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BEFORE THE

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 MONTELL 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.

I. Background

Montell was a party to the UP/SP merger proceeding, addressing the issue of the loss of competitive rail service to its facility located at West Lake Charles, Louisiana. See Decision No. 44 at 66-67. While served by both the SP and KCS, Montell established that KCS does not offer effective competition to the SP due to its need to interline with the UP to provide competitive service to points in the west and to the major eastern gateways. Id. at 66. The CMA settlement with applicants, as amended, provided very limited BNSF access to West Lake Charles, allowing service only to New Orleans and the Mexico gateways. UP/SP-260 at 23, n. 9.

In the decision, the Board granted BNSF direct access to West Lake Charles. While acknowledging the KCS access, the Board concluded that "KCS must interline with UP or SP to provide efficient routings to the New Orleans, Houston and St. Louis gateways. Thus, while these shippers now benefit from direct rail competition, an unconditioned merger would place all the efficient rail routings under applicants' control." Decision No. 44 at 152. "To preserve existing competitive alternatives for shippers in the Lake Charles area," the Board imposed specific conditions opening West Lake Charles and the other Lake Charles area shipping points to BNSF service. Id. at 153.

As a separate condition, the Board imposed, and expanded, the CMA settlement agreement provision allowing shippers at 2-to-1 points to reopen contracts with applicants in order to allow BNSF access to at least 50% of those volumes. Clarification of the contract reopening condition was issued by the Board in Decision No. 57, served November 20, 1996. In that decision, the Board confirmed that it is available to adjudicate disputes which may arise with regard to the contract reopening condition. Decision No. 57 at 13-14. In its first progress report,

filed October 1, 1996, BNSF sought to raise the issue of the status of West Lake Charles, and the other Lake Charles area shipping points, under the contract reopening condition. The Board declined to rule on this issue on the basis that it had not been raised in an adequate manner to give notice to all concerned that such a ruling was requested. Id. at 14.

Montell has endeavored to raise the contract reopening provision with applicants on a direct basis. Applicants have advised Montell that they do not consider the West Lake Charles facility to constitute a 2-to-1 point. See Exhibit A, a letter of June 27, 1997 from Pat B. Collins, Union Pacific Railroad Company, to B. F. LeBlanc, Montell USA, Inc. Having reached an impasse, Montell accordingly requests the Board to determine whether it is eligible for the contract reopening condition imposed in Decision No. 44.

II. Argument

The discussion by the Board in Decision No. 44 granting Montell's request for additional competitive service at West Lake Charles clearly and convincingly demonstrates that the Board considered West Lake Charles to be a "2-to-1 point." 2-to-1 points are those where shippers have rail service from UP and SP and no other railroad prior to the merger, Decision No. 44 at 16, and therefore lose competitive rail service absent the introduction of another carrier into the marketplace. While KCS serves West Lake Charles, the Board expressly found that "an unconditioned merger would place all [the West Lake Charles shippers'] efficient rail routings under applicants' control." Id. at 152. Throughout the UP/SP proceeding, 2-to-1 status extended to any shipper who would lose effective competitive options, regardless of whether that competition was through direct competition between UP and SP or where one carrier provided

direct service and the other carrier provided interline service with a third party, such as occurred at West Lake Charles. Indeed, the trackage rights agreement with BNSF was structured to give BNSF routings where the BNSF's own route was so circuitous as to be non-competitive with the direct UP and SP routes, e.g., Houston to Memphis. See UP/SP-22 at 22, UP/SP-23 at 19; see also MONT-2 at 19, citing to deposition testimony of UP/SP witness Richard Peterson that circuitous routes were treated as 2-to-1 corridors.

There is not a single word in Decision No. 44 or Decision No. 57 which supports the applicant's June 27 rejection of Montell's request for recognition of 2-to-1 status and the power to modify its contract. The Board indirectly addressed this issue in Decision No. 63, served December 4, 1996, rejecting a KCS petition to modify the BNSF access to the Lake Charles area. In that decision, the Board asserted that it imposed the BNSF access "to assure continued competition for Lake Charles area shippers ... [since] KCS lacks a sufficient route structure to be competitive with UP/SP..." Decision No. 63 at 7. The Board further notes the contention of the parties that Lake Charles is a 2-to-1 area, and states "we have chosen BNSF to correct *this*...." Id. at 8 (emphasis added). Even the applicants' settlement agreement with CMA alludes to the Lake Charles area being a 2-to-1 point, stating that BNSF access is provided "on the same basis as is provided for ... '2-to-1' points ..." UP/SP-219, Settlement Agreement at ¶ 8.[2/] The fact that the Board did not dispose of the issue of the 2-to-1 status of West Lake Charles in

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[2/] Paragraph 8 of the original CMA Settlement Agreement covered only West Lake and Lake Charles; however, as previously noted, paragraph 8 was extended to West Lake Charles at UP/SP-260 at 23, n. 9.

Decision No. 57 was procedural only. The Board specifically stated that "Nothing said in this decision is intended to prejudge those issues." Decision No. 57 at 14.

Treatment of West Lake Charles as a 2-to-1 point is the only logical conclusion based upon the Board's decisional criteria applied in approving the UP/SP merger. The Board specifically found that competition at 3-to-2 points likely would not be diminished or otherwise suffer competitive harm, and that corrective action in the 3-to-2 markets is not required. Decision No. 44 at 119-121. Rather, the conditions imposed by the Board are intended to ameliorate the loss of competition and, as the Board expressly stated with regard to the Lake Charles area, to preserve pre-merger competition. Id. at 144-145. Accordingly, Montell's facility at West Lake Charles, Louisiana, must be considered a 2-to-1 point.

WHEREFORE, THE PREMISES CONSIDERED, Montell USA, Inc. respectfully urges the Surface Transportation Board to determine that Montell's plant at West Lake Charles, Louisiana, constitutes a 2-to-1 point under the UP/SP merger decision, and specifically is eligible under the contract reopening condition.

Respectfully submitted,

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

Attorney for Montell USA, Inc.

July 24, 1997

MARKETING & SALES

PAT COLLINS
BUSINESS MANAGER - CHEMICALS

UNION PACIFIC RAILROAD COMPANY

201 OXFORD ROAD
WEST CHESTER, PA 19380
(215) 429-5660
FAX: (610)793-0816

June 27, 1997

Mr. B. F. LeBlanc
Director, Transportation & Distribution
North America
Montell Polyolefins
Montell USA, Inc.
Wilmington, DE 19850

Dear Bernie:

This is in response to your letter of June 17 concerning Montell's master contract and related contracts for rail transportation via UP/SP in the Gulf Coast. You refer to the contract modification condition in the UP/SP merger decision. You also indicate that you wish to consider reopening the master contract in the Gulf Coast.

As we advised you at our previous meeting, the contract modification condition is not applicable to Montell's rail transportation contracts. The condition requires UP/SP to modify any contract with shippers "2-to-1" points so that BNSF has access to at least 50% of the volume under contract. The Montell master contract and implementing contracts pertain to your facilities at Bayport, TX and West Lake Charles, LA. Neither of those facilities were served only by UP and SP prior to the UP/SP merger. Therefore, neither location is a "2-to-1" point. Consequently, UP is under no obligation to modify or reopen Montell's contracts to allow BNSF access to at least 50% of the volume. BNSF previously contended before the STB that shippers at West Lake Charles, LA are the "functional equivalent of a 2-to-1 situation for the purpose of the contract modification condition". The STB declined to find in favor of BNSF on this issue in the STB's decision clarifying the contract modification which was issued last November.

UP considers the Montell contracts, including the minimum volume requirements, to continue in full force and effect. We are not inclined to reopen these contracts for discussion at this time.

Sincerely,

Pat Collins

Pat B. Collins

cc R. W. Granatelli
Ed Sims
Bob Worrell

EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition was served on this 24th day of July, 1997, by hand, upon:

Arvid E. Roach II, Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Post Office Box 7566
Washington, DC 20044

Erika Z. Jones, Esquire
Mayer, Brown & Platt
2000 Pennsylvania Avenue, NW
Washington, DC 20006

and, by first-class mail, postage prepaid, upon:

Eugene M. Fitzmaurice, Esquire
ARCO Chemical Company
3301 Westchester Pike
Post Office Box 706
Newtown Square, PA 19073-2387

Michael D. Billiel, Esquire
Antitrust Division
U.S. Department of Justice
325 Seventh Street, NW
Suite 500
Washington, DC 20530

Thomas L. Butera, Esquire
Assistant Counsel & Assistant Secretary
Law Department
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

Paul Samuel Smith, Esquire
U.S. Department of Transportation
400 7th Street, SW
Room 4102 C-30
Washington, DC 20590

William A. Mullins, Esquire
Troutman Sanders, LLP
1300 I Street, NW
Suite 500, East
Washington, DC 20005-3314

Martin W. Bercovici

194521

MAYER, BROWN & PLATT

1909 K STREET, N.W.

WASHINGTON, D.C. 20006-1101

ERIKA Z. JONES
DIRECT DIAL (202) 263-3232
ejones@mayerbrown.com

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MAY 12 1999
MAIL MANAGEMENT STB

MAIN TELEPHONE
202-263-3000
MAIN FAX
202-263-3300

May 12, 1999

By Hand

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

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five (25) copies of the Petition of The Burlington Northern and Santa Fe Railway Company for Clarification (BNSF-86). Also enclosed is a 3.5 inch disk containing the text of the Petition and supporting verified statements in WordPerfect 6.1 format.

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

Sincerely,

Erika Z. Jones

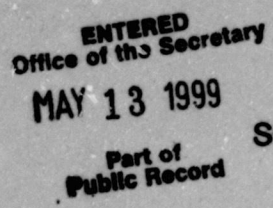
Erika Z. Jones

Enclosures

cc: All Parties of Record

194521

-BNSF-86



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.

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

and

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

Erika Z. Jones
Adrian L. Steel, Jr.
Adam C. Sloane
Mayer, Brown & Platt
1909 K Street, NW
Washington, DC 20006-1101
(202) 263-3000

Attorneys for The Burlington Northern and Santa Fe Railway Company

May 12, 1999

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

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

Pursuant to Decision No. 44 in the above-referenced proceeding, The Burlington Northern and Santa Fe Railway Company ("BNSF") petitions the Surface Transportation Board ("Board") for clarification of the "new facilities" and "transload" conditions imposed by the Board in approving the UP/SP merger.[1/] See Decision No. 44 at 106, 145-46. Specifically, BNSF seeks a clarification that a new facility recently constructed at El Paso, TX, by Four Star Sugar Co. ("Four Star Sugar") is accessible to BNSF via the trackage rights granted to it in this proceeding.[2/] As explained below, for purposes of the

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[1/] The acronyms used herein are the same as those used in Appendix B to Decision No. 44.

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

new facilities and transload conditions, the Four Star Sugar facility clearly is "on" a trackage rights line and, therefore, should be deemed open to BNSF service.

In Decision No. 44, BNSF received the right to serve new facilities and transload facilities "on both SP-owned and UP-owned track over which BNSF will receive trackage rights." Decision No. 44 at 146. See also Decision No. 61 at 7 (BNSF may serve any new facility and any new transload "on any UP/SP line over which BNSF has received trackage rights in the BNSF agreement"). BNSF's right to serve new facilities, including new transload facilities, along trackage rights lines was an expansion of the rights granted to BNSF under the BNSF Agreement, permitting such access at "2-to-1" points. That right encompasses not only the right to serve new facilities and transloads that are immediately adjacent to the lines over which BNSF received trackage rights pursuant to the BNSF Agreement and the CMA Agreement,[3/] but also the right to serve new facilities and transloads that are adjacent to spurs, industrial tracks or yard tracks that are, in turn, served by the trackage rights lines. This common sense conclusion is supported by (1) the language and purposes of the new facilities and transload conditions; (2) the Board's

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3/ Following the Board's practice (see, e.g., Decision No. 44 at 12 n.15), the agreement entered into by BNSF and UP on September 25, 1995, as modified thereafter by the Supplemental Agreement, dated November 18, 1995, and the Second Supplemental Agreement, dated June 27, 1996, is referred to in this Petition as the "BNSF Agreement."

The "CMA Agreement," as used herein, is the agreement entered into by the Applicants, BNSF, and CMA on April 18, 1996, and submitted by the Applicants in the pleading designated UP/SP-219. See, e.g., Decision No. 44 at 9.

prior decisions concerning the conditions[4/] (see, e.g., Finance Docket No. 32760, Decision No. 75 (served Oct. 27, 1997) ("Decision No. 75" or "Donnelley decision")); and (3) the fact that new rail-served facilities and transloads are constructed adjacent to spurs, industrial tracks or yard tracks with the expectation of obtaining rail service via nearby main lines.

This Petition is necessitated by UP's refusal to permit BNSF to serve the new Four Star Sugar facility because the facility is located on an industrial lead on the opposite side of the former SP Dallas Street Yard at El Paso from BNSF's trackage rights line between El Paso and Sierra Blanca, TX. UP's position, apparently, is that facilities that are located adjacent to spurs, industrial tracks or yard tracks are not "on" trackage rights lines and, therefore, are not open to BNSF access under the new facilities and transload conditions. Because UP's position is contrary to the conditions imposed by the Board on the UP/SP merger and has deprived shippers of access to BNSF at the Four Star Sugar facility, the Board should clarify that the Four Star Sugar facility may be served by BNSF.

[4/] The new facilities and transload conditions both refer to facilities located "on" trackage rights lines and are designed to achieve similar purposes. See, e.g., Decision No. 44 at 106, 146. Accordingly, decisions construing one of the conditions are relevant to the interpretation of the other. See Decision No. 75 at 4 ("Our resolution of this particular dispute should provide the parties with substantial guidance in settling disputes over the application of our new facilities and transload condition.").

BACKGROUND

A. Description Of BNSF's Interest.

BNSF is a party to the BNSF and CMA Agreements and, under those agreements and the Board's conditions, is obligated to provide service to shippers to preserve pre-merger UP versus SP competition. As the Board is aware, BNSF has had a number of disputes with UP concerning access to facilities, such as Four Star Sugar's new facility. These disputes have created uncertainty for BNSF and its customers, impeding BNSF's ability to develop fully competitive service on the trackage rights lines.

B. The Four Star Sugar Facility

As described in the Verified Statement of Peter J. Rickershauser ("V.S. Rickershauser") submitted herewith in support of BNSF's Petition as Attachment A, Four Star Sugar distributes corn syrup and other liquid sweeteners that originate in a number of midwestern states to processors, such as soft drink manufacturers, in the El Paso area. Four Star Sugar's new facility is located at 250 Noble Street in El Paso. Built in 1998, the facility primarily transloads liquid sweeteners from rail cars to trucks for distribution in the El Paso area. The facility is on the south side of the former SP Dallas Street Yard. See Attachment B (map and photograph) hereto. The facility receives main line service via a line that runs through the center of the yard -- the former SP line between El Paso and San Antonio, TX. BNSF received trackage rights over this line pursuant to the BNSF Agreement between El Paso and Sierra Blanca, TX. See BNSF Agreement, § 4(a).

The facility is connected to the El Paso-Sierra Blanca trackage rights line by an approximate 4,000 foot industrial lead. See V.S. Rickershauser at 3. Although the industrial lead runs along the east side of the Dallas Street Yard, it connects directly to the trackage rights line, and, therefore, it is not necessary to use any yard track or enter the yard to serve the facility from the trackage rights line. See Attachment B. The yard is fairly small, consisting of a small number of yard tracks adjacent to BNSF's trackage rights line and another few tracks used for car repair, maintenance of way, and storage. See V.S. Rickershauser at 3.

As reflected in the Verified Statement of Robert A. Sieffert ("V.S. Sieffert") of Cerestar USA, Inc. ("Cerestar") submitted herewith in support of BNSF's Petition as Attachment C, Cerestar, a major domestic and international corn refiner, is a prospective user of the Four Star Sugar facility. Cerestar operates a corn wet milling facility at three locations in the United States, including Dimmitt, TX. Cerestar uses numerous distribution facilities -- some owned by Cerestar and some owned by third parties -- where corn syrup and starch are brought in by rail and transloaded to truck for local distribution. As Mr. Sieffert explains, Cerestar's Dimmitt, TX mill, which is located on a BNSF line, is geographically situated to compete for Four Star Sugar's business at its new facility. See V.S. Sieffert at 3. However, because Four Star Sugar's facility is located on a former SP (now UP) line, Cerestar has been unable to compete with corn syrup producers, such as Cargill and ADM, that are located on UP lines for service to the facility, because there is no incentive for UP to establish competitive BNSF-UP joint line rates.

C. **UP's Refusal To Permit BNSF Access**

When the new Four Star Sugar facility came to BNSF's attention, BNSF orally requested UP to confirm that, because of the facility's location on a line over which BNSF received trackage rights under the BNSF Agreement, the facility would be open to BNSF access. See V.S. Rickershauser at 4. Upon receiving oral confirmation in late August 1997 that John Ransom, UP's Senior Manager of Interline Marketing, had preliminarily concluded that the facility would qualify for BNSF access (ibid.), BNSF formally requested access to the facility in April 1998. (A copy of BNSF's e-mail request is attached hereto as Attachment D.) Thereafter, however, UP, on April 28, 1998, reversed course and denied BNSF access. See Attachment D. In response to a further BNSF inquiry, Charles F. Penner, UP's Director of Industrial Development, again denied BNSF's request, contending that the site is served by "an industrial lead track from the south side of UP's Dallas Street Yard" and is "well removed from the Trackage Rights lines which are north of the yard." Attachment E (letter from Penner, dated Oct. 2, 1998).

Subsequently, in an article in the October 19, 1998 edition of Rail Business (Attachment F hereto at page 5), UP's Mark Davis indicated that he had been told by UP's lawyers that, "as [the Four Star Sugar and several other] facilities are new, they are covered under the Settlement Agreement, and so are therefore accessible to BNSF." Based upon this public statement, Peter J. Rickershauser, BNSF's Vice President of UP/SP Lines and Mexico, wrote to Mr. Ransom on October 23, 1998 (see Attachment G hereto), to once again request UP's agreement to BNSF access to the facility. In

response, by letter dated November 5, 1998 (Attachment H hereto), Mr. Ransom disavowed Mr. Davis' statement and once again denied BNSF's request for access on the grounds that the Four Star Sugar "facility is not located along the trackage rights lines" because "[i]t is served off an industrial lead on the opposite side of the yard from BNSF's trackage rights lines."

D. The New Facilities And Transload Conditions

On April 18, 1996, the Applicants, BNSF, and CMA entered into the CMA Agreement, which provides, inter alia, that "[t]he BN/Santa Fe Settlement Agreement shall be amended to grant BN/Santa Fe the right to serve any new shipper facility located subsequent to the consummation of the UP/SP merger on any SP-owned line over which BN/Santa Fe receives trackage rights in the BN/Santa Fe Settlement Agreement." CMA Agreement at 2. As required by the CMA Agreement, the BNSF Agreement was amended to incorporate this "new facilities" provision. See Second Supplemental Agreement (dated June 27, 1996) at 2, 7, 9, 12. Both the CMA Agreement and the Second Supplemental Agreement expressly provided that the term "new facilities" did not include transload facilities. See CMA Agreement § 2 ("new facilities do not include . . . transload facilities"); Second Supplemental Agreement at 3 ("for purposes of this Agreement, 'new shipper facility' does not include . . . transload facilities").

In Decision No. 44, however, the Board expanded the scope of the Agreements' new facilities provision by including transload facilities and by granting BNSF access to new facilities (including new transloads) located on any UP or SP line over which BNSF

obtained trackage rights under the BNSF Agreement.[5/] In expanding the new facilities provision of the BNSF and CMA Agreements, and in imposing additional conditions on the merger independent of the Agreements, the Board addressed two issues raised by opponents of the merger: (1) the failure of the BNSF Agreement, even as modified by the CMA Agreement, to prevent a merger-related loss of indirect competition, such as siting competition; and (2) the insufficient traffic density that BNSF would be able to achieve on the trackage rights lines under the BNSF and CMA Agreements.[6/]

Thus, the Board explained in Decision No. 61 that

> [t]he BNSF agreement, certain opponents noted, allowed BNSF access only to 2-to-1 shippers at points served by UP and SP and no other

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[5/] See, e.g., Decision No. 44 at 146 ("We require as a condition that this provision be modified in two respects: first, by requiring that BNSF be granted the right to serve new facilities on both SP-owned and UP-owned track over which BNSF will receive trackage rights; second, by requiring that the term 'new facilities' shall include transload facilities, including those owned or operated by BNSF."); Finance Docket No. 32760 (Sub-No. 21), Decision No. 10 at 11 (served Oct. 27, 1997) ("Sub-No. 21, Decision No. 10") ("The new facilities and transloading condition originated in the BNSF and CMA agreements. The condition gave BNSF the right to serve any facilities that are established after the merger on SP-owned lines over which BNSF receives trackage rights. We expanded the condition in Decision No. 44 by giving BNSF the right to serve new facilities established on both UP-owned and SP-owned lines over which BNSF obtained trackage rights, and by specifying that new facilities would be defined to include new transload facilities, including those owned or operated by BNSF.").

[6/] See Finance Docket No. 33388, CSX Corporation et al. -- Control and Operating Leases/Agreements -- Conrail Inc. et al., Decision No. 89 (served July 23, 1998) at 60 ("The broad build-out, new facility, and transload conditions imposed in UP/SP were imposed in part to ensure sufficient traffic density for BNSF to operate effectively over thousands of miles of trackage rights granted to remedy widespread 2-to-1 effects in that merger. UP/SP, Decision No. 44, slip op. at 145. More importantly, they were imposed to replicate indirect forms of competition that were lost because, before the merger, shippers solely served by just one of the two merging carriers could nevertheless transload shipments to, relocate on, or build out to, the nearby lines of the other carrier. See, e.g., UP/SP, Decision No. 44, slip op. at 106.")

> railroad. Pre-merger UP vs. SP competition, these opponents insisted, was far broader than that, and included: potential build-outs or build-ins; the potential to truck transload; the potential to use joint truck/rail or barge/rail movements; the ability to shift production among numerous plants located on UP and SP; the ability to relocate plant facilities; the ability to play UP and SP against each other in deciding where to locate new facilities; and source and product competition between shippers located on UP and shippers located on SP.

Decision No. 61 at 8-9 (emphasis added).[7/]

As noted above, the Board's expansion of the BNSF and CMA Agreements' new facilities provisions also was intended to address traffic density problems that, according to the merger's critics, would prevent BNSF from being fully competitive in its trackage rights operations. As the Board stated, the "new facilities and transload conditions were intended, in part, to enable BNSF to achieve sufficient traffic density on the trackage rights lines, not only in the near future but in the more distant future as well." Id. at 10.

In imposing additional conditions providing for BNSF access to all new facilities and transloads located "on" UP and SP lines over which BNSF received trackage rights in the UP/SP merger, however, the Board did not specifically address whether new facilities and transloads -- like the Four Star Sugar facility -- that are adjacent to spurs, industrial tracks or yard tracks (that are, in turn, served by trackage rights lines) are "on" the trackage rights lines and, therefore, open to BNSF access. As shown below, such

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[7/] See also id. at 10 ("The new facilities and transload conditions were intended, in part, to preserve the indirect UP vs. SP competition provided by siting and transload options. By requiring that BNSF be allowed to serve any new facility (except as otherwise indicated) located post-merger on any UP/SP line over which BNSF received trackage rights in the BNSF agreement, we guaranteed that all pre-merger UP vs. SP siting competition would survive the merger.").

facilities should be deemed to be "on" the trackage rights lines and, therefore, open to BNSF access under the new facilities and transload conditions.

ARGUMENT

A. The Board Should Resolve The Issue Of BNSF Service To The Four Star Sugar Facility To Protect The Rights Of Four Star Sugar And Its Shippers Under The UP/SP Merger Conditions.

In recent correspondence to BNSF and to the Board, UP has taken the position that all disputes concerning the issue of BNSF service to shipper facilities should be submitted to arbitration under the terms of the BNSF Agreement. In making this argument, UP relies on the Board's statement in Decision No. 81 in this proceeding (served October 5, 1998), that "any further disputes between BNSF and UP arising under their settlement agreement should be arbitrated under the provisions of that agreement before bringing the matter to us to resolve." Decision No. 81 at 5.

However, the dispute here is not a dispute "between BNSF and UP under their settlement agreement." Indeed, as described above, the specific right sought to be vindicated here -- the right of new facilities and new transloads located on any trackage rights line to receive BNSF service -- was not a part of the BNSF Agreement, even as it was amended by the CMA Agreement, as it was submitted to the Board by UP/SP. Rather, the right was imposed by the Board itself as an additional condition to the merger, and thus the condition provides rights to shippers (and, for that matter, to BNSF) independent of the BNSF Agreement.

Moreover, the dispute directly involves the rights of both Four Star Sugar and its shippers to receive competitive service under the UP/SP merger conditions. As the

Board recognized in Decision No. 44 and in a number of decisions thereafter, the merger conditions were imposed by the Board to protect the public interest in preserving pre-merger competition, and, as beneficiaries of the conditions imposed, shippers have rights independent of any rights BNSF may have under the BNSF Agreement to have the conditions implemented in a manner which will effectively preserve that competition. See Decision No. 44 at 12 n.15 (shippers at points opened up to BNSF under the BNSF Agreement have rights under the Agreement); Finance Docket No. 32760, Decision No. 72 (served May 23, 1997) at 8 n.18 ("We wish to clarify that shippers have rights under the BNSF agreement because we have imposed the terms thereof as a condition of the merger."). Four Star Sugar and its shippers, therefore, should not be subjected to the delay inherent in an arbitration proceeding in order to vindicate their rights to the preservation of pre-merger competition.

Further, the Board has previously recognized that it has a direct role to play in the protection and preservation of the rights shippers received under the Board's conditions. Thus, in declining UP's and BNSF's request that the Board adopt a "new facilities" protocol, the Board stated that it was "confident that we can resolve any controversies that are brought before us quickly." Sub-No. 21. Decision No. 10 at 13. See also Decision No. 75 at 4 ("We will continue to resolve these issues [relating to the new facilities and transload conditions] on a case-by-case basis").

Moreover, notwithstanding its more recent protestations, UP itself has previously recognized that questions about shipper access to BNSF under the new facilities and transload conditions may be submitted directly to the Board rather than first to

arbitration. In a June 20, 1997 letter from Paul A. Conley, Jr., UP Assistant Vice President-Law, in which Mr. Conley transmitted a draft supplement to the BNSF Agreement designed to reflect the changes ordered by the Board in Decision Nos. 44, 52, 61 and 72, UP stated that it had "added language specifying, as stated on page[s] 11 and 12 of Decision No. 61, that disputes over the extent of the transload condition may be referred to the Board" notwithstanding the arbitration provision in the BNSF Agreement. (A copy of Mr. Conley's letter together with UP's draft Third Supplemental Agreement, which sets forth at page 2 UP's proposed language permitting the parties to seek such direct Board review, is attached hereto as Attachment I.) Mr. Conley reiterated this proposed language in a June 24, 1997 draft Amended and Restated Settlement Agreement (See Attachment J hereto at §1(b)). UP then expanded its proposal in the June 30, 1997 Amended and Restated Settlement Agreement which it submitted to the Board on July 1, 1997, as part of its Quarterly Progress Report (UP/SP-303) to propose direct Board review not only for disputes as to BNSF's right to serve transload facilities but also for disputes as to BNSF's right to serve all new shipper facilities. Specifically, UP proposed that:

> Notwithstanding the requirement in Section 15 of this Agreement that unresolved disputes and controversies be submitted for binding arbitration, disputes as to the proper scope of BNSF's rights to serve new shipper facilities or to establish and/or serve transload facilities can be presented by the parties to the Surface Transportation Board for resolution.

UP/SP-303, Exhibit B at 3. (A copy of UP's June 30, 1997 proposed Amended and Restated Settlement Agreement is attached hereto as Attachment K.) Thus, UP itself has acknowledged that direct review of shipper access disputes under the new facilities

and transload conditions should be available notwithstanding the arbitration provision of the BNSF Agreement.[8/]

Finally, to the extent the arbitration provision of the BNSF Agreement would preclude direct Board adjudication of disputes concerning the rights of shippers to receive competitive two-carrier service under the merger conditions, the arbitration provision should be deemed overridden by the provisions of 49 U.S.C. §11321(a) (formerly 49 U.S.C. §11341(a)). Such an override would be "necessary" to implement the rights granted by the Board to shippers to receive such service in a timely and efficient manner.

Thus, in order to clarify the Board's conditions and to protect the rights granted to Four Star Sugar and its shippers in the merger proceeding, the Board should resolve the question of whether BNSF may serve the Four Star Sugar facility in this clarification proceeding.

[8/] While UP and BNSF have not yet reached final agreement as to the appropriate language to implement all of the various changes ordered by the Board in Decision No. 44 and subsequent decisions because several issues remain unsolved, the fact that UP expressed its belief in the appropriateness of, and was agreeable to, the direct submission of access disputes under the new facilities and transload conditions to the Board notwithstanding the arbitration provision of the BNSF Agreement undercuts any self-serving argument to the contrary that UP now makes. In fact, UP acknowledged that one of the disagreements that remained between UP and BNSF was "the specification of the UP/SP lines where BNSF is entitled to serve new industries and transloads" and that the disagreement "may have to be referred to the Board for resolution." UP/SP-303 at 79. In addition, resolution of the present dispute by the Board would resolve one of the remaining open issues between UP and BNSF and would facilitate completion of the process of amending the BNSF Agreement to incorporate the changes ordered by the Board.

B. The Language And Purposes Of The New Facilities And Transload Conditions Support The Conclusion That BNSF Should Be Accorded Access To Four Star Sugar's Facility.

As noted, the new facilities and transload conditions afford BNSF access to facilities "on" its trackage rights lines. Both the language and purposes of these conditions support the conclusion that new facilities and transloads, like the new Four Star Sugar facility, should be deemed to be "on" the trackage rights lines (and, therefore, open to BNSF service) if those facilities are adjacent to spurs, industrial tracks or yard tracks that are, in turn, served by trackage rights lines.

First, a decision that, for purposes of the new facilities and transload conditions, the Four Star Sugar facility is "on" a trackage rights line would be consistent with the language of the conditions. As a review of any dictionary would show, "on" does not indicate only "location at or along" (see, e.g., THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3d ed. 1992) (definition 1(c) of "on" as a preposition)), which, apparently is the definition upon which UP is basing its position. "On" also indicates "proximity" (id. (definition 1(d)), as well as "in close proximity with," and "involv[ed] with the activity, work or function of" (MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1993) (definitions 1(c) and 6(b) of "on" as a preposition)). These latter meanings are consistent with BNSF's position that, under the new facilities and transload conditions, BNSF may serve new facilities and transloads that are adjacent to spurs, industrial tracks or yard tracks so long as such facilities are proximate to trackage rights lines and located to take advantage of the "activity, work or function" of the line.

Moreover, the crabbed interpretation of the conditions advocated by UP would frustrate the two main purposes for which the conditions were imposed: (i) the preservation of pre-merger "indirect" rail competition between UP and SP for the siting of new facilities and transloads on their lines, and (2) the ensuring of adequate traffic density along the lines. See, e.g., Decision No. 61 at 9-10.

If a constricted interpretation of the conditions were adopted, few, if any, facilities would be open to BNSF under the conditions, because virtually all shipper and transload facilities are actually connected to main line track by industrial, yard or lead tracks. Thus, the severely circumscribed interpretation of the new facilities and transload conditions apparently favored by UP would prevent the conditions from ensuring the preservation of pre-merger indirect "siting" competition, leaving shippers worse off than they had been before UP and SP merged.

Prior to the merger, a prospective owner of a new facility or transload would have competitive leverage in negotiating with UP and SP concerning the location of the new facility or transload, even if a proposed site for the facility was not immediately adjacent to a main line track -- that is, the owner (or a shipper) would be able to "play UP and SP against each other" in choosing a location for a facility, regardless of whether the proposed facility was to be located adjacent to a spur, industrial track or yard track or whether it was to be immediately adjacent to the main line track itself.[9/] Accordingly, as

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[9/] See, e.g., Sub-No. 21, Decision No. 10 at 11 ("Ordinarily, shippers can lock in the competitive benefits of their ability to locate new facilities on the lines of two or more independent railroads by negotiating a long-term contract with the railroad on which they ultimately will locate. Permitting BNSF to serve new facilities was intended to replace (continued...)

Mr. Sieffert of Cerestar confirms in his Verified Statement, Four Star Sugar and its customers could just as effectively have played UP and SP off against each other whether the new facility was to be (a) located adjacent to a spur, industrial lead or yard track that was, in turn, served by a nearby main line, or (b) located immediately adjacent to a main line. See V.S. Sieffert at 2.[10/] See also V.S. Rickershauser at 6. But, if, as UP apparently advocates, a facility must be immediately adjacent to a trackage rights main line in order to obtain access to BNSF under the new facilities and transload conditions, there would be less siting competition today (and less competitive leverage accruing to shippers as a result of such indirect competition) than there was prior to the UP/SP merger -- a result that clearly is contrary to the main purpose of the new facilities and transload conditions.

[9/](...continued)
competition that was lost by shippers who before the merger had a choice to locate facilities at points served by UP or SP.").

[10/] As Mr. Sieffert has explained in his Verified Statement, shippers such as Cerestar often enjoyed the benefits of this type of indirect competition between UP and SP before the merger. See V.S. Sieffert at 2. Cerestar or a third party could build a new facility or transload facility on either a UP or SP line. In determining where to build such a new facility, Cerestar or a prospective transload facility owner "could contact UP and SP to determine what rate and service offerings each carrier would be willing to make if the facility were to be placed on its line. These offerings could then be played against each other, and the shipper or transload owner could use this competitive leverage to get the best deal it could for itself (in the case of a shipper's own facility) or for the shippers that would use the transload facility". Id. at 2.

With the UP/SP merger, however, this indirect siting competition would have disappeared but for the Board's imposition of the new facilities and transload conditions. As Mr. Sieffert has noted, these conditions enable "BNSF to replicate the pre-merger competition that existed between UP and SP by allowing BNSF to compete post-merger with the combined UP/SP for the facilities' business." Ibid.

Therefore, because pre-merger siting competition between UP and SP included competition for facilities to be located adjacent to spurs, industrial tracks or yard tracks, as well as facilities to be located immediately adjacent to the carriers' main lines, preservation of this pre-merger siting competition -- which, as noted above, was among the primary purposes of the new facilities and transload conditions -- dictates that BNSF be accorded access to the new Four Star Sugar facility because it is adjacent to an industrial lead that is served by a trackage rights line.

The other principal purpose of the new facilities and transload conditions -- the development of sufficient traffic density for BNSF to be competitive in its trackage rights operations (see, e.g., Decision No. 61 at 9) -- also supports the common sense interpretation of the conditions that BNSF advocates in this Petition. If the Board were to adopt an interpretation of the new facilities and transload conditions pursuant to which facilities like the Four Star Sugar facility were deemed not to be "on" a trackage rights line, BNSF's efforts to obtain adequate traffic density on the trackage rights lines would be hampered. Although the Board has declined to invoke traffic density as a justification for BNSF's access to particular facilities (see, e.g., Decision No. 75 at 4 n.10), it is clear that a highly circumscribed interpretation of the scope of the conditions, such as the one advocated by UP, would have sweeping adverse effects on BNSF's ability to attain adequate traffic density on the trackage rights lines.

Accordingly, the language and purposes of the new facilities and transload conditions -- the preservation of pre-merger indirect competition and the development

of sufficient traffic density on the trackage rights lines -- establish that BNSF should be accorded access to the Four Star Sugar facility.[11/]

C. The Donnelley Decision Supports The Conclusion That BNSF Should Be Accorded Access To Four Star Sugar's Transload Facility.

The relief sought in this Petition also is supported by significant Board precedent. Specifically, in Decision No. 75, the Board held that, under the transload condition, BNSF should be accorded access to a proposed new transload facility that was connected to a trackage rights line by a spur. Thus, in Decision No. 75, the Board, in effect, held that a facility served by a spur off of a trackage rights line should be deemed to be "on" the trackage rights line under the transload condition.

Decision No. 75 addressed the status of a proposed new transload at Sparks, NV. The proposed transload was to be used to transfer paper stock from rail to the Reno, NV commercial printing plant of R.R. Donnelley & Sons, Inc. ("Donnelley"). As the Board

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[11/] The fact that BNSF has a line at El Paso does not support a contrary conclusion. The Board's new facilities and transload conditions afford BNSF access to new facilities and transloads on any UP or SP line over which BNSF has trackage rights, and BNSF's right of access is not restricted in any way to only situations where a shipper's pre-merger siting options were limited to UP and SP lines. To the contrary, "[t]he new facilities condition should be read literally: BNSF may serve any new facility (except as otherwise indicated) located post-merger on any UP/SP line over which BNSF has received trackage rights in the BNSF agreement. The transload condition should likewise be read literally: BNSF may serve any new transload facility * * * located post-merger on any UP/SP line over which BNSF has received trackage rights in the BNSF agreement; and BNSF's right to serve a new transload facility includes the right to handle all traffic transloaded at that facility." Decision No. 61 at 7 (emphasis added). By the same token, under the CMA Agreement, which was the basis for the new facilities condition, BNSF's access to new facilities was not restricted to situations where a shipper's pre-merger siting options were limited to UP and SP lines. See CMA Agreement § 2 (BNSF has "the right to serve any new shipper facility located subsequent to the consummation of the UP/SP merger on any SP-owned line" over which BNSF received trackage rights under the BNSF Agreement) (emphasis added).

and UP recognized, Donnelley was on a spur off of the SP line over which BNSF had trackage rights. See, e.g., Decision No. 75 at 2, 3 & n.5, 4. This was not an inconsequential fact in the dispute about BNSF's access to the proposed transload. To the contrary, a disagreement over whether the spur was "dormant" figured prominently in the parties' arguments. See Decision No. 75, at 3 & n.5 (noting that BNSF and Donnelley argued that the spur was dormant and that "UP claims that, although the [proposed transload] facility has not been rail-served for several years, one other shipper located on the spur is presently rail-served. UP, therefore, insists that the spur is not 'dormant'"). Although UP vigorously contested the dormancy issue, it did not argue either in its negotiations with BNSF (see V.S. Rickershauser at 7-8) or before the Board, as it apparently now does, that because a facility is located adjacent to a spur, industrial track or yard track, it is not "on" a trackage rights line and, therefore, not accessible to BNSF under the new facilities or transload conditions.

Moreover, the Board did not view the facility's location on a spur as disqualifying it from being "on" the trackage rights line under the new facilities and transload conditions. Thus, the Donnelley decision, to which the Board has directed parties seeking guidance in construing the new facilities and transload conditions, compels the conclusion that BNSF should be accorded access to Four Star Sugar's facility.[12/]

[12/] In addition to its implicit concession in Donnelley of the fact that the new facilities and transload conditions apply to facilities located on spur tracks, UP has granted BNSF access under the merger conditions to other new facilities not located directly adjacent to a BNSF trackage rights line. See V.S. Rickershauser at 8. For example, BNSF was granted access by UP to new shipper facilities located in industrial parks at Grand Junction, CO (Conoco, Inc. and Total Petroleum) and Fernley, NV (Quebecor) under the (continued...)

D. Patterns Of Industrial Development And The Expectations Of Shippers Support The Conclusion That BNSF Should Be Accorded Access To Four Star Sugar's Facility.

"[T]he 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." Verified Statement of F.E. (Skip) Kalb, Jr. ("V.S. Kalb") at 2 (Attachment L hereto). This pattern of industrial development, which pre-dates the UP/SP merger, benefits both shippers and rail carriers. Shippers benefit because, by locating their new facilities and transloads in industrial parks or near rail yards, they can procure large, reasonably-priced sites that have convenient access to rail and truck service, while avoiding a host of problems relating to environmental, zoning, and other land use issues. Rail carriers benefit from the concentration of shippers at or around industrial parks or rail yards because such concentrations facilitate the gathering and delivery of freight for numerous customers with a minimum of stops, and preclude the need to construct multiple turnouts on main line tracks to serve multiple shippers (which, as noted by Mr. Kalb, enhances main line rail operations and improves safety.) See V.S. Kalb at 2.

[12/](...continued)
new facilities condition. See ibid. In the case of Quebecor, its new printing facility is located nearly a mile off BNSF's trackage rights line on a spur passing a number of "1-to-1" shipper facilities to which BNSF does not have access. Ibid. UP did not even raise the issue of the location of these two facilities in relation to the trackage rights lines in the parties' discussions concerning BNSF access. See ibid. By granting BNSF access to these facilities, UP has again acknowledged that the new facilities and transload conditions should apply to facilities located on spurs, industrial tracks and yard tracks if those facilities receive main line service via BNSF's trackage rights lines.

Further, as Mr. Kalb explains, when shippers construct facilities and transloads in industrial parks or yards adjacent to spurs, industrial tracks or yard tracks that are, in turn, served by nearby main lines, they do so with the expectation that they will receive rail service via those main lines. See V.S. Kalb at 3. This expectation often accounts for the decision to site new facilities in such locations. See ibid. Such shippers undoubtedly characterize such facilities as being "on" such main lines.

Thus, from the shippers' perspective, it makes no difference whether their siting options include locations at spurs, industrial tracks or yards: they can reap the benefits of siting competition regardless of whether their facilities are immediately adjacent to main line tracks or are served by those main lines via spurs, industrial tracks or yards. Thus, shippers have never felt themselves constrained to consider only sites immediately adjacent to a main line in order to take advantage of siting and transload competition between UP and SP. See V.S. Kalb at 3.

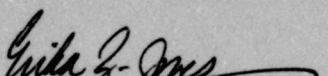
The Board clearly did not intend its new facilities and transload conditions to alter prevailing patterns of industrial development or to defeat the reasonable expectations of shippers. UP's position, however, would have these untoward effects. If UP's position prevails, shippers wishing to obtain the competitive leverage ostensibly afforded by the new facilities and transload conditions' preservation of siting competition could do so only if they were able to place their new facilities and transloads immediately adjacent to trackage rights lines. As Mr. Kalb explains (V.S. Kalb at 4), such a state of affairs would create incentives for shippers to adopt inefficient and environmentally unsound development patterns.

Moreover, as a practical matter, zoning, environmental, and safety concerns, as well as significant cost issues, limit the availability of sites immediately adjacent to trackage rights lines that could be used for new facilities and transloads. Thus, UP's position, if accepted by the Board, would sharply reduce the number of facilities that could obtain the benefits of the indirect competition that the new facilities and transload conditions were intended to preserve. As a result, the scope of the new facilities and transload conditions would be significantly circumscribed, thereby frustrating the competition-preserving purposes of the conditions.

CONCLUSION

For the foregoing reasons, the Board should clarify that BNSF may have access to the new Four Star Sugar facility at El Paso because it is adjacent to an industrial lead that is served by a line over which BNSF received trackage rights pursuant to the BNSF Agreement.

Respectfully submitted,



Erika Z. Jones
Adrian L. Steel, Jr.
Adam C. Sloane
Mayer, Brown & Platt
1909 K Street, NW
Washington, DC 20006-1101
(202) 263-3000

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

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

and

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

Attorneys for The Burlington Northern and Santa Fe Railway Company

May 12, 1999

CERTIFICATE OF SERVICE

I hereby certify that copies of the Petition of The Burlington Northern and Santa Fe Railway Company for Clarification (BNSF-86) have been served on all Parties of Record.

Adrian J. Steel

ATTACHMENT A

VERIFIED STATEMENT
OF
PETER J. RICKERSHAUSER

My name is Peter J. Rickershauser. I am Vice President - Business Development of The Burlington Northern and Santa Fe Railway Company ("BNSF"). My business address is 2650 Lou Menk Drive, Fort Worth, TX 76131.

The purpose of this Verified Statement is to describe the facts and circumstances surrounding the Petition filed by BNSF seeking a clarification that Four Star Sugar Co.'s ("Four Star Sugar") recently-constructed facility at El Paso, TX, can be served by BNSF via the trackage rights granted to it by the Surface Transportation Board ("Board") in the UP/SP merger. I have been directly involved in BNSF's efforts to gain access to the Four Star Sugar facility through research concerning the facility and its location, and in communications with UF concerning BNSF access to the facility. In addition, I personally visited El Paso and the Four Star Sugar facility to gain an understanding of its location with reference to BNSF's trackage rights line over the former SP line between El Paso and Sierra Blanca, TX, and to obtain first-hand knowledge of the rail service situation at El Paso.

BACKGROUND AND QUALIFICATIONS

I joined BNSF in October 1996, as Vice President, Marketing, UP/SP Lines. Subsequently, I served as Vice President, Marketing for the UP/SP Lines and the Mexico Business Unit. I assumed my current position in December 1998, and am responsible, in addition to our UP/SP Lines and Mexico marketing, for marketing activities involving our shortline and transload/distribution partners, as well as our Class 1 connections and our smaller merchandise customers through our "DART" (Direct Account Resource

Team) group. In these various positions, I have been responsible for, among other things, coordinating the marketing and implementing of the new service opportunities that BNSF offers to shippers as a result of the merger of UP and SP. BNSF gained access to more than 4,300 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 SP 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 Corporation, 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.

FOUR STAR SUGAR'S NEW FACILITY

Four Star Sugar distributes corn syrup and other liquid sweeteners that originate in a number of midwestern states to liquid sugar receivers, such as manufacturers of soft drinks, in the El Paso area. Four Star Sugar's new facility is located at 250 Noble Street in El Paso. It was built in 1998 and primarily transloads liquid sweeteners from rail cars to trucks for distribution to receivers in the El Paso area. As the map and overhead photograph attached to BNSF's Petition as Attachment B show, the facility is positioned on the south side of the former SP Dallas Street Yard. Main line service to the facility is provided over the former SP line between El Paso and San Antonio, TX, which runs through the center of the yard. BNSF received trackage rights over this line between El Paso and Sierra Blanca, TX pursuant to the BNSF Agreement.

The facility is connected to the El Paso-Sierra Blanca trackage rights line by an industrial lead of approximately 4000 feet in length. As Attachment B shows, the industrial lead connects directly to the trackage rights line and, while it runs along the east side of the Dallas Street Yard, it is not necessary to enter the yard to serve the facility from the trackage rights line. The yard itself is relatively small and consists of only a small number of yard tracks adjacent to the trackage rights line and another few tracks used for car repair, maintenance of way, and storage. It is also evident from the map and photograph (Attachment B) that, while the track serving Four Star Sugar is adjacent to the yard, it is not a key part of the yard's operation.

THE DISPUTE OVER BNSF ACCESS TO THE FOUR STAR SUGAR FACILITY

Upon learning of Four Star Sugar's new facility, BNSF made an oral request to UP for confirmation that the facility would be accessible to BNSF under the terms of the UP/SP merger settlement agreements and conditions. BNSF access would enable Four Star Sugar to effectively and efficiently receive product from a number of shippers such as Cerestar USA, Inc. ("Cerestar"), a major domestic and international corn refiner. After being verbally informed in late August of 1997 that it was the preliminary view of John Ransom, UP's Senior Manager of Interline Marketing, that the facility would qualify for BNSF access, BNSF made a formal request for access to the facility in April 1998. (A copy of BNSF's e-mail request is attached to BNSF's Petition as Attachment D.) Contrary to its earlier representation, UP, on April 28, 1998, responded to this request by denying BNSF access. See Attachment D to BNSF's Petition. In a letter dated October 2, 1998 (Attachment E to BNSF's Petition), Charles F. Penner, UP's Director of Industrial Development, responded to a further BNSF inquiry by again denying BNSF's request on the ground that the site is served by "an industrial lead track from the south side of UP's Dallas Street Yard" and is "well removed from the Trackage Rights lines which are north of the yard."

Thereafter, in a news article appearing in the October 19, 1998 edition of Rail Business (Attachment F to BNSF's Petition), UP's Mark Davis indicated that he had talked to UP's lawyers and had been told that, "as [the Four Star Sugar and several other] facilities are new, they are covered under the Settlement Agreement, and so are therefore accessible to BNSF." In light of this public statement, I wrote to Mr. Ransom

on October 23, 1998 (Attachment G to BNSF's Petition), to once again request UP's agreement to BNSF access to the facility. Mr. Ransom replied to me by letter dated November 5, 1998 (Attachment H to BNSF's Petition). In that letter, he disavowed Mr. Davis' statement and once again denied BNSF's request for access on the grounds that the Four Star Sugar "facility is not located along the trackage rights lines" because "[i]t is served off an industrial lead on the opposite side of the yard from BNSF's trackage rights lines."

BNSF ACCESS TO FACILITIES AND TRANSLOADS ON SPURS, INDUSTRIAL TRACKS AND YARD TRACKS IS NECESSARY TO PRESERVE PRE-MERGER COMPETITION

Contrary to UP's position, new facilities and transloads, like the new Four Star Sugar facility, should be deemed to be "on" a BNSF trackage rights line (and, therefore, open to BNSF service) if they are on a spur, industrial track or yard track that is, in turn, served by the trackage rights line. This conclusion is supported by the purposes for which the Board imposed the new facilities and transload conditions. As I understand the Board's decisions, those purposes include the preservation of pre-merger "indirect" rail competition and the ensuring of adequate traffic density along the lines.

But for the merger, a prospective owner of a new facility or transload would have had the option to locate its new facility on either a UP line or a SP line. Shippers and transload facility owners often enjoyed the benefits of this type of indirect competition before the merger. In determining where to build such a new facility, a prospective shipper or transload owner could contact UP and SP to determine what rate and service offerings each carrier would be willing to make if the facility were to be placed on its line.

These offerings could then be played against each other, and the shipper or transload owner could use this competitive leverage to get the best transportation service offering it could for itself (in the case of a shipper's own facility) or for the shippers that would be directing rail traffic into the transload facility.

With the UP/SP merger, however, this indirect siting competition would have disappeared but for the Board's imposition of the new facilities and transload conditions. These conditions enable BNSF to replicate the pre-merger competition that existed between UP and SP by allowing BNSF to compete post-merger with the combined UP/SP for the facilities' business. In the specific case of Four Star Sugar's new facility at El Paso, if BNSF is not able to serve facilities such as that facility, Cerestar and other shippers cannot enjoy the benefits of the siting competition that would have continued into the future but for the merger.

Moreover, the fact that Four Star Sugar's facility is on an industrial track is of no consequence as to whether the location of such a new facility or transload could have been a source of competitive leverage -- that is, whether the construction of such a transload or the existence of siting alternatives for new facilities could have been used by Four Star Sugar (and its customers) to "play UP and SP against each other" in order for shippers using the Four Star Sugar facility to obtain commercial advantages in negotiations with one or both carriers. Four Star Sugar and its customers could just as effectively have played UP and SP off against each other whether the new facility was to be (a) located adjacent to a spur, industrial lead or yard track that was, in turn, served by a nearby main line, or (b) located immediately adjacent to a main line.

Therefore, because pre-merger siting competition between SP and UP included competition for facilities to be located adjacent to spurs, industrial tracks or yard tracks, as well as facilities to be located immediately adjacent to the carriers' main lines, preservation of this pre-merger siting and transload competition requires that BNSF be accorded access to Four Star Sugar because it is adjacent to an industrial track that is served by a trackage rights line.

As noted above, another purpose of the new facilities and transload conditions was the development of sufficient traffic density for BNSF to be competitive in its trackage rights operations. The location of new facilities and transloads adjacent to spurs, industrial tracks or yard tracks served by nearby main lines is, and has been, a predominant mode of industrial development in the western United States. To preclude BNSF from serving such new facilities and transloads by narrowly and artificially defining "on trackage rights lines" would significantly undercut the new facilities and transload conditions, and would deprive BNSF of a significant source of traffic density on its trackage rights lines.

UP'S PRACTICE UNDER THE BNSF AGREEMENT CONFLICTS WITH THE POSITION IT NOW ADVANCES

UP's position denying BNSF access to the new Four Star Sugar facility is inconsistent with the positions it has taken previously with respect to other new facilities. For instance, in the dispute between BNSF and UP concerning BNSF access to the new transload facility being constructed at Sparks, NV, UP never contended in its numerous discussions and correspondence with BNSF or in its pleadings filed with the Board that

BNSF was not entitled to access that new facility because the facility was located on a spur rather than directly "on" BNSF's trackage rights line at Sparks.

Further, BNSF was granted access by UP to new shipper facilities located in industrial parks at Grand Junction, CO (Conoco, Inc. and Total Petroleum) and Fernley, NV (Quebecor) under the new facilities condition notwithstanding the fact that the facilities are located on spurs, industrial tracks and yard tracks which receive main line service via a BNSF trackage rights line. In the case of Quebecor, its new printing facility is located nearly a mile off BNSF's trackage rights line, on a spur passing a number of "1-to-1" shipper facilities to which BNSF does not have access. At no point in our discussions with UP concerning BNSF access to those facilities did UP even raise the issue of the location of the facilities in relation to the trackage rights lines.

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

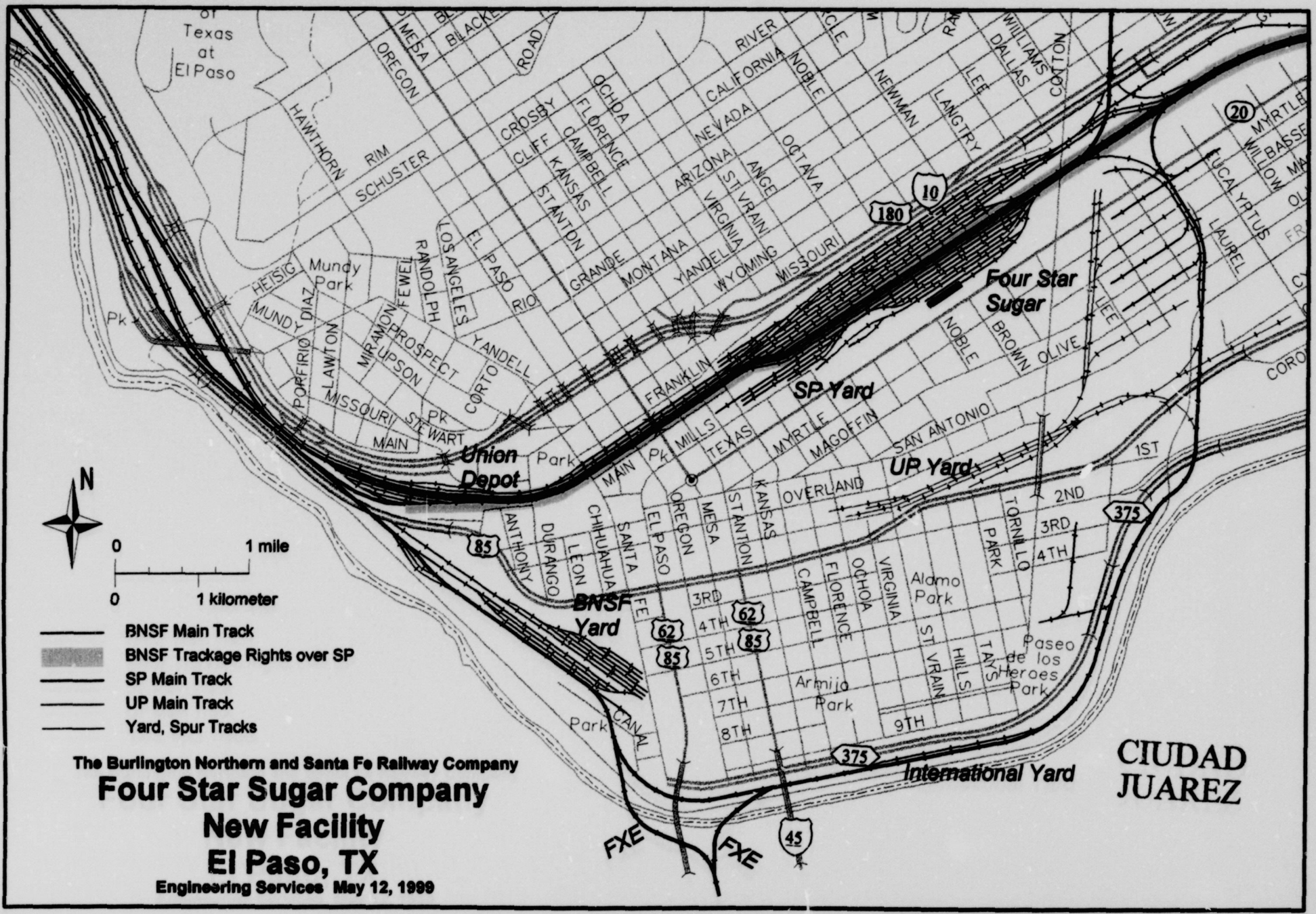
SHARON D. BOSSIER
Notary Public
STATE OF TEXAS
My Comm. Exp. 09/15/2001

Notary Public

My Commission Expires: 09/15/2001

verif.sig

ATTACHMENT B


Four Star Sugar
SP Yard
UP Yard
Union Depot
BNSF Yard
International Yard
CIUDAD JUAREZ
Alamo Park
Armijo Park
Paseo de los Heroes Park
Mundy Park
N
0 1 mile
0 1 kilometer
BNSF Main Track
BNSF Trackage Rights over SP
SP Main Track
UP Main Track
Yard, Spur Tracks
The Burlington Northern and Santa Fe Railway Company
Four Star Sugar Company
New Facility
El Paso, TX
Engineering Services May 12, 1999

Juarez, Mex.
BNSF Yard
Noble St.
Four Star Sugar
Texas Ave.
SP Dallas St. Yard
Cotton St.
I-10
N

ATTACHMENT C

VERIFIED STATEMENT
OF
ROBERT A. SIEFFERT

My name is Robert A. Sieffert. I am Manager of Transportation/Distribution for Cerestar USA, Inc. ("Cerestar"). My business address is 1100 Indianapolis Boulevard, Hammond, IN 46320-1094. I have held this position with Cerestar, and predecessor company American Maize Products Company, for 13 years. Prior to employment with Cerestar, I was employed as an Account Manager by the Elgin, Joliet and Eastern Railway Company. My main responsibilities as Manager of Transportation/Distribution for Cerestar include establishment and administration of all freight rates via all transportation modes, operation of Cerestar's rail fleet of tank cars and covered hoppers, and operation of Cerestar's warehouse and filling station network.

The purpose of my statement is to support the Petition being filed by The Burlington Northern and Santa Fe Railway Company ("BNSF") seeking a clarification that, under the conditions imposed by the STB in the Union Pacific/Southern Pacific merger proceeding, BNSF can serve a recently constructed transload facility at El Paso, TX operated by Four Star Sugar, Inc. As I explain below, BNSF service to that facility is necessary to enable Cerestar to enjoy the benefits of the competition which existed before the UP/SP merger with respect to the siting of transload facilities such as Four Star Sugar's new facility.

Cerestar is in the corn refining business. It manufactures and ships heavy corn syrups, high fructose corn syrup, industrial and food grade corn starches, and corn byproducts such as corn germ and corn feed/meal. Cerestar operates three corn wet-mill facilities in the United States. They are located at Hammond, IN, Decatur, AL, and Dimmitt, TX. Cerestar also utilizes numerous distribution facilities -- some owned by

Cerestar and some owned by third parties -- where corn syrup and starch are brought in by rail and transloaded to truck for local distribution.

At its three domestic mills, Cerestar grinds approximately 200,000 bushels of corn per day. Because most of Cerestar's products are transported in bulk over long distances, Cerestar relies heavily on rail transportation. It ships or receives more than 20,000 rail cars of all commodities each year.

Before the UP/SP merger, in addition to competition at locations open to both UP and SP direct service, Cerestar often enjoyed the benefits of indirect competition between UP and SP. One form of this indirect competition was the competition that existed between UP and SP with respect to the location of new facilities on their lines. These facilities could be built by shippers such as ourselves, or they could be built by third parties, which we then could use to transload our product from rail to truck for delivery to its final destination. In determining where to build a new facility, a shipper or prospective transload facility owner could contact UP and SP to determine what rate and service offerings each carrier would be willing to make if the facility were to be placed on its line. These offerings could then be played against each other, and the shipper or transload owner could use this competitive leverage to get the best deal it could for itself (in the case of a shipper's own facility) or for the shippers that would use the transload facility. As a shipper that often uses transload facilities, Cerestar was in the position to receive the benefits of this type of pre-merger siting competition between UP and SP.

With the advent of the merger, however, this indirect siting competition would have disappeared but for the Board's imposition of a condition that BNSF be able to serve all new facilities, including new transload facilities, constructed on any line over which BNSF received trackage rights as a result of the merger. This condition enables BNSF to replicate the pre-merger competition that existed between UP and SP by allowing BNSF to compete post-merger with the combined UP/SP for the facilities' business. In the specific case of Four Star Sugar's new transload facility at El Paso, if

BNSF is not able to serve facilities such as that facility, Cerestar and other shippers cannot enjoy the benefits of the siting competition that would have continued into the future but for the merger.

For example, Cerestar's Dimmitt, TX mill, which is served solely by BNSF, is situated geographically to compete for Four Star Sugar's business. The Four Star Sugar facility is, however, located on a former SP (now UP) line. As a result, Cerestar has been unable to compete with other corn syrup producers such as Cargill and ADM for service to the facility because there is no incentive for UP to establish competitive BNSF-UP joint line rates. UP can haul the shipments of those other producers directly from their facilities in the Midwest to the Four Star Sugar facility. Were it not for the merger, Four Star Sugar could have taken advantage of the indirect siting competition which existed between UP and SP, and it could have negotiated with both carriers over potential transload sites and the rates and terms each would offer Four Star Sugar for service to its new facility. Cerestar could then have had the benefit of those competitively-driven terms to compete with Cargill and ADM. The merger deprived Cerestar of that opportunity, and the Board should enable BNSF to replace that competition by competing post-merger with UP.

Further, it is my understanding that UP has opposed BNSF service to Four Star Sugar's facility not on the ground that such service is unnecessary to preserve pre-merger siting competition, but based on the fact that the Four Star Sugar facility is located on an industrial lead next to a former SP yard which is itself adjacent to a BNSF trackage rights line rather than directly on a BNSF trackage rights line. That fact is irrelevant to whether or not pre-merger siting competition between UP and SP lines existed before the merger. The shipper's facility in this case is located directly adjacent to the railroad's facility, a transportation corridor which includes the line over which BNSF gained trackage rights, by UP's agreement, as a result of the UP/SP merger. In making a determination as to where to locate a new facility, owners of facilities such as Four Star Sugar's transload

facility could have received rail service from either the UP or SP main line on which they were considering locating their facility, and it would not have mattered whether the facility would be connected to the main line by a short turn out or siding or by a spur, industrial lead or yard track. Either way, the facility owners would have been able to use the siting leverage they had to negotiate the best deal they could.

For the reasons stated in BNSF's Petition and in this statement, Cerestar urges the Board to grant the Petition and order that BNSF be granted access to the Four Star Sugar transload facility.

VERIFICATION

THE STATE OF Indiana)

COUNTY OF Porter)

Robert A. Sieffert, 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.

Robert A. Sieffert

Subscribed and sworn before me on this 14th day of April, 1999.

Notary Public

My Commission expires:

FRANCES L TURNAK
NOTARY PUBLIC STATE OF INDIANA
PORTER COUNTY
MY COMMISSION EXP NOV 25,2000

ATTACHMENT D

To: Frank.Colby@BNSF.COM@Internet
cc: Edward.Pidgeon@BNSF.COM @ internet, Regina.Minish@BNSF.COM @ Internet, Peter.Rickershauser1@BNSF.COM @ Internet, Helen A. Heller@UP, Robert B. Price@UP, John H. Ransom@UP, Larry E. Wzorek@UP, Kurt H. Schroeder@UP
Subject: Four Star Sugars (Magnolia Coca Cola) El Paso, TX

Frank, after running a thorough investigation, checking with all Departments and authorities responsible for determing trackage rights locations, it has been determined that Four Star Sugars is not located along the trackage rights line between El Paso and Sierra Blanca. We have placed Four Star Sugars in our 2-to-1 database as NOT a 2-to-1 shipper.

If you have any questions, please let me know.

Linda

---------- Forwarded by Linda M. Gaeta on 04/28/98 10:05 AM ----------

To: Robert B. Price
cc: " - (052)Colby, Frank" <Frank.Colby@BNSF.COM>, " - (052)Pidgeon, Edward" <Edward.Pidgeon@BNSF.COM>, "BNSF -PRICKER1 (052)" <Peter.Rickershauser1@BNSF.COM>, Susan M. Hulzenga, Linda M. Gaeta
Subject: Four Star Sugars (Magnolia Coca Cola) El Paso, TX

Bob:

This is an official request for 2-to-1 status for a new shipper facility in the El Paso area. This is new facility qualifies as a 2-to-1 shipper facility if located on the UP/SP trackage/haulage rights on the Sierra Blanca line.

Ken Holmes, BNSF called Bert Van Kampen, UP to inquire about this facility in August, 1997.

Bert advised that John Ransom's preliminary review of the new Magnolia Coca Cola facility indicates it is on the line running from El Paso to Sierra Blanca, TX and will probably be considered a 2:1 industry.

Magnolia has completed construction and named the business at this new location Four Star Sugars.

Please advise if the customer below qualifies as a 2-to-1 Shipper Facility and advise back.

Four Star Sugars
250 Noble Street
El Paso, TX

Per the 2-to-1 Protocol Requirements BNSF plans to serve this customer via UP haulage from El Paso.

Thanks

Frank

ATTACHMENT E

UNION PACIFIC RAILROAD COMPANY

CHARLES F. PENNER
DIRECTOR
INDUSTRIAL DEVELOPMENT

1416 DODGE STREET
OMAHA, NEBRASKA 68179

October 2, 1998

Mr. F. E. Kalb, Jr.
AVP - Industrial Development
Burlington Northern Santa Fe
2650 Lou Menk Drive
P. O. Box 961058
Ft. Worth, TX 76131

Dear Skip:

Please refer to BNSF's request to provide service to RCA/Thomson Consumer Electronics and Four Star Sugars in El Paso.

The RCA/Thomson facility qualifies for direct access by BNSF.

Four Star Sugars is served by an industrial lead track from the south side of UP's Dallas Street Yard. The site is well removed from the Trackage Rights lines which are north of the yard. Consequently, access by BNSF is not approved.

Please contact me if there are any questions.

Sincerely,

Charlie

Charles F. Penner
Director Industrial Development

cc: Pete Rickershauser - BNSF, Ft. Worth
Buck Hord - BNSF, Ft. Worth
Steve Searle - UP, Ft. Worth

ATTACHMENT F

Rail BUSINESS

Volume 4 No. 41 October 19, 1998

FRA, Wall Street: Working On The Railroads?

Jolene Molitoris traveled to New York at the beginning of this month. But FRA's administrator wasn't in the Big Apple to catch the sights — she was there to meet with Wall Street rail analysts. And her purpose, said a Capitol Hill source who received corroborative accounts from two reliable industry insiders, was "to convince analysts to [make railroads] adopt a Positive Train Control system."

By FRA estimates, a nationwide PTC system would cost $500 million-$1 billion, said the Hill source. That's a billion dollars out of the railroads' pockets that couldn't help but trickle down to rates.

PTC is essentially a radio-based system of train location, operating commands and other data designed to prevent collisions, unsafe train speeds and to provide safeguards against potential human error. Human factors such as fatigue and the use of impairing substances caused roughly a third of reported train accidents in 1997, according to documents filed in an April hearing on FRA reauthorization.

Why is Molitoris courting Wall Street and hence leaning on the carriers? Recent history shows the FRA has served as a conduit for rail labor concerns, which often center on safety, the Hill source said. But such a massive undertaking is largely an "unfunded mandate" for which the federal government is unlikely to open its coffers, he added, and while railroads are amenable to improving safety, they're skittish about paying for technology that may quickly become obsolete.

Bronx Shippers Get New Option

... see p.5

"[PTC] is going to have to be funded by the private sector railroads," the source said. "Nobody's going to hand them a check. [Molitoris] may have told Wall Street types to lean on the railroads for money to fund this." The source admitted he was troubled by Molitoris'

(continued on p.8)

OmniTRAX Out As Mexico Railway Operator

In a surprising move, **OmniTRAX Inc.** has bowed out as operating manager of Mexico's **Southeast Railway**, leaving the door wide open for an **IC**-led consortium to make a bid for the job. Careful readers will note that IC was in fact a bidder for the Southeast Railway concession, but lost out to **Grupo Tribasa** last summer (**RB** 7/6/98, p.5). If the bid is approved, IC will wind up working with one of its former competitors. And you thought keeping up with *Melrose Place* was tough.

OmniTRAX's retreat is a sure-fire eyebrow-raiser, and officials from the company aren't talking, but the firm's pull-out coincided with the appointment of Frantz Gunas as director general of the Southeast Railway. Insiders speculate that he and OmniTRAX didn't see eye to eye on certain aspects of the contract to manage the line.

Enter IC, which now heads up **Transci Logistics LLC**, a new consortium of shippers and other companies preparing a bid to

(continued on p.7)

This Week

Class Is

FRA doing the rounds on Wall Street 1

IC looks south after OmniTRAX bumped in Mexico 1

Railroads decide on Day One? 3

BNSF access worries unfounded 5

Hot Spots

UP: Lumber limping along, Mojave no mirage 2

Shortlines

Rejected by STB, South Orient cashes out 3

Shortlines looking overseas 4

Alameda Corridor rates receive OK 7

Business Development

Bronx rail link bolsters boxcar business 5

UP Service Update

Hurricane season hinders service efforts 6

U.S. methods have already had an impact, though, and not only on the bottom line. Case in point: Within the first year of operations in Brazil, Flohr said, railroad grade crossing accidents dropped by 70%. How? Simple things, apparently. "You will blow the darn horn at all freight crossings and leave the light on in the daytime," Flohr said. Personal injuries averaged 47/month before RailTex arrived. Within six months, that casualty list dropped to 5/month. "We gave them the tools normally given here," Flohr said. "Eyewear, hardhats, safety-toed shoes and proper tools."

BNSF: Open Sesame?

BNSF's quarterly report on UP-SP implementation (FB 10/12/98, p.1) stated that the Class I carrier was "awaiting advice from UP confirming BNSF's ability to access additional new customers locating along the trackage rights lines." But it doesn't appear BNSF will have much of a problem getting access and UP is wondering what all the fuss is about.

The shippers specified were **Quebecor Printing Corp.** (Fernley, Nev.), **Four Star Sugars** (El Paso, Texas), **RCA/Thompson Electronics** (Belen, Texas) and **Pilgrim's Pride** (Tenaha, Texas).

BNSF singled out Four Star Sugars in a footnote: "UP informally notified BNSF that UP will deny BNSF access to Four Star Sugars. BNSF will continue to pursue access to this facility, as it clearly is a 'new transload facility' to which BNSF should have access under the Settlement Agreement."

Four Star Sugars couldn't be reached for comment, but BNSF already has the green light to access all the new shippers, said UP's Mark Davis. "I talked to [our lawyers], and they told me that, as those facilities are new, they are covered under the Settlement Agreement, and so are therefore accessible to BNSF. They may be waiting for connections, but other than that, we don't have any reason that BNSF wouldn't have access."

A spokesman for Pilgrim's Pride confirmed that BNSF is already moving his product. "We're with Burlington Northern Santa Fe. Service has been okay," he added.

"I expect we'll get cleared for BNSF transport by early to mid-November," said a spokesman at Quebecor. He said he'd submitted a request for BNSF access in early September and mentioned a 45-day period of negotiation between the two Class Is. "We heard some scuttlebutt about haggling between the two, but nothing serious."

RCA couldn't comment by press time.

Upside Overseas?

Despite the demanding service standards in Europe, McCarren expects WC to triple in value in 10 years. To get there, the railroad has committed to a "massive investment" which includes 280 new locomotives.

G&W had no international revenues in July 1997. Today, 40% of all company revenues come from overseas, Fuller said. "In terms of market growth potential, there is more upside because [foreign railroads] are not managed as well," he said.

And railroads aren't the only industry players that can profit from the upside potential overseas, said Flohr. He urged equipment vendors to become involved in the "tremendous [market] opportunities" in foreign countries.

Business Development

New Bronx Rail Link Opens Up Boxcar Biz

It may span only 1.9 miles, but TOFC (trailer-on-flatcar) and boxcar shippers in New York City's Bronx borough are cautiously optimistic that the new Oak Point rail freight link will be long on efficiencies and cost savings.

Built over a 20-year period by the **New York Department of Transportation**, the rail link, which will be served by **Conrail**, finally went into service last week. The line roughly parallels the Harlem River and allows Conrail to access its New York City freight yards without having to operate over a heavily-travelled section of track used by three **Metro North** commuter lines.

But more importantly for produce receivers and other intermodal customers in the area, Oak Point, with its full 17'6" clearance, will bring local land rail TOFC service to New York City for the first time. Other rail lines into the city have much lower clearances, so trailers had to be railed to Conrail's New Jersey terminals and then draved back into the Bronx. That required crossing the perpetually congested George Washington bridge – a time-consuming and costly maneuver all the way around, especially since a Jersey-New York dray can run anywhere from $200-300.

In theory, the new link sounds like a hands-down benefit for the **Hunt's Point Market**, a huge produce co-op in the Bronx. But will it work in the real world? "It depends; we'll be able to answer that question after we get the first shipment in," said Stephen D'Arrigo of **D'Arrigo Brothers Company of New York**, a produce receiving company. D'Arrigo is also chairman of the Hunt's Point Market traffic committee and VP of the co-op.

"If they can match the time that the TOFCs arrive in Jersey, and

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ATTACHMENT G

BNSF

PETER J. RICKERSHAUSER
Vice President UP/SP Lines & Mexico

Burlington Northern Santa Fe

2650 Lou Menk Drive
P.O. Box 961065
Fort Worth, TX 76161-0065
817 352-6686
Fax 817 352-7154

October 23, 1998

Mr. John Ransom
Senior Interline Marketing Officer
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

Subject: BNSF Access To Four Star Sugars New Transload Facility, El Paso, TX.

Dear John:

As you may be aware, Four Star Sugars has established a new transload facility at 250 Noble Street, El Paso, TX, adjacent to Union Pacific's route between El Paso and Sierra Blanca where Burlington Northern & Santa Fe has trackage rights, pursuant to the UP/SP settlement agreements and conditions, and alongside UP's former Southern Pacific Dallas Street Yard just northeast of downtown El Paso.

Early indications from you, as relayed by Bert Van Kampen to Ken Holmes of BNSF in August, 1997, indicated that BNSF would have access to this new facility.

However, when BNSF's AVP, Industrial Development, Skip Kalb, formally contacted his counterpart Charles Penner of Union Pacific, concerning BNSF access to this new facility, Mr. Penner informed Mr. Kalb access by BNSF to this facility would not be approved by UP. A copy of Mr. Penner's letter is attached.

I now read on page 5 of the October 19, 1998 "Rail Business" that UP's Mark Davis is quoted as stating BNSF would have access to the Four Star Sugars' facility in El Paso. A copy of that article is also attached.

BNSF's position is that BNSF should have access to this facility under the terms of the Chemical Manufacturers' Agreement, the BNSF Settlement Agreement, and conditions and decisions of the Surface Transportation Board Please provide a clarification from Union Pacific as to UP's position on BNSF access to this facility.

Sincerely,

Attachments

cc: F. E. Kalb, Jr., AVP-Industrial Development, BNSF
Charles F. Penner, Director Industrial Development, UP

102398.a

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ATTACHMENT H

UNION PACIFIC RAILROAD COMPANY

MARKETING & SALES

1416 DODGE STREET
OMAHA, NEBRASKA 68179

November 5, 1998

Mr. Peter J. Rickershauser
Vice President UP/SP Lines & Mexico
Burlington Northern Santa Fe
2650 Lou Menk Drive
Ft. Worth, TX 76161-0065

Re: Four Star Sugars New Facility; El Paso, TX

Dear Pete:

This is in response to your letter of October 23 in which you asked for a clarification of UP's position on BNSF access to Four Star Sugars at El Paso. As you properly noted, UP's position is clearly stated in Charlie Penner's letter of October 2 to Skip Kalb in response to his request concerning this matter. Also, I attach for your information an electronic message that Linda Gaeta sent on April 28, 1998 to Frank Colby advising him that the Four Star Sugars facility is not a new facility open to BNSF.

Our review of the facts indicates that this facility is not located along the trackage rights lines. It is served off an industrial lead on the opposite side of the yard from BNSF's trackage rights lines in this area. It cannot be construed as being along the trackage rights lines. Therefore, BNSF does not have access to this facility.

All of our responses to BNSF's inquiries have been consistent. I am sure BNSF is not relying on the news article that you referred to, which includes a partial quote attributed to a member of UP's Public Relations staff, as an indication that Union Pacific has changed its position which has been communicated directly in writing to BNSF on more than one occasion.

Sincerely,

John Ransom
Manager Interline Marketing

Attachment

To: Frank.Colby@BNSF.COM@Internet
cc: Edward.Pidgeon@BNSF.COM @ Internet, Regina.Minish@BNSF.COM @ Internet, Peter.Rickershauser1@BNSF.COM @ Internet, Helen A. Heller@UP, Robert B. Price@UP, John H. Ransom@UP, Larry E. Wzorek@UP, Kurt H. Schroeder@UP
Subject: Four Star Sugars (Magnolia Coca Cola) El Paso, TX

Frank, after running a thorough investigation, checking with all Departments and authorities responsible for determing trackage rights locations, it has been determined that Four Star Sugars is not located along the trackage rights line between El Paso and Sierra Blanca. We have placed Four Star Sugars in our 2-to-1 database as NOT a 2-to-1 shipper.

If you have any questions, please let me know.

Linda

---------- Forwarded by Linda M. Gaeta on 04/28/98 10:05 AM ----------

To: Robert B. Price
cc: " - (052)Colby, Frank" <Frank.Colby@BNSF.COM>, " - (052)Pidgeon, Edward" <Edward.Pidgeon@BNSF.COM>, "BNSF -PRICKER1 (052)" <Peter.Rickershauser1@BNSF.COM>, Susan M. Hulzenga, Linda M. Gaeta
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Bert advised that John Ransom's preliminary review of the new Magnolia Coca Cola facility indicates it is on the line running from El Paso to Sierra Blanca, TX and will probably be considered a 2:1 industry.

Magnolia has completed construction and named the business at this new location Four Star Sugars.

Please advise if the customer below qualifies as a 2-to-1 Shipper Facility and advise back.

Four Star Sugars
250 Noble Street
El Paso, TX

Per the 2-to-1 Protocol Requirements BNSF plans to serve this customer via UP haulage from El Paso.

Thanks

Frank

ATTACHMENT I

UNION PACIFIC RAILROAD COMPANY

PAUL A. CONLEY, JR.
ASSISTANT VICE PRESIDENT-LAW

1416 DODGE STREET
OMAHA, NEBRASKA 68179
(402) 271-4229
FAX (402) 271-5610

June 20, 1997

Via Fax and UPS Overnight

Richard E. Weicher, Esq.
General Counsel
The Atchison, Topeka &
Santa Fe Railway Company
1700 East Golf Road
Schaumburg, IL 60173

RE: UP/SP Merger - Third Supplemental Agreement

Dear Rick:

Enclosed is a draft Third Supplemental Agreement further amending the September 25, 1995 Settlement Agreement. As stated in the preamble to the Third Supplemental Agreement, it is intended to reflect changes to the Settlement Agreement ordered by the Surface Transportation Board in Decisions No. 44, 52, 61, and 72.

The following is a brief explanation of each Section of the Third Supplemental Agreement.

1. Amendment to Section 1. The deletion of the phrase "SP-owned" is intended to implement the expansion of BNSF's rights to serve new shipper facilities on any of the trackage rights lines rather than only those on lines formerly owned by SP.

   The definition of "new shipper facility" has been expanded to include new transload facilities. It also includes language from Larry Wzorek's last letter to Mike Roper regarding their discussions about the definition of "new shipper facility" in connection with negotiating the new shipper facility protocol.

   We have also added language specifying, as stated on page 11 and 12 of Decision No. 61, that disputes over the extent of the transload condition may be referred to the Board.

2. Amendment to Section 4. This amendment is intended to implement expanded rights to serve the Elmendorf plants. This language is somewhat different from the language the Board referred to in Decision No. 52, page 3. However, since the Board seemed to want to defer to our negotiations with Slover & Loftus on this issue, we do not think it will have any problem with this current treatment of the issue.

The other change is deletion of the "SP-owned" language.

3. Amendment to Section 5. Again, the "SP-owned" language has been deleted. I should note, that in footnote 8 to Decision 63, the Board suggested that West Lake should be one word, i.e., "Westlake," rather than two words. We do not agree with the Board, and will explain that the "Open and Prepay" shows Westlake as two words ("West Lake") as does our system map.

4. Amendment to Section 6. The "SP-owned" language has been deleted.

We have also added the enhanced interchange rights ordered by the Board in Decision No. 72 for access to TUE.

5. Amendment to Section 8. This section expands BNSF's right to serve plants accessed by a build-in/build-out as ordered by the Board in Decision 44. As called for on page 146 of Decision No. 44, we have also added language that disputes may be arbitrated or submitted to the Board.

6. Amendment to Section 9. This is more language necessary to comply with the expanded rights at Elmendorf.

7. Amendment to Exhibit A. Here again, the amendment is intended to reflect the expanded Elmendorf rights.

8. This section is simply intended to preserve the parties rights to further modify the Settlement Agreement pending the outcome of appeals.

Upon receipt of your comments, we can put the Third Supplemental Agreement in final form for execution. We will file both the Third Supplemental Agreement and a restated version of the entire Agreement on July 1. The restated version would incorporate in one document, which would not need to be executed by the parties, the changes resulting from all three supplemental agreements.

I think most of these changes are pretty straightforward, and I would appreciate your comments as soon as possible.

Very truly yours,

Enclosure

c: Arvid Roach
Mike Roper
Larry Wzorek

DRAFT - 06/20/97

THIRD SUPPLEMENTAL AGREEMENT

This Third Supplemental Agreement is entered into this _____ day of June, 1997, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation and its railroad affiliates (The Burlington and Santa Fe Railway Company and all of its railroad affiliates, and, where appropriate in the context, their predecessors, are hereinafter referred to collectively as "BNSF"), on the one hand, and UNION PACIFIC RAILROAD COMPANY, a Utah corporation ("UPRR"), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SP") and all of their railroad affiliates (UPRR, SP and all of their railroad affiliates, and where appropriate in the context, their predecessors, are hereinafter referred to collectively as "UP"), on the other hand.

BNSF and UP are parties to an agreement dated September 25, 1995, as supplemented by agreements dated November 18, 1995 and June 27, 1996 (the "Settlement Agreement").

The Settlement Agreement must be further modified in various minor respects to comply with changes since June 27, 1996, ordered by the Surface Transportation Board in Decisions No. 44, 52, 61, and 72 all entered in Finance Docket No. 32760.

In order to reflect the changes required by the Surface Transportation Board, the parties agree to the following further amendments to the Settlement Agreement:

1. **Amendment to Section 1.**

Section 1b is amended as follows:

- The phrase "SP-owned" is deleted from Subsection (iv).
- The last sentence of Section 1b is deleted and the following sentences are substituted in its place: "Also for purposes of this Agreement, 'new shipper facility' does not include expansion of or additions to an existing facility but does include (1) new transload facilities located after September 11, 1996, including those owned or operated by BNSF and (2) existing facilities constructing trackage for accessing rail services for the first time. 'Transload facilities' shall mean a rail transload facility as that term is used in the industry. Any such transload facility must have operating costs above

and beyond the costs that would be incurred in providing direct rail service. By way of example, BNSF would not be able to construct a truck transload facility adjacent to an exclusively served coal mine and then truck the coal a short distance (say 100 feet) from the mine to the facility. Notwithstanding the requirement in Section 15 of this Agreement that unresolved disputes and controversies be submitted for binding arbitration, disputes as to the proper scope of BNSF's rights to establish and/or serve transload facilities can be presented by the parties to the Surface Transportation Board for resolution."

2. **Amendment to Section 4.**

a) Section 4a shall be amended by deleting the sixth subparagraph and substituting the following subparagraphs in its place:

- UP's line between Craig Junction and SP Junction (Tower 112) via Track No. 2 through Fratt, Texas.
- SP's line between SP Junction (Tower 112) and Elmendorf, Texas.
- SP's line in San Antonio between SP Tower 105 and SP Junction (Tower 112)."

b) Section 4b shall be amended as follows:

- The following language shall be inserted in Subsection (i), after the word "Agreement": "and City Public Service Board of San Antonio, Texas Elmendorf facilities listed on Exhibit A to this Agreement,"
- The phrase "SP-owned" is deleted from Subsection (iv).

3. **Amendment to Section 5.**

Section 5b shall be amended by deleting the phrase "SP-owned" from Subsection (iv).

4. **Amendment to Section 6.**

a) Section 6c shall be amended by deleting the phrase "SP-owned" from Subsection (iv).

b) Section 6c shall be amended by adding the following language at its conclusion:

", and the right to interchange with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and (z) at Texarkana, TX/AR for movements of empty coal trains returning from Texas Utilities Electric Company's Martin Lake generating station."

5. **Amendment to Section 8.**

Section 8 is amended by adding a new Section "j)" and relettering Subsections 8j and 8k as Subsections 8k and 8l, respectively. New Subsection 8j shall read as follows:

"In addition to the right to serve build-in/build-out lines specified in Sections 4a and 5a, BNSF shall have the right to serve via a new build-in/build-out line constructed to reach a facility that was, prior to September 11, 1996, solely served by either UP or SP and would be open to two-railroad service upon construction of the build-in/build-out line (a) to a point on lines owned by SP on September 11, 1996, in the case of facilities solely served by UP, or (b) to a point on lines owned by UP on September 11, 1996, in the case of facilities solely served by SP. UP shall grant BNSF any trackage rights that may be necessary for BNSF to reach the point at which the build-in/build-out line connects with the line in question. Notwithstanding the requirement in Section 15 of this Agreement that unresolved disputes and controversies be submitted for binding arbitration, technical disputes with respect to the implementation of the right to serve build-in/build-out lines can be presented by the parties to the Surface Transportation Board for resolution."

6. **Amendment to Section 9.**

Section 9l shall be amended by adding the following language at its conclusion:

"BNSF shall also have the right, at City Public Service Board of San Antonio, TX' option, to connect for movement to and

from Elmendorf, TX, where BNSF's trackage rights granted pursuant to this Agreement intersect at SP Junction (Tower 112) with the existing trackage rights SP has granted to City Public Service Board of San Antonio, TX."

7. **Amendment to Exhibit A.**

In the Section captioned "Points Referred to in Section 4b" add after "San Antonio TX", "Elmendorf TX (CPSB facilities)."

8. The parties acknowledge that each is appealing certain aspects of Decision No. 44 (and related Decisions) decided by the Surface Transportation Board on August 6, 1996 in Finance Docket No. 32760 and that the terms of the Settlement Agreement, including the amendments made in this Third Supplemental Agreement, may need to be further amended to reflect any modifications in said Decision No. 44 resulting from the appeals.

IN WITNESS WHEREOF, the parties have caused this Third Supplemental Agreement to be fully executed as of the date first above written.

UNION PACIFIC RAILROAD COMPANY

By:_____
Title:_____

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By:_____
Title:_____

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By:_____
Title:_____

** TOTAL PAGE.007 **

ATTACHMENT J

UNION PACIFIC RAILROAD COMPANY

PAUL A. CONLEY, JR.
ASSISTANT VICE PRESIDENT-LAW

1416 DODGE STREET
OMAHA, NEBRASKA 68179
(402) 271-4229
FAX (402) 271-5610

June 24, 1997

Via Fax and UPS Overnight

Richard E. Weicher, Esq.
General Counsel
The Burlington Northern and
Santa Fe Railway Company
1700 East Golf Road
Schaumburg, IL 60173

RE: Amended and Restated Settlement Agreement

Dear Rick:

Enclosed is an Amended and Restated Settlement Agreement. It incorporates all three Supplements to the Agreement. I have highlighted the changes taken from the Third Supplemental Agreement which was forwarded to you on Friday. I believe this is what the Board had in mind when it ordered us in Decision No. 72 to "submit an updated version of the BNSF Agreement no later than July 1, 1997."

Sincerely,

Enclosure

c: Arvid Roach
Mike Roper
Larry Wzorek

[AMENDED AND RESTATED AS OF JUNE 26, 1997]

AGREEMENT

This Agreement ("Agreement") is entered into this 25th day of September, 1995, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), hereinafter collectively referred to as "BNSF", on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Interstate Commerce Commission ("ICC") in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company.

NOW, THEREFORE, in consideration of their mutual promises, UP/SP and BNSF agree as follows:

1. **Western Trackage Rights**

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

   - SP's line between Denver, Colorado and Salt Lake City, Utah;
   - UP's line between Salt Lake City, Utah and Ogden, Utah;
   - SP's line between Ogden, Utah and Little Mountain Utah;
   - UP's line between Salt Lake City, Utah and Alazon, Nevada;
   - UP's and SP's lines between Alazon and Weso, Nevada;

- SP's line between Weso, Nevada and Oakland, California via SP's line between Sacramento and Oakland referred to as the "Cal-P" (subject to traffic restrictions as set forth in Section 1g);
- SP's line between Elvas (Elvas Interlocking) and Stockton (subject to traffic restrictions as set forth in Section 1g and also excluding any trains moving over the line between Bieber and Keddie, CA to be purchased by BNSF pursuant to Section 2a of this Agreement);
- UP's line between Weso, Nevada and Stockton, California; and
- SP's line between Oakland and San Jose, California.

b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the lines listed in Section 1a (except the line between Elvas (Elvas Interlocking) and Stockton). BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also receive the right to interchange with the Nevada Northern at Shafter, NV; with the Utah Railway Company at the Utah Railway Junction, UT, Grand Junction, CO and Provo, UT; with the Utah Central Railway Company at Ogden, UT; and with the Salt Lake, Garfield and Western at Salt Lake City, UT. BNSF shall also receive the right to utilize in common with UP/SP, for normal and customary charges, SP's soda ash transload facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash transload facilities in Ogden and Salt Lake City and to establish its own soda ash

transload facilities along the trackage rights granted under this section. For purposes of this Agreement, "2-to-1 shipper facilities" shall mean all industries that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the Agreement was executed, regardless of how long ago a shipper may have shipped, or whether a shipper ever shipped, any traffic via either UP or SP. [redacted]

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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. Where switching districts have been established they shall be presumed to establish these geographic limitations.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement,

using a third party contractor to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of this facility is required to accommodate the combined needs of UP/SP and BNSF, then the parties shall share in the cost of such expansion on a pro rata basis allocated on the basis of the relative number of lifts for each party in the 12-month period preceding the date construction begins.

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

g) On SP's line between Weso and Oakland via the "Cal-P," BNSF shall be entitled to move only (i) intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one manifest train/day in each direction. Intermodal trains are comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration. Manifest trains shall be carload business and shall be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP trains. Helpers shall not be used unless comparable UP/SP manifest trains use helpers in which case BNSF trains may be operated in the same fashion provided that BNSF furnishes the necessary helper service. BNSF may also utilize the "Cal-P" for one manifest train per day moving to or from Oakland via Keddie and Bieber; provided, however, that BNSF may only operate one manifest train/day in each direction via the "Cal-P" regardless of where the train originates or terminates. The requirement to use helpers does not apply to movement over the "Cal-P."

h) At BNSF's request, UP/SP shall provide train and engine crews and required support personnel and services in accordance with UP/SP's operating practices necessary to handle BNSF trains moving between Salt Lake City and Oakland. UP/SP shall be reimbursed for providing such employees on a cost plus reasonable additives basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense. BNSF must also give UP/SP

reasonable advance notice of its need for employees in order to allow UP/SP time to have adequate trained crews available. All UP/SP employees engaged in or connected with the operation of BNSF's trains shall, solely for purposes of standard joint facility liability, be deemed to be "sole employees" of BNSF. If UP/SP adds to its labor force to comply with a request or requests from BNSF to provide employees, then BNSF shall be responsible for any labor protection, guarantees or reserve board payments for such incremental employees resulting from any change in BNSF operations or traffic levels.

i) UP/SP agree that their affiliate Central California Traction Company shall be managed and operated so as to provide non-discriminatory access to industries on its line on the same and no less favorable basis as provided UP and SP.

j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF if UP/SP subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost at such time as BNSF begins to use the line for domestic high cube double stacks.

k) BNSF agrees to waive its right under Section 9 of the Agreement dated April 13, 1995, and agreements implementing that agreement to renegotiate certain compensation terms of such agreement in the event of a merger, consolidation or common control of SP by UP. BNSF also agrees to waive any restrictions on assignment in the 1990 BN-SP agreement covering trackage rights between Kansas City and Chicago.

2. **I-5 Corridor**

a) UP/SP shall sell to BNSF UP's line between Bieber and Keddie, California. UP/SP shall retain the right to use the portion of this line between MP 0 and MP 2 for the purpose of turning equipment. UP/SP shall pay BNSF a normal and customary trackage rights charge for this right.

b) BNSF shall grant UP/SP overhead trackage rights on BN's line between Chemult and Bend, Oregon for rail traffic of all kinds, carload and intermodal, for all commodities.

c) The parties will, under the procedures established in Section 9f of this Agreement, establish a proportional rate agreement incorporating the terms of the "Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor" attached hereto as Exhibit B.

3. **Southern California Access**

a) UP/SP shall grant access to BNSF to serve all "2-to-1" shipper facilities in Southern California at the points listed on Exhibit A to this Agreement.

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

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

d) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, and (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP). BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement.

e) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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. Where switching districts have been established, they shall be presumed to establish these geographic limitations.

f) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow and Mojave, California for rail traffic of all kinds, carload and intermodal for all commodities.

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

h) Forty five (45) days before initiating service to a customer pursuant to Sections 3a and 3b, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

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

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

- UP's line between Ajax and San Antonio;
- UP's line between Houston (Algoa) and Brownsville (with parity and equal access to the Mexican border crossing at Brownsville);
- UP's line between Odem and Corpus Christi;
- UP's line between Ajax and Sealy;

- SP's line between San Antonio and Eagle Pass (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Craig Junction and SP Junction (Lower 1/2) via Track No. 2 through Ennis, Texas;
- SP's line between SP Junction (Lower 1/2) and Ennis/Bardwell, Texas;
- SP's line in San Antonio between SP Junction (Lower 1/2) and SP Junction (Lower 1/2);
- SP's Port Lavaca Branch, between Placedo, TX, and Port Lavaca, TX, for the sole purpose of reaching a point of build-in/build-out to/from Union Carbide Corporation's ("UCC") facility at North Seadrift, TX. UP/SP shall permit BN/Santa Fe or UCC to construct and connect to the Port Lavaca Branch, at their expense, a build-in/build-out line. BN/Santa Fe or UCC shall have the right to purchase for net liquidation value all or any part of the Port Lavaca Branch that UP/SP may abandon;
- UP's line between Kerr (connection to Georgetown RR) and Taylor;
- UP's line between Temple and Waco;
- UP's line between Temple and Taylor;
- UP's line between Taylor and Smithville; and
- SP's line between El Paso and Sierra Blanca.

b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement and City Public Service Board of San Antonio, Texas Elmendorf facilities listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the

Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the lines listed in Section 4a. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also have the right to interchange with (w) the Tex-Mex Railway at Corpus Christi and Robstown, (x) the Georgetown Railroad at Kerr, (y) the FNM at Brownsville (Matamoros, Mexico) and Eagle Pass, and (z) at Elgin, the operator of SP's former line between Giddings and Llano should service be reinstituted on that line to Elgin. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP has currently. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the FNM. BNSF shall have the right to purchase for fair market value a yard at Brownsville to support trackage rights operations.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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. Where switching districts have been established they shall be presumed to establish these geographic limitations.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that

BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

e) The trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

f) In lieu of BNSF's conducting actual trackage rights operations between Houston, Corpus Christi, Harlingen and Brownsville (including FNM interchange), UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8j of this Agreement. UP/SP shall accept, handle, switch and deliver traffic moving under haulage without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/SP's account.

g) UP/SP shall sell to BNSF UP's line between Dallas and Waxahachie with UP retaining trackage rights to exclusively serve local industries on the Dallas-Waxahachie line.

h) Upon the effectiveness of the trackage rights to Eagle Pass under this section, BNSF's right to obtain haulage services from UP/SP to and from Eagle Pass pursuant to the agreement between BNSF and SP dated April 13, 1995 and subsequent haulage agreement between those parties shall no longer apply, provided BNSF shall continue to have the right to use trackage at or near Eagle Pass as specified in that agreement for use in connection with trackage rights under this Agreement.

5. **Eastern Texas - Louisiana Trackage Rights and Purchase**

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

- SP's line between Houston, Texas and Iowa Junction in Louisiana;
- SP's line between Dayton, Texas and Baytown, Texas;
- SP's Channelview Spur which connects to the SP's line between Houston, TX and Iowa Junction, LA near Sheldon, TX for the sole purpose of reaching a point of build-in/build-out to/from the facilities of Lyondell Petrochemical Company and Arco Chemical Company at Channelview, TX. UP/SP shall permit BN/Santa Fe or one or both shippers to construct and connect to SP's Channelview Spur, at their expense, a build-in/build-out line. BN/Santa Fe or

the shippers shall have the right to purchase for net liquidation value all or any part of the Channelview Spur that UP/SP may abandon;

- SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97);
- UP's Main Line No. 1 from UP MP 14.29 to MP 14.11 including crossover to SP's main line and UP's MP 10.38 to MP 10.2; and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, Louisiana intermodal facility (approximately UP MP 9.2).

b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the lines listed in Section 5a. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles and West Lake, LA, and traffic of shippers open to SP and KCS at West Lake Charles, LA; the foregoing rights at Lake Charles, West Lake, and West Lake Charles, LA shall be limited to traffic (x) to, from and via New Orleans, and (y) to and from points in Mexico, with routings via Eagle Pass, Laredo (through interchange with Tex-Mex at Corpus Christi or Robstown), or Brownsville, TX. In addition to all other charges to be paid by BNSF to UP/SP herein, at West Lake and West Lake Charles, BNSF shall also be required to pay a fee to UP/SP equal to the fee that UP pays KCS as of the date of this Agreement to access the traffic at West Lake, adjusted upwards

or downwards in accordance with Section 12 of this Agreement. BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switching, or (iii) with UP/SP's prior agreement, through use of a third party to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

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

f) Trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

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

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

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

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

- SP's line between Houston, Texas and Fair Oaks, Arkansas via Cleveland and Pine Bluff;

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

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

c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the lines listed in Section 6a (except the line between Fair Oaks, AR and Illmo, MO). Except as provided in Section 9l of this Agreement, BNSF shall not have the right to enter or exit at intermediate points on UP's and SP's lines between Memphis and Valley Junction, IL. Traffic to be handled over the UP and SP lines between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6c" may also be handled over these lines. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA

(BEA 55), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via its trackage rights over either the UP line or the SP line, at its discretion, for operating convenience. BNSF shall also have the right to interchange with the Little Rock and Western Railway at Little Rock and the Little Rock Port Authority at Little Rock [redacted].

d) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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. Where switching districts have been established they shall be presumed to establish these geographic limitations.

e) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

f) The trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

g) BNSF shall grant to UP/SP overhead trackage rights on BN's line between West Memphis and Presley Junction. UP/SP shall be responsible for upgrading this line as necessary for its use. If BNSF uses this line for overhead purposes to connect its line to the trackage rights lines, BNSF shall share in one-half of the upgrading cost.

7. **St. Louis Area Coordinations**

a) UP/SP agree to cooperate with BNSF to facilitate efficient access by BNSF to other carriers at and through St. Louis via The Alton & Southern Railway Company (A&S). If BNSF requests, UP/SP agree to construct or cause to be constructed for the use of both BNSF and UP/SP a faster connection between the BN and UP lines at Grand Avenue and a third track from Grand Avenue to near Gratiot Street Tower at the sole cost and expense of BNSF. Upon completion of such construction, UP/SP shall grant to BNSF overhead trackage rights on UP's line between Grand Avenue and Gratiot Street.

b) UP wishes to secure dispatching authority for the MacArthur Bridge across the Mississippi River at St. Louis. Dispatching is currently controlled by the Terminal Railroad Association of St. Louis (TRRA). BNSF agrees that it will cause its interest on the TRRA Board or any shares it owns in the TRRA, to be voted in favor of transferring dispatching control of the MacArthur Bridge to UP if such matter is presented to the TRRA Board or its shareholders for action. Such dispatching shall be performed in a manner to ensure that all users are treated equally.

c) If BNSF desires to use the A&S Gateway Yard, upon transfer of MacArthur Bridge dispatching to UP, UP/SP shall assure that charges assessed by the A&S to BNSF for use of Gateway Yard are equivalent to those assessed other non-owners of A&S.

d) UP/SP and BNSF agree to provide each other reciprocal detour rights between Bridge Junction-West Memphis and St. Louis in the event of flooding, subject to the availability of sufficient capacity to accommodate the detour.

8. **Additional Rights**

a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, California for rail traffic of all kinds, carload and intermodal, for all commodities to enable BNSF to connect via SP's line with the Oakland Terminal Railroad ("OTR") and to access the

Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built. BNSF shall pay 50% of the cost (up to $2,000,000 maximum) for upgrading to mainline standards and reverse signaling of SP's No. 1 track between Emeryville (MP 8) and Stege (MP 13.1). Compensation for these trackage rights shall be at the rate of 3.48 mills per ton mile for business moving in the "I-5 Corridor" and 3.1 mills per ton mile on all other carload and intermodal business and 3.0 mills per ton mile for bulk business escalated in accordance with the provisions of Section 12 of this Agreement. UP/SP shall assess no additional charges against BNSF for access to the JIT and the OTR.

b) BNSF shall waive any payment by UP/SP of the Seattle Terminal 5 access charge.

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

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

e) BNSF shall waive SP's requirement to pay any portion of the Tehachapi tunnels clearance improvements pursuant to the 1993 Agreement between Santa Fe and SP.

f) BNSF shall allow UP to exercise its rights to use the Hyundai lead at Portland Terminal 6 without any contribution to the cost of constructing such lead.

g) BNSF shall allow UP/SP to enter or exit SP's Chicago-Kansas City-Hutchinson trackage rights at Buda, Earlville, and west of Edelstein, Illinois. UP/SP shall be responsible for the cost of any connections required.

h) BNSF will amend the agreement dated April 13, 1995, between BNSF and SP to allow UP/SP to enter and exit Santa Fe's line solely for the purposes of permitting UP/SP or its agent to pick up and set out interchange business, including reciprocal switch business at Newton, Kansas, and switching UP industry at that point.

i) It is the intent of the parties that this Agreement result in the preservation of service by two competing railroad companies for all customers listed on Exhibit A to this Agreement presently served by both UP and SP and no other railroad (2-to-1 customers).

The parties recognize that some 2-to-1 customers will not be able to avail themselves of BNSF service by virtue of the trackage rights and line sales contemplated by this Agreement. For example, 2-to-1 customers located at points between Niles Junction and the end of the joint track near Midway (including Livermore, CA, Pleasanton, CA, Radum, CA, and Trevarno, CA), Lyoth, CA, Lathrop, CA, Turlock, CA, South Gate, CA, Tyler, TX, Defense, TX, College Station, TX, Great Southwest, TX, Victoria, TX, Sugar Land, TX, points on the former Galveston, Houston & Henderson Railroad served only by UP and SP, Opelousas, LA, and Herington, KS, are not accessible under the trackage rights and line sales covered by this Agreement. Accordingly, UP/SP and BNSF agree to enter into arrangements under which, through trackage rights, haulage, ratemaking authority or other mutually acceptable means, BNSF will be able to provide competitive service to 2-to-1 customers at the foregoing points and to any 2-to-1 customers who are not located at points expressly referred to in this Agreement or Exhibit A to this Agreement.

BNSF shall have the right to interchange with any short-line railroad which, prior to the date of this Agreement could interchange with both UP and SP and no other railroad.

j) In addition to the right to serve build-in/build-out lines specified in Sections 4a and 5a, BNSF shall have the right to serve, via a new build-in/build-out line constructed pursuant to the right that was, prior to September 11, 1996, only served by either UP or SP and would be open to two-railroad service upon construction of the build-in/build-out line: (1) to a point on lines owned by SP on September 11, 1996, in the case of facilities solely served by SP; (2) to a point on lines owned by UP on September 11, 1996, in the case of facilities solely served by UP; and shall grant BNSF any trackage rights that may be necessary for BNSF to reach the point at which the build-in/build-out line connects with the line in question. Notwithstanding the requirement in Section 16 of this Agreement that unresolved disputes and controversies be submitted for binding arbitration, technical disputes with respect to the implementation of the right to serve build-in/build-out lines can be presented by the parties to the Surface Transportation Board for resolution.

k) Where this Agreement authorizes BNSF to utilize haulage to provide service the fee for such haulage shall be $.50 per car mile plus a handling charge to cover handling at the haulage junction with BNSF and to or from a connecting railroad or third party contract switcher. The

handling charge shall be $50 per loaded or empty car for intermodal and carload and $25 per loaded or empty car for unit trains with unit train defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee. UP/SP shall bill BNSF the $50 per car handling charge for all cars and, upon receipt of appropriate documentation from BNSF demonstrating that business assessed the $50 per car handling fee was a unit train, adjust prior billings by $25 per car for each car BNSF demonstrates to have been eligible for the $25 per car handling charge for unit trains. Where UP/SP is providing reciprocal switching services to BNSF at "2-to-1" facilities as provided for in Section 9h of this Agreement, the per car handling charge shall not be assessed at the point where such reciprocal switch charge is assessed. The haulage fee and handling charge shall be adjusted upwards or downwards in accordance with Section 12 of this Agreement.

i) In the event, for any reason, any of the trackage rights granted under this Agreement cannot be implemented because of the lack of sufficient legal authority to carry out such grant, then UP/SP shall be obligated to provide an alternative route or routes, or means of access of commercially equivalent utility at the same level of cost to BNSF as would have been provided by the originally contemplated rights.

9. **Trackage Rights - General Provisions**

a) The compensation for operations under this Agreement shall be set at the levels shown in the following table:

Table I
Trackage Rights Compensation
(mills per ton-mile)

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

These rates shall apply to all equipment moving in a train consist including locomotives. The rates shall be escalated in accordance with the procedures described in Section 12 of this Agreement. The owning line shall be responsible for maintenance of its line in the ordinary course including rail

relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by such owning line under this Agreement.

b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

c) Capital expenditures on the lines over which BNSF has been granted trackage rights pursuant to this Agreement (the trackage rights lines) will be handled as follows:

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

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

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

(iv) BNSF and UP/SP agree that a capital reserve fund of $25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent which will not unreasonably be withheld, be drawn down to pay for capital projects

on the trackage rights lines that are required to accommodate the operations of both UP/SP and BNSF on those lines, but in any event shall not be used for expenditures covered by subparagraph (i) above. Any disputes over whether a project is required to accommodate the operation of both parties shall be referred to binding arbitration under Section 15 of this Agreement.

(v) If both UP/SP and BNSF intend to serve new shipper facilities or future transloading facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1b, 4b, 5b, and 6c, they shall share equally in any capital investment necessary to provide rail service to such new shipper facility. If only one railroad initially provides such service, the other railroad may elect to provide service at a later date, but only after paying to the railroad initially providing such service 50% of any capital investment (including per annum interest thereon) made by the railroad initially providing rail service to the new shipper facility. Per annum interest shall be at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by the other railroad commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points more or less than the prior year's interest rate.

d) The management and operation of the trackage rights line shall be under the exclusive direction and control of the owning carrier. The owning carrier shall have the unrestricted power to change the management and operations on and over joint trackage as in its judgement may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing joint

trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier.

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

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

f) The trackage rights grants described in this Agreement, and the purchase and sale of line segments shall be included in separate trackage rights and line sale agreement documents respectively of the kind and containing such provisions as are normally and customarily utilized by the parties, including exhibits depicting specific rail line segments, and other provisions dealing with maintenance, improvements, and liability, subject to more specific provisions described for each grant and sale contained in this Agreement and the general provisions described in this section. BNSF and UP/SP shall elect which of their constituent railroads shall be a party to each such trackage rights agreement and line sale and shall have the right to assign the agreement among their constituent railroads. The parties shall use their best efforts to complete such agreements by June 1, 1996. If agreement is not reached by June 1, 1996 either party may request that any outstanding matters be resolved by binding arbitration with the arbitration proceeding to be completed within sixty (60) days of its institution. In the event such agreements are not completed by the date the grants of such

trackage rights are to be effective, it is intended that operations under such grants shall be commenced and governed by this Agreement.

g) All locations referenced herein shall be deemed to include all areas within the present designated switching limits of the location, and access to such locations shall include the right to locate and serve new auto and intermodal facilities at such locations and to build yards or other facilities to support trackage rights operations.

h) If requested by BNSF, UP/SP will provide to BNSF reciprocal switching services at "2-to-1" shipper facilities covered in this Agreement at a rate of no more than $130 per car adjusted pursuant to Section 12 of this Agreement.

i) It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities to handle such local traffic. These locations include Salt Lake City, Ogden, Brownsville and San Antonio, and other locations where such volume develops. Facilities or portions thereof presently utilized by UP or SP at such locations shall be acquired from UP/SP by lease or purchase at normal and customary charges. Upon request of BNSF and subject to availability and capacity, UP/SP shall provide BNSF with terminal support services including fueling, running repairs and switching. UP/SP shall also provide intermodal terminal services at Salt Lake City, Reno, and San Antonio. UP/SP shall be reimbursed for such services at UP's normal and customary charges. Where terminal support services are not required, BNSF shall not be assessed additional charges for train movements through a terminal. BNSF shall also have equal access along with UP/SP, on economic terms no less favorable than the terms of UP/SP's access, to the existing storage in transit ("SIT") facility at Dayton, TX. UP/SP agree to work with BNSF to locate additional SIT facilities on the trackage rights lines as necessary.

j) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the trackage rights lines.

k) BNSF shall have the right to inspect the UP and SP lines over which it obtains trackage rights under this agreement and require UP/SP to make such improvements under this section as BNSF deems necessary to facilitate its operations at BNSF's sole expense. Any such

inspection must be completed and improvements identified to UP/SP within one year of the effectiveness of the trackage rights.

l) BNSF shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines it will purchase or be granted trackage rights over pursuant to this Agreement. UP/SP shall have the right to connect, for movement in any direction, with its present lines (including trackage rights) at points where its present lines (including trackage rights) intersect with lines it will be granted trackage rights over pursuant to this Agreement. BNSF shall also have the right at Public Service Board of San Antonio, TX junction to connect for movement to and from Edmendorf, TX where BNSF's trackage rights granted pursuant to this Agreement intersect at SP Junction (Lowes 112) with the existing trackage rights SP has granted to Public Service Board of San Antonio, TX.

10. **Compensation for Sale of Line Segments**

a) BNSF shall pay UP/SP the following amounts for the lines it is purchasing pursuant to this Agreement:

Line Segment	Purchase Price
Keddie-Bieber	$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego intermodal yard; SP's Avondale "New" yard; and SP's Lafayette yard)	100 million

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

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

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

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

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

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

(vi) removal by 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:_____

[AMENDED AND RESTATED AS OF JUNE 26, 1997]

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
[redacted]
Halsted TX (LCRA plant)
Waco TX
Points on Sierra Blanca-El Paso line

Points Referred to in Section 5b

Baytown TX
Amelia 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 propertional rate.

Third Party Consultant

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

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

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

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

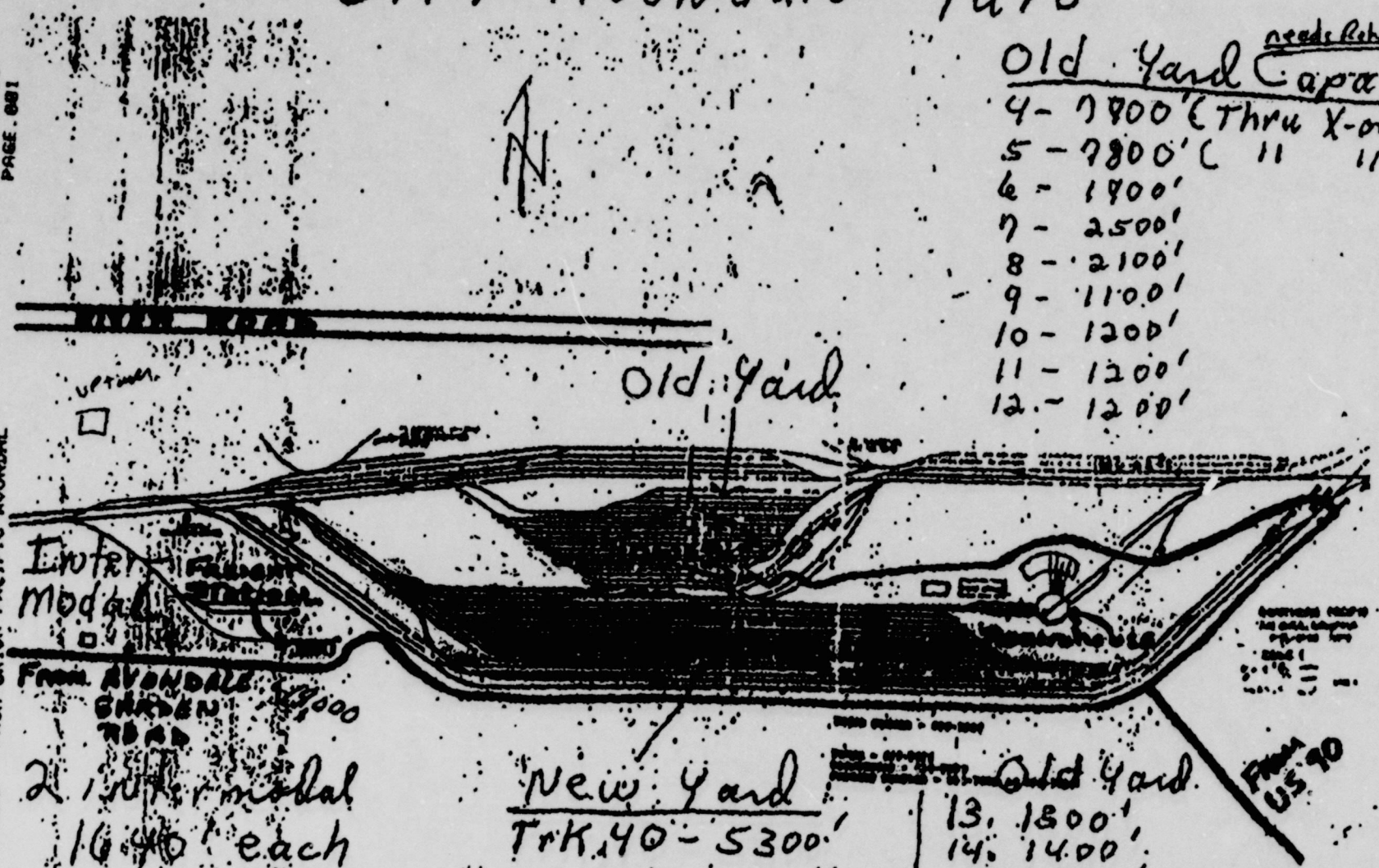
$$\frac{\sum(1) \times (4)}{\frac{(2) \times (3)}{\sum(4)}} \text{ (for all moves)}$$

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

B. Compute BNSF Division on a Specific Move

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

S.P. Avondale Yard



Old Yard Capacity

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

New Yard

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

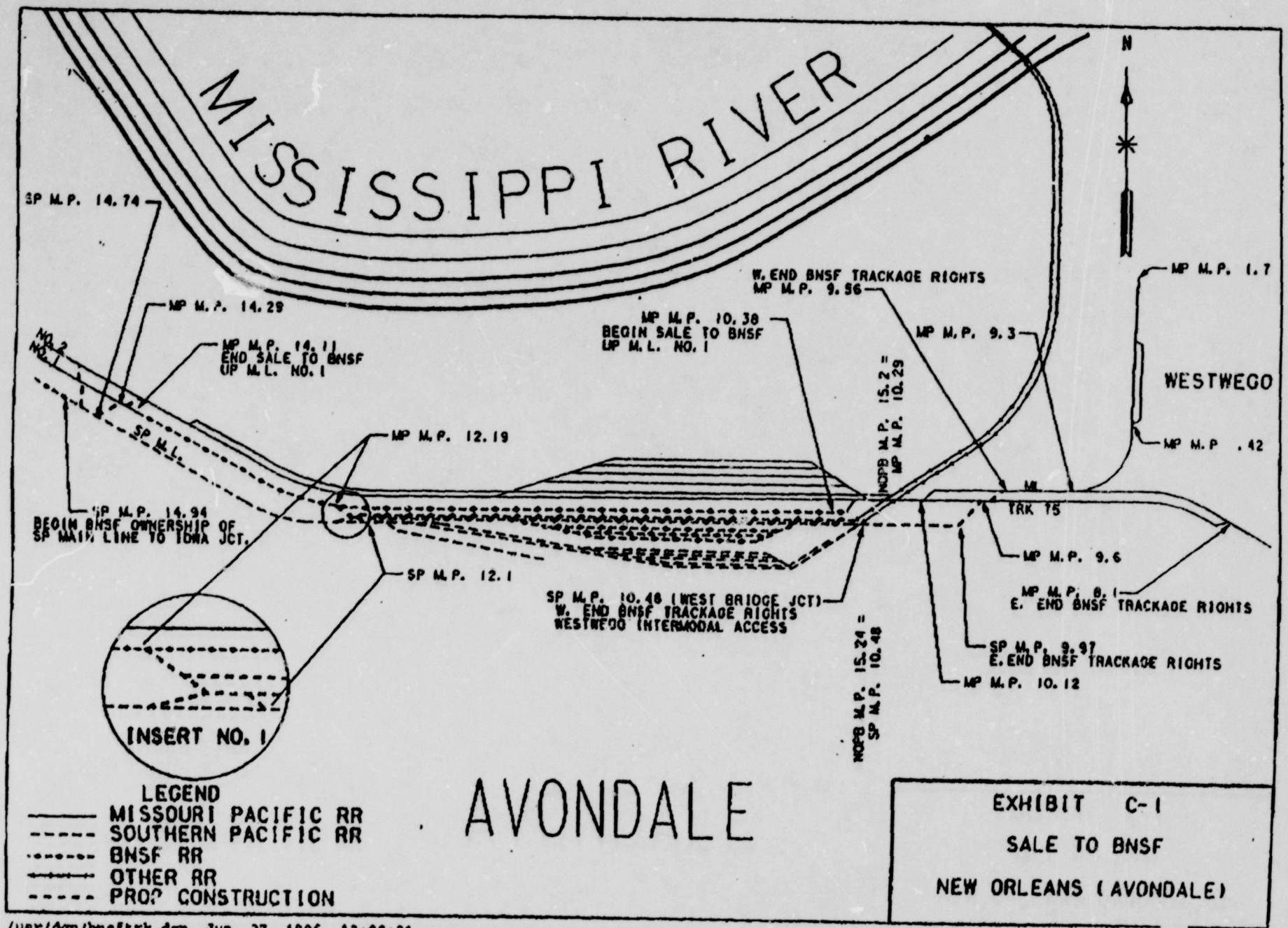
Old Yard

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

Not to scale not entirely accurate

EXHIBIT C

SEP 24 '93 9:22 FROM UNION PACIFIC AVONDAL P.01/01 PAGE.001
TOTAL PAGE.001
TOTAL PAGE.001
P.37/38



/usr/dgn/bnsftrk.dgn Jun. 27, 1996 13:08:21

** TOTAL PAGE.038 **

ATTACHMENT K

[AMENDED AND RESTATED AS OF JUNE 30, 1997]

AGREEMENT

This Agreement ("Agreement") is entered into this 25th day of September, 1995, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), hereinafter collectively referred to as "BNSF", on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Interstate Commerce Commission ("ICC") in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company.

NOW, THEREFORE, in consideration of their mutual promises, UP/SP and BNSF agree as follows:

1. **Western Trackage Rights**

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

   - SP's line between Denver, Colorado and Salt Lake City, Utah;
   - UP's line between Salt Lake City, Utah and Ogden, Utah;
   - SP's line between Ogden, Utah and Little Mountain Utah;
   - UP's line between Salt Lake City, Utah and Alazon, Nevada;
   - UP's and SP's lines between Alazon and Weso, Nevada;

- SP's line between Weso, Nevada and Oakland, California via SP's line between Sacramento and Oakland referred to as the "Cal-P" (subject to traffic restrictions as set forth in Section 1g);
- SP's line between Elvas (Elvas Interlocking) and Stockton (subject to traffic restrictions as set forth in Section 1g and also excluding any trains moving over the line between Bieber and Keddie, CA to be purchased by BNSF pursuant to Section 2a of this Agreement);
- UP's line between Weso, Nevada and Stockton, California; and
- SP's line between Oakland and San Jose, California.

b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement and at points other than those listed on Exhibit A on the lines (except the line between Elvas (Elvas Interlocking) and Stockton) listed in Section 1a, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a new shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the lines (except the line between Elvas (Elvas Interlocking) and Stockton) listed in Section 1a (including but not limited to situations where, when the Agreement was signed, a new shipper facility was being developed or land had been acquired for that purpose with the contemplation of reserving rail service by both UP and SP). BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also receive the right to interchange with the Nevada Northern at Shafter, NV; with the Utah Railway Company at the Utah Railway Junction, UT, Grand Junction, CO and Provo, UT; with the Utah Central Railway Company at Ogden, UT; and with the Salt Lake, Garfield and Western at Salt Lake City, UT. BNSF shall also receive the right to utilize

in common with UP/SP, for normal and customary charges. SP's soda ash transload facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash transload facilities in Ogden and Salt Lake City and to establish its own soda ash transload facilities along the trackage rights granted under this section. For purposes of this Agreement, "2-to-1 shipper facilities" shall mean all industries that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the Agreement was executed, regardless of how long ago a shipper may have shipped, or whether a shipper ever shipped, any traffic via either UP or SP. Also for purposes of this Agreement, "new shipper facility" does not include expansion of or addition to an existing facility but does include (1) transload facilities which, when the Agreement was signed, were being developed or land had been acquired for that purpose, (2) new transload facilities located after September 11, 1996, including those owned or operated by BNSF, and (3) existing facilities constructing trackage for accessing rail services for the first time. "Transload facilities" shall mean a rail transload facility as that term is used in the industry and shall include product transfers involving trucks, barges and intermodal containers and product transfers between rail cars as well as new transload technologies that may be developed in the future. Any such transload facility must have operating costs above and beyond the costs that would be incurred in providing direct rail service. By way of example, BNSF would not be able to construct a truck transload facility adjacent to an exclusively served coal mine and then truck the coal a short distance (say 100 feet) from the mine to the facility. Notwithstanding the requirement in Section 15 of this Agreement that unresolved disputes and controversies be submitted for binding arbitration, disputes as to the proper scope of BNSF's rights to serve new shipper facilities or to establish and/or serve transload facilities can be presented by the parties to the Surface Transportation Board for resolution.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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. Where switching districts have been established they shall be presumed to establish these geographic limitations.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election: provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of this facility is required to accommodate the combined needs of UP/SP and BNSF, then the parties shall share in the cost of such expansion on a pro rata basis allocated on the basis of the relative number of lifts for each party in the 12-month period preceding the date construction begins.

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

g) On SP's line between Weso and Oakland via the "Cal-P," BNSF shall be entitled to move only (i) intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one manifest train/day in each direction. Intermodal trains are comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration. Manifest trains shall be carload business and shall be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP trains. Helpers shall not be used unless comparable UP/SP manifest trains use helpers in which case BNSF trains may be operated in the same fashion provided that BNSF furnishes the necessary helper service. BNSF may also utilize the "Cal-P" for one manifest train per day moving to or from Oakland via Keddie and Bieber: provided, however, that BNSF may only operate one manifest train/day in each direction via the "Cal-P" regardless of where the train originates or terminates. The requirement to use helpers does not apply to movement over the "Cal-P."

h) At BNSF's request, UP/SP shall provide train and engine crews and required support personnel and services in accordance with UP/SP's operating practices necessary to handle BNSF trains moving between Salt Lake City and Oakland. UP/SP shall be reimbursed for providing such employees on a cost plus reasonable additives basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense. BNSF must also give UP/SP reasonable advance notice of its need for employees in order to allow UP/SP time to have adequate trained crews available. All UP/SP employees engaged in or connected with the operation of BNSF's trains shall, solely for purposes of standard joint facility liability, be deemed to be "sole employees" of BNSF. If UP/SP adds to its labor force to comply with a request or requests from BNSF to provide employees, then BNSF shall be responsible for any labor protection, guarantees or reserve board payments for such incremental employees resulting from any change in BNSF operations or traffic levels.

i) UP/SP agree that their affiliate Central California Traction Company shall be managed and operated so as to provide non-discriminatory access to industries on its line on the same and no less favorable basis as provided UP and SP.

j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF if UP/SP subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost at such time as BNSF begins to use the line for domestic high cube double stacks.

k) BNSF agrees to waive its right under Section 9 of the Agreement dated April 13, 1995, and agreements implementing that agreement to renegotiate certain compensation terms of such agreement in the event of a merger, consolidation or common control of SP by UP. BNSF also agrees to waive any restrictions on assignment in the 1990 BN-SP agreement covering trackage rights between Kansas City and Chicago.

2. **I-5 Corridor**

a) UP/SP shall sell to BNSF UP's line between Bieber and Keddie, California. UP/SP shall retain the right to use the portion of this line between MP 0 and MP 2 for the purpose of turning equipment. UP/SP shall pay BNSF a normal and customary trackage rights charge for this right.

b) BNSF shall grant UP/SP overhead trackage rights on BN's line between Chemult and Bend, Oregon for rail traffic of all kinds, carload and intermodal, for all commodities.

c) The parties will, under the procedures established in Section 9f of this Agreement, establish a proportional rate agreement incorporating the terms of the "Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor"attached hereto as Exhibit B.

3. **Southern California Access**

a) UP/SP shall grant access to BNSF to serve all "2-to-1" shipper facilities in Southern California at the points listed on Exhibit A to this Agreement.

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

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

d) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, and (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP). BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement.

e) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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. Where switching districts have been established, they shall be presumed to establish these geographic limitations.

f) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow and Mojave, California for rail traffic of all kinds, carload and intermodal for all commodities.

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

h) Forty five (45) days before initiating service to a customer pursuant to Sections 3a and 3b, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

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

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

- UP's line between Ajax and San Antonio;
- UP's line between Houston (Algoa) and Brownsville (with parity and equal access to the Mexican border crossing at Brownsville);
- UP's line between Odem and Corpus Christi;
- UP's line between Ajax and Sealy;
- SP's line between San Antonio and Eagle Pass (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Craig Junction and SP Junction (Tower 112) via Track No. 2 through Fratt, Texas;
- SP's line between SP Junction (Tower 112) and Elmendorf, Texas;
- SP's line in San Antonio between SP Tower 105 and SP Junction (Tower 112);
- SP's Port Lavaca Branch, between Placedo, TX, and Port Lavaca, TX, for the sole purpose of reaching a point of build-in/build-out to/from Union Carbide Corporation's ("UCC") facility at North Seadrift, TX. UP/SP shall permit BN/Santa Fe or UCC to construct and connect to the Port Lavaca Branch, at their expense, a build-in/build-out line. BN/Santa Fe or UCC shall have the right to purchase for net liquidation value all or any part of the Port Lavaca Branch that UP/SP may abandon;
- UP's line between Kerr (connection to Georgetown RR) and Taylor;
- UP's line between Temple and Waco;
- UP's line between Temple and Taylor;
- UP's line between Taylor and Smithville; and
- SP's line between El Paso and Sierra Blanca.

b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement and

City Public Service Board of San Antonio. Texas Elmendorf facilities listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement and at points other than those listed on Exhibit A on the lines listed in Section 4a, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a new shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the lines listed in Section 4a (including, but not limited to situations where, when the Agreement was signed, a new shipper facility was being developed or land had been acquired for that purpose with the contemplation of receiving rail service by both UP and SP). BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also have the right to interchange with (w) the Tex-Mex Railway at Corpus Christi and Robstown, (x) the Georgetown Railroad at Kerr, (y) the FNM at Brownsville (Matamoros, Mexico) and Eagle Pass, and (z) at Elgin, the operator of SP's former line between Giddings and Llano should service be reinstituted on that line to Elgin. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP has currently. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the FNM. BNSF shall have the right to purchase for fair market value a yard at Brownsville to support trackage rights operations.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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. Where

switching districts have been established they shall be presumed to establish these geographic limitations.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

e) The trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

f) In lieu of BNSF's conducting actual trackage rights operations between Houston, Corpus Christi, Harlingen and Brownsville (including FNM interchange), UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8j of this Agreement. UP/SP shall accept, handle, switch and deliver traffic moving under haulage without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/SP's account.

g) UP/SP shall sell to BNSF UP's line between Dallas and Waxahachie with UP retaining trackage rights to exclusively serve local industries on the Dallas-Waxahachie line.

h) Upon the effectiveness of the trackage rights to Eagle Pass under this section, BNSF's right to obtain haulage services from UP/SP to and from Eagle Pass pursuant to the agreement between BNSF and SP dated April 13, 1995 and subsequent haulage agreement between those parties shall no longer apply, provided BNSF shall continue to have the right to use trackage at or near Eagle Pass as specified in that agreement for use in connection with trackage rights under this Agreement.

5. **Eastern Texas - Louisiana Trackage Rights and Purchase**

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

- SP's line between Houston, Texas and Iowa Junction in Louisiana;
- SP's line between Dayton, Texas and Baytown, Texas;
- SP's Channelview Spur which connects to the SP's line between Houston, TX and Iowa Junction, LA near Sheldon, TX for the sole purpose of reaching a

point of build-in/build-out to/from the facilities of Lyondell Petrochemical Company and Arco Chemical Company at Channelview, TX. UP/SP shall permit BN/Santa Fe or one or both shippers to construct and connect to SP's Channelview Spur, at their expense, a build-in/build-out line. BN/Santa Fe or the shippers shall have the right to purchase for net liquidation value all or any part of the Channelview Spur that UP/SP may abandon;

- SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97);
- UP's Main Line No. 1 from UP MP 14.29 to MP 14.11 including crossover to SP's main line and UP's MP 10.38 to MP 10.2; and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, Louisiana intermodal facility (approximately UP MP 9.2).

b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement and at points other than those listed on Exhibit A as the lines listed on Section 5a,, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a new shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the lines listed in Section 5a (including, but not limited to, situations where, when the Agreement was signed, a new shipper facility was being developed or land had been acquired for that purpose with the contemplation of receiving rail service by both UP and SP). BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles and West Lake, LA, and traffic of shippers open to SP and

KCS at West Lake Charles, LA. BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switching, or (iii) with UP/SP's prior agreement, through use of a third party to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

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

f) Trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

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

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

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

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

- SP's line between Houston, Texas and Fair Oaks, Arkansas via Cleveland and Pine Bluff (including the right to transport empty and loaded coal trains to and from a point of build-in/build-out to/from Entergy Services, Inc.'s plant

at White Bluff, Arkansas if and when a build-in/build-out line is constructed by any entity other than UP/SP to connect such plant with SP's line between Houston and Fair Oaks):

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

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

c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement and at points other than those listed on Exhibit A on the lines listed in Section 6a,, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the lines listed in Section 6a (including, but not limited to situations where, when the Agreement was signed, a new shipper facility was being developed or land had been acquired for that purpose with the contemplation of receiving rail service by both UP and SP). Except as provided in Section 9l of this Agreement, BNSF shall not have the right to enter or exit at intermediate points on UP's and SP's lines between Memphis and Valley Junction, IL. Traffic to be handled over the UP and SP lines

between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6c" may also be handled over these lines. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 55), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via its trackage rights over either the UP line or the SP line, at its discretion, for operating convenience. BNSF shall also have the right to interchange with the Little Rock and Western Railway at Little Rock and the Little Rock Port Authority at Little Rock, with KCS at Shreveport, LA and Texarkana, TX/AR for movements of traffic that was originated by KCS at or that will be delivered by KCS to shippers at Lake Charles, West Lake, or West Lake Charles, LA, and the right to interchange with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and (z) at Texarkana, TX/AR for movements of empty coal trains returning from Texas Utilities Electric Company's Martin Lake generating station.

d) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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. Where switching districts have been established they shall be presumed to establish these geographic limitations.

e) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads. BNSF shall have the

right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

f) The trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

g) BNSF shall grant to UP/SP overhead trackage rights on BN's line between West Memphis and Presley Junction. UP/SP shall be responsible for upgrading this line as necessary for its use. If BNSF uses this line for overhead purposes to connect its line to the trackage rights lines, BNSF shall share in one-half of the upgrading cost.

7. **St. Louis Area Coordinations**

a) UP/SP agree to cooperate with BNSF to facilitate efficient access by BNSF to other carriers at and through St. Louis via The Alton & Southern Railway Company (A&S). If BNSF requests, UP/SP agree to construct or cause to be constructed for the use of both BNSF and UP/SP a faster connection between the BN and UP lines at Grand Avenue and a third track from Grand Avenue to near Gratiot Street Tower at the sole cost and expense of BNSF. Upon completion of such construction, UP/SP shall grant to BNSF overhead trackage rights on UP's line between Grand Avenue and Gratiot Street.

b) UP wishes to secure dispatching authority for the MacArthur Bridge across the Mississippi River at St. Louis. Dispatching is currently controlled by the Terminal Railroad Association of St. Louis (TRRA). BNSF agrees that it will cause its interest on the TRRA Board or any shares it owns in the TRRA, to be voted in favor of transferring dispatching control of the MacArthur Bridge to UP if such matter is presented to the TRRA Board or its shareholders for action. Such dispatching shall be performed in a manner to ensure that all users are treated equally.

c) If BNSF desires to use the A&S Gateway Yard, upon transfer of MacArthur Bridge dispatching to UP, UP/SP shall assure that charges assessed by the A&S to BNSF for use of Gateway Yard are equivalent to those assessed other non-owners of A&S.

d) UP/SP and BNSF agree to provide each other reciprocal detour rights between Bridge Junction-West Memphis and St. Louis in the event of flooding, subject to the availability of sufficient capacity to accommodate the detour.

8. **Additional Rights**

a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, California for rail traffic of all kinds, carload and intermodal, for all commodities to enable BNSF to connect via SP's line with the Oakland Terminal Railroad ("OTR") and to access the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built. BNSF shall pay 50% of the cost (up to $2,000,000 maximum) for upgrading to mainline standards and reverse signaling of SP's No. 1 track between Emeryville (MP 8) and Stege (MP 13.1). Compensation for these trackage rights shall be at the rate of 3.48 mills per ton mile for business moving in the "I-5 Corridor" and 3.1 mills per ton mile on all other carload and intermodal business and 3.0 mills per ton mile for bulk business escalated in accordance with the provisions of Section 12 of this Agreement. UP/SP shall assess no additional charges against BNSF for access to the JIT and the OTR.

b) BNSF shall waive any payment by UP/SP of the Seattle Terminal 5 access charge.

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

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

e) BNSF shall waive SP's requirement to pay any portion of the Tehachapi tunnels clearance improvements pursuant to the 1993 Agreement between Santa Fe and SP.

f) BNSF shall allow UP to exercise its rights to use the Hyundai lead at Portland Terminal 6 without any contribution to the cost of constructing such lead.

g) BNSF shall allow UP/SP to enter or exit SP's Chicago-Kansas City-Hutchinson trackage rights at Buda, Earlville, and west of Edelstein, Illinois. UP/SP shall be responsible for the cost of any connections required.

h) BNSF will amend the agreement dated April 13, 1995, between BNSF and SP to allow UP/SP to enter and exit Santa Fe's line solely for the purposes of permitting UP/SP or its agent to pick up and set out interchange business, including reciprocal switch business at Newton, Kansas, and switching UP industry at that point.

i) It is the intent of the parties that this Agreement result in the preservation of service by two competing railroad companies for all customers listed on Exhibit A to this Agreement presently served by both UP and SP and no other railroad (2-to-1 customers).

The parties recognize that some 2-to-1 customers will not be able to avail themselves of BNSF service by virtue of the trackage rights and line sales contemplated by this Agreement. For example, 2-to-1 customers located at points between Niles Junction and the end of the joint track near Midway (including Livermore, CA, Pleasanton, CA, Radum, CA, and Trevarno, CA), Lyoth, CA, Lathrop, CA, Turlock, CA, South Gate, CA, Tyler, TX, Defense, TX, College Station, TX, Great Southwest, TX, Victoria, TX, Sugar Land, TX, points on the former Galveston, Houston & Henderson Railroad served only by UP and SP, Opelousas, LA, and Herington, KS, are not accessible under the trackage rights and line sales covered by this Agreement. Accordingly, UP/SP and BNSF agree to enter into arrangements under which, through trackage rights, haulage, ratemaking authority or other mutually acceptable means, BNSF will be able to provide competitive service to 2-to-1 customers at the foregoing points and to any 2-to-1 customers who are not located at points expressly referred to in this Agreement or Exhibit A to this Agreement.

BNSF shall have the right to interchange with any short-line railroad which, prior to the date of this Agreement could interchange with both UP and SP and no other railroad.

j) In addition to the right to serve build-in/build-out lines specified in Sections 4a, 5a and 6a, BNSF shall have the right to serve via a new build-in/build-out line constructed to reach a facility that was, prior to September 11, 1996, solely served by either UP or SP and would be open to two-railroad service upon construction of the build-in/build-out line (a) to a point on lines owned by SP on September 11, 1996, in the case of facilities solely served by UP, or (b) to a point on lines owned by UP on September 11, 1996, in the case of facilities solely served by SP. UP shall grant BNSF any trackage rights that may be necessary for BNSF to reach the point at which the build-in/build-out line connects with the line in question. Notwithstanding the requirement in Section 15 of this Agreement that unresolved disputes and controversies be submitted for binding arbitration, technical disputes with respect to the implementation of the right to serve build-in/build-out lines can be presented by the parties to the Surface Transportation Board for resolution.

k) Where this Agreement authorizes BNSF to utilize haulage to provide service the fee for such haulage shall be $.50 per car mile plus a handling charge to cover handling at the haulage junction with BNSF and to or from a connecting railroad or third party contract switcher. The handling charge shall be $50 per loaded or empty car for intermodal and carload and $25 per loaded or empty car for unit trains with unit train defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee. UP/SP shall bill BNSF the $50 per car handling charge for all cars and, upon receipt of appropriate documentation from BNSF demonstrating that business assessed the $50 per car handling fee was a unit train, adjust prior billings by $25 per car for each car BNSF demonstrates to have been eligible for the $25 per car handling charge for unit trains. Where UP/SP is providing reciprocal switching services to BNSF at "2-to-1" facilities as provided for in Section 9h of this Agreement, the per car handling charge shall not be assessed at the point where such reciprocal switch charge is assessed. The haulage fee and handling charge shall be adjusted upwards or downwards in accordance with Section 12 of this Agreement.

l) In the event, for any reason, any of the trackage rights granted under this Agreement cannot be implemented because of the lack of sufficient legal authority to carry out such grant, then UP/SP shall be obligated to provide an alternative route or routes, or means of access of commercially equivalent utility at the same level of cost to BNSF as would have been provided by the originally contemplated rights.

9. **Trackage Rights - General Provisions**

a) The compensation for operations under this Agreement shall be set at the levels shown in the following table:

Table I
Trackage Rights Compensation
(mills per ton-mile)

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

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

b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

c) Capital expenditures on the lines over which BNSF has been granted trackage rights pursuant to this Agreement (the trackage rights lines) will be handled as follows:

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

ii) Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below.

That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.

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

(iv) BNSF and UP/SP agree that a capital reserve fund of $25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent which will not unreasonably be withheld, be drawn down to pay for capital projects on the trackage rights lines that are required to accommodate the operations of both UP/SP and BNSF on those lines, but in any event shall not be used for expenditures covered by subparagraph (i) above. Any disputes over whether a project is required to accommodate the operation of both parties shall be referred to binding arbitration under Section 15 of this Agreement.

(v) If both UP/SP and BNSF intend to serve new shipper facilities or future transloading facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1b, 4b, 5b, and 6c, they shall share equally in any capital investment necessary to provide rail service to such new shipper facility. If only one railroad initially provides such service, the other railroad may elect to provide service at a later date, but only after paying to the railroad initially providing such service 50% of any capital investment (including per annum interest thereon) made by the railroad initially providing rail service to the new shipper facility. Per annum interest shall be at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by the other railroad commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared

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

d) The management and operation of the trackage rights line shall be under the exclusive direction and control of the owning carrier. The owning carrier shall have the unrestricted power to change the management and operations on and over joint trackage as in its judgement may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing joint trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier.

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

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

f) The trackage rights grants described in this Agreement, and the purchase and sale of line segments shall be included in separate trackage rights and line sale agreement documents respectively of the kind and containing such provisions as are normally and customarily utilized by the parties, including exhibits depicting specific rail line segments, and other provisions dealing with maintenance, improvements, and liability, subject to more specific provisions described for each grant and sale contained in this Agreement and the general provisions described in this section. BNSF and

UP/SP shall elect which of their constituent railroads shall be a party to each such trackage rights agreement and line sale and shall have the right to assign the agreement among their constituent railroads. The parties shall use their best efforts to complete such agreements by June 1, 1996. If agreement is not reached by June 1, 1996 either party may request that any outstanding matters be resolved by binding arbitration with the arbitration proceeding to be completed within sixty (60) days of its institution. In the event such agreements are not completed by the date the grants of such trackage rights are to be effective, it is intended that operations under such grants shall be commenced and governed by this Agreement.

g) All locations referenced herein shall be deemed to include all areas within the present designated switching limits of the location, and access to such locations shall include the right to locate and serve new auto and intermodal facilities at such locations and to build yards or other facilities to support trackage rights operations.

h) If requested by BNSF, UP/SP will provide to BNSF reciprocal switching services at "2-to-1" shipper facilities covered in this Agreement at a rate of no more than $130 per car adjusted pursuant to Section 12 of this Agreement.

i) It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities to handle such local traffic. These locations include Salt Lake City, Ogden, Brownsville and San Antonio, and other locations where such volume develops. Facilities or portions thereof presently utilized by UP or SP at such locations shall be acquired from UP/SP by lease or purchase at normal and customary charges. Upon request of BNSF and subject to availability and capacity, UP/SP shall provide BNSF with terminal support services including fueling, running repairs and switching. UP/SP shall also provide intermodal terminal services at Salt Lake City, Reno, and San Antonio. UP/SP shall be reimbursed for such services at UP's normal and customary charges. Where terminal support services are not required, BNSF shall not be assessed additional charges for train movements through a terminal. BNSF shall also have equal access along with UP/SP, on economic terms no less favorable than the terms of UP/SP's access, to all SP Gulf Coast storage in transit ("SIT") facilities for storage in transit of traffic handled by BNSF under the terms of this Agreement. UP/SP agree to work with BNSF to locate additional SIT facilities on the trackage rights lines as necessary.

j) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the trackage rights lines.

k) BNSF shall have the right to inspect the UP and SP lines over which it obtains trackage rights under this agreement and require UP/SP to make such improvements under this section as BNSF deems necessary to facilitate its operations at BNSF's sole expense. Any such inspection must be completed and improvements identified to UP/SP within one year of the effectiveness of the trackage rights.

l) BNSF shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines it will purchase or be granted trackage rights over pursuant to this Agreement. UP/SP shall have the right to connect, for movement in any direction, with its present lines (including trackage rights) at points where its present lines (including trackage rights) intersect with lines it will be granted trackage rights over pursuant to this Agreement. BNSF shall also have the right, at City Public Service Board of San Antonio, TX' option, to connect for movement to and from Elmendorf, TX, where BNSF's trackage rights granted pursuant to this Agreement intersect at SP Junction (Tower 112) with the existing trackage rights SP has granted to City Public Service Board of San Antonio, TX.

10. **Compensation for Sale of Line Segments**

a) BNSF shall pay UP/SP the following amounts for the lines it is purchasing pursuant to this Agreement:

Line Segment	Purchase Price
Keddie-Bieber	$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego intermodal yard; SP's Avondale "New" yard; and SP's Lafayette yard)	100 million

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

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

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Feb # 127

CR-12

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

CONSOLIDATED RAIL CORPORATION'S FOURTH REQUEST TO APPLICANTS FOR THE PRODUCTION OF DOCUMENTS

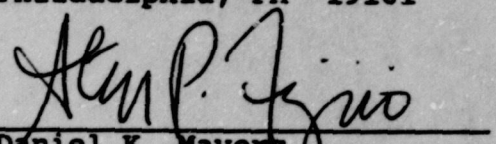
Pursuant to 49 C.F.R. §§ 1114.21 - 1114.31 and the Discovery Guidelines entered pursuant to order dated December 5, 1995 ("Discovery Guidelines"), Consolidated Rail Corporation ("Conrail") hereby submits its Fourth Request For Production of Documents to Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company, and to Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (collectively, "Applicants").

Conrail hereby incorporates by reference the Definitions and Instructions contained in its First Request for Production of Documents and First Set of Interrogatories to Applicants (designated as document CR-4), served December 22, 1995, and its Second Set of Interrogatories and Second Request for Production of Documents to Applicants (designated as document CR-8), served February 2, 1996, as if fully set forth herein.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Provide (in document form or by computer disk), or make available for review, all of the Houston Belt Terminal Railway's Centralized Traffic Control ("CTC") logs for the route from New South Yard via Tower 26 to Belt Junction for the 60 days preceding February 15, 1996 (or any other representative consecutive 60 day period identified by agreement of counsel).

Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
CONSOLIDATED RAIL CORPORATION
2001 Market Street
Philadelphia, PA 19101



Daniel K. Mayers
William J. Kolasky, Jr.
A. Stephen Hut, Jr.
Steven P. Finizio
Alex E. Rogers
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

February 16, 1996

CERTIFICATE OF SERVICE

I certify that on this 16th day of February, 1996, a copy of the foregoing Consolidated Rail Corporation's Fourth Request to Applicants for Production of Documents was served by hand delivery to:

Arvid E. Roach II
S. William Livingston, Jr.
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

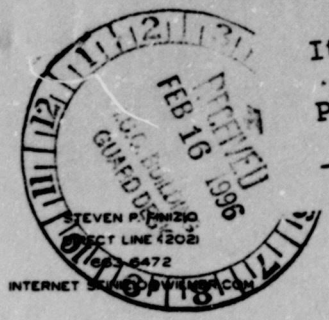
Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and served by first-class mail, postage pre-paid, to all parties on the Restricted Service List.

Steven P. Finizio

STB FD 32760 2-16-96 I 61266

61264



Item No. _____

Page Count 4

Feb # 124.

PICKERING
W.
-1420

TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

4 CARLTON GARDENS
LONDON SWIY 5AA
TELEPHONE 011 (44171) 839-4466
FACSIMILE 011 (44171) 839-3537

RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
TELEPHONE 011 (322) 231-0903
FACSIMILE 011 (322) 230-4322

FRIEDRICHSTRASSE 95
BRIEFKASTEN 29
D-10117 BERLIN
TELEPHONE 011 (49301) 2643-3601
FACSIMILE 011 (49301) 2643-3630

STEVEN P. FINIZIO
DIRECT LINE (202)
Office 6472
INTERNET

February 16, 1996

VIA HAND DELIVERY

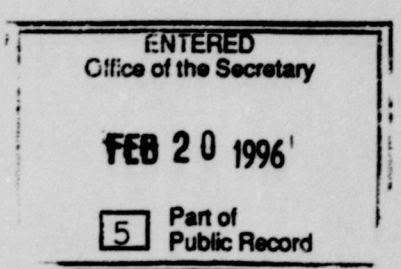
Mr. Vernon A. Williams
Interstate Commerce Commission
Case Control Branch
Room 1324
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are: (1) one original and twenty copies of Consolidated Rail Corporation's Fourth Request to Burlington Northern Railroad Company, Atcheson, Topeka and Santa Fe Railway Company and Burlington Northern Santa Fe Corporation for the Production of Documents, designated as document CR-11; and (2) one original and twenty copies of Consolidated Rail Corporation's Fourth Request to Applicants for the Production of Documents, designated as document CR-12.

Also enclosed is a 3.5-inch WordPerfect 5.1 disk containing the texts of CR-11 and of CR-12.



Sincerely,

Steven P. Finizio

Attorney for Consolidated Rail Corporation

Enclosures

cc: Arvid E. Roach II, Esq. (w/disk)
Erika Z. Jones, Esq. (w/disk)
Restricted Service List

CR-11

ENTERED
Office of the Secretary
FEB 20 1996
5 Part of Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
FEB 16 1996
MAIL BUILDING
GUARD DESK

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

CONSOLIDATED RAIL CORPORATION'S
FOURTH REQUEST TO BURLINGTON NORTHERN RAILROAD COMPANY,
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
AND BURLINGTON NORTHERN SANTA FE CORPORATION
FOR THE PRODUCTION OF DOCUMENTS

Pursuant to 49 C.F.R. §§ 1114.21 - 1114.31 and the Discovery Guidelines entered pursuant to order dated December 5, 1995 ("Discovery Guidelines"), Consolidated Rail Corporation ("Conrail") hereby submits its Fourth Request for Production of Documents to Burlington Northern Railroad Company, Atchison, Topeka and Santa Fe Railway Company, and Burlington Northern Santa Fe Corporation.

Conrail hereby incorporates by reference the Definitions and Instructions contained in its First Request for Production of Documents to BNSF Corporation (designated as document CR-5), served December 28, 1995, and its First Set of

Interrogatories and Second Request for Production of Documents to BNSF Corporation (designated as document CR-7), served February 2, 1996, as if fully set forth herein.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Provide (in document form or by computer disk), or make available for review, all DigiCon train sheet records for all trains from New South Yard to Dobbin, TX, for the 60 days preceding February 15, 1996 (or any other representative consecutive 60 day period identified by agreement of counsel).

2. Provide (in document form or by computer disk), or make available for review, all of the Houston Belt Terminal Railway's Centralized Traffic Control ("CTC") logs for the route from New South Yard via Tower 26 to Belt Junction for the 60 days preceding February 15, 1996 (or any other representative consecutive 60 day period identified by agreement of counsel).

Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
CONSOLIDATED RAIL CORPORATION
2001 Market Street
Philadelphia, PA 19101

Daniel K. Mayers
William J. Kolasky, Jr.
A. Stephen Hut, Jr.
Steven P. Finizio
Alex E. Rogers
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

February 16, 1996

CERTIFICATE OF SERVICE

I certify that on this 16th day of February, 1996, a copy of the foregoing Consolidated Rail Corporation's Fourth Request to Burlington Northern Railroad Company, Atchison, Topeka and Santa Fe Railway Company, and Burlington Northern Santa Fe Corporation for the Production of Documents was served by hand delivery to:

Erika Z. Jones
Mayer, Brown and Platt
2000 Pennsylvania Avenue, N.W.
Suite 6500
Washington, D.C. 20006

Arvid E. Roach II
S. William Livingston, Jr.
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and served by first-class mail, postage pre-paid, to all parties on the Restricted Service List.

Steven P. Finizio

STB FD 32760 2-16-96 I 61264

Item No. _____ 61264

Page Count 8

Feb 11 1996

I, MORSE & GARFINKLE, P.C.

ATTORNEYS AT LAW

ROBERT H. MORSE
MORRIS R. GARFINKLE
EDWARD D. GREENBERG
MARK S. KAHAN
SUSAN B. JOLLIE
ANDREW B. SACKS
DAVID K. MONROE
DAVID P. STREET
MARK W. ATWOOD
ROBERT W. KNEISLEY
STEVEN JOHN FELLMAN
ROBERT D. ROSEMAN
JEFFREY K. KOMINERS
CHARLES H. WHITE, JR.
KEITH G. SWIRSKY

F. WILLIAM CAPLE
ANITA M. MOSNER
MARTIN JACOBS
IRA T. KASDAN
JOSEPH B. HOFFMAN
XIANPING WANG*
RICHARD BAR
GEOFFREY P. GITNER
SILVIA M. PARK

ANDREW T. GOODSON
ERIC N. MILLER
PETER J. PETESCH
GREGORY P. CIRILLO

M. ROY GOLDBERG
DANIEL B. HASSETT
GEORGE D. NOVAK, II*
MARTHA LEARY SOTELO
KATHERINE M. ALDRICH
JOHN P. YOUNG
MICHAEL P. FLEMING*
HELLE R. WEEKE*
REBECCA LANDON TZOU
ELI D. CLARK*
JENNIFER A. COHN
ALEXANDER M.R. VAN DER BELLEN
HOWARD E. KASS
JOHN F.C. LUEDKE*

*NOT ADMITTED IN D.C.

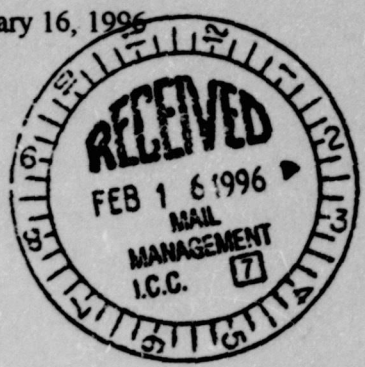
CANAL SQUARE
1054 THIRTY-FIRST STREET, N.W.
WASHINGTON, D.C. 20007-4492
TELEPHONE: (202) 342-5200
FACSIMILE: (202) 342-5219
(202) 337-8787
INTERNET: gkmg@capcon.net

ROBERT N. KHARASCH
OF COUNSEL
GEORGE F. GALLAND (1910-1985)
GKMG CONSULTING SERVICES, INC.
SAMUEL W. FAIRCHILD†
JAMES F. MILLER†
AUDREY WRIGHT SPOLARICH†
†NOT MEMBER OF THE BAR

February 16, 1996

WRITER'S DIRECT DIAL NUMBER

(202) 342-6750



VIA MESSENGER

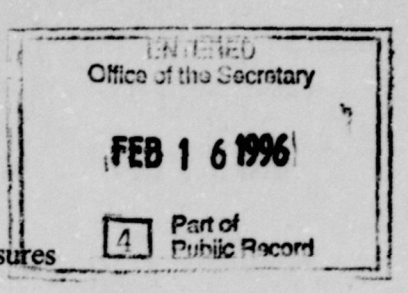
Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 1324
1201 Constitution Ave., N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are one original and twenty copies of International Paper Company's Second Interrogatories and Request for Documents to Burlington Northern Railroad Company, designated as document IP-3.

Also enclosed is a 3.5" WordPerfect 5.1 disk containing the text of IP-3.



Very truly yours,

Andrew T. Goodson
Attorney for International Paper Company

Enclosures

cc: Erika Z. Jones, Esq.
Restricted Service List

XINJIYUAN-GKMG LAW OFFICE
AFFILIATED FIRM
SUITE 415, YI ZI BUILDING, SICHUAN MANSION
A-1 PU WAI AVENUE
BEIJING 100037 PEOPLE'S REPUBLIC OF CHINA
TEL: 011-86-10-836-6880 FAX: 011-86-10-836-6878

RECEIVED
FEB 16 1996
MAIL
MANAGEMENT
I.C.C.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

ENTERED
Office of the Secretary
FEB 16 1996
Part of
Public Record

INTERNATIONAL PAPER COMPANY'S SECOND
INTERROGATORIES AND
REQUEST FOR DOCUMENTS
TO BURLINGTON NORTHERN RAILROAD COMPANY

ORIGINAL

Edward D. Greenberg
Andrew T. Goodson
GALLAND, KHARASCH, MORSE &
GARFINKLE, P.C.
1054 Thirty- First Street, N.W.
Second Floor
Washington, D.C. 20007
(202) 342-5200

Attorneys for International Paper Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

INTERNATIONAL PAPER COMPANY'S SECOND
INTERROGATORIES AND
REQUEST FOR DOCUMENTS
TO BURLINGTON NORTHERN RAILROAD COMPANY

Pursuant to 49 C.F.R. §§ 1114.21-1114.31, International Paper Company directs the following interrogatories and document requests to Burlington Northern Railroad Company and its parent, subsidiary and related corporations.

DEFINITIONS

1. "Applicants" means Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, individually and collectively, together with any parent, subsidiary or affiliated corporation, partnership or other legal entity, including, but not limited to UP Acquisition Corporation, Union Pacific Holdings Corp., Chicago and North Western Railway Company, Philip F. Anschutz and The Anschutz Corporation.

2. "BN" means The Burlington Northern Railroad Company, and its parent subsidiary and related corporations.

3. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intracompany communications; electronic mail; correspondence; telegrams, memoranda; contracts; instruments; studies; projections; forecasts; summaries, notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further, the term "document" includes:

a. both basic records and summaries of such records (including computer runs);

b. both original versions and copies that differ in any respect from original versions, including notes; and

c. both documents in the possession, custody, or control of Applicants and documents in the possession, custody, or control of consultants or others who have assisted Applicants in connection with the Transaction.

4. "Identify,"

a. when used in relation to an individual, means to state the name, address, and home and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;

b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;

c. when used in relation to a document, means to:

(1) state the type of document (e.g., letter, memorandum, report, chart);

(2) identify the author, each addressee, and each recipient; and

(3) state the number of pages, title, and date of the document;

d. when used in relation to an oral communication or statement, means to:

(1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;

(2) state the date and place of the communication or statement;

(3) describe in detail the contents of the communication or statement; and

(4) identify all documents that refer to, relate to or evidence the communication or statement;

e. when used in any other context means to describe or explain.

5. "IP" means International Paper Company.

6. "Including" means including without limitation.

7. "Person" means an individual, company, partnership, or other entity of any kind.

8. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.

9. "Relating to" a subject means making a statement about, referring to, or discussing the subject including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.

10. "Settlement Agreement" means the agreement as supplemented between UP and SP and BN attached to the verified statements of John H. Rebensdorf, which is contained in Volume I of the Application filed in connection with the Proposed Merger.

11. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.

INSTRUCTIONS

1. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed under oath by the person making them. Objections are to be signed by the representative or counsel

making them. A copy of the answers and objections should be served upon the undersigned counsel for IP within fifteen (15) days after the date of service.

2. BN should contact the undersigned immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these discovery requests cover the period beginning January 1, 1993, and ending with the date of response.

4. If BN has information that would permit a partial answer to any interrogatory, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that interrogatory, and if the burden of conducting such special study would be greater for BN than for IP, then:

a. state that fact;

b. provide the partial answer that may be made with information available to BN;

c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit IP to derive or ascertain a more complete answer; and

d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, of any compilation, abstract, or summary based thereon, as will permit IP to derive or ascertain a more complete answer.

5. If BN's reply to any interrogatory includes a reference to the Application filed in this proceeding, such response shall specify the volume(s) and exact page number(s) of the Application where the information is contained.

6. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,

a. identify the information or document (in the manner provided in Definition 8 *supra*); and

b. state the basis for the claim that it is privileged or otherwise not discoverable.

7. In responding to any request for data regarding intermodal traffic, indicate separately data for trailers and for containers.

8. If BN knows or later learns that its response to any interrogatory is incorrect, it is under a duty seasonably to correct that response.

9. Pursuant to 49 C.F.R. § 1114.29, BN is under a duty seasonably to supplement its responses with respect to any questions directly addressed to the identity and locations of persons having knowledge of discoverable matters.

INTERROGATORIES

1. Identify all BN employees who attended a meeting with IP employees on or about December 13, 1995 concerning service to IP mills in Camden and Pine Bluff, Arkansas. Identify all documents which relate to that meeting, including but not limited to any notes of those who attended, and any subsequent memoranda or correspondence discussing the meeting or BN's plan for servicing those mills.

2. Identify all BN employees who attended a meeting with employees of Applicants on or about December 20, 1995 in Omaha concerning service to IP mills in Camden and Pine Bluff, Arkansas. Identify all documents which relate to that meeting, including but not limited to any notes of those who attended, and any subsequent memoranda or correspondence discussing the meeting or an operating plan for servicing those mills.

DOCUMENT REQUESTS

1. All documents identified in response to Interrogatory No. 1.

2. All documents identified in response to Interrogatory No. 2.

3. The map which, during his deposition on February 14, 1996, Carl Ice testified he was given by John Rebensdorf during their negotiations leading to the Settlement Agreement.

4. All documents relating to, or used to calculate, rates recently proposed by BN to IP for single line service to IP mills in Camden and Pine Bluff, Arkansas.

Respectfully submitted,

Edward D. Greenberg
Andrew T. Goodson
GALLAND, KHARASCH, MORSE &
GARFINKLE, P.C.
1054 Thirty- First Street, N.W.
Second Floor
Washington, D.C. 20007
(202) 342-5200

Attorneys for International Paper Company

STB FD 32760 2-9-96 I 61223

61223

Item No. 61223

Page Count 11

Filed 82

RLEA-7

ORE 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

RECEIVED
FEL 9 1996

**SECOND SET OF INTERROGATORIES
OF RLEA/UTU TO APPLICANTS**

FILED
Office of the Secretary
FEB 12 1996
5 Part of
Public Record

William G. Mahoney
Richard S. Edelman
Donald F. Griffin

HIGHSAW, MAHONEY & CLARKE, P.C.
1050 17th Street, N.W.
Suite 210
Washington, D.C 20036
(202) 296-8500

Counsel for Railway Labor
Executives Association, Its
Affiliated Organizations and
United Transportation Union

Dated: February 9, 1996

SECOND INTERROGATORIES
OF RLEA/UTU TO APPLICANTS

The Railway Labor Executives' Association, its affiliated organizations and the United Transportation Union ("RLEA") serve through counsel, pursuant to 49 C.F.R. §1114.26, the following interrogatories upon the Applicants. Answers to these interrogatories should be served upon counsel for RLEA: HIGHSAW, MAHONEY & CLARKE, P.C., 1050 17th Street, N.W., Suite 210; Washington, D.C. 20036; fifteen (15) days after service thereof.

RLEA/UTU hEreby incorporate herein by reference and adopt for these interrogatories the definitions and instructions contained in their first set of interrogatories RLEA-4 which were dated January 2, 1996. For convenient reference, this second set of RLEA/UTU interrogatories are numbered consecutively with the first set of RLEA/UTU interrogatories, so the second set of interrogatories begin with interrogatory no. 61.

61. Identify every part of the UP/SP proposed operating plan which can be implemented only with abrogation or modification of existing collective bargaining agreements.

62. Identify every efficiency envisioned by Applicants to result from the proposed common control/merger transaction which cannot be realized without abrogation or modification of existing collective bargaining agreements.

63. With respect to Applicants' response to RLEA/UTU interrogatory no. 1, referring to "efficiency to be achieved" by "rationalization of labor agreements", and Applicants' response to RLEA/UTU interrogatory no. 8 referring to "rationalization of existing collective bargaining agreements" explain what is meant by "rationalization" of agreements.

64. With respect to Applicants' response to RLEA/UTU interrogatory no. 1, referring to "instances" in which "rationalization of labor agreements" will be required to permit an "efficiency to be achieved," identify every efficiency which is envisioned by Applicants which will necessitate "rationalization" of labor agreements.

65. With respect to potential abrogations, modifications or "rationalizations" of agreements which Applicants believe to be necessary to obtain efficiencies envisioned by Applicants as a result of their common control/merger, including those identified in Applicants' responses to interrogatories nos. 62 and 64, identify the *types* of agreement provisions which Applicants believe must be abrogated modified or "rationalized." [In this interrogatory, RLEA/UTU do not seek identification of specific rules in specific agreements but only types of rules; *e.g.*,

"scope," "seniority," "starting times," "reporting points," "classification," etc.]

66. With respect to Applicants' response to RLEA/UTU interrogatory no. 1 which refers to some "but by no means all" efficiencies which cannot be realized without "rationalization of labor agreements," identify any efficiencies envisioned by Applicants which will not involve "rationalization" of agreements.

67. With respect to efficiencies Applicants expect to achieve as a result of the proposed common control/merger which Applicants believe will require "rationalization of labor agreements":

a. identify any efficiencies which Applicants' contend would be actually precluded by existing agreements;

b. identify any efficiencies which could be implemented without "rationalization of labor agreements" but at a cost that Applicants deem unacceptable.

68. To the extent that Applicants plan to abrogate, modify or "rationalize" labor agreements identify the procedure that Applicants plan to use to abrogate, modify or "rationalize" agreements.

69. To the extent that Applicants plan to "rationalize" labor agreements, state whether Applicants believe that this cannot be done under the Railway Labor Act; and, if Applicants believe that "rationalizations" cannot be done under the Railway Labor Act, explain the basis for that belief.

70. To the extent that Applicants have stated that they will need to have single collective bargaining agreements applicable to particular crafts, in particular geographic areas, state whether Applicants believe that uniformity is necessary for rules other than those pertaining to scope, seniority and/or assignment of work.

71. To the extent that Applicants have stated that they will need to have single collective bargaining agreements applicable to particular crafts in particular geographic areas, state whether Applicants desire only uniform agreements for those areas without regard to specific rules, or whether they desire specific agreements with specific rules for those areas.

72. With respect to Applicants responses to RLEA/UTU interrogatories nos. 8, 11 and 12, identify the "various alternatives" that Applicants believe will be available Applicants for implementation of particular operating changes, and the "various alternatives" that Applicants believe to be

"open to the parties" under *New York Dock* as to how to proceed; and identify any differences between the two sets of "various alternatives."

73. With respect to Applicants' assertions of Southern Pacific's lack of adequate capital and inability to raise adequate capital for necessary maintenance, upgrades and construction, identify whether any of the following are deemed by Southern Pacific to contribute to these problems:

a. high debt load relative to other railroads;

b. the acquisition of Southern Pacific by RGI Industries through a leveraged transaction;

c. an initial lack of capital for Southern Pacific after its acquisition by RGI Industries;

d. Southern Pacific assets are already pledged as collateral for other debt; and

e. identify the relative degree to which each factor (and) is deemed to contribute to Southern Pacific's capital shortfall.

74. With respect to Applicants' response to RLEA/UTU interrogatory no. 36, identify any particular provisions or types of provisions in existing collective bargaining agreements which Applicants will seek to modify, override or replace through

negotiations or arbitration under Article I §4 of the *New York Dock* conditions. [In responding to this interrogatory, Applicants need not identify specific rules in specific agreements, but only types of rules; *e.g.* "scope", "seniority", "starting times", "reporting points", "classification" etc.]

75. With respect to Applicants' response to RLEA/UTU interrogatory no. 35, identify any particular provisions or types of provisions in existing collective bargaining agreements which applicants will seek to modify, override or replace under 49 U.S.C. §11341(a) if it can not obtain agreement from any union or unions for such modification, override or replacement.

76. Identify any options or contingencies that have been identified by Southern Pacific for its future in the event that the UP/SP common control/merger application is not approved.

77. With respect to eliminations of existing terminals and/or creation of new terminals for train and engine crews which are planned by Applicants, identify any elimination, termination or change in reporting points which Applicants will propose in negotiations or arbitration which will involve changes in reporting points in excess of 50 miles.

78. Are Applicants willing to commit that they will not seek any changes in train and engine crew reporting points which will exceed 50 miles.

79. State how Applicants plan to assign water service mechanic work if the common control/merger application is granted.

80. State whether Applicants consider the Alton & Southern R.R. to be involved in the common control/merger within the meaning of 49 U.S.C. §11347; and whether they deem Alton & Southern R.R. employees to be covered by the employee protective conditions which will be imposed if the common control/merger application is approved.

81. Identify the total dollar value to the Southern Pacific railroads of the deferral for the Southern Pacific railroads of pay increases and lump sum payments generally applicable to employees of Class I railroads pursuant to Public Law 102-29 (and Presidential Emergency Board 219 and subsequent clarification and modification boards).

82. State whether Applicants will assert that the anti-trust exemption under 49 U.S.C. §11341(a) which will attach to STB approval of the Applicants' common control and merger will apply to actions of Applicants and/or BNSF in implementing the

September 25, 1995 Settlement Agreement between Applicants and BNSF and with respect to operations under that agreement.

83. State whether Applicants believe that Applicants will be able to assert Section 11341(a) exemption from anti-trust law and other law following an approval of their common control and merger as a defense in a dispute which may arise with BNSF with respect to operations under the September 25, 1995 Settlement Agreement between Applicants and BNSF.

84. State whether Applicants believe that the terms of September 28, 1995 Settlement Agreement between Applicants and BNSF will be subject to modification of abrogation pursuant 49 U.S.C. §11341(a) following an approval of Applicants' common control and merger if Applicants were to assert that such modification or abrogation would be necessary for Applicants to realize benefits sought by the common control and merger.

85. Identify any contract which any of the SP railroads has had with any corporation owned or controlled by Philip Ansxhutz or The Anschutz Corporation since 1988 for provision of products or services.

Respectfully submitted,

William G. Mahoney
Richard S. Edelman
Donald F. Griffin

HIGHSAW, MAHONEY & CLARKE, P.C.
1050 17th Street, N.W.
Suite 210
Washington, D.C. 20036
(202) 296-8500

Counsel for Railway Labor
Executives Association, Its
Affiliated Organizations and
United Transportation Union

Dated: February 9, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the Second Set Of Interrogatories Of RLEA/UTU To Applicants by hand-delivery to the offices of the following:

Paul A. Cunningham
HARKINS CUNNINGHAM
1300 19th Street, N.W.
Suite 600
Washington, D.C. 20036

Arvid E. Roach, II
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
P. O. Box 7566
Washington, D.C. 20044

and by first-class mail, postage prepaid, to the offices of the parties on the restricted service list.

Dated at Washington, D.C. this 9th day of February 1996.

Richard S. Edelman

STB FD 32760 2-7-96 I 61199

61199

Item No. 11

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R, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (44711 839-4466
FACSIMILE 011 (44711 839-3537

RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
TELEPHONE 011 (322) 231-0803
FACSIMILE 011 (322) 230-4322

FRIEDRICHSTRASSE 95
BRIEFKASTEN 28
D-10117 BERLIN
TELEPHONE 011 (49301 2643-3601
FACSIMILE 011 (49301 2643-3630

February 7, 1996

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MANAGEMENT
I.C.C.

VIA HAND DELIVERY

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 1324
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are one original and twenty copies each of (1) Consolidated Rail Corporation's Third Request to Applicants for the Production of Documents (designated as document CR-9), and (2) Consolidated Rail Corporation's Third Request to BNSF Corporation for the Production of Documents (designated as document CR-10).

Also enclosed is a 3.5-inch WordPerfect 5.1 disk containing the text of CR-9 and CR-10.

Sincerely yours,

A. Stephen Hut, Jr.

Attorney for Consolidated Rail Corporation

Enclosures

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

CONSOLIDATED RAIL CORPORATION'S
THIRD REQUEST TO APPLICANTS
FOR THE PRODUCTION OF DOCUMENTS

Pursuant to 49 C.F.R. §§ 1114.21 - 1114.31 and the Discovery Guidelines entered pursuant to order dated December 5, 1995 ("Discovery Guidelines"), Consolidated Rail Corporation ("Conrail") hereby submits its Third Request For Production of Documents to Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company, and to Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (collectively, "Applicants").

Conrail hereby incorporates by reference the Definitions and Instructions contained in its First Request for Production of Documents and First Set of Interrogatories to Applicants (designated as document CR-4), served December 22, 1995, and its Second Set of Interrogatories and Second Request for Production of Documents to Applicants (designated as document CR-8), served February 2, 1996, as if fully set forth herein.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Provide all SP timesheets for the month of October 1995 (or any other representative consecutive four week period identified by agreement between counsel for Conrail and counsel for the Applicants) for SP's route between Houston and Memphis.

Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
CONSOLIDATED RAIL CORPORATION
2001 Market Street
Philadelphia, PA 19101

Daniel K. Mayers
William J. Kolasky, Jr.
A. Stephen Hut, Jr.
Steven P. Finizio
Alex E. Rogers
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

February 7, 1996

CERTIFICATE OF SERVICE

I certify that on this 7th day of February, 1996, a copy of the foregoing Consolidated Rail Corporation's Third Request to Applicants for Production of Documents was served by hand delivery to:

Arvid E. Roach II
S. William Livingston, Jr.
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and served by first-class mail, postage pre-paid, to all parties on the Restricted Service List.

Steven P. Finizio

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

**THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S
FIRST REQUEST FOR ADMISSIONS ON
BURLINGTON NORTHERN RAILROAD COMPANY AND THE
ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY**

Martin W. Bercovici
Douglas J. Behr
Arthur S. Garrett, III

KELLER AND HECKMAN
1001 G Street, N. W.
Suite 500 West
Washington, D.C. 20001
Tel: (202) 434-4100
Fax: (202) 434-4646

Attorneys for The Society
of the Plastics Industry, Inc.

February 2, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

**THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S
FIRST REQUEST FOR ADMISSIONS
ON BURLINGTON NORTHERN RAILROAD COMPANY AND THE
ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY**

Pursuant to 49 C.F.R. §§ 1114.21 and 1114.27 and the Discovery Guidelines entered pursuant to order dated December 5, 1995 ("Discovery Guidelines"), The Society of the Plastics Industry, Inc. ("SPI") directs the following requests for admissions to Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as "BNSF."

THE RAILROAD ENTITIES

1. 'Applicants' means Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad

Company, individually and collectively, together with any parent, subsidiary or affiliated corporation, partnership or other legal entity, including, but not limited to UP Acquisition Corporation, Union Pacific Holdings Corp., Chicago & North Western Railway Company, Philip F. Anschutz and The Anschutz Corporation.

2. 'BN' means the Burlington Northern Railroad Company.

3. 'BNI' means Burlington Northern Inc.

4. 'CNW' means Chicago and North Western Railway Company.

5. 'BNSF' means BNSF Corporation or the entity resulting from the merger of BNI and BN with Santa Fe Pacific Corporation and The Atchison, Topeka, and Santa Fe Railway Company, and includes all parents, subsidiaries, or affiliated corporations of any of the foregoing entities.

6. 'DRGW' means The Denver and Rio Grande Western Railroad Company.

7. 'KCS' means The Kansas City Southern Railway Company.

8. 'Santa Fe' means The Atchison, Topeka and Santa Fe Railway Company.

9. 'SFP' means Santa Fe Pacific Corporation.

10. 'SLSRC' means St. Louis Southwestern Railway Company.

11. 'SPRC' means Southern Pacific Rail Corporation.

12. 'SPTC' means Southern Pacific Transportation Company.

13. 'SPCSL" means SPCSL Corp.

14. 'SP' means all SPRC entities individually and collectively, *i.e.*, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway

Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, together with any parent, subsidiary or affiliated corporation, partnership or other person or legal entity, including, but not limited to Philip F. Anschutz and The Anschutz Corporation.

15. 'UPC' means Union Pacific Corporation.

16. 'UPRC' means Union Pacific Railroad Company.

17. 'MPRC' means Missouri Pacific Railroad Company.

18. 'UP' means all UPC entities individually and collectively, *i.e.*, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company, together with any parent, subsidiary or affiliated corporation, partnership or other legal entity, including, but not limited to UP Acquisition Corporation, Union Pacific Holdings Corp., and Chicago & North Western Railway Company.

19. 'UP Acquisition' means UP Acquisition Corporation, an indirect wholly-owned subsidiary of Union Pacific Corporation.

DEFINITIONS

1. The 'Agreement and Plan of Merger' means the August 3, 1995 Agreement set forth at page 1 et seq. of the Applicants' Railroad Merger Application, Volume 7 (UP/SP-28 at 1).

2. 'BNSF Agreement' refers to the agreement between UP and SP and BNSF relating to the proposed UP/SP merger, including the Supplemental Agreement, set forth at p. 16 et seq. of the

Applicants' Railroad Merger Application, Volume 5 (UP/SP-26 at 16 et seq.).

3. 'Commission' or 'ICC' means the Interstate Commerce Commission and also includes the Department of Transportation's Surface Transportation Board and any other successor agency or department charged by Congress with authority over railroad mergers and combinations.

4. 'Competition' includes both intramodal and intermodal competition and, where applicable, includes source competition.

5. 'Consolidated System' means the integrated rail system after the Transaction (as defined below), or to the entity created by the merger proposed by Applicants.

6. 'Document' means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda, contracts; instruments; studies; projections; forecasts; summaries, notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases;

invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further, the term 'document' includes:

a. both basic records and summaries of such records (including computer runs);

b. both original versions and copies that differ in any respect from original versions, including notes; and

c. both documents in the possession, custody, or control of Applicants and documents in the possession, custody, or control of consultants or others who have assisted Applicants in connection with the Transaction.

7. 'Including' means including without limitation.

8. 'Person' means an individual, company, partnership, or other entity of any kind.

9. 'Plastic(s) Resin(s)' means each and every commodity that bears any of the following STCC codes: 2821138, Acrylonitrile-butadiene-styrene, other than liquid; 2821139, Polypropylene, other than liquid; 2821140, Polystyrene, other than liquid; 2821141, Polyvinyl chloride, other than liquid; 2821142, polyethylene, other than liquid; 2821144, plastics, resins or gums, other than liquid; 2821148, styrene-acrylonitrile, other than liquid; 2821150 Styrene-butadiene copolymer, other than liquid; 2821156, polyethylene terephthalate; and 2821163, plastic flakes, granules, lumps, pellets, powder or solid mass, other than expanded.

10. 'Provide' (except where the word is used with respect to providing service or equipment) or 'describe' means to supply a complete narrative response.

11. 'Rates' include contract rates and tariff rates.

12. 'Relate to and relating to' have the broadest meaning according to them and include but are not limited to the following: directly or indirectly describing, setting forth, discussing, commenting upon, analyzing, supporting, contradicting, referring to, constituting, concerning or connected in any way with the subject in question or any part thereof.

13. 'Revenue share' means any share of revenue on traffic interchanged with another railroad, including contractual revenue shares, joint rates, proportional rates, and multiple independent factor rates.

14. 'Shipper' means a user of rail services, including a consignor, a consignee, or a receiver.

15. 'STCC' means Standard Transportation Commodity Code.

16. 'Studies, analyses, and reports' include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

17. 'Transaction' means the actions for which approval is sought by the Applicants, as described at UP/SP-1 including

a. the acquisition of control of SPR by UP Acquisition;

b. the merger of SPR into UPRC; and

c. the resulting common control of UP and SP by UPC or any one of such actions or any combination of such actions, and any related transactions.

18. 'Western Class I Railroad' means, in addition to Applicants, any of the following: BN, Santa FE, CNW, Illinois Central Railroad Company, KCS, and Soo Line Railroad Company.

19. References to railroads, shippers, and other companies (including Applicants) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

20. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

INSTRUCTIONS

1. Unless otherwise specified, these discovery requests cover the period beginning January 1, 1993, and ending with the date of response.

2. BNSF should set forth in detail all reasons why it cannot admit any request and shall fairly meet the substance of the requested admission.

3. When good faith, the Discovery Guidelines, and/or other applicable rules or law require that BNSF qualify its response to a request or deny only a part of the requested admission, BNSF

shall specify and admit so much of the request as is true and qualify and/or deny the remainder, as appropriate.

4. BNSF should not respond that lack of information or knowledge is the reason for failure to admit or deny any request, unless it previously has made a reasonable but unsuccessful inquiry for the purpose of obtaining sufficient information to respond to the request.

5. BNSF should not deny any request for admission on the ground that the request relates to, or constitutes, an issue for determination at or by hearing.

REQUESTED ADMISSIONS

For the purposes of this proceeding only, SPI requests that BNSF admit that each of the following statements is true:

1. That BNSF does not have any studies, analyses, reports or plans regarding the construction or acquisition of additional storage capacity for plastics resins shipments.

2. That BNSF does not have any studies, analyses, reports or plans relating to facilities and operations necessary to serve plastics producers or plants not currently served by BNSF.

3. That BNSF does not have any operating plans to serve plastics resins production points opened to BNSF service by the BNSF Agreement.

Respectfully submitted,

Martin W. Bercovici
Douglas J. Behr
Arthur S. Garrett III

KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Tel: (202) 434-4100
Fax: (202) 434-4646

Attorneys for The Society
of the Plastics Industry, Inc.

February 2, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of The Society of the Plastics Industry, Inc.'s foregoing First Set of Admissions on Burlington Northern Railroad Company and the Atchison, Topeka, and Santa Fe Railway Company, was served this 2nd day of February, 1996, by hand-delivery, upon counsel for BNSF:

Erika Z. Jones, Esq.
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1882

and, by mail upon the remainder of the Restricted Service List.

Martin W. Bercovici

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Page Count 17

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S FIRST SET OF INTERROGATORIES AND DATA REQUESTS TO BURLINGTON NORTHERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY

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Martin W. Bercovici
Douglas J. Behr
Arthur S. Garrett, III

KELLER AND HECKMAN
1001 G Street, N. W.
Suite 500 West
Washington, D.C. 20001
Tel: (202) 434-4100
Fax: (202) 434-4646

Attorneys for The Society of the Plastics Industry, Inc.

February 2, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S FIRST SET OF INTERROGATORIES AND DATA REQUESTS ON BURLINGTON NORTHERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY

Pursuant to 49 C.F.R. §§ 1114.21 - 1114.31 and the Discovery Guidelines entered pursuant to order dated December 5, 1995 ("Discovery Guidelines"), The Society of the Plastics Industry, Inc. ("SPI") directs the following interrogatories and data requests to Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as "BNSF."

THE RAILROAD ENTITIES

1. 'Applicants' means Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad

Company, individually and collectively, together with any parent, subsidiary or affiliated corporation, partnership or other legal entity, including, but not limited to UP Acquisition Corporation, Union Pacific Holdings Corp., Chicago & North Western Railway Company, Philip F. Anschutz and The Anschutz Corporation.

2. 'BN' means the Burlington Northern Railroad Company.

3. 'BNI' means Burlington Northern Inc.

4. 'CNW' means Chicago and North Western Railway Company.

5. 'BNSF' means BNSF Corporation or the entity resulting from the merger of BNI and BN with Santa Fe Pacific Corporation and The Atchison, Topeka, and Santa Fe Railway Company, and includes all parents, subsidiaries, or affiliated corporations of any of the foregoing entities.

6. 'DRGW' means The Denver and Rio Grande Western Railroad Company.

7. 'KCS' means The Kansas City Southern Railway Company.

8. 'Santa Fe' means The Atchison, Topeka and Santa Fe Railway Company.

9. 'SFP' means Santa Fe Pacific Corporation.

10. 'SLSRC' means St. Louis Southwestern Railway Company.

11. 'SPRC' means Southern Pacific Rail Corporation.

12. 'SPTC' means Southern Pacific Transportation Company.

13. 'SPCSL" means SPCSL Corp.

14. 'SP' means all SPRC entities individually and collectively, *i.e.*, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway

Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, together with any parent, subsidiary or affiliated corporation, partnership or other person or legal entity, including, but not limited to Philip F. Anschutz and The Anschutz Corporation.

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18. 'UP' means all UPC entities individually and collectively, i.e., Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company, together with any parent, subsidiary or affiliated corporation, partnership or other legal entity, including, but not limited to UP Acquisition Corporation, Union Pacific Holdings Corp., and Chicago & North Western Railway Company.

19. 'UP Acquisition' means UP Acquisition Corporation, an indirect wholly-owned subsidiary of Union Pacific Corporation.

DEFINITIONS

1. The 'Agreement and Plan of Merger' means the August 3, 1995 Agreement set forth at page 1 et seq. of the Applicants' Railroad Merger Application, Volume 7 (UP/SP-28 at 1).

2. 'BNSF Agreement' refers to the agreement between UP and SP and BNSF relating to the proposed UP/SP merger, including the Supplemental Agreement, set forth at p. 16 et seq. of the

Applicants' Railroad Merger Application, Volume 5 (UP/SP-26 at 16 et seq.).

3. 'Commission' or 'ICC' means the Interstate Commerce Commission and also includes the Department of Transportation's Surface Transportation Board and any other successor agency or department charged by Congress with authority over railroad mergers and combinations.

4. 'Competition' includes both intramodal and intermodal competition and, where applicable, includes source competition.

5. 'Consolidated System' means the integrated rail system after the Transaction (as defined below), or to the entity created by the merger proposed by Applicants.

6. 'Describe' when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communication.

7. 'Document' means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda, contracts; instruments; studies; projections; forecasts; summaries, notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of

negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further, the term 'document' includes:

a. both basic records and summaries of such records (including computer runs);

b. both original versions and copies that differ in any respect from original versions, including notes; and

c. both documents in the possession, custody, or control of Applicants and documents in the possession, custody, or control of consultants or others who have assisted Applicants in connection with the Transaction.

8. 'Identify,'

a. when used in relation to an individual, means to state the name, address, and home and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;

b. when used in relation to a corporation, partnership, or other entity, means to state the name of the

entity and the address and telephone number of its principal place of business;

c. when used in relation to a document, means to:

(1) state the type of document (e.g., letter, memorandum, report, chart);

(2) identify the author, each addressee, and each recipient; and

(3) state the number of pages, title, and date of the document;

d. when used in relation to an oral communication or statement, means to:

(1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;

(2) state the date and place of the communication or statement;

(3) describe in detail the contents of the communication or statement; and

(4) identify all documents that refer to, relate to or evidence the communication or statement;

e. when used in any other context means to describe or explain.

9. 'Including' means including without limitation.

10. 'Person' means an individual, company, partnership, or other entity of any kind.

11. 'Plastic(s) Resin(s)' means each and every commodity that bears any of the following STCC codes: 2821138, Acrylonitrile-butadiene-styrene, other than liquid; 2821139, Polypropylene, other than liquid; 2821140, Polystyrene, other than liquid; 2821141, Polyvinyl chloride, other than liquid; 2821142, polyethylene, other than liquid; 2821144, plastics, resins or gums, other than liquid; 2821148, styrene-acrylonitrile, other than liquid; 2821150 Styrene-butadiene copolymer, other than liquid; 2821156, polyethylene terephthalate; and 2821163, plastic flakes, granules, lumps, pellets, powder or solid mass, other than expanded.

12. 'Provide' (except where the word is used with respect to providing service or equipment) or 'describe' means to supply a complete narrative response.

13. 'Rates' include contract rates and tariff rates.

14. 'Relate to and relating to' have the broadest meaning according to them and include but are not limited to the following: directly or indirectly describing, setting forth, discussing, commenting upon, analyzing, supporting, contradicting, referring to, constituting, concerning or connected in any way with the subject in question or any part thereof.

15. 'Revenue share' means any share of revenue on traffic interchanged with another railroad, including contractual revenue shares, joint rates, proportional rates, and multiple independent factor rates.

16. 'Shipper' means a user of rail services, including a consignor, a consignee, or a receiver.

17. 'STCC' means Standard Transportation Commodity Code.

18. 'Studies, analyses, and reports' include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

19. 'Transaction' means the actions for which approval is sought by the Applicants, as described at UP/SP-1 including

a. the acquisition of control of SPR by UP Acquisition;

b. the merger of SPR into UPRC; and

c. the resulting common control of UP and SP by UPC or any one of such actions or any combination of such actions, and any related transactions.

20. 'Western Class I Railroad' means, in addition to Applicants, any of the following: BN, Santa FE, CNW, Illinois Central Railroad Company, KCS, and Soo Line Railroad Company.

21. References to railroads, shippers, and other companies (including Applicants) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

22. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

INSTRUCTIONS

1. Unless otherwise specified, these discovery requests cover the period beginning January 1, 1993, and ending with the date of response.

2. If BNSF has information that would permit a partial answer to any interrogatory, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that interrogatory, and if the burden of conducting such special study would be greater for BNSF than for SPI, then:

a. state that fact;

b. provide the partial answer that may be made with information available to BNSF;

c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit SPI to derive or ascertain a more complete answer; and

d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit SPI to derive or ascertain a more complete answer.

3. All documents responsive to a data request should be produced, including each copy of an original that differs in any way from the original, including, but not limited to, differences caused by markings on, or other additions to, such copy or deletions of parts of the original.

4. If a document responsive to a particular data request is known to have been in existence but no longer exists, state the circumstances under which it ceased to exist, and identify all persons having knowledge of the contents of such documents.

5. If the information sought in a particular interrogatory is contained in existing documents, those documents may be specifically identified, and pursuant to 49 C.F.R. § 1114.26(b), BNSF may produce legible, complete and exact copies thereof so long as the original documents are retained and will be made available if requested; however, the documents shall be produced within the fifteen-day time period provided for responding to these interrogatories and shall be identified as being responsive to that particular interrogatory. In such case, the copies should be sent by expedited delivery to the undersigned attorneys. SPI will pay all reasonable costs for duplication and expedited delivery of documents to its attorneys.

6. If BNSF's reply to any interrogatory includes a reference to the Application to be filed in this proceeding, such response shall specify the volume(s) and exact page number(s) of the Application where the information is contained.

7. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,

a. identify the information or document (in the manner provided in Definition 8 *supra*); *and*

b. state the basis for the claim that it is privileged or otherwise not discoverable.

8. In responding to any request for data regarding intermodal traffic, indicate separately data for trailers and for containers.

9. If BNSF knows or later learns that its response to any interrogatory is incorrect, it is under a duty seasonably to correct that response.

Pursuant to 49 C.F.R. § 1114.29, BNSF is under a duty seasonably to supplement their responses with respect to any questions directly addressed to the identity and locations of persons having knowledge of discoverable matters.

INTERROGATORIES AND DATA REQUESTS

1. Identify each and every rail yard currently owned or utilized by BNSF in the state of Texas and/or Louisiana that is capable of being used for the storage of cars transporting plastics resins. For each such yard, provide the following information on a monthly basis:

a. Total storage capacity;

b. Amount of storage capacity currently committed to customers;

c. Amount of storage capacity currently committed to plastics resins producers, by producers.

2. As to each yard identified in response to Request No. 1 above, provide the following information on a monthly basis:

a. Current volume of storage of plastics resins;

b. The charges, if any, made for use of each yard, broken down by shipper, by plant, per month for the past three years;

c. Whether any other entity, including any other railroad or any shipper, has authority, currently or in the future, to use any of the yards identified in this Request and if so, describe in detail and with particularity the basis of that authority.

3. Describe all studies, analyses, reports and plans, etc. regarding the construction or acquisition of additional storage capacity, including but not limited to discussions with the UP and/or SP and any discussions with the operator of the Dayton, Texas car storage facility.

4. Describe any agreement with the UP and/or SP concerning access by BNSF to storage facilities owned or leased by the UP and/or SP if the Agreement and Plan of Merger is approved.

5. Identify by name and position those marketing personnel with BNSF responsible for plastics producers and/or the plastics industry and describe each such person's responsibilities, including but not limited to, the identity of each company for which he/she is responsible.

6. Identify each and every plant location of each and every customer of BNSF that ships plastics resins and for each such plant location provide the following information:

a. Identify and describe each contract entered into in the past five years and for each contract identify any minimum volume requirements;

b. State each rate for carrying plastics resins for the past three years and the time period that each rate was in effect;

c. Identify each competitive rail carrier with access to each such plant;

d. Describe the routes used for shipments by BNSF from each such plant;

e. Identify all correspondence regarding rates and/or service for plastics resins for each origin and destination pair from January 1, 1990 through and including the date of your response.

7. Identify each and every analysis, policy and/or comparative market analysis, including, but not limited to, transportation pricing, analyses of rail-to-truck and rail-to-barge transportation competition, and analyses of the traffic diversion resulting from the BNSF Agreement relating to plastics resins and/or plastics resins shipper(s).

8. Identify all plastics producers or plants not currently served by BNSF which will be available for BNSF service according to the BNSF Agreement and any plans, analyses or shipper contacts with regard to serving those producers.

9. Identify all studies, analyses and reports prepared in determining the facilities and operations necessary

to serve those producers identified in response to Request No. 8 above.

10. Identify each and every complaint and/or concern expressed by BNSF or other railroads possessing trackage rights over any segment of UP or SP track.

11. Identify each and every complaint and/or concern expressed by shippers served by railroads having trackage rights over any segment of UP or SP track.

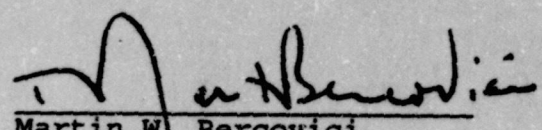
12. Identify, by shipper, the plastics resins traffic that BNSF has identified it can or should obtain as a result of the BNSF Agreement and include for each shipper identified, the volume of such traffic, the origination and destination points of such traffic, and the STCC code for such traffic.

13. Identify, by shipper, origination and destination points, and STCC code, any plastics resins traffic as to which BNSF and UP and/or SP have bid against each other since January 1, 1990, including the dates of such bidding and the results thereof, and identify all documents related thereto.

14. Describe any operating plans of the BNSF to serve plastics resins production points opened to BNSF service by the BNSF Agreement.

15. Produce all documents identified in response to any of the interrogatories set forth above and all documents relied upon in responding to any request.

Respectfully submitted,



Martin W. Bercovici
Douglas J. Behr
Arthur S. Garrett III

KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Tel: (202) 434-4100
Fax: (202) 434-4646

Attorneys for The Society
of the Plastics Industry, Inc.

February 2, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of The Society of the Plastics Industry, Inc.'s foregoing First Set of Interrogatories and Data Requests on Burlington Northern Railroad Company and the Atchison, Topeka, and Santa Fe Railway Company, was served this 2nd day of February, 1996, by hand-delivery, upon counsel for BNSF:

Erika Z. Jones, Esq.
Mayer, Brown & Platt
2000 Pennsylvania Acenue, N.W.
Washington, D.C. 20006-1882

and, by mail upon the remainder of the Restricted Service List.

Martin W. Bercovici

STB FD 32760 2-2-96 I 61162

61162

Item No. _____

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Feb #21

CR-8

FEB 0 5 1996

Part of Public Record

RECEIVED FEB 2 1996 Mail MANAGEMENT I.C.C.

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

CONSOLIDATED RAIL CORPORATION'S
SECOND SET OF INTERROGATORIES AND SECOND
REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANTS

Pursuant to 49 C.F.R. §§ 1114.21 - 1114.31 and the Discovery Guidelines entered pursuant to order dated December 5, 1995 ("Discovery Guidelines"), Consolidated Rail Corporation ("Conrail") hereby submits this Second Set of Interrogatories and Document Requests to Applicants.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions apply and are incorporated into each Interrogatory as though fully set forth therein:

DEFINITIONS

1. "Applicants" means Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, individually and collectively, and any division thereof (and includes present or former directors, officers, employees and agents) together with any parent, subsidiary or affiliated corporation, partnership or other legal entity, including, but not limited to, UP Acquisition Corporation, Union Pacific Holdings Corp., Chicago and North Western Railway Company, Philip F. Anschutz and The Anschutz Corporation.

2. "Application" means the Railroad Merger Application, Finance Docket No. 32760, filed November 30, 1995, by Applicants.

3. "BN/Santa Fe" means BNSF Corporation or the entity resulting from the merger of Burlington Northern Inc. and Burlington Northern Railroad Company with Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company, and includes all parents, subsidiaries, or affiliated corporations of any of the foregoing entities.

4. "Commission" or "ICC" means the Interstate Commerce Commission.

5. "Conrail" means Consolidated Rail Corporation and any divisions, parents, or subsidiaries.

6. "Document" means any and all writings and recordings as defined in Rule 1001 of the Federal Rules of Evidence, including drafts, typings, printings, minutes or copies or reproductions thereof in the possession, custody or control of BNSF Corporation.

7. "Gulf/Eastern Area" means "the web of routes connecting Chicago, St. Louis and Memphis at the north with Houston, San Antonio, Dallas/Ft. Worth and the Mexican border at the south," as described on page 41 of the Verified Statement of R. Bradley King and Michael D. Ongerth ("King/Ongerth V.S."), but also includes all rail routes in Texas west to El Paso and east (through Louisiana) to New Orleans and UP or SP routes from New Orleans to the north or northwest.

8. "Identify" or "identification" means:

a. With respect to a natural person, his or her name and current or last known home and business address (including street name and number, city or town, state, zip code, and telephone number), and his or her last known job title or position.

b. With respect to a person other than a natural person, its full name and type of organization, the address of its principal place of business (including street name and number, city or town, state, zip code, and telephone number), and the jurisdiction and place of its incorporation or organization.

c. With respect to a document, the type of document (e.g., letter, record, list, memorandum, report, deposition

transcript), its date, title, and contents, the identification of the person who prepared the document, the identification of the person for whom the document was prepared or to whom it was delivered, and the identification of the person who has possession, custody, or control over the document.

9. "Relating" or "related" to a given subject matter means constitutes, contains, comprises, consists of, embodies, reflects, identifies, states, refers to, deals with, sets forth, proposes, shows, evidences, discloses, describes, discusses, explains, summarizes, concerns, authorizes, contradicts or is any way pertinent to that subject, including, without limitation, documents concerning the presentation of other documents.

10. "Analyses or Analysis" include any analyses, studies, evaluations, discussions, or reports in whatever form, including letters, memoranda, tabulations, measurements, electronic mail, notes, diary notations, journals, and computer printouts of data selected from a database.

11. References to railroads, shippers, and other companies (including Applicants) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

12. All other definitions set out in Conrail's First Requests for Production of Documents and First Set of Interrogatories not specifically set out above are incorporated herein by reference.

INSTRUCTIONS

1. Consistent with the Discovery Guidelines, these Interrogatories are intended to be non-duplicative of previous written discovery of which Conrail has been served copies. If you consider the Interrogatory to be duplicative, you should so state and refer Conrail to the specific documents or answers produced in response to such prior discovery.

2. If, in responding to each Interrogatory, you consider any part of the Interrogatory objectionable, you should respond to each part of the Interrogatory not deemed objectionable and set forth separately the part deemed objectionable and the grounds for objection.

3. Unless otherwise specified, these Interrogatories cover the period from January 1, 1993, to the date of the response and are subject to revision as described in Paragraph 12 of these Instructions.

4. If the Interrogatory refers to "Applicants" or to any "Applicant", and the response for one Applicant would be different from the response for other Applicants, give separate responses for each Applicant.

5. All documents that respond, in whole or part, to any paragraph of a Request shall be produced in their entirety. Documents that in their original condition were stapled, clipped, or otherwise fastened together, shall be produced in such form. In addition, all documents are to be produced in the file folders or jackets in which they are maintained.

6. If any response to these Interrogatories include a reference to the Application, such response shall specify the responsive volume(s) and page number(s).

7. All documents should be grouped together according to the individual paragraphs and sub-paragraphs of the Request to which they are responsive.

8. If any of the requested documents cannot be produced in full, you are requested to produce them to the fullest extent possible, specifying clearly the reasons for your inability to produce the remainder and stating whatever information, knowledge or belief you have concerning the unproduced portion. If you cannot produce a responsive document because it is no longer is in your possession, custody, or control, state the date on which each such document ceased being in your possession, custody or control; describe the disposition of each such document and the reason for such disposition; and identify each person presently in possession, custody or control of the document or a copy thereof.

9. If any privilege or protection is claimed as to any information or document, state the nature of the privilege or protection claimed (e.g., attorney-client, work product, etc.) and state the basis for claiming the privilege or protection. For each such document, provide the following information:

A. the type of document;

B. the title of the document;

C. the name, address, and title of each author;

D. the name, address, and title of each addressee;

E. all persons to whom copies were sent or distributed and all other persons to whom the document or its contents were disclosed in whole or part;

F. the date of the document;

G. the subject matter of the document;

H. the number of pages;

I. an identification of any attachments or appendices;

J. the current location of the document and the name of the current custodian; and

K. a statement of the basis on which privilege is claimed.

If less than an entire document is claimed to be privileged, furnish a copy of those portions of the document that are not privileged.

10. Use of the singular shall be deemed to include the plural, and vice versa. The terms "and" and "or" should be interpreted as conjunctive, disjunctive, or both, depending on the context, so as to have their broadest meaning. Whenever necessary to bring within the scope of a Request or Interrogatory all information or documents that might otherwise be construed to be outside its scope, the use of a verb in any tense shall be construed as the use of the verb in all other tenses. The term "all" includes "any," and vice versa.

11. If you want clarification concerning the Interrogatory, you are instructed to contact Counsel for Conrail concerning such clarification reasonably in advance of the response date.

12. These Interrogatories and Requests are continuing in nature and you are under a duty to supplement or correct any responses that are incomplete or incorrect and otherwise supplement your responses in accordance with 49 C.F.R. § 1114.29.

INTERROGATORIES

1. Have Applicants performed any Analysis of crew cycles and/or the operation of crew cycles on the primarily directional routes in the Gulf/Eastern Area that are described in the Application?

2. (a) What computerized train performance measurements or data have been kept by either of the Applicants from 1993 through 1995?

(b) Explain what information is contained in each such measurement or data set.

3. Describe, with examples showing specific content and volume, all component model features for the MultiRail model used to support Applicants' Operating Plan, including:

(a) Input files and tables;

(b) Calibration measurements used to validate;

(c) Output files; and

(d) Types of statistical outputs furnished or available.

4. (a) At what point and at what level of detail were cars, trains, and classifications patterns of BN/Santa Fe traffic over the trackage rights segments (segments of Applicants' rail lines over which BN/Santa Fe will obtain

trackage rights) introduced into the modeling process for the Operating Plan?

(b) Describe if, or how, this traffic is reflected in the Operating Plan appendices on blocking and train and traffic densities by line segment.

5. (a) With respect to the Operating Plan model, how was empty car origin-destination flow developed?

(b) How is it introduced in the modeling?

(c) Explain in detail the methodology for developing and timing the introduction of empty flows.

6. For each of the new blocks depicted in Attachment 13-3 of the Operating Plan, state:

(a) Car volume by day of week;

(b) Train assignment;

(c) Previous handling of the component traffic;

(d) Major component origin-destination flows; and

(e) Comparative origin-destination trip times for flows.

7. (a) How does the model reflect train capacities and handling of cars in excess of train capacity?

(b) Are routings changed?

(c) What logic is applied?

8. How does the model reflect yard processing capacity constraints? Please explain in detail these limitations by type and yard location and any train, route, or trip time changes vis-a-vis the base case reflected in the final model version used to prepare the Application.

9. (a) Describe elapsed time-per-car average for each yard in the Gulf/Eastern Area.

(b) Are these data developed by the model?

(c) How do they compare to pre-merger actual data?

10. (a) Does the Operating Plan model provide descriptions of trains by route segment?

(b) Is this in string line form?

(c) Does it include all train types including unit, intermodal, auto, and local service trains?

(d) Are BN/Santa Fe over-the-road and local service trains included?

11. State the amounts of fees or charges paid by Applicants, BN/Santa Fe, or any other railroad, per unit for which the fee or charge is imposed, for traffic over the MacArthur Bridge in St. Louis, MO.

12. Identify any agreements between, or proposals or requests by (a) Applicants, the Houston Belt and Terminal Railroad ("HBTR"), and/or BN/Santa Fe relating to HBTR's storage of rail cars on behalf of BN/Santa Fe for service provided by BN/Santa Fe under the BN/SF Agreement; or (b) Applicants, the Port Terminal Railroad Association ("PTRA"), and/or BN/Santa Fe relating to PTRA's storage of rail cars on behalf of BN/Santa Fe for service provided by BN/Santa Fe under the BN/SF Agreement.

13. Identify any and all UP and/or SP facilities that BN/Santa Fe and/or Applicants have identified, reserved, and/or requested for the storage of rail cars, on behalf of or in the account of BN/Santa Fe, to serve any and all shippers under the BN/SF Agreement. For each facility, identify its location, owner, total storage capacity, and available capacity for the storage of rail cars in the account of BN/Santa Fe.

14. With respect to lines where BN/Santa Fe will have trackage rights under the BN/SF Agreement,

(a) How will BN/Santa Fe trains enter the post-merger UPSP system?

(b) What are the criteria for priority in giving BN/Santa Fe trains access at points where such trains arrive to enter the Applicants' post-merger lines?

(e) A listing of the variable cost of each movement and the full cost of each movement (to the extent that you computed URCS full costs) tied to or identifying the cost parameters used to produce those variable (and total) costs;

(f) The changes in the URCS Cost Model parameters and/or movement parameters that resulted in a decline in the total variable cost and total full cost (if you computed it) at the same time that revenue increased by $76 million; and

(g) The treatment of costs of BN/Santa Fe trackage rights movements on the post-merger UP/SP, and of BN/Santa Fe trackage rights compensation paid to UP/SP, for operations over UP/SP tracks in the cost analysis after consolidation.

18. If Applicants computed cost differences pre- and post-consolidation based on the difference in gross ton miles, train miles, locomotive unit miles, car miles and/or car types

(a) Identify by origin-destination pair the source of any cost reduction identified with respect to each of those measurements (or identify the work papers by title and number where that information can be found); and

(b) Identify the URCS cost parameters used in performing these calculations and explain how such URCS parameters differ from the URCS parameters developed by the ICC to cost pre-consolidation SP movements and pre-consolidation UP movements.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents compiling or constituting copies of simulations made (including string line charts) on traffic moving during 1994 or 1995 on the following lines:

(a) SP (or affiliate or predecessor) lines from (i) Houston to St. Louis via Shreveport, Pine Bluff, Brinkley and Delta; and (ii) between Brinkley and Memphis; and

(b) UP (or affiliate or predecessor) lines from Houston to St. Louis via Palestine, Texarkana, and Little Rock.

2. All documents comprising or constituting copies of simulations made (including string line charts) using or projecting Applicants' traffic to move post-merger on the UP and SP lines referred to in Document Request No. 1.

3. All documents comprising or constituting copies of simulations made (including string line charts) using or projecting both Applicants' and BN/Santa Fe traffic to move post-merger on the UP and SP lines referred to in Document Request No. 1.

4. All documents that discuss or disclose line capacity or capacity constraints that led to the decision to pair UP and SP trackage in primarily directional routings between Houston and St. Louis.

5. All bridge reports made since January 1, 1994 for the UP and SP lines referred to in Document Request No. 1.

6. All incident reports made since January 1, 1994 for the lines referred to in Document Request No. 1.

7. If the answer to Interrogatory No. 1 herein is affirmative, produce all documents that relate to any such Analysis.

8. All documents relating to any and all UP and/or SP facilities that BN/Santa Fe and/or Applicants have identified, reserved, or requested on behalf of (or in the account of) BN/Santa Fe for the storage of rail cars used to serve shippers in connection with the BN/SF Agreement, including but not limited to

(a) such facilities from, with or involving the HBTR or the PTRA;

(b) any proposals, agreements or requests among or between Applicants, BN/Santa Fe, and/or HBTR concerning such storage; and

(c) any proposals, agreements, or requests among or between Applicants, BN/Santa Fe, and/or PTRA concerning such storage.

CERTIFICATE OF SERVICE

I certify that on this 21 day of February, 1996, a copy of the foregoing Consolidated Rail Corporation's Second Set of Interrogatories and Document Requests to Applicants was served by hand delivery to:

Arvid E. Roach II
S. William Livingston, Jr.
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and served by first-class mail, postage pre-paid, to all parties on the Restricted Service List.

A. Stephen Hut, Jr.

STB FD 32750 2-2-96 I 61165

Item No. _____

Page Count 13

Feb 22

61145

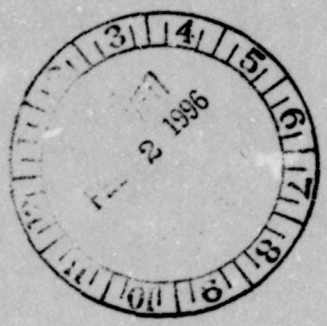
R & LOFTUS
ENEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

WILLIAM L. S_____
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSANBERG
CHRISTOPHER A. MILLS*
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. DIETRICH

*ADMITTED IN ILLINOIS ONLY

202 347-7170

February 2, 1996



Via Hand Delivery

Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: 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, et al.

Gentlemen:

Enclosed for filing in the above-referenced proceeding are the original and 20 copies of the Western Coal Traffic League's First Set of Interrogatories and Document Production Requests to BN/Santa Fe (WCTL-5).

Also enclosed is a WordPerfect 5.1 diskette containing the aforementioned filing.

Sincerely yours,

Christopher A. Mills

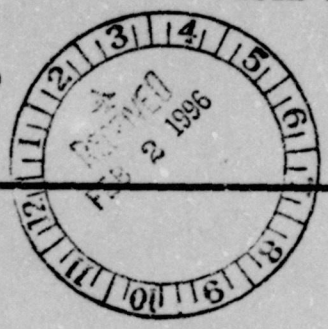
FEB 05 1996

CAM:mfw
Enclosure

cc: The Honorable Jerome Nelson
Restricted Service List

WCTL-5

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

WESTERN COAL TRAFFIC LEAGUE'S FIRST SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS TO BN/SANTA FE

FEB 0 5 1996

WESTERN COAL TRAFFIC LEAGUE

OF COUNSEL:

By: C. Michael Loftus
John H. LeSeur
Christopher A. Mills
Patricia E. Kolesar
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

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

Attorneys and Practitioners

Dated: February 2, 1996

WESTERN COAL TRAFFIC LEAGUE'S
FIRST SET OF INTERROGATORIES
AND DOCUMENT PRODUCTION REQUESTS
TO BN/SANTA FE

The Western Coal Traffic League ("WCTL") hereby submit these, its First Set of Interrogatories and Document Requests to Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe"). WCTL requests responses to these interrogatories and document production requests within 15 days after service thereof as provided in the Discovery Guidelines adopted by Judge Nelson in his decision served December 7, 1995.

DEFINITIONS AND INSTRUCTIONS

A.

Definitions

1. "Applicant" or "Applicants" means one or more of the parties to the Railroad Merger Application in Finance Docket No. 32760 filed at the Interstate Commerce Commission ("ICC") on November 30, 1995.

2. "Communication" means the transmittal by whatsoever means of information of any kind.

3. "Document" means the term "document" as that term is used in Fed. R. Civ. P. 34(a) in BN/Santa Fe's current or prior possession, custody or control. "Document" as used herein

also encompasses electronic mail and physical things such as computer disks in BN/Santa Fe's current or prior possession, custody or control.

4. "IC" means Illinois Central Railroad Company.

5. "Identify," when used with reference to a document, means to either produce such document or to state its date, type of document (e.g., letter, memorandum, chart, etc., or other means of identifying it), its title or heading, the author's (authors') full name(s), its recipient(s), general subject matter contents, number of pages and the document's present location and custodian and in the case of contracts filed with the Interstate Commerce Commission or Surface Transportation Board, the contract number. If such document was, but is no longer in BN/Santa Fe's possession, custody or control, state what disposition was made of it.

6. "Identify," when used with reference to a communication other than a document, means to state the nature of the communication (e.g., meeting, telephone call, etc.), the time, date and place the communication occurred, and the participants' full names, business addresses and job titles.

7. "Merger" or "proposed merger" means the merger proposed by the Applicants in Finance Docket No. 32760.

8. "PRB" means the Powder River Basin.

9. "Relate to" or "Relating to" means making a statement about, discussing, describing, referring to, reflecting,

explaining, analyzing, or in any other way pertaining, in whole or in part, to a subject.

10. "Settlement Agreement" means the agreement between BN/Santa Fe and UP/SP dated September 25, 1995, including all supplements and amendments thereto.

11. "SP" means Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, and the Denver and Rio Grande Western Railroad Company.

12. "UP" means Union Pacific Railroad Company, the former Chicago and North Western Railway Company, Missouri Pacific Railroad Company, and the former Western Railroad Properties Incorporated.

B.

INSTRUCTIONS

1. In the following interrogatories and document production requests, all uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa. References to railroads, shippers or other companies include officers, directors, employees, and agents thereof, except where the context clearly requires otherwise.

2. To the extent that BN/Santa Fe considers any of the following interrogatories or document production requests objectionable, respond to each part thereof as is not objectionable in your view, and separately identify that part of the

interrogatory request that you find objectionable and state the grounds for each such objection.

3. If BN/Santa Fe objects to any interrogatory or document production request on grounds of privilege, identify which privilege is claimed.

4. If Counsel for BN/Santa Fe wants clarification concerning any interrogatory or document production request set forth, Counsel for BN/Santa Fe is instructed to contact Counsel for WCTL (either in writing or telephonically) concerning such requests reasonably in advance of the due date referenced above.

5. Unless otherwise specified, these interrogatories cover the period from January 1, 1995 to date, and these document production requests cover all documents fitting one or more of the categories listed below, and created or modified on or after January 1, 1995.

6. These interrogatories and document production requests are continuing in nature, and BN/Santa Fe's responses should be supplemented whenever additional responsive information or documents come into BN/Santa Fe's possession or control.

INTERROGATORIES

1. Assuming the proposed merger is consummated, state, by origin, destination and shipper:

(a) the volume of coal traffic that BN/Santa Fe expects to gain annually as a result of the Settlement Agreement and/or any other agreement(s) be-

tween BN/Santa Fe, Applicants, and any other rail carrier(s); and

(b) the volume of coal traffic that BN/Santa Fe expects to be diverted to UP/SP as a result of the merger.

2. Identify the origin(s) for coal shipments in Utah and Colorado to which BN/Santa Fe will gain access as a result of the Settlement Agreement and any other agreement(s) among BN/Santa Fe, Applicants, and any other rail carrier(s). For purposes of this Interrogatory, "access" means the ability to serve directly with BN/Santa Fe's power and crews and/or the ability to serve via reciprocal switch or interchange with a rail carrier other than UP or SP that directly serves an origin.

3. With respect to the agreement between Applicants and IC described in the UP press release attached hereto as Appendix 1:

(a) Identify any communications between BN/Santa Fe and Applicants with respect to the matters described in the first paragraph at the top of the second page of such press release;

(b) Describe any adverse impact that would result to BN/Santa Fe operations and/or service in the Central Corridor under the Settlement Agreement if the Board imposes a condition to any grant of merger authority that Applicants must sell to a rail carrier other than BN/Santa Fe the SP

line(s) between Salt Lake City/Provo, UT and Kansas City, MO/KS via Denver and Pueblo, CO, including associated lines necessary to enable such other rail carrier to serve coal mines in Colorado and Utah presently served by SP, and asuming Applicants decide to go ahead with the merger.

4. Are there any instances where Santa Fe submitted a bid or rate proposal for the movement of coal to a customer within one year prior to the date of exercise of the common control authority granted by the Interstate Commerce Commission in its decision served August 23, 1995 in Finance Docket No. 32549, and BN/Santa Fe submitted a higher bid or rate proposal for the same movement (or a coal movement of comparable tonnage involving the same origin mining area and destination and the same time frame) subsequent to the date of exercise of such common control authority?

5. If the answer to Interrogatory No. 4 is affirmative, identify with respect to each such instance:

(a) The origin mining area involved;

(b) The destination state;

(c) The amount of the increase expressed as a percentage; and

(d) Whether BN provided bids or rate proposals for the movement of coal to the same customer(s) during the same time frames from (i) the same mining areas, or (ii) other origin mining areas.

6. Has BN/Santa Fe (or any of its affiliates) entered into a "separate. . . haulage agreement" with SP pursuant to Section 5(f) of the Agreement entered into on April 13, 1995 between BN/Santa Fe and SP and filed with the Interstate Commerce Commission in Finance Docket No. 32549 implementing the haulage services SP agreed to provide to Santa Fe "between Caldwell, Texas and the Elmendorf Facility at San Antonio" as set forth in Section 6(a) of the April 13, 1995 Agreement?

7. If the answer to Interrogatory No. 6 is negative, when, if ever, does BN/Santa Fe (or any of its affiliates) plan to enter into the "separate. . . haulage agreement" identified in Interrogatory No. 6?

DOCUMENT PRODUCTION REQUESTS

1. Produce all documents relating to communications identified in response to Interrogatory No. 3(a).

2. If the answer to Interrogatory No. 6 is affirmative, produce a copy of the agreement described therein.

3. Produce the Agreement dated April 13, 1995 between BN/Santa Fe and SP concerning the proposed merger of BN and Santa Fe that was approved by the Interstate Commerce Commission in Finance Docket No. 32549.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE

By: C. Michael Loftus
John H. LeSeur
Christopher A. Mills
Patricia E. Kolesar
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202-347-7170

Attorneys and Practitioners

Dated: February 2, 1996

UNION PACIFIC RAILROAD

RELEASE

1416 Dodge Street
Omaha, NE 68179
(402) 271-3476

FOR IMMEDIATE RELEASE

Union Pacific and Southern Pacific have reached agreement with Illinois Central Railroad on a variety of marketing and operational issues associated with the pending UP/SP merger.

"This agreement will mean more efficient operations for both railroads, especially through some key gateways," said UP Corporation President Dick Davidson.

Illinois Central President E. Hunter Harrison added, "This agreement ensures efficient routing options will continue to be available post-merger for all shippers. We have excellent working relationships with both the UP and the SP and are confident that will continue following their merger."

In the marketing area, the agreement is designed to take advantage of mutually beneficial interline routes and business opportunities. For example, the agreement contemplates cooperative efforts in marketing forest products, coal, chemicals, and carload business.

In the operating area, the agreement focuses principally on issues designed to ensure efficient operation after merger. It covers interchange of traffic between the two railroads in the Chicago area, rebuilding of certain facilities in the New Orleans area, and the resolution of the impact of the merger on certain trackage rights. For example, IC will be sold SP's interest in a line between Church and Valley Junction in Illinois and the new UP/SP system will retain trackage rights on that line. In the Chicago area, the agreement specifies how operations will be conducted after merger on the Illinois Central track between Chicago and Joliet.

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of February, 1996, I caused a copy of the foregoing First Set of Interrogatories and Document Production Requests of the Western Coal Traffic League to be served by hand on the individuals listed below, and by first class United States Mail, postage prepaid, on all other persons on the Restricted Service List in this proceeding.

Erika Z. Jones
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

Christopher A. Mills

18. Confidentiality.

Except as provided below, the parties may make all terms of this Agreement known to the public through a press release previously reviewed and approved by the other parties, and may address it in subsequent communications to the Surface Transportation Board or others. The parties agree, however, that the terms of this Agreement found in sections 2a), 6b) and c) and in Exhibits A-1 and A-2 are confidential and shall not be disclosed, without the consent of the other party, to individuals not employed by or acting as counsel for or consultants to UP/SP or IC, except as required by law, provided the parties may make appropriate disclosure of such terms to government entities or as required in connection with the process of seeking government approval of the control case, or of this Agreement under applicable Surface Transportation Board confidentiality procedures.

UNION PACIFIC CORPORATION

By: _____
Title: _____

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Title: _____

SOUTHERN PACIFIC RAIL CORPORATION

By: _____
Title: Vice President

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

By: _____
Title: Vice President

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Title: Vice President

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

By: _____
Title: Vice President

SPCSL CORP.

By: _____
Title: Vice President

ILLINOIS CENTRAL RAILWAY COMPANY

By: _____
Title: _____

STB FD 32760 2-2-96 I 61164

61164

Item No. _____

Page Count 10

Feb # 23

LOVER & LOFTUS
ATTORNEYS AT LAW
1 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

WII
C. I
DOI
JOI
KEI
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS*
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. DIETRICH

*ADMITTED IN ILLINOIS ONLY

202 347-7170

FEB 0 5 1996

February 2, 1996

Via Hand Delivery

Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: 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, et al.

Gentlemen:

Enclosed for filing in the above-referenced proceeding are the original and 20 copies of the Western Coal Traffic League's Second Set of Interrogatories and Document Production Requests to Applicants (WCTL-4).

Also enclosed is a WordPerfect 5.1 diskette containing the aforementioned filing.

Sincerely yours,

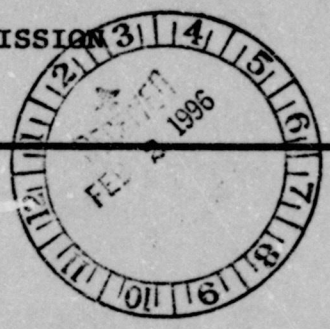
Christopher A. Mills

CAM:mfw
Enclosure

cc: The Honorable Jerome Nelson
Restricted Service List

WCTL-4

BEFORE THE
INTERSTATE COMMERCE COMMISSION



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

WESTERN COAL TRAFFIC LEAGUE'S SECOND SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS TO APPLICANTS

WESTERN COAL TRAFFIC LEAGUE

OF COUNSEL:

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

By: C. Michael Loftus
John H. LeSeur
Patricia E. Kolesar
Christopher A. Mills
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for the Western Coal Traffic League

Dated: February 2, 1996

WESTERN COAL TRAFFIC LEAGUE'S
SECOND SET OF INTERROGATORIES
AND DOCUMENT PRODUCTION REQUESTS
TO APPLICANTS

Please provide answers to the following interrogatories, and provide all documents responsive to the following document production requests, in accordance with the Definitions and Instructions appended to Western Coal Traffic League's First Set of Interrogatories and Document Production Requests to Applicants served on December 18, 1995, which Definitions and Instructions are incorporated herein by reference.

I.

INTERROGATORIES

25. Identify all coal shippers (including coal mines, coal transloading facilities and power plants or other facilities at which coal is loaded into or unloaded from railcars and the owners or operators thereof) to which BNSF will gain access as a result of the Settlement Agreement. For purposes of this Interrogatory, "access" means the ability to serve directly with BNSF's power and crews and/or the ability to serve via reciprocal switch or interchange with a rail carrier other than UP/SP that directly serves a coal shipper.

26. Identify any communication(s) with a shipper(s) relating to proposed or contemplated build-outs or build-ins between a plant or other shipping or receiving facility served by UP and a line of the SP, or vice versa, within one year prior to

August 4, 1995. With respect to any such communications, provide the name of the shipper, the location of the facility, and the date(s) and nature of the communication(s). For purposes of this Interrogatory, "build-out" means construction of a spur or other line by a shipper or affiliate of a shipper, and "build-in" means construction of a spur or other line by UP or SP.

27. Identify any studies, analyses, memoranda, reports or other documents relating to whether the proposed merger should or would be consummated if the approval were conditioned on (a) divesting or (b) providing trackage rights over UP/SP's Central Corridor lines, in either event to a neutral rail carrier (one other than UP/SP or BN/Santa Fe) so as to permit such neutral carrier to serve all coal mines presently served by SP in Colorado and Utah and to transport coal produced at such mines or at mines served by the Utah Railway to Kansas City, MO/KS and/or St. Louis, MO, for movement beyond via connecting rail carriers or other mode of transportation.

28. Identify any communications between Applicants and Illinois Central Railroad Company ("IC") relating to the matters identified in the UP press release attached hereto as Appendix 1.

29. With respect to the first paragraph at the top of the second page of Appendix 1 attached hereto, and assuming that the Board imposes a condition to any grant of merger authority to Applicants requiring sale of or a grant of trackage rights over UP/SP's Central Corridor lines between Provo, UT or points

west thereof and Kansas City, MO or points east thereof via Grand Junction, Denver and/or Pueblo, CO, including access to coal mines presently served by or accessible to SP, and that Applicants still decide to go ahead with the merger:

(a) State whether the agreement with IC requires Applicants to negotiate first with IC concerning such sale or trackage rights;

(b) Describe any communications between Applicants and IC concerning the line or line(s) that would be sold to or operated over by IC in order to enable IC to provide service between points in the midwest and points in Colorado and/or Utah; and

(c) Identify the line or line(s) which Applicants would propose to sell to IC or over which Applicants would propose to grant trackage rights.

30. Identify any studies, analyses, memoranda, reports or other documents relating to your answer to any part of Interrogatory No. 29.

31. Describe any agreement(s) or understanding(s) between Applicants and the Utah Railway or among Applicants, BN/Santa Fe and the Utah Railway concerning Utah Railway's access to additional coal mines or coal transloading facilities following consummation of the proposed merger.

32. Identify any documents relating to the agreement(s) or understandings(s) described in your answer to Interrogatory No. 7.

33. For purposes of this Interrogatory, "WRPI" means Western Railroad Properties, Incorporated and "CNW" means Chicago and North Western Railway Company. Are there any instances where WRPI/UP or WRPI/UP/CNW or UP/CNW submitted a joint bid or rate proposal for the movement of coal to a customer within one year prior to the date of exercise of the common control authority granted by the Interstate Commerce Commission in its decision served March 7, 1995 in Finance Docket No. 32133, and UP submitted a higher bid or rate proposal for the same movement (or a coal movement of comparable tonnage involving the same origin mining area and destination and the same time frame) subsequent to the date of exercise of such common control authority?

34. If the answer to Interrogatory No. 34 is affirmative, identify with respect to each such instance:

(a) The origin mining area involved;

(b) The destination state;

(c) The amount of the increase expressed as a percentage; and

(d) Whether UP provided bids or rate proposals for the movement of coal to the same customer(s) during the same time frames from (i) the same mining areas, or (ii) other origin mining areas.

II.

DOCUMENT PRODUCTION REQUESTS

27. Produce all documents relating to all communications identified in response to Interrogatory No. 26.

28. Produce all documents identified in response to Interrogatory No. 27.

29. Produce all documents relating to all communications identified in response to Interrogatory No. 28.

30. Produce any agreements or written understandings between Applicants and IC relating to the subject matter of the first paragraph at the top of the second page of Appendix 1 attached hereto.

31. Produce all documents identified in response to Interrogatory No. 30.

32. Produce all documents identified in response to Interrogatory No. 32.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE

By: C. Michael Loftus
John H. LeSeur
Patricia E. Kolesar
Christopher A. Mills
Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys and Practitioners

Dated: February 2, 1996

UNION PACIFIC RAILROAD

RELEASE

1416 Dodge Street
Omaha, NE 68179
(402) 271-5678

FOR IMMEDIATE RELEASE

Union Pacific and Southern Pacific have reached agreement with Illinois Central Railroad on a variety of marketing and operational issues associated with the pending UP/SP merger.

"This agreement will mean more efficient operations for both railroads, especially through some key gateways," said UP Corporation President Dick Davidson.

Illinois Central President E. Hunter Harrison added, "This agreement assures efficient routing options will continue to be available post-merger for all shippers. We have excellent working relationships with both the UP and the SP and are confident that will continue following their merger."

In the marketing area, the agreement is designed to take advantage of mutually beneficial interline routes and business opportunities. For example, the agreement contemplates cooperative efforts in marketing forest products, coal, chemicals, and carload business.

In the operating area, the agreement focuses principally on issues designed to ensure efficient operation after merger. It covers interchange of traffic between the two railroads in the Chicago area, rebuilding of certain facilities in the New Orleans area, and the resolution of the impact of the merger on certain trackage rights. For example, IC will be sold SP's interest in a line between Church and Valley Junction in Illinois and the new UP/SP system will retain trackage rights on that line. In the Chicago area, the agreement specifies how operations will be conducted after merger on the Illinois Central track between Chicago and Joliet.

The accord also resolves IC's role in UP/SP's pending merger approval case before the Surface Transportation Board (STB). IC agrees not to oppose UP/SP's application. UP/SP agrees to negotiate first with IC if additional competition beyond the Burlington Northern Santa Fe (BNSF) agreement is imposed by the STB and UP still decides to go ahead with the merger.

Davidson said, "UP's and SP's existing agreement with BNSF would be imposed as a condition to the merger, and it fully addresses all competitive issues."

Harrison noted, "UP and SP have demonstrated their good-faith and proactive efforts to address upfront the anticompetitive elements of their proposed merger. If the STB decides UP's agreement with BNSF is sufficient to protect the public interest, this element of our agreement will not be triggered."

The agreement is contingent upon approval of the proposed Union Pacific-Southern Pacific merger. In all, more than 1,500 customers and government agencies have supported the proposed combination. A merger application was filed November 30, 1995. A decision is expected from the Surface Transportation Board, the successor of the Interstate Commerce Commission, by mid-summer.

-0-

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of February, 1996, I caused a copy of the foregoing Second Set of Interrogatories and Document Production Requests of the Western Coal Traffic League to be served by hand on the individuals listed below, and by first class United States Mail, postage prepaid, on all other persons on the Restricted Service List in this proceeding.

Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

Christopher A. Mills

STB FD 32760 1-31-96 I 61141

FEB 0 1 1996

Item No. 6114

Page Count 4

JAN 417

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
PATRICIA E. DIETRICH

*ADMITTED IN ILLINOIS ONLY

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

202 347-7170

EXPEDITED CONSIDERATION REQUESTED

January 31, 1996

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 No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.

Dear Mr. Secretary:

Enclosed for filing in the captioned proceeding please find an original and twenty (20) copies of Peabody Holding Company, Inc.'s (i) Petition for Leave to Late-File Notice of Intent to Participate; and (ii) Notice of Intent to Participate ("PHC-1").

An extra copy of this filing is enclosed. Kindly indicate receipt and filing by time-stamping the copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for Peabody Holding Company, Inc.

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

Office of the Secretary
FEB 0 1 1996
Part of

ORIGINAL

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
JAN 31 1996

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

PETITION FOR LEAVE TO LATE-FILE NOTICE OF INTENT TO PARTICIPATE BY PEABODY HOLDING COMPANY, INC.

Pursuant to 49 C.F.R. § 1117.1, Peabody Holding Company, Inc., a New York corporation ("Peabody"), hereby petitions the Board to grant it leave to late-file its Notice of Intent to Participate in the referenced docket. The Notice of Intent is attached hereto and is designated as PHC-1. In support of this Petition, Peabody states as follows:

1. Peabody is a holding company which has ownership interests in coal mines which may be affected by the proposed rail merger.

2. The purpose of the January 16, 1996 due date for filing Notices of Intent to Participate in this proceeding was to facilitate the Board's compilation of an official service list for the proceeding. See Finance Docket No. 32760, Union Pacific

Corp., et al.--Control and Merger--Southern Pacific Rail Corp., et al., Decision No. 6 (served October 19, 1995), at 10.

3. The official service list for the proceeding has not yet been published by the Board. It is our understanding that it is still being compiled.

4. Under the procedural schedule set for this proceeding, comments, protests, requests for conditions, and all other opposition evidence and argument are not due until March 29, 1996. Peabody is prepared to comply with this schedule.

4. Peabody's late-filed Notice of Intent to Participate will not delay the proceeding, will not prejudice any party to the proceeding, and should not adversely affect the compilation of the official service list for the proceeding.

5. The granting of Peabody's Petition for Leave to Late-File is consistent with Board's practice of construing its rules liberally to secure a just determination of issues presented pursuant to 49 C.F.R. § 1100.3.

WHEREFORE, Peabody respectfully requests that the Board grant its Petition for Leave to Late-File.

Respectfully submitted,

PEABODY HOLDING COMPANY, INC.

C. Michael Loftus

By: C. Michael Loftus
Christopher A. Mills
Patricia E. Kolesar
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: January 31, 1996

Attorneys and Practitioners

STB FD 32760 1-29-96 I 61122

61122 ISRI-1

BEFORE THE
SURFACE TRANSPORTATION BOARD

JAN 30 1996

Part of Public Record

JAN 30 1996

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

NOTICE OF INTENT TO PARTICIPATE

Pursuant to Decision No. 9 in this proceeding, and in accordance with 49 C.F.R. §1180.4(a)(4), the Institute of Scrap Recycling Industries, Inc., hereby submits its Notice of Intent to Participate. This party respectfully requests that its representatives, as listed below, be included in the service list maintained by the Board in this proceeding so that the listed representatives receive copies of all orders, notices, and other pleadings in this proceeding. Further, these parties request that Applicants and other parties of record serve copies of all pleadings filed in this proceeding directly upon the indicated representatives as listed below:

John K. Maser III, Esquire
Jeffrey O. Moreno, Esquire
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934

Michael Mattia
Director, Risk Management
Institute of Scrap Recycling Industries, Inc.
1325 G Street, N.W.
Washington, D.C. 20005

Respectfully submitted,

John K. Maser III
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500
Attorneys for Institute of Scrap Recycling Industries, Inc.

January 29, 1996

Item No. _____

Page Count 1

JAN 397

STB FD 32760 1-29-96 I 61104

Item No. _____

Page Count 4

JAN 379

ORIGINAL. 41104

LSBC Holdings, Inc.
121 West First Street
Geneseo, Illinois 61254

RECEIVED
JAN 29 1996

January 27, 1996

Mr. Vernon Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue
Washington, DC 20423

RE: Finance Docket #32760 ~~(Sub-no. 129)~~
Docket #AB-3 (Sub-no. 130)
#AB-8 (Sub-no. 38)
Denver and Rio Grande Western Railway
Missouri Pacific Railroad Company
Notice of Intent to Abandon and Discontinue Service

~~#32760~~
~~#AB-8 (Sub-no. 36X)~~
~~#AB-12 (Sub-no. 189X)~~
Denver and Rio Grande Western Railway
Southern Pacific Transportation Company
Discontinuance Exemption
Abandonment Exemption

Mr. Williams:

To comply with the Surface Transportation Board (ICC) Procedural Schedule for the above-referenced docket, ***LSBC Holdings, Inc.*** is herewith enclosing our **Description of Anticipated Inconsistent and Responsive Application and Petition for Waiver.**

Please advise us of any changes that occur in the scheduling of these proceedings.

On Behalf of the Board,

Thomas Zwica
Executive Vice-President

ENTERED
Office of the Secretary
JAN 29 1996
8 Part of Public Record

With reference to: Finance Docket #32760
Docket #AB-3 (Sub-No. 130)
#AB-8 (Sub-No. 38)
Denver and Rio Grande Western Railroad Co.
Missouri Pacific Railroad Company
Notice of Intent to Abandon and Discontinue Service

Finance Docket #32760
Docket #AB-8 (Sub-No. 36X)
#AB-12 (Sub-No. 189X)
Denver and Rio Grande Western Railroad Co.
Southern Pacific Transportation Company
Discontinuance Exemption
Abandonment Exemption

Description of Anticipated Inconsistent and Responsive Application and Petition for Waiver

LSBC Holdings, Inc. has invited Southern Pacific Transportation Company and the Union Pacific Railroad to enter into the following private transactions:

From Southern Pacific Transportation Company:
All of the assets of the former Denver and Rio Grande Western Railroad (D&RGW), including the railroad and all associated trackage, all operating, trackage and haulage rights, all associated buildings and real estate, signals and dispatching facilities, equipment, parts, patents, trademarks and namesakes, and any and all motive power units specifically configured for operation on the D&RGW property.

From the Union Pacific Railroad:
Purchase the former Missouri Pacific Railroad line from NA Tower, CO to Towner, CO; purchase, lease, operating, or trackage rights from the Denver and Rio Grande Western yard in Pueblo, CO to NA Tower, CO; and purchase, lease operating or trackage rights on the former Missouri Pacific Railroad's "Hoisington Sub" from Towner, CO east through the state of Kansas on to Kansas City, thereby encompassing in entirety the trackage rights currently held by the Southern Pacific Railroad (D&RGW).

Petition for Waiver

LSBC Holdings Inc. is requesting a waiver from complying with regulation **49 CFR Sec. 1180 Subpart A Sec. 1180.6, 1180.7, 1180.8, 1180.9** due to the fact that material information required to comply with the regulation has not yet been forwarded to **LSBC Holdings, Inc.** by either the Southern Pacific Transportation Company or the Union Pacific Railroad. Once this information has been received, **LSBC Holdings, Inc.** intends to fully comply with the regulation.

LSBC Holdings, Inc.

LSBC Holdings, Inc. is a privately held corporation focused on the acquisition of rail transportation properties that become available as a result of either mergers or abandonment petitions or line rationalization.

LSBC Holdings, Inc. believes that with careful research and selection, the application of innovative management, focused local and national marketing programs, these light-density rail properties represent significant business opportunities.

LSBC Holdings, Inc. plan for the Property

Upon acquistion of the aforementioned property, **LSBC Holdings, Inc.** will immediately implement it's marketing and operational plan which is focused on the following areas.

1) **Improve and expand service to local on-line customers.**

2) **Provide a competitive routing alternative to traffic orginating off-line.**

3) **Provide competitive access to shippers who could find themselves limited to service provided by only one carrier.**

4) **Work with local community development groups to retain existing business and attract new business development opportunities.**

5) **Apply innovative management techniques and marketing strategies to develop some of the underlying potential unique to the location of the property.**

6) **Position the railroad to ultiize technical innovations in communications and data exchange to improve the efficiency of operations.**

7) **Implement a plan of maintainance, repair and upgrading to insure that future service will not be interrupted and new service can be accomodated.**

Whenever a change of ownership occurs, there naturally exists a high degree of anxiety amongst the current employee base. **LSBC Holdings, Inc.** will aggressively address employee relations to assure current employees of our intent to retain all who so desire to remain in their current positions. While we can expect that some attrition of the employee base will naturally occur, we believe that by taking a pro-active stance in regard to employee relations the impact on the service level of the railroad will be negligible.

LSBC Holdings, Inc. will initiate a comprehensive program to refine the railroad in ways that will increase the opportunities for employees, modernize the motive power of the railroad, expand the rolling stock inventory to insure the rail needs of the region are met and apply management and operational policies that insure profitability.

LSBC Holdings, Inc.

121 West First Street
Geneseo, Illinois 61254

Certificate of Service:

I hereby certify that I have this day served the foregoing documents upon Applicant's Representative Mr. Robert T. Opal, General Attorney, Union Pacific Railroad, 1416 Dodge Street, Omaha, Nebraska, 68179, and to Mr. Gary Laakso, General Attorney, Mr. Phil Anschutz, Chairman of the Board at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, by Prepaid, First Class, Certified Return Receipt Requested, United States Postal Service.

Dated at Geneseo, Illinois, this 27th day of January 1996.

Signature _____

Thomas H. Zwica
Executive Vice-President

STB FD 32760 1-26-96 I 61090

41090

Office of the Secretary
JAN 29 1996
Part of
Public Record

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

RECEIVED
JAN 29 1996

January 26, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, NW
Washington, D.C. 20423

Re: 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.

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is the original and twenty (20) copies of the FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF WESTERN RESOURCES, INC., designated WSTR-5. Also enclosed is a diskette formatted in WordPerfect 5.1 with a copy of the Interrogatories.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Thomas W. Wilcox

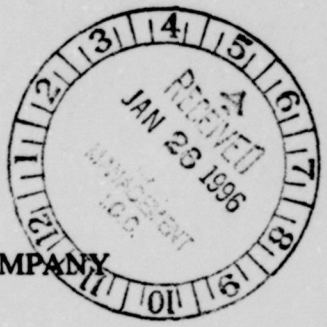
enclosures
cc: W. Jack Green
T.L. Green
(w/encl.)

Item No. _____

Page Count 15

JAN 365

WSTR-5



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

JAN 29 1996
Part of
Public Record

FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF WESTERN RESOURCES, INC.

Pursuant to the Surface Transportation Board's ("STB" or "Board") General Rules of Practice, 49 C.F.R. §§1114.21 to 1114.31, Western Resources, Inc. ("Western") submits the following initial interrogatories and requests for production of documents to Applicants. Western requests that Applicants comply with these discovery requests by February 12, 1996. Western further requests that Applicants, in accordance with the Discovery Guidelines established in this proceeding, notify the undersigned of any objections they may have to these requests so that an attempt may be made to resolve such objections informally and expeditiously.

DEFINITIONS

A. "Applicants" or "Applicant" means Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, individually and collectively, together with any parent, subsidiary or affiliated corporation, partnership or other

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legal entity, including, but not limited to, UP Acquisition Corporation, Union Pacific Holdings Corp., Chicago & North Western Railway Company, Philip F. Anschutz and The Anschutz Corporation.

B. "Document" means any writings or other compilations of information, whether handwritten, typewritten, printed, recorded, or produced or reproduced by any process, including but not limited to, intracompany or other communications, business records, agreements, contracts, correspondence, telegrams, memoranda, studies, projections, summaries of records of telephone or personal conversations of interviews, reports, diaries, log books, notebooks, forecasts, photographs, maps, tape recordings, computer tapes, computer programs, computer printouts, computer models, statistical or financial statements, graphs, charts, sketches, note charts, plans, drawings, minutes or records of summaries of conferences, expressions or statements or policy, lists of persons attending meetings or conferences, opinions or reports or summaries of negotiations or investigations, brochures, opinions or reports of consultants, pamphlets, advertisements, circulars, trade or other letters, press releases, drafts, revisions of drafts, invoices, receipts, and original or preliminary notes. Further, the term "document" includes:

(1) Both basic records and summaries of such records (including computer runs);

(2) Both original versions and copies that differ in any respect from original versions; and

(3) Both documents in the possession of Applicants and documents in the possession of consultants, counsel, or any other person that has assisted Applicants.

C. The term "identify," when used with reference to a document, means to state its title or other identifying data; the kind of document; its present location and custodian; its date or

approximate date; the identity of the author, originator, sender, and each person who received the document; and the general subject matter.

D. "Official," "officer," "employee," "representative," or "agent" includes any natural or corporate person, including attorneys.

E. "Person," as used herein, refers to any natural person, any business entity (whether partnership, association, cooperative, joint venture, proprietorship, or corporation), and any governmental or other public entity, department, administration, agency, bureau or political subdivision thereof, or any other form of organization or legal entity, and all their officials, officers, employees, representatives and agents, including consultants. Furthermore, references to a company, a corporation, a partnership, or any form of business entity include officers, directors, employees, consultants to, and agents thereof, except where the context clearly requires otherwise.

F. The term "produce" means to make legible, complete and exact copies of the responsive documents, which are to be sent, via first class mail, to the undersigned. "Produce" also means to supply the undersigned with a detailed index of the documents which are produced into the depository, and a catalogue of the precise location of the documents in the depository by bates number.

G. "Referring to" a subject means making a statement about, discussing, describing, reflecting, dealing with, consisting of, constituting, comprising, or in any way concerning, in whole or in part, the subject.

H. "SP" means Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, individually and collectively, together with any parent, subsidiary or affiliated corporation, partnership or other legal entity, including, but not limited to, Philip F. Anschutz and The Anschutz Corporation.

I. "Studies, analyses, and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

J. "UP" means Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company, individually and collectively, together with any parent, subsidiary or affiliated corporation, partnership or other legal entity, including, but not limited to, UP Acquisition Corporation, Union Pacific Holdings Corp., and Chicago & North Western Railway Company.

INSTRUCTIONS

A. The time period encompassed by these requests, unless otherwise stated, is January 1, 1993 to the present, and shall extend to the end of this proceeding to the extent documents responsive to these requests are discovered or created or otherwise acquired by Applicants during the pendency of this proceeding.

B. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa. "Each" shall be construed to include "all," and the present tense shall include the past tense and vice versa.

C. If Applicants withhold any document or any part of a document on the claim that such document is privileged or confidential, Applicants are to:

(1) Identify the nature of the document;

(2) Identify the subject matter of the document, *i.e.*, briefly describe the contents of the document;

(3) Identify the author and all addressees or recipients of the document;

(4) Identify the date of the document; and

(5) State the nature of the claim that the document is privileged or confidential.

D. If any document called for by these requests for production is not available or accessible, such request(s) for production shall be deemed to call for sufficient explanation of the reasons therefor, as well as an identification of the unavailable or inaccessible document(s).

E. If any document or information called for by these requests for production is available in computerized format, produce the document or information in that format, along with a description of the software utilized, instruction books, and all other material necessary to translate the documents or information from computerized to hard copy format.

F. Where any interrogatory or document request refers to "Applicants" or to any "Applicant," and the response for one applicant would be different from the response for other applicants, give separate responses for each applicant.

INTERROGATORIES

Interrogatory No. 1

Describe all changes to Western's present route of movement of bituminous coal by SP set forth in the rail transporation agreement between Western, SP and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") identified as ICC-DRGW-C-15052, which will be caused by Applicants' Operating Plan if the proposed UP/SP consolidation is approved.

Interrogatory No. 2

State how soon after approval of their proposed merger Applicants intend to consummate the proposed abandonment of track known as the Towner-NA Junction Line (portion of Hoisington Subdivision) in Kiowa, Crowley and Pueblo Counties, Colorado, authority for which has been sought by the Missouri Pacific Railroad Company in Docket No. AB-3(Sub No. 130).

Interrogatory No. 3

State how soon after approval of their proposed merger Applicants intend to consummate the proposed discontinuance of trackage rights over the Towner-NA Junction Line, authority for which has been sought by the Denver and Rio Grande Western Railroad Company in Docket No. AB-8(Sub No. 38).

Interrogatory No. 4

State how soon after approval of their proposed merger Applicants intend to consummate the proposed abandonment of track known as the Hope-Bridgeport Line (portion of Hoisington Subdivision) in Dickinson and Saline Counties, Kansas, authority for which has been sought by the Missouri Pacific Railroad Company in Docket No. AB-3(Sub No. 131).

Interrogatory No. 5

State how soon after approval of their proposed merger Applicants intend to consummate the proposed discontinuance of trackage rights over the Hope-Bridgeport line, authority for which has been sought by the Denver and Rio Grande Western Railroad Company in Docket No. AB-8(Sub No. 37).

Interrogatory No. 6

State how soon after approval of their proposed merger Applicants intend to consummate the proposed abandonment of a 109-mile portion of track known as the Malta-Canon City Line, between Malta and Canon City in Lake, Chaffee, and Fremont Counties, Colorado, authority for which has been sought by Southern Pacific Transportation Company in Docket No. AB-12(Sub No. 188).

Interrogatory No. 7

State how soon after approval of their proposed merger Applicants intend to consummate the proposed discontinuance of trackage rights over the Malta-Canon City Line, authority for which has been sought by The Denver Rio Grande and Western Railroad Company in Docket No. AB-8(Sub No. 39).

Interrogatory No. 8

State when the proposed upgrades to the original Kansas Pacific line from Denver to Topeka via Salina, Kansas described in Applicants' Operating Plan are expected to be commenced, and the estimated time for completion of such upgrades.

Interrogatory No. 9

State when Applicants propose to begin rerouting SP trains carrying coal from Colorado mine origins which presently use the Tennessee Pass route to Kansas City via Pueblo, Colorado to the upgraded Kansas Pacific line to Kansas City via Denver, Colorado.

Interrogatory No. 10

Describe in detail the "$50 million worth of new track, ten new 9,300 foot sidings and five siding extensions" referenced in conjunction with the upgrades to the Kansas Pacific Line in the Merger Application, Volume 3, at pages 58 and 219.

Interrogatory No. 11

Describe in detail the means by which Applicants intend to route empty coal trains to the Powder River Basin of Wyoming via Topeka and Denver, including but not limited to all planned connections, interchanges, newly constructed track, upgrades, and other reconfigurations or

additions or subtractions to existing trackage and routing deemed necessary to accomplish this objective.

Interrogatory No. 12

Describe any studies or analyses Applicants have conducted on the effect of the Operating Plan on coal unit train cycle times.

Interrogatory No. 13

Describe in detail the extent to which the Operating Plan contemplates the use by Applicants of the line of rail currently owned by the Santa Fe running between Topeka, Kansas and Kansas City Kansas/Missouri, including but not limited to:

a. Whether it is intended that loaded coal unit trains will traverse the line in either direction, and if so, the level of this traffic on a daily basis and the origins of such coal;

b. Whether it is intended that empty coal unit trains will traverse the line in either direction, and if so, the level of this traffic on a daily basis and the origins of such empty trains;

c. The extent to which intermodal trains will use this line, and the level of such traffic on a daily basis; and

d. The extent to which (a)-(c) above will improve Santa Fe's ability to serve existing shippers along the line.

Interrogatory No. 14

Describe how Applicant's trains traveling west over the Santa Fe line between Topeka and Kansas City will reach Herington, Kansas, including but not limited to a description of all new or modified interchanges, connections, trackage, or other rail facilities, between Applicants and Santa Fe in Topeka, Kansas, required to facilitate this routing.

Interrogatory No. 15

Describe how Applicant's trains traveling west over the Santa Fe line between Topeka and Kansas City will reach Salina, Kansas, including but not limited to a description of all new or modified interchanges, connections, trackage, or other rail facilities, between Applicants and Santa Fe in Topeka, Kansas, required to facilitate this routing.

Interrogatory No. 16

State when Applicants intend to close the current SP Lines' yard in Topeka, Kansas, as described in the Merger Application at Volume 3, page 182.

Interrogatory No. 17

State whether the present rail interchange between the SP and Santa Fe at First Street in Topeka, Kansas is to be eliminated under Applicants' Operating Plan.

Interrogatory No. 18

If the Santa Fe/SP interchange at First Street in Topeka is to remain in place, describe the type and projected levels of UP/SP traffic over the Santa Fe main line pursuant to the trackage rights granted to SP by Santa Fe in the Agreements dated April 13, 1995 and August 1, 1995, between SP, Santa Fe and the Burlington Northern Railroad Company, and SP and Santa Fe, respectively.

DOCUMENT REQUESTS

Document Request No. 1

All documents referring or relating to the new route for coal trains moving between the Powder River Basin in Wyoming and Texas using segments of UP and SP trackage identified and described in the Merger Application at Volume 3, page 123.

Document Request No. 2

All documents, including but not limited to maps, diagrams and track charts which relate to the "new route for coal and grain traffic to Texas via Topeka, Kansas." identified and described in the verified statement of King/Ongerth in the Merger Application, at Volume 3, pages 56-58.

Document Request No. 3

All documents, including but not limited to maps, diagrams and track charts which refer or relate to the Kansas Pacific Route identified in the verified statement of King/Ongerth.

Document Request No. 4

All documents, including but not limited to maps, diagrams and track charts which refer or relate to the yard consolidation and conversion, and "other changes in the routing of traffic" in UP's Neff Yard and 18th Street Yard, and SP's Armourdale Yard, located in Kansas City, Kansas/Missouri, which are described in the Merger Application, at Volume 3, pages 179-180.

Document Request No. 5

All documents, including but not limited to maps, diagrams and track charts which discuss or illustrate (1) the present configuration of the SP's and UP's rail yards in Kansas City, Kansas,

and (2) the changes Applicants have proposed to make to these rail yards, as described in the Merger Application at Volume 3, at page 223.

Document Request No. 6

All documents, including but not limited to maps, diagrams and track charts which relate to the proposed changes to UP and SP trackage in Herington, Kansas, described in the Merger Application at Volume 3, pages 180-182.

Document Request No. 7

All documents, including but not limited to maps, diagrams and track charts which discuss or illustrate (1) the present configuration of the SP's and UP's rail yards in Topeka, Kansas, and (2) all changes Applicants have proposed to make to these rail yards, as described in the Merger Application at Volume 3, at page 182.

Document Request No. 8

All documents, including by not limited to maps, diagrams, and track charts referring or relating to the construction by UP and SP of a connection in Topeka "to allow continued access to SP served industry while eliminating current UP-SP crossing," described in the Merger Application at Volume 3, page 227.

Document Request No. 9

All documents which refer or relate to the effect of the Applicants' proposed Operating Plan on the current arrangement by which coal is delivered by SP for Western Resources, Inc. from

Colorado origin mines to SP's interchange with Santa Fe in Kansas City, Kansas/Missouri, via Pueblo, Colorado, for final delivery to Western's Lawrence and Tecumseh Energy Stations.

Respectfully submitted,

Thomas Wilcox

Nicholas J. DiMichael
Thomas W. Wilcox
DONELAN, CLEARY, WOOD & MAGER, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for Western Resources, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF WESTERN RESOURCE, INC., has been served via regular mail, postage prepaid on January 26, 1996 on the attached restricted service list.

Linda L. Wise