United States of America
Surface Transportation Board

Oral Argument

In the matter of:

Intermountain Power Agency, Complainant,

v.

Union Pacific Railroad Company, Defendant

Thursday, November 14, 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, Chairperson
Ann D. Begeman, Vice Chairperson
Francis P. Mulvey, Commissioner

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APPEARANCES:

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Good morning. Welcome. Today we're going to hear oral argument in the case of Intermountain Power Agency versus Union Pacific Railroad Company, STB Docket No. 42136. You all look like veterans of these proceedings, so I'm not going to go through the preliminaries. I think you know how these lights work.

And my understanding is, each side had been allotted 20 minutes per side, and that IPA has decided to take 15 minutes on opening and five minutes for rebuttal, that is correct? So that's how the lights will be handled, so why don't we begin?

MR. LOFTUS: Good morning, Chairman Elliot, Vice Chairman Begeman, Commissioner Mulvey. My name is Michael Loftus, with the firm of Slover & Loftus, appearing on behalf of IPA. I'm accompanied at counsel's table by my partner Andy Kolesar,
and I would like to note for the Board's --
the presence of John Aguilar of the Los
Angeles Department of Water and Power, which
is the fuel purchasing and operating agent of
the Intermountain Power Agency. John is also
a witness in this proceeding.

I'd like to begin by addressing
the issues that the Board flagged in the
decision scheduling this argument, and then
we'll address a few other major issues as time
permits. I've provided to the Board some oral
argument exhibits, they're all from the
existing record before the Board, and I'd ask
you to turn to Oral Argument Exhibit Number 1,
and that is a schematic of the Intermountain
Standalone Railroad, the IRR, which has been
presented in the evidence by IPA in this case.

UP argues that if the Board finds
that the IRR's revenues exceed the IRR's
costs, the Board needs to conduct a cross-
subsidy analysis under Otter Tail, to
determine the amount of the prescribed rates,
in other words, to see if the prescribed rate should be limited under Otter Tail. Thank you.

In Otter Tail, the Board uses a schematic that appears at Page 10 of that decision, and it describes in connection with that three shippers. Shipper One is the complaining shipper and the rail facility is required to transport its traffic, who are identified as the core facilities.

Shipper Two is a shipper who also uses the core facilities, and in addition, secondary facilities that serve Shipper Two, but not the complaining shipper. Shipper Three uses only the secondary facilities and none of the core facilities.

The Otter Tail limitation applies only in situations involving Shipper Three traffic. In this case, there is no Shipper Three traffic, and as a result, there is no Otter Tail cross-limitation concern. Now, I ask you to turn to Oral Argument Exhibit...
Number 2, which is a schematic of the segment near Lynndyl, and it shows the mainline moving down, it's the dotted line, residual UP, then solid below that, going down to the center of the page, and it shows the IRR Lynndyl Yard to the right of that.

UP claims that the crossover traffic moving between Lynndyl and Milford on the IRR does not share any facilities with the issue traffic, and it has two strained theories as to why that is so. The first is that the mainline and the yard tracks are separate and distinct rail facilities.

Now, this exhibit, or this schematic, presented by UP is somewhat misleading, I think, when you look at the degree of separation between the mainline and the yard tracks. If you look at Exhibit Number 3, it contains portions of two exhibits submitted in the record, the first, 3B2 from IPA's evidence, and the second is from UP's evidence.
I want to go to the very first page of that exhibit and if you look at the upper left-hand corner where you see milepost 665 --

COMMISSIONER MULVEY: Excuse me. Maybe I'm getting old, but these pages are all numbered the same 3B2, 3B2. There is a reference to a Page 2 of 7, on Page 3 of 7, which page are you referring to exactly?

MR. LOFTUS: That is a little confusing. I apologize for that. I'm referring to Page 2 of 7.

COMMISSIONER MULVEY: Okay. Thank you.

MR. LOFTUS: Which is also the very first page after the cover sheet for Exhibit Number 3.

COMMISSIONER MULVEY: Thank you.

MR. LOFTUS: If you look at the upper left-hand corner, Milepost 665.70, that is the beginning of the 1.55 miles of common facilities that is utilized by the issue
traffic and by the crossover traffic. And you see the red lines there, those are the Lynndyl Yard tracks.

If you turn to the second page of that exhibit, about 3/4 of the way down the length of that page, there's a faint milepost designation, Milepost 664.15. If you can make that out. That is where the Intermountain Plant spur separates from the mainline, and then it curves away from the mainline and heads off to the power plant.

So as that exhibit and UP's exhibit all indicate, the tracks are very close together. In fact, the distance from the mainline to the first yard track is 15 feet, which is about the distance from me to your desk there; your dais. The second track is about 15 feet beyond that.

Now, the rail industry, as the Board knows, is a network industry. It operates the system in the manner that is most efficient for the network, and in an area like
this, where you have three tracks, those
tracks will be utilized to handle the trains
moving through the area in the manner that is
the most efficient and achieves the best
throughput given the number, the spacing, and
the direction of the trains.

The IRR is a standalone railroad
designed to operate as a least cost, most
efficient railroad, and it does operate in
that fashion utilizing all three of those
tracks for the traffic that moves through
there.

The UP's second rationale for why
crossover traffic does not share any
facilities is that none of the crossover
traffic moves over the mainline. IPA's
opening evidence RTC model shows that the
northbound crossover traffic uses 1.55 miles
of the mainline. On its opening, IPA
hardwired the RTC model to route all of the
southbound crossover traffic through the
Lynndyl Yard.
It did that as a simplification measure. When UP said that this magically separated the traffic in a manner that there was no sharing of facilities, on rebuttal, IPA went back to its RTC model and allowed the system to use the mainline for southbound crossover traffic if the mainline was available.

And in fact, when it was run that way, southbound crossover traffic did use the mainline as well as the side tracks in the Lynndyl Yard. UP, in its RTC model, hardwired it so that all of the crossover traffic in both directions would move through the yard and none would move over the mainline.

Of course, that seals their argument that there's no sharing of facilities, but that is not the way the RTC model requires it. It did it that way only because it was told to.

In summary, there is no Shipper Three traffic because all of the crossover
traffic moving between Lynndyl and Milford
shares 1.55 miles of the core facilities, and
therefore, qualifies as a Shipper Two for
purposes of the Otter Tail analysis.

I'd like to turn, briefly, to
address two other subjects. The first is a
category of traffic that UP has excluded from
the traffic group as defined by IPA. And
these are premium intermodal trains, referred
to as Z-Trains, that move eastbound from LA to
either Denver or Chicago.

UP argues that these trains should
be excluded from the traffic group because the
transit time over the Milford to Lynndyl
segment of the IRR is longer than UP's actual
transit time in its operations. It charges
that, as a result, the IRR service would be
"significantly inferior" to the service that
UP provides.

IPA has demonstrated in its
rebuttal evidence that the additional time
required for transit when IRR handles the
traffic through that segment, approximately 30
minutes, is not consequential in any manner
with regard to the Z-Train traffic, and here's
why.

Number one, the Z-Train traffic
moves from LA, approximately 1400 miles to
Denver, and approximately 2800 miles to
Chicago. The shippers for that traffic are
centered about the arrival time of those
trains at the destination. That's when
they're able to get the containers off and to
move them on as need be.

When you look at the impact of
this 30 minutes over that distance, when you
compare the transit times for the entire
movement from LA to Denver, or from LA to
Chicago, it is a truly minuscule number in
terms of a percent of the impact on the total
transit time.

I can't say the numbers because
they are confidential, but those percentages
appear at Page 21 of the IPA brief.
In addition, the Z-Train traffic spends a substantial period of time idling in UP yards awaiting further movement and that time also provides a cushion in terms of any possible impact of that 30 minutes.

And the evidence IPA presented also shows a significant interval of time for many containers between train arrivals and further handling of that container, which also provides a further cushion against any impact of that 30 minutes as far as the shipper itself is concerned.

The other category of traffic that -- at this point, I will stop and I will add any further comments with my rebuttal unless--

CHAIRMAN ELLIOTT: Question first.

Mr. Mulvey?

COMMISSIONER MULVEY: I want to ask you a question about the Z-Trains. You admit that the Z-Train traffic would take 30 minutes longer -- Isn't it the Board's
requirement that the service be at least
equivalent, if not superior? If that is the
case, should we resolve this issue in UP's
favor? Because 30 minutes is 30 minutes. It
is longer. It's not equivalent in service.

MR. LOFTUS: In answering that, I
would say two things. First, let me be clear,
30 minutes is our number. They have some
different numbers and some are lower than
that, and some are higher, depending upon what
months you use. We compared the IRR's peak
week to the UP's peak week. They say that's
not right, but we think it is right. That's
the apples-to-apples comparison. That's how
we get our 30 minutes.

As to whether the Board precedent
requires that, because it takes 30 minutes
longer, game over, the answer is no. The
Board does not. It's been addressed in a
number of cases. We discussed those
precedents in our brief; each of them. You
will find that what the Board's really saying
is, and it uses these precise words in some of
the cases that, you have to demonstrate that
you're going to meet the shipper's needs.

And the situations where the Board
has disallowed things that a complaining
shipper tried to do with a standalone railroad
are things like making all the trains a
uniform length of 115 cars on the standalone
railroad, when in fact, many of the trains are
90 or 95 cars long on the railroad, and that
was CSX.

Three other cases also found the
train length to be a problem. In another
case, the standalone railroad set a limit of
115 cars per train, but yet, the actual
operations by UP, the railroad in that case,
had a lot of trains that were longer than
that, so the Board would not accept 115.

Those significant changes that
impacted operations, or contract requirements,
and as the evidence we presented demonstrates,
there is no significant impact in terms of the
needs of the shipper, which, as I mentioned, relates to the movement from LA to Denver. We don't have another case like this in the precedents where you are looking at a time difference.

In most of the standalone cost cases, it hasn't been an issue because it was clearly longer, even when you take into -- or shorter, even when you take into consideration, the interchange times. Thank you.

VICE CHAIRMAN BEGEMAN: If I could just continue with Frank's question, which was a question I had as well. So you're suggesting 30 minutes is a non-issue. What would be an issue? At what point do you tip the scale too far? And I'd also like to know how you were able to determine that it's the shipper's view that 30 minutes is a non-issue.

MR. LOFTUS: Well, our basic view on whether the shipper would see it as an issue has to do whether the shipper would even
be aware of it. In the evidence that we have
presented indicates that the shipper would
not, that it would be -- that the performance
that the shipper encountered would not be
affected by the differential and the time
because there are various other periods that
occur in the chain of railroad handling of the
containers before they get to the shipper that
would more than absorb that 30 minutes.
That's the point there.

As to where do you draw the line,
if not 30, you know, how much is it? I can't
honestly say I have an answer for that, but it
would truly have to be, I would say, at least
two or three times that before it would have
an impact.

COMMISSIONER MULVEY: Following up
on the consequential resource significance of
a number, does an overlap really exist between
the IRR and in UP at Lynndyl? I mean, aren't
you creating an overlap where one doesn't
exist, even under your own RTC modeling? Your
argument says only 2 of 65 trains in a 7-day modeling period have any overlap at all.

So this is a tiny amount. You say the 30 minutes for the Z-Trains is a tiny amount. So why is that amount not significant and why is the timing amount sufficient to avoid the cross-subsidy analysis that UP proposes?

MR. LOFTUS: Well, the Board's conceptual framework for the cross-subsidy analysis is clear. You have core facilities. Those are the facilities that are utilized by the complaining shipper. If another shipper uses core facilities and other facilities, then it is Shipper Two. This traffic, when it is handled in the way an efficient railroad would handle it, would utilize all three tracks, the mainline and the R tracks, to handle the trains moving over this segment, regardless of whether a crossover or -- well, the issue traffic will all move on the mainline regardless, because it peels off.
But you refer to only a few of the southbound, but all of the northbound crossover trains move over the mainline at Lynndyl under the RTC model. So there is a significant amount of the crossover traffic that moves over the mainline. In addition, we believe that it is a false distinction to claim that the track yards in the mainline are not the same rail facility in the context of the Board's analysis of cross-subsidies.

COMMISSIONER MULVEY: Thank you.

CHAIRMAN ELLIOTT: One follow-up question. Let's say, hypothetically, by your argument against UP's Otter Tail cross-subsidization argument, what if, instead, we went to the light density line and did a PPL cross-subsidy analysis, and we exclude the 1.55 miles, would the Board be correct in looking at it that way as opposed through the Otter Tail analysis that UP proposed?

MR. LOFTUS: Well, what I'm hesitating about is, when you say eliminate
the -- you know, clearly, a PPL analysis could be done. We don't believe there is any PPL Montana cross-subsidy threshold, cross-subsidy concern. The UP would have the burden of showing same if there is under the Board precedent, and we don't believe that they have.

They have presented a template, if you will, which we have problems with, which we pointed out in our filings, but we believe that such an analysis would show that there's no threshold cross-subsidy concern with this system.

CHAIRMAN ELLIOTT:  Okay. Thank you.

MR. LOFTUS:  Thank you.

CHAIRMAN ELLIOTT:  Thank you.

Counsel for Union Pacific. You have 20 minutes.

MR. ROSENTHAL:  Thank you, and I plan to refer to some slides that I have.

Good morning. Just to begin with, you know,
gentlemen, you have it exactly right that you
can do a PPL cross-subsidy test, we did it,
and the evidence is in the record. The issues
that IPA had with it were some minor issues
about how you allocate some particular types
of costs, you know, G&A-types costs; taxes.

But the critical point, the really
critical point, is that this Otter Tail case
and the Shipper Three was really a function of
that case. There was this Shipper Three in
Otter Tail that didn't share any of the
facilities with the issue traffic, and BN had
argued to take out that traffic, and the Board
said, no, we're going to leave it in and
explain it.

But the Board realized that the
situation presented an important point about
taking the PPL Montana test to the next step,
and I'm going to talk about that in more
detail, but that next step applies to the PPL
Montana test. It really has nothing to do
with whether there's Shipper Three traffic or
whether there isn't.

I mean, it's interesting the way they designed the SARR with this tiny overlap, if any overlap, to try to include all this traffic, and I'd like to talk about their design and how that was used to create a cross-subsidy. But whether there is an overlap or isn't an overlap really is irrelevant to applying this second step of Otter Tail.

The economic theory behind it works whether or not there is this Shipper Three that doesn't share facilities. So I don't really want to make such a big deal of it because the economic point is that, if you're going to apply that PPL test and draw a line, you have to have the segment that's self-sustaining in a contestable world. That's what the second half of that Otter Tail test says.

And again, it's where you draw the line for the PPL test, you can draw it
anywhere you want on the issue route. You
don't have to include all of the core
facilities. And you would apply the test in
the same way whether there is or isn't a
Shipper Three. It would apply to the Shipper
Two traffic.

So the overlap is interesting for
the SARR design, but ultimately, it's not
determinative of how you apply that second
level cross-subsidy test. And I really do
want to spend most of my time addressing the
issue that the Board put in its oral argument
notice, whether IPA's SAC model includes an
improper cross-subsidy and whether the Board
should apply the modified test that we
proposed.

You know, our proposal is a
logical extension of the Board's reliance on
ATC to allocate crossover revenue when looking
at cross-subsidies. And we think it would
greatly simplify SAC cases by reducing the
incentives that shippers have to extend their
SARRs in order to create cross-subsidies in their favor. We think that would ultimately reduce the benefits on the parties and the Board in these types of cases.

But I want to begin, briefly, by talking about some of the revenue and cost evidence in this case, because if you hold IPA to your established standards of proof, you're not going to need to address the other issues, because standalone revenues don't exceed standalone costs, and the case would end there.

And this case should end there because IPA's evidence substantially overstates SARR revenues and understates SARR costs. One of the issues was these Z-Trains, which IPA assumes the SARR is going to pick up at Milford, bridge over its line, and hand it back to UP at Lynndyl, and it assumes it's going to get this revenue even though it's not matching UP's transit times.

Another, perhaps even more
important, example was when IPA started out
its case by assuming that UP would pick up
some traffic that was on the SARR and hand it
over to IPA in exchange for this really tiny
fee, where IPA then, on rebuttal, changed its
method of operation.

And there are a number of places
where IPA also understates SARR costs, you
know, through their counts of locomotives,
their fuel assumptions, the number of
employees, their salaries, and IPA implicitly
admitted many, many of these problems on
rebuttal by submitting entirely new evidence
in attempt to address them.

And the rules say that the Board
shouldn't consider this new material. The
Board's rules are designed to deter this kind
of catch-me-if-you-can litigation, but even if
you could consider it, you shouldn't. You
know, IPA's tactics in putting in this
evidence on rebuttal deprived UP of a fair
opportunity to reply, but we discovered some
serious problems, even in the short time that we had to prepare our brief, and, you know, we could have addressed them in much more detail if IPA had followed the rules and submitted its evidence in its opening statement so that we could have addressed them on reply, including these Z-Train issues that Mr. Loftus spent some time on.

And I'm happy to come back to these points and talk about the specific ones, but I do want to make sure I talk about the cross-subsidy issue. And the cross-subsidy issue flows from the way that IPA designed its SARR and selected its crossover traffic. And this case provides an unusually clear illustration of how shippers can undermine the SAC test by using crossover traffic to create cross-subsidies in their favor.

So how did IPA create a cross-subsidy? Well, as you know, this is IPA's second challenge to UP's Provo to Lynndyl rates. In the first case, they also
challenged UP's rates from two origins east of Provo; the Skyline Mine and the Savage Coal Terminal.

And in the first case, I'm going to try to go to my slides now, IPA replicated UP's route from Price to Provo, and then it went on from Provo to Lynndyl, and then it added this segment south of Lynndyl to Milford, even though its trains really, you know, don't move south of Lynndyl.

Now, the first time around, IPA made a mistake in its ATC calculations. UP pointed out that IPA couldn't win once the mistake was corrected, and after some back and forth, IPA wound up dismissing that case and filing a new complaint. So what's the difference between the first case and the second one? This is really killing the drama. There we go.

The only major difference is that IPA amputated the portion of its SARR from Price to Provo, which meant it had to drop its
challenge to UP's rates from Skyline and
Savage. So now, IPA's SARR replicates UP's
route from Provo to Lynndyl, you have this,
again, long segment from Lynndyl to Milford,
doubling the SAR, even though the trains don't
move over it.

And, you know, this was curious to
us because shippers complain that the SAC test
is too expensive and too time-consuming, and
then you had somebody bring a case, abandon
two mines where they could possibly get
relief, and then build a SARR twice as long as
necessary. So why did they do this? There
are two reasons.

First, IPA recognized that the
SAR's cost to build and operate the Price
segment would be much greater than the SAR's
revenue allocation for the segment. The Price
segment was dragging the SARR down, and IPA
didn't need to build the segment to still get
some revenue credit when traffic that moved
over that segment moved over the Provo to
Lynndyl segment, and from Lynndyl to Milford.

Second, because the SARR no longer included the Price segment, the extra contribution from this higher density Milford segment didn't have to be distributed over the Price segment. It could go back to the Provo to Lynndyl segment. And the reason that IPA built this Milford segment is, basically, the reverse of the reason for not building the Price segment.

It's inexpensive to construct and operate relative to the revenue they're allocated. And this is what I was talking about when I said that shippers can undermine the SAC test to the SARR design and traffic selection process. The issue traffic in this case doesn't use either the Price segment or the Milford segment.

So IPA could choose whether or not to build them, and they chose to build a profitable Milford segment, even though their traffic really doesn't use it, and really,
most of the traffic on that doesn't share any facilities with their traffic, and they didn't build the Price segment, even though, actually, most of the traffic on that segment does share facilities with their traffic.

And, you know, this was a choice. Shippers do the math before they settle on their SARR design. They figure this out. And absent some major miscalculation, a shipper is never going to build more than the core facilities unless there's some benefit to be gained from gaming the revenue allocation process.

And usually, railroads couldn't prove this. We'd have to go build a longer SARR to make our point, and there'd be all sorts of disputes about whether we'd done it or not. But in this case, there really can't be a dispute about what happened because IPA built the SARR in the first case. It tried to build a low-cost SARR and it didn't have a winning case. So we can see what happens when
you choose between building and using the revenue allocations.

So now, in one sense, this is a crossover traffic problem, but in the very important sense, it's a cross-subsidy problem, because what's happening here is, IPA is using revenue from the Milford segment to subsidize reductions in its own rates. And the Board's current internal cross-subsidy test isn't sensitive enough to fully address this issue, and that's why we proposed our new test.

So to explain it, we did -- let me go back and look at the Milford segment, and basically, there are two types of traffic that are moving over the Milford segment, some of the traffic, mostly coal, sharing -- also moves over the Provo to Lynndyl segment, like the issue traffic. That's the light green.

The other traffic, which is mostly intermodal traffic, never moves over the Provo to Lynndyl segment. IPA designed the SAR, again, to bridge this traffic between Milford
and Lynndyl, and it hands the traffic back off the UP. And it was the second traffic that made us pause.

So in our reply evidence, we showed how the Board would apply the PPL Montana internal cross-subsidy test to see if IPA created a cross-subsidy that favored the issue traffic, and we illustrated this test using IPA's opening evidence. Our evidence said you shouldn't even get to this point because revenues don't exceed costs, so we used IPA's evidence.

And we applied the internal cross-subsidy test to test the portion of the SARR from Provo to a point just north of Lynndyl, where Mr. Loftus' map showed the lines, you know, just came together, and we did that so that we were cutting off any argument about whether this intermodal traffic was in or out. We picked a spot where it was out.

And essentially, you perform the Board's test by assigning all of the SARR
revenue from any traffic that moves over the segment we were testing, that north segment, and determine whether those revenues exceed the traffic's attributable costs, which are the costs to build that segment, and then the variable costs of operating south of it.

If revenues don't exceed the attributable costs, there's plainly an impermissible cost-subsidy. It means that that segment, which isn't a necessary part of the route for the issue traffic, isn't self-sustaining. It's not self-sustaining, and that's why the shipper lost in PPL Montana and Otter Tail.

But even if revenues exceed costs, which they did in our illustration, there's an important second step that's also directed to detect and prevent cross-subsidies, and the Board described this test in Otter Tail where it said that the internal cross-subsidy test also establishes the limits on potential relief.
So we calculated that limit on relief, and what you do is, you apply the Board's maximum mark-up methodology to the results of the first step of the PPL test; of the internal cross-subsidy test. And that produced the rates that you see in the third column here, which is from our reply evidence. And again, this is all based on IPA's opening evidence. By IPA's reply, they had agreed that their RVCs needed to be much higher, but we were using IPA's opening evidence because that's what we had at the time.

And essentially, these ratios establish the limits on potential rate relief. And you can see those are higher than where IPA had calculated at the time was the maximum in all years but, I think, 2013. And what that means, what this notion means, is that, you can't take traffic from south of the line that we drew and use it to prescribe rates overall that are lower than these rate levels or else it would also be creating a cross-
subsidy.

Now, why is that? It's because the Board recognized in Otter Tail that if rates were set any lower after application of the whole SAC test to the entire SAR, and you came up with lower rates, then if you applied the internal cross-subsidy test again to the nearest segment using those new rates, you'd fail the test.

So in other words, the Board would have been setting rates at a level that would have created a cross-subsidy, and that was what the Board -- that was, sort of, the insight in Otter Tail, that you can't set rates so low after applying your own cross-subsidy test to the whole SAR, that you create any portion of the SARR that's not self-sustaining in a contestable world.

That was Otter Tail and that has nothing to do with whether there is or isn't a Shipper Three, that's just applied to the results of the first step of the Board's test.
And in our illustration, again, application of the Board's current test confirmed that IPA's SAC model had at least some impermissible cross-subsidy because the SAC test performed on the entire SARR produced rate levels below the limits on potential relief.

But we looked at this and we thought, why does the current test assign all SARR revenues from any traffic that touches the segment north of the line to that segment? Isn't it likely that some of this revenue is really needed to support the fixed costs at other segments south of the line, or maybe someplace entirely off the SARR all together?

And the Board's current test makes sense in light of its history. When the Board adopted this test in PPL Montana, it didn't really have a revenue allocation method that it was confident in using to allocate revenues on a geographic basis. It was using a modified mileage prorate to allocate crossover revenues.
But now the Board uses ATC, and the Board has said that ATC is the best method of allocating crossover revenues by geography short of performing a full SAC test. That's the whole purpose of ATC and the Board places tremendous confidence in ATC. It's used to allocate crossover revenue between on-SARR and off-SARR segments, and those allocations are hugely important in SAC cases.

In every modern rate case, the revenues from crossover traffic dwarfs the revenues from issue traffic. If ATC isn't doing its job, then the results in all of these SAC cases are meaningless. So why not use ATC when testing the SARR for internal cross-subsidies? If it's good enough to allocate revenue between on-SARR and off-SARR segments to perform the SAC cross-subsidy test, why isn't it good enough to allocate revenue within the SARR to perform the internal cross-subsidy test?

The Board has said that the
internal cross-subsidy test is just as important, just as mandated by the guidelines. If a railroad isn't allowed to rely on cross-subsidies, neither is the shipper in challenging the rates.

We think it has to be the case. If you're going to use ATC in one case, you have to use it in the other. You can't have separate sets of rules applying to cross-subsidies created by railroads and cross-subsidies created by shippers. And adopting our test would have, you know, pretty substantial benefits.

If ATC is accurately allocating crossover revenues to prevent subsidization, then its use in the internal cross-subsidy test would make that test much more effective, much more accurate. Second, if you can more accurately identify these internal cross-subsidies, there'd be much less of an incentive to engage in what we saw here; the building of, literally, extra SARR facilities
in an attempt to take advantage of these types of internal cross-subsidies.

You know, IPA had argued in their rebuttal that, you know, what we're really doing is restricting the SARR to replicating its own core facilities. We're sort of saying, you know, in future cases, you could never do more than build Provo to Lynndyl. That's not exactly right.

The law acknowledges that the SARR still gains from building all the way down to Milford, there are the costs of interchange at Lynndyl that you'd have to take into account, they get those efficiencies, the SARR could still build from, you know, origin to destination to handle the issue traffic, but in most cases, the results under our test would probably be close to what you'd get if you confine a SARR to its core facilities. But we don't see anything wrong with that and we don't think the Board should either, because it already uses ATC to
allocate revenues when testing for cross-
subsidies, and it's fair to both sides. The
same rule applies when testing the railroad
for cross-subsidies, and when testing the
shipper's SARR for cross-subsidies.

I just want a minute on equity
flotation costs. The issue there is really
very straightforward. These are just costs of
raising equity. If you go out into the market
and you need to raise equity, you need to pay
Goldman Sachs, or whoever you do it, to raise
the equity. It's just like when a SARR goes
out, has to design the SAR, you've got to pay
the engineer to do the design costs.

Here, IPA's capital structure
assumed a certain amount of equity, we went
out, we looked and we said, because the Board
has said railroads haven't had enough evidence
in what these costs are, we looked at a bunch
of transactions of about the same size, in the
same time period, we came up with what the fee
is for raising equity, and we put it in there,
and we think that's a cost that the Board should clearly include.

Again, the same as designing a railroad, it's a cost that the SARR incurs to get up and running, and, you know, under the Board's rules, we presented, you know, feasible, realistic evidence. IPA has nothing. They came up with some excuses about why our evidence wasn't good enough, but that's too late. Under the Board's rules, if they don't address an issue like this on opening, and we present a feasible, realistic alternative, you know, under the Board's rules, again, the Board has to use our evidence, and we think it's accurate.

We think it's accurate. This isn't a matter of game playing. This is something that's been excluded, I think, for too long from the costs of building a SAR.

COMMISSIONER MULVEY: Thank you. I know that we set focus in this hearing on ATC, and crossover traffic, and the like, but
I would like to turn back to an earlier part of your testimony, your evidence, which deals with some of the specifics, some of the cost drivers which your numbers involved, if you would focus on some of the more important ones and there I'm talking about wages, salary streams, overhead -- et cetera.

What you're saying that the purpose of the standalone cost test is to design a railroad that is efficient. And I think you're making the charge that they've gone over -- that IPA went over that and went beyond efficiency and created, in some ways, a cost structure that was unrealistic. Do you want to comment on that and focus on what you think were the more important factors that were understated?

MR. ROSENTHAL: Sure. Well, I think that's right. We have a number of comparisons throughout the test, throughout our evidence, that show where, in this, you know, particular case, they've gone, you know,
by looking at some ratios, they've gone, sort
of, far beyond what the Board has accepted in
other cases.

I think one of the big examples
here, actually, maybe they're related, the
number of locomotives and the amount of fuel
on the cost side, you know, essentially, what
they've done is, they said, for the IPA issue
traffic, you know, let's assume we have, you
know, we didn't put three, we disagree whether
it's three or four trains, we think it's four,
they think it's three, let's say we have three
trains, we've got to operate them 220 days of
the year, you know, that's, you know, 0.6 of
a year, so we need 0.6 times three trains
because it takes a, you know, one-day round
trip.

You know, meanwhile, they're
assuming that these locomotives are going to
be ready to move their issue coal back and
forth on call, they assume they're going to
have these locomotives, but they don't provide
enough locomotives so that it is available, so
that's one big area where they've understated
costs.

They then try to look at the fuel
for these locomotives and they say, you know,
we're going to operate them faster, we're
going to operate our trains faster than UP
operates their trains, and yet, somehow, we're
going to, you know, burn less fuel. So I
mean, those are a couple of the, actually,
pretty sizable ones that matter.

You know, again, there are a
number of places where they assume that they
can, you know, do maintenance using only two
crews, you know, or two teams, to cover very
long distances; longer than in prior case.
You know, we've gone through a lot of them,
but, you know, the troubling thing here is
that this has been, sort of, a catch-me-if-
you-can-type of litigation.

You know, there are places where
we've come and we've said, look, you know, you
say you use one ratio, you're going to justify
the fringes and benefits based on all of the
railroads, you know, and it's 41 percent, and
we come back and we say, well, actually,
that's okay, but the real number is 44
percent. And then they come in and they say,
oh, well, you know, if you just look at BN and
KCS, you know, it's 42 percent.

You know, there are a number of
those, and, I mean, that's okay. There's some
back and forth, and I'm not meaning to be too
critical, but I would really urge the Board to
apply its evidentiary rules. They really are
pretty clear and they're meant to prevent this
sort of thing.

COMMISSIONER MULVEY: But it's
also true that the IRR would be using newer
more fuel-efficient locomotives and so, if you
use the UP average, which would be an older
set of locomotives, they would be using new
ones in a single startup company, one could
assume that the railroads would have new
locomotives, they'd be more fuel-efficient, and perhaps, more powerful as well?

MR. ROSENTHAL: Well, I mean, I don't know. I don't know. I mean, they're trying -- you know, I guess there are two things. One, there's no evidence of that. They speculate in there that, well, maybe we'd be using more efficient locomotives, but the other point is, under their plan, you know, they're not just using their own locomotives, and this is part of this, how many locomotives they have.

They're assuming they're going to get locomotives from other people. They're sending some locomotives offline and other locomotives are coming online, so they're also going to get a mix of locomotives on their network, so they can't say that they're always going to have new stuff. And they tried this, you know, new SARR thing in some of these maintenance costs as well.

They said, oh, we're going to
have, you know, great track, you know, we only
have to worry about, you know, a little bit of
maintenance, a little bit of ditch digging,
ditch clearing, whatever, and they had a
witness who said, oh you know, I worked on --
again, on rebuttal. They put this guy in on
rebuttal. Said, oh, I worked on, you know,
work beat when it was formed and we didn't
really have high maintenance costs, but the
costs here actually have to be over the ten-
year SARR period.

We're looking at the peak period,
and one of the problems with looking at this,
you know, new railroad is that, you can't just
look on day one. You know, we're talking
about its operations ten years out when it's
no longer quite so new. So, you know, that
explanation doesn't quite cut it for those
costs either.

COMMISSIONER MULVEY: Thank you.

CHAIRMAN ELLIOTT: A quick

question. Going back to the beginning of your
argument with respect to your PPL analysis.

How did that analysis play out versus your argument, you know, I guess, Otter Tail-type argument? I mean, what were the comparisons?

MR. ROSENTHAL: I'm sorry. I'm not sure I understand what you mean. You know, we did --

CHAIRMAN ELLIOTT: I mean, as I understand it, in your analysis, IPA, based on your cross-subsidy analysis, would lose, is that right?

MR. ROSENTHAL: Well, no. Actually, no. I mean, again, first, I have to say that we were doing this test based on IPA's opening evidence. We were trying to illustrate this.

CHAIRMAN ELLIOTT: Okay.

MR. ROSENTHAL: You know, it was for illustrative purposes only. We don't know how it would play out because a lot of this depends on things like what traffic, ultimately, is in the analysis at the end of
the day, and what are the costs.

CHAIRMAN ELLIOTT: Sure.

MR. ROSENTHAL: So all that's going to matter. But what we showed was that, if you apply just, sort of, the standard Board's PPL analysis, that first step wouldn't have kicked the case out. IPA would not have lost. There was not a cross-subsidy.

But what we showed, and what I was illustrating with that chart with the three columns, if you then, again, using just the standard, you know, not using ATC, but the Board's standard analysis, with the Otter Tail insight that this test also has to serve on a limit of relief, then we showed that there would be a limit, and the limit would be higher than you'd get after running the full SAC test, which I think -- which shows a cross-subsidy.

It shows that you couldn't really sustain those lower SAC rates. Again, I mean, that test, it doesn't mean they would lose, it
means that the maximum amount received would 
be slightly higher than if you did the full 
SAC test. Now, again, even applying -- and we 
have another chart in there in our reply which 
shows what would happen if you used our ATC 
version, and it's similar.

IPA doesn't lose in our analysis, 
you don't get the result in PPL and Otter 
Tail, they don't get kicked out, but when you 
apply the second test, again, the maximum RVCs 
are higher, so there's, you know, a cross-
subsidy. How well those RVC numbers play out 
after the traffic, I can't tell you, but in no 
case does it say that they absolutely lose in 
our examples.

In our examples, there's still a 
rate reduction, it's just less than you'd get 
if you applied the SAC test without accounting 
for these cross-subsidies.

CHAIRMAN ELLIOTT: Thank you.

That does answer my question.

COMMISSIONER MULVEY: I have one
other question. IPA says that your crossover traffic proposal is, in fact, a movement-specific adjustment which runs counter to the Board's directives. Does your approach require a movement-specific adjustment to the IRR overhead traffic in a way that violates the spirit of the Board's precedents on such adjustments?

I mean, your approach does require modifying, for example, train lengths, empty car return ratios, and train type, et cetera, isn't that right?

MR. ROSENTHAL: Well, it's a slightly different issue. A crossover proposal is just an application of the PPL test. We also had suggested some changes. You know, again, we think if the Board is going to use ATC to test cross-subsidies that the railroad creates, it ought to test cross-subsidies the shipper creates.

We think there are improvements that could be made to ATC and we were, you
know, frankly, motivated by some of the
Board's suggestions in the APCO case about
ways that you might modify ATC to reflect the
characteristics of the movements, you know, as
they operate over the SAR, and we would be
making changes to URCS.

You know, I don't think they're
movement-specific URCS. I think we're really
modifying ATC. You know, ATC already breaks
up the cost of the traffic into separate
buckets. You're already departing from URCS.
You're taking out interchange costs and things
like that, so I see it really as a
modification to ATC, and that really is a
movement-specific cost.

COMMISSIONER MULVEY: Okay. So
you're saying, basically, it's a cost
allocation issue and it's not really a
movement-specific adjustment.

MR. ROSENTHAL: I think it's an
adjustment to ATC, which is already -- you
know, which is using URCS, but I wouldn't
really consider it a movement-specific
adjustment. The other point is, one of the
things that has troubled the Board in the past
about movement-specific adjustments is that,
you're changing the cost allocation of a
particular movement.

And the way our methodology works,
we're not changing the costs of any movement.
Again, we're re-allocating the costs within
the movement, so the totals still add up. You
know, we haven't changed the costs of any one
movement. We're shifting the costs to reflect
the operations over the segment the SARR is
replicating.

COMMISSIONER MULVEY: One more
general question. Aren't the railroads really
advocating, and I know you're speaking for
Union Pacific, but railroads in general, are
advocating that crossover traffic should not
be included in the analysis, and so, how does
that square with the Board's recent and
historic precedent about crossover traffic?
MR. ROSENTHAL: Okay. You know, if I thought I could come up here and win with an argument for excluding crossover traffic, I'd make it, but, you know, we've gone through 715, we've talked about ATC, the Board seems committed to using ATC, and now what we're saying is, you know, if you're going to use ATC to test for cross-subsidies when it's, you know, the railroad that's accused of creating a cross-subsidy, you ought to use it when you're testing for cross-subsidies that the shippers are trying to create through their standalone railroads.

So, you know, I got to work within the Board's rules. If you're willing to toss crossover traffic out, that would be great. We submitted evidence that showed the results of the case if you're inclined to go that way, and, you know, that's in the record too, so you could go that way.

We also submitted evidence that addressed the other Board proposals in ex
parte 715, the idea of only including train
load traffic as crossover, or requiring them
to originate or terminate the traffic. The
evidence is in there if you're inclined to go
that way, but if you're going to, you know,
stick with the current formulation, at least
for now, until we can convince you otherwise,
we've got an ATC-based test that we think it
fair to both sides, and an improvement over
the Board's current test.

COMMISSIONER MULVEY: Thank you.

CHAIRMAN ELLIOTT: Thank you, Mr.
Rosenthal. And I think you have five minutes
on rebuttal.

MR. LOFTUS: Thank you. I'd like
to be clear about what's going on here with
the UP's ATC proposal for cross-subsidy
purposes. Standalone costs require grouping
for captive shippers to have any hope
whatsoever of sharing in the economies of
scale, scope, and density available to the
incumbent railroads.
Crossover traffic in Otter Tail was described by the Board as an indispensable part of standalone cost cases at this juncture if shippers are going to have a chance at all to get any relief. Mr. Rosenthal makes it sound like, oh, happy day. You know, when the Board developed its cross-subsidy analysis, it didn't have an ability to allocate revenues well, and that was a limitation on what it could do.

But we now have ATC, so now you can do what the Board really wanted to do all along. That's not true at all. What the Board did in the cross-subsidy analysis is, it said that Shipper Two traffic, traffic that uses core facilities and also secondary facilities, that traffic, the contribution can all go to sharing the costs of the core facilities for the shipper.

What they're proposing now is that you take Shipper Two traffic, and instead of allowing all the contribution to go to the
offset costs on the core facilities, that you
divide the contribution between the core
facilities and the secondary facilities. The
Board did not have anything like that on its
mind in Otter Tail.

If you look at Page 10, and I'm
going to read a quote, they're talking about
the sharing of Shipper Three, you can have
Shipper Three because they can at least offset
costs on the secondary facilities, even though
they can't offset costs on the primary
facilities.

The Board said, "Even if the
revenue contribution from Shipper Three were
sufficient to cover the entire capital cost of
the secondary facilities, then all of the
revenue from Shipper Two could be used to
share the expenses of the core facilities that
would not entail a cross-subsidy."

So the Board wasn't thinking
about, you know, trying to divide up the
contribution from the Shipper Two traffic
between the core facilities and the non-core secondary facilities. The ATC system was devised for an entirely different purpose. It uses an entirely different universe of costs.

ATC relies on the incumbent's system average costs. It relies on the incumbent's traffic densities in the real world. The cross-subsidy analysis, you look at PPL and you look at Otter Tail, it relies on the SAC from the bottom-up costs, and it excludes the non-attributable costs.

So it's a different universe of costs that are used for making the division. My time is short and I want to hit a couple of other things quickly. We did not, in some underhanded fashion, design this system to create the overlap. The issue traffic moves over the UP mainline down this 1.5 miles. There's no other way to get that issue traffic to where it's going without going over that segment.

The first through change point on
the UP after that is Milford and there are
good operational reasons for using that as a
stopover point. I don't want to go beyond my
time; be happy to answer any questions.

COMMISSIONER MULVEY: No.

VICE CHAIRMAN BEGEMAN: Just one
question. Since you requested that we hold the
hearing, was there one particular aspect that
you wanted to convey to us that you didn't
feel was adequately conveyed in the record, or
did you just want to provide the overview that
you've been able to do so far?

MR. LOFTUS: Thank you for that
question. There are a couple of things that
I would like to mention very briefly. Sorry
for taking so long. I'm trying to find the
reference I was looking for. There are two
points with regard to the UP local traffic
that Mr. Rosenthal had mentioned in his
remarks.

And with regard to that traffic,
there were two points that UP raised on its
brief about IPA's evidence. It said that IPA
had ignored the need to provide empty cars for
the movement of the local traffic in its
evidence, and that is not correct, and I would
just simply direct the Board to IPA Rebuttal
Work Paper Local RTC Trains.xlsx, which
reveals that there were a number of empty cars
sufficient to handle the loads delivered to
each origin.

UP also suggested that IPA failed
to include all of the local trains that UP
moves in the real world, and that is true, but
the reason was that IPA did not put all of the
local traffic that UP actually hauls on that
segment on to its system. And IPA put on a
number of trains adequate for the traffic it
handled.

It did use actual start times for
the trains that the UP ran. There was -- I
don't think I made reference to the
confidential work paper, that reveals one of
the important elements of our explanation that
the half-hour difference in transit time over
the Milford to Lynndyl segment would not
really have a meaningful impact on the
shippers from the LA origin to the
destination.

That highly-confidential exhibit
shows the arrival time of the Z-Trains at
destination, whether they're within normal
business hours or outside of normal business
hours, and support the point we had made in
that regard. Nothing further. Thank you.

VICE CHAIRMAN BEGEMAN: All right.

Well, you know, each rate case that is
presented becomes more interesting, more
complicated, some actually more complicated
than the particular case that we're talking
about here. We spent the last hour and 15
minutes talking about the hypothetical and
arguing over what each side has tried to work
within the Board's rules. But we've got
shippers here, we've got a railroad here, and
I hope that you will not resist the chance to
keep talking and trying to resolve your
differences in the real world.

COMMISSIONER MULVEY: Thank you. This is my last hearing. I just want to say,
it seems that in the last nine years or so,
these cases have gotten even more complicated
over time, and we keep trying to simplify
things, but every time we try to simplify
things it seems to add another level of
complexity. So to some extent, I'll be happy
not to be hearing these cases anymore, but let
me just echo what Ann says, I do hope that you
can negotiate a settlement on this, but, all
parties can agree upon and make use of our
mediation processes. Thank you very much for
coming.

CHAIRMAN ELLIOTT: Thank you much,
Counsel, for your time and excellent argument.
Thanks, Frank, for your service and this
hearing is hereby adjourned. Thank you.

(Whereupon, the hearing in the above-
entitled matter was concluded at 10:42 a.m.)
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</table>
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Intermountain Power Agency
v. Union Pacific Railroad Co.

Before: Surface Transportation Board

Date: 11-14-13

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

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C.  20005-3701
(202) 234-4433
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BEFORE THE
SURFACE TRANSPORTATION BOARD

INTERMOUNTAIN POWER AGENCY
Complainant,
v.
UNION PACIFIC RAILROAD COMPANY
Defendant.

Docket No. 42136

Oral Argument Exhibit Nos. 1-3 of
Intermountain Power Agency

Includes Public Materials from the Existing Record

INTERMOUNTAIN POWER AGENCY

By: C. Michael Loftus
Christopher A. Mills
Andrew B. Kolesar III
Daniel M. Jaffe
Stephanie M. Archuleta
SLOVER & LOFTUS LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: November 14, 2013

Attorneys for Complainant
IPA Oral Argument Exhibit No. 1

Source: IPA Opening Exhibit III-A-1
Schematic Of The Intermountain Stand-Alone Railroad ("IRR")

LEGEND
IRR
Rail Station
Loadout
Plant
Interchange

IGS = Intermountain Generating Station
IRSC = Intermountain Railcar Service Center
IPA Oral Argument Exhibit No. 2

Source: UP's Reply Argument at p. 13
and UP's Brief at p. 54
UP Lynndyl Schematic

(This schematic appears in UP's Reply Argument at p. 13 and in UP's Brief at p. 54)
IPA Oral Argument Exhibit No. 3

Source: IPA Opening Evidence, Exhibit III-B-2 (pages 2 through 4)
UP Reply Evidence, Exhibit III-B-2 (pages 2 through 4)
# LYNNDYL YARD

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<td>1,130</td>
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| TOTAL | 28,437| 5.39  |

---

**SUBDIVISION:** LYNNDYL  
**LYNNDYL YARD**  
MP 665.70 TO 664.86  
**DATE:** 12/07/12  
**SCALE:** 1" = 500'  
**LEGEND:**

- 136# STANDARD CWR
- 115# CWR CLASS 1 RELAY
- TURNOUT TYPE

- FED: FAILED EQUIPMENT DETECTOR WITH NUMBER OF TRACKS COVERED
- HB: HOT BEARING DETECTOR
- DE: DRAGGING EQUIPMENT DETECTOR
- HW: HOT WHEEL DETECTOR
- AUTOMATIC EQUIPMENT IDENTIFICATION SCANNER WITH NUMBER OF TRACKS COVERED
- 20: #20 ELECTRIC
- 15: #15 ELECTRIC
- 10: #10 HAND-THROWN
- 10E: #10 ELECTRIC

---

### Diagram:

- **#10 TURNOUT MP 665.61**
- **#15 TURNOUT MP 665.70**
- **LINE A**
- **LINE B**
- **MP 664.86**

---

**PAGE 2 OF 7**
**Table:**

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**Legend:**

- **-** Standard CWR
- **-** CWR Class 1 Relay
- **FED** Failed Equipment Detector with Number of Tracks Covered
- **HB** Hot Bearing Detector
- **DE or DED** Dragging Equipment Detector
- **HW** Hot Wheel Detector
- **AEI** Automatic Equipment Identification Scanner with Number of Tracks Covered

**Notes:**

- **LEGEND:**
  - **-** STANDARD CWR
  - **-** CWR CLASS 1 RELAY
  - **FED** FAILED EQUIPMENT DETECTOR WITH NUMBER OF TRACKS COVERED
  - **HB** HOT BEARING DETECTOR
  - **DE or DED** DRAGGING EQUIPMENT DETECTOR
  - **HW** HOT WHEEL DETECTOR
  - **AEI** AUTOMATIC EQUIPMENT IDENTIFICATION SCANNER WITH NUMBER OF TRACKS COVERED

**Subdivision:** LYNNDYL

**LYNNDYL YARD**

**MP 664.86 TO 663.79**

**Date:** 12/07/12

**Scale:** 1" = 500'

**Page 3 of 7**
LYNNDYL YARD

<table>
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<th>LINE</th>
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LEGEND:

- 136# STANDARD CWR
- 115# CWR CLASS I RELAY
- #20 TURNOUT
- 20 - #20 ELECTRIC
- 15E - #15 ELECTRIC
- 15 - #15 HAND-THROWN
- 10S - #10 SPRING
- 10 - #10 HAND-THROWN
- 10E - #10 ELECTRIC

SUBDIVISION: LYNNDYL
LYNNDYL YARD
MP 663.79 TO 663.06

DATE: 12/07/12
SCALE: 1" = 500'

PAGE 4 OF 7
#15 TURNOUT
MP 665.70

#10 TURNOUT
MP 665.61

LYNNDYL YARD

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<tr>
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LEGEND:
- #10 TURNOUT
- #15 TURNOUT
- #10 HAND-THROWN
- #10 ELECTRIC
- #15 HAND-THROWN
- #15 ELECTRIC

SUBDIVISION: LYNNDYL
LYNNDYL YARD
MP 665.70 TO 664.86
DATE: 04/02/13
SCALE: 1"=500"

DATE: 04/02/13
PREPARED BY:
STV/L.T.D. WHITHEAD ASSOCIATES
## Table: Length After Track Clearance Area and Length From Turnout to Turnout

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<td><strong>Total</strong> 32,903 (L.F.) 6.23 (MILES)</td>
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**Legend:**

- **1368 Standard CWR**
- **115# CWR Class 1 Relay**
- **# Turnout Type**
- **Red**: Remove
- **Green**: Add
- **AEI**: Automatic Equipment Identification Scanner with Number of Tracks Covered

---

**Subdivision:** Lynndyl Lynndyl Yard

**MP 664.86 to 663.79**

**Date:** 04/02/13

**Scale:** 1"=500"
#10 TURNOUT MP 663.20
#10 TURNOUT MP 663.41
#10 TURNOUT MP 663.15
#10 TURNOUT MP 663.28
LINE B
LINE A
MP 663.79
M.O.W.
END OF M.O.W. MP 663.49

LYNNDYL YARD

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LEGEND:
- 136# STANDARD CWR
- 115# CWR CLASS 1 RELAY
- #20 ELECTRIC
- #15 ELECTRIC
- #15 HAND-THROWN
- #10 HAND-THROWN
- #10 ELECTRIC
- #10 SPRING

- TURNOUT TYPES
- FAILED EQUIPMENT DETECTOR WITH NUMBER OF TRACKS COVERED
- HB - HOT BEARING DETECTOR
- DE OR DID - DRAGGING EQUIPMENT DETECTOR
- HW - HOT WHEEL DETECTOR
- AUTOMATIC EQUIPMENT IDENTIFICATION SCANNER WITH NUMBER OF TRACKS COVERED

SUBDIVISION: LYNNDYL
LYNNDYL YARD
MP 663.79 TO 663.06
DATE: 04/02/13
SCALE: 1"=500"
UNION PACIFIC’S
ORAL ARGUMENT EXHIBITS

Intermountain Power Agency
v.
Union Pacific Railroad Company
STB Docket No. 42136
November 14, 2013
Legend:
- IPA Issue Traffic
- Non-Issue Cross-Over Traffic That Shares Core Provo To Lynndyl Facility
Provo

Legend:
- IPA Issue Traffic
- Non-Issue Cross-Over Traffic That Shares Core Provo To Lynndyl Facility
- Non-Issue Cross-Over Traffic That Does Not Share Core Provo To Lynndyl Facility

Milford

Provo

Lynndyl
Cross-Subsidy Test

Legend:
- **IPA Issue Traffic**
- **Non-Issue Cross-Over Traffic That Shares Core Provo To Lynndyl Facility**
- **Non-Issue Cross-Over Traffic That Does Not Share Core Provo To Lynndyl Facility**

Source: UP Reply at III.H-16 to III.H-22.
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Source: UP Reply at III.H.18, Table III.H.5.
PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

INTERMOUNTAIN POWER AGENCY
Complainant,
v. Docket No. 42136
UNION PACIFIC RAILROAD COMPANY
Defendant.

Oral Argument Exhibit No. 4 of Intermountain Power Agency

Non-Public
Material has been Redacted

INTERMOUNTAIN POWER AGENCY

By: C. Michael Loftus
Christopher A. Mills
Andrew B. Kolesar III
Daniel M. Jaffe
Stephanie M. Archuleta
SLOVER & LOFTUS LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: November 14, 2013
Attorneys for Complainant
IPA Oral Argument Exhibit No. 4

*Z-Train Average Transit Times and Arrival Times At Destination*

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1.  
2.  
3.  
4.  
5.  

REDACTED

---

1/ Transit time is defined as difference between departure from origin station and arrival at destination station. Averages are based on UP Z-Trains operating over the IRR route from July 1, 2011 to June 30, 2012.

2/ "Business Hours" defined as 8:00 am to 6:00 pm.

3/ "Non-Business Hours" defined as 6:01 pm to 7:59 am.

---

Source: IPA Rebuttal e-workpaper “Z Train Transit Time.xlsx,” Tab “Summary.” IPA cites this workpaper in its Rebuttal Narrative at III-C-43 n.38.