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BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

UNION PACIFIC'S REPLY TO BNSF'S OPENING STATEMENT AND EVIDENCE

VOLUME I of II: REPLY STATEMENT AND EVIDENCE

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–TERMINAL TRACKAGE RIGHTS–
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

UNION PACIFIC'S REPLY TO BNSF'S OPENING STATEMENT AND EVIDENCE

I. INTRODUCTION

The Board should deny BNSF's application for terminal trackage rights over the Rose Bluff Industrial Lead for two simple reasons. First, BNSF already fully enjoys the access that it obtained to Lake Charles area shippers, including CITGO, in connection with the UP/SP merger and is providing the competition contemplated by the BNSF Settlement Agreement and the Board. Second, BNSF has not met its statutory burden of proving its use of terminal trackage rights "to be practicable and in the public interest without substantially impairing the ability of the rail carrier[s] owning the facilities . . . to handle [their] own business." 49 U.S.C. § 11102(a). In short, BNSF now seeks to gain priority for its shipments of crude oil without regard for its past agreements, the Board's decisions, and the consequences for Union Pacific, KCS, and shippers other than CITGO. The Board should reject this effort.

Union Pacific takes seriously its obligations under the BNSF Settlement Agreement and the conditions the Board placed on the UP/SP merger. Contrary to BNSF's claims, however, Union Pacific simply is not required to provide BNSF trackage rights over the Rose Bluff Industrial Lead. The terms of a pre-merger joint facility agreement with KCS preclude Union Pacific from unilaterally granting BNSF those trackage rights without KCS's approval. In such

circumstances—which both Union Pacific and BNSF anticipated—BNSF expressly agreed in Section 8(n) of the BNSF Settlement Agreement to accept alternative access of equivalent commercial utility. Contrary to BNSF's claims, the Board also never ordered Union Pacific to provide BNSF trackage rights over the Rose Bluff Industrial Lead. Instead, the Board imposed an access condition to preserve rail competition in the Lake Charles area, but it left Union Pacific and BNSF to determine BNSF's method of access pursuant to the BNSF Settlement Agreement.

Moreover, BNSF already is providing the competition contemplated by the BNSF Settlement Agreement and the Board. In the 18 years since the UP/SP merger, BNSF has accessed Lake Charles area shipper facilities, including CITGO's facility in West Lake Charles, using a combination of haulage and reciprocal switching rights that it negotiated at the time of the merger. BNSF now claims it must have terminal trackage rights to compete effectively for crude oil moving to CITGO, but BNSF handled {{ }} of CITGO's crude oil business in 2014, while Union Pacific handled {{ }} and KCS handled {{ }}.[1] Plainly, BNSF competes very effectively for this traffic now.

BNSF's application also fails because BNSF has not met its statutory burden of proof. It has not established that terminal trackage rights are in the public interest either as a remedy for anticompetitive conduct or under the "bridge the gap" precedent applied in merger cases. In addition, BNSF's proposed operations—which would force more trains into congested facilities where two carriers now strain to operate—are not practicable. Union Pacific and KCS recognized long ago that two carriers cannot practicably occupy Rose Bluff Yard and the Rose Bluff Industrial Lead at the same time. They therefore split yard occupancy time, and they

[1] Material within double brackets is Highly Confidential, and material within single brackets is Confidential. This material has been redacted from the Public version of this reply.

divided customers into two zones, with just one railroad serving each zone. Adding BNSF trains to the Lead would disrupt operations carefully choreographed to maximize service in a capacity constrained area and would produce a cascade of delay and disruption that would substantially impair Union Pacific's and KCS's service to customers.

The remainder of this reply is organized as follows. *Part II* describes BNSF's rights to access shippers in the Lake Charles area; railroad operations in the Lake Charles area, particularly on the Rose Bluff Industrial Lead and in Rose Bluff Yard; and communications among Union Pacific, BNSF, and KCS regarding BNSF's demand to serve CITGO using trackage rights.[2] *Part III* explains why BNSF access to CITGO and other Lake Charles area shippers using reciprocal switching fully satisfies the BNSF Settlement Agreement and the Board's conditions on the UP/SP merger. *Part IV* demonstrates that terminal trackage rights over the Rose Bluff Industrial Lead are neither practicable nor in the public interest and would substantially impair our ability to serve shippers. *Part V* explains why there is no compelling reason for the Board to override the consent provision of the KCS/Union Pacific joint facility agreement that governs the Rose Bluff Industrial Lead. *Part VI* explains why the Board, if it awards any relief, should require that BNSF pay any additional costs associated with its operation over the Rose Bluff Industrial Lead.

Union Pacific's reply evidence is supported by testimony from witnesses who bring personal knowledge and experience to bear on the issues raised by this proceeding.

- **John H. Rebensdorf**, formerly Union Pacific's Vice President – Network Planning and Operations. Mr. Rebensdorf negotiated the BNSF Settlement Agreement on

[2] In past documents and decisions in this docket, the "Rose Bluff Industrial Lead" and "Rose Bluff Yard" have been incorrectly called "Rosebluff Industrial Lead" and "Rosebluff Yard." Similarly, "Westlake, Louisiana" has been incorrectly called "West Lake, Louisiana." This reply uses the correct geographical names, except in quotations that contain the incorrect names.

behalf of Union Pacific. He describes the rights BNSF obtained to access shippers in the Lake Charles area and the need for Section 8(n)'s alternative access provision.

- **Jamal W. Chappell**, Union Pacific's Superintendent of Transportation Services – Livonia Service Unit, and **Michael V. Matya**, formerly Union Pacific's Director of Shipment Management, Chemicals Shipment Management. Messrs. Chappell and Matya describe current rail operations in the Lake Charles area and the impact BNSF's operation of its own trains to CITGO and other shipper facilities on the Rose Bluff Industrial Lead would have on operations and other customers in the area.

- **Cameron A. Scott**, Union Pacific's Executive Vice President of Operations, and **Roger D. Lambeth**, Union Pacific's General Superintendent for Transportation Services. Messrs. Scott and Lambeth describe communications among Union Pacific, BNSF, and KCS regarding BNSF's demand to operate its own trains to CITGO. They also address BNSF's incorrect assertions that its proposed operations on the Rose Bluff Industrial Lead would be comparable to existing BNSF operations on Union Pacific's Baytown Subdivision and Sabine Lead.

Union Pacific is also submitting a verification from Daniel P. Hartmann, Union Pacific's Senior Director – Interline Marketing, confirming the accuracy of information presented in this reply regarding traffic volumes in the Lake Charles area and Union Pacific's experience addressing merger-related customer access requests from BNSF.[3]

II. BACKGROUND

A. BNSF's rights to access shippers in the Lake Charles area

BNSF's rights to access CITGO and other shippers in the Lake Charles area are governed by the BNSF Settlement Agreement, as supplemented and amended over time by the terms of related settlement agreements and conditions the Board placed on the UP/SP merger. Because BNSF relies heavily on rights it claims to find in that agreement but neglects to address key provisions, we discuss the actual terms of the agreement and their evolution in detail.

[3] For the Board's convenience, Union Pacific is providing a separate volume containing maps and other exhibits, so the Board has a single source of all of the exhibits that are referenced in this reply statement and by Union Pacific's witnesses.

1. The Initial BNSF Settlement Agreement

Union Pacific and BNSF entered into the BNSF Settlement Agreement on September 25, 1995, and supplemented the agreement on November 18, 1995. *See* Counsel's Exhibit 1 (Initial BNSF Settlement Agreement and Supplemental Agreement). The BNSF Settlement Agreement preserved rail competition for all shippers who, prior to the UP/SP merger, were served by both Union Pacific and Southern Pacific and no other railroad ("2-to-1" shippers). Competition was preserved by identifying all "2-to-1" geographic points, then negotiating trackage rights and line sales that would allow BNSF to serve shippers at those points.

The BNSF Settlement Agreement involved trackage rights for BNSF over several thousand miles of lines. Union Pacific and BNSF knew that pre-existing agreements could restrict Union Pacific's authority to grant trackage rights to BNSF at some locations. *See* Rebensdorf RVS at 3. Accordingly, they agreed in what is now Section 8(n) of the BNSF Settlement Agreement that if Union Pacific lacked sufficient legal authority to grant certain rights, it would provide BNSF an "alternative" access "of commercially equivalent utility." Specifically, Section 8(n) states:

> 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.

Counsel's Exhibit 1 (Initial BNSF Settlement Agreement § 8(j)).[4]

[4] The BNSF Settlement Agreement has been supplemented and amended over time as required by related settlement agreements and conditions the Board imposed on the UP/SP merger. When we refer to Section 8(n), we are referring to the numbering in the current version of the BNSF Settlement Agreement, which is often called the Restated and Amended Settlement Agreement, (continued...)

2. The CMA Agreement and the Second Supplemental Agreement

Under the BNSF Settlement Agreement, BNSF obtained trackage rights *through* the Lake Charles area. To preserve competition on the route between Houston and New Orleans, Union Pacific agreed to grant BNSF trackage rights over Southern Pacific's Lafayette Subdivision between Houston, Texas, and Iowa Junction, Louisiana, and sell BNSF the line from Iowa Junction to Avondale, Louisiana. *See id.* (Initial BNSF Settlement Agreement §§ 5(a), 10(a)).

The Houston-Iowa Junction trackage rights were "overhead" rights only; they did not give BNSF access rights to shippers in the Lake Charles area. Those shippers initially were not covered by the BNSF Settlement Agreement because they were not "2-to-1" shippers. Prior to the UP/SP merger, shippers in West Lake Charles had access to both Southern Pacific and KCS, but not Union Pacific. Shippers in Lake Charles and Westlake had access to three railroads: Union Pacific, Southern Pacific, and KCS.

In the merger proceeding, the Chemical Manufacturers Association ("CMA") and certain shippers argued that the merger would reduce competition in the Lake Charles area for shippers served by Union Pacific, Southern Pacific, and KCS. They said that Union Pacific and Southern Pacific provided the only competitive rail service for Lake Charles area traffic moving to, from, and via New Orleans, and to and from Mexico, so for that traffic, the merger effectively would reduce the rail options from two carriers to one carrier.

To secure CMA's support, Union Pacific entered into a settlement agreement with CMA and BNSF ("CMA Agreement"). We agreed to amend the BNSF Settlement Agreement to give BNSF the right to handle traffic of all shippers then open to Union Pacific, Southern Pacific, and

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or "RASA." Union Pacific and BNSF jointly filed the RASA with the Board on March 1, 2002. *See* Counsel's Exhibit 2 (Restated and Amended Settlement Agreement).

KCS in Lake Charles and Westlake if the traffic was moving (a) to, from, and via New Orleans; and (b) to and from points in Mexico. The parties agreed that BNSF access to shippers under the CMA Agreement would be on the same basis as for shippers at "2-to-1" points. *See* Counsel's Exhibit 3 (CMA Agreement § 8). Union Pacific later entered into a supplemental agreement with CMA and BNSF to give BNSF access to shippers in West Lake Charles served only by Southern Pacific and KCS. *See* Counsel's Exhibit 4 (Applicants' Brief at 23 n.9).

Union Pacific and BNSF subsequently incorporated the Lake Charles area access provisions of the CMA Agreement (as supplemented) into Section 5(b) of the BNSF Settlement Agreement through their Second Supplemental Agreement. *See* Counsel's Exhibit 5 (Second Supplemental Agreement § 4(b)). The Second Supplemental Agreement incorporated the alternative access provision of the Initial BNSF Settlement Agreement. *See id.* (Second Supplemental Agreement § 6(b) (renumbering Section 8(j) as Section 8(k))).

3. The Board's Lake Charles access condition

In approving the UP/SP merger, the Board required a change to the BNSF Settlement Agreement that affects at least some of the traffic BNSF moves to CITGO. The Board required Union Pacific to "remove the (New Orleans and Mexico) geographic restrictions on direct BNSF service to Lake Charles, West Lake, and West Lake Charles shippers and permit BNSF to serve all destinations from these points." *Union Pacific/Southern Pacific Merger* ("Decision No. 44"), 1 S.T.B. 233, 428 (1996). The Board's objective was to ensure that Lake Charles area shippers could use single-line BNSF service for all of their traffic, rather than be required to rely on joint-line KCS-BNSF service for those movements that were subject to the geographic restriction. *See id.* Nothing in the Board's order affected the alternative access provision in what is now Section 8(n) of the BNSF Settlement Agreement.

4. KCS's challenge to BNSF access in the Lake Charles area

Shortly after the Board approved the UP/SP merger, KCS filed a motion for reconsideration, arguing that Union Pacific could not unilaterally provide BNSF access to shippers in the Lake Charles area, and asking the Board to eliminate aspects of its merger conditions that required such access. *See Union Pacific/Southern Pacific Merger*, Decision No. 63, FD 32760 (STB served Dec. 4, 1996) ("Decision No. 63"). KCS asserted that certain joint facility agreements between KCS and a Southern Pacific predecessor company, Texas and New Orleans Railroad Company ("T&NO"), precluded Union Pacific from providing trackage rights access to BNSF without either KCS's consent or a Board decision granting terminal trackage rights under 49 U.S.C. § 11103(a) (now 49 U.S.C. § 11102(a)). *See id.* at 8.

In response, BNSF argued that the agreements did not prevent BNSF from accessing the Lake Charles area by reciprocal switch, and that the Board could in any event override KCS's contractual veto power under 49 U.S.C. § 11341(a) (now 49 U.S.C. § 11321(a)). *See id.* The Board concluded that it was unnecessary to resolve the matter at that time because KCS was not attempting to block BNSF's access by reciprocal switch. *See id.* at 9.

5. The "50/50 Line" Agreement

BNSF no longer has trackage rights on the main line through the Lake Charles area. In 1998, Union Pacific and BNSF agreed to exchange 50% ownership interests in their respective main line segments of the former Southern Pacific Lafayette Subdivision between Dawes, Texas (near Houston), and Avondale, Louisiana (often referred to as the "50/50 Line"). The agreement initially was reflected in a February 12, 1998 Term Sheet Agreement, *see* Counsel's Exhibit 6 (50/50 Line Term Sheet), and later formalized in a September 1, 2000 Agreement, *see* Counsel's Exhibit 7 (50/50 Line Agreement).

In the transaction, BNSF gained rights to serve shipper facilities on the Lafayette Subdivision and certain former Southern Pacific branches to which it had *not* gained access in the UP/SP merger. Neither the 50/50 Line Term Sheet nor 50/50 Line Agreement in any way affects Union Pacific's obligations regarding shippers in the Lake Charles area to which BNSF gained access under the BNSF Settlement Agreement. BNSF acknowledges that neither the 50/50 Line Term Sheet nor the 50/50 Line Agreement is the source of any right BNSF is now claiming to operate its own trains to CITGO and other Lake Charles area shippers. *See* BNSF Op. at 8 n.5.[5]

B. Railroad operations in the Lake Charles area and service to CITGO

The Lake Charles area is part of a very busy rail corridor that requires coordination and cooperation between and among Amtrak and the three freight railroads with rights to operate and serve local customers in Lake Charles, Westlake, and West Lake Charles. *See* Counsel's Map Exhibit A. Coordination and cooperation are required to serve the 26 active customer facilities in Westlake and West Lake Charles whose traffic is switched by Union Pacific and KCS in Rose Bluff Yard. *See* Counsel's Map Exhibit B. Messrs. Chappell and Matya describe these operations in their statement. We summarize that testimony here because an understanding of the operations is key to determining whether the terminal trackage rights that BNSF seeks meet the statutory criteria, including whether BNSF's use of the trackage would substantially impair Union Pacific's and KCS's ability to handle their business and degrade service for customers.

[5] In responding to discovery requests, BNSF repeatedly characterizes the 50/50 Line Term Sheet Agreement and the 50/50 Line Agreement as "contracts that do not relate to this proceeding." *See* Counsel's Exhibit 8 (BNSF Responses to KCS Second Set of Discovery Requests at 3-5).

1. Operations on the Lafayette Subdivision (the 50/50 Line)

Union Pacific and BNSF operate an average of 25 trains each day over the Lafayette Subdivision in the Lake Charles area. KCS crosses the main line to enter Rose Bluff Yard and serve customers on the Rose Bluff Industrial Lead. Amtrak's Sunset Limited travels over the main line six days a week, three times westbound, and three times eastbound. *See* Chappell/Matya RVS at 3.

The Lafayette Subdivision is almost entirely single track. There are no sidings between Union Pacific's Lake Charles Yard, also known as North Yard (on the east end of the Lake Charles area) and the turnout to the Rose Bluff Industrial Lead (on the west end). Capacity is further constrained by a single-track swing bridge over the Calcasieu River, located between North Yard and the turnout to the Lead. Priority is given to maritime traffic. Unscheduled bridge openings can occur as many as 10 to 12 times each day, and each opening lasts at least 20 minutes. The disruption to rail activity lasts longer, because trains must stop well short of the bridge before it opens and accelerate back to track speed after it closes. *See id.* at 4.

2. Operations in North Yard

Union Pacific's primary yard in the Lake Charles area is North Yard, which is a local support yard. This yard receives cars destined for local customers, and it builds blocks of cars for delivery to those customers and for delivery to smaller serving yards, primarily Rose Bluff Yard. North Yard also is used for interchange between Union Pacific and BNSF; the yard is used to collect cars from local customers for interchange with BNSF, and to receive cars from BNSF destined for local customers. When BNSF has cars for CITGO and other customers in Lake Charles, Westlake, or West Lake Charles, it hands them to Union Pacific at North Yard. When customers Union Pacific switches in these areas have cars for BNSF, Union Pacific hands them to BNSF at North Yard. *See id.* at 3.

3. Operations in Rose Bluff Yard

Rose Bluff Yard is the primary serving yard that Union Pacific uses for customers in Westlake and West Lake Charles. This yard is located on the Rose Bluff Industrial Lead about a half-mile south of the main line. As shown in Counsel's Map Exhibit C, Rose Bluff Yard consists of six tracks: a center runner track, and five other tracks, with two on one side of the runner track, and three on the other. All six tracks converge at both ends of the yard, so there is effectively only a single track that can be used to move cars from the main line down the Lead.

Union Pacific and KCS jointly own Rose Bluff Yard and the Rose Bluff Industrial Lead under the terms of a 1948 joint facility agreement between KCS and Union Pacific predecessor T&NO. *See* Counsel's Exhibit 9 (1948 Agreement). In the agreement, the joint owners state that "neither shall sell, lease or transfer its interest in the jointly owned tracks, or any part thereof, without advance written approval by the other party." *Id.* (1948 Agreement § 19).

The joint owners long ago recognized the need to operate the yard and local trackage in a coordinated manner to serve customers in Westlake and West Lake Charles. In 1981, KCS and Southern Pacific (Union Pacific's predecessor) divided the area into two customer zones, "Zone 1" and "Zone 2." As shown in Counsel's Map Exhibit B, Zone 1 customers are generally located north and east of Rose Bluff Yard, and Zone 2 customers, including CITGO, are located south of Rose Bluff Yard. The railroads agreed to use Rose Bluff Yard only for handling cars destined to or originating from Zone 1 or Zone 2, and that, with limited exceptions, the exchange between the carriers of cars destined to or from either Zone 1 or Zone 2 would be made in Rose Bluff Yard. *See* Counsel's Exhibit 10 (1981 Agreement, Art. I, § B).

The railroads initially traded responsibilities for the two zones every two years. In 1999, KCS and Union Pacific eliminated this arrangement, agreeing that KCS would be responsible for switching only customers in Zone 1 and Union Pacific would be responsible for switching only

customers in Zone 2. *See* Counsel's Exhibit 11 (1999 Agreement). Each railroad moves cars for the other in its assigned zone.

Traffic volumes in Zones 1 and 2 have grown significantly. In 1995, the year before the UP/SP merger, Union Pacific and Southern Pacific moved approximately 20,700 cars in line haul service to Westlake and West Lake Charles.[6] In 2014, Union Pacific and BNSF moved approximately 54,400 cars in line haul service to customers in these areas.[7]

Union Pacific and KCS operate in Rose Bluff Yard in separate 12-hour windows. The operating windows and locations of the trains that operate in Rose Bluff Yard and on the Rose Bluff Industrial Lead in Zone 2 during each 24-hour period, are shown in Counsel's Map Exhibit D. Union Pacific's window in Rose Bluff Yard is from 6:00 am to 6:00 pm, and KCS's window is from 6:00 pm to 6:00 am. *See* Chappell/Matya RVS at 7.[8] KCS has primary use of tracks 1-3, and Union Pacific has primary use of tracks 5-6. *See* Chappell/Matya RVS at 6. During Union Pacific's 12-hour operating window, however, our crews operate over all of the tracks in the yard, including the running track, in order to position cars properly. *See id.* at 7.[9]

For example, some Union Pacific trains bring cars up the Rose Bluff Industrial Lead into Rose Bluff Yard, where these (or other) trains switch outbound cars for KCS to KCS's tracks, pick up Union Pacific and BNSF outbound cars from Zone 1 that KCS switched to Union Pacific's tracks, and then take Union Pacific's and BNSF's outbound cars to North Yard. Other Union Pacific trains perform similar operations, but in the reverse direction: they bring inbound

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[6] *See* Hartmann Reply Verification.

[7] *See id.*

[8] BNSF's operating witness incorrectly states that Union Pacific's operating window begins at 5:00 am. *See* BNSF Op., Bredenberg VS at 3.

[9] BNSF's operating witness incorrectly states that Union Pacific uses only two yard tracks for switching. *See* BNSF Op., Bredenberg VS at 5.

cars from North Yard into Rose Bluff Yard, switch Union Pacific and BNSF inbound cars for Zone 1 to KCS's tracks, pick up KCS inbound cars for Zone 2 that KCS left on Union Pacific's tracks, and take cars down the Lead for delivery to Zone 2 customers. Still other Union Pacific trains remain in Rose Bluff Yard and on the Lead, picking up, delivering, and sorting cars. *See* Chappell/Matya RVS at 8, 10-13.

Union Pacific and KCS must coordinate carefully on use of this constrained space to ensure that customer service does not suffer. If operations go according to plan, each railroad finishes its work within its window. But plans are often disrupted, resulting in "overstays." Unanticipated operating issues in Rose Bluff Yard or at a customer facility, as well as the need to hold trains heading for or exiting the yard, can cause overstays for both railroads. When Union Pacific cannot complete our switching assignments within our scheduled window, we are often able to overstay the window, then allow KCS to overstay its window (and so on). Sometimes overstays are not the most efficient option, and we are unable to complete our switching assignments before we must exit the yard. *See id.* at 8-9. Union Pacific and KCS stay in constant communication to coordinate operations in the yard. *See id.* at 9.

4. Operations on the Rose Bluff Industrial Lead

Operations on the Rose Bluff Industrial Lead occur around the clock to serve customers in the southern portion of Zone 1 and all of Zone 2. Union Pacific operates 24 hours a day on the Lead in Zone 2, as shown in Counsel's Map Exhibit D. *See also* Chappell/Matya RVS at 9-13.[10] During every 24-hour period, Union Pacific operates eight local jobs on the Lead to serve the 14 active customer facilities in Zone 2. This includes trains that remain in Zone 2, switching cars to

[10] BNSF's operating witness is wrong when he states that Union Pacific and KCS use the Lead (as opposed to Rose Bluff Yard) during alternating twelve-hour windows. *See* BNSF Op., Bredenberg VS at 4-5.

and from customer facilities; trains that pick up cars that have been set out by the local switching jobs and then move the cars to Rose Bluff Yard and North Yard; and trains that switch inbound cars in Rose Bluff Yard and distribute them to other trains that deliver the cars to customer facilities. *See* Chappell/Matya RVS at 9-13.[11] At various times, all these trains can block the Lead, even those that primarily switch customer facilities. *See* Chappell/Matya RVS at 12-13.

Union Pacific's operations on the Rose Bluff Industrial Lead are complicated by the fact that Zone 2 is non-dispatched territory. This requires operations to be designed so that no more than one job operates in a given area at any time, with reliance on crews to coordinate their operations to avoid interference. Each crew is responsible for knowing which other trains are operating in the area and obtaining permission from other on-duty jobs to enter the Lead. Communication and coordination are essential to ensure the safety of all employees and to provide reliable service to customers. *See id.* at 13-14.

5. Service to CITGO

Union Pacific provides daily service to CITGO. Some of the CITGO cars move via a Union Pacific line haul routing. In addition, BNSF hands cars for CITGO to Union Pacific in North Yard for handling through haulage and reciprocal switching. From that point, until the cars are returned to BNSF, Union Pacific and BNSF cars destined to or from CITGO move in the same trains with the same level of service. *See id.* at 14.

Union Pacific and BNSF cars bound for CITGO are combined at North Yard, then moved in a single block to Rose Bluff Yard. KCS also leaves cars for CITGO on Union Pacific's tracks in Rose Bluff Yard. In the yard, Union Pacific crews switch these Union Pacific, BNSF, and

[11] BNSF's operating witness incorrectly states that Union Pacific operates only four trains per day on the Lead. *See* BNSF Op., Bredenberg VS at 5.

KCS cars into a single block, and then move them down the Rose Bluff Industrial Lead and set them out on railroad industry track for delivery to CITGO. Another Union Pacific job switches the cars into CITGO's facility. Empty cars follow the same pattern in reverse. *See id.* at 14-16.[12]

CITGO does not have a loop track at its facility, and it has no current plans for further expansion of its rail infrastructure. *See* Counsel's Exhibit 12 (CITGO Responses to KCS Discovery Requests at 4). CITGO has capacity to store 90 rail cars loaded with crude oil, but to unload the cars, it must stage them in blocks of 12 cars at its unloading tracks. After unloading, CITGO moves the cars to one of its four empty car storage tracks. *See id.* (CITGO Responses to KCS Discovery Requests at 5). When picking up empty cars at CITGO, Union Pacific often must build a block by pulling cars from multiple storage tracks, using railroad-owned tracks south of the switch for CITGO's facility. *See* Chappell/Matya RVS at 15-16.

Union Pacific, KCS, and CITGO are parties to an Industry Track Agreement in which the parties agreed to a daily maximum volume of cars that the CITGO facility can accommodate. Such maximums are important. They require customers to manage their ordering and inventory so their cars do not accumulate in rail yards, causing congestion that would affect other customers. As CITGO increased its unloading capacity over time, the parties have adjusted the daily maximum. *See* Counsel's Exhibit 13 (Industry Track Agreement and First Amendment).

In June of 2014, in response to CITGO's request to receive more cars, Union Pacific proposed to amend the Industry Track Agreement to increase CITGO's flexibility in ordering

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[12] Under the 1981 Agreement, as limited by CITGO's Industry Track Agreement, either railroad may operate "solid over-the-road unit trains" (defined as 25 cars or more loaded with the same commodity on one bill of lading on the same day) to an industry located in the zone other than that in which it performs switching service. In practice, KCS has not used this authority. Union Pacific is aware of only a few occasions in 2012 when KCS operated a train to CITGO's facility. *See* Chappell/Matya RVS at 21.

and unloading cars. *See* Counsel's Exhibit 14 (Proposed Second Amendment to Industry Track Agreement). Union Pacific has implemented the more flexible arrangement, even though CITGO has not yet signed the amendment. Since Union Pacific implemented this new arrangement, CITGO has not complained that it is not receiving enough cars. *See* Chappell/Matya RVS at 15.

CITGO began moving crude oil to its West Lake Charles facility in 2012, and since then Union Pacific has steadily increased the number of cars delivered. In 2012, Union Pacific delivered {{ }} cars to CITGO on behalf of BNSF, KCS, and Union Pacific. Union Pacific delivered {{ }} cars in 2013, and {{ }} cars in 2014.[13] In each of the three years, BNSF was the line haul carrier with the {{ }} share of this traffic. In 2014, BNSF had {{ }} of the business, Union Pacific had {{ }}, and KCS had {{ }}.[14]

C. Communications among BNSF, KCS, and Union Pacific regarding BNSF's request to access CITGO using trackage rights

In May 2012, BNSF sent Union Pacific a letter demanding to change its method of accessing CITGO by running its own trains over the Rose Bluff Industrial Lead. Union Pacific responded by attempting on multiple occasions to engage BNSF and KCS in discussions to address the serious operational problems that would result from the insertion of a third railroad in Rose Bluff Yard and on the rest of the Lead. *See* Scott/Lambeth RVS at 1-2.

BNSF did not provide an operating plan in its initial letter. The letter did not address how frequently BNSF planned to operate, the time of day, or the train configuration (the number of locomotives and cars). *See* Counsel's Exhibit 15 (5/24/12 Letter from Bigoness to Hartmann).[15]

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[13] *See* Hartmann Reply Verification.

[14] *See id.*

[15] In its initial letter, BNSF invoked the 50/50 Line Agreement. However, as discussed above, BNSF now appears to agree with Union Pacific that the trackage rights request is governed by the BNSF Settlement Agreement, not the 50/50 Line Agreement. *See* note 5, supra.

Union Pacific responded by noting the many concerns raised by BNSF's apparent plan to operate unit trains to CITGO, as well as the need to obtain concurrence from KCS. *See* Counsel's Exhibit 16 (6/21/12 Letter from Hartmann to Bigoness).

After meetings between Union Pacific and BNSF operating personnel, BNSF sent a second letter announcing that it was responding to Union Pacific's operating concerns by agreeing to move traffic in manifest quantities (rather than in longer unit trains) with four-axle locomotives (rather than six-axle locomotives), that KCS's concurrence was not required, and that BNSF would begin the new service in 18 days. Again, BNSF did not provide an operating plan, simply asserting that it would coordinate with local operating personnel "as needed." *See* Counsel's Exhibit 17 (11/2/12 Letter from Bigoness to Hartmann). Union Pacific responded by encouraging further discussions among BNSF, KCS, and Union Pacific. *See* Counsel's Exhibit 18 (11/20/12 Letter from Hartmann to Bigoness).

Further discussions did occur. BNSF, KCS, and Union Pacific informally discussed the issues a few days later in Houston, at which point KCS took the position that BNSF was not allowed on the jointly-owned KCS/Union Pacific property. *See* Scott/Lambeth RVS at 4. Later, Union Pacific and BNSF personnel met in Fort Worth, and Union Pacific reiterated its operating concerns and the need to include KCS in the discussions. *See id.*

At the direction of Cameron Scott, then Union Pacific's Vice President of Network Planning and Operations, whose responsibilities included joint facilities and service design, Roger Lambeth, then Union Pacific's General Superintendent for Transportation Services in the Southern Region, attempted to encourage substantive discussions among BNSF, KCS, and Union Pacific about the problems that would result from BNSF's proposed train operations to CITGO. In mid-December, in an effort to elicit a focused discussion that would include all interested

parties, Mr. Lambeth emailed a "straw man" proposal under which BNSF would use one hour of KCS's yard window and one hour of Union Pacific's yard window. *See id.* at 5-6; *see also* Counsel's Exhibit 19 (12/18/12 Email from Lambeth to Thomas). Mr. Lambeth's email did not produce the desired result. BNSF treated the email as permission to operate, while KCS objected that Union Pacific was disregarding KCS's legal right to block BNSF operations over the Rose Bluff Industrial Lead. *See* Scott/Lambeth RVS at 6. Mr. Lambeth subsequently contacted BNSF to reinforce Union Pacific's position that BNSF could not operate over the Rose Bluff Industrial Lead without KCS's approval. *See id.*

Shortly afterward, KCS filed a complaint in federal court seeking a declaration that BNSF was precluded from operating trains over jointly owned KCS/Union Pacific track, and BNSF filed its terminal trackage rights application. On September 9, 2013, the court dismissed KCS's complaint, accepting BNSF's argument that a decision by the court would "encroach upon the STB's exclusive jurisdiction to clarify the scope of Decisions No. 44 and 63." Counsel's Exhibit 20 (Memorandum Ruling at 12).

III. BNSF'S EXISTING ACCESS TO CITGO AND OTHER SHIPPERS ON THE ROSE BLUFF INDUSTRIAL LEAD USING RECIPROCAL SWITCHING SATISFIES THE BNSF SETTLEMENT AGREEMENT AND THE UP/SP MERGER CONDITIONS.

BNSF's application for terminal trackage rights rests on a false premise—that BNSF has an unconditional right to serve CITGO and other Lake Charles area shippers using trackage rights over the Rose Bluff Industrial Lead. BNSF goes so far as to argue that the BNSF Settlement Agreement and the merger conditions impose on Union Pacific the "responsibility" to "ensur[e] that [it] has (or acquires) any underlying contractual or other authority needed" to grant BNSF trackage rights over the Rose Bluff Industrial Lead. BNSF Op. at 12 & Weicher VS at 8. BNSF is wrong. BNSF now asks for rights different from those it agreed to accept in the BNSF

Settlement Agreement, and different from those the Board required Union Pacific to provide BNSF when the UP/SP merger was approved.

A. BNSF agreed to alternative access where Union Pacific lacks authority to grant certain trackage rights.

BNSF is wrong in asserting that the BNSF Settlement Agreement gives it an unconditional right to access CITGO and other shippers using trackage rights over the Rose Bluff Industrial Lead. Under the terms of the joint facility agreement governing the Rose Bluff Industrial Lead, Union Pacific cannot grant trackage rights over KCS's objection, and KCS has objected to BNSF operating over the Lead. Union Pacific and BNSF expressly agreed in Section 8(n) of the BNSF Settlement Agreement that if Union Pacific lacks sufficient legal authority to grant certain trackage rights, we would provide BNSF with an alternative means of access of commercially equivalent utility—which we have done. [16]

BNSF gained rights to serve Lake Charles area shippers as a result of the CMA Agreement. The CMA Agreement made this new access subject to the general terms of the BNSF Settlement Agreement. The parties to the CMA Agreement expressly agreed that "[t]he [BNSF] Settlement Agreement shall be amended to give [BNSF] the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles and West Lake, Louisiana." Counsel's Exhibit 3 (CMA Agreement § 8). The CMA Agreement further provided that BNSF "access to the covered shippers at Lake Charles and West Lake shall be *on the same basis as is provided for in the [BNSF] Settlement Agreement for '2-to-1' points.*" *Id.* (emphasis added).

When Union Pacific advised the Board of the parties' subsequent agreement to extend the CMA Agreement's coverage to shippers in West Lake Charles, Union Pacific said we would do

[16] If BNSF does not believe its current access to CITGO is consistent with Section 8(n), it can invoke the agreement's dispute resolution mechanism. *See* Counsel's Exhibit 2 (RASA § 15).

so by amending the BNSF Settlement Agreement. *See* Counsel's Exhibit 4 (Applicants' Brief at 23 n.9) ("Applicants recently agreed with CMA to extend the coverage of Section 8 of the CMA settlement to shippers at West Lake Charles served by SP and KCS, and the [BNSF] Settlement Agreement will be amended accordingly.").

Union Pacific and BNSF subsequently incorporated the CMA Agreement's Lake Charles area access provisions into Section 5(b) of the BNSF Settlement Agreement through the Second Supplemental Agreement. *See* Counsel's Exhibit 5 (Second Supplemental Agreement § 4(b)). Nothing in the Second Supplemental Agreement in any way affected the substance of Section 8(n) of the BNSF Settlement Agreement. *See id.* (Second Supplemental Agreement § 6(b)). Accordingly, the new provision granting BNSF access to shippers in the Lake Charles area was subject to Section 8(n).

B. The Board did not condition its approval of the UP/SP merger on BNSF's use of trackage rights to access shippers in the Lake Charles area.

BNSF also is wrong in asserting that the Board "specifically" required Union Pacific to provide BNSF with trackage rights over "nine miles of track in West Lake Charles, LA jointly owned by UP and KCS, known as the Rosebluff Industrial Lead." BNSF Op. at 2-3. The Board's decision approving the UP/SP merger makes no mention whatsoever of the nine miles of track in West Lake Charles, the Rose Bluff Industrial Lead, or any Lake Charles area track jointly owned by Union Pacific and KCS. Nor does this requirement appear in the BNSF Settlement Agreement or the CMA Agreement.

BNSF claims the Board determined in Decision No. 44 that "direct BNSF service" to shippers in the Lake Charles area using trackage rights is "a vital and necessary component in resolving the loss of competitive options to Lake Charles area shippers." BNSF Op. at 15. However, BNSF is playing semantic games. In Decision No. 44, the Board required Union

Pacific to remove a geographic restriction on BNSF single-line service to Lake Charles area shippers from Section 5(b) of the BNSF Settlement Agreement. In explaining why it removed the geographic restriction, the Board referred to "direct" BNSF service, but it used the term "direct" to distinguish between BNSF single-line service and KCS-BNSF joint-line service—not between BNSF access using trackage rights and BNSF access using reciprocal switching. *See* Decision No. 44, 1 S.T.B. at 428 ("[A]pplicants must remove the . . . geographic restrictions on direct BNSF service to Lake Charles, West Lake, and West Lake Charles shippers and permit BNSF to serve all destinations from these points."). Nothing in the Board's order in any way suggests that removal of the geographic restriction from Section 5(b) was intended to affect the alternative access provision in Section 8(n). *See id.*

What BNSF now characterizes as "trackage rights conditions," Weicher VS at 3, are really just access conditions: the Board left Union Pacific and BNSF to determine the specific method BNSF would use to access shippers pursuant to the BNSF Settlement Agreement—including Section 8(n).

The BNSF Settlement Agreement does not give BNSF the unfettered right to serve Lake Charles area shippers using trackage rights. Before removal of the geographic restriction, Section 5(b) stated that BNSF would have the right to "handle" certain Lake Charles area traffic:

> BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles and West Lake, LA, and traffic of shippers open to SP and KCS at West Lake Charles, LA; the foregoing rights at Lake Charles, West Lake, and West Lake Charles, LA shall be limited to traffic (x) to, from and via New Orleans, and (y) to and from points in Mexico, with routings via Eagle Pass, Laredo (through interchange with Tex-Mex at Corpus Christi or Robstown), or Brownsville, TX.

Counsel's Exhibit 5 (Second Supplemental Agreement § 4(b)).

When Union Pacific and BNSF submitted the Restated and Amended Settlement Agreement, they again used the term "handle":

> 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.

Counsel's Exhibit 2 (RASA § 5(b)).

The issue of *how* BNSF would "handle" the traffic is governed by separate provisions of the BNSF Settlement Agreement. The parties recognized that different methods of access might be appropriate in different commercial and operating environments.[17] They agreed that BNSF's access to shippers could be "direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor." Counsel's Exhibit 2 (RASA § 5(c)).

The parties also agreed to a process they would follow when BNSF proposed to initiate service to a covered shipper or to change its method of service: BNSF agreed to provide Union Pacific the specifics of its proposed operating plan and obtain Union Pacific's approval of that plan. *See id.* (RASA § 5(d)). If Union Pacific does not approve BNSF's proposed plan, Union Pacific must propose an alternative plan. *See id.* If the parties cannot reach an agreement, they may arbitrate their dispute. *See id.* (RASA § 15).

This process was designed to promote informed discussion and service-oriented outcomes. Union Pacific and BNSF have used this process several hundred times since the UP/SP merger. In just the past five years, Union Pacific and BNSF have used the process on over 90 occasions when BNSF has asked to establish service to a covered shipper or to change its

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[17] *See, e.g., Union Pacific/Southern Pacific Merger, General Oversight*, Decision No. 15, FD 32760 (Sub-No. 21), slip op. 13 n.35 (STB served Nov. 30, 1999) ("Most rail shippers, BNSF observes, want to be served by one, not two, rail carriers, due to issues of coordination, potential downtime while a facility is switched, and record-keeping, and also due to safety issues.").

existing method of service. We reached agreement with BNSF in every case, except a few the Board had to resolve when the parties disagreed about whether a shipper was covered by the BNSF Settlement Agreement. Since the UP/SP merger, the parties have never found it necessary to arbitrate a dispute over Union Pacific's disapproval of, or establishment of conditions on approval of, an operating plan proposed by BNSF.[18]

BNSF's assertions are further undermined by the fact that the Board was aware BNSF did not plan to use trackage rights to serve Lake Charles area shippers following the merger. As Mr. Rebensdorf describes, after BNSF obtained access to Lake Charles area shippers under the CMA Agreement, BNSF and Union Pacific agreed that BNSF would serve those shippers using a combination of haulage and reciprocal switching. *See* Rebensdorf RVS at 5. Union Pacific submitted the parties' agreement on this subject to the Board several months before the Board approved the merger. *See* Counsel's Exhibit 21 (Lake Charles Haulage Agreement). In addition, BNSF submitted a "Progress Report and Operating Plan" to the Board in October 1996, in which it described its plan to serve Lake Charles area shippers using switching provided by Union Pacific. *See* Counsel's Exhibit 22 (BNSF Progress Report and Operating Plan at 6) ("UP/SP will switch industries in the greater Lake Charles area and will provide two blocks for [BNSF].").

Although BNSF now asks the Board to "*confirm* the direct trackage rights granted to BNSF over the Rosebluff Industrial Lead as a condition to the UP/SP merger," BNSF Op. at 1 (emphasis added), the Board never prescribed or authorized BNSF operations using trackage rights over the Rose Bluff Industrial Lead to begin with. The trackage rights implementing agreements that Union Pacific submitted before the Board approved the UP/SP merger do not identify the Lead as a line over which BNSF was seeking authority to operate using trackage

[18] *See* Hartmann Reply Verification.

rights. *See* Counsel's Exhibit 23 (Houston-Iowa Junction Trackage Rights Agreement). And the notice of exemption for trackage rights that Union Pacific and BNSF jointly submitted to the Board, which the Board addressed in Decision No. 44, 1 S.T.B. at 522, did not identify the Rose Bluff Industrial Lead as a line over which BNSF would receive trackage rights. *See* Counsel's Exhibit 24 (Notice of Exemption).

BNSF does not identify any decision in which the Board authorized BNSF trackage rights over the Lead. In contrast, where the Board *did* grant BNSF terminal trackage rights in the merger proceeding—over KCS trackage in Shreveport, Louisiana, and Beaumont, Texas—the Board made specific findings pursuant to 49 U.S.C. § 11103(a) (now § 11102(a)) that a grant of terminal trackage rights (i) was in the public interest, (ii) was practicable, and (iii) would not impair KCS's ability to handle its own traffic. *See* Decision No. 44, 1 S.T.B. at 447-48.

BNSF's assertions are also inconsistent with Decision No. 63. There, the Board acknowledged BNSF's position that BNSF could "access the Lake Charles area by reciprocal switch," and it outlined the steps BNSF could follow if its "access to the Lake Charles area is blocked." Decision No. 63, slip op. at 8-9. The decision further confirms that the Board imposed access conditions, not "trackage rights conditions," and that the Board recognized that access could be through reciprocal switching. And, as we have shown, BNSF has competed very successfully using its access to CITGO via reciprocal switching.

C. BNSF is seeking rights different from those it agreed to accept in Section 8(n) of the BNSF Settlement Agreement and those the Board imposed as conditions on the UP/SP merger.

The Board should not permit BNSF to use a terminal trackage rights application to circumvent Section 8(n) of the BNSF Settlement Agreement. Allowing BNSF to avoid the terms of its agreement, which the Board imposed as a condition on the UP/SP merger, would be no different from imposing a new condition long after the merger was consummated. It is far too

late to impose new merger conditions now, especially in the absence of any showing of competitive harms under the current arrangement. *See generally Canadian National, et al.—Control—Illinois Central, et al.* ("*CN/IC Control, Reconsideration*"), 6 S.T.B. 492, 496 (2002) ("[O]nce the period for administrative reconsideration has passed, carriers that have decided to move forward with their transaction are entitled to rely on the assumption that the basic terms and conditions of administratively final decisions are not likely to be altered."); *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 583 (2001) ("[A]bsent some failure of a condition that we imposed or some specific reservation of jurisdiction through oversight or otherwise, it would generally not be appropriate for us to impose new conditions on our approval of a transaction that has already been consummated."); *Guilford Transportation—Control—B&M et al.*, 5 I.C.C.2d 202, 206 (1988) (discussing the "obvious" unfairness associated with additional conditions "long after control transactions were consummated and consolidated operations were effected"). A decision that effectively imposes a new condition on the UP/SP merger this long after the transaction was consummated would improperly deprive Union Pacific of the basic, fundamental "right to walk away from a transaction if it deems the conditions too burdensome." *CN/IC Control, Reconsideration*, 6 S.T.B. at 496.

IV. BNSF'S USE OF TRACKAGE RIGHTS OVER THE ROSE BLUFF INDUSTRIAL LEAD WOULD NOT BE "PRACTICABLE AND IN THE PUBLIC INTEREST WITHOUT SUBSTANTIALLY IMPAIRING THE ABILITY OF THE RAIL CARRIER OWNING THE FACILITIES . . . TO HANDLE ITS OWN BUSINESS."

BNSF is not entitled to terminal trackage rights under Board precedent. The Board should not depart from that precedent, especially where BNSF is seeking rights different from those it agreed to accept in the BNSF Settlement Agreement.

A railroad seeking trackage rights over the terminal facilities of another carrier must show its use of the facilities "to be practicable and in the public interest without substantially

impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." 49 U.S.C. § 11102(a). BNSF does not show that the terminal trackage rights it seeks here are in the public interest either as a remedy for anticompetitive conduct, or under the "bridge the gap" precedent that applies in merger cases. BNSF also fails to show that its proposed operations are practicable without substantially impairing Union Pacific's and KCS's ability to handle their own business on the Rose Bluff Industrial Lead.

A. BNSF terminal trackage rights over the Rose Bluff Industrial Lead are not "in the public interest."

The Board has identified two situations in which a grant of trackage rights under 49 U.S.C. § 11102(a) might be in the public interest. *First*, terminal trackage rights might be in the public interest when they are necessary to remedy anticompetitive conduct. *See Midtec Paper Corporation v. CNW et al.*, 3 I.C.C.2d 171 (1986), *aff'd sub nom. Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988). *Second*, terminal trackage rights might be in the public interest when they are "designed to bridge a gap within broader trackage rights imposed on applicants and deemed necessary to remedy or mitigate anticompetitive effects in the transaction." *Canadian National, et al.—Control—Illinois Central, et al.* ("*CN/IC Control*"), 4 S.T.B. 122, 173 (1999). Neither situation exists here, and there are no cases that expand the "public interest" definition beyond these two situations.

1. BNSF has not shown any anticompetitive conduct.

Outside of "bridge the gap" situations, "terminal trackage rights can be granted only if applicants meet the generally applicable competitive access standards." *CN/IC Control*, 4 S.T.B. at 175. "That standard requires that a party seeking terminal trackage rights show that the incumbent carrier has engaged, or is likely to engage, in competitive abuse and that terminal rights would ameliorate that conduct." *Id.* (citing 49 C.F.R. pt. 1144); *see also, e.g., Shenango*

Inc. v. Pitts., Chartiers & Yough. Ry., 5 I.C.C.2d 995, 1000-01 (1989) ("The relevant question is whether [the owner of the trackage] has committed, or appears likely to commit, an act that is contrary to the competition policies of the rail transportation policy or is otherwise anticompetitive such that a competitive access remedy would be required."). Even where anticompetitive conduct is shown, terminal trackage rights are recognized as "an extraordinary remedy, one to be afforded only when less intrusive remedies such as . . . reciprocal switching are insufficient." *Western Fuels Serv. Corp. v. The Burlington N. & Santa Fe Ry.*, NOR 41987, slip op. at 7 (STB served July 28, 1997); *see also Shenango*, 5 I.C.C.2d at 1002 ("Trackage rights are a remedy of last resort . . . .").

BNSF does not show any anticompetitive conduct on the part of Union Pacific or KCS, nor could it.[19] CITGO and other shippers in the Lake Charles area have access to three railroads, including access to two of the three through reciprocal switching. BNSF cars move to CITGO in Union Pacific trains along with Union Pacific's own cars, receiving equivalent service. Union Pacific and KCS have responded to CITGO's needs, adjusting service as CITGO increased its capacity to receive crude oil by rail. BNSF has benefited from that expansion of service to CITGO and is competing successfully for business: in 2014, BNSF handled {{

}}.[20]

BNSF cites the Board's Lake Charles access condition in connection with the "public interest" requirement of 49 U.S.C. § 11102, *see* BNSF Op. at 13-14, but the Board's conclusion that BNSF *access* to Lake Charles area shippers was required to address competitive effects of

[19] The governing case law makes clear that merely refusing to provide a competitor access to tracks is not, by itself, conduct sufficient to justify a competitive access remedy. *See, e.g., Vista Chemical Co. v. Atchison, T. & S.F. Ry.*, 5 I.C.C.2d 331, 340 (1989); *Midtec*, 3 I.C.C.2d at 174.

[20] *See* Hartmann Reply Verification.

the UP/SP merger was not the same as the public interest analysis required to grant *trackage rights* under 49 U.S.C. § 11102. Indeed, the Board has repeatedly "reject[ed] [the] argument that [it] may use the 'public interest' language of 49 U.S.C. 11102 to prescribe terminal trackage rights without regard to the competitive access regulations." *Western Fuels*, slip op. at 7. "[T]he ICC and the Board have consistently determined since [*Midtec*] that [the competitive access regulations] must be satisfied to obtain this extraordinary remedy." *Id.* And, as discussed above, BNSF's current access to CITGO through reciprocal switching has been more than adequate to preserve pre-merger competition, allowing BNSF {{

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2. The Board's "bridge the gap" precedent does not apply because there is no gap to bridge, and trackage rights are not "necessary" in view of BNSF's existing access to CITGO via reciprocal switching.

The Board applies a special public interest test to applications for terminal trackage rights in one narrow situation involving rail mergers. The Board has required non-applicant carriers to grant terminal trackage rights to another carrier "in limited circumstances where the rights were designed to *bridge a gap* within broader trackage rights imposed on applicants and deemed necessary to remedy or mitigate anticompetitive effects in the transaction." *CN/IC Control*, 4 S.T.B. at 173 (emphasis added). BNSF's application does not satisfy either part of this test.

a) The Rose Bluff Industrial Lead does not "bridge" a "gap."

BNSF's application does not address a "bridge the gap" situation because there is no "gap" in BNSF's trackage rights over Union Pacific that must be "bridged." For support, BNSF invokes the Board's decision in the UP/SP merger to grant BNSF terminal trackage rights over two segments of KCS track in Shreveport, Louisiana (over which Southern Pacific had trackage

[21] *See* Hartmann Reply Verification.

rights), and one KCS segment in Beaumont, Texas (over which both Union Pacific and Southern Pacific had trackage rights). *See* BNSF Op. at 23. BNSF's analogy is flawed. The Shreveport and Beaumont terminal trackage rights were necessary to bridge what would otherwise have been gaps within broader BNSF trackage rights that the Board imposed on Union Pacific as a condition to the UP/SP merger—specifically, BNSF trackage rights from Houston to Memphis and Houston to New Orleans. As the Board explained:

> These [terminal trackage] rights are important to BNSF's ability to conduct operations over the segments between Houston and Memphis and between Houston and New Orleans because KCS solely owns certain rail lines through Shreveport and Beaumont, which form essential parts of those routes.

Decision No. 44, 1 S.T.B. at 446-47. If BNSF could not operate its own trains over the terminal segments in the middle of the through routes, the Board's Houston to Memphis and Houston to New Orleans trackage rights conditions would fail.[22]

An earlier "bridge the gap" case that the Board cited in Decision No. 44 presented a similar situation. In *Union Pacific—Control—Missouri Pacific; Western Pacific*, 366 I.C.C. 459 (1982), in order to ameliorate certain anticompetitive consequence of the UP/MP/WP merger, the Interstate Commerce Commission imposed a condition granting Denver & Rio Grande Western trackage rights over Missouri Pacific's line between Pueblo and Kansas City, which in turn necessitated granting DRGW terminal trackage rights over a segment of the line east of Pueblo that was owned by non-applicant Atchison, Topeka & Santa Fe. *See id.* at 572-76.[23]

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[22] Even so, the Board granted the terminal trackage rights only after satisfying itself that granting the trackage rights was practicable and would not substantially impair KCS's ability to handle its own traffic. *See id.* at 447-48.

[23] In this case, too, the Commission found that the trackage rights were practicable and would not substantially impair the ability of ATSF to conduct its own business. *See id.* at 575-76.

BNSF's current application does not seek terminal trackage rights to bridge a gap in a broader grant of merger-related trackage rights. BNSF does not need trackage rights over the Rose Bluff Industrial Lead to operate its own trains from Houston to New Orleans, or over any broader trackage rights the Board imposed in the merger proceeding. BNSF initially obtained trackage rights over the Lafayette Subdivision main line through the Lake Charles area, which did not require operations on the Lead, and it now jointly owns the main line (the 50/50 Line). The Lead does not serve as a bridge across what would otherwise be a gap in BNSF's trackage rights. On the contrary, the Lead comes to a dead end south of CITGO's facility without connecting to any other trackage.

b) Terminal trackage rights are not necessary to mitigate anticompetitive effects of the UP/SP merger.

The Board's "bridge the gap" precedent is also inapplicable because BNSF's application does not show that trackage rights operations over the Rose Bluff Industrial Lead are "necessary to remedy or mitigate anticompetitive effects [of the UP/SP merger]." *CN/IC Control*, 4 S.T.B. at 173. Under Board precedent, terminal trackage rights are not "necessary" or appropriate when there is a less intrusive alternative, such as reciprocal switching. In the UP/SP merger, the Board granted BNSF terminal trackage rights over KCS segments in Shreveport and Beaumont because there was no practicable alternative to BNSF's operating its own trains over those short segments of longer through routes. Here, BNSF has a practicable, less intrusive alternative that it has used for 18 years; BNSF already has access to CITGO using reciprocal switching—and it has used that arrangement to capture {{ }}.

CITGO is in a much better competitive position than before the UP/SP merger. Before the merger, two railroads had access to CITGO's facility, Southern Pacific and KCS, and they took turns switching cars to and from the facility. Today, one railroad switches the facility, so

nothing changed in that respect, but CITGO now has access to *three* railroads: Union Pacific, BNSF, and KCS.[24]

BNSF claims that Union Pacific's switching service "has become increasingly problematic over the last two years." Bredenberg VS at 6. On the contrary, Union Pacific's service to CITGO has grown as CITGO expanded its capacity to receive crude oil by rail. As described above, the total number of Union Pacific, BNSF, and KCS cars that Union Pacific delivered to CITGO increased from {{ }} in 2012, to {{ }} in 2013, and {{ }} in 2014.[25] And as CITGO's business has grown, Union Pacific has moved more BNSF cars, allowing BNSF to consistently handle {{ }}.

BNSF identifies only one particular period of service difficulty, "the early summer of 2014." Bredenberg VS at 6. However, as BNSF's own documents confirm, {

}. *See* Counsel's Exhibit 25 (BNSF Documents Regarding CITGO Pump Issues); *see also* Chappell/Matya RVS at 14-15. In addition, as Messrs. Chappell and Matya describe, Union Pacific adjusted its own operations in June 2014 to help improve the flow of cars to CITGO. *See* Chappell/Matya RVS at 15. Since then, Union Pacific has not heard CITGO complain that it is not receiving enough cars. *See id.*

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[24] CITGO's competitive situation also benefits from the Board's condition requiring elimination of the geographic restriction on BNSF access to shippers in the Lake Charles area that Union Pacific, BNSF, and CMA negotiated. CITGO would not have the broad single-line BNSF service it has today if the Board had left the negotiated geographic restriction in place. Instead, BNSF would have had to offer joint-line service with KCS or Union Pacific to move crude oil to CITGO.

[25] *See* Hartmann Reply Verification.

BNSF also claims that terminal trackage rights are necessary because it could provide better service at a lower cost if it could operate its own trains over the Rose Bluff Industrial Lead. *See* BNSF Op. at 17-18 & Bredenberg VS at 8-9. Even if this unsupported claim were correct, it would not be sufficient justification for granting terminal trackage rights. BNSF is considering only its own interests, not the burdens its proposed operations would impose on Union Pacific, KCS, and other shippers on the Lead and in the Lake Charles area. These burdens would be substantial, as we show next.

B. BNSF's proposed service using terminal trackage rights is not practicable and would substantially impair Union Pacific's and KCS's ability to handle their own business on the Rose Bluff Industrial Lead.

The statute requires an applicant to prove that its use of terminal trackage rights is "practicable . . . without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." 49 U.S.C. § 11102(a). BNSF's evidence does not meet that standard. BNSF's cursory discussion of its proposed service to CITGO shows an almost complete lack of understanding of operations in Rose Bluff Yard and the rest of the Rose Bluff Industrial Lead and a disregard for the many other customers on the Lead. BNSF offers no evidence on how it would serve shippers other than CITGO, even though it claims it is entitled to terminal trackage rights to all shippers reached by the Lead.

1. BNSF's discussion of its proposed service to CITGO shows little understanding of current operations on the Rose Bluff Industrial Lead.

BNSF's only evidence that its operations would not substantially impair Union Pacific's and KCS's operations is its operating witness's bald assertion based on his claimed "experience and . . . understanding of the operations of the Rosebluff Industrial Lead." Bredenberg VS at 5. Union Pacific acknowledges Mr. Bredenberg's long experience in railroad operations, but there

appear to be significant gaps in his understanding of current operations in Rose Bluff Yard and on the remainder of the Lead.

For example, Mr. Bredenberg seems to think that Union Pacific operates on the Rose Bluff Industrial Lead for only 12 hours each day. *See* Bredenberg VS at 4-5.[26] However, as Messrs. Chappell and Matya explain, the alternating 12-hour periods apply to occupancy of Rose Bluff Yard, not to the Lead south of the yard. Our trains work on that part of the Lead 24 hours a day, picking up and setting out cars for numerous customers. *See* Chappell/Matya RVS at 9-13.

Mr. Bredenberg also seems to believe that Union Pacific operates only four trains per day on the Lead—one each way between North Yard and Rose Bluff Yard, and one each way between Rose Bluff Yard and customers on the Lead. *See* Bredenberg VS at 5.[27] As Messrs. Chappell and Matya explain, however, Union Pacific operates eight jobs a day to serve our customers on the Lead. Union Pacific crews move on and off the Lead throughout the day and night as they switch cars in and out of multiple customer facilities. *See* Chappell/Matya RVS at 10-13; *see also* Counsel's Map Exhibit D.

In addition, Mr. Bredenberg apparently believes (again mistakenly) that Union Pacific uses only two tracks in Rose Bluff Yard during our yard occupancy period. *See* Bredenberg VS

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[26] Mr. Bredenberg says: "UP and KCS operate at restricted speed over the Rosebluff Industrial Lead and use the track during alternating twelve-hour windows in which UP operates exclusively for a twelve-hour period and KCS operates exclusively on the Rosebluff Industrial Lead for the other twelve hour period." *Id.* at 4-5.

[27] Mr. Bredenberg says: "It is my understanding that KCS and UP currently operate one train each into Rosebluff Yard from their respective yards and one train each out of Rosebluff Yard to their respective yards per day. In addition, UP currently operates one train out of the Rosebluff Yard to industries on the Rosebluff Industrial Lead and one train into the Rosebluff Yard from industries on the Rosebluff Industrial Lead per day." *Id.* at 5.

at 5.[28] As Messrs. Chappell and Matya explain, however, Union Pacific occupies all of the yard tracks when our crews are switching cars during our 12-hour window in Rose Bluff Yard. *See* Chappell/Matya RVS at 7.

Discovery suggests a reason for the gaps in Mr. Bredenberg's understanding. BNSF apparently failed to study the operating conditions on the Rose Bluff Industrial Lead before demanding to operate its own trains on the Lead. BNSF first demanded access using trackage rights in May 2012, however, the only study of operations on the Lead that BNSF produced in support of its request covers train activities from December 8, 2014, to December 22, 2014.[29] In other words, the study ended just nine days before BNSF filed its evidence. Mr. Bredenberg does not mention the study or appear to rely on it, so we do not address its failings further.

2. BNSF's proposed service to CITGO would substantially impair Union Pacific and KCS operations on the Rose Bluff Industrial Lead.

a) BNSF's proposal reflects erroneous assumptions about current operations on the Rose Bluff Industrial Lead.

Mr. Bredenberg says relatively little about BNSF's proposed service to CITGO, commenting only that BNSF "anticipates" that its proposed service "will closely resemble" Mr. Lambeth's straw man proposal, which assumed a maximum delivery of 30 cars every other day, with delivery between 5:00 am and 7:00 am. Bredenberg VS at 7. However, as Mr. Lambeth explains, his straw man proposal was designed merely to spark discussion among Union Pacific, BNSF, and KCS; it is not and was not intended to be a practicable plan for BNSF operations

[28] Mr. Bredenberg says: "KCS uses three yard tracks for switching and storage, and UP uses two yard tracks for switching and storage. The sixth track, the Rosebluff Industrial Lead, is designated as a running track." *Id.* at 5.

[29] BNSF produced the document as BNSF-HC-000595(R) - 000614(R).

under the existing conditions on the Rose Bluff Industrial Lead and in Rose Bluff Yard. *See* Scott/Lambeth RVS at 5-6.

It is even unclear what Mr. Bredenberg means when he says he "anticipates" that BNSF's proposed service "will closely resemble" Mr. Lambeth's straw man proposal. Documents BNSF produced in discovery indicate that {{

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Mr. Bredenberg says BNSF would operate a "CITGO Direct Train" from its Lacassine Yard "through the Rosebluff Yard on any running track designated by UP, and then on the Rosebluff Industrial Lead to the CITGO facility without stopping," in order to "avoid[] creating interference for other service on the lead." Bredenberg VS at 7-8. But the facts show there is no time when BNSF could operate to CITGO without creating interference with Union Pacific or KCS service on the Lead.

Messrs. Chappell and Matya describe in detail why BNSF could not operate trackage rights trains to CITGO based on Mr. Bredenberg's so-called operating plan without substantially impairing Union Pacific's and KCS's service to customers on the Rose Bluff Industrial Lead. Mr. Bredenberg asserts that "the only change to KCS's operations will be a reduction in congestion in the Rosebluff Yard." Bredenberg VS at 8. However, if BNSF's CITGO Direct Train moved through Rose Bluff Yard between 5:00 am and 6:00 am, it would directly interfere with KCS's operations on most days because Union Pacific's 12-hour window in the yard is not scheduled to begin until 6:00 am. *See* Chappell/Matya RVS at 7.

Moreover, even if BNSF were to schedule the CITGO Direct Train to move through Rose Bluff Yard at 6:00 am, it still would interfere with KCS. BNSF's plan assumes there is a fixed time when KCS exits Rose Bluff Yard, but that is inconsistent with actual yard operations. As Messrs. Chappell and Matya explain, KCS often does not exit the yard when its scheduled window ends at 6:00 am. *See id.* at 8-9, 16-17. KCS can, and often does, overstay its window on any given day under ordinary operating conditions. *See id.* at 17.

b) Adding BNSF train operations on the Rose Bluff Industrial Lead during Union Pacific's occupancy window would create cascading delays, impeding service to all customers on the Lead.

Even if BNSF picked a different window for movements through Rose Bluff Yard, its operation would immediately, consistently, and substantially interfere with operations in the yard and on the Rose Bluff Industrial Lead. The CITGO Direct Train's movements would disrupt and delay operations that have been carefully choreographed by Union Pacific and KCS to maximize service in a capacity constrained area.

To illustrate: A Union Pacific train, YRB86, is scheduled to enter Rose Bluff Yard each morning from the south immediately after KCS leaves the yard. YRB86 spends the early morning hours picking up out-bound cars from Zone 2 customers on the Lead, then moves up the Lead with around 120 cars and generally works for several hours in the yard, setting out KCS cars it picked up from Zone 2 and picking up Union Pacific cars from Zone 1 that KCS left in the yard during its window. YRB86 then departs to North Yard, where it leaves cars to be added to Union Pacific trains that move on to Beaumont, Texas, or Alexandria, Louisiana, or to be picked up by BNSF. *See id.* at 10, 17-18.

YRB86 must move into Rose Bluff Yard as soon as possible following KCS's exit from the yard because until YRB86 moves into the yard and away from the west end of the yard,

Union Pacific cannot start operating a second train, YRB65. YRB65 works in Rose Bluff Yard building blocks of cars to be set out for customers in Zone 2 by switching inbound cars that KCS and Union Pacific previously delivered to the yard, and it then heads south over the Lead to deliver cars to several customers in Zone 2. *See id.* at 11, 18.

YRB65 must finish its work in the yard as soon as possible so Union Pacific can start operating a third train, YAK63, which brings Union Pacific and BNSF cars destined for customers in Zones 1 and 2 from North Yard to Rose Bluff Yard. YAK63 cannot depart North Yard with these inbound cars until Rose Bluff Yard is clear, or it risks blocking traffic on the Lafayette Subdivision as it waits to enter Rose Bluff Yard. And, if YAK63's departure from North Yard is delayed, it may overstay our window in Rose Bluff Yard, delaying KCS's entry into the yard (which may then result in a KCS overstay, and so on). *See id.* at 11, 19.

Under BNSF's operating plan, Union Pacific would have to hold YRB86 south of the CITGO facility in the morning so BNSF's CITGO Direct Train could move through the yard, down the single-track Rose Bluff Industrial Lead, and into the CITGO facility (or, when pulling outbound empty cars from the facility back up the Lead to the main line). As a result, every time BNSF moves a CITGO Direct Train, YRB86 would be delayed, and that delay would have a cascading effect on YRB65 and YAK63 (and potentially on KCS's entry into and exit from Rose Bluff Yard). *See id.* at 17-19.

Moreover, the delay to YRB86—and thus to Union Pacific's other operations—would be *at least* twice as long as the 25 minutes BNSF says it would need to move the CITGO Direct Train over the Rose Bluff Industrial Lead into CITGO's facility, assuming it has a "clear route" over the Lead. Bredenberg VS at 7-8. YRB86 could not even start moving to Rose Bluff Yard until the CITGO Direct Train cleared the Lead, and it would still have to move from CITGO's

facility to the yard—arriving approximately one hour later than it would otherwise enter the yard. *See* Chappell/Matya RVS at 17.

In addition, BNSF's plan unrealistically assumes that the CITGO Direct Train actually would have a "clear route" from Lacassine Yard to the Lead. Bredenberg VS at 7. As Messrs. Chappell and Matya explain, Union Pacific's local jobs operating between North Yard and Rose Bluff Yard have a lower priority than Amtrak trains and Union Pacific and BNSF through trains operating on the Lafayette Subdivision. This means that locals are held when necessary to avoid interfering with traffic on the main line. *See* Chappell/Matya RVS at 4. The CITGO Direct Train would likewise have a lower priority than passenger and through freight trains. *See id.* at 19-20.

Moreover, like other trains moving on the main line, the CITGO Direct Train would have to contend with delays caused by the swing bridge between North Yard and the Lead. Union Pacific would have to hold YRB86 south of CITGO's facility to wait for the CITGO Direct Train to move from Lacassine Yard over the Lafayette Subdivision and clear the Lead, even when KCS has left Rose Bluff Yard on schedule, and the CITGO Direct Train arrival at Rose Bluff Yard could be later than BNSF assumes. *See id.* at 20.

The cascading delays that BNSF's proposed operations would create are not mere matters of scheduling or inconvenience to Union Pacific or KCS; they unavoidably would have a significant impact on service to customers on the Rose Bluff Industrial Lead. BNSF's proposed train movements would delay Union Pacific operations that are a challenge to complete within the time available under current conditions.

Similar interference would result if a CITGO Direct Train arrived at Rose Bluff Yard later in the day. Because Union Pacific jobs are working in the yard throughout Union Pacific's window, and on the Lead in Zone 2 throughout the day and night, any additional train would

cause delays similar to those described above. *See id.* at 19. BNSF hypothesizes a clear route from Lacassine Yard through Rose Bluff Yard and over the Lead to CITGO without interference to any other operations, but interference is inevitable because the clear route that BNSF assumes simply does not exist, and creating that clear route would interfere with Union Pacific's service to all of our customers on the Lead.

BNSF also does not explain how it would avoid interfering with Union Pacific service at the CITGO facility. Union Pacific delivers loaded cars to CITGO and pulls empty cars every day. Taking at face value Mr. Bredenberg's reliance on Mr. Lambeth's straw man proposal, BNSF apparently proposes to remove empty cars only every other day, which means more empty cars will occupy CITGO's storage track for an extra day, using track space that might be needed to hold other cars, and potentially interfering with our ability to pull empty Union Pacific or KCS cars. *See id.* at 20-21. CITGO does not have a loop track on which a CITGO Direct Train could remain intact during delivery, unloading, and empty return. CITGO would have to break the cars into twelve-car blocks for unloading, and it presumably would use the same set of empty car storage tracks for both cars delivered by BNSF and cars delivered by Union Pacific. *See* Counsel's Exhibit 12 (CITGO Responses to KCS Discovery at 3-6).

c) Adding BNSF train operations on the Rose Bluff Industrial Lead would consume scarce capacity and increase congestion and would not eliminate the need for any trains currently operating in the Lake Charles area.

BNSF's failure to confront the issues its proposed operations on the Rose Bluff Industrial Lead would create is highlighted by its erroneous assertion that these operations would "free[] up capacity and reduc[e] congestion." Bredenberg VS at 8. In fact, BNSF's operation of a CITGO Direct Train would *consume* capacity and *increase* congestion.

BNSF's proposed service would not eliminate any train operating today in the Lake Charles area. A CITGO Direct Train would not replace a Union Pacific train. Union Pacific would still have to operate all the same trains it currently operates in Rose Bluff Yard and on the Lead to handle Union Pacific and KCS cars to CITGO and other Zone 2 customers. And BNSF presumably also would continue to deliver and pick up cars at North Yard that Union Pacific would handle for BNSF's other customers on the Lead. BNSF's CITGO Direct Train would be an *additional train* that would have to operate over the Lafayette Subdivision, through Rose Bluff Yard, and south to CITGO over the Lead. Any marginal impact of removing BNSF's cars for CITGO from Union Pacific trains would be outweighed by BNSF's consumption of an additional slot on the Lafayette Subdivision and the delays and disruption to Union Pacific's operations in Rose Bluff Yard and on the Lead—delays that would impact the common customers of Union Pacific, KCS, and BNSF. *See* Chappell/Matya RVS at 22.[30]

BNSF similarly fails to consider the consequences of its plans when it incorrectly asserts that the impact of its operations over the Rose Bluff Industrial Lead would be similar to that of its operations over the Shreveport and Beaumont terminal trackage rights granted in the UP/SP merger proceeding. *See* BNSF Op. at 23-24. In the UP/SP merger, the Board found that BNSF trackage rights would not substantially impair KCS's use of the Shreveport and Beaumont segments because, "[f]or the most part, BNSF trains will be using track capacity freed up by UP/SP," and "the traffic handled by BNSF will replace traffic now handled by SP." Decision No.

[30] In fact documents produced in discovery indicate BNSF {{

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44, 1 S.T.B. at 447. The Board could not make a similar finding here. BNSF's CITGO Direct Train would not replace any train operating on the Lead today; instead, BNSF would be adding a train to the Lead. Moreover, this is not a case involving the occasional, incidental interference that occurs on many rail lines. By plan, BNSF would disrupt Union Pacific operations every time BNSF operated a CITGO Direct Train into or out of CITGO's facility.

BNSF asserts that the Shreveport and Beaumont terminal trackage rights are comparable because "concerns over operational complexities from three versus two carriers operating over the segments" would "simply 'require coordination of operations between the parties.'" BNSF Op. at 23 (quoting Decision No. 44, 1 S.T.B. at 447). That is wrong. BNSF trackage rights would not just add another operator on the Rose Bluff Industrial Lead, they would add new trains. Replacing a Southern Pacific through train with a BNSF through train is very different from adding local trains to an already congested terminal. Accommodating an incremental BNSF CITGO Direct Train would not be merely a matter of "coordination," it would consume capacity that Union Pacific and KCS are already using.

In fact, documents produced in discovery suggest that BNSF is willing to provide unit train service to CITGO {{

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Finally, BNSF argues that the Board has determined that, by accepting the conditions on the UP/SP merger, including the BNSF Settlement Agreement, Union Pacific agreed to accept any operational interference that occurs when BNSF exercises its access rights. *See* BNSF Op. at 20 n.7 (citing *Union Pacific/Southern Pacific Merger*, Decision No. 95, FD 32670 (STB served Mar. 4, 2002)). Over 18 years, Union Pacific has in good faith accommodated BNSF's trackage rights operations over thousands of miles of our track. But the Board never said that Union Pacific agreed to accept any interference BNSF caused. Rather, in addressing build-ins/build-outs, the Board observed that Union Pacific was not entitled "to a remedy or compensation whenever new BNSF service to a build-in/build-out line via the trackage rights lines leads to *any* interference with its operations." Decision No. 95 at 4 (emphasis in original). The Board also said that "BNSF should recognize that it would not, in most circumstances, be free from responsibility for at least a share of the costs for improvements required by new traffic patterns associated with a build-in/build-out line." *Id.*

In any event, this case is not about a build-in or build-out. BNSF is seeking terminal trackage rights, and it must make the statutorily required showing that its use of the trackage is "practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities . . . to handle its own business." 49 U.S.C. § 11102(a). The issue of

substantial impairment of the owner's business is particularly important in terminal trackage rights cases because other, less intrusive access remedies are usually available. Here, BNSF already has access to CITGO using reciprocal switching, and it has used that access successfully for 18 years. BNSF has not shown that the trackage rights access to CITGO that it seeks is "practicable" or "in the public interest," particularly considering its existing access, the impact trackage rights would have on Union Pacific's and KCS's operations, and the impact a grant of trackage rights would have on the 25 other customers that rely on Union Pacific and KCS to serve them using the Rose Bluff Yard and the Rose Bluff Industrial Lead.

3. BNSF fails to address service to shippers other than CITGO.

While its application focuses primarily on CITGO, BNSF appears to be requesting terminal trackage rights to access all the shippers on the Rose Bluff Industrial Lead, not just CITGO. Mr. Bredenberg states that "BNSF proposes to operate over the Rosebluff Industrial Lead to provide direct service to the CITGO facility and to other customers in the terminal area." Bredenberg VS at 7. However, he provides absolutely no information about BNSF's proposed operations for the other shippers.

In more recent pleadings, BNSF asserts that "any BNSF direct train service under the terminal trackage rights requested here would reduce the number and frequency of . . . UP trains, essentially creating a zero-sum game." Counsel's Exhibit 29 (BNSF Reply to KCS Motion to Compel at 7-8). As discussed above, BNSF's assertion is incorrect. As long as Union Pacific continues to move Union Pacific and KCS traffic to shippers on the Rose Bluff Industrial Lead, Union Pacific will operate the same number of trains on the Lead. Some of the Union Pacific trains might be somewhat shorter without BNSF cars, but that does not make it a "zero-sum game" in terms of consuming capacity on the Lead. One train moving 100 cars consumes much less capacity on the Lead and at shipper facilities than two trains moving 50 cars each. *See*

Chappell/Matya RVS at 22.[31] That is why KCS and Union Pacific's predecessor company agreed long ago that it was not practicable to have two railroads operating at the same time in this cramped, capacity constrained area—that is why they split yard occupancy times and divided the customers into two zones, with only one railroad physically serving shipper facilities in each zone.

Documents BNSF produced in discovery show that {{

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BNSF's failure to offer any evidence regarding access to other shippers is all the more remarkable in light of BNSF's recent revelation (in discovery-related pleadings) that it "has discussed potential service on the Rosebluff Industrial Lead with several shippers," and "has executed agreements with one such shipper," agreements that apparently contemplate that BNSF will "provide direct service . . . in the event that its application in this proceeding is granted." Counsel's Exhibit 29 (BNSF Reply to KCS Motion to Compel at 10). Given BNSF's complete failure to address proposed operations to shippers on the Lead other than CITGO, including shippers that have signed contracts with BNSF, the Board cannot make the statutorily required

[31] In addition, as discussed in note 30, BNSF actually may be planning {{

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finding that BNSF's use of trackage rights is "practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities . . . to handle its own business." 49 U.S.C. § 11102(a).

4. BNSF's operations on the Baytown Subdivision and Sabine Lead do not provide a model for operations on the Rose Bluff Industrial Lead.

Rather than provide any concrete facts that would allow the Board to evaluate the impact of BNSF's use of terminal trackage rights, Mr. Bredenberg asserts that BNSF's operations over Union Pacific's Baytown Subdivision and Sabine Lead would serve as a model for BNSF's operations over the Rose Bluff Industrial Lead. *See* Bredenberg VS at 8.[32] That assertion again betrays a lack of understanding of operations on the Rose Bluff Industrial Lead.

As Mr. Scott explains, the Baytown Subdivision and Sabine Lead are very different from the Rose Bluff Industrial Lead. The Baytown Subdivision—a substantially larger operation than the Rose Bluff Industrial Lead—is not a dead-end switching lead like the Rose Bluff Industrial Lead: Union Pacific lines connect to the northern and southern ends of the Subdivision. Thus, there is no equivalent to the choke-point created by the small, heavily-used Rose Bluff Yard. Union Pacific and BNSF do not even enter the Subdivision from the same location. Union Pacific enters from the south end and treats the Baytown Subdivision as a through route; BNSF enters from the north. Both railroads have capacity to operate on this Subdivision. Union Pacific has yards at three locations on the Subdivision; BNSF has its own large yard at the north end and an agreement with a third party to store cars and originate crews further down the line. *See* Scott/Lambeth RVS at 8.

[32] Mr. Bredenberg refers to the Baytown "Branch," but Baytown is actually a Union Pacific Subdivision.

The Sabine Lead also provides no model for operations over the Rose Bluff Industrial Lead. Like the Baytown Subdivision, the Sabine Lead lacks the sort of choke point created by Rose Bluff Yard. It has lower carload volume and fewer switching requirements, as well as more capacity to handle existing traffic, than the Rose Bluff Industrial Lead. Union Pacific has three yards to support its operations on the Sabine Lead, and BNSF supports its operations from its yard in Beaumont, located at the north end of the Sabine Lead. *See id.*

Finally, unlike at the Rose Bluff Industrial Lead, there is room for capacity improvements on the Baytown Subdivision and the Sabine Lead should capacity issues arise. And, of course, the Baytown Subdivision and Sabine Lead are accommodating operations of *two* railroads, not the *three* railroads that BNSF would have operating through Rose Bluff Yard and on the rest of the Rose Bluff Industrial Lead. *See id.*

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Given the gaps in BNSF's understanding of operations in Rose Bluff Yard and on the Rose Bluff Industrial Lead, its failure to present a realistic plan for serving CITGO without interfering with Union Pacific's operations, and the complete absence of information about how it proposes to serve shippers other than CITGO, the Board has no basis for concluding that BNSF's use of terminal trackage rights would not substantially impair Union Pacific's and KCS's service to customers on the Lead.

V. THERE IS NO COMPELLING REASON FOR THE BOARD TO OVERRIDE THE CONSENT PROVISION IN THE 1948 JOINT FACILITY AGREEMENT.

KCS has declined to approve BNSF's use of the Rose Bluff Industrial Lead, under the terms of the joint facility agreement governing the Lead. BNSF's opening statement includes an alternative request for relief if the Board does not grant terminal trackage rights: BNSF asks the Board to use its authority under 49 U.S.C. § 11321(a) to override "the terms of the joint facility

agreements that KCS has invoked as a basis for blocking BNSF's direct access to Lake Charles area shippers." BNSF Op. at 23. The Board should deny this request.

BNSF is wrong when it asserts that "in Decision No. 63, the Board expressed its intent to override any consent provision in the joint facility agreements if a terminal trackage application were denied." *Id.* at 22-23. The Board did not commit to exercising its override authority. It merely said that if a terminal trackage rights application is ultimately denied, "an override of the terms of the four joint facility agreements might be necessary." Decision No. 63 at 9.

The Board has recognized that its authority to override contractual obligations is a powerful tool that should be used only when "necessary to carry out [a] merger." *CN/IC Control*, 4 S.T.B. at 174; *see also CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196, 272 (1998) ("Applicants, however, have not demonstrated that a permanent override would be necessary to carry out this transaction."). Here, an override is not necessary because BNSF already has what has proved to be highly effective access to CITGO and the other shippers on the Rose Bluff Industrial Lead using reciprocal switching. *Cf. CN/IC Control*, 4 S.T.B. at 174-75 (explaining that availability of alternatives made an override unnecessary).

The Board's conditions on the UP/SP merger did not require that BNSF serve CITGO and other shippers in the Lake Charles area using trackage rights. In Section 8(n) of the BNSF Settlement Agreement, BNSF agreed to alternative access where Union Pacific lacked sufficient legal authority to grant trackage rights. BNSF has served shippers on the Rose Bluff Industrial Lead for the past 18 years using reciprocal switching. Even before the UP/SP merger, only one carrier operated the trains to customers on the Lead. BNSF receives equal treatment in serving shippers on the Lead through reciprocal switching, as its cars move in the same trains as Union Pacific's and are switched in a non-discriminatory manner. BNSF has been successful in winning

and growing CITGO's business using reciprocal switching. And, as described above, BNSF trackage rights operations through Rose Bluff Yard and on the Lead would substantially impair Union Pacific's and KCS's operations and degrade service to other customers on the Lead. In short, an override is both unnecessary and inappropriate here.

VI. IF THE BOARD AWARDS ANY RELIEF, IT SHOULD REQUIRE BNSF TO PAY ALL ADDITIONAL COSTS ASSOCIATED WITH ITS OPERATIONS OVER THE ROSE BLUFF INDUSTRIAL LEAD.

BNSF not only seeks rights different from those it agreed to accept under Section 8(n) of the BNSF Settlement Agreement, it also contends that Union Pacific should bear responsibility for the costs of providing those different rights, including "any compensation due to KCS." BNSF Op. at 21. This position is a blatant overreach and should be rejected. If the Board should grant BNSF relief, whether by granting terminal trackage rights or overriding the consent provision, it should make clear that if BNSF elects to operate using trackage rights, BNSF must pay any associated incremental costs, including any appropriate compensation to KCS for BNSF's presence on the Rose Bluff Industrial Lead.

Under 49 U.S.C. § 11102(a) and (b), a rail carrier granted use of terminal facilities must compensate the facilities' owner. BNSF knows this. When the Board granted BNSF terminal trackage rights over the Shreveport and Beaumont segments in the UP/SP merger proceeding, the agency required BNSF to compensate KCS. *See* Decision No. 44, 1 S.T.B. at 449 ("Section [11102(a)] provides that the carriers are responsible for establishing the conditions and compensation applicable to terminal trackage rights awarded under [Section 11102], and we will therefore allow BNSF and KCS an opportunity to reach an agreement respecting such matters."). BNSF and KCS subsequently entered into a trackage rights agreement under which BNSF agreed to compensate KCS. *See* Counsel's Exhibit 31 (Shreveport/Beaumont Trackage Rights Agreement).

The outcome should be the same here. As in the case of the Shreveport and Beaumont segments, BNSF would be voluntarily accepting the benefits and obligations associated with a grant of terminal trackage rights, including the obligation to compensate KCS. The case for requiring BNSF to compensate KCS would be even stronger here. BNSF already has access to CITGO and other shippers in the Lake Charles area through reciprocal switching, and it has no need to use trackage rights to serve those shippers. BNSF's decision to use terminal trackage rights instead of the current reciprocal switching arrangement would be entirely voluntary.

Similar considerations would apply if BNSF gained trackage rights through an override of KCS's contractual rights. BNSF currently has access to CITGO using reciprocal switching. If BNSF believes that its current access terms do not already provide the commercial equivalent of trackage rights access, it can invoke the remedy that it negotiated in Section 8(n) of the BNSF Settlement Agreement. If BNSF voluntarily seeks a contractual override, rather than exercising the rights that it negotiated, then it should be responsible for any additional costs. It should not be placed in a better position if its application for terminal trackage rights is denied than if it were granted.[33]

VII. CONCLUSION

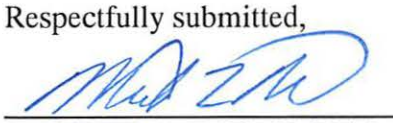
The Board should deny BNSF's application for terminal trackage rights. BNSF already competes successfully for CITGO's business using the access it obtained in the UP/SP merger. It now seeks rights different from those it accepted in the BNSF Settlement Agreement, a result the

[33] If the Board grants BNSF terminal trackage rights over the Rose Bluff Industrial Lead or overrides the consent provision, it should make clear that Union Pacific and BNSF should follow the process that applies when BNSF elects to change the manner by which it provides service to covered shippers under the BNSF Settlement Agreement. *See* Counsel's Exhibit 2 (RASA § 5(d)). This includes provision by BNSF of an adequate operating plan and an opportunity for Union Pacific to review and approve the plan. *See id.* BNSF appears to agree that this would be appropriate. *See* BNSF Op. at 18-19.

Board should not allow. BNSF has failed to meet the burden of proof the statute imposes for a grant of terminal trackage rights. It provides the Board with no basis on which to make the findings required under 49 U.S.C. § 11102(a). BNSF also has not justified an override of KCS's contractual right to deny BNSF's trains admission to the Rose Bluff Industrial Lead. It provides no compelling reason for the Board to override a private contract—particularly where the consequence would be to degrade service to the other shippers on the Lead.

BNSF's requests for terminal trackage rights and an override should be denied.

Respectfully submitted,



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August 24, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2015, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760 (Sub-No. 46).



Michael L. Rosenthal

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

REPLY VERIFIED STATEMENT

OF

JOHN H. REBENSDORF

REPLY VERIFIED STATEMENT

OF

JOHN H. REBENSDORF

I. Background

My name is John H. Rebensdorf. Until I retired in 2012, I was Union Pacific Railroad Company's Vice President – Network Planning and Operations. I hold a Bachelor's Degree in Civil Engineering from the University of Nebraska and a Master's Degree in Business Administration from Harvard University. Before I joined Union Pacific, I worked in the Mechanical Department of the Chicago, Burlington & Quincy Railroad and in the Operating and Engineering Department of the Chicago, Rock Island and Pacific Railroad. At Union Pacific, I held a variety of positions in the Finance, Executive, and Operating departments before I was promoted to Vice President –Network Planning and Operations in 2003.

I was Union Pacific's lead negotiator for the settlement agreement between Union Pacific and BNSF in connection with the UP/SP merger ("BNSF Settlement Agreement"). I was also involved in amending that agreement to address the conditions imposed on the merger by the Board, including the terms of a settlement agreement among Union Pacific, BNSF, and the Chemical Manufacturers Association ("CMA Agreement").

I am making this statement to correct errors in BNSF's Opening Statement and Evidence and the Verified Statement of Richard E. Weicher about the rights BNSF obtained in the UP/SP merger to serve shippers in and around Lake Charles, Louisiana. Union Pacific took seriously the need to address concerns that shippers expressed about the merger, and in response we made numerous concessions to accommodate service by BNSF that would preserve competition and otherwise address shipper concerns. As I explain below, Union Pacific and BNSF both

recognized that Union Pacific in some circumstances might lack sufficient legal authority to grant BNSF access to shippers using trackage rights, so we expressly provided for alternative access in such situations. As I also explain below, BNSF planned at the time of the merger to access shippers in the Lake Charles area using reciprocal switching, not trackage rights. I further explain why BNSF is simply wrong when it claims that it has a unilateral right to change its method of service from reciprocal switching to trackage rights.

II. BNSF agreed in Section 8(n) of the BNSF Settlement Agreement to use an alternative means of access where Union Pacific lacks sufficient authority to grant trackage rights.

In applying for terminal trackage rights over the Rose Bluff Industrial Lead, BNSF is asking the Board to grant entirely different rights than BNSF agreed to accept in the BNSF Settlement Agreement. BNSF now takes the position that it should receive trackage rights regardless of any legal rights KCS may possess under the joint facility agreements governing the trackage in question. However, Union Pacific and BNSF expressly agreed in Section 8(n) of the BNSF Settlement Agreement that if Union Pacific for any reason lacked sufficient legal authority to grant certain trackage rights, Union Pacific as a remedy would provide an alternative means of access of commercially equivalent utility.

The BNSF Settlement Agreement states in Section 8(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.

Union Pacific and BNSF expressly included this provision in the Initial BNSF Settlement Agreement. *See* Counsel's Exhibit 1 (Initial BNSF Settlement Agreement § 8(j)). And the provision remains in place and unchanged, except for re-numbering, in the Restated and

Amended Agreement ("RASA"), which Union Pacific and BNSF submitted to the Board on March 1, 2002, to reflect the conditions imposed by the Board on the merger and subsequent decisions interpreting and clarifying those conditions. *See* Counsel's Exhibit 2 (RASA § 8(n)).

Section 8(n) was important to both Union Pacific and BNSF. Union Pacific was granting BNSF trackage rights over several thousand miles of lines. In negotiating these trackage rights, Union Pacific and BNSF recognized that some lines might be subject to pre-existing agreements that would restrict Union Pacific's ability to grant access to BNSF. Section 8(n) addresses this possible restriction. Union Pacific was careful not to make commitments that we could not keep, and BNSF obtained the assurance that it would receive the value of the rights that it had negotiated.

Section 8(n) directly contradicts BNSF's incorrect claim that Union Pacific has a "responsibility" for "ensuring that [it] has (or acquires) any underlying contractual or other authority needed" to grant BNSF the trackage rights described in the BNSF Settlement Agreement. BNSF Op. at 12 & Weicher VS at 8. The BNSF Settlement Agreement imposes no such responsibility. Instead, on its face, Section 8(n) obligates Union Pacific to provide an alternative form of access of "commercially equivalent utility" when Union Pacific lacks sufficient legal authority to grant trackage rights. The present situation represents the very contingency that the parties contemplated when they negotiated Section 8(n).

As background, the BNSF Settlement Agreement initially covered only those shippers who, immediately prior to the UP/SP merger, were served by both Union Pacific and Southern Pacific and no other railroad ("2-to-1" shippers). Prior to the UP/SP merger, CITGO and other Lake Charles area shippers were not "2-to-1" shippers. CITGO and other shippers in West Lake Charles had access to both KCS and Southern Pacific—they did not have access to Union

Pacific. Shippers in Lake Charles and Westlake had access to three railroads: Union Pacific, Southern Pacific, and KCS, and therefore were "3-to-2" shippers.

In the merger proceeding, CMA and certain shippers argued that the merger would reduce competition in the Lake Charles area even though there were no 2-to-1 shippers in that area. To secure CMA's support for the merger, Union Pacific entered into the CMA Agreement, in which it agreed to give BNSF access to Lake Charles area shippers by amending the BNSF Settlement Agreement to cover those shippers. *See* Counsel's Exhibit 3 (CMA Agreement § 8). The amendment did not affect Section 8(n) of the BNSF Settlement Agreement. *See* Counsel's Exhibit 5 (Second Supplemental Agreement § 6(b)).[1]

In approving the UP/SP merger, the Board required Union Pacific to change the BNSF Settlement Agreement in one way that might affect traffic moving to CITGO—it required Union Pacific to remove a geographic restriction on BNSF service to shippers in the Lake Charles area. However, the change did not affect the application of Section 8(n). On the contrary, the Board imposed as a condition on the UP/SP merger all the terms of the BNSF Settlement Agreement, including Section 8(n). *See Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233, 419 (1996).

III. BNSF planned at the time of the UP/SP merger to access Lake Charles area shippers using reciprocal switching, not trackage rights.

In his statement, Weicher implies that the Board's merger conditions require that BNSF must be allowed to serve Lake Charles area shippers using trackage rights. The Board never imposed such a requirement. What Weicher characterizes as "trackage rights conditions," Weicher VS at 3, are more accurately described as access conditions. The Board left Union

[1] In the Second Supplement Agreement, Section 8(j) of the Initial BNSF Settlement Agreement was re-numbered as Section 8(k), after the parties added a new Section 8(j). In the RASA, the provision was re-numbered as Section 8(n) after the parties added new Sections 8(j), (k), and (l).

Pacific and BNSF to determine the specific method of access pursuant to the terms of the BNSF Settlement Agreement (including Section 8(n)).

Indeed, at the time of the merger, BNSF was not even planning to serve Lake Charles area shippers using trackage rights, and the Board was aware of this fact. After BNSF obtained access to the Lake Charles area in the CMA Agreement, Union Pacific agreed that BNSF could serve Lake Charles area shippers using a combination of haulage and reciprocal switching. The parties then entered into a haulage agreement, which Union Pacific submitted to the Board several months before the Board approved the UP/SP merger. *See* Counsel's Exhibit 21 (Lake Charles Haulage Agreement).

The BNSF Settlement Agreement also does not require that BNSF serve Lake Charles area shippers using trackage rights; instead, the agreement uses the broader term "handle":

> 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.

Counsel's Exhibit 2 (RASA § 5(b)) (emphasis added). The parties agreed that BNSF access to industries at points open to BNSF could be "direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor." *Id.* (RASA § 5(c)). Neither Union Pacific nor BNSF ever represented to the Board that BNSF would access any shipper facility using trackage rights, as opposed to relying on reciprocal switching provided by Union Pacific. The parties recognized that different methods of access might be appropriate in different operating and commercial environments.

BNSF has served Lake Charles area shippers using reciprocal switching since 1997. When I retired from Union Pacific in 2012, fifteen years after the UP/SP merger, BNSF was still serving many "2-to-1" locations using reciprocal switching. I am not aware of any time, at least

until now, that BNSF or a shipper has claimed that BNSF access using reciprocal switching violates the Board's condition for Lake Charles area access.

IV. BNSF does not have an absolute right to elect between access using trackage rights and access using reciprocal switching.

As a final point, BNSF is incorrect when it claims that it has "the unilateral right to use any identified service alternative." Weicher VS at 3. That statement is incorrect for two reasons: *First*, as discussed above, Section 8(n) of the BNSF Settlement Agreement recognizes that BNSF does not have the right to serve a particular shipper using trackage rights where Union Pacific lacks sufficient legal authority to grant the necessary trackage rights. *Second*, even where there are no legal barriers to BNSF service using trackage rights, BNSF's election is contingent on the development of a mutually acceptable operating plan, as BNSF acknowledges in its Opening Statement and Evidence. *See* BNSF Op. at 19 ("[T]he BNSF Settlement Agreement sets forth a process by which the railroads can agree on an operating plan.").

The process that Union Pacific and BNSF agreed to follow when BNSF proposes to initiate service to a covered shipper or change its method of service requires BNSF to obtain Union Pacific's approval of an operating plan. Specifically:

1. Before initiating service or changing its election BNSF must provide Union Pacific "with the specifics of its operating plan over UP/SP trackage." Counsel's Exhibit 2 (RASA § 5(d)).

2. Within 30 days of its receipt of BNSF's proposed operating plan, Union Pacific must "notify BNSF of its approval or disapproval of BNSF's plan." *Id.*

3. If Union Pacific disapproves of BNSF's proposed plan, Union Pacific must "provide an explanation in writing to BNSF of its reasons for disapproval" and "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." *Id.*

4. If Union Pacific approves BNSF's plan but establishes conditions on that approval—for example, a requirement that BNSF make capital investments to permit the

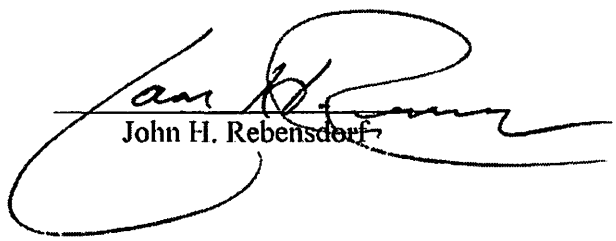
operations to occur—"those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP." *Id.*

This process was designed to promote informed discussion with the objective of providing both railroads the ability to serve their customers. My recollection from my time at Union Pacific is that we were able to reach agreement with BNSF in every case, except a few where the parties disagreed about whether a shipper was actually covered by the BNSF Settlement Agreement. I do not recall that the parties ever reached the point where they arbitrated a dispute over Union Pacific's disapproval of, or establishment of conditions on approval of, an operating plan proposed by BNSF, but arbitration is available if needed. Such disputes would be covered by the arbitration provision in Section 15 of the BNSF Settlement Agreement. *See* Counsel's Exhibit 2 (RASA § 15)).

VERIFICATION

I, John H. Rebensdorf, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on 02/20, 2015.



John H. Rebensdorf

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

REPLY VERIFIED STATEMENT

OF

JAMAL W. CHAPPELL AND MICHAEL V. MATYA

REPLY VERIFIED STATEMENT

OF

JAMAL W. CHAPPELL AND MICHAEL V. MATYA

I. Introduction

Our names are Jamal W. Chappell and Michael V. Matya. We are, respectively, Superintendent of Transportation Services-Livonia Service Unit for Union Pacific Railroad Company ("Union Pacific") and Director of Carload Solutions Operations for Union Pacific Distribution Services, a Union Pacific subsidiary. We are making this joint statement to describe Union Pacific's operations in the Lake Charles area and the adverse impact BNSF train operations to CITGO would have on operations and customers in the area.

Jamal W. Chappell: My railroading career began in 1996 when I joined Southern Pacific Railroad as a train dispatcher. After the UP/SP merger, I continued my employment with Union Pacific as a train dispatcher and later a corridor manager until 2001. In June 2001, I transferred to the Western Region Transportation Department. I held various positions in different locations, including Director of Terminal Operations in Las Vegas, Nevada, and Director of Transportation Services in Salt Lake City, Utah, until 2012. In November 2012, I moved to the Southern Region Transportation Department, where I served as the Director of Transportation Services-Livonia Service Unit. I have held my current position since September 1, 2014.

In my current job, I am responsible for overseeing day-to-day operations in the Livonia Service Unit, which covers seven subdivisions in Central and Southern Louisiana and Eastern Texas. The Lake Charles area, including Rose Bluff Yard and the Rose Bluff Industrial Lead, is part of my territory. My job involves analyzing, coordinating, and executing Union Pacific's transportation plan for the Service Unit. I also maintain relationships with customers, other railroads, regulatory agencies, and city and state governments in my territory.

Michael V. Matya: My career at Union Pacific began during 2003 when I was hired by the Engineering Department. In July 2004, I transferred to Union Pacific's Marketing & Sales Department and have held various positions in that department, including: Manager-Customer Service; Team Leader-Work Order Exceptions; Team Leader-National Customer Service Center for the Southern Region; and Team Leader-Customer Care, Western Region.

Prior to beginning my current job on August 1, 2015, I was responsible for supporting marketing and sales personnel by developing and implementing logistical solutions to systemic issues that occur on our network. In that position, I was involved in several projects aimed at improving Union Pacific's service in the Lake Charles area, including service in Rose Bluff Yard and on the Rose Bluff Industrial Lead, and service to CITGO specifically.

* * *

We have reviewed what BNSF describes as its plan to serve CITGO by operating an additional train over the Rose Bluff Industrial Lead, contained in the Verified Statement of Rollin D. Bredenberg ("Bredenberg VS") and discussed in BNSF's responses to KCS's discovery requests.

In this statement, we explain how Union Pacific's operations would be negatively affected by BNSF's proposed operation and how service to customers would suffer if BNSF were to operate trains from its new Lacassine Yard over the Rose Bluff Industrial Lead to CITGO's facility. In Part II, we provide an overview of operations in the Lake Charles area. In Part III we provide an overview of Rose Bluff Yard. In Part IV, we describe more specifically Union Pacific's train operations in Rose Bluff Yard and on the remainder of the Lead. In Part V, we describe Union Pacific's current service to CITGO. Finally, in Part VI, we explain how

BNSF's operation of trains to CITGO would degrade service to all customers located on the Lead.

II. Operations in the Lake Charles Area

The Lake Charles area is located along Union Pacific's Lafayette Subdivision (sometimes called the "50/50 Line," because it is jointly owned by Union Pacific and BNSF). *See* Counsel's Map Exhibit A. The Lafayette Subdivision is a very busy line that currently handles an average of 25 trains a day, and sometimes as many as 30 trains a day. Both Union Pacific and BNSF operate trains on the Lafayette Subdivision. KCS crosses the line to enter Rose Bluff Yard and serve customers on the Rose Bluff Industrial Lead. Amtrak's Sunset Limited operates over the line six days a week, three days with an eastbound train and three days with a westbound train.

Union Pacific originates and terminates approximately 130,000 loaded cars a year along the Lafayette Subdivision, including traffic we handle in reciprocal switch for BNSF and KCS. In the Lake Charles area alone, we serve approximately 30 active shipper facilities. These Lake Charles area customers account for an average of more than 60,000 loaded cars annually, meaning we handle a total of approximately 120,000 cars a year when empty returns are included. The number of loaded cars moving to and from our Lake Charles area customers increased by nearly 30,000 from 2009 to 2014.

Union Pacific's primary yard in the Lake Charles area is Lake Charles Yard, also known as North Yard, located on the north side of the main line and east of a swing bridge across the Calcasieu River. North Yard acts as a local support yard in Union Pacific's network. It receives cars destined for customers in the area and builds blocks of cars for delivery to customers and for delivery to other Union Pacific yards, primarily Rose Bluff Yard. It also supports interchange between Union Pacific and BNSF by collecting cars moving from customer facilities to BNSF,

and by receiving cars from BNSF destined for local customers, including CITGO. Union Pacific's local jobs, which move cars between North Yard and Rose Bluff Yard, have a low priority and are therefore held in the yards and delayed as necessary to avoid conflicts with Amtrak or line haul trains moving on the main line.

Capacity on the Lafayette Subdivision is severely limited, especially in the Lake Charles area. The Lafayette Subdivision has a single-track main line, with very few sidings. There are no sidings between North Yard (on the east end of the Lake Charles area) and the turnout to the Rose Bluff Industrial Lead (on the west end). The nearest siding to the west of the Lead is Lockmoor, five miles away. To the east of the Lead, the nearest siding is the Iowa Siding, 14 miles away. Iowa is the only siding between the Lead and BNSF's Lacassine Yard, which is 25 miles east of the Lead.

Capacity on the Lafayette Subdivision is further limited by the single-track swing bridge, which is located two miles east of the connection to the Rose Bluff Industrial Lead. Maritime traffic, both commercial and recreational, on the Calcasieu River receives priority over train traffic on the bridge. The number of times the bridge opens and the duration of each opening vary throughout the year. When recreational traffic is heavy, usually in the summer months, the bridge can open as many as 10-12 times per day. In cooler months the bridge opens an average of 4-5 times per day, primarily for commercial maritime traffic. For each opening, it takes at least 20 minutes for the bridge to swing open, allow traffic to pass, and swing closed. The bridge will stay open longer if multiple vessels are approaching rather than open and close for each vessel. While the bridge may open for 20 minutes, the delay for trains that must stop for the bridge opening is longer because of the time it takes to slow down and stop the train and then start the train and accelerate back to track speed.

The times the bridge opens vary from day to day. Union Pacific receives virtually no advance notice of bridge openings. Vessels signal the bridge tender when they approach the bridge, which is attended 24 hours a day. The bridge tender notifies a Union Pacific dispatcher and the dispatcher slows area train traffic and immediately stops all train traffic approaching the bridge within two miles, unless a train has already proceeded through the last signal prior to the bridge, in which case it is allowed to traverse before the bridge opens. Trains stopped for the bridge cause delays further down the line because other approaching trains will not have a clear signal to proceed until the bridge closes and waiting trains resume their operations.

The bridge opening process reduces the number of trains that can move across the main line each day and causes variability in the running time of trains crossing over this segment. Because the railroads do not control the bridge and cannot predict when the bridge will open, a BNSF train heading west from Lacassine Yard towards CITGO may have to stop east of the bridge, meaning BNSF cannot assume it would have a clear route to CITGO or consistent transit times.

III. Rose Bluff Yard

Rose Bluff Yard is a very busy yard in which careful choreography is required to accommodate numerous daily activities. This yard could not accommodate BNSF's proposed operation to CITGO's facility because current demands on the yard infrastructure consume its capacity. The yard, jointly owned by Union Pacific and KCS, is located on the Rose Bluff Industrial Lead about a half-mile south of the main line, west of the swing bridge. The connection between the Lafayette Subdivision and the Lead is configured such that trains moving on the main line can enter the yard only from the east, and trains exiting the yard must proceed east on the main line. Rose Bluff Yard consists of six tracks. *See* Counsel's Map Exhibit C. The yard has a center "runner" track (Track 4), and five other yard tracks that tie into the

runner track at each end of the yard. Two of the yard tracks are used primarily by Union Pacific (Tracks 5 and 6**)**, and three are used primarily by KCS (Tracks 1-3). This means that before Union Pacific turns over the yard to KCS, we leave cars that KCS will handle on tracks 1-3 and cars Union Pacific will handle on tracks 5 and 6. Tracks 1, 2, 3, 5, and 6 can each hold between 80 and 85 cars without fouling (i.e. obstructing) a switch to an adjacent track. Track 3 extends one and a half miles south of the yard; and the extension is used for overflow storage. The runner track (Track 4) is the only track that runs through the entire yard. Because all six tracks converge at each end of the yard or on the Lead, Track 4 is effectively the only track that can be used to access the Lafayette Subdivision and the Rose Bluff Industrial Lead. Yet Track 4 is frequently blocked during switching operations and when trains entering the yard cannot fit all of their cars on another track. Most Union Pacific trains that enter the yard are long enough that they must leave some cars on Track 4 while they are working in the yard.

Rose Bluff Yard is the primary serving yard for customers located in a dense industrial area that KCS and a Union Pacific predecessor company long ago divided into two operating zones, “Zone 1” and “Zone 2.” As shown in Counsel’s Map Exhibit B, Zone 1 customers are located generally to the north and east of Rose Bluff Yard, and Zone 2 customers, including CITGO, are located south of the yard. KCS switches customers in Zone 1, and Union Pacific switches customers in Zone 2.

Current operations in Rose Bluff Yard and on the Rose Bluff Industrial Lead reflect a concerted and highly coordinated effort by Union Pacific and KCS to provide customers with efficient service in this capacity-constrained area. In view of the limited capacity, the two railroads have recognized that it is impractical for both to work on the same track area at the same time. Until 1999, Union Pacific and KCS took turns switching Zone 1 and Zone 2 for two-

year periods. A railroad would switch the same zone for two years and then the two railroads would swap switching responsibility for the next two years. Beginning in 1999, to reduce operational complexity and improve service, Union Pacific and KCS, in consultation with customers in the area, decided to assign switching responsibility with KCS switching only Zone 1 and Union Pacific switching only Zone 2 permanently. This approach allowed each railroad to focus on the operating characteristics and needs of particular customers as well as permitting more efficient movement in each zone.

Union Pacific, KCS, and BNSF line-haul traffic moving to customers in both zones passes through Rose Bluff Yard, where it is switched by either Union Pacific or KCS for delivery by a local job. Outbound traffic picked up from customers in both zones also passes through Rose Bluff Yard, where Union Pacific or KCS switches it for movement beyond.

To support switching for customers of all three railroads, Union Pacific and KCS share Rose Bluff Yard in 12-hour windows. Union Pacific's scheduled window is from 6:00 AM to 6:00 PM. Mr. Bredenberg's statement that Union Pacific's window begins at 5:00 AM (Bredenberg VS at 3) is incorrect. In addition, Mr. Bredenberg's statement that Union Pacific uses only two yard tracks for switching and storage (*id*. at 5) is incorrect. During Union Pacific's window, our crews operate over all six tracks in the yard to break down trains and build trains for switching into Zone 2 or forwarding to North Yard, or to interchange cars with KCS. Union Pacific trains enter the yard over the runner track (Track 4), and then use that track and Tracks 1, 2, 3, 5 and 6 to sort cars and build blocks to be moved by Union Pacific or KCS. Tracks 2, 3, 5 and 6 are usually occupied with cars waiting to be moved by KCS or Union Pacific. Track 1 regularly holds cars for KCS; KCS uses this track to switch its customers with facilities adjacent to that track during KCS's window in the yard.

Union Pacific gathers cars destined for both Zone 1 and Zone 2 customers and switches them in Rose Bluff Yard. Union Pacific moves Union Pacific and BNSF cars from North Yard to Rose Bluff Yard via a Union Pacific local job (YAK63). A Union Pacific switch crew then switches Zone 1 cars into the KCS tracks and Zone 2 cars into the Union Pacific tracks. The Union Pacific crew combines these Zone 2 cars with cars delivered by KCS destined to Zone 2, previously left on one of the Union Pacific tracks by a KCS switch crew. BNSF line-haul cars arrive in the same blocks as the KCS or Union Pacific cars, depending on which railroad received the car from BNSF earlier. The Union Pacific switching crew generally does not know which line-haul carrier moved the car to the Lake Charles area; they know only which railroad, KCS or Union Pacific, moved the car to Rose Bluff Yard. On the outbound side, Union Pacific gathers cars from Zone 2 customers and moves them to Rose Bluff Yard, where cars that will move in KCS line haul service are left for KCS, and the rest are combined with cars a KCS switch crew has brought in from Zone 1 and left for Union Pacific. A Union Pacific local job (YRB86) moves these outbound cars to North Yard. KCS performs similar types of operations during its 12-hour window.

Union Pacific and KCS work hard to adhere to their scheduled operating windows, which is essential to keeping Rose Bluff Yard fluid. Any significant interruption in their carefully timed sequence disrupts terminal operations and customer service. When everything goes as planned, each railroad performs its yard work within its 12-hour window and the Rose Bluff Yard is prepared for the other railroad to take over. But, more often than not, things do not go precisely as planned. Given the volume of cars that must be switched in Rose Bluff Yard and the limited infrastructure, it is not always possible for Union Pacific and KCS to complete their planned work in the yard in 12 hours. Unanticipated operating issues in the yard or at a customer facility,

as well as the need to hold trains heading for or exiting Rose Bluff Yard due to conflicts with higher priority trains or bridge activity on the Lafayette Subdivision, also cause overstays for both Union Pacific and KCS. A Union Pacific train cannot enter Rose Bluff Yard while KCS is still working there (and vice versa). It is not uncommon for both Union Pacific and KCS to overstay their windows, often for an hour or more. In most cases, if Union Pacific overstays our window the railroads will agree that KCS may overstay its next window to make up for lost time (and vice versa). Both railroads generally require a full 12 hours of yard switching to meet all of the customers' needs, and a shortened window often is not a realistic option. Periodically the overstays by both railroads accumulate, so the windows are pushed later and later. In some cases it can take days (or even weeks) for the railroads to "reset" to the planned yard occupancy schedule. Union Pacific and KCS stay in constant communication and carefully coordinate operations in Rose Bluff Yard to ensure that service to customers does not suffer when planned operating windows inevitably shift to accommodate the day-to-day challenges of running a railroad.

IV. Operations on the Rose Bluff Industrial Lead and in Rose Bluff Yard

As shown on Counsel's Map Exhibit B, the Rose Bluff Industrial Lead extends approximately nine miles south from the main line, through Rose Bluff Yard, and approximately seven miles below the south/west side of Rose Bluff Yard. The portion of the Lead south of Rose Bluff Yard provides connections to 14 active customer facilities in Zone 2. Similar to the Rose Bluff Yard, the Lead south of the yard has train movements scheduled 24 hours a day. We have devoted considerable effort to coordinating the work done in this area, with periodic efforts to improve and refine operations. Because of this around-the-clock schedule, adding a new train would seriously impede existing service to Union Pacific-served customers located on the Lead.

Union Pacific's operations on the Lead consist of eight local jobs that work before, during, and after Union Pacific's scheduled 12-hour window in Rose Bluff Yard as depicted on Counsel's Map Exhibit D. Union Pacific's daily operations begin with job number YRB86, scheduled to be on-duty from midnight until noon. YRB86 originates at the southern end of the Rose Bluff Industrial Lead and gradually moves north to Rose Bluff Yard. The primary function of this job is to pick up outbound cars to be switched to KCS in Rose Bluff Yard or moved on to North Yard for further line haul movement on Union Pacific or BNSF. Each day YRB86 picks up an average of approximately 120 cars that have been set out along the Lead by the other Union Pacific switching jobs. In light of its function, this job is also known as the "reverse spreader" job. YRB86 is scheduled to move into Rose Bluff Yard at about 6:00 AM, when Union Pacific's yard occupancy window begins.

If KCS overstays its window, YRB86 must wait on the Lead until KCS has left the yard. After the KCS switching job clears Rose Bluff Yard, YRB86 enters the yard using the runner track (Track 4) to access the yard, then pulls into Track 1. If Track 1 cannot accommodate all of the cars it is pulling, which is typically the case (because Track 1 accommodates only approximately 80 cars), YRB86 will leave a cut of cars on Track 4. YRB86 sets out KCS interchange cars it gathered from Zone 2 onto the yard tracks designated for KCS. YRB86 then picks up any Union Pacific and BNSF cars that KCS brought to Rose Bluff Yard from Zone 1, and departs to North Yard, generally between 11:00 AM and 2:00 PM, but sometimes later. If YRB86 does not arrive at North Yard by noon, it must re-crew. In addition, YRB86 must arrive in North Yard by 5:00 PM to meet the cut-off time for cars scheduled to be on the next day's manifest train to Beaumont, Texas, and by 7:00 PM for cars scheduled to be on the next day's manifest train to Alexandria, Louisiana.

After YRB86 has finished some switching and moved away from the west end of Rose Bluff Yard, YRB65 moves into the yard from the west. YRB65 builds train blocks for Zone 2 customers by combining and sorting inbound cars KCS crews delivered to Tracks 5 and 6 with cars brought by Union Pacific also set out on Tracks 5 and 6. YRB65 obstructs Track 4 as it moves cars from Tracks 2, 3, 5, and 6. Once the blocks are built for Zone 2, typically by between 1:00 PM and 3:00 PM (if YRB65 has not been delayed earlier by YRB86 operations), YRB65 will depart the yard to the southwest on the Lead. This job will then move southbound on the Lead dropping off blocks of cars at established locations, where they will be picked up later by the Union Pacific jobs YRB66, YRB75, and YRB76, which handle industry switching. For this reason, the YRB65 job is also known as the "spreader" job. After traversing the Lead, a new crew takes over YRB65, at which point the job is redesignated YRB75. The new crew serves customer facilities at the southern end of the Lead.

Between 3:00 PM and 5:00 PM, YAK63 is scheduled to arrive in Rose Bluff Yard from North Yard. YAK63's arrival time varies because that job cannot depart North Yard until YRB86 arrives in North Yard and YRB65 exits Rose Bluff Yard over the Lead to Zone 2. This ensures that YAK63 does not interfere with other traffic on the Lafayette Subdivision while waiting for the other jobs to clear Rose Bluff Yard. Besides waiting for the other Union Pacific jobs to clear Rose Bluff Yard, YAK63 contends with traffic on the Lafayette Subdivision when trying to move from North Yard to Rose Bluff Yard. (As noted above, local jobs YAK63 and YRB86 have lower priority than other trains moving over the main line.) At times, YAK63 does not arrive in Rose Bluff Yard until after Union Pacific's scheduled occupancy period has ended, and there is no choice but to encroach on KCS's window. YAK63 brings an average of approximately 120 cars a day from North Yard destined for customers in Zones 1 and 2.

Depending on when it arrives in Rose Bluff Yard, YAK63 may have time to switch inbound cars for Zone 2 customers to Union Pacific's yard tracks and cars for Zone 1 customers to KCS's yard tracks.

Between 4:00 PM and 2:00 AM, YRB74 first completes any switching of inbound cars in Rose Bluff Yard that YAK63 could not complete, then exits the yard to the south and provides spotting and pulling to a small group of industries located on the northern part of the Rose Bluff Industrial Lead below Rose Bluff Yard. At the same time, YRB76 serves customers (including CITGO) located south of where YRB74 operates**.** Each job handles approximately 70 cars a day and extensively uses the Lead while switching due to the configuration of the customer facilities they serve.

Several other Union Pacific jobs work on the Lead and customer tracks in Zone 2 during and after our yard occupancy window. YRB66 begins working at around 9:00 AM to switch customers located in the northern portion of Zone 2. YRB66 pulls outbound cars from the northern Zone 2 customers and sets them out for collection by YRB86 the following day. YRB66 also picks up the inbound cars set out by YRB65 and delivers them to the northern Zone 2 customers. Most of YRB66's work is performed on spur tracks off the Rose Bluff Industrial Lead. However, YRB66 fouls (i.e. obstructs) the Lead while switching cars for customer facilities located closer to the Lead. This is a necessary part of the switching operation because there is very limited track space off the Lead at these facilities. In addition, YRB75 takes over from YRB65 in the afternoon and switches customers located on the southern end of the Lead. Because YRB75 takes over from YRB65 (using the same locomotive), it cannot begin its assignment to pull outbound cars and spot inbound cars until YRB65 has completed its work in Rose Bluff Yard and moved down the Lead.

The final job to come on duty in a 24-hour period is YRB46. Its function is to handle any switching to and from customer facilities on the Lead that other Union Pacific jobs could not finish during their shifts.

In addition to picking up and setting out cars for Zone 2 customers, Union Pacific provides incidental and intraplant switching to most Zone 2 customers. Incidental switching occurs when Union Pacific must rearrange cars within a customer facility during a regular pickup or dropoff due to the configuration of the facility. Intraplant switching occurs when a customer asks Union Pacific to rearrange cars at its facility outside the usual pickup and dropoff. A local job engaged in incidental or intraplant switching for Zone 2 customers will foul the Lead on some occasions.

Union Pacific's service to customers, including incidental and intraplant switching, is complicated by the fact that Zone 2 is non-dispatched territory. This means that operations in Zone 2 are coordinated independently by the local train crews. For safety and efficiency, Union Pacific arranges jobs to work in specific areas and take turns using the Lead to or from Rose Bluff Yard, to minimize the likelihood that two crews will operate in the same area at the same time. This coordination extends to operations at North Yard and over the Lafayette Subdivision. However, variability in traffic volume and railroad operations sometimes leads to jobs working beyond their scheduled times, requiring careful coordination between jobs. Each crew is responsible for knowing which other jobs are operating and obtaining permission from the other on-duty jobs to enter the Lead. Operations on the Lead are further complicated because all of the switches to track off the Lead must be operated by hand. This requires the switch job to stop so the brakeman or conductor can manually operate the switch.

Union Pacific's operations in Zone 2 must be tightly coordinated to ensure the safety of all employees and to provide reliable service to customers for Union Pacific, KCS, and BNSF cars. Insertion of an additional train would upset the tightly choreographed activities in this constrained facility. The new operation would overlap with one or more of the existing operations, but there is no leeway to shift those existing operations because of the amount of activity that already occurs within a 24-hour period.

V. Service to CITGO

Union Pacific's current service to CITGO is the result of extensive planning and improvement efforts. CITGO began receiving tank cars of crude oil at its West Lake Charles facility in 2012. From the first shipment, Union Pacific has worked with CITGO to accommodate increasing volumes in this congested area.

Union Pacific provides daily service to CITGO, using YRB76 to pull empty cars and spot incoming cars for unloading. Union Pacific deliveries to CITGO include cars that travel into the Lake Charles area via Union Pacific, KCS, or BNSF line-haul service. Union Pacific and BNSF cars are combined at North Yard and transferred together in a single block to Rose Bluff Yard by YAK63. KCS brings its line-haul cars for CITGO into Rose Bluff Yard and leaves them on Track 5 or 6 for Union Pacific. A Union Pacific crew gathers into a single block all cars destined to CITGO for delivery to CITGO. The Union Pacific crew does not differentiate among cars from the three railroads when delivering cars to CITGO or picking up cars from CITGO; cars for all three railroads receive the same service from Union Pacific on the same trains.

We are aware of some instances when service fell short of CITGO's wishes. The complex and interconnected nature of railroad operations makes some amount of delay and error inevitable. However, to our knowledge, Union Pacific's service has been not the cause of any major problems. Mr. Bredenberg refers to some service issues in "the early summer of 2014."

(Bredenberg VS at 6.) This appears to be a reference to a time in April and May of 2014 when the number of crude oil cars delivered was limited due to a malfunction in the unloading equipment at CITGO's facility. This reduced the number of rail cars that CITGO could unload, requiring both Union Pacific and BNSF to hold cars at yards outside Rose Bluff until CITGO could receive them. In addition, because CITGO controls its own car ordering and sources crude from multiple locations, there have been times when too many cars were routed to CITGO and some had to be stopped short of the Lake Charles area to avoid significant terminal congestion. In every instance we worked with CITGO to resolve the issue and return to normal service as soon as possible.

Initially, Union Pacific, KCS, and CITGO agreed that Union Pacific would deliver cars so that CITGO would have no more than 30 cars at its facility at any one time. Since June of 2014, in response to CITGO's request for more cars, Union Pacific has been providing service to CITGO using a "keep full" methodology. Under this service plan, Union Pacific delivers as many cars as CITGO can accommodate every day without regard to either CITGO's processing capability or any contractual maximum number. Since we made this change, we have not heard CITGO complain that it is not receiving enough cars.

To physically serve CITGO, YRB65 sets out a block of loaded cars south of the switch for CITGO's facility as it spreads cars down the Lead. YRB76 later pulls the block north past the switch for CITGO's facility, then shoves the cars (pushes them with the locomotive at the rear of the consist) into CITGO's facility. Inside its facility, CITGO moves cars through its unloading tracks using a trackmobile. As cars are unloaded, CITGO moves the empty cars to its storage tracks for pick-up by Union Pacific. When picking up empty cars, the YRB76 crew pulls each cut of cars from CITGO's storage tracks separately to build an outbound block. This movement

requires the crew to use railroad-owned track south of the switch for CITGO's facility. *See* Counsel's Map Exhibit B. The YRB76 crew then shoves the outbound block south of the switch (to the same location where it retrieved the inbound block), and leaves the cars for YRB86 to move to Rose Bluff Yard.

VI. Effect on Customer Service of Adding BNSF Trains Through Rose Bluff Yard and in Zone 2

Adding BNSF trains through Rose Bluff Yard and on the portion of the Rose Bluff Industrial Lead in Zone 2 would greatly impair Union Pacific's operations and degrade service to customers. As explained above, Rose Bluff Yard is occupied 24 hours a day, with Union Pacific and KCS crews switching and sorting cars for customers in Zones 1 and 2 using all six tracks. During Union Pacific's 12-hour window, there is never a time when a BNSF train for CITGO could run through the yard without interfering with Union Pacific crews scheduled to work in the yard. Cars are stored on most of the yard tracks most of the time. Switching cars in Rose Bluff Yard requires the switch engine to move back and forth among the six tracks (including the runner track), pulling and shoving cars. Because all six tracks in Rose Bluff Yard converge at each end of the yard or on the Lead, these switching operations block the only way through the yard. If a BNSF train had a window to enter Rose Bluff Yard, Union Pacific would not be able to switch in the yard at all during the window. A BNSF slot would interfere with Union Pacific's service to other customers regardless of when during Union Pacific's window that slot was scheduled. And if BNSF did not receive a regular slot, but instead asked to run its train when Union Pacific and KCS could create a "clear route," creating that "clear route" would interrupt the around-the-clock operations of the two railroads and upset their careful coordination.

If BNSF's slot were between 5:00 AM and 7:00 AM, as proposed by Mr. Bredenberg, BNSF would be operating during KCS's window in the yard, which lasts until 6:00 AM. Even if

BNSF requested a slot beginning at 6:00 AM, just after KCS's window is scheduled to end, that would not reduce the serious problems BNSF operations would create. As explained above, Union Pacific and KCS often cannot complete their work in Rose Bluff Yard within their windows. It simply would not be possible to guarantee BNSF any slot when it would have a "clear route" without disrupting existing operations. If Union Pacific and KCS had to provide a fixed 6:00 AM slot for BNSF, KCS often would have to disrupt its operations, clear a path through the yard, and then resume operations, causing a much longer delay and much greater disruption than if KCS had been able to finish its work in the yard.

Even if KCS were always able to finish work precisely at 6:00 AM, BNSF operations through the yard would significantly impair UP's operations as shown on Counsel's Map Exhibit D. To provide BNSF with a clear route to the CITGO facility, YRB86 (the reverse spreader job) would have to hold south of the CITGO facility from the time the BNSF train left Lacassine Yard until the BNSF train cleared Rose Bluff Yard and the portion of the Rose Bluff Industrial Lead between the yard and CITGO. This means YRB86 would have to hold during a period when this job should be dropping off and picking up cars in Rose Bluff Yard and preparing to depart for North Yard. Even if BNSF arrived at Rose Bluff Yard just as KCS departed, YRB86 would have to hold for close to an hour. If BNSF's train took 25 minutes to move over the Lead into CITGO's facility, as Mr. Bredenberg assumes (Bredenberg VS at 7-8), YRB86 would be delayed by those 25 minutes, plus the approximately 25 minutes it would take for that job to move up the Lead into the Rose Bluff Yard. (If BNSF's departure from Lacassine Yard were delayed because of other trains on the main line, YRB86 would have to continue holding south of CITGO, delaying even longer its entry into Rose Bluff Yard.)

As a consequence, even with "perfect" timing, YRB86's arrival in Rose Bluff Yard would be significantly delayed. That means YRB86 would likely arrive late at North Yard. This could further affect Union Pacific operations and customers because the outbound cars on YRB86 must make connections to trains outbound from North Yard, including Union Pacific trains moving to Beaumont, Texas, or Alexandria, Louisiana. BNSF operations and customers could also be affected, as YRB86 moves BNSF cars for which Union Pacific is providing a reciprocal switch to North Yard to be picked up there by BNSF. Depending on the delay, the cars on YRB86 could miss their scheduled connections and sit in North Yard for an additional day, or the connecting train could be delayed while waiting for the cars. Both situations would result in slower service for customers. Moreover, YRB86 is a 12-hour job. Even a short delay could mean that the crew exceeds its hours-of-service. Should that occur, Union Pacific would have to re-crew the job, creating more delay and additional expense.

Focusing again on Rose Bluff Yard and Rose Bluff Industrial Lead, delays to YRB86 would cascade to several other Union Pacific jobs. Any delay to YRB86 movements would delay YRB65, which cannot begin switching inbound cars for Zone 2 customers until YRB86 moves away from the west end of Rose Bluff Yard. If YRB65 begins switching late, these inbound cars may not be positioned when YRB66, YRB74, and YRB76 are ready to place them at customer facilities. (YRB65 cannot begin "spreading" cars until it finishes switching in Rose Bluff Yard.) This creates cascading delays because these three jobs must place inbound cars at customer facilities and spot outbound cars to be picked by YRB86. If YRB66, YRB74, and YRB76 are delayed, then some outbound cars may not be ready for pick up by YRB86 and will spend an extra day in Zone 2.

Delays to YRB86 would also delay the arrival of inbound cars for both Zone 1 and Zone 2 customers because YAK63 cannot depart North Yard with inbound cars until YRB86 arrives in North Yard. Moreover, if YAK63 is delayed, it could arrive after the end of Union Pacific's scheduled window, or it might cause YRB74 to overstay Union Pacific's window in order to complete switching of inbound cars in Rose Bluff Yard, which would delay KCS's entry into the yard and increase the likelihood of an overstay by KCS.

There is no time during Union Pacific's occupancy when a clear route could readily be established for BNSF. In order to make a slot for a BNSF train to move to and from CITGO, all switching operations would have to stop in Rose Bluff Yard and on the Rose Bluff Industrial Lead north of CITGO's facility. Even with switching operations at a standstill there might not be a clear route through Rose Bluff Yard and on the Lead between CITGO and the yard. Tracks 1, 2, 3, 5, and 6 are almost always holding cars waiting to be switched. Most days, Track 4, the runner track, will also be holding cars for a significant portion of Union Pacific's occupancy period because YRB86 and YAK63 must leave some cars on the runner track when they enter the yard. As a result, Rose Bluff Yard is impassable for large portions of Union Pacific's window.

In addition, it is uncertain how much time switching would have to pause to accommodate a BNSF train. As with Union Pacific's YAK63, a BNSF train would have to wait until Rose Bluff Yard is clear before entering the Lafayette Subdivision to ensure it does not block the main line while waiting for a clear route through the yard. Union Pacific would therefore have to stop switching and clear a path through Rose Bluff Yard and down the Lead to CITGO before BNSF's train could depart from Lacassine Yard. Moreover, BNSF's train would be unlikely to move from Lacassine Yard though Rose Bluff Yard to CITGO as regularly and

quickly as Mr. Bredenberg suggests. BNSF's train, like Union Pacific's local jobs, would have lower priority than Amtrak and through trains operating on the Lafayette Subdivision. It would also have to contend with bridge openings that affect all trains on the main line. Union Pacific's operations would be on hold all of this time, waiting for the BNSF train to arrive at Rose Bluff Yard and move down the Lead to CITGO.

The delays caused by BNSF operating a train to CITGO would reduce service to all customers that rely on Rose Bluff Yard to switch their cars. If Union Pacific cannot switch for its full 12 hours, fewer cars would be switched. As a result, customers in both Zone 1 and Zone 2 would receive fewer cars every day and cars would spend more time sitting at customer facilities or other rail yards waiting to be processed through Rose Bluff Yard. It is difficult to predict the magnitude of the service reductions without knowing more about the operation that BNSF proposes for both its inbound loads to CITGO and outbound empties from CITGO.

Even if a BNSF train could consistently get into and out of CITGO without causing delays (which appears impossible to us, based on our experience), Union Pacific's service to CITGO would still likely be interrupted. BNSF has provided no information on how its operations would be coordinated with Union Pacific's service to CITGO for Union Pacific and KCS carloads. Union Pacific delivers loaded cars to CITGO and takes away empty cars every day. While it is unclear, BNSF's proposal apparently would have loaded cars delivered one day and empties taken away on another day, with the BNSF locomotives stored on CITGO track in the interim. (Bredenberg VS at 7-8.) This means empty BNSF cars, and two BNSF locomotives, would be consuming track capacity within CITGO's facility that Union Pacific could otherwise use to spot additional loaded cars for delivery. Union Pacific would have to hold more loaded

cars for CITGO in Lake Charles Yard, and as a result CITGO's facility would have decreased throughput.

In addition, BNSF has not explained how it plans to remove its empties from the CITGO facility or how BNSF empties will be separated from Union Pacific and KCS empties. Also, if BNSF removed its empty cars from CITGO in the same manner as Union Pacific does today—that is, building a block from empty cars CITGO leaves on its storage tracks—the BNSF crew would have to use the Lead to build the train, which would consume additional capacity on the Lead and potentially interfere with our ongoing operations to serve other customers.

Our experience with a few trains KCS moved to CITGO in late 2012 confirms that it would be virtually impossible to add a regular train for deliveries and pickups at CITGO without substantially impairing Union Pacific service. Under the joint facility agreement, as limited by CITGO's Industry Track Agreement, KCS has a contractual right to deliver trains of 25 cars or more directly to Zone 2 customers, but due to the limited capacity in this area it has rarely attempted to make such deliveries. The few times KCS did move a train to CITGO, we had great difficulty finding times when KCS could move into and out of the facility without disrupting Union Pacific operations. Since then, KCS has not tried again to move a train to CITGO, but instead has continued to rely on Union Pacific switching under the switching arrangement that Union Pacific and KCS developed long ago.

Union Pacific's operations would not benefit from BNSF running its own trains because this would not significantly reduce the amount of work that we must do to serve customers through Rose Bluff Yard and in Zone 2. It certainly would not reduce the total number of trains Union Pacific operates in the Lake Charles area, in the Rose Bluff Yard, or on the Rose Bluff Industrial Lead. Under the BNSF proposal, Union Pacific would deliver and pull fewer cars for

CITGO, but Union Pacific would still have to switch other cars for CITGO, and all Union Pacific jobs would still operate to serve other Zone 2 customers. Further, so long as BNSF still has cars moving to other customers in Zone 1 or Zone 2, the BNSF local job that brings cars to and from North Yard would still have to run, and Union Pacific would still have to switch a block of cars received from BNSF there and move them to Rose Bluff Yard.

In fact, instead of removing work from the system, BNSF trains for CITGO would add new train movements to a congested area with complicated operations. BNSF would add at least a new train to CITGO and a new train from CITGO. The new trains would consume capacity on the Lafayette Subdivision, in Rose Bluff Yard, and on the Rose Bluff Industrial Lead. One train moving 100 cars would consumes much less capacity on the Lead and at shipper facilities than two trains moving 50 cars each. BNSF might see a small benefit by avoiding the time and cost of a reciprocal switch. However, BNSF would have to add crews and locomotives devoted to operating a dedicated CITGO train. And Union Pacific and KCS would be forced to deal with disruption of their operations due to additional delays and complexity in coordinating operations in Rose Bluff Yard, while all of the customers in Zone 2 would see a reduction in service.

Moreover, we understand that BNSF claims it is entitled to run its own trains to any customer reached by the Rose Bluff Industrial Lead. BNSF has provided no information about which customers (other than CITGO) it plans to serve, what volume of cars it would carry for each customer, the schedules of trains BNSF would add, or any other operations information for these trains. We have no doubt that BNSF train movements to multiple customers on the Lead would cause very significant disruptions to our service, given the physical operational constraints involved in serving all Zone 2 customers.

VERIFICATION

I, Jamal W. Chappell, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on August 19, 2015.

Jamal W. Chappell

VERIFICATION

I, Michael V. Matya, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on August 20, 2015.

Michael V. Matya

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

REPLY VERIFIED STATEMENT

OF

CAMERON A. SCOTT AND ROGER D. LAMBETH

REPLY VERIFIED STATEMENT

OF

CAMERON A. SCOTT AND ROGER D. LAMBETH

Our names are Cameron A. Scott and Roger D. Lambeth. We are, respectively, Executive Vice President of Operations and General Superintendent for Transportation Services in the Western Region for Union Pacific Railroad Company. In 2012, when BNSF initially proposed to access CITGO's facility in West Lake Charles, Louisiana, using trackage rights, Mr. Scott was Union Pacific's Vice President of Network Planning and Operations which included responsibility for joint facilities and service design, and Mr. Lambeth was Superintendant of Transportation Services in the Southern Region, which includes Lake Charles.

We have participated in written, telephonic, and in-person communications with our respective counterparts at both BNSF and KCS regarding BNSF's proposal to operate its own trains to CITGO on the Rose Bluff Industrial Lead. We are making this joint statement to correct certain assertions by BNSF witness Rollin Bredenberg regarding communications between and among Union Pacific, BNSF, and KCS about BNSF's proposed operations. We also briefly address Mr. Bredenberg's mistaken assertion that BNSF's proposed operations would be similar to operations on Union Pacific's Baytown Subdivision and Sabine Lead.

I. BNSF never resolved the operating and consent issues posed by its proposal to access CITGO using trackage rights over the Rose Bluff Industrial Lead.

BNSF first notified Union Pacific of its proposal to change its service from reciprocal switch to operating its own trains to CITGO using trackage rights in a May 24, 2012 letter from Christopher Bigoness, BNSF's Manger, Network Strategy, to Daniel

Hartmann, Union Pacific's Senior Director – Interline Marketing. *See* Counsel's Exhibit 15 (5/24/12 Letter from Bigoness to Hartmann). On June 21, 2012, Union Pacific responded and rejected BNSF's proposal as infeasible. *See* Counsel's Exhibit 16 (6/21/12 Letter from Hartmann to Bigoness). In its response, Union Pacific identified serious operating and service issues that would preclude BNSF from serving CITGO using trackage rights "[u]nless and until major track infrastructure improvements are completed." Union Pacific also reminded BNSF that the trackage over which BNSF proposed to operate was jointly owned by Union Pacific and KCS and that KCS's consent would be required. Contrary to Mr. Bredenberg's summary assertion that Union Pacific's concerns were "satisfactorily addressed by BNSF," BNSF Op., Bredenberg VS at 2, BNSF never fully addressed nor satisfied Union Pacific's concerns that its proposed operations were infeasible. BNSF also never obtained KCS's consent.

During the summer and fall of 2012, Union Pacific personnel participated in discussions with BNSF counterparts and attempted to engage BNSF in meaningful discussion about the feasibility of its proposed operations given existing operations and limited capacity on the Rose Bluff Industrial Lead, as well as in Rose Bluff Yard. These discussions included a face-to-face meeting on August 23, 2012, between Union Pacific and BNSF operating personnel in Lake Charles. During these discussions, BNSF provided only vague statements about its proposed operations which did not address Union Pacific's operating and service concerns. In fact, during one conversation, Mr. Bredenberg stated that, in view of his experience in the area decades ago while he worked for the Southern Pacific railroad, we could not tell him anything about Lake Charles operations that he did not already know. BNSF demanded the right to provide

trackage rights service to CITGO, notwithstanding our operating concerns and apparently without regard for KCS as a joint facility co-owner.

In a November 2, 2012 letter from Mr. Bigoness to Mr. Hartmann, BNSF acknowledged Union Pacific's operational concerns and asserted that it would move traffic to CITGO in "manifest quantities" using four axle locomotives beginning on November 20. *See* Counsel's Exhibit 17 (11/2/12 Bigoness letter to Hartmann). However, BNSF did not address the fundamental problems of accommodating a third railroad on the Rose Bluff Industrial Lead and in the capacity constrained Rose Bluff Yard, stating that any resulting issues could be addressed by "local UP and KCS operating personnel." BNSF also asserted that KCS's consent was unnecessary. Union Pacific responded on November 20, 2012. Union Pacific acknowledged the changes in BNSF's proposal and sought BNSF's commitment to continue addressing the service issues presented by operating personnel at Union Pacific and KCS. *See* Counsel's Exhibit 18 (11/20/12 Hartmann letter to Bigoness).

Contrary to Mr. Bredenberg's assertion that Union Pacific had "concurred with BNSF's direct service to the CITGO facility," Bredenberg VS at 2, Union Pacific's letter pointed to the need for further discussions among operating personnel at Union Pacific, BNSF, and KCS to address BNSF's altered proposal to serve CITGO. In its November 2, 2012 letter, BNSF still had not described its proposed service plans in any useful detail, so the railroads could not even begin talking about what infrastructure and operating changes would be needed if BNSF were allowed to operate its own train through Rose Bluff Yard or on the Rose Bluff Industrial Lead. Because the operational

and consent issues had not yet been resolved, BNSF did not begin operations on November 20, as proposed in its November 2 letter.

During November and December, Union Pacific tried to encourage BNSF and KCS to engage in substantive discussions to determine whether and what improvements could be made to the Rose Bluff Yard and Rose Bluff Industrial Lead infrastructure and operations that might accommodate BNSF's proposal to operate there using trackage rights. During a Port Terminal Railroad Association board meeting in Houston, Texas, on November 27-28, 2012, Mr. Scott informally spoke with Mr. Bredenberg and Steve Truitt, Vice President Transportation and Safety of KCS, about getting the three railroads together to discuss operations in the Rose Bluff Yard and on the Lead. Mr. Truitt reacted by saying that BNSF was not welcome on this jointly-owned property and that KCS would sue BNSF for trespass if it operated trains to CITGO.

Mr. Scott specifically raised the Lake Charles situation with Mr. Bredenberg at a November 29, 2012, meeting of Union Pacific and BNSF operating, interline marketing, and law personnel at BNSF's headquarters in Fort Worth, Texas, held to discuss a variety of joint facility and access issues. During a break in the meeting, Mr. Scott emphasized with Mr. Bredenberg the need to get Union Pacific, KCS, and BNSF operating personnel together to figure out how best to operate in the Lake Charles area to maximize operational efficiency and service to the customers. Mr. Scott subsequently directed Mr. Lambeth to continue Union Pacific's effort to engage BNSF and KCS personnel in substantive discussions about the issues raised by BNSF's interest in trackage rights operations to CITGO.

Mr. Scott recalls that, during a routine call in mid-December regarding a variety of network planning and joint facility issues, Mr. Bredenberg raised the issue of BNSF's desire to operate its own trains to CITGO. Mr. Scott reminded Mr. Bredenberg that discussions among Union Pacific, BNSF, and KCS were required to address operations in the Lake Charles area if BNSF wanted to change from reciprocal switching to trackage rights to access CITGO. Mr. Scott also told Mr. Bredenberg that he had asked Mr. Lambeth to work with BNSF and KCS operating personnel to address how the three railroads could best operate in the Lake Charles area.

In response to Mr. Scott's direction, Mr. Lambeth attempted to engage KCS and BNSF operating personnel in discussions about BNSF service to CITGO. The point became more urgent on December 14, 2012, when Mr. Lambeth learned from Richard Castagna, Union Pacific's then Assistant Vice President Operations – Southern Region, that BNSF was making plans for the next week to operate a train directly to CITGO on the Rose Bluff Industrial Lead. The same day, Mr. Lambeth was contacted by KCS's Steve Truitt, who also had learned about BNSF's plans, and who stated that KCS would not allow BNSF to operate the train to CITGO. On December 17, Mr. Truitt told Mr. Lambeth that BNSF had a 30-car train moving toward CITGO and reiterated that KCS would not let BNSF operate the train to CITGO. Mr. Lambeth then contacted Brent Thomas, BNSF's Superintendent of Operations, and advised him that those cars should be handled, as usual, via Lake Charles Yard, with delivery provided by Union Pacific.

On December 18, 2012, Mr. Lambeth attempted to encourage a more focused discussion among the railroads by emailing Mr. Thomas, and copying KCS's Mr. Truitt, a "straw man" proposal under which BNSF would use one hour of KCS's "window" in

Rose Bluff Yard and one hour of Union Pacific's "window" to operate through Rose Bluff Yard and down the Rose Bluff Industrial Lead. *See* Counsel's Exhibit 19 (12/18/12 Lambeth email to Thomas). The email did not spark the discussion that Mr. Lambeth hoped for. Instead, BNSF incorrectly interpreted the email as permission to operate its train to CITGO on the joint trackage, while KCS objected that Union Pacific was disregarding the need for KCS's consent before BNSF could initiate train operations over the Rose Bluff Industrial Lead. Mr. Lambeth subsequently contacted BNSF to reinforce that BNSF could not operate over the Rose Bluff Industrial Lead without KCS's approval and resolution of various operational issues.

Mr. Bredenberg's assertion, *see* Bredenberg VS at 3, that Mr. Lambeth's proposal reflected an operating plan that Union Pacific was prepared to implement unilaterally is simply wrong. In his statement, Mr. Bredenberg incorrectly says the plan involved allocating BNSF "a two hour window during UP's twelve-hour period, from 5:00 A.M. to 7:00 A.M. to operate to CITGO." *Id*. Union Pacific's window in Rose Bluff Yard is from 6:00 A.M. to 6:00 P.M. Mr. Lambeth suggested that BNSF operate between 5:00 A.M. and 7:00 A.M., which includes one hour from KCS's window, in order to engage all three railroads in an operating discussion about BNSF's proposal. Mr. Lambeth's short email was in no way an "operating plan" that Union Pacific had any authority to implement unilaterally, and it was not intended to be taken that way.

In addition, Mr. Bredenberg now says that "BNSF proposes to operate over the Rosebluff Industrial Lead to provide direct service to the CITGO facility *and to other customers* in the terminal area." Bredenberg VS at 7 (emphasis provided). Yet BNSF has never discussed with Union Pacific any plans to serve shippers on the Rose Bluff

Industrial Lead other than CITGO, despite the fact that this sort of discussion is part of the well-established process both carriers rely on to adjust merger condition operations.

Union Pacific remains open to engaging in discussions with BNSF and KCS about potential improvements to the operations and infrastructure in Rose Bluff Yard and on the Rose Bluff Industrial Lead, but we have significant doubts that conditions could be improved to the point where three railroads could operate their own trains over these capacity constrained facilities, for reasons explained in the Reply Verified Statement of Jamal Chappell and Michael Matya. However, meaningful discussions cannot even begin until BNSF explains the exact nature of the operations it contemplates for both loads and empties, so the parties can sit down and determine what infrastructure and operating changes might allow BNSF to meet its objectives without substantially impairing Union Pacific's and KCS's service to customers on the Rose Bluff Industrial Lead and in the Lake Charles area.

II. Operations on the Baytown Subdivision and Sabine Lead are not comparable to operations on the Rose Bluff Industrial Lead.

BNSF's operating witness, Mr. Bredenberg, asserts that BNSF's operations over Union Pacific's Baytown Subdivision and Sabine Lead would serve as a model for operations through Rose Bluff Yard and over the Rose Bluff Industrial Lead. *See* Bredenberg VS at 8. This is wrong. Most notably, only two railroads operate over the Baytown Subdivision and Sabine Lead. BNSF's proposal for CITGO would result in three railroads attempting to operate in a capacity-constrained terminal area. Moreover, BNSF's assertion betrays a lack of understanding of current operations and conditions on the Rose Bluff Industrial Lead.

The Baytown Subdivision is in no way operationally equivalent to the Rose Bluff Industrial Lead; the Baytown line is a much larger operation. The Rose Bluff Industrial Lead is a dead-end switching lead; Baytown is a through-route that connects to Union Pacific lines on both the northern and southern ends of the Baytown Subdivision. The Rose Bluff Industrial Lead, the sole track that connects to the customers, runs through an unavoidable choke-point: the small Rose Bluff Yard, which is already shared by two railroads. In contract, on the Baytown Subdivision, Union Pacific and BNSF enter the line from different locations. Union Pacific enters from the south end and BNSF enters from the north. Moreover, both railroads have their own terminal capacity to support their respective operations on the Baytown Subdivision. Union Pacific has yards at three locations on the line; BNSF has its own large yard at the north end of the line and an agreement with a third party to store cars and originate crews further down the line. This is nothing like the conditions on the Rose Bluff Industrial Lead and in the shared, congested Rose Bluff Yard.

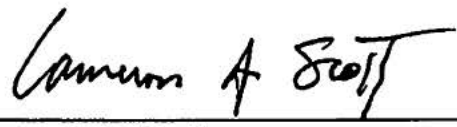
The Sabine Lead is also unlike the Rose Bluff Industrial Lead, particularly in the complexity and congestion of operations. The Sabine Lead lacks a choke point similar to Rose Bluff Yard. The Sabine Lead has lower carload volume, fewer switching requirements, and more capacity to handle existing traffic, than the Rose Bluff Industrial Lead. In addition, both Union Pacific and BNSF each have their own terminal capacity to support their operations on the Sabine Lead. Union Pacific has three yards to support its operations, and BNSF supports its operations from its yard in Beaumont, at the north end of the Sabine Lead.

Mr. Bredenberg's claims that two-railroad operations on the Baytown Subdivision and the Sabine Lead with their multiple separate yards provide a model for three-railroad operations on the Rose Bluff Industrial Lead and in Rose Bluff Yard are contrary to the facts.

VERIFICATION

I, Cameron A. Scott, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Reply Verified Statement.

Executed on this 23rd day of August, 2015.

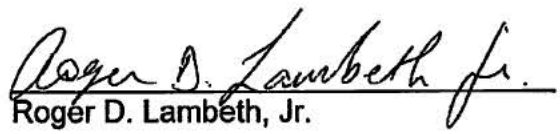


Cameron A. Scott

VERIFICATION

I, Roger D. Lambeth, Jr., declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Reply Verified Statement.

Executed on this 23rd day of August, 2015.

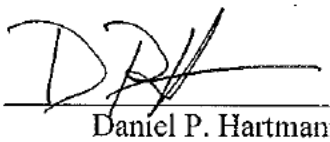


Roger D. Lambeth, Jr.

REPLY VERIFICATION OF
DANIEL P. HARTMANN

I, Daniel P. Hartmann, Senior Director – Interline Marketing for Union Pacific Railroad Company, declare under penalty of perjury that I assisted in the preparation of Union Pacific's Reply to BNSF's Opening Statement and Evidence and that the information contained therein regarding traffic volumes in the Lake Charles area and Union Pacific's experience addressing merger-related customer access requests from BNSF Railway Company is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on August 22, 2015.



Daniel P. Hartmann

REDACTED – TO BE PLACED ON PUBLIC FILE

UP/SP-412



239083

ENTERED
Office of Proceedings
August 24, 2015
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

UNION PACIFIC'S REPLY TO BNSF'S OPENING STATEMENT AND EVIDENCE

VOLUME II of II: COUNSEL'S MAPS AND EXHIBITS

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August 24, 2015

Contains Color Images



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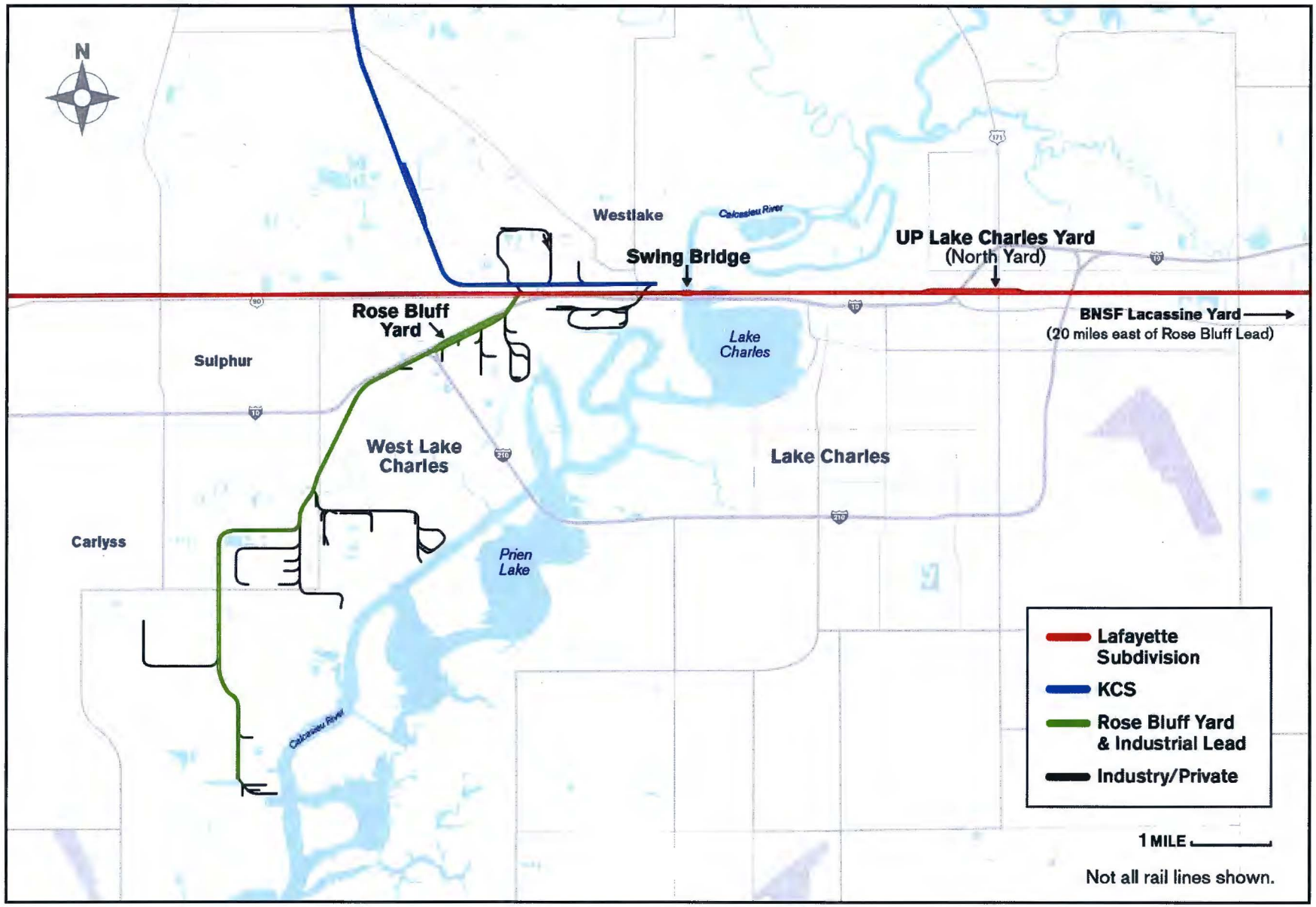
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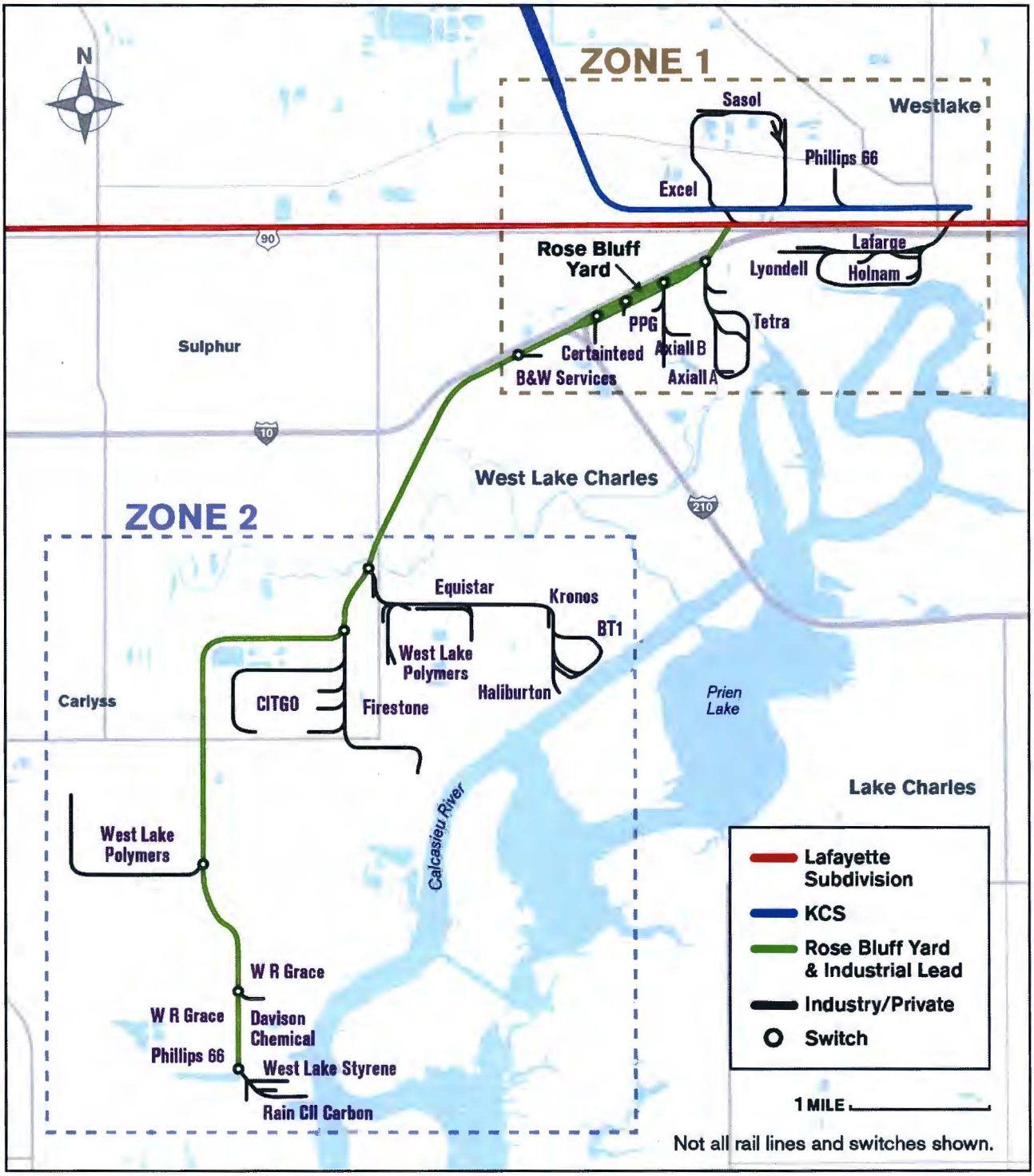
Map Exhibit A

Overview of Lake Charles Area Trackage



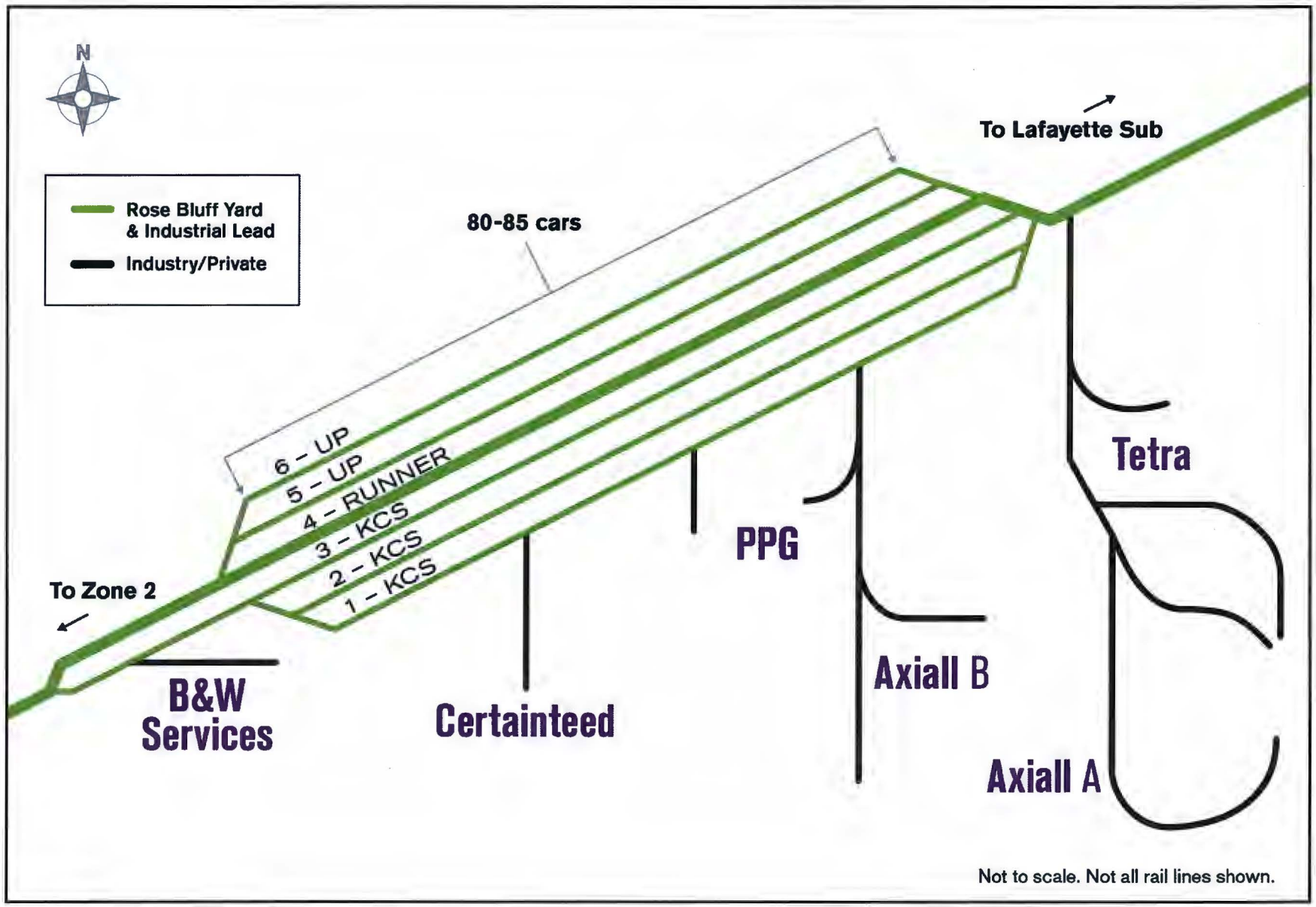
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Rose Bluff Yard and Industrial Lead



Map Exhibit C

Rose Bluff Yard



Map Exhibit D

Union Pacific Local Trains on the Rose Bluff Industrial Lead

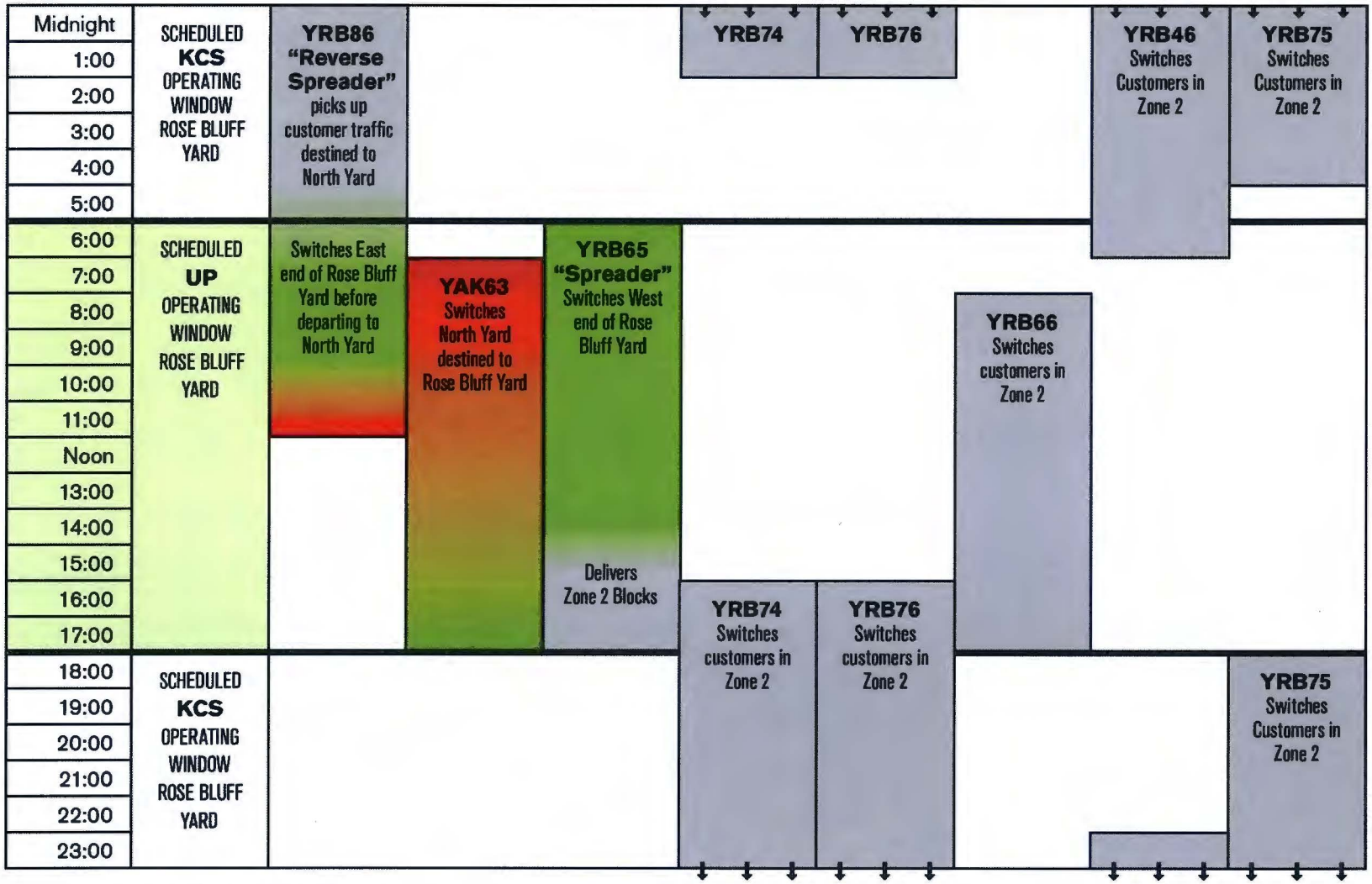


Chart indicates scheduled start and end times. Actual times vary.

LOCATION OF UP TRAINS

- Rose Bluff Yard
- Industrial Lead
- In or enroute to/from North Yard

Exhibits

Exhibit 1

UNION PACIFIC RAILROAD
COMPANY COUNTERPART

U. P. R. R. Co.
Agreement
Audit No. 182144

AGREEMENT

This Agreement ("Agreement") is entered into this 25 day of September, 1995, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), hereinafter collectively referred to as "BNSF", on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Interstate Commerce Commission ("ICC") 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.

NOW, THEREFORE, in consideration of their mutual promises, UP/SP and BNSF agree as follows:

1. **Western Trackage Rights**

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

   - SP's line between Denver, Colorado and Salt Lake City, Utah;
   - UP's line between Salt Lake City, Utah and Ogden, Utah;
   - SP's line between Ogden, Utah and Little Mountain Utah;
   - UP's line between Salt Lake City, Utah and Alazon, Nevada;
   - UP's and SP's lines between Alazon and Weso, Nevada;

- SP's line between Weso, Nevada and Oakland, California via SP's line between Sacramento and Oakland referred to as the "Cal-P" (subject to traffic restrictions as set forth in Section 1g);
- UP's line between Weso, Nevada and Stockton, California; and
- SP's line between Oakland and San Jose, California.

b) The trackage rights granted under this section herein 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 industries which are presently served (either directly or by reciprocal switch) only by both UP and SP and by no other railroad at points listed on Exhibit A to this Agreement. BNSF shall also receive the right to interchange with the Nevada Northern at Shafter, Nevada; with the Utah Railway Company at the Utah Railway Junction and Provo; and with the Salt Lake, Garfield and Western at Salt Lake City.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which new industries shall be open to BNSF service shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP, either directly or through reciprocal switch. In negotiating the trackage rights agreements pursuant to Section 9f of this Agreement, the parties shall agree on the mileposts defining these geographic limitations. Where switching districts have been established they shall be presumed to establish these geographic limitations.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads.

e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of this 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.

f) Except as hereinafter 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) On SP's line between Weso and Oakland via the "Cal-P," BNSF shall be entitled to move only (i) intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one manifest train/day in each direction. Intermodal trains are comprised of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration. Manifest trains shall be carload business and shall be (a) operated without the use of helpers and (b) equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP trains. If UP/SP operates manifest trains requiring the use of helpers then BNSF's manifest trains may be operated in the same fashion provided that BNSF furnishes the necessary helper service. BNSF may also utilize the "Cal-P" for one manifest train per day moving to or from Oakland via Keddie and Bieber; provided, however, that BNSF may only operate one manifest train/day in each direction via the "Cal-P" regardless of where the train originates or terminates. The requirement to use helpers, does not apply to movement over the "Cal-P."

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 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 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 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, California. 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, Oregon for rail traffic of all kinds, carload and intermodal, for all commodities.

c) The parties will, under the procedures established in Section 9f 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 industries at all stations in Southern California presently served (either directly or through reciprocal switch) only by both UP and SP and by no other railroad at points listed on Exhibit A to this Agreement.

b) UP/SP shall grant BNSF overhead trackage rights on UP's line between Riverside and Ontario, California for the sole purpose of moving rail traffic of all kinds, carload and intermodal, for all commodities to industries at Ontario presently served (either directly or through reciprocal switch) only by both UP and SP and by no other railroad.

c) UP/SP shall grant BNSF overhead trackage rights on UP's line from Basta, California to Fullerton and La Habra, California for the sole purpose of moving rail traffic of all kinds, carload and intermodal, for all commodities to industries at Fullerton and La Habra presently served (either directly or through reciprocal switch) only by both UP and SP and by no other railroad.

d) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow and Mojave, California for rail traffic of all kinds, carload and intermodal for all commodities.

e) UP/SP shall work with BNSF to facilitate access by BNSF to the Ports of Los Angeles and Long Beach. 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.

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;
- UP's line between Houston (Algoa) and Brownsville;
- UP's line between Odem and Corpus Christi;
- UP's line between Ajax and Sealy;
- SP's line between San Antonio and Eagle Pass (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Kerr (connection to Georgetown RR) and Taylor;
- UP's line between Temple and Waco;
- UP's line between Temple and Taylor;
- UP's line between Taylor and Smithville; and
- SP's line between El Paso and Sierra Blanca.

b) The trackage rights granted under this section shall be bridge rights for movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such

lines only to industries which are presently served (either directly or by reciprocal switch) only by both UP and SP and by no other railroad at points listed on Exhibit A to this Agreement. BNSF shall also have the right to interchange with (i) the Tex-Mex Railway at Corpus Christi and Robstown, (ii) the Georgetown RR at Kerr, and (iii) the FNM at Brownsville (Matamoros, Mexico).

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which new industries shall be open to BNSF service shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP, either directly or through reciprocal switch. In negotiating the trackage rights agreements pursuant to Section 9f of this Agreement the parties shall define mileposts defining these geographic limitations. Where switching districts have been established they shall be presumed to establish these geographic limitations.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads.

e) 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 (including FNM interchange) UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for a reasonable fee. 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 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, Texas and Iowa Junction in Louisiana; and
- UP's and SP's lines near Avondale (SP MP 16.9) and West Bridge Junction (SP MP 10.5).

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 industries which are presently served (either directly or by reciprocal switch) only by both UP and SP and by no other railroad at points listed on Exhibit A to this Agreement.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which new industries shall be open to BNSF service shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP, either directly or through reciprocal switch. In negotiating the trackage rights agreements pursuant to Section 9f of this Agreement the parties shall define mileposts defining these geographic limitations

where switching districts have been established they shall be presumed to establish these geographic limitations.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switching, or (iii) with UP/SP's prior agreement, through use of a third party to perform switching for itself or both railroads.

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

f) 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 SP's line between Iowa Junction in Louisiana and near Avondale, Louisiana (SP MP 16.9). UP/SP shall retain full trackage rights including the right to serve all local industries on the line for the trackage rights charges set forth in Section 9a of this Agreement. UP/SP shall retain rights for the Louisiana and Delta Railroad (L&D) to serve as UP/SP's agent between Iowa Junction and points served by the L&D. BNSF agrees that the purchase of this line is subject to contracts between SP and the L&D. UP/SP shall cause L&D to pay BNSF compensation equal to that set forth in Table I in Section 9 of this Agreement for operations between Lafayette and Iowa Junction.

h) UP/SP shall sell to BNSF UP's Westwego, Louisiana intermodal terminal; a portion of SP's Avondale yard as shown on Exhibit C; and SP's Lafayette yard.

6. **Houston - Memphis Trackage Rights**

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

- SP's line between Houston, Texas and Fair Oaks, Arkansas via Cleveland and Pine Bluff;

- UP's line between Fair Oaks and Bridge Junction;
- SP's line between Brinkley and Briark, Arkansas; and
- UP's line between Pine Bluff and North Little Rock, Arkansas.

b) In lieu of conducting actual operations between Pine Bluff and North Little Rock, Arkansas, UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for a reasonable fee.

c) The trackage rights granted herein 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 industries which are presently served (either directly or by reciprocal switch) only by both UP and SP and by no other railroad at points listed on Exhibit A to this Agreement. BNSF shall also have the right to interchange with the Little Rock and Western Railway at Little Rock.

d) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which new industries shall be open to BNSF service shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP, either directly or through reciprocal switch. In negotiating the trackage rights agreements pursuant to Section 9f of this Agreement the parties shall agree on the mileposts defining these geographic limitations. Where switching districts have been established they shall be presumed to establish these geographic limitations.

e) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads.

f) 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 shall grant to UP/SP overhead trackage rights on BN's line between West Memphis and Presley Junction. 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 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.

8. **Additional Rights**

a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, California 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 (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" and 3.1 mills per ton mile on all other carload and intermodal business and 3.0 mills per ton mile for bulk business 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, Wisconsin and access to the MERC dock in Superior, Wisconsin.

d) BNSF shall grant UP the right to use the Pokegama connection at Saunders, Wisconsin (i.e., the southwest quadrant connection at Saunders).

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, Illinois. 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 SP to enter and exit Santa Fe's line solely for the purposes of permitting SP or its agent to pick up and set out interchange business, including reciprocal switch business at Newton, Kansas, and switching UP industry at that point.

i) It is the intent of the parties that this Agreement result in the preservation of service by two competing railroad companies for all customers listed on Exhibit A to this Agreement presently served by both UP and SP and no other railroad (2-to-1 customers).

The parties recognize that some 2-to-1 customers 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 customers located at Herlong, CA, Turlock, CA, Tyler, TX, Defense, TX, College Station, TX, Great Southwest, TX, Victoria, TX, Sugarland, TX, Sinton, TX, points on the former Galveston, Houston & Henderson Railroad served only by UP and SP, Harbor, LA, Paragould, AR, Forrest City, AR, Dexter Jct., MO, Preston, KS and Herington, KS, are not accessible under the trackage rights and line sales covered by this Agreement. Accordingly, UP/SP agree to enter into arrangements with BNSF 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 customers at the foregoing points and to any 2-to-1 customers who are not located at points expressly referred to in this Agreement or Exhibit A to this Agreement.

j) 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 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.

9. **Trackage Rights - General Provisions**

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

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 (1/2) the original cost of constructing such facilities.

c) Capital expenditures on the lines over which BNSF has been granted trackage rights pursuant to this Agreement (the trackage rights lines) 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.

d) The management and operation of the trackage rights line shall be under the exclusive direction and control of the owning carrier. The owning carrier shall have the unrestricted power to change the management and operations on and over joint trackage as in its judgement 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 UP/SP traffic.

Owner shall keep and maintain the trackage rights lines 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 trackage rights lines.

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 present designated switching limits of the location, and access to such locations shall include the right to locate and serve new auto and intermodal facilities at such locations and to build yards or other facilities to support trackage rights operations.

h) If requested by BNSF, UP/SP will provide to BNSF reciprocal switching services at the 2-to-1 points covered in this Agreement at rates which will fully reimburse UP/SP for its costs plus a reasonable return.

i) It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities to handle such local traffic. 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.

j) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the trackage rights lines.

k) 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.

l) BNSF shall have the right to connect for movement in all directions with the trackage rights lines where its present lines (including existing trackage rights), lines to be purchased under this Agreement, and the trackage rights lines intersect.

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:

Line Segment	Purchase Price
Keddie-Bieber	$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego intermodal yard; SP's Avondale "New" 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 Seller, 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, fibre 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 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 9a 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, operation would continue under the existing trackage rights agreement.

11. **Term**

This Agreement shall be effective upon execution 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 cancelled 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 Interstate Commerce Commission, 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 annually beginning as of the effective date of this Agreement to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the ICC 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 an appropriate adjustment factor 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 operations 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.

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 9f 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**

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.

18. **Confidentiality**

The parties may make all other terms of this Agreement known to the public through a press release previously reviewed and approved by the other parties, and may address it in subsequent communications to the ICC or others. The parties agree, however, that the financial terms of this Agreement are confidential and shall not be disclosed, without the consent of the other party, to individuals not employed by or acting as counsel for or consultants to UP/SP or BNSF, except as

required by law, provided the parties may make appropriate disclosure of such terms to government entities or as required in connection with the process of seeking government approval of the control case, or of this Agreement under applicable ICC confidentiality procedures.

UNION PACIFIC CORPORATION

By: R K Davidson
Title:

UNION PACIFIC RAILROAD COMPANY

By: R K Davidson
Title:

SOUTHERN PACIFIC RAIL CORPORATION

By:
Title:

MISSOURI PACIFIC RAILROAD COMPANY

By: R K Davidson
Title:

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By:
Title:

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

By:
Title:

SPCSL CORP.

By:
Title:

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

By:
Title:

BURLINGTON NORTHERN RAILROAD COMPANY

By:
Title:

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By:
Title:

EXHIBIT A

Points Referred to in Section 1b

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
Points on paired track from Weso NV to Alazon NV
Reno NV (intermodal and automotive only -
BNSF must establish its own automotive facility)
Points between Oakland CA and San Jose CA
San Jose CA
Warm Springs CA
Fremont CA
Points in the Livermore CA area (including Pleasanton CA,
Radum CA, and Trevarno CA)
West Sacramento CA
Melrose Drill Track near Oakland CA

Points Referred to in Section 3a

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4b

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

Points Referred to in Section 5b

Baytown TX
Amelia TX
Orange TX
Mont Belvieu TX

Points Referred to in Section 6c

Camden AR
Pine Bluff AR
Fair Oaks AR
Baldwin AR
Little Rock AR
North Little Rock AR
East Little Rock AR
Paragould AR

EXHIBIT B

TERM SHEET FOR UP/SP-BNSF PROPORTIONAL RATE AGREEMENT COVERING I-5 CORRIDOR

Concept

BNSF trackage rights in the "I-5" corridor will allow BNSF to handle traffic on a single line basis that currently moves via joint BN-SP routes. This Agreement will enable UPSP to compete with BNSF for that traffic and to make rates, using the proportional rates, to and from all points UP/SP serves in the covered territory described below.

Covered Territory

Traffic moving between the following areas north of Portland, Oregon and west of Billings and Havre, Montana:

- Canadian interchanges in Vancouver area
- Points north of Seattle and west of Cascades
- Points south of and including Seattle and west of Cascades
- Washington points east of Cascades and west of and including Spokane
- Points east of Spokane and west of Billings and Havre

and points in

- Arizona,
- California,
- Colorado,
- New Mexico,
- Nevada,
- Oregon,
- Utah,
- Texas west of Monahans and Sanderson, and
- connections to Mexico at El Paso and to the west.

Traffic Covered

Traffic covered will be all commodities (carload, intermodal and bulk) moving both southbound and northbound. All cars loaded or made empty on BNSF lines in the Covered Territory (including reloads) and cars received in interchange.

Proportional Rates

A third party, such as a major accounting firm or other established transportation consultant (the "consultant"), will be employed to compute the proportional rates. The mileage prorate shall be the ratio of (a) BNSF miles between areas north of Portland or interchange north of Portland and SP interchange at Portland to (b) BNSF single-line miles from BNSF origin or interchange to BNSF destination or interchange.

The consultant will develop a table of net ton mile rates (net of refunds, allowances, and rebates). This table will be in matrix form based on commodity, car type, and area north of Portland, Oregon. The rates shown in the matrix will be by commodity at the 3-digit STCC level and by car type for movement between each of the areas north of Portland, Oregon, and the Portland interchange. The net ton mile rates will be based on movements between each of the areas north of Portland and the group of states (including connections to Mexico) listed above. The initial rates will be derived based on the BN-SP portion of BN-SP interline rates (net of refunds, allowances, and rebates) in effect in the quarter preceding acquisition of SP by UP.

The net ton mile rate for each commodity/car type shall be a weighted average of the rates applicable to movements of each such commodity/car type between the points listed above. An example of this computation is attached.

New rates will be derived each subsequent quarter. In subsequent quarters, the rates will include a prorate of both SP-BNSF interline rates (net of refunds, allowances, and rebates) and BNSF single-line rates (net of refunds, allowances, and rebates). At such time as a rate can be developed for a particular commodity/car type on the basis of a BNSF single-line rate then future rate adjustments for such commodity/car type shall be based solely on BNSF single-line rates. All computations of net ton mile rates will be based on rates that actually moved traffic.

UP/SP agree that any rate it publishes will reflect the proportional rate from the latest quarterly study and BNSF's division shall be that amount. Movements using proportional rates shall be interline BNSF-UP/SP movements and will be billed accordingly. Proportional rates used by UP/SP in contracts will be escalated on the same basis as UP/SP's rates are escalated. BNSF and UP/SP will establish procedures to ensure that in settling interline accounts UP/SP's and BNSF's revenue south of Portland is not disclosed to the other.

Application

The net ton mile rates in each cell of the matrix will be applied to the BN mileage and the associated net tons from areas north of Portland to Portland interchange to develop the proportional rate to the Portland interchange.

Service

BNSF shall accept, handle, switch and deliver traffic moving under this Agreement without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in BNSF's account. UP/SP has the right to provide equipment. BNSF will work with UP/SP to establish and provide trackage for strategically located car distribution points in BN territory. To the extent justified by business volumes, BNSF will continue operating Vancouver, BC-Portland (SP interchange) trains comparable to BN Nos. 111 and 112. BNSF will cooperate with UP/SP to establish necessary blocks to provide efficient and competitive service on traffic moving under the proportional rate.

Third Party Consultant

The third party consultant shall be jointly employed by UP/SP and BNSF. The parties will share equally in the expense of employing such third party consultant. Both UP/SP and BNSF shall have the right to audit the work of the third party consultant and agree to share in any irregularities found in this work and cooperate to work with the third party consultant to establish procedures to promptly correct those deficiencies. The third party consultant shall be required to remain impartial between UP/SP and BNSF. Any breach of the impartiality requirement shall result in the termination of such third party consultant and the selection of a new consultant by the parties.

Example of Revenue Per Ton Mile
Calculation by Origin-Destination Cell
Cell Includes Car Type and Commodity

	Assumption:	Move 1	Move 2
1.	BNSF Revenue Per Car From O/D Areas North of Portland to Destination States	$5000	$2000
2.	BNSF Miles From O/D Areas North of Portland to Destination States	1000	500
3.	BNSF Net Tons From O/D Areas North of Portland to Destination States	100	50
4.	BNSF Number of Carloads From O/D Areas North of Portland to Destination States	10	5
5.	BNSF Miles Between Actual Point of Origin to Interchange and Portland	300	200

A. Revenue/NTM Factor (Computed by Consultant for Each Cell in Matrix)

$$\frac{\sum(1) \times (4) \text{ (for all moves)}}{\frac{(2) \times (3)}{\sum(4)}}$$

$$\frac{\frac{5000 \times 10}{1000 \times 100} + \frac{2000 \times 5}{500 \times 50}}{10 + 5} = \$0.06/\text{NTM}$$

B. Compute BNSF Division on a Specific Move

(A) x (5) x (3)
$0.06 x 300 x 100 = $1800
$0.06 x 200 x 50 = $ 600

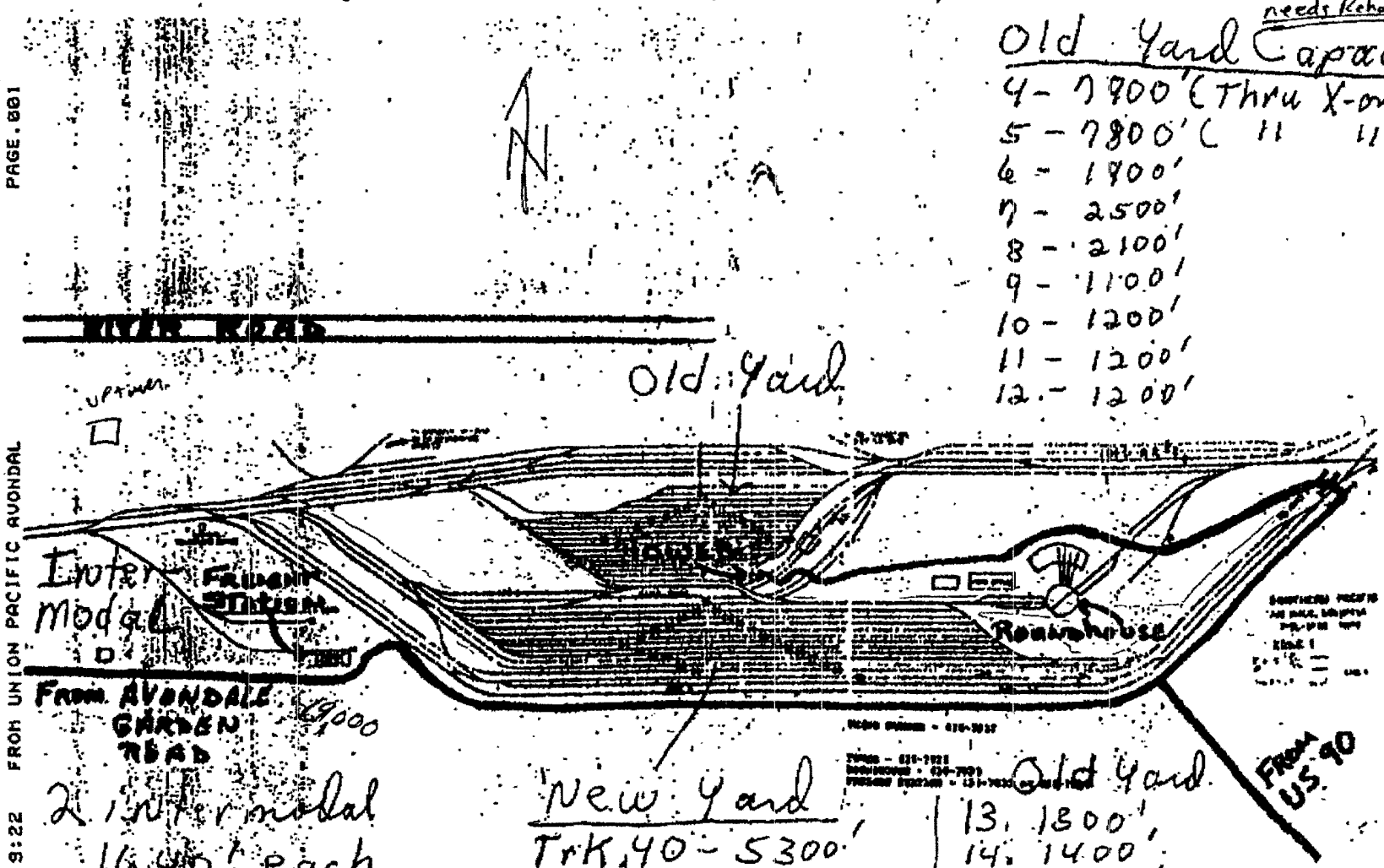
6660-3888
392-2280

S.P. Avondale Yard

9/24/95
Crandall
350-7150

SEP 24'95 11:21 FR UP SPRING 713-3507593 13 350 7593 TO 82715955 P.01/01
SEP 24 '95 9:22 FROM UNION PACIFIC AVONDAL PAGE.001

** TOTAL PAGE.001 ** *
** TOTAL PAGE.001 **



Old Yard Capacity

needs Rehab

4 - 7900' (Thru X-overs)
5 - 7800' (" ")
6 - 1900'
7 - 2500'
8 - 2100'
9 - 1100'
10 - 1200'
11 - 1200'
12 - 1200'

New Yard

Trk. 40 - 5300'
37-39 - 4000'
30-36 - 2000'
29 - 1500'
28 - 1200'
27 - 1150'
26 - 1100'
25 - 900

Old Yard

13. 1800'
14. 1400'
15. 1800'
16. 1700'
17. 1600'
18. 1500'
19. 1400'
20 1300'
21 1200'
22 1100'
23.) 1000'
24.) 900'

2 Intermodal 1640' each

Not to scale not entirely accurate

EXHIBIT C

11/18/95

SUPPLEMENTAL AGREEMENT

This Supplemental Agreement ("Supplemental Agreement") is entered into this 18 day of November, 1995, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), hereinafter collectively referred to as "BNSF", on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Interstate Commerce Commission ("ICC") 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.

Pursuant to an Agreement between UP/SP and BNSF dated September 25, 1995 (the "Agreement"), UP/SP and BNSF agreed to various trackage rights, line sales, and other related transactions.

In order to (a) realize the intent of the parties that the Agreement result in the preservation of service by two competing railroad companies for all 2-to-1 customers as described in Section 8i of the Agreement and (b) correct various errata to the Agreement that have been identified since it was signed, the parties agree to amend the Agreement as follows:

1. **Amendment to Section 1.**

a) Section 1b is amended by (i) inserting the phrase "with the Utah Central Railway Company at Ogden" between the phrases "Provo:" and "and with the Salt" in the second to last line, and (ii) adding at its conclusion the following language:

> "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 granted under this section."

b) Section 1d is amended by adding at its conclusion the following language:

> "BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election."

c) Section 1g is amended by (i) revising the third and fourth sentences to read as follows:

> "Manifest trains shall be carload business and shall be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP trains. Helpers shall not be used unless comparable UP/SP manifest trains use helpers in which case BNSF trains may be operated in the same fashion provided that BNSF furnishes the necessary helper service."

and (ii) by deleting the comma in the last sentence after the word "helpers."

d) Section 1i is amended by inserting the term "BNSF" between the words "provide" and "non-discriminatory" in the second line.

2. **Amendment to Section 3**. Section 3 is amended by adding a new Section 3f to the Agreement. New Section 3f shall read as follows:

> "f) Forty-five (45) days before initiating service to a customer pursuant to Sections 3a and 3b, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads. BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election."

3. **Amendment to Section 4**.

a) Section 4a is amended by adding the phrase "(with parity and equal access to the Mexican border crossing at Brownsville)" at the conclusion of the second sub-paragraph which reads "UP's line between Houston (Algoa) and Brownsville."

b) Section 4b is amended by adding at its conclusion the phrase "and Eagle Pass."

c) Section 4d is amended by adding at its conclusion the following language: "BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election."

d) The first sentence of Section 4f is amended by inserting a comma between the phrase "(including FNM interchange)" and the term "UP/SP."

4. **Amendment to Section 5.**

a) Section 5a is amended as follows in order to add an additional grant of trackage rights:

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

- SP's line between Houston, Texas and Iowa Junction in Louisiana;
- SP's line between Dayton, Texas and Baytown, Texas;
- UP's and SP's lines near Avondale (SP MP 16.9) and West Bridge Junction (SP MP 10.5); and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, Louisiana intermodal facility (approximately UP MP 9.2)."

b) Section 5b is amended by adding at its conclusion the following sentence: "BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction."

c) The last sentence in Section 5c is amended by inserting a period after the word "limitations" and by beginning a new sentence immediately thereafter with the word "where."

d) Section 5d is amended by adding at its conclusion the following language: "BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election."

5. **Amendment to Section 6.**

a) Section 6c is amended by adding at its conclusion the following language: "and the Little Rock Port Authority at Little Rock."

b) Section 6e is amended by adding at its conclusion the following language: "BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election."

6. **Amendment to Section 8.**

a) The parenthetical clause in Section 8d is amended to read as follows: "(i.e., the southwest quadrant connection at Saunders including the track between BN MP 10.43 and MP 11.14.)"

b) The second line in Section 8h is amended by substituting "UP/SP" for "SP" in the two places "SP" appears in that line.

c) Section 8i is amended in its entirety to read as follows:

"i) It is the intent of the parties that this Agreement result in the preservation of service by two competing railroad companies for all customers listed on Exhibit A to this Agreement presently served by both UP and SP and no other railroad (2-to-1 customers).

The parties recognize that some 2-to-1 customers 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 customers 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), 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, Paragould, AR, Dexter, MO, 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 customers at the foregoing points and to any 2-to-1 customers who are not located at points expressly referred to in this Agreement or Exhibit A to this Agreement.

BNSF shall have the right to interchange with any short-line railroad which, prior to the date of this Agreement could interchange with both UP and SP and no other railroad."

d) Section 8j. is modified by adding the word "or" between the words "route" and "routes."

7. Amendment to Section 9.

a) The third sentence of Section 9d is amended by deleting the phrase "UP/SP traffic" and inserting the phrase in place thereof "traffic of the owning carrier."

b) Section 9h is amended in its entirety to read as follows:

"h) The rates for reciprocal switching services provided by UP/SP to BNSF pursuant to the terms of the Agreement shall fully reimburse UP/SP for its costs plus a reasonable return."

c) Section 9l is amended in its entirety to read as follows:

"l) 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 lines it will purchase or be granted trackage rights over pursuant to this Agreement. UP/SP shall have the right to connect, for movement in any direction, with its present lines (including trackage rights) at points where its present lines (including trackage rights) intersect with lines it will be granted trackage rights over pursuant to this Agreement."

8. **Deletion of Section 18**. Section 18 of the Agreement captioned "Confidentiality" is hereby deleted.

9. **Amendment of Exhibit A**.

a) In the section captioned "Points Referred to in Section 1b" make the following deletions and insertions: (i) insert before "Points between Oakland, CA and San Jose, CA: the following points: "Herlong, CA; Johnson Industrial Park at Sacramento, CA; Farmers Rice at West Sacramento, CA; Port of Sacramento, CA;" (ii) add the following language after "Points between Oakland, CA and San Jose, CA": "(including Warm Springs CA, Fremont CA, Elmhurst CA, Shinn CA, Kohler CA, and Melrose CA) and (iii) delete "Points in the Livermore, CA area (including Pleasanton, CA, Radum, CA, and Trevarno, CA); West Sacramento, CA; Melrose Drill Track near Oakland, CA".

b) Delete the reference to "Victoria, TX" in the section captioned "Points Referred to in Section 4b." Add "Sinton, TX" in place thereof.

c) Add the phrase "(Amoco, Exxon and Chevron plants)" after the reference to Mont Belvieu, TX in the section captioned "Points Referred to in Section 5b." Add the points "Eldon, TX (Bayer plant)" and "Harbor, LA" at the end of this section.

d) Delete the reference to "Paragould, AR" in the section captioned "Points Referred to in Section 6c." Add "Forrest City, AR" in place thereof.

For ease of reference, a revised Exhibit A incorporating the foregoing changes is attached.

10. **Amendment to Exhibit B**. The third sentence in the last section (captioned "Third Party Consultant") of Exhibit B shall modified by amending the phrase "share in any" to "share any."

This Supplemental Agreement makes no other changes to the Agreement and the Agreement's terms shall remain in full force and effect except as modified above.

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be fully executed as of the date first above written.

UNION PACIFIC CORPORATION

By: _____
Title: _____

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

SOUTHERN PACIFIC RAIL CORPORATION

By: _____
Title: _____

MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Title: _____

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Title: _____

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

By: _____
Title: _____

SPCSL CORP.

By: _____
Title: _____

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

By: _____
Title: _____

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____
Title: VP

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By: _____
Title: _____

EXHIBIT A

Points Referred to in Section 1b

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
Points on paired track from Weso NV to Alazon NV
Reno NV (intermodal and automotive only -
BNSF must establish its own automotive facility)
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 3a

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4b

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

Points Referred to in Section 5b

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

Points Referred to in Section 6c

Camden AR
Pine Bluff AR
Fair Oaks AR
Baldwin AR
Little Rock AR
North Little Rock AR
East Little Rock AR
Forrest City, AR

Exhibit 2

Counsel's Exhibit 2

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:

Line Segment	Purchase Price
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 I 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:_____

Exhibits to Restated and Amended BNSF Settlement Agreement

Exhibit A – List of "2-to-1" Points

Exhibit B -- Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor

Exhibit C – Schematic drawing of UP's Main Line No. 1 between MP 14.11 and 10.38, UP's Westwego intermodal terminal, and SP's old Avondale Yard (together with the fueling and mechanical facilities located thereon)

Exhibit D -- Dispatching Protocols

Exhibit E -- "2-to-1 Point Identification Protocol"

Exhibit F -- Overhead Trackage Rights Lines

EXHIBIT A

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, Freemont 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 B

EXHIBIT B

TERM SHEET FOR UP/SP-BNSF PROPORTIONAL RATE AGREEMENT COVERING I-5 CORRIDOR

Concept

BNSF trackage rights in the "I-5" corridor will allow BNSF to handle traffic on a single line basis that currently moves via joint BN-SP routes. This Agreement will enable UPSP to compete with BNSF for that traffic and to make rates, using the proportional rates, to and from all points UP/SP serves in the covered territory described below.

Covered Territory

Traffic moving between the following areas north of Portland, Oregon and west of Billings and Havre, Montana:

- Canadian interchanges in Vancouver area
- Points north of Seattle and west of Cascades
- Points south of and including Seattle and west of Cascades
- Washington points east of Cascades and west of and including Spokane
- Points east of Spokane and west of Billings and Havre

and points in

- Arizona,
- California,
- Colorado,
- New Mexico,
- Nevada,
- Oregon,
- Utah,
- Texas west of Monahans and Sanderson, and
- connections to Mexico at El Paso and to the west.

Traffic Covered

Traffic covered will be all commodities (carload, intermodal and bulk) moving both southbound and northbound. All cars loaded or made empty on BNSF lines in the Covered Territory (including reloads) and cars received in interchange.

Proportional Rates

A third party, such as a major accounting firm or other established transportation consultant (the "consultant"), will be employed to compute the proportional rates. The mileage prorate shall be the ratio of (a) BNSF miles between areas north of Portland or interchange north of Portland and SP interchange at Portland to (b) BNSF single-line miles from BNSF origin or interchange to BNSF destination or interchange.

The consultant will develop a table of net ton mile rates (net of refunds, allowances, and rebates). This table will be in matrix form based on commodity, car type, and area north of Portland, Oregon. The rates shown in the matrix will be by commodity at the 3-digit STCC level and by car type for movement between each of the areas north of Portland, Oregon, and the Portland interchange. The net ton mile rates will be based on movements between each of the areas north of Portland and the group of states (including connections to Mexico) listed above. The initial rates will be derived based on the BN-SP portion of BN-SP interline rates (net of refunds, allowances, and rebates) in effect in the quarter preceding acquisition of SP by UP.

The net ton mile rate for each commodity/car type shall be a weighted average of the rates applicable to movements of each such commodity/car type between the points listed above. An example of this computation is attached.

New rates will be derived each subsequent quarter. In subsequent quarters, the rates will include a prorate of both SP-BNSF interline rates (net of refunds, allowances, and rebates) and BNSF single-line rates (net of refunds, allowances, and rebates). At such time as a rate can be developed for a particular commodity/car type on the basis of a BNSF single-line rate then future rate adjustments for such commodity/car type shall be based solely on BNSF single-line rates. All computations of net ton mile rates will be based on rates that actually moved traffic.

UP/SP agree that any rate it publishes will reflect the proportional rate from the latest quarterly study and BNSF's division shall be that amount. Movements using proportional rates shall be interline BNSF-UP/SP movements and will be billed accordingly. Proportional rates used by UP/SP in contracts will be escalated on the same basis as UP/SP's rates are escalated. BNSF and UP/SP will establish procedures to ensure that in settling interline accounts UP/SP's and BNSF's revenue south of Portland is not disclosed to the other.

Application

The net ton mile rates in each cell of the matrix will be applied to the BN mileage and the associated net tons from areas north of Portland to Portland interchange to develop the proportional rate to the Portland interchange.

Service

BNSF shall accept, handle, switch and deliver traffic moving under this Agreement without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in BNSF's account. UP/SP has the right to provide equipment. BNSF will work with UP/SP to establish and provide trackage for strategically located car distribution points in BN territory. To the extent justified by business volumes, BNSF will continue operating Vancouver, BC-Portland (SP interchange) trains comparable to BN Nos. 111 and 112. BNSF will cooperate with UP/SP to establish necessary blocks to provide efficient and competitive service on traffic moving under the proportional rate.

Third Party Consultant

The third party consultant shall be jointly employed by UP/SP and BNSF. The parties will share equally in the expense of employing such third party consultant. Both UP/SP and BNSF shall have the right to audit the work of the third party consultant and agree to share in any irregularities found in this work and cooperate to work with the third party consultant to establish procedures to promptly correct those deficiencies. The third party consultant shall be required to remain impartial between UP/SP and BNSF. Any breach of the impartiality requirement shall result in the termination of such third party consultant and the selection of a new consultant by the parties.

Example of Revenue Per Ton Mile
Calculation by Origin-Destination Cell
Cell Includes Car Type and Commodity

	Assumption:	Move 1	Move 2
1.	BNSF Revenue Per Car From O/D Areas North of Portland to Destination States	$5000	$2000
2.	BNSF Miles From O/D Areas North of Portland to Destination States	1000	500
3.	BNSF Net Tons From O/D Areas North of Portland to Destination States	100	50
4.	BNSF Number of Carloads From O/D Areas North of Portland to Destination States	10	5
5.	BNSF Miles Between Actual Point of Origin to Interchange and Portland	300	200

A. Revenue/NTM Factor (Computed by Consultant for Each Call in Matrix)

$$\frac{\sum (1) \times (4) \text{ (for all moves)}}{\frac{(2) \times (3)}{\sum (4)}}$$

$$\frac{\frac{5000 \times 10}{1000 \times 100} + \frac{2000 \times 5}{500 \times 50}}{10 + 5} = \$0.06/\text{NTM}$$

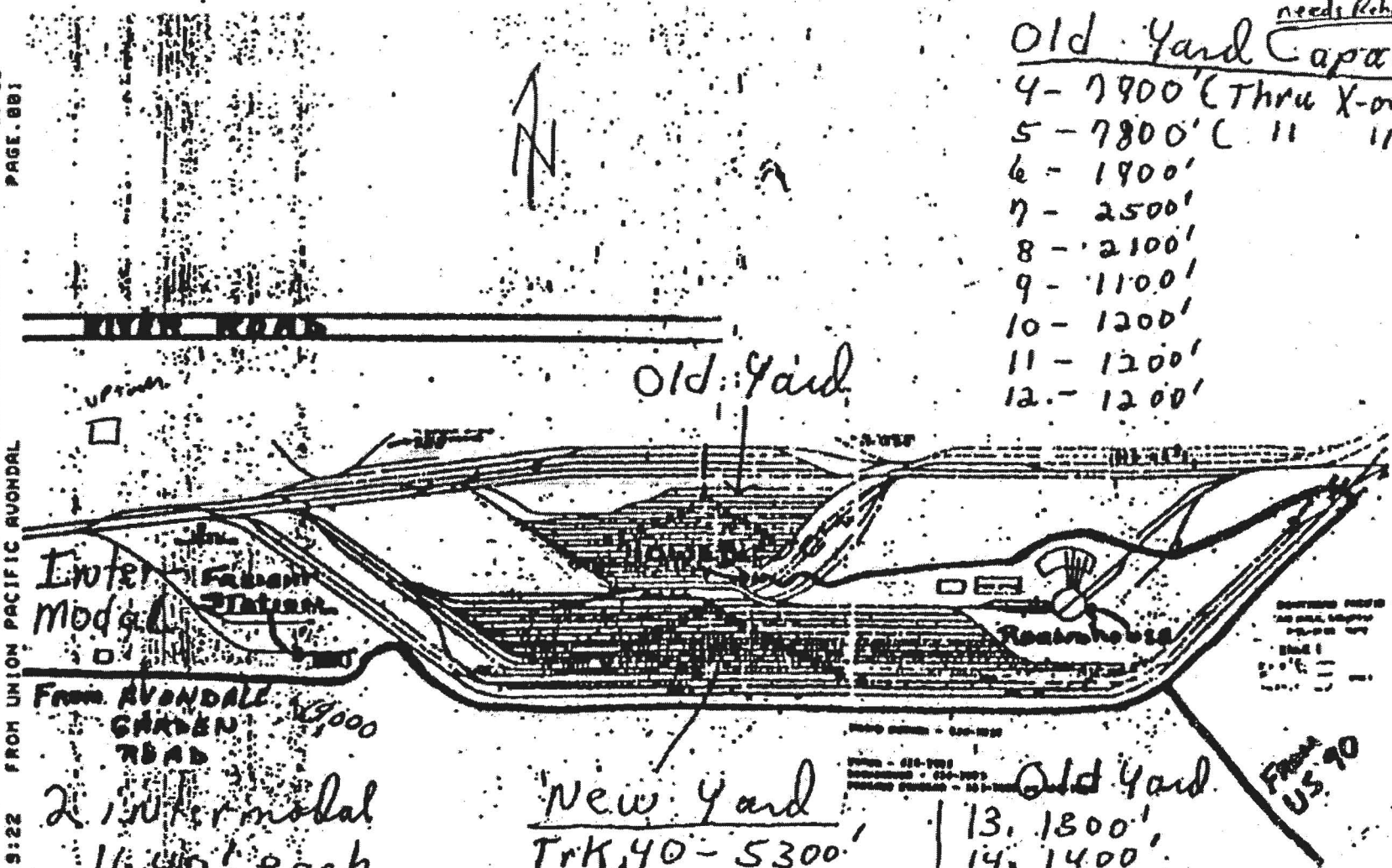
B. Compute BNSF Division on a Specific Move

(A) x (5) x (3)
$0.06 x 300 x 100 = $1800
$0.06 x 200 x 50 = $ 600

EXHIBIT C

660-3585
392-2080

S.P. Avondale Yard



Old Yard Capacity (needs Rehab)

4- 7900' (Thru X-overs)
5- 7800' (" ")
6- 1900'
7- 2500'
8- 2100'
9- 1100'
10- 1200'
11- 1200'
12.- 1200'

New Yard

Trk. 40- 5300'
37-39- 4000'
30-36- 2000'
29 - 1500'
28 - 1200'
27 - 1150'
26 - 1100'
25 - 900'

Old Yard

13. 1800'
14. 1400'
15. 1800'
16. 1700'
17. 1600'
18. 1500'
19. 1400'
20 1300'
21 1200'
22 1100'
23.) 1000'
24.) 900'

EXHIBIT C

SEP 24'95 11:21 FR UP SPRING 713-3587593 13 358 7593 TO 82715955 P.01/01
SEP 24 '95 9:22 FROM UNION PACIFIC AVONDAL PAGE.001
** TOTAL PAGE.001 **
** TOTAL PAGE.001 **

EXHIBIT D

EXHIBIT D

April 24, 1996

BNSF - UP/SP DISPATCHING PROTOCOLS

As agreed: Dave Clifton - BNSF
Hank Jay - SP
Steve Barkley - UP

1. Scope: These protocols apply on all rail line segments where Burlington Northern Railroad Company or The Atchison, Topeka & Santa Fe Railway Company (which will be referred to jointly or individually as "BNSF") has trackage rights over tracks of the entity or entities resulting from the merger of the rail affiliates of Union Pacific Corporation and Southern Pacific Rail Corporation (which will be referred to jointly or individually as "UP/SP") and on all rail line segments where UP/SP has trackage rights over tracks of BNSF. All such rail lines will be referred to as "joint trackage and will include all current joint line trackage rights."

2. Purpose: To ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track.

3. General Instructions: BNSF and UP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on joint trackage that trains of the tenant are to be dispatched exactly as if they were trains of the same class of the owner and given equal treatment with trains of the owner. These instructions will be issued at agreed intervals or at the request of either party.

4. Monitoring Systems: At the request and expense of the tenant, the owner will make available computer terminals, facilities or capabilities comparable to those available to its own dispatchers showing joint trackage it dispatches so that the tenant can monitor the handling of its trains by the owner.

5. Train Information: The tenant will provide to the owner, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over joint trackage, preferably using electronic data interchange. Parties will establish run time standards by train category based on expected train volumes for each line segment. If train volumes are different than expected then adjustments to run time standards will be made by mutual agreement. The tenant will provide reliable and current information about trains approaching joint trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching joint trackage, sufficiently in advance to allow dispatchers to plan for them. The owner will provide to the tenant advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions. BNSF and UP/SP will cooperate to develop a process for discussing maintenance windows in advance and agree upon so as not to adversely affect schedules of one carrier more than the other.

6. Specific Instructions: The owner will permit the tenant to transmit instructions regarding the requirements of specific trains and shipments to designated dispatching center employees responsible for handling those trains.

7. Train Priorities/Run Time Standards: BNSF and UP/SP will at all times provide to each other current procedures for assigning dispatching priorities or rankings to their trains and information sufficient to show how those procedures are applied to their own trains. The tenant will assign priorities or rankings to its trains operating on joint trackage using the owner's procedures, and the owner will dispatch tenant trains in accordance with those priorities or rankings. It is understood that technological advances in computer aided dispatching might result in changes to priority assignment methodologies. The parties agree to discuss technological changes which might affect priority assignment methodologies prior to implementation. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads. It is agreed that a three member panel from each carrier will make up the Joint Service Committee. Suggestions for three member panel are representatives from Joint Facilities, VP Transportation, and Joint Trackage Rights Operations.

8. Entry to Joint Trackage: At points where tenant trains enter joint trackage, entry will be provided by the owner on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. [If operating circumstances make strict application of this principle difficult or uncertain, BNSF and UP/SP may jointly establish standards for determining sequence of entry to joint trackage.] Parties will communicate daily on any conflicts concerning entry to joint trackage to gain resolution.

9. Communications: BNSF and UP/SP will provide to each other, and keep current, lists of dispatching personnel responsible for dispatching each segment of joint trackage and contact numbers. For each segment, BNSF and UP/SP will designate supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.

10. Access to Dispatching Centers: Appropriate officials of either railroad will be admitted at any time to dispatching facilities and personnel responsible for dispatching joint trackage to review the handling of trains on joint trackage and will be provided an office in the other railroad's dispatching center (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to that review). In order to support BNSF operations over UP/SP trackage rights granted in connection with the UP/SP merger, UP/SP will pay BNSF an amount equal to the reasonable and conventional salary of one supervisory employee to be placed by BNSF at UP/SP's Harriman dispatching center. It is understood that management and supervision of dispatching operations is the responsibility of the owning carrier.

11. Performance Measurement: BNSF and UP/SP will cooperate to develop train performance evaluation methods under which train performance of tenant trains on joint trackage segments can be compared to train performance of the owner's trains on the same segments for the same train category and priority.

12. Personnel Incentives and Evaluation: In evaluating the performance of employees and supervisors responsible for dispatching joint trackage, both BNSF and UP/SP will consider train performance of tenant trains and effectiveness in cooperating with tenant personnel and meeting tenant service requirements in the same manner as such factors are considered with respect to the owner's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of the owner's trains, performance of the tenant's trains shall be considered on the same basis to the extent feasible.

13. Disagreements: The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee, the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.

14. Modifications: As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of both railroads on joint trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.

EXHIBIT E

2-To-1 Point Identification Protocol

As a condition of the Surface Transportation Board's (STB) approval of the consolidation of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP), The Burlington Northern and Santa Fe Railway Company (BNSF) was granted the right to serve all shipper facilities, that as of September 25, 1995, were open to both UP and SP, and no other railroad, whether via direct service, reciprocal switching, joint facility or other arrangements. Since the consolidation was consummated, BNSF and UP have been working to identify a complete list of 2-to-1 shipper facilities to which BNSF is entitled to access. The purpose of this protocol is to establish procedures and mechanisms for further identifying 2-to-1 shipper facilities open to BNSF as a result of the conditions imposed in the UP/SP merger. Those procedures and mechanisms are as follows:

1. BNSF shall submit to UP, by written or electronic communication, the name and address of any facility to which access is sought. In addition to the name and address of the facility, BNSF shall furnish any additional information relating to the facility's identity and location that is in BNSF's possession when the request for access is made. BNSF shall also provide any information in its possession at such time pertaining to the rail service options that were available to the facility on or before September 25, 1995. UP will handle for BNSF any traffic en route to the facility pending UP's determination of BNSF's right to access the facility in question. If UP determines that BNSF is not entitled to access a particular facility, BNSF will terminate any BNSF direct routing of traffic to that facility. UP shall be compensated for any traffic en route in accordance with the method of compensation set forth in Paragraph 7, below.

2. UP shall have five (5) business days from the date of such communication to respond by written or electronic communication to any request for access, provided that, if BNSF shall request a determination on more than five shipper facilities on a single day or, if a single request pertains to more than five (5) shipper facilities, BNSF shall identify the five (5) shipper facilities that need immediate attention, and the five (5) business day requirement shall apply to those shipper facilities, with the remaining shipper facilities request or requests to be responded to within ten (10) business days after the date of the request(s).

3. If UP fails to respond to an access request by the close of business of the fifth business day or, in the case of requests for which UP has ten business days to respond, by the close of the tenth business day, BNSF shall be deemed to have access to such facility or facilities as set forth in Paragraph 4 below, and UP shall be deemed to have waived any claims that BNSF is not entitled to serve the facility or facilities.

4. If UP approves BNSF's request for access, BNSF shall immediately be authorized to serve the facility either directly, through reciprocal switching, or, with UP's prior approval, a third party contractor, as provided for in the UP/BNSF Settlement Agreement dated September 25, 1995, as amended. No less than five (5) business days prior to the date that BNSF proposes to begin service to a facility, BNSF shall elect the mode of service that it intends to utilize and shall notify UP in writing or electronically of its election. BNSF shall have the right, upon 180 days prior written notice to UP, to change its election; provided, however, that BNSF shall (i) not change its election more often than once every five years, and (ii) shall reimburse UP for any costs incurred by UP in connection with such changed election. UP may not reverse a prior decision approving

BNSF's request for access to a facility without either BNSF's consent or approval by the STB.

5. If UP declines to approve a BNSF request for access to any facility, and BNSF believes that UP has an insufficient or inappropriate reason to decline access, BNSF may so notify UP, either in writing or by electronic communication, of the reasons why BNSF believes it is entitled to such access, and upon such notice, may seek an order from the STB finding that BNSF was entitled to access to that facility.

6. UP shall approve all such requests where, on the basis of all available information, UP concludes that a particular facility was open to service by both UP and SP, either directly or through reciprocal switching, joint facility or other arrangements and by no other rail carrier, as of September 25, 1995. If UP declines to approve a BNSF request for access to any facility, UP shall provide as part of its notification to BNSF a statement in writing or by electronic communication of its reasons and of the specific evidence supporting its determination that BNSF should not have access to the facility. A statement that UP lacks sufficient information to make a determination as to whether a facility is a 2-to-1 facility is not an adequate reason to deny a BNSF request for access to a facility. At any time after UP's notification, BNSF may request UP to reconsider its decision declining to approve BNSF's request for access.

7. If BNSF transports traffic to or from a shipper facility pursuant to paragraph 1 above and it is later determined that BNSF is not entitled to access to that facility, BNSF shall compensate UP for the movement of such traffic as follows: If a joint through rate is available, then UP is entitled to $3 per car mile for the loaded move from the applicable junction in the price document. If multiple junctions are available, BNSF

receives its longest haul and UP receives $3 per car mile beyond that junction. If no joint through rate exists, BNSF receives its longest haul via junctions in existence between UP and BNSF, prior to the date of UP control over SP, September 11, 1996, and UP receives $3 per car mile beyond. UP must file a claim with BNSF to recover revenues under this section making reference on the claim to this section of the joint 2-to-1 Point Identification Protocol.

8. BNSF and UP shall identify an individual or individuals within their respective organizations as the person or persons to whom all communications pursuant to this protocol shall be directed.

9. The parties agree to submit any disputes under this protocol to the STB for resolution or, with the consent of both parties, to arbitration, as described in the UP/BNSF Settlement Agreement dated September 25, 1995, as amended.

AGREED TO AND ACCEPTED BY:

UNION PACIFIC RAILROAD COMPANY

John H. Ransom

Date: June 24, 1998

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Peter J. Pfahler

Date: June 26, 1998

EXHIBIT F

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.

Exhibit 3

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 18th day of April 1996 among

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railroad Company, SPCSL Corp. and The Denver & Rio Grande Western Railroad Company (collectively, "Applicants," with Union Pacific Railroad Company and Missouri Pacific Railroad Company referred to collectively as "UP," Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railroad Company and SPCSL Corp. referred to collectively as "SP," and UP and SP referred to collectively as "UP/SP");

Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (collectively, "BN/Santa Fe"); and

the Chemical Manufacturers Association ("CMA"),

concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Surface Transportation Board ("STB") in Finance Docket No. 32760, Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control & Merger -- Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Ry., SPCSL Corp. & Denver & Rio Grande Western R.R. ("the Control Case").

WHEREAS, Applicants entered into a Settlement Agreement in the Control Case with BN/Santa Fe dated September 25, 1995, as later amended ("the BN/Santa Fe Settlement Agreement"); and

WHEREAS, CMA had certain concerns about the BN/Santa Fe Settlement Agreement and raised those concerns with Applicants; and

WHEREAS, Applicants wish to address those concerns and to convince CMA to withdraw its opposition to the proposed UP/SP merger,

NOW THEREFORE, in consideration of their mutual promises, Applicants, BN/Santa Fe and CMA agree as follows:

1. The BN/Santa Fe Settlement Agreement shall be amended to grant BN/Santa Fe overhead trackage rights (a) over UP's line between Houston, Texas, and Valley Junction, Illinois, via Palestine, Texas, (b) over SP's line between Fair Oaks, Arkansas, and Valley Junction, Illinois, and (c) over UP's line between

Fair Oaks and Bald Knob, Arkansas. These rights shall be for traffic moving to or from points south of Bald Knob and Brinkley, Arkansas. Local access shall be limited to that provided for in Section 6c of the BN/Santa Fe Settlement Agreement.

2. The BN/Santa Fe Settlement Agreement shall be amended to grant BN/Santa Fe the right to serve any new shipper facility located subsequent to the consummation of the UP/SP merger on any SP-owned line over which BN/Santa Fe receives trackage rights in the BN/Santa Fe Settlement Agreement. New facilities do not include expansions of or additions to existing facilities or load-outs or transload facilities. Each railroad electing to serve such a new facility shall share equally in any capital investment necessary to provide rail service to the facility.

3. Effective upon consummation of the UP/SP merger, UP/SP shall modify any contracts with shippers at "2-to-1" points in Texas and Louisiana so that at least 50% of the volume is open to BN/Santa Fe.

4. (a) The BN/Santa Fe Settlement Agreement shall be amended to provide for a reciprocal switch charge at "2-to-1" points of no more than $130 per car. This charge shall be adjusted upward or downward each year on the basis of 50% of RCAF(U).

(b) In addition, effective upon consummation of the UP/SP merger, all SP reciprocal switch charges with other railroads (other than those at "2-to-1" points) that are higher than $150 per car shall be reduced to no more than $150 per car. This charge shall be adjusted upward or downward each year on the basis of 50% of RCAF(U).

5. The BN/Santa Fe Settlement Agreement shall be amended to specify that BN/Santa Fe shall have equal access to Dayton Yard, on economic terms no less favorable than the terms of UP/SP's access, for storage-in-transit of traffic handled by BN/Santa Fe pursuant to the Agreement, and that UP/SP shall work with BN/Santa Fe to locate additional storage-in-transit facilities on the trackage rights lines as necessary.

6. (a) UP/SP shall place 100% of the total trackage rights fees received from BN/Santa Fe with respect to the lines in Texas, Louisiana, Arkansas, Missouri and Illinois over which BN/Santa Fe will receive trackage rights in a segregated fund to be spent on (a) maintenance on those lines, (b) offsetting depreciation of those lines, and (c) capital improvements on those lines. If UP/SP's expenditures for maintenance, depreciation and capital improvements on the trackage rights lines in those states exceed the amount in the segregated fund,

UP/SP shall first be reimbursed for the excess out of future trackage rights fees before making further payments into the fund. The costs for accounting necessary to administer this provision may also be charged to the segregated fund. Maintenance, depreciation and capital improvements expenditures shall include standard additives. CMA or its designee shall have the right to audit these calculations.

(b) UP/SP shall place 100% of the total trackage rights fees received from BN/Santa Fe with respect to the lines in states other than Texas, Louisiana, Arkansas, Missouri and Illinois over which BN/Santa Fe will receive trackage rights in a segregated fund to be spent on (a) maintenance on those lines, (b) offsetting depreciation of those lines, and (c) capital improvements on those lines. If UP/SP's expenditures for maintenance, depreciation and capital improvements on the trackage rights lines in states other than Texas, Louisiana, Arkansas, Missouri and Illinois exceed the amount in the segregated fund, UP/SP shall first be reimbursed for the excess out of future trackage rights fees before making further payments into the fund. The costs for accounting necessary to administer this provision may also be paid out of the segregated fund. Maintenance, depreciation and capital improvements expenditures shall include standard additives. CMA or its designee shall have the right to audit these calculations.

7. Section 12 of the BN/Santa Fe Settlement Agreement shall be amended to provide that BN/Santa Fe's trackage rights fees shall be adjusted upward or downward each year by the difference between the year in question and the preceding year in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the fee. CMA or its designee shall have the right to audit the escalation calculations.

8. The BN/Santa Fe Settlement Agreement shall be amended to give BN/Santa Fe the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles and West Lake, Louisiana, (a) to, from and via New Orleans, and (b) to and from points in Mexico, with routings via Eagle Pass, Laredo (through interchange with Tex Mex at Corpus Christi or Robstown), or Brownsville, Texas. BN/Santa Fe access to the covered shippers at Lake Charles and West Lake shall be on the same basis as is provided for in the BN/Santa Fe Settlement Agreement for "2-to-1" points, except that at West Lake BN/Santa Fe shall be required to pay a fee to UP/SP equal to the haulage fee that UP must now pay to KCS to access the traffic, adjusted per Section 12 of the BN/Santa Fe Settlement Agreement. The BN/Santa Fe Settlement Agreement shall also be amended to give BN/Santa Fe the right to handle traffic of shippers open to all of UP, SP and KCS at

Texarkana, Texas/Arkansas, and Shreveport, Louisiana, to and from the Memphis BEA (BEA 55), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA.

9. Applicants shall agree with BN/Santa Fe on a dispatching protocol for the trackage rights under the BN/Santa Fe Settlement Agreement along substantially the lines of Attachment A hereto.

10. The BN/Santa Fe Settlement Agreement shall be amended to specify that, in the Houston-Memphis-St. Louis corridor, BN/Santa Fe has the right to move some or all of its traffic via its trackage rights over either the UP line or the SP line, at its discretion, for operating convenience.

11. Section 4b of the BN/Santa Fe Settlement Agreement shall be amended by adding at the end thereof: "BN/Santa Fe's access and interchange rights at Corpus Christi and Brownsville must be at least as favorable as SP has currently. BN/Santa Fe shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and Ferrocariles Nacionales de Mexico. BN/Santa Fe shall have the right to purchase for fair market value a yard at Brownsville to support trackage rights operations."

12. The BN/Santa Fe Settlement Agreement shall be amended to specify that (a) BN/Santa Fe has the right to serve all shippers 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 BN/Santa Fe Settlement Agreement was signed, regardless of how long ago a shipper may have shipped, or whether a shipper ever shipped, any traffic via either UP or SP; and (b) BN/Santa Fe has the right to serve new facilities located within the geographic boundaries of the "2-to-1" points, as defined in the BN/Santa Fe Settlement Agreement, including but not limited to situations where, when the BN/Santa Fe Settlement Agreement was signed, a facility was being developed, or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP. With regard to (b), where switching limits exist at a "2-to-1" point, they shall define the area within which BN/Santa Fe has the right to serve new facilities, and where switching limits do not exist, the covered area shall be defined on the basis of what would have been reasonable switching limits.

13. This provision applies to any CMA member ("the Shipper") that

(a) has a facility that was, prior to the consummation of

the UP/SP merger, solely served by UP, and seeks, in order to obtain two-railroad service, the right to build out from that facility to (or the right for BN/Santa Fe to build in to that facility from) a point on the former SP ("the Build-In Point") and the associated grant to BN/Santa Fe of any trackage rights that may be necessary for BN/Santa Fe to reach the Build-In Point, or

(b) has a facility that was, prior to the consummation of the UP/SP merger, solely served by SP, and seeks, in order to obtain two-railroad service, the right to build out from that facility to (or the right for BN/Santa Fe to build in to that facility from) a point on the former UP ("the Build-In Point") and the associated grant to BN/Santa Fe of any trackage rights that may be necessary for BN/Santa Fe to reach the Build-In Point.

The Shipper may request arbitration of a claim for such relief by the later of (i) one year following consummation of the UP/SP merger, or (ii) one year following the expiration of the contract in existence as of the date of this settlement that has the latest expiration. The arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association, and shall be subject to the U.S. Arbitration Act. The arbitration shall be concluded within 90 days unless otherwise agreed to between the shipper and UP/SP. The standard for decision as to whether the Shipper shall be entitled to relief shall be the principles with regard to build-ins articulated by the Interstate Commerce Commission in Finance Docket No. 32549, Decision served Aug. 23, 1995, or, if more favorable to the Shipper, any principles with regard to build-ins articulated by the STB in the Control Case. If the parties do not agree on the route over which BN/Santa Fe shall receive any necessary trackage rights to reach the Point of Build-In, the arbitrator shall decide the route, and in doing so shall seek to minimize the operating inconvenience to UP/SP, consistent with ensuring that BN/Santa Fe can provide competitive service. The compensation terms of any trackage rights awarded to BN/Santa Fe shall be the same as for all other BN/Santa Fe trackage rights (except Keddie-Stockton) under the BN/Santa Fe Settlement Agreement. The rights conferred by this provision shall be without prejudice to any pending request for relief in the Control Case and to any other rights a shipper has to proceed before the STB.

14. Applicants will, in a submission to the STB, state that they are agreeable to annual STB oversight proceedings for five years, with the Board to examine whether the BN/Santa Fe Settlement Agreement has effectively addressed the competitive issues it was intended to address. The Board shall have

authority to impose additional remedial conditions.

15. In light of the provisions of this agreement, CMA will withdraw its opposition to the UP/SP merger and the BN/Santa Fe Settlement Agreement. A number of CMA's member companies have taken positions in support of or in opposition to the UP/SP merger. This settlement is without prejudice to the right of any CMA member company that is a party to the Control Case to continue to take any position and seek any relief in that docket.

16. The provisions of this agreement shall remain in effect for 99 years or until the termination of the BN/Santa Fe Settlement Agreement in accordance with its terms.

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16. The provisions of this agreement shall remain in effect for 99 years or until the termination of the BN/Santa Fe Settlement Agreement in accordance with its terms.

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DRAFT - April 12, 1996

BNSF - UP/SP DISPATCHING PROTOCOLS

1. **Scope:** These protocols apply on all rail line segments where Burlington Northern Railroad Company or The Atchison, Topeka & Santa Fe Railway Company (which will be referred to jointly or individually as "BNSF") has trackage rights over tracks of the entity or entities resulting from the merger of the rail affiliates of Union Pacific Corporation and Southern Pacific Rail Corporation (which will be referred to jointly or individually as "UP/SP") and on all rail line segments where UP/SP has trackage rights over tracks of BNSF. All such rail lines will be referred to as "joint trackage."

2. **Purpose:** To ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track.

3. **General Instructions:** BNSF and UP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on joint trackage that trains of the tenant are to be dispatched exactly as if they were trains of the owner and given equal treatment with trains of the owner. These instructions will be issued at agreed intervals or at the request of either party.

4. **Monitoring Systems:** At the request and expense of the tenant, the owner will make available computer terminals, facilities or capabilities comparable to those available to its own dispatchers showing joint trackage it dispatches so that the tenant can monitor the handling of its trains by the owner.

5. **Train Information:** The tenant will provide to the owner, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over joint trackage, preferably using electronic data interchange. The tenant will provide reliable and current information about trains approaching joint trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching joint trackage, sufficiently in advance to allow dispatchers to plan for them. The owner will provide to the tenant advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions.

6. **Specific Instructions:** The owner will permit the tenant to transmit instructions regarding the requirements of specific trains and shipments to dispatching employees

responsible for handling those trains.

7. **Train Priorities:** BNSF and UP/SP will at all times provide to each other current procedures for assigning dispatching priorities or rankings to their trains and information sufficient to show how those procedures are applied to their own trains. The tenant will assign priorities or rankings to its trains operating on joint trackage using the owner's procedures, and the owner will dispatch tenant trains in accordance with those priorities or rankings. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads.

8. **Entry to Joint Trackage:** At points where tenant trains enter joint trackage, entry will be provided by the owner on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. [If operating circumstances make strict application of this principle difficult or uncertain, BNSF and UP/SP may jointly establish standards for determining sequence of entry to joint trackage.]

9. **Communications:** BNSF and UP/SP will provide to each other, and keep current, lists of dispatching personnel responsible for dispatching each segment of joint trackage and contact numbers. For each segment, BNSF and UP/SP will designate supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.

10. **Access to Dispatching Centers:** Appropriate officials of either railroad will be admitted at any time to dispatching facilities and personnel of the other responsible for dispatching joint trackage to review the handling of trains on joint trackage and will be provided an office in the other railroad's dispatching center (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to that review). In order to support BNSF operations over UP/SP trackage rights granted in connection with the UP/SP merger, UP/SP will pay BNSF an amount equal to the reasonable and conventional salary of one supervisory employee to be placed by BNSF at UP/SP's Harriman dispatching center.

11. **Performance Measurement:** BNSF and UP/SP will cooperate to develop train performance evaluation methods under which train performance of tenant trains on joint trackage segments can be compared to train performance of the owner's trains on the same segments.

12. **Personnel Incentives and Evaluation:** In evaluating the performance of employees and supervisors responsible for dispatching joint trackage, both BNSF and UP/SP will

consider train performance of tenant trains and effectiveness in cooperating with tenant personnel and meeting tenant service requirements in the same manner as such factors are considered with respect to the owner's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of the owner's trains, performance of the tenant's trains shall be considered on the same basis to the extent feasible.

13. **Disagreements:** The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee, the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.

14. **Modifications:** As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of both railroads on joint trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.

Exhibit 4

UP/SP-260

BEFORE THE

Surface Transportation Board

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

APPLICANTS' BRIEF

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June 3, 1996

Indeed, in covering every shipper that has access to UP and SP and no other railroad, regardless of non-rail competitive options or the extent of UP-SP competition for the shipper's business, it goes beyond what was necessary from a competitive standpoint and beyond what any prior merger applicants have done. UP/SP-230, pp. 133-34; BN/SF-55, Kalt, p. 7.

The agreement gives BN/Santa Fe access to every location where even a single shipper now has a choice of UP or SP. At those points, in addition to serving all facilities now open to UP and SP, BN/Santa Fe can handle intermodal and auto traffic, serve existing and new transloading facilities, and serve all future industries. The agreement also allows BN/Santa Fe to serve the two corridors where UP and SP are the only real competitive rail options: Houston-Memphis and Houston-New Orleans.[9/] Even though there are other rail routes in those corridors, they are sufficiently circuitous and inferior that Applicants determined to treat the corridors as "2-to-1." No "2-to-1" point or corridor has been omitted from coverage under the settlement. UP/SP-23, Peterson, pp. 163-65; UP/SP-230, pp. 134-39; UP/SP-231, Peterson, pp. 28-35.

KCS argues that the settlement is too narrow because shippers that are not directly served by UP and SP can benefit from two-railroad competition indirectly, through such means

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[9/] Also included, by agreement with CMA, are certain flows involving intermediate points in these corridors (the Lake Charles area, Texarkana and Shreveport). Applicants recently agreed with CMA to extend the coverage of Section 8 of the CMA settlement to shippers at West Lake Charles served by SP and KCS, and the BN/Santa Fe settlement agreement will be amended accordingly. This moots the arguments of Montell USA.

Exhibit 5

SECOND SUPPLEMENTAL AGREEMENT

This Second Supplemental Agreement is entered into this 27 day of June, 1996, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP," with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), hereinafter collectively referred to as "BNSF," on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Surface Transportation Board (the "Board") 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.

Pursuant to an Agreement between UP/SP and BNSF dated September 25, 1995 (the "Agreement"), and a Supplemental Agreement dated November 18, 1995 (the "Supplemental Agreement"), UP/SP and BNSF agreed to various trackage rights, line sales, and other related transactions.

Since execution of the Agreement and the Supplemental Agreement the parties have made a variety of commitments which will further realize their intent that competition be enhanced by the common control of UP and SP subject to the terms of the Agreement and the Supplemental Agreement.

In order to reflect these additional commitments in one agreement, the parties agree to the following further amendments to the Agreement as previously amended by the Supplemental Agreement:

1. **Amendment to Section 1.**

a) Section 1a is amended by inserting after the sixth subparagraph the following additional subparagraph:

"• SP's line between Elvas (Elvas Interlocking) and Stockton (subject to traffic restrictions as set forth in Section 1g and also excluding any trains moving over the line between Bieber and Keddie, CA to be purchased by BNSF pursuant to Section 2a of this Agreement);".

b) Section 1b is amended in its entirety to read as follows:

"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 at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the SP-owned lines listed in Section 1a (except the line between Elvas (Elvas Interlocking) and Stockton). BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also receive

the right to interchange with the Nevada Northern at Shafter, NV; with the Utah Railway Company at the Utah Railway Junction, UT, Grand Junction, CO and Provo, UT; with the Utah Central Railway Company at Ogden, UT; and with the Salt Lake, Garfield and Western at Salt Lake City, UT. 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 granted under this section. For purposes of this Agreement, "2-to-1 shipper facilities" shall mean all industries 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 Agreement was executed, regardless of how long ago a shipper may have shipped, or whether a shipper ever shipped, any traffic via either UP or SP. Also for purposes of this Agreement, "new shipper facility" does not include expansion of or additions to an existing facility or load-outs or transload facilities."

c) Section 1c is amended in its entirety to read as follows:

"c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and

exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer 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 they shall be presumed to establish these geographic limitations."

2. **Amendment to Section 3**.

a) Section 3a is amended in its entirety to read as follows:

"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) Section 3b is amended in its entirety to read as follows:

"b) UP/SP shall grant BNSF overhead trackage rights on UP's line between Riverside and Ontario, CA for the sole purpose of moving rail traffic of all kinds, carload and intermodal, for all commodities to "2-to-1" shipper facilities at Ontario."

c) Section 3c is amended in its entirety to read as follows:

"c) UP/SP shall grant BNSF overhead trackage rights on UP's line from Basta, CA to Fullerton and LaHabra, CA for the sole purpose of moving rail traffic of all kinds, carload and intermodal, to "2-to-1" shipper facilities at Fullerton and LaHabra."

d) Sections 3d, e, and f are amended by relettering them respectively as Sections 3f, g, and h. Section 3 is amended by adding new Sections 3d and 3e which shall read as follows:

"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 at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility 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 at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP). BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement."

"e) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer 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, they shall be presumed to establish these geographic limitations."

3. **Amendment to Section 4.**

a) Section 4a is amended by adding the following subparagraphs after the fifth subparagraph:

"• SP's line between MP 0 and MP 12.6 for the sole purpose of serving the City Public Service of San Antonio plants at Elmendorf, TX;

• SP's Port Lavaca Branch, between Placedo, TX, and Port Lavaca, TX, for the sole 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;".

b) Section 4b is amended in its entirety to read as follows:

"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 at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being

developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the SP-owned lines listed in Section 4a. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also have the right to interchange with (w) the Tex-Mex Railway at Corpus Christi and Robstown, (x) the Georgetown Railroad at Kerr, (y) the FNM at Brownsville (Matamoros, Mexico) and Eagle Pass, and (z) at Elgin, the operator of SP's former line between Giddings and Llano should service be reinstituted on that line to Elgin. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP has currently. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the FNM. BNSF shall have the right to purchase for fair market value a yard at Brownsville to support trackage rights operations."

c) Section 4c is amended in its entirety to read as follows:

"c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed

on Exhibit A to this Agreement, shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer 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 they shall be presumed to establish these geographic limitations."

d) Section 4f is amended by deleting the phrase "a reasonable fee" at the end of the first sentence and substituting therefor the phrase "the fee called for by Section 8j of this Agreement."

4. **Amendment to Section 5.**

a) Section 5a is amended by inserting the following subparagraph after the second subparagraph:

"• SP's Channelview Spur which connects to the SP's line between Houston, TX and Iowa Junction, LA near Sheldon, TX for the sole purpose 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;"

and by amending in the third subparagraph to read as follows:

"SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97), and"

and by inserting the following subparagraph after the third subparagraph:

"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"

b) Section 5b is amended in its entirety to read as follows:

"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 at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the SP-owned lines listed in Section 5a. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles and West Lake, LA, and traffic of shippers open to SP and KCS at West Lake Charles, LA; the foregoing rights at Lake Charles, West Lake, and West Lake Charles, LA shall be limited to traffic (x) to, from and via New Orleans, and (y) to and from points in Mexico, with routings via Eagle Pass, Laredo (through interchange with Tex-Mex at Corpus Christi

or Robstown), or Brownsville, TX. In addition to all other charges to be paid by BNSF to UP/SP herein, at West Lake and West Lake Charles, BNSF shall also be required to pay a fee to UP/SP equal to the fee that UP pays KCS as of the date of this Agreement to access the traffic at West Lake, adjusted upwards or downwards in accordance with Section 12 of this Agreement. BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction."

c) Section 5c is amended in its entirety to read as follows:

"c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer 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 they shall be presumed to establish these geographic limitations."

d) Section 5g shall be amended by changing the parenthetical reference in the second line from "(SP MP 16.9)" to "(SP MP 14.94)."

e) Section 5h is amended in its entirety to read as follows:

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

f) Exhibit C-1 attached hereto shall be substituted for Exhibit C to the Agreement.

5. **Amendment to Section 6.**

a) The title of Section 6 is changed from "Houston-Memphis Trackage Rights" to "Houston, TX-Valley Junction, IL Trackage Rights."

b) Section 6a is amended by adding the following grants of trackage rights:

"• UP's line between Houston, TX and Valley Junction, IL, via Palestine, TX;

• SP's line between Fair Oaks, AR and Illmo, MO via Jonesboro, AR and Dexter Junction, MO; and

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

c) Section 6b is amended by deleting the phrase "a reasonable fee" and substituting therefor the phrase "the fee called for by Section 8j of this Agreement."

d) Section 6c is amended in its entirety to read as follows:

"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 at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being

developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the SP-owned lines listed in Section 6a (except the line between Fair Oaks, AR and Illmo, MO). Except as provided in Section 9l of this Agreement, BNSF shall not have the right to enter or exit at intermediate points on UP's and SP's lines between Memphis and Valley Junction, IL. Traffic to be handled over the UP and SP lines between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6c" may also be handled over these lines. 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 55), 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 its 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 and the Little Rock Port Authority at Little Rock."

e) Section 6d is amended in its entirety to read as follows:

"d) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at

points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which (i) new shipper facilities and future transloading facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer 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 they shall be presumed to establish these geographic limitations."

6. **Amendment to Section 8**.

a) Section 8i is amended by inserting in the fourth line of the second paragraph before the name "Turlock" the names "Lyoth, CA, Lathrop, CA," and by deleting the names "Paragould, AR, and Dexter, MO" from the seventh line of the second paragraph."

b) Section 8j is amended by relettering it as Section 8k.

c) Section 8 is amended by adding a new Section 8j to read as follows:

"j) 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" facilities as provided for in Section 9h 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 shall be adjusted upwards or downwards in accordance with Section 12 of this Agreement."

7. **Amendment to Section 9**.

a) Section 9c is amended by inserting the following additional subparagraph:

"(v) If both UP/SP and BNSF intend to serve new shipper facilities or future transloading facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1b, 4b, 5b, and 6c, they shall share equally in any capital investment necessary 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."

b) Section 9h is amended in its entirety to read as follows:

"h) If requested by BNSF, UP/SP will provide to BNSF reciprocal switching services at "2-to-1" shipper facilities covered in this Agreement at a rate of no more than $130 per car adjusted pursuant to Section 12 of this Agreement."

c) Section 9i is amended by adding at its conclusion the following language:

"i) BNSF shall also have equal access along with UP/SP, on economic terms no less favorable than the terms of UP/SP's access, to the existing storage in transit ("SIT") facility at Dayton, TX. UP/SP agree to work with BNSF to locate additional SIT facilities on the trackage rights lines as necessary."

8. **Amendment to Section 10.**

Section 10 is amended by adding a new Section 10c which shall read as follows:

"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 10b(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 10b(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 10c."

9. **Amendment to Section 12**.

Section 12 is amended by deleting the first paragraph and substituting therefor the following three paragraphs:

"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 additional fee BNSF must pay UP/SP pursuant to Section 5b of this Agreement shall be subject to this same adjustment.

"The rates for reciprocal switching services established in Section 9h and for haulage service established in Section 8j 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."

10. **Amendment to Exhibit A**.

a) In the section captioned "Points Referred to in Section 1b" change the parenthetical phrase after "Reno NV" to read as follows: "(only intermodal, automotive, [BNSF must establish its own automobile facility], transloading, and new shipper facilities located on the SP line)."

b) In the section captioned "Points Referred to in Section 6c" add Paragould, AR and Dexter, MO.

IN WITNESS WHEREOF, the parties have caused this Second Supplemental Agreement to be fully executed as of the date first above written.

UNION PACIFIC CORPORATION

By: _____
Title: President & Chief Operating Officer

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: Chairman

SOUTHERN PACIFIC RAIL CORPORATION

By: _____
Title: _____

MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Title: Chairman

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Title: _____

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

By: _____
Title: _____

SPCSL CORP.

By: _____
Title: _____

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

By: _____
Title: _____

IN WITNESS WHEREOF, the parties have caused this Second Supplemental Agreement to be fully executed as of the date first above written.

UNION PACIFIC CORPORATION

By:_____
Title:_____

UNION PACIFIC RAILROAD COMPANY

By:_____
Title:_____

SOUTHERN PACIFIC RAIL CORPORATION

By: John D Gray
Title: VP

MISSOURI PACIFIC RAILROAD COMPANY

By:_____
Title:_____

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: John D Gray
Title: VP

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

By: John D Gray
Title: VP

SPCSL CORP.

By: John D Gray
Title: VP

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

By: John D Gray
Title: VP

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____

Title: VP Law & Gen Counsel

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By: _____

Title: VP Law & Gen Counsel

Exhibit 6

TERM SHEET AGREEMENT
COVERING OWNERSHIP AND OPERATION
OF LINES IN AND AROUND HOUSTON, TX

I. GENERAL CONCEPT

1. UP and BNSF agree that they will jointly own and operate the former SP Lafayette Subdivision between Dawes (MP 352.8) and Avondale (MP 14.9) (the "50/50 Line"), on a basis similar to that found in the Powder River Basin Agreement except for dispatching. Trackage between MP 14.9 and 10.5 owned by UP and by BNSF shall be jointly dispatched and used by both parties without charge but otherwise shall be subject to typical joint facility provisions.

2. BNSF will grant UP overhead trackage rights between Beaumont and Navasota.

II. SPECIFIC TERMS COVERING JOINT OWNERSHIP AND DISPATCHING OF FORMER LAFAYETTE SUB

1. UP and BNSF will exchange 50 percent interests in their respective main lines, including operating sidings used for meeting and passing trains, which constitute the former SP Lafayette Subdivision, with each party having a 50 percent interest in the resulting operating corridor. A listing of such operating sidings is provided at Exhibit A.

2. It is the intention of the parties that UP and BNSF shall have the right to serve all present and future industries or facilities originating or terminating traffic on the 50/50 Line and on former SP branches and spurs connecting to the 50/50 Line or any new branches or spurs connecting to these lines. These industries and facilities shall be open to BNSF on the same basis that BNSF serves "2-to-1" customers per Section 5 of the Settlement Agreement, as amended and supplemented, or on a haulage basis for the fee called for in Section 8j of the Settlement Agreement, and calculated as shown on the Example attached as Exhibit B.

3. Except for existing rights, neither BNSF nor UP can admit a third party or provide haulage without the other's approval on the 50/50 Line; provided, however, that either party may use the Louisiana & Delta Railroad as its agent to provide service over the 50/50 Line without obtaining the approval of the other party. As of the date hereof, UP shall not impose or enforce any requirement (a) contained in any agreement entered into after execution of

the Settlement Agreement and (b) covering traffic which BNSF had access to under the terms of the Settlement Agreement, that the L&DRR pay any additional rental or other fee if traffic is routed via BNSF.

4. On the 50/50 Line, capital additions and betterments will be split on a user (i.e., 50/50) basis, and maintenance capital (track replacement), ordinary maintenance, and operations will be split on an annualized usage basis (gross ton miles). Except as to capital additions and betterments agreed to by the parties prior to the date of this Term Sheet Agreement as payable out of the Capital Improvements Fund established by the Settlement Agreement, capital additions and betterments will be subject to the mutual agreement of the parties in the same manner as they are agreed to under procedures established in the Powder River Basin Agreement.

5. Capital costs of projects which benefit only one party shall be paid for solely by such party. If, for any reason, the other party desires to use such facility it will pay 50% of the actual cost plus interest.

6. Exchange is subject to TexMex' existing trackage rights. TexMex trackage rights charges shall be paid to UP for UP's sole benefit. TexMex usage of the line shall be considered UP usage for purposes of allocating liability, calculating UP and BNSF's respective usage shares, etc. The parties' contracts with Amtrak shall not be affected by this Term Sheet Agreement. Amtrak usage of the 50/50 Line shall be considered the usage of the respective owner of the segment in question prior to the exchange of ownership for all purposes including, but not limited to, compensation, liability, and all other provisions of the parties' respective contracts with Amtrak.

7. BNSF and UP agree on a consolidated regional dispatching center encompassing BNSF, UP, HB&T and PTRA (between Bridge 5A and Deer Park) lines, and including KCS and TexMex participation as appropriate, as described in Exhibit C.

8. Field management, facility maintenance, and improvements to the 50/50 Line will continue to be performed by UP or BNSF on segments each owned prior to the exchange of ownership.

9. BNSF and UP agree to establish reasonable joint service standards, including a joint service standards committee for operations pursuant to this Term Sheet Agreement.

10. UP shall not be required to pay for any expenditures made by BNSF to meet the line condition standard in Section 10c of the Settlement Agreement and Section 6(b) of the Purchase and Sale Agreement up to the amount in the escrow account (principal of $10.5 million plus interest). After the expenditures equal the amount in the escrow account, further expenditures shall be allocated pursuant to this Term Sheet Agreement. The cash and interest in the escrow account will be divided between the parties pursuant to their agreement settling the dispute over the condition of the Iowa Jct. to Avondale segment of the 50/50 Line.

III. SPECIFIC TERMS COVERING BEAUMONT-NAVASOTA TRACKAGE RIGHTS

1. BNSF will grant UP overhead trackage rights between Beaumont and Navasota at the same mill rate and the same general terms as provided for such trackage rights in the Settlement Agreement.

2. UP shall have the right to enter/exit at Cleveland and Conroe.

3. UP will make capital contributions to capacity related improvements to the trackage rights line on a usage basis (gross ton miles).

IV. STRANG/PASADENA INTERCHANGE

1. UP shall continue interchange of traffic originating between Sinco and Bayport through the PTRA at Pasadena for movement by BNSF. BNSF will be responsible for PTRA charges resulting from this service. The parties agree to reconsider this issue in 6 to 8 weeks after UP's directional operations and terminal changes are in place and operational. The adequacy of interchange service provided subsequent to the reinstatement of the prior interchange after such reconsideration shall be subject to review by the Service Standards Committee. The Pasadena interchange shall be reinstated in the event the Service Standards Committee finds that interchange service standards have not been met for a reasonable period of time.

V. OTHER

1. The parties agree to cooperate with each other and make and prosecute diligently whatever filing or applications, if any, are necessary to implement the provisions of this Term Sheet Agreement.

2. The parties agree to use their best efforts to promptly complete definitive agreements reflecting the intent and provisions of this Term Sheet Agreement.

3. Unresolved disputes and controversies concerning any of the terms and provisions of this Term Sheet Agreement shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

4. The provisions of Section II.2, Industry Access, Section II.7, Joint Dispatching Center, and Section III, Beaumont-Navasota Trackage Rights, shall be effective and implementation shall begin as soon as practical but no later than 30 days from execution, and remain in effect thereafter, and the remaining provisions of this Term Sheet Agreement shall be implemented as soon as possible upon receipt of required governmental approval or exemption, if any.

5. The parties intend that the undertakings in this Term Sheet Agreement constitute legally enforceable obligations.

AGREED TO:

UNION PACIFIC RAILROAD COMPANY

By: James V Dolan
Title: Vice President - L&N
Date: Feb 12 1998

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By:_____
Title:_____
Date:_____

2. The parties agree to use their best efforts to promptly complete definitive agreements reflecting the intent and provisions of this Term Sheet Agreement.

3. Unresolved disputes and controversies concerning any of the terms and provisions of this Term Sheet Agreement shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

4. The provisions of Section II.2, Industry Access, Section II.7, Joint Dispatching Center, and Section III, Beaumont-Navasota Trackage Rights, shall be effective and implementation shall begin as soon as practical but no later than 30 days from execution, and remain in effect thereafter, and the remaining provisions of this Term Sheet Agreement shall be implemented as soon as possible upon receipt of required governmental approval or exemption, if any.

5. The parties intend that the undertakings in this Term Sheet Agreement constitute legally enforceable obligations.

AGREED TO:

UNION PACIFIC RAILROAD COMPANY

By:_____
Title:_____
Date:_____

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By: R. J. [signature]
Title: Vice President, UP/SP Lines
Date: February 12, 1998

EXHIBIT A
OPERATING SIDINGS

I. BNSF Segment

(a) Salix
(b) Raceland Jct.
(c) Schriever
(d) Berwick
(e) Bayou Sale
(f) Baldwin
(g) New Iberia
(h) Cade
(i) Lafayette (only track 902, not Lafayette yard)
(j) Crowley Siding
(k) Midland
(l) Roanoke

II. UP Segment

(a) Fauna
(b) Crosby
(c) Dayton
(d) Ames
(e) Devers
(f) China
(g) Connell
(h) Francis
(i) N. Echo
(j) S. Echo
(k) Brimstone
(l) Lockmore
(m) Iowa Siding (to be constructed)

EXHIBIT B*

Between:	Mileage	Roundtrip	Charges On/Off+Miles+Recip=Total/Car
Origin and Destination	15	30	$100 + $15 + $130 = $245
Reciprocal Switch (per load) within Switching District	--	--	NA + NA + $130 = $130

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* Provided for illustrative purposes only. Charges subject to annual adjustment in accordance with the Settlement Agreement.

Exhibit C

Consolidated Dispatching Center

a) The lines to be dispatched by the Consolidated Dispatching Center are shown on the map attached hereto. Each railroad will control, manage and dispatch its own lines and the 50/50 Line will be dispatched jointly. BNSF shall be provided necessary office space and facilities in the Consolidated Dispatch Center.

b) See attached organizational chart for management structure.

c) A Joint Director, reporting to Service Standards Committee, will be retained by UP and BNSF's respective Vice Presidents-Transportation. Each railroad shall submit the names of two potential candidates and then mutually agree on the person to fill the position. BNSF and UP will mutually agree upon a process to change the Joint Director which permits either to remove the incumbent. The parties shall agree upon a written description of the Joint Director's job duties, two of which will include responsibility for ensuring compliance with (1) dispatching protocol standards and (2) standards for the gathering and distribution of cars to/from industries on the 50/50 Line, former SP branches and spurs, to either railroad. The Joint Director's job description and performance shall be reviewed/evaluated periodically by both railroads. Either railroad shall have the right to remove the Joint Director at its sole discretion.

d) Until UP implements CAD III, UP will support its dispatching using Digacon. UP's server is located in Omaha and during emergency outages UP will take control of its lines and the 50/50 Line from Omaha. During emergency outages BNSF will control its lines from Ft. Worth.

e) BNSF and UP agree that KCS/Tex Mex should be offered the opportunity to dispatch their lines in the Gulf Coast area from the Consolidated Dispatching Center.

f) Cost allocation shall be subject to customary joint facility arrangements.

g) Consolidated Dispatching Center will be located in the first floor of UP's Spring, Texas, regional offices. UP will develop and furnish proposed office layout.

Exhibit 7

AGREEMENT

AGREEMENT made this 1st day of September, 2000, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter called "BNSF," and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, hereinafter called "UPRR."

WITNESSETH:

WHEREAS, BNSF owns a line of railroad between Iowa Junction, Louisiana and Avondale, Louisiana and UPRR owns a line of railroad between Dawes, Texas and Iowa Junction, Louisiana; and

WHEREAS, by conveyance simultaneous with the entry into this Agreement, but separate and apart from this Agreement, BNSF is acquiring an undivided one-half interest in certain of the UPRR Trackage (as hereinafter defined) and UPRR is acquiring an undivided one-half interest in certain of the BNSF Trackage (as hereinafter defined); and

WHEREAS, the parties desire to set forth in this Agreement the manner in which the Joint Trackage (as hereinafter defined) will be managed, maintained and operated subsequent to acquisition by (1) UPRR of a one-half interest in that portion of the BNSF Trackage to be conveyed to it, and (2) BNSF of a one-half interest in that portion of the UPRR Trackage to be conveyed to it.

NOW, THEREFORE, it is mutually agreed:

Section 1. DEFINITIONS

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

Additions and Betterments shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts under principles of railroad retirement and betterment ("RRB") accounting.

BNSF Trackage shall mean ~~(a)~~ the portion of the mainline track of the former Southern Pacific Transportation Company ("SP") Lafayette Subdivision between Iowa Junction, Louisiana, in the vicinity of BNSF Milepost 205.3, and Avondale, Louisiana, in the vicinity of BNSF Milepost 14.94, as shown on the print dated February 12, 1998, attached as Exhibit "A" and by reference made a part of this Agreement (the "Print"), including the right of way and operating sidings used for passing and meeting trains shown on "Exhibit 'A'," and trackage appurtenances, together with signals and communications facilities required for the control of operations over such track (for purposes of management and use of such signals and communications facilities only, and not ownership), and all Additions and Betterments or Improvements, in which UPRR has participated pursuant to this Agreement, to any of the foregoing, and (b) such of the Customer Access Trackage (as defined below) as is now owned or controlled by BNSF or as is added to the ownership or control of BNSF.

Consolidated Dispatching Center or CDC shall mean a consolidated regional dispatching center, established and operated pursuant to the provisions of an agreement entered into between the parties, located in UPRR's Spring, Texas facility, encompassing BNSF, UPRR, Houston Belt & Terminal Railway Company ("HBT") and Port Terminal Railroad Association ("PTRA") (between Bridge 5A and Deer Park Junction) lines generally as shown on Exhibit "A " attached thereto, and lines of The Kansas City Southern Railway Company ("KCS") and Texas Mexican Railway Company ("TexMex") in the same general area if KCS and TexMex elect to participate in consolidated dispatching.

Customer Access Trackage shall mean trackage which is not included in subsection (a) of the above definition of BNSF Trackage or in subsection (a) of the below definition of UPRR Trackage, and which from time to time would be utilized to provide access to present and future industries or facilities originating or terminating traffic on the former SP Lafayette Subdivision between Dawes (MP 353.0) and Avondale (MP 14.94) and on former SP branches and spurs connecting to the said section of the Lafayette Subdivision or any new branches and spurs connecting to these lines, together with the right of way for such trackage, and trackage appurtenances, signals and communications facilities for the control of operations thereover (for purposes of management and use of such signals and communications facilities only, and not ownership); it being agreed that such trackage is included in the definition of "Customer Access Trackage" (and as such is subject to the terms of this Agreement) only during the time period that such trackage is to be utilized for access.

Equipment shall mean trains, locomotives, rail cars (loaded or empty), trailers and containers (loaded or empty), cabooses, vehicles and machinery which are

capable of being operated on railroad tracks or on adjacent right-of-way for purpose of the maintenance or repair of such railroad tracks or right-of-way.

Exclusive BNSF Trackage shall mean that portion of the track of the former SP Lafayette Subdivision between Iowa Junction, Louisiana, in the vicinity of BNSF Milepost 205.3, and Avondale, Louisiana, in the vicinity of BNSF Milepost 14.94, and all Additions and Betterments thereto, not included at any given time within the definition of BNSF Trackage.

Exclusive UPRR Trackage shall mean that portion of the track of the former SP Lafayette Subdivision between Dawes, Texas in the vicinity of UPRR Milepost 353.0, and Iowa Junction, Louisiana, in the vicinity of UPRR Milepost 205.3, and all Additions and Betterments thereto, not included at any given time within the definition of UPRR Trackage.

GTM shall mean gross ton mile, which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

GTM Handled Proportion shall mean the GTMs operated by one of the parties over the Joint Trackage divided by the total GTMs operated by both parties over the Joint Trackage during the same time period. All movements over the Joint Trackage shall be counted for the purposes of computing such GTM Handled Proportion; provided, however, that (1) Equipment engaged in work service pertaining to inspection, construction, maintenance or operation of the Joint Trackage or changes in and/or Additions and Betterments or Improvements to the Joint Trackage shall not be so counted, and (2) GTMs of third parties (other than Louisiana & Delta Railroad, Inc., or its successors, ("L&D") whose use shall be attributed as provided at Section 4.1 below) shall be attributed to the party that admitted such third party or for whose benefit such third party was so admitted.

Joint Service Standards Committee shall mean a committee comprised of the chief transportation officers (or their designees) of UPRR and BNSF which shall be responsible for establishing appropriate rules or standards to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage.

Joint Trackage shall mean the BNSF Trackage and the UPRR Trackage, collectively.

Light Engines shall mean one or more locomotive units not coupled to cars.

Management Services shall mean (1) the field management of, facility maintenance of, and making of Additions and Betterments or Improvements to, the Joint

Trackage, (2) provision and performance of all work and services necessary to facilitate, or incidental to, the operation and use of the Joint Trackage pursuant to and in accordance with the terms of this Agreement, and (3) provision and furnishing of all Equipment and employees in the management, control and maintenance of the Joint Trackage. The Management Services do not include any of the services to be provided under the Property Management Agreement.

Manager shall mean UPRR with reference to the performance of Management Services on the UPRR Trackage, and BNSF with reference to the performance of Management Services on the BNSF Trackage.

Project shall mean the establishment of the CDC and the relocation of certain existing dispatching functions of the parties to the CDC.

Property Accounts shall mean the accounts so designated in the applicable STB accounting classification for railroad companies in effect from time to time.

Property Exchange Agreement shall mean the Property Exchange Agreement of September 1, 2000, between BNSF and UPRR.

Property Management Agreement shall mean the Property Management Agreement of September 1, 2000, between BNSF and UPRR.

Purchase and Sale Agreement shall mean the Purchase and Sale Agreement of December 11, 1996, between BNSF and Southern Pacific Transportation Company.

Settlement Agreement shall mean that Agreement dated September 25, 1995, as amended and supplemented by the parties hereto and as conditioned by the STB, between Union Pacific Corporation, UPRR, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation ("SPRC"), Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP"), on the one hand, and The Burlington Northern Railroad Company ("BN") and The Atchison, Topeka & Santa Fe Railway Company ("Santa Fe"), on the other hand, concerning the proposed acquisition of SPRC by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to an application to the Interstate Commerce Commission 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*.

STB shall mean the Surface Transportation Board or successor agency.

Term Sheet shall mean that Term Sheet Agreement between UPRR and BNSF covering Ownership and Operation of Lines In and Around Houston, Texas dated February 12, 1998.

UPRR Trackage shall mean (a) the portion of the mainline track of the former SP Lafayette Subdivision between Dawes, Texas in the vicinity of UPRR Milepost 353.0, and Iowa Junction, Louisiana, in the vicinity of UPRR Milepost 205.3, as shown on the Print, including the right of way and operating sidings used for passing and meeting trains shown on "Exhibit 'A'," and trackage appurtenances, together with signals and communications facilities required for the control of operations over such track (for purposes of management and use of such signals and communications facilities only, and not ownership), and all Additions and Betterments or Improvements, in which BNSF has participated pursuant to this Agreement, to any of the foregoing, and (b) such of the Customer Access Trackage (as defined above) as is now owned or controlled by UPRR or as is added to the ownership or control of UPRR.

User shall mean (1) BNSF with reference to BNSF's operation over the UPRR Trackage and (2) UPRR with reference to UPRR's operation over the BNSF Trackage.

Section 2. ACCESS

2.1 (a) UPRR and BNSF shall each have the right to serve all present and future industries or facilities originating or terminating traffic on the Joint Trackage.

(b) In the event that UPRR shall locate a New Customer Facility (as such term is defined at Section 2.2 (a) below) on or adjacent to the Exclusive UPRR Trackage, BNSF shall have the right to serve such New Customer Facility; provided, however, that BNSF shall not have the right to locate a New Customer Facility on or adjacent to the Exclusive UPRR Trackage.

(c) In the event that BNSF shall locate a New Customer Facility on or adjacent to the Exclusive BNSF Trackage, UPRR shall have the right to serve such New Customer Facility; provided, however, that UPRR shall not have the right to locate a New Customer Facility on or adjacent to the Exclusive BNSF Trackage.

(d) Whenever a New Customer Facility is to be located on the Joint Trackage, the Manager of that portion of the Joint Trackage shall notify the other party that such New Customer Facility is to be so located. Such notice shall be given as soon as

practicable after agreement between the Manager and the customer has been reached for the location of the New Customer Facility.

(e) At least forty-five (45) days prior to initiating service to an industry or facility, the non-Manager must elect, in writing, whether its service shall be (1) direct, (2) through reciprocal switch, (3) on a haulage basis for the fee calculated as shown on the example attached as Exhibit B, or (4) with the Manager's prior written agreement, using a third party contractor to perform switching for the non-Manager alone or both parties. If the party electing to provide service is not also the Manager of that section of Joint Trackage on which the customer to be served is located, such electing party shall provide its proposed rail service plan for the customer to the Manager in its notice of election on the manner in which service is to be provided, and the Manager shall within twenty-two (22) days of its receipt of such notice either (i) notify the electing party of its approval or disapproval of such rail service plan, which approval shall not be unreasonably withheld, or (ii) if the Manager disapproves of such rail service plan, submit to the electing party a revised rail service plan as to such customer. In the event such revised rail service plan is unacceptable to the electing party, the Manager shall provide service, comparable to its own, on behalf of the electing party on an interim basis at a fee determined by the election choices of this Agreement until the parties mutually agree upon a rail service plan or one is established by arbitration pursuant to Section 10 below. The non-Manager, having elected to initiate service pursuant to this Agreement or when already providing service to a customer under a previous election pursuant to the Settlement Agreement, shall have the right, upon one hundred eighty (180) days' notice to the Manager, to change its election; provided, however, that the Non-Manager (x) shall not change its election more often than once every five (5) years and (y) shall reimburse the Manager for any costs incurred by the Manager in connection with such changed election.

2.2 (a) A party to this Agreement ("Party X"), unless it elects in writing not to participate, shall pay fifty percent (50%) of the other party's ("Party Y") cost and expense of (1) constructing any connecting and access tracks and switches (each, a "New Customer Improvement") for new industries or facilities originating or terminating traffic on the Joint Trackage other than exclusively owned or leased facilities as set forth at Section 5.3 below (each, a "New Customer Facility") upon Party X's election to serve a New Customer Facility, and/or (2) upgrades ("Existing Customer Improvements") to connecting and access tracks and switches required to serve an existing industry or facility originating or terminating traffic on the Joint Trackage other than exclusively owned or leased facilities as set forth at Section 5.3 below (each, an "Existing Customer Facility") (New Customer Facilities and Existing Customer Facilities are hereinafter collectively referred to as "Customer Facilities", while Existing Customer Improvements and New Customer Improvements are hereinafter collectively referred to as "Improvements").

(b) Improvements that Party X elects to participate in the cost and expense of constructing shall progressively during construction become a part of the Joint Trackage either: (i) if the Improvement itself connects directly to any portion of the Joint Trackage defined in subsection (a) of the definition of BNSF Trackage or subsection (a) of the definition of UPRR Trackage, become a jointly owned part of the Joint Trackage; or (ii) if the Improvement itself does not connect directly as described in (i) above, become Customer Access Trackage. Party Y shall promptly execute the necessary conveyances to transfer one-half ownership of any Improvements that become jointly owned under the foregoing sentence. Should Party X decline to participate in the cost and expense of constructing Improvements, Party X shall be denied access to the Customer Facility served by such and the Improvements then shall not become a jointly owned part of the Joint Trackage (except that if any part of the same was already a part of the jointly owned Joint Trackage, it will remain so), but will become Customer Access Trackage.

(c) Should Party X elect at a later date to serve a Customer Facility served by Improvements the cost and expense of constructing it previously declined to participate in (and thus was denied access to), such right shall be granted to Party X by Party Y upon payment of fifty percent (50%) of Party Y's cost and expense of the Improvements plus per annum interest equal to the rate paid on 90-day Treasury bills of the United States government as of the date of completion. On the date of use by Party X, such Improvements shall become part of the Joint Trackage as described in Section 2.2 (b) above. 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 of the prior year's interest (i.e., adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

Section 3. MAINTENANCE, OPERATION, AND CONTROL

3.1 UPRR shall manage the UPRR Trackage and BNSF shall manage the BNSF Trackage. Manager shall have sole charge of the maintenance and repair of its respective portions of the Joint Trackage, including, without limitation, ordinary and routine replacement of ties, rails and other track and signal equipment, with its own supervisors, labor, materials and Equipment. Any work projects performed pursuant to this Section 3.1 shall become a part of the Joint Trackage or, in the case of retirements, shall be excluded from the Joint Trackage. By September 1 of each year during the term of this Agreement (1) UPRR will advise BNSF of its anticipated programmed maintenance on the UPRR Trackage for the succeeding calendar year, and (2) BNSF will advise UPRR of its

anticipated programmed maintenance on the BNSF Trackage for the succeeding calendar year.

3.2 Unless otherwise mutually agreed to by the parties in writing, Manager shall, (1) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Term Sheet, including any special instructions for the Joint Trackage as of the date of the Term Sheet, (2) maintain at least the physical capacity of the Joint Trackage as of the date of the Term Sheet (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (3) be responsible, as provided for in Section 5.1, for any Additions and Betterments to the Joint Trackage as shall be necessary to accommodate the traffic of the parties while maintaining existing service standards (including transit times) in effect on the date of the Term Sheet. Manager shall also make such Additions and Betterments to its respective portion of the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction. Additions and Betterments to the Joint Trackage that are for the exclusive benefit of User shall be performed by Manager at User's sole cost and expense. In the event that either party desires to perform Additions and Betterments to the Joint Trackage to improve it to a condition in excess of the standard set forth in this Section 3.2, such Additions and Betterments shall be referred to the Joint Service Standards Committee for approval. Any question or controversy arising with respect to the undertaking of Additions and Betterments pursuant to this Section 3.2 that cannot be resolved by the Joint Service Standards Committee within sixty (60) days following its submission shall be submitted for arbitration pursuant to Section 10 below.

3.3 Manager shall employ all persons necessary to construct, operate, maintain, repair and renew its respective portion of the Joint Trackage. Manager shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in management of the same. Manager shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Manager's personnel.

3.4 Field management of the Joint Trackage shall at all times be under the exclusive direction and control of Manager. Operation (including dispatching) of the Joint Trackage and the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of the CDC in accordance with the Consolidated Dispatching Center Agreement dated March 15, 1998, and such reasonable operating rules as Manager shall from time to time institute; provided, however, that in the management, operation (including dispatching) and maintenance of the Joint Trackage, Manager and User shall be treated equally. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with the CDC's dispatching and signaling facilities. The parties

shall consult with each other prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

3.5 The Joint Service Standards Committee shall meet on a regular basis, including an annual meeting to be held on or about September 15 of each year during the term of this Agreement; provided, however, that during the first year of operation under this Agreement the Joint Services Standards Committee shall meet not less often than every three (3) months. Thereafter, the Joint Service Standards Committee shall meet when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between trains of Manager and trains of User, grievances over the handling of particular trains or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Joint Service Standards Committee may decide to consider. The Joint Service Standards Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Manager and User. Either party may request a special meeting of the Joint Service Standards Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Joint Service Standards Committee where appropriate to address immediate concerns of either party. It is expected that the work of the Joint Service Standards Committee shall be undertaken in a spirit of mutual cooperation consistent with the principle of non-discrimination in service expressed in this Agreement.

3.6 The annual Additions and Betterments program for the next year shall be prepared and submitted by the Manager to the Joint Service Standards Committee prior to September 1 of each year during the term of this Agreement.

3.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other party for loss, damage or expense caused by or resulting from such interruption or delay.

3.8 Manager may from time to time provide any track or tracks other than those delineated in Exhibit A to this Agreement for use by User hereunder provided there shall at all times be afforded User a continuous route of equal utility for the operation of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, this Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

3.9 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party furnishes such labor, fuel or train and other supplies to the other party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

3.10 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

3.11 Except as otherwise may be provided in this Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Manager, they shall be required to pass the applicable rules examinations required by Manager of its own employees. Manager shall delegate to specified User officers the conduct of such examinations in the event User chooses to conduct such examinations. If an officer of Manager conducts such examinations of employees of User, User shall pay Manager a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations.

3.12 If any employee of a party shall neglect, refuse or fail to abide by rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of the other party, be prohibited by the party employing such employee from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee, then upon such notice presented in writing, the parties shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to a party's employees shall be given by the officers of such party, and such investigation shall be conducted in accordance with the terms and conditions of labor agreements between such party and its employees. If, in the judgment of the party not employing such employee, the result of such investigation warrants, such employee shall, upon written request by such party, be withdrawn by the employing party from service on the Joint Trackage, and the employing party shall release and indemnify the other party from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

3.13 If any Equipment of User is bad ordered en route on the Joint Trackage and (1) it is necessary that it be set out, and (2) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired and picked up by User. Manager may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Manager while in any manner so engaged or while en route to or returning to Manager's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Manager's employees after repairing such bad ordered Equipment for User move directly to perform service for Manager's benefit rather than return to Manager's terminal, then User's exclusive time and liability will end when Manager's employees depart for work to be performed for Manager's benefit. In the case of such repairs by Manager to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR") (the "Interchange Rules"), in effect on the date of performance of the repairs. Manager shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under the Interchange Rules, and Manager shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Manager also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under the Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 7 of this Agreement.

3.14 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Manager, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case employees of User shall consult with and be governed by the directions of Manager. Manager reserves the right to rerail Equipment of User when, in the judgment of Manager, Manager deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 9 of this Agreement. Services provided under this section shall be billed in accordance with Section 7 of this Agreement.

3.15 In the event Equipment of either party shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among such party's employees, or due to mechanical failure of such Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 3.13), or to any other cause not resulting from an accident or derailment (including the failure of such party to promptly repair and clear bad ordered Equipment pursuant to Section 3.13), and such Equipment is unable to proceed, or if a train of either party fails to maintain the speed required by Manager on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of a party's trains on the Joint Trackage, the other party shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew the train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. Any Equipment or Employee of a party so furnished shall for purposes of liability be considered the Sole Property and Sole Employee of the other party. The reasonable costs and expenses of rendering such assistance shall be borne by the party receiving assistance from the other party. Services provided under this section shall be billed in accordance with Section 7 of this Agreement.

3.16 User, at Manager's request, shall be responsible for reporting to Manager the statistical data called for in this Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

3.17 User shall have the right to establish crew points at various locations along the Joint Trackage as may be mutually agreed to in writing between the parties from time to time. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate crew changes of User, Manager may require User to construct additional trackage in the vicinity of such location as may be required in the reasonable judgment of Manager, the cost and expense of which shall be borne by User. In the event such trackage is constructed at the cost and expense of User, and Manager shall choose to use such trackage, Manager shall pay User fifty percent (50%) of the cost of constructing such trackage, plus interest as calculated pursuant to Section 2.2 above. In addition, Manager shall lease to User by separate written agreement, existing facilities, for office, locker, change and lunchroom purposes by User's personnel upon request of User to Manager, and as reasonably available, or property as reasonably available for User to establish its own facilities.

3.18 The terms and conditions applicable to the management of the real property underlying the Joint Trackage which is subject to the Property Exchange Agreement shall be contained in a separate agreement to be entered into between the parties.

Section 4. ADMISSION OF THIRD PARTIES; PROVISION OF HAULAGE SERVICES.

4.1 Except for rights in existence on February 12, 1998, neither party shall admit a third party to the use of the Joint Trackage or provide haulage services thereover without the prior written consent of the other party; provided, however, that either party may use L&D as its agent to provide service over the Joint Trackage without obtaining the prior written consent of the other party with the following understandings:

(a) Any agreement entered into between either party and L&D subsequent to the effective date hereof shall fully comply with all terms and conditions of this Agreement;

(b) BNSF shall assume and guarantee all liabilities arising from L&D's operations as BNSF's agent;

(c) UPRR shall assume and guarantee all liabilities arising from L&D's operations as UPRR's agent;

(d) L&D usage of the Joint Trackage for the benefit of one party shall be considered the usage of such party for purposes of allocating liability and calculating the parties' respective usage shares;

(e) L&D usage of the Joint Trackage for the benefit of both parties shall be considered the usage of each party to the extent each benefits from such usage (e.g., on a GTM proportion basis) for purposes of allocating and calculating the parties' respective usage shares; and

(f) Either party may interchange with L&D at Lafayette, Louisiana and other locations as agreed by the parties in writing from time to time.

As of the date hereof, UPRR shall not impose or enforce any requirement (a) contained in any agreement entered into after execution of the Settlement Agreement and (b) covering traffic which BNSF had access to under the terms of the Settlement Agreement, that the L&D pay any additional rental or other fee if traffic is routed via BNSF.

Section 5. ADDITIONS AND BETTERMENTS

5.1 Manager shall construct such Additions and Betterments to the Joint Trackage with an estimated cost of One Hundred Thousand Dollars ($100,000) or less per project as Manager or User shall deem desirable for the safe, efficient and economical use of the Joint Trackage by both parties. Before commencing construction of Additions and Betterments with an estimated cost greater than One Hundred Thousand Dollars ($100,000) per project for use by both parties, Manager shall secure the written approval of User. Neither party shall unreasonably withhold its written approval of any project

proposed by the other party for the safe, efficient and economical use of the Joint Trackage by both parties. All Additions and Betterments to the Joint Trackage shall progressively during construction become part of the Joint Trackage. Manager shall have the right to include as a part of the cost of Additions and Betterments any engineering costs related to Additions and Betterments to the Joint Trackage.

5.2 Either party shall have the right to construct, or have constructed for it, Additions and Betterments, Improvements (in accordance with Section 2 above), industrial trackage or, subject to the conditions set forth in Section 5.3 below, other trackage and facilities connecting to the Joint Trackage, provided that such construction is performed in such a manner as not to impair the other party's use of the Joint Trackage. Except as provided in Section 5.3 below, the party not constructing, or having the construction performed for it, shall have the right to jointly use such industrial trackage or other trackage and facilities or any portion thereof (1) as soon as it is placed in service and upon payment of one-half of the cost of construction, or (2) at any time subsequent to such construction by payment of an amount equal to (a) one-half of such cost of construction, plus Additions and Betterments, less retirements, and (b) per annum interest equal to the rate paid on 90-day Treasury bills of the United States government as of the date of completion. On the date such party's use commences, said Additions and Betterments, Improvements (in accordance with Section 2 above), industrial trackage or, subject to the conditions set forth in Section 5.3 below, other trackage or facilities shall become part of the Joint Trackage. 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 of the prior year's interest (i.e., adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate.) Upon the exercise of such election to take use and the payment as prescribed, such industrial trackage or other trackage and facilities or portion thereof shall be deemed equally jointly owned, and become a part of the Joint Trackage.

5.3 Either party 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, along the Joint Trackage pursuant to the following terms and conditions:

(a) 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;

(b) 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

(c) 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, except for properties identified in Exhibit "C" .

Each party has identified in Exhibit "C" any area or areas where it currently anticipates it will need such exclusively owned or leased and used facilities. Each party hereby agrees to reserve for the construction of such exclusively owned or leased and used facilities property currently owned by it at the area(s) identified with its name in Exhibit "C".

Section 6. SETTLEMENT AGREEMENT ESCROW ACCOUNT

Notwithstanding any other provision of this Agreement to the contrary, UPRR shall not be required to pay for any expenditures made by BNSF to meet the line condition standard in Section 10c of the Settlement Agreement up to the amount in the escrow account established pursuant to Section 10c of the Settlement Agreement (approximately principal of $10.5 million plus interest) (the "Escrow Account"). After the expenditures equal the amount in the Escrow Account, further expenditures shall be allocated as set forth above in this Agreement.

Section 7. COMPENSATION AND BILLING

7.1 Accounting as prescribed by the STB from time to time will be followed for purposes of this Agreement, except as provided in Sections 1.1 and 7.5.

7.2 Each of the parties shall bear one-half of the costs properly chargeable to capital account and its cost (or other accounting treatment) for retirement of its one-half of any depreciable property in connection with the Joint Trackage. Either party incurring costs properly chargeable to capital account in constructing Additions and Betterments or Improvements to the Joint Trackage shall progressively bill the other party hereto one-half of the cost incurred subject to adjustment when the Roadway Completion Report is received. The progressive billing shall be made not more frequently than monthly within thirty (30) days of the close of the month in which the billing party charges its fifty percent

(50%) of the cost to its appropriate capital account and the amount of such progressive billing shall not exceed the fifty percent (50%) so charged by the billing party.

7.3. Except as otherwise provided in Section 7.5, Manager will, on the first day of each month, render to User a bill for User's estimated share of the estimated cost incurred by Manager in controlling operations over, maintaining, repairing and renewing the Joint Trackage for that month. User shall pay that bill by the twentieth day of the same month. Each party shall furnish to the other within fifteen (15) days subsequent to the close of each calendar month during the term of this Agreement a statement of its usage (in GTMs) of the Joint Trackage during such month. Since User's actual GTM Handled Proportion for the month will not be known until the end of the month and since the actual costs will similarly not be known until some later date, the bill rendered to User shall be an estimate derived from the latest preceding month for which actual cost and User's actual GTM Handled Proportion of such cost is known. Promptly after identifying the actual costs and User's actual GTM Handled Proportion for the month covered by the estimated bill, Manager shall render to User a statement showing User's actual GTM Handled Proportion of such actual cost for the month. In the event User's actual GTM Handled Proportion of such cost for any month shall exceed its estimated payment for that month, Manager shall include a bill for such difference with a statement of actual cost and User shall pay said bill within thirty (30) days of its receipt thereof. In the event User's actual GTM Handled Proportion of such cost for any month shall be less than its estimated payment for that month, Manager shall include a refund payment for such difference with a statement of actual cost. In the event User shall fail to provide Manager with User's GTMs for any particular month by the 15th day as provided for in this Section, Manager may compute User's actual GTM Handled Proportion by using the latest monthly GTM Handled Proportion available and make the appropriate adjustment in subsequent monthly billing.

7.4 Each of the parties hereto shall pay one-half of any taxes or assessments levied by any governmental body, municipal or otherwise, on the Joint Trackage.

7.5 The parties hereto agree that the current cost of replacement in kind of track materials replaced under AFE or similar programmed work authority will be shared between them on an annual Gross Ton Mile Proportion for the calendar year in which the expense is incurred for the replacement in kind.

7.6 In the event either party hereto shall fail to receive any monies due from the other party hereto within the time period specified in this Agreement, or if not specified, within thirty (30) days of receipt of billing, the party so failing shall add an amount to the payment of such delinquent monies equal to 1/365th of the sum of the (1) effective annual rate of return on 180-day U. S. Treasury Bills plus (2) two percent (2%), for each day the payment is delinquent commencing with the date the payment was due and continuing until and including the date the payment is received. The rate of return on the first issue of

such Treasury Bills in January of any year shall be used for the period January through June 30 of such year, and in July of any year shall be used for the period July 1 through December 31 of such year. The delinquent payment additive provided for herein shall be (1) compounded monthly, and (2) the lesser of (a) the amount calculated as set forth above, or (b) the maximum amount permitted by law.

7.7 Bills containing clerical errors will not be deemed a valid reason for delaying payments. Any bills containing minor errors (errors of less than $5,000) shall be paid subject to adjustment in subsequent billing. Bills containing major errors (errors of $5,000 or more) may be reduced by the amount of the major error. Adjustments of clerical errors of less than $5,000 requested by either party and not made within sixty (60) days after receipt of such request shall thereafter become subject to the same delinquent payment additive provided for in Section 7.6. Disputed items in excess of $5,000 shall be subject to the same delinquent payment additive as provided in Section 7.6 if payment is due and withheld, or a similar credit if paid and subsequently refunded; provided, however, that no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month in which the expense covered thereby is incurred, except that there will not be any time limitation in connection with liability and casualty claims or capital expenditures and related operating expenses accounted for under authority for AFEs or in the case of claims disputed as to amount or liability. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims. Notwithstanding the delinquent payment additive provisions hereinbefore provided, in the event either of the parties shall fail to make one or more payments within six (6) months of the date the same became due and payable and the matter is not the subject of arbitration, such failure or nonpayment shall constitute a default and thereafter the party hereto not in default shall have the right to exercise any and all of the actions, remedies or privileges hereinafter provided for defaults.

7.8 Except as otherwise specifically provided for in this Agreement, bills rendered pursuant hereto shall be prepared in conformance with the standard practices of the party rendering the bill. Such billings, including surcharges, Equipment rental and other rates, will be based on cost, and such surcharges, Equipment rental and other rates will be subject to revision from time to time to reflect changes in costs. A one percent (1%) surcharge will be applied in lieu of the material surcharge in the billing party's standard billing practice to material placed under AFE or similar programmed work authority when the material is delivered to the job site from suppliers or processors such as rail welders or tie treaters and not from existing stock. Secondhand material prices, including, without limitation, rail, shall be equal to fifty percent (50%) of the cost of new materials at the time the materials are applied to or released from the Joint Trackage. Scrap materials shall be priced at the current market scrap prices received by Manager at the time of removal from

the Joint Trackage. Either of the parties shall have the option to receive fifty percent (50%) of the amount(s) received from the salvage of any retired depreciable property or a portion of the salvage from any retired non-depreciable facilities equal to its GTM Handled Proportion for the calendar year in which the retirement occurred in lieu of receiving a credit for the value of the salvage in the maintenance and operation bills. For the purposes of this Section, salvage from track materials replaced in kind or the value thereof shall be apportioned on an annual GTM Handled Proportion basis for the calendar year in which salvage occurred.

7.9 So much of the books, accounts, and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the other party hereto.

Section 8. COMPLIANCE WITH LAWS

8.1 With respect to operation of Equipment on the Joint Trackage pursuant to this Agreement, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

8.2 Each party (i) agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials") and covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 8.2 and Section 8.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by a party to this Agreement (the "Derailing Party") carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of the Derailing Party. The Derailing Party shall also immediately advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Manager, if other than the Derailing Party.

Manager shall assume responsibility for cleaning up any release of Hazardous Materials from Equipment involved in a Derailment on that section of the Joint Trackage for which it provides Management Services in accordance with all federal, state, or local regulatory requirements. The Derailing Party may have representatives at the

scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 9 of this Agreement.

If a Hazardous Materials release caused by a Derailment results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by a party to this Agreement or a third party), Manager shall assume responsibility for emergency cleanup conducted to prevent further damage. The Derailing Party shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 9 of this Agreement.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a Derailment, the Derailing Party shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Manager, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 9 of this Agreement. Transfers of Hazardous Materials by a Derailing Party shall only be conducted after being authorized by Manager.

8.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 9 of this Agreement.

8.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 8.2 and 8.3 of this Agreement.

Section 9. LIABILITY

9.1. The provisions of this Section 9 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 9, no provisions hereof shall be deemed to deprive either party of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this

Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 9 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

9.2 The parties agree that for the purposes of this Section 9:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by one party to assist in operating Equipment of the other party shall be considered the Sole Employees of such other party while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;

(c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Additions and Betterments or Improvements to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Additions and Betterments or Improvements to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except (other than as provided in Section 9.5(c)) liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any Third-Party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment;

(f) Operating Employees of a party whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 9.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;

(h) "Third Party" shall mean any person or entity other than (i) a party hereto, (ii) a Sole Employee of either party, (iii) a Joint Employee, or (iv) an invitee of either party;

(i) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a Third Party. Without limiting the generality of the foregoing, neither of the

parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;

(j) For the purpose of this Section 9, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

9.3 The parties agree that:

(a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 9, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgments shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by Third Party or Parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 9, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 9;

(d) User shall provide written notice to the other party of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 9 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars ($100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars ($100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 9.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 9, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to Third Parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were

involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to Third Parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Manager shall investigate and defend such claim or suit unless resulting from an incident covered under Section 9.5(c) in which case said Section shall govern; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

9.4 The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or derailment.

9.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property).

(b) Loss and/or Damage to Third Parties or their property (other than Third Parties involved in any crossing accident on the Joint

Trackage), to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, or only one party is involved (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property), that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, or occurs in such a way that it cannot be determined how such Loss and/or Damage came about, such Loss and/or Damage (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property) shall be apportioned between the two (2) parties to this Agreement, and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ton miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of this Agreement, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of this Agreement. User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) As to claims by Third Parties against either party hereto for grade crossing accidents, it is understood and agreed that a number of vehicular crossings of the Joint Trackage presently exist, or may be constructed. Each party agrees, as an equal owner of the Joint Trackage, to accept all crossings in whatever condition they may be during the term of this Agreement, and that neither party will assert any claim, demand or cause of action against the other party hereto that a crossing is inadequate, defective, or extra hazardous. In any crossing accident on the Joint Trackage in which only one party's Sole Property is involved, that party will investigate, defend,

indemnify, and hold harmless the other from and against any claim, demand or cause of action by any Third Party for actual damages arising out of the crossing accident on the Joint Trackage. Notwithstanding anything in this Section to the contrary, in any crossing accident in which only one party's Sole Property is involved, and that same party, pursuant to this Agreement, is responsible for maintenance of the portion of the Joint Trackage on which the crossing accident occurred, then that party will additionally investigate, defend, indemnify, and hold harmless the other party from and against any claim by a Third Party for punitive damages arising from the crossing accident.

(d) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in this Section 9.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable or allocated fault for the acts or omissions (negligent or otherwise) of any other party's Employee.

9.6 THE PARTIES EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; AND (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS.

Section 10. ARBITRATION, PROCEEDINGS AND AWARD

10.1 If at any time a question or controversy shall arise between the parties hereto touching the construction of any part of this Agreement or concerning the business or manner of transacting business carried on under its provisions, or concerning the

observance or performance of any of the conditions herein contained, or the rights or obligations of any party under or arising from this Agreement upon which question or point in controversy the parties cannot agree, such question or controversy shall be submitted for arbitration to a disinterested person or persons familiar with such business and experienced in railway management as hereinafter provided. Such question or controversy shall be submitted to a single competent disinterested arbitrator if the parties hereto are able to agree upon such single arbitrator within twenty (20) days after the party desiring such arbitration shall notify in writing the other party to such question or controversy. If such single arbitrator cannot be agreed upon before the expiration of such period of twenty (20) days, such arbitration shall be had before a board of three competent and disinterested persons to be named as follows: The party demanding such arbitration shall give the other party notice of demand, stating specifically the question or questions to be submitted for decision or the point or points in controversy, and nominating a person who has the required qualifications to act as one (1) arbitrator. The party hereto to whom such notice is given shall appoint a second arbitrator and give the party hereto demanding arbitration notice in writing of such appointment within twenty (20) days from the time of such notice. If at the expiration of twenty (20) days from the receipt of such notice the party receiving it has not notified the party demanding the arbitration of its nomination of a second arbitrator having like qualifications, the party making the demand may make such selection. The first and second arbitrators chosen shall select a third, and if the arbitrators chosen shall be unable to agree upon a third arbitrator within a period of twenty (20) days from the date of appointment of the second arbitrator, the third arbitrator may be appointed upon ten (10) days' notice upon motion or application of either party hereto by the Chief Judge (or Judge acting as Chief Judge) of the United States District Court for the Southern District of the State of Texas.

10.2 Upon the selection of the single arbitrator if there shall be just one (1), or upon completion of the selection of such board of three (3) arbitrators, the said arbitrator, or board, shall proceed at once with reasonable diligence to inquire into and determine the questions and controversies at issue as disclosed in the notice of arbitration and shall give to both parties reasonable notice of the time and place (of which the arbitrator or arbitrators shall be the judge) where the arbitrator or arbitrators may take such evidence as may be deemed reasonable or as either party may submit, without requiring witnesses to be sworn, and may hear arguments of counsel or others. If any arbitrator shall decline or fail to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering the evidence and hearing the testimony and arguments which may be submitted by each party, said single arbitrator, or the majority of such board of arbitrators (as the case may be), shall state such decision or award in writing within ninety (90) days of the final submissions by the parties, which decision or award, when delivered to both parties, shall be final, binding and conclusive upon both parties, and each party hereby expressly agrees to be bound conclusively thereby as to any of the matters submitted to arbitration. Until the single

arbitrator, or board of arbitrators, as the case may be, shall issue the first decision or make the first award upon any question or controversy so submitted for arbitration, the business, settlements and payments to be transacted and made under the terms of this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such questions. Immediately after such first decision or award, each party shall forthwith make such changes in the conduct of its business, or such payments or restitution, as the case may be, as are in and by such decision or award required of it to be made.

10.3 The books and papers of both parties as far as they relate to any matter submitted to arbitration shall be open to the examination of the arbitrator or arbitrators, as the case may be. Each party to the arbitration shall pay all compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

Section 11. DEFAULT

11.1. In the event of default by either of the parties with respect to the payment of monies due the other pursuant to the terms of this Agreement, the party to whom such money is owed shall have the right to offset against any monies whatsoever, except divisions of revenues, it may then or thereafter owe the party in default. This right to offset shall be in addition to any other rights or remedies available to the party not in default and shall prevail notwithstanding provisions, if any, in any other agreements to the contrary.

11.2. In the event either of the parties shall fail to make one or more payments of monies due the other party pursuant to this Agreement within six (6) months of the date the same became due and payable and the matter is not the subject of arbitration, such failure or non-payment shall constitute a non-payment default. In the event of a non-payment default, and provided the non-defaulting party delivers notice of its intention to rely on this Section 11.2 in connection with such default to the other party in default not less than thirty (30) or no more than sixty (60) days prior to the expiration of the six month default period specifying the bill or bills payment of which is overdue, the non-defaulting party may file an application with the appropriate authorities, if necessary, seeking authority for the party in default to cease operations over the Joint Trackage. The party in default shall cooperate with the non-defaulting party in seeking authority for such cessation of operations, and if such authority is obtained, or if such authority is not required, the party in default shall cease operations over the Joint Trackage as quickly as it can legally do so and continue such cessation until the default has been cured.

Section 12. NOTICES

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, by facsimile transmission, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UPRR:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for BNSF:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Ft. Worth, Texas 76161-0034

With a copy to:

-AVP Joint Facilities
2600 Lou Menk Drive
P. O. Box 961034
Ft. Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 12.

Section 13. SECTION HEADINGS

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 14. EFFECTIVE DATE AND TERM

This Agreement shall become effective as of the date first hereinabove written and shall remain in full force and effect for a term of ninety-nine (99) years.

Section 15. LAWS GOVERNING

This Agreement shall be interpreted in accordance with the laws of the State of Texas.

Section 16. ASSIGNABILITY

16.1 Except as provided in the sentence immediately following, this Agreement and any rights granted hereunder may not be assigned in whole or in part by either party hereto without the prior written consent of the other. This Agreement may be assigned by either party without the prior written consent of the other only (1) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (2) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled, controlling or under common control with the assigning 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

16.2 This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against either of the parties hereto.

Section 17. ENTIRETY, AMENDMENTS, AND WAIVERS

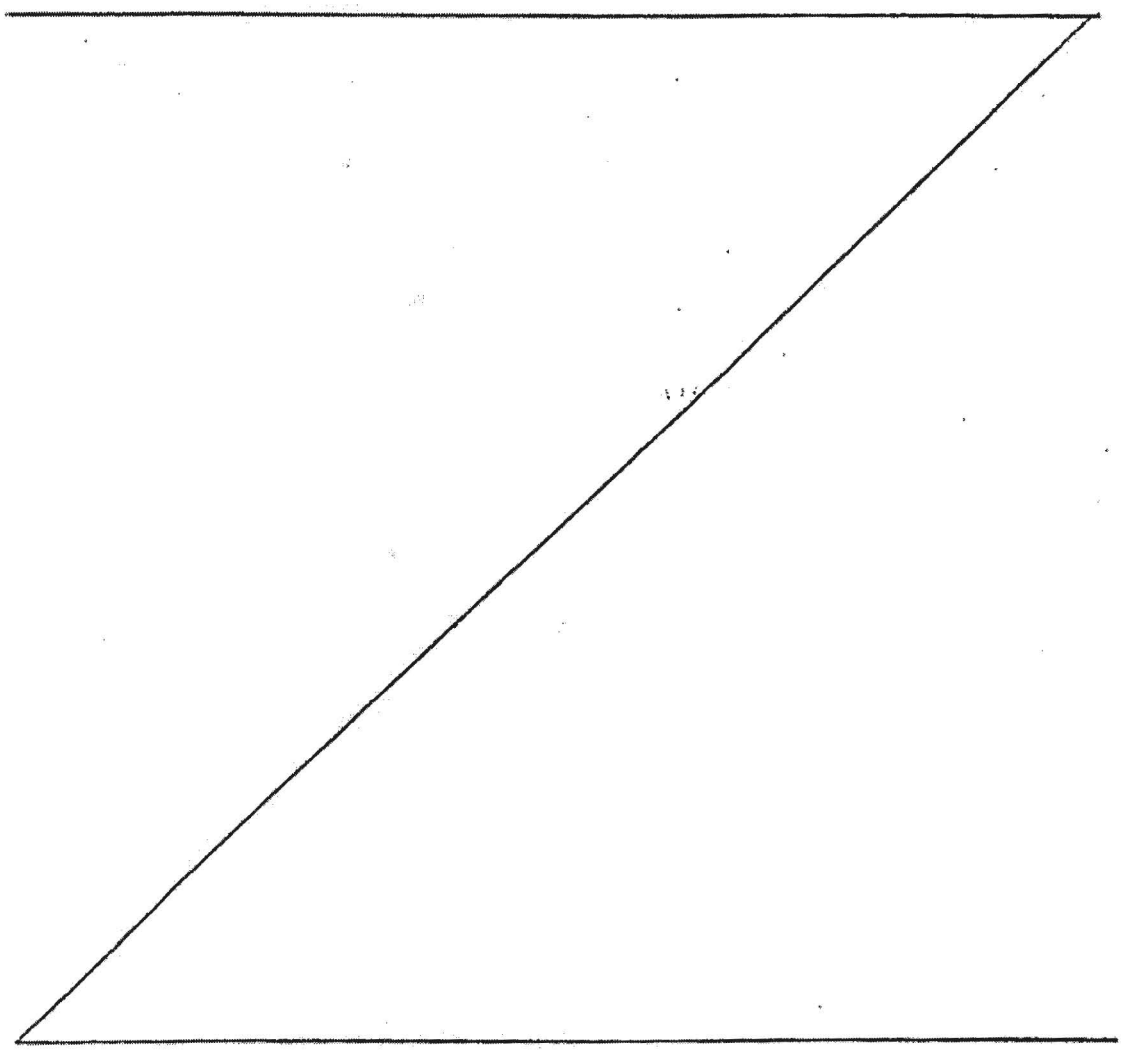
17.1 This Agreement is entered into to implement certain provisions of the Term Sheet. The provisions of the Term Sheet shall govern in the event of any conflict with the provisions of this Agreement except as to Sections 3 and 9. Notwithstanding the first sentence of this Section 17.1, nothing in this Agreement shall affect, expand or diminish the rights and obligations of the parties under the Property Exchange Agreement and the Purchase and Sale Agreement. All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

17.2 The parties acknowledge that they have previously entered into a trackage rights agreement dated June 1, 1996 (the "June 1, 1996 Agreement"), providing for BNSF operation over UPRR trackage between Houston, Texas and Iowa Junction, Louisiana as well as BNSF operation over UPRR's Baytown Branch, and (2) a trackage rights agreement dated September 10, 1998 (the "September 10, 1998 Agreement"), providing for BNSF operation over UPRR trackage between Beaumont, Texas and Port Arthur, Texas. The June 1, 1996 Agreement and the September 10, 1998 Agreement will be modified, by actions separate from this Agreement, to reflect changes required by the Term Sheet and shall continue in existence pursuant to their terms as so modified. The agreement between UPRR and BNSF dated as of June 1, 1996, by which BNSF granted UPRR trackage rights over BNSF trackage between Iowa Junction, Louisiana (BNSF MP205.3) and Avondale, Louisiana (BNSF MP 14.94) is hereby terminated.

17.3 Any branches and spurs constructed after the date of this Agreement (i) on the former SP Lafayette Subdivision between Dawes, Texas (MP 353.0) and Avondale,

Louisiana (MP 14.94), or (ii) on its former SP branches and spurs, shall be treated as Improvements and governed by this Agreement. Obtaining any STB approval required for such construction shall be the responsibility of the constructing party.

17.4 The failure of either party hereto to insist in any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligations or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.



Section 18. GOVERNMENTAL APPROVAL

In the event that service to any Customer Facilities hereunder requires the operation by one party over trackage of the other which is subject to the jurisdiction of the STB, the party proposing to so operate shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the operations to be carried on and any agreement between the parties with respect thereto. The other party, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. Each of the parties agrees to cooperate fully to procure all such necessary consent, approval, or authority.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first hereinabove written.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By _____
Title: Senior Vice President Operations

Attest: _____
Assistant Secretary

SEAL

UNION PACIFIC RAILROAD COMPANY

By _____
Title: EVP

Attest: _____
Assistant Secretary

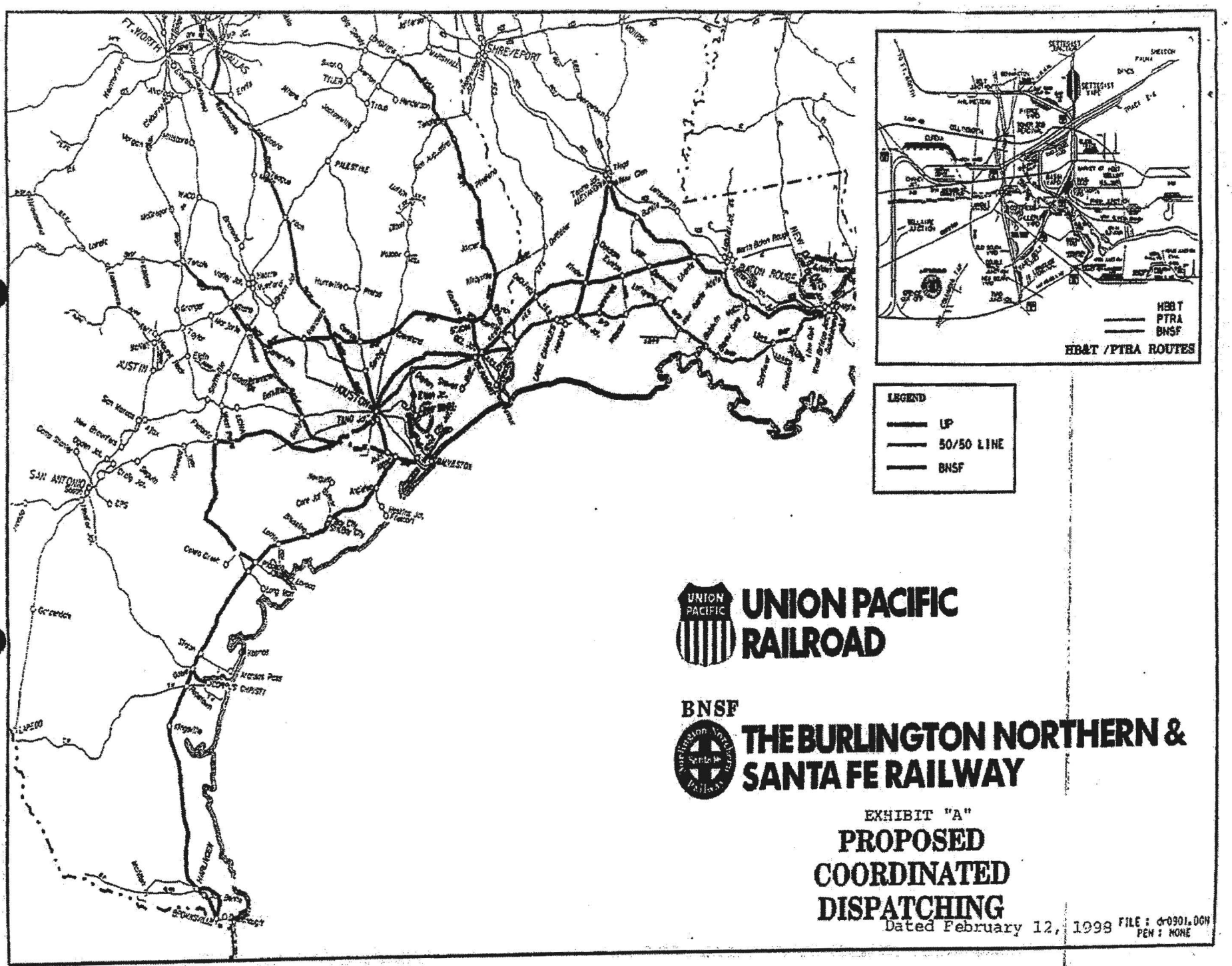

FT. WORTH
DALLAS
SHREVEPORT
TYLER
PALESTINE
AUSTIN
HOUSTON
SAN ANTONIO
GALVESTON
BATON ROUGE
NEW ORLEANS
LAREDO
HB&T
PTRA
BNSF
HB&T /PTRA ROUTES
LEGEND
UP
50/50 LINE
BNSF
UNION PACIFIC RAILROAD
BNSF
THE BURLINGTON NORTHERN & SANTA FE RAILWAY
EXHIBIT "A"
PROPOSED
COORDINATED
DISPATCHING
Dated February 12, 1998
FILE : dr0901.DGN
PEN : NONE

EXHIBIT B*

Between:	Mileage	Roundtrip	Charges On/Off+Miles+Recip=Total/Car
Origin and Destination	15	30	$100+$15+$130 = $245
Reciprocal Switch (per load) within Switching District	–	–	NA + NA + $130 = $130

* Provided for illustrative purposes only. Charges subject to annual adjustment in accordance with Settlement Agreement

EXHIBIT "C"

UP Dayton, TX – south side of mainline between MP 326.92 and MP 330.36

Orange, TX – south side of mainline between MP 258.21 and MP 258.91

Brimstone, LA – north side of mainline between MP 232.13 and 234.63

Lockmoor, LA – north side of mainline between MP 223.54 and 224.34

Lake Charles, LA – north side of mainline between MP 215.42 and MP 217.73

BNSF

Sheldon, TX -- in the vicinity of MP 343, sufficient property east of the San Jacinto Bridge

Orange, TX – north side of main line between MP 255 and MP 259.

Lockmoor, TX – south side of main line between MP 222 and MP 226.

Exhibit 8

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

RESPONSES AND OBJECTIONS OF BNSF TO THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S SECOND SET OF DISCOVERY REQUESTS TO BNSF

BNSF Railway Company ("BNSF") responds as follows to the Kansas City Southern Railway Company's ("KCSR") Second Set of Discovery Requests to BNSF:

GENERAL RESPONSES

The following General Responses apply to each of KCSR's document requests:

1. Where BNSF states that it will produce documents, BNSF will conduct a reasonable search for responsive, non-privileged documents, subject to any other qualifications specified in its response and the terms of the Protective Order in this proceeding.

2. Production of documents does not necessarily imply that they are relevant to or admissible in this proceeding and is not to be construed as waiving any of the general or specific objections stated below.

GENERAL OBJECTIONS

BNSF objects to KCSR's discovery requests on the following grounds:

1. **Privilege.** BNSF objects to KCSR's discovery requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege or protection. Any production of privileged or otherwise

protected documents is inadvertent and shall not constitute a waiver of any claims of privilege or other protection.

2. **Relevance/Burden.** BNSF objects to KCSR's discovery requests to the extent that they seek information or documents that are not directly relevant to this matter, to the extent that they seek documents in a form not maintained by BNSF in the regular course of business, to the extent that a response would impose an unreasonable burden on BNSF, and to the extent that they seek information or documents that are as readily, or more readily, available to KCSR as BNSF.

3. **Confidential Information.** BNSF objects to the KCSR discovery requests to the extent that they seek information or documents that constitute or disclose confidential, proprietary, or sensitive nonpublic information. Subject to and without waiving this objection, BNSF will produce information responsive to KCSR's discovery requests, if not otherwise objectionable, subject to the terms of the Protective Order in this proceeding. BNSF reserves the right to seek additional protection as needed.

4. **Third Party Information.** BNSF objects to the KCSR discovery requests to the extent that they seek information or documents that constitute or disclose information that would result in the violation of any contractual obligation to a third party, or in the violation of 49 U.S.C. § 11904, which relates to the disclosure of certain shipper or consignee information.

5. **Settlement/Mediation.** BNSF objects to production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any proceeding.

6. **Instruction No. 11.** BNSF objects to Instruction No. 11 as unduly burdensome, overbroad, and seeking information that is neither relevant nor reasonably calculated to lead to

the discovery of admissible evidence. Where BNSF agrees to produce responsive documents, BNSF will only search for and provide information created on or after January 1, 2012 to December 15, 2014.

7. BNSF incorporates these General Objections into each Response below as if fully set forth therein.

OBJECTIONS AND RESPONSES TO KCSR DISCOVERY REQUESTS

KCSR Requests for Admission

KCSR Request for Admission No. 1: "Admit or Deny: UP has the right to grant KCSR operating rights to directly serve all shippers on the 50/50 line without BNSF's consent."

BNSF Response: BNSF objects to this Request on the grounds that it is overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks an admission related to the legal interpretation of contracts that do not relate to this proceeding, namely the February 12, 1998 Term Sheet Agreement between UP and BNSF and the September 1, 2000 Operating Agreement between UP and BNSF. Subject to these objections and without waiving the General Responses and General Objections set forth above, BNSF states that Section 4.1 of the Operating Agreement with respect to the 50/50 Line defines the Parties' rights to admit third parties' to the Line. To the extent not expressly admitted herein, BNSF denies the Request.

KCSR Request for Admission No. 2: "In the event of a future merger or control transaction between UP and any other Class I carrier besides KCSR or BNSF, UP has the right, as part of a settlement agreement between UP and any other party, to grant KCSR operating rights to directly serve all shippers on the 50/50 line without BNSF's consent."

BNSF Response: BNSF objects to this Request on the grounds that (1) it is overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks an admission related to the legal interpretation of contracts that do not relate to this proceeding, namely the February 12, 1998 Term Sheet Agreement between UP and BNSF and the September 1, 2000 Operating Agreement between UP and BNSF, and (2) it seeks an admission with respect to a vague and hypothetical scenario.

KCSR Request for Admission No. 3: "In the event of a future merger or control transaction between UP and any other Class I carrier besides KCSR or BNSF, [and] UP has in fact granted, without BNSF's consent, KCSR the right, as part of a settlement agreement between UP and any other party, to operate over the 50/50 line to directly serve all shippers on the 50/50 line that the STB could impose that settlement agreement as a condition to the merger and override any contractual provisions that might have prevented UP from granting KCSR such access."

BNSF Response: BNSF objects to this Request on the grounds that (1) it is overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks an admission related to the legal interpretation of statutory provisions and of contracts that do not relate to this proceeding, namely the February 12, 1998 Term Sheet Agreement between UP and BNSF and the September 1, 2000 Operating Agreement between UP and BNSF, and (2) it seeks an admission with respect to a vague and hypothetical scenario. Subject to these objections and without waiving the General Responses and General Objections set forth above, BNSF states that 49 U.S.C. §§ 11321(a) and 11324(c) set forth the STB's legal authority to impose a condition to a merger and to override contractual provisions as hypothesized in this Request.

KCSR Request for Admission No. 4: "In the event of a future merger or control transaction between UP and any other Class I carrier besides KCSR or BNSF, UP has in fact granted, without BNSF's consent, KCSR the right, as part of a settlement agreement between UP and a shipper or shipper trade organization, to operate over the 50/50 line to directly serve all shippers on the 50/50 line and the STB has imposed that settlement agreement as a condition to the merger that BNSF would be entitled to receive compensation from KCSR for KCSR's use of the 50/50 line and such compensation would be in addition to, not in lieu of, any compensation that UP may owe BNSF for UP's use of the 50/50 line."

BNSF Response: BNSF objects to this Request on the grounds that (1) it is overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks an admission related to the legal interpretation of statutory provisions and contracts that do not relate to this proceeding, namely the February 12, 1998 Term Sheet Agreement between UP and BNSF and the September 1, 2000 Operating Agreement between UP and BNSF, and (2) it seeks an admission with respect to a vague, hypothetical, and abstract scenario in that the STB lacks authority to order that KCSR could "directly serve all shippers on the 50/50 line." Subject to these objections and without waiving the General Responses and General Objections set forth above, BNSF states that the referenced agreements and 49 U.S.C. §§ 11102(a) govern BNSF's right to compensation in the hypothetical scenario described in this Request.

KCSR Interrogatories

KCSR Interrogatory No. 1: "In the event that KCSR and BNSF both have a cut of 30 or more cars ready to be placed into the CITGO yard, which is a potential operational issue that

could arise as noted by Roger Lambeth, Superintendent of the UP Livonia Service Unit, and BNSF's cars are placed first, explain why that does not interfere with KCSR's operations."

BNSF Response: BNSF objects to this Request on the grounds that it is unduly burdensome, overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents related to speculative operating characteristics. Subject to these objections and without waiving the General Responses and General Objections set forth above, BNSF states that BNSF service, which would closely resemble the "BNSF Citgo Crude Operating Plan" proposed by UP on December 18, 2012, would effectively replace UP service for BNSF's reciprocal switch cars, and BNSF plans to hold its cars in the Lacassine Yard until UP gives BNSF a window to operate, thus the operating scenario would not be materially different from the current situation. BNSF further states that the frequency, volume, timing of delivery and operating characteristics of trains BNSF will use to perform service to CITGO will vary, but BNSF expects that service to CITGO will closely resemble the operating plan outlined by Rollin D. Bredenberg in his Verified Statement, submitted on December 31, 2014 as an attachment to BNSF's Opening Statement in this proceeding. BNSF further directs UP to the Verified Statement of Rollin D. Bredenberg and to the documents BNSF is producing pursuant to UP's First Set of Discovery Requests to BNSF.

KCSR Interrogatory No. 2: "Is your request for direct terminal trackage rights over the Rosebluff Industrial Lead limited to serving only CITGO and no other shippers located on, or connecting to, the Rosebluff Industrial Lead? If no, list all other shippers BNSF would attempt to serve in the event its Application is granted and the STB's decision does not limit BNSF's access only to CITGO."

BNSF Response: Subject to and without waiving the General Responses and General Objections set forth above, BNSF states that at this time BNSF identifies CITGO as the only shipper that it will initially serve using the proposed terminal trackage rights. Upon approval of the proposed terminal trackage rights, BNSF anticipates that additional shippers will request BNSF service using the proposed terminal trackage rights. BNSF cannot speculate as to which other shippers it may seek to serve with these rights. BNSF further directs KCSR to the Verified Statement of Rollin D. Bredenberg, submitted on December 31, 2014 as an attachment to BNSF's Opening Statement in this proceeding, and to the documents BNSF is producing pursuant to UP's First Set of Discovery Requests to BNSF.

KCSR Interrogatory No. 3: "Is your request for direct terminal trackage rights over the Rosebluff Industrial Lead limited to serving CITGO via unit trains only? If yes, what is the minimum and maximum number of cars BNSF intends to utilize in such unit trains?"

BNSF Response: BNSF objects to this Request on the grounds that it is unduly burdensome, overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents related to speculative operating characteristics, and is vague in that the term "unit train" is used differently by different rail carriers. Subject to these objections and without waiving the General Responses and General Objections set forth above, BNSF states that its request for direct terminal trackage rights over the Rosebluff Industrial Lead is not limited to serving CITGO via unit trains only, and that BNSF intends to move all manifest traffic as well as trains carrying multiple cars up to the total number of cars that the CITGO facility may hold.

KCSR Interrogatory No. 4: "In the event BNSF's Application is denied, will BNSF continue to serve CITGO via switching provided by UP?"

BNSF Response: BNSF objects to this Request on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents related to speculative operating characteristics. Subject to that objection and without waiving the General Responses and General Objections set forth above, BNSF states that it will continue to serve CITGO consistent with BNSF's common carrier obligation through whatever service options are available to BNSF at the time CITGO requests service.

KCSR Document Requests

KCSR Document Request No. 1: "Provide copies of all Documents relating to BNSF's operational capabilities of providing existing or future rail service to CITGO's Lake Charles area facility."

BNSF Response: BNSF objects to this Request on the grounds that it is unduly burdensome and is overbroad. Subject to these objections and without waiving the General Responses and General Objections set forth above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 2: "Provide copies of all Documents involving efforts by BNSF to market, solicit, obtain, and transport any fuel, lubricant, petrochemical and other industrial product to/from CITGO's Lake Charles facility, including copies of any prior, existing, or future contracts, proposals, or tariffs."

BNSF Response: BNSF objects to this Request on the grounds that it is unduly burdensome, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents unrelated to the standards for terminal trackage rights under 49 U.S.C. §11102. Subject to these objections

and without waiving the General Responses and General Objections set forth above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 3: "Provide copies of all Documents relating to BNSF's $26 million investment in its new multi-track yard at Lacassine and all studies, presentations, or plans to serve Lake Charles area Shippers via the yard."

BNSF Response: BNSF objects to this Request on the grounds that it is unduly burdensome, overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents that do not relate to this proceeding, namely with respect to trackage that is different than the trackage at issue in this proceeding (the Rosebluff Industrial Lead). Subject to and without waiving these objections or the General Responses and General Objections above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 4: "Provide copies of all Documents relating to any plans, intentions, or discussions by BNSF to serve any other Lake Charles area Shipper in the event BNSF is able to directly operate over the Rosebluff Industrial Lead to serve CITGO's Lake Charles facility."

BNSF Response: BNSF objects to this Request on the grounds that it is unduly burdensome, is overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that the request seeks documents related to speculative shippers and service and to the extent that the request seeks documents that do not relate to this proceeding, namely with respect to trackage that is different than the trackage at issue in this proceeding (the Rosebluff Industrial Lead). Subject to and without

waiving these objections or the General Responses and General Objections above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 5: "Provide copies of all Documents relating to any rail operational impacts that may occur at any non-CITGO Lake Charles area Shipper facility if BNSF provides direct rail service to CITGO's Lake Charles facility."

BNSF Response: BNSF objects to this Request on the grounds that it is unduly burdensome, is overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that the request seeks documents related to speculative shippers and service and to the extent that the request seeks documents that do not relate to this proceeding, namely with respect to trackage that is different than the trackage at issue in this proceeding (the Rosebluff Industrial Lead). Subject to and without waiving these objections or the General Responses and General Objections above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 6: "Provide copies of all Documents that relate to BNSF's level and/or quality of service to any Lake Charles area Shipper other than CITGO where such service either currently involves BNSF service, or formerly involved BNSF service and whether such service was via reciprocal switch from UP and/or via BNSF's use of the 50/50 line."

BNSF Response: Subject to and without waiving the General Responses and General Objections above, BNSF objects to this Request on the grounds that it is unduly burdensome, is overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to

the discovery of admissible evidence in that the request seeks documents related to speculative shippers and service and to the extent that the request seeks documents that do not relate to this proceeding, namely with respect to trackage that is different than the trackage at issue in this proceeding (the Rosebluff Industrial Lead). Subject to and without waiving these objections or the General Responses and General Objections above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 7: "Provide copies of all Documents that led BNSF to "reasonably assume[]" (See BNSF's Opening Statement and Evidence at 8) that KCSR's objection relating to BNSF's direct access to CITGO or any other Lake Charles area Shipper had been resolved.

BNSF Response: Subject to and without waiving the General Responses and General Objections above, BNSF states that it will produce the Restated and Amended Settlement Agreement (RASA), the February 12, 1998 Term Sheet Agreement between UP and BNSF, and the September 1, 2000 Operating Agreement if requested by KCSR.

KCSR Document Request No. 8: "Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or quality of BNSF's prior or existing service to CITGO's Lake Charles area facility."

BNSF Response: Subject to and without waiving the General Responses and General Objections above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 9: "Provide copies of all Documents reflecting any communications between BNSF and UP relating to the adequacy, inadequacy, level of, and/or

quality of UP's switching services, including any requests by BNSF to UP requesting improvements in, or changes to, such switching service."

BNSF Response: BNSF objects to this Request on the grounds that it is unduly burdensome, is overbroad and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that the request seeks documents that do not relate to this proceeding, namely with respect to historic UP switching services that do not relate to BNSF's intended future use of terminal trackage rights on the Rosebluff Industrial Lead. Subject to and without waiving these objections or the General Responses and General Objections above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 10: "Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or market effectiveness of BNSF's rates vis-à-vis the rates provided by UP, KCSR, or any other transportation mode for any product transported to/from CITGO's Lake Charles facility."

BNSF Response: Without waiving the General Responses and General Objections above, BNSF objects to this Request on the grounds that it (1) is unduly burdensome, (2) is overbroad, (3) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents unrelated to the standards for terminal trackage rights under 49 U.S.C. §11102, and (4) seeks information that could cause BNSF to violate 49 U.S.C. § 11904, as explained above in General Objection No. 4.

KCSR Document Request No. 11: "Other than any information or statements included in BNSF's December 31, 2014 Opening Statement and Evidence, provide any other Documents supporting BNSF's statement that its direct "use of the trackage is practicable without

substantially interfering with the ability of KCSR or UP to handle their own business." (See BNSF's Opening Statement and Evidence at 10).

BNSF Response: Subject to and without waiving the General Responses and General Objections above, BNSF directs KCSR to the documents produced and answers provided by BNSF in response to UP's First Set of Discovery Requests to BNSF.

KCSR Document Request No. 12: "Provide copies of all Documents, including any studies, analyses, or reports, relating to any cost savings BNSF may incur by providing direct unit train service to CITGO's Lake Charles are facility instead of continuing to serve CITGO via a reciprocal switch provided by UP."

BNSF Response: Without waiving the General Responses and General Objections above, BNSF objects to this Request on the grounds that it (1) is unduly burdensome, (2) is overbroad, (3) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that it seeks documents unrelated to the standards for terminal trackage rights under 49 U.S.C. §11102, and (4) seeks information that could cause BNSF to violate 49 U.S.C. § 11904, as explained above in General Objection No. 4.

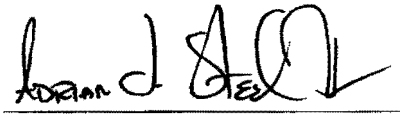
KCSR Document Request No. 13: "Provide copies of all Documents supporting BNSF's claim that it is BNSF's "sole option" to choose either direct service or reciprocal switching, on a case-by-case basis, irrespective of the agreements between UP and KCSR, or any operational issues that arise from vacillating between the two access provisions."

BNSF Response: Subject to and without waiving the General Responses and General Objections above, BNSF states that it will produce the Restated and Amended Settlement Agreement (RASA), the February 12, 1998 Term Sheet Agreement between UP and BNSF, and the September 1, 2000 Operating Agreement if requested by KCSR.

KCSR Document Request No. 14: "Provide copies of all Documents reflecting any communications between BNSF and CITGO relating to the capacity, lack of capacity, adequacy, inadequacy, and/or operational capabilities of CITGO's yard at its Lake Charles facility to load, unload, or store BNSF cars."

BNSF Response: BNSF objects to this Request on the grounds that it is burdensome and overbroad. Subject to and without waiving these objections or the General Responses and General Objections above, BNSF directs KCSR to the documents produced by BNSF in response to UP's First Set of Discovery Requests to BNSF.

Respectfully submitted,



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(202) 263-3237

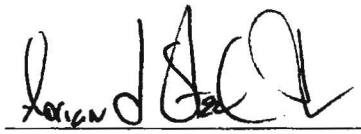
Roger P. Nober
Richard E. Weicher
David T. Rankin
Courtney Biery Estes
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2383

Counsel for BNSF Railway Company

Dated: January 28, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 2015, copies of the foregoing Responses and Objections of BNSF to KCSR's Second Set of Discovery Requests to BNSF have been served by e-mail on counsel for Union Pacific Railroad Company, KCSR and CITGO, and by first-class U.S. Mail on all parties as listed on the Board's website for the service list in Finance Docket No. 32760 (Sub-No. 46).



Adrian L. Steel, Jr.

Exhibit 9

Counsel's Exhibit 9

Redacted from Public Version

Exhibit 10

Counsel's Exhibit 10

Redacted from Public Version

Exhibit 11

Counsel's Exhibit 11

Redacted from Public Version

Exhibit 12

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
– TERMINAL TRACKAGE RIGHTS –
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

CITGO PETROLEUM CORPORATION'S RESPONSES TO KANSAS CITY SOUTHERN RAILWAY COMPANY'S FIRST SET OF DISCOVERY REQUESTS

Pursuant to Part 1114 of the Surface Transportation Board's ("STB" or "Board") Rules of Practice, 49 C.F.R. Part 1114, Intervenor CITGO Petroleum Corporation ("CITGO") hereby submits it objections and responses to the Kansas City Southern Railway Company's ("KCSR") First Set of Discovery Requests to CITGO. CITGO responses are based on information discovered by means of a reasonable search of files, documents, data and other information presently within the possession, custody or control of CITGO. CITGO specifically reserves the right to supplement its responses upon the discovery of additional responsive information.

GENERAL OBJECTIONS

The following General Objections apply to each of KCSR's First Set of Discovery Requests to CITGO, and are in addition to any objections set forth herein with respect to specific discovery requests.

A. CITGO objects to the Definitions and/or Instructions in KSCR's First Set of Discovery Requests to CITGO to the extent they individually or in the aggregate exceed or alter

the requirements of the applicable STB Rules of Practice, including without limitation, 49 C.F.R. Part 1114.

B. CITGO objects to the production of any information, document, data, or other material that is subject to a claim of privilege, including without limitation information or materials subject to the attorney client privilege, the work product immunity, prepared in anticipation of litigation, or relating to settlement discussions or negotiations.

C. CITGO objects to the production of confidential, non-public, proprietary or competitively sensitive documents, data or information. Subject to and without waiving this objection, CITGO will produce such confidential information, if otherwise responsive and subject to production, only under the terms of the Protective Order entered in this proceeding.

D. CITGO objects to the production of any information, documents, data, or other materials that are not relevant to the subject matter involved in this proceeding.

E. CITGO objects to KSCR's First Set of Discovery Requests to CITGO to the extent that any request would impose an undue burden on CITGO in relation to the relevance and probative value of the information, require the production of information that is publicly available, require production of information already produced to, or in the possession of, or equally available to, KCSR.

F. CITGO objects to KSCR's First Set of Discovery Requests to CITGO to the extent that any request is overbroad.

G. CITGO objects to KSCR's First Set of Discovery Requests to CITGO to the extent that any request is vague or ambiguous.

H. CITGO objects to the definition of "CITGO" as overbroad, vague, ambiguous to the extent it defines "CITGO" as any other person or entity other than CITGO Petroleum Corporation.

I. CITGO objects to Instruction No. 1 as overbroad and in excess of the requirements of the STB Rules of Practice to the extent it purports to require CITGO to provide information or produce documents that are not within the possession, custody or control of CITGO.

J. CITGO objects to Instruction No. 5 as overbroad and in excess of the requirements of the STB Rules of Practice to the extent it purports to require CITGO to provide information or produce documents that are not within the possession, custody or control of CITGO.

K. CITGO objects to Instruction No. 11 on the grounds of overbreadth and relevance to the extent it purports to require CITGO to search for or provide information or documents prior to the period September 2012 to the present.

L. CITGO objects to Instruction No. 15 as inconsistent with the requirements of the STB Rules of Practice to the extent it purports to require CITGO to provide objections and/or responses within a period of less than 15 days.

REQUEST FOR ADMISSION

1. Admit or Deny: There is a signed industry track agreement between CITGO, UP, and KCSR governing the loading, unloading, switching, and placement of rail cars in the CITGO Lake Charles Area facility yard.

RESPONSE: Admit.

2. Admit or Deny: UP and KCSR have proposed to CITGO a new industry track agreement that would increase the number of cars that could be delivered into the CITGO Lake Charles Area rail yard but that CITGO has not yet signed that agreement.

RESPONSE: Admit.

INTERROGATORIES

Interrogatory No. 1. Does CITGO have any track expansion plans for its Lake Charles Area facility, and if so, describe those plans, including any proposed budget for such expansion plans?

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that it has completed its track improvement and expansion plans, and has no current plans for further expansion of its rail infrastructure at the CITGO Lake Charles refinery based on current market and operational conditions.

Interrogatory No. 2. Does CITGO have any available funds for the current fiscal year to undertake any track expansion or track capacity improvements at its Lake Charles Area facility, and if so, provide a detailed breakdown of how those funds will be spent?

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that it has completed its track improvement and expansion plans, and has no plans for further expansion of its rail infrastructure at the CITGO Lake Charles refinery during the current fiscal year. CITGO believes that funds could be made available for further track improvements or expansions should the need arise.

Interrogatory No. 3. Describe in detail each transportation mode used by CITGO for the previous three years for each inbound or outbound fuel, lubricant, petrochemical or other industrial product that was shipped to/from CITGO's Lake Charles Area facility, including volumes for each product and the modal percentage for each mode for each product category.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Interrogatory No. 3 on the grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject

matter of the Terminal Trackage Rights Application filed by BNSF Railway Company ("BNSF") on December 31, 2014.

Interrogatory No. 4. Describe the current capacity of CITGO's rail tracks at CITGO's Lake Charles Area facility.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that the total operational track capacity at CITGO's Lake Charles facility available for use in rail crude oil shipments is 161 railcars.

Interrogatory No. 5. Describe how CITGO currently loads, unloads, switches, and stores railcars at its Lake Charles Area facility and identify on a map the specific building or tracks used by CITGO for the loading and unloading process and where CITGO stores unloaded railcars.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that railcars loaded with crude oil are brought into the CITGO Lake Charles crude unloading facility in a single train on Track 827, which runs west, then south, and then east around the unloading facility. CITGO has sufficient track to store 90 railcars loaded with crude oil. After the railcars are delivered by the railroad, CITGO stages the cars in blocks of 12 cars at the unloading rack located on Tracks 834 and 835. After unloading, empty rail cars are moved to empty car storage tracks, Tracks 828-832. Additional empty railcar storage is available on Tracks 833-836.

Interrogatory No. 6. If today BNSF were to deliver a 60 car loaded unit train to CITGO's Lake Charles Area Facility, describe the process by which CITGO would store, load, unload, and switch those railcars and whether such a process would require the use of any non-CITGO owned tracks or property.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO states that over the past nine months, UP has delivered more than 50 railcars at a time 11 times and more than 40 railcars at a time 35 times. The process for handling a 60-car unit train from BNSF would be no different from the process used when UP has delivered 40 or 50

manifest cars in the past. A 60-car BNSF unit train would be brought into the facility on Track 827 as one continuous train of loaded cars. CITGO would stage and unload cars in blocks of 12. After unloading, empty railcars would be moved to the empty storage locations on Tracks 828-832 at the East side of the facility. BNSF would then pull the empties from the storage track. The delivery, staging, unloading, storage and pick up of railcars for a BNSF 60-car unit train service would not require the use of tracks outside the CITGO facility.

DOCUMENT REQUESTS

Document Request No. 1. Provide copies of all Documents relating to BNSF's operational capabilities of providing existing or future rail service to CITGO's Lake Charles Area facility.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

Document Request No. 2. Provide copies of all Documents involving efforts by BNSF or UP to market or solicit CITGO's business for the transportation of any fuel, lubricant, petrochemical and other industrial product to/from CITGO's Lake Charles Area facility, including copies of any prior, existing, or future contracts, proposals, or tariffs.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Document Request No. 2 on the grounds that (1) it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014, and (2) it would impose an undue burden on CITGO in relation to the relevance and probative value of the information.

Document Request No. 3. Provide copies of all Documents relating to the existing capacity and/or track design, including any engineering drawings or schematics, of rail facilities at CITGO's Lake Charles Area facility, including any Documents relating to expansion, modification, or a change to the existing design or capacity.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

Document Request No. 4. Provide copies of all Documents relating to CITGO's use, lack of use, or proposed use of other non-rail transportation modes for the movement of fuels, lubricants, petrochemicals and other industrial products to/from CITGO's Lake Charles Area facility.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Document Request No. 4 on the grounds that (1) it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014, and (2) it would impose an undue burden on CITGO in relation to the relevance and probative value of the information. Subject to and without waiving its objections, CITGO will produce documents relating to a number of occasions in which CITGO was required to transload crude oil from railcars to barges as a result of rail service failures or limitations on rail service to the CITGO Lake Charles unloading facility.

Document Request No. 5. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or quality of KCSR's and UP's prior, future, or existing service to CITGO's Lake Charles Area facility.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

Document Request No. 6. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or quality of BNSF's prior or existing service to CITGO's Lake Charles Area facility.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO further specifically objects to Document Request No. 6 to the extent it relates to BNSF's

rail service at any location other that the CITGO Lake Charles refinery on the grounds that the Request is overbroad and seeks the production of documents that are neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014. Subject to and without waiving its objections, CITGO states that BNSF does not currently provide direct service to CITGO's Lake Charles refinery.

Document Request No. 7. Provide copies of all Documents reflecting any communications relating to the adequacy, inadequacy, level of, and/or quality of UP's switching services to/from the Lake Charles Area facility, including any requests by CITGO to UP requesting improvements in, or changes to, such switching service.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

Document Request No. 8. Provide copies of all Documents relating to the adequacy, inadequacy, level of, and/or market effectiveness of BNSF's rates vis-a-vis the rates provided by UP, KCSR, or any other transportation mode for the transportation of any product transported to/from CITGO's Lake Charles Area facility.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Document Request No. 8 on the grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014.

Document Request No. 9. Provide copies of all Documents, including any studies, analyses, or reports, relating to any cost savings CITGO may incur by BNSF providing direct unit train service to CITGO's Lake Charles Area facility instead of continuing to serve CITGO via a reciprocal switch provided by UP.

RESPONSE: In addition to CITGO's above-stated General Objections, CITGO further specifically objects to Document Request No. 9 on the grounds that it requests information that is

neither relevant nor likely to lead to the discovery of admissible evidence relating to the subject matter of the Terminal Trackage Rights Application filed by BNSF on December 31, 2014.

Document Request No. 10. Provide copies of all Documents reflecting any communications relating to the capacity, lack of capacity, adequacy, inadequacy, and/or operational capabilities of the rail and unloading facilities at CITGO's Lake Charles Area facility to load, unload, or store BNSF cars if BNSF were to deliver unit trains in the manner as set forth in BNSF's December 31, 2014 filing in this proceeding.

RESPONSE: Subject to and without waiving its above-stated General Objections, CITGO will produce non-privileged responsive documents within its possession, custody or control.

State of Louisiana.
County of Calcasieu.
SS:

VERIFICATION

Michael Barrett being duly sworn, deposes and says that he has read the foregoing Interrogatories, knows the facts asserted there are true and that the same are true as stated.

Executed on January 29, 2015

Michael Barrett

Subscribed and sworn to before me this 29 day of 2015.

Notary Public of Louisiana.
My Commission expires my death.

Charles N. Harger
Bar ID # 01069

Respectfully submitted,



Edward D. Greenberg
David K. Monroe
Svetlana Lyubchenko
GKG Law, P.C.
Canal Square
1054 Thirty-First Street, N.W.
Washington, D.C. 20007
Ph.: 202-342-5277

Charles N. Harper
Senior Corporate Counsel
Refining Ops-LCMC
CITGO Petroleum Corporation
P. O. Box 1562
Lake Charles, LA 70602
Ph.: 337-708-7422

Counsel for CITGO Petroleum Corporation

Dated: January 30, 2015

CERTIFICATE OF SERVICE

I hereby certify this 30th day of January, 2015, that I have caused the foregoing CITGO Petroleum Corporation's Responses to KCSR's First Discovery Requests to be served as indicated below on the following counsel of record for the parties:

Adrian L. Steel, Jr.
Robert M. Jenkins III
Adam C. Sloane
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006

Roger P. Nober
Richard E. Weicher
David T. Rankin
Courtney Biery Estes
BNSF Railway Company
250 Lou Menk Drive
Forth Worth, TX 76131

Counsel for BNSF Railway Company

Gayola L. Thal
Robert N. Bent
Louise A. Rinn
Elisa B. Davies
Jeremy M. Berman
Union Pacific Railroad Company
1400 Douglass Street
Omaha, Nebraska 68179

Michael L. Rosenthal
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Washington, D.C. 20037

W. James Wochner
David C. Reeves
The Kansas City Southern Railway Company
P.O. Box 219335
Kansas City, MO 64121

Counsel for Kansas City Southern Railway Company



David K. Monroe

Exhibit 13

Counsel's Exhibit 13

Redacted from Public Version

Exhibit 14

Counsel's Exhibit 14

Redacted from Public Version

Exhibit 15

Counsel's Exhibit 15



Chris Bigoness
Manager Merger Customer Access
Network Strategy

BNSF Railway Company
2500 Lou Menk Drive
AOB 3rd Floor
Fort Worth, TX 76131
Phone: 817-867-6697
Fax: 817-352-7154
Email: chris.bigoness@bnsf.com

May 24, 2012

Mr. Daniel P. Hartmann
Senior Director Interline
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Change of Service to 50/50 Customer – Citgo in West Lake Charles, LA

Dear Dan,

Pursuant to an Agreement between BNSF and UP dated September 1, 2000, Section 2.1(e) ("50/50 Line Agreement"), this letter shall serve as notice of BNSF's intent to change its method of service to Citgo at 4401 Highway 108, Lake Charles, LA 70601.

BNSF intends to change its method of service by instituting direct service to the Citgo facility. This change of service is planned to commence 180 days from the date of this letter (November 20, 2012) and will be in conformity with the terms of any applicable agreements between BNSF and UP. BNSF's local Operations personnel will contact UP's local Operations personnel to discuss any concerns.

In accordance with Section 2.1(e) of the 50/50 Line Agreement, you are required to notify BNSF in writing of your approval or disapproval of the manner in which the service will be provided within 22 days (June 15, 2012) of receipt of this letter.

Sincerely,

Christopher P. Bigoness
Manager Merger Customer Access
BNSF Railway

Exhibit 16

UNION PACIFIC RAILROAD
1400 Douglas Street Omaha, Nebraska 68179

June 21, 2012

Mr. Chris Bigoness
Manager Network Development
BNSF Railway
2500 Lou Menk Drive, 3rd Floor AOB-3
Fort Worth, TX 76131

Re: Change of Service to 50/50 Customer – Citgo, W. Lake Charles, LA

Dear Chris:

Union Pacific received your letter, dated May 24, 2012, regarding BNSF's request to change its method of service to Citgo at 4401 Highway 108, Lake Charles, LA 70601. BNSF requested a change in the service to direct service by BNSF to the Citgo facility. UP currently handles BNSF cars to and from Citgo via a switch from the Rosebluff Yard that requires a multiple of UP moves to get in and out of the complex.

You asked for UP's response by June 15. However, the unique circumstances at Lake Charles required UP to conduct an extensive internal review. As a result, we have identified several major issues relating to BNSF's request and we are unable to agree to BNSF's direct access at this time. The obstacles to approval of BNSF's proposal include the following:

- The track needed to access the Citgo complex runs through the Rosebluff Yard, a yard that is jointly owned and shared by UP and KCS. KCS manages the yard area and allocates to UP a twelve hour window to operate within the yard and coordinate 10 daily switch jobs needed to serve Citgo and an additional ten customers in the area. KCS has the other twelve hour window to serve its customers in the Lake Charles area. BNSF direct access to Citgo would impede and severely impair UP and KCS operations needed for other customers in Lake Charles. BNSF would need operational concurrence from KCS in order to operate through the yard and related track.
- BNSF's operating officers in the Lake Charles area previously indicated to UP that BNSF would use six-axle locomotives to serve the Citgo facility directly. However, the track structure coming off UP's Lafayette subdivision cannot support six-axle road locomotives. Significant track infrastructure improvements would need to be made to support road locomotives.
- The track layout within Citgo's facility is not designed to receive or handle unit train volumes. A loop track would need to be constructed within the facility to support unit train volumes without impairing other operations in and around the Citgo facility.
- The track configuration from the main line to the complex, the Rosebluff Industrial Lead, includes a near 90 degree turn. This configuration makes unit train operations challenging and time consuming, if not virtually impossible without impeding service to other Lake Charles area customers. Significant track infrastructure improvements would need to be made to address this issue.

These and other critical issues lead UP to conclude that BNSF direct access to Citgo's refinery, especially for unit trains using six axle road locomotives, is not feasible now and unlikely to be feasible by November 20 - - BNSF's projected start-up date. Unless and until major track infrastructure improvements are completed in this area and KCS provides its operational concurrence, UP cannot agree to BNSF's election to serve the Citgo facility directly. The addition of BNSF's direct operations in this area would have a major impact on UP's ability to operate efficiently and serve the myriad of customers in Lake Charles who get rail service via the same track structure that BNSF would have to use for its direct service.

We are willing to explore this further with you and others at BNSF. Please provide any additional information you might want UP to consider.

Sincerely,

/s/ D. Hartmann

Daniel Hartmann
Senior Director – Interline Marketing
Network and Industrial Development
402 544 3169

dphartma@up.com

CC: B. Maher, L. Wzorek, E. Davies, G. Sturm, O. Durkin, C. Sanford, M. White

Exhibit 17

Counsel's Exhibit 17

Chris Bigoness
Manager Merger Customer Access
Network Strategy

BNSF Railway Company
2500 Lou Menk Drive
AOB 3rd Floor
Fort Worth, TX 76131
Phone: 817-867-6697
Fax: 817-352-7154
Email: chris.bigoness@bnsf.com

November 2, 2012

Mr. Daniel P. Hartmann
Senior Director Interline
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Change of Service to 50/50 Customer – Citgo in West Lake Charles, LA

Dear Dan,

BNSF has received UP's reply of June 21, 2012 regarding BNSF's change of service notification for Citgo at 4401 Highway 108, Lake Charles, LA 70601.

In its reply, UP highlighted several issues related to unit train service and KCS approval that prevented it from agreeing to BNSF's plan for direct service to Citgo. For the past four months, BNSF has attempted to work with UP to address these alleged issues. With respect to KCS, please see the attached email dated July 30, 2012.

UP's concerns regarding unit train service are not relevant at this time as BNSF will serve Citgo directly using four axle locomotives to move traffic in manifest quantities. This service will begin on November 20, 2012 as stated in our original service notification. BNSF will coordinate operations with local UP and KCS operating personnel as needed.

Sincerely,

Christopher P. Bigoness
Manager Merger Customer Access
BNSF Railway

Estes, Courtney B

From: Bailiff, Sarah W
Sent: Monday, July 30, 2012 4:00 PM
To: George Sturm
Cc: Daniel P. Hartmann; Christopher C. Dale; Larry E. Wzorek; Elisa B. Davies; Bigoness, Chris; Estes, Courtney B; Rankin, David T; Stephens, William M
Subject: RE: BNSF Change of Service Request for Citgo - UP Response

George,

Thanks for looking into this per our conversation last week.

We were not planning to respond to UP's June 21 letter until we had a better understanding of UP's operational concerns and perhaps an opportunity to address them. The concerns we discussed last week were (1) the perceived inability to get much dialogue going on a priority basis with your local operating team; and (2) UP's initial stance on the KCS issues as referenced in Dan Hartmann's June 21 letter.

As for the status of responses, etc., here is some of the chronology, as I understand it:

July 3, 2012 - Dan Hartmann and Chris Bigoness discussed UP's June 21, 2012 letter, as Chris wanted clarification of some issues. I'm advised by Chris that Dan had suggested that rather than exchange a volley of emails and documents back and forth, that the operational issues might be better addressed by a designated operating contact.

July 9, 2012 - Dan Hartmann forwarded contact info for Mr. Chris Dale, MTO, and Chris Bigoness responded by email to Dan Hartmann on that same date, advising he had forwarded Chris's contact info on to Marc Stephens, BNSF's General Director based in Spring.

July 10, 2012 - Dan Hartmann forwarded to Chris Bigoness additional contact info for Mr. Charles Schlatre, Director Transportation Services (presumably Mr. Hale's superior).

July 24, 2012 – Marc Stephens spoke with Mr. Schlatre, who was unprepared to discuss UP's access issues at Lake Charles. Marc requested a meeting, and Mr. Schlatre was not going to be available for another couple of weeks.

Today – Marc Stephens sent another email to Mr. Schlatre requesting an on site meeting.

As for the KCS issues, as I mentioned last week, the question of whether BNSF has the right to access Citgo at Lake Charles, over objection of KCS was resolved a long time ago. KCS's petition to reject BNSF's direct access to Lake Charles, Westlake, and West Lake Charles (granted pursuant to the CMA Agreement, the original UP/SP Settlement Agreement and Decision 44) was denied by the STB back in 1996 in Decision No. 63, FD 32760. Certainly, some dialogue concerning integration of our direct service along with UP and KCS may be appropriate, but ultimately we do not believe KCS concurrence (whether that concurrence is phrased as "operational" or otherwise) is an appropriate condition on our direct access as Mr. Hartmann had suggested in his June 21 letter. Accordingly, while we will certainly have our local operating personnel make efforts to resolve any issues that should reasonably be addressed concerning joint operations into Citgo, we do not believe outright denial of direct access previously granted to BNSF would be appropriate.

Sarah
817-352-2354

From: George Sturm [mailto:GSTURM@up.com]
Sent: Monday, July 30, 2012 9:58 AM
To: Bailiff, Sarah W
Cc: Daniel P. Hartmann; Christopher C. Dale; Larry E. Wzorek; Elisa B. Davies
Subject: Fw: BNSF Change of Service Request for Citgo - UP Response

Sarah,
This is in regard to the discussion you and I had about Lake Charles. To my knowledge, UP has not received any written response from BNSF to Dan Hartmann's note of July 9 (below) or to his letter of June 21, 2012. Has BNSF contacted Mr. Dale? Please let me know. Thanks.

From: Daniel P. Hartmann/UPC
To: Chris.Bigoness@BNSF.com
Cc: Larry E. Wzorek/UPC@UP, George Sturm/UPC@UP, Owen J. Durkin/UPC@UP, Chris Sanford/UPC, Christopher C. Dale/UPC@UP
Date: 07/09/2012 10:45 AM
Subject: Citgo and GT Logistics UP Operating Contact

Chris,

As we discussed, please have your local operating personnel contact the following UP Manager of Terminal Operations in Lake Charles, LA regarding the following items:

1. BNSF's operating plan to hold unit trains on its line in the event GT Logistics, Port Arthur, TX is unable to receive the train.

2. BNSF's questions regarding the operating challenges involved with moving unit trains to Citgo, West Lake Charles, LA.

Mr. Christopher Dale
Manager Terminal Operations
Union Pacific Railroad
Ph: (402) 501-4552
Cell: (409) 273-6257

Please let me know if you have any questions.

Thank you,
Dan H.

Daniel P. Hartmann
Sr. Director Interline Marketing
Union Pacific Railroad | Marketing & Sales
Ph: 402.544.3169 | Fax: 402.501.2243

----- Forwarded by George Sturm/UPC on 07/30/2012 09:23 AM -----

From: Daniel P. Hartmann/UPC
To: Chris.Bigoness@BNSF.com
Cc: james.titsworth@bnsf.com, connie.wilson@bnsf.com, Brian G. Maher/UPC@UP, Larry E. Wzorek/UPC@UP, George Sturm/UPC@UP, Owen J. Durkin/UPC@UP, Chris Sanford/UPC, Mark White/UPC@UP

Date: 06/21/2012 11:06 AM
Subject: BNSF Change of Service Request for Citgo - UP Response

---

Chris,

Attached please find UP's response to your letter dated May 24, 2012 concerning BNSF direct access to Citgo, West Lake Charles, LA. Please contact me if you have any questions.

Best regards,

Dan H.

(See attached file: Citgo, Change in Service Request - 06212012 - Final.pdf)

Daniel P. Hartmann
Sr. Director Interline Marketing
Union Pacific Railroad | Marketing & Sales
Ph: 402.544.3169 | Fax: 402.501.2243

**

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**

Exhibit 18

UNION PACIFIC RAILROAD
1400 Douglas Street Omaha, Nebraska 68179

November 20, 2012

Mr. Chris Bigoness
Manager Network Development
BNSF Railway
2500 Lou Menk Drive, 3rd Floor AOB-3
Fort Worth, TX 76131

Re: Change of Service to 50/50 Joint Line Customer – Citgo, W. Lake Charles, LA

Dear Chris:

Union Pacific received your letter, dated November 2, 2012, regarding BNSF's request to change its method of service to Citgo at 4401 Highway 108, Lake Charles, LA 70601. In your letter, you stated that UP's concerns regarding direct unit train service to the facility are not relevant at this time as BNSF will serve Citgo directly using four axle locomotives to move traffic in manifest quantities.

Citgo's rail operations are governed by a tri-party Industry Track Agreement (ITA) between Citgo, UP and KCS. In order to maintain fluidity for all users, BNSF must abide by the same volume restrictions as UP, and agreed upon by Citgo in the ITA. Please refer to the Capacity Section of the ITA below for a description of those restrictions (a complete copy of the ITA is attached for your further reference). Please note that the parties are currently in negotiations concerning increasing the maximum daily restriction from 24 cars per day to 30 cars per day.

> **With the current track structure supporting this location, the facility at which the Track is located (the "Facility") can accommodate maximum volumes of 24 railcars per day and 480 railcars per month. If at any time Industry projects or reasonably should anticipate that it will exceed these volumes, Industry shall immediately so notify Railroad. Prior to exceeding those volumes, Industry shall provide, at its cost, such rail infrastructure improvements and/or improved operating procedures to support the increased volumes as may be required by Railroad in its sole discretion. Such required improvements may relate to Industry or Railroad owned trackage. Industry shall submit all plans for infrastructure improvements to Railroad in advance for approval.**

Please notify UP in advance if BNSF wishes to serve Citgo with unit train service at some future point so UP and BNSF can conduct detailed discussions regarding mitigating the operational impacts that unit train operations will create.

As stated in your letter, your commitment to coordinating operations with local UP and KCS operating personnel is appreciated. We will be monitoring operations in the area to ensure service does not deteriorate for other customers and will work with BNSF if any concerns arise.

Sincerely,

Daniel Hartmann
Senior Director – Interline Marketing
Network and Industrial Development
402 544 3169

dphartma@up.com

CC: B. Maher, L. Wzorek, E. Davies, D. Hughes, G. Sturm, O. Durkin, C. Sanford, M. White

Exhibit 19

From: CN=Roger D. Lambeth/O=UPC
To: brent.thomas@bnsf.com;William.Stephens@bnsf.com
Sent: 12/18/2012 03:53:01 PM
Cc: CN=Richard M. Castagna/O=UPC;CN=Cameron A. Scott/O=UPC@UP;CN=Owen J. Durkin/O=UPC;CN=George Sturm/O=UPC@UP;Steven E. Truitt <STruitt@KCSouthern.com>;CN=Christopher C. Dale/O=UPC;CN=Jamal W. Chappell/O=UPC;"Charles Schlatre" <cnschlatrejr@up.com>;CN=Ryan R. Larsen/O=UPC@UP;CN=Greg D. Workman/O=UPC;CN=Elisa B. Davies/O=UPC@UP;CN=Larry E. Wzorek/O=UPC@UP
Subject: BNSF Citgo Crude Operating Plan

Currently, there are 47 loads spotted in the facility at Citgo (30 KCS and 17 UP). Thirty of these are expected to be released and pulled by KCS - and respotted with 30 loads (KCS) on Wednesday am.

BN will begin delivering to Citgo on Friday (12/21) morning (after KCS pulls their Wednesday spot) - - 30 cars - - between 5am and 7am. They will then be able to come every other day to spot and pull - - based on Citgo having the cars unloaded and based on capacity. UP will deliver cars received as they arrive and place within the facility or one of the storage tracks. In the event KCS and BN both have a 30 car cut for Citgo, they will need to work out the logistics of delivery.

UP, BN, and KCS are limited to a max delivery of 30 cars. No six axle locomotives until the curve from #825 to #826 can be re-engineered.

UP be willing to meet with KCS and BN to facilitate any other operating issues or plans.

Roger Lambeth
UPRR
Supt. Livonia SU
office 225-338-2929
cell 713-398-0872

Exhibit 20

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

KANSAS CITY SOUTHERN RAILWAY CO.	CIVIL ACTION NO. 13-00098
VERSUS	JUDGE ELIZABETH ERNY FOOTE
BNSF RAILWAY CO.	MAGISTRATE JUDGE HORNSBY

MEMORANDUM RULING

In this action for declaratory judgment, Plaintiff Kansas City Southern Railway Co. ("KCSR") and Defendant BNSF Railway Co. ("BNSF") dispute whether BNSF has the right to opearate its locomotives on certain tracks near Lake Charles, Louisiana without the permission of KCSR. BNSF has filed a motion to dismiss on the issue of whether this Court has subject matter jurisdiction to adjudicate the suit. [Record Document 8]. In response, KCSR argues that this Court has jurisdiction under 28 U.S.C. § 1332 because the parties are diverse, the amount in controversy requirement is satisfied, and the complaint asserts a contractual, i.e., state law, basis for its alleged right to deny BNSF locomotives access to the tracks. BNSF contends, however, that under 49 U.S.C. § 11321(a) and the precedent set by several United States Courts of Appeal, the Surface Transportation Board ("STB") has exclusive jurisdiction over this dispute because it alone has the power to determine whether a prior STB order allegedly granting BNSF access rights to the same tracks abrogates KCSR's contractual rights. For the following reasons, the Court finds that it lacks subject matter jurisdiction and **GRANTS** BNSF's Motion To Dismiss.

I. Factual and Procedural Background

The controversy in this case stems from two competing sources of trackage rights to the same Lake Charles area railroad tracks:[1] (1) a series of joint use agreements between KCSR and Texas & New Orleans Railroad ("T&NO"—today, Union Pacific) granting KCSR the contractual right to deny non-Union Pacific trains access to the tracks; and (2) a series of orders from the STB that appear to grant BNSF the right to access these tracks as a condition of the 1996 merger between Southern Pacific ("SP") and Union Pacific ("UP").

From 1934 to 1996, KCSR and T&NO, which became SP in 1961, separately or jointly had use of most of the railroad tracks that passed through the Lake Charles terminals. [Record Document 4, p. 4]. Four joint use agreements executed between 1934 and 1955 govern their rights over these tracks. [Record Document 4, pp. 5-6]. These agreements prevent either party from granting access to the tracks to third parties without the express consent of the other party. [Record Document 4, p. 5]. At some point before 1996, UP also gained indirect access to the Lake Charles area through so-called "reciprocal interchange agreements" wherein KCSR or SP would use their locomotives to haul UP cars to UP locomotives waiting beyond the three Lake Charles terminals. [Record Document 4, p. 5].

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[1]There are three terminals in the Lake Charles area: (1) West Lake Charles, (2) Westlake, and (3) Lake Charles.

In 1995, UP and SP brought a proposal to merge before the STB (successor to the Interstate Commerce Commission). The STB not only possesses exclusive authority over the approval and supervision of railroad mergers under 49 U.S.C. § 11321(a), but also has the power to impose conditions on the approval of mergers when necessary to protect certain statutorily enumerated interests, such as maintaining competitive railing service. 49 U.S.C. § 11324. Fearing that the merger between UP and SP would create an uncompetitive market in the Lake Charles area, the STB proposed granting limited trackage rights to BNSF as a condition of approval of the merger. Throughout the public comment period, KCSR objected to the grant of new rights on the ground that the STB's concerns regarding competitiveness near Lake Charles were unfounded. Nonetheless, the STB's final approval of the merger, memorialized in STB Decision No. 44, appeared to allow BNSF even greater access to the Lake Charles area than the STB had initially proposed. Decision No. 44 grants BNSF the following rights:

> (1) to handle traffic of shippers open to all of UP, SP and KCSR at Lake Charles and Westlake, LA; (2) to handle traffic of shippers open to SP and KCSR at West Lake Charles, LA; and (3) to interchange with KCSR, at Shreveport and Texarkana, traffic that was originated by KCSR at or that will be delivered by KCSR to shippers at Lake Charles, Westlake, or West Lake Charles (collectively, the Lake Charles area).

Union Pac. Corp. et al—Control & Merger—S. Pac. Rail Corp. et al, S.T.B. Finance Docket No. 32760, 1996 WL 691928, at *1 (1996) (footnotes omitted).

KCSR petitioned the STB to review Decision No. 44, arguing that the STB did not possess sufficient statutory authority to override the consent provisions found in the four KCSR/T&NO joint use agreements. [Record Document 4, p. 8]. In response to KCSR's

petition, the STB issued Decision No. 63, in which it declined to squarely address the issues raised by KCSR, opting instead to provide guidance on the steps the parties should take to resolve their dispute:

> We need not resolve these matters at this time. As to the terms of the four KCSR-T & NO joint facility agreements, if the parties (KCSR, BNSF, and UP/SP) are not able to come to an agreement, any differences in interpretation of the four joint facility agreements may be submitted to arbitration under the terms of those agreements. If the parties (KCSR, BNSF, and UP/SP) are unable to agree and the arbitral interpretation produces a situation where BNSF access to the Lake Charles area is blocked, BNSF may return to the Board to seek approval of a terminal trackage rights application under new 49 U.S.C. 11102(a); and, if and to the extent that application is ultimately denied, an override of the terms of the four joint facility agreements might be necessary under old 49 U.S.C. 11341(a) [now 49 U.S.C. § 11321(a)].

Union Pacific, WL 691928 at *6. Neither KCSR nor BNSF took further legal action on this issue before the filing of this suit.

After UP and SP successfully merged in 1996 (under the name Union Pacific), a new status quo emerged in the Lake Charles area. From 1996 to 2012, while UP and KCSR were the only freight carriers providing direct locomotive service in the area, BNSF enjoyed indirect access to Lake Charles shippers via reciprocal interchanges. [Record Document 4, pp. 9-10]. Then, in December of 2012, BNSF declared that it intended to exercise the rights it felt were due to it under Decisions 44 and 63, and it instructed its engineers to move BNSF locomotives directly through Lake Charles terminals to service a BNSF client (CITGO). [Record Document 4, pp. 11-12]. UP and KCSR responded separately, taking issue with BNSF's interpretation of Decision No. 63 and voicing additional safety concerns over BNSF's immediate plans to send locomotives over KCSR/UP tracks. [Record Document 4, pp. 13-

14]. Without conceding the issue of the proper interpretation of the STB decisions, BNSF abandoned its immediate plans to directly connect with CITGO. [Record Document 4, p. 13].

KCSR initiated this lawsuit in response to BNSF's 2012 actions. [Record Document 1, pp. 13-15]. In its amended complaint, KCSR requests that this Court issue a declaratory judgment that "BNSF lacks any lawful right at this time to operate trains over any tracks governed by the joint use agreements, including tracks solely owned by KCSR, without KCSR's express consent." [Record Document 4, p. 16]. Subsequent to BNSF's answer but before it filed this motion, BNSF also filed a terminal trackage rights application with the STB under § 11102(a) seeking direct access to the Lake Charles area terminals.[2] [Record Document 9, p. 121]. BNSF's Motion To Dismiss urges dismissal of this suit for want of subject matter jurisdiction; in the event the Court believes it possesses jurisdiction, BNSF moves the Court to either stay this suit while the STB hears the terminal trackage rights application or refer this suit to the STB. [Record Document 9, p. 6].

II. The Law

A Federal Rule of Civil Procedure 12(b)(1) motion should be granted when it appears certain that the plaintiff cannot prove a plausible set of facts that establish subject-matter jurisdiction. See Lane v. Halliburton, 529 F.3d 548, 557 (5th Cir. 2008). The party seeking to invoke jurisdiction bears the burden of demonstrating its existence. See Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001). Indeed, "there is a presumption against

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[2]The application seeks relief under 49 U.S.C. § 11102(a) and purports to follow the guidelines laid out in Decision No. 63.

subject matter jurisdiction that must be rebutted by the party bringing an action to federal court." Coury v. Prot, 85 F.3d 244, 248 (5th Cir. 1996) (citation omitted). The Declaratory Judgment Act does not confer jurisdiction; accordingly, KCSR must show an independent basis for this Court's jurisdiction. See Lawson v. Callahan, 111 F.3d 403, 405 (5th Cir. 1997). BNSF cites no extrinsic evidence in support of its Rule 12(b)(1) motion; this case thus presents a "facial attack" on the Court's jurisdiction. See Paterson v. Weinberger, 644 F.2d 521, 523 (5th Cir. 1981). For the purposes of this motion, then, the Court must presume that the allegations contained in the complaint are true. See id.; see also In re Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir. 2007).

Under the Interstate Commerce Commission Termination Act ("ICCTA"), the STB has exclusive authority to approve mergers and acquisitions of rail carriers. 49 U.S.C. § 11321(a).[3] The STB's approval of a merger is contingent upon its finding that the merger serves the public interest. 49 U.S.C. § 11324(c). Before approving a merger, the STB must also consider "whether the proposed merger would have an adverse effect on competition among rail carriers in the affected region or in the national rail system." 49 U.S.C. § 11324(b). To alleviate any anti-competitive effects, the STB may "impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities." 49 U.S.C. § 11324(c).

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[3]The ICCTA left the ICC's historic exclusive power over railroad mergers and acquisitions intact. See Norfolk and W. Ry. Co. v. Bhd. of R.R. Signalmen, 164 F.3d 847, 853 (4th Cir. 1998). Thus, for the purposes of this analysis, the ICC and the STB are interchangeable agencies. See also Franks Inv. Co. v. Union Pac. R.R. Co., 534 F.3d 443, 445 (5th Cir. 2008)(rev'd on other grounds).

The ICCTA also exempts a carrier participating in an approved merger "from the antitrust laws and from all other law . . . as necessary to let that rail carrier . . . carry out the transaction . . . ." 49 U.S.C. § 11321(a). The exemption extends to both carriers' statutory and common-law obligations. Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n, 499 U.S. 117, 127-130, 111 S. Ct. 1156 (1991)(citations omitted). Several appellate courts have held that in the event of a dispute over whether a § 11321(a) STB order overrides conflicting statutory law, the STB has exclusive jurisdiction to interpret the prior order and determine its proper scope. Ry. Labor Exec.'s Ass'n v. S. Pac. Transp. Co., 7 F.3d 903, 906 (9th Cir. 1993); Union R.R. Co. v. United Steelworkers of Am., 242 F.3d 458, 464, 468 (3d Cir. 2001); Norfolk and W. Ry. Co. v. Bhd. of R.R. Signalmen, 164 F.3d 847, 854-55 (4th Cir. 1998).[4]

III. Analysis

BNSF argues that KCSR's characterization of this suit as a mere diversity suit is impossibly narrow. Relying on Labor Executives, Steelworkers, and Signalmen, BNSF argues that because any meaningful resolution of the trackage rights at issue in this case requires an interpretation of Decision No. 63 and because the STB has exclusive jurisdiction to determine the proper scope of its own orders, this Court lacks subject matter

[4] See also S. Pac. Transp. Co. v. Young, 890 F.2d 777, 778-81 (5th Cir. 1989)(holding that ICC, not the district court, had jurisdiction to determine the res judicata effects of arbitration imposed by ICC as a condition of its approval of SP acquiring tracks.)

jurisdiction.[5] In response, KCSR (1) distinguishes the Labor Executives line of cases from the instant suit and (2) argues that it is well-settled that the STB does not entertain disputes between rail carriers over the meaning of joint use agreements.

Taking KCSR's first argument first, KCSR offers two reasons to distinguish the Labor Executives line of cases. First, KCSR argues that these cases only address conflicts between the ICCTA and the Railway Labor Act ("RLA"), not the ICCTA and state law. This distinction is immaterial. In Dispatchers, the Supreme Court did hold that the STB could exempt carriers from requirements imposed by the RLA. Dispatchers, 499 U.S. at 129-32, 111 S. Ct. at 1164-65. The Supreme Court made clear, however, that the STB's power to override the RLA is an application of the general rule that "§ 11341 [now § 11321] means what it says: A carrier is exempt from all law as necessary to carry out an ICC-approved transaction." 499 U.S. at 129, 111 S. Ct. at 1164 (emphasis in original).[6] The Supreme Court also noted that Congress endowed the STB with the broad powers necessary to carry out its statutory duty to regulate carrier mergers. Id. at 119-20, 111 S. Ct. at 1158-59 (the STB has "exclusive authority to examine, condition, and approve proposed mergers and consolidations of transportation carriers."). The Supreme Court noted that its holding comports with Congressional intent to "promote economy and efficiency in interstate

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[5] BNSF argues in the alternative that the STB has primary jurisdiction over this suit. [Record Document 9, pp. 22-25]. As the Court rules in BNSF's favor on its principle argument, it is unnecessary to address the primary jurisdiction issue.

[6] See also id. at 128, 111 S. Ct. at 1163 (section 11321(a) "is clear, broad, and unqualified,"), id. at 129, 111 S. Ct. at 1163 ("the phrase 'all other law' indicates no limitation.").

transportation by the removal of the burdens of excessive expenditure" because "[t]he resolution process for major disputes under the RLA would so delay the proposed transfer of operations that any efficiencies the carriers sought would be defeated." Id. at 132-33, 111 S. Ct. at 1165-66 (internal marks omitted).

The Labor Executives line of cases relied on the Supreme Court's broad understanding of the STB's authority to hold that the STB has exclusive jurisdiction to clarify the scope of its own orders when those orders concern the immunizing power of § 11321(a):

> We are persuaded that because the ICC had exclusive authority to approve the Rio Grande merger and thereby exempt the Railroads from any procedural or substantive law which might otherwise impede that merger, it should have exclusive authority to clarify the scope of its own approval and the corresponding breadth of the section 11341(a) [now 11321(a)] exemption. Such orders would, of course, be subject to appellate review in the circuit court of appeals. . . .

Labor Executives, 7 F.3d at 906 (emphasis added); see also Signalmen, 164 F.3d at 854; Steelworkers, 242 F.3d at 466.

This same reasoning—that it is necessary to recognize the STB's exclusive jurisdiction to determine the scope of its own orders in order to honor Congress' intent that the STB "promote economy and efficiency in interstate transportation" through the use of its immunizing powers—makes as much sense with respect to obligations imposed by state law as it does with respect to obligations imposed by the RLA. Dispatchers, 499 U.S. at 132-33, 111 S. Ct. at 1165-66. Federal district court adjudication of whether an STB order supercedes private contracts, like federal district court adjudication of whether a STB order

overrides the RLA, creates a risk of inconsistent rulings, delay, and ultimately the frustration of the STB's efforts to carry out its Congressional directive.[7] The Court therefore finds the Labor Executives line of cases persuasive.

In its second attempt to distinguish this suit from Labor Executives, KCSR notes that unlike the plaintiffs in Labor Executives, United Steelworkers, and Signalmen, all of whom petitioned the district court to interpret a § 11321(a) STB order in their favor, KCSR asks only that this Court declare that it has certain contractual rights over the tracks in the Lake Charles area. [Record Document 11, p. 17]. The language of KCSR's own amended complaint belies this contention:

> WHEREFORE, KCSR respectfully requests that the Court:
>
> > (a) Enter a declaratory judgment in its favor and against BNSF declaring that BNSF has no lawful right to operate over KCSR track or track subject to the joint agreement referenced hereinabove without the express consent of KCSR . . .

[Record Document 4, p. 16] (emphasis added).[8] In order to declare that BNSF has "no lawful right" over these tracks, this Court would have to interpret the scope of STB Decisions No. 44 and 63 to determine what rights, if any, those decisions granted to BNSF.

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[7] See Signalmen, 164 F.3d at 854-55; Cf. Harris v. Union Pac. R.R., 141 F.3d 740, 743 (7th Cir. 1998)(holding that a district court had jurisdiction to entertain a civil rights suit attacking a post-merger labor-management agreement because the agreement was the product of the voluntary consent of the parties, not a STB order conditioning the merger, and because "[o]nly laws that would block the transaction give way [to § 11341(a) superceding power]. None of the civil rights laws puts any obstacle in the way of Union Pacific's acquisition of the Chicago & North Western.").

[8] KCSR's original complaint contains substantially the same language. [Record Document 1, pp. 14-15].

As discussed above, such an analysis would encroach on the STB's "exclusive authority to examine, condition, and approve proposed mergers . . . ." Dispatchers, 499 U.S. at 119-20, 111 S. Ct. at 1159.[9]

Turning to KCSR's second argument—that established STB and appellate precedent provides that the courts, not the STB, are the proper forum to adjudicate a contractual dispute between carriers—each case KCSR cites in support of this argument suffers from one of two defects: either the case does not involve a § 11321(a) STB order or, if it does, the STB order does not conflict with the disputed contract.[10] For instance, in PCS Phosphate Co., Inc. v. Norfolk S. Co., 559 F.3d 212, 220 (4th Cir. 2009), the Fourth Circuit faced the

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[9] Part (c) of plaintiff's complaint requests that this Court "[o]rder such other further relief as the Court deems just and proper under the circumstances." [Record Document 4, p. 16]. Though this language could conceivably be read to request only a judgment interpreting the four joint use agreements, such a reading raises justiciability concerns because BNSF does not dispute the meaning of the four joint use agreements. See Tilley Lamp Co. v. Thacker, 454 F.2d 805, 807-08 (5th Cir. 1972) ("The Declaratory Judgment Act authorizes relief only in cases of actual controversy . . . under Article III, Section 2 of the United States Constitution.") (internal marks omitted); Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 240–41, 57 S. Ct. 461, 464 (1937) ("The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy . . . .") (emphasis added).

[10] KCSR relies on the following cases: PCS Phosphate Co., Inc. v. Norfolk S. Co., 559 F.3d 212, 220 (4th Cir. 2009) ("The STB itself has emphasized that courts, not the STB, are the proper forum for contract disputes, even when those contracts cover subjects that seem to fit within the definition of 'rail transportation.'"); Twp. of Woodbridge, NJ, et al. v. Consol. Rail Co., Docket No. 42053, 2000 WL 1771044, at *3-4 (2000) ("It would be inappropriate for us to rule on the merits of the contract disputes in this case. Such matters are best addressed by the courts."); Canadian Pac. Ry. Co., et al.–Control–Dakota, Minn. & E. R.R. Co., et al., Docket No. FD 35081, 2009 WL 1245964, at *5 (2009) ("The Board's policy is to refrain from interpreting or enforcing private contracts, leaving such issues to be resolved by the parties to the contract or in court.").

issue of whether the STB had exclusive jurisdiction to adjudicate a dispute between a carrier and a mine owner over the enforcement of a private easement covenant between the parties. Neither party was involved in a rail merger. PCS Phosphate, 559 F.3d at 215-16. In Canadian Pac. Ry. Co., et al.–Control–Dakota, Minn. & E. R.R. Co., et al., Docket No. FD 35081, 2009 WL 1245964 (2009), the STB determined that it did not have exclusive jurisdiction to resolve a dispute over the meaning of two joint use agreements because "the Board's statements in [its merger order] were neither intended to interpret the terms of the two agreements at issue, nor to impart additional terms into the agreement." Canadian Pac., 2009 WL 1245964 at *5. In Township of Woodbridge, NJ, et al. v. Consolidated Rail Co., the STB explicitly stated that its authority to override existing law was not implicated because the agreements at issue were not executed prior to its approval of the rail acquisition. Woodbridge, Docket No. 42053, 2000 WL 1771044, at *3-4 (2000). Dispatchers, Labor Executives, Signalmen, and Steelworkers, involve conflicts between STB orders and existing laws. None of the cases cited by KCSR involves this type of conflict. Accordingly, the Court does not find them analogous to the present situation.

IV. Conclusion

In order to the grant the relief sought by KCSR, the Court would have to encroach upon the STB's exclusive jurisdiction to clarify the scope of Decisions No. 44 and 63. The Court therefore **GRANTS** BNSF's Motion To Dismiss [Record Document 8].

THUS DONE AND SIGNED this 9th day of September, 2013.

ELIZABETH ERNY FOOTE
UNITED STATES DISTRICT JUDGE

Exhibit 21

U. P. R. R. Co.
Agreement
Audit No. 186774

HAULAGE AGREEMENT
BETWEEN
LAKE CHARLES, LOUISIANA AND HARBOR, LOUISIANA;
LAKE CHARLES, LOUISIANA, AND
WESTLAKE, LOUISIANA, ROSE BLUFF, LOUISIANA
AND WEST LAKE CHARLES, LOUISIANA

THIS HAULAGE AGREEMENT, made and entered into this 1st day of June, 1996, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation ("MPRR"), SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SPT") (MPRR and SPT are hereinafter referred to collectively as "Owner"), and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("BN"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Santa Fe") (BN and Santa Fe are hereinafter referred to collectively as "User").

WITNESSETH:

WHEREAS, Owner owns lines of railroad which extend from Lake Charles, Louisiana, SPT's Milepost 216.6 to Harbor, Louisiana, a spur 4.1 miles from Mallard Jct, SPT's Milepost 215.3, and between Lake Charles and West Lake, Louisiana, Rose Bluff, Louisiana and West Lake Charles, Louisiana, a distance of approximately 7 miles between Lake Charles Yard and the yard at Rose Bluff ("Haulage Corridor"), as illustrated by dashed line on the attached print dated June 1, 1996, marked Exhibit "A", attached hereto and made a part hereof:

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended (the "Settlement Agreement"), between Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), MPRR (UPC, UPRR and MPRR are hereinafter referred to collectively as "UP"), Southern Pacific Rail Corporation ("SPC"), SPT, St. Louis Southwestern Railway Company ("SSW"), The Denver and Rio Grande Western Railroad Company ("DRGW"), and SPCSL Corp. ("SPCSL") (SPC, SPT, SSW, DRGW, and SPCSL are hereinafter collectively referred to as "SP") (UP and SP are hereinafter referred to collectively as "UP/SP"), on the one hand, and BN and Santa Fe, on the other hand, UP/SP agreed to grant certain rights to User, including haulage rights over the Haulage Corridor; and

WHEREAS, User desires to use the Haulage Corridor for the movement of rail cars (loaded or empty), in User's account, in Owner's trains in each direction over the Haulage Corridor; and

WHEREAS, Owner is agreeable to such an arrangement under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein expressed, the parties hereto covenant and agree as follows:

Section 1. Haulage Rights.

(A) User hereby hires and confirms Owner as its agent to provide haulage services for loaded and empty rail cars on the Haulage Corridor ("Haulage Services") and Owner agrees to perform such Haulage Services solely as User's agent, and in each case pursuant to the following terms and conditions:

i. Haulage Services for rail cars shall be provided on a per rail car basis only.

ii. User shall have the right to handle traffic of shippers open to all of UP, SP and The Kansas City Southern Railway Company ("KCS") at Lake Charles and West Lake, and SP and KCS only at West Lake Charles and Rose Bluff, (a) to, from and via New Orleans, Louisiana, and (b) to and from points in Mexico, with routings via Eagle Pass, Laredo (through interchange with The Texas Mexican Railway Company) or Brownsville, Texas. Shippers to which User shall have the right to handle traffic shall be those published, and amendments thereto, in the respective tariffs of SP, KCS, and UP.

iii. Haulage Services shall apply to all commodities.

iv. User agrees that where blocking is requested by User, it will enter into a separate written agreement with Owner detailing, among other things, the number of blocks required and Owner's cost to provide such blocking.

v. It is expressly understood by the parties that any Haulage Services provided by Owner shall, at Owner's option, be on a train load basis or using Owner's existing train service and capacity, in both cases using Owner's locomotives and crews.

vi. For such Haulage Services, User shall be permitted to quote rates in contracts, quotations, or appropriate publications.

vii. User shall have the right to (a) access all existing industries which are served by UP and SP and no other railroad directly, by reciprocal switching, joint facility or other arrangements, (b) serve any new shipper facility on any SP-owned line over which User receives trackage rights pursuant to the Settlement Agreement, and (c) subject to the geographic limitations set forth below, serve new shipper facilities, future transloading facilities and to establish and serve intermodal and auto facilities at points listed on Exhibit A to the Settlement Agreement. The geographic limitations applicable to subparagraph (c) above shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer 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 they shall be presumed to establish these geographic limitations.

(B) While performing such Haulage Services, Owner shall not be a connecting or intermediate carrier and shall not be entitled to any division of tariff, contract, or switching rates or like charges other than as herein provided. Rail cars being so moved shall remain in User's car hire account as applicable.

(C) The management, operation, dispatching and maintenance of the Haulage Corridor shall, at all times, be under the exclusive direction and control of Owner, and the movement of rail cars over and along the Haulage Corridor shall at all times be subject to the direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time-to-time institute, but in the management, operation, dispatching and maintenance of the Haulage Corridor, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of rail cars over the Haulage Corridor shall be made on a nondiscriminatory basis, without reference to ownership, and customary priorities shall be accorded differing classes of traffic (i.e. bulk commodities, manifest, intermodal, etc.) irrespective of whether the traffic is that of Owner or User. The foregoing shall include, without limitation, decisions as to terminal departure times, destination terminal receiving times, enroute delays, track maintenance and the scheduling of maintenance windows. User may monitor dispatching operations over the Haulage Corridor. Owner shall from time-to-time notify User of operating rules and any changes thereto.

(D) During the normal course of business it is expected that some rail cars moved under this Haulage Agreement shall be diverted by User. If, in the sole opinion of the Owner, diversion of rail cars by User becomes an unreasonable administrative burden on Owner, Owner shall so notify User and present to User an estimate of Owner's actual cost to handle diversions for User. If such amount is not accepted by User, User and Owner shall then negotiate in good faith to determine an appropriate charge to be paid by User to Owner to cover Owner's reasonable cost for each rail car so diverted after Owner's

notification to User as set forth above. If after ninety (90) days Owner and User have been unable to reach agreement that a diversion cost is appropriate or as to what the cost of each diversion shall be then the matter shall be submitted to binding arbitration under the terms and conditions contained in Section 13 of this Haulage Agreement.

Section 2. **Pick Up and Delivery Tracks.** The location of tracks designated for pickup and for delivery of the rail cars of User at Lake Charles in connection with the provision of Haulage Services shall be as mutually agreed upon by the authorized representatives of the parties from time-to-time.

Section 3. **Receipt and Delivery of Rail Cars.** Rail cars shall be deemed received from User (i) when Owner couples into such rail cars, or (ii) in the case of run through operations, when, Owner's crews board User's train for the commencement of Haulage Services. Rail cars shall be deemed delivered to User (i) when set out, and the locomotives of Owner are uncoupled therefrom, on agreed to tracks, or (ii) in the case of run through operations, when Owner's crews disembark from User's train at the designated delivery track, and the notification of such delivery has been given to User.

Section 4. **Compensation for Haulage Services.** As compensation for the Haulage Services as above set forth, User shall pay to Owner, in addition to other payments to be made under this Haulage Agreement, for each loaded or empty rail car movement (including reciprocal switch charges and/or interchange charges) the amount set forth in Exhibit "B", attached hereto and made a part hereof (the "Haulage Rates").

In addition to all other charges to be paid by User to Owner herein, at West Lake, and West Lake Charles, User shall also pay a fee to Owner of Three Hundred Fifty Dollars ($350) per loaded car for all shippers other than Pittsburg Plate Glass, Inc. ("PPG") and a fee of Three Hundred Forty-Two Dollars ($342) per loaded car for PPG traffic. These fees shall be adjusted upwards or downwards as set forth below in this Section 4.

The Haulage Rates shall be subject to adjustment annually beginning on January 1, 1997 to reflect fifty percent (50%) of increases or decreases in the Rail Cost Adjustment Factor ("Index"), not adjusted, for changes in productivity ("RCAF-U"), published by the Association of American Railroads ("AAR") or successor agency or other organization. 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 13 of this Haulage Agreement. The ratio between the Index for the year immediately prior to any year in which an increase or decrease is to be made effective and the Index for the year 1995 shall be developed, and the Haulage Rates shall be increased or decreased in direct proportion to such ratio, but under no circumstances shall the adjusted rate be less than the initial Haulage Rates provided in this Haulage Agreement.

Upon every fifth anniversary of this Haulage Agreement ("Anniversary Date"), either party may request on ninety (90) days' written notice that the parties jointly review the operations 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, any party may request binding arbitration under Section 13 of this Haulage Agreement. It is the intention of the parties that the Haulage Rates reflect the same basic relationship to operating costs as upon execution of this Haulage Agreement.

Notwithstanding the foregoing, User shall not be obligated to pay haulage charges for rail cars returning empty from loaded haulage movements delivered to the Owner in violation of Association of American Railroads ("AAR") Circular No. OT - 10 regulations.

Section 5. **Bad Ordered Rail Cars.** If a rail car of User is bad ordered en route on the Haulage Corridor and it is necessary that it be set out, such bad ordered rail car shall, after being promptly repaired, be promptly picked up and delivered to User. Unless otherwise agreed, Owner shall, at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered rail car safe for movement. The employees and equipment of Owner while in any manner so engaged or while en route to, or returning to Owner's terminal from, such an assignment shall be considered sole User employees and sole User equipment. However, should Owner's employees after repairing such bad ordered rail cars for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner for rail cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the AAR, hereinafter called "Interchange Rules," in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owners for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to rail cars that are User's rail car owner responsibility items as determined under said Interchange Rules should said rail car owner refuse or otherwise fail to make payment therefor.

Section 6. **Billing.**

(A) Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. For charges other than Haulage Rates, billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by this Haulage

Agreement User is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

(B) Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Surface Transportation Board ("STB") or retroactive adjustment of wage rates and settlement of wage claims.

(C) So much of the books, accounts and records of each party hereto as are related to the subject matter of this Haulage Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

(D) Should any payment become payable by Owner to User under this Haulage Agreement, the provisions of Subsections (A) through (C) of this Section 6 shall apply with User as the billing party and Owner as the paying party.

(E) Either party hereto may assign any receivables due it under this Haulage Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under this Haulage Agreement.

Section 7. Liability and Indemnification. Except as otherwise provided, each party assumes and agrees to settle or pay all claims for loss or damage to property, including rail cars, empty and loaded, handled for each party's sole account as follows:

(A) User agrees to indemnify and hold Owner harmless of and from any and all loss or damage to rail cars in User's account, or the contents thereof (including damages for delay to freight and damage to patrons or property caused by the freight), arising out of Owner's handling of such rail cars pursuant to this Haulage Agreement. In the event claim is made against Owner for any such loss, damage or delay, User agrees to defend, process, adjust, settle, or pay any such claim (whichever is or are applicable), to appear and defend any suit brought to enforce such claim, and to pay all expenses, costs and judgments obtained or incurred in any such suit.

(B) User shall also assume and bear liability for all damage to or loss of Owner's property used in handling rail cars in User's account, including locomotives, cabooses, and end-of-train devices ("ETDs"), tracks and appurtenances, and injury (including death) to Owner's employees or third persons, or damage to or loss of the property of such employees or third persons, suffered as a result of the handling of rail cars in User's account hereunder in that proportion which the number of rail cars in User's account in the train containing such rail cars shall bear to the total number of rail cars in such train (excluding locomotives and cabooses); provided that User shall not bear any portion of damage to or loss of rail cars in Owner's account or the contents thereof which may result from such operation.

(C) It is mutually agreed that the provisions of Subsection (B) of this Section 7 shall not be applicable in the event of a collision between a train of Owner's that contains rail cars in User's account and a train of Owner that does not contain rail cars in User's account, when such collision is caused solely by negligence in the operation of the Owner train that does not contain rail cars in User's account. Then, in such event, Owner shall bear solely the loss of and damage to rail cars in User's account and the contents thereof, and shall bear any other liability for damage, injury (including death) or loss suffered by User or a third party as a result of such collision.

(D) All employees of Owner from time to time engaged in handling rail cars in User's account which are in a train of Owner also involving rail cars in Owner's account shall, for the purpose of this Haulage Agreement, be regarded as joint employees of the parties hereto while so engaged. An employee or employees of a party while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party shall be deemed the sole employee(s) of such party. As between the parties hereto, each party shall assume, bear, settle and pay all loss, costs, or damage which its rail cars or other property, rail cars handled for its account, or freight in its custody as a common carrier, or otherwise, shall suffer by reason of the actions of said joint employees while engaged in joint rail car handling. All damage to property jointly used in handling rail cars, including locomotives, cabooses, ETDs, tracks and appurtenances, and in the performance of any of the services as aforesaid, and all damages or injury (including death) to third persons, or to property of third persons, and all loss, cost and damage or injury (including death) such joint employees may suffer as a result of such joint handling operation (except to the extent caused by the freight), or the performance of such other duties as aforesaid, shall be treated as a common expense incident thereto. Such common expense shall be divided between the parties hereto in proportion that the number of rail cars being handled for User by Owner bears to the total number of rail cars being handled by Owner in such joint rail car handling operation related to such loss, damage or injury (including death) at the time such loss, damage or injury (including death) occurs.

(E) THE PARTIES EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS HAULAGE AGREEMENT, SUCH INDEMNITY SHALL INCLUDE INDEMNITY FOR (1) THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 8. **Service Standards Committee.** A Service Standards Committee ("Committee"), comprised of officers of Owner and User, shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient use of the facilities that are a part of the Haulage Corridor. The Committee shall meet on a regular basis not less often than every three (3) months during the first year of operation under this Haulage Agreement, and thereafter when any party serves upon the other thirty (30) days' written notice of its desire to meet to review the overall performance of Haulage Service provided for under this Haulage Agreement, to resolve conflicts and consider other relevant matters in the discretion of the Committee. The Committee shall consider technological improvements that may foster more rapid and consistent service in the Haulage Corridor. Changes in service standards or decisions on capital investments flowing from such consideration shall be negotiated in good faith and subject to the terms of this Haulage Agreement.

Section 9. **Hazardous Materials.**

(A) In the event any accident, bad ordered rail car, derailment, vandalism or wreck (hereinafter for the purposes only of this Section 9 called, collectively, "derailment") involving rail cars in the account of User carrying hazardous materials, substances or wastes as defined pursuant to Federal or State law (hereinafter called "Hazardous Materials") shall occur on any segment of the Haulage Corridor, Owner shall notify User of such incident and any report required by Federal, State, or local authorities shall be the responsibility of User. User shall then advise the owner/shipper of Hazardous Materials

in rail cars in User's account involved in the derailment and shall immediately furnish Owner with all necessary information related to the Hazardous Materials.

(B) Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's rail cars on Owner's property in accordance with all Federal, State, or local regulatory requirements. User, at its sole cost and expense and risk, may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of any Hazardous Materials released and the cleanup effort. Such clean up costs shall be borne in accordance with Section 7 of this Haulage Agreement.

(C) If a Hazardous Materials release from User's rail cars results in contamination of real property or water adjacent to Owner's property, Owner shall assume responsibility for emergency clean up conducted to prevent further damage. User shall be responsible for performing clean up efforts thereafter. Any costs associated with cleaning up real property or water adjacent to Owner's property contaminated by Hazardous Materials shall be borne as provided in Section 7 of this Haulage Agreement.

(D) If Hazardous Materials released from User's rail cars must be transferred to undamaged rail cars, User shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged rail cars that are blocking the Haulage Corridor, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne as provided in Section 7 of this Haulage Agreement. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

(E) The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Haulage Corridor or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 7 of this Haulage Agreement.

Section 10. Acts of God. Whenever a period of time is provided in this Haulage Agreement for any party to do or perform any act or thing other than the payment of money for Haulage Services, said party shall not be liable or responsible for any delays due to strikes, extraordinary weather conditions, lockouts, casualties, acts of God, war, court orders, work stoppages, riots, public disorders, criminal acts of other entities, governmental regulations or control or other such causes beyond the reasonable control of said party. In any such event, any time period shall be extended for the amount of time said party is so delayed; provided that this Section 10 shall not be construed to affect the responsibilities of said party hereunder to do or perform such act or thing once such delays have been removed.

Section 11. No Third Party Beneficiaries. Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership,

corporation or governmental entity other than the parties hereto and their respective successors and assigns any right or benefit under or by reason of this Haulage Agreement.

Section 12. Governmental Approvals. The parties agree to cooperate in seeking any necessary governmental approvals or authority for operations under this Haulage Agreement at any time during its term to the extent such approval or authority may be required under then applicable laws or regulations.

Section 13. Arbitration.

(A) If at any time a question or controversy shall arise between the parties hereto in connection with this Haulage Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 13 shall be governed by the rules and procedures set forth in this Section 13.

(B) If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Colombia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretobefore stated.

(C) Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

(D) After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or

award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Haulage Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

(E) Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

(F) The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

(G) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 14. Assignment. Except as provided in Section 6(E) and in the following sentence, this Haulage Agreement and any rights granted hereunder may not be assigned in whole or in part by any party without the prior written consent of the other party. This Haulage Agreement may be assigned by any 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. In the event of an authorized assignment, this Haulage Agreement and the operating rights thereunder shall be binding upon the successors and assigns of the parties.

Section 15. Term and Termination. This Haulage Agreement shall be effective upon execution for a term of five (5) years (the "Initial Term") and shall automatically renew thereafter for successive periods of one (1) year in length (each, an "Extension") unless notice of termination of this Haulage Agreement at the end of the Initial Term or any Extension is given by Owner to User on ninety (90) days' written notice; provided, however, that the User may terminate this Haulage Agreement at any time during the Initial

Term or any Extension upon ninety (90) days' prior written notice to Owner; provided, further, that in no event shall the term of this Haulage Agreement be extended beyond that date which is ninety-nine (99) years after its effective date. The Haulage Services granted to User pursuant to this Haulage Agreement shall not become effective until the acquisition of control of SP by UP pursuant to the application pending before the STB in Finance docket No. 32760, and provided also that in the event the acquisition of the control of SP by UP is (i) finally disapproved by the STB and the time for any appeal has passed without any appeal being filed or, if such disapproval was appealed, the disapproval was affirmed on appeal, or (ii) approved by the STB subject to conditions that are unacceptable to UP/SP and such control of SP by UP is thus not effected, Owner's agreement to provide the Haulage Services pursuant to this Haulage Agreement shall be of no force and effect and this Haulage Agreement shall terminate. In the event that this Haulage Agreement is terminated as provided in the first sentence of this Section, User may commence operations pursuant to the trackage rights agreement of even date between User and Owner by which Owner granted to User trackage rights over the Haulage Corridor, in which case User, at its sole cost and expense, shall obtain any and all necessary approvals of governmental bodies, including, without limitation, the STB, for such operation. User agrees that it shall not use its companion trackage rights until such time as it no longer uses the Haulage Services provided under this Haulage Agreement. Liabilities created under this Haulage Agreement, if it becomes effective and is later terminated, shall survive such termination.

Section 16. Default.

(A) Notwithstanding the provisions of Section 6 of this Haulage Agreement, either party hereto claiming default of any of the provisions of this Haulage Agreement shall furnish written notice and demand to the other party for performance or compliance with the covenant or condition of this Haulage Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of this Haulage Agreement under which such claim of default is made.

(B) If the default shall continue for an additional period of thirty (30) days after receipt of such written notice, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of this Haulage Agreement, either party may resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate this Haulage Agreement.

(C) Failure of a party to claim a default shall not constitute waiver of such default. Either party hereto entitled to claim default may waive any such default in writing, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 17. Severability. If any part of this Haulage Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Haulage Agreement and the remaining parts of this Haulage Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 18. Conflicting Provisions. If any conflict between the Settlement Agreement and this Haulage Agreement shall arise, the provisions of the Settlement Agreement shall govern unless specific reference is made in this Haulage Agreement, or any amendment thereof, to the fact that an inconsistency exists between it and the Settlement Agreement and that, as to such specifically identified inconsistency, the terms of this Haulage Agreement, or any amendment thereof, control.

Section 19. Notices. All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Haulage Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid and addressed to such other party at the address listed below:

If intended for Owner:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for User:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

General Director Contracts
and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Section 20. Other Agreements.

This Haulage Agreement shall not become effective unless and until each and every trackage rights, haulage, purchase/sale and proportional rate agreement between and among the parties to the Settlement Agreement (collectively, the "Other Agreements") necessary to implement the Settlement Agreement becomes effective in accordance with the terms of each such Other Agreement and the Settlement Agreement; and in the event that one or more of such Other Agreements for any reason does not become effective, this Haulage Agreement shall be of no force and effect and shall terminate.

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[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Haulage Agreement to be duly executed as of the day and year first above written.

MISSOURI PACIFIC RAILROAD COMPANY

By: James V Dolan
Its: [illegible]

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Its: _____

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____
Its: _____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By: _____
Its: _____

186774

IN WITNESS WHEREOF, the parties hereto have caused this Haulage Agreement to be duly executed as of the day and year first above written.

MISSOURI PACIFIC RAILROAD COMPANY

By:_____
Its:_____

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By:_____
Its: V.P.

BURLINGTON NORTHERN RAILROAD COMPANY

By:_____
Its:_____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By:_____
Its:_____

180774

IN WITNESS WHEREOF, the parties hereto have caused this Haulage Agreement to be duly executed as of the day and year first above written.

MISSOURI PACIFIC RAILROAD COMPANY

By:_____
Its:_____

SOUTHERN PACIFIC TRANSPORTATION COMPANY

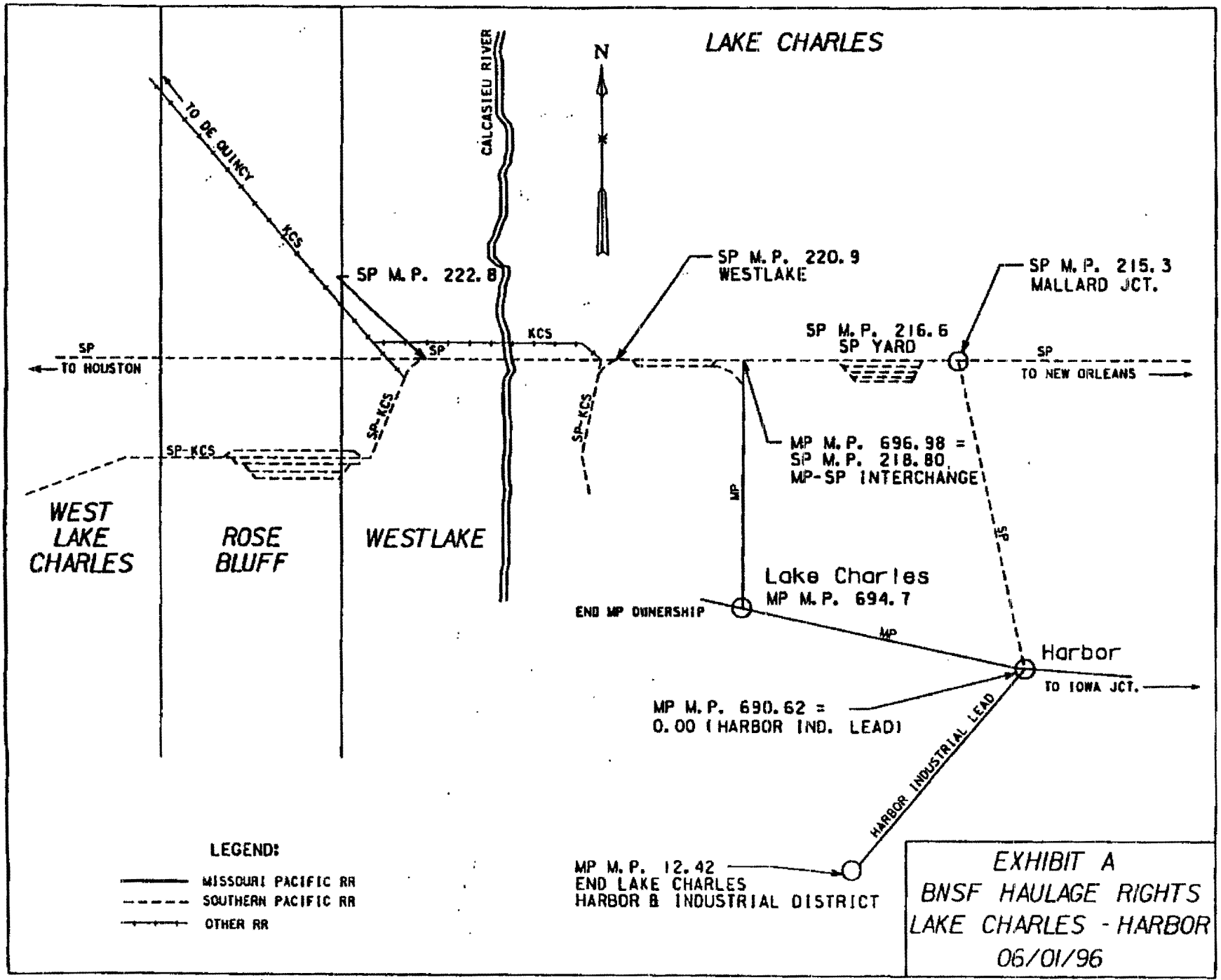
By:_____
Its:_____

BURLINGTON NORTHERN RAILROAD COMPANY

By:_____
Its:_____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By:_____
Its:_____



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EXHIBIT "B"
TO
HAULAGE AGREEMENT

Intermodal, carload and bulk traffic within defined Haulage Corridor in either direction (loaded or empty):

1.	Handling of Rail Car to or from User and Owner and to or from a connecting railroad or third party contract switcher	$50.00 per car
2.	Handling of Rail Car to or from User and Owner and to or from a connecting railroad or third party contract switcher for unit trains defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee	25.00 per car
3.	Movement of Rail Car within Haulage Corridor	.50 per car mile
4.	Reciprocal Switch Rail Cars at 2-to-1 industries	130.00 per car
5.	Reciprocal Switch Rail Cars at 2-to-1 industries that contain commodities within the following STCC: 01131, 01132, 01133, 01135, 01136, 01137, 01139 and 01144.	60.00 per car

NOTE: All charges listed above are subject to annual adjustment as provided for in Agreement

Exhibit 22

Counsel's Exhibit 22

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

BURLINGTON NORTHERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S PROGRESS REPORT AND OPERATING PLAN

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Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

October 1, 1996

EXHIBIT A

BURLINGTON NORTHERN/SANTA FE'S PROGRESS REPORT AND OPERATING PLAN

October 1, 1996

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I. INTRODUCTION

This document sets forth BN/Santa Fe's Progress Report and Operating Plan which are being submitted pursuant to the Board's directive in Decision No. 44.

The Progress Report, which is presented in Section II, discusses BN/Santa Fe's progress to date on implementation of the rights and access granted to BN/Santa Fe pursuant to the BNSF Agreement. It will also describe events planned to take place before the end of 1996.

The Operating Plan, which is presented in Section III, details the train service BN/Santa Fe plans to operate by the end of the first full year following consummation of the UP/SP merger. The Operating Plan is divided into two geographic regions -- the Gulf Region and the Central Region. Train service details are provided for each corridor within a region. Support operations and personnel requirements are aggregated at the regional level.

II. IMPLEMENTATION PROGRESS REPORT

1. Line Purchases.

BN/Santa Fe's purchase of the three UP/SP line segments set forth in the BNSF Agreement is proceeding under the following schedule:

* Dallas to Waxahachie, TX: The closing took place on September 20, 1996.

* Iowa Jct.to Avondale, LA: The closing is planned for no later than December 16, 1996.

* Bieber to Keddie, CA: The closing is planned for no later than December 16, 1996.

2. Dispatching. BN/Santa Fe plans to implement the dispatching protocol required under the CMA Agreement on or before December 16, 1996.

BN/Santa Fe will assume direct dispatching control on each of the three purchased segments. Necessary notices to affected employees were issued during the week of September 16, 1996.

Closing and control dates are planned to coincide as closely as possible under the following schedule:

* Dallas to Waxahachie: Dispatching control from BN/Santa Fe's Fort Worth, TX Network Operations Center was assumed on September 21, 1996.

* Iowa Jct. to Avondale: Dispatching control from Fort Worth is planned to immediately follow the closing, which is to occur no later than December 16, 1996.

* Bieber to Keddie: Dispatching control from Fort Worth is also planned to immediately follow the closing, which is to occur no later than December 16, 1996.

3. Preparation for Direct BN/Santa Fe Train Service.

BN/Santa Fe supervisory personnel began qualification trips over UP and SP lines in August. These trips will enable operating supervisors to train and qualify train and engine personnel for each route prior to implementation of actual BN/Santa Fe train service. Qualification trips on all trackage rights lines, except the Central and I-5 Corridors, have been completed.

Qualification trips for acquired lines between Keddie and Bieber, CA and between Iowa Jct. and Avondale, LA will be completed in sufficient time to permit actual train operation by

no later than December 16. The same is true for I-5 trackage rights operations between Keddie and Stockton, CA.

Appropriate notices were served by BN/Santa Fe on affected labor organizations on August 20, 1996, in accord with contract provisions.

Initially, BN/Santa Fe will reimburse UP/SP for supplying crews to operate BN/Santa Fe trains on the Central Corridor route. Specifically, an agreement has been reached with UP/SP that allows BN/Santa Fe to reimburse UP/SP for supplying crews to operate BN/Santa Fe trains between Denver, CO and Salt Lake City, UT for up to one year. After that, BN/Santa Fe will use its own crews between Denver and Salt Lake City. Between Salt Lake City and Stockton/Richmond, CA, BN/Santa Fe will continue to reimburse UP/SP for supplying crews to operate BN/Santa Fe trains until such time as it becomes more efficient and economical to use BN/Santa Fe crews.

4. Start-up Interim Haulage. UP/SP will handle BN/Santa Fe traffic on a start-up interim haulage basis, until the direct BN/Santa Fe train service commences (described in section 5), as outlined below.

* UP/SP began interim haulage for BN/Santa Fe traffic on all routes, except the I-5 Corridor, on September 13, 1996.

* Haulage on the I-5 route between Bieber and Stockton will commence following implementation of the BNSF Agreement provision on proportional rates.

* BN/Santa Fe traffic between Pine Bluff, AR and Little Rock, AR and between Houston, TX and Brownsville, TX will continue on a haulage basis, as direct train service is not now planned.

5. Direct Train Service Start-Up. BN/Santa Fe plans to begin direct train service on its new routes as follows:

* Between Temple and Kerr, TX, direct train service with BN/Santa Fe crews is planned to start on October 9, 1996. This service will extend to Houston as soon as traffic flows warrant.

* Between Temple and San Antonio, TX, BN/Santa Fe direct service has been operating since January 15, 1996, under the terms of a settlement between BN/Santa Fe and SP in the BN/Santa Fe merger. This service will continue to operate on SP's line from Caldwell, TX via Flatonia, TX for a period of 90 days. On or about December 16, 1996, these trains will shift to the trackage rights lines via Smithville, TX.

* Between San Antonio and Eagle Pass, TX, UP/SP will continue to move BN/Santa Fe traffic on a haulage basis for six months. Direct BN/Santa Fe train service will commence in March 1997.

* Between Houston and Corpus Christi/Robstown, TX, direct train service using BN/Santa Fe crews is planned to start on October 9, 1996.

* Between Houston, Memphis, TN, and East St. Louis, IL, start-up of direct BN/Santa Fe train service is planned to commence no later than December 16, 1996. This service will be structured to provide continuing connections over Illinois gateways to the Northeast.

* Between Houston and New Orleans, LA, start-up of direct BN/Santa Fe train service will commence immediately following closing on the Iowa Jct.-Avondale segment purchase and is planned for no later than December 16.

* Between Denver and Stockton/Richmond, direct BN/Santa Fe train service is planned to start on October 10, 1996.

* Between Bieber and Stockton/Richmond, start-up of direct BN/Santa Fe train service will commence following closing on the Bieber to Keddie segment purchase, currently planned for no later than December 16, 1996.

6. Marketing Discussion. Information concerning shippers, contracts and tariffs, and other items that outline BN/Santa Fe's marketplace activity is presented in the Verified Statement of Richard W. Brown as part of this submission.

III. BN/SANTA FE OPERATING PLAN

A. GULF REGION

1. Houston-New Orleans. This corridor and its train crew districts are depicted by Figure 1.

a. Through Train Service. Three daily through trains, in each direction, are planned to serve this corridor.

* Trains M-HOUNEO and M-NEOHOU will operate between Houston and New Orleans starting on or about December 16, 1996. Eastbound, the train will set out in Beaumont, TX and will set out and pick up in Lafayette, LA. It will be blocked in Lafayette for New Orleans connections. Westbound, the train will set out and pick up in Lafayette and pick up westbound traffic in Beaumont.

* Trains M-TEMNEO and M-NEOTEM will operate between Temple and New Orleans starting in the first quarter of 1997. These trains will run via Silsbee, TX. Both will set out and pick up in Beaumont and Lafayette.

* Trains Q-LOSAVO and Q-AVOLOS will be dedicated international intermodal trains between Los Angeles, CA and New Orleans starting about August 1997. These trains will originate/terminate in the Westwego intermodal facility and will bypass Houston running via Silsbee and Temple. Western intermodal traffic, for other than Los Angeles, will be marshalled at Clovis, N.M.

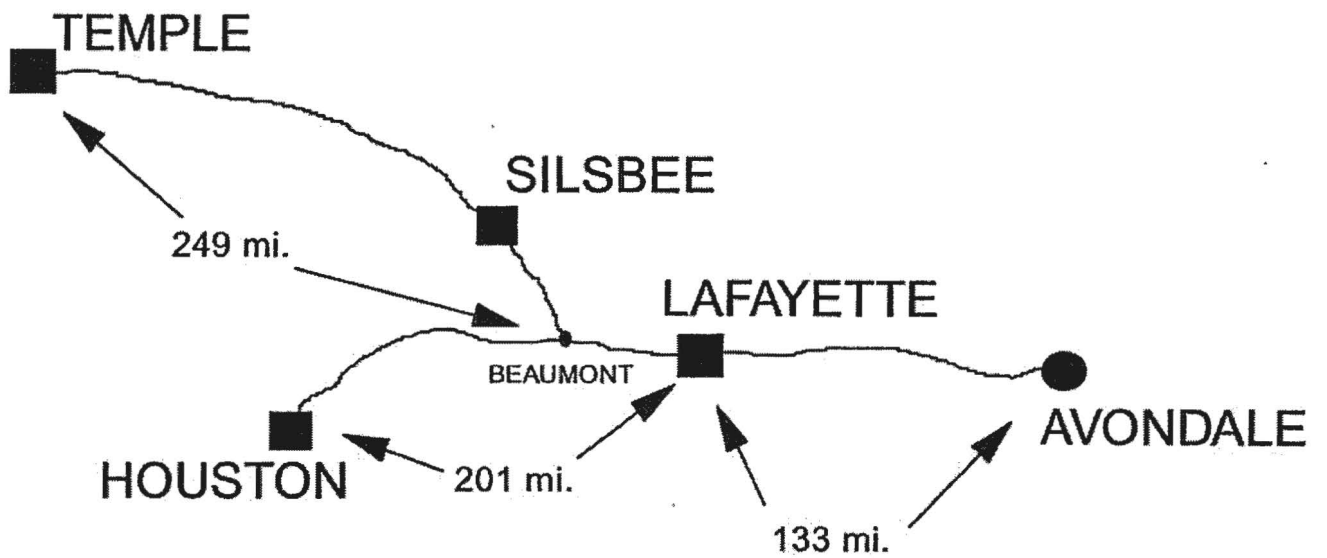
Schedule outlines for these trains are contained in the Operating Plan Appendix.

b. Local Train Service.

* BN/Santa Fe local service will operate between Lafayette and Avondale three times weekly in each direction. This local will commence operation following

GULF

Figure 1



Home Terminals

Away from Home Terminals

Mileage between Crew Change

closing on the line segment planned for no later than December 16, 1996. The train will handle Louisiana & Delta Railroad ("L&D") interchange at Schriever, LA and New Iberia, LA.

* A daily turnaround local will run between Beaumont and Lake Charles, LA to haul Lake Charles and Orange, TX traffic starting no later than December 16, 1996. The schedule for this local is contained in the Appendix as Train L-BEALKC.

* A daily turnaround local will run between Houston and the Dayton, TX storage yard handling BN/Santa Fe Baytown Branch traffic and storage yard plastics. The schedule for this local is contained in the Appendix as Train L-HOUSJO.

* UP/SP will switch industries at Amelia (Beaumont) for BN/Santa Fe. BN/Santa Fe will haul traffic between UP/SP and its Beaumont Yard.

* UP/SP will switch industries at Orange and will provide east and west blocks for pick up by BN/Santa Fe.

* UP/SP will switch industries in the greater Lake Charles area and will provide two blocks for BN/Santa Fe.

c. Yard Operation.

* Houston. New Orleans manifest trains and the Dayton local will originate and terminate at the Houston Belt & Terminal Railroad's ("HB&T") New South Yard. HB&T will switch BN/Santa Fe traffic for connections and Houston industry.

* Dayton. The Sjolander facility (Dayton Storage Yard) will classify BN/Santa Fe Baytown Branch traffic.

* Beaumont. BN/Santa Fe's existing yard will serve Beaumont and the new train service described above.

* Lafayette. BN/Santa Fe will employ two switch crews to serve Lafayette Yard and to classify New Orleans traffic in both directions.

* New Orleans. BN/Santa Fe through trains will do any necessary work at Avondale and Westwego in conjunction with their own trains. Lafayette Yard will classify New Orleans interchange traffic in both directions. Delivery of non-run-through interchange traffic to connecting lines in New Orleans is now planned to be by

Exhibit 23

U. P. R. R. Co.
Agreement 186763
Audit No.

HOUSTON, TEXAS TO IOWA JUNCTION, LOUISIANA
TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT made as of this 1st day of June, 1996, between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter referred to as "MPRR") and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (hereinafter referred to as "SPT") (MPRR and SPT are hereinafter referred to collectively as "Owner"), on the one hand, and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("BN"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Santa Fe") (BN and Santa Fe are hereinafter referred to collectively as "User"), on the other hand.

WITNESSETH:

WHEREAS, Owner owns lines of railroad consisting of track structure extending:

between Houston, Texas, in the vicinity of SPT's Milepost 360.42, and Beaumont, Texas, in the vicinity of SPT's Milepost 280.1 and MPRR's Milepost 458.95 and MPRR's Milepost 460.36 (at which point Owner operates, pursuant to a written agreement of January 18, 1966 between Owner, Santa Fe, and The Kansas City Southern Railway Company ("KCS"), over trackage of each other and trackage of KCS in Beaumont, Texas) ("Houston-Beaumont Line) which shall include a line of railroad extending between Dayton Junction, Texas, in the vicinity of SPT's Milepost 0.00, and West Baytown, Texas, in the vicinity of SPT's Milepost 24.7 (SPT's "Baytown Branch"), and between Eldon Junction, in the vicinity of SPT's Milepost 0.00, and East Baytown, Texas, in the vicinity of SPT's Milepost 3.09 (SPT's "Cedar Bayou Branch"); and

between Beaumont, Texas, in the vicinity of SPT's Milepost 277.03 and Iowa Junction, Louisiana, in the vicinity of SPT's Milepost 205.30, ("Beaumont-Iowa Junction Line")

as shown by bold and dashed lines on the attached print dated June 1, 1996 (and identified as Exhibit "A") (Figures 7-1, 7-2, 7-3 and 7-4) and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage"; and

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended (the "Settlement Agreement"), between Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), MPRR (UPC, UPRR and MPRR are collectively referred to hereinafter as "UP"), Southern Pacific Rail Corporation ("SPC"), SPT, The Denver and Rio

Grande Western Railroad Company ("DRGW"), St. Louis Southwestern Railway Company ("SSW") and SPCSL Corp. ("SPCSL") (SPC, SPT, DRGW, SSW and SPCSL are hereinafter referred to collectively as "SPT") (UP and SPT are hereinafter referred to collectively as "UP/SP"), on the one hand, and BN and Santa Fe, on the other hand, Owner granted certain rights to User, including overhead bridge trackage rights between Houston, Texas and Iowa Junction, Louisiana, including the SPT's Baytown and Cedar Bayou Branches and the right to access all industries which are presently served either directly or by reciprocal switching, joint facility or other arrangement by both UP and SP and no other railroad except as may be otherwise herein provided, such rights to be effective upon UP's acquisition of control of SP pursuant to the application currently pending before the STB in Finance Docket No. 32760.

WHEREAS, pursuant to the Settlement Agreement, Owner and User wish to more specifically define the terms and conditions under which said trackage rights shall be exercised.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

2. Rights of User:

(a) Subject to the terms and conditions contained herein, Owner grants to User the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in User's account over the Joint Trackage in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered Owner for the purposes of this Agreement, it being understood and agreed that User shall not have the right to:

(i) Switch industries upon the Joint Trackage, except as hereinafter provided;

(ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in this Section 2 and in Sections 2.12, 2.13 and 2.14 of Exhibit B;

(iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage, except as otherwise provided in this Section 2;

(iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement; or

(v) Connect with or interchange with any other railroad except as may hereinafter be provided.

(b) The rights granted in Section 2 (a) shall be for rail traffic of all kinds and commodities, both carload and intermodal.

(c) User shall have the right to set out and pickup at the Sjolander Facility, a rail car facility located in the vicinity of SPT's Baytown Branch Milepost 1.79 ("Sjolander Facility"), subject to the provisions of Section 2(d)(ii), at SPT's yard at Beaumont at SPT's yard at Orange Siding, Texas, and SPT's Lake Charles, Louisiana yard on the Beaumont-Iowa Junction Line.

At Orange Siding, User shall not unreasonably interfere with Owner's main line train operations while setting out or picking up. Should a change in the future operations of User result in User unreasonably blocking the main track at Orange Siding while setting out or picking up, Owner, at its sole discretion, may require User to construct additional trackage in the vicinity of Orange Siding as may be required in the reasonable judgment of Owner, the cost and expense of which shall be borne by User. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty-percent (50%) of the cost of constructing such trackage and interest per annum 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 Owner 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 such additional trackage. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest rate (i.e., the adjustment

may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate.

(d) User, at its sole cost and expense, shall be responsible for providing blocks destined to industries on the Joint Trackage located south of the Sjolander Facility:

(i) User shall provide, on a daily basis, up to three (3) blocks for the rail cars that are to be moved to the industries between the Sjolander Facility and West Baytown and East Baytown;

(ii) User shall have equal access to Dayton Yard (Sjolander Facility) on economic terms no less favorable than the terms of Owner's access, for storage in transit of traffic handled by User pursuant to this Agreement, and Owner shall work with User to locate additional storage-in-transit facilities on the Joint Trackage covered by this Agreement, as necessary; and

(iii) Should User require additional trackage and services at the Sjolander Facility for other purposes, such as switching or staging of railcars, User shall make its own arrangement with the Owner of the Sjolander Facility. User, at its sole cost and expense, shall initiate plans with Owner and construct, or have constructed necessary trackage (with the points of initial switch diverging from Owner's Baytown Branch in the vicinity of Milepost 1.3), to avoid conflict with Owner's operation in and out of the Sjolander Facility.

(e) User shall have the right to (a) access all existing industries which are served by UP and SP and no other railroad directly, by reciprocal switching, joint facility or other arrangements, (b) serve any new shipper facility on any SP-owned line over which User receives trackage rights pursuant to this Agreement, and (c) subject to the geographic limitations set forth below, serve new shipper facilities, future transloading facilities and to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to the Settlement Agreement. The geographic limitations applicable to subparagraph (c) above shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer 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 they shall be presumed to establish these geographic limitations.

User shall participate in fifty percent (50%) of Owner's cost and expense of any connecting and access tracks and switches ("Improvements") for such new shipper facilities upon User's election to directly serve such new shipper facility which then shall become part of the Joint Trackage. Should User decline to participate in the cost and

expense of Improvements required to serve any new shipper facility, User shall be denied access to such new shipper facility and the Improvements then shall not be part of the Joint Trackage; provided, however, should User elect at a later date to serve such new shipper facility, such right shall be granted to User by Owner upon payment of fifty percent (50%) of Owner's initial cost and expense of the Improvements plus interest as calculated pursuant to Section 2 (c) above.

If User wishes to provide rail service to any new shipper facility at the locations set forth in this Section 2 (e), User shall provide Owner with written notice of its plans including a proposed rail service plan to the new shipper facility and Owner shall, within thirty (30) days of its receipt of such notice and plan, notify User of its approval or disapproval of User's plans for construction, which approval Owner shall not unreasonably withhold. In the event a request is approved by Owner, Owner shall construct and maintain the Improvements at User's sole cost and expense, provided, that Owner, subject to the provisions of the second paragraph of this Section 2 (c) regarding payment of fifty percent (50%) of the cost thereof plus interest, if applicable, may elect to participate in the cost of Improvements at that time or in the future.

Forty-five (45) days before initiating service to a customer, User must elect, in writing, whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior written agreement, using a third party contractor to perform switching for User alone or both User and UP/SP. User shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; provided, however, that User shall (x) not change its election more often than once every five (5) years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election.

User shall have the right to access industries open to all of MPRR, SPT and The Kansas City Southern Railway Company ("KCS") at Lake Charles and West Lake Charles and traffic of shippers open to SPT and KCS at West Lake, Louisiana and Rose Bluff, Louisiana. The foregoing rights shall be limited (a) to, from and via New Orleans, and (b) to and from points in Mexico, with routings via Eagle Pass, Laredo (through interchange with The Texas Mexican Railway Company ("Tex-Mex") at Corpus Christi and Robstown), or Brownsville, Texas. Shippers to which User shall have the right to handle traffic shall be those published in the respective tariffs of SPT, KCS and MPRR and amendments thereto.

In addition to all other charges to be paid by User to UP/SP herein, at West lake and West Lake Charles, User shall also be required to pay a fee to UP/SP equal to the fee that UP pays KCS as of the date of this Agreement to access the traffic at West Lake, adjusted upwards or downwards in accordance with Section 4 of this Agreement.

(f) User shall have the right to establish crew points at various locations along the Joint Trackage as may be mutually agreed to in writing between the parties from time to time.

However, User agrees that if sufficient trackage is not available at such location(s) to facilitate crew changes of User, Owner may require User to construct additional trackage in the vicinity of such location as may be required in the reasonable judgment of Owner, the cost and expense of which shall be borne by User. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty percent (50%) of the cost of constructing such trackage, plus interest as calculated pursuant to Section 2 (c) above.

In addition, Owner shall lease to User by separate written agreement, existing facilities, for office, locker, change and lunchroom purposes by User's personnel upon request of User to Owner, and as reasonably available, or property as reasonably available for User to establish its own facilities.

(g) It is the intent of the parties that User shall, where sufficient volume exists, be able to utilize its own terminal facilities to handle local traffic. Facilities or portions thereof presently utilized by UP/SP shall, pursuant to a separate written agreement entered into between the parties, be provided by UP/SP to User by lease or purchase at normal and customary charges. Upon request of User and subject to availability and capacity, UP/SP shall, pursuant to a separate written agreement entered into between the parties, provide User with terminal support services, including fueling, running repairs and switching. UP/SP shall be reimbursed by User for such services at UP's normal and customary charges. Where terminal support services are not required, User shall not be assessed additional charges for train movement through a terminal.

(h) User may, subject to Owner's written consent, use agents for limited feeder service on the Joint Trackage.

(i) User shall have the right to inspect the Joint Trackage and require Owner to make such reasonable improvements as User deems necessary to facilitate its operations at User's sole cost and expense. Any such inspection must be completed and improvements identified to Owner within one (1) year of the effectiveness of this Agreement.

(j) User shall have the right to connect, for movements in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines it will purchase or be granted trackage rights over pursuant to the Settlement Agreement.

(k) User agrees that when entering, exiting, setting out or picking up from its existing lines of railroad or trackage rights lines ("User's Operations"), it shall do so without unreasonable interference or impairment of the Joint Trackage. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate User's Operations, Owner may require User to construct additional trackage in the vicinity of such location(s) as may be required in the reasonable judgment of Owner, the cost and expense of which shall be borne solely by User. In the event such trackage is constructed at the cost and expense of User, and Owner shall choose to use such trackage, Owner shall pay User fifty percent (50%) of the cost of constructing such trackage plus per annum interest as calculated pursuant to Section 2 (c) above.

3. GTM Rates:

(a) In addition to other payments to be made under this Agreement, User shall remit to Owner for the use of the Joint Trackage in the operation of its Equipment therealong and thereover, the total amount of the following sums monthly, which sums per GTM ("GTM Rates") shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, Changes in and/or Additions to the Joint Trackage (to the extent required by the first sentence of Section 2.2 of the General Conditions), operating expenses, interest rental, depreciation and taxes:

(i) 3.1 mills per GTM for all Equipment, except as provided in Subsection (a)(ii) of this Section 3.

(ii) 3.0 mills per GTM for unit trains (trains consisting entirely of sixty-seven (67) or more rail cars of bulk freight of a single commodity (except for intermodal shipments, unless of a single commodity), loaded or empty ("Unit Trains").

(b) For the purpose of computing the GTM Rates under this Section 3, it is mutually agreed that the distance between the designated points of the Joint Trackage shall be determined by reference to UPRR's EPMS Engineering Mileage Master and SPT's Station Pair Master File which shall be subject to verification by User; provided, however, that Owner shall not bill User for the mileage over the KCS at Beaumont and User agrees that it shall pay KCS for its use of trackage of KCS at Beaumont over which it operates.

(c) The GTM Rates set forth in Section 3 (a) of this Agreement shall be subject to adjustment annually, commencing as of July 1, 1997, as follows:

The GTM Rates shall be adjusted upward or downward effective July 1 of each year during the term of this Agreement by the difference in the two (2) preceding years in UP/SP's system average URCS costs for the categories of maintenance and operating

costs covered by the GTM Rates. "URCS costs" shall mean costs developed using the Uniform Rail Costing System.

Upon every fifth anniversary of the effective date of this Agreement ("Anniversary Date"), either party may request, on ninety (90) days' written notice, that the parties jointly review the operations 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 6 of the General Conditions. It is the intention of the parties that rates and charges for trackage rights and services granted under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

4. Reciprocal Switching Charges:

In addition to the other payments to be made under this Agreement, User shall remit to Owner the following amounts for reciprocal switching User elects to be performed by Owner under this Agreement.

(a) Except as provided in Subsection 4(b) below, Owner shall receive One Hundred Thirty Dollars ($130) per rail car for rail cars of certain commodities switched to and from an industry directly served by either SP or UP (such charge to apply once for the movement in and out).

(b) Owner shall receive Sixty Dollars ($60) per rail car for rail cars constituting part of a Unit Train switched to and from an industry directly served by either SP or UP (such charge to apply once for the movement in and out) that contain commodities within the following Standard Transportation Commodity Codes ("STCC"): 01131, 01132, 01133, 01135, 01136, 01137, 01139 and 01144.

Charges set forth in this Section 4 shall be adjusted July 1 of each year during the term of this Agreement to reflect fifty percent (50%) of increases or decreases in the Rail Cost Adjustment Factor ("Index"), not adjusted for changes in productivity ("RCAF-U"), published by the STB or successor agency or other organization. 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 6 of the General Conditions. The ratio between the Index for the year immediately prior to any year in which an increase or decrease is to be made effective and the Index for the year 1995 shall be developed, and the reciprocal switching charge shall be increased or decreased in direct proportion to 50% of such ratio, but under no circumstances shall the adjusted rate be less than the initial reciprocal switching charges provided in this Agreement.

5. Additions:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary to implement the rights granted under Section 2 of this Agreement. User, at its sole cost and expense, shall pay the cost of such Connections and Sidings. In the event Owner shall elect to use such Connections and Sidings, Owner shall pay to User fifty percent (50%) of the cost to User of constructing the Connections and Sidings, plus interest as calculated pursuant to Section 2 above. Owner shall maintain the part of any Connection or Siding on its property at its sole cost and expense, and User, at its sole cost and expense, shall maintain the part of any Connection or Siding on its property or property of others.

(b) Except as provided in Section 5 (a) above, expenditures for any future Changes in and/or Additions to the Joint Trackage, such as, but not limited to, sidings (other than Improvements), Centralized Traffic Control, grade separations, and future connections (other than Connections), shall be handled as follows:

(i) Owner shall bear the cost of all Changes in and/or Additions to the Joint Trackage that are necessary to achieve the benefits of the consolidation of UP and SP as outlined in the application filed with the STB in Finance Docket No. 32760 for UP to control SP. The operating plan filed by UP and SP in support of that application shall be given presumptive weight in determining what Changes in and/or Additions to the Joint Trackage are necessary to achieve these benefits.

(ii) Any Changes in and/or Additions to the Joint Trackage other than those covered by subparagraph (b)(i) of this Section 5 above shall be shared by Owner and User on the basis that the parties' respective GTMs operated over the Joint Trackage bear to total GTMs operated over the Joint Trackage for the twelve (12) month period immediately prior to the month work on the project is commenced; provided, that User shall not be required to share in the cost of any Changes in and/or Additions to the Joint Trackage under the provision of this subparagraph (ii) for eighteen (18) months following UP's acquisition of control of SP as outlined in the application filed with the STB in Finance Docket No. 32760. The use of Joint Trackage by any third party shall be attributed to Owner for purposes of computing respective GTMs for purposes of this Section 5 (b).

6. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party

to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP/SP

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for User:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

General Director Contracts
and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 6.

7. Settlement Agreement:

The provisions, rights and obligations set forth in the Settlement Agreement, as amended and supplemented from time to time, shall survive, and nothing herein shall be deemed to repeal or supersede the Settlement Agreement, as amended and supplemented. If any conflict between the Settlement Agreement and this Agreement shall arise, the provisions of the Settlement Agreement, as amended and supplemented, shall govern.

8. Alternative Route(s):

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.

9. Other Agreements:

This Agreement shall not become effective unless and until each and every trackage rights, haulage, purchase/sale and proportional rate agreement between and among the parties to the Settlement Agreement (collectively, the "Other Agreements") necessary to implement the Settlement Agreement becomes effective in accordance with

the terms of each such Other Agreement and the Settlement Agreement; and in the event that one or more of such Other Agreements for any reason does not become effective, this Agreement shall be of no force and effect and shall terminate.

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[SIGNATURES APPEAR ON NEXT PAGE]

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

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By:_____
Its:_____

MISSOURI PACIFIC RAILROAD COMPANY

By: James V Dolan
Its: _____

BURLINGTON NORTHERN RAILROAD COMPANY

By:_____
Its:_____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By:_____
Its:_____

186763

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

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Its: _____

MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Its: _____

BURLINGTON NORTHERN RAILROAD COMPANY

By: _____
Its: _____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By: _____
Its: _____

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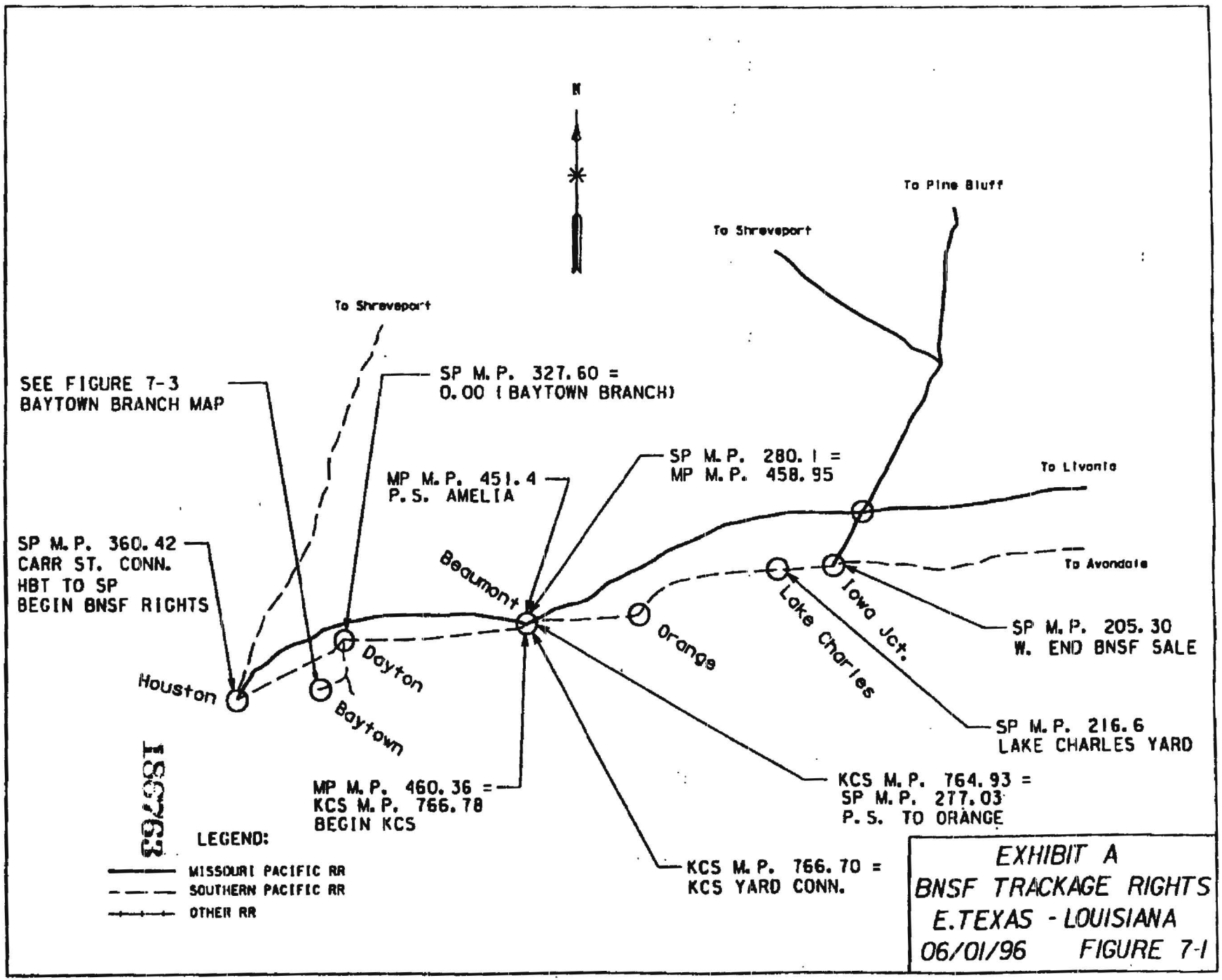
By: _____
Its: _____

BURLINGTON NORTHERN RAILROAD COMPANY

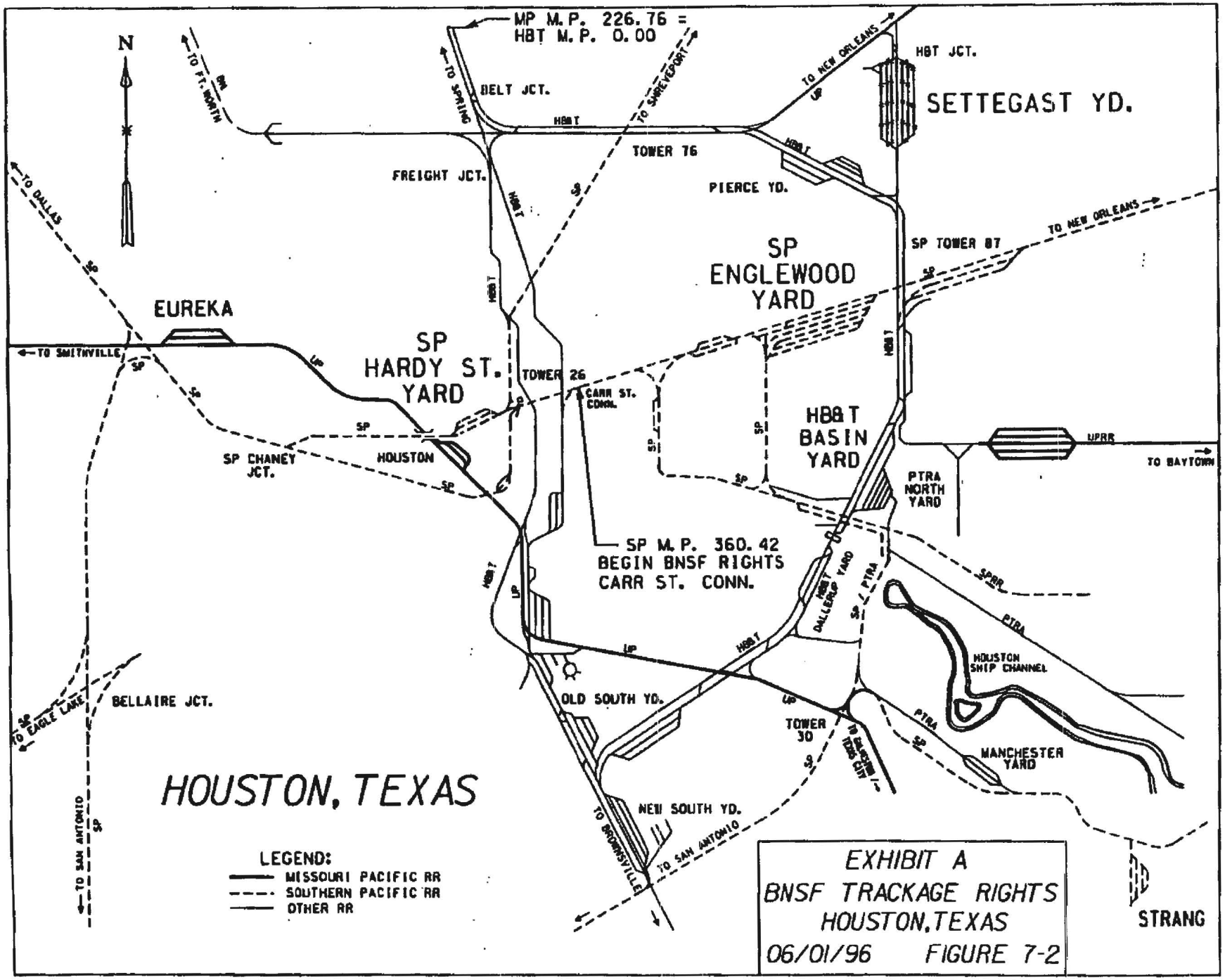
By: _____
Its: _____

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

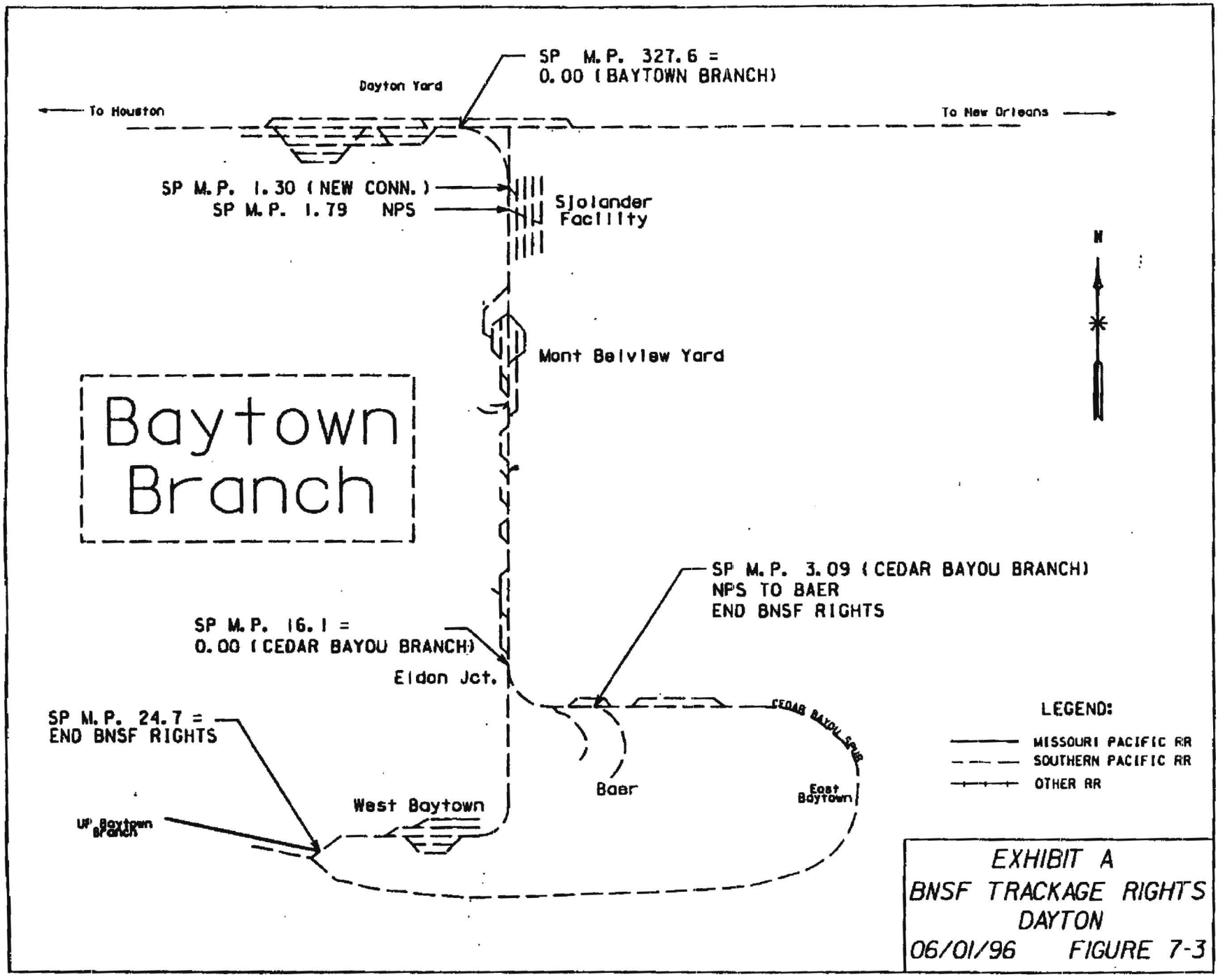
By: _____
Its: _____



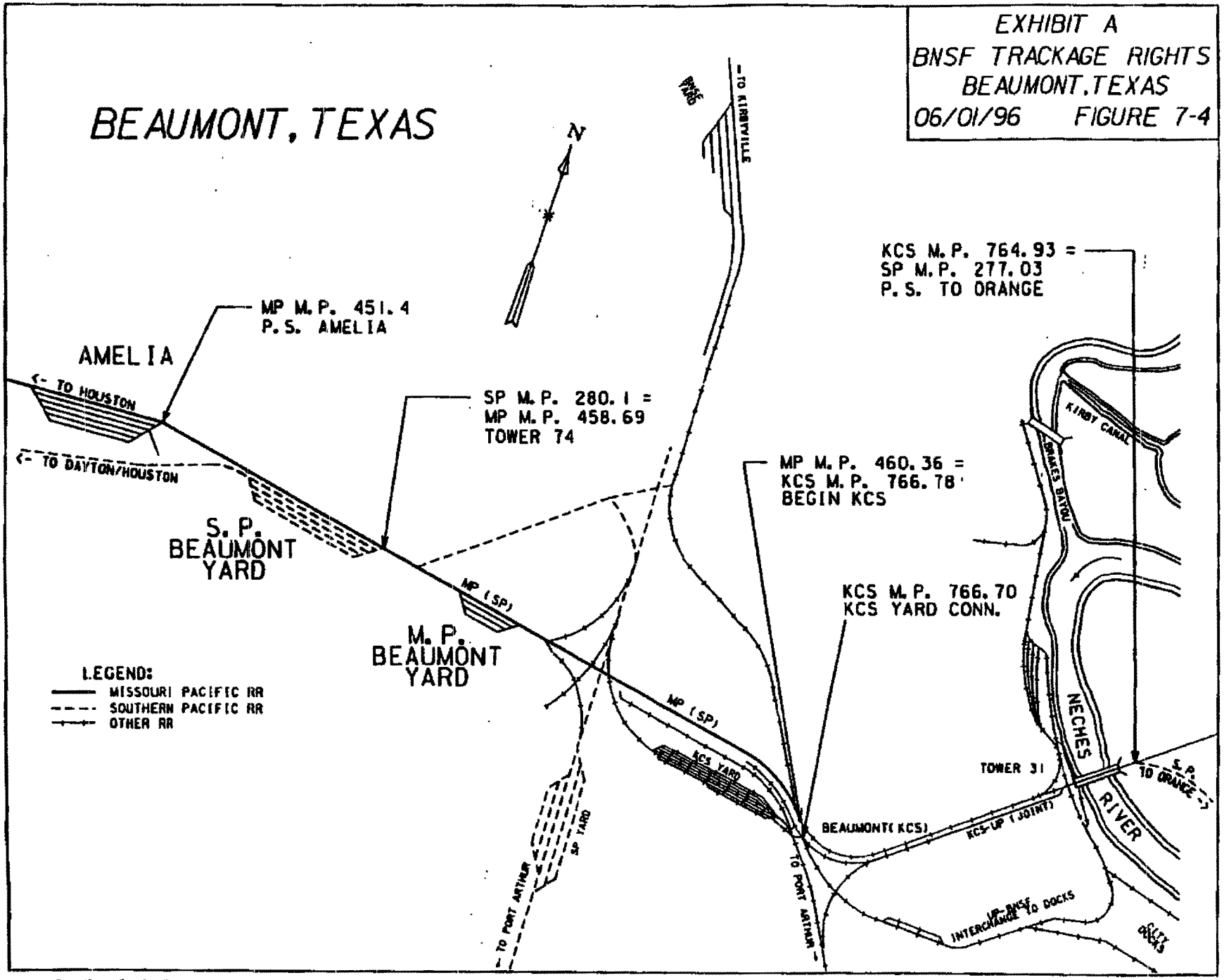
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EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated June 1, 1996 to which this Exhibit "B" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.4 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.

1.5 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

1.6 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

1.7 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Trackage by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Trackage, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Trackage or Changes in and/or Additions to the Joint Trackage shall not be counted and GTMs of third parties shall be attributed to the Owner.

1.8 "Joint Trackage" shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.9 "Mill" shall mean one-tenth of a cent ($0.001 US).

1.10 "Owner" shall have the meaning given to it in the Agreement.

1.11 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.12 "STB" shall means the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.13 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, Owner shall, (i) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Agreement, including special instructions for the Joint Trackage as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Trackage as of the date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Trackage as shall be necessary to accommodate the traffic of Owner and User while maintaining existing service standards (including transit times) in effect on the date of the Agreement. In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner agrees to make

such Changes in and/or Additions to the Joint Trackage if funded in advance by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in such improved condition.

2.3 Owner shall employ all persons necessary to construct, operate, maintain, repair and renew the Joint Trackage. Owner shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in managing of the same. Owner shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to that of Owner. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Trackage, Owner and User shall be treated equally. All operating, dispatching and maintenance decisions by Owner affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the BNSF-UP/SP Dispatching Protocols attached hereto as Attachment 1. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities the same as Owner's trains so utilize. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage, which have not theretofore been generally adopted in the railroad industry.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of Owner and User (or their designees) shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage. The Committee shall meet on a regular basis, but not less often than every three (3) months during the first year of operation under this Agreement, and thereafter when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between Equipment of Owner and Equipment of User, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use

of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Owner and User. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work on the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Agreement.

2.6 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.7 Owner may from time to time provide any track or tracks on the Joint Trackage other than those delineated in Exhibit A to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.8 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.9 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.10 Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Owner, they shall be required to pass the applicable rules examinations required by Owner of its own employees. Owner shall delegate to specified User's officers the conduct of such examinations in the event User chooses to conduct such examinations. If an Owner officer conducts such examinations of employees of User, User shall pay Owner a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding

any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. During the initial start-up period, User shall allow Owner's pilot, at User's sole cost and expense, to accompany User over the Joint Trackage as Owner may in its reasonable judgment deem necessary. Should Owner ever require a pilot on User's Equipment after the initial start-up period on a frequent basis, that matter shall be referred to the Committee for resolution.

2.11 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

2.12 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired, and, thereafter, be promptly removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in

accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Owner also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be rerailed or cleared by Owner, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case, employees of User shall consult with and be governed by the directions of Owner. Owner reserves the right to rerail Equipment of User when, in the judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 5 of these General Conditions. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.14 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or derailment (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 User shall pay to Owner reasonable expenses incurred by Owner in the issuance of timetables made necessary solely by changes in the running time of the trains of User over the Joint Trackage. If changes in running time of trains of Owner or

third parties, as well as those of User, require the issuance of timetables, then User shall pay to Owner that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of Owner or third parties, but not those of User, require the issuance of timetables, then User shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.16 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

Section 3. BILLING

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner, or at such other location as Owner may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.4 Should any payment become payable by Owner to User under the Agreement, the provisions of Sections 3.1 and 3.2 of these General Conditions shall apply with User as the billing party and Owner as the paying party.

3.5 Either party hereto may assign any receivables due it under this Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Trackage, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 User agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials"). User covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by User carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Owner, immediately.

In the event of a Derailment, Owner shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water

on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), Owner shall assume responsibility for emergency cleanup conducted to prevent further damage. User shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a derailment involving Equipment of User, or on a train operated by User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the partes hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint

Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 - Definitions and Covenants. The parties agree that for the purposes of this Section 5:

(a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;

(b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;

(c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;

(d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

(e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the partes hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits,

demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages as specified in the next following sentence. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties;

(f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

(g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;

(h) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;

(i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint

Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

(a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;

(b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

(c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;

(d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;

(e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars ($100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars ($100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

(g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have

been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

(a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned equally between the parties, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other

procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6. The parties acknowledge that other procedures have been agreed to for resolution of disputes concerning compliance with the BNSF-UP/SP Dispatching Protocols (attached hereto as Attachment 1) which procedures are set forth in Paragraph 13 thereof.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Columbia upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all partes to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL and ABANDONMENT

7.1 Owner and User shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. User and Owner agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Trackage and Owner fails or declines to replace said Joint Trackage, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Trackage for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Trackage for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months' prior written notice to User of its intention so to do ("Notice of Abandonment").

Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Trackage thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice. "Net

Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Trackage or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently make application for all necessary governmental authority for abandonment of its right to operate over such Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. CATASTROPHIC EXPENSE

Catastrophic expense to the Joint Trackage, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars ($100,000) for each occurrence shall be billed in addition to the GTM Rates and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

Section 9. TERM

9.1 The Agreement shall be effective upon execution for a term of ninety-nine (99) years, provided, however, the trackage rights granted to User pursuant to the Agreement shall not become effective until the acquisition of control of SP by UP pursuant to STB Finance Docket No. 32760, and provided also that in the event the acquisition by UP of control of SP is finally disapproved by the STB and the time for any appeal has passed or, if the disapproval was appealed, the disapproval was affirmed on appeal, the trackage rights granted pursuant to the Agreement shall be of no force and effect and the Agreement shall terminate. User shall have the right to terminate the Agreement upon twelve (12) months' prior written notice to Owner. Liabilities created under this Agreement, if it becomes effective and is later terminated, shall survive such termination.

9.2 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

Section 10. ASSIGNMENT

Except as provided in Section 3.5 and in the sentence immediately following, the Agreement and any rights granted hereunder may not be assigned in whole or in part by Owner or User without the prior written consent of the other. The Agreement may be assigned by Owner or User without the prior written consent of the other only (i) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (ii) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled,

controlling or under common control with the assigning party. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. OTHER CONSIDERATIONS

12.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

12.2 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

12.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Trackage set forth in Section 1.7 of these General Conditions shall prevail.

12.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

12.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

END OF EXHIBIT "B"

ATTACHMENT 1

Exhibit RBK-1
Page 1 of 3 pages

April 24, 1996

BNSF - UP/SP DISPATCHING PROTOCOLS

As agreed: Dave Clifton - BNSF
Hank Jay - SP
Steve Barkley - UP

1. Scope: These protocols apply on all rail line segments where Burlington Northern Railroad Company or The Atchison, Topeka & Santa Fe Railway Company (which will be referred to jointly or individually as "BNSF") has trackage rights over tracks of the entity or entities resulting from the merger of the rail affiliates of Union Pacific Corporation and Southern Pacific Rail Corporation (which will be referred to jointly or individually as "UP/SP") and on all rail line segments where UP/SP has trackage rights over tracks of BNSF. All such rail lines will be referred to as "joint trackage and will include all current joint line trackage rights."

2. Purpose: To ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track.

3. General Instructions: BNSF and UP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on joint trackage that trains of the tenant are to be dispatched exactly as if they were trains of the same class of the owner and given equal treatment with trains of the owner. These instructions will be issued at agreed intervals or at the request of either party.

4. Monitoring Systems: At the request and expense of the tenant, the owner will make available computer terminals, facilities or capabilities comparable to those available to its own dispatchers showing joint trackage it dispatches so that the tenant can monitor the handling of its trains by the owner.

5. Train Information: The tenant will provide to the owner, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over joint trackage, preferably using electronic data interchange. Parties will establish run time standards by train category based on expected train volumes for each line segment. If train volumes are different than expected then adjustments to run time standards will be made by mutual agreement. The tenant will provide reliable and current information about trains approaching joint trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching joint trackage, sufficiently in advance to allow dispatchers to plan for them. The owner will provide to the tenant advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions. BNSF and UP/SP will cooperate to develop a process for discussing maintenance windows in advance and agree upon so as not to adversely affect schedules of one carrier more than the other.

6. **Specific Instructions:** The owner will permit the tenant to transmit instructions regarding the requirements of specific trains and shipments to designated dispatching center employees responsible for handling those trains.

7. **Train Priorities/Run Time Standards:** BNSF and UP/SP will at all times provide to each other current procedures for assigning dispatching priorities or rankings to their trains and information sufficient to show how those procedures are applied to their own trains. The tenant will assign priorities or rankings to its trains operating on joint trackage using the owner's procedures, and the owner will dispatch tenant trains in accordance with those priorities or rankings. It is understood that technological advances in computer aided dispatching might result in changes to priority assignment methodologies. The parties agree to discuss technological changes which might affect priority assignment methodologies prior to implementation. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads. It is agreed that a three member panel from each carrier will make up the Joint Service Committee. Suggestions for three member panel are representatives from Joint Facilities, VP Transportation, and Joint Trackage Rights Operations.

8. **Entry to Joint Trackage:** At points where tenant trains enter joint trackage, entry will be provided by the owner on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. [If operating circumstances make strict application of this principle difficult or uncertain, BNSF and UP/SP may jointly establish standards for determining sequence of entry to joint trackage.] Parties will communicate daily on any conflicts concerning entry to joint trackage to gain resolution.

9. **Communications:** BNSF and UP/SP will provide to each other, and keep current, lists of dispatching personnel responsible for dispatching each segment of joint trackage and contact numbers. For each segment, BNSF and UP/SP will designate supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.

10. **Access to Dispatching Centers:** Appropriate officials of either railroad will be admitted at any time to dispatching facilities and personnel responsible for dispatching joint trackage to review the handling of trains on joint trackage and will be provided an office in the other railroad's dispatching center (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to that review). In order to support BNSF operations over UP/SP trackage rights granted in connection with the UP/SP merger, UP/SP will pay BNSF an amount equal to the reasonable and conventional salary of one supervisory employee to be placed by BNSF at UP/SP's Harriman dispatching center. It is understood that management and supervision of dispatching operations is the responsibility of the owning carrier.

11. **Performance Measurement:** BNSF and UP/SP will cooperate to develop train performance evaluation methods under which train performance of tenant trains on joint trackage segments can be compared to train performance of the owner's trains on the same segments for the same train category and priority.

12. **Personnel Incentives and Evaluation:** In evaluating the performance of employees and supervisors responsible for dispatching joint trackage, both BNSF and UP/SP will consider train performance of tenant trains and effectiveness in cooperating with tenant personnel and meeting tenant service requirements in the same manner as such factors are considered with respect to the owner's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of the owner's trains, performance of the tenant's trains shall be considered on the same basis to the extent feasible.

13. **Disagreements:** The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee, the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.

14. **Modifications:** As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of both railroads on joint trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.

Exhibit 24

Before the
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32760 (SUB-NO. 1)

UNION PACIFIC RAILROAD COMPANY,
MISSOURI PACIFIC RAILROAD COMPANY,
SOUTHERN PACIFIC TRANSPORTATION COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND
THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BURLINGTON NORTHERN RAILROAD COMPANY AND
THE ATCHISON,TOPEKA AND SANTA FE RAILWAY COMPANY

NOTICE OF EXEMPTION FOR TRACKAGE RIGHTS

The exempt trackage rights in this proceeding are related to, and contingent upon, the UP/SP merger proposed in Finance Docket No. 32760.

On September 25, 1995, UP/SP reached an agreement with Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (collectively referred to as "BN/Santa Fe") under which BN/Santa Fe would receive overhead trackage rights and local trackage rights on UP and SP lines, in order, among other things, to access shippers at points in the states of Utah, Nevada, California, Texas, Louisiana and Arkansas receiving rail services from UP and SP and no other railroad. Also, UP/SP retained trackage rights on lines to be sold to BN/Santa Fe in California, Texas and Louisiana. BN/Santa Fe granted to UP/SP overhead and local trackage rights in Oregon, California and Wisconsin. The trackage rights will be effective when UP/SP receive and exercise control authority as requested in Finance Docket No. 32760.

BN/Santa Fe will not file a responsive application in Finance Docket No. 32760 with respect to the trackage rights involved herein.

This Notice of Exemption for Trackage Rights, with accompanying Verifications, is submitted for exempt trackage rights that involve UP grants to BN/Santa Fe, SP grants to BN/Santa Fe, and BN/Santa Fe grants to UP/SP. The trackage rights transactions are for bridge rights for movement of overhead traffic, with local access as specified.

The Commission's class exemption for trackage rights, 49 C.F.R. § 1180.2(d)(7), applies to trackage rights such as these if the class exemption criteria are met. Railroad Consolidation Procedures -- Trackage Rights Exemption, 1 I.C.C.2d 270, (1985), aff'd sub nom. Illinois Commission Comm'n v. ICC, 819 F.2d 311 (D.C. Cir. 1987). Because a written agreement forms the basis of these trackage rights and the trackage rights are not being filed or sought in a responsive application in a rail consolidation proceeding, the Commission's exemption criteria are met.

Pursuant to the Commission's regulations at 49 C.F.R. § 1180.4(g), in order to qualify for an exemption, a verified Notice of Exemption must be filed with the Commission containing the information in 49 C.F.R. § 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii), and indicating the level of labor protection to be imposed. Responses to the requirements are provided below.

Section 1180.6(a)(1) - Description of Proposed Transaction

Descriptions of the exempt trackage rights at station points are as follows:

Western Trackage Rights

UP Grants to BN/Santa Fe

- Salt Lake City, UT - Ogden, UT
- Salt Lake City, UT - Alazon, NV
- Alazon, NV - Weso, NV
- Weso, NV - Stockton, Ca
- Riverside, CA - Ontario, CA
- Basta, CA - Fullerton, CA - La Habra, CA

SP Grants to BN/Santa Fe

- Denver, CO - Salt Lake City, UT
- Ogden, UT - Little Mountain, UT
- Alazon, NV - Weso, NV
- Weso, NV - Oakland, CA (via Sacramento and Oakland, CA via "Cal-P" line)
- Oakland, CA - San Jose, CA

The above trackage rights are bridge rights for the movement of overhead traffic only, except for local access to industries served by UP and SP and no other railroad at the points specified below:

- 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
- Points on paired track from Weso, NV - Alazon, NV
- Reno, NV (intermodal and automotive only)
- Herlong, CA
- Johnson Industrial Park at Sacramento, CA
- Farmers Rice at West Sacramento, CA
- Port of Sacramento, CA
- Points between Oakland, CA and San Jose, CA (including Warm Springs, CA, Fremont, CA, Shinn, CA, Elmhurst, CA, Kohler, CA, and Melrose, CA
- San Jose, CA
- Ontario, CA
- La Habra, CA
- Fullerton, CA
- Access to the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built.

South Texas Trackage Rights

UP Grants to BN/Santa Fe

- Ajax, TX - San Antonio, TX
- Houston, (Algoa) TX - Brownsville, TX
- Odem, TX - Corpus Christi, TX
- Ajax, TX - Sealy, TX
- Kerr, TX - Taylor, TX
- Temple, TX - Waco, TX
- Temple, TX - Taylor, TX
- Taylor, TX - Smithville, TX

SP Grants to BN/Santa Fe

- San Antonio, TX - Eagle Pass, TX
- El Paso, TX - Sierra Blanca, TX

The above trackage rights are bridge rights for the movement of overhead traffic only, except for the local access to industries served by UP and SP and no other railroad at the points specified below:

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

Eastern Texas/Louisiana Trackage Rights

UP Grants to BN/Santa Fe

- Avondale, LA - West Bridge Jct., LA
- West Bridge Jct., LA (MP 10.2) - Westwego, LA intermodal facility (MP 9.2)

SP Grants to BN/Santa Fe

- Houston, TX - Iowa Jct., LA
- Dayton, TX - Baytown, TX
- Avondale, LA (milepost 16.9) - West Bridge Jct. (milepost 10.5), LA
- Bridge No. 5-A at Houston, TX

The above trackage rights are bridge rights for the movement of overhead traffic only, except for the local access to industries served by UP/SP and no other railroad at the points listed below:

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

Houston, TX, to Memphis, TN, Trackage Rights

UP Grants to BN/Santa Fe

- Fair Oaks, AR - Bridge Jct., AR
- North Little Rock, AR - Pine Bluff, AR

SP Grants to BN/Santa Fe

- Houston, TX - Fair Oaks, AR via Cleveland, TX - Pine Bluff, AR
- Brinkley, AR - Briark, AR

The above trackage rights are bridge rights for the movement of overhead traffic only, except for the local access to industries served by UP/SP and no other railroad at the points listed below.

- Camden, AR
- Pine Bluff, AR
- Fair Oaks, AR
- Baldwin, AR
- Little Rock, AR
- North Little Rock, AR
- East Little Rock, AR
- Forrest City, AR

St. Louis Area Coordinations

UP Grant to BN/Santa Fe

- St. Louis, MO (Grand Avenue - Gratiot Street) (overhead rights only)

BN/Santa Fe Grants to UP/SP

- Chemult, OR - Bend, OR (overhead rights only)
- Barstow, CA - Mojave, CA (overhead rights only)
- Keddie, CA - UP MP 0 to MP 2 (to turn equipment) (UP/SP will retain trackage rights between these mileposts over the Bieber-Keddie line to be sold to BN/Santa Fe)[1/]
- Dallas, TX - Waxahachie, TX (overhead rights and exclusive right to serve local industries) (UP/SP will retain trackage rights after sale of the line to BN/Santa Fe)[1/]
- Iowa Jct., LA - Avondale, LA (overhead rights and the right to serve all local industries, with right for Louisiana and Delta Railroad to serve as UP/SP's agent between Iowa Jct. and points served by L&D) (UP/SP will retain trackage rights after sale of the line to BN/Santa Fe)[1/]
- West Memphis-Presley Jct., AR (overhead rights only)
- Saunders, WI - Superior, WI (overhead rights only with access to MERC Dock in Superior)
- 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)

Section 1180.6(a)(1)(i) - Summary of the proposed transaction, the name of applicants, their business address and telephone number, and the name of counsel to whom questions can be addressed.

The trackage rights total approximately 1,727 miles on UP, 2,241 miles on SP and 376 miles on BN/Santa Fe in the states of California, Colorado, Arkansas, Louisiana, Missouri, Nevada, Oregon, Texas, Utah and Wisconsin.

The exact names and addresses of the parties are:

Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

1/ Sales of these lines to BN/Santa Fe are the subject of a Petition For Exemption in Finance Docket No. 32760 (Sub-No.2).

Southern Pacific Transportation Company
St. Louis Southwestern Railway Company
SPCSL Corp.
The Denver & Rio Grande Western Railroad Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105

Burlington Northern Railroad Company
The Atchison, Topeka and Santa Fe Railway Company
6th Floor
1700 East Golf Road
Schaumburg, Illinois 60173-5860

Questions regarding this transaction are to be addressed to the representatives named below:

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Assistant Vice President-Law
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Missouri Pacific Railroad Company
1416 Dodge Street, #830
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Tel. (402) 271-4229

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San Francisco, California 94105
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Vice President and General Counsel
Burlington Northern Santa Fe Corporation
6th Floor
1700 East Golf Road
Schaumburg, Illinois 60173-5860
Tel. (708) 995-6887

Section 1180.6(a)(1)(ii) - Consummation Date

The transactions will be consummated as soon as possible upon the effectiveness of an order authorizing the merger and control being sought in Finance Docket No. 32760. Unless the Commission provides otherwise, the effective date of such an order is 30 days after service of the order. See 49 C.F.R. § 1115.3(f)(1).

Section 1180.6(a)(1)(iii) - Purpose of the Transaction

The principal purpose of the trackage rights granted to BN/Santa Fe by UP is to preserve rail competition for various shipper facilities which are presently served only by UP and SP, and which would otherwise go from two serving railroads to one upon merger of UP and SP. An additional purpose of such rights is to enhance the efficiency and competitiveness of the BN/Santa Fe system. The purpose of the trackage rights granted to UP/SP by BN/Santa Fe is to enhance the efficiency and competitiveness of the UP/SP system.

Section 1180.6(a)(5) - List of States

Following are the states in which any part of the real property of each railroad carrier is situated:

State	Rail Carrier(s)
AL	BN/Santa Fe
AR	UP, SP, BN/Santa Fe
AZ	SP, BN/Santa Fe
CA	UP, SP, BN/Santa Fe
CO	UP, SP, BN/Santa Fe
FL	BN/Santa Fe
ID	UP, BN/Santa Fe
IL	UP, SP, BN/Santa Fe
IA	UP, BN/Santa Fe

State	Rail Carrier(s)
MO	UP, SP, BN/Santa Fe
MT	UP, BN/Santa Fe
ND	BN/Santa Fe
NE	UP, BN/Santa Fe
NM	SP, BN/Santa Fe
NV	UP, SP
OK	UP, SP, BN/Santa Fe
OR	UP, SP, BN/Santa Fe
SD	UP, BN/Santa Fe

State	Rail Carrier(s)	State	Rail Carrier(s)
KS	UP, SP, BN/Santa Fe	TN	UP, SP, BN/Santa Fe
KY	BN/Santa Fe	TX	UP, SP, BN/Santa Fe
LA	UP, SP, BN/Santa Fe	UT	UP, SP
MI	UP	WA	UP, BN/Santa Fe
MN	UP, BN/Santa Fe	WI	UP, BN/Santa Fe
MS	BN/Santa Fe	WY	UP, BN/Santa Fe

Section 1180.6(a)(6) - Map (Exhibit 1)

Two maps are attached as Exhibit 1. One map depicts the rights granted to UP/SP together with the proposed UP/SP system. The other map depicts the rights granted to the BN/Santa Fe system.[2/]

Section 1180.6(a)(7)(ii) - Agreement (Exhibit 2)

Attached as Exhibit 2 is the Agreement, including the Supplemental Agreement dated November 18, 1995, which governs the grants of trackage rights.

Section 1180.4(g)(1)(i) - Labor Protection

The parties are agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in Norfolk & Western Ry. -- Trackage Rights -- Burlington Northern R.R., 354 I.C.C. 605 (1978), as modified by Mendocino Coast Ry. -- Lease Operate -- California Western R.R., 360 I.C.C. 653 (1980).

2/ As required by 49 C.F.R. & 1180.6(a)(6), the parties are submitting 20 unbound copies of each of these maps. If additional unbound maps are needed, they are available upon request from the above-named counsel.

Section 1180.4(g)(2)(i) - Caption Summary

Environmental impacts associated with trackage rights proceedings generally are considered to be insignificant. Therefore, an environmental report and documentation normally need not be submitted for these types of transactions, pursuant to 49 C.F.R. § 1105.6(c)(4).

A proposed caption summary is submitted as Exhibit 3.

Respectfully submitted,

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VERIFICATION

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

Richard E. Weicher, Vice President and General Counsel of Burlington Northern Santa Fe Corporation, being first duly sworn, deposes and says that he has read the foregoing Notice of Exemption in Finance Docket No 32760 (Sub-No. 1), knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Richard E. Weicher
Richard E. Weicher

Subscribed and sworn to before me this
13th day of November, 1995.

Notary Public

My Commission Expires:

"OFFICIAL SEAL"
CHARLENE M. SCHWARTZ
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11/2/97

VERIFICATION

STATE OF COLORADO)
)
COUNTY OF DENVER)

William F. Fowler, Managing Director Contracts and Joint Facilities of SP, being first duly sworn, deposes and says that he has read the foregoing Notice of Exemption in Finance Docket No. 32760 (Sub-No. 1) that he knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

William E. Fowler

Subscribed and sworn to before me this 7th day of November 1995.

Notary Public

My Commission Expires:
November 20, 1999

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Jerry S. Wilmoth, Director Joint Facilities of UP, being first duly sworn, deposes and says that he has rad the foregoing Notice of Exemption in Finance Docket No. 32760 (Sub-No. 1), knows the contents thereof, and that the same are true as stated to the best of this knowledge, information and belief.

Jerry S. Wilmoth

Subscribed and sworn to before me this 15TH day of November, 1995.

GENERAL NOTARY-State of Nebraska
MARY R. HOLEWINSKI
My Comm. Exp. Oct. 15, 1996

Notary Public

My Commission Expires:

October 15, 1996

EXHIBIT 1
Finance Docket 32760 (Sub-No. 1)

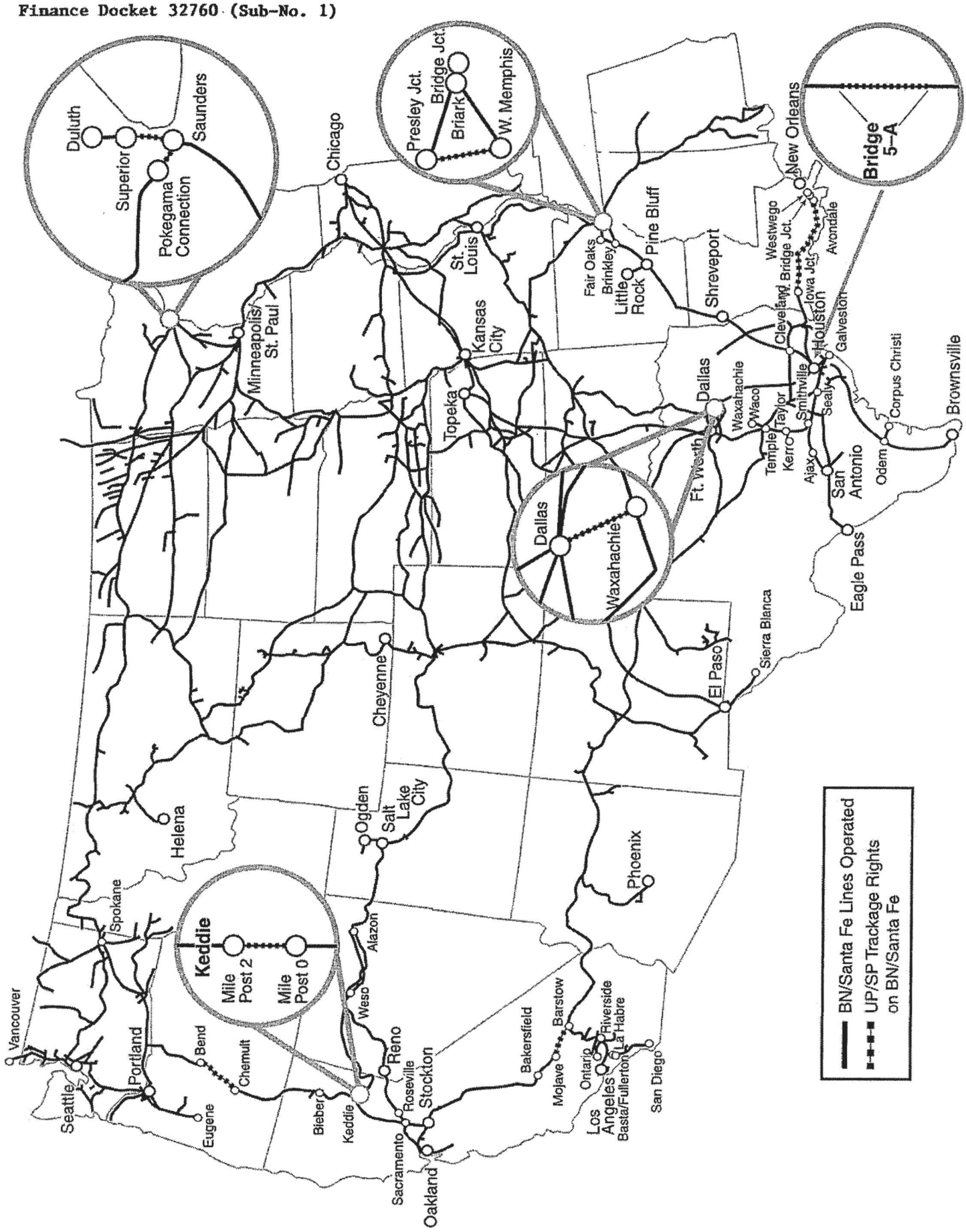


EXHIBIT 1
Finance Docket 32760 (Sub-No. 1)

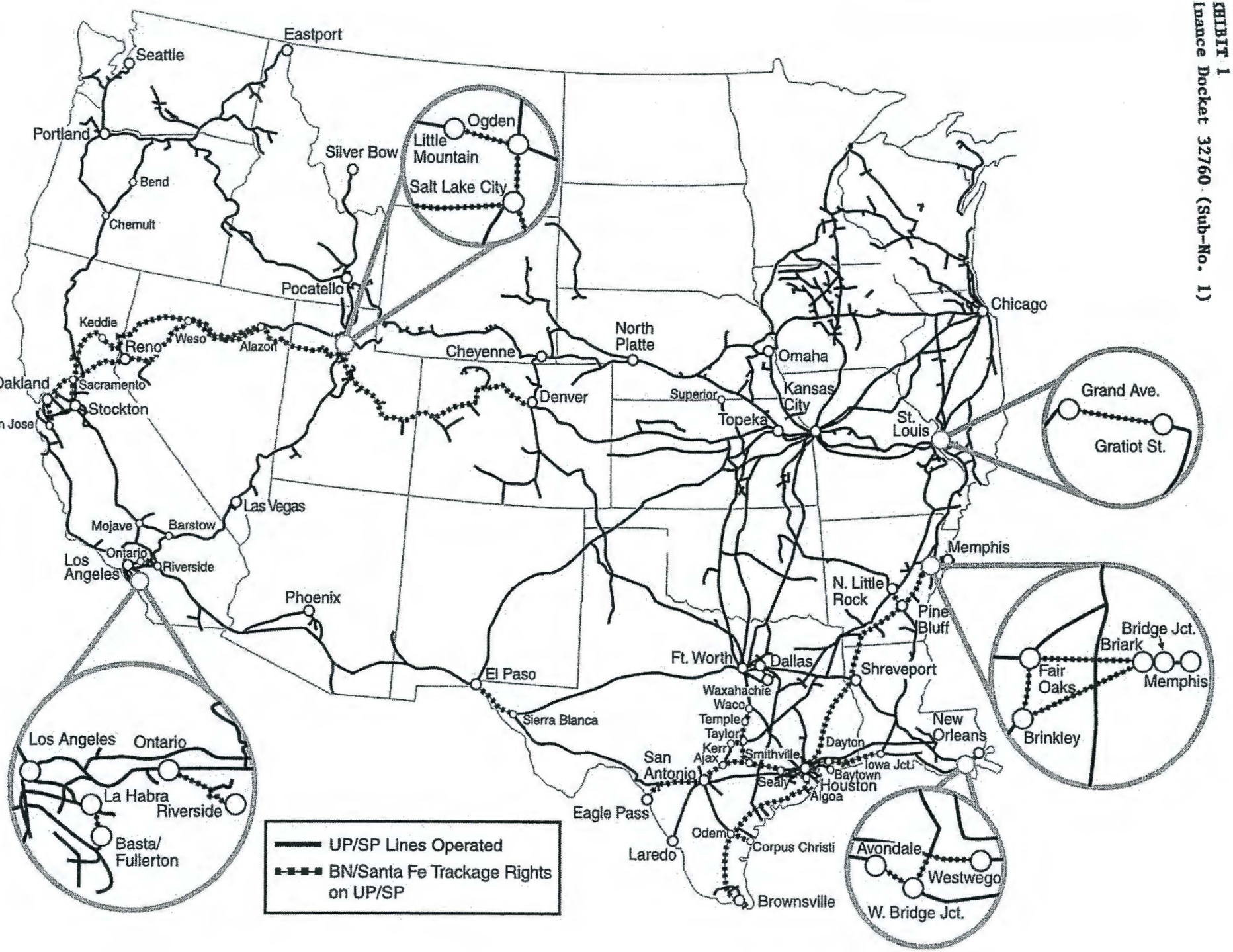


Exhibit 25

Counsel's Exhibit 25

Redacted from Public Version

Exhibit 26

Counsel's Exhibit 26

Redacted from Public Version

Exhibit 27

Counsel's Exhibit 27

Redacted from Public Version

Exhibit 28

Counsel's Exhibit 28

Redacted from Public Version

Exhibit 29

Counsel's Exhibit 29

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

APPLICATION FOR TERMINAL TRACKAGE RIGHTS

BNSF's Reply to KCSR's Motion to Compel Responses to Second Discovery Requests Directed to BNSF Railway Company

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COUNSEL FOR BNSF RAILWAY COMPANY

February 26, 2015

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 46)

BNSF RAILWAY COMPANY
—TERMINAL TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY

APPLICATION FOR TERMINAL TRACKAGE RIGHTS

BNSF's Reply to KCSR's Motion to Compel Responses to Second Discovery Requests Directed to BNSF Railway Company

BNSF Railway Company ("BNSF") hereby replies to The Kansas City Southern Railway Company's ("KCSR") Motion to Compel Responses to Second Discovery Requests Directed to BNSF ("Motion") filed in the above-referenced proceeding on February 6, 2015. As explained below, because BNSF has fully and adequately responded to each KCSR Second Discovery Request covered by the KCSR Motion, KCSR's Motion should be denied.

I. Background

As described in more detail in BNSF's Opening Statement filed on December 31, 2014, at 4, the Board imposed trackage rights conditions on the UP/SP merger that provide BNSF the right (1) to handle traffic of shippers open to all of UP, SP, and KCSR at Lake Charles and Westlake; and (2) to handle traffic of shippers open to SP and KCSR at West Lake Charles (collectively, the "Lake Charles Condition"). *See* Finance Docket No. 32760, Decision No. 44, 1 S.T.B. 233 (served Aug. 12, 1996) ("Decision No. 44"). The rights that the STB granted to BNSF include both direct train service and reciprocal switch. *See* Exhibit 1 to BNSF's Opening Statement, BNSF Settlement Agreement, Section 5(c). In its Application and Opening Statement,

BNSF has requested that the Board confirm the Lake Charles Condition through the imposition of terminal trackage rights over the Rosebluff Industrial Lead at West Lake Charles.

KCSR submitted KCSR's Second Discovery Requests to BNSF on January 13, 2015, and BNSF submitted a timely response to the KCSR requests on January 28, 2015 (the "BNSF January 28 Response"). On February 6, KCSR filed its Motion, requesting that the Board order BNSF to provide further responses to certain of the KCSR Second Discovery Requests. KCSR filed its Motion without previously contacting BNSF's counsel to raise its concerns as to BNSF's discovery responses.

On February 20, BNSF submitted a letter to KCSR, attached here as Exhibit A (the "BNSF February 20 Letter"), seeking to amicably resolve several of the issues raised by KCSR in its Motion. In its February 20 Letter, BNSF agreed to produce additional documents responsive to KCSR's Second Discovery Requests, clarified the privileged status of certain documents already produced by BNSF, explained the basis for redacting certain documents produced by BNSF, further explained BNSF's position on the scope of BNSF's responses to certain KCSR discovery requests, and sought further clarity from KCSR on the intent of certain KCSR discovery requests. BNSF produced the documents on February 20, 2015. As of the date of this filing, KCSR has not responded to the BNSF February 20 Letter.

This terminal trackage rights proceeding should be a straightforward technical exercise to implement the Lake Charles Condition. As discussed further below, the KCSR Motion to Compel is a transparent attempt to further delay the implementation of that Condition and to re-litigate issues fully aired nearly twenty years ago.

II. The Board Should Deny the KCSR Motion to Compel Because BNSF Has Fully and Adequately Responded to the KCSR Second Discovery Requests.

As shown below, BNSF has complied with the Board's discovery rules in fully and adequately responding to each KCSR Second Discovery Request covered by the KCSR Motion. Therefore, no further BNSF response is necessary, and the Board should deny the KCSR Motion in its entirety.

A. Competitive Effectiveness

KCSR Document Request Nos. 2, 10 and 12 relate to "BNSF's claims about competition and BNSF's desires to switch to direct service, versus continuing with service via reciprocal switch." Motion at 15. KCSR alleges, erroneously, that "if BNSF is already successfully competing and already providing CITGO with the competitive option that BNSF claims the Board deemed 'critical,' there is no justification for the grant of intrusive terminal trackage rights." *Id.* Through Document Request No. 2, KCSR seeks documents relating to BNSF marketing efforts with respect to transporting any industrial product to or from CITGO's Lake Charles facility. Through Document Request No. 10, KCSR seeks documents relating to BNSF's rates vis-à-vis rates provided by other carriers for any product transported to or from CITGO's Lake Charles facility. Finally, through Document Request No. 12, KCSR seeks documents "relating to any cost savings BNSF may incur by providing direct unit train service to CITGO's Lake Charles area facility instead of continuing to serve CITGO via a reciprocal switch provided by UP."

As BNSF stated in its January 28 Response, each of KCSR Document Request Nos. 2, 10, and 12 seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in that the requests seek documents unrelated to the standards

for terminal trackage rights under 49 U.S.C. § 11102. *See* BNSF January 28 Response at 8-9, 12, and 13.

In its Reply to the first KCSR Motion to Compel at 4-6, filed on February 4, 2015 ("BNSF First Reply"), BNSF established that the "competitive effectiveness" of the Lake Charles Condition is *not* at issue in this proceeding. In Decisions Nos. 44 and 63 of the UP/SP merger proceeding, the Board decided that the Lake Charles Condition was competitively necessary in order to address the potential loss of competition resulting from the UP/SP merger. On its face, the Lake Charles Condition means what it says: BNSF has the right to serve shippers in the Lake Charles Area by direct service over trackage rights or by reciprocal switch. KCSR's attempt to raise an issue concerning the "competitive effectiveness" of that condition now is nothing more than a transparent attempt to re-litigate an issue that was resolved adversely to KCSR years ago.

KCSR sought reconsideration in 1996 of the Lake Charles Condition, and the Board specifically rejected the KCSR competition argument in Decision No. 63, including the argument that KCSR itself provided a sufficient remedy for the loss of competition resulting from the UP/SP merger. *See* BNSF Opening Statement at 5-7.[1] The Lake Charles Condition cannot now be changed absent a reopening of the UP/SP merger. The Board's merger conditions vested rights not only in BNSF but also in shippers, and KCSR cannot seek to modify a merger condition, including the Lake Charles Condition, without the participation of all beneficiaries of the merger conditions. *See* Decision No. 44, 1 S.T.B. at 247 n.15; *see also* Finance Docket No.

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[1] In rejecting KCSR's argument, the Board stated: "Moreover, we continue to believe that the conditions we imposed, by building upon a privately negotiated settlement agreement, as endorsed by all relevant shippers, offer a better competitive solution than KCS has offered." Finance Docket No. 32760, Decision No. 63, slip op. at 9 (STB served Dec. 4, 1996) ("Decision No. 63").

32760 (Sub-No. 21), Decision No. 21, slip op. at 6 (STB served Dec. 20, 2001) (BNSF and shippers have independent rights to seek Board intervention "to ensure that the conditions [the Board] imposed on the merger are implemented in a manner that effectively preserves pre-merger competition.").

KCSR's suggestion that it needs the information requested by Document Request Nos. 2, 10 and 12 to analyze the "competitive effectiveness" of the Lake Charles Condition and the question of whether direct BNSF train service is "competitively justified" is disingenuous and invokes a completely irrelevant standard. The "public interest" element of 49 U.S.C. § 11102(a) does not require a determination of "competitive effectiveness," but rather was determined by the Board to have been satisfied by the provisions of the BNSF and CMA Agreements, which the Board imposed as conditions to the UP/SP merger in Decision No. 44 and again emphatically confirmed in Decision No. 63. The Board's decisions found those agreements to be in the public interest and necessary to preserve pre-merger competition. Under those agreements—in particular, the CMA Agreement—CITGO and other Lake Charles area shippers have a right to direct service from BNSF. Here, CITGO has determined that it wants to utilize that right since, in its business judgment, it needs direct unit train service to its Lake Charles facility.

Thus, KCSR's invitation to assess the "competitive effectiveness" of indirect BNSF service and to treat the public interest issue as contestable in this proceeding is meritless. KCSR can, of course, challenge the continued necessity of the UP/SP merger conditions and the public interest determination that the Board made in the UP/SP proceeding, but it cannot do so here through a thinly veiled collateral attack on long-settled conditions. Instead, if KCSR wishes to re-litigate the issues it lost in 1996, it must petition to reopen the UP/SP merger proceeding in order to allow all concerned parties the opportunity to participate.

The information requested by KCSR Document Request Nos. 2, 10 and 12 has nothing to offer with respect to the Board's "public interest" standard that controls in this proceeding, and the information would not "affect the outcome of this proceeding." *Waterloo Ry.—Adverse Aban.— Lines of Bangor & Aroostook R.R. & Van Buren Bridge Co. in Aroostook Cnty., Me.*, AB 124 (Sub-No. 2) et al., slip op. at 2 (STB served Nov. 14, 2003) ("*Waterloo*"). The information is therefore irrelevant to this proceeding and excluded from the scope of BNSF documents that KCSR may request through discovery. The Board should deny the KCSR Motion with respect to KCSR Document Request Nos. 2, 10 and 12.

B. Potential for Interference

KCSR claims that a number of the KCSR Second Discovery Requests at issue here—namely Interrogatory No. 1 and Document Request Nos. 1, 5, and 8—relate to the potential for interference on the Rosebluff Industrial Lead should the Board impose the terminal trackage rights requested by BNSF in this proceeding. Specifically, KCSR is "concerned that adding BNSF direct service will substantially impair the ability of KCSR and UP to use the facilities to handle their own business." Motion at 10.

1. KCSR Interrogatory No. 1

With respect to Interrogatory No. 1, which seeks an explanation of why a hypothetical operational issue "would not interfere with KCSR's operations," BNSF has provided a full and adequate response. The alleged "operational issues" that KCSR attempts to raise cannot serve as a basis to stop the full implementation of the Lake Charles Condition, now that BNSF needs to serve shippers by direct service in order to effectively compete on the Rosebluff Industrial Lead.[2]

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[2] As BNSF noted in its Opening Statement, "to the extent that there is any interference with UP's operations, the Board recognized in Decision No. 95 (served March 4, 2002), that BNSF's trackage rights operations would, 'by definition, potentially interfere with UP's operations on the trackage rights lines and UP agreed to this potential interference when it

If an operational issue arises related to a particular BNSF direct service, the issue should not be resolved by denying BNSF direct access, but by all three carriers working cooperatively to accommodate BNSF's operations. Any operational accommodation or additional service introduced pursuant to the Lake Charles Condition should not be construed as "interference" that would justify denying BNSF's application for terminal trackage rights.

That said, BNSF explained in its Response to KCSR Interrogatory No. 1 that BNSF service "would effectively replace UP service for BNSF's reciprocal switch cars, and BNSF plans to hold its cars in the Lacassine Yard until UP gives BNSF a window to operate." BNSF January 28 Response at 6. BNSF clarified in its February 20 Letter that "BNSF direct service would not cause substantial (if any) interference with KCSR's operations." February 20 Letter at 2.

In its First Reply, BNSF stated:

> the facts here are that BNSF's proposed terminal trackage rights operations on the Rosebluff Industrial Lead will not affect KCSR operations. BNSF's operations would effectively replace UP's deliveries and pickups of BNSF reciprocally-switched cars at the CITGO facility, and thus the situation at the facility would not be materially different than it is today. Moreover, as noted in BNSF's Opening Statement at 19, BNSF would hold its cars in BNSF's Lacassine Yard until UP gives BNSF a clear operating window, thereby eliminating any risk of interference at the Rosebluff Yard or on the Lead itself.

BNSF First Reply at 6-7. BNSF also noted in its First Reply that Rollin D. Bredenberg, BNSF's Vice President of Capacity Planning and Operations Research, testified that "BNSF's direct train service, which would, under the UP proposed operating plan, occur during a two hour window provided by UP during UP's 12-hour operating period, will not cause substantial interference with KCSR's operations." *Id.* at 7 (citing V.S. Bredenberg at 7-8). Put simply, any BNSF direct

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accepted the conditions, including the terms of the BNSF Agreement, that we imposed when we approved the UP/SP merger.'" Opening Statement at 20, note 7 (quoting Decision No. 95, slip op. at 4.)

train service under the terminal trackage rights requested here would reduce the number and frequency of these UP trains, essentially creating a zero-sum game.

KCSR may not like BNSF's answer, but BNSF has fully and adequately answered the KCSR request that BNSF explain why the speculative operational issue raised by KCSR would not interfere with KCSR's operations. The Board should deny the KCSR Motion with respect to Interrogatory No. 1.

2. KCSR Document Request No. 5

KCSR requested in Document Request No. 5 that BNSF produce documents "relating to any rail operational impacts that may occur at any non-CITGO Lake Charles area Shipper facility if BNSF provides direct rail service to CITGO's Lake Charles facility."

As a threshold matter, to the extent that KCSR Document Request No. 5 seeks information relating to "rail operational impacts" that would occur to any trackage that is not a part of the Rosebluff Industrial Lead (the trackage at issue in this proceeding), any such information would "not be able to affect the outcome" of this proceeding and therefore is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence, and KCSR is not entitled to discovery of those documents under the Board's rules. *Waterloo*, slip op. at 2.

As to the Rosebluff Industrial Lead, BNSF conducted a thorough and comprehensive search for documents relevant to the operational interference issue, and BNSF produced a number of these documents in response to UP's First Set of Discovery Requests to BNSF. As BNSF stated in its January 28 Response, and without waiving its objections set forth in the January 28 Response, those already-produced documents are equally responsive to many of the KCSR Second Discovery Requests, including Document Request No. 5. BNSF January 28

Response at 10. Furthermore, as established in Section II.B.1 above, BNSF's Opening Statement at 10-11, and V.S. Bredenberg at 8, any BNSF direct rail service to CITGO's facility would have no material "rail operational impact" to any other non-CITGO shipper on the Rosebluff Industrial Lead because UP will provide BNSF a clear operating window to serve CITGO and BNSF's trains will immediately and completely pull into the CITGO facility, avoiding any interference on the Rosebluff Industrial Lead.

BNSF has fully and adequately responded to KCSR Document Request No. 5. The Board should therefore deny the KCSR Motion with respect to this request.

3. KCSR Document Request Nos. 1 and 8

Through Document Request Nos. 1 and 8, KCSR asked BNSF to produce documents relating to BNSF's operational capabilities of providing existing or future service to CITGO, and documents relating to the quality of BNSF's prior or existing service to CITGO.

Without waiving its objections set forth in the January 28 Response, the documents that BNSF has already produced include a number of documents that are responsive and relevant to KCSR Document Request Nos. 1 and 8. In response to the KCSR Motion, and as noted in the BNSF February 20 Letter at 2, BNSF conducted a further search and identified certain additional documents that are responsive to Document Request Nos. 1 and 8, which BNSF will produce. With that production, BNSF will have fully and adequately responded to these requests. The Board should therefore deny the KCSR Motion with respect to these requests.

C. Lacassine Yard

Through Document Request No. 3, KCSR requests that BNSF produce documents relating to BNSF's new Lacassine Yard, including plans to serve Lake Charles area shippers via the yard. As BNSF stated in its January 28 Response at 9 (and as KCSR acknowledged in its

Motion at 11), BNSF has already produced a number of documents responsive to KCSR Document Request No. 3. In its February 20 Letter, BNSF agreed to provide a further response if KCSR clarifies the scope of this request. As of the date of this filing, KCSR has not provided any such clarification. Without waiving its objections in its January 28 Response, BNSF has demonstrated that it fully intends to produce documents that are responsive to this KCSR request once clarified, and the Board should therefore deny the KCSR Motion with respect to KCSR Document Request No. 3.

D. Shippers Other Than CITGO

1. KCSR Interrogatory No. 2

Through Interrogatory No. 2, KCSR asks BNSF to state whether it would only serve CITGO and no other shippers "located on, or connecting to," the Rosebluff Industrial Lead and, if not, to "list all other shippers BNSF would attempt to serve" if the Board imposes the terminal trackage rights requested here. In its Response, BNSF stated:

> at this time BNSF identifies CITGO as the only shipper that it will initially serve using the proposed terminal trackage rights. Upon approval of the proposed terminal trackage rights, BNSF anticipates that additional shippers will request BNSF service using the proposed terminal trackage rights. BNSF cannot speculate as to which other shippers it may seek to serve with these rights.

January 28 Response at 6-7.

To clarify and expand on this response, BNSF further states that, as reflected in the documents already produced by BNSF and without waiving the objections set forth in its Response, BNSF has discussed potential service on the Rosebluff Industrial Lead with several shippers. BNSF has executed agreements with one such shipper, pursuant to which BNSF will provide reciprocal switch service and may eventually provide direct service either in the event that its application in this proceeding is granted or the impediments, if any, to such service are removed by means of a statutory override of any pertinent agreements under former 49 U.S.C. §

11341(a) (now 49 U.S.C. § 11321(a)), as contemplated by the Board. *See* Decision No. 63, slip op. at 10. BNSF intends to fulfill its common carrier obligations as to other shippers requesting service on the Rosebluff Industrial Lead.

2. KCSR Document Request No. 4

In Document Request No. 4, KCSR asked BNSF to produce documents relating to BNSF's plans to serve "any other Lake Charles area Shipper in the event that BNSF is able to directly operate over the Rosebluff Industrial Lead to serve CITGO's Lake Charles facility."

As established above in Section II.B.2, to the extent that KCSR Document Request No. 4 seeks information relating to shippers not located on the Rosebluff Industrial Lead, any such information would not "be able to affect the outcome" of this proceeding and therefore is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence, and KCSR is not entitled to discovery of those documents under the Board's rules. *Waterloo*, slip op. at 2. BNSF service to shippers using trackage other than the Rosebluff Industrial Lead would not affect any BNSF service to shippers on the Lead.

KCSR Document Request No. 4 also requests certain relevant information as to shippers, namely the information that relates to shippers that BNSF may serve on the Rosebluff Industrial Lead if the Board imposes the terminal trackage rights sought here. The documents that BNSF has already produced and will produce include a number of documents that are responsive and relevant to KCSR Document Request No. 4. In response to the KCSR Motion, BNSF conducted a further search and identified certain additional documents that are responsive to Document Request No. 4, which BNSF will produce. With that production, BNSF will have fully and adequately responded to this KCSR request. The Board should therefore deny KCSR's motion with respect to KCSR Document Request No. 4.

E. Completeness of BNSF Documents

KCSR alleges in its Motion at 19-20 that certain of the documents BNSF has produced are "incomplete," and requests the Board to order BNSF to "provide the documents that appear to be missing." In its February 20 Letter at 1, BNSF explained that it "has located and will produce the attachments" to certain documents, which BNSF produced on February 20. BNSF further explained that BNSF had already produced the remaining requested documents as attachments to other related documents. Therefore, the Board should deny the KCSR Motion with respect to the "incomplete" documents.

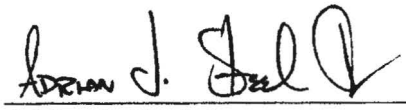
F. Redactions

Through its Motion at 11 and 20, KCSR asked the Board to order BNSF to "unredact" certain of documents produced by BNSF. BNSF reviewed these documents and noted in its February 20 Letter that it "removed the redactions on three documents and will produce those in an unredacted form," and that BNSF included a chart "which explains the basis for the remaining redactions." BNSF February 20 Letter at 1. As explained in the chart, BNSF properly redacted certain portions of the documents that contained "irrelevant commercially sensitive information." This information is irrelevant and excluded from the scope of BNSF documents that KCSR may request through discovery because the information would not "be able to affect the outcome" of this proceeding. *Waterloo*, slip op. at 2. Furthermore, BNSF properly redacted certain portions of the documents that contained privileged attorney-client communications, which the parties have agreed lies outside the scope of documents that any party must produce in this proceeding. Therefore, the Board should deny KCSR's request to order BNSF to "unredact" certain documents.

III. Conclusion

For the reasons stated above, BNSF respectfully requests that the Board deny the KCSR Motion to Compel.

Respectfully submitted,



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Dated: February 26, 2015

EXHIBIT A

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February 20, 2015

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Re: Finance Docket No. 32760 (Sub-No. 46), BNSF Railway Company--Terminal Trackage Rights--The Kansas City Southern Railway Company and Union Pacific Railroad Company

Dear Bill :

I am writing this letter in response to KCSR's Motion to Compel Responses to KCSR's Second Set of Discovery Requests Directed to BNSF Railway served on February 6, 2015. BNSF is reviewing the Motion and will reply on or before the due date, February 26, 2015. I am writing this letter to address in the interim several of the matters raised in the Motion in an effort to see if we can reach a resolution as to those matters.

First, KCSR has expressed concern that BNSF's production of documents was incomplete in certain respects as set forth in the chart on pages 19-20 of the Motion. BNSF has located and will produce the attachments to the documents listed in rows 2-3 and 12-20 of the chart. As to the document listed in row 1, BNSF-C-000043 should have been marked as privileged and attorney work product since Mr. Bigoness was providing comments at the request of BNSF in-house attorney Courtney Estes who was also a recipient of the e-mail to which the annotated UP letter was attached. The letter was inadvertently produced. A copy of the e-mail from Chris Bigoness of BNSF transmitting the annotated letter will be produced. BNSF is waiving privilege as to Mr. Bigoness's e-mail and the annotated letter, but it is not thereby waiving and does not intend to waive any privilege as to any other documents or information. Additional documents relating to Mr. Bigoness's e-mail are also being produced, with portions relating to legally privileged material to or from Ms. Estes redacted. A chart responding to each item you have listed in your chart is attached.

Second, KCSR has questioned certain redactions to documents that were made. We have removed the redactions on three documents and will produce those in an unredacted form, and we have attached a chart which explains the basis for the remaining redactions.

Third, we have the following comments with respect to specific interrogatories and documents requests cited in your Motion regarding which are not addressed above:

Mayer Brown LLP operates in combination with other Mayer Brown entities with offices in Europe and Asia and is associated with Tauil & Chequer Advogados, a Brazilian law partnership

a. Interrogatory No. 1: In its response to this interrogatory, BNSF set forth in full its position as to why there would be no interference with KCSR's operations as described in the hypothetical scenario posed. BNSF stated that it would operate only once UP gave it a clear window and that BNSF direct service to the CITGO facility would effectively replace the UP reciprocal switch service now being performed for BNSF traffic. Rollin Bredenberg confirmed in his Verified Statement to which BNSF referred that BNSF's direct train service would, under the UP proposed operating plan, occur during a two hour window provided by UP during UP's 12-hour operating period (see V.S. Bredenberg at 7). Thus, BNSF direct service would not cause substantial (if any) interference with KCSR's operations.

b. Document Request Nos.1 and 8: BNSF has produced the non-privileged documents that it could identify that are responsive to these document requests. We are checking again to see if additional non-privileged documents can be located, and, if so, we will produce them.

c. Document Request No. 3: If you will please identify the specific information that you need concerning the Lacassine Yard -- in your words, the "capacity and service structure" and "operating structure and plans" for the yard – and explain what you mean by the terms that you have used, BNSF will respond further.

Please let me know if you have any questions or would like to discuss. Thank you.

Sincerely yours,

Adrian L. Steel, Jr.

Attachments

cc: Crystal M. Zorbaugh
Michael L. Rosenthal
Edward D. Greenberg
David K. Monroe

February 20, 2015

BNSF Document Production Chart in Response to KCSR Second Motion to Compel

Documents KCSR Listed as Incomplete
FD-32760 (Sub-No. 46)
-TERMINAL TRACKAGE RIGHTS-
KANSAS CITY SOUTHERN RAILROAD COMPANY AND UNION PACIFIC RAILROAD COMPANY

	BNSF Bates Number	Documents Missing According to KCSR	Status
1	BNSF-C-000043	Need response to questions posed in BNSF-C-000043-BNSF-C000044 and identity of individual asking questions	The UP letter was annotated by Chris Bigoness. See BNSF-HC-000670-671; BNSF-HC-000681-682; BNSF-HC-000679-680; BNSF-HC-000674-675; BNSF-HC-000676-678; BNSF-HC-000672-673
2	BNSF-C-000102	Need Attachment (Citgo Pipeline Report) Spreadsheet	See BNSF-HC-000102A[1]
3	BNSF-C-000210	Need Attachment	See BNSF-HC-000210A-211A; BNSF-HC-000210B-214B[2]
4	BNSF-C-000259	May 27, 2014 E-mail to Becky Murchison - Capacity Questions Summary to improvements made track and unloading operation for last year — Tally of Cars Interchanged (Partial Answer Provided in BNSF-HC-000583 but e-mail noted additional answers anticipated).	See BNSF-HC-000259 RESP 1-2[3]
5	BNSF-HC-000064	12/19/12 E-mail -- Answer to question posed	See BNSF-HC-000065
6	BNSF-HC-000066	12/19/12 Answers / plan to questions	See BNSF-HC-000693-694; BNSF-HC-000691-692; BNSF-HC-000690; BNSF-HC-000688-689; BNSF-HC-000686-687
7	BNSF-HC-000086	Need answer to 04/30/13 M.S. Question	See BNSF-HC-000086 RESP 1-50

[1] "A" at the end of a Bates Number signifies that a document is an attachment to the original document which KCSR objected to in the first column, e.g., BNSF-HC-000210A-211A is an attachment to BNSF-C-000210 document listed in the third row.

[2] "B" at the end of a Bates Number signifies that a document is an additional attachment to the original document which KCSR objected to in the first column, e.g., BNSF-HC-000210B-214B is an attachment to BNSF-C-000210 document listed in the third row.

[3] "RESP" at the end of a Bates Number signifies that a document is responsive to the original document which KCSR objected to in the first column, e.g., BNSF-HC-000259 RESP 1-2 is a separate document that contains responsive information to BNSF-C-000259 in the fourth row.

BNSF Document Production Chart in Response to KCSR Second Motion to Compel

Documents KCSR Listed as Incomplete
FD-32760 (Sub-No. 46)
-TERMINAL TRACKAGE RIGHTS-
KANSAS CITY SOUTHERN RAILROAD COMPANY AND UNION PACIFIC RAILROAD COMPANY

8	BNSF-HC-000141	Need answer to D.S. question	See BNSF-HC-000683-685; See also BNSF-C-0000-lo as produced January 16, 2015
9	BNSF-HC-000146	(2/20/14 - e-mail) Need answer to question	See BNSF-HC-000146 RESP 1
10	BNSF-HC-000197 to BNSF-HC-000207	Need documents that are missing in between Tabs	See BNSF-HC-000407-000480 as produced January 16, 2015
11	BNSF-HC-000216 to BNSF-HC-000217	Need answer to questions posed on 2/21/12 and 2/24/12	See BNSF-HC-000407-000480 as produced January 16, 2015
12	BNSF-HC-000223 to BNSF-HC-000225	Need PowerPoint attachment (BNSF-HC-000223)	See BNSF-HC-000223A-224A; BNSF-HC-000225A-227A; BNSF-HC-000225B-230B
13	BNSF-HC-000227	Need Attachments (Lake Charles MOU and ITA)	See BNSF-HC-000227A-240A; BNSF-HC-000227B-230B
14	BNSF-HC-000260	Missing attachments	See BNSF-HC-000260A; BNSF-HC-000260B-265B
15	BNSF-HC-000266	NBR - missing attachment	See BNSF-HC-000266A
16	BNSF-HC-000487	Missing PowerPoint attachment (BNSF-HC-000487)	See BNSF-HC-000487A
17	BNSF-HC-000490	Missing meeting notes and PowerPoint attachment (BNSF-HC000490)	See BNSF-HC-000490A-491A;BNSF-HC-000490B-498B
18	BNSF-HC-000508	Missing PowerPoint attachment (BNSF-HC-000508)	See BNSF-HC-000508A
19	BNSF-HC-000525	Missing meeting notes and PowerPoint attachment (BNSF-HC000525)	See BNSF-HC-000525A-532A;BNSF-HC-000525B-533B
20	BNSF-HC-000536	Missing two PDF attachments (BNSF-HC-000536)	See BNSF-HC-000536A; BNSF-HC-000536B

February 20, 2015

BNSF Document Production Chart
in Response to KCSR's Second Motion to Compel
FD-32760 (Sub-No. 46)
BNSF RAILWAY COMPANY
-TERMINAL TRACKAGE RIGHTS-
KANSAS CITY SOUTHERN RAILROAD COMPANY AND
UNION PACIFIC RAILROAD COMPANY
REDACTED DOCUMENTS

Document	Grounds for Redaction
BNSF-HC-000007	Irrelevant commercially sensitive information concerning potential revenue from new business
BNSF-HC-000009-BNSF-HC-000011	See unredacted documents for BNSF-HC000009 - BNSF-HC-000010. BNSF-HC-000011 contains irrelevant commercially sensitive information concerning a market overview
BNSF-HC-000052-BNSF-HC-000054	Irrelevant commercially sensitive information concerning analysis of financial aspects of the new Lacassine Yard (e.g., costs, contribution, and operating savings) and concerning the terms of an existing transportation contract
BNSF-HC-000056	Irrelevant commercially sensitive information concerning costs of the new Lacassine Yard
BNSF-HC-000058	Irrelevant commercially sensitive information concerning the operating savings associated with the new Lacassine Yard
BNSF-HC000060-BNSF-HC-000062	Irrelevant commercially sensitive information concerning potential revenue from new business, existing cost per car mile, traffic contribution, and market share contribution
BNSF-HC-000155	Irrelevant commercially sensitive information concerning potential revenue from new business
BNSF-HC-000177	Irrelevant commercially sensitive information concerning potential revenue from new business
BNSF-HC-000400-BNSF-HC-000401	Irrelevant commercially sensitive information concerning traffic and revenues
BNSF-HC-000410-BNSF-HC-000411	See unredacted document for BNSF-HC000411. BNSF-HC-000410 contains irrelevant commercially sensitive information concerning traffic and revenues and potential revenues from new business

BNSF-HC-000426	Irrelevant commercially sensitive information concerning potential revenues from new business
BNSF-HC-000428-BNSF-HC-000430	Irrelevant commercially sensitive information concerning potential revenue from new business, existing cost per car mile, traffic contribution and market share contribution
BNSF-HC-000432	Irrelevant commercially sensitive information concerning costs of the new Lacassine Yard
BNSF-HC-000434	Irrelevant commercially sensitive information concerning the operating savings associated with the new Lacassine Yard
BNSF-HC000436-BNSF-HC-000438	Irrelevant commercially sensitive information concerning potential revenue from new business, existing cost per car mile, traffic contribution, and market share contribution
BNSF-HC-000485	Attorney-Client Privileged—Sarah Bailiff's transmission of legal advice discussed with in-house BNSF attorneys (Nober, Weicher, Rankin)
BNSF-HC-000572	Attorney-Client Privileged - -Sarah Bailiff set forth legal strategy as provided to her by in-house BNSF attorneys (Weicher, Rankin, Estes)
BNSF-HC-000590	Attorney-Client Privileged—Sarah Bailiff's transmission of legal advice discussed with in-house BNSF attorneys (Nober, Weicher, Rankin)

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2015, copies of the foregoing BNSF's Reply to KCSR's Motion to Compel Responses to Second Discovery Requests Directed to BNSF Railway Company have been served by e-mail on Counsel for UP, KCSR and CITGO, and by first-class U.S. Mail on all parties as listed on the Board's website for the service list in Finance Docket No. 32760 (Sub-No. 46).

Adrian L. Steel, Jr.

Exhibit 30

Counsel's Exhibit 30

Redacted from Public Version

Exhibit 31

Counsel's Exhibit 31

Redacted from Public Version