SERVICE DATE – JULY 21, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 32760 (Sub-No. 49)

BNSF RAILWAY COMPANY—PETITION FOR CLARIFICATION—SERVICE TO COLORADO MATERIALS

Digest:[1] The Board denies a request from BNSF Railway Company (BNSF) to issue an order clarifying that it has the right to serve shipper Colorado Materials pursuant to conditions imposed by the Board as part of the Union Pacific Corporation/Southern Pacific Rail Corporation merger approval.

Decided: July 21, 2026

On February 15, 2024, BNSF Railway Company (BNSF) filed a petition (Petition) seeking clarification of certain conditions imposed by the Board as part of its approval of the merger between Union Pacific Railroad Company (UP) and Southern Pacific Rail Corporation (SP) in 1996 (UP-SP Merger). Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 44), 1 S.T.B. 233, 364 (1996). Specifically, BNSF requested that the Board issue an order clarifying that those conditions give BNSF the right to serve Colorado Materials, a shipper facility located on a UP-owned line in Uvalde County, Tex., known as the Cline Mine Industrial Lead (the Lead).

In a decision served on June 30, 2025, the Board denied BNSF's request. BNSF Ry.—Pet. for Clarification—Serv. to Colo. Materials (June 2025 Decision), FD 32760 (Sub-No. 49) (STB served June 30, 2025). However, the Board provided BNSF an opportunity to seek discovery from UP to determine if there was evidence in support of BNSF's request and, if so, to renew its request in an amended petition. Id. at 8. BNSF took discovery from UP and, on November 20, 2025, filed an amended petition (Amended Petition). For the reasons explained below, the Board will deny the Amended Petition.[2]

---

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decision, EP 696 (STB served Sept. 2, 2010).

[2] While attempting to avoid references to confidential or highly confidential information in Board decisions, the Board reserves the right to rely upon and disclose such information in decisions when necessary. See Consumers Energy Co. v. CSX Transp., Inc., NOR 42142, slip op. at 1 n.2 (STB served Jan. 11, 2018). In this case, the Board determined that it could not discuss the findings in this decision without disclosing certain information marked confidential by the parties.

BACKGROUND

History of this Proceeding. The history of the UP-SP Merger conditions and the procedural history of the current proceeding were discussed in detail in the June 2025 Decision, FD 32760 (Sub-No. 49), slip op. at 1-3. In short, as a condition of the UP-SP Merger, the Board imposed the terms of a settlement agreement entered into by UP and BNSF on September 25, 1995 and amended by supplemental agreements dated November 18, 1995, and June 27, 1996 (collectively the 1995 Agreement) that (among other things) were intended to ameliorate potential competitive harms of that merger and protect shippers that would be losing access to a second rail carrier, i.e., "2-to-1" shippers. Decision No. 44, 1 S.T.B. at 242-43, 246-47, 419. The settlement agreement did so by allowing BNSF to replicate, to a large extent, the competitive service that would be lost when SP was absorbed into UP. Id. at 368, 372-73. In 2001, UP and BNSF updated the settlement agreement to incorporate the additional conditions imposed by Decision No. 44 and the Board's subsequent interpretations thereof. The updated settlement agreement, which was entered into on March 1, 2002, is titled the Restated and Amended Settlement Agreement (RASA). The Board approved the RASA in the context of its oversight of the implementation of the UP-SP Merger. See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., 5 S.T.B. 1173, 1174, 1178 (2001). A copy of the RASA is provided as Exhibit B of BNSF's Petition. As relevant here, the RASA allows BNSF to access "New Shipper Facilities"[3] located after the UP-SP Merger: (1) at "2-to-1 Points," and (2) on "Trackage Rights Lines." (Pet. 7; id., Ex. B, RASA at §§ 1(b), 3(c), 4(b), 5(b), 6(d), 8(i).)

In the Petition, BNSF argued that it is entitled to serve Colorado Materials because it is a "New Shipper Facility" located at a 2-to-1 Point. (Pet. 9.) BNSF claimed that the Lead[4] was owned by SP and that, prior to the UP-SP Merger, UP's affiliate, Missouri Pacific Railroad Company (MP),[5] had a trackage rights agreement with SP (SP-MP Agreement) that permitted MP to also provide service on the Lead.[6] (Id. at 9.) According to BNSF, because both MP and

[3] The RASA defines "New Shipper Facilities" in relevant part as "newly constructed rail-served Shipper Facilities." (BNSF Pet., Ex. B, RASA 3.) UP does not dispute that the Colorado Materials facility is a New Shipper Facility under the RASA.

[4] The Lead runs north-south from its northern point at Cline, Tex. (at a connection with an east-west line that was owned by SP) to and including its southern point in Blewett, Tex. (BNSF Am. Pet. 4.) Colorado Materials is located approximately three miles north of Blewett. (UP Reply 5, Dec. 22, 2025.)

[5] Because MP was UP's affiliate at the time of the UP-SP Merger, service by MP is attributed to UP for purposes of determining whether a facility is a 2-to-1 shipper facility under the RASA.

[6] MP had been serving shippers in the vicinity of Blewett via its Crystal City Subdivision, which accessed Blewett from the southeast and which had suffered extensive flood damage. (BNSF Am. Pet. 5.) After entering an agreement with SP that allowed MP to operate over SP's line (including the Lead), MP abandoned its Crystal City Subdivision while continuing to serve the Blewett area. (Id.) A copy of the SP-MP Agreement is provided at Exhibit C of the Petition.

SP could have served shippers on the Lead prior to the UP-SP Merger, all points on the Lead constituted 2-to-1 Points under the RASA, regardless of whether there were actually any shippers in existence at the location at the time of the UP-SP Merger. (Id. at 9 n.3.)

The Board, however, concluded that BNSF's position was inconsistent with the language of the RASA, which limits the definition of 2-to-1 Points to locations with an existing shipper facility at the time of the UP-SP Merger that was open to both UP and SP and no other railroad (i.e., a location with a "2-to-1 Shipper Facility").[7] June 2025 Decision, FD 32760 (Sub-No. 49), slip op. at 5. Accordingly, the Board concluded that BNSF had failed to demonstrate that Colorado Materials is located at a 2-to-1 Point because it provided no evidence that there was an existing shipper facility on the Lead or in the vicinity of Blewett[8] open to both UP and SP at the time of the UP-SP Merger. Id. at 5-6.

However, the Board noted that there was some evidence in the record indicating that a dual-served shipper may have existed somewhere along the Lead at the time of the merger. Id. at 7-8. Because UP was the party most likely to possess such information, the Board allowed BNSF to take discovery from UP regarding any matter relevant to the existence of any facility located on the Lead or in the vicinity of Blewett at the time of the UP-SP Merger. Id. at 6-7. The decision provided that, after discovery was completed, BNSF could file an amended petition for enforcement including any additional relevant information and argument. Id. at 8. If such a petition were filed, UP would be permitted to reply. Id.

BNSF's Amended Petition and UP's Reply. In its Amended Petition, BNSF claims that discovery produced evidence of two facilities in the vicinity of Blewett that were open to both UP and SP prior to the UP-SP Merger: Gato Quarry and Vulcan Materials.[9] (BNSF Am. Pet. 8.)

[7] The RASA defines "2-to-1 Shipper Facilities" in pertinent part as "Shipper Facilities that were open to both UP and SP . . . and no other railroad when the 1995 Agreement was executed." (BNSF Pet., Ex. B, RASA 3.) The June 2025 Decision and this decision use the phrase "at the time of the UP-SP Merger" to mean "when the 1995 Agreement was executed."

[8] As the Board explained in the June 2025 Decision, the definition of a "2-to-1 Point" is not limited geographically to the boundaries of a particular facility that existed at the time of the UP-SP Merger. June 2025 Decision, FD 32760 (Sub-No. 49), slip op. at 6 n.10. Rather, under the RASA, a 2-to-1 Point includes "all geographic locations at which at least one '2-to-l' Shipper Facility is located" and "the boundaries for such '2-to-l' Points shall be deemed to include all areas within the switching limits of the locations." (BNSF Pet., Ex. B, RASA 2-3.) Thus, Colorado Materials would be located at a 2-to-1 Point if it were within the switching limits of a 2-to-1 Shipper Facility. The Board need not determine whether Colorado Materials is within the switching limits of a 2-to-1 Shipper Facility because, as explained below, the Board finds that the facilities on which BNSF bases its claim do not constitute 2-to-1 Shipper Facilities.

[9] The facility BNSF refers to as Gato Quarry is located approximately two miles south of Blewett and the facility BNSF refers to as Vulcan Materials is located near Dabney, Tex., approximately five miles southwest of Blewett. (BNSF Am. Pet. 13.) Because the names of these facilities changed over the years, and because the parties dispute which names applied to which facilities, this decision will, at times, refer to the facility BNSF calls Gato Quarry as the

With respect to Gato Quarry, BNSF states that "UP admitted, in its April 25, 2013 letter from [its] Senior Director [of] Interline Marketing, to BNSF, that the 'Uvalde Rock Asphalt Gato quarry was jointly served by both SP and MP prior to the UP/SP Merger.'" (Id. at 9.) BNSF argues that the Board should treat this statement as an irrebuttable and binding admission that Blewett constitutes a 2-to-1 Point under the RASA. (Id. at 13.) With respect to Vulcan Materials, BNSF claims that internal UP emails confirm that the facility was open to UP and SP prior to the UP-SP Merger. (Id. at 10.) In addition, BNSF argues that pre-merger correspondence between SP, MP, and various shippers in the area indicates that both MP and SP could serve customers in the vicinity of Blewett. (Id. at 11.) BNSF further claims that a September 7, 2012 report prepared by DFDX GmbH Transportation Consultants for BNSF confirms that the Gato Quarry and the Vulcan Materials facility were served by both UP and SP before the merger. (Id. at 10-11.)

UP's reply to the Amended Petition argues that neither the Blewett Facility nor the Dabney Facility were existing facilities open to both UP and SP at the time of the UP-SP Merger. (UP Reply 3, 7, 10, Dec. 22, 2025.) With respect to the Blewett Facility, UP states that the evidence shows that it ceased operating by 1989, approximately six years before the UP-SP Merger. (Id. at 7.) In particular, UP claims that documents from SP's records dating from 1988 and 1989 state that access to the facility had been physically blocked. (Id. at 8.) In addition, UP argues that the statement by its Senior Director of Interline Marketing that Gato Quarry was served by both UP and SP "prior to the UP/SP merger" is irrelevant because it does not address whether that facility was served by both carriers *at the time* of the UP-SP Merger, and its record show that this facility was in fact closed to rail service by 1989. (Id. at 11.)

With respect to the facility BNSF calls Vulcan Materials (i.e., the Dabney Facility), UP argues that the consultant's report relied on by BNSF actually confirms that it was not open to both UP and SP. (Id. at 9-10.) Specifically, UP claims that the statement that BNSF relies on was referring only to the Blewett Facility, and that the report goes on to state that the Dabney Facility was served only by MP. (Id.) As for the internal UP email containing statements indicating that the Dabney Facility may have been open to both UP and SP prior to the UP-SP Merger, UP argues that BNSF fails to mention or include follow-up emails explaining that those statements were incorrect. (Id. at 10.) In addition, UP states MP owned the tracks between Blewett and Dabney, and that a provision in an agreement between the then-owner of the Dabney Facility and MP allowed the owner to use MP track to sell SP material used to maintain SP's track. (Id. at 9.) UP argues that such a provision would have been unnecessary if SP had had access to the Dabney Facility. (Id.)

PRELIMINARY MATTERS

Section 15 of the RASA states that, "[e]xcept 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 . . . which shall be the exclusive remedy of the parties." (BNSF

"Blewett Facility" and refer to the facility BNSF calls Vulcan Materials as the "Dabney Facility" to avoid confusion.

Pet., Ex. B, RASA § 15.) According to UP, because the June 2025 Decision stated that, following discovery, the parties retained the ability to submit this matter to arbitration under Section 15 of the RASA, such arbitration is the exclusive remedy available to the parties and the Board should dismiss this proceeding. (UP Reply 1, Dec. 22, 2025.)

However, the June 2025 Decision also found that "this proceeding is properly before the Board" and invited BNSF to file an amended petition following discovery and UP to file a reply. June 2025 Decision, FD 32760 (Sub-No. 49), slip op. at 4. In doing so, the Board established an additional avenue for relief—the filing of an amended petition with the Board—apart from arbitration, just as Section 15 of the RASA contemplated it might. Accordingly, UP's request to dismiss this proceeding is denied.

DISCUSSION AND CONCLUSIONS

BNSF argues that the Blewett Facility and Dabney Facility were 2-to-1 Shipper Facilities under the RASA because they were open to both UP and SP prior to the UP-SP Merger. (BNSF Am. Pet. 8.) BNSF claims that Colorado Materials should therefore be considered a 2-to-1 Point because it is located in the same switching limits where the Blewett Facility and Dabney Facility were located (i.e., the switching limits of Blewett). (Id. at 8-12.) However, as explained in the June 2025 Decision, for Colorado Materials to qualify as a 2-to-1 Point under the RASA, it must be located within the same switching limits as a facility that was open to both UP and SP *at the time* of the UP-SP Merger. June 2025 Decision, FD 32760 (Sub-No. 49), slip op. at 5. As explained further below, the record evidence demonstrates that neither the Blewett Facility nor the Dabney Facility was open to both UP and SP at the time of the UP-SP Merger.

Gato Quarry. UP acknowledges that Gato Quarry (i.e., the Blewett Facility) may have been open to both UP and SP at some point *prior* to the UP-SP Merger but disputes that it was open to both *at the time* of the UP-SP Merger. (UP Reply 3, 7-8, Dec. 22, 2025.) The evidence on the record supports a conclusion that the Blewett Facility ceased operating several years before the UP-SP Merger. As UP explains, certain SP documents dating from 1988 and 1989 state that the track owned by the Blewett Facility and previously used to serve the facility had been physically blocked and that the access road leading to the facility had been fenced off.[10] (Id., Ex. F at UP-COMAT-002480 (stating that a bumper had been installed on the lead to the former Uvalde Rock Asphalt Company plant and that the access road to that plant had been closed with fencing); id., Ex. F at UP-COMAT-002471 (stating that SP officials had gone to the facility several times but that the gate was locked and the tracks clearly were not being used).) Other documents contain handwritten notes referring to the industry track agreement between MP and the former Uvalde Rock Asphalt Company that say "Trk. Gone." (Id., Ex. F at UP-COMAT-002493-94, -002497; BNSF Am. Pet., Ex. 7.) In addition, a map attached to a 1988 memo shows that the track to the Blewett Facility had been physically blocked and states "plant closed-not active" and "bumper installed on trk." (UP Reply, Ex. F at UP-COMAT-002482, Dec. 22, 2025.) Although the RASA does not require a facility to have been actively served by both UP and SP at the time of the merger to qualify as a 2-to-1 Shipper Facility, it had to be

[10] These documents refer to the former Uvalde Rock Asphalt Facility, which, as explained below, is most likely the Blewett Facility.

"open" to both railroads at that time. (BNSF Pet., Ex. B, RASA 3.) The evidence summarized above indicates that, starting in the late 1980s, the track used to access the Blewett Facility was physically blocked, at least some portion of the track was gone, and the facility had ceased operations. Under these circumstances, the Board concludes the Blewett Facility was not open to rail service at the time of the UP-SP merger. There is no record evidence indicating that the Blewett Facility ever reopened to rail service before the UP-SP Merger proceeding began in 1995. Accordingly, the Board finds that Blewett Facility is not a 2-to-1 Shipper Facility under the RASA.

As noted above, BNSF argues that the admission of UP's Senior Director of Interline Marketing that the "Uvalde Rock Asphalt Gato quarry was jointly served by both SP and MP prior to the UP/SP Merger'" should be treated as an irrebuttable and binding admission that Blewett constitutes a 2-to-1 Point under the RASA, and asserts that its request is supported by the doctrine of equitable estoppel. (BNSF Am. Pet. 13.) However, that statement merely indicates that Gato Quarry was dual-served at some point "prior to" the UP-SP Merger, not that it was dual-served *at the time* of the merger. The statement is not inconsistent with UP's contention that Gato Quarry was closed to rail service at the time the UP-SP Merger occurred. There is thus no basis to consider the statement as an admission of the existence of a 2-to-1 Point at the time of the merger and BNSF's equitable estoppel argument is therefore inapposite.

Vulcan Materials. BNSF points to several pieces of evidence as support for its assertion that Vulcan Materials (i.e., the Dabney Facility) was dual-served at the time of the UP-SP Merger. The first is an internal UP email from 2012 generated in response to BNSF's request for access to Colorado Materials in which a UP employee states that SP served the Dabney Facility prior to the UP-SP Merger. (BNSF Am. Pet. 10; id., Ex. 5 at UP-COMAT-001767.) However, BNSF ignores subsequent emails that claim the Dabney Facility was not open to SP. The first was from another employee explaining that a map he located shows that SP did not operate over MP's line to Dabney. (UP Reply, Ex. J, UP-COMAT-001706, Dec. 22, 2025.) In another, the employee who originally claimed that the Dabney Facility was served by SP states that two other individuals that had been involved with Vulcan Materials had informed him that SP never had access to the Dabney Facility. (Id., Ex. J at UP-COMAT-001705.)

BNSF next points to a statement in the 2012 consultant's report that the "mines operated by Uvalde Rock Asphalt Company were served by both [SP] and [MP]." (BNSF Am. Pet. 11 (citing id., Ex. 6 at BNSF-COMAT-000326).) BNSF and UP dispute whether this statement refers to just the Gato Quarry (Blewett Facility), or to both Gato Quarry and Vulcan Materials, (i.e., the Dabney Facility). Both parties agree that the facility BNSF refers to as Vulcan Materials is located near Dabney on what was MP's line and that this facility was formerly known as White's Mine. (See BNSF Am. Pet. 9, 10; UP Reply 4 n.11, Dec. 22, 2025.) BNSF claims that Vulcan Materials was "formerly the Uvalde Rock Asphalt Company" (BNSF Am. Pet. 9; see also id. at 11 (stating that "White's Mine's predecessor" was "the Uvalde Rock Asphalt Company").) UP, on the other hand, claims that the facility BNSF refers to as Gato Quarry (i.e., the Blewett Facility) was the only one of the two facilities formerly known as the

"Uvalde Rock Asphalt Company."[11] (UP Reply 4 n.12, Dec. 22, 2025.) The evidence in the record supports a finding that UP is correct and that the Dabney Facility was referred to as "White's Mines" while only the Blewett Facility was referred to as "Uvalde Rock Asphalt Company." Thus, the statement from the consultant's report quoted by BNSF indicates only that Gato Quarry—not Vulcan Materials, i.e., the Dabney Facility—was dual served at some point before the UP/SP merger.[12] There are several facts that support this finding.

- First, the full sentence from the consultant's report (that BNSF only partially quotes), summarizing a conversation the consultant had with "John H. White, Jr., former owner of White's Mines," reads: "Mr. White stated that the mines operated by Uvalde Rock Asphalt Company were served by both [SP] and [MP], but that White's Mines were served solely by [MP]." (BNSF Am. Pet., Ex. 6 at BNSF-COMAT-0000325 to –0000326.) The sentence taken in its entirety indicates that Uvalde Rock Asphalt Company was not the same facility as White's Mines and that White's Mines was served only by MP.

- Second, an internal SP memorandum from 1965 (1965 Memo) discusses the service being provided by MP to "White's Mines at Dabney." (BNSF Am. Pet., Ex. 7 at UP-COMAT-002549.) The 1965 Memo indicates that SP was not able to serve Dabney but that it provided service to "Uvalde Rock Asphalt property." Specifically, the 1965 Memo focuses on a discussion that SP had with the owner of "White's Mines at Dabney." It explains that White's Mines was being served by MP but was not satisfied with the number of cars MP was providing. (Id.) The memo goes on to discuss options for White's Mines to obtain cars from SP, including the possibility of SP or White's Mines building new infrastructure to create a connection. (Id.) In addition, the memo suggests that SP could provide White's Mines with additional cars via MP by connecting with MP at Blewett, noting that SP was already regularly operating from Cline to the Uvalde Rock Asphalt facility. (Id.) Thus, the 1965 Memo demonstrates that Uvalde Rock Asphalt Company was not the facility referred to as White's Mines at Dabney and that White's Mines was served only by MP.

- Third, as noted above, an April 24, 1987 agreement between the then-owner of the Dabney Facility (R.L. White) and MP allowed R.L. White to use MP's line to ship material from the Dabney Facility to SP for use in maintenance of its track.[13] (UP Reply,

[11] The confusion seems to stem from the fact that R.L. White, doing business as "White's Mines," which owned the Dabney Facility, also purchased the Blewett Facility in approximately 1984 (i.e., White's Mines became the owner of both of what BNSF calls Gato Quarry and Vulcan Materials) and Vulcan Materials subsequently purchased both facilities. (UP Reply 4 n.11, 12.)

[12] As noted, the Board has concluded that Gato Quarry was closed to rail service at the time of the UP-SP Merger and therefore was not a 2-to-1 Shipper Facility.

[13] R.L. White transferred its interests in that agreement to Vulcan Materials at the same time that the Dabney Facility was sold to Vulcan Materials. (UP Reply, Ex. E at UP-COMAT-002281 to -002282, Dec. 22, 2025.)

Ex. E at UP-COMAT-002262.) If SP had access to the Dabney Facility, such an agreement likely would not have been necessary.

- Finally, on one of the maps provided by UP (dated December 12, 1984), a rail line going toward Dabney is labeled as "Mo Pac RR" and going "to White's Mines Main Plant." (UP Reply, Ex. F at UP-COMAT-002482, Dec. 22, 2025.) The same map shows another track heading south and running parallel to what is labeled as the "access road to former Uvalde Rock Asphalt Plant."[14] Again, this demonstrates that the facility at Dabney was known as White's Mines and was not the Uvalde Rock Asphalt Company, which was located south of Blewett.

BNSF points to other pre-merger documents that it claims demonstrate that "both MP and SP could serve customers in the vicinity of Blewett." (BNSF Am. Pet. 11. (citing id., Ex. 7).) One of these documents is the 1965 Memo, which, as discussed above, indicates that SP could not serve Dabney. The other documents are correspondence and internal SP memoranda discussing the acquisition of the former Uvalde Rock Asphalt Company by R.L. White (doing business as White's Mines or White's Mines, Inc.).[15] These documents discuss a proposed industry track agreement between "White's Mines, Inc." and SP to replace the industry track agreement SP had with Uvalde Rock Asphalt Company. (Id.) However, these documents merely indicate that R.L. White acquired the former Uvalde Rock Asphalt Company. They do not establish that the Uvalde Rock Asphalt Company was located at Dabney or that it became known as White's Mines. In fact, a map attached to the proposed industry track agreement cited by BNSF indicates that the facility referred to as "Uvalde Rock Asphalt Company" was not the Dabney Facility but the Blewett Facility.[16] (See UP Reply, Ex. F at UP-COMAT-002592 & -002597, Dec. 22, 2025 (map showing line extending south (i.e., towards the Blewett Facility) as going to the facility that "was owned by Azrock" (the company that purchased the Uvalde Rock Asphalt Company) and another line extending towards Dabney as going to Vulcan Materials).)

---

[14] The words "White's Mines Inc." appear beside the track going to Gato Quarry on the map. (UP Reply, Ex. F at UP-COMAT-002482.) However, that label is likely indicating that it was private track owned by White Mines, Inc. (as noted above, White's Mines, Inc. (i.e., R.L. White) purchased the former Uvalde Rock Asphalt Company in 1987). This conclusion is supported by the fact that, on the same map, the line toward Dabney has "Mo Pac RR" written beside it to indicate the line was owned by MP. (Id.) These same labels appear on another pre-merger map that shows the line extending toward Dabney as going to "Vulcan Materials" and the line going south as extending to a facility that "was owned by Azrock" (i.e., the company that purchased Uvalde Rock Asphalt Company) and now owned by the "White family." (Id., Ex. F at UP-COMAT-002592.)

[15] In some documents the company is referred to as "White's Mines" and in others as "White's Mines, Inc." (Compare UP Reply, Ex. E at UP-COMAT-002258, with id., Ex. F at UP-COMAT-002502.)

[16] BNSF does not include a copy of this map. However, the agreement states that the relevant map is SP's "Drawing No. 84-6192" and UP includes this drawing in its reply. (UP Reply, Ex. F at UP-COMAT-002597, Dec. 22, 2025.)

In summary, the evidence relied on by BNSF does not support its claim that Vulcan Materials (i.e., the Dabney Facility) was dual-served prior to the UP-SP merger. The internal UP email suggesting that SP served the Dabney Facility is contradicted and effectively shown to be incorrect by subsequent emails. Similarly, once it is understood that White's Mines was not formerly the Uvalde Rock Asphalt Company, the consultant's report is best read as indicating that, according to the former owner of White's Mines, the Dabney Facility was served only by MP. Finally, the other pre-merger documents relied on by BNSF either do not address the Dabney Facility (the documents discussing an agreement for SP to serve the former Uvalde Rock Asphalt Company after White's Mines acquired it), or clearly indicate that SP did not serve the Dabney Facility (the 1965 Memo).

As a final point, BNSF argues that "UP must shoulder the burden of proof regarding the historic status of shipper facilities" because "[a]bsent that burden, UP would be incentivized to let these records disappear, as apparently happened in this case." (BNSF Am. Pet. 13 n.9.) However, BNSF fails to explain what records they believe UP let disappear. As UP notes, it "produced over 4,000 pages of records in discovery, dating as far back as 1947, including records from [SP] and [MP]." (UP Reply 13, Dec. 22, 2025.) Indeed, as shown by the parties' filings, UP produced extensive documentation relating to service to the Dabney Facility and Blewett Facility.

For the reasons explained above, the Board finds that the evidence shows that the two facilities on which BNSF bases its claims were not 2-1 Shipper Facilities because they were not open to both UP and SP at the time of the UP-SP Merger and thus Colorado Materials is not located at a 2-1 Point. Accordingly, BNSF's Amended Petition will be denied.

It is ordered:

1. UP's request to dismiss this proceeding is denied.

2. BNSF's Amended Petition seeking a Board order holding that the conditions imposed in the UP-SP Merger proceeding grant BNSF the right to serve Colorado Materials is denied.

3. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.