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VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

32760 (Sub-No. 48)

Re: STB Docket No. FD ~~32760~~, Union Pacific Corporation—Control & Merger—Southern Pacific Rail Corporation

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is BNSF Railway Company's Petition for Enforcement. 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.

Respectfully submitted,

/s/ Peter W. Denton

Peter W. Denton
Attorney for BNSF Railway Company

FILED
February 8, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 8, 2024
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

32760 (Sub-No. 48)
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

**BNSF RAILWAY COMPANY'S
PETITION FOR ENFORCEMENT**

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Dated: February 8, 2024

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BEFORE THE
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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

**BNSF RAILWAY COMPANY’S
PETITION FOR ENFORCEMENT**

1. Introduction and Summary

Over the last year, Union Pacific Railroad Company (“UP”) has repeatedly refused – for a variety of inconsistent and unsupported reasons – to allow a rail-served facility located in Little Rock, AR (the “Facility”) now owned by McGeorge Contracting Company (“McGeorge”) and known as Granite Mountain Quarries (“Granite Mountain”) to benefit from competitive access by BNSF Railway Company (“BNSF”). BNSF now asks that the Surface Transportation Board (“STB” or “Board”) ensure that BNSF can provide the rail service requested by McGeorge in order to fulfill BNSF’s competition-preserving role ordered by the Board when it approved the merger of UP and Southern Pacific Rail Corporation (“SP”) in 1996.

Prior to the UP/SP merger, the Facility received competitive line-haul service from only two railroads: Missouri Pacific Railroad Company (“MP,” an affiliate of

UP) and St. Louis Southwestern Railway Company (“SSW,” an affiliate of SP).¹ UP accessed the Facility directly. SP accessed the Facility indirectly via UP reciprocal switch, allowing SP to move line-haul traffic between the Facility and origins and destinations on SP’s network or interchange with another rail carrier. UP asserts that the Facility also could have been accessed via UP reciprocal switch by a short-line railroad: Little Rock and Western Railway (“LRWN”). LRWN had a single rail line extending approximately 80 miles to the northwest from Little Rock into Central Arkansas. LRWN could only interchange with UP or SP.

Therefore, even if LRWN could access the Facility via reciprocal switch, LRWN’s limited ability to provide service in Central Arkansas meant that the Facility had only two pre-merger competitive options for line-haul traffic – UP and SP – and the Facility enjoyed the benefit of competition between those two carriers. The UP/SP merger eliminated one of those options and left UP with full control over line-haul service to and from the Facility. According to the plain language and principles of the UP/SP merger-related settlement agreement between UP and BNSF (as amended and restated, the “RASA”), imposed by the Board as a condition to the merger, McGeorge and the Facility should benefit from BNSF access and service, replacing the competition that was lost by the UP/SP merger.

Pursuant to 49 U.S.C. § 11327, BNSF hereby requests that the Board issue an order enforcing the conditions imposed by the Board in its approval of the UP/SP merger in 1996. Specifically, BNSF requests that the Board confirm that the Facility is a “2-to-1” Shipper Facility at a “2-to-1” Point pursuant to the RASA. The requested order will allow McGeorge to benefit from the competitive forces of two-carrier line haul service, just as McGeorge would have if the UP/SP merger had not

¹ Because the Board treated UP’s affiliates and SP’s affiliates the same as UP and SP for competitive purposes in the UP/SP merger context, this Petition refers interchangeably to each of MP/UP and SSW/SP.

occurred. BNSF will step into the shoes of SP and replace the competition that was lost as a result of the UP/SP merger.

The facts set forth in this Petition have been verified by Mike Martucci, BNSF Manager, Contracts and Joint Facilities.

2. Background

2.1. Over the last year, UP has repeatedly refused to allow BNSF to access the Facility, using inconsistent and unsupported reasoning.

In April 2023, McGeorge requested service from BNSF at the Facility. Invoking the well-established “election” protocols under the RASA, BNSF sent a letter to UP requesting access to directly serve the Facility. *See* Ex. D, Letter from Mike Martucci, BNSF Manager Contracts & Joint Facilities to Chris Sanford, UP Manager Commercial & Interline Strategy (Apr. 12, 2023).

In a May 12, 2023 response letter, UP declined BNSF’s request to access the Facility, asserting that the Facility had pre-merger access to LRWN, and thus did not qualify as a “2-to-1” Shipper Facility under the RASA. *See* Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (May 12, 2023).

In a June 20, 2023 reply letter, BNSF requested that UP reconsider its denial, given LRWN’s limited commercial reach at the time of the UP/SP merger, which effectively left the Facility with two pre-merger competitive options: UP and SP. *See* Ex. D, Letter from Martucci (BNSF) to Sanford (UP) at 1-2 (June 20, 2023).

On July 21, 2023, UP denied BNSF’s access to the Facility for a second time, now citing the fact that SP’s pre-merger ability to access the Facility was limited to certain stations not served by MP/UP. *See* Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (July 21, 2023).

On August 18, 2023, BNSF responded to UP’s second denial, stating that SP’s somewhat limited access pre-merger did not mean that the Facility was not a “2-to-

1” Shipper Facility. Nevertheless, BNSF revised its request for access to be consistent with SP’s pre-merger access rights. *See* Ex. D, Letter from Martucci (BNSF) to Sanford (UP) (Aug. 18, 2023).

On December 11, 2023, UP denied BNSF access to serve McGeorge a third time, circling back to its original reasoning that, since the Facility had pre-merger access to LRWN, it does not qualify as a “2-to-1” Shipper Facility under the RASA. *See* Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (Dec. 11, 2023).

Under the RASA election protocols, BNSF should have had access to the Facility as of May 12, 2023. Instead, UP has forced BNSF to engage in an unnecessary letter writing campaign and to escalate this issue for resolution by the Board. McGeorge’s request for BNSF service remains pending until the Board rules on this Petition.

2.2. The RASA ensures that BNSF can access “2-to-1” Shipper Facilities at “2-to-1” Points.

In August 1996, the Board approved the common control and merger of the rail carriers controlled by UP (including MP) and the rail carriers controlled by SP (including SSW), subject to various conditions designed to preserve direct and indirect competition that would be lost as a result of the consolidation of the two carriers. *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp (Decision No. 44)*, 1 S.T.B. 233, 233, 367-75, 418-21 (1996). The essential bargain struck by UP/SP in order to obtain Board approval for their merger consisted of granting BNSF rights to access shippers that would have otherwise suffered from a reduction of competitive options as a result of the 1996 merger.

The Board imposed as a condition of the merger the terms of a settlement agreement between UP and BNSF. *Id.* at 242-43, 246-47, 419. Under the settlement agreement, “BNSF [is] to serve all shippers who would otherwise go from two directly serving carriers [UP and SP] to one [UP]. **In essence, the [UP/BNSF**

settlement] agreement [permits] BNSF to replace, to a large extent, the competitive service that [was] lost when SP [was] absorbed into UP.” See *Decision No. 44*, 1 S.T.B. 233 at 368 (emphasis added).

As contemplated by *Decision No. 44*, BNSF and UP restated and amended the original settlement agreement in accordance with that decision and subsequent Board decisions interpreting the agreement. The Board approved the terms of the March 1, 2002 Restated and Amended UP/BNSF Settlement Agreement (“RASA”), attached hereto as Exhibit B, in the context of the Board’s oversight review of the UP/SP merger. See *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (General Oversight) (Decision No. 21)*, 5 S.T.B. 1173, 1174, 1178 (2001).

Among other things, the RASA ensures that BNSF can access “2-to-1” Shipper Facilities (facilities that could be served by only UP and SP before the UP/SP merger) located at “2-to-1” Points (geographic locations where at least one “2-to-1” Shipper Facility was located).

3. Argument

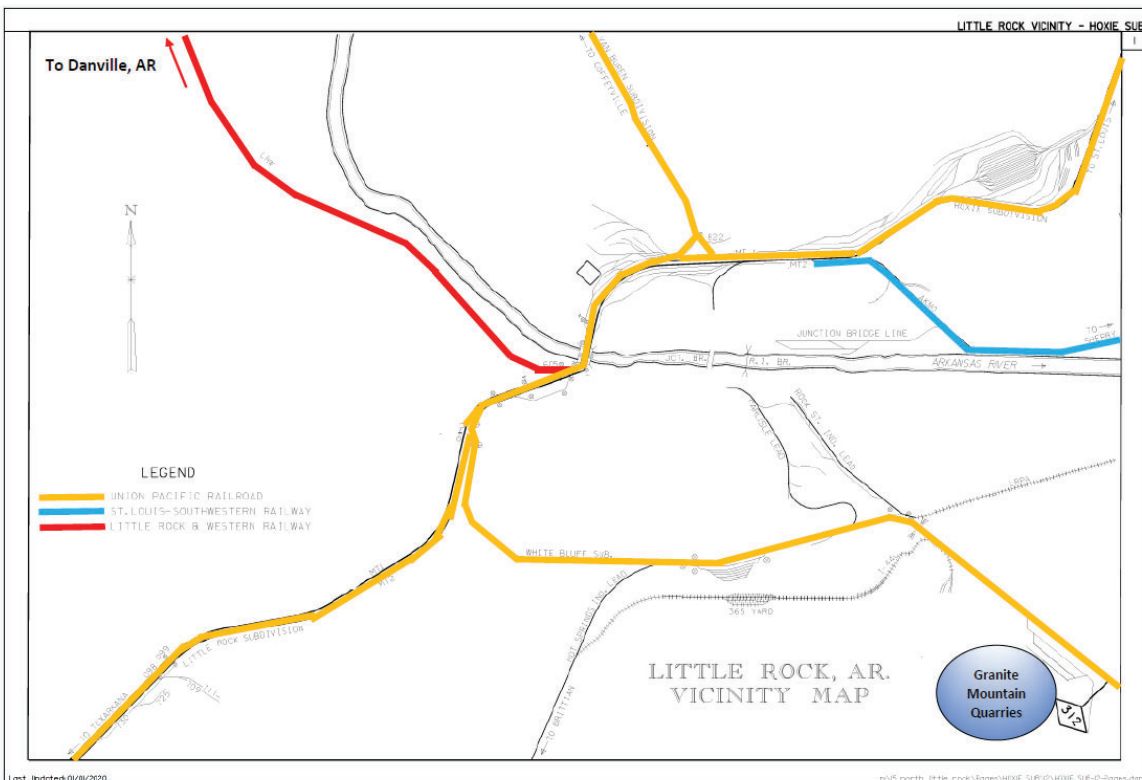
3.1. McGeorge and the Facility should benefit from BNSF access pursuant to the UP/SP merger conditions.

The Board should ensure that McGeorge and the Facility benefit from competitive BNSF access pursuant to the UP/SP merger conditions and the RASA. The Facility clearly falls within the class of shipper facilities, open to both UP and SP before their merger, that the Board intended to continue to receive competitive dual-carrier service from BNSF following the UP/SP merger.

3.1.1. The Facility is located at the “2-to-1” Point of Little Rock, AR.

“2-to-1” Points are defined as “all geographic locations at which at least one “2-to-1” Shipper Facility is located. Such points include, without limitation, the points listed . . . [in] 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.” Ex. B, RASA, Definitions at 2-3. The Facility is located within the switching limits of Little Rock, AR. *See* Ex. A, Map; Ex. C, Tariff MP 8170.C at Items 2520 & 2525.² Little Rock is listed as a “2-to-1” Point in the RASA. *See* Ex. B, RASA, Ex. A, List of “2-to-1 Points.” Therefore, the Facility is located at the “2-to-1” Point of Little Rock, AR.³ In correspondence with BNSF denying BNSF access to the Facility, UP has not disputed that the Facility is located at a “2-to-1” Point.



Map of Granite Mountain Quarries, Little Rock, AR

² The applicable MP tariff in place at the time of the UP/SP merger states, in part, that “Granite Mountain Quarries, Drury Spur, AR, will be considered in the switching limits of Little Rock -- North Little Rock, AR. . . .” *See* Ex. C, Tariff MP 8170.C.

³ North Little Rock is also identified a “2-to-1” Point in the RASA. *See* Ex. B, RASA, Ex. A, List of “2-to-1 Points”.

3.1.2. The Facility is a “2-to-1” Shipper Facility.

“2-to-1” Shipper Facilities are facilities “that were open to both UP and SP . . . and no other railroad when the 1995 [UP/BNSF] Agreement was executed . . .” Ex. B, RASA, Definitions at 3. In correspondence with BNSF, UP has contended that the Facility’s pre-merger access to a short-line carrier (LRWN) in addition to affiliates of UP and SP means that the Facility is not a “2-to-1” Shipper Facility. Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (May 12, 2023); *Id.*, Letter from Sanford (UP) to Martucci (BNSF) (Dec. 11, 2023). This is plainly wrong. The Board should instead find that the Facility’s pre-merger access to only UP and SP for line-haul purposes makes the Facility a “2-to-1” Shipper Facility within the meaning of the RASA.

At the time of the UP/SP merger, the Facility was directly accessed only by UP. SP could also access the Facility indirectly via UP reciprocal switch, subject to certain limitations discussed below. UP has asserted that LRWN could also access the Facility via reciprocal switch, subject to similar limitations. UP and SP could move traffic to and from the Facility on their vast Class I rail networks, with the ability to interchange the traffic with numerous other rail carriers in order to access the entire national rail network. LRWN had a single rail line extending approximately 80 miles from Little Rock into Central Arkansas, and LRWN could only interchange with UP or SP. LRWN thus had no route structure at all to compete with the combined UP/SP.

Therefore, if the Facility’s owner wanted rail service beyond the Central Arkansas area, it had two options: UP or SP. Competition between those two Class I rail systems would necessarily constrain the prices for rail transportation that either railroad would quote the Facility’s owner. Given its limited geographic reach and its ability to interchange only with UP and SP, LRWN imposed no real competitive discipline on UP or SP, even if LRWN could avail itself of UP reciprocal

switch access to the Facility as UP has alleged. For the competition-preserving purposes of the RASA, the Facility was “open to UP and SP . . . and no other railroad.” Ex. B, RASA, Definitions at 3. The RASA makes it clear that “[i]t is the intent of the parties that this Agreement result in the preservation of competition by two rail carriers for [] all “2-to-1” Shipper Facilities” *Id.*, § 8(i). Pre-merger, the Facility had access to two line-haul carriers and it should have the same access again today, with BNSF serving as a replacement for SP.

3.1.3. SP’s limited rights to access the Facility before the UP/SP merger do not preclude BNSF access today.

In addition to asserting that the Facility is not a “2-to-1” Shipper Facility as a result of LRWN’s alleged reciprocal switch access, UP has also cited SP’s limited access to the Facility as a basis for denying BNSF access to the Facility today. Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (July 21, 2023). UP claims that the tariff discussed above indicates that SP’s access to the Facility via UP reciprocal switching was only allowed for certain commodities moving to or from stations on SSW/SP not served by MP/UP.⁴ In other words, under UP’s theory, at the time of the UP/SP merger, SP could access the Facility in order to move traffic to and from “stations not competitive with MP.” Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (July 21, 2023). UP has claimed, without explanation, that this restriction allows UP to deny BNSF access to the Facility. *Id.*

But even if UP is correct about SP’s pre-merger access limitations to the Facility, the RASA does not say that BNSF cannot access shipper facilities with pre-merger partial exclusivity to one of UP or SP. Instead, the RASA provides a broad

⁴ Similar limits applied to LRWN’s access to the Facility via MP reciprocal switch: “Granite Mountain Quarries, Drury Spur, AR, will be considered in the switching limits of Little Rock--North Little Rock, AR, on CL shipments of Sand, Gravel, Stone, including Rip Rap, and articles taking same rates or related thereto. Applicable only to or from stations on the LRWN and SSW not served by the MP and only on cars switched to or from connection of the MP by Granite Mountain Quarries.” Ex. C, Tariff MP 8170.C at 2520 & 2525.

right for BNSF to serve facilities at “2-to-1” Points “that were open to both UP and SP . . . and no other railroad.” As established above, the Facility represents just such a case. Therefore, UP’s argument that SP’s access to the Facility was limited pre-merger to stations not competitive with MP should not preclude BNSF from accessing the Facility today under the RASA.

Notwithstanding these broader rights, in recognition of BNSF’s role under the UP/SP merger conditions as a competitive replacement to SP, BNSF offered UP to revise its request for access to the Granite Mountain Quarries facility under the RASA to be consistent with the geographic and commodity limitations set forth in the tariff. Ex. D, Letter from Martucci (BNSF) to Sanford (UP) (Aug. 18, 2023). BNSF reasoned that “[SP] had the right under the tariff to serve such traffic, and, as the competitive replacement for [SP], BNSF has that same right now.” *Id.* In other words, BNSF was willing to accept the same access limitation that UP claimed applied pre-merger to SP. UP yet again denied this request, without further explanation. Ex. D, Letter from Sanford (UP) to Martucci (BNSF) (Dec. 11, 2023).

3.2. The Board should confirm that BNSF has access to the Facility under the RASA and the UP/SP merger conditions.

3.2.1. The Board has continuing jurisdiction to resolve issues related to the UP/SP merger conditions.

The Board has jurisdiction and authority to provide BNSF with the limited relief requested here. In *UP/SP (General Oversight) Decision No. 21*, 5 S.T.B. at 1177-78, the Board stated that, while it was concluding its formal oversight process for the UP/SP merger, it retained under 49 U.S.C. § 11327 “continuing authority to enter supplemental orders and to modify decisions entered in merger and control proceedings under 49 U.S.C. 11323” and that “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.”⁵

Section 15 of the RASA contains a dispute resolution provision that, by implication, allows the Board or an arbitrator to hear disputes arising out of its terms.⁶ The provision implies that the Board may, by decision, determine that an unresolved dispute or controversy should not be submitted for binding arbitration but rather should be resolved by the Board.

UP and BNSF have previously resolved RASA-related disputes through private negotiations, arbitration, and formal Board proceedings. When the parties disagree as to the proper forum for a dispute, the Board has decided whether to hear the dispute. The Board has established several general principles when determining the proper forum for these disputes. First, “a Board proceeding may be proper for a dispute with potentially broad implications concerning conditions imposed in the UP/SP merger.” *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 108)*, FD 32760, slip op. at 3 (STB served May 5, 2017). Second, “[i]t 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.” *Id.* Third, “arbitration is preferable

⁵ 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.*, FD 33556 (Sub-No. 4), Oversight Decision No. 4, slip op. at 3 (STB served Dec. 27, 2001); *Decision No. 35*, FD 36500, slip op. at 55 (“[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.”)).

⁶ Section 15 of the RASA provides that, “[e]xcept 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 [the] Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.” Ex. B, RASA at Section 15 (emphasis added).

for the resolution of disputed factual matters where the parties have agreed in advance to pursue this approach.” *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 86)*, 4 S.T.B. 303, 309 (1999). In accordance with these principles, the Board has previously resolved several UP/SP merger disputes itself rather than allowing the disputes to be privately arbitrated.⁷

This Petition concerns the type of dispute that the Board has previously resolved in a public administrative proceeding. Here, “no material facts appear to be in dispute,” the dispute has “potentially broad implications concerning conditions imposed in the UP/SP merger,” and the dispute clearly “raises important issues related to the preservation of pre-merger rail competition.” *Decision No. 108*, FD 32760, slip op. at 3. As described above, the dispute centers on the definition of a “2-to-1” Shipper Facility, which could have broad implications for other similarly-situated facilities. The Board itself should determine how the agreement that allowed BNSF to fulfill the Board’s competitive objectives in the UP/SP merger should apply under those circumstances. Doing so not only would preserve the Board’s authority over its merger conditions, but also would allow shippers and other parties to participate and provide the Board with their views. Moreover, BNSF has established here that the Board must act in order to preserve pre-merger rail competition. Accordingly, if there is a question regarding the dispute’s forum, the Board should retain this matter rather than allowing it to be decided by an arbitrator.

⁷ See *Decision No. 108*, FD 32760, slip op. at 3 (the Board exercised its discretion to hear a dispute about BNSF’s ability to serve a shipper under the RASA because it “raise[d] important issues related to the preservation of pre-merger rail competition,” and because “no material facts appear[ed] to be in dispute”); *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 96)*, 6 S.T.B. 210, 213 (2002) (the Board determined that it should resolve a dispute about the mechanism for adjusting the fees applicable to the trackage rights that BNSF acquired in connection with the UP/SP merger, because of the “broad implications” to the UP/SP merger conditions); *Decision No. 86*, 4 S.T.B. at 306, n.9 (the Board used the “broad implications” reasoning to resolve a dispute related to the scope of the “new facilities” UP/SP merger condition.).

3.2.2. The order requested here will allow McGeorge to benefit from BNSF fulfilling its competition-preserving role under the UP/SP merger conditions.

At the core of the UP/SP merger conditions is the requirement that UP enable customers who had pre-merger competitive service from only UP and SP to benefit from BNSF serving as a competitive replacement. This ensures that those shippers would not suffer a loss of competition and would continue to have at least two line-haul carrier options after the UP/SP merger. If UP is permitted to continue denying BNSF access to serve McGeorge, the competition-preserving effects of the Board's carefully-crafted UP/SP merger conditions will be at risk.

UP's repeated denial of BNSF's request to access the Facility is just the latest attempt by UP to erode the essential competition-preserving bargain that it struck to obtain Board authority for the UP/SP merger in 1996. Over the last quarter-century, BNSF has repeatedly and successfully sought to enforce the rights of its customers under the UP/SP merger conditions – all in the face of UP's efforts to limit competition by restricting BNSF access.⁸

For the reasons stated above, the Board should issue an order stating that the Facility is a “2-to-1” Shipper Facility located at a “2-to-1” Point pursuant to the RASA. BNSF's request is limited and is similar to other orders the Board has had to issue to ensure UP complies with the UP/SP merger conditions. *See, e.g., Union Pac.*

⁸ *See, e.g., Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 75)*, FD 32760, (STB served Oct. 24, 1997) (Board permitted BNSF to serve the R.R. Donnelley & Sons Company's transload facility pursuant to the transload condition imposed in the UP/SP approval decision (*Decision No. 44*) over UP's objection); *Decision No. 81*, FD 32760 (STB served Oct. 5, 1998) (Board permitted BNSF to serve South Texas Liquid Terminal, Inc., a transload facility located within the San Antonio, Tex. switching limits pursuant to the UP/SP-BNSF settlement agreement, over UP's objection); *Decision No. 86*, FD 32760 (STB served July 12, 1999) (Board permitted BNSF to serve Four Star Sugar Co. facility in El Paso, Tex. pursuant to the new facilities condition imposed in *Decision No. 44*); *Decision No. 95*, FD 32760 (STB served Mar. 4, 2002) (Board provided guidance concerning “build-in/build-out” options for shippers to obtain access to an additional rail carrier and instructed BNSF and UP to negotiate implementation of the build-in/build-out UP/SP merger condition); *Decision No. 109*, FD 32760 (STB served Jan. 31, 2018) (Board ordered UP to permit BNSF to provide rail service to Mission Rail Park at Elmendorf, Texas, again over UP's objection).

Corp.—Control & Merger—S. Pac. Rail Corp, (Decision No. 81), 3 S.T.B. 737 (1998) (finding that a shipper, South Texas Liquid Terminal, Inc., was located within the switching limits of San Antonio, a 2-to-1 Point, pursuant to an applicable tariff in effect on September 25, 1995 and section 9(g) of the RASA).

Such an order will allow McGeorge to have competitive two-carrier service, as requested by the shipper, as envisioned by the RASA, and as contemplated by the Board. BNSF would simply step into the shoes of SP and provide the competitive replacement intended by the parties to the RASA and the Board. Without Board intervention, UP will continue to disregard the UP/SP merger conditions and will not allow BNSF to provide the service requested by McGeorge.

Respectfully submitted,

/s/ Peter W. Denton

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Attorneys for BNSF Railway Company

Dated: February 8, 2024

VERIFICATION

I, Mike Martucci, BNSF Manager, 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 Enforcement.

/s/ Mike Martucci

Mike Martucci

Executed on February 8, 2024.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2024, I have caused the foregoing BNSF Railway Company's Petition for Enforcement to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Onika K. Williams

Onika K. Williams

Attorney for BNSF Railway Company

EXHIBIT A

Map of Granite Mountain Quarries, Little Rock, AR

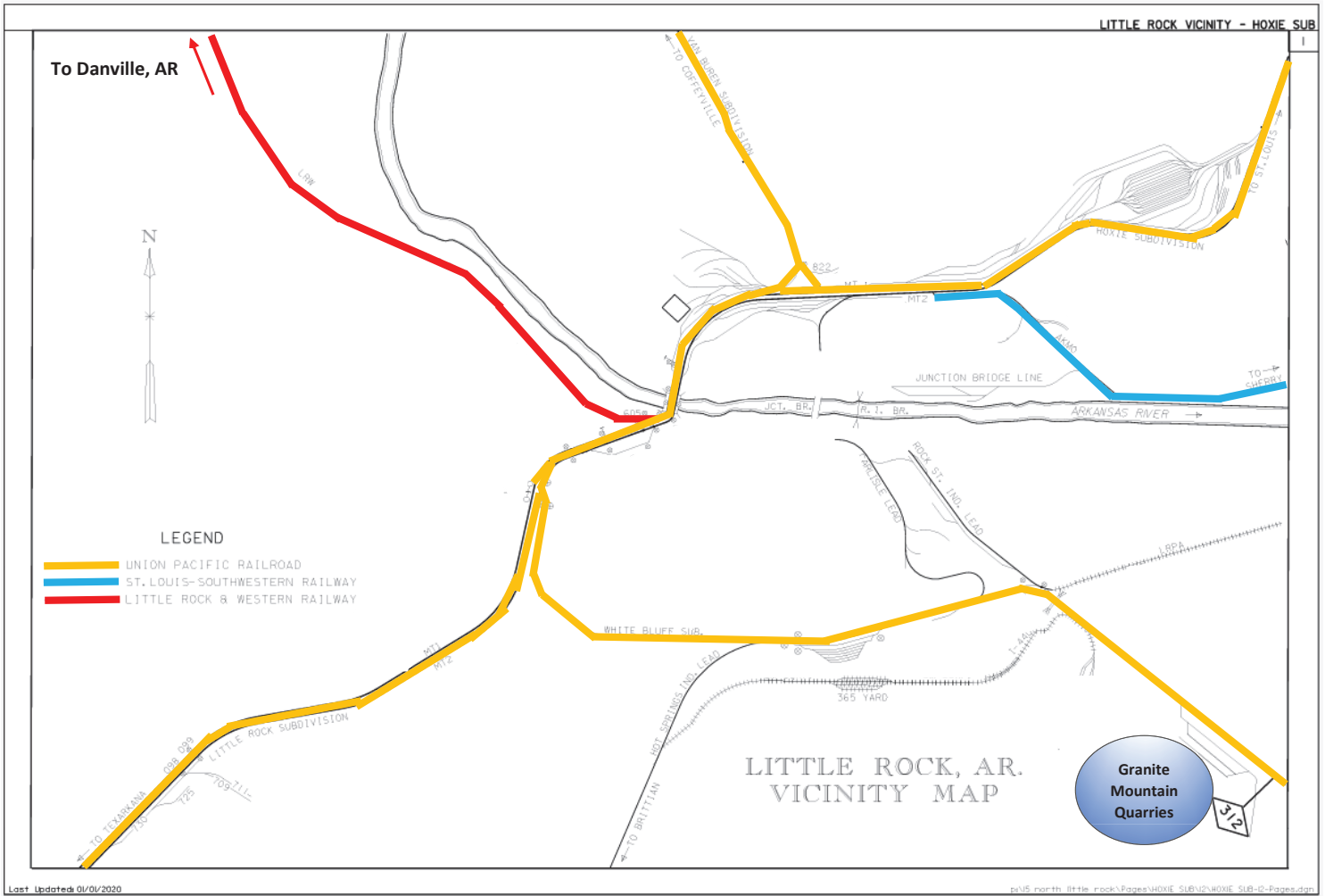


EXHIBIT B

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 Keddle, 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:

<u>Line Segment</u>	<u>Purchase Price</u>
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 1 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: _____

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 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.

EXHIBIT C

Tariff MP 8170.C

SUBJECT, EXCEPT AS OTHERWISE PROVIDED, TO INCREASES IN RATES AND CHARGES AS PROVIDED IN ITEM 8 (RAIL CARRIER COST RECOVERY TARIFFS).

IL CC A-503

(BREVS IL CC A-92)
Carriers,

ICC MP 8170-C

(Cancels ICC MP 8170-B,
Also ICC MP 8003-R, ICC MP 8005-Y,
ICC MP 8034-Q, ICC MP 8090-L, ICC
MP 8139-B, ICC MP 8180-D and ICC MP 8187-E)



MISSOURI PACIFIC RAILROAD COMPANY

TARIFF MP 8170-C

(Cancels Tariffs MP 8003-R, MP 8005-Y, MP 8034-Q, MP 8090-L,
MP 8139-B, MP 8170-B, MP 8180-D and MP 8187-E, also see
Cancellation Notice on page 2 herein)

ABSORPTIONS OF SWITCHING AND OTHER TERMINAL CHARGES

AND

ALLOWANCES

AT STATIONS

ON

**MISSOURI PACIFIC RAILROAD
DONIPHAN, KENSETT & SEARCY RAILWAY**

(Except as Noted in Item 325)

THIS TARIFF APPLIES ON INTRASTATE TRAFFIC IN THE STATES OF ARKANSAS, COLORADO, ILLINOIS, KANSAS, LOUISIANA,
MISSOURI, NEBRASKA, OKLAHOMA AND TENNESSEE (Memphis).

SWITCHING TARIFF

ISSUED MAY 11, 1990

EFFECTIVE JUNE 25, 1990

K. H. SCHROEDER
Manager-Pricing Services
Omaha, Nebraska

Issued by
G. R. HIX
Tariff Publishing Officer
1416 Dodge St.
Omaha, Nebraska 68179
(Also filed with AR, CO, IL, KS, MS, MO and OK)

SECTION 5
DEFINITION OF SWITCHING LIMITS

ITEM	STATION	BETWEEN MILE POST (Except as noted)	AND MILE POST (Except as noted)
2520	Little RockAR	342.2 on north 349.21 on east	352.14 on south 345.1 on west
2525	North Little RockAR	Granite Mountain Quarries, Drury Spur, AR, will be considered in the switching limits of Little Rock--North Little Rock, AR, on CL shipments of Sand, Gravel, Stone, including Rip Rap, and articles taking same rates or related thereto. Applicable only to or from stations on the LRWN and SSW not served by the MP and only on cars switched to or from connection of the MP by Granite Mountain Quarries.	
2530	LivoniaLA	619.6	622.9
2535	MabelvaleAR	353.15	357.15
2540	MarcheAR	353.50 (Applicable on Interstate and Intrastate traffic)	356.68
2545	MarionIL	NORTH: 1111/100 mile.	SOUTH: 2.4 miles.
2550	ModeIL	NORTH: 2/10 mile.	SOUTH: 23/100 mile.
2555	MomenceIL	NORTH: 1/3 mile.	SOUTH: 1.5 mile.
2560	Mt VernonIL	NORTH: 0.13 mile.	SOUTH: 1.3 miles.
2565	New IberiaLA	46.494	48.86 47.1
2570	NewportAR	258.15	262.48
2575	OmahaNE	Beginning at the Metropolis Utilities District plant on the Missouri River and on the tracks of the CNW, Florence, NE, thence south along the west bank of the Missouri River to and including Gibson, NE, on the BN; thence southwest via an imaginary straight line to, but not including, Avery, NE, on the UP; thence west via an imaginary straight line to and including Ralston, NE, and Seymour Park, NE; thence north on 84th Street to and intersection with CNW tracks; thence north via tracks of the CNW to and including the yard of O'Neil Grain, Coal & Feed Co, Rood Siding; thence northeast via an imaginary straight line to and including DeBolt Place, NE on the CNW; thence east via an imaginary straight line to Florence, NE, the place of beginning.	
2580	OpelousasLA	588.0	591.41
2585	Pine BluffAR	382.05 on north	392.67 on south 410.33 on west
2590	SmackoverAR	476.0	482.06
2595	StanleyLA	540.35	541.5
2600	St AnneIL	SOUTH: 25/44 mile.	SOUTHWEST: 1/3 mile.
2605	St ElmoIL	NORTH: 1 mile.	SOUTH: 21/100 mile.
2610	SalemIL	253	255
2615	ShelbyvilleIL	NORTH: 8/10 mile.	SOUTH: 15/100 mile.
2620	SullivanIL	NORTH: 23/100 mile.	SOUTH: 21/100 mile.
2625	TexarkanaAR-TX	Western Limit - Toward Paris, TX Mile Post A-2.73	
		Southern Limit - Toward Jefferson, TX Mile Post 3.52	
		Southeastern Limit - Toward Shreveport, LA Mile Post T-70.85	
		Northeastern Limit - Toward Hope, AR Mile Post 487.0	
2630	ThebesIL	NORTH: 33/100 mile.	SOUTH: 36/100 mile.
2635	TuscolaIL	NORTH: 66/100 mile.	SOUTH: 34/100 mile.
2640	WestvilleIL	NORTH: 1/4 mile.	SOUTH: 3.7 miles.

EXHIBIT D

Correspondence between
Mike Martucci, BNSF Manager Contracts & Joint Facilities,
and Chris Sanford, UP Manager Commercial & Interline Strategy



Mike Martucci
*Manager Contracts and
Joint Facilities*

BNSF Railway Company
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-0804
Email: mike.martucci@bnsf.com

April 12, 2023

Mr. Chris Sanford
Manager Commercial & Interline Strategy
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Access to McGeorge Contracting Company at Little Rock, AR

Dear Chris:

Please accept this letter as BNSF's formal election request to access to McGeorge Contracting Company at 1010 Shamburger Ln Little Rock, AR 72206 and initiate service pursuant to the Restated and Amended Settlement Agreement ("RASA") between BNSF and UP dated March 1, 2002. This is an existing facility at a 2-1 Point to which BNSF was expressly granted access in the RASA. McGregor Contracting was formerly Granite Mountain Quarries (a pre-merger customer) and defined in the former MP tariff as open to both the MP and SSW.

BNSF intends to serve this facility directly with unit train service planned to commence 45 days from the date of this letter (on or after May 27, 2023). Service frequency will be based on customer volumes and can be expected to fluctuate as needed depending on the customers' demand.

In accordance with Section 6(d) of the RASA, please confirm approval of BNSF's election in writing within 30 days' receipt of this letter (May 12, 2023). Upon UP's confirmation of service, BNSF's local Operations personnel will be available to discuss any concerns with UP's local Operations personnel.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Martucci".

Mike Martucci
Manager Contracts and Joint Facilities
BNSF Railway

UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

1400 DOUGLAS STREET
OMAHA, NEBRASKA 68179
402-544-3105



May 12, 2023

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway Company
2500 Lou Menk Drive, AOB GL
Fort Worth, TX 76131

Dear Mike:

Please refer to your letter of April 13, 2023 seeking UP confirmation of BNSF access to McGeorge Contracting Company at 1010 Shamburger Ln, Little Rock, AR 72206. As published in Tariff MP-8170-C. Item 2525, in force at the time of the UP-SP merger Missouri Pacific's offer of reciprocal switching for Granite Mountain Quarries extended to Little Rock & Western Railway and St. Louis and Southwestern Railway. The RESTATED AND AMENDED AGREEMENT of March 1, 2002 defines "2-to-1" Shipper Facilities as "Shipper Facilities that were open to both UP and SP... and no other railroad." Since Granite Mountain Quarries had access to MP, SSW, and LRWN it does not qualify as a "2-to-1" Shipper Facilities.

Union Pacific declines BNSF's request for customer access.

Sincerely,

A handwritten signature in blue ink that reads "Chris".

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Jon Helm
Eric Hamilton
Tanya Spratt
Derek Hinds
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Stephanie Weekly



Mike Martucci
*Manager Contracts and
Joint Facilities*

BNSF Railway Company
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-0804
Email: mike.martucci@bnsf.com

June 20, 2023

Mr. Chris Sanford
Manager Commercial & Interline Strategy
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Access to McGeorge Contracting Company at Little Rock, AR

Dear Chris:

In your letter dated May 12, 2023, concerning BNSF's request for confirmation of its access to McGeorge Contracting Company/Granite Mountain Quarries at Little Rock, Arkansas, you denied BNSF's request stating: "Since Granite Mountain Quarries had access to MP, SSW, and LRWN, it does not qualify as a '2-to-1' Shipper Facilit[y]." As set forth below, the fact the LRWN served the Granite Mountain Quarries prior to the UP/SP merger does not defeat the Quarries' right to BNSF service.

As you are aware, LRWN is a shortline with limited trackage in the Little Rock area. It principally moves traffic to and from locations on its rail network. Prior to the merger, LRWN's interchange connections for traffic moving to and from locations outside the Little Rock area were limited to MP and SSW. Thus, the Quarries effectively had only two pre-merger competitive options for such traffic – MP and SSW – and enjoyed the benefit of competition between those two carriers. The merger eliminated one of those options and gave UP/SP full control over the Quarries' traffic. LRWN could not provide a competitive option for that traffic outside the Little Rock area.

The Quarries' right to effective two carrier competitive service post-merger is confirmed by the express statement of the parties' intent in the RASA. Section 8(i) states, in relevant part: "It is the intent of the parties that this Agreement result in the preservation of competition by two rail carriers for: (b) all other shippers who had direct competition or competition by siting, transload or build-in/build-out from only UP and SP pre-merger." Given that the control by MP and SSW over all LRWN interchanges precluded LRWN from independently competing for the Quarries' traffic, the preservation of two carrier service to the Quarries requires BNSF access.

UP itself has recognized that 3M, another shipper at Little Rock located on the Drury Spur, is entitled to second carrier service by BNSF. 3M traffic via BNSF is reciprocally switched



by UP, notwithstanding that LRWN could have served the facility pre-merger under the pre-merger MP tariff. Additionally, UP reciprocally switches BNSF bridge movements to 3M which are delivered to UP at North Little Rock by LRWN on behalf of BNSF. These moves today incur a UP reciprocal switch charge under the RASA "2-to-1" reciprocal switch fee.

BNSF therefore requests that UP reconsider its position that the Granite Mountain Quarries facility at the station of Little Rock is not open to BNSF. The facility had competitive service from only two carriers pre-merger (MP and SSW), and it is entitled to two carrier service post-merger. Due to the nature of this business in unit service, we also plan to serve this as originally stated through direct service.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Martucci". The signature is fluid and cursive, with the first and last names being more prominent.

Mike Martucci
Manager Contracts and Joint Facilities
BNSF Railway

UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

1400 DOUGLAS STREET
OMAHA, NEBRASKA 68179
402-544-3105



July 21, 2023

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway Company
2500 Lou Menk Drive, AOB GL
Fort Worth, TX 76131

Dear Mike:

Please refer to your letters of April 13 and June 20, 2023 seeking Union Pacific's confirmation of BNSF direct access to McGeorge Contracting, also known as Granite Mountain Quarries at Drury Spur, AR.

Your letter of June 20 states the subject customer had "two pre-merger competitive options...- MP and SSW..." In fact, prior to the UP-SP merger reciprocal switching for Granite Mountain Quarries at Drury Spur was limited, applying "only to or from stations on the LRWN and SSW not served by the MP..." in other words stations not competitive with MP. Since the merger Granite Mountain Quarries continues to have direct access to all former SSW and MP stations now served by Union Pacific.

The facts regarding the 3M location mentioned in your letter of June 20 differ substantially from those surrounding Granite Mountain Quarries:

- 1) Prior to the UP-SP merger reciprocal switching at 3M was not geographically limited and,
- 2) 3M was identified as a Two to One shipper at the time of the merger.

Based on the facts cited above UP declines to confirm BNSF access to McGeorge Contracting at Drury Spur, AR.

Sincerely,

A handwritten signature in blue ink that reads "Chris".

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Jon Helm
Sarah Bailiff
Tyler White
Eric Hamilton
Tanya Spratt
Derek Hinds
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Stephanie Weekly



Mike Martucci
*Manager Contracts and
Joint Facilities*

BNSF Railway Company
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-0804
Email: mike.martucci@bnsf.com

August 18, 2023

Mr. Chris Sanford
Manager Commercial & Interline Strategy
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Access to McGeorge Contracting / Granite Mountain Quarries at Little Rock, AR

Dear Chris:

In your letter dated July 21, 2023, concerning BNSF's request for confirmation of its access to McGeorge Contracting Company/Granite Mountain Quarries at Little Rock, Arkansas, you once again denied BNSF's request. In so doing, you acknowledged that Granite Mountain Quarries was open to MP reciprocal switching for SSW traffic prior to the UP/SP merger, but that switching was limited to traffic moving to and from "stations not competitive with MP."

Consistent with my election request letter dated April 12, 2023, BNSF continues to believe that, under the RASA, the Granite Mountain Quarries facility is a "2-to-1" Shipper Facility at a 2-to-1 Point, because the facility was "open to both UP and SP . . . and no other railroad." The fact that the facility had somewhat limited dual-carrier access pre-merger is not inconsistent with the RASA definition of a "2-to-1" Shipper Facility.

In order to resolve this dispute for now, BNSF will revise its request for access to the Granite Mountain Quarries facility under the RASA to be for traffic to and from stations not served by UP. SSW had the right under the tariff to serve such traffic, and, as the competitive replacement for SSW (SP), BNSF has that same right now.

As set forth in BNSF's original request, BNSF will elect to serve the Granite Mountain Facility by direct service as is its right to do under the RASA. Please promptly confirm BNSF's revised request so that Granite Mountain Quarries' right to BNSF service to and from stations not served by UP is delayed no longer.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Martucci".

Mike Martucci
Manager Contracts and Joint Facilities
BNSF Railway



BUILDING AMERICA®

December 11, 2023

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway Company
2500 Lou Menk Drive, AOB GL
Fort Worth, TX 76131

Dear Mike:

Please refer to your letter dated August 18th, 2023, seeking UP confirmation of BNSF access to McGeorge Contracting Company at 1010 Shamburger Lane, Little Rock, AR 72206. Union Pacific ("UP") does not believe Drury Spur meets the criteria for "2 to 1" set forth in The Restated and Amended Settlement Agreement between UP and BNSF dated March 1, 2002 ("RASA"). The RESTATED AND AMENDED AGREEMENT of March 1, 2002, defines "2-to-1" Shipper Facilities as "Shipper Facilities that were open to both UP and SP... and no other railroad." Since Granite Mountain Quarries had access to MP, SSW, and LRWN, it does not qualify as a "2-to-1" Shipper Facilities.

Union Pacific declines BNSF's request for customer access.

Sincerely,

Ryan Pichler
Senior Manager Commercial & Interline Strategy

CC: Derek Hinds
 Sean Frazier
 Olin Dirks
 Tanya Spratt
 David Hughes
 Stephanie Weekly