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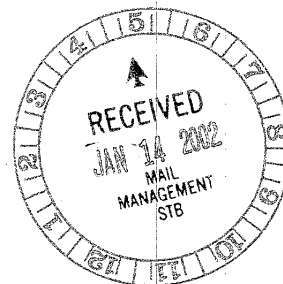
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January 14, 2002

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Transportation Company, et al.*

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and twenty-five (25) copies of the Reply to Petition of The Burlington Northern and Santa Fe Railway Company for Clarification (designated **WCTL-27**), submitted by the Western Coal Traffic League.

We have enclosed an electronic copy of this Reply on diskette and an additional hard copy to be date-stamped and returned to the bearer of this letter.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "John H. LeSeur".

John H. LeSeur
An Attorney for
Western Coal Traffic League

Enclosures

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WCTL-27

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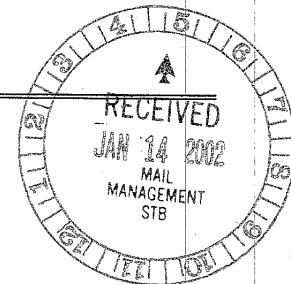
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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)

Finance Docket No. 32760



REPLY TO PETITION OF
THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY FOR CLARIFICATION (BNSF-98)

OF COUNSEL:

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Dated: January 14, 2002

Attorneys for
Western Coal Traffic League

BEFORE THE
SURFACE TRANSPORTATION BOARD

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PACIFIC RAILROAD COMPANY, AND	)	
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COMPANY, SPCSL CORP., AND THE	)	
DENVER AND RIO GRANDE WESTERN	)	
RAILROAD COMPANY	)	

REPLY TO PETITION OF
THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY FOR CLARIFICATION (BNSF-98)

The Western Coal Traffic League ("WCTL") files this reply to the petition for clarification ("Petition") served by the Burlington Northern and Santa Fe Railway Company on December 21, 2001 (BNSF-98).

I.

THE BNSF PETITION

As BNSF explains, BNSF and UP initially agreed to use an RCAF-U based method to adjust the trackage rights fees set forth in the BNSF agreement. This methodology was opposed by WCTL, the Chemical Manufacturers Association ("CMA"), and other

shipping groups on the ground it was not cost-based and would serve to further inflate the already excessive base trackage rights fee levels set forth in the agreement.

According to BNSF, BNSF and UP decided to accept a cost-based adjustment mechanism as part of its settlement agreement with CMA. The CMA settlement agreement language was subsequently incorporated into the BNSF Agreement. That Agreement (in its present form) at section 12 provides that the trackage rights fee levels will be adjusted annually based upon the URCS cost 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....

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).

Finance Docket No. 32760 (Sub. No. 21), Joint Submission of Restated and Amended BNSF Settlement Agreement (UP/SP-386) (BNSF-92), July 25, 2001.

BNSF argues that UP has misapplied this adjustment procedure by: (1) including in the adjustments purchase premium costs UP incurred when it purchased SP and (2) including in the adjustments investment costs UP agreed to exclusively fund.

Based upon these contentions, BNSF asks the Board to clarify Decision No. 44 by finding that BNSF's interpretation of the adjustment mechanism as it applies to the two issues raised by BNSF is correct. BNSF requests that "other parties" present their views on the issues raised in BNSF's Petition. Petition at 3.

II.

WCTL COMMENTS

WCTL was one of several shipper parties that urged the STB to adopt a cost-based trackage rights fee adjustment mechanism in the BNSF agreement. The adjustment mechanism BNSF and UP are actually deploying appears to be based on the "below the wheel" cost accounting URCS formulations submitted by WCTL, CMA and other shippers.¹ See Comments of the Western Coal Traffic League (March 29, 1996) at 29-32, V.S. Crowley 20-29. (Redacted, Public Version).

¹WCTL and CMA used the same cost witness and presented similar testimony on the fee adjustment issues.

At the time WCTL was sponsoring URCS based cost adjustment proposals, its position and intent was that purchase premium costs should not be included in the URCS-based cost formulations it presented (and BNSF and UP appear to have adopted).² Thus, if, as BNSF suggests, the initial intent of BNSF and UP was to use shipper-sponsored URCS calculations, those calculations were not intended by WCTL to include acquisition premium costs.

WCTL also urges the Board to consider the practical impact of the adjustment issues. The base fee levels exceed 5 mills per revenue ton mile on most unit train movements. Id. at 29, V.S. Crowley 22. The STB found the sale to be "reasonable" under the regulatory standards it employed but, as a practical commercial matter, a 5 mill trackage rights fee -- to recover only below the wheel costs -- is extraordinarily high in the real world of competitive western coal unit train transportation.³ This fee puts BNSF at a significant disadvantage -- which disadvantage increases by the length of the involved trackage

²See Finance Docket No. 33726, Western Coal Traffic League v. Union Pacific Railroad Co., (STB Decision served May 10, 2000).

³Id., V.S. Weishaar 28-31. WCTL also points to the recent WPL decision. There, as disclosed in the decision, the STB found UP's below the wheel costs for the involved unit train coal traffic approximated only 2.3 mills per net revenue ton-mile. See Docket No. 42051, Wisconsin Power and Light Company v. Union Pacific Railroad Company, (STB Decision served Sept. 12, 2001) at Appendix A.

rights segments BNSF must traverse on a given movement.

Any actions taken by the Board to lessen this fee
(which is what BNSF requests) will help to ameliorate the
competitive disadvantage.

CONCLUSION

WCTL requests that the Board grant BNSF's Petition.

Respectfully submitted,

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OF COUNSEL:

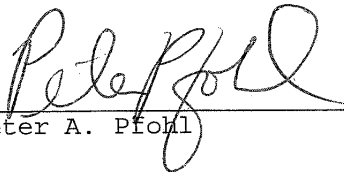
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Washington, D.C. 20036

Dated: January 14, 2002

Attorneys for
Western Coal Traffic League

CERTIFICATE OF SERVICE

I certify that I have this 14th day of January, 2002,
served copies of the foregoing Reply by first class mail, postage
prepaid, or by more expeditious means on all parties of record in
Finance Docket No. 32760.



Peter A. Pfohl