

STB

FD-32760

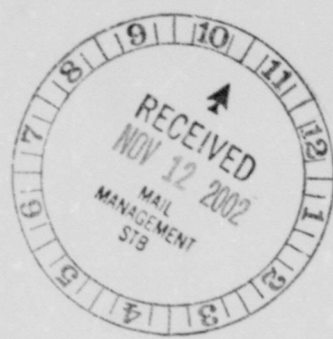
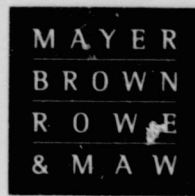
11-12-02

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206587



November 12, 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  
MAIN FAX (202) 263-3300  
www.mayerbrownrowe.com

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.

Dear Secretary Williams:

On behalf of The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP"), I am writing to request a twenty (20) day extension of all applicable filing deadlines with respect to Decision No. 98 served by the Board in this proceeding on October 22, 2002, including the filing deadlines for any petitions for reconsideration and the report required to be filed by BNSF and UP concerning matters pertaining to the implementation of Section 12 of the BNSF Settlement Agreement that have been resolved or remain outstanding, an analysis of the impact of those matters on the trackage rights charges, and any proposed revisions to Section 12.

The parties are currently discussing a possible overall resolution of the open issues on mutually-agreeable terms and are hopeful that the additional 20 days will allow them to resolve those issues.

Counsel for UP has agreed to my seeking this requested extension of time on behalf of UP.

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.

cc: David M. Konschnik  
Michael L. Rosenthal, Esq.  
All Parties of Record

**ENTERED**  
Office of Proceedings

**NOV 12 2002**

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Little Thin Jacket

STB FD-32760 7-3-02 I

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ENTERED  
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JUL 3 - 2002

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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 CORPORATION AND THE DENVER AND

RIO GRANDE WESTERN RAILROAD COMPANY

AMERICAN CHEMISTRY COUNCIL'S  
MOTION FOR LEAVE TO FILE REPLY



The American Chemistry Council ("the Council")<sup>1</sup> respectfully submits that UP/SP-397, UP's Reply to BNSF's Response to Order to Show Cause, contains potentially misleading arguments concerning the intent of the Council's predecessor, CMA, regarding the trackage

<sup>1</sup> The American Chemistry Council (formerly the Chemical Manufacturers Association, or CMA) represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$455 billion a year enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.



rights fee escalator issue. UP ascribes to CMA positions CMA never took, most notably coining the term "CMA Method" to refer to an escalation methodology that CMA in its CMA Agreement with UP expressly did not adopt.

It order to ensure that the Board is not confused, the Council therefore requests leave to file the attached brief reply.

Respectfully submitted,

Two handwritten signatures are present. The first signature is on the left, and the second is on the right. Both are written in black ink and are positioned above a horizontal line.

David F. Zoll  
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: June 28, 2002

STB

FD-32760

3-27-02

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205073



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ENTERED  
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MAR 28 2002  
Part of  
Public Record

BNSF-101

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

BNSF'S REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO UNION PACIFIC

Pursuant to 49 C.F.R. § 1114.30, The Burlington Northern and Santa Fe Railway Company ("BNSF") directs the following document requests to Union Pacific Railroad Company ("UP").

Responses should be served as soon as possible, and in no event later than 15 days from the date of service hereof, unless specifically indicated. BNSF will pay all reasonable costs for duplication and expedited delivery of documents to its attorneys. "Documents" are writings or compilations of information in any form, including electronic messages. UP should contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.



## DOCUMENT REQUESTS

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.

2. Produce all documents concerning or relating to whether UP and BNSF agreed 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.

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.

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.

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.



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.

Respectfully submitted,

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, Texas 76131-0039  
(817) 352-2353 or (817) 352-2368

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

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

Attorneys for The Burlington Northern and Santa Fe Railway Company

March 27, 2002

CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Request for Production of Documents to Union Pacific (BNSF-101) are being served as follows:

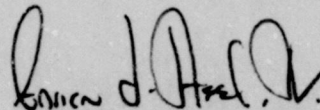
By Hand:

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

  
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FD-32760

3-25-02

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205042



BEFORE THE  
SURFACE TRANSPORTATION BOARD

205042

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

ENTERED  
Office of the Secretary  
MAR 26 2002  
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Public Record

**UNION PACIFIC'S REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO THE AMERICAN CHEMISTRY COUNCIL**

Pursuant to 49 C.F.R. § 1114.30, Union Pacific Railroad Company ("UP") directs  
the following document requests to The American Chemistry Council ("ACC").

Responses should be served as soon as possible, and in no event later than 15 days  
from the date of service hereof, unless specifically indicated. UP will pay all reasonable costs  
for duplication and expedited delivery of documents to its attorneys. "Document" are writings or  
compilations of information in any form, including electronic messages. ACC should contact the  
undersigned promptly to discuss any objections or questions regarding these requests with a view  
to resolving any disputes or issues of interpretation informally and expeditiously.

DOCUMENT REQUESTS

1. Produce all documents created prior to 1997 supporting ACC's assertion  
that it "was certainly not in CMA's (now the Council's) contemplation that the 3.1 mills per

gross ton mile would be adjusted upward to reflect UP's writing up of assets owning to its purchase of SP at a price above book value." (See CMA-15 at 2.)

2. Produce all documents created prior to 1997 reflecting communications, discussions, or agreements between the Chemical Manufacturers Association ("CMA") and UP, or among CMA, 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." (See Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760, Decision No. 96 (STB served Mar. 19, 2002), slip op. at 6.)

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." (See Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760, Decision No. 96 (STB served Mar. 19, 2002), slip op. at 6.)

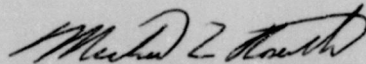
4. If ACC files a pleading in response to the Surface Transportation Board's order to show cause why the Board should not dismiss the BNSF-98 clarification petition for failure to state a claim, produce when it serves its pleading all documents supporting any calculations and assertions about the intent of any party to any agreement that ACC includes in its pleading. (See Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760, Decision No. 96 (STB served Mar. 19, 2002), Ordering ¶ 1, slip op. at 7.)



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  
(402) 271-3309



---

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*

March 25, 2002

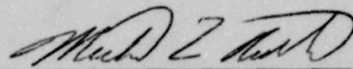
CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2002, I caused a copy of the foregoing "Union Pacific's Request for the Production of Documents to The American Chemistry Council" to be served by hand on:

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

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

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



ORIGINAL

LAW OFFICES  
GORDON P. MACDOUGALL  
1025 CONNECTICUT AVE., N. W.  
WASHINGTON, D. C. 20036

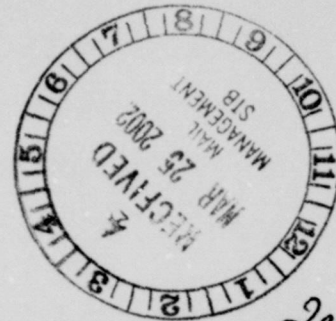
TELEPHONE  
AREA CODE 202  
223-9738

ENTERED  
Office of the Secretary

MAR 26 2002

Part of  
Public Record

March 25, 2002



Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington DC 20423

Re: F.D. No. 34145, Bulkmatic Railroad Corporation-Acquisition  
Exemption-Bulkmatic Transport Company  
F.D. No. 34179, Bulkmatic Railroad Corporation-Operation  
Exemption-Bulkmatic Transport Company

Dear Mr. Williams:

The petition to reject/revoke the acquisition and operation exemptions in the entitled proceedings was filed March 4, 2002. The petition advised the Board of pending discovery (Pet., 2), such that the supplement to the petition would be due April 18, 2002. 49 CFR 1121.3.

Respondent has advised it will need additional time within which to respond to the discovery. The discovery ordinarily would have been due March 19; however, respondent believes it will be able to fully respond to discovery on or before April 1, 2002, and has no objection if petitioner is accorded a comparable extension until May 1, 2002, within which to supplement its petition.

Wherefore, it is requested that the time within which petitioner may supplement its petition to reject/revoke be extended to and including May 1, 2002.

A copy of this letter has been served upon all parties of record by first class mail postage-prepaid.

Very truly yours,

*Gordon P. MacDougall*  
Attorney for Joseph C. Szabo,  
Petitioner.

cc: David C. Dillon  
Thomas F. McFarland



STB

FD-32760

3-25-02

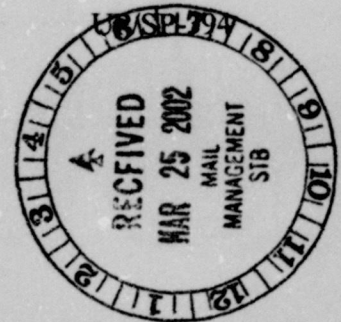
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MAR 26 2002

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD



205041

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 REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

Pursuant to 49 C.F.R. § 1114.30, Union Pacific Railroad Company ("UP") directs  
the following document requests to The Burlington Northern and Santa Fe Railway Company  
("BNSF").

Responses should be served as soon as possible, and in no event later than 15 days  
from the date of service hereof, unless specifically indicated. UP will pay all reasonable costs  
for duplication and expedited delivery of documents to its attorneys. "Document" are writings or  
compilations of information in any form, including electronic messages. BNSF should contact  
the undersigned promptly to discuss any objections or questions regarding these requests with a  
view to resolving any disputes or issues of interpretation informally and expeditiously.

**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.” (See BNSF-98 at 14.)

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.” (See Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760, Decision No. 96 (STB served Mar. 19, 2002), slip op. at 6.)

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.” (See Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760, Decision No. 96 (STB served Mar. 19, 2002), slip op. at 6.)

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.” (See BNSF-99 at 13 n.11.)

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



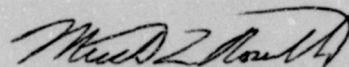
calculations and assertions about the intent of any party to any agreement that BNSF includes in its pleading. (See Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB

Finance Docket 32760, Decision No. 96 (STB served Mar. 19, 2002), Ordering ¶ 1, slip op. at 7.)

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  
(402) 271-3309



---

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*

March 25, 2002

CERTIFICATE OF SERVICE

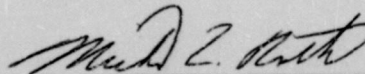
I hereby certify that on this 25th day of March, 2002, I caused a copy of the foregoing "Union Pacific's Request for the Production of Documents to The Burlington Northern and Santa Fe Railway Company" to be served by hand on:

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

6-28-02

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Title This Jacket

STB FD-32760 6-28-02 I

ID-205746



**PATTON BOGGS LLP**  
ATTORNEYS AT LAW

205746

2550 M Street, NW  
Washington, DC 20037-1350  
202-457-6000

Facsimile 202-457-6315  
www.pattonboggs.com

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

June 28, 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-18, American Chemistry Council's Motion for Leave to File Reply and CMA-19, American Chemistry Council Reply to UP/SP-397. Please stamp the additional copy with the date of receipt and return with our messenger.

Also enclosed is a diskette with this filing in Word Perfect 5.x.

Sincerely,

Scott N. Stone

Counsel for the American  
Chemistry Council

**ENTERED**  
**Office of Proceedings**

JUL 1 2002

**Part of**  
**Public Record**



205746

BEFORE THE  
SURFACE TRANSPORTATION BOARD

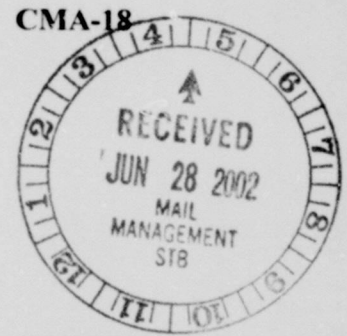
Finance Docket No. 32760

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

AMERICAN CHEMISTRY COUNCIL'S  
MOTION FOR LEAVE TO FILE REPLY



ENTERED  
Office of Proceedings

JUL 1 2002

Part of  
Public Record

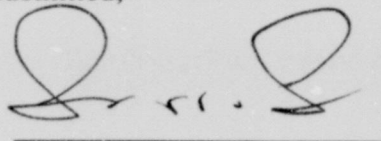
The American Chemistry Council ("the Council")<sup>1</sup> respectfully submits that UP/SP-397, UP's Reply to BNSF's Response to Order to Show Cause, contains potentially misleading arguments concerning the intent of the Council's predecessor, CMA, regarding the trackage

<sup>1</sup> The American Chemistry Council (formerly the Chemical Manufacturers Association, or CMA) represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$455 billion a year enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.

rights fee escalator issue. UP ascribes to CMA positions CMA never took, most notably coining the term "CMA Method" to refer to an escalation methodology that CMA in its CMA Agreement with UP expressly did not adopt.

It order to ensure that the Board is not confused, the Council therefore requests leave to file the attached brief reply.

Respectfully submitted,



---

David F. Zoll  
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: June 28, 2002

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

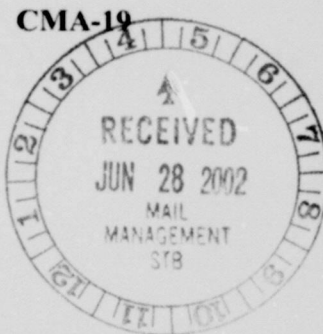
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY  
AND MISSOURI PACIFIC RAILROAD COMPANY  
-- CONTROL AND MERGER --

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

AMERICAN CHEMISTRY COUNCIL'S  
REPLY TO UP/SP-397

The American Chemistry Council ("the Council")<sup>2</sup> submitted evidence to the Board on May 22, 2002 in CMA-17 showing that the Council's predecessor, CMA, had negotiated with UP and had obtained agreement to a modified escalator formula for the trackage rights fees to be

<sup>2</sup> The American Chemistry Council (formerly the Chemical Manufacturers Association, or CMA) represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$455 billion a year enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.





paid by the BNSF. The original escalator agreed between UP, SP and BNSF was based on 70% of year-to-year changes in the RCAF. The revised escalator adopted by UP and CMA in Paragraph 7 of the CMA Agreement provided that the trackage rights fees would "be adjusted upward or downward each year by the difference between the year in question and the preceding year in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the fee." See CMA-17, Verified Statement of Thomas E. Schick at 4.

If there is anything that can fairly be characterized as the "CMA Method," the escalator formula in Paragraph 7 of the CMA Agreement was it, because this is the only escalator formula that CMA ever agreed to. What UP labels as the "CMA Method" was an escalator formula suggested earlier by one of CMA's witnesses, Mr. Crowley, which CMA did not adopt in the CMA Agreement.

The intention and effect of the escalator formula in Paragraph 7 of the CMA Agreement was to adjust the trackage rights fees beginning in the second post-merger year. Schick V.S., id. at 4. Because the first adjustment would have been based on a comparison of costs in the second post-merger year with costs in the first post-merger year, there never would have been a comparison of post-merger costs with pre-merger costs. Id.<sup>3</sup>

CMA never agreed to, and was not involved in negotiating, the changes subsequently made by UP, in its second supplemental agreement with BNSF, which UP now refers to as the "CMA Method." As the Council has pointed out, the Second Supplemental Agreement was filed

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<sup>3</sup> Hence the Council disagrees with UP's view (UP/SP-397 at 20) that the words "the year in question" in Section 7 of the CMA Agreement must mean the previous year. If the intention had been to base the adjustment on a comparison of the two prior years' costs, that is what the CMA Agreement would have said.

on the last business day before the oral argument in the UP/SP merger, after CMA had already filed a brief withdrawing its opposition to the merger.<sup>4</sup>

UP suggests that it "agreed" to adopt the escalator formula proposed by CMA's witness Crowley. UP/SP-397 at 11. But CMA never asked UP to agree to this escalator. The CMA Agreement, as noted, did not contain this escalator. Although UP and BNSF subsequently agreed, in the Second Supplemental Agreement, to amend the agreement to incorporate the Crowley formula, CMA never agreed to this. Nor was CMA involved in the negotiations that resulted in the Second Supplemental Agreement.

In sum, it would be erroneous to infer that UP adopted the "CMA Method" in any way at the behest of, or with the agreement of CMA. As far as the Council is concerned, the so-called "CMA Method," as interpreted by UP, is invalid, both because it was adopted without consultation with CMA, and because, as now interpreted by UP, it would materially abrogate an important aspect of the CMA Agreement – that the escalator formula should be based only on a comparison of costs for post-merger years, rather than comparing pre-merger costs with post-merger costs. It would be unjust to construe the Second Supplemental Agreement as abrogating this aspect of the CMA Agreement, for two reasons. First, CMA was not involved in negotiating the Second Supplemental Agreement. Second, the Board in approving the UP/SP merger imposed the CMA Agreement (including Paragraph 7) as an additional condition separate from the UP/SP-BNSF Settlement Agreement.<sup>5</sup>

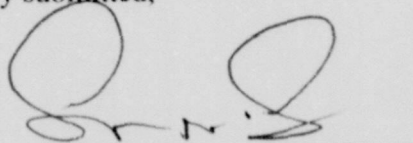
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<sup>4</sup> UP's submission of testimony from Mr. Rebensdorf on April 29, 1996 stating UP's unilateral intention or interpretation regarding the escalator formula (see quoted passage, UP/SP-397 at 12) had no effect, and could not have had any effect, in modifying the mutual agreement of UP and CMA in the CMA Agreement.

<sup>5</sup> See Decision No. 44, 1 S.T.B. 233 at 419.

The best that can be said of the escalator formula that was adopted in the Second Supplemental Agreement is that, if it were applied in such a way as not to alter the underlying intent of the CMA Agreement to compare only post-merger years, it could be harmonized with CMA's intentions. Indeed, as Mr. Schick testifies, he was advised that the change in the escalator formula made in the Second Supplemental Agreement was intended to be only a technical, non-substantive change. CMA-17, Verified Statement of Thomas E. Schick at 6. BNSF has submitted evidence and argument concerning how the formula, with the proper adjustments, could carry out the intention of the CMA Agreement and not be distorted by inclusion of merger related cost write-ups and capital investments which UP repeatedly pledged to pay for. The Council concurs with and endorses that evidence and argument.

Respectfully submitted,



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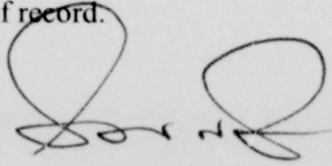
Counsel for the American  
Chemistry Council

dated: June 28, 2002



CERTIFICATE OF SERVICE

This is to certify that I have, this 28nd day of June, 2002, served copies of the foregoing filings by hand upon 'Vashington counsel for the Burlington Northern Santa Fe and Union Pacific and by first class mail upon other parties of record.



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Scott N. Stone

STB

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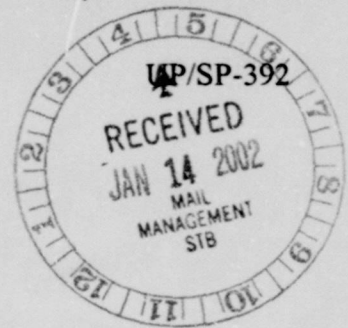
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Office of the Secretary

JAN 15 2002

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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

**UP'S MOTION TO DISMISS BNSF'S PETITION FOR CLARIFICATION  
OF THE TRACKAGE RIGHTS FEE ADJUSTMENT PROVISION**

BNSF seeks clarification of the BNSF Settlement Agreement's provision for adjusting trackage rights fees. BNSF-98, Petition of the Burlington Northern and Santa Fe Railway Company for Clarification ("Petition"), December 21, 2001, pp. 1-2. The Board should dismiss BNSF's Petition and require the parties to arbitrate their dispute. The BNSF Settlement Agreement requires arbitration, and both BNSF and UP invoked arbitration before BNSF filed its Petition. BNSF claims that this dispute raises important policy questions for the Board about whether BNSF can compete with UP, but BNSF's ability to compete effectively using the adjusted fees is well established.

The Board should also dismiss BNSF's petition for failing to state a claim. BNSF's petition relies entirely on unsupported allegations that the parties' intent differed from the language of the BNSF Settlement Agreement. In the absence of evidence, UP cannot respond to BNSF's claims, and the Board has no basis for granting the relief that BNSF seeks.

### BACKGROUND

A pending arbitration proceeding encompasses both issues on which BNSF seeks clarification. On October 4, 2001, after good-faith efforts to resolve the parties' differences had failed, UP commenced arbitration regarding the BNSF Settlement Agreement's provision for adjusting trackage rights fees. That provision states explicitly that fees will be adjusted from year to year to reflect changes in URCS costs:

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

Restated and Amended BNSF Settlement Agreement, § 12. The provision defines "URCS costs" as "costs developed using the Uniform Rail Costing System." Id.

UP sought to arbitrate whether URCS costs should be altered to eliminate the effect of normal purchase accounting for UP's purchase of SP.<sup>1</sup> On November 1, 2001, BNSF filed a counter-request for arbitration seeking arbitration on the same issue. BNSF also asked for arbitration on a new URCS-costing issue: whether URCS costs should be altered to eliminate

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<sup>1</sup> UP described the URCS-costing dispute as follows:

For the 1997 and 1998 annual adjustments, UP calculated "the difference in the two preceding years" in UP/SP's costs using actual data from 1995 and 1996, and from 1996 and 1997, respectively, as provided in Section 12 [of the BNSF Settlement Agreement]. BNSF claims that the 1995 and 1996 cost data should be artificially adjusted to reflect UP's post-merger cost structure, even though Section 12 does not provide for any such adjustment.

UP's demand for arbitration is attached as Exhibit A.

UP also raised a second issue: whether the adjustment should reflect the difference in URCS costs in the two preceding years, as UP contends, or the percentage change in URCS costs in the two preceding years, as BNSF contends. BNSF does not seek clarification with respect to the second issue. Petition, p. 2 n.3.



certain merger-related investments.<sup>2</sup> BNSF's counter-request raised three additional issues relating to the application of the fee adjustment provision.<sup>3</sup> UP and BNSF have since resolved those three issues.

On December 21, while the parties prepared for arbitration, BNSF filed its petition for clarification. The Petition asks the Board to resolve the same two URCS-costing issues contained in BNSF's counter-request for arbitration.

I. THE BOARD SHOULD REQUIRE UP AND BNSF TO ARBITRATE THIS DISPUTE

The Board should require UP and BNSF to arbitrate their dispute regarding the adjustment provision. The BNSF Settlement Agreement requires arbitration of disputes as the exclusive remedy. Both BNSF and UP have already invoked arbitration. Moreover, the Board does not need to intervene; this dispute does not involve any important policy question about whether BNSF can compete with UP.

A. The BNSF Settlement Agreement Requires Arbitration

The fee adjustment dispute is subject to a requirement to arbitrate. UP and BNSF included an arbitration clause in the BNSF Settlement Agreement. They agreed that "unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the

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<sup>2</sup> BNSF described the URCS-costing disputes as follows:

Whether UP is entitled to include the purchase premium associated with its acquisition of SP and certain merger-related expenditures relating to the trackage rights lines which were to be funded solely by UP in the investment base used in the adjustment of the trackage rights charges payable by BNSF.

BNSF's counter-request for arbitration is attached as Exhibit B.

<sup>3</sup> The additional issues involve: (i) the method of combining UP and SP URCS costs for 1995 and 1996; (ii) the categories of maintenance and operating costs that are used to calculate the fee adjustment; and (iii) the source of dispatching expenses that are used to calculate the fee adjustment.



application of charges hereunder shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.” Restated and Amended BNSF Settlement Agreement, § 15.<sup>4</sup> The fee adjustment dispute involves a term or provision of the agreement, so arbitration is the “exclusive” remedy.

The Board should not consider a dispute that is subject to arbitration. In its decision concluding formal UP/SP merger oversight, the Board stated that it would remain available to resolve disputes “subject to any applicable requirement to arbitrate.” Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760 (Sub-No. 21), Decision No. 21 (STB served Dec. 20, 2001) (“General Oversight Dec. No. 21”), slip op. at 6. The Board specifically expressed a preference for private resolution of the parties’ fee adjustment dispute. See id., slip op. at 7.<sup>5</sup> The Board should thus dismiss BNSF’s petition in favor of the arbitration proceeding required by the BNSF Settlement Agreement.

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<sup>4</sup> Section 15 of the Restated and Amended BNSF Settlement Agreement states:

Except as otherwise provided by any decision of the STB or by separate agreement, unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

<sup>5</sup> Board policy strongly favors arbitration and other private methods of dispute resolution. See, e.g., Arbitration – Various Matters Relating to Its Use as an Effective Means of Resolving Disputes that Are Subject to the Board’s Jurisdiction, STB Ex Parte No. 586 (STB served Oct. 26, 2001), slip op. at 1.

B. BNSF and UP Have Already Invoked Arbitration

Even if BNSF could have asked the Board to resolve the fee adjustment dispute, it invoked arbitration first. The Board should not allow BNSF to change forums at whim.<sup>6</sup>

BNSF filed its petition for clarification nearly two months after it had filed its expanded counter-request for arbitration and nearly three months after UP had initiated the arbitration. Before BNSF filed its petition, the parties were actively pursuing arbitration. The parties had agreed to a process for selecting arbitrators, and they had agreed to compromise the three additional issues raised in BNSF's counter-request. If BNSF wanted the Board rather than an arbitrator to decide this dispute, it should have made that request much earlier. BNSF should be held to the choice that it made.

C. This Dispute Does Not Require the Board To Resolve Any Important Policy Question About Whether BNSF Can Compete with UP

The fee adjustment dispute does not involve any important policy question requiring Board intervention. In typical fashion, BNSF argues that, unless its prevails, it will be unable to compete on a "level playing field." Petition, p. 16. No such danger exists. The current level of trackage rights fees has allowed BNSF to compete vigorously for the traffic opened up to it by the merger, as the Board has found in five consecutive oversight decisions. This dispute will not cause those fees to rise in the future. Moreover, the adjustment mechanism is subject to renegotiation and, ultimately, to arbitration. There is thus no important policy question for the Board to address.

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<sup>6</sup> BNSF claims that it "is willing to submit to the arbitrator in the first instance the specific question of whether the adjustments made for the [past five] years were correct." Petition, p. 8. BNSF also states, however, that "it is critical that the Board resolve the key threshold issue of the proper investment base." Id. BNSF's first statement apparently refers to arbitration regarding the complex recalculations of UP URCS that would be required if the Board ruled in its favor.



The core of the parties' dispute involves the trackage rights fees that BNSF has been paying UP over the past five years. BNSF claims that the fees it paid were too high because UP misinterprets the adjustment mechanism. Regardless of who prevails in this dispute, BNSF cannot possibly claim that its ability to compete has been harmed. As BNSF reveals in its Petition, it was completely unaware of the fee adjustment issue until it audited UP's adjustment methodology. Petition, p. 2. It competed vigorously while paying the adjusted fees.

Five years of Board oversight proceedings have established that BNSF is an effective competitor using the rights it obtained in the UP/SP merger, despite paying trackage rights fees that BNSF now claims to be flawed.<sup>7</sup> In its final annual oversight decision, the Board concluded that "BNSF has competed vigorously for the traffic opened up to it by the BNSF Agreement and has become an effective competitive replacement for the competition that would otherwise have been lost or reduced when UP and SP merged." General Oversight Dec. No. 21, slip op. at 4.

The Board's conclusion endorsed BNSF's own pride in its competitive success. In its final oversight report, BNSF told the Board that it "has been and continues to be an aggressive and effective competitor utilizing the rights it obtained pursuant to the BNSF Settlement Agreement and the conditions imposed by the Board." See, e.g., BNSF-PR-20, p. 2. BNSF reported that aggressive marketing efforts have paid off handsomely – its traffic volume on UP lines grew steadily over the five-year oversight period, as did its loadings and deliveries.

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<sup>7</sup> See Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760 (Sub-No. 21), Decision No. 16 (STB served Dec. 15, 2000); Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760 (Sub-No. 21), Decision No. 15 (STB served Nov. 30, 1999); Union Pacific Corp. – Control & Merger – Southern Pacific Corp., STB Finance Docket 32760 (Sub-No. 21), Decision No. 13 (STB served Dec. 21, 1998); Union Pacific Corp. – Control & Merger – Southern Pacific Corp., 2 S.T.B. 703 (1997).



Id. at 5-6. Before the merger, BNSF told the Board "that it would grow the traffic associated with its rights . . . to the size and scale of a new Class I railroad." Id. at 4. Five years later, BNSF reported that it met that commitment and, in fact, "has exceeded that goal." Id. Even though it had already exceeded its goal, BNSF said that it "anticipates the continued customer growth and commercial success of its UP/SP franchise." Id. at 7.

BNSF would have to disavow five years of its own oversight reports in order to argue that the fees are too high to permit it to compete. The Board would have to ignore five years of oversight decisions in order to agree.

BNSF warns that it may not be competitive in the future, but those concerns are not credible. First, the trackage right fees will not rise in the future because of the disputed costs. If BNSF wins, the fees will fall, but any disputed "increase" occurred in the past.<sup>8</sup> Second, the BNSF Settlement Agreement allows either party to request review and renegotiation of the fee adjustment mechanism every five years. If the parties do not agree "on the need for or the extent of adjustment," then "either party may request binding arbitration." Restated and Amended BNSF Settlement Agreement, § 12. BNSF has already commenced the review and renegotiation process.<sup>9</sup> The trackage rights fees that BNSF pays in the future will be adjusted based on the results of that process.

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<sup>8</sup> In fact, the trackage rights fees have not increased above their original levels, with one minor exception. BNSF's complaint is that the fees have not fallen as much as they should have. The minor exception involves the fee for Keddle-Stockton/Richmond trackage rights. The parties negotiated a separate fee for the Keddle segment, which, unlike the fees for other segments, is calculated to two decimal places. See Restated and Amended BNSF Settlement Agreement, § 9(a). The Keddle fee initially fell, but it later rose above the original level as a result of rounding.

<sup>9</sup> See Letter from Richard E. Weicher, Esq., BNSF's Vice President and Senior Regulatory Counsel, to James V. Dolan, Esq., UP's Vice President-Law, dated Nov. 1, 2001 (attached as (continued...))

The fees BNSF has paid in the past have not hindered its ability to compete, and future adjustments to those fees are currently subject to review and renegotiation. Public policy concerns do not justify Board intervention in the dispute.

II. THE BOARD SHOULD DISMISS BNSF'S PETITION FOR FAILING TO STATE A CLAIM

BNSF's petition rests entirely on allegations that the parties intended to apply the adjustment provision in a way that requires modifications to URCS. BNSF claims that the parties intended to exclude the "purchase premium" and certain merger-related investments from URCS when they adjusted trackage rights fees. Those allegations, however, are entirely unsupported. They provide no basis for granting the relief that BNSF seeks.

BNSF offers no evidence to support its claims that the parties intended to depart from URCS. It identifies no witnesses and includes no verified statements. If BNSF's claims are based on statements from BNSF or UP personnel, BNSF should reveal who made the statements, so UP can address the sources and contexts. If there is a document that supports BNSF's claims, it should produce that document. It does neither.<sup>10</sup>

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Exhibit C). UP and BNSF subsequently agreed to hold the joint review and renegotiation in abeyance pending the completion of the arbitration.

<sup>10</sup> BNSF cites evidence that the BNSF Settlement Agreement was designed to allow BNSF to replace the competition provided by the pre-merger SP. BNSF also cites evidence that the fee adjustment provision was designed to reflect changes in UP's actual costs. Those propositions are undisputed. BNSF offers no support, however, for its key assertions: that the parties intended to capture some of the URCS-cost changes resulting from merger-related expenses in the initial trackage rights fee and that they intended to depart from URCS in the adjustment process because some URCS costs are not "actual" costs. BNSF quotes, with apparent approval, Applicants' statement that trackage rights fees will be adjusted on the basis of changes in "actual UP/SP system average URCS costs for the categories of maintenance and operating costs covered by the fees." BNSF-98, p. 10 n.7. If BNSF is claiming that "actual" maintenance and operating costs are something other than the "system average UCRS costs" and that the adjustment provision does not reflect the parties' intent, BNSF should present evidence that supports its claim.



BNSF also offers no evidence to explain how the parties allegedly intended to modify URCS. It does not explain how the parties intended to identify and remove disputed items from URCS. It refers only to some undefined intent to "exclude" some costs.<sup>11</sup> If BNSF claims that the parties agreed to procedures for modifying URCS, it should not only describe those procedures, but also identify where the parties' agreement to apply those procedures can be found.

The language of the BNSF Settlement Agreement provides no evidence to support BNSF's "intent" claims. Under Section 12 of the agreement, trackage rights fees are to be adjusted annually based on changes in "UP/SP's system average URCS costs." Restated and Amended BNSF Settlement Agreement, § 12. The provision requires that fee adjustments be based on changes in system average URCS costs. It contains no suggestion that the parties agreed to alter URCS costs in any way or did not consider some of the costs reflected in URCS to be "actual" costs.<sup>12</sup> It specifically defines "URCS" costs to mean "costs developed using the Uniform Rail Costing System." *Id.*

Under these circumstances, UP cannot respond effectively to BNSF's claims. Neither UP nor the Board can fully address BNSF's claims about the parties' intent unless BNSF first clarifies their substance, reveals their factual basis, and explains how it believes the "purchase premium" and merger-related capital expenditures are to be excluded from URCS.

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<sup>11</sup> BNSF also fails to explain how the relief it seeks could be implemented. BNSF claims that it would not require UP to create and maintain two separate sets of URCS figures indefinitely into the future, but that is exactly what its proposed relief requires. *See* Petition, p. 16 n.12.

<sup>12</sup> Under the Board's long-established accounting rules, UP's costs include the cost of transportation property acquired. *See Western Coal Traffic League v. Union Pacific R.R.*, STB Finance Docket No. 33726 (STB served May 12, 2000), slip op. at 7-8.



In light of the deficiencies in BNSF's petition, the Board has no basis for disregarding the express language of the BNSF Settlement Agreement and granting BNSF the relief it seeks. The Board should dismiss BNSF's petition for failing to state a claim upon which relief can be granted.

CONCLUSION

UP and BNSF submitted their fee adjustment dispute to arbitration, as required by the BNSF Settlement Agreement. Nothing justifies releasing BNSF from its commitment to arbitrate these types of disputes, or its specific election to arbitrate this dispute. Even if this were an appropriate forum, the Board should still dismiss BNSF's petition for failing to state a claim.

Respectfully submitted,

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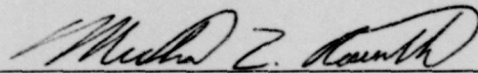
  
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*Attorneys for Union Pacific Corporation,  
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Southern Pacific Rail Corporation*

January 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2002, I caused a copy of the foregoing "UP's Motion to Dismiss BNSF's Petition for Clarification of the Trackage Rights Fee Adjustment Provision" 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 (Sub-No. 21).

A handwritten signature in cursive script, appearing to read "Michael L. Rosenthal", is written over a horizontal line.

Michael L. Rosenthal

**EXHIBIT A**

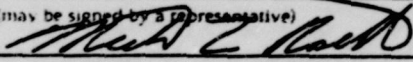


# American Arbitration Association

## COMMERCIAL ARBITRATION RULES

### DEMAND FOR ARBITRATION

**MEDIATION** is a nonbinding process. The mediator assists the parties in working out a solution that is acceptable to them. If you wish for the AAA to contact the other parties to ascertain whether they wish to mediate this matter, please check this box (there is no additional administrative fee for this service) ☐

TO Name <b>The Burlington Northern and Santa Fe Railway Company</b>			Name of Representative (if known) <b>Richard E. Weicher</b>		Name of Firm (if applicable)	
Address <b>2500 Lou Menk Drive, Third Floor</b>			Representative's Address <b>2500 Lou Menk Drive, Third Floor</b>			
City <b>Pt. Worth</b>	State <b>TX</b>	Zip Code <b>76131-0039</b>	City <b>Pt. Worth</b>	State <b>TX</b>	Zip Code <b>76131-0039</b>	
Phone No. <b>(817) 352-2368</b>		Fax No. <b>(817) 352-2399</b>		Phone No. <b>(817) 352-2368</b>		Fax No. <b>(817) 352-2399</b>
The named claimant, a party to an arbitration agreement contained in a written contract, dated <b>September 25, 1995</b> and providing for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration thereunder.						
THE NATURE OF THE DISPUTE  <b>See Attachment A hereto.</b>						
THE CLAIM OR RELIEF SOUGHT (the Amount, if Any)  <b>See Attachment A hereto.</b>						
DOES THIS DISPUTE ARISE OUT OF AN EMPLOYMENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
TYPES OF BUSINESS Claimant <b>Railroad</b> Respondent <b>Railroad</b>						
HEARING LOCALE REQUESTED <b>Washington, D.C.</b>						
You are hereby notified that copies of our arbitration agreement and this demand are being filed with the American Arbitration Association at its <b>Washington, D.C.</b> office, with a request that it commence administration of the arbitration. Under the rules, you may file an answering statement within fifteen days after notice from the AAA.						
Signature (may be signed by a representative) 				Title <b>Attorney</b>		
Name of Claimant <b>Union Pacific Railroad Company</b>			Name of Representative <b>Michael L. Rosenthal</b>		Name of Firm (if Applicable) <b>Covington &amp; Burling</b>	
Address (to Be Used in Connection with This Case) <b>1416 Dodge Street</b>			Representative's Address <b>1201 Pennsylvania Avenue, N.W.</b>			
City <b>Omaha</b>	State <b>NE</b>	Zip Code <b>68179</b>	City <b>Washington</b>	State <b>D.C.</b>	Zip Code <b>20004-2401</b>	
Phone No. <b>(402) 271-5000</b>		Fax No.		Phone No. <b>(202) 662-5448</b>		Fax No. <b>(202) 778-5448</b>
TO INSTITUTE PROCEEDINGS, PLEASE SEND TWO COPIES OF THIS DEMAND AND THE ARBITRATION AGREEMENT, WITH THE FILING FEE AS PROVIDED FOR IN THE RULES, TO THE AAA. SEND THE ORIGINAL DEMAND TO THE RESPONDENT.						

## ATTACHMENT A

### NATURE OF DISPUTE AND RELIEF SOUGHT

This dispute involves the procedures for adjusting the compensation that The Burlington Northern and Santa Fe Railway Company ("BNSF") must pay to operate its trains over certain tracks owned by Union Pacific Railroad Company ("UP").

The dispute arises under an Agreement dated September 25, 1995 (Attachment B) and a Second Supplemental Agreement dated June 27, 1996 (Attachment C) between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, "UP/SP"), on the one hand, and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (collectively, "BN/Santa Fe"), on the other hand. (There is also a Supplemental Agreement between the same parties dated November 18, 1995, but we do not include it because its provisions are not directly relevant to the parties' dispute.)<sup>1</sup>

The September 25, 1995, Agreement as supplemented by the June 27, 1996, Second Supplemental Agreement, collectively referred to as the "BNSF Settlement Agreement," was imposed by the Surface Transportation Board as a condition to its approval of a merger between the Union Pacific and Southern Pacific railroad systems, which was consummated on September 11, 1996.

The BNSF Settlement Agreement provides, *inter alia*, for grants of "trackage rights" that allow BNSF to operate its trains over designated UP tracks and UP to operate its trains over designated BNSF tracks as long as the railroads compensate each other for such operations.

The initial trackage rights compensation levels were set forth in Section 9(a) of the September 25, 1995 Agreement. Section 9(a) also provides that the compensation levels "shall be escalated in accordance with the procedures described in Section 12 of this Agreement."

The procedures described in Section 12 of the September 25, 1995 Agreement were amended by Section 9 of the June 27, 1996 Agreement.<sup>2</sup> As a result of the amendment, the BNSF Settlement Agreement trackage rights escalation clause currently provides that the

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<sup>1</sup> In the years after the agreements, the rail entities in the Union Pacific and Southern Pacific systems merged in a series of transactions, and the surviving entity is UP. The rail entities in the BN/Santa Fe system also merged, and the surviving entity is BNSF.

<sup>2</sup> The amendment to Section 12 was required by an agreement among UP/SP, BN/Santa Fe, and the Chemical Manufacturers Association, dated April 18, 1996 (Attachment D).



trackage rights charges shall be adjusted each year by the difference in a specified measure of UP's maintenance and operating costs in the two preceding years. Specifically, Section 12, as amended, provides:

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

UP has adjusted its trackage rights charges to BNSF annually in accordance with Section 12. BNSF claims, however, that according to its own calculations, UP has overcharged BNSF. BNSF has demanded that UP refund the alleged overcharges, and BNSF has short-paid on one occasion.

UP accordingly has instituted this arbitration pursuant to the terms of Section 15 of the September 25, 1996 Agreement, which provides:

Unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

The dispute between UP and BNSF ultimately turns on two differences in the parties' respective interpretations of the Section 12 adjustment procedures:

(1) For the 1997 and 1998 annual adjustments, UP calculated "the difference in the two preceding years" in UP/SP's costs using actual data from 1995 and 1996, and from 1996 and 1997, respectively, as provided in Section 12. BNSF claims that the 1995 and 1996 cost data should be artificially adjusted to reflect UP's post-merger cost structure, even though Section 12 does not provide for any such adjustment.

(2) In making each annual adjustment, UP adjusted the trackage rights charges by "the difference" between UP/SP costs in the two preceding years, as required by Section 12. BNSF claims that the charges should be adjusted by the percentage change in UP/SP's costs, even though Section 12 explicitly refers to "the difference" in costs.

UP requests that the arbitrator find that UP has correctly interpreted and applied Section 12's trackage rights compensation adjustment provision, that BNSF's interpretations are incorrect, and that UP is accordingly entitled to compensation at the levels it has established.



**EXHIBIT B**

## Freeborn & Peters

November 1, 2001

### VIA FEDERAL EXPRESS

Mr. Gregory M. Smith  
American Arbitration Association  
Case Management Center  
2200 Century Parkway, Suite 300  
Atlanta, GA 30345-3203

#### *Attorneys at Law*

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Weston W. Marsh  
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Direct 312.360.6702  
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wmarsh@  
freebornpeters.com

*Chicago*

*Springfield*

Re: 16 Y 181 00545 01; Union Pacific Railroad Company and  
The Burlington Northern and Santa Fe Railway Company

Dear Mr. Smith:

We represent The Burlington Northern and Santa Fe Railway Company ("BNSF"), Respondent in the above matter. This will acknowledge receipt of your letter dated October 18, 2001 notifying BNSF of the filing of the demand for arbitration in this proceeding submitted on behalf of Claimant, Union Pacific Railroad Company ("UP"). Please accept this letter as BNSF's answering statement to UP's demand for arbitration, pursuant to Rule R-4(b) of the Commercial Dispute Resolution Procedures of the American Arbitration Association, and as BNSF's counter-request for arbitration as set forth below.

UP's demand for arbitration states that this dispute involves the interpretation and application of Section 12 of a September 25, 1995 Settlement Agreement between UP and BNSF (collectively, the "Parties"), as amended and supplemented by Section 9 of a June 27, 1996 Second Supplemental Agreement between the Parties. BNSF concurs that these agreements are involved in the dispute but disagrees with UP's characterization of the issues to be resolved.

UP's demand acknowledges that the pertinent agreements were "imposed by the Surface Transportation Board ["STB"] as a condition to its approval of a merger between the Union Pacific and Southern Pacific railroad systems, which was consummated on September 11, 1996." But UP neglects to explain that the condition was imposed because, without it, competition for rail transportation of freight would be eliminated in vast areas of the U.S. by merger of UP and SP. The remedy for this anti-competitive merger was for the STB to require that BNSF be allowed to operate competing freight service with its own trains over UP and SP tracks, subject to specified compensation. This practice is known in the industry as "trackage rights".



## Freeborn & Peters

Mr. Gregory M. Smith  
November 1, 2001  
Page 2

In imposing the remedy of trackage rights, the STB recognized that any effective competition offered by BNSF depended on a reasonable level of compensation for use of UP and SP trackage. If the charges by UP for BNSF's trackage rights were too high, the freight rates charged by BNSF to customers would be higher than UP's charges and not competitive. The STB also recognized that BNSF's ability to provide competitive trackage rights service depended upon the proper adjustment of UP's charges to reflect changes in UP's actual maintenance and operating costs. Therefore, the bases for determining annual adjustments to the trackage rights charges, at the heart of this dispute, will determine whether BNSF will be able to provide competitive service over its trackage rights as intended by the STB.

In its demand, UP's selection of issues for resolution and its description of those issues are calculated to result in higher trackage rights charges for BNSF that will discourage competition. The following is a description of issues that must be resolved in order that the provisions and intent of the agreements be realized. The first two of these are restatements of the arguments raised in UP's demand for arbitration; the remaining three are related issues that have arisen between BNSF and UP in the same agreements.

- (1) Whether UP is entitled to include the purchase premium associated with its acquisition of SP and certain merger-related expenditures relating to the trackage rights lines which were to be funded solely by UP in the investment base used in the adjustment of the trackage rights charges payable by BNSF.
- (2) Whether UP has correctly reflected in its adjustment calculations the changes in gross ton-mile costs associated with UP's declining unit costs involved in trackage rights operations.
- (3) In calculating adjustments to the trackage rights fee, UP combined UP and SP costs by use of a weighted average based on respective trackage rights miles. BNSF contends this is improper and not consistent with STB costing methodology. BNSF contends that to create combined UP/SP costs for 1995 and 1996 consistent with STB methodology, total SP costs should be added to total UP costs, by cost category, and this total should be divided by total SP service units plus total UP service units, by cost category.



## Freeborn & Peters

Mr. Gregory M. Smith

November 1, 2001

Page 3

- (4) UP has used certain, specified categories of maintenance and operating costs in determining the annual trackage rights fee adjustment, and these categories are different from the approach that is customary in the industry. BNSF submits that a proper calculation of changes in a rail carrier's maintenance and operating fees must include the equipment and transportation costs in BNSF's application of the Uniform Rail Costing System.
- (5) There is a dispute concerning the definition of "dispatching expenses" for purposes of the trackage rights fee adjustment analysis.

BNSF respectfully requests that the arbitration proceeding address all five of the above issues. As to each of these issues, it is BNSF's position that UP has incorrectly calculated the annual adjustments in trackage rights charges to which BNSF is subject, resulting in higher charges that discourage effective competition. Therefore, BNSF requests that the arbitrator(s) find that UP has incorrectly interpreted and applied the provisions of Section 12 of the Parties' agreement; that BNSF's interpretations are correct; that UP is not entitled to compensation at the levels it has established; and that BNSF accordingly is entitled to appropriate refunds from UP for overpayment of trackage rights charges.

BNSF reserves the right to submit any of these issues for resolution by the STB pursuant to the jurisdiction that it reserved to itself to "provide guidance to the parties and to arbitrators in interpreting the intended scope" of the conditions imposed on the merger of UP and SP. At this time, it appears that issue (1) above fits within the STB's contemplation that "an administrative proceeding might be preferable for the resolution of general matters with broad implications with respect to implementation of our conditions."

BNSF objects to UP's request that the hearing in this matter be held in Washington, D.C. BNSF proposes instead that the Parties be allowed a reasonable period in which to agree on a neutral arbitrator and additional arbitrators to represent each of BNSF and UP. Persons to be considered for these positions would not be limited to those who might be submitted by the AAA. The hearings should be held in a city designated by the neutral arbitrator. In any event, we submit that, until such time as the arbitration panel has been selected and the parties have identified their witnesses, it is premature to select a hearing site. To the extent BNSF is required by the Association's procedures at this time

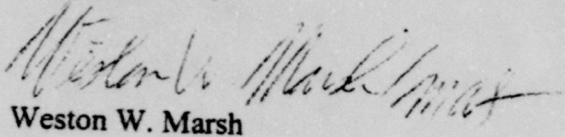
Freeborn & Peters

Mr. Gregory M. Smith  
November 1, 2001  
Page 4

to propose a hearing locale, BNSF requests that the hearing be held in Chicago, Illinois.

Finally, attached (to your counterpart of this letter only) is BNSF's listing of persons or firms, including potential witnesses, who may be involved in this case. We understand this is used to check for conflicts of interest of potential arbitrators in this proceeding.

Yours very truly,



Weston W. Marsh

cc: ✓ Michael L. Rosenthal, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, DC 20044



**EXHIBIT C**



**BNSF**



RICHARD E. WEICHER  
*Vice President & Sr. Regulatory Counsel*

The Burlington Northern and  
Santa Fe Railway Company

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**Privileged and Confidential**  
**Attorney Work Product**

**VIA FAX 402-271-5610 and  
UPS OVERNIGHT MAIL**

November 1, 2001

James V. Dolan, Esq.  
Vice President-Law  
Union Pacific Railroad Company  
1416 Dodge Street  
Omaha, NE 68179

**Re: BNSF Settlement Agreement**

Dear Jim:

Pursuant to Section 12 of the BNSF Settlement Agreement as well as Section 3(c) of the individual implementing trackage rights agreements and the July 30, 2001 letter agreement between UP and BNSF extending the time for the giving of notice thereunder, BNSF hereby requests that UP and BNSF jointly review the operation of the trackage rights charges adjustment mechanism and renegotiate its application.

BNSF is willing to hold the joint review and renegotiation of the adjustment mechanism in abeyance pending the completion of the arbitration commenced by UP's letter of October 4, 2001. If UP is interested in such an abeyance, please let me know.

Sincerely,

Richard E. Weicher

REW/trmm

STB

FD-32760

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December 21, 2001

### 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**  
**DEC 26 2001**  
**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 Petition of The Burlington Northern and Santa Fe Railway Company for Clarification (BNSF-98). Also enclosed is a disk with the text of the pleading in Word Perfect 9 format.

I would appreciate it if you would date-stamp the enclosed extra copies and return them 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

DEC 26 2001

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

PETITION OF THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY FOR CLARIFICATION

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Attorneys for The Burlington Northern and Santa Fe Railway Company

December 21, 2001

204181  
BNSF-98



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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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PETITION OF THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY FOR CLARIFICATION

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Pursuant to Decision No. 44 in the above-referenced proceeding, The Burlington Northern and Santa Fe Railway Company ("BNSF") petitions the Surface Transportation Board ("Board") for clarification of the merger conditions imposed by the Board in approving the UP/SP merger.<sup>1</sup> See Decision No. 44, 1 S.T.B. 233, 418-420. Specifically, BNSF seeks a clarification as to whether, as part of the process of the annual adjustment of the trackage rights fees under Section 12 of the BNSF Settlement Agreement to reflect changes in UP's maintenance and operating costs, BNSF (and derivatively its customers) should be required to pay trackage rights fees that are

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<sup>1</sup> The acronyms used herein are the same as those used in Appendix B to Decision No. 44.



inflated to reflect part of the purchase premium that UP paid when it acquired SP or part of certain merger-related capital expenditures that were to be funded solely by UP.<sup>2</sup>

This issue has arisen as the result of an audit by BNSF of the methodology used by UP in adjusting the trackage rights charges which revealed that UP was using an investment base that BNSF believes is improper. The parties have been unable to resolve the issue in their negotiations concerning the annual adjustment of the trackage rights fees. In those negotiations, UP advanced an adjustment methodology which would, in effect, require BNSF and its shippers to bear more than the true cost of changes in UP's maintenance and operating costs incurred on trackage rights lines and, additionally, to bear part of the merger-related capital expenditures UP is committed to fund.

On October 4, 2001, UP commenced a commercial arbitration requesting that the arbitrator find that the trackage rights fees which UP has charged for BNSF's use of the trackage rights lines since 1996 have been correct. The issue of the proper investment base, as well as four other disputed issues, are raised in that arbitration.<sup>3</sup>

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<sup>2</sup> "A prior decision may be clarified whenever there appears to be a need for a more complete explanation of the action taken therein." Finance Docket No. 32760, Decision No. 61 at 6 (served Nov. 20, 1996).

<sup>3</sup> The four other technical issues which BNSF has raised with respect to UP's proposed adjustment methodology are: (i) whether UP has correctly reflected in the adjustment of the mill rates the changes in the gross ton mile costs associated with its declining URCS unit costs involved in trackage rights operations; (ii) whether the separate UP and SP URCS costs for 1995 and 1996 should be combined by simple addition or by a weighted average based on respective trackage rights miles; (iii) whether UP has used the proper categories of maintenance and operating costs in determining the annual trackage rights fee adjustment; and (iv) whether UP has used the proper dispatching expenses for purposes of the trackage rights fee adjustment. These issues are appropriately the subject of the pending arbitration, and BNSF does not seek the resolution of these technical disputes in the context of this Petition.



As explained below, the question of the proper investment base to be used in adjusting the trackage rights fees has application to more than just the years currently in dispute between BNSF and UP. The issue involves significant policy issues as to the purpose and intention of the Board's trackage rights condition – a key condition to the Board's approval of the UP/SP merger, and it is important that other parties to the UP/SP merger be afforded the opportunity to submit their views on the issue. Resolution of the issue in the pending private arbitration would not afford them that opportunity. Further, Board resolution of the issue is necessary to ensure that, over the 99 year term of the Settlement Agreement, BNSF is able to compete fairly with UP over the trackage rights lines.<sup>4</sup>

Finally, in Decision No. 21 in the UP/SP general oversight proceeding, Finance Docket No. 32760 (Sub-No. 21) (served Dec. 20, 2001), the Board noted its concurrence with DOT's view that "it is important that the trackage rights fee adjustment mechanism work as intended, so that any increases or decreases in UP's costs are properly reflected in the agreed-upon adjustments to the trackage rights fee." Decision No. 21 at 6-7. The Board did not take any action in Decision No. 21 as to the gross ton-mile ("GTM") mill rate dispute because there did not appear to be a need for Board action based on the record before it and because no party had specifically requested

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<sup>4</sup> BNSF seeks a clarification from the Board only as to the proper investment base issue because it relates to the critical public policy question of whether BNSF and its shippers should be required, in effect, to subsidize part of the SF purchase premium and part of the merger-related capital expenditures that UP alone was to fund. On the other hand, the other disputed issues are more technical in nature and turn on the interpretation of specific contractual language (e.g., the phrase "the difference in the two preceding years"), and private arbitration should adequately resolve those issues.

relief. However, and of significance here, the Board recognized the importance of assuring accuracy in the manner in which UP cost increases or decreases are reflected in the GTM mill rate. Moreover, as established in this Petition, there is in fact a need for Board action to resolve the critical threshold issue of the proper investment base.<sup>5</sup>

#### BACKGROUND

In Section 9a of the September 25, 1995 BNSF Settlement Agreement, the trackage rights charges are expressed as mills per ton-mile charges (most commonly, 3.1 mills per ton-mile). In that initial Settlement Agreement, the parties agreed to adjust the GTM mill rates annually, based on a percentage of the Rail Cost Adjustment Factor, unadjusted for changes in productivity ("RCAF-U"). The use of the RCAF-U as the basis for the annual adjustment of the trackage rights fees was subject to substantial criticism in the UP/SP merger proceeding on the grounds that, since it is a price index rather than a cost index, the RCAF-U ignored the substantial productivity gains that railroads had achieved in the recent past and were likely to continue to achieve in the future. See, e.g., Comments of the Chemical Manufacturers Association (CMA-7) ("CMA Comments") at 14.<sup>6</sup> It was argued that the use of the RCAF-U would inhibit

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<sup>5</sup> In addition, in Decision No. 21, the Board noted that, notwithstanding the end of the formal oversight process for the UP/SP merger, it continues to have authority to enforce the conditions it imposed on the merger and would remain available to consider and resolve issues relating to the parties' compliance with those conditions, subject to any applicable requirement to arbitrate. Decision No. 21 at 5-6. As noted below, notwithstanding the pending arbitration between BNSF and UP, it is critical that the Board act now to resolve the issue of the proper investment base so that the error caused by UP's improper methodology will not be embedded in the GTM mill rates and that BNSF's ability to provide effective replacement competition will not thereby be adversely affected.

<sup>6</sup> Copies of the excerpts from the parties' pleadings cited herein are attached in the order in which they appear in the Petition.



BNSF's ability to compete and that the "proper adjustment mechanism . . . should be based on actual cost changes or a method that approximates, as closely as possible, the cost changes." Id. Verified Statement of Thomas D. Crowley at 51.

UP responded to this criticism by agreeing with BNSF and the Chemical Manufacturers Association (now, the American Chemistry Council ("ACC")) to modify the adjustment mechanism so that changes in the GTM mill rates would be more closely aligned with the actual maintenance and operating costs incurred by UP/SP and would not overstate those costs. Accordingly, Section 12 of the BNSF Settlement Agreement was amended to provide that:

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

This provision was incorporated as Section 7 of the Chemical Manufacturers Association Agreement ("CMA Agreement"), dated April 18, 1996, which was then incorporated in the Second Supplement to the Settlement Agreement dated June 27, 1996. Both the BNSF Settlement Agreement and the CMA Agreement were imposed by the Board as conditions to its approval of the UP/SP merger.

As part of its merger application, UP proposed to pay a substantial premium above book value for SP. This purchase premium was known to the parties, and when UP and BNSF negotiated the initial Settlement Agreement, including the GTM mill rates, they recognized the premium as an expense that UP would bear to effect the merger. In other words, UP's payment of the purchase premium was contemplated when UP and BNSF agreed to the charge of 3.1 mills per ton-mile that applies to most of BNSF's



trackage rights, and any obligation that BNSF and its customers have to pay for that purchase premium is included in the GTM mill rates.

When UP executed the merger, it paid the purchase premium, and, in its normal accounting processes, UP wrote up or restated various elements of its asset base to reflect that purchase premium. Those adjustments are reflected in certain categories of costs related to roadway property, which comprise a large part of the accounts to be considered in adjusting the trackage rights charges.

As discussed below, UP is now attempting to apply the annual trackage rights adjustment mechanism so that the purchase premium is recognized as an increase in its maintenance and operating costs between 1996 and 1997 and, thereby, imposes a significant increase on BNSF's trackage rights fees in the annual adjustment that is effective in 1998. The effect of the increase would recur in succeeding years and would essentially become permanently embedded in the trackage rights fee. UP has accorded the same treatment to certain merger-related capital investments that it agreed would not be reflected in trackage rights compensation for which it is responsible.

As a consequence of this inflation of UP's costs in 1997, BNSF's trackage rights fees would be increased for 1998 and thereafter by substantial merger costs that UP knew it would incur when it agreed to the negotiated mills per ton-mile charges. This would effectively burden BNSF's trackage rights fees with a double counting of the purchase premium, plus the merger-related capital expenditures that UP agreed it would bear. These artificially high costs would render BNSF a less effective competitor.

However, as the Board has repeatedly stated, the purpose of the trackage rights conditions was, in effect, to put BNSF in the "shoes of SP" as a competitor so that

BNSF could replace the competitive service that would otherwise have been lost when SP was absorbed into UP. See, e.g., Decision No. 44, 1 S.T.B. at 368, 384, 423; Finance Docket No. 32760 (Sub-No. 21), Decision No. 19 at 2 (served Nov. 8, 2001). It was not intended by the Board that the "shoes of SP" would include a cost burden that is significantly increased by UP's addition of the purchase premium to the adjustment from 1996 to 1997. That unintended cost burden will continue indefinitely due to UP's inclusion of the UP-funded merger-related costs in the annual adjustment at the beginning of the adjustment process and the absence of any mechanism to correct the effects of the improper adjustment in the future.

It is important to point out that the issue presented by this Petition as to the purchase premium differs markedly from the issue the Board has addressed in connection with the Conrail transaction and the UP/SP merger with respect to the use of URCS costs in rate reasonableness determinations. Thus, in Western Coal Traffic League v. Union Pacific Railroad Company, Finance Docket No. 33726 (served May 12, 2000), the issue was whether the SP restructuring costs should be included in the UP 1997 URCS costs used in the development of revenue-to-variable cost ratios for jurisdictional thresholds and rate reasonableness determinations. Here, such ratios and reasonableness determinations and standards are irrelevant. Rather, the issue is the proper application of an adjustment mechanism intended to measure the differences in UP's actual "operating and maintenance" costs so that BNSF's costs in providing service to "2-to-1" and other customers under the BNSF Settlement Agreement will stay in rough equivalence to the relationship between the negotiated trackage rights fee and UP's *actual* costs at the time of the Settlement Agreement.



BNSF believes that including the purchase premium and the UP-funded capital expenditures in the 1997 investment base has resulted, when compared to the pre-merger 1996 investment base, in an improper escalation of the trackage rights fees or, as has been the case in the last several years, has resulted in the charges not decreasing as much as they should have to reflect decreases through this period in UP's actual costs. Such a result is contrary to the intent of the Board and the parties, as expressed by John H. Rebensdorf in his Verified Statement in Support of UP's Application, that the "trackage rights rate place both carriers on a level playing field with neither subsidizing the other." UP/SP-22, Verified Statement of John H. Rebensdorf at 301.

#### RELATIONSHIP TO PENDING ARBITRATION

As discussed above, in this Petition, BNSF is not seeking a resolution of the question of whether UP properly adjusted the trackage rights fees for the past five years. BNSF is participating in the pending arbitration and is willing to submit to the arbitrator in the first instance the specific question of whether the adjustments made for the identified years were correct. However, in light of the significant concern expressed during the merger proceeding about the level of the trackage rights fees and the need for their proper cost-based adjustment, it is critical that the Board resolve the key threshold issue of the proper investment base so that BNSF's ability to compete as the replacement for SP over the trackage rights lines will not be adversely affected.



## ARGUMENT

- A. The Intent of the Parties and the Board was that the Trackage Rights Fees Should Be Adjusted by Changes in UP's *Actual Maintenance and Operating Costs*

The purpose of the annual adjustment of the GTM mill rates is to ensure that any fluctuations in UP's "maintenance and operating costs" will not adversely affect BNSF's ability to provide competitive service over the trackage rights lines. As various parties argued to the Board during the UP/SP merger proceeding, an adjustment mechanism that does not properly reflect decreases in UP's maintenance and operating costs would handicap BNSF since UP's lower costs relative to the trackage rights operations would enable it to offer lower rates to shippers than BNSF could offer. See, e.g., CMA Comments at 14. The importance of this adjustment process also is reflected by the fact that CMA was provided with the right to audit the adjustment calculations. See also ACC-1 at 8 ("Accurate calculation of [the trackage rights] fee is important to ensuring that BNSF can compete on an equal footing with UP over the trackage rights lines.").

Moreover, it was the intent of the parties to the CMA Agreement that the maintenance and operating costs to be used in the annual adjustment process should be the costs actually incurred by UP in providing service on its lines, including the lines over which BNSF received trackage rights. As discussed above, this is evident from the fact that, in deciding to predicate adjustments to the trackage rights fees upon UP's URCS costs for the categories of maintenance and operating costs, the parties to the CMA Agreement rejected the adjustment mechanism in the original September 25, 1995 Settlement Agreement, which relied on the industry-wide RCAF index and failed to take productivity changes into account. Because the adjustment mechanism was not originally pegged to UP's actual costs (as opposed to industry average costs), and, in

particular, did not take into account productivity-based decreases in UP's costs, the September 25, 1995 Settlement Agreement was amended so as to avoid enabling UP to reap the benefits of decreases in actual costs due to improvements in productivity or other factors without passing these cost decreases through in the trackage rights adjustment mechanism. Otherwise, UP could secure a competitive rate advantage over BNSF. Thus, the CMA Agreement's adjustment mechanism was intended to focus on UP's actual costs, including productivity enhancements, thereby assuring that, when UP's costs of providing service over its lines decrease, the costs of BNSF's service would similarly decrease.

The parties' pleadings further confirm this conclusion that it is the actual maintenance and operating costs incurred by UP in providing service that are to be considered in the adjustment process. For example, Richard F. Kauders, UP's principal witness on the issue of trackage rights compensation, stated in his Rebuttal Verified Statement in response to the criticism made concerning the use of the RCAF-U as an adjustment mechanism:

[T]o eliminate any issue of whether the trackage rights compensation levels track "actual costs," Applicants have agreed with BN/Santa Fe to use an escalator that tracks the actual changes in their below-the-wheel costs. That puts the "RCAF-U/RCAF-A" issue completely to bed.

UP/SP-231, Rebuttal Verified Statement of Richard F. Kauders at 73 (emphasis added). Likewise, in its Rebuttal, UP stated that, "to eliminate [the RCAF-U] issue, Applicants are agreeing with BN/Santa Fe to a purely actual-cost-based escalator." UP/SP-230 at 125 (emphasis added.)<sup>7</sup>

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<sup>7</sup> In the Applicants' brief, UP further stated that the parties had revised "the escalation formula for trackage rights fees so that it will track changes in actual costs."



Similarly, CMA stated in its brief (i) that the adjustment mechanism was changed to reflect "year-to-year changes in UP/SP actual system average cost for the maintenance and operating cost elements covered by the [trackage rights] fee"; and (ii) that the revised adjustment mechanism would "correct the tendency of the fee to rise above actual costs over time because of the use of an escalator that did not incorporate productivity gains." CMA-12 at 3 (emphasis added). BNSF likewise noted in its brief that arguments that "the rate would escalate to uncompetitive levels [were] no longer tenable now that the 70% RCAF-U adjustment clause has been replaced by an adjustment mechanism based directly on actual changes in UP's costs." BN/SF-59 at 22 (emphasis added). Finally, the Board itself noted that "UP/SP has agreed to use actual maintenance related expenses, rather than using an index" to adjust the trackage rights fees and that doing so would reflect "costs more accurately." Decision No. 44, 1 S.T.B. at 41<sup>8</sup> n.169 (emphasis added).<sup>8</sup>

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UP/SP-260 at 9 (emphasis added). See also UP/SP-266 at 3 where, in describing Section 7 of the CMA Agreement, UP stated "[t]rackage rights compensation levels . . . will be adjusted on the basis of changes in actual UP/SP system average URCS costs for the categories of maintenance and operating costs covered by the fees." (Emphasis added.)

<sup>8</sup> The conclusion that the relevant costs are UP's actual maintenance and operating costs is further supported by the language in Section 12 of the BNSF Settlement Agreement which states that "[i]t is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement." This language reflects that the clearly anticipated purchase premium and merger-related capital expenditures for which UP was to be solely responsible were not to affect that relationship.



Thus, the Board and the parties, including UP, were in unanimous agreement that the trackage rights fees should be adjusted by changes in UP's actual maintenance and operating costs.<sup>9</sup>

B. UP's Proposed Adjustment Methodology Artificially Inflates the Trackage Rights Fees by Reflecting Part of the Purchase Premium and Part of UP-Funded Capital Expenditures

As described above, Section 12 of the BNSF Settlement Agreement provides that the trackage rights fees shall be adjusted each year by the difference in certain categories of UP's URCS operating and maintenance costs in the two preceding years. Accordingly, the adjustment to be effective on July 1, 1997, is based on the difference in those costs for 1995 and 1996, and the adjustment to be effective on July 1, 1998, is based on the difference in those costs for 1996 and 1997.

UP advocates using the separate pre-merger UP and SP URCS costs for both 1995 and 1996 when determining the adjustment to be made on July 1, 1997. UP then advocates that the 1996 pre-merger UP and SP URCS costs be compared with the post-merger, consolidated single system UP/SP URCS for 1997 for purposes of the July 1, 1998 adjustment. There are, however, two critical faults in the approach UP proposes. First, the UP/SP 1997 URCS costs include the purchase price (including the purchase premium) that UP paid for SP. Second, under Section 9c of the original BNSF

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<sup>9</sup> This conclusion is not contradicted by the fact that the Board acknowledged in Decision No. 44 that, under the principles of SSW Compensation, trackage rights fees properly include three components: (i) the variable costs to the landlord resulting from the tenant's use of the track; (ii) a portion of the maintenance and operating costs on the relevant rail properties; and (iii) a return element on the value of the rail property. Decision No. 44, 1 S.T.B. at 414. The method selected by the parties in the CMA Agreement for the adjustment of the trackage rights fees is a separate and independent standard which, as established above, provides for the consideration of UP's actual maintenance and operating costs.

Settlement Agreement, UP committed to exclusively fund all capital expenditures necessary to achieve the benefits of the merger as outlined in the UP/SP Application and all capital expenditures related to the trackage rights lines for the first 18 months after the merger. As explained below, the inclusion by UP of the purchase premium in the UP/SP 1997 URCS costs and the inclusion of UP-funded capital expenditures in its URCS costs for 1996, 1997, and 1998 (as well as any subsequent years if booked in those years) would result in BNSF paying higher trackage rights fees. In effect, the errors would require BNSF and its shippers to pay for part of the purchase premium and part of those capital expenditures.

The artificial inflation of the trackage rights fees that results from comparing pre-merger URCS costs with the post-merger URCS costs that include the purchase premium is caused by the way that the purchase premium is treated under traditional accounting principles as applied to the investment accounts established by the Board's regulations. Specifically, the URCS maintenance-of-way category includes three general categories of costs: traditional expenditures to maintain the physical right-of-way; depreciation and leases; and return on investment.

Significantly, the "maintenance" portion of the "maintenance and operating" costs referred to in Section 12 of the Settlement Agreement accounts for over 98 percent of the total URCS costs that form the basis for the trackage rights fee adjustments. Further, the return on investment portion of the URCS maintenance category represents well over 50 percent of the URCS costs to be adjusted. Thus, the comparison of incorrect amounts in these categories will have a significant impact on the trackage rights fee adjustment. In this regard, a comparison of the separate UP and SP 1996



R-1 Reports with the consolidated 1997 UP R-1 Report shows that approximately \$2.7 billion of the purchase premium was allocated to roadway asset accounts (including the maintenance investment accounts at issue here). Thus, although without additional information it is not possible to identify the specific amounts allocated by UP to those maintenance investment accounts, it is clear that the amounts allocated are significant and that they would increase UP's stated 1997 URCS costs in those accounts materially.

Under established accounting principles, the purchase premium would be distributed, allocated by accounting conventions, among the various investment accounts established by the Board's regulations, and a major portion of the premium would be distributed to the investment accounts included in the URCS maintenance-of-way category. If the purchase premium is included in UP's 1997 URCS costs, those costs will be higher than they would otherwise be if only actual maintenance and operating costs were to be considered.

The anomalous result of this one time addition of billions of dollars to UP's investment base is that decreases between UP's URCS 1996 costs and its 1997 costs are offset, and what should be a decline in BNSF's trackage rights charges is eliminated or becomes an increase. Moreover, 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 a part of the all-inclusive GTM mill rate. They could not have intended that it would be factored into those trackage rights charges again in 1998. Yet, this is the undisputed consequence of UP's inclusion of the purchase premium in the adjustment mechanism.



Similarly, as to the merger-related capital expenditures, which UP was to solely fund under Section 9c of the Settlement Agreement, UP would, in effect, have BNSF pay for those capital expenditures by including them in the maintenance investment categories used in determining the annual adjustments.<sup>10</sup> As with the purchase premium, UP's approach to the merger-related capital expenditures would significantly inflate the level of UP's actual operating costs and would prevent the trackage rights fees from declining as rapidly as they should, precluding BNSF from competing on a level playing field and denying customers the fruits of fair competition between BNSF and UP.

Moreover, unless the adjustments are made correctly now, the artificial inflation of the trackage rights fees caused by UP's inclusion of the purchase premium and the UP-funded merger-related capital expenditures in the investment base would lead to BNSF paying higher trackage rights fees over the remaining term of the Settlement Agreement.<sup>11</sup> If there is an error in the July 1, 1998 adjustment, there is no other mechanism for ever correcting it.

Finally, as discussed above, UP's inclusion of the purchase premium and the merger-related capital expenditures (for which it is supposed to be solely responsible) in

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<sup>10</sup> In UP's Fifth Annual Oversight Report filed on July 2, 2001, UP reported that, by the end of 2001, it expects to have invested \$1.586 billion to implement the UP/SP merger. UP/SP-384 at 38. While the information necessary to determine the exact portion of that amount which represents the capital expenditures that UP was to solely fund under Section 9c of the Settlement Agreement is not available to BNSF, it is clear that the amount of such expenditures is significant and that the expenditures would increase UP's stated 1997 URCS costs materially.

<sup>11</sup> While the precise amount of overpayments is subject to resolution in the parties' pending arbitration, it is clear that the annual amount of overpayment is a multi-million dollar figure.

its 1997 URCS costs deviates from the parties' intent that only changes in UP's actual maintenance and operating costs should be used in the adjustment process. The inclusion of the premium and those capital expenditures would deprive BNSF of the ability to compete on an equal footing with UP since, if they are included, UP will have a cost advantage that would make it harder for BNSF to compete for business on the trackage rights lines.

### CONCLUSION

For the reasons set forth above, BNSF seeks a clarification from the Board that (i) in the application of the adjustment methodology, the combined UP/SP 1997 URCS costs must exclude any amounts attributable to the purchase premium paid by UP for SP; and (ii) the separate 1996 UP and SP URCS costs as well as the combined UP/SP URCS costs for 1997, 1998, and any applicable subsequent years must exclude any merger-related capital expenditures relating to the trackage rights lines for which UP has sole responsibility under Section 9c of the BNSF Settlement Agreement.<sup>12</sup> The purpose of the annual adjustments is to ensure that UP and BNSF maintain the competitive equivalency – or, in the words of Mr. Rebensdorf, the “level playing field” – established by the trackage rights fees set in the BNSF Settlement Agreement and

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<sup>12</sup> It is not BNSF's position that UP should be required to create and maintain two separate sets of URCS figures indefinitely into the future. Rather, it is BNSF's position that, because the parties (including UP) and the Board intended that the adjustments made to the GTM mill rate should be made by reference to the changes in UP's actual maintenance and operating costs, URCS figures which exclude the purchase premium and the UP-funded merger-related capital expenditures should be created for 1996, 1997, 1998 and any further years in which such amounts were included in UP's customary URCS figures. Otherwise, contrary to the intent of the parties and the Board, the adjustments would be made by comparison of pre-merger URCS costs with post-merger URCS costs. At the time of the merger, no party understood that the comparison would be made in such a manner, and the purchase premium and the UP-funded capital expenditures cannot therefore be considered actual costs of UP for purposes of the adjustment.



approved by the Board, and UP's novel approach to the trackage rights fees adjustment skews the competitive balance in favor of UP, contrary to the intention of the parties to use changes in UP's actual costs and contrary to the Board's intention of preserving vigorous rail rate and service competition between UP and BNSF.

Respectfully submitted,

Erika Z. Jones/als

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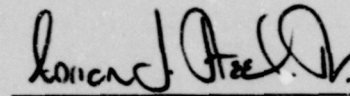
Attorneys for The Burlington Northern and Santa Fe Railway Company

December 21, 2001



CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Petition for Clarification (BNSF-98) 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.

EXCERPTS FROM CITED PLEADINGS



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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

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COMMENTS OF THE CHEMICAL MANUFACTURERS ASSOCIATION

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On December 8, 1994, Richard K. Davidson, CEO of UP and President of Union Pacific Corporation, was reported to have said that the Union Pacific had rejected the idea of merging with the Southern Pacific Railroad because to do so would "corner the freight market in Gulf Coast chemicals, raising competitive questions that would be challenged at the ICC."<sup>1</sup> Now, UP proposes to merge with SP, and to address anti-competitive concerns through a Comprehensive Agreement providing trackage rights and limited line sales to the BNSF (the "BNSF

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<sup>1</sup> "Union Pacific Is On Track to Lock Up Railroad Lead," Wall Street Journal, December 8, 1994, Davidson Depo., Exh. 1. The article did not purport to quote Mr. Davidson directly. At his deposition, Mr. Davidson acknowledged that he had shared the competitive concerns with the Wall Street Journal, but that any remaining competitive concerns with the current merger were addressed with the BNSF Agreement. Davidson Depo. Tr. at 74-76.



3. Higher operating costs for BNSF, compared to UP/SP. Because BNSF exclusively serves only relatively few destinations that receive products from the 2-to-1 points under the BNSF Agreement, and would be able to capture only a portion of traffic from neutral gateways, it would be virtually impossible for BNSF to gain sufficient traffic density to lower its operating costs to be able to compete with UP/SP. Dr. Shepherd concludes from this factor alone that "Looked at objectively, a barrier this severe would be quite sufficient, in virtually all other markets in the U.S. economy, to deter a rational entrant even from trying to enter."<sup>23</sup>

Added to the problem of lower traffic density is the burden imposed by the trackage rights fees that BNSF would have to pay to use the UP/SP track. According to calculations by Mr. Crowley, on the Houston-Memphis-St. Louis route, BNSF's costs (including the trackage rights compensation between Houston and Memphis) would be (or %) higher than the costs faced by the UP/SP,<sup>24</sup> and that differential will increase substantially over time because the trackage rights compensation paid by the BNSF will escalate using a rail cost adjustment factor (RCAF) that will not be adjusted for the substantial productivity gains that have been achieved by railroads in the recent past and are likely to continue to be achieved in the future.<sup>25</sup>

At a minimum, as Dr. Shepherd points out, "this barrier alone would give UP/SP a rational basis for raising its own prices to shippers by precisely that cost difference. The

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<sup>23</sup> Shepherd VS at 46.

<sup>24</sup> Crowley VS at 49-50.

<sup>25</sup> Crowley VS at 55-58.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 32760

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

**--CONTROL AND MERGER--**

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

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**Verified Statement  
of  
Thomas D. Crowley  
President  
L. E. Peabody & Associates, Inc.**

**REDACTED**

**On Behalf of  
Chemical Manufacturers Association**

**Due Date: March 29, 1996**



based on the current cost of capital.<sup>18/</sup> The use of cost-based trackage rights payments is common in the railroad industry. Also, the proper adjustment mechanism for the compensation should be based on actual cost changes or a method that approximates, as closely as possible, the cost changes. Each issue is discussed below under the following topics:

1. Compensation in the UP/SP-BNSF Agreement
2. Other UP/SP Agreements
3. Adjustment Mechanism

1. **Compensation in the UP/SP-BNSF Agreement**

The level of the trackage rights compensation included in the UP/SP agreement with BNSF provides a substantial profit to UP/SP when the BNSF utilizes the UP/SP's line segments. For purposes of this analysis, profit refers to compensation in excess of UP/SP's operating costs, depreciation, rents, and a return on investment at the current cost of capital. Compensation at a level higher than the cost incurred provides UP/SP a monopoly rent. Stated differently, the compensation level stated in the UP/SP-BNSF settlement agreement rewards UP/SP for the problems created by UP's and SP's decision to merge. In order to avoid providing UP/SP a monopoly rent, variable costs should utilize the original cost less depreciation of the railroads' assets. This is the actual cost incurred by UP/SP. The proper level for determining costs in this proceeding are the combined UP/SP URCS costs for 1994 indexed to fourth quarter 1995 ("4Q95") wage and price levels. Trackage rights at this level reflect a maximum change because

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<sup>18/</sup> For instances where the BNSF will utilize haulage services, those charges should also be based on variable cost of service (including return based on the current cost of capital). The UP/SP settlement agreement does not specify the level of charges for haulage service.



Before the  
INTERSTATE COMMERCE COMMISSION

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Finance Docket No. 32760

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

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RAILROAD MERGER APPLICATION

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VOLUME I

SUPPORTING INFORMATION, SUMMARY OF BENEFITS,  
EXHIBITS 1, 8, 10-12 AND 16-19, STATEMENTS OF APPLICANTS' PRINCIPAL OFFICERS,  
AND OTHER SUPPORTING STATEMENTS

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## **VERIFIED STATEMENT**

**OF**

**JOHN H. REBENS DORF**

My name is John H. Rebensdorf. I am Vice President-Strategic Planning for Union Pacific Railroad Company. I hold a Bachelor's Degree in Civil Engineering from the University of Nebraska and a Master's Degree in Business Administration from Harvard University. Before coming to Union Pacific, I was employed as a management consultant by Temple, Barker and Sloane. I have worked in the Mechanical Department of the Chicago, Burlington & Quincy Railroad and in the Operating and Engineering Department of the Chicago, Rock Island and Pacific Railroad. I joined Union Pacific in 1971 as Manager of Budget Research. I became Assistant Controller in 1976, Assistant Vice President-Planning & Analysis in 1980, Assistant Vice President-Finance in 1984 and was appointed to my present position in 1987.

The purpose of my statement is to describe the settlement agreement that was reached between UP and SP, on the one hand, and BN/Santa Fe, on the other hand, on September 25, 1995. I will review the background of the settlement agreement and the underlying negotiations and describe the key provisions of the agreement, including the rights granted and the compensation terms.



overhead trackage rights on BN/Santa Fe's line between West Memphis and Presley Junction in Arkansas.

Finally, some provisions of the Agreement resolved outstanding issues of concern that have no connection with the merger -- also adding to competition in the process. These included operating rights in Northern Wisconsin for UP/SP to resolve access to the MERC dock at Superior as well as direct access to the DWP and DMIR at Pokegama, Wisconsin. BN/Santa Fe, on the other hand, was granted the right to purchase UP's line between Dallas and Waxahachie, Texas, in order to consolidate maintenance and operating responsibility on this track which is part of BN/Santa Fe's main line between Houston and Dallas.

### **III. Compensation Terms**

My objective in negotiating the trackage rights compensation terms was to ensure that Union Pacific would be fairly reimbursed for the maintenance and operating expense associated with BN/Santa Fe's trackage rights operations, and would receive a reasonable return on the capital tied up in the lines whose capacity BN/Santa Fe would be partially using. It was my intent that the trackage rights rate place both carriers on a level playing field with neither subsidizing the other. I am confident these goals were reached.

The rates ultimately agreed to were the result of arm's-length negotiation with a considerable give and take between the parties. There were several possible starting points for the rate negotiation.



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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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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)

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

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August 17, 2001

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

E. Audit of Trackage Rights Fees

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

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

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

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

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



Before the  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 32760

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

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**RAILROAD MERGER APPLICATION**

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**APPLICANTS' REBUTTAL**

**VOLUME 2, PART A - STATEMENTS OF APPLICANTS' PRINCIPAL OFFICERS  
AND STATEMENTS ON COMPETITION AND PUBLIC BENEFITS**

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REBUTTAL  
VERIFIED STATEMENT  
OF  
RICHARD F. KAUDERS

My name is Richard F. Kauders. I am Manager-Economic Research for Union Pacific Railroad Company ("UP"). I have been employed by UP more than 23 years. My responsibilities include the development of cost and related testimony for use before the Surface Transportation Board ("Board") and its predecessor, the Interstate Commerce Commission ("Commission"). I hold a B.S. degree from Cornell University and the M.B.A. degree from Northwestern University. My experience with UP has consisted principally of work in the regulatory costing area including mergers, trackage rights, rate complaints and investigations and branch line abandonments.

I have participated in cost studies and the calculation of benefits in a number of merger proceedings before the Interstate Commerce Commission, including Finance Docket 30000, Union Pacific -- Control -- Missouri Pacific & Western Pacific ("UP/MP/WP"), Finance Docket 30,800, Union Pacific -- Control -- Missouri-Kansas-Texas ("UP/MKT"), and Finance Docket 32133, Union Pacific -- Common Control -- Chicago North Western ("UP/CNW"). I have previously been deposed in this proceeding about the calculation of the benefits and the preparation of the Summary of Benefits exhibit.

I have been asked to respond to criticism of various parties attacking the benefits which will flow from this merger, the preparation of the Summary of

On another point, a number of parties have attacked the provision in the original agreement between Applicants and BN/Santa Fe for the trackage rights compensation levels to be escalated each year by 70% of the RCAF-U. They assert that the parties should have used the RCAF-A, because that tracks "actual costs." See, e.g., WCTL-12, Crowley, pp. 24-26; IP-10, Prescott, pp. 28-31; WSC-11, Fauth, p. 27. I believe that the standard 70% of RCAF-U approach is preferable to use of the RCAF-A, because productivity gains are much smaller for costs below the wheel than for a railroad's costs overall (which is what the RCAF-A purports to measure). However, to eliminate any issue of whether the trackage rights compensations levels track "actual costs," Applicants have agreed with BN/Santa Fe to use an escalator that tracks the actual changes in their below-the-wheel costs. That puts the "RCAF-U/RCAF-A" issue completely to bed.



Before the  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 32760

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

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**RAILROAD MERGER APPLICATION**

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**APPLICANTS' REBUTTAL**  
**VOLUME 1 - NARRATIVE**

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April 29, 1996



The assertion that the use of 70% of the unadjusted RCAF index to escalate the agreed compensation would create an advantage for UP/SP over time (see, e.g., CMA-7, Crowley, pp. 55-58; IP-10, Prescott, pp. 28-31; WSC-11, Fauth, p. 27) is wrong. As Mr. Kauders shows, productivity gains are much smaller for costs below the wheel than for a railroad's costs overall.<sup>48/</sup> Nevertheless, to eliminate this issue, Applicants are agreeing with BN/Santa Fe to a purely actual-cost-based escalator.

In past merger cases, the ICC has repeatedly made clear its preference for privately negotiated terms and conditions for trackage rights it mandates. See, e.g., UP/MP/WP, 366 I.C.C. at 589; UP/MKT, 4 I.C.C.2d at 468; BN/Santa Fe, Slip Op., p. 88. The Commission has also repeatedly set forth the compensation principles that it expects railroads to bring to bear in their negotiations,

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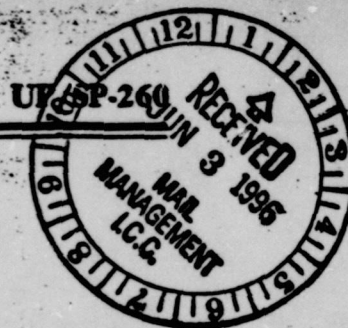
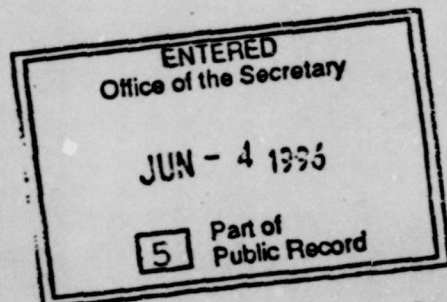
<sup>47/</sup> (...continued)

As Mr. Rebensdorf explains, the parties here agreed to use gross ton-miles as the basis for their agreement, and other agreements are indisputably in the same range when stated on that basis. By the same token, KCS' witness Rawert seriously misleads when he restates the agreed rate on a loaded car-mile basis, arrives at \$.42 per car-mile, and then asserts that this rate is at the high end of the charges in Mr. Rebensdorf's Table of Comparable Rates. KCS-33, Rawert, p. 248. On a total car-mile basis, which is how all the rates are stated in Mr. Rebensdorf's Table, the agreed rate is at the low end of the range.

<sup>48/</sup> Moreover, the provision in the agreement that permits reopening the escalation provision every five years ensures that it can be recalibrated if necessary.

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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June 8, 1996



- Granting BN/Santa Fe added shipper access in the Lake Charles area and at Texarkana and Shreveport.
- Creating dedicated funds under which 100% of BN/Santa Fe's trackage rights fees will be spent on maintaining and improving the trackage rights lines.
- Revising the escalation formula for trackage rights fees so that it will track changes in actual costs.
- Giving BN/Santa Fe the option of traditional joint facility billing, in lieu of the agreed flat fees.
- Adopting a written "protocol" to guarantee against any discrimination in train dispatching.
- Granting BN/Santa Fe the right to serve new industries that locate on SP-owned lines where BN/Santa Fe has trackage rights.
- Releasing shippers from contractual commitments so that BN/Santa Fe will have quick access to nearly all the traffic at "2-to-1" points.
- Ensuring that BN/Santa Fe will have ample storage-in-transit ("SIT") capacity for plastics.
- Capping reciprocal switch charges at "2-to-1" points at \$130 per car, and capping SP's reciprocal switch charges at other points at \$150 per car.
- Granting build-in rights to shippers at two specific locations, and creating an arbitration mechanism under which other shippers can pursue such rights.
- Making clear that BN/Santa Fe shall have access and interchange rights equal to SP's at Corpus Christi and Brownsville.
- Clarifying BN/Santa Fe's access to existing and new shipper facilities at "2-to-1" points.
- Consenting to a five-year oversight process under which the Board can review the effectiveness of the BN/Santa Fe settlement and impose additional remedies if necessary.

UP/SP-230, pp. 13-21; UP/SP-231, Rebensdorf, pp. 5-11.<sup>5/</sup>

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<sup>5/</sup> Applicants also entered into a settlement with Utah Railway which greatly expands its access to Utah coal, and arrived at amicable settlements with a number of other parties to the case. UP/SP-231, Rebensdorf, pp. 7, 11-14.



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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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APPLICANTS' SUBMISSION OF FINAL SETTLEMENT AGREEMENT  
AND IMPLEMENTING AGREEMENTS WITH BN/SANTA FE

Yesterday Applicants concluded negotiations with BN/Santa Fe on the attached Second Supplemental Agreement (Exhibit A) and definitive implementing agreements. The Second Supplemental Agreement contains all the additions and revisions to the original BN/Santa Fe settlement agreement necessary to implement Applicants' settlement agreement with CMA and memorialize additional changes unilaterally offered by Applicants to address concerns of specific shippers. It also contains clarifications negotiated between Applicants and BN/Santa Fe in connection with development of the detailed implementing agreements.

Attached as Exhibit B are the definitive trackage rights agreements called for by the original BN/Santa Fe settlement agreement. Although not required by that agreement, definitive haulage agreements implementing the settlement agreement are included as Exhibit C. Applicants and BN/Santa Fe have also reached definitive agreements

Changes to Implement the CMA Agreement<sup>1/</sup>

- St. Louis Trackage Rights (CMA § 1). The revised settlement agreement extends BN/Santa Fe's trackage rights to East St. Louis. (Ex. A, p. 11, § 6a.<sup>2/</sup>)
- Access to New Shipper Facilities (CMA § 2). BN/Santa Fe gains the right to serve any new shipper facility located on any SP-owned line over which BN/Santa Fe receives trackage rights. (Ex. A, p. 2, § 1b; p. 7, § 4b; p. 9, § 5b; pp. 11-12, § 6c.)
- Reciprocal Switch Charges at "2-to-1" Points (CMA § 4(a)). UP/SP will provide reciprocal switching to BN/Santa Fe at "2-to-1" shipper facilities at a rate of no more than \$130 per car. (Ex. A, p. 15, § 9h.) Applicants and BN/Santa Fe have also separately agreed that reciprocal switch charges vis-a-vis BN/Santa Fe at non-"2-to-1" points will be reduced to \$130. This is \$20 below the \$150 level previously unilaterally offered by Applicants.<sup>3/</sup>
- Adjustment of Trackage Rights Fees (CMA § 7). Trackage rights compensation levels under the settlement agreement will be adjusted on the basis of changes in actual UP/SP system average URCS costs for the categories of maintenance and operating costs covered by the fees. (Ex. A, pp. 16-17, § 12.)

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<sup>1/</sup> Certain provisions of the CMA agreement did not call for amendments to the BN/Santa Fe settlement agreement, but of course are fully binding on Applicants. These are Sections 3 (modification of shipper contracts to allow BN/Santa Fe to compete at once for half of every shipper's traffic), 4(d) (reduction in SP reciprocal switch charges at non-"2-to-1" points), 6 (segregated accounts for trackage rights fees dedicated to maintenance, depreciation and capital improvements on the trackage rights lines), 9 (dispatching protocol for trackage rights, which has already been filed), 13 (arbitration procedure for build-in claims), and 14 (Applicants' consent to Board oversight).

<sup>2/</sup> Citations are to the page numbers of the Second Supplemental Agreement and the sections of the BN/Santa Fe settlement agreement, as amended.

<sup>3/</sup> Applicants stand by their commitment to reduce unilaterally all SP reciprocal switch charges vis-a-vis railroads other than BN/Santa Fe to \$150 per car, with further reductions possible by bilateral negotiation.



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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

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BRIEF OF THE CHEMICAL MANUFACTURERS ASSOCIATION

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The Chemical Manufacturers Association ("CMA") is a nonprofit trade association whose member companies account for approximately 90% of the productive capacity for basic industrial chemicals in the United States. CMA's members depend heavily on rail transportation of bulk chemicals, which typically move in tank cars and covered hopper cars owned or leased by the companies.

On March 29, 1996, CMA filed Comments (CMA-7) opposing the proposed merger because it appeared the trackage rights agreement negotiated by Applicants (UP/SP) with the Burlington Northern/Santa Fe ("BNSF Agreement") would not effectively address anti-competitive concerns that would otherwise arise following the merger. CMA raised the possibility, however, that its position regarding the merger could change if the BNSF Agreement



- Provides that UP/SP will release at least 50% of any business subject to contracts at "2-to-1" points in Texas and Louisiana. *This will enable BNSF to compete for this business earlier than it otherwise would be able to.*
- Establishes reciprocal switch charge of no more than \$130 at "2-to-1" points, and reduces switch charges at other points that are above \$150 to \$150, with escalation at 50% of RCAF(U). *These reciprocal switching charges will facilitate access to BNSF for line haul service.*
- Allows BNSF to have equal access to Dayton Yard for storage-in-transit (SIT). UP/SP will work with BNSF to locate additional SIT facilities on the trackage rights lines. *These provisions will help to overcome what might otherwise be SIT capacity limitations for BNSF.*
- Places 100% of the trackage rights fees in a segregated fund to be used exclusively for maintenance, improvements and depreciation on the trackage rights lines, with one fund for the South Central region and one fund for the Central Corridor/California. *This ensures that trackage rights fees are used for the trackage rights lines rather than subsidizing other lines.*
- Changes trackage rights fee escalator from 70% of RCAF(U) to year-to-year changes in UP/SP actual system average cost for the maintenance and operating cost elements covered by the fee. CMA will have the right to audit. *This will correct the tendency of the fee to rise above actual costs over time because of the use of an escalator that did not incorporate productivity gains.*
- Grants BNSF the right to handle traffic to and from certain points in the Lake Charles area to, from or via New Orleans and to and from Mexico via Eagle Pass, Laredo or Brownsville, and "3-to-2" traffic at Texarkana and Shreveport to and from the Memphis BEA. *This corrects situations at certain points where the second remaining carrier after the merger could not offer a competitive routing to and from certain points.*
- Adopts a dispatching protocol which includes provision for on-site BNSF manager, at UP/SP expense, to monitor dispatching of BNSF trains. *This will ensure that BNSF will enjoy equal dispatch of its trains.*
- Affords BNSF the right to run any or all of its traffic, at its option, in either direction on lines operated directionally by Applicants. *This addresses the concern of many parties that BNSF would have difficulty running trains against the flow of traffic, particularly between Houston and Memphis.*
- Confirms BNSF access and interchange rights at Corpus Christi and Brownsville at least as favorable as SP has currently. BNSF will have direct access to the Port of Brownsville, BRGI and FNM, and BNSF will have the right to purchase a yard at Brownsville for trackage rights operations. *This will help to ensure BNSF competitiveness on traffic to and from Mexico.*

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 32760**

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

**- CONTROL AND MERGER -**

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

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**BRIEF OF BN/SANTA FE**

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June 3, 1996



ta Fe in any particular case.<sup>9</sup> That should allay any remaining concerns about the rate base, while objections that the rate would escalate to uncompetitive levels are no longer tenable now that the 70% RCAF-U adjustment clause has been replaced by an adjustment mechanism based directly on actual changes in UP's costs. See *Ice 2d V.S. 3*; *Kent/Klick V.S. 57-58*.

Even SP has competed effectively paying trackage rights compensation rates that are similar to those in the BN/Santa Fe Agreements. BN/Santa Fe will be able — and fully expects — to compete vigorously and effectively under those terms.

**II. THE RESPONSIVE APPLICATIONS AND SUGGESTED ALTERNATIVE OR ADDITIONAL CONDITIONS DO NOT SOLVE THE COMPETITIVE PROBLEMS AND DO NOT MEET THE BOARD'S STANDARDS FOR THE IMPOSITION OF CONDITIONS**

We have shown above that the BN/Santa Fe Agreements provide full remedies for the "competitive harm [that] is directly and causally related to the merger." *BN/Santa Fe* at 54. Once that has been established, no additional conditions are appropriate, and the Board's conditioning role is at an end. The Board's "role in merger proceedings is to evaluate carrier-originated proposals to determine whether they are consistent with the public interest." *UP/MP/WP* at 564. To this end, the Board grants only those conditions that are "narrowly tailored" to ameliorate the direct adverse effects of a merger; once those effects have been

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<sup>9</sup> BN/Santa Fe reads Applicants' April 29 filing not only as providing to BN/Santa Fe a segment-by-segment option to pay the lower of Agreement-based fees and traditional joint facilities billing fees, but also as committing that traditional joint facilities billing calculations will be based on *original* investment cost less depreciation (plus an allocated share of actual roadway maintenance and dispatching expense), as opposed to a book value that may have been adjusted. See *UP/SP-230* at 16 n.7 (equating the approach that Applicants are offering BN/Santa Fe as an option with portions of Mr. Crowley's verified statements endorsing an approach based on original investment cost). BN/Santa Fe intends to hold Applicants to those representations, and the Board will have the oversight authority to do so as well.



**REDACTED - PUBLIC VERSION**

UP/SP-384

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

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

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

---

**UNION PACIFIC'S FIFTH ANNUAL OVERSIGHT REPORT**

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Southern Pacific Rail Corporation*

July 2, 2001

5. Lower Costs

UP achieved the efficiencies it predicted during the merger proceeding. UP estimates its annual savings from the merger at more than \$690 million annually. The savings reflect substantial reductions in administrative personnel and more efficient deployment of agreement employees. More efficient routes, including directional running, reduce operating costs. Car hire and other equipment costs fell as transit times improved and interchange delays disappeared. Combined shops repair locomotives and cars more efficiently.

UP also was able to realize enormous savings by reducing SP's costs of acquiring supplies and equipment. SP lacked UP's sophisticated contract monitoring systems. It also paid higher prices because it could not secure the volume discounts that UP obtained. Combined, UP and SP reduced supply costs even further.

UP's profitability has not increased markedly and its rates have not increased over the five-year oversight period. The Board should therefore conclude that most of these savings were passed along to customers in the form of reduced rates.

6. Capital Investments<sup>53</sup>

By the end of 2001, UP expects to have invested \$1.586 billion to implement the UP/SP merger. UP's investment will exceed the \$1.441 billion we predicted in the merger application by approximately \$140 million. This total excludes more than \$1.5 billion in costs associated with the service crisis of 1997-98. It also does not include most of the costs of acquiring billions of dollars worth of locomotives and freight cars, even though those assets are used on former SP lines.

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<sup>53</sup> We discuss Houston/Gulf Coast area investments separately at pp. 47-49, below.

STB

FD-32760

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December 17, 2001

VIA HAND DELIVERYThe Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, DC 20423-0001Re: 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 Petition of The Burlington Northern and Santa Fe Railway Company for Clarification (BNSF-97).

I would appreciate it if you would date-stamp the enclosed extra copies and return them to the messenger for our files.

Sincerely,

*Erika Z. Jones/dls*

Erika Z. Jones

Enclosures

cc: All Parties of Record

ENTERED  
Office of the Secretary

DEC 17 2001

Part of  
Public Record

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LOS ANGELES

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PALO ALTO

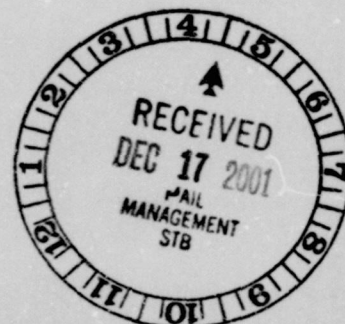
PARIS

WASHINGTON

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

BNSF-97

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

PETITION OF THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY FOR CLARIFICATION

ENTERED  
Office of the Secretary

DEC 17 2001

Part of  
Public Record

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December 17, 2001



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

---

PETITION OF THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY FOR CLARIFICATION

---

Pursuant to Decision No. 44 in the above-referenced proceeding, The Burlington Northern and Santa Fe Railway Company ("BNSF") petitions the Surface Transportation Board ("Board") for clarification of the merger conditions imposed by the Board in approving the UP/SP merger.<sup>1</sup> See Decision No. 44, 1 S.T.B. 233, 418-20. BNSF seeks a clarification of an issue with broad public policy implications that has arisen under the BNSF Settlement Agreement, as amended and imposed by the Board as a condition of the merger.<sup>2</sup> Specifically, BNSF seeks a clarification as to when BNSF is

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<sup>1</sup> The acronyms used herein are the same as those used in Appendix B to Decision No. 44.

<sup>2</sup> "A prior decision may be clarified whenever there appears to be a need for a more complete explanation of the action taken therein." Finance Docket No. 32760, Decision No. 61 at 5 (served Nov. 20, 1996).



required to construct or fund construction of a new connection or other facilities or improvements to serve a build-in/build-out line pursuant to the BNSF Settlement Agreement and the CMA Agreement.

The issue has arisen in connection with the planned new build-in line which is to serve Union Carbide Corporation's ("UCC")<sup>3</sup> plastics and chemicals production facility at Seadrift, TX from the former SP Port Lavaca Branch which runs between Placedo and Port Lavaca, TX. Claiming that BNSF's planned operations will interfere with its operations, UP has asserted that BNSF should be required to construct a new connection at Placedo and a new siding between Placedo and Kamey, TX (where the new line will connect with the Port Lavaca Branch) before it can provide service to the Seadrift facility. Maps depicting the rail lines involved and the build-in line are attached hereto as Attachment A.

As explained below, the question of when BNSF should be required to construct a new connection or other facilities or improvements to serve a build-in/build-out line has application to more than just the immediate dispute between BNSF and UP. The question should be addressed by the Board because its resolution may significantly affect the public policy choices that underpin the Board's approval of the UP/SP merger, and it is important that other parties to the UP/SP merger proceeding be afforded the opportunity to submit their views on the issue. Resolution in a private arbitration would not afford them that opportunity. Further, Board resolution of the question is necessary

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<sup>3</sup> As the Board has been previously advised, UCC has merged with The Dow Chemical Company ("Dow"). UCC continues to exist as the same corporate legal entity, but as a wholly-owned subsidiary of Dow rather than a publicly-traded company.

to ensure that, over the 99 year term of the Settlement Agreement, BNSF is able to compete effectively on a level playing field with UP over the trackage rights lines.<sup>4</sup>

It should be emphasized that what BNSF seeks in this Petition is policy guidance from the Board on the question presented – that is, the standard to be used in determining when BNSF may be required to construct or fund construction of a new connection or other facilities or improvements to serve build-in/build-out lines under the BNSF Settlement Agreement, CMA Agreement, and the Board's decisions. BNSF does not seek a resolution of the specific dispute concerning whether BNSF should be required to construct a connection at Placedo and/or a siding on the Placedo-Kamey line. Nonetheless, in order to provide the Board with a complete background and context in order to resolve the broader public policy question posed, BNSF will set forth the facts which have led to the dispute so that the Board will be fully apprised of that background and context in resolving the question.

#### BACKGROUND

In approving the UP/SP merger, the Board imposed as a condition that UP grant BNSF trackage rights over SP's Port Lavaca Branch to preserve the build-out option which the exclusively UP-served UCC facility at Seadrift enjoyed before the merger.<sup>5</sup>

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<sup>4</sup> The question presented in this Petition was not addressed in the proposed Restated and Amended BNSF Settlement Agreement (UP/SP-386, BNSF-92) submitted to the Board on July 25, 2001, because the parties were at that time continuing their negotiations in the hope that, consistent with the Board's expressed preference for the private resolution of disputes, a mutually-agreeable resolution could be achieved. It is now clear, however, that such a resolution cannot be reached and that resolution by the Board is necessary.

<sup>5</sup> As the Board noted, the BNSF Settlement Agreement was amended by the parties to provide that BNSF would receive these trackage rights. See Section 4a of the BNSF Settlement Agreement, as amended by Section 3a of the Second Supplemental Agreement dated June 27, 1996.



Decision No. 44, 1 S.T.B. at 475. Subsequently, UCC and BNSF reached agreement for the construction of a new line from the Seadrift facility to the Port Lavaca Branch, and BNSF filed a Petition for Exemption with the Board in Finance Docket No. 34003 on January 31, 2001, for authority to construct and operate the new line. On June 19, 2001, the Board conditionally granted the requested exemption subject to the completion of the environmental review process.<sup>6</sup>

In February 2001, BNSF initiated discussions with UP concerning BNSF's plan for providing service to UCC via the new line. Specifically, BNSF advised UP that it planned to serve the new line by running trains south from Houston on the UP Algoa-Brownsville, TX main line over which BNSF received trackage rights under the BNSF Settlement Agreement. Near Placedo, TX, the trains would turn onto the former SP line using a reverse movement over an existing connection in the southwest quadrant of the crossing and then proceed east to a turn-out to the new line near Kamey, TX. After providing service to the UCC Seadrift facility, BNSF trains would return west over the Port Lavaca Branch to the UP main line near Placedo and, using a reverse movement over the southwest quadrant connection, get back on UP's Algoa-Brownsville, TX line to return north to Houston. It is anticipated that BNSF will run one train of approximately 25 to 30 cars each way per day on the proposed line. BNSF's proposed route of service is reflected on Attachment A.

During the parties' discussions concerning BNSF's proposed service plan, UP has insisted that "any level of interference" with its operations is unacceptable. Based

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<sup>6</sup> The Post Environmental Assessment was issued on December 10, 2001, and the matter awaits a final Board decision.



on this premise, UP has argued that BNSF should be required to build or fund a new connection at Placedo and a siding on the Placedo-Kamey line. As shown below, UP's premise is directly contrary to not only the language of the BNSF Settlement Agreement, but also the Board's intent that BNSF should be able to provide fully competitive service to replace the service that would otherwise have been lost upon SP's absorption into UP. Accordingly, the Board should adopt the procedures set forth herein and clarify that, consistent with the terms of the BNSF Settlement Agreement and with governing law, BNSF may be required to construct or fund a new connection or other facilities or improvements to provide service to a build-in/build-out line only if UP demonstrates<sup>7</sup> that, absent such construction, BNSF's proposed service would unreasonably and materially interfere with UP's service to its customers and only if requiring BNSF to undertake such construction would be consistent with BNSF's ability to provide competitive service.<sup>8</sup>

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<sup>7</sup> It is appropriate for UP to carry the burden of establishing the requisite unreasonable and material interference since UP will in all cases be the owner of the lines involved and will have the most information concerning the existing operations on those lines.

<sup>8</sup> Pursuant to Decision No. 44, a request for a determination of whether BNSF is required to construct a connection and/or siding as UP proposes can be submitted to the Board or to arbitration. See Decision No. 44, 1 S.T.B. at 420 ("Any technical disputes with respect to the implementation of this build-in/build-out remedy may be resolved either by arbitration or by the Board."). The Board has recognized, however, that clarification of issues arising under the Settlement Agreement may be appropriate to "provide guidance to the parties and to arbitrators in interpreting the intended scope" of the conditions to the UP/SP merger. See Decision No. 86 at 4. Similarly, the Board has stated that "an administrative proceeding might be preferable for the resolution of general matters with broad implications with respect to implementation of our conditions." Id. at 6. The clarification sought in this Petition relates to "general matters with broad implications" that transcend the particular dispute over construction that may be required at Placedo and on the Placedo-Kamey line, and such a clarification would provide the "guidance" necessary to the resolution of a variety of disputes. Besides the

## PROVISIONS OF THE BNSF SETTLEMENT AGREEMENT AND THE CMA AGREEMENT

The original September 25, 1995 BNSF Settlement Agreement, as supplemented, is silent on the question of when BNSF should be required to construct or fund new facilities to serve a build-in/build-out line. The Restated and Amended BNSF Settlement Agreement, however, provides in Section 8(l) that the routing of the trackage rights which BNSF is to receive to serve a build-in/build-out line "shall seek to minimize the operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service." This language is identical to the language set forth in Section 13 of the CMA Agreement.<sup>9</sup>

### ARGUMENT

#### A. Connection at Placedo

In a September 24, 2001 letter (Attachment B hereto), UP asserted that a new connection must be built at the crossing at Placedo because BNSF's proposed operation of one 25 to 30 car train per day in each direction will otherwise allegedly result in "unacceptable delays" to UP's traffic. Specifically, UP claimed that BNSF's proposed use of a reverse movement over the existing connection in the southwest

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Placedo situation, one other situation where such guidance is necessary is in connection with San Jacinto Rail Limited's proposed build-in line to the Bayport Loop in Finance Docket No. 34079. As the Board is aware, UP has already advanced the position there that San Jacinto should be required to construct a new connection at T&NO Junction in Houston because of claimed interference with UP's operations due to traffic from the Bayport Loop moving through that junction.

<sup>9</sup> As originally written and executed, the CMA Agreement provided for a process where an arbitrator would determine whether a particular build-in/build-out was economically feasible under Interstate Commerce Commission and Board precedent. The Board rejected the feasibility standard and thus eliminated the need for an arbitration to determine if a build-in/build-out could be constructed. See Decision No. 44, 1 S.T.B. at 420.



quadrant of the crossing would "adversely impact the fluid operation" of the UP main lines between Houston/Flatonia and Brownsville. In its letter, however, UP provided no detailed justification of its claim of interference, but simply claimed that each BNSF train would cause a delay of 30 to 60 minutes. UP further contended in its letter (i) that it was never the intent of UP or BNSF or of the Board that BNSF's operations could result in some level of "acceptable" interference with UP's operations; and (ii) that "[t]he creation of any level of interference with the owner's operations and service to its customers" is unacceptable.

UP's bald assertion that BNSF's operations on the trackage rights lines cannot create "any level of interference" with UP's operations and service to its customers is clearly overly broad and not supported by the BNSF Settlement Agreement, the CMA Agreement, the Board's decisions, or any other authority. UP has sought support for its position in Section 9 of the BNSF Settlement Agreement. See September 24, 2001 letter at 2. But UP's resort to Section 9 is unavailing. The only portion of Section 9 that conceivably is relevant to UP's position is Section 9b. Section 9b merely states that BNSF and UP will conduct a joint inspection to determine the new connections and related facilities that are "necessary to implement the trackage rights granted under this Agreement." BNSF Settlement Agreement Section 9b. Section 9b, however, says nothing about the standard to be used in determining whether a new connection is "necessary" or "required" "to implement" the trackage rights. Thus, Section 9b provides no support for UP's no-interference standard.<sup>10</sup>

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<sup>10</sup> In the parties' negotiations, UP has also cited Section 2(n) of the Houston, Texas to Brownsville, Texas Trackage Rights Agreement (dated June 1, 1996). Section 2(n) of that agreement does not advance UP's position, either. That provision states that,



Further support for the conclusion that UP has misstated the standard to be applied in a situation involving a build-in/build-out line can be found, as noted above, in Section 8(l) of the Restated and Amended BNSF Settlement Agreement, to which UP has agreed. Section 8(l) provides that the route over which BNSF shall receive trackage rights to reach a build-in/build-out point shall "seek to minimize the operational inconvenience to UP/SP, consistent with ensuring that BNSF can provide competitive service." Thus, the language of the Restated and Amended BNSF Settlement Agreement clearly recognizes that some level of interference with UP's operations may occur in connection with BNSF service to and from build-in/build-out lines. Indeed, such a result is inherent in any increased use of UP's lines, and UP accepted the increased use of its lines in agreeing to grant BNSF trackage rights. In addition, as noted, Section 8(l) mandates only those steps to minimize inconvenience to UP that are "consistent with ensuring that BNSF can provide competitive service." This plainly is inconsistent with UP's no-interference standard, and, to the contrary, mandates consideration of whether BNSF's operations would unreasonably and materially interfere with UP's operations and whether proposed construction remedies for such interference would be consistent with BNSF's ability to provide competitive service.

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"when entering, exiting, setting out or picking up from its existing lines of railroad or trackage rights lines ('User's Operations'), [BNSF] shall do so without unreasonable interference or impairment of the Joint Trackage." (Emphasis added.) Nothing in this provision states that the determination of whether "sufficient trackage" is available for BNSF's operations depends on whether those operations would cause any interference to UP's operations -- which is the position that UP has taken. To the contrary, the provision clearly states that BNSF must conduct its operations without "unreasonable interference or impairment" of the joint trackage, and it, therefore, strongly implies that the determination of whether BNSF may be required to construct additional trackage depends (at least in substantial part) on whether BNSF's operations without the new facilities would unreasonably or materially interfere with UP's operations. This is precisely the position that BNSF has advocated and UP has rejected.

In assessing whether proposed BNSF service to and from a build-in/build-out line would cause unreasonable and material interference with UP's operations, consideration should be given to whether similar operations have caused undue interference with UP's operations elsewhere. For instance, BNSF's proposed use of reverse movements at Placedo is similar to the practice at T&NO Junction and Dayton, TX where the number of such movements is similar, and UP is nonetheless able to operate without undue difficulty. Similarly, UP itself employs this same type of reverse movement to move its grain trains onto the Port Terminal Railroad Association at North Yard in Houston.

Further, in determining whether the construction of a new connection or other facilities for reducing interference with UP's operations would compromise BNSF's ability to "provide competitive service" (Section 8(l) of the Restated and Amended BNSF Settlement Agreement), consideration should be given to whether SP would have had to construct a connection to provide the service at issue.<sup>11</sup>

Based on these principles and considerations, the Board should clarify that:

- When BNSF presents an operating plan to UP to serve a build-in/build-out line, UP is required to approve that operating plan unless the plan will cause unreasonable and material interference with UP's operations.
- If UP believes that BNSF's proposed operating plan would cause such interference, then UP must provide (i) a detailed justification in writing supporting its position, and (ii) a proposed alternative operating plan which will enable BNSF to provide competitive service to the shipper with the least additional cost.

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<sup>11</sup> The Board has most recently noted that the build-in/build-out condition was imposed by the Board on the UP/SP merger "to replicate . . . competitive opportunities that would otherwise have been lost upon SP's absorption into UP". (Finance Docket No. 32760 (Sub-No. 21), Decision No. 19 at 2 (served Nov. 8, 2001).) BNSF should therefore be able to operate in a manner that most closely replicates the service SP would have provided (i.e., BNSF should be able to "step in the shoes" of SP).



- If UP's proposed alternative operating plan would require BNSF to construct or fund new facilities or other improvements, then UP is required to provide an explanation of why the operations of the two carriers cannot be coordinated to avoid the need for the construction of new facilities.
- If, at that point, UP and BNSF continue to disagree as to the need for the construction of new facilities and as to how they should be funded, then the issue "may be resolved either by arbitration or the Board" (see Decision No. 44, 1 S.T.B. at 420).

The adoption of these procedures would enable BNSF to provide competitive service to shippers via build-in/build-out lines to replace the competition that would have otherwise been lost by the merger while at the same time affording protection to UP's ability to serve its customers.<sup>12</sup>

#### B. Siding on Placedo-Kamey Line

In its discussions with BNSF, UP has also asserted that BNSF should be required to construct a new siding on the Placedo-Kamey line for UP's use because BNSF's proposed service would interfere with UP's practice of leaving unit rock trains on the line to unload them to the customer. In support of its position, UP asserted in its September 24, 2001 letter that it was not the parties' intent when they executed the BNSF Settlement Agreement that UP would be "impeded in its ability to continue to provide service to existing customers in the manner service was provided prior to the merger." UP further asserted that "any BN-proposed change to existing operations or

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<sup>12</sup> While BNSF's current Petition for Clarification relates to service to build-in/build-out lines, the issues may also arise in the context of providing service to other shippers to which BNSF gained access under the merger conditions, particularly including new facilities on trackage rights lines. To the extent this is so, the Board should clarify that the procedures outlined above should apply to such service as well. In either case, appropriate changes incorporating the procedures should be made to the Restated and Amended BNSF Settlement Agreement.



access to a new customer that adversely impacts an existing customer must be remedied by BNSF to UP's satisfaction."

There is again, however, no standard anywhere in the BNSF Settlement Agreement which even remotely resembles the absolutist principle that UP proposes.<sup>13</sup> The Board should clarify that UP cannot conduct operations, including parking cars or trains on a through route, that impede BNSF's ability to provide competitive service to a build-in/build-out line. The Port Lavaca Branch is a certificated line over which BNSF was expressly granted trackage rights in the BNSF Settlement Agreement as a condition of the merger, and UP's operations would preclude BNSF from fully exercising those trackage rights. It makes no sense for UP to take the position that it is entitled to block a line at its discretion and to require BNSF to pay for a siding that UP – not BNSF – would use.<sup>14</sup>

Moreover, absent the merger, SP would likely have implemented the most cost effective and practical solution it could to accommodate the rock train unloading operations so that SP could provide service to both the customer and UCC. UP should be put to a similar task. That is, BNSF should not be required to provide funding for a

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<sup>13</sup> To the extent the BNSF Settlement Agreement does set forth a standard, it would be the same as that discussed above for a build-in, and the relevant questions in the present dispute would be whether BNSF's proposed operation of one train in each direction each day on the Placedo-Kamey line would cause unreasonable and material interference with UP's service to its customer.

<sup>14</sup> In any event, as in other areas, UP should be required to substantiate its claim that BNSF's operations would unreasonably and materially interfere with UP's operations, including, in the present dispute, providing information on where the blockage occurs on the line (e.g., on which side of Kamey), when and how often the blockage occurs, and whether the blockage will extend into the future on a more or less "permanent" basis.

siding in a case like this unless there are no other practical alternatives.<sup>15</sup> UP's implementation of unloading directly off the line would impede BNSF's ability to implement the Board's competitive trackage rights conditions, and the Board should clarify that, in situations such as this, BNSF should not be required to bear the costs associated with creating access to the line.

### CONCLUSION

For the reasons set forth above, BNSF requests that the Board adopt the procedures set forth herein and clarify that BNSF should be required to construct or fund a new connection or other facilities or improvements to provide service to a build-in/build-out line only if UP demonstrates that, absent such construction, BNSF's proposed service would unreasonably and materially interfere with UP's service to its

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<sup>15</sup> In this regard, it appears that the unit rock trains operate only about one to three times a week, and some sort of plan could be devised which would accommodate those trains as well as BNSF's projected six trains each week to and from Seadrift – particularly since the line seems to be lightly used. For instance, the rock trains could be pulled east on the Port Lavaca Branch past Kamey while the BNSF trains moved to and from the build-in line or the cars could be staged east, rather than west, of Kamey.



customers and only if requiring BNSF to undertake such construction would be consistent with BNSF's ability to provide competitive service.

Respectfully submitted,

Erika Z. Jones / als

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Adrian L. Steel, Jr.  
Adam C. Sloane

Jeffrey R. Moreland  
Richard E. Weicher  
Sidney L. Strickland, Jr.  
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The Burlington Northern  
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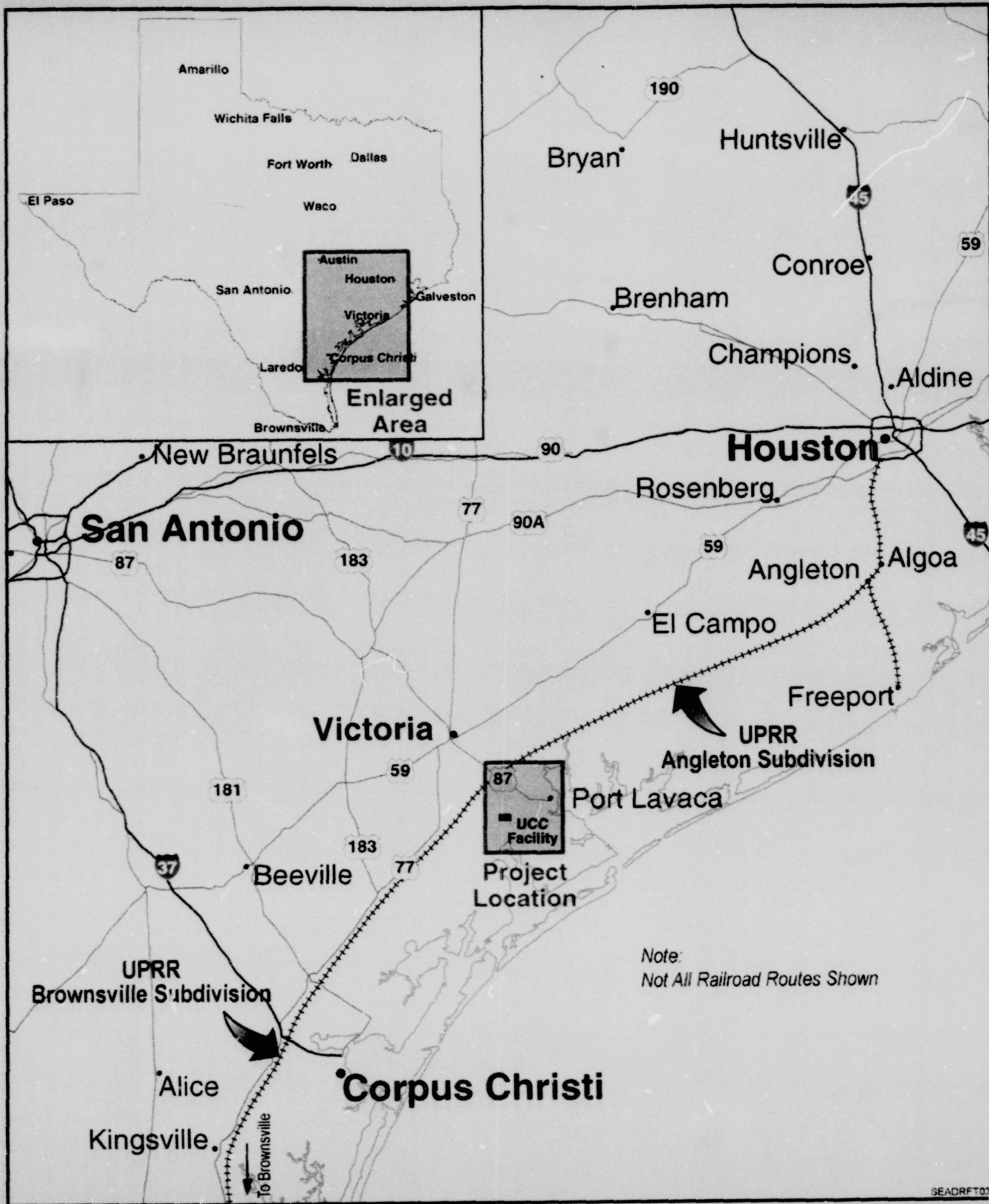
Mayer, Brown & Platt  
1909 K Street, NW  
Washington, DC 20006  
(202) 263-3000

Attorneys for The Burlington Northern and Santa Fe Railway Company

December 17, 2001



**ATTACHMENT A**



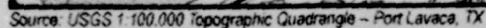
## Seadrift Rail Build-In

Finance Docket No. 34003

## PROJECT AREA

Figure 1-1





**Figure 1-2**



**ATTACHMENT B**

STEVE BARKLEY  
Regional Vice President  
Southern Region

UNION PACIFIC RAILROAD COMPANY



24125 Aldine Westfield Rd  
Spring Texas 77373  
(281) 350-7201

September 24, 2001

Mr. Rollin Bredenberg  
Vice President , Service Design & Performance  
The Burlington Northern & Santa Fe Railway Company  
2600 Lou Menk Drive  
P. O. Box 961034  
Fort Worth, TX 76161-0034

Re: Build-Out at North Seadrift, Texas

Dear Rollin:

Reference is made to your letter of August 29, 2001 regarding the proposed build-out at North Seadrift, Texas.

We have thoroughly reviewed your comments to my letter of July 5, 2001 and disagree both with BNSF's assessment of the potential impact of its proposed operating plan on UP's operations and with BNSF's interpretation of the intent of the UP/BNSF Settlement Agreement and the CMA agreement.

First, BNSF's proposed operating plan is unacceptable since even the modest volumes BNSF projects it would handle (one train averaging 25-30 cars per day in each direction) would result in unacceptable delays on UP's mainlines between Houston/Flatonia and Mexico via Brownsville. Although it is inconceivable to UP that BNSF and the customer to be served by the build-out have no immediate plans to increase their projected volumes as quickly as possible to capitalize upon the expenses they have incurred, even the two trains that BNSF projects to operate would each cause a conservative 30 to 60 minute delay on a corridor that handles 21 trains per day, with expected growth as crew resources become available. Without the construction of any of the connections proposed by UP, even the start-up volumes projected in BNSF's plan would adversely impact the fluid operation of the mainlines between Houston/Flatonia and Brownsville, a line which is jointly used by UP, BNSF and TexMex to access various seaports and gateways to Mexico.

Second, BNSF is correct in stating that the former SP could have operated to Houston via Flatonia, but SP could also have restored service over its line between Placedo and Houston via Rosenberg. That option is no longer open to



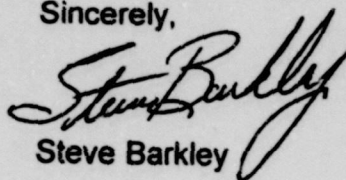
UP since the line is now owned by TexMex. In any event, UP believes that it neither was the intent of the STB, nor is it in the spirit of the CMA agreement, that BNSF be given expansive trackage rights in order to avoid minimal expenditures for the construction of facilities required to alleviate the disruption of UP's operations caused by BNSF's operations.

Third, UP categorically disagrees that it was ever the intent of UP/BNSF or of the STB to establish joint operations which would result in some "acceptable" level of interference on the owner's tracks. The creation of any level of interference with the owner's operations and service to its customers by operating rights granted in the UP/SP merger is unacceptable. Section 9 of the BNSF/UP Settlement Agreement clearly requires the parties to construct connections and any other improvements necessary to prevent such interference.

Lastly, the issue regarding UP's continued service to its customer located on the Placedo - Kamey portion of the Port Lavaca Subdivision was a condition that existed prior to the BNSF/UP Settlement Agreement. Clearly it was not the parties' intent that UP be impeded in its ability to continue to provide service to existing customers in the manner that service was provided prior to the merger. Accordingly, UP believes that any BNSF-proposed change to existing operations or access to a new customer that adversely impacts an existing customer must be remedied by BNSF to UP's satisfaction.

UP stands ready to further discuss the implementation of the options outlined in my letter of July 5. Please let me know when you would like to meet for further discussions.

Sincerely,

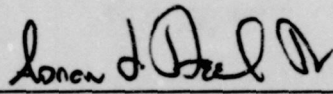
A handwritten signature in cursive script, appearing to read "Steve Barkley".

Steve Barkley



CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Petition for Clarification (BNSF-97) are being served on all parties of record.

  
\_\_\_\_\_  
Adrian L. Steel, Jr.

STB

FD-32760

9-28-01

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203600

**MAYER, BROWN & PLATT**

1909 K STREET, N.W.

WASHINGTON, D.C. 20006-1101

**Erika Z. Jones**

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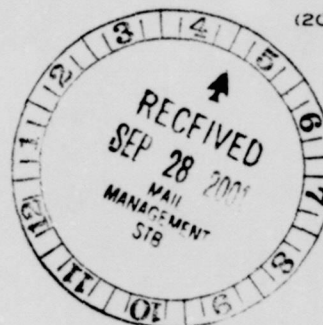
MAIN FAX

(202) 263-3300

September 28, 2001

VIA HAND DELIVERY

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



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

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five (25) copies of both the "Highly Confidential" version and "Public" version of the Joint Petition of The Burlington Northern and Santa Fe Railway Company, and Entergy Services, Inc. and Entergy Arkansas, Inc. for Enforcement of Merger Condition (BNSF-95/ESI-34).

The Petition has been designated as "Highly Confidential" under the protective order issued in this docket. Copies of the public version of the petition are being served on all parties of record. Any party of record who has executed the undertaking for highly confidential material and wishes to receive a copy of the highly confidential version of the Petition may contact Adrian Steel at (202) 263-3237. Also enclosed is a 3.5 inch disk containing the text of the highly confidential and public versions of the filing in WordPerfect 9 format.

I would appreciate it if you would date-stamp the enclosed extra copies and return them to the messenger for our files.

Sincerely,

*Erika Z. Jones/als*  
 Erika Z. Jones

ENTERED  
 Office of the Secretary

OCT 01 2001

Part of  
 Public Record

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



## PUBLIC VERSION

BNSF-95  
ESI-34BEFORE 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 COMPANYJOINT PETITION OF THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY, AND ENTERGY SERVICES, INC.  
AND ENTERGY ARKANSAS, INC.  
FOR ENFORCEMENT OF MERGER CONDITION

## EXPEDITED HANDLING REQUESTED

ENTERED  
Office of the Secretary

OCT 01 2001

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and Santa Fe Railway Company

September 28, 2001

**PUBLIC VERSION**

BNSF-95  
ESI-34

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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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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**JOINT PETITION OF THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY, AND ENTERGY SERVICES, INC.  
AND ENTERGY ARKANSAS, INC.  
FOR ENFORCEMENT OF MERGER CONDITION**

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**EXPEDITED HANDLING REQUESTED**

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Pursuant to Decision No. 44 and Decision No. 72 in the above-referenced proceeding, Petitioners The Burlington Northern and Santa Fe Railway Company ("BNSF"),<sup>1</sup> and Entergy Services, Inc. and Entergy Arkansas, Inc. (collectively "Entergy") petition the Surface Transportation Board ("Board") for an order of

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<sup>1</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44.



enforcement directing UP to permit BNSF to connect from BNSF's lines at Jonesboro and Hoxie, AR with its trackage rights over UP to provide rail service to Entergy's coal-fired electric generating station at White Bluff, AR.<sup>2</sup>

### INTRODUCTION

As the Board is aware, there is a dispute between BNSF and UP as to whether BNSF has the right under the BNSF Settlement Agreement to connect from its own lines to the UP and SP lines north of Bald Knob and Fair Oaks, AR over which BNSF received trackage rights as a condition of the UP/SP merger. BNSF, supported by the U.S. Department of Transportation, Entergy, and The National Industrial Transportation League ("NIT League"), contends that BNSF has the right to do so while UP contends that BNSF does not have that right. The parties have submitted their comments and replies on this dispute in the Board's general UP/SP merger oversight proceeding (Finance Docket No. 32760 (Sub-No. 21)), and Petitioners do not propose to restate their arguments on the dispute here. Rather, the purpose of this Petition is to request the Board to rule expeditiously on this particular dispute in light of the circumstances described below pertaining to the contract being negotiated between BNSF and Entergy for the transportation of Powder River Basin ("PRB") coal to Entergy's White Bluff Station.

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<sup>2</sup> In Decision No. 72, the Board stated that "any beneficiary of the Decision No. 44 conditions has the right to seek relief from the Board." Slip op. at 8 (footnote omitted). See also *id.* at 8 n.18 ("We wish to clarify that shippers have rights under the BNSF agreement because we have imposed the terms thereof as a condition to the merger. \* \* \* [S]hippers have recourse to the Board for enforcement of the merger conditions.").



## **BACKGROUND**

Entergy owns and operates a coal-fired electric generating station known as the White Bluff Station, which is located on UP's Pine Bluff-Little Rock line, just north of Pine Bluff, AR. At the time of the UP/SP merger, the White Bluff Station was exclusively served by UP. However, in the UP/SP merger proceeding before the Board, Entergy received the right to obtain service from BNSF by building out to the former SP line at Pine Bluff over which BNSF received trackage rights. Union Pacific et al. – Control and Merger – Southern Pacific et al., Decision No. 44, 1 S.T.B. 233, 429-30 and 469 (1996). Subsequently, as an outgrowth of UP's service crisis in 1997, Entergy filed suit against UP for breach of the parties' coal transportation contract. Then, in 2000, the Board confirmed Entergy's right to access BNSF by connecting to a former SP track near the Pine Bluff Arsenal rather than building all the way into downtown Pine Bluff. Decision No. 88 (served March 21, 2000).

Last summer, Entergy and UP reached agreement on the settlement of Entergy's lawsuit.

In reliance on UP's commitment, Entergy and BNSF have negotiated the terms of a rail transportation contract covering BNSF deliveries of PRB coal to the White Bluff Station.<sup>3</sup> Given the language of Section 9I of the BNSF Settlement Agreement providing BNSF with the right to connect with the trackage rights lines from its own lines

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<sup>3</sup> While all of the essential terms of the contract have been finalized, the contract has not yet been executed due to the uncertainty raised by UP's opposition to BNSF's proposed interchanges between its lines and the trackage rights lines at Jonesboro and Hoxie.

(and the language of Section 6c drafted by UP which expressly preserves BNSF's rights under Section 9I), BNSF and Entergy have negotiated the terms of the contract on the basis of a service plan which would route the loaded BNSF unit coal trains from the PRB over BNSF's lines via Springfield, MO to Jonesboro, then south on the former SP line to Pine Bluff, and over to the White Bluff Station on UP's line. After the coal is delivered, the empty trains would continue to Little Rock on the UP line, turn north onto the UP line at Little Rock to Hoxie where they would return to the BNSF line for the trip back to the PRB. This routing, which is shown on the map attached to the Verified Statement of Richard C. Ellis of BNSF ("Ellis V.S.") submitted herewith, provides the most direct, least circuitous routing, provides Entergy with maximum equipment utilization, and closely replicates the pre-merger BNSF-SP routing which was available to Entergy.<sup>4</sup> Deliveries of coal under the contract are projected to commence on January 1, 2002. Ellis V.S. at 2.

UP has taken the position, however, both in its discussions with BNSF and in its pleadings before the Board that, notwithstanding the language of the BNSF Settlement Agreement cited above, BNSF does not have the right to enter and exit the trackage rights lines at Jonesboro and Hoxie and that BNSF's unit coal trains must continue to Memphis and return back to the trackage rights lines in order to provide service to the White Bluff Station.

---

<sup>4</sup> An alternative routing – one which would replicate the exact pre-merger BNSF-SP service option – would route the return trains back through Pine Bluff, north on the former SP line to Jonesboro and then back to the PRB via Springfield. However, given the institution of directional operations on the UP and SP lines in this corridor, the routing described above, which would have the BNSF unit trains join the directional operations, was selected. Ellis V.S. at 2.



### NEED FOR EXPEDITION

Although BNSF and Entergy recognize that the Board will endeavor to resolve all of the disputed issues relating to the Restated and Amended BNSF Settlement Agreement promptly, BNSF and Entergy need to have the dispute concerning BNSF's right to connect with the trackage rights lines at Jonesboro and Hoxie resolved as soon as practicable. As described below, there are several reasons for such expedition.

First, as set forth at pages 2 to 3 of the Ellis Verified Statement, if BNSF is to be required to route Entergy's traffic to Memphis, then it will have to alter the service plan described above. Instead of turning south onto the former SP line at Jonesboro, the loaded PRB coal unit trains would proceed on BNSF's line to West Memphis to be interchanged to the trackage rights lines there. In order to make the interchange, BNSF would have to construct at significant cost an interchange at Bridge Junction in West Memphis or rehabilitate and upgrade its West Memphis Branch.<sup>5</sup>

Both of these projects, which are reflected on the map attached to the Ellis Verified Statement, will require substantial lead time. Ellis V.S. at 3. For instance, the construction of an interchange between BNSF and UP at Bridge Junction would require a significant amount of fill and could take up to 6 to 9 months to complete. Ibid. Similarly, the rehabilitation and upgrading of BNSF's West Memphis branch would require the rehabilitation of an out-of-service connection, significant fill, and the

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<sup>5</sup> In the event the Board determines that BNSF must route its trains via Memphis, BNSF would, if a contract with Entergy were finalized based on that route, operate the loaded trains through Bridge Junction across the Mississippi River to the east side of the river, run around the train and then operate the train back across the bridge and onto the UP line until the necessary interchange connections are completed. Because such service would cause congestion on the single-track bridge across the Mississippi River, work on the interchange connections would need to commence as soon as possible. Ellis V.S. at 3.



rehabilitation and upgrading of the rail on the entire branch. The necessary work for this alternative would take even longer and could require as much as 9 to 12 months. Ibid. Once interchanged, the loaded trains would proceed over the former SP line to Brinkley where they would join the southbound former SP line to Pine Bluff and then on to the White Bluff Station.

The empty trains would follow the return route through Little Rock as described above, but they would turn off of the northbound UP line at Bald Knob and travel back east to West Memphis (via Fair Oaks) on the UP line. Once there, they would interchange to the BNSF West Memphis branch for their return to the PRB. A new connection, which could take up to 6 to 9 months to complete, would need to be constructed at Presley Junction to implement the interchange. Ellis V.S. at 3.

Even if the Board finds that BNSF has the right to connect to the trackage rights lines at Jonesboro and Hoxie, BNSF still needs to make the arrangements for those connections. Ellis V.S. at 4. A connection between the UP and BNSF lines at Hoxie will require upgrade and other work and could take up to 2 months to complete. BNSF must also, regardless of the route, develop and design the specific operating and service plans for the service to the White Bluff Station, including plans for locomotive allocation, crews, federal inspection of the trains, and locomotive fueling. Ibid. Accordingly, BNSF needs to know as soon as possible which route its unit trains to the White Bluff Station will take so that, to the extent possible, the necessary preparatory work can be completed before the anticipated commencement of service on January 1, 2002.

Second, as set forth in the Verified Statement of Jeffrey G. Herndon of Entergy ("Herndon V.S.") submitted herewith, under its coal transportation agreement with UP, entered in settlement of Entergy's breach of contract litigation with UP, Entergy is required to provide certain notices in advance of each calendar year regarding its intended coal shipments.

Entergy must factor into its notice to UP the tonnage that it intends to ship to White Bluff via BNSF. However, if Entergy assumes for purposes of such notification that the new agreement with BNSF will be executed and an adverse ruling by the Board prevents that from occurring,

As set forth above, Entergy must make its nomination for 2002 by November 1, 2001. If the routing issue before this Board is not resolved by that time, Entergy may be forced to forego BNSF service for much or all of 2002 due to the absence of an executed contract with BNSF and the uncertainty that would exist as to whether, when,

and on what terms such a contract could be entered and how long it would take BNSF to complete necessary track improvements for the route that UP argues is required.

### **CONCLUSION**

For the reasons set forth in BNSF's and Entergy's submissions in the oversight proceeding, the Board should enforce the clear language of the BNSF Settlement Agreement, reject UP's proposal to delete that language, and hold that BNSF has the right to connect from BNSF's lines at Jonesboro and Hoxie, AR with its trackage rights over UP to provide rail service to Entergy's White Bluff Station. Further, as noted above, there are steps and actions which BNSF and Entergy must take in the immediate future in order for the delivery of PRB coal to Entergy's White Bluff Station to commence effective January 1, 2002, as contemplated by their negotiations. Accordingly, Petitioners request that UP be required to file its response to this Petition



as soon as practical,<sup>6</sup> and that the Board expedite its consideration of the Petition and issue its decision as soon thereafter as practical.

Respectfully submitted,

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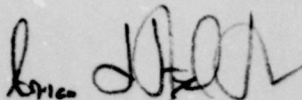
Attorneys for  
The Burlington Northern  
and Santa Fe Railway Company

September 28, 2001

<sup>6</sup> Such a directive should not be difficult for UP to comply with since, with its arguments on the merits having previously been submitted to the Board, the only issue which would need to be addressed in its response would be BNSF and Entergy's request for an expedited decision.

CERTIFICATE OF SERVICE

I do hereby certify that copies of the foregoing Joint Petition of The Burlington Northern and Santa Fe Railway Company, and Entergy Services, Inc. and Entergy Arkansas, Inc. (BNSF-95/ESI-34) are being served on all parties of record. Public Versions of the Petition are being served on all parties of record, and Highly Confidential versions are being served on counsel for Union Pacific Railroad Company and Entergy Services, Inc. and Entergy Arkansas, Inc.

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

Adrian L. Steel, Jr.

**Verified Statement  
of  
Richard C. Ellis**

My name is Richard C. Ellis. I am the Assistant Vice President, Unit Train Operations, of The Burlington Northern and Santa Fe Railway Company ("BNSF"). My office address is 2600 Lou Menk Drive, Fort Worth, Texas 76131-2830.

I have been employed by BNSF and its predecessors since 1972, spending all of my career in operations. I have been in management positions since 1978, most of which have involved management of unit coal train operations, either at the Powder River Basin ("PRB") end or the delivery end. I have held positions as the Terminal Superintendent at BNSF's Alliance, Nebraska yard from 1984-88, as the Terminal Superintendent in Minneapolis, Minnesota from 1988-92, as the General Superintendent of Transportation in Minneapolis from 1992-96, and as the Assistant Vice President, Transportation for the BNSF system in Fort Worth from 1996-97. I have held my current position since 1997. As the Assistant Vice President, Unit Train Operations, I am responsible for all unit train operations on BNSF, including coal unit train operations in the PRB on lines owned solely by BNSF and on the line owned jointly by BNSF and the Union Pacific Railroad Company ("UP") and operated by BNSF.

The purpose of this Verified Statement is to describe the routing which BNSF would use to provide coal unit train service to Entergy Services, Inc and Entergy Arkansas, Inc.'s (collectively, "Entergy") coal-fired electric generating station at White Bluff, AR. Entergy and BNSF have negotiated the terms of, but not yet executed, a rail transportation contract covering BNSF deliveries of PRB coal to the White Bluff Station by BNSF.

Given the language of Section 91 of the BNSF Settlement Agreement providing BNSF with the right to connect with the trackage rights lines from its own lines (and the language of



Section 6c drafted by UP which expressly preserves BNSF's rights under Section 9l), BNSF and Entergy have negotiated the terms of the contract on the basis of a service plan which would route the loaded BNSF unit coal trains from the PRB over BNSF's lines via Springfield, MO to Jonesboro, then south on the former SP line to Pine Bluff, and over to the White Bluff Station on UP's line. When a train is made empty, it would continue to Little Rock on the UP line, turn north onto the UP line at Little Rock to Hoxie where it would return to the BNSF line for the trip back to the PRB. As shown on the map attached hereto, this routing provides the most direct, least circuitous routing, provides Entergy with maximum equipment utilization, and closely replicates the pre-merger BNSF-SP routing which was available to Entergy. Deliveries of coal under the contract are projected to commence on January 1, 2002.

An alternative routing -- one which would replicate the exact pre-merger BNSF-SP service option -- would route the return trains back through Pine Bluff, north on the former SP line to Jonesboro and then back to the PRB via Springfield. However, given the institution of directional operations on the UP and SP lines in this corridor, the routing described above, which would have the BNSF unit trains join the directional operations, was selected.

If BNSF is to be required to route Entergy's traffic to Memphis as UP has contended, then BNSF will have to alter the service plan described above. Instead of turning south onto the former SP line at Jonesboro, the loaded PRB coal unit trains would proceed on BNSF's line to West Memphis to be interchanged to the trackage rights lines there. Once interchanged, the loaded trains would proceed over the former SP line to Brinkley where they would join the southbound former SP line to Pine Bluff and then on to the White Bluff Station. In order to make the interchange at West Memphis, BNSF would have to construct at significant cost an interchange at Bridge Junction in West Memphis or rehabilitate and upgrade its West Memphis

Branch. Both of these projects will require substantial lead time. For instance, construction of an interchange between BNSF and UP at Bridge Junction would require a significant amount of fill and could take up to 6 to 9 months to complete. Similarly, the rehabilitation and upgrading of BNSF's West Memphis branch would require the rehabilitation of an out-of-service connection, significant fill, and the rehabilitation and upgrading of the rail on the entire branch. The necessary work for this alternative would take even longer and could require as much as 9 to 12 months.

The empty trains would follow the return route through Little Rock as described above, but they would turn off of the northbound UP line at Bald Knob and travel to West Memphis (via Fair Oaks) on the UP line. Once there, they would interchange to the BNSF West Memphis branch for their return to the PRB. A new connection, which could take up to 6 to 9 months to complete, would need to be constructed at Presley Junction to implement the interchange.

In the event the Board determines that BNSF must route its trains via Memphis and a contract with Entergy were finalized based on that route, BNSF would operate the loaded trains through Bridge Junction across the Mississippi River to the east side of the river, run around the train and then operate the train back across the bridge and onto the UP line until the necessary interchange connections are completed. Because such service would cause congestion on the single-track bridge across the Mississippi River, work on the interchange connections would need to commence as soon as possible.

Even if the Board finds that BNSF has the right to connect to the trackage rights lines at Jonesboro and Hoxie, BNSF still needs to make the arrangements for those connections. A connection between the UP and BNSF lines at Hoxie will require upgrade and other work and could take up to 2 months to complete. BNSF must also, regardless of the route, develop and

design the specific operating and service plans for the service to the White Bluff Station, including plans for locomotive allocation, crews, federal inspection of the trains, and locomotive fueling.

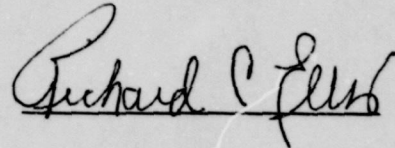
Accordingly, BNSF needs to know as soon as it can which route its unit trains to the White Bluff Station will take so that, to the extent possible, the necessary preparatory work can be completed before the anticipated commencement of service on January 1, 2002.



**VERIFICATION**

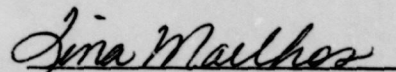
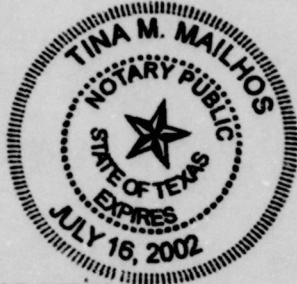
**THE STATE OF TEXAS )  
 )  
COUNTY OF TARRANT)**

Richard C. Ellis, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.



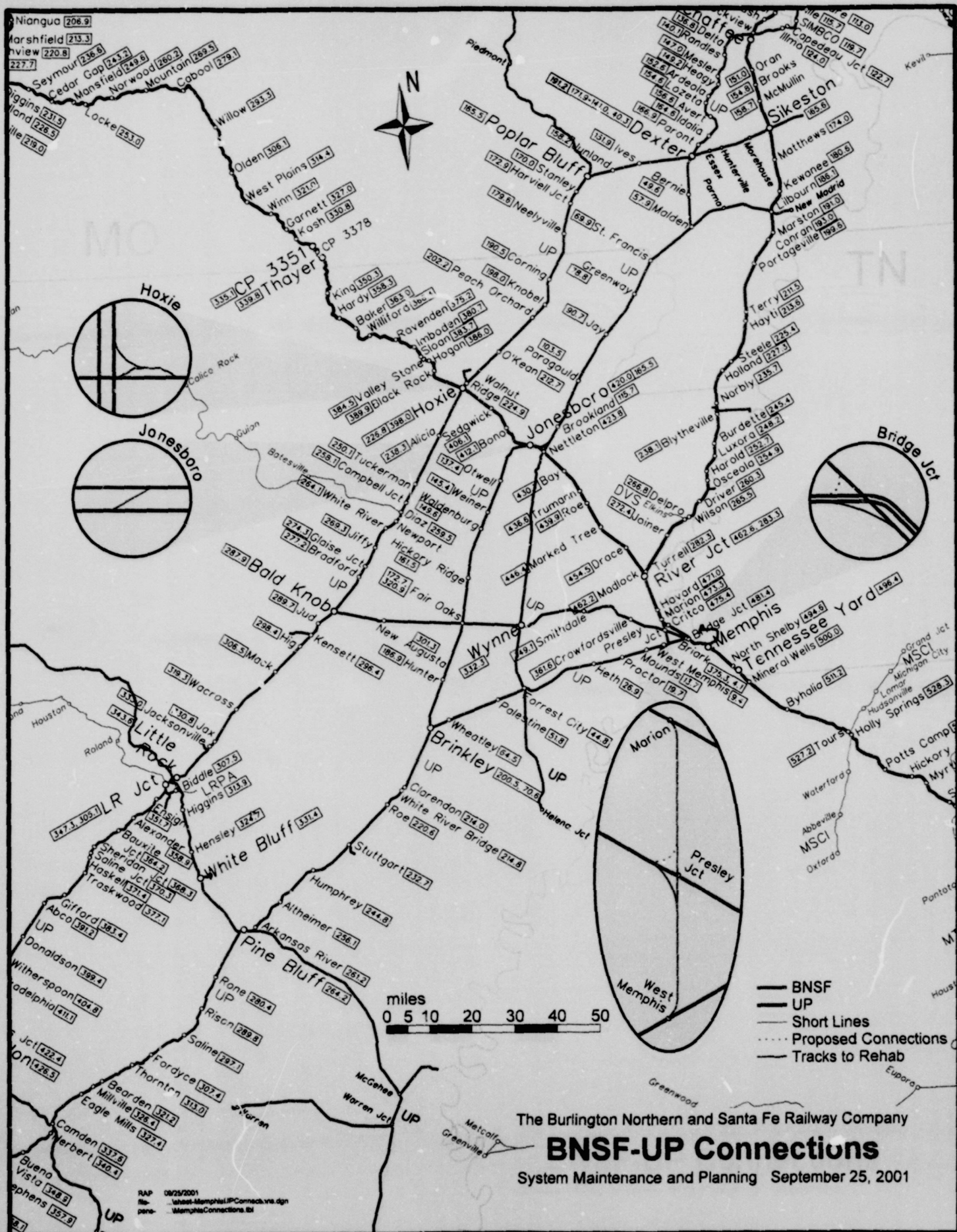
Richard C. Ellis

Subscribed and sworn to before me on this 26 day of September, 2001.



Notary Public

My Commission expires:





**HIGHLY CONFIDENTIAL**

Verified Statement of Jeffery G. Herndon

REDACTED



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June 21, 2000

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

FILED

JUN 21 2000

SURFACE  
TRANSPORTATION BOARD

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

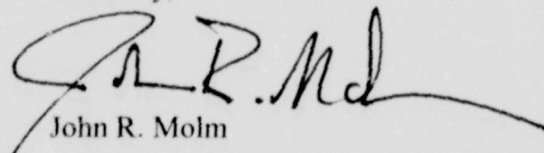
Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and twenty-five (25) copies each of the PUBLIC and HIGHLY CONFIDENTIAL versions of AmerenUE's Petition For Reconsideration Of "Contract Modification Condition" Portion Of Decision No. 89. In accordance with the Board's regulations, we have also enclosed a 3.5-inch diskette containing the Highly Confidential version of the pleading in WordPerfect format.

The HIGHLY CONFIDENTIAL version is being filed under seal and will be subject to the protective order that is in place for the above-referenced proceeding.

An additional copy of each version of the filing is enclosed. Please date and time stamp these copies and return them to the messenger for our files.

Sincerely,

  
John R. Molm

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JUN 21 2000

Enclosures  
SURFACE  
TRANSPORTATION BOARD  
cc: Parties of Record

ENTERED  
Office of the Secretary

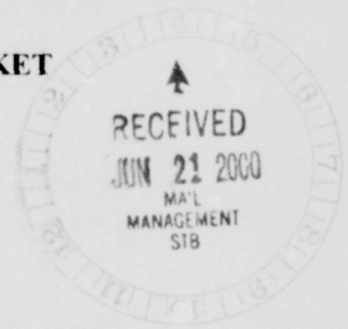
JUN 22 2000

Part of  
Public Record

PUBLIC VERSION - TO BE FILED IN PUBLIC DOCKET

BEFORE THE  
SURFACE TRANSPORTATION BOARD

1990s  
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

PETITION FOR RECONSIDERATION OF "CONTRACT  
MODIFICATION CONDITION" PORTION OF DECISION NO. 89

ENTERED  
Office of the Secretary

JUN 22 2000

Part of  
Public Record

EXPEDITED CONSIDERATION REQUESTED

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JUN 21 2000

June 21, 2000

SURFACE  
TRANSPORTATION BOARD



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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 32760**

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

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**PETITION FOR RECONSIDERATION OF "CONTRACT  
MODIFICATION CONDITION" PORTION OF DECISION NO. 89**

AmerenUE ("UE") hereby petitions the Surface Transportation Board ("STB" or "Board"), pursuant to 49 C.F.R. § 1115.3 (1998), for reconsideration of the Board's decision in this matter, served June 1, 2000.<sup>1</sup> In Decision No. 89 the Board committed material error by denying UE the benefits of the contract modification condition as established in the Board's previous decisions numbered 44, 57 and 73.<sup>2</sup> In support of its petition, UE shows the following.

**SUMMARY OF ARGUMENT**

The Board's Decision No. 89 stated that even though the previous STB decisions found that the contract modification condition applies "to every contract entered into prior to the consummation of the merger by a 2-to-1 shipper, on the one hand, and either UP ["Union Pacific Railroad"] or SP ["Southern Pacific Railroad"] on the other," the contract modification condition

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<sup>1</sup> Union Pac. Corp. et al.-Control and Merger-Southern Pac. Corp. et al., F.D. 32760 ("UP/SP"), Decision No. 89, Slip op. (STB served June 1, 2000) ("Decision No. 89").

<sup>2</sup> UP/SP, Decision No. 44, Slip op. (STB served Aug. 12, 1996) ("Decision No. 44"); UP/SP, Decision No. 57, Slip op. (STB served Nov. 20, 1996) ("Decision No. 57"); UP/SP, Decision No. 73, Slip op. (STB served Aug. 14, 1997) ("Decision No. 73").

does not apply to UE's contract because "Addendum Three" of the original contract "amounted to 'major surgery' on the underlying contract." Decision No. 89 at 9 (citation omitted). The Board's refusal to grant UE the benefits of the contract modification condition constitutes material error on three grounds.

First, the decision errs inasmuch as the Board misinterprets the Addendum to the underlying contract. While there might be some support for the Board's view that a substantive modification creates a new contract in and of itself, the Addendum was neither substantive nor "major surgery," and, in fact, expressly provides that it was not to be viewed as creating a new contract. In addition, the Board's misinterpretation of the Addendum is evident in the Board's failure to consider all the facts and argument presented by both sides regarding the Addendum issue.

Second, the decision errs inasmuch as the Board arbitrarily imposed new restrictions on the contract modification condition. These new limitations run contrary to both prior statements contained in decisions by the Board about the expansive scope of the contract modification condition as well as to the intent of the parties involved in the UP/UE Addendum negotiations.

Finally, the Board erred in placing *ex post facto* limitations on a 2-to-1 shipper's (UE's) use of the contract modification condition and allowing UP to benefit from a failure to follow a prior Board directive. The contract modification condition was intended to be a mechanism for use at the option of and benefit for 2-to-1 shippers. The Board's decision runs contrary to that intent.



## ARGUMENT

### **I. THE BOARD'S DECISION WAS IN ERROR BECAUSE IT MISINTERPRETS THE SIGNIFICANCE OF THE ADDENDUM TO THE UNDERLYING CONTRACT**

- A. The Board erred in finding that the Addendum amounted to "major surgery" and thus ineligible for benefits under the contract modification condition; the Addendum was not a substantive change to the underlying contract.

In Decision No. 89, the Board first found that the UP/UE Contract (ICC-WRPI-C-0080):

- was entered into prior to the consummation of the merger by a 2-to-1 shipper;
- was negotiated under the auspices of old 49 U.S.C 10713;
- was in effect at the time the merger was consummated;
- and, therefore, the contract modification applied to this contract at the time of the merger.

Decision No. 89 at 9. Thereafter, notwithstanding these findings, the Board denied UE's right to the contract modification condition by merely adopting UP's argument that the "Addendum amounted to 'major surgery' on the underlying contract." *Id.*

This arbitrary decision constitutes material error. That the Board was arbitrary in accepting UP's assertion that the Addendum amounted to "major surgery" is evidenced by the fact that the Board makes no mention of, or cites to, UE's contrary arguments set forth in UE's Petition for Clarification and Enforcement of Merger Conditions ("UE Petition") containing these arguments dated January 19, 2000 at 20-22 and Exhibit 1 at 2.<sup>3</sup> Although the specific terms of the transportation contract and Addendum are confidential, the Board appears to make an arbitrary evaluation of the terms of the Addendum by adopting, without any analysis, UP's

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<sup>3</sup> Additional discussion of why the Board's failure to cite or mention UE's Petition and arguments is an indication of the arbitrary nature of the decision can be found in Part II B of this petition.

characterization of "major surgery" and UP's incorrect assertions that the Addendum relieved UE of "significant liabilities." These characterizations and assertions not true. Addendum Three is a 3¼ page amendment to a 43 page contract, hardly major surgery. Addendum Three was not a one-sided concession by UP to UE. UP bargained for and received benefits of equal or greater value than UE received from Addendum Three. For example, [\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*]. Clearly the Addendum only changed minor conditions of the contract to the benefit of both parties.

More importantly, the Board's blind adoption of UP's characterization of the Addendum misinterprets the Addendum because the interpretation is contrary to Missouri law. The Missouri Supreme Court has held that a sales contract, modified in terms of quantity of goods, payment schedule, and duration of viability, was "only a continuance of a prior contractual relationship" between the parties. Lowther v. Hays, 225 S.W.2d 708, 710 (Mo. 1950). That same court later held that "a subordinate and separable part of [a] contract may be waived or modified by the parties without a cancellation or avoidance of the whole contract." Zumwinkel v. Leggett, 345 S.W.2d 89, 94 (Mo. 1961), citing 12 Am. Jur., Contracts, § 427 at 1004-1005. The Board's finding that the UE contract was not the contract in effect at the time of the merger is irreconcilable with the Missouri law. Vice Chairman Burkes' statement in his separate comment that the amendment "does not eliminate the fact that the original contract, ICC-WRPI-C-0080, was in effect at the time the merger was consummated," is the only finding possible that is consistent with Missouri law.<sup>4</sup> Decision No. 89, Vice Chairman Burkes, Commenting, at 11.

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<sup>4</sup> The Board's summary conclusion in Decision No. 89, footnote 25 that notwithstanding Missouri law, "we never intended that the contract modification condition would apply to a contract that received the kind of post-merger 'major surgery'" (Slip op. at 10) is a clear

UE agrees with the Vice Chairman and reiterates that the complete record substantiates that nothing in the Addendum was so drastically different from the original contract as to render the Addendum substantively separable from the contract that was in effect when the merger was consummated. In borrowing UP's phraseology ("major surgery") the Board has seriously misconstrued the true nature of the Addendum.

- B. The Addendum itself states that it is not to be considered a new contract and the parties never intended it to be a new contract.

The Board's arbitrary adoption of UP's terminology regarding the Addendum suggests that the Board also adopted UP's arguments that the Addendum was a new contract. See Decision No. 89 at 9 citing UP/SP-374 at 18-22; UP/SP-374, Exhibit 1 at 7-8. However, the Addendum itself notes that it was not intended to be construed as a new contract in any way; nor was it intended to be construed as "major surgery." As the Addendum states, and as Vice Chairman Burkes properly highlighted, "nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided." See UE Petition, Highly Confidential Exhibit 23; Decision No. 89, Vice Chairman Burkes Commenting, at 11.

An oft-cited case from the Fifth Circuit underscores this point. The court in Crook v. Zorn held that "[a] novation...is simply the creation of a new contract in the place of an old one...To effect a novation, all the parties must intend to terminate the old agreement and to substitute or create one that is entirely new...Such an intention is never presumed." Crook v. Zorn, 95 F.2d 782, 783-784 (5<sup>th</sup> Cir. 1938). The intent of the parties should not be presumed in the instant case. That intent, merely to modify certain subordinate parts of the original deal, but no more, was explicitly stated in the contract itself. Therefore, the Board committed material

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departure from the Board's previous reasoned and well-explained rational for the contract modification condition. This departure from the Board's prior decisions is material error because it is arbitrary and without any explanation as more fully discussed below.



error in construing the Addendum as a "new" contract, (*i.e.* not to be treated as the contract that was in effect at the time the UP/SP merger was consummated,) in direct contradiction to the express intent of the parties.

Moreover, UP's argument, and the Board's apparent reliance upon the assertion that this is a situation where "the parties originally assumed [the contract modification clause] to be inapplicable," is wrong.<sup>5</sup> Union Pacific Railroad Company's Response to AmerenUE's Petition for Clarification and Enforcement of Merger Conditions dated February 8, 2000 ("UP's Response") at 21. It is ironic that UP, which knew of the contract modification condition at the time the Addendum was signed, and was in fact required to inform shippers of the provisions of the modification condition, would fail to explicitly include in the Addendum any reference to the status that the modification might have on the contract modification condition. If UP had truly intended not to have the contract modification provision apply, then the burden lay with UP to have expressed that intent in the Addendum. Indeed, notwithstanding UP's profession to the Board that it "has identified . . . all shippers with outstanding contracts at 2-to-1 points, and has advised those shippers in writing that they were covered by the contract modification condition," and the Board's imposed responsibility to send a third letter to inform shippers such as UE of its rights under the contract modification clause, "UP never sent any such notification to UE even though UP had publicly declared UE's '2-to-1' status in the UP/SP proceeding." UE Petition at 22.

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<sup>5</sup> UE's use of "the Board's apparent reliance" here and similar language elsewhere in this Petition is based upon UE's belief that the Board relied only upon UP's arguments in determining the contract modification condition because the section of Decision No. 89 dealing with the contract modification condition only recites UP's arguments and does not cite to UE's pleading on the issue.

UP's failure to provide notification to UE of even the existence of the contract modification condition was a disregard of UP's "ethical duty to speak."<sup>6</sup> Contrary to UP's assertions, See UP's Response at 19, UE could not have an ethical duty to speak about a fact which as the Board agreed UE only recently became aware<sup>7</sup> and for which UE never had any intention of waiving any rights it might have under the condition. See Decision No. 89 at 6 and 9 n.24. UP should not be encouraged to *ex post facto* claim that UE not only *knew* of the modification conditions, but *waived their rights under the conditions*, when UP did not, as the Board required, inform UE of such rights. Even if we assume *arguendo* that there was a legitimate factual dispute over whether UE was a qualified 2-to-1 shipper in need of notification, it is quite a leap to claim, as UP did, that (i) UE knew of its rights to the modification condition, and (ii) UE waived them when agreeing to Addendum Three.

Finally, UP's claims that the application of the contract modification condition to UE would create a "substantially different contract" that allows UE to "spring the condition on an unsuspecting railroad" See UP's Response at 19, 16. Believing that UP is an unsuspecting railroad, particularly with respect to the conditions imposed in UP's own merger, lacks any credibility. Furthermore, contrary to UP's claims that the imposition of this condition would leave UP with a contract that it would have never negotiated, UP's remedies for this concern were already addressed in the Board's prior decisions. See Decision No. 57 at 12 (Guideline

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<sup>6</sup> UP's failure to provide notification of the contract modification condition to UE was not only a disregard of UP's ethical duty to speak, it was a breach of UP's Board imposed directive. See Section III B for more discussion on UP's breach of its Board imposed directive.

<sup>7</sup> As the Board indicated in Decision No. 89, Decision No. 57 would have been a matter of public record. However, the Board clearly indicated its concern that 2-to-1 shippers may not be aware of the contract modification condition and all the guidelines which is why the Board directed UP to notify all such shippers. See Decision No. 57 at 13.

#9).<sup>8</sup> Under Guideline #9, UP has the sole right to determine, if a shipper uses the contract modification condition, whether UP will release and terminate the entire contract. Therefore, the Board erred in determining that the contract modification condition does not apply to the UE contract inasmuch as this determination runs contrary to Missouri law and to the explicit and bargained-for terms between the parties.

**II. THE BOARD'S DECISION WAS IN ERROR BECAUSE IT ABITRARILY IMPOSES NEW LIMITATIONS UPON THE CONTRACT MODIFICATION CONDITION CONTRARY TO BOTH PRECEDENT AND THE INTENT OF THE CONTRACTING PARTIES.**

A. The Board's previous decisions concerning the contract modification clause are expansive in scope

Under the initial proposal of the Chemical Manufacturers Association ("CMA"), the contract modification proposal contained a rather limited scope. The Board later clarified and expanded the application of the contract modification condition. In Decision No. 44, the Board decided that "The CMA agreement provides that, immediately upon consummation of the merger, applicants must modify any contracts with shippers at 2-to-1 points in Texas and Louisiana to allow BNSF access to at least 50% of the volume. We require as a condition that this provision be modified by extending it to shippers at all 2-to-1 points incorporated within the BNSF agreement, not just 2-to-1 points in Texas and Louisiana." Decision No. 44 at 146.

Decision No. 57 provided further guidance to the implementation of the contract modification condition. In Guideline #1, the Board stated the general rule that:

The contract modification condition applies to *every* contract entered into prior to the consummation of the merger by a 2-to-1 shipper, on the one hand, and either UP or SP, on the other hand, provided *only* that such contract (i) was negotiated under the auspices either of old 49 U.S.C. 10713 or of new 49 U.S.C. 10709, and (ii) was in effect at the time the merger was consummated.

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<sup>8</sup> The text of Guideline #9 has been reproduced as Exhibit 1.



Decision 57 at 9 (emphasis added). The Board has also reiterated numerous times that the contract modification condition was to be used at the election of the shipper. Furthermore, the condition "does not guarantee that BNSF will actually receive that traffic. The condition merely allows a 2-to-1 shipper to put up for bidding traffic that had previously been committed by contract either to UP or to SP." *Id.* at 5.

In Decision No. 73, the Board elaborated further on the broad reach of contract modification condition. Although the Board found that the shipper was not a 2-to-1 shipper, the Board went on to state that "when we imposed the contract modification condition, we had in mind that this condition would apply only to those shippers that had 2-to-1 status immediately prior to the consummation of the merger." Decision No. 73 at 3. The Board also stated that a shipper had the option of invoking the condition "*at any time prior to the expiration of a contract.*" Decision No. 57 at 10 (emphasis added). These decisions are evidence of the fact that the Board has continuously preserved an extremely broad and shipper-friendly codification of the contract modification condition for all 2-to-1 shippers.

In fact, the only mention of whether parties seeking relief under the contract modification condition would be free to amend their initial contracts stems from Decision No. 57. The Board stated in Guideline #8 that "UP/SP and a shipper may, by mutual agreement, modify *any term* of *any contract* subject to the contract modification condition; and a shipper may waive, in whole or in part, its rights under the contract modification condition." Decision No. 57 at 11 (emphasis added). Thus, the Board acknowledged that a shipper and UP may modify a contract under the contract modification condition. In addition, but separately, the Board stated that a shipper may waive in whole or in part; its rights under the contract modification condition. *Id.* Furthermore, the Board found in Decision No. 89 that no document before the Board gave any indication that UE had "any intention whatsoever of waiving whatever rights it might have under that

condition." Decision No. 89 at 9 n.24. Nonetheless, the Board found that the contract modification condition did not apply to UE. This finding is a material error.

UP could have and should have obtained a specific waiver from UE regarding the contract modification condition since UP was in the best position to understand the risk attendant with the failure to do so. As the Board noted there is no indication that UE waived those rights and, in fact, UE would not have waived those rights. For the Board to now impose such a new limitation on the contract modification condition is contrary to the Board's prior decisions and contrary to the intent of the parties. These are material errors.

UE argues below that given the expansive interpretations by the Board of the contract modification condition, the decision refusing to extend the benefits of the condition to a modified contract constitutes material error.

B. Decision No. 89 places arbitrary limitations upon the ability of shippers to benefit from the contract modification clause.

Given that the Board has previously held that the modification condition is at the election of the shipper and that shippers and UP/SP were free to modify *any term of any contract* and still remain eligible unless a shipper waves the condition, the Board's limitations on UE's ability to benefit from the condition constitutes material error.

The Administrative Procedure Act ("APA") (5 U.S.C.S. § 561 et seq.) provides that a reviewing court "shall hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C.S. § 706(2)(a) (2000). The Supreme Court interpreted this section of the APA as imposing a procedural requirement "mandating that an agency take whatever steps it needs to provide an explanation" for its actions. Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 654 (1990). Moreover, Decision No. 89 was a formal adjudicative proceeding.

Accordingly, under APA § 557(3)(A), the STB is required to include with each order "a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record." The finding that the Addendum constituted "major surgery" was without any explicit detailed reasoning and thus constitutes material error.

Given the broad scope of the Board's prior interpretations of the contract modification condition, and especially given the Board's explicit approval of contract modification and express waivers of the condition, it becomes all the more apparent that the Board arbitrarily imposed limitations on UE's ability to benefit from the condition. The Seventh Circuit held that should the Interstate Commerce Commission, now the S. B., is to change long-standing policy abruptly, "it must give a reason why; otherwise its behavior is arbitrary and capricious and therefore a violation of the Administrative Procedure Act." Illinois v. Interstate Commerce Comm'n, 722 F.2d 1341, 1348 (7<sup>th</sup> Cir. 1983). The Third Circuit likewise noted that "where an agency departs from established precedent without announcing a principled reason for such a reversal, its action is arbitrary." Donovan v. Adams Steel Erection, Inc., 766 F.2d 804, 807 (3<sup>rd</sup> Cir. 1985). And the D.C. Circuit held that "While agencies may not be bound under the doctrine of *stare decisis* to the same degree as courts...it is at least incumbent upon the agency carefully to spell out the bases of its decision when departing from prior norms." Food Mktg. Inst. v. Interstate Commerce Comm'n 587 F.2d 1285, 1290 (D.C. Cir. 1978) (citations omitted). As much as the Board's decision to exclude UE's contract from the contract modification condition is lacking in explanation; it is also a departure from prior application of the condition. In this context the Board's determination in Decision No. 89 is arbitrary and constitutes material error deserving of reconsideration.



**III. THE BOARD'S DECISION WAS IN ERROR BECAUSE IT UNDULY BURDENS A 2-TO-1 SHIPPER AND BENEFITS A PARTY IN BREACH, CONTRARY TO THE INTENT OF THE CONTRACT MODIFICATION CONDITION.**

A. The purpose and intent of the contract modification clause is to benefit BNSF and 2-to-1 shippers.

The clear purpose of the contract modification condition is to benefit both BNSF and 2-to-1 shippers, and that UP's interests are protected under Guideline #9, the Contract Termination Option. See Footnote 8 and Decision No. 57 at 12. The Board itself was explicit in stating this point. It is possible that the Board failed to fully realize the burdens placed upon UE and, potentially, other 2-to-1 shippers by its refusal to allow UE to benefit from the condition at UE's option during the course of the contract that was in effect on the merger consummation date as provided in Guideline #5. See Id. at 10.

Originally, the CMA agreement proposed that the modification condition be available only to 2-to-1 shippers in Texas and Louisiana. See Decision No. 44 at 146. The Board rejected this proposal, opting instead to expand the condition to all 2-to-1 shippers "incorporated within the BNSF agreement." Id. The Board felt that such an expansion was necessary for ensuring BNSF effective trackage rights. "The contract modification condition was intended to allow BNSF to access, sooner rather than later, a substantial volume of traffic at 2-to-1 points previously open only to UP and SP." Decision No. 57 at 12. Moreover, the Board stated numerous times that the contract modification condition was intended to benefit 2-to-1 shippers which is evidenced by the Board's Guideline #4, Shipper Selection and #5, Shipper Timing Right. See Id. at 10. Such shippers would be neither forced to seek a bid from BNSF nor to accept that bid. Rather, 2-to-1 shippers had the option to inquire as to the various courses of action. The "modification condition allows shippers to opt out of contracts to obtain a better arrangement with BNSF." Id. at 6. The Board's failure to uphold the contract modification

condition that was intended to benefit BNSF and shippers, while providing UP protections, is material error.

B. Decision No. 89 unduly and unjustly burdens a 2-to-1 shipper and benefits a carrier that failed to follow a prior Board imposed directive.

The Board directed "UP/SP to provide written notification to all [2 to 1] shippers...that the contract modification condition has been clarified." Decision No. 57 at 13. This directive was imposed because UP/SP was in a superior position to know of the benefits of the condition and thus, it had the responsibility of notifying relevant shippers. The notification requirement was aimed at placing UP and the shippers on an equal understanding of the condition. See Id. However, UE reiterates that UP *never* notified UE of the contract modification condition. See UE's Petition at 21. Furthermore, UP argues that it was not responsible for notifying UE because it felt UE was not a 2-to-1 shipper. The Board has agreed that UE clearly fell into that category. See Decision No. 89 at 4, 6-7.

Most importantly, UP declared to the Board, and the Board relied upon that declaration, that UP had advised all 2-to-1 shippers with outstanding contracts of the contract modification condition. See Decision No. 57 at 13. The Board required UP to provide a third written notification to all such shippers within 10 days of the service date of Decision No. 57 (served Nov. 20, 1996). Id. UP's failure to provide UE notification of the contract modification condition is a breach of the Board's directive. UP should not benefit from its failure to follow a prior Board directive. Even if UP doubted that UE was entitled to the contract modification condition because of the Conceptual Framework between UE and UP, UP should have either sent the notice to UE or notified the Board that one 2-to-1 shipper with an applicable contract was not being notified. UP's failure to provide UE notification of the contract modification condition, when UE was clearly a 2-to-1 shipper, has now resulted in an adverse consequence to UE. UP

should not be rewarded for its failure to notify UE when the Board's purpose for requiring UP to notify shippers was to provide shippers with full information of their rights under the condition.

By refusing to apply to UE the contract modification condition, the Board is in essence unjustly benefiting UP. Indeed, at the time at which the Addendum was agreed to, UP, but not UE, was aware of the condition. UP was therefore the party upon whom the burden should fall. Had UP sought to exclude the Addendum from terms of the condition, it ought to have done so during the negotiations over the Addendum. UP should not benefit after-the-fact — after it failed to carry out its duty of notifying UE in the first place.

A conservative estimate of UE of not being able to exercise the contract modification during the remainder of the UE/UP contract is over \$3 million. Under some theories of projected savings, the potential savings that UE loses from not being able to exercise the contract modification condition for the rest of the term of the contract could reach nearly \$18 million. Therefore, the Board has unjustly rewarded UP for UP's gaming the system. The Board has miscalculated where it placed the burden of the contract modification condition. The burden, as the Board implied in its previous clarifications of the condition, lies in every way with UP. Decision No. 89, however, reverses that policy and lays the burden not with the party who had knowledge of the condition but rather, improperly, with the shipper.

### **CONCLUSION**

Because the Board misinterpreted the meaning of Addendum Three to the UP/UE contract, because the Board imposed arbitrary limitations on the rights of shippers to benefit from the contract modification condition, and because the Board unduly benefited UP, contrary to the intent of the modification condition, Decision No. 89 should be reversed with respect to the contract modification condition.



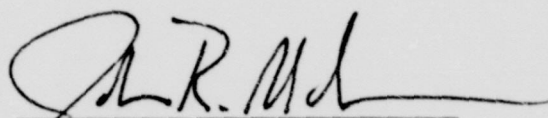
The Board's interpretation of the significance of the Addendum is clearly at odds with the stated intent of UP and UE. The Board should not, now, proceed to accept UP's phraseology—calling the contract “major surgery”—when UP, had it chosen at the time of modification to exclude the Addendum from terms of the contract modification condition, could have done so. Because of the Board's misinterpretations, material error was committed. In an effort to reaffirm the stated intent of the contract modification condition, as well as to reaffirm the policy grounds upon which the condition was developed, findings with respect to the contract modification condition in Decision No. 89 should be reversed.

#### **EXPEDITED CONSIDERATION REQUESTED**

UE respectfully requests the Board to issue a decision reconsidering Decision No. 89 with respect to UE's right to exercise the contract modification condition as addressed herein as expeditiously as possible. Each day that passes cuts into the limited remaining time that UE should have to exercise the contract modification condition like every other 2-to-1 shipper with a contract that was in effect at the time the merger was consummated. In addition, the request for expedited consideration is in line with the Board's prior acknowledgment that disputes, particularly regarding the contract modification condition, may require prompt disposition. See Decision No. 57 at 14.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "J.R. Molm", written over a horizontal line.

John R. Molm  
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Attorneys for AmerenUE

## Exhibit 1

Excerpt from: *Union Pac. Corp. et al. - Control and Merger - Southern Pac. Corp. et al.*, F.D. 32760, Decision No. 57, Slip op. at 12 (STB served Nov. 20, 1996) (footnote omitted):

Guideline #9: Contract Termination Option. If a shipper uses the contract modification condition and tenders to BNSF freight covered by a UP/SP contract, UP/SP may, at its option, release the entire volume under the contract.

This contract termination option is, we think, essential to the protection of UP/SP's own interests given the way we have structured the contract modification condition. Guideline #4 provides that a shipper has the right to select, on a contract-by-contract basis, the portion (not greater than 50%) of its traffic that is open to BNSF; Guideline #5 provides a similar right with respect to timing; and Guidelines #6 and #7, taken together, provide, in essence, that all contractual provisions that burden UP/SP continue to apply, but that volume incentive provisions that burden the shipper must be, at the shipper's option, prorated. UP/SP could easily be left with a fractured loss-generating half-contract that neither UP nor SP would ever have negotiated.

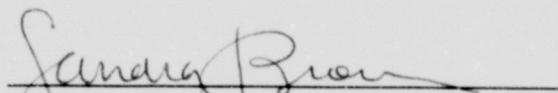
The contract modification condition was intended to allow BNSF to access, sooner rather than later, a substantial volume of traffic at the 2-to-1 points previously open only to UP and SP. We had in mind that UP/SP would be required to release for immediate competition 50% of the traffic that UP and SP had locked up in contracts. We never intended that UP/SP would be required to haul the other 50% of that traffic at a loss.

The contract termination right provided for in Guideline #9 is intended to be exercisable by UP/SP at its option. We therefore will not entertain petitions asking us to review whether, in any particular instance, an exercise of the contract termination option would be, or was, justified by the economics of the relevant contract.



**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the "**PETITION FOR RECONSIDERATION OF  
"CONTRACT MODIFICATION CONDITION" PORTION OF DECISION NO. 89**" was  
served this 21<sup>st</sup> day of June, 2000, by hand delivery to counsel for Union Pacific Railroad  
Company, counsel for Burlington Northern and Santa Fe Railway Company and by first class  
mail upon all other parties of record in this proceeding.

  
Sandra L. Brown  
Attorney for AmerenUE

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OF

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FOR IMMEDIATE RELEASE

UNION PACIFIC ANNOUNCES AGREEMENT TO MERGE WITH SOUTHERN PACIFIC

Bethlehem, PA, August 3 -- Union Pacific Corporation (NYSE: UNP) and Southern Pacific Rail Corporation (NYSE: RSP) announced today that they have reached an agreement providing for the merger of Southern Pacific with Union Pacific. The \$5.4 billion transaction would form North America's largest railroad, a 34,000-mile network operating in 25 states and serving both Mexico and Canada. The two railroad companies had combined 1994 operating revenues of \$9.54 billion.

The agreement, approved today by the Boards of Directors of Union Pacific and Southern Pacific, is subject to execution of a definitive merger agreement, which is expected to be signed very shortly. Under terms of the agreement, Union Pacific would make a first-step cash tender offer of \$25.00 a share for up to 25 percent of the Common Stock of Southern Pacific. The tender offer would commence next week. The shares purchased in the tender offer will be held in a voting trust. Following completion of the offer, and the satisfaction of other conditions, including approval by the Interstate Commerce Commission (ICC), Southern Pacific will be merged with Union Pacific Corporation. Upon completing the transaction, each share of Southern Pacific stock will be converted, at the holder's election (subject to proration), into the right to receive \$25.00 in cash or 0.4065 shares of Union Pacific Common Stock. As a result of the transaction, 60 percent of Southern Pacific shares will be converted into Union

• more •



Pacific stock and the remaining 40 percent into cash, including the shares acquired in the original tender offer. The two companies expect to file an application with the ICC no later than December 1.

Union Pacific also stated that the previously announced spin-off of Union Pacific Resources would be consummated after completion of the transaction. The initial public offering of shares of Union Pacific Resources will proceed as scheduled.

In connection with the merger, Philip Anschutz, a major shareholder of Southern Pacific, will be appointed/non-executive Vice Chairman of the Board of Directors of Union Pacific following completion of the transaction and will enter into a customary seven-year standstill agreement. In addition, Mr. Anschutz, who owns 31 percent of Southern Pacific, and the Morgan Stanley Leveraged Equity Fund, which owns seven percent of Southern Pacific, have agreed to vote their shares in favor of the transaction.

"When completed, this transaction will deliver major benefits for customers," said Drew Lewis, Union Pacific's Chairman and Chief Executive Officer. "The combined system will be able to offer new services that neither Union Pacific nor Southern Pacific can offer on its own. The new system will yield extensive new single-line service, faster schedules, more frequent and reliable service, shorter routes and improved equipment utilization. Benefits from operating efficiencies, facility consolidations, cost savings and increased traffic are estimated to be in excess of \$500 million per year."

## WHITE PAPER

A century and a quarter ago at Promontory, Utah, Union Pacific joined Southern Pacific's predecessor, the Central Pacific, to create the nation's first transcontinental railroad and link California to the rest of the nation. Later, far to the south, Southern Pacific and the Texas & Pacific, a predecessor of UP, were joined to open up the Southwest. Now, in the wake of the Burlington Northern/Santa Fe merger, the time has come to complete the restructuring of the major western railroads by recreating these historic and highly efficient transcontinental routes and forging a worthy competitor to BN/Santa Fe.

The merger of the Union Pacific and Southern Pacific railroads will provide dramatic service improvements to shippers, significantly strengthen western rail competition, and help position American industry to be fully competitive domestically and internationally in the 21st Century.

### **Competition Will Be Strengthened**

- UP is financially strong and provides solid service, but lacks efficient routes to many markets; SP has many excellent routes but lacks the volume and capital to take advantage of its opportunities.
- BN/Santa Fe will be nearly twice the size of UP or SP. Combining UP and SP will create a competitor that is fully the equal of BN/Santa Fe in all major western markets.
- Neither UP nor SP match Santa Fe service time or reliability in the California-Chicago markets. Strengthened by its merger with BN, Santa Fe's edge in these key markets will increase.
- UP and SP overlap at some points but are end to end at many others. Together they form a network offering countless opportunities for service improvements and efficiencies.
- UP and SP will agree to conditions that give another railroad access to those points where UP and SP are the only competitors (just as BN and Santa Fe did).

Cost savings are expected to be in excess of \$500 million per year.

- SP shippers will have the assurance of long-term, top-quality service from a financially-sound carrier.

### **Public Benefits From Combined UP/SP Can Offer:**

- Shippers will enjoy single line service between UP's South Central origins and SP receivers in California, SP Oregon lumber shippers and UP destinations in the Upper Midwest, UP Iowa and Nebraska grain producers and SP feeder markets in the San Joaquin and Imperial Valleys, and more.
- Shorter routes will allow faster, more reliable service in many corridors, including Chicago-Oakland and Memphis-Los Angeles.



- Carload shippers will receive much better service across the Central Corridor.

#### Optimizing Capacity Saves Capital While Improving Service

- Flexibility derived from alternative routes and yards will reduce transit time and allow more trains to be run without congestion. Examples:
  - Chicago-Southern California: By shifting manifest traffic to UP's Central Corridor route and expedited traffic to SP's Tucuman route, UP/SP will move expedited traffic faster and more reliably. By combining SP's excellent LA intermodal terminals with UP's outstanding Chicago terminals, UP/SP will be able to deliver reliable third-morning service in this corridor.
  - Houston-St. Louis: Using alternative routes and an array of yards, UP/SP will be able to preblock chemical traffic from the Gulf Coast for run through service with Conrail, Norfolk Southern, and CSX, avoiding interchange at St. Louis, and to expedite traffic over other congested gateways such as Chicago, Memphis, and New Orleans. Shorter routes will save at least 24 hours over existing UP or SP service.
  - Combining UP and SP will alleviate existing bottlenecks, thus freeing capital to upgrade crucial lines (e.g., Tucuman, Ft. Worth-El Paso) and build facilities needed to serve new markets (e.g., Inland Empire intermodal facility in Southern California).
  - Service disruptions due to traffic maintenance work will be reduced. Maintenance can be scheduled for longer, more efficient windows while traffic moves over the alternate route.
  - Terminal consolidations will free yard space for storage in transit.

#### Better Use of Cars and Locomotives

- Merged UP and SP will be able to reposition both cars and locomotives to dramatically improve utilization. UP rolling stock and locomotive power will move efficiently between LA, San Francisco Bay, and the PNW. Additionally, movements between California and Texas will be enhanced.
- Exploiting the difference in peak seasons on the two systems will allow cars to be loaded more frequently - the equivalent of increasing fleet size without spending scarce capital dollars. Triangulation and exploiting backhaul opportunities will also improve equipment supply.
- Shorter routes, preblocking to reduce terminal time, and smoother operations will improve transit time and utilization for both shipper-owned and rail-owned cars.



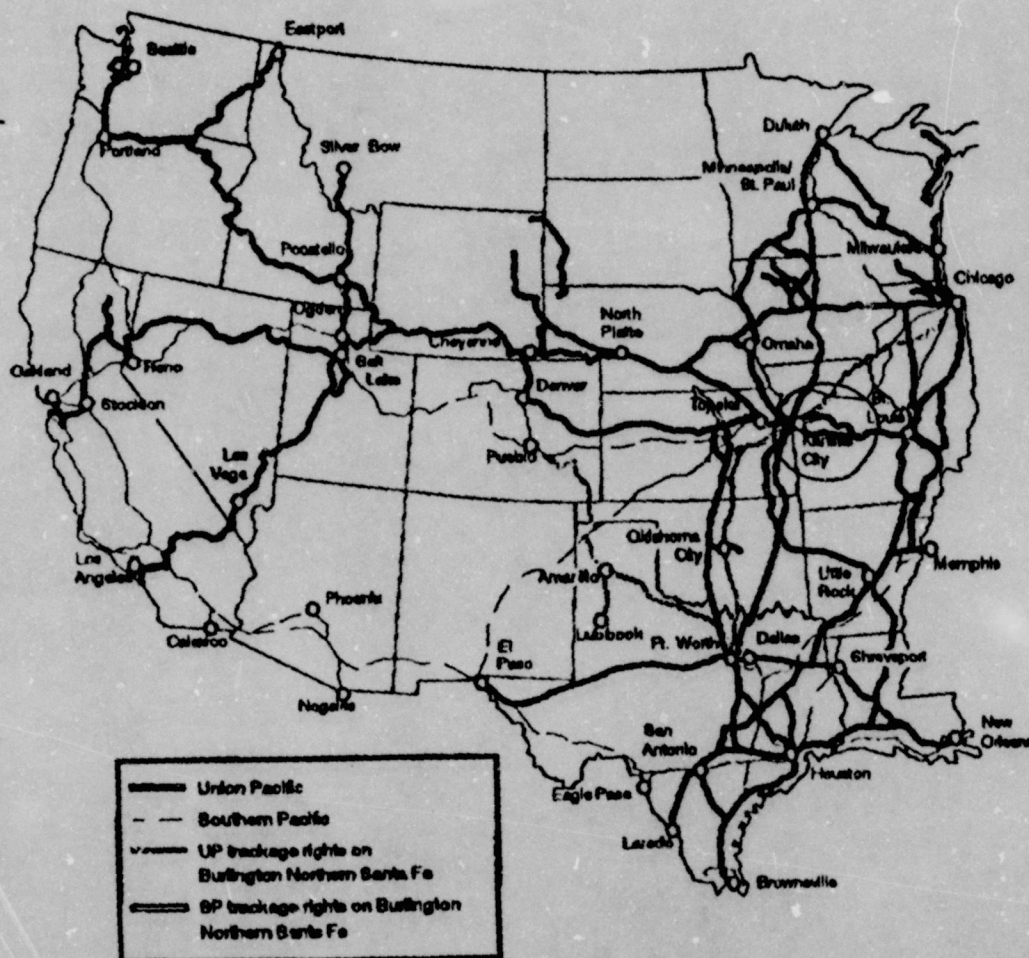


# Fast Facts



## Union Pacific Railroad

Operating Revenues (1994)	\$6.44 billion
Operating Income (1994)	\$1.4 billion
Employees	35,000
Track operated	22,600 miles
States served	29
Locomotives	9,922
Freight cars	97,800
Trains operated daily	
Freight	1,200
Commuter	187
Commuter operations— daily riders	
Metra (Chicago)	90,000 riders
Metrolink (Los Angeles)	8,800 riders



## Southern Pacific Lines

Operating Revenues (1994)	\$3.1 billion
Operating Income (1994)	\$346 million
Employees	18,010
Track operated	14,500 miles
States served	16
Locomotives	2,418
Freight cars	44,628
Trains operated daily	
Freight	750



## Southern Pacific Lines

1860 Lincoln Street • 14th Floor • Denver, Colorado 80295 • (303) 812-5001 • Fax: (303) 812-5099

Jerry R. Davis  
Chairman and  
Chief Executive Officer

August 3, 1995

Dear Valued Customer:

Southern Pacific Rail Corporation and Union Pacific Corporation have reached an agreement to merge, forming a stronger and more efficient rail system that will provide transportation benefits for both companies' customers.

This proposed merger, which is expected to be consummated in mid-1996, will offer many benefits to the shipping public. The attached summary highlights many of these benefits that our customers can look forward to receiving as a result of this combination.

For those customers who have concerns about possible reductions in competition, I want to assure you that Southern Pacific and Union Pacific will be addressing these situations appropriately.

We look forward to discussing this exciting merger proposal with you in more detail, and to explain fully all of the associated benefits. Please do not hesitate to contact your local Southern Pacific representative should you have any questions.

While this merger is pending, Southern Pacific continues to be an independent railroad, and will continue to compete vigorously with all railroads to meet your transportation needs. Your traffic personnel should continue to contact their normal business contacts at Southern Pacific for our services as they have in the past. Our commercial effort, focus and direction has not changed.

The entire Southern Pacific Team and I, appreciate your business and look forward to continuing to serve your transportation needs in the future.

Sincerely,

Attachments



**THIS EXHIBIT IS  
HIGHLY CONFIDENTIAL  
AND HAS BEEN  
REDACTED.**



On August 3, 1995, UP and SP announced their intention to merge. In an August 3<sup>rd</sup> letter and accompanying "White Paper" sent out to shippers, UP stated that "it will guarantee that shippers at locations now served by both carriers will continue to enjoy two-railroad competition by agreeing to conditions giving a second carrier railroad access whenever UP and SP provide the only rail service to the customer." *See* Exhibit 8. In SP's counterpart letter of August 3, 1995, SP stated "while this merger is pending, Southern Pacific continues to be an independent railroad, and will continue to compete vigorously with all railroads to meet your transportation needs." *See* Exhibit 9.

Shortly after the announcement, UP representatives met with UE on September 7, 1995. *See* Verified Statement of Udo A. Heinze at 1, attached as Exhibit 2 ("V.S. Heinze"). The stated purpose of the meeting, in part, was for UP to present to UE its proposal to address the loss of SP access to Labadie with the UP/SP merger. *See* Highly Confidential Exhibit 10. UP's proposal included the following:

**REDACTED**

Communications Dept.

1416 Dodge Street  
Omaha, NE 68178  
(402) 271-3478

**OMAHA, September 26 -- Union Pacific and Southern Pacific railroads today announced a comprehensive agreement with Burlington Northern Santa Fe Corporation to preserve and intensify rail competition following the UP/SP merger.**

**Under the agreement, BNSF will be able to serve every shipper that is served jointly by UP and SP today. In addition, UP/SP and BNSF will grant each other further rights which will create new competitive routes in a number of markets.**

**The agreement calls for nearly 4,100 miles of trackage rights and line sales between UP/SP and BNSF. It guarantees strong rail competition for the Gulf Coast petrochemical belt, U.S.-Mexico border points, the Intermountain West, California, and along the Pacific Coast.**

**"As part of our merger proposal with Southern Pacific Lines, we promised our customers that we would bring strong rail competition to every point that loses a two-carrier option," said Dick Davidson, Union Pacific Railroad Chairman.**

**"This agreement backs up that pledge," he said. As part of the agreement, BNSF will not oppose UP's proposed acquisition of SP. "Many of our customers had requested that BNSF be selected as the competitive choice," Davidson added.**

**"After taking the terms of our agreement with BNSF into account, we're confident we can show a net annual benefit from our proposed merger with SP exceeding \$500 million," Davidson said.**

**-M O R E-**



Under the agreement, UP/SP will share more than 3,800 miles of track with BNSF under trackage rights and sell more than 335 miles of track to BNSF.

The line sales portion of the agreement would total about \$150 million.

Trackage rights are a contractual arrangement which allow one railroad to operate its trains with its own crews over the tracks of another railroad in exchange for a per mile fee. They are a proven means of providing effective rail service.

"The combined UP/SP competing against the Burlington Northern Santa Fe will benefit rail customers through shorter routes, faster schedules, extensive new single-line service, elimination of capacity bottlenecks, improved car handling at terminals and cost efficiencies," said Davidson.

The competitive agreement covers the following regions:

## **WEST COAST-INTERMOUNTAIN**

### **Burlington Northern Santa Fe**

--BNSF will operate over SP and UP lines between Denver, Colorado and Oakland, California. BNSF will serve Provo, Geneva, Salt Lake City and Ogden, Utah; Reno, Nevada and various other intermediate points. BNSF will operate over both UP's "Feather River" route and SP's Donner Pass line.

--BNSF will purchase UP's "Inside Gateway" route in Northern California between Keddie and Bieber, linking its Oregon lines with its California network.

-M O R E-



- BNSF will serve the Oakland-San Jose area via UP trackage rights.
- BNSF will improve its access to the Port of Oakland over SP trackage rights.
- UP/SP will work with BNSF to assure uninterrupted rail service to the Ports of Long Beach and Los Angeles while the Alameda Corridor project is constructed.

### Union Pacific/Southern Pacific

-UP/SP will have trackage rights in Oregon over BNSF between Bend and Chemult, Oregon to connect eastern Oregon and Washington with the SP's I-5 Corridor linking the Pacific Coast.

-UP/SP will gain overhead trackage rights over BNSF's Mojave to Barstow, California line.

-BNSF will enter into a proportional rate agreement with UP/SP over the Portland Gateway which will allow UP/SP to compete with BNSF on business originating or terminating in an area extending from Montana west and from Canada to the Columbia River and destined to or originating in an area extending from Oregon to West Texas.

### TEXAS-LOUISIANA

-BNSF will operate over UP between Houston and Brownsville, Texas.

-BNSF will be granted trackage rights on SP's line between Houston and Iowa, La. Louisiana near Lake Charles. The remaining SP line east to Axandale, Louisiana near New

-M O R E-

Orleans from Iowa-Ict. will be sold to BNSF, with UP retaining full trackage rights. This will give BNSF a through route between Houston and New Orleans, where the lines of UP and SP are parallel.

-BNSF will gain access to major petrochemical plants at Mont Belvieu, Baytown, Amella and Orange, Texas.

-BNSF will operate over various UP and SP routes in Texas, including San Antonio-Sealy, San Antonio-Eagle Pass, Taylor-Round Rock and Waco-Taylor-Smithville.

-UP will sell its Dallas-Waxahachie line to BNSF, but will retain exclusive rights to serve on-line customers.

## HOUSTON-MEMPHIS

-BNSF will operate over SP between Houston and Fair Oaks, Arkansas and over UP between Fair Oaks and Memphis, Tennessee. This will give BNSF a through route between Houston and Memphis.

## ACCESS

-BNSF will grant UP/SP improved access to the BNSF Chicago-Kansas City line at points west of Chicago; and to dock and port facilities in Superior, Wisconsin and Portland, Oregon.

-M O R E-



The proposed agreement will be submitted to the Union Pacific Corporation Board of Directors at its regularly scheduled meeting on Thursday. The agreement will go before the Southern Pacific Rail Corporation Board of Directors, also meeting on Thursday.

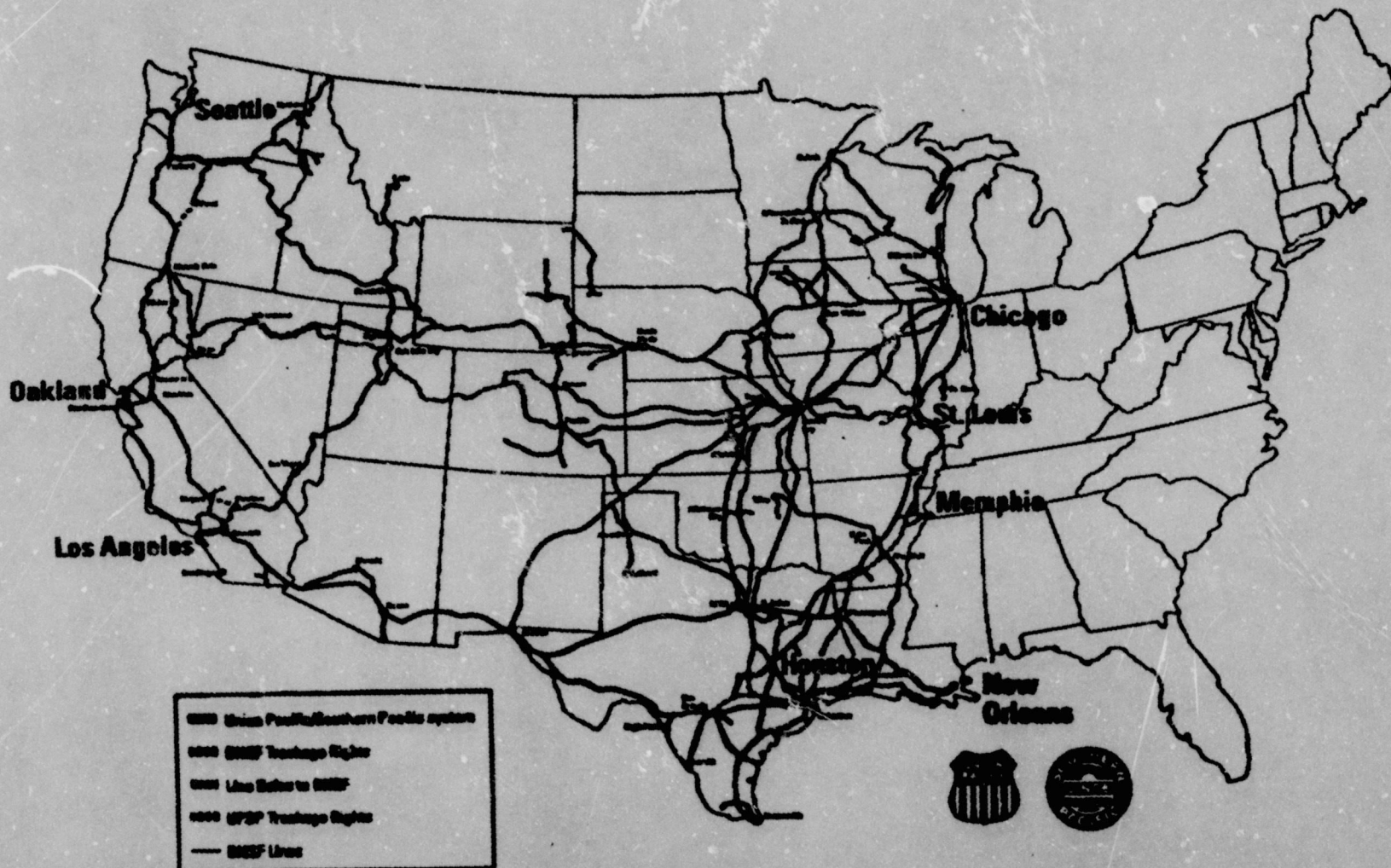
Union Pacific, a subsidiary of Union Pacific Corporation, plans to file its merger application with the Interstate Commerce Commission by December 1. A decision is expected next year.

For further information, contact:

John Bromley, Union Pacific, 402-271-3475

Larry Kaufman, Southern Pacific, 303-812-5022





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preserved and in fact enhanced. Specifically, some of UP/SP's promises that they should now be expected to uphold include:

- "Applicants emphasized their intent to ensure that a second strong railroad would compete at every location where UP and SP provide the only rail competition."  
Applicants' Brief, UP/SP-260 at 7.
- "The BN/Santa Fe settlement agreement preserves – and in fact enhances – competition for all "2-to-1" traffic." Applicants' Brief, UP/SP-260 at 22.
- "Indeed, in covering every shipper that has access to UP and SP and no other railroad, regardless of non-rail competitive options or the extent of the UP-SP competition for the shipper's business, it goes beyond what was necessary from a competitive standpoint and beyond what any prior merger applicants have done. ... No "2-to-1" point or corridor has been omitted from coverage under the settlement." Applicants' Brief, UP/SP-260 at 23. (emphasis in original, citations omitted.)

UP's promises during its quest to achieve the Board's approval of its merger should be enforced against UP now. Nowhere in UP's assertions that every "2-to-1" shipper will be provided a competitive replacement to SP does UP give a caveat that these promises do not apply to UE.

In addition, UP should not be able to argue now that UE is only entitled to joint line service instead of BNSF direct access via trackage rights over UP or that UE is not now entitled to a second direct access carrier. Contrary to what UP told UE in 1996, *i.e.*, that UE was not entitled to direct BNSF access because it would place UE in a more competitive position, UP/SP offered to substitute BNSF for SP to all other shippers via the BNSF agreement. This benefit would provide shippers with improved service because it provided to new single-line service throughout the BNSF system. *See* Applicants' Rebuttal, UP/SP-231, dated April 2, 1996,

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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

COMMENTS OF GOVERNORS, SHIPPERS AND  
OTHERS IN SUPPORT OF THE PRIMARY APPLICATION

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Pacific Railroad Company

March 29, 1996

**VERIFIED STATEMENT OF**

**UDO A. HEINZE**

**MANAGER, FOSSIL FUEL  
on behalf of  
UNION ELECTRIC COMPANY**

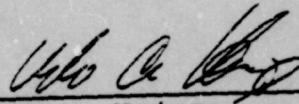
My name is Udo A. Heinze. I am the Manager of Fossil Fuels at Union Electric Company ("UE"). I have held this position for eight years. Prior to that time, I was a Senior Buyer of coal and rail services for UE. Union Electric Company, headquartered in St. Louis, Missouri supplies energy services to a 24,500 square mile service territory in Missouri and Illinois.

UE's total generating capacity is approximately 8,000 MW, of which approximately 68% is from coal-fired steam generating units. In 1995 UE received over 12 million tons of coal at its four coal-fired plants. Over 96% of this coal was delivered by rail. The Union Pacific ("UP"), Southern Pacific ("SP"), Illinois Central ("IC") and Burlington Northern ("BN") are the railroads utilized by Union Electric for the delivery of coal.

In 1995, 6,926,000 tons of coal were delivered to UE's Labadie Power Plant - all by rail. The Labadie Plant has been served by the Union Pacific and Southern Pacific separately. The merger of UP and SP would result in the Labadie Plant being served by only one railroad instead of the current two.

Because of this proposed reduction from two railroads to one provider of rail service to Labadie, UE and UP have met to discuss the future of rail service to this plant.

UE and UP have reached an agreement that will insure on-going competition for rail service to the Labadie Plant after the merger. Because of this agreement, the Union Pacific/Southern Pacific merger is in the best interests of Union Electric, and UE supports the merger application.

  
\_\_\_\_\_  
Udo A. Heinze

Dated: March 25, 1996



VERIFICATION

STATE OF MISSOURI    )  
                          ) ss  
CITY OF ST. LOUIS    )

Udo A. Heinze, being first duly sworn, deposes and says that he has read the foregoing document, knows the facts asserted therein, and that the same are true as stated.

*Udo A. Heinze*

Udo A. Heinze

Subscribed and sworn to before me this 25th day of March 1996.

*Deborah L. Anzalone*  
Notary Public

DEBORAH L. ANZALONE  
NOTARY PUBLIC—STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXPIRES APR. 18, 1998





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I, Robert K. Neff, verify under penalty of perjury that the foregoing is true and correct based on my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this verified statement.

Robert K. Neff  
Robert K. Neff

Dated: 1/18/2000

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AND HAS BEEN  
REDACTED.**



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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

RAILROAD MERGER APPLICATION

APPLICANTS' REBUTTAL

VOLUME 2, PART C - STATEMENTS ON COMPETITION  
AND PUBLIC BENEFITS

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*Attorneys for Union Pacific  
Corporation, Union Pacific  
Railroad Company and Missouri  
Pacific Railroad Company*

April 29, 1996



Shreveport, Louisiana, moving to and from the Memphis BEA (BEA 55). Accordingly, Section 6(c) of the settlement agreement will be amended to give BN/Santa Fe the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana and Shreveport to and from the Memphis BEA. These rights will not include proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA.

- Service to UE at Labadie, MO - Although it will not require an amendment to the settlement agreement, we have reached a separate understanding with Union Electric Company ("UE"). UE's plant at Labadie, Missouri currently is served by UP and by SP. Accordingly, it meets the definition of a "2-to-1" point, even though Labadie is not expressly mentioned in Section 8(i) of the settlement agreement. We had initially discussed with BN/Santa Fe sale of the former Rock Island line between St. Louis and Owensville over which SP currently serves UE. We could not reach agreement with BN/Santa Fe sale of that line. We have worked directly with the customer and established a proportional rate agreement between Kansas City and Labadie. UE may, pursuant to this agreement, secure single line bids from UP or interline bids with any other carrier over Kansas City or St. Louis. I believe the UE arrangement is another demonstration of our commitment to preserve competition.
- Interchange Rights and Terminal Facilities in Brownsville - Section 4(a) of the settlement agreement granted BN/Santa Fe trackage rights on UP's lines in Texas between Houston (Algoa) and Brownsville and between Odem and Corpus Christi. Concerns have been raised that BN/Santa Fe does not have adequate access and interchange rights at Corpus Christi and Brownsville. Accordingly, we will amend Section 4(b) of the settlement agreement to provide that BN/Santa Fe access and interchange rights at Corpus Christi and Brownsville will be at least as favorable as SP has currently. The amendment will specify that BN/Santa Fe shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and Ferrocarriles Nacionales de Mexico and the right to purchase a yard at Brownsville to support trackage rights operations. I should note, however, that at the outset BN/Santa Fe intends to use haulage to handle its traffic between Houston and Brownsville, and thus its operations and access will be the same as UP/SP's. If the haulage operation is converted to trackage rights the interchange and other rights described above will be implemented.
- Directional Operation - UP/SP trains will operate directionally between Dexter Junction, Missouri and Houston, Texas. To address concerns that directional operations would negatively impact BN/Santa Fe trains, the settlement agreement will be amended to give BN/Santa Fe additional overhead trackage rights adequate to allow BN/Santa Fe to also operate directionally in the same fashion as UP/SP.

JIM SHATTUCK  
EXECUTIVE VICE PRESIDENT  
MARKETING AND SALES

## UNION PACIFIC RAILROAD COMPANY



ROOM 1130  
1416 DODGE STREET  
OMAHA, NEBRASKA 68179  
402-271-3700  
FAX: 402-271-3142

August 3, 1995

Good Afternoon:

You will no doubt have heard that Union Pacific and Southern Pacific plan to merge. UP has made a tender offer for 25% of SP's stock, and will acquire the rest of the SP stock and merge the railroads after we receive regulatory approval, which is expected in mid-1996. Your involvement and support in this process will be very important.

This merger will offer significant benefits for our customers and fit together naturally into an efficient network providing the entire transportation community better service. UP's shippers will enjoy new single-line service across the Southern Corridor, between the Upper Midwest and SP points in the Southwest and California, between Seattle/Tacoma and California, and in many other markets. Shorter routes will become available in many corridors and the ability to use alternative routes to speed both intermodal and manifest traffic. Reliable third-morning intermodal service between Chicago and northern and southern California, and between Los Angeles and Memphis will become standard. Switching and terminal delays will be reduced by preblocking and running traffic around busy terminals such as Chicago, Kansas City, and St. Louis. There will be major improvements in equipment availability and storage-in-transit opportunities.

The UP/SP merger will strengthen rail competition throughout the west. The new system will have the financial strength to make the huge capital investments needed to overcome capacity constraints to ensure quality service to all of its customers. It will be a worthy competitor to the new BN/Santa Fe system. And it will guarantee that shippers at locations now served by both carriers will continue to enjoy two-railroad competition by agreeing to conditions giving a second railroad access wherever UP and SP provide the only rail service to a customer.

A White Paper is enclosed that describes the benefits of the merger in more detail.

Our ICC application will be filed no later than December 1. We will be in touch with you soon to discuss the UP/SP merger in more detail, hear your ideas about how the combined system can provide better service, and ask for your support.

We think this transaction is the step that is needed to attain truly efficient and competitive rail transportation in the West. If you have questions or comments about the merger, I urge you to please contact me or your Marketing and Sales representative.

A handwritten signature in dark ink, appearing to read 'Jim', is written over the printed name.

JIM SHATTUCK  
Executive Vice President - Marketing & Sales  
(402) 271-3700

STB

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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

PETITION OF THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY  
FOR CLARIFICATION

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Richard E. Weicher  
Michael E. Roper  
Sidney L. Strickland, Jr.

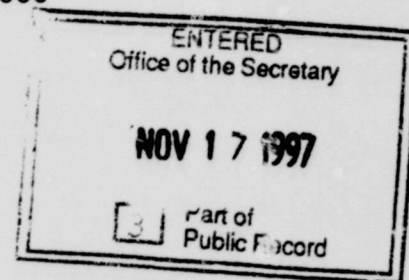
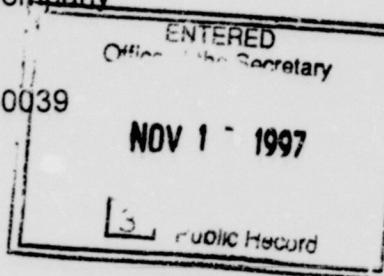
Erika Z. Jones  
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Attorneys for The Burlington Northern and Santa Fe Railway Company

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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

---

**PETITION OF THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY  
FOR CLARIFICATION**

---

Pursuant to 49 C.F.R. § 1117 and Decision Nos. 44, 72, and 73 in the above-referenced proceeding, The Burlington Northern and Santa Fe Railway Company ("BNSF")<sup>1/</sup> requests the Board to clarify the conditions imposed by the Board on the UP/SP merger to require the Applicants to grant BNSF access for traffic moving to and from the western United States (including Mexican traffic) to all shippers located on UP or SP lines pre-merger in the New Orleans, Louisiana switching district that were open to direct service or reciprocal switching by both UP and SP prior to the merger, but which have now been closed to BNSF by the Applicants.

---

<sup>1/</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44.

As explained below, the Applicants closed those shippers to access by BNSF immediately after the merger was consummated.<sup>2/</sup> In singling out BNSF for exclusion from access to New Orleans shippers that, before the merger, were located on UP or SP lines, the Applicants have deprived these New Orleans shippers of their only practical efficient rail alternative to Applicants' service for traffic moving to and from the western United States (including Mexico).<sup>3/</sup> Furthermore, the Applicants' action defeats the justified expectations of numerous shippers, who had no reason to anticipate that BNSF would not be permitted to serve them and who, therefore, chose not to participate in the UP/SP merger proceeding. Finally, the action contradicts representations made by the

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<sup>2/</sup> In their August 20, 1997 "Reply to Comments" (UP/SP-311), the Applicants characterize BNSF's request for access to these New Orleans switching district shippers as "untimely," "contrary to BNSF's contractual agreement not to seek additional conditions," and "wholly unjustified." UP/SP-311, at 33. These characterizations are without merit. As noted, the Applicants waited until *after* the Board's approval of their merger to take the affirmative step of *closing* these shippers to BNSF service. Because neither the shippers nor BNSF could have anticipated that the Applicants would engage in such anti-competitive conduct *after* receiving approval for their merger, neither the shippers nor BNSF could have sought the relief sought in this Petition prior to the Board's approval of the UP/SP merger. Moreover, the characterization of the relief sought in this Petition as "an additional condition[]" is incorrect. BNSF is seeking a clarification that the Board's decision in the UP/SP merger proceeding requires a return to the status quo as of the time the BNSF and CMA Agreements were negotiated, not additional rights that the shippers did not have before the merger. Finally, as we show below, the relief requested in this Petition is entirely justified because, notwithstanding the fact that other carriers are nominally available to these New Orleans shippers (*see* UP/SP-311, at 33-34), those shippers face the loss of the efficient competitive alternative to the Applicants' service to and from the western United States.

<sup>3/</sup> Unless the context otherwise indicates, BNSF's use of the phrase "traffic moving to and from the western United States" or similar phrases shall hereinafter include traffic to and from Mexican origins and destinations.



Applicants to shippers prior to the approval of the merger that New Orleans area shippers would benefit from improved competition in the West.

Therefore, BNSF requests that the Applicants be directed to provide access to BN/Santa Fe for traffic moving to or from western origins and destinations (including Mexico) via reciprocal switching to any shipper in the New Orleans switching district that was located on a line of UP or SP before the merger and that could have received service pre-merger from both UP and SP via direct service or reciprocal switching.<sup>4/</sup>

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<sup>4/</sup> In Decision No. 72, the Board stated that "any beneficiary of the Decision No. 44 conditions has the right to seek relief from the Board." Slip op. at 8 (footnote omitted). In Decision No. 73, the Board stated its preference for issuing a "clarification in the nature of a declaratory order" (slip op. at 4 n.10), rather than an "order of enforcement," at this juncture of the proceedings.

Because the CMA Agreement does not contain a mandatory arbitration clause, and because this matter does not involve a dispute over the meaning of the terms of the BNSF Agreement, this matter is properly within the jurisdiction of the Board, rather than subject to arbitration.

## BACKGROUND

As reflected on the map attached hereto as Attachment A, both UP and SP before their merger had mainline tracks that approached the New Orleans area from the west. Neither carriers' tracks, however, actually crossed the Mississippi River into the city of New Orleans. Their tracks instead ended on the west side of the river, and they served various shippers located on the west bank of the river. Under the UP (actually, MP) and SP New Orleans switching district tariffs applicable at the time of the merger, UP and SP were both able to serve, either directly or via reciprocal switching, over 40 such west bank shippers. All other carriers serving New Orleans were also able to serve those shippers via reciprocal switching services offered by UP or SP. In fact, pursuant to the applicable tariffs in effect immediately prior to the Applicants' action, ATSF had access via reciprocal switching to all of the shippers at issue here.<sup>5/</sup> See Verified Statement of Peter J. Rickershauser, at 2-3, attached hereto as Attachment B.

Immediately after the consummation of the UP/SP merger, the Applicants amended their New Orleans switching district tariffs, cutting off BNSF's access to all New Orleans area shippers who, prior to the UP/SP merger, were located on a UP or SP line and who could receive service from both UP and SP by direct service or reciprocal

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<sup>5/</sup> The effect of the Applicants' tariff amendments precluding BNSF access to these shippers is reflected in the Applicants' refusal earlier this year to accept a unit grain train from BNSF for delivery to Continental Grain's Westwego, LA elevator facility, under terms of the pre-merger and immediately post-merger UP (MP) switching tariff. BNSF and the shipper, citing the applicable tariff providing for a reciprocal switch charge on grain and grain products in connection with ATSF linehaul traffic, attempted to deliver the train to UP at Avondale, LA. However, UP denied BNSF an interchange at Avondale and required BNSF to negotiate a division of linehaul revenue before accepting the train and delivering it to the grain terminal. See Rickershauser Verified Statement, at 5.

switching.<sup>6/</sup> The Applicants' tariff amendments were directed solely at BNSF: No other railroad lost access to shippers in the New Orleans switching district as a result of the tariff amendments. BNSF has requested the Applicants to reverse the amendments so that BNSF can provide the same service that SP was able to provide prior to the merger, but the Applicants have refused to do so, asserting that these west bank New Orleans shippers are not "2-to-1" shippers, because they were not served exclusively by UP and SP prior to the merger. See January 20, 1997 letter from Bert Van Kampen, UP Manager-Switching, to William K. Anderson, BNSF Manager Auxiliary Prices, attached to the Rickershauser Verified Statement as Exhibit 6.<sup>7/</sup>

#### ARGUMENT

In approving the UP/SP merger, the Board concluded that an unconditioned merger of UP and SP would have presented significant competitive harms, but that these harms were adequately addressed by the BNSF Agreement and the CMA Agreement, as modified by the Board. In particular, the Board concluded that the BNSF Agreement is sufficient (with certain modifications directed by the Board) to address the competitive

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<sup>6/</sup> The UP/SP merger was consummated on September 11, 1996. The UP tariff amendments closing New Orleans industries to access by BNSF were published on September 13, 1996, to be effective on September 14, 1996, while the SP tariff amendments closing the industries to BNSF access were published on September 25, 1996, to be effective on October 15, 1996. *See* Rickershauser Verified Statement, at 2-4.

<sup>7/</sup> Notwithstanding UP's January 20, 1997 letter, as late as February 7, 1997, UP's Customer Revenue Support group apparently believed that BNSF did have access to these west bank shippers and provided a tariff reference to BNSF to items which had in fact already been closed by UP's tariff amendments. *See* Rickershauser Verified Statement, at 5.



harms of an unconditioned UP/SP merger because "the BNSF agreement will permit BNSF to replace, to a large extent, the competitive service that is lost when SP is absorbed into UP." Dec. No. 44, slip op. at 103.

Throughout the decision, the Board expressed its expectation that BNSF would be able to replace SP's service at every point that was served pre-merger by UP and SP and no other railroad. Dec. No. 44, slip op. at 103, 124, 148, 157, 164. The Board specifically included in that analysis those points that UP or SP reached by reciprocal switching before the merger. *Id.* at 121. As the Board stated in discussing reciprocal switching at a specific point in the West: "[I]t only makes sense that BNSF should be given, to the maximum extent possible, the rights formerly held "by the carrier it is replacing. *Id.* at 192. This explicitly includes reciprocal switching rights held by UP and SP on the other's lines. *Id.*<sup>8/</sup>

This principle that BNSF should be given the rights formerly held by the carrier it is replacing is particularly applicable here in the situation where BNSF *purchased* the SP line between Iowa Junction and Avondale. In such a situation, absent a specific provision excluding access to shippers that SP accessed via the line before the merger, BNSF should have the right to provide the identical service which SP provided.

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<sup>8/</sup> One of the areas that the Board specifically identified as a "competitive problem area[]" is the Houston-to-New Orleans corridor. Dec. No. 44, slip op. at 103. One of the "broad-based, positive effects of the merger [as conditioned]" that the Board specifically identified was "access for BNSF to New Orleans." Dec. No. 44, slip op. at 104.

**A. The Applicants' Tariff Amendments Deprive New Orleans Switching District Shippers Of Their Only Practical Efficient Alternative To The Applicants' Rail Service.**

The Applicants' tariff amendments deprive various New Orleans shippers located on UP or SP lines pre-merger of their only realistic competitive and efficient alternative to the Applicants' rail service. Although, in certain cases, these shippers could theoretically receive service from more than two carriers before the UP/SP merger, the loss of access to BNSF service effectively deprives these shippers of any realistic efficient alternative to the Applicants' service for their traffic to and from the western United States. As the Board has recognized, shippers who, prior to the UP/SP merger, could receive rail service from more than two railroads may, nonetheless, be treated as "2-to-1" shippers, because they faced the loss of efficient competitive rail options as a result of the UP/SP merger.<sup>9/</sup>

Thus, in the UP/SP merger proceeding, the Board expanded BNSF access to Lake Charles, West Lake Charles, and Westlake area shippers beyond the level contemplated in the CMA Agreement, even though those shippers could receive service from KCS, as well as UP and SP. Decision No. 44, slip op. at 152-153. In so doing, the Board recognized that those shippers were, for all practical purposes, "2-to-1" shippers,

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<sup>9/</sup> As noted, these New Orleans shippers should be treated as "2-to-1" shippers for the additional reason that BNSF *purchased* the SP line between Iowa Junction and Avondale and, absent an explicit direction to the contrary, BNSF should be able to provide identical service as that provided pre-merger by SP via that line. As discussed infra, these shippers fully expected -- and were led by the Applicants to believe -- that BNSF would be able to provide them with the same service that SP had provided to them before the merger.

because, after the merger, all the "*efficient* routings" for those shippers' traffic, would be "under the applicants' control." *Id.* at 152 (emphasis added).

Similarly, in Decision No. 44, the Board imposed a condition "to maintain the availability of two independent and *efficient* PRB routings to [Texas Utilities Electric Company's ("TUE")] Martin Lake plant near Henderson, TX." Slip op. at 154 (emphasis added). Notwithstanding the fact that TUE had the option of BNSF single-line service for receipt of PRB coal, such relief was necessary because the BNSF single-line routing was excessively circuitous. *See id.* at 186 ("Without this condition, all but one of TUE's PRB routings would involve UP/SP, and the one that would not would be excessively circuitous."); *see also* Decision No. 72, slip op. at 2-3 (explaining TUE condition).<sup>10/</sup>

Accordingly, the Board has recognized that shippers can be deemed "2-to-1" shippers because route circuitry or other service impediments effectively limit them to only two commercially realistic and efficient rail carrier options both under the merging carriers' control (even if more than two carriers have nominal access to their facilities).<sup>11/</sup> Here, the Applicants' unilateral tariff amendments effectively deprived New Orleans area

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<sup>10/</sup> In addition, in Decision No. 44, the Board explained that, in determining whether a particular location or corridor was to be considered as "2-to-1" for purposes of defining BNSF's access, "[t]he ultimate eastern origins or destinations for interterritorial traffic are not considered, only the eastern gateways for such traffic." Slip op. at 122 n.128. This analysis clearly implies that the Board expected BNSF to replace SP for west-bound (or western-originated) traffic, even if the affected shipper might have had access to an eastern carrier for its east-bound (or eastern-originated) traffic.

<sup>11/</sup> In fact, UP has itself recognized that a "showing that [a] shipper lacks effective competitive options for its traffic movements" would justify relief even if the shipper had been served by a third carrier prior to a merger transaction. *See* UP/SP-311, at 33.



shippers located pre-merger on UP and SP lines of the benefits of efficient competitive rail service to and from the West.<sup>12/</sup>

As reflected on the map of the New Orleans vicinity attached hereto as Attachment A, all of the shippers (over 40 in number) on a UP or SP line prior to the merger are located on the west bank of the Mississippi River. In order for these shippers to be served for westbound movements by KCS or IC, the shippers' traffic would have to be first moved across the Mississippi River to the east bank for interchange to these carriers. At present, UP and SP operations are not consolidated in the New Orleans area. Shipments to and from the seven SP customers open to reciprocal switch by KCS or IC move from SP to IC, which provides an intermediate connection with KCS. For the UP-served customers, UP interchanges directly with IC, but uses the New Orleans Public Belt Railroad ("NOPB") to provide an intermediate connection with KCS. These movements could require as much as an additional one to three days before the traffic would move out of the New Orleans area on KCS or IC. See Rickershauser Verified Statement, at 7. Then, in order to reach destinations on the West Coast, Mexico or other locations west of KCS's or IC's service area, a further interchange at a junction such as Dallas, TX would be required to BNSF or another carrier. This further interchange could require an additional one to two days. Thus, the

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<sup>12/</sup> In addition to the reasons set forth in the text establishing that service to the West over KCS or IC would not provide an efficient competitive alternative, the Applicants themselves recognized in their brief in the UP/SP merger proceeding that routings in the New Orleans to Houston corridor on other carriers were "sufficiently circuitous and inferior that Applicants determined to treat the corridor[] as '2-to-1'." See UP/SP-260, at 23. Thus, for western and Mexican traffic that traverses Houston, the Applicants have effectively conceded that routings via KCS or IC are competitively inferior.

most likely carrier to handle business between western markets and those customers on UP or SP denied reciprocal switch access to BNSF in the New Orleans' area, KCS, is the one with the most indirect and time-consuming interchange process when compared with UP's ability to move traffic directly to and from these shippers.

For many shippers, this additional transit time would render joint-line BNSF service non-competitive and would leave the shippers with only one realistic alternative for service to the West. For instance, as set forth in the Verified Statement of Bernard Fiest, Jr., Manager of Transportation for Delta Terminal Services, Inc. ("Delta") (attached hereto as Attachment C), Delta owns and operates a public storage facility in Harvey, LA, near New Orleans. At this facility, Delta receives, stores, transfers and reships a variety of liquid products such as vegetable oils, petroleum, lube oils, and other chemicals on behalf and for the account of various customers. Prior to the UP/SP merger, Delta's facility was directly served by both UP and SP and received two separate switches each day -- SP in the morning and UP in the evening. Destinations for most of the products shipped by rail from Delta's facility are in the Midwest, western United States, and Mexico. Because many of Delta's customers use privately-owned or leased railcars for their product movements, competitive and consistent transit times are important to the customers both for reasons of maintaining product quality and sizing their railcar fleets to meet their needs. Because many of the customers' products are more suited to rail service (as opposed to service by truck), access to competitive rail service is a significant reason many of Delta's customers use its facility.

As Mr. Fiest has noted, access to both UP and SP prior to the merger provided Delta's customers with "head-to-head competitive rail service to and from points in the western United States by having access to the marketing services, prices, and transportation capabilities of both UP and SP." Moreover, alternative service by KCS or IC is inadequate to meet the needs of Delta and its customers:

We and our customers have found that interline routings using two or more carriers, which is now the only option available to us and our users, even to reach jointly-served BNSF/UP points or local BNSF points, is not an attractive cost or service alternative to the single-line service provided by UP and SP, in competition, prior to the UP/SP merger. Since the UP/SP merger, our switch service has decreased and we have been switched primarily by the UP in the evening.

Thus, for Delta and its customers the Applicants' tariff amendments clearly deprived them of one of their two efficient pre-merger competitive western rail alternatives

One of Delta's customers that lost such a rail alternative is C. & T. Refinery, Inc. As set forth in the Verified Statement of Scot W. Jansen, Corporate Traffic Manager for C. & T. Refinery (attached hereto as Attachment D), C. & T. Refinery uses public storage facilities in Harvey and Avondale, LA such as Delta Terminal Services' facility for vegetable oil storage and transfer. Prior to the merger, these facilities were served by UP, and SP had access to the facilities either directly or through reciprocal switching. As Mr. Jansen sets forth in his Verified Statement, UP's refusal to permit BNSF to access the facilities has deprived C. & T. Refinery of a pre-merger competitive option it had on SP for westbound traffic:

The public storage facilities in New Orleans lost some of their competitive advantages when Union Pacific denied [BNSF]



access to public storage facilities located on the Mississippi River. A shipper moving commodities east from New Orleans will have three carriers with access. If the same shipper decides to move west he will only have one choice UP.

Similarly, in his Verified Statement (attached hereto as Attachment E), Terry J. Voss, Senior Vice President Transportation for AG Processing, Inc. ("AGP"), describes his company's use of the public storage facilities at Harvey, LA as a part of AGP's business of processing soy beans into soy bean meal for livestock feed and the refining of soy bean meal into edible vegetable oils. In the course of this business, AGP exports substantial volumes of these oils to foreign countries, and transportation charges are a "determining factor" in AGP's ability to participate in the highly competitive world market for such oils. Any change in the transportation pricing of the oils could limit AGP's ability to compete in the export market. For example, according to Mr. Voss, vegetable oils are traded in increments of one one-hundredth of one cent per pound. Prior to the merger, the Harvey, LA storage facilities were served by both UP and SP. Now, without BNSF access to the facilities, AGP fears that, absent the price competition that would result from BNSF access to the facilities (price competition that was provided by SP prior to the merger), its "freight will be noncompetitive and hence [its] international marketing opportunities will be restricted". Voss Verified Statement at 2.

The Verified Statement of Peter O. Opsomer, Transportation Resource Manager for The Dial Corporation (attached hereto as Attachment F), describes another shipper that has been deprived of one of its two pre-merger efficient competitive rail alternatives for western traffic by the Applicants' tariff amendments. Dial operates a fleet of private tank cars and leases bulk storage facilities in Harvey and Avondale for handling coconut

oils and similar products. These facilities -- the Delta Terminal Services and International Matex Tank Terminal facilities -- were both served directly or through reciprocal switch by UP and SP prior to the merger. The Applicants' action has had the effect of causing the two facilities -- and thus Dial itself -- to lose "some of their competitive advantages . . . particularly . . . on shipments moving to the West."

Additionally, as set forth in the Verified Statement of John G. Breslin, Director of Logistics for Witco Corporation (attached hereto as Attachment G), Witco is a specialty chemicals company which has a facility in Gretna, LA which was served by UP and accessible to SP through reciprocal switch before the merger. Witco sells and receives products from customers and suppliers located throughout the world at its Gretna facility. As Mr. Breslin explains, there is a "distinct need for two competing railroads in the South . . . [which are] comparable in terms of their size, scope and ability to provide a competitive service." Thus, in Mr. Breslin's view, only BNSF can provide a comparable competitive service to UP's exclusive service, and Witco supports BNSF access to its Gretna facility through reciprocal switching.

Further, in his Verified Statement (attached hereto as Attachment H), J. Ron Brinson, President and Chief Executive Officer of the Port of New Orleans, describes how the Applicants' action has adversely affected the competitive alternatives available to the Port's Perry Street Facility located on the west bank of the Mississippi River. Prior to the merger, the Perry Street Facility was served by both UP and SP, and the absence of reciprocal switching access by BNSF has limited the facility "to one railroad for movement to and from the Western United States."

Thus, contrary to the Applicants' argument in UP/SP-011, the fact that shippers located on UP or SP pre-merger could theoretically receive service to and from western destinations by KCS or IC is an insufficient ground to deny this Petition. As discussed above, that alternative service involves the possibility of up to an additional three to five days transit time. Much of the affected shippers' traffic is time sensitive, and the magnitude of this additional transit time would place the shippers at a competitive disadvantage on a carrier other than UP. Additionally, the shippers discussed above, and many others, rely on shipper-owned or leased equipment, in place of railroad-provided equipment, to meet their specific transportation needs. The expenses of maintaining these fleets have to be factored into rail transportation charges to arrive at total rail transportation costs. A consistently less-efficient or slower route requires a shipper to provide more equipment to meet product flow requirements. In many cases, no matter how competitively a railroad prices its transportation product, the additional equipment costs required by a circuitous and less efficient two-line haul will render it uncompetitive with a more efficient, single-line haul. Rickershauser Verified Statement, at 8. Accordingly, these shippers are, for all practical purposes, "2-to-1" shippers whose loss of efficient competitive access to a carrier other than the Applicants for western traffic justifies the imposition of a competition-restoring remedy requested in this Petition.

**B. The Applicants' Tariff Amendments Defeat The Reasonable Expectations Of New Orleans Switching District Shippers.**

Further, the Applicants' last-minute tariff amendments came as a complete surprise to BNSF and these New Orleans switching district shippers, defeating the shippers' reasonable expectations that BNSF would have access to their facilities as SP



had prior to the merger. Indeed, a number of shippers chose not to participate in the UP/SP merger proceeding because they assumed that BNSF would have access to their facilities:

- Verified Statement of Steve Silver, Trading Director for Gardner Smith (U.S.A.) L.L.C. (attached hereto as Attachment I) -- "While we did not participate in the UP/SP merger proceeding, we expected that BNSF would have access to [Gardner Smith's] Avondale and Harvey facilities."
- Verified Statement of Paul Robbins, Director of Transportation for Celotex Corporation (attached hereto as Attachment J) -- "During the merger proceedings, we were aware of the settlement agreements made by the BNSF and fully expected that [Celotex Corp.'s manufacturing plant at Merrero, Louisiana] would be treated like the other 'two-for-one' points were, as far as competitive access is concerned."
- Verified Statement of Bernard Fiest, Jr., Manager of Transportation for Delta Terminal Services, Inc. (Attachment C) -- "Delta remained neutral in regard to supporting or opposing the UP/SP merger, however, we fully expected that we would be no worse off than had this merger not occurred, particularly with the purchase by BNSF of the SP lines to New Orleans. The recent action by the Union Pacific to eliminate competitive access from the BNSF does not fulfill our expectations of being no worse off in accessing, and providing to customers who use Delta's services, competitive service by two major western rail carriers, as when both UP and SP directly served our facility."
- Verified Statement of Scot W. Jansen, Corporate Traffic Manager for C. & T. Refinery, Inc. (Attachment D) -- "I supported the UP/SP merger based on the original settlement agreement that included giving BNSF access to New Orleans, La. I was not aware that when UP stated that BNSF would have access to New Orleans, they intended only giving them interchange rights with southeastern carriers. UP closed these industries after the merger was complete and didn't give shippers any formal notice."
- Verified Statement of Peter O. Opsomer, Transportation Resource Manager for The Dial Corporation (Attachment F) -- "Dial was aware of the BN's original settlement agreements that would have allowed

access after the UP/SP merger. We were not aware that the UP had restricted access until we recently requested rate proposals."

See also Verified Statement of Terry J. Voss, Senior Vice President Transportation for Ag Processing, Inc. (Attachment E) ("AGP participated in and supported the UP/SP merger. We were aware of the Board's intent to correct the loss of the two-to-one facilities and felt the BNSF agreement with UP/SP would correct these situations.").

These and other New Orleans switching district shippers on UP or SP lines prior to the merger thus anticipated that BNSF would have access to their facilities following the UP/SP merger. Indeed, as described in the Rickershauser Verified Statement, the materials distributed by the Applicants to customers to seek their support for the merger represented that existing competition would be preserved and that "Head-to-Head Competition [Would] Improve[ ] in the West", and showed the New Orleans area as one of the locations where this improvement would occur. *See* Rickershauser Verified Statement, at 8. Those materials also represented that "Customers open to reciprocal switching prior to the merger will continue to be open to reciprocal switching after the merger." Id. at 8-9.

The Board recognized in Decision No. 44 that UP and SP should be held to such pre-merger representations, and the Board should hold the Applicants to their representations here that existing competition would be preserved, that New Orleans shippers would be among those that would benefit from improved competition in the West, and that they would remain open to reciprocal switching. *See* Decision No. 44, at 12 n. 14 ("Applicants must adhere to all of their representations."). By waiting until after the Board's approval, and the Applicants' consummation, of the merger to amend

the tariffs -- thereby depriving these New Orleans switching district shippers of access to the Applicants' only real competitor for these shippers' western traffic -- the Applicants have defeated the justifiable expectations of these shippers and contradicted their own representations.<sup>13/</sup>

### CONCLUSION

The Applicants' tariff amendments excluding BNSF -- and BNSF alone -- from access to the New Orleans shippers located on UP or SP lines pre-merger that were open to both UP and SP via direct service or reciprocal switching before the merger preclude BNSF from effectively competing with UP. The Board should not tolerate such anti-competitive conduct. In the words of Mr. Jansen of C. & T. Refinery in his Verified Statement, "it is only fair for the shipping community of [the] New Orleans switching district to have more than one option to move traffic west." Similarly, the United States Department of Transportation in its comments submitted in the Oversight Proceeding (DOT-1) noted that, "to the extent that routes to the West are restricted under a new switching tariff to a single carrier, UPSP, it appears that UPSP has effectively created a 2-to-1 situation." DOT-1, at 6. DOT thus urged the Board to "inquire into this problem and to take remedial action as necessary." Ibid.

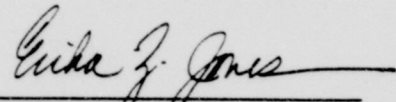
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<sup>13/</sup> As noted above (note 2, *supra*), because the Applicants waited until *after* the Board approved, and they consummated, their merger to deprive BNSF of access to New Orleans switching district shippers, their contention (UP/SP-311, at 33) that the relief sought in this Petition is untimely or constitutes a request for an entirely new condition is groundless. In addition, the issue of access by BNSF to these New Orleans shippers is an appropriate subject for oversight because the tariff amendments took effect only after the merger was consummated.



Accordingly, for the foregoing reasons, BNSF respectfully requests the Board to require the Applicants to grant BN/Santa Fe access for traffic to or from destinations or origins in the western United States (including Mexican traffic) via reciprocal switching to all shippers located on a UP or SP line prior to the merger in the New Orleans switching district that were open to direct service or reciprocal switching by both UP and SP prior to their merger, but which have now been closed to BNSF by the Applicants.

Respectfully submitted



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Attorneys for The Burlington Northern and Santa Fe Railway Company

Dated: November 14, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition of The Burlington Northern and Santa Fe Railway Company for Clarification (BN/SF-83) was 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.

Loe and Steel

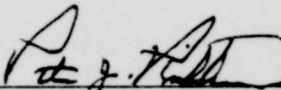
VERIFICATION

THE STATE OF TEXAS     )

)

COUNTY OF TARRANT    )

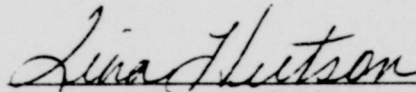
Peter J. Rickershauser, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
Peter J. Rickershauser

Subscribed and sworn to before me on this 6th day of November, 1997.



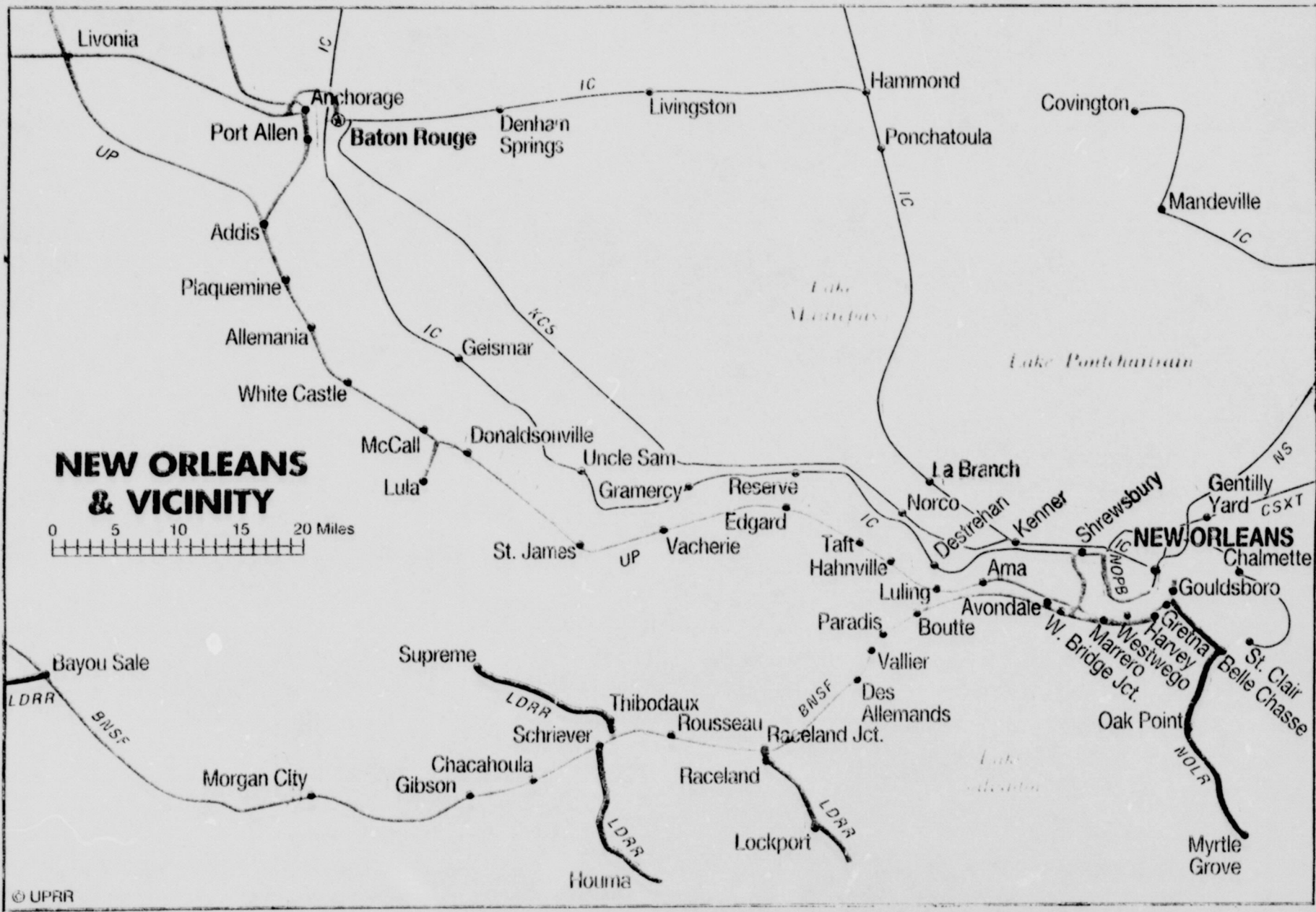
My Commission Expires June 28, 1998

  
\_\_\_\_\_  
Notary Public

6-26-98



**ATTACHMENT A**



**ATTACHMENT B**



VERIFIED STATEMENT  
OF  
PETER J. RICKERSHAUSER

My name is Peter J. Rickershauser. I am Vice President, Marketing of The Burlington Northern and Santa Fe Railway Company ("BNSF") on the UP/SP lines. My business address is 2600 Lou Menk Drive, Fort Worth, Texas 76131.

I joined BNSF in October 1996 as Vice President, Marketing, UP/SP Lines. In this capacity, I am responsible for coordinating the marketing and implementing of the new service opportunities that BNSF offers to shippers as a result of the UP/SP merger. BNSF gained access to more than 4,200 miles of UP and SP track through a combination of trackage rights and line purchases as a condition of the September 1996 UP/SP merger.

Prior to joining BNSF, I was Vice President, Sales, with Southern Pacific Rail Corporation in Denver, Colorado, where I directed SP's field carload sales force in the United States and Canada. From 1991 to 1995, I was Managing Director, Regional Sales-Midwest, in Lisle, Illinois, for SP. My responsibilities in that position included planning and directing sales activities for SP's largest domestic carload sales region.

From 1982 to 1991, I held a number of sales and marketing management positions with Norfolk Southern Railroad, including Vice President, Sales and Marketing, for Triple Crown Services, Inc., a Norfolk Southern subsidiary; Director, Intermodal Marketing, and district sales manager positions. Previous to that, I held a series of positions in railroad operations and maintenance-of-way departments with Conrail predecessors Central Railroad Company of New

Jersey and the New York & Long Branch Railroad Co. in the Northeast, followed by sales representative and district sales manager positions in Iowa with the Norfolk & Western Railway Co.

I earned a Bachelor of Arts degree from Franklin & Marshall College in 1971, and a Master of Arts degree in 1974 from Syracuse University.

I am submitting this Verified Statement in support of BNSF's Petition for Clarification ("Petition") of the conditions imposed by the Board on the UP/SP merger to require the Applicants to grant BNSF access for traffic moving to and from the western United States (including Mexican traffic) to all shippers located in the New Orleans, Louisiana switching district on UP or SP lines prior to the UP/SP merger that, before the merger, were open to service directly or via reciprocal switching by both UP and SP, but which have now been closed to BNSF by various tariff amendments by the Applicants. By closing these New Orleans shippers to BNSF, the Applicants have deprived the shippers of their only practical efficient rail alternative to the Applicants' service for traffic moving to and from the western United States (including Mexican traffic). Furthermore, the Applicants' action defeats the justified expectations of numerous shippers, who had no reason to anticipate that BNSF would not be permitted to serve them after the merger and who, therefore, chose not to participate in the UP/SP merger proceeding.

**A. The Tariff Amendments**

ATSF, one of BNSF's predecessors, became a carrier serving New Orleans on September 12, 1996, one day after the UP/SP merger became effective, pursuant to the common carrier obligation imposed on BNSF by the Board with respect to the traffic it was to handle under the

BNSF Settlement Agreement. *See* Decision No. 44, slip op. at 134. On that date, Supplement 16 to the Official Railroad Station List (OPSL 6000-Q) became effective thereby establishing ATSF as a rail carrier serving New Orleans. (A copy of the Supplement is attached hereto as Exhibit 1.) OPSL 6000-Q is the vehicle by which rail carriers identify the railroad stations to which they provide service. By virtue of that publication, ATSF was entitled to serve, through reciprocal switching, all industries in the New Orleans switching district that were open to reciprocal switching as of that date.

Item 3000-G of Tariff MP 8170-C applies to carload switching charges between New Orleans and Avondale, Gouldsboro, Gretna, Harvey, Marrero and Westwego, LA. Supplement 195 to that tariff indicates that, in August of 1996, Item 3000-G had a reciprocal switch charge that applied to IC traffic and another reciprocal switch charge that applied to all other rail carriers in New Orleans. Reference Mark 130 to Item 3000-G indicated a reciprocal switch charge that applied "only in connection with the IC." Reference Mark 131 of Item 3000-G indicated that another reciprocal switch charge was "not applicable in connection with the IC." Under standard tariff interpretation, that meant Reference Mark 131 applied to all carriers other than IC serving New Orleans as shown on OPSL 6000-Q, including, on and after September 12, 1996, ATSF. The 40 industries or warehouses to which these reciprocal switch charges applied were and are shown in Item 2950 series of this same tariff.

On September 13, 1996, UP issued Supplement 197 to Tariff MP 8170-C to be effective on September 14, 1996. In that publication, Item 3000-G became Item 3000-H and was modified to exclude application to BNSF. Reference Mark 130 was retained to cover IC traffic. However, Reference Mark 131 was deleted, and Reference Mark 259 was substituted. Reference Mark 259



applied "only in connection with CSXT, IC, KCS, NS or SP". (This contained an error in that it referred to IC when Reference Mark 130 already applied in connection with IC.) Publication of Reference Mark 259 had the effect of closing the industries covered by Item 3000-H to BNSF alone out of all of the linehaul rail carriers serving New Orleans. Supplement 198 was issued on September 19, 1996, to be effective on September 20, 1996, to correct the error in Supplement 197. Reference Mark 259 was changed to delete "IC" from the reference mark. (Copies of the relevant MP tariff publications discussed above are attached hereto as Exhibit 2.)

Similarly, at approximately the same time, the Applicants published amendments to the SP (SP 9500 series) tariff applicable to Southern Pacific-served customers in the New Orleans switching district. Those amendments, issued on September 25, 1996, and effective on October 15, 1996, also closed industries and shippers within the district to service by BNSF. (The tariff publication closing these industries to BNSF is attached hereto as Exhibit 3.) Like UP's pre-merger tariff, SP's tariff in effect prior to the amendment (SP 9500 Series) afforded ATSF access to the shippers at issue here. (A copy of the SP 9500 series tariff (Item 5060) which provided ATSF access to these shippers is attached hereto as Exhibit 4.)

The Applicants' tariff amendments singled out BNSF. No other carrier that had access to industries and shippers in the New Orleans switching district was affected by the tariff amendments.

BNSF has asked the Applicants to reverse the tariff amendments. *See* December 17, 1996 letter from William K. Anderson, BNSF Manager Auxiliary Prices, to Bert Van Kampen, UP Manager-Switching, attached hereto as Exhibit 5. The Applicants, however, have refused to do so, claiming that these shippers are not "2-to-1" shippers, because they were not served exclusively by UP and SP before the merger. *See* January 20, 1997 letter from Mr. Van Kampen to Mr. Anderson, attached hereto as Exhibit 6. Nonetheless, as late as February 7, 1997, UP's Customer Revenue Support group advised BNSF that BNSF did have access to these industries, and provided a tariff reference to an item (MP 8170-E Item 2950) which had already been closed, by UP's action, to BNSF. (A copy of a facsimile dated February 7, 1997, from Ralph Cole of UP to Keith Moeller of BNSF advising BNSF of the tariff reference is attached hereto as Exhibit 7.)

During the same time period, but prior to UP's January 20, 1997 response, a BNSF grain shipper and BNSF sought to move a unit grain train into the Continental Grain Co.'s Westwego, LA terminal elevator. The 27 car train was billed January 3, 1997, from Courtland, KS. BNSF had, on September 12, 1996, amended Tariff OPSL 6000-Q, the Official Railroad Station List, to show Westwego as an operating station served by ATSF, along with the other New Orleans' area points as discussed earlier. BNSF and the customer were planning on using a \$60.00 per loaded car reciprocal switching charge on grain and grain products applicable on grain and grain products, as provided in Item 137, MP 8170 series tariff. However, UP refused to accept the unit train for interchange at Avondale and required BNSF to negotiate a division of linehaul revenue before accepting the unit train and placing it on Continental's receiving tracks for unloading.

**B. The Effect Of The Tariff Amendments On BNSF's Access To New Orleans Switching District Industries And Shippers**

If not for the Applicants' tariff amendments, BNSF would have had access, via direct service or reciprocal switching, to numerous shippers in the New Orleans switching district, including:

On UP lines: ADM/Growmark, Amerada Hess, Continental Grain, Cytec Industries, International Matex Tank Terminal, Port of New Orleans' Perry Street Wharf, ST Services, Texaco, and Witco Chemicals.

On SP Lines: Avondale Steel Sales, Evans Cooperage Co., and General Chemical Corporation.

Jointly Served Directly By Both UP and SP:

Avondale Shipyards, Celotex Corp., Delta Terminal Services, and Hunting Tubular Threading.

Because of the amendments to the tariffs, however, BNSF has been cut off from serving these shippers and industries. While these tariffs have not been kept updated, and some firms have changed names or gone out of business in the interim, the MP (UP) tariff in effect at the time UP made the changes described above listed 40 individual industries or warehouses, and the SP tariff listed seven, of which four were served by both UP and SP, making a total of 43 customers, eliminating the doublecount of the UP and SP jointly-served facilities.

**C. The Effect Of The Lack Of Access To BNSF Service On New Orleans Switching District Industries And Shippers**

As the Verified Statements of the shippers attached to the Petition demonstrate, many New Orleans industries and shippers located on UP or SP lines pre-merger have been deprived of their only realistic efficient alternative to the Applicants' service for traffic moving to and from the West (including Mexico) as a result of the tariff amendments. None of the other carriers that



serve New Orleans -- including KCS, IC, CSX or NS -- can provide efficient competitive service for traffic to and from the western United States. As reflected on the map of the New Orleans vicinity attached as Attachment A to the Petition, all of the shippers (over 40 in number) on a UP or SP line prior to the merger are located on the west bank of the Mississippi River. In order for these shippers to be served for westbound movements by KCS or IC, the shippers' traffic would first have to be moved to the east bank of the Mississippi River via UP or SP for further interchange to the connecting carrier. At present, UP and SP operations remain separate in the New Orleans area. For shippers switched by SP going to IC or KCS, SP runs directly to IC to interchange, and interchanges both IC and KCS traffic through IC. KCS traffic is then resorted by IC for delivery to KCS. For shippers switched by UP going to IC, UP runs directly to IC for interchange; UP interchange for KCS is handled through the New Orleans Public Belt Railroad ("NOPB"). These movements could require an additional one to three days before the traffic could begin to move out of the New Orleans area on KCS or IC. Then, in order to reach destinations on the West Coast, Mexico or other locations west of KCS' or IC's service area, a further interchange would be required to BNSF or another carrier. This further interchange could require an additional one to two days. Significantly, the carrier best positioned to handle western and Mexican business to and from UP and SP customers who have been denied reciprocal switch access to BNSF in the New Orleans area, KCS, has the routing with the most number of carriers, interchanges, and the most potential for extended transit times. Further, these complex methods of interchanging between UP, SP and KCS naturally lead to the small volumes of traffic that are currently being interchanged between the carriers at New Orleans, thus confirming that the KCS alternative route is not competitive.

Much of the traffic of the shippers at issue is time sensitive, and the magnitude of this additional transit time (2-5 days) would therefore place the shippers -- and the joint line KCS or IC-BNSF route -- at a competitive disadvantage on a carrier other than UP. Additionally, the shippers discussed above, and many others, rely on shipper-owned or leased equipment, in place of railroad-provided equipment, to meet their specific transportation needs. The expenses of maintaining these fleets have to be factored into rail transportation charges to arrive at total rail transportation costs. A consistently less-efficient or slower route requires a shipper to provide more equipment to meet product flow requirements. In many cases, no matter how competitively a railroad prices its transportation product, the additional equipment costs required by a circuitous and less efficient two-line haul will render it uncompetitive with a more efficient, single-line haul.

Additionally, as the Verified Statements of the shippers attached to the Petition further demonstrate, New Orleans switching district industries and shippers expected BNSF to obtain access to them as a result of the UP/SP merger. The Applicants gave no indication whatever that, immediately following consummation of the merger, they would single out BNSF for exclusion from the district. Indeed, over and over again, in materials distributed to customers by UP and SP to seek merger support, the New Orleans area is shown as a point where, in the Applicants' own language, "Head-to-Head Competition Improves in the West", and like all other merger points, "customers currently served only by UP and SP will gain access to BNSF"; "in all cases, competition will be maintained and in most cases competition will be stronger"; "As a result of the settlement with the BN/SF system, preservation - indeed, strengthening - of rail competition for every shipper who now has it." In fact, in an April 1996 "Merger Update", the Applicants expressly stated that "Customers open to reciprocal switching prior to the merger will continue

to be open to reciprocal switching after the merger." (Excerpts from the Applicants' publications containing these statements are attached hereto as Exhibit 8.)

Customers were never told otherwise, and they had no way to determine that UP was planning to deny BNSF access to New Orleans area UP and SP customers within the reciprocal switching limits open to all other carriers. There was no indication that these customers, alone, would be singled out by UP or SP post-merger for different treatment or for the loss of access to efficient competitive western single-line rail service.

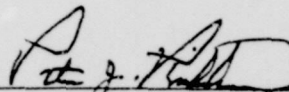
Thus, while the customers BNSF is seeking to gain access to on UP and SP within the New Orleans reciprocal switching district may not technically be "2-to-1" customers as defined in the BNSF Settlement Agreement -- although four of them were served by both UP and SP directly, they are within a recognized reciprocal switching area, and therefore should have access for western traffic to all linehaul carriers serving New Orleans, including BNSF. There was no reason for them to believe that BNSF would not have access to their facilities based on payment of the reciprocal switch charge which applied to all other carriers.



VERIFICATION

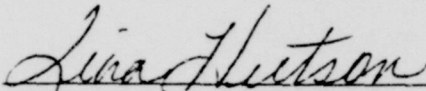
THE STATE OF TEXAS   )  
                                  )  
COUNTY OF TARRANT   )

Peter J. Rickershauser, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
Peter J. Rickershauser

Subscribed and sworn to before me on this 6th day of November, 1997.



  
\_\_\_\_\_  
Notary Public

My Commission Expires

6-26-98

EXHIBIT 1

**SUPPLEMENT 16**

# **OFFICIAL RAILROAD STATION LIST**

**OPSL 6000-Q**

Cancels Supplements 11,  
13, 14 and 15.

Supplement 5, 10, and 16  
contain all changes.

**ISSUED  
OCTOBER 15, 1996**

**EFFECTIVE  
NOVEMBER 1, 1996**

Except as otherwise provided herein.

## ***Includes National Rate Basis and Centralized Station Master Data***

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## ALPHABETICAL - FREIGHT

STATION	COUNTY	RULZ 260	RR	OPSL	FSAC	SPLC	NATIONAL RATE BASIS	CRG CODE	EFFECTIVE DATE	RATE ZIP
*Whitlaw (1-3559).....[Greely]	MP	3325	1557	598444	Horace, KS.....	M	08/23/1996	67201		
Whitewater (1-3559).....[Butler]	MP	3810	2373	588239	Newton, KS.....	MP	08/23/1996	67154		
Wichita (26-3500).....[Sedgwick]	WCTA	1	2304	588440	Wichita, KS.....	GP	08/23/1996	67202		
Wichita Union Stock Yard (1-3559)										
Willis (1-3559).....[Sedgwick]	WCHYD	MP	3675	2301	588441	G	08/23/1996	67202		
Willis (1-3559).....[Brown]	MP	1335	1450	581275	Sabetha, KS.....	M	08/23/1996	66435		
Wilmore (3500).....[Cummahe]	MP	52390	52390	597724	Ashland, KS.....	M	08/23/1996	67155		
Wilroads (1-3100).....[Ford]	DOFB	13	250	597659	Dodge City, KS.....	Z	08/16/1996	67801		
Winfield (1-3559).....[Cowley]	WNYLO	MP	4980	2513	588860	K	08/23/1996	67156		
*Wolcott (1-3559).....[Wyandotte]	MP	460	1584	591514	Kansas City, MO.....	B	08/23/1996	67156		
Wolf (1-31-3100).....[Pawnee]	GP	35	14	598169	Garden City, KS.....	I	05/23/1996	67851		
Woodston (1-662-3500-3564).....[Rooks]	KYLE	2300	2001	591612	Stockton, KS.....	IF	01/25/1996	67675		
Woodston (3502).....[Rooks]	MP	2300	2001	591612	Stockton, KS.....	OP	08/23/1996	67675		
Yates Center (1-3559).....[Woodson]	MP	3580	2241	587355	Chanute, KS.....	M	08/23/1996	66781		
Yoder (3500).....[Reno]	MP	3735	2415	599147	Wichita, KS.....	M	08/23/1996	67585		
Yuma (1-662-3502-3564).....[Cloud]	YUMES	KYLE	62	1890	583635	OP	01/26/1996	66901		
Yuma (1-662-3500-3564).....[Cloud]	KYLE	1950	1891	583635	Concordia, KS.....	IF	08/23/1996	66901		
Yuma (3500).....[Cloud]	YUMES	MP	1890	583635	Concordia, KS.....	IF	08/23/1996	66901		
Zenda (3502).....[Kingman]	MP	52360	52360	589493	Kingman, KS.....	M	08/23/1996	67159		
KENTUCKY										
Baxter (6).....[Barian]	CSXT	19453	91003	291542	No Rate Basis.....	B	09/22/1996	40806		
Cumberland (8).....[Barian]	CSXT	20040	91004	291506	No Rate Basis.....	B	09/22/1996	40823		
Henderson (3700).....[Henderson]	HNDSN	NS	60501	296420	Henderson, KY.....	O	09/03/1996	42420		
Highland (6).....[Lincoln]	CSXT	17355	91080	288923	No Rate Basis.....	B	09/22/1996	41701		
Hot Spot (6).....[Letcher]	CSXT	16454	91077	287627	No Rate Basis.....	B	09/22/1996	41845		
Louisville Sub (139-3506).....[Jefferson]	LOSUB	BN	99516	286501	No Rate Basis.....	M	10/03/1996	40202		
Sassafraz (6).....[Knott]	CSXT	17325	91082	287195	No Rate Basis.....	B	09/22/1996	41759		
Vicco (6).....[Perry]	CSXT	17320	91081	287886	No Rate Basis.....	B	09/22/1996	41773		
West Henderson (3700).....[Henderson]	NS	72435	60500	296423	Henderson, KY.....	O	09/03/1996	47670		
LOUISIANA										
Abbeville (1-3320).....[Vermilion]	ATSF	83585	36667	657850	Abbeville, LA.....	B	09/12/1996	70510		
Addis (1-3559).....[West Baton Rouge]	MP	21530	4585	644997	Plaquemine, LA.....	M	08/23/1996	70710		
Algiers (3559).....[Orleans]	MP	24080	4	647001	New Orleans (E), LA.....	B	08/23/1996	70140		
Allendale (1-3559).....[West Baton Rouge]	MP	22105	8776	644924	Baton Rouge (W), LA.....	B	08/23/1996	70767		
Alliance (3500).....[Plaquemine]	MP	24135	217	649130	Myrtle Grove, LA.....	M	08/23/1996	70037		
Alvin Callender (3500).....[Plaquemine]	MP	24096	110	649122	Myrtle Grove, LA.....	M	08/23/1996	70143		
Ama (1-3559).....[St Charles]	MP	21755	4958	646163	New Orleans (E), LA.....	B	08/23/1996	70031		
Anchorage (1-31-3559)										
Anna La Butte (1-3320).....[West Baton Rouge]	ATSF	13045	9104	644955	Baton Rouge (W), LA.....	B	08/23/1996	70767		
Antonia (1-3559).....[St Martin]	ATSF	83545	36646	657348	Lafayette, LA.....	B	09/12/1996	70517		
Ara (59).....[Grant]	MP	9020	6759	655750	Georgetown, LA.....	M	08/23/1996	71467		
Arzent (1-22-3559).....[St James]	MP	21695	36665	657392	New Iberia, LA.....	B	09/12/1996	70519		
Avery Island (1-3320).....[Iberia]	ATSF	83590	4826	645585	Donaldsonville, LA.....	M	08/23/1996	70090		
Avondale (1-3320).....[Jefferson]	ATSF	83745	36668	657790	Weeks, LA.....	B	09/12/1996	70513		
Avondale (1-31-3559).....[Jefferson]	AVOND	MP	36751	646528	New Orleans, LA.....	SP	10/03/1996	70094		
Avoyelles Par Coop (1-3559)			8057	646528	New Orleans (E), LA.....	B	09/17/1996	70094		
Baldwin (1-3320).....[East Baton Rouge]	MP	22133	9715	644793	Plaquemine, LA.....	M	08/23/1996	70767		
Baldwin (1-3320).....[St Mary]	BLDWN	ATSF	36682	657618	New Iberia, LA.....	B	09/12/1996	70514		
*Basile (1-3559).....[Evangeline]	MP	13320	3154	657298	Eunice, LA.....	M	08/23/1996	70515		
Batchelor (1-22-3559).....[Pointe Coupee]	MP	21980	9875	644432	New Roads, LA.....	M	08/23/1996	70715		
Baton Rouge (1-1211-3559)										
Baton Rouge (1-3320).....[East Baton Rouge]	BATON	MP	8100	644800	Baton Rouge (W), LA.....	B	08/23/1996	70621		
Bayou Goula (1-3559).....[Iberville]	MP	21575	4631	645373	Donaldsonville, LA.....	M	08/23/1996	70716		
Bayou Pierre (1-3559).....[Red River]	BAPZ	MP	4050	656140	Mansfield, LA.....	M	08/23/1996	71027		
Bayou Sale (1-3320).....[St Mary]	BATSA	ATSF	36691	657699	Franklin, LA.....	B	09/12/1996	70538		
Beile Chasse (3500).....[Plaquemine]	MP	24095	84	649113	New Orleans (E), LA.....	B	08/23/1996	70037		
Benjamin Switch (3500).....[Orleans]	MP	24093	8	647013	New Orleans (E), LA.....	B	08/23/1996	70037		
Berwick (1-3320).....[St Mary]	ATSF	83660	36703	657692	Morgan City, LA.....	B	09/12/1996	70342		
Billaud (1-3320).....[Lafayette]	ATSF	83570	36655	657478	Morgan City, LA.....	MP	10/03/1996	70518		
Boeuf (1-3320).....[Assumption]	ATSF	83675	36710	659130	Morgan City, LA.....	MP	10/03/1996	70340		
Bonita (1-3559).....[Morehouse]	MP	9610	6606	651518	Har Rouge, LA.....	M	08/23/1996	71223		
Boutte (1-3320).....[St Charles]	BOUTE	ATSF	36712	646170	New Orleans, LA.....	MP	10/03/1996	70039		
Boutte (1-3300).....[St Charles]	BOUTE	SP	18286	646170	New Orleans (W), LA.....	M	09/12/1996	70039		
*Boyce (1-3559).....[Rapides]	MP	21340	4206	655926	Alexandria, LA.....	M	08/23/1996	71409		
Breaux Bridge (1-3320).....[St Martin]	ATSF	83555	36640	657347	Lafayette, LA.....	B	09/12/1996	70517		
*Bringhurst (1-3559).....[Rapides]	MP	9095	7136	655984	Alexandria, LA.....	M	08/23/1996	71420		
Broussard (1-3320).....[Lafayette]	ATSF	83565	36652	657475	Lafayette, LA.....	B	09/12/1996	70518		
Cabot (1-3320).....[St Mary]	ATSF	83620	36675	657697	Franklin, LA.....	B	09/12/1996	70538		
Cade (1-3320).....[St Martin]	ATSF	83575	36658	657390	Lafayette, LA.....	B	09/12/1996	70519		
Cadre Spur (1-22-3559).....[St James]	MP	21645	4754	645590	Donaldsonville, LA.....	M	08/23/1996	70700		
Casplane (1-3559).....[Cade]	MP	21200	8229	653888	Mansfield, LA.....	M	08/23/1996	71115		
Chambers (1-3559).....[Rapides]	MP	21365	4285	655972	Alexandria, LA.....	M	08/23/1996	71346		
Cheneyville (1-3559).....[Rapides]	CVLE	MP	4369	655979	Bunkie, LA.....	M	08/23/1996	71225		
Choctaw (1-22-3559).....[West Baton Rouge]	MP	21527	4501	644995	Plaquemine, LA.....	M	08/23/1996	70767		
Cinclare (1-3559).....[West Baton Rouge]	MP	22130	8721	644973	Baton Rouge (W), LA.....	B	08/23/1996	70767		
Clarks (1-3559).....[Caldwell]	MP	9745	6693	655170	Georgetown, LA.....	M	08/23/1996	71415		
Collinston (1-3559).....[Morehouse]	MP	9635	6621	651590	Har Rouge, LA.....	MP	08/23/1996	71229		
Crowley (1-3500).....[Acadia]	CRWLY	AKDN	200	37465	No Rate Basis.....	M	09/12/1996	70527		
Crowley (1-3320).....[Acadia]	CRWLY	ATSF	36632	657570	Crowley, LA.....	B	09/12/1996	70526		
Cypressport (1-3320).....[St Mary]	MP	83610	36672	657666	Weeks, LA.....	B	09/12/1996	70538		
Cypress (1-3559).....[Natchitoches]	MP	21305	4154	656564	Natchitoches, LA.....	M	08/23/1996	71420		
Des Allemands (1-3320).....[St Charles]	ATSF	83730	36736	646137	Des Allemands, LA.....	B	09/12/1996	70030		
*Dolet Hills (197-3559).....[Red River]	MP	21227	8202	656124	Mansfield, LA.....	M	08/23/1996	71105		
Donner (1-3320).....[Terrebonne]	ATSF	83695	36721	659718	Schriever, LA.....	B	08/15/1996	70352		

FOR EXPLANATION OF REFERENCE MARKS, SEE LAST PAGE OF NOTES SECTION

## ALPHABETICAL - PERICPT

STATION	COUNTY	RULE	RR	CPSL	FSAC	SPLC	NATIONAL RATE BASIS	CRG CODE	EFFECTIVE DATE	RATE ZIP
Duane (1-22-3559).....	[St Charles]	MP	21742	4932	646151		New Orleans (E), LA.....	B	08/23/1996	70070
Duson (1-3320).....	[Lafayette]	ATSF	83520	36638	657467		Lafayette, LA.....	B	09/12/1996	70529
*Eider (1-3559).....	[Allen]	MP	3995	7195	659159		Oakdale, LA.....	M	08/23/1996	70648
Elka (1-3320).....	[Lafayette]	ATSF	83560	36649	657472		Lafayette, LA.....	B	09/12/1996	70502
*Elton (1-3559).....	[Jefferson Davis]	MP	13130	9168	658413		Bunice, LA.....	M	08/23/1996	70532
Erwinville (1-3559).....	[West Baton Rouge]	MP	13070	9110	644917		Baton Rouge (W), LA.....	B	08/23/1996	70729
Etherwood (1-3320).....	[Acadia]	ATSF	83495	36626	657584		Crowley, LA.....	B	09/12/1996	70534
Famland (1-3559).....	[Grant]	MP	3825	6760	655752		Georgetown, LA.....	M	08/23/1996	71467
Fenton (1-3559).....	[Jefferson Davis]	MP	10030	7211	658443		Lake Charles, LA.....	M	08/23/1996	70640
Fontenot (1-3559).....	[Allen]	PONTN	MP	7202	658135		Lake Charles, LA.....	M	08/23/1996	70648
Fordeche (1-3559).....	[Pointe Coupee]	MP	21455	4487	644491		Melville, LA.....	M	08/23/1996	70732
Franklin (1-3320).....	[St Mary]	ATSF	83640	36685	657640		Franklin, LA.....	B	09/12/1996	70538
*Fr. St Leon (3500).....	[Plaquemine]	MP	24090	52	649110		New Orleans (E), LA.....	B	08/23/1996	70037
*Gallion (1-3559).....	[Beauregard]	FLTON	MP	9190	658082		De Quincey, LA.....	M	08/23/1996	70657
Ganahan (1-3559).....	[Red River]	MP	21245	8175	656135		Manafield, LA.....	M	08/23/1996	71019
*Gallion (1-3559).....	[Morehouse]	MP	3620	6612	652530		Mer Rouge, LA.....	M	08/23/1996	71019
Garden City (1-3320).....	[St Mary]	ATSF	83645	36688	657663		Franklin, LA.....	M	08/23/1996	71223
Gayles (1-3559).....	[Caddo]	GAYLE	MP	9256	651884		Shreveport, LA.....	B	09/12/1996	70540
Glanville (1-3559).....	[Rapides]	MP	3920	7146	655989		Oakdale, LA.....	M	08/23/1996	71205
Glynn (1-3559).....	[Pointe Coupee]	MP	22075	3813	644445		New Roads, LA.....	M	08/23/1996	71433
*Gouldsboro (1-31-3559).....	[Jefferson]	GLSR	MP	9008	646522		New Orleans (E), LA.....	B	08/23/1996	70736
Grayson (1-3559).....	[Caldwell]	MP	9740	6630	655160		Georgetown, LA.....	M	08/23/1996	70053
Gretna (1-31-3559).....	[Jefferson]	GRTN	MP	9010	646521		New Orleans (E), LA.....	B	08/23/1996	71435
Grosse Tete (1-3559).....	[Iberville]	MP	21525	4566	645319		Plaquemine, LA.....	M	08/23/1996	70053
*Guy (1-3559).....	[Allen]	MP	9950	7167	658121		Oakdale, LA.....	M	08/23/1996	70740
Hachville (1-3559).....	[St Charles]	MP	21740	4917	646150		New Orleans (E), LA.....	B	08/23/1996	70655
*Hancock (1-3559).....	[Ouachita]	MP	3452	6634	652317		Mer Rouge, LA.....	B	08/23/1996	70057
Hanna (3559).....	[Red River]	MP	21260	9161	656193		Manafield, LA.....	M	08/23/1996	71281
Harbor (1-3320).....	[Calcasieu]	HARB	ATSF	83455	36602	658612	Lake Charles, LA.....	MP	08/23/1996	71019
Harbor (1-3559).....	[Calcasieu]	HARB	MP	10059	7229	658612	Lake Charles, LA.....	M	10/03/1996	70601
Harbor (1-19-3300).....	[Calcasieu]	HARB	SP	19128	37532	658612	Lake Charles, LA.....	M	09/24/1996	70601
Harvey (1-31-3559).....	[Jefferson]	HARVE	MP	12087	9019	646522	New Orleans (E), LA.....	B	09/13/1996	70601
*Hatchwood (1-3559).....	[St Landry]	MP	13205	8136	657156		Opelousas, LA.....	B	09/17/1996	70058
Some Plantation (1-3559).....	[West Baton Rouge]	MP	22135	8714	644975		Baton Rouge (W), LA.....	B	08/23/1996	70577
Iowa Jct (3559).....	[Jefferson Davis]	IOWA	MP	10036	7215	658415	Lake Charles, LA.....	M	08/23/1996	70710
Iowa Junction (1-3320).....	[Formerly Iowa]	IOWA	MP	10036	7215	658415	Lake Charles, LA.....	M	08/23/1996	70647
Jay (1-3320).....	[Jefferson Davis]	ATSF	83460	36605	658615		Lake Charles, LA.....	BM	09/12/1996	70647
Jeanerette (1-3320).....	[Lafourche]	ATSF	83725	36734	659368		Lockport, LA.....	B	09/12/1996	70374
Jennings (1-3320).....	[Iberia]	ATSF	83630	36676	657773		New Iberia, LA.....	B	09/12/1996	70544
Jessie Bend (3500).....	[Jefferson Davis]	ATSF	83480	36617	658450		Jennings, LA.....	B	09/12/1996	70546
Jones (1-3559).....	[Plaquemine]	MP	24115	163	649118		Myrtle Grove, LA.....	M	08/23/1996	70037
Junction City (3502).....	[Morehouse]	MP	3605	6603	651515		Mer Rouge, LA.....	M	08/23/1996	71250
Junction City (1-19-3502).....	[Union]	MP	11700	11700	652142		*Junction City, LA.....	OF	08/23/1996	71749
*Kallona (1-3559).....	[St Charles]	MP	9117	9117	652142		No Rate Basis.....	O	06/16/1995	71749
Krotz Springs (1-3559).....	[St Landry]	MP	21725	4890	646147		Edgard, LA.....	M	08/23/1996	70666
Lacassine (1-3320).....	[Jefferson Davis]	MP	13185	9128	657159		Opelousas, LA.....	M	08/23/1996	70666
Lacour (1-3559).....	[Pointe Coupee]	ATSF	83465	36608	658470		Jennings, LA.....	B	09/12/1996	70650
Lafayette (1-3320).....	[Lafayette]	MP	21985	9859	644435		New Roads, LA.....	M	08/23/1996	70715
Lafayette Storage (1-3320).....	[Lafayette]	ATSF	83530	36641	657450		Lafayette, LA.....	B	09/12/1996	70502
Lagonda (1-3320).....	[Lafayette]	ATSF	83535	36644	657450		Lafayette, LA.....	B	09/12/1996	70502
Lake Charles (1-3320).....	[St Mary]	ATSF	83655	36700	657693		No Rate Basis.....	MP	10/03/1996	70300
Lake End (1-3559).....	[Calcasieu]	LKCA	ATSF	83450	36594	658660	Lake Charles, LA.....	B	09/12/1996	70601
Lamkin (3500).....	[Red River]	MP	21265	9157	656197		Hatchitoches, LA.....	M	08/23/1996	71019
Lancel Ridge (1-3559).....	[Ouachita]	MP	11995	7073	652328		Sterlington, LA.....	M	08/23/1996	71201
Larrell (1-3559).....	[Iberville]	MP	21610	4682	645382		Donaldsonville, LA.....	M	08/23/1996	70780
Le Compt (1-3559).....	[St Landry]	MP	13235	9152	657175		Opelousas, LA.....	M	08/23/1996	70650
Le Jeune Spur (1-3559).....	[Rapides]	MP	21375	4318	655976		Bunkie, LA.....	M	08/23/1996	71346
Le Moyne (1-22-3559).....	[Allen]	MP	3980	7183	658168		Oakdale, LA.....	M	08/23/1996	70655
Lettsworth (1-3559).....	[St Landry]	MP	21420	4410	657126		Bunkie, LA.....	M	08/23/1996	71356
Lida Grove (1-3559).....	[Pointe Coupee]	LETS	MP	8890	644422		New Roads, LA.....	M	08/23/1996	70753
Lillie (3502).....	[West Baton Rouge]	MP	22110	8770	644925		Baton Rouge (W), LA.....	B	08/23/1996	70767
Lillie (1-19-3502).....	[Union]	MP	11705	11705	652146		*Bernice, LA.....	OF	08/23/1996	71254
Lithette (3500).....	[Union]	MP	9124	9124	652146		No Rate Basis.....	O	01/28/1994	71254
Liva Oak (3500).....	[Rapides]	MP	22173	9131	655960		Opelousas, LA.....	M	08/23/1996	70584
*Livonia (1-3559).....	[Plaquemine]	MP	24110	155	649115		Myrtle Grove, LA.....	M	08/23/1996	70037
Lobdell (1-3559).....	[Pointe Coupee]	LITON	MP	4496	644492		Plaquemine, LA.....	M	08/23/1996	70755
Lottie (1-3559).....	[West Baton Rouge]	LOBDE	MP	8767	644926		Baton Rouge (W), LA.....	B	08/23/1996	70767
Lucas (1-3559).....	[Pointe Coupee]	MP	13170	9118	644497		Opelousas, LA.....	M	08/23/1996	70756
Lula (1-31-3559).....	[Caddo]	MP	21175	8269	653878		Shreveport, LA.....	M	08/23/1996	71105
Lula (1-3559).....	[Assumption]	MP	22260	9121	659122		Thibodaux, LA.....	M	08/23/1996	70346
Luling (1-3559).....	[St Charles]	LULUG	MP	21750	4940	646167	New Orleans (E), LA.....	B	08/23/1996	70070
Luling (1-3320) (Formerly Luling).....	[St Charles]	ATSF	83760	36761	646167		New Orleans, LA.....	SP	10/03/1996	70070
Luling (1-3559).....	[Iberville]	MP	21500	4525	645311		Plaquemine, LA.....	M	08/23/1996	70757
Lutero (1-31-3559).....	[Jefferson]	MP	12082	5028	646524		New Orleans (E), LA.....	B	08/23/1996	70072
McDonoghville (3500).....	[Jefferson]	MP	24085	20	646501		New Orleans (E), LA.....	BM	08/23/1996	70053
*McGinty (1-3559).....	[Morehouse]	MP	3602	6601	651512		Mer Rouge, LA.....	M	08/23/1996	71250
*McNary (1-3559).....	[Rapides]	MP	9912	7146	655987		Oakdale, LA.....	M	08/23/1996	71433
Meeker (1-3559).....	[Rapides]	MP	11380	4332	655978		Bunkie, LA.....	M	08/23/1996	71346
Mormontau (1-3320).....	[Acadia]	ATSF	83485	36620	657588		Jennings, LA.....	B	09/12/1996	70556
MPC Spur (1-3500-3559).....	[Rapides]	MP	21370	6286	655970		Alexandria, LA.....	B	08/23/1996	71346
Midland (1-3320).....	[Acadia]	ATSF	83490	36623	657584		Crowley, LA.....	B	09/12/1996	70557
Morgan City (1-3320).....	[St Mary]	ATSF	83665	36706	657670		Morgan City, LA.....	B	09/12/1996	70380
Morganza (1-3559).....	[Pointe Coupee]	MP	21390	8866	644462		New Roads, LA.....	M	08/23/1996	70759
Morrison (1-3559).....	[Pointe Coupee]	MP	22015	8655	644467		New Roads, LA.....	M	08/23/1996	70751
Morrow (1-3559).....	[St Landry]	MP	21415	4406	657123		Bunkie, LA.....	G	08/23/1996	71356
*Moueta (3500).....	[Acadia]	MP	13275	9222	657528		Bunice, LA.....	M	08/23/1996	70516
Myrtle Grove (3500).....	[Plaquemine]	MP	24150	267	649136		No Rate Basis.....	BM	08/23/1996	70067

FOR EXPLANATION OF REFERENCE MARKS, SEE LAST PAGE OF NOTES SECTION



## ALPHABETICAL - FREIGHT

STATION	COUNTY	RULE 260	RR	OPSL	FSAC	SPLC	NATIONAL RATE BASIS	CHG CODE	EFFECTIVE DATE	RATE ZIP
Myrtle Grove (1-3500).....[Plaquemines]		.....	NOLR	220	257	649126	No Rate Basis.....	SM	08/23/1996	70067
Myrtle Grove (1-22-3559).....[Iberville]		.....	MP	21555	4604	645330	No Rate Basis.....	B	08/23/1996	70764
New Iberia (1-3120).....[Iberia]		.....	NEWIB	ATSP 83580	36664	657720	New Iberia, LA.....	2	09/12/1996	70560
New Orleans (1-3120).....[Orleans]		.....	NEWOR	ATSP 83765	36764	647000	New Orleans, LA.....	2	09/12/1996	70140
New Orleans (1-3559).....[Orleans]		.....	NEWOR	MP 12090	9001	647000	New Orleans (E), LA.....	3	09/17/1996	70140
North Baton Rouge (1-31-3559)										
.....[East Baton Rouge]		.....	MP	12040	9103	644772	Baton Rouge (W), LA.....	3	08/23/1996	70821
North Bend (1-3120).....[St Mary]		.....	ATSP	83425	36675	657696	Franklin, LA.....	2	09/12/1996	70538
Oak Alley (1-22-3559).....[St James]		.....	MP	21675	4813	645584	Donaldsonville, LA.....	M	08/23/1996	70086
Oak Point (3500).....[Plaquemines]		.....	MP	24097	121	649124	Myrtle Grove, LA.....	M	08/23/1996	70037
Oakville (3500).....[Plaquemines]		.....	MP	24105	143	649116	Myrtle Grove, LA.....	M	08/23/1996	70037
Oberlin (1-3559).....[Allen]		.....	MP	9975	7175	658167	Oakdale, LA.....	M	08/23/1996	70655
Olivier (1-3120).....[Iberia]		.....	ATSP	83600	36670	657742	New Iberia, LA.....	2	09/12/1996	70560
Olla (1-3559).....[La Salle]		.....	MP	9765	6711	655515	Georgetown, LA.....	M	08/23/1996	71465
Opeleousas (1-3120).....[St Landry]		.....	OPELO	ATSP 83540	36645	657160	Opeleousas, LA.....	2	09/12/1996	70570
*Oxbow (1-7-3559).....[Red River]		.....	MP	21255	8177	656183	Manfield, LA.....	M	08/23/1996	71013
Palmetto (1-3559).....[St Landry]		.....	MP	21430	4433	657135	Melville, LA.....	MP	08/23/1996	71358
Papoutville (1-3120).....[Iberia]		.....	ATSP	83605	36671	657777	New Iberia, LA.....	GP	10/01/1996	70544
Paradis (1-3120).....[St Charles]		.....	ATSP	83740	36742	646193	Des Allemands, LA.....	Z	09/12/1996	70080
Port Allen (1-31-3559)										
.....[West Baton Rouge]		PTALL	MP	22735	8741	644958	Baton Rouge (W), LA.....	3	08/23/1996	70767
Port Barre (1-3559).....[St Landry]		.....	MP	12010	8142	657157	Opeleousas, LA.....	M	08/23/1996	70577
Port Barre Jct (26-3559).....[St Landry]		.....	MP	12027	8140	657162	Opeleousas, LA.....	M	08/23/1996	70577
Power House Spur (1-3120).....[Iberia]		.....	ATSP	83595	36669	657743	New Iberia, LA.....	2	09/12/1996	70560
Pownhater (1-3559).....[Natchitoches]		.....	MP	21275	8148	655515	Natchitoches, LA.....	M	08/23/1996	71066
*Pulpwood Spur (1-3559).....[Caldwell]		.....	MP	9737	6683	655151	Monroe, LA.....	M	08/23/1996	71418
Raceland (1-3120).....[Lafourche]		.....	RCLND	ATSP 83715	36733	659353	Lockport, LA.....	2	09/12/1996	70394
Raceland Jct (3127).....[Lafourche]		.....	RACJL	BN 83714	36732	659352	Lockport, LA.....	Z	09/12/1996	70394
Ramos (1-3120).....[St Mary]		.....	ATSP	83670	36709	657683	Morgan City, LA.....	2	09/12/1996	70380
Rapides (1-3559).....[Rapides]		.....	MP	21345	4224	659923	Alexandria, LA.....	M	08/23/1996	71409
Rayne (1-3120).....[Acadia]		.....	ATSP	83515	36635	657560	Crowley, LA.....	2	09/12/1996	70578
*Reeves (1-3559).....[Allen]		.....	MP	13360	8176	658192	No Rate Basis.....	3G	08/23/1996	70658
Reisor (1-3559).....[Caddo]		.....	MP	21150	4011	653879	Shreveport, LA.....	M	08/23/1996	71121
*Riverton (1-3559).....[Caldwell]		.....	MP	9725	6675	655137	Monroe, LA.....	M	08/23/1996	71418
Roanoke (1-3120).....[Jefferson Davis]		.....	ATSP	83475	36614	658463	Jennings, LA.....	2	09/12/1996	70581
*Rodemacher (1-3559).....[Rapides]		.....	MP	21338	4205	655925	Alexandria, LA.....	M	08/23/1996	71409
Rosa (1-3559).....[St Landry]		.....	MP	21425	4415	657128	Bunkie, LA.....	M	08/23/1996	71364
Rose Bluff (1-3120).....[Calcasieu]		.....	ROSBL	ATSP 83445	36593	658673	Lake Charles, LA.....	2	09/12/1996	70669
Schriever (1-3120).....[Terrebonne]		.....	SCHRI	ATSP 83700	36724	659711	Schriever, LA.....	2	09/12/1996	70395
Schwabs (1-3559).....[Pointe Coupee]		.....	MP	21395	8863	644463	New Roads, LA.....	M	08/23/1996	70759
Scott (1-3120).....[Lafayette]		.....	ATSP	83525	36642	657463	No Rate Basis.....	MP	10/01/1996	70583
Shreveport (1-3120).....[Caddo]		.....	SHPRT	ATSP 83780	37608	653900	Shreveport, LA.....	2	09/12/1996	71101
*Shreveport (26-3559).....[Jefferson]		.....	SHPBY	MP 21805	8050	646519	New Orleans (E), LA.....	3	08/23/1996	70140
Slacks (1-22-3559).....[Iberville]		.....	MP	21505	4529	645313	Plaquemine, LA.....	M	08/23/1996	70757
Smithfield (1-3559).....[West Baton Rouge]		.....	MP	22085	8794	644918	Baton Rouge (W), LA.....	3	08/23/1996	70767
Sondheimer (3500).....[East Carroll]		.....	MP	11050	6837	651188	Tallulah, LA.....	M	08/23/1996	71276
St James (1-3559).....[St James]		.....	MP	21635	4776	645588	Donaldsonville, LA.....	M	08/23/1996	70086
St Landry (3500).....[Evangeline]		.....	MP	22160	8320	657232	Opeleousas, LA.....	M	08/23/1996	71367
Standard (6-3559).....[La Salle]		.....	MP	9760	6705	655512	Georgetown, LA.....	M	08/23/1996	71465
Star (3500).....[Plaquemines]		.....	MP	24125	194	649134	Myrtle Grove, LA.....	M	08/23/1996	70037
Swartz (1-3559).....[Ouachita]		.....	MP	9655	6636	652319	Mer Rouge, LA.....	M	08/23/1996	71281
Taft (1-22-3559).....[St Charles]		.....	MP	21735	4904	646143	New Orleans (E), LA.....	3	08/23/1996	70057
Talla Bena (3500).....[Madison]		.....	MP	11060	6840	651718	Tallulah, LA.....	M	08/23/1996	71276
Tate Cove (3500).....[Evangeline]		.....	MP	22165	8325	657238	Opeleousas, LA.....	M	08/23/1996	70586
Thibodaux (1-3120).....[Formerly Thibodaux]		.....	ATSP	83710	36730	659320	Thibodaux, LA.....	3	10/01/1996	70301
Thibodaux Jct (1-3120).....[Formerly Thibodaux Jct]		.....	ATSP	83705	36727	659146	Thibodaux, LA.....	SM	10/01/1996	70301
Tioga (1-31-3559).....[Rapides]		.....	TIOGA	MP 9855	6789	655917	Alexandria, LA.....	M	08/23/1996	71477
Trotue (1-3120).....[Acadia]		.....	ATSP	83500	36629	657501	No Rate Basis.....	MP	10/01/1996	70534
Transylvania (3500).....[East Carroll]		.....	MP	11035	4828	651160	Lake Providence, LA.....	M	08/23/1996	71286
*Tucker (1-3559).....[St Landry]		.....	MP	13206	8138	657155	Opeleousas, LA.....	M	08/23/1996	70577
Tullos (1-3559).....[La Salle]		.....	MP	9780	6726	655542	Georgetown, LA.....	M	08/23/1996	71479
*Unatex (1-3559).....[Evangeline]		.....	MP	13317	8162	657297	Bunkie, LA.....	M	08/23/1996	70515
Urania (1-3559).....[La Salle]		.....	URANI	MP 9775	6717	655518	Georgetown, LA.....	M	08/23/1996	71480
Ursa (1-3120).....[Assumption]		.....	ATSP	83695	36715	659193	No Rate Basis.....	2	08/15/1996	70340
Vacherie (1-3559).....[St James]		.....	MP	21690	4832	645582	Edgard, LA.....	M	08/23/1996	70090
*Valderouge (1-3559).....[Rapides]		.....	MP	9897	7133	655982	Alexandria, LA.....	M	08/23/1996	71485
Vallier (1-3120).....[St Charles]		.....	ATSP	83735	36739	646195	Des Allemands, LA.....	2	09/12/1996	70080
Victory Switch (3500).....[Plaquemines]		.....	MP	24092	78	649109	New Orleans (E), LA.....	SM	08/23/1996	70037
Ville Platte (3500).....[Evangeline]		.....	MP	22170	8329	657250	Opeleousas, LA.....	M	08/23/1996	70586
Walroy (1-3120).....[Lafayette]		.....	ATSP	83550	36647	657473	Lafayette, LA.....	2	09/12/1996	70502
Waterford Spur (1-3559).....[St Charles]		.....	MP	21730	4894	646142	Edgard, LA.....	M	08/23/1996	70066
Welsh (1-3120).....[Jefferson Davis]		.....	ATSP	83470	36611	658467	Jennings, LA.....	2	09/12/1996	70591
West Bridge Jct (1-3120).....[Jefferson]		.....	ATSP	83750	36754	646526	No Rate Basis.....	2	09/12/1996	70000
West Lake (1-3120).....[Calcasieu]		.....	WLAKS	ATSP 83435	36590	658671	Lake Charles, LA.....	2	09/12/1996	70669
West Lake Charles (1-3120).....[Calcasieu]		.....	WLKCS	ATSP 83440	36592	658670	Lake Charles, LA.....	2	09/12/1996	70669
Westdale (1-3559).....[Red River]		.....	MP	21220	8206	656128	Manfield, LA.....	M	08/23/1996	71105
Westwego (1-3120).....[Jefferson]		.....	ATSP	83755	36757	646525	New Orleans, LA.....	2	09/12/1996	70094
Westwego (1-31-3559).....[Jefferson]		.....	Wwego	MP 12076	8055	646525	New Orleans (E), LA.....	3	08/23/1996	70094
White Castle (1-3559).....[Iberville]		.....	MP	21595	4663	645380	Donaldsonville, LA.....	M	08/23/1996	70788
*Woodlawn (1-3559).....[Jefferson Davis]		.....	MP	10035	7214	658447	Lake Charles, LA.....	M	08/23/1996	70647
Woodworth (1-3559).....[Rapides]		.....	MP	9890	7130	655981	Alexandria, LA.....	M	08/23/1996	71485
Zacarter (1-3120).....[Terrebonne]		.....	ATSP	83690	36718	659727	Schriever, LA.....	2	09/12/1996	70356

## MAINE

*Albert (1-386-3100).....[Arundel]	.....	BAR	1242	11065	11065	Van Buren, ME.....	2	09/01/1996	04743
Brownville Junction (1).....[Piscataquis]	.....	BRNJ	NBSR 589	589	114807	No Rate Basis.....	MP	09/02/1996	04415

FOR EXPLANATION OF REFERENCE MARKS, SEE LAST PAGE OF NOTES SECTION



EXHIBIT 2

# MISSOURI PACIFIC RAILROAD COMPANY



SUPPLEMENT 195  
TO

## TARIFF MP 8170-C

Cancels Supplement 194.

Supplements 149, 164, 171, 180, 182, 190 and 195 and the Special Supplement shown on page 2 of Supplement 149 contain all changes.

### LOCATION OF NEW OR CHANGED ITEMS

The latest complete list of all new or changed items in effective Supplements is published in Supplement 190.  
The latest complete list of all stations listing corporations, etc. in effective supplements is published in Supplement 190.

### ABSORPTIONS OF SWITCHING AND OTHER TERMINAL CHARGES AND ALLOWANCES AT STATIONS ON MISSOURI PACIFIC RAILROAD DONIPHAN, KENSETT & SEARCY RAILWAY (Except as Noted in Item 325)

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## SWITCHING TARIFF

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This tariff applies on intrastate traffic in the states of Arkansas, Colorado, Illinois, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, Tennessee (Memphis) and Texas.

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ISSUED AUGUST 8, 1996

♠ -- EFFECTIVE AUGUST 9, 1996  
♠ -- EFFECTIVE AUGUST 30, 1996

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K. H. SCHROEDER  
Manager-Pricing Publications  
UNION PACIFIC RAILROAD  
1416 Dodge Street  
Omaha, Nebraska 68179

(Published by Railroad Publication Services, Atlanta, GA 30335)

## SECTION 7 - RULES AND REGULATIONS

## LOCATION OF INDUSTRIES

Reciprocal switching will be performed at the following Industries and Warehouses located in New Orleans, LA and Sub-Ports:

ITEM	INDUSTRY OR WAREHOUSE	BUSINESS	LOCATION
133 2950-J	ADM/Growmark .....	Grain Elevator .....	Ama, LA.
	Amerada Hess Corp .....	Bulk Storage .....	Marrero, LA.
	Avondale Shipyards, Divn Avondale Industries, Inc. ....	Ship Building .....	Avondale and Westwego, LA.
	Bon Marche Furniture Co. ....	Furniture .....	Marrero, LA.
	Bulk Chemical .....	Chemicals .....	Gretna, LA.
	Calotex Corp .....	Insulating Wallboard .....	Harvey, LA.
	Chemco Corp .....	Chemicals .....	Westwego, LA.
	Continental Grain Co .....	Chemicals .....	Westwego, LA.
	Crescent Feed .....	Grain Elevator .....	Westwego, LA.
	Cytec Industries .....	Bulk Grain .....	Westwego, LA.
	Delta Commodities Co .....	Chemicals .....	Avondale, LA.
	Foster, L.B. ....	Bulk Liquid Storage .....	Harvey, LA.
	Gibson Romans Co .....	Pipe Storage .....	Marrero, LA.
	Gulf States Asphalt Co .....	Roofing Compounds .....	Gretna, LA.
	Intercoastal Warehouse, Inc. ....	Asphalt .....	Westwego, LA.
	International Matex Tank Terminal Co .....	Warehouse .....	Westwego, LA.
	Jefferson Parish School Board Warehouse, Inc. ....	Tank Storage .....	Avondale, LA.
	Louisiana Highway Dept .....	School Supplies .....	Harvey, LA.
	Louisiana Power & Light Co .....	Highway Materials .....	Harvey, LA.
	Maiter International .....	Power Plant .....	Westwego, LA.
	National Gypsum Co (Division Gold Bond) .....	Cleaning Compounds .....	Gretna, LA.
	PM Ag Products Westwego .....	Gypsum Products .....	Westwego, LA.
	Perry Street Wharf .....	Wharf .....	Westwego, LA.
	Publicker Chemical .....	Alcohol .....	Gouldsboro, LA.
	Schmidt, Bob .....	Staurolite Residue .....	Gretna, LA.
	Service Foundry, Inc. ....	Foundry .....	Gretna, LA.
	Sigma Coating Co .....	Paint and Varnish .....	Avondale, LA.
	Southern Scrap Material .....	Scrap .....	Harvey, LA.
	Stan Blast Abrasives .....	Paint .....	Westwego, LA.
	Sun Chemical Co .....	Chemicals .....	Harvey, LA.
	(258) ST Services .....	Grain Products Storage .....	Victory Switch at Belle Chasse, LA.
	Texaco, Inc. ....	Petroleum Products .....	Westwego, LA.
	Texaco Refining Marketing .....	Pipe and Storage .....	Harvey, LA.
	Tubular Threading .....	Pipe .....	Marrero, LA.
	U.S. Steel Co. Warehouse .....	Steel .....	Marrero, LA.
	Vinson Supply .....	Pipe .....	Westwego, LA.
	Ward Lumber Co .....	Lumber .....	Marrero, LA.
	West Building Materials .....	Lumber and Hardware .....	Gretna and Gouldsboro, LA.
	WITCO Chemicals Co .....	Chemicals .....	Gretna, LA.
	Zartman, Inc. ....	Seasoning Supplier .....	Gretna, LA.
	(DQ 3389)		Gouldsboro, LA.



SECTION 7 - SWITCHING CHARGES ON CL FREIGHT  
(See Item 2995 for Application)

ITEM	BETWEEN (Except as Noted)	AND (Except as Noted)	CHARGES IN CENTS PER CAR			
			① COLUMN 1	② COLUMN 2	③ COLUMN 3	④ COLUMN 4
184 3000-G	New Orleans ..... LA ALSO Interchange connections with IC, NOPB or NS, in Jefferson Parish. (DQ-3393)	Avondale ..... LA Gouldsboro ..... LA Gretna ..... LA Harvey ..... LA Marrero ..... LA Westwego ..... LA	① 39000	...	21700	19300
			② 21400 ③ 12700			
3070-H	Industries at Baton Rouge (Port Allen), LA, as described in item 2915.	Baton Rouge, LA interchanges. (See Note 1)	① 40000 ② 25200 ③ 15300 (See Note 2)	8300	21700	19300

NOTE 1. When for road-haul via KCS, does not include IC intermediate switch charge in item 5285, Tariff ICC IC 8000-series.

NOTE 2. Reciprocal switching service will be performed only on traffic on which the lowest rate or charge does not apply via the MP as a revenue line haul carrier. & (DQ 3397)

## EXPLANATION OF REFERENCE MARKS

- + Denotes Reduction.  
 + Denotes Increase.  
 ① Charges apply whether or not absorbed in whole or in part by line haul carriers.  
 ② Not applicable in connection with CR.  
 ③ For application of charges in or on Special Equipment, see item 385.  
 ④ Applicable only on Grain, as described in List 1, item 200, Tariff WTL 6330-series. Also soybeans, as described in List 5, item 250, Tariff WTL 6330-series.  
 ⑤ Applies on Grain, Grain Products, Seeds and related articles as described in Tariff WTL 6330-series.  
 ⑥ Applies only in connection with the IC.  
 ⑦ Not applicable in connection with the IC.  
 ⑧ Applicable only in connection with the ATSF.  
 ⑨ Applicable only in connection with the BN.  
 ⑩ Applicable only in connection with the KCS (formerly LA).  
 ⑪ When from or to connections with the CR.  
 ⑫ Applicable only in connection with the SSW.  
 ⑬ Applicable only in connection with the CSXT.  
 ⑭ Applicable only in connection with the NS.  
 ⑮ Applies only in connections with the GWWR.  
 \*\*\* Open to reciprocal switching only on traffic that originates or terminates east of the Mississippi River.  
 Denotes industries which are hereby CANCELLED, account name changed, no longer in business, moved off line, or no longer served by this railroad.  
 (With number enclosed) - Reissued from supplement bearing the number enclosed within the square. (See item 100)

# MISSOURI PACIFIC RAILROAD COMPANY



SUPPLEMENT 197  
TO

## TARIFF MP 8170-C

Cancels Supplements 171, 195 and 196.  
Supplements 149, 164, 180, 182, 190 and 197 and the Special Supplement shown on page 2 of  
Supplement 149 contain all changes.

### LOCATION OF NEW OR CHANGED ITEMS

The latest complete list of all new or changed items in effective Supplements is published in this Supplement.  
The latest complete list of all stations listing corporations, etc. in effective supplements is published in  
this Supplement.

ABSORPTIONS OF SWITCHING AND OTHER TERMINAL CHARGES  
AND  
ALLOWANCES  
AT STATIONS ON  
MISSOURI PACIFIC RAILROAD  
DONIPHAN, KENSETT & SEARCY RAILWAY  
(Except as Noted in Item 325)

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## SWITCHING TARIFF

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This tariff applies on intrastate traffic in the states of Arkansas, Colorado, Illinois, Kansas, Louisiana, Missouri, Nebraska,  
Oklahoma, Tennessee (Memphis) and Texas.

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ISSUED SEPTEMBER 13, 1996

EFFECTIVE SEPTEMBER 14, 1996

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K. H. SCHROEDER  
Manager-Pricing Publications  
UNION PACIFIC RAILROAD  
1416 Dodge Street  
Omaha, Nebraska 68179

(Published by Railroad Publication Services, Atlanta, GA 30335)



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## STATION

Brownsville ..... TX

## CORPORATION, FIRM, INDIVIDUAL OR TEAM TRACK LOCATION

City of Brownsville (City Abattoir Track) .....

Jones Moving and Storage .....

M. I. Drilling Fluids .....

Milwhite .....

195 \*\*\* .....

Premier Services .....

Tex Mex Cold Storage - Number 1 .....

Tex Mex Cold Storage - Number 2 .....

(DQ 3397)

## STATION

Malvern ..... AR

## CORPORATION, FIRM, INDIVIDUAL OR TEAM TRACK LOCATION

197 \*\*\* .....

## STATION

Monroe ..... LA

## CORPORATION, FIRM, INDIVIDUAL OR TEAM TRACK LOCATION

Allen Millwork Mfg Co .....

Baird's Inc .....

Brookings, R. E., Co .....

Faulk-Coiller Bonded Warehouses, Inc (No 1) .....

120 Gulf South Warehouse .....

Howard Brothers Discount Stores, Inc .....

L.A. Industries .....

Majone and Hyde .....

Monroe Brick &amp; Builders Supply Co .....

197 \*\*\* .....

197 Monroe Warehouse Co .....

MPM Oils .....

124 Murphy GC .....

News-Star-World Publishing Corp .....

Reed &amp; Sons Hardwoods, Inc .....

Sears, Roebuck &amp; Co .....

Seig Mfg Co .....

Slagle-Johnson Lumber Co .....

Strauss, F. &amp; Sons, Inc .....

Strauss Liquor Corp .....

(DQ 3325)

## 168 STATION

Parsons ..... KS

## CORPORATION, FIRM, INDIVIDUAL OR TEAM TRACK LOCATION

Beachner Grain .....

Kansas Army Ammunition Plant .....

TecTank, Inc. ....

Valley Distributors, Inc. ....

Woods, O. E. Lumber Co .....

(DQ 3325)



SUPPLEMENT 197 TO TARIFF MP 8170-C

ITEM	SUBJECT	RULES AND REGULATIONS																																																																																																													
(NL) 122-B	APPLICATION OF RECIPROCAL SWITCHING CHARGES, IN CONNECTION WITH ATSF LINE HAUL TRAFFIC	<p>Provisions of other items of this tariff naming reciprocal switching charges, do not apply on traffic received from or delivered to the ATSF. In lieu thereof, reciprocal switching charges will be \$100.00 per loaded car. (See Exceptions)</p> <p>EXCEPTION 1. Not applicable in connection with shipments of coal (STCC 11 (X)) nor coke (STCC 29 913 (X) or 29 914 (X)).</p> <p>EXCEPTION 2. Not applicable in connection with shipments of grain and products of grain, moving under the provisions of item 137-series.</p> <p>* EXCEPTION 3. Not applicable in connection with shipment at Lake Charles, LA, moving under the provisions of item 570-series.</p> <p>(DQ 3403)</p>																																																																																																													
(198) 125-E	APPLICATION OF RECIPROCAL SWITCHING CHARGES AND ABSORPTION OF SWITCHING CHARGES IN CONNECTION WITH SP OR SSW	Cancel. (DQ 3400)																																																																																																													
(198) 130-F	APPLICATION OF RECIPROCAL SWITCHING CHARGES AND ABSORPTIONS ON GRAIN AND FOODS IN CONNECTION WITH DRGW, SP OR SSW	Cancel. (DQ 3400)																																																																																																													
(NL) 137-B	APPLICATION OF RECIPROCAL SWITCHING CHARGES ON GRAIN AND PRODUCTS IN CONNECTION WITH ATSF LINE HAUL TRAFFIC	<p>Provisions of other items of this tariff naming reciprocal switching charges do not apply on traffic received from or delivered to the ATSF. In lieu thereof, reciprocal switching charges will be \$80.00 per loaded car. (Exceptions)</p> <p>The provisions named above apply only on the following commodities as more fully described in Section 2 of Tariff ICC STCC 6001-series: (X)</p> <table border="1"> <thead> <tr> <th>STCC NO.</th><th>DESCRIPTION</th><th>STCC NO.</th><th>DESCRIPTION</th></tr> </thead> <tbody> <tr><td>01 131</td><td>Barley</td><td>20 421</td><td>Prepared Feed</td></tr> <tr><td>01 132</td><td>Corn</td><td>20 449</td><td>Rice Hulls</td></tr> <tr><td>01 133</td><td>Oats</td><td>20 451</td><td>Prepared Flour</td></tr> <tr><td>01 135</td><td>Rye</td><td></td><td>(phosphated, self-rising)</td></tr> <tr><td>01 136</td><td>Sorghum</td><td>20 452</td><td>Prepared Flour, mixes</td></tr> <tr><td>01 137</td><td>Wheat</td><td>20 465</td><td>Corn Oil</td></tr> <tr><td>01 139</td><td>Grain, nec</td><td>20 467</td><td>Wet Process Corn</td></tr> <tr><td>01 141</td><td>Cottonseed</td><td>20 469</td><td>Wet Process Corn, Milling</td></tr> <tr><td>01 142</td><td>Flaxseeds</td><td>20 619</td><td>Sugar Mill By-Products</td></tr> <tr><td>01 144</td><td>Soybeans</td><td>20 626</td><td>Molasses Beet Pulp</td></tr> <tr><td>01 149</td><td>Sunflower Seeds</td><td>20 823</td><td>Malt Extract or Brewers</td></tr> <tr><td>01 151</td><td>Grass Seeds</td><td></td><td>Spent Grains</td></tr> <tr><td>01 159</td><td>Seeds</td><td>20 831</td><td>Malt</td></tr> <tr><td>01 191</td><td>Fodder, Hay or Roughage</td><td>20 832</td><td>Flour Sprouts</td></tr> <tr><td>01 196</td><td>Straw</td><td>20 839</td><td>Malt Products or By-Products</td></tr> <tr><td>01 199</td><td>Field Crop, nec</td><td></td><td>By-Products of Liquor</td></tr> <tr><td>01 991</td><td>Hay</td><td>20 859</td><td>Distilling</td></tr> <tr><td>01 992</td><td>Alfalfa</td><td></td><td>Cottonseed Oil</td></tr> <tr><td>20 411</td><td>Wheat flour</td><td>20 911</td><td>Cottonseed Meal</td></tr> <tr><td>20 412</td><td>Wheat Bran, Middlings</td><td>20 914</td><td>Soybean Oil</td></tr> <tr><td>20 413</td><td>Corn Meal or Flour</td><td>20 921</td><td>Soybean Meal</td></tr> <tr><td>20 414</td><td>Rye Flour or Meal</td><td>20 923</td><td>Linseed Oil</td></tr> <tr><td>20 415</td><td>Buckwheat Flour or Meal</td><td>20 931</td><td>Oil Nuts</td></tr> <tr><td>20 416</td><td>Oat Flour or Meal</td><td>20 933</td><td>Oil Seed Cake Meal</td></tr> <tr><td>20 418</td><td>Grain Mill By-Products</td><td>20 939</td><td>Cottonseed</td></tr> <tr><td>20 419</td><td>Flour or other Grain Mill Products, nec</td><td>(1) 50 011 10</td><td></td></tr> </tbody> </table> <p>(1) Filled with ICC as information only.</p> <p>EXCEPTION 1. Not applicable in connection with shipments moving under the provisions of reference mark (254) in item 860-series.</p> <p>* EXCEPTION 2. Not applicable in connection with shipments at Lake Charles, LA, moving under the provisions of item 570-series.</p> <p>(DQ-3284)</p>		STCC NO.	DESCRIPTION	STCC NO.	DESCRIPTION	01 131	Barley	20 421	Prepared Feed	01 132	Corn	20 449	Rice Hulls	01 133	Oats	20 451	Prepared Flour	01 135	Rye		(phosphated, self-rising)	01 136	Sorghum	20 452	Prepared Flour, mixes	01 137	Wheat	20 465	Corn Oil	01 139	Grain, nec	20 467	Wet Process Corn	01 141	Cottonseed	20 469	Wet Process Corn, Milling	01 142	Flaxseeds	20 619	Sugar Mill By-Products	01 144	Soybeans	20 626	Molasses Beet Pulp	01 149	Sunflower Seeds	20 823	Malt Extract or Brewers	01 151	Grass Seeds		Spent Grains	01 159	Seeds	20 831	Malt	01 191	Fodder, Hay or Roughage	20 832	Flour Sprouts	01 196	Straw	20 839	Malt Products or By-Products	01 199	Field Crop, nec		By-Products of Liquor	01 991	Hay	20 859	Distilling	01 992	Alfalfa		Cottonseed Oil	20 411	Wheat flour	20 911	Cottonseed Meal	20 412	Wheat Bran, Middlings	20 914	Soybean Oil	20 413	Corn Meal or Flour	20 921	Soybean Meal	20 414	Rye Flour or Meal	20 923	Linseed Oil	20 415	Buckwheat Flour or Meal	20 931	Oil Nuts	20 416	Oat Flour or Meal	20 933	Oil Seed Cake Meal	20 418	Grain Mill By-Products	20 939	Cottonseed	20 419	Flour or other Grain Mill Products, nec	(1) 50 011 10	
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**SUPPLEMENT 197 TO TARIFF MP 3170-C**

ITEM	SUBJECT	RULES AND REGULATIONS
<b>171</b> 325-M	NON-APPLICATION OF SWITCHING CHARGES AT SPECIFIC POINTS NAMED	<p>(a) Rates published herein will not apply at Kansas City, MO-KS on interstate traffic on Crushed Rock, Crushed Stone and/or Crushed Limestone, CL, on traffic destined stations in Kansas or Missouri to which through rates are provided in Tariff ICC SWFB 4319-series or Tariff ICC WTL 4337-series.</p> <p>(b) Rates published herein will not apply on intrastate traffic on Crushed Rock, Crushed Stone and/or Crushed Limestone, CL, from Leads, MO, on traffic destined to stations in Missouri to which through rates are provided in Tariff ICC SWFB 4319-series.</p> <p>(c) The switching charges as published in this tariff will apply except as provided in Paragraphs (a) and (b).</p> <p>Provisions formerly shown and not brought forward eliminated. (DQ-3333)</p>
<b>138</b> 350-B	SWITCHING AT COMMON STATIONS (DQ 3400)	When DRGW, SP, SSW, SSWN or UP line haul traffic is destined to or originates from any industry physically served by the MP, the industry will also be considered to be served by the DRGW, SP, SSW, SSWN or UP.
<b>138</b> 351	APPLICATION OF RECIPROCAL SWITCHING CHARGES AND ABSORPTIONS WITH DRGW, SP, SSW, SSWN OR UP (DQ 3400)	Reciprocal switching charges or provisions relating to absorption of switching charges do not apply on shipments received from or delivered to DRGW, SP, SSW, SSWN or UP.
<b>138</b> 480-D	INTERMEDIATE SWITCHING SERVICE AT ST LOUIS, MO-EAST ST LOUIS, IL	Cancel. (DQ 3329)

**SECTION 1**  
**RECIPROCAL AND INTERMEDIATE SWITCHING CHARGES (See Items 240 and 260)**  
**Charges in Cents Per Car (Except as Noted)**

ITEM	SUBJECT	Switching charges named in Items 500 to 715 will not apply where charges are provided in Items 720 to 870.	
		AT STATIONS IN	① CHARGES
<b>147</b> 554-B	RECIPROCAL AND INTERMEDIATE SWITCHING CHARGES-GENERAL	Parsons .....KS	13900
		Provisions formerly shown and not brought forward are hereby ELIMINATED. Tariff as amended applies. (DQ 3329)	
570-C		Lake Charles .....LA	* <b>257</b> 6000 * <b>147</b> 7800 * <b>258</b> 13000
		(DQ 3403)	

ITEM	STATION	COMMODITY	BETWEEN	AND	① CHARGES
<u>183</u> 745-F	Chicago, IL Switching District as defined in Tariff WTL 8020-series. (DQ-3383)	All Freight	Industries	Connecting Lines.	<u>131</u> 29500 <u>212</u> 40600 <u>130</u> 36500
<u>183</u> 755-D	Chicago Heights, IL and its Switching District (DQ-3383)	All Freight	Industries	Connecting Lines	<u>24</u> 14800 <u>212</u> 40600
<u>184</u> 758-E	East St Louis ..... IL  (DQ-3393)	All Freight, CL.	Connection at Val- ley Jct. IL with: ATSF, GWR or IC	Industries at: Dupo, Sugar Loaf, or Valley Jct. IL	<u>135</u> 21500 <u>130</u> 27500 <u>228</u> 22900
			Connections with: ALS or TRRA	Industries at Bixby, Dupo, Sugar Loaf or Valley Jct. IL	<u>221</u> 10400 <u>212</u> 38500 <u>220</u> 49500 <u>142</u> 18800 <u>221</u> 25000 <u>222</u> 29600 <u>130</u> 27500
<u>184</u> 800-G	Memphis ..... TN  (DQ-3393)	Freight, All kinds.	MP Interchange with Connecting Carriers.	INDUSTRIES	<u>220</u> 13700 <u>142</u> 15900 <u>221</u> 7200 <u>130</u> 39000 <u>222</u> 7600
				Memphis Municipal Terminal.	
			Paine Yards	Georgia St Warehouse	
			MP Interchange with Connection Carriers.	Industrial Tracks of Tennessee Chute Har- bor Project.	
<u>192</u> 810-D	Mt Vernon ..... IL	All Freight	Industries	Connection with CSXT and NS	14800
<u>184</u> 832-E	St Louis ..... MO  (DQ-3393)	All Freight, CL.	Connections	Industries	<u>221</u> 10400 <u>220</u> 25000 <u>212</u> 38500 <u>142</u> 18800 <u>222</u> 29600 <u>220</u> 49500 <u>130</u> 27500

**SECTION 2 - INTER-TERMINAL AND INTERMEDIATE SWITCHING CHARGES**  
(See Items 240 and 260) Switching Charges in Cents per Car (Except as Noted)

ITEM	STATION	SWITCHING CHARGES		
<div>179</div> 927 05-D	Brownsville . . . . TX (Applicable only on traffic received from or delivered to the National Railways of Mexico, via the Brownsville and Matamoros Bridge Company (BMB))	Interchange connections of the MP with the BMB . . . . .	Interchange connection of MP with the BRG . . . . .	\$193.00 (Notes 1, 2 and 3)
		NOTE 1. Includes bridge charge published in Brownsville and Matamoros Bridge Company Circular 1200-series. NOTE 2. On railway cars moving on their own wheels from Mexico to repair facilities on the tracks of the BRG, this charge includes the empty return of the car. NOTE 3. When cars are to be weighed at the customer's request, there will be an additional charge of \$200.00 per car. (DQ 3331)		

**SECTION 4**  
**SPECIFIC EXCEPTIONS TO GENERAL ABSORPTIONS OF SWITCHING AND TERMINAL CHARGES**

ITEM	STATION	ABSORPTION (Subject to Item 1840, Except as Noted)	
1990-C	MARION . . . . . IL	Switching charges of the Crab Orchard & Egyptian RR not to exceed \$200.00 per loaded car will be absorbed. Charges not absorbed will be in addition to the line haul charges. (DQ 3328)	
<div>180</div> 2125-C	ST LOUIS, MO EAST ST LOUIS, IL (See Item 495)	Cancel (DQ 3329)	
<div>180</div> 2135-C		Cancel (DQ 3329)	
<div>180</div> 2215-B		Cancel (DQ 3329)	
<div>180</div> 2240-B		Cancel (DQ 3329)	
<div>180</div> 2250-B		Cancel (DQ 3329)	
<div>180</div> 2265-B		Cancel (DQ 3329)	
<div>180</div> 2266-A		Unless otherwise provided, on shipments which originate and terminate beyond the East St Louis, IL/St Louis, MO switching limits, MP will absorb the intermediate switching charge or the Trans-Mississippi River charge of the ALS or TRRA, only when MP is the delivering line-haul carrier. Unless otherwise provided, on shipments which originate or terminate on connecting lines within the East St Louis, IL/St Louis, MO switching limits, MP will absorb the ALS or TRRA intermediate switch charge or the Trans-Mississippi River charge. (DQ 3329)	



## SECTION 7 - RULES AND REGULATIONS

## LOCATION OF INDUSTRIES

Reciprocal switching will be performed at the following industries and Warehouses located in New Orleans, LA and Sub-Ports:

ITEM	INDUSTRY OR WAREHOUSE	BUSINESS	LOCATION
1921 2950-J	ADM/Growmark	Grain Elevator	Ama, LA.
	Amerada Hess Corp	Bulk Storage	Marrero, LA.
	Avondale Shipyards, Divn Avondale Industries, Inc.	Ship Building	Avondale and Westwego, LA.
	Bon Marche Furniture Co.	Furniture	Marrero, LA.
	Bulk Chemical	Chemicals	Gretna, LA.
	Celotex Corp	Insulating Wallboard	Harvey, LA.
	Chemco Corp	Chemicals	Westwego, LA.
	Continental Grain Co	Grain Elevator	Westwego, LA.
	Crescent Feed	Bulk Grain	Westwego, LA.
	Cytac Industries	Chemicals	Avondale, LA.
	Delta Commodities Co	Bulk Liquid Storage	Harvey, LA.
	Foster, L.B.	Pipe Storage	Marrero, LA.
	Gibson Homans Co	Roofing Compounds	Gretna, LA.
	Gulf States Asphalt Co	Asphalt	Westwego, LA.
	Intercoastal Warehouse, Inc	Warehouse	Westwego, LA.
	International Matex Tank Terminal Co	Tank Storage	Avondale, LA.
	Jefferson Parish School Board Warehouse, Inc	School Supplies	Harvey, LA.
	Louisiana Highway Dept	Highway Materials	Harvey, LA.
	Louisiana Power & Light Co	Power Plant	Westwego, LA.
	Maiter International	Cleaning Compounds	Gretna, LA.
	National Gypsum Co (Division Gold Bond)	Gypsum Products	Westwego, LA.
	PM Ag Products Westwego	Wharf	Westwego, LA.
	Perry Street Wharf	Alcohol	Gouldsboro, LA.
	Publicker Chemical	Staurolite Residue	Gretna, LA.
	Schmidt, Bob	Foundry	Gretna, LA.
	Service Foundry, Inc	Paint and Varnish	Avondale, LA.
	Sigma Coating Co	Scrap	Harvey, LA.
	Southern Scrap Material	Paint	Westwego, LA.
	Stan Blast Abrasives	Chemicals	Harvey, LA.
	Sun Chemical Co	Grain Products Storage	Victory Switch at Belle Chasse, LA.
	(258) ST Services	Petroleum Products	Westwego, LA.
	Texaco, Inc	Pipe and Storage	Harvey, LA.
	Texaco Refining Marketing	Pipe	Marrero, LA.
	Tubular Threading	Steel	Marrero, LA.
	U.S. Steel Co. Warehouse	Pipe	Westwego, LA.
	Vinson Supply	Lumber	Marrero, LA.
	Ward Lumber Co	Lumber and Hardware	Gretna and Gouldsboro, LA.
	West Building Materials	Chemicals	Gretna, LA.
	WITCO Chemicals Co	Seasoning Supplier	Gretna, LA.
	Zartman, Inc		Gouldsboro, LA.
	(DQ 3389)		

SECTION 7 - SWITCHING CHARGES ON CL FREIGHT  
(See Item 2995 for Application)

ITEM	BETWEEN (Except as Noted)	AND (Except as Noted)	CHARGES IN CENTS PER CAR			
			① COLUMN 1	⑤ COLUMN 2	⑤ COLUMN 3	⑤ COLUMN 4
3000-H	New Orleans	LA	(130) 39000 A (258) 21400 ③ 12700	...	21700	19300
	(DQ-34(3))	Avondale Gouldsboro Gretna Harvey Marrero Westwego	LA LA LA LA LA LA			

**SECTION 7 - SWITCHING CHARGES ON CL FREIGHT**  
 (See Item 2995 for Application)

ITEM	BETWEEN (Except as Noted)	AND (Except as Noted)	CHARGES IN CENTS PER CAR			
			① COLUMN 1	② COLUMN 2	③ COLUMN 3	④ COLUMN 4
3045-F	New Orleans ..... LA (Applies from all points within New Orleans (proper) terminal of the MP, located in Orleans Parish). (DQ-3403)	New Orleans ..... LA (Applies to all points within New Orleans (proper) terminal of the MP, located in Orleans Parish).	<del>(130)</del> 28500 A <del>(258)</del> 21400	7200	21700	19300
3055-B	Belle Chasse ..... LA (DQ 3403)	Avondale ..... LA Gouldsboro ..... LA Marrero ..... LA New Orleans ..... LA Westwego ..... LA	A <del>(258)</del> 21400 <del>(130)</del> 31200	8300	...	...
<del>(198)</del> 3070-I	Industries at Baton Rouge (Port Allen), LA, as described in item 2915.	Baton Rouge, LA interchanges. (See Note 1)	<del>(130)</del> 40000 <del>(188)</del> 25200 B <del>(130)</del> 15300 (See Note 2)	8300	21700	19300
NOTE 1. When for road-haul via KCS, does not include IC intermediate switch charge in item 5285, Tariff ICC IC 8000-series. NOTE 2. Reciprocal switching service will be performed only on traffic on which the lowest rate or charge does not apply via the MP as a revenue line haul carrier. (DQ 3397)						

**SECTION 8 - RULES AND REGULATIONS**
**RECIPROCAL SWITCHING WILL BE PERFORMED AT THE  
 FOLLOWING INDUSTRIES AND DELIVERY POINTS WITHIN  
 THE KANSAS CITY, MO-KS SWITCHING LIMITS**

Rate District shown applies in connection with rates named in items 3655, 3660, 3665 and 3740.

ITEM	NAME OF INDUSTRY SWITCH OR DELIVERY POINT	LOCATION KCK-Means Kansas City, KS KCM-Means Kansas City, MO	RATE DIS- TRICT	DISTANCE IN MILES				
				TO STATE LINE	To Connections Located in Groups (See item 3255)			
					1	2	3	4
<del>(198)</del> 3445-A	KCS Board of Public Utilities ..... (DQ 3328)	Quindaro ..... KS	9	3.27	4.34	5.54	10.89	3.43

## SECTION 8

RECIPROCAL AND INTERTERMINAL SWITCHING CHARGES IN CENTS PER CAR, EXCEPT AS NOTED

## ITEM 3655-G

AND MP CONNECTIONS LOCATED IN:

BETWEEN RATE DISTRICT (See Items 3280-3650)	GROUP A (See Item 3270)				GROUP B See Item 3270	
	COLUMN A (See Note 1)		COLUMN B (See Note 2 and Exception)		COLUMN A (See Note 1)	COLUMN B (See Note 2 and Exception)
	①		②		①	②
1	23100 (129) 29300		26900		(227) 13400 (113) 22700 (224) 27900 (150) 18700 (220) 29200 (119) 13900	32800
1-A 2 3	14500 (129) 25200		17700		(227) 7900 (113) 16700 (224) 22800 (150) 11000 (220) 17100 (119) 8200	19000
4	16400 (129) 25200		18000		(227) 7900 (113) 16700 (224) 22800 (150) 11000 (220) 17100 (119) 8200	17700
5	16400 (129) 25200		18000		(227) 7100 (113) 16700 (224) 22800 (150) 10100 (220) 15500 (119) 7400	17700
6	19900 (129) 25200		22800		(227) 9800 (113) 16700 (224) 22800 (150) 13400 (220) 21000 (119) 10200	22800
7	23100 (129) 29300		26900		(227) 13400 (113) 22700 (224) 27900 (150) 18700 (220) 29200 (119) 13900	32800
8	29400		18000		29400	6300
9 (DQ 3328)	(148) 25200 (148) 49500		25200		25200	25200

NOTE 1. Where reference is made hereto, Column A rates apply on traffic interchanged with connecting carriers and that has origin or destination beyond switching limits of Kansas City, MO-KS. For charges on Grain, Grain Products, Seeds and related articles as described in Tariff ICC WTL 5330-series, see Item 3660.

NOTE 2. Where reference is made hereto, Column B rates apply on traffic between industries on the MP within the Kansas City, MO-KS switching limits, received FROM or delivered to connecting carriers which have origin or destination within switching limits of Kansas City, MO-KS.

EXCEPTION. Column B rates will not apply on movement of Grain or Screenings, CL, for which rates are provided in Tariff ICC WTL 4050-series, or in Item 3710.



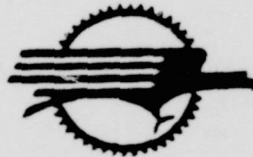
**SECTION 8**  
**MISCELLANEOUS RATES IN CENTS PER CAR (Except as Noted)**

ITEM	ON	BETWEEN	AND	Ⓔ RATE
(Except as Noted)				
171 3710-C	Grain, Grain Products, as described in Tariff ICC WTL 8330-series.	FROM	TO	16000
		MP track connection with other carriers on traffic which originates within switching limits of Kansas City, MO-KS.		
		To industries on the MP.		
Note: Switching charges named in Items 3710 to 3725 will not apply where charges are provided in Item 3708. (DQ 3333)				
171 3720-B	Grain, as described in List 1, Item 200, Tariff ICC WTL 8330-Series; also Soybeans.  (DQ 3333)	FROM	TO	16000
		Industries or tracks located on the MP within the switching limits of Kansas City, MO-KS.	Connections with other carriers.	
171 3725-D	GRAIN PRODUCTS, as described in List 2, Item 220, Tariff ICC WTL 8330-series.  (DQ 3333)	Industries or tracks located on the MP within the switching limits of Kansas City, MO-KS.	Industries or tracks located on the MP within the switching limits of Kansas City, MO-KS.	16000 per car.
			Connections with other carriers.	

## EXPLANATION OF REFERENCE MARKS

- \* Denotes Reduction.  
 ▲ Denotes changes in wording which result in neither increase nor reductions in charges.  
 ① Charges apply whether or not absorbed in whole or in part by line haul carriers.  
 20 Not applicable in connection with CR.  
 39 For application of charges in or on Special Equipment, see Item 385.  
 75 Applicable only on Grain, as described in List 1, Item 200, Tariff WTL 6330-series. Also soybeans, as described in List 5, Item 250, Tariff WTL 6330-series.  
 79 Applies on Grain, Grain Products, Seeds and related articles as described in Tariff WTL 6330-series, and only in connection with CSXT, IC, KCS, NS or SP. &  
 129 Applies only in connection with the KCS.  
 130 Applies only in connection with the IC.  
 131 Not applicable in connection with the IC.  
 132 Applicable only in connection with BN, except not applicable where 201, 203, 204, or 205 apply.  
 133 Applicable only in connection with the ATSF.  
 142 Applicable only in connection with the BN.  
 143 Applicable only in connection with the DRGW.  
 147 Applies only in connection with the SP and SSW.  
 148 Not applicable in connection with the DRGW.  
 150 Applicable only in connection with the CNW.  
 189 Applicable only in connection with the KCS (formerly LA).  
 212 When from or to connections with the CR.  
 220 Applicable only in connection with the SSW.  
 221 Applicable only in connection with the CSXT.  
 222 Applicable only in connection with the NS.  
 225 Applies only in connection with the NS and UP.  
 227 Not applicable where 130, 133, 135, 150, 220, 225, 228 and 229 applies.  
 229 Applies only in connection with the GWWP.  
 254 Applicable only in connection with ATSF on Grain and Grain Products, as described in Item 137, on shipments from or to Garvey via KSW.  
 256 Open to reciprocal switching only on traffic that originates or terminates east of the Mississippi River.  
 257 Applicable only in connection with ATSF on the following traffic:
- | STCC NO. | DESCRIPTION |
|----------|-------------|
| 01 131   | Barley      |
| 01 132   | Corn        |
| 01 133   | Oats        |
| 01 135   | Rye         |
| 01 136   | Sorghum     |
| 01 137   | Wheat       |
| 01 139   | Grain, nec  |
| 01 144   | Soybeans    |
- 258 Applicable only in connection with ATSF on all commodities except as provided for in reference mark 257.  
 259 Applies only in connection with CSXT, IC, KCS, NS or SP.  
 \*\*\* Denotes industries which are hereby CANCELLED, account name changed, no longer in business, moved off line, or no longer served by this railroad.  
 NI Not subject to increases of any kind.  
 PA Denotes partial amendment. Cancels prior amendment, if any, to the item.  
 X STCC numbers shown will also embrace all articles assigned additional digits listed thereunder in Tariff ICC STCC 5001-series. For example, STCC number 01 137 embraces also articles covered by numbers with a greater number of digits beginning with STCC number 01 137.  
☐ (With number enclosed) - Reissued from supplement bearing the number enclosed within the square. (See Item 100)

# MISSOURI PACIFIC RAILROAD COMPANY



SUPPLEMENT 198  
TO

## TARIFF MP 8170-C

Supplements 149, 164, 180, 182, 190, 197 and 198 and the Special Supplement shown on page 2 of Supplement 149 contain all changes.

### LOCATION OF NEW OR CHANGED ITEMS

The latest complete list of all new or changed items in effective Supplements is published in Supplement 197.  
The latest complete list of all stations listing corporations, etc. in effective supplements is published in Supplement 197.

ABSORPTIONS OF SWITCHING AND OTHER TERMINAL CHARGES  
AND  
ALLOWANCES  
AT STATIONS ON  
MISSOURI PACIFIC RAILROAD  
DONIPHAN, KENSETT & SEARCY RAILWAY  
(Except as Noted in Item 325)

## SWITCHING TARIFF

This tariff applies on intrastate traffic in the states of Arkansas, Colorado, Illinois, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, Tennessee (Memphis) and Texas.

ISSUED SEPTEMBER 19, 1996

EFFECTIVE SEPTEMBER 20, 1996

K. H. SCHROEDER  
Manager-Pricing Publications  
UNION PACIFIC RAILROAD  
1416 Dodge Street  
Omaha, Nebraska 68179

(Published by Railroad Publication Services, Atlanta, GA 30335)



**EXPLANATION OF REFERENCE MARKS**

- ▲ Denotes changes in wording which result in neither increase nor reductions in charges.
- (259) ▲ Applies only in connection with CSXT, KCS, NS or SP. (DQ 3404)

EXHIBIT 3

SECTION 12 - INDUSTRIES OPEN TO RECIPROCAL SWITCHING		ITEM
LOUISIANA - (Continued)		
SWITCHING STATIONS	INDUSTRIES OPEN TO RECIPROCAL SWITCHING (ADJACENT STATION)	
LAKE CHARLES (37500) (Concluded)	(LAKE CHARLES - 37500)  Calcasieu Steel & Pipe Incorporated (0246)	
	(WEST LAKE - (37460)  Condea Vista Company (0544) Conoco Incorporated (0502) Holnam Incorporated (0331) Jupiter Nash (0501) M. I. Drilling Fluids (0331) Olin Corporation (0400) PPG Industries (0600) Tetra Chemical (0620)	
(C)(1)NEW ORLEANS (38400)	(AVONDALE - 38300)  Avondale Shipyards Incorporated (0132)	5060 (Con- tin- ued)
	(HARVEY - 38335)  Avondale Steel Sales (0468) Evans Cooperate Company Incorporated (0431)	
	(MARRERO - 38330)  Celotex Corporation (0210) Delta Commodities Incorporated (0280) General Chemical Corporation (0238) Tubular Threading Incorporated (0246)	
SHREVEPORT (47000) (Continued)	(BOSSIER CITY - 47310)  Bollinger Lumber & Supply Company (2961) Bariod Drilling Fluids Incorporated (2913) P & M Tube Division (2950)	
(Continued)		
For Explanation of (other) abbreviations and reference marks, see Item 50000.		
Issued: September 25, 1996		Effective: October 15, 1996
Issued by: Manager - Publications Southern Pacific Transportation Company One Market Plaza San Francisco, California 94105		Correction 235



SOUTHERN PACIFIC TRANSPORTATION COMPANY		
1st Revised Page.....272		ICC SP 9500-D
Cancels Original Page.....272		
ABBREVIATIONS	EXPLANATION OF ABBREVIATIONS	ITEM
AKA.....	Also Known As.	50000
BOE.....	Bureau of Explosives.	
ICC.....	Interstate Commerce Commission.	
NSO.....	National Service Order.	
OPSL.....	Official List of Open & Prepay Stations.	
STCC.....	Standard Transportation Commodity Code Tariff.	
SWFB.....	Southwestern Freight Bureau.	
UFC.....	Uniform Freight Classification.	
REFERENCE	EXPLANATION OF REFERENCE MARKS	
*.....	Change.	50000
§.....	Addition.	
(R).....	Denotes reduction or new rate.	
(A).....	Denotes increase.	
(C).....	Denotes changes which results in neither increase nor reduction in charges.	
(E).....	Provisions not brought forward herein have been eliminated.	
(NEW).....	New item.	
(1).....	Reciprocal switching for these industries applies only for the account of:  CSXT, IC, KCS, MP and NS.	
- LAST PAGE -		
Issued: September 25, 1996 Effective: October 15, 1996		
Issued by: Manager - Publications Southern Pacific Transportation Company One Market Plaza San Francisco, California 94105 -272- Correction 236		

EXHIBIT 4

SECTION 12 - INDUSTRIES OPEN TO RECIPROCAL SWITCHING		ITEM
<u>LOUISIANA - (Continued)</u>		
SWITCHING STATIONS	INDUSTRIES OPEN TO RECIPROCAL SWITCHING (ADJACENT STATION)	
LAKE CHARLES (37500) (Concluded)	(LAKE CHARLES - 37500)  Calcasieu Steel & Pipe Incorporated (0246)	
	(WEST LAKE - (37460)  Condea Vista Company (0544) Conoco Incorporated (0502) Holnam Incorporated (0331) Jupiter Nash (0501) M. I. Drilling Fluids (0331) Olin Corporation (0400) PPG Industries (0600) Tetra Chemical (0620)	
NEW ORLEANS (38400)	(AVONDALE - 38300)  Avondale Shipyards Incorporated (0132)	5060 (Con- tin- ued)
	(HARVEY - 38335)  Avondale Steel Sales (0468) (D)(A) Energy <del>Company</del> Group Evans Cooperate Company Incorporated (0431)	
	(MARRERO - 38330)  Celotex Corporation (0210) Delta Commodities Incorporated (0280) General Chemical Corporation (0238) Tubular Threading Incorporated (0246)	
SHREVEPORT (47000) (Continued)	(BOSSIER CITY - 47310)  Bollinger Lumber & Supply Company (2961) Bariod Drilling Fluids Incorporated (2913) P & H Tube Division (2950)	
(Continued)		
For Explanation of (other) abbreviations and reference marks, see Item 50000.		
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-129-		



SOUTHERN PACIFIC TRANSPORTATION COMPANY		
Original Page.....272		ICC SP 9500-D
ABBREVIATIONS	EXPLANATION OF ABBREVIATIONS	ITEM
AKA.....	Also Known As.	50000
BOE.....	Bureau of Explosives.	
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REFERENCE	EXPLANATION OF REFERENCE MARKS	
*.....	Change.	50000
!.....	Addition.	
(R).....	Denotes reduction or new rate.	
(A).....	Denotes increase.	
(C).....	Denotes changes which results in neither increase nor reduction in charges.	
(D).....	Provisions not brought forward herein have been eliminated.	
(NEW).....	New item.	
- LAST PAGE -		
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