

STB FD

32760

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- (ii) includes track and associated structures together with right-of-way and facilities needed for operations.
- (iii) indemnity for environmental liabilities attributable to UP/SP's prior operations.
- (iv) standard provisions for sales of this nature involving title, liens, encumbrances other than those specifically reserved or provided for by this Agreement.
- (v) assignment of associated operating agreements (road crossings, crossings for wire and pipelines, etc.). Non-operating agreements shall not be assigned.
- (vi) removal by Seller, from a conveyance, within 60 days of the closing of any sale, of any non-operating real property without any reduction in the agreed upon purchase price.
- (vii) the purchase will be subject to easements or other agreements involving telecommunications, fibre optics or pipeline rights or operations in effect at the time of sale.

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

c) Prior to closing the sale of SP's Iowa Jct.-Avondale line (the "IJA Line"), representatives of UP/SP and BNSF shall conduct a joint inspection of the IJA Line to consider whether its condition at closing meets the standard established in Section 10b(i) of this Agreement. If the representatives of the parties are unable to agree that the condition of the IJA Line meets this standard, then BNSF shall place \$10.5 million of the purchase price in escrow with a mutually agreed

upon escrow agent, and closing shall take place. After closing the parties shall mutually select an independent third party experienced in railroad engineering matters (the "Arbitrator") who shall arbitrate the dispute between the parties as to whether the condition of the IJA Line is in compliance with Section 10b(i) of this Agreement. Arbitration shall be conducted pursuant to Section 15 subject to the foregoing qualification that the Arbitrator be experienced in railroad engineering matters. If the Arbitrator finds the IJA Line is below the standard, the Arbitrator shall determine the amount (which shall not exceed \$10.5 million) required to bring it in compliance with the standard and authorize the payment of such amount out of the escrow fund to BNSF with the balance, if any, paid to UP/SP. Any amount so paid to BNSF out of the escrow fund to bring the IJA Line into compliance with the standard shall be used by BNSF exclusively to that end (or to reimburse BNSF for funds previously expended to that end) and UP/SP shall not, as a tenant on the IJA Line be billed for any work undertaken by BNSF pursuant to the provisions of this Section 10c.

11. Term

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

12. Adjustment of Charges

All trackage rights charges under this Agreement shall be subject to adjustment upward or downward July 1 of each year by the difference in the two preceding years in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the trackage rights fee. "URCS costs" shall mean costs developed using the Uniform Rail Costing System. The additional fee BNSF must pay UP/SP pursuant to Section 5b of this Agreement shall be subject to this same adjustment.

The rates for reciprocal switching services established in Section 9h and for haulage service established in Section 8j shall be adjusted upward or downward each July 1 of each year to reflect fifty percent (50%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the Surface Transportation Board or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and, failing to agree on such an index, the matter shall be referred to binding arbitration under Section 15 of this Agreement.

The parties will agree on appropriate adjustment factors if not covered herein for switching, haulage and other charges.

Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 15 of this Agreement. It is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

13. **Assignability**

This Agreement and any rights granted hereunder may not be assigned in whole or in part without the prior consent of the other parties except as provided in this Section. No party may permit or admit any third party to the use of all or any of the trackage to which it has obtained rights under this Agreement, nor under the guise of doing its own business, contract or make any arrangement to handle as its own trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of that party.

In the event of an authorized assignment, this Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties. This Agreement may be assigned by either party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets.

14. **Government Approvals**

The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement or of any separate agreements made pursuant to Section 9f and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such agreements. BNSF agrees not to oppose the primary application or any related applications in Finance Docket No. 32760 (collectively the "control case"), and not to seek any conditions in the control case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. BNSF shall remain a party in the control case, but shall not participate further in the control case other than to support this Agreement, to protect the commercial value of the rights granted to BNSF by this Agreement, and to oppose requests for conditions by other parties which adversely affect BNSF; provided, however, that BNSF agrees to reasonably cooperate with UP/SP in providing testimony to the ICC necessary to demonstrate that this Agreement and the operations to be conducted thereunder shall provide effective competition at the locations covered by the Agreement. UP/SP agree to support this Agreement and its implementation and warrant that it has not entered into agreements with other parties granting rights to other parties granted to BNSF under this Agreement. UP/SP agree to ask the ICC to impose this Agreement as a condition to approval of the control case. During the pendency of the control case, UP and SP shall not, without BNSF's written consent, enter into agreements with other parties which would grant rights to other parties granted to BNSF or inconsistent with those granted to BNSF under this Agreement which would substantially impair the overall economic value of rights to BNSF under this Agreement.

15. **Arbitration**

Unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under

Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

16. **Further Assurances**

The parties agree to execute such other and further documents and to undertake such acts as shall be reasonable and necessary to carry out the intent and purposes of this Agreement.

17. **No Third Party Beneficiaries**

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: _____
Title: _____

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

EXHIBIT A

Points Referred to in Section 1b

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

Points Referred to in Section 3a

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4b

Brownsville TX
Port of Brownsville TX
Port of Corpus Christi
Harlingen TX
Corpus Christi TX
Sinton TX
San Antonio TX
Elmendorf TX
Halsted TX (LCRA plant)
Waco TX
Points on Sierra Blanca-El Paso line

Points Referred to in Section 5b

Baytown TX
Annelia TX
Orange TX
Mont Belvieu TX (Amoco, Exxon, Chevron plants)
Eldon TX (Bayer plant)
Harbor LA

Points Referred to in Section 6c

Camden AR
Pine Bluff AR
Fair Oaks AR
Baldwin AR
Little Rock AR
North Little Rock AR
East Little Rock AR
Forrest City AR
Paragould AR
Dexter MO

EXHIBIT B

TERM SHEET FOR UP/SP-BNSF PROPORTIONAL RATE AGREEMENT COVERING I-5 CORRIDOR

Concept

BNSF trackage rights in the "I-5" corridor will allow BNSF to handle traffic on a single line basis that currently moves via joint BN-SP routes. This Agreement will enable UPSP to compete with BNSF for that traffic and to make rates, using the proportional rates, to and from all points UP/SP serves in the covered territory described below.

Covered Territory

Traffic moving between the following areas north of Portland, Oregon and west of Billings and Havre, Montana:

- Canadian interchanges in Vancouver area
- Points north of Seattle and west of Cascades
- Points south of and including Seattle and west of Cascades
- Washington points east of Cascades and west of and including Spokane
- Points east of Spokane and west of Billings and Havre

and points in

- Arizona,
- California,
- Colorado,
- New Mexico,
- Nevada,
- Oregon,
- Utah,
- Texas west of Monahans and Sanderson, and
- connections to Mexico at El Paso and to the west.

Traffic Covered

Traffic covered will be all commodities (carload, intermodal and bulk) moving both southbound and northbound. All cars loaded or made empty on BNSF lines in the Covered Territory (including reloads) and cars received in interchange.

Proportional Rates

A third party, such as a major accounting firm or other established transportation consultant (the "consultant"), will be employed to compute the proportional rates. The mileage prorate shall be the ratio of (a) BNSF miles between areas north of Portland or interchange north of Portland and SP interchange at Portland to (b) BNSF single-line miles from BNSF origin or interchange to BNSF destination or interchange.

The consultant will develop a table of net ton mile rates (net of refunds, allowances, and rebates). This table will be in matrix form based on commodity, car type, and area north of Portland, Oregon. The rates shown in the matrix will be by commodity at the 3-digit STCC level and by car type for movement between each of the areas north of Portland, Oregon, and the Portland interchange. The net ton mile rates will be based on movements between each of the areas north of Portland and the group of states (including connections to Mexico) listed above. The initial rates will be derived based on the BN-SP portion of BN-SP interline rates (net of refunds, allowances, and rebates) in effect in the quarter preceding acquisition of SP by UP.

The net ton mile rate for each commodity/car type shall be a weighted average of the rates applicable to movements of each such commodity/car type between the points listed above. An example of this computation is attached.

New rates will be derived each subsequent quarter. In subsequent quarters, the rates will include a prorate of both SP-BNSF interline rates (net of refunds, allowances, and rebates) and BNSF single-line rates (net of refunds, allowances, and rebates). At such time as a rate can be developed for a particular commodity/car type on the basis of a BNSF single-line rate then future rate adjustments for such commodity/car type shall be based solely on BNSF single-line rates. All computations of net ton mile rates will be based on rates that actually moved traffic.

UP/SP agree that any rate it publishes will reflect the proportional rate from the latest quarterly study and BNSF's division shall be that amount. Movements using proportional rates shall be interline BNSF-UP/SP movements and will be billed accordingly. Proportional rates used by UP/SP in contracts will be escalated on the same basis as UP/SP's rates are escalated. BNSF and UP/SP will establish procedures to ensure that in settling interline accounts UP/SP's and BNSF's revenue south of Portland is not disclosed to the other.

Application

The net ton mile rates in each cell of the matrix will be applied to the BN mileage and the associated net tons from areas north of Portland to Portland interchange to develop the proportional rate to the Portland interchange.

Service

BNSF shall accept, handle, switch and deliver traffic moving under this Agreement without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in BNSF's account. UP/SP has the right to provide equipment. BNSF will work with UP/SP to establish and provide trackage for strategically located car distribution points in BN territory. To the extent justified by business volumes, BNSF will continue operating Vancouver, BC-Portland (SP interchange) trains comparable to BN Nos. 111 and 112. BNSF will cooperate with UP/SP to establish necessary blocks to provide efficient and competitive service on traffic moving under the proportional rate.

Third Party Consultant

The third party consultant shall be jointly employed by UP/SP and BNSF. The parties will share equally in the expense of employing such third party consultant. Both UP/SP and BNSF shall have the right to audit the work of the third party consultant and agree to share in any irregularities found in this work and cooperate to work with the third party consultant to establish procedures to promptly correct those deficiencies. The third party consultant shall be required to remain impartial between UP/SP and BNSF. Any breach of the impartiality requirement shall result in the termination of such third party consultant and the selection of a new consultant by the parties.

Example of Revenue Per Ton Mile
Calculation by Origin-Destination Cell
Cell Includes Car Type and Commodity

Assumption:	<u>Move 1</u>	<u>Move 2</u>
1. BNSF Revenue Per Car From O/D Areas North of Portland to Destination States	\$5000	\$2000
2. BNSF Miles From O/D Areas North of Portland to Destination States	1000	500
3. BNSF Net Tons From O/D Areas North of Portland to Destination States	100	50
4. BNSF Number of Carloads From O/D Areas North of Portland to Destination States	10	5
5. BNSF Miles Between Actual Point of Origin to Interchange and Portland	300	200

A. Revenue/NTM Factor (Computed by Consultant for Each Call in Matrix)

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

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

B. Compute BNSF Division on a Specific Move

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

6660 28182
372. 2280

S.P. Avondale Yard

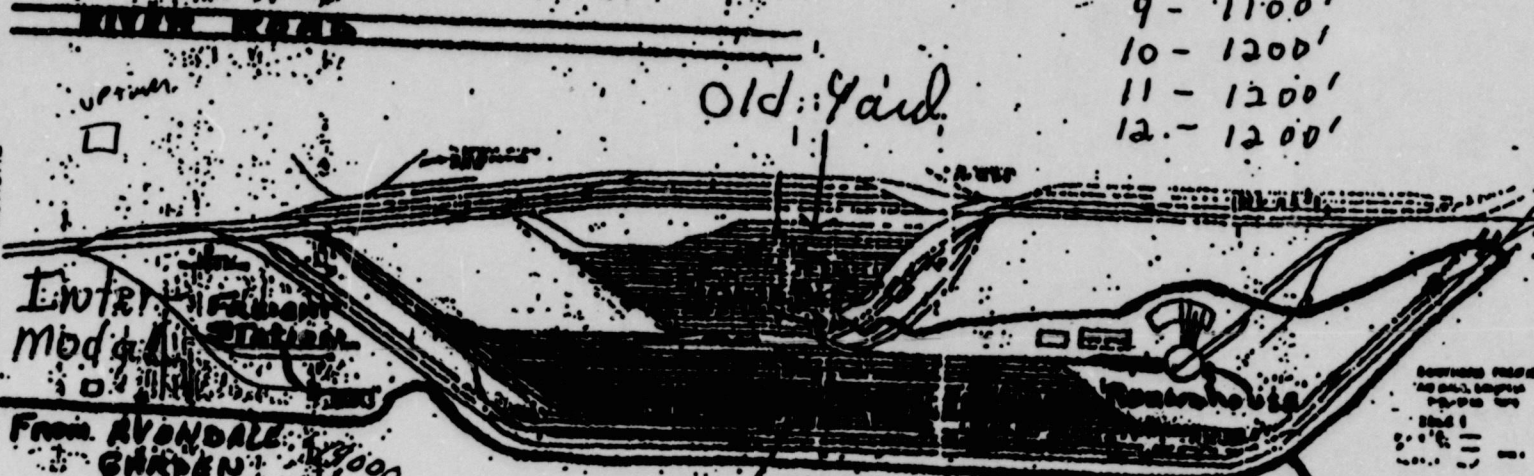
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PAGE. 881

Old Yard ^{needs Rehab} Capacity

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

TOTAL PAGE. 881
TOTAL PAGE. 881



SEP 24 '95 9:22 FROM UNION PACIFIC AVONDAL

From AVONDALE 17,000
GARDEN ROAD
2 intermodal
16,400' each

New Yard

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

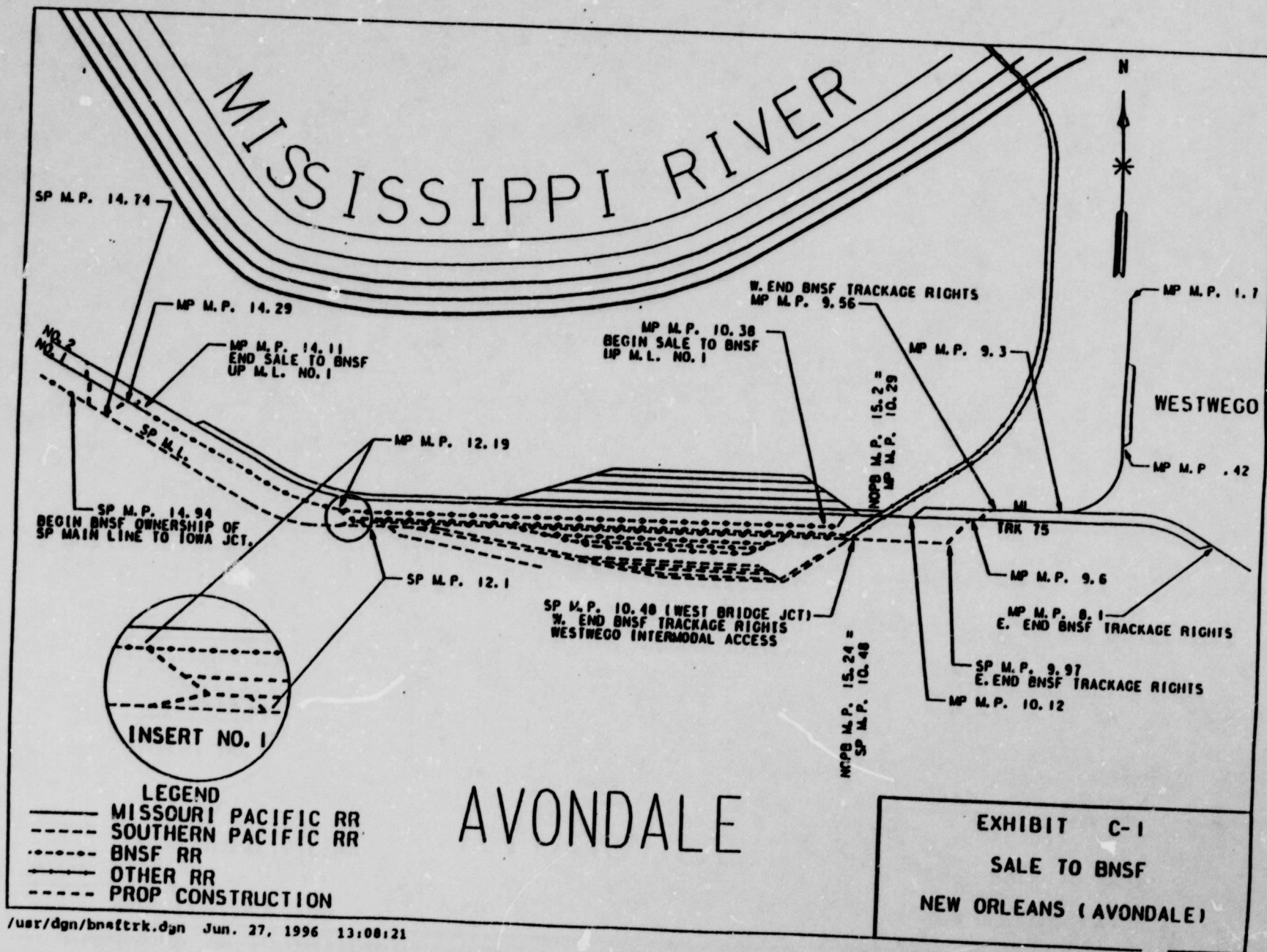
Old Yard

- 13. 1800'
- 14. 1400'
- 15. 1800'
- 16. 1700'
- 17. 1600'
- 18. 1500'
- 19. 1400'
- 20. 1300'
- 21. 1200'
- 22. 1100'

23. 1000'
24. 900'

EXHIBIT C

Not to scale
not entirely
accurate



ATTACHMENT L

**VERIFIED STATEMENT
OF
F. E. (SKIP) KALB, JR.**

BACKGROUND

My name is Skip Kalb, and I am Assistant Vice President-Industrial Development for The Burlington Northern and Santa Fe Railway Company ("BNSF"). My business address is 2650 Lou Menk Drive, Fort Worth, TX 76131. In my present position, which I have held since September 25, 1995, following the consolidation of The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") with Burlington Northern Railroad Company, I am responsible for all of BNSF's Industrial Development activities.

Prior to the BNSF merger, I spent over 20 years with the Santa Fe, all in Santa Fe's Industrial Development Department. See attached biographical sketch.

As the officer of BNSF responsible for Industrial Development, I have been directly involved in our efforts to locate new customers along the lines to which BNSF has been granted trackage rights in the Union Pacific/Southern Pacific merger ("UP/SP trackage rights lines"). This activity has included making inspections of the UP/SP trackage rights lines; meeting with prospective industries interested in locating facilities in these areas; communicating with federal, state and local economic development officials, industrial real estate brokers, and other BNSF Business Units about BNSF's rights to serve new facilities along the UP/SP trackage rights lines; and overseeing specific industrial development projects.

As a part of our efforts to locate new customers on our trackage rights lines, we have met with UP to discuss various industrial development issues. The reason that BNSF needs to clarify the new facility and transload conditions is that satisfactory and consistent

definitions of these conditions are critical to BNSF's ability to implement the merger agreements and conditions that were designed and imposed to preserve competition following the UP/SP merger.

PATTERNS OF INDUSTRIAL DEVELOPMENT AND THE EXPECTATIONS OF SHIPPERS

Shippers do not typically feel the need to locate their facilities immediately adjacent to main line tracks in order to obtain the benefits of main line rail transportation. Beginning well before the UP/SP merger, and continuing up to the present day, the siting of new facilities and transloads in industrial complexes (or industrial parks) and adjacent to rail yards has been a predominant mode of industrial development in the United States. Shippers (including transload facility owners) reap numerous advantages from placing their new facilities and transloads in industrial parks or near rail yards. By concentrating industrial activity in such locations, shippers are often able to obtain large, competitively-priced sites with convenient access to rail and truck service compatible with existing land use and zoning regulations, while avoiding contentious environmental issues. The concentration of shippers at or around industrial parks or rail yards also enables rail carriers to gather and deliver freight for numerous customers with fewer stops for pick-ups and set-offs. It also eliminates the need to build multiple turnouts on main line tracks to serve multiple shippers, and thus improves both rail operations on the main line tracks, as well as safety.

Shippers that locate their facilities and transloads in industrial parks or yards adjacent to spurs, industrial tracks or yard tracks that are served by nearby main lines expect to receive rail service via those main lines. Indeed, the decision to site new

facilities in such locations often is driven by the expectation of obtaining service from such lines.

Because shippers seek and expect to obtain service via main lines when they locate their facilities adjacent to spurs, industrial tracks or yard tracks served by those nearby main lines, they have long understood that the competitive leverage to be obtained from siting competition is available even if their siting options include points adjacent to spurs, industrial tracks or yards. In considering their options in this respect, shippers never have deemed themselves bound to locate immediately adjacent to a main line in order to take advantage of siting competition between UP and SP.

THE IMPLICATIONS OF UP'S POSITION

In imposing the new facilities and transload conditions, the Surface Transportation Board ("Board" or "STB") could not have intended to disrupt either this pattern of industrial development or the reasonable expectations of shippers. If UP's position were accepted by the Board, however, that would occur. In the future, shippers wishing to take advantage of the indirect siting competition intended to be preserved by the new facilities and transload conditions would be required to place their new facilities and transloads immediately adjacent to trackage rights lines. Such a requirement would foster inefficient and environmentally unsound development patterns (because, in many cases, the siting of new facilities immediately adjacent to trackage rights lines would be less efficient or more environmentally detrimental than the siting of such new facilities in already-existing industrial parks or near rail yards).

Moreover, such a requirement could altogether preclude many new facilities and transloads from obtaining the benefits of the indirect competition that the new facilities and transload conditions were intended to preserve, because zoning, environmental, safety, and cost impediments could make it impractical for large numbers of new facilities or transloads to be sited immediately adjacent to trackage rights lines. Thus, the position that the new facilities and transload conditions apply only to facilities located immediately adjacent to trackage rights lines has unacceptable implications and should be rejected.

CONCLUSION

In my dealings with many of BNSF's customers, transload operators, state and local economic development agencies, industrial real estate developers and brokers, I have encountered a widely-shared sense that the conditions imposed in the UP/SP merger can confer numerous economic benefits on the shippers of the nation. These conditions will work if BNSF has the same rights to serve new customers and facilities located on UP/SP lines over which BNSF has trackage rights as UP does on those lines.

Accordingly, I respectfully urge the Board to clarify that BNSF has the right to serve the new Four Star Sugar facility at El Paso.

BIOGRAPHICAL SKETCH

F.E. "SKIP" KALB, JR.

MAY 1, 1999

Skip Kalb is Assistant Vice President-Industrial Development for The Burlington Northern and Santa Fe Railway Company ("BNSF"). Mr. Kalb is responsible for all Industrial Development activities for BNSF's 34,000 mile system, which stretches across 28 states, two Canadian provinces and the Gulf of Mexico. He held a similar position with The Atchison, Topeka and Santa Fe Railway Company prior to its merger with the Burlington Northern Railroad Company.

Skip is a graduate of Baker University. He obtained his MBA from the University of Kansas in 1975. He is a past President of the American Railway Development Association and is a member of both the American Economic Development Council and the Texas Economic Development Council. Mr. Kalb was recently appointed as the Chairman of Associate Members of the International Development Research Council, an organization in which he holds a Master Professional Designation, which is limited to 5% of IDRC membership.

Mr. Kalb has published papers in several trade journals and publications dealing with the Transportation component of Economic Development, including "Intermodal Strategies for Industrial Development" and "The Private Capital Decision-Making Process: An Analytical Tool for Industrial Development."

Some of the major developments that Mr. Kalb has initiated include the UPS Super Hub in Willow Springs, IL; Santa Fe's facility developments at Alliance, TX; and numerous other customer facilities along the BNSF system.

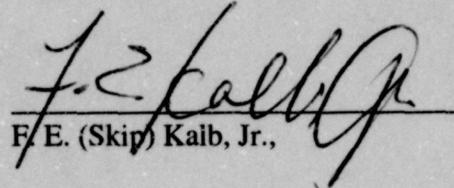
Skip and his family have lived in Argyle, TX for the past eight years.

VERIFICATION

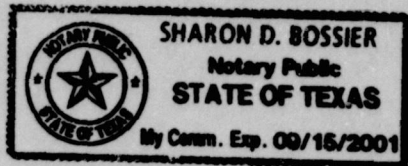
THE STATE OF TEXAS)

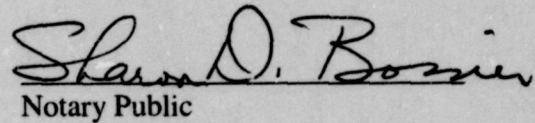
COUNTY OF TARRANT)

F. E. (Skip) Kalb, Jr., 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.


F. E. (Skip) Kalb, Jr.,

Subscribed and worn before me on this 30 th day of April 1999.




Notary Public

My Commission Expires: 09/15/2001

STB FD 32760 12-9-98 I 192575 1/2

192575

PAUL H. LAMBOLEY
1350 EYE STREET N.W.
SUITE 200
WASHINGTON, D.C. 20005-3324

TEL 202-312-8000
FAX 202-312-8100

DIRECT 202-312-8220

December 8, 1998

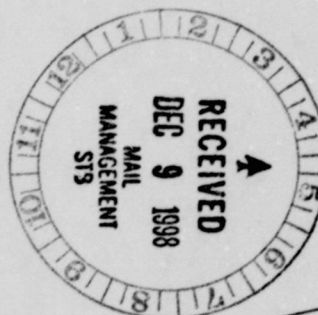
VIA MESSENGER

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

ENTERED
Office of the Secretary

DEC 10 1998

Part of
Public Record



[Handwritten signature]

RE: Finance Docket No. 32760

Dear Secretary Williams:

Enclosed are an original and twelve (12) copies of the Joint Petition of the City of Reno and the Union Pacific Railroad Company. Also enclosed is a Request for Waiver.

Please file the same, and return two file-stamped copies of each in the envelopes provided.

Expedited consideration by the Board is requested. Thank you.

Regards,

[Handwritten signature]
Paul H. Lamboley

PHL/jbc

cc: Elaine K. Kaiser
Section of Environmental Analysis

**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**

**JOINT PETITION FOR APPROVAL OF AGREEMENT,
IMPOSITION OF CONDITION, AND REMOVAL OF RESTRICTIONS**

Pursuant to Article II, Paragraph 2.3 (b) of the Memorandum of Understanding ("MOU" or "agreement") entered into and executed on December 1, 1998, by and between the City of Reno, Nevada ("Reno") and the Union Pacific Railroad Company ("UP"), a copy of which is attached as Exhibit A, Reno and UP jointly petition the Surface Transportation Board ("Board") to approve their agreement and to impose it as a condition of the Board's approval of the common control and merger of the rail carriers controlled by Union Pacific Corporation and the rail carriers controlled by Southern Pacific Rail Corporation ("UP/SP merger") in lieu of any other mitigation that could be imposed pursuant to environmental mitigation conditions set out in Paragraph 22a-22d of Appendix G to Decision No. 44 served August 12, 1996 in the above-entitled proceeding.

Further, Reno and UP jointly request removal of all restrictions on the number of trains (including trains operated by UP, BNSF, Amtrak and any other

trackage rights operators) that pass through the City of Reno whether or not set out in Paragraph 22a of Appendix G to Decision No. 44.

Finally, Reno and UP jointly request that Board approval sought herein shall not be effective unless and until the first issuance of bonds for the Project.

As notice required by Paragraph 22d of Appendix G to Decision No. 44 and by Decision No. 79, served March 2, 1998, extended by Decision No. 83 served November 16, 1998 a copy of this Joint Petition and the MOU is being provided to the Board's Section of Environmental Analysis (SEA).

Expedited consideration of this Joint Petition is requested since prompt motion for dismissal with prejudice of review proceedings in No. 96-1418 pending before the United States Court of Appeals for the District Court of Columbia Circuit is contemplated if Board approval is granted.

Respectfully submitted this 21 day of December, 1998.

City of Reno, Nevada

By: _____

Paul R. Lambole
1350 Eye Street N.W.
Suite 200
Washington, DC 20005
Telephone: (202) 312-8220
Facsimile: (202) 312-8100

Its Counsel

Union Pacific Railroad Company

By: _____

J. Michael Hemmer
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, DC 20044
Telephone: (202) 662-5578
Facsimile: (202) 778-5578

Its Counsel

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

**MEMORANDUM OF UNDERSTANDING
FOR RENO RAIL CORRIDOR**

THIS MEMORANDUM OF UNDERSTANDING FOR RENO RAIL CORRIDOR (this "**Memorandum**"), dated as of December __, 1998, is entered into by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**UP**"), and **THE CITY OF RENO**, a municipal corporation of the State of Nevada ("**City**"), with reference to the following Recitals:

RECITALS

A. UP's railroad right of way and rail lines generally run at grade through the City's downtown area. As a result of the at grade route of UP's rail lines, vehicular and pedestrian traffic is subject to significant delay, which in turn impacts mobility in the City and pedestrian and vehicular safety.

B. In anticipation of the increased volume of rail, vehicular and pedestrian traffic through the City and in order to mitigate the impacts thereof in the City's downtown area, the City has reviewed several alternatives intended to mitigate and improve existing and anticipated conditions in the downtown area, and improve public safety along the route on which UP rail traffic is transported.

C. The alternative which the City presently is pursuing is the acquisition, construction and installation of a below grade rail transportation corridor to be located in the downtown area of the City generally along the route of UP's existing right of way.

D. The parties hereto desire to set forth the terms and conditions for the financing, construction, operation, maintenance and repair of the Rail Corridor (as defined below).

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, UP and the City hereby agree as follows:

ARTICLE I DEFINITIONS

"Access Road" means the access road to be constructed immediately adjacent to and on one side of the Tracks for the purpose of maintaining the Tracks and other components of the Rail Corridor.

"Additional Lease Revenues" has the meaning set forth in Section 2.1(h).

"Additional Leases" means those leases, licenses and other occupancy agreements identified on Exhibit E attached hereto as the **"Additional Leases"**, and all modifications, renewals, extensions or substitutions thereof.

"Air Rights" has the meaning set forth in Section 2.2(b).

"Bond Financing" has the meaning set forth in Section 2.1(b).

"City" means the City of Reno, Nevada and its successors and assigns with respect to ownership of the Rail Corridor property.

"County" means the County of Washoe, Nevada, and its successors and assigns.

"Escrow Agent" has the meaning set forth in Section 2.2(j).

"Escrow Deposit Date" has the meaning set forth in Section 2.2(i)(1).

"Escrow Release Conditions" shall mean the occurrence of both (i) the severance of the main line as permitted by Section 4.1, and (ii) Substantial Completion.

"Federal Loan" has the meaning set forth in Section 2.1(b).

"Force Majeure Reasons" means any act, event, or condition beyond the reasonable control of the City, or its contractors or subcontractors, which adversely affects the design, procurement and/or construction schedule relating to the severance of the mainline tracks, as permitted by Section 4.1, on or before the four (4) year anniversary of the date hereof, including, without limitation, (i) strikes, lockouts, or other labor disturbances, earthquake, flood, hurricanes, or other natural disaster, (ii) acts of God, (iii) war, riots or civil insurrection, (iv) catastrophic equipment failure, (v) failure or interference with reasonably available sources of supply of equipment and materials necessary to construct the Project in accordance with the terms of this Memorandum, (vi) accident, (vii) third party or governmental challenges or lawsuits regarding the financing or funding of the Project, any environmental documentation, report, approval or permit necessary for construction of the Project or the funding thereof, (viii) delays not caused by the City, or its contractors or subcontractors, in the issuance of other permits and approvals necessary for the construction of the Project; (ix) delays not caused by the City, or its contractors or subcontractors, associated with the creation, implementation, approval and completion of remediation and remediation plans and requirements with respect to contamination of Hazardous Substances in, around, under or across the Rail Corridor, and (x) events or other circumstances beyond the reasonable control of the City, or its contractors or subcontractors.

"FRA" means the Federal Railroad Administration.

"Hazardous Substances" means any toxic or hazardous wastes, materials or substances, pollutants or contaminants, including, without limitation, petroleum (including crude oil or any fraction thereof), natural gas and synthetic fuel products and by products, and any substances defined in, regulated or listed as "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "toxic wastes," "pollutants," "contaminants," or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 40 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., and any other applicable federal, state and local laws, statutes and regulations, and regulations promulgated pursuant to any of the foregoing.

"Leased Parcels" has the meaning set forth in Section 2.2(d).

"Lease Revenues" means all rents, income, profits, payments, reimbursements, charges and other sums received, paid, collected, payable or collectible under the Leases.

"Leases" means those leases, licenses and other occupancy agreements identified on Exhibit B attached hereto as the **"Leases"**, and all modifications, renewals, extensions or substitutions thereof.

"Main Drainage System" has the meaning specified in Section 6.3.

"Map" means the map attached hereto as Exhibit A and by this reference incorporated herein.

"Materials Contribution" has the meaning set forth in Section 2.2(g).

"Neutral Arbitrator" has the meaning set forth in Section 11.1(a).

"NDOT" means the Nevada Department of Transportation.

"NDOT Commitment" has the meaning set forth in Section 2.1(c).

"Non-Rail Components" means all components of the Project other than Track, Track Support Structures, and the Access Road.

"Other Real Property" has the meaning set forth in Section 2.2(d).

"Plans" has the meaning specified in Section 3.1(a).

"Project" means a rail transportation corridor and related facilities to be located generally below the existing grade in the central downtown business district of the City. The proposed corridor will be approximately 2.1 miles long and will be located generally within UP's existing right of way between West Second Street and Sutro. The Project will consist of two mainline tracks, constructed to standards permitting maximum train speeds of sixty (60) miles per hour, and an access road adjacent to and on one side of the tracks within the below grade corridor. There will

be no turnouts or connections to other tracks within the Project area except for the Reno Branch Connection Track (the Reno Branch Connection Track shall be part of the Project). Prior to severing UP's existing mainline tracks for construction of the trench portion of the Project, the City shall install the Shoo-Fly Track to serve as a temporary bypass route for trains during construction (the Shoo-Fly Track shall be part of the Project).

"Project Costs" means all costs associated with the acquisition, design, construction, environmental mitigation, installation and equipping of the Project, including reimbursement to the City for any payments in connection with Project made by the City prior or subsequent to the execution of this Memorandum, and including the costs of site preparation and construction and installation of improvements, including temporary trackage and facilities, structures, buildings, equipment, machinery or facilities thereon, costs and expenses incurred in connection with the execution and delivery of the Project Documents, and any and all other agreements, or other documents issued in connection therewith, as well as administrative, engineering, environmental, legal, financial, accounting and other costs incurred in connection with the acquisition, design, construction, installation and financing of the Project. The Project may require removal of the existing Amtrak station in the City. UP shall have no obligation to contribute any property or funds beyond the UP Contribution to relocate the Amtrak station.

"Project Documents" means all documents, agreements and contracts relating to the Project entered into by the City, including, without limitation, the following: (1) this Memorandum; (2) all acquisition, design, installation and construction documents; (3) all legal documents relating to the creation of the assessment district in the City and the Bond Financing, including, without limitation, trust indentures, leases, mortgages, security agreements, pledges and assignments; (4) agreements between the City and the County related to the Bond Financing and/or the Project; (5) all documents relating to the NDOT Commitment and Federal Loan; and (6) all conveyance, assignment and transfer documents relating to the Air Rights, Real Property and the Leases.

"Project Escrow" has the meaning set forth in Section 2.2(j).

"Project Funding" has the meaning set forth in Section 2.1(a).

"Rail Corridor" means a two mainline track rail route (including the Track and Track Support Structures) generally located below grade through the City, together with the real property on which such rail lines are located, the extent of which is shown on the Map. If constructed, the Rail Corridor shall be generally located in UP's existing right-of-way as depicted on the Map. The Rail Corridor shall not include any public street, roadway or highway structures or improvements over or adjacent to the Rail Corridor (provided that this sentence shall not be deemed to exclude the Access Road from the definition of Rail Corridor), which items shall however, be part of the Project. In addition, the Rail Corridor shall not include any connections to local industries or other Tracks within the area of the Rail Corridor.

"Rail Corridor Real Property" has the meaning set forth in Section 2.2(c).

"Rail-Related Items" has the meaning set forth in Section 2.2(g).

"Real Property" means the Rail Corridor Real Property and the Other Real Property.

"Reno Branch Connection Track" means a single line surface track (and any industry tracks that may spring therefrom) adjacent to and on the north side of the Rail Corridor connecting UP's Reno Branch to the main line of the Rail Corridor generally located as shown on the Map, with its specific locations to be set forth in the Plans.

"Shoo-Fly Track" means (i) a temporary double track rail line (except for the portion running through the City's central hotel district, as shown on the Plans, with respect to which only a single track line shall be used) constructed pursuant to and in accordance with the Plans, any support structures to the extent they support the Shoo-Fly Track and the real property on which such rail line is located, generally running parallel to parts of the Rail Corridor; or (ii) such other alternative route to UP's existing main line as UP and the City may approve as part of the Plans, such approval not to be unreasonably withheld. The Shoo-Fly Track will be a temporary bypass route for trains during construction of the Rail Corridor and shall be removed as a cost of the Project when the Rail Corridor is completed, unless the parties mutually agree otherwise with respect to a segment of the Shoo-Fly Track located outside the City's central business district.

"STB" means the Surface Transportation Board.

"Substantial Completion" means completion of construction of the Rail Corridor to such an extent that trains may operate efficiently and safely on the Rail Corridor at track speeds of no less than forty (40) mph, but this shall not be deemed to modify the requirement that the Rail Corridor shall be designed and built to allow maximum train speeds of sixty (60) mph.

"Termination of Assignment" has the meaning specified in Section 2.2(i)(1).

"Track" means all railroad related improvements, including, without limitation, all tracks of any kind and all rail-related facilities (including rails and fastenings, switches, ties, ballast, roadbed, access road, signaling devices and systems, grade crossing warning devices, crossing surfaces, pole lines, lighting, and communication facilities and equipment).

"Track Support Structures" means those properties, improvements and structures for use or support of the Track including, without limitation, rail bridges, culverts and other structures, subgrade, embankments, subballast and surface water drainage facilities (to the extent such drainage facilities are required for operation of the railroad or the Access Road), and maintenance, access and service roads. The term "Track Support Structures" shall not include (i) the retaining walls of the trench portion of the Rail Corridor, (ii) any structure which is part of or provides support to a roadway or highway over or adjacent to the Rail Corridor (except for the Access Road), or (iii) the Main Drainage System or any facility for the treatment of water deposited in the Main Drainage System.

"UP" means Union Pacific Railroad Company, a Delaware corporation, and its successors and assigns permitted under this Memorandum.

"UP Contribution" means those items described in Section 2.2.

ARTICLE II FINANCING; DISMISSAL OF PENDING ACTIONS

2.1 Funding Sources.

(a) **Project Funding.** The City shall use its commercially reasonable efforts to procure funding and financing for all Project Costs, except for those Project Costs to be funded or financed pursuant to the UP Contribution ("**Project Funding**"). The City anticipates that the Project Funding will come from a variety of different funding and financing sources, each as more particularly described in this Section 2.1. Notwithstanding the foregoing, (i) the City shall not be obligated to use any or all of the funding or financing sources described in this Section 2.1; (ii) the City may use funding and financing sources other than those described in Section 2.1, and (iii) the City shall have the sole right to determine the funding and financing sources used for the Project Funding, the amounts to be drawn from such funding and financing sources and the allocation of all funding sources; provided, however, that as provided in Section 4.1 below, the City must be able to provide reasonable assurances to UP that the funding sources selected by the City are adequate to complete the Rail Corridor before UP's existing main line tracks are severed.

(b) **Bond Financing and Federal Loan.** The City currently anticipates that a portion of the Project Funding will be funded by the issuance and sale of bonds by the City or any other applicable governmental entity or agency (the "**Bond Financing**"). In addition, the City currently anticipates that a portion of the Project Funding will be funded and financed by a loan from the United States Department of Transportation (the "**Federal Loan**"). The City is in the process of applying for the Federal Loan and will use commercially reasonable efforts to obtain the Federal Loan Commitment in a timely manner. The Bond Financing and/or the Federal Loan will be repaid, in whole or in part, from the City's hotel tax revenues, assessments collected from an assessment district within the City, and a portion of the County's sale tax revenues that is allocated to the City for the Project pursuant to a separate agreement to be entered into by the City and the County. In the event that the City, in its sole discretion, decides to use the Bond Financing to fund a portion of the Project Costs, it shall use commercially reasonable efforts to cause the Bond Financing to occur in a timely manner. UP shall have no obligation or responsibility to repay any amount of either the Bond Financing or the Federal Loan should the City's funding for repayment become inadequate or repayment is not made by City for any other reason. Further, the City agrees that the permanent and exclusive easement for rail operation over the Rail Corridor which UP shall retain shall not be subject to any liens, encumbrances, or security interests designed to facilitate, accomplish or guarantee repayment of the Bond Financing or Federal Loan.

(c) **NDOT Commitment.** The City currently anticipates that a portion of the Project Funding will be funded and financed by a grant from the Regional Transportation Commission, which is an agency formed in July 1979 as a result of enabling legislation approved by the Nevada State Legislature as NRS 373.030, and the NDOT (the "**NDOT Commitment**"). The City is in the process of applying for the NDOT Commitment and agrees to use commercially reasonable efforts to obtain the NDOT Commitment in a timely manner.

2.2 UP Contribution.

(a) **Overall UP Contribution.** It is the parties' intent that UP make a fixed contribution towards the Project Costs, as described in this Section. It is agreed that UP's obligations for any contribution for Project Costs are specifically as set forth in this Memorandum, and that, except as otherwise expressly set forth in this Memorandum, UP shall not be obligated to make any other or further financial contribution toward the Project or the Rail Corridor, or to repay in whole or in part any financing obtained by the City as part of the Project.

(b) **Transfer of Air Rights.** UP shall make a portion of the UP Contribution by conveyance and transfer to the City, or its designee, by quitclaim deed, of all air rights from ground level and above, but excluding any air rights previously conveyed by UP or its predecessors, over the intended route of the Rail Corridor (the "**Air Rights**"), as more particularly depicted on the Map. The City and UP shall promptly commission a study by an independent third party engineering firm to determine what conditions, if any, must be imposed on any future development at grade level over the Rail Corridor to avoid significant adverse impacts on UP's operations on the Rail Corridor under such development (including impacts on railroad employee safety, ventilation, noise, lighting, maintenance and derailment cleanup). No development at grade level covering the Rail Corridor may occur except in accordance with the guidelines proposed by such engineering firm and approved by the City and UP (which approval shall not be unreasonably withheld). As part of its recommendations, the engineering firm shall specify the maximum covered area (in terms of linear feet) for which no restrictions are needed. The City agrees that approval of any proposed development over the Rail Corridor shall include a requirement that the developer of the project release the City and UP against any and all claims and damages resulting to the development from rail operations in the Rail Corridor, including noise, vibration, fumes, smoke, and similar items. Notwithstanding anything to the contrary above, the foregoing study and restrictions shall not apply to, and no restrictions shall be imposed on, street and pedestrian overcrossings of the Rail Corridor that are constructed in connection with the Project.

(c) **Transfer of Rail Corridor Real Property.** UP shall make a portion of the UP Contribution by conveyance to the City, or its designee, by quitclaim deed, of UP's interests in those certain parcels of real property identified on Exhibit C attached hereto on which the Rail Corridor shall be built, including all improvements, buildings and structures owned by UP thereon and easements and appurtenances thereto (the "**Rail Corridor Real Property**"). Notwithstanding the specific description in Exhibit C, the Rail Corridor Real Property to be transferred to the City shall include all of the property owned by UP on which the Rail Corridor will be built; provided, however, that the conveyance of such property shall (i) exclude the Track and Track Support Structures constructed as part of the Project, which shall become the property of UP; (ii) exclude the easements, licenses and rights described in Section 5.2; and (iii) include a reservation in favor of UP a permanent exclusive easement granting to UP of the right to use, operate, maintain, replace and improve the Rail Corridor Real Property for railroad purposes until such time as UP shall abandon such right-of-way or cease to use it for railroad purposes.

(d) **Transfer of Other Real Property.** UP shall make a portion of the UP Contribution by conveyance to the City, or its designee, by quitclaim deed, of UP's interests in those certain parcels of real property identified on Exhibit C attached hereto that are not Rail

Corridor Real Property, including, all improvements, buildings and structures owned by UP thereon and easements and appurtenances thereto (the "**Other Real Property**").

(e) **Provisions Applying to All Real Property and Air Rights.** The Real Property and the Air Rights to be transferred to the City pursuant to this Memorandum shall be valued at Forty Two Million Dollars (\$42,000,000). In connection with the conveyance by UP to the City of the Real Property and the Air Rights, UP represents and warrants that (i) it has not previously sold, transferred, assigned, leased or conveyed the Real Property, the Air Rights (excluding any air rights previously conveyed) or any part thereof, to any other party (other than the Leases and such other leases, licenses and occupancy agreements entered into pursuant to Section 2.2(j)); and (ii) to the best knowledge of Mr. R.D. Uhrich, Assistant Vice President – Real Estate (who is the person at UP who has personal knowledge of such matters), no third party or governmental entity has exercised or is attempting to exercise any right of reverter, power of termination, or reversionary interest relating to the Real Property or the Air Rights, or any portion thereof. UP also covenants and agrees to reasonably cooperate and assist the City in (1) taking any action to remove or clear any title defect relating to the Real Property or the Air Rights, or any portion thereof, which defect existed prior to the lease or conveyance thereof to the City, or arose, or will arise, as a result of such lease or conveyance, (2) establishing and/or confirming the priority and perfection of title vested, or to be vested, in the City for the Real Property and the Air Rights and (3) obtaining the release of any reversionary interests affecting the Real Property or the Air Rights, or any portion thereof, from such third parties or governmental entities owning or holding the same. UP agrees, at the City's request, to undertake the cooperation and assistance described in this Section 2.2(e) prior to the conveyance of the Air Rights and Real Property to the City, but such covenants shall survive the conveyance thereof. UP shall convey the Real Property and the Air Rights to the City, or its designee, free and clear of any monetary encumbrances and subject to all existing easements and licenses for longitudinal fiber optic communication facilities and longitudinal pipe and wire lines, and further subject to all existing lease or occupancy agreements and all existing wireline, pipeline, road crossing, signboard licenses and agreements, and other licenses affecting the Real Property, and to all encumbrances of record (other than monetary liens or encumbrances). Transfer taxes or fees and closing costs (other than escrow charges) in connection with any conveyance and/or lease of the Real Property and/or Air Rights shall be Project Costs except that the parties shall make use of any exemptions from fees or transfer taxes that exist due to the fact that this will be a transfer to a governmental entity. The provisions of this Section shall survive the conveyance or assignment of the Real Property, the Air Rights or the Leases and shall apply notwithstanding the form of deed.

(f) **Transfer of Leases.** In connection with the conveyance and transfer by UP to the City of the Real Property, UP shall transfer, assign and convey to the City, or its designee, the Leases (including all security deposits thereunder in immediately available funds except deposits related to transportation services provided by UP as opposed to lease security), which Leases are located on the Real Property described in Section 2.2(c) above. Within 20 days after the execution of this Memorandum UP shall deliver to the City true, correct and complete copies of all the Leases. UP represents and warrants to the City that as of the date of this Memorandum (i) a true and correct rent roll and delinquency report for the Leases as of November 30, 1998 is included within the rent roll and delinquency report attached hereto as Exhibit D; and (ii) the scheduled payments under the Leases identified on the rent roll produced

or will produce a net income stream of at least \$961,613.60 during the calendar year 1998 on an annualized basis. UP does not represent or warrant that this annualized amount of rental or any other amount of rental will be paid at any time after the date of this Memorandum, or during the year 1999 or at anytime in the future, nor does UP warrant the payment of any amount of rent to the City by the tenants and licensees thereunder. If, following the transfer of the Leases to the City, any payment is made to UP under the Leases, UP shall, within a reasonable time after receipt thereof, remit such amounts, without deduction or offset, to the City and, until such remittance, UP shall hold such funds as a trustee on behalf of the City. UP shall be responsible for, and shall indemnify, defend and hold harmless the City, its representatives, agents, officers, employees, successors and assigns, from and against, any claims, liabilities, losses or actions arising out of or related to the Leases, to the extent arising out of, relating to or caused by the acts or omissions of UP, its agents, representatives, employees, officers, directors and invitees occurring prior to the date on which UP transfers and assigns the Leases to the City. The City shall be responsible for, and shall indemnify, defend and hold harmless UP, its representatives, agents, officers, employees, successors and assigns, from and against, any claims, liabilities, losses or actions arising out of or related to the Leases, to the extent arising out of, relating to or caused by the acts or omissions of the City, its agents, representatives, employees, officers, directors and invitees occurring after the date on which UP transfers and assigns the Leases to the City.

(g) **Materials Contribution.** UP shall make a portion of the UP Contribution in the form of a contribution towards the Project Costs of design, construction and installation of the Shoo-Fly Track, the Reno Branch Connection Track and the Track and Track Support Structures for the Rail Corridor, and the engineering, materials, labor and track removal relating thereto (collectively, the "**Rail-Related Items**"), in an amount equal to Seventeen Million Dollars (\$17,000,000) (the "**Materials Contribution**"); provided, however, that (i) UP shall in no event be required to contribute an amount in excess of \$17,000,000 for the Rail-Related Items; and (ii) if the Rail-Related Items ultimately cost less than \$17,000,000, UP shall only be required to contribute such lesser amount, but in no event shall UP's contribution be reduced as a result of this clause (ii) to an amount less than \$15,000,000. The Materials Contribution shall be paid by UP in immediately available funds in the manner provided in Section 2.2(f) below; provided, however, that UP may, at its option, elect to make the Materials Contribution in whole or in part by providing engineering services, labor and/or construction materials in kind to the Project, which election shall be made by written notice to the City delivered at any time prior to the City's publication of a request for interest, request for qualifications, request for proposal or any procurement announcement relating to any design engineering or construction contract for the Project. If UP properly and timely elects to contribute a portion of the Materials Contribution by providing engineering services, labor and/or construction materials in kind, the value of such services, labor and materials shall be UP's actual and substantiated out-of-pocket cost therefor (including transportation costs to the Project site for materials); but for the purposes of this Memorandum, such cost shall not exceed the cost at which such services, labor and materials could have been obtained by the City from third parties at commercially reasonable and customary rates (including transportation costs to the Project site for materials).

(h) **Transfer of Additional Leases.** In addition to the Leases, UP shall dedicate to the City all of the rents, income, profits, payments, reimbursements, charges and sums received, paid, collected, payable or collectable under the Additional Leases (the

"Additional Lease Revenues") for a period of 30 years from the date of execution and delivery of this Memorandum. Within 20 days after execution of this Memorandum, UP shall deliver to the City true, correct and complete copies of all the Additional Leases. UP represents and warrants to the City that as of the date of this Memorandum: (i) a true and correct rent roll and delinquency report for the Additional Leases as of November 30, 1998 is included within the rent roll and delinquency report attached hereto as Exhibit D, and (ii) the scheduled payments under the Additional Leases identified on the rent roll produced or will produce a net income stream of at least One Hundred Sixty-Five Thousand Dollars (\$165,000.00) during calendar year 1998 on an annualized basis. UP does not represent or warrant that this annualized amount of rental or any other amount of rental will be paid at any time after the date of this Memorandum, or during the year 1999 or at anytime in the future, nor does UP warrant the payment of any amount of rent to the City by the tenants and licensees thereunder. Within 30 days after the execution and delivery of this Memorandum, UP shall execute and deliver into the Project Escrow an Assignment of Rents assigning the Additional Lease Revenues to the City or its designee, which assignment shall be in form and substance reasonably acceptable to UP and to City (the "Assignment"). The Assignment shall be for a term of 30 years and shall provide that UP shall remain the owner of the property on which the Additional Leases are situated and shall remain the landlord under the Additional Leases, but that the Additional Lease Revenues shall be paid to the City as provided in this Memorandum. All Additional Lease Revenues generated after the date of execution and delivery of this Memorandum shall be placed by UP in the Project Escrow and shall be released therefrom as provided in Section 2.2(j). UP's obligations with respect to the Additional Leases during the term of the Assignment shall be the same as its obligations under Section 2.2(k)(2) regarding the Leases. UP shall comply with the terms of the Additional Leases applicable to the landlord and shall maintain, or cause tenants to maintain, commercially appropriate property damage and liability insurance with respect thereto. The Assignment shall provide that if any of the Additional Leases expire or terminate during the term of the Assignment, UP and the City shall jointly make commercial reasonable efforts to promptly lease such property, and any and all new leases on such property formerly covered by the Additional Leases shall also become part of the Additional Leases covered by the Assignment for the remaining term thereof. The Assignment also shall provide that renewals and extensions of any Additional Leases shall be at the then current fair market rental rates. The specific rights and obligations of the parties regarding such leasing shall be the same as set forth in Section 2.2(k)(1) of this Memorandum with respect to the leasing of the Real Property. Notwithstanding the foregoing, upon giving the City at least 90 days prior written notice UP may remove from the list of Additional Leases any lease which UP terminates (such termination to occur within 30 days after expiration of the 90 day notice period) for the purpose of using the land subject to such Additional Lease for expansion of UP's rail facilities. UP represents to the City that it currently has no plans to expand its rail facilities in a manner that will require termination of any of the Additional Leases. UP also agrees that it will use reasonable efforts to avoid termination of Additional Leases as a result of rail facility expansion. UP shall not be required to replace any Additional Lease terminated for the purpose of expanding UP's rail facilities or for rail-related purposes unless the percentage of rental income of Additional Leases terminated for the purpose of expanding UP's rail facilities or for rail-related purposes exceeds five percent (5%) of the greater of (x) \$165,000, or (y) the average annual income stream received by the City from the Additional Leases over the prior 5 years, in which event UP shall add other properties with leases to the Assignment for the remaining term of the Assignment to ensure that the City's

revenue stream from the Additional Leases is never reduced as a result of this provision by more than five percent (5%) of the greater of (1) \$165,000, or (2) the average annual income stream received by the City from the Additional Leases over the prior 5 years. Notwithstanding the foregoing, UP shall retain all security deposits under the Additional Leases and shall be solely responsible therefor (provided that, if a security deposit is applied to any monetary default under an Additional Lease, the amount so applied shall constitute Additional Lease Revenues).

(i) **Timing and Logistics of UP Contribution.**

(1) Air Rights, Real Property, Leases, Additional Leases. Within ten days after the later of (A) first issuance of the bonds for the Project; or (B) the effective date of the STB approval of this Memorandum, but not sooner than the date of filing of the dismissal(s) described in Section 2.3(a) ("**Escrow Deposit Date**"), UP and the City shall deliver into the Project Escrow fully executed and acknowledged (1) quitclaim deeds conveying the Air Rights from UP to the City, or its designee; (2) quitclaim deeds conveying the Rail Corridor Real Property from UP to the City, or its designee; (3) quitclaim deeds for each parcel of the Other Property conveying such parcels from UP to the City, or its designee; (4) lease assignments conveying the Leases from UP to the City, or its designee; (5) quitclaim deeds conveying the Rail Corridor Real Property from the City to UP, (6) the Assignment, and (7) a document in recordable form executed by the City which has the effect of terminating the Assignment upon the recordation thereof ("**Termination of Assignment**"). The forms of such deeds, lease assignments and other documents, and the legal descriptions attached thereto, shall be in accordance with the terms of this Memorandum and shall otherwise be subject to the mutual agreement of the parties; provided, however, that the parties acknowledge and agree that the legal descriptions shall be amended from time to time to the extent that they prove inaccurate or do not follow the ultimate alignment of the Rail Corridor (it being the parties' intent that the City, or its designee, obtain title to all real property upon which the Rail Corridor shall be constructed). In addition and notwithstanding any of the documentation deposited into the Project Escrow, the parties agree to execute and deliver, at any time, such other documents and instruments as are necessary or desirable to effect the transfer, conveyance, lease and assignment by UP to the City or its designee of the Air Rights, the Leases and the Real Property, all of which shall be in a mutually acceptable form.

(2) Lease Revenues and Additional Lease Revenues. From and after the Escrow Deposit Date, UP shall, within a reasonable time after receipt thereof, transfer and remit all Lease Revenues and Additional Lease Revenues received by or on behalf of UP after the date of the execution and delivery of this Memorandum, without offset or deduction, into the Project Escrow. Following the transfer of Lease Revenues and the Additional Lease Revenues to the City from the Project Escrow in accordance with Section 2.2(j), but prior to the transfer of the Leases from UP to the City and recordation of the Assignment in accordance with Section 2.2(j), UP shall, within a reasonable time after receipt thereof, transfer and remit all Lease Revenues and Additional Lease Revenues received by or on behalf of UP, without offset or deduction, to the City.

(3) Materials Contribution. The Materials Contribution, to the extent made in cash, shall be paid over time to the City in the form of reimbursement payments until the full Materials Contribution amount has been expended, with the actual reimbursement payments

to be paid to the City within 30 days after delivery to UP of invoices from the City detailing the costs incurred to date for the matters described in Section 2.2. The Materials Contribution, to the extent made in kind of construction materials, shall be delivered to the Project site by UP on or prior to the delivery date specified by the City for the materials in question.

(j) **Project Escrow.** Within thirty (30) days after the date hereof, UP and the City shall open an escrow (the "**Project Escrow**") with a mutually acceptable escrow agent or trustee (the "**Escrow Agent**") located in Reno. All Lease Revenues, Additional Lease Revenues, and other funds deposited into the Project Escrow shall be invested by the Escrow Agent at the direction of the City, subject to the approval of UP, such approval not to be unreasonably withheld or delayed. Upon the severance of the main line, as permitted by Section 4.1, the Escrow Agent shall promptly (i) cause the deeds relating to the Rail Corridor Real Property and the Air Rights to be recorded in the Official Records of Washoe County, Nevada; and (ii) release all Lease Revenues, Additional Lease Revenues and other funds in the Project Escrow, including all interest and investment income, to the City, in a manner designated by the City. Upon the satisfaction or mutual waiver of the Escrow Release Conditions, the Escrow Agent shall promptly (x) cause the deeds related to the Other Real Property and the Assignment to be recorded in the Official Records of Washoe County, Nevada; (y) deliver the lease assignments relating to the Leases to the City; and (z) deliver to the appropriate party such other documents and instruments that have been deposited into the Project Escrow. Upon the satisfaction or mutual waiver of the Escrow Release Conditions, UP shall promptly remit to the City in immediately available funds, without offset or deduction, all security deposits under the Leases (except for deposits related to transportation services provided by UP). The Escrow Agent shall continue to hold the Termination of Assignment and the quitclaim deed from the City to UP. If (A) the severance of the main line, as permitted by Section 4.1, has not occurred on or before the four (4) year anniversary of the date hereof, which date shall be subject to extension for up to two (2) years during any period in which a Force Majeure Reason has occurred (such extension to include a reasonable period of time following the cessation of the Force Majeure Reason to allow the City, or its contractors and subcontractors, to resume design or construction efforts, as applicable) or (B) the City has delivered written notice that it is canceling, terminating or abandoning the Project, the Escrow Agent shall deliver and return all documents, instruments and funds (including accrued interest) held by the Escrow Agent to the parties depositing the same and this Memorandum shall terminate and be of no further force and effect. If, following the severance of the main line, as permitted by Section 4.1, the City delivers written notice that it is canceling, terminating or abandoning the Project, the Escrow Agent shall cause the quitclaim deed executed by the City to UP with respect to the Rail Corridor Real Property and the Termination of Assignment to be recorded in the Official Records of Washoe County, Nevada. All costs and charges of the Project Escrow and the Escrow Agent shall be borne equally by the parties.

(k) **UP Obligations Regarding UP Contribution Items Prior to Delivery.**

(1) **Air Rights and Real Property.** From and after the date hereof, UP shall not, without the City's prior written consent, in its sole discretion, (i) transfer, sell, encumber, hypothecate, assign, pledge, lease or grant to any person or entity any right, title and interest in and to the Air Rights or the Real Property; or (ii) take any action or omit to take any action which will reduce, diminish, limit or lessen the value or utility of the Air Rights or the

Real Property. UP shall use commercially reasonable efforts to maintain and maximize the existing value of the Air Rights and the Real Property prior to the transfer thereof to the City pursuant to Section 2.2(j) and, in all events, shall operate and maintain the Real Property in accordance with applicable law and in good order, condition and state of repair and shall maintain property damage and general liability insurance thereon at the same levels as currently in force (or, if no insurance is currently in force, in such amounts as shall be reasonably determined by the City and UP). With respect to any portion of the Real Property that is currently or in the future not subject to a Lease, until the date such Real Property is conveyed to the City, (A) UP and the City shall promptly confer and mutually agree upon the rental and other occupancy parameters for such Real Property and a marketing program that shall aggressively market such portion of the Real Property for lease and/or license; (B) both UP and the City shall market such Real Property in accordance with the approved marketing plan and solicit offers for the same; (C) each party shall, until such Real Property is leased and/or licensed, regularly communicate and share information with each other regarding prospective tenants and licensees, marketing opportunities and the status of their respective efforts to market such Real Property; (D) each party shall immediately deliver written notice and copies of any offer or material correspondence relating thereto to the other party ~~and~~ both parties shall be entitled to participate in negotiations and discussions with such prospective tenant or licensee); and (E) no lease or license shall be entered into with respect to such Real Property until approved by both parties, such approval not to be unreasonably withheld or delayed. Upon the execution of such lease or license, such lease or license shall constitute a "Lease" for all purposes under this Memorandum. In no event shall UP prioritize or favor for leasing or licensing any of its other real property holdings within the City that are not included within the Real Property to the disadvantage of the Other Real Property.

(2) Leases. From and after the date hereof through and until the date on which the Leases are transferred to the City pursuant to Section 2.2(j), UP shall not, without the City's prior written consent, in its sole discretion, (i) transfer, sell, encumber, hypothecate, assign, pledge, lease or grant to any person or entity any right, title and interest in and to the Leases; or (ii) take any action or omit to take any action which will materially reduce, diminish, limit or lessen the value or occupancy under the Leases. In addition, UP shall not, without the City's prior written consent, which consent shall not be unreasonably withheld or delayed, (A) modify, amend, alter or terminate any of the Leases, except that UP may terminate any Lease for nonpayment of rent or other material breach without prior authorization from City, (B) release, discharge, reduce or waive any obligations of any of the tenants, licensees or parties thereunder (except that UP may (1) conduct day to day management of the Leases in the ordinary course of business in the manner and up to the standard of care currently employed by UP with respect to the Leases and other operating income properties of UP, and (2) continue any lawsuits presently pending with respect to any Lease and comply with the outcome thereof (provided that UP shall not agree to any settlement or compromise thereof which would reduce rent, materially modify the Lease or cause the termination of the Lease without the prior written consent of the City)); or (C) waive any material default or monetary default under any Lease. Subject to the terms of this Memorandum, UP shall remain and be considered the landlord and/or licensor under all Leases until such Lease is assigned to the City.

2.3 Dismissal of Action; Removal of Train Restrictions.

(a) **UP/SPTL Merger Litigation.** Within 10 days after the later of (i) first issuance of bonds for the Project, or (ii) the effective date of the STB approval of this Memorandum, the City will take all necessary actions to withdraw its appeal pending before the D.C. Circuit Court of Appeals in the City's case against the Surface Transportation Board (and UP as an intervening party therein), D.C. Circuit Court of Appeals, Case No. 96-1418, and shall cause such case to be dismissed with prejudice.

(b) **Approval of Memorandum; Removal of Train Restrictions.** Within 10 days after execution of this Memorandum by all parties, the City and UP shall jointly petition the STB to approve this Memorandum and to impose the same as a condition of the UP/SP merger in lieu of any other mitigation that could have been imposed pursuant to Environmental Mitigation Conditions No. 22a through 22d in Appendix G of Decision No. 44 in the UP/SP merger. Further, such petition shall request removal of all restrictions on the number of trains (including trains operated by UP, BNSF, Amtrak, or any other trackage rights operator) that pass through the City. In addition, such petition shall provide that the STB approval sought therein shall not be effective unless and until the first issuance of bonds for the Project. If granted by the STB, and subject to applicable law and the regulations and rules of the STB, the removal of numerical restrictions on the number of trains that pass through the City shall remain in full force and effect irrespective of whether the Rail Corridor and Project are ever constructed or completed. The City agrees that upon the effective date of the STB approval of this Memorandum it will permanently withdraw all requests made by it or on its behalf for any form of mitigation including train limits and other operating restrictions, of any effect with respect to the UP/SP merger other than as provided in this Memorandum, and that it will not in the future make any further claim, demand or request for any such mitigation with respect to the UP/SP merger other than enforcement of this Memorandum in accordance with its terms. The preceding sentence, however, shall not be deemed to relieve UP of any obligations to implement in Reno any mitigation measures which are applicable on a systemwide or corridorwide basis and which were imposed on UP by the STB as a result of the UP/SP merger approval.

ARTICLE III DESIGN

3.1 Plans and Specifications.

(a) **Preparation of Plans.** City shall select and engage qualified engineering firms, architects and consultants, and/or design-build contractors, to prepare or furnish, in compliance with current UP standards and specifications, for the Project (including the Shoo-Fly Track) (and each portion and segment thereof) schematic designs, preliminary and final engineering, structural and mechanical plans, preliminary and final construction plans and specifications, and/or design progress submittals (collectively, the "Plans").

(b) Approval of Plans.

(1) During the planning and design process, or the design/build process, as applicable, City shall deliver to UP, for its review, comment and approval, copies of

each set of Plans for the Project (or any segment thereof), other than work to be performed outside of the Rail Corridor. If UP's review of such Plans in a timely and professional manner reasonably requires UP to hire a consultant for such purpose, then, with the prior written consent of the City, the reasonable cost of such consultant shall be a Project Cost and UP shall bill the City for such costs in a manner to be agreed upon by the parties. UP shall provide to City and the designer or the design/build contractor (as the case may be) any comments, suggestions or disapprovals regarding each set of Plans, which comments, suggestions or disapprovals shall be delivered (A) with respect to initial or intermediate Plan submittals, within thirty (30) days after UP's receipt of such set of plans, and (B) with respect to final Plan submittals, within thirty (30) days after UP's receipt of such final set of Plans. City shall evaluate and consider UP's comments and suggestions in good faith, provided that City shall have no obligation to incorporate such comments or suggestions into the Plans, or make any revisions or modifications to the Plans in response thereto, except as provided in this Section 3.1. If UP fails to deliver a written disapproval, or fails to provide the reasonably detailed reason(s) therefor, within the time periods set forth above, such Plans shall be conclusively deemed approved by UP.

(2) Approval of the Plans shall not be unreasonably withheld, and any disapproval shall set forth in reasonable detail the reasons therefor. Plans may be disapproved by UP only if, in its reasonable and good faith judgment, (A) the design of the Rail Corridor is unsafe or fails to comply with any applicable law or regulation, (B) the design will materially and adversely affect UP's ability to operate trains over the Rail Corridor; (C) the design does not meet UP's customary standards and specifications as made available to the designer or design/build contractor (to the extent such standards and specifications apply to the Project), or (D) the design will require that UP incur substantially higher costs in future maintenance of the main tracks than that which is currently required to keep UP's existing main tracks through the downtown area of the City in good condition and repair (not taking into account, however, increased costs associated with operations in a trench and having an access road on only one side of such Tracks, or the increased speeds at which trains can operate through the Rail Corridor as a result of the Project). With respect to any portion of the Project that is constructed pursuant to the design/build process, UP may not disapprove or request changes to any matter shown on a design progress submittal if the subject matter of such disapproval or requested change was shown on a prior design progress submittal approved (or deemed approved) by UP. If any proposed Plans are disapproved, the parties shall promptly meet and negotiate in good faith to attempt to mutually agree upon acceptable Plans. If they are unsuccessful in resolving such dispute within 10 days thereafter, either party may submit such matter to arbitration pursuant to Article XI below. Any material modification to any approved Plans shall be subject to UP's reasonable approval in the manner described above.

(3) Except for relocation of Amtrak's station in Reno, UP represents that it has full authority to approve the Plans and the construction of the Rail Corridor and that the City will not have to seek any approvals from any other entity operating trains over the existing Tracks with respect thereto. To the extent legally necessary, the City shall obtain prior approval from Amtrak for relocation or modification of Amtrak's current station in downtown Reno.

3.2 Phasing and Scheduling.

(a) **Project Segments.** City shall determine the specific segments or components of the Project and the specific order in which the segments or components shall be planned and constructed. City shall use reasonable efforts to keep UP reasonably informed of proposed phasing and scheduling for the Project, and the sequence in which City intends to construct specific segments or components and shall reasonably consider suggestions regarding such matters made by UP, provided that City shall have the right to determine the sequence in which each segment shall be constructed, and the schedule on which such segment shall be constructed. City shall not be obligated to construct segments in a contiguous sequence (*i.e.*, one segment may be constructed in the eastern portion of the Rail Corridor, with the next segment to be constructed in the western portion of the Rail Corridor).

(b) **Schedules.** Promptly after deciding that it will commence construction of any segment of the Project, City shall deliver to UP a construction schedule for that segment, setting forth in chronological order City's anticipated times for commencement of construction and/or the construction periods for the various portions of that segment, which schedule City may revise from time to time as necessary (in City's reasonable judgment). All revisions by the City to the construction schedule shall be promptly delivered to UP. City shall use commercially reasonable efforts to cause its engineers and consultants to complete the Plans (or, for any portions of the Project constructed using a design/build process, City shall cause the design/build contractor to complete design progress submittals) for each segment of the Project in the general order of the City's phasing schedule (as revised from time to time). The City will use its reasonable efforts to avoid material adverse interference with UP's train operations on UP's existing main tracks (prior to the severance thereof), the Reno Branch Connection Track and the Shoo-Fly Track. Requests for cessation of UP's operations to allow work in close proximity to the active track(s) shall be requested at least 7 days in advance by the City or its contractors. UP shall comply with all such reasonable requests insofar as they do not cause significant delays to UP's train schedules and operations.

ARTICLE IV CONSTRUCTION

4.1 Severance of Existing Mainline Track. Notwithstanding anything to the contrary contained herein, the City may not sever UP's existing main rail lines in connection with the Project unless and until: (i) the Shoo-Fly Track has been accepted by UP, in its reasonable discretion, and placed in service; (ii) the City has certified to UP in writing that it has received sufficient funds, or legally binding funding commitments, to pay for the portions of the Project necessary to construct the trench and install the Track and Track Support Structures in the Rail Corridor; (iii) the City has entered into binding construction contracts covering the work described in clause (ii) of this Section with a contractor reasonably approved by UP and has issued a notice to proceed to the contractor thereof; (iv) City has certified in writing to UP that all environmental permits and approvals necessary to construct the Rail Corridor have been obtained from all agencies with jurisdiction over construction of the Rail Corridor; (v) City has obtained and there is in full force and effect one or more performance bonds issued by a bonding company(ies), and in form and substance, reasonably satisfactory to UP, which bond shall guarantee and insure the timely completion by the City's contractor(s) of the entire Rail Corridor

as designed by City and approved by UP; (vi) the STB has acted as set forth in Section 2.3(b) and written notice thereof has been provided by the STB to the parties; and (vii) all legal actions by City against UP, involving the merger of the UP and SP as described in Section 2.3(a) have been withdrawn and dismissed with prejudice. The City shall give UP 30 days' advance notice of the date it intends to sever the existing mainline tracks.

4.2 Construction in accordance with Approved Plans. The City shall cause the Project to be constructed in accordance with the Plans as approved by UP. Once commenced, the City shall use commercially reasonable efforts to cause construction of the trench portion of the Project to proceed with reasonable diligence to completion and the City shall use commercially reasonable efforts to enforce all construction contracts and any performance bond(s). The City shall cause the Project to be built in a good and workmanlike manner and in accordance with accepted construction industry standards.

4.3 Utility Relocation.

(a) Except to the extent provided in Section 4.3(b), if relocation of existing utilities or easements is necessary or desirable to allow construction of the Project, the City shall be responsible for such relocations. UP agrees that the City may cause some or all of such utility relocation to occur before the existing UP mainline tracks are severed in order to reduce the time that UP will be using the Shoo-Fly Track. Any utility to be located over or under UP's existing main tracks, while still in use by UP, shall be subject to the approval of UP, such approval not to be unreasonably withheld or delayed, prior to the relocation thereof.

(b) If, under UP's existing agreements with third party permit or easement holders, the third party is obligated to relocate, at the cost of such third party, the facilities that must or are desired to be relocated as a result of the Project, then UP shall notify each such third party that it must relocate its facilities in accordance with the agreement between UP and such third party and thereafter take such reasonable steps as are necessary to cause each such third party to comply with such agreement. To the extent assignable, UP may assign all of its interest and rights under one or more of such agreements to the City upon reasonable advance written notice and the City thereafter may take such action as it, in its sole discretion, deems necessary to obtain relocation at the expense of the third party(ies). Upon such assignment, the City shall also be entitled to any payments, revenues or income derived or generated under such agreements. Costs incurred by the City in connection therewith shall be deemed Project Costs. Notwithstanding the foregoing, the provisions of this Section 4.3(b) shall not apply to the relocation of the utilities of the City or its departments and agencies, which relocation shall be undertaken as a Project Cost.

4.4 Permits and Licenses. Except as otherwise provided in this Agreement and other than for work performed by or on behalf of UP, City shall furnish, or cause to be furnished, at City's sole cost and expense, all permits, licenses, labor, materials, tools and equipment for the design and construction of the Project (including the Shoo-Fly Track). UP shall reasonably cooperate with the City's efforts to obtain any such permits and licenses that the City is required to obtain.

4.5 Compliance with Law. City's construction of the Project shall comply in all material respects with all applicable legal requirements.

4.6 Flagging. UP shall provide all necessary flagging protection against conflicts with train operations and similar activities to assure safe operations during construction of the Project. City shall reimburse UP for UP's reasonable costs and expenses incurred in connection with providing flagging protection, and such costs shall be Project Costs.

4.7 Cooperation.

(a) It is the parties' intent that the Project and the Rail Corridor be constructed and completed and be a successful endeavor between the parties. The parties also acknowledge that the failure of the Project and the Rail Corridor is not in the interest of either party. To effect the parties' intent, each party agrees at all times to act in good faith and to reasonably cooperate with the other party to effect the terms of this Memorandum and to facilitate the successful completion of the Project and the Rail Corridor. Safety shall be considered paramount at all times.

(b) The scope and complexity of constructing the Project is such that some inconvenience and interference with UP's rail operations are inevitable. UP and City shall reasonably and in good faith cooperate (i) during the planning and construction process to minimize such inconvenience and interference and to facilitate the efficient and timely construction of the Project, and (ii) in the scheduling and construction of the Project, including, without limitation, cooperating to obtain all permits and licenses necessary to construct the Project, and UP shall cooperate in City's efforts to obtain all financing necessary to construct the Project.

(c) In addition to the foregoing, (i) UP shall use reasonable efforts to conduct its rail operations on and around the Property in a manner designed not to interfere with the construction of the Project, (ii) the City and its contractors shall use reasonable efforts not to interfere with normal train operations and not to encroach within 15 feet of the then active rail line (however, the parties recognize that due to physical constraints at several locations, such 15 foot limitation may be reduced with UP's approval, which shall not be unreasonably withheld and may only be withheld based upon safety issues), (iii) UP shall grant to City and/or City's contractors, at no cost or consideration, temporary access licenses on terms and conditions reasonably acceptable to UP (including reasonable provisions requiring City's contractors to indemnify, defend and hold harmless UP from and against all actual liabilities, losses, actions, penalties, claims, demands, damages, detriments, costs, charges, judgments and expenses (including, without limitation, reasonable attorneys' fees and costs) which arise from the City's use of such licenses, provided such indemnity shall not cover the negligence or willful misconduct of UP, its agents, representatives, employees, consultants, officers, directors and invitees), over portions of UP's other property to the extent reasonably necessary for the construction of the Project, and vehicular and pedestrian ingress thereto and egress therefrom, and for the storage and staging of construction materials and equipment, provided that such licenses shall not materially impair UP's existing or reasonably contemplated use of or freight rail operations on such other property, and (iv) UP shall grant to City at no cost or consideration, permanent easements in, on, over and under portions of UP's other property for subjacent and

lateral support, and for the placement of any underground footings, foundations, facilities, pipelines or utilities set forth in the Plans or otherwise reasonably necessary for the Project (or relocated as a result of the Project); provided that, for such consents not set forth in the Plans, (x) such easements shall not materially impair UP's existing or reasonably contemplated use of or freight or passenger rail operations on such other property, (y) City shall pay all costs relating to the use by City of such easements (including, without limitation, the costs of relocating any existing utilities or other facilities therein), and (z) such easements shall be on terms and conditions reasonably acceptable to UP (including reasonable provisions requiring City to indemnify, defend and hold harmless UP from and against all liabilities, losses, actions, penalties, claims, demands, damages, detriments, costs, charges, judgments and expenses (including, without limitation, reasonable attorneys' fees and costs) which arise from the City's use of such easements, provided such indemnity shall not cover the negligence or willful misconduct of UP, its agents, representatives, employees, consultants, officers, directors and invitees).

ARTICLE V OWNERSHIP OF PROJECT IMPROVEMENTS

5.1 Ownership Of Project Improvements. Upon completion of the Project, the City shall own all Project improvements, structures, buildings and facilities, other than all Track and Track Support Structures, which will be owned by UP. To the extent UP does not do such work pursuant to Section 2.2(g), the contractor which removes any existing Track from UP's right of way or the Shoo-Fly Track shall be responsible for the disposal thereof and shall be entitled to any salvage value thereof.

5.2 Signboard Agreements, Fiber Optic Lines and Longitudinal Pipelines. UP shall retain all presently existing signboard agreements and licenses, fiber optic lines, longitudinal pipelines and easements related thereto on or under the Rail Corridor Real Property and all rights, liabilities, obligations, income and revenues arising therefrom or thereunder; provided, however, that such lines, pipelines and easements shall be subject to relocation as a result of the Project, which relocation shall be a Project Cost. UP shall also retain (i) the non-exclusive right to grant additional easements and/or licenses for fiber optic lines and longitudinal pipelines on or under the Rail Corridor Real Property; and (ii) the right, with respect to existing fiber optic lines and easements, to grant additional rights for additional fiber optic lines within the existing fiber optic easement areas; provided, however, that, in connection with any grant under clauses (i)-(ii), such fiber optic lines, longitudinal pipelines and easement or license areas shall not adversely affect the Project or the Rail Corridor, or the construction, operation, safety, maintenance and costs thereof (unless UP agrees in writing to bear such additional costs). Notwithstanding the rights retained and reserved by UP under this Section, upon the conveyance of the Rail Corridor Real Property to the City, the City shall also have the non-exclusive right to grant easements and/or licenses for fiber optic lines and longitudinal pipelines on or under the Rail Corridor Real Property; provided, however, that such fiber optic lines, longitudinal pipelines and easement or license areas shall not adversely affect the Project or the Rail Corridor, or the construction, operation, safety, maintenance and costs thereof (unless the City agrees in writing to bear such additional costs).

ARTICLE VI MAINTENANCE

6.1 Maintenance of Track, Track Support Structures, and Access Road.

UP shall be responsible, at its sole cost and expense, for all maintenance, repair, replacement and/or improvements to the Track, Track Support Structures and the Access Road components of the Rail Corridor from and after the date of its acceptance thereof (which acceptance shall be deemed to have occurred upon UP's commencement of rail operations over the Rail Corridor at main line speeds of up to 60 mph).

6.2 Maintenance of Non-Rail Components. The City shall be responsible, at its sole cost and expense, for all maintenance, repair, replacement and/or improvement to the Non-Rail Components of the Rail Corridor. The City shall have the right to use the Access Road to inspect, maintain, repair, replace and/or improve all or any portion of the Non-Rail Components and agrees to pay UP's reasonable out of pocket costs for necessary flagging protection under Track Workers Safety Regulations. To the extent necessary or desirable for the City to perform such functions, UP and the City shall establish periods of not less than six consecutive hours no more often than once every 24 hours during normal business periods in which train operations will be limited to one track, or if necessary, halted, through the Rail Corridor.

6.3 Drainage Facilities in Trench. The City shall be responsible for maintenance and operation of (i) any drainage systems in the depressed portion of the Rail Corridor designed to collect groundwater infiltrating into the trench, and (ii) the main underground drainage system (including catch basins) into which surface water is deposited from the surface collection system in the depressed portion of the Rail Corridor (the facilities described in clauses (i) and (ii) are referred to herein as the "**Main Drainage System**"). The City shall also be responsible for the treatment, if any, of groundwater and surface water deposited in the Main Drainage System to the extent required by governmental authorities prior to its disposal. UP shall be responsible for maintaining the surface water collection and surface drainage system (up to but not including the catch basins) in the Rail Corridor, which surface water collection and surface drainage shall be part of the Track Support Structures.

6.4 Maintenance of Shoo-Fly Track and Reno Branch Connection Track. UP shall be responsible, at its sole cost and expense, for maintaining the Shoo-Fly Track, grade crossing surfaces (within 2 feet of the nearest rail) and all related signal systems and crossing protection equipment while trains operate thereon as the bypass track during construction of the Project. UP shall be responsible, at its sole cost and expense, for maintaining the Reno Branch Connection Track, grade crossing surfaces, all related signal systems and crossing protection equipment and all Track, all Track Support Structures and Non-Rail Components (to the extent related solely to the Reno Branch Connection Track).

6.5 Cooperation. UP and the City shall reasonably cooperate with each other in scheduling and performing their respective obligations under this Article VI. The City shall require that all of its representatives and contractors comply with UP's safety regulations (but only to the extent such regulations previously have been delivered to the City by UP) when

working in the vicinity of the Tracks (including having UP flaggers present when such work occurs).

ARTICLE VII LIABILITY

7.1 Property Damage; Personal Injury.

(a) **Generally.** Generally, and subject to the provisions of Sections 7.1(b)-(d), inclusive, below, as among the parties to this Memorandum, UP shall be responsible for any property damage, personal injury or death arising from rail operations on the Rail Corridor, and City shall be responsible for all property damage, personal injury, death or claims for business interruption or interference arising from development and construction of the Project, except to the extent UP performs such development or construction pursuant to Section 2.2(g). The City will require its contractors to procure general liability and railroad protective insurance naming UP as an additional insured.

(b) **City Invitees, Contractors and Employees.** The City shall be liable for injury to or death of its invitees, construction and maintenance contractors and direct employees (i.e., not UP or UP's employees), and damage to its or their equipment, regardless of fault and regardless of UP or UP-contractor involvement, except to the extent such injury, death or damage is caused by the negligence or intentional misconduct of UP or UP's employees, invitees or contractors, in which case UP shall be liable for such injury, death or damage to the extent of such negligence or intentional misconduct. For the purposes of this subsection (b), "equipment" shall not include facilities or equipment constituting part of, or used in connection with, rail operations on or maintenance of, the Rail Corridor.

(c) **Train Accidents and Derailments.** In a train accident or derailment, UP shall be responsible for any injury to or death of its employees and damage to its equipment, as well as for injury to or death of third parties and damage to property (including, without limitation, Rail Corridor structures, improvements, buildings, facilities and equipment, Track, Track Support Structures, Non-Rail Components and the Shoo-Fly Track), except to the extent that the accident or derailment is caused in whole or in part by the negligence or intentional misconduct of the City or its invitees, contractors, agents or employees, in which case, the City shall only be liable for such injury, death or damage to the extent of such negligence or intentional misconduct.

(d) **Indemnity.** The party responsible or liable pursuant to this Section 7.1 for any death, injury or damage shall indemnify, defend and hold harmless the other party (and such other party's respective officers, directors, agents, representatives and employees), from and against any claim arising, in whole or in part, from such incident, except to the extent such claim arises out of the gross negligence or intentional misconduct of the party seeking indemnity.

(e) **Liens.** City will promptly remove all liens and encumbrances filed against UP's reserved rail easement or other property as a result of construction of the Project (except for such liens and encumbrances incurred by UP in connection with the Materials Contribution). UP shall have no obligation to accept the Project as final unless and until all mechanics and similar

liens burdening UP's reserved rail easement and other property have been fully resolved by City and releases recorded as necessary.

7.2 Environmental Liability

(a) **Rail Corridor.** From and after the date on which the Rail Corridor Real Property is conveyed to the City, each party shall be responsible for, and shall indemnify, defend and hold harmless the other party, its representatives, agents, officers, employees, successors and assigns, from and against, any claims, liabilities, losses or actions arising out of the release of Hazardous Substances within, on, over, under or adjacent to the Rail Corridor Real Property to the extent such release is a release from the equipment, or is caused by, relates to or arises from the activities or omissions, of such party, its employees, representatives, agents, shippers or invitees. UP shall indemnify, defend and hold the City, its representatives, agents, officers, employees, successors and assigns harmless from and against any actions, proceedings, governmental investigations, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of, relating to or caused by the release of Hazardous Substances within, on, over, under or adjacent to the Rail Corridor Real Property by UP, its employees, representatives, agents, shippers or invitees, which occurred on, over or under a portion of the Rail Corridor Real Property prior to date on which the Rail Corridor Real Property is conveyed to the City (it being understood and agreed that migration of Hazardous Substances released by third parties from adjacent property onto the Rail Corridor Real Property shall not be deemed to be a release by UP under this Section unless UP caused the release on the adjacent property). Notwithstanding the foregoing, the costs of remediation of any Hazardous Substances required by a governmental agency (with jurisdiction over such matter) from the Rail Corridor Real Property in connection with, or made necessary by, the construction of the Project on the Rail Corridor Real Property shall constitute a Project Cost and UP shall not have any independent obligation for such costs (other than making the UP Contribution) (nothing in this sentence, however, shall be deemed to (i) prevent the City from seeking contribution or reimbursement from responsible parties other than UP or (ii) require the City to remediate contamination located outside the Rail Corridor Real Property).

(b) **Other Real Property.** UP shall be responsible for, and shall indemnify, defend and hold harmless the City, its representatives, agents, officers, employees, successors and assigns, from and against, any claims, liabilities, losses or actions arising out of the release of Hazardous Substances within, on, over or under the Other Real Property, or any portion thereof, to the extent such release is caused by, relates to or arises from the activities or omissions, of UP, its employees, representatives, agents, shippers or invitees occurring prior to the date on which the Other Real Property is conveyed and transferred to the City. The City shall be responsible for, and shall indemnify, defend and hold harmless UP, its representatives, agents, officers, employees, successors and assigns, from and against, any claims, liabilities, losses or actions arising out of the release of Hazardous Substances within, on, over or under the Other Real Property, or any portion thereof, to the extent such release is caused by, relates to or arises from the activities or omissions, of the City, its employees, representatives, agents, shippers or invitees occurring after the date on which the Other Real Property is conveyed and transferred to the City.

ARTICLE VIII CONDITIONS TO PARTIES' OBLIGATIONS

8.1 Conditions To Parties' Obligations. The obligations of the parties under this Memorandum shall be conditioned upon the receipt of all required regulatory approvals without the imposition of any condition thereto that materially adversely affects either party. Such approvals shall include the approval of the STB of the settlement set forth in Section 2.3(b) above.

ARTICLE IX CITY NOT A CARRIER, NO JOINT VENTURE

9.1 Common Carrier Obligations. UP shall have and retain all of its duties, responsibilities and obligations arising under the Interstate Commerce Act and any successor federal legislation (and any similar Nevada statute) which require UP to serve existing and future rail freight shippers. UP acknowledges and agrees that nothing in this Memorandum or in any agreement to be executed in connection with this Memorandum shall be construed to obligate or require the City to assume or acquire any obligation to provide rail freight service or any other kind of service to any current or future shipper or receiver of UP or to otherwise impose upon the City any obligation or responsibility associated with the status of being a railroad or common carrier.

9.2 No Joint Venture. This Project is the sole undertaking and responsibility of the City and is not intended to be a joint venture. Nothing contained in this Memorandum shall have the effect of creating a joint venture or partnership between the City and UP.

9.3 Labor Protection Matters. UP shall be solely responsible for all labor protection matters relating to UP's employees or former employees and resulting from such UP's operations on the Rail Corridor. The City shall not be subject to labor protection matters relating to UP's employees or former employees and resulting from such operations on the Rail Corridor, and UP shall indemnify, defend and hold the City harmless against any losses or liabilities resulting from such matters.

ARTICLE X DEFAULT AND REMEDIES

10.1 Default and Remedies.

(a) The parties hereto acknowledge that in the event of a default or breach of any of the terms of this Memorandum, damages may not be an adequate remedy, and the non-defaulting party may seek the entry of decrees for specific performance in favor of such party. A defaulting party shall have 30 days to cure any default following receipt of written notice from another party. If such cure can reasonably be expected to take more than 30 days, the defaulting party shall be deemed to have effectuated a cure if it commences such cure within 30 days of notice and proceeds to complete all activities necessary and does in fact complete such cure using due diligence; provided, however, this sentence shall not apply to the payment of any fees or expenses pursuant to this Memorandum. The parties agree that their remedies under this Memorandum shall consist of actual damages and specific performance. Nonpayment of any

fees or expenses pursuant to this Memorandum which continues beyond the cure period shall be a material default. Notwithstanding the foregoing, if a bona fide dispute exists with respect to the amount of any fee or expense, the party obligated to pay such fee or expense shall pay the undisputed portion thereof at the time and in the manner required, and such party shall not be deemed to be in default with respect to the nonpayment of the disputed portion of such fee or expense until such time as the dispute has been resolved, whereupon the additional amount (if any) which is to be paid by such party shall be promptly paid.

(b) The parties hereto acknowledge that any claim or cause of action by UP arising from or related to complete failure of City to cause or obtain Substantial Completion of the Project after severance of UP's existing main line tracks as provided in Section 4.1 above shall not be subject to the requirement to arbitrate disputes under this Memorandum as set forth in Article XI, and that UP shall have the right in its sole discretion to file one or more lawsuits in a court(s) of competent jurisdiction located in the State of Nevada seeking damages and/or specific performance of City's obligations under this Memorandum.

ARTICLE XI ARBITRATION

11.1 ARBITRATION--NO CONSTRUCTION STOPPAGE

(a) IN THE EVENT OF A CLAIM OR DISPUTE ARISING OUT OF THIS MEMORANDUM, THE PARTIES SHALL MAKE GOOD FAITH EFFORTS TO RESOLVE THE DISPUTE THROUGH NEGOTIATION. FAILING A RESOLUTION OF THE DISPUTE OR CLAIM THROUGH THESE GOOD FAITH EFFORTS WITHIN 30 DAYS AFTER THE COMMENCEMENT OF THE DISPUTE OR CLAIM, ANY PARTY MAY SERVE UPON THE OTHER A WRITTEN DEMAND FOR ARBITRATION. THE PARTIES SHALL, WITHIN 15 DAYS THEREAFTER, OR WITHIN SUCH EXTENDED PERIOD AS THEY SHALL AGREE TO IN WRITING, ATTEMPT TO AGREE UPON A MUTUALLY SATISFACTORY ARBITRATOR. IF THEY ARE UNABLE TO SO AGREE, THEN, PRIOR TO THE EXPIRATION OF SAID 15-DAY PERIOD, CITY SHALL DESIGNATE ONE PERSON TO ACT AS ARBITRATOR, AND UP SHALL DESIGNATE ONE PERSON TO ACT AS ARBITRATOR. THE TWO DESIGNATED ARBITRATORS SHALL PROMPTLY SELECT A THIRD ARBITRATOR ("NEUTRAL ARBITRATOR"). ANY ARBITRATOR, INCLUDING THE NEUTRAL ARBITRATOR, SELECTED PURSUANT TO THE TERMS HEREOF SHALL BE A PERSON WITH AT LEAST FIVE YEARS' EXPERIENCE WITH THE DESIGN, CONSTRUCTION AND OPERATION OF RAILROAD FACILITIES.

(b) IF CITY, ON THE ONE HAND, OR UP, ON THE OTHER HAND, FAILS TO DESIGNATE ITS ARBITRATOR WITHIN 15 DAYS AFTER THE DATE OF DELIVERY OF THE DEMAND FOR ARBITRATION (OR THE AGREED UPON EXTENDED PERIOD), OR IF THE TWO DESIGNATED ARBITRATORS ARE UNABLE TO SELECT A NEUTRAL ARBITRATOR WITHIN 15 DAYS AFTER THEIR APPOINTMENT, A NEUTRAL ARBITRATOR SHALL BE DESIGNATED PURSUANT TO NEVADA LAW. THE AWARD OF THE MUTUALLY-DESIGNATED ARBITRATOR OR NEUTRAL ARBITRATOR, AS THE CASE MAY BE, SHALL BE SUPPORTED BY LAW, THE TERMS OF THIS MEMORANDUM AND SUBSTANTIAL EVIDENCE, AND

FURTHER, THE MUTUALLY-DESIGNATED ARBITRATOR OR NEUTRAL ARBITRATOR, AS THE CASE MAY BE, SHALL ISSUE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE MAKING OF AN AWARD WHICH FAILS TO COMPLY WITH THE REQUIREMENTS OF THE IMMEDIATELY PRECEDING SENTENCE SHALL BE DEEMED TO BE IN EXCESS OF SUCH ARBITRATOR'S POWERS AND THE COURT SHALL VACATE THE AWARD IF, AFTER REVIEW, IT DETERMINES THAT THE AWARD CANNOT BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE CONTROVERSY SUBMITTED.

11.2 ARBITRATION--CONSTRUCTION STOPPAGE.

(a) IN NO EVENT SHALL CONSTRUCTION BE STOPPED IN THE EVENT OF A CLAIM, OR DISPUTE, EXCEPT WHERE IT IS ABSOLUTELY NECESSARY (IN THE REASONABLE JUDGMENT OF THE PARTIES) TO FIRST RESOLVE THE DISPUTE IN ORDER TO BE ABLE TO CONTINUE CONSTRUCTION. IN THE EVENT THAT CONSTRUCTION IS STOPPED, AN ARBITRATOR SHALL BE IMMEDIATELY DESIGNATED PURSUANT TO NEVADA LAW.

(b) NO ARBITRATOR SHALL BE SELECTED WHO IS UNABLE TO HEAR THE DISPUTE WITHIN 15 DAYS AFTER BEING SELECTED. NOTWITHSTANDING ANY NEVADA LAW TO THE CONTRARY, WHERE CONSTRUCTION IS STOPPED, THE ARBITRATOR MAY NOT ADJOURN THE HEARING EXCEPT UPON THE STIPULATION OF ALL PARTIES TO THE ARBITRATION. IN ADDITION TO ALL OTHER ISSUES, THE ARBITRATOR SHALL ALSO DETERMINE WHETHER IT WAS ABSOLUTELY NECESSARY TO STOP CONSTRUCTION, AND IF IT WAS NOT ABSOLUTELY NECESSARY, THE PARTY WHICH CAUSED THE CONSTRUCTION STOPPAGE BECAUSE OF NECESSITY SHALL BE ENTITLED TO DAMAGES ARISING OUT OF SUCH CONSTRUCTION STOPPAGE, WHICH DAMAGES SHALL ALSO BE DETERMINED BY THE ARBITRATOR. THE AWARD OF THE ARBITRATOR SHALL BE SUPPORTED BY LAW, THE TERMS OF THIS MEMORANDUM AND SUBSTANTIAL EVIDENCE, AND FURTHER, THE ARBITRATOR SHALL ISSUE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE MAKING OF AN AWARD WHICH FAILS TO COMPLY WITH THE REQUIREMENTS OF THE IMMEDIATELY PRECEDING SENTENCE SHALL BE DEEMED TO BE IN EXCESS OF SUCH ARBITRATOR'S POWERS AND THE COURT SHALL VACATE THE AWARD IF, AFTER REVIEW, IT DETERMINES THAT THE AWARD CANNOT BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE CONTROVERSY SUBMITTED.

11.3 IMPARTIALITY OF NEUTRAL ARBITRATOR

(a) NO PERSON SHALL ACT AS A NEUTRAL ARBITRATOR WHO IN ANY WAY HAS ANY FINANCIAL OR PERSONAL INTEREST IN THE RESULTS OF THE ARBITRATION OR HAS ANY PAST OR PRESENT RELATIONSHIP WITH ANY OF THE PARTIES OR THEIR COUNSEL. FAILURE TO DISCLOSE ANY SUCH INTEREST OR RELATION SHALL BE GROUNDS FOR VACATING THE AWARD.

11.4 COMPENSATION OF ARBITRATOR.

(a) EACH PARTY SHALL PAY THE EXPENSES AND FEES OF THE ARBITRATOR IT SELECTS. THE EXPENSES AND FEES OF THE NEUTRAL ARBITRATOR SHALL BE BORNE EQUALLY BY THE PARTIES.

11.5 DAMAGES.

(a) THE ARBITRATOR(S) IS(ARE) SPECIFICALLY AUTHORIZED TO AWARD MONETARY DAMAGES TO THE NON-DEFAULTING PARTY OR REQUIRE SPECIFIC PERFORMANCE OF THE TERMS OF THIS AGREEMENT BY THE DEFAULTING PARTY.

CITY

UP

ARTICLE XII MISCELLANEOUS

12.1 Assignment. The qualifications and reputation of each party hereto are material inducements to the other party in entering into this Memorandum. Therefore, neither party may assign, transfer, sell or convey its rights and interests or delegate its duties under this Memorandum without the prior written consent of the other party. Notwithstanding the foregoing, (i) City may collaterally assign its rights under this Memorandum in connection with any or all of the Bond Financing, the NDOT Commitment and the Federal Loan; (ii) the City may assign, transfer, encumber, sell or hypothecate the Lease revenues or any parts thereof; and (iii) the City may sell, encumber, hypothecate, assign, transfer or lease the Transferred Property, or any part thereof.

12.2 Governing Law. THIS MEMORANDUM SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA, WITHOUT REFERENCE TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF SUCH STATE.

12.3 Headings. The article and section headings in this Memorandum are for convenience only and shall not be used in the interpretation or considered part of this Memorandum.

12.4 Severability. If any clause or provision of this Memorandum is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of this Memorandum shall not be affected but shall remain in full force and effect.

12.5 Time. Time is of the essence of this Memorandum.

12.6 Exhibits And Recitals. All Recitals herein and exhibits attached hereto are incorporated herein by this reference.

12.7 Interpretation. The language in all parts of this Memorandum shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto for any reason (including, without limitation, by virtue of the fact that this Memorandum may have been drafted or prepared by counsel for one of the parties, it being recognized that all parties hereto, and their respective counsel, contributed materially and substantially to the preparation of this Memorandum).

12.8 No Third Party Beneficiaries. It is the intent of each party to this Memorandum that each provision of this Memorandum inure only to the benefit of the parties which execute this Memorandum, and their permitted successors and assignees, and shall not inure to the benefit of any other person.

12.9 Notices. All notices and other communications under this Memorandum shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally on the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below and receipt has been confirmed either telephonically or by facsimile, or (ii) on receipt, if mailed to the party to whom notice is to be given by overnight courier or first class mail, registered or certified, return receipt requested, postage prepaid and properly addressed as follows:

To the City:

City of Reno
490 South Center Street, Suite 201
Reno, Nevada 89505
Attn: Mr. Charles E. McNeely, City Manager
Telecopy No.: (702) 334-2097
Confirmation No.: (702) 334-2400

With a copy to:

City of Reno
Office of City Attorney
P.O. Box 1900
Reno, Nevada 89505
Attn: Merri Balaustegui-Traficanti, Esq.
Telecopy No.: (702) 334-2420
Confirmation No.: (702) 334-2050

To UP:

Union Pacific Railroad Company
1416 Dodge Street, Room 830
Omaha, Nebraska 68179
Attn: Vice President - Law
Telecopy No. (402) 271-5610
Confirmation No. (402) 271-4229

12.10 Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

12.11 Authority. Each individual executing this Memorandum hereby represents and warrants that he has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he is executing this Memorandum to the terms hereof.

12.12 All Negotiations Incorporated. All negotiations relative to the matters contemplated by this Memorandum are merged herein and there are no other understandings or agreements relating to the matters herein other than those incorporated in this Memorandum or expressly referenced in this Memorandum.

12.13 Allocation of Environmental Benefits. City and UP agree that, as between City and UP, upon Substantial Completion of the Rail Corridor all benefits or credits, under any federal implementation plan and/or the state implementation plan or a similar program administered by the State of Nevada, which may accrue, result, or become available from the construction of the Project, and the operation of trains on the Rail Corridor, shall be allocated to the City and UP in proportion to their respective contributions to the final cost of the Project, except that all such benefits or credits which may accrue or result from UP's use of new, upgraded or different equipment, including locomotives utilizing alternative fuels or fuel saving improvements, more efficient prime movers (engines), traction motors, or controls, or different types of propulsion, or from other operational changes specific to UP shall be allocated entirely 100% to UP.

12.14 Further Assurances. Each party will, whenever and as often as it shall be reasonably requested so to do by the other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Memorandum or to transfer the Air Rights, Leases and/or Real Property to the City.

ARTICLE XIII EFFECT OF MEMORANDUM

13.1 Effect Of Memorandum. Each of the parties hereto covenants and agrees that it intends that the terms and provisions of this Memorandum shall be binding on each other and it will not take a position in any future negotiations that is inconsistent with or contrary to the terms and provisions of this Memorandum.

13.2 STB Approvals. The parties hereto agree to cooperate diligently and in good faith to obtain all necessary consents or approvals from the STB with respect to this Memorandum and the rail freight operations by UP on the Rail Corridor.

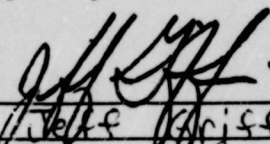
13.3 Conflicts. To the extent that the provisions of this Memorandum conflict with any other agreements between the City and UP with respect to the Rail Corridor and/or the Project, the provisions of this Memorandum shall control.

[Signatures on next page]

IN WITNESS WHEREOF, this Memorandum has been executed by the parties
hereto on the date first above written

CITY:

CITY OF RENO,
a municipal corporation

By: 
Name: Jeff Griffin
Title: Mayor, City of Reno

UP:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Memorandum has been executed by the parties hereto on the date first above written

CITY:

CITY OF RENO,
a municipal corporation

By: _____
Name: _____
Title: _____

UP:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: James V. Dolan
Name: James V. Dolan
Title: Vice President - Law

LAJ:851252.10

S-1

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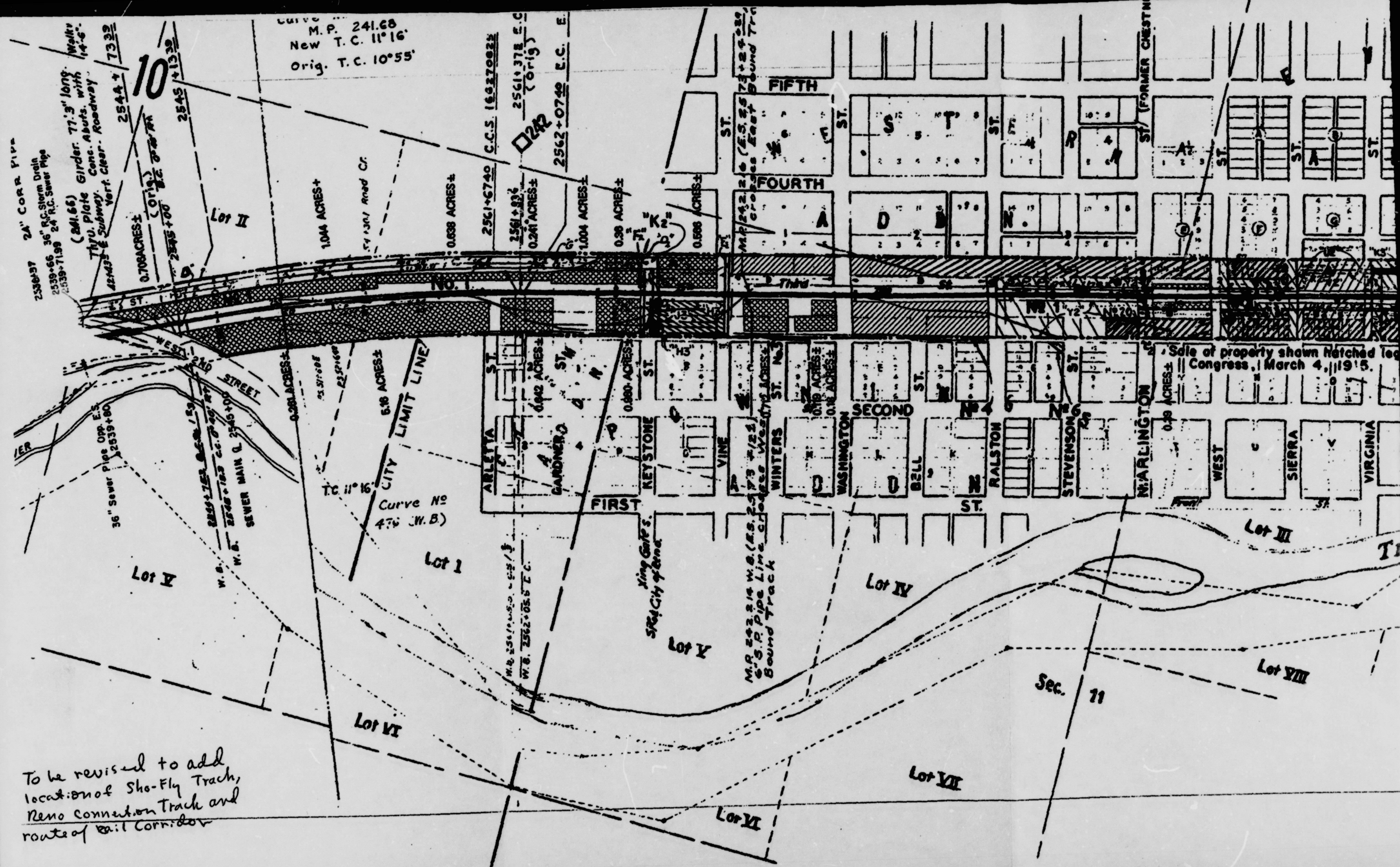
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TOTAL P.02

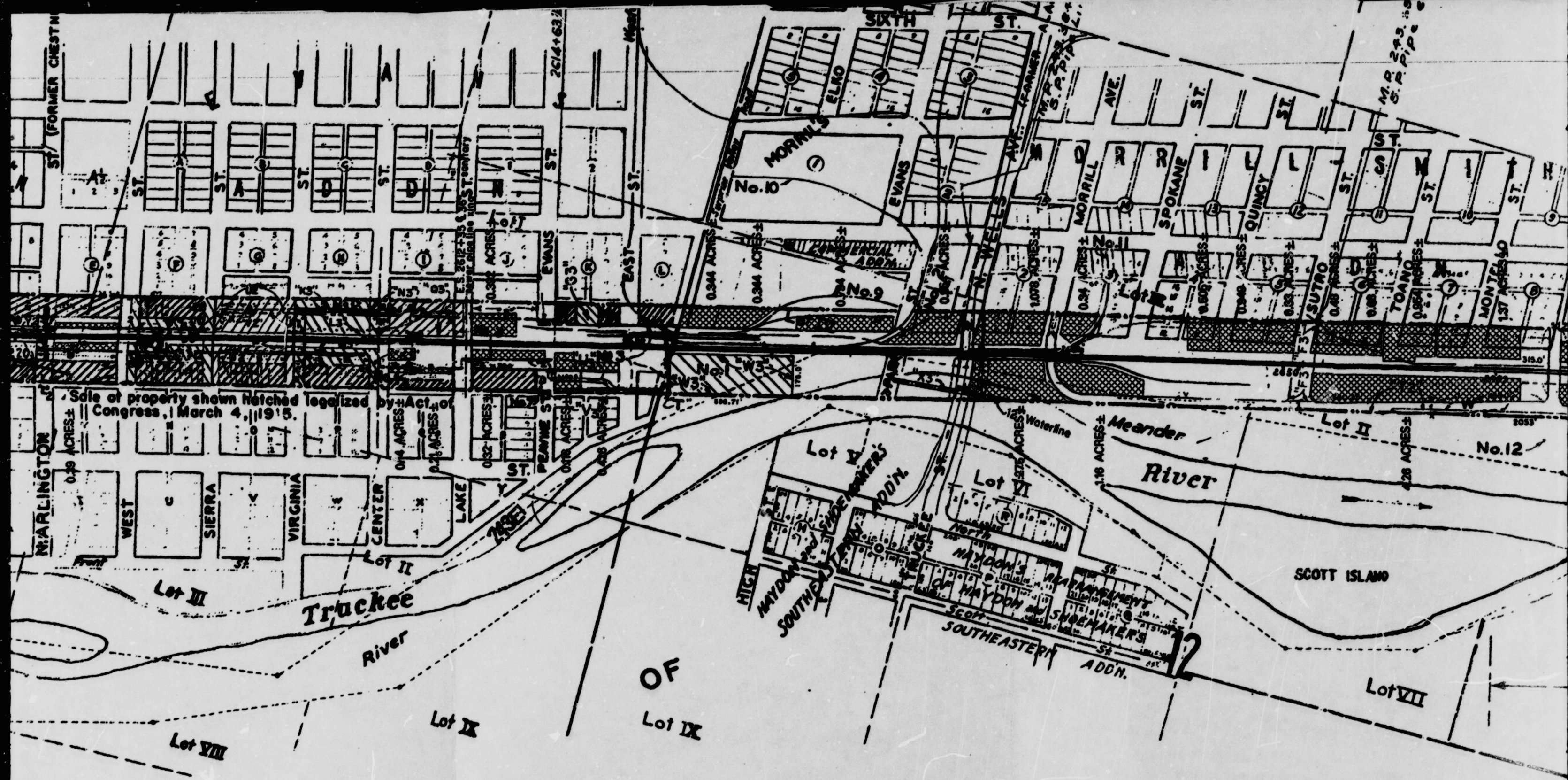
EXHIBIT A

MAP



To be revised to add
location of Sho-Fly Trach,
Reno Connection Track and
route of Rail Corridor

Sale of property shown hatched loc
Congress, March 4, 1915.



Sale of property shown hatched legalized by Act of Congress, March 4, 1915.

Truckee River

Meander River

SCOTT ISLAND

OF Lot IX

Lot VIII

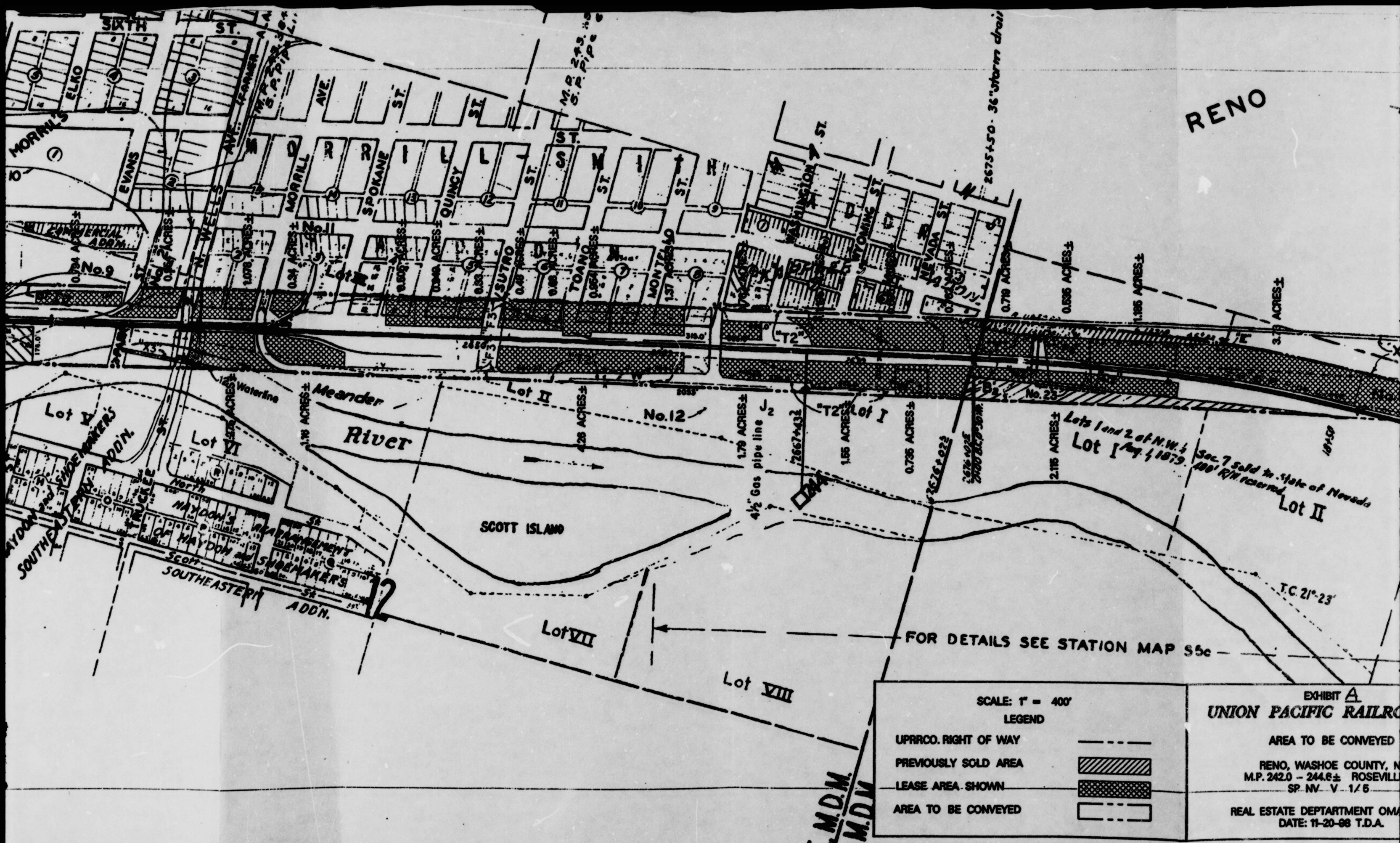
Lot IX

Lot VII

No. 12

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HAYDON'S
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RENO

SCALE: 1" = 400'
LEGEND

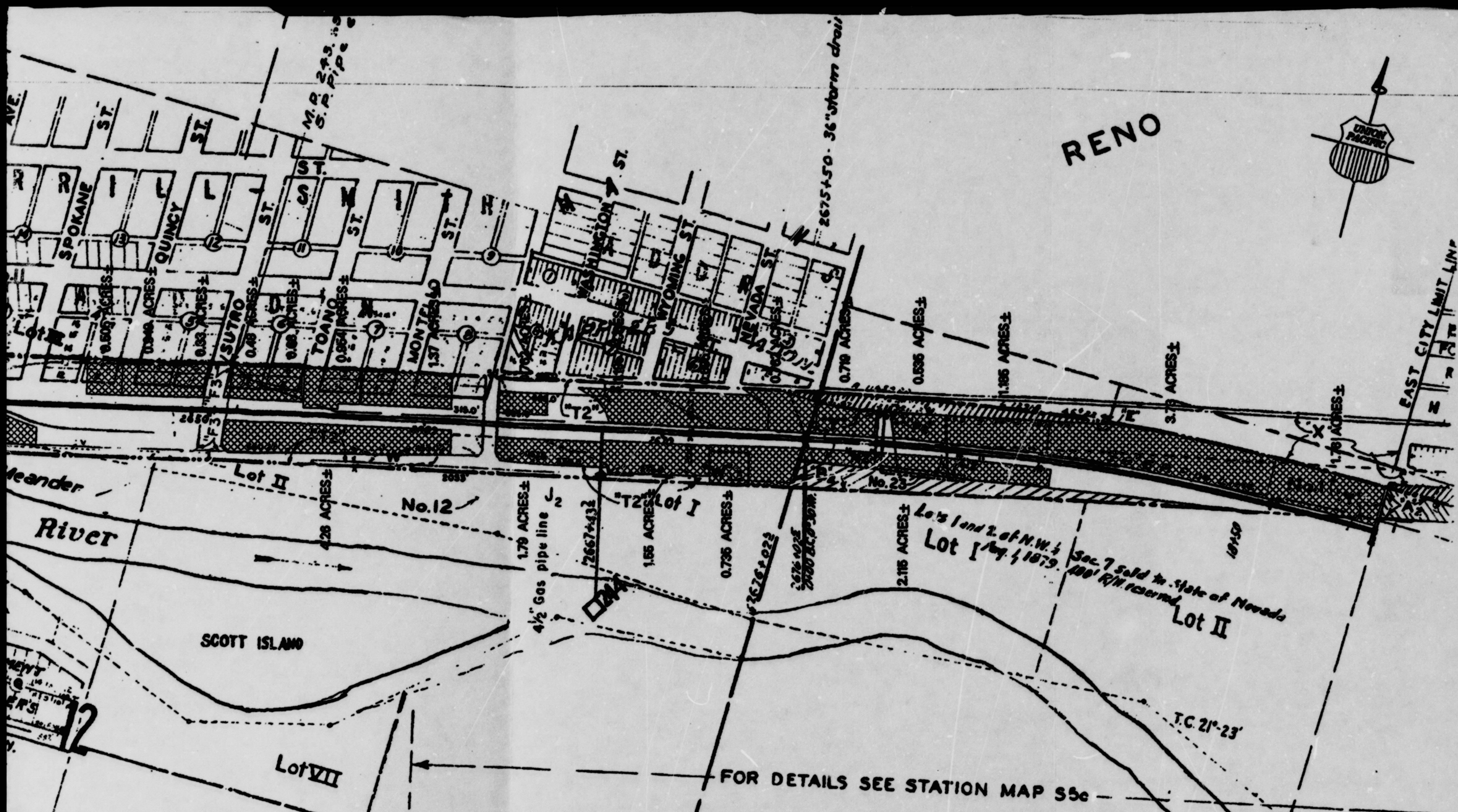
- UPRRCO. RIGHT OF WAY
- PREVIOUSLY SOLD AREA
- LEASE AREA SHOWN
- AREA TO BE CONVEYED

EXHIBIT A
UNION PACIFIC RAILROAD

AREA TO BE CONVEYED

RENO, WASHOE COUNTY, N.
M.P. 242.0 - 244.6± ROSEVILLE
SP. NV. V. 1/5

REAL ESTATE DEPARTMENT OMA
DATE: 11-20-88 T.D.A.



<p>SCALE: 1" = 400'</p> <p>LEGEND</p> <p>UPPRCO. RIGHT OF WAY </p> <p>PREVIOUSLY SOLD AREA </p> <p>LEASE AREA SHOWN </p> <p>AREA TO BE CONVEYED </p>		<p>EXHIBIT A</p> <p>UNION PACIFIC RAILROAD CO.</p> <p>AREA TO BE CONVEYED</p> <p>RENO, WASHOE COUNTY, NV.</p> <p>M.P. 242.0 - 244.8± ROSEVILLE SUB.</p> <p>SP. NV. V. 1/5</p> <p>REAL ESTATE DEPARTMENT OMAHA NE.</p> <p>DATE: 11-20-88 T.D.A.</p>
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M.D.M.
M.D.M.

FOR DETAILS SEE STATION MAP S5c

SCOTT ISLAND

Lot VII

Lot VIII

Lot II

Lot I and 2 of N.W. 1/4
Lot I 1/4 1879

Sec. 7 sold to State of Nevada
100' R/W reserved

T.C. 21'-23'

No. 12

No. 23

4 1/2" Gas pipe line

"T2"

Lot I

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EXHIBIT B

LEASES

EXHIBIT B
Lease Agreements to be Transferred
W. 2nd to East City Limit
Milepole 241.6 to 244.54

AUD NBR	FLDR NBR	ANNU AMT	RENT STAT	MP STRT	PART NAME	AREA/ACRE	PURPOSE
S716456	0151944	58339.20	CURRENT	241.60	DESERT LUMBER, INC.	5.160	Ind-Bldg
S208451	0148531	23234.04	CURRENT	241.63	FARRAR, D. N.	0.706	Storage & Handling
S715014	0148457	2615.88	CURRENT	241.70	EAGLE WINDOW AND DOOR	0.430	Ind-Bldg
204962	160490	16480.00	DELINQUENT	241.75	SKILSOURCE INC. OF NEVADA	1.044	Storage & Handling
S118837	0151876	592.82	CURRENT	241.77	CHISM, J. H.	0.261	Dwelling
S200704	0148529	23794.80	CURRENT	241.88	BERRY HINCKLEY TERMINAL, INC.	0.638	Ind-Bldg
S189874	0148533	13068.00	CURRENT	241.99	GISSKE, W.P.	0.241	Ind-Bldg
206867	165970	9000.00	CURRENT	242.00	SCHNABEL, DAVID	0.642	Storage & Handling
S193617	0148453	23438.00	CURRENT	242.03	BURGER KING CORPORATION	1.004	Ind-Bldg
205820	0166602	26400.00	CURRENT	242.06	SKILSOURCE INC. OF NEVADA	0.980	Storage & Handling
S180403	0148530	32047.56	CURRENT	242.08	BERRY-HINCKLEY INDUSTRIES	0.360	Ind-Bldg
S160773	0148663	32976.00	CURRENT	242.13	PELTER FAMILY TRUST	0.566	Ind-Bldg
S204854	0148534	19807.80	DELINQUENT	242.23	GARECHT FAMILY TRUST, WILLIAM T.	0.712	Ind-Bldg
S180414	0148455	4279.71	CURRENT	242.27	ECCLES PROPERTIES, INC.	0.119	Ind-Bldg
S156826	151873	5624.13	CURRENT	242.27	H W TAMKA (Only portion of lease assigned)	0.180	Ind-Bldg
S103994	0148670	7948.92	CURRENT	242.60	RENO, CITY OF	0.390	Parking
206268	0164033	54156.00	CURRENT	242.89	BUSINESS AS RENO TURF CLUB	0.140	Ind-RR Bldg
S710499	0148452	19467.36	CURRENT	242.96	ALLRIGHT SIERRA PARKING	0.392	Parking
S714587	0148543	26400.00	DELINQUENT	243.01	MONKEY BARS, INC.	0.320	Ind-RR Bldg
S193222	0148535	25044.00	CURRENT	243.03	HART, ROBERT A.	0.426	Ind-RR Bldg
205586	0165144	4513.46	CURRENT	243.08	RENO, CITY OF	0.116	Parking
S113340	0148676	8190.00	CURRENT	243.15	RECORD SUPPLY COMPANY	0.344	Ind-Bldg
S146505	0148540	8482.00	CURRENT	243.18	MARTIN IRON WORKS, INC.	0.344	Ind-Bldg
S170090	0148537	7748.40	CURRENT	243.25	HART, ROBERT A.	0.794	Ind-Bldg
S184757	0148662	9492.00	CURRENT	243.32	MACAULAY IRON WORKS, INC.	0.954	Ind-Bldg
S203405	0151879	25280.16	CURRENT	243.38	PVS INVESTMENTS	1.078	Storage & Handling
201494	27883	24420.00	CURRENT	243.45	WSS REALTY INC.	1.275	Ind-Bldg
S203376	0169897	22714.44	CURRENT	243.47	PVS INVESTMENTS	1.160	Ind-Bldg
S119693	0151871	6071.76	DELINQUENT	243.47	PIMPL, GEORGE AND PATRICIA	0.340	Storage & Handling
S174061	0148536	2157.12	CURRENT	243.52	HART, ROBERT A.	0.034	Ind-RR Bldg
S714236	0148679	11400.00	CURRENT	243.59	RAY HEATING PRODUCTS	0.505	Storage & Handling
S181821	0148730	5678.04	CURRENT	243.65	RENO SALVAGE CO	0.688	Storage & Handling
S186989	0148731	32799.72	CURRENT	243.66	RENO SALVAGE COMPANY	4.260	Storage & Handling
S180354	0148683	7054.20	CURRENT	243.66	RENO SALVAGE	0.480	Ind-Bldg
S189873	0148666	5775.24	CURRENT	243.66	PETROLEUM DISTRIBUTORS, INC.	0.330	Parking
205920	0168983	12500.00	CURRENT	243.67	DONALD D. ROHN AND RICHARD L. ROHN	0.947	Ind-Bldg
S167794	0148681	5727.96	CURRENT	243.76	SHANE, J.S.	0.954	Storage & Handling

Note: Rent Status as of 11/12/98

EXHIBIT B
Lease Agreements to be Transferred
W. 2nd to East City Limit
Milepole 241.6 to 244.54

AUD. NBR	FLDR. NBR	ANNU. AMT.	RENT. STAT.	MP. STRT.	PART. NAME	AREA/ACRE	PURPOSE
S117368	0148682	31889.16	CURRENT	243.81	RENO SALVAGE COMPANY	1.370	Storage & Handling
S119044	0148538	13218.00	CURRENT	243.88	JORDAN, H. MONTE & MICHAEL	0.762	Ind-Bldg
205354	0167020	28000.00	CURRENT	243.99	DISPOSAL SERVICES	1.790	Storage & Handling
S717058	0148668	24887.52	CURRENT	244.00	AMERICAN READY MIX	1.550	Industrial
205478	165154	18166.00	CURRENT	244.01	HEWITT, ED	0.695	Storage & Handling
S184745	0151877	18720.00	CURRENT	244.03	NATIONAL TOW AND ROAD SERVICE	1.195	Storage & Handling
S206228	0148450	10500.00	CURRENT	244.07	AMERICAN READY MIX	0.735	Ind-Bldg
S204384	0148665	26964.48	CURRENT	244.16	PIONEER WEST INVESTMENT COMPANY	2.115	Ind-Bldg
S208743	0148739	18122.00	CURRENT	244.18	SIERRA STRIPERS & ASPHALT PAVING,	0.762	Ind-Bldg
205386	0165147	12468.00	DELINQUENT	244.19	LOUIS HOOTEN, DBA LOUIS HOOTEN TIRE	0.719	Ind-RR Bldg
S164989	0148741	30076.32	CURRENT	244.22	SIERRA ROOFING CORPORATION	1.185	Storage & Handling
S713653	0148542	9286.92	CURRENT	244.22	RSW RECYCLING, INC.	0.535	Ind-Bldg
S201613	0151975	57396.48	CURRENT	244.37	WASHOE FUEL, INC	3.730	Ind-Bldg
S194511	0151945	37200.00	CURRENT	244.54	RENO-SPARKS READY MIX, INC.	1.760	Ind-Bldg
		\$961,613.60					

Note: Rent Status as of 11/12/98

EXHIBIT 3
Lease Income Pledged
W. 2nd to Woodland Ave-Lawton
Milepole 238.07-241.59

AUD. NR.	CDR. NR.	CITY	ANNC. AMT.	RENT STAT.	MP. STR.	PART NAME	DIST. TO TRK.	PURPOSE
S207455	169895	LAWTON	500.00	CURRENT	238.07	MORREY DISTRIBUTING COMPANY	40 feet	Beautification
S199766	169896	LAWTON	500.00	CURRENT	238.13	WARREN, J.F.	50 feet	Ag
204040	160034	LAWTON	8096.00	CURRENT	238.18	VINCE DYE	70 feet	Ind
206868	165121	LAWTON	300.00	CURRENT	238.21	KEEN, T. L.	25 feet	Ag
S151601	148387	LAWTON	256.31	CURRENT	238.40	HILL, G.C.	25 feet	Ag
S715571	148386	LAWTON	538.07	CURRENT	238.70	JONES, ROBERT G. AND LINDA M.	25 feet	Pasture
S108117	148384	LAWTON	300.00	CURRENT	239.19	CAMPBELL, L. F.	139 feet	Pasture
S719298	161774	WEST RENO	7710.24	CURRENT	239.43	SCHOPPER, FRED J. AND BONNIE	45 feet	Ind
202654	160137	WEST RENO	500.00	CURRENT	240.49	CITY OF RENO	30 feet	Beautification
205412	166911	WEST RENO	600.00	CURRENT	240.84	RICHARD BAKER	30 feet	Pasture/dwelling
202807	162573	WEST RENO	7800.00	CURRENT	240.99	RYAN PROPERTIES	35 feet	Ind
S714074	148822	WEST RENO	4950.48	CURRENT	241.05	WATSON, MARYANN AND GARY	75 feet	Ind/Bldg
S714072	148824	WEST RENO	4149.72	CURRENT	241.10	HYER, RICHARD	75 feet	Ind/Bldg
S162714	148740	WEST RENO	7987.80	CURRENT	241.13	SHEWMAKER, W.F.	35 feet	Ind/Bldg
S102309	169893	WEST RENO	24144.00	DELINQUENT	241.15	MODEL DAIRY C/O CARNATION COMPANY	35 feet	Ind/Bldg
S168422	148671	WEST RENO	7661.64	CURRENT	241.24	RUSK, W.	25 feet	Ind/Bldg
S173882	148673	WEST RENO	6707.04	CURRENT	241.27	RUSK, W.	25 feet	Ind/Bldg
S716243	148821	WEST RENO	15340.20	CURRENT	241.30	SAGA EXPLORATION	25 feet	Ind/Bldg
S173883	148672	WEST RENO	8616.24	CURRENT	241.36	RUSK, W.	33 feet	Ind/Bldg
S159416	148829	WEST RENO	15907.20	CURRENT	241.39	R H FLYGE LAND & WAREHOUSE COMPANY	33 feet	Ind/Bldg
S173885	148674	WEST RENO	6260.76	CURRENT	241.43	RUSK, W.	22 feet	Ind/Bldg
S173884	148675	WEST RENO	11492.52	CURRENT	241.46	RUSK, W.	22 feet	Ind/Bldg
S159938	148456	WEST RENO	19900.00	CURRENT	241.46	ETCHEBERRY CONSTRUCTION	22 feet	Ind/Bldg
S160418	148828	WEST RENO	5780.00	CURRENT	241.59	BURKE, ALICE K.	30 feet	Ind/Bldg
			\$ 165,998.22					

Note: Rent Status as of 11/12/98

EXHIBIT C
REAL PROPERTY

Curve No. 10
M.P. 241.68
New T.C. 11°16'
Orig. T.C. 10°55'

10

2536+37 24" CORR PIPE
2539+66 36" R.C. Storm Drain
2539+71.99 24" R.C. Sewer Pipe
(241.66)
Thru. plate Girder 77'3" long.
Subway. Conc. Abuts. with
14'-6"
Vert. Clear. Roadway -

2544+73.32

0.706 ACRES±

(Orig.)
2545+00 E.E. 24" R.C.

2545+13.32

Lot II

1.044 ACRES±

1301 Road Cr.

0.638 ACRES±

2561+6740 C.C.S. 166270025

2561+836

0.241 ACRES±

2561+378 E.C.
(Orig.)

2562+0740 E.C. E.

1.004 ACRES±

0.36 ACRES±

0.588 ACRES±

ST.

FIFTH

M.P. 242.216 (E.S. 25 73+24+20)
Groceries East Bound Trk

0.241 ACRES±

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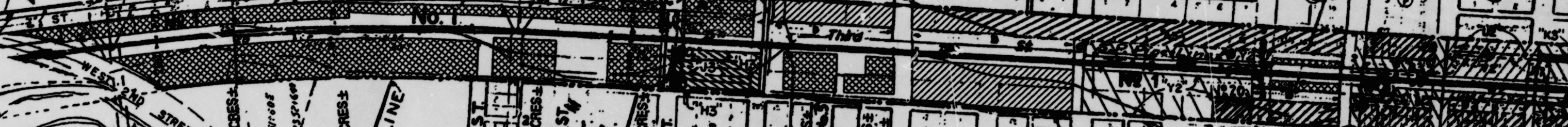
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ST. (FORMER CHESTNUT)



Sale of property shown Hatched leg
Congress, March 4, 1915.

36" Sewer Pipe Opp. E.S.
2539+80
2540+75.3 E.S. 153
2540+75.3 C.C. 24" R.C.
SEWER MAIN Q. 2545+00
W.B. 2545+18.3 C.C. 24" R.C.

Lot V

T.C. 11°16'

Curve No
47.4 (W.B.)

CITY LIMIT LINE

5.18 ACRES±

Lot I

ARLETTA ST.

GARDNER ST.

KEYSTONE ST.

VINE ST.

WINTERS ST. No. 3

WASHINGTON ST.

BELL ST.

RALSTON ST.

STEVENSON ST.

MARLINGTON ST.

WEST ST.

SIERRA ST.

VIRGINIA ST.

Xing Gate's
Spec City of Bond

Lot V

M.P. 242.214 W.B. (E.S. 25 73+24+20)
S.P. Pipe Line crosses Westbound
Bound Track

Lot IV

Lot VI

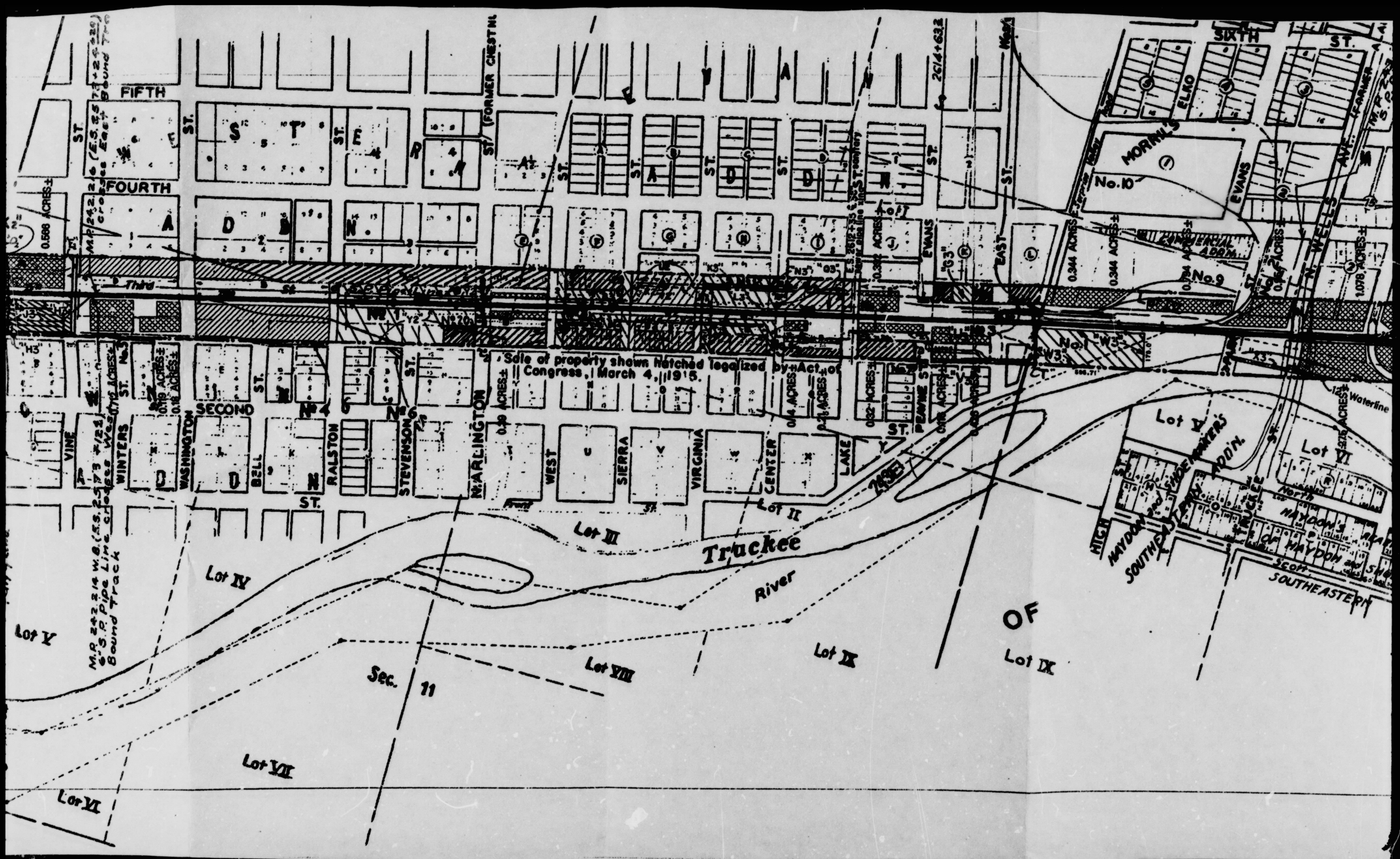
Lot VI

Lot VI

Sec. 11

Lot VII

To be revised to
reflect other Real Property
and Rail Corridor Real Property



FIFTH

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SECOND

SIXTH

ST. (FORMER CHESTNUT)

VINE

WINTERS

WASHINGTON

BELL

RALSTON

STEVENSON

MARLINGTON

WEST

SIERRA

VIRGINIA

CENTER

LAKE

PEANUT

EVANS

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MORRIS

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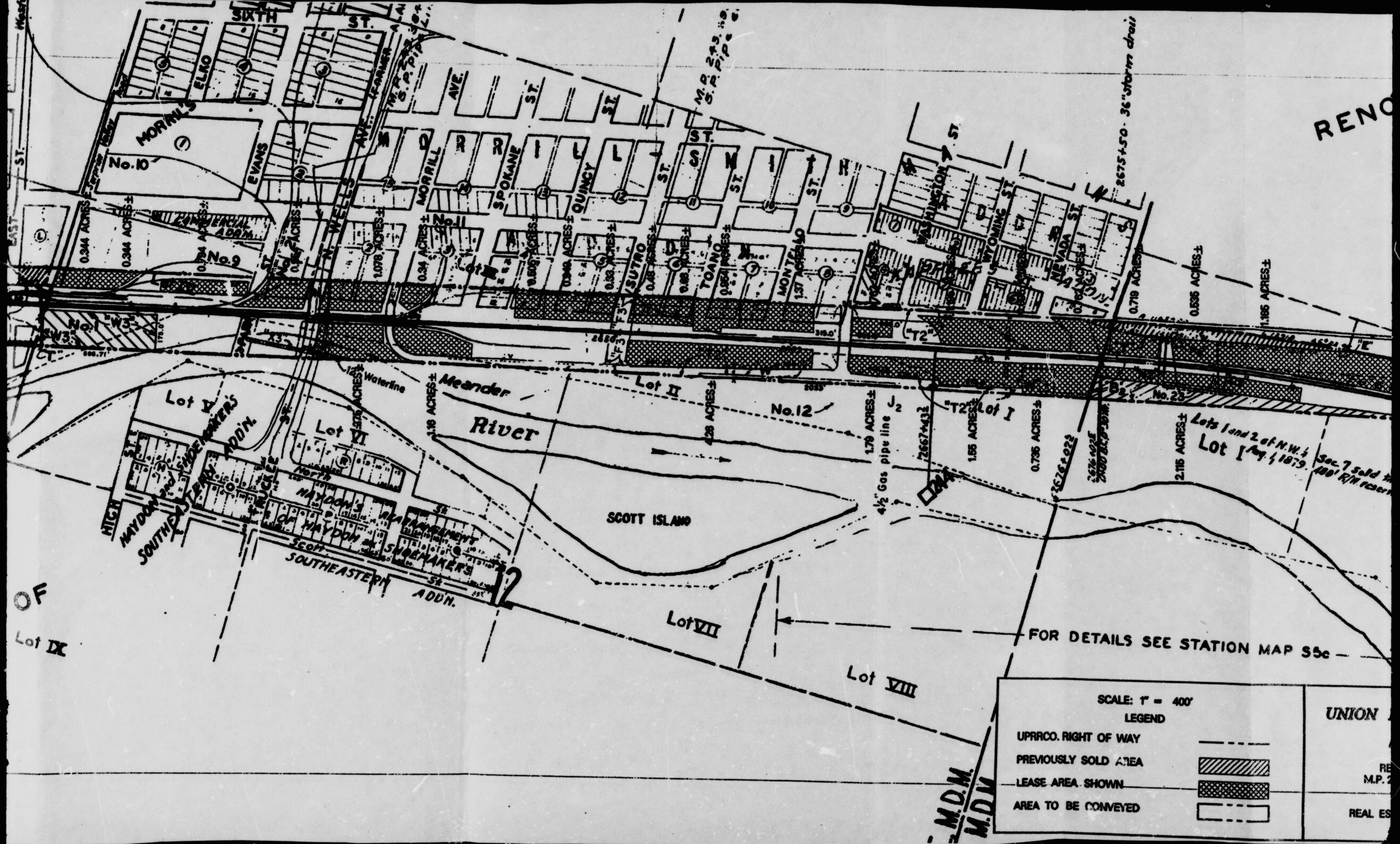
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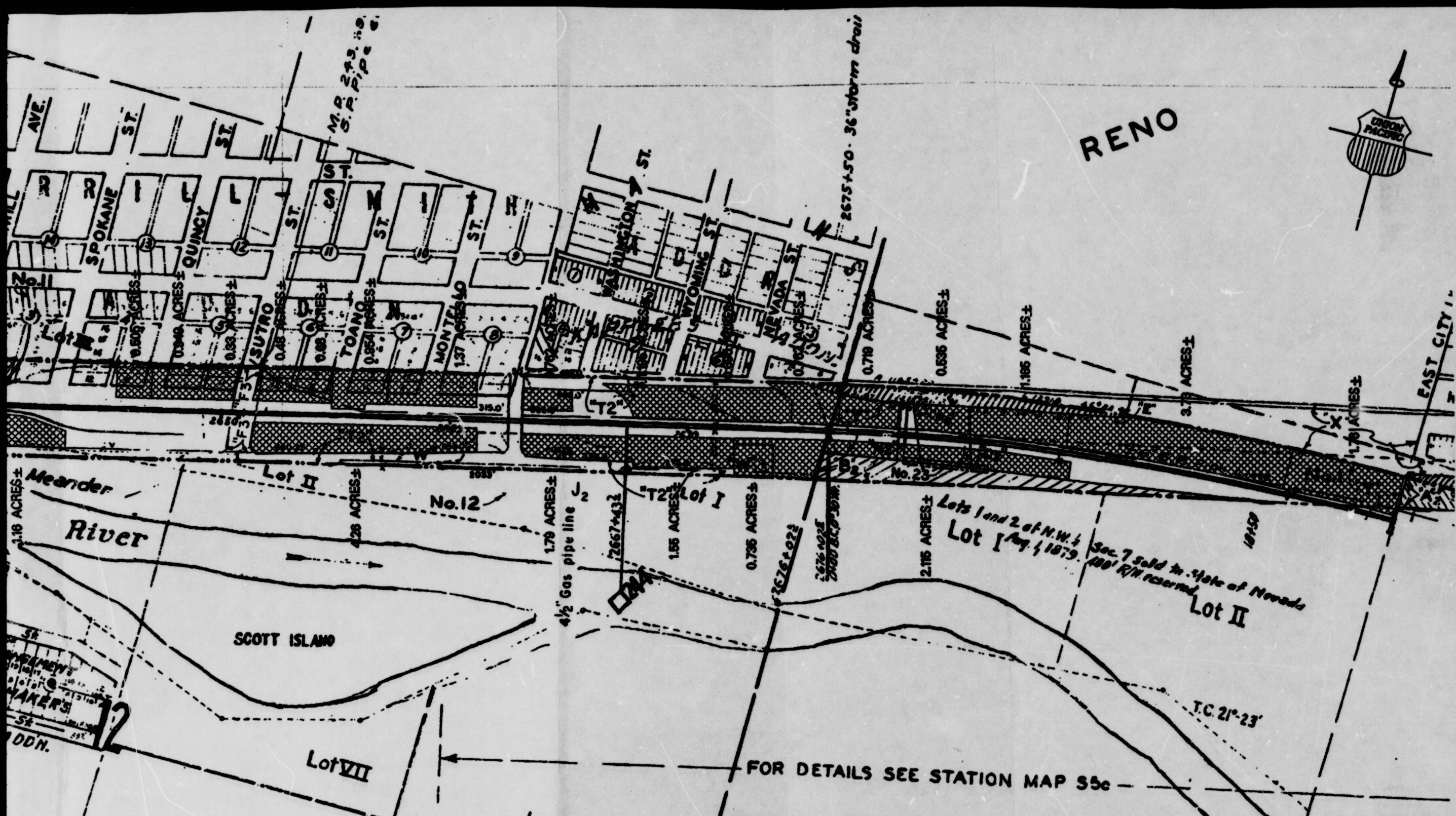
RENO

OF
Lot IX

FOR DETAILS SEE STATION MAP S5c

SCALE: 1" = 400'		UNION
LEGEND		
UPPRCO. RIGHT OF WAY	---	
PREVIOUSLY SOLD AREA	▨	
LEASE AREA SHOWN	▩	
AREA TO BE CONVEYED	---	RE M.P. 2
		REAL ES

M.D.M.
M.D.M.



RENO



FOR DETAILS SEE STATION MAP S5c

SCALE: 1" = 400'		EXHIBIT <u>C</u> UNION PACIFIC RAILROAD CO.
LEGEND		
UPRRCO. RIGHT OF WAY	---	AREA TO BE CONVEYED RENO, WASHOE COUNTY, NV. M.P. 242.0 - 244.8± ROSEVILLE SUB. SP. NV. V. 1/5 REAL ESTATE DEPARTMENT OMAHA NE. DATE: 11-20-98 T.D.A.
PREVIOUSLY SOLD AREA		
LEASE AREA SHOWN		
AREA TO BE CONVEYED		

M.D.M.
M.D.M.

EXHIBIT D

RENT ROLL AND DELINQUENCY REPORT

EXHIBIT **D**
 Lease Agreements to be Transferred
 W. 2nd to East City Limit
 Milepole 241.6 to 244.54

AUD. NBR	FLDR. NBR	ANNU. AMT.	RENT. STAT.	MP. STR.	PART. NAME	AREA/ACRE	PURPOSE
S716456	0151944	58339.20	CURRENT	241.60	DESERT LUMBER, INC.	5.160	Ind-Bldg
S208451	0148531	23234.04	CURRENT	241.63	FARRAR, D. N.	0.706	Storage & Handling
S715014	0148457	2615.88	CURRENT	241.70	EAGLE WINDOW AND DOOR	0.430	Ind-Bldg
204962	160490	16480.00	DELINQUENT	241.75	SKILSOURCE INC. OF NEVADA	1.044	Storage & Handling
S118837	0151876	592.82	CURRENT	241.77	CHISM, J. H.	0.261	Dwelling
S200704	0148529	23794.80	CURRENT	241.88	BERRY HINCKLEY TERMINAL, INC.	0.638	Ind-Bldg
S189874	0148533	13068.00	CURRENT	241.99	GISSKE, W.P.	0.241	Ind-Bldg
206867	165970	9000.00	CURRENT	242.00	SCHNABEL, DAVID	0.642	Storage & Handling
S193617	0148453	23438.00	CURRENT	242.03	BURGER KING CORPORATION	1.004	Ind-Bldg
205820	0166602	26400.00	CURRENT	242.06	SKILSOURCE INC. OF NEVADA	0.980	Storage & Handling
S180403	0148530	32047.56	CURRENT	242.08	BERRY-HINCKLEY INDUSTRIES	0.360	Ind-Bldg
S160773	0148663	32976.00	CURRENT	242.13	PELTER FAMILY TRUST	0.566	Ind-Bldg
S204854	0148534	19807.80	DELINQUENT	242.23	GARECHT FAMILY TRUST, WILLIAM T.	0.712	Ind-Bldg
S180414	0148455	4279.71	CURRENT	242.27	ECCLES PROPERTIES, INC.	0.119	Ind-Bldg
S156826	151873	5624.13	CURRENT	242.27	H W TAMKA (Only portion of lease assigned)	0.180	Ind-Bldg
S103994	0148670	7946.92	CURRENT	242.60	RENO, CITY OF	0.390	Parking
206268	0164033	54156.00	CURRENT	242.89	BUSINESS AS RENO TURF CLUB	0.140	Ind-RR Bldg
S710499	0148452	19467.36	CURRENT	242.96	ALLRIGHT SIERRA PARKING	0.392	Parking
S714587	0148543	26400.00	DELINQUENT	243.01	MONKEY BARS, INC.	0.320	Ind-RR Bldg
S193222	0148535	25044.00	CURRENT	243.03	HART, ROBERT A.	0.426	Ind-RR Bldg
205586	0165144	4513.46	CURRENT	243.08	RENO, CITY OF	0.116	Parking
S113340	0148676	8190.00	CURRENT	243.15	RECORD SUPPLY COMPANY	0.344	Ind-Bldg
S146505	0148540	8482.00	CURRENT	243.18	MARTIN IRON WORKS, INC.	0.344	Ind-Bldg
S170090	0148537	7748.40	CURRENT	243.25	HART, ROBERT A.	0.794	Ind-Bldg
S184757	0148662	9492.00	CURRENT	243.32	MACAULAY IRON WORKS, INC.	0.954	Ind-Bldg
S203405	0151879	25280.16	CURRENT	243.38	PVS INVESTMENTS	1.078	Storage & Handling
201494	27883	24420.00	CURRENT	243.45	WSS REALTY INC.	1.275	Ind-Bldg
S203376	0169897	22714.44	CURRENT	243.47	PVS INVESTMENTS	1.160	Ind-Bldg
S119693	0151871	6071.76	DELINQUENT	243.47	PIMPL, GEORGE AND PATRICIA	0.340	Storage & Handling
S174061	0148536	2157.12	CURRENT	243.52	HART, ROBERT A.	0.034	Ind-RR Bldg
S714236	0148679	11400.00	CURRENT	243.59	RAY HEATING PRODUCTS	0.505	Storage & Handling
S181821	0148730	5678.04	CURRENT	243.65	RENO SALVAGE CO	0.688	Storage & Handling
S186989	0148731	32799.72	CURRENT	243.66	RENO SALVAGE COMPANY	4.260	Storage & Handling
S180354	0148683	7054.20	CURRENT	243.66	RENO SALVAGE	0.480	Ind-Bldg
S189873	0148666	5775.24	CURRENT	243.66	PETROLEUM DISTRIBUTORS, INC.	0.330	Parking
205920	0168983	12500.00	CURRENT	243.67	DONALD D. ROHN AND RICHARD L. ROHN	0.947	Ind-Bldg
S167794	0148681	5727.96	CURRENT	243.76	SHANE, J.S.	0.954	Storage & Handling

STB FD 32750 12-9-98 I 192575 2/2

EXHIBIT D
Lease Agreements to be Transferred
W. 2nd to East City Limit
Milepole 241.6 to 244.54

AUD. NBR	LDRENBR	NNL AMT	IRENT STAT	MP. STR	PART. NAME	AREA/ACRE	PURPOSE
S117368	0148682	31889.16	CURRENT	243.81	RENO SALVAGE COMPANY	1.370	Storage & Handling
S119044	0148538	13218.00	CURRENT	243.88	JORDAN, H. MONTE & MICHAEL	0.732	Ind-Bldg
205354	0167020	28000.00	CURRENT	243.99	DISPOSAL SERVICES	1.790	Storage & Handling
S717058	0148668	24887.52	CURRENT	244.00	AMERICAN READY MIX	1.550	Industrial
205476	165154	18166.00	CURRENT	244.01	HEWITT, ED	0.695	Storage & Handling
S184745	0151877	18720.00	CURRENT	244.03	NATIONAL TOW AND ROAD SERVICE	1.195	Storage & Handling
S206228	0148450	10500.00	CURRENT	244.07	AMERICAN READY MIX	0.735	Ind-Bldg
S204384	0148665	26964.48	CURRENT	244.16	PIONEER WEST INVESTMENT COMPANY	2.115	Ind-Bldg
S208743	0148739	18122.00	CURRENT	244.18	SIERRA STRIPERS & ASPHALT PAVING,	0.762	Ind-Bldg
205386	0165147	12468.00	DELINQUENT	244.19	LOUIS HOOTEN, DBA LOUIS HOOTEN TIRE	0.719	Ind-RR Bldg
S164989	0148741	30076.32	CURRENT	244.22	SIERRA ROOFING CORPORATION	1.185	Storage & Handling
S713653	0148542	9286.92	CURRENT	244.22	RSW RECYCLING, INC.	0.535	Ind-Bldg
S201613	0151875	57396.48	CURRENT	244.37	WASHOE FUEL, INC	3.730	Ind-Bldg
S194511	0151945	37200.00	CURRENT	244.54	RENO-SPARKS READY MIX, INC.	1.760	Ind-Bldg
		\$961,613.60					

EXHIBIT **D**
 Lease Income Pledged
 W. 2nd to Woodland Ave-Lawton
 Milepole 238.07-241.59

AUD. NBR	ID. NBR	CITY	ANNU. AMT	RENT STAT	MP. STRT	PART NAME	DIST. TO TRK	PURPOSE
S207455	169895	LAWTON	500.00	CURRENT	238.07	MORREY DISTRIBUTING COMPANY	40 feet	Beautification
S199766	169896	LAWTON	500.00	CURRENT	238.13	WARREN, J.F	50 feet	Ag
204040	160034	LAWTON	8096.00	CURRENT	238.18	VINCE DYE	70 feet	Ind
206868	165121	LAWTON	300.00	CURRENT	238.21	KEEN, T. L.	25 feet	Ag
S151601	148387	LAWTON	256.31	CURRENT	238.40	HILL, G.C.	25 feet	Ag
S715571	148386	LAWTON	538.07	CURRENT	238.70	JONES, ROBERT G. AND LINDA M.	25 feet	Pasture
S108117	148384	LAWTON	300.00	CURRENT	239.19	CAMPBELL, L. F.	189 feet	Pasture
S719298	161774	WEST RENO	7710.24	CURRENT	239.43	SCHOPPER, FRED J. AND BONNIE	45 feet	Ind
202654	160137	WEST RENO	500.00	CURRENT	240.49	CITY OF RENO	30 feet	Beautification
205412	166911	WEST RENO	600.00	CURRENT	240.84	RICHARD BAKER	30 feet	Pasture/dwelling
202807	162573	WEST RENO	7800.00	CURRENT	240.99	RYAN PROPERTIES	35 feet	Ind
S714074	148822	WEST RENO	4950.48	CURRENT	241.05	WATSON, MARYANN AND GARY	75 feet	Ind/Bldg
S714072	148824	WEST RENO	4149.72	CURRENT	241.10	HYER, RICHARD	75 feet	Ind/Bldg
S162714	148740	WEST RENO	7987.80	CURRENT	241.13	SHEWMAKER, W.F.	35 feet	Ind/Bldg
S102309	169893	WEST RENO	24144.00	DELINQUENT	241.15	MODEL DAIRY C/O CARNATION COMPANY	35 feet	Ind/Bldg
S168422	148671	WEST RENO	7661.64	CURRENT	241.24	RUSK, W.	25 feet	Ind/Bldg
S173882	148673	WEST RENO	6707.04	CURRENT	241.27	RUSK, W.	25 feet	Ind/Bldg
S716243	148821	WEST RENO	15340.20	CURRENT	241.30	SAGA EXPLORATION	25 feet	Ind/Bldg
S173883	148672	WEST RENO	8616.24	CURRENT	241.36	RUSK, W.	33 feet	Ind/Bldg
S159416	148829	WEST RENO	15907.20	CURRENT	241.39	R H FLYGE LAND & WAREHOUSE COMPANY	33 feet	Ind/Bldg
S173885	148674	WEST RENO	6260.76	CURRENT	241.43	RUSK, W.	22 feet	Ind/Bldg
S173884	148675	WEST RENO	11492.52	CURRENT	241.46	RUSK, W.	22 feet	Ind/Bldg
S159938	148456	WEST RENO	19900.00	CURRENT	241.46	ETCHEBERRY CONSTRUCTION	22 feet	Ind/Bldg
S160418	148828	WEST RENO	5780.00	CURRENT	241.59	BURKE, ALICE K.	30 feet	Ind/Bldg
			\$ 165,998.22					

CERTIFICATE OF SERVICE

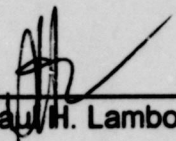
This is to certify that copies of the foregoing Joint Petition for Approval were served, via messenger, this 24 day of December, 1998 on:

Erika Z. Jones
Roy T. Englert, Jr.
Donald M. Falk
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Counsel for BNSF

Richard G. Slattery
National Railroad Passenger
Corporation
60 Massachusetts Ave. N.E.
Washington, DC 20002

Counsel for Amtrak



Paul H. Lambole

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

REQUEST FOR WAIVER

Joint Petitioners City of Reno and Union Pacific Railroad Company hereby
request waiver of copy and service requirements as follows:

1. Wavier of requirement that 20 copies of Joint Petition
be filed as ordered by Decision No. 9, served
December 27, 1995, and in lieu thereof, authorization
and acceptance of 10 copies as provided by
regulations, 49 CFR 1104.3, is requested, and
2. Waiver of requirement for service on all parties of
record (POR), and in lieu thereof, authorization and
acceptance of service limited to Burlington Northern
SanteFe (BNSF) and National Railroad Passenger
Corporation (Amtrak) as the only other parties
substantially affected by the Reno/UP specific
environmental mitigation settlement is requested.

This Request for Waiver is believed to be consistent with the fair, reasonable and cost-effective administration of environmental mitigation in merger proceedings, and will not prejudice to the interests of any party of record (POR).

Respectfully submitted this 21st day of December, 1998.

City of Reno, Nevada

By: 

Paul H. Lambole
1350 Eye Street N.W.
Suite 200
Washington, DC 20005
Telephone: (202) 312-8220
Facsimile: (202) 312-8100

Union Pacific Railroad Company

By: 

J. Michael Hemmer
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, DC 20044
Telephone: (202) 662-5578
Facsimile: (202) 778-5578

CERTIFICATE OF SERVICE

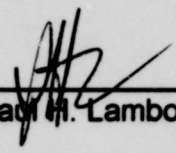
This is to certify that copies of the foregoing Request for Waiver were served,
via messenger, this 8th day of December, 1998 on:

Erika Z. Jones
Roy T. Englert, Jr.
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Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Counsel for BNSF

Richard G. Slattery
National Railroad Passenger
Corporation
60 Massachusetts Ave. N.E.
Washington, DC 20002

Counsel for Amtrak



Paul M. Lamboley

STB

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• 185991

PAUL H. LAMBOLEY
SUITE 400
1020 NINETEENTH STREET NW
WASHINGTON, D. C. 20036

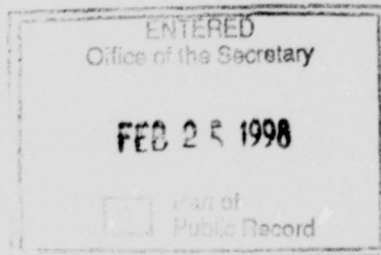
TEL 202.496.4920
FAX 202.293.6200



February 24, 1998

Via Hand Delivery

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



I

Re: F.D. No. 32760. UPSP Merger Proceedings
Request for Stay - Expedited Consideration Requested

Dear Secretary Williams:

The Section of Environmental Analysis ("SEA") issued its Final Mitigation Plan ("FMP") for the Reno area on February 11, 1998. The thirty day comment period extends until March 12, 1998.

As previously reported, the City of Reno, with the assistance of Paine Webber, is actively pursuing a funding plan to implement a depressed trainway project through downtown Reno. In the spirit of Decision No. 44, the funding plan presents the opportunity to achieve an "innovative", long-term approach to impact mitigation and service enhancement through a mutually agreed solution.

For this reason, and because good faith negotiations have continued between the City and the UPSP, the City submits this letter to request that the Board stay all further proceedings in the Reno Mitigation Study for a period of eight (8) months. The stay of proceedings requested includes deferral of the thirty day comment period on the FMP as well as submission of the FMP to the Board for decision. The City also requests that the current limit of 14.7 trains per day remain in effect during the stay period.

As in the Wichita Mitigation Study, the City of Reno believes that holding further proceedings in the Reno Mitigation Study in abeyance at this time will provide significant benefits. Not only will it promote good relations and encourage continued negotiations between the UPSP and the City, it will facilitate the timely pursuit of the

Honorable Vernon A. Williams

February 24, 1998

Page 2

private/public funding plan before the Department of Transportation ("DOT") and Congress in 1998, since approval by both may be necessary to certain plan elements. Finally, deferral may ensure that public funding authority granted the City by the 1997 Nevada Legislature will not be lost.

The City's stay request has been discussed with counsel and representatives of the UPSP, who have advised that UPSP will not oppose the stay. The UPSP will forward a separate letter stating its position on the City's request for stay.

As the thirty day comment period on the FMP is rapidly closing, expedited consideration of stay is requested.

I will be available to answer any questions on this matter you may have.

Very truly yours,


Paul D. Lambole

cc: Honorable Linda J. Morgan, Chairman (courtesy copy)
Honorable Gus A. Owen, Vice Chairman (courtesy copy)
Elaine Kaiser, Chief
Section of Environmental Analysis
J. Michael Hemmer
Robert F. Starzell
(Via Facsimile and US Mail)

STB

FD

32760

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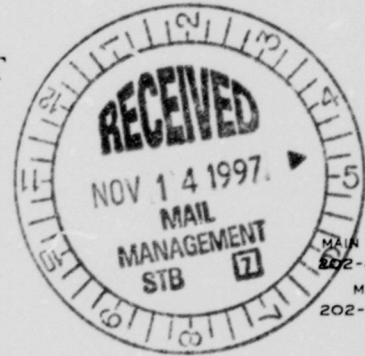
MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

ERIKA Z. JONES

DIRECT DIAL (202) 778-0642
ejones@mayerbrown.com

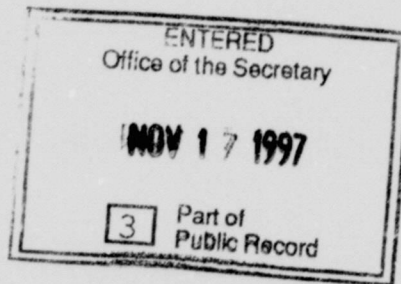


183908

November 14, 1997

By Hand

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



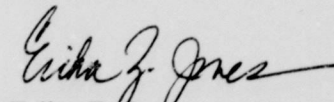
Re: Finance Docket No. 32760, Union Pacific Corporation, et al. --
Control and Merger -- Southern Pacific Rail Corporation, et al.

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five (25) copies of Petition of The Burlington Northern and Santa Fe Railway Company for Clarification (BN/SF-83). Also enclosed is a 3.5-inch disk containing the text of the Petition in WordPerfect 6.1 format.

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

Sincerely,


Erika Z. Jones

Enclosures

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

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

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

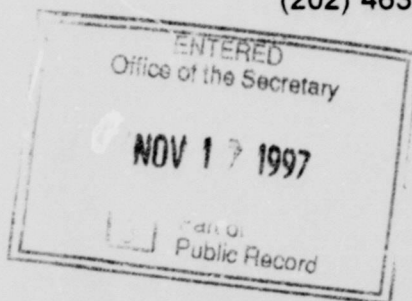
Erika Z. Jones
Janice G. Barber
Adrian L. Steel, Jr.
Adam C. Sloane

The Burlington Northern
and Santa Fe Railway Company
3017 Lou Menk Drive
P.O. Box 961039
Ft. Worth, Texas 76161-0039
(817) 352-2353

Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 463-2000

and

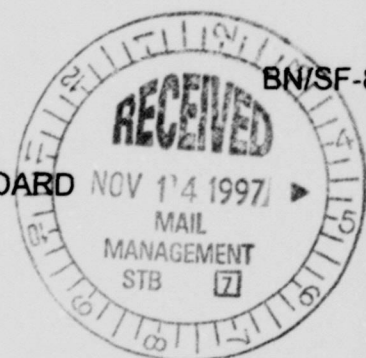
1700 East Golf Road
Schaumburg, Illinois 60173
(847) 995-6887



Attorneys for The Burlington Northern and Santa Fe Railway Company



BEFORE THE
SURFACE TRANSPORTATION BOARD



BN/SF-83

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")^{1/} 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.

^{1/} 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.^{2/} 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).^{3/} 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

^{2/} 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.

^{3/} 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.^{4/}

^{4/} 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.^{5/} 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

^{5/} 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.^{6/} 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.^{7/}

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

^{6/} 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.

^{7/} 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.*^{8/}

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.

^{8/} 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.^{9/}

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,

^{9/} 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).^{10/}

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).^{11/} Here, the Applicants' unilateral tariff amendments effectively deprived New Orleans area

^{10/} 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.

^{11/} 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.^{12/}

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

^{12/} 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-311, 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.^{13/}

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.

^{13/} 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.

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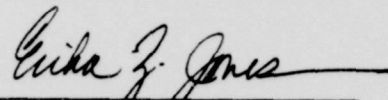
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Dated: November 14, 1997

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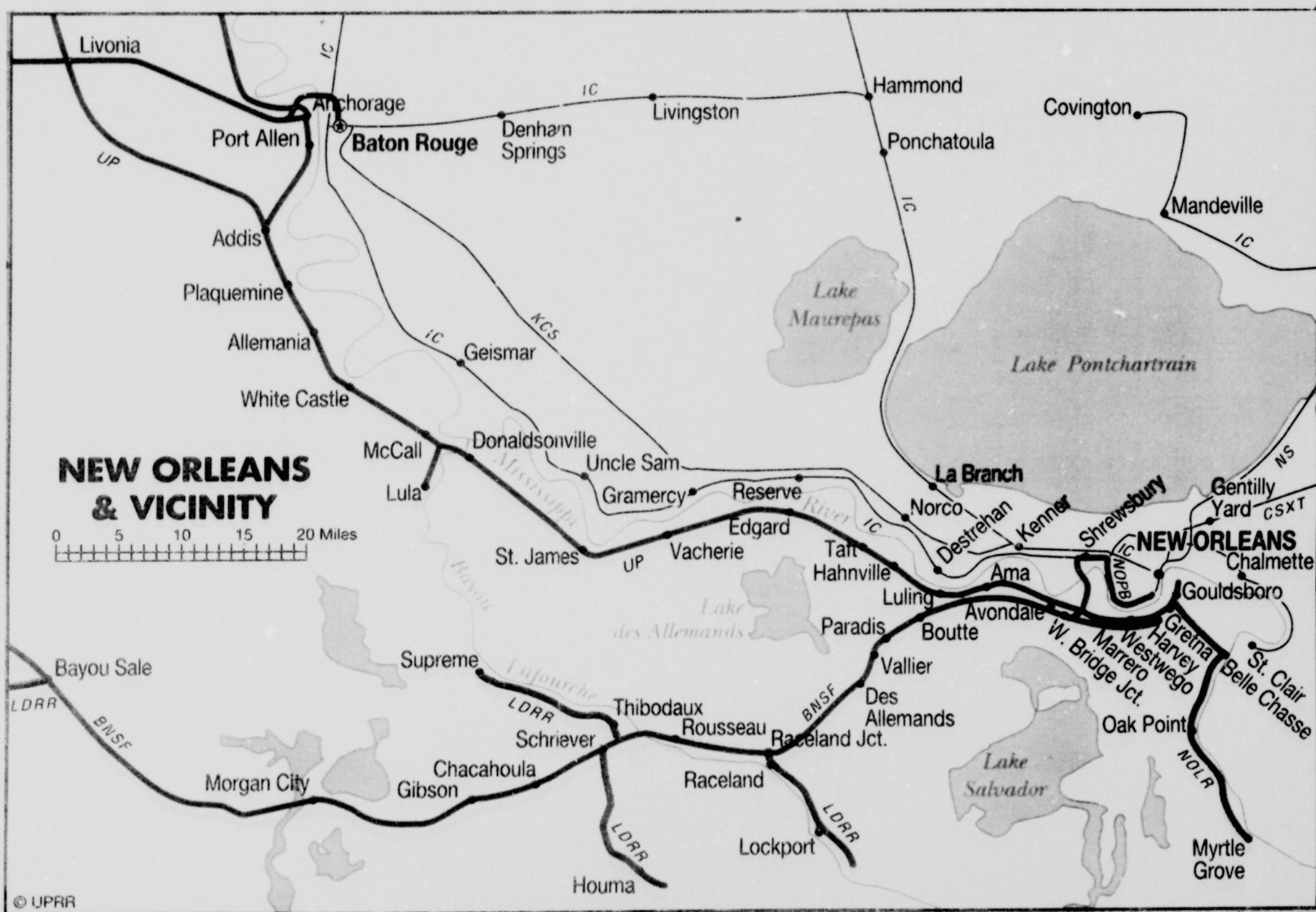
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CERTIFICATE OF SERVICE

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.



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.)

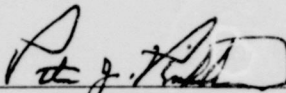
Customers were never told otherwise, and they had no way to determine that UP was planning to deny BNSF access to New Orleans area UP and SP customers within the reciprocal switching limits open to all other carriers. There was no indication that these customers, alone, would be singled out by UP or 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)

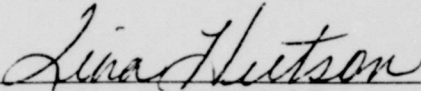
Peter J. Rickershauser, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.



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

Includes National Rate Basis and Centralized Station Master Data

- ◆ A complete list of over 40,000 rail freight stations on more than 550 carriers in the U.S., Canada and Mexico
- ◆ Official Rate Basis Points
- ◆ Official Centralized Station Master Data
- ◆ Rating ZIP Codes
- ◆ Intermodal facilities
- ◆ Junction Rule 260 and interchange points
- ◆ Standard Point Location Codes
- ◆ Freight Station Accounting Codes
- ◆ Freight handling facilities and restrictions

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.

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Stephen R. Rendleman, Publisher

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ALPHABETICAL - FREIGHT

STATION	COUNTY	RULE 260	RR	OPSL	PSAC	SPLC	NATIONAL RATE BASIS	CHG CODE	EFFECTIVE DATE	RATE ZIP
*Whitellaw (1-3559).....[Greeley]	MP	3325	1557	59844	Borace, KS.....	M	08/23/1996	67201		
Whitewater (1-3559).....[Butler]	MP	3810	2373	58839	Newton, KS.....	MP	08/23/1996	67154		
Wichita (26-3500).....[Sedgwick]	WCHTA	1	2304	588440	Wichita, KS.....	GP	08/23/1996	67202		
Wichita Union Stock Yard (1-3559).....[Sedgwick]	WCHTD	MP	2301	588441	Wichita, KS.....	G	08/23/1996	67202		
Willis (1-3559).....[Brown]	MP	1335	1450	581275	Sabetha, KS.....	M	08/23/1996	66435		
Wilmore (3500).....[Comanche]	MP	52390	52390	597724	Ashland, KS.....	M	08/23/1996	67155		
Wilroads (1-3100).....[Ford]	DCFB	15	250	597659	Dodge City, KS.....	E	08/16/1996	67800		
Winfield (1-3559).....[Cowley]	WNFLO	MP	2513	588860	Arkansas City, KS.....	M	08/23/1996	67156		
*Wolcott (1-3559).....[Wyandotte]	MP	440	1584	581514	Kansas City, MO.....	B	08/23/1996	67156		
WOLF (1-31-3100).....[Planey]	GPW	35	14	598169	Garden City, KS.....	I	05/23/1996	67051		
Woodston (1-662-3500-3564).....[Rooks]	KYLE	2300	2001	591612	Stockton, KS.....	IF	01/25/1994	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	66783		
Yoder (3500).....[Reno]	MP	3735	2415	589147	Wichita, KS.....	OP	08/23/1996	67585		
Yuma (1-662-3502-3564).....[Cloud]	YUMKS	KYLE	62	1890	583635	Bellefonte, KS.....	M	01/26/1994	66901	
Yuma (1-662-3500-3564).....[Cloud]	KYLE	1950	1891	583635	Concordia, KS.....	IF	09/03/1996	66901		
Yuma (3500).....[Cloud]	YUMKS	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).....[Barlan]	CSKT	19855	91003	291542	No Rate Basis.....	B	09/22/1996	40806		
Cumberland (6).....[Barlan]	CSKT	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]	CSKT	17155	91080	288923	No Rate Basis.....	B	09/22/1996	41701		
Hot Spot (6).....[Letcher]	CSKT	16454	91077	287627	No Rate Basis.....	B	09/23/1996	41845		
Louisville Hub (338-3506).....[Jefferson]	LOHUB	BN	99516	286501	No Rate Basis.....	M	10/03/1996	40202		
Sassafra (6).....[Knott]	CSKT	17325	91082	287185	No Rate Basis.....	B	09/22/1996	41759		
Vicco (6).....[Perry]	CSKT	17320	91081	287086	No Rate Basis.....	B	09/22/1996	41773		
West Henderson (3700).....[Henderson]	NS	72435	60500	296423	Henderson, KY.....	O	09/03/1996	42760		
LOUISIANA										
Abbeville (1-1320).....[Vermilion]	ATSF	83585	36667	657850	Abbeville, LA.....	E	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	130	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).....[West Baton Rouge]	AMCS	MP	8104	644955	Baton Rouge (W), LA.....	B	08/23/1996	70767		
Anse La Butte (1-3320).....[St Martin]	ATSF	83545	36646	657348	Lafayette, LA.....	E	09/12/1996	70517		
*Antonia (1-3559).....[Grant]	MP	9820	6759	655750	Georgetown, LA.....	M	08/23/1996	71467		
Ara (59).....[St Martin]	NS	83576	36465	657392	Wau Thoria, LA.....	E	09/12/1996	70519		
Arzant (1-22-3559).....[St James]	MP	21685	4826	645585	Donaldsonville, LA.....	M	08/23/1996	70090		
Avery Island (1-3320).....[Iberia]	ATSF	83590	36668	657780	Weeks, LA.....	E	09/12/1996	70513		
Avondale (1-3320).....[Jefferson]	AVOND	ATSF	36751	646528	New Orleans, LA.....	SP	10/03/1996	70094		
Avondale (1-31-3559).....[Jefferson]	AVOND	MP	8057	646528	New Orleans (E), LA.....	S	09/17/1996	70094		
Avoyelles Par Coop (1-3559).....[East Baton Rouge]	MP	22133	8715	644793	Plaquemine, LA.....	M	08/23/1996	70767		
Baldwin (1-3320).....[St Mary]	BLOWN	ATSF	36682	657618	New Iberia, LA.....	B	09/12/1996	70514		
*Basile (1-3559).....[Evangeline]	MP	13320	8154	657298	Bunice, LA.....	M	08/23/1996	70515		
Batchelor (1-22-3559).....[Pointe Coupee]	MP	21980	8875	644432	New Roads, LA.....	M	08/23/1996	70715		
Baton Rouge (1-1211-3559).....[East Baton Rouge]	BATON	MP	8100	644800	Baton Rouge (W), LA.....	B	08/23/1996	70821		
Bayou Goula (1-3559).....[Iberia]	MP	21575	4631	645373	Donaldsonville, LA.....	M	08/23/1996	70716		
Bayou Pierre (1-3559).....[Red River]	BAPIZ	MP	4050	656140	Mansfield, LA.....	M	08/23/1996	71027		
Bayou Sale (1-3320).....[St Mary]	BATON	ATSF	36691	657699	Franklin, LA.....	E	09/12/1996	70536		
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.....	E	09/12/1996	70342		
Billeaud (1-3320).....[Lafayette]	ATSF	83570	36655	657478	Morgan City, LA.....	MP	10/03/1996	70518		
Bouef (1-3320).....[Assumption]	ATSF	83675	36710	659190	Morgan City, LA.....	MP	10/03/1996	70340		
Bonita (1-3559).....[Morehouse]	MP	9410	6406	651518	Mer Rouge, LA.....	M	08/23/1996	71223		
Boutte (1-3320).....[St Charles]	BOUZE	ATSF	36712	646170	New Orleans, LA.....	MP	10/03/1996	70039		
Boutte (1-3300).....[St Charles]	BOUZE	SP	36286	646170	New Orleans (W), LA.....	M	09/12/1996	70039		
*Boyce (1-3559).....[Rapides]	MP	21240	4206	659326	Alexandria, LA.....	M	08/23/1996	71409		
Breaux Bridge (1-3320).....[St Martin]	ATSF	83555	36648	657347	Lafayette, LA.....	E	09/12/1996	70517		
Bringham (1-3559).....[Rapides]	MP	9895	7136	655984	Alexandria, LA.....	M	08/23/1996	71430		
Broussard (1-3320).....[Lafayette]	ATSF	83565	36652	657475	Lafayette, LA.....	E	09/12/1996	70518		
Cabot (1-3320).....[St Mary]	ATSF	83620	36675	657697	Franklin, LA.....	E	09/12/1996	70538		
Cade (1-3320).....[St Martin]	ATSF	83575	36658	657390	Lafayette, LA.....	E	09/12/1996	70519		
Cairo Spur (1-22-3559).....[St James]	MP	21645	4754	645590	Donaldsonville, LA.....	M	08/23/1996	70700		
Caspiana (1-3559).....[Caddo]	MP	21200	8229	653808	Mansfield, LA.....	M	08/23/1996	71115		
Chambers (1-3559).....[Rapides]	MP	21365	4285	655972	Alexandria, LA.....	M	08/23/1996	71146		
Cheneyville (1-3559).....[Rapides]	CPVLE	MP	4369	655979	Bunice, LA.....	M	08/23/1996	71325		
Choctaw (1-22-3559).....[West Baton Rouge]	MP	21527	4581	644955	Plaquemine, LA.....	M	08/23/1996	70767		
Cinclare (1-3559).....[West Baton Rouge]	MP	22130	8723	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	Mer Rouge, LA.....	MP	08/23/1996	71229		
Crowley (1-3500).....[Acadia]	CROWLY	AKW	200	37665	No Rate Basis.....	E	09/12/1996	70527		
Crowley (1-3320).....[Acadia]	CROWLY	ATSF	36632	657570	Crowley, LA.....	M	09/12/1996	70526		
Cypressport (1-3320).....[St Mary]	ATSF	83610	36672	657666	Weeks, LA.....	E	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	646197	Des Allemands, LA.....	E	09/12/1996	70030		
*Dolet Bille (1-3559).....[Red River]	MP	21227	8202	656124	Mansfield, LA.....	M	08/23/1996	71105		
Donner (1-3320).....[Terrebonne]	ATSF	83695	36721	659718	Schriever, LA.....	E	08/15/1996	70352		

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

ALPHABETICAL - FREIGHT

STATION	COUNTY	RULE 260	RR	OPSL	FSAC	SPIC	NATIONAL RATE BASIS	CHG 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.....	E	09/12/1996	70529	
*Eider (1-3559).....	[Allen]	MP	9995	7185	659169	Oakdale, LA.....	M	08/23/1996	70648	
Elka (1-3320).....	[Lafayette]	ATSF	83560	36649	657472	Lafayette, LA.....	E	09/12/1996	70502	
*Elton (1-3559).....	[Jefferson Davis]	MP	12320	8168	658413	Dunice, LA.....	M	08/23/1996	70532	
Erwinville (1-3559).....	[West Baton Rouge]	MP	13070	8110	644917	Baton Rouge (W), LA.....	B	08/23/1996	70729	
Etherwood (1-3320).....	[Acadia]	ATSF	83495	36626	657584	Crowley, LA.....	E	09/12/1996	70534	
Farmiana (1-3559).....	[Grant]	MP	9825	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	10015	7202	658185	Lake Charles, LA.....	M	08/23/1996	70640	
Fordeoch (1-3559).....	[Pointe Coupee]	MP	21455	4467	644491	Helville, LA.....	M	08/23/1996	70722	
Franklin (1-3320).....	[St. Mary]	ATSF	83640	36685	657640	Franklin, LA.....	E	09/12/1996	70732	
Fr. St. Leon (3500).....	[Plaquemine]	MP	24090	62	649110	New Orleans (E), LA.....	B	08/23/1996	70538	
*Fulton (1-3559).....	[Beauregard]	FLTON	MP	8180	658382	De Quincy, LA.....	B	08/23/1996	70037	
Gahagan (1-3559).....	[Red River]	MP	21245	8175	656185	Manafield, LA.....	M	08/23/1996	71019	
*Gallion (1-3559).....	[Morehouse]	MP	9620	6612	651530	Mer Rouge, LA.....	M	08/23/1996	71223	
Garden City (1-3320).....	[St. Mary]	ATSF	83645	36688	657643	Franklin, LA.....	E	09/12/1996	71223	
Gayles (1-3559).....	[Caddo]	GAYLE	MP	21195	8256	653884	Shreveport, LA.....	E	09/12/1996	70540
Glenora (1-3559).....	[Rapides]	MP	9920	7148	655989	Oakdale, LA.....	M	08/23/1996	71305	
Glynn (1-3559).....	[Pointe Coupee]	MP	22075	8818	644449	New Roads, LA.....	M	08/23/1996	71433	
*Gouldsboro (1-31-3559).....	[Jefferson]	GLSR	MP	12089	8008	646523	New Orleans (E), LA.....	B	08/23/1996	70736
Grayson (1-3559).....	[Calcasieu]	MP	9740	6690	655160	Georgetown, LA.....	M	08/23/1996	70053	
Gretna (1-31-3559).....	[Jefferson]	GAETN	MP	12088	8010	646521	New Orleans (E), LA.....	B	08/23/1996	71435
Grosse Tete (1-3559).....	[Iberville]	MP	21525	4566	645319	Plaquemine, LA.....	B	08/23/1996	71435	
*Guy (1-3559).....	[Allen]	MP	9960	7167	658121	Oakdale, LA.....	M	08/23/1996	70053	
Hannville (1-3559).....	[St. Charles]	MP	21740	4917	646150	New Orleans (E), LA.....	M	08/23/1996	70740	
*Hancock (1-3559).....	[Ouachita]	MP	9652	6634	652317	Mer Rouge, LA.....	B	08/23/1996	70655	
Hanna (3559).....	[Red River]	MP	21260	8161	656193	Manafield, LA.....	M	08/23/1996	71281	
Harbor (1-3320).....	[Calcasieu]	HARBR	ATSF	83455	36602	658612	Lake Charles, LA.....	M	08/23/1996	71019
Harbor (1-3559).....	[Calcasieu]	HARBR	MP	10059	7220	658612	Lake Charles, LA.....	MP	10/03/1996	70601
Harbor (1-19-3300).....	[Calcasieu]	HARBR	SP	19128	37532	658612	Lake Charles, LA.....	M	09/13/1996	70601
Harvey (1-31-3559).....	[Jefferson]	HARVE	MP	12087	8019	646522	New Orleans (E), LA.....	B	09/17/1996	70601
*Hawelwood (1-3559).....	[St. Landry]	MP	13205	8136	657156	Opelousas, LA.....	M	08/23/1996	70058	
Hone Plantation (1-3559).....	[West Baton Rouge]	MP	22135	8714	644975	Baton Rouge (W), LA.....	B	08/23/1996	70577	
Iowa Jct (3559).....	[Jefferson Davis]	IOWAJ	MP	10036	7215	658415	Lake Charles, LA.....	M	08/23/1996	70710
Iowa Junction (1-3320).....	[Formerly Iowa]	MP	22135	8714	644975	Baton Rouge (W), LA.....	B	08/23/1996	70647	
Jay (1-3320).....	[Jefferson Davis]	IOWJC	ATSF	83460	36605	658415	Lake Charles, LA.....	SEMP	09/12/1996	70647
Jeanerette (1-3320).....	[Lafourche]	ATSF	83725	36734	659368	Lockport, LA.....	E	09/12/1996	70647	
Jennings (1-3320).....	[Iberia]	ATSF	83630	36676	657773	New Iberia, LA.....	E	09/12/1996	70374	
Jesuit Bend (3500).....	[Jefferson Davis]	ATSF	83480	36617	658450	Jennings, LA.....	E	09/12/1996	70544	
Jones (1-3559).....	[Plaquemine]	MP	24115	163	649118	Myrtle Grove, LA.....	M	09/12/1996	70546	
Junction City (3502).....	[Morehouse]	MP	9605	6603	651515	Mer Rouge, LA.....	M	08/23/1996	70037	
Junction City (1-19-3502).....	[Union]	MP	11700	11700	652142	**Junction City, LA.....	M	08/23/1996	71250	
*Kilona (1-3559).....	[Union]	OUCH	MP	9117	652142	No Rate Basis.....	OP	08/23/1996	71749	
Krotz Sprange (1-3559).....	[St. Charles]	MP	21725	4990	648147	Edgard, LA.....	O	06/16/1995	71749	
Lacassine (1-3320).....	[St. Landry]	MP	13185	9128	657159	Opelousas, LA.....	M	08/23/1996	70666	
Lacour (1-3559).....	[Jefferson Davis]	ATSF	83465	36608	658470	Jennings, LA.....	M	08/23/1996	70750	
Lacour (1-3559).....	[Pointe Coupee]	MP	21985	36608	658470	Jennings, LA.....	M	09/12/1996	70750	
Lafayette (1-3320).....	[Lafayette]	ATSF	83530	36643	657450	New Roads, LA.....	M	08/23/1996	70650	
Lafayette Storage (1-3320).....	[Lafayette]	ATSF	83535	36644	657450	Lafayette, LA.....	E	08/23/1996	70715	
Lagonda (1-3320).....	[Lafayette]	ATSF	83535	36644	657450	Lafayette, LA.....	E	09/12/1996	70502	
Lake Charles (1-3320).....	[St. Mary]	ATSF	83655	36700	657693	No Rate Basis.....	E	09/12/1996	70502	
Lake Charles (1-3320).....	[Calcasieu]	LKCHA	ATSF	83450	36594	658640	Lake Charles, LA.....	MP	10/03/1996	70300
Lake End (1-3559).....	[Red River]	MP	21265	8157	656197	Hatchitoches, LA.....	E	09/12/1996	70601	
Larkin (3500).....	[Ouachita]	MP	11995	7073	652328	Starlington, LA.....	M	08/23/1996	71019	
Ladrel Ridge (1-3559).....	[Iberville]	MP	21610	4682	645382	Donaldsonville, LA.....	M	08/23/1996	71201	
*Lawell (1-3559).....	[St. Landry]	MP	13235	8152	657175	Opelousas, LA.....	M	08/23/1996	70788	
Le Compt (1-3559).....	[Rapides]	MP	21375	4318	655976	Opelousas, LA.....	M	08/23/1996	70550	
Le Jeune Spur (1-3559).....	[Allen]	MP	9980	7183	658168	Bunkie, LA.....	M	08/23/1996	71346	
Le Moyne (1-22-3559).....	[St. Landry]	MP	21420	4410	657126	Bunkie, LA.....	M	08/23/1996	70655	
Lettsworth (1-3559).....	[Pointe Coupee]	LETSB	MP	21370	8890	644422	New Roads, LA.....	M	08/23/1996	70753
Lida Grove (1-3559).....	[West Baton Rouge]	MP	22110	8770	644925	Baton Rouge (W), LA.....	B	08/23/1996	70767	
Lillie (3502).....	[Union]	MP	11705	11705	652146	**Bernice, LA.....	B	08/23/1996	70753	
Lillie (1-19-3502).....	[Union]	OUCH	MP	9124	652146	No Rate Basis.....	OP	01/28/1994	71256	
Lithcoats (3500).....	[Rapides]	MP	22173	8331	655960	Opelousas, LA.....	O	08/23/1996	71256	
Live Oak (3500).....	[Plaquemine]	MP	24110	155	649115	Myrtle Grove, LA.....	M	08/23/1996	70586	
Livonia (1-3559).....	[Pointe Coupee]	LIVON	MP	13160	4496	644493	Plaquemine, LA.....	M	08/23/1996	70037
Lobdell (1-3559).....	[West Baton Rouge]	LOBDE	MP	22115	8767	644926	Baton Rouge (W), LA.....	M	08/23/1996	70755
Lottie (1-3559).....	[Pointe Coupee]	MP	13170	8118	644497	Opelousas, LA.....	B	08/23/1996	70767	
Lucas (1-31-3559).....	[Caddo]	MP	21175	9269	653878	Shreveport, LA.....	M	08/23/1996	70756	
Lula (1-3559).....	[Assumption]	MP	22260	9121	659122	Thibodaux, LA.....	M	08/23/1996	71305	
Luling (1-3559).....	[St. Charles]	LULNG	MP	21750	4940	646167	New Orleans (E), LA.....	M	08/23/1996	70346
Luling (1-3320).....	[Formerly Luling]	MP	21750	4940	646167	New Orleans (E), LA.....	B	08/23/1996	70070	
*Luling (1-3320).....	[St. Charles]	ATSF	83760	36761	646167	New Orleans, LA.....	SP	10/03/1996	70070	
Luling (1-3320).....	[Iberville]	MP	21500	4525	645311	Plaquemine, LA.....	M	08/23/1996	70757	
Luttrell (1-31-3559).....	[Jefferson]	MP	12082	5028	644524	New Orleans (E), LA.....	B	08/23/1996	70072	
*McDonoghville (3500).....	[Jefferson]	MP	24085	20	646503	New Orleans (E), LA.....	BM	08/23/1996	70053	
*McGinty (1-3559).....	[Morehouse]	MP	9602	6601	651512	Mer Rouge, LA.....	M	08/23/1996	70053	
*McNary (1-3559).....	[Rapides]	MP	9912	7148	653987	Oakdale, LA.....	M	08/23/1996	71250	
Meeker (1-3559).....	[Rapides]	MP	21380	4332	655978	Bunkie, LA.....	M	08/23/1996	71346	
Mertautau (1-3320).....	[Acadia]	ATSF	83485	36620	657588	Jennings, LA.....	E	09/12/1996	70554	
*MPC Spur (1-3500-3559).....	[Rapides]	MP	21370	4284	655970	Alexandria, LA.....	M	08/23/1996	70556	
Midland (1-3320).....	[Acadia]	ATSF	83490	36623	657586	Crowley, LA.....	E	09/12/1996	71346	
Morgan City (1-3320).....	[St. Mary]	ATSF	83665	36706	657670	Morgan City, LA.....	E	09/12/1996	70557	
Morgans (1-3559).....	[Pointe Coupee]	MP	21390	8866	644462	New Roads, LA.....	E	09/12/1996	70380	
Morrison (1-3559).....	[Pointe Coupee]	MP	22015	8855	644467	New Roads, LA.....	M	08/23/1996	70759	
Morrow (1-3559).....	[St. Landry]	MP	21415	4406	657123	Bunkie, LA.....	M	08/23/1996	70751	
*Mowata (3500).....	[Acadia]	MP	13275	8222	657518	Bunkie, LA.....	G	08/23/1996	71356	
Myrtle Grove (3500).....	[Plaquemine]	MP	24150	267	649136	No Rate Basis.....	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	267	649136	No Rate Basis.....	BM	08/23/1996	70067
Myrtlegrove (1-22-3559)....[Iberville]		MP	21555	4604	645330	No Rate Basis.....	B	08/23/1996	70764
New Iberia (1-3320)....[Iberia]		NEWIB	ATSP 83580	36664	657720	New Iberia, LA.....	Z	09/12/1996	70560
New Orleans (1-3320)....[Orleans]		NEWOR	ATSP 83765	36764	647000	New Orleans, LA.....	Z	09/12/1996	70140
New Orleans (1-3559)....[Orleans]		NEWOR	MP 12090	8001	647000	New Orleans (E), LA.....	B	09/17/1996	70140
North Baton Rouge (1-31-3559)....[East Baton Rouge]		MP	13040	8103	644772	Baton Rouge (W), LA.....	B	08/23/1996	70821
North Bend (1-3320)....[St Mary]		ATSP	83625	36675	657696	Franklin, LA.....	Z	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 (1-3320)....[Iberia]		ATSP	83600	36670	657742	New Iberia, LA.....	Z	09/12/1996	70560
Olla (1-3559)....[La Salle]		MP	9765	6711	655515	Georgetown, LA.....	M	08/23/1996	71465
Opelousas (1-3320)....[St Landry]		OPELO	ATSP 83540	36645	657160	Opelousas, LA.....	Z	09/12/1996	70570
*Oxbow (1-7-3559)....[Red River]		MP	21255	8177	656183	Mansfield, LA.....	M	08/23/1996	71019
Palmetto (1-3559)....[St Landry]		MP	21430	4433	657135	Melville, LA.....	M	08/23/1996	71358
Papoutville (1-3320)....[Iberia]		ATSP	83605	36671	657777	New Iberia, LA.....	GP	10/03/1996	70544
Paradis (1-3320)....[St Charles]		ATSP	83740	36742	646193	Des Allemands, LA.....	Z	09/12/1996	70080
Port Allen (1-31-3559)....[West Baton Rouge]		PTALL	MP 22125	8741	644958	Baton Rouge (W), LA.....	B	08/23/1996	70767
Port Barre (1-3559)....[St Landry]		MP	13210	8142	657157	Opelousas, LA.....	M	08/23/1996	70577
Port Barre Jct (26-3559)....[St Landry]		MP	13207	8140	657162	Opelousas, LA.....	M	08/23/1996	70577
Power House Spur (1-3320)....[Iberia]		ATSP	83595	36669	657743	New Iberia, LA.....	Z	09/12/1996	70560
Pownatan (1-3559)....[Natchitoches]		MP	21275	8148	656543	Natchitoches, LA.....	M	08/23/1996	71066
*Pulpwood Spur (1-3559)....[Caldwell]		MP	9737	6683	655151	Monroe, LA.....	M	08/23/1996	71418
Raceland (1-3320)....[Lafourche]		RCLND	ATSP 83715	36733	659353	Lockport, LA.....	Z	09/12/1996	70394
Raceland Jct (3127)....[Lafourche]		RACJL	BN 83714	36732	659352	Lockport, LA.....	Z	09/12/1996	70394
Ramos (1-3320)....[St Mary]		ATSP	83670	36709	657683	Morgan City, LA.....	Z	09/12/1996	70800
Rapides (1-3559)....[Rapides]		MP	21345	4224	655923	Alexandria, LA.....	M	08/23/1996	71409
Rayne (1-3320)....[Acadia]		ATSP	83515	36635	657560	Crowley, LA.....	Z	09/12/1996	70578
*Reeves (1-3559)....[Allen]		MP	13360	8176	658192	No Rate Basis.....	BC	08/23/1996	70658
Reisor (1-3559)....[Caddo]		MP	21150	4011	653879	Shreveport, LA.....	M	08/23/1996	71129
*Riverton (1-3559)....[Caldwell]		MP	9725	6675	655137	Monroe, LA.....	M	08/23/1996	71418
Roanoke (1-3320)....[Jefferson Davis]		ATSP	83475	36614	658463	Jennings, LA.....	Z	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 (1-3320)....[Calcasieu]		ROSBL	ATSP 83445	36593	658673	Lake Charles, LA.....	Z	09/12/1996	70669
Schriever (1-3320)....[Terrebonne]		SCHRI	ATSP 83700	36724	659711	Schriever, LA.....	Z	09/12/1996	70395
Schwabs (1-3559)....[Pointe Coupee]		MP	21995	8863	644463	New Roads, LA.....	M	08/23/1996	70759
Scott (1-3320)....[Lafayette]		ATSP	83525	36642	657463	No Rate Basis.....	MP	10/03/1996	70583
Shreveport (1-3320)....[Caddo]		SHRPT	ATSP 83780	37608	653900	Shreveport, LA.....	Z	09/12/1996	71010
*Shrewsbury (26-3559)....[Jefferson]		SHRBY	MP 21805	8050	646519	New Orleans (E), LA.....	B	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.....	B	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	21655	4776	645588	Donaldsonville, LA.....	M	08/23/1996	70086
St Landry (3500)....[Evangeline]		MP	22160	8320	657232	Opelousas, 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.....	B	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	Opelousas, LA.....	M	08/23/1996	70586
Thibodaux (1-3320) (Formerly Thibodaux)....[Lafourche]		ATSP	83710	36730	659320	Thibodaux, LA.....	B	10/03/1996	70301
Thibodaux Jct (1-3320) (Formerly Thibodaux)....[Lafourche]		ATSP	83705	36727	659346	Thibodaux, LA.....	EMP	10/03/1996	70301
Tiocha (1-31-3559)....[Rapides]		TIOGA	MP 9855	6789	655917	Alexandria, LA.....	M	08/23/1996	71477
Tortue (1-3320)....[Acadia]		ATSP	83500	36629	657501	No Rate Basis.....	MP	10/03/1996	70534
Transylvania (3500)....[East Carroll]		MP	11035	6828	651160	Lake Providence, LA.....	M	08/23/1996	71286
*Tucker (1-3559)....[St Landry]		MP	13206	8138	657155	Opelousas, LA.....	M	08/23/1996	70577
Tullios (1-3559)....[La Salle]		MP	9780	6726	655542	Georgetown, LA.....	M	08/23/1996	71479
*Unatex (1-3559)....[Evangeline]		MP	13317	8162	657297	Eunice, LA.....	M	08/23/1996	70515
Urania (1-3559)....[La Salle]		URANI	MP 9775	6717	655518	Georgetown, LA.....	M	08/23/1996	71480
Ursa (1-3320)....[Assumption]		ATSP	83695	36715	659193	No Rate Basis.....	Z	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	9892	7133	655982	Alexandria, LA.....	M	08/23/1996	71485
Vallier (1-3320)....[St Charles]		ATSP	83735	36739	646195	Des Allemands, LA.....	Z	09/12/1996	70080
Victory Switch (3500)....[Plaquemines]		MP	24092	78	649109	New Orleans (E), LA.....	BM	08/23/1996	70037
Ville Platte (3500)....[Evangeline]		MP	22170	8329	657250	Opelousas, LA.....	M	08/23/1996	70586
Walroy (1-3320)....[Lafayette]		ATSP	83550	36647	657473	Lafayette, LA.....	Z	09/12/1996	70502
Waterford Spur (1-3559)....[St Charles]		MP	21730	4894	646142	Edgard, LA.....	M	08/23/1996	70066
Welsh (1-3320)....[Jefferson Davis]		ATSP	83470	36631	658467	Jennings, LA.....	Z	09/12/1996	70591
West Bridge Jct (1-3320)....[Jefferson]		ATSP	83750	36754	646526	No Rate Basis.....	Z	09/12/1996	70000
West Lake (1-3320)....[Calcasieu]		WLAK	ATSP 83435	36590	659671	Lake Charles, LA.....	Z	09/12/1996	70669
West Lake Charles (1-3320)....[Calcasieu]		WLACH	ATSP 83440	36592	658670	Lake Charles, LA.....	Z	09/12/1996	70669
Westdale (1-3559)....[Red River]		MP	21220	8206	656128	Mansfield, LA.....	M	08/23/1996	71105
Westwego (1-3320)....[Jefferson]		ATSP	83755	36757	646525	New Orleans, LA.....	Z	09/12/1996	70094
Westwego (1-31-3559)....[Jefferson]		WEGO	MP 12076	8055	646525	New Orleans (E), LA.....	B	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 (1-3320)....[Terrebonne]		ATSP	83690	36718	659727	Schriever, LA.....	Z	09/12/1996	70356
MAINE										
*Albert (1-386-3100)....[Arroostook]		BAR	1242	11065	111065	Van Buren, ME.....	Z	09/01/1996	04743
Brownville Junction (1)....[Piscataquis]		BRNJ	NBSR 589	589	114807	No Rate Basis.....	MP	09/03/1996	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)

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 AUGUST 8, 1996

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

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
	ADM/Growmark	Grain Elevator	Ama, LA.
	Amerada Hess Corp	Bulk Storage	Marrero, LA.
	Avondale Shipyards, Divn Avondale Industries, Inc.		
	Bon Marche Furniture Co.	Ship Building	Avondale and Westwego, LA.
	Bulk Chemical	Furniture	Marrero, LA.
	Celotex Corp	Chemicals	Gretna, LA.
	Chemco Corp	Insulating Wallboard	Harvey, 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 Homans 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.
	Malter 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 Plast 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.

(132)
2950-J

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)	AvondaleLA GouldsboroLA GretnaLA HarveyLA MarreroLA WestwegoLA	130 39000 131 21400 7 12700	...	21700	19300
3070-I	Industries at Baton Rouge (Port Allen), LA, as described in Item 2915.	Baton Rouge, LA interchanges. (See Note 1)	130 40000 131 25200 7 130 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.
- 7 Applies on Grain, Grain Products, Seeds and related articles as described in Tariff WTL 6330-series.
- 130 Applies only in connection with the IC.
- 131 Not applicable in connection with the IC.
- 135 Applicable only in connection with the ATSF.
- 142 Applicable only in connection with the BN.
- 188 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.
- 228 Applies only in connections with the GWWR.
- 258 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)

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 13, 1996

EFFECTIVE SEPTEMBER 14, 1996

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

CUMULATIVE INDEX OF NEW OR CHANGED ITEMS

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3-A	149	545-A	149	835-C	149	975-A	149	1275-A	149	1520-A	149	1855-A	149
25	149	550-A	149	840-F	149	980-A	149	1279-A	149	1525-A	149	1857-A	149
85-A	149	554-B	197	845-B	180	982-C	180	1277-E	190	1530-A	149	1860-A	149
106-C	184	555-A	149	850-H	149	985-A	149	1280-A	149	1533	149	1865-A	149
117	149	560-B	180	855-B	190	990-A	149	1285-A	149	1535-A	149	1870-A	149
122-B	197	561-A	149	860-E	190	995-A	149	1290-A	149	1540-A	149	1875-A	149
125-E	197	565-C	149	865-A	149	1000-A	149	1295-A	149	1545-A	149	1880-A	149
130-F	197	570-C	197	870-A	149	1005-A	149	1300-A	149	1548	149	1885-A	149
135-B	149	575-A	149	871-A	149	1007	149	1305-A	149	1547	149	1890-A	149
137-B	197	580-D	149	872-B	149	1010-C	149	1310-A	149	1548-B	149	1891-A	149
140-C	149	585-A	149	873-B	149	1020-B	149	1315-A	149	1548 01	149	1892-A	149
142-B	149	590-D	149	874-B	149	1025-B	149	1317-A	149	1549	149	1895-A	149
143-B	149	595-A	149	875-D	149	1030-C	149	1320-A	149	1550-A	149	1905-A	149
145-A	149	600-E	149	875-B	149	1035-A	149	1322-A	149	1555-A	149	1910-A	149
146-A	149	605-A	149	877-C	149	1040-A	149	1325-A	149	1560-A	149	1915-A	149
147-A	149	610-A	149	878-B	149	1045-A	149	1340-A	149	1581-A	184	1920-B	149
148-A	149	615-A	149	879-B	149	1050-A	149	1345-A	149	1582	182	1925-A	149
150-A	149	618-A	180	880-B	149	1055-A	149	1350-A	149	1583	182	1930-A	149
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175-A	149	635-A	149	884-B	149	1100-A	149	1358	149	1575-A	149	1938-A	149
180-A	149	640-B	180	885-B	149	1105-A	149	1360-A	149	1580-A	149	1940-A	149
185-A	149	645-B	149	886-B	149	1110-A	149	1365-A	149	1585-A	149	1950-A	149
210-A	149	650-A	149	887-B	149	1115-A	149	1370-A	149	1586-A	149	1955-A	149
225-A	149	655-F	180	888-B	149	1120-A	149	1375-A	149	1587-A	149	1960-A	149
240-A	149	660-F	180	888 05-A	149	1125-A	149	1378-B	190	1588-A	149	1965-A	149
260-B	149	665-F	180	889-B	149	1135-A	149	1377	190	1590-B	149	1970-A	149
277	190	670-F	180	890-B	149	1145-A	149	1378-A	149	1595-A	149	1975-A	149
325-M	197	675-F	180	891-B	149	1150-A	149	1380-A	149	1600-A	149	1980-A	149
350-B	197	680-F	180	892-B	149	1151-A	149	1382-A	149	1605-B	149	1985-A	149
351	197	685-F	180	893-B	149	1155-A	149	1383	184	1607	182	1987-A	149
355-E	149	690-F	180	894-B	149	1160-A	149	1385-A	149	1610-A	149	1990-C	197
357	149	695-F	180	895-C	149	1165-A	149	1395-A	149	1615-A	149	1995-A	149
360-A	149	700-F	180	896-B	149	1170-A	149	1396-B	149	1620-A	149	2000-A	149
370-A	149	705-B	149	897-B	149	1175-A	149	1397-A	149	1625-A	149	2005-A	149
380-A	149	706-A	149	898-B	149	1180-A	149	1400-B	149	1715-A	149	2010-A	149
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386	149	706 30-A	149	899 05-B	149	1190-A	149	1401 05-A	149	1725-A	149	2118	149
387	149	706 40-A	149	899 06-A	149	1195-A	149	1401 10-A	149	1730-A	149	2020-A	149
388	149	707-A	149	899 07-A	149	1196-A	149	1403	149	1735-A	149	2025-A	149
390-A	149	707 20-A	149	899 08-A	149	1200-A	149	1404	149	1740-A	149	2030-A	149
395-B	149	709-A	149	899 09-A	149	1203	149	1405-B	149	1745-A	149	2035-A	149
400-C	149	710-B	149	899 10-A	149	1204	149	1410-A	149	1750-A	149	2040-A	149
405-B	149	711-B	149	900-A	149	1205-A	149	1415-A	149	1755-A	149	2045-A	149
410-A	149	711 50-A	149	905-B	149	1210-A	149	1420-A	149	1760-A	149	2050-A	149
415-A	149	715-C	149	910-A	149	1211-A	149	1425-A	149	1765-A	149	2055-A	149
420-A	149	720-A	149	915-A	149	1212-A	149	1430-B	149	1770-A	149	2060-A	149
425-A	149	725-B	180	920-A	149	1212 50	149	1435-B	149	1775-A	149	2065-A	149
430-A	149	730-B	180	923-A	149	1213-A	149	1440-B	149	1780-A	149	2070-A	149
435-A	149	735-F	184	925-A	149	1214-A	149	1445-A	149	1785-A	149	2075-A	149
440-A	149	745-F	197	927 01-A	149	1214 50-A	149	1450-A	149	1790-A	149	2080-A	149
445-A	149	750-A	149	927 02	149	1215-A	149	1455-B	149	1795-A	149	2085-A	149
450-B	149	755-D	197	927 03-A	149	1220-A	149	1460-A	149	1800-A	149	2100-A	149
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480-D	197	760-B	149	927 05-D	197	1222 01-B	149	1470-A	149	1810-A	149	2110-A	149
500-C	190	770-B	149	930-A	149	1222 02	149	1475-A	149	1815-A	149	2115-A	149
505-A	149	775-A	149	935-A	149	1224 01-A	149	1480-A	149	1820-A	149	2120-A	149
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512-A	190	790-A	149	942-A	149	1230-A	149	1490-B	149	1830-A	149	2130-A	149
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520-B	149	800-G	197	947-C	149	1240-A	149	1495-A	149	1840-B	149	2140-B	149
525-A	149	805-B	149	949-B	149	1245-A	149	1496-B	149	1842-A	149	2145-A	149
527-A	149	810-D	197	950-A	149	1250-A	149	1500-A	149	1843-A	149	2150-A	149
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535-B	149	825-E	149	960-A	149	1255-A	149	1510-A	149	1848	149	2165-B	149
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(Concluded on following page)

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INDEX OF STATIONS LISTING CORPORATIONS, FIRMS,
INDIVIDUAL OR TEAM TRACK LOCATIONS IN SUPPLEMENTS

STATION	SUP	STATION	SUP	STATION	SUP
Abilene, KS	149	(PA) Hamsonville, MO	149	Pinckneyville, IL	149
Abilene, TX	149	Hastings, NE	149	Pine Bluff, AR	149
Alexandria, LA	190	Henryetta, OK	149	Robstown, TX	149
Altus, OK	149	Hodge, TX	149	Salem, IL	149
Atchison, KS	149	Holdenville, OK	149	San Antonio, TX	190
Bartlesville, OK	161	Houston, TX	182	Sealy, TX	149
Bastrop, LA	149	Independence, KS	149	Sedalia, MO	149
Baytown, TX	149	Iola, KS	149	Shawnee, OK	164
Beaumont, TX	149	Irving, TX	149	Sherman, TX	149
Bixby, IL	149	(PA) Joplin, MO	149	(PA) Shreveport, LA	149
Booneville, MO	149	Kanapolis, KS	149	Sinton, TX	149
Brownsville, TX	197	Kamar, IL	149	(PA) South Ft Smith, AR	149
(PA) Camden, AR	149	(PA) Lake Charles, LA	182	Springfield, MO	149
Cape Girardeau, MO	149	Lamar, MO	149	St Genevieve, MO	149
Carrollton, TX	149	Laredo, TX	149	St Joseph, MO	149
(PA) Carthage, MO	149	(PA) Lincoln, NE	149	St Louis, MO	161
Chicago, IL	149	Little Rock, AR	149	Stafford, KS	149
Chicago Heights, IL	149	Livonia, LA	149	Sugar Land, TX	149
Coffeyville, KS	149	Longview, TX	180	Sugar Loaf, IL	149
Columbus, KS	149	Louisville, NE	149	Sullivan, IL	149
Corpus Christi, TX	190	Maivern, AR	197	Sweetwater, TX	149
Dallas, TX	149	(PA) Marshall, MO	149	Taylor, TX	149
Danville, IL	149	McNeil, TX	149	Temple, TX	190
Denison, TX	149	(PA) McPherson, KS	149	Texarkana, AR	149
Denton, TX	149	(PA) Memphis, TN	190	Texarkana, TX	149
Dexter, MO	190	Monroe, LA	197	Topeka, KS	149
Durant, OK	149	Muskogee, OK	149	Tulsa, OK	149
East St Louis, IL	149	Nashville, AR	149	Tuscola, IL	149
East Waco, TX	149	(PA) Nebraska City, NE	149	Tyler, TX	149
El Paso, TX	149	New Braunfels, TX	149	Valley Jct, IL	149
Enid, OK	149	North Little Rock, AR	149	Van Buren, AR	190
Falls City, NE	149	Oakdale, LA	149	Victoria, TX	149
Ft Scott, KS	149	Oklahoma City, OK	182	Waco, TX	180
(PA) Ft Smith, AR	149	Orange, TX	190	Webb City-Carterville, MO	149
Ft Worth, TX	182	Osage City, KS	149	Wellington, KS	149
Fredrick, OK	149	Osborne, KS	149	West Helena, AR	149
Galveston, TX	149	Pacific, MO	149	(PA) Wichita, KS	149
Garland, TX	149	Paragould, AR	149	Wichita Falls, TX	149
Greenville, TX	149	Paris, TX	149	Winfield, KS	190
Hartlingen, TX	149	Parsons, KS	197		

**LIST OF CORPORATIONS, FIRMS, INDIVIDUALS AND TEAM TRACK LOCATIONS
FROM AND TO WHICH RECIPROCAL RATES APPLY**

STATION

Brownsville TX

CORPORATION, FIRM, INDIVIDUAL OR TEAM TRACK LOCATION

City of Brownsville (City Abbatore 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

187 ***

STATION

Monroe LA

CORPORATION, FIRM, INDIVIDUAL OR TEAM TRACK LOCATION

Allen Millwork Mfg Co

Bailard's Inc

Brookings, R. E., Co

Faulk-Cotlier Bonded Warehouses, Inc (No 1)

19 Gulf South Warehouse

Howard Brothers Discount Stores, Inc

L.A. Industries

Maione and Hyde

Monroe Brick & Builders Supply Co

187 ***

187 Monroe Warehouse Co

MPM Oils

124 Murphy GC

News-Star-World Publishing Corp

Reed & Sons Hardwoods, Inc

Sears, Roebuck & Co

Selig Mfg Co

Slagle-Johnson Lumber Co

Strauss, F. & Sons, Inc

Strauss Liquor Corp

(DQ 3326)

188 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 3326)

SUPPLEMENT 197 TO TARIFF MP 8170-C

ITEM	SUBJECT	RULES AND REGULATIONS																																																																																																																
<div><div>NL</div>122-B</div>	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. (DQ 3403)</p>																																																																																																																
<div><div>198</div>125-E</div>	APPLICATION OF RECIPROCAL SWITCHING CHARGES AND ABSORPTION OF SWITCHING CHARGES IN CONNECTION WITH SP OR SSW	Cancel. (DQ 3400)																																																																																																																
<div><div>198</div>130-F</div>	APPLICATION OF RECIPROCAL SWITCHING CHARGES AND ABSORPTIONS ON GRAIN AND FOODS IN CONNECTION WITH DRGW, SP OR SSW	Cancel. (DQ 3400)																																																																																																																
<div><div>NL</div>137-B</div>	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 8001-series: (X)</p> <table><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</td></tr><tr><td>01 199</td><td>Field Crop, nec</td><td></td><td>By-Products</td></tr><tr><td>01 991</td><td>Hay</td><td>20 859</td><td>By-Products of Liquor</td></tr><tr><td>01 992</td><td>Alfalfa</td><td></td><td>Distilling</td></tr><tr><td>20 411</td><td>Wheat flour</td><td>20 917</td><td>Cottonseed Oil</td></tr><tr><td>20 412</td><td>Wheat Bran, Middlings</td><td>20 914</td><td>Cottonseed Meal</td></tr><tr><td>20 413</td><td>Corn Meal or Flour</td><td>20 921</td><td>Soybean Oil</td></tr><tr><td>20 414</td><td>Rye Flour or Meal</td><td>20 923</td><td>Soybean Meal</td></tr><tr><td>20 415</td><td>Buckwheat Flour or Meal</td><td>20 931</td><td>Unseed Oil</td></tr><tr><td>20 416</td><td>Oat Flour or Meal</td><td>20 933</td><td>Oil Nuts</td></tr><tr><td>20 418</td><td>Grain Mill By-Products</td><td>20 939</td><td>Oil Seed Cake Meal</td></tr><tr><td>20 419</td><td>Flour or other Grain Mill</td><td>(1) 50 011 10</td><td>Cottonseed</td></tr><tr><td></td><td>Products, nec</td><td></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 (234) 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. (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	01 199	Field Crop, nec		By-Products	01 991	Hay	20 859	By-Products of Liquor	01 992	Alfalfa		Distilling	20 411	Wheat flour	20 917	Cottonseed Oil	20 412	Wheat Bran, Middlings	20 914	Cottonseed Meal	20 413	Corn Meal or Flour	20 921	Soybean Oil	20 414	Rye Flour or Meal	20 923	Soybean Meal	20 415	Buckwheat Flour or Meal	20 931	Unseed Oil	20 416	Oat Flour or Meal	20 933	Oil Nuts	20 418	Grain Mill By-Products	20 939	Oil Seed Cake Meal	20 419	Flour or other Grain Mill	(1) 50 011 10	Cottonseed		Products, nec		
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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																																																																																																															
01 199	Field Crop, nec		By-Products																																																																																																															
01 991	Hay	20 859	By-Products of Liquor																																																																																																															
01 992	Alfalfa		Distilling																																																																																																															
20 411	Wheat flour	20 917	Cottonseed Oil																																																																																																															
20 412	Wheat Bran, Middlings	20 914	Cottonseed Meal																																																																																																															
20 413	Corn Meal or Flour	20 921	Soybean Oil																																																																																																															
20 414	Rye Flour or Meal	20 923	Soybean Meal																																																																																																															
20 415	Buckwheat Flour or Meal	20 931	Unseed Oil																																																																																																															
20 416	Oat Flour or Meal	20 933	Oil Nuts																																																																																																															
20 418	Grain Mill By-Products	20 939	Oil Seed Cake Meal																																																																																																															
20 419	Flour or other Grain Mill	(1) 50 011 10	Cottonseed																																																																																																															
	Products, nec																																																																																																																	

ITEM	SUBJECT	RULES AND REGULATIONS
171 325-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 Leeds, 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). Provisions formerly shown and not brought forward eliminated. (DQ-3333)</p>
198 350-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.
198 351	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.
188 480-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
167 554-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 3326)	
570-C		Lake Charles LA	* 257 6000 * 147 7800 * 258 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 (uQ-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>138</u> 21500 <i>ATSF</i> <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>228</u> 49500 <u>142</u> 18800 <i>Cal</i> <u>228</u> 25000 <i>Cal</i> <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>228</u> 13700 <u>142</u> 15900 <u>221</u> 7200 <u>130</u> 39000 <u>222</u> 7600
				Memphis Municipal Terminal.	
				Tracks in Sargent Yard	
			Paine Yards	Georgia St Warehouse	
<u>182</u> 810-D	Mt Vernon IL	All Freight	MP Interchange with Connection Carriers.	Industrial Tracks of Tennessee Chute Har- bor Project.	14800
			Industries	Connection with CSXT and NS	
<u>184</u> 832-E	St Louis MO (DQ-3393)	All Freight, CL.	Connections	Industries	<u>221</u> 10400 <u>228</u> 25000 <i>Cal</i> <u>212</u> 38500 <u>142</u> 18800 <i>Cal</i> <u>222</u> 29600 <u>228</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		
179 927.05-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 3329)	
189 2125-C	ST LOUIS, MO EAST ST LOUIS, IL (See Item 495)	Cancel (DQ 3329)	
189 2135-C		Cancel (DQ 3329)	
189 2215-B		Cancel (DQ 3329)	
189 2240-B		Cancel (DQ 3329)	
189 2250-B		Cancel (DQ 3329)	
189 2265-B		Cancel (DQ 3329)	
189 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
183 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.
	Cytex Industries	Chemicals	Avondale, LA.
	Delta Commodities Co	Bulk Liquid Storage	Harvey, LA.
	Foster, L.B.	Pipe Storage	Marrero, LA.
	Gibson Romans 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	Goulsboro, 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 Goulsboro, LA.
	West Building Materials	Chemicals	Gretna, LA.
	WITCO Chemicals Co	Seasoning Supplier	Gretna, LA.
	Zartaran, Inc		Goulsboro, 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	Avondale	(130) 39000 ▲ (258) 21400 74 12700	...	21700	19300
		Goulsboro				
		Gretna				
		Harvey				
		Marrero				
	(DQ-3403)	Westwego				

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).	① 28500 ② 21400	7200	21700	19300
3055-B	Belle Chasse LA (DQ 3403)	Avondale LA Gouldsboro LA Marrero LA New Orleans LA Westwego LA	① 21400 ② 31200	8300
① 3070-I	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 800 th 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 3265)			
					1	2	3	4
① 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

BETWEEN RATE DISTRICT (See Items 3280-3650)	AND MP CONNECTIONS LOCATED IN:			
	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	⑤B	①	⑤B
1	23100 (129) 29300	26900	(227) 13400 (133) 22700 (225) 228 27900 (150) 18700 (220) 29200 (135) 13900	32800
1-A 2 3	14500 (129) 25200	17700	(227) 7900 (133) 16700 (225) 228 16400 (150) 11000 (220) 17100 (135) 8200	19000
4	16400 (129) 25200	18000	(227) 7900 (133) 16700 (225) 228 16400 (150) 11000 (220) 17100 (135) 8200	17700
5	18400 (129) 25200	18000	(227) 7100 (133) 16700 (225) 228 14500 (150) 10100 (220) 15500 (135) 7400	17700
3	19900 (129) 25200	22800	(227) 9800 (133) 16700 (225) 228 19900 (150) 13400 (220) 21000 (135) 10200	22800
7	23100 (129) 29300	26900	(227) 13400 (133) 22700 (225) 228 27900 (150) 18700 (220) 29200 (135) 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 3680.

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 5330-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 5330-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 5330-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

- Δ 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.
 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, and only in connection with CSXT, IC, KCS, NS or SP. Δ
 ⑫ Applies only in connection with the KCS.
 ⑬ Applies only in connection with the IC.
 ⑭ Not applicable in connection with the IC.
 ⑮ Applicable only in connection with BN, except not applicable where ②①, ②②, ②④, or ②⑤ apply.
 ⑯ Applicable only in connection with the ATSF.
 ⑰ Applicable only in connection with the BN.
 ⑱ Applicable only in connection with the DRGW.
 ⑲ Applies only in connection with the SP and SSW.
 ⑳ Not applicable in connection with the DRGW.
 ㉑ Applicable only in connection with the CNW.
 ㉒ Applicable only in connection with the KCS (formerly LA).
 ㉓ When from or to connections with the CR.
 ㉔ Applicable only in connection with the SSW.
 ㉕ Applicable only in connection with the CSXT.
 ㉖ Applicable only in connection with the NS.
 ㉗ Applies only in connection with the NS and UP.
 ㉘ Not applicable where ⑬, ⑭, ⑮, ⑯, ⑰, ⑱, ㉑, ㉒ and ㉓ applies.
 ㉙ Applies only in connection with the GWW.
 ㉚ Applies only in connection with ATSF on Grain and Grain Products, as described in Item 137, on shipments from or to Garvey via KSW.
 ㉛ Open to reciprocal switching only on traffic that originates or terminates east of the Mississippi River.
 ㉜ 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 |
- ㉝ Applicable only in connection with ATSF on all commodities except as provided for in reference mark ㉜.
 ㉞ 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 6001-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 (0546) Conoco Incorporated (0502) Holnam Incorporated (0331) Jupiter Nash (0501) M. I. Drilling Fluids (0331) Olin Corporation (0400) PPC 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		
-129-		Correction 235

ABBREVIATIONS	EXPLANATION OF ABBREVIATIONS	ITEM
AKA..... BOE..... ICC..... NSO..... OPSL..... STCC..... SWFB..... UFC.....	Also Known As. Bureau of Explosives. Interstate Commerce Commission. National Service Order. Official List of Open & Prepay Stations. Standard Transportation Commodity Code Tariff. Southwestern Freight Bureau. Uniform Freight Classification.	50000
REFERENCE	EXPLANATION OF REFERENCE MARKS	
*..... @..... (R)..... (A)..... (C)..... (D)..... (NEW)..... (1).....	Change. Addition. Denotes reduction or new rate. Denotes increase. Denotes changes which results in neither increase nor reduction in charges. Provisions not brought forward herein have been eliminated. New item. 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

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 Southern Pacific Transportation Company
 One Market Plaza
 San Francisco, California 94105

-272-

Correction 236

EXHIBIT 4

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)	
NEW ORLEANS (38400)	(AVONDALE - 38300) Avondale Shipyards Incorporated (0132)	5060 (Con- tin- ued)
	(HARVEY - 38335) Avondale Steel Sales (0468) (D)(A) Energy Supply Company 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) Baroid Drilling Fluids Incorporated (2913) P & H Tube Division (2950)	
(Continued)		
For Explanation of (other) abbreviations and reference marks, see Item 50000.		
Issued: July 19, 1996		Effective: August 8, 1996
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		Correction 148

ABBREVIATIONS	EXPLANATION OF ABBREVIATIONS	ITEM
AKA..... BOE..... ICC..... NSO..... OPSL..... STCC..... SWFB..... UFC.....	Also Known As. Bureau of Explosives. Interstate Commerce Commission. National Service Order. Official List of Open & Prepay Stations. Standard Transportation Commodity Code Tariff. Southwestern Freight Bureau. Uniform Freight Classification.	50000
REFERENCE	EXPLANATION OF REFERENCE MARKS	
✕..... @..... (R)..... (A)..... (C)..... (D)..... (NEW).....	Change. Addition. Denotes reduction or new rate. Denotes increase. Denotes changes which results in neither increase nor reduction in charges. Provisions not brought forward herein have been eliminated. New item.	

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Issued: November 16, 1995

Effective: January 1, 1996

Issued by: Manager - Publications
 Southern Pacific Transportation Company
 One Market Plaza
 San Francisco, California 94105

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EXHIBIT 5



BURLINGTON NORTHERN SANTA FE CORPORATION

William K. Anderson
Manager Auxiliary Prices
P.O. Box 961069
Ft. Worth, TX 76161-0069

Phone: (817) 352-2133
Fax: (817) 352-7202

December 17, 1996

Mr. Bert Van Kampen Via Fax: (402) 271-4890
Manager - Switching
Union Pacific Railroad
1416 Dodge Street, Rm. 1130
Omaha, NE 68179-0210

Dear Bert:

In the STB's Decision approving the UP-SP merger, the Board determined that "[i]n essence, 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 at 103. Throughout the decision, the Board indicated its expectation that BNSF would be able to replace SP's service at every point that was served pre-merger by UP and SP. The Board specifically included in that analysis those points UP or SP reached by reciprocal switching before the merger, stating that "[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. One of the areas that the Board specifically identified as a "competitive problem area" is the Houston-to-New Orleans corridor, and 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 at 104.

We believe it is clear that the Board expected BN/Santa Fe to replace SP at points, such as New Orleans, previously served for the purposes of west-bound (or western-originated) traffic by both UP and SP, even if the affected shipper might have access to an eastern carrier for its east-bound (or eastern-originated) traffic. Therefore, we are requesting UP to include BNSF in its reciprocal switching tariffs at New Orleans, specifically in Item 3000 of Tariff MP 8170 series and Item 5060 of Tariff SP 9500 series, and to provide reciprocal switching services to BNSF to the extent such services were provided to SP at locations where UP and SP were competitors for west-bound traffic before the UP/SP merger. This will insure competition for west-bound or western-originated business at New Orleans between BNSF and UP for UP-served customers formerly accessible to SP, as the Surface Transportation Board expects and intends. The Board did not intend to confer on UP a monopoly for west-bound (or western-originated) traffic from UP-served shippers.

BURLINGTON NORTHERN SANTA FE CORPORATION

Please advise when your two switch tariffs will be amended to provide ATSF, our operating carrier, reciprocal switch charges in New Orleans along with the supplement number and effective date.

Sincerely,

W. K. Anderson

William K Anderson

EXHIBIT 6

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET
OMAHA, NEBRASKA 68179

January 20, 1997

Mr. William K. Anderson
Manager Auxiliary Prices
Burlington Northern Santa Fe Corporation
P. O. Box 961069
Ft. Worth, TX 76161-0069

Dear Bill:

Your letter of December 17, 1996, asked that UP include BNSF in New Orleans reciprocal switching tariffs and provide reciprocal switching services to BNSF at New Orleans.

The Surface Transportation Board's decision approving the UP-SP merger required as a condition that BNSF be given access to "2-to-1" customers. After careful review, we have been unable to identify any "2-to-1" customers at New Orleans. Obviously, there are customers who were served by both UP and SP prior to the merger. However, in every case, these customers are also served by another railroad at New Orleans. If you can identify a specific customer who fits the definition of "2-to-1", we will obviously take steps to ensure that you have access to that customer.

Your letter has not identified any customers that will lose two-railroad service if we do not comply with your request. Accordingly, we will not take the actions you have requested.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bert". The signature is fluid and cursive, with a prominent loop at the end.

Bert Van Kampen
Manager - Switching
(402) 271-3733
(402) 271-4890 (FAX)

EXHIBIT 7

EE 07'97 15:25 FR CUST REV SUPPORT

913 435 3861 TO 60527900

P.01

2/7/07

16:10



UNION PACIFIC RAILROAD

Keith Moeller

BNSF

fax 913-435-3013

Dennis Bell

Ralph Cole

UNION PACIFIC RAILROAD

phone 314-992-1807

fax 314-425-4334

Keith:

The switch for AGFX 87631 out of Delta Commodities at Harvey in the
NEW Orleans District: \$127.00 p/c this is the Grain and Grain Products
rate. Verified by an old CNW friend in the switching department: Rich
Kennedy. (314) 892-1963.

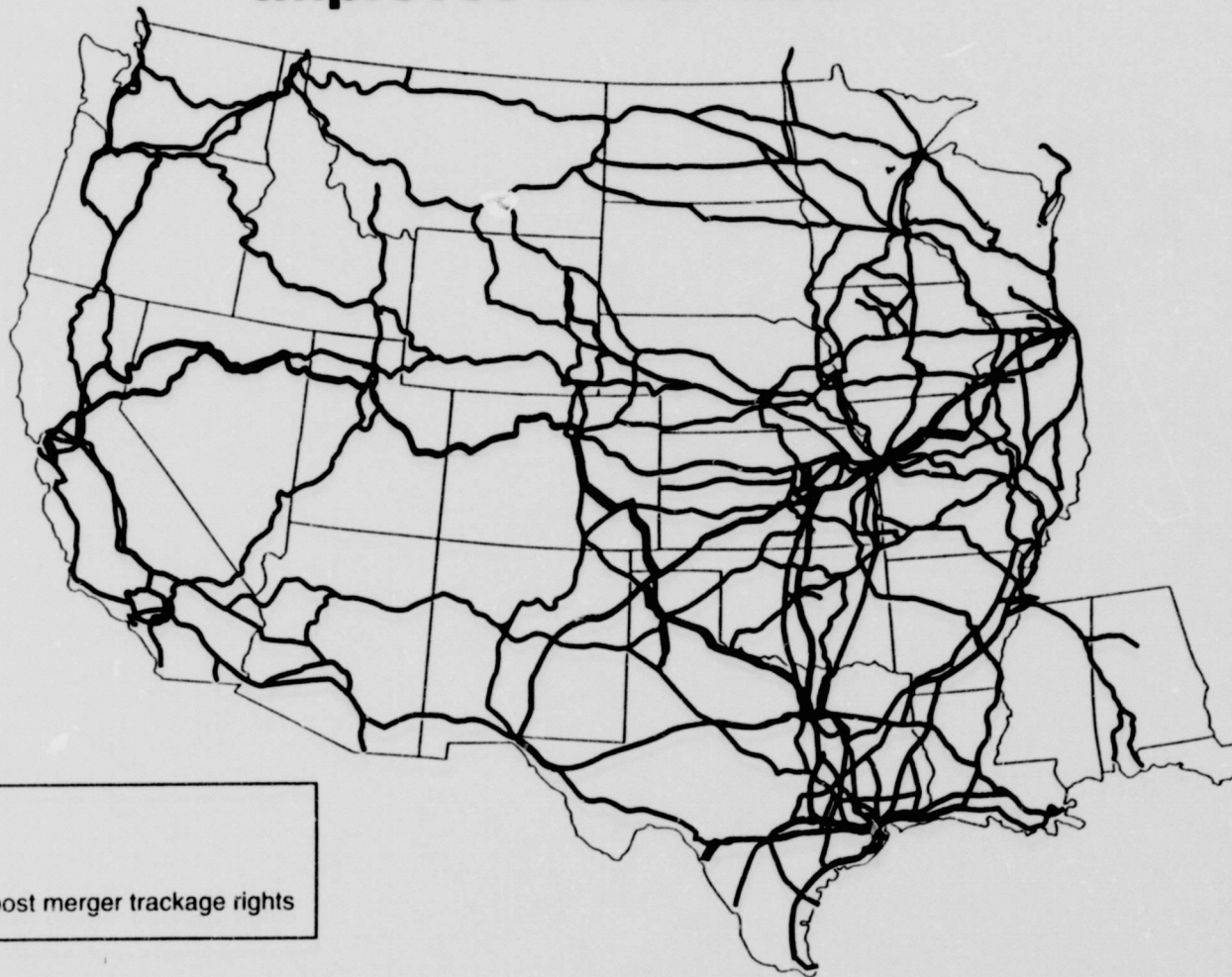
The authority is: MP 8170-a ITEM 2950. Commodities Described in WTL
6330-X take the Grain and Grain Products rate of: \$127.00 P/C.

EXHIBIT 8

Merger Update



Head-to-Head Competition Improves In the West



— BNSF
= UPSP
includes post merger trackage rights

Reciprocal Switching

Improved Access To More Customers

- Reciprocal switch charges between SP and UP will be eliminated after the merger.
- Reciprocal switch charges between SP and the other railroads will be reduced.
- Customers open to reciprocal switching prior to the merger will continue to be open to reciprocal switching after the merger.



- # Competitive Access

- Improved Competition

- UP/SP have agreements with BNSF and Utah Railways.
- Customers currently served by only UP and SP, will gain access to BNSF.
- BNSF can serve the customers directly or utilize UP for switching or haulage.
- In all cases, competition will be maintained and in most cases competition will be stronger.
- History has demonstrated UP and BNSF will be fierce competitors.





Volume 9 ■ Issue 6
December
1995

CHANGES

A Newspaper for Union Pacific Employees

SPECIAL
EDITION

UP/SP Merger Would Strengthen Competitive Alternatives

THE UNION PACIFIC - SOUTHERN PACIFIC RAILROAD combination - which could become reality by mid-September next year - promises unprecedented opportunities for transportation customers, railroad employees, states and cities west of the Mississippi.

The merger of UP/SP, now before the Interstate Commerce Commission (ICC), would greatly improve transit times throughout the western two-thirds of the nation, take trucks off overcrowded highways and yield direct routing and efficiency benefits never before accomplished in railroad history.

With ICC approval, the UP/SP merger would create \$750 million in efficiency savings and new business opportunities for the two companies and logistical savings for customers, while enhancing rail competition in the western United States.

The merger will attract new business that didn't move by any mode in 1994, but could be drawn to the merged system by better routes.

Merging with SP is the "only way UP can fill in the gaps in our system between Texas and California, Los Angeles and Oakland or improve the efficiency between the California ports and the Mississippi gateways," said UP Corporation President Dick Davidson.

"There is no other way than a merger to achieve the dramatic capacity enhancements, service improvements, and cost reductions that BN/Santa Fe has already achieved by its merger."

In this issue, *Changes* explores the merger application filed November 30 in Washington, D.C. See inside for details of the operating plan, shorter-faster rail routes, customer and government support, facility enhancement, corridor upgrades

and other merger facts.

Historically and physically, UP and SP routes were created to work together. The joint Operating Plan shows numerous places where route structures of each railroad fill in gaps of the other.

The natural fit will yield unprecedented improvements:

- More direct routes, shaving hundreds of miles off some trips.
- Substantially faster transit times, cutting hours and days from many routes.
- Specialized use of parallel routes in which traffic will flow in one direction on UP track and in the opposite direction on SP track.
- Blocks of customers' freight cars that bypass intermediate terminals, eliminating congestion and frequent interchanges.
- Alternative main-line routes - both east-west and north-south - which will allow planned and unplanned traffic diversion with little or no loss in transit times.
- Improved use of train crews.
- Combined locomotive and freight-car fleets better able to meet customer needs.

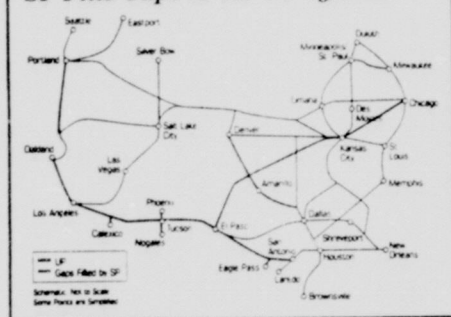
To realize maximum benefits, the merging companies are prepared to mount one of the most aggressive redesign and upgrading efforts in railroad history (Please see page 2 for chart listing key corridor and facilities upgrades).

UP/SP will offer literally hundreds of new or improved train services. Many intermodal, automotive and manifest train schedules on the railroads will be replaced or changed.

■ See OPERATING PLAN, page 2



SP Fills Gaps in the UP System



14 Benefits of UP/SP Merger

- Stronger transport competition throughout the Western states through creation of a rail system with the direct routes, service capabilities and financial resources to compete with the BN/SF in every major corridor.
- As a result of the settlement with the BN/SF system, preservation - indeed strengthening - of rail competition for every shippers who now has it.
- Expanded single line service opportunities for shippers throughout the SP and UP systems, including single line access to all major Mexico gateways.
- Approximately \$1.3 billion in new capital investments to expand, upgrade and improve rail-line capacity and facilities throughout the Western states, including major capacity expansion on SP between Los Angeles and El Paso.
- Solutions to SP's chronic service and reliability problems through access to adequate capital resources, new technology and improved operating systems.
- Assurance of long-term, high quality rail service to SP shippers without the disabilities resulting from SP capital and earnings weaknesses.
- Solutions to congestion delays on both railroads as capital investments and operating changes alleviate bottle necks in critical terminals and corridors.
- For the first time in history, single line rail service along the Pacific Coast between California and Seattle/Tacoma and other Pacific Northwest points, offered by both UP/SP and BN/SF.
- Faster, more reliable, more competitive intermodal service between California and New Orleans, Houston, Dallas/Ft. Worth, Memphis, St. Louis, Chicago and the Twin Cities as well as between the Midwest and Texas and the West Coast.
- Improved and expedited carload service with new through trains and improved blocking of shipments, both on and beyond the system, which reduces transit times by several days.
- Much more direct and efficient routes, shaving hundreds of miles for many shippers and resulting in faster transit times and improved equipment turn around.
- Almost \$500 million in annual efficiency savings, allowing UP/SP to provide service at lower cost.
- Specialized use of parallel routes to reduce congestion, improve reliability and transit time and provide flexibility for track maintenance.
- Terminal consolidations and improvements, including new and expanded intermodal terminals in Southern California, Kansas City, Port and St. Louis and other locations.

Merger to Impact Work Centers

"HOW WILL THE MERGER AFFECT ME?" That's the question most on the minds of Union Pacific and Southern Pacific employees. Although the November 30 merger application includes a broad operating plan - combined shops and yards, shorter corridors and routes - these are preliminary and subject to change once the merger is approved. The following summary is probably not as much information as employees would like to know about the impact on major work centers. As developments occur, employees will be kept informed.

UNION PACIFIC RAILROAD

Omaha - About 1,850 employees work in Headquarters, with another 800 at the Harriman Dispatching Center. The Headquarters situation is still under study, but transfers of some clerical and nonagreement positions are anticipated.

North Platte, Nebraska - UP's Bailey Yard is the world's largest classification yard. About 2,200 employees work in North Platte, repairing locomotives and rail cars, and moving train traffic. Shops are expected to continue operating at full capacity.

St. Louis - About 1,000 employees work at the National Customer Service Center. Overall, UP has nearly 1,750 employees in the St. Louis area, including 300 at the East St. Louis rail yard. Some clerical and nonagreement positions may be transferred, but no final decision has been made.

North Little Rock, Arkansas - About 2,000 employees perform major locomotive overhauls and other mechanical repairs, or work in transportation. The merger application calls for the shops to continue operating at full capacity, focusing on EMD locomotives.

Chicago - UP's recent merger with CNW brought with it Chicago's east-west rail traffic, major intermodal facilities and repair shops. About 2,500 work in the area. The UP/SP merger would expedite traffic to and from Chicago.

Kansas City - About 1,400 employees work in a newly opened UP locomotive shop and in transportation. Duplicate UP and SP one-spot car shops in Kansas City would be consolidated at UP's yard.

Salt Lake City - About 1,200 employees work at a locomotive repair shop, technical training center and in transportation. Duplicate UP and SP one-spot car shops in Salt Lake City would be consolidated at SP's yard.

Pocatello, Idaho - About 1,200 employees work in transportation and a car-repair shop. The application sets out plans to move work currently performed at SP's Denver and Pine Bluff car shops to Pocatello and DeSoto shops.

Maintenance-of-Way equipment repair work currently done in Pocatello would be transferred to SP's new Denver shop.

Fort Worth - The railroad's equipment repair shops and yard employ 1,200. Light repair work will continue at the Maintenance-of-Way equipment repair shop, but heavy repair will transfer to SP's new Denver facility.

SOUTHERN PACIFIC RAIL CORPORATION

Southern Pacific has about 3,600 employees in California, including about 1,500 at its Headquarters in San Francisco. Some Headquarters clerical and nonagreement positions may be transferred, but no final decision has been made. SP

■ EMPLOYEE IMPACT, from page 4

Merger Review Calendar

- Nov. 30, 1995**
Merger application filed
 - Jan. 2, 1996**
ICC accepts application
 - Jan. 15 to May 13, 1996**
Filing of notifications, opposition, responsive applications, comments, protests and rebuttals
 - June 3, 1996**
Briefs due
 - July 2, 1996**
Oral arguments before ICC
 - July 5, 1996**
ICC voting conference
 - Aug. 12, 1996**
Final decision
 - Sept. 11, 1996**
Merger effective date
- *Established by the ICC and subject to modification

ATTACHMENT C

Delta

Terminal Services, Inc.

3540 RIVER ROAD
P.O. BOX 581
HARVEY, LOUISIANA 70059
PHONE 504-340-4911
FAX 504-348-1893

Verified Statement Of Delta Terminal Services, Inc.

My name is Bernard Fiest, Jr., and I am the Manager, Transportation for Delta Terminal Services, Inc ("Delta"). My business address is 3540 River Road, Harvey, LA. In my position, I am responsible for coordinating the rail, marine and truck shipments which originate and terminate at this facility. The purpose of my statement is to support the efforts made by the Burlington Northern and Santa Fe Railway Company ("BNSF") to serve our facility at Harvey, Louisiana through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP).

Delta receives, stores, and reships a variety of liquid products such as vegetable oils, petroleum, lube oils and other chemicals using rail, water, and motor transportation options available in the New Orleans area, as a warehouse and transfer operation for the buyers, sellers, and beneficial owners of these commodities. A majority of these commodities arrive via ship or rail and are transferred into our storage tanks under specific contract arrangements with our customers. The ultimate destinations for these commodities varies, but mostly move to those destinations via rail and truck. Destinations for most commodities shipped via rail from Delta which are controlled by the buyers and sellers of these commodities and not Delta, is in the Midwest and Western United States and well as Mexico. Our customers used privately owned or leased railcars for their movements, and competitive and consistent transit times are important to them both in terms of maintaining product quality and sizing their railcar fleets to meet their needs. Many of these commodities, by their nature, are more suited to rail versus truck handling to and from our facility, and access to competitive rail service for our customers and Delta Commodities is a significant reason customers use our facility.

Delta, prior to the UP/SP merger, was directly served by both UP and SP, and was accessible by reciprocal switch using either of those carries to all other railroads serving the New Orleans area. Our facility received two separate industry switches per day, in the morning from SP and in the evening from UP.

Access to both carriers directly at our facility provided our 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. 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.

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. It is for this reason that we are providing this statement and request the Surface Transportation Board's assistance in restoring competitive rail service between major western rail carriers at our facility.

VERIFICATION

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

Subscribed and sworn to before me on this 18 day of SEPT. 1997.

Notary Public

My Commission expires:

IT IS PERSONALLY ONE AND ONE
THEY ARE THE ONLY TWO WHO WERE
PRESENT AT THE MEETING AND TO THE
THE PRESIDENT OF THE
THE NAME AND ADDRESS OF THE
THE PRESIDENT OF THE UNITED STATES
IN THE

STATE OF LOUISIANA
 PARISH OF Jefferson
 before me, Notary Public in and for the State of Louisiana, and
 after reading the within petition and the petitioners' oaths of
 the petitioners to the within and now the substance of the
 petition, I find it to be true and genuine, and approve
 of the same, and certify the contents of the petition.
 In testimony whereof, I have hereunto set my hand and
 the seal of my office, at New Orleans, Louisiana, this
11th day of March, 1960.
 Notary Public

ARTHUR A. MAURICE
NOTARY PUBLIC

PARISH OF ORLEANS, STATE OF LOUISIANA
MY COMMISSION IS ISSUED FOR LIFE.

ATTACHMENT D

C. & T. Refinery, Inc.

FAX # 704-525-4510
TELEPHONE: 704-523-0414

Refiners of VEGETABLE SHORTENINGS AND OILS

P.O. BOX 240457 CHARLOTTE, N.C. 28224

10/23/1997

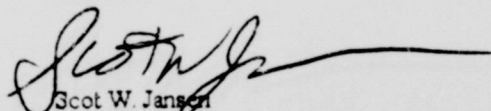
VERIFIED STATEMENT
OF
C. & T. REFINERY, INC
5000 SOUTH BLVD.
CHARLOTTE, NC 28217

My name is Scot W. Jansen and I am Corporate Traffic Manager for C & T Refinery, Inc. My business address is 5000 South Boulevard, Charlotte, NC 28217. In my position, I am responsible for the transportation activities for two vegetable oil facilities. Both plants operate their own fleet of private tank cars. The purpose of my statement is support the efforts of The Burlington Northern Santa Fe Railway Company ("BNSF") to serve a facility we lease in New Orleans, La., through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP).

- I. C & T Refinery, Inc., originates vegetable oil from Harvey, LA and Avondale, LA
 - a. C & T Refinery stores oil at both the above facilities
 - b. Before merger, SP had access into both facilities through reciprocal switching.
- II. The public storage facilities in New Orleans lost some of their competitive advantages when Union Pacific denied 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.
- III. 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.

In light of Union Pacific's current track record in regards to supplying reliable service, it is only fair for the shipping community of New Orleans switching district to have more than one option to move traffic west.

Sincerely



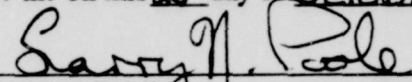
Scot W. Jansen
Corporate Traffic Manager

VERIFICATION

I Scot Jansen, being duly sworn deposes and says that he has read the foregoing statement and the contents thereof are true and correct of the best of his knowledge and belief.



Subscribed and sworn to before me on this 23rd day of October, 1997


Notary Public

My Commission expires: May 9, 1999

ATTACHMENT E

VERIFIED STATEMENT

OF

TERRY J. VOSS

My name is Terry J. Voss. I am Senior Vice President Transportation for Ag Processing, Inc. (AGP). I am responsible for all transportation for AGP and subsidiary companies. AGP is a regional cooperative owned by 330 local cooperatives. They are the largest cooperative soybean processor in the world with eight soybean processing facilities. In addition, they have a pet food company, three vegetable oil refineries and an extensive feed company operation. AGP has grain elevators in the East from Indiana to Ohio and in the Midwest from Nebraska to Missouri and north to Canada. Their 1996 sales were nearly \$3 billion. AGP supports the efforts of Burlington Northern Santa Fe Railway Company (BNSF) to serve the IMT - Delta facilities in the New Orleans area of Harvey, Louisiana.

Prior to the merger of the Union Pacific Railroad Company (UP) and the Southern Pacific Transportation Company (SP), the IMT facility was served by each railroad. Subsequent to the merger this facility has become a two-for-one point as it is served exclusively by UPSP.

AGP's primary business is the processing of soybeans into soybean meal for livestock feed and the refining of soybean oil into edible vegetable oils. The world is the market for vegetable oils and there is much competition from foreign processors and refiners. AGP, in its normal course of business, exports oils to foreign countries. Transportation charges are almost the determining factor in delivering products to the foreign buyer. Any change in transportation

pricing could limit the opportunity to participate in the export market. As example, vegetable oils are traded in increments of one one hundredth of one cent per pound.

AGP has soybean processing or vegetable refining facilities located on BNSF in Missouri, Texas, Minnesota and Iowa. Allowing BNSF access to Harvey, Louisiana would provide us with the opportunity to export vegetable oils for single line service from our BNSF locations. It is common knowledge that where two or more carriers have access to a facility, especially in single line service, the competitive benefits are obvious. Without the BNSF opportunity to serve the facility we fear that our freight will be noncompetitive and hence our international marketing opportunities will be restricted.

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.

Again, we request that the BNSF be allowed access to this facility.

VERIFICATION

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

Terry J. Voss

Subscribed and sworn to before me on this 30th day of July, 1997.

Margaret Acclin
Notary Public

My Commission expires:



ATTACHMENT F



**VERIFIED STATEMENT
OF
THE DIAL CORPORATION
15501 NORTH DIAL BOULEVARD
SCOTTSDALE, ARIZONA 85260**

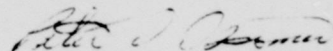
15501 North Dial Boulevard
Scottsdale, AZ 85260-1619
602 754-DIAL

My name is Peter O. Opsomer and I am Transportation Resource Manager for The Dial Corporation. My business address is 15501 N. Dial Boulevard, Scottsdale, AZ 85260. In my position I am responsible for the transportation of rail, intermodal, and truck transportation of raw materials and supplies for all Dial facilities located throughout the country. Dial currently operates their own fleet of private tank cars and leases bulk storage facilities in New Orleans, LA for handling coconut oils and similar products. The purpose of my statement is to support the efforts of the Burlington Northern Santa Fe Railway Company (BNSF) to serve the facilities we utilize in New Orleans, LA, through reciprocal switching in order to restore the competitive situation that existed before the merger of the Union Pacific Railroad Company (UP) and the Southern Pacific Transportation Company (SP).

- I. The Dial Corporation originates in excess of 200 tank car shipments of oils annually from Harvey and Avondale, LA. These shipments move from Delta Commodities and International Matex respectively.
- II. Prior to the UP/SP merger these facilities were served directly by, or open to, reciprocal switching by both the UP and the SP railroads.
- III. Dial was able to obtain competitive proposals from both the UP and SP to assist in maintaining competitive rates and service.
- IV. The New Orleans facilities have lost some of their competitive advantages, due to the Union Pacific denial to access. This is particularly true on shipments moving to the West.
- V. 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.

In view of the foregoing and, based on the most recent service record of the UP/SP merger, we respectfully request the BNSF be allowed access to the New Orleans switching district.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter O. Opsomer", written in a cursive style.

Peter O. Opsomer
Transportation Resource Manager

VERIFICATION

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

Peter O. Opsomer

Subscribed and sworn to before me on this 5th day of November, 1997.

Maureen A. Holt
Notary Public

My Commission expires: My Commission Expires Dec. 31, 1999

ATTACHMENT G

VERIFIED STATEMENT OF: JOHN G. BRESLIN

WITCO CORPORATION

My name is John G. Breslin, and I am Director of Logistics for Witco Corporation and have held this position for eight years. My duties include policy, procurement, regulatory compliance in all transportation, warehousing and related activities in all geographies.

The Witco Corporation is a specialty chemicals company. The purpose of my statement is to support the efforts of the Burlington Northern and Santa Fe Railway Company ("BNSF") to serve our facility at Gretna, Louisiana, through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP). We sell to and receive products from customers and suppliers located throughout the world. During 1996, we shipped thousands of carloads/containers/trailers to and from our facility in Gretna. This plant was open to SP and UP directly.

The Witco Corporation will continue to require the services of BNSF at this facility because of the competitive pricing option no longer provided since the merger of SP and UP. There is a distinct need for two competing railroads in the South which own their own track and facilities. As is the case when only one company is able to operate in a particular market, service suffers and price is non-competitive. It is time for customers interested in the Southern market to have service by more than one rail carrier which owns its facilities. Their rail carriers should not be just any rail carriers. They must be comparable in terms of their size, scope and ability to provide a competitive service. From what I

understand of railroad operations, in the 1990s, two carriers of relatively equal size and scope provide the greatest opportunities for seamless service, efficient equipment utilization and synergies.

To summarize, we support the efforts of the Burlington Northern and Santa Fee Railway Company to serve our Gretna, LA facility through reciprocal switching.

I, John G. Breslin, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on September 26, 1997.

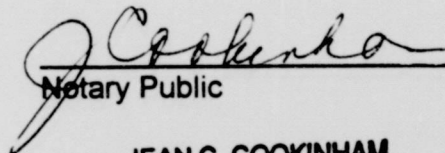
Sincerely,

WITCO CORPORATION



By: John G. Breslin
Title: Director of Logistics

Subscribed and sworn to before me on this 25th day of
September, 1997.

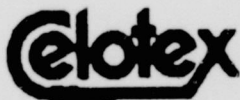


Notary Public

JEAN C. COOKINHAM
NOTARY PUBLIC OF CONNECTICUT
MY COMMISSION EXPIRES MAY 31, 2000

My commission expires:

ATTACHMENT H



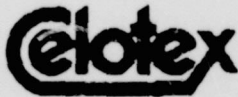
The Celotex Corporation

Post Office Box 31602
Tampa, Florida 33631-3602
(813) 873-1700

**VERIFIED STATEMENT
OF
PAUL ROBBINS**

My name is Paul Robbins and I am the Director of Transportation for Celotex Corporation. My business address is 4010 Boy Scout Boulevard, Tampa, Florida 33607-5650. In my position, I am responsible for managing logistics services and costs. The purpose of my statement is support the efforts of The Burlington Northern and Santa Fe Railway Company ("BNSF") to serve our facility at New Orleans, Louisiana through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP).

The subject facility of this letter is our manufacturing plant in Marrero, LA, which produces an insulation board used in construction, but primarily as roofing insulation. The board can be shipped in boxcars, bulkhead flatcars, flatbed truck or piggyback. For several years, until the IC retired the units, flatracks were used daily to a major customer in Illinois. Looking a little further back in history, Thrall Door cars were in dedicated use until the SP railroad retired those cars from service. The plant also receives a variety of raw materials for use in the manufacturing process, none of which are presently shipped directly to the plant site by rail. Our facility has always been open to reciprocal switching and the SP and UP took turns handling the switching service, six months at a time, until an agreement was made for the UP to handle all our switching. Marrero product is shipped all over the country with consistent volume into the Southeast and the



The Celotex Corporation

Post Office Box 31602
Tampa, Florida 33631-3602
(813) 873-1700

Midwest, but with the heaviest volume to Texas. West Coast and Midwest customers could be served by rail if the right competitive factors were introduced, but at this time only truck and piggyback are in use.

During the merger proceedings, we were aware of the settlement agreements made by the BNSF and fully expected that Marrero would be treated like the other "two for one" points were, as far as competitive access is concerned. The BNSF needs to be given access to Marrero to allow at least a minimal level of competition for the UPSP, and giving Celotex the opportunity to be competitive in the markets that the BNSF serves.

VERIFICATION

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

Paul R. Robbins

Subscribed and sworn to before me on this 30th day of JUNE, 1997.

P S Ballantyne
Notary Public

My Commission expires: 1/27/98



P S BALLANTYNE
My Commission CC344534
Expires Jan. 27, 1998
Bonded by ANG
800-853-5678

ATTACHMENT I



Gardner Smith (U.S.A.) L.L.C.

Commodity House

26877 Northwestern Hwy.
Suite 212
Southfield, MI 48034
Telephone : (810) 357-3880
Facsimile : (810) 357-4288

VERIFIED STATEMENT OF STEVE SILVER

MY NAME IS STEVE SILVER AND I AM TRADING DIRECTOR FOR GARDNER SMITH (USA) L.L.C..

MY BUSINESS ADDRESS IS 26877 NORTHWESTERN HIGHWAY, SUITE 212, SOUTHFIELD, MICHIGAN 48034. IN MY POSITION, I AM RESPONSIBLE FOR ALL ASPECTS OF TRADING VEGETABLE OILS INCLUDING MOTOR AND RAIL TRANSPORTATION. THE PURPOSE OF MY STATEMENT IS TO SUPPORT THE EFFORTS OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF") TO SERVE OUR FACILITIES AT NEW ORLEANS, LOUISIANA OR SUB PORTS OF AVONDALE AND HARVEY, LA., THROUGH RECIPROCAL SWITCHING IN ORDER TO RESTORE THE COMPETITIVE SITUATION THAT EXISTED BEFORE THE MERGER OF THE UNION PACIFIC COMPANY ("UP") AND SOUTHERN PACIFIC TRANSPORTATION COMPANY (SP)

OUR INTEREST IS IN SERVICING THE TANK TERMINAL OPERATIONS AT HARVEY LA., AND AVONDALE, LA. INBOUND WITH VEGOILS ORIGINATING IN THE US MIDWEST AND OUTBOUND FOR TROPICAL OILS (PALM AND COCONUT OILS) TO THE US MIDWEST, AND NORTH TO CANADA. PRIOR TO THE UP/SP MERGER, BOTH THE AVONDALE AND THE HARVEY FACILITY WAS OPEN TO SP VIA RECIPROCAL SWITCHING.

WE NEED SERVICE BY BNSF AT THESE FACILITIES TO REPLACE THE COMPETITIVE OPTIONS AVAILABLE PRIOR TO THE MERGER AND WE BELIEVE THAT BNSF WILL BRING COMPETITIVE RATES TO THESE MOVEMENTS AND PROVIDE BETTER, TIMELY SERVICE FOR SEVERAL OF THE ORIGIN AND DESTINATION LOCATIONS.

WHILE WE DID NOT PARTICIPATE IN THE UP/SP MERGER PROCEEDING, WE EXPECTED THAT BNSF WOULD HAVE ACCESS TO THE AVONDALE AND HARVEY FACILITIES.

VERIFICATION:

STEVE SILVER, BEING DULY SWORN DEPOSES AND SAYS THAT HE HAS READ THE FOREGOING STATEMENT AND THE CONTENTS THEREOF ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

Steve Silver

STEVE SILVER
TRADING DIRECTOR
GARDNER SMITH (USA) L.L.C.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 30TH DAY OF JULY, 1997.

Cheryl E. Hendry

NOTARY PUBLIC

MY COMMISSION EXPIRES : 6/30/01

CHERYL E. HENDRY
Notary Public, Oakland County, MI
My Commission Expires: 6/30/01

ATTACHMENT J

VERIFIED STATEMENT

OF

J. RON BRINSON

My name is J. Ron Brinson and I am President and Chief Executive Officer for the Port of New Orleans. My business address is 1350 Port of New Orleans Place. The purpose of my statement is support for the efforts of The Burlington Northern and Santa Fe Railway Company ("BNSF") to serve our Perry Street in New Orleans, Louisiana, through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP).

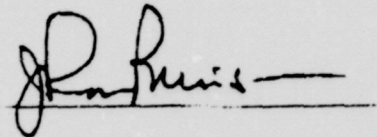
The Perry Street Facility is located on the Westbank of the Mississippi River at mile marker 96 AHP. This terminal is comprised of a wharf with a linear footage over 1,000 feet, a 160,000 square foot transit shed, and an open storage and marshalling area of more than 130,000 square feet. Previously served by both the UP and the SP, Perry Street continues to be accessed by barge and truck lines. However, because of the merger of the UP and the SP and the absence of a reciprocal switching agreement, rail customers are limited to one railroad for movement to and from the Western United States.

As the only port in the United States served by six Class 1 railroads, the Port of New Orleans,

its customers, and its tenants have benefitted from the competition that exists among these carriers. Therefore, the Port of New Orleans strongly urges the Surface Transportation Board to look favorably upon the request by BNSF to gain access, through reciprocal switch service, to the Perry Street facility.

VERIFICATION

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



J. Ron Brinson

Subscribed and sworn to before me on this 10th day of November, 1997.



Notary Public

JOSEPH M. ORLESCH, JR.

Notary Public

Parish of Orleans, State of Louisiana

My Commission is dated for life

My commission expires at death.

STB FD

32760

10-23-97

I

183343

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

202 347-7170

October 23, 1997

BY HAND DELIVERY

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



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

Dear Mr. Secretary:

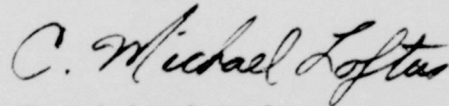
Enclosed for filing in the above-referenced proceeding please find a separately packaged original and twenty-five (25) copies of the HIGHLY CONFIDENTIAL VERSION of the Petition of Entergy Services, Inc. and Entergy Arkansas, Inc. for Modification Of Decision No. 44, Or In The Alternative, For Additional Condition (ESI-28) (the "Petition"), which is being filed under seal in accordance with the procedure set forth at 49 C.F.R. § 1104.14. In addition, please find an original and twenty-five (25) copies of the PUBLIC, REDACTED VERSION of the Petition (ESI-29). In accordance with prior orders in this proceeding, we have also enclosed a Wordperfect 5.1 diskette containing the HIGHLY CONFIDENTIAL VERSION of the Petition.

Extra copies of these filings are enclosed. Kindly indicate receipt and filing by time-stamping these copies and returning them to the bearer of this letter.

The Honorable Vernon A. Williams
October 23, 1997
Page 2

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "C. Michael Loftus".

C. Michael Loftus
An Attorney for Entergy Services,
Inc. and Entergy Arkansas, Inc.

CML/raw
Enclosures

cc: Arvid E. Roach II, Esq.
Paul A. Cunningham, Esq.
Parties of Record

STB FD

32760

10-23-97

I

183341

Original

ESI-29 ~~18334~~

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket Nos. 32760-18334/
and 32760 (Sub-No. 21)-183342

PETITION OF ENTERGY SERVICES, INC.
AND ENTERGY ARKANSAS, INC. FOR
MODIFICATION OF DECISION NO. 44 OR, IN
THE ALTERNATIVE, FOR ADDITIONAL CONDITION

PUBLIC, REDACTED VERSION



OF COUNSEL:

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

Dated: October 23, 1997

ENTERGY SERVICES, INC. and its
affiliate ENTERGY ARKANSAS, INC.

By: O. H. Storey
Deputy General Counsel
Entergy Services, Inc.
Mail Unit L-ENT-26D
639 Loyola Avenue
New Orleans, LA 70113

C. Michael Loftus
Frank J. Pergolizzi
Andrew B. Kolesar III
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Their Attorneys

ENTERED	
Office of the Secretary	
OCT 28 1997	
5	Part of Public Record

UNION PACIFIC CORPORATION, UNION)	
PACIFIC RAILROAD COMPANY, AND)	
MISSOURI PACIFIC RAILROAD COMPANY)	
-- CONTROL AND MERGER -- SOUTHERN)	Finance Docket Nos. 32760
PACIFIC RAIL CORPORATION, SOUTHERN)	and 32760 (Sub-No. 21)
PACIFIC TRANSPORTATION COMPANY,)	
ST. LOUIS SOUTHWESTERN RAILWAY)	
COMPANY, SPCSL CORP., AND THE)	
DENVER AND RIO GRANDE WESTERN)	
RAILROAD COMPANY)	
)	

PETITION OF ENTERGY SERVICES, INC.
AND ENTERGY ARKANSAS, INC. FOR
MODIFICATION OF DECISION NO. 44 OR, IN
THE ALTERNATIVE, FOR ADDITIONAL CONDITION

Entergy Services, Inc. ("ESI") and its affiliate Entergy Arkansas, Inc. (formerly known as Arkansas Power & Light Company ("Entergy Arkansas")) (collectively, "Entergy") hereby petition the Board to modify Decision No. 44 in this proceeding served August 12, 1996, approving the common control and merger of Union Pacific Railroad Company and its rail affiliates ("UP") and Southern Pacific Transportation Company and its rail affiliates ("SP") (collectively "Applicants"), to address a critical situation that has resulted from UP's inability to provide Entergy with any semblance of adequate rail transportation service for coal consumed at Entergy Arkansas' power plants.

Specifically, Entergy requests modification of the condition imposed to preserve a competitive rail transportation option for Entergy's White Bluff Steam Electric Station ("White

Bluff") near Redfield, AR, so as to permit Burlington Northern and Santa Fe Railway Company ("BNSF"), on an immediate but temporary basis, to serve the White Bluff plant via its trackage rights over UP between Pine Bluff and Little Rock, AR, rather than via a build-out from the plant to Pine Bluff. Entergy requests that such interim BNSF service be effective for a period of three years, which is the estimated length of time required for Entergy to design, permit and construct a build-out from the White Bluff plant to Pine Bluff.

BACKGROUND

In Decision No. 44, the Board granted Entergy's request for a condition authorizing BNSF's use of its trackage rights between Memphis and Pine Bluff, AR¹ to serve the White Bluff plant upon completion of a 21-mile build-out from the plant to Pine Bluff. See Decision No. 44 at 154, 185, 232. This condition, which will be referred to herein as the "White Bluff condition," was intended to preserve a competitive alternative to UP for the transportation of PRB coal (which can be originated by either UP or BNSF) to the White Bluff plant. Under the White Bluff condition as imposed, however, BNSF cannot use these trackage rights to serve White Bluff independently of UP unless and until Entergy constructs the build-out line.

¹ The Memphis-Pine Bluff line segment is part of SP's line between Memphis and Houston, over which BNSF has obtained trackage rights pursuant to its settlement agreement with Applicants ("BNSF agreement").

The build-out line would parallel UP's existing line between Pine Bluff and Little Rock, which is the line UP presently uses to serve the White Bluff plant. (Entergy has a private spur that connects the plant with UP's Pine Bluff-Little Rock line at Redfield, AR.) Under the BNSF agreement, BNSF also received overhead trackage rights over the UP line between Pine Bluff and Little Rock, but those rights do not include the right to serve any shipper facilities located at intermediate points, such as the White Bluff plant.² A schematic showing these lines and the location of the White Bluff plant is attached hereto as Counsel's Exhibit 1.

After the UP/SP merger was consummated, BNSF began serving Little Rock via haulage. According to its Quarterly Progress Report filed in the merger oversight proceeding on October 1, 1997, BNSF intends in the near future to begin operating its own trains between Pine Bluff and Little Rock using the trackage rights available to it under the BNSF agreement. (BNSF Quarterly progress Report dated October 1, 1997 (BNSF-PR-5), Verified Statement of Ernest L. Hord at 21.)

² Notwithstanding the waste of societal resources entailed in building a duplicate line parallel to an existing line, Entergy did not seek a condition requiring direct BNSF service to the White Bluff plant using its trackage rights over UP's Pine Bluff-Little Rock line because, under existing precedent, such a condition would almost certainly have been denied as putting Entergy in a better position than it was in prior to the UP/SP merger. The build-out condition was intended to preserve, as closely as possible, Entergy's pre-merger competitive transportation options at White Bluff. Cf. Finance Docket No. 32549, Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation, et al., Decision No. 38 (served August 23, 1995) at 68.

As detailed in Entergy's March 29, 1996 Comments (ESI-12), all of the PRB coal traffic presently moving to the White Bluff plant and to Entergy Arkansas' other coal-fired power plant, the Independence Steam Electric Station ("Independence") near Newark, AR, is presently committed to UP (which directly serves both plants) under a rail transportation contract that expires on December 31, 1999 (the "Interim Agreement").³ See Verified Statement of Roy A. Giangrosso in ESI-12 at 6-7. Each of the two plants consumes approximately 6.5 million tons of coal annually under normal conditions; the 13 million tons of coal transported annually to these plants make Entergy Arkansas UP's largest single PRB coal customer. (Id. at 4, 6.)

As the Board is well aware from extensive recent news media coverage,⁴ and as UP has acknowledged in Applicants' Third Quarter 1997 Progress Report (UP/SP-323) in the merger oversight proceeding, UP's service, particularly south of Kansas City and extending into Arkansas, Oklahoma and Texas, has deteriorated

³ Entergy has two rail transportation contracts with UP executed in 1983, referred to as the "1983 Agreements," which have been suspended while the Interim Agreement is in effect but which become effective again (subject to renegotiation of certain rate terms) when the Interim Agreement expires. Under the 1983 Agreements, Entergy is committed to ship to White Bluff and Independence.

⁴ See, e.g., "Wrong Track; A Big Railroad Merger Goes Terribly Awry In a Very Short Time," The Wall Street Journal, October 2, 1997. A copy of this article is attached hereto as Counsel's Exhibit 2.

dramatically in the past few months.⁵ Entergy Arkansas has experienced the effects of this service deterioration first-hand. Its Interim Agreement with UP contains a service standard, under which UP has committed to transporting coal from the PRB mines to White Bluff "Elapsed Transit Time" (which excludes specified time for loading coal trains at the mines and unloading them at the plants) of hours in the case of White Bluff and hours in the case of Independence. See the accompanying Verified Statement of Charles W. Jewell, Jr. ("Jewell V.S.") at 5. UP's performance under its contractual service standard has been very poor -- and it is getting worse.

UP's average Elapsed Transit Time was hours for coal trains moving to the White Bluff plant and hours for coal trains moving to the Independence plant; these cycle times exceeded the contractual standard by an average of hours in the case of White Bluff and hours in the case of Independence. UP's average Elapsed Transit Times ballooned to hours for White Bluff and hours for Independence. On average,

⁵ Indeed, the Board itself has indicated that "[t]he recent operational difficulties that have been experienced by UP/SP are well known. . . ." Finance Docket No. 33469, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) -- Union Pacific Railroad Company and Southern Pacific Transportation Company, Decision served September 30, 1997, at 1. UP's present service problems were further acknowledged by the Board in its Decision served October 2, 1997, in Ex Parte No. 573, Rail Service in the Western United States, instituting a proceeding to focus on "the immediate resolution of existing [service] problems." Id. at 1.

Jewell V.S. at 6-7.⁷

6

UP

exceeded its service standard by an average of _____ hours, or
This means that Entergy's trains are taking more than
_____ longer to complete train cycles than they should.

- 6 -

ing critical proportions and Entergy does not expect UP's service to return to "normal" levels

in the foreseeable future. Id. at 8.

Entergy has repeatedly informed UP of the vital importance of compliance with the contract service standards, and of the worsening situation in terms of inventory and reduced coal burn at the White Bluff and Independence plants. On September 23, 1997, Entergy wrote to UP and informed it that the situation had deteriorated to the point where Entergy believed UP had materially breached its contractual obligations under the Interim Agreement. In the same letter (a copy of which is appended to the Jewell V.S. as Exhibit CWJ-2), Entergy requested UP's permission to waive the 100%-volume requirement of the Interim Agreement and its cooperation in making alternative transportation arrangements with other carriers, in particular BNSF. Finally, Entergy requested assurances from UP as to its ability to meet its contracted service commitments in the future.

On October 3, 1997, UP responded to Entergy's letter. The response, a copy of which is appended to Mr. Jewell's testimony as Exhibit CWJ-3, did not provide the kind of assurances Entergy requested

UP's program for remedying its service meltdown is very general in nature, and contains no representations as to when its

PRB coal service will return to normal levels.⁸

9

Given UP's continuing service deterioration and its refusal to respond to Entergy's entreaties, on October 3, 1997, Entergy filed suit in the United States District Court for the Middle District of Louisiana alleging that UP has materially breached both the Interim Agreement and the underlying 1983 Agreements due to its continuing failure to meet the contractual service standards, and seeking both the right to terminate the agreements and damages. Entergy Services, Inc. and Entergy Arkansas, Inc. v. Union Pacific Railroad Company, Civil No. 97-967-B-M3 filed October 3, 1997. A copy of the complaint in this action is appended to Mr. Jewell's testimony as Exhibit CWJ-4.

⁸ It should be noted that the program is set forth in a pleading by counsel with no accompanying sworn testimony. UP's unsworn representations are to be contrasted with the statements in Applicants' Progress Report dated July 1, 1997 (which did contain verified statements by UP operating officials). In its July 1 Progress Report, UP stated that its coal service "has consistently exceeded its own performance goals and contractual performance commitments for Powder River Basin coal shippers in recent months. Indeed, performance levels have reached all-time records." Id. at 42.

9

If the relief requested in its complaint is granted, Entergy will be free from its contractual volume obligations to UP.

The Board should understand that Entergy is not asking it either to interpret Entergy's rail transportation contracts with UP, or otherwise to interject itself into Entergy's contractual relationship with UP. That is clearly a matter for the court in Louisiana, not the Board. Rather, Entergy is seeking the Board's assistance in enabling it to make alternative transportation arrangements for transporting PRB coal to White Bluff during the present UP service emergency. The action by the Board which Entergy requests herein would remove a possible impediment to Entergy's obtaining effective relief from the United States District Court in Louisiana, where its action for breach of contract is pending.

ARGUMENT

- I. THE BOARD SHOULD MODIFY THE CONDITION IMPOSED
for ENTERGY'S BENEFIT BY PERMITTING BNSF TO
USE ITS PRESENT UP OVERHEAD TRACKAGE RIGHTS
TO SERVE THE WHITE BLUFF PLANT

In Decision No. 44, the Board held that conditions to its approval of the UP/SP merger would be imposed if:

the merger produces effects harmful to the public interest (such as a significant loss of competition) that a condition will ameliorate or eliminate. A condition must also be operationally feasible, and produce net public benefits.

Decision No. 44 at 144. See, also, Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 469, 562-565

(1992), aff'd sub. nom. Southern Pacific Transp. Co. v. I.C.C., 736 F. 2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985).

The Board applied these criteria in imposing the White Bluff condition. That condition requires UP to permit BNSF to use its overhead trackage rights between Memphis and Pine Bluff (which it obtained under the BNSF agreement) to serve Entergy's White Bluff plant via a build-out if and when the build-out is constructed. Id. at 154, 185. The condition was intended to preserve Entergy's pre-merger option of building out to SP at Pine Bluff, thereby providing an all-rail competitive option to UP in transporting PRB coal to White Bluff. Id. at 154.

In Decision No. 44 the Board also imposed a five-year oversight condition. The express rationale for this condition was to:

retain jurisdiction to impose additional remedial conditions if, and to the extent, we determine that the conditions already imposed have not effectively addressed the competitive harms caused by the merger.

Id. at 146. The oversight condition further required that both Applicants and BNSF submit quarterly progress reports and implementing plans regarding compliance with, and the effectiveness of, the conditions imposed.

On May 7, 1997, the Board instituted a proceeding in Finance Docket No. 32760 (Sub-No. 21) to implement the oversight condition imposed in Decision No. 44. In its Decision No. 1 in the oversight proceeding, the Board reiterated that, by imposing

the oversight condition, it intended to retain jurisdiction to impose additional remedial conditions if necessary to assure the effective resolution of competitive problems created by the merger. Id. at 3.

Entergy submits that the build-out preservation condition imposed for its benefit in Decision No. 44 is inadequate to protect it from competitive harm during the present UP service crisis, and that the public interest requires that the condition be modified to permit BNSF immediate access to the White Bluff plant in order to provide a coal transportation alternative to UP. UP has proved wholly unable, in recent months, to provide service at the level contemplated by its rail transportation contract with Entergy -- with the result that Entergy's coal inventory at both the White Bluff and Independence plants has dwindled to dangerously low levels, requiring curtailment of coal burn (and electric generation) at these plants.

The modified condition requested by Entergy is operationally feasible, and will produce a net public benefit by enabling Entergy to continue to provide its customers throughout Arkansas with the low-cost electricity generated by the White Bluff and Independence plants.¹⁰ With respect to operational

10

feasibility, BNSF already has overhead trackage rights on UP's line between Pine Bluff and Little Rock, which is the very same line used by UP to serve the White Bluff plant.¹¹ In its October 1, 1997 Quarterly Progress Report, BNSF has indicated that it is in the process of converting its present haulage arrangement with UP into a full-fledged trackage rights operation. It would be a simple matter for BNSF coal trains to use this same line in delivering coal to the White Bluff plant, which is connected to the UP line at Redfield, AR, by Entergy's private rail spur.

Moreover, BNSF service to White Bluff would not entail any additional train movements over the Pine Bluff-Little Rock line. The volume of coal moving to White Bluff would not change from normal levels; BNSF trains (using some of Entergy's private trainsets that are now in UP service) would simply replace UP trains. The only operational difference is that BNSF coal trains would enter the line from the east, at Pine Bluff, rather than from the west, at Little Rock, as UP trains do.

Entergy recognizes that its proposed modification to the White Bluff condition would enable BNSF to serve the White Bluff plant sooner than if it were required to wait for Entergy to construct the build-out from the White Bluff plant to Pine Bluff.¹² However, the public interest requires that BNSF be

¹¹ See Counsel's Exhibit 1 which shows the BNSF trackage rights between Memphis-Pine Bluff-Little Rock, as well as the locations of the White Bluff and Independence plants.

¹²

(continued...)

permitted access to White Bluff immediately, so that Entergy can begin the process of restoring the coal inventories at the White Bluff and Independence plants to a level that assures coal burn will not continue to be curtailed.

Moreover, Entergy is not seeking permanent direct access to BNSF using its Pine Bluff-Little Rock trackage rights, but only access during the present UP service crisis. Entergy is not sanguine that UP can return to anything approaching normal service levels in the foreseeable future. Accordingly, it requests that BNSF be permitted to serve the White Bluff plant for a period of three years (the estimated time required to construct and place in service a build-out line to Pine Bluff). If the build-out is not completed within three years, BNSF's ability to serve the plant directly would terminate until such time as the build-out is completed.

In further support of its proposed modification to the White Bluff condition, Entergy notes that in Applicants' Third Quarter 1997 Progress Report filed October 1, 1997 in the merger oversight proceeding, UP has made certain representations concerning its willingness to relieve PRB coal shippers from their contractual obligations in order to help ease its service crisis. In particular, UP states:

Working collaboratively with its utility customers in Texas, UP/SP has allowed shippers to shift coal to other carriers,

¹²(...continued)

including traffic subject to UP/SP contracts. These arrangements include . . . agreeing that movements by BNSF be credited to the uncommitted volume in contracts with volume commitments, and agreeing to relax volume commitments where necessary to allow BNSF to handle traffic. . . .

Id. at 17.¹³ UP has indicated that these measures will shift a total of four million tons of coal off its system over the next 15 months. Id. at 18.

These representations sound good on paper

¹³ UP also represents that it is taking steps to have MNA move empty coal trains from Newport, Arkansas to Pleasant Hill, Missouri. Id.

. This is a step that could and should have been taken many months ago. Indeed, prior to UP's sale of its line serving the Independence plant to the MNA in 1993, this shorter route was used by all Independence coal trains, both loaded and empty. Jewell V.S. at 10.

II. ALTERNATIVELY, THE BOARD SHOULD IMPOSE AN
ADDITIONAL CONDITION PERMITTING BNSF TO
SERVE WHITE BLUFF ON AN INTERIM BASIS

If the Board is not inclined to modify the White Bluff condition in the manner requested by Entergy, then it should impose a new condition permitting BNSF to serve the White Bluff plant as a temporary matter. Such a condition should allow direct BNSF service to White Bluff, in the manner described above, for a period of three years from the effective date of the condition. The condition should provide that direct BNSF service to White Bluff will terminate after three years if Entergy has not completed the White Bluff build-out by then.

The Board clearly has the authority to impose such an additional condition if it finds it necessary to ameliorate "effects harmful to the public interest" produced by the UP/SP merger. Decision No. 44 at 144. The Board has retained oversight jurisdiction in the merger proceeding, and expressly reserved jurisdiction to impose "additional remedial conditions"

both in Decision No. 44 (at 146) and in Decision No. 1 in the separate oversight proceeding (at 3).¹⁴

There is no question that Entergy's present predicament at White Bluff and Independence is largely a consequence of UP's failure to implement the UP/SP merger in an orderly manner. Although it puts a somewhat different spin on its service problems in its October 1 Progress Report, UP clearly has failed to plan properly, and has moved far too quickly, in implementing its merger with SP. It makes a number of excuses for this, such as pointing to the "time-consuming New York Dock negotiating process" and its lack of prior understanding of "the fundamental frailty of SP prior to the merger, resulting from more than a decade of financial deprivation." Id. at 10. The bottom line, however, is that the merger clearly is a major factor that has caused UP's service to utility coal shippers such as Entergy to deteriorate to the point where drastic remedial action is required to avoid a real crisis.

Once again, the Board should understand that by imposing an additional condition permitting BNSF to use its existing overhead trackage rights to serve the White Bluff plant, the Board would not be either interpreting Entergy's rail transportation contract with UP or otherwise interfering with the parties' contractual relationship. Entergy has filed a breach of contract

¹⁴ Further support for the Board's authority to grant relief to remedy an emergency situation involving traffic congestion lies in the "directed service" provisions of 49 U.S.C. § 11123.

action in federal district court in Louisiana, and it is for the court to determine if Entergy may terminate its contract with UP. If the court grants the relief requested by Entergy, then Entergy will be in a position to make use of the relief requested from the Board in the instant Petition. On the other hand, absent the relief requested from this Board, Entergy may be unable to obtain an effective remedy from the court in Louisiana.

CONCLUSION

For all of the foregoing reasons, Entergy respectfully requests that the Board either modify the White Bluff condition imposed in Decision No. 44, or impose a new condition, in either case permitting BNSF to use its existing overhead trackage rights between Pine Bluff and Little Rock, AR to serve the White Bluff plant for a period of three years (the period required to design,

permit and construct the build-out contemplated by the original White Bluff condition).

Respectfully submitted,

ENTERGY SERVICES, INC. and its
affiliate ENTERGY ARKANSAS, INC.

By: O. H. Storey
Deputy General Counsel
Entergy Services, Inc.
Mail Unit L-ENT-26D
639 Loyola Avenue
New Orleans, LA 70113

OF COUNSEL:

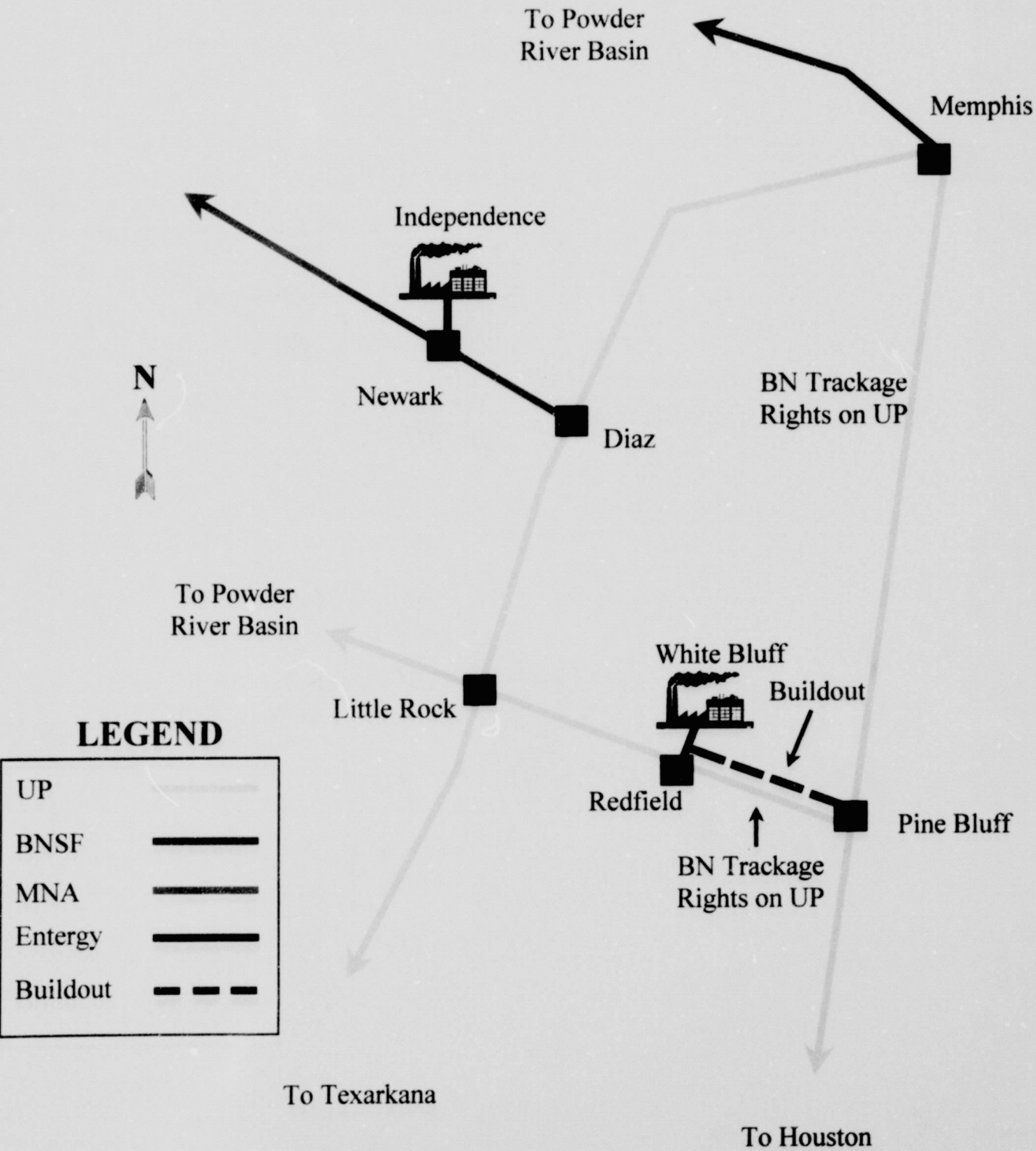
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C. Michael Loftus
Frank J. Pergolizzi
Andrew B. Kolesar III
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: October 23, 1997

Their Attorneys

Schematic of Principal Rail Lines in Arkansas



THE WALL STREET JOURNAL THURSDAY, OCTOBER 2, 1997

Wrong Track

A Big Railroad Merger Goes Terribly Awry In a Very Short Time

**Union Pacific Is Hammered
Over Service and Safety;
Have Patience, It Says
Have You Seen Our Rice?**

By DANIEL MACHALABA

Staff Reporter of THE WALL STREET JOURNAL

Its railroad safety record, marred by three fatal crashes in three months, is being characterized as a "fundamental breakdown" by federal regulators. Its route system west of the Mississippi River has slipped into near gridlock in many places, with thousands of freight cars backed up in the Houston area alone. Its chairman was forced to publicly apologize in August to its big customers.

So bad has service become that customers say Union Pacific Corp., the nation's largest railroad, can't account for millions of dollars of shipments for weeks at a time. Riviana Foods Corp., a Texas rice producer, tried to ship a freight car full of rice from Missouri to Tennessee in early August. A month later, the car was spotted on a track in Devil's Slide, Utah. The latest word is that it was somewhere in Texas. "I still don't know where it's at," says Terry Nickens, Riviana's distribution manager.

Is this any way to run a railroad?

A Major Debacle

Union Pacific's attempts to put together the biggest railroad merger in history is fast becoming one of the industry's biggest debacles. With high hopes last year, the company bought Southern Pacific Rail Corp. for \$3.9 billion and promised to begin merging the systems this summer into a seamless link between the West Coast and the Midwest.

Instead, with amazing speed, the merger has unraveled in recent weeks into a series of service and safety snafus. Analysts estimate the carrier has already lost about \$125 million in revenue as customers diverted shipments. Hundreds of customers have threatened to take away business, and the Federal Railroad Administration could well impose stiff fines on the company for safety violations. The company concedes that its service problems will reduce its third-quarter earnings by 10% to 15%. And the stock price has fallen 13% in the past month.

Yesterday, things got worse. The Dallas-based company said it would abandon an embarrassing plan to move goods by ship through the Panama Canal—a plan that was rejected this week by its customers. Instead, in an even-more-remarkable step, it agreed to hand over some of its business to competing railroads and to "borrow" the services of dozens of former managers from Eastern railroads to help untangle the mess.

Surprised Observers

The setbacks have startled industry observers, who only a few months ago expected the merger to go smoothly, especially because Union Pacific had had a sterling reputation in railroading.

"They thought they could conquer the world," says William Withuhn, transportation curator at the Smithsonian Institution in Washington and a widely recognized expert on railroads. "They were counting on having a great success. But they just didn't plan it right. It fell apart."

Union Pacific acknowledges that it has been caught by surprise—and humbled by the experience. Richard Davidson, its chief executive, said in an interview after a recent meeting with more than 200 angry chemicals-company officials and other shippers in Houston: "I never imagined in my wildest dreams that I'd be down here apologizing for our service." Yesterday, a Union Pacific spokesman said, "There's no denying we have severe service problems, but we are making headway."

Problems Acknowledged

The carrier's executives concede that they overestimated their ability to combine giant rail systems operating hundreds of thousands of freight cars. Its own long record of success, unmatched through much of the late 1980s and early 1990s, may have bred overconfidence. "We are arrogant," Greg Garrison, Union Pacific's Houston superintendent, said last month. "We consider ourselves the best."

Union Pacific's woes raise troubling questions about how well railroads can transport goods in the nation's ever-growing economy. For more than a decade, the industry has been on an unprecedented merger binge that was supposed to give the remaining five powerful railroads a better chance at competing against trucks, which now earn nearly 80% of the nation's freight revenues. That improvement, in turn, was supposed to help reduce everything from highway congestion to air pollution to fuel consumption. Consumers would gain, too, because railroads can haul goods about 20% more cheaply than trucks can, with much of the saving to be passed on to the public.

But Union Pacific's problems suggest that the railroads are a long way from fulfilling this promise and that shippers may be discouraged from using them. Chemicals companies on the Gulf Coast have been switching to trucks whenever possible because Union Pacific's delays have cost them an estimated \$100 million in plant closings, lost revenues and extra expenses.

In Waverly, Ohio, Mill's Pride Inc., a maker of prefabricated kitchens that had turned to railroads to save money, says it

Please Turn to Page A13, Column 1

Big Railroad Merger Quickly Goes Awry

Continued From First Page

has dropped Union Pacific and the railroad industry entirely. "They give us excuses. They have derailments, floods, breakdowns, snow, just stuff you wouldn't think would happen," says Armando Sanchez, the distribution manager. "You would think, if a truck can get through, why can't they?"

Moreover, Union Pacific's headaches pose a threat to the next great railroad merger—the \$10 billion breakup of Conrail Inc. between Norfolk Southern Corp. and CSX Corp. Once considered almost certain to be cleared by the government's Surface Transportation Board, the merger is now raising questions from members of Congress, labor unions and community leaders worried about a repeat performance.

An Enormous Challenge

To be sure, Union Pacific faced an enormous challenge in trying to create a system with 36,000 miles of track and more than 150,000 freight cars. What's more, the company it was buying, Southern Pacific, was the weakest of the major railroads; it suffered from inadequate investment in freight yards and locomotives. Some industry executives, who jokingly called it "the Suffering Pacific," say it couldn't have survived on its own over the long haul.

Nevertheless, Union Pacific officials hoped that the merger, which became effective in September 1996, would yield huge rewards, not only through major cost savings but by increasing freight business with more-direct routes between the Midwest and West Coast. Southern Pacific's major routes stretch in a great arc from Portland, Ore., to Los Angeles, Houston, St. Louis and Chicago; Union Pacific forms a large funnel-like system, from the Midwest to Salt Lake City, with branches to Seattle, Oakland, Calif., and Los Angeles. Combining the two, Union Pacific promised, would slash delivery times as much as 20%, more than enough to win new business.

But company officials concede that they badly underestimated the number of crews and locomotives they would need; in part, they relied on their past success in acquiring other railroads. Those mergers allowed Union Pacific to lay off great numbers of employees and still keep the trains running. But instead of adding to a combined work force of 53,000, the company offered buyouts to more than 1,000 workers at a time when freight shipments were booming nationwide.

"We miscalculated," says Mr. Garrison, the Houston superintendent. "It upset a lot of customers."

The Houston Trouble

The company also cut back operations at an important railyard near Houston, shifting 300 freight cars a day to the bigger but overtaxed Englewood yard in Houston 20 miles away. The result: Within a few weeks, the bigger yard was swamped, causing delays of as long as a month in various areas. "The yard is like a coffee cup that's already too filled," says Rick

Carswell, a yard manager at Englewood. "It just overflowed."

In a railroad, delays at a hub can quickly spread throughout the system—and this one did in a big way. By August, at the start of the peak season for shipping holiday merchandise, trains were backed up for miles along the Gulf Coast.

In one 7-mile stretch outside Houston recently, five Union Pacific freight trains—each with about 100 cars—were backed up nose to tail; frustrated crews were simply taken off, leaving the trains unmanned. "Finally, you throw up your hands and say the heck with this," says Bert Hohlt, a Union Pacific crew member after a particularly grueling run aboard a Texas-to-Chicago freight train.

A Union Pacific spokesman says floods in Texas as well as hurricane-related damage in the Gulf Coast region compounded the problems. The company tried to persuade its labor unions to agree to new flexible work rules, but the unions didn't go along until last month. By then, the snarl had spread to Union Pacific's facilities in the Los Angeles/Long Beach harbor complex, where as many as 3,000 containerized shipments have been piling up for lack of freight cars. "I've never seen it this bad," says David McLean, director of global marketing for Circle International Inc., of San Francisco, which arranges freight transportation for major firms.

Through its buyouts, Union Pacific also encouraged an exodus of many Southern Pacific executives and managers, whom industry officials said were skilled at keeping the weaker line going. "They lost a lot of institutional knowledge," says Ed Emmett, president of the National Industrial Transportation League, which represents about 1,200 rail and truck customers.

What's more, the exodus aggravated the clash of corporate cultures that a merger would be sure to provoke. Led by the 6-foot-4-inch Mr. Davidson, who surrounded himself with equally imposing subordinates, Union Pacific runs a well-heeled and aggressive rail operation out of its Omaha, Neb., rail headquarters. Executives there, accustomed to using the latest equipment to dispatch trains and repair tracks, were skeptical about the talents of many Southern Pacific people. Former Southern Pacific executives say many of their suggestions were ignored. "You are merging two cultures, one that had no money and one that had a lot of money," says Art Shoener, who resigned last week as Union Pacific's executive vice president for operations.

Traditions Slighted

Most merging railroads, to bolster morale, have tried hard to preserve the traditions of their predecessors. But recently, Union Pacific replaced the name of a famous Southern Pacific high-speed freight train, the Memphis Blue Streak, with the symbol "IMELB" (standing for Intermodal Memphis to Long Beach train). "It was an inspirational thing," says Fred

Fraily, who wrote a book about the Blue Streak. "The Memphis Blue Streak was the heart and soul of the Southern Pacific. But all that was lost on the Union Pacific." In response, a Union Pacific spokesman says: "That's the least of our concerns right now."

Yesterday, the company hit what analysts described as rock bottom: It announced a service-recovery plan that appears to mirror parts of a rescue operation outlined by its chief rival, Burlington Northern Santa Fe Corp. Union Pacific said it would temporarily divert certain business, including coal, grain and automobile shipments, to other railroads throughout the western two-thirds of the country, including Burlington Northern. In addition, Union Pacific plans to reroute trains around congested hubs and use less-busy freight yards to handle more of its business. It also said it would operate fewer trains and reduce the number of locomotives on its faster trains and spread them around the system.

"Everyone at our company is working hard on restoring service to levels that will satisfy our customers," Mr. Davidson said in a statement yesterday.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

UNION PACIFIC CORPORATION, UNION) PACIFIC RAILROAD COMPANY, AND) MISSOURI PACIFIC RAILROAD COMPANY) -- CONTROL AND MERGER -- SOUTHERN) PACIFIC RAIL CORPORATION, SOUTHERN) PACIFIC TRANSPORTATION COMPANY,) ST. LOUIS SOUTHWESTERN RAILWAY) COMPANY, SPCSL CORP., AND THE) DENVER AND RIO GRANDE WESTERN) RAILROAD COMPANY)	Finance Docket Nos. 32760 and 32760 (Sub-No. 21)
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VERIFIED STATEMENT OF
CHARLES W. JEWELL, JR.

My name is Charles W. Jewell, Jr. I am the Director, Coal Supply for Entergy Services, Inc. ("ESI"). My office address is 10055 Grogans Mill Road, Suite 300, The Woodlands, Texas 77380.

I joined ESI (in my present position) on March 31, 1997. Prior to joining Entergy, I was employed by PacifiCorp, a large investor-owned electric utility operating in the northwestern United States, as Director of Coal and Fuel Supply. I held that position for approximately four years. Prior to joining PacifiCorp, I worked for several coal companies, primarily in the financial and business development areas. I have a B.S. in Accounting from West Virginia University and a Masters in Business Administration from Marshall University.

As Director, Coal Supply for ESI, I am responsible for the acquisition of coal and related transportation for all of the electric utility operating subsidiaries of Entergy Corporation.

Entergy Corporation is an investor-owned public utility holding company registered pursuant to the Public Utility Holding Company Act of 1935. The Entergy operating companies include Entergy Arkansas, Inc. ("Entergy Arkansas", formerly known as Arkansas Power & Light Company); Entergy Gulf States, Inc. (formerly Gulf States Utilities Company); Entergy Louisiana, Inc. (formerly Louisiana Power & Light Company); Entergy Mississippi, Inc. (formerly Mississippi Power & Light Company); and Entergy New Orleans, Inc. (formerly New Orleans Public Service, Inc.). ESI is a wholly-owned subsidiary of Entergy Corporation, and acts as agent for the above-named operating companies in acquiring fuel and related transportation for their coal-fired power plants. In this Verified Statement I will focus in particular on Energy Arkansas.¹

The purpose of this testimony is to provide the Surface Transportation Board ("Board") with facts concerning the present critical situation faced by Entergy as a result of UP's continuing and very severe service problems in transporting coal to Entergy Arkansas' two large coal-fired plants in Arkansas, the White Bluff Steam Electric Station ("White Bluff") and the Independence Steam Electric Station ("Independence"). I will also demonstrate Entergy's need for modification of the White Bluff build-out preservation condition imposed by the Board in granting merger authority to Union Pacific Railroad Company

¹ I will refer to ESI and Entergy Arkansas, Inc. collectively as "Entergy" in my testimony.

("UP") and Southern Pacific Transportation Company ("SP") in 1996. This condition, which I will refer to as the "White Bluff condition", is described in more detail on page 2 of Entergy's accompanying Petition for Modification in this proceeding.

I. BACKGROUND

Entergy Arkansas produces, distributes and sells electric power to approximately 600,000 residential, commercial and agricultural customers located in 63 counties in Arkansas, and also engages in the wholesale power market. Its White Bluff and Independence plants collectively consist of four units (two at each plant), with a combined capacity of approximately 3,337 megawatts. Each plant normally burns approximately 6.5 million tons of coal annually, or 13 million tons in total, all of which is produced in the southern Powder River Basin of Wyoming, and all of which is transported to the plants by rail (specifically, by UP). Entergy's present coal supply and transportation arrangements for the White Bluff and Independence plants are described at pp. 5-8 of the Verified Statement of Roy A. Giangrosso (who was then ESI's Director, Coal Supply) in Entergy's Comments in this proceeding served March 29, 1996.

Entergy's present rail transportation contract with UP, known as the "Interim Agreement", whose term runs through

requires that 100% of the coal

destined to White Bluff and Independence be transported by UP. Unfortunately, the level of service

provided by UP in transporting coal to these plants under the Interim Agreement is abysmal. As I will describe in more detail below, UP is completely failing to meet the service standards set forth in the Interim Agreement, with the result that Entergy is unable to receive all the coal these plants need to meet their generation requirements. Entergy has been forced to curtail burn (and thus generation) at these plants, and either purchase more expensive power from the grid or use more expensive gas generation.

In order to remedy the present situation, which is growing to near-critical proportions due to UP's continuing service crisis in the south-central part of the nation, Entergy must supplement UP's inadequate coal transportation service with transportation by other rail carriers, in particular the Burlington Northern and Santa Fe Railway Company ("BNSF") -- which also serves the PRB mines in Wyoming -- at White Bluff.² It is for this reason that Entergy is requesting the Board to modify the White Bluff condition previously imposed in approving the UP/SP merger to enable BNSF to serve the White Bluff plant immediately, without waiting for construction of the build-out.

² BNSF service to White Bluff would enable UP to concentrate on providing service to Independence.

The build-out involves construction of a 21-mile line to a connection with the former SP Memphis-Houston line at Pine Bluff, AR. BNSF was granted trackage rights over this line as a condition to the UP/SP merger, and the White Bluff condition will enable BNSF to use these trackage rights to access the White Bluff plant after the build-out is completed. It will take approximately three years to construct the build-out, from engineering design to final completion, so completion will not occur until approximately the year 2001. In the interim, without the relief requested herein, Entergy must rely on UP to haul coal to its Arkansas power plants -- a totally unacceptable situation considering UP's failure to meet Entergy's coal delivery requirements.

II. UP's CONTRACTUAL SERVICE COMMITMENTS

Entergy presently operates 18 trainsets, each consisting of 115 high-capacity aluminum cars acquired by Entergy in 1995, in PRB coal service to the White Bluff and Independence plants. The economics of acquiring and using this equipment are dependent on an assured level of rail service. Thus, Entergy's Interim Agreement with UP (which became effective in 1990) contains a service standard, under which UP has committed to transporting coal from the PRB mines to White Bluff

"Elapsed Transit Time" (excluding specified time for loading coal trains at the mines and unloading them at the plants) of hours in the case of White Bluff and hours in

the case of Independence. If UP fails to meet its
Elapsed Transit Time , it then
has a deficit, which it must make up

. If UP incurs a deficit and
fails to make it up it is obligated to pay
Entergy liquidated damages

UP is also under an express contractual obligation to
exercise good faith in avoiding the creation of deficits. It is
Entergy's position that the make-up and liquidated damages
provisions of the Interim Agreement are not intended to be used
as substitutes for contract transit time requirements in the
chronic, pervasive manner that UP has resorted to in recent
years.³

³ Virtually identical service standards are also contained
in Entergy's original rail transportation contracts with UP and
its then-partner, the Chicago and North Western ("CNW"), and with
Missouri Pacific, which were signed in 1983. These agreements
are also described in Mr. Giangrosso's Verified Statement filed
as part of Entergy's Comments of March 29, 1996.

UP's average Elapsed
Transit Time was hours for coal trains moving to the White
Bluff plant and hours for coal trains moving to the Indepen-
dence plant. These cycle times exceeded the contractual standard
by an average of hours in the case of White Bluff and hours
in the case of Independence.

UP's average Elapsed Transit Times ballooned to hours
for White Bluff and hours for Independence.

these transit times soared even further, to _____ hours and _____ hours, respectively. On average, _____ UP exceeded its contractual service standard by _____ hours, or _____. _____ UP exceeded its service standard by an average of _____ hours, or _____. _____ UP exceeded its service standard by an average of _____ hours, or _____.

These poor cycle times resulted in deficit tonnages -- the volumes of coal by which UP fell short of the quantity it should have transported in the trainsets provided by Entergy had it met its service standard --

addition, UP has effectively "rolled over" deficits
, and the cumulative deficit stood at about
. We are seeing

no improvement in UP's cycle times

and the deficit is growing at an accelerated rate.

As a direct result of UP's dismal performance in transporting coal to the White Bluff and Independence plants, the inventory of coal stockpiled at the plants, which Entergy attempts to keep at a level equal to days' projected coal burn, has rapidly dwindled. At present, the inventory amounts to only days at White Bluff and days at Independence. The reduced inventories, with no prospect of improvement in UP's service, have resulted in Entergy Arkansas' curtailing burn (and thus the generation of electricity) at these plants. As a result, the Entergy system (which is economically dispatched) has had to purchase more expensive power from the grid and shift more generation to its expensive gas-fired plants. Given UP's virtual service meltdown south of Kansas City, which Entergy does not expect UP to be able to remedy in the foreseeable future, the situation is becoming critical for Entergy (and, I understand, for other utilities particularly in Texas).

III. ENTERGY'S ATTEMPTS TO USE ALTERNATE RAIL SERVICE

Entergy has repeatedly informed UP of the vital importance of compliance with its service commitments under the Interim Agreement, and of the worsening situation in terms of inventory and reduced coal burn at the White Bluff and Independence plants. Entergy has had several meetings and conference calls with UP, to no avail. Finally, on September 23, 1997, I

wrote to UP's Senior Vice President in charge of coal marketing and transportation, Art Peters, and informed him that the situation had deteriorated to the point where Entergy believed UP had materially breached its contractual obligations under the Interim Agreement. A copy of my letter to Mr. Peters is attached hereto as Exhibit CWJ-1.

My September 23 letter also requested UP's permission to waive the 100%-volume requirement of the Interim Agreement, and sought UP's cooperation in making alternative transportation arrangements with other carriers, in particular BNSF. Finally, we requested definitive assurances from UP as to its ability to meet its contracted service standard in the future, and indicated that the matter had to be resolved by September 30, 1997.

Mr. Peters did not respond to my September 23 letter until late on October 3, 1997 (after the lawsuit discussed below had been filed). A copy of Mr. Peters' October 3 letter is attached hereto as Exhibit CWJ-2. To say the least, his response did not provide the kind of assurances Entergy had requested

Equally important, Mr. Peters' October 3 letter rejected Entergy's request that UP waive the volume requirements of the Interim Agreement and cooperate with Entergy in arranging alternative transportation service with other carriers to help Entergy through the present crisis.

Given UP's continuing service deterioration⁵ and its refusal to respond in a meaningful way to our requests for cooperation in resolving the present crisis, on October 3, 1997, Entergy filed suit in the United States District Court for the Middle District of Louisiana alleging that UP has materially breached both the Interim Agreement and the underlying 1983 Agreements due to its continuing failure to meet the contractual service standards, and seeking both the right to terminate the agreements and damages. Entergy Services, Inc. and Entergy Arkansas, Inc. v. Union Pacific Railroad Company, Civil No. 97-967-B-M3 filed October 3, 1997. A copy of the complaint in this action is attached hereto as Exhibit CWJ-3.

The modified condition being sought here would remove an impediment to Entergy obtaining effective relief through the federal court action. With the modified condition, Entergy would be able to make alternative transportation arrangements with BNSF.

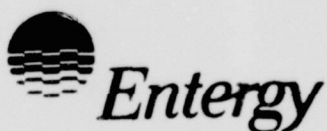
IV. CONCLUSION

UP's present service difficulties are a direct result of its haste and failure to plan adequately in implementing its merger with SP. Entergy urgently needs the Board's help in

⁵ As an example of how bad things are, on September 29, 1997 one of our trains was released after unloading at the White Bluff plant. UP then took the empty train to Durand, KS, where it arrived on September 30. The train was then parked on a siding and the locomotives removed. This train was finally returned to service on October 11, but other trains either are not moving or have been removed from service from time to time.

obtaining substitute rail service to make up for UP's merger-related inability to keep the White Bluff and Independence plants supplied with coal.

On behalf of Entergy, I respectfully urge the Board to modify the White Bluff build-out condition to enable BNSF to serve the White Bluff plant directly, using its existing trackage rights over the UP line that passes right by the plant, until Entergy is able to construct the build-out.



Entergy Services, Inc.
Parkwood II Building, Suite 300
10055 Grogans Mill Road
The Woodlands, TX 77380
Tel 281 297 3562

Charles W. Jewell, Jr.
Director
Coal Supply

September 23, 1997

VIA FACSIMILE AND
CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mr. Art Peters
Senior Vice President
& General Manager
Union Pacific Railroad Company
1416 Dodge Street, Room 500
Omaha, NE 68179

RE: Breach of Railroad's Service Commitments

Dear Mr. Peters:

Entergy Arkansas, Inc. currently receives rail transportation services to its Arkansas coal plants from Union Pacific Railroad Company pursuant to Interim Rail Transportation Agreement ICC-WRPI-C-0065, dated October 1, 1991, which superseded certain provisions of Agreement ICC-UP-C-0505 and Agreement ICC-MP-C-0430. Upon termination of the interim agreement, the terms of Agreements ICC-UP-C-0505 and ICC-MP-C-0430 again are applicable, subject to amendment/renegotiation.

Entergy's coal plants in Arkansas have experienced significant shortages in coal deliveries from Union Pacific. As a result of these delivery shortages and Union Pacific's failure to meet the service standards set forth in the agreement, Entergy, among other things, has been forced to curtail its coal burns, seek alternate fuel sources and purchase electric power from other sources, all to the detriment of Entergy and its ratepayers.

Based on Union Pacific's actions and its inadequate responses to concerns expressed by Entergy representatives, Entergy believes that Union Pacific has breached its contractual obligations under the agreement. Specifically, Entergy believes that Union Pacific, among other things, has failed and refused to abide by the contractual obligations with respect to cycle times, minimum train lading weight and the good faith obligation to avoid creating deficit tonnages.

Mr. Art Peters
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9/23/97

While the agreement provides for deficit service payments, such payments do not provide an adequate remedy. Union Pacific's persistent and continuing failure to meet its cycle time commitments under the agreement, and its continued failure and refusal to make good faith efforts to avoid deficit tonnages as required by our agreement are unacceptable. Such failure and refusal are causing Entergy substantial and irreparable harm, and constitute a material breach of the agreement. Among other things, and without waiving any other alternatives available to it, given the current near-emergency situation with respect to the coal inventory at the White Bluff and Independence plants, Entergy will explore immediately options (1) with respect to the movement of coal to the Independence plant via Burlington Northern Santa Fe and Missouri & Northern Arkansas Railroads; (2) for the barge delivery of coal to the White Bluff plant, and (3) for the movement of coal via BNSF to Pine Bluff, Arkansas, and thence via Union Pacific to the White Bluff Plant.

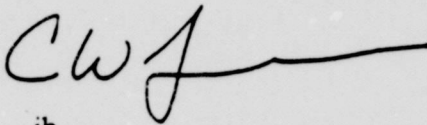
Entergy expects that Union Pacific will cooperate with it in every respect in its efforts to make alternative transportation arrangements with alternate providers. You are requested to provide information with respect to any restrictions that may exist with respect to the M&NA's delivery of coal to White Bluff in connection with BNSF, and to waive such restrictions. You are also requested to provide Entergy with a rate for the movement of trainloads of coal in Entergy cars between a point of interchange with BNSF at Pine Bluff, Arkansas, and the White Bluff plant, that can be used in combination with a BNSF rate from the Powder River Basin mines to Pine Bluff.

Additionally, Entergy demands adequate assurances from the Union Pacific as to its ability to meet its cycle time commitments under the agreement from this date forward, and as to its ability to transport all deficit tonnage that has accrued and that will accrue so as to become completely current and remain current. In order to receive adequate assurances with respect to these issues, it will be necessary for Union Pacific to provide documentation sufficient to enable Entergy to perform a due diligence review of Union Pacific's operations with a view toward satisfying itself with reasonable certainty as to Union Pacific's ability to perform in accordance with any such assurances. Entergy expects that Union Pacific will cooperate in making information available for this purpose.

Mr. Art Peters
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9/23/97

While Entergy will be pursuing these alternatives, it in no way considers these to be the only remedies available to it. Under the circumstances, Entergy intends to evaluate all of its remedies. We plan to resolve this matter no later than September 30, 1997. Please contact me immediately so that we may discuss this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "CWJ", followed by a long horizontal flourish.

jb

cc: James F. Kenney

bcc: Ms. Kelly Cupero
Mr. Chris Mills, Slover & Loftus
Mr. Bud Storey

EXHIBIT CWJ-2

REDACTED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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RICHARD T. MARTIN
CLERK

ENTERGY SERVICES, INC. AND
ENTERGY ARKANSAS, INC.,

PLAINTIFFS,

VERSUS

UNION PACIFIC RAILROAD COMPANY,

DEFENDANTS.

CV NO. 97-967-B-M3

* * * * *

C O M P L A I N T

Plaintiffs, Entergy Services Inc. ("ESI") and Entergy Arkansas, Inc. ("Entergy Arkansas") (collectively referred to herein as "Entergy"), complain of defendant Union Pacific Railroad Company ("UP") as follows:

Jurisdiction and Venue

1.

This is a civil action in which the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. This Court has jurisdiction of the parties and the subject matter pursuant to 28 U.S.C. § 1332.

2.

Venue is properly in this Court pursuant to 28 U.S.C. §1391(a), because UP resides in this judicial district; UP owns, controls and operates railroad lines and other facilities

throughout the State of Louisiana, including extensive business operations and properties in parishes included within the Middle District of Louisiana.

The Parties

3.

Entergy Arkansas, formerly known as Arkansas Power & Light Company, is an Arkansas corporation with its principal place of business in Arkansas. It operates and holds title to an interest in the electric generating stations described below in ¶ 6, and is a wholly-owned subsidiary of Entergy Corporation, an investor-owned public utility holding company organized and existing under the laws of Delaware and registered pursuant to the Public Utility Holding Company Act of 1935, and having its principal place of business in New Orleans, Louisiana. Entergy Arkansas produces, distributes and sells electric power at retail in Arkansas, engages in wholesale sale of power, and through a system of entitlements to energy produced by each Entergy operating company, distributes electric power throughout Entergy's service area in the states of Louisiana, Texas, Mississippi and Arkansas.

4.

Plaintiff ESI is a wholly-owned subsidiary of Entergy Corporation. ESI is a corporation organized and existing under the laws of the State of Delaware, and having its principal place of business in New Orleans, Louisiana. ESI acts as an agent for Entergy Corporation's public utility operating subsidiaries, including Entergy Arkansas, and Entergy Gulf States, Inc., and is

responsible for acquiring fuel and related transportation for coal-fired power plants operated by its electric utility affiliates. In particular, ESI is responsible for procuring and arranging transportation of approximately 13 million tons of coal annually for transportation to, and use by, Entergy Arkansas at its coal-fired electric generating stations in Arkansas.

5.

Defendant UP is a corporation organized under the laws of the State of Utah having its principal place of business in Omaha, Nebraska. UP engages in interstate for-hire rail transportation in Louisiana, Arkansas and other states in the midwestern and western United States.

Background

6.

Entergy Arkansas operates two large coal-fired power plants, the White Bluff Steam Electric Station and the Independence Steam Electric Station (respectively referred to herein as "White Bluff" and "Independence"). White Bluff is located near Redfield, in Jefferson County, Arkansas, and consists of two generating units with a combined generating capacity of 1,659 megawatts ("MW") of electric power. Independence is located near Newark, in Independence County, Arkansas, and also consists of two generating units, with a combined generating capacity of 1,678 MW.

7.

In generating electric power, Entergy Arkansas burns approximately 6.5 million tons of coal at each station, for a total of

approximately 13.0 million tons annually at both plants. All of the coal burned at White Bluff and Independence is produced in the southern Powder River Basin of Wyoming ("PRB") and is transported to White Bluff and Independence by rail.

8.

Since August of 1984, Entergy Arkansas' PRB coal has been transported to its White Bluff and Independence plants pursuant to long-term rail transportation agreements. The first of these agreements was entered by and between Entergy Arkansas, UP, and two UP predecessor companies, Western Railroad Properties, Incorporated ("WRPI") and Chicago and North Western Transportation Company ("CNW"), on July 22, 1983, and provided for the transportation of coal originating in the PRB and destined for Entergy Arkansas' White Bluff and Independence plants (the "UP Agreement"). A related agreement was executed the same day by and between Entergy Arkansas and another UP predecessor company, Missouri Pacific Railroad Company ("MP") (the "MP Agreement"). (The UP Agreement and the MP Agreement are collectively referred to herein as the "1983 Agreements"). The 1983 Agreements became effective upon their approval by the Interstate Commerce Commission ("ICC") pursuant to 49 U.S.C. § 10713, and are identified as Contract Numbers ICC-UP-C-505 and ICC-MP-C-0403.

9.

The UP Agreement provided for the transportation of coal between the PRB mines and Kansas City, Missouri/Kansas; the MP Agreement provided for the transportation of the same coal from

Kansas City, Missouri/Kansas to the White Bluff and Independence plants. Use of both agreements was necessary to provide for the continuous rail carriage of coal from the PRB to the White Bluff and Independence plants.

10.

On October 1, 1991, Entergy Arkansas, UP, WRPI, CNW and MP entered an Interim Rail Transportation Agreement ("Interim Agreement"), ICC-WRPI-C-0065, which was also approved by the ICC. The Interim Agreement is currently in effect. A recent amendment to the Interim Agreement provides that the parties will negotiate market-based rates for the movement of PRB coal to White Bluff and Independence by rail starting in the year 2000.

11.

Both the 1983 Agreements and Interim Agreement set forth the rates, services and other terms and conditions governing transportation of coal by UP between PRB mine origins in Wyoming and the White Bluff and Independence plants. The agreements contain confidential provisions that prohibit disclosure of certain information regarding these agreements, and Entergy has therefore framed in general terms portions of this pleading relating to the agreements.

12.

The 1983 Agreements represented the first agreements entered by UP and WRPI/CNW for the transportation of PRB coal. The first movements under these agreements occurred in August of 1984, when WRPI first instituted service to the PRB mines from which Entergy

Arkansas purchased (and purchases) coal for use in generating electricity at the White Bluff and Independence plants.

13.

Pursuant to the terms of the 1983 Agreements and the Interim Agreement, Entergy Arkansas is obligated to ship, and UP is obligated to transport, a certain minimum volume of coal each year.

14.

Both the 1983 Agreements and the Interim Agreement include a number of provisions that describe UP's commitments concerning the service to be provided in connection with the contract movements to White Bluff and Independence, including but not limited to the following:

- (a) UP has a duty to transport all coal tendered by Entergy Arkansas within a defined average elapsed transit time.
- (b) If UP fails to meet the transit time standard, and as a result, fails to transport the required volume of coal during a defined time period, UP must transport (in its own railcars) the shortfall to Entergy Arkansas within a certain time thereafter. If UP fails to do so, UP must pay a prescribed amount of liquidated damages to Entergy Arkansas.
- (c) UP is expressly obligated to exercise good faith efforts to avoid creating any deficit tonnages.

15.

Among other things, the purpose of the contract provisions described in paragraph 14, herein, is to optimize the productivity

of Entergy Arkansas' railcar fleet and to assure an adequate and continuous supply of coal to maintain electric generation at Entergy Arkansas' White Bluff and Independence plants. As the parties expressly stated in the 1983 Agreements, it was their "desire that the contractual arrangement promote maximum equipment utilization and transportation efficiency and provide all parties with economic incentives."

16.

In reliance on the service standards and other contractual provisions described in paragraphs 14 and 15 herein (collectively referred to herein as "the service standards"), in 1995 Entergy Arkansas replaced its fleet of steel railcars used for the transportation of coal from the PRB to the White Bluff and Independence plants with a fleet of higher-capacity aluminum railcars, and made certain modifications to the coal unloading facilities at both plants, at a total capital cost in excess of \$100 million.

The Controversy

17.

In spite of the stated intent to promote maximum equipment utilization and transportation efficiency, and the obligation to make a good faith effort to avoid creating deficit tonnages, UP has consistently ignored its contractual service commitments to Entergy Arkansas, and has breached, and continues to breach, the service standards by:

- (a) Continually failing to meet the transit time standard.

- (b) Continually failing to comprise trains of the required length.

18.

Entergy has repeatedly informed UP of the vital importance of compliance with the service standards, and the consequent impact of UP's failure to meet these standards on Entergy Arkansas' ability to plan and provide electric utility service to its customers.

19.

Despite Entergy's efforts, UP has refused to either correct the service deficiencies, or provide adequate assurances that it would (or could) take the necessary steps to assure its ability to comply with its contractual service commitments to the end that Entergy is confronted with an escalating deficit in its coal supply which has forced curtailment of power production and reduced reserves to a critical level.

20.

Entergy Arkansas has fully complied with all of its obligations and responsibilities under its contracts with UP.

21.

Under the terms of the 1983 Agreements and the Interim Agreement, Entergy is not free to seek alternative transportation of coal for the White Bluff and Independence plants. Unless Entergy is freed from this restriction, Entergy is precluded from taking action to ensure the reliability of its system, and as a consequence, both Entergy and its customers may suffer irreparable harm.

COUNT I

BREACH OF CONTRACT

22.

Entergy hereby realleges and incorporates by reference ¶¶ 1-21 of this Complaint.

23.

In entering the 1983 Agreements and the Interim Agreement, Entergy Arkansas reasonably expected that UP would substantially perform its contractual promises relating to the service standards, and particularly the stated intent to promote maximum equipment utilization and transportation efficiency and the express commitment to exercise good faith efforts to avoid the creation of deficit tonnages.

24.

Rather than promote maximum equipment utilization and transportation efficiency and exercise good faith, UP has instead persistently failed to meet its duty to comply with the service standards.

25.

UP's persistent failure to meet the service standards has caused, and is continuing to cause, substantial hardship to Entergy and has substantially impaired, and will continue to impair, the ability of Entergy Arkansas to serve its ratepayers.

26.

In entering the 1983 Agreements and the Interim Agreement, Entergy Arkansas relied on UP's agreement to provide service in

accordance with the service standards and did not expect that UP would persistently fail to comply with the service standards.

27.

Entergy also reasonably relied on UP's commitment in the Interim Agreement to exercise good faith to avoid creating deficit tonnages, and reasonably did not expect that UP would engage in a practice of creating and cumulating (rolling over) deficit tonnages in lieu of meeting the contractual elapsed transit time standard.

28.

As a direct and proximate result of UP's failure to meet the service standards, Entergy and Entergy Arkansas have been deprived of maximum equipment utilization and transportation efficiencies in entering the 1983 Agreements and the Interim Agreement.

29.

The liquidated damages remedy contained in the 1983 Agreements and the Interim Agreement was not intended to apply to chronic, pervasive failures to meet the railroad service standards, such as have occurred.

30.

By persistently failing to meet the service standards, UP has materially breached and repudiated the 1983 Agreements and the Interim Agreement.

31.

Entergy has provided UP with an opportunity to cure the above-described breach and UP has exhibited an inability, or unwillingness, to correct the same.

32.

As a direct and proximate result of this breach, Entergy has incurred damages relating to, inter alia, the cost of replacement power, the loss of sales and revenues associated with curtailing production from the plants in question, and other costs and expenses associated with the UP's failure to provide adequate rail transportation service, in an amount in excess of \$1 million.

COUNT XI

BREACH OF COVENANT OF GOOD FAITH

33.

Entergy hereby realleges and incorporates by reference ¶¶ 1-32 of this Complaint.

34.

In entering the 1983 Agreements and the Interim Agreement, the parties stated their desire to promote maximum equipment utilization and transportation efficiency and UP expressly committed to exercise good faith to avoid the creation of deficit tonnages.

35.

Under its contractual commitments to Entergy, UP has both an implied and express duty to cooperate with Entergy in order to accomplish the stated objectives set forth in paragraph 34 herein.

36.

UP has refused to comply with the service standards, which were intended to ensure maximum equipment utilization and transportation efficiency, and has been unable, or unwilling, to correct past deficiencies in service.

37.

UP has engaged in a practice of creating and cumulating (rolling over) deficit tonnages, rather than fulfilling its contractual commitment to act in good faith to avoid the creation of such deficit tonnages.

38.

While UP has neglected to comply with its contractual service standards and refused to correct such deficiencies, UP's service to other PRB coal shippers has, in UP's words, "consistently exceeded [UP's] own performance goals and contractual performance commitments...in recent months." Though service to Entergy has continued to deteriorate, UP's "performance levels" for other customers "have reached all-time records." See Applicants' Report on Merger Condition Implementation, Surface Transportation Board Docket No. 32760 (Sub-No. 21), Union Pacific Corporation, Union Pacific Company and Missouri Pacific Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company [OVERSIGHT] at 42 (filed July 1, 1997).

39.

In ignoring and/or refusing to comply with its duty to satisfy the express service standards and stated intent set forth in its contractual commitments to Entergy, while at the same time choosing to provide "record level" service to other PRB coal shippers, UP has breached the covenant of good faith and fair dealing, and has otherwise failed to act in compliance with standards of commercial reasonableness.

40.

As a direct and proximate result of UP's breach of the duty of good faith and fair dealing, Entergy has incurred damages relating to, inter alia, the cost of replacement power, the loss of sales and revenues associated with curtailing production from the plants in question, and other costs and expenses associated with the UP's failure to provide adequate rail transportation service, in an amount in excess of \$1 million; but such monetary damages may be inadequate to fully compensate Entergy for the losses and harm which may be experienced by Entergy and its customers.

PRAYER FOR RELIEF

WHEREFORE, Entergy prays for the following relief:

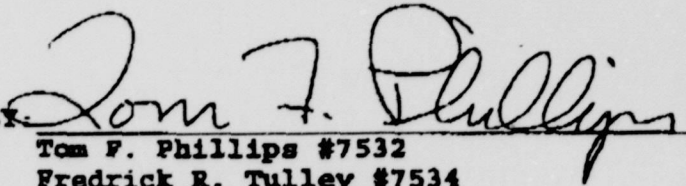
(a) that on the basis of Counts I and II, the Court enter a judgment (i) declaring that UP has materially breached the 1983 Agreements and the Interim Agreement, that because of the material breach those agreements are unenforceable by UP, and that Entergy is excused from performance under those agreements; and (ii)

ordering UP to pay damages relating to the failure to meet the service standards set forth in those agreements;

(b) that the Court, alternatively, order UP to pay all direct, consequential and incidental damages incurred by Entergy as a result of UP's material breach of the 1983 Agreements and the Interim Agreement; and

(c) that the Court award such other and further relief as it deems just and proper.

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Attorneys for Entergy Arkansas, Inc. and
Entergy Services, Inc.

VERIFICATION

STATE OF TEXAS)
) SS:
COUNTY OF MONTGOMERY)

Charles W. Jewell, Jr., being duly sworn, deposes and says that he has read the foregoing verified statement, knows the contents thereof, and that the same are true as stated, except as to those statements made on information and belief, and as to those, that he believes them to be true.

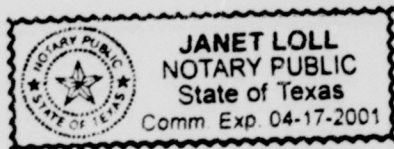
CWJ

Subscribed and sworn to before me
this 22 day of October, 1997.

Janet Loll

Notary Public for Montgomery County, Texas

My Commission expires 04-17-2001.



CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of October, 1997, caused HIGHLY CONFIDENTIAL copies of the foregoing Petition to be served by hand upon Applicants' counsel:

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Paul A. Cunningham, Esq.
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I further certify that I caused REDACTED, PUBLIC copies of the foregoing to be served by first class mail, postage prepaid, on:

The Hon. Rodney E. Slater
Secretary
U.S. Dept. of Transp.
400 7th Street, S.W.
Suite 10200
Washington, D.C. 20590

The Hon. Janet Reno
Att'y Gen. of the United States
U.S. Dept. of Justice
10th & Constitution Ave., N.W.
Room 4400
Washington, D.C. 20530

all other parties of record in Finance Docket No. 32760 and Finance Docket No. 32760 (Sub-No. 21).

Andrew B. Kolesar III

STB

FD-32760

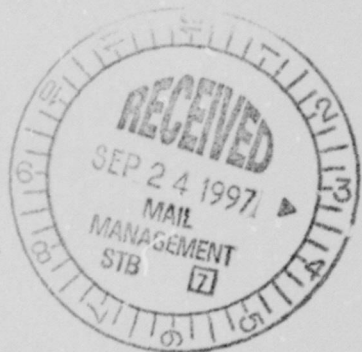
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182159

BEFORE THE
SURFACE TRANSPORTATION BOARD

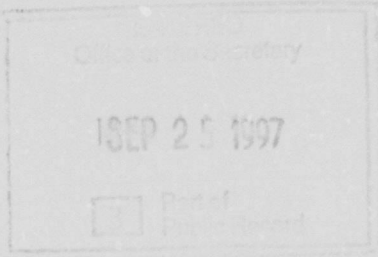


Finance Docket No. 32760

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

I

CITY OF RENO'S MOTION FOR WAIVER
OF SERVICE REQUIREMENT
FOR DISCOVERY PURPOSES



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September 24, 1997

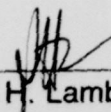
Counsel for The City of Reno

**MOTION FOR WAIVER OF SERVICE
REQUIREMENT TO DISCOVERY PURPOSES**

The City of Reno, hereby moves for waiver of service requirements of 49 C.F.R. § 1104.12(a) for purposes of discovery primarily related to the "Reno Mitigation Study" ordered in Decision No. 44. By waiver request, the City of Reno seeks authorization to limit service to counsel of record for the Union Pacific/Southern Pacific (UP/SP) applicants,¹ for the reason that there are no other parties of record (POR) who have interest or participate in the Reno Mitigation Study.

The Board has previously granted similar waiver requests. See Decision Nos. 45 and 70.

Dated this 24th day of September 1997.



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Counsel for The City of Reno

¹ Union Pacific Corporation is referred to as UPC. Union Pacific Railroad Company (UPRR) and Missouri Pacific Railroad Company (MPRR) were formerly referred to collectively as UP. On January 1, 1997, MPRR merged into UPRR, see Decision No. 67, slip op. at 1 n.3; and, for the period beginning January 1, 1997, the acronym "UP," as used in this motion, shall be understood to refer to UPRR.

Southern Pacific Rail Corporation is referred to as SPR. Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), SPCSL Corp. (SPCSL), and The Denver and Rio Grande Western Railroad Company (DRGW) are referred to collectively as SP.

UPC, UP, SPR, and SP are referred to collectively as applicants. See Decision No. 44, slip op. at 7 n.3. Common control was consummated September 11, 1996.

Certificate of Service

This is to certify that I have this 24 day of September, 1997, served a copy of the foregoing City of Reno's Motion for Waiver of Service Requirement for Discovery Purposes, via first class mail, postage prepaid, on:

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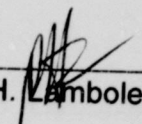
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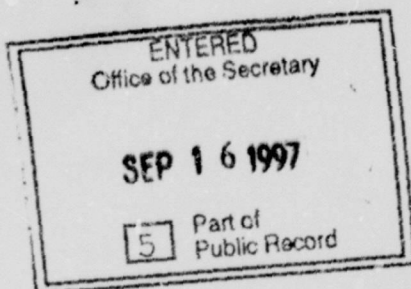
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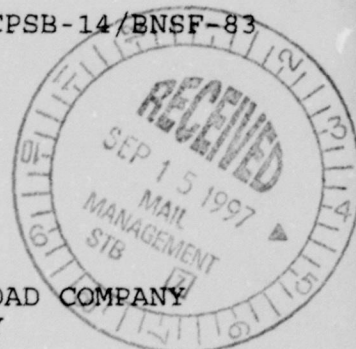
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UP/SP-321/CPSB-14/BNSF-83

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

JOINT SUBMISSION OF THE PARTIES
CONCERNING THE CPSB CONDITION

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September 15, 1997

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

JOINT SUBMISSION OF THE PARTIES
CONCERNING THE CPSB CONDITION

On August 23, 1996, Applicants^{1/} and CPSB jointly submitted to the STB proposed terms implementing the CPSB Condition. UP/SP-273/CPSB-9 ("UP-CPSB Submission"). Those terms consisted of agreed-upon amendments to the BNSF Agreement and the Sealy Agreement. These amendments were set forth in Exhibit A to the UP-CPSB Submission.

On August 30, 1996, BNSF submitted a reply to the UP-CPSB Submission. Therein, BNSF agreed with all of the UP-CPSB Submission terms, except the Track No. 2 facilities restriction. That restriction precluded BNSF from serving new industries or transloading facilities on UP's Track No. 2 line between Craig Junction and SP Junction (Tower 112).

^{1/} Acronyms used herein are the same as those used by the STB in Decision Nos. 44, 52 and 61. MPRR merged into UPRR on January 1, 1997. DRGW and SPCSL merged into UPRR on June 30, 1997.

In Decision No. 52, served on September 10, 1996, the STB directed BNSF to accept the UP-CPSB implementing terms; reserved judgment on BNSF's objection to the Track No. 2 facilities restriction; and authorized UP, CPSB and BNSF, "upon agreement of all three parties," to amend the UP-CPSB implementing terms. Decision No. 52, p. 6.

In Decision No. 61, served on November 20, 1996, the STB held that BNSF could serve new industries and transloading facilities on Track No. 2. This ruling "effectively nullifie[d]" the Track No. 2 facilities restriction set forth in the UP-CPSB Submission. Decision No. 61, p. 12 n.34. The STB directed UP, CPSB and BNSF to make "conforming amendments to the BNSF agreement and the Sealy Trackage Rights Agreement" to remove the facilities restriction. Id.

Pursuant to the STB's directive in Decision No. 61, the parties have agreed upon revisions to the Sealy Agreement, and UP and BNSF have incorporated those revisions into an agreement entitled "First Supplement to the Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement." The First Supplement removes the Track No. 2 facilities restriction and make other agreed-upon conforming changes. The First Supplement is appended as Exhibit A hereto.

The First Supplement is intended by the parties to supersede the provisions of the Sealy Agreement approved by the STB in Decision No. 52.

Pursuant to the STB's Decision No. 46, UP and BNSF are filing simultaneously herewith a 49 C.F.R. 1180.2(d)(7) class exemption notice covering the Sealy Agreement.

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

Respectfully submitted,

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Southwestern Railway Company

September 15, 1997

CERTIFICATE OF SERVICE

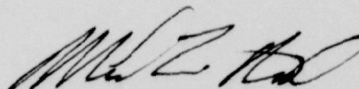
I, Michael L. Rosenthal, certify that, on this 15th day of September, 1997, I caused a copy of the foregoing document, to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery upon:

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Department of Justice
Washington, D.C. 20530

John H. Leseur
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Premarmer Notification Office
Bureau of Competition
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Federal Trade Commission
Washington, D.C. 20580

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Michael L. Rosenthal

**FIRST SUPPLEMENT TO THE
SEALY, TEXAS TO WACO AND EAGLE PASS, TEXAS
TRACKAGE RIGHTS AGREEMENT**

THIS FIRST SUPPLEMENTAL AGREEMENT, made and entered into as of the 28th day of August, 1997, by and between UNION PACIFIC RAILROAD COMPANY, a Utah corporation ("UPRR"), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SPT") (UPRR and SPT are hereinafter referred to collectively as "Owner"), on the one hand, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BNSF") (BNSF is hereinafter referred to collectively as "User"), on the other hand.

WITNESSETH:

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended (the "Settlement Agreement"), between Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR") (UPC, UPRR and MPRR are hereinafter referred to collectively as "UP"), Southern Pacific Rail Corporation ("SPC"), SPT, St. Louis Southwestern Railway Company ("SSW"), The Denver and Rio Grande Western Railroad Company ("DRGW"), and SPCSL Corp. ("SPCSL") (SPC, SPT, SSW, DRGW and SPCSL are hereinafter referred to collectively as "SP") (UP and SP are hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka & Santa Fe Railway Company ("Santa Fe"), on the other hand, UP/SP agreed to grant certain rights to User, including overhead bridge rights between Sealy and Waco and Eagle Pass, Texas, and the right to access industries presently served either directly or by reciprocal switching, joint facility or other arrangement by both UP and SP and no other railroad at points listed in the Settlement Agreement, as well as the right to access City Public Service Board of San Antonio ("CPSB") plants at Elmendorf, TX, except as otherwise provided, such rights to be effective upon UP's acquisition of control of SP pursuant to the application to the STB in Finance Docket No. 32760.

WHEREAS, there is now in effect an agreement dated June 1, 1996 (the "Original Agreement"), entered into between the parties in compliance with the Settlement Agreement, pursuant to which Owner granted to User trackage rights over certain of Owner's tracks between Sealy, Waco and Eagle Pass, Texas (hereinafter referred to as the "Joint Trackage"), including the right to access CPSB's Elmendorf plants under certain specified terms.

WHEREAS, in the STB's Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) approving the merger of UP and SP, the STB imposed a condition in favor of CPSB that required Owner to modify the trackage rights that had been granted to

allow User to access CPSB's Elmendorf plants (the "CPSB Condition").

WHEREAS, UP/SP and CPSB reached an agreement on amendments to the Original Agreement to allow User the right to access CPSB's Elmendorf Plants, that was (i) submitted to the STB on August 23, 1996, and (ii) accepted by the STB in Decision No. 52 in Finance Docket No. 32760 (served September 10, 1996), as fulfilling the CPSB Condition.

WHEREAS, the STB ruled in Decision No. 61 in Finance Docket No. 32760 (served November 20, 1996) ("Decision No. 61") that the new facilities and transload conditions imposed in Decision No. 44 applied to the lines over which Owner had agreed to grant User trackage rights to access CPSB's Elmendorf facilities.

WHEREAS, Owner has agreed to grant BNSF trackage rights over UPRR's line between Craig Junction and SP Junction (SP Tower 112), and over SPT's line between SP Tower 105 and SP Junction (SP Tower 112) to satisfy the CPSB Condition and comply with Decision No. 61.

NOW, THEREFORE, it is mutually agreed, by and between the parties hereto, as follows:

I. AMENDMENTS TO THE ORIGINAL AGREEMENT.

The Original Agreement is hereby amended as follows:

(a) The first "WHEREAS" clause shall be amended, by adding after the fifth subparagraph:

"UPRR's main track no. 2 at Craig Junction, Texas, in the vicinity of UPRR's Milepost 235.9 and SP Junction (Tower 112) in the vicinity of UPRR's Milepost 259.8."

(b) The first "WHEREAS" clause shall be amended, by inserting at the beginning of the seventh subparagraph after the colon:

"a line of railroad of SPT between San Antonio, in the vicinity of SPT's Del Rio Subdivision, Milepost 212.7 (Tower 105) and SP Junction (Tower 112), in the vicinity of SPT's Milepost 211.0, and"

(c) The first "WHEREAS" clause shall be amended by deleting the three lines following the seventh subparagraph and replacing them with the following:

"as shown by bold and dash lines on the attached prints (identified as Exhibit "A") (Figures, 4-1, 4-2 and 4-3), and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage"; and"

(d) Subparagraph (b) of Section 2 of the Original Agreement shall be deleted in its entirety and replaced with the following:

"(b) The rights granted in Section 2(a) shall be for all rail traffic of all kinds and commodities, both carload and intermodal, of all commodities."

(e) Section 2(g) is amended by striking the first two sentences and inserting:

"(g) User shall have the right to (a) access all existing industries which are served by UP and SP and no other railroad directly, by reciprocal switching, joint facility or other arrangements, (b) access City Public Service Board of San Antonio ("CPSB") facilities at Elmendorf, Texas, including expansions of or additions to these facilities and any new CPSB facilities at Elmendorf, (c) serve any new shipper facility (including any new transloading facility), to the extent permitted by STB Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and STB Decision No. 61 in Finance Docket No. 32760 (served November 20, 1996), on any SP-owned or UP-owned line over which BNSF received trackage rights pursuant to Section 2(a) of this Agreement, and (d) subject to the geographic limitations set forth below, serve new shipper facilities and existing and future transloading facilities and establish and exclusively serve intermodal and auto facilities at points listed in Exhibit A to the Settlement Agreement. The geographic limitations applicable to subparagraph (d) above shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch."

(f) Section 2 shall be amended by adding after subparagraph (l):

IN WITNESS WHEREOF, the parties hereto have caused this First Supplement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: James V. DeLoach
Its: Vice President - Law

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: James V. DeLoach
Its: Vice President - Law

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this First Supplement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Its: _____

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____
Its: _____

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: F. W. Woolley
Its: Attorney-in-Fact & General Counsel

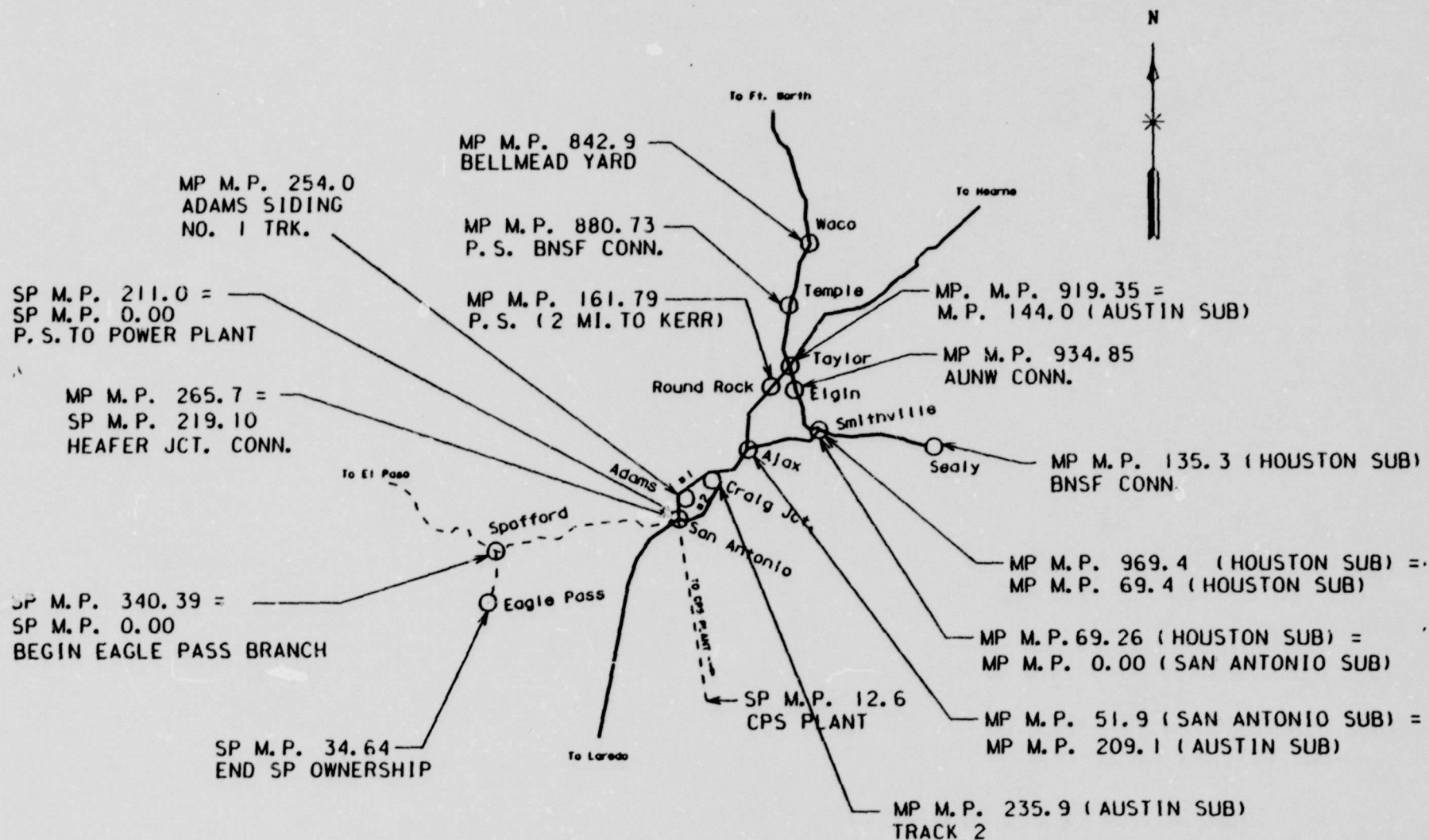
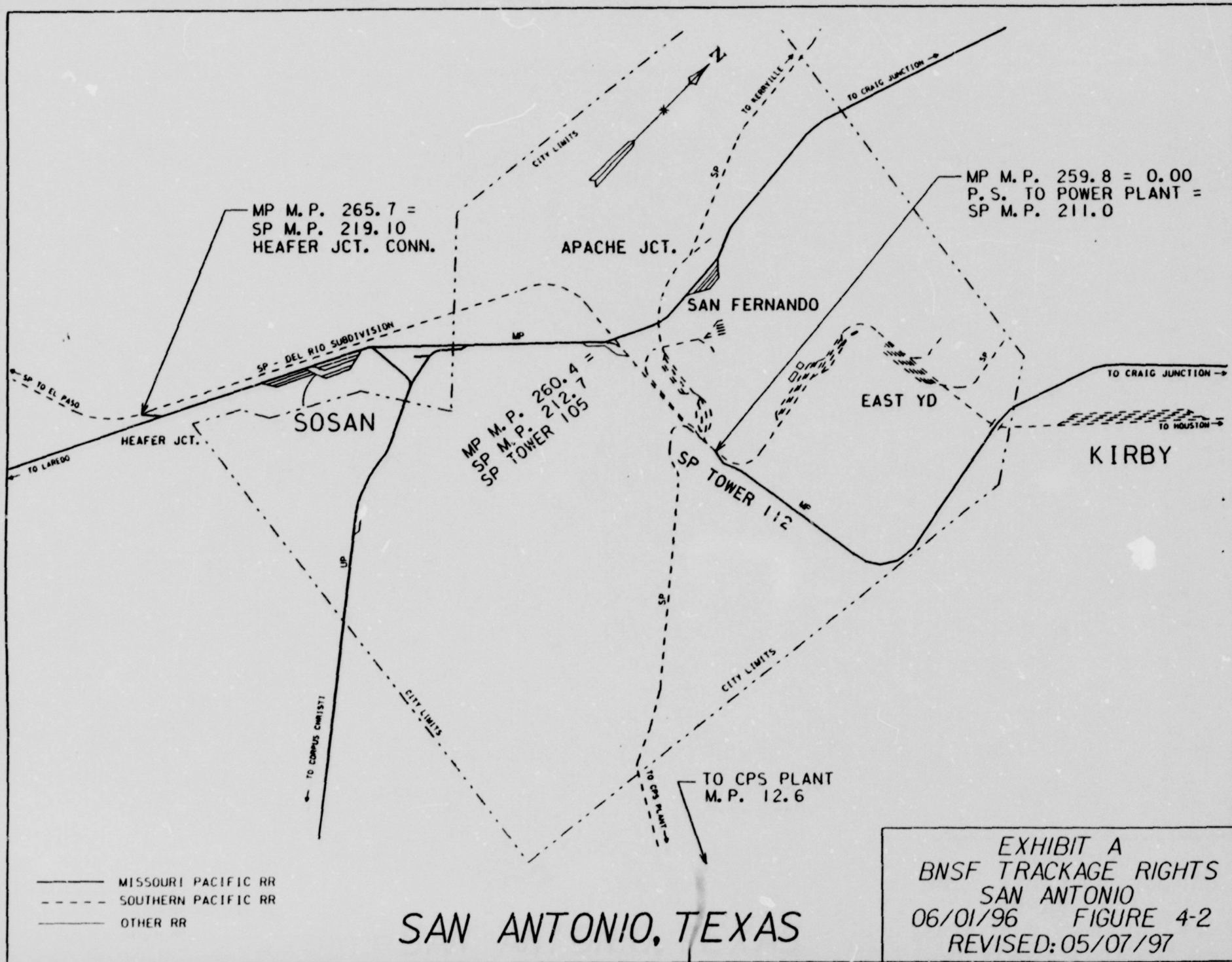
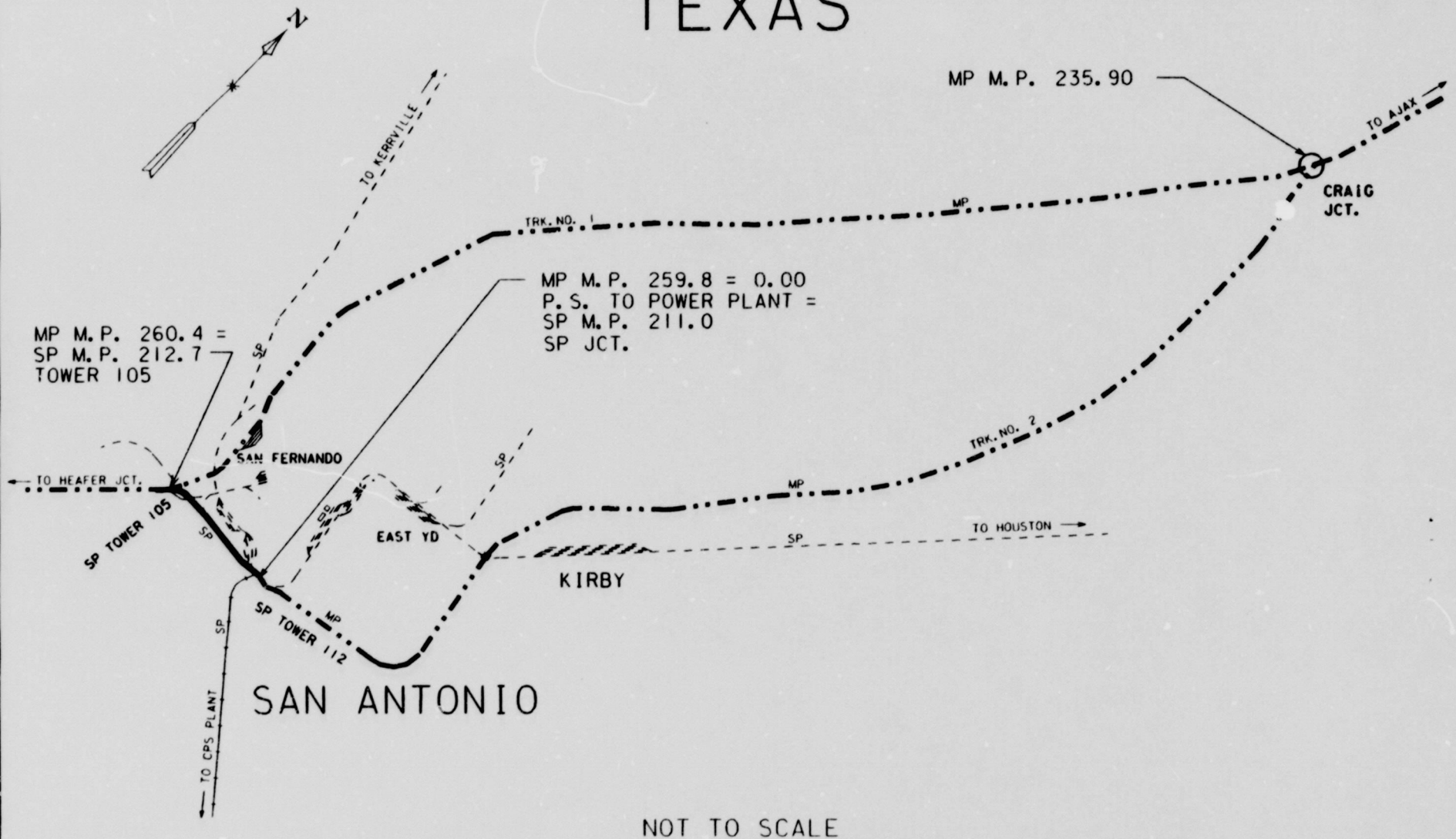


EXHIBIT A
 BNSF TRACKAGE RIGHTS
 CENTRAL TEXAS
 06/01/96 FIGURE 4-1
 REVISED: 05/07/97



TEXAS



LEGEND:

- BNSF TRACKAGE RIGHTS ON MISSOURI PACIFIC RR
- BNSF TRACKAGE RIGHTS ON SOUTHERN PACIFIC RR
- - - - - CPSB AND BNSF TRACKAGE RIGHTS ON SOUTHERN PACIFIC RR
- SOUTHERN PACIFIC RR

EXHIBIT A
BNSF TRACKAGE RIGHTS
SAN ANTONIO TO CRAIG JCT.
09/11/96 FIGURE 4-3
REVISED: 05/07/97

STB

FD-32760

ID-181162

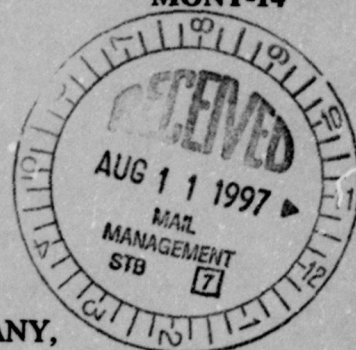
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181162

BEFORE THE
Surface Transportation Board
WASHINGTON, D.C. 20423

MONT-14



UNION PACIFIC CORPORATION,
UNION 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

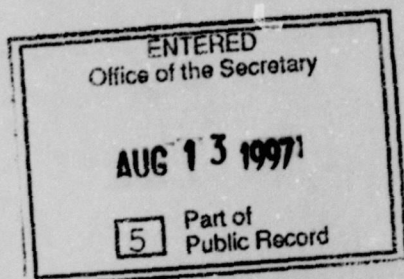
STB FINANCE DOCKET NO. 32760

**ERRATA TO PETITION OF MONTELL USA, INC.
FOR DETERMINATION OF WEST LAKE CHARLES AS A 2-TO-1 POINT**

The July 24, 1997 Petition of Montell USA, Inc. for Determination of West Lake Charles As A 2-To-1 Point was filed inadvertently without a document identification number. Submitted herewith is a corrected first page bearing a sequential number (MONT-13) as appropriate in the captioned proceeding.

Copies of this Errata are being served upon those parties served with the July 24, 1997 Petition of Montell USA, Inc.

Respectfully submitted,



Martin W. Bercovici
Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4144

August 11, 1997

Attorney for Montell USA, Inc.

BEFORE THE

MONT-13

Surface Transportation Board

WASHINGTON, D.C. 20423

UNION PACIFIC CORPORATION,
UNION 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

STB FINANCE DOCKET NO. 32760

**PETITION OF
MONTCELL USA, INC.
FOR DETERMINATION OF WEST LAKE CHARLES AS A 2-TO-1 POINT**

Montell USA, Inc. ("Montell"), respectfully requests the Surface Transportation Board to resolve a dispute with applicants Union Pacific Railroad and Southern Pacific Transportation Company ("UP/SP") concerning the application of the contract reopening condition imposed in conjunction with approval of the merger of the UP and SP.^{1/}

^{1/} This request is submitted for dispute resolution pursuant to Decision No. 57 at 13-14. Considering that this dispute is specific as to Montell, it is not intended that this be addressed within the context of the oversight, currently in progress, which is being conducted under Sub-No. 21 of this docket.

In consideration of the foregoing, Montell is serving this Petition on applicants and BNSF, on ARCO Chemical (which has purchased the Olin Lake Charles plant) and PPG, as the other Lake Charles area parties, and on KCS, DOJ and DOT. Any other party which may be interested in this Petition may secure a copy upon request. Montell respectfully requests waiver of any requirement that other parties to the proceeding also be served with this Petition.