

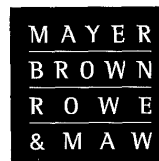
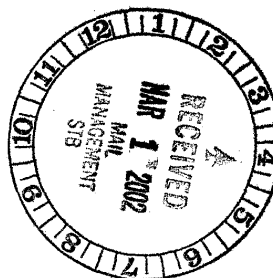
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BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

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

Dear Secretary Williams:

In its response to the Petition for Clarification filed by The Burlington Northern and Santa Fe Railway Company ("BNSF") (BNSF-97) in this proceeding, the American Chemistry Council ("ACC") has proposed the adoption of a procedure to be followed by BNSF and UP when BNSF proposes to serve a build-in/build-out pursuant to the conditions imposed by the Board on the UP/SP merger. See CMA-14 at 5. BNSF has reviewed the procedure proposed by ACC and, with one exception, is agreeable to ACC's proposal and urges the Board to adopt the procedure. The one exception relates to ACC's proposal concerning how any new facility required to be constructed should be funded. BNSF believes that the costs for any such new facility should be allocated between UP and BNSF pursuant to Section 9(b) of the Restated and Amended BNSF Settlement Agreement. That section provides that the cost of facilities necessary to implement trackage rights granted under the Settlement Agreement shall be borne by the party receiving the trackage rights and that, if the other party decides to utilize such facilities, it shall pay one-half of the original cost of constructing the facilities.

With respect to the need for such a protocol, BNSF notes that, in its Reply to BNSF's Petition for Clarification (UP/SP-391), UP has argued that a protocol such as that proposed by ACC should not be adopted. However, over a year has passed since BNSF first contacted UP concerning its proposed service to the Union Carbide Seadrift facility, and the failure of UP and BNSF to reach agreement in a timely manner concerning BNSF's proposed service confirms the need for such a protocol. This need is particularly clear when UP's September 24, 2001 letter in which it asserted that BNSF's operations could cause no interference whatsoever with UP's existing operations is taken into consideration. Moreover, from a shipper's perspective, the lack of certainty as to the process and as to the time required to resolve any disputes that may arise erodes the effectiveness of the Board's condition in providing replacement competition. Finally, ACC's proposed protocol is similar to the procedures set forth in the Restated and Amended

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BNSF Settlement Agreement relating to UP's review of BNSF's proposed operating plans for serving facilities to which BNSF has access under the Agreement.

Respectfully submitted,

Erika Z. Jones/als

Erika Z. Jones
Counsel for The Burlington Northern
and Santa Fe Railway Company

Enclosures

cc: Chairman Linda J. Morgan
Vice Chairman Wayne Burkes
Mr. David M. Konschnik, Director
Office of Proceedings
All Parties of Record