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October 12, 2005

VIA HAND DELIVERY

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, DC 20423

FILED
OCT 12 2005
SURFACE
TRANSPORTATION BOARD



Re: Docket No. 42095, Kansas City Power & Light
Company v. Union Pacific Railroad Company

Dear Secretary Williams:

Enclosed for filing in the referenced docket please find an original and ten copies of the Verified Complaint of Kansas City Power & Light Company. Also enclosed is a WordPerfect Diskette containing the Complaint, and a check in the amount of the current requisite filing fee.

An additional copy of the Complaint also is enclosed. Kindly indicate receipt and filing of the Complaint by time-stamping this extra copy and returning it the bearer of this letter.

Thank you for your attention to this matter.

ENTERED
Office of Proceedings

OCT 12 2005

Part of
Public Record

Sincerely,

Kelvin J. Dowd
An Attorney for
Kansas City Power & Light Company

FILED
OCT 12 2005
SURFACE
TRANSPORTATION BOARD

KJD:jml
Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

214890



KANSAS CITY POWER & LIGHT COMPANY
1201 Walnut
Post Office Box 418679
Kansas City, Missouri 64141

Complainant,

v.

Docket No. 42095

UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street
Omaha, Nebraska 68179

Defendant.

ENTERED
Office of Proceedings

OCT 12 2005

Part of
Public Record

VERIFIED COMPLAINT

KANSAS CITY POWER & LIGHT COMPANY

FEE RECEIVED
OCT 12 2005
SURFACE
TRANSPORTATION BOARD

By: William G. Riggins
General Counsel
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1201 Walnut
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Kansas City, Missouri 64141

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FILED
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SURFACE
TRANSPORTATION BOARD

Dated: October 12, 2005

Attorneys & Practitioners

BEFORE THE
SURFACE TRANSPORTATION BOARD



KANSAS CITY POWER & LIGHT COMPANY
1201 Walnut
Post Office Box 418679
Kansas City, Missouri 64141

Complainant,

v.

Docket No. 42095

UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street
Omaha, Nebraska 68179

Defendant.

VERIFIED COMPLAINT

COMES NOW Kansas City Power & Light Company ("KCPL"), and complains against Union Pacific Railroad Company ("UP") pursuant to 49 U.S.C. §§ 11701 and 11704.

By this Complaint, KCPL seeks the establishment of just and reasonable rates, rules and other terms for unit train coal transportation service between UP-served mines in Campbell and Converse Counties in the Southern Powder River Basin region of Wyoming ("SPRB"), and KCPL's Montrose Generating Station near Ladue, Missouri.

In support hereof, KCPL states as follows:

THE PARTIES

1. KCPL is a Missouri corporation engaged in the generation, distribution and sale of electric power to approximately 500,000 customers in a 4600 square-mile service area located in 24 counties in western Missouri and eastern Kansas. KCPL also makes "off system" sales to other utilities and customers in different regions of the United States.

2. KCPL owns and operates a coal-fired electric generation station near Ladue, Missouri known as the Montrose Generating Station. The Montrose Station consumes approximately 2,000,000 tons of sub-bituminous coal each year.

3. UP is a common carrier railroad engaged in the transportation of freight in interstate commerce. UP is subject to the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), 49 U.S.C. § 10101, *et seq.*, and to the jurisdiction of this Board. As further described *infra*, UP exerts sole control over the establishment of rates for the transportation of coal to the Montrose Station.

COAL TRANSPORTATION TO MONTROSE

4. All of the coal consumed at the Montrose Station is delivered by rail, which is the only feasible means of transporting the volumes of coal involved. The Montrose Station's coal requirements are met from mines located in the SPRB, which is more than 900 miles from Ladue, Missouri.

5. The mines in the SPRB from which KCPL can procure coal for the Montrose Station are served by both UP and the BNSF Railway Company ("BNSF"). However, insofar as coal transportation to Ladue is concerned, BNSF's lines terminate at Kansas City, Missouri, approximately 140 rail miles northwest of the Montrose Station.

6. Since 1986, all SPRB coal consumed at the Montrose Station has been transported under a series of contracts entered into pursuant to 49 U.S.C. § 10709 and its predecessor statute (the former 49 U.S.C. § 10713). Since 1988, when UP acquired the Missouri-Kansas-Texas Railroad, UP has participated in virtually all of KCPL's coal shipments to Montrose.

7. Since 1993, coal deliveries to the Montrose Station have been completed by the Missouri & Northern Arkansas Railroad ("MNA"), a shortline railroad which, *inter alia*, leases the UP lines between Kansas City and Ladue. On information and belief, the term of this lease can extend at least until 2073. Under the lease, MNA has full and exclusive operating rights on the Kansas City-Ladue line, and assumed all common carrier and other operating responsibilities in connection therewith.

8. MNA receives a negotiated revenue division from UP in consideration of its role in the joint movement of coal to Montrose. However, under the terms of its lease MNA has granted UP automatic concurrence in all rates, routes, contracts or other pricing actions that UP may take, so long as MNA's revenue division is maintained. As a result, UP has sole control over the establishment of rates for coal service to Montrose.

9. All coal transportation service to the Montrose Station from the SPRB currently is provided pursuant to a contract that KCPL negotiated with UP, which is denominated as Contract No. ICC-UP-C-30239. That contract expires on December 31, 2005.

UP'S PUBLIC COMMON CARRIER PRICING PROGRAM

10. Effective March 31, 2004, UP established and issued UP Circular 111, which the carrier represents is a "Unit Train Coal Common Carrier Circular" applicable to unit train coal shipments from the SPRB. According to UP's 2004 Annual Report, this was intended to be a "new coal pricing mechanism[] for all shipments from the Southern Powder River Basin (SPRB) in Wyoming" A copy of Circular 111 is attached as Exhibit A to this Complaint.

11. The common carrier rates established by UP for application to individual unit train coal movements are set forth in a series of numbered Items in Circular 111. These Items, and Circular 111 itself, describe two (2) different classes of common carrier rates that apply to each covered movement. The first class, labeled "Option 1" rates, apply to movements without regard to the volume of coal tendered for transportation. The second class, labeled "Option 2 " rates, apply in the event that a shipper tenders a certain minimum quantity of coal for transportation in each of three (3) consecutive twelve (12) month periods. In general, Option 1 rates are higher than the Option 2 rates applicable to the same movement.

12. Under the terms of Circular 111 as set unilaterally by UP, a shipper intending to transport coal under Option 2 rates is required to execute a "Volume Commitment Certificate," in a form dictated by UP. The form appears as General Rule Item 300 of Circular 111 (*see* Exhibit A). That form contains the following language:

....Shipper acknowledges the reciprocal benefits under Option 2 terms and conditions and agrees to be bound by the applicable terms and conditions set forth in this Circular and Rate Item associated with Destination.

Notwithstanding the quoted form language, UP has represented that Option 2 rates under Circular 111 are common carrier rates subject to the jurisdiction of this Board, and that the execution of a "Volume Commitment Certificate" does not create a contractual relationship between UP and a particular shipper.

13. Item 4140-C of Circular 111 establishes common carrier rates that will apply to UP coal transportation service from the SPRB to the Montrose Station effective January 1, 2006, upon the expiration of Contract ICC-UP-C-30239. A copy of Item 4140-C as currently in effect is attached as Exhibit B to this Complaint. As set forth therein, the applicable Option 1 common carrier rate for Montrose service is \$15.84 per ton. The Option 2 rate applicable during the first twelve (12) month volume period is \$14.26 per ton. Additionally, the Item provides that UP service to Montrose will be subject to "fuel surcharges," as referenced in General Rule Item 11 of Circular 111 (Exhibit A, page 2 of 2), and determined in accordance with Circular UP-6603-series.

14. The non-rate service terms and conditions that UP has established for application to post-2005 common carrier service from the SPRB to the Montrose Station are set forth in General Rule Item 200 of Circular 111 for movements that occur under the Option 1 rate, and General Rule Item 300 of Circular 111 for movements that occur under the Option 2 rates.

KCPL'S EFFORTS TO
SECURE A REASONABLE RATE

15. As described *supra*, Contract ICC-UP-C-30239 will expire on December 31, 2005. In the absence of a successor alternative agreement, after that date KCPL will have no means to procure SPRB coal delivery service to the Montrose Station other than under the terms of UP's common carrier Circular 111.

16. In anticipation of the need for unit train coal service after 2005, KCPL expressed its desire to negotiate an extension of Contract UP-C-30239 or a new contract, with reasonable rates and service terms to govern KCPL's Montrose coal movement. However, consistent with public pronouncements made at the unveiling of the Circular 111 program, UP insisted that it will only transport SPRB coal to the Montrose Station after December 31, 2005 under rates and terms set forth in Circular 111, including Item 4140 and other incorporated circulars.

17. With no other alternatives available and an absolute need to provide for the transportation of coal to the Montrose Station from and after January 1, 2006, KCPL transmitted a "Circular 111 Option 2 Volume Commitment Certificate" to UP, notifying UP that KCPL would transport coal under the Option 2 rate established in Item 4140-C of Circular 111. However, in its transmittal letter KCPL made clear that it was executing the Certificate under duress; that the Circular 111 rates were not the product of any agreement between KCPL and UP; that KCPL does not consider those rates to be reasonable; that KCPL did not consider the non-rate service terms of Circular 111 to be equitable or reasonable as applied to KCPL's Montrose service; that KCPL was electing the Option 2 rates as the only alternative to the even higher Option 1 rate; and that KCPL's execution of the Certificate was specifically conditioned on the understanding that the Option 2 rates

and related service terms are common carrier rates and practices, fully subject to the jurisdiction of this Board as to their reasonableness.

18. UP unilaterally has established unreasonable common carrier rates and service practices for the transportation of coal to the Montrose Station after 2005. Accordingly, KCPL's only recourse is to seek relief from this Board.

UP POSSESSES MARKET DOMINANCE OVER
COAL TRANSPORTATION TO THE MONTROSE STATION

19. The Montrose Station consumes approximately 2,200,000 tons of SPRB coal each year, and is located more than 900 miles from its coal sources. There are no navigable waterways by which coal feasibly could move to Ladue, Missouri. The only practical means by which this volume of coal can be transported to the Montrose Station is via rail.

20. Acting with the automatic concurrence of MNA, UP is the only railroad that holds out to provide coal delivery service to the Montrose Station. While BNSF also services mines in the SPRB, as a practical matter that carrier's lines come no closer to Ladue, Missouri than Kansas City, which is more than 140 miles away from the Montrose Station. BNSF has rail lines that theoretically could be connected to the UP trackage leased by MNA at Fort Scott, Kansas. However, the terms of MNA's lease from UP effectively prohibit MNA from interchanging Montrose-bound coal traffic with BNSF. Accordingly, UP possesses "qualitative" market dominance over KCPL's coal movements under 49 U.S.C. § 10707.

21. The lowest common carrier rate established by UP in Item 4140-C of Circular 111 for application to coal transportation to the Montrose Station is substantially in excess of 180% of the variable cost of that service. Accordingly, the jurisdictional threshold established under 49 U.S.C. § 10707(d) is satisfied.

22. Because UP possesses market dominance over coal transportation to the Montrose Station, this Board has jurisdiction to adjudicate the reasonableness of UP's rates, rules and practices applicable to that transportation, as set forth in Circular 111 (including Item 4140-C) and other tariffs or circulars referenced therein.

**THE COMMON CARRIER RATES, CHARGES AND SERVICE
RULES ESTABLISHED BY UP FOR APPLICATION TO THE
MONTROSE COAL TRAFFIC ARE UNREASONABLE AND UNLAWFUL**

23. The Option 1 common carrier rate set out in Item 4140-C of Circular 111 (Exhibit B) for application to coal transportation to the Montrose Station exceeds the maximum reasonable level permitted under 49 U.S.C. § 10701(d)(1) and 49 U.S.C. § 10702, and therefore is unlawful.

24. The Option 2 common carrier rates set out in Item 4140-C of Circular 111 (Exhibit B) for application to coal transportation to the Montrose Station exceed the maximum reasonable levels permitted under 49 U.S.C. § 10701(d)(1) and 49 U.S.C. § 10702, and therefore are unlawful.

25. Item 4140-C of Circular 111 provides that the UP common carrier rates all are subject to a "fuel surcharge," which is published in Item 690 of UP Circular 6603-B. As applied to KCPL's Montrose coal traffic, this surcharge exceeds the maximum reasonable level permitted

under 49 U.S.C. § 10701(d)(1) and 49 U.S.C. § 10702, and therefore is unlawful.

26. In accordance with 49 C.F.R. Part 1111.1(a), the reasonableness of the rates and charges referenced in Paragraphs 23, 24 and 25 should be examined using the Constrained Market Pricing guidelines set forth in *Coal Rate Guidelines - Nationwide*, 1 I.C.C. 2d 520 (1985). This is so because coal shipments to the Montrose Station via UP and MNA involve high-volume, repetitive unit train traffic.

27. Circular 111 also includes service terms applicable to coal transportation to the Montrose Station which differ from those set forth in Contract UP-C-30239, and are inadequate to meet KCPL's legitimate coal transportation needs. KCPL reserves the right to present evidence of the unlawfulness of these terms if, as applied to the Montrose coal service, they result in unreasonable charges and/or constitute unreasonable practices in violation of 49 U.S.C. §§ 10702 and 10746.

28. This Complaint shall be deemed to apply to and likewise challenge any changes to the provisions of Exhibit A, Exhibit B, or any tariffs or circulars referenced therein (including new or replacement rates, charges or service terms), as the same may be applied by UP to coal transportation service to the Montrose Station.

29. Neither this proceeding nor the granting of the relief requested herein will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, Complainant KCPL prays that Defendant UP be required to answer the charges herein, and that after a hearing and investigation conducted pursuant to 49 U.S.C. §10704(a)(1) and the Board's implementing regulations, the Board: (1) find the challenged rates, charges, rules and practices to be unreasonable in violation of 49 U.S.C. §§10701(d)(1), 10702 and/or 10746; (2) prescribe maximum lawful rates and charges, and reasonable rules and practices, as requested by KCPL and demonstrated by the evidence to be adduced herein; (3) award damages to KCPL pursuant to 49 U.S.C. § 11704(b), to be calculated based on the record of this proceeding; and (4) grant to KCPL such other and further relief as the Board may deem proper based on said record.

Respectfully submitted,

KANSAS CITY POWER & LIGHT COMPANY

By: William G. Riggins
General Counsel
Kansas City Power & Light Company
1201 Walnut
Post Office Box 418679
Kansas City, Missouri 64141

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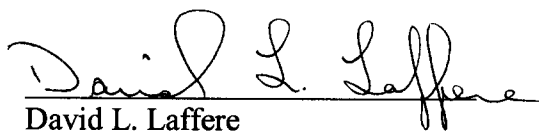
Dated: October 12, 2005

Attorneys & Practitioners

VERIFICATION

State of Missouri)
County of Jackson) ss:

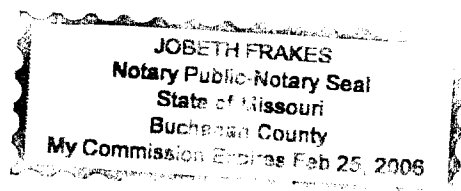
DAVID L. LAFFERE, being duly sworn, deposes and says that he is Supervisor,
Fuel Logistics for Kansas City Power & Light Company, that he has read the foregoing
Complaint, that he knows the contents thereof, and that the same are true as stated to the best of
his knowledge, information and belief.


David L. Laffere

Sworn and subscribed
before me this 7th day of October, 2005


Notary Public

My Commission Expires: 2-25-06





UP CIRCULAR 111

UNIT TRAIN COAL COMMON CARRIER CIRCULAR

APPLYING ON:

UNIT COAL TRAINS FROM THE
POWDER RIVER BASIN OF WYOMING

Governed, except as otherwise provided herein, by UFC 6000-series;
UP 6004-series and UP 6603-series.

Issued By:
G.H. OSLER - PUBLICATION MANAGER
K.A. EYMANN - PUBLICATION MANAGER

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

Issued: August 18, 2005
Effective: March 31, 2004
Expiration: December 31, 2025

UP 111

GENERAL RULE ITEM 1 (Revision: A)

DEFINITION OF ITEM SYMBOLS

A - Add
C - Change
D - Decrease
I - Increase
X - Expire

Issued: August 18, 2005
Effective: March 31, 2004
Expiration: December 31, 2025

UP 111

Page: 1 of 1
Item:
Concluded on this page

GENERAL RULE ITEM 5 (Revision: J)

Item Re-Issued: Aug. 18, 2005 Effective: Aug. 23, 2005

Symbol	Index of General Items
	Item/Version
	001A Definition of Item Symbols
C	005J Index of Items
	100E General Rules and Definitions
	200A Service/Rate Selection Option 1
	300D Service/Rate Selection Option 2
	400E Form - Shipment Volume Commitment Certificate
	Index of Rate Items
	Ultimate Destination
I	2510E CO, Pueblo, Comanche Generating Station
I	3120E IA, Muscatine, Muscatine Generating Station via Clinton, IA interchange
I	3130F IA, Cedar Rapids, Prairie Creek or Sixth St. Gen. Stations via Cedar Rapids, IA interchange
I	3140E IA, Marshalltown, Sutherland Generating Station
	3212B IL, Chicago, KCBX Terminal for furtherance to specified plants
I	3215C IL, Cora, for furtherance to specified plants
	3221A IL, Coffeen, Coffeen Generating Station rail direct via UP-NS
	3230B IL, Joppa, Electric Energy Inc.
	3236 IL, Sommer, Edwards Plant
	3236 IL, Meredosia, Meredosia Generating Station via barge
	3236 IL, Lis, Newton Generating Station via Chicago interchange with CSX
C,I	4000A IL, Chicago and WI, Superior for furtherance to specified plants
	3310F IN, Michigan City, Michigan City Generating Station via Chicago, IL interchange
	3310F IN, Wheatfield, Schahfer Generating Station via Chicago, IL interchange
	3500A KY, Calvert City, via UP-CNIC-PAL for furtherance to specified plants
I	3620D LA, Rodemacher, Rodemacher Generating Station
	4120B MO, St. Joseph, Lake Road Generating Station
	4130B MO, Sibley, Sibley Generating Station via Kansas City Interchange
	4140C MO, Ladue, Montrose Generating Station
	4150B MO, Hill Crest, Meramec Generating Station
I	4160D MO, Rush Tower, Rush Island Generating Station via barge
I	4160D MO, West Alton, Sioux Generating Station via barge
	4170B MO, West Labadie, Labadie Power Plant
I	4210E MN, St. Paul, High Bridge Generating Station
	4710B NE, Grand Island, Platte Generating Station
I	4720D NE, Hastings, Whelan Generating Station
	5330A OH, Warrenton, via UP-NS-WE for furtherance to specified plants
A	5331 OH, Warrenton, via UP-NS-WE for furtherance to specified plants
A	5332 OH, Warrenton, via UP-CSX-WE for furtherance to specified plants
I	6110F TX, Smithers Lake, Parish Generating Station
I	6620C WI, Wisconsin Rapids, Kraft Div. Plant
I	6620C WI, Biron, Biron Div. Plant via Wisconsin Rapids Interchange
I	6620C WI, Stevens Pt, River Div. Plant via Wisconsin Rapids Interchange
I	6630D WI, Alma, Alma Generating Station via barge
I	6630D WI, Genoa, Genoa Generating Station via barge
I	6640D WI, Cassville, Dewey Generating Station via barge
C	6650F WI, Pleasant Prairie and Oak Creek, Pleasant Prairie Power Plant and Oak Creek Power Plant
I	9010B Export to Spain via Cora, IL

GENERAL RULE ITEM 100 (Revision: E)
 Item Re-Issued Mar. 4, 2005 Effective: Apr. 1, 2005

General Rules and Definitions

For purposes of applying this Circular, the following will govern.

Commodity/Coal: Coal, a mineral substance whose Standard Transportation Commodity Code (STCC) as set forth in the Standard Transportation Commodity code tariff ICC STCC 6001-Series, begins with the two digits 11. This Circular does not apply to dried, enhanced or beneficiated coal (synthetic coal), having the STCC number 29-911-91.

Origin(s): UP served coal mine origins in Campbell and Converse counties in the Southern Powder River Basin of Wyoming.

Destination(s): Rail station capable of receiving trainloads of Coal as specified in individual Rate Items.

Shipper: Party who is paying the freight charges under this Circular.

UP: Union Pacific Railroad Company

Railroad: UP and any other rail carrier that is a party to this Circular for a joint rate to the specified Destination as listed in Items 1000-9999 of this Circular.

Rates: Are in U.S. dollars and cents per net ton of 2,000 lbs. Rates apply only for Coal consumed at the station(s) noted in the Item Description of the Rate Item, unless otherwise provided.

Rate Item: Schedule of rates, charges, and terms applicable to particular Destination.

Diversions: Diversions may be permitted under certain circumstances, as provided in UP Circular 6603-Series.

Request for Service: Transportation under this Circular will take place on the Southern Powder River Basin joint line which is subject to intense use. In order to maximize the utilization of the rail lines and loading facilities for the benefit of all parties involved in transportation of Coal from Origins, UP must coordinate with its joint owner of the rail line, the mine operators, and Shippers. Shipper requesting transportation under this Circular must provide a "Monthly Coal Tonnage Forecast" as provided in Item 250 of UP Circular 6603-Series. That Item defines the monthly process for the submission of forecasts by both the receiver of coal and the producer(s) who will load those tons for shipment via UP. This condition applies in addition to any specific notice requirements stated in this Circular.

Shipper Owned or Leased Equipment: Means railcars owned, leased or otherwise furnished by Shipper for transportation under this Circular.

Railroad Owned or Leased Equipment: Means railcars owned, leased or otherwise furnished by Railroad for transportation under this Circular.

Equipment: If Rate Item for Destination specifies Shipper Owned or Leased Equipment, Shipper will provide suitable equipment at no charge to Railroad. Railcars shall be compatible with the loading facility and the unloading facility.

All railcars used for transportation under this Circular shall be open-top hopper or gondola railcars, and shall have a marked capacity sufficient to meet the Minimum Lading Weight per Railcar as specified in the Rate Item for Destination.

Loaded railcars shall not exceed the maximum gross-weight-on-rail ("GWOR") associated with the route of movement, but in no case greater than 286,000 lbs. In some corridors the GWOR will be less than 286,000 lbs, in which case Railroad will note in the applicable Rate Item the maximum weight capability on the route of movement.

Such railcars shall also meet or exceed the Association of American Railroads ("AAR") Interchange Rules, as amended from time to time, and shall have been inspected and approved by UP for safety in accordance with Federal Railroad Administration ("FRA") regulations, as amended from time to time.

Issued: August 18, 2005
 Effective: March 31, 2004
 Expiration: December 31, 2025

UP 111

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Transportation under this Circular is subject to the provisions of the AAR Interchange Rules, including those rules governing railcar repair, maintenance, damage, or destruction, in a manner prescribed by the "Field Manual of Interchange Rules" and the "Office Manual of the Interchange Rules" adopted by and currently in use by the AAR. UP also recommends compliance with UP CMI 950302 (Car Maintenance Instructions) as outlined in Item 225 of UP 6603-Series.

Freight Charges: Freight charges shall be calculated based on the greater of the actual lading weight of all Coal in a train as determined by weighing pursuant to the rules in UP Circular 6603-Series, or the minimum tender per shipment weight, which is specified by Destination in the Rate Item. If Railroad owned or leased equipment is properly loaded, and if solely due to Railroad, fewer than the number of railcars required to meet the minimum tender per shipment are provided to load, freight charges will be based on the actual lading weight.

Payment: Railroad may invoice Shipper by means of mail or electronic transfer of documentation. Shipper shall pay the amount invoiced by means of mail or electronic transfer of funds within 15 calendar days after date of invoice. Late payment and other credit terms shall be in accordance with UP's credit terms as published in Rule 62 of UFC 6000-Series. If Shipper fails to pay in accordance with the requirements or if, in UP's sole discretion, adverse credit conditions occur which could affect Shipper's ability to meet payment terms, UP may revoke credit privileges and institute any one or more of the Revocation of Credit and Other Remedies procedures outlined in UFC 6000.

Notices: Notices to UP should be addressed to:

Attn: General Director -Logistics and Demand
Union Pacific Railroad
Marketing and Sales Energy Group
Stop 1260
1400 Douglas Street
Omaha, NE 68179
Fax (402) 501-0163

Notices to CNIC should be addressed to:

Attn: AVP Coal Marketing
Canadian National Railway
234 Donald Street
Winnipeg, MB, Canada R3C 4B4
FAX (204) 934-7375

Notices to Norfolk Southern should be addressed to:

Attn: Senior Vice President Energy & Properties
Norfolk Southern Corp.
110 Franklin Road
Roanoke, VA 24042-0026
FAX (540) 985-6398

Notices to Paducah & Louisville Railway should be addressed to:

Attn: AVP Marketing & Sales
Paducah & Louisville Railway
1500 Kentucky Ave.
Paducah, KY 42003
FAX (270) 444-4388

Notices to Wheeling & Lake Erie Railway should be addressed to:

Attn: VP Coal Marketing
Wheeling & Lake Erie Railway
100 East First Street
Brewster, OH 44613
FAX (330) 767-7021

Other General Rules: Shipments made under this Circular shall be subject to Circular UP 6603-series or its successors, which contains the General Loading Rules, Accessorial Charges and Fuel Surcharge for Coal Trains

Issued: August 18, 2005
Effective: March 31, 2004
Expiration: December 31, 2025

UP 111

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Item:
Continued on next page

Originating in Wyoming and related items.

Services or other matters not specifically addressed in this Circular shall continue to be governed by and paid for in accordance with rules, regulations, statutory provisions and provisions of the applicable tariffs, rules circulars, publications or in other applicable rate and service terms established under 49 U.S.C. Section 11101. Such rules, regulations and provisions, as amended from time to time, are herein incorporated by reference without being specifically listed. To the extent any such rules, regulations or provisions as they relate to the parties hereto are inconsistent with the terms of this Circular, the terms of this Circular shall govern. When reference is made in this Circular to tariffs, circulars, items, notes, rules, etc., such references are continuous and include revisions and supplements to and successive issues of such tariffs, circulars, items, notes, rules, etc.

In the event of any conflict between the terms of this Circular and the terms of the RateItem, the provisions of the Rate Item shall govern.

Issued: August 18, 2005
Effective: March 31, 2004
Expiration: December 31, 2025

UP 111

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GENERAL RULE ITEM 200 (Revision: A)
Item Re-Issued August 2, 2004

Service/Rate Selection: Option 1

OPTION 1: Unit Train Shipments - No Volume Requirement

These terms and conditions will apply to transportation under this Circular if Shipper elects Option 1.

Volume: No volume commitment applies under this option.

Annual Volume Estimate: For planning purposes, Shipper shall advise Railroad of its intent to ship under this Circular as specified in Monthly Coal Tonnage Forecast. In addition, not later than October 1 each year, Shipper shall provide to Railroad an estimate of tons of Coal anticipated to be loaded in the next calendar year by month ("Annual Volume Estimate"). Shipper shall attempt to load Coal in approximately even monthly increments within each calendar year. If Shipper decides to begin shipments within any time-frame other than a full calendar year basis, then Shipper shall provide Railroad an Annual Volume Estimate for the remaining months of that calendar year, ninety calendar days prior to the first shipment, unless otherwise mutually agreed.

Service: Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes, denial of or limitation of access to track controlled by any party other than Railroad, or events outside the control of the Railroad. Railroad intends to use reasonable efforts to deliver the Annual Volume Estimate and the Monthly Coal Tonnage Forecast furnished by Shipper but has no binding obligation to comply with these planning estimates.

Rate: Option 1 rate in the Rate Item applies in return for the limited liability terms as follows. In exchange for paying the rate published in Option 1 of the Rate Item, Shipper agrees that in no event will Railroad's responsibility for damages exceed the sales price of the Coal at Origin. The fuel surcharge in UP Circular 6603-Series, Item 690 applies. Railroad may adjust rates subject to 20 days' notice for increases.

Full-Value Liability Rate: In return for paying a rate greater than the Option 1 rate as published in the Rate Item, Shipper may recover full damages, if any, as provided in 49 U.S.C. 11706. To make a shipment subject to 49 U.S.C. 11706, Shipper must comply with these provisions:

1. Shipper shall notify Railroad no less than 72 hours before the shipment is released for transportation that the Shipper chooses to utilize the Full-Value Liability Rate.
2. Shipper shall prepay a rate equal to 250% of the Option 1 Rate published in the Rate Item applicable to Destination; and
3. Shipper shall note on the shipping instructions that the shipment is subject to the Full Value Liability Rate as provided in this Circular.

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GENERAL RULE ITEM 300 (Revision: D)
 Item Re-Issued Jun. 8, 2005 Effective July 1, 2005

Service/Rate Selection: Option 2

OPTION 2: Unit Train Shipments - Three-year or Longer Volume Commitment

Option 2 rates in the Rate Item will apply only if Shipper agrees to be bound by the Minimum Volume Requirement as set forth in the Rate Item by executing the Volume Commitment Certificate ("Certificate") found in Item 400 of this Circular. In return for Shipper's volume commitment, Railroad commits to transport Coal loaded by Shipper and moving in Shipper Owned or Leased Equipment, subject to these terms and conditions ("Service Commitment") and to charge rates as defined by Volume Year in the Rate Item and fixed as of the date of the Certificate subject to adjustment only by fuel surcharge ("Rate Commitment"). If Shipper elects to utilize Railroad Owned or Leased Equipment, as specified in the Rate Item applicable to a Destination, Shipper will receive Rate Commitment in return for its volume commitment.

I. Definitions and Rules

Volume Commitment Period: Volume Commitment Period consists of 36 or more consecutive months during which the Minimum Volume Requirement, Rate Commitment and Service Commitment (if applicable) are in force. A Volume Commitment Period comprises three or more consecutive Volume Years or 12 or more consecutive Volume Quarters. A Volume Commitment Period may begin on the first day of any calendar quarter not less than ninety (90) days and not more than twenty-four (24) months after Shipper submits signed Certificate. The maximum duration of the Volume Commitment Period will be determined by the rate columns offered in the Rate Item.

Volume Year: Volume Year consists of 12 consecutive calendar months. A Volume Year also consists of four consecutive Volume Quarters. A Volume Year does not have to coincide with a calendar year, but the starting date for the first Volume Year must coincide with the first day of the Volume Commitment Period and will always begin on the first day of a calendar quarter.

Volume Quarter: Volume Quarter consists of three consecutive calendar months. A Volume Quarter must correspond to a calendar quarter. The starting date for the first Volume Quarter must coincide with the first day of the Volume Commitment Period.

Certificate Submission: When Shipper submits the Certificate electing to ship under Option 2, the Certificate must include a good faith, non-binding estimate of the amount of Coal Shipper projects shipping between Origins and Destination for each Volume Quarter during the Volume Commitment Period. The estimate will be used only for planning purposes. The completed Certificate shall be submitted to Railroad (to the address/fax number stated in the notices section of Item 100) not less than ninety (90) days and not more than twenty-four (24) months before the Volume Commitment Period begins. Certificates are not assignable. In the event of a conflict between the terms of a Certificate and the terms of a contract, the terms of the contract shall govern.

Commitment Rate: The rate applicable for each Volume Year for transportation subject to respective volume and service commitments ("Commitment Rate") is found in Columns 2 and above in the Rate Item applicable to Destination. The Commitment Rates shall be the rates in the Rate Item on the date Shipper submits the Certificate. No adjustments other than the fuel surcharge will apply to the Commitment Rates during the Volume Commitment Period. Subject to 20 days' notice for an increase, Railroad may adjust the Commitment Rates at any time before UP receives signed Certificate for a Destination. Shipper Certificates received after notice of a rate increase but before the rate increase becomes effective will take the increased rate.

Minimum Volume Requirement: Shipper choosing Option 2 commits to load for transportation a minimum volume of Coal from Campbell and Converse counties in Wyoming via the route specified in the Rate Item in each Volume Year during Volume Commitment Period. The "Minimum Volume Requirement" for a Destination is specified in the Rate Item for that Destination.

If the Minimum Volume Requirement contains a percentage requirement, Shipper shall send a written statement within thirty (30) days after the end of Volume Year to Railroad certifying: (1) the total number of tons of Coal received via any transportation mode at Destination originating in Campbell and Converse Counties in Wyoming, (2) the total number of tons of Coal on which freight charges were paid under this Circular, and (3) whether the Shipper has satisfied the Minimum Volume Requirement. If Shipper fails to satisfy the Minimum Volume Requirement,

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Railroad shall be entitled to compensation in the form of Liquidated Damages as determined below.

Liquidated Damages: If Shipper fails to meet its Minimum Volume Requirement, Shipper shall pay Railroad, not as a penalty, but as compensation for lost traffic in the form of liquidated damages, agreed upon as reasonable, and intended by the parties to be the sole and exclusive remedy for Shipper's failure to meet the Minimum Volume Requirement, an amount equal to \$3.00 for each shortfall ton.

II. Service Commitment for Moves in Shipper Owned or Leased Equipment

A. Service Commitment: Railroad commits to transport for each Volume Quarter and Volume Year the amount of Coal nominated by Shipper as provided herein.

Ninety (90) days before each Volume Year, Shipper will nominate in good faith the number of tons of Coal it wishes Railroad to transport to Destination for the upcoming Volume Year by month. The nominated tonnage must be ratable. A monthly nomination is ratable if it is no more than 10% greater or 10% less than one-twelfth of the aggregate Volume Year total. If Shipper uses both Shipper Owned or Leased Equipment and Railroad Owned or Leased Equipment, this nomination shall specify the tons designated for transportation in Shipper Owned or Leased Equipment. The "Service Commitment Volume" will be the lesser of (a) the aggregate of the nominated tons for the Destination for each Volume Quarter or (b) the aggregate of tons nominated for the Destination in the Monthly Coal Tonnage Forecast Process specified in UP Circular 6603-Series, Item 250, for the same Volume Quarter. The Service Commitment applies only to those tons committed by Shipper as determined by the Service Commitment Volume.

B. Cycle Time Estimate: Cycle Time Estimate is the Railroad round-trip transit time between Origin and Destination, and is provided in the Rate Item for each Destination requiring Shipper Owned or Leased Equipment as a good faith estimate for equipment planning purposes only. Cycle Time Estimate does not include loading or unloading time, time elapsed for delays caused by events of Force Majeure, or time elapsed for delays caused or requested by Shipper or Shipper's mine operator. Actual cycle time will vary and may be above or below the Cycle Time Estimate. If the Rate applies only to an interchange with another rail carrier, the Cycle Time Estimate is for loaded and empty time on UP only.

C. Shipper Owned or Leased Equipment: If the Rate Item for the Destination specifies Shipper Owned or Leased Equipment, Shipper and Railroad will mutually agree on the number of trainsets Shipper will provide to transport the Service Commitment Volume. Railroad reserves the right to limit the number of trainsets in service whenever, in Railroad's sole judgment, the addition of more trainsets will impair fluidity or would not materially increase the amount of Coal delivered to Destination. Railroad limitation on the number of trainsets below the number mutually agreed-upon with Shipper shall not relieve Railroad of its Service Commitment except as otherwise provided in D. Service Commitment Performance or IV. Force Majeure.

D. Service Commitment Performance: If Shipper loads Coal at a ratable monthly pace and Railroad fails to transport Coal made available for timely loading by Shipper or Shipper's mine operator for reasons attributable solely to the Railroad, Shipper has the right to notify Railroad of its calculation of tons required to meet the Service Commitment Volume for the previous Volume Quarter. Such notification must be made no later than fifteen (15) business days after the term of the Volume Quarter has expired.

Railroad shall not be responsible for tonnage shortfalls attributable to the following:

1. Delays resulting either directly or indirectly from events, actions, and/or requests attributable to Shipper or Shipper's mine operator;
2. Delays in loading or unloading (except where such delays are caused in substantial part by Railroad);
3. Inability of Shipper's mine operator to load Coal or inability at Destination to unload Coal;
4. Insufficient supply of Shipper Owned or Leased Equipment, except when Railroad limits the number of trainsets furnished by Shipper;
5. Force Majeure events affecting either party; or
6. Limitation on access to trackage not within Railroad's sole control, provided that Railroad make reasonable efforts to regain access or to remove limitation.

In addition, if Rate Item applies only to the UP portion of an interline route, UP shall not be responsible for delays attributable to connecting carrier's inability to accept trains at interchange or delays on the connecting carrier's portion of the route. If Shipper fails to meet its Minimum Volume Requirement due to Railroad's service failure, or Railroad's limitation of trainsets furnished by Shipper, Shipper's Minimum Volume Requirement will be adjusted downward for such failures.

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Once Railroad receives notice of Shipper's calculation of tons required to meet the Service Commitment Volume, Railroad shall have fifteen (15) business days to respond. When Shipper and Railroad have agreed in writing upon the amount of Coal required to satisfy the Service Commitment Volume ("Shortfall Volume") Railroad shall have ninety (90) days to satisfy the Service Commitment by any means deemed appropriate by the Railroad, including the use of Railroad Owned or Leased Equipment at the same freight rate in effect during Volume Quarter when shortfall arose. Shipper shall work with Railroad to ensure availability of Coal at Origins to load Shortfall Volume tons. If Railroad transports more Coal to a Destination than the Service Commitment Volume during a Volume Quarter, that extra Coal shall be credited against any Shortfall Volumes occurring in the following four Volume Quarters. Coal transported during a Volume Quarter using additional resources provided by Railroad shall be credited against any Shortfall Volumes for the previous Volume Quarter or credited toward future Shortfall Volumes, if any. If Shortfall Volume occurs in a Volume Quarter and Shortfall Volume has not been cured by application of credits for prior surplus deliveries or deliveries in the 90-day period following agreement on Shortfall Volume, Shipper shall be entitled to appropriate compensation in the form of Liquidated Damages as determined below.

E. Liquidated Damages: If Railroad fails to meet its Service Commitment, Railroad shall pay Shipper, not as a penalty, but as compensation for obtaining an alternate fuel supply or any other damages, in the form of liquidated damages, agreed upon as reasonable, and intended by the parties to be Shipper's sole and exclusive remedy for Railroad's failure to meet its Service Commitment, an amount equal to \$3.00 for each un-cured shortfall ton. Shipper shall invoice Railroad by means of mail or electronic transfer of documentation. Railroad shall pay the amount invoiced by means of mail or electronic transfer of funds within 15 calendar days after date of invoice.

III. Service for Moves in Railroad Owned or Leased Equipment

Annual Volume Estimate: Not later than October 1 each year, Shipper shall provide to Railroad an estimate of tons of Coal anticipated to be loaded in the next calendar year by month ("Annual Volume Estimate"). The nominated tonnage must be ratable. A monthly nomination is ratable if it is no more than 10% greater or 10% less than one-twelfth of the aggregate Volume Year total.

Service: Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes or events outside the control of the Railroad. Railroad intends to use reasonable efforts to meet the lesser of the Annual Volume Estimate for a Destination or the aggregate annual total of the Monthly Coal Tonnage Forecast furnished by the Shipper, but has no binding obligation to comply with these planning estimates. In no event will Railroad's responsibility for damages exceed the value of Coal at Origin. If Shipper fails to meet its Minimum Volume Requirement due solely to Railroad's service failure, Shipper's Minimum Volume Commitment for that Volume Year will be adjusted downward for such failure.

IV. Force Majeure:

If any party is delayed in or prevented from the performance of its obligations under this Circular for at least twenty-four (24) consecutive hours, beginning from the time disability actually commenced, as a result of an event beyond its control, including an Act of God; accumulation of snow and/or ice or other adverse weather conditions sufficient to impede the movement of trains or train crews; war; insurrection; riot or other civil disturbance; explosion; fire; derailment; destruction of or damage to right-of-way, including bridges; strike, lockout or other labor disturbance; the failure of the Mine Operator to load requested Coal ("Force Majeure"), such party's obligations and those of such other parties affected thereby shall be suspended for the duration of such Force Majeure; PROVIDED, HOWEVER, that the parties shall make all reasonable efforts to continue to meet their obligations for the duration of the Force Majeure.

In order for a declaration of Force Majeure to be effective, the party experiencing the Force Majeure event shall notify in a timely fashion and in writing all other parties as to the nature of the Force Majeure, when it began, and its projected duration. Such party also shall notify in a timely fashion and in writing all other parties upon the cessation of the Force Majeure.

The parties shall make all reasonable efforts to eliminate or abate such Force Majeure and resume their obligations expeditiously upon its cessation, except that no party hereto will be required to acquiesce to an unfavorable settlement of any labor dispute.

The suspension of any obligations owing to a Force Majeure shall neither cause the Term of any Volume Commitment Certificate to be extended nor affect any rights accrued under any Volume Commitment Certificate prior to the Force Majeure. The Minimum Volume Requirement shall be reduced by 1/365th and the Service Commitment Volume shall be reduced by 1/90th for each continuous 24-hour period during which the Force Majeure event existed.

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GENERAL RULE ITEM 400 (Revision: E)
 Item Re-Issued: Mar. 4, 2005 Effective: Apr. 1, 2005

Circular 111 Option 2 Volume Commitment Certificate

Certificate # _____
 (Assigned by UP)

Shipper Name: _____
 Address: _____

Circular 111, Rate Item _____, for Rate Item Destination: _____
 Interchange/Connection if applicable: _____

If alternative option exists in Rate Item, Equipment Furnished by:
 Railroad _____ Shipper _____ Both _____

First Date of Volume Commitment Period: _____
 (Must be the first day of a calendar quarter, not less than 90 days or more than 24 months after signed Certificate is submitted)

Last Date of Volume Commitment Period: _____
 (Must be the last day of a calendar quarter, 36 or more months after commencement date, in increments of 12 months, as determined by rate columns offered in the Rate Item)

Volume Commitment Period Good-Faith Estimate of Tonnage: _____
 (If both Shipper Owned or Leased Equipment and Railroad Owned or Leased Equipment, specify volumes for each)

Volume Year 1

Volume Quarter 1: _____
 Volume Quarter 2: _____
 Volume Quarter 3: _____
 Volume Quarter 4: _____

Volume Year 3

Volume Quarter 9: _____
 Volume Quarter 10: _____
 Volume Quarter 11: _____
 Volume Quarter 12: _____

Volume Year 2

Volume Quarter 5: _____
 Volume Quarter 6: _____
 Volume Quarter 7: _____
 Volume Quarter 8: _____

(Use attachment for additional
 Volume Years if applicable)

By signature below, Shipper acknowledges the reciprocal benefits under Option 2 terms and conditions and agrees to be bound by the applicable terms and conditions set forth in this Circular and Rate Item associated with Destination. All of the Option 2 terms and conditions set forth in Circular 111 will be held constant for the term of this Certificate, as well as the Fuel Surcharge mechanism set forth in UP Circular 6603-Series at the time of Certificate receipt. If a change has been announced but is not yet in effect, the announced term, condition and/or rate will apply.

By Shipper: _____

Title: _____

Date: _____

Fax to: (402) 501-0163

Attention: General Director Logistics and Demand, Union Pacific Railroad Energy Marketing and Sales

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Union Pacific Railroad

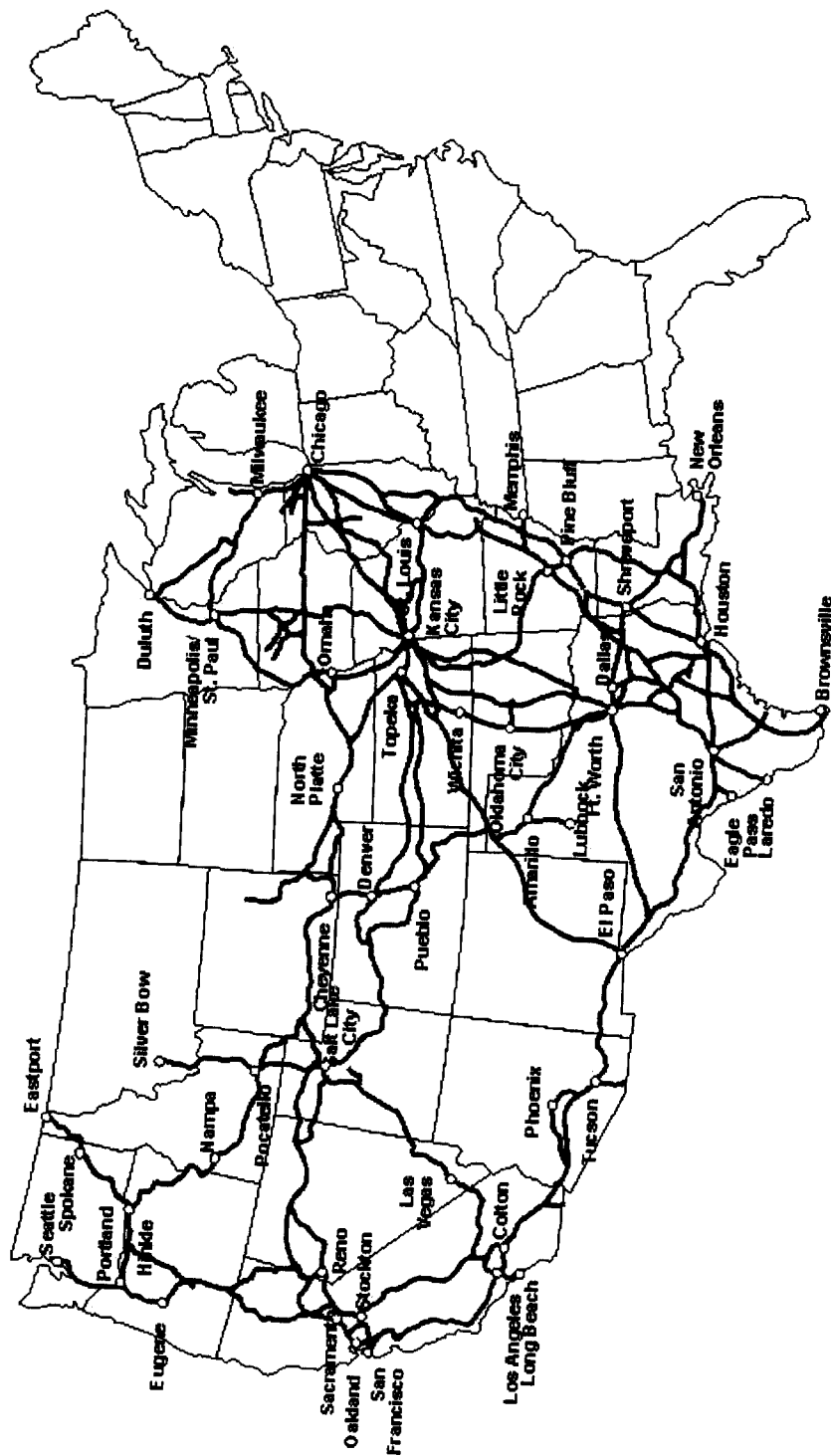


Exhibit B

	UP 111	Item: 4140-C Item Desc: MO, Ladue (Henry County) Montrose Generating Station
Unit Coal Trains from SPRB to Montrose Generating Station, Ladue (Henry County), MO		
For billing purposes use the following rate authority: UP 111-4140-C		
STCC/GROUP	STCC	DESCRIPTION
11		Coal
Prices are subject to Fuel surcharges.		
GENERAL RULE ITEM 4140 (Revision: A) Railroad's Cycle Time Estimate in Shipper Owned or Leased Equipment is 138 hours, subject to terms and conditions in Item 300 of Circular UP 111.		
Minimum Volume Requirement for Option 2 rates is the greater of either 95 percent of Net Tons received at Montrose Generating Station, Ladue (Henry County), MO from Campbell and Converse Counties in Wyoming via all modes of transportation, or 1,600,000 Net Tons annually. The maximum volume that Railroad will transport under this item is 2,100,000 Net Tons annually.		
GENERAL RATE APPLICATION RULES FOR ITEM 4140-C		
- Free time to unload will be 6 hour(s). - Mileage allowance payment on private equipment will not apply.		
APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	Rates are in U.S. dollars Per Net Ton. Subject to a minimum lading weight of 117 tons per car. Price applies in shipper owned or leased equipment. Price applies if minimum tender per shipment is 12,285 Net Ton(s). Price applies if minimum tender per shipment is 1 Train.	
2.	Rates are in U.S. dollars Per Net Ton. Subject to a minimum lading weight of 117 tons per car. Price applies in shipper owned or leased equipment. Price applies if minimum tender per shipment is 12,285 Net Ton(s). Price applies if minimum tender per shipment is 1 Train.	
3.	Rates are in U.S. dollars Per Net Ton.	
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COLUMN	RATE APPLICATION RULES				
4.	Subject to a minimum lading weight of 117 tons per car.				
	Price applies in shipper owned or leased equipment.				
	Price applies if minimum tender per shipment is 12,285 Net Ton(s). Price applies if minimum tender per shipment is 1 Train.				
	Rates are in U.S. dollars Per Net Ton.				
	Subject to a minimum lading weight of 117 tons per car.				
	Price applies in shipper owned or leased equipment.				
	Price applies if minimum tender per shipment is 12,285 Net Ton(s). Price applies if minimum tender per shipment is 1 Train.				
	Col. 1 Option 1	Col. 2 Option 2 Year 1	Col. 3 Option 2 Year 2	Col. 4 Option 2 Year 3	Route Code/Group
STCC: 11 Coal					
From: ENERGY SPRB MINES GROUP					
To: MO, LADUE					
	15.84	14.26	14.83	15.42	UP
NOTES	DESCRIPTION				

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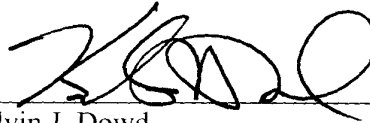
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CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. Part 1111.3, I hereby certify that on this 12th day of October, 2005, I caused copies of this Verified Complaint to be served by overnight express courier on the senior legal officer of Defendant Union Pacific Railroad Company ("UP") as follows:

J. Michael Hemmer, Esq.
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

A handwritten signature in black ink, appearing to read 'K. Dowd', is written over a horizontal line.

Kelvin J. Dowd
An Attorney for Complainant