UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD
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ORAL ARGUMENT

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IN THE MATTER OF:
UNION PACIFIC CORPORATION, : Finance
and MISSOURI PACIFIC RAILROAD : Docket
COMPANY

- CONTROL AND MERGER -

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

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Tuesday,

January 15, 2013

Surface Transportation Board
Suite 120
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on
for hearing, pursuant to notice, at 9:30 a.m.
BEFORE:

DANIEL R. ELLIOTT, III Chairman
ANN D. BEGEMAN Vice Chairperson
FRANCIS P. MULVEY Commissioner

Neal R. Gross & Co., Inc.
202-234-4433
APPEARANCES:

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On Behalf of Burlington Northern Railroad Company:

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On Behalf of G3 Enterprises:

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CHAIRMAN ELLIOTT: Good morning, everyone, welcome. Today we'll hear oral presentations involving a claim arising out of the Union Pacific Southern Pacific merger in Finance Docket Number 32760.

BNSF and G3 argue that UP must adhere to representations that were made to Modesto and Empire Traction Company, a Class 3 railroad, in December 13th, 1995 letter addressing the Switching District of Modesto, California.

UP argues that BNSF and G3 are not entitled to this relief. Board Members will hear presentations on behalf of BNFS, G3, and UP.

As we did not receive a notice from Modesto and Empire Traction Company, that they plan to appear, these will be the presentations for today.

In an effort to move things along, the Board Members will not be making opening remarks this morning, but I wanted to cover a few
procedural matters before we begin.

We have asked each party to make a
short statement of its argument, but counsel
should be prepared to answer questions from the
Board at any time during your allotted time.

I assure you that we have read all of
your pleadings and there is no reason to repeat
every argument. Each side has been allotted a
total of 20 minutes.

BNSF and G3 have notified the Board
that the petitioners have divided their 20
allotted minutes as follows: On opening BNSF
will have 12 minutes and G3 will have five
minutes.

UP will next have 20 minutes to
respond. And petitioners have jointly reserved
three minutes for rebuttal. If you wish to make
a change to your reserved rebuttal time, please
advise us when you begin your opening
presentation.

Any party making a PowerPoint
presentation or using similar hard copy aids
using materials previously placed in the record, should have provided these materials in hard copy, eight-and-a-half by 11 size, to opposing counsel and the Board. We will have any pages used today and such presentations bound into the transcript of this proceeding.

Speakers, please note that the timing lights are in front of me. You will see a yellow light when you have one minute remaining, and a red light when your time has expired.

The yellow one minute light will be accompanied by a single chime, and the red light, signifying that your time has expired, will be accompanied by two chimes.

Please, keep to the time you have been allotted. When you see the red light and hear the double chime, please, finish your thought and take a seat.

In addition, just a reminder to everyone to, please, turn off your cell phones.

We will now proceed with Counsel for BNSF.

Please, step up to the podium.
MR. WEICHER: Good morning. Thank you, Chairman Elliott, Commissioner Mulvey, and Vice Chairman Begeman. We appreciate the opportunity to appear.

We are sharing our time with G3, so I'll make a brief comment and then pass to her.

We'll try to make this efficient at the podium.

I am Richard Weicher, from BNSF. Jolene Yee is with us, from G3, Adrian Steel for Mayer Brown. I'll give a basic overview of our position and we will still reserve three minutes between us for rebuttal.

We believe that, in the Union Pacific Southern Pacific merger, Union Pacific committed to the public and the Board, and the Board ordered, the preservation of two carrier rail competition at all locations, where otherwise a shipper facility would lose all of its pre-merger competitive options, other than the merged Union Pacific Southern Pacific Railroad.

This is embodied in a variety of specific conditions for existing and future
facilities throughout the West in the Board's decisions.

Inherent in this commitment, we believe, is a commitment that UP could not take action after the merger to eliminate access by the non-Union Pacific carrier. Jolene Yee will describe the specific situation we're dealing with in Modesto, California.

MS. YEE: Good morning. My name is Jolene Yee, I am Counsel for G3 Enterprises. I am joined here today by G3 CEO, Mr. Robert Lubeck, and its VP and General Manager of Logistics Division, Ms. Patty Reeder.

We are here today to ask the STB to enforce STB Decision 44, and related actions to preserve competitive access, and to restore reciprocal switching to the Rogers facility.

On Page 91 of STB Decision 44, the Department of Labor had cautioned that preserving competition in an already concentrated rail industry is vital to businesses and communities.

And it urged the STB to carefully
review the impact on the merger, not only on the rail industry, but also its employees and the communities.

The STB did take action to preserve competition in these communities. Prior to the UP/SP merger, the Rogers facility enjoyed three carrier service, and the benefits of competition in pricing and in service.

Now, UP seeks to close the facility to reciprocal switching, which eliminates, not preserves, competition in the Modesto Switching District in contravention to the Board's actions and decisions.

The reality is that without STB intervention, the G3 will lose its rights to competitive rates and services at the Rogers facility.

The negative impact is on G3, and its major customers, and the Modesto community, which greatly benefits from the growth and success of the businesses that reside in it.

Termination of reciprocal switching
to the Rogers facility creates a monopoly. It eliminates competitive rates and service levels for G3 and its customers.

The letter you received from Cal Freight demonstrates the effect of single service to Rogers. UP increased Cal Freight's cost by $600 per car, as compared to BNSF's rates.

This increase puts Cal Freight at a competitive disadvantage and negatively impacts its ability to increase its business.

Termination of reciprocal switching to the Rogers facility also severely hinders G3's ability to support the strategic growth of its primary customer, E & J Gallo Winery.

This year, 2013, 34 percent of G3's boxcar shipments for Gallo must ship with BNSF, because the cargo is bound for closed BNSF destinations.

The inability to cost effectively ship with BNSF from Rogers significantly undermines the ability to manage Gallo's traffic and support Gallo's growth over time.
Unless the Board requires UP to restore reciprocal switching to Rogers, G3 cannot support the strategic growth of Gallo using the Rogers facility.

Gallo may determine that the Rogers facility is thus unacceptable, and it's difficult for us to see an acceptable alternative long-term solution.

G3 relied on dual service to invest millions of dollars in expanding the Rogers facility. It recognized the long-term need for warehouse space to handle Gallo's growing logistics needs, and in 2001 began to explore options where it could get comparable rates and services to those who hadn't negotiated at the Gallo facility, which is within a five mile radius.

G3 specifically sought locations that were proximate to the winery with dual service by UP and BNSF, and it recognized that this would be a competitive necessity for handling Gallo boxcar shipments in the future.
It had initially planned to build a warehouse on the M&ET line, on land that it owned, but before construction, it found out that the Rogers facility was for sale.

And it did some due diligence. G3 received confirmation from the seller, Proctor & Gamble, that the facility was dual served.

It understood that the M&ET had confirmed that the facility was dual served, as a condition to the merger, and it generally believed that the merger conditions protected reciprocal switching to Rogers.

Now, everyone's probably asking themselves, why didn't G3 confirm this with UP at the time? Well, hindsight is 20/20, and it was a miss.

In hindsight, perhaps, it would have been prudent to confirm reciprocal switching with UP. But, at the time, G3 had no immediate plans to require boxcar service in the foreseeable future, and it had done all the other pieces of due diligence, confirming with P&G and the M&ET.
COMMISSIONER MULVEY: Now, Ms. Yee, is it true, that before the incident that caused this case to come before us, to begin with, G3 had not attempted to use reciprocal switching?

I mean, you bought the facility quite a while ago, back in 2001, so between 2001 and when the incident occurred, there was no prior use of boxcar service, no need for reciprocal switching before then?

MS. YEE: That is correct. Not by G3. In fact, actually, we can pull up the map of a G3 facility. In reliance in the belief that the Rogers facility was dual served, it purchased the facility in 2001 for $11 Million Dollars.

This was a strategic purchase that supported the long-term plan for the site to handle winery growth, when the current Gallo site reaches capacity, which is landlocked.

So over the next eight years, it invested an additional $29 Million, including $11.8 Million for Warehouse 3, which you can see on the picture, which was constructed
specifically to accommodate boxcars.

The warehouse with the Number 1 on it is the original Rogers facility. Everything else was built around it, and you can see, that the Buildings 3 and 5 were built curved, specifically, to accommodate boxcar service.

The total investment in the Rogers facility was $40 Million Dollars. And they increased the original size of Warehouse 1, which is approximately 500,000 square feet, to a total of a over two million square feet for the entire facility.

After the expansion, the Rogers facility seemed to be a perfect answer to meet the long-term goal of having nearby dual service to support its customers' growth.

There were a number of years, as Commissioner Mulvey stated, before the business of G3 and its customers justified rail service.

But, more recently, Gallo realized that it was approaching its capacity limit, and as you can see in the support letter from Gallo,
because Rogers is part of Gallo's strategic

growth plan to access competitive service, G3

contacted UP.

In March of 2011, G3 opened
discussions with UP, regarding the logistics of
actually operating reciprocal switching at the
site, and there was quite a lot of discussion
over a few month period.

And then, to G3's shock and surprise,
UP abruptly terminated those discussions and took
the action to remove the facility from the UP
circular in June of 2011, effective July of 2011,
and thereafter issued formal notice that it
closed the facility's reciprocal switch.

On Page 4 of STB Decision 21, the STB
noted in evaluating its decision on whether to
terminate merger oversight, UP had demonstrated
that, in fact, competition was enhanced, rates
either declined or stayed the same in every
single market, and other railroads had and were
continuing to effectively compete against UP. If
the Board's -
CHAIRMAN ELLIOTT: Ms. Yee.

MS. YEE: Yes?

CHAIRMAN ELLIOTT: A quick question about kind of the overall picture. In the Modesto Switching District, and I think that's the point that we're talking about here, in general.

MS. YEE: Yes.

CHAIRMAN ELLIOTT: At the time of, I guess, 1995, when the decision was put out and the agreement was made, putting aside the argument of whether Proctor & Gamble was a two to one facility, or a three to two facility, but were there any other two to one facilities in the Modesto Switching District that were served just by UP and SP, that you're aware of?

MS. YEE: I am not personally aware of. My colleagues may have more detail on that.

CHAIRMAN ELLIOTT: Do any of the -

VICE CHAIR BEGEMAN: If you could refer to the map, on Page 4. It's unclear to me, whether or not the orange line, is orange and
yellow. Was the Rogers facility served solely by
UP, or was it served by both UP and SP?

MR. WEICHER: As we understand it,
the M&ET had some facilities, which were open,
some were closed, but they were all three twos.

CHAIRMAN ELLIOTT: Mr. Weicher, I
don't think we can hear you.

MR. WEICHER: Oh, sorry.

VICE CHAIR BEGEMAN: Do you want to -

MR. WEICHER: We'll let UP correct
that there were some closed facilities, some open
facilities on M&ET, but they were all three to
twos in the vernacular of question. And we have
some maps coming up that will address that.

CHAIRMAN ELLIOTT: Okay.

VICE CHAIR BEGEMAN: So even though
the map just shows an orange line, which would be
UP at Rogers, you're saying that's not the
situation?

MR. WEICHER: That is.

VICE CHAIR BEGEMAN: So it was only
served by one carrier at pre-merger?
MR. WEICHER: Directly, yes. And you'd be correct, if you misunderstand with trackage.

CHAIRMAN ELLIOTT: And just, I want to make sure, I'm not really as much interested in just strictly the G3 facility, I just want to know if there was anything in the Modesto Switching District in 1995, that was served just by UP and SP, whether directly or indirectly. Does anyone, do your guests have any idea?

MS. YEE: He said that there were other sites, at the time, that were just served just by UP.

CHAIRMAN ELLIOTT: Yes, because the way I look at it is, and maybe he can confirm this when they get up, but the way I looked at it was, you know, the reciprocal switching was available to certain customers. But, although, it wasn't mentioned, it seemed that there were also closed customers to that reciprocal switching that were just served by UP and SP, but that wasn't addressed in
the, and Mr. Rosenthal's shaking his head, so
maybe that isn't, in fact, true.

But I think that's important when you
look at the Settlement Agreement, whether or not
that's the case. You may continue. I'm sorry.

MS. YEE: If the STB chooses not to
re-institute reciprocal switching to the Rogers
facility, then the Modesto Community served by
G3, and its customers will be denied the benefits
of the merger decision.

G3, therefore, urges the Board to
grant the joint petition reinstating competitive
assets to the Rogers facility, which was a
condition to the UP/SP Merger. Thank you.

CHAIRMAN ELLIOTT: Thank you.

MR. WEICHER: G3 and BNSF are sort of
yielding each other's times, so however you want
to use the clock. We won't go over the overall
limits --

CHAIRMAN ELLIOTT: Sure.

MR. WEICHER: -- for your questions,
if that's all right?
CHAIRMAN ELLIOTT: Where are we at with time?

(Off microphone comment.)

CHAIRMAN ELLIOTT: Okay.

(Off microphone comments.)

CHAIRMAN ELLIOTT: Yes, I know that.

But there's still five minutes left.

CLERK: Except for BNSF, they've used all their time.

CHAIRMAN ELLIOTT: Okay, but we still have overall five minutes left?

CLERK: Yes.

CHAIRMAN ELLIOTT: Okay. Go ahead, Mr. Weicher.

MR. WEICHER: I'll quickly go through a couple of maps. That's the broad Union Pacific/Southern Pacific, if you turn to the next one, this is from the UP's Merger Application.

The blow-up shows in the territory that can be reached, there's BNSF and UP coming into the area of Stockton and Modesto.

The point of this, is with by cutting
off this facility from the M&ET, it's left only
with Union Pacific. If you turn to the next
slide, sort of what you were referring to before,
you have pre-merger access of three railroads to
the star, the Rogers facility.

The orange is Union Pacific, the
green in the middle is M&ET, BNSF is over on the
right, and SP was the yellow. And SP and BNSF
came in by reciprocal switching.

If you turn to the next slide, right
after the merger, M&ET still provides the link to
the outside world on those first snaps to the
BNSF and through reciprocal switching that can be
provided by Union Pacific to M&ET.

And if you turn to the next map,
where we are today, you have the world as closed,
and only UP, everything else is gone.

We believe, that the fact that the
Rogers facility was originally served directly by
only Union Pacific, and otherwise by reciprocal
switching, does not diminish, in any way, its
right to the access under the merger agreements.
There are many, many facilities in the West that were served only directly by one or the other carriers. But they're still entitled to their alternatives.

We don't think this proceeding is about the right to close an industry to reciprocal switching, it's about preserving merger condition to a facility.

We think these rights run with the land not the name of the party, which is why it's important that these not be devalued years later. Going from a three to one destroys that competitive alternative.

The fact that this isn't an imprinted merger condition in the long decision, because of the letters we'll come to in a moment, it shouldn't diminish the value of this.

The Board encourages voluntary settlements, that's been its policy, and it would disturb that long-standing precedent of encouraging voluntary settlements to erode this.

I will pass to Mr. Steel, to review...
the representations, with however of our blended
time we have left, and, of course, I'll be here
for questions.

MR. STEEL: Thank you, Mr. Weicher.

I will just focus on a few points, since we're
running near our time. At the time, though, of
the post-merger, and the announcement of the
merger, and throughout the proceeding, UP made a
number of representations to the effect that the
existing competition will be preserved, in fact,
enhanced in a number of situations.

Mr. Davidson, then the Chairman of
UP, made that statement in his verified
statements and rebuttal verified statements, that
no shipper facilities would lose competition.

If you'll look at the Slide 7, these
are two, the next two slides are a couple of
those representations. The applicants emphasized
their intent to ensure that a second strong
railroad would compete at every location where UP
and SP provide the only rail competition.

That's our two to one situation. We
understand that. But, our point here is, that it also applies to a three to one situation, actually it wasn't needed in most cases for three to two situations.

But if going from two to one is bad, going from three to one to even, I won't say worse, but it causes the same loss of access, which we think is really the key here.

Were the merger conditions designed to preserve the competition that, at least, that existed at the time of the merger?

Modesto, the shippers that you've talked about, Chairman, there were four or five, seven of those, maybe, they were protected by the MET's access. You take away MET's access, and they all go to single service after the merger. If you look at the next slide.

COMMISSIONER MULVEY: And MET wrote a letter to UP, it said, expressing its concern over the loss of competitive access, and UP responded.

And they said in their response, that
they would not reduce competition at the Modesto facility. But then, they were very, very careful in the way they wrote it.

And they said, specifically, that they would keep competitive access, as referenced in Items 1233 of the switching tower, which names their specific customers who are served.

And in the tower, you can see, that it lists Proctor & Gamble and exists some specific industries, which is not G3, G3 wasn't there then.

So wasn't UP careful in the way it constructed its response to MET, and saying that look, we are not going to reduce competition for existing customers, but new customers, like G3, that could be another matter?

MR. STEEL: That's correct. But we view the representations as sort of, it's called alternative theory of why the joint petition should be crafted.

And we have a time problem, I don't think we used 17 minutes from where we were, so
if you don't mind, if we go on a little bit?

CHAIRMAN ELLIOTT: No problem.

MR. STEEL: The representations, you can read them, we think they should be read more broadly than UP thinks they should be read.

And our view is, read them how we want to read them. If it doesn't support relief on that basis, then that's so be it, but that's an alternative.

What we think the concern here is, that UP's action, post-merger action, is that it took a facility, and if you'll look in the settlement agreement, you'll see that shipper, shippers we're talking about, are defined as facilities, not shipper customers.

It's, shipper facilities shall mean all existing or new shipper or receiver facilities, not shippers, shipper facilities. And a two to one shipper facility should mean all shipper facilities, which we just defined, as the facilities.

So the facility we're talking about
that had competition, in 1995 before the merger, was the Rogers physical plant. That physical plant is entitled to competition in perpetuity.

Up's action here cuts that off. The other ones, actually, at Modesto are probably also, but we're not arguing about those today.

If you look in the Board's Decision 44, as to, was the Board really worried about this kind of thing I'm talking about, dropping the competition of a facility down, Page 103, and you probably don't have it, but I'll read it to you, 103 footnote 97, when it talks about the items it examined.

It examined whether all shippers, whose direct access to rail service has gone from two railroads to one. So, their looking at, to make sure no shipper facility goes to one exclusively served rail carrier. That's UP, of course, here.

And this thing lasted for 99 years, and beyond that. The agreement went so far and focused on two to ones, because that was the big
issue.

The three to twos were actually there, UP averred, Richard Peterson, Vice President over marketing, I think, indicated that applicants had carefully analyzed each one of the 26 cities and towns, where three to two traffic originates, Modesto was one of those, and found that in every case, combining UP and SP, would yield much stronger competition. Well, that statement's only true if the third carrier stays present.

So even by their own, those representations, not necessarily the letters, the letters have their pluses and minuses, and you can interpret those as you want, and, I think, you're actually right, Commissioner, that they did carefully craft that. With intent, I don't know, but it was pretty carefully crafted.

But we say fine, they live up to the representations, fine. That's not the issue. The issue here is access to this facility in perpetuity. And I think I made all my main
points. Quick questions?

CHAIRMAN ELLIOTT: Quick question,

regarding the two to one facility. And in the

agreement itself, it says two to one shipper

facility shall mean all shipper facilities that

were open to both UP and SP, whether via direct

service, or via reciprocal switching, joint

facility, or other arrangements, and no other

railroad when the 1995 Agreement was executed.

Based on that language, I mean, at

the end it says no other railroad, wouldn't you

think that BNSF would have a problem with that

language?

MR. STEEL: This facility was not a

two to one shipper facility. Modesto was not a

two to one point. If you had, if MET wasn't

present, then Modesto would have been just like

any other exhibit eight point. In fact, in that

situation, at a two to one point, it's just sort

of a corollary, a new shipper would have bought

the old facility. That can qualify, even a

closed facility, can be opened if it's actually a
new shipper at a two to one point. But here, I'm
only using this to show that shipper facilities
are the facility not the customer in the larger
merger conditions, not in the letter. I
understand that the letter has what it says.
We're not arguing. Is this two to one?

CHAIRMAN ELLIOTT: So you're saying
that the Modesto Switching District is not a two
to one point?

MR. STEEL: It's not identified as
two to one point.

CHAIRMAN ELLIOTT: Okay.

MR. STEEL: But it's not a two to one
situation, this is a shipping facility, which is,
we sort of indicated that's the relevant entity
or body that we're looking at, had competitive
service before the merger.

UP's taken post-merger action to
eliminate all that competitive service, and
that's what we think is wrong. Thank you. If
you have any other questions, we'd be glad to, I
apologize for running over a little bit, but I
was talking as fast as I can.

CHAIRMAN ELLIOTT: Thank you, very much. We appreciate it.

MR. STEEL: Thank you.

MR. ROSENTHAL: Chairman Elliott, and Vice Chairman Begeman, and Commissioner Mulvey, I'd like to introduce, Lou Anne Rinn, UP's Associate General Counsel, who's joining me at counsel's table. We also have Gayla Thal, UP's Vice President Law and General Counsel, and Elisa Davies, an attorney in UP's legal department.

We're here today, because BN and G3 are hoping that you'll ignore what UP actually said in its letter to MET, or that you'll impose conditions on the UP/SP Merger 16 years after the transaction that have nothing to do with any merger-related harms.

And just last Friday, as it was mentioned, two shippers made some last minute filings supporting BN and G3, and we'll respond to those untimely, unverified statements in writing. We might need a protective order to
address some of the facts. But they don't change
the legal issue here.

CHAIRMAN ELLIOTT: I don't think it's
probably necessary for you to respond, unless you
really feel you need to. I don't think it got to
the substance. I understand the procedural --

MR. ROSENTHAL: Arguments were
mentioned, claims were made about rates and UP's
rates, and they're just not true, as far as we
can determine.

CHAIRMAN ELLIOTT: Sure.

MR. ROSENTHAL: And I'm not sure we
can address that without a protective order. And
I'm not sure whether -

CHAIRMAN ELLIOTT: Yes, I don't know
if it will come into play, with respect to the
decision.

MR. ROSENTHAL: Fair enough. But, I
mean, because the fact is, that UP never told G3,
ever told MET that shippers like G3 would be
open to reciprocal switching after the merger.

The merger conditions don't require
UP to open shippers, like G3, to reciprocal switching. And G3 didn't lose any competition at Rogers, as a result of the merger. G3 didn't even have a facility at Rogers before the merger.

It wasn't a two to one shipper, a three to one shipper, a three to two shipper, or whatever, it wasn't a shipper at Rogers before the merger.

Now, G3 says it believed the facility, if bought, would be open to reciprocal switching, but UP's reciprocal switching circular was very clear, and G3, as they say, never tried to verify the facts with UP.

Now, if G3 relied on something that somebody else said before they bought the facility, that is in the clear language in UP's circular, UP can't be responsible for that oversight.

So BN and G3 are left making claims about the intent of the merger conditions. That there was some undocumented, never before mentioned understanding that shippers like G3
would be treated as to two to one shippers. But
that's just nonsense.

VICE CHAIR BEGEMAN: Could you please
drill down on the Rogers facility and the Proctor
& Gamble facility, or facility versus shipper,
and pre-merger, I could even say post-merger. Why
was Proctor & Gamble listed on the reciprocal
switching list?

MR. ROSENTHAL: All right, pre-
merger, Proctor & Gamble's facility was served
directly by UP, and it was open to reciprocal
switching by SP and MET.

After the merger, because of what UP
said in its letter, the facility continued to be
open, served by UP, open to SP, our reciprocal
switching, well, open to MET by reciprocal
switching, because UP and SP had merged, but UP
had promised MET --

VICE CHAIR BEGEMAN: But only because
of the letter, not because of the agreement?

MR. ROSENTHAL: Because of the letter
that UP sent, UP promised MET that it would keep
the named facilities open. Proctor & Gamble continued to be there. Proctor & Gamble continued to be open to MET after the merger. Proctor & Gamble was open to MET via reciprocal switching until it moved away.

COMMISSIONER MULVEY: But there is this issue of intent, and you alluded to it, and in the merger approval decision, applicants, which is UP/SP, claimed that they have a basic purpose in entering into the BNSF agreement, which was to preserve competition, competitive rail service, for all 2-1 customers of UP and SP. They indicate that to preserve competition options for shippers, they identify all 2-1 points, that is all points at which service has been provided by UP and SP, but by no other railroad. And then it goes into traffic rights.

So that, you agreed with the intent, the intent was to preserve competition at all 2-1 points, and the Board decided that 3-2 points still provided for sufficient competition for the
Board to say well, that's fine, 3-2, but 2-1 cases, we want to preserve competition.

So was the intent, which UP/SP agreed with, to preserve competition? Aren't the actions that UP is taking right now, run counter to that intent?

MR. ROSENTHAL: No, I don't see that, the question --

COMMISSIONER MULVEY: An intent, by the way, which you agreed with.

MR. ROSENTHAL: The question during the merger was, what would be the impacts of the merger? By combining UP and SP, would there be any shippers that, before the merger had competition, and after the merger wouldn't have competition?

By combining UP and SP, Proctor & Gamble didn't lose competition that it had before the merger. Proctor & Gamble, because of UP's representation, continued to have competition after the merger, had competition, as long as it was there.
Now, I think, Chairman Elliott, I think you had asked about other shippers in that area. If you go to our map exhibit, I think it's 4, and Slide 5, it's also Exhibit D to our filing.

If you look at the map, in the Rogers area, before the merger, there were a number of shippers. Some of them were open, but some of them were closed.

So even when SP was there, even before the merger, there were shippers that were open, there were shippers that were closed.

Why are some shippers open and some shippers closed, because the decision to open or close shippers depends on shippers' specific circumstances.

That's why UP has a list that names shippers, and that's why UP's tariff says we're going to provide service only to the shippers named in our tariff.

It's a shipper's specific decision.

It's not as though UP goes around and says some
large geographic area is going to be opened.
Every shipper in there is going to be open for
reciprocal switching.

     UP's tariff limits it to a list of
shippers, as does BN's tariff, as does CSX's
tariff, as does Norfolk Southern's tariff. There
are other ways to do it, but it's not the way UP
did it.

     CHAIRMAN ELLIOTT: I got a little
distracted at the beginning. And I think you
heard my question, you were shaking your head no.

     I just want to make sure that in the
Modesto Switching District, that at the time, in
1995, the time of the merger, there were no other
two to ones in the Modesto Switching District
that were served by UP and SP alone, and that the
reciprocal switching rates for Modesto didn't
apply to?

     MR. ROSENTHAL: There were no, none,
zero, two to one shippers in the Modesto area.
If you look in the UP/SP Merger Application, when
Mr. Peterson was describing areas that were
potentially effected by the merger, as they point to, he talks about Modesto, and he talked about it as a three to two location.

And then, frankly, if somebody had a problem, and was looking into the future, these issues were contested, they were raised during the merger.

There were some three to two shippers in certain circumstances that received protections, because the third carrier didn't provide adequate routings, but the Board addressed all those non-two to one situations, very specifically, and it explained its reasons.

And nobody came in and said, you know, here's this other possibility that might spring up years later, bought by some other shipper that didn't lose competition, because again, G3 wasn't at Rogers before the UP/SP Merger. G3 didn't lose competition.

You know, in the merger, the Board gave BN tremendous access to existing and new UP shippers. New shippers locating at two to one
points, points where any customer was served by
UP and SP and no other railroad, could have built
a new facility and received UP and BN service.

CHAIRMAN ELLIOTT: Do you agree, that
in this situation, though, that the G3 facility
is a new shipper, under the definition of the
settlement agreement?

MR. ROSENTHAL: Yes. G3 is certainly
not Proctor & Gamble, and they're not claiming --

CHAIRMAN ELLIOTT: But --

MR. ROSENTHAL: -- to be Proctor &
Gamble. When they look at the tariff, they can't
sit there and say I see Proctor & Gamble, I think
that's me. You know, there's not even, you know,
there's no corporate connections, as far as I
know. They know they're not Proctor & Gamble.

CHAIRMAN ELLIOTT: I know, I --

MR. ROSENTHAL: But, no. Had they
come in in 2001, they could have chosen to locate
at a two to one point. There were 70 two to one
points, that were named in the merger.

And then, there were stretches of
track, where if you were located anywhere on them you could have built a new facility and received two carrier service.

The Board protected two carrier service by saying that if a new shipper built a facility anywhere along 4,000 miles of trackage rights, that UP gave BN, they'd be open to service.

And these issues keep arising. In the past four years, UP has granted access to shippers, about an average of 15 a year, when BN comes in and says we want to serve the shipper.

So it's not as though UP is resisting legitimate claims under the merger conditions. This simply isn't a legitimate claim.

G3 wasn't at Rogers before the merger. It's not covered by the letter. It's not covered by the merger conditions. It's not a two to one shipper. It's not an anything to anything shipper. It just wasn't there at the time of the merger. It didn't lose competition.

COMMISSIONER MULVEY: Would you say
then, that the only way for the Board to address this, if it chose to address it, would be to impose a new condition, which would mean, therefore, reopening the entire UP/SP Merger, and then say let's look at the conditions again? There we might say well, we'll impose conditions similar to the conditions that we imposed on the new facilities locating on trackage right points, but also anybody who acquires a facility in a place like the Modesto Switching District.

MR. ROSENTHAL: I mean, it would be an entirely new condition, so somebody would have to come in showing, you know, new evidence, changed circumstances, or material error in the Board's decision, and they just haven't come close to doing that. Because this is the type of argument that could have been made during the merger.

You know, these situations weren't hidden, they were obvious. You could've looked at the UP and SP tariffs, and found locations where one carrier served a shipper directly, it
was open to the open carrier, and still others, through reciprocal switching.

This wasn't just Modesto where this occurs, it occurs at other places where there are multiple carrier service, in New Orleans, Kansas City, St. Louis.

So, yes, you've got somebody coming in and saying we want a new condition. And what's the end? You know, what does it mean? Is it just one shipper, where there was a letter? Is it everybody in these circumstances? And, again, you know, what's the justification?

This was litigated extensively during the UP/SP Merger. People had plenty of opportunity, and there needs to be some finality.

COMMISSIONER MULVEY: Ms. Yee noted that hindsight is always 20/20, but I will agree with you, that I wasn't part of the Board then. Although, it seems I've been here for a long time, but this goes back to 1995.

And it certainly was litigated. It certainly was analyzed and people just did not
catch everything. Perhaps I shouldn't say "catch", but instead say that they didn't take into account every possible contingency, so.

MR. ROSENTHAL: I mean, respectfully, this isn't an issue of something that went uncaught, though. I mean, as I mentioned before, this is an area where if this issue had been raised, I don't think there would have been any conditions. P&G was open, you know, it was a very big customer. Maybe that's the reason. It was opened by a railroad that was UP's predecessor, that was a small railroad. There may have been particular reasons why P&G was opened and other, again, other shippers on that line weren't open, despite SP's presence. So I think it's very hard to say that the fact that UP and SP were in the area before the merger, had anything to do with P&G being open. So I don't even think this is a situation where it's something that was uncaught or unaddressed. This was an area that was addressed in the merger application, Gallo was in Modesto, the merger
application actually talks about Gallo, and the
fact that SP was a very small part of the Modesto
business, the merger gave BN improved routes over
the central corridor that might have improved its
service to the Midwest, improving its service for
this type of business. And the Board looked at
three to two situations, looked at the parties'
evidence and concluded that this wasn't a
situation that required a competitive remedy.
And so now, you know, here we are after the
merger, where G3, you know, could've looked at
the tariff, but didn't. Could've asked UP, but
didn't. Hasn't actually used this facility for
12 years, despite saying that they bought this
for this, you know, plan. And, as you saw on the
map, you know, we're no longer talking just this
Proctor & Gamble facility, this original
facility, they've expanded the facility. They've
built new building. So whatever UP's deal was
with Proctor & Gamble that led UP to open Proctor
& Gamble, you know, would they have done the same
for Gallo with its plans to build this massive
distribution center, I don't think so.

The other issue is, you know, do they need this access? They talk about Gallo and traffic going to Gallo. But Gallo has four distribution centers in the East, UP and BN can both reach those using connections with Eastern Railroads.

Gallo has distribution centers in Fort Worth and in Kansas City, and those can be served by BN and UP. The only facility that UP can't reach is a closed facility on BN in Chicago.

Now, I'm not a logistics expert, and I don't need to tell them what they can shift traffic around, or how they can serve them.

But, if the problem is a closed BN facility in Chicago, maybe, the answer is that BN should open its Chicago facility. I mean, you know, if it's a commercial deal to be struck, maybe there's a commercial deal to be struck.

But I don't see why, because somebody, you know, perhaps, relied on somebody
that they shouldn't have, or didn't investigate, UP is suddenly opening a facility that UP isn't -

COMMISSIONER MULVEY: The Board, right now, is looking at the whole issue of competition in the rail industry and we have an ongoing proceeding on that.

One of the things being looked at is reciprocal switching also the Canadian situation, but with some changes reflecting the different situation of the United States. So it's something that's being looked at anyway.

Would you think that, maybe, that's what we need to be doing here, is to have reciprocal switching nation-wide, so we wind up with fewer closed facilities, and give shippers more competitive access?

MR. ROSENTHAL: No, I don't, actually, don't think so. This probably isn't a surprise to you, Commissioner Mulvey.

(Laughter.)

MR. ROSENTHAL: But the fact is, you
know, because of things like the UP/SP Merger, where you have the ability to locate at two to one points, and get service by BN and UP, or locate anywhere on 4,000 miles of trackage rights and get service, or locate in other areas that, you know, apart from the merger offered competitive service.

You've got the same thing in the East, as a result of the Conrail transaction with the shared asset areas. There are lots of places that shippers, if they want to choose to locate someplace and receive competitive service, they can do that.

There may be reasons, probably are reasons, why they choose to locate in other spots. You know, I'm not going to speculate on why G3 did what it did.

Maybe, it just was an oversight. Maybe it's 20/20 hindsight, but again, that shouldn't be UP's responsibility in a situation like this.

VICE CHAIR BEGEMAN: Excuse me. Like
many of you, I was around during that UP/SP Merger. When the Board announced its decision, it advertised its decision, which was quite controversial, as you know, at least among some, that they were preserving competition.

And the agreement is part of the reason. They also imposed some additional conditions. So, now, 16 years later, how for this facility has competition been preserved?

MR. ROSENTHAL: The Board preserved, as part of its decision, competition for every shipper, that before the merger --

VICE CHAIR BEGEMAN: For a moment in time, is that what the Board's concern was, not going forward?

MR. ROSENTHAL: Well, no. The Board had a couple of concerns. The Board, in one they preserved competition for every shipper that before the merger had service by UP, SP, and no other carrier.

So there was no customer that lost rail competition, as a result of the merger. And
that preserved competition for every existing
customer.

For the future, what the Board said
is, we're concerned with the ability of people
who come in the future, to be able to locate
their facilities and still receive competitive
service.

And that's why the Board said at any
two to one point, a point that has at least one
two to one shipper, new shippers can locate their
facilities there and receive competition, along
the trackage rights line, the 4,000 miles of
trackage rights lines that BN obtained.

VICE CHAIR BEGEMAN: But in this
case, competition isn't going to be preserved?

MR. ROSENTHAL: Of course it is. G3
had no competition. There was no competition to
preserve.

VICE CHAIR BEGEMAN: But the location
did.

MR. ROSENTHAL: There's no, if you
want to go to Modesto and get competition, you
can go to Modesto and locate on MET. There's
competition in Modesto. You can rent facilities,
as much warehouse space, one of our slides in
there shows, as much as warehouse space --

VICE CHAIR BEGEMAN: The facility
that had competition no longer will 16 years
later, is that correct?

MR. ROSENTHAL: No, I don't think so.
P&G's facility had competition, as long as P&G
was there. Is there some spot of land, yes, but
that's not preserving competition.

That's not what UP talked about.
That's not what the conditions talked about, and
that's not what the Board was talking about.

The Board didn't say that at every
spot anywhere we're going to make sure there's
competition in the future. The Board said, we're
going to preserve competition and make sure that
no shipper loses the ability to reach another
railroad. No shipper that was served by UP and
SP and no other railroad will lose competition.

COMMISSIONER MULVEY: Yours --
MR. ROSENTHAL: And said, I'm sorry, that we're going to preserve competition and allow future shippers to locate there. Those were the conditions, that's what the Board --

COMMISSIONER MULVEY: That's my point, future shippers -- a shipper, for example, who located on any of the miles where trackage rights were imposed, to preserve 2-1 competition. Why wouldn't you consider G3 as a new shipper and take the Modesto District as an area that was served 2-1. Now it's a new company coming in, as opposed to continuing Proctor & Gamble service, but, you know, it's almost basically the same as if they would have torn down the facility and built a new one, they would be in the same position.

MR. ROSENTHAL: No, the reason is, because Rogers in Modesto wasn't a two to one location. The Board didn't say as a condition to the merger that a shipper should be able to locate anywhere they want on UP, and obtain two carrier service.
They said in 1995, or 1996, in the decision, that you can locate at two to one points, or that you can locate on the trackage rights lines.

And if G3, I don't know if they were aware of the MET letter or not, but if they were, they could've read it and saw that they couldn't get competition from there.

If they read the Board's decision on the merger, they wouldn't have thought they could get competition by locating at Rogers.

And if they read UP's tariff, they wouldn't have thought they could get competition by locating at Rogers, because they're not named in the tariff.

There is no reason why G3 should've thought they can move there and obtain competition, or service, from another railroad.

You know, UP can provide excellent service there, either directly, using interline rates, UP and BN rates, it doesn't have to be done through reciprocal switching.
And if BN wants to serve these shippers in a different way than interline rates, then if it wants reciprocal switching, the answer is to negotiate a commercial exchange for fair value.

But that's not what they want to do. They want you to have you give them something for nothing. And you shouldn't do that, you should deny the petition. Thank you.

CHAIRMAN ELLIOTT: One final question, Mr. Rosenthal. I just was reviewing the settlement language, which wasn't really emphasized in the briefs; but in the definition of two to one shipping facilities, which I read earlier, it says all shipper facilities that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility, or other arrangements, and no other railroad, when the 1995 agreement was executed.

Now, when I read that language, I do have some concern that there may be some ambiguity, because it says open to both UP and SP
via direct or reciprocal.

And then, it addresses no other railroad without referencing reciprocal, and that's possible, to me, to read that no other railroad means direct service. If you need to get the --

MR. ROSENTHAL: No, there is, you know, there's no ambiguity. The UP/SP two to one definition, that the Board has in its merger decision, I think you can find it on Page 252 of the Board's report, in Oversight Decision 20, you find it on the second or third page. It's very clear, that it means things that were served by UP and SP, and no other railroad.

And by talking about reciprocal switching, what we were saying is, we're not going to play games. We're not saying that it has to be served by UP and SP directly, we mean any way that it had two railroad competition by UP and SP.

If SP could've gotten it through reciprocal
switching, we consider that open. But if there's another railroad that's there, it's not a two to one shipper. And, you know, I actually think your reading perhaps helps us, but there's still --

CHAIRMAN ELLIOTT: Well, if my reading helped you, wouldn't the via direct service or reciprocal switching be after no other railroad?

MR. ROSENTHAL: No, I think the point was very clear. And it's, again, if you go back and you look at the merger decision and the conditions that the Board imposed, the point was, that no shipper was going to lose access.

And if somebody thought it was different, the time to raise this would have been 16 years ago, or 15 years ago, or sometime before that.

I mean, this isn't really, the first time that BN has been in here arguing to expand two to one conditions. The Board's been very clear.
VICE CHAIR BEGEMAN: If this is about the agreement and what the agreement meant, then why hasn't Provision Number 15 kicked in requiring arbitration?

MR. ROSENTHAL: We, you know, there's been a history here of sometimes arbitrating things, and then having the Board come in and say, you know, this is important, we're going to decide this.

VICE CHAIR BEGEMAN: I mean, it does say shall be submitted for binding arbitration.

MR. ROSENTHAL: There, you know, if you want to throw them out because they should have arbitrated this, that's okay with me too.

(Laughter)

MR. STEEL: Mr. Rosenthal, you're very charitable.

VICE CHAIR BEGEMAN: That wasn't exactly the purpose of my question.

MR. ROSENTHAL: I'm sorry.

VICE CHAIR BEGEMAN: I would like the other side to have an opportunity to answer it,
if they could.

MR. ROSENTHAL: I mean, you know, they filed, the answer is, they filed at the Board, we filed a response at the Board. You know, perhaps, they should've gone through arbitration.

I think there may be a protocol between the companies involving issues involving two to one, where we say, you know, go to the Board or arbitrate.

CHAIRMAN ELLIOTT: There is a two to one protocol, which, I trust, is both arbitration and the Board. So not to make BNSF's jurisdiction argument, but, maybe, Mr. Steel was about to make that. Thank you, Mr. Rosenthal.

MR. STEEL: I was not about to make it, but I will address it. A couple of things. The two to one protocol is about the process to actually identify what were the two to one shippers after the merger.

So the merger happened, and there were 70 odd, he said, two to one points. All the
shippers weren't identified. There's a protocol for how you go about identifying which ones were open to UP and SP and no other carriers.

So that's what the protocol was for.

It's largely no longer relevant, because all of the two to one individual shipper facilities have been identified.

On your point about arbitration, Vice Chairman, Mr. Rosenthal is correct. When matters have sort of broad implications, there's sort of a protocol between us, that we'll just do them here. In this particular case, G3 is also a petitioner, and they clearly could have come here without going to arbitration. So that's actually the hook, if there were a jurisdictional issue, since they're here, that probably obviates 15 --

VICE CHAIR BEGEMAN: But it does say shall, and you signed it, I mean, how was it optional?

MR. STEEL: Well, you will see that the big episodes of these occurred from 1996 to about the year 2000, and there were a number of
times when our friends at UP raised that issue, and the Board said, we'll address the general principles, and if you all need to debate how it applies to a particular location, go arbitrate that, but what we'll do is address the general principles.

VICE CHAIR BEGEMAN: And we're not talking about a location?

MR. STEEL: Wait, excuse me?

VICE CHAIR BEGEMAN: But we are talking about a location.

MR. STEEL: We are talking about a location here, but we have our friend the shipper, who isn't bound by the arbitration clause.

A couple of things, and I'll try and limit them. First, on the shipping letters that they complain about, that's standard practice here, at the Board.

And people don't write in and go for the protective orders. If they want to respond to shippers letters, we have just as much right
to respond to the response to shippers letters.

I don't think we need the last word about the shippers letters, but if they respond, we may well respond to what they have to say. But I think the shipper letter, everybody gets shipper letters and shippers come in, I don't see why we need that.

Second, a key point here is that if G3, or if Proctor & Gamble had come the Board back at the time of the merger, and said we've got this concern that MET's access, making this a three to two shipper, is conditioned on UP not closing a reciprocal switch, I think the Board would have been receptive to that.

Because what could UP have said, no, we want to be able to close it and turn it into a two to one point, where we can end up with only UP/SP combined service. So that really can't have been what happens.

The other thing is, if we don't adhere to sort of the intent of the letters, and what Mr. Beer was really trying to get across,
then a party who voluntarily settles an agreement is going to end up here, as you say, Vice Chairman, with no competition after this action.

Mr. Rosenthal spent a lot of time on the letters and reciprocal switching and all that, and as you heard me say before, that's fine. We agree that there's a dispute there. We don't think that we have to win that dispute to get relief here.

As I mentioned earlier, the Board in its Decision 44, clearly, indicated it was focusing on the reduction of competition for all shippers who receive pre-merger competition. Two to ones were just sort of the big kahuna, is what had to be addressed.

The three to twos we looked at, everything they could do, as you know, Vice Chairman, to preserve existing competition, they did. The Board's new rules on mergers, not only preserve all competitions, they require the enhancement of competition.

So it makes no sense to us to say
that what we'll walk out of here today, as you
say, when we walk out of here today, and if they
prevail, a shipper facility, and note, that Mr.
Rosenthal said nothing about the provisions in
the agreement, that you said they signed, we
signed, they agreed, that the analysis was of
shipper facilities. It says that.

He's talking about one single named
corporate entity. We know P&G's gone. But for
99 years, did we think that they were going to
stay at this one facility?

It's about facilities. It's about
jobs. It's about economic growth. Why should we
have made G3 go build a new facility and spend
all the money, implicate all the environmental
issues when there's a facility that's capable of
being used that had competition before the
merger, and now UP just cuts that off.

That just doesn't make good public
policy sense to us. I don't think it would to
anybody else. G3, they may have had their faults
in their due diligence, but the bottom line was,
this was a competitively served facility that's not. And so, I guess, the thought that I just wanted to leave you with, it's not a new condition, they can't be surprised that you would say to them, you can't take a pre-merger competitive location and turn it into a non-competitive location. That can't be a condition that they're talking about is a new condition. If they're surprised about that, then they didn't understand what the Board was doing in 1996. But, I guess, I'll close with, and we'll answer any questions, of course, but I'll close with, as you leave today, I would part with Vice Chairman's question, this facility, the relevant facility is losing competition. He didn't say otherwise. He can't say otherwise. It's gone from three carrier service to two carrier service, and now they make it one, and that's a simple fact. It's about access. It's about preserving competition, and what they've done doesn't do that. Thank you, and we appreciate your time.
CHAIRMAN ELLIOTT: Thank you, very much. We'll take this matter under advisement. And the meeting of the Board --

COMMISSIONER MULVEY: I have another question for the UP. You claim that switching districts do not define which customers are open to reciprocal switching, and that the word districts only relates to intra-terminal or inter-terminal rates. This is Page 6 or 7 of your pleading.

If that's all a switching district is, then why would UP use such language in its response to an explicit competitive concern, expressed by MET in its letter that says UP has no intention to diminish the current switching district of Modesto, California, so what then is a district?

MR. ROSENTHAL: I'm sorry, we didn't really have a chance to get into the switching district issue. When MET wrote UP about the merger, they seemed to be expressing two concerns.
Their letter wasn't entirely clear, but UP's response was, one, they were talking about, we thought, the switching district of Modesto. And two, we thought they were talking about shippers that were actually open for reciprocal switching.

So UP made two commitments in return. One, was that shippers that were currently listed in the tariff as open, would remain open.

The second is, that we wouldn't diminish the current switching district of Modesto. The first one goes to this reciprocal switching, can a railroad essentially treat a customer as its customer, publish single line rates to that customer, but have UP pickup and drop off the cars. That's reciprocal switching.

The alternative is that somebody is treated as a line haul carrier. UP would enter into joint rates and joint routes with BN and the traffic would interchange at some point that the carriers agreed to.

That's the reciprocal switching
question. Traffic moves is just a question of how, switching districts are something else.

A switching district determines whether traffic originates and terminates in the same district. And if it does, then a shipper can use a carrier's published rates for inter-terminal or intra-terminal switching.

So, in other words, if Rogers is in the Modesto District, and somebody wanted to move a train or a boxcar of wine from one facility to the other, because they're in the same defined switching district, they can go to UP's tariff, which says that we'll perform an inter-terminal switch, inter-terminal from one railroad to another in the same district.

We'll do it for, you know, $515, I think, is the rate in UP's tariff. G3 confused the matter. They suggest that whether G3 is open or closed has some impact on the size of the switching districts. It doesn't.

UP defines switching district in terms of stations and groups of stations. And we
have an exhibit there. You don't have to pull it up.

But it shows, I think it's Exhibit G. It shows that Rogers is within the switching district of Modesto, that's the way these things are recorded.

So any shipper at the station of Rogers, and G3 is in Rogers, would be part of this Modesto Switching District. So switching districts say I can move a car from an origin to a destination in the same district, and it's really entirely different from reciprocal switching. If that helps. Thank you.

CHAIRMAN ELLIOTT: Now the meeting of the Board is adjourned. Thank you, very much.

(Whereupon, the meeting in the above-entitled matter was concluded at 10:34 a.m.)
ability 9:10, 13:21
able 49:5, 51:20
accommodate 13:1
above-entitled 1:21
accept 10:7
access 7:5, 16 14:2
actions 7:15, 8:12
accompany 5:12
account 43:3
acquire 41:9
addition 5:19
additional 12:20
address 16:14 31:1
addressed 17:22
addressee 3:8
adjourned 67:15
advised 48:3
advisor 4:19
adviser 64:2
ago 12:6 55:17, 17
agree 39:4 42:17
agreed 34:19 35:3
Alternative 10:7
allow 51:3
allowed 34:7
america 1:1
analysis 62:6
analyzed 27:5
announced 48:2
announcement 22:7
answer 4:4 13:14
appeal 3:18 6:4
approximate 13:21
approximately 13:10
approach 34:8
approaching 13:21
approved 34:8
arrangement 56:4, 11
area 19:21 36:3, 7
areas 37:22 47:5, 10
argue 3:8
argues 1:14 3:8
arguing 12:4
argument 1:4 4:3, 8
begeman 1:24 6:3
be 15:20 16:9, 16, 21
began 10:13
begins 16:14 31:1
began 15:20 16:9, 16, 21
began 10:13
believes 8:7, 20 18:9
benevolence 11:11 32:9
believed 11:11 32:9
benefits 8:7, 20 18:9
beyond 26:21
big 26:22 43:10
bin 56:11
bits 51:17
bland 22:1
blind 56:11
broadly 25:5
Brown 2:9 6:10
business 7:21
businesses 7:21
Burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
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burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
burlington 13:4, 5 39:2
provision 62:4
provisions 62:4
proximate 10:19
prudent 11:18
public 6:15 62:19
publish 65:14
published 66:6
pull 12:11 67:1
purchase 12:15
purchased 12:13
purpose 34:10
56:19
pursuant 1:21
put 15:10
puts 9:8
putting 15:11
P&G 11:22 43:9,13
43:18 50:9
P&G's 50:9 62:9
P-R-O-C-E-E-D-... 50:9 62:9
P&G's 44:17 50:20,21
published 7:17
publish 65:14
public 6:15 62:19
3:1
Q
qualify 28:21
question 15:3
16:13 28:2 35:8
35:11 37:11 53:11
56:19 63:14 64:5
66:11
questions 4:4 18:21
22:3 28:1 29:21
63:12
quick 15:3 28:1,2
quickly 19:15
quite 12:5 14:7
48:3
R
R 1:23
radius 10:17
rail 1:11 6:16 7:20
8:2 13:19 22:21
26:15,18 34:12
46:6 48:22
railroad 1:8,8,14
2:2,8 3:10 6:20
22:20 28:9,11
34:17 39:2 43:11
43:12 50:20,21
52:18 53:19 54:3
54:5,14,19 55:2,9
65:13 66:14
railroads 14:20
20:4 26:16 45:7
Railway 1:13 2:13
raise 55:16
raised 38:6 43:8
59:1
rate 66:17
rates 8:16 9:2,7
10:14 14:18 31:8
31:9 37:17 53:21
52:21 53:2 64:9
65:15 19:66:6
reach 45:6,11
50:19
reached 19:20
reaches 19:20
reach 25:18
reached 19:20
record 5:1
recorded 67:6
red 5:10,12,16
reduce 24:1,14
reduction 61:12
Redder 7:13
refer 15:21
referenced 24:5
referencing 54:3
referring 20:3
reflecting 46:10
regarding 14:5
28:3
reinstating 18:12
related 7:15
relates 64:8
relevant 29:15 58:5
63:14
reinstate 12:12
relied 10:9 32:14
45:22
relief 3:14 25:7
61:9
remain 65:9
remaining 5:9
marks 3:22
remedies 44:9
reminder 5:19
remove 14:11
rent 50:2
reopening 41:4
repeat 4:7
report 54:11
representation 35:20
representations 3:9
22:1,9,18 24:18
25:3 27:13,20
require 11:20
31:22 61:20
required 44:9
requires 10:1
requiring 56:4
reserve 6:11
reserved 4:16,18
reside 8:21
resisting 40:13
respect 31:16
respectfully 43:4
respond 4:16 30:20
31:4 59:21 60:1,3
60:4
responded 23:21
response 23:22
24:13 57:4 60:1
64:13 65:2
responsibility 47:20
responsible 32:17
restore 7:16 10:2
result 32:3 47:9
48:22
return 65:7
review 8:1 21:22
reviewing 53:11
re-institute 18:7
Richard 2:12 6:8
27:3
right 18:22 20:8,10
20:22 21:6 27:16
33:9 35:5 41:8
46:5 59:22
rights 8:15 21:9
34:18 40:7 47:4
49:12,13 51:8
52:4
Rinn 30:7
RIO 1:13
Robert 7:11
Rogers 7:17 8:6,16
9:1,6,12,20 10:2,4
10:5,10 11:4,12
12:13 13:3,7,13
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Control and Merger: Union Pacific and Southern Pacific Rail

Before: STB

Date: 01-15-13

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Court Reporter
UNION PACIFIC/SOUTHERN PACIFIC MERGER

STB Finance Docket No. 32760

January 15, 2013

UNION PACIFIC’S

ORAL ARGUMENT EXHIBITS
as specifically named in Item 1663.

following a UP/SP merger. We have no intention of closing UP's present open customers.

Replay EX. B: Dec. 1995 Letter to Met
SOURCE: www.uprr.com/Customers/Shortline/attachments/current-uprrc-pd-1

Issued in this circular:

UP will provide Reciprocal Switching only to or from UP customers specifically

UP Rec. Switch. Circ. (current)
Reply Ex. D: Map (current)

Modesto-area Rail Lines

- UP (former UP)
- C&O
- General Foods
- C&O Enterprises
- Rogers
- J.S. West Milling
- Moore
- ConAgra Grocery Products
- Voith
- Met Inc.
- Michael & Russell
- Farm & Ranch Equipment
- Larry's Tree Mart
- BSIF
- Intermodal

Reciprocal Switching Status
- Open
- Closed

9/2012

Exhibit D, Page 1 of 1
Reciprocal switching charges in this tariff apply only to industries listed herein.
customers not held in Section 5 must move in NS line-haul service only if from NS customers specifically held in Section 5 of this tariff. Line-haul shipments to or from NS will provide reciprocal switching.
or as otherwise provided in this Section.

Revised protocol switching will only be performed on movements specifically shipped from or consigned to the industries listed in Section 1.
Comparison of Switching Language

UPR Met

Listed in this circular:

UPR will provide reciprocal switching only to or from UP customers specifically.
Switching District (current)

Reply Ex. C: OSPL Modesto
led in this circular.

UP will provide reciprocal switching only to or from UP customers specifically.

Example Warehouse for Lease

* 28' Clear Height
* Close to Highways
* 4.91 Acres
* 2 Truck Access Doors
* 8 Dock Doors
* 2 Rail Doors
* Rail Access

Evictorme@bearland.com
209.557.2706
Evictorme
Please contact
For More Information

100,000 Sq. Ft.

3924 Finch Road, Modesto, CA

Warehouse # 124

SOURCE: www.bearland.com/security/forlease
January 15, 2013

of Decision No. 44

BNSE and G3 for Enforcement

Amended Joint Petition of

Finance Docket No. 32760
Union Pacific and Southern Pacific

Merged UP/SP System
Principal UP/SP Far West Routes
Pre-merger: 3 Railroad access to Rogers Facility.
Exhibit A: Amended Joint Petition of BNSF and G3

Pre-merger: 2 Railroad access to Rogers Facility Rogers Facility
Applicants' Brief (UP/SP-260) dated June 3, 1996 at p. 7

As soon as the UP/SP merger agreement was announced, Applicants emphasized their intent to ensure that a second strong railroad would compete at every location where UP and SP provide the only rail competition. Applicants negotiated with a number of railroads, but shippers quickly made it clear that only BN/Santa Fe could provide the strong, comprehensive competition that was required. Smaller railroads such as KS

UP's Merger Representations
In most instances, up will yield much stronger competition, and found that in every case combining up and sp certificates and forms where "2-co-2" traffic originates or terminates will greatly multiply each one of the 26

UPS Merger Representations
Exhibit B to Amended Joint Petition of BNSF and GS

Met sought assurances from UP...
MET sought assurances from UP
Exhibit C to Amended Joint Petition of BNSF and CSX

Provide assurances to MET
Exhibit C to Amended Joint Petition of BNSF and CSX

[Text boxed area reading]

as specifically named in Item 166.

following a UP/SP merger, we have no intention of closing UP's present open customers

of Switching Tariff 5P 9600-C. Which defines the switching district of Modesto.

reference, attached are copies of Item 1233 of Switching Tariff 5P 8005-D and Item 1915

of diminishing the current switching district of Modesto, California. For your ready

We can assure you that the merger is approved Union Pacific has no intention

UP Provided assurances to MET
Merger Condition Principles

1. No shipper facility which received competitive service
2. UP cannot take action post-merger to reduce any direct result of the merger

pre-merger could be reduced to one carrier service as a shipper facility to one carrier service.
Restated and Amended Settlement Agreement dated March 1, 2002

conditions imposed on the Lp/Sp meter:

(2) The conditions imposed on the Lp/Sp meter:

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