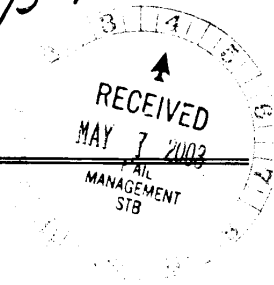


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



ARIZONA ELECTRIC POWER
COOPERATIVE, INC.,

Complainant,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY and
UNION PACIFIC RAILROAD COMPANY,

Defendants.

Docket No. 42058

ENTERED
Office of Proceedings

MAY 7 2003

Part of
Public Record

**REPLY IN OPPOSITION TO UNION PACIFIC RAILROAD
COMPANY'S PETITION TO REQUIRE SUBMISSION OF
NEW OPENING EVIDENCE OR, ALTERNATIVELY, TO DISMISS**

PUBLIC VERSION

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ARIZONA ELECTRIC POWER	)	
COOPERATIVE, INC.	)	
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Complainant,	)	
	)	
v.	)	Docket No. 42058
	)	
THE BURLINGTON NORTHERN AND	)	
SANTA FE RAILWAY COMPANY and	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendants.	)	
	)	

Complainant Arizona Electric Power Cooperative, Inc. (“AEP CO”), submitted its Opening Evidence on stand-alone costs (“SAC”) and other matters on February 7, 2003. On April 18, 2003, two and a half months later, and little more than a month before reply evidence is due, Defendant Union Pacific Railroad Company (“UP”) filed its petition (“Petition”) to require AEP CO to revise and resubmit its SAC evidence because of alleged deficiencies or, alternatively, to dismiss the complaint.

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deficiencies in AEPCO's evidence in their Reply Evidence due May 27, 2003, and UP's filing should not be allowed to add any further delay to the procedural schedule.¹

UP's Petition is so utterly lacking in foundation that AEPCO can only conclude that it was submitted primarily for purposes of delay and diversion. While the Petition cites three alleged deficiencies in AEPCO's SAC evidence, only the first – the claimed inability to “decode” how AEPCO derived the traffic group and revenues for its stand-alone railroad (“SARR”) – raises the kind of issue that could be viewed as having even a remote connection to Defendants' ability to prepare reply evidence. However, AEPCO's procedure for deriving its SARR traffic and revenues is fully described and documented in AEPCO's Opening Evidence, fully understood by Defendants (contrary to the contentions in UP's Petition), and entirely reasonable, as explained infra.

The other two alleged deficiencies – the claimed inadequacy of the residual incumbents' revenue divisions for cross-over traffic, and the supposed infeasibility of the SARR's rerouting of the issue and a small portion of other traffic – are both substantively unfounded and entirely unrelated to Defendants' ability to prepare reply evidence. While

¹ Under 49 C.F.R. § 1111.8, reply evidence is normally due 60 days after opening evidence. Here, Defendants insisted on nearly a four-month interval premised on AEPCO's challenge to three different sets of rates. As a result of its settlement with UP, AEPCO withdrew its challenge to the Colorado and Powder River Basin rates prior to the filing of opening evidence. Defendants have consequently had a very long period to prepare their reply evidence – and to raise any specific questions they had concerning the formulation of AEPCO's SARR traffic group. Instead, UP waited until the eleventh-hour to file its Petition, thus evidently hoping to induce further delay in a rate case that has already been pending for well over two years.

no shipper has been required on opening to make a prima facie showing of coverage of off-SARR costs for crossover traffic, AEPCO's explanation as to the commercial reasonableness of the divisions more than suffices for that purpose. Additionally, AEPCO's rerouting of coal traffic moving via Belen-Deming to a SARR route via El Paso-Vaughn and its use of existing BNSF/UP trackage rights were both already the subject of favorable Board rulings denying Defendants' earlier motions in this case. In any event, the two claims, being heavily fact-oriented, simply do not constitute adequate grounds for a motion to dismiss or the equivalent under Board precedent and should instead be addressed through reply evidence.²

AEPCO believes its SARR traffic group and configuration, as presented on Opening and in its subsequent Errata filings, to be fully correct and feasible and has no intention of altering them significantly at a later stage of this proceeding. The UP Petition's supposition to the contrary is groundless.

² Docket No. 42057, Public Service Co. of Colorado d/b/a Xcel Energy v. Burlington N. & S.F. Ry. Co., (STB served April 4, 2003) ("Xcel") at 2 ("alleged deficiencies [in a shipper's opening SAC presentation] are better left for an assessment of the merits after development of the full evidentiary record."). See also Docket No. 37809, McCarty Farms v. Burlington N. Inc., (ICC served Feb. 13, 1995) at 8 ("Unless the model is patently incapable of meeting the shipper's needs, we will presume that the stand-alone system is feasible unless and until its feasibility is challenged in the railroad's case-in-chief."), and Cadwallader-Gibson Co., Inc. v. Alabama G.S. R. Co., 262 I.C.C. 398, 399 (1945) (overruling a motion to dismiss a rate complaint for alleged deficiencies before submission of defense evidence on grounds that claimed insufficiency related only to the weight of the complainants' evidence).

UP's Petition does, however, serve one useful function in illustrating how and why coal rate cases have become so time-consuming and expensive and why matters that seemingly should be beyond dispute are so deeply contested. As demonstrated herein, the explanation is that essential information lies in the exclusive possession of the railroad defendants, and the railroads very carefully limit and control how they make that information available to complainant shippers. The result is an uneven playing field that the railroads attempt to exploit for their own advantage.

AEPCO urges the Board to adhere to its established precedent in Xcel and McCarty Farms and refuse to excuse Defendants from filing reply evidence on schedule so that these matters can be decided on the basis of the full evidentiary record.³ To do otherwise will simply mean further delay in this and ensuing rate cases as post-opening evidence motions to dismiss (as were also filed in TMPA, PPL Montana and Xcel) will become just another standard railroad tactic for increasing the complexity and cost of these cases.

³ Beyond Xcel and McCarty Farms, the Board has declared that motions to dismiss do not affect the procedural schedule:

[T]o ensure that there is no misunderstanding as to the effect of filing any motion (whether a motion to dismiss, to compel discovery, or otherwise), we will follow a policy that, unless we issue an order altering the procedural schedule, parties to a proceeding will be expected to adhere to the established procedural schedule pending a decision on the motion.

Ex Parte No. 527, Expedited Procedures for Processing Rail rate Reasonableness, Exemption and Revocation Proceedings, (STB served Oct. 1, 1996) at 9.

ARGUMENT

I. UP's Petition Fails to Meet the Applicable Legal Standard

UP's Petition lacks any meaningful discussion of the applicable legal standards for such a motion. UP's omission of such a discussion is hardly surprising since (1) a petition to require a party to re-submit evidence is simply unheard of in Board practice,⁴ and (2) precedent is very clear that UP's alternative remedy of dismissal "is a disfavored request and rarely granted in judicial and administrative proceedings." Docket No. 31593, Garden Spot & Northern Limited Partnership and Indiana Hi-Rail Corp. – Purchase and Operate – Indiana Rail Road Co. Line Between Newton and Browns, IL, (ICC served Dec. 23, 1992) at 2.

Moreover, dismissal is allowed only when there are no material issues of fact, and in this regard all evidence must be viewed in a light most favorable to the complainant. Docket No. 42012, Sierra Pacific Power Co. & Idaho Power Co. v. Union Pacific R.R., (STB served Jan. 26, 1998). In short, UP must satisfy the Board that it is entitled to judgment as a matter of law. See, e.g., Docket No. 40169, National Grain and Feed Association v. Burlington Northern R.R., (ICC served June 1, 1990) at 4 & n.4; Docket No. 40913, Department of Public Service Regulation and Public Service Commission of the State of Montana v. Union Pacific R.R., (ICC served March 15, 1993).

⁴ UP itself acknowledges that its request to require the filing of new evidence seeks "unusual relief." UP Petition at 5.

As demonstrated herein, AEPCO disputes UP's factual assertions in all material respects, and for present purposes, all such disputed matters must be resolved in AEPCO's favor. Moreover, UP's central factual claim – that it cannot decipher AEPCO's stand-alone traffic and revenues – is belied by UP's specific (albeit entirely unfounded) criticisms of AEPCO's evidence. Its other claims are either primarily factual in nature and/or erroneous as a matter of law. In no respect does UP's Petition begin to satisfy the applicable legal standard for such a filing, and it must thus be denied.

II. AEPCO's Stand-Alone Traffic Group and the Associated Revenues are Readily Ascertainable and Well-Documented

UP claims that it and its consultants are unable to discern AEPCO's traffic group for its SARR, the Apache Cochise & Eastern Railroad ("ACE"), and that AEPCO made undocumented adjustments to the SARR's base (2001) revenues. These claims are disingenuous. First, UP has correctly discerned that the ACE's non-coal traffic includes all overhead trainload revenue freight traffic that moved over BNSF's line between Defiance and Vaughn, NM in 2001, and all overhead trainload revenue freight traffic that moved over UP's line between El Paso, TX and Cochise, AZ in 2001.⁵ Second, it is clear from the Klick/Murphy Verified Statement submitted with its Petition that UP fully understands how and why AEPCO's stand-alone revenue adjustments were made.

⁵ AEPCO Op. Exhibits III-A-3 and III-A-4 show the specific traffic flows. AEPCO excluded Amtrak, local, work, yard, helper, light engine, and service trains from the ACE's traffic group.

A. Mechanics of Traffic Group Construction

The shipper's derivation of a traffic group for its SARR begins, by necessity, with information provided by the defendant(s). In this case, as in most others, the relevant data was produced in separate parts by both Railroads. Specifically, each Defendant produced a train movement file and a revenue file (a/k/a traffic tapes).⁶

The train movement file shows the route of movement of trains and the number of loaded and empty railcars, but does not identify the specific cars transported, their origin, destination, contents, net tons, or the revenues generated by such movements. The traffic tapes identify specific cars (or trailers/containers in the case of intermodal traffic) and their origin, destination, net tons, contents, and associated revenues, but give no information as to their route of movement. Individually, the files are useless for selecting and then quantifying stand-alone traffic. It is only when their data is combined that the information can be utilized.

In order to develop the traffic group, the shipper must link the two sets of records to each other, utilizing common fields in the data sources that allow the shipper (or rather its consultants, since the shipper never sees the data, which is designated highly confidential) to determine the net tons and revenues associated with the train movements

⁶ The information contained in these files is depicted on AEPCO Op. Exhibit III-A-2, pp. 1-4. UP's data included a third database, the "Car Movement File," that contains data fields that form a bridge between the train movement file and the traffic tapes. Nothing in AEPCO's discovery requests required or asked that the information be produced in separate parts.

that its SARR will handle. In other words, the shipper must first identify the trains that move (or could reasonably move) over the route of its SARR, and then the shipper must associate the carloads and their net tons and revenues for those movements.

After the requisite linkages are made, the shipper can then determine what traffic to include in and exclude from its SARR, and then the shipper can determine the engineering and operation of the SARR to handle that traffic and evaluate its costs and revenues. Identification of the SARR's traffic group and associated revenues is thus a critical step in developing the shipper's SAC presentation.

B. Volume of Data and Difficulties in Basic Processing

The source data for the SARR traffic group and revenues as provided by the Railroads in this case were extremely voluminous. For 2001 alone, UP provided 227 tape volumes, and one CD, totaling 136.2 gigabytes of data, and BNSF provided 24 tapes, totaling 14 gigabytes.⁷ The data files provided on tape cartridges were stored in EBCDIC (mainframe) format. The BNSF train event data, UP train movement data, and UP car data were provided in compressed format, making it necessary to complete an extra time-consuming step in the data extraction process. All of the data in the tapes had to be laboriously extracted and converted (i.e., "unpacked") before it could then be sorted and analyzed into something useful for designing a SARR and preparing evidence.⁸

⁷ See AEPCO Op. Exhibit III-A-2, pp. 1, 3.

⁸ Approximately 100 hours of computer time were required to extract the data so that it could then be utilized. In addition, AEPCO had to seek several clarifications

Since parties do not submit the actual tape cartridges as evidence or workpapers,⁹ the Board should appreciate that the quantity of useful information encompassed in what the Railroads produced is actually quite a small percentage of the data included on the tape cartridges. The corresponding traffic and revenue data that AEPCO submitted with its Opening Evidence consisted of 12 CDs or 7.2 gigabytes of data. Plainly, the Railroads' approach to document production results in the inclusion of much chaff amidst relatively little grain.

Indeed, the data as produced by the Railroads is so user-unfriendly that AEPCO's consultants have every confidence that the Railroads, for purposes of their regular business operations, must have some other process for utilizing the information on a regular basis. UP's mere ability to claim that AEPCO has overstated its SARR traffic volume and revenues – notwithstanding UP's care in not stating in the Petition what the Railroads believe to be the correct traffic figures – demonstrates that the Railroads must have some other means for accessing and utilizing their data that they do not share with complainants. Unless they had some other source or means of information, they could not have any basis for criticizing AEPCO's treatment.

In fact, the Railroads have elsewhere indicated that they have considerable additional data manipulation abilities. In particular, Rick Holmes, UP's Director of

related to the decoders for the fields and the formatting of the files.

⁹ AEPCO is confident that the Board's staff has no interest in receiving copies of over 200 tape cartridges.

Information Systems Auditing, gave a presentation on October 25, 2002 to the Computer Science Engineering CSE 291 class at Michigan State University, the powerpoint version of which is available at http://web.cse.msu.edu/~cse291/Speakers_files/holmes291.pdf and included as Attachment 1. Mr. Holmes explained how UP's "Data Warehouse Offers"¹⁰ the ability to apply "Integration and Transformation" to UP's "Operational and Financial Systems" and provide "Analysis and Reporting" as to provide "Any user, any question, any data, any time" to "Subject-Oriented, Integrated, Historical Data." The integrated data included CRM [Customer Relationship Management], Transportation Control System, Accounts Receivable, Revenue Shipment Processing, and Contract Administration, that is, all the things (and more) that a shipper would want to construct its SARR traffic analysis. Despite this obviously extensive data manipulation capability, UP has chosen to present its data response to AEPCO through three separate data sources, and leave it to AEPCO to find the proper data linkages among them.

BNSF itself has not denied that it has additional data sources and/or processes. In particular, AEPCO sent BNSF a letter dated December 9, 2002 (Attachment 2), "request[ing] that BNSF provide the databases, programs, and spreadsheets (in a machine-readable format, where available), used to calculated the adjustments" in a particular data field. By letter dated January 17, 2003 (Attachment 3),

¹⁰ UP's Data Warehouse purportedly consists of 2 data centers, 359,346 programs, 76,653,381 lines of code, 34.7 terabytes of storage, and a 5.5 terabyte warehouse. AEPCO has every confidence that the costs of the warehouse are reflected in UP's variable costs.

five weeks later (and three weeks before AEPCO's Opening Evidence was due), BNSF's counsel told AEPCO that "As to your request for databases and programs, we object to producing databases and programs, as opposed to the output of those databases and programs, which we have already provided."¹¹

UP's presentation and BNSF's reply thus indicate that the carriers have the capability to produce additional information and/or to utilize more extensive capabilities beyond those provided to AEPCO in discovery, and that the Railroads have no intention of making that information available to assist shippers in their rate cases. Accordingly, shippers must, of necessity, work only with the data that the Railroads have chosen to provide and its inherent limitations.

C. Difficulties in Matching Train and Revenue Data and Need for Adjustments

Since the Railroads produced their train movement and revenue information in separate data bases, AEPCO's development of the ACE's traffic group consists in large part of matching trains from the train file with cars and revenues from the traffic tapes. Where a SARR handles primarily unit train movements, the task is greatly facilitated because the shipper can use waybills that cover multiple car movements on a single

¹¹ BNSF produced its belated response only after some prompting. On January 2, 2003, BNSF had sent an email response (Attachment 4) to an inquiry from AEPCO, stating that "we are in the process of tracking down the answer to your inquiry and will get back to you as soon as we have a response." On January 17, 2003, AEPCO had sent a follow-up letter (Attachment 5), asking where the response was. BNSF sent its response later that day.

waybill from a common origin to a common destination using a common route to associate cars with individual train movements. However, AEPCO's SARR involves a large proportion of non-unit train traffic,¹² for which waybills are of little use as each car or container may move on a separate waybill, as contrasted with unit trains, where more than one hundred cars may share a single waybill that appears in the revenue data.

Where (and to the extent) possible, AEPCO matched the traffic tape information to the train movement records, i.e., if the train file said there were 100 loaded/revenue-producing cars on a train, AEPCO attempted to find the 100 cars in the traffic tapes.¹³ In many cases, it was possible to make a 100% match; AEPCO assumes that such instances are not the subject of the Railroads' current complaints. However, in other cases, the match is not perfect because all of the records do not link up, and it becomes necessary to make appropriate adjustments.

The need for the adjustments is clear and compelling: the train movement files plainly show that the trains contained revenue-producing cars, and there is no reason to think that the train movement data – provided by the carriers and represented to

¹² The non-unit train traffic includes not only intermodal, but also manifest (both normal and priority), automotive, and agricultural products.

¹³ This linking process is described in "UP Traffic Analyses.doc" and "BNSF GF Traffic.doc" in AEPCO's electronic workpapers for Part III-A-2 of its Opening Evidence. UP is correct in asserting that approximately 100 computer programs are utilized in the process (although some of the programs are more accurately characterized as routines). The numerous programs are needed to reaggregate the data that the Railroads have produced in a disaggregated form.

constitute data to be relied upon – is defective in this regard. If the traffic data does not provide a corresponding carload or other revenue unit, there is no sound reason to think that the revenue-producing cars did not move. The far more plausible explanation is that there is some sort of defect in the traffic tapes designed by the Railroads and provided to AEPCO. Under the circumstances, there is no sound reason to exclude the movement from the universe of traffic available to the SARR. The far more appropriate approach, which AEPCO has utilized, is to assume that the missing and/or unfound revenue data would have yielded a movement whose revenue was equivalent to that of the other traffic for which a match could be made.

In this regard, the statement in the Klick/Murphy V.S. at 4 that “no revenue data were missing from the traffic databases produced by UP and BNSF in discovery” is misleading (deliberately so, in AEPCO’s opinion). The statement may well be technically true, but it in no sense demonstrates the lack of need for, or error in, AEPCO’s adjustment. The traffic data may well contain the complete set of revenues, but unless the data can be matched to a particular train, the data might as well be missing altogether. The traffic tapes are simply flat data files consisting of sequential records of “all” the revenue units for a given period of time, and they are not designated by any information that indicates the route they traveled. Without a matching data field, there is no ability to identify the revenue as having been derived from trains moving over the SARR’s route.¹⁴

¹⁴ The matching files are shown in AEPCO Op. Exhibit III-A-2.

It is the equivalent of looking for a needle in the haystack: it may well be there, but one will never find it. Furthermore, the Railroads' ability to claim that no movements are missing from the traffic tapes means they have some ability to check the integrity and accuracy of the data that is not available to AEPCO. Were that means available to AEPCO, there might well have been no need to make the type of adjustments that AEPCO properly made in its Opening Evidence.

D. Adjustment for Intermodal Traffic

A similar adjustment is required for intermodal traffic, although the task is complicated, as UP indicates, by the lack of information as to the number of trailer/container units ("TCUs") per railcar. As UP notes, its train movement file contains only the number of railcars (which are identified as to whether they are loaded or empty), and the revenue and car movement files contain the TCUs.

In many cases, AEPCO was able to associate the trains with specific TCUs using a combination of all three files. However, for numerous intermodal flat cars it was not possible to make the linkage. Knowing that the flatcars carried some TCUs (or else they would have had a different designation on the train data), AEPCO needed to calculate the number of TCUs.

More specifically, with respect to intermodal trains, the UP train file identified each intermodal train, by train identification number and date, traversing the ACE route along with the number of loaded and empty railcars in the train. (See AEPCO Op. Exhibit III-A-2, pp. 3-4.) The loaded cars reflect the equipment for which UP

received revenue. Once the train was identified, individual loaded TCU's for that train could be found in the UP car movement file.¹⁵ Then, the revenue associated with the individual TCU's was identified from the UP revenue file (see AEPCO Op. Exhibit III-A-2, page 3). However, as AEPCO noted in its Opening Evidence, not all loaded cars shown in the train file were found in the car movement file; nor were all loaded TCU's shown in the car movement file found in the UP revenue file. Thus, AEPCO was forced to impute an average revenue (and number of revenue TCU's) to the remaining loaded railcars.¹⁶

As UP notes, AEPCO used a figure of 2.0 TCUs per railcar where it was not possible to make a linkage. AEPCO believes that its figure was necessary, reasonable, and actually quite conservative. In particular, analysis of BNSF data addressed on

¹⁵ For intermodal trains, the car initial and number in the UP car movement file equaled the identification number of the trailer or container (TCU), not the identification number of the flat car transporting the trailer or container.

¹⁶ UP attempts to discredit AEPCO's methodology by implying that a car containing empty (or non-revenue) TCU's can be counted as a loaded car in UP's train movement file (although UP presents no data to quantify the magnitude of this supposed problem). If this is true, then UP has not followed the definition of loaded cars as prescribed by the Board. Instruction (H) to Schedule 755 of the Annual Report Form R-1 states that the railroads should "Report miles made by flatcars carrying loaded highway trailers or empty highway trailers moving under revenue billings as loaded freight car-miles and miles made by flatcars carrying other empty highway trailers as empty freight car miles" (emphasis supplied). Instruction (P) to Schedule 755 states that "Each car moving under revenue billing shall be considered as a loaded car." Therefore, if UP is moving empty TCU's, the railcars are properly considered loaded railcars only if UP receives revenue for at least one TCU on the car. If no revenue is received, then the UP train file should classify the railcars (and TCU's) as empty cars (and TCU's).

opening indicates that the average TCU/railcar ratio for BNSF is [REDACTED], and such a figure is consistent with the general knowledge of AEPCO's consultants, L.E. Peabody & Associates, Inc.¹⁷ In considering whether a figure of 2.0, or [REDACTED], is too high, it is important to recognize that trailers/containers may vary by size, they may be double-stacked (especially on the route of AEPCO's SARR), and that it is easily possible to load six (or more) containers on a doublestack intermodal railcar.

Furthermore, it is important to scrutinize the precise wording of the Klick/Murphy criticism of AEPCO's procedure very carefully. The Klick/Murphy V.S. states at p. 8 n.7 that "a figure of two *overstates* the number of *loaded* TCU's (including revenue empties) per loaded intermodal car, which is the figure AEPCO needed to make a

¹⁷ AEPCO addressed this matter in its March 3, 2003 response to the Railroads' February 27, 2003 supplemental workpaper requests:

8. With respect to ACE Non-Coal Traffic and Revenue Forecast.xls at worksheet titled "ACE UP 2001 Traf. and Rev," provide all workpapers underlying the following statement in footnote 1: "1/ Assumed 2 units (trailer or container) per flat car. Based on ICC Statement IS4-69 (1.83 units per car for Western railroads) and 2001 BNSF revenue traffic data for ACE traffic ([REDACTED])."

Response: The basis for the first portion of the footnote (an assumed 2 units per flat car based on ICC Statement IS4-69) can be found in Surface Transportation Board's ("STB") BNSF or UP URCS unit costs for 2001, both of which are publically available electronic files available from the STB. The basis for the second portion of the footnote ([REDACTED]) is based on the query "CarTest.qpr" contained in the enclosed disk, which summarizes BNSF revenue car data stored in the file "BNCar2001.dbf" provided with AEPCO's Opening Evidence electronic workpapers.

relevant conversion from loaded TCU's from the UP traffic data to loaded cars on the train movement file" (original italics; emphasis added). While Klick/Murphy thus criticize AEPCO's adjustment as being too large, they acknowledge that "a relevant conversion" is needed, and they carefully avoid stating what the correct figure is (and certainly do not claim that the correct factor is 1.0) or explaining how it could be derived.

Their statement, like most of UP's filing, is thus an exercise in sophistry and evasion. While UP criticizes AEPCO's approach as producing a figure that is too high, UP nowhere states what the correct figure would be (with one limited exception addressed infra).¹⁸ It certainly has the data available to do so in its reply evidence.

Again, AEPCO believes that its procedures were necessary, appropriate, and reasonable in light of the limitations and gaps in the data produced by the Railroads. AEPCO acknowledges that some other adjustment figure – either higher or lower – might be more appropriate, if additional information were provided. But UP, despite its full understanding of the predicament confronting AEPCO (which, indeed, the Railroads created), has supplied none of that information (which, to the extent it favors the Railroads, should likely be barred outright because it was not originally produced in discovery). UP has thus not identified any basis for requiring AEPCO to refile its

¹⁸ Accordingly, even if AEPCO were inclined to make a correction based on the data provided in discovery, AEPCO would have no idea what precise correction to make given the Railroads' production of dis-aggregated revenue and train/car movement data. The Railroads are fully capable of making (and explaining) any needed corrections in their reply evidence.

Opening SAC Evidence, or dismissing AEPCO's complaint, especially as UP's filing provides no insight as to what UP considers to be the "relevant conversion" to be made.

UP (Klick/Murphy V.S. at 9 to 10) further chastises AEPCO for having treated priority manifest trains designated as "Q" trains as intermodal trains, and explains that "Before July 2001, 'Q' was a designation applied to stack trains other than APL, but that designation was changed and provided to AEPCO in discovery." Indeed, AEPCO did rely on a document produced by UP in discovery (UP document Bates Nos. E-9363-9365), but UP claims in its Petition that another document, U-A-C 027359, indicates that the "Q" designation was changed. That document was provided to AEPCO on December 16, 2002 (see Attachment 6),¹⁹ the day before UP advised AEPCO that "[t]he record layout, field descriptions, and data definitions [in the train data] should be the same as those contained in the Western Resources documents discussed above," which included Bates Nos. E-9363-9365. See Attachment 7. AEPCO's error (if any) should thus be readily understandable to UP's consultants.²⁰

Moreover, the error is of no consequence. Assuming UP is correct, the effect is to overstate 2001 SARR traffic volume by [REDACTED] tons and 2001 SARR revenue by [REDACTED], which reduces the percentage reduction by [REDACTED] per

¹⁹ December 17, 2003 was actually the day after the formal close of discovery. See the Board's scheduling order served November 27, 2002.

²⁰ UP has not explained whether it revised its train data for the first half of 2001 to reflect the redesignation of its "Q" trains.

ton (the resulting rate becomes [REDACTED] per ton rather than [REDACTED] per ton). Whether or not AEPCO's treatment was correct, the SAC remains far below the jurisdictional threshold of [REDACTED].

In any event, UP's contentions regarding the proper treatment of "Q" trains belong in its reply evidence, not in a petition to require a shipper to refile its opening evidence or face dismissal of its complaint. UP's use of a motion to dismiss to present such claims is simply not an appropriate use of the Board's processes.

E. Alleged Overstatement in BNSF Intermodal Revenues

UP alleges that AEPCO has vastly overstated BNSF's traffic in ways that should have been immediately apparent to AEPCO. In this instance, UP provides some quantification of the alleged overstatement, although the allegation is misdirected:

Indeed, AEPCO's adjustments for BNSF cross-over traffic are even more obviously wrong than the adjustments AEPCO applied to the UP traffic – in ways that should have been obvious to AEPCO had it paused to perform a reality check on its own figures. For example, for 2001, AEPCO's adjusted revenue figures show as much revenue earned on intermodal traffic moving over BNSF's east-west line between Defiance and Vaughn as BNSF earned on all of the intermodal traffic moving anywhere on its entire system, even though we know from available sources that the BNSF east-west line that is replicated by the ACE handles far less than all of BNSF's intermodal traffic.

Klick/Murphy V.S. at 11 (footnotes omitted). In n.9, Klick/Murphy claim that the publicly-available figure for BNSF from the 2001 Form 10-K is \$2.6 billion, "similar to what AEPCO claims would move over the ACE."

The claims are replete with errors. The \$2.6 billion figure is from BNSF's 2000 10-K (although the actual figure, \$2.654 billion, rounds to \$2.7 billion). See Attachment 8. The BNSF 2001 10-K does not list an aggregate revenue figure for intermodal, although it does list \$3.4 billion for consumer products, \$2.1 billion for industrial products, and \$1.5 billion for agricultural products. See Attachment 9.

More importantly, the volume of intermodal traffic claimed by AEPCO for the BNSF Defiance-Vaughn segment for 2001 is not \$2.6 billion, but is instead [REDACTED].²¹ The 2001 intermodal traffic of AEPCO's SARR thus corresponds to [REDACTED] of BNSF's 2000 total, which is an entirely reasonable relationship (particularly as the Petition provides no quantification for the intermodal traffic in BNSF's Chicago-Denver and Chicago-Texas corridors). Moreover, AEPCO's total non-coal traffic for its BNSF segment for 2001 is only [REDACTED].²² In contrast, BNSF's total non-coal traffic in 2001 was \$6.9 billion, of which the ACE's share equates to [REDACTED].

In short, the aggregate revenue figures for AEPCO's SARR traffic do not reveal any errors by AEPCO. Consideration of the Petition's error-ridden allegations,

²¹ See Summary of BNSF Revenue from Intermodal Trains (Train Types "B," "P," "Q," "S," and "Z"), as Classified from BNSF/AEPCO-01265 provided by BNSF in discovery (and included in AEPCO's Opening Workpapers at Vol. 4, p. AEP-02026).

²² See AEPCO Opening Workpaper "ACE Non-Coal Traffic and Revenue Forecast.xls." It should be noted that the ACE's share is considerably less as the figure reflects the total through revenue, not the ACE's division.

however, suggests an intent to exaggerate, mislead, and deceive on the part of the Railroads.

F. The Petition's Claims are Unfounded

The foregoing analysis reveals that UP's core claims – that it cannot or does not understand AEPCO's SARR traffic group, and/or that there is some fundamental flaw in AEPCO's derivation of that traffic group – are completely unfounded. The specific (albeit specious) criticisms presented by UP demonstrate that the Railroads fully understand both (a) AEPCO's general approach, which, as plainly stated in Part III-A of AEPCO's Opening Evidence, was needed to capture essentially all of the overhead freight traffic moving over the ACE's routes plus unit train coal traffic traversing the lines,²³ and (b) the specific adjustments AEPCO made to value that traffic.

There is thus no basis for granting UP's Petition either to require AEPCO to refile its Opening Evidence or to dismiss the AEPCO's complaint. The Railroads are entirely capable of presenting whatever criticisms they have in their Reply Evidence due

²³ UP (Klick/Murphy V.S. at 7) feigns some confusion as to whether AEPCO intended to include some movements (particularly those that involved the Pacific Northwest and Utah) in the ACE's traffic base. In fact, AEPCO excluded all movements that did not traverse the ACE's route – including railcars that were initially in trains that ultimately traversed that route but were removed prior to reaching the ACE lines – by examining and comparing the train, car and revenue data (and UP does not allege otherwise). Because of the inherent difficulties in working with UP's data, many of these exclusions were performed manually. Such movements also did not figure into AEPCO's "adjustment ratio," as the adjustment was calculated based on revenue data for cars that were included in the ACE traffic group for which a definitive link was made between the train movement data and the revenue data.

May 27, 2003, and they should, in accordance with Board precedent, proceed to do exactly that.

To the extent UP and BNSF had any legitimate questions, they could have, and rationally would have, chosen a different course of action. That course might have included filing a more timely motion, submitting additional workpaper requests that actually noted the nature of their alleged confusion, or even contacting counsel for AEPCO by telephone. Any of these actions would have been more appropriate than what the Railroads have done here.

In that regard, AEPCO (meaning in this case its counsel and consultants) take strong exception to UP's suggestion that if AEPCO felt it was unable to work with the Railroads' data appropriately, then AEPCO should have contacted the Railroads before filing its Opening Evidence. As explained supra, AEPCO believes that it understood quite well the data produced by the Railroads, including its limitations (introduced deliberately or not). That evidence, and particularly the "decoders" and other materials required to process the machine readable data were produced relatively late, leaving no time for consultations that, based on past experience, and the sustained practice of railroad defendants of making rate cases as difficult as possible for shippers, would likely have been fruitless.²⁴ Moreover, as confirmed by the January 17, 2003 letter

²⁴ Indeed, AEPCO's counsel and consultants recall another recent case involving a different railroad and shipper, but the same consultants, in which the shipper was simply unable to link different railroad data sources. The shipper did ask the railroad consultants for assistance in linking the data, but was told squarely that "We're not going to do your

from BNSF's counsel, the Railroads have no intention of sharing additional programs and data sources beyond that which they are willing to produce in discovery.

In short, the Railroads' criticisms have not been shown to have any foundation, although they plainly demonstrate that the Railroads understand fully the matters as to which they profess ignorance. There is no basis for granting either of the forms of relief requested, and the Railroads should be expected to file their Reply Evidence in accordance with the existing procedural schedule.

**III. AEPCO's Supposed "Failure" to Make a Prima Facie
Showing Regarding Off-System Revenues and Costs
Does not Excuse UP from Filing Reply Evidence**

UP also contends that the Board should require AEPCO to file new opening evidence – or should dismiss AEPCO's Complaint – because AEPCO supposedly failed to make a necessary demonstration that the divisions it has employed for cross-over traffic yield off-system revenues that exceed off-system costs. UP's contention, like the many unsuccessful BNSF and UP efforts to thwart the use of cross-over traffic in prior SAC cases, is both procedurally improper and substantively wrong. Nothing in Board precedent gives UP any basis for claiming that AEPCO's supposed "failure" to make such

work for you." Given such past experience, there should be no question as to the speciousness of UP's suggestion that AEPCO should have contacted the Railroads.

a detailed revenue/cost showing excuses UP from filing its Reply Evidence on May 27, 2003.²⁵

Significantly, during discovery in this case, both carriers refused to provide requested information on divisions, with UP flatly objecting on the basis that “rate division data is irrelevant in STB rate cases and therefore non-discoverable,” and BNSF similarly claiming that AEPCO’s request sought “information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.”²⁶ Having refused to produce division information on the grounds of relevance, the Defendants should be estopped from demanding that AEPCO resubmit opening evidence (or face dismissal) for failure to make a “particularly significan[t]” showing as to how associated costs relate to revenue divisions.

Notwithstanding the lack of divisions data from the Railroads, AEPCO’s Opening Evidence demonstrated the commercial reasonableness of AEPCO’s use of the Board’s established modified mileage block prorate methodology to calculate divisions on non-coal. AEPCO’s Opening Evidence at III-A-30 to 32, sponsored by John P. Toren, the former Vice President-Sales & Marketing for Intermodal and Consumer Products for

²⁵ UP never explains why AEPCO’s alleged silence on the issue prevents UP from pursuing the matter in its Reply Evidence.

²⁶ See UP’s Responses to Complainant’s Interrogatories and Request for Documents, at 39 (emphasis added), and BNSF’s Responses and Objections to Complainant’s Interrogatories and Requests for Production of Documents, at 33. Both UP’s and BNSF’s objections are reproduced in AEPCO Op. electronic workpaper “AEPCO Divisions Discovery.pdf.”

the former Chicago and North Western Railway (“CNW”) with over thirty years’ experience in railroad sales and marketing,²⁷ squarely addressed the relationship of the intermodal revenues and costs. Mr. Toren explained that the modified mileage block methodology left the residual incumbent with not just an acceptable, but a commercially desirable, revenue division, notwithstanding the terminal costs, which are often not borne entirely by the carrier:

Mr. Toren has concluded that application of the modified mileage block prorate method to intermodal traffic ... provides a sound approximation of the division that a bridge carrier in the ACE’s situation would receive for handling intermodal traffic.[]²⁸ The longer hauls reflect higher total revenues, and the additional mileage blocks for the origin/destination terminal operations provide a reasonable level of compensation for those services, particularly considering that their cost often is not borne directly or entirely by the railroad. Mr. Toren further adds that there is nothing inherently problematic in the use of a bridge carrier for this purpose, particularly where (as here) the bridge carrier receives and delivers complete run-through trains, intact.

Id. at III-A-31 to 32 (emphasis added). Mr. Toren’s analysis confirms the reasonableness of the ACE’s divisions on the cross-over traffic.

Moreover, it is appropriate to note that the ACE’s operations do not leave the residual incumbents with low-density movements over short segments that have

²⁷ See AEPCO Op. at IV-16 to 17 (setting forth Mr. Toren’s qualifications).

²⁸ Mr. Toren noted that intermodal movements in the west are relatively long, which causes the terminal costs to become a smaller portion of the total cost of service. He further noted that the shipper and other parties sometimes share in the lifting costs.

proved problematic in other instances. Instead, the residual incumbents are left with long hauls over very high-density lines, i.e., the remainder of major transcontinental routes.²⁹ Additionally, AEPCO objects strongly to any claim that a shipper on opening should be required to undertake a detailed cost analysis of all off-SARR cross-over traffic.

A. UP's Misstatement of Board Precedent

UP, at p. 13 of its Petition, claims that "settled Board precedent" requires AEPCO to make a prima facie showing on opening that "UP and BNSF would retain sufficient revenues to cover the 'off-line' costs associated with [] cross-over traffic." While AEPCO agrees that Board precedent is settled, the precedent stands for the opposite conclusions: (1) where, as here, railroad defendants withhold division information, the Board will rely upon simplifying assumptions regarding off-system revenues and costs; (2) to the extent defendants seek to introduce additional information on reply, shippers may certainly introduce additional information on rebuttal; and (3) when defendants withhold in discovery information regarding their actual divisions, they will not be heard to complain about the use of approved methodologies for revenue divisions for cross-over traffic.

UP's first cited authority for AEPCO's prima facie obligation is Arkansas Power & Light Co. v. Burlington Northern R.R., 3 I.C.C.2d 757 (1987) ("Arkansas").

²⁹ If AEPCO had extended the ACE's lines to include additional territory, the Defendants doubtless would be heard to complain that AEPCO had introduced a cross-subsidy by including facilities not utilized by the issue traffic.

Arkansas did not impose any obligation upon the complainant to submit detailed revenue and cost findings for traffic moving beyond the route parameters of the SARR itself. Instead, the ICC explicitly found that the shipper could rely upon a simplifying “assumption” that interline traffic would cover its off-line costs, even though the complainant’s evidence was demonstrably insufficient to document actual revenues and costs for purposes of quantifying a maximum reasonable rate. Id. at 774-75.³⁰ Furthermore, the ICC did not place the burden of proof on the complainant, but instead based its findings upon: (1) the agency’s own familiarity with the route in question; (2) the significant volume of traffic and revenue associated with that route; (3) the shortness of the relevant gathering and distribution systems relative to the high density segments of the SARR system; and with greatest relevance to the instant inquiry, (4) the defendants’ failure to demonstrate that the complainant’s approach had improperly biased the rate analysis. Id. at 775.

The next “settled” precedent cited by UP, Omaha Public Power District v. Burlington Northern R.R., 3 I.C.C.2d 123 (1986) (“OPPD”), also granted the complainant the benefit of a simplifying assumption that off-system revenues would exceed off-system costs. This assumption even “permitted [the initial decision] to disregard off-line costs and revenues.” Id. at 139 (emphasis added). Moreover, rather than require complainants

³⁰ The Commission also rejected the “network” method of SARR design advocated by the defendants, in which all included traffic must be local to the SARR, because “tracking revenues and costs becomes impractical.” Id. at 773.

to make a prima facie showing, OPPD accepted the showing that the complainant made in response to Burlington Northern's challenge:

The Burlington Northern first challenged the absence of off-line costs and revenues in its evidence to the Administrative Law Judge. Omaha Power responded with exhibits that purported to show the total costs and revenues (including auxiliary costs and investments) under the "Appendix F" methodology for a group of unit train coal shippers constituting part, but not all, of the original CMV traffic.

Id. at 142 (emphasis added). A case where the agency accepts the complainant's responsive evidence and employs a simplifying assumption to dismiss a railroad argument that would have required an "extremely complex and expensive" evidentiary showing plainly does not constitute precedent for requiring a prima facie showing by complainants. Id.

In PPL Montana, the Board expressly stated that the complainant was not required to make the affirmative showing contemplated by BNSF:

BNSF also contends that PPL's SAC presentation should be rejected because PPL has not shown that the revenues allocated to the residual BNSF for all cross-over traffic movements are sufficient to cover the residual BNSF's stand-alone costs associated with those movements. We do not agree that such a showing is necessary.

Id. at 10 n.20 (emphasis added).³¹ Moreover, the Board went on to note that a residual carrier would agree to move traffic so long as the revenue division covers the carrier's "attributable" (i.e., directly variable) costs. This guidance as to the standard to be applied in the event of a claim by the defendants provides no support for UP's attempt to require shippers to make a prima facie showing, particularly as to a matter where defendants withhold potentially relevant information from shippers.³²

**B. UP's Petition Ignores the Board's Actual Precedent
on Divisions on Cross-Over Traffic**

Notwithstanding UP's efforts to require AEPCO to make a burdensome and detailed prima facie showing as to off-SARR costs of cross-over traffic, the Board has repeatedly upheld use of a mileage-block approach for calculating revenue divisions, particularly where, as here, defendants withhold production of division information in discovery.

³¹ In footnote 19 on the same page the Board expressed concern that requiring such a showing "could very well eliminate the usefulness of including cross-over traffic in a SAC analysis."

³² The only other authorities cited by UP in support of its argument are McCarty Farms, Inc. v. Burlington Northern, Inc., 2 S.T.B. 460, 468 (1997), where the Board "seriously questioned," but did not rule upon, the feasibility of a SARR system which stranded BN branch lines from the balance of the BN system, and Docket No. 42056, Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Ry., (STB served March 24, 2003), where the Board rejected on the merits complainant's effort to re-route certain cross-over traffic without adequately addressing potential off-system operating problems and off-system costs. Neither case provides any support for UP's claim regarding the ACE, which does not isolate the residual incumbents' branch lines from the rest of their systems or reroute any non-coal cross-over traffic.

For example, in Bituminous Coal – Hiawatha, UT to Moapa, NV, 10 I.C.C.2d 259 (1994) (“Nevada Power II”), which UP completely ignores, the ICC used a mileage prorate, consistent with its staff’s analysis of revenue divisions on historically interlined traffic:

This leaves the issue of how revenues should be allocated between the SARR and the incumbents for this cross-over traffic. In the absence of any better evidence, we will prorate the revenues attributable to the cross-over traffic among the SARR and incumbent carriers on a mileage basis, as proposed by NPC. This approach is consistent with the treatment in our staff’s preliminary analysis of historically interlined traffic for which actual (market-based) divisions are not available. See [Bituminous Coal – Hiawatha, UT to Moapa, NV, 6 I.C.C.2d 1 (1989)], at 45-46.

10 I.C.C.2d at 268 (emphasis added).

The Board has used a modified version of the mileage block prorate methodology in a number of subsequent cases, such as its recent TMPA decision:

Normally, when two or more railroads serve a shipper in joint-line service, they negotiate a market-based revenue division of the rate.[] Lacking information to determine BNSF’s typical percentage division in various market-driven situations, TMPA divided the revenues on cross-over traffic between the GCRR and the residual BNSF based on the modified mileage block prorate (MMBP) method that has been used in prior SAC cases. . . . [W]e use TMPA’s evidence.

Id. at 31. The Board also utilized that approach in Docket No. 42022, FMC Wyoming Corp. v. Union Pacific R.R., (STB served May 12, 2000) at 30-31, where UP had refused to produce divisions information during discovery:

[I]n withholding from FMC division information for all UP movements, UP denied FMC the opportunity to produce an alternative algorithm that might be more suitable for estimating market-based divisions for these movements. Thus, in the absence of any better evidence, we use FMC's modified mileage prorate method to estimate ORR divisions for these movements.

. . . It is inappropriate for UP to deny FMC access to actual division data and then to rely on division sheets to rebut the modified mileage block prorate method for only selected traffic. Consequently, we adhere to the use of the modified mileage prorate method here.

Id. at 30-31.

UP itself appears to have advocated use of the modified mileage block prorate method in Docket No. 42051, Wisconsin Power and Light Co. v. Union Pacific R.R., (STB served Sept. 13, 2001) at 24. Moreover, nothing in Wisconsin suggests that UP claimed that the shipper failed to make a necessary prima facie showing. As Wisconsin was served 4-15 years after the "settled" precedents cited by UP, one can only conclude that UP's current view is a very recent concoction.

C. AEPCO's Opening Evidence is Entirely Adequate Under the Board's Actual Precedent and the Circumstances of this Case

The precedent reviewed supra demonstrates that defendants that withhold information as to their divisions may not challenge a shipper's use of the modified mileage block prorate method to calculate SARR divisions on cross-over traffic.

As noted supra and explained in AEPCO's Opening Narrative at III-A-27 to 28, AEPCO sought the information in discovery, but the carriers refused to produce the

information on grounds of relevance.³³ Under Nevada Power II, FMC, and TMPA, the railroads are thus barred from attacking AEPCO's use of the modified mileage block prorated method to calculate revenue divisions.

Moreover, AEPCO's Opening Evidence went beyond the Board's requirements in this respect. As noted supra, AEPCO included at Op. Narrative III-A-30 to 32 evidence sponsored by John Toren, the former Vice President-Sales & Marketing for Intermodal and Consumer Products for CNW prior to its acquisition by UP. Mr. Toren's testimony explained the commercial reasonableness of the results under the modified mileage block prorated, taking into account the associated costs of intermodal movements. AEPCO thus has more than met any applicable burden. While Defendants may disagree, their proper course is to file reply evidence (to the extent permitted in light of their discovery responses), not to impose any further burdens on AEPCO.

IV. Governing Precedent Sanctions the ACE Route Via Vaughn and El Paso, Including the Use of BNSF's Existing Trackage Rights Over UP, and the Fact Issues Raised by UP Should Be Addressed in Defendants' Reply Evidence

The final UP-alleged deficiency in AEPCO's opening SAC presentation concerns the SARR route for transporting coal traffic from ACE-served mines in New Mexico to Cochise, AZ. UP argues that the ACE route via Vaughn and El Paso is longer

³³ At III-A-27 n.22, AEPCO noted that BNSF, nearly two years after AEPCO served its discovery, produced certain limited divisions information solely regarding non-issue coal traffic. UP did not produce any divisions information in this case.

with more grades and curves and therefore less efficient than the present BNSF/UP route via Belen, Rincon and Deming, and fails to meet the transportation needs of the affected shippers (including AEPCO). UP further argues that AEPCO improperly assumes that the ACE can use BNSF's trackage rights over UP between Vaughn and El Paso in lieu of constructing its own north-south line either between Belen and Rincon (replicating the route presently used by BNSF) or between Vaughn and El Paso.

A. Efficiency of Vaughn/El Paso Routing

UP's claims regarding the efficiency of the ACE route are strictly factual in nature. They include: whether AEPCO included all of the ACE's costs in moving coal via the longer route, whether the ACE's cycle times for moving coal via Vaughn-El Paso will significantly exceed those of BNSF/UP via Belen/Rincon/Deming, and whether the ACE will meet the affected shippers' transportation needs and cover any of their additional costs. Under Xcel and McCarty Farms, fact questions of this kind should not be addressed in a procedural motion, but "are better left for an assessment on the merits after development of the full evidentiary record." Xcel at 2.

UP also argues (Petition at 20) that it and BNSF would never agree to route AEPCO's coal traffic via Vaughn-El Paso due to the inefficiencies and higher costs, and that a SAC presentation cannot be based on a "non-viable" real-world route. But the incumbents' real-world preferences are irrelevant from a SAC perspective. BNSF-UP could plainly use the Vaughn-El Paso route if they wanted to, and in the ACE's stand-

alone world, the Belen-Rincon-Deming route does not exist (and BNSF/UP certainly cannot retaliate on that basis).

Moreover, the Board already ruled in its decision served August 20, 2002 in this proceeding denying BNSF/UP's motion to bifurcate the determination of SAC from different origins ("August 2002 Decision"), that AEPCO's Vaughn-El Paso routing was permissible. Id. at 6.³⁴ Any different result would contradict the Coal Rate Guidelines, where the agency stated:

In selecting the route of a SAC railroad, for instance, an overriding factor may be the effort to lower costs by taking advantage of economies of density. Generally, a stand-alone railroad would attempt to fully utilize plant capacity, adding other profitable traffic in order to reduce the average cost of operation. Thus, the stand-alone railroad may not represent the shortest route for the captive shipper, but the one with the highest traffic densities. . . . [T]he optimal size and placement of the physical plant must be determined on a case-by-case basis.

1 I.C.C.2d 520, 543-44 (1985).

UP further asserts that, in the real world, "none of the affected parties could force the others to accept a reroute via Vaughn" (Petition at 21). This assertion confuses legal principles governing the establishment of joint rates and routes with SAC principles. Rail carriers initially have the rate and routing initiative, and the rates under challenge were established as joint rates with the interchange point at Deming, NM.

³⁴ The Board's only condition was that AEPCO had not requested the Belen-Rincon-Deming routing. AEPCO did not do so, as noted in AEPCO's Op. Narrative at III-B-1 n.1.

However, the SARR is not limited by the parameters established by the Defendants for their joint operations. The SARR must be able to provide service from the origins to the destinations involved, but the service is single-line service and the SARR need not provide it in the same manner or using the same route that the incumbents do. August 2002 Decision at 5-7.³⁵ Whether the affected shippers would “allow” the new route (Petition at 21), and its affect on their (and the SARR’s) service and costs, are factual matters that should be developed on the record, not decided on the basis of speculative allegations in a procedural motion.

**B. Propriety of ACE’s Use of BNSF Trackage
Rights Between Vaughn and El Paso**

Prior rate cases have routinely permitted SARRs to use the incumbent’s existing trackage rights over third party railroads in providing service for the issue and other (cross-over) traffic, rather than replicate those facilities by constructing them.³⁶ UP concedes that this approach is consistent with stand-alone theory “because the ‘theory of contestability is based on the assumption that both the entrant and the incumbent can

³⁵ “But BNSF and UP are themselves free to alter or vary their routing of AEPCO’s movement in this manner at any time (by mutually changing the interchange point) without needing AEPCO’s consent and without affecting the joint rate charged to (and challenged by) AEPCO.”

³⁶ See, e.g., Westmoreland Coal Sales Co. v. Denver R.G.W. R. Co., 5 I.C.C.2d 1067, 1105 (1988); Nevada Power I, 6 I.C.C.2d at 57; Nevada Power II, 10 I.C.C.2d at 303 n.55; West Texas Utilities Co. v. Burlington Northern R.R., 1 S.T.B. 638, 673 (1996); Wisconsin, at 69; TMPA at 15 n.21 and 67 n.106.

employ the same productive technique, incurring the same costs” (Petition at 23, quoting Nevada Power I at 57).

However, UP then seeks to distinguish this precedent on the basis that AEPCO’s case involves joint service by two railroads, and that the ACE is using trackage rights of one defendant over a line of the other, rather than over the line of a third-party carrier. UP argues that the approach is improper because:

UP and BNSF together incur all of the costs associated with issue traffic moving over the entire route. It is these *total* costs that are necessary to “reproduc[e] the service capability” that are the relevant costs for stand-alone purposes.

Petition at 23-24 (citing the ICC’s 1983 interim Coal Rate Guidelines decision in Ex Parte 347 (Sub-No. 1) (original emphasis)).

UP’s argument still fails because it assumes that the ACE is replicating UP’s service between Vaughn and El Paso. However, the ACE is instead replicating BNSF service, *i.e.*, service that BNSF can provide using its existing trackage rights over UP’s line. The ACE is thus “reproducing the service capability” of BNSF, not UP. By changing the issue traffic’s route from Belen-Rincon-Deming to Vaughn-El Paso, AEPCO conceptually changed the interchange point for the joint BNSF/UP service from Deming to El Paso. Because BNSF has the capability of using its existing trackage rights to transport AEPCO’s (and other) coal trains between Vaughn and El Paso, UP’s position is conceptually that of a third-party rail carrier for purposes of the SARR routing

selected by AEPCO. The Board expressly approved that routing in its August 2002 Decision noted supra.

To be sure, as UP notes, the August 2002 Decision did not expressly address the use of trackage rights between Vaughn and El Paso as opposed to new SARR construction. But the Board accepted that exact principle for another portion of the route for both single-line UP Colorado-origin traffic and joint-line BNSF/UP PRB-origin traffic. The Board first held (id. at 7) that AEPCO's SARR for the single-line UP Colorado traffic was free to use BNSF's trackage rights over UP for Bond, CO-Denver, as well as UP's trackage rights over BNSF between Pueblo, CO-Stratford, TX. The Board's endorsement of AEPCO's use of BNSF trackage rights over a UP-constructed segment (Bond-Denver) for challenging a UP single-line movement is, by itself, sufficient to dispose of UP's key premise that a shipper cannot utilize trackage rights that one defendant has granted to another defendant, but must instead construct the line involved. However, the Board went on to hold respect to issue traffic transported under joint rates:

These guiding principles—that a SARR may replicate the cost-sharing arrangements but may not hypothesize non-existent revenue or cost-sharing arrangements—apply with equal force to SARRs designed to test the BNSF-UP joint rates from the PRB and New Mexico origins. Thus, for each segment of a route used to test the respective joint rates, only the traffic and revenues of the carrier whose portion of the route is being replicated should be included in the SARR's traffic group. But the SARR may be assumed to have the same cost-sharing arrangements as the defendant carriers have on each segment, so long as the terms of those

arrangements (including operational provisions and terms of compensation) are the same as those applicable to the defendant carriers.

Id. (emphasis added).

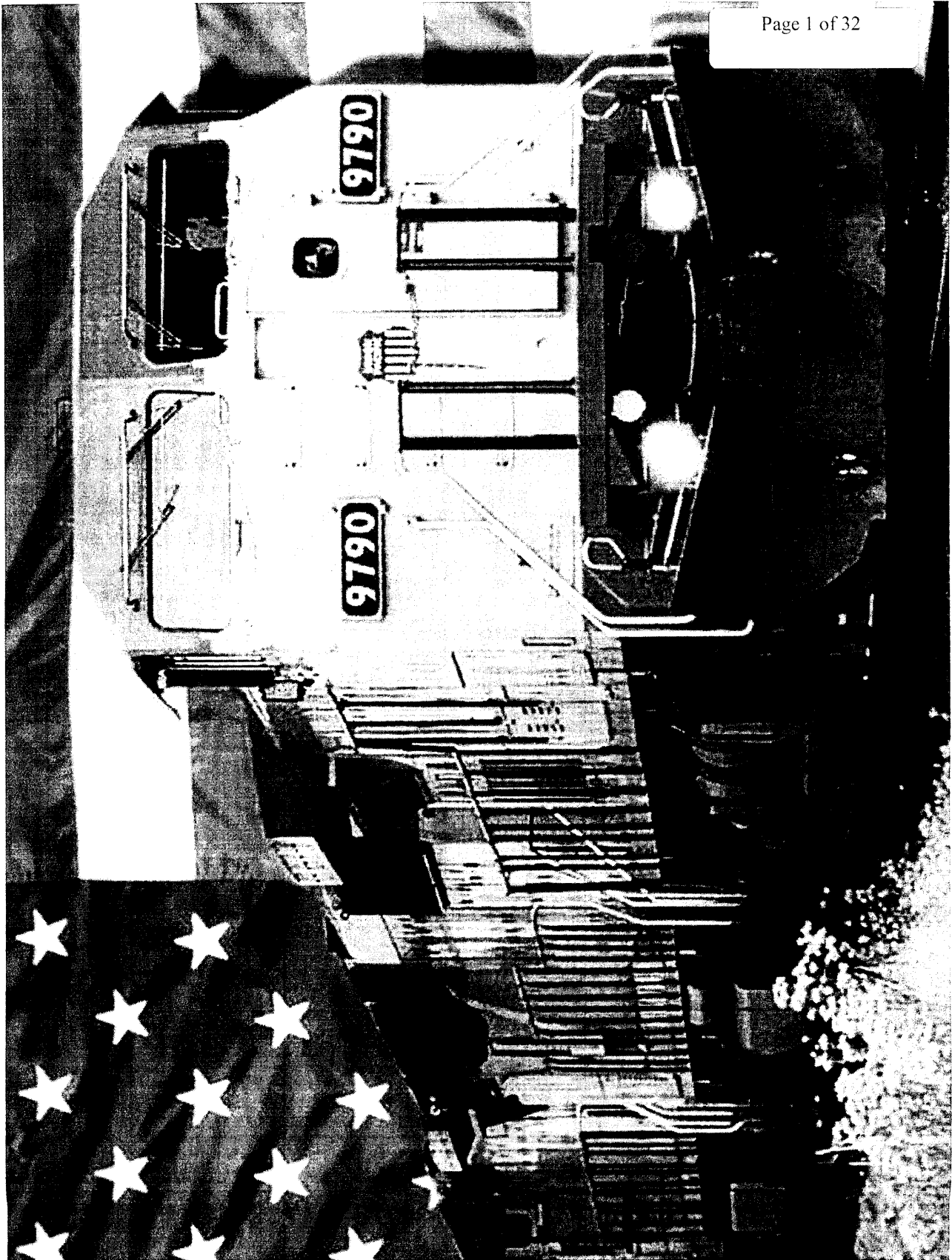
The ACE's use of the BNSF trackage rights over UP's line between Vaughn and El Paso complies precisely with the Board's August 2002 Decision. The ACE is doing nothing more than stepping into the BNSF's shoes under the terms and conditions of the presently-applicable UP/BNSF joint facility agreement.³⁷ AEPCO has carefully limited the ACE's traffic over the segment to coal traffic that BNSF has the present right to move over this line, and AEPCO has excluded all UP traffic moving over the line. The ACE is thus replicating a BNSF route, not a UP route. Thus, AEPCO's decision to use the existing BNSF trackage rights rather than construct a line between Vaughn and El Paso is entirely in accordance with the August 2002 Decision.³⁸

Although the issue should be regarded as settled by the August 2002 Decision, UP makes one additional argument (Petition at 23-24) against the ACE's use of trackage rights that warrants a brief response. This argument is that because the

³⁷ See AEPCO's Opening Narrative at III-A-6 (including n. 3) and III-D-71.

³⁸ UP's Petition at 23 cites Potomac Electric Power Co. v. Conrail, 367 I.C.C. 532 (1983), as "rejecting use of trackage rights fees rather than cost of constructing or purchasing line for stand alone purposes [sic]." However, that case involved a situation where a shipper unsuccessfully tried to extend an incumbent's trackage rights over a relatively short line segment being used by a SARR to the entire SARR system. Id. at 551-53. Here, consistent with the August 2002 Decision, AEPCO is not proposing any extension of existing shared-use arrangements.

Attachment 1



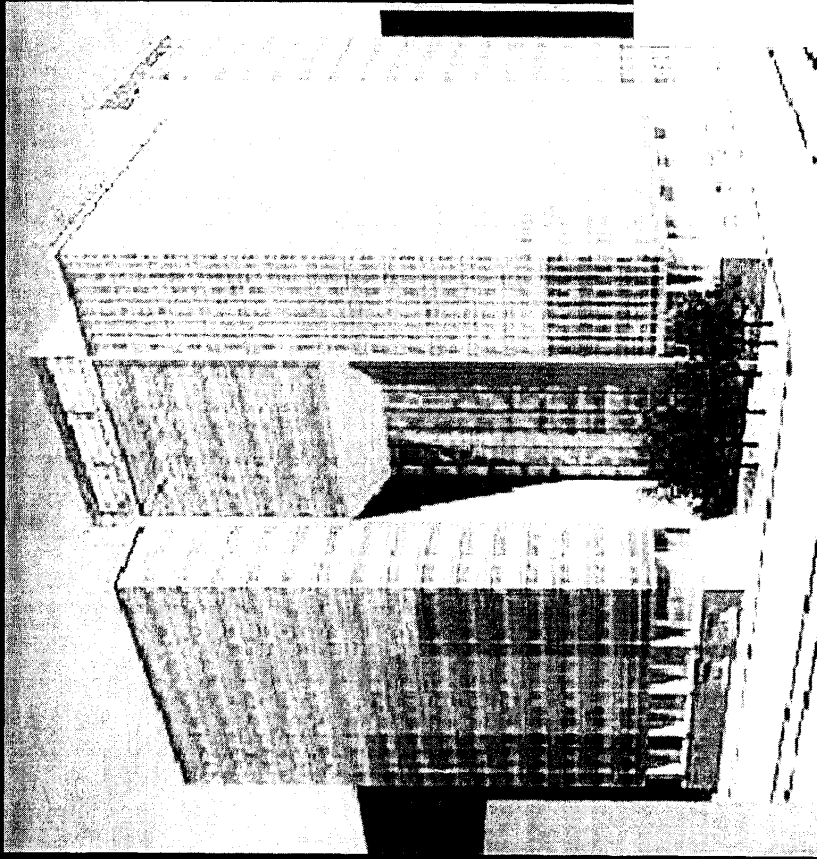
Agenda

- Railroad Overview
- Technology Overview
- Questions



Union Pacific Railroad

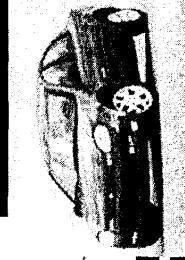
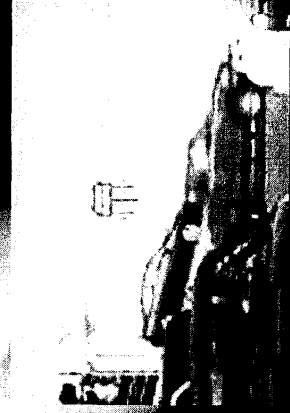
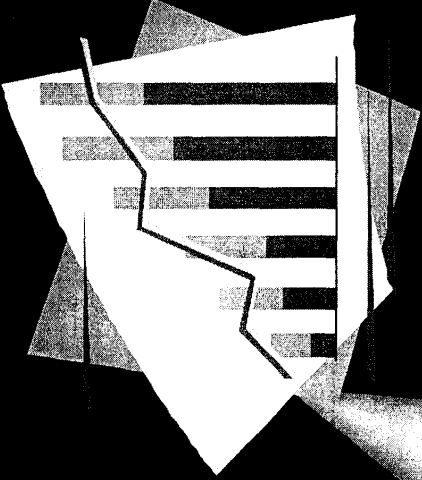
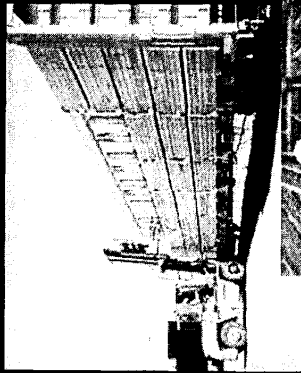
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Success!

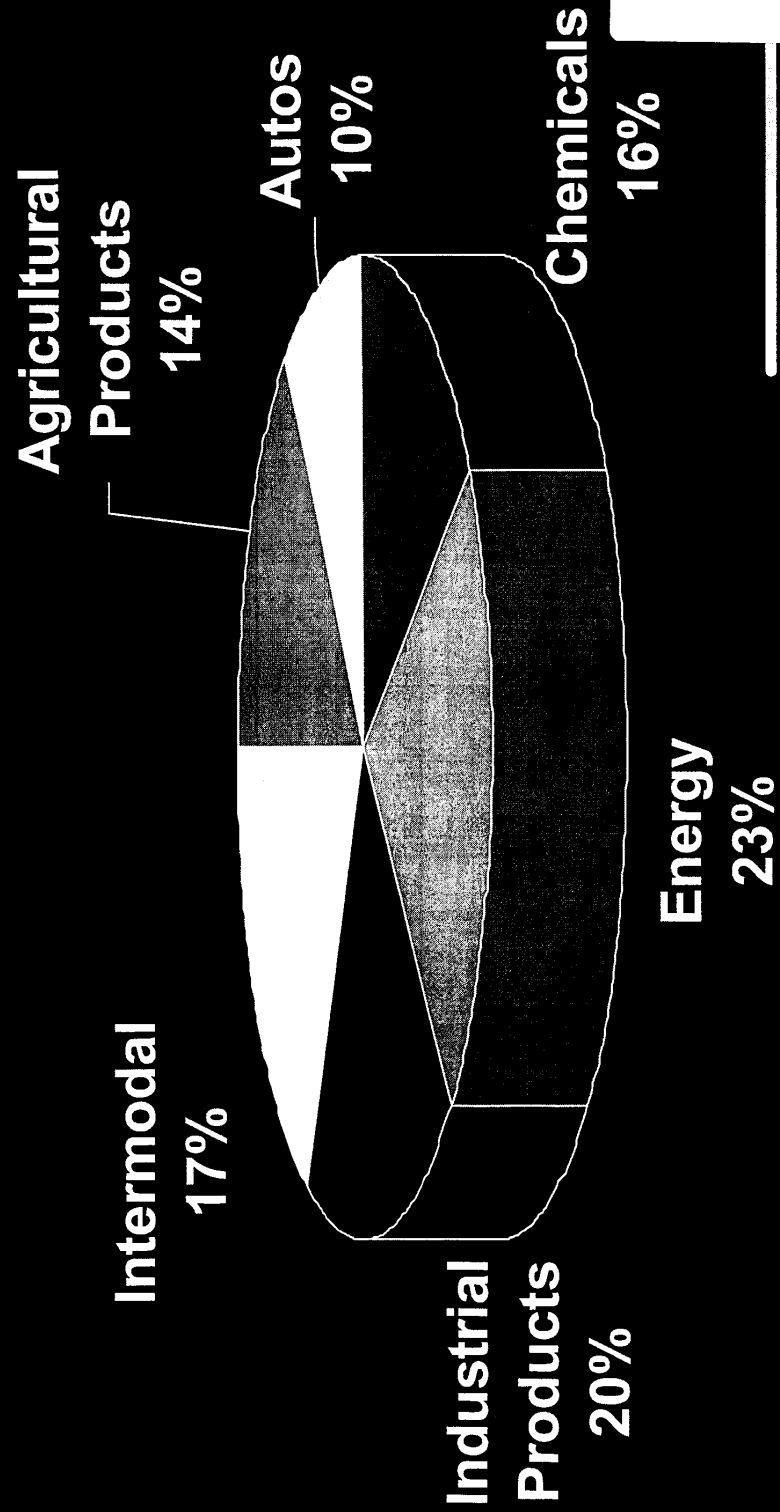


\$10.3 B



BUILDING AMERICA™

2000 Business Mix -



The Management Challenge:

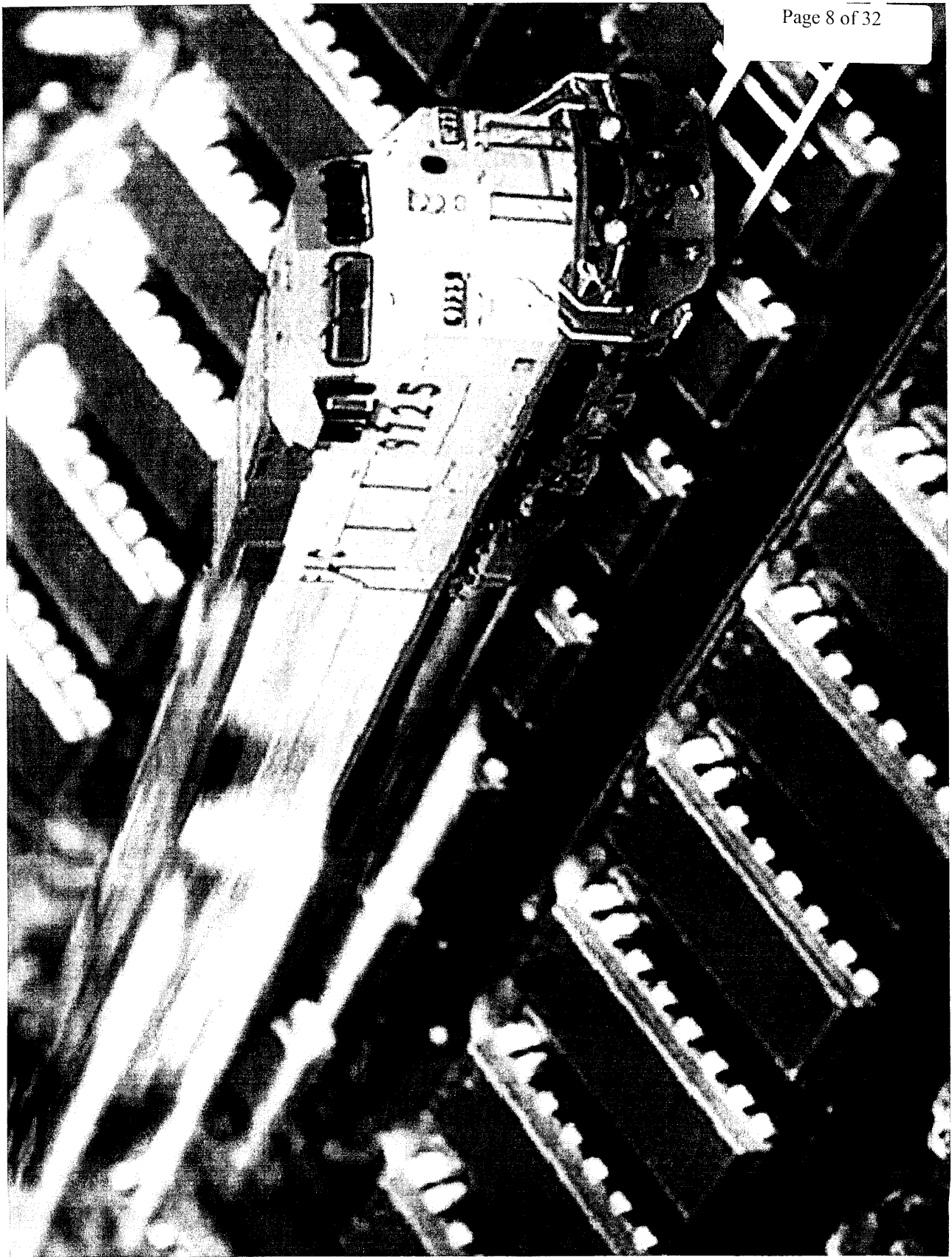
- Miles of Track - 37,785 Route, 56,902 Track
- Links - 145, Nodes - 84
- 1,356 Mainline Switches
- Locomotives - 6,847
- Freight Cars - 157,090
- Freight Car Inventory - 315,000
- Car Loads Daily - 28,622
- Thru-Freight Daily - 2,300
- Yard Jobs Daily - 1,053
- Locals Daily - 724
- Active Trainmen - 13,173
- Active Engineers - 9,071
- 2 Data Centers
- 359,346 Programs
- 76,653,381 Lines of Code
- 34.7 Terabytes of Storage
- 5.5 Terabyte Data Warehouse
- System Availability Achieved during 2000 - TCS 99.75%
- 15,000 LAN Connected Personal Computers
- TCS Transactions Daily - 5.5 million
- TCS Inquiries Daily - 590,000
- General Inquiries Run Daily - 27,000
- Web Visits Daily - 177,000

Technology Enables!

Technology Infrastructure

- Telecommunications Network
- Data Centers
- Network Devices
- Security





Technology Role

- Technology is an Investment in the Future.
- Technology must Enable the Yield Strategy.
- Business Concept Innovation must be Promoted.

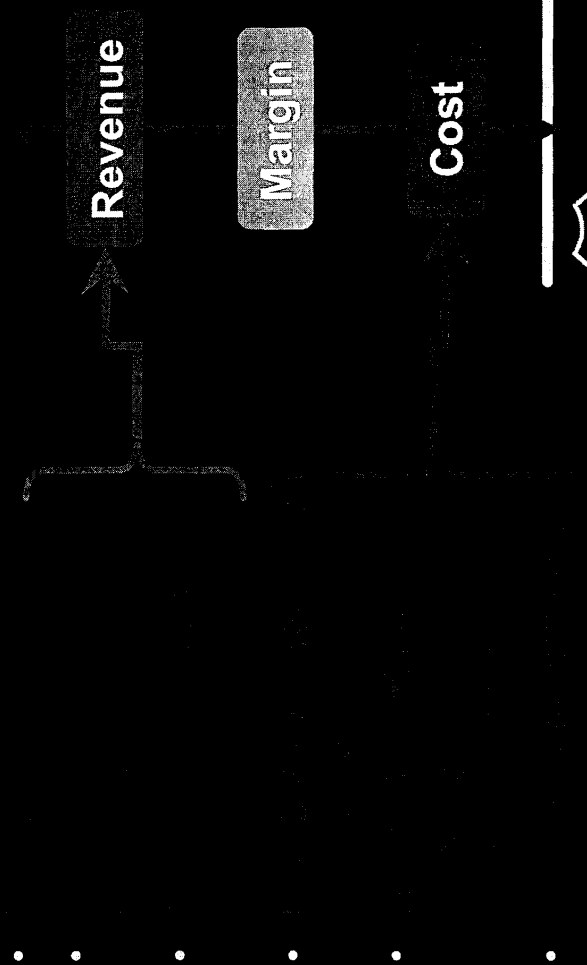
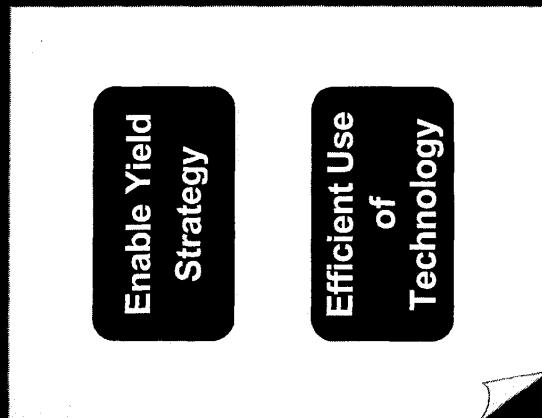


Dynamics of a Yield Strategy

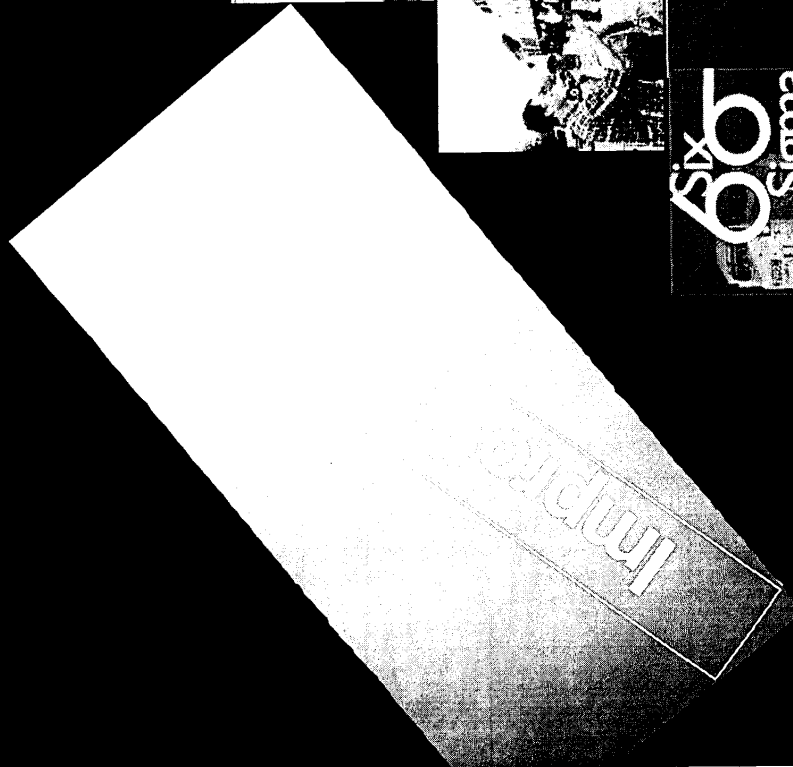
Technology
Strategy

Strategic
Initiatives

Yield Strategy
Goal



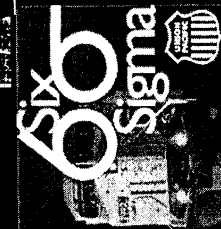
Improvement Hierarchy



Technology
Initiatives



Organizational
Initiatives



PACIFIC
BUILDING AMERICA™

Key Areas of Focus

Customer

Automated Customer-Friendly Product



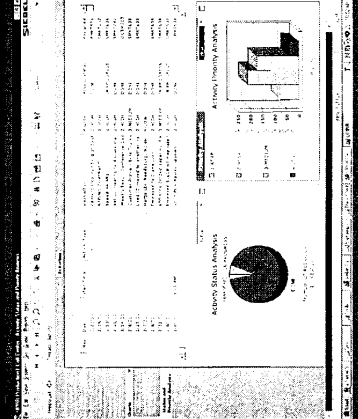
Operations

Reliability, Productivity & Cost Control



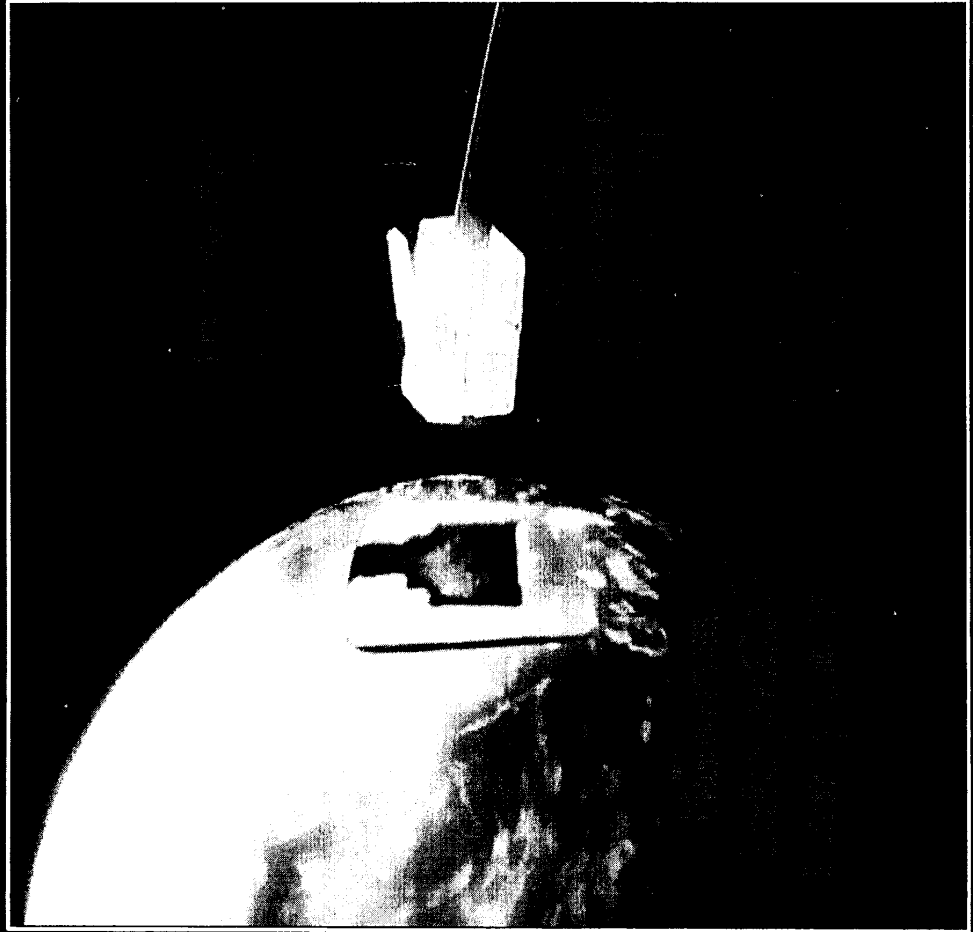
Data Analysis

Any user, any question, any data, any time



Customer Engagement Strategy

UPRR Customer Services



Electronic Data
Interchange

FAX / Imaging

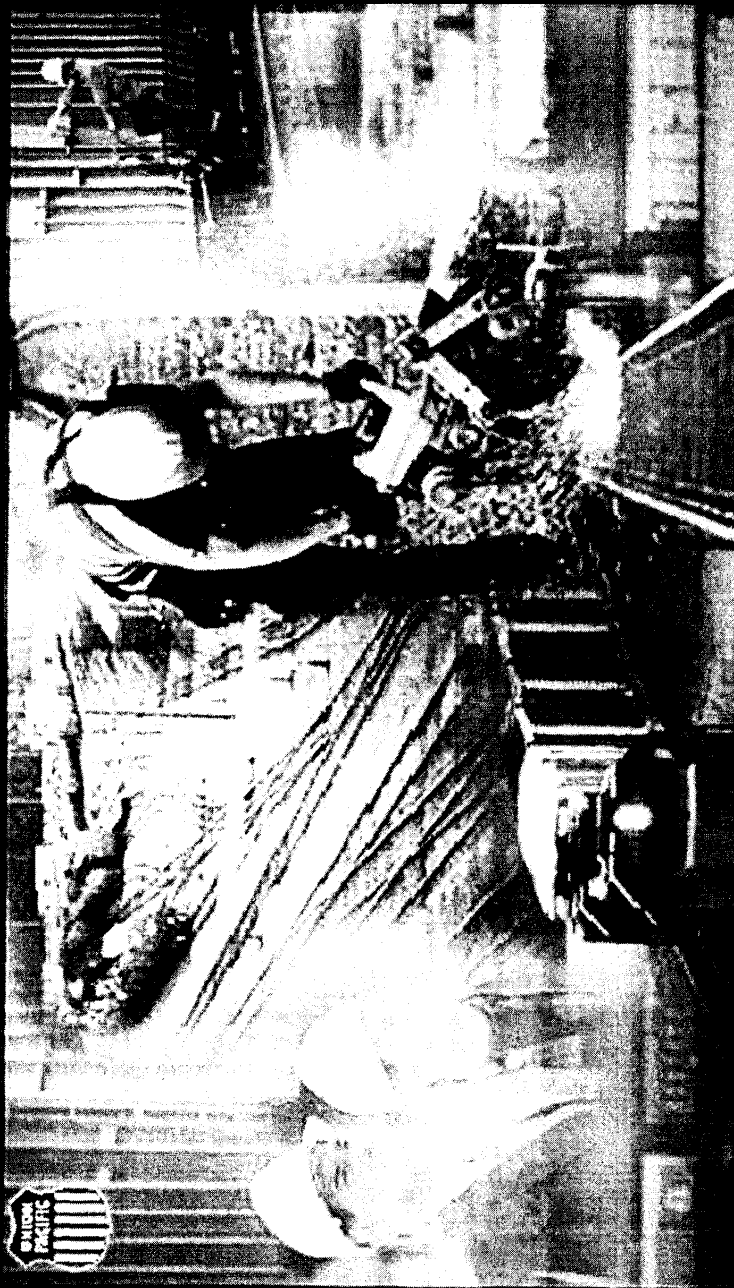
WEB/XML

Customer
Relationship
Management

Yield
Management



Operational Planning / Execution



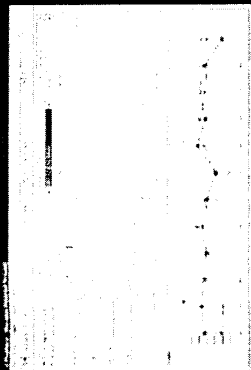
STRATEGIC TACTICAL REALTIME

Page 14 of 32

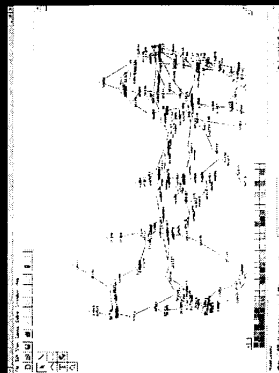


BUILDING AMERICA™

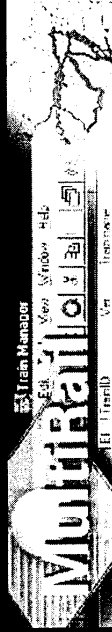
Operational Support Strategic



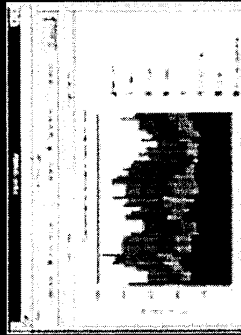
Forecasting



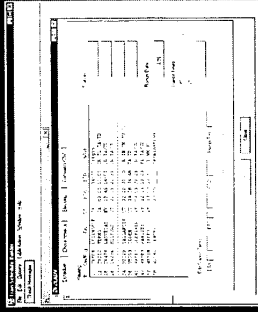
Simulation



Transportation &
Resource Planning



Terminal
Planning



Train
Schedule
Builder

- Cost Effective Resource Plans
- Integrated Marketing / Operating Plan
- Achievable Plan



BUILDING AMERICA

[illegible]

Network Surveillance

Bulk Network Management

[illegible]

Integrated Train Management

[illegible]

Locomotive Management

- **Assignment and Allocation of Resources**
- **Resolve Resource Conflicts**
- **Executable Plan**

BUILDING AMERICASM

[illegible]

The image shows a document page with a header section at the top. The header contains a table with several rows of data. Below the table, there is a large, dark, irregular shape that appears to be a stamp or a large mark. The rest of the page is mostly white with scattered black specks and lines.

Tracking and Work Reporting



Train Dispatching

[illegible]

Terminal Management

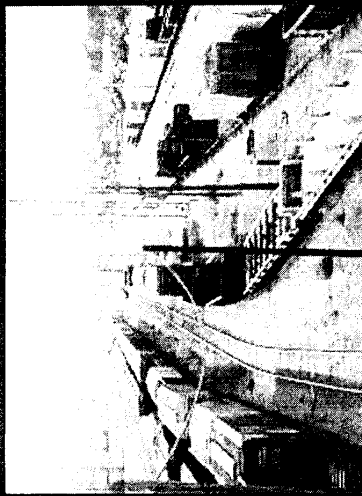
Page 17 of 32

- Proactive Monitoring
- Service Based Dispatching
- Safe and Efficient Train Operations



THE UNIVERSITY OF CHICAGO PRESS

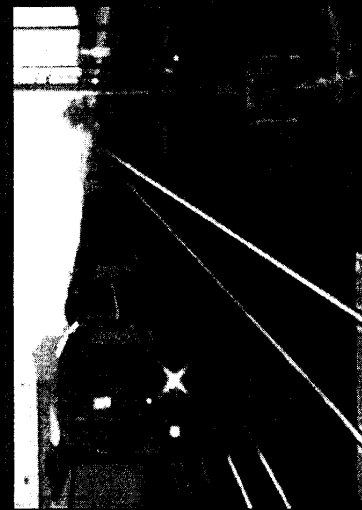
Resources



Cars



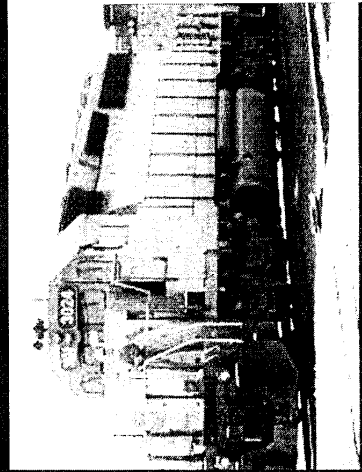
Crews



Line-of-Road

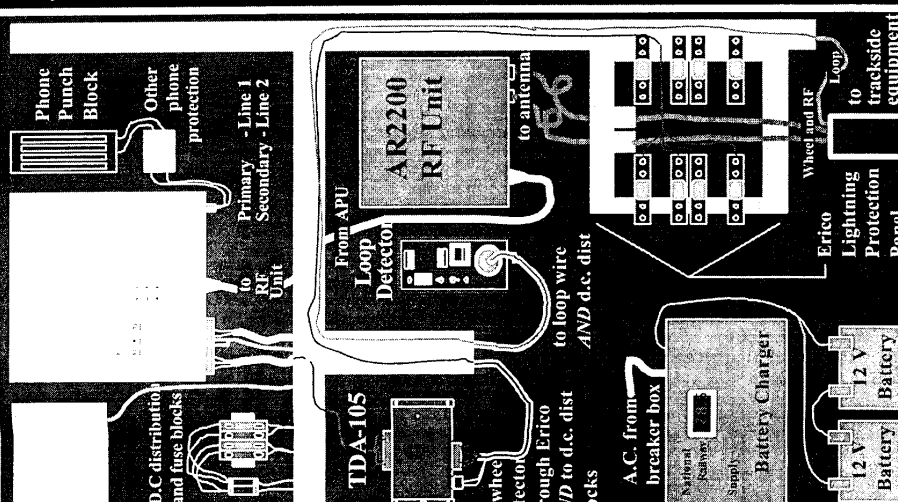
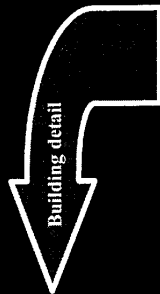


Terminals

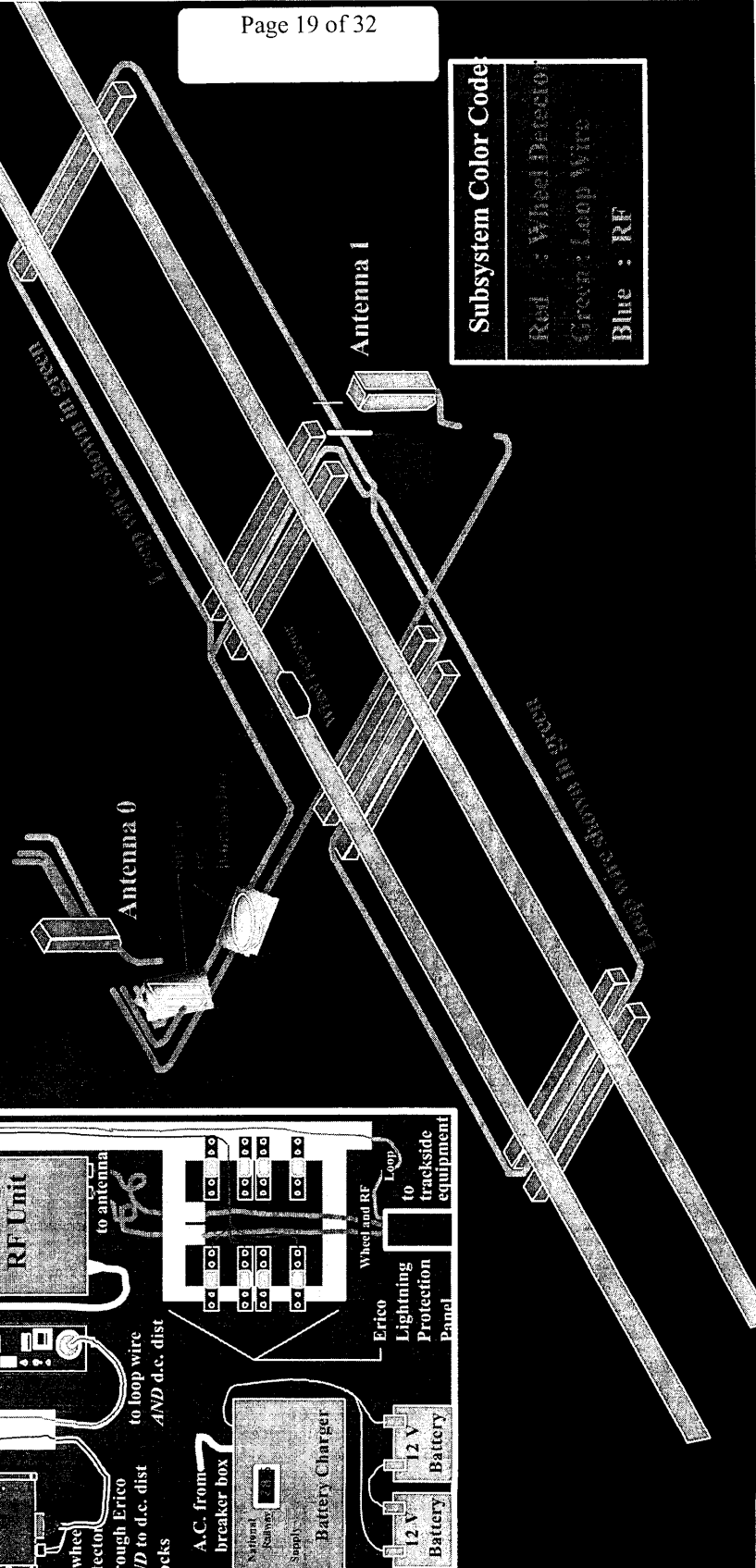


Locomotives

Automatic Equipment Identification



Note: This layout is for a typical single track site. Site-to-site variations are to be expected and double track and dedicated RF sites are not addressed here.



Subsystem Color Code	
Red	Wheel Detector
Green	Loop Wire
Blue	RF



Train Lineup and Crew Boards

Circ-7: Board:

Display Options:

☒ Train (=TL)

Direction: Board Only

☒ Inbound ☐ Outbound

☒ Board(ZB)

☒ Working (W)

☐ Assignment (A)

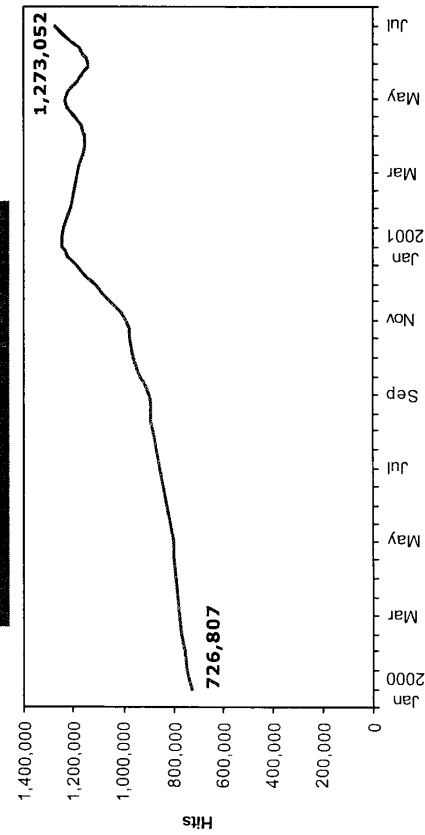
☐ Vacancy (V)

Craft:

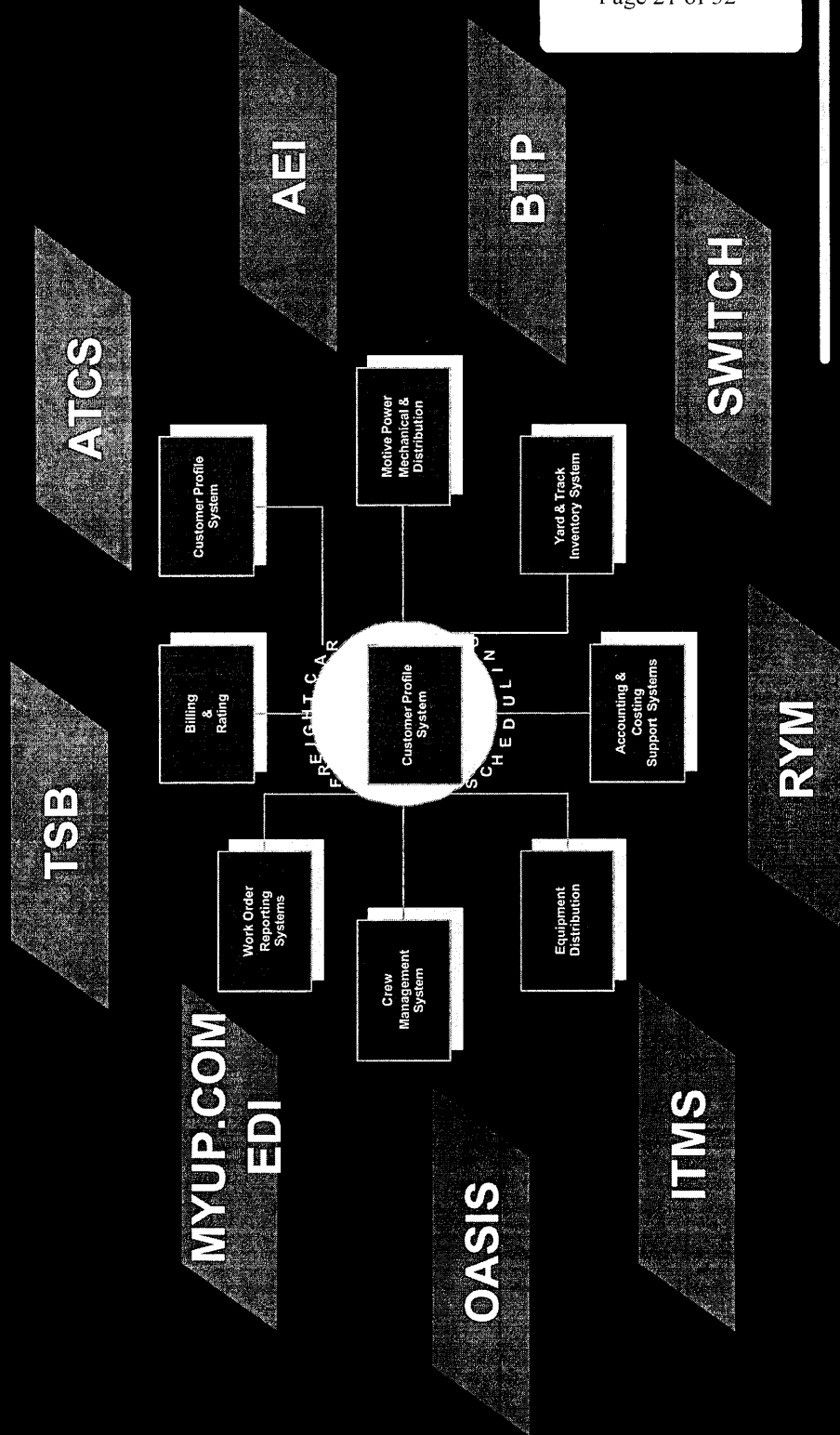
☒ Engineer

☐ Train & Yard

Crew Boards & Lineups

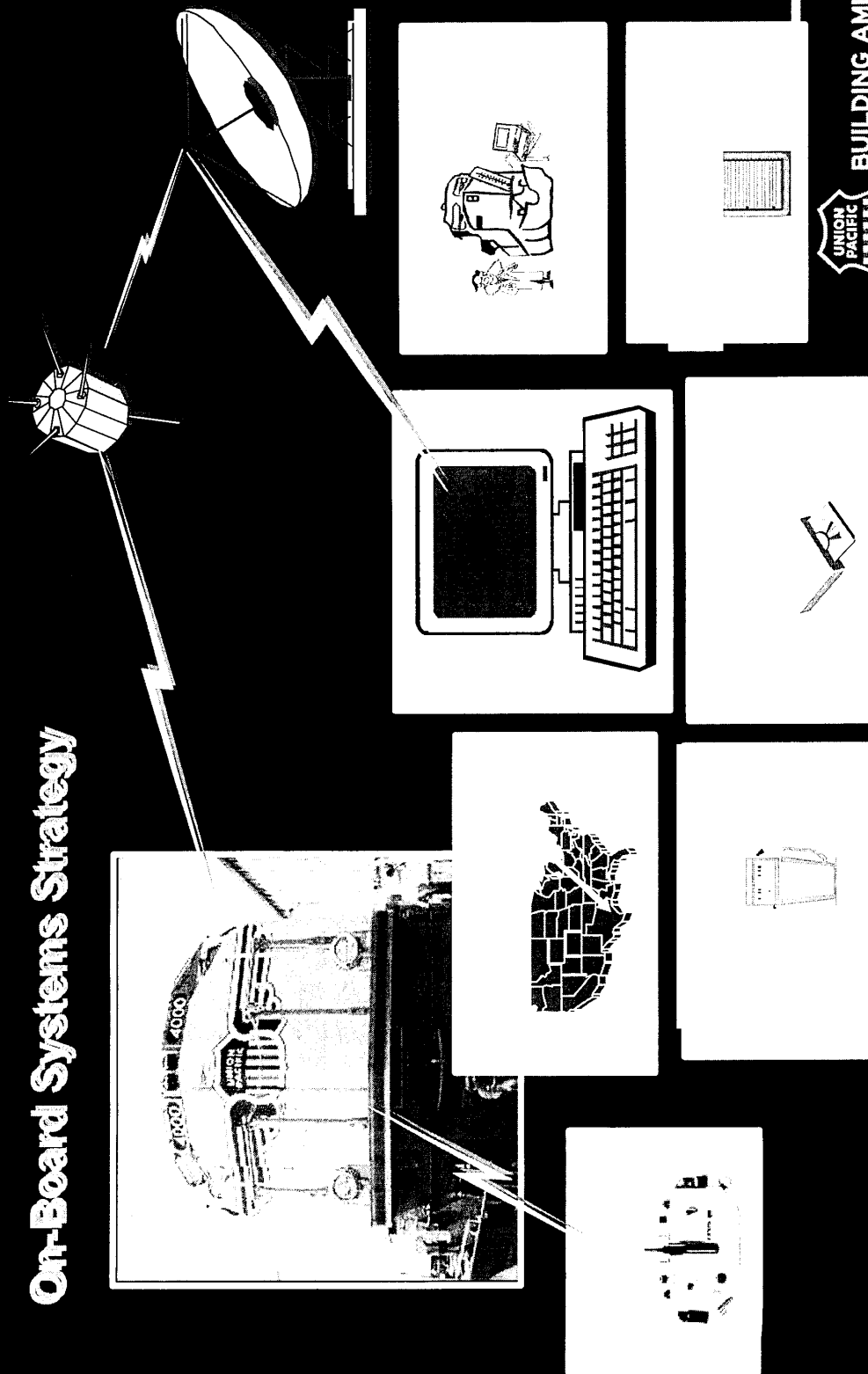


Train Control System

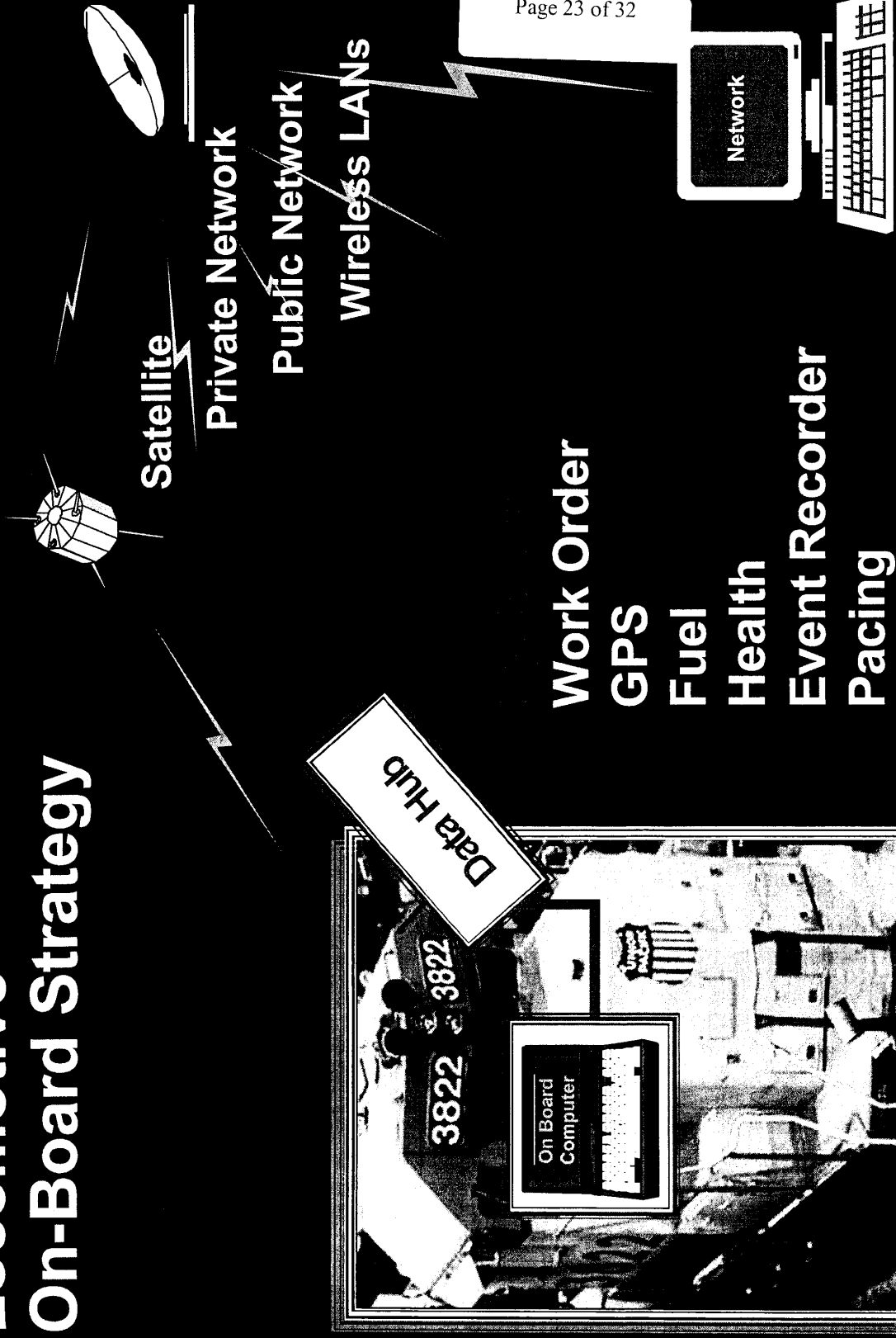


On-Board Technology

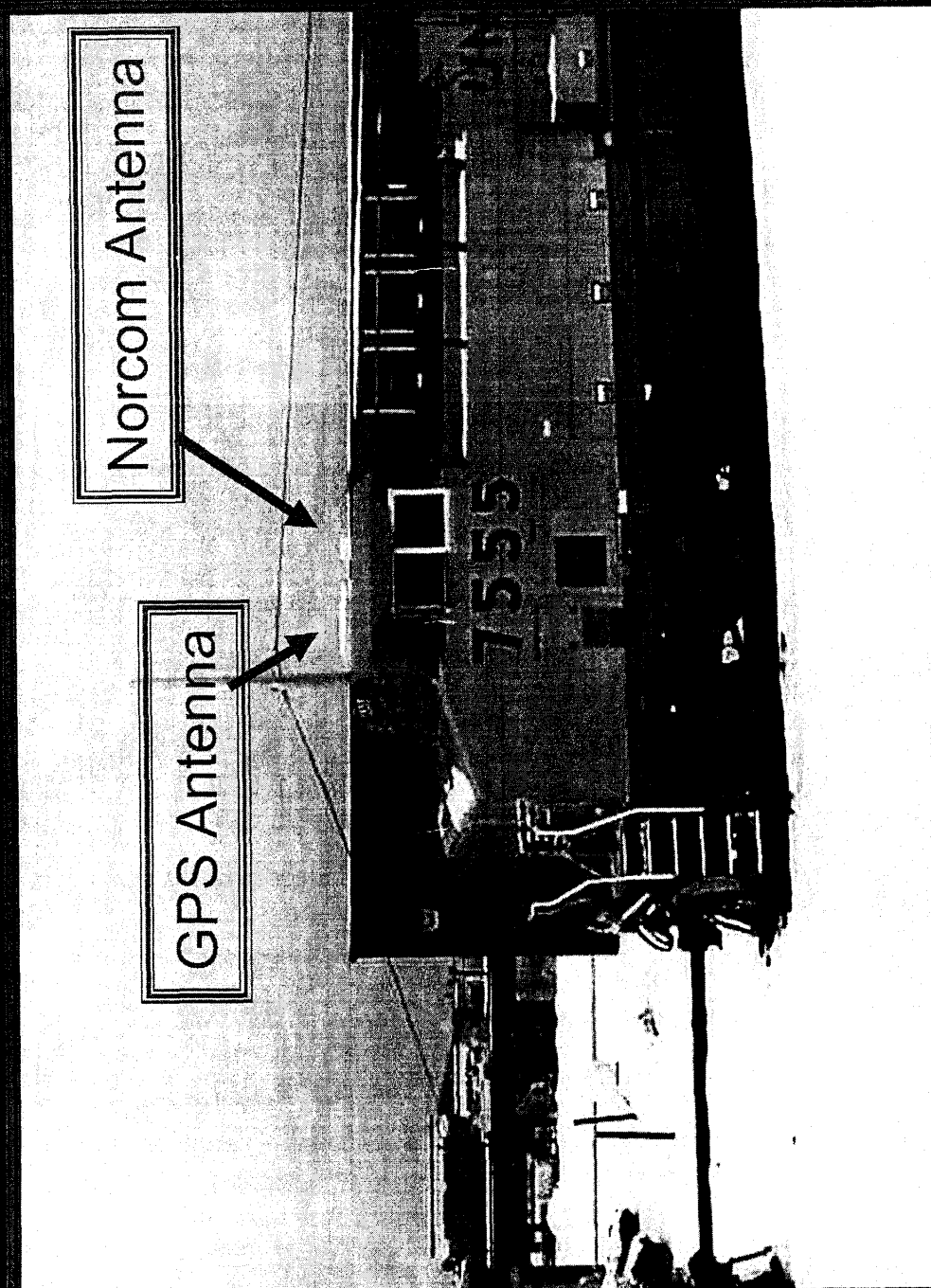
On-Board Systems Strategy



Locomotive On-Board Strategy



Locomotive On-Board Technology Global Positioning Satellite



Locomotive On-Board Technology Advanced Train Control System

Page 25 of 32



Page 26 of 32

Applications: OptiTrac

Map Display

Tools: [Hand] [Zoom In] [Zoom Out] [Full Screen] [Initial View] [US View] [Print Map]

Legend: [] Unit Position

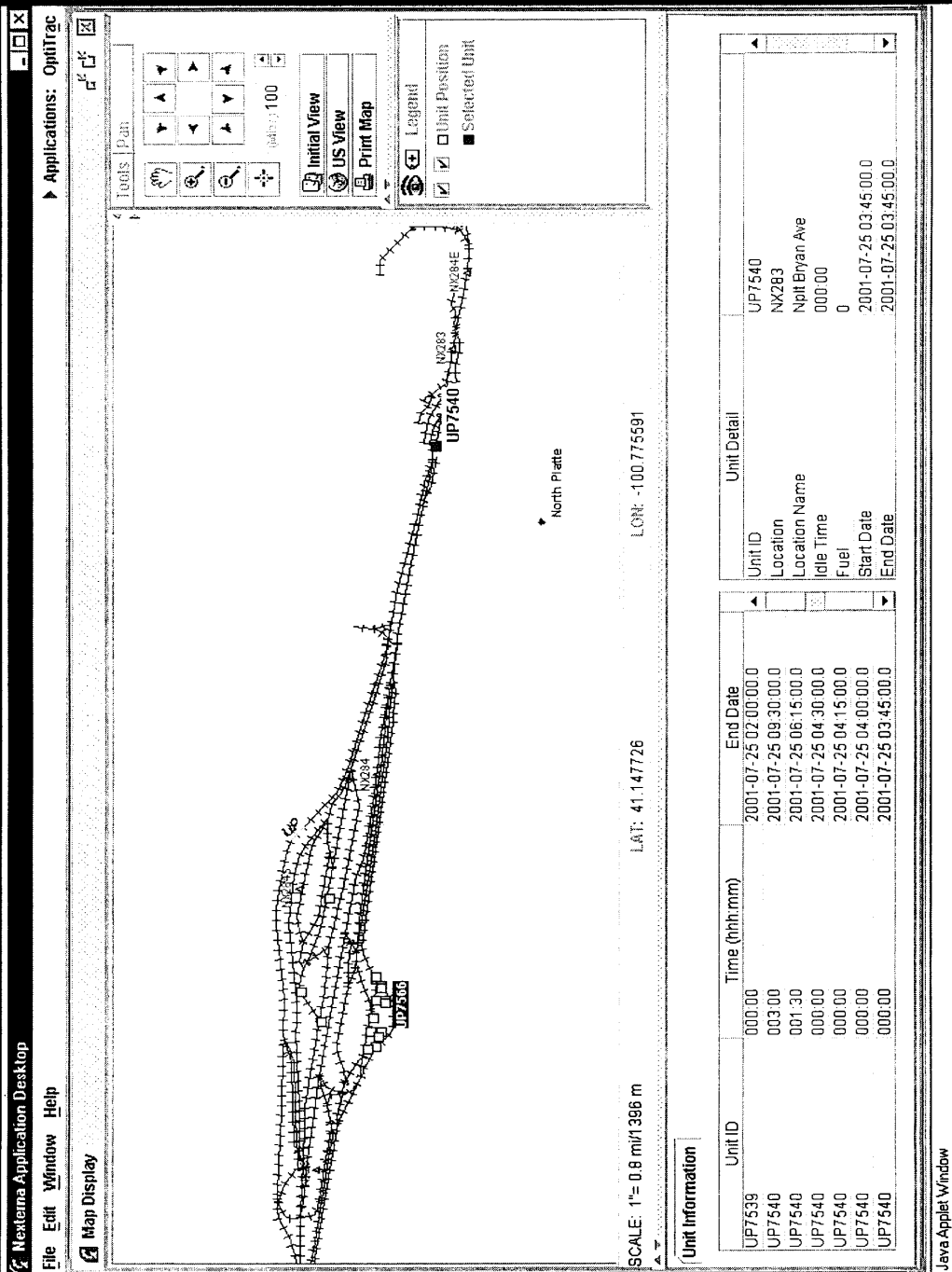
Scale: 1" = 512.8 mi/825305 m

Coordinates: LAT: 46.373464, LON: -127.666971

Unit ID	Time (hh:mm)	End Date
CNW8811	012.59	2001-07-25 08:44:59.0
SP297	000.00	2001-07-25 08:30:00.0
SP297	000.00	2001-07-25 06:15:00.0
SP297	000.00	2001-07-25 08:00:00.0
SP297	000.00	2001-07-25 07:45:00.0
SP297	000.00	2001-07-25 07:30:00.0
SP297	000.00	2001-07-25 07:15:00.0

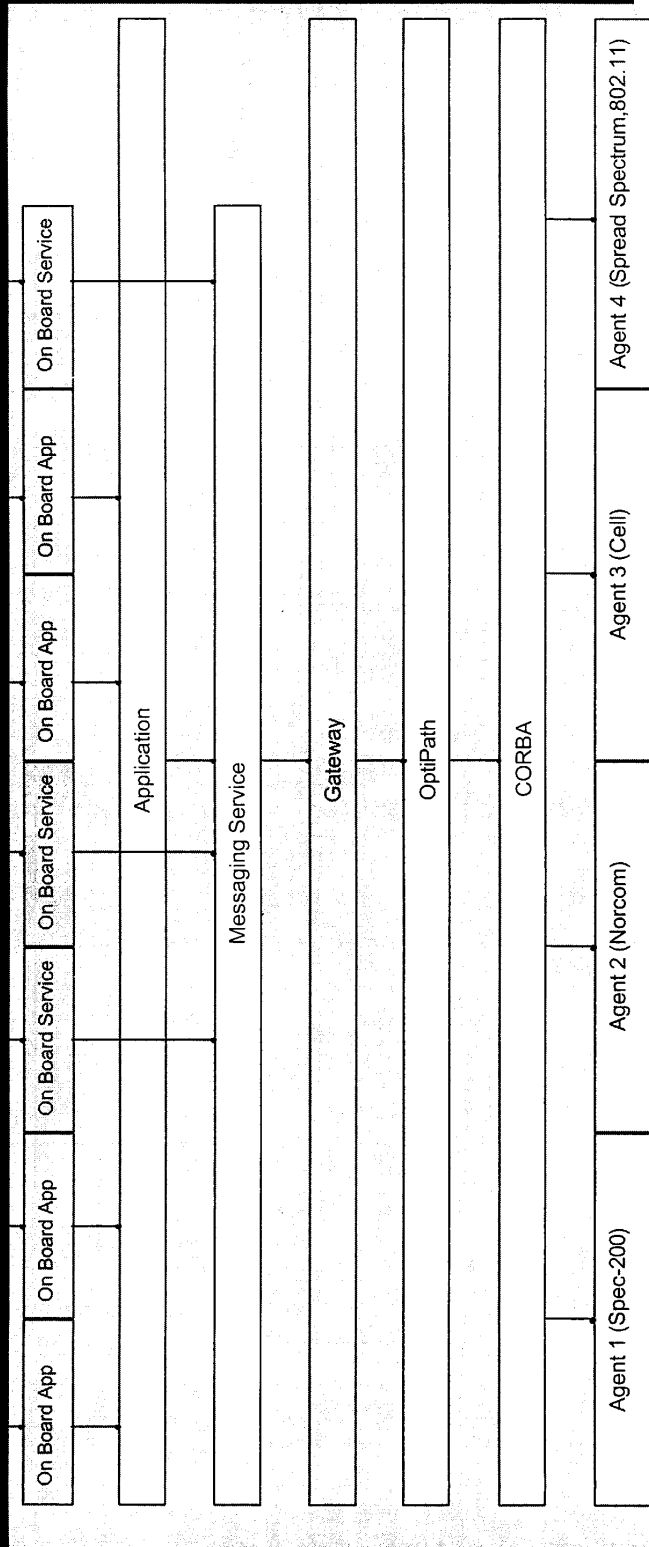
Unit Detail
Unit ID: CNW8811
Location: NPI61
Location Name: East South Morrill
Idle Time: 012.59
Fuel: 0
Start Date: 2001-07-24 19:45:00.0
End Date: 2001-07-25 08:44:59.0

Locomotive On-Board Technology Opti Trac



On-board Architecture

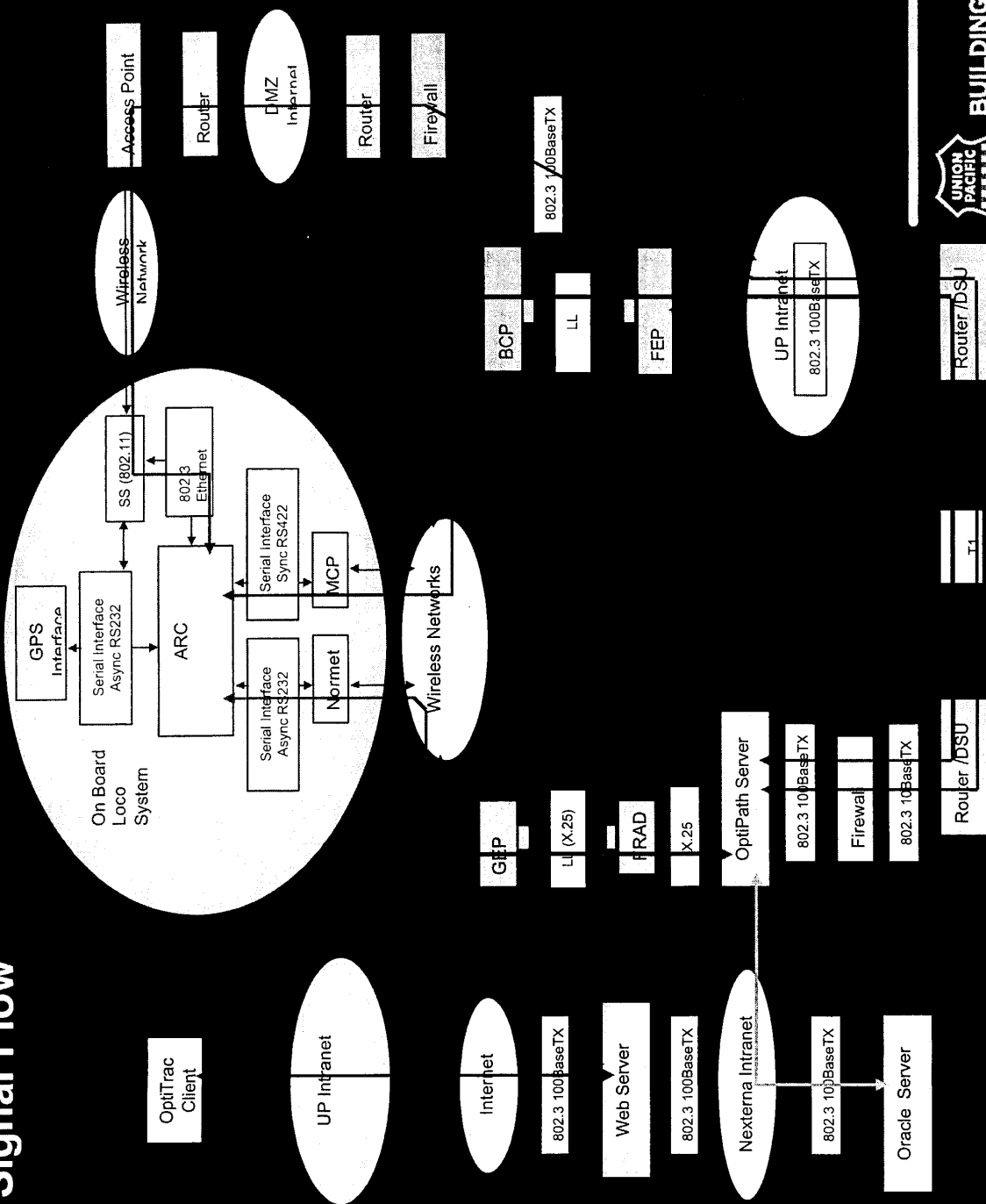
- Health (EOA/Fire)
- Event Recorder (Wabtec)
- Fuel (Wabtec)
- Train Line
- Pacing
- Smart Start / EcoTran
- GPS



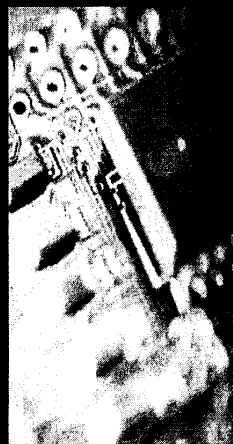
NT Operating System



GPS Signal Flow



Our Data Warehouse Offers



Operational and
Financial Systems

Integration
and

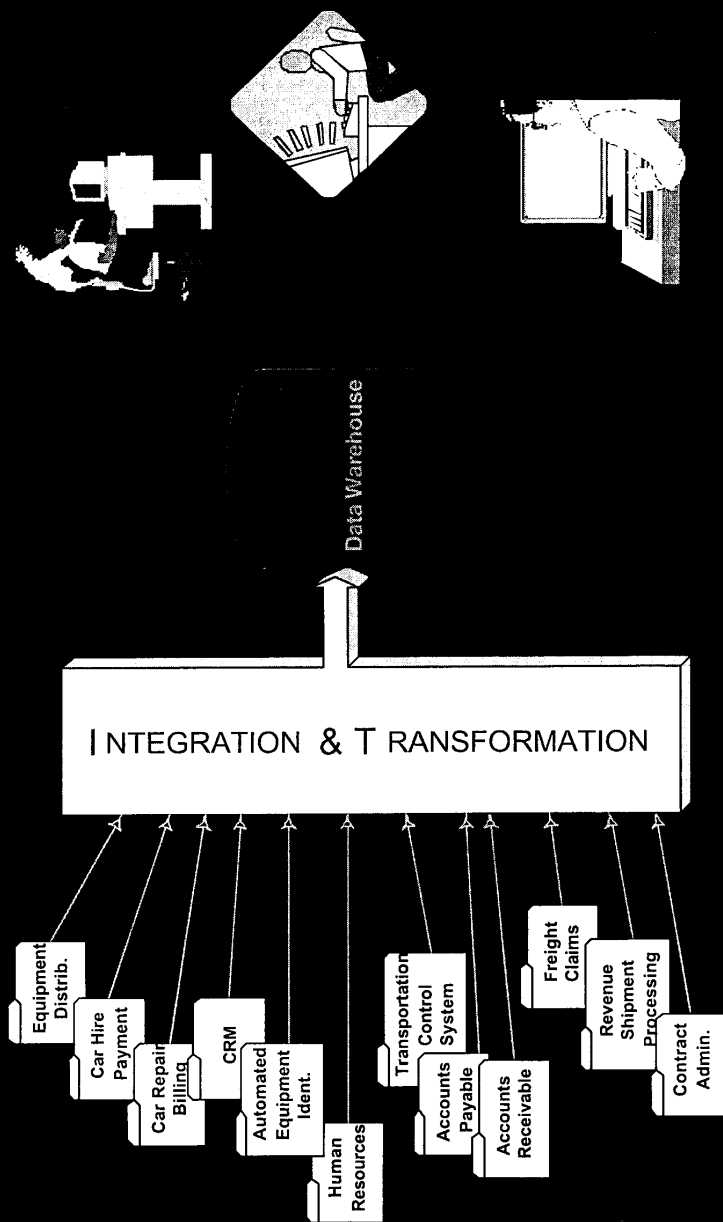
Transformation

Analysis
and Reporting

**Subject-Oriented, Integrated, Historical Data
Any user, any question, any data, any time**



Our Data Warehouse Offers



Page 31 of 32

Subject-Oriented, Integrated, Historical Data
Any user, any question, any data, any time



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Attachment 2
(Redacted)

Attachment 3
(Redacted)

Attachment 4

Andrew B. Kolesar III

From: Quarterman, Cynthia [cquarter@steptoe.com]
Sent: Thursday, January 02, 2003 10:55 AM
To: 'abk@sloverandloftus.com'
Subject: RE: AEPCO v. BNSF/UP

Andy:

We are in the process of tracking down the answer to your inquiry and will get back to you as soon as we have a response. Regards,

Cynthia L. Quarterman

-----Original Message-----

From: Andrew B. Kolesar III [mailto:abk@sloverandloftus.com]
Sent: Thursday, January 02, 2003 10:11 AM
To: 'Cquarter@Steptoe. Com'
Subject: AEPCO v. BNSF/UP

Good morning Cynthia:

I sent a letter to you on December 9 in the AEPCO case regarding two revenue adjustment data fields from the BNSF traffic tapes (the CONALOW field and the COTREV field). To the best of my knowledge, we haven't received a response yet.

In light of the schedule, could you please provide a response to us on that as soon as you possible? Thanks.

Andy

1/17/2003

Attachment 5

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PROHL
DANIEL M. JAFFE
KAREN HASSELL HERREN
KENDRA A. ERICSON

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

abk@sloverandloftus.com

January 17, 2003

VIA TELECOPIER

Cynthia L. Quarterman, Esq.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Docket No. 42058, Arizona Electric Power Cooperative, Inc. v.
The Burlington Northern and Santa Fe Ry. and Union Pacific R.R.

Dear Cynthia:

We are writing once again regarding our December 9, 2002 letter in which we requested necessary clarification regarding two revenue adjustment data fields in the BNSF "Payables Tape." A copy of our letter is attached. As you will recall, we had not received a response to our letter for more than three weeks, and requested by email that you respond as soon as possible given the approaching due date for Opening Evidence. In your January 2, 2003 reply (attached hereto), you stated that "we are in the process of tracking down the answer to your inquiry and will get back to you as soon as we have a response."

It has now been fifteen days since the date of your reply and BNSF still has not produced this important information. To summarize, AEPCO requested clarification regarding BNSF's revenue records two months prior to the date of Opening Evidence. It is now only twenty-one days prior to the due date of that evidence and we still have not received the requested information.

Sincerely,



Andrew B. Kolesar III

Enclosures

Attachment 6
(Redacted)

Attachment 7
(Redacted)

Attachment 8

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

Form 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2000

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**
For the transition period from _____ to _____
Commission File Number: 1-11535

Burlington Northern Santa Fe Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

41-1804964
(I.R.S. Employer Identification No.)

2650 Lou Menk Drive
Second Floor
Fort Worth, Texas 76131-2830
(Address of principal executive offices, including zip code)

817/333-2000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, \$0.01 par value	New York Stock Exchange Chicago Stock Exchange Pacific Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirement for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

The aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$11.616 billion on January 31, 2001. For purposes of this calculation only, the registrant has excluded stock beneficially owned by directors and officers. By doing so, the registrant does not admit that such persons are affiliates within the meaning of Rule 405 under the Securities Act of 1933 or for any other purpose.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date:

Common Stock, \$0.01 par value, 392,452,205 shares outstanding as of January 31, 2001.

DOCUMENTS INCORPORATED BY REFERENCE

List hereunder the documents from which parts thereof have been incorporated by reference and the part of the Form 10-K into which such information is incorporated:

Burlington Northern Santa Fe Corporation's definitive Proxy Statement, to be filed not later than 120 days after the end of the fiscal year covered by this report.....PART III

ITEM 6. Selected Financial Data

The following table presents, as of and for the dates indicated, selected historical financial information for the Company.

	December 31,				
	2000	1999	1998	1997	1996
	(Dollars in millions, except per share data)				
FOR THE YEAR ENDED:					
Revenues	\$ 9,205	\$ 9,189	\$ 9,054	\$ 8,489	\$ 8,192
Operating income	\$ 2,108	\$ 2,205	\$ 2,158	\$ 1,767	\$ 1,748
Net income	\$ 980	\$ 1,137	\$ 1,155	\$ 885	\$ 889
Basic earnings per share	\$ 2.38	\$ 2.46	\$ 2.45	\$ 1.91	\$ 1.95
Average shares (in millions)	412.1	463.2	470.5	464.4	456.3
Diluted earnings per share	\$ 2.36	\$ 2.44	\$ 2.43	\$ 1.88	\$ 1.91
Average shares (in millions)	415.2	466.8	476.2	471.1	464.4
Dividends declared per common share	\$ 0.48	\$ 0.48	\$ 0.44	\$ 0.40	\$ 0.40
AT YEAR END:					
Total assets	\$24,375	\$23,700	\$22,646	\$21,266	\$19,693
Long-term debt and commercial paper, including current portion	\$ 6,846	\$ 5,813	\$ 5,456	\$ 5,289	\$ 4,711
Stockholders' equity	\$ 7,480	\$ 8,172	\$ 7,784	\$ 6,822	\$ 5,994
Total debt to capital	47.8%	41.6%	41.2%	43.7%	44.0%
FOR THE YEAR ENDED:					
Capital expenditures	\$ 1,399	\$ 1,788	\$ 2,147	\$ 2,182	\$ 2,234
Depreciation and amortization	\$ 895	\$ 897	\$ 832	\$ 773	\$ 760

ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's discussion and analysis relates to the financial condition and results of operations of Burlington Northern Santa Fe Corporation and its majority-owned subsidiaries (collectively, BNSF or Company). The principal subsidiary of BNSF is The Burlington Northern and Santa Fe Railway Company (BNSF Railway). All earnings per share information is stated on a diluted basis.

Revenue Table

The following table presents BNSF's revenue information by commodity for the years ended December 31, 2000, 1999 and 1998 and includes certain reclassifications of prior year information to conform to current year presentation.

	Revenues			Cars/Units			Average Revenue Per Car/Unit		
	2000	1999	1998	2000	1999	1998	2000	1999	1998
	(In Millions)						(In Thousands)		
Intermodal	\$2,654	\$2,507	\$2,451	3,441	3,203	3,086	\$ 771	\$ 783	\$ 794
Carload	2,577	2,561	2,593	1,774	1,773	1,801	1,453	1,444	1,440
Coal	2,131	2,226	2,239	2,023	2,123	2,078	1,053	1,049	1,077
Agricultural Commodities	1,257	1,337	1,280	680	715	689	1,849	1,870	1,858
Automotive	493	443	388	249	250	230	1,980	1,772	1,687
Total Freight Revenues	9,112	9,074	8,951	8,167	8,064	7,884	\$1,116	\$1,125	\$1,135
Other Revenues	93	115	103						
Total Revenues	\$9,205	\$9,189	\$9,054						

Attachment 9

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2001

OR
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____
Commission File Number: 1-11535

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Delaware
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(I.R.S. Employer Identification No.)

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Second Floor
Fort Worth, Texas 76131-2830
(Address of principal executive offices, including zip code)
(817) 333-2000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, \$0.01 par value	New York Stock Exchange Chicago Stock Exchange Pacific Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirement for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

The aggregate market value of the voting stock held by non-affiliates of the registrant was approximately \$10.639 billion on January 31, 2002. For purposes of this calculation only, the registrant has excluded stock beneficially owned by directors and officers. By doing so, the registrant does not admit that such persons are affiliates within the meaning of Rule 405 under the Securities Act of 1933 or for any other purpose.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date:

Common Stock, \$0.01 par value, 384,250,986 shares outstanding as of January 31, 2002.

DOCUMENTS INCORPORATED BY REFERENCE

List hereunder the documents from which parts thereof have been incorporated by reference and the part of the Form 10-K into which such information is incorporated:

Burlington Northern Santa Fe Corporation's definitive Proxy Statement, to be filed
not later than 120 days after the end of the fiscal year covered by this reportPART III

Railroad industry personnel are covered by the Railroad Retirement System instead of Social Security. BNSF Railway's contributions under the Railroad Retirement System have been approximately triple those in industries covered by Social Security. The Railroad Retirement System, funded primarily by payroll taxes on covered employers and employees, includes a benefit roughly equivalent to Social Security (Tier I), an additional benefit similar to that allowed in some private defined-benefit plans (Tier II), and other benefits. Investment of Tier II Railroad Retirement assets has until recently been limited to special interest-bearing U. S. Treasury securities. The Railroad Retirement and Survivors' Improvement Act of 2001 (Act) creates a new National Railroad Retirement Investment Trust to hold Tier II Railroad Retirement assets and empowers the trustees to invest these assets in the same types of investments available to private sector retirement plans. In addition to liberalizing certain retirement benefit requirements for rail employees, the Act reduces Tier II railroad retirement tax rates on rail employers beginning in 2002 and eliminates a supplemental annuity tax. The Company expects to realize savings of approximately \$20 million in 2002 and \$50 million in 2003. Future adjustments in the Tier II Railroad Retirement tax rates assessed on both rail employers and rail employees will depend on Railroad Retirement fund levels, and annual savings could be as much as \$80 million by 2005.

Railroad industry personnel are also covered by the Federal Employers' Liability Act (FELA) rather than by state workers' compensation systems. FELA is a fault-based system, with compensation for injuries settled by negotiation and litigation, not subject to specific statutory limitations on the amount of recovery. By contrast, most other industries are covered under state, no-fault workers' compensation plans with standard compensation schedules. BNSF Railway believes it has adequate recorded liabilities for its FELA claims. However, the ultimate costs of these FELA claims are uncertain and the actual costs could be significantly higher than anticipated.

Business Mix

In serving the Midwest, Pacific Northwest and the Western, Southwestern, and Southeastern regions and ports of the country, BNSF Railway transports, through one operating transportation services segment, a wide range of products and commodities derived from manufacturing, agricultural, and natural resource industries. Accordingly, its financial performance is influenced by, among other things, general and industry economic conditions at the international, national, and regional levels.

Major markets served directly by BNSF Railway include Albuquerque, Amarillo, Billings, Birmingham, Bismarck/Mandan, Cheyenne, Chicago, Corpus Christi, Council Bluffs, Dallas, Denver, Des Moines, Duluth/Superior, El Paso, Eugene/Salem, Fargo/Moorhead, Fort Worth, Fresno/Bakersfield, Galesburg, Galveston, Grand Forks, Helena, Houston, Kansas City, Lake Charles, Lincoln, Little Rock/Pine Bluff, the Los Angeles Basin, Lubbock, Memphis, Minot, Mobile, New Orleans, Oklahoma City, Olympia, Omaha, Peoria, Phoenix, Portland, the Quad Cities, Reno/Sparks, Sacramento, Salt Lake City/Ogden, San Antonio, San Bernadino, San Diego, the San Francisco Bay area, the San Joaquin Valley area, St. Louis/East St. Louis, St. Paul/Minneapolis, Seattle, Sioux City, Sioux Falls, Spokane, Springfield (Missouri), Stockton, Tacoma, Topeka, Tulsa, Waco, Wichita, Vancouver (British Columbia), Wenatchee, Winnipeg (Manitoba) and Yakima. BNSF serves Cedar Rapids through a "Voluntary Coordination Agreement" with the Cedar Rapids and Iowa City Railway Company and Iowa Interstate Railroad, and through a haulage agreement with Canadian National Railway Company (CN). Other major cities are served through Intermodal Market Extension terminals located at various off-line points. Major ports served include Beaumont, Bellingham, Brownsville, Corpus Christi, Everett, Galveston, Houston, Kalama, Long Beach, Longview, Los Angeles, Mobile, New Orleans, Portland, Richmond (Oakland), San Diego, Seattle, Duluth/Superior, Tacoma, Vancouver (Washington), and Vancouver (British Columbia). Canadian traffic is accessed through border crossings in Minnesota, Montana, North Dakota, and Washington, as well as through interchange with Canadian railroads at Chicago, Minneapolis/St. Paul, and other gateways. BNSF Railway also accesses markets in Mexico through United States/Mexico crossings at Brownsville, Eagle Pass and El Paso, Texas, and San Diego, California, and through an interline agreement with the Texas Mexican Railway Company, BNSF Railway reaches Laredo, Texas, a major rail gateway between the U.S. and Mexico.

Consumer Products: The consumer freight business provided approximately 37 percent of freight revenues in 2001 and consisted of the following seven types of business:

- **International.** International business consists primarily of container traffic from steamship companies and accounted for approximately 29 percent of total Consumer Products revenues.
- **Direct Marketing.** Direct marketing generated approximately 23 percent of total Consumer Products revenue. These center around intermodal traffic contracted from United Parcel Service and the United States Postal Service, and service for nationwide LTL (less-than-truckload) carriers including Yellow Freight, Roadway Express and Consolidated Freightways.

- **Truckload.** Truckload traffic represented approximately 14 percent of total Consumer Products revenue. This traffic is comprised of business through the joint service arrangement with J.B. Hunt, as well as business from Schneider National and other truckload carriers.
- **Automotive.** The transportation of both assembled motor vehicles and shipments of vehicle parts to numerous destinations throughout the Midwest, Southwest, West and Pacific Northwest provided about 13 percent of 2001 total Consumer Products revenue.
- **Intermodal Marketing Companies.** Approximately 12 percent of total Consumer Products revenue was generated through intermodal marketing companies, primarily shipper agents and consolidators.
- **Perishables and Dry Boxcar.** Perishables and Dry Boxcar represented approximately 9 percent of total Consumer Products revenue. This group consists of beverages, canned goods and perishable food items. Other consumer goods handled include cotton, salt, rubber and tires, and miscellaneous boxcar shipments.

Industrial Products: Industrial Products' freight business provided approximately 23 percent of BNSF's freight revenues in 2001 and consists of the following four business areas:

- **Construction Products.** The construction products sector represented approximately 36 percent of total Industrial Products revenue in 2001. This sector serves virtually all of the commodities included in or resulting from the production of steel along with mineral commodities such as clays, sands, cements, aggregates, sodium compounds and other industrial minerals. Industrial taconite, an iron ore derivative produced in northern Minnesota, scrap steel and coal coke are BNSF Railway's primary input products transported, while finished steel products range from structural beams and steel coils to wire and nails. BNSF Railway links the integrated steel mills in the East with fabricators in the West and Southwest. Service is also provided to various mini-mills in the Southwest that produce rebar, beams and coiled rod to the construction industry. Industrial minerals include various mined and processed commodities such as cement and aggregates (construction sand, gravel and crushed stone) that generally move to domestic markets for use in general construction and public work projects, including highways. Borates and clays move to domestic points as well as to export markets primarily through West Coast ports. Sodium compounds, primarily soda ash, are moved to domestic markets for use in the manufacturing of glass and other industrial products. Sand is utilized in the manufacturing of glass and for use in foundry and oil drilling applications.
- **Building Products.** This sector includes primary forest product commodities such as lumber, plywood, oriented strand board, particleboard, paper products, pulpmill feedstocks, wood pulp and sawlogs, which resulted in approximately 35 percent of total 2001 Industrial Products revenue. Also, included in this sector are government, machinery and waste traffic. This diverse commodities group primarily originates from the Pacific Northwest, Western Canada, upper Midwest, and the Southeast for shipment mainly into domestic markets. Industries served include construction, furniture, photography, publishing, newspaper and industrial packaging. Shipments of waste, ranging from municipal waste to contaminated soil, are transported to landfills and reclamation centers across the country. Government and machinery business includes aircraft parts, agricultural and construction machinery, military equipment and large industrial machinery.
- **Chemicals and Plastics.** The chemicals and plastics sector represents approximately 16 percent of total 2001 Industrial Products revenue. This group is composed of industrial chemicals and plastics commodities. These commodities include caustic soda, chlorine, industrial gases, acids, polyethylene, polypropylene and polyvinyl chloride. Industrial chemicals and plastics resins are used by the automotive, housing, and packaging industries, as well as for feedstocks, to produce other chemical and plastic products. These commodities originate primarily in the Gulf Coast region for shipment mainly into domestic markets.
- **Petroleum.** Commodities included in the petroleum sector are liquefied petroleum gas (LPG), diesel fuels, asphalt, alcohol/solvents, petroleum coke, lubes/oils/waxes and carbon black, which made up 13 percent of total Industrial Products revenue for 2001. Product use varies based on commodity, and includes the use of LPG for heating purposes, diesel fuel and lubes to run heavy machinery, and asphalt for road projects and roofing. Products within this group originate and terminate throughout the BNSF network with the largest areas of activities being the Texas Gulf, Pacific Northwest, California, Montana and Illinois.

Coal: Based on carloadings and tons hauled, BNSF Railway is the largest transporter of low-sulfur coal in the United States. The transportation of coal contributed about 23 percent of 2001 freight revenues. Approximately 90 percent of BNSF Railway's coal traffic originated in the Powder River Basin of Wyoming and Montana during the three years ended December 31, 2001. These coal shipments were destined for coal-fired electric generating stations located primarily in the North Central, South Central and Mountain regions of the United States.

ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's discussion and analysis relates to the financial condition and results of operations of Burlington Northern Santa Fe Corporation and its majority-owned subsidiaries (collectively, BNSF or Company). The principal subsidiary of BNSF is The Burlington Northern and Santa Fe Railway Company (BNSF Railway). All earnings per share information is stated on a diluted basis.

Results of Operations

Year Ended December 31, 2001 Compared with Year Ended December 31, 2000

BNSF recorded net income for 2001 of \$731 million, or \$1.87 per share, after a first quarter extraordinary charge of \$6 million, net of tax, related to the early extinguishment of a debt obligation, compared with net income for 2000 of \$980 million, or \$2.36 per share. The decrease in net income and earnings per share is primarily due to a \$353 million decrease in operating income and \$75 million in losses related to non-rail investments. The decrease in operating income reflects increased compensation and benefits costs, higher fuel expenses and higher materials and other costs, which included a \$66 million fourth quarter charge for workforce reduction related costs. The favorable effect of the common stock repurchase program on earnings per share partially offset lower earnings in 2001 (see Liquidity and Capital Resources: Common Stock Repurchase Program).

Revenue Table

The following table presents BNSF's revenue information by commodity for the years ended December 31, 2001, 2000 and 1999, and includes certain reclassifications of prior year information to conform to current year presentation.

	Revenues			Cars / Units			Average Revenue Per Car / Unit		
	2001	2000	1999	2001	2000	1999	2001	2000	1999
	(in millions)			(in thousands)					
Consumer Products	\$ 3,356	\$ 3,405	\$ 3,197	3,752	3,850	3,597	\$ 894	\$ 884	\$ 889
Coal	2,123	2,131	2,226	2,133	2,023	2,123	995	1,053	1,049
Industrial Products	2,080	2,114	2,108	1,442	1,501	1,508	1,442	1,408	1,398
Agricultural Products	1,531	1,462	1,543	828	793	836	1,849	1,844	1,846
Total Freight Revenues	9,090	9,112	9,074	8,155	8,167	8,064	\$ 1,115	\$ 1,116	\$ 1,125
Other Revenues	118	95	121						
Total Operating Revenues	\$ 9,208	\$ 9,207	\$ 9,195						

Revenues

Total revenues of \$9,208 million for 2001 were essentially flat compared with 2000. In 2001, the sluggish economy hampered BNSF's revenue growth; although, based on reporting to the Association of American Railroads (AAR), BNSF's share of the western United States rail traffic market remained essentially unchanged at approximately 43 percent.

Consumer Products revenues of \$3,356 million for 2001 were \$49 million, or 1 percent, less than 2000 due to decreased loadings in the LTL sector and the loss in late 2000 of some automotive contract business as well as decreases in the automotive sector as a result of sluggish industry-wide sales. Additionally, a significant automotive contract was lost at the end of the third quarter of 2001 and is expected to affect future automotive revenues. These declines were partially offset by a ten percent growth in the intermodal truckload business, increased international revenues, increases in dry boxcar business due to strong beverage shipments, and a \$32 million favorable transportation contract settlement in automotive revenues.

Coal revenues of \$2,123 million for 2001 decreased \$8 million from 2000 revenues of \$2,131 million. The decrease in revenues was primarily a result of lower revenue per car on certain contract renewals, partially offset by a six percent increase in coal tons shipped due to colder weather, tight eastern coal supplies and high natural gas prices.

Industrial Products revenues of \$2,080 million for 2001 were \$34 million, or 2 percent, lower than 2000, despite increased revenue per car as a result of selected price increases and increased length of haul. Revenues for the year fell due to continued production cutbacks affecting most sectors. These decreases were partially offset by increases in the petroleum products sector resulting from increases in LPG and asphalt shipments.