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April 25, 2019
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April 25, 2019

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Docket No. AB-1270, *Port of Benton County, WA – Adverse Discontinuance of Rail Service – Tri-City Railroad Company, LLC*

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is a verified statement of Christopher Randall, Shortline Market Development Director for BNSF Railway Company ("BNSF"). On April 15, 2019, Tri-City Railroad Company, LLC ("TCRY") filed a Reply in Opposition to Application for Adverse Discontinuance containing certain false and misleading allegations regarding BNSF. BNSF did not have an opportunity to respond to TCRY's claims prior to the April 15, 2019, deadline for comments in this proceeding. Therefore, BNSF respectfully requests the Board's leave to late-file the enclosed comments in the interest of having a more complete and accurate record.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter W. Denton", with a long horizontal flourish extending to the right.

Peter W. Denton
Attorney for BNSF Railway Company

Enclosure

cc: All Parties of Record

**VERIFIED STATEMENT OF
CHRISTOPHER RANDALL**

My name is Christopher Randall, and my business address is 2500 Lou Menk Drive, Fort Worth, Texas 76131. I am a Shortline Market Development Director for BNSF Railway Company (“BNSF”). I have 29 years of experience in railroad management with BNSF, and I am familiar with BNSF’s operations in Benton County, WA. My responsibilities include negotiating agreements with shortline operators and I am familiar with the interactions between BNSF and Tri-City Railroad Company, LLC (“TCRY”). I have been directly involved in all the issues associated with BNSF service on the rail line (the “Port Line”) that is the subject of adverse discontinuance application filed in this proceeding by the Port of Benton, Washington (the “Port”), including the litigation with TCRY and the relationship between BNSF and the Port.

I am making this statement to respond to certain false and misleading allegations made in TCRY’s Reply in Opposition to Application for Adverse Discontinuance filed in Docket No. AB-1270 on April 15, 2019 (the “TCRY Reply”). BNSF must correct the record with respect to TCRY’s central argument that BNSF “represented to a Federal Court that it would pay its fair share of maintenance costs, but it has not spent a dime on maintenance in the many years since.” TCRY Reply at 10. In the Verified Statement of Randolph V. Peterson (“Peterson VS”), attached to the TCRY Reply, Mr. Peterson alleges that BNSF “pledge[d] to the Judge at the hearing to pay maintenance costs associated with its use of the track.” Peterson VS at 14. Mr. Peterson further claims that “BNSF has refused to pay invoices submitted to it for its share of maintenance costs per the formula pledged by the BNSF at the TRO hearing.” *Id.* at 15.

BNSF’s position with respect to its responsibility to pay for maintenance costs on the Port Line has never changed. The maintenance responsibilities regarding the Port Line currently rest entirely with TCRY under TCRY’s lease with the Port. BNSF has no current

contractual obligation (with the Port or TCRY) to make maintenance payments in connection with BNSF's operations on the Port Line.

I have attached here as Exhibit A the agreement between the U.S. Atomic Energy Commission ("AEC," the Port's predecessor), Northern Pacific Railway Company ("Pacific Company," BNSF's predecessor), Union Pacific Railroad Company ("Union Company" or "UP") dated November 6, 1947, as amended in 1948 (the "AEC Agreement"). Through the AEC Agreement, which still governs BNSF's and UP's operations on the Port Line,¹ AEC granted Pacific Company and Union Company operating rights over the Port Line in exchange for the railroads reimbursing AEC for the cost of constructing the line through 25 annual payments. *See* Exhibit A at 12, Article X. The AEC Agreement provides that:

The payments to be made by the Pacific Company and Union Company . . . shall be in lieu of all other charges for use by them or either of them during the term of this agreement of [the Port Line]. After all said annual payments . . . have been made, the Pacific Company and Union Company shall continue to have the right to operate over the trackage without further payments.

Id. Under the AEC Agreement, AEC (now the Port of Benton) has the responsibility to keep the Port Line "in good condition and repair and suitable for the business of [BNSF and UP]." Exhibit A at 4, Article VIII. The Port's lease with TCRY makes TCRY responsible for maintaining the Port Line.

Despite these existing contractual arrangements, BNSF is willing to make maintenance payments if the line's owner, the Port, requests that BNSF enter into a contract with the Port to make such payments. This position is entirely consistent with BNSF's representations ten years ago in the federal district court case cited by TCRY and Mr. Peterson.

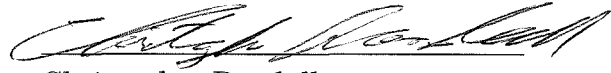
¹ In addition to the 1947 AEC Agreement, current operations by BNSF and UP on the Port Line are also governed by a 1961 agreement and a 1979 agreement between AEC and the railroads. *See, e.g., BNSF Ry. Co. v. Tri-City & Olympia R.R. Co. LLC*, No. CV-09-5062-EFS, 2012 WL 12951546, *1-2 (E.D. Wash. Feb. 14, 2012). Those later agreements did not alter the maintenance responsibilities set forth in the 1947 AEC Agreement.

Indeed, contrary to TCRY's false allegations, BNSF has in fact paid for maintenance costs related to the Port Line when requested by the Port. In 2014, the Port asked BNSF to pay \$50,000 for the Berry Bridge Ballast Project. BNSF and the Port entered into an agreement for the project, and BNSF paid the Port that amount in 2015. BNSF has received no other requests for payment from the Port. BNSF has not paid certain "invoices" submitted by TCRY and referenced by Mr. Peterson, *see* Peterson VS at 15, because BNSF has no contractual obligation to pay TCRY for maintenance costs.

VERIFICATION

I, Christopher Randall, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 25, 2019.

A handwritten signature in black ink, appearing to read "Christopher Randall", written over a horizontal line.

Christopher Randall

Exhibit A to Randall VS

AEC Agreement

ATOMIC ENERGY COMMISSION

CONTRACT FOR RAILROAD SERVICE

THIS CONTRACT, entered into this 6th day of November, 1947, by and between the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting by and through the UNITED STATES ATOMIC ENERGY COMMISSION, created by Public Law 535, 79th Congress, approved August 1st 1946, (hereinafter called the "Commission"), NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, (hereinafter called "Pacific Company"), and OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its Lessees, UNION PACIFIC RAILROAD COMPANY, a Utah corporation, (hereinafter collectively called the "Union Company"). Said railroad companies are also hereinafter collectively referred to as "Railroads".

WITNESSETH THAT:

WHEREAS, for the purposes hereinafter stated, there has been prepared a map marked Exhibit "A" dated August 25, 1947, attached hereto and made a part hereof, on which are shown in various colors certain existing and proposed lines of railway in Benton County, Washington, extending in a general northwesterly direction from Kennewick, Washington; and

WHEREAS, the Government has constructed on its property a line of railway, a portion of which is shown in green on said exhibit, extending from Hanford, Washington, southerly to a point near the north bank of the Yakima River; and

WHEREAS, the Government desires to have a direct rail connection to the south so as to interchange business with the Pacific Company and with the Union Company at an interchange facility to be constructed near the vicinity of point E on said exhibit, and in order to accomplish this purpose it is proposed:

(1) That the Commission construct the proposed line of railway shown in yellow on said exhibit between approximately point B on the north right of way line of the Union Company and point D, and also construct said interchange facilities.

The Commission proposes to authorize its prime contractor, the General Electric Company, a New York corporation (hereinafter called the "Electric Company"), to construct and maintain said line and facilities under the terms of contract numbered W-31-109-eng-52, dated May 15, 1946, between the Government and said Electric Company (hereinafter called "Prime Contract");

(2) That the Pacific Company obtain the right to operate with its employees and equipment over the existing track of the Union Company shown in red on said exhibit between point A, which is the point of connection with the line of railway of the Pacific Company, and point B, which is the point of connection with the Government trackage;

(3) That the Pacific Company and Union Company be granted the right to operate with their respective employees and equipment over said track shown on said exhibit between points B and E and to and in said interchange facilities;

NOW, THEREFORE, the parties do mutually agree as follows:

ARTICLE I.

The Commission shall procure or provide all necessary rights of way and public authority for the construction, maintenance and operation of said interchange facilities and said line of railway and appurtenances (including bridge across the Yakima River) between points B and E.

ARTICLE II.

The Commission shall forthwith locate, lay down and construct said line of railway (including said bridge) in approximately the location shown in yellow on said exhibit between points B and D. The Commission shall also forthwith construct or provide said interchange facilities and a wye in the vicinity of point E. Said line of railway, bridge, interchange facilities and wye shall be constructed in a manner suitable for the operations of the Pacific Company and the Union Company with their respective equipment.

ARTICLE III.

The Commission shall pay for all cost of right of way for and construction of said line of railway B-D, including said bridge, and for the cost of said interchange facilities and wye.

ARTICLE IV.

The Pacific Company and Union Company agree, upon the completion of the line B-D and the interchange facilities and wye, each to pay one-half of the sum of \$100,000, which sum fairly represents the cost to which the Railroads would be subjected if they constructed interchange trackage at point B. Unless otherwise directed by the Commission, said sums shall be paid to the Electric Company as prime contractor of the Commission, or to such other contractor as the Commission may designate, for application in reduction of cost of work under the terms of said prime contract or other contract. The Commission shall own said interchange facilities and wye but the Pacific Company and the Union Company shall be entitled during the term of this agreement to use the same and the connecting trackage C-E for the purpose of interchanging business with the Government free of rental or any other charge.

ARTICLE V.

The Commission hereby grants the Pacific Company and Union Company the equal joint right to operate with their respective employees and equipment over said line of railway shown on said exhibit between points B and E, and to use said interchange facilities and wye for the purpose of interchanging business with the Government. The Commission agrees that the Pacific Company and the Union Company shall each have equal rights and privileges in the transaction of their business and any right or privilege at any time granted by the Commission to one of said companies in respect to its operations shall be a right or privilege which the other company may at its option exercise in respect to its operations.

ARTICLE VI.

The Union Company agrees, by contract of even date herewith, in form and substance mutually satisfactory to the Union Company and the Pacific Company to grant to the Pacific Company the equal joint use and possession in common with the Union Company of said line of railway shown in red on said exhibit between points A and B. Such use by the Pacific Company shall be restricted to movements of its business in each direction between Kennowick and the connection with the Government trackage at point B.

ARTICLE VII.

The Pacific Company and Union Company each for itself agrees to deliver and receive at said interchange facilities all business which either is obligated to transport as a common carrier by railroad.

The Union Company and Pacific Company may from time to time by mutual agreement between them arrange for one of them to operate a joint train between points A and E in which will be moved the business of both railroads. The railroad operating such joint train shall be considered as the agent of the other company in such operation.

ARTICLE VIII.

The Commission will have the general control, management and administration of said railway between points B and E, said interchange facilities and wye, and will at all times keep the same in good condition and repair and suitable for the business of the Pacific Company and Union Company, provided if damage results to said Government trackage by reason of the negligent act or omission of the Railroads, or either of them, the one at fault will reimburse the Commission for such damage. The Railroads shall not by reason of any defect in the trackage or by reason of the failure or neglect to repair such defect, make against the Government, its employees, agents, or contractors any claim or demand for loss, damage or injury arising from such defect, neglect or failure, but should the Commission fail to repair any defect within a reasonable time after being notified so to do by the Railroads or either of them, then such Railroads or either of them may make the necessary repairs at once, the cost of which will be paid by the Commission.

ARTICLE IX

Subject to the approval of the Commission, the Pacific Company and the Union Company shall agree from time to time upon rules and regulations covering the movement of engines, cars and trains over the line B-E, and on said interchange facilities and wye. All rules, regulations and train schedules shall be equal, just and fair as between the Pacific Company and the Union Company and shall not unjustly discriminate against either.

ARTICLE X.

The Pacific Company and Union Company, each for itself, agrees to make the following payments as rental for the right to use the trackage B-C until such time as the total of such payments made by both equals the initial actual cost to the Commission of constructing said line of railway between points B-C:

(1) The Pacific Company shall pay the sum of \$4.00 for each loaded car moved in either direction over said line B-C, provided such car has received or will receive a line haul over the lines of railway of the Pacific Company. Movements from or to Pasco shall not be deemed line haul movements, provided, however, that line haul movements to and from points beyond Pasco shall not lose character as such by reason of stoppage in transit at Pasco.

(2) The Union Company shall pay the sum of \$4.00 for each loaded car moved in either direction over said line B-C, provided such car has received or will receive a line haul over the lines of railway of the Union Company. Movements from or to Kennewick shall not be deemed line haul movements, provided, however, that line haul movements to and from points beyond Kennewick shall not lose character as such by reason of stoppage in transit at Kennewick.

Unless otherwise directed by the Commission, the payments provided for in paragraphs numbered (1) and (2) of this Article shall be paid to the Electric Company as prime contractor of the Commission, or to such other contractor as the Commission may designate, for application in reduction of cost of work under the terms of said prime contract or other contract. The Pacific Company and Union Company shall make such payments on or before the 25th day of each month for all such cars so moved in the preceding month.

Upon completion of the trackage B-C the Commission shall furnish to each of the other parties a detailed statement showing the actual cost of construction of this trackage, including the right of way and bridge.

The payments to be made by the Pacific Company and Union Company as provided in this Article shall be in lieu of all other charges for the use by them or either of them, during the term of this agreement, of said line B-C.

After such rental payments made by the Railroads shall equal the initial actual cost to the Commission of constructing said line of railway between points B-C, the railroads shall continue to have the right during the term of this agree-

ment to operate over the trackage without further rental payments.

ARTICLE XI.

The Commission shall from time to time designate tracks within the interchange facilities for the purpose of interchanging cars hereunder.

All cars and contents placed on the interchange tracks shall be deemed to be in the possession of the Commission and to continue in the possession of the Commission until the Railroads shall move said cars from said interchange tracks.

The Commission shall pay to the Railroads demurrage accruing on all cars interchanged with it by the Railroads while such cars are in the possession of the Commission, but such demurrage charges shall not be made after the Commission has notified the Railroads that such cars are available for the use of the Railroads and may be removed from such interchange tracks. The Commission shall pay demurrage charges in accordance with the terms and provisions of the Association of American Railroad Freight Tariff 4-Y, I.C.C. 3963, B. T. Jones, Agent, or supplements thereto and reissues thereof.

The Commission shall be responsible for loss of or damage to cars and equipment of the Railroads and cars and equipment owned by others for which the Railroads are responsible while such cars and equipment are in the possession of the Commission, ordinary wear and tear excepted.

As engines and crews of two or more of the parties hereto will be using at the same time trackage B-E, including the interchange facilities and wye, it is agreed that each party will assume any liability for injury to or death of any person or persons, or loss of or damage to any property caused by its sole negligence; and if such injury, death, loss or damage results from the concurring negligence of two or more of the parties hereto, the responsibility therefor shall be assumed equally by the parties at fault. If such liability results from defects of equipment of any party, or concurring of two or more parties, the cost resulting shall be divided on the same basis as loss or damage resulting from negligence of such party or parties.

ARTICLE XII.

The parties hereto, with respect to the operation of equipment and appliances on and over said Government trackage shall comply with all applicable laws and all applicable rules, regulations and orders promulgated by any Board, Commission or other public body having jurisdiction, for the protection of persons or otherwise.

ARTICLE XIII.

No members of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE XIV.

The Railroads warrant that they have not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Railroads for the purpose of securing business.

ARTICLE XV.

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Railroads will immediately give notice thereof to the Commission. Such notice shall include all relevant information with respect to such dispute.

The Commission may terminate this agreement at any time upon six months advance notice thereof in writing being given by the Commission to the Railroads.

The financial liabilities assumed hereunder by the Commission shall be conditional upon the availability of funds for payment of any claims which may arise.

ARTICLE XVI.

The Railroads, in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

The Railroads agree that the provision of above paragraph will also be inserted in all of their subcontracts. For the purpose of this Article, a subcontract is defined as any contract entered into by the Railroads with any individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw materials shall not be considered as a subcontract.

ARTICLE XVII.

(1) It is understood that disclosure of information relating to the work contracted for hereunder to any person not entitled to receive it, or failure to safeguard all secret, confidential and restricted matter that may come to the Railroads or any person under their control in connection with the work under this contract, may subject the Railroads, their agents, employees and subcontractors to criminal liability under the laws of the United States. See Sections 10 and 16 of the Atomic Energy Act of 1946 (Public Law 585 - 79th Congress). See also Title I of an Act approved June 15, 1917, (40 Stat. 217; 50 U.S.C. 31-42) as amended by an Act approved March 28, 1940 (54 Stat., Chap. 79); and the provisions of an Act approved January 12, 1938, (52 Stat. 3; 50 U.S.C., 45-45d), as supplemented by Executive Order No. 8381, dated March 22, 1940, 5 F.R. 1147; see also, generally, the Atomic Energy Act of 1946, (Public Law 585 - 79th Congress).

(2) The Railroads agree to conform to all security regulations and requirements of the Atomic Energy Commission. Except as the Commission may authorize, in accordance with Section 10 (b)(5)(B) of the Atomic Energy Act of 1946, the Railroads agree not to permit any individual to have access to restricted data until the Federal Bureau of Investigation shall have made an investigation and report to

the Commission on the character, associations, and loyalty of such individual and the Commission shall have determined that permitting such person to have access to restricted data will not endanger the common defense or security. The term "restricted data" as used in this paragraph means all data concerning the manufacture or utilization of atomic weapons, the production of fissionable material, or the use of fissionable material in the production of power, but shall not include any data which the Commission from time to time determines may be published without adversely affecting the common defense and security. The Railroads shall insert in all subcontracts under this contract provisions similar to the text of Sections (1) and (2) of this Article.

ARTICLE XVIII.

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact which may arise hereunder, and which are not disposed of by mutual agreement, shall be decided by a representative of the Commission duly authorized to supervise and administer performance of the work hereunder, who shall reduce his decision to writing and mail a copy thereof to the Railroads. Within thirty (30) days from this mailing, the Railroads may appeal in writing to the Commission, whose written decision thereon shall be final and conclusive. Pending decision of a dispute hereunder, the Railroads shall diligently proceed with performance under this contract. To the extent that disputes involve questions which are subject to determination by the Interstate Commerce Commission, National Railroad Adjustment Board, or other regulatory body having jurisdiction over such questions, this Article shall not apply; nor shall this Article apply to disputes between the Railroads which do not involve the Commission.

ARTICLE XIX.

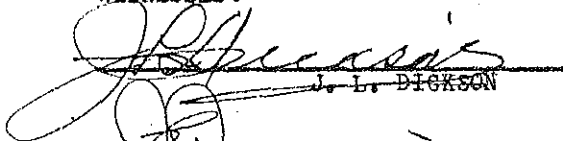
As used in this contract, the term "Commission" shall mean the United States Atomic Energy Commission, created by Public Law 585, 79th Congress, approved August 1, 1946, or the duly authorized representative or representatives of said Commission.

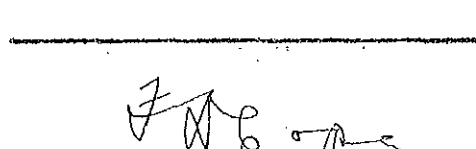
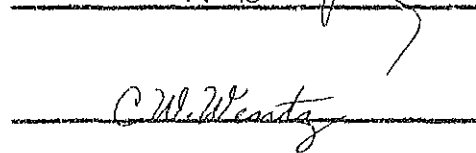
ARTICLE XX.

This agreement is conditioned upon the approval, if required, by the Interstate Commerce Commission of the arrangement herein contemplated whereby the Railroads will operate over trackage B-E, including the interchange facilities and wye, and whereby the Pacific Company will take use in common with the Union Company of said line of railway shown in red on Exhibit "A" between points A and B.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first above written.

WITNESSES:


J. L. DICKSON

J. E. TRAVIS


C. W. Wenzel

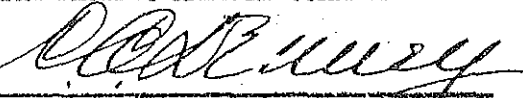
UNITED STATES ATOMIC ENERGY COMMISSION

By


C. SHUGG

MANAGER, HANFORD DIRECTED OPERATIONS
NORTHERN PACIFIC RAILWAY COMPANY

By


President

OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY
UNION PACIFIC RAILROAD COMPANY

By


PRESIDENT

ORIGINAL

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(NPRyCo. COPY)

Supplemental Agreement No.: 1

Contract No. AT-45-1-Gen-21

modified to read as follows:

**ARTICLE XX
ATOMIC ENERGY COMMISSION**

THIS CONTRACT, entered into this 7th day of December 1948, by and between the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting by and through the UNITED STATES ATOMIC ENERGY COMMISSION, created by Public Law 585, 79th Congress, approved August 1, 1946, (hereinafter called the "Commission"), NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin Corporation, (hereinafter called "Pacific Company"), and OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon Corporation, and its Lessee, UNION PACIFIC RAILROAD COMPANY, a Utah Corporation (hereinafter collectively called the "Union Company"). Said railroad companies are also hereinafter collectively referred to as "Railroads".

WITNESSETH THAT:

WHEREAS, a certain contract was entered into between the parties hereto on November 6, 1947, designated as contract No. AT-45-1-Gen-21; and

WHEREAS, by Article XX of said contract No. AT-45-1-Gen-21, the same was conditioned upon approval, if required, by the Interstate Commerce Commission; and

WHEREAS, pursuant to application duly made to the Interstate Commerce Commission, which application was officially designated as Finance Docket No. 15925, and upon which application, and after hearing, the Interstate Commerce Commission issued its report, order, and certificate dated September 28, 1949; and

WHEREAS, pursuant to said report and order it is necessary to modify said contract No. AT-45-1-Gen-21 in order to comply with the decision and order of the Interstate Commerce Commission;

NOW, THEREFORE, it is mutually agreed:

Section 1. Article X of contract No. AT-45-1-Gen-21 is amended and

modified to read as follows:

"ARTICLE X"

"Upon completion of the line of railway between points B-C the Commission shall furnish to each of the Railroads a detailed statement showing the cost of construction of said line of railway B-C, including the right of way and bridge.

"As rental for the right to use the line of railway between points B-C, the Pacific Company and the Union Company, each for itself, agrees to pay annually for twenty-five (25) years one-twenty-fifth ($1/25$) of one-half ($1/2$) of the initial actual cost of construction of said line of railway between points B-C, without interest.

"Unless otherwise directed by the Commission, the payments to be made by the Pacific Company and the Union Company as provided in this article shall be paid to the Electric Company as prime contractor of the Commission or to such other contractor as the Commission may designate, for application in reduction of cost of work under the terms of said prime contract or other contract. The Pacific Company and Union Company shall make their first annual payments on the first anniversary date of the final completion of the line of railway between points B-D and interchange tracks and wye tracks, and subsequent payments shall be made annually thereafter as provided in this article.

"The payments to be made by the Pacific Company and Union Company as provided in this article shall be in lieu of all other charges for use by them or either of them during the term of this agreement of said line B-C. After all said annual payments to be made by the Pacific Company and Union Company have been made, the Pacific Company and Union Company shall continue to have the right to operate over the trackage without further payments."

Section 2. Article XV of contract No. AT-45-1-Gen-21 is amended and modified to read as follows:

"ARTICLE XV"

"Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Railroads will immediately give notice thereof to the Commission. Such notice shall include all relevant information with respect to such dispute.

"The Commission may terminate this agreement at any time on six month's notice in writing being given by the Commission to the Railroads. If the Commission exercises said right of termination the Railroads, and each of them, thereupon shall be relieved from any and all liability for annual payments provided for in Article X from and after the effective date of termination. In the event the effective date of termination is not the anniversary date on which an annual payment is payable, rental shall be pro rated on a per diem basis, and shall be paid for the portion of the year during which this agreement has been in effect.

"If either the Pacific Company or Union Company shall fail to perform any of its obligations under this agreement, the Commission may terminate this agreement as to the railroad so defaulting by giving to such railroad six months' written notice of intention so to do; provided that if during such six-month period the defaulting railroad corrects said default, then this agreement shall not terminate because of such default. A default by either railroad shall not be cause for termination of this agreement by the Commission as to the other railroad. The termination of this agreement because of default by one of the railroads shall not relieve the defaulting company from its obligation to make all annual payments as required by Article X hereof.

"If the Commission terminates the Hanford Project, or suspends operation thereof for an indefinite period which continues for one

year, the Railroads may terminate this agreement by giving the Commission six (6) months notice in writing, and upon giving of such notice to the Commission, the Railroads shall be relieved from any and all annual payments provided for in Article X from and after the date of receipt by the Commission of such notice.

If the Commission suspends operation of the Project for a fixed or determinable period of time, this agreement shall remain in effect, but the obligation of the Railroads to pay rental under Article X shall be suspended for the period during which the operations are suspended.

"The financial liabilities assumed hereunder by the Commission shall be conditional upon the availability of funds for payment of any claims which may arise."

Section 3. Except as herein specifically modified and amended, said contract No. AT-45-1-Gen-21 remains and continues in full force and effect.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first above written.

WITNESSES:

UNITED STATES ATOMIC ENERGY COMMISSION

 H. J. Pickett

 C. W. Wentz

By David F. Shaw
 Deputy Manager, ~~Hanford Operations Office~~
 Hanford Operations Office
 NORTHERN PACIFIC RAILWAY COMPANY

By C. W. Evers
 President

OREGON-WASHINGTON RAILROAD & NAVIGATION
 COMPANY
 UNION PACIFIC RAILROAD COMPANY

By J. J. [Signature]
 President

CERTIFICATE OF SERVICE

I certify that on April 25, 2019, I have served copies of BNSF's comments upon all parties of record in this proceeding, by email.

A handwritten signature in black ink, appearing to read 'Peter W. Denton', with a long horizontal flourish extending to the right.

Peter W. Denton