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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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August 1, 2022
Part of
Public Record

OMAHA PUBLIC POWER DISTRICT.

Complainant,

 $\mathbf{V}_i$

NOR 42173

UNION PACIFIC RAILROAD COMPANY,

Defendant.

UNION PACIFIC RAILROAD COMPANY'S MOTION FOR A PROTECTIVE ORDER

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
WHITNEY C. LARKIN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

August 1, 2022

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OMAHA PUBLIC POWER DISTRICT,	)	
	)	
Complainant,	)	
	)	
v.	)	NOR 42173
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

In a decision served October 17, 1997, the Board dismissed a complaint filed by Omaha Public Power District (OPPD) challenging the charge that Union Pacific Railroad Company (UP) assessed BNSF Railway Company (BNSF) for switching service that UP voluntarily provided on behalf of BNSF between the point at which UP's tracks meet BNSF's tracks and OPPD's North Omaha Power Station (NOPS) in Omaha, Nebraska. *See Omaha Pub. Power Dist. v. Union Pac. R.R.*, Docket No. 42006 (STB served Oct. 17, 1997) (*OPPD I*), *petition to reopen denied*, Docket No. 42006 (STB served Nov. 14, 2000).

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UP plans to file a motion to dismiss OPPD's complaint. UP believes OPPD's complaint is subject to dismissal for the same reason the Board dismissed OPPD's prior complaint in 1997. To investigate that issue, UP served certain narrowly-tailored, jurisdictional discovery requests on OPPD, which are attached as Exhibit B. Pursuant to 49 C.F.R. § 1114.21(c), UP asks the Board to quash OPPD's discovery requests and stay any further discovery by OPPD pending (i) OPPD's completion of its production of documents responsive to UP's discovery requests, and (ii) the Board's resolution of UP's motion to dismiss.¹

I. BACKGROUND

OPPD's complaint concerns a UP switch charge applicable to the movement of coal by BNSF from the Powder River Basin in Wyoming to OPPD's NOPS facility in Omaha, Nebraska. The NOPS facility is located on UP's lines, and it is open to BNSF via reciprocal switching. The coal moves in unit train service over BNSF's lines between the Powder River Basin and Omaha, and UP switches the trains to and from the plant on behalf of BNSF. The complaint indicates that subject coal traffic is covered by a rail transportation contract between OPPD and BNSF. *See Complaint*, ¶ 6.

On June 20, 1997, OPPD filed a similar complaint. The filing began a process in which the parties engaged in several months of costly, burdensome discovery. UP devoted substantial resources to producing the extensive information required to litigate a stand-alone cost case. The parties engaged in many verbal and written communications in good faith efforts to facilitate the discovery process, but they ended up filing multiple motions to compel. *See Exhibits C, D, E, &*

¹ Pursuant to 49 C.F.R. § 1111.11(b), the parties met and conferred about procedural issues, including the issue raised in this motion. OPPD declined to agree to a procedural schedule that would suspend UP's obligation to respond to OPPD's discovery requests pending the Board's resolution of a UP motion to dismiss.

F. Ultimately, the discovery process proved to be a complete waste of resources when the Board dismissed OPPD's complaint, agreeing with UP that the Board lacked jurisdiction because the transportation from origin to destination was covered by a contract between BNSF and OPPD. *See OPPD I*, slip op. at 2.

UP believes OPPD's new complaint should be dismissed on the same jurisdictional grounds as OPPD's prior complaint, despite OPPD's apparent efforts to avoid that result in its most recent contract with BNSF. *See Complaint*, ¶¶ 6, 8. To obtain support for a motion to dismiss, UP served a limited set of discovery requests on OPPD immediately after receiving service of the complaint. *See Exhibit B*. UP's requests focus narrowly on OPPD's contract with BNSF and payment of the charge OPPD challenges in its complaint. UP plans to file a motion to dismiss within 20 days of the date on which OPPD completes its production of documents in response to UP's jurisdictional discovery requests.²

If the Board does not immediately stay discovery by OPPD, UP will rapidly begin to incur substantial costs to respond to OPPD's discovery requests. Stand-alone cost cases have become even more discovery intensive than when OPPD filed its first complaint in 1997. In 1997, OPPD served a total of 44 discovery requests. *See Exhibit E, Att. 1*. Currently, OPPD is seeking documents and information responsive to more than 160 requests. UP must begin searching for and producing responsive information almost immediately to meet the very demanding procedural schedule in stand-alone cost cases. *See 49 C.F.R. § 1111.9*.

² UP plans to file a motion to dismiss regardless of what OPPD's documents reveal about the details of OPPD's agreement with BNSF, but UP expects the documents to help advance its contract-based jurisdictional argument for dismissal. UP presented alternative arguments for dismissing OPPD's 1997 complaint. *See Exhibit G (UP's 1997 Motion)*. The Board had no need to address those other in 1997. UP will present all available arguments in its motion to dismiss.

II. ARGUMENT

The Board's dismissal of OPPD's 1997 complaint raises serious questions about the substantive soundness of OPPD's current complaint. If the Board dismisses OPPD's current complaint, OPPD's 164 discovery requests become moot. Even if the Board does not dismiss the complaint, its decision may clarify certain issues and thus lessen the need for discovery or prevent future disputes. This motion is aimed at avoiding a repetition of the wasted effort relating to the discovery process in 1997.

The Board and its predecessor, the Interstate Commerce Commission, have stayed discovery in similar circumstances. In *Zoneskip, Inc. v. United Parcel Service of America, Inc.*, Docket No. 40519, 1991 WL 89759, at *2 (ICC May 28, 1991), the Commission stayed discovery because UPS's motion to dismiss raised "significant concerns about both the substantive and procedural soundness of the complaint and questions about the potential scope of this case." The Commission also noted that its "action on the pending UPS motion to dismiss, regardless of [its] ultimate resolution of the matter, may determine the appropriate scope of discovery, if any." *Id.* In *Dairyland Power Cooperative v. Union Pacific Railroad Co.*, Docket No. 42105, slip op. at 2 (STB served Apr. 29, 2008), the Board stayed discovery because UP's motion to dismiss raised "issues that may affect both the procedural schedule in these matters and the scope of discovery." Similarly, in *DXH, Inc. v. Matson Navigation Co.*, Docket No. WCC-105, slip op. at 2 (STB served June 6, 2002), the Board suspended the procedural schedule in order to consider a pending motion to dismiss, "[g]iven that a decision on the motion to dismiss may affect the scope of discovery." *See also, e.g., Phila. Belt Line R.R. v. Consol. Rail Corp.*, Fin. Docket No. 32802, 1996 WL 104370, at *2 (STB served Mar. 12, 1996) ("Conrail's procedural motion will be granted; the procedural schedule and all discovery will be suspended pending the Board's ruling on the merits of Conrail's motion to dismiss.").

OPPD's admission that transportation of its coal to NOPS is subject to a contract with BNSF (Complaint, ¶ 6) strongly suggests that OPPD's current complaint presents the same jurisdictional issue that led the Board to dismiss OPPD's complaint in *OPPD I*. Indeed, while UP has not yet filed a motion to dismiss here (because it is seeking discovery regarding OPPD's contract), the Board's decision in *OPPD I* provides an even stronger basis for staying OPPD's discovery than existed in the cases discussed above—the Board and the parties have been here before. UP's motion to dismiss filed in *OPPD I* also identified many reasons to dismiss OPPD's attempt to challenge UP's switch charge to BNSF *in addition to* the contract-based argument the Board found dispositive in *OPPD I*. See Exhibit G. The Board should recognize the existence of serious questions about the substantive soundness of OPPD's current complaint and resolve those questions before the parties must engage in the costly rate-case discovery process.

The Board ordinarily does not delay the procedural schedule in stand-alone cost cases to consider motions to dismiss, but this is no ordinary stand-alone cost case. In fact, in *OPPD I*, the Board did eventually suspend the deadline for completing discovery, rather than address certain pending discovery motions, in light of UP's motion to dismiss. See *Omaha Pub. Power Dist. v. Union Pac. R.R.*, Docket No. 42006 (STB served Aug. 25, 1997). Unfortunately, by time the Board suspended the deadline, the parties had engaged in two months of intensive, costly discovery. UP is seeking to avoid a similarly wasteful expenditure of resources here.

III. CONCLUSION

The Board's decision in *OPPD I* and the UP's motion to dismiss filed in the *OPPD I* proceeding show there are significant questions about the substantive soundness of OPPD's current complaint. OPPD is insisting that UP respond to discovery requests that will be expensive and time-consuming to address. Under the circumstances, the Board should quash OPPD's discovery requests and stay any further discovery by OPPD pending (i) OPPD's

completion of its production of documents responsive to UP's discovery requests, and (ii) the Board's resolution of UP's motion to dismiss.

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
WHITNEY C. LARKIN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

August 1, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of August, 2022, I caused a copy of the foregoing document to be served by email on all parties of record in STB Docket No. NOR 42173.

/s/ Michael L. Rosenthal

BEFORE THE
SURFACE TRANSPORTATION BOARD

Omaha Public Power District	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR 42173
	)	
Union Pacific Railroad Company	)	
	)	
Defendant	)	
	)	

**COMPLAINANT’S FIRST REQUESTS FOR ADMISSIONS,
INTERROGATORIES, AND REQUESTS
FOR PRODUCTION OF DOCUMENTS TO DEFENDANT**

Complainant Omaha Public Power District (“OPPD”), pursuant to 49 C.F.R. Part 1114.30, hereby submits its First Requests for Admissions, Interrogatories, and Requests for Production of Documents to Defendant Union Pacific Railroad Company (“UP”).

Responses to OPPD’s Requests for Admissions and answers to Interrogatories, and copies of documents responsive to OPPD’s Requests for Production should be delivered to the Law Office of Thomas W. Wilcox, LLC, 1629 K. Street NW, Suite 300, Washington, D.C. 20006, within thirty (30) days from the date hereof, unless otherwise agreed by the parties. OPPD is prepared to cooperate with Defendant to facilitate the expeditious production of documents with the minimum practical burden.

I. DEFINITIONS

The following defined terms are used herein:

1. “BNSF” means BNSF Railway Company.
2. “OPPD route(s)” means the railroad line segments over which UP moves or reasonably could move loaded and empty coal trains between Origin and Destination.
3. “OPPD train(s)” or “OPPD service” means the trains containing loaded or empty coal cars moving between Origin and Destination over the OPPD route(s).
4. “Challenged Rate” means the rate for common carrier rail transportation service that is the subject of OPPD’s Complaint in this proceeding including any such rate that may be established after the date hereof.
5. “UP Lines” means rail lines over which UP conducts train operations including both lines owned by UP and lines owned by other railroads or entities over which UP has trackage or operating rights, together with all branch lines and spur tracks that connect with these lines. Where information is requested for trains or traffic moving on UP Lines, the request includes information for trains/traffic moving between initial origin and final destination, regardless of whether the initial origin or final destination are located on the specified lines.
6. “UP” means Union Pacific Railroad Company, its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessor, parent and/or holding companies, subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf.

7. “Defendant” means UP as defined in this section.

8. “Destination” means OPPD’s North Omaha Power Station (“NOPS”) located at Omaha, Nebraska.

9. “Distributed power” means a train configuration in which one or more locomotives are positioned at the front of the train and one or more active locomotives are positioned at an intermediate point in the train and/or at the rear of the train, with the intermediate or rear locomotives remotely controlled from the lead locomotive on the train.

10. “Document(s)” means all writings or visual displays of any kind, whether generated by hand or electronic means including without limitation, photographs, lists, memoranda, reports, notes, letters, electronic mail, phone logs, contracts, drafts, workpapers, computer print-outs, electronic data, telecopies, newsletters, notations, books, affidavits, statements (whether or not verified), speeches, summaries, opinions, studies, analyses, evaluations, statistical records, proposals, treatments, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks or drives), and all other materials of any tangible medium or expression, in UP’s current or prior possession, custody or control. A draft or non-identical copy is a separate document within the meaning of this term.

11. “Geocoded” means process or object data associated to an entity which is linked to a specific location or an array of locations on the Earth’s surface through a standard geographic coordinate system.

12. “Geographic Coordinates” means latitude and longitude coordinates (in decimal values, with no decimal value truncation) associated to a named and standard geographic coordinate system, such as “North American Datum of 1927.”

13. “Identify,” when referring to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and/or recipient(s).

14. “Identify,” when referring to information, means to list or produce documents containing the specified information.

15. “Local Train” means “Way train” as used in UP’s R-1 Annual Report Form R-1 to the STB.

16. “Origin” means the interchange between UP and BNSF in the vicinity of Omaha, Nebraska at BNSF’s Gibson Yard (“Gibson Yard Interchange”) that is described in UP’s “UP Reciprocal Switching Circular UP 8005 F” (the “Circular”), a copy of which is attached as Exhibit A to OPPD’s Complaint.

17. “Person” means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

18. “Possession, custody, or control” refers to and includes documents actually within the possession, custody or control of UP or any other person acting for or in concert with UP; and refers to and includes documents prepared by, obtained, or placed in the possession, custody, or control of any such person within the scope of his or her duties or relationship to UP; and further refers to and includes documents having been

placed in the temporary possession, custody, or control of any third party by any of the foregoing or UP. Documents are deemed to be in the possession, custody, or control of UP if UP has the right to secure the document, or a copy thereof, from another person or entity, whether public or private, having such actual physical possession, custody, or control thereof.

19. “Price” or “prices” mean the price per ton or other unit of measure, and whether it is f.o.b. or f.a.s. a railroad car, vessel, destination, port or other conveyance.

20. “Related,” “related to,” and “relating to” mean and include making a statement discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining to, in whole or in part, the subject matter of the Interrogatory or Request.

21. “Road Train” means “Unit Train” and “Through Train” as used in UP’s Annual Report Form R-1 to the STB.

22. “Short Line Railroad” means any non-Class I railroad that connects to a UP rail line in Nebraska.

23. “STB” means the U.S. Surface Transportation Board.

24. “And,” “or,” and/or “each” shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Interrogatory or Request all responsive information or documents which otherwise might be construed as outside the scope of the Interrogatory or Request. All use of the masculine gender shall be deemed to include the feminine.

25. "Replacement Costs," unless otherwise specified, has the same meaning as used in UP's written comments to date in STB Docket Ex Parte No. 722, *Railroad Revenue Adequacy*.

26. "Revenue Adequacy Criteria" means earning revenues that are:

(a) adequate, under honest, economical, and efficient management, to cover:

(1) total operating expenses including depreciation and obsolescence; and (2) a reasonable and economic profit or return (or both) on capital employed in the business;

(b) provide a flow of net income plus depreciation adequate to:

(1) support prudent capital outlays; (2) assure the repayment of a reasonable level of debt; (3) permit the raising of needed equity capital;

(c) cover the effects of inflation; and

(d) attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

II. INSTRUCTIONS

UP is requested to conform to the following instructions in responding to these Requests and Interrogatories. Each paragraph shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

1. Where these discovery requests seek data in a computer-readable format, machine-readable format, or in its native format, this data is defined as an electronic file which contains structured, relational data, and is managed within a commercially available and relational database system (for example Microsoft, Oracle, IBM) and is readable via commercially available and standard Microsoft Windows software API

(Application Programming Interfaces) methods to include Open Database Connectivity (ODBC) implementations, thereby making the data accessible independent of the host system.

If the source table is stored within a non-relational system, such as a 'flat file', or a custom system (not commercially available), provide the data in standard sequential or delimited text files. The text files will be MS-DOS or MS-Windows compatible text formats.

- a. For each computer file supplied provide:
 - i. The name and description of the source database or other file from which the records in the computer file were selected (stating whether the file is an original extract from a line of business transactional or data warehouse computer system, or if the provided file is an extract, or report, created specifically for this request) including a graphic or textural representation of the database relational model for each system to include all named tables of data within the system's relational model, and for every table provide a list of fields, primary keys, foreign keys, list relational links to other tables and fields, and filters, if any, associated to the relational links. Include all related tables, and all fields within each included table. List the fields which define a unique record (row) for each table, or state if the table does not require unique row differentiators or primary keys. For code tables, provide the code, and associated data elements in a discreet list (no duplicates);
 - ii. A description of how the records in the file produced were selected;
 - iii. The original table names (no aliases), original field names, to match the provided systems' data structures within each computer program (in native software and text file) and intermediate file used in deriving the files produced if the files produced are flat files. If the files produced are commercially available relational database files, provide the method used and code (if code was created) used to export the data to this

relational format including the operating system and version under which the final text files or relational tables were produced; and

- iv. A relational diagram defining relationships amongst tables, with all fields, listing primary keys, foreign keys, with each table or file provided as listed in the relational diagram. Also provide all table indexes, and index files, which define the index to be clustered or non-clustered.
- b. For each field in each computer database file provide a complete, standard data structure including:
- i. The name of the field including its source table name, and if different from the LOB (line of business) or off-line analytical system field name, provide all field name incarnations so that there is a linkage between the provided fieldname and the original source fieldname and source table, and source application/system. Also provide the “Synonymous Name”, that being a single word or multiple words that differ from the fieldname, but represents the same data element using alternative or more descriptive terminology. Also provide the “Context”, that being a designation or description of the application environment in which the data item (or field) is applied or from which it is originally derived (its origin);
 - ii. The starting and ending positions of the field if the file is a non-delimited flat file, or if the file is delimited, verify that the delimiter is inserted at the end of each field and the delimiter is not contained, as data, within any data cell (provide row terminators and line feed codes), otherwise, if the provided data set is a relational database "table", export the table structure into a separate ANSI SQL 92 code or text file;
 - iii. A detailed definition of the field and whether this field is the record's (or row's) unique identifier, or it is one of many fields which create a unique row (list them);
 - iv. A detailed description of the data in the field including an explanation of what they are used for and also provide all related index files in SQL code format or text files, if any;

- v. The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed) and whether this field is Unicode, or contains any constraints, or requirements to be Non-Null, or non-blank;
- vi. If the values in a field are codes, terms or abbreviations, provide a list of all codes, terms or abbreviations used with detailed definitions of each and provide the approved domain (range of values if indeterminate) or list of values permitted if determinate. Also provide minimum and maximum values including whether the values are Null, hidden, or specific ASCII or ISO codes. Include the character encoding or software vendor's code page, for each table if any;
- vii. An indication of whether the data in the field are packed or compressed;
- viii. If the data in the field are packed or compressed, the type of packing or compression:
 - (1) Zoned with low-order sign;
 - (2) Binary with LSB first;
 - (3) Binary with MSB first;
 - (4) Packed with high-order sign;
 - (5) Packed with low-order sign;
 - (6) Packed with no sign; and
 - (7) Other (specify and provide detailed instructions for unpacking).
- ix. If the data files and tables originate on a non-Microsoft Windows operating system, state the original operating system and convert to Microsoft Windows format; and
- x. For data or other electronic information submissions where the source system does not have a 32-bit operating system, verify that all data and files are computer-readable on a 32-bit operating system.

2. If an answer to an Interrogatory or the production of any responsive document is withheld under 49 C.F.R. § 1114.30(a)(1) on the basis of a claimed privilege

or attorney work product, then for each such answer or document, provide the following information: its date, type (e.g., letter, meeting notes, memo, etc.), author (note if author is an attorney), addressee(s)/recipient(s) (note if addressee(s) or recipient(s) is an attorney), general subject matter, and basis for withholding the information. OPPD is willing to negotiate the scope of any privilege log requested in this instruction.

3. If the answer to any Interrogatory or the production of any responsive document is withheld on claimed grounds other than privilege or attorney work product, provide the information described in Instruction No. 2 and state with specificity the basis for such withholding.

4. Defendant is requested to supplement its production in the manner provided in 49 C.F.R. Part 1114.29.

5. All documents should be produced or made available for inspection in the form in which they are retained by UP in the usual course of business (*e.g.*, if the documents are in a file, the file containing the documents should be produced), unless otherwise agreed by OPPD and UP.

6. Please organize or number the documents produced in such a manner that OPPD readily may determine which documents are being produced in response to each specific Request for Production. If no document is produced in response to any specific Request, please so indicate in the response.

7. OPPD reserves the right to file supplemental or follow-up Interrogatories or Requests for Production, and pursue other discovery, as necessary or appropriate.

III. REQUESTS FOR ADMISSIONS

Request for Admission No. 1

Admit that UP faces no effective intramodal competition for the transportation of coal from Origin to Destination.

Request for Admission No. 2

Admit that UP faces no effective intermodal competition for the transportation of coal from Origin to Destination.

Request for Admission No. 3

Admit that: (a) UP is the only railroad with tracks connected to the NOPS plant tracks, and therefore the only railroad capable of providing direct rail service to NOPS from the Gibson Yard Interchange; (b) neither motor carriage nor water vessel transportation represents a practical and economically viable alternative to unit train rail service; and (c) UP does not face effective competition for the transportation of coal to NOPS from BNSF's Gibson Yard.

Request for Admission No. 4

Admit that the UP switch rate is more than 180% of the variable cost of the service between NOPS and the Gibson Yard Interchange.

IV. INTERROGATORIES

Interrogatory No. 1

If UP's response to Request for Admission No. 1 was anything other than an unqualified admission, please describe in detail the effective intramodal competition that Defendant claims exists for the transportation to which the Challenged Rate applies, the annual volume of coal subject to such competition, the rate reductions or other consideration that Defendant has offered to OPPD for transportation between Origin and Destination in response to such competition, and why such competition is effective.

Interrogatory No. 2

If UP's response to Request for Admission No. 2 was anything other than an unqualified admission, please describe in detail the effective intermodal competition that Defendant claims exists for the transportation to which the Challenged Rate applies, the annual volume of coal subject to such competition, the rate reductions or other consideration that Defendant has offered to OPPD for transportation between Origin and Destination in response to such competition, and why such competition is effective.

Interrogatory No. 3

Provide a description of the movement of OPPD's trains by UP from Origin to Destination and from Destination to Origin including, but not limited to, a description of all transportation-related activities (including placing and/or interchanging trains with other railroads, holding loaded or empty trains in transit, providing notifications to OPPD or other railroads, inspecting trains, changing crews and other related activities) at Origin, at Destination, and at intermediate stations or other points between Origin and Destination.

Interrogatory No. 4

To the extent that the information is not included in your response to Interrogatory No. 3, please describe:

- a. The location and length (route miles) of each crew district (identified by “from and to” stations) traveled by the OPPD trains when operated by UP;
- b. The location(s) where the locomotives on the OPPD trains are fueled by UP and the fueling procedures used (*e.g.*, DTL);
- c. If distributed power is used, please describe the distributed power configuration used for locomotives on the OPPD trains;
- d. The operations involved in interchanging the OPPD trains with BNSF at the Gibson Yard Interchange including, but not limited to, operations involving the removal, placement and/or re-positioning of locomotives on the trains;
- e. Any run-through locomotive power arrangements between UP and BNSF in effect between 2019 and the present which apply to the OPPD trains interchanged at the Gibson Yard Interchange;
- f. The operations in delivering loaded trains to, placing loaded trains for unloading at, and removing empty trains subsequent to unloading from, the railcar unloading facilities at Destination including, but not limited to, operations involving the removal, placement and/or repositioning of locomotives or railcars;
- g. Identify any other carriers tracks, personnel or facilities used to perform any activities for OPPD’s trains moving between Origin and Destinations; and
- h. Identify any third-party contractors that perform any services on behalf of UP for OPPD’s trains moving between Origin and Destination.

Interrogatory No. 5

Please identify the location and name of each intermodal terminal, Automotive Distribution Center, bulk transfer facility or yard located on UP Lines in Nebraska.

Interrogatory No. 6

For each calendar year from 2017 through 2021, please provide:

- a. The total amount of corporate debt incurred or assumed by UP including principal and all accrued interest, that was outstanding as of the first day of such year;
- b. The total principal amount of new corporate debt incurred or assumed by UP, during such year; and
- c. The total amount of corporate debt for which UP was responsible for repayment including principal and all accrued interest, which remained outstanding as of the last day of such year.

As used in this Interrogatory, “corporate debt” refers to all types of commercial (as distinguished from personal or residential) indebtedness including, but not limited to, bonds, notes, debentures, equipment trust certificates, conditional sales agreements and capitalized leases whether secured or unsecured and regardless of the source of the borrowing.

Interrogatory No. 7

For each calendar year from 2017 through 2021, please provide:

- a. The total number of shares of common stock and total number of shares of preferred stock (by class, if applicable) that were issued and outstanding as of the first day of the year;

- b. The total number of shares of common stock and total number of shares of preferred stock (by class) that were repurchased by UP during such year;
- c. The total amount expended (stated separately for common and preferred stock) to make the repurchases described in Subpart b; and
- d. The sources (stated separately by source and amount) of the funds used to make the repurchases described in Subpart b.

Interrogatory No. 8

Please identify any computer programs or models that are currently being used or have been used by UP in the past three years to (a) download locomotive, train and/or car event or similar data from locomotives, trains, and/or cars along any line segment on UP Lines in Nebraska including, but not limited to, the Event Recorder Automated Download system or any successor thereto and/or (b) process locomotive event data for purposes of determining locomotive throttle position and/or fuel consumption.

Interrogatory No. 9

Please describe how hazardous materials are handled by UP in each of the yards identified in response to Interrogatory No. 5, and specifically describe the procedures used by UP to classify railcars containing hazardous materials and if such classification occurs in a separately designated portion of the yards.

Interrogatory No. 10

Please identify UP affiliates that provide services to UP in Nebraska. Describe the services provided by these affiliates. Also provide a description of payments made to affiliates, equity contributions made to affiliates, distributions from affiliates, and other financial or accounting transactions between UP and affiliate.

Interrogatory No. 11

Please state whether UP has calculated its current cost of equity capital ("COE") or current weighted average cost of capital ("COC") during the period January 1, 2019 through the present. If it has, please identify (a) the COE and/or COC values that UP calculated and the periods (including future periods) for which the values were calculated; (b) the methodology, assumptions and inputs used to determine the values; (c) whether and how UP utilized the values that were calculated; and (d) any adjustments that UP made in calculating and/or utilizing the values. Please identify all documents that support your response and/or that memorialize your calculations.

Interrogatory No. 12

Please describe your methodology and inputs for calculating UP's COE and COC for the time periods specified in response to the previous Interrogatory. Please describe any adjustments that were made to the COE and COC values in performing the calculations. Please identify all documents that support your response.

Interrogatory No. 13

Please state whether the Challenged Rate reflect Congestion Pricing. If so, please explain (a) what is meant by Congestion Pricing in this context; (b) how Congestion Pricing was used in establishing the level of the Challenged Rate; (c) whether and how Congestion Pricing is compatible with the Stand-Alone Cost Constraint under the STB's *Coal Rate Guidelines*; (d) how and why Congestion Pricing is not subsumed within application of the MMM (Maximum Markup Methodology) under the *Guidelines*;

and (e) how or why Congestion Pricing allows UP to charge a rate higher than that identified under MMM. Please identify all documents that show how Congestion Pricing was taken into account in establishing the Challenged Rates.

Interrogatory No. 14

Please state whether Congestion Pricing takes into account UP's costs of providing OPPD service, and any other service over any portion of OPPD's route. If so, please identify and describe: (a) the costs for OPPD's service and other service that was accounted for; (b) the cost factors; and (c) the costing system that was utilized to take these costs into account. Please state whether and describe the extent to which those costs include opportunity costs.

Interrogatory No. 15

To the extent that the cost system(s) used by UP that is described in Interrogatory No. 14 differs from the STB's Uniform Rail Costing System, please identify (a) the cost system(s) utilized; (b) the inputs used to develop costs using such system(s); (c) the mathematical calculations used to develop the costs; and (d) the underlying support for the choice of inputs and mathematical calculations.

Interrogatory No. 16

Please state whether and describe the manner in which Congestion Pricing and the cost system(s) described in Interrogatory Nos. 14 and 15 take into account the Replacement Costs of UP's assets. Please identify all documents that show

how Replacement Costs are taken into account in Congestion Pricing as applied in the determination of the Challenged Rates.

Interrogatory No. 17

Please state whether UP calculates, tracks and/or utilizes Replacement Costs in the regular course of business. If so, please describe how UP calculates, tracks and/or utilizes Replacement Costs including, but not limited to, your choice of inputs, assumptions, and methodologies. Please identify all Replacement Cost calculations that UP has performed since January 1, 2019, and explain whether and how Replacement Costs are used by UP to determine rates, dividends, stock buybacks, capital expenditures, and/or executive compensation.

Interrogatory No. 18

Please identify any discussions since January 1, 2019 between representatives of UP and representatives of equity and debt analysts and/or rating agencies relating to: (a) UP's Replacement Costs, their calculation or their use in financial planning or the setting of revenue goals; (b) UP's ability to meet the Revenue Adequacy Criteria; and (c) UP's success or lack of success in earning returns on invested capital equal to its COC or COE. Please describe in detail the substance of all such discussions. Please identify all documents that support your Answer or that relate to or memorialize any of those discussions.

Interrogatory No. 19

Please state whether, and if so, describe how the determination of compensation paid to UP executives takes into account: (a) UP's COC or COE; (b) whether UP's earnings or return on investment have matched or exceeded its COC or COE; and (c) whether UP's earnings are sufficient to cover Replacement Costs. If the COC or COE is taken into account, please identify the COC and/or COE percentages used, the methodology for calculating the COC and/or COE, and all inputs utilized. If UP's earnings relative to the COC or COE are taken into account, please identify how the earnings and investment base used in that accounting are determined. If Replacement Costs are taken into account, please identify how Replacement Costs are determined. Please identify all documents that support your Answer.

Interrogatory No. 20

Please identify and describe any corporate or enterprise-level projections that UP has made from January 1, 2019 to the present of UP's future annual revenues, costs, earnings, profits, operating ratios, return on investment, return on invested capital and/or return on equity for any time period(s) subsequent to December 31, 2020. Please identify all documents that support your response and/or that memorialize your projections.

Interrogatory No. 21

Please describe the purposes and objectives of UP stock repurchases, or planned stock repurchases that UP has made since January 1, 2019. The description should include, without limitation: (a) why UP decided to make such repurchases or planned repurchases; (b) whether UP determined that shares that were or would be repurchased were worth more or less than, or the same as, the purchase price, and by what measure; (c) any comparisons of the return or benefits that UP obtained or produced, or expected to obtain or produce, on such repurchases or planned repurchases, both in general and relative to other potential uses of the funds used, or to be used, in the repurchases; (d) any return on assets, investment, capital, invested capital, and/or equity, or change in operating ratio, considered, achieved, and/or anticipated in conjunction with such repurchases or planned repurchases; and (e) whether and/or how such repurchases or planned repurchases increased or decreased, or were expected to increase or decrease, the value or price of UP stock or UP earnings per share.

Interrogatory No. 22

Please describe in detail the operations between UP and BNSF by which OPPD's trains are transferred to UP at the Gibson Yard Interchange for final delivery to NOPS, and the return of unloaded OPPD trains to the Gibson Yard Interchange for transfer to BNSF.

V. DOCUMENT PRODUCTION REQUESTS

Request for Production No. 1

Please produce all correspondence between UP and BNSF dating from January 1, 2020 to the present relating to the operations between UP and BNSF by which OPPD's trains are transferred to UP at the Gibson Yard Interchange for final delivery to NOPS, and returned to the Gibson Yard Interchange after being unloaded.

Request for Production No. 2

Please produce all correspondence between UP and OPPD dating from January 1, 2020 to the present relating to the operations by which OPPD's trains are transferred to UP at the Gibson Yard Interchange for final delivery to NOPS, and returned to the Gibson Yard Interchange after being unloaded.

Request for Production No. 3

Please produce all documents dating from January 1, 2020 to the present referring or relating to the requests of OPPD to UP, and to BNSF, to be directly invoiced for payment of the Challenged Rate, including but not limited to all correspondence between BNSF and UP referring or relating to OPPD's request.

Request for Production No. 4

Please produce all tariffs and supplements dated from 2020 to the present applicable to the movement of coal by UP from the Gibson Yard Interchange to NOPS.

Request for Production No. 5

Please produce all agreements, contracts, or contract provisions between UP and BNSF dating from 2020 to the present applicable to the movement of coal received by UP from BNSF in Omaha and delivered by UP to NOPS.

Request for Production No. 6

Please produce all agreements, contracts, or contract provisions between UP and BNSF related to UP's provision of services pursuant to the terms of the Circular.

Request for Production No. 7

Please produce all documents related to the establishment of the Challenged Rate including, but not limited to, all documents used and/or relied upon in determining any formula or other methodology used for calculating the rates.

Request for Production No. 8

Please produce any studies, analyses and other documents in UP's possession from January 1, 2019 to the present regarding the transportation of coal to Destination from Origin (a) by a rail carrier(s) other than UP; and (b) by any mode of transportation other than rail. If no such documents exist, please confirm same in the response to this Request.

Request for Production No. 9

Please provide the density information described below for UP's rail system for each year or partial year 2019 to the present in a computer readable database or electronic spreadsheet including all record layouts, all field descriptions, data definitions and data dictionaries/decoders required to utilize the data. The density database should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and SPLC at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains) by segment expressed in net ton-miles, (ii) total density (both directions including empty and loaded trains) by segment expressed in gross ton-miles plus appropriate factors that can be used to convert gross ton-miles to net ton-miles, (iii) total density (both directions including empty and loaded trains) by segment expressed in car-miles; and
- f. Density information (i) for segments that UP utilizes via trackage rights (or other joint facility or joint use agreements) on another railroad, (ii) for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use agreements) over UP segments and (iii) an identification of such densities in (i) and (ii) that are included in the total densities provided in response to subpart e. above.

Request for Production No. 10

Please produce density charts and/or maps for the UP system for the period 2019 to the present.

Request for Production No. 11

Please produce documents sufficient to show the maximum permissible gross weight on rail (“GWR”) per railcar for all UP Lines in Nebraska, and for all segments having a GWR less than 286,000 lbs. per railcar, please produce document sufficient to show the items and factors that limit the GWR for the identified segments.

Request for Production No. 12

For each UP line segment and for any other railroad's line segments which UP utilizes via trackage rights agreements, please produce documents, in a computer-readable database or spreadsheet format to the extent available, which contain operating statistics and density data (including, but not limited to, train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) for all traffic by commodity for each year or partial year 2019 to the present.

Request for Production No. 13

For each Road Train and Local Train operating over the OPPD route, please produce documents sufficient to show:

- a. UP's train identifier or designation and/or symbol of each identified Road Train and the beginning and end points served by each of the identified Road Trains;
- b. Whether the crews are assigned or in pool service;
- c. The home and away-from-home terminals for each crew district;
- d. The scheduled on-duty and off-duty locations for each crew assigned to the identified Road Trains;
- e. The number of crew members assigned per shift to each of the identified Road Trains;
- f. The number and type of locomotives assigned to each of the Road Trains;
- g. The number and type of loaded and empty cars assigned to each of the Road Trains;
- h. The trailing length for each of the identified Road Trains;

- i. The trailing weight for each of the identified Road Trains;
- j. The scheduled frequency of service for each identified Road Train;
and
- k. The scheduled time of departure and arrival at stations served by each
of the identified Road Trains.

Request for Production No. 14

Please produce the databases, data warehouses and computer programs (with all documentation related to these databases and computer programs and associated selection criteria), in a computer-readable format, that include the information listed below for each movement handled by UP as originating, terminating, overhead or single-line carrier for each year or partial year 2019 to the present. To the extent this data is contained in separate tables, please provide the appropriate fields to correctly link the separate tables. Please also include appropriate fields required to correctly link this data to the car event data discussed in Request for Production No. 15 including any “foreign key(s)” UP uses in the normal course of business to link the data sets.

- a. The name of the consignee, shipper, payee, and customer for each shipment record;
- b. Commodity (seven-digit Standard Transportation Commodity Code “STCC”);
- c. Toxic Inhalation Hazard/Poisonous Inhalation Hazard (“TIH/PIH”) Commodity Identifier;
- d. Origin station and State;
- e. Destination station and State;

- f. For shipments that originated on UP's system(s), the date and time the shipment was originated;
- g. For shipments UP received in interchange, the on-junction location station, state, Standard Point Location Code ("SPLC"), Freight Station Accounting Code ("FSAC"), and milepost;
- h. For shipments UP received in interchange, the road received from;
- i. For shipments UP received in interchange, the date and time the shipment was interchanged;
- j. For shipments given in interchange, off-junction location station, state, SPLC, FSAC, and milepost;
- k. For shipments given in interchange, the railroad given to;
- l. For shipments given in interchange, the date and time the shipment was interchanged;
- m. For shipments terminated on UP's system, the date and time the shipment was terminated;
- n. Origin FSAC;
- o. Destination FSAC;
- p. Origin SPLC;
- q. Destination SPLC;
- r. Number of rail cars;
- s. Number of intermodal containers or trailers;
- t. Tons (Net);
- u. Rail car tare weight;
- v. Intermodal container or trailer tare weight
- w. Total freight revenues from origin to destination, or UP's share of the total freight revenues in the event that UP was not the sole carrier for

a particular movement including any adjustments thereto, along with a description of the adjustment (*i.e.*, add to or subtract from gross revenue);

- x. Total revenues from surcharges (including, but not limited to, fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and UP's division thereof provided in response to Subpart w. above;
- y. The contract, agreement, tariff, or other pricing authority that the shipment is billed under including the amendment and item numbers;
- z. Unique Waybill number and date;
- aa. TOFC/COFC plan;
- bb. Car/trailer/container initial for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer initial);
- cc. Car/trailer/container number for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer number);
- dd. The unique train identification initial and number of all trains used to move the shipment;
- ee. The number of locomotives, by train identification, by segment, used to move the shipment;
- ff. The total horsepower, by train identification, by line segment, used to move the shipment;
- gg. The station, state and SPLC where the traffic was interchanged between trains;
- hh. Total loaded movement miles;
- ii. Total loaded miles on UP's system;
- jj. The predominant route of movement for each shipment on UP's system that is associated with the loaded movement miles;

- kk. AAR car-type code;
- ll. Provider of car and container/trailer (UP-owned, UP-leased, shipper or foreign road);
- mm. Total empty movement miles;
- nn. Total empty miles on UP's system;
- oo. Miles used to derive applicable fuel surcharges;
- pp. Applicable fuel surcharge rate;
- qq. Intermodal service plan code and the intermodal line of business code for each intermodal shipment;
- rr. Length, width and height for each car/container/trailer used to move the shipment;
- ss. Number of articulated wells included (where applicable) in an individual railcar used to move an intermodal (or other) shipment; and
- tt. Field with a flag to indicate whether the shipment travelled over the OPPD route.

Request for Production No. 15

Please produce documents, in a computer-readable format to the extent available, which contain complete information (including all events) tracking and describing car, trailer/container, and locomotive movements (including yard and hub operations) from origin to destination for each car, trailer/container, and locomotive moving on the UP system for each year or partial year 2019 to the present. Please include appropriate fields required to correctly link this data to the waybill data discussed in Request for Production No. 14 and the train event data discussed in Request for Production No. 16 including any “foreign key(s)” UP uses in the normal course of business to link the

data sets. The car event information provided should include, but not be limited to, the following information:

- a. Car Initial;
- b. Car Number;
- c. Car Owner (System, Foreign, Private);
- d. Tare weight;
- e. Lading weight;
- f. Number of intermodal units on flat cars;
- g. Event Sequence Number;
- h. Year;
- i. Month;
- j. Day;
- k. Unique Train Identification Symbol and/or Number;
- l. Train Date;
- m. Unique Waybill Number;
- n. Waybill Date;
- o. Load/Empty Indicator;
- p. Unique Shipment Identification Number;
- q. Actual event date/time stamp for nodal events (if movement link data are provided, provide timestamps for both car departure from line segment begin node and car arrival at line segment end node);
- r. Time zone indicator (of the Event date/time stamp);
- s. Event type indicator specifying if the event was an arrival, a departure, an intermediate switching/handling event, or an instantaneous time as in the case of a non-dwell event (e.g., passing a scanner);

- t. Unique System/Network Location Identifier (if movement link data are provided, provide for both line segment begin and end nodes). Include the following:
 - i. Station name;
 - ii. City or metropolitan name;
 - iii. State / Province name;
 - iv. SPLC;
 - v. Engineering milepost; and,
 - vi. Transportation milepost.
- u. Trackage Rights Indicator;
- v. Switching Type indicator (specifying if the event is classifying a car onto a train, classifying the car off a train, or intermediate switching);
- w. Line segment name (for movement link data);
- x. Direction of travel (for movement link data please also indicate whether the car movement was from line segment begin node-to-end node or end node-to-begin node);
- y. Interchange Indicator specifying if the car was received or delivered in interchange;
- z. Identification of interchange railroad;
- aa. Industry Handling Indicator specifying if the car was pulled from origin or placed at destination;
- bb. Time elapsed at event location;
- cc. Time elapsed between event locations;
- dd. Miles between event locations; and
- ee. Field with a flag to indicate whether the car event was on the OPPD route.

Request for Production No. 16

Please provide documents that record complete train movement data (including all events and intermediate stations) in a computer readable format to the extent available, from origin to destination for all UP train movements (including yard and hub

operations) for each year or partial year 2019 to the present. Please include the appropriate fields required to correctly link this data to the car event data discussed in Request for Production No. 15 including any “foreign key(s)” UP uses in the normal course of business to link the data sets. The train movement information provided should include, but not be limited to, the following information:

- a. Unique Train Identification Symbol and/or Number;
- b. Train Date;
- c. Train Type (intermodal, unit, merchandise, foreign, etc.);
- d. Event Sequence Number;
- e. Year;
- f. Month;
- g. Day;
- h. Event date/time stamp;
- i. Time zone indicator (of the Event date/time stamp);
- j. Event type indicator specifying if the event was an arrival, a departure, an intermediate handling event, or an instantaneous time as in the case of a non-dwell event (e.g., passing a scanner);
- k. Unique System/Network Location Identifier (if for movement data, provide for both line segment begin and end nodes). Include the following:
 - i. Station name;
 - ii. City or metropolitan name;
 - iii. State / Province name;
 - iv. SPLC;
 - v. Engineering milepost; and,
 - vi. Transportation milepost.
- l. Trackage Rights Indicator;

- m. Number of loaded cars arriving at station;
- n. Number of loaded cars departing from station;
- o. Number of loaded intermodal units arriving at station;
- p. Number of loaded intermodal units departing from station;
- q. Number of empty cars arriving at station;
- r. Number of empty cars departing from station;
- s. Number of empty intermodal units arriving at station;
- t. Number of empty intermodal units departing from station;
- u. Trailing net tons arriving at station;
- v. Trailing net tons departing from station;
- w. Trailing gross tons arriving at station;
- x. Trailing gross tons departing from station;
- y. Length of train arriving at station;
- z. Length of train departing from station;
- aa. Number of active locomotives arriving at station;
- bb. Number of active locomotives departing from station;
- cc. Horsepower of active locomotives arriving at station;
- dd. Horsepower of active locomotives departing from station;
- ee. A flag indicating if the location was turn station;
- ff. Unit Train Loading/Unloading Indicator (for unit trains indicate if the cars were loaded or unloaded at station);
- gg. Switching Indicator (indicate if the train was picking up or dropping off cars);
- hh. Number of cars switched onto train;
- ii. Number of cars switched out of train;

- jj. Number of cars repositioned on train;
- kk. Train Crew Change Indicator;
- ll. Train Fueling Indicator;
- mm. Meet/Pass Indicator;
- nn. Line segment name;
- oo. Direction of travel (for movement link data please also indicate whether the car movement was from line segment begin node-to-end node or end node-to-begin node);
- pp. Interchange Indicator specifying if the train was received or delivered in interchange;
- qq. Identification of Interchange Railroad;
- rr. Industry Handling Indicator specifying if the train pulled cars from origin or placed cars at destination;
- ss. Time elapsed at event location;
- tt. Time elapsed between event locations;
- uu. Miles between event locations; and
- vv. Field with a flag to indicate whether the train event was on the OPPD route.

Request for Production No. 17

Please provide all documents including computer programs, definitions, decoders, and instructions, necessary to utilize, evaluate and link the data produced in response to Request for Production No. 13, Request for Production No. 14, Request for Production No. 15 and Request for Production No. 16. Please include with this production a description of the relationship between the databases (*e.g.*, whether there is a 1:1 ratio between databases, or whether one can expect to link 100% of the records in one file to

another file). Please also indicate which data fields are common (and may be used to link) to the provided databases.

Request for Production No. 18

Please produce documents sufficient to show the relationship(s) among, and scope of, all databases used to record, monitor, track and invoice trains and/or cars on UP's system including, but not limited to, graphical representations of such systems.

Request for Production No. 19

For each database identified in response to Request for Production No. 18, please produce documents sufficient to show the fields in each database and the type of data in each field (*i.e.*, a detailed field description and decoder for each unique entry in each field).

Request for Production No. 20

For each database identified in response to Request for Production No. 18, please produce documents sufficient to show the standard reports (including a description of the report) that are produced from data contained in the databases including reports that rely on multiple databases. "Standard reports" include regularly scheduled recurring reports and commonly requested ad-hoc reports.

Request for Production No. 21

Please produce all transportation contracts including amendments and supplements thereto (or letters of understanding with appendices or attachments), and all tariffs, common carrier pricing authorities or other documents containing common carrier rate and service terms (collectively "pricing authorities"), entered into, agreed to or

established or provided by UP which govern or governed shipments handled by UP as originating, terminating, overhead or single-line carrier on the OPPD route for each year or partial year 2019 to the present. For each pricing authority, please provide the traffic volumes and revenues associated with the movement of traffic under each pricing authority by traffic group (e.g., coal, agriculture, intermodal, etc.) for each year or partial year 2019 through the present.

Request for Production No. 22

Please produce all forecasts and all documents related to forecasts or projections prepared by or for UP from 2019 through the present, or in UP's possession and relate to that time period, of future traffic volumes and/or revenues for all freight traffic by traffic group (including any breakdown of any such forecasts or projections whether by commodity classification, geographic regions, line segment, or any other category) including, but not limited to, traffic projections prepared in connection with engineering studies, authorizations for expenditures or other road property investments, marketing studies, operating expense budgets, capital budgets, human resource planning, or mergers with or acquisition of other carriers.

Request for Production No. 23

To the extent such documents are not produced in response to Request for Production No. 22, please produce copies of all computer programs and databases used by UP from 2019 through the present to forecast or project volumes and/or revenues for all traffic moving over any portion of the OPPD route.

Request for Production No. 24

Please provide the following UP Geographic/Geospatial Information System (“GIS”) data for the State of Nebraska. The GIS data should be viewable, readable, and writable with no access limitations. The GIS data should be able to be read using current off the shelf (COTS) software, using either ESRI ArcView (ArcGIS) or MapInfo Pro (MapInfo/ Pitney Bowes):

- a. Map Projections defined per layer;
- b. GIS files associated with and/or created by the GIS software system, to include:

1. In their original vector, or other, file format to include file types such as:

For ESRI application software:

- a) .shp (shape files, feature geometry)
- b) .shx (shape file indexes)
- c) .dbf (attribute format)
- d) .prj (projection format)
- e) .sbn, .sbx (spatial indexes of features)
- f) .fbn, .fbx (spatial index of features)
- g) .ixs (geocoding indexes)
- h) .mxs (geocoding indexes)
- i) .atx (attribute index)
- j) .shp.xml (metadata in xml)
- k) .cpg (code page)

2. For MapInfo application software:

- a) .dat (attribute data)
- b) .tab (MapInfo table, stores types of data)
- c) .id (stores links to graphic and database information)
- d) .map (stores graphic and geographic information)
- e) .ind (index files)

3. For other GIS systems: provide native files.

- c. Map data geocoded to a standard available coordinate system;

- d. Map data associated to latitude and longitude coordinates without limits placed on decimal accuracy; and
- e. Map Layers (either separate object layers, or in layers with each object having attributes defining the item's entity type and attributes)
 - 1. Track detail
 - a) Rail stations and/or nodes (an entity with all attributes)
 - b) Rail segments and/or links between nodes (an entity with all attributes)
 - c) Siding (an entity with all attributes)
 - d) Grade (an entity, or attributes associated to track)
 - e) Curves (an entity, or attributes associated to track)
 - f) Mileposts (an entity, with a unique identifier, milepost name, milepost code, latitude and longitude coordinates with no limits on geocoded coordinate decimal values) that match the mileposts in the transactional "Event" data provided in response to Request for Production Nos. 14, 15 and 16
 - g) Elevation in feet above sea level per rail node/milepost
 - h) Time tables
 - i) Signals
 - 2. Mileage between track nodes;
 - 3. Land parcels; and,
 - 4. Terminals (including, but not limited to, UP rail yards, Automotive Distribution Facilities, Bulk Transfer Facilities and intermodal facilities).

Request for Production No. 25

Please produce current operating timetables (including special instructions and/or operating rule books), station lists, station books, and track charts (including a legend for the track chart markings) covering UP's rail system. Please provide the requested documents in their native format to the extent available (including all necessary

documentation). If current versions of any of the requested documents are not available, please produce the most recent versions that are available.

Request for Production No. 26

To the extent such information is not produced in response to Request for Production No. 25, please produce track charts and “condensed profiles” (including schematics which provide the number, length, and ownership status (*i.e.*, whether railroad-owned or privately-owned) of the tracks at the origins and destinations), which are applicable to all UP Lines in Nebraska.

Request for Production No. 27

Please produce detailed track diagrams of all tracks in the vicinity of Omaha, Nebraska that are utilized for the interchange of trains between UP and BNSF including, but not limited to, the track layout, the length of each track, the ownership of each track and descriptions of the existing facilities.

Request for Production No. 28

Please produce documents, in a computer-readable format to the extent available, that show the following for UP Lines that make up the OPPD route:

- a. The gradient or grade profile for each line segment;
- b. The elevation and elevation changes (in feet above sea level) for each line segment; and
- c. The locations of all curves on each line segment and all information maintained by UP pertaining to such curves including, but not limited to, the beginning milepost, ending milepost, and degree of curvature.

Request for Production No. 29

Please produce documents which provide the following information for all UP helper services operated on the OPPD route, separately for each helper service location, for each year or partial year 2019 to the present:

- a. “From” and “To” stations and mileposts where trains are actually helped;
- b. Number and type of locomotives (model and horsepower) involved per help;
- c. Round-trip mileage each locomotive travels per help;
- d. Number of total trains helped per crew assignment;
- e. Minimum train size/weight requiring helper service; and
- f. Crew size per crew assignment.

Request for Production No. 30

Please produce documents or data, in a computer-readable format to the extent available, which provide the following information for each UP crew district on the OPPD route:

- a. Each crew district identified by “from” and “to” stations;
- b. The route miles in each such crew district; and
- c. The number of locomotive units per train by train type (i.e., coal, general freight, automotive, intermodal, etc.) and the extent to which the locomotive units are in a distributed power train configuration.

Request for Production No. 31

Please produce documents which contain the following information for UP for each year or partial year 2019 to present:

- a. The location(s) where car inspectors inspect trains moving on the OPPD route, and the location(s) where inspections occur on the UP Lines between Origin and Destination;
- b. A description of the procedures followed by the car inspectors in preparing for and inspecting the trains;
- c. The total number of car inspections per tour of duty (by day of the week) and the total number of trains inspected per tour of duty (by day of the week), separated between coal trains and other than coal trains, for each location identified in response to (a) above;
- d. The number of car inspectors inspecting each train at each location identified in response to (a) above and the time spent by each inspector during each inspection;
- e. The daily or hourly rates of pay including all additives for the inspectors identified in response to (d) above;
- f. The number of trains each car inspector identified in response to (a) above inspects during his tour of duty;
- g. The other duties performed by the car inspectors identified in response to (d) above while on duty and not inspecting trains;
- h. The percentage of time the car inspectors identified in response to (d) above spend inspecting trains versus other assignments during their tour of duty;
- i. The materials and supplies used by the car inspectors at each of the locations identified in response to (a) above;
- j. The purchase price of each item identified in response to (i) above; and
- k. The total number of trains and cars inspected at each location identified in response to (a) above.

Request for Production No. 32

Please produce any studies or analyses conducted by UP from January 1, 2017 to the present which model and evaluate rail operations over all or any part of the UP

Lines in Nebraska using the Rail Traffic Controller (“RTC”) computer model. In addition to the results of such studies or analyses, please produce documents sufficient to show the following information for each study or analysis:

- a. The version of the RTC model utilized in each study or analysis;
- b. All electronic files input into the RTC model including track input files, train input files, Form A and Form B files (or similar files showing track, operating or other outages or failures that affected train operations); and
- c. All electronic files generated as output from the RTC model for each study or analysis.

Request for Production No. 33

Please produce the train list(s) and train profile(s) showing the scheduled horsepower per ton (“HPT”) for all UP trains operating on the OPPD route. If the train list(s) or train profile(s) are not available, please provide other documents sufficient to show the scheduled HPT for the trains identified above.

Request for Production No. 34

Please produce copies of the following documents:

- a. Documents sufficient to show the locomotive tonnage ratings (*e.g.*, horsepower per trailing ton) by line segment for the OPPD route; and
- b. Tractive effort tables or other documents sufficient to show the tractive effort produced by the locomotives used to transport trains through all or any portion of the OPPD route.

Request for Production No. 35

Please produce all records from January 1, 2019 through the present related to UP's use of BNSF locomotives in the provision of service between Origin and Destination.

Request for Production No. 36

Please produce documents, in a computer-readable format to the extent available, sufficient to show the dispatch priority given by UP to each train type (*e.g.*, double-stack, priority intermodal, through, general freight, coal, *etc.*) and, to the extent applicable, special dispatch priority given to any train within a grouping based on train type.

Request for Production No. 37

Please produce documents sufficient to show unplanned track-related and operating-related incidents or outages that affected UP train operations on the OPPD route in 2019-2021 including the cause of the incidents or outages, the duration of the incidents or outages, the location of the incidents or outages, and the train IDs of any trains impacted by the incidents or outages.

Request for Production No. 38

To the extent such information is not produced in response to Request for Production No. 35, please produce documents for each year or partial year 2019 to the present which list by initial and unit number: (a) locomotives used in the OPPD service between Origin and Destination, and in any other coal service between Origin and any destination or used by UP in providing transportation service including switching services,

on UP Lines and yards in Nebraska; and (b) if such locomotives were drawn from a pool(s), all the locomotives in the pool(s) from which the locomotives used in the OPPD or other coal service are drawn.

Request for Production No. 39

Please produce documents, in a computer-readable format to the extent available, which provide the following information for each of the locomotives contained in each of the listings produced in response to Request for Production No. 38, to the extent that the information is in UP's possession or is available to UP upon request:

- a. The locomotive initial and number;
- b. The manufacturer, if purchased;
- c. The lessor, if leased or rented, or provider, if used in run-through service;
- d. Model or type (*e.g.*, SD-40-2);
- e. Horsepower;
- f. Capacity of its fuel tanks (gallons);
- g. Weight;
- h. Date of purchase or lease;
- i. Date first placed into service;
- j. The original cost plus the cost of any additions and betterments;
- k. Financing vehicle (*e.g.*, equipment trust);
- l. Debt rate as a percent;
- m. Financing terms (in years);

- n. Annual depreciation;
- o. Annual depreciation as a percent;
- p. Current salvage value as a percent;
- q. Accrued depreciation;
- r. If leased, the type of lease (i.e., capital, operating, “power by the hour”, etc.);
- s. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- t. If an operating lease, the quarterly, semi-annual, etc., lease payment by locomotive or group of locomotives covering the term of the lease (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- u. If leased or rented under a short-term or “power by the hour” agreement, the minimum annual fixed payment and the use payment (e.g., per kilowatt/hour, per diesel unit mile, etc.) per locomotive, the average annual payment per locomotive, and the annual locomotive unit-miles for each such locomotive, stated separately for coal service and other service; and
- v. The diesel unit-miles traveled each year or partial year from 2019 to the present in all types of service.

Request for Production No. 40

Please produce all lease or rental agreements including all supplements and copies of all billings, applicable to each leased or rented locomotive identified in response to Request for Production No. 38 and Request for Production No. 39.

Request for Production No. 41

Please produce all locomotive maintenance and repair records and/or reports and related documents for each year or partial year 2019 to the present, which provide UP

locomotive maintenance, repair and overhaul expenses by locomotive or locomotive type or series (or by other basis in which records are kept) and the total locomotive unit-miles corresponding to these maintenance, repair and overhaul expenses for the locomotives identified in response to Request for Production No. 38. To the extent that these records and/or reports do not include all locomotive repair, maintenance and overhaul amounts reported in R-1 Schedule 410, please identify those expenses that are not included.

Request for Production No. 42

Please produce all locomotive maintenance agreements including all supplements, attachments, exhibits and schedules, with outside contractors and provide, for each year or partial year 2019 to the present for all locomotives in UP's fleet under such maintenance agreements, (a) the amount paid for each locomotive or by locomotive type in total and broken down by each service performed under the agreement and (b) the number of locomotive unit miles corresponding to the amounts listed above.

Request for Production No. 43

Please produce documents sufficient to show the following information for UP for the most recent 12 calendar months:

- a. The location(s) where locomotives traversing the OPPD route are fueled;
- b. The actual amount of fuel used by the locomotives identified in response to Request for Production No. 38, by individual locomotive;
- c. The total number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to (b) above during the same time period used in response to (b) above;

- d. The method by which UP accounts for or records fuel usage for locomotives;
- e. Computer-readable versions (both compiled and non-compiled) including all supporting databases and necessary documentation, of any and all computer programs in UP's possession used to estimate the fuel usage of locomotives; and
- f. The same information for all road and switch locomotives on the UP system in the same format as that given in the responses to (b), (c), and (e) above.

Request for Production No. 44

For the locomotive fueling locations identified in response to Request for Production No. 43, please produce documents sufficient to show the following information with respect to locomotive fueling at each location:

- a. The source(s) of the fuel including the name and location of the vendor(s) who provide the fuel to UP and the refinery(ies) or other location from which the fuel is obtained;
- b. The method and cost of transporting and dispensing the fuel from the refinery(ies) or other locations from which the fuel is obtained to the location where the fueling of locomotives is performed;
- c. The method by which fuel is dispensed into locomotives, *i.e.* from fixed fueling facilities or by direct-to-locomotive (tanker truck) service;
- d. A description of all facilities and equipment (including, but not limited to, fuel storage tanks) at each location where UP has fixed fueling facilities; and
- e. The cost per gallon paid (including any applicable taxes) on a weekly basis in 2020, and in 2021 to the extent available.

Request for Production No. 45

Please produce copies of all contracts/agreements with third parties related to the performance of locomotive fueling functions for all road locomotives that are used on the OPPD route.

Request for Production No. 46

Please produce documents, in a computer readable format to the extent available, which show locomotive utilization and locomotive performance (*e.g.*, locomotive unit-miles, locomotive hours running, locomotive hours switching, locomotive hours out-of-service for repairs and locomotive hours stored useable) for each locomotive that UP owned or leased for each year or partial year 2019 to the present and that UP used in providing transportation service on the OPPD route.

Request for Production No. 47

Please produce documents for each year or partial year 2019 to the present which contain the following, in a computer readable format, for each freight car purchased or leased by UP (including freight cars currently on order and privately-owned freight cars leased by UP that maintain the private owner's car initial and number) that UP has in providing transportation service on the OPPD route:

- a. Initial and number;
- b. Manufacturer;
- c. Lessor, if leased;
- d. AAR car type;
- e. Tare weight;

- f. Purchase or order date, if purchased;
- g. Lease or order date, if leased;
- h. Total purchase price, if purchased;
- i. If leased, the type of lease (e.g., capital, operating, etc.) and term;
- j. If leased, the amount and frequency of lease payments;
- k. If purchased, the AFE applicable to each purchased freight car; and
- l. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

Request for Production No. 48

Under *Alternative Methods of Accounting for Railroad Track Structures*, 367 I.C.C. 157, 180 (1983), UP is required to submit a standard “unit of property” that distinguishes between when a certain cost should be expensed or capitalized. Please produce UP’s most recent, STB approved, property units and the supporting information and data for those units.

Request for Production No. 49

Please produce a copy of UP’s rules and instructions pertaining to train handling including, but not limited to, measures for conserving fuel.

Request for Production No. 50

For each year or partial year 2019 to the present, please produce documents which contain the following information (in a computer-readable format, if available) with respect to each shipper-owned and shipper-leased railcar and each intermodal and automotive railcar provided by a third party moving over any part of the OPPD route:

- a. Identification number of the car;
- b. The type of the car;
- c. The length and tare weight of the car (for intermodal and automotive cars only);
- d. The cost to UP for use of the car;
- e. The terms of any mileage allowance agreement covering the car;
- f. Whether the car is subject to a zero-based mileage agreement;
- g. Whether the car hire paid on the car is subject to refund of the payments under certain contractual conditions; and
- h. The year of manufacture of the car.

Request for Production No. 51

Please produce all railcar maintenance agreements with outside contractors including all supplements, attachments, exhibits and schedules, in effect during all or any portion of each year or partial year 2019 to the present, for all the cars on the OPPD route, and documents providing (a) the amount paid for each car or by car or by car type total and broken down by each service performed under the agreement, and (b) the number of car-miles corresponding to the amounts referenced in (a).

Request for Production No. 52

Please produce copies of all contracts/agreements with third parties (including, but not limited to, shippers or receivers) in effect during all or any portion of the period from January 1, 2019 to the present related to the performance of car inspection functions with respect to (a) UP coal trains and (b) other UP trains traversing all or a portion of the OPPD route.

Request for Production No. 53

Please produce the following for all joint ownership, joint facility or joint use agreements including, but not limited to, trackage rights agreements, joint or common ownership agreements and lease agreements, between UP and another rail carrier or other entity applicable to any of the railroad lines and/or facilities on the OPPD route, and that were in effect during all or any portion of the period from January 1, 2019 to the present:

- a. Copies of all agreements (including amendments and supplements);
- b. Copies of all bills and/or payments from 2019 to the present (including all supporting documents and data), for each month, quarter and/or annual period from 2019 to the present; and
- c. Density data and operating statistics (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), and number of trains) separately for UP and all other carriers using the facility for each year or partial year for the period from 2017 to the present.

Request for Production No. 54

For each year or partial year 2019 to the present, please produce UP's detailed annual and quarterly Wage Forms A and B that support the summary Wage Forms A and B provided to the STB.

Request for Production No. 55

Please produce documents sufficient to show the applicable wage rates for UP's maintenance of way employees by job classification for each year or partial year 2019 to the present.

Request for Production No. 56

Please provide documents sufficient to show UP's existing maintenance-of-way plan and staffing in Nebraska including maintenance-of-way districts and/or crews employed by UP to maintain the (a) track, (b) signals and communications facilities, and (c) bridges and (d) all other facilities on the OPPD route, the number of UP employees by job classification presently assigned to each maintenance-of-way district or crew on both a permanent and a seasonal basis, and any changes in the maintenance districts, crews, and number and classification of employees that have occurred since January 1, 2019.

Request for Production No. 57

Please produce documents sufficient to show the maintenance-of-way equipment owned or leased by UP whose value per unit exceeded \$5,000 when acquired, and how such equipment is assigned to the respective maintenance-of-way districts identified in response to Request for Production No. 56. In addition, please provide documents sufficient to show the unit costs for such equipment, if purchased, or the annual lease cost if leased, and the annual cost of ownership including information on maintenance and fueling costs during each year or partial year 2019 to the present.

Request for Production No. 58

For maintenance of way and/or construction for the OPPD route performed by contractors for the period from 2019 to the present, please produce copies of all bills for services, documents which contain a description of the line location of the contract repairs and/or construction, and the details of the work performed including labor and materials. If UP does not maintain copies of these documents, produce whatever documents UP does

maintain or have available to it describing the costs incurred by UP and the details of the work performed, in a computer readable form if available (including all necessary decoders or other explanatory documentation).

Request for Production No. 59

Please produce documents sufficient to show the transaction costs incurred by UP, by service unit, for electronic data interchange services with Railinc (or other applicable service providers) during each of the years 2019 to the present.

Request for Production No. 60

Please produce documents for each year or partial year 2019 to the present which provide UP's loss and damage costs and annual tonnage separately for each commodity that UP carries on its system.

Request for Production No. 61

Please produce documents including, but not limited to, tax returns filed with the states and all supporting schedules and attachments, showing the ad valorem taxes that UP paid to the State of Nebraska and in Omaha, Nebraska for each year or partial year 2019 to the present, together with documents showing the total route-miles and total track-miles UP owned or owns in the State for each year 2019 to the present. Please also provide the current ad valorem tax rates which the State of Nebraska and local governments use to assess UP property and how these rates are applied.

Request for Production No. 62

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity (including, without limitation, Amtrak,

CREATE, or other passenger or commuter rail entities) to construction, upgrading, maintenance and/or operating expenses on the OPPD route.

Request for Production No. 63

Please produce an unredacted copy of UP's Positive Train Control ("PTC") Implementation Plan filed with the Federal Railroad Administration as required under 49 C.F.R. Part 236, as well as any amendments or supplements thereto.

Request for Production No. 64

Please produce documents sufficient to show UP's actual costs to implement its PTC program including, but not limited to, all input data to schedules PTC 330, PTC 332, PTC 335, PTC 352B, PTC 410, PTC 700, PTC 710, PTC 710S, PTC 720 and PTC Supplement: Grants of UP's R-1 from 2019 to present. To the extent that these records, reports and databases do not include all cost amount reported in the R-1 Schedules, please identify the expenses that are excluded.

Request for Production No. 65

Please produce copies of the most current land valuation maps for the OPPD route, and all documents (including but not limited to deeds or other instruments of grant or conveyance) related to the parcels identified on those maps.

Request for Production No. 66

Please produce documents sufficient to show all donated rights of way and/or land grants (including easements) obtained by UP and/or UP's predecessors in connection with the construction of any rail lines or facilities located on the OPPD route.

Request for Production No. 67

Please produce all documents related to any sale, appraisal, abandonment or acquisition of land (improved and unimproved) that UP completed on the OPPD route since 2019 including, but not limited to, documents showing the location of the parcel, size of the parcel, the valuation of the parcel by UP, the sale or acquisition price, UP land transaction cost, a description of any improvements to the parcel, the date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

Request for Production No. 68

Please produce documents sufficient to show the following with respect to grading construction activities undertaken or proposed at any time by UP or its predecessors, or currently ongoing, on the OPPD route:

- a. Number of cubic yards of excavation of:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.
- b. Number of cubic yards of embankment of:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.
- c. Number of cubic yards of borrow of:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.

- d. Grading construction data for each construction specification measured by UP including without limitation, roadbed width, side slope ratio, track center distance, presence of access roads, impact of grading activities on right-of-way width, use of geotextiles, use of water, soil stabilization, and width and depth of side ditches;
- e. Number of route miles, separated between single track main, double track main, triple track main, etc., corresponding to the cubic yard information described in paragraphs (i) through (iv) of Subparts (a), (b) and (c) of this Request;
- f. Number of track-miles corresponding to the cubic yards in paragraphs (i) through (iv) of Subparts (a), (b) and (c) of this Request;
- g. All of the different types of equipment (and the associated tasks) used to:
 - i. Excavate common earth;
 - ii. Excavate loose rock;
 - iii. Excavate solid rock;
 - iv. Excavate unclassified material; and
 - v. Obtain borrow material.
- h. Linear feet of pipe installed for lateral drainage;
- i. Number of cubic yards of rip-rap placed for the protection of the roadway;
- j. Location, type and quantity of retaining walls;
- k. Construction method including, but not limited to, the number of cubic yards of masonry or other similar material used for retaining walls;
- l. Number of acres cleared;
- m. Number of acres grubbed; and
- n. Number of acres seeded.

Request for Production No. 69

Please produce documents sufficient to show the costs that UP incurred during each year 2019 to the present for the following:

- a. Cost per cubic yard of excavation for:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.
- a. Number of cubic yards of embankment of:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.
- c. Cost per cubic yard of borrow for:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material.
- d. Cost per cubic yard of rip-rap (installed), separated between material and labor;
- e. Cost for each material used for retaining walls, separated between material and labor;
- f. Gross cost per acre for clearing timber and any credits reflecting the sale of timber;
- g. Cost per acre for grubbing;
- h. Cost per acre for seeding;
- i. Cost per acre for weed spray (including necessary chemicals);
- j. Cost per hour or per mile for brush cutting;

- a. Cost per square yard for geotextile fabric; and
- b. Cost per linear foot for yard drainage facilities.

Request for Production No. 70

Please produce documents sufficient to show culvert/drainage pipe locations (i.e., railroad milepost), size (diameter), length, height of cover, number of tracks crossed, type, and cost of material and installation for each, for the OPPD route.

Request for Production No. 71

Please produce documents sufficient to show the following for construction projects that UP has undertaken since January 1, 2019:

- a. Standard construction project specifications including but not limited to: track structures and designs; bridges; culverts; yard and roadway buildings; fueling facilities; maintenance facilities and waste water treatment facilities;
- b. Whether or not the project was performed “under traffic”, i.e., traffic continued to move through the construction area;
- c. Standard estimating procedures for track construction projects; and
- d. Standard estimating procedures for non-track construction projects.

Request for Production No. 72

Please produce all of UP’s price list books governing prices for construction and maintenance materials (including but not limited to weights of rail from 115 to 141 pounds per yard, turnouts, ties, fasteners, lubricators, plant and field welds, fencing, roadway signs, track geometry cars, hot bearing and dragging equipment detectors, and related tools), or other documents utilized by UP’s engineering personnel for estimating costs of maintenance and construction projects for each year or partial year 2019 to the

present. To the extent that the charges for transportation and delivery of materials are not included in the prices shown, please produce documents sufficient to show such charges for all materials.

Request for Production No. 73

Please produce documents sufficient to show the following information with respect to rail purchased by UP and used on UP Lines in Nebraska for each year or partial year 2019 to the present:

- a. The average cost per linear foot and/or ton by weight of rail for both new and relay rail;
- b. The source of the rail;
- c. The average cost per ton-mile to transport the rail on UP;
- d. The average cost per ton to handle the rail, categorized by the length of and weight of rail including the cost for a specialized rail train if applicable, on UP;
- e. The average cost per ton-mile, by carrier, to transport the rail on a foreign carrier by carrier;
- f. The average cost per ton to handle the rail, categorized by length and weight of rail including the cost for a specialized rail train if applicable, on a foreign carrier by carrier; and
- g. Any haulage agreements between UP and a foreign carrier that applied or could apply to the transportation of rail over either carriers rail lines in Nebraska.

Request for Production No. 74

Please produce documents sufficient to show the following information with respect to ballast or sub-ballast used on UP Lines in Nebraska for each year or partial year 2019 to the present:

- a. The average cost per cubic yard for ballast, by type;
- b. The average cost per cubic yard for the transportation and handling of ballast;
- c. The average length of haul represented by the value(s) in (b) above;
- d. The average cost per cubic yard for sub-ballast, by type;
- e. The average cost per cubic yard for transportation and handling of sub-ballast;
- f. The average length of haul represented by the value(s) in Subpart (e) above;
- g. The names and locations of all quarries supplying such ballast or sub-ballast; and
- h. The unit prices from all quarries listed in response to Subpart (g).

Request for Production No. 75

Please produce bridge lists or other documents detailing location (milepost, division and subdivision), number of spans, type(s) of spans, length of each span, load rating, a description of what is being crossed (*e.g.*, name of body of water, highway or road (including name or number), navigable waterway *etc.*), whether or not it is a movable bridge, whether or not it is in service, type, length, number of tracks, clearance, height, curvature and skew (if any) for all bridges located on the OPPD route.

Request for Production No. 76

For each of the types of bridges identified in the documents produced in response to Request for Production No. 75, please produce documents sufficient to show the standard design for the bridge type and the unit costs (*e.g.*, cost per foot or other

appropriate measure), for single track open deck and ballast deck construction and double track open deck and ballast deck construction, from 2019 to the present.

Request for Production No. 77

Please produce documents sufficient to show the following information related to the construction or replacement, in part or in whole, of each bridge on the OPPD route from 2019 to the present:

- a. The location of the bridge, by line segment and milepost;
- b. An itemized listing of the bridge components being constructed or replaced (including quantities);
- c. The estimated cost, by component, for each of the components (identified in response to Subpart (b) above) being constructed or replaced;
- d. The actual cost, by component, for each of the components (identified in response to Subpart (b) above) being constructed or replaced;
- e. The design for each bridge;
- f. The total cost of the bridge;
- g. The total length of the bridge;
- h. Whether the project was new construction or rehabilitation;
- i. Whether or not the project was performed “under traffic”, i.e. traffic continued to move through the construction area;
- j. All costs incurred as a function of performing the project under traffic, e.g., flagging costs, temporary signal costs, realignments, delays and all other costs that would not be incurred if the bridge was new construction;
- k. The construction documents and contracts for the construction and/or rehabilitation; and

1. Any cost sharing between UP and another entity.

Request for Production No. 78

Please produce documents (in computer readable format to the extent available) that identify and list the location and type of communications and signals systems/facilities used for train operations by milepost, division, and subdivision on the OPPD route.

Request for Production No. 79

Please produce documents listing the items, the cost of each item and the quantity of each item installed on UP's system related to the construction and (during each year or partial year 2019 to the present) operation of the centralized traffic control signal system(s) or any other traffic control system in use on the UP system (including hot bearing and dragging/failed equipment detectors). Please indicate whether the costs include additional services such as installation, design planning, electrical drops for utilities, and/or transportation. If the costs for additional services are not included, please provide each cost separately for each additional service.

Request for Production No. 80

Please produce documents containing the following information for each UP communications site (defined as a location with a microwave tower, a land mobile radio ("LMR") tower, a tower used for both purposes, or a location where communications equipment (microwave or LMR) is located that does not include a tower) located on or near the OPPD route:

- a. The number of microwave towers, LMR towers, combined towers, or other communications equipment location (shown separately for each category);
- b. The latitude and longitude coordinates of each tower or other communications equipment location;
- c. The height of each tower in (i) feet above the ground and (ii) feet above sea level;
- d. The number of microwave antennae on each tower and the status of each antenna (*i.e.*, whether it is operational);
- e. The number of LMR antennae on each tower and the status of each antenna (*i.e.*, whether it is operational);
- f. The latitude and longitude coordinates of other communications sites that can link via microwave or radio from this site or a topological map of the communication system; and
- g. The acres of land owned or leased by UP for these sites and the cost of purchase or lease.

Request for Production No. 81

Please produce documents sufficient to show:

- a. UP's specifications for the construction of communications sites (as defined in Request for Production No. 78 above);
- b. The total number of UP route miles on UP Lines in Nebraska that are covered by microwave communications;
- c. The total number of UP route miles on UP Lines in Nebraska that are not covered by microwave communications;
- d. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the microwave radio and/or land mobile radio communications system(s) on the UP system during each of the years 2019 to the present; and

- e. The annual spot maintenance costs incurred by UP for the microwave and/or land mobile radio tower communications system per tower and by device type, on the OPPD route.

Request for Production No. 82

Please produce documents sufficient to describe the specifications, functions, operation and costs, during each year or partial year 2019 to the present, of any communications system equipment other than microwave towers used to transmit data from devices such as mobile two-way radios, portable (hand-held) two-way radios, FEDs, AEI scanners and EOTDs across all or any part of the UP system(s).

Request for Production No. 83

Please produce documents sufficient to show:

- a. The locations and quantities of fiber optic cabling installed on UP rights-of-way on UP Lines in Nebraska;
- b. The bandwidth capacity of the fiber optic cabling identified in Subpart (a);
- c. The entity that owns and operates the fiber optic cabling identified in Subpart (a);
- d. The costs to UP, if any, for installing the fiber optic cable identified in Subpart (a);
- e. Whether UP is permitted to use the fiber optic cable identified in Subpart (a);
- f. The amount, if any, that UP pays the carriers for use of the fiber optic cable identified in Subpart (e); and
- g. The revenues or other payments that UP receives from the carriers for the use of the railroad's right-of-way for fiber optic cable.

Request for Production No. 84

If UP utilizes the fiber optic cable(s) identified in response to Request for Production No. 83, please provide documents sufficient to show:

- a. The total number of UP route miles on UP Lines in Nebraska that are covered by fiber optic communications;
- b. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the fiber optic communications system on the UP system(s) during each of the years 2019 to the present; and
- c. The annual spot maintenance costs incurred by UP for the fiber optic communications system and by device type, on UP Lines in Nebraska.

Request for Production No. 85

Please produce documents sufficient to show the location, size (including square footage, number and lengths of tracks, capacity, etc.), components (such as equipment and machinery), and original cost of each facility located on the OPPD route that falls within each of the following categories of facilities:

- a. Roadway maintenance facilities;
- b. Locomotive maintenance facilities;
- c. Locomotive servicing facilities (including fueling facilities);
- d. Administrative facilities;
- e. Rail yards;
- f. Dispatch centers;
- g. Freight car repair and maintenance facilities;
- h. Scales;

- i. Wastewater treatment plants;
- j. Landslide/rockslide detection/protection devices or facilities;
- k. Snowshed facilities; and
- l. Train, yard and engineman facilities.

Request for Production No. 86

For each year or partial year 2019 to the present, please produce documents which contain the following information with regard to UP highway and railroad at-grade crossings:

- a. The various sizes, compositions and costs per linear foot (installed) of a one-lane private road crossing over a single line of track;
- b. The various sizes, compositions and costs per linear foot (installed) of a two-lane public highway crossing over a single line of track;
- c. The various sizes, compositions and costs per linear foot (installed) of a four-lane public highway crossing over a single line of track;
- d. The installed cost of signs for a private road crossing (if necessary);
- e. The installed cost of signs for a public highway crossing;
- f. The installed cost of each of the different types of protective devices identified in the response to Subpart (g) below;
- g. A list identifying each component required for an automatic type interlocking (assuming a diamond crossing);
- h. The cost of each of the components identified in response to Subpart (g) above and the cost of installation for each year or partial year 2008 to the present;
- I. The costs for a 16-foot and 24-foot cattle guard and the cost of installation for each year or partial year 2019 to the present; and
- j. Any additional costs incurred.

Request for Production No. 87

Please produce documents in a computer readable format, to the extent available, containing the following information for each UP at-grade and grade-separated road crossing on the OPPD route:

- a. Geographic location, *i.e.*, city, county and state;
- b. Rail location, *i.e.*, railroad, line name and milepost;
- c. Whether public or private;
- d. Name of road crossed;
- e. Width;
- f. Length;
- g. Type of construction;
- h. Number of tracks;
- i. Type of protective devices;
- j. Date of initial installation at the location;
- k. Total cost of the initial installation and the amount borne by UP, if any; and
- l. Identification of the party responsible for ongoing maintenance of any such structures.

Request for Production No. 88

For each grade-separated, highway crossing identified in Request for Production No. 86, please provide documents sufficient to show, separately for each crossing:

- a. The total construction cost of the highway crossing;
- b. The percentage of the total cost incurred by UP; and
- c. Any monies received by UP from any other party to compensate UP for the use of the crossing including, but not limited to, maintenance and easement payments.

Request for Production No. 89

Please produce documents sufficient to show the location, linear feet, and type of fencing (*e.g.*, snow fence) for all fencing currently in place on the OPPD route.

Request for Production No. 90

Please produce all documents relating to any contribution by any governmental or quasi-governmental entity (including, without limitation, Amtrak, CREATE, or other passenger or commuter rail entities) to the construction or maintenance of at-grade or grade separated crossings of the OPPD route.

Request for Production No. 91

Please produce documents sufficient to show the following for each construction and rehabilitation project which exceeded \$2,000,000 in cost and was completed by UP, or an outside contractor acting on UP's behalf, since January 1, 2019:

- a. The date the project was started;
- b. The date the project was completed;
- c. Whether the project was new construction or rehabilitation;
- d. Whether or not the project was performed "under traffic", *i.e.*, traffic continued to move through the construction area;
- e. A complete copy of the Authorization For Expenditure ("AFE") and description of all columns and data contained with the AFEs;

- f. A complete copy of the Roadway Completion Report or any successor document;
- g. All invoices underlying each AFE and/or Roadway Completion Report;
- h. Engineering and/or construction plans;
- i. Progress reports;
- j. Photographs, if available, and
- k. Construction contracts.

Request for Production No. 92

Please produce documents including, but not limited to, AFEs, construction plans, engineering estimates, bid tabs, contractor invoices, and construction specifications, for any projects that a carrier other than UP has undertaken on the OPPD route for which UP paid for some or all of the project cost since 2019.

Request for Production No. 93

Please provide documents identifying each electrical connection in Nebraska that is used to provide power to devices including, but not limited to, the CTC system and other signal devices, hot box detectors, failed equipment detectors, powered road crossings, warning devices and power switches, and provide the following for each such connection:

- a. The location of the connection by line segment and milepost;
- b. The source of the electricity;
- c. The amount UP paid for each connection and the date; and
- d. UP's costs for each billing period from 2019 to the present.

Request for Production No. 94

Please produce documents (in computer readable format to the extent available) that depict individual tracks, connections to the main line, turnouts, communications, signals and elevations for all yards on the UP system which are located on the OPPD route.

Request for Production No. 95

Please produce all inflation and/or rail cost adjustment estimates or calculations in UP's possession or that UP prepared or caused to be prepared or purchased for each year or partial year 2019 to the present including, but not limited to, any estimates relating to:

- a. The cost of acquiring equity;
- b. The cost of acquiring debt;
- c. General expenses including, but not limited to, asset, equipment, materials and supplies, fuel and labor expense;
- d. Railroad productivity including, but not limited to, commodity-specific productivity, asset productivity and expense productivity;
- e. Gross Domestic Product/Implicit Price Deflator;
- f. Producer Price Index - All Commodities;
- g. The U.S. Department of Energy's U.S. average price of Retail On-Highway Diesel Fuel; and
- h. Land values along or adjacent to UP's right of way for UP Lines Nebraska.

Request for Production No. 96

Please provide documents related to the amount of Bonus Depreciation claimed by UP separately for 2017, 2018, 2019, 2020, and 2021 on UP's Federal Tax Returns in Schedule 4562. The amount should be separated by asset class and include the historical cost recorded for the assets related to the claimed bonus depreciation including all schedules and worksheets showing the calculation and development of bonus depreciation allowed under the Economic Stimulus Act of 2008, the American Reinvestment and Recovery Act, the American Taxpayer Relief Act and the Tax Increase Prevention Act.

Request for Production No. 97

Please provide copies of UP's 2017, 2018, 2019, 2020, and 2021 State income tax return for Nebraska including all State tax credit worksheets.

Request for Production No. 98

For each intermodal terminal, Automotive Distribution Center, bulk transfer or yard facility located on UP Lines in Nebraska (as identified in response to Interrogatory No. 5), please provide the following:

- a. Documents containing descriptions of the existing facilities;
- b. Documents showing the track layout, the length of each track and the ownership of each track;
- c. Copies of all agreements (including amendments and supplements) between UP and any other entity pertaining to services provided by such entity and charges incurred by UP for such services from 2019 to the present;

- d. Copies of all invoices, bills, etc. (including all supporting documents and data) received by UP for services provided from 2019 to the present;
- e. Document sufficient to show the services that UP or any other entity provides at each facility;
- f. Documents sufficient to show the components (e.g., land, track, specific buildings, loading or unloading facilities, etc.) that are owned and/or operated by UP or by any other entity. In the event that an entity other than UP owns and/or operates any identified facility, please produce documents sufficient to show any applicable lift or other charges incurred by UP for such services; and
- g. Documents sufficient to show the security procedures and measures employed and the entity responsible for providing and paying for security.

Request for Production No. 99

For each yard identified in Interrogatory No. 5, please produce documents sufficient to show:

- a. The type of yard, (i.e., electronically controlled hump yard or flat switch yard);
- b. The number of shifts operated at each yard, and the average number of cars handled over each yard per day;
- c. The yard layout, yard signaling, yard switching, and the yard connection to mainline track;
- d. The average number of hazardous material cars handled at each yard on a daily basis that by-pass the hump;
- e. The scheduled switch crew assignments on a daily basis (including the name or designation of each assignment) and the respective duties of each assignment (e.g., switching job, bowl job, hump job, industrial job, etc.);
- f. For each of the switch assignments identified in response to subpart e above, the typical number of switch crew members and the number and type of locomotives assigned to each switch service; and the

typical number of hours worked by switch crews in performing their assigned tasks;

- g. For each individual industrial switch job identified in response to part (e), above:
 - i. The name or designation of each individual industrial switch job;
 - ii. The number of crew members assigned to each identified industrial switch job;
 - iii. Number and type of locomotives assigned to each identified industrial switch job;
 - iv. The industries served by each identified industrial switch job; and
 - v. The frequency of service of each identified industrial switch job.
- h. For each Local Train, that originates or terminates in each of the yards:
 - i. UP's train identification or designation of each Local Train;
 - ii. The number of crew members assigned to each identified Local Train;
 - iii. The number of loaded and empty cars assigned to each Local Train;
 - iv. The trailing length of each identified Local Train;
 - v. The trailing weight of each identified Local Train;
 - vi. The number and type of locomotives assigned to each Local Train;
 - vii. The route of service for each identified Local Train, and if the Local or Road Train is a turn crew or straight-away crew;
 - viii. The industries served by each identified Local Train; and
 - ix. The frequency of service of each Local Train.

Request for Production No. 100

For all locations on the OPPD route where UP interchanges railcars and/or trains with another railroad, please provide documents that:

- a. Identify the location of the interchange (by milepost and/or yard name);

- b. Describe the interchange procedures at each location;
- c. Identify the tracks (and length of each track) used for interchange purposes; and
- d. Identify the ownership of each track used for interchange purposes.

Request for Production No. 101

For each track construction project that UP has undertaken since 2019 to the present, provide documents showing the following:

- a. How the disposal of excess excavation quantities was handled; and
- b. All costs associated with the disposal of such excess excavation quantities.

Request for Production No. 102

Please produce documents sufficient to show the amount of annual depreciation expense shown in Column (c) of UP's 2019 and 2020 Schedule PTC 335, Accumulated Depreciation – Road and Equipment Owned and Used that is associated with bonus depreciation allowed under the American Tax Payer Relief Act, including any supporting schedules.

Request for Production No. 103

Please provide documents related to the amount of dividends paid from affiliated companies as shown in UP's Annual Report Form R-1, Schedule 210, Line 25(a) separately for years 2017, 2018, 2019 and 2020. The amounts should be separated by the affiliated companies paying the dividends in the respective years.

Request for Production No. 104

Please produce for each year or partial year 2019 to the present documents (in a computer readable format) which show for each UP individual locomotive engineer, conductor, dispatcher and equipment inspector, the number of shifts worked per year, their length of employment, and their annual compensation.

Request for Production No. 105

Please produce documents sufficient to show the applicable wage rates for UP's maintenance of way employees by job classification for each year 2019 to the present.

Request for Production No. 106

Please provide any studies or databases showing dwell times in yards for shipper provided and foreign cars.

Request for Production No. 107

Please provide a copy of any UP operating rules related to the special handling of hazardous materials (provide the requested information by class of hazardous material) including, but not limited to, rules related to:

- a. Placement of cars containing hazardous materials in a train;
- b. The number and location of buffer cars required, if any, when handling hazardous materials in trains; and
- c. Special routing instructions for trains containing hazardous materials.

Request for Production No. 108

For each UP rail yard referred to in Interrogatory No. 5, please produce documents sufficient to identify switch crew assignments, hump crew assignments, Local

Train assignments, the number of cars handled over each hump yard per day and the number of hazardous material cars handled at each hump yard per day which by-pass the hump operation at each yard.

Request for Production No. 109

For any company other than UP that provides the development, implementation and/or maintenance of computer systems, software and associated documentations for the day-to-day operations of UP, please produce documents sufficient to show the services outsourced, the fees paid for the outsourced services, and the analyses which developed the estimated and/or actual savings realized by UP and each of its subsidiaries from such outsourcing.

Request for Production No. 110

Please produce all documents related to any internal assessments made by or for UP as to whether the company meets the Revenue Adequacy Criteria. To the extent that this Request is burdensome, counsel for OPPD is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Request for Production No. 111

Please provide documents sufficient to show the COE and COC values utilized for the time periods specified in Interrogatory Nos. 11 and 12, and the purpose for which those values are utilized. To the extent that this Request is burdensome,

counsel for OPPD is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Request for Production No. 112

Please provide documents sufficient to show in detail the methodology used for calculating the COE and COC for the time periods specified in Interrogatory No. 11. To the extent that this Request is burdensome, counsel for OPPD is willing to confer to determine if the burden can be reduced, particularly by producing representative documents in various categories.

Request for Production No. 113

Please produce documents sufficient to show all revenues, fees, rents or other compensation received by UP in 2019 and 2020 from any source that was related to a third party's use or exercise of subsurface rights below any UP right-of-way on the OPPD route.

Request for Production No. 114

Please describe the manner in which UP currently provides the transportation services for OPPD traffic moving between BNSF's Gibson Yard Interchange and NOPS including unloading time, crew assignments, number of locomotives, locomotive ownership (UP or BNSF locomotives used to move coal from Gibson Yard Interchange to NOPS) and involved crew and locomotive times.

Request for Production No. 115

Please produce copies of any locomotive sharing agreements between UP and BNSF.

Request for Production No. 116

Please identify the following for each OPPD train that UP switched from the Gibson Yard Interchange to NOPS and back to the Gibson Yard Interchange for years 2020 to the present:

- a. Date and time UP switch crew arrived at Gibson Yard Interchange to get the loaded train;
- b. Date and time UP switch crew arrived at NOPS with loaded train;
- c. Date and time UP switch crew left NOPS with empty train;
- d. Date and time UP switch crew left Gibson Yard Interchange after dropping off the empty train; and
- e. The locomotive initial and number for each locomotive used.

Request for Production No. 117

Please provide all switching studies (logs and summaries) or other documents which relate in whole or in part to including data relating to or derived from, UP switching of cars carrying coal between the Gibson Yard Interchange and NOPS in possession of UP. This request includes any internal analyses by UP of the application of the “SSW Compensation” formula to the calculation of the switch tariff rate in the Circular.

Request for Production No. 118

Please provide the following information:

- a. Actual maintenance of way structures expenditures for the trackage traversed by the OPPD trains between the Gibson Yard Interchange and NOPS; and
- b. The service units, e.g. gross ton-miles, moving over the Gibson Yard Interchange to NOPS line.

Request for Production No. 119

Please identify the miles, by ownership, which make up the Gibson Yard Interchange to NOPS line.

Request for Production No. 120

Please describe and provide copies of all crew agreements currently in effect which contain provisions dealing with Omaha, Nebraska switching operations.

Request for Production No. 121

Please provide the following information in a computerized format, to the extent possible, for each UP yard or road crew that handled OPPD trains between the Gibson Yard Interchange and NOPS for each of the years 2020 to present:

- a. The date;
- b. Number of engine men (including trainees);
- c. Number of trainmen (including trainees);
- d. Number and job title of any other employee (including trainees);
- e. Place, time, and date first went on duty;
- f. Place, time, and date finally went off duty;

- g. Train number;
- h. Locomotive numbers (including slave units), and number of unit train;
- i. Number of cars in train;
- j. Actual miles run;
- k. Kind of service (e.g., local, through, switching, deadheading);
- l. Service class for each employee (provide definition of codes used);
- m. Run number (provide definition of codes used);
- n. Time claimed for each employee;
- o. Straight time actually worked, for each employee;
- p. Straight time paid for, for each employee;
- q. Overtime, for each employee;
- r. Constructive codes and related miles, for each employee (provide definitions of codes used and all different payment rates for each of the years 2017 to present;
- s. Rate codes of each employee (provide definitions of codes used and all different wage rates for each of the years 2017 to present;
- t. Payments for meals and lodging for each employee;
- u. Any remarks written on time slips; and
- v. Whether those employees performed any service per shift other than that involved in the transportation of the OPPD trains and, if so, a description of such other service.

If any of the foregoing information is not available in a computerized format, provide copies of the specific time slips (if information appears on the back of the time slips,

then that data should also be copied), together with explanations and definitions of any codes appearing thereon and each different wage rate and payment scale for each of the years 2020 to present.

Request for Production No. 122

Please provide all data on, or a copy of, any yard reports, delay reports, conductor's reports, dispatcher's sheets or other documentation identifying yard activities for each crew handling each of the trains moving from Gibson Yard Interchange to NOPS, together with explanations and definitions of any codes appearing thereon.

Request for Production No. 123

Please identify all agreements pertaining to Omaha, Nebraska to which UP is a party with other rail carriers, and supplements thereto, under which UP purchases the services of and/or compensates such other carrier(s) for the use of locomotives, crews, dispatching services, trackage or other facilities. Provide a copy of each agreement including all supplements.

Request for Production No. 124

Please identify the frequency that UP uses:

- a. UP locomotives to handle the OPPD traffic between the Gibson Yard Interchange and the NOPS; and
- b. BNSF-provided locomotives to handle the OPPD traffic between the Gibson Yard Interchange and the NOPS.

Request for Production No. 125

Please identify all written agreements covering movements on which UP locomotives are used on trains traversing non-UP owned lines and/or non-UP owned locomotives are used on the trains traversing lines of UP for movements over the Gibson Yard Interchange to NOPS line. Please provide a copy of all agreements (including supplements and amendments) covering these movements.

Request for Production No. 126

For these section of the agreements identified in Request for Production No. 125 that covers compensation between the parties, please provide the amount of compensation or equalization by component, e.g., fuel, maintenance, servicing, etc., and the service units covered by the compensation, e.g., horsepower hours, for each of the years 2019 to present and the basis for computing the compensation by component including, but not limited to, studies used in determining the basis of compensation. Please provide a copy of correspondence, bills, etc., relating to each agreement.

Request for Production No. 127

For all agreements covering locomotives owned by one carrier and used on another carrier's lines and not covered by Request for Production No. 125 agreements, provide the amount and basis including, but not limited to, identification of studies used in determining the basis, of compensation, for the using carrier's compensation to the owning carrier for:

- a. Use of the locomotive;
- b. Fuel consumed while on using carrier's line;

- c. Maintenance of the locomotive(s);
- d. Servicing of the locomotive(s); and
- e. Other.

Request for Production No. 128

Please provide a copy of correspondence, bills, etc., relating to each agreement identified in response Request for Production No. 127 above.

Request for Production No. 129

Please provide all fuel usage documents, reports, analyses and estimates (as well as estimation methodologies) including fuel quantities and the associated service units, for any or all of the locomotives used to handle the OPPD trains, for the years 2019 to the present.

Request for Production No. 130

Please provide the following for each valuation section traversed by the train(s) between the Gibson Yard Interchange and the NOPS:

- a. A description by milepost and station name of the properties encompassed by each valuation section (as of December 31st for each of the years 2019 through 2021);
- b. A description by milepost and station name of the portion of the valuation section identified in response to Request for Production No. 130(a) that is traversed by the OPPD traffic (as of December 31st for each of the years 2019 through 2021);
- c. Gross values by STB property account included within each valuation section identified in response to Request for Production No. 130(a) (as of December 31st for each of the years 2019 through 2021);
- d. Accumulated depreciation by STB property account for all properties included within each valuation section identified in response to

Request for Production No. 130(a) (as of December 31st for each of the years 2019 through 2021);

- e. Gross values by STB property account of only those properties used by the OPPD traffic for each valuation section identified in response to Request for Production No. 130(a) (as of December 31st for each of the years 2019 through 2021);
- f. Accumulated depreciation by STB property account for all properties used by the OPPD traffic for each valuation section identified in Request for Production No. 130(a) (as of December 31st for each of the years 2019 through 2021);
- g. Total gross ton-miles of cars and contents and gross ton-miles of locomotives and cabooses traversing the entire valuation section for each valuation section identified in response to Request for Production No. 130(a) (as of December 31st for each of the years 2019 through 2021); and
- h. For each valuation section identified in response to Request for Production No. 130(a) where the properties used by the OPPD traffic are less than the total properties within the valuation section, total gross ton-miles of cars and contents and gross ton-miles of locomotives and cabooses for each valuation section identified in response to Request for Production No. 130(a) (as of December 31st for each of the years 2019 through 2021).

Request for Production No. 131

Explain how loaded cars that are switched from a railroad to the UP are categorized in the Report of Freight Commodity and Statistics (Form QCS) and in Schedule 755, Railroad Operating Statistics to the Annual Report Form R-1 filed with the Surface Transportation Board.

Request for Production No. 132

Please provide a copy of UP's technical specifications for construction and/or maintenance of industrial trackage.

Request for Production No. 133

Please produce all documents from 2007 to the present prepared by UP personnel or consultants retained by UP relating to any possible transportation of coal to NOPS involving water, truck, conveyor belt or other non-rail modes.

Request for Production No. 134

Please produce all documents from 2007 to the present relating to the feasibility of rail construction which would directly connect NOPS to the track of the BNSF in the vicinity of Omaha, Nebraska.

Request for Production No. 135

For the years 2016 to the present, produce all documents including, but not limited to, studies, analyses, reports, or projections prepared by UP personnel or consultants retained by UP relating to:

- a. The amount of power generated by OPPD's electrical generating stations;
- b. The amount of power purchased and sold by OPPD; and
- c. The economic feasibility of OPPD increasing power production at one of its power stations and decreasing power production at another station and the effect of such increases or decreases on the switching charge assessed by UP.

Request for Production No. 136

For the years 2007 to the present, please produce all documents including studies, analyses or projections prepared by UP personnel, or consultants retained by UP, relating to the ability of gas, nuclear power, or other fuels to displace coal from the Powder River Basin in Wyoming as the fuel utilized by electric utilities to produce electricity.

Request for Production No. 137

Please produce any studies, analyses and other documents in UP's possession relating to any evaluation by or for UP of the rate included in the Circular governing the OPPD move between Origin and Destination.

Request for Production No. 138

Please produce all data, analyses and other documents in UP's possession relating to any sales of UP railroad lines in the past 10 years.

Respectfully submitted,

/ss/ Thomas W. Wilcox

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
1629 K. Street NW, Suite 300
Washington, D.C. 20006
(202) 508-1065
Tom@twilcoxlaw.com

Stephen M. Bruckner
Robert W. Futhey
Fraser Stryker PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102
402.978.5225
sbruckner@fraserstryker.com

Dated: July 22, 2022

*Attorneys for Omaha Public Power
District*

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

OMAHA PUBLIC POWER DISTRICT,

Complainant,

V.

NOR 42173

UNION PACIFIC RAILROAD COMPANY.

Defendant.

UNION PACIFIC RAILROAD COMPANY'S FIRST SET OF DISCOVERY REQUESTS TO COMPLAINANT

Pursuant to 49 C.F.R. § 1114.30, Union Pacific Railroad Company (“UP”) hereby requests that Omaha Public Power District (“OPPD”) produce documents responsive to the following requests to Michael L. Rosenthal at Covington & Burling LLP, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001, as promptly as possible, and no later than August 10, 2022.

DEFINITIONS

1. “BNSF” means BNSF Railway Company.
2. “BNSF Contact” means the “new rail transportation contract with BNSF” identified in Paragraph 6 of the Complaint.
3. “Communication(s)” means any transmission or receipt of information by one or more persons and/or between two or more persons by means including but not limited to telephone conversations, letters, telecopies, electronic mail, text messages, written memoranda, and in-person conversations.
4. “Complaint” refers to the Complaint filed in the captioned docket by OPPD.

5. “Document(s)” means all types of documents that are subject to discovery under the Board’s rules at 49 C.F.R. § 1114.30(a)(1). “Document” includes every copy of a document that is not identical to the original or any other copy.

INSTRUCTIONS

1. These requests extend to any documents and information in the possession, custody, or control of OPPD, its present and former directors, officers, employees, attorneys, and any other agents or representatives.

2. Unless a different time period is specified, these requests cover the period from January 1, 2019, to the present.

3. If OPPD withholds documents on the basis of a claimed privilege or attorney work product, then for each such document, OPPD should provide the following information: the document’s date, type (*e.g.*, letter, memo, notes), author(s), addressee(s)/recipient(s), general subject matter, and the basis for withholding the document.

DOCUMENT REQUESTS

Request for Production No. 1

Produce the BNSF Contract.

Request for Production No. 2

Produce all Documents reflecting or consisting of Communications with BNSF relating to negotiation of the BNSF Contract.

Request for Production No. 3

Produce all Documents (other than the BNSF Contract) reflecting or consisting of agreements or understandings between BNSF and OPPD relating to (i) the BNSF Contract, (ii) the rate challenged in the Complaint, and/or (iii) OPPD reimbursement to BNSF for UP

charges to BNSF for handling coal between BNSF's Gibson Yard Interchange and OPPD's North Omaha Power Station.

Request for Production No. 4

Produce all bills of lading for transportation provided under (i) the BNSF Contract, and/or (ii) the rate challenged in the Complaint.

Request for Production No. 5

Produce all invoices for transportation provided under (i) the BNSF Contract, and/or (ii) the rate challenged in the Complaint.

Request for Production No. 6

Produce Documents sufficient to show "OPPD has paid 100% of the rate," as alleged in Paragraph 10 of the Complaint.

Request for Production No. 7

Produce all Documents reflecting or consisting of Communications relating to charges for transportation between BNSF's Gibson Yard and OPPD's North Omaha Power Station between (i) OPPD and BNSF, and/or (ii) OPPD and UP.

Request for Production No. 8

Produce all Documents reflecting or consisting of Communications relating to charges for transportation between origins in the Powder River Basin and OPPD's North Omaha Power Station between (i) OPPD and BNSF, and/or (ii) OPPD and UP.

CRAIG V. RICHARDSON
JAMES B. BOLES
TONYA W. CONLEY
WHITNEY C. LARKIN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

/s/ Michael L. Rosenthal
MICHAEL L. ROSENTHAL
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, D.C. 20001
(202) 662-6000

Attorneys for Union Pacific Railroad Company

July 25, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2022, I caused a copy of the foregoing document to be served by email on all parties of record in STB Docket No. NOR 42173.

/s/ Michael L. Rosenthal

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6291

CAROLYN F. CORWIN

DIRECT DIAL NUMBER

(202) 662-5338

DIRECT FACSIMILE NUMBER

(202) 778-5338

LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND

TELEPHONE: 44-(71)-495-5655
FACSIMILE: 44-(71)-495-3101

BRUSSELS OFFICE
KUNSTLAAN 44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-549-5230
FACSIMILE: 32-2-502-1598

July 24, 1997



BY HAND

Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Docket No. NOR-42006, Omaha Public Power
District v. Union Pacific Railroad Company

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket are an original and 10 copies of UP's Motion to Compel Production of Documents. Also enclosed is a 3.5-inch diskette containing the pleading in WordPerfect 5.1 format, which is capable of being read by WordPerfect for Windows 7.0. A copy of the pleading has been served on counsel for complainant.

Please file-stamp the enclosed copy of the pleading and return it to our messenger.

Thank you for your assistance.

Sincerely yours,

Carolyn F. Corwin

Carolyn F. Corwin

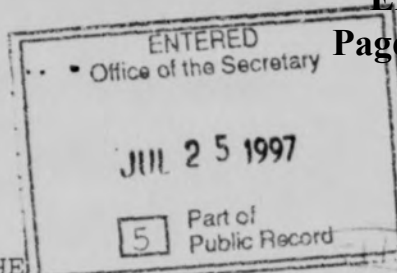
Enclosures

cc: Thomas W. Wilcox, Esq.

ENTERED	
Office of the Secretary	
JUL 25 1997	
5	Part of Public Record

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD



OMAHA PUBLIC POWER DISTRICT,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. NOR-42006

UP'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Defendant Union Pacific Railroad Company ("UP") hereby moves to compel production of documents from Complainant Omaha Public Power District ("OPPD") pursuant to 49 C.F.R. 1114.31(a). In this proceeding, OPPD challenges the charge the Burlington Northern & Santa Fe Railway ("BNSF") pays to UP for switching BNSF's coal traffic at OPPD's North Omaha Power Station ("NOPS") facility. Although UP serves the NOPS facility and has tracks running close to OPPD's Nebraska City power plant (located approximately 45 miles south of the NOPS facility), OPPD contracts with BNSF to carry coal from the Powder River Basin to both facilities. UP handles only the switching of BNSF cars over a five-mile segment of track at the NOPS facility.

OPPD has declined to provide documents relating to the movement of coal from origin to its plants. It has also refused to produce documents regarding the subjects of possible build-

- 2 -

outs from OPPD facilities and purchase of lines serving those facilities. The individual discovery requests at issue are reproduced in Parts I and II below.¹

As discussed below, both categories of disputed documents are relevant to the key issue of market dominance.² The Board cannot proceed to determine the reasonableness of any rate unless it concludes that the railroad has market dominance with respect to the transportation to which the rate applies. See 49 U.S.C. § 10701(d)(1). Here, the actual transportation in question is the movement of coal from origin to destination, not transportation over a very short segment of that movement. The Board must determine whether market forces effectively constrain UP's switch charge for OPPD's coal traffic. If UP cannot obtain

¹ A copy of OPPD's responses to UP's first set of discovery requests is attached hereto as Exhibit 1. At issue in this motion are OPPD's responses to Requests Nos. 1, 2, 3, 6, 7, 10, 12, 13, and 27. On July 22, 1997, the parties conferred regarding OPPD's failure to produce documents responsive to the requests at issue. The parties were unable to resolve their differences on the matters discussed below.

² UP will shortly file a motion to dismiss arguing that OPPD cannot pursue a challenge to UP's switch charge because (1) the traffic subject to the charge moves pursuant to contract and is therefore not within the Board's jurisdiction; (2) the switch charge is not a rate paid by OPPD, but merely a cost incurred by BNSF, and the rate paid by OPPD to BNSF, including any component of it reflecting a pass-through of the switch charge, is a matter entirely between BNSF and OPPD; and (3) even if the switching charge is viewed as a rate paid by OPPD, it is merely one factor in a through rate and may not be challenged separately from the through rate. However, the Board has made clear that a rate challenge should proceed even when a motion to dismiss has been filed. It is therefore important that UP obtain the requested discovery so that it is in a position to litigate the complaint as it has been pleaded.

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OPPD documents regarding all aspects of the market conditions relating to the transportation of OPPD's coal and the alternatives available to OPPD, UP will be seriously hampered in its ability to demonstrate that it lacks market dominance.

As UP will need relevant documents in order to conduct efficient depositions of OPPD's witnesses, and as the period allowed for discovery under the Board's rules ends September 3, UP is requesting an expedited decision on this motion and an order that OPPD produce responsive documents by August 12, 1997 at the latest.

I. OPPD SHOULD BE COMPELLED TO PRODUCE DOCUMENTS REGARDING
MARKET CONDITIONS RELATING TO MOVEMENT OF COAL TO ITS
FACILITIES

The Board should require OPPD to produce certain categories of documents regarding market conditions relating to movement of coal to OPPD's plants. Each of the requests at issue is unobjectionable and calls for highly relevant information.

UP's First Set of Discovery Requests includes requests for the following categories of documents:

(a) All contracts entered into since January 1, 1980 for the transportation of coal to NOPS and all amendments thereof, and all documents relating to the competition or bidding for or negotiation of such contracts and amendments (Request No. 1);

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(b) All documents relating to the competition or bidding between railroads for NOPS traffic that led to contract ICC-BN-C-2205 (Request No. 2);

(c) All contracts entered into since January 1, 1980 for the transportation of coal to complainant's Nebraska City plant and all amendments thereof, and all documents relating to the competition or bidding for or negotiation of such contracts and amendments (Request No. 3);

(d) With respect to the rail transportation of coal to NOPS since UP began serving NOPS, payments made to each rail carrier for such transportation during each calendar quarter to date, and the rate or rates in effect during the quarter (Request No. 6);

(e) With respect to the rail transportation of coal to OPPD's Nebraska City plant, payments made to each rail carrier for such transportation during each calendar year to date, and the rate or rates in effect during the quarter (Request No. 7); and

(f) All documents relating to the possible transportation of coal to NOPS from any origin by a line-haul rail carrier other than BNSF (Request No. 10).

OPPD has declined to produce these documents, in each case asserting objections based on relevance, overbreadth and

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burden.³ OPPD also objects to production on the basis that some of the documents are confidential and may not be produced without BNSF's permission, and on the basis that OPPD should not be required to produce documents dated prior to January 1, 1985.

The documents in question are clearly relevant to the issues in this proceeding. As noted above, the threshold jurisdictional issue in this coal rate challenge is whether UP possesses market dominance with respect to the transportation in question. Paragraph 12 of OPPD's complaint alleges that "UP possesses 'market dominance' over Complainant's coal traffic." UP disputes this allegation and will seek to show that its charges are constrained by market forces.⁴ Information on the bidding for OPPD's coal traffic, the terms of contracts OPPD actually entered into, the amounts OPPD has paid for transportation of its coal, and other information on OPPD's alternatives

³ As indicated in its responses, in connection with Requests Nos. 1, 2 and 3, OPPD has agreed to produce only the single section of its current contract with BNSF -- the section that governs payment of the UP switch charge -- and any documents related to negotiation of that section. It has redacted the remainder of the contract. In response to Requests Nos. 6 and 7, OPPD has agreed to produce only responsive information relevant to the switching movement and information on routes and trains for other line-haul movements. It has refused to produce information responsive to Requests 6(b) and (c) and 7(a) and (b) with respect to any line-haul movements of coal to its facilities.

⁴ Indeed, it is difficult to imagine that UP could be found to possess market dominance with respect to the transportation of OPPD's coal when it is BNSF, not UP, which, in vigorous competitive bidding in 1985-86, won the contract, which continues in effect today, for the transportation of coal from the Powder River Basin to OPPD's facilities.

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for movement of its coal is obviously relevant to whether UP possesses market dominance as to that traffic.

OPPD presumably will argue that it is challenging only the charge UP assesses for switching BNSF cars to OPPD, and that the requested documents relate to the line-haul coal movement, not to the switch movement. See, e.g., OPPD's Response to Request No. 10. Even if OPPD were entitled to pursue a challenge to UP's switch charge separate from the through rate (and we shall show in our motion to dismiss that it is not), it cannot confine the market dominance inquiry so narrowly. In order to determine whether UP has market dominance with respect to any aspect of the transportation of OPPD's coal, the Board must consider the alternatives available to OPPD and the leverage it is able to exert in its relationship with UP. UP is entitled to investigate all aspects of this relationship, including the origin-to-destination competition between UP and BNSF that OPPD enjoys at each of its plants and the terms on which BNSF won the contract for the transportation of OPPD's coal.⁵

⁵ The Interstate Commerce Commission previously required production of documents regarding line-haul alternatives in the context of a challenge to a switch charge. In a proceeding involving a switch charge assessed by Southern Pacific, the Commission held that SP was entitled to discovery of line-haul information concerning the traffic it switched. No. 40178 (Sub-Nos. 1, 2, 3), SP/SSW Switching Charges on Carloads of Grain at Kansas City, Reciprocal Switching Charges, Southern Pacific System, Switching Charges, Inclusion of Additional Carriers, Etc., Decision served Oct. 17, 1989, p. 2. The Commission recognized that SP needed such discovery in order to show that there were effective constraints on its switch fees. Id. Likewise, information on OPPD's contracts for the line-haul

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In fact, OPPD's initial production of documents appears to reflect a recognition that documents concerning line-haul movements are relevant. While it has redacted, or failed to produce, all documents relating to the current BNSF contract (except for the short section of the contract relating to the UP switching charge), OPPD has produced a number of documents reflecting BNSF bids and contracts for individual line-haul movements of OPPD traffic in the first part of the 1980s, before it entered into the current contract. This selective production suggests that OPPD is prepared to produce some documents relating to line-haul movements, but only those that are consistent with its litigation interests.

OPPD may also argue that documents regarding transportation of coal to its Nebraska City plant are not relevant because it challenges only the switch charge at the NOPS facility. However, the same railroads (BNSF and UP) are competitors for OPPD's traffic at both facilities, and OPPD's alternatives for transportation of coal to Nebraska City clearly contribute to its overall leverage in its dealings with UP. Thus, documents relating to Nebraska City are likely to be relevant to UP's argument that it lacks market dominance. It is particularly important that OPPD be required to produce these documents, because UP has the burden of producing evidence

movement of its coal and the negotiations leading up to those contracts will help to establish that there are effective constraints on the amount UP can charge for switching at NOPS.

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regarding the existence of geographic competition in its initial evidentiary filing. UP will want to show that OPPD has the ability to shift production to a different facility served by a competing railroad. Documents regarding transportation of coal to the Nebraska City facility are most likely to yield such evidence.

OPPD's objections on grounds other than relevance are also without merit.⁶ The requests at issue are clear and focused, and OPPD should be able to locate the relevant files without significant difficulty. While a response to the requests may require the production of a significant number of documents, this is because the subject of market dominance has a broad scope. Because UP has a strong need for such documents in order to help construct its market dominance defense, the requests cannot be regarded as either overly broad or unduly burdensome. The Board should order production of the requested documents.

⁶ In view of the protective order the Board has entered in this proceeding and the strong need for the requested discovery in a case of this kind, there is no basis for objections based on confidentiality. The requests for contracts and related documents going back to 1980 are justified in view of the long-term nature of many coal transportation contracts, including OPPD's current 13-year contract with BNSF. Moreover, documents covering the period 1980 to the present would provide a more complete picture of commercial developments during the post-Staggers Act era.

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II. OPPD SHOULD BE COMPELLED TO PRODUCE DOCUMENTS RELATING TO
POTENTIAL BUILD-OUT OR LINE PURCHASE OPTIONS AVAILABLE TO IT

The Board should also require production of several categories of documents relating to options OPPD may have to build out to another railroad or to purchase the line UP uses to switch cars at the NOPS facility. Such documents are highly relevant to the question of market dominance, and the requests are otherwise unobjectionable.

UP's First Set of Discovery Requests seeks the following categories of documents:

(a) Documents relating to a possible build-in/build-out from NOPS to the lines of BNSF (Request No. 8);

(b) Documents relating to the proposed build-out from OPPD's Nebraska City plant (Request No. 12);

(c) Documents relating to possible purchase by OPPD from BNSF of BNSF's line to OPPD's Nebraska City plant (Request No. 13);

(d) Documents relating to the possible purchase of, or obtaining of trackage rights over, UP's line serving NOPS (Request No. 23); and

(e) All studies, reports or analyses of rail build-out costs generally (Request No. 27).

OPPD objects to each of these requests on the ground of undue burden and, except in the case of Request No. 8, on the

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ground of relevance.⁷ OPPD asserts that it has located no documents responsive to Request Nos. 8 and 23.⁸

Documents regarding a possible build-out or a line purchase opportunity by this very shipper are highly relevant to the issue of whether UP possesses market dominance with respect to OPPD's coal traffic. If OPPD could and would, in the event it found UP's switch fee excessive, build out from NOPS to BNSF's line, or purchase or obtain trackage rights on UP's track serving NOPS, this would tend to show that UP lacks market dominance as to the NOPS traffic. Requests Nos. 12 and 13 seek production of documents relating to consideration of both a build-out and a line purchase at OPPD's nearby Nebraska City plant. Such documents are likely to shed light on the options currently available to OPPD at its NOPS facility, and on how OPPD would evaluate and act on those options.

Request No. 12 relates to OPPD's decision in the 1980s to build out to a UP line at its Nebraska City plant in order to

⁷ OPPD counsel has agreed to reconsider OPPD's objections to Request No. 27, but has not yet provided a response on this point. OPPD counsel has agreed to produce any documents responsive to Request No. 9, which relates to a prior build-out that occurred at the NOPS facility.

⁸ It is difficult to understand why OPPD would have no documents responsive to these requests. If OPPD truly believed the UP switch fee was unreasonably high and that it was being injured as a result, it would presumably have engaged in some consideration of a possible build-out to BNSF, the purchase of UP's line serving NOPS, or negotiation of trackage rights over that line. However, UP accepts the representation of OPPD's counsel that no such documents exist.

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obtain two-railroad competition for that facility. Request No. 13 relates to OPPD's possible purchase of BNSF's line serving OPPD's Nebraska City plant. Both requests involve a serious and well-publicized effort by OPPD to gain service by a second railroad to its Nebraska City plant, located approximately 45 miles south of the NOPS facility. OPPD obtained ICC approval for construction of the proposed build-out line. See Finance Docket No. 32630, Omaha Public Power District -- Construction Exemption -- in Otoe County, NE, Decision served November 30, 1995. Reports in the public press indicate that BNSF ultimately agreed to sell OPPD its line serving the Nebraska City plant, and that the build-out plans were set aside. Evidence that OPPD regarded a build-out and purchase of the line of the incumbent railroad as realistic means of gaining two-railroad service at its Nebraska City plant, and evidence regarding how OPPD went about evaluating and acting on those options, is certainly relevant to the question whether OPPD could and would take similar steps to limit UP's ability to impose charges at the NOPS facility.

Request No. 27 requests analyses of rail build-out costs. Such documents are relevant to whether a build-out from the NOPS facility is feasible and is regarded by OPPD as feasible, and thus constitutes a realistic check on any market power UP could otherwise exercise in connection with the NOPS traffic.

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There is no basis for objections based on overbreadth or burden. Each of Requests Nos. 12, 13 and 27 call for documents on a discrete subject. The requested documents should be easy to locate. OPPD should be ordered to provide the documents in question.

III. AN EXPEDITED DECISION IS NEEDED SO THAT DEPOSITION
DISCOVERY MAY PROCEED

UP requests an expedited decision on this motion to compel in view of the limited period provided for conduct of discovery. Under the Board's procedural schedule set out in 49 C.F.R. § 1111.8, discovery in this case must be completed by September 3. UP has noticed depositions of a number of OPPD witnesses for dates between August 19 and September 2. In order for these depositions to be meaningful, it will be important for UP to have all OPPD documents relating to market dominance issues at least by mid-August. In order to meet this schedule, UP's motion must be acted on by early August, and OPPD must comply very promptly with any order to produce documents.

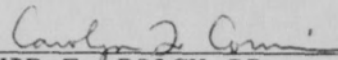
CONCLUSION

Requests Nos. 1, 2, 3, 6, 7, 10, 12, 13, and 27 of UP's First Set of Discovery Requests call for documents that are clearly relevant to the issue of market dominance. OPPD has not shown why production of these documents would be unduly burdensome, particularly in view of their importance to UP's defense on this key issue. The motion to compel should be granted, and OPPD

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should be ordered to produce responsive documents no later than
August 12, 1997.

Respectfully submitted,


ARVID E. ROACH II
CAROLYN F. CORWIN
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-6000

JAMES V. DOLAN
LOUISE A. RINN
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-4227

Attorneys for Defendant Union
Pacific Railroad Company

July 24, 1997

EXHIBIT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____	)	
OMAHA PUBLIC POWER DISTRICT,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR-42006
	)	
UNION PACIFIC RAILROAD COMPANY)	)	
	)	
Defendant.	)	
_____	)	

COMPLAINANT'S OBJECTIONS AND RESPONSES TO
UP'S FIRST SET OF DISCOVERY REQUESTS

Complainant Omaha Public Power District ("OPPD") hereby responds to Defendant Union Pacific Railroad Company's ("UP") First Set of Discovery Requests, served on OPPD by UP on June 27, 1997.

Generally Applicable Responses

1. OPPD has conducted a reasonable search of its files for documents responsive to UP's document requests. Subject to the general and specific objections hereinafter set forth, all responsive documents either have been produced or will be produced in the near future by making such materials available for inspection and copying by UP at the offices of OPPD's undersigned Washington counsel. Copies of all materials

will be provided upon payment of duplication costs.

2. Certain information and documents responsive to UP's interrogatories and document requests are confidential and commercially sensitive. To the extent such information and documents are produced in this proceeding, OPPD will produce such information and documents upon the Surface Transportation Board's approval of the protective order jointly submitted by the parties on July 8, 1997.

3. OPPD does not object to UP's election to forego supplying verifications for its answers to OPPD's interrogatories, and has similarly not supplied verifications for the written answers to UP's requests provided herein. OPPD concurs that the parties may discuss the need for verification of individual responses, as appropriate.

General Objections

Each of the responses to individual interrogatories and document requests posed by UP set forth below are subject to the following general objections. These general objections apply and are in addition to the specific objections to each of UP's individual requests.

1. OPPD objects to the production of documents which are and information which is subject to the attorney-client privilege.
2. OPPD objects to the production of documents which are and information which

is subject to the work product doctrine.

3. OPPD objects to the production of documents which are and information which is in the possession and control of UP.

4. OPPD objects to the production of documents which are or information which is readily obtainable from public sources, in particular the Surface Transportation Board and from publications in general circulation.

5. CPPD objects to the production of documents which are or information which is related to settlement discussions between the parties or to negotiations between OPPD, BNSF and UP regarding transportation arrangements to succeed ICC BN-C-2205.

6. OPPD objects to the definitions of "identify" and "relating to" as being overbroad and unduly burdensome.

7. OPPD objects to UP's interrogatories and document requests to the extent they seek the production of documents dated prior to January 1, 1985.

Responses to Individual Interrogatories
and Document Production Requests

Request No. 1

Produce all contracts entered into since January 1, 1980 for the transportation of coal to NOPS and all amendments thereof, and all documents relating to the

competition or bidding for or negotiation of such contracts and amendments.

Response

OPPD objects to this request to the extent it is not reasonably calculated to lead to the discovery of evidence which is admissible in this proceeding. OPPD also objects to this request to the extent it is vague and unduly burdensome. OPPD also objects to this request because it would require the disclosure to UP and/or its counsel of confidential contract provisions that have no bearing on the issues presented in this proceeding and that would require the permission of BNSF prior to disclosure. OPPD also objects to this request to the extent it seeks documents dated prior to January 1, 1985. Subject to these objections, OPPD is producing or will in the near future produce to defendant the section of ICC-BN-C-2205 governing the payment of the charge assessed by UP under Tariff UP 8005-D (item 3650) for moving trains from UP's interchange with BNSF in Omaha to NOPS, as well as documents related to the negotiation of that section. Moreover, OPPD stands ready to meet with UP counsel to discuss a mutually acceptable means by which to narrow UP's Request No. 1 to accommodate the interests and concerns of both parties.

Request No. 2

All documents relating to the competition or bidding between railroads for NOPS traffic that led to contract ICC-BN-C-2205.

Response

See Response to Request No.1

Request No. 3

Produce all contracts entered into since January 1, 1980 for the transportation of coal to complainant's Nebraska City plant and all amendments thereof, and all documents relating to the competition or bidding for or negotiation of such contracts and amendments.

Response

See Response to Request No.1

Request No. 4

Has complainant at any time paid a switch fee directly to defendant for the delivery of coal traffic to NOPS? If your response is "yes," produce all documents relating to such payments.

Response

OPPD objects to Request No. 4 to the extent it is overbroad. Subject to this objection, a reasonable search of OPPD's files does not indicate that OPPD has directly paid UP the switch charge assessed in Tariff UP 8005-D (item 3650).

Request No. 5

Produce all documents since defendant began serving NOPS relating to defendant's switch fee for the delivery of coal to NOPS, including but not limited to:

- (a) all communications with BNSF concerning the amount of such fees, BNSF's absorption in whole or in part of such fees, payments by complainant to BNSF to defray in whole or in part BNSF's costs of paying such fees, the effect of such fees on the rate to be charged by BNSF, or other matters regarding such fees;
- (b) all tariffs setting forth such fees;
- (c) any other documents evidencing or discussing the amount of such fees;
- (d) documents evidencing or discussing BNSF's absorption in whole or in part of such fees;
- (e) documents evidencing or discussing payments by complainant to BNSF to defray in whole or in part BNSF's costs of paying such fees; and
- (f) all studies, reports or analyses regarding such fees.

Response

OPPD objects to Request No. 5 to the extent it is, vague, overbroad and unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, OPPD is producing or will in the near future produce to UP documents responsive to this request.

Request No. 6

With respect to the rail transportation of coal to NOPS since defendant began serving NOPS, please provide, for each calendar quarter to date,

- (a) each route used;
- (b) the total dollar amount of payments made to each rail carrier for such transportation during the quarter;
- (c) the rate or rates in effect during the quarter; and
- (d) the number of trains, cars and net tons of coal received during the quarter.

Response

OPPD objects to Request No. 6 to the extent it is vague, overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to the extent this request would require the disclosure of confidential contract information that is irrelevant to the issues presented by

OPPD's Complaint, and that would require the permission of BNSF prior to disclosure. Subject to the foregoing, OPPD is producing or will in the near future produce documents responsive to subparagraphs 6(a) through (d) for the movement of OPPD's coal by UP from the Omaha Interchange to NOPS, and for 6(a) and (d) for the movement of OPPD's coal from origin mines to the Omaha Interchange. Furthermore, in response to 6(a), coal trains destined for NOPS travel from mines in the Powder River Basin to Alliance, NE; to Lincoln, NE; to Omaha, NE (BN's Gibson Yard); where they are switched by UP to NOPS.

Request No. 7

With respect to the rail transportation of coal to complainant's Nebraska City plant, please provide, for each calendar quarter from January 1, 1980 to date,

- (a) the total dollar amount of payments made to each rail carrier for such transportation during the quarter;
- (b) the rate or rates in effect during the quarter; and
- (c) the number of trains, cars and net tons of coal received during the quarter.

Response

OPPD objects to Request No. 7 to the extent it is vague, overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible

evidence. OPPD also objects to the extent this request would require the disclosure of confidential contract information that is irrelevant to the issues presented by OPPD's Complaint, and that would require the permission of BNSF prior to disclosure. Subject to these objections, OPPD is producing or will in the near future produce documents responsive to 7(c).

Request No. 8

All documents relating to a possible build-in/build-out from NOPS to the lines of BNSF, including but not limited to:

- (a) all communications with BNSF regarding such a possible build-in/build-out; and
- (b) all documents regarding the cost, feasibility, or effectiveness as a competitive constraint on rail rates of such a possible build-in/build-out.

Response

OPPD objects to Request No. 8 to the extent it is vague and unduly burdensome. Subject to these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 9

All documents, without regard to date, relating to the construction of track to

connect NOPS to defendant in the 1970s, including but not limited to documents regarding:

- (a) anticipated savings from such construction;
- (b) the cost, feasibility, or effectiveness as a competitive constraint on rail rates of such construction; and
- (c) who contributed what amounts to the cost of such construction.

Response

OPPD objects to Request No. 9 to the extent it is overbroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence. A determination of whether any documents responsive to this request are in OPPD's files would require a substantial amount of time and energy, as this request on its face covers documents which are nearly 30 years old. Prior to making such a search, OPPD requests that UP provide OPPD with an explanation of the purported relevance and need for such materials in this proceeding.

Request No. 10

All documents relating to the possible transportation of coal to NOPS from any origin by a line-haul rail carrier other than BNSF.

Response

OPPD objects to Request No. 10 to the extent it seeks information which is not

reasonably calculated to lead to the discovery of admissible evidence. This request is also vague and repetitive in that it seeks information covered by previous requests. Whether there is or has been competition between BNSF and UP (or other carriers) for the movement of OPPD's traffic from origin mines to the Omaha Interchange for final delivery to NOPS is not a disputed issue in this case.

Request No. 11

All documents relating to any possible transportation of coal to NOPS involving water, truck, conveyor belt or other non-rail modes.

Response

OPPD objects to Request No. 11 to the extent it is unduly burdensome. Subject to this objection, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 12

All documents relating to the proposed build-out from complainant's Nebraska City plant.

Response

OPPD objects to Request No. 12 to the extent it is vague, overbroad, and

unduly burdensome. OPPD also objects to this request to the extent it seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to the extent this request seeks information that is the subject of ongoing confidential negotiations between OPPD and BNSF.

Request No. 13

All documents relating to the possible purchase by complainant from BNSF of BNSF's line to complainant's Nebraska City plant.

Response

OPPD objects to Request No. 13 to the extent it is vague, overbroad, and unduly burdensome. OPPD also objects to this request to the extent it seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to the extent this request seeks information that is the subject of ongoing confidential negotiations between OPPD and BNSF.

Request No. 14

What is the anticipated life of NOPS? State the basis for your answer, including but not limited to annual output projections. Produce all documents relating to the anticipated life of NOPS and its projected output.

Response

OPPD objects to Request No. 14 to the extent it is vague and overbroad. Subject to these objections, OPPD responds that the useful life of NOPS extends at least until 2016. OPPD is providing or will produce in the near future materials responsive to this request.

Request No. 15

If complainant contends that a different cost of capital than the railroad industry cost of capital should have been used for the development of stand-alone costs in this case, state:

- (a) what cost of capital complainant contends should be used;
- (b) the basis for complainant's contention; and
- (c) the cost of capital of complainant.

Produce all documents relating to these subjects.

Response

OPPD objects to Request No. 15 to the extent it is vague, particularly the use of the term "the railroad industry cost of capital." Subject to this objection, OPPD states that it is currently evaluating the options available regarding the cost of capital applicable in a stand-alone cost presentation pursuant to the Interstate Commerce

Commission's decision served September 3, 1985 in Ex Parte No. 347 (Sub-No. 1),
Coal Rate Guidelines — Nationwide.

Request No. 16

State, by non-coal generation source, the amount of power generated by complainant from non-coal sources in each year since 1979 and projected to be generated in each year in the future for which complainant has made projections, and the cost of such power. Produce all documents relating to projections by any person of future generation of power by complainant from non-coal sources, and the cost of such power, and all documents relating to the feasibility and potential benefits of, or any plans for, such generation of power from non-coal sources.

Response

OPPD objects to Request No. 16 to the extent it is overbroad, and unduly burdensome. Subject to these objections, OPPD is producing or will produce in the near future documents responsive to this request.

Request No. 17

State, by seller, the amount of power purchased by complainant in each year since 1979 and projected to be purchased in each year in the future for which

complainant has made projections, and the cost of such power. Produce all documents relating to projections by any person of future purchases of power by complainant, and the cost of such power, and all documents relating to the feasibility and potential benefits of, or any plans for, such purchases.

Response

OPPD objects to Request No. 17 to the extent it is overbroad, and unduly burdensome. Subject to these objections, OPPD is producing or will produce in the near future documents responsive to this request.

Request No. 18

State, by purchaser, the amount of power sold by complainant to other power producers or to power wholesalers in each year since 1979 and projected to be sold to such persons in each year in the future for which complainant has made projections, and the price of such power. Produce all documents relating to projections by any person of future such sales of power by complainant, and the cost of such power, and all documents relating to the feasibility and potential benefits of, or any plans for, such sales.

Response

OPPD objects to Request No. 18 to the extent it is overbroad, and unduly

burdensome. Subject to these objections, OPPD is producing or will produce in the near future documents responsive to this request.

Request No. 19

Produce all documents relating to whether to increase power output at one of complainant's plants and decrease it at another, and to the feasibility and potential benefits of, or any plans for, doing so, including but not limited to documents relating to the potential effect of such decisions on rail rates or negotiations concerning rail rates.

Response

OPPD objects to Request No. 19 to the extent it is vague, overbroad, and unduly burdensome. Subject to these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 20

Produce OPPD's 1997 Integrated Resource Plan, and all similar plans.

Response

OPPD objects to Request No. 20 as vague and overbroad through its use of the term "all similar plans." Subject to this objection, OPPD is producing or will produce in the near future its 1997 Integrated Resource Plan.

Request No. 21

All documents relating to possible access to NOPS by a railroad other than defendant through construction, trackage rights, transportation in conjunction with a non-rail mode, ratemaking authority, or any other means, including but not limited to communications with any railroad on such subject.

Response

OPPD objects to Request No. 21 to the extent it is vague, overbroad, and repetitive of previous requests. Subject to these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 22

Produce all documents evidencing or describing train movements to NOPS since defendant began to serve NOPS.

Response

OPPD objects to Request No. 22 to the extent it is vague, overbroad and unduly burdensome. Subject to these objections, OPPD is producing or will produce in the near future documents responsive to this request.

Request No. 23

Produce all documents relating to the possible purchase of, or obtaining of trackage rights over, the line of defendant serving NOPS by NOPS or any other person.

Response

OPPD objects to Request No. 23 to the extent it is vague, overbroad, and repetitive of previous requests. Subject these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 24

State, for each generating plant of complainant for each year from 1985 to date, the plant's:

- (a) cost per kilowatt hour of generating power;

- (b) cost of fuel;
- (c) generating capacity; and
- (d) actual power generation.

Response

OPPD objects to Request No. 24 to the extent it is vague, overbroad and unduly burdensome. OPPD particularly objects to 24(b) because it vaguely requests "cost of fuel," which could be read to request disclosure of actual rail rates, which OPPD has objected to for the reasons of admissibility, relevance, and confidentiality discussed herein above. Subject to these objections, OPPD is producing or will in the near future produce documents responsive to this request.

Request No. 25

Produce all documents relating to the possibility of reconfiguring NOPS or any other generating plant of complainant to utilize, in whole or in part, a different type of coal or a different fuel.

Response

OPPD objects to Request No. 25 to the extent it is vague, overbroad, and unduly burdensome. Subject to these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 26

Produce, for the year 1979 to date, all fuel procurement and transportation data submitted by or on behalf of complainant to the Federal Energy Regulatory Commission on Form 580, including all exhibits and attachments thereto.

Response

OPPD objects to Request No. 26 to the extent it is vague and overbroad. Subject to these objections, OPPD responds that it is a public entity that is exempt from filing Form 580 with the Federal Energy Regulatory Commission.

Request No. 27

Produce all studies, reports or analyses of rail build-out costs.

Response

OPPD objects to Request No. 27 to the extent it is vague and overbroad and not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to this request because it merely repeats previous requests posed by UP.

Request No. 28

Identify the three present or former employees of complainant who are most

familiar with the following matters:

- (a) the competition or bidding for and negotiation of contract ICC-BN-C-2205;
- (b) the accounting records relating to complainant's payments to BNSF under said contract;
- (c) the computation and verification of such payments;
- (d) the accounting records relating to complainant's payments to BNSF for the transportation of coal to complainant's Nebraska City plant;
- (e) the computation and verification of such payments;
- (f) the physical movement of coal trains to NOPS;
- (g) any alleged payment of a switch fee directly to defendant for the delivery of coal traffic to NOPS;
- (h) BNSF's absorption in whole or in part of defendant's switch fee for the delivery of coal to NOPS;
- (i) payments by complainant to BNSF to defray in whole or in part BNSF's costs of paying defendant's switch fee for the delivery of coal to NOPS;
- (j) the effect of defendant's switch fee for the delivery of coal to NOPS on the rate to be charged by BNSF;
- (k) tariffs setting forth defendant's switch fee for the delivery of coal to NOPS;
- (l) a possible build-in/build-out from NOPS to the lines of BNSF;
- (m) the construction of track to connect NOPS to defendant in the 1970s;
- (n) the possible transportation of coal to NOPS from any origin by a line-haul rail carrier other than BNSF;

(o) any possible transportation of coal to NOPS involving water, truck, conveyor belt or other non-rail modes;

(p) the proposed build-out from complainant's Nebraska City plant;

(q) the possible purchase by complainant from BNSF of BNSF's line to complainant's Nebraska City plant;

(r) the anticipated life of NOPS;

(s) the cost of capital of NOPS;

(t) the generation of power by complainant from non-coal sources, and the cost of such power;

(u) the purchase of power by complainant, and the cost of such power;

(v) the sale of power by complainant to other power producers or to power wholesalers, and the price of such power;

(w) whether to increase power output at one of complainant's plants and decrease it at another;

(x) possible access to NOPS by a railroad other than defendant through construction, trackage rights, transportation in conjunction with a non-rail mode, ratemaking authority, or any other means;

(y) records evidencing or describing train movements to NOPS since defendant began to serve NOPS;

(z) the possible purchase of, or obtaining of trackage rights over, the line of defendant serving NOPS by NOPS or any other person;

(aa) the cost per kilowatt hour of generating power, cost of fuel, generating capacity, and actual power generation of each of complainant's generating plants; and

(bb) the possibility of reconfiguring NOPS or any other generating plant of complainant to utilize, in whole or in part, a different type of coal or a different fuel.

Response:

OPPD objects to individual subparagraphs of Request No. 28 to the extent they are vague, over broad and not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to this request to the extent it contemplates the disclosure of confidential contract information which is unrelated to the issues presented by OPPD's complaint and would require the permission of BNSF prior to such disclosure. Subject to these objections, OPPD responds that the following persons are most familiar with the matters listed in this request:

Dan D. Kloock - Division Manager, Fuels

Ron T. Boro - Manager, Fossil Fuels

David C. Dietz - Manager, System Operations

Request No. 29

To the extent that any person other than complainant has or has had an ownership interest in or entitlement to any portion of the power output of NOPS or any other plant of complainant, for each plant and for each year from 1979 to date identify that person and state the percentage of that ownership or entitlement.

Response

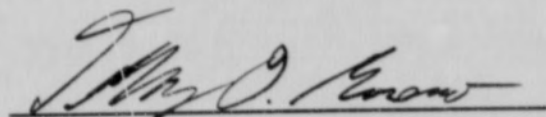
No person other than OPPD has or has had an ownership interest in or entitlement to any portion of the power output of NOPS or any other plant of OPPD.

Request No. 30

To the extent that complainant has or has had a partial ownership interest in any generating plants operated by any other person, for each plant and for each year from 1979 to date, identify that plant and state the percentage ownership interest.

Response

OPPD does not and has not had a partial ownership interest in any generating plants operated by any other person.



Thomas W. Wilcox
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC 20005

July 14, 1997

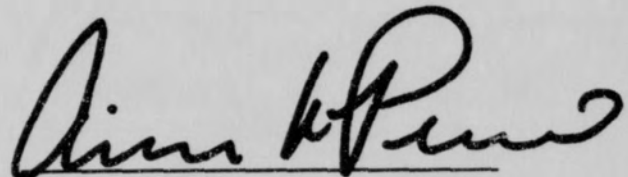
CERTIFICATE OF SERVICE

I hereby certify that I have on this 14th day of July, 1997, served a copy of the foregoing COMPLAINANT'S OBJECTIONS AND RESPONSES TO UP'S FIRST SET OF DISCOVERY REQUESTS by hand delivery on the following persons:

Arvid E. Roach II, Esquire
Carolyn F. Corwin, Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20044-7566

And also by facsimile and first-class mail on the following persons:

James V. Dolan, Esquire
Louise A. Rinn, Esquire
Union Pacific Railroad
1416 Dodge Street
Room 830
Omaha, NE 68179

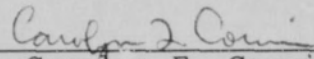


Aimee L. DePew

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 1997, I caused a copy of the foregoing Motion to Compel Production of Documents to be sent by messenger to:

Thomas W. Wilcox, Esq.
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue N.W.
Suite 750
Washington, D.C. 20005



Carolyn F. Corwin

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N. W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000
FACSIMILE: (202) 662-6291

CAROLYN F. CORWIN
DIRECT DIAL NUMBER
(202) 662-5338
DIRECT FACSIMILE NUMBER
(202) 778-5338

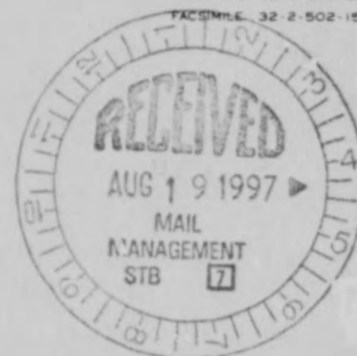
LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
TELEPHONE: 44-171-495-5656
FACSIMILE: 44-171-495-3101
BRUSSELS OFFICE
KUNSTLAAN 44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-549-5230
FACSIMILE: 32-2-502-1598

August 19, 1997

BY HAND

Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

I



Re: Docket No. NOR-42006, Omaha Public Power
District v. Union Pacific Railroad Company

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket are an original and 10 copies of UP's Further Motion to Compel Production of Documents.

Also enclosed is a 3.5-inch diskette containing the pleading in WordPerfect 5.1 format, which is capable of being read by WordPerfect for Windows 7.0.

Please file-stamp the enclosed copy of the pleading and return it to our messenger.

Thank you for your assistance.

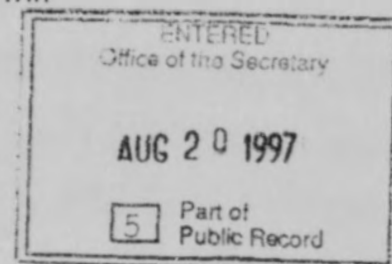
Sincerely yours,

Carolyn F. Corwin

Carolyn F. Corwin

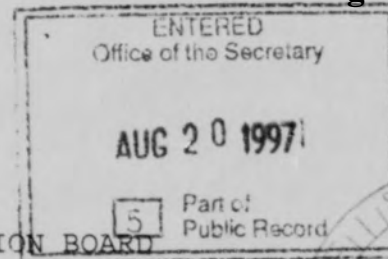
Enclosures

cc: Thomas W. Wilcox, Esq.



EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD



OMAHA PUBLIC POWER DISTRICT,
Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,
Defendant.

Docket No. NOR-42006

UP'S FURTHER MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Defendant Union Pacific Railroad Company ("UP") hereby moves to compel production of additional documents from Complainant Omaha Public Power District ("OPPD") pursuant to 49 C.F.R. § 1114.31(a). On July 24, 1997, UP filed an initial motion to compel production of certain documents requested in UP's first set of discovery requests. This further motion to compel seeks production of documents requested in UP's second set of discovery requests, served on July 25, 1997.¹

UP's initial motion to compel sets out the background facts relevant to this motion, and the Board is respectfully referred to that discussion. Briefly, OPPD's complaint challenges the reasonableness of a switch fee UP charges to the

¹ OPPD filed its responses and objections on August 11, 1997. The parties conferred regarding OPPD's objections on August 14, 1997, but failed to reach agreement on the issues addressed in this motion. This motion is thus timely under 49 C.F.R. § 1114.31(a).

- 2 -

Burlington Northern Santa Fe Railway ("BNSF") for switching of cars carrying coal to OPPD's North Omaha Power Station ("NOPS"). OPPD's complaint alleges (at ¶ 12) that UP has market dominance with respect to that traffic. The Board's threshold inquiry into the market dominance issue will entail an examination of the degree to which UP faces effective competition with respect to the NOPS coal traffic.

In its initial motion to compel, UP argued that OPPD should be required to produce documents regarding its negotiations for a long-term coal transportation contract and the contract it ultimately awarded to BNSF for transportation of coal to OPPD's NOPS and Nebraska City facilities because such documents were likely to shed light on whether UP possesses market dominance with respect to the OPPD traffic. UP also argued that OPPD should be compelled to produce documents relating to potential build-out or line purchase options available to it, including documents relating to its decision to pursue similar options to gain access to a second railroad at its Nebraska City plant, again because such documents would be relevant to the issue of market dominance.

In its response to UP's second set of discovery, OPPD declines to produce additional categories of documents that are clearly relevant to the market dominance issue. OPPD also refuses to produce documents that would shed light on its cost expert's views on appropriate stand-alone cost ("SAC")

- 3 -

methodology.² The requests at issue (which are reproduced in Parts I, II, and III below) seek information of relevance to this proceeding, and they are neither burdensome nor objectionable on any other ground. This further motion to compel, like UP's initial motion, should be granted.

Because UP will begin deposing OPPD witnesses during the last week in August,³ it requests an expedited decision on this motion and an order that OPPD produce responsive documents by August 25, 1997, at the latest.

I. OPPD SHOULD BE COMPELLED TO PRODUCE DOCUMENTS REGARDING ITS PRIOR NEGOTIATIONS WITH UP AND ITS CONSIDERATION OF UP AND BNSF FOR TRANSPORTATION OF ITS COAL

UP's Second Set of Discovery Requests includes requests for the following categories of documents:

(a) All documents relating to OPPD's negotiations with UP for the transportation of coal to NOPS or any other OPPD facility (Request No. 1); and

(b) All documents relating to OPPD's consideration of either UP or BNSF for the transportation of coal to NOPS or any other OPPD facility (Request No. 2).⁴

² A copy of OPPD's responses and objections to UP's second set of discovery requests is attached hereto as Exhibit A.

³ Originally, UP had hoped to begin its depositions of OPPD witnesses on August 19. However, OPPD advised that it was unable to commit to produce any of its witnesses during the week of August 18.

⁴ UP originally believed that these two requests were encompassed within Requests 1-3 of its first set of discovery (continued...)

- 4 -

The documents requested are clearly relevant to the question whether UP has market dominance with respect to OPPD's coal traffic. Documents concerning OPPD's negotiations with UP will help to show whether UP faces effective competition with respect to OPPD traffic. Even if the focus of this proceeding is only on the five-mile segment of UP track between NOPS and BNSF's line, documents relating to OPPD's consideration of UP and BNSF for transportation of its coal should shed light on whether OPPD has effective competitive options that constrain UP's ability to increase its switch fee.

OPPD's reply to UP's initial motion to compel suggests that it believes that the Board's bottleneck decisions support the position that discovery touching on traffic subject to contract is inappropriate in the context of a challenge to a switch fee for that traffic at destination. However, the bottleneck decisions say nothing about the proper scope of discovery in a rate reasonableness case. UP and other railroad appellants are currently challenging the Board's holding regarding its jurisdiction to review separately for reasonableness common carrier rate factors that are combined with contract rate factors

⁴(...continued)
requests. On further reflection, UP believed it should pose these additional requests in order to clarify that it seeks information about OPPD's dealings with UP, as well as its dealings with BNSF.

- 5 -

for through movements.⁵ But whatever the merits of that holding, it does not purport to govern the scope of discovery on the issue of market dominance in a rate case. Although the Board lacks jurisdiction to regulate traffic under contract, a shipper's contract negotiations with a railroad with respect to the shipper's traffic, and its consideration of competitive options for that traffic, are clearly relevant to whether the railroad has market dominance with respect to some or all of the shipper's traffic. Moreover, the Board routinely considers contract rate levels for the purpose of determining revenues that would be available to a stand-alone railroad. See, e.g., No. 41191, West Texas Utilities Co. v. Burlington Northern R.R., Decision served May 3, 1996, p. 31, aff'd, Burlington Northern R.R. v. STB, 114 F. 3d 206 (D.C. Cir. 1997). Thus, information relating to contract movements is clearly not off limits for purposes of discovery in rate cases.⁶

⁵ See MidAmerican Energy Co. v. STB, Nos. 97-1081, et al. (8th Cir.).

⁶ In its initial motion to compel (at pages 6-7, note 5), UP pointed out that production of documents regarding line-haul alternatives has previously been required in the context of a challenge to a switch charge, citing No. 40178 (Sub-Nos. 1, 2, 3), SP/SSW Switching Charges on Carloads of Grain at Kansas City, Reciprocal Switching Charges, Southern Pacific System, Switching Charges, Inclusion of Additional Carriers, Etc., Decision served Oct. 17, 1989, p. 2. Contrary to OPPD's argument in response, the SP/SSW decision supports production of such documents in this proceeding. The fact that the SP/SSW proceeding involved many parties does not render inapplicable here the Commission's conclusion that information about linehaul movements can shed light on the existence of effective competitive alternatives.

(continued...)

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II. OPPD SHOULD BE COMPELLED TO PRODUCE DOCUMENTS RELATING TO
OPPD'S ANALYSIS OF A PRIOR BUILD-OUT

UP's Second Set of Discovery Requests includes requests for the following categories of documents:

(a) All studies, reports and analyses relating to build-outs (Request 8);⁷ and

(b) For each parcel of land complainant acquired in connection with plans to build out to UP's line from its Nebraska City plant, provide:

(a) a description of that parcel;

(b) the value at which the parcel was appraised;

(c) the identity of the individual who provided the appraisal; and

(d) the actual amount complainant paid for the parcel (Request 13).

At page 9 of its reply to UP's initial motion to compel, OPPD acknowledges that the existence of "competition . . . in the form of build-outs and alternative

⁶(...continued)

The Commission declined to require production of information on linehaul revenues and costs due to the difficulty of computing such figures with precision and concerns about the confidentiality of private contracts. Here UP is not seeking any information that would require computations, and the protective order issued by the Board in this proceeding fully addresses any confidentiality concerns. Also, there is no issue here with respect to expectations of confidentiality on the part of a non-party shipper.

⁷ OPPD has advised that it objects to this request only to the extent it relates to OPPD facilities other than NOPS.

- 7 -

modes of getting the coal to the Omaha Interchange or to another point of connection with BNSF" is relevant to whether UP has market dominance for purposes of this case. OPPD nevertheless continues to refuse to produce information regarding its plans to build out to a second railroad at its nearby Nebraska City plant.

UP's position that such documents are relevant to the issue of market dominance is not based on mere speculation. Several years ago OPPD itself distributed to the public information demonstrating why it believed a build-out would produce effective competition for its Nebraska City plant. Exhibit B to this motion contains copies of an OPPD pamphlet, question and answer sheets, and slide presentation discussing the Nebraska City build-out project. In those documents, OPPD explains that construction of a five-mile rail spur from the Nebraska City plant -- approximately the same distance as would be involved in the present case -- "will provide competitive rail transportation service for the station" (Ex. B, second page). The documents further indicate that the threat of competition had already reduced the cost of OPPD's coal delivery substantially, that the cost of the build-out would be more than covered by OPPD's future cost savings on coal transportation, and that OPPD had investigated other modes of coal transportation, including truck, barge, conveyor belt and slurry pipeline. There is no reason why a build-out at the NOPS facility would not present a similar competitive constraint.

- 8 -

Of course, OPPD is free to argue that circumstances at Nebraska City and NOPS are different; the extent of that difference will be a matter for dispute when the parties submit their evidence. As explained in UP's initial motion to compel, however, a shipper's analysis of a build-out option at one of its facilities is clearly relevant to how that shipper would evaluate and act on such an option at another of its facilities. UP should at least have the opportunity to explore this subject in discovery.

The information on the land valuation that OPPD performed for the proposed Nebraska City build-out (the subject of Request 13) is relevant to the issue of the cost of a potential build-out at NOPS. An argument by UP that a build-out at NOPS would be feasible and would provide a competitive constraint on UP's switch fee will surely generate a dispute concerning the amounts OPPD would need to pay to obtain the land on which it could build a rail spur. The parties may also disagree on land valuation for purposes of determining the costs that would be incurred by a stand-alone railroad. OPPD's actual experience with its proposed build-out at Nebraska City would shed light on whether its position with respect to land values at the NOPS facility is consistent with real world conditions.

III. OPPD SHOULD BE COMPELLED TO PRODUCE PRIOR TESTIMONY AND
WORKPAPERS OF ITS STAND-ALONE COST EXPERT

OPPD has indicated that it intends to use L.E. Peabody & Associates as its stand-alone cost expert in this proceeding.

- 9 -

Request No. 10 of UP's Second Set of Discovery Requests seeks "copies of all written testimony submitted by individuals affiliated with L.E. Peabody & Associates in stand-alone cost proceedings before the Surface Transportation Board, including all appendices and work papers generated in connection with such testimony."

OPPD has objected to this request on the grounds of relevance and burden and has asserted that most of the Peabody materials are subject to protective order. UP has offered to limit its request to several recent stand-alone cost proceedings and to consider the possibility that the Peabody materials could be redacted.

UP is surely entitled to explore the stand-alone cost methodology that has previously been used by the experts who will present OPPD's stand-alone cost study in this proceeding. It is common practice for a party to obtain copies of prior testimony of experts who testify on behalf of the opposing party in a proceeding, and there is no reason not to permit discovery of such materials here. Any confidentiality concerns can be satisfied by designating the Peabody materials as "Highly Confidential" under the protective order in this case, and/or by appropriate redactions.

There is a fundamental unfairness in permitting OPPD to shield the Peabody material. The Peabody firm has been involved in virtually all of the stand-alone cost proceedings on behalf of

- 10 -

shippers⁸ and has had the opportunity to review the testimony and workpapers of the railroads' experts in those proceedings. In many of these cases, the Donelan Cleary law firm has represented the shipper and has had similar access to the railroads' evidence. Thus, the shippers' experts and counsel are familiar with the evidence submitted by the railroads in these cases. However, UP and its counsel have not had similar access. Shippers in stand-alone cost cases have liberally designated materials for filing under seal, with the result that individual railroads and their counsel have no opportunity to use the material from other cases to educate themselves.⁹

If shippers are able to resist discovery of the Peabody materials, they will have succeeded in compartmentalizing stand-alone cases, so that the railroads never have an opportunity to explore any discrepancies in the methodology used by shippers' experts. To the extent the railroads seek to use counsel and experts who have not previously been involved in stand-alone cost cases, they will be seriously disadvantaged by the shippers' use of the protective orders in earlier cases to shield the methodology used by their experts in those cases. The Board should compel production of the Peabody materials in order to end this

⁸ See the Verified Statement of Thomas D. Crowley, attached to OPPD's Petition for Order Establishing Procedural Schedule, filed June 20, 1997, pp. 1-2.

⁹ The firm of Klick Kent & Allen, which has served as an expert for railroads in other stand-alone cases, is unable to serve as an expert for UP in this case due to a conflict.

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de facto compartmentalization of the Board's stand-alone cost proceedings.

IV. AN EXPEDITED DECISION IS NEEDED SO THAT DEPOSITION DISCOVERY MAY PROCEED IN AN EFFICIENT MANNER

UP requests an expedited decision on this motion in view of the limited period provided for conduct of discovery. Under the Board's procedural schedule set out in 49 C.F.R. § 1111.8, discovery in this case is scheduled to end on September 3. UP has noticed depositions of OPPD witnesses for the weeks of August 25 and September 2.¹⁰ OPPD's counsel may attempt to bar questioning on the subjects covered by UP's motions to compel if the motions remain undecided at that time. Moreover, if the depositions are to be meaningful, UP will need to receive the disputed documents by August 25 at the latest.

In the alternative, the Board should extend the period for deposition discovery to September 17 (or a later date) in order to provide adequate time for defendant's counsel to receive and review the disputed documents prior to the depositions of the OPPD witnesses.¹¹

¹⁰ Even if there were no disputes about document production, it might be necessary to extend the deposition period by several days due to the difficulty OPPD has experienced in scheduling its witnesses for depositions during the August vacation period.

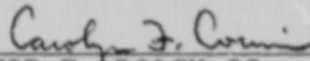
¹¹ Extension of the deadline for discovery would not require any change in the deadlines for submission of the parties' evidence.

- 12 -

CONCLUSION

Request Nos. 1, 2, 8, 10 and 13 call for documents that are clearly relevant to the issues in this case. OPPD has not shown why production of the documents in question would be unduly burdensome. The motion to compel should be granted, and OPPD should be required to produce the disputed documents by August 25, 1997. Alternatively, the period for deposition discovery should be extended to September 17, 1997, or to some later date that will permit adequate time to review the disputed documents prior to depositions of the OPPD witnesses.

Respectfully submitted,



ARVID E. ROACH II
CAROLYN F. CORWIN
ANDREW J. SHAPIRO
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-6000

JAMES V. DOLAN
ROBERT T. OPAL
LOUISE A. RINN
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-3072

Attorneys for Defendant Union
Pacific Railroad Company

August 19, 1997

EXHIBIT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____	)	
OMAHA PUBLIC POWER DISTRICT,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR-42006
	)	
UNION PACIFIC RAILROAD COMPANY	)	
	)	
Defendant.	)	
_____	)	

COMPLAINANT'S OBJECTIONS AND RESPONSES TO
UP'S SECOND SET OF DISCOVERY REQUESTS

Complainant Omaha Public Power District ("OPPD") hereby responds to Defendant Union Pacific Railroad Company's ("UP") Second Set of Discovery Requests to Complainant, served on OPPD by UP on July 25, 1997.

Generally Applicable Responses

The Generally Applicable Responses and General Objections contained in OPPD's Responses to UP's first set of discovery requests are hereby incorporated by reference.

Responses to Individual Interrogatories
and Document Production Requests

Request No. 1

Produce all documents relating to OPPD's negotiations with UP for the transportation of coal to NOPS or any other OPPD facility.

Response

OPPD objects to this request to the extent documents responsive to this request are within the categories of documents encompassed by UP's Motion to Compel Production of Documents currently under consideration by the Board.

Request No. 2

Produce all documents relating to OPPD's consideration of either UP or BNSF for the transportation of coal to NOPS or any other OPPD facility.

Response

OPPD objects to this request to the extent documents responsive to this request are within the categories of documents encompassed by UP's Motion to Compel Production of Documents currently under consideration by the Board.

Request No. 3

Produce all contracts currently in effect or effective for any future time period for the supply of coal to complainant.

Response

OPPD objects to Request No. 3 to the extent it is overbroad, unduly burdensome, duplicative of previous requests, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections OPPD responds that it has already provided UP with a substantial amount of information concerning OPPD's coal sources and supplies to NOPS and NCPS.

Request No. 4

Produce all documents relating to complainant's participation in, or sharing of resources within, the Mid-Continent Area Power Pool or any other power pooling organization.

Response

OPPD objects to Request No. 4 to the extent it is overbroad, unduly burdensome, and calls for information which has been the subject of previous requests. Subject to these objections, OPPD responds that it has already provided UP with a substantial amount of information related to OPPD's actual and projected power transactions.

Request No. 5

Produce all documents relating to potential sources for future power purchases by complainant.

Response

OPPD objects to Request No. 5 to the extent it is, vague, overbroad and highly speculative. Subject to these objections, OPPD responds that it has already provided UP with a substantial amount of information related to OPPD's actual and projected power transactions.

Request No. 6

Produce all documents submitted by complainant in connection with development of the annual power supply plans referred to in Nebraska Revised Statutes §§ 70-1023 through 70-1027.

Response

OPPD responds that it has already provided UP with a substantial amount of documents responsive to this request.

Request No. 7

Produce copies of any such annual power supply plan.

Response

OPPD responds that it has already provided UP with a substantial amount of documents responsive to this request.

Request No. 8

Produce all studies, reports and analyses relating to build-outs.

Response

OPPD objects to Request No. 8 because it merely repeats prior requests made by UP in its first set of document requests, to which OPPD has responded. OPPD also objects to Request No. 5 to the extent documents responsive to this request are within the categories of documents encompassed by UP's Motion to Compel Production of Documents currently under consideration by the Board.

Request No. 9

Produce copies of all evidence submitted by complainant in ICC Docket No. 38783.

Response

See General Objection No. 4.

Request No. 10

Produce copies of all written testimony submitted by individuals affiliated with L.E. Peabody & Associates in stand-alone cost proceedings before the Surface Transportation Board, including all appendices and work papers generated in connection with such testimony.

Response

OPPD objects to Request No. 10 to the extent it is irrelevant, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of

admissible evidence. Moreover, nearly all the material covered by this request, if not all of it, is confidential and covered by protective orders issued by the Board.

Request No. 11

State the approximate date on which you contend that a hypothetical stand-alone railroad serving NOPS would begin operations for purposes of a stand-alone cost analysis.

Response

OPPD objects to Request No. 11 as being premature. The date upon which a hypothetical stand-alone railroad serving NOPS would begin operations for purposes of a stand-alone analysis, and all other components of a stand-alone analysis are part of OPPD's ongoing preparation of its evidence to be submitted under the Board's procedural schedule.

Request No. 12

State whether you contend that the hypothetical stand-alone railroad would cease operations in 2016 for purposes of a stand-alone cost analysis. If you contend that the stand-alone railroad would continue to operate after 2016, state the approximate date when you believe it would cease operations. State whether you contend that the stand-alone railroad would continue to operate after NOPS ceases operations. If you contend that NOPS would continue to operate after 2016, state what volume of coal you contend NOPS would receive each year it would operate after 2016.

Response

OPPD objects to Request No. 12 as being premature. Subject to this objection, OPPD responds that the life of the discounted cash flow model that is

used in the stand-alone analysis is one of the variables of the analysis under current consideration.

Request No. 13

For each parcel of land complainant acquired in connection with plans to build out to UP's line from its Nebraska City plant, provide:

- (a) a description of that parcel;
- (b) the value at which the parcel was appraised;
- (c) the identity of the individual who provided the appraisal; and
- (d) the actual amount complainant paid for the parcel

Response

OPPD objects to Request No. 13 to the extent documents responsive to this request are within the categories of documents encompassed by UP's Motion to Compel Production of Documents currently under consideration by the Board.

Respectfully submitted,

Thomas W. Wilcox

Thomas W. Wilcox
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC 20005
(202) 371-9500

August 11, 1997

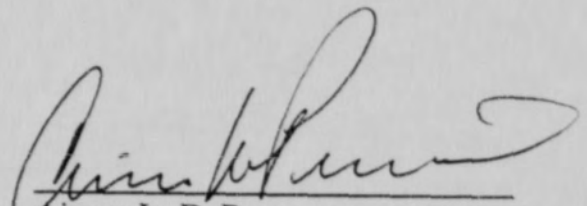
CERTIFICATE OF SERVICE

I hereby certify that I have on this 11th day of August, 1997, served a copy of the foregoing COMPLAINANT'S OBJECTIONS AND RESPONSES TO UP'S SECOND SET OF DISCOVERY REQUESTS by hand delivery on the following persons:

Arvid E. Roach II, Esquire
Carolyn F. Corwin, Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20044-7566

And also by facsimile and first-class mail on the following persons:

James V. Dolan, Esquire
Louise A. Rinn, Esquire
Union Pacific Railroad
1416 Dodge Street
Room 830
Omaha, NE 68179


Aimee L. DePew

What environmental studies will be included?

Environmental issues are important in the route selection process. An environmental assessment report (EAR) will be completed after a thorough review is made of all possible routes in the study area. The EAR identifies, evaluates and records possible environmental impacts within the requirements of the National Environmental Policy Act (NEPA) and the guidelines for the U.S. Army Corps of Engineers' 404 permit.

Environmental resources to be studied in the EAR include the following: wetlands, threatened or endangered wildlife or vegetation, cultural and historic sites, public and private resources, business and homes, and agriculture.

The NEPA process also ensures that regulatory agencies and the public are involved throughout the process of qualifying for a permit.

How will land acquisition be handled?

Once a route is selected, OPPD will determine what land is necessary for the project. A land-evaluation study, which thoroughly examines current land values, will be conducted. From that evaluation, a schedule for payment to each landowner will be developed. A payment schedule is applied to each parcel and represents a basis for individual negotiations. An OPPD Land Rights Representative will personally contact each property owner to

determine fair compensation. Payment will be made at the time of closing.

OPPD has the power of eminent domain, but the utility is confident that the corridor can be acquired on a voluntary basis through sincere and open negotiations. All acquisitions will be supported by the report of an independent real estate appraiser. This will help determine the fair market value of each parcel.

How can more information be obtained?

OPPD encourages public involvement throughout the process of planning and building this rail spur, and the utility would be pleased to address questions and consider comments from the public in regard to the project.

Please contact:

Patricia Thompson
Consumer Relations Manager
OPPD
444 S. 16th St. Mall, 3E/EP 1
Omaha, NE 68102-2247

A toll-free Energy Advisor number
is available for your convenience:
(800) 648-2658.

For
Your
Information...



EXHIBIT B

Nebraska City Station
Rail Spur

Why should OPPD build a rail spur?

A railroad spur between the Missouri Pacific track south of Nebraska City and the Omaha Public Power District's Nebraska City Station will provide competitive rail transportation service for the station.

At present, OPPD has coal brought to the plant on Burlington Northern track from eastern Wyoming through Lincoln to the station. Without this connector track, OPPD will remain a "captive customer" of Burlington Northern. Building a railroad spur will create competition in the coal-hauling market and help ensure the lowest possible rail transportation costs.

What is the cost?

What are the savings?

The estimated cost of installing the spur is \$12.5 million. That's a lot of money; however Nebraska City Station uses a lot of coal. On the average, the station burns approximately two million tons – or 180 trainloads – of coal a year, and that amount is expected to increase over the next several years. Because of the large volume of coal being transported, the cost of the line will be recovered even if our cost-savings per ton is small. After construction, OPPD expects savings to be at least \$4 million annually. OPPD expects to operate Nebraska City Station for another 30 to 40 years.

How will the specific route be chosen?

A site-selection process is used to identify the route that offers the best combination of low environmental, social and economic impacts, favorable engineering characteristics, economic feasibility and responsiveness to public concerns. This route selection procedure is a three-step process.

Step one, which is already done, involved identifying all feasible corridors within the study area. Standards were set for judging the corridors during the selection process; then, each was studied and judged to identify obvious flaws that would make construction of a spur unacceptable.

Step two consists of judging the remaining corridors using the factors determined under step one. Public input is particularly important during this step so that those hard-to-detect characteristics may be identified.

Step three names the preferred corridor, based on the evaluation of how the requirements are met and on public comments received. Once a corridor is selected, detailed study, engineering and design will begin on the route within this corridor.

What is the schedule?

The detailed study of environmental impacts, engineering characteristics and other factors is expected to begin with the

announcement of the preferred corridor. This is tentatively set for late in 1993 or early in 1994. Public comments will be welcome up to and including that time.

Land acquisition is expected to begin in 1995 and should be completed early in 1996. Construction is expected to start in the spring of 1997, and the spur should be in service in late 1998.

What field activities will take place?

During the engineering of the rail spur, several types of field activities will be performed. These include aerial photography, a variety of land surveys, environmental field investigations and archeological field inspections, among others.

Prior to field activities, OPPD field personnel will contact landowners along the route to ask permission to enter the property for environmental evaluations, land surveys, soil testing and property appraisal. Any property damages caused by these activities will be paid for by OPPD. Again, no OPPD personnel will be entering private land without permission of the owner.

Several activities may be accomplished simultaneously, but the majority will be made separately to make use of or to confirm information received during a previous survey. For this reason, and for the purpose of obtaining additional site-specific information, return trips to the same area may be required.

Rail Spur Questions March 17, 1993

1. How many trains per day will use the new track?

Currently, the Nebraska City Plant uses about 2,000,000 tons of coal per year. Each train carries about 10,800 tons. A total of about 185 trains are delivered to the plant each year, or about 1 train every other day. Once delivery is made, the emptied train is returned about one hour later. It is expected that coal deliveries would be split between the two competing carriers resulting in an average of less than one train delivery (plus empty return) every other day on the new track.

2. How fast will they be travelling inbound and outbound?

25 MPH may be the maximum speed on the tracks. When they are loaded inbound, that is about all they would want to do. Outbound, with the steep grades we will have, this is about all they will be able to do. Trains may go as slow as 10 MPH, at times.

3. Why does OPPD have to construct this new rail line? Why can't the Union Pacific Railroad use the existing track?

The coal that is burned at Nebraska City originates in the Powder River Basin in Wyoming. The Burlington Northern Railroad (BN) and the Union Pacific Railroad (UP) have access to coal mines in the Powder River Basin. A rail spur connecting the Nebraska City Station with the UP tracks would provide competitive access between the mine origin and the plant. The value of competitive access at Nebraska City is estimated to be over \$4,000,000 per year for the entire 40 year life of the plant.

The existing track is owned by Burlington Northern. They have been unwilling to allow us to use their tracks for Union Pacific trains.

4. How long will the trains take to clear a grade crossing? What measures will be taken to ensure that trains do not block crossings for an unreasonable amount of time?

At fifteen miles per hour, it will take about five minutes to clear a crossing. The railroad and OPPD are interested in the fastest possible turn around for these trains, so we will be monitoring their whereabouts closely.

5. What types of warning devices will be employed at grade crossings? What type of crossing surface will be provided?

When the specific details of the crossing locations are known the warning devices will be selected. All grade crossings, including warning devices, will be reviewed and approved by the County

Engineer. The crossing surface will be of a material and construction to provide a minimum of maintenance. Presently rubber or concrete show the lowest maintenance costs.

6. How will OPPD control noxious weeds and pests on the right of way?

The design will provide for native grasses and wild flowers along the line to minimize maintenance and to provide a natural setting for wildlife who may inhabit the area.

7. The new track may cut off access to fields and possibly to residences. What provisions will OPPD make to provide access to these areas?

The District will take access into account when designing this spur. The design will allow for reasonable access across the line for field work or for access to residences.

8. Will visibility at grade crossings be considered in the design?

Yes, safety of traffic near the spur will be a very high priority to the District, the engineer and the railroad. You can be assured that all reasonable actions will be taken to design a safe spur.

9. Why was this particular route picked, what other routes were considered?

No route has yet been selected. Many corridors have been investigated. With your input, a corridor will be selected and an acceptable route designed within that corridor.

10. Will OPPD have to conform to federal, state and local permits to construct the new line? Which permits will be applicable to this project?

The District will obtain all necessary permits to complete this project. Permits will likely be required from the Corps of Engineers, the Nebraska Department of Environmental Quality, and Otoe County. Other jurisdictions will also review the design to assure that it conforms to all applicable laws and building codes.

11. What measures have been taken to ensure the protection of the environment?

OPPD will carefully evaluate all feasible routes to ensure that environmental impacts resulting from the construction of the rail spur are minimized. Environmental criteria to be evaluated will include potential impacts to wetlands, sensitive areas, noise, endangered or threatened species, critical or unique habitats, and habitat quality. OPPD will work closely with all applicable regulatory agencies to ensure compliance with environmental/permit programs which protect the environment.

12. Will commodities other than coal be moved over the rail line?

Shipments other than coal would not be expected to any great degree. If other industries would locate near the spur, their use of the line will be considered.

13. Why can't the track be relocated to a different spot or different elevation to miss my house, barn, pond, etc.?

As the design progresses, input from individuals affected by the spur will be considered. A railroad, however, requires wide sweeping turns and shallow grade so moving a small distance to avoid an obstacle may not be possible due to these design constraints.

14. How many acres of land will the railroad need and how wide a strip of right-of-way will be required?

Depending on the terrain, the railroad needs about 50 feet either side of centerline of the spur. If the cuts or fills are large, more land will be needed.

15. If a train derails or starts a fire on my land or spills oil into the creek, who cleans up the mess and pays for the damages?

The rail carrier or OPPD would be responsible depending upon the terms of the operating agreement negotiated between the rail carrier and OPPD prior to the start up and use of the spur.

16. Does OPPD have right of eminent domain for the track? Will I be paid a fair price for my land that they have to take?

OPPD has the power of eminent domain but we are confident that the Railroad corridor can be acquired on a voluntary basis through sincere and open negotiations. All acquisitions will be supported by the report of an independent real estate appraiser, which will help determine each parcel's fair market value.

17. Will anything be done about the noise that the trains make?

Noise impacts on residences will be considered during the design. Sound carries a long way and some increase in noise levels cannot be avoided.

18. How will construction effect drainage patterns in the area? Will any wetlands be effected?

Minimizing impacts on drainage patterns and wetlands will be prime concerns to be considered in the corridor selection and route design.

19. Will any blasting be done during construction?

Blasting will be held to an absolute minimum on this project. None is anticipated at this time.

20. Is there any set pattern to when the trains will use the track?

Trains will arrive and depart on an irregular schedule at any time, day or night.

21. What will happen if another generating unit is built at the Nebraska City site?

The District's plans presently include the construction of additional generating capacity for operation in the year 2008. Should this be constructed on the Nebraska City property, the number of trains would most likely double to deliver the proper amount of fuel to the station.

22. Will a train on the track block emergency vehicle access?

The Design of the spur will consider emergency vehicle access to the various locations which may be impacted by the trains. Due to the number of county roads in the area, it is not expected that any area will ever be blocked off by trains occupying the track.

23. What effect will the spur have on tourism in the area?

The spur should have minimal impact on tourism. No culturally significant areas, such as orchards, historical sites, or shopping centers have been identified in the corridors. One of the reasons for the Public Information Meetings is to obtain public input prior to the design of the rail spur. Your input will help us avoid such impacts.

24. How many people are employed at the Nebraska City Station?

The Site has 104 full time OPPD employees. Forty Five of these live in Nebraska City, another 12 live in rural areas surrounding the town. The remaining 48 persons live in surrounding communities.

Plant staff is frequently supplemented by technical and craft persons during periods of high maintenance activity. This supplemental staff can bring the total number of personnel on site up to nearly 300 for short periods of time.

25. How many people will be employed during the construction of the spur?

Construction activity such as this will be somewhat labor intensive. Depending on the route selected and the methods used by the contractor, the total number of personnel working on the project may approach 200.

NEBRASKA CITY RAIL SPUR

March 17, 1993

Why are we meeting with you today?

To inform you, the District's Nebraska City employees, as to the District's intentions on the Rail Spur Project. Your neighbors will probably be asking you questions about the spur, which we want you to be able to answer. You are also members of the community who will be impacted by the route and probably have questions of your own.

(Slide 1)

HISTORY

CAPTIVE TO BURLINGTON NORTHERN

Since going on line, the Nebraska City Station has been captive to the Burlington Northern Railroad for the delivery of coal via rail.

UNION PACIFIC OBTAINS ACCESS TO MINES

In August 1984, the Union Pacific Railroad obtained access to the Powder River Basin in Conjunction with a Chicago & Northwestern subsidiary, Western Railroad Properties, Inc.

1986 TRANSPORTATION NEGOTIATIONS

In 1986 the District started the design of a rail spur to the Union Pacific Railroad. This threat of competition reduced the cost of delivery of coal substantially. The District subsequently awarded the transportation contract to Burlington Northern and ceased design of the rail spur.

CONTRACT WITH BURLINGTON ENDS 12/31/98

Since the contract with Burlington Northern ends in 1998, the District, in 1991, began to study the issue of competitive access. Black & Veatch was hired to continue the design since they were the engineers in the 1985 work.

NPPD has recently awarded contracts to build a similar spur to their Gerald Gentleman Station near Sutherland, NE. They were scheduled to break ground on 3-1-93.

PROJECT JUSTIFICATION

COMPETITIVE ACCESS

The rail spur will provide the District with competitive access between the station and the mines.

LOWER TRANSPORTATION RATES

This competitive access will provide for lower transportation rates as was exhibited in the 1986 transportation negotiations.

FLEXIBLE TRANSPORTATION AGREEMENTS

Besides reducing base transportation rates, competition can lower the price of other transportation services, such as lease rates on additional train sets. Competition can also provide for more favorable escalation terms and incentives. This would also allow for a mix of long and short term transportation contracts.

SAVINGS FOR CUSTOMER OWNERS

All of this, put together, will provide for long term savings for our customer owners.

AT LEAST \$4,000,000 PER YEAR

There are many benefits, as you can see, we have an estimated range of from 4 to 10 million dollars per year in savings to our customer owners if we obtain competitive access through the construction of the Nebraska City Rail Spur. This figure is based on the drop in rates proposed when the design for the spur started in 1985.

(Slide 3)

ALTERNATE MODES OF TRANSPORTATION

A railroad was not the only option investigated for transporting coal to the station from the Missouri Pacific Rail line. We also looked at 4 other options that are listed here. Each of these requires the installation of a separate coal unloading facility near the Missouri Pacific Line. This facility would take the coal off the train and load it out onto one of these other modes of transportation. As you can see by the numbers, there are no real alternatives to building this spur.

<u>MODES</u>	<u>CAPITAL COST</u>	<u>O & M COST</u>
TRUCK	\$ 24,400,000	\$2,100,000
CONVEYOR	80,900,000	1,500,000
BARGE	27,400,000	1,500,000
SLURRY PIPELINE	113,900,000	2,000,000
RAILROAD	12,500,000	200,000

(Slide 4)

TRANSPORTATION CONTRACT SCHEDULE

BEGIN SPUR CONSTRUCTION LATE 1996

Due to the fact that it will take approximately two years to build the spur, we will begin construction in late 1996.

**BEGIN TRANSPORTATION CONTRACT
NEGOTIATIONS EARLY 1997**

When transportation contract negotiations begin in early 1997, construction will be well underway showing the railroads that we are serious about building the spur. This will provide the railroads with the impetus needed to provide good competitive bids.

AWARD CONTRACT MIDDLE 1998

We will award the transportation contract in the summer of 1998 with the spur nearing completion.

SPUR COMPLETION LATE 1998

The construction of the spur will be complete in late 1998 which will allow for the testing of the spur prior to the first delivery of coal under the new contract.

FIRST DELIVERY JANUARY 1, 1999

The first delivery of coal will take place on January 1, 1999.

PROJECT PHASES

ROUTE SELECTION THRU 2/94

This is the process of defining and selecting the corridors, studying those corridors and scoring them. This provides for a quantitative method of selecting the best route.

PRELIMINARY DESIGN 2/94 TO 11/94

This will select the best alignment for the spur along the selected route.

ENVIRONMENTAL LICENSING 2/94 TO 11/95

The process of studying the environmental aspects of the alignment and providing documentation for the license applications.

FINAL DESIGN 1/95 TO 11/95

The detailed design of the spur including all bridges, earthwork, culverts and road crossings.

COMPLETE LAND ACQUISITION 12/95

The end of the land acquisition process (which is expected to take about six (6) months). (The approvals to cross the Burlington Northern near the station could take longer.)

AWARD BRIDGE CONTRACT 3/96

The bridge over highway 75 is a long lead time item and should begin prior to actual earthwork.

CONSTRUCTION 7/96 TO 8/98

This project is expected to take approximately two years to construct.

(Slide 6)

1993 ACTIVITIES

CORRIDOR SELECTION

This activity identifies possible the corridors, evaluates and scores them and compares them against each other. This will determine the most suitable corridor for the spur. The evaluation will consider technical, environmental and socio-economic criteria.

PUBLIC INFORMATION MEETINGS

A meeting will be scheduled with the local officials, county board, city council, etc. After that there will be a public forum held at the Nebraska City Station to gain input from the citizens of the area.

FINAL ROUTE SELECTION

After the input from the citizens and public officials is received and incorporated into the project, the final route will be selected for study.

PRELIMINARY DESIGN PHASE

During this process, the selected route will be studied in detail with the alignment of the spur laid out in a preliminary fashion. The alignment will be finalized and detailed during the final design phase.



ROUTE SELECTION SCREENING CRITERIA

To assure that the most acceptable corridor is selected, each corridor is graded on the following three areas.

TECHNICAL

ENVIRONMENTAL

PEOPLE FACTORS

(Slide 9)

TECHNICAL

Technically, each corridor is evaluated by the following criteria:

CURVE - DEGREE

GRADE CONSTRAINTS

LENGTH OF NEW TRACKAGE

TOTAL BRIDGE LENGTH

ROAD CROSSINGS

100 YEAR FLOOD PLAIN

EARTHWORK

ORDER-OF-MAGNITUDE COST

(Slide 10)

ENVIRONMENTAL

AQUATIC - WETLANDS

VISIBILITY FROM SENSITIVE AREAS

IMPACT ON SENSITIVE AREAS

NOISE IMPACTS

ARCHAEOLOGICAL OR HISTORIC RESOURCES

TERRESTRIAL - ENDANGERED OR THREATENED SPECIES

TERRESTRIAL - CRITICAL OR UNIQUE HABITAT

TERRESTRIAL - HABITAT QUALITY

These potential environmental impacts will be evaluated consistent with the National Environmental Protection Act guidelines. This is required by the U.S. Army, Corps of Engineers permit program. This will ensure that potential environmental impacts are identified and evaluated by the District, regulatory agencies, and the public before construction of the rail spur.

(Slide 11)

PEOPLE FACTORS

These factors will be used to assess the impact of the project on the people of the area. Some of these factors are not easily measured, but they will be studied and considered in the final evaluation.

PROXIMITY TO RESIDENTIAL DEVELOPMENT

PROXIMITY TO COMMERCIAL DEVELOPMENT

IMPACT ON AGRICULTURAL AREAS

DISPLACEMENT OF RESIDENCES

DISPLACEMENT OF BUSINESSES

IMPORTANT FARMLAND, ORCHARDS OR ARBORETUMS

(Slide 12)

ARCHAEOLOGICAL INVESTIGATION

A study of the local archaeology will be done to assure that we will not impact or disturb any areas of historical significance. This will include a study of the records of the state and county as well as an actual field inspection of the corridors.

RECORDS STUDY

FIELD INVESTIGATION

(Slide 13)

FEDERAL AGENCIES WITH JURISDICTION

U.S. ARMY CORPS OF ENGINEERS*

The Corps of Engineers is expected to be the lead agency for the spur.

A permit is required by the Clean Water Act, to build structures in, or to discharge dredged or fill material into the "Waters of the United States".

We will be building near a creek that discharges into the Missouri River.

U.S. FISH AND WILDLIFE SERVICE

Reviews the project for impacts on wetlands, threatened and endangered species of animals, insects and plants, and for impacts on habitat which could impact threatened and endangered life forms.

ENVIRONMENTAL PROTECTION AGENCY

Another reviewing agency for the project as it pertains to impacts on wildlife or water. Has veto authority over the Corps of Engineers.

INTERSTATE COMMERCE COMMISSION

Will be the agency who will give us authority to cross the Burlington Northern line. Can require its own Environmental Impact Statement. Burlington Northern has abandoned the line south of the plant. This should make it easier to gain rights to cross the Burlington Northern line.

*Lead Agency

LOCAL AGENCIES WITH JURISDICTION

OTOE COUNTY BOARD

Approves crossing of all county roads, issues building permits.

OTOE COUNTY HIGHWAY DEPARTMENT

Reviews designs and makes recommendations to the county board.

PAPIO/MISSOURI RIVER NATURAL RESOURCES DISTRICT

May review the design for impact on the flood plain of the Missouri River.

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Provides the permit to disturb the land as part of the Clean Water Act. Also may require a permit for storm water discharges of the line.

NEBRASKA DEPARTMENT OF ROADS

Requires approval of crossing Highway 75. No permit, but they will review the design and must approve it.

NEBRASKA DEPARTMENT OF WATER RESOURCES

The Nebraska Flood Plain Management Act requires a permit prior to building in any flood plain.

NEBRASKA PUBLIC SERVICE COMMISSION

The Public Service Commission regulations indicate that they have review authority. There is no formal application but it is considered prudent to let them review the plans and show that we conform with federal safety regulations.

(Slide 15)

PROJECT TEAM

We wanted to let you know who was working on the project. You may recognize some of these names. As you can see, the project involves several different areas of the company.

PRODUCTION OPERATIONS

Tom Burton Rich Kotan
Igor Cherko Keith Morrison

Production Operations is taking the lead on this project, coordinating the work of the outside engineer and the other divisions within the District.

ENVIR'T & GOV'T AFFAIRS

Tim Grove

This group is assisting in the regulatory aspect of the project and is helping to review the environmental reports

FUELS

Ron Boro

Fuels is providing interface with the railroads as well as the cost justification for the project.

FACILITIES MANAGEMENT

Alison Rider Marty Zuehlke

Unfortunately, this project will require the acquisition of land. The real estate group from Facilities Management will coordinate the land purchase for the project. Another individual who has recently joined the project team is Ron Marshall.

CORPORATE COMMUNICATIONS

Pat Thompson

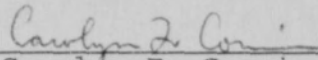
To assist in communicating with the public, the District's Corporate Communications group will handle the press releases, advertising, and coordinate all contacts with public officials, the press, and the public.

Although they are not listed here, the Division Managers from each of these divisions have also been active participants in this project.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 1997,
I caused a copy of UP's Further Motion to Compel Production of
Documents to be sent by messenger to:

Thomas W. Wilcox, Esq.
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue N.W.
Suite 750
Washington, D.C. 20005



Carolyn F. Corwin

181705

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500



September 3, 1997

Via Hand Delivery

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

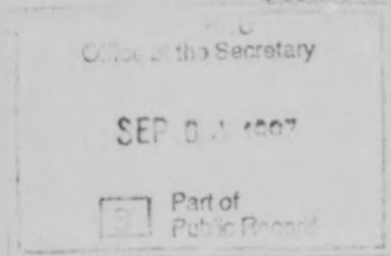
T

Re: Docket No. NOR-42006, *Omaha Public Power District*
v. Union Pacific Railroad Company

Dear Secretary Williams:

Enclosed is the original and ten (10) copies of OPPD's Motion to Compel Production of Documents filed on behalf of Omaha Public Power District ("OPPD"), the Complainant in this proceeding. A extra copy of enclosed for stamping and return to this office.

Please do not hesitate to contact the undersigned if you have any questions.



Sincerely,

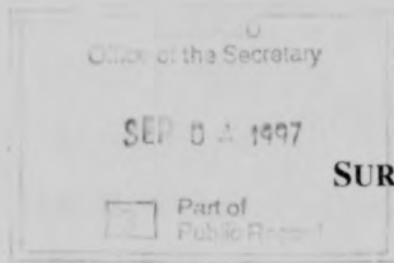
Thomas W. Wilcox

Thomas W. Wilcox

ENCLOSURES

4820/123

cc: Carolyn F. Corwin, Esquire
(w/enclosure)



BEFORE THE
SURFACE TRANSPORTATION BOARD



Omaha Public Power District)

Complainant,)

v.)

Union Pacific Railroad Company)

Defendant.)

Docket No. NOR-42006

**OPPD'S MOTION TO
COMPEL PRODUCTION OF DOCUMENTS**

Complainant, Omaha Public Power District ("OPPD"), hereby moves to compel the production of certain documents sought by OPPD in discovery from the defendant, Union Pacific Railroad Company ("UP"). In this proceeding, OPPD has filed a complaint challenging the reasonableness of the switching charge assessed by UP in Tariff 8005-D for switching unit trains of coal from UP's interchange point with The Burlington Northern and Santa Fe Railway Company ("BNSF") at Omaha, Nebraska to OPPD's North Omaha Power Station ("NOPS").

OPPD served its "First Set of Interrogatories and Requests for Production of Documents and Records" ("First Requests") upon the UP on June 20, 1997. UP served its objections and responses on July 7, 1997. OPPD served its "Second Set of Interrogatories and Requests for Production of Documents and Records" ("Second Requests") upon the UP on July 29, 1997 and UP served its responses and objections on August 13, 1997. UP has provided documents in response to OPPD's discovery requests on a continuing basis over the past two months, and the parties have exchanged a series of verbal and written communications in an effort

to resolve UP's objections, to clarify OPPD's requests, and to facilitate the orderly production of documents.¹

After protracted negotiations with UP and reviewing documents that UP has produced to date - some of which have been produced as recently as August 22 - OPPD has concluded that disagreements between the parties on several of OPPD's requests for production of documents will not be resolved without intervention by the Board. OPPD therefore submits this motion seeking an order from the Board compelling UP to respond to those requests.

In each case OPPD has sought the production of documents containing information to be used to calculate the variable cost of UP to deliver OPPD's coal over the segment of track from UP's interchange with BNSF to NOPS as well as the stand-alone cost. The information sought is straightforward and recognized by the Board as part of the variable and stand-alone cost calculations in coal rate reasonableness cases: maintenance of way expenditures, crew wages, locomotive costs, road property valuation, land valuations, and grading costs.

UP has not flatly refused to provide materials responsive to OPPD's requests, which has contributed to the lengthy discussions between the parties and the timing of this motion. Rather, UP has engaged in a process of selectively responding to the requests, in some cases electing to perform "special studies" instead of providing raw data, and in other cases, producing only materials UP believes are relevant to this proceeding.

The specific document requests, and the reasons for an order from the Board compelling UP to respond to them, are set out below.

¹ OPPD is submitting, as attachments to this motion to compel, (1) UP's responses and objections to OPPD's first and second sets of discovery requests; (2) UP's discovery letter dated August 1, 1997; (3) UP's discovery letter dated August 22, 1997; and (4) OPPD's letter dated September 2, 1997.

First Request No. 5(a)

OPPD's First Request No. 5(a) asks UP to provide:

Actual maintenance of way structures expenditures for the trackage traversed by the OPPD trains between the Omaha Interchange and NOPS

UP initially objected to this request on July 7, 1997 on the ground that it would require an extremely burdensome special study, but nevertheless, indicated that it was initiating a search for responsive information. Consequently, no documents were produced in response to this request on July 7.

Following a teleconference on July 28, 1997 to address UP's discovery objections, UP counsel sent OPPD counsel a letter on August 1, 1997 indicating that, despite its earlier objection of burden, UP had elected to undertake a special study in response to Request No. 5(a). Although OPPD had preferred to receive the raw data, it acquiesced to a study provided that UP also produced all of the underlying data and work papers upon which the study was based. The study was not completed and produced to OPPD until August 22, 1997.

After carefully reviewing UP's special study, OPPD has determined that it does not fully and adequately respond to Request No. 5(a). First and foremost, the study does not even cover the track segment described in the Request. In fact, it states that "there has been no effort to allocate the costs to the portion of the track used to carry OPPD's traffic." Second, UP has not supplied "actual expenditures," as requested. Rather, UP has devised "an allocation" of costs recorded in the cost center for the UP Council Bluffs Manager of Track Maintenance.

UP also has apparently not provided OPPD with all of the underlying data and work papers to support its study, including computerized data (and materials needed to understand the computerized data). This information is essential if OPPD is to be able to evaluate the study. OPPD requires the underlying data and work papers for both the North Omaha Lead and the UP cost center, which

includes the North Omaha Lead, in order to ascertain the development of the direct labor costs assigned to the North Omaha Lead, the process by which costs reported to the Council Bluffs cost center were allocated to this segment of track, and the service units upon which such costs are based (*i.e.*, gross-ton miles, tons, carloads, etc.).

UP has elected to perform the special study in lieu of producing raw data responsive to Request No. 5. UP should not be permitted to use the special study to avoid production of the underlying basis for the study's conclusions. OPPD is entitled to evaluate the study based upon the underlying data and to draw its own conclusions from that data.

First Request Nos. 7 and 8

In First Request Nos. 7 and 8, OPPD seeks crew wage information for each UP yard or road crew that has handled OPPD trains between UP's interchange with BNSF in Omaha and NOPS from 1995 to date. Crew wages are an important component of railroad variable cost. Nevertheless, as with First Request No. 5, UP initially objected to these requests on the ground that they would require an extremely burdensome special study, but indicated that it would provide the requested information to the extent it is available when it had been compiled. UP subsequently elected to conduct the special study which it previously had concluded would be extremely burdensome.

UP has provided some of the underlying data and work papers behind its study. However, it has not produced all such data, in particular all computerized data from which the study data was selected and the documentation needed to understand such data. Because UP has elected to perform the special study in lieu of producing raw data responsive to Request Nos. 7 and 8, it should be required to produce the underlying basis for the study's conclusions. OPPD is entitled to

evaluate the study based upon the underlying data and to draw its own conclusions from that data.

UP also has refused to provide any response to subsection (v) of both First Request Nos. 7 and 8. These subsections seek crew wage information for services performed by UP crews for other customers along the UP line serving NOPS. The written summary produced by UP in response to First Request No. 1 states unequivocally that UP crews that handle both the loaded and empty OPPD trains also handle other switching jobs along the line. Thus, the wages for these crews cannot be attributed solely to OPPD's movements. Crew wage information as to other customers along the line clearly is relevant to the determination of costs associated with operating the track and therefore should be provided by UP in response to First Request Nos. 7 and 8.

First Request No. 13(b); Second Request Nos. 2 and 3

In Request No. 13(a), OPPD asked UP to list and provide a copy of all written agreements covering movements on which UP locomotives are used on trains traversing non-UP owned lines and/or non-UP owned locomotives are used on trains traversing UP lines for movements covered by UP Freight Tariff 8005-D for Omaha, Nebraska. In Request No. 13(b), OPPD requested the following:

For the section of the agreements identified in Interrogatory No. 13(a) that covers compensation between the parties, provide the amount of compensation or equalization by component, *e.g.*, fuel, maintenance, servicing, etc., and the service units covered by the compensation, *e.g.*, horsepower hours, for each of the years 1995, 1996 and 1997 year to date and the basis for computing the compensation by component, including but not limited to studies used in determining the basis of compensation. Provide a copy of correspondence, bills, etc., relating to each agreement.

UP objected to these requests on grounds of burden, overbreadth, and relevance. Subject to these objections, UP produced documents in response to Request No. 13(a) and indicated its intent also to produce documents responsive to Request No. 13(b). In a letter dated August 1, 1997, UP indicated that it was still in the process of assembling its responses to Request No. 13(b). When UP finally responded, on August 4, 1997, it failed to provide any information on locomotive compensation other than fuel costs. The parties had several discussions regarding this request and UP's limited response to it. These discussions culminated in the September 2 letter from OPPD counsel to UP counsel.

Moreover, in an effort to clarify the scope of Request No. 13(b), OPPD followed up with Request Nos. 2 and 3 in its Second Set of Discovery Requests. UP objected to these requests as burdensome, overbroad, and irrelevant. Subsequent attempts to resolve these objections have been unsuccessful.

According to documents produced by UP in discovery, OPPD trains are handled as run-through trains with BNSF providing locomotive power. Therefore, the locomotive cost associated with hauling the trains over UP's line is born by BNSF in the first instance. UP and BNSF agreed to compensate BNSF for the use of its locomotives by an agreed-to fuel burn rate and that horsepower hours would be settled on the basis of a run-through agreement dated November 14, 1979. While UP has produced documents related to fuel compensation, it has refused to produce any documents related to the horsepower hour component of the compensation.

In a letter dated August 22, 1997, UP cited burden and overbreadth as the basis for refusing to provide additional information. UP claims that it would be exceedingly burdensome to assemble detail on the particular UP locomotives provided to BNSF as run-through power or when UP owes BNSF horsepower hours because its November 14, 1979 agreement with BNSF covers hundreds of

units exchanged at a number of locations. In addition, UP claims that Request No. 13(b) is overbroad because it is not confined to the North Omaha area, since the run-through power agreement covers hundreds of different units exchanged at a several different geographic points.

UP's objections do not outweigh OPPD's need for this highly relevant information. Locomotive costs are a vital component of railroad variable costs. OPPD should not be denied this critical information simply because BNSF and UP decided to apply the terms of an existing run-through power agreement that covers numerous units and multiple locations rather than set up a separate agreement for the switch movement at Omaha. Moreover, First Request No. 13(b) is specifically limited to locomotive compensation related to "movements covered by UP Freight Tariff 8005-D . . . for Omaha, Nebraska" and Second Request Nos. 2 and 3 are implicitly so limited. UP's claims of over breadth are misplaced.

In summary, UP has provided only one element of the locomotive costs for the movement of trains over its track from the BNSF interchange to NOPS - fuel. It has not questioned the relevance of the additional information sought by OPPD. The high degree of relevance and the need for the remaining aspects of locomotive costs outweigh any alleged burden to UP to assemble and produce this information.

First Request No. 17

In First Request No. 17, OPPD has requested documents containing certain road property valuation information for each valuation section traversed by OPPD's trains between the Omaha interchange and NOPS. UP has objected to this request on grounds of burden, overbreadth, and relevance.

OPPD has been perplexed by UP's objections since road property valuations are so clearly relevant to a coal rate reasonableness proceeding. On two separate occasions, OPPD has sought further explanation of UP's objections and asked UP

to reconsider its position. On August 1, 1997, UP explained that there is no valuation section that precisely matches the track at issue. UP described the North Omaha Lead as part of a larger valuation section with no reliable means of allocating to the North Omaha Lead the amounts that apply to the entire valuation section. Furthermore, UP expressed an inability to see how such information would be relevant to this proceeding in any event. UP reiterated this explanation in its August 22, 1997 letter.

The road property valuations clearly are relevant because road property return on investment ("ROI") is a component of a rail carrier's variable cost calculations. System average ROI is not an accurate surrogate for ROI on actual net investment for specific rail line segments.² Thus, UP's relevance objection is unsupportable.

Furthermore, UP's refusal to produce the road property valuation sections because the North Omaha Lead is part of a valuation section covering a larger area is not a valid basis for objection. UP claims only that there is no reliable way to allocate to the North Omaha Lead the amounts that apply to the entire valuation section. This is simply a matter of UP's opinion. OPPD should be free to evaluate the data for itself and to develop its own opinion. Any difference of opinion between OPPD and UP goes to the weight of the evidence, not its relevance. UP, therefore, should provide the requested information for the valuation section that encompasses the North Omaha Lead.

First Request No. 23

In First Request No. 23, OPPD asks UP to "[p]rovide copies of UP's most current valuations of land for the rail lines between the Omaha Interchange and NOPS." UP's sole objection is that "the most current valuations are too dated to be

² See Docket No. 41191, *West Texas Utilities Co. v. Burlington Northern Railroad Co.*, Appendix F, page 82. (Decision served May 3, 1996).

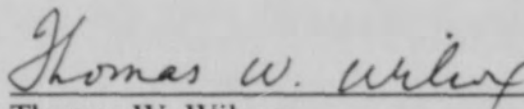
relevant to the issues in this case." The parties have engaged in continuing discussions about this objection.

UP acknowledges that land valuations clearly are relevant. It has decided, however, that land valuations dating back to 1991 are too old to be relevant. UP confuses relevance with the weight of the evidence. It is not for the UP unilaterally to decide if 1991 land valuations are too old. If the UP desires to submit its own land appraisal, as it has indicated it will do, it is free to do so and to argue that its valuations are better evidence than 1991 valuations. The Board will then determine which party's evidence to rely upon. Regardless of the Board's decision on the weight of the land valuation evidence, the 1991 valuations remain relevant and must be produced.

Conclusion

WHEREFORE, for the foregoing reasons, OPPD requests that the Board order UP to produce the documents encompassed by the document requests discussed in this Motion.

Respectfully submitted,



Thomas W. Wilcox
Nicholas J. DiMichael
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005
(202) 371-9500

Attorneys for Complainant

September 3, 1997

ATTACHMENT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____	)	
OMAHA PUBLIC POWER DISTRICT,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR-42006
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
_____	)	

UP'S OBJECTIONS AND RESPONSES TO OPPD'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS AND RECORDS

Defendant Union Pacific Railroad Company ("UP") hereby responds to the First Set of Interrogatories and Requests for Production of Documents and Records served by Complainant Omaha Public Power District ("OPPD") on June 20, 1997.

GENERAL RESPONSES

The following general responses are made with respect to all of the interrogatories and document requests.

1. UP has conducted a reasonable search for documents responsive to the interrogatories and document requests. Except as objections are noted herein,¹ all responsive documents have been or shortly will be made available for inspection and copying. Copies of documents will be supplied upon payment of

¹ Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege (General Objection No. 1) or the work product doctrine (General Objection No. 2) are not being produced.

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duplication costs (including, in the case of computer tapes, costs for programming, tapes and processing time).

2. Production of documents or information does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any objection stated herein.

3. Certain of the documents to be produced contain sensitive confidential information. UP will produce these documents, designated "Confidential" or "Highly Confidential," only after the Board has entered a protective order in this proceeding.

4. In line with past practice in cases of this nature, UP has not secured verifications for the answers to interrogatories herein. UP is prepared to discuss the matter with OPPD if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

The following objections are made with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each interrogatory or document request.

1. UP objects to production of, and is not producing, documents or information subject to the attorney-client privilege.

2. UP objects to production of, and is not producing, documents or information subject to the work product doctrine.

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3. UP objects to production of, and is not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. UP objects to production of, and is not producing, public documents that are readily available, including but not limited to documents on public file at the Board or the Securities and Exchange Commission or clippings from newspapers or other public media.

5. UP objects to producing, and is not producing, information or documents that are as readily obtainable by OPPD from its own files.

6. UP objects to the discovery requests to the extent that they call for the preparation of special studies not already in existence.

7. UP objects to the definitions of "describe" and "identify" as unduly burdensome.

8. UP objects to the definitions of "referring to" and "relating to" as unduly vague.

9. UP objects to the definition of "Omaha Interchange" to the extent it implies that UP is participating as a line haul carrier in coal movements that UP switches to OPPD for BNSF.

10. UP objects to Instructions Nos. 3, 4, and 5 to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

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11. UP objects to Instruction No. 4 as unduly burdensome.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Request No. 1

"Describe the manner in which the UP currently provides the transportation services for OPPD traffic moving between BNSF, Omaha Interchange and NOPS (hereinafter referred to as 'the OPPD traffic' or 'the OPPD train(s)') as provided for in UP Freight Tariff 8005-D and applicable supplements for Omaha, Nebraska, including crew assignments, number of locomotives and involved crew and locomotive times."

Response

Subject to the General Objections stated above, UP responds as follows:

A description responsive to this request is attached hereto as Attachment 1.

Request No. 2

"Describe and provide the most current of the following documents with regard to the Omaha, Nebraska switching district:

- a. All tariffs containing a description of the geographic area or boundaries;
- b. Maps or schematics depicting the geographic, operational and ownership area or boundaries;
- c. Track charts covering yard tracks in and around Omaha, including the trackage between the Omaha Interchange and NOPS;
- d. Operating time tables and special instructions covering the trackage identified in Interrogatory No. 2 (c) above; and,

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- e. Any document not listed above which contains definitions of geographic, operational or ownership areas or boundaries."

Response

UP objects to subpart e. of this request on the grounds that it is unduly vague, unduly burdensome, overbroad, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP will produce current documents responsive to this request. Maps and other oversized or voluminous items will be made available for inspection in Omaha and will be copied in response to requests following inspection. Copies of the relevant pages of tariffs, track charts and timetables are being produced with this response. There are no special instructions in the timetable regarding this traffic.

Request No. 3

"Identify the following for each OPPD train that UP switched from the Omaha Interchange to NOPS and back to the Omaha Interchange during calendar years 1995, 1996 and 1997 year-to-date:

- a. Date and time UP switch crew arrived at Omaha Interchange to get the loaded train;
- b. Date and time UP switch crew arrived at NOPS with loaded train;
- c. Date and time UP switch crew left NOPS with empty train;

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- d. Date and time UP switch crew left Omaha Interchange after dropping off the empty train; and,
- e. The locomotive initial and number for each locomotive used during the Interrogatory No. 3(a) through 3(d) activities."

Response

UP objects to this request on the ground that it would require an extremely burdensome special study. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP will produce considerable responsive information as soon as it is compiled.

Request No. 4

"Summarize in detail, or provide, all switching studies (logs and summaries) or other documents which relate in whole or in part to, including data relating to or derived from, UP switching of cars carrying coal between the Omaha Interchange and NOPS in possession of UP."

Response

Subject to the General Objections stated above, UP responds as follows:

Any responsive documents that are located will be produced.

Request No. 5

"Provide the following information:

- a. Actual maintenance of way structures expenditures for the trackage traversed by the OPPD trains between the Omaha Interchange and NOPS; and,

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- b. The service units, e.g., gross ton-miles, corresponding to the data provided in response to Interrogatory No. 5(a)."

Response

UP objects to this request on the ground that it would require an extremely burdensome special study. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

As to subpart a., to date UP has been unable to locate information regarding maintenance-of-way expenditures for the North Omaha Lead only, but is continuing to search for such information. As to subpart b., the total number of gross tons (including tare and lading weight but not locomotive weight) moving over the North Omaha Lead were:

1995	3,664,228
1996	4,291,395
1997 through May	1,553,694

The tonnage includes both line haul and switched traffic. UP does not have records regarding how many miles each car moved over the North Omaha Lead.

Request No. 6

"Describe and provide copies of all crew agreements currently in effect which contain provisions dealing with Omaha, Nebraska switching operations."

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Response

UP objects to this request on the grounds that it is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP will make the requested documents available for inspection in Omaha and will make copies in response to requests following inspection.

Request No. 7

"Provide the following information in a computerized format, to the extent possible, for each UP yard or road crew that handled OPPD trains between the Omaha Interchange and NOPS for each of the years 1995, 1996 and 1997 year to date:

- a. The date;
- b. Number of engine men (including trainees);
- c. Number of trainmen (including trainees);
- d. Number and job title of any other employees (including trainees);
- e. Place, time, and date first went on duty;
- f. Place, time, and date finally went off duty;
- g. Train number;
- h. Locomotive numbers (including slave units), and number of unit train;
- i. Number of cars in train;
- j. Actual miles run;
- k. Kind of service (e.g., local, through, switching, deadheading);

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- l. Service class for each employee (provide definition of codes used);
- m. Run number (provide definition of codes used);
- n. Time claimed for each employee;
- o. Straight time actually worked, for each employee;
- p. Straight time paid for, for each employee;
- q. Overtime, for each employee;
- r. Constructive codes and related miles, for each employee (provide definitions of codes used and all different payment rates for each of the years 1995, 1996 and 1997 year to date);
- s. Rate codes of each employee (provide definitions of codes used and all different wage rates for each of the years 1995, 1996 and 1997 year to date)1;
- t. Payments for meals and lodging for each employee;
- u. Any remarks written on time slips; and,
- v. Whether those employees performed any service per shift other than that involved in the transportation of the OPPD trains and, if so, a description of such other service.

If any of the foregoing information is not available in a computerized format, provide copies of the specific time slips (if information appears on the back of the time slips, then that data should also be copied), together with explanations and definitions of any codes appearing thereon and each different wage rate and payment scale for each of the years 1995, 1996 and 1997 year to date."

Response

UP objects to this request on the ground that it would require an extremely burdensome special study. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

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In response to subparts b., c. and d., each train has three UP crew members: an engineer, a conductor and a brakeman.

In response to the remaining subparts, UP will provide the requested information to the extent it is available when it has been compiled. UP has ascertained that no time slips are available.

Request No. 8

"Provide the same information as set forth in Interrogatory Nos. 7(a) through (v) in the same manner for each UP yard or road crew that handled the empty movement from NOPS to the Omaha Interchange. If any of the foregoing information is not available in a computerized format, provide copies of the specific time slips (if information appears on the back of the time slips, then that data should also be copied), together with explanations and definitions of any codes appearing thereon and each different wage and payment rate scales for each of the years 1995, 1996 and 1997 year to date."

Response

See response to Request No. 7.

Request No. 9

"Provide all data on, or a copy of, any yard reports, delay reports, conductor's report, dispatchers sheets or other documentation identifying yard activities for each crew handling each of the trains identified in Interrogatory Nos. 7 and 8, together with explanations and definitions of any codes appearing thereon."

Response

UP objects to this request on the grounds that it is unduly vague and overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of

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admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP will produce the requested documents to the extent they can be located.

Request No. 10

"Identify all agreements pertaining to Omaha, Nebraska as defined in UP Freight Tariff 8005-D and applicable supplements to which UP is a party with other rail carriers, and supplements thereto, under which UP purchases the services of and/or compensates such other carrier(s) for the use of locomotives, crews, dispatching services, trackage or other facilities. Provide a copy of each agreement including all supplements."

Response

UP objects to this request on the grounds that it is unduly vague and overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

Responsive documents will be produced.

Request No. 11

"Identify the frequency that UP uses:

- a. UP locomotives to handle the OPPD traffic between the Omaha Interchange and the NOPS; and,
- b. PNSF-provided locomotives to handle the OPPD traffic between the Omaha Interchange and the NOPS."

Response

Subject to the General Objections stated above, UP responds as follows:

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Only locomotives provided by BNSF are used to move the OPPD traffic to NOPS. Generally, only BNSF locomotives are used to pull empty coal trains; occasionally a UP locomotive is tied to the two BNSF locomotives when they pull the empties.

Request No. 12

"For UP locomotives used to handle the OPPD traffic, provide the following information for each of the years 1995, 1996 and 1997 year to date:

- a. Identification of the location(s) from which the locomotives are drawn plus the total number of locomotives available in that location(s);
- b. For each locomotive in the above location(s) provide the following:
 1. Its model or type (e.g., SD-40-2);
 2. Horsepower;
 3. Capacity of fuel tanks (gallons);
 4. Date of purchase or lease;
 5. Original cost plus additions and betterments;
 6. Financing vehicle (e.g., equipment trust);
 7. Debt rate as a percent;
 8. Financing terms (in years);
 9. Annual depreciation;
 10. Accrued depreciation;
 11. If leased, whether a capital or operating lease;
 12. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives. If group of locomotives, identify the number (by initial and number) and aggregate dollars; and,

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13. If an operating lease, the quarterly, semi-annual, annual, etc. lease payment by locomotive or group of locomotives covering the term of the lease. If a group of locomotives, identify the number (by initial and number) and aggregate dollars.
- c. If there are no specific locations from which the locomotives used to handle the OPPD traffic are drawn, provide the information requested in 12(b) above for each locomotive used to handle the OPPD traffic as identified in Interrogatory No. 3(e)."

Response

UP objects to this request on the grounds that it is overbroad and burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and that it would require an extremely burdensome special study. Without waiving this objection and subject to the General Objections stated above UP responds as follows:

UP will produce information that can be gathered without excessive burden regarding the UP locomotives used to handle OPPD traffic.

Request No. 13

- "a. List all written agreements covering movements on which UP locomotives are used on trains traversing non-UP owned lines and/or non-UP owned locomotives are used on the trains traversing lines of UP for movements covered by UP Freight Tariff 8005-D and applicable supplements for Omaha, Nebraska, as defined in that tariff. Provide a copy of all agreements (including supplements and amendments) covering these movements.
- b. For the section of the agreements identified in Interrogatory No. 13(a) that covers compensation between the parties, provide the amount of compensation or equalization by component, e.g., fuel, maintenance,

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servicing, etc., and the service units covered by the compensation, e.g., horsepower hours, for each of the years 1995, 1996 and 1997 year to date and the basis for computing the compensation by component, including but not limited to studies used in determining the basis of compensation. Provide a copy of correspondence, bills, etc., relating to each agreement."

Response

UP objects to this request on the grounds that it is unduly burdensome and overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

a. Those agreements that are relevant to OPPD traffic are being produced in response to Request No. 10 above.

b. UP will produce documents regarding compensation paid to BNSF for the use of its power and fuel for the OPPD traffic.

Request No. 14

"a. For all agreements covering locomotives owned by one carrier and used on another carrier's lines and not covered by Interrogatory No. 13(a) agreements, provide the amount and basis, including but not limited to identification of studies used in determining the basis, of compensation, for the using carrier's compensation to the owning carrier for:

1. Use of the locomotive;
2. Fuel consumed while on using carrier's line;
3. Maintenance of the locomotive(s);

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4. Servicing of the locomotive(s); and
 5. Other.
- b. Provide a copy of correspondence, bills, etc., relating to each agreement identified in response to Interrogatory No. 14(a)."

Response

UP objects to this request on the grounds that it is unduly burdensome and overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 15

"For each of the years 1995, 1996 and 1997 year to date, provide the following information with supporting documentation with regard to locomotives identified in response to Interrogatory No. 3(e):

- a. The manufacturer, the model, the purchase date and the total purchase price of diesel locomotives purchased by the carrier;
- b. The fuel consumption rate at each throttle setting including 'low idle'; and,
- c. The lessee, the model, lease date and the lease rate of diesel locomotives leased by the carrier, e.g., power by the hour. Identify the services provided by the lessee and included in the lease rate by component, e.g., locomotive repairs."

Response

Subject to the General Objections stated above, UP responds as follows:

UP lacks information responsive to this request for the BNSF locomotives used for the OPPD traffic. See responses to Request Nos. 11 and 12 above.

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Request No. 16

"Provide all fuel usage documents, reports, analyses and estimates (as well as estimation methodologies), including fuel quantities and the associated service units, for any or all of the locomotives used to handle the OPPD trains, for the years 1995, 1996 and 1997 year to date."

Response

UP objects to this request on the grounds that it is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

To the extent available, UP will provide the requested documents as they relate to movement of the OPPD traffic.

Request No. 17

"Provide the following for each valuation section traversed by the OPPD train(s) between the Omaha Interchange and the NOPS:

- a. A description by milepost and station name of the properties encompassed by each valuation section (as of December 31st for each of the years 1995 and 1996);
- b. A description by milepost and station name of the portion of the valuation section identified in response to Interrogatory No. 17(a) that is traversed by the OPPD traffic (as of December 31st for each of the years 1995 and 1996);
- c. Gross values by ICC/STB property account included within each valuation section identified in response to Interrogatory No. 17(a) (as of December 31st for each of the years 1995 and 1996);
- d. Accumulated depreciation by ICC/STB property account for all properties included within each valuation section identified in response to Interrogatory No. 17(a) (as of December 31st for each of the years 1995 and 1996);

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- e. Gross values by ICC/STB property account of only those properties used by the OPPD traffic for each valuation section identified in response to Interrogatory No. 17(a) (as of December 31st for each of the years 1995 and 1996);
- f. Accumulated depreciation by ICC/STB property account for all properties used by the OPPD traffic for each valuation section identified in Interrogatory No. 17(a) (as of December 31st for each of the years 1995 and 1996);
- g. Total gross ton-miles of cars and contents and gross ton-miles of locomotives and cabooses traversing the entire valuation section for each valuation section identified in response to Interrogatory No. 17(a) for each of the years 1995 and 1996;
- h. For each valuation section identified in response to Interrogatory No. 17(a) where the properties used by the OPPD traffic are less than the total properties within the valuation section, total gross ton-miles of cars and contents and gross ton-miles of locomotives and cabooses for each valuation section identified in response to Interrogatory No. 17(a) for each of the years 1995 and 1996)."

Response

UP objects to this request on the grounds that it is unduly burdensome and overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 18

"Explain how loaded cars that are switched pursuant to UP Freight Tariff 8005-D from a railroad to the UP are categorized in the Report of Freight Commodity and Statistics (Form QCS) and in Schedule 755, Railroad Operating Statistics to the Annual Report Form R-1 filed with the Surface Transportation Board."

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Response

Subject to the General Objections stated above, UP responds as follows:

In accordance with the Board's accounting rules and procedures, the OPPD loaded cars are not included in the QCS. The time required to switch the loaded cars is reflected in the R-1 Schedule 755, line 117, Yard-Switching Hours, which measures time expended by yard crews in switching service.

Request No. 19

"For 1995, 1996 and 1997 year to date provide copies of revenue statements for all traffic handled by the UP in Omaha, Nebraska pursuant to UP Freight Tariff 8005-D."

Response

UP objects to this request on the grounds that it is unduly vague and overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

There are no "revenue statements." The amount of switching revenue UP received from traffic to or from stations on the North Omaha Lead was:

1995	\$2,323,483
1996	\$2,574,867
1997 through May	\$986,493

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Request No. 20

"Provide a copy of Union Pacific's current schedule of rates and surcharges for billing railroads and others for use of facilities, services and equipment."

Response

Subject to the General Responses and Objections stated above, UP responds as follows:

UP will produce the requested document.

Request No. 21

- "a. For each of the years 1995, 1996 and 1997 year to date, provide the annual amount of Ad Valorem Tax paid by UP and the total road-miles and track-miles owned by UP in the state of Nebraska and in Omaha, Nebraska.
- b. Provide the current Ad Valorem tax rates which the State of Nebraska and local governments use to assess UP property and how these rates are applied."

Response

UP objects to this request on the ground that it is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

- a. Total Ad Valorem Tax paid in Nebraska was:

1995	\$13,294,995.57
1996	\$14,231,709.56

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The ad valorem taxes for 1997 will not be levied until November and will not be paid until April 1998. Data as to the taxes paid to local governments in the Omaha area in 1995 and 1996 will be produced. The requested mileage data are as follows:

	<u>Road Miles</u>	<u>Track Miles</u>
Nebraska 1996	1,268.03	2,597.86
1995	1,104.39	2,382.88
Omaha 1996	37.22	126.01
1995	37.22	126.01

b. In 1995, the average rate assessed in Nebraska was 0.02177581. In 1996, the average rate assessed was 0.02144401. The rates assessed and amounts paid to the local governments in the Omaha area will be provided. The method used to assess UP property is described in a document that will be produced.

Request No. 22

"Provide the following:

- a. A copy of UP's most current land valuation maps covering the rail lines between the Omaha Interchange and NOPS;
- b. Documents identifying all land grants and/or donated rights of way (including easements) obtained by UP or its predecessors on the rail lines between the Omaha Interchange and NOPS; and,
- c. Documents and/or maps which identify the UP-owned trackage used by UP to provide service to OPPD between the Omaha Interchange and NOPS."

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Response

UP objects to this request on the grounds that it is overbroad and unduly burdensome. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP will produce the requested documents. Documents regarding land grants and/or donated rights of way will be made available for inspection in Omaha and copies will be provided upon request following inspection.

Request No. 23

"Provide copies of UP's most current valuations of land for the rail lines between the Omaha Interchange and NOPS."

Response

UP objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The most current valuations are too dated to be relevant to the issues in this case.

Request No. 24

"Provide a copy of Union Pacific's technical specifications for construction and/or maintenance of industrial trackage."

Response

UP objects to this request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving

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the foregoing objection and subject to the General Objections stated above, UP responds as follows:

UP will provide any responsive documents.

Request No. 25

"For each of the years 1995, 1996 and 1997 year to date, produce documents that identify the following:

- a. Cost per ton for 132 lb. rail - new;
- b. Cost per ton for 132 lb. rail - second hand;
- c. Cost per ton for 115 lb. rail - new;
- d. Cost per ton for 115 lb. rail - second hand;
- e. Cost per plant weld;
- f. Cost per field weld;
- g. Cost per rail anchor - new;
- h. Cost per 7.5" x 14" tie plate - new;
- i. Cost per 7.5" x 14" tie plate - second hand;
- j. Cost per 7.5" x 12" tie plate - new;
- k. Cost per 7.5" x 12" tie plate - second hand;
- l. Cost per 7" x 9" x 8'6" wood crosstie - Grade 5;
- m. Cost per 7" 9" x 8'6" wood crosstie - Grade 3;
- n. Cost for a No. 9 turnout (metal material only);
- o. Cost for a No. 11 turnout (metal material only);
- p. Cost per MBM for wood switch ties;
- q. Cost per rail spike;
- r. Cost per cubic yard of ballast;
- s. Cost per cubic yard of subballast;

- 23 -

- t. All transportation costs, identified separately, for each of the items listed in (a) through (s) above;
- u. All labor costs, identified separately, for installing each of the items listed in (a) through (s) above."

Response

UP objects to providing cost information for 1995 and 1996 and to subparts t. and u. of this request on the ground that these requests are unduly vague and burdensome and would require an extremely burdensome special study. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

As to parts a. through s., UP does not purchase all of the items specified, but will provide the current price it is paying for the closest equivalent. UP will also produce information about the labor costs associated with installing the appropriate unit.

Request No. 26

"For all bridges located on the rail line between the Omaha Interchange and the NOPS produce bridge lists or other documents identifying:

- a. Each bridge;
- b. Its location;
- c. What it crosses (e.g., river, interstate highway, railroad, etc.);
- d. Distinguishing features and characteristics of the bridge (such as type, length and height);

- 24 -

- e. The individual components of which the bridge is constructed (e.g., spans, piers, abutments, etc.); and,
- f. The number and length of such components in the bridge."

Response

UP objects to subpart d. of this request on the grounds that it is unduly vague and overbroad. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

To the extent available, UP will provide the requested information.

Request No. 27

"For each of the components identified in response to Interrogatory No. 26, produce documents identifying the most current available construction unit costs (e.g., cost per foot or other appropriate measure that can be applied to the components) for single track configurations for both open deck and ballast deck construction."

Response

Subject to the General Objections stated above, UP responds as follows:

To the extent available, UP will produce the requested documents.

Request No. 28

"Produce documents identifying the highway at-grade crossings on the rail line between the Omaha Interchange and the NOPS and the following information for each such crossing:

- 25 -

- a. Geographic location, i.e., city, county and state;
- b. Rail location, i.e., railroad line name and milepost;
- c. Width;
- d. Length;
- e. Type of construction;
- f. Number of tracks; and,
- g. Type of protective devices."

Response

Subject to the General Objections stated above, UP responds as follows:

To the extent available, the requested information will be produced.

Request No. 29

"For each of the different types and sizes of highway crossings and highway crossing protective devices identified in response to Interrogatory No. 28, produce documents identifying the most current available construction costs."

Response

UP objects to this request on the grounds that it is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

Current construction costs for the types of crossings located on the track used to carry the CPPD traffic will be produced.

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Request No. 30

"Provide documents containing the grading construction information listed below for the rail line between Omaha Interchange and the NOPS:

- a. Number of cubic yards of excavation separated by type of material (e.g., common, loose rock, solid rock, etc.);
- b. Number of cubic yards of borrow separated by type of material (e.g., common, loose rock, solid rock, etc.);
- c. Construction specifications (e.g., roadbed width, side slope ratio, width of ditches, etc.);
- d. Number of route miles, separated between single track main and double track main, corresponding to the cubic yard information provided in response to Interrogatory Nos. 30(a) and (b) above;
- e. Number of track miles corresponding to the cubic yard information provided in response to Interrogatory Nos. 30(a) and (b) above;
- f. Linear feet of pipe installed for lateral drainage;
- g. Number of cubic yards of rip rap placed for the protection of the roadway;
- h. Number of cubic yard of masonry or other similar material used for retaining walls;
- i. Number of acres cleared;
- j. Number of acres grubbed; and,
- k. Number of acres seeded."

Response

UP objects to this request on the grounds that it is unduly burdensome and would require an extremely burdensome special study. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

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To the extent available, UP will produce the requested documents.

Request No. 31

"For each of the years 1995, 1996 and 1997 year to date, provide the documents containing the following information:

- a. The cost per cubic yard of excavation separately for common, loose rock and solid rock;
- b. The cost per cubic yard of borrow separately for common, loose rock and solid rock;
- c. The cost per cubic yard of rip rap (installed) separated between material and labor;
- d. The cost per cubic yard of masonry, or other similar material, used for retaining walls separated between material and labor;
- e. The cost per acre for clearing and any adjustments for the sale of timber;
- f. The cost per acre for grubbing;
- g. The cost per acre for seeding; and,
- h. The cost per square yard for geotextile fabric."

Response

UP objects to this request on the ground that it is unduly burdensome and overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

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To the extent available, UP will produce the requested documents.

Request No. 32

"Provide documents containing the following information for all culverts on the rail line between the Omaha Interchange and the NOPS:

- a. Location (i.e., state, line segment, railroad milepost, etc.);
- b. Size (diameter); and,
- c. Cost per linear foot (installed) for each size identified in response to Interrogatory No. 32(b) above for each of the years 1995, 1996 and 1997 year to date."

Response

UP objects to this request on the grounds that it is unduly burdensome and overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

To the extent available, UP will produce the requested documents.

- 29 -

Carolyn F. Corwin
ARVID E. ROACH II
CAROLYN F. CORWIN
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-5388

JAMES V. DOLAN
LOUISE A. RINN
Law Department
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-4227

Attorneys for Defendant Union
Pacific Railroad Company

July 7, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 1997,
I caused a copy of the foregoing UP's Objections and Responses
to OP/D's First Set of Interrogatories and Requests for
Production of Documents and Records to be sent by messenger
to:

Thomas W. Wilcox, Esq.
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005

Carolyn F. Corwin
Carolyn F. Corwin

BEFORE THE
SURFACE TRANSPORTATION BOARD

OMAHA PUBLIC POWER DISTRICT,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR-42006
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	

UP'S OBJECTIONS AND RESPONSES TO OPPD'S
SECOND SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS AND RECORDS

Defendant Union Pacific Railroad Company ("UP") hereby responds to the Second Set of Interrogatories and Requests for Production of Documents and Records served by Complainant Omaha Public Power District ("OPPD") on July 29, 1997.

GENERAL RESPONSES

The general responses set forth in UP's Objections and Responses to OPPD's First Set of Interrogatories and Requests for Production of Documents and Records are hereby incorporated by reference.

GENERAL OBJECTIONS

The general objections set forth in UP's Objections and Responses to OPPD's First Set of Interrogatories and Requests for Production of Documents and Records are hereby incorporated by reference. Any additional specific objections are stated at the beginning of the response to each interrogatory or document request.

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SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Request No. 1

"Produce all correspondence between UP and BNSF dating from 1979 to the present relating to the operations between UP and BNSF by which OPPD's trains are transferred to UP for final delivery to NOPS."

Response

UP objects to this request on the grounds that it is unduly vague, unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP will produce responsive documents that can be gathered without excessive burden.

Request No. 2

- "a. Identify the UP locomotives used from 1995 to the present to equalize the horsepower hours between UP and BNSF pursuant to the run-through agreement and documents referenced in Bates numbers UP 00034 through UP 00065.
- b. For each of the locomotives identified in response to 2. a. above, provide the following information:
 - 1. Model or type (e.g., SD-40-2);
 - 2. Horsepower;
 - 3. Date of purchase or lease;
 - 4. Original cost plus additions and betterments;
 - 5. Financing vehicle (e.g., equipment trust);
 - 6. Debt rate as a percent;

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7. Financing terms (in years);
8. Annual depreciation;
9. Accrued depreciation;
10. If leased, whether a capital, operating or full-service lease;
11. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives. If group of locomotives, identify the number (by initial and number) and aggregate dollars;
12. If an operating lease, the quarterly, semi-annual, annual, etc. lease payment by locomotive or group of locomotives covering the term of the lease. If a group of locomotives, identify the number (by initial and number) and aggregate dollars; and,
13. If a full-service lease, e.g., power by the hour, the lease rate and the services provided by the lessee and included in the lease rate by component, e.g., locomotive repairs."

Response

UP objects to this request on the grounds that it is overbroad, would require an extremely burdensome special study, and seeks information that is of marginal relevance to this proceeding in view of the fact that only BNSF locomotives are used in connection with movement of the OPPD traffic except in rare situations described in UP's response to Request No. 11 of OPPD's First Set of Interrogatories and Requests for Production of Documents and Records.

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Request No. 3

"For the sections of the agreement identified in Bates numbers UP 00034 through UP 00065 covering compensation between the parties to that agreement, provide:

- a. The amount of compensation or equalization by component, e.g., fuel, maintenance, servicing, etc., and the service units covered by the compensation, e.g., horsepower hours, for each of the years 1995, 1996 and 1997 year to date;
- b. The basis for computing the compensation by component, including but not limited to studies used in determining the basis of compensation; and,
- c. A copy of all correspondence, bills, etc., relating to the agreement and supplements."

Response

UP objects to this request on the grounds that it is unduly burdensome, overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP has previously produced responsive information relating to the OPPD traffic.

Request No. 4

"Produce copies of all agreements, and supplements, between BNSF and UP, other than those agreements, and supplements, produced in response to First Interrogatory No. 10, applicable to Omaha, Nebraska, including the Omaha, Nebraska switching district."

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Response

UP objects to this request on the grounds that it is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP will produce documents relevant to the OPPD traffic to the extent such documents have not been produced previously.

Request No. 5

"Produce all documents regardless of date related to the development and adoption of Item 3650 of Tariff UP 8005-D."

Response

Subject to the General Objections stated above, UP responds as follows:

UP is presently unaware of responsive documents that have not been produced previously, but is continuing to search for any such documents.

Request No. 6

"Produce all tariffs and supplements dated from 1979 through 1984 applicable to the movement of coal by UP from the Omaha Interchange to NOPS."

Response

UP objects to this request on the grounds that it is unduly vague, overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of

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admissible evidence. Without waiving this objection, and subject to the General Objections stated above, UP responds as follows:

UP will produce any documents responsive to this request.

Request No. 7

"Produce all agreements, contracts or contract provisions between UP and BNSF dated from 1979 to the present applicable to the movement of coal received by UP from BNSF in Omaha and delivered by UP to NOPS."

Response

Subject to the General Objections stated above, UP responds as follows:

UP will produce documents responsive to this request.

Request No. 8

"Produce all documents, regardless of date, related to the construction of track to connect NOPS to defendant in the 1970s, including but not limited to documents regarding;

- a. the cost, feasibility, or effectiveness of the construction as a competitive constraint on rail rates; and
- b. any maps or diagrams associated with such construction."

Response

Subject to the General Objections stated above, UP responds as follows:

UP will produce documents responsive to this request.

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Request No. 9

"Produce all documents from 1982 to the present prepared by UP personnel or consultants retained by UP relating to any possible transportation of coal to NOPS involving water, truck, conveyor belt or other non-rail modes."

Response

Subject to the General Objections stated above, UP responds as follows:

UP will produce any documents responsive to this request.

Request No. 10

"Produce all documents from 1982 to the present relating to the feasibility of rail construction which would directly connect NOPS to the track of the BNSF in the vicinity of Omaha, Nebraska."

Response

Subject to the General Objections stated above, UP responds as follows:

UP will produce documents responsive to this request.

Request No. 11

"For the years 1991 to the present, produce all documents, including but not limited to studies, analyses, reports, or projections prepared by UP personnel or consultants retained by UP relating to:

- a. the amount of power generated by OPPD's electrical generating stations;
- b. the amount of power purchased and sold by OPPD;
- c. the economic feasibility of OPPD increasing power production at one of its power stations and decreasing power production at another station and the effect of

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such increases or decreases on the switching charge assessed by UP under item 3650 of Tariff UP 8005-D."

Response

Subject to the General Objections stated above, UP responds as follows:

UP will produce any documents responsive to this request.

Request No. 12

"For the years 1982 to the present, produce all documents, including studies, analyses or projections prepared by UP personnel, or consultants retained by UP, relating to the ability of gas, nuclear power, or other fuels to displace coal from the Powder River Basin in Wyoming as the fuel utilized by electric utilities to produce electricity."

Response

UP objects to this request on the grounds that it is overbroad and unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection and subject to the General Objections stated above UP responds as follows:

UP will produce responsive documents that can be gathered without excessive burden.

- 9 -

Carolyn F. Corwin
ARVID E. ROACH II
CAROLYN F. CORWIN
ANDREW J. SHAPIRO
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-5388

JAMES V. DOLAN
LOUISE A. RINN
ROBERT T. OPAL
Law Department
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-3072

Attorneys for Defendant Union
Pacific Railroad Company

August 13, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 1997,
I caused a copy of the foregoing UP's Objections and Responses to
OPPD's Second Set of Interrogatories and Requests for Production
of Documents and Records to be sent by messenger to:

Thomas W. Wilcox, Esq.
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005

Carolyn F. Corwin

ATTACHMENT 2

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N. W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000
FACSIMILE: (202) 662-6291

CAROLYN F. CORWIN
DIRECT DIAL NUMBER
(202) 662-5338
DIRECT FACSIMILE NUMBER
(202) 778-5338

LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
TELEPHONE: 44-171-495-5655
FACSIMILE: 44-171-495-3101
BRUSSELS OFFICE
KUNSTLAAN 44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-549-5230
FACSIMILE: 32-2-502-1598

August 1, 1997

BY MESSENGER

Thomas W. Wilcox, Esq.
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue N.W.
Suite 750
Washington, D.C. 20005

Re: OPPD v. UP, Docket No. NOR-42006

Dear Tom:

As a follow-up to our telephone conversation on July 28, 1997, and in response to your letter of July 29, 1997, I can report the following. The paragraph numbers below correspond to the paragraph numbers in your July 29 letter.

1. With my letter of July 29, 1997 to you, I enclosed a track profile covering the southern portion of the North Omaha Lead. This profile is responsive to Request 2, as well as Requests 22, 26, and 30-32. UP has made considerable efforts to locate a similar profile drawing that shows the remainder of the relevant track, but has been unable to locate such a profile. We will let you know if a further search is successful, but at this point I am not optimistic. I also forwarded to you an alignment map covering Omaha and North Omaha with my letter dated July 25, 1997. In addition, I have offered you the opportunity to review a larger, more detailed CNW alignment map in our offices.

2. With my letter to you dated July 30, 1997, I enclosed the results of a special study showing, for the period June 1996 through May 1997, times of (a) placement of loaded cars at NOPS and (b) release of empty cars to BNSF. This information is the closest UP has to the crew event times described in Request 3(b) and (d). UP does not have information responsive to Request 3(a), (c), or (e). Contrary to what is stated in your letter, I did not tell you that in response to Request 3 UP would provide the times trains were handed off from BNSF to UP. Request 3 inquires about

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Thomas W. Wilcox, Esq.
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Page 2

times relating to UP crew activity. A UP crew may or may not be on duty at the time BNSF drops off loaded cars. Thus, the hand-off of a train from BNSF would not necessarily correspond to the time a UP switch crew arrived to pick up the cars.

3. I have confirmed that UP has no documents responsive to Request 4 other than documents that were generated since the complaint was filed. As I advised you during our telephone call, we consider the latter documents to constitute attorney work product, and we are not producing them.

4. UP is working on a special study in response to Request 5(a). I still expect to provide the results of that study to you some time next week.

5. As we have stated previously, UP is willing to produce crew agreements for inspection in Omaha. We will wait to hear whether you intend to engage in such an inspection or are otherwise able to narrow your request so that we can avoid burdensome copying of these agreements, a number of which are in the unusual format I described to you.

6. I have confirmed that UP has no documents responsive to Request 9.

7. As your letter notes, my letter dated July 25, 1997 sets out UP's position on Request 12.

8. As I advised you during our telephone call, UP has been assembling information on the compensation paid for use of BNSF locomotives in connection with movement of the OPPD traffic in response to Request 13(b). I hope to have that information for you early next week.

9. As I advised you, UP's primary objection to Request 14 is overbreadth, and we are willing to discuss this request further if you can narrow it. To the extent you have done so in OPPD's Second Set of Discovery Requests, UP will respond in due course.

10. I have investigated further regarding Request 17. UP continues to object to this request on the ground that data on valuation sections would not yield relevant information and that assembling such data would be unduly burdensome. As I told you, there is no valuation section that matches the track at issue. I am advised that the valuation section that encompasses the North Omaha Lead runs from Missouri Valley, IA to the north, Council Bluffs, IA to the east, and Millard, NE to the southwest. The section has 35.48 mainline track miles (including 16.87 miles of double-track

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Thomas W. Wilcox, Esq.
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Page 3

mainline) and 52.24 track miles of yard and lead tracks. The track cost and road property asset costs within the valuation section are not identified to a specific mile post, station number, or track number. As we have previously advised you, UP does not have a record of the gross ton-miles for traffic moving on the North Omaha Lead. Thus, there is no reliable way to allocate to the North Omaha Lead the amounts that apply to the entire valuation section.

Even if the valuation section records did provide information specific to the North Omaha Lead, we believe these records would not be relevant. We are unable to determine how the information requested would have any bearing on an issue pertinent to this proceeding. Moreover, it would require substantial effort for UP to retrieve records and write a program to provide the requested information for the valuation section.

11. As I noted during our telephone call, I believe the reference to Gelco rates on document no. UP 00100 must be read in the context of the statement in document no. UP 00099. Standard reference sources reveal that Gelco is a corporation that lease s railroad equipment, among other things.

12. UP is continuing to pull from its files deeds that are responsive to Request 22(b). Although we initially indicated that these documents would be available for review in Omaha, UP is making copies and is willing either to forward them to Washington, D.C. or to provide them to someone in the Omaha area. Please let us know your preference on this. UP is in the process of creating a map of the relevant right of way that shows parcels with deed references in response to Request 22(a) and will provide a copy of that map when it is ready.

13. The most recent valuation UP has for the property in question was prepared in 1991. UP believes that a 1991 land valuation is too dated to provide information of relevance to this proceeding. This is particularly true in view of recent plans for real estate development in the downtown Omaha area. In any event, UP intends to hire an appraiser to perform an up-to-date appraisal of the value of the relevant property for purposes of the stand-alone cost analysis. Presumably, OPPD will do the same. Thus, land valuation information from 1991 would be superfluous.

14. I had originally thought that UP could produce a document responsive to Request 24 this week, but that is not the case. UP will produce a responsive document as soon as possible.

15. I provided the results of UP's special study in response to Request 25 with my letter to you dated July 29, 1997.

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Thomas W. Wilcox, Esq.
August 1, 1997
Page 4

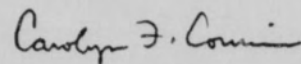
16. As noted above, we produced one track profile to you with my letter dated July 29 and an alignment map with my letter dated July 25. UP is searching for other profiles and maps that may provide more detail on the relevant property in response to Request 26 and other requests.

17. Apart from the track profile referenced above, as well as documents already produced in response to other requests, UP has been unable to locate any documents responsive to Requests 30 and 31.

Please let me know as soon as possible whether you will want to review any of the documents UP has offered for inspection in Omaha. UP has limited space for storage and review and needs to hear soon whether someone will come to Omaha and, if so, when, so that arrangements can be made.

Please do not hesitate to call if you have questions.

Sincerely yours,



Carolyn F. Corwin

ATTACHMENT 3

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N. W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000
FACSIMILE: (202) 662-6291

LECONFIELD HOUSE
CURZON STREET
LONDON W1T 8AS
ENGLAND
TELEPHONE: 44-(71)-495-5655
FACSIMILE: 44-(71)-495-5101
BRUSSELS OFFICE
KUNSTLAAN 44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-549-5230
FACSIMILE: 32-2-502-1598

CAROLYN F. CORWIN
DIRECT DIAL NUMBER
(202) 662-5338
DIRECT FACSIMILE NUMBER
(202) 778-5338

August 22, 1997

BY MESSENGER

Thomas W. Wilcox, Esq.
Donelan, Cleary, Wood & Maser, P.C.
Suite 750
1100 New York Avenue, N.W.
Washington, D.C. 20005



Re: OPPD v. UP, Docket No. NOR-42096

Dear Tom:

This responds to your letter dated August 15, 1997, as supplemented by the follow-up letter you and Jeff Moreno sent on August 19, 1997, relating to UP's responses to OPPD's first set of discovery requests.

As an initial matter, you have indicated that a representative of L.E. Peabody & Associates may wish to visit UP's offices in Omaha. Materials available for review there include crew agreements and originals of deeds and other instruments (you have already received copies of these latter documents). In addition, the oversized CNW track map I have offered for review at our offices is also available for review at UP's offices. Since space is tight, please provide at least one week's notice of the date of the Peabody visit.

The following comments are numbered to correspond with the heading numbers in your letters.

1. Maps and Charts - We have provided you with a number of maps and track charts covering various portions of the North Omaha area (e.g., Bates nos. UP 00005-UP 00012, UP 00166, UP 00210, UP 00372-UP 00373), as well as several large valuation maps (UP 00575 through UP 00584). UP personnel have checked once again and have determined that you have received copies of all hard copy maps and charts of the North Omaha area that UP has in its possession. I am now checking to see whether UP's computerized mapping system contains sufficient data to provide a more detailed map showing the North Omaha Lead.

COVINGTON & BURLING

Thomas W. Wilcox, Esq.
August 22, 1997
Page 2

I have not previously forwarded a U.S. Geological Survey map showing the Omaha North Quadrangle, on the assumption that you already have access to such maps. I enclose a copy of such a map with this letter (Bates no. UP 00670).

The materials UP has produced to you include a detailed track profile that includes the southern portion of the North Omaha Lead (Eates no. UP 00210). As I have advised you previously, UP has searched extensively but has been unable to find a similar detailed track profile covering the remaining part of the North Omaha Lead. I have also offered you an opportunity to inspect an oversized, highly detailed CNW track map of Omaha at our offices.

In this connection, it is important to recall that the segment of track on which OPPD is focusing in this case is not a main line or even a branch line. Rather, it is an industrial lead track. UP does not typically keep the same level of detail for an industrial lead track as for a main line track or a branch track.

You note that you have been unable to determine where UP track ownership begins. I understand that the boundary is located in the vicinity of the Harvey Street pumping station. Earlier today we produced a 1988 UP agreement with BN that includes a map that may be helpful in this regard. I am advised that Exhibit B to that agreement (a BN map, Bates no. 00697), shows the boundary between BNSF track and UP track at point "D." I am still checking to see whether UP has any additional information on this subject.

2. Maintenance of Way Information - UP has completed work on the special study in response to OPPD Request 5(a). I am producing that study to you today.

3. Crew Wage Data - I had understood that the material we provided to you in response to OPPD Requests 7 and 8 contained the supporting data for the special study on this subject. I am advised, however, that we have additional hard copy back-up that was used in connection with the study, including car reporting data and an hours of service report. We will produce these materials to you within the next few days.

I am puzzled by your reference to movements other than OPPD trains. OPPD Request 7 specifically refers to "crews that handled OPPD trains." As noted in UP's response to OPPD Request 1, the extra crews that handle OPPD trains perform no other work. The regular crews may perform some other work, but UP's data bases do not provide detail on what work is performed for particular customers by particular

COVINGTON & BURLING

Thomas W. Wilcox, Esq.
August 22, 1997
Page 3

crews. This is why it was necessary to perform a special study to identify crew information for the OPPD moves.

4. Locomotive Compensation - We have provided you with invoices showing the amounts UP has paid to BNSF for fuel in connection with the locomotives used for switching of the OPPD traffic, as well as documents on horsepower equalization. We have advised you that assembling detail on the particular UP locomotives provided to BNSF as runthrough power or when UP owes BNSF horsepower hours would be exceedingly burdensome. Moreover, the request is clearly overbroad, since it is not confined to the North Omaha area. (The UP-BNSF runthrough power agreement covers hundreds of different units exchanged at a number of different geographical points.) We believe you have all the responsive documents that are relevant to the North Omaha area.

In order to provide you with some useful information on this subject, UP would be willing to perform a computation of the dollar value of a UP horsepower hour based on the entire UP freight locomotive fleet. Please let me know if this approach would be satisfactory to you.

5. Road Property Valuation - We stand by our earlier explanation of our objection on this point. See my letter dated August 1, 1997. You ask for "whatever service units you have" for the entire valuation section and the track used by NOPS trains. However, the valuation section contains many different sorts of tracks, including main line track and branch lines, as well as industry track. UP does not use any service units to allocate valuation section data to a segment such as the North Omaha Lead. As I have advised you before, UP does not believe that there is a reliable way to perform such an allocation, and the valuation section information is not used for this purpose.

In any event, the historical accounting data you seek would be irrelevant to the calculation of variable costs, stand-alone costs, or any other matter that will be at issue in this proceeding. Unless you can explain further why the requested information is relevant, we see no basis for producing it.

6. Revenue Received by UP from Switching Movements - OPPD Request 19 asks only for "revenue statements," and we have previously advised you that UP has no such documents. We have already provided you with the total switching revenue UP received for all traffic handled by UP for industries on the North Omaha Lead under Tariff 8005-D.

COVINGTON & BURLING

Thomas W. Wilcox, Esq.
August 22, 1997
Page 4

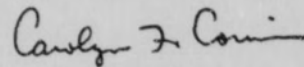
7. Land Valuations - We stand by our position on this subject, as described in my letter to you dated August 1, 1997.

8. Grading Quantities and Costs - I am unclear from your statement whether you believe that UP's response to Request 30 is somehow incomplete. If so, please let me know what you think is missing. As for Request 31, UP has searched and has advised that it has no documents containing the historical grading costs for the North Omaha Lead.

9. Track Specifications - We expect to produce a document responsive to OPPD Request 24 to you by early next week.

Please feel free to call me if you have questions about the above.

Sincerely yours,



Carolyn F. Corwin

Enclosure

ATTACHMENT 4

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

September 2, 1997

Via Hand Delivery

Carolyn F. Corwin, Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20044-7566

Re: Docket No. NOR- 42006, *Omaha Public Power District*
v. Union Pacific Railroad Company

Dear Carolyn:

Over the past several weeks, UP has been producing materials responsive to OPPD's first discovery requests, which were served on UP on June 27, 1997. We have also exchanged correspondence for the purpose of explaining and clarifying the requests and UP's responses, and coming to agreement on what OPPD has asked for and what UP has provided, or has indicated it wants to provide in response to these requests. For the most part, these discussions have been productive and enabled the parties to proceed with discovery in an efficient manner without intervention by the Board.

However, it appears from the past few letters, in particular your August 22, 1997 letter to me, that we have reached a point in this process where it might be necessary for OPPD to ask the Board to resolve several issues in a motion to compel the production of documents. I have set out these issues below and OPPD's position on them with the hope that they can be resolved without the Board's intervention.

Maintenance of Way Information

Request No. 5(a) asked for "actual maintenance of way structures expenditures" for the segment of track from the Omaha Interchange to NOPS. In response to this request, UP elected to perform a special study, which was produced to OPPD on August 22, 1997. This study is not responsive to Request

DONELAN, CLEARY, WOOD & MASER, P.C.

Letter to Carolyn F. Corwin, Esquire
September 2, 1997
Page - 2 -

No. 5(a) in a couple of respects. First, the study does not cover the track segment described in the request, and frankly states that "there has been no effort to allocate the costs to the portion of the track used to carry OPPD's traffic." Second, UP has not in any event supplied the requested "actual expenditures." Rather, UP has devised "an allocation" of costs recorded in the cost center for the Council Bluffs Manager of Track Maintenance. We expect UP to provide OPPD with all of the materials which underlay the study, including all underlying hard copy and computerized materials and data, and any documentation needed to understand the computerized materials. This material is required to ascertain (1) the development of the costs assigned to the "North Omaha Lead;" (2) the process by which costs reported to the Council Bluffs cost center were allocated to this segment of track; and (3) the service units upon which such costs are based (i.e. gross-ton miles, tons, carloads, etc.). In short, the special study, in and of itself, is not responsive to this request. Please let me know immediately whether UP intends to supply the additional information summarized above, and if so, when we may expect its production.

Crew Wage Information

You indicated in your August 22 letter that UP would provide additional hard-copy backup to the special study UP elected to undertake in lieu of responding to Request Nos. 7 and 8. This material was produced by UP on August 28. In addition, please provide us with all computerized material underlying the study, *e.g.*, the crew wage database, including documentation necessary to understand the computerized material. If you are withholding production of any computerized material - or additional hard-copy material - underlying the special study, please inform me of this fact immediately.

Also, there shouldn't be any confusion as to whether Request Nos. 7 and 8 cover crew information for UP crews which perform work in addition to services related to OPPD's movement. Request Nos. 7(v) and 8(v) specifically request information regarding other work performed by the crews handling the OPPD movement. Furthermore, UP's response to Request No. 1 states unequivocally that

DONELAN, CLEARY, WOOD & MASER, P.C.

Letter to Carolyn F. Corwin, Esquire
September 2, 1997
Page - 3 -

UP crews that handle both the loaded and empty OPPD trains handle other switching jobs along the line in addition to OPPD's movement. Thus the wages for these crews cannot be attributed to OPPD's movements as you have apparently concluded. Crew wage information as to other customers along the line is obviously relevant to the determination of the costs associated with operating this track and is responsive to these requests. Please provide us with this data immediately. We would prefer the raw data instead of another special study. If UP is not going to provide this material, please inform me immediately.

Locomotive Compensation

It appears we have reached impasse on OPPD's requests for information on locomotive compensation. First Request No. 13(a) asked specifically for any agreements by which non-UP locomotives are used on trains traversing the lines of movements covered by Tariff 8005-D, and First Request No. 13(b) specifically requested that for any agreements discussing compensation for such use by UP of non-UP locomotives, UP was to provide the amount of compensation by component and the service units covered by such compensation including specifically "horsepower hours." According to document UP00035, OPPD trains are handled as a run-through train with BNSF providing the locomotive power. Thus, the locomotive cost of hauling the trains over UP's line is borne by BNSF in the first instance. UP and BNSF agreed to compensate BNSF for the use of its locomotives by an agreed-to fuel burn rate; and that "horsepower hours will be settled on the basis of the run-through agreement dated November 14, 1979." A copy of the November 14, 1979 was produced by UP in discovery.

OPPD followed up First Request No. 13 in its Second Set of Interrogatories and Requests for Production of Documents and Records by submitting Second Request Nos. 2 and 3, which also dealt with locomotives and the compensation arrangement between UP and BNSF.

However, while UP has provided information related to fuel compensation, it has refused to produce any documents related to the horsepower hour component

DONELAN, CLEARY, WOOD & MASER, P.C.

Letter to Carolyn F. Corwin, Esquire
September 2, 1997
Page - 4 -

of the compensation. As I understand it, your refusal is based on a claim of burden and over breadth.

This position is untenable. Locomotive costs are a vital component of variable costs, and First Request No. 13, and Second Request Nos. 2 and 3 clearly seek this information. You state that the November 14, 1979 agreement covers hundreds of units exchanged at a number of locations, but it is not OPPD's fault that BN and UP decided to apply the terms of an existing agreement to the OPPD movements rather than set up a separate agreement. Moreover, neither First Request No. 13 nor Second Request Nos. 2 and 3 are overbroad, as you claim in your August 22 letter. First Request No. 13 is specifically limited to locomotive compensation related to "movements covered by UP Freight Tariff 8005-D," and Second Request Nos. 2 and 3 are implicitly so limited. Finally, it cannot be true that OPPD has "all the responsive documents that are relevant to the North Omaha area" as you assert. UP has provided only one aspect of the locomotive costs for the movement of trains over its track from the BNSF interchange to NOPS - fuel. The high degree of relevance and need for the remaining aspects of locomotive costs outweigh any alleged burden to UP to assemble and produce this information. Please inform me immediately if UP intends to continue to refuse to produce the information responsive to First Request No. 13 and Second Request Nos. 2 and 3.

We respectfully decline your offer of August 22 to "perform a computation of the dollar value of a UP horsepower hour based on the entire UP freight locomotive fleet." This information is well beyond the scope of OPPD's requests and would therefore not be responsive to them.

Road Property Valuation

Road property return on investment (ROI) is a component of railroad variable cost calculations. System average ROI is not an accurate surrogate for ROI on actual net investment for specific rail line segments. OPPD has requested this information from UP in Request No. 17. Your continued refusal to produce this information based on an assertion that this information is "irrelevant to the calculation of variable costs, stand-alone costs, or any matter that will be at issue in

DONELAN, CLEARY, WOOD & MASER, P.C.

Letter to Carolyn F. Corwin, Esquire
September 2, 1997
Page - 5 -

this proceeding" is therefore insupportable. You have also refused to produce the requested valuation information for the movement from the BNSF interchange to NOPS because it is allegedly encompassed by a valuation section covering a larger area. Our reasons why this position is also insupportable have been made in prior correspondence. Please notify me immediately if UP intends to continue to withhold this information.

Land Valuation

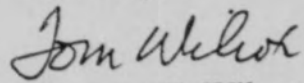
In your August 22 letter, you indicated no change in your position on Request No. 23, which straightforwardly asked for copies of UP's most current land valuations for the rail lines between the Omaha Interchange and NOPS. We intend to include in a motion to compel a request for an order from the Board requiring that these documents be produced by UP.

Grading Costs

Your reference to "historical grading costs" in conjunction with Request No. 31 requires clarification. This request asked for documents from the 1995, 1996, and 1997 time frame, which OPPD does not consider to fall into the "historical" category. Please advise me immediately whether UP is withholding any documents responsive to this request.

Please give me a call if you have any questions about the foregoing.

Sincerely,


Thomas W. Wilcox

4820-123

cc: Dan D. Kloock
Thomas D. Crowley

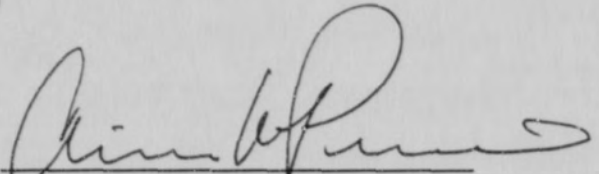
CERTIFICATE OF SERVICE

I hereby certify that I have on this 3rd day of September, 1997, served a copy of the foregoing OPPD'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS by hand delivery on the following persons:

Arvid E. Roach II, Esquire
Carolyn F. Corwin, Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20044-7566

And also by facsimile and first-class mail on the following persons:

James V. Dolan, Esquire
Louise A. Rinn, Esquire
Union Pacific Railroad
1416 Dodge Street
Room 830
Omaha, NE 68179


Aimee L. DePew

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE (202) 662-6291

CAROLYN F. CORWIN

DIRECT DIAL NUMBER

(202) 662-5338

DIRECT FACSIMILE NUMBER

(202) 778-5338

LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE 44-171-495-5655

FACSIMILE 44-171-495-3101

BRUSSELS OFFICE

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE 32-2-549-5230

FACSIMILE 32-2-502-1598

October 6, 1997

BY HAND

Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

I



Re: Docket No. NOR-42006, Omaha Public Power
District v. Union Pacific Railroad Company

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket are an original and 10 copies of UP's Third Motion to Compel Production of Documents.

Also enclosed is a 3.5-inch diskette containing the pleading in WordPerfect 5.1 format, which is capable of being read by WordPerfect for Windows 7.0.

Please file-stamp the enclosed copy of the pleading and return it to our messenger.

ENTERED Thank you for your assistance.
Office of the Secretary

OCT 07 1997

3 Part of
Public Record

Sincerely yours,

Carolyn F. Corwin

Carolyn F. Corwin

Enclosures

cc: Thomas W. Wilcox, Esq.

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

OMAHA PUBLIC POWER DISTRICT,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. NOR-42006



UP'S THIRD MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Defendant Union Pacific Railroad Company ("UP") hereby moves to compel production of additional documents from Complainant Omaha Public Power District ("OPPD") pursuant to 49 C.F.R. § 1114.31(a). On July 24 and August 19, 1997, UP filed motions to compel production of certain documents requested in UP's first and second sets of discovery requests. This further motion to compel seeks production of additional documents requested in UP's first set of discovery requests. OPPD's original responses to the requests in question led UP to believe that OPPD would produce the requested documents.¹ In recent

¹ A copy of OPPD's responses and objections to UP's first set of discovery requests is included as Attachment A to this motion.

- 2 -

correspondence, however, OPPD's counsel has reversed course and has indicated that OPPD will refuse to produce these documents.²

UP's initial motion to compel sets out the background facts relevant to this motion, and the Board is respectfully referred to that discussion. OPPD's complaint challenges the reasonableness of a switch fee UP charges to the Burlington Northern & Santa Fe Railway ("BNSF") for switching of cars carrying coal to OPPD's North Omaha Power Station ("NOPS").

Although OPPD has never actually paid the challenged switch fee directly to UP (see Att. A, p. 6), it has asserted that it covers a portion of that fee through payments it makes to BNSF (see Complaint ¶ 9; OPPD's Reply to Defendant's Motion to Dismiss, p. 2). Nevertheless, OPPD now refuses to produce complete information regarding the amount of the challenged fee it allegedly covers. OPPD declines to produce the contractual provision describing the escalation factor applied to BNSF's

² On September 12 and 18, UP's counsel sent letters to OPPD's counsel inquiring about the status of OPPD's production in response to certain requests. OPPD's counsel responded to those letters on September 25, stating in some instances that OPPD would decline to produce the items as to which UP had inquired. This motion is being filed within 10 days of OPPD's statement of refusal to respond and is therefore timely under 49 C.F.R. § 1114.31(a). Copies of the parties' recent correspondence regarding the disputed discovery requests are included as Attachment B to this motion.

In the case of Request No. 22, discussed in Part III below, OPPD originally stated that it would produce responsive documents but now maintains that it has no obligation to produce any documents at all in response to that request. See Att. A, p. 18; Att. B, Letter of T. Wilcox & J. Moreno to C. Corwin, Sept. 25, 1997, p. 3. Such "sandbagging" should not be permitted.

- 3 -

absorption of a portion of the challenged UP switch fee, which is necessary to determine the amount of the fee OPPD covers, and has produced only a limited set of documents relating to OPPD's actual payments to BNSF in connection with the UP switch fee. In addition, OPPD refuses to produce copies of past tariffs containing the switch fee.

OPPD also refuses to produce complete information regarding movement of the traffic at issue in this proceeding. This includes information on the routes used to carry coal to NOPS and the volume of coal carried to NOPS for each quarter since UP began serving NOPS and documents evidencing or describing train movements to NOPS since UP began serving that facility.

The discovery requests at issue, which are reproduced or summarized in Parts I, II, and III below, seek information of relevance to this proceeding, and they are neither burdensome nor objectionable on any other ground. Indeed, as noted above, all of the documents UP seeks fall into categories that OPPD originally agreed to produce. The motion to compel should therefore be granted.

UP requests an expedited decision on this motion. In an order dated August 25, 1997, the Board suspended the deadline for completion of discovery in this proceeding, and the parties then agreed to postpone UP's depositions of OPPD witnesses. UP assumes that, if the Board does not grant the pending motion to

- 4 -

dismiss, it will soon issue an order establishing a new discovery deadline. In order to conduct efficient discovery, UP will need to review the requested documents prior to deposing the OPPD witnesses.

I. OPPD SHOULD BE COMPELLED TO PRODUCE ALL PORTIONS OF ITS 1986 CONTRACT RELATING TO BNSF'S PARTIAL ABSORPTION OF UP'S SWITCH CHARGE³

Request No. 1 of UP's First Set of Discovery Requests asks for all contracts entered into since January 1, 1980 for the transportation of coal to NOPS and all amendments thereof, and all documents relating to the competition or bidding for or negotiation of such contracts and amendments. OPPD objected to this request on various grounds, but expressly agreed to produce the section of its 1986 coal transportation contract with BNSF governing payment of the UP switch charge. See Att. A, p. 4.⁴ OPPD then produced a section of that contract relating to BNSF's absorption of a portion of the switch charge. UP's counsel subsequently pointed out that OPPD had not produced another

³ In its first motion to compel, filed on July 24, 1997, UP moved to compel production of the entire contract between UP and BNSF in connection with Request No. 1. If that motion is granted, there is no need for the Board to rule on this portion of the present motion. However, if the Board should deny UP's broader motion, it should at least require production of the provision relating to escalation of the amount of BNSF's absorption of the switch fee, addressed herein.

⁴ In addition, in Request No. 5 of UP's First Set of Discovery Requests, UP asked for all documents relating to UP's switch fee, including "BNSF's absorption in whole or in part of such fees." OPPD stated in response to this request that it would produce responsive documents. See Att. A, p. 7.

- 5 -

section of the contract, cross-referenced in the section OPPD had produced, that provides an escalation factor to be applied to the BNSF absorption amount.⁵ See Att. B, Letter from C. Corwin to T. Wilcox, Sept. 12, 1997, p. 1. Inexplicably, OPPD's counsel then took the position that the escalation factor provision is not relevant and that, in any event, OPPD had responded sufficiently by producing documents showing the actual absorption amount for limited periods of time. See Att. B, Letter from T. Wilcox & J. Moreno to C. Corwin, Sept. 25, 1997, p. 1.⁶

Both the basic absorption provision and the escalation factor provision of the OPPD/BNSF contract are highly relevant because both are needed in order to determine the actual amount OPPD pays in connection with the challenged switch fee. This case presents an anomaly: the party complaining about the fee at issue does not actually pay the fee to UP; UP receives payment only from BNSF. OPPD, the complainant here, asserts that it covers a portion of the fee through payments to BNSF, but it now declines to provide the information necessary to compute what it actually pays to BNSF. UP is not in a position to develop this

⁵ The escalation factor provision is expressly mentioned in the section of the contract that OPPD produced. See Exhibit B to the unredacted version of UP's Motion to Dismiss, filed on July 29, 1997.

⁶ While the September 25 letter (at page 1) states that OPPD has produced documents showing the actual absorption amounts "throughout the history of the contract," UP has received such documents only for the period 1994 to 1996.

- 6 -

information on its own; only OPPD possesses the facts regarding the actual payments it makes to BNSF.

It is fundamentally unfair for OPPD to insist that it bears a portion of the burden of covering the challenged fee, but to refuse to provide all information needed to compute the actual amounts it has paid, and will pay, to BNSF under their contract. The allocation of responsibility, as between OPPD and BNSF, for covering the challenged fee is of potential relevance to whether UP possesses market dominance over the subject traffic. In addition, as explained in UP's motion to dismiss, if OPPD is permitted to challenge the UP switch fee at all, it may challenge only the unabsorbed amount of the fee. See Motion to Dismiss, p. 14 n.7. Computation of that amount for all relevant periods (including future periods) requires knowledge of the escalation factor as well as the basic absorption provision. Moreover, the terms governing how much of the switch fee BNSF absorbs under the current agreement may shed light on whether and how much OPPD will reimburse BNSF in the future should BNSF again win the linehaul contract for OPPD's business in later periods.

OPPD apparently recognizes that BNSF's agreement to absorb a portion of the challenged switch fee is a matter of relevance in this proceeding, since it has produced that section of the OPPD/BNSF contract. There is no apparent basis for OPPD's position that the companion provision describing how the absorption amount changes is not similarly relevant.

- 7 -

The fact that OPPD has produced some documents showing the actual amount of absorption by BNSF for a limited period does not make the escalation provision less relevant. UP is entitled to know the framework under which OPPD and BNSF compute their respective contractual obligations with regard to the switch fee and to understand how any formula would be applied to compute any OPPD responsibility for switch fee payments in all periods, including future years.

II. OPPD SHOULD BE REQUIRED TO PRODUCE OTHER DOCUMENTS RELATING TO PAYMENT OF THE UP SWITCH FEE AND COPIES OF RELEVANT TARIFFS

Request No. 5 of UP's First Set of Discovery Requests asks for all documents since UP began serving NOPS relating to UP's switch fee for the delivery of coal to NOPS, including (among other things) communications with BNSF concerning the amount of such fees and payments by OPPD to BNSF to defray BNSF's costs of paying such fees, and all tariffs setting forth such fees. OPPD stated several objections but also indicated that it would provide responsive documents. See Att. A, p. 7. UP's counsel subsequently pointed out that those documents OPPD had produced in response to Request No. 5 (such as BNSF freight bills) covered only a limited period (1993 or 1994 to 1996) and that OPPD had produced no copies of tariffs. See Att. B, Letter from C. Corwin to T. Wilcox, Sept. 12, 1997, p. 2. OPPD's counsel then announced that it would be too burdensome for OPPD to locate and retrieve BN freight bills for all years covered by

- 8 -

UP's request and that OPPD would not produce tariffs, in view of the fact that these documents were published by UP. See Att. B, Letter of T. Wilcox & J. Moreno to C. Corwin, Sept. 25, 1997, p. 1.

OPPD should be required to produce the requested communications with BNSF, including freight bills showing BNSF's billings to OPPD related to the UP switch fee for all periods since UP began serving NOPS.⁷ As discussed in Part I above, it is unfair for OPPD to assert that it bears part of the burden of the switch fee UP charges to BNSF but to refuse to reveal the amount it has actually paid. OPPD has not shown that the BNSF freight bills for 1997 and for the period prior to 1994 are unavailable. While OPPD's counsel's September 25 letter (at page 1) claims that some of the BNSF freight bills cannot be located due to a recent office move, some bills apparently are available, and it is unclear whether OPPD has searched in earnest for the others.⁸ The September 25 letter (at page 1) also asserts that the information in the BNSF freight bills is

⁷ UP began serving NOPS in the mid-1970s. OPPD cannot claim that it is unduly burdensome to search for documents from the requested time period. In its second set of discovery requests, OPPD sought documents for periods extending back to 1979 and earlier, and UP has searched for and produced documents from those periods.

⁸ OPPD has not even attempted to explain why it has not produced responsive documents other than the BNSF freight bills (e.g., documents advising OPPD personnel of the amount of the switch fee OPPD would pay to BNSF for a given period) for 1997 and years prior to 1993.

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available from other sources, but it does not identify those sources. In any event, if the information is in OPPD's files, it should be produced. There is no justification for OPPD to limit its production of BNSF freight bills (or any other documents relating to the challenged switch fee) to a single three-year period.

OPPD should also be compelled to produce any relevant tariffs in its possession. UP's counsel has explained to OPPD's counsel that UP is unable to locate copies of its tariffs for the period prior to 1983 because such tariffs appear to have been destroyed in the ordinary course of business.⁹ Obviously these tariffs are highly relevant to this proceeding. Tariffs from the 1979-1980 period are of central importance to UP's defense under Section 229(a) of the Staggers Act. Tariffs from all periods would confirm the limited amount of the increases in the switch fee over a period of many years and thus the lack of market dominance with regard to the traffic at issue. In view of the fact that UP's tariff files are incomplete, OPPD should be required to produce any responsive tariffs from its files.

⁹ The switch fee at issue has existed for many years and has been adjusted only a few times since BNSF began to carry OPPD's coal and pay the fee. The fee (which was low enough to allow BNSF to win the linehaul business from UP in 1986) has never been challenged until this complaint was filed. Accordingly, UP had no reason to believe that it should retain the old tariffs.

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III. OPPD SHOULD BE COMPELLED TO PRODUCE INFORMATION REGARDING THE ROUTES USED TO CARRY COAL TO NOPS AND THE VOLUME OF COAL CARRIED TO NOPS AND DOCUMENTS DESCRIBING TRAIN MOVEMENTS TO NOPS

Request No. 6 of UP's First Set of Discovery Requests asks OPPD to provide, "[w]ith respect to the rail transportation of coal to NOPS since [UP] began serving NOPS, for each calendar quarter to date, (a) each route used; . . . and (d) the number of trains, cars and net tons of coal received during the quarter." OPPD raised various objections, but stated that it would provide, among other things, documents responsive to subparagraphs "6(a) and (d) for the movement of OPPD's coal from origin mines to the Omaha Interchange." See Att. A, p. 8. However, OPPD described only the current route used by BNSF for its linehaul movement. See id. OPPD subsequently produced train reports showing volumes of coal received at NOPS, but only for the period 1994 to 1996. The September 25 letter from OPPD's counsel states that OPPD does not intend to provide additional documents in response to Request No. 6. See Att. B, Letter from T. Wilcox & J. Moreno to C. Corwin, Sept. 25, 1997, p. 2.

Request No. 22 of UP's First Set of Discovery Requests asks OPPD to produce "all documents evidencing or describing train movements to NOPS since defendant began to serve NOPS." OPPD stated several objections, but also indicated that it would provide documents responsive to this request. See Att. A, p. 18. However, OPPD has produced no documents in response to this request, and it now takes the position that it need not respond

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at all. See Att. B, Letter from T. Wilcox & J. Moreno to C. Corwin, Sept. 25, 1997, p. 3.

UP seeks information regarding routes and volumes of traffic movements to NOPS and documents relating more generally to such movements because UP itself has only limited information regarding the NOPS traffic when other carriers handle the linehaul portion of the move. As the switching carrier, UP does not have access to waybill data about the movement. In order to obtain basic information about the movements of coal to NOPS, UP must rely primarily on OPPD's files.

With respect to Request No. 6(a), which seeks information on the routes used to move coal to NOPS, OPPD has provided information only for the route used in the current linehaul movement, despite UP's request for information on routes used during all quarters since UP began to serve NOPS. OPPD has failed to offer any justification for limiting its response with respect to routing information. Such information is pertinent to both competitive issues (such as potential rail-water routings) and the possible design of a stand-alone railroad.

UP also needs to receive complete information on the volumes of traffic received at NOPS during different periods, not simply for the limited period covered by the train reports that OPPD has produced. Traffic volumes during the 1979-1980 period are relevant to UP's defense under Section 229 of the Staggers Act. In addition, traffic volume information for all periods

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would shed light on whether OPPD may be in a position to cut back on use of coal at NOPS as a way of putting pressure on UP, a point that is of central importance to the market dominance issues in the case.

OPPD's counsel argued in their September 25 letter (at page 2) that it would be unduly burdensome to require OPPD to locate and produce train reports for years when UP originated coal for NOPS, since UP should have the requested information for those years. However, for many of the missing years, UP did not originate coal for NOPS.¹⁰ Even for years prior to 1986, when UP did originate coal for NOPS, OPPD should be required to produce train reports, since UP's information may differ from that maintained by OPPD.¹¹ The September 25 letter from OPPD's counsel does not state that it is impossible to locate the train reports for all periods or that they are unduly voluminous.

¹⁰ It is unclear from the September 25 letter whether OPPD intends to produce train reports for all years when UP did not originate coal for NOPS. Although it states that no additional documents will be produced, the letter also states that train reports will be produced only for years when BNSF originated OPPD's coal. See Att. B, Letter from T. Wilcox & J. Moreno to C. Corwin, Sept. 25, 1997, p. 2. UP is attempting to clarify this point with OPPD's counsel, but has not yet received a response. Presumably OPPD should also be willing to produce train reports for any period when a railroad other than UP or BNSF originated coal for NOPS, but this, too, is unclear from the September 25 letter.

¹¹ In some years, OPPD may have taken coal from both UP and another carrier. UP's records for these years would not show the total volume of traffic moved to NOPS. Moreover, UP ordinarily retains records for traffic it switches for only a limited period of time.

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As to Request No. 22, involving documents evidencing or describing train movements to NOPS, after originally agreeing to produce responsive documents, OPPD now takes the position that it need not produce any documents at all. The only justification offered is that UP has responded to one of OPPD's discovery requests by providing a description of the switching operation at NOPS, supposedly demonstrating that UP already has the requested information. See Att. B, Letter of T. Wilcox & J. Moreno to C. Corwin, Sept. 25, 1997, p. 3. That argument is frivolous. OPPD had received the cited UP response a week before it agreed to produce documents responsive to Request No. 22; thus, the argument OPPD's counsel now puts forward is merely an after-the-fact attempt to justify OPPD's abrupt about-face on its original agreement to respond.

Moreover, OPPD's request and the UP response cited by OPPD focus narrowly on UP's switching operation at NOPS, while UP's Request No. 22 for documents about train movements to NOPS is far broader.¹² UP's request would encompass, for example,

¹² Even if UP's request had been as narrowly focused as the OPPD request referenced by OPPD's counsel in their September 25 letter, there would be no basis for OPPD's refusal to produce documents responsive to UP's request. So long as it may possess some different information about a subject, a party may not decline to produce relevant documents merely because the requesting party already possesses some information about that subject. See, e.g., Finance Docket No. 30759, Denver & Rio Grande Western R.R. v. St. Louis Southwestern Ry., Decision served Apr. 29, 1988, pp. 3-4. OPPD's documents regarding the switching operation at NOPS would likely reveal different information and perspectives than UP is able to provide from its own internal sources.

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documents discussing alternatives OPPD personnel perceived for movement of coal to NOPS, documents evidencing OPPD's failure to use two different carriers to transport coal to NOPS when it had the opportunity to do so following OPPD's build-out to UP's track,¹³ and documents evidencing the ability of carriers other than UP to provide a linehaul alternative for service to NOPS while paying the (relatively low) switch fee charged by UP. These and other documents responsive to Request No. 22 would shed light on the transportation alternatives available for NOPS and are therefore relevant to the issue of market dominance. Moreover, contemporaneous statements by OPPD personnel regarding train movements to NOPS could provide impeachment material in connection with market dominance testimony presented by OPPD witnesses. UP is clearly entitled to have documents from OPPD's files describing the traffic movements at issue in this proceeding as it prepares its defense to OPPD's complaint.

IV. AN EXPEDITED DECISION ON THIS MOTION IS NEEDED SO THAT
DISCOVERY MAY PROCEED IN AN EFFICIENT MANNER

In order to conduct efficient deposition discovery, UP needs to review in advance all responsive OPPD documents. By its order of August 25, the Board suspended the deadline for completion of discovery in this case until further notice, and the depositions of OPPD witnesses have therefore been postponed

¹³ The NOPS facility was originally served by the Chicago and North Western Railway ("CNW"). CNW was in a position to terminate the NOPS traffic until the mid-1980's, when it abandoned the track segment it had used to serve NOPS.

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pending receipt of a further order from the Board. UP assumes that, if it does not grant the motion to dismiss, the Board will soon set a new schedule for completion of discovery. Because UP will need to review documents in advance of depositions, it will be important to have a ruling on all motions to compel well before any new deadline for completion of discovery. In order to achieve this goal, it presumably will be necessary for the Board to expedite its consideration of this motion.

CONCLUSION

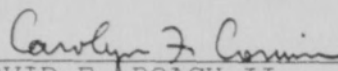
The documents addressed in this motion are clearly relevant to the issues in this case, as OPPD apparently recognized when it initially agreed to produce documents responsive to the requests in question. OPPD has not explained why production of these documents would be unduly burdensome. The motion to compel should be granted, and OPPD should be

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required to produce the disputed documents by a date well before the deadline for completion of discovery in this case.

Respectfully submitted,

JAMES V. DOLAN
ROBERT T. OPAL
LOUISE A. RINN
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-3072


ARVID E. ROACH II
CAROLYN F. CORWIN
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-6000

Attorneys for Defendant Union
Pacific Railroad Company

October 6, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____	)	
OMAHA PUBLIC POWER DISTRICT,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket No. NOR-42006
	)	
UNION PACIFIC RAILROAD COMPANY)	)	
	)	
Defendant.	)	
_____	)	

COMPLAINANT'S OBJECTIONS AND RESPONSES TO
UP'S FIRST SET OF DISCOVERY REQUESTS

Complainant Omaha Public Power District ("OPPD") hereby responds to Defendant Union Pacific Railroad Company's ("UP") First Set of Discovery Requests, served on OPPD by UP on June 27, 1997.

Generally Applicable Responses

1. OPPD has conducted a reasonable search of its files for documents responsive to UP's document requests. Subject to the general and specific objections hereinafter set forth, all responsive documents either have been produced or will be produced in the near future by making such materials available for inspection and copying by UP at the offices of OPPD's undersigned Washington counsel. Copies of all materials

will be provided upon payment of duplication costs.

2. Certain information and documents responsive to UP's interrogatories and document requests are confidential and commercially sensitive. To the extent such information and documents are produced in this proceeding, OPPD will produce such information and documents upon the Surface Transportation Board's approval of the protective order jointly submitted by the parties on July 8, 1997.

3. OPPD does not object to UP's election to forego supplying verifications for its answers to OPPD's interrogatories, and has similarly not supplied verifications for the written answers to UP's requests provided herein. OPPD concurs that the parties may discuss the need for verification of individual responses, as appropriate.

General Objections

Each of the responses to individual interrogatories and document requests posed by UP set forth below are subject to the following general objections. These general objections apply and are in addition to the specific objections to each of UP's individual requests.

1. OPPD objects to the production of documents which are and information which is subject to the attorney-client privilege.
2. OPPD objects to the production of documents which are and information which

is subject to the work product doctrine.

3. OPPD objects to the production of documents which are and information which is in the possession and control of UP.

4. OPPD objects to the production of documents which are or information which is readily obtainable from public sources, in particular the Surface Transportation Board and from publications in general circulation.

5. OPPD objects to the production of documents which are or information which is related to settlement discussions between the parties or to negotiations between OPPD, BNSF and UP regarding transportation arrangements to succeed ICC BN-C-2205.

6. OPPD objects to the definitions of "identify" and "relating to" as being overbroad and unduly burdensome.

7. OPPD objects to UP's interrogatories and document requests to the extent they seek the production of documents dated prior to January 1, 1985.

Responses to Individual Interrogatories
and Document Production Requests

Request No. 1

Produce all contracts entered into since January 1, 1980 for the transportation of coal to NOPS and all amendments thereof, and all documents relating to the

competition or bidding for or negotiation of such contracts and amendments.

Response

OPPD objects to this request to the extent it is not reasonably calculated to lead to the discovery of evidence which is admissible in this proceeding. OPPD also objects to this request to the extent it is vague and unduly burdensome. OPPD also objects to this request because it would require the disclosure to UP and/or its counsel of confidential contract provisions that have no bearing on the issues presented in this proceeding and that would require the permission of BNSF prior to disclosure. OPPD also objects to this request to the extent it seeks documents dated prior to January 1, 1985. Subject to these objections, OPPD is producing or will in the near future produce to defendant the section of ICC-BN-C-2205 governing the payment of the charge assessed by UP under Tariff UP 8005-D (item: 3650) for moving trains from UP's interchange with BNSF in Omaha to NOPS, as well as documents related to the negotiation of that section. Moreover, OPPD stands ready to meet with UP counsel to discuss a mutually acceptable means by which to narrow UP's Request No. 1 to accommodate the interests and concerns of both parties.

Request No. 2

All documents relating to the competition or bidding between railroads for NOPS traffic that led to contract ICC-BN-C-2205.

Response

See Response to Request No.1

Request No. 3

Produce all contracts entered into since January 1, 1980 for the transportation of coal to complainant's Nebraska City plant and all amendments thereof, and all documents relating to the competition or bidding for or negotiation of such contracts and amendments.

Response

See Response to Request No.1

Request No. 4

Has complainant at any time paid a switch fee directly to defendant for the delivery of coal traffic to NOPS? If your response is "yes," produce all documents relating to such payments.

Response

OPPD objects to Request No. 4 to the extent it is overbroad. Subject to this objection, a reasonable search of OPPD's files does not indicate that OPPD has directly paid UP the switch charge assessed in Tariff UP 8005-D (item 3650).

Request No. 5

Produce all documents since defendant began serving NOPS relating to defendant's switch fee for the delivery of coal to NOPS, including but not limited to:

- (a) all communications with BNSF concerning the amount of such fees, BNSF's absorption in whole or in part of such fees, payments by complainant to BNSF to defray in whole or in part BNSF's costs of paying such fees, the effect of such fees on the rate to be charged by BNSF, or other matters regarding such fees;
- (b) all tariffs setting forth such fees;
- (c) any other documents evidencing or discussing the amount of such fees;
- (d) documents evidencing or discussing BNSF's absorption in whole or in part of such fees;
- (e) documents evidencing or discussing payments by complainant to BNSF to defray in whole or in part BNSF's costs of paying such fees; and
- (f) all studies, reports or analyses regarding such fees.

Response

OPPD objects to Request No. 5 to the extent it is, vague, overbroad and unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, OPPD is producing or will in the near future produce to UP documents responsive to this request.

Request No. 6

With respect to the rail transportation of coal to NOPS since defendant began serving NOPS, please provide, for each calendar quarter to date,

- (a) each route used;
- (b) the total dollar amount of payments made to each rail carrier for such transportation during the quarter;
- (c) the rate or rates in effect during the quarter; and
- (d) the number of trains, cars and net tons of coal received during the quarter.

Response

OPPD objects to Request No. 6 to the extent it is vague, overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to the extent this request would require the disclosure of confidential contract information that is irrelevant to the issues presented by

OPPD's Complaint, and that would require the permission of BNSF prior to disclosure. Subject to the foregoing, OPPD is producing or will in the near future produce documents responsive to subparagraphs 6(a) through (d) for the movement of OPPD's coal by UP from the Omaha Interchange to NOPS, and for 6(a) and (d) for the movement of OPPD's coal from origin mines to the Omaha Interchange. Furthermore, in response to 6(a), coal trains destined for NOPS travel from mines in the Powder River Basin to Alliance, NE; to Lincoln, NE; to Omaha, NE (BN's Gibson Yard); where they are switched by UP to NOPS.

Request No. 7

With respect to the rail transportation of coal to complainant's Nebraska City plant, please provide, for each calendar quarter from January 1, 1980 to date,

- (a) the total dollar amount of payments made to each rail carrier for such transportation during the quarter;
- (b) the rate or rates in effect during the quarter; and
- (c) the number of trains, cars and net tons of coal received during the quarter.

Response

OPPD objects to Request No. 7 to the extent it is vague, overbroad, unduly burdensome and is not reasonably calculated to lead to the discovery of admissible

evidence. OPPD also objects to the extent this request would require the disclosure of confidential contract information that is irrelevant to the issues presented by OPPD's Complaint, and that would require the permission of BNSF prior to disclosure. Subject to these objections, OPPD is producing or will in the near future produce documents responsive to 7(c).

Request No. 8

All documents relating to a possible build-in/build-out from NOPS to the lines of BNSF, including but not limited to:

- (a) all communications with BNSF regarding such a possible build-in/build-out; and
- (b) all documents regarding the cost, feasibility, or effectiveness as a competitive constraint on rail rates of such a possible build-in/build-out.

Response

OPPD objects to Request No. 8 to the extent it is vague and unduly burdensome. Subject to these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 9

All documents, without regard to date, relating to the construction of track to

connect NOPS to defendant in the 1970s, including but not limited to documents regarding:

- (a) anticipated savings from such construction;
- (b) the cost, feasibility, or effectiveness as a competitive constraint on rail rates of such construction; and
- (c) who contributed what amounts to the cost of such construction.

Response

OPPD objects to Request No. 9 to the extent it is overbroad, unduly burdensome, and is not reasonably calculated to lead to the discovery of admissible evidence. A determination of whether any documents responsive to this request are in OPPD's files would require a substantial amount of time and energy, as this request on its face covers documents which are nearly 30 years old. Prior to making such a search, OPPD requests that UP provide OPPD with an explanation of the purported relevance and need for such materials in this proceeding.

Request No. 10

All documents relating to the possible transportation of coal to NOPS from any origin by a line-haul rail carrier other than BNSF.

Response

OPPD objects to Request No. 10 to the extent it seeks information which is not

reasonably calculated to lead to the discovery of admissible evidence. This request is also vague and repetitive in that it seeks information covered by previous requests. Whether there is or has been competition between BNSF and UP (or other carriers) for the movement of OPPD's traffic from origin mines to the Omaha Interchange for final delivery to NOPS is not a disputed issue in this case.

Request No. 11

All documents relating to any possible transportation of coal to NOPS involving water, truck, conveyor belt or other non-rail modes.

Response

OPPD objects to Request No. 11 to the extent it is unduly burdensome. Subject to this objection, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 12

All documents relating to the proposed build-out from complainant's Nebraska City plant.

Response

OPPD objects to Request No. 12 to the extent it is vague, overbroad, and

unduly burdensome. OPPD also objects to this request to the extent it seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to the extent this request seeks information that is the subject of ongoing confidential negotiations between OPPD and BNSF.

Request No. 13

All documents relating to the possible purchase by complainant from BNSF of BNSF's line to complainant's Nebraska City plant.

Response

OPPD objects to Request No. 13 to the extent it is vague, overbroad, and unduly burdensome. OPPD also objects to this request to the extent it seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to the extent this request seeks information that is the subject of ongoing confidential negotiations between OPPD and BNSF.

Request No. 14

What is the anticipated life of NOPS? State the basis for your answer, including but not limited to annual output projections. Produce all documents relating to the anticipated life of NOPS and its projected output.

Response

OPPD objects to Request No. 14 to the extent it is vague and overbroad. Subject to these objections, OPPD responds that the useful life of NOPS extends at least until 2016. OPPD is providing or will produce in the near future materials responsive to this request.

Request No. 15

If complainant contends that a different cost of capital than the railroad industry cost of capital should have been used for the development of stand-alone costs in this case, state:

- (a) what cost of capital complainant contends should be used;
- (b) the basis for complainant's contention; and
- (c) the cost of capital of complainant.

Produce all documents relating to these subjects.

Response

OPPD objects to Request No. 15 to the extent it is vague, particularly the use of the term "the railroad industry cost of capital." Subject to this objection, OPPD states that it is currently evaluating the options available regarding the cost of capital applicable in a stand-alone cost presentation pursuant to the Interstate Commerce

Commission's decision served September 3, 1985 in Ex Parte No. 347 (Sub-No. 1),
Coal Rate Guidelines — Nationwide.

Request No. 16

State, by non-coal generation source, the amount of power generated by complainant from non-coal sources in each year since 1979 and projected to be generated in each year in the future for which complainant has made projections, and the cost of such power. Produce all documents relating to projections by any person of future generation of power by complainant from non-coal sources, and the cost of such power, and all documents relating to the feasibility and potential benefits of, or any plans for, such generation of power from non-coal sources.

Response

OPPD objects to Request No. 16 to the extent it is overbroad, and unduly burdensome. Subject to these objections, OPPD is producing or will produce in the near future documents responsive to this request.

Request No. 17

State, by seller, the amount of power purchased by complainant in each year since 1979 and projected to be purchased in each year in the future for which

complainant has made projections, and the cost of such power. Produce all documents relating to projections by any person of future purchases of power by complainant, and the cost of such power, and all documents relating to the feasibility and potential benefits of, or any plans for, such purchases.

Response

OPPD objects to Request No. 17 to the extent it is overbroad, and unduly burdensome. Subject to these objections, OPPD is producing or will produce in the near future documents responsive to this request.

Request No. 18

State, by purchaser, the amount of power sold by complainant to other power producers or to power wholesalers in each year since 1979 and projected to be sold to such persons in each year in the future for which complainant has made projections, and the price of such power. Produce all documents relating to projections by any person of future such sales of power by complainant, and the cost of such power, and all documents relating to the feasibility and potential benefits of, or any plans for, such sales.

Response

OPPD objects to Request No. 18 to the extent it is overbroad, and unduly

burdensome. Subject to these objections, OPPD is producing or will produce in the near future documents responsive to this request.

Request No. 19

Produce all documents relating to whether to increase power output at one of complainant's plants and decrease it at another, and to the feasibility and potential benefits of, or any plans for, doing so, including but not limited to documents relating to the potential effect of such decisions on rail rates or negotiations concerning rail rates.

Response

OPPD objects to Request No. 19 to the extent it is vague, overbroad, and unduly burdensome. Subject to these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 20

Produce OPPD's 1997 Integrated Resource Plan, and all similar plans.

Response

OPPD objects to Request No. 20 as vague and overbroad through its use of the term "all similar plans." Subject to this objection, OPPD is producing or will produce in the near future its 1997 Integrated Resource Plan.

Request No. 21

All documents relating to possible access to NOPS by a railroad other than defendant through construction, trackage rights, transportation in conjunction with a non-rail mode, ratemaking authority, or any other means, including but not limited to communications with any railroad on such subject.

Response

OPPD objects to Request No. 21 to the extent it is vague, overbroad, and repetitive of previous requests. Subject to these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 22

Produce all documents evidencing or describing train movements to NOPS since defendant began to serve NOPS.

Response

OPPD objects to Request No. 22 to the extent it is vague, overbroad and unduly burdensome. Subject to these objections, OPPD is producing or will produce in the near future documents responsive to this request.

Request No. 23

Produce all documents relating to the possible purchase of, or obtaining of trackage rights over, the line of defendant serving NOPS by NOPS or any other person.

Response

OPPD objects to Request No. 23 to the extent it is vague, overbroad, and repetitive of previous requests. Subject these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 24

State, for each generating plant of complainant for each year from 1985 to date, the plant's:

- (a) cost per kilowatt hour of generating power;

- (b) cost of fuel;
- (c) generating capacity; and
- (d) actual power generation.

Response

OPPD objects to Request No. 24 to the extent it is vague, overbroad and unduly burdensome. OPPD particularly objects to 24(b) because it vaguely requests "cost of fuel," which could be read to request disclosure of actual rail rates, which OPPD has objected to for the reasons of admissibility, relevance, and confidentiality discussed herein above. Subject to these objections, OPPD is producing or will in the near future produce documents responsive to this request.

Request No. 25

Produce all documents relating to the possibility of reconfiguring NOPS or any other generating plant of complainant to utilize, in whole or in part, a different type of coal or a different fuel.

Response

OPPD objects to Request No. 25 to the extent it is vague, overbroad, and unduly burdensome. Subject to these objections, OPPD responds that an initial review of its files indicates that there are no documents responsive to this request.

Request No. 26

Produce, for the year 1979 to date, all fuel procurement and transportation data submitted by or on behalf of complainant to the Federal Energy Regulatory Commission on Form 580, including all exhibits and attachments thereto.

Response

OPPD objects to Request No. 26 to the extent it is vague and overbroad. Subject to these objections, OPPD responds that it is a public entity that is exempt from filing Form 580 with the Federal Energy Regulatory Commission.

Request No. 27

Produce all studies, reports or analyses of rail build-out costs.

Response

OPPD objects to Request No. 27 to the extent it is vague and overbroad and not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to this request because it merely repeats previous requests posed by UP.

Request No. 28

Identify the three present or former employees of complainant who are most

familiar with the following matters:

- (a) the competition or bidding for and negotiation of contract ICC-BN-C-2205;
- (b) the accounting records relating to complainant's payments to BNSF under said contract;
- (c) the computation and verification of such payments;
- (d) the accounting records relating to complainant's payments to BNSF for the transportation of coal to complainant's Nebraska City plant;
- (e) the computation and verification of such payments;
- (f) the physical movement of coal trains to NOPS;
- (g) any alleged payment of a switch fee directly to defendant for the delivery of coal traffic to NOPS;
- (h) BNSF's absorption in whole or in part of defendant's switch fee for the delivery of coal to NOPS;
- (i) payments by complainant to BNSF to defray in whole or in part BNSF's costs of paying defendant's switch fee for the delivery of coal to NOPS;
- (j) the effect of defendant's switch fee for the delivery of coal to NOPS on the rate to be charged by BNSF;
- (k) tariffs setting forth defendant's switch fee for the delivery of coal to NOPS;
- (l) a possible build-in/build-out from NOPS to the lines of BNSF;
- (m) the construction of track to connect NOPS to defendant in the 1970s;
- (n) the possible transportation of coal to NOPS from any origin by a line-haul rail carrier other than BNSF;

- (o) any possible transportation of coal to NOPS involving water, truck, conveyor belt or other non-rail modes;
- (p) the proposed build-out from complainant's Nebraska City plant;
- (q) the possible purchase by complainant from BNSF of BNSF's line to complainant's Nebraska City plant;
- (r) the anticipated life of NOPS;
- (s) the cost of capital of NOPS;
- (t) the generation of power by complainant from non-coal sources, and the cost of such power;
- (u) the purchase of power by complainant, and the cost of such power;
- (v) the sale of power by complainant to other power producers or to power wholesalers, and the price of such power;
- (w) whether to increase power output at one of complainant's plants and decrease it at another;
- (x) possible access to NOPS by a railroad other than defendant through construction, trackage rights, transportation in conjunction with a non-rail mode, ratemaking authority, or any other means;
- (y) records evidencing or describing train movements to NOPS since defendant began to serve NOPS;
- (z) the possible purchase of, or obtaining of trackage rights over, the line of defendant serving NOPS by NOPS or any other person;
- (aa) the cost per kilowatt hour of generating power, cost of fuel, generating capacity, and actual power generation of each of complainant's generating plants; and

(bb) the possibility of reconfiguring NOPS or any other generating plant of complainant to utilize, in whole or in part, a different type of coal or a different fuel.

Response:

OPPD objects to individual subparagraphs of Request No. 28 to the extent they are vague, over broad and not reasonably calculated to lead to the discovery of admissible evidence. OPPD also objects to this request to the extent it contemplates the disclosure of confidential contract information which is unrelated to the issues presented by OPPD's complaint and would require the permission of BNSF prior to such disclosure. Subject to these objections, OPPD responds that the following persons are most familiar with the matters listed in this request:

Dan D. Kloock - Division Manager, Fuels

Ron T. Boro - Manager, Fossil Fuels

David C. Dietz - Manager, System Operations

Request No. 29

To the extent that any person other than complainant has or has had an ownership interest in or entitlement to any portion of the power output of NOPS or any other plant of complainant, for each plant and for each year from 1979 to date identify that person and state the percentage of that ownership or entitlement.

Response

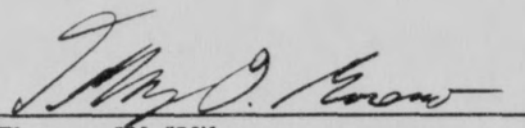
No person other than OPPD has or has had an ownership interest in or entitlement to any portion of the power output of NOPS or any other plant of OPPD.

Request No. 30

To the extent that complainant has or has had a partial ownership interest in any generating plants operated by any other person, for each plant and for each year from 1979 to date, identify that plant and state the percentage ownership interest.

Response

OPPD does not and has not had a partial ownership interest in any generating plants operated by any other person.


Thomas W. Wilcox
Jeffrey O. Moreno
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC 20005

July 14, 1997

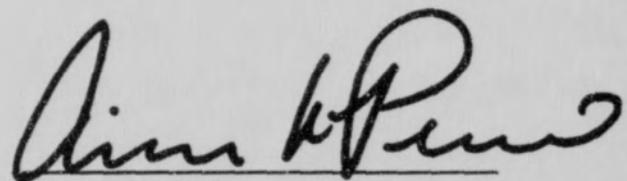
CERTIFICATE OF SERVICE

I hereby certify that I have on this 14th day of July, 1997, served a copy of the foregoing COMPLAINANT'S OBJECTIONS AND RESPONSES TO UP'S FIRST SET OF DISCOVERY REQUESTS by hand delivery on the following persons:

Arvid E. Roach II, Esquire
Carolyn F. Corwin, Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20044-7566

And also by facsimile and first-class mail on the following persons:

James V. Dolan, Esquire
Louise A. Rinn, Esquire
Union Pacific Railroad
1416 Dodge Street
Room 830
Omaha, NE 68179



Aimee L. DePew

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000
FACSIMILE (202) 662-6291

CAROLYN F. CORWIN
DIRECT DIAL NUMBER
202 662 5338
DIRECT FACSIMILE NUMBER
202 778 5338

LECONFIELD HOUSE
CURZON STREET
LONDON W1T 8AS
ENGLAND
TELEPHONE 44 (71) 495 5655
FACSIMILE 44 (71) 495 3101
BRUSSELS OFFICE
KUNSTLAAN 44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE 32 2 549 5230
FACSIMILE 32 2 502 598

September 12, 1997

BY MESSENGER

Thomas W. Wilcox, Esquire
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005

Re: OPPD v. UP, Docket No. NOR-42006

Dear Tom:

Our continuing review of OPPD's responses to UP's First and Second Discovery Requests suggests that, while OPPD has produced a considerable amount of responsive material, some items apparently have not been produced, although the requests were not objected to by OPPD. We would appreciate your checking to determine whether in fact there are responsive documents in these categories that OPPD has not yet produced. Please note that this letter does not waive any of the positions taken in our motions to compel production of certain other categories of documents. In addition, we are continuing to review the OPPD production and may have additional follow-up questions later.

Request 1

In response to Request 1 of UP's First Discovery Request, OPPD agreed to produce the portion of its 1986 contract with BN that relates to BN's partial absorption of UP's switch charge. The section of the contract produced to us refers to an escalation factor applicable to the switch fee absorption amount, but this cross-referenced section has not been produced. Because the cross-referenced section relates to the switch fee absorption, it appears to fall within the scope of what OPPD agreed to produce. (OPPD produced several other types of other documents that refer to the escalation factor and its effect on the amount of the fee absorbed by BNSF. Please let me know if there is a reason OPPD has not produced the cross-referenced contract section.

COVINGTON & BURLING

Thomas W. Wilcox, Esquire
September 12, 1997
Page 2

Request 5

Request 5 of UP's First Discovery Requests covers the period January 1, 1985 to the present (see General Instruction No. 11). However, the documents produced in response to this request cover only the years 1993-1996 (1994-1996 in the case of the BN freight bills). Are there similar documents for 1997 and for years prior to 1993-94? If so, is there a reason why they have not been produced? Moreover, the production appears to contain no tariffs and no documents analyzing or discussing the reasonableness of the UP switch fee. Are there any such documents?

Request 6(a)

While some information has been produced in response to UP's First Discovery Request 6(a), this information appears to be incomplete. The request sought information on each route used for rail transportation of coal to NOPS for each quarter since UP began serving NOPS. OPPD stated in its response that it would produce documents responsive to Request 6(a) and that "coal trains destined for NOPS travel from mines in the Powder River Basin to Alliance, NE; to Lincoln, NE; to Omaha, NE (BN's Gibson Yard); where they are switched by UP to NOPS." We have seen no documents that purport to be responsive to Request 6(a) (although OPPD represented to the Board at page 5 of its response to UP's initial motion to compel that it had produced information on the routing of its coal traffic). Is the route described in the response the route that has always been used by BN? Have other carriers (e.g., CNW) used different routes? We need more comprehensive information on this subject than OPPD has provided.

Requests Relating to Alternatives

With respect to Requests 8, 11, 21, 23 and 27 (and perhaps others) of UP's First Discovery Requests, you told me several times during July and August that OPPD believes it may have some documents relating to possible alternatives to UP switching at NOPS. Has anything been located?

Requests 16 and 25

We have not seen documents that describe the capability of each NOPS unit to burn natural gas, including the capability of each unit to use natural gas alone and the proportion of the burn represented by natural gas when gas and coal are used at the same time. Does OPPD have such documents? If so, please produce them to us.

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Thomas W. Wilcox, Esquire
September 12, 1997
Page 3

Requests 17 and 18 (First Set); Requests 4 and 5 (Second Set)

While OPPD has produced some information on power purchases and sales, it appears that we have not received documents responsive to some aspects of our requests. We believe we should have received, among others, (a) documents that describe how OPPD dispatchers decide whether to sell or buy power (including explanations of the self-generation cost used for sales and bids, the avoided cost used for purchases, the transmission cost used, and any transaction cost and margin required before a purchase is made); (b) records of bids and offers for economy power sales for OPPD and OPPD's bids to others (for 1996 and year to date 1997); (c) records of power sales and purchases by party, with dollars per MWh, on a monthly basis (for 1996 and year to date 1997); (d) the input data for 1997-2007 used for OPPD's PROVIEW GAF forecasts^{1/} (including forecast FOB mine and transportation costs, must-run conditions, any limitations on power purchases or sales, assumed pricing for power purchases and sales, required margin between self-generation and power purchases before a purchase displaces self-generation, and transmission costs used for power purchases and sales); (e) the outputs of PROVIEW GAF (including purchased power and power sales, in dollars and MWh, by year and for peak and off-peak and seasonal periods, and generation and capacity factors at each NOPS unit); (f) OPPD's PROVIEW/GAF Manual and Model documentation; (g) any estimates of the expected market clearing price for electricity in the MAPP or for OPPD (for 1995 to present); (h) documents relating to OPPD's decision to join the Western Systems Power Pool and benefits OPPD expects or enjoys from such membership; (i) documentation relating to OPPD's arrangement to purchase power from Enron for the period 2001-2008 (including the contract and OPPD's final bid evaluation that led to the selection of Enron's bid); and (j) records relating to any evaluation by OPPD of the purchase of power from Nebraska Public Power District (including estimated cost of purchased power from NPPD versus self-generation at the more costly NOPS units). Does OPPD have records in these categories? If so, please produce them to us.

Requests 19 and 24

OPPD has produced some information on its plant costs, but it appears that we have not received a number of other documents that would be responsive to these requests. This includes, among other things, (a) dispatch tables for each NOPS unit and for other OPPD plants showing the dispatch rate (dollars per MWh) at various output levels (for 1996 and year to date 1997); (b) dispatch rules and guidance used by OPPD

^{1/} See pages 72-73 of OPPD's 1997 Integrated Resource Plan.

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Thomas W. Wilcox, Esquire
September 12, 1997
Page 4

system dispatchers (including any must-run conditions and minimum loads); (c) records showing the delivered fuel price inputs to the development of the dispatch tables for NOPS and Nebraska City (broken down by FOB mine and transportation costs); (d) documents showing the 1996 heat rates and heat rate curves for OPPD's six coal-fired units; (e) documents showing the variable operations and maintenance (O&M) amounts for the five NOPS units and Nebraska City that were used for the dispatch tables in 1996 and 1997; (f) documents sufficient to show the number of hours in 1996 when NOPS units 1, 2, and 3 were used at the same time the Nebraska City plant was less than fully utilized; (g) any studies of, or documents describing the implementation of, seasonal shutdowns of a portion of NOPS; (h) any studies of the economics of seasonal or non-seasonal shutdown of any NOPS units in conjunction with purchase of power or increased utilization at other OPPD units; (i) documents showing a breakdown for each of the fixed and variable O&M expense categories shown at pages 25 and 26 of OPPD's 1997 Integrated Resource Plan and the basis and methodology for the division between the fixed and variable categories shown on page 26 for OPPD's six coal-fired units; (j) documents showing the basis and methodology for calculating the estimates of avoided peak and off-peak energy costs shown on page 43 of OPPD's 1997 Integrated Resource Plan; (k) documents showing the basis for the amounts of credits for power sales for 1995 and 1996 shown under O&M expenses on page 26 of OPPD's 1996 Annual Report; and (l) OPPD's Form EIA for 1990-1994. Does OPPD have some or all of these documents? If so, please produce them to us.

Request 22

OPPD stated that it would produce documents on train movements to NOPS, responsive to Request 22 in UP's First Discovery Request. We have not seen any documents in OPPD's production that are designated as responsive to Request 22. I raised this point with you during our August 6th telephone conversation, and you promised to check into it. What have you found?

Request 26

With respect to Request 26 of UP's First Discovery Requests, while OPPD has produced FERC reports for the years 1983-1996, no documents have been produced for the years 1979-1982 or for 1997. Does OPPD have copies of FERC reports for these years?

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Thomas W. Wilcox, Esquire
September 12, 1997
Page 5

Request 3 (Second Set)

Document No. OPPD 004845, produced in response to Request 3 of UP's Second Discovery Requests, is not readable. Can you supply us with a legible copy? Also, the documents produced in response to Request 3 appear to refer only to coal for the Nebraska City plant. Are there other contracts that cover coal for the NOPS facility? If so, when will they be produced? If not, why not?

Request 4 (Second Set)

During our telephone conversation of August 14, you said you would check on whether OPPD has any summary descriptions of its arrangements with the MAPP and other power pooling organizations. Has anything been located?

Requests 6 and 7 (Second Set)

While some documents responsive to Requests 6 and 7 of UP's Second Request for Documents were produced, the Estimated Seasonal Load and Generating Capability Data document for 1990 has not been produced. In addition we received only two statewide planning documents, one for 1986-2015 and the other for 1997-2016. Are there others in OPPD's files? I recall your telling me during our August 14th telephone call that a similar document was prepared in 1991.

Request 9 (Second Set)

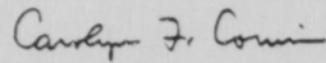
At your suggestion, we have explored the possibility of obtaining OPPD's evidentiary submissions at the Board. Our paralegal advises that OPPD's opening evidentiary submission is not available at all, that OPPD's rebuttal submission is available only on microfiche, and that it took more than five hours to print out just the verified statements (but not the accompanying workpapers) from the latter submission. In view of the burden involved in printing out materials at the Board and the fact that the opening OPPD submission is not available from the Board, we request that you provide us with the items we have not yet obtained. If it is more convenient, we could borrow materials from you, copy what we want, and return the materials to you.

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Thomas W. Wilcox, Esquire
September 12, 1997
Page 6

Please let me know where OPPD stands on these matters. Many of the documents described above relate to product and geographic competition issues that UP must address in its opening evidence. Thus, we will need to have them produced to us as soon as possible.

Sincerely yours,

A handwritten signature in cursive script, reading "Carolyn F. Corwin".

Carolyn F. Corwin

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6281

CAROLYN F. CORWIN

DIRECT DIAL NUMBER

(202) 662-5338

DIRECT FACSIMILE NUMBER

(202) 778-5338

LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AB

ENGLAND

TELEPHONE: 44-(71)-485-3666

FACSIMILE: 44-(71)-485-3101

BRUSSELS OFFICE

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1566

September 18, 1997

BY MESSENGER

Thomas W. Wilcox, Esquire
Donelan, Cleary, Wood & Maser, P.C.
Suite 750
1100 New York Avenue, N.W.
Washington, D.C. 20005

Re: OPPD v. UP, Docket No. NOR-42006

Dear Tom:

This follows up on my letter to you dated September 12, 1997, inquiring about certain documents that OPPD appears not to have produced in connection with UP discovery requests for which OPPD originally agreed to provide responsive documents.

First, there is an omission on page 4 of the letter. In the next to the last line of the carryover paragraph, item (l) should refer to OPPD's Form EIA 412 for the years 1990 through 1996.

Second, our concerns about OPPD's response to UP's First Request No. 6 are broader than described in my September 12 letter. OPPD stated that it would provide documents responsive to Requests 6(a) and (d) for the movement of OPPD's coal from origin mines to Omaha and from Omaha to NOPS. We need information on the volume of coal traffic that moved to NOPS in each quarter since UP began to serve NOPS (in approximately the mid-1970's), as well as the routes used. This information should include the identity of the carrier transporting the coal in each quarter. At this point, all we have received are train reports for the period 1994-1996. (I assume all of the traffic shown in these reports was carried by BN.) Does OPPD have responsive information for years earlier than 1994 and for 1997? If so, please produce these documents.

Third, in connection with our many follow-up questions involving plant costs, power purchases and sales, and similar subjects, I want to clarify that we believe

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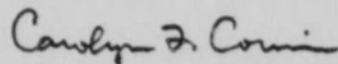
Thomas W. Wilcox, Esquire
September 18, 1997
Page 2

that OPPD should have supplied information on each individual NOPS and Nebraska City unit to the extent information on individual units is available. For the most part, what we received referred only to the NOPS and Nebraska City plants, without providing detail on the individual units within NOPS. Where available, please provide responsive information and documents on an individual unit basis.

Finally, I see that in the opening paragraph of the September 12 letter, I characterized the requests discussed as ones to which OPPD did not object. We recognize that OPPD did state formal objections to many of these requests. I should have stated that the requests in question are ones as to which OPPD stated it would provide responsive documents.

Please feel free to call me if you have questions. As I noted previously, we need to receive a prompt response to the inquiries stated in my September 12 letter.

Sincerely yours,



Carolyn F. Corwin

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

September 25, 1997

By Telecopy and Hand Delivery

Carolyn F. Corwin, Esquire
Covington and Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Re: *OPPD v. UP*, Dkt. No. NOR-42006

Dear Carolyn:

This letter responds to your letters dated September 12 and 18, 1997, regarding OPPD's responses to UP's First and Second Discovery Requests. We respond to each of the items as listed in the September 12th letter.

Request No. 1

OPPD has produced all relevant portions of its 1986 contract with BNSF. The portion of the contract governing escalation of the switch fee absorption amount is not relevant. OPPD has produced documents that show the amount of the absorption throughout the history of the contract and that information is sufficient for purposes of this proceeding.

Request No. 5

OPPD asserts that the production of BN freight bills for the years 1985 to 1994 is unduly burdensome. OPPD recently has relocated many of its offices and is unable to locate many of these documents for later years. The information in these documents is available from other sources and thus OPPD should not be put to the burden of attempting to locate and produce them. Moreover, OPPD recently settled litigation with BNSF over the productivity factor and the freight bills have not been revised to reflect changes brought about by this settlement. OPPD will not produce tariffs because all relevant tariffs were published by UP. OPPD will produce documents analyzing or discussing the reasonableness of the UP switch fee to the extent any documents exist which are not privileged and have not been produced already.

DONELAN, CLEARY, WOOD & MASER, P.C.

Letter to Carolyn F. Corwin, Esquire
September 25, 1997
Page - 2 -

Request No. 6

OPPD will provide additional train reports for the period prior to 1994 and 1997 only during times when BNSF originated OPPD's coal. UP should have this information for the years in which it originated the coal and it therefore would be unduly burdensome to require OPPD to locate and produce these reports. OPPD does not intend to provide any additional documents in response to this request.

Request Nos. 8, 11, 21, 23 and 27

OPPD has not located any documents responsive to these requests.

Request Nos. 16 and 25

OPPD will produce additional documents.

Request Nos. 17 and 18 (First Set); Request Nos. 4 and 5 (Second Set)

Much of the information that you have described in your letter is not encompassed by these requests. This information does appear to be encompassed by UP's Third Set of Discovery Requests, to which OPPD will respond or object by October 6, 1997. To the extent some of the requested information may be encompassed by these requests, OPPD partially responds herein.

There are no written documents for items (a-c) of your letter. The information sought by item (d) already has been produced as part of the 1997 Integrated Resource Plan. OPPD does not retain the information requested by item (e). The information sought by item (f) is proprietary to Electronic Data Systems Inc. and cannot be provided to UP without the consent of EDS. OPPD does not have documents responsive to items (g), (h) and (j). OPPD's contract with Enron, sought by item (i), is confidential and cannot be produced without Enron's consent.

Request Nos. 19 and 24

The information that you have described in your letter is not encompassed by these requests. Therefore, OPPD has not produced and does not intend to produce such documents in response to these requests. Much of this information does appear to be encompassed by UP's Third Set of Discovery Requests, to which OPPD will respond or object by October 6, 1997.

DONELAN, CLEARY, WOOD & MASER, P.C.

Letter to Carolyn F. Corwin, Esquire
September 25, 1997
Page - 3 -

Request No. 22

The information sought by this request was answered by the UP itself in response to Request No. 1 of OPPD's first set of discovery requests. Clearly this is information within UP's possession and there is no need for OPPD to respond further to this request.

Request No. 26

OPPD does not have FERC reports for the years 1979-1982. OPPD will produce FERC reports for 1997.

Request No. 3 (Second Set)

OPPD will produce a legible copy of OPPD 004845. OPPD has produced all of its contracts responsive to this request. Although both the Peabody and Kerr-McGee contracts refer to Nebraska City, coal under those contracts also is delivered to NOPS.

Request No. 4 (Second Set)

OPPD does not have any documents responsive to this request.

Request Nos. 6 and 7 (Second Set)

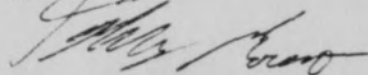
OPPD does not have an Estimated Seasonal Load and Generating Capability Data document for 1990. OPPD will produce two additional statewide planning documents generated in 1984 and 1991.

Request No. 9 (Second Set)

OPPD will produce the requested information.

If you require any further clarification of this letter, please contact us.

Sincerely,



Thomas W. Wilcox
Jeffrey O. Moreno

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000
FACSIMILE (202) 662-6291

CAROLYN F. CORWIN
DIRECT DIAL NUMBER
(202) 662-5338
DIRECT FACSIMILE NUMBER
(202) 778-5338

LECONFIELD HOUSE
CURZON STREET
LONDON W1T 8AS
ENGLAND
TELEPHONE 44 (71) 495 5655
FACSIMILE 44 (71) 495 3101
BRUSSELS OFFICE
KUNSTLAAN 44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE 32 (2) 549 5230
FACSIMILE 32 (2) 502 1598

October 3, 1997

BY MESSENGER

Thomas W. Wilcox, Esq.
Jeffrey O. Moreno, Esq.
Donelan, Cleary, Wood & Maser, P.C.
Suite 750
1100 New York Avenue, N.W.
Washington, D.C. 20005

Re: OPPD v. UP, Docket No. NOR-42006

Dear Tom and Jeff:

This letter addresses points in your letter dated September 25, 1997, which in turn responded to my letters dated September 12 and 18, 1997, relating to OPPD's responses to UP's discovery requests. In some respects, your points are reasonably clear, and you have indicated that OPPD will produce some additional documents. However, there are some areas as to which we need further clarification.

Request No. 1 - OPPD's original response to this request states that it will produce the section of contract ICC-BN-C-2205 "governing the payment of the charge assessed by UP under Tariff UP 8005-D (item 3650) for moving trains from UP's interchange with BNSF in Omaha to NOPS," and OPPD did produce one contract section relating to BN's absorption of part of the UP switch fee. In view of that response, we do not understand why you now take the position that the related contractual provision providing for escalation of the absorption amount (which is explicitly cross-referenced in the provision OPPD produced) is irrelevant. Our records indicate that OPPD has produced documents showing the actual absorption amount for some time periods (1994-1996, not the entire history of the contract, as your letter states). However, UP is also entitled to know the contractual framework pursuant to which those amounts were calculated. We ask that you reconsider your position on this

COVINGTON & BURLING

Thomas W. Wilcox, Esq.
Jeffrey O. Moreno, Esq.
October 3, 1997
Page 2

point, or at least explain further why you believe the escalation provision should not be produced when you acknowledge that the basic absorption provision is relevant.

Request No. 5 - It is unclear from your letter why OPPD has been unable to locate some of the BN freight bills for the period 1985 to 1994. Has an effort been made to locate them? Why is it burdensome to produce those that have been located? Is OPPD also declining to produce the 1997 bills, and, if so, on what basis? Also, you state that the information in these documents is available from other sources, but you do not identify those other sources. What are they? The fact that the freight bills have not been adjusted to reflect the terms of a settlement with BNSF is not a reason for not producing them; OPPD should simply produce the bills with an explanation. (It is not clear from your letter that any settlement adjustment would affect the switch fee absorption amount.) Your letter does not explain why OPPD's production of responsive documents other than the BN freight bills was limited to the period 1993-1996.

As to tariffs showing the challenged switch fee, OPPD should produce any copies in its possession, even if the tariffs were published by UP. As I explained in my letter dated September 29, 1997, UP's tariff files unfortunately are not complete. In these circumstances, there is clearly no basis for OPPD to withhold these highly relevant documents. Please let me know immediately whether OPPD has such documents so we can decide whether to move to compel production.

Request No. 6 - Your letter appears to contain contradictory statements regarding whether OPPD intends to produce additional documents in response to this request (involving movements of coal to NOPS). Will it do so or not? We do not believe there is any basis for your position that OPPD will limit its production of train reports to years when BNSF originated OPPD's coal. UP's records regarding coal movements to NOPS may not be complete or may differ from OPPD's information. UP is entitled to see train reports for all periods. Your letter also does not address the questions about the route information covered by Request 6(a) that are contained in my September 12 letter. What is OPPD's response to these questions?

Request Nos. 17 and 18 (First Set); Request Nos. 4 and 5 (Second Set) - We disagree with your assertion that the items of information listed in my September 12 letter are not encompassed by these requests. However, since you acknowledge that the information is encompassed by UP's Third Set of Discovery Requests, we will await OPPD's October 6 responses to those requests. I note at this point, however, that your statements that OPPD does not have documents responsive to items (a), (b), (c), (e), (g), (h), and (j) of my September 12 letter are contrary to our understanding of what records OPPD would surely maintain. For example, we understand that OPPD's FERC Form 714

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Thomas W. Wilcox, Esq.
Jeffrey O. Moreno, Esq.
October 3, 1997
Page 3

(Part II, Schedule 6) contains a brief description of OPPD's dispatch practices, which would be partially responsive to item (a). Based on our understanding of utility recordkeeping practices, there also should be other documentation (either written or in machine-readable form) relating to OPPD's dispatch practices. As to item (c), we understand that OPPD at least should have computer diskettes with records of monthly power purchases and sales used in preparing FERC Form 714 and EIA Form 412. Please consult again with your client to be certain there has been no misunderstanding. (As you are aware, UP's discovery requests include a broad definition of the term "document," including computer disks and other machine readable formats.) With respect to item (d), OPPD's Integrated Resource Plan does not appear to contain detailed monthly unit-specific inputs to GAF (e.g., FOB mine cost, transportation cost, stockpile and handling cost, heat rate, O&M cost broken down between fixed and variable). If I am wrong about this, please refer me to the page number of the IRP where this detailed information may be found. As for items (f) and (i), we believe that the protective order in this proceeding should address any concerns about the asserted confidential and proprietary status of the requested documents. (Moreover, as to item (f), we question whether the model documentation, as opposed to the model itself, is actually proprietary.) In addition, many confidentiality provisions contain exceptions for documents requested in legal proceedings. Is this the case for OPPD's arrangements with EDS and Enron? To the extent it has not yet done so, and if it is actually required, we request that OPPD seek the consent of EDS and Enron to production of the requested documents (with any appropriate confidentiality designations).

Request Nos. 19 and 24 - We disagree with your assertion that the items of information listed in my September 12 letter are not encompassed by these requests. However, since you acknowledge that the information is encompassed by UP's Third Set of Discovery Requests, we will await OPPD's October 6 response to those requests.

Request No. 22 - OPPD initially stated that it would produce documents responsive to this request for documents evidencing or describing train movements to NOPS, and you subsequently told me you would check on why no such documents had been produced. It is unclear why you are now taking the position that OPPD need not respond to this request. The fact that UP responded to a different OPPD request by providing a description of the switching operation at NOPS certainly does not mean that OPPD is relieved of any obligation to produce documents evidencing or describing train movements to NOPS. UP is entitled to see OPPD's information on this subject, regardless of the fact that UP may already possess some relevant information. There is no basis for OPPD to renege on its original commitment to produce these documents.

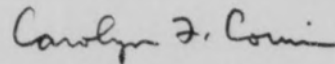
COVINGTON & BURLING

Thomas W. Wilcox, Esq.
Jeffrey O. Moreno, Esq.
October 3, 1997
Page 4

Request No. 4 (Second Set) - We are puzzled by your statement that OPPD has no documents responsive to this request. You originally objected to this request (involving OPPD's participation in power pooling organizations) in part on the ground that OPPD had already produced substantial information relating to its actual and projected power transactions. You later advised me during a telephone conversation that OPPD has a great deal of material relating to its participation in the Mid-Continent Area Power Pool and asked whether UP was really interested in all this material. In an effort to narrow the request, I suggested that you check to see whether OPPD has any documents summarizing its arrangements with MAPP and other power pooling organizations, and you agreed to check on this. If the comment in your September 25 letter means that OPPD does not have any such summary descriptions, UP will stand by its original request. If you can suggest another way to narrow this request, we would be happy to discuss it further.

Please let us know your position on these points as soon as possible. In addition, please let us know when we can expect to receive the additional documents OPPD has agreed to produce.

Sincerely yours,

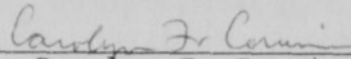


Carolyn F. Corwin

CERTIFICATE OF SERVICE

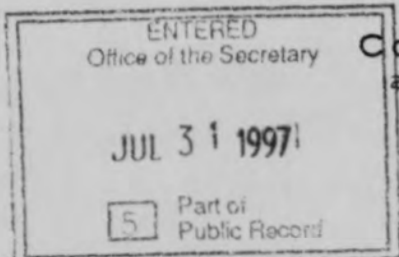
I hereby certify that on this 6th day of October, 1997,
I caused a copy of UP's Third Motion to Compel Production of
Documents to be sent by messenger to:

Thomas W. Wilcox, Esq.
Donelan, Cleary, Wood & Maser, P.C.
Suite 750
1100 New York Avenue N.W.
Washington, D.C. 20005



Carolyn F. Corwin

180842



COVINGTON & BURLING
201 PENNSYLVANIA AVENUE, N. W.
P.O. BOX 7566
WASHINGTON, D.C. 20044-7566
(202) 662-6000
FACSIMILE (202) 662-6291

CAROLYN F. CORWIN

DIRECT DIAL NUMBER

(202) 662-5338

DIRECT FACSIMILE NUMBER

(202) 778-5338

LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 44-(71)-495-5655

FACSIMILE: 44-(71)-495-3101

BRUSSELS OFFICE

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

July 29, 1997



BY HAND

Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Docket No. NOR-42006, Omaha Public Power
District v. Union Pacific Railroad Company

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket are an original and 10 copies of UP's Motion to Dismiss.

Please note that the Motion to Dismiss has two versions: one contains material that is redacted for the public file, and the other contains information designated "Confidential" by OPPD under the protective order governing this proceeding. The "Confidential" version of the motion is clearly marked and is being separately filed with the Board under seal. The Board is being provided with 10 copies of both versions of each document. Both versions have been served on counsel for OPPD.

Also enclosed in the sealed envelope is a 3.5-inch diskette containing the "Confidential" version of the pleading in WordPerfect 5.1 format, which is capable of being read by WordPerfect for Windows 7.0.

Please file-stamp the enclosed copy of the pleading and return it to our messenger.

Thank you for your assistance.

Sincerely yours,

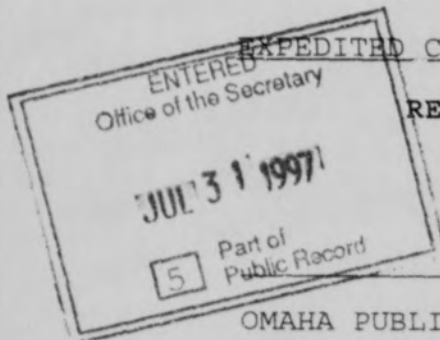
Carolyn F. Corwin

Carolyn F. Corwin

Enclosures

cc: Thomas W. Wilcox, Esq.

180842



EXPEDITED CONSIDERATION REQUESTED

REDACTED -- TO BE FILED IN THE PUBLIC RECORD

BEFORE THE
SURFACE TRANSPORTATION BOARD



OMAHA PUBLIC POWER DISTRICT,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. NOR-42006

MOTION TO DISMISS

Defendant Union Pacific Railroad Company ("UP") hereby moves to dismiss the Complaint herein of Omaha Public Power District ("OPPD"). This motion is supported by the Verified Statement of Bert A. Van Kampen (Exhibit A hereto).

As the parties are engaged in burdensome and costly discovery, UP respectfully requests that the Board give this motion expedited consideration.

STATEMENT OF FACTS

The Complaint, filed June 20, 1997, concerns a UP switch fee applicable to the movement of coal by Burlington Northern & Santa Fe Railway ("BNSF") from the Powder River Basin in Wyoming to OPPD's North Omaha Power Station ("NOPS") in North Omaha, Nebraska. The coal moves in unit trains, at a current rate of some 1.9 million tons per year. Complaint ¶¶ 3, 7. The NOPS facility is located on UP's lines in the Omaha switching district, and is open to BNSF via reciprocal

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switching. The coal moves over BNSF's lines from the origin to Omaha, and UP switches the coal trains to and from the plant on BNSF's behalf. The distance of the switch move is some five miles. Id. ¶¶ 5, 8.

The Complaint indicates that the subject coal traffic is covered by a transportation service contract between OPPD and BNSF. Id. ¶ 7. OPPD has confirmed to UP in discovery that all of the pertinent traffic is covered by this contract. The Complaint does not disclose the duration of the contract, and OPPD has refused to produce the contract to UP in discovery, with the exception of a single section involving the switch fee (Exhibit B hereto). However, UP is aware, from public sources and from bidding on the contract in competition with BN, that the contract was entered into in 1986 and its expiration date is December 31, 1998. Van Kampen V.S. ¶ 6.

UP's switch fees for the Omaha switching district are set forth in a tariff. See Van Kampen V.S. ¶ 2 & Attachment. The current level of the fee applicable to the coal moved by BNSF to the NOPS facility is \$124 per car. Van Kampen V.S. ¶ 7. This is in line with switch fees charged by UP systemwide. Id. Indeed, in many instances UP switch fees were as high as \$495 per car until they were reduced as a result of the UP/SP merger. Id.

The Complaint states that, under the transportation service contract, payment of the UP switch charge is "shared" between BNSF and OPPD. Complaint ¶ 9. This statement is, at

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the very least, highly misleading. In fact, as OPPD has confirmed to UP in discovery, BNSF pays the entire amount of the switch fee to UP, and OPPD does not pay, and never has paid, any part of the switch fee to UP. What the BNSF-OPPD contract provides is that

The Complaint also says, following its statement that payment of the switch fee is "shared" between BNSF and OPPD under the present contract: "Upon the expiration of that contract, Complainant will be responsible for payment of the entire switching charge unless and until a similar arrangement is entered into." Complaint ¶ 9. This statement is also, at the very least, extremely misleading. First, UP and BNSF are certain to compete vigorously for a new contract to follow the

1/

pursuant to a section of the contract that OPPD has refused to produce in discovery.

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expiration of the current one, and if UP is the successful bidder for that new contract, no switch fee will be paid by anyone. Second, if BNSF prevails in that bidding, it will, as now, be responsible for payment of 100% of the switch fee to UP. Third, whether any new BNSF-OPPD contract includes a provision for complete or partial "absorption" of the switch fee will be a matter for negotiation, and cannot be known in advance. Van Kampen V.S. ¶ 9.

The Complaint seeks, as relief, the prescription of "a just and reasonable switch charge." Complaint, Prayer, p. 4.^{2/} It seems clear that what is sought is prescription of a new switch fee to be effective upon the expiration of the present transportation service contract. That construction of the Complaint is supported by the absence of any request for reparations, and by the Complaint's reliance, in claiming market dominance, on assertions (a) as to the revenue-to-variable-cost ratio with regard to the full amount of the switch fee, and (b) that OPPD will not be responsible for the full amount of the fee until the present contract expires. Complaint ¶¶ 9, 10.

^{2/} The Prayer also requests prescription of "related rules and service terms for the switch movement." Apart from this reference, the Complaint is silent about "rules and service terms," and thus we treat this request as nugatory.

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ARGUMENT

We show below that the Complaint must be dismissed for four reasons. First, since all of the subject traffic is under contract and will be until December 31, 1998, the Board lacks jurisdiction to consider a challenge to a common carrier rate for the traffic, even if the switch fee is regarded as such a rate. Second, the Board should refuse to consider a challenge to the switch fee by OPPD, since the fee is not a rate paid by OPPD but rather is a cost incurred by OPPD's transportation service provider, BNSF. Third, even if the switch fee were considered -- contrary to the facts -- to be a rate charged to OPPD, it could not be separately challenged, because it would be only one factor in a through rate. Finally, the Complaint should be dismissed because challenges to switch fees should be permitted only if anticompetitive conduct within the meaning of the Board's competitive access rules is shown, and the Complaint makes no such allegation.

I. THE COMPLAINT MUST BE DISMISSED BECAUSE THE BOARD LACKS JURISDICTION OVER TRANSPORTATION PROVIDED PURSUANT TO A CONTRACT

The first reason why the Complaint must be dismissed is that all of the subject traffic is under contract until December 31, 1998. As noted, the Complaint quite clearly seeks prescription of a switch rate to be effective after the expiration of the contract. But regardless of whether that is the case or an immediate prescription is sought, the law is

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clear that the restrictions on the Board's jurisdiction over contracts preclude the granting of such relief.

Under 49 U.S.C. § 10709(c)(1), transportation under a contract between a rail carrier and a purchaser of rail services is not subject to statutory requirements with respect to rates "and may not be subsequently challenged before the Board or in any court on the grounds that such contract violates a provision of [the Rail Part of the Interstate Commerce Act, 49 U.S.C. §§ 10101, et seq.]." This provision, introduced in the Staggers Act of 1980, has the effect of depriving the Board of jurisdiction to consider rates for rail transportation provided pursuant to contract. See Burlington Northern R.R. v. STB, 75 F.3d 685, 687 (D.C. Cir. 1996).

Because, as the Complaint makes clear and OPPD has confirmed to UP in discovery, all transportation of coal to the NOPS facility is pursuant to a contract between a rail carrier and a shipper, and will continue to be through December 31, 1998, the Board lacks jurisdiction to consider the rate that OPPD pays to BNSF under the contract, including amounts paid to defray BNSF's switching costs.

OPPD may argue that the Board has jurisdiction to consider whether the switch charge will be reasonable following the expiration of the contract. However, the Board lacks authority to make such an anticipatory ruling. In Burlington Northern, the United States Court of Appeals for the District of Columbia Circuit held that, where a complaint

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was filed with respect to traffic then under contract, the ICC lacked authority to require the railroad to publish a tariff covering such traffic more than a year prior to the expiration of the contract. The court explained that allowing the Commission to require publication of a tariff in these circumstances would allow an "end-run around the statutory scheme -- jump-starting the rate review process well in advance of the earliest possible date at which common carrier service could begin, and thereby avoiding the practical force of the statutory limits on its authority." 75 F.3d at 694.

Here, the Burlington Northern ruling is a fortiori applicable. The present contract has even longer to run than did the contract in that case. Similarly, the contract here has nearly a half a year longer to run than did the MidAmerican contract, as to which the Board held, in its December 31, 1996 Bottleneck decision, that a challenge to a common carrier rate purportedly applicable to traffic under contract would have to be dismissed. Specifically, the Board stated, after rejecting MidAmerican's claims for other legal reasons:

"We would have to dismiss MidAmerican's complaint on ripeness grounds in any event. As noted, the utility's coal currently moves under a transportation contract that does not expire until December 31, 1997. Under Burlington N.R.R. v. Surface Transp. Bd., 75 F.3d 685, 692-96 (D.C. Cir. 1996), the Board is without authority to adjudicate a rate case involving a common carrier rate that might be used upon the expiration of a

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contract until at or near the time at which the contract expires."

Docket No. 41242, Central Power & Light Co. v. Southern Pacific Transportation Co., Decision served Dec. 31, 1996, p. 17 ("Bottleneck I"), appeal pending, No. 97-1081 (8th Cir.).

Moreover, the court's ruling in Burlington Northern and the Board's conclusion in Bottleneck I make good policy sense in the present context, for it may well be that UP will prevail in bidding for a new contract movement to follow the expiration of the current contract, and there will be no occasion for payment of the switch charge. In that event, the Board would have engaged in an extremely wasteful exercise by litigating the reasonableness of the switch charge on a speculative basis.

OPPD may also try to argue that the contract incorporates the switch tariff, and the tariff can therefore be challenged. That argument should also be rejected, for several reasons.

First, it is without merit as a matter of law. Section 10709 restricts the Board's jurisdiction over all contract traffic; it makes no exception for contracts that define their contractual terms by reference to terms of a tariff. Even if a tariff rate is adopted by reference in a contract, it then becomes a contractual rate, not a common carrier rate.

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Second, the argument is incorrect as a matter of fact. The contract

Third, even if a tariff incorporated in a contract could be challenged if the parties so intended, the question of what the parties intended here would itself be a contract question for resolution by a court, not this Board.^{2/} To avoid eroding the restriction on its jurisdiction over contract traffic, the Board should entertain such a challenge -- if at all -- only after a court holds that it was the parties' intent that the Board be free to do so.^{3/}

^{2/} See, e.g., Coal Trading Corp. v. Baltimore & Ohio R.R., 6 I.C.C.2d 361, 365 (1990) ("The interpretation of the term 'tariff' or other contract provisions, and the effect on the contracts of contract terms applicable to the shipments at issue is a matter for the courts.").

^{3/} In Coal Trading, the ICC was going to be resolving the reasonableness of the disputed tariff rates with respect to non-contractual movements in any event, and therefore could leave for later court determination whether, as to the contract movements, the parties intended for the tariff to be challengeable. Here, there is no such separate basis for adjudicating the reasonableness of the switch fee.

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II. THE COMPLAINT MUST BE DISMISSED BECAUSE THE SWITCH CHARGE IS A COST INCURRED BY OPPD'S SERVICE PROVIDER, NOT A RATE PAID BY OPPD

The second reason why the Complaint must be dismissed is that it does not challenge a rate that is paid by OPPD. As OPPD has confirmed in discovery, the switch fee is, and always has been, paid by BNSF to UP. No part of it is paid to UP by OPPD. The attached statement of Mr. Van Kampen confirms that this is the case. Van Kampen V.S. ¶ 3.

OPPD pays an overall transportation rate to BNSF -- it does not separately pay any amount to UP for the switch fee. BNSF is the only carrier shown on the waybill as handling the traffic. Van Kampen V.S. ¶ 5. UP switches the traffic as BNSF's agent, and BNSF is considered to serve the destination facility. Id. That the contract

does not change the fact that the fee is not a rate paid by OPPD to UP. The fee is no different from any other cost incurred by BNSF. BNSF's rate could just as well include some pass-through of fuel costs, or crew costs, or any other costs, but that would not convert those amounts into separate transportation rates.

There is substantial authority that challenges to railroad rates must be brought by the party that actually pays the rate, not a party to whom the rate is "passed on." The switch fee is neither "charged" to nor "collected" from OPPD by UP. 49 U.S.C. § 10704(a)(1). In Southern Pacific Co. v. Darnell-Taenzer Lumber Co., 245 U.S. 531, 534 (1918), Justice

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Holmes held that a purchaser of lumber from a lumber shipper could not challenge as excessive the rail rate paid by the lumber shipper, even though the shipper had passed on the rate to the purchaser. Technically, Justice Holmes said, the reason was the absence of privity, but the basis for the rule was not simply technical: "Behind the technical mode of statement is the consideration well emphasized by the Interstate Commerce Commission, of the endlessness and futility of the effort to follow every transaction to the ultimate result."^{2/}

Thus, because it is uncontested that OPPD does not pay UP the switch fee, OPPD may not bring this action against UP.

III. THE COMPLAINT MUST BE DISMISSED BECAUSE EVEN IF THE SWITCH FEE WERE VIEWED AS A RATE PAID BY OPPD, IT COULD NOT BE CHALLENGED SEPARATELY FROM THE THROUGH RATE

The third reason why the Complaint must be dismissed is that even if -- contrary to the actual facts -- the switch

^{2/} See also, e.g., Johnson v. Atchison, Topeka & Santa Fe Ry., 17 F. Supp. 720 (N.D. Tex. 1937); Nicola, Stone & Myers Co. v. Louisville & Nashville R.R., 14 I.C.C. 199, 209 (1908) ("The reparation is due to the person who has been required to pay the excessive charge as the price of transportation."). Further confirmation that the only proper claimant is the party that actually pays the rate is found in 49 U.S.C. § 11701(b), which specifies that "the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant." What this provision makes clear is that even if the party that actually paid the rate was not injured by its excessive level because he entirely passed the rate on to another, that party must bring the rate challenge, and the defendant cannot seek dismissal on the ground that the rate was passed on.

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fee were viewed as a rate paid by OPPD, that rate could not be challenged separately from the through rate of which it would be one factor.

In its recent Bottleneck decisions, the Board reaffirmed a long line of precedents^{5/} holding that a through rate may only be challenged on a through basis. See Bottleneck I, pp. 11-13, and Docket No. 41242, Central Power & Light Co. v. Southern Pacific Transportation Co., Decision served Apr. 30, 1997, p. 4 ("Bottleneck II"), appeal pending, No. 97-1081 (8th Cir.). Overruling an earlier statement in Metropolitan Edison Co. v. Consolidated Rail Corp., 5 I.C.C.2d 385, 408 (1989), that any "separately published rate" may be

^{5/} See, e.g., Great Northern Ry. v. Sullivan, 294 U.S. 458, 463 (1935) ("The shipper's only interest is that the charge be reasonable as a whole."); Louisville & Nashville R.R. v. Sloss-Sheffield Steel & Iron Co., 269 U.S. 217, 234 (1925) ("The shipper's only interest is that the joint rate be reasonable as a whole."); Alenberg Cotton Co. v. Alabama Great Southern R.R., 289 I.C.C. 71, 78 (1953) ("It is well settled that reparation may be awarded only where the total rate is assailed, on a showing that the total charges applied were unreasonable, and not where the attack is directed solely against a particular factor or segment of the through rate, or against a practice employed in determining a rate without regard to the total charges resulting from the rate so determined."); Commercial Club of Omaha v. Anderson & Saline River Ry., 27 I.C.C. 302, 318 (1913) ("The shipper is interested in the through rate; the total charge he must pay. . . . The through rate is a unit from point of origin to destination even though it is made up of separately established rates. We can not break the unit solely to form a basis for reparation."); Board of Trade of the City of Chicago v. Atlantic City R.R., 20 I.C.C. 504, 508-09 (1911) ("This Commission has uniformly held that the division of a through rate was not a matter of concern to the public The total rate is the thing of consequence, not the manner in which that charge may be shared by the different parties to it").

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separately challenged, the Board specifically held that a separately published proportional rate that is a factor in a through rate cannot be separately challenged. Bottleneck I, pp. 12-13. If it is viewed -- incorrectly -- as a rate factor rather than a cost to the line-haul carrier, this is precisely the nature of the switch fee that OPPD is attempting to challenge. Like a proportional rate, that fee is available only for use in conjunction with a line-haul movement. See Van Kampen V.S. ¶ 4. "So far as the public is concerned, the effect of . . . a reciprocal switching arrangement is to establish a joint rate." Reciprocal Switching, Richmond, Va., 306 I.C.C. 97, 103 (1959).

Thus, what the ICC said more than 70 years ago in International Harvester Co. v. New York Central R.R., 88 I.C.C. 368, 372 (1924), aff'd in pertinent part, 101 I.C.C. 89 (1925), is equally applicable here:

"As we have so frequently stated, the shipper is concerned primarily with the reasonableness of the through rate he has to pay and not with the factors composing that rate. This principle is in no way altered because . . . one of the factors is a switching rate. It may be, as counsel for the . . . line-haul carriers argue, that the switching rate was unreasonable but that is a matter with which the [shipper] complainant is not concerned. It has been damaged when it paid the unreasonable rate."

See also, e.g., Columbus Freight Bureau v. Central of Georgia Ry., 303 I.C.C. 367, 376-77 (1958).

There are a number of statements in old ICC cases that switch fees can be separately challenged by shippers.

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E.g., Reciprocal Switching Charges at Evansville, Ind., 155 I.C.C. 450, 451 (1929); Interchange Switching at Wichita, Kans., 61 I.C.C. 205, 206 (1921).^{1/} However, these statements reflect the concept, articulated in Metropolitan Edison, that separately published rates can be challenged^{2/} -- and that concept was definitively laid to rest in the Bottleneck decisions. They also reflect an era in which shippers had an absolute right to compel reciprocal switching in any terminal area^{3/} -- and that era came to an end with

^{1/} Even these old cases, though, indicate that only the non-absorbed amount of the fee can be challenged by the shipper. See, e.g., Increased Switching Charges at Detroit, Mich., 91 I.C.C. 82, 99-100 (1924) ("A proposal by any of the carriers under whose tariffs respondents' switching charges are absorbed, regardless of the amounts, to limit their absorptions to amounts less than the charges here found justified, and thus increase the cost of service to the shippers, may be made the subject of protests with a view to the institution of an investigation and suspension proceeding for the consideration of such proposed increases."); Utica Traffic Bureau v. New York, Ontario & Western Ry., 18 I.C.C. 168, 170 (1910) ("complaint can be made only of the excess of these switching charges above the \$5 per car absorbed by the line carriers"). OPPD's Complaint does not assert that the non-absorbed amount of the switch fee is unreasonable, and thus even under the old cases the Complaint would have to be dismissed.

^{2/} See also, e.g., Docket No. 40178, SP/SSW Switching Charges on Carloads of Grain at Kansas City, Decision served Oct. 24, 1989, p. 3 n.8.

^{3/} See, e.g., Interchange Switching at Wichita, 61 I.C.C. at 206 (citing, as reason for rule that switch fee can be separately challenged, the proposition that a carrier "is not justified in attempting to restrict traffic to its own lines by making an excessive charge for switching to or from its connections"); Switching Absorptions, 47 I.C.C. 583, 586-87 (1917) (to same effect). The earlier law as to the right to compel switching is exemplified by Iowa & Southwestern Ry. v. Chicago, Burlington & Quincy R.R., 32 I.C.C. 172 (1914).

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the enactment of what is now 49 U.S.C. § 11102 and the adoption of the competitive access rules, 49 C.F.R. pt. 1144. Finally, they reflect a mechanistic focus on equal treatment of every shipper under the rubric of antidiscrimination doctrine,^{10/} which became obsolete with enactment of the Staggers Act, with its more restricted discrimination provision and endorsement of demand-based pricing. See Pub. L. No. 96-448, § 212, 94 Stat. 1895, 1912 (1980).

The Bottleneck decisions did create one exception to the rule that a through rate must be challenged on a through basis: the Board held that where one factor in a through rate is a contract rate and the other is a common carrier rate, the latter factor can be separately challenged. Bottleneck I, pp. 13-14; Bottleneck II, p. 4. However, that exception (which is on appeal) does not permit the challenge made here. As noted, the Complaint quite clearly seeks prescription of a switch fee upon expiration of the present contract. No contract now exists that would operate in conjunction with the switch fee at that future time, and thus no predicate for the Bottleneck exception. And even if a present prescription is sought, the exception does not apply, because, as already discussed, the current contract

^{10/} See, e.g., Detroit Switching Charges, 28 I.C.C. 494, 495-96 (1913).

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IV. THE COMPLAINT MUST BE DISMISSED BECAUSE IT MAKES NO
ALLEGATION OF ANTICOMPETITIVE CONDUCT WITHIN THE MEANING
OF THE BOARD'S COMPETITIVE ACCESS RULES

The fourth and final reason why the Complaint must be dismissed is that it fails to make any allegation of anticompetitive conduct within the meaning of the Board's competitive access rules, 49 C.F.R. pt. 1144. A shipper challenge to the level of a reciprocal switch fee is indistinguishable from a request to have reciprocal switching imposed at a prescribed fee where an interline route via the same junction is already available at a rate the shipper considers too high. That was exactly the situation in the Midtec and Vista cases, in which the ICC found that the shippers were required to satisfy -- and had failed to satisfy -- the competitive access rules. See Midtec Paper Corp. v. Chicago & North Western Transportation Co., 1 I.C.C.2d 362 (1985), 3 I.C.C.2d 171 (1986), aff'd sub nom. Midtec Paper Corp. v. United States, 857 F.2d 1487 (D.C. Cir. 1988); Vista Chemical Co. v. Atchison, Topeka & Santa Fe Ry., 5 I.C.C.2d 331 (1989).

In each of those cases, the defendant railroad handled, or stood ready to handle, the traffic over a short segment in interchange service that was indistinguishable from

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switching service. The plaintiff wanted to force a reduction in the defendant's short-haul rate factor through the imposition of reciprocal switching at a lower fee. The actual rail service would have been identical -- only the charge would have changed. See Midtec, 1 I.C.C.2d at 365, 3 I.C.C.2d at 176-77, 857 F.2d at 1498-511; Vista, 5 I.C.C.2d at 333-36. This case seeks exactly the same remedy, and, like the shippers in Midtec and Vista, OPPD should be required to prove anticompetitive conduct before such a remedy will be imposed.

Here, there is no allegation whatsoever of anticompetitive conduct within the meaning of the competitive access rules. Indeed, no such allegation is possible, since, as Mr. Van Kampen indicates, the switch fee has not changed materially for many years, the fee did not prevent BN from winning the traffic in 1986 in free competitive bidding, and UP has taken no action to diminish the quality of its switching service or otherwise disadvantage OPPD. Van Kampen v.S. ¶¶ 7, 8.

CONCLUSION

This motion does not imply that reciprocal switch fees can never be challenged as excessive. Clearly, they can be challenged under the competitive access rules where they have the effect of forcing traffic onto the switch carrier's own, inefficient long-haul route. They can also be challenged when they cause a through rate to be unreasonable, and they may also be subject to separate challenge under the Bottleneck

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decisions in certain circumstances not present in this case. On the facts of this case, however, for the multiple reasons set forth above, it is clear that the Complaint must be dismissed.

Respectfully submitted,

JAMES V. DOLAN
PAUL A. CONLEY, JR.
LOUISE A. RINN
ROBERT T. OPAL
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000

Arvid E. Roach II /cfc
ARVID E. ROACH II
CAROLYN F. CORWIN
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-6000

Attorneys for Defendant

July 29, 1997

EXHIBIT A

VERIFIED STATEMENT

OF

BERT A. VAN KAMPEN

1. My name is Bert A. Van Kampen. I am Manager-Switching Services of Union Pacific Railroad Company ("UP"). I have a Bachelor's degree in Business Administration from Washington University. I have been employed at UP and predecessor railroads since 1966, and have had responsibilities in the area of switching since 1979. I am knowledgeable about the matters discussed herein.

2. The attached tariff is the tariff that applies to UP's switching for the Burlington Northern & Santa Fe Railway ("BNSF") of BNSF coal traffic bound to the North Omaha Power Station ("NOPS") of Omaha Public Power District ("OPPD"). The fee applicable to the NOPS traffic is set forth at Item 3650 of the tariff.

3. The switch fee is charged by UP to BNSF, not by UP to OPPD. UP receives payment from BNSF, not from OPPD.

4. The switch fee is applicable only in conjunction with a BNSF line haul. It is not a local rate that can be used for traffic that both originates and terminates on UP's lines in Omaha.

5. Where traffic such as this BNSF coal movement to OPPD's NOPS facility is handled in reciprocal switching service, the carrier providing the switching service -- here, UP -- is not a line haul carrier providing rail service to the shipper. Rather, it switches the traffic as the agent of the

- 2 -

line haul carrier. The line haul carrier is the only carrier shown on the waybill, and is considered to serve the destination facility.

6. UP competed for the contract to handle OPPD's coal traffic from the Powder River Basin to NOPS, but lost, in competitive bidding, to BN. The contract was awarded in 1986, and OPPD advised UP that it would terminate on December 31, 1998.

7. Since 1986, the switch fee applicable to the NOPS coal movement has increased only very modestly, pursuant to cost-based adjustments. The fee was \$105 per car on December 31, 1985 and is \$124 per car today. This is in line with switch fees charged by UP systemwide. Indeed, in many instances UP switch fees were as high as \$495 per car until they were reduced as a result of the UP/SP merger.

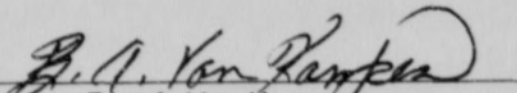
8. UP has not taken any anticompetitive actions whatsoever in connection with the switching of the NOPS coal. As well as maintaining a stable switch fee, the quality of switching service has been maintained at a high level.

9. UP hopes to be successful in competing for the NOPS coal movement when the current contract expires. Should BNSF succeed in again gaining a contract for this business, whether that new BNSF-OPPD contract would include a provision for complete or partial "absorption" of the switch fee would be a matter for negotiation, and cannot be known in advance.

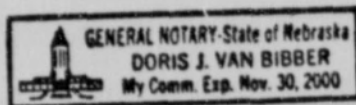
VERIFICATION

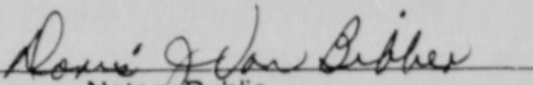
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Bert A. Van Kampen, being duly sworn, deposes and says that he is the Manager - Switching Services at Union Pacific Railroad Company, and has read the foregoing statement, knows the contents thereof, and that the same is true and correct.


Bert A. Van Kampen

Subscribed and sworn to before me by Bert A. Van Kampen this 28th day of July, 1997.




Notary Public

SUBJECT: EXCEPT AS OTHERWISE PROVIDED, TO INCREASES IN RATES AND CHARGES AS PROVIDED IN ITEM 8 (RAIL CARRIER COST RECOVERY TARIFFS)

ICC UP 8005-D
(Cancels ICC UP 8005-C,
Also ICC UP 8000-D, ICC
UP 8015-D and ICC UP 8020-D)

UNION PACIFIC RAILROAD COMPANY



FREIGHT TARIFF UP 8005-D

(Cancels Freight Tariffs UP 8000-D, UP 8005-C, UP 8015-D and UP 8020-D also see Cancellation Notice on Page 2 herein)

LOCAL AND JOINT SWITCHING CHARGES AND ABSORPTIONS AT STATIONS IN

CALIFORNIA
COLORADO
IDAHO
IOWA
KANSAS

MISSOURI
MONTANA
NEBRASKA
NEVADA
OREGON

UTAH
WYOMING
WASHINGTON

ON THE
UNION PACIFIC RAILROAD

SEE ITEM 120 FOR INTRASTATE APPLICATION

SWITCHING - ABSORPTION TARIFF

ISSUED SEPTEMBER 6, 1989

EFFECTIVE OCTOBER 21, 1989

K. H. SCHROEDER
Manager-Pricing Services
Omaha, Nebraska

Issued by
G. R. HIX
Tariff Publishing Officer
1416 Dodge St.,
Omaha, Nebraska 68179

UP 00013

EXHIBIT A-
Attachment

SUPPLEMENT 239 TO TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP			
ITEM	STATION	GROUP N INDUSTRIES AND LOCATION	DISTRICT (See Item 1231)
1661-B	LIST OF INDUSTRIES AT MILWAUKEE, WI (DQ 3457)	A-1 Recycling, 2101 W. Morgan Ave. Alpine Plywood American Can Company, 5000 N. Tautonia Ave. Barrel Plating Service Inc., 503 S. Water Street Bliffert Inc., 10733 W. Bluemound Road Continental Grain Co. (KK Elevator), 732 N. Jackson Crown Cork & Seal Co. Inc., 4801 W. Woolworth Ave. DCS Color and Supply Co. Inc., 1050 E. Bay Street Delta Resins & Refractories, 5253 N. Tautonia Ave. Frantz & Company, 12314 W. Silver Spring Georgia Pacific Corp., 5059 N. 119th Street Grossman Brothers, 4777 W. Lincoln H&R Scrap Metals, 9000 W. Fon du Lac Avenue Hansen Storage Co., No. 112, 2880 N. 112th Street Kellogg's Miller Compressing, 900 S. Water St (Plant No. 8) Koh's Foods, 11100 W. Burleigh Street Ladish Co., 5481 S. Packard Avenue Meehan Seaway Services Ltd., Municipal Dock No. 50, Piers 2, 3 and 4 Midwest Industrial Lumber, 11750 W. Silver Spring Rd. Milprint Inc., 4200 N. Horton Ave. Milwaukee Forge & Machine Co., 1532 E. Oklahoma Ave. Milwaukee Northside Warehouse, 9400 W. Flagg Street Milwaukee Sewerage Commission, Jones Island Sewerage Plant National Warehouse Corp., 531 S. Water St. Peltz, 1514 East Thomas St. Penney, J. C. Co., 11800 W. Burleigh St. Roundy's Inc., 11300 W. Burleigh St. Schmidt, M. J., 12305 W. Silver Spring Rd. Schneider Fuel & Supply Co., 3438 W. Forest Home Ave. Tenneco Packaging, 5600 Good Hope Rd. Tex Par Energy, Inc., 3443 W. Mill Rd. Wayne Chemical Corp., 548 S. Water St. Weyerhaeuser Co., 2960 N. 112th St. Wisconsin Cold Storage Co., 344 E. Florida Street Wisconsin Color Press, Inc., 5400 W. Good Hope Rd. Wisconsin Paperboard Corp., 1514 E. Thomas Street	Chase Tower BJ Wisconsin National Ave. West Allis Bayview Wisconsin Bayview Wisconsin Tower BJ Tower BJ West Allis Fonda Wauwatosa Wauwatosa Cudahy Jones Island Tower BJ Capitol Drive St. Francis Fonda Jones Island National Ave E. North Ave. Wauwatosa Wauwatosa Tower BJ Chase Wisconsin Wisconsin National Ave. Wauwatosa National Ave. Wisconsin E. North Ave.
ITEM	STATION	INDUSTRY	GROUP
1695-B	LIST OF INDUSTRIES AT OMAHA, NE OR SOUTH OMAHA, NE	*** Century Graphics, 155 Ida Street (DQ-3378)	F
1720-B		& Farmland Industries Grain Division, 1230 Ohio St. Farnam Co., 5847 No. 16th St. Ferer & Sons, Aaron, 909 Abbott Drive Finocchio, Inc., Louis, 4202 So. 102nd St (DQ 3457)	D I A H
1750-C		*** Kraft Foods Co., 5825 J St Liberty Gas & Oil Co., 1112 No. 13th St (DQ 3372)	G D
1775-A		Nebraska Warehouse Co., 9100 F St. Neste Trifinery Carbogen North Side Produce Co., 5029 No. 18th St Nogg Fruit Co., 9717 I St Northwestern Steel & Supply Co., 4427 So. 76th St (DQ-3378)	H A I H G
1780-D		Omaha Bedding & Couch Manufacturing Co., 50th & F St. Omaha Public Power Distric, 24th & Craig Avenue Omaha World Herald, 14th & Capitol St *** (DQ-3372)	G F E

SUPPLEMENT 239 TO TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP			
ITEM	STATION	INDUSTRY	GROUP
1825-B	LIST OF INDUSTRIES AT OMAHA, NE (DQ 3457)	▲ *** Union Pacific TOFC Ramp, 10th & Mason St United A-G Cooperative, Inc., 4228 So. 72nd St	B G
1867-D	LIST OF INDUSTRIES AT SAN JOSE, CA	Borchers Brothers Coors Del Monte Plant #3 Ecolab Floor Service Supply Franklin Distillers Frito Lay Gypsum Drywall Supply International Paper Container Key West Wire Red Wing San Jose Distribution Service Stapleton Spence Packing Sun Garden Packing	
1870-M	▲ LIST OF INDUSTRIES AT SEATTLE, WA (DQ 3457)	Aluminum Company America Ash Grove Cement Bamis Bloch Steel Industries Boeing CH Lilly Cork Insulation Sales Crowley Marine Service Foss Maritime General Electric Lamp Golden Grain Great Western Chemical Incon Glass Packaging James Hardie Gypsum Jorgensen Steel Leslie Salt Liquid Carbonic Longview Fiber Lucks Oscar Mac Millan Piper Manson Construction M Bloch Mill Steel North Star Forwarding Ocean Terminals Owl Transfer Storage Pacific Terminals Limited PMC Distributors PSF Industries Port Seattle R A Barnes Sears Seattle Cold Storage Seattle Transfer Storage Stationers Distributing Terminal 106 United Western Supply Vitex Western Cartage	
1887-A	LIST OF INDUSTRIES AT TURLOCK, CA	Americold International Paper Ranchers Feed Rogers Food Snider Lumber Stutts Scientific Nutritional (DQ-3235) *** Turlock Fruit Company Tab Products Feedstuffs Processing	
ITEM	STATION	GROUP N INDUSTRIES AND LOCATION	DISTRICT (SEE ITEM 1398)
1889-B	LIST OF INDUSTRIES AT TWIN CITIES, MN (DQ 3457)	American Agco Company 545 Hardman Ave Archer Daniels Midland Co. ① 575 Drake St. (Elevator D) Delmar Elevators 1, 3 and 4 ▲ Atlas Cold Storage 240 Chester Street (St Paul) Brown & Bigelow 345 East Plato Blvd (St Paul) Bunge Corporation 12100 Yosemite Avenue South Midway Elevator Capitol City Distributing Company 295 State Street (St Paul) Cargill Incorporated Elevator "A" (Port Cargill) (See Item 3718) Elevator "C" (Port Cargill) (See Item 3718) Cargo Carriers Incorporated 12105 Lynn Avenue South (See Item 3718) Cenex 1200 North Concord Street Chrysler Corp 13005 Highway 55 Conagra Incorporated UP Savage Team Track "A" Flour Mill (Joint Industry with CPRS - No switching for connecting lines) Continental Grain Company West Highway 13 Dakota Bulk Terminal 620 East Richmond Avenue	S. St. Paul Western Ave. S. E. Minneapolis State Street State Street ⑪ Savage E. Minneapolis State Street ⑪ Savage ⑪ Savage ⑪ Savage S. St Paul Plymouth ⑪ Savage State Street ⑪ Savage S. St Paul

Continued on next page)

SUPPLEMENT 239 TO TARIFF UP 8005-D

SECTION 3 - SWITCHING SERVICES AND CHARGES - IN DOLLARS PER CAR - EXCEPT AS NOTED				
ITEM	STATION	APPLICATION	SWITCHING PER ITEM	
			2060	2100
			CHARGE	
207 3845-E	SOUTH OMAHA NE (DQ-3378)	Between interchange tracks with connecting roads and the following industries located on the UP: Darling International Edible Larson Cement Stone Co. Millard Refrigerated #3 South Omaha Terminal Warehouse Co. ***	\$102.00	\$116.00
189 3909	UMATILLA OR (DQ 3243)	PVC Powder FROM Leased Storage Track TO JM Manufacturing (Note 1) NOTE 1. Applies only on inbound UP Line Haul.	\$ 85.00	
3934.5 -A	WEST SACRA- MENTO CA	▲ Expired March 31, 1997 per Sup. 207.		
EXPLANATION OF REFERENCE MARKS				
REFERENCE MARKS		EXPLANATION		
▲		Denotes Reduction.		
▲		Denotes Increase.		
▲		Denotes change in wording which results in neither increase nor reduction in charges.		
(11)		Applies on List 1 Grain, also soybeans.		
⊗		Applicable on lumber and lumber products (STCC's 24 2 ⊗, 24 3 ⊗ and 24 91 ⊗) and gypsum wallboard (32 754 ⊗) (on STCC's 24 2 ⊗, 24 3 ⊗ and 24 91 ⊗ filed with ICC as information only).		
***		Industries formerly shown and not brought forward are CANCELLED account no longer in operation, moved off line, or no longer served by this carrier.		
□		(With number enclosed) - Reissued from supplement bearing the number enclosed within the square. (See Item 100)		

SUPPLEMENT 229 TO TARIFF UP 8005-D

SECTION 3—SWITCHING SERVICES AND CHARGES—IN DOLLARS PER CAR—EXCEPT AS NOTED							
ITEM	STATION	APPLICATION	SWITCHING PER ITEM				
			2060		2100		
			CHARGE				
225 3576.5	MANKATO . . . MN (DQ 3431)	All Freight between Group N Industries	\$234.00				
		Soybean Hulls, Soybean Meal, Wheat Mill Feed, in covered hopper cars (not subject to Item 2050): FROM Archer Daniels Midland Co. TO Farmland Industries	① \$170.00 ①② \$ 92.00 ③ \$201.00 ②③ \$123.00				
		TO Hubbard Milling Co.	① \$154.00 ①② \$ 75.00 ③ \$180.00 ②③ \$101.00				
		Soybean Hulls, Soybean Meal, Wheat Mill Feed, in covered hopper cars (not subject to Item 2050): FROM Cargill, Inc. Honeycomb Products Co. TO Farmland Industries Hubbard Milling Co.	① \$170.00 ①② \$ 92.00 ③ \$201.00 ②③ \$123.00				
		Vegetable Oil, in tank cars: FROM Honeycomb Products Co. leased track TO Honeycomb Products Plant	\$158.00 ① \$ 92.00				
① Applies only in lots of three (3) or more cars. ② Applies only in shipper owned or leased equipment. ③ Applies only in lots of two (2) cars.							
222 3602-A	NORFOLK . . . NE (See Note 2) (DQ 3428)	Iron or Steel Scrap (STCC 40 211 00): BETWEEN Nucor Steel and Alter Norfolk ALSO BETWEEN Norfolk Iron & Metal and Nucor Steel	\$120.00				
		Finished Steel (STCC 33 124 00, STCC 33 125 00): BETWEEN Norfolk Iron & Metal and Nucor Steel	\$124.00				
		Finished Steel (STCC 33 124 00, STCC 33 125 00): BETWEEN Nucor Steel AND Nucor Corp. (Vulcraft, Plant 1), (Vulcraft, Plant 2), (Nucor Cold Finish, Plant 3)	\$170.00 \$120.00(NOTE 1)				
		NOTE 1 - Applies only when volume requirement of 750 cars per annual volume period is met. Each volume period shall consist of 12 consecutive months (calendar year). NOTE 2 - Charges in this item apply only when moving in the following equipment: ALTX 1, ALTX 2, ALTX 3, ALTX 4, ALTX 5, ALTX 6, ALTX 7, ALTX 8, ALTX 9, ALTX 10, ALTX 11, ALTX 12, ALTX 13, ALTX 14, ALTX 15 CGW 1084 UP 5647, 88424, 95000, 95001, 95007, 95010, 95015, 95025, 95030, 95031, 95038, 95045, 95048, 95050, 95055, 95060, 95075, 95082, 95089, 95090, 95099, 95116, 95118, 95126, 95138, 95139, 95144, 95150, 95153, 95157, 95189, 95199, 132049, 132067, 132085, 132400, 132466, 132471, 132530, 132548, 133016, 134002, 134071, 134091 VNXX 1 Shipments handled in cars other than those specified above will be subject to an additional charge of \$500.00 per car. Charges to be billed effective November 1, 1996.					
220 3665-J	OMAHA NE (DQ 3425)	BETWEEN	AND INDUSTRIES IN	⑩	⑪	COLUMN	
						1	2
		BN, CC @KCS or MP	GROUP G or H	\$297.00	\$102.00	\$309.00	\$144.00
		IAIS	GROUP G or H	\$100.00	\$ 85.00	\$309.00	\$144.00
COLUMN 1. Not applicable on articles taking Grain rates. COLUMN 2. Applicable only on articles taking Grain rates.							
206 3860-D	STERLING . . . CO (DQ 3391)	Between BN and the following industries located on the UP: Cepex American Nutrena Feed Trinidad Bean Elevator	\$154.00		\$240.00		

ITEM	SUBJECT	RULES AND REGULATIONS																																																																																																																	
204	APPLICATION OF LINE-HAUL RATES-SPECIFIC (DQ 3388)	Line-haul rates which have application from or to stations in Column 1, will also apply to the extent indicated from or to industries or facilities served by UP at the corresponding station named in Column 2 when UP performs line-haul service from or to stations in Column 1. <table><thead><tr><th>COLUMN 1</th><th>COLUMN 2</th></tr></thead><tbody><tr><td>Des Moines, IA</td><td>Swanwood, IA</td></tr><tr><td>Eddyville, IA</td><td>① Bridgeport Station, IA</td></tr><tr><td>Madison, WI</td><td>② Mendota, WI</td></tr><tr><td>Peoria, IL</td><td>Keystone Switch, IL</td></tr><tr><td></td><td>Kolbe, IA</td></tr><tr><td></td><td>Limestone, IL</td></tr><tr><td></td><td>Mapleton, IL</td></tr><tr><td></td><td>Pioneer, IL</td></tr><tr><td></td><td>Sommer, IL</td></tr><tr><td>Sioux City, IA</td><td>③ South Sioux City, NE</td></tr></tbody></table> ① Applies only from or to the Cargill, Inc. Corn Wet Milling Plant. ② Applies only on groundwood paper or printing paper. ③ Applies only on Grain or Grain Products.		COLUMN 1	COLUMN 2	Des Moines, IA	Swanwood, IA	Eddyville, IA	① Bridgeport Station, IA	Madison, WI	② Mendota, WI	Peoria, IL	Keystone Switch, IL		Kolbe, IA		Limestone, IL		Mapleton, IL		Pioneer, IL		Sommer, IL	Sioux City, IA	③ South Sioux City, NE																																																																																										
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NSP 206.5-A	APPLICATION OF RECIPROCAL SWITCHING CHARGES IN CONNECTION WITH ATSF LINE HAUL TRAFFIC (DQ 3388)	Provisions of other items of this tariff naming reciprocal switching charges do not apply on traffic received from or delivered to the ATSF. In lieu thereof, reciprocal switching charges will be \$100.00 per loaded car. (See Exceptions) EXCEPTION 1. Not applicable in connection with shipments of Coal (STCC 11 (X)) nor Coke (STCC 29 913 (X) or 29 914 (X)). EXCEPTION 2. Not applicable in connection with shipments of Grain and Products of Grain, moving under the provisions of Item 209 5-series. EXCEPTION 3. Not applicable in connection with shipments moving from/to Manuel, CA under the provisions of the note in Item 3530-series. EXCEPTION 4. Not applicable in connection with Group N industries.																																																																																																																	
NSP 206-D	APPLICATION OF RECIPROCAL SWITCHING CHARGES ON GRAIN AND PRODUCTS IN CONNECTION WITH BN LINE HAUL TRAFFIC	Provisions of other items of this tariff naming reciprocal switching charges do not apply on traffic received from or delivered to the BN. In lieu thereof, reciprocal switching charges will be \$60.00 per loaded car. (EXCEPTION 1) The provisions named above apply only on the following commodities as more fully described in Section 2 of Tariff ICC STCC 6001-series: (See Note) <table><thead><tr><th>STCC NO.</th><th>DESCRIPTION</th><th>STCC NO.</th><th>DESCRIPTION</th></tr></thead><tbody><tr><td>01 121</td><td>Cotton, raw</td><td>20 421</td><td>Prepared Feed</td></tr><tr><td>01 129</td><td>Cotton</td><td>20 449</td><td>Rice Hulls</td></tr><tr><td>01 131</td><td>Barley</td><td>20 451</td><td>Prepared Flour</td></tr><tr><td>01 132</td><td>Corn</td><td></td><td>(phosphated, self-rising)</td></tr><tr><td>01 133</td><td>Oats</td><td>20 452</td><td>Prepared Flour, mixes</td></tr><tr><td>01 135</td><td>Rye</td><td>20 465</td><td>Corn Oil</td></tr><tr><td>01 136</td><td>Sorghum</td><td>20 467</td><td>Wet Process Corn</td></tr><tr><td>01 137</td><td>Wheat</td><td>20 469</td><td>Wet Process Corn, Milling</td></tr><tr><td>01 139</td><td>Grain, nec</td><td>20 619</td><td>Sugar Mill By-Products</td></tr><tr><td>01 141</td><td>Cottonseed</td><td>20 626</td><td>Molasses Beet Pulp</td></tr><tr><td>01 142</td><td>Flaxseed</td><td>20 823</td><td>Malt Extract or Brewers Spent Grains</td></tr><tr><td>01 144</td><td>Soybeans</td><td></td><td>Malt</td></tr><tr><td>01 149</td><td>Sunflower Seeds</td><td>20 831</td><td>Flour Sprouts</td></tr><tr><td>01 151</td><td>Grass Seeds</td><td>20 832</td><td>Malt Products or By-Products</td></tr><tr><td>01 159</td><td>Seeds</td><td>20 839</td><td>By-Products of Liquor Distilling</td></tr><tr><td>01 191</td><td>Fodder, Hay or Roughage</td><td></td><td>Cottonseed Oil</td></tr><tr><td>01 196</td><td>Straw</td><td>20 859</td><td>Cottonseed Meal</td></tr><tr><td>01 199</td><td>Field Crop, nec</td><td></td><td>Cotton Linters</td></tr><tr><td>20 411</td><td>Wheat Flour</td><td>20 911</td><td>Soybean Oil</td></tr><tr><td>20 412</td><td>Wheat Bran, Middlings</td><td>20 914</td><td>Soyt Meal</td></tr><tr><td>20 413</td><td>Corn Meal or Flour</td><td>20 915</td><td>Linseed Oil</td></tr><tr><td>20 414</td><td>Rye Flour or Meal</td><td>20 921</td><td>Oil Nuts</td></tr><tr><td>20 415</td><td>Buckwheat Flour or Meal</td><td>20 923</td><td>Oilseed Cake Meal</td></tr><tr><td>20 416</td><td>Oat Flour or Meal</td><td>20 931</td><td>Cottonseed</td></tr><tr><td>20 418</td><td>Grain Mill By-Products</td><td>20 933</td><td></td></tr><tr><td>20 419</td><td>Flour or Other Grain Mill Products, nec</td><td>20 939</td><td></td></tr><tr><td></td><td></td><td>① 50 011 10</td><td></td></tr></tbody></table> EXCEPTION 1. Not applicable in connection with Group N industries. NOTE. STCC Numbers shown will also embrace all articles assigned digits listed thereunder in ICC STCC 6001-series. For example STCC Number 01 137 embraces also articles covered by numbers with a greater number of digits beginning with STCC Number 01 137.		STCC NO.	DESCRIPTION	STCC NO.	DESCRIPTION	01 121	Cotton, raw	20 421	Prepared Feed	01 129	Cotton	20 449	Rice Hulls	01 131	Barley	20 451	Prepared Flour	01 132	Corn		(phosphated, self-rising)	01 133	Oats	20 452	Prepared Flour, mixes	01 135	Rye	20 465	Corn Oil	01 136	Sorghum	20 467	Wet Process Corn	01 137	Wheat	20 469	Wet Process Corn, Milling	01 139	Grain, nec	20 619	Sugar Mill By-Products	01 141	Cottonseed	20 626	Molasses Beet Pulp	01 142	Flaxseed	20 823	Malt Extract or Brewers Spent Grains	01 144	Soybeans		Malt	01 149	Sunflower Seeds	20 831	Flour Sprouts	01 151	Grass Seeds	20 832	Malt Products or By-Products	01 159	Seeds	20 839	By-Products of Liquor Distilling	01 191	Fodder, Hay or Roughage		Cottonseed Oil	01 196	Straw	20 859	Cottonseed Meal	01 199	Field Crop, nec		Cotton Linters	20 411	Wheat Flour	20 911	Soybean Oil	20 412	Wheat Bran, Middlings	20 914	Soyt Meal	20 413	Corn Meal or Flour	20 915	Linseed Oil	20 414	Rye Flour or Meal	20 921	Oil Nuts	20 415	Buckwheat Flour or Meal	20 923	Oilseed Cake Meal	20 416	Oat Flour or Meal	20 931	Cottonseed	20 418	Grain Mill By-Products	20 933		20 419	Flour or Other Grain Mill Products, nec	20 939				① 50 011 10	
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		① 50 011 10																																																																																																																	
		① Deregulated. (File DQ-3388)																																																																																																																	

SUPPLEMENT 211 TO TARIFF UP 8005-D

ITEM	SUBJECT	RULES AND REGULATIONS																																																																																																												
(NS2) 208.5-C	APPLICATION OF RECIPROCAL SWITCHING CHARGES IN CONNECTION WITH BN LINE HAUL TRAFFIC (DQ 3388)	Provisions of other items of this tariff naming reciprocal switching charges do not apply on traffic re- ceived from or delivered to the BN. In lieu thereof, reciprocal switching charges will be \$130.00 per load- ed car. (EXCEPTIONS 1, 2 and 3) EXCEPTION 1. Not applicable in connection with shipments of Coal (STCC 11- (X)) nor Coke (STCC 29- 913-(X) or 29-914-(X)), nor for shipments moving under the provisions of Notes 1, 2, 4, 5 and 6 in Item 3030-series. EXCEPTION 2. Not applicable in connection with shipments of Grain and Products of Grain, moving under the provisions of Item 208-series. EXCEPTION 3. Not applicable in connection with Group N Industries.																																																																																																												
	(NS2) 209.5-A	APPLICATION OF RECIPROCAL SWITCHING CHARGES ON GRAIN AND PRODUCTS IN CONNECTION WITH ATSF LINE HAUL TRAFFIC	Provisions of other items of this tariff naming reciprocal switching charges do not apply on traffic re- ceived from or delivered to the ATSF. In lieu thereof, reciprocal switching charges will be \$60.00 per loaded car. (EXCEPTION 1) The provisions named above apply only on the following commodities as more fully described in Sec- tion 2 of Tariff ICC STCC 6001-series: (See Note) <table><thead><tr><th>STCC NO.</th><th>DESCRIPTION</th><th>STCC NO.</th><th>DESCRIPTION</th></tr></thead><tbody><tr><td>01 131</td><td>Barley</td><td>20 421</td><td>Prepared Feed</td></tr><tr><td>01 132</td><td>Corn</td><td>20 449</td><td>Rice Hulls</td></tr><tr><td>01 133</td><td>Oats</td><td>20 451</td><td>Prepared Flour</td></tr><tr><td>01 135</td><td>Rye</td><td></td><td>(phosphated, self-rising)</td></tr><tr><td>01 136</td><td>Sorghum</td><td>20 452</td><td>Prepared Flour, mixes</td></tr><tr><td>01 137</td><td>Wheat</td><td>20 465</td><td>Corn Oil</td></tr><tr><td>01 139</td><td>Grain, nec</td><td>20 467</td><td>Wet Process Corn</td></tr><tr><td>01 141</td><td>Cottonseed</td><td>20 469</td><td>Wet Process Corn, Milling</td></tr><tr><td>01 142</td><td>Flaxseed</td><td>20 619</td><td>Sugar Mill By-Products</td></tr><tr><td>01 144</td><td>Soybeans</td><td>20 626</td><td>Molasses Beet Pulp</td></tr><tr><td>01 149</td><td>Sunflower Seeds</td><td>20 823</td><td>Malt Extract or Brewers</td></tr><tr><td>01 151</td><td>Grass Seeds</td><td></td><td>Spent Grains</td></tr><tr><td>01 159</td><td>Seeds</td><td>20 831</td><td>Malt</td></tr><tr><td>01 191</td><td>Fodder, Hay or Roughage</td><td>20 832</td><td>Flour Sprouts</td></tr><tr><td>01 196</td><td>Straw</td><td>20 839</td><td>Malt Products or</td></tr><tr><td>01 199</td><td>Field Crop, nec</td><td></td><td>By-Products</td></tr><tr><td>20 411</td><td>Wheat Flour</td><td>20 859</td><td>By-Products of Liquor</td></tr><tr><td>20 412</td><td>Wheat Bran, Middlings</td><td></td><td>Distilling</td></tr><tr><td>20 413</td><td>Corn Meal or Flour</td><td>20 911</td><td>Cottonseed Oil</td></tr><tr><td>20 414</td><td>Rye Flour or Meal</td><td>20 914</td><td>Cottonseed Meal</td></tr><tr><td>20 415</td><td>Buckwheat Flour or Meal</td><td>20 921</td><td>Soybean Oil</td></tr><tr><td>20 416</td><td>Oat Flour or Meal</td><td>20 923</td><td>Soybean Meal</td></tr><tr><td>20 418</td><td>Grain Mill By-Products</td><td>20 931</td><td>Linseed Oil</td></tr><tr><td>20 419</td><td>Flour or Other Grain Mill</td><td>20 933</td><td>Oil Nuts</td></tr><tr><td></td><td>Products, nec</td><td>20 939</td><td>Oilseed Cake Meal</td></tr><tr><td></td><td></td><td>① 50 011 10</td><td>Cottonseed</td></tr></tbody></table> EXCEPTION 1. Not applicable in connection with Group N Industries. NOTE. STCC Numbers shown will also embrace all articles assigned digits listed thereunder in ICC STCC 6001-series. For example STCC Number 01 137 embraces also articles covered by numbers with a greater number of digits beginning with STCC Number 01 137.	STCC NO.	DESCRIPTION	STCC NO.	DESCRIPTION	01 131	Barley	20 421	Prepared Feed	01 132	Corn	20 449	Rice Hulls	01 133	Oats	20 451	Prepared Flour	01 135	Rye		(phosphated, self-rising)	01 136	Sorghum	20 452	Prepared Flour, mixes	01 137	Wheat	20 465	Corn Oil	01 139	Grain, nec	20 467	Wet Process Corn	01 141	Cottonseed	20 469	Wet Process Corn, Milling	01 142	Flaxseed	20 619	Sugar Mill By-Products	01 144	Soybeans	20 626	Molasses Beet Pulp	01 149	Sunflower Seeds	20 823	Malt Extract or Brewers	01 151	Grass Seeds		Spent Grains	01 159	Seeds	20 831	Malt	01 191	Fodder, Hay or Roughage	20 832	Flour Sprouts	01 196	Straw	20 839	Malt Products or	01 199	Field Crop, nec		By-Products	20 411	Wheat Flour	20 859	By-Products of Liquor	20 412	Wheat Bran, Middlings		Distilling	20 413	Corn Meal or Flour	20 911	Cottonseed Oil	20 414	Rye Flour or Meal	20 914	Cottonseed Meal	20 415	Buckwheat Flour or Meal	20 921	Soybean Oil	20 416	Oat Flour or Meal	20 923	Soybean Meal	20 418	Grain Mill By-Products	20 931	Linseed Oil	20 419	Flour or Other Grain Mill	20 933	Oil Nuts		Products, nec	20 939	Oilseed Cake Meal			① 50 011 10
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SUPPLEMENT 211 TO TARIFF UP 8005-D

SECTION 3—SWITCHING SERVICES AND CHARGES—IN DOLLARS PER CAR—EXCEPT AS NOTED					
ITEM	STATION	APPLICATION	SWITCHING PER ITEM		CHARGE
			2060	2100	
3817	SIOUX CITY . . . IA (DQ 3388)	All Freight Between interchange with BN or CC: AND industries, except Kent Foods	...	...	\$277.00 \$132.00
		Potassium Chloride (Potassium Muriate): FROM interchange with BN. TO Nutra-Flo Chemical Co. (Floyd River Terminal)	...	...	\$132.00
3840-D	SOUTH OMAHA NE (DQ 3388)	Between interchange tracks with connecting roads and the following industries located on the UP: Inland Container Corp. Kaiser Agricultural and Chemical Company. Sculiar-Weish Grain Co.	⑩ \$178.00	⑪ \$105.00	\$240.00
3857	SOUTH SIOUX CITY . . . NE (DQ 3388)	Between industries located in Group N and interchange at Sioux City, IA	\$206.00	...	...
3861	STILLWATER . MN (DQ 3388)	Between industries located in Group N and interchange with BN	\$212.00	...	...
3863	SUPERIOR . . . WA (DQ 3388)	Between industries located in Group N and interchanged with BN, DWP, LSTT, CPRS, WC via CPRS	\$220.00 ① \$161.00	...	...
		EXCEPTIONS Simko, Inc.	\$320.00	...	...
① Applies only on grain as described in List 1 of Tariff WTL 6330 series, also soybeans or sunflower seeds.					
3908	TWIN CITIES MN (For list of industries see item 1889) (DQ 3388)	Between industries located in Group N as provided below: AND interchange with the following carriers: BN	\$247.00 (See Exceptions ⑪ \$163.00 ② \$220.00)	...	...
		CPRS, TCW, WC	\$280.00 (See Exceptions ⑪ \$163.00 ② \$220.00)	...	...
EXCEPTIONS					
Alter Scrap Processing			\$320.00	...	...
Great Western Recycling			\$320.00	...	...
Great Lakes Coal & Dock			① \$325.00	...	...
Minnesota Mining & Manufacturing Co. (3M Co) - All open 3M facilities in the E. St Paul District:					
BN			\$255.00	...	...
CPRS, TCW, WC			\$275.00	...	...
① Applies only on Petroleum Coke (STCC 29 913).					
② Applies only on Beet Pulp, dry (STCC 20 619 30) or Beet Pulp, wet (STCC 20 619 35).					

SUPPLEMENT 202 TO TARIFF UP 8005-D

INDEX OF NEW OR CHANGED ITEMS PUBLISHED SINCE SUPPLEMENT 118									
ITEM	SUP	ITEM	SUP	ITEM	SUP	ITEM	SUP	ITEM	SUP
140-H	197	1687-C	194	3205-R	202	3765-D	164	5150-D	202
206-S	164	1673-D	164	3255-G	164	3770-C	164	5155-A	202
207-H	164	1675-C	194	3278-A	197	3775-D	164	5160-A	202
207.5-A	164	1685-B	197	3290-D	163	3780-D	164	5175-A	202
207.7	164	1695-A	197	3295-D	197	3787	164	5180-A	202
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1250-A	164	1867-C	186	3490-D	186	5025-D	202	5245-A	202
1436-B	194	1870-K	186	3520-D	202	5035-C	202	5250-A	202
1447-A	186	1875-E	194	3525-D	202	5045-B	202	5254-A	202
1455-F	186	1877-C	186	3523-C	186	5055-C	202	5260-D	202
1460-B	186	1885-E	202	3530-E	164	5065-A	202	5270-C	202
1465-B	186	1887-A	186	3573	164	5070-A	202	5275-B	202
1470-B	186	1897-A	164	3585-D	195	5075-A	202	5290-A	202
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1480-C	186	3030-I	197	3592	164	5085-A	202	5305-A	202
1485-C	186	3035-D	164	3608-B	164	5090-D	202	5310-D	202
1490-B	186	3065-D	164	3610-F	164	5095-B	202	5315-A	202
1495-B	186	3060-D	194	3612	164	5100-B	202	5320-D	202
1500-C	186	3125-D	197	3630-D	164	5105-B	202	5325-D	202
1540-A	197	3130-H	202	3635-E	164	5110-B	202	5335-B	202
1555-B	197	3142	186	3645-E	164	5115-B	197	5340-A	202
1565-A	164	3143	197	3650-F	202	5130-B	202	5345-A	202
1590-E	194	3145-E	194	3665-I	202	5135-B	202	5350-F	194
1640-A	164	3170-E	202	3690-E	202	5138	164	5355-A	202
1655-E	194	3175-G	164	3701-B	164	5140-A	202		
1658-L	186	3198-A	164	3740-D	197	5145-A	202		
1665-A	194	3200-D	164						

SECTION 1 — SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP

ITEM	STATION	INDUSTRY	GROUP
1785-A	LIST OF INDUSTRIES AT OMAHA, NE	Overmyer Warehouse Co., D. H. 9990 F St. **** (DQ 3350)	H
1885-E	LIST OF INDUSTRIES AT TACOMA, WA	Cascade Pole Fred Tebb & Sons General Metals Hygrade Food Products Joseph Simon & Sons Lyle Wood Products (DQ 3350) Nalleys Fine Food Paxport Mills Puget Sound Freight Lines (PSFL) Puget Sound Manufacturing Co. Simpson Paper Kraft ****	

SUPPLEMENT 202 TO TARIFF UP 8005-D

SECTION 3—SWITCHING SERVICES AND CHARGES—IN DOLLARS PER CAR—EXCEPT AS NOTED										
ITEM	STATION	APPLICATION	SWITCHING PER ITEM							
			2060		2100					
			CHARGE							
199 3412-F	KANSAS CITY, KS (Fairfax District) (DQ 3336)	All freight, except Motor Vehicles, SU, loaded in or on bi-level or tri-level equipment, between General Motors Assembly Division at Kansas City (Fairfax District), KS and interchange tracks with connecting roads	\$145.00		\$191.00					
			KC							
			\$242.00							
			27							
			\$175.00							
200 3520-D	LINCOLNNE (DQ 3343)	Between connections with ATSF, BN and KCS and the following industries located on the UP: Capitol Concrete Hyland Bros Lumber Journal Star Printing Koser Supply Company Lincoln Lumber Lincoln Public Schools Nebraska Wood Treating	\$138.00		\$172.00					
200 3525-D	LINCOLNNE (DQ 3343)	BETWEEN	AND		\$145.00					
		Point of Interchange with ATSF, BN and KCS on Crushed Stone.	Trackage of Nebco, Inc., Lincoln, NE at Mile Post 52.41 on Beatrice Branch.							
200 3650-F	OMAHANE (DQ 3343)	BETWEEN	AND INDUSTRIES IN		10	11	COLUMN			
		BN, KCS or MP	Group A,B,C,D or E		\$105.00	\$102.00	1	2		
			Group F		\$124.00	\$102.00	\$135.00	\$106.00		
			Group I		\$215.00	\$113.00	\$135.00	\$106.00		
		CC	Group A,B,C,D or E		\$113.00	\$113.00	\$135.00	\$106.00		
			Group F		\$124.00	\$113.00	\$135.00	\$106.00		
			Group I		\$215.00	\$113.00	\$135.00	\$106.00		
		IAIS	Group A,B,C,D or E		\$100.00	\$85.00	\$135.00	\$106.00		
			Group I		\$100.00	\$85.00	\$135.00	\$106.00		
		COLUMN 1. Not applicable on articles taking Grain rates. COLUMN 2. Applicable only on articles taking Grain rates.								
		200 3655-I	see Sup 229	BETWEEN	AND INDUSTRIES IN		10	11	COLUMN	
				BN, CNW, CC KCS or MP	GROUP G or H		\$297.00	\$102.00	1	2
					GROUP G or H		\$100.00	\$ 85.00	\$309.00	\$144.00
				IAIS	GROUP G or H		\$100.00	\$ 85.00	\$309.00	\$144.00
COLUMN 1. Not applicable on articles taking Grain rates. COLUMN 2. Applicable only on articles taking Grain rates.										
200 3690-E	OMAHANE (DQ3343)	BETWEEN	AND		\$124.00		—			
		Williams Pipeline Co.	BN, CC,CNW, KCS OR MP							
			IAIS							

SUPPLEMENT 197 TO TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP				
ITEM	STATION	INDUSTRY	GROUP	
160 1540-A	LIST OF INDUSTRIES AT KANSAS CITY, KS	*** Farmland Industries, Inc. Griffin Wheel Co. International Sweeteners (Muncie, KS) Lumber Products Sales Midwest Distributing Co. (DQ-3278)	3	
177 1555-F	LIST OF INDUSTRIES AT KANSAS CITY, KS (FAIRFAX)	Brad Rogan Tire Co. Brown Strauss Steel Central Chemical Co. Central Missouri Railroad Central Plains Steel Co. Certain-Teed Products Corp. (CSG) (DQ-3269)	4	
168 1685-B	171 1765-C Cancels Items 1765-A and 1765-B 169 1795-C 170 1810-B	Alco Packaging, 9802 J Street Anthony Corp., Mark, 9767 1 St. Asarco, 5th & Douglas St. Ashton Wholesale Service, Inc. of Nebraska, 1218 Nicholas St. (DQ-3251)	H H A A	
169 1695-A		Cargill Molasses Co., 701 Abbott Drive Century Graphics, 155 Ida Street (DQ-3251)	A	
171 1765-C		Elanco Products 10200 L St. Hersey Pasta Group, 8848 F St. Mutual Distributing Co., 9700 J St. (File DQ-3256)	H G H	
169 1795-C		Phillips & Sons Co., Ed 10100 J St. Price & Sons, Clayton J., 1113 Nicholas St. *** Ready Mixed Concrete Co., 7th & Seward St. Richman-Gordman Stores, 9202 F St. Roberts & Dybdahl, Inc., 1109 S. 19th St. (DQ-3251) Alco Packaging, provisions transferred to item 1685-series.	H A D H B	
170 1810-B		*** Smith-Kline Animal Health Products, 4444 So. 76th St. (File DQ-3258)	G	
SECTION 3 - SWITCHING SERVICES AND CHARGES—IN DOLLARS PER CAR—EXCEPT AS NOTED				
ITEM	STATION	APPLICATION	SWITCHING PER ITEM	
			2060	2100
			CHARGE	
162 3025-E	ALL STATIONS IN OREGON EXCEPT AS PROVIDED BELOW	Between industry tracks and interchange tracks of connecting lines.	\$240.00	\$240.00
	ALBINA, OR EAST PORTLAND, OR	Between industries located on UP tracks and interchange tracks of connecting lines in East Portland, OR and Portland, OR	\$240.00	\$240.00
	KENTON, OR NORTH PORTLAND, OR RIVERGATE, OR ST JOHNS, OR ST JOHNS (PORTLAND MUNICIPAL TERMINAL NO. 4), OR	Between industries located on UP tracks and interchange tracks of connecting lines in East Portland, OR and Portland, OR	\$240.00	\$240.00
	ALBINA, OR EAST PORTLAND, OR PORTLAND, OR	Between industries located on UP tracks and interchange tracks of connecting lines in North Portland, OR	\$240.00	\$240.00
	KENTON, OR ST JOHNS, OR	Between industries located on UP tracks and interchange tracks of connecting lines in North Portland, OR (DQ-3282)	\$240.00	\$240.00

SUPPLEMENT 164 TO TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP			
ITEM	STATION	INDUSTRY	GROUP
<u>156</u> 1565-A	LIST OF INDUSTRIES AT KANSAS CITY, KS (FAIRFAX)	Data Documents (Midwest Tab Card) Farmland Industries Grain Div Fashion, Inc Fox Villet Drug Co	4
1590-D	LIST OF INDUSTRIES AT KANSAS CITY, KS (FAIRFAX)	Magic Wood <i>Rich Forest</i> Manna Pro Massey Ferguson, Inc Metal Finishers Metro Park Warehouse (No. 2) 2900 Fairfax Trafficway Metro Park Warehouse, 3341 No. 7th St. Trafficway Provisions referenced (E) are hereby ELIMINATED: Expired with December 31, 1993. a	4
<u>128</u> 1640-A	LIST OF INDUSTRIES AT KANSAS CITY, KS (PUBLIC LEVEE TERMINAL)	Fairfax Mobile Home Supply Fairfax Transfer & Warehouse Co *** Four Seasons Distributing Co Industrial Cartage & Warehouse Kansas City Cold Storage (Fairfax) (DQ-3101)	5
<u>128</u> 1667-B	LIST OF INDUSTRIES AT OAKLAND, CA (File DQ-3141)	*** Anchor Container Service Bay Area Warehouse *** Fleischmans Granny Goose Industrial Foundry Lakeside Metals Mother's Cake Cookies Nabisco Quaker Oats R.A. Trucking Schnitzer Steel Svenhards Bakery Wessex	
<u>127</u> 1673-D	LIST OF INDUSTRIES AT OGDEN, UT	American Nutrition Cargill Flour Milling Cereal Food Processors Durbano metals Dyco chemical Industries ① Farmers Grain Cooperative ① Reciprocal switching will apply only on outbound shipments of Barley (STCC 01 131 10) or Wheat (STCC 01 137 10) destined to local SP stations in CA. (DQ-3102)	
<u>148</u> 1725-C	LIST OF INDUSTRIES AT OMAHA, NE	Ford Bros. Van & Storage Co., 10564 J Street Franks Fruit House, 87th & F St. (DQ-3157)	E G

SUPPLEMENT 118 TO TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP			
ITEM	STATION	INDUSTRY	GROUP
<u>96</u> 1667-A	LIST OF INDUSTRIES AT OAKLAND, CA (File DQ-2998)	Able Warehouse Anchor Container Service *** Bay Area Warehouse - <i>formerly B & S Warehouse</i> Commercial Carriers Fleischmans Granny Goose Industrial Foundry	Lakeside Metals Mother's Cake Cookies Nabisco Quaker Oats R.A. Trucking Schnitzer Steel Svenhards Bakery Wessex
<u>28</u> 1670-A	LIST OF INDUSTRIES AT OAKESDALE, WA (DQ-2344)	Cancel, account interchange eliminated.	
<u>97</u> 1673-B	LIST OF INDUSTRIES AT OGDEN, UT	American Nutrition Cargill Flour Milling Cereal Food Processors Durbano metals Dyce chemical industries *** (DQ-3002)	Harsac Koch Agri Services <i>formerly Evans & Sider's Elevator</i> L. Bloom and Sons Pillsbury Wasatch distributing Western Gateway storage
<u>129</u> 1675-B	LIST OF INDUSTRIES AT OLYMPIA, WA	*** *** Capitol Beverages Cascade Pole Co. *** Hardeel Mutual Plywood Co. Hytex Corporation (File DQ-3045)	*** Pabst Brewing Port of Olympia *** The Harms Co. Washington State Game Dept. Willamette Valley Company
<u>78</u> 1680-C	LIST OF INDUSTRIES AT OMAHA, NE	ACMS Omaha Terminal, 701 Abbott Drive	A
<u>1</u> 1685-A		*** AT&T, 4334 So. 67th St (DQ-2933)	G
<u>78</u> 1690-B		ASARCO, 5th & Douglas St Anthony Corp., Mark, 9767 I St Ashton Wholesale Service, Inc. of Nebraska, 1218 Nicholas St	A H A
<u>1</u> 1695-A		*** Bemis Co., Inc., 3514 So. 25th St (DQ-2933)	C
<u>78</u> 1700-C		Gate City Steel, 1141 No. 11th St *** City of Omaha, 1114 Nicholas St (First Horn Track) (DQ-2933)	D A
<u>78</u> 1705-C		*** Con Agri (Elevator B), 29th & C St Crown Food Packaging, 4133 So. 72nd St (DQ-2933)	C G
<u>1</u> 1710-A		Daisley Packaging Corp., 1423 Marcy St Data Documents, Inc., 9503 F St	B H
<u>108</u> 1715-D		AG Processing, 6501 No. 9th St... <i>formerly Distriland</i> DeGeorge Manufacturing Co., 610 So. 14th St Disbrow & Co., 1201 Nicholas St Drake-Williams Steel, Inc., 2301 Hickory St (File DQ-3036)	I B A C
<u>1</u> 1720-A		Farnam Co., 5847 No. 16th St Ferer & Sons, Asron, 909 Abbott Drive Finocchiaro, Inc., Louis, 4202 So. 102nd St	I A H

See last page of this supplement for explanation of other reference marks.

SUPPLEMENT 118 TO TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP			
ITEM	STATION	INDUSTRY	GROUP
71 1725-B	<i>Sup 164</i>	*** Ford Bros. Van & Storage Co., 1024 Dodge St. *** Frank's Fruit House, 87th & F St. ***	E G
1 1730-A		Gendler Equipment Co., 1112 No. 13th St. General Electric Co., 5636 F St.	D G
71 1735-C		Gratton Warehouse Co., 9995 I St. Harding Glass Co., 9090 F St. Harvey William, 4334 So. 87th St. Heartland Terminal, (ACMS) 6801 No. 9th St. (DQ-2933)	H H G I
77 1750-B	<i>Sup 237</i>	Koch Asphalt @ Kraft Foods Co., 6825 J St. Liberty Gas & Oil Co., 1112 No. 13th St.	G D
81 1765-A	<i>Sup 197</i>	Blanco Products 10200 L St. Mutual Distributing Co., 9700 J St.	H H
71 1780-C	<i>Sup 237</i>	Omaha Bedding & Couch Manufacturing Co., 60th & F St. Omaha Public Power Distric, 24th & Craig Avenue *** Omaha World Herald, 14th & Capitol St. Omeco-St. John Co., 8930 F St. (DQ-2933)	G F E G
81 1795-B	<i>Sup 197</i>	Phillips & Sons Co., Ed. 10100 J St. Pride & Sohe, Clayton J., 1113 Nicholas St. Rapid Press, 155 Ida Street Ready-Mixed Concrete Co., 7th & Seward St. Richman-Gordman Stones, 9202 F St. Aiko Packaging, 9802 J St. Roberts & Dybdahl, Inc., 1109 S. 19th St. *** (DQ-2575)	H A F D H H B
13 1805-A		Item Cancelled, Tariff, as amended, to apply. (DQ-2188)	
1 1810-A	<i>Sup 197</i>	Skinner Macaroni Co., 6848 F St. Smith-Kline Animal Health Products, 4444 So. 76th St.	G G
1 1815-A		Specialty Sales Co., 1401 Jones St. Sterling Distributing Co., 4433 So. 96th St.	B H
24 1820-B		Harcros Chemicals, 9000 F St. Swift & Co. (Adhesives & Coatings), 9828 J St. Swift & Co. (Grocery Products Division), 4433 So. 94th St. (DQ-2296)	H H H
1 1825-A	<i>Sup 237</i>	Union Equity, 1230 Ohio St. Union Pacific TOFC Ramp, 10th & Mason St. United A-G Cooperative, Inc., 4228 So. 72nd St.	D B G
1 1830-A		United American Fuels, 7300 F St. United Distributors, Inc., 7300 F St.	G G
1 1835-A		Warren Distributing Co., 727 So. 13th St. Western Paper Co., 10000 J St.	B H
28 1840-B		Western Sales & Service, Inc., 1801 No. 11th St. Weyerhaeuser Co. (Carton-Container Division), 7517 F St. White Farm Equipment Co., 7002 F St. Williams Pipe Line, Co., 7th & Yates St. (Carter Lake Track) Witco Chemical Corp., 6200 No. 16th St. Zalkin, Inc., 8th & Pacific St. *** (DQ-2344)	D G G D I B

See last page of this supplement for explanation of other reference marks.

SUPPLEMENT 118 TO TARIFF UP 8005-D

SECTION 3—SWITCHING SERVICES AND CHARGES—IN DOLLARS PER CAR—EXCEPT AS NOTED					
ITEM	STATION	APPLICATION	SWITCHING PER ITEM		
			2060	2100	
			CHARGE		
A 3610-D	OGDEN UT	GRAIN or Grain Products between any two of the following facilities: American Nutrition, Cereal Food Processors, Evans Elevator, Pillsbury, or Rocky Mountain Milling. (See Exception). EXCEPTION. On movement of whole grain between the above facilities when loaded in UP system covered hopper cars, the charge per car will be \$490.00.	\$197.00		
A 3615-C	OLYMPIA WA	Freight, all kinds. From one track to another track within the same plant or industry.	* \$133.00		
A 3620-C		* This charge will also apply where the industry has available and elects to use its own power.			
		Freight, all kinds. Between interchange with BN and points within yard limits.	\$271.00		
A 3625-C	OMAHA NE	BETWEEN POINTS IN	AND POINTS IN		
		DISTRICT 1.	DISTRICT 1 (See EXCEPTION 1).	\$84.00	\$93.00
			DISTRICTS 2 to 5.	\$105.00	\$129.00
		EXCEPTION 1. Will not apply to tracks north of 9th Street to Capitol Avenue and west on Capitol Avenue to 14th Street. District 5 charges apply. EXCEPTION 2. Charges herein will not apply where charges are provided in items 3650 to 3685.			
A 3626-B	OAKLAND CA	Freight carloads, between interchange track with SP and ferry slip connection with ABL at Alameda, CA.	\$98.00		
A 3627-B	OAKLAND CA	Freight carloads (See Note) from location on UP within plant limits of General Foods at San Leandro, CA to interchange track with SP.	\$114.00		
		NOTE. Applies only in connection with the following traffic: (a) Shipments consisting of transit and non-transit articles under provisions of item 7970, PSFB Tariff ICC PSFB 9764-series, and (b) When final destination is point on SP in California to which rates applicable on non-transit articles from San Leandro, CA, to destination are lower via SP than via UP or UP and connections, and (c) When transit credits, representative of inbound line haul movement via UP, are surrendered against transit articles included in the outbound car.			
A 3628-A	OMAHA NE	Articles taking Grain rates between industries in Omaha and other industries in Omaha. (Note 1)	\$92.00		
		NOTE 1. Charges applicable to intra-terminal switching.			
A 3629-A	OMAHA NE	All Freight between Ferrer & Sons, Aaron and Asarco	\$194.00		

See last page of this supplement for explanation of other reference marks.

UP 00027

SUPPLEMENT 118 TO TARIFF UP 8005-D

SECTION 3—SWITCHING SERVICES AND CHARGES—IN DOLLARS PER CAR—EXCEPT AS NOTED							
ITEM	STATION	APPLICATION		SWITCHING PER ITEM			
				2060		2100	
				CHARGE			
		BETWEEN	AND INDUSTRIES IN	⑩	⑪	COLUMN	
						1	2
A 3650-D	Sup 202	BN, KCS or MP	Group A,B,C,D or E	\$106.00	\$102.00	\$135.00	\$106.00
			Group F	\$124.00	\$102.00	\$135.00	\$106.00
			Group I	\$215.00	\$113.00	\$135.00	\$106.00
		CC or LAIS	Group A,B,C,D or E	\$113.00	\$113.00	\$135.00	\$106.00
			Group F	\$124.00	\$113.00	\$135.00	\$106.00
			Group I	\$215.00	\$113.00	\$135.00	\$106.00
COLUMN 1. Not applicable on articles taking Grain rates. COLUMN 2. Applicable only on articles taking Grain rates.							
A 3655-C		BETWEEN	AND INDUSTRIES IN	⑩	⑪	COLUMN	
						1	2
		CNW.	GROUP A,B,C,D or E	\$134.00	\$124.00	\$153.00	\$106.00
			GROUP F OR I	\$215.00	\$124.00	\$153.00	\$106.00
COLUMN 1. Not applicable on articles taking Grain rates. COLUMN 2. Applicable only on articles taking Grain rates.							
A 3660-D	OMAHANE	BETWEEN	AND INDUSTRIES IN	⑩	⑪	COLUMN	
		ACMS Omaha Terminal	Group A,B,C, or E	\$106.00	\$23.00	\$153.00	
			Group F	\$124.00	\$32.00	\$153.00	
Group I	\$215.00		\$32.00	\$153.00			
NOTE. Charges apply only (See also Item 3675): (a) On interstate traffic when barge rates include switching charges and the ACMS Omaha Terminal per diem or per diem and per diem reclaim charges to the railroads. (b) In connection with charges subject to Item 2060, except that charges do not apply on shipments received or delivered to Dock Board Elevator of the City of Omaha.							
A 3665-E	Sup 229	BETWEEN	AND INDUSTRIES IN	⑩	⑪	COLUMN	
						1	2
		BN, CNW, CC, LAIS, KCS or MP	Group G or H	\$297.00	\$102.00	\$309.00	\$144.00
COLUMN 1. Not applicable on articles taking Grain rates. COLUMN 2. Applicable only on articles taking Grain rates.							
A 3670-E		BETWEEN	AND INDUSTRIES IN	⑩	⑪	COLUMN	
						1	2
		ACMS Omaha Terminal	Group G or H	\$297.00	\$102.00	\$309.00	\$144.00
NOTE. Charges apply only (See Item 3660): (a) On interstate traffic when barge rates include switching charges and the ACMS Omaha Terminal per diem or per diem and per diem reclaim charges to the railroads. (b) In connection with charges subject to Item 2060, except that charges do not apply on shipments received or delivered to Dock Board Elevator of the City of Omaha. COLUMN 1. Not applicable on articles taking Grain rates. COLUMN 2. Applicable only on articles taking Grain rates.							

See last page of this supplement for explanation of other reference marks.

UP 00028

SUPPLEMENT 118 TO TARIFF UP 8005-D

SECTION 3—SWITCHING SERVICES AND CHARGES—IN DOLLARS PER CAR—EXCEPT AS NOTED							
ITEM	STATION	APPLICATION	SWITCHING PER ITEM				
			2060		2100		
			CHARGE				
		BETWEEN	AND	(10)	(11)		
A 3675-E	OMAHA NE	ACMS Omaha Terminal	Industries in DISTRICTS 1 to 6.	\$144.00	\$102.00	...	
			Industries in DISTRICT 7.	\$199.00	\$145.00	...	
			Industries in DISTRICT 8.	\$199.00	\$102.00	...	
			Interchange tracks with the BN or CC.	\$124.00	\$102.00	...	
			Interchange tracks with the CNW, IAIS or MP.	\$124.00	\$102.00	...	
NOTE. Charges for switching interstate CL shipments moving in line haul service via ACMS Omaha Terminal at barge rates which do not include switching charges to or from industries located on tracks of UP or connecting lines in Omaha Switching District and on which the ACMS Omaha Terminal do not pay railroad per diem or per diem and per diem reclaim charges, between Omaha Municipal Barge Dock, 6th Street between Cass and California Streets, not including Dock Board Elevator (See also item 3660).							
72 3680-C		Cancel, provisions of Tariff as amended apply. (DQ-2891)					
A 3685-C		All freight, except articles taking Grain rates, when the consignee of an inbound shipment which has been placed on inspection, hold or team tracks pay the charges thereon or receipts for the shipment, thereby accepting delivery and then orders the shipment switched to another road for rebilling as a new shipment.		...	\$103.00		
A 3690-D		Sep 20 2	BETWEEN	AND	\$124.00	...	
Williams Pipeline Co.			BN, CC, CNW, IAIS, KCS, OR MP				
A 3695-C	BETWEEN		AND	\$93.00			
Kellogg Co. (96th & First St.)	Kellogg Co. (99th & 1 St.)						
NOTE. Charge applicable to Intra-terminal switching.							
A 3700-F		BETWEEN	AND	\$622.00 (SUBJECT TO NOTE 1) \$649.00 (SUBJECT TO NOTE 2)			
		Conagra Elevator A 1513 North 16th St.	Skinner Mascaroni 6848 F Street				
		NOTE 1. Applicable only on private cars. NOTE 2. Applicable only on railroad owned cars.					
A 3702-A	OROVILLE CA	All freight from Hold Tracks to Sun Valley Energy			\$37.00		
A 3710-C	PALLAS UT	All freight between DRGW transfer and points within switching limits, except as provided below.			\$112.00	...	
		SLAG, in five or more cars.			\$85.00	...	
A 3715-C	PENDLETON .. OR	Flour, bulk. Between Pendleton Flour Mill, O. G. W. Plant or Hart's warehouse.			\$172.00		

See last page of this supplement for explanation of other reference marks.

See last page of this supplement for explanation of other reference marks.

TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP		
ITEM	STATION	APPLICATION
1255	DESCRIPTION OF OMAHA, NE SWITCHING DISTRICT	The Omaha, NE Switching District includes all the territory on and within the following described boundary: DISTRICT 1 Comprising all tracks north side of Jones Street and north to but not including Nicholas Street and all tracks between Marcy Street and Jones Street east of 6th Street. DISTRICT 2 Comprising all tracks south side of Jones Street and west to 21st Street, except from Marcy Street east of 6th Street to Jones Street. DISTRICT 3 Comprising all tracks between 21st Street and Summit (near A Street). DISTRICT 4 Comprising all tracks on Nicholas Street and north to Carter Lake, including that portion of Iowa (Carter Lake District) west of the Missouri River. DISTRICT 5 Comprising all tracks north of 9th Street to Capital Avenue, west on Capital Avenue to 14th Street. DISTRICT 6 All locations on and within the following described boundary: Beginning at 9th and Browne Streets, thence west on Browne Street to CNW, thence northwest on CNW to Read Street, thence north on 24th Street to Weber Street, thence and air line east to Missouri River, thence Missouri River south and east to Second Street, thence south on Second Street to Kensington Street, thence west on Kensington Street to 9th Street, thence south on 9th Street to Browne Street. DISTRICT 7 Comprising all tracks west of the Summit (near A Street) to 77th Street (near F Street). DISTRICT 8 Includes all tracks west of Mile Post 9.57 to and including Mile Post 11.48, thence east of imaginary line running south from Mile Post 11.48 to junction with UP track and on and east of that track running south to I Street (including industries served by track running south to near L Street), thence east to 96th Street, thence north to UP main line, thence east to Mile Post 9.57. NOTE - Interchange tracks of connecting lines at Omaha, NE are located as follows: BN, CNW, IC, KCS, MKT, MP, SCNO DISTRICT 1 NW DISTRICT 2 CNW: (a) On cars received from CNW DISTRICT 2 (b) On cars delivered to CNW DISTRICT 3
1260	DESCRIPTION OF ONO, CA SWITCHING DISTRICT	From Mile Post 73, plus 4,400 feet to and including Mile Post 77, plus 280 feet.
1265	DESCRIPTION OF PALLAS, UT SWITCHING DISTRICT	South (South of Ogden) Mile Post 45.0, North (South of Ogden) Mile Post 44.1.

TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP			
ITEM	STATION	INDUSTRY	GROUP
1735	LIST OF INDUSTRIES AT OMAHA, NE	Gratton Warehouse Co., 9995 I St	H
		Harding Glass Co., 9090 F St	H
		Hartland Terminal, 6801 No. 9th St	I
1740		Hotpoint Co., 6636 F St	G
		Industrial Chemical Laboratories, Inc., 1015 No. 14th St	A
		K-B Foods, Inc., 4330 So. 102nd St	H
1745		Keebler Co., 421 So. 76th St	G
		Kellogg Co., 9601 F St	H
1750		Kraft Foods, Co., 6825 J St	G
		Liberty Gas & Oil Co., 1112 No. 13th St	D
		Lindsay Bros. Co., 902 Jackson St	E
1755		Loveland Lawns, 9816 F St	H
		Lozier Corp, 6316 John J. Pershing Drive	I
		Maytag Parts & Service Co., 4505 So. 76th St	G
1760		Midwest Box Co., 6425 No. 16th St	I
		Milder Oil Co., 26th & Dorcas St	C
1765		Morris Industries, Inc., 10200 L St	H
		Mutual Distributing Co., 9700 J St	H
1770		Nabisco, 1810 Read St	I
		National Roofing Co., 1502 N. 11th St	D
		Nebraska Builders Products Co., 6820 J St	G
1775		Nebraska Warehouse Co., 9100 F St	H
		North Side Produce Co., 6029 No. 16th St	I
		Nogg Fruit Co., 9717 I St	H
		Northwestern Steel & Supply Co., 4427 So. 76th St	G
1780		Omaha Bedding & Couch Manufacturing Co., 60th & F St	G
		Omaha Paper Co., 901 Jackson St	B
		Omaha Public Power District, 24th & Craig Avenue	F
		Omaha Tile Distributing Co., 1324 Leavenworth St	B
		Omeco-St. John Co., 6930 F St	G
1785		Overmyer Warehouse Co., D. H., 9990 F St	H
		Pamida Distributors, 8800 F St	H
1790		Paxton-Mitchell Co., 2614 Martha St	C
		Paxton & Vierling Steel Co., 5th & Ave. H (Carter Lake)	D
1795		Phillips & Sons Co., Ed. 10100 J St	H
		Price & Sons, Clayton J., 1113 Nicholas St	A
		Rapid Printing & Mailing Inc., 9320 J St	H
		Ready Mixed Concrete Co, 7th & Seward St	D
		Richman-Gordman Stores, 9202 F St	H
		Rieske & Sons, S., 9802 J St	H
		Roberts & Dybdahl, Inc., 1109 S. 19th St	B
1800		Salvation Army, 26th & Center St	C
		Serta of Omaha, 1301 Nicholas St	A
1805		SCNO, 701 Abbott Drive	A

TARIFF UP 8005-D

SECTION 2 - RULES AND REGULATIONS GOVERNING SWITCHING IN SECTIONS 3, 3A OR 6		
ITEM	SUBJECT	APPLICATION
2000	APPLICATION OF RECIPROCAL SWITCHING CHARGES	Except as otherwise provided, where reference is made to this item, the charge for switching service applies only between industries to or from interchange tracks with connecting roads by the UP on traffic to or from points on connecting roads outside the switching district of the same station. NOTE: Charges apply whether or not absorbed in whole or in part by connecting line(s).
2100	APPLICATION OF INTER-TERMINAL SWITCHING CHARGES	Except as otherwise provided, where reference is made to this item, the charge for switching service applies only on shipments received from or destined to connecting roads when shipments originate at or are destined to a point within the switching district of the same station.
2150	CHARGES FOR SPECIAL TYPE OF HEAVY CAPACITY FLAT CARS	A charge of \$498.00 per car used, in addition to the regular local switching charges named in SECTION 3, will be made for each car used both originating and terminating within the same switching district named in this tariff, for the movement of which carrier furnishes flat cars bearing mechanical designation "FG" or "FW" of any capacity, and cars of designation "FM" of 200,000 lbs and over nominal capacity, and a charge of \$1,505.00 per car on flat cars bearing mechanical designation "FD" named in Rule 21 of the Official Railway Equipment Register, ICC RER 6411-series. NOTE: Said charges also apply on traffic having prior or subsequent barge movement.
2100	DEFINITION OF INTRA-PLANT, INTRA-TERMINAL, INTER-TERMINAL OR RECIPROCAL SWITCHING	INTRA-PLANT SWITCHING A movement from one track to another, or between two points on the same track, within the same plant or industry. INTRA-TERMINAL SWITCHING A movement (other than Intra-Plant switching), from a track, industry or firm to another track, industry or firm on the same road within the switching limits of one station or industrial district. INTER-TERMINAL SWITCHING A movement from a track of one road to a track of another road, or between a track, industry or firm on the UP and a track, industry or firm on connecting road, when such tracks are within the limits of the same station or industrial switching district. RECIPROCAL SWITCHING A movement between industries to or from interchange tracks with connecting roads by the UP on traffic to or from points on connecting roads outside the switching district of the same station.
2180	REFUND OF INBOUND CHARGES ON GRAIN	(a) Refund of inbound switching charges authorized in connection with outbound shipments of Articles taking Grain rates shall be made only when there has been shipped over the UP an amount equal to 90 percent or more in weight of the inbound tonnage shown by freight bill surrendered. (b) The proper observance of the above rule will be subject to verification by the WW&IB and before refund of inbound charges is made the WW&IB shall certify that the conditions of the rule have been observed, except shipments reshipped in the original car, when any documentary evidence which will substantiate the claim may be used by the shipper.
2200	DEMURRAGE AND STORAGE RULES AND CHARGES	Charges shown herein will be subject to Demurrage and Storage rules and charges as provided in tariffs on file with the Interstate Commerce Commission or State Commissions as the case may be. EXCEPTION: Where switching service is performed on traffic moving under line-haul rates which are subject to special detention charges and rules, the switching charges provided in this tariff will be subject to the same detention charges and rules as applicable in connection with the line-haul rates.

SUPPLEMENT 229 TO TARIFF UP 8005-D

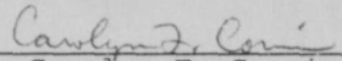
EXPLANATION OF REFERENCE MARKS	
REFERENCE MARKS	EXPLANATION
▲	Denotes change in wording which results in neither increase nor reduction in charges.
•	Denotes increase.
⑩	Applies on All Freight except List 1 Grain and Soybeans.
⑪	Applies on List 1 Grain, also Soybeans.
⑫	Applicable only in connection with shipments handled under MP/UP haulage or KCS trackage rights operations over MP/UP lines.
NS2	Not subject to any increases.
ⓧ	Except as otherwise specifically shown, the STCC number referred to shall also embrace all articles assigned additional digits listed thereunder in Tariff ICC STCC 6001-series. For example, STCC number 28 186 embraces also articles covered by numbers with a greater number of digits beginning with STCC number 28 186.
***	Industries formerly shown and not brought forward are CANCELLED account no longer in operation, moved off line, or no longer served by this carrier.
□	(With number enclosed)-Reissued from supplement bearing the number enclosed within the square. (See Item 100.)

EXHIBIT B (redacted)

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 1997, I caused a copy of the foregoing Motion to Dismiss (both redacted and unredacted versions) to be sent by messenger to:

Thomas W. Wilcox, Esq.
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue N.W.
Suite 750
Washington, D.C. 20005



Carolyn F. Corwin