Weil, Gotshal & Manges LLP

2001 M Street, NW Suite 600
Washington, DC 20036
+1 202 682 7000 tel
+1 202 857 0940 fax

Drew Tulumello
+1 (202) 682-7100
Drew.Tulumello@weil.com

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Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Docket No. FD 32760 (Sub-No. 52), *BNSF Railway Company—Petition for Review—UP/SP Merger Conditions*

Dear Chief of Case Administration:

Enclosed for e-filing in the above-referenced proceeding is BNSF Railway Company's Petition for Review, Enforcement, and Modification of the UP/SP Merger Conditions. Pursuant to 49 C.F.R. § 1002.2(f)(88), a filing fee of $350 was paid using pay.gov.

Please contact me with any questions.

Thank you for your prompt attention to this matter.

Respectfully submitted,

/s/ *Drew Tulumello*

Drew Tulumello
Attorney for BNSF Railway Company

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 52)

BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

BNSF RAILWAY COMPANY'S PETITION FOR REVIEW, ENFORCEMENT, AND MODIFICATION OF THE UP/SP MERGER CONDITIONS

Jill K. Mulligan
Courtney B. Estes
Tyler White
Kevin Baldwin
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2383

Peter W. Denton
Steptoe LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-6445

Adrian L. Steel, Jr.
Attorney at Law
7720 Timon Dr.
McLean, VA 22102
(202) 468-9008

Drew Tulumello
Chantale Fiebig
Weil, Gotshal & Manges LLP
2001 M Street, NW
Washington, DC 20036
(202) 682-7000

Brian Liegel
Weil, Gotshal & Manges LLP
1395 Brickell Avenue
Miami, FL 33131
(305) 577-3100

Attorneys for BNSF Railway Company

Dated: November 28, 2025

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BEFORE THE
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1. INTRODUCTION

Three decades ago, this Board approved a historic merger between the Union Pacific Railroad Company ("UP") and the Southern Pacific Rail Corporation ("SP"). The Board recognized that the UP/SP merger could have "led to substantial competitive harm" given the overlap between UP and SP lines of service where customers would lose competitive options offered to them through a two-carrier network merging into one. *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (UP/SP) (Oversight Decision No. 10)*, 2 S.T.B. 703, 705, 706 (1997). To preserve competition that was at risk from the overlapping networks of UP and SP, the Board imposed a series of conditions that were "designed to preserve competition" post-merger. Most importantly, the Board imposed conditions that were crafted to ensure that BNSF Railway Company ("BNSF")—the only Class I counterweight to UP in the western United States—received robust rights and privileges to serve customers on

a competitive basis with UP, which then allowed UP to proceed with its merger with SP. Indeed, the Board recognized that BNSF was the recipient of many of these rights designed to preserve competition, and that it "should be regarded as the guardian of the rights [the Board] entrusted to it." *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight Decision No. 20)*, 5 S.T.B. 1159, 1171 (2001).

In the nearly thirty years since the UP/SP merger, however, UP has engaged in a pattern of obstructive conduct that has diminished those competitive options and has harmed customers by delaying or preventing BNSF from fully replacing the competition that was lost through the UP/SP merger as the Board originally intended. Although BNSF has diligently worked to enforce the rights the Board entrusted to it through constant vigilance, extensive negotiations with UP, and numerous petitions to the Board, its efforts have faced repeated resistance and obstruction from UP. Unfortunately, UP's efforts have been successful in many ways leading to customers having fewer options for service at locations that were previously served by UP and SP.[1]

To address this loss in competition and to prevent further degradation of the competitive options available to shippers, BNSF brings this Petition to request that the Board, in the public interest, review the conditions imposed in connection with

[1] The Board has on numerous occasions confirmed that shippers have an independent right to enjoy the benefits of the two-carrier service under the merger conditions. *See, e.g.*, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight Decision No. 21)*, 5 S.T.B. 1173, 1178 (2001) ("[W]e note that shippers have a right (independent of any rights and interests BNSF may have under the BNSF Agreement) to seek Board intervention to ensure that the conditions we imposed on the merger are implemented in a manner that effectively preserves pre-merger competition.").

the UP/SP merger, enforce the obligations UP has refused to abide by, and modify those conditions as necessary to preserve the competition the Board envisioned. UP's refusal to fulfill its obligations as originally intended raises the question of whether the merger conditions are being implemented in a way that is consistent with the policies underlying those conditions.

Arguments on the merits of UP's recently announced merger with Norfolk Southern Corporation ("NS") will be presented in that proceeding. While the Board will have the opportunity to evaluate the proposed UP/NS merger and its potential impact on competition and other public interest concerns, it is not clear that the Board can review UP's compliance with the UP/SP merger conditions as part of the Board's consideration of the UP/NS merger. Indeed, the Board's prior practice indicates that BNSF must seek this independent relief through a standalone proceeding, because the UP/NS merger proceeding would not be the appropriate venue to "remedy[] old harms." CP-KCS Hearing Tr. at 1099:07–1100:02 (Sept. 30, 2022) (Chairman Oberman, in statements made to the BNSF panel members during the CP-KCS merger proceeding, noted that the Board is "not supposed to be remedying old harms in a merger" according to "the practice of this Board and the ICC [since] time in memorial"). Accordingly, this standalone proceeding will allow the Board to address and rectify UP's conduct under the UP/SP merger conditions separate from the Board's consideration of the UP/NS merger, and provide the Board with the information necessary to evaluate UP's past conduct with respect to merger conditions as it reviews future mergers.

BNSF therefore requests that the Board exercise its oversight authority to review, enforce, and, to the extent necessary, modify the UP/SP merger conditions. *See* 49 U.S.C. § 11327. Through this Petition, BNSF requests that the Board enter a procedural schedule that will allow the parties to fully develop the record for the Board's review. *See* 49 C.F.R. § 1114.21 *et seq*. Based on the full record, BNSF would then ask the Board to review UP's harmful conduct since the UP/SP merger; enforce the rights granted to BNSF to preserve competition; and modify the conditions of the UP/SP merger approval decision as the Board deems necessary, to ensure customers are not further harmed by UP's ongoing efforts to stifle, and its failure to preserve, competition.

The facts set forth in this Petition have been verified by Olivia Power, BNSF Assistant Vice President, Contracts and Joint Facilities.

2. BACKGROUND

2.1 The Board imposed the UP/SP merger conditions to preserve competition.

UP's merger with SP in 1996 was "unprecedented in scope," combining two of the three largest railroads in the West and linking 35,000 miles of track in what became the nation's biggest rail network. *Oversight Decision No. 10*, 2 S.T.B. at 705. The merger thus eliminated direct and indirect competition across thousands of miles where the two carriers had previously gone head-to-head for customer business. *See Union Pac. Corp.— Control & Merger—S. Pac. Rail Corp* (*Decision No. 44*), 1 S.T.B. 233, 367–75, 418–21 (1996). The Board approved this merger subject to various

conditions designed to preserve direct and indirect competition that would be lost as a result of the consolidation. *Id.*

The essential bargain struck by UP/SP to obtain Board approval for their merger involved granting BNSF expansive rights and means to access shippers that otherwise would have suffered from a reduction in their competitive options as a result of the merger (so-called 2-to-1 shippers). To preserve those rights, the Board imposed various conditions on UP, including, for example, requiring UP to (1) allow BNSF to have access to shippers at 2-to-1 points via extensive trackage rights over the combined UP/SP network; (2) allow shippers to elect to be served by BNSF when establishing new shipper facilities at 2-to-1 points and along BNSF's trackage rights lines; (3) ensure that BNSF would have the benefit of access to certain infrastructure jointly funded with UP; and (4) ensure that BNSF has equal treatment with respect to dispatching and serving customers in several shared service areas.

The Board also required as a condition of the merger the terms of a comprehensive settlement agreement between UP and BNSF that memorialized these and other rights to preserve competition. *Id.* at 242–43, 246–47, 419. BNSF and UP later restated and amended that original settlement agreement in accordance with Board decisions interpreting that agreement, *see generally Decision No. 44,* 1 S.T.B 223., and an additional competition-preserving agreement with the Chemical Manufacturers Association ("CMA") for additional rights, *see Union Pac. Corp—Control & Merger—S. Pac. Rail Corp*, FD 32760, Applicants' Submission of Settlement Agreement with CMA (Apr. 19, 1996). The operative agreement

enshrining these conditions—the Restated and Amended Settlement Agreement ("RASA")—was approved by the Board in 2001 and remains binding today. *See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight Decision No. 21)*, 5 S.T.B. 1173 at 1174, 1178 (2001).

The Board's conditions to the UP/SP merger also included a five-year oversight period "to examine whether the conditions [the Board has] imposed have effectively addressed the competitive issues they were intended to remedy." *Decision No. 44,* 1 S.T.B. at 373. The Board retained jurisdiction to impose additional remedial conditions to the extent the Board determined that the conditions imposed did not effectively address the competitive harm caused by the merger. *Id.* One year into the five-year oversight period, the Board determined that the UP/SP merger, subject to the conditions imposed by the Board, had not resulted in any adverse competitive effects. *Oversight Decision No. 10*, 2 S.T.B. at 703. Nonetheless, the Board emphasized that its conclusions were "preliminary" and its "oversight is continuing," because it was "too early in the process to determine with certainty just how vigorous the competition between UP and BNSF will be over the long term, and whether BNSF's operations will be efficient and responsive to shipper needs." *Id.* at 704.

At the end of the oversight period, the Board determined that "the record demonstrate[d] that the conditions [it] imposed on the UP/SP merger have worked as intended…" *Oversight Decision No. 21*, 5 S.T.B. at 1177. But the Board made clear, "the conclusion of the formal oversight process does not preclude any party from invoking [the Board's] jurisdiction to address any merger-related concerns arising out

of [the Board's] conditions." *Id.* at 1177–78. Indeed, the Board stressed that it "remain[s] available—***into the indefinite future***—to consider and promptly resolve any disputes of general applicability" relating to the conditions imposed in the UP/SP merger. *Id.* at 1178 (emphasis added).

And in the years since, the Board has repeatedly recognized its express authority under 49 U.S.C. § 11327 to enter supplemental orders and to modify decisions entered in the UP/SP proceeding (as it has in other merger proceedings as well). *See Oversight Decision No. 21*, 5 S.T.B. at 1177 (recognizing that the Board retains under section 11327 "continuing authority to enter supplemental orders and to modify decisions entered in merger and control proceedings under 49 U.S.C. 11323"); *Oversight Decision No. 20)*, 5 S.T.B. at 1171–72 (rejecting UP's argument that the Board "lack[ed] the power to grant BNSF's proposals" that would "expand the conditions on the UP/SP merger 5 years after UP and SP consummated the merger").[2]

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[2] *See also Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.* (*Decision No. 109*), FD 32760 (STB served Jan. 31, 2018) (granting a BNSF petition for enforcement of UP/SP merger conditions); *Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 35*), FD 36500, slip op. at 77 (STB served Mar. 15, 2023) ("The Board has authority to enter supplemental orders enforcing merger conditions and to modify prior decisions entered in the merger proceeding both during and after the merger oversight period.") (citing 49 U.S.C. § 11327); *Canadian Nat'l Ry.—Control—Ill. Cent. (General Oversight) (Decision No. 4)*, FD 33556 (Sub-No. 4), slip op. at 3 (STB served Dec. 27, 2001) ("[STB has] the authority independent of the formal oversight process to enforce or revise merger conditions as warranted upon request or on our own initiative."); *Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 35)*, FD 36500, slip op. at 55 (STB served Mar. 15, 2023) ("[T]he Board is authorized to issue supplemental orders under 49 U.S.C. § 11327, both during the oversight period and afterwards, which may include taking remedial action following the transfer of control if warranted."). "A prior decision may be clarified whenever there appears to

2.2 UP's conduct has failed to preserve competition since the merger.

Since the approval of the merger in 1996, UP has repeatedly violated its obligations under the merger conditions and the RASA, to the detriment of shippers that have been deprived of the competition the Board sought to preserve. Recognizing that the Board has entrusted it to replace the competition lost by the UP/SP merger, BNSF has made every effort to compete with UP to serve customers, but UP has increasingly sought to frustrate the UP/SP merger conditions and, at times, simply refused to abide by the conditions intended to permit BNSF to do so.

Among other things, over the past three decades, UP has denied BNSF access to customers through a variety of delay and deny strategies, reducing the options available to those customers. In addition, UP has imposed unreasonable operational demands that make it harder for BNSF to exercise its rights and has refused to engage in the administrative maintenance—such as updating trackage rights agreements and granting new ones—necessary to ensure the RASA's conditions are effective and enduring.

Recently UP has also attempted to drive up the cost of access to BNSF, and accordingly to BNSF's customers, through unnecessary contract negotiations and rate reviews. This summer, UP indicated a desire to increase all of the rates that BNSF pays UP for trackage, haulage, and switching rights granted to BNSF as part of the merger. Under the RASA, UP triggered a 90-day review period to try to adjust

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be a need for a more complete explanation of the action taken therein." *See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.* (*Decision No. 61*), FD 32760, slip op. at 7 (STB served Nov. 20, 1996).

the agreed-upon mechanism for establishing the rates that have escalated annually for more than 30 years.[3] However, rather than promptly proposing an adjustment for the parties to jointly review, as anticipated by the RASA and the trackage rights agreements implementing the trackage rights themselves, UP has again sought to shift the burden to BNSF by taking months to engage, and then after expiration of the 90-day review period insisting that BNSF itself bear the burden of proffering data and analysis to advance the very review that UP requested to undertake. UP's unwarranted delay in resolving its requested review unduly and intentionally burdened BNSF, and unnecessarily increased the risk of potentially heightened costs for shippers.

As a result of UP's conduct, BNSF has been forced to file more than a dozen petitions with the Board against UP to enforce the Board's conditions under the RASA. These petitions have included, among other things, requests for the Board to enforce or clarify BNSF's trackage rights, prevent UP from structuring transactions to evade its merger obligations, resolve UP's tactics which obstruct the customer election process, and grant BNSF emergency service when UP blocks access.[4] In

[3] To date, the only change to the trackage rights rate was an adjustment *downward* at the request of the CMA.

[4] *See, e.g.*, *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 109)*, FD 32760 (STB served Jan. 31, 2018) (granting BNSF's petition for enforcement and directing UP to allow BNSF to provide service to Mission Rail Park); *BNSF Ry. Co.—Terminal Trackage Rights—Kan. City S. Ry. Co. and Union Pac. R.R. Co. (Decision No. 3)*, FD 32760 (Sub-No. 46) (STB served July 5, 2016) (granting BNSF's application for terminal trackage rights over the Rosebluff lead); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 104)*, FD 32760 (STB served Jan. 22, 2009) (granting BNSF's petition for clarification regarding trackage rights over the Cal-P and Elvas-Stockton lines); *Union Pac. Corp.—Control & Merger—S. Pac.*

these petitions, the Board itself has acknowledged UP's escalating efforts to limit competition in a manner that contravenes the foundational principles of the UP/SP merger conditions. *See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.* (*Decision No. 109)*, FD 32760, slip op. at 11 (STB served Jan. 31, 2018) (recognizing that "UP's position" on BNSF's access rights would "contravene the intent and purpose" of the RASA provision at issue); *see also BNSF Ry. Co.—Pet. for Enforcement—Interchange with Savage Tooele R.R. Co.*, FD 32760 (Sub-No. 50), slip op. at 6 (STB served Apr. 28, 2025) (recognizing "the Petition presents questions about whether the merger conditions are being implemented in a way that is consistent with the policies underlying them"). BNSF has also expended significant efforts and resources to privately resolve these issues with UP before BNSF is forced to bring them to the Board.

Additionally, BNSF has had to defend against meritless petitions filed by UP that this Board has recognized seek to "side-step" the critical competition-preserving precepts underlying the merger conditions, including UP's "attempts to interpret the RASA in a manner that would undermine the conditions imposed." *TGS Cedar Port*

Rail Corp., FD 32760 (Sub-No. 49) (*Colorado Materials*) (filed Feb. 15, 2024). *See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, FD 32760 (Sub-No. 48) (*Granite Mountain*) (filed Feb. 8, 2024); *BNSF Ry. Co.— Petition for Enforcement—Interchange with Savage Tooele R.R. Co.*, FD 32760 (Sub-No. 50) (STB served Apr. 28, 2025) (denying UP's request to dismiss BNSF's petition for enforcement to allow BNSF to interchange with Savage Tooele Railroad Company); *BNSF Ry. Co.—Emergency Pet. for Enforcement—Interchange with Salt Lake Garfield & W. Ry.*, FD 32760 (Sub-No. 51) (filed July 7, 2025) (seeking emergency action to prevent UP from blocking BNSF's use of trackage rights for interchange with Salt Lake Garfield & Western Railway).

R.R. LLC—Operation Exemption—In Chambers Cty., Tex., FD 36627 (STB served Apr. 1, 2024). For example, in 2024, the Board denied UP's request to revoke TGS Cedar Port Railroad LLC's (TGSC) exemption to operate private track within an industrial park as a common carrier, with the ultimate goal of precluding BNSF from serving that industrial park. The Board found that UP's petition "does not withstand scrutiny," explaining that the RASA does not authorize UP "to block BNSF's access to an established 2-to-1 point, rendering Park shippers captive to UP, if TGSC provides terminal services within the Park as a common carrier." *Id.*[5]

In other matters, BNSF has been compelled to privately arbitrate disputes with UP, but that too has often proven to be an unsatisfactory remedy. This is particularly true when the issues implicate broader competitive concerns and the public interest policies underlying the merger conditions. Although arbitration may resolve a discrete contractual dispute based on the text of a specific provision, arbitrators are not well-positioned or authorized to assess the larger competitive landscape the Board sought to preserve through the original conditions, and affected customers may not be able to participate in the arbitration. *See BNSF Ry. Co.—Pet. for Enforcement—Interchange with Savage Tooele R.R. Co.*, FD 32760 (Sub-No. 50), slip op. at 5 (STB served Apr. 28, 2025) (denying UP motion to dismiss and demand

[5] Similarly, in its April 28, 2025, decision in *Savage Toole,* the Board held that further inquiry was necessary to determine whether UP structured its transaction with a new shortline railroad to preclude BNSF access to shippers at a new industrial park. *See BNSF Ry. Co.— Petition for Enforcement—Interchange with Savage Tooele R.R. Co.*, FD 32760 (Sub-No. 50) (STB served Apr. 28, 2025).

for arbitration because "a Board proceeding may be a proper forum for a dispute with potentially broad implications concerning conditions imposed in the UP/SP merger").

Over the past 30 years, this ad hoc, petition by petition, and issue by issue approach has proven costly, inefficient, and detrimental to shippers, who lose competitive options given the time it takes for BNSF to litigate and address each problem one at a time. Many issues never reach the Board or result in a temporary resolution that is inadequate to meaningfully preserve or replace the competition lost due to the UP/SP merger. UP's pattern of conduct—both its failure to preserve competition and its active efforts to undermine it—provide reasonable grounds for the Board to review the conditions imposed in connection with the UP/SP merger.[6]

3. UP'S CONDUCT IMPEDING COMPETITION OVER THE YEARS NECESSITATES REVIEW, ENFORCEMENT, AND MODIFICATION OF THE UP/SP MERGER CONDITIONS

The Board has the authority and responsibility to conduct a comprehensive review of UP's compliance with the UP/SP merger conditions. 49 U.S.C. § 11327. The Board has recognized that it is "'the Board's responsibility to determine whether the conditions it has imposed in merger proceedings are being properly implemented in a manner consistent with the public policy underlying those conditions.'" *BNSF Ry. Co.—Pet. For Enforcement—Interchange With Savage Tooele R.R. Co.*, FD 32760 (Sub-No. 50), slip op. at 6 (STB served Apr. 28, 2025) (citing *Union Pac. Corp.*—

[6] "If the Board finds that a complaint states reasonable grounds for investigation and action, it has a duty to investigate the complaint." *Brampton Enterprises, LLC D/B/A Savannah Re-Load v. Norfolk S. Ry. Co.*, NOR 42118, slip op. at 4 (STB served Mar. 16, 2011) (citing 49 U.S.C. § 11701; *Lewis-Simas-Jones Co. v. So. Pac. Co.*, 283 U.S. 654, 662 (1931)).

Control & Merger—S. Pac. Rail Corp. (*Decision No. 108)*, FD 32760, slip op. at 3 (STB served May 5, 2017)).[7]

UP's conduct actively harms rail customers by expressly precluding and degrading competition from BNSF. The examples below illustrate UP's violations of the merger conditions, including UP's abuse of the customer election protocol, UP's failure to uphold its trackage rights obligations, UP's manipulation of the customer siting process, and UP's creation of operational impediments that hinder BNSF's ability to compete. These and other areas of concern underscore the need and establish reasonable grounds for Board review.

3.1 Shippers are subject to UP's abuses of the customer election process.

UP routinely manipulates or mismanages the RASA customer election protocol to improperly deny or unjustifiably delay BNSF's access to shippers, who in turn lose the access to multiple competitors that the RASA's 2-to-1 protocol was designed to preserve. The RASA identifies certain shippers as "2-to-1 shipper facilities" because those shippers were served pre-merger only by both UP and SP. *See* RASA Exhibit A. The RASA establishes a procedure "for further identifying 2-to-1 shipper facilities

[7] The Board has exercised its Section 11327 authority in previous cases, including in a follow-on proceeding to the Conrail joint ownership application by NS and CSX. *See CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.*, FD 33388 (STB served Nov. 7, 2003); *Canadian Nat'l Ry., et al.—Control—Wisc. Cent. Transp. Corp., et al.,* FD 34000 (STB served Sept. 7, 2001), *citing Coach USA, Inc., et al.—Control & Merger Exemption—Gray Line Tours of S. Nev.*, FD 33431 (STB served Aug. 29, 2001) (addressing issues that arose two years after approval of common control); *Mexrail, Inc. v. Union Pac. R.R. Co.*, FD 32980 (STB served July 13, 2000) (invoking section 11327 in establishing compensation terms for use of joint facility originally approved in 1951).

open to BNSF as a result of the conditions imposed in the UP/SP merger." *See* RASA Exhibit E. Under this protocol, BNSF may elect to access customers either directly or via reciprocal switch, and UP is required to respond promptly to such elections.

In recent years, however, UP has unnecessarily prolonged this process and, in some cases, denied election requests on pretextual grounds. In other cases, UP has changed its reasons, given contradictory reasons, or given no reason at all, for its denials. This has forced BNSF to reply to each new ground for denial and thus delayed the election process. As a result, BNSF is often forced to challenge such denials before the Board or through private negotiation. In certain cases, BNSF does not pursue a Board action for a meritorious claim because the affected customer fears retaliation from UP. In many others, the frequency of obstruction and time, effort, and expense required to litigate effectively prevent BNSF from seeking relief or the customer opportunity expires before BNSF can obtain relief.

The Board last conducted a comprehensive review of the RASA's 2-to-1 protocol provisions and related compliance over twenty years ago. *See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight Decision No. 11*), 3 S.T.B. 7 (1998). At that time, BNSF requested the Board adopt its "proposal that it be permitted to serve a facility pending resolution of any dispute over the status of a particular facility." *Id.* at 9. The Board declined, citing "UP's responsiveness under the agreement" as well as the Board's "availability to resolve 2-to-1 disputes expeditiously" as factors that made it "unnecessary that BNSF be permitted to serve shipper facilities pending resolution of disputes." *Id.* As a result, it rejected BNSF's

proposal for interim service. The Board also had no concerns about the burden of proof or the availability of evidence to determine whether a shipper qualified as a 2-to-1 shipper facility. The Board reasonably believed then that the parties and shippers would "be able to draw upon any and all available information to resolve the status of a particular facility," and expected that "[p]ertinent 2-to-1 information should be available to BNSF through its supporting shipper, which should be eager to gain access to an additional rail carrier." *Id.* at 10. But, significantly, the Board also noted, "[i]f it turns out that, under this protocol, UP is consistently refusing to grant access to shippers that are 2-to-1 shippers by involving arbitrations or [the Board's] adjudication as a delaying tactic" it would "further consider BNSF's proposal." *Id.*

Now decades later, that situation has been borne out: UP increasingly denies BNSF's access or employs delay tactics to impede BNSF from timely implementing service. In multiple cases, even after acknowledging BNSF's access rights, UP has delayed service by withholding operating-plan approvals or conditioning such approvals on unjustified and burdensome requirements. And even in situations where BNSF secures 100 percent of a customer's business, UP continues to impose siting requirements and administrative prerequisites for service to those customers that delay the commencement of service, including the execution of leases, industry track agreements, and UP's own track and grade inspections on private property.

For example, in Dayton, Texas, BNSF elected to serve a customer on June 10, 2025; although UP nominally approved access two weeks later, it refused to approve

the operating plan submitted the next month. Instead, it introduced new, unjustified conditions—including demanding that the customer, who had received rail service from UP for years, build a new arrival track if it desired service by BNSF. As an additional example, in Maverick, Texas, UP obstructed BNSF's service to a customer that had acquired a facility for which BNSF already held approved access and an operating plan. After BNSF submitted a new election, UP falsely claimed the customer was not "sited" and purported to revoke BNSF's longstanding approvals for that access—despite the fact that the customer had already shipped with UP. When BNSF produced UP's own invoice proving this, UP shifted to a new pretext, asserting the shipment did not "count" because it involved coal left by the prior tenant. UP's baseless delays have since prevented BNSF from serving the customer.

UP's gamesmanship also shifts unjustified costs to customers. For example, after BNSF filed its election on March 4, 2022, to serve a customer in Fruita, Colorado, UP refused to consider BNSF service unless the customer contacted UP directly (a baseless demand)—despite BNSF's right to make the election under the RASA. When BNSF objected, UP issued only a conditional approval requiring the customer to sign multiple UP lease agreements for the lead track, and then layered on additional demands for track upgrades at the customer's expense, even though UP was already serving other shippers over the same track. As a result of UP's manufactured delays, the customer incurred significant transload costs.

Dozens of other examples of UP's delay and refusal to grant access abound. Moreover, after nearly thirty years, UP has struggled or been unable to produce

relevant "2-to-1 information" from the 1990s. BNSF is often required to provide *prima facie* evidence of UP and SP's pre-merger operations because of UP's failure to maintain appropriate records. Over time, this information will be increasingly difficult to access. UP's delay tactics, unexplained denials of access, and failure to maintain or provide relevant UP/SP records improperly shift the burden of proof onto BNSF. Over the past three decades, BNSF has submitted approximately 200 customer elections to UP. In over a third of those cases, UP denied or delayed BNSF's access. As a result of UP's tactics, BNSF lost significant customer contracts—leaving those shippers without competitive options and effectively limiting them to UP as their sole provider. With the benefit of a complete discovery record, the Board should adopt an enhanced customer-election protocol that fully addresses the range of obstacles BNSF encounters in securing competitive access.

3.2 UP's conduct with respect to trackage rights agreements deprives rail shippers of competitive service.

Across various contexts, UP consistently imposes obstacles in its administration and negotiation of trackage rights agreements with BNSF that undermine shippers' access to competitive services and flout obligations under the UP/SP merger conditions.

1996 Trackage Rights Agreements. A prime illustration of UP's obstructive conduct and its failure to engage in fair and effective competition is its longstanding refusal to update the parties' existing trackage-rights agreements. The implementing trackage-rights agreements (TRAs) associated with the initial UP/SP Merger Settlement Agreement have not been comprehensively updated since their

execution in 1996. *See Union Pac. Corp—Control & Merger—S. Pac. Rail Corp*, FD 32760, Applicants' Submission of Final Settlement Agreement and Implementing Agreements with BNSF (June 28, 1996). In several respects, the TRAs no longer accurately reflect the parties' rights and obligations as subsequently amended by the Board and the RASA. Updating the TRAs is essential to ensure consistency with the RASA, relevant STB rulings, and related matters. Yet, UP has repeatedly resisted BNSF's requests over the years to make these necessary updates.

As a result, UP's current approach creates significant ambiguity, requiring outdated provisions from the 1996 TRAs to be read together with the terms reflected in the RASA and the Board's decisions to determine the governing conditions. This lack of clarity has caused continuing problems: UP employees have denied BNSF access based on superseded language in the 1996 TRAs. The resulting confusion imposes unnecessary inefficiencies and administrative burdens on BNSF and its personnel, harming BNSF's ability to effectively provide a timely competitive option for customers. Employees of both carriers as well as customers should be able to rely on a single, comprehensive, and accurate set of documents clearly outlining each party's trackage rights obligations and entitlements. Accordingly, the Board should order UP to promptly enter into negotiations with BNSF to update the TRAs to bring all governing documents into alignment with STB rulings and the RASA.

New Trackage Rights Agreements. UP has also repeatedly delayed in entering into new TRAs consistent with the RASA. Instead, UP has even attempted to strong-arm BNSF into executing new agreements—inconsistent with the terms of

the RASA and delaying BNSF's access—whenever BNSF seeks to directly access 2-to-1 points where BNSF does not currently have trackage rights to access.

BNSF has experienced these issues in the context of omnibus points and elsewhere. Section 8(i) of the RASA (the "Omnibus Clause") reflects the intent to preserve the competition that existed before the UP/SP merger by allowing BNSF to provide competitive service to shippers for whom UP and SP were the only options. For shippers that are located at a 2-to-1 point but not accessible to BNSF through the existing UP/SP trackage rights, UP and BNSF are required to agree on trackage rights or other "mutually acceptable means" to allow BNSF to provide competitive service, and they were expected to do so promptly. However, UP has abused this process, using it as a delay tactic to prevent BNSF from offering competitive service at omnibus points to the detriment of customers. Indeed, when BNSF first raised similar delay issues to the Board in *Oversight Decision No. 21*, 5 S.T.B. at 1182, the Board mandated "that UP *must expeditiously* address requests for access and service proposals." *Id.* (emphasis added).

UP has not abided by that command. When BNSF has requested trackage rights under the Omnibus Clause, UP has stalled. As a recent example, earlier this year, BNSF and UP agreed that three facilities in Utah—Burningham Enterprises (Provo Industrial Lead), Bridgesource LLC (Evona Lead), and David Grant Hay (Evona Lead)—are located at 2-to-1 points, and they also agreed that existing BNSF trackage rights did not extend to those locations. When BNSF informed UP of its intent to enter into a trackage rights agreement to directly access these three

facilities, UP insisted that the parties negotiate new trackage rights agreements altogether, as opposed to simply adhering to the terms of the existing UP/SP agreements.[8] As a result, BNSF cannot provide these customers with the assurances they need to confidently plan for 2-to-1 competitive service. UP's delays create uncertainty about BNSF's ability to access these facilities, leaving customers questioning whether service will materialize and preventing BNSF from making firm commitments.

UP engages in similar obstructive tactics elsewhere. In other contexts, UP often proposes terms—whether related to payment or other aspects—that are inconsistent with the compensation and conditions for trackage rights agreements mandated by the Board. A clear illustration of UP's tactics was its recent interference with BNSF's access to the Woods Cross Industrial Lead to reach Silver Eagle and Woods Cross, Utah. Just like UP, BNSF has used the Woods Cross Industrial Lead to directly access Silver Eagle and the other Woods Cross customers for many years, serving as a replacement for the competition that would have otherwise been lost with the UP/SP merger in 1996. Indeed, under the RASA, BNSF must have "the same access as UP" to Woods Cross shippers and BNSF must be able to elect to

[8] UP's current position is inconsistent with the trackage rights agreement that UP and BNSF executed for BNSF direct service to a shipper facility located at the omnibus point of Labadie, Missouri. That agreement incorporated the gross ton mile ("GTM") rates and other terms set forth in the RASA. UP's position is also contradictory to Section 9(a) of the RASA which provides: "The compensation for operations under this Agreement shall be set at the [GTM] levels shown in the following table as subsequently indexed under the 1995 Agreement."

directly serve those customers. RASA §§ 1(b), 1(c).[9] Only in late 2023 did UP object to that long-standing BNSF service from the Woods Cross Industrial Lead. At that time, UP contested BNSF's access to Woods Cross. UP claimed that BNSF's commercial access to Silver Eagle from the Woods Cross Industrial lead was limited to a reciprocal switch, which denied BNSF the same direct service access as UP.

UP further demanded that BNSF execute a new trackage rights agreement to maintain access via the lead. After significant back-and-forth, UP proposed a draft trackage rights agreement for BNSF to serve customers on the Woods Cross Industrial Lead in Utah that deviated significantly from the trackage rights agreements under the UP/SP conditions. UP rejected BNSF's attempt to harmonize the Woods Cross agreement with the other UP/SP TRAs, insisting on key terms including rates that differ from the UP/SP TRAs. The TRA that UP proposed for BNSF to serve customers on the Cedar Bayou Industrial Lead in Texas similarly deviated from the RASA terms, with UP once again attempting to strong-arm BNSF into accepting new and different terms. UP's efforts to consistently rewrite TRA terms not only undermine the uniform framework the Board established under the UP/SP merger conditions but also create unnecessary obstacles that complicate BNSF's ability to timely serve customers efficiently and maintain competitive service.

Additionally, despite customers requesting service from BNSF, UP's delay in negotiating and reaching a "mutually acceptable means" has deprived customers of the competitive access promised by the UP/SP merger conditions. The Board must

[9] Woods Cross, Utah is listed in the RASA, Ex. A, as a "2-to-1" Point.

ensure that UP cannot use undue delay tactics, including insisting on new trackage rights terms, to obstruct BNSF's access. The Board should require UP to adhere to the terms contained in UP/SP template trackage rights agreements when BNSF requests access to omnibus points or other points that BNSF should be able to access via the RASA. The Board should also require UP to respond to such requests in a fixed amount of time, since UP has disregarded the Board's mandate to do so "expeditiously." *Oversight Decision No. 21*, 5 S.T.B. at 1182.

3.3 The customer siting process limits shippers' access to competitive rail service.

The existing customer siting process places additional constraints on BNSF's ability to compete and to replace the competition lost through the UP/SP merger. The RASA contains no provision requiring UP to notify or communicate with BNSF regarding new customers at a 2-to-1 point. Nor does it establish any requirement or process for UP to inform or coordinate with BNSF when a potential customer expresses interest in locating a new shipper facility on a line on which BNSF holds trackage rights. Further, the RASA does not contain any provision requiring UP to advise potential new shippers that they may have a right to BNSF service. This lack of communication enables UP to approach potential customers unilaterally, often securing long-term marketing agreements or structuring infrastructure investments in ways that effectively exclude BNSF from competing for the business. As a result, BNSF is on an uneven competitive playing field with UP when prospective shipper facilities begin initial discussions with UP. UP engages in a variety of techniques to "lock in" these customers before the customer even knows that competitive BNSF

service is available. UP does this through phased construction plans, pricing strategies, and other commercial arrangements that preclude BNSF competition and access. In some cases, UP appears to steer customers toward sites not served by BNSF and in other cases UP fails to inform the prospective shipper that BNSF has the right to serve the shipper as well.

To counteract these practices, BNSF works to proactively engage with and educate potential customers early in the siting process to ensure they understand their rights of access to BNSF under the UP/SP merger conditions. On the other hand, BNSF (unlike UP) is required to notify UP well in advance of its intentions to serve new shippers to confirm BNSF's election per the RASA protocols. This requirement creates a significant informational and competitive imbalance: while UP can court and contract with potential customers with no notice to BNSF, BNSF effectively must disclose its business plans to UP each time. This asymmetry harms customers and fails to preserve the competition that would have existed had UP and SP not combined. A full evidentiary record will equip the Board to implement comprehensive reforms that remedy the competitive harm and informational imbalance inherent in the current customer siting process.

3.4 UP deliberately impedes BNSF's operational rights.

UP's obstructive conduct also includes the imposition of operational and dispatching challenges for BNSF and its shippers. For example, UP has restricted BNSF's access to infrastructure that BNSF has funded pursuant to the RASA capital

investment provisions. *See* RASA § 9(c)(v).[10] Despite the RASA's requirement that BNSF be able to utilize the infrastructure it has jointly invested in to serve new shipper facilities and provide competitive rail service, *see id.*, UP has repeatedly hindered BNSF's ability to use these capital assets. Examples of UP's exclusionary conduct with respect to capital investment and infrastructure include: (i) Southton Siding on the Rockport Subdivision in Texas, where UP repeatedly reserves the only siding on the branch for its own non-operating uses such as storage; (ii) the Eagle Pass U.S./Mexico border crossing, where UP denies BNSF access to the Slot Track to give preference to its own trains; and (iii) the Baytown Branch in Texas, where UP claimed exclusive use of new sidings despite the RASA and Dispatching Protocol's provisions permitting BNSF use.

UP further impedes BNSF's operations through discriminatory dispatching—in contravention of the RASA Dispatching Protocols. *See* RASA Exhibit D. As stipulated in the RASA, UP is required to dispatch trains in accordance with the established Dispatching Protocols, providing equal treatment—without discrimination in terms of promptness, service quality, or efficiency—compared to the traffic of the owning carrier. *See id.* UP instead has instituted limited operating windows applicable to BNSF traffic at many locations that deviate from the UP/SP

[10] RASA § 9(c)(v) provides: "If both UP/SP and BNSF intend to serve New Shipper Facilities located subsequent to UP's acquisition of control of SP as authorized by Sections l(b), 3(c), 4(b), 5(b), 6(d), and 8(i) of this Agreement, they shall share equally in any capital investment in such connections and sidings and siding extensions or other support facilities required by both UP and BNSF to provide rail service to such New Shipper Facility."

Dispatching Protocol, resulting in dispatching practices that favor UP's own traffic over BNSF's. Trains are not dispatched on a first-come, first-served basis, in direct violation of the protocol's neutrality requirement.

For example, at Eagle Pass border crossing, UP fails to give parity in operations to BNSF's traffic going to Mexico. UP instead prioritizes its own traffic, at the expense of BNSF's customers. BNSF observed significant disruption in 2024, with UP's misconduct requiring customers to make a Hobson's choice: (1) use UP for service to Mexico (thereby losing a competitive option) or (2) lose access to the Mexican market altogether. Indeed, the Board has expressly recognized concerns relating to shipping to the Mexican market, noting "[t]he Board has been monitoring reports of rail service issues in Mexico affecting rail traffic to and from the United States . . . ." *See* Letter from Chairman R. Primus to U.S. Secretary of Agriculture, U.S. Trade Representative, and U.S. Congressional Committees (Sept. 20, 2024). UP's failure to follow its parity obligations exacerbates these challenges for shippers.

Further, UP repeatedly fails to honor its parity obligations at the Baytown Branch in Texas. While UP should dispatch its traffic in a manner that permits BNSF to also serve its customers, it instead routinely engages in disruptive conduct such as holding UP trains on the single main line, prohibiting BNSF from moving traffic altogether. BNSF's own data shows the impact of UP's disruptions: BNSF's performance metrics for on-time deliveries in the Baytown Branch fall significantly below the average for its network. Thus, UP's preference for its own trains comes at the expense of customers who suffer service disruptions and are deprived of BNSF's

competitive service. This practice erodes customer confidence in BNSF's ability to serve as a competitive option and to replace the competition lost from the UP/SP merger.

The Board addressed the parties' dispatching practices in 1998, in *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight Decision No. 13*), 3 S.T.B. 987 (1998). In that decision, the Board echoed BNSF's position that "it and UP ought to have joint dispatching facilities." *Id.* at 995 n.32. However, at that time, the Board concluded there was "no reason why BNSF and UP should not be able to work out these sorts of issues privately." *Id.* at 996 n.34. Recognizing that issues may continue to arise from UP's conduct, the Board made clear that

> [i]f for some reason BNSF continues to have complaints, however, and wants us to intervene, it should submit pleadings: (1) that demonstrate, with as much evidentiary detail as necessary, the existence of the problems it alleges, and that further demonstrate that these problems were either created or exacerbated by the merger; (2) that set forth, at length, the precise remedies it would have us impose; and (3) that explain, with as much detail as circumstances require, why it is that the desired remedies are necessary.

Id.

Efforts to expeditiously resolve these issues "privately" have failed to hold UP accountable, and UP has continued to flagrantly disregard its obligations to grant BNSF impartial access to customers. By engaging in unfair dispatching practices, UP deprives customers of the efficient and competitive rail service they rely on. With the benefit of a complete discovery record, BNSF expects to identify the specific remedies needed to address UP's operational obstacles, such as an enhanced dispatch protocol or joint dispatch facilities. At this stage, however, the issues BNSF has

raised provide reasonable grounds for reviewing UP's operational practices with respect to BNSF's ability to provide competitive service.

4. THE BOARD SHOULD ISSUE AN ORDER SETTING A PROCEDURAL SCHEDULE

For every instance of UP obstructive tactics that reaches the Board, there are many other instances in which UP precludes BNSF from competing or significantly delays customers from receiving the service they seek from BNSF, all outside of the Board's visibility. The Board sees only a fraction of the underlying picture, and a more complete record is essential for the Board to adequately exercise its continuing oversight authority to ensure in the public interest that all of the UP/SP merger conditions are effective.

BNSF accordingly requests that the Board enter a procedural order that permits the parties and interested third parties to undertake discovery regarding the efficacy of the UP/SP merger conditions and to participate in the proceeding. This will allow BNSF—as the "guardian" of those merger conditions—to present to the Board its case-in-chief and requests for remedies, including necessary modifications to the RASA, on a fully developed evidentiary and expert record.

Discovery will provide the Board with a record documenting UP's repeated delay tactics and wrongful denials of access and other condition violations that would include: (i) information from shippers and governmental agencies relating to the loss of competition; (ii) internal documents and data from UP regarding its violations of the conditions; and (iii) analysis from economists and other experts on the extent of the lost competition due to UP's noncompliance and on the need for modifications to

the merger conditions to ensure that the pre-merger competition between UP and SP is fully preserved going forward.

With the benefit of a full discovery record, BNSF will request that the Board issue an order enforcing and modifying its UP/SP merger conditions. Therefore, BNSF requests that the Board issue an order setting the proposed procedural schedule that provides for party-directed discovery as authorized under 49 C.F.R. § 1114.21 *et seq*., and the submission of evidence and argument by any interested party. The perspectives of shippers as to whether the promises made by UP under the merger conditions have been met are of particular importance. Neither BNSF nor UP can provide that perspective. BNSF is simultaneously filing a motion for protective order to govern the exchange and submission of confidential material in this proceeding.

Proposed Procedural Schedule:

Date	**Event**
D	Board issues decision setting procedural schedule
D + 90	Close of written discovery
D + 111	Last day for depositions
D + 132	BNSF Opening Statement and Evidence (including expert reports) due
D + 146	Submission of statements and evidence from third parties
D + 167	UP's Reply Statement and Evidence (including expert reports) due
D + 188	BNSF Rebuttal Statement due
At the Board's discretion	Public Hearing

5. CONCLUSION

BNSF requests that the Board adopt the procedural schedule above to permit the development of a full record of fact and expert testimony to review, enforce, and modify the UP/SP merger conditions, as necessary, to further the public interest. Without Board intervention, UP will continue to undermine the UP/SP merger conditions the Board imposed thirty years ago and deprive shippers of the effective two-carrier competition to which they are entitled.

VERIFICATION

I, Olivia Power, BNSF Assistant Vice President, Contracts and Joint Facilities, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Petition for Review.

/s/ *Olivia Power*

Olivia Power

Executed November 28, 2025.

CERTIFICATE OF SERVICE

I, hereby certify that on this 28th day of November, 2025, I have caused the foregoing BNSF Railway Company's Petition for Review to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ *Drew Tulumello*

Drew Tulumello

Attorney for BNSF Railway Company

EXHIBIT A

Restated and Amended Settlement Agreement ("RASA")

03/01/02

RESTATED AND AMENDED AGREEMENT

This Restated and Amended Agreement ("Agreement") is entered into this ___ day of March, 2002, between UNION PACIFIC RAILROAD COMPANY ("UP"), a Delaware corporation, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF"), a Delaware corporation.

WITNESSETH:

WHEREAS, UP and BNSF entered into an agreement dated September 25, 1995, as amended by supplemental agreements dated November 18, 1995, and June 27, 1996 (collectively, the "1995 Agreement"), in connection with UP's acquisition of Southern Pacific Rail Corporation and its affiliates ("SP") in Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company;

WHEREAS, the Surface Transportation Board ("STB") approved the common control and merger of UP and SP in Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and in so doing imposed certain conditions on UP and SP, including, as modified by the STB, the April 18, 1996 settlement agreement among UP, BNSF and the Chemical Manufacturers Association (the "CMA Agreement");

WHEREAS, as a part of its oversight of the UP/SP merger in Finance Docket Nos. 32760, 32760 (Sub-No. 21), and 32760 (Sub-No. 26), the STB has modified and clarified certain of the conditions it imposed in Decision No. 44;

WHEREAS, UP and BNSF entered into a Term Sheet Agreement dated February 12, 1998 (the "Term Sheet Agreement"), pursuant to which UP and BNSF agreed to the joint ownership of the line of railroad between Dawes, TX and Avondale, LA, which joint ownership was effected by separate agreement dated September 1, 2000 (the "TX-LA Line Sale Agreement");

WHEREAS, UP and BNSF have reached agreement with respect to the implementation of the conditions imposed by the STB on the UP/SP merger, as modified and clarified, and certain other matters relating to their rights and obligations under the 1995 Agreement, the CMA Agreement, the Term Sheet Agreement and the TX-LA Line Sale Agreement; and

WHEREAS, UP and BNSF now wish to amend and restate the 1995 Agreement to incorporate the conditions imposed by the STB on the UP/SP merger (including the CMA Agreement, as modified by the STB) and the agreements they have reached relating to those conditions and other related matters.

NOW, THEREFORE, the parties agree to amend and restate the 1995 Agreement as follows:

DEFINITIONS

For purposes of this Agreement, the following definitions and terms shall apply:

Shipper Facilities shall mean all existing or new shipper or receiver facilities, including transload facilities as well as rail car storage and car service and repair facilities not owned, leased or operated by UP.

"2-to-1" Points shall mean all geographic locations at which at least one "2-to-1" Shipper Facility is located. Such points include, without limitation, the points listed in Section 8(i) of and on Exhibit A to this Agreement. The boundaries for such "2-to-1" Points shall be deemed to

include all areas within the switching limits of the locations as described in Section 9(g) of this Agreement.

"2-to-1" Shipper Facilities shall mean all Shipper Facilities that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the 1995 Agreement was executed, regardless of how long ago the shipper or receiver at that facility may have shipped or received, or whether the shipper or receiver at that facility ever shipped or received, any traffic via either UP or SP. The "2-to-1 Point Identification Protocol" between the parties attached hereto as Exhibit E shall govern the process for identifying "2-to-1" Shipper Facilities open to BNSF as a result of the conditions imposed on the UP/SP merger.

New Shipper Facilities shall mean: (i) existing Shipper Facilities constructing trackage for accessing rail service for the first time; and (ii) newly constructed rail-served Shipper Facilities. New Shipper Facilities shall also mean previously-served Shipper Facilities that begin to ship by rail again where (i) there has been a change of owner or lessee, and (ii) the use of the facility is actually different in nature and purpose from the facility's prior use (e.g., there has been a change in the type of products shipped from or received at the facility). New Shipper Facilities shall not include expansion of or additions to an existing rail-served Shipper Facility, but do include (1) Shipper Facilities which, on September 25, 1995, were being developed or for which land had been acquired for that purpose in contemplation of receiving rail service by both UP and SP, and (2) Transload Facilities located after September 11, 1996, including those owned or operated by BNSF.

Trackage Rights Lines shall mean the lines over which BNSF has been granted trackage rights pursuant to this Agreement, but shall not include any other lines over which UP/SP grants

BNSF trackage rights ("Overhead Trackage Rights") solely (i) to facilitate the parties' operation over Trackage Rights Lines, (ii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and points listed or described in Section 8(i) of this Agreement, or (iii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and a build-in/build-out line pursuant to Sections 4(a), 6(c) and 8(l) of this Agreement. The mutually-agreed upon junction point will be selected with the objective of minimizing the operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service. BNSF acknowledges that it shall not have the right to serve any existing or New Shipper Facility on a line over which BNSF has been granted Overhead Trackage Rights unless such right is specified in this Agreement or in any agreement implementing the Overhead Trackage Rights or unless BNSF has the right to serve a build-in/build-out line on such Overhead Trackage Rights line pursuant to the CMA Agreement or the conditions imposed on the UP/SP merger. All Overhead Trackage Rights Lines, as of the date of the execution hereof, are listed in Exhibit F to this Agreement, which exhibit may be amended and replaced from time to time by a new exhibit signed and dated by the parties. New Shipper Facilities shall be deemed to be "on" a Trackage Rights Line if the facility is either (1) adjacent to a Trackage Rights Line or (2) adjacent to a spur, an industrial track, or a yard that is itself served by such Trackage Rights Line. New Shipper Facilities are not "on" a Trackage Rights Line if they can be accessed only via a 49 U.S.C. 10901 "line of railroad" which is not a Trackage Rights Line.

Transload Facilities shall mean Shipper Facilities other than automotive or intermodal facilities or team tracks where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur) as defined by the STB in its decisions

in Finance Docket No. 32760. An "Existing Transload Facility" is a Transload Facility which was in existence on September 25, 1995.

1. **Western Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Denver, CO and Salt Lake City, UT;
- UP's line between Salt Lake City and Ogden, UT;
- SP's line between Ogden and Little Mountain, UT;
- UP's line between Salt Lake City and Alazon, NV;
- UP's and SP's lines between Alazon and Weso, NV;
- SP's line between Weso, and Oakland, CA via SP's line between Sacramento, CA and Oakland referred to as the "Cal-P" (subject to traffic restrictions as set forth in Section 1(g));
- Overhead Trackage Rights on SP's line between Binney Junction, CA and Roseville, CA in the vicinity of SP MP 106.6;
- SP's line between Elvas (Elvas Interlocking) and Stockton, CA (subject to traffic restrictions as set forth in Section 1(g) and also excluding any trains moving over the line between Bieber and Keddie, CA purchased by BNSF pursuant to Section 2(a) of this Agreement);
- UP's line between Weso and Stockton, CA; and
- SP's line between Oakland and San Jose, CA.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload

Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also receive the right to interchange with: the BHP Nevada Railroad Company at Shafter, NV; the Utah Railway Company at Utah Railway Junction, UT; Grand Junction, CO; and Provo, UT; the Utah Central Railway Company at Ogden; the Salt Lake, Garfield and Western at Salt Lake City; and the Salt Lake City Southern Railroad Company at Salt Lake City. BNSF shall also receive the right to utilize in common with UP/SP, for normal and customary charges, SP's soda ash Transload Facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash Transload Facilities in Ogden and Salt Lake City and to establish its own soda ash Transload Facilities along the Trackage Rights Lines. BNSF shall have the same access as UP to all "2-to-1" Shipper Facilities and "2-to-1" Points between Salt Lake City, UT, and SP MP 755.1 north of Woods Cross, UT.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections,

sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 1(c) above, of the manner by which it proposes such service be provided and

the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks, NV with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of SP's Sparks intermodal facility is required to accommodate the combined needs of UP/SP and BNSF, then the parties shall share in the cost of such expansion on a pro rata basis allocated on the basis of the relative number of lifts for each party in the 12-month period preceding the date construction begins. If for any reason UP/SP vacates its Sparks intermodal facility, BNSF (i) may vacate the facility and independently establish one of its own, or (ii) shall be permitted by UP/SP to continue to occupy the Sparks facility upon entry into an agreement with UP/SP containing normal and customary terms and conditions (including, without limitation, rental) for the use of similar facilities. If UP elects to offer the Sparks intermodal ramp property for sale to a third party and/or receives an offer UP is willing to accept,

UP will offer to sell the property to BNSF on the same terms and conditions as are applicable to the third party. BNSF shall have thirty (30) days in which to advise UP whether or not it will buy the property on those terms. In the event BNSF declines to buy the property on those terms or fails to advise UP of its intentions within thirty (30) days, BNSF's right of first refusal will be extinguished, and UP may sell the property to the third party. BNSF will then be required to vacate the property within six (6) months, and UP's obligation to furnish BNSF with intermodal terminal services and access to a UP intermodal facility in the Sparks/Reno area will be extinguished.

(f) Except as otherwise herein provided, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) BNSF may operate only the following trains on SP's "Cal-P" line between Sacramento and Oakland: (i) intermodal and automotive trains composed of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration and (ii) one overhead through manifest train of carload business per day in each direction. These BNSF manifest trains may be either I-5 Corridor or Central Corridor trains. On the Donner Pass line between Sacramento and Weso, BNSF may operate only intermodal and automotive trains as described in clause (i) and one overhead through manifest train of carload business per day in each direction. The manifest trains must be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP manifest trains. BNSF may use helpers on these trains only if comparable UP/SP manifest trains use helpers; BNSF must provide the helper service. The restrictions set forth in this section do not apply to local trains serving Shipper Facilities to which BNSF has

access on the identified lines, and such trains shall not be considered in determining whether BNSF is in compliance with such restrictions. If UP grants its prior concurrence, BNSF's overhead through manifest trains shall be allowed to set out and pick up traffic to or from intermediate points on the identified lines.

(h) At BNSF's request, UP/SP shall provide train and engine crews and required support personnel and services in accordance with UP/SP's operating practices necessary to handle BNSF trains moving between Salt Lake City and Oakland. UP/SP shall be reimbursed for providing such employees on a cost plus reasonable additives basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense. BNSF must also give UP/SP reasonable advance notice of its need for employees in order to allow UP/SP time to have adequate trained crews available. All UP/SP employees engaged in or connected with the operation of BNSF's trains shall, solely for purposes of standard joint facility liability, be deemed to be "sole employees" of BNSF. If UP/SP adds to its labor force to comply with a request or requests from BNSF to provide employees, then BNSF shall be responsible for any labor protection, guarantees or reserve board payments for such incremental employees resulting from any change in BNSF operations or traffic levels.

(i) UP/SP agree that their affiliate Central California Traction Company shall be managed and operated so as to provide BNSF non-discriminatory access to industries on its line on the same and no less favorable basis as provided UP and SP.

(j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) if UP/SP

subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) at such time as BNSF begins to use the line for domestic high cube double stacks.

(k) BNSF agrees to waive its right under Section 9 of the Agreement dated April 13, 1995, and agreements implementing that agreement to renegotiate certain compensation terms of such agreement in the event of a merger, consolidation or common control of SP by UP. BNSF also agrees to waive any restrictions on assignment in the 1990 BN-SP agreement covering trackage rights between Kansas City and Chicago.

2. **I-5 Corridor**

(a) UP/SP shall sell to BNSF UP's line between Bieber and Keddie, CA. UP/SP shall retain the right to use the portion of this line between MP 0 and MP 2 for the purpose of turning equipment. UP/SP shall pay BNSF a normal and customary trackage rights charge for this right.

(b) BNSF shall grant UP/SP overhead trackage rights on BN's line between Chemult and Bend, OR for rail traffic of all kinds, carload and intermodal, for all commodities.

(c) The parties will, under the procedures established in Section 9(f) of this Agreement, establish a proportional rate agreement incorporating the terms of the "Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor" attached hereto as Exhibit B.

3. **Southern California Access**

(a) UP/SP shall grant access to BNSF to serve all "2-to-1" Shipper Facilities in Southern California at the points listed on Exhibit A to this Agreement.

(b) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Riverside and Ontario, CA; and

- UP's line between Basta, CA and Fullerton and La Habra, CA.

(c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement.

(d) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(e) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow (including both legs of the wye) and Mojave, CA.

(f) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall work with BNSF to facilitate access by BNSF to the Ports of Los Angeles and Long Beach, CA. Other than as legally precluded, UP/SP shall (a) extend the term of the present agreement dated November 21, 1981, to continue until completion of Alameda Corridor, (b) amend that agreement to apply to all carload and intermodal traffic, and (c) grant BNSF the right to invoke such agreement to provide loop service utilizing UP's and Santa Fe's

lines to the Ports at BNSF's option to allow for additional operating capacity. UP/SP's commitment is subject to available capacity. Any incremental capacity related projects necessary to accommodate BNSF traffic shall be the sole responsibility of BNSF.

(h) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 3(d) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

4. **South Texas Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Ajax and San Antonio, TX;

- UP's line between Houston (Algoa) and Brownsville, TX (with parity and equal access to the Mexican border crossing at Brownsville);
- UP's line between Odem and Corpus Christi, TX;
- UP's line between Ajax and Sealy, TX;
- SP's line between San Antonio and Eagle Pass, TX (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Craig Junction and SP Junction, TX (Tower 112) via Track No. 2 through Fratt, TX;
- SP's line between SP Junction (Tower 112) and Elmendorf, TX;
- SP's line in San Antonio between SP Tower 105 and SP Junction (Tower 112);
- Overhead Trackage Rights on SP's Port Lavaca Branch, between Placedo and Port Lavaca, TX, for the purpose of reaching a point of build-in/build-out to/from Union Carbide Corporation's ("UCC") facility at North Seadrift, TX. UP/SP shall permit BN/Santa Fe or UCC to construct and connect to the Port Lavaca Branch, at their expense, a build-in/build-out line. BN/Santa Fe or UCC shall have the right to purchase for net liquidation value all or any part of the Port Lavaca Branch that UP/SP may abandon;
- UP's line between Kerr (connection to Georgetown RR) and Taylor, TX;
- Overhead Trackage Rights on UP's line between Round Rock and McNeil, TX for the purpose of interchanging with the Capital Metro Transit Authority, its successors or agent;

- UP's line between Temple and Waco, TX;
- UP's line between Temple and Taylor, TX;
- UP's line between Taylor and Smithville,TX; and
- SP's line between El Paso and Sierra Blanca, TX.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement and City Public Service Board of San Antonio, Texas Elmendorf facilities listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to interchange with: the Texas Mexican Railway Company at Corpus Christi and Robstown, TX; the Georgetown Railroad at Kerr; Transportacion Ferroviaria Mexicana ("TFM") at Brownsville (Matamoros, Mexico); Ferrocarril Mexicano ("FXE") at Eagle Pass; and the operator of SP's former line between Giddings and Llano at McNeil, TX. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP had on September 25, 1995. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the TFM. UP will designate a yard in Brownsville for sale to BNSF at such time as BNSF establishes its own trackage rights operations into Brownsville and at such time as the connection between UP and SP as a part of the Brownsville

relocation project is completed. In the event UP/SP determines to cease operations in the SP East Yard at San Antonio, TX, UP/SP will give first consideration to BNSF for taking over operation of the East Yard pursuant to a mutually-agreeable arrangement.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and

auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 4(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(f) In lieu of BNSF's conducting actual trackage rights operations between Houston, Corpus Christi, Harlingen and Brownsville, TX (including TFM interchange), UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement. UP/SP shall accept, handle, switch and deliver traffic moving under haulage without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/SP's account.

(g) UP/SP shall sell to BNSF UP's line between Dallas and Waxahachie, TX with UP retaining trackage rights to exclusively serve local industries on the Dallas-Waxahachie line.

(h) Upon the effectiveness of the trackage rights to Eagle Pass under this section, BNSF's right to obtain haulage services from UP/SP to and from Eagle Pass pursuant to the agreement between BNSF and SP dated April 13, 1995 and subsequent haulage agreement between those parties shall no longer apply, provided BNSF shall continue to have the right to use trackage at or near Eagle Pass as specified in that agreement for use in connection with trackage rights under this Agreement.

5. **Eastern Texas - Louisiana Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston and Iowa Junction in Louisiana, which trackage rights have been amended by the Term Sheet Agreement and the TX-LA Line Sale Agreement implementing UP's and BNSF's joint ownership of SP's line between Dawes, TX and Avondale, LA;

- SP's line between Beaumont and Port Arthur, TX;
- SP's line between Dayton and Baytown and East Baytown, TX;
- SP's Channelview Spur which connects to the SP's line between Houston and Iowa Junction near Sheldon, TX for the purpose, inter alia, of reaching a point of build-in/build-out to/from the facilities of Lyondell Petrochemical Company and Arco Chemical Company at Channelview, TX. UP/SP shall permit BN/Santa Fe or one or both shippers to construct and connect to SP's Channelview Spur, at their expense, a build-in/build-out line. BN/Santa Fe or the shippers shall have the right to purchase for net liquidation value all or any part of the Channelview Spur that UP/SP may abandon;
- SP's line between Mallard Junction and Harbor, LA;
- SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97);
- UP's Main Line No. 1 from UP MP 14.29 to MP 14.11 including crossover to SP's main line and UP's MP 10.38 to MP 10.2; and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, LA intermodal facility (approximately UP MP 9.2).

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement,

and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles, Rose Bluff and West Lake, LA, and traffic of shippers open to SP and KCS at West Lake Charles. BNSF shall also have the right to interchange with: the Acadiana Railway Company at Crowley, LA; and the Louisiana & Delta Railroad, Inc. at Lafayette, Raceland and Schreiver, LA. BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction, LA.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 5(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish

for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) UP/SP shall grant BNSF the right to use SP's Bridge 5A at Houston, Texas.

(f) Except as otherwise provided herein, trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall sell to BNSF UP's Main Line No. 1 between MP 14.11 and 10.38, UP's Westwego intermodal terminal, SP's old Avondale Yard (together with the fueling and mechanical facilities located thereon) as shown on Exhibit C; and SP's Lafayette Yard.

6. **Houston, TX-Valley Junction, IL Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston, TX and Fair Oaks, AR via Cleveland and Pine Bluff, AR;
- UP's line between Fair Oaks and Bridge Junction, AR;
- SP's line between Brinkley and Briark, AR;
- UP's line between Pine Bluff and North Little Rock, AR
- UP's line between Houston and Valley Junction, IL via Palestine, TX;
- SP's line between Fair Oaks and Illmo, MO via Jonesboro, AR and Dexter Junction, MO; and

- UP's line between Fair Oaks and Bald Knob, AR.

(b) In lieu of conducting actual operations between Pine Bluff and North Little Rock, AR, UP/SP agrees, upon request of BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement.

(c) BNSF shall have the right to transport unit coal trains (i) over the Trackage Rights Lines to and from a point of build-in/build-out to and from Entergy Services, Inc.'s plant at White Bluff, AR if and when such a build-in/build-out line is constructed by an entity other than UP/SP to connect such plant with an SP line, and (ii) to and from Entergy Services, Inc.'s plant at White Bluff (1) by entering and exiting the Trackage Rights Lines at Jonesboro and Hoxie, AR, respectively, and/or (2) by utilization of BNSF's line via Memphis, TN.

(d) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. In addition to the other restrictions and limitations set forth herein, as to UP's and SP's lines between Memphis and Valley Junction, IL: (1) BNSF shall not have the right to enter or exit at intermediate points north of Bald Knob and Fair Oaks, AR; and (2) BNSF traffic is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana. These two restrictions do not apply to traffic moving to or

from Shipper Facilities in the Houston-Memphis-St. Louis Corridor to which BNSF has access pursuant to this Section 6(d) or Section 8(i) below. The two restrictions also do not apply to the traffic that BNSF is permitted to handle pursuant to the remaining provisions of this Section 6(d), which remains subject to all other conditions and restrictions. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 73), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via trackage rights over either the UP line or the SP line, at its discretion, for operating convenience. BNSF shall also have the right to interchange: with the Little Rock and Western Railway at Little Rock, AR; the Little Rock Port Authority at Little Rock, AR; KCS at Shreveport, LA and Texarkana, TX/AR, for movements of traffic originated by KCS at or delivered by KCS to shippers or receivers at Lake Charles, West Lake, or West Lake Charles, LA; with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and (z) at Texarkana, TX/AR for movements of empty coal trains returning from Texas Utilities Electric Company's Martin Lake generating station; and with the Texas Northeastern Railroad at Texarkana, TX for the sole purpose of moving BNSF traffic to and from Shipper Facilities at Defense, TX.

(e) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after

initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(f) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii)

any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 6(e) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(g) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(h) BNSF shall grant to UP/SP overhead trackage rights on BN's line between West Memphis and Presley Junction, AK. UP/SP shall be responsible for upgrading this line as necessary for its use. If BNSF uses this line for overhead purposes to connect its line to the trackage rights lines, BNSF shall share in one-half of the upgrading cost.

7. **St. Louis Area Coordinations**

(a) UP/SP agree to cooperate with BNSF to facilitate efficient access by BNSF to other carriers at and through St. Louis via The Alton & Southern Railway Company ("A&S"). If

BNSF requests, UP/SP agree to construct or cause to be constructed for the use of both BNSF and UP/SP a faster connection between the BN and UP lines at Grand Avenue in St. Louis, MO and a third track from Grand Avenue to near Gratiot Street Tower at the sole cost and expense of BNSF. Upon completion of such construction, UP/SP shall grant to BNSF overhead trackage rights on UP's line between Grand Avenue and Gratiot Street.

(b) UP wishes to secure dispatching authority for the MacArthur Bridge across the Mississippi River at St. Louis. Dispatching is currently controlled by the Terminal Railroad Association of St. Louis ("TRRA"). BNSF agrees that it will cause its interest on the TRRA Board or any shares it owns in the TRRA to be voted in favor of transferring dispatching control of the MacArthur Bridge to UP if such matter is presented to the TRRA Board or its shareholders for action. Such dispatching shall be performed in a manner to ensure that all users are treated equally.

(c) If BNSF desires to use the A&S Gateway Yard, upon transfer of MacArthur Bridge dispatching to UP, UP/SP shall assure that charges assessed by the A&S to BNSF for use of Gateway Yard are equivalent to those assessed other non-owners of A&S.

(d) UP/SP and BNSF agree to provide each other reciprocal detour rights between Bridge Junction-West Memphis and St. Louis in the event of flooding, subject to the availability of sufficient capacity to accommodate the detour.

(e) UP/SP shall provide BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO for the purpose of accessing Ameren UE's facility at Labadie. BNSF shall have the right to serve all "2-to-1" Shipper Facilities, New Shipper Facilities and Existing Transload Facilities at Labadie.

8. **Additional Rights**

(a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, CA for rail traffic of all kinds, carload and intermodal, for all commodities to enable BNSF to connect via SP's line with the Oakland Terminal Railroad ("OTR") and to access the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built. BNSF shall pay 50% of the cost (up to $2,000,000 maximum) for upgrading to mainline standards and reverse signaling of SP's No. 1 track between Emeryville (MP 8) and Stege, CA (MP 13.1). Compensation for these trackage rights shall be at the rate of 3.48 mills per ton mile for business moving in the "I-5 Corridor," 3.1 mills per ton mile on all other carload and intermodal business, and 3.0 mills per ton mile for bulk business (as defined in Section 9(a) of this Agreement) escalated in accordance with the provisions of Section 12 of this Agreement. UP/SP shall assess no additional charges against BNSF for access to the JIT and the OTR.

(b) BNSF shall waive any payment by UP/SP of the Seattle Terminal 5 access charge.

(c) BNSF shall grant to UP overhead trackage rights on BN's line between Saunders, WI and access to the MERC dock in Superior, WI.

(d) BNSF shall grant UP the right to use the Pokegama connection at Saunders, WI (i.e., the southwest quadrant connection at Saunders including the track between BN MP 10.43 and MP 11.14).

(e) BNSF shall waive SP's requirement to pay any portion of the Tehachapi tunnels clearance improvements pursuant to the 1993 Agreement between Santa Fe and SP.

(f) BNSF shall allow UP to exercise its rights to use the Hyundai lead at Portland Terminal 6 without any contribution to the cost of constructing such lead.

(g) BNSF shall allow UP/SP to enter or exit SP's Chicago-Kansas City-Hutchinson trackage rights at Buda, Earlville, and west of Edelstein, IL. UP/SP shall be responsible for the cost of any connections required.

(h) BNSF will amend the agreement dated April 13, 1995, between BNSF and SP to allow UP/SP to enter and exit Santa Fe's line solely for the purposes of permitting UP/SP or its agent to pick up and set out interchange business, including reciprocal switch business at Newton, KS. and switching UP industries at that point.

(i) It is the intent of the parties that this Agreement result in the preservation of competition by two rail carriers for (a) all "2-to-1" Shipper Facilities at points listed on Exhibit A to this Agreement and (b) all other shippers who had direct competition or competition by means of siting, transload or build-in/build-out from only UP and SP pre-merger.

The parties recognize that some "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at "2-to-1" Points will not be able to avail themselves of BNSF service by virtue of the trackage rights and line sales contemplated by this Agreement. For example, "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities located at points between Niles Junction and the end of the joint track near Midway (including Livermore, CA, Pleasanton, CA, Radum, CA, and Trevarno, CA), Lyoth, CA, Lathrop, CA, Turlock, CA, South Gate, CA, Tyler, TX, Defense, TX, College Station, TX, Great Southwest, TX, Victoria, TX, Sugar Land, TX, points on the former Galveston, Houston & Henderson Railroad served only by UP and SP, Opelousas, LA and Herington, KS are not accessible under the trackage rights and line sales covered by this Agreement. Accordingly, UP/SP and BNSF agree to enter into arrangements under which, through trackage rights, haulage, ratemaking authority or other mutually acceptable means, BNSF will be able to provide competitive service

to "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at the foregoing points and at other "2-to-1" Points not along a Trackage Rights Line.

(j) BNSF shall have the right to interchange with any short-line railroad which, prior to the Effective Date of this Agreement, could interchange with both UP and SP and no other railroad.

(k) BNSF shall also have the right to interchange with any short-line railroad that constructs a new line to and establishes an interchange on a Trackage Rights Line subsequent to UP's acquisition of control of SP; PROVIDED, HOWEVER, that the short-line railroad must be a Class II or Class III railroad neither owned nor operated by BNSF or any BNSF affiliate. In addition, the new rail line must be either (i) an extension of an existing Class II or Class III carrier that does not connect with UP or (ii) a new Class II or Class III carrier. BNSF shall not be entitled to interchange traffic with a Class II or Class III carrier at such a new interchange on a Trackage Rights Line if the traffic originates or terminates at a Shipper Facility that is now served solely by UP unless the Shipper Facility qualifies as a New Shipper Facility or unless the new line qualifies as a build-in or build-out under this Agreement.

(l) In addition to the right to serve build-in/build-out lines specified in Sections 4(a), 5(a) and 6(c) of this Agreement, BNSF shall have the right to serve a new build-in/build-out line constructed to reach a facility that was, prior to September 11, 1996, solely served by either UP or SP and would be open to two railroad service upon construction of the build-in/build-out line (i) to a point on lines owned by SP on September 11, 1996, in the case of facilities solely served by UP, or (ii) to a point on lines owned by UP on September 11, 1996, in the case of facilities solely served by SP. UP shall grant BNSF Overhead Trackage Rights necessary for BNSF to reach the build-in/build-out line. The routing of such trackage rights shall seek to minimize the

operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service.

(m) Where this Agreement authorizes BNSF to utilize haulage to provide service, the fee for such haulage shall be $.50 per car mile plus a handling charge to cover handling at the haulage junction with BNSF and to or from a connecting railroad or third party contract switcher. The handling charge shall be $50 per loaded or empty car for intermodal and carload and $25 per loaded or empty car for unit trains with unit train defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee. UP/SP shall bill BNSF the $50 per car handling charge for all cars and, upon receipt of appropriate documentation from BNSF demonstrating that business assessed the $50 per car handling fee was a unit train, adjust prior billings by $25 per car for each car BNSF demonstrates to have been eligible for the $25 per car handling charge for unit trains. Where UP/SP is providing reciprocal switching services to BNSF at "2-to-1" Shipper Facilities as provided for in Section 9(i) of this Agreement, the per car handling charge shall not be assessed at the point where such reciprocal switch charge is assessed. The haulage fee and handling charge set forth above as of September 25, 1995, shall be adjusted upwards or downwards in accordance with Section 12 of this Agreement.

(n) In the event, for any reason, any of the trackage rights granted under this Agreement cannot be implemented because of the lack of sufficient legal authority to carry out such grant, then UP/SP shall be obligated to provide an alternative route or routes, or means of access of commercially equivalent utility at the same level of cost to BNSF as would have been provided by the originally contemplated rights.

(o) In the event UP determines to terminate or not renew a lease to an Existing Transload Facility to which BNSF gained access as a result of this Agreement or the conditions

imposed on the UP/SP merger and BNSF has previously entered into a contract to provide transportation services to the Existing Transload Facility, UP shall extend the lease for the remaining period of such transportation contract or for a period not to exceed 24 months, whichever period is shorter.

9. **Trackage Rights - General Provisions**

(a) The compensation for operations under this Agreement shall be set at the levels shown in the following table as subsequently indexed under the 1995 Agreement:

Table I
Trackage Rights Compensation
(mills per ton-mile)

	Keddie-Stockton/Richmond	All Other Lines
Intermodal and Carload	3.48	3.1
Bulk (67 cars or more of one commodity in one car type)	3.0	3.0

These rates shall apply to all equipment moving in a train consist including locomotives. The rates shall be escalated in accordance with the procedures described in Section 12 of this Agreement. The owning line shall be responsible for maintenance of its line in the ordinary course including rail relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by such owning line under this Agreement.

(b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have

the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

(c) Capital expenditures on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights will be handled as follows:

(i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed by UP/SP in support of the application shall be given presumptive weight in determining what capacity improvements are necessary to achieve these benefits.

(ii) Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below. That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.

(iii) For 18 months following UP's acquisition of control of SP, BNSF shall not be required to share in the cost of any capital improvements under the provision of subparagraph (ii) above.

(iv) BNSF and UP/SP agree that a capital reserve fund of $25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent which will not unreasonably be withheld, be drawn down to pay for capital projects on the Trackage Rights Lines that are required to

accommodate the operations of both UP/SP and BNSF on those lines, but in any event shall not be used for expenditures covered by subparagraph (i) above. Any disputes over whether a project is required to accommodate the operation of both parties shall be referred to binding arbitration under Section 15 of this Agreement.

(v) If both UP/SP and BNSF intend to serve New Shipper Facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1(b), 3(c), 4(b), 5(b), 6(d), and 8(i) of this Agreement, they shall share equally in any capital investment in such connections and sidings and siding extensions or other support facilities required by both UP and BNSF to provide rail service to such New Shipper Facility. If only one railroad initially provides such service, the other railroad may elect to provide service at a later date, but only after paying to the railroad initially providing such service 50% of any capital investment (including per annum interest thereon) made by the railroad initially providing rail service to the New Shipper Facility. Per annum interest shall be at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by the other railroad commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the

access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points more or less than the prior year's interest rate.

(d) Subject to the terms of the Dispatching Protocols attached hereto as Exhibit D and incorporated herein, the management and operation of the lines over which the parties have granted trackage rights to each other pursuant to this Agreement ("Joint Trackage") shall be under the exclusive direction and control of the owning carrier, and the owning carrier shall have the otherwise unrestricted power to change the management and operations on and over Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing Joint Trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier. Trains operating in the Houston terminal shall be routed over the most efficient routes as necessary to avoid delays and congestion, even routes over trackage over which the operating carrier has no operating rights.

The owning carrier shall keep and maintain the Joint Trackage at no less than the track standard designated in the current timetable for the applicable lines subject to the separate trackage rights agreement. The parties agree to establish a joint service committee to regularly review operations over the Joint Trackage lines.

In the event the owning carrier determines to sell or remove from service a Joint Trackage line and/or any associated facilities, the owning carrier shall provide the other carrier with reasonable written notice of such determination. Any such sale to a third party shall be expressly made subject to the terms and conditions of this Agreement, and the owning carrier

shall remain responsible as to the obligations imposed on it herein in the event the third party purchaser does not fulfill those obligations.

(e) Each party shall be responsible for any and all costs relating to providing employee protection benefits, if any, to its employees prescribed by law, governmental authority or employee protective agreements where such costs and expenses are attributable to or arise by reason of that party's operation of trains over Joint Trackage. To the extent that it does not violate existing agreements, for a period of three years following acquisition of control of SP by UP, BNSF and UP/SP shall give preference to each other's employees when hiring employees needed to carry out trackage rights operations or operate lines being purchased. The parties shall provide each other with lists of available employees by craft or class to whom such preference shall be granted. Nothing in this Section 9(e) is intended to create an obligation to hire any specific employee.

(f) The trackage rights grants described in this Agreement and the purchase and sale of line segments shall be included in separate trackage rights and line sale agreement documents respectively of the kind and containing such provisions as are normally and customarily utilized by the parties, including exhibits depicting specific rail line segments, and other provisions dealing with maintenance, improvements, and liability, subject to more specific provisions described for each grant and sale contained in this Agreement and the general provisions described in this section. BNSF and UP/SP shall elect which of their constituent railroads shall be a party to each such trackage rights agreement and line sale and shall have the right to assign the agreement among their constituent railroads. The parties shall use their best efforts to complete such agreements by June 1, 1996. If agreement is not reached by June 1, 1996 either party may request that any outstanding matters be resolved by binding arbitration with the

arbitration proceeding to be completed within sixty (60) days of its institution. In the event such agreements are not completed by the date the grants of such trackage rights are to be effective, it is intended that operations under such grants shall be commenced and governed by this Agreement.

(g) All locations referenced herein shall be deemed to include all areas within the switching limits of the location designated by tariff, clarified to the extent necessary by publicly-available information, in effect as of September 25, 1995, and access to such locations shall include the right to locate and serve new auto and intermodal facilities at such locations.

(h) The tenant carrier on the Joint Trackage shall have the right to construct, or have constructed for it, for its sole use exclusively owned or leased facilities, including, without limitation, automobile and intermodal facilities, storage in transit facilities, team tracks and yards along the Joint Trackage pursuant to the following terms and conditions:

(i) The party wishing to construct such exclusively owned facilities for its sole use shall submit its plans to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed;

(ii) In the case of the construction of team tracks and ancillary facilities, including loading facilities and necessary track connections, the parties shall work cooperatively with each other to enable such construction;

(iii) Such exclusively owned or leased and used facilities shall not (i) impair the other party's use of the Joint Trackage, (ii) prevent or unduly hinder the other party's access to existing or future customers or facilities served from the Joint Trackage, or (iii) impair access to other exclusively owned facilities then in existence; and

(iv) If jointly owned or leased and used property is to be used for the construction of such exclusively owned or leased and used facilities, the party so constructing such exclusively owned or leased and used facilities shall reimburse the other party for its ownership of the jointly owned property so utilized at 50% of its then current fair market value. If the tenant carrier uses property of the owning carrier for the construction of exclusively owned or leased and used facilities, the tenant carrier shall reimburse the owning carrier for its ownership of the property at 100% of its then current fair market value.

(i) Where UP/SP provides reciprocal switching services to BNSF under this Agreement, UP/SP will do so at a rate of no more than $130 per car as of September 25, 1995, adjusted pursuant to Section 12 of this Agreement, and all such reciprocal switching services shall be provided on an impartial basis. In the event BNSF's access to a Shipper Facility pursuant to this Agreement is effected by means of a third party contractor, (i) any associated third party switch fee shall be paid by UP/SP, (ii) BNSF shall pay to UP/SP the applicable reciprocal switch fee established between the parties to this Agreement, and (iii) BNSF shall neither be entitled to become an assignee of UP/SP nor become eligible to enter into a separate agreement with the shipper so served.

(j) It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities for traffic handled by BNSF under the terms of this Agreement. These locations include Salt Lake City, Ogden, Brownsville and San Antonio, and other locations where such volume develops. Facilities or portions thereof presently utilized by UP or SP at such locations shall be acquired from UP/SP by lease or purchase at normal and

customary charges. Upon request of BNSF and subject to availability and capacity, UP/SP shall provide BNSF with terminal support services including fueling, running repairs and switching. UP/SP shall also provide intermodal terminal services at Salt Lake City, Reno, and San Antonio. UP/SP shall be reimbursed for such services at UP's normal and customary charges. Where terminal support services are not required, BNSF shall not be assessed additional charges for train movements through a terminal. BNSF shall also have equal access, along with UP/SP, to all SP Gulf Coast storage in transit facilities ("SIT") (i.e., those SP facilities at Dayton, East Baytown, and Beaumont, TX), on economic terms no less favorable than the terms of UP/SP's access, for storage in transit of traffic handled by BNSF under the terms of this Agreement, including, but not limited to, traffic to or from Shipper Facilities to which BNSF gained access under the terms of this Agreement. UP/SP agree to work with BNSF to locate additional SIT facilities on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line as necessary.

(k) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line.

(l) BNSF shall have the right to inspect the UP and SP lines over which it obtains trackage rights under this Agreement and require UP/SP to make such improvements under this section as BNSF deems necessary to facilitate its operations at BNSF's sole expense. Any such inspection must be completed and improvements identified to UP/SP within one year of the effectiveness of the trackage rights.

(m) BNSF shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including

existing trackage rights) intersect with Trackage Rights Lines or lines it will purchase pursuant to this Agreement. UP/SP shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines over which it will receive trackage rights pursuant to this Agreement. BNSF shall also have the right, at the option of the City Public Service Board of San Antonio, TX, to connect for movement to and from Elmendorf, TX, where BNSF's trackage rights granted pursuant to this Agreement intersect at SP Junction (Tower 112) with the existing trackage rights SP has granted to City Public Service Board of San Antonio, TX.

(n) In the event UP/SP institute directional operations over any Trackage Rights Line or on lines over which BNSF is granted Overhead Trackage Rights, (i) UP/SP shall provide BNSF with reasonable notice of the planned institution of such operations and shall adjust, as appropriate, the trackage rights granted to BNSF pursuant to this Agreement so as to avoid impairing BNSF's ability to provide competitive service on a Trackage Rights Line, and (ii) BNSF shall operate in accordance with the flow of traffic established by such directional operation; PROVIDED, HOWEVER, that any rights granted to BNSF as a result of UP/SP's institution of directional operations shall be Overhead Trackage Rights only, and PROVIDED FURTHER that BNSF shall have the right, on any Trackage Rights Line over which directional operations have been instituted (including lines on which BNSF received Overhead Trackage Rights to serve a point listed or described in Section 8(i) of this Agreement or a build-in/build-out line), to operate against the flow of traffic if it is reasonably necessary to do so for BNSF to provide competitive service to shippers on the line which are accessible to BNSF (including service to New Shipper Facilities and build-in/build-out lines) over such line including but not

limited to circumstances where UP operates against the flow of traffic with trains of the same or similar type for the same shipper(s) or for shipper(s) in the same general area.

10. **Compensation for Sale of Line Segments**

(a) BNSF shall pay UP/SP the following amounts for the lines it is purchasing pursuant to this Agreement:

Line Segment	Purchase Price
Keddie-Bieber	$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego intermodal yard; SP's old Avondale yard; and SP's Lafayette yard)	100 million

(b) The purchase shall be subject to the following terms:

(i) the condition of the lines at closing shall be at least as good as their current conditions as reflected in the current timetable and slow orders (slow orders to be measured by total mileage at each level of speed restrictions).

(ii) includes track and associated structures together with right-of-way and facilities needed for operations.

(iii) indemnity for environmental liabilities attributable to UP/SP's prior operations.

(iv) standard provisions for sales of this nature involving title, liens, encumbrances other than those specifically reserved or provided for by this Agreement.

(v) assignment of associated operating agreements (road crossings, crossings for wire and pipelines, etc.). Non-operating agreements shall not be assigned.

(vi) removal by UP/SP, from a conveyance, within 60 days of the closing of any sale, of any non-operating real property without any reduction in the agreed upon purchase price.

(vii) the purchase will be subject to easements or other agreements involving telecommunications, fiber optics or pipeline rights or operations in effect at the time of sale.

BNSF shall have the right to inspect the line segments and associated property to be sold and records associated therewith for a period of ninety days from the Effective Date of this Agreement to determine the condition and title of such property. At the end of such period, BNSF shall have the right to decline to purchase any specific line segment or segments. In such event, UP/SP shall grant BNSF overhead trackage rights on any such segment with compensation to be paid, in the case of Avondale-Iowa Junction on the basis of the charges set forth in Section 9(a) of this Agreement, and in the case of Keddie-Bieber on a typical joint facility basis with maintenance and operating costs to be shared on a usage basis (gross ton miles used to allocate usage) and annual interest rental equal to the depreciated book value times the then current cost of capital as determined by the ICC times a usage basis (gross ton miles). In the case of Dallas-Waxahachie, operations would continue under the existing trackage rights agreement.

(c) Prior to closing the sale of SP's Iowa Jct.-Avondale line (the "IJA Line"), representatives of UP/SP and BNSF shall conduct a joint inspection of the IJA Line to consider

whether its condition at closing meets the standard established in Section 10(b)(i) of this Agreement. If the representatives of the parties are unable to agree that the condition of the IJA Line meets this standard, then BNSF shall place $10.5 million of the purchase price in escrow with a mutually agreed upon escrow agent, and closing shall take place. After closing the parties shall mutually select an independent third party experienced in railroad engineering matters (the "Arbitrator") who shall arbitrate the dispute between the parties as to whether the condition of the IJA Line is in compliance with Section 10(b)(i) of this Agreement. Arbitration shall be conducted pursuant to Section 15 subject to the foregoing qualification that the Arbitrator be experienced in railroad engineering matters. If the Arbitrator finds the IJA Line is below the standard, the Arbitrator shall determine the amount (which shall not exceed $10.5 million) required to bring it in compliance with the standard and authorize the payment of such amount out of the escrow fund to BNSF with the balance, if any, paid to UP/SP. Any amount so paid to BNSF out of the escrow fund to bring the IJA Line into compliance with the standard shall be used by BNSF exclusively to that end (or to reimburse BNSF for funds previously expended to that end) and UP/SP shall not, as a tenant on the IJA Line be billed for any work undertaken by BNSF pursuant to the provisions of this Section 10(c).

11. **Term**

This Agreement shall be effective upon execution (which occurred on September 25, 1995) (the "Effective Date") for a term of ninety-nine years, PROVIDED, HOWEVER, that the grants of rights under Section 1 through 8 shall be effective only upon UP's acquisition of control of SP, and provided further that BNSF may terminate this Agreement by notice to UP/SP given before the close of business on September 26, 1995, in which case this Agreement shall have no further force or effect. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be canceled and

deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants, PROVIDED, HOWEVER, that if this Agreement becomes effective and is later terminated, any liabilities arising from the exercise of rights under Sections 1 through 8 during the period of its effectiveness shall survive such termination. For purposes of this Section 11, "Final Order" shall mean an order of the STB, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

12. **Adjustment of Charges**

All trackage rights charges under this Agreement shall be subject to adjustment upward or downward July 1 of each year by the difference in the two preceding years in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the trackage rights fee. "URCS costs" shall mean costs developed using the Uniform Rail Costing System.

The rates for reciprocal switching services established in Section 9(i) and for haulage service established in Section 8(m) shall be adjusted upward or downward each July I of each year to reflect fifty percent (50%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the Surface Transportation Board or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and, failing to agree on such an index, the matter shall be referred to binding arbitration under Section 15 of this Agreement.

The parties will agree on appropriate adjustment factors if not covered herein for switching, haulage and other charges.

Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operation of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 15 of this Agreement. It is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement (September 25, 1995).

13. **Assignability**

This Agreement and any rights granted hereunder may not be assigned in whole or in part without the prior consent of the other parties except as provided in this section. No party may permit or admit any third party to the use of all or any of the trackage to which it has obtained rights under this Agreement, nor under the guise of doing its own business, contract or make any arrangement to handle as its own trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of that party. In the event of an authorized assignment, this Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties. This Agreement may be assigned by either party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets.

14. **Government Approvals**

The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement or of any separate agreements made pursuant to Section 9(f) and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such

agreements. BNSF agrees not to oppose the primary application or any related applications in Finance Docket No. 32760 (collectively the "control case"), and not to seek any conditions in the control case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. BNSF shall remain a party in the control case, but shall not participate further in the control case other than to support this Agreement, to protect the commercial value of the rights granted to BNSF by this Agreement, and to oppose requests for conditions by other parties which adversely affect BNSF; PROVIDED, HOWEVER, that BNSF agrees to reasonably cooperate with UP/SP in providing testimony to the ICC necessary to demonstrate that this Agreement and the operations to be conducted thereunder shall provide effective competition at the locations covered by the Agreement. UP/SP agree to support this Agreement and its implementation and warrant that it has not entered into agreements with other parties granting rights to other parties granted to BNSF under this Agreement. UP/SP agree to ask the ICC to impose this Agreement as a condition to approval of the control case. During the pendency of the control case, UP and SP shall not, without BNSF's written consent, enter into agreements with other parties which would grant rights to other parties granted to BNSF or inconsistent with those granted to BNSF under this Agreement which would substantially impair the overall economic value of rights to BNSF under this Agreement.

15. **Arbitration**

Except as otherwise provided by any decision of the STB or by separate agreement, unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

16. **Further Assurances**

The parties agree to execute such other and further documents and to undertake such acts as shall be reasonable and necessary to carry out the intent and purposes of this Agreement.

17. **No Third Party Beneficiaries**

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

UNION PACIFIC RAILROAD COMPANY

By:_____
Title:_____

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By:_____
Title:_____

Exhibits to Restated and Amended BNSF Settlement Agreement

Exhibit A – List of "2-to-1" Points

Exhibit B -- Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor

Exhibit C – Schematic drawing of UP's Main Line No. 1 between MP 14.11 and 10.38. UP's Westwego intermodal terminal, and SP's old Avondale Yard (together with the fueling and mechanical facilities located thereon)

Exhibit D -- Dispatching Protocols

Exhibit E -- "2-to-1 Point Identification Protocol"

Exhibit F -- Overhead Trackage Rights Lines

EXHIBIT A

EXHIBIT A

LIST OF "2-TO-1" POINTS

Points Referred to in Section 1(b)

Provo UT
Salt Lake City UT
Ogden UT
Ironton UT
Gatex UT
Pioneer UT
Garfield/Smelter/Magna UT (access to Kennecott private railway)
Geneva UT
Clearfield UT
Woods Cross UT
Relico UT
Evona UT
Little Mountain UT
Weber Industrial Park UT
North Salt Lake City UT
American Fork UT
Orem UT
Points on paired track from Weso NV to Alazon NV
Reno NV (only intermodal, automotive [BNSF must establish its own automotive facility], transloading, and new shipper facilities)
Herlong CA
Johnson Industrial Park at Sacramento CA
West Sacramento CA (Farmers Rice)
Port of Sacramento CA
Points between Oakland CA and San Jose CA (including Warm Springs CA, Freemont CA, Elmhurst CA, Shinn CA, Kohler CA, and Melrose CA)
San Jose CA

Points Referred to in Section 3(a)

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4(b)

Brownsville TX
Port of Brownsville TX
Port of Corpus Christi
Harlingen TX
Corpus Christi TX
Sinton TX
San Antonio TX
Elmendorf TX
Halstead TX (LCRA plant)
Waco TX
Points on Sierra Blanca-El Paso line

Points Referred to in Section 5(b)

Baytown TX
Amelia TX
Orange TX
Mont Belvieu TX (Amoco, Exxon, Chevron plants)
Eldon, TX (Bayer plant)
Harbor, LA

Points Referred to in Section 6(d)

Camden AR
Pine Buff AR
Fair Oaks AR
Baldwin AR
Little Rock AR
North Little Rock AR
East Little Rock AR
Forrest City, AR
Paragould AR
Dexter MO

EXHIBIT B

EXHIBIT B

TERM SHEET FOR UP/SP-BNSF PROPORTIONAL RATE AGREEMENT COVERING I-5 CORRIDOR

Concept

BNSF trackage rights in the "I-5" corridor will allow BNSF to handle traffic on a single line basis that currently moves via joint BN-SP routes. This Agreement will enable UPSP to compete with BNSF for that traffic and to make rates, using the proportional rates, to and from all points UP/SP serves in the covered territory described below.

Covered Territory

Traffic moving between the following areas north of Portland, Oregon and west of Billings and Havre, Montana:

- Canadian interchanges in Vancouver area
- Points north of Seattle and west of Cascades
- Points south of and including Seattle and west of Cascades
- Washington points east of Cascades and west of and including Spokane
- Points east of Spokane and west of Billings and Havre

and points in

- Arizona,
- California,
- Colorado,
- New Mexico,
- Nevada,
- Oregon,
- Utah,
- Texas west of Monahans and Sanderson, and
- connections to Mexico at El Paso and to the west.

Traffic Covered

Traffic covered will be all commodities (carload, intermodal and bulk) moving both southbound and northbound. All cars loaded or made empty on BNSF lines in the Covered Territory (including reloads) and cars received in interchange.

Proportional Rates

A third party, such as a major accounting firm or other established transportation consultant (the "consultant"), will be employed to compute the proportional rates. The mileage prorate shall be the ratio of (a) BNSF miles between areas north of Portland or interchange north of Portland and SP interchange at Portland to (b) BNSF single-line miles from BNSF origin or interchange to BNSF destination or interchange.

The consultant will develop a table of net ton mile rates (net of refunds, allowances, and rebates). This table will be in matrix form based on commodity, car type, and area north of Portland, Oregon. The rates shown in the matrix will be by commodity at the 3-digit STCC level and by car type for movement between each of the areas north of Portland, Oregon, and the Portland interchange. The net ton mile rates will be based on movements between each of the areas north of Portland and the group of states (including connections to Mexico) listed above. The initial rates will be derived based on the BN-SP portion of BN-SP interline rates (net of refunds, allowances, and rebates) in effect in the quarter preceding acquisition of SP by UP.

The net ton mile rate for each commodity/car type shall be a weighted average of the rates applicable to movements of each such commodity/car type between the points listed above. An example of this computation is attached.

New rates will be derived each subsequent quarter. In subsequent quarters, the rates will include a prorate of both SP-BNSF interline rates (net of refunds, allowances, and rebates) and BNSF single-line rates (net of refunds, allowances, and rebates). At such time as a rate can be developed for a particular commodity/car type on the basis of a BNSF single-line rate then future rate adjustments for such commodity/car type shall be based solely on BNSF single-line rates. All computations of net ton mile rates will be based on rates that actually moved traffic.

UP/SP agree that any rate it publishes will reflect the proportional rate from the latest quarterly study and BNSF's division shall be that amount. Movements using proportional rates shall be interline BNSF-UP/SP movements and will be billed accordingly. Proportional rates used by UP/SP in contracts will be escalated on the same basis as UP/SP's rates are escalated. BNSF and UP/SP will establish procedures to ensure that in settling interline accounts UP/SP's and BNSF's revenue south of Portland is not disclosed to the other.

Application

The net ton mile rates in each cell of the matrix will be applied to the BN mileage and the associated net tons from areas north of Portland to Portland interchange to develop the proportional rate to the Portland interchange.

Service

BNSF shall accept, handle, switch and deliver traffic moving under this Agreement without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in BNSF's account. UP/SP has the right to provide equipment. BNSF will work with UP/SP to establish and provide trackage for strategically located car distribution points in BN territory. To the extent justified by business volumes, BNSF will continue operating Vancouver, BC-Portland (SP interchange) trains comparable to BN Nos. 111 and 112. BNSF will cooperate with UP/SP to establish necessary blocks to provide efficient and competitive service on traffic moving under the proportional rate.

Third Party Consultant

The third party consultant shall be jointly employed by UP/SP and BNSF. The parties will share equally in the expense of employing such third party consultant. Both UP/SP and BNSF shall have the right to audit the work of the third party consultant and agree to share in any irregularities found in this work and cooperate to work with the third party consultant to establish procedures to promptly correct those deficiencies. The third party consultant shall be required to remain impartial between UP/SP and BNSF. Any breach of the impartiality requirement shall result in the termination of such third party consultant and the selection of a new consultant by the parties.

Example of Revenue Per Ton Mile
Calculation by Origin-Destination Cell
Cell Includes Car Type and Commodity

	Assumption:	Move 1	Move 2
1.	BNSF Revenue Per Car From O/D Areas North of Portland to Destination States	$5000	$2000
2.	BNSF Miles From O/D Areas North of Portland to Destination States	1000	500
3.	BNSF Net Tons From O/D Areas North of Portland to Destination States	100	50
4.	BNSF Number of Carloads From O/D Areas North of Portland to Destination States	10	5
5.	BNSF Miles Between Actual Point of Origin to Interchange and Portland	300	200

A. Revenue/NTM Factor (Computed by Consultant for Each Call in Matrix)

$$\frac{\sum \frac{(1) \times (4)}{(2) \times (3)}}{\sum (4)} \text{ (for all moves)}$$

$$\frac{\frac{5000 \times 10}{1000 \times 100} + \frac{2000 \times 5}{500 \times 50}}{10 + 5} = \$0.06/\text{NTM}$$

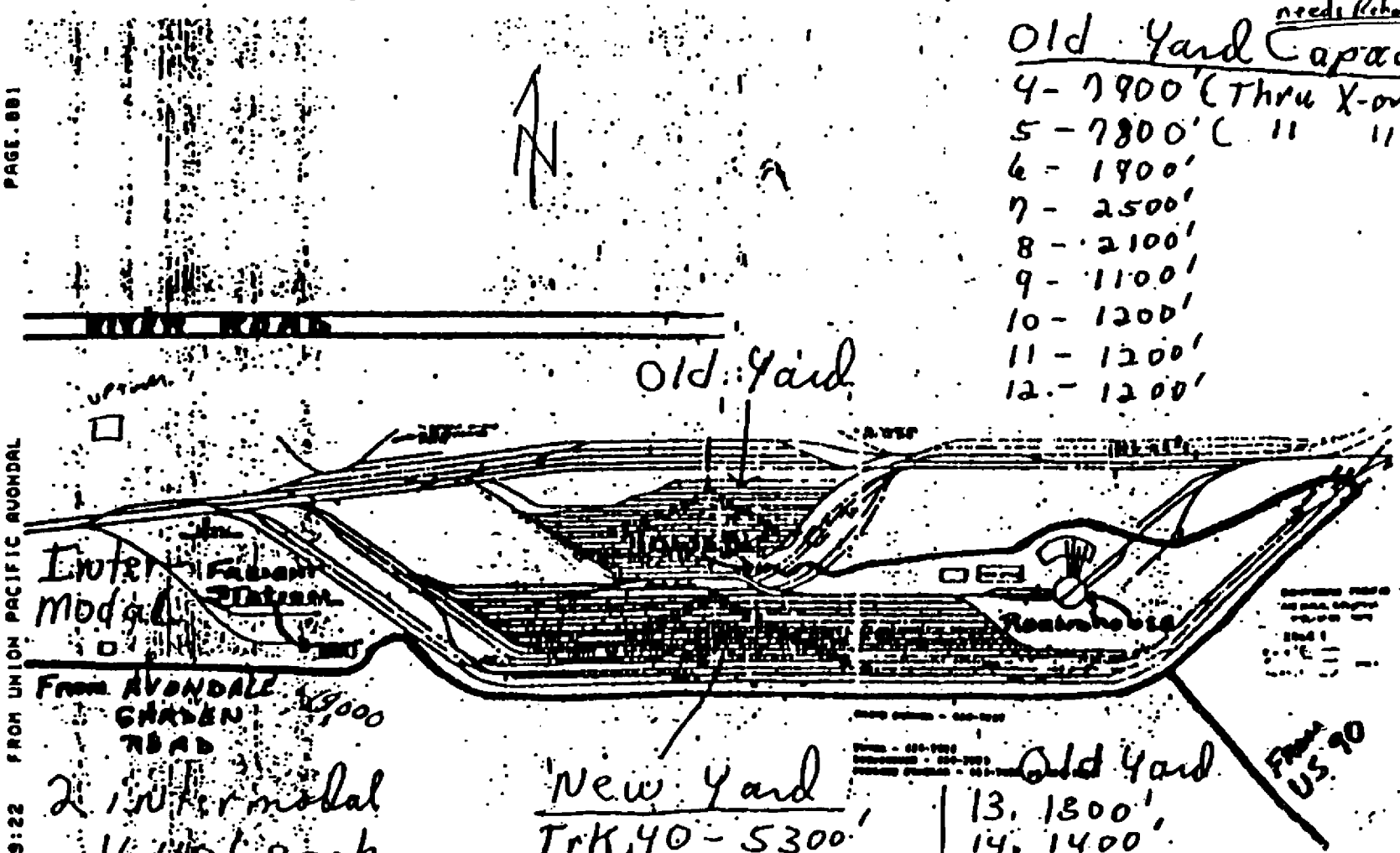
B. Compute BNSF Division on a Specific Move

(A) x (5) x (3)
$0.06 x 300 x 100 = $1800
$0.06 x 200 x 50 = $ 600

EXHIBIT C

6660-3582
342-2280

S.P. Avondale Yard



Old Yard Capacity (needs Rehab)

4 - 1900' (Thru X-overs)
5 - 7800' (" ")
6 - 1900'
7 - 2500'
8 - 2100'
9 - 1100'
10 - 1200'
11 - 1200'
12 - 1200'

New Yard

Trk. 40 - 5300'
37-39 - 4000'
30-36 - 2000'
29 - 1500'
28 - 1200'
27 - 1150'
26 - 1100'
25 - 900

Old Yard

13. 1800'
14. 1400'
15. 1800'
16. 1700'
17. 1600'
18. 1500'
19. 1400'
20 1300'
21 1200'
22 1100'
23.) 1000'
24.) 900'

Not to scale
All dimensions approximate

SEP 24'95 11:21 FR UP SPRING 713-3587593 13 358 7593 TO 82715555 P.01/01
SEP 24 '95 9:22 FROM UNION PACIFIC AVONDAL PAGE.001
** TOTAL PAGE.001 **

EXHIBIT D

April 24, 1996

BNSF - UP/SP DISPATCHING PROTOCOLS

As agreed: **Dave Clifton - BNSF**
Hank Jay - SP
Steve Barkley - UP

1. Scope: These protocols apply on all rail line segments where Burlington Northern Railroad Company or The Atchison, Topeka & Santa Fe Railway Company (which will be referred to jointly or individually as "BNSF") has trackage rights over tracks of the entity or entities resulting from the merger of the rail affiliates of Union Pacific Corporation and Southern Pacific Rail Corporation (which will be referred to jointly or individually as "UP/SP") and on all rail line segments where UP/SP has trackage rights over tracks of BNSF. All such rail lines will be referred to as "joint trackage and will include all current joint line trackage rights."

2. Purpose: To ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track.

3. General Instructions: BNSF and UP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on joint trackage that trains of the tenant are to be dispatched exactly as if they were trains of the same class of the owner and given equal treatment with trains of the owner. These instructions will be issued at agreed intervals or at the request of either party.

4. Monitoring Systems: At the request and expense of the tenant, the owner will make available computer terminals, facilities or capabilities comparable to those available to its own dispatchers showing joint trackage it dispatches so that the tenant can monitor the handling of its trains by the owner.

5. Train Information: The tenant will provide to the owner, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over joint trackage, preferably using electronic data interchange. Parties will establish run time standards by train category based on expected train volumes for each line segment. If train volumes are different than expected then adjustments to run time standards will be made by mutual agreement. The tenant will provide reliable and current information about trains approaching joint trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching joint trackage, sufficiently in advance to allow dispatchers to plan for them. The owner will provide to the tenant advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions. BNSF and UP/SP will cooperate to develop a process for discussing maintenance windows in advance and agree upon so as not to adversely affect schedules of one carrier more than the other.

6. Specific Instructions: The owner will permit the tenant to transmit instructions regarding the requirements of specific trains and shipments to designated dispatching center employees responsible for handling those trains.

7. Train Priorities/Run Time Standards: BNSF and UP/SP will at all times provide to each other current procedures for assigning dispatching priorities or rankings to their trains and information sufficient to show how those procedures are applied to their own trains. The tenant will assign priorities or rankings to its trains operating on joint trackage using the owner's procedures, and the owner will dispatch tenant trains in accordance with those priorities or rankings. It is understood that technological advances in computer aided dispatching might result in changes to priority assignment methodologies. The parties agree to discuss technological changes which might affect priority assignment methodologies prior to implementation. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads. It is agreed that a three member panel from each carrier will make up the Joint Service Committee. Suggestions for three member panel are representatives from Joint Facilities, VP Transportation, and Joint Trackage Rights Operations.

8. Entry to Joint Trackage: At points where tenant trains enter joint trackage, entry will be provided by the owner on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. [If operating circumstances make strict application of this principle difficult or uncertain, BNSF and UP/SP may jointly establish standards for determining sequence of entry to joint trackage.] Parties will communicate daily on any conflicts concerning entry to joint trackage to gain resolution.

9. Communications: BNSF and UP/SP will provide to each other, and keep current, lists of dispatching personnel responsible for dispatching each segment of joint trackage and contact numbers. For each segment, BNSF and UP/SP will designate supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.

10. Access to Dispatching Centers: Appropriate officials of either railroad will be admitted at any time to dispatching facilities and personnel responsible for dispatching joint trackage to review the handling of trains on joint trackage and will be provided an office in the other railroad's dispatching center (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to that review). In order to support BNSF operations over UP/SP trackage rights granted in connection with the UP/SP merger, UP/SP will pay BNSF an amount equal to the reasonable and conventional salary of one supervisory employee to be placed by BNSF at UP/SP's Harriman dispatching center. It is understood that management and supervision of dispatching operations is the responsibility of the owning carrier.

11. **Performance Measurement**: BNSF and UP/SP will cooperate to develop train performance evaluation methods under which train performance of tenant trains on joint trackage segments can be compared to train performance of the owner's trains on the same segments for the same train category and priority.

12. **Personnel Incentives and Evaluation**: In evaluating the performance of employees and supervisors responsible for dispatching joint trackage, both BNSF and UP/SP will consider train performance of tenant trains and effectiveness in cooperating with tenant personnel and meeting tenant service requirements in the same manner as such factors are considered with respect to the owner's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of the owner's trains, performance of the tenant's trains shall be considered on the same basis to the extent feasible.

13. **Disagreements**: The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee, the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.

14. **Modifications**: As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of both railroads on joint trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.

EXHIBIT E

2-To-1 Point Identification Protocol

As a condition of the Surface Transportation Board's (STB) approval of the consolidation of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP), The Burlington Northern and Santa Fe Railway Company (BNSF) was granted the right to serve all shipper facilities, that as of September 25, 1995, were open to both UP and SP, and no other railroad, whether via direct service, reciprocal switching, joint facility or other arrangements. Since the consolidation was consummated, BNSF and UP have been working to identify a complete list of 2-to-1 shipper facilities to which BNSF is entitled to access. The purpose of this protocol is to establish procedures and mechanisms for further identifying 2-to-1 shipper facilities open to BNSF as a result of the conditions imposed in the UP/SP merger. Those procedures and mechanisms are as follows:

1. BNSF shall submit to UP, by written or electronic communication, the name and address of any facility to which access is sought. In addition to the name and address of the facility, BNSF shall furnish any additional information relating to the facility's identity and location that is in BNSF's possession when the request for access is made. BNSF shall also provide any information in its possession at such time pertaining to the rail service options that were available to the facility on or before September 25, 1995. UP will handle for BNSF any traffic en route to the facility pending UP's determination of BNSF's right to access the facility in question. If UP determines that BNSF is not entitled to access a particular facility, BNSF will terminate any BNSF direct routing of traffic to that facility. UP shall be compensated for any traffic en route in accordance with the method of compensation set forth in Paragraph 7, below.

2. UP shall have five (5) business days from the date of such communication to respond by written or electronic communication to any request for access, provided that, if BNSF shall request a determination on more than five shipper facilities on a single day or, if a single request pertains to more than five (5) shipper facilities, BNSF shall identify the five (5) shipper facilities that need immediate attention, and the five (5) business day requirement shall apply to those shipper facilities, with the remaining shipper facilities request or requests to be responded to within ten (10) business days after the date of the request(s).

3. If UP fails to respond to an access request by the close of business of the fifth business day or, in the case of requests for which UP has ten business days to respond, by the close of the tenth business day, BNSF shall be deemed to have access to such facility or facilities as set forth in Paragraph 4 below, and UP shall be deemed to have waived any claims that BNSF is not entitled to serve the facility or facilities.

4. If UP approves BNSF's request for access, BNSF shall immediately be authorized to serve the facility either directly, through reciprocal switching, or, with UP's prior approval, a third party contractor, as provided for in the UP/BNSF Settlement Agreement dated September 25, 1995, as amended. No less than five (5) business days prior to the date that BNSF proposes to begin service to a facility, BNSF shall elect the mode of service that it intends to utilize and shall notify UP in writing or electronically of its election. BNSF shall have the right, upon 180 days prior written notice to UP, to change its election; provided, however, that BNSF shall (i) not change its election more often than once every five years, and (ii) shall reimburse UP for any costs incurred by UP in connection with such changed election. UP may not reverse a prior decision approving

BNSF's request for access to a facility without either BNSF's consent or approval by the STB.

5. If UP declines to approve a BNSF request for access to any facility, and BNSF believes that UP has an insufficient or inappropriate reason to decline access, BNSF may so notify UP, either in writing or by electronic communication, of the reasons why BNSF believes it is entitled to such access, and upon such notice, may seek an order from the STB finding that BNSF was entitled to access to that facility.

6. UP shall approve all such requests where, on the basis of all available information, UP concludes that a particular facility was open to service by both UP and SP, either directly or through reciprocal switching, joint facility or other arrangements and by no other rail carrier, as of September 25, 1995. If UP declines to approve a BNSF request for access to any facility, UP shall provide as part of its notification to BNSF a statement in writing or by electronic communication of its reasons and of the specific evidence supporting its determination that BNSF should not have access to the facility. A statement that UP lacks sufficient information to make a determination as to whether a facility is a 2-to-1 facility is not an adequate reason to deny a BNSF request for access to a facility. At any time after UP's notification, BNSF may request UP to reconsider its decision declining to approve BNSF's request for access.

7. If BNSF transports traffic to or from a shipper facility pursuant to paragraph 1 above and it is later determined that BNSF is not entitled to access to that facility, BNSF shall compensate UP for the movement of such traffic as follows: If a joint through rate is available, then UP is entitled to $3 per car mile for the loaded move from the applicable junction in the price document. If multiple junctions are available, BNSF

receives its longest haul and UP receives $3 per car mile beyond that junction. If no joint through rate exists, BNSF receives its longest haul via junctions in existence between UP and BNSF, prior to the date of UP control over SP, September 11, 1996, and UP receives $3 per car mile beyond. UP must file a claim with BNSF to recover revenues under this section making reference on the claim to this section of the joint 2-to-1 Point Identification Protocol.

8. BNSF and UP shall identify an individual or individuals within their respective organizations as the person or persons to whom all communications pursuant to this protocol shall be directed.

9. The parties agree to submit any disputes under this protocol to the STB for resolution or, with the consent of both parties, to arbitration, as described in the UP/BNSF Settlement Agreement dated September 25, 1995, as amended.

AGREED TO AND ACCEPTED BY:

UNION PACIFIC RAILROAD COMPANY

John H. Ransom

Date: June 24, 1998

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Peter J. Rickershauser

Date: June 26, 1998

EXHIBIT F

EXHIBIT F

LIST OF OVERHEAD TRACKAGE RIGHTS

1. Western Trackage Rights

   A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Valley Subdivision between MP 141.9 near Binney Junction, CA and Roseville, CA in the vicinity of SP's Valley Subdivision MP 106.6.

2. South Texas Trackage Rights

   A. UP/SP shall grant BNSF Overhead Trackage Rights on the following lines:

      a) SP's Port Lavaca Branch, between Placedo, TX in the vicinity of MP 14.2, and a point of build-in along said branch in the vicinity of MP 6.93 at Kamey, TX; and

      b) UP's line between Round Rock, TX, in the vicinity of UP's Austin Subdivision Milepost 161.79, and McNeil, TX, in the vicinity of UP's Austin Subdivision Milepost 166.1.

3. Eastern Texas – Louisiana Trackage Rights

   A. UP/SP shall grant BNSF Overhead Trackage Rights on UP's Beaumont Subdivision between MP 458.69 in the vicinity of Beaumont, TX and MP 377.98 (Gulf Coast Junction) in the vicinity of Houston, TX.

4. Additional Rights

   A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Martinez Subdivision between approximately MP 2 in the vicinity of Oakland, CA and approximately MP 13 in the vicinity of Richmond, CA.

5. Rights to Omnibus Points

   A. UP/SP shall grant BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO.