

ENTERED
Office of Proceedings

DEC 12 2002

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



UP/SP-398

BNSF-106

206818

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

**JOINT REPORT REGARDING IMPLEMENTATION
OF SECTION 12 OF THE BNSF SETTLEMENT AGREEMENT**

As required by the Board in Decision No. 98, served October 22, 2002, The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP") hereby submit their report regarding matters pertaining to the implementation of Section 12 of the BNSF Settlement Agreement that have been resolved through negotiation.

In late 2001, pursuant to the terms of the BNSF Settlement Agreement, UP and BNSF submitted five issues regarding the interpretation of Section 12 for resolution by the American Arbitration Association. All five issues have now been resolved. One issue was resolved by the Board in Decision No. 98. The parties have resolved the other four issues through negotiations, as described below:

1. Method of creating 1995 and 1996 UP and SP URCS costs. The parties originally disagreed about whether to develop 1995 and 1996 UP/SP URCS costs by

(a) weighting UP and SP URCS costs by the trackage rights miles over each carrier's lines, or
(b) combining UP and SP data to develop consolidated URCS costs. The parties have agreed to the weighting method, which produces lower fees than the consolidated URCS alternative.¹

2. Categories of maintenance and operating costs that are used to calculate the fee adjustment. The parties originally disagreed about whether to calculate the fee adjustment (a) using the URCS cost categories that are covered by the trackage rights fees, or (b) also including additional equipment and other transportation costs that are not covered by the trackage rights fees. The parties have agreed to use only the URCS cost categories covered by the trackage rights fees, as set forth in Exhibit A.²

3. Source of dispatching expenses. The parties originally disagreed about whether to calculate the dispatching expenses component of maintenance and operating costs using URCS costs or a non-URCS source of costs. The parties ultimately agreed to use URCS costs, as set forth in Exhibit A.³

4. Use of "difference" or "percentage difference" in costs. The parties originally disagreed about whether to base the annual fee adjustment on the difference in URCS

¹ In Uniform Railroad Costing System, 5 I.C.C.2d 894, 918-19 (1989), the Interstate Commerce Commission used consolidated data from merged carriers to establish the foundation of the URCS regression methodology. The parties do not believe that that decision precludes their agreed-upon approach in this situation. Moreover, UP used the weighted average method to develop UP/SP URCS costs in presenting its evidence regarding trackage rights fees during the merger proceeding. See UP/SP-22, Rebensdorf V.S. at 306.

² These are the same URCS cost categories that UP used in presenting evidence to the Board in the UP/SP merger proceedings. The Board accepted UP's methodology in its decision approving the merger. See Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 413-15 (1996).

³ These are the same URCS dispatching costs that UP used and the Board accepted in the UP/SP merger proceedings. See id. at 413-15.

costs in the two preceding years or the percentage difference in URCS costs in the two preceding years. The parties have agreed to use the difference in URCS costs.⁴

As a result of Decision No. 98 and the parties' agreements, the BNSF Settlement Agreement trackage rights fees as of July 1, 2002 are 2.8 mills per ton-mile (applicable to bulk traffic); 2.9 mills per ton-mile (applicable to carload and intermodal traffic); and 3.29 mills per ton-mile (applicable to both carload and intermodal traffic on the Keddle-Stockton/Richmond line). These current fees are below the original fees of 3.0 mills per ton-mile (bulk traffic); 3.1 mills per ton-mile (intermodal traffic); and 3.48 mills per ton-mile (carload and intermodal traffic on the Keddle-Stockton/Richmond line). The fees for each period are set forth in the table below. They never rose above the initial levels, and they are all at or below the levels that UP and BNSF had originally billed for trackage rights operations over each other's lines.⁵

BNSF Settlement Agreement Trackage Rights Fees in Mills Per Gross Ton-Mile			
Period	Bulk	Carload and Intermodal	Keddle-Richmond Carload and Intermodal
July '96-June '97	3.0	3.1	3.48
July '97-June '98	2.9	3.0	3.42
July '98-June '99	3.0	3.1	3.46
July '99-June '00	3.0	3.1	3.46
July '00-June '01	2.9	3.0	3.39
July '01-June '02	2.9	3.0	3.36
July '02-June '03	2.8	2.9	3.29

In Decision No. 98, the Board asked the parties to propose revisions to Section 12 to incorporate the resolution of their disputes. Exhibit A to this filing illustrates the calculations

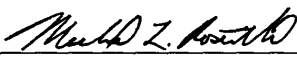
⁴ In Decision No. 98, the Board refers to a fifth dispute, relating to whether UP correctly reflected its declining URCS unit costs. This is not a separate dispute. Rather, it was BNSF's characterization of the "difference" versus "percentage difference" dispute.

⁵ We provide supporting calculations in Exhibit B.

the parties will use to make adjustments to the trackage rights fees. The parties intend to revise Section 12 by including that illustration as an exhibit to the BNSF Settlement Agreement.

Respectfully submitted

Carl W. von Bernuth
Union Pacific Corporation
1416 Dodge Street, Room 1230
Omaha, Nebraska 68179
(402) 271-6304


Carolyn F. Corwin
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
(202) 662-5448

J. Michael Hemmer
Louise A. Rinn
Lawrence E. Wzorek
Law Department
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-3309

Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and
Southern Pacific Rail Corporation

Jeffrey R. Moreland
Richard E. Weicher
Sidney L. Strickland, Jr.
Michael E. Roper
The Burlington Northern
and Santa Fe Railway Company
2500 Lou Menk Drive, Third Floor
Ft. Worth, Texas 76131-0039
(817) 352-2368

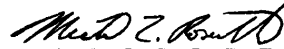

Erika Z. Jones
Adrian L. Steel, Jr.
Mayer, Brown, Rowe & Maw
1909 K Street, N.W.
Washington, DC 20006
(202) 263-3000

Attorneys for The Burlington Northern and Santa Fe Railway Company

December 11, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2002, I caused a copy of the foregoing "Joint Report Regarding Implementation of Section 12 of the BNSF Settlement Agreement" to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760 (Sub-No. 21).



Michael L. Rosenthal

EXHIBIT A

Calculation of "UP/SP's System Average URCS Costs for the
Categories of Maintenance and Operating Costs Covered by the Trackage Rights Fee"

<u>Line</u>	<u>Description</u>	<u>Source</u>
1	Maintenance of Way	D1L157C10
2	Dispatching, etc.	D3L169C25
3	Total Direct TM	D3L172C25
4	Ratio Dispatching : Total	L.2 / L.3
5	Total TM	D3L191C25
6	Dispatching Portion	L.4 x L.5
7	Tons per Train	L.21
8	Dispatch, etc. per GTM	L.6 / L.7
9	Subtotal	L.1 + L.8
10	Overhead Markup Ratio	D8L607C1
11	OE Cost per GTM	L.9 x L.10
12	Roadway Depreciation per GTM	D1L234C10
13	Overhead Markup Ratio	D8L608C1
14	Unit Cost per GTM - DL	L.12 x L.13
15	Roadway Return per GTM	D1L251C10
16	Overhead Markup Ratio	D8L609C1
17	Unit Cost per GTM - ROI	L.15 x L.16
18	Total per GTM	L.11 + L.14 + L.17
19	Gross Ton-Miles	A1L122C1
20	Train Miles	A1L104C1
21	Gross Tons per Train	L.19 / L.20

Notes:

- (1) In order to calculate "the difference in the two preceding years in UP/SP's system average URCS costs" in year y , subtract the value in Line 18 for year $y-1$ from the value in Line 18 for year $y-2$.
- (2) For 1995 and 1996, "UP/SP's system average URCS costs" were calculated by weighting UP and SP URCS costs based on the percentage of trackage rights miles over each railroad that were granted to BNSF in the UP/SP merger.

EXHIBIT B

Line	Description	Source	SP - 1995	UP - 1995
			Per GTM Variable	Per GTM Variable
1	Maintenance of Way	D1L157C10	0.00044751	0.00033271
2	Dispatching, etc.	D3L169C25	0.07008	0.08617
3	Total Direct TM	D3L172C25	0.35636	0.34303
4	Ratio Dispatching : Total	L. 2 / L. 3	0.19666	0.2512
5	Total TM	D3L191C25	0.47544	0.44672
6	Dispatching portion	L. 4 x L. 5	0.0935	0.11222
7	Tons per train	L. 24	5225	5555
8	Dispatch, etc. per GTM	L. 6 / L. 7	<u>0.00001789</u>	<u>0.00002020</u>
9	Subtotal	L. 1 + L. 8	0.00046540	0.00035291
10	Overhead markup Ratio	D8C607C1	<u>1.09953</u>	<u>1.16158</u>
11	OE Cost per GTM	L. 9 x L. 10	0.00051172	0.00040993
12	Roadway Depreciation per GTM	D1L234C10	0.00035682	0.00026074
13	Overhead markup Ratio	D8C608C1	<u>1.05919</u>	<u>1.07122</u>
14	Unit cost per GTM - DL	L. 12 x L. 13	0.00037794	0.00027931
15	Roadway Return per GTM	D1L251C10	0.00092409	0.00071484
16	Overhead markup Ratio	D8C609C1	<u>1.03550</u>	<u>1.04518</u>
17	Unit cost per GTM - ROI	L. 15 x L. 16	0.00095690	0.00074714
18	Total per GTM - 1995 level	L.11 + L.14 + L.17	0.00184656	0.00143638
19	Perecnt of Miles	L. 27	0.5648	0.4352
20	Weighted cost per GTM	L. 18 x L. 19	0.00104294	0.00062511
21	Total per GTM Rounded to x.xx mills	L. 20 (SP + UP)		0.00166805 1.67
22	Gross ton miles	A1L122C1	258,412,850	572,209,496
23	Train miles	A1L104C1	49,453	103,013
24	Gross tons per train		5,225	5,555
			Miles	Percent
25	Rights on UP		1,726.8	43.52%
26	Rights on SP		2,240.9	56.48%
27	Total		3,967.7	100.00%

Line	Description	Source	SP - 1996	UP - 1996
			Per GTM Variable	Per GTM Variable
1	Maintenance of Way	D1L157C10	0.00042930	0.00030529
2	Dispatching, etc.	D3L169C25	0.08325	0.06640
3	Total Direct TM	D3L172C25	0.35383	0.27862
4	Ratio Dispatching : Total	L. 2 / L. 3	0.23528	0.23832
5	Total TM	D3L191C25	0.47353	0.36065
6	Dispatching portion	L. 4 x L. 5	0.11141	0.08595
7	Tons per train	L. 24	5124	5791
8	Dispatch, etc. per GTM	L. 6 / L. 7	<u>0.00002174</u>	<u>0.00001484</u>
9	Subtotal	L. 1 + L. 8	0.00045104	0.00032013
10	Overhead markup Ratio	D8C607C1	<u>1.10034</u>	<u>1.14220</u>
11	OE Cost per GTM	L. 9 x L. 10	0.00049630	0.00036565
12	Roadway Depreciation per GTM	D1L234C10	0.00035582	0.00024312
13	Overhead markup Ratio	D8C608C1	<u>1.04275</u>	<u>1.05623</u>
14	Unit cost per GTM - DL	L. 12 x L. 13	0.00037103	0.00025679
15	Roadway Return per GTM	D1L251C10	0.00090774	0.00070395
16	Overhead markup Ratio	D8C609C1	<u>1.03494</u>	<u>1.04362</u>
17	Unit cost per GTM - ROI	L. 15 x L. 16	0.00093946	0.00073466
18	Total per GTM - 1996 level	L.11 + L.14 + L.17	0.00180679	0.00135710
19	Perecnt of Miles	L. 27	0.5648	0.4352
20	Weighted cost per GTM	L. 18 x L. 19	0.00102047	0.00059061
21	Total per GTM Rounded to x.xx mills	L. 20 (SP + UP)		0.00161108 1.61
22	Gross ton miles	A1L122C1	274,162,456	600,292,328
23	Train miles	A1L104C1	53,509	103,663
24	Gross tons per train		5,124	5,791
			Miles	Percent
25	Rights on UP		1,726.8	43.52%
26	Rights on SP		2,240.9	56.48%
27	Total		3,967.7	100.00%

Line	Description	Source	UP (incl. SP) - 1997	
			Per GTM	Variable
1	Maintenance of Way	D1L157C10		0.00035392
2	Dispatching, etc.	D3L169C25	0.09542	
3	Total Direct TM	D3L172C25	0.48318	
4	Ratio Dispatching : Total	L. 2 / L. 3	0.19748	
5	Total TM	D3L191C25	0.62613	
6	Dispatching portion	L. 4 x L. 5	0.12365	
7	Tons per train	L. 21	5773	
8	Dispatch, etc. per GTM	L. 6 / L. 7		<u>0.00002142</u>
9	Subtotal	L. 1 + L. 8		0.00037534
10	Overhead markup Ratio	D8C607C1		<u>1.14454</u>
11	OE Cost per GTM	L. 9 x L. 10		0.00042959
12	Roadway Depreciation per GTM	D1L234C10		0.00028611
13	Overhead markup Ratio	D8C608C1		<u>1.04884</u>
14	Unit cost per GTM - DL	L. 12 x L. 13		0.00030008
15	Roadway Return per GTM	D1L251C10		0.00088858
16	Overhead markup Ratio	D8C609C1		<u>1.03160</u>
17	Unit cost per GTM - ROI	L. 15 x L. 16		0.00091666
18	Total per GTM - 1997 level Rounded to x.xx mills	L.11 + L.14 + L.17		0.00164633 1.65
19	Gross ton miles	A1L122C1		854,405,504
20	Train miles	A1L104C1		148,003
21	Gross tons per train			5,773

Line	Description	Source	UP (incl. SP) - 1998	
				Per GTM Variable
1	Maintenance of Way	D1L157C10		0.00033756
2	Dispatching, etc.	D3L169C25	0.09805	
3	Total Direct TM	D3L172C25	0.52852	
4	Ratio Dispatching : Total	L. 2 / L. 3	0.18552	
5	Total TM	D3L191C25	0.68721	
6	Dispatching portion	L. 4 x L. 5	0.12749	
7	Tons per train	L. 21	5882	
8	Dispatch, etc. per GTM	L. 6 / L. 7		0.00002167
9	Subtotal	L. 1 + L. 8		0.00035923
10	Overhead markup Ratio	D8C607C1		<u>1.22792</u>
11	OE Cost per GTM	L. 9 x L. 10		0.00044111
12	Roadway Depreciation per GTM	D1L234C10		0.00029147
13	Overhead markup Ratio	D8C608C1		<u>1.04952</u>
14	Unit cost per GTM - DL	L. 12 x L. 13		0.00030590
15	Roadway Return per GTM	D1L251C10		0.00087621
16	Overhead markup Ratio	D8C609C1		<u>1.02772</u>
17	Unit cost per GTM - ROI	L. 15 x L. 16		0.00090050
18	Total per GTM - 1998 level Rounded to x.xx mills	L.11 + L.14 + L.17		0.00164751 1.65
19	Gross ton miles	A1L122C1		826,426,112
20	Train miles	A1L104C1		140,493
21	Gross tons per train			5,882

Line	Description	Source	UP (incl. SP) - 1999	
			Per GTM Variable	
1	Maintenance of Way	D1L157C10		0.00034551
2	Dispatching, etc.	D3L169C25	0.10016	
3	Total Direct TM	D3L172C25	0.51991	
4	Ratio Dispatching : Total	L. 2 / L. 3	0.19265	
5	Total TM	D3L191C25	0.66910	
6	Dispatching portion	L. 4 x L. 5	0.12890	
7	Tons per train	L. 21	5,759	
8	Dispatch, etc. per GTM	L. 6 / L. 7		<u>0.00002238</u>
9	Subtotal	L. 1 + L. 8		0.00036789
10	Overhead markup Ratio	D8C607C1		<u>1.13389</u>
11	OE Cost per GTM	L. 9 x L. 10		0.00041715
12	Roadway Depreciation per GTM	D1L234C10		0.00032011
13	Overhead markup Ratio	D8C608C1		<u>1.05001</u>
14	Unit cost per GTM - DL	L. 12 x L. 13		0.00033612
15	Roadway Return per GTM	D1L251C10		0.00080176
16	Overhead markup Ratio	D8C609C1		<u>1.02828</u>
17	Unit cost per GTM - ROI	L. 15 x L. 16		0.00082443
18	Total per GTM - 1999 level Rounded to x.xx mills	L.11 + L.14 + L.17		0.00157770 1.58
19	Gross ton miles	A1L122C1		898,189,312
20	Train miles	A1L104C1		155,965
21	Gross tons per train			5,759

Line	Description	Source	UP (incl. SP) - 2000	
				Per GTM Variable
1	Maintenance of Way	D1L157C10		0.00034682
2	Dispatching, etc.	D3L169C25	0.10588	
3	Total Direct TM	D3L172C25	0.53633	
4	Ratio Dispatching : Total	L. 2 / L. 3	0.19742	
5	Total TM	D3L191C25	0.66146	
6	Dispatching portion	L. 4 x L. 5	0.13059	
7	Tons per train	L. 21	5,843	
8	Dispatch, etc. per GTM	L. 6 / L. 7		<u>0.00002235</u>
9	Subtotal	L. 1 + L. 8		0.00036917
10	Overhead markup Ratio	D8L607C1		<u>1.10148</u>
11	OE Cost per GTM	L. 9 x L. 10		0.00040663
12	Roadway Depreciation per GTM	D1L234C10		0.00033115
13	Overhead markup Ratio	D8L608C1		<u>1.04749</u>
14	Unit cost per GTM - DL	L. 12 x L. 13		0.00034688
15	Roadway Return per GTM	D1L251C10		0.00077414
16	Overhead markup Ratio	D8L609C1		<u>1.02966</u>
17	Unit cost per GTM - ROI	L. 15 x L. 16		0.00079710
18	Total per GTM	L. 11 + L. 14 + L. 17		0.00155061
	Rounded to x.xx mills			1.55
19	Gross ton miles	A1L122C1		931,342,528
20	Train miles	A1L104C1		159,403
21	Gross tons per train			5,843

Line	Description	Source	UP (incl. SP) - 2001	
			Per GTM	Variable
1	Maintenance of Way	D1L157C10		0.00034364
2	Dispatching, etc.	D3L169C25	0.07959	
3	Total Direct TM	D3L172C25	0.51990	
4	Ratio Dispatching : Total	L. 2 / L. 3	0.15309	
5	Total TM	D3L191C25	0.65119	
6	Dispatching portion	L. 4 x L. 5	0.09969	
7	Tons per train	L. 21	6,097	
8	Dispatch, etc. per GTM	L. 6 / L. 7		<u>0.00001635</u>
9	Subtotal	L. 1 + L. 8		0.00035999
10	Overhead markup Ratio	D8L607C1		<u>1.11020</u>
11	OE Cost per GTM	L. 9 x L. 10		0.00039966
12	Roadway Depreciation per GTM	D1L234C10		0.00033024
13	Overhead markup Ratio	D8L608C1		<u>1.04463</u>
14	Unit cost per GTM - DL	L. 12 x L. 13		0.00034498
15	Roadway Return per GTM	D1L251C10		0.00070928
16	Overhead markup Ratio	D8L609C1		<u>1.02822</u>
17	Unit cost per GTM - ROI	L. 15 x L. 16		0.00072930
18	Total per GTM	L.11 + L.14 + L.17		0.00147394
	Rounded to x.xx mills			1.47
19	Gross ton miles	A1L122C1		959,425,536
20	Train miles	A1L104C1		157,355
21	Gross tons per train			6,097

Summary

<u>Year</u>	<u>URCS Var. Cost</u>	<u>Difference</u>
1995	0.00166805	
1996	0.00161108	(0.00005697)
1997	0.00164633	0.00003525
1998	0.00164751	0.00000118
1999	0.00157770	(0.00006981)
2000	0.00155061	(0.00002709)
2001	0.00147394	(0.00007667)

	<u>Rounded to three decimals</u>			<u>Billed as</u>		
7/1/1996	3.000	3.100	3.480	3.0	3.1	3.48
7/1/1997	2.943	3.043	3.423	2.9	3.0	3.42
7/1/1998	2.978	3.078	3.458	3.0	3.1	3.46
7/1/1999	2.979	3.079	3.459	3.0	3.1	3.46
7/1/2000	2.909	3.009	3.389	2.9	3.0	3.39
7/1/2001	2.882	2.982	3.362	2.9	3.0	3.36
7/1/2002	2.805	2.905	3.285	2.8	2.9	3.29