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311124
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Office of Chief Counsel
April 13, 2026
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PUBLIC VERSION

April 13, 2026

VIA E-FILING

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: ***BNSF Railway Company—Petition For Enforcement— Interchange With Savage
Tooele Railroad Company, STB Docket FD 32760 (Sub-No. 50)***

Dear Chief of Case Administration:

Enclosed for e-filing in the above-referenced proceeding is a public version of BNSF's Opening Statement and Evidence, with appropriate redactions that the Board can place on its docket. We are concurrently filing a highly confidential version of the Opening Statement and Evidence to be filed under seal.

Respectfully submitted,

/s/ Peter W. Denton
Peter W. Denton

Attorney for BNSF Railway Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOEELE RAILROAD COMPANY

BNSF’S OPENING STATEMENT AND EVIDENCE

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Dated: April 13, 2026

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOEELE RAILROAD COMPANY

BNSF’S OPENING STATEMENT AND EVIDENCE

1. Introduction and Summary

BNSF Railway Company (“BNSF”) hereby submits this Opening Statement and Evidence requesting that the Surface Transportation Board (“STB” or “the Board”) enforce the UP/SP merger conditions by requiring Union Pacific Railroad Company (“UP”) to allow BNSF to interchange with a new shortline railroad, Savage Tooele Railroad Company (“STR”) and thereby provide competitive service to shippers located at the Lakeview Business Park in Tooele County, Utah.

In connection with the Board’s approval in 1996 of the merger between UP and Southern Pacific Transportation Company (“SP”), the Board imposed conditions to allow BNSF to serve as a replacement for the competition that would be lost by the merger. These merger conditions included requiring UP to grant BNSF trackage rights over the UP Shafter Subdivision in central Utah, along with other portions of the combined UP/SP network. Under Section 8(k) of the Restated and Amended UP/BNSF Settlement Agreement (“RASA”), UP agreed to allow BNSF to interchange with certain shortline railroads that construct a new line to the Shafter

Subdivision or any of the other UP lines over which BNSF has trackage rights (“Trackage Rights Lines”).

In 2019, developers began making plans to locate a new rail-served industrial park (“the Lakeview Business Park” or “the Park”) in Tooele County, Utah. To connect the Park to the national rail network, STR planned to purchase and construct a new rail line on the right-of-way comprising UP’s abandoned Warner Spur and to extend the new line from the Park to the Shafter Subdivision at Burmester, Utah. (See STR Pet. at 4-6, June 30, 2022, *Savage Tooele R.R.—Constr. & Operation Exemption—Line of R.R. in Tooele Cnty., Utah* (“STR Exemption Proceeding”), FD 36616.) STR would then provide common carrier freight service for shippers located in the Park and would interchange with UP and BNSF at Burmester. (*Id.* at 1-4.)

Indeed, STR’s filings before the Board make clear that, by connecting to a UP line over which BNSF has trackage rights under the UP/SP merger conditions, STR intended for shippers located at the Park to have the benefit of competitive two-carrier service. (*Id.* at 4 (explaining that “the proposed project will enable rail traffic to and from the park to be interchanged with UP and BNSF Railway Company (“BNSF”) at Burmester, thereby providing greater mode optionality for business park tenants [and] competitive freight optionality”); see also *id.* at 4 n.5 (describing STR’s understanding that “[t]his is a UP line over which BNSF has overhead trackage rights and the right to interchange with new Class III railroads

that serve new facilities such as the Lakeview Business Park which seek a connection to the UP main line”).) UP submitted no reply to STR’s petition.

Documents produced in discovery in this proceeding demonstrate that UP initially shared STR’s understanding that BNSF would have access via STR to the new Park based on its location on a UP/SP merger trackage rights line. UP’s Senior Manager Commercial & Interline Strategy, Chris Sanford, indicated in 2020 that BNSF would have such access. UP commercial employees relied on Mr. Sanford’s advice until UP changed its position in late 2022 and sought to structure the transaction to prevent BNSF from interchanging with STR.

After years of negotiation, UP and STR finalized a Purchase and Sale Agreement (“PSA”) in September 2023 for the Warner Spur right-of-way discussed above. The PSA provided that STR would construct a rail line on this right-of-way that would connect to the Shafter Subdivision via a 1.04-mile section of track retained by UP (the “Connecting Line” or the “first mile”). UP declined to sell the Connecting Line to STR or to grant STR operating rights over the Connecting Line. Instead, UP insisted upon retaining and reinstating common carrier service over the Connecting Line and included language in the PSA to reserve UP’s {{ [REDACTED] }} to operate over the Connecting Line. In doing so, UP planned to prevent BNSF and STR from exercising their interchange rights under Section 8(k) of the RASA.

UP now argues that RASA Section 8(k) only requires UP to allow BNSF to interchange with shortline railroads that construct a new line directly to a UP/SP

merger trackage rights line. (*See, e.g.*, UP Reply at 3.) Under UP’s theory, BNSF has no right to interchange with STR because the new STR line will terminate at milepost 1.04 on UP’s Warner Spur, rather than on the Shafter Subdivision itself. But UP has attempted to preclude STR from interchanging with BNSF at Burmester by its own self-serving actions.¹ By declining to sell or grant STR operating rights over the Connecting Line, UP essentially imposed a “steel barrier” to exclude the Park’s shippers from benefiting from the competition that UP promised to preserve when it agreed to provide BNSF with access rights in connection with the UP/SP merger.

The Board has previously made clear that UP cannot side-step the “critical precepts” underlying the UP/SP merger conditions—namely the preservation of competition between Class I railroads—by interpreting the RASA in a manner that undermines the merger conditions or by manipulating transactions to avoid its merger obligations. (*See TGS Cedar Port R.R. LLC—Operation Exemption—In Chambers Cnty., Tex. (Cedar Port)*, FD 36627, slip op. at 7 (STB served Apr. 1,

¹ UP’s regional manager with principal responsibility for handling the commercial aspects of the UP-STR transaction, Michelle Zemeckis, confirmed UP’s intent { [REDACTED] [REDACTED] }. She wrote in a May 2024 e-mail, upon the Board’s approval of UP’s petition to reinstate common carrier service over the Connecting Line: { [REDACTED] [REDACTED] } (Ex. 2 at UP-STRC-003205 (emphasis added); *see also* Ex. 20, UP-STRC-005038, -5040 (2018 email from Ms. Zemeckis’ counterpart, Ms. Meier, reflecting a similar intent to exclude BNSF, noting {{ [REDACTED] [REDACTED] }}).

2024); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Mission Rail) (Decision No. 109)*, FD 32760, slip op. at 11 (STB served Jan. 31, 2018).) In *Mission Rail*, the Board explained that changes in UP’s service or use of connecting trackage **“wholly within UP’s control”** should not affect a shipper’s rights to dual-carrier service under the RASA, and the UP/SP merger conditions (here, STR’s right to interchange with both UP and BNSF at Burmester). (*Mission Rail (Decision No. 109)*, FD 32760, slip op. at 11 (STB served Jan. 31, 2018) (emphasis added).)

Thus, regardless of the ownership or regulatory status of the Connecting Line,² BNSF should have the right to interchange with STR consistent with UP’s obligations under the UP/SP merger conditions. Indeed, if UP either had sold the Connecting Line or had granted STR operating rights over it, there would be no question that the UP/SP merger conditions enable BNSF to interchange with STR. UP’s efforts here are the latest attempt to erode and undercut the rights that BNSF was granted to replace the competition that was lost due to the UP/SP merger.

And for years UP has employed delay tactics while undercutting BNSF’s rights, successfully delaying resolution of BNSF’s access until after STR became operational earlier this year. (*See Verified Notice of Exemption at 3, Cando*

² In its February 13, 2024 decision granting UP’s petition to reinstitute common carrier service over the line segment, the Board stated that its decision “shall not be construed as permitting UP to defeat any rights that BNSF may have had to interchange with STR or serve shippers at Lakeview Business Park had the exemption not become effective.” (*Union Pac. R.R.—Operation Exemption—in Tooele Cnty., Utah (“UP Exemption Proceeding”)*, FD 36741, slip op. at 3 (STB served Feb. 13, 2024).)

Holdings (U.S.) Inc. and Alberta Investment Management Corporation, et al.—

Control Exemption—Savage Bingham & Garfield Railroad LLC and Savage Tooele

Railroad LLC., FD 36914 (filed Mar. 11, 2026) (noting that “STR completed construction of the authorized track in January of 2026 and is operational.”).) UP unnecessarily extended the PSA process for months, as described below, while the Park development progressed. When BNSF initiated this dispute before the Board in December 2023, UP delayed the process by unsuccessfully trying to move the proceedings to private arbitration. And UP refused to offer its witnesses for deposition in this case and delayed those depositions as long as possible. As a result, STR is now operational, but shippers still cannot obtain the competitive rail service that the UP/SP merger conditions were designed to preserve.

STR did not choose to agree to { [REDACTED] } with UP; that was the only deal UP would offer. The record shows that STR repeatedly sought to purchase the entire Warner Spur (including the Connecting Line) or obtain operating rights over the Connecting Line so that Park tenants could have competitive access to both UP and BNSF. UP refused, and made {{ [REDACTED]

[REDACTED]

[REDACTED] }} STR repeatedly attempted to remove the {{ [REDACTED] }} from the PSA, but UP repeatedly reinserted it—and added language {{ [REDACTED]

[REDACTED] }} STR’s witness Phillip

Hoskins testified that to move forward with the purchase, exclusivity {{ [REDACTED]

[REDACTED] }} (Ex. 8, Hoskins Dep. Tr.

97:15-22). Thus, STR had no choice but to accept this deal if it wanted to offer Park tenants access to the national rail network.

Preserving competition amongst Class I railroads is beneficial to shippers and the public. It also aligns with the policies underlying the Board’s decision to impose conditions on the UP/SP merger. As the owner and developer of the Lakeview Business Park (the Romney Group LLC) explained in its July 2, 2024 filing in this proceeding, access to two Class I railroads is “highly preferable” for Park tenants “in order to achieve the best possible service and rates,” which is why Romney Group LLC is “very much in favor of shippers within the Lake[view] Business Park being able to obtain railroad service from both UP and BNSF.” (Romney Group Letter, July 2, 2024.)

Pursuant to 49 U.S.C. § 11327, BNSF requests that the Board issue an order enforcing its UP/SP merger conditions and requiring UP to allow BNSF to interchange with STR. UP has an affirmative obligation to ensure that the merger conditions, including RASA Section 8(k), are applied in a manner consistent with the conditions’ underlying purposes. UP has not done so here.

2. Background

2.1 RASA Section 8(k) and the UP/SP merger conditions grant BNSF the right to interchange with new shortline railroads on Trackage Rights Lines.

In August 1996, the Board approved the common control and merger of the rail carriers controlled by UP and the rail carriers controlled by SP, subject to various conditions designed to preserve direct and indirect competition that would

be lost as a result of the consolidation of the two carriers. (*Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 44)*, 1 S.T.B. 233, 233, 367-75, 418-21 (1996).)

The essential bargain that UP/SP struck in order to obtain Board approval for their merger consisted of granting BNSF rights—including trackage rights allowing BNSF to operate over nearly 4,000 miles of UP/SP lines—to access shippers that would have otherwise suffered from a reduction of competitive options as a result of the 1996 merger. The Board imposed as a condition of the merger the terms of a settlement agreement between UP and BNSF (as restated and amended, the “RASA”). (*Id.* at 242-43, 246-47, 419; *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 21)*, 5 S.T.B. 1173, 1174, 1178 (2001) (approving the terms of the March 1, 2002 RASA, attached hereto as Ex. 1, in the context of the Board’s oversight review of the UP/SP merger and noting that “although we are concluding our formal oversight process for the UP/SP merger, we will continue to have authority to enforce the conditions we imposed on the merger”).³

³ In its decision ending the formal oversight process and approving the RASA, the Board also acknowledged its continuing authority to enforce merger conditions and noted that “shippers have a right (independent of any rights and interests BNSF may have under the BNSF Agreement) to seek Board intervention to ensure that the conditions we imposed on the merger are implemented in a manner that effectively preserves pre-merger competition.” (*Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (General Oversight) (Decision No. 21)*, 5 S.T.B. 1173, 1178 (2001).)

Through the settlement agreement, BNSF obtained trackage rights over UP's Shafter Subdivision, along with a number of other Trackage Rights Lines. The RASA ensured that "BNSF [has] the right to interchange with any short-line railroad that constructs a new line to and establishes an interchange on a Trackage Rights Line," subject to limited restrictions not relevant here. (Ex. 1, RASA § 8(k).) The right for BNSF to interchange with a new shortline railroad that connects to a Trackage Rights Line is consistent with other competition-preserving principles of the UP/SP merger conditions, including most notably the right for BNSF to serve any "new shipper facility" that locates on a Trackage Rights Line. (*Decision No. 44*, 1 S.T.B. at 373, 392-93, 419-20.) Any new shortline railroad that establishes a new line to a Trackage Rights Line is in the same position as, and lost pre-merger UP/SP siting competition in the same manner as, a shipper constructing a new facility on a Trackage Rights Line. Section 8(k) preserves that pre-merger siting competition.

Here, the transaction as proposed by STR fits squarely within the parameters of Section 8(k): (i) STR is a Class II or Class III carrier not owned or operated by BNSF or any BNSF affiliate; (ii) STR is a new Class II or Class III carrier; and (iii) the traffic to be interchanged does not originate or terminate at a shipper facility that was exclusively served by UP pre-merger.

2.2 The Board has authorized STR to construct and operate its new rail line and has authorized UP to reinstate common carrier service over the Connecting Line.

In two related proceedings, the Board authorized STR to construct and operate its new shortline railroad, *STR Exemption Proceeding*, FD 36616, slip op. at

1-2 (STB served Apr. 1, 2024), and it authorized UP to reinstate common carrier service over the Connecting Line, *UP Exemption Proceeding*, FD 36741 (STB served Feb. 13, 2024).

The STR Exemption Proceeding: On June 30, 2022, STR petitioned the Board for an exemption “to construct and operate approximately 11 miles of rail line connecting the . . . Shafter Subdivision mainline . . . near Burmester, Utah, to the Lakeview Business Park in Grantsville, Utah.” (*STR Exemption Proceeding*, FD 36616, slip op. at 1 (STB served Mar. 30, 2023).) STR stated throughout its petition for exemption that it anticipated interchanging with both UP and BNSF at Burmester, Utah, along UP’s Shafter Subdivision. (*See* STR Pet. at 3 n.5, June 30, 2022, *STR Exemption Proceeding*, FD 36616 (citing BNSF’s right to interchange with STR under RASA § 8(k)).)

Two months after STR filed its petition, the Board instituted a proceeding under 49 U.S.C. § 10502(b) and identified an issue that required clarification. (*STR Exemption Proceeding*, FD 36616 (STB served Aug. 24, 2022).) The Board noted that the proposed transaction described in the STR Petition left a 1.04-mile gap of uncertain ownership and regulatory status between UP’s Shafter Subdivision and the STR line, and therefore “it [was] not clear how STR’s proposed line [would] connect (and remain connected) to the national rail network.” (*Id.*, slip op. at 2.) STR had originally indicated that either UP would retain ownership of the Connecting Line, “in which event STR contemplates this track would become part of the non-jurisdictional ancillary track used by UP and BNSF to interchange cars

with STR,” or STR would acquire the Connecting Line and reinstate common carrier service over it. (STR Pet. at 4-5, June 30, 2022, *STR Exemption Proceeding*, FD 36616.)

The Board directed STR to submit a supplement that clarified this issue. (*STR Exemption Proceeding*, FD 36616, slip op. at 2 (STB served Aug. 24, 2022).) In response, STR stated that “counsel for [UP] informed counsel for STR that UP has decided to retain ownership of its abandoned right-of-way between milepost 0.0 and milepost 1.04, and to petition the Board to reinstate common carrier operating authority over this segment.” (STR Verified Suppl. 1, Sept. 20, 2022, *STR Exemption Proceeding*, FD 36616.)

On April 1, 2024, the Board granted STR’s petition for exemption, authorizing STR to construct and operate approximately 11 miles of rail line in Tooele County, Utah, which, as the Board described citing to STR’s petition for exemption, “would reestablish the former Warner Branch connection to UP’s Shafter Subdivision at Burmester.” (*Exemption Proceeding*, FD 36616, slip op. at 1 (STB served Apr. 1, 2024).)

The UP Exemption Proceeding: On November 21, 2023, UP petitioned the Board for an exemption to reinstate common carrier service over the Connecting Line. (UP Pet., Nov. 21, 2023, *UP Exemption Proceeding*, FD 36741.) Although the PSA with STR was executed several months earlier, UP made no mention of the fact that, at its insistence, STR would not be able to interchange with BNSF under RASA Section 8(k) due to the exclusivity language.

On December 11, 2023, BNSF moved for the Board to institute a proceeding and set a procedural schedule to consider UP's petition. (BNSF Mot., *UP Exemption Proceeding*, FD 36741.) BNSF argued that "UP structured its transaction with STR and acted with respect to the Line so that BNSF cannot interchange with STR, thus violating its rights under the RASA." (*UP Exemption Proceeding*, FD 36741, slip op. at 2 (STB served Feb. 13, 2024) (citing BNSF Mot. at 1-2).) BNSF asked the Board to examine whether to grant UP's petition in light of UP's apparent gamesmanship. (BNSF Mot. at 5-6, Dec. 11, 2023, *UP Exemption Proceeding*, FD 36741.)

The Board denied BNSF's motion, reasoning that "UP's effort to seek common carrier operating authority over the [Connecting Line] is separate and distinct from BNSF's claimed right to access STR and its future shippers via the [Connecting Line] under the terms of the RASA." (*UP Exemption Proceeding*, FD 36741, slip op. at 2 (STB served Feb. 13, 2024).) The Board stated that "[g]ranting UP the authority to reinstitute common carrier service over the [Connecting Line] does not preclude BNSF from seeking, through either arbitration or a new, separate Board proceeding, a determination that BNSF is entitled to access STR via the [Connecting Line]." (*Id.*, slip op. at 3.) The Board then noted that "in any future proceeding, whether before an arbitrator or the Board, this decision shall not be construed as permitting UP to defeat any rights that BNSF may have had to interchange with STR or serve shippers at Lakeview Business Park had the exemption not become effective." (*Id.*)

2.3 The Board acknowledged that this proceeding is the proper forum to determine whether UP can bar BNSF from interchanging with STR.

Following the Board’s decision in the *UP Exemption Proceeding*, UP sought to resolve the issue of BNSF’s ability to interchange with STR through private arbitration. (See BNSF Pet., June 30, 2022, Ex. A, UP Demand.) BNSF, however, initiated this proceeding and petitioned the Board to assert jurisdiction because of the broad policy implications of UP’s attempt to defeat the competition-preserving requirements of the merger by manipulating the structure of the transaction. (BNSF Pet., June 30, 2024.)

In its April 28, 2025 decision, the Board asserted its jurisdiction to resolve this dispute, agreeing that BNSF’s petition “presents questions about whether the merger conditions are being implemented in a way that is consistent with the policies underlying them.” (*BNSF Ry. Co.—Pet. for Enforcement—Interchange with Savage Tooele R.R. Co.*, FD 32760 (Sub-No. 50), slip op. at 6 (STB served Apr. 28, 2025).) The Board issued an order setting a procedural schedule allowing for a period of discovery focused on the structuring of the transaction followed by additional submissions on the merits. (*Id.*, slip op. at 6-7, 6 n.7.)

The parties have since conducted discovery, including the exchange of written discovery and documents, and the depositions of one STR witness and three UP witnesses. In a decision served on February 26, 2026, the Board set a new schedule for this proceeding. BNSF now submits this Opening Statement and Evidence.

3. Argument

3.1 UP structured the STR transaction with the intent to deprive BNSF of its right to interchange with STR and to serve customers at the Lakeview Business Park.

Evidence obtained through discovery confirms that, despite initially acknowledging internally that the new Park would be open to both BNSF and UP, UP ultimately structured the transaction with STR to prevent BNSF from interchanging with STR and thereby accessing the Lakeview Business Park.

In 2018-19, when the idea of a new industrial park was formed, and STR expressed an interest in establishing a new industrial park and connecting that park with the UP Shafter Subdivision to interchange with UP and BNSF, UP's commercial and operational personnel recognized that STR had the right to interchange with BNSF at Burmester and advanced no objection. UP recognized that it had no ground on which to deny STR's right to interchange with BNSF. The UP personnel involved even requested that STR plan for two interchange tracks—one for UP and one for BNSF—at MP 1.04.

UP, however, decided nonetheless to try to achieve exclusivity through the artifice of retaining ownership of the Connecting Line and forcing STR to agree that UP would have { [REDACTED] } operating rights over the line. UP's effort should be seen for what it is, and it should be rejected. The insertion of what amounts to be a “steel barrier” through UP's retention of ownership of the Connecting Line is nowhere authorized under the RASA. As the Board stated in an analogous situation in *TGS Cedar Port R.R.—Operation Exemption—in Chambers Cnty., Tex.*, FD

36627, slip op. at 9 (STB served Apr. 1, 2024) where UP tried to block access to shippers at a “2-to-1” point as opposed to shippers on a new shortline: “UP has not shown that the RASA—which was adopted by the Board as a competition-preserving condition to the UP/SP merger—authorizes UP to block BNSF’s access to an established 2-to-1 point, rendering Park shippers captive to UP.”

3.1.1 UP initially concluded that BNSF would have the right to access and serve customers at the newly-constructed Park.

In early discussions between UP employees, UP acknowledged that it expected the Park to be open to BNSF and UP. In a September 24, 2020 email from UP’s Chris Sanford to UP’s Melissa Meier, Mr. Sanford stated that {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}

(Ex. 4 at UP-STRC-003670 (emphasis added).) Mr. Sanford was UP’s longtime Senior Manager Commercial & Interline Strategy with many years of experience in interpreting and applying the RASA, and other UP employees relied on his assessment of access issues related to other railroads. (*See* Ex. 14, Meier Dep. Tr. at 45:8-18, 66:20-67:17; Ex. 13, Zemeckis Dep. Tr. at 83:5-84:7, 85:6-15, 86:2-11; *see also* Ex. 5 at UP-STRC-005654 to -5655 (October 9, 2020 email from UP’s Melissa Meier to UP’s Andrew Saunders stating that {{ [REDACTED]

[REDACTED]

[REDACTED] }}).)

In her deposition, Ms. Zemeckis confirmed that {{ [REDACTED] }}
[REDACTED]
[REDACTED]
[REDACTED] }} (Ex. 13, Zemeckis Dep. Tr. 88:14-89:15; *see also id.* at 91:14-18 ({{ [REDACTED] }}
[REDACTED]
[REDACTED] }}).) Ms. Meier, the previous UP project manager for the Lakeview Business
Park project from 2019-2020, (Ex. 14, Meier Dep. Tr. 16:11-20, 17:22-3), also
{{ [REDACTED] }} (*Id.* at 65:8-67:17;
74:18-75:17 ({{ [REDACTED] }}
[REDACTED]))

And this view—that BNSF would have access to the new Park—was repeated in communications between various employees when discussing the project and related negotiations with park developers and STR. (*See* Ex. 6 at UP-STRC-007224 (October 2020 email from UP’s Christina Quindt, Director of Industrial Safety, Planning and Integration, acknowledging that the proposed industrial park {{ [REDACTED] }} (emphasis added); *id.* (email from UP’s Sean Fraizer, General Director Sales—Industrial Business Team, forwarding Ms. Quindt’s email internally at UP and reiterating that {{ [REDACTED] }} [REDACTED] }} (emphasis added); *id.* at UP-STRC-007225 (describing {{ [REDACTED] }} [REDACTED] }}).)

As UP negotiated with STR to secure UP access to the Park, UP also indicated to STR that BNSF would have access. For example, in a December 14, 2020 email from STR's Phillip Hoskins to BNSF's Travis Thowe, Mr. Hoskins stated that {{ [REDACTED] [REDACTED] }}

(See Ex. 7 at BNSF-STR000345.) The “New Service Letter” that UP sent to STR dated September 8, 2021 reinforced that mutual understanding. (See Ex. 15 at UP-STRC-003856 (stating that UP “plan[ed] to move forward with its track authorization process subject to [certain terms and conditions]” including the condition that, {{ [REDACTED]

[REDACTED]

[REDACTED] }); see also Ex. 13,

Zemeckis Dep. Tr. 119:16-22 ({{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}).

3.1.2 Despite STR's stated preference to purchase and/or operate over the Connecting Line, UP decided to retain the Connecting Line as a "steel barrier" to BNSF interchange access.

For at least three years leading up to the execution of the final PSA, STR and UP discussed various ways that they could structure the transaction to allow Park customers to benefit from access to the national rail network. Options for structuring the transaction included (1) UP selling the entire Warner Spur to STR;

(2) UP leasing or granting STR an easement over the first mile of track and selling STR the balance; or (3) UP retaining the first mile of track but granting STR operating rights over it and selling STR the balance.

Early sales prints and drafts of an agreement between UP and STR reflect that UP was initially willing to consider selling or leasing portions of the Connecting Line and did not believe that this sale would impact BNSF's right to serve customers at the Park. (See Ex. 5 at UP-STRC-005654 to -5655.) And STR made clear throughout negotiations that its preference was to purchase the Connecting Line from UP. (See Ex. 9 at UP-STRC-006923 to -6924 ({ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] }).) But ultimately, UP did not choose any of the options described above and instead decided to retain the first mile of track without granting STR operating rights over it.⁴

Mr. Hoskins testified that, when STR explained to the Board that "UP may retain ownership of the abandoned right-of-way track between MP 0.0 and MP 1.04," (STR Pet. at 4-5, June 30, 2022, FD 36616), STR was still "hopeful" that it

⁴ STR speculated as to UP's intentions in an undated memo noting that { [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] } (Ex. 10 at SAV000692. (emphasis added).)

would be able to purchase or use the first mile of track (Ex. 8, Hoskins Dep. Tr. 109:4-110:20; *see also id.* at 113:3-9.) In an October 7, 2022 email to BNSF’s Mike Martucci, Mr. Hoskins recounted {{ [REDACTED] }} (See Ex. 3 at BNSF-STR000133.) At his deposition, Mr. Hoskins clarified that this Economic Development (“ED”) contact was UP’s Shelly Zemeckis.⁵ (Ex. 8, Hoskins Dep. Tr. 49:15-50:6.) Mr. Hoskins recalled that Ms. Zemeckis stated that she:

{{ [REDACTED] }}

(Ex. 3 at BNSF-STR000133.) Regarding the issue of whether UP was willing to sell the first mile, Mr. Hoskins stated in his email to BNSF that {{ [REDACTED] }}
[REDACTED]
[REDACTED] }}⁶ (*Id.*)

Mr. Hoskins testified that he was later “disappointed” when UP decided not to sell the Connecting Line. (Ex. 8, Hoskins Dep. Tr. 69:5-71:11.) This decision was especially disappointing because STR was always willing to grant UP operating

⁵ UP’s Michelle Zemeckis may also be referred to in emails by the first name Shelly and by the last name Huckfeldt or as “Shelly (Huckfeldt) Zemeckis.” (See Ex. 13, Zemeckis Dep. Tr. at 9:1-14.)

⁶ When questioned about this dinner with Mr. Hoskins and their conversation, Ms. Zemeckis did not recall many of the details of this discussion but did recall telling Mr. Hoskins that she “needed to engage legal counsel for support” because the issue of the first mile “involved [UP’s] legal status of that first mile.” (Ex. 13, Zemeckis Dep. Tr. 180:7-181:5.)

rights over the first mile if UP were willing to sell it. (*See* Ex. 8, Hoskins Dep. Tr. 54:3-55:8; Ex. 3 at BNSF-STR000133.) STR also recognized that the requirement that UP file a separate petition to seek Board approval to reinstate common carrier service over the first mile could significantly delay STR becoming operational. (*See* Ex. 8, Hoskins Dep. Tr. 73:3-12.)

UP has asserted that it did not want to sell the Connecting Line because it used this track as ancillary track to support operations on the Shafter Subdivision. (*See* UP Pet. at 3, Nov. 21, 2023, *UP Exemption Proceeding*, FD 36741 (asserting that UP was “unwilling to sell its right-of-way and track assets between Milepost 0.0 and Milepost 1.04 because it has been using the track as ancillary track to support operations on the Shafter Subdivision”).) This reasoning appears to be pretextual, however, both because internal UP documents indicate that UP makes limited (if any) use of this section of track,⁷ and because STR made clear throughout negotiations that the transaction would not impact UP’s ability to continue to use the track to support its operations. (*See* Ex. 8, Hoskins Dep. Tr. 54:3-55:8; Ex. 3 at

⁷ In a UP email chain from July 2024, UP’s Rick Harris asked for { [REDACTED] } (Ex. 12 at UP-STRC-002594.) UP’s Adam Simeon, General Director Scheduling and Technology responded that he is { [REDACTED] } (*Id.*) Mr. Simeon { [REDACTED] } (*Id.*)

BNSF-STR000133 ({ [REDACTED]

[REDACTED] })).) Moreover, it does not appear, based on the materials produced in discovery, that UP has undertaken any analysis of how BNSF's ability to interchange with STR over the Connecting Line might in fact impact UP's operations.

Internal STR documents show that STR viewed UP's refusal to convey or grant operating rights over the first mile as { [REDACTED] } that would hinder BNSF's ability to serve the Park and its tenants. (See Ex. 10 at SAV000692.) STR sought to complete the UP agreements { [REDACTED] } (See *id.* at SAV000692-93.) The PSA drafting history reflects STR's growing frustration with UP's prolonged delays in finalizing the agreement⁸—delays that ultimately

⁸ (See, e.g., Ex. 16, UP-STRC-002700 (Email chain between STR and UP in which Mr. Harris was repeatedly asked about the status of UP's review of the PSA {

[REDACTED] } Ms. Zemeckis

positioned UP to be able to force STR into accepting the exclusivity provisions that STR had consistently opposed. When UP finally responded to STR’s proposed PSA redlines, UP actively and repeatedly forced exclusivity into the PSA despite STR’s sustained efforts to preserve BNSF access. For example, STR’s April 21, 2023 PSA redlines {{ [REDACTED]

[REDACTED]

[REDACTED] }} (See Ex. 17 SAV000354; *see also* Ex.

8, Hoskins Dep. 90:12–92:6.) UP’s June 27, 2023 counter-edits {{ [REDACTED]

[REDACTED]

[REDACTED] }} (See Ex. 18 SAV000270; *see also* Ex. 8, Hoskins Dep. 96:14–17.)

After continued discussions in which STR {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }} (See Ex. 19 SAV000182; *see also* Ex. 8, Hoskins Dep. 102:11-

103:19.)

also acknowledged that Mr. Hoskins “was frustrated with the amount of time it was taking” to execute the PSA. (See Ex. 13, Zemeckis Dep. 208:6-8.)

In the final PSA, UP insisted upon including language to ensure that it retained the “exclusive right” to operate over the Connecting Line—and that STR would provide testimony on this fact to the STB if necessary:

{{ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] }}

(Ex. 11 at SAV00015 to -016, Final PSA Section 4(g) (emphasis added); *see also* Ex. 8, Hoskins Dep. Tr. 89:20-90:5.) STR understood that this section potentially implicated BNSF’s ability to access the Park. (*See* Ex. 8, Hoskins Dep. Tr. 98:20-99:6.) However, as Mr. Hoskins explained, to move forward with the transaction, exclusivity {{ [REDACTED] }} (*Id.* at 97:15-22 (emphasis added).) UP’s months-long delay in engaging with STR on the PSA, followed by UP’s insistence on including the exclusivity language, left STR in the dark and contributed to STR not having any realistic choice but to accept the exclusivity language so that the project could move forward toward completion, despite recognizing that it would block BNSF access and undermine competition.

3.2 UP cannot negate BNSF’s right under Section 8(k) to interchange with an otherwise-qualified new shortline railroad by structuring its transaction with STR to impose an artificial steel barrier.

The evidence obtained in discovery illustrates that, by retaining the Connecting Line and refusing to grant STR operating rights over it, UP structured the transaction to avoid its obligations under the RASA that require UP to allow BNSF to interchange with new shortline railroads.

As STR’s petition for exemption makes clear, STR initially understood that it could interchange with both UP and BNSF at Burmester, Utah because of BNSF’s right to interchange with new shortline railroads under Section 8(k) of the RASA and BNSF’s overhead trackage rights over the Shafter Subdivision.⁹ (STR Pet. at 3 & n.5, June 30, 2022, *STR Exemption Proceeding*, FD 36616.) And, as evidenced in correspondence and internal UP documents, UP employees shared this understanding that the new Park would be open to *both* BNSF and UP. (*See supra* Section 3.1.) Yet, despite initially expressing a willingness to sell, lease, or grant operating rights of the Connecting Line, UP ultimately insisted on retaining “exclusive” rights over the Connecting Line. In doing so, UP sought to prevent BNSF from exercising its rights under section 8(k) of the RASA.

⁹ STR’s expectation of both BNSF and UP service is rooted in the fact that, before the merger, the Park could have been located on either a UP or SP line, and the Park’s developers could have leveraged the then-existing siting competition between UP and SP to negotiate the best possible rates and terms of service for its tenant shippers. While the UP/SP merger removed this option, Section 8(k) of the RASA was intended to preserve that indirect competition by substituting BNSF service as a replacement for the competition that was otherwise lost due to the merger.

UP’s intent to exclude BNSF is evidenced in UP’s reaction to the Board’s decision granting UP authority to reinstate common carrier service over the first mile. After the Board issued its February 13, 2024 decision in FD 36741 granting UP authority to reinstate common carrier service over the first mile—and explicitly noting that “this decision does not affect BNSF’s rights under RASA Section 8(k) and the UP/SP merger conditions”—UP’s regional manager responsible for the Park, Ms. Zemeckis, wrote that { [REDACTED] [REDACTED] }

(Ex. 2 at UP-STRC-003205 (emphasis added).)¹⁰

Notwithstanding UP’s efforts, prior Board precedent makes clear that UP cannot side-step its obligations to preserve pre-merger competition by insisting on the inclusion of “exclusivity” language in its contracts and structuring its industrial development to exclude BNSF from areas that otherwise would have benefited from competitive pre-merger service.

3.3 Regardless of the ownership or regulatory status of the Connecting Line, BNSF has the right to interchange with STR under Section 8(k) of the RASA.

Recognizing BNSF’s right under Section 8(k) to interchange with STR under these circumstances is consistent with prior Board precedent. The Board has

¹⁰ Ms. Zemeckis was the same “ED” contact who had previously been

{{ [REDACTED] [REDACTED] [REDACTED] }}

(Ex. 3 at BNSF-STR000133.)

consistently emphasized that the merger conditions were intended to allow BNSF to replicate competitive options for traffic that would have existed absent the merger. (See, e.g., *Cedar Port*, FD 36627, slip op. at 7 (citing *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 19)*, FD 32760 (Sub-No. 21), slip op. at 4-6 (STB served Nov. 8, 2001)). And the Board has held that actions by UP which are “wholly within UP’s control” cannot defeat merger condition rights. *Mission Rail*, FD 32760, slip op. at 11 (STB served Jan. 31, 2018).

In 2018, the Board issued a decision confirming that BNSF would have access under the UP/SP merger conditions to serve a new shipper facility, the Mission Rail Industrial Park in Elmendorf, Texas, via new track connecting to an existing trackage rights line. (*Id.*, slip op. at 17.)¹¹ As it has here, in *Mission Rail*, UP had attempted to structure the construction and operation transactions in order to evade its obligations under the UP/SP merger conditions and artificially exclude BNSF from fulfilling the competition-preserving role intended by the Board when it approved the UP/SP merger. (See *id.*, slip op. at 3-7.) In that case, the Board recognized that “changes in UP’s service or use of connecting trackage after a new facility is established—changes that, here, were wholly within UP’s control—should not affect whether the new facility should have access to dual-carrier service under the UP/SP merger conditions.” (*Id.*, slip op. at 11.)

¹¹ In the *Mission Rail* dispute, UP (rather than a shortline) intended to operate the line to serve Mission Rail Park. Therefore, BNSF’s right to access the park was determined via the “new shipper facilities” condition, rather than the shortline interchange condition relevant here.

Mission Rail dealt with UP’s obligation to allow BNSF to access new shipper facilities located on Trackage Rights Lines. As discussed above, RASA Section 8(k) similarly concerns UP’s obligation to allow BNSF to access new shortline railroads connected to Trackage Rights Lines. Just as it did in *Mission Rail*, the Board should see through UP’s attempt to exclude BNSF here by attempting to insert a 1.04-mile steel barrier between STR and the Shafter Subdivision. The decision to insist on exclusive access to the first 1.04 miles of track emanating from the Shafter Subdivision was wholly within UP’s control. It was clearly and intentionally designed to prevent BNSF from exercising its rights under Section 8(k) to interchange with new shortline railroads that would otherwise be able to connect to a Trackage Rights Line.

In another recent decision, the Board resoundingly rejected UP’s attempt to prevent BNSF from interchanging with a new shortline railroad, thereby cutting off BNSF access to the TGS Cedar Port Industrial Park that BNSF currently serves pursuant to its competition-preserving role.¹² (*Cedar Port*, FD 36627, slip op. at 1, 6 (STB served Apr. 1, 2024).) The Board emphasized once again that a “foundational premise of the UP/SP merger conditions” is “the preservation of competition at points that would otherwise become captive to UP” and found that “UP’s petition side-steps these critical precepts, which underlie and inform the merger conditions,

¹² In *Cedar Port*, UP argued that it can block BNSF from providing competitive line-haul service to customers simply because a common carrier railroad replaces a private railroad as the provider of first-mile/last-mile service to those customers.

and have been applied in past decisions to reject similar attempts by UP to interpret the RASA in a manner that would undermine the conditions imposed.” (*Id.*, slip op. at 7.) UP’s positions in both *Cedar Port* and here would have had the same effect: to artificially eliminate line-haul competition from BNSF at an industrial park with multiple customers.

These same principles apply to the RASA Section 8(k) provision permitting BNSF to interchange with new shortline railroads. Interpreting Section 8(k) in a way that incentivizes UP to structure its transactions with new shortline railroads to prevent them from interchanging with BNSF would seriously undermine the competition-preserving purpose of the UP/SP merger conditions. Such an outcome would allow UP to readily avoid its merger obligations by insisting on “exclusivity” provisions in its contracts and refusing to permit qualified new shortlines from operating over short sections of connecting track, which would otherwise be an efficient means of connecting to a Trackage Rights Line.

3.4 Permitting BNSF to interchange with STR is consistent with the competition-preserving conditions of the UP/SP merger and is beneficial to shippers and to the public.

Over the last quarter-century, BNSF has repeatedly sought to enforce the rights of BNSF and its customers under the UP/SP merger conditions—all in the face of UP’s efforts to limit competition by restricting BNSF access. UP’s attempt to exclude BNSF from providing competition to the Lakeview Business Park aligns with UP’s broader pattern of attempting to circumvent its UP/SP merger obligations, which require it to enable BNSF to provide effective competition. But

preserving competition amongst Class I railroads is beneficial to shippers and the public and aligns with the policies underlying the Board’s decision to impose conditions on the UP/SP merger.

As STR’s Phillip Hoskins recognized in his deposition, “competition . . . is always a good and healthy thing” and BNSF access to the Park would have “benefits to the potential customers.” (Ex. 8, Hoskins Dep. Tr. at 114:22-115:11; *id.* at 69:5-16 (explaining that he was “disappointed” with UP’s decision to retain the first mile because “wanting to provide customers with dual access was a selling point”).) The Park’s owner and developer also explained, in its July 2, 2024 Letter, that shippers benefit from competitive access to multiple railroads. (Romney Group Letter, July 2, 2024.) Specifically, competitive service has wide-ranging benefits for shippers, including “the potential for lower rates, better service terms, . . . additional destinations and origins for commodities and/or raw materials, [and] the presence of an alternative railroad service provider can alleviate harms to shippers from service breakdowns on the other carrier’s rail system.” (*Id.*) When competitive service is denied, these shippers suffer the economic consequences.

Given UP’s intent to pursue a new merger with Norfolk Southern, its compliance with past merger commitments is now a matter of heightened public and regulatory importance. The recently proposed UP/NS merger is another opportunity for UP to further consolidate its hold on markets that are already lacking in competition in part because UP has aggressively sought to limit BNSF’s ability to provide the replacement competition that UP agreed to as a condition for

the UP/SP merger. There is every reason to believe that UP will take a similar approach to any conditions placed on the UP/NS merger, should the Board ultimately approve it. Therefore, it is important for the Board to now assert its authority to enforce past merger conditions. The Board should not permit UP to avoid its obligations under the RASA.

4. Conclusion

For the reasons stated above, BNSF respectfully requests that the Board issue an order enforcing the UP/SP merger conditions by requiring UP to allow BNSF to interchange with STR. Such an order would give shippers at the Lakeview Business Park the competitive service options that they desire and are entitled to, as intended under the RASA. Doing so would confirm the opinion of UP's joint facilities personnel that BNSF would have access to the Park. It would also make clear to UP that it cannot structure interchange transactions with new shortline railroads on Trackage Rights Lines to deprive shippers of the rights guaranteed them under RASA Section 8(k) by inserting steel barriers between the Trackage Rights Line and the new shortline railroad.

Dated: April 13, 2026

Respectfully submitted,

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
SERVICE TO GRANITE MOUNTAIN QUARRIES

EXHIBIT 1

RESTATED AND AMENDED SETTLEMENT AGREEMENT (“RASA”)

03/01/02

RESTATED AND AMENDED AGREEMENT

This Restated and Amended Agreement (“Agreement”) is entered into this ____ day of March, 2002, between UNION PACIFIC RAILROAD COMPANY (“UP”), a Delaware corporation, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (“BNSF”), a Delaware corporation.

WITNESSETH:

WHEREAS, UP and BNSF entered into an agreement dated September 25, 1995, as amended by supplemental agreements dated November 18, 1995, and June 27, 1996 (collectively, the “1995 Agreement”), in connection with UP’s acquisition of Southern Pacific Rail Corporation and its affiliates (“SP”) in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company;

WHEREAS, the Surface Transportation Board (“STB”) approved the common control and merger of UP and SP in Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and in so doing imposed certain conditions on UP and SP, including, as modified by the STB, the April 18, 1996 settlement agreement among UP, BNSF and the Chemical Manufacturers Association (the “CMA Agreement”);

WHEREAS, as a part of its oversight of the UP/SP merger in Finance Docket Nos. 32760, 32760 (Sub-No. 21), and 32760 (Sub-No. 26), the STB has modified and clarified certain of the conditions it imposed in Decision No. 44;

WHEREAS, UP and BNSF entered into a Term Sheet Agreement dated February 12, 1998 (the "Term Sheet Agreement"), pursuant to which UP and BNSF agreed to the joint ownership of the line of railroad between Dawes, TX and Avondale, LA, which joint ownership was effected by separate agreement dated September 1, 2000 (the "TX-LA Line Sale Agreement");

WHEREAS, UP and BNSF have reached agreement with respect to the implementation of the conditions imposed by the STB on the UP/SP merger, as modified and clarified, and certain other matters relating to their rights and obligations under the 1995 Agreement, the CMA Agreement, the Term Sheet Agreement and the TX-LA Line Sale Agreement; and

WHEREAS, UP and BNSF now wish to amend and restate the 1995 Agreement to incorporate the conditions imposed by the STB on the UP/SP merger (including the CMA Agreement, as modified by the STB) and the agreements they have reached relating to those conditions and other related matters.

NOW, THEREFORE, the parties agree to amend and restate the 1995 Agreement as follows:

DEFINITIONS

For purposes of this Agreement, the following definitions and terms shall apply:

Shipper Facilities shall mean all existing or new shipper or receiver facilities, including transload facilities as well as rail car storage and car service and repair facilities not owned, leased or operated by UP.

"2-to-1" Points shall mean all geographic locations at which at least one "2-to-1" Shipper Facility is located. Such points include, without limitation, the points listed in Section 8(i) of and on Exhibit A to this Agreement. The boundaries for such "2-to-1" Points shall be deemed to

include all areas within the switching limits of the locations as described in Section 9(g) of this Agreement.

"2-to-1" Shipper Facilities shall mean all Shipper Facilities that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the 1995 Agreement was executed, regardless of how long ago the shipper or receiver at that facility may have shipped or received, or whether the shipper or receiver at that facility ever shipped or received, any traffic via either UP or SP. The "2-to-1 Point Identification Protocol" between the parties attached hereto as Exhibit E shall govern the process for identifying "2-to-1" Shipper Facilities open to BNSF as a result of the conditions imposed on the UP/SP merger.

New Shipper Facilities shall mean: (i) existing Shipper Facilities constructing trackage for accessing rail service for the first time; and (ii) newly constructed rail-served Shipper Facilities. New Shipper Facilities shall also mean previously-served Shipper Facilities that begin to ship by rail again where (i) there has been a change of owner or lessee, and (ii) the use of the facility is actually different in nature and purpose from the facility's prior use (e.g., there has been a change in the type of products shipped from or received at the facility). New Shipper Facilities shall not include expansion of or additions to an existing rail-served Shipper Facility, but do include (1) Shipper Facilities which, on September 25, 1995, were being developed or for which land had been acquired for that purpose in contemplation of receiving rail service by both UP and SP, and (2) Transload Facilities located after September 11, 1996, including those owned or operated by BNSF.

Trackage Rights Lines shall mean the lines over which BNSF has been granted trackage rights pursuant to this Agreement, but shall not include any other lines over which UP/SP grants

BNSF trackage rights ("Overhead Trackage Rights") solely (i) to facilitate the parties' operation over Trackage Rights Lines, (ii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and points listed or described in Section 8(i) of this Agreement, or (iii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and a build-in/build-out line pursuant to Sections 4(a), 6(c) and 8(l) of this Agreement. The mutually-agreed upon junction point will be selected with the objective of minimizing the operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service. BNSF acknowledges that it shall not have the right to serve any existing or New Shipper Facility on a line over which BNSF has been granted Overhead Trackage Rights unless such right is specified in this Agreement or in any agreement implementing the Overhead Trackage Rights or unless BNSF has the right to serve a build-in/build-out line on such Overhead Trackage Rights line pursuant to the CMA Agreement or the conditions imposed on the UP/SP merger. All Overhead Trackage Rights Lines, as of the date of the execution hereof, are listed in Exhibit F to this Agreement, which exhibit may be amended and replaced from time to time by a new exhibit signed and dated by the parties. New Shipper Facilities shall be deemed to be "on" a Trackage Rights Line if the facility is either (1) adjacent to a Trackage Rights Line or (2) adjacent to a spur, an industrial track, or a yard that is itself served by such Trackage Rights Line. New Shipper Facilities are not "on" a Trackage Rights Line if they can be accessed only via a 49 U.S.C. 10901 "line of railroad" which is not a Trackage Rights Line.

Transload Facilities shall mean Shipper Facilities other than automotive or intermodal facilities or team tracks where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur) as defined by the STB in its decisions

in Finance Docket No. 32760. An “Existing Transload Facility” is a Transload Facility which was in existence on September 25, 1995.

1. **Western Trackage Rights**

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

- SP’s line between Denver, CO and Salt Lake City, UT;
- UP’s line between Salt Lake City and Ogden, UT;
- SP’s line between Ogden and Little Mountain, UT;
- UP’s line between Salt Lake City and Alazon, NV;
- UP’s and SP’s lines between Alazon and Weso, NV;
- SP’s line between Weso, and Oakland, CA via SP’s line between Sacramento, CA and Oakland referred to as the “Cal-P” (subject to traffic restrictions as set forth in Section 1(g));
- Overhead Trackage Rights on SP’s line between Binney Junction, CA and Roseville, CA in the vicinity of SP MP 106.6;
- SP’s line between Elvas (Elvas Interlocking) and Stockton, CA (subject to traffic restrictions as set forth in Section 1(g) and also excluding any trains moving over the line between Bieber and Keddie, CA purchased by BNSF pursuant to Section 2(a) of this Agreement);
- UP’s line between Weso and Stockton, CA; and
- SP’s line between Oakland and San Jose, CA.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) “2-to-1” Shipper Facilities and Existing Transload

Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also receive the right to interchange with: the BHP Nevada Railroad Company at Shafter, NV; the Utah Railway Company at Utah Railway Junction, UT; Grand Junction, CO; and Provo, UT; the Utah Central Railway Company at Ogden; the Salt Lake, Garfield and Western at Salt Lake City; and the Salt Lake City Southern Railroad Company at Salt Lake City. BNSF shall also receive the right to utilize in common with UP/SP, for normal and customary charges, SP's soda ash Transload Facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash Transload Facilities in Ogden and Salt Lake City and to establish its own soda ash Transload Facilities along the Trackage Rights Lines. BNSF shall have the same access as UP to all "2-to-1" Shipper Facilities and "2-to-1" Points between Salt Lake City, UT, and SP MP 755.1 north of Woods Cross, UT.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections,

sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 1(c) above, of the manner by which it proposes such service be provided and

the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks, NV with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of SP's Sparks intermodal facility is required to accommodate the combined needs of UP/SP and BNSF, then the parties shall share in the cost of such expansion on a pro rata basis allocated on the basis of the relative number of lifts for each party in the 12-month period preceding the date construction begins. If for any reason UP/SP vacates its Sparks intermodal facility, BNSF (i) may vacate the facility and independently establish one of its own, or (ii) shall be permitted by UP/SP to continue to occupy the Sparks facility upon entry into an agreement with UP/SP containing normal and customary terms and conditions (including, without limitation, rental) for the use of similar facilities. If UP elects to offer the Sparks intermodal ramp property for sale to a third party and/or receives an offer UP is willing to accept,

UP will offer to sell the property to BNSF on the same terms and conditions as are applicable to the third party. BNSF shall have thirty (30) days in which to advise UP whether or not it will buy the property on those terms. In the event BNSF declines to buy the property on those terms or fails to advise UP of its intentions within thirty (30) days, BNSF's right of first refusal will be extinguished, and UP may sell the property to the third party. BNSF will then be required to vacate the property within six (6) months, and UP's obligation to furnish BNSF with intermodal terminal services and access to a UP intermodal facility in the Sparks/Reno area will be extinguished.

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

(g) BNSF may operate only the following trains on SP's "Cal-P" line between Sacramento and Oakland: (i) intermodal and automotive trains composed of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration and (ii) one overhead through manifest train of carload business per day in each direction. These BNSF manifest trains may be either I-5 Corridor or Central Corridor trains. On the Donner Pass line between Sacramento and Weso, BNSF may operate only intermodal and automotive trains as described in clause (i) and one overhead through manifest train of carload business per day in each direction. The manifest trains must be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP manifest trains. BNSF may use helpers on these trains only if comparable UP/SP manifest trains use helpers; BNSF must provide the helper service. The restrictions set forth in this section do not apply to local trains serving Shipper Facilities to which BNSF has

access on the identified lines, and such trains shall not be considered in determining whether BNSF is in compliance with such restrictions. If UP grants its prior concurrence, BNSF's overhead through manifest trains shall be allowed to set out and pick up traffic to or from intermediate points on the identified lines.

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

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

(j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) if UP/SP

subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) at such time as BNSF begins to use the line for domestic high cube double stacks.

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

2. **I-5 Corridor**

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

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

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

3. **Southern California Access**

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

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

- UP's line between Riverside and Ontario, CA; and

- UP's line between Basta, CA and Fullerton and La Habra, CA.

(c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement.

(d) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(e) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow (including both legs of the wye) and Mojave, CA.

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

(g) UP/SP shall work with BNSF to facilitate access by BNSF to the Ports of Los Angeles and Long Beach, CA. Other than as legally precluded, UP/SP shall (a) extend the term of the present agreement dated November 21, 1981, to continue until completion of Alameda Corridor, (b) amend that agreement to apply to all carload and intermodal traffic, and (c) grant BNSF the right to invoke such agreement to provide loop service utilizing UP's and Santa Fe's

lines to the Ports at BNSF's option to allow for additional operating capacity. UP/SP's commitment is subject to available capacity. Any incremental capacity related projects necessary to accommodate BNSF traffic shall be the sole responsibility of BNSF.

(h) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 3(d) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

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

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

- UP's line between Ajax and San Antonio, TX;

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

- UP's line between Temple and Waco, TX;
- UP's line between Temple and Taylor, TX;
- UP's line between Taylor and Smithville, TX; and
- SP's line between El Paso and Sierra Blanca, TX.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement and City Public Service Board of San Antonio, Texas Elmendorf facilities listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to interchange with: the Texas Mexican Railway Company at Corpus Christi and Robstown, TX; the Georgetown Railroad at Kerr; Transportacion Ferroviaria Mexicana ("TFM") at Brownsville (Matamoros, Mexico); Ferrocarril Mexicano ("FXE") at Eagle Pass; and the operator of SP's former line between Giddings and Llano at McNeil, TX. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP had on September 25, 1995. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the TFM. UP will designate a yard in Brownsville for sale to BNSF at such time as BNSF establishes its own trackage rights operations into Brownsville and at such time as the connection between UP and SP as a part of the Brownsville

relocation project is completed. In the event UP/SP determines to cease operations in the SP East Yard at San Antonio, TX, UP/SP will give first consideration to BNSF for taking over operation of the East Yard pursuant to a mutually-agreeable arrangement.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and

auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 4(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

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

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

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

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

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

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

- SP's line between Houston and Iowa Junction in Louisiana, which trackage rights have been amended by the Term Sheet Agreement and the TX-LA Line Sale Agreement implementing UP's and BNSF's joint ownership of SP's line between Dawes, TX and Avondale, LA;

- SP's line between Beaumont and Port Arthur, TX;
- SP's line between Dayton and Baytown and East Baytown, TX;
- SP's Channelview Spur which connects to the SP's line between Houston and Iowa Junction near Sheldon, TX for the purpose, inter alia, of reaching a point of build-in/build-out to/from the facilities of Lyondell Petrochemical Company and Arco Chemical Company at Channelview, TX. UP/SP shall permit BN/Santa Fe or one or both shippers to construct and connect to SP's Channelview Spur, at their expense, a build-in/build-out line. BN/Santa Fe or the shippers shall have the right to purchase for net liquidation value all or any part of the Channelview Spur that UP/SP may abandon;
- SP's line between Mallard Junction and Harbor, LA;
- SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97);
- UP's Main Line No. 1 from UP MP 14.29 to MP 14.11 including crossover to SP's main line and UP's MP 10.38 to MP 10.2; and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, LA intermodal facility (approximately UP MP 9.2).

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement,

and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles, Rose Bluff and West Lake, LA, and traffic of shippers open to SP and KCS at West Lake Charles. BNSF shall also have the right to interchange with: the Acadiana Railway Company at Crowley, LA; and the Louisiana & Delta Railroad, Inc. at Lafayette, Raceland and Schreiver, LA. BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction, LA.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 5(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish

for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

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

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

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

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

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

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

- UP's line between Fair Oaks and Bald Knob, AR.

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

(c) BNSF shall have the right to transport unit coal trains (i) over the Trackage Rights Lines to and from a point of build-in/build-out to and from Entergy Services, Inc.'s plant at White Bluff, AR if and when such a build-in/build-out line is constructed by an entity other than UP/SP to connect such plant with an SP line, and (ii) to and from Entergy Services, Inc.'s plant at White Bluff (1) by entering and exiting the Trackage Rights Lines at Jonesboro and Hoxie, AR, respectively, and/or (2) by utilization of BNSF's line via Memphis, TN.

(d) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. In addition to the other restrictions and limitations set forth herein, as to UP's and SP's lines between Memphis and Valley Junction, IL: (1) BNSF shall not have the right to enter or exit at intermediate points north of Bald Knob and Fair Oaks, AR; and (2) BNSF traffic is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana. These two restrictions do not apply to traffic moving to or

from Shipper Facilities in the Houston-Memphis-St. Louis Corridor to which BNSF has access pursuant to this Section 6(d) or Section 8(i) below. The two restrictions also do not apply to the traffic that BNSF is permitted to handle pursuant to the remaining provisions of this Section 6(d), which remains subject to all other conditions and restrictions. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 73), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via trackage rights over either the UP line or the SP line, at its discretion, for operating convenience. BNSF shall also have the right to interchange: with the Little Rock and Western Railway at Little Rock, AR; the Little Rock Port Authority at Little Rock, AR; KCS at Shreveport, LA and Texarkana, TX/AR, for movements of traffic originated by KCS at or delivered by KCS to shippers or receivers at Lake Charles, West Lake, or West Lake Charles, LA; with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and (z) at Texarkana, TX/AR for movements of empty coal trains returning from Texas Utilities Electric Company's Martin Lake generating station; and with the Texas Northeastern Railroad at Texarkana, TX for the sole purpose of moving BNSF traffic to and from Shipper Facilities at Defense, TX.

(e) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after

initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(f) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii)

any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 6(e) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

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

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

7. St. Louis Area Coordinations

(a) UP/SP agree to cooperate with BNSF to facilitate efficient access by BNSF to other carriers at and through St. Louis via The Alton & Southern Railway Company ("A&S"). If

BNSF requests, UP/SP agree to construct or cause to be constructed for the use of both BNSF and UP/SP a faster connection between the BN and UP lines at Grand Avenue in St. Louis, MO and a third track from Grand Avenue to near Gratiot Street Tower at the sole cost and expense of BNSF. Upon completion of such construction, UP/SP shall grant to BNSF overhead trackage rights on UP's line between Grand Avenue and Gratiot Street.

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

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

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

(e) UP/SP shall provide BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO for the purpose of accessing Ameren UE's facility at Labadie. BNSF shall have the right to serve all "2-to-1" Shipper Facilities, New Shipper Facilities and Existing Transload Facilities at Labadie.

8. Additional Rights

(a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, CA for rail traffic of all kinds, carload and intermodal, for all commodities to enable BNSF to connect via SP's line with the Oakland Terminal Railroad ("OTR") and to access the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built. BNSF shall pay 50% of the cost (up to \$2,000,000 maximum) for upgrading to mainline standards and reverse signaling of SP's No. 1 track between Emeryville (MP 8) and Stege, CA (MP 13.1). Compensation for these trackage rights shall be at the rate of 3.48 mills per ton mile for business moving in the "I-5 Corridor," 3.1 mills per ton mile on all other carload and intermodal business, and 3.0 mills per ton mile for bulk business (as defined in Section 9(a) of this Agreement) escalated in accordance with the provisions of Section 12 of this Agreement. UP/SP shall assess no additional charges against BNSF for access to the JIT and the OTR.

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

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

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

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

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

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

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

(i) It is the intent of the parties that this Agreement result in the preservation of competition by two rail carriers for (a) all "2-to-1" Shipper Facilities at points listed on Exhibit A to this Agreement and (b) all other shippers who had direct competition or competition by means of siting, transload or build-in/build-out from only UP and SP pre-merger.

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

to “2-to-1” Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at the foregoing points and at other “2-to-1” Points not along a Trackage Rights Line.

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

(k) BNSF shall also have the right to interchange with any short-line railroad that constructs a new line to and establishes an interchange on a Trackage Rights Line subsequent to UP's acquisition of control of SP; PROVIDED, HOWEVER, that the short-line railroad must be a Class II or Class III railroad neither owned nor operated by BNSF or any BNSF affiliate. In addition, the new rail line must be either (i) an extension of an existing Class II or Class III carrier that does not connect with UP or (ii) a new Class II or Class III carrier. BNSF shall not be entitled to interchange traffic with a Class II or Class III carrier at such a new interchange on a Trackage Rights Line if the traffic originates or terminates at a Shipper Facility that is now served solely by UP unless the Shipper Facility qualifies as a New Shipper Facility or unless the new line qualifies as a build-in or build-out under this Agreement.

(l) In addition to the right to serve build-in/build-out lines specified in Sections 4(a), 5(a) and 6(c) of this Agreement, BNSF shall have the right to serve a new build-in/build-out line constructed to reach a facility that was, prior to September 11, 1996, solely served by either UP or SP and would be open to two railroad service upon construction of the build-in/build-out line (i) to a point on lines owned by SP on September 11, 1996, in the case of facilities solely served by UP, or (ii) to a point on lines owned by UP on September 11, 1996, in the case of facilities solely served by SP. UP shall grant BNSF Overhead Trackage Rights necessary for BNSF to reach the build-in/build-out line. The routing of such trackage rights shall seek to minimize the

operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service.

(m) Where this Agreement authorizes BNSF to utilize haulage to provide service, the fee for such haulage shall be \$.50 per car mile plus a handling charge to cover handling at the haulage junction with BNSF and to or from a connecting railroad or third party contract switcher. The handling charge shall be \$50 per loaded or empty car for intermodal and carload and \$25 per loaded or empty car for unit trains with unit train defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee. UP/SP shall bill BNSF the \$50 per car handling charge for all cars and, upon receipt of appropriate documentation from BNSF demonstrating that business assessed the \$50 per car handling fee was a unit train, adjust prior billings by \$25 per car for each car BNSF demonstrates to have been eligible for the \$25 per car handling charge for unit trains. Where UP/SP is providing reciprocal switching services to BNSF at “2-to-1” Shipper Facilities as provided for in Section 9(i) of this Agreement, the per car handling charge shall not be assessed at the point where such reciprocal switch charge is assessed. The haulage fee and handling charge set forth above as of September 25, 1995, shall be adjusted upwards or downwards in accordance with Section 12 of this Agreement.

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

(o) In the event UP determines to terminate or not renew a lease to an Existing Transload Facility to which BNSF gained access as a result of this Agreement or the conditions

imposed on the UP/SP merger and BNSF has previously entered into a contract to provide transportation services to the Existing Transload Facility, UP shall extend the lease for the remaining period of such transportation contract or for a period not to exceed 24 months, whichever period is shorter.

9. **Trackage Rights - General Provisions**

(a) The compensation for operations under this Agreement shall be set at the levels shown in the following table as subsequently indexed under the 1995 Agreement:

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

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

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

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

the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

(c) Capital expenditures on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights will be handled as follows:

- (i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed by UP/SP in support of the application shall be given presumptive weight in determining what capacity improvements are necessary to achieve these benefits.
- (ii) Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below. That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.
- (iii) For 18 months following UP's acquisition of control of SP, BNSF shall not be required to share in the cost of any capital improvements under the provision of subparagraph (ii) above.
- (iv) BNSF and UP/SP agree that a capital reserve fund of \$25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent which will not unreasonably be withheld, be drawn down to pay for capital projects on the Trackage Rights Lines that are required to

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

- (v) If both UP/SP and BNSF intend to serve New Shipper Facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1(b), 3(c), 4(b), 5(b), 6(d), and 8(i) of this Agreement, they shall share equally in any capital investment in such connections and sidings and siding extensions or other support facilities required by both UP and BNSF to provide rail service to such New Shipper Facility. If only one railroad initially provides such service, the other railroad may elect to provide service at a later date, but only after paying to the railroad initially providing such service 50% of any capital investment (including per annum interest thereon) made by the railroad initially providing rail service to the New Shipper Facility. Per annum interest shall be at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by the other railroad commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the

access to such industry or industries. Each annual adjustment shall be subject, however, to a “cap” (up or down) of two percentage points more or less than the prior year’s interest rate.

(d) Subject to the terms of the Dispatching Protocols attached hereto as Exhibit D and incorporated herein, the management and operation of the lines over which the parties have granted trackage rights to each other pursuant to this Agreement (“Joint Trackage”) shall be under the exclusive direction and control of the owning carrier, and the owning carrier shall have the otherwise unrestricted power to change the management and operations on and over Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing Joint Trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier. Trains operating in the Houston terminal shall be routed over the most efficient routes as necessary to avoid delays and congestion, even routes over trackage over which the operating carrier has no operating rights.

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

In the event the owning carrier determines to sell or remove from service a Joint Trackage line and/or any associated facilities, the owning carrier shall provide the other carrier with reasonable written notice of such determination. Any such sale to a third party shall be expressly made subject to the terms and conditions of this Agreement, and the owning carrier

shall remain responsible as to the obligations imposed on it herein in the event the third party purchaser does not fulfill those obligations.

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

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

arbitration proceeding to be completed within sixty (60) days of its institution. In the event such agreements are not completed by the date the grants of such trackage rights are to be effective, it is intended that operations under such grants shall be commenced and governed by this Agreement.

(g) All locations referenced herein shall be deemed to include all areas within the switching limits of the location designated by tariff, clarified to the extent necessary by publicly-available information, in effect as of September 25, 1995, and access to such locations shall include the right to locate and serve new auto and intermodal facilities at such locations.

(h) The tenant carrier on the Joint Trackage shall have the right to construct, or have constructed for it, for its sole use exclusively owned or leased facilities, including, without limitation, automobile and intermodal facilities, storage in transit facilities, team tracks and yards along the Joint Trackage pursuant to the following terms and conditions:

- (i) The party wishing to construct such exclusively owned facilities for its sole use shall submit its plans to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed;
- (ii) In the case of the construction of team tracks and ancillary facilities, including loading facilities and necessary track connections, the parties shall work cooperatively with each other to enable such construction;
- (iii) Such exclusively owned or leased and used facilities shall not (i) impair the other party's use of the Joint Trackage, (ii) prevent or unduly hinder the other party's access to existing or future customers or facilities served from the Joint Trackage, or (iii) impair access to other exclusively owned facilities then in existence; and

(iv) If jointly owned or leased and used property is to be used for the construction of such exclusively owned or leased and used facilities, the party so constructing such exclusively owned or leased and used facilities shall reimburse the other party for its ownership of the jointly owned property so utilized at 50% of its then current fair market value. If the tenant carrier uses property of the owning carrier for the construction of exclusively owned or leased and used facilities, the tenant carrier shall reimburse the owning carrier for its ownership of the property at 100% of its then current fair market value.

(i) Where UP/SP provides reciprocal switching services to BNSF under this Agreement, UP/SP will do so at a rate of no more than \$130 per car as of September 25, 1995, adjusted pursuant to Section 12 of this Agreement, and all such reciprocal switching services shall be provided on an impartial basis. In the event BNSF's access to a Shipper Facility pursuant to this Agreement is effected by means of a third party contractor, (i) any associated third party switch fee shall be paid by UP/SP, (ii) BNSF shall pay to UP/SP the applicable reciprocal switch fee established between the parties to this Agreement, and (iii) BNSF shall neither be entitled to become an assignee of UP/SP nor become eligible to enter into a separate agreement with the shipper so served.

(j) It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities for traffic handled by BNSF under the terms of this Agreement. These locations include Salt Lake City, Ogden, Brownsville and San Antonio, and other locations where such volume develops. Facilities or portions thereof presently utilized by UP or SP at such locations shall be acquired from UP/SP by lease or purchase at normal and

customary charges. Upon request of BNSF and subject to availability and capacity, UP/SP shall provide BNSF with terminal support services including fueling, running repairs and switching. UP/SP shall also provide intermodal terminal services at Salt Lake City, Reno, and San Antonio. UP/SP shall be reimbursed for such services at UP's normal and customary charges. Where terminal support services are not required, BNSF shall not be assessed additional charges for train movements through a terminal. BNSF shall also have equal access, along with UP/SP, to all SP Gulf Coast storage in transit facilities ("SIT") (i.e., those SP facilities at Dayton, East Baytown, and Beaumont, TX), on economic terms no less favorable than the terms of UP/SP's access, for storage in transit of traffic handled by BNSF under the terms of this Agreement, including, but not limited to, traffic to or from Shipper Facilities to which BNSF gained access under the terms of this Agreement. UP/SP agree to work with BNSF to locate additional SIT facilities on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line as necessary.

(k) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line.

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

(m) BNSF shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including

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

(n) In the event UP/SP institute directional operations over any Trackage Rights Line or on lines over which BNSF is granted Overhead Trackage Rights, (i) UP/SP shall provide BNSF with reasonable notice of the planned institution of such operations and shall adjust, as appropriate, the trackage rights granted to BNSF pursuant to this Agreement so as to avoid impairing BNSF's ability to provide competitive service on a Trackage Rights Line, and (ii) BNSF shall operate in accordance with the flow of traffic established by such directional operation; PROVIDED, HOWEVER, that any rights granted to BNSF as a result of UP/SP's institution of directional operations shall be Overhead Trackage Rights only, and PROVIDED FURTHER that BNSF shall have the right, on any Trackage Rights Line over which directional operations have been instituted (including lines on which BNSF received Overhead Trackage Rights to serve a point listed or described in Section 8(i) of this Agreement or a build-in/build-out line), to operate against the flow of traffic if it is reasonably necessary to do so for BNSF to provide competitive service to shippers on the line which are accessible to BNSF (including service to New Shipper Facilities and build-in/build-out lines) over such line including but not

limited to circumstances where UP operates against the flow of traffic with trains of the same or similar type for the same shipper(s) or for shipper(s) in the same general area.

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

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

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

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

- (i) the condition of the lines at closing shall be at least as good as their current conditions as reflected in the current timetable and slow orders (slow orders to be measured by total mileage at each level of speed restrictions).
- (ii) includes track and associated structures together with right-of-way and facilities needed for operations.
- (iii) indemnity for environmental liabilities attributable to UP/SP's prior operations.
- (iv) standard provisions for sales of this nature involving title, liens, encumbrances other than those specifically reserved or provided for by this Agreement.

- (v) assignment of associated operating agreements (road crossings, crossings for wire and pipelines, etc.). Non-operating agreements shall not be assigned.
- (vi) removal by UP/SP, from a conveyance, within 60 days of the closing of any sale, of any non-operating real property without any reduction in the agreed upon purchase price.
- (vii) the purchase will be subject to easements or other agreements involving telecommunications, fiber optics or pipeline rights or operations in effect at the time of sale.

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

(c) Prior to closing the sale of SP's Iowa Jct.-Avondale line (the "IJA Line"), representatives of UP/SP and BNSF shall conduct a joint inspection of the IJA Line to consider

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

11. **Term**

This Agreement shall be effective upon execution (which occurred on September 25, 1995) (the “Effective Date”) for a term of ninety-nine years, PROVIDED, HOWEVER, that the grants of rights under Section 1 through 8 shall be effective only upon UP’s acquisition of control of SP, and provided further that BNSF may terminate this Agreement by notice to UP/SP given before the close of business on September 26, 1995, in which case this Agreement shall have no further force or effect. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be canceled and

deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants, PROVIDED, HOWEVER, that if this Agreement becomes effective and is later terminated, any liabilities arising from the exercise of rights under Sections 1 through 8 during the period of its effectiveness shall survive such termination. For purposes of this Section 11, "Final Order" shall mean an order of the STB, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

12. Adjustment of Charges

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

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

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

Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operation of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 15 of this Agreement. It is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement (September 25, 1995).

13. **Assignability**

This Agreement and any rights granted hereunder may not be assigned in whole or in part without the prior consent of the other parties except as provided in this section. No party may permit or admit any third party to the use of all or any of the trackage to which it has obtained rights under this Agreement, nor under the guise of doing its own business, contract or make any arrangement to handle as its own trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of that party. In the event of an authorized assignment, this Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties. This Agreement may be assigned by either party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets.

14. **Government Approvals**

The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement or of any separate agreements made pursuant to Section 9(f) and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such

agreements. BNSF agrees not to oppose the primary application or any related applications in Finance Docket No. 32760 (collectively the “control case”), and not to seek any conditions in the control case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. BNSF shall remain a party in the control case, but shall not participate further in the control case other than to support this Agreement, to protect the commercial value of the rights granted to BNSF by this Agreement, and to oppose requests for conditions by other parties which adversely affect BNSF; PROVIDED, HOWEVER, that BNSF agrees to reasonably cooperate with UP/SP in providing testimony to the ICC necessary to demonstrate that this Agreement and the operations to be conducted thereunder shall provide effective competition at the locations covered by the Agreement. UP/SP agree to support this Agreement and its implementation and warrant that it has not entered into agreements with other parties granting rights to other parties granted to BNSF under this Agreement. UP/SP agree to ask the ICC to impose this Agreement as a condition to approval of the control case. During the pendency of the control case, UP and SP shall not, without BNSF’s written consent, enter into agreements with other parties which would grant rights to other parties granted to BNSF or inconsistent with those granted to BNSF under this Agreement which would substantially impair the overall economic value of rights to BNSF under this Agreement.

15. Arbitration

Except as otherwise provided by any decision of the STB or by separate agreement, unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

16. **Further Assurances**

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

17. **No Third Party Beneficiaries**

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

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

Exhibit A
LIST OF “2-TO-1” POINTS

Points Referred to in Section 1(b)

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

Points Referred to in Section 3(a)

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4(b)

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

Points Referred to in Section 5(b)

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

Points Referred to in Section 6(d)

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

EXHIBIT F

LIST OF OVERHEAD TRACKAGE RIGHTS

1. Western Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Valley Subdivision between MP 141.9 near Binney Junction, CA and Roseville, CA in the vicinity of SP's Valley Subdivision MP 106.6.

2. South Texas Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on the following lines:
 - a) SP's Port Lavaca Branch, between Placedo, TX in the vicinity of MP 14.2, and a point of build-in along said branch in the vicinity of MP 6.93 at Kamey, TX; and
 - b) UP's line between Round Rock, TX, in the vicinity of UP's Austin Subdivision Milepost 161.79, and McNeil, TX, in the vicinity of UP's Austin Subdivision Milepost 166.1.

3. Eastern Texas – Louisiana Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on UP's Beaumont Subdivision between MP 458.69 in the vicinity of Beaumont, TX and MP 377.98 (Gulf Coast Junction) in the vicinity of Houston, TX.

4. Additional Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Martinez Subdivision between approximately MP 2 in the vicinity of Oakland, CA and approximately MP 13 in the vicinity of Richmond, CA.

5. Rights to Omnibus Points

- A. UP/SP shall grant BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 2

May 21, 2024 email from UP's Michelle Zemeckis to UP's Douglas Craven
(UP-STRC-003205)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 3

October 7, 2022 email from STR's Phillip Hoskins to BNSF's Mike Martucci
(BNSF-STR000133)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 4

September 24, 2020 email from UP's Chris Sanford to UP's Melissa Meier
(UP-STRC-003670)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 5

October 9, 2020 email from UP's Melissa Meier to UP's Andrew Saunders
(UP-STRC-005654)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 6

October 2020 internal UP email chain (UP-STRC-007224)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 7

December 14, 2020 email from STR's Phillip Hoskins to BNSF's Travis Thowe
(BNSF-STR000345)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 8

Excerpts from the Transcript of October 23, 2025 Deposition of STR's
Phillip Hoskins

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 9

September 9, 2022 email from STR's Phillip Hoskins (UP-STRC-006923)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 10

Savage memorandum titled “Opportunities with Union Pacific” (SAV000689)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 11

Purchase and Sale Agreement between UP and STR executed on
September 14, 2023 (SAV000001)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 12

July 2024 UP email chain discussing use of the Warner Spur (UP-STRC-002594)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 13

Excerpts from the Transcript of January 21, 2026 Deposition of UP's
Michelle Zemeckis

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 14

Excerpts from the Transcript of January 23, 2026 Deposition of UP's
Melissa Meier

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 15

September 10, 2021 email from Michelle Zemeckis to Phillip Hoskins attaching the
service letter for the Warner Spur (UP-STRC-003855)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 16

June 22, 2023 email chain between STR and UP (UP-STRC-002700)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 17

April 21, 2023 email from STR's Phillip Hoskins to UP (SAV000354)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 18

June 27, 2023 email from UP's Rick Harris to STR's Phillip Hoskins (SAV000270)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 19

August 31, 2023 email from UP's Rick Harris to STR's Phillip Hoskins (SAV000182)

[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 50)

BNSF RAILWAY COMPANY
—PETITION FOR ENFORCEMENT—
INTERCHANGE WITH SAVAGE TOOELE RAILROAD COMPANY

EXHIBIT 20

June 2018 internal UP email from UP's Melissa Meier (UP-STRC-005034)

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing *BNSF's Opening Statement and Evidence* to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Tara Woods

Tara Woods

Counsel for BNSF Railway Company

April 13, 2026