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Office of Chief Counsel
August 26, 2026
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August 26, 2026

**PUBLIC VERSION**

**VIA E-FILING**

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

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

Dear Chief of Case Administration:

Enclosed for e-filing in the above-referenced proceeding is a public version of BNSF Railway Company's Supplemental Petition, with appropriate redactions that the Board can place in its docket. We are concurrently filing a highly confidential version of the Supplemental Petition to be filed under seal.

Respectfully submitted,

/s/ *Drew Tulumello*

Drew Tulumello
*Attorney for BNSF Railway Company*

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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Dated: August 26, 2026

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## Verified Statements

- Verified Statement of Olivia E. Power, Assistant Vice President of Contracts and Joint Facilities, BNSF Railway Company
- Verified Statement of Lance R. Brewer, General Manager, Division Operations for the Red River Division, BNSF Railway Company
- Verified Statement of Michael R. Baranowski, Senior Managing Director, FTI Consulting, Inc.
- Verified Statement of Nicholas Hill, Ph.D., Partner, Bates White Economic Consulting

## Exhibits

- Exhibit 1 – Restated and Amended Settlement Agreement
- Exhibit 2 – July 25, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)
- Exhibit 3 – August 31, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)
- Exhibit 4 – March 23, 2023 letter from Chris Sanford (UP) to Mike Martucci (BNSF)
- Exhibit 5 – April 13, 2023 letter from Mike Martucci (BNSF) to Chris Sanford (UP)
- Exhibit 6 – May 5, 2023 letter from Chris Sanford (UP) to Mike Martucci (BNSF)
- Exhibit 7 – February 21–August 3, 2023 emails between BNSF and UP
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- Exhibit 21 – July 2–October 1, 2009 emails between UP and BNSF
- Exhibit 22 – March 3, 2026 letter from David Hughes (UP) to Olivia Power (BNSF)
- Exhibit 23 – September 26, 2023 letter from Mark Simon (UP) to Mike Martucci (BNSF)
- Exhibit 24 – March 30, 2023 emails between BNSF and UP
- Exhibit 25 – May 2, 2025 email from UP to BNSF
- Exhibit 26 – UP Annual Merger Implementation Report, July 1, 1997
- Exhibit 27 – September 11–13, 2024 emails between BNSF and UP

- Exhibit 28 – February 8, 2018 BNSF internal emails
- Exhibit 29 – January 8, 2018 emails between UP and BNSF
- Exhibit 30 – March 13–April 6, 2021 emails between BNSF and UP
- Exhibit 31 – March 28, 2025 BNSF internal emails
- Exhibit 32 – June 2022 BNSF Presentation
- Exhibit 33 – June 8–9, 2019 emails between BNSF and UP
- Exhibit 34 – July 24, 2024 Joint Service Committee presentation
- Exhibit 35 – May 2, 2019 BNSF internal emails
- Exhibit 36 – July 23, 2021 emails between BNSF and UP
- Exhibit 37 – June 13, 2019 emails between BNSF and UP
- Exhibit 38 – June 13–14, 2019 BNSF internal emails
- Exhibit 39 – March 28, 2022 BNSF internal emails

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## I. INTRODUCTION

In the three decades since the 1996 merger between the Union Pacific Railroad Company ("UP") and the Southern Pacific Rail Corporation ("SP"), competition in the combined UP/SP service area has continually degraded. {{[redacted]}} even though the Board imposed merger conditions intended to preserve for customers the "competitive service" and choice of provider lost when SP was "absorbed into UP." *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 44)*, 1 S.T.B. 233, 368 (1996) ("Decision No. 44"). The Board intended for BNSF to be the "guardian"

of these conditions,[1] but despite BNSF's efforts, the merger conditions have failed to preserve competition in the industry.

The evidence available thus far indicates that the reduction in competition is due to UP disregarding or violating the merger conditions in multiple ways that have had a direct and adverse impact on competition. First, UP has continually violated the mandated train dispatching protocols designed to ensure dispatching parity between UP and BNSF trains on UP lines over which BNSF was granted trackage rights. Second, UP has improperly delayed or denied BNSF's exercise of its contractual rights to serve customers that should benefit from BNSF competitive service. Third, UP has refused to update, or has demanded wholesale re-negotiation of, the Trackage Rights Agreements ("TRAs") that implement BNSF's rights in connection with the merger. This is not an exhaustive list of the ways in which UP has acted to thwart competition, but these are among the most pressing issues that preclude BNSF from effectively preserving competition in accordance with the merger conditions. As shown below, the Board's Confidential Carload Waybill Sample data ("Waybill Data") demonstrates the effect of UP's disregard and violation of the merger conditions on competition.

In light of this degradation to competition and adverse impacts on customers, BNSF sought relief in November 2025 from the Board in a Petition ("Original Petition") documenting UP's pattern of delay, denial, and obstruction of the merger

[1] *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight Decision No. 20)*, FD 32760 (Sub-No. 21), slip op. at 13 (STB served Dec. 20, 2001) ("Oversight Decision No. 20").

conditions and asking that the Board open a proceeding to review, enforce, and modify the merger conditions as necessary. In response, the Board instructed BNSF to "supplement its petition to clarify the scope of the proposed proceeding and the exact nature of the relief requested." *BNSF Ry. Co.—Pet. for Rev.—UP/SP Merger Conditions*, FD 32760 (Sub-No. 52), slip op. at 6 (STB served May 26, 2026) (the "May 2026 Decision"). Although BNSF maintains that UP's conduct threatens the overall efficacy of the UP/SP merger conditions and encourages the Board to take a broader view of the agency's important conditioning authority than it expressed in its May 2026 Decision, BNSF is cognizant of the many current demands on the Board and its prior guidance "encourag[ing] parties . . . to make their best efforts to resolve among themselves any disputes that may arise." *Decision No. 44*, 1 S.T.B. at 432. BNSF will therefore attempt a bilateral approach with UP to resolve the ongoing service election and TRA disputes; as detailed below, success there will depend on UP's good faith participation and BNSF may be back before the Board again on those matters in the future. However, given the impact of UP's anticompetitive dispatching behaviors on competition and on shippers, BNSF seeks the Board's assistance now to enforce the Restated and Amended Settlement Agreement's ("RASA") equal dispatching provisions.[2] *See* RASA § 9(d) and Exhibit D. Accordingly, BNSF now submits this Supplemental Petition to specifically request that the Board open a proceeding to enforce the merger conditions requiring equal dispatching.

[2] A copy of the RASA is included as Exhibit 1.

BNSF also recognizes that UP's proposed merger with Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") is currently under Board consideration, and if approved, would be a sea change for the railroad industry. In that proceeding, UP/NS has claimed that traffic the combined railroad would handle in its "Committed Gateway Pricing" service would be subject to the same "equal dispatch" and nondiscrimination standard that already applies to UP through the RASA. *See Union Pac. Corp.—Control—Norfolk S. Corp.*, FD 36873, UP-80/NS-78 (filed July 27, 2026), at Supp. Page 44 & n. 47. In addition, as part of its effort to secure support for the proposed UP/NS merger, UP has already agreed to grant a third railroad operating rights over one of the same lines on which UP continues to deny BNSF the dispatching parity expressly required by the UP/SP merger conditions.[3] Thus, the proposed UP/NS merger only heightens the need for meaningful Board action to enforce the equal dispatching obligations and ensure that customers retain a meaningful competitive choice.

## II. BACKGROUND

When the Board approved the UP/SP merger in 1996, it imposed merger conditions memorialized in a settlement agreement between UP and BNSF, as well as in an additional competition-preserving agreement with the Chemical

[3] *See, e.g.*, Lubomir Cech, *CN and Union Pacific sign access agreements linked to NS merger (updated)*, RAIL MARKET NEWS (July 23, 2026), https://railmarket.com/news/business/60372-cn-and-union-pacific-sign-access-agreements-linked-to-ns-merger-updated ("Union Pacific and CN have signed two binding Memoranda of Understanding covering operating rights and customer access in connection with Union Pacific's proposed merger with Norfolk Southern. . . . CN would gain new rights over Union Pacific's network between Memphis, Tennessee, and Eagle Pass, Texas, supporting freight movements between Canada and Mexico.").

Manufacturers Association ("CMA"). *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, FD 32760, Applicants' Submission of Settlement Agreement with CMA (filed Apr. 19, 1996). The operative agreement enshrining these conditions, as later restated and amended, and approved by the Board, is the RASA, which remains binding today. *See Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight Decision No. 21)*, 5 S.T.B. 1173, 1173–74, 1177–78 (2001) ("Oversight Decision No. 21").

Under the RASA, UP granted BNSF trackage rights over roughly 3,968 miles of the combined UP/SP network and sold BNSF over 300 additional miles of line, enabling BNSF to serve as the competitive replacement for shippers that enjoyed two-carrier service. *See Decision No. 44*, 1 S.T.B. at 253. Among the key competition-preserving conditions in the RASA are (1) equal, non-discriminatory dispatching of BNSF trains by UP; (2) a notice-and-response service election protocol by which BNSF informs UP how it will serve eligible customers on lines under the RASA; and (3) implementing TRAs that ensure that the parties' obligations and entitlements reflect the conditions of the RASA and Board decisions. The Board intended BNSF to be the "guardian of the[se] rights." *Oversight Decision No. 20* at slip op. 13. Regrettably, UP's anticompetitive conduct has eroded the efficacy of these key conditions, in violation of their letter and spirit.

UP's anticompetitive conduct is documented in BNSF's own contemporaneous records and has been described in the accompanying Verified Statements of Lance R. Brewer (General Manager, Division Operations for BNSF's Red River Division), and

Olivia E. Power (BNSF Assistant Vice President of Contracts & Joint Facilities). Empirical data also reveals the extent to which the efficacy of the merger conditions has been eroded and the competitive harm to shippers that erosion has caused. This empirical data is reflected in the accompanying expert Verified Statements of Michael R. Baranowski (a Senior Managing Director at FTI Consulting with more than 40 years of experience in analyzing railroad traffic, operations, and revenue patterns) and Dr. Nicholas D. Hill (a Partner at Bates White Economic Consulting and Ph.D. economist who previously served as an Assistant Section Chief in the Economic Analysis Group of the Justice Department's Antitrust Division). Taken together, the factual record and economic data reflect a sustained pattern of conduct by UP that disregards the UP/SP merger conditions and degrades competition for shippers.

**A. UP Treats BNSF Trains Unequally in Dispatching**

The Board required UP to provide BNSF trains with equal dispatching on trackage rights lines so that BNSF can provide shippers with effective and efficient service and is not discriminated against in its operations over UP lines in the process. In particular, Section 9(d) of the RASA imposes a categorical neutrality requirement on UP, directing that "[t]rains 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." RASA § 9(d). This guarantee is enforced through specific "Dispatching Protocols" contained in the RASA. *See* RASA Exhibit D ("Dispatching Protocols").

Despite this clear obligation, UP routinely violates the Dispatching Protocols by engaging in a range of prohibited conduct, including imposing absolute operating

windows on BNSF trains only and not on UP trains; imposing dispatching processes that favor UP without BNSF's consent; replacing first-come, first-served access with UP-dictated windows; and forcing BNSF trains to hold while UP local trains operate with de facto priority. These forms of unequal dispatching directly harm shippers who suffer from delays and unreliable service when their cars on BNSF trains are subject to UP's unequal treatment. At its core, the discriminatory dispatching treatment makes it harder for BNSF to compete with UP on these movements. This is reflected in the data available thus far to BNSF, further described below, which includes:

- service interruption performance data and service alert data that reveal frequent instances of UP prioritizing movement of UP trains over BNSF trains;
- BNSF crew call data demonstrating that BNSF is forced to recrew trains operating over UP-owned RASA track at {{ }} the rate of BNSF trains operating over BNSF-owned track;
- Automatic Equipment Identification ("AEI") data showing that BNSF trains are held on Joint Trackage while UP trains are allowed to run through, resulting in significantly delayed transit times; and
- contemporaneous communications, including email correspondence and radio communications, corroborating the significant and recurring issues caused by UP's dispatching violations.

These records and data plainly demonstrate that UP prioritizes its own trains on trackage rights lines, thereby directly limiting the efficacy of the RASA's equal dispatching provisions in preserving competition.

### B. UP Improperly Delays and Denies BNSF's Service Elections

UP has also violated the UP/SP merger conditions by intentionally frustrating the service election process. The RASA provides BNSF with the right to elect, at its sole discretion, the manner in which it will serve customers that BNSF has the right

to access under the merger conditions. *See, e.g.*, RASA § 1(d) (allowing BNSF to "notify UP of its election . . . of the manner by which it proposes . . . service be provided and the specifics of its operating plan over UP/SP trackage"). The service election protocol only allows UP to approve or deny BNSF's proposed operating plan for serving the customers to whom BNSF has a contractual right of access. In such cases, UP is required to explain the reasons for any disapproval in writing, and provide an alternative service plan. *See id.* UP is not allowed to abuse the service election process as a tool to deny BNSF access to these customers entirely. However, this is precisely what UP has done, by both preventing BNSF from accessing customers at all, and by introducing delay and uncertainty into the service election process.

***BNSF's Empirical Evidence Shows UP's Systematic Abuse of the Service Election Process.*** BNSF has compiled a significant sample of service elections (from shortly after the UP/SP merger to the present) that demonstrates UP systematically abuses the service election process.[4] As detailed in Dr. Hill's Verified Statement, a high-level analysis of this available data helps illustrate the extent of UP's improper conduct. [redacted]

[4] BNSF has compiled a data set of [redacted] service elections at points covered by the RASA, including supporting documentation. Due to historical variations in how BNSF has tracked its service elections in the decades since the merger, the data set contains the readily available information BNSF has maintained in the ordinary course of business, although it may not capture all of BNSF's service elections under the RASA.

[redacted]

[redacted]



***Specific Delays and Denials Support BNSF's Empirical Evidence.*** BNSF also maintains the UP-BNSF correspondence underlying its service elections, as well as the documentary evidence BNSF receives from customers and develops itself to support service elections if needed.[6] These records reflect that in recent years UP has unnecessarily prolonged the service election process and, in some cases, denied elections on pretextual grounds. In other cases, UP has changed its reasons, given contradictory reasons, or given no reason at all to deny BNSF access to

[5] Hill Verified Statement ¶ 29 & Figure 1.

[6] BNSF also records new customer opportunities in Salesforce, a customer relationship management platform that allows BNSF to monitor customer information and the status of customer acquisition opportunities.

customers. These tactics force BNSF to respond to each new ground for denial, further delaying the process.

For instance, on July 25, 2022, BNSF informed UP that it intended to directly serve {{[redacted]}} in Fruita, Colorado.[7] UP told BNSF that {{[redacted]}} was "not within the boundaries of" the location in question and instructed BNSF to submit a formal access request.[8] UP also denied BNSF's subsequent formal service election on the separate ground that {{[redacted]}} shipped and received the same commodities as the prior owner of the facility.[9] When BNSF informed UP that {{[redacted]}} was shipping a different product,[10] UP repeated its denial on essentially the same grounds with no further explanation.[11] After further back-and-forth, including additional dismissive responses from UP and months of delay,[12] {{[redacted]}} chose not to continue seeking BNSF's access at the site, resulting in lost competition for the customer's business.

Another tactic UP employs is to claim it cannot locate the customer at the address in question, purportedly rendering the service election "premature" and imposing onerous obligations. For example, UP responded to a March 2022 BNSF service election seeking to directly serve a customer by stating that it had "no record

[7] Exhibit 2 (July 25, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)).
[8] Exhibit 3 (August 31, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)), at 1.
[9] Exhibit 4 (March 23, 2023 letter from Chris Sanford (UP) to Mike Martucci (BNSF)).
[10] Exhibit 5 (April 13, 2023 letter from Mike Martucci (BNSF) to Chris Sanford (UP)).
[11] Exhibit 6 (May 5, 2023 letter from Chris Sanford (UP) to Mike Martucci (BNSF)).
[12] Exhibit 7 (February 21–August 3, 2023 emails between BNSF and UP).

of {{[redacted]}} seeking to establish a transload or customer location in Fruita, CO" and that it was thus premature for UP to respond to BNSF's service election.[13] BNSF responded that the RASA "makes no reference to UP needing to have [a] record of a customer seeking to establish a location"[14] (and that the customer had already leased the land and performed significant work on the track to bring it to operating standard).[15]

UP issued only conditional approval of the service election, requiring UP track and joint use agreements, and BNSF joint-funding of any necessary capital investments for track upgrades.[16] BNSF informed UP that it already had authority to enter the customer's track to commence service immediately, that separate agreements between UP and the customer were not a pre-condition to BNSF service under the RASA, and that no additional investments were needed to access the track.[17] UP refused to remove the conditions.[18] Subsequently, UP stalled implementation of that agreement for months, demanding track assessments and significant repairs to the track in question.[19]

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[13] Exhibit 8 (March 25, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)).
[14] Exhibit 9 (April 7, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)), at 1.
[15] *Id.*
[16] Exhibit 10 (April 12, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)).
[17] Exhibit 11 (May 2, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)).
[18] Exhibit 12 (May 2, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)); Exhibit 13 (May 5, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)) at 1; Exhibit 14 (May 6, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)).
[19] Exhibit 15 (May 26–August 1, 2022 emails between UP and customer; internal BNSF emails re: same).

This UP delaying tactic is part of a larger pattern. For example, BNSF issued a formal election to directly serve {{[redacted]}} at Eagle Pass, Texas on April 17, 2024. UP responded that the customer "has not yet been established as a located industry on Union Pacific" and that "BNSF's request for confirmation of access to the facility . . . is premature."[20] UP stated that it was "actively working to locate this customer on UP lines, and once located UP will then entertain a BNSF request for access to the facility."[21]

UP's response made clear that it intended to fully control the service election timeline despite its clear obligations under the RASA. BNSF responded by providing an invoice dated April 27, 2024 locating the customer at Eagle Pass and reiterating that UP confirm its approval of the service election.[22] In response, UP confirmed its denial, stating that the referenced invoice involved a "holdover train from the previous owners of the facility" and that the customer was "not considered to be a located industry or New Shipper on Union Pacific."[23] While UP stated it "continues to actively work with" the customer "on track infrastructure that will support the future rail needs of the facility," it maintained that it would not "entertain a BNSF request for access to the facility" "[u]ntil such time as these plans are completed and

[20] Exhibit 16 (May 17, 2024 letter from Ryan Pichler (UP) to Toni Hanson (BNSF)).
[21] *Id.*
[22] Exhibit 17 (June 3, 2024 letter from Toni Hanson (BNSF) to Ryan Pichler (UP)); Exhibit 18 (April 27, 2024 Customer Invoice).
[23] Exhibit 19 (June 18, 2024 letter from Ryan Pichler (UP) to Toni Hanson (BNSF)).

approved by Union Pacific."[24] Again, UP indicated that the timing of any service election was within its control, regardless of the evidence BNSF could provide.

Troublingly, UP pursued this tactic even while BNSF's Original Petition was pending before the Board. In April 2026, BNSF elected to directly serve {{ }} a customer at a facility in Clearfield, Utah. Thirty days later, UP denied access on the grounds that {{ }} "has not yet been established as a located industry on UP." Once again, UP stated that it was "actively working to locate this customer, and once located UP will then entertain a BNSF request for access to the facility."[25] BNSF has been unable to serve {{ }} for months due to UP's stall tactic. Additional examples of UP's misconduct are provided in Ms. Power's Verified Statement.

***UP's Violations of the Service Election Process Cause Competitive Harm.*** UP's violations of the service election protocol have harmed shippers and deprived them of the protections imposed by the Board in the UP/SP merger. Economic theory explains the adverse impact of UP's behavior on competition. A single firm can impose additional transaction costs on competitors and cause delays in customer acquisition—in this case, steering customers toward UP service before BNSF's service election process is complete.[26] As Dr. Hill explains, a firm that controls an approval or negotiation process can suppress competition as effectively by

[24] *Id.*
[25] Exhibit 20 (May 21, 2026 letter from Ryan Pichler (UP) to Michael Pruneau (BNSF)).
[26] Hill Verified Statement ¶¶ 22–23.

delaying as by denying: delay raises the rival's costs, creates uncertainty, extends the lag between customer commitment and service, causes missed customer opportunities, and makes the rival appear unreliable.[27] As a result, customers are deprived of the competition they would otherwise enjoy.

UP's abuse of the service election process has already had real competitive consequences: in many cases, BNSF loses the delayed or denied opportunities. But, given the Board's May 2026 Decision, BNSF is not asking the Board to impose blanket enforcement relief for all service election disputes at this time. BNSF will continue to address those disputes with UP on a case-by-case basis and, where bilateral efforts fail, bring specific disputes to the Board asking for expeditious treatment. This targeted approach respects the Board's preference for private resolution where possible while preserving relief for customers when UP's conduct continues to frustrate the competitive choice guaranteed by the UP/SP merger conditions.

### C. UP Fails to Update the TRAs or Demands Inconsistent TRA Terms

Competition in the industry has also been degraded as a result of UP's refusal to update the TRAs that put BNSF's roughly 4,000 miles of trackage rights into operational effect. Indeed, the Board has recognized that the TRAs "will be restated and amended, as necessary, to reflect the terms and conditions of the restated and amended BNSF Agreement, as approved by the Board." Oversight Decision No. 21 at 1174 n.3. But the TRAs have not been comprehensively updated since their execution in 1996, and in several respects no longer accurately reflect the parties' rights and

[27] *Id.*

obligations as subsequently amended by the Board and the RASA. Moreover, UP has resisted BNSF's requests over the years to make these necessary updates, resulting in significant ambiguity regarding the parties' rights.[28]

The parties' contemporaneous communications demonstrate that (1) UP has refused to update the implementing TRAs to reflect the RASA and subsequent Board decisions; and (2) UP has demanded inconsistent TRA terms at locations BNSF is entitled to access directly, abusing the TRA process as another delay tactic to deny customers service.

In one instance, UP stated that "there is no compelling reason to spend a significant amount of time and effort to update the TRAs" since "UP will continue to be guided by the [RASA] when questions related to the TRAs arise."[29] But UP has not "be[en] guided by the" RASA when such questions arise. For example, {{ }} This past March, for example, UP improperly and untimely sought to reopen {{ }}

[28] *See* Power Verified Statement at 14.
[29] Exhibit 21 (July 2–October 1, 2009 emails between UP and BNSF), at 1.
[30] Exhibit 22 (March 3, 2026 letter from David Hughes (UP) to Olivia Power (BNSF)).

[redacted]

[redacted]}}

UP has also insisted on negotiating new TRAs with terms inconsistent with the RASA and with the parties' practices over the last 30 years, including at the Woods Cross Industrial Lead, preventing BNSF from accessing {{[redacted]}} at that location on the same basis as UP.[32] The parties have been engaged in a years-long negotiating process regarding a new TRA at Woods Cross that remains ongoing.[33]

UP often proposes terms in new TRAs governing BNSF's customer access pursuant to UP/SP merger conditions that are flatly inconsistent with the compensation and conditions for TRAs mandated by the RASA and the Board. For instance, at the Cedar Bayou Industrial Lead near Houston, UP proposed material terms in a new TRA that deviated from the UP/SP and RASA framework. Among other changes, UP proposed a ten-year term for the TRA {{[redacted]}}[34] UP raised these baseless positions even though BNSF already had longstanding operating rights to the Cedar Bayou Industrial Lead under the RASA and the Board's orders.[35]

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[31] *Id.*
[32] Exhibit 23 (September 26, 2023 letter from Mark Simon (UP) to Mike Martucci (BNSF)).
[33] *See* Power Verified Statement at 13.
[34] Exhibit 24 (March 30, 2023 emails between BNSF and UP)); Exhibit 25 (May 2, 2025 email from UP to BNSF).
[35] Power Verified Statement at 13–14.

UP's demands and abuse of the TRA process have created extensive delays for customers seeking BNSF service. Each of these failures has deprived shippers of timely access to the competitive BNSF service that was intended to be afforded to them by the Board's conditions. Accordingly, BNSF is seeking commercial resolution of these TRA issues bilaterally with UP in parallel with submitting this Supplemental Petition and will bring specific disputes to the Board should these bilateral efforts fail. This approach is consistent with the Board's preference for private resolution and permits the Board to focus on resolving BNSF's equal dispatching claims, which BNSF has been unable to resolve privately and are a prerequisite to maintaining competition.[36]

### D. Waybill Data Demonstrates the Effect of UP's Anticompetitive Conduct

Taken together, UP's conduct has had negative impacts on competition across the railroad industry, in turn harming customers. The impact on competition is detailed in the Verified Statements of Mr. Baranowski and Dr. Hill, reflecting their analysis of the Board's Waybill Data. [redacted]

[redacted]

{{[redacted]

[redacted]

[36] Through a letter sent contemporaneously with this filing, BNSF invited UP to join in the process of updating the 1996 TRAs and in developing template provisions (the TRA provisions required by the RASA and subsequent Board decisions) to be used in new TRAs executed pursuant to the merger conditions.

[redacted]

[37] Baranowski Verified Statement at 25.
[38] *Id.*
[39] *Id.* at 28.

[redacted]

## III. GOVERNING LEGAL STANDARD FOR REQUESTED RELIEF

In response to BNSF's request for review in its Original Petition, the Board identified information BNSF should submit in order to obtain review of the UP/SP merger conditions and their efficacy.[43] Where BNSF seeks enforcement of the conditions, the Board instructed BNSF to "state which RASA provision(s) it believes

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[40] *Id.*

[41] *Id.* at 29.

[42] Hill Verified Statement ¶ 11.

[43] There is no question the Board has continuing authority over the UP/SP merger conditions. In Oversight Decision No. 21, the Board expressly 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." *Oversight Decision No. 21*, 5 S.T.B. at 1177–78. The Board also recognized the end of formal oversight would "not preclude any party from invoking [the Board's] jurisdiction to address any merger-related concerns arising out of [the Board's] conditions." *Id.*; *Canadian Pac. Ry. Ltd.—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. (Oversight Decision No. 4)*, FD 33556 (Sub-No. 4), slip op. at 3 (STB served Dec. 27, 2001).

UP has violated and provide any available factual support (including documentation) for its claims." May 26 Decision at slip op. 6.

Accordingly, this Supplemental Petition seeks relief in the form of initiating a formal proceeding to enforce the RASA's equal dispatching provisions. The evidence BNSF provides in this Supplemental Petition demonstrates UP's pattern of undermining the UP/SP merger conditions and satisfies the Board's threshold for opening a proceeding. *See Oversight Decision No. 20* at slip op. 1, 8, 9. At the conclusion of discovery, BNSF will seek an order (1) enforcing Section 9(d) of the RASA and the Dispatching Protocols, (2) imposing retroactive civil penalties pursuant to 49 U.S.C. §§ 11901 and 11323–27[44] for UP's noncompliance; and (3) requiring UP to report on a quarterly and annual basis whether and how it is meeting its equal dispatching requirements under the merger conditions.

## IV. THE UP/SP MERGER DISPATCHING CONDITIONS MUST BE ENFORCED TO PRESERVE COMPETITION

UP has violated the RASA's dispatching provisions (RASA Section 9(d) and Exhibit D), which obligate UP to give BNSF trains "equal dispatch without any discrimination in promptness, quality of service, or efficiency." RASA § 9(d). The Board relied on these equal dispatching protocols in finding that the trackage rights would solve the "competitive problem" of the UP/SP merger, *see* Decision No. 44 at 403–04, but they have failed because BNSF has not received dispatching parity from UP.[45] BNSF has reason to believe that much of the best evidence of UP's violations is

[44] *See Decision No. 44*, 1 S.T.B. at 239–40.

[45] The Board previously addressed dispatching parity in *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Oversight Decision No. 13)*, 3 S.T.B. 987, 1033 (1998)

in UP's possession and shielded from Board review absent compulsory discovery. However, even BNSF's own data, accompanied by expert analysis, demonstrates UP's ongoing failure to abide by the merger conditions and the resulting harms to competition. BNSF therefore respectfully submits that this Supplemental Petition and its accompanying documents provide the Board with adequate grounds to open a proceeding to allow the Board—with the benefit of discovery—to evaluate the need to enforce the equal dispatching provisions of the UP/SP merger conditions.

### A. Governing Provisions and Board Analysis

In order to allow BNSF to replace the service that customers enjoyed from SP prior to the UP/SP merger, the Board imposed merger conditions that would require UP to provide equal dispatching to BNSF trains after the merger. In particular, RASA Section 9(d) governs operations over "Joint Trackage"—the lines over which the parties have granted each other trackage rights. While UP retains exclusive direction and control of operations on its own lines, Section 9(d) imposes a categorical neutrality requirement: "[t]rains 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." RASA § 9(d). This equal

("Oversight Decision No. 13"). In *Decision No. 44*, the Board concluded that the parties should resolve dispatching issues privately but was clear that the Dispatching Protocols alone were insufficient to ensure dispatching discrimination does not occur. *See* 1 S.T.B. at 404 ("This protocol, together with our continuing oversight, should ensure that dispatching discrimination does not occur."), 432 ("[W]e encourage parties to this proceeding to make their best efforts to resolve among themselves any disputes that may arise . . . before resorting to the Board for resolution."). Twenty-five years after the end of Board oversight, equal dispatching has been eroded as described in this Supplemental Petition, and now warrants review.

dispatching obligation is essential to BNSF's ability to fully utilize the trackage rights it receives from UP on nearly 4,000 miles of railroad lines across the United States.

Section 9(d)'s equal dispatching guarantee is enforced through specific "Dispatching Protocols" contained in Exhibit D to the RASA. The Protocols' purpose is "[t]o ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track." Dispatching Protocols § 2. The Dispatching Protocols translate that principle into multiple concrete commitments, which UP has violated, including:

- **Section 2 (Purpose).** Section 2 of the Dispatching Protocols provides that BNSF trains are to be given equal dispatch without any discrimination in promptness, quality of service, or efficiency. It further provides that the competitiveness of BNSF's operations shall not be adversely affected by the fact that UP owns the track. UP directly violates Section 2 by imposing absolute calling windows exclusively on BNSF trains—a discriminatory restriction that has no parallel application to UP's own trains—and by using UP's track ownership to restrict BNSF's competitive operations.

- **Section 3 (General Instructions).** Section 3 requires that UP issue written instructions to all personnel responsible for train dispatching on Joint Trackage that trains of the tenant (BNSF) are to be dispatched exactly as if they were trains of the same class of the owner (UP) and given equal treatment with trains of the owner. These instructions are to be issued at agreed intervals or at the request of either party. UP has issued written instructions to its dispatchers that mandate unequal treatment of BNSF trains—the opposite of what Section 3 requires.

- **Section 7 (Train Priorities/Run Time Standards).** Section 7 provides that information as to assignment of train priorities is to be shared with BNSF, and that those assignments must be made equitably. UP assigns de facto priority to UP trains by restricting BNSF to a narrow calling window while UP local trains and other UP trains operate without equivalent restrictions.

- **Section 8 (Entry to Joint Trackage).** Section 8 provides that BNSF's entry to Joint Trackage must be provided on a first-come, first-served basis, subject to applicable train priorities and specific operating conditions of both railroads. Critically, Section 8 further provides that if strict application of the first-come, first-served rule is difficult or uncertain, deviations from that standard may only be implemented by joint agreement with BNSF. UP replaces first-come, first-served access with UP-dictated absolute windows implemented without any joint agreement with BNSF.

- **Section 12 (Performance Incentives and Evaluation).** Section 12 provides that performance evaluation of UP's employees and supervisors responsible for dispatching BNSF trains shall take into account BNSF's train performance on UP's lines and UP's effectiveness in cooperating with BNSF personnel and meeting BNSF's service requirements, in the same manner as such factors are considered for UP's own trains. Communications with UP demonstrate that UP personnel are not measured by BNSF's train performance or their cooperation with BNSF.

- **Section 14 (Modifications).** Section 14 provides that the dispatching protocols may be modified at any time by mutual agreement, consistent with the objective of equal, flexible, and efficient handling of all trains. UP has imposed dispatching protocols through unilateral modification—not a mutual agreement. BNSF was never consulted, never agreed, and has repeatedly objected to UP's unilaterally imposed terms.

In summary, UP violates the Dispatching Protocols because it: (1) imposes absolute operating windows only on BNSF trains and not on UP trains, constituting discriminatory treatment; (2) imposes dispatching processes without BNSF's consent, violating the mutual agreement requirement; (3) replaces first-come, first-served access with UP-dictated windows; and (4) forces BNSF trains to hold while UP locals operate with de facto priority. Despite BNSF's repeated demands, UP has refused to rescind these practices, and BNSF's operations and ability to compete continue to suffer.

### B. Evidence of UP's Unequal Dispatching

BNSF routinely encounters operational challenges caused by UP's failure to meet its equal dispatching obligations by systematically subordinating BNSF traffic to UP traffic on Joint Trackage lines. The full extent of UP's disparate treatment of BNSF trains can only be revealed through UP's train movement data (which BNSF would seek discovery of in a full proceeding), but BNSF's own delay data demonstrates that UP routinely preferences its own trains. And due to unique circumstances, BNSF has information about UP's train movement at Eagle Pass and on the Baytown Branch that clearly shows violations of equal dispatching obligations in these key regions.[46] Moreover, BNSF's internal records show that UP has adopted a written policy of dispatching discrimination on the Rockport Subdivision and also prioritizes its own traffic in Houston. These specific examples reveal systemwide disparities in dispatch.

***UP's Systemwide Dispatching Violations***. BNSF collects service interruption performance data across its entire system, including trains operating on Joint Trackage. This "SIDOL data" systematically records the specific corridor of a delay, information about the impacted BNSF train, and a description of the cause of delay. As the Verified Statement of Mr. Baranowski details, the SIDOL data over Joint Trackage reveals frequent instances of UP operators prioritizing movement of

[46] As set forth below, BNSF possesses this information demonstrating UP's violations of its equal dispatch obligations because it possesses either AEI reader data or radio transmissions permitting a comparison between UP and BNSF trains. BNSF also has internal documents and records demonstrating UP's violations. The necessary data to show all violations is not in BNSF's possession.

one or more UP trains over BNSF trains.[47] {{ }} BNSF's "Alert List" data, which monitors similar information, displays a similar pattern of discriminatory dispatching.[49]

UP's discriminatory dispatching is also reflected in BNSF's crew call data. Mr. Baranowski's analysis of BNSF's crew call data for the entire Red River Division (covering Texas, Oklahoma, parts of Arkansas, and Louisiana), from May 2021 through June 2026, shows that BNSF is forced to recrew trains operating over UP-owned RASA segments at {{ }} the recrew rate for BNSF trains operating over BNSF-owned track.[50] {{ }}

***Eagle Pass***. BNSF's limited visibility into UP's train movements confirms the discriminatory pattern reflected in BNSF's delay and crew data. At the Eagle Pass, Texas, border crossing with Mexico, for example, UP fails to give BNSF parity in operations to and from the Mexican market, prioritizing its own traffic at the expense of BNSF's customers. Both carriers use the corridor between San Antonio and Eagle Pass to interchange international traffic with Ferromex, and the RASA specifically grants BNSF trackage rights on that line "with parity and equal access to the

[47] Baranowski Verified Statement ¶¶ 40–41.
[48] *Id.*
[49] *Id.*
[50] *Id.* at ¶ 36.
[51] *Id.* at ¶ 37.

Mexican border crossing at Eagle Pass." RASA § 4(a). The presence of foreign AEI readers along Eagle Pass, which use sensors and radio frequency tags to track railcar movement at certain designated locations, permits BNSF a unique view into UP's own train movements (data not currently available to BNSF for other Joint Trackage segments). That data reveals a pattern of repeated delays of trains arriving at Spofford, Texas, a station roughly 30 miles north of the Eagle Pass gateway.[52] If UP followed its equal dispatching obligations, trains passing the Spofford AEI reader would depart and proceed through Eagle Pass in the same relative sequence, as the Dispatching Protocols require entry "on a first-come, first-served basis." Dispatching Protocols § 8. However, Mr. Baranowski's analysis of the AEI reader data reveals that, in 2025, [redacted]}}

[52] *See id.* at ¶¶ 5, 9.
[53] *Id.* at ¶ 10.
[54] *Id.*

[redacted]}}

BNSF's contemporaneous documents corroborate the significant and recurring issues caused by UP's conduct. As noted above, if UP followed the RASA's equal

[55] *Id.* at ¶ 13.

dispatching obligations, it would allocate border-crossing slots on a first-come, first-served basis based on their passage of the Spofford AEI reader.[56] But as the Verified Statements of Mr. Brewer and Ms. Power detail, UP has instead consistently allocated itself more border crossing slots than BNSF, even when BNSF's train passes the AEI reader first.[57] Additionally, UP and BNSF jointly invested to build a slot track—a terminal track used for train staging, holding, meets, and movement coordination—at UP's Clark's Park Yard within Eagle Pass. While UP should permit BNSF equal use pursuant to the Dispatching Protocols, *see* RASA § 9(c)(v), UP repeatedly prevents BNSF from using that slot track.[58]

When BNSF has attempted to resolve these issues privately, UP has refused to honor its obligations.[59] UP has acknowledged lacking personnel to resolve such issues—specifically a manager stationed at BNSF's dispatching center in Fort Worth, Texas. A BNSF employee, by contrast, is stationed at UP's Omaha, Nebraska dispatching center and functions as a liaison on similar issues for BNSF.[60] During the Board's prior oversight period, UP claimed that having a UP station manager at BNSF's dispatching center would [redacted]}}[61] But UP has not filled this position for years.[62] Indeed, in a September 2024 email, David Hughes from UP Joint Facilities responded to BNSF's Mr. Brewer via

[56] *See* Brewer Verified Statement at 5.
[57] *Id*. at 6–8.
[58] RASA § 9(c)(v); Brewer Verified Statement at 9; Power Verified Statement at 15.
[59] *See* Brewer Verified Statement at 17; Power Verified Statement at 4–6.
[60] *See* Power Verified Statement at 6.
[61] Exhibit 26 (UP Annual Merger Implementation Report, July 1, 1997), at 80.
[62] *See* Brewer Verified Statement at 10.

email regarding unequal dispatching at Eagle Pass. Mr. Hughes admitted, "I cannot say whether BNSF or UP local management is being transparent with the issues to you or simply passing blame," and wrote he had "not been allowed to replace our Director of Joint Facilities in [Fort] Worth[,]" even though "[t]hat position was created to help monitor and resolve [parity] issues like these."[63] Nearly two years later, UP has still failed to fill it.

***Baytown Branch***. On the Baytown Branch near Dayton, Texas, UP routinely blocks BNSF operations by holding oversized UP trains on the single main line. The Baytown Branch is a single line near Houston that serves critical customers along the Gulf. Trains moving on the Baytown Branch are not dispatched from a central location using sensors or electronic readers. Rather, coordination of movements is handled on a conductor-to-conductor or train-to-train basis over radio. Accordingly, train movement across the Baytown Branch is recorded through radio transmissions rather than electronic data, permitting BNSF visibility into UP's train movements compared to its own.

Mr. Baranowski analyzed a set of radio transmissions on the UP dispatcher channel at Dayton Yard 52 on the Baytown Branch covering January through June 2026. The Baytown Branch radio transmissions show that even at a conductor level there are clear violations of UP's obligations to treat BNSF's traffic equally.[64] For example, {{[redacted]

[63] Exhibit 27 (September 11–13, 2024 emails between BNSF and UP), at 2.
[64] *See* Baranowski Verified Statement ¶ 2.

[redacted]}}

The results of Mr. Baranowski's analysis of radio transmissions are consistent with BNSF's internal documentation of repeated delays caused by UP traffic on the Baytown Branch. Indeed, BNSF tracked UP train UP86 delays on a near-daily basis in early 2018.[70] BNSF's contemporaneous email documents that UP86's late departures cascade into delays for at least nine trains, and separately complains that, when BNSF needed to use the "New Main" at Dayton Yard/UP Robinson Yard, "we are told by the on duty [Manager of Yard Operations] that BNSF is not allowed to use that track per [UP's] Senior [Manager of Train Operations]."[71]

The impact of UP's disparate treatment on the Baytown Branch is also visible in BNSF's performance metrics, which track BNSF's success in completing spots

[65] Baranowski Verified Statement ¶ 22.
[66] *Id.*
[67] *Id.* at ¶ 37.
[68] *Id.* at ¶¶ 33, 34.
[69] *Id.* at ¶¶ 32, 33.
[70] *See* Exhibit 28 (February 8, 2018 BNSF internal emails).
[71] Exhibit 29 (January 8, 2018 emails between UP and BNSF).

(placing a car at a designated place on a track for handling) or pulls (picking up cars from a spot so they can move onwards) at scheduled customer industry locations. {{[redacted]}}

***Rockport Subdivision***. UP's conduct on the Rockport Subdivision, serving the Elmendorf, Texas area, also shows violations of its equal dispatching obligations.[73] UP unilaterally created and has enforced a "BNSF Rockport Process" that holds BNSF trains to operating windows not imposed on UP's traffic.[74] This Process imposes restrictions BNSF never agreed to and that apply only to BNSF despite the RASA's mandate that UP treat BNSF trains the same as UP's trains of the same class.

UP is aware of BNSF's position that the "Rockport Process" violates Section 9(d) of the RASA and the Dispatching Protocols.[75] In a March 19, 2021 communication, BNSF's Mr. Brewer formally demanded that UP "immediately rescind this unauthorized 'process' document" and re-educate its dispatchers on the Dispatching Protocols' requirements.[76] In the same communication, BNSF's Sarah

[72] Baranowski Verified Statement ¶¶ 15, 16.
[73] *See* Brewer Verified Statement at 2; Power Verified Statement at 5.
[74] *See id.*; *see, e.g.*, Exhibit 30 (March 13–April 6, 2021 emails between BNSF and UP), at 1–2.
[75] Brewer Verified Statement at 4.
[76] Exhibit 30 at 1.

Bailiff noted that nothing in the RASA or the Protocols "grants UP the right to impose such restrictions on off-line operations as a condition to operate onto UP trackage," and that UP "routinely holds out [BNSF] for the better part of a day—every day."[77]

Contemporaneous BNSF operating analyses confirm the discriminatory pattern: UP has at times run a local train on the Rockport Subdivision six days a week and does not allow BNSF to run trains during that time, despite no provisions in the Dispatching Protocols which bestow super priority status on UP local trains.[78] In addition, UP routinely parks BNSF trains on sidings while running its own trains past BNSF's parked trains, contrary to the Dispatching Protocols.[79] This dispatching issue has persisted; {{[redacted]}}

***Houston***. The Houston Terminal is one of the most critical rail junctions in the United States, serving the Port of Houston and connecting key East-West lanes. Houston illustrates many operational and dispatching issues as BNSF and UP converge and compete for network space. After the UP/SP merger, BNSF proposed a joint dispatching center in Spring, Texas, to assure equal treatment and improved service. UP agreed, and the joint dispatching center was established to operationalize UP's equal dispatching obligation. The center is supervised by a neutral joint director

[77] *Id.* at 1–2.
[78] *See* Exhibit 31 (March 28, 2025 BNSF internal emails); Exhibit 32 (June 2022 BNSF Presentation), at 5.
[79] *See id.*; Exhibit 33 (June 8–9, 2019 emails between BNSF and UP), at 2.
[80] *See* Exhibit 34 (July 24, 2024 Joint Service Committee presentation), at 5.

and staffed by UP and BNSF employees.[81] Recent operational data shows the goal of "equal treatment" is no longer being achieved.

As noted above, Mr. Baranowski's analysis shows that the Red River Division, which includes Houston, suffers from a higher level of recrews on UP tracks it accesses through trackage rights than on BNSF's own lines.[82] In Houston, UP's failure to timely dispatch often requires BNSF to use multiple crews for a single movement, including "non-productive starts" where a crew reports for duty, is assigned to a train, and expires without dispatch.[83] In some cases, the UP-caused delays have even resulted in a BNSF standstill and have required BNSF to recrew a train only for it not to move.[84] While the issue is recurring, Mr. Brewer's Verified Statement describes a notable documented example where BNSF identified 19 BNSF trains that UP had not handled despite the presence of BNSF crews on all the trains for at least 12 hours.[85]

UP also stores its trains on key mainlines in the Houston complex, physically blocking BNSF from moving its traffic. For example, as described in Mr. Brewer's Verified Statement, nine UP trains were held in the Houston complex for a combined total of 315 hours in March 2022, blocking routes needed by BNSF trains.[86] Overall,

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[81] Brewer Verified Statement at 11–12.
[82] Baranowski Verified Statement ¶ 36.
[83] Brewer Verified Statement at 19; *see* Exhibit 35 (May 2, 2019 BNSF internal emails).
[84] *See* Exhibit 36 (July 23, 2021 emails between BNSF and UP).
[85] Brewer Verified Statement at 14; Exhibit 37 (June 13, 2019 emails between BNSF and UP); Exhibit 38 (June 13–14, 2019 BNSF internal emails).
[86] Brewer Verified Statement at 18; Exhibit 39 (March 28, 2022 BNSF internal emails).

as explained in Mr. Baranowski's Verified Statement, [redacted] }}

### C. Harm to Competition

The delays to BNSF traffic caused by UP's violations of its equal dispatching obligations are more than an inconvenience. While the violations *alone* suffice to require enforcement, their impact on rail competition makes enforcement even more pressing. Operationally, BNSF is forced to incur the expense of recrewing trains delayed past their UP-imposed operating window.[88] Delays also can substantially affect customers and harm BNSF's ability to provide competitive rail service. Yet BNSF's ability to compete for customers' business—and customers' ability to benefit from competitive service—is directly compromised by UP's misconduct.

The impact of this degraded competition is also demonstrated in available data. {{[redacted]

[87] Baranowski Verified Statement ¶ 38.
[88] *See, e.g.*, *id.* at ¶ 36.
[89] *See id.* at ¶ 17.
[90] *Id.*

[redacted][1]}}

[redacted]

UP's failure to honor its equal dispatching obligations at Baytown Branch, Eagle Pass, and the Rockport Subdivision is particularly troublesome because UP is prohibiting BNSF from utilizing infrastructure that BNSF jointly funded. RASA Section 9(c)(v) governs jointly funded infrastructure and provides that, where UP and BNSF intend to serve New Shipper Facilities, "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." *See* RASA § 9(c)(v). As Ms. Power's Verified Statement explains, BNSF has invested with UP to construct shared facilities at the Baytown Branch, the Rockport Subdivision (Southton Siding), and Eagle Pass, among other locations.[92] Yet, despite

[91] *Id.*
[92] Power Verified Statement at 14–15.

the equal dispatching obligations, UP prevents BNSF from using the jointly funded slot track at Eagle Pass and accessing jointly funded sidings at both Baytown Branch and the Rockport Subdivision.[93]

**D. Relief Requested**

The RASA clearly prohibits UP's conduct which has prevented BNSF from effectively utilizing the Joint Trackage lines that ensure competition. Accordingly, BNSF requests that the Board initiate a formal proceeding regarding UP's anticompetitive dispatching practices. While the above detail describes the scope of the problem using the best evidence available without discovery, it necessarily captures only a portion of UP's conduct because BNSF generally does not have access to UP's train-movement data, including comparable AEI data across all Joint Trackage lines. Where BNSF does have such visibility, including at Eagle Pass, the data confirms that UP is preferencing its own trains over BNSF's. BNSF expects discovery of comparable data across the broader Joint Trackage network to reveal the same pattern.

After discovery has been completed, if the record confirms that UP is the cause of the dispatching issues that have harmed competition and shippers, BNSF will detail further areas where UP preferences its own traffic in violation of its obligations and request that the Board enforce UP's obligations across all Joint Trackage lines. Specifically, BNSF will request an order (1) enforcing Section 9(d) of the RASA and the Dispatching Protocols, (2) imposing retroactive civil penalties pursuant to 49

[93] *See, e.g.*, *id.*; Brewer Verified Statements at 10–11.

U.S.C. §§ 11901 and 11323–27[94] against UP for its noncompliance with the RASA and the Dispatching Protocols, and (3) requiring UP to report on a quarterly and annual basis whether and how it is meeting its equal dispatching requirements under the merger conditions.

## V. CONCLUSION

The examples of noncompliance above are not isolated grievances; they form a mutually reinforcing pattern through which UP, across operations, service elections, and trackage rights, has stymied BNSF's ability to provide the competition the merger conditions were meant to preserve. The Board has itself "acknowledged UP's escalating efforts to limit competition in a manner that contravenes the foundational principles of the UP/SP merger conditions," Original Petition at 10, including in *Mission Rail*, where it ordered UP to permit BNSF to serve the Park, *see Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp. (Decision No. 109)*, FD 32760, slip op. at 11 (STB served Jan. 31, 2018), and in the *Savage Tooele* and *Salt Lake Garfield & Western* matters, *see BNSF Ry. Co.—Pet. for Enforcement—Interchange with Savage Tooele R.R. Co.*, FD 32760 (Sub-No. 50), slip op. at 6 (STB served Apr. 28, 2025); *BNSF Ry. Co.—Emergency Pet. for Enforcement—Interchange With Salt Lake Garfield & W. Ry.*, FD 32760 (Sub-No. 51) (filed July 7, 2025).

The Board does not require BNSF, at this stage, to prove every violation conclusively. It requires instead only a showing of "reasonable grounds for reviewing UP's operational practices." Original Petition at 12 & n.6, 27. BNSF has met that bar:

[94] *See Decision No. 44*, 1 S.T.B. at 239–40.

it has identified the specific RASA provisions at issue (RASA Section 9(d) and Exhibit D), supplied contemporaneous documentation of violations of each, and submitted expert analysis of the harms to competition. Moreover, much of the most probative evidence—such as UP's internal dispatching instructions, priority methodologies, and train movement data—lies exclusively within UP's control, which is precisely why the Board's continuing oversight authority under 49 U.S.C. § 11327 should now be exercised to open a proceeding. Left unchecked, UP's refusal to abide by its obligations under the Board-imposed merger conditions will continue to degrade competition across the industry.

For the foregoing reasons, BNSF respectfully requests that the Board find that BNSF has presented sufficient evidence of the need for enforcement of the RASA's equal dispatching obligation to open a formal proceeding and require the parties to meet and confer on a further procedural schedule.

Respectfully submitted

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Dated: August 26, 2026

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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**EXHIBIT 1**

REDACTED - TO BE PLACED ON PUBLIC FILE

03/01/02

**RESTATED AND AMENDED AGREEMENT**

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

WITNESSETH:

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

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

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

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

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1. **Western Trackage Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. **I-5 Corridor**

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

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

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

3. **Southern California Access**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. **St. Louis Area Coordinations**

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

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

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

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

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

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

8. **Additional Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Trackage Rights - General Provisions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **Term**

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

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

12. **Adjustment of Charges**

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

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

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

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

13. **Assignability**

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

14. **Government Approvals**

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

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

15. **Arbitration**

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

16. **Further Assurances**

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

17. **No Third Party Beneficiaries**

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

UNION PACIFIC RAILROAD COMPANY

By:_____
Title:_____

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By:_____
Title:_____

**Exhibits to Restated and Amended BNSF Settlement Agreement**

Exhibit A – List of "2-to-1" Points

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

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

Exhibit D -- Dispatching Protocols

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

Exhibit F -- Overhead Trackage Rights Lines

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**EXHIBIT A**

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# 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

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EXHIBIT B

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# EXHIBIT B

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

## Concept

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

## Covered Territory

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

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

and points in

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

## Traffic Covered

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

## Proportional Rates

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

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

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

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

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

## Application

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

## Service

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

## Third Party Consultant

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

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

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

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

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

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

B. Compute BNSF Division on a Specific Move

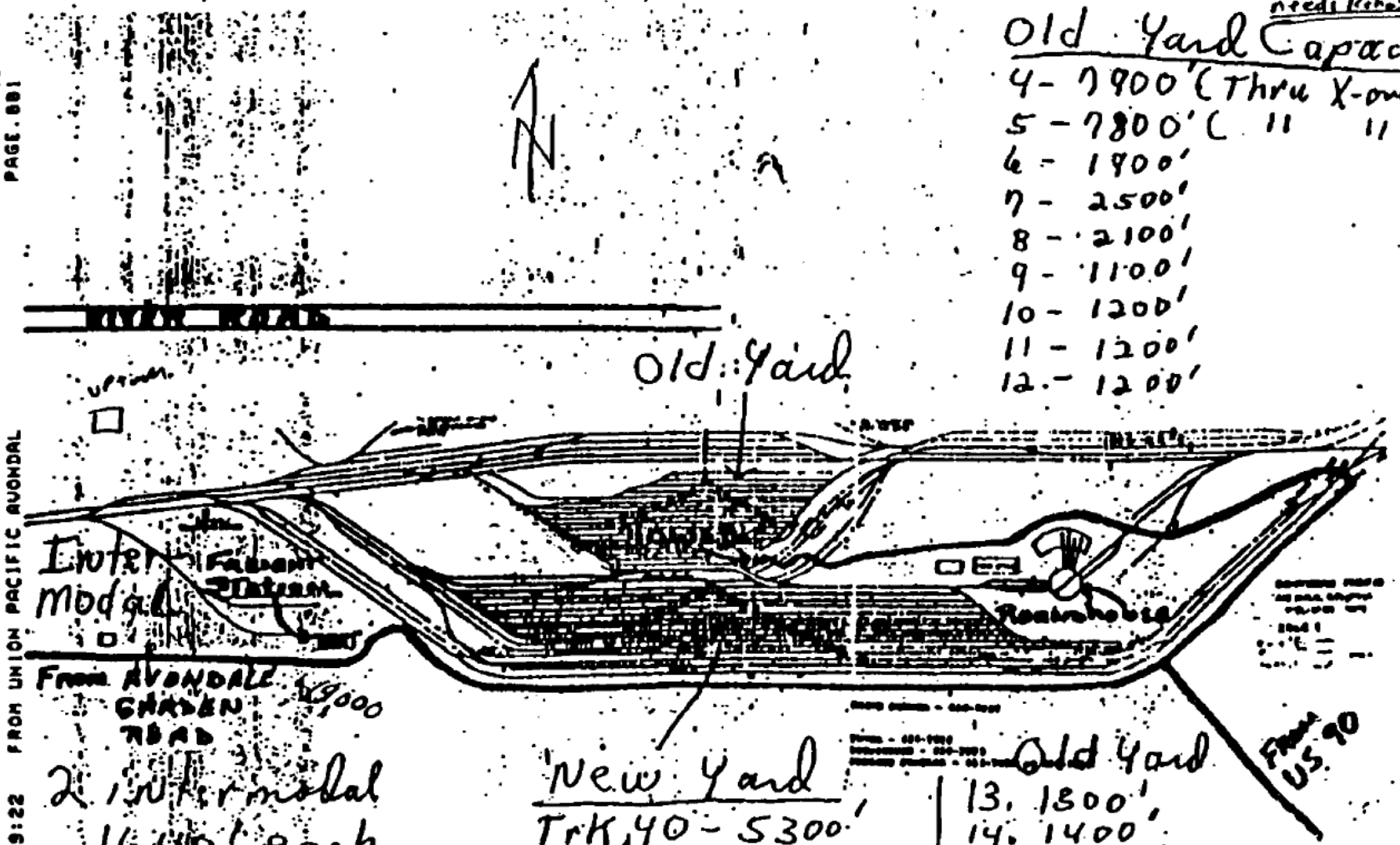
(A) x (5) x (3)
$0.06 x 300 x 100 = $1800
$0.06 x 200 x 50 = $ 600

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**EXHIBIT C**

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# S.P. Avondale Yard




Old Yard Capacity (needs Rehab)

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

New Yard

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

Old Yard

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

SEP 24'95 11:21 FR UP SPRING 713-350793 13 358 7593 TO 82715555 P.01/01
SEP 24 '95 9:22 FROM UNION PACIFIC AVONDAL PAGE.001
TOTAL PAGE.001

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**EXHIBIT D**

REDACTED - TO BE PLACED ON PUBLIC FILE

April 24, 1996

# BNSF - UP/SP DISPATCHING PROTOCOLS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**EXHIBIT E**

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## 2-To-1 Point Identification Protocol

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

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

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

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

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

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

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

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

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

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

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

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

AGREED TO AND ACCEPTED BY:

UNION PACIFIC RAILROAD COMPANY

John H. Ransom

Date: June 24, 1998

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Peter J. Rickershauser

Date: June 26, 1998

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

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**EXHIBIT 2**

REDACTED - TO BE PLACED ON PUBLIC FILE

**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

July 25, 2022

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

Re: Courtesy Notification- [redacted] at Gary, CO

Dear Chris:

This is a courtesy letter to notify you that BNSF intends to service [redacted] at the [redacted] (station Gary, CO) located at [redacted] Fruita, CO 81521 with our existing local out of Grand Junction (R-PWR4001). BNSF was granted access to the [redacted] at this address in 2007. [redacted] has acquired the assets of [redacted] within the park.

Please update your systems accordingly and advise in writing if you have any questions or concerns.

Sincerely,

Mike Martucci
Manager Contracts and Joint Facilities
BNSF Railway

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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**EXHIBIT 3**

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

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

August 31, 2022

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 August 29, 2022, seeking clarification to the distinction between [redacted].

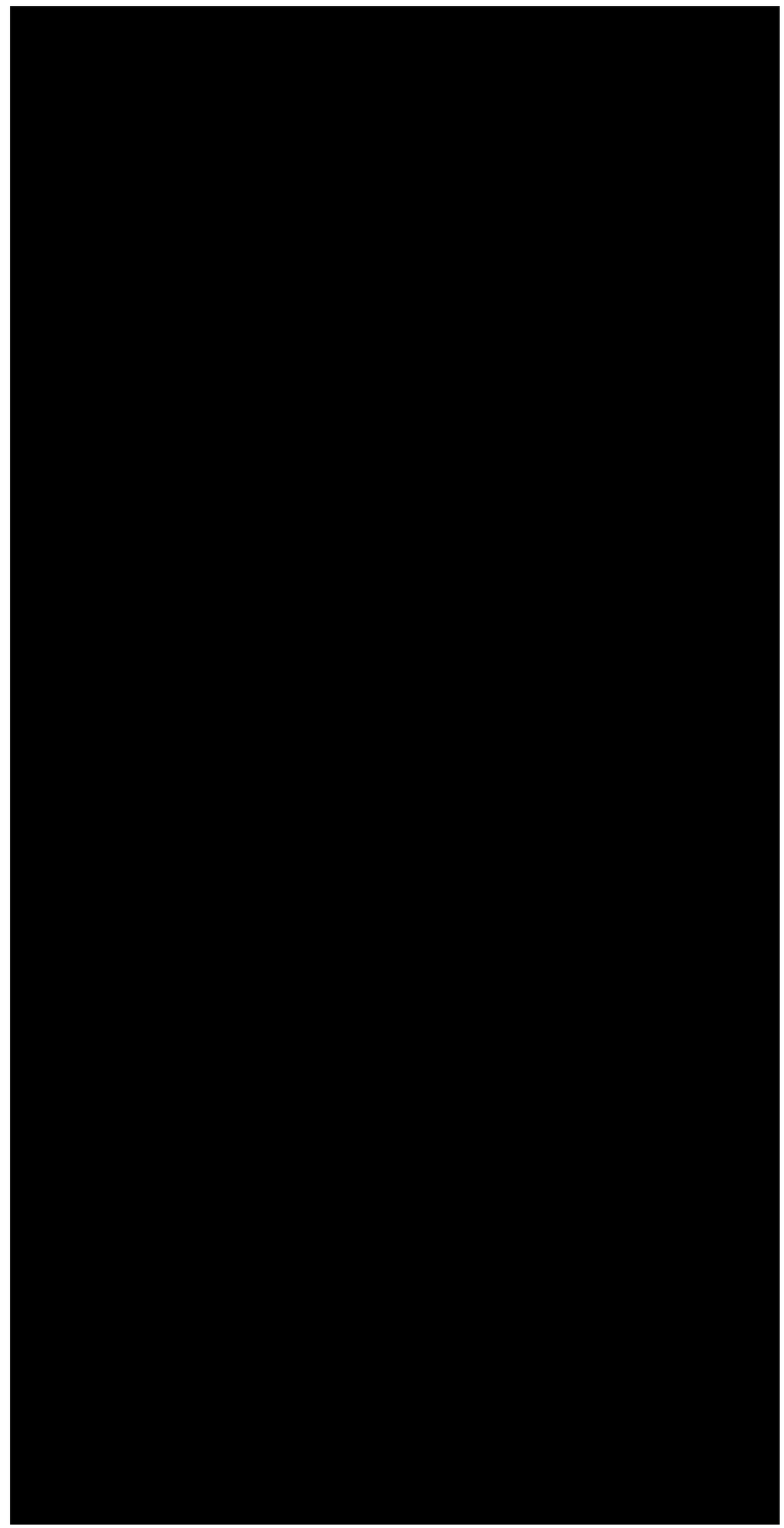
As shown in the attached Exhibit A from the track agreement for [redacted], tracks for [redacted] including track [redacted] are not within the boundaries of the track agreement coverin[redacted]. Since [redacted] is not within the boundaries o[redacted], an access request will be required if BNSF seeks confirmation of access to [redacted].

The track agreement for [redacted] as terminated effective January 19, 2022.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Sarah Bailiff
Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles



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

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

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

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**EXHIBIT 4**

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

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

March 23, 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 February 21, 2023 and prior correspondence seeking UP confirmation of BNSF access to [redacted] in Fruita CO. [redacted] continues to ship and receive the same commodities as the prior owner of the facility – the purpose has not changed.

Union Pacific declines BNSF's request for customer access.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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**EXHIBIT 5**

REDACTED - TO BE PLACED ON PUBLIC FILE

**Mike Martucci**
*MGR Contracts & 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 13, 2023

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

Re: Access to [redacted] at station Gary, CO

Dear Chris:

Please refer to your letter dated March 23, 2023 and prior correspondence regarding BNSF's request to access and serve [redacted] in Fruita, CO 81521. UP has indicated this customer is shipping and receiving the same commodities as the former facility owner. However, [redacted] which was the prior owner before [redacted]

[redacted] on the other hand, is receiving [redacted] Thus in contrast to the former owner, [redacted]

[redacted] is a new transload facility with a new owner, and this new enterprise reflects a change in nature and purpose in accordance with the Restated and Amended Settlement Agreement (RASA) between BNSF and UP dated March 1, 2002. Accordingly, further review of this matter is requested.

Sincerely,

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

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**EXHIBIT 6**

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

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

May 5, 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 and prior correspondence seeking UP confirmation of BNSF access to [redacted] in Fruita CO. [redacted] continues to ship and receive the same commodities as the prior owner of the facility and the fact that it transloaded an incidental amount of [redacted] compared to the remainder of the business does not change the facility into a transload.

Union Pacific declines BNSF's request for customer access.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles

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

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

---

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

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**EXHIBIT 7**

**From:** White, Tyler
**Sent:** Thursday, August 3, 2023 12:21 PM
**To:** Tanya Spratt (tspratt@up.com)
**Cc:** Martucci, Mike
**Subject:** RE: Union Pacific response to BNSF Election- [redacted] at station Gary, CO

Hi Tanya: Following up again about this one. Thanks.

**Tyler R. White**
**Senior General Attorney**
**BNSF Railway Company**
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828
817-352-2687 (direct dial)
tyler.white2@BNSF.com

**From:** White, Tyler <Tyler.White2@BNSF.com>
**Sent:** Thursday, July 20, 2023 8:12 AM
**To:** Tanya Spratt (tspratt@up.com) <TSPRATT@UP.COM>
**Cc:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Subject:** Re: Union Pacific response to BNSF Election- [redacted] at station Gary, CO

Hi Tanya: Also reaching out again about this matter. Let us know how UP wants to proceed. Thanks.

**Tyler R. White**
**Senior General Attorney**
**BNSF Railway Company**, **Law Department**
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828
817-352-2687 (direct dial)
tyler.white2@BNSF.com

**From:** White, Tyler <Tyler.White2@BNSF.com>
**Date:** Friday, June 23, 2023 at 2:46 PM
**To:** Tanya Spratt (tspratt@up.com) <TSPRATT@UP.COM>
**Cc:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Subject:** RE: Union Pacific response to BNSF Election- [redacted] at station Gary, CO

Following up on our call from a month or so ago, we are stilling looking to get the commodity list related to this matter. If UP wants to conduct a joint call with the customer, which I think you mentioned on our call, then Mike Martucci (copied) can work with the UP team to set that type of meeting set up. Let us know. Thanks.

**Tyler R. White**
**Senior General Attorney**
**BNSF Railway Company**

2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828
817-352-2687 (direct dial)
tyler.white2@BNSF.com

---

**From:** White, Tyler
**Sent:** Tuesday, May 16, 2023 4:04 PM
**To:** Tanya Spratt (tspratt@up.com) <tspratt@up.com>
**Subject:** FW: Union Pacific response to BNSF Election- [redacted] at station Gary, CO

Hi Tanya: Not sure how involved you've been in this matter so far, but can you help me understand the reluctance to provide details on the commodities previously shipped out of this facility? UP's letter of May 5, 2023 declining BNSF access cited the current facility owner continuing to ship and receive the same commodities as the prior owner. So it seems completely reasonable to ask for the details about those commodities so that BNSF can verify the basis for UP's declination. BNSF and UP may ultimately disagree about whether UP's position here is valid, but I hope we can avoid playing games about the underlying facts, which are going to come out one way or another. I'm happy to jump on the phone if you want to discuss. Thanks.

**Tyler R. White**
**Senior General Attorney**
**BNSF Railway Company**
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828
817-352-2687 (direct dial)
tyler.white2@BNSF.com

---

**From:** Chris Sanford <CHRISSANFORD@UP.COM>
**Sent:** Monday, May 15, 2023 5:01 PM
**To:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Cc:** Power, Olivia E <Olivia.Power@BNSF.com>; Sieverson, Katherine A <Katherine.Sieverson@bnsf.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Tanya Spratt <TSPRATT@UP.COM>; Justin Barager <jbarager@up.com>; Mark Simon <MTSIMON@up.com>; David Hughes <DWHUGHES@up.com>; Jamal Chappell <JWCHAPPE@up.com>; Olin Dirks <OHDIRKS@up.com>; Kelsey Ruggles <KMRUGGLES@up.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; White, Tyler <Tyler.White2@BNSF.com>
**Subject:** Union Pacific response to BNSF Election- [redacted] at station Gary, CO

**EXTERNAL EMAIL**

[redacted] is not "actually different in nature and purpose from the facility's prior use" when it was

---

**From:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Sent:** Tuesday, May 9, 2023 3:24 PM
**To:** Chris Sanford <CHRISSANFORD@UP.COM>
**Cc:** Power, Olivia E <Olivia.Power@BNSF.com>; Sieverson, Katherine A <Katherine.Sieverson@bnsf.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Tanya Spratt <TSPRATT@UP.COM>; Justin Barager <jbarager@up.com>; Mark Simon <MTSIMON@up.com>; David Hughes <DWHUGHES@up.com>; Jamal Chappell <JWCHAPPE@up.com>; Olin Dirks <OHDIRKS@up.com>; Kelsey Ruggles <KMRUGGLES@up.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; White, Tyler <Tyler.White2@BNSF.com>
**Subject:** RE: Union Pacific response to BNSF Election- [redacted] at station Gary, CO

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Chris,

In response to your May 5, 2023 letter, can you please clarify which commodities [redacted] has continued shipping in relation to its predecessor [redacted]?

Thank you,
Mike

---

**From:** Chris Sanford <CHRISSANFORD@UP.COM>
**Sent:** Friday, May 5, 2023 3:14 PM
**To:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Cc:** Power, Olivia E <Olivia.Power@BNSF.com>; Sieverson, Katherine A <Katherine.Sieverson@bnsf.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Tanya Spratt <TSPRATT@UP.COM>; Justin Barager <jbarager@up.com>; Mark Simon <MTSIMON@up.com>; David Hughes <DWHUGHES@up.com>; Jamal Chappell <JWCHAPPE@up.com>; Olin Dirks <OHDIRKS@up.com>; Kelsey Ruggles <KMRUGGLES@up.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; White, Tyler <Tyler.White2@BNSF.com>
**Subject:** Union Pacific response to BNSF Election- [redacted] at station Gary, CO

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**EXTERNAL EMAIL**

@Martucci, Mike -

Please find Union Pacific's response attached.

Everyone have a safe and enjoyable weekend.

---

**From:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Sent:** Thursday, April 13, 2023 15:36
**To:** Chris Sanford <CHRISSANFORD@UP.COM>
**Cc:** Power, Olivia E <Olivia.Power@BNSF.com>; Sieverson, Katherine A <Katherine.Sieverson@bnsf.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Tanya Spratt <TSPRATT@UP.COM>; Justin Barager <jbarager@up.com>; Mark Simon <MTSIMON@up.com>; David Hughes <DWHUGHES@up.com>; Jamal Chappell <JWCHAPPE@up.com>; Olin Dirks <OHDIRKS@up.com>; Kelsey Ruggles <KMRUGGLES@up.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; White, Tyler <Tyler.White2@BNSF.com>
**Subject:** RE: Union Pacific response to BNSF Election- [redacted] at station Gary, CO

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Chris,

Please see BNSF's attached response.

Thank you,
Mike

---

**From:** Chris Sanford <CHRISSANFORD@UP.COM>
**Sent:** Thursday, March 23, 2023 5:01 PM
**To:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Cc:** Power, Olivia E <Olivia.Power@BNSF.com>; Sieverson, Katherine A <Katherine.Sieverson@bnsf.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Tanya Spratt <TSPRATT@UP.COM>; Justin Barager <jbarager@up.com>; Mark Simon <MTSIMON@up.com>; David Hughes <DWHUGHES@up.com>; Jamal Chappell <JWCHAPPE@up.com>; Olin Dirks <OHDIRKS@up.com>; Kelsey Ruggles <KMRUGGLES@up.com>
**Subject:** Union Pacific response to BNSF Election- [redacted] at station Gary, CO

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**EXTERNAL EMAIL**

Please find Union Pacific's response attached.

---

**From:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Sent:** Tuesday, February 21, 2023 3:29 PM
**To:** Chris Sanford <CHRISSANFORD@UP.COM>
**Cc:** Power, Olivia E <Olivia.Power@BNSF.com>; Sieverson, Katherine A <Katherine.Sieverson@bnsf.com>; Helm, Jon H <Jon.Helm@bnsf.com>
**Subject:** BNSF Election- [redacted] at station Gary, CO

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Chris,

Please find BNSF's election letter for [redacted] at the station of Gary, CO. Please send any questions or concerns via e-mail.

Thank you.

---

Mike Martucci | *BNSF Railway* | Manager- Contracts and Joint Facilities | ☎Office: 817-867-0804 | ☎Cell: 817-223-0864

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

---

**EXHIBIT 8**

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

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

March 25, 2022

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 March 4, 2022, seeking UP confirmation of BNSF access to [redacted] at Fruita, CO. Union Pacific has no record of [redacted] seeking to establish a transload or customer location in Fruita, CO

Since UP has no record of [redacted] at Fruita, it is premature for UP to respond formally either approving or disapproving BNSF access.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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**EXHIBIT 9**

REDACTED - TO BE PLACED ON PUBLIC FILE

**Mike Martucci**
*Manager Contracts & 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 7, 2022

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

Re: Access to [redacted], at the station of Fruita, CO

Dear Chris:

I'm following up on your letter dated March 25, 2022 regarding UP's response to BNSF's request to directly serve [redacted] at the station of Fruita, CO. The statement that UP has no record of [redacted] seeking to establish a transload or customer location in Fruita, CO is simply irrelevant.

Per the RASA, Section 1, subparagraph (d), it states:

"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 I(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."

This section makes no reference to UP needing to have record of a customer seeking to establish a location, and there are no conditions provided in the RASA that justify withholding UP's confirmation of access to a new shipper facility. Accordingly, your withholding response violates the terms of the RASA.

[redacted] has already executed a lease inclusive of land, track [redacted] and buildings (the site) at [redacted], which are the rightful owners of the land and appurtenances. Please see the attached exhibit showing the land boundary and the track in question. They have performed rehab on this private industry track to bring it to standard, and it was approved by our Engineering team for operation by BNSF the week of March 21, 2022. This location was previously rail served by a [redacted] customer, which is why we elected to service this site under the premise of a new customer facility, with a change in both ownership and nature and purpose.

Again, we request your review of the initial election request for BNSF to directly serve [redacted] submitted on March 4, 2022, and provide your approval as soon as possible to ensure BNSF is in a position to provide a competitive rail service offering to this new facility as envisioned by the RASA.

[redacted]

Sincerely,

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway

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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

---

**EXHIBIT 10**

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

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

April 12, 2022

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 March 4, 2022 and follow up letter of April 7, 2022 , seeking UP confirmation of BNSF access to [redacted] at Fruita, CO.

Union Pacific confirms BNSF request for direct customer access effective April 14, 2021 subject to the following conditions:

- Prior to initiating service, the operating managers at each carrier must agree to a specific, written operating plan that may not be changed without agreement from authorized personnel at both parties in writing. BNSF operations must not impinge on Amtrak operations on the Green River sub.
- Prior to initiating service, UP must have an executed track agreement for the track owner and a joint use agreement for the track user(s) at New Customer Facility.
- As with all BNSF access requests arising from the Agreement of March 1, 2002, in the event capital investments are necessary to provide rail service to the facility as described in this letter, BNSF is required to share equally in such investments prior to initiating service as pursuant to the applicable agreements.

BNSF may not initiate service until all of the conditions have been met.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

---

## EXHIBIT 11

**Mike Martucci**
*Manager Contracts & Joint Facilities*

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

May 2, 2022

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

Re: Access Approval to [redacted], at the station of Fruita, CO

Dear Chris:

I'm following up on your letter dated April 12, 2022 regarding UP's approval for BNSF's access to directly serve [redacted] at the station of Fruita, CO. Regarding the conditions set, BNSF's local division leadership has provided UP their written operating plan to serve this customer and have received affirmation of such plan.

We understand UP is working with [redacted] to progress an ITA to authorize UP's entry upon [redacted] track. Meanwhile, for expediency BNSF has been granted its own authority to enter upon track in order to commence service immediately. We are aware of no necessary investments associated with access to this track, and a separate UP agreement with the customer is not a pre-condition to BNSF service set out in the RASA. Thus, we plan to commence serving [redacted] immediately.

Sincerely,

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway

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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

---

**EXHIBIT 12**

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

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

May 2, 2022

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 earlier today advising of BNSF's intention to commence service [redacted] prior to a track agreement being executed.

Your letter states "We understand UP is working with [redacted] to progress an ITA to authorize UP's entry upon [redacted] track." In this specific instance [redacted] is working with UP to gain access to UP track. Union Pacific owns about 400' of track between the clearance point and the switch for track 712. BNSF does not have the right to grant customer access over Union Pacific owned industry track without an agreement from Union Pacific.

This letter serves to reiterate the conditions in Union Pacific's confirmation letter of April 12, 2022 – "Prior to initiating service, UP must have an executed track agreement for the track owner and a joint use agreement for the track user(s) at New Customer Facility" – and – "Prior to initiating service, the operating managers at each carrier must agree to a specific, written operating plan that may not be changed without agreement from authorized personnel at both parties in writing. BNSF operations must not impinge on Amtrak operations on the Green River sub"

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Sarah Bailiff
Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles

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SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

**EXHIBIT 13**

REDACTED - TO BE PLACED ON PUBLIC FILE

**Mike Martucci**
*Manager Contracts & Joint Facilities*

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

May 5, 2022

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

Re: Access Approval to [redacted], at the station of Fruita, CO

Dear Chris:

I'm following up on your letter dated May 2, 2022 regarding UP's approval for BNSF's access to directly serve [redacted] at the station of Fruita, CO. You indicate that [redacted] is working with UP to gain access to UP track, and in particular, approximately 400' of track between the clearance point and the switch for track [redacted]. Please see the attached schematic showing the yellow hatched line past the clearance point for track [redacted]. Track [redacted] is a privately owned industry track, which as previously stated is being leased by a third party to [redacted] for their operation. [redacted] will not be operating over UP's track, and therefore will not be seeking access over UP's track whatsoever. They will have a static unload facility near the warehouses alongside track [redacted], and will not be moving any cars once placed by BNSF.

BNSF was granted access to service [redacted] as a new shipper facility, along a trackage rights line. We understand your position to be that a UP ITA must be executed prior to any service commencing, since customer cars will traverse the 400' section of UP owned track? Can you please clarify this point? Per the terms of the RASA, we have formally requested access to serve this facility under the guidance and language of the RASA, and no language provides that a UP ITA is a condition of BNSF's ability to use its trackage rights to service any customer. We therefore ask you remove the condition that an ITA between [redacted] and UP as a precursor to serving this facility.

Sincerely,

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway



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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

---

**EXHIBIT 14**

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

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

May 6, 2022

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 yesterday requesting clarification of Union Pacific's position that an ITA must be executed prior to commencement of service.

BNSF's assertion the customer will not operate over Union Pacific owned track is unenforceable in the absence of an industry track agreement.

This letter serves to again reiterate the conditions in Union Pacific's confirmation letter of April 12, 2022 – "Prior to initiating service, UP must have an executed track agreement for the track owner and a joint use agreement for the track user(s) at New Customer Facility" – and – "Prior to initiating service, the operating managers at each carrier must agree to a specific, written operating plan that may not be changed without agreement from authorized personnel at both parties in writing. BNSF operations must not impinge on Amtrak operations on the Green River sub"

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Sarah Bailiff
Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles

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SURFACE TRANSPORTATION BOARD

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

---

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

---

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

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**EXHIBIT 15**

**From:** Van Meter, Lindsay
**Sent:** Monday, August 1, 2022 5:15 PM
**To:** Martucci, Mike
**Subject:** RE: AccessUP: [redacted] Gary, CO --- UPRR Service Notification Feedback

Mike,

The pin shows where the private crossing is located. It is only for forklift traffic to unload centerbeam flatcars.

[redacted]

**From:** Martucci, Mike
**Sent:** Monday, August 1, 2022 2:33 PM
**To:** Van Meter, Lindsay
**Subject:** RE: AccessUP: [redacted], Gary, CO --- UPRR Service Notification Feedback

I have a hard stop at 4 Central today, but are you in tomorrow to discuss?

**From:** Van Meter, Lindsay <Lindsay.VanMeter@BNSF.com>
**Sent:** Monday, August 1, 2022 2:06 PM
**To:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Subject:** FW: AccessUP: [redacted], Gary, CO --- UPRR Service Notification Feedback

As info……. Sounds like UP is now telling [redacted] that there is about $50k worth of track repairs required to get the track in service (I assume this is in regards to the lead getting to [redacted] track – red below).

[redacted]

**From:** [redacted]
**Sent:** Monday, August 1, 2022 12:14 PM
**To:** Van Meter, Lindsay <Lindsay.VanMeter@BNSF.com>
**Subject:** Fwd: AccessUP: [redacted], Gary, CO --- UPRR Service Notification Feedback

**EXTERNAL EMAIL**

Is this even legal at what the UP is pulling on this customer. This is tantamount to harassment. I am recommending [redacted] get the STB involved immediately to see if violations and fines are in order.

What is your company's experience with this type of situation?

[redacted]

Sent from my iPhone

Begin forwarded message:

**From:** [redacted]
**Date:** August 1, 2022 at 9:14:17 AM MDT
**To:** [redacted]
**Cc:** [redacted]
**Subject: FW: AccessUP:** [redacted]**, Gary, CO --- UPRR Service Notification Feedback**

[redacted] see below this is outrageous ? you already fixed the track I thought?

[redacted]

---

**From:** [redacted]
**Sent:** Monday, August 1, 2022 7:55 AM
**To:** [redacted]
**Subject:** Fw: AccessUP: [redacted] Gary, CO --- UPRR Service Notification Feedback

FYI....

[redacted]

---

**From:** Alisha Elgan <ACELGAN@up.com>
**Sent:** Friday, July 29, 2022 10:52 AM
**To:** [redacted]
**Cc:** Keegan Jones <krjones01@up.com>; Christina Quindt <CQuindt@up.com>; Madison McAllister

<mgmcalli@up.com>; Alisha Elgan <ACELGAN@up.com>
**Subject:** RE: AccessUP: [redacted] Gary, CO --- UPRR Service Notification Feedback

Good Morning, [redacted]

Hope all is well with you. I wanted to introduce you to Keegan Jones. He is taking over your account for Halsie in the Sales team.

By way of updates~

1. UPRR Operating has approved Rail Access
2. Engineering has completed the track inspection on UPRR owned track and determined that track rehab in the amount of $53,628.00 is required to bring the track to In-Service status. Keegan and Christina will call you regarding the track rehab cost.
3. IPP team has reviewed and determined that an on-site is required to review the current crossing to ensure it is compliant to UPRR safety standards. The onsite fee is $7,500.00

[redacted]

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

**From:** Alisha Elgan
**Sent:** Monday, June 6, 2022 4:22 AM
**To:** [redacted] Halsie Guenther <halsie.guenther@up.com>; Madison

McAllister <mgmcalli@up.com>
**Subject:** RE: AccessUP: [redacted] Gary, CO --- Location Analysis

[redacted]
It was great meeting you last week at your site.

Thanks for confirming that the car types and car lengths will be 50~ boxcars and 73~ centerbeams. I have updated the below steps on where we are at in the URR Review process.

[redacted]

**Madison,**
A private crossing was also installed over this [redacted]track. That info is not on the UP Track Agreement Application form. I will request from IPP that they assign a DOT #.

**Halsie,**
[redacted] is taking over this project for [redacted] as the point of contact.

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

**From:** Alisha Elgan
**Sent:** Tuesday, May 31, 2022 9:58 PM
**To:** [redacted]

**Cc:** Halsie Guenther <halsie.guenther@up.com>; Madison McAllister <mgmcalli@up.com>; [redacted]

**Subject:** RE: AccessUP: [redacted] Gary, CO --- Location Analysis

Adding [redacted] to this string.

Hi [redacted]
I will be in Fruita tomorrow morning if either of you will be around.

Meanwhile, please let me know the following info:

Please verify the following 2 items with your UPRR served shippers:

- What will be the rail car types used?
- What will be the rail car length(s)?

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

---

**From:** Alisha Elgan
**Sent:** Thursday, May 26, 2022 6:03 PM
**To:** [redacted]
**Cc:** Halsie Guenther <halsie.guenther@up.com>; Madison McAllister <mgmcalli@up.com>
**Subject:** RE: AccessUP: [redacted], Gary, CO --- Location Analysis

Hi [redacted]

Per our call today,

Please verify the following 2 items with your UPRR served shippers:

- What will be the rail car types used?
- What will be the rail car length(s)?

I have attached your completed track application form that Halsie in UP Sales sent you. Real Estate Track Mgr, Madison, will use this to draft the necessary track agreement(s) upon Operating, IPP and Engineering approvals.

[redacted]

[redacted]

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

---

**From:** Alisha Elgan
**Sent:** Thursday, May 26, 2022 3:39 PM
**To:** [redacted]
**Subject:** FW: AccessUP: [redacted] Gary, CO --- Location Analysis

Hi [redacted]

I tried giving you a call but got your VM. I was unable to leave a VM due to it being full. Please give me a call when you are able.

I have a few Operational type questions for you before I can request formal feedback from Operating on service approval.

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

**From:** Alisha Elgan
**Sent:** Thursday, May 26, 2022 2:51 PM
**To:** [redacted] Halsie Guenther <halsie.guenther@up.com>
**Subject:** FW: AccessUP: [redacted], Gary, CO --- Location Analysis

Thank you, [redacted]

I am waiting on UPRR Real Estate Track Mgr to confirm for me UPRR's track ownership footprint. I have a feeling based on some system research that UPRR does NOT own from the POS to the gate on track # [redacted] but I will see what Real Estate says and get back to you all.

Note: UPRR Engineering team will inspect UPRR owned track only.

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

Phone: 719-424-0457
Email: ACElgan@up.com

www.up.com

**From:** [redacted]
**Sent:** Thursday, May 26, 2022 1:36 PM
**To:** Alisha Elgan <ACELGAN@up.com>
**Subject:** Re: AccessUP: [redacted], Gary, CO --- Location Analysis

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Alisha,

Please see the attached track inspection report. [redacted] inspected from the gate to the EOT. Also attached is the scope of work for our crew to perform repairs based upon the track inspection. Please call with any questions. Thanks,

[redacted]

-----Original Message-----
From: Alisha Elgan <ACELGAN@up.com>
To: [redacted]
Cc: Halsie Guenther <halsie.guenther@up.com>; [redacted]
Sent: Thu, May 26, 2022 1:13 pm
Subject: RE: AccessUP: [redacted], Gary, CO --- Location Analysis

Hi [redacted]
Thanks for confirming track # [redacted] I will do some research on that location and then will call you later today with some operational type questions.

[redacted]
Please send me the private track inspection report that shows that the privately owned section of track is FRA compliant.

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

---

**From:** [redacted]
**Sent:** Thursday, May 26, 2022 1:03 PM
**To:** Alisha Elgan <ACELGAN@up.com>
**Cc:** Halsie Guenther <halsie.guenther@up.com>; [redacted]
**Subject:** RE: AccessUP: [redacted], Gary, CO --- Location Analysis

# * PROCEED WITH CAUTION - This email was sent from outside the Company *

Hi there we would like UP service on track [redacted] we had [redacted] already come out and repair the spur

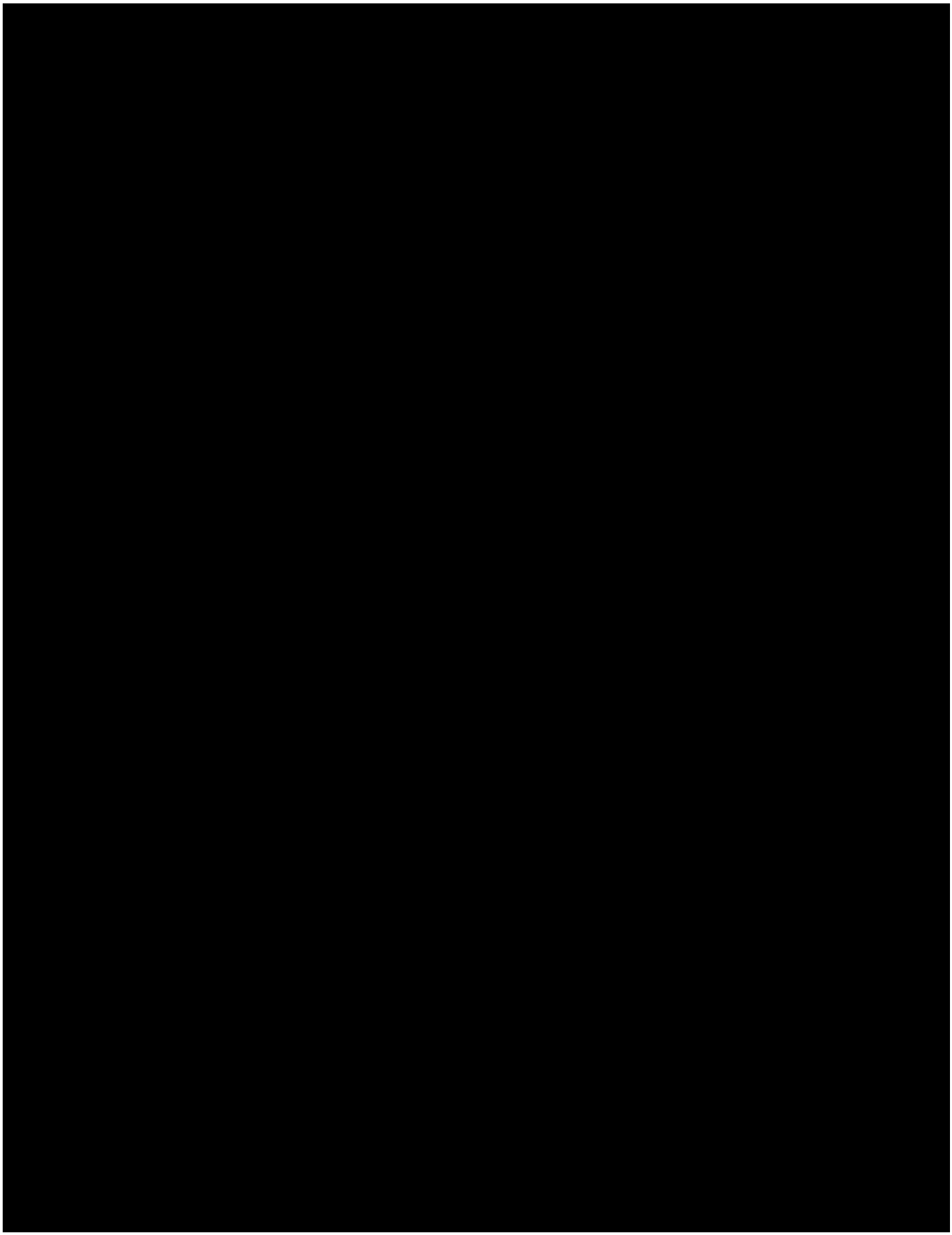
---

**From:** Alisha Elgan <ACELGAN@up.com>
**Sent:** Thursday, May 26, 2022 12:39 PM
**To:** [redacted]
**Cc:** Halsie Guenther <halsie.guenther@up.com>
**Subject:** AccessUP: [redacted], Gary, CO --- Location Analysis

Good Afternoon, [redacted]

I received an AccessUP project where you would like to get setup with rail. This facility appears to be between tracks [redacted]

Using the map below, what track # do you want UPRR rail service on (the track #'s are the last 3 digit # in blue)?






**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

**www.up.com**



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SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

**EXHIBIT 16**

BUILDING AMERICA®

May 17, 2024

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

Dear Toni:

Please refer to your letter dated April 17, 2024, seeking Union Pacific's confirmation of BNSF access to [redacted], Eagle Pass, TX 78852. BNSF has requested to serve this facility directly with a planned service start date of June 1, 2024.

As of the date of this letter, [redacted] has not yet been established as a located industry on Union Pacific. Accordingly, the BNSF's request for confirmation of access to the facility located at [redacted] Eagle Pass, TX 78852 is premature. UP is actively working to locate this customer on UP lines, and once located UP will then entertain a BNSF request for access to the facility.

As [redacted] is no longer located at [redacted], Eagle Pass, TX 78852, Union Pacific's prior confirmation of BNSF access to this service location is terminated.

Sincerely,

Ryan Pichler

Ryan Pichler
Senior Manager Commercial & Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Derek Hinds
Stephanie Weekly
Tyler White
Eric Watkins

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

**EXHIBIT 17**

REDACTED - TO BE PLACED ON PUBLIC FILE

**Toni Hanson**
*Manager Contracts and Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-5213
Email: toni.hanson@bnsf.com

June 3rd, 2024

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

Re: UP Response to [redacted] on May 17th, 2024

Dear Ryan:

BNSF elected service to [redacted], Eagle Pass, TX 78852 on April 17, 2024. UP's letter dated May 17, 2024 stated that [redacted] has not yet been established as a located industry on Union Pacific and as such BNSF's confirmation of access to this facility is premature.

Please find the attached invoice from UP to [redacted] for shipment date of April 27, 2024, where shipper is [redacted] and Revenue Origin is Eagle Pass, TX. Therefore, BNSF requests that UP reconsider its prior position and confirm approval of BNSF's election to this New Shipper Facility pursuant to Section 4(d) of the RASA.

Given the timeline from the original election notification, sent on April 17, 2024, service was to commence on or after June 1, 2024, therefore, please provide a response confirming BNSF's access by end of business day June 5, 2024, and expediated of the service plan approval once submitted.

Sincerely,

Toni Hanson

Toni Hanson
Manager Contracts and Joint Facilities
BNSF Railway

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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

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

---

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

---

**EXHIBIT 18**

REDACTED - TO BE PLACED ON PUBLIC FILE

# FILED UNDER SEAL

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

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**EXHIBIT 19**

BUILDING AMERICA®

June 18, 2024

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

Dear Toni:

With reference to the BNSF's letters dated April 17, 2024, and June 3, 2024, seeking Union Pacific's confirmation of BNSF access to [redacted], Eagle Pass, TX 78852, as Union Pacific stated in our May 17, 2024, letter to the BNSF, we have not yet established [redacted] as a located industry and New Shipper on Union Pacific. For clarity, the BNSF's June 3, 2024, letter references an attached invoice that was provided in a separate email.

The unit train of [redacted] that shipped from [redacted] on April 27, 2024, was a holdover train from the previous owners of the facility [redacted] and it is Union Pacific's current understanding based on our conversations with [redacted] that at this time they do not intend to ship additional unit trains of [redacted] In addition, the only commodity election Union Pacific has received from the BNSF is for [redacted]

As previously explained, Union Pacific continues to actively work with [redacted] on track infrastructure that will support the future rail needs of the facility. Until such time as these plans are completed and approved by Union Pacific, [redacted] is not considered to be a located industry or New Shipper on Union Pacific.

As stated in Union Pacific's May 17, 2024, letter, once [redacted] is established as a New Shipper, Union Pacific will then entertain a BNSF request for access to the facility.

Sincerely,

Ryan Pichler

Ryan Pichler
Senior Manager Commercial & Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Derek Hinds
Stephanie Weekly
Tyler White
Eric Watkins

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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**EXHIBIT 20**

BUILDING AMERICA®

May 21, 2026

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

Michael:

Please refer to BNSF's letter dated April 22, 2026, seeking Union Pacific's confirmation of BNSF access to [redacted] located at [redacted]. The letter states that [redacted] is a New Shipper Facility, and that access is pursuant to the Restated and Amended Settlement Agreement ("RASA") between UP and BNSF dated March 1, 2002. The letter also states that BNSF intends to serve this facility directly with Utah Railway as its agent with service planned to commence on or after June 6, 2026.

As of the date of this letter, [redacted] has not yet been established as a located industry on UP. Accordingly, BNSF's request for confirmation of access to the facility located at [redacted] is premature. UP is actively working to locate this customer, and once located UP will then entertain a BNSF request for access to the facility.

Ryan Pichler

Ryan Pichler
Commercial and Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Justin Barager

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SURFACE TRANSPORTATION BOARD

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

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

---

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

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**EXHIBIT 21**

**From:** GSTURM@up.com
**Sent:** Thursday, October 1, 2009 10:39 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** MHEMMER@UP.COM; LEWZOREK@up.com; WGBARR@up.com; Aman, Brian H <Brian.Aman@bnsf.com>; Wilson, Connie J <Connie.Wilson@bnsf.com>; Clark, Kristy D <Kristy.Clark@BNSF.com>; Schulze, Mark A <Mark.Schulze@bnsf.com>; Rickershauser, Pete J Pete.Rickershauser@bnsf.com ; Weicher, Richard E Richard.Weicher@bnsf.com ; Bredenberg, Rollin D <Rollin.Bredenberg@bnsf.com>; Cobb, Sydney M <Sydney.Cobb@BNSF.com>; Thowe, Travis B <Travis.Thowe@bnsf.com>; Hayes, William P <William.Hayes@bnsf.com>
**Subject:** Re: UP/SP Settlement Agreement Implementing Trackage Rights Agreements - Updates
**Attach:** Houston to Brownsville TRA 061009.doc; Redline.doc; Chart.doc

---

Sarah,
This is in reference to the attached e-mail and your note of September 25, 2009 on the subject of updating the various trackage rights agreements ("TRAs") related to the March 2, 2002 UP/SP - BNSF Restated and Amended Settlement Agreement ("Settlement Agreement"). After review of this proposal by Joint Facilities and the Law Department, UP has come to the conclusion that since the Settlement Agreement prevails in the event of a conflict between it and the TRAs, there is no compelling reason to spend a significant amount of time and effort to update the TRAs. UP will continue to be guided by the Settlement Agreement when questions related to the TRAs arise. Please let me know if you have any questions. Thanks.

"Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com> To "'GSTURM@up.com'" <GSTURM@up.com>
07/02/2009 08:06 PM cc "Bredenberg, Rollin D" <Rollin.Bredenberg@bnsf.com>, "Rickershauser, Pete J" <Pete.Rickershauser@bnsf.com>, "Schulze, Mark A" <Mark.Schulze@bnsf.com>, "Weicher, Richard E" <Richard.Weicher@bnsf.com>, "Clark, Kristy D" <Kristy.Clark@BNSF.com>, "Hayes, William P" <William.Hayes@bnsf.com>, "Aman, Brian H" <Brian.Aman@bnsf.com>, "Thowe, Travis B" <Travis.Thowe@bnsf.com>, "Cobb, Sydney M" <Sydney.Cobb@BNSF.com>, "Wilson, Connie J" <Connie.Wilson@bnsf.com>
Subject UP/SP Settlement Agreement Implementing Trackage Rights Agreements - Updates

George,

As you know the Implementing Agreements that accompany the UP/SP Merger Settlement Agreement have not been updated since they were executed in 1996 and in some respects erroneously reflect the rights and obligations of the parties, as they have been amended by the STB over time. It is important that these trackage rights agreements are updated to ensure consistency of these agreements with the Restated and Amended Settlement Agreement (RASA) and recent STB rulings and related matters concerning the RASA. Toward that end, we decided to start with an agreement that doesn't seem to have an extreme amount of controversy attached to it at the moment (Houston-Brownsville) to begin to develop a model for moving forward on other implementing trackage rights agreements.

Accordingly, attached for your review is a draft of a proposed Restated and Amended Trackage Rights Agreement for Houston-Brownsville. Also included is a redline against the original 1996 version and a chart identifying principal substantive changes and underlying source material. Although we will be reviewing the General Conditions as well, I have not included any proposed changes for them yet, as this is a fairly hefty read as it is. Nevertheless, from a quick scan of the General Conditions, it appears -- fortunately -- that part of the TRA's is fairly constitutional in nature and may not require much, if any, updating.

This is a preliminary nonbinding discussion draft for your review and consideration. Finalization of any trackage rights agreement of this nature will require formal approval BNSF's senior management, and accordingly, all or part of this draft is subject to change or withdrawal for any reason or no reason and my forwarding this draft to you does not reflect a binding offer to amend our agreement.

I look forward to your feedback, George, and I hope you and your family have a safe and pleasant holiday weekend.

Sarah

(See attached file: Houston to Brownsville TRA 061009.doc)(See attached file: Redline.doc)(See attached file: Chart.doc)
**

This message and any attachments contain information from Union Pacific which may be confidential and/or privileged. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is strictly prohibited by law. If you receive this message in error, please contact the sender immediately and delete the message and any attachments.

**

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

---

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

---

**EXHIBIT 22**

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

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

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

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**EXHIBIT 23**

BUILDING AMERICA®

September 26, 2023

Mr. Mike Martucci
Manager- Contracts and Joint Facilities
Burlington Northern Santa Fe
2500 Lou Menk Drive
Fort Worth, TX 76131

To Mr. Martucci:

Union Pacific (UP) has become aware [redacted] serving as Burlington Northern Santa Fe's (BNSF's) Agent, has been traversing the Woods Cross Industrial Lead to serve [redacted] from the track connecting to that lead. Neither BNSF nor its [redacted] have any rights to serve [redacted] from the Woods Cross Industrial Lead on the west side of the [redacted] facility. BNSF and its [redacted] continue to have access to [redacted] via the two tracks connected to the Salt Lake City Sub on the east side of the [redacted] facility.

Union Pacific will cease to allow [redacted] to serve [redacted] via the Woods Cross Industrial Lead effective November 15, 2023.

Sincerely,

Mark Simon
Senior Director – Short Line & Interline
Union Pacific Railroad
1400 Douglas St, Stop: 1350
Omaha, Ne 68179

[redacted]

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

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

---

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

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**EXHIBIT 24**

**From:** Bailiff, Sarah W </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=96E84C50FDB24066B2AA11D3B4DAF943-B803193>
REDACTED - TO BE PLACED ON PUBLIC FILE
**Sent:** Thursday, March 30, 2023 1:14 PM
**To:** David Hughes <DWHUGHES@up.com>
**Subject:** RE: Trackage rights discussion

David,

We have considered your offer to grant us a 10 year trackage rights arrangement to operate where we already have longstanding rights to operate pursuant to the terms of the UP/SP Merger Settlement Agreement, orders of the STB, and the 50-50 Line Agreement. We respectfully decline.

We are planning to use our its existing rights to access [redacted] on and after April 1. Please advise promptly with confirmation that those rights will be honored so that various parties may plan accordingly.

Sarah
817-352-2354
817-247-1422 cell

**From:** David Hughes <DWHUGHES@up.com>
**Sent:** Thursday, March 30, 2023 10:45 AM
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Subject:** Trackage rights discussion

*** This email includes an ATTACHMENT from outside of BNSF and could contain malicious links. Ensure email is from a **trusted** sender before opening the attachment.

Never enter your login credentials if prompted. Click the **Email Alert** button on the Outlook toolbar to send SPAM email to Security.

**EXTERNAL EMAIL**

Sarah,

I am running short on time to hear back whether BNSF would consider our discussed approach regarding TGS.

I am attaching a trackage rights agreement that has been hastily put together and has not been run by UP Law, but give you something to show your peers. We obviously would work with BNSF on your edits and we would have edits of our own to this document.

Please let me know if this is something BNSF is interested in. I am working on the temp rights we discussed today to buy us more time.

-dwh

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

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

---

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

---

**EXHIBIT 25**

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# FILED UNDER SEAL

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SURFACE TRANSPORTATION BOARD

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

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

---

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

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**EXHIBIT 26**

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

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

---

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

---

**EXHIBIT 27**

**From:** Power, Olivia E <Olivia.Power@BNSF.com>
**Sent:** Friday, September 13, 2024 9:17 AM
**To:** Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** FW: Eagle Pass Calling plan 0600 / 13TH - UPDATE

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**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Friday, September 13, 2024 8:57 AM
**To:** David Hughes <DWHUGHES@up.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>
**Subject:** RE: Eagle Pass Calling plan 0600 / 13TH - UPDATE

Appreciate the prompt response David and the contextual detail provided. And rest assured, I am not yelling at you, just a bit weary of the same types of items we've tried to remedy for years. And my type would have been in all CAPS if I was. 😊

*Lance R. Brewer* **|** *General Manager - Red River Division*

---

**From:** David Hughes <DWHUGHES@up.com>
**Sent:** Friday, September 13, 2024 8:38 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>
**Subject:** RE: Eagle Pass Calling plan 0600 / 13TH - UPDATE

**EXTERNAL EMAIL**

---

Lance,

It is good to hear from you. We used to bump into one another down in Spring; but I do not get down to Texas as much as I would like anymore. And you have not yelled at me in a while, so it is good to hear from you again.

*Why do we continue to see BNSF receiving 1 SB slot when we have trains verifiably by Spofford ahead of trains you are running across ahead?*
Lance, I do not know the answer to your question. A good while ago, I tried to listen into the border call, but the call was in Spanish, and I had no idea what was going on. I know that UP is very frustrated with FXE performance here in Omaha. However, I cannot speak informatively about local decisions. But I have followed up a couple of times discreetly with the UP team. Let me cover one example:

> I saw one communication about a UP train (sorry I did not keep the TrainID) being place in front of a BNSF train. So I asked about the train. I was told that track occupancy issues had caused the train to wait on the E/W main. When the AMTRAK passing became imminent, the train was moved west of the wye and into a siding. BNSF was about to be held on the main until the UP train could be pulled back down the other leg of the wye, but BNSF was short on crew time. So the BNSF train was allowed to proceed to Ryan Ruin with the understanding that the time the UP train passed the wye would be used instead of the reader time. However, when the data was presented, BNSF "forgot" about the deal that was cut locally.

Lance. I cannot vouch for what discussions are had locally. I cannot say whether UP was clear in explaining the

problem or whether there was an actual agreement locally or whether someone's silence was taken a concurrence. I cannot say whether dispatching should have placed the UP train in a siding east of the wye sooner. I cannot say whether BNSF or UP local management is being transparent with the issues to you or simply passing blame. UP managers complain to me about BNSF only seeing their problems. BNSF managers complain to me about UP not listening to their problems.

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But your question above is more fundamental. BNSF does not feel it is being treated fairly, and when BNSF attempts to put data to that concern, UP does what I just did above and say "well except….." Lance, I do realize my response is not satisfying. But I do believe the issues are more complex than a simple spreadsheet. UP is having to hold trains deep in our network because FXE performance issues so dissatisfying. I would assume BNSF is having to do the same thing. FXE seems to play the two norther carriers against one another to obscure their own shortcomings. And then when we could work together, we do not seem to communicate effectively locally.

So again, I cannot tell you why you are seeing what you are seeing. I have not been allowed to replace our Director of Joint Facilities in Ft Worth. That position was created to help monitor and resolve issues like these. I am doing what I can to be fair and open minded to both sides and I will continue to do what I can to help bridge communication between UP and BNSF where I can. But I am unable to monitor and deescalate tension like we have done in the past without a counterpart to Erica. If I can get that position replaced, we will certainly reengage as we have done in the past. The best I can do at this time is point BNSF and UP transportation teams back to each other to resolve these matters locally and escalate up the chain of command when that does not work.

-dwh

---

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Friday, September 13, 2024 7:19 AM
**To:** David Hughes <DWHUGHES@up.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Lance.Brewer@BNSF.com; kenny.theerman@bnsf.com; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; erica.stigall@bnsf.com
**Subject:** FW: Eagle Pass Calling plan 0600 / 13TH - UPDATE

*** PROCEED WITH CAUTION - This email was sent from outside the company. ***

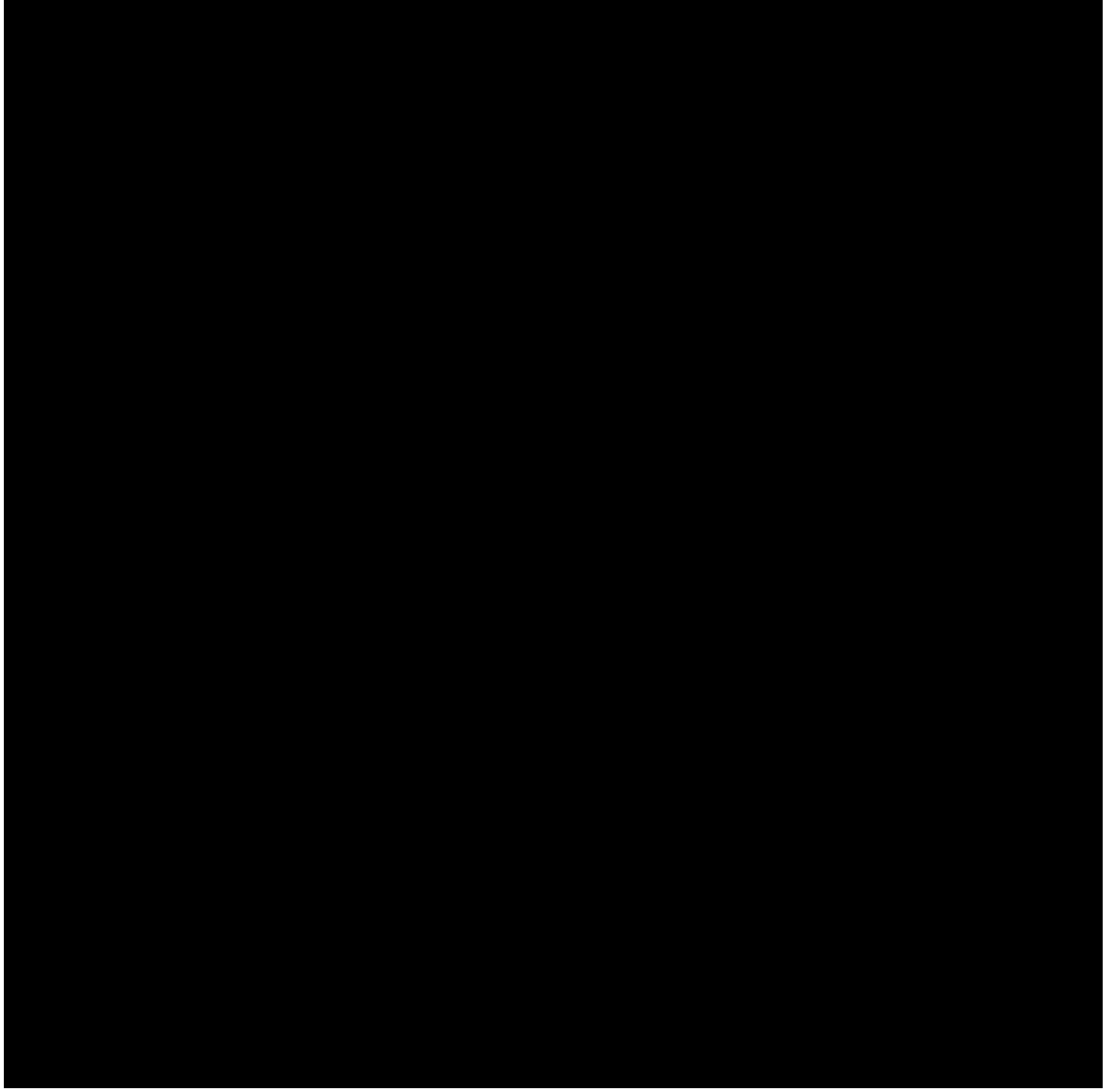
David,

Why do we continue to see BNSF receiving 1 SB slot when we have trains verifiably by Spofford ahead of trains you are running across ahead?

MNLEG10, AMLEG09, & your ZYCEG11 which hasn't even gotten to Spofford yet should not be running ahead of our GSVL3E03. That should be the 2nd slot for us.

And now you have cut us off from bring trains to Caldwell in the name of too many on the trackage. You are hindering us on both ends by not allowing us slots across the border, then using our train counts that can't run down to EAP to cut us off at Caldwell. This is blatant preference to UPRR trains and operation.

Your local team continues to just do whatever they want and claim they are doing it in the name of fluidity, however we are far from fluid, and are consistently the carrier not receiving parity every window. This has to stop.



*Lance R. Brewer* **|** *General Manager - Red River Division*

**From:** Duchemin, Matthew K <Matthew.Duchemin@BNSF.com>
**Sent:** Friday, September 13, 2024 7:07 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** RE: Eagle Pass Calling plan 0600 / 13TH - UPDATE

Confirmed 01 slot in the current SB window based on Spofford arrival time. UPRR has cut us off at Caldwell. 02 trains in EAP, 03 trains between San Antonio and Eagle Pass and 01 train South of Caldwell. As soon as arrival tracks open in Eagle Pass, we will pick

up what is holding on the Galveston Sub. We will request to advance the HTPLEAP113 to Cadet to stage there since it has work.

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Matthew K. Duchemin | Terminal Trainmaster | San Antonio, TX | 210-419-1418

---

**From:** Duchemin, Matthew K <Matthew.Duchemin@BNSF.com>
**Sent:** Friday, September 13, 2024 6:34 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** RE: Eagle Pass Calling plan 0600 / 13TH - UPDATE

**UPDATE** – Just informed we are only getting 01 slot in the ongoing SB window, Aldo is working with local UP ops now in attempt to have a 2nd slot South. Please keep 06 hour spacing on ALL EAP trains out of Temple. We are going to see bunching on trains into EAP and will end up having to tie trains down online.

First SB train on the bridge, BNSF will have 02 slots v 03 for UPRR. Projecting 02 NB pulls from FXE in the morning window, no information provided for the evening window.



[redacted]

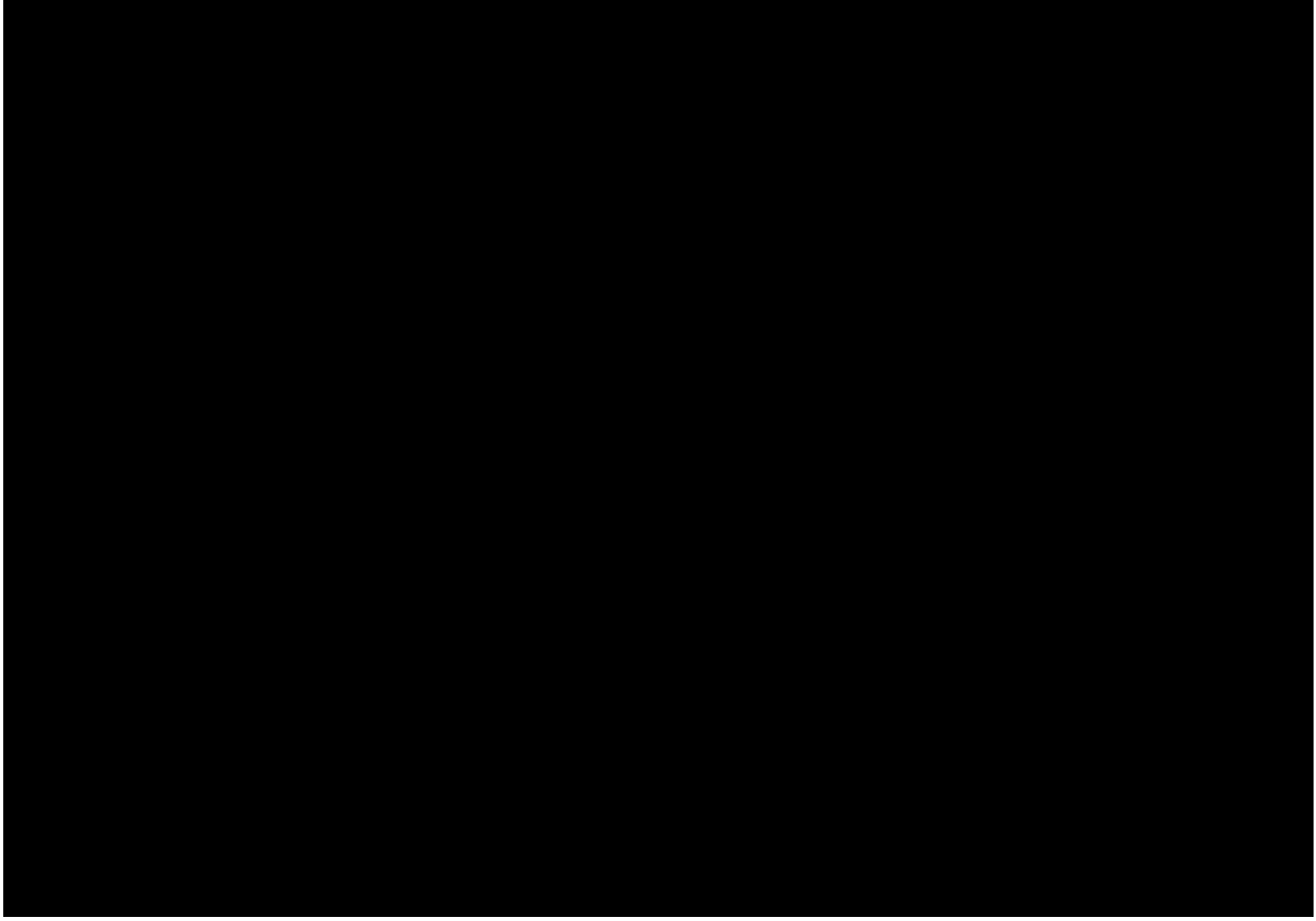
200 – 88 cars HTPLEAP108 / 2 B/O ON E/E
201 – CLEAR (FXE PULL – Intermodal)
298 – 69 cars VALTEAP410
300 – CLEAR (HEMPEAP405 lands)
301 – 100 cars HEAPCDT113 (3 CBP HOLDS)
302 – CLEAR (HTPLEAP111 lands)

Matthew K. Duchemin | Terminal Trainmaster | San Antonio, TX | 210-419-1418

**From:** Duchemin, Matthew K
**Sent:** Thursday, September 12, 2024 5:58 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** Eagle Pass Calling plan 0600 / 12TH - UPDATE

Interchange with the FXE remained sluggish overnight, the flow is just now beginning to go South and we have 02 confirmed slots. We pulled 02 from FXE in the previous NB window and have been informed we will only have 01 NB pull in the upcoming window. The 02 trains holding at Cadet will be called out this morning.

[redacted]



200 – 87 cars HTPLEAP108
201 – 89 cars HEAPCDT112
298 – CLEAR
300 – 80 cars VALTEAP409
301 – 110 cars GBWKEAP903 (Will interchange during this SB window)
302 – 113 cars XEAPABA912

611 – 79 cars VALTEAP407 (Moving to interchange)

Matthew K. Duchemin | Terminal Trainmaster | San Antonio, TX | 210-419-1418

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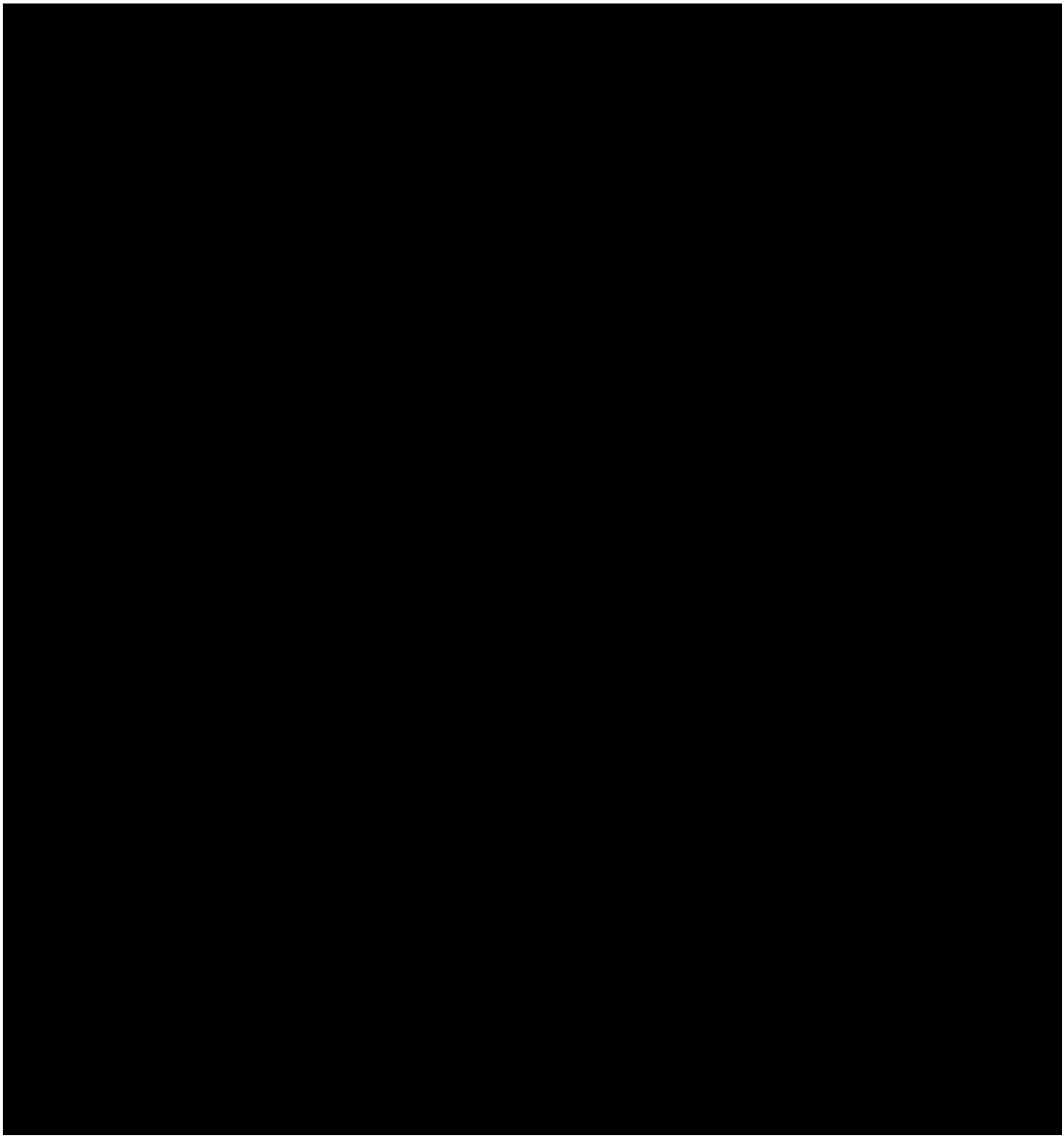
**From:** Duchemin, Matthew K <Matthew.Duchemin@BNSF.com>
**Sent:** Wednesday, September 11, 2024 11:01 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** Eagle Pass Calling plan 1100 / 11TH - UPDATE

We've been told we will only have 01 slot in the upcoming SB window instead of 02, with a 04 UPRR v 01 BNSF split, going off Spofford times. At this time we do not have any trains tied down on CENTEX trackage rights, however we will be at capacity in Eagle Pass and Cadet. BNSF will receive 01 train in the ongoing NB window, the Z EAPCHI814A (7607').

Natural spacing in traffic coming from Temple at the moment, please keep 6 hour spacing on all EAP train following the next call out of Temple.

There is a call at 1115 between all three Railroads, more to come.

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Matthew K. Duchemin | Terminal Trainmaster | San Antonio, TX | 210-419-1418

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

---

**EXHIBIT 28**

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Bahruth, Joshua R <Joshua.Bahruth@BNSF.com>
**Sent:** Thursday, February 8, 2018 8:37 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Lawler, Gregory G <Gregory.Lawler@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Bates, Scot A <Scot.Bates@bnsf.com>; Robertson, Brooke M <Brooke.Robertson@BNSF.com>
**Cc:** Petersen, Aaron M <Aaron.Petersen@BNSF.com>; Walley, Gerrad H <Gerrad.Walley@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>; Snell, Michelle L <Michelle.Snell@BNSF.com>
**Subject:** RE: Houston Complex 06:30 Morning Update - 02-08-2018

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Lance,

The information you received is correct. The UP 86 yesterday did not exit the steel lead till 21:30. Due to this delay we had to send the DYT201 out to relive the DYT101 as none of the work was completed due to the UP blockage. DYT201 completed the DYT101 work and they were then relived by the DYT302 at Gulf Siding. DYT302 is in route to Dayton with the pulls from [redacted]. DYT301 has been unable to depart the train from Dayton to line congestion on the branch.

**Recovery Plan:**
DYT101 is going to take the DYT301 train after the arrival of the DYT302, and begin work on [redacted].
We will call an extra at Dayton to relive the DYT101 they will complete the DYT101 work and head steel lead to service [redacted].
[redacted].
DYT301 will start out of Dayton and we expect to be back on schedule and head down to start regular work.
[redacted].

**Communication:**
[redacted] This has been the common theme with all customers on the branch that have been effected by these delays and I know that all concerns have been a point of discussion with the UP local Management who we met with last week. (Brian Gorton – Rick Tidwell)

[redacted]

We will keep you updated on status of our handling as we work through this issue and any additional concerns that are identified.

JRB

---

**From:** Brewer, Lance R
**Sent:** Thursday, February 8, 2018 8:10 AM
**To:** Bahruth, Joshua R <Joshua.Bahruth@BNSF.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Lawler, Gregory G <Gregory.Lawler@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Bates, Scot A <Scot.Bates@bnsf.com>; Robertson, Brooke M <Brooke.Robertson@BNSF.com>

REDACTED - TO BE PLACED ON PUBLIC FILE

**Cc:** Petersen, Aaron M <Aaron.Petersen@BNSF.com>; Walley, Gerrad H <Gerrad.Walley@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>
**Subject:** RE: Houston Complex 06:30 Morning Update - 02-08-2018

So I'm hearing UP 86 had us blocked on the DYT Branch and we did not switc[redacted]. This is a huge deal. I would like to know the recovery plan, when exactly they will receive their switch, and who we have talked to at [redacted] explaining the exception as well as what their reaction and feedback was.

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

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**From:** Bahruth, Joshua R
**Sent:** Thursday, February 8, 2018 6:32 AM
**To:** Reilly, Rob M <Rob.Reilly@bnsf.com>; Lawler, Gregory G <Gregory.Lawler@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Cc:** Petersen, Aaron M <Aaron.Petersen@BNSF.com>; Walley, Gerrad H <Gerrad.Walley@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>
**Subject:** Houston Complex 06:30 Morning Update - 02-08-2018

## *Yesterday's Performance:*

**Relief Starts:**
Relief transfer (PTRA-DYT; PTRA-HOU; DYT-HOU) starts: 7
Road Relief crew starts: 0

**ITD Yesterday On yard Transfers:** *(HOU180 HOU-EGW) (HOU185 HOU-STR) (HOU187 HOU-PTRA) (HOU188 HOU-DYT) (CSY182 HOU-CSY) (DYT283 PTX-DYT) (HOU285 STR- DYT) (HOU289 PTX-HOU) (DYT289 DYT-HOU) (HOU388 PTRA-HOU)*
Average ITD on transfer jobs was 8.5hrs.
Biggest hitters has been:
Y HOU1801 07-ITD – 6hrs.
Train delivered to Englewood, HOU809 extra was called to relieve them from East yard due to no route. Held waiting on QAGLI 2 to go by.
Y HOU1871 07-ITD – 14hrs.
Crew had a pickup in east belt yard of PTRA blocked traffic that was shuttled out due to congestion. UP senior instructed train to pull up to Cullen and ran a UP Q train around them, then instructed to shove back and make their pick up in east belt yard in route to PTRA. Train arrived 02:07 02/08.
Y HOU1851 07- ITD – 6hrs.
Train relieved at gas crossing by the HOU285. Cut arrived Strang.
Y HOU1881 07- ITD – 7hrs.
Departed and was relieved at Market St. waiting for a route. Train is made it to Fauna UP on main and leader lost air pressure Mech is working on motor now.
Y HOU2851 07- 9hrs.
Train held in Strang UP for LHG51,MPBSR. Tied down at Market St. pending a 1st shift job relief.
Y HOU2831 07-9hrs.
Train ran on West Belt to Pierce Main 1 to keep route clear for the UPRR (Y HOU70).

**ITD On Originating Manifest Trains:**
Average ITD on Originating 53 minutes on 2 trains measured. (Houston & Dayton)

**Yard Inventory: 919**
Bunching of inbound traffic caused by line congestion within the complex has driven up inventory.
*This will result in lost production with TP48 in Houston SYD due to the tracks that are needed work working limits are currently occupied by the HOULAL1-08 outbound.*

## *Current Complex Status:*

**Houston Sub**
H TEAHOU1 07-100 cars at Casey TX CSY182 will bring down
H TEAPTX1 07- Train arriving Manchester Yard now.

**Houston SOYD outbound**
H HOUSLA1 07-79 cars being air tested now called for 0530 hou382 will double out.
H HOULAL1 08-114 cars being air tested called for 0535 out of Silsbee
Y HOU3841 08-53 cars trying to get signals now
H HOUTUL8 08-87 cars

**Houston SOYD Inbound**
H BNTHOU1 07-126 cars train died at Fauna UP hou186 will dog catch.
H TEAHOU1 07-100 cars csy182 will bring down
Y GAT2841 07-96 cars tied down in hd3 in order to relieve inventory levels for TP48 to work.
Y HOU3881 07-100 cars 9autos crew is at North yard had to finish yarding hou187 now on train
Y DYT2891 07-68 cars still in Dayttx due to no route.

**Houston Complex transfers**
Y HOU2851 07-Tied down at Market St. with security watching train. Have hou188 take train in
Y HOU2831 07-Tied down at Peirce have hou181 take train in
HOU386-H DYTTUL1 07 TW to Casey TX.

**OUTBOUND UNIT TRAINS:**
U PTNPAN0 04- Train departing PTRA N-YARD.
X LDHONI9 06- 0758 extra job will air test and pull
X PTNGDN9 08-0759 extra job will pull
X LDHHUT8 07- Pending ETR

**Josh Bahruth** | **BNSF Railway** | **Terminal Superintendent** | ✉ Joshua.Bahruth@BNSF.com | Office: 817-867-2110 | BB: 682-225-9635
***"Recognition Gains Repetition."***

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SURFACE TRANSPORTATION BOARD

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

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

---

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

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**EXHIBIT 29**

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Boemio, Robert P <Robert.Boemio@BNSF.com>
**Sent:** Monday, January 8, 2018 4:34 PM
**To:** Brian Gorton <BEGorton@up.com>
**Cc:** Bahruth, Joshua R <Joshua.Bahruth@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** Fwd: UPRR Delays & Issues

---

Brian
Here are some raw comments from my TM on the branch. It is from his point of view only but there may be something that can help

My guys seem to think the 86 crew has thrown out the anchor.

Thanks

Bob

Begin forwarded message:

> **From:** "Kenward, Brandon M" <Brandon.Kenward@BNSF.com>
> **Date:** January 8, 2018 at 4:13:57 PM CST
> **To:** "Boemio, Robert P" <Robert.Boemio@BNSF.com>, "Pennington, Joshua A" <Joshua.Pennington@BNSF.com>
> **Cc:** "Kenward, Brandon M" <Brandon.Kenward@BNSF.com>
> **Subject: UPRR Delays & Issues**
>
> Mr. Boemio / Mr. Pennington,
>
> Last week we encountered 3 consecutive days (1/4-1/6) in that the UP86 did not depart the Cedar Bayou Industrial Lead with the original crew on that train. It is beyond imperative that this train depart the Cedar Bayou Industrial Lead not only within the crew HOS but ideally as close to noon as possible, this is so that the entire Baytown Branch operation both UPRR and BNSF can be successful for that day's work. When the UP86 fails to meet that goal, especially with the amount of cars that train handles on most days, it causes delays for the BN101, BN201, BN301, BN302, UP40, UP41, UP35, UP25 and UP23r. If you look at previous instances where we have had significant delays on the branch, it can be attributed to this train not running on time. I am mindful that the UP39 is the power connection for the UP86, however you can still see the importance of the UP86 being on time.
>
> I'm not sure if the UPRR feels the same urgency with this train as we do because at the end of the day they do not travel against the flow of traffic, as we do. We have seen in the past when they leave this train at 1413 or the rock plant to be re-crewed. I do, however, realize that leaving a train there does not affect them like it does us.
>
> Also, I would like to take issue with when we need to utilize the "New Main" at BNSF Dayton Yard / UP Robinson Yard, we are told by the on duty MYO that BNSF is not allowed to use that track per their Senior MTO. This came after a DYTCSX was staged there and the JCM pulled multiple crews away from that train due to Main Line issues. This is the only occurrence that has taken place. I don't feel that it would be too much to request usage of the track when we have previously let multiple UPRR trains run through our yard and have also pulled multiple UPRR trains into their yard to keep the Branch Fluid for ALL of us to be able to service customers on time.
>
> *Brandon M. Kenward* | BNSF Railway Co. | Dayton Division Trainmaster – Red River Division |
> brandon.kenward@bnsf.com | C: 832-250-8026| O: 713-847-3126

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

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

---

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

---

**EXHIBIT 30**

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Friday, March 19, 2021 1:13 PM
**To:** Jason B. Jones <JBJONES1@up.com>; David W. Hughes <DWHUGHES@up.com>; David Giandinoto <DGIANDIN@up.com>; Brian W. McGavock <BWMCGAVOCK@UP.COM>; Matthew F. Lyons <MFLYONS@UP.COM>
**Cc:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Gabriel, Jon <Jon.Gabriel@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** FW: BNSF Trains Improperly Required to Hold at Caldwell/Temple in Preference to UP Trains Operating on the Rockport Sub

---

Jason,

As you will see in the thread below, our respective joint facilities teams have been exchanging correspondence regarding the BNSF's growing and continuing concern over the protocol that has been unilaterally distributed to UP dispatchers as well as managers in the Harriman Center under your supervision and responsibility. As you and others in the Harriman are certainly aware, this protocol and restrictions that are being placed on BNSF trains, and distributed in writing to your officers and dispatchers was never agreed upon by the BNSF, nor were we ever consulted or notified of its creation and implementation by your team prior to its execution.

While our joint facilities teams may or may not continue to debate the matter, I am also aware of the proper escalation sequence on issues of this nature, and that they must first be afforded the opportunity to be addressed and response provided through the ranks of our operating teams. As most of your team is aware, and if not I can provide ample documentation of multiple instances where we have escalated this dispute regarding the Rockport Sub access and this document to yourself and many members of the UP Harriman Center team, we have made our disagreement with the implementation of this protocol widely known over the course of the last few years in writing, conference calls, and in meetings with UPRR operating and dispatching teams.

Even in light of those past escalations and requests for you and the UPRR to cease the distribution of this process document (titled below as "BNSF Rockport Process") and adhere properly to the BSNF-UP/SP Dispatching Protocols, I am again in this case making a formal request to you and your operating leadership within the UPRR and the Harriman Center to (1) immediately rescind this unauthorized "process" document; and (2) your assurance that, in accordance with Section 3 of the Dispatch Protocol, your local operating team and those responsible for dispatching this corridor are re-educated by written directive on UP's obligations concerning the Dispatch Protocol, which I will share with you Section 3 language stating:

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

In addition to this formal request, I am also requesting a response to this correspondence from you or your Supervisor affirming completion of the requested action above.

---

**From:** Bailiff, Sarah W
**Sent:** Thursday, March 18, 2021 7:15 AM
**To:** David W. Hughes (DWHUGHES@up.com) <DWHUGHES@up.com>
**Cc:** Brian W. McGavock <BWMCGAVOCK@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; White, Tyler <Tyler.White2@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** BNSF Trains Improperly Required to Hold at Caldwell/Temple in Preference to UP Trains Operating on the Rockport Sub

David,

UP's Operating Team refers to a process "revised on December 2020 with all parties" concerning operating of trains to the Rockport Sub (also referred to as the Elmendorf Branch). That white paper appears to be the absolute gospel according to UP's operating personnel whenever we have attempted to request parity in our joint operations on the Elmendorf Branch. The myth seems to be that the document was a jointly prepared document that both UP and BNSF have agreed will govern the parties' operations for this corner of UP's property. And yet it was solely prepared by UP and revised solely by UP in December 2020. We have never consented to that document controlling our operations. This "BNSF Rockport Process" document imposes operating restrictions on BNSF contrary to the RASA and the Dispatch Protocol, as it requires BNSF to hold trains at Caldwell awaiting entry to our trackage rights in preference to UP trains which, unlike BNSF

trains, are granted absolute windows and priority operating rights. Moreover, it mandates BNSF on-duty time on its own system as a precondition of being granted a slot to operate. Nothing in the RASA or the Dispatch Protocol grants UP the right to impose such restrictions on off-line operations as a condition to operate onto UP trackage. And I am unaware of any similar situation on the BNSF system where BNSF issues similar mandates to UP and routinely holds out UP for the better part of a day – every day.

We have tried through our local operating teams to work around this "BNSF Rockport Process" document, but notwithstanding that continuing dialogue and assurances that UP will look to see if BNSF can be afforded rights to operate the branch at times/locations where UP is not using it (regardless of UP's clear obligations under the Dispatch Protocol). However, when it comes down to actually running the trains, UP's operating team advises their hands are tied by this documented process (see below) and absolute windows.

We request (1) immediate rescission of this unauthorized "process" document; and (2) your assurance that, in accordance with Section 3 of the Dispatch Protocol, your local operating team and those responsible for dispatching this corridor are re-educated by written directive on UP's obligations concerning the Dispatch Protocol including the following terms:

- BNSF trains are to be given equal dispatch without ANY discrimination in promptness, quality of service or efficiency. (Section 2)
- The competitiveness of BNSF's operations shall not be adversely affected by the fact that UP owns the track. (Section 2)
- Information as to assignment of train priorities is to be shared with BNSF, and those assignments must be made equitably. (Section 7)
- BNSF's entry to its trackage rights must be provided to BNSF on a **first-come, first-served basis**, subject to applicable train priorities and specific operating conditions of both railroads. If strict application of the first come first served rule is difficult or uncertain, deviations from that standard may only be implemented by joint agreement with BNSF. (Section 8)
- Performance evaluation of UP's employees and supervisors responsible for dispatching BNSF's trains shall take into account BNSF's train performance on UP's lines and UP's effectiveness in cooperating with BNSF personnel and meeting BNSF's service requirements in the same manner as such factors are considered with respect to UP's own trains. (Section 12)

---

**From:** Nathan A. Kamprath [mailto:NAKAMPRA@up.com]
**Sent:** Tuesday, March 16, 2021 10:13 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Brian W. McGavock <BWMCGAVOCK@UP.COM>; Jason B. Jones <JBJONES1@up.com>; John M. Hopkins <JMHOPKIN@UP.COM>; Jamal W. Chappell <JWCHAPPE@up.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Matthew F. Lyons <MFLYONS@UP.COM>; SouthSrDir@up.com; SUPT-NETWORK (SUPT-NETWORK@UP.COM) <SUPT-NETWORK@UP.COM>
**Subject:** RE: BNSF Train denied at Caldwell U CWELJ 14

**EXTERNAL EMAIL**

This is still the same process that was recently revised on December 2020 with all parties.
Nothing has changed..

if you need us to send a copy of whole process I can attach.

# BNSF Rockport Process

BUILDING AMERICA™

Revised December 22, 2020

Overview: Provide consistent service on the BNSF Elmendorf/Southton trains across the Austin and West Texas Corridors. The ultimate purpose of this document is to standardize the planning, communication, and execution of running BNSF Elmendorf/Southton trains from Caldwell to destination.

Challenges: Elmendorf/Southton trains traverse down Austin main track two, against the flow of UP north trains out of San Antonio, as well as limited capacity on the Rockport Subdivision. To accommodate, traffic must be flipped out of San Antonio to Austin main track one. This document will lay out the communication standards and actions that must be taken by the UPRR and BNSF to be successful in running these trains to destination.

Standard Call Window at Temple

Any train coming from the BNSF at Temple that is destined for Elmendorf/Southon should be on duty at Temple between 0800-1600.

This call window will allow the trains to arrive after the daily local windows are complete and afford a better opportunity to proceed to destination without interruption. Trains that are called outside of this standard window will be held on the BNSF Railroad short of Caldwell.

**Nathan A. Kamprath**
Union Pacific Railroad | Sr. Director Operations - Southern Region
Ph 402.636.7063 | Cell 402.619.3350 | Esker Fax:402.501.1870
Email nakampra@up.com | www.uprr.com, LATA:N102996
HDC| 850 Jones St. | Omaha, NE 68102

BUILDING AMERICA®

"Miner, Tessa D" ---03/16/2021 09:49:46 PM---* PROCEED WITH CAUTION - This email was sent from outside the Company *

From: "Miner, Tessa D" <Tessa.Miner@BNSF.com>
To: "Brian W. McGavock" <BWMCGAVOCK@UP.COM>, "SouthSrDir@up.com" <SouthSrDir@up.com>, "SUPT-NETWORK (SUPT-NETWORK@UP.COM)" <SUPT-NETWORK@UP.COM>
Cc: "Matthew F. Lyons" <MFLYONS@UP.COM>, "John M. Hopkins" <JMHOPKIN@UP.COM>, "Jamal W. Chappell" <JWCHAPPE@up.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Theerman, Kenny J" <Kenny.Theerman@BNSF.com>, "Jason B. Jones" <JBJONES1@up.com>
Date: 03/16/2021 09:49 PM
Subject: RE: BNSF Train denied at Caldwell U CWELJ 14

---

## * PROCEED WITH CAUTION - This email was sent from outside the Company *

UP Team,
We are once again having to potentially re-crew a train that we have been told on multiple occasions that this was not the case.

U CWELJ 14 is being refused due to "time limits" that have been discussed by both parties BNSF and UP and agreed that they should not exist.

Brian,
I am referring to your message below to "stop holding trains and bring them" so that all parties know it is ok to run.

I am also including the HDC Team, Mr. Jones, and whomever else needs to know that the trains to El Mendorf/Rockport Sub are no longer to be held.

Please call me if there are questions.

**Tessa Miner | BNSF Railway | Director of Trackage Rights | (713) 825 -8631 C | (817) 352-7332 O**

**From:** Brian W. McGavock [mailto:BWMCGAVOCK@UP.COM]
**Sent:** Saturday, March 13, 2021 7:41 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Matthew F. Lyons <MFLYONS@UP.COM>; John M. Hopkins <JMHOPKIN@UP.COM>; Jamal W. Chappell <JWCHAPPE@up.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Jason B. Jones <JBJONES1@up.com>
**Subject:** Re: BNSF Train denied at Caldwell

**EXTERNAL EMAIL**

Stop holding trains and bring them
Sent from my iPhone

On Mar 13, 2021, at 8:17 AM, Miner, Tessa D <Tessa.Miner@bnsf.com> wrote:

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

UP,
Please see below information on the reason BNSF train was denied. It's a new one to me. We were denied because of an 8 hour Amtrak window??

I believed eve the CM is stating the "paper" that is talking about the Elmedorf window. After our meeting last week, I thought this was being handled. Can you please provide an update where we are at with letting everyone know our trains CAN run inside this window?

-UP denied taking the U SLOPUX0 01T / UCWEGJ 05 off at Caldwell onto the Giddings Sub due to it being called outside of their expected call time to get it delivered onto the Rockport Sub. UP Corridor Manager Mark Clemmer stated that there is a letter out that states the specific call times for Elemendorf / Southton trains to be called out of Temple and believes it to be between 0800 - 1600 based on Amtrak coming south. He stated he would try and find letter and email it to me.

Tessa Miner

**

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

---

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

---

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

---

**EXHIBIT 31**

**From:** Graham, Matthew S <Matthew.Graham2@BNSF.com>
**Sent:** Friday, March 28, 2025 10:40 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Power, Olivia E <Olivia.Power@BNSF.com>
**Cc:** Hamilton, Eric <Eric.Hamilton@BNSF.com>; Martucci, Mike <Mike.Martucci@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>
**Subject:** Rockport Sub DS Process - [redacted] Trains

---

Greetings Team.

Rockport Sub—-Purcell/([redacted] trains), Southton, Elmendorf---process.

After touring and evaluation of the UP Rockport Sub with Terminal Manager Leodoro...it has come to light that the UP has a process that is not an agreement (that I know of), where BNSF is only allotted a 12-hour window from 1800-0600 to spot/pull.

The UP has a Local (YEY61) that works 6 days a week on the Rockport Sub—-5 days regular and tag job on Saturdays from 0600-1800.
The local takes 12 hours each day working and only gets 1 warrant for the entire Rockport Subdivision (their entire shift).

We need to address this process with the UP and see if the Dispatcher/Corridor Manager can instruct the (YEY61) to continue communication with the dispatcher throughout their shift. Ideally if BNSF has a S/B train between 0600-1800, the dispatcher could communicate with the (YEY61) to get 2 warrants and roll-up/release the track to Southton siding. This would expedite BNSF trains destined for Purcell, Southton, and Elmendorf to Southton siding, rather than holding at Goodwin or Bracken, which creates about an 8–12-hour delay with new crew/shuttle jobs to deliver/pull.

**Action Item:**
***Plan is to discuss the dispatching process with the South Texas Sr. Lane Director. See if we could address our customer service concerns for the trains Arriving/Departing the Rockport Sub by adjusting the dispatching protocol and communication process for the (YEY61) on the Rockport Sub.

Have a Safe Day!

---

Matthew S Graham | *BNSF Railway* | Director of Trackage Rights – Omaha, NE | ☎Cell: 346-328-1013

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

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**EXHIBIT 32**

REDACTED - TO BE PLACED ON PUBLIC FILE

# ELMENDORF Unit Train Performance Concerns



REDACTED - TO BE PLACED ON PUBLIC FILE

# Summary

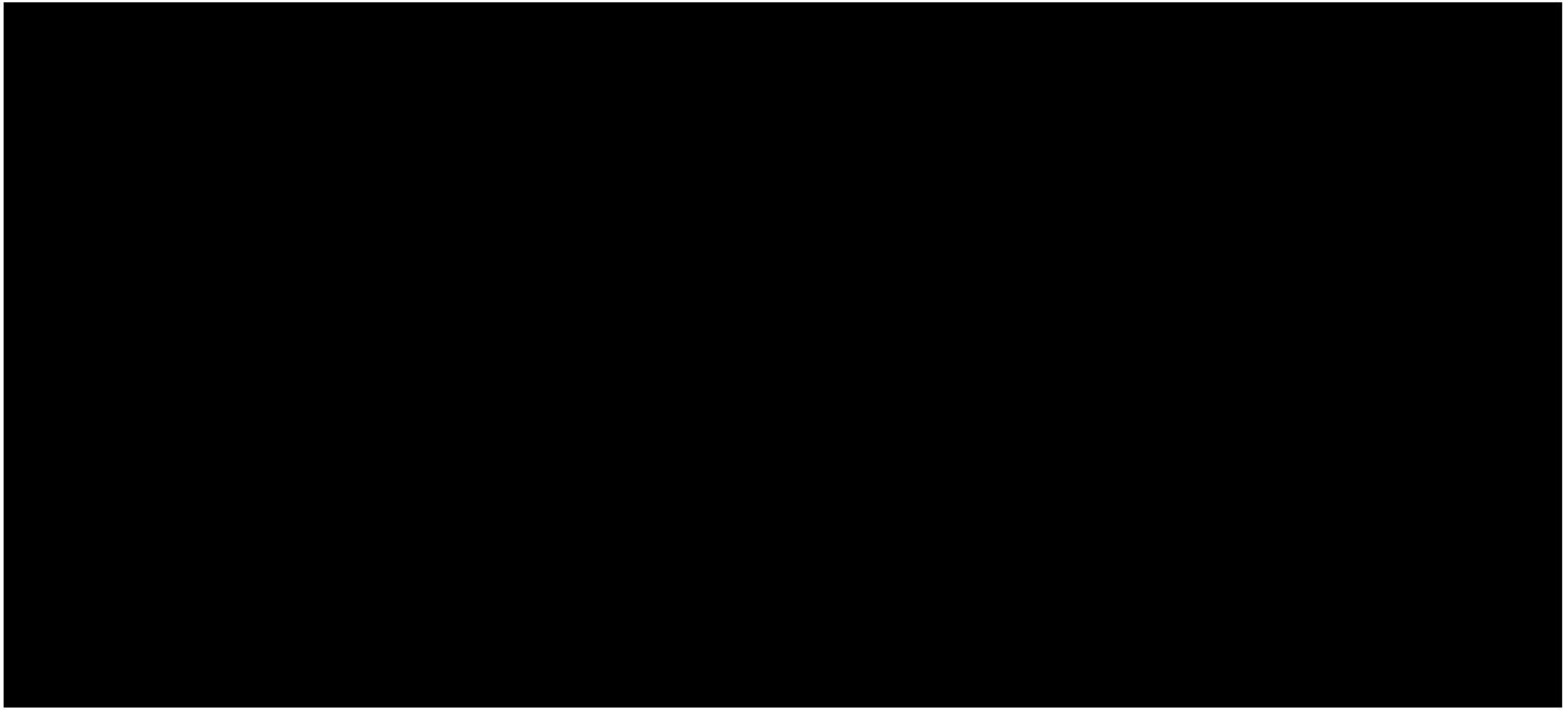
We continue to experience delays on Handling from the UPRR when requesting access to and from the Rockport Sub with our Unit trains for Elmendorf. The poor handling has continued to result in significant delay for our customers to receive their product. Additionally, BNSF continues to experience increased recrew rates between Temple, TX and Elmendorf that continues to impact our crew availability within the San Antonio complex and overall fluidity. These continued delays have been persistent over the previous 6 months and have been increasingly challenging over the past 45-60 days with increased volume.

The following slides will provide additional details and performance toward Elmendorf. Provided on these slides are samples of run times on and off the Rockport Sub for the last 45 days.

# Elmendorf Inbounds

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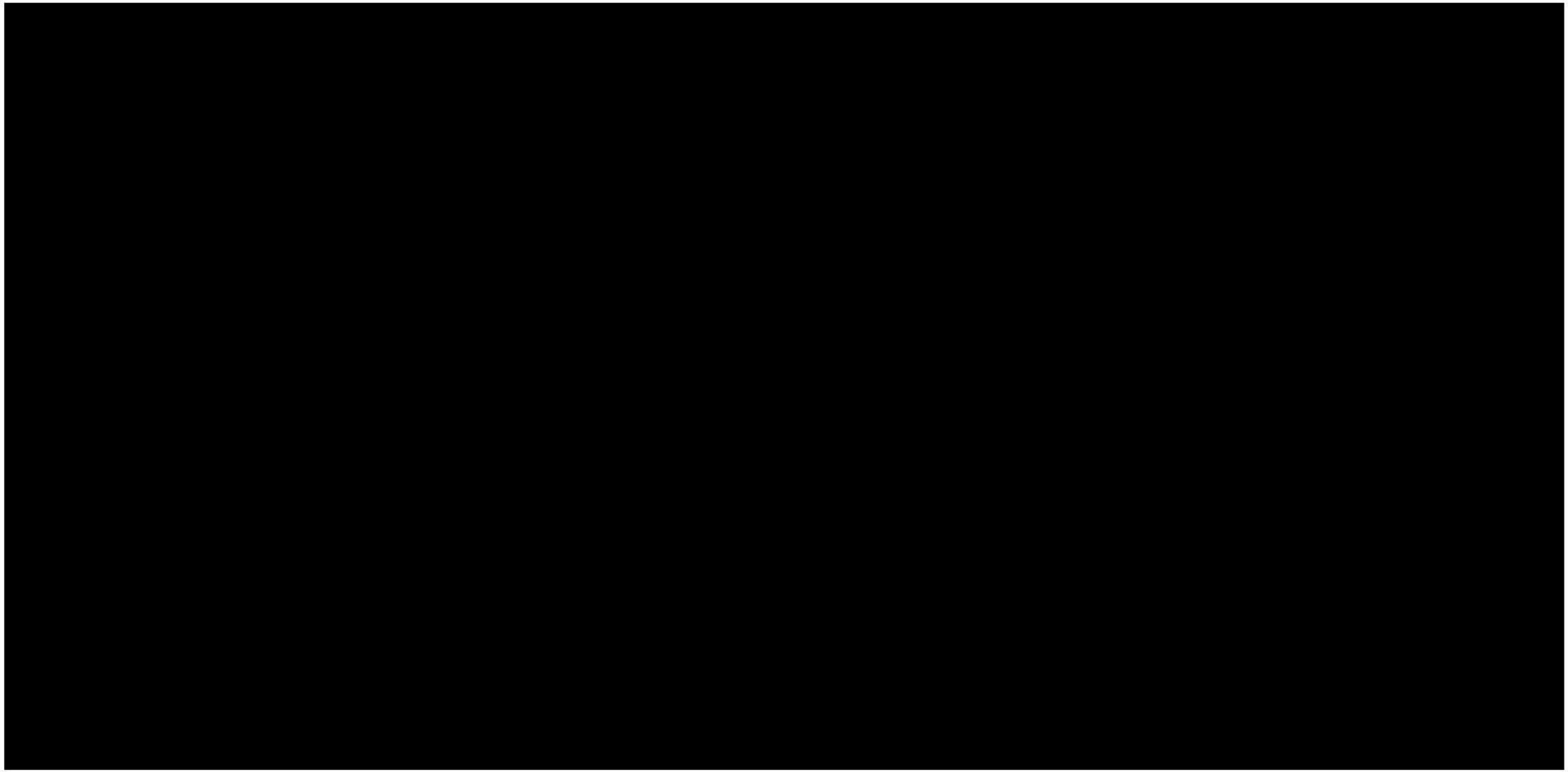
## Temple, TX to Elmendorf - **Avg 44.1 hrs - Last 45 days**



# Elmendorf Outbounds

REDACTED - TO BE PLACED ON PUBLIC FILE

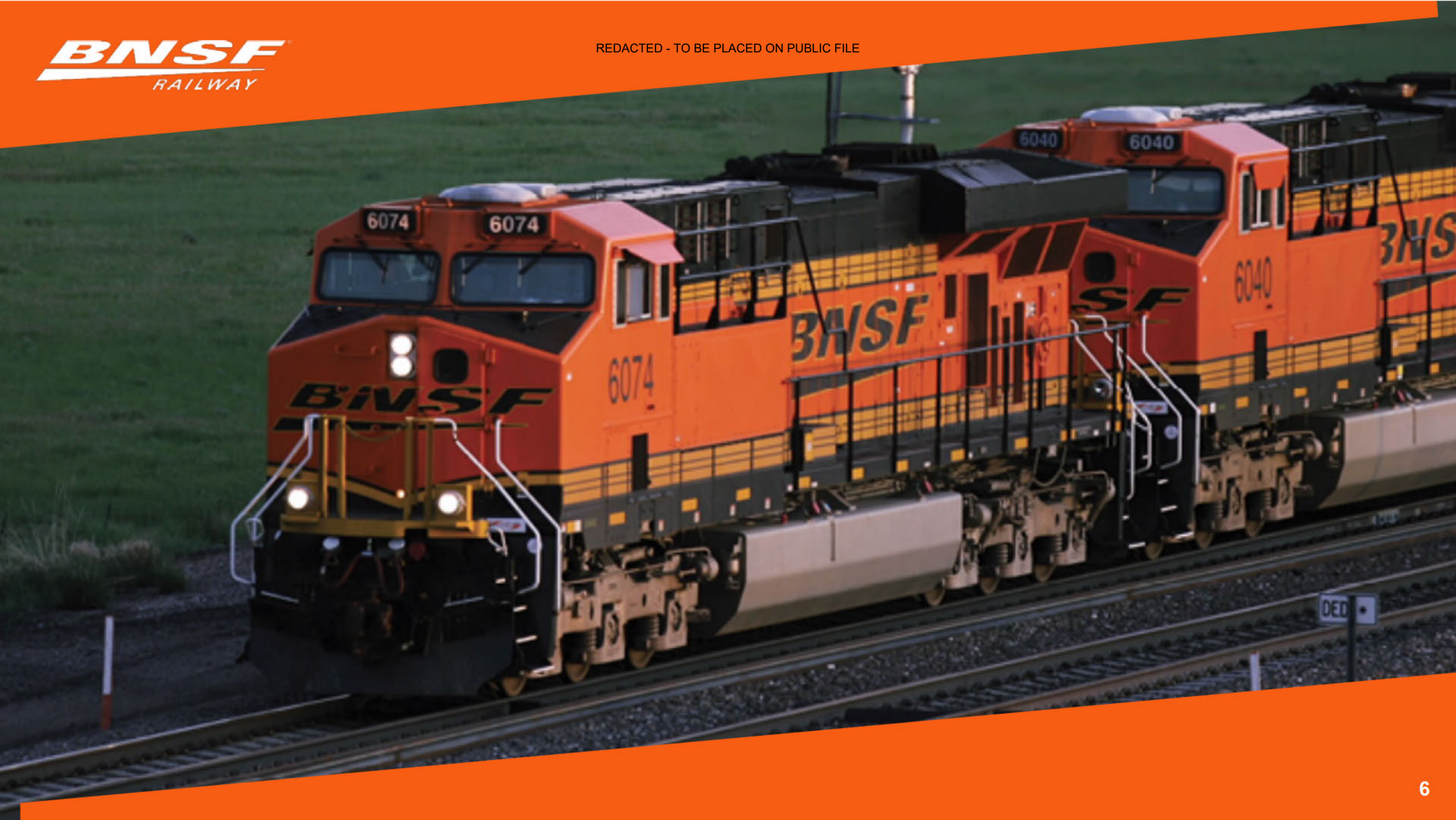
## Elmendorf to Temple, TX - **Avg 19.3 hrs - Last 45 days**



# Delays

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- UPRR Local:
  - Local works 6 days a week and nothing is allowed on sub while they are working their customers.
- UPRR needing to build a route:
  - Train traverse against the flow of traffic off the Austin Sub MT2 to Rockport
- Congestion on Rockport:
  - [redacted] coal trains and UPRR Local given priority over BNSF trains following MOW
- Mow on Rock Port Sub
  - UPRR MOW track work continues through June 2018
- UPRR Coal trains
  - UPRR will always prioritize the [redacted] Coal trains movement.


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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

**EXHIBIT 33**

**From:** Norwood, Zachary B <Zachary.Norwood@BNSF.com>
**Sent:** Sunday, June 9, 2019 11:45 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Templeton, Olivia E <Olivia.Templeton@BNSF.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** Re: UP Rockport Destination Trains

---

[redacted]

On Jun 9, 2019, at 11:37 AM, Templeton, Olivia E <Olivia.Templeton@bnsf.com> wrote:

[redacted]

Sent from my iPhone

On Jun 9, 2019, at 11:25 AM, Norwood, Zachary B <Zachary.Norwood@bnsf.com> wrote:

> Interesting perspective on Parity from Kevin, based on directional running....
>
> Begin forwarded message:
>
> **From:** "Norwood, Zachary B" <Zachary.Norwood@BNSF.com>
> **Date:** June 9, 2019 at 11:22:39 AM CDT
> **To:** "Kevin D. Ready" <KDREADY@up.com>
> **Subject: Re: UP Rockport Destination Trains**
>
> If there are service interruptions going on it is definitely in all our best interests if the CM's go back to distributing them. I haven't seen much in the communication pipeline about SI's other than what I've gotten from you. Which means the BNSF leaders aren't likely aware these things are going on either.
> It doesn't seem like Parity when we're getting reports of coal and locals on the Rockport moving. I get what you are saying about the Austin #2. But, if that's the operational issue, the various trackage agreements in place in Central Texas allows UP to use #1 at your discretion. UP is choosing not to put BNSF on #1 at their discretion. And we now have customers out of product...
>
> Zach Norwood
> Director Trackage Rights (HDC)
> 713 458 8008
>
> On Jun 9, 2019, at 11:00 AM, Kevin D. Ready <KDREADY@up.com> wrote:
>
> **EXTERNAL EMAIL**
>
> Zach,
>
> That is not the case at all. The bottle neck is the need to traverse the wrong direction on Austin main 2, a move we do not typically do at all. This is the definition of parity, we have run the exact same amount of trains**(0)** in that direction on the Austin #2. Our recrew rate and speed for

the Austin will clearly show that you are not the only railroad burning through money on this route.

REDACTED - TO BE PLACED ON PUBLIC FILE

This started with the derailment at Taylor which caused us to tie down trains on Austin 2. We have had non-stop incidents and crew issues since and are still trying to recover. I will shore up the communication part with my team when issues arise so we do not have any miscommunication going forward.. All that being said it is my understanding that you have live crews on the trains right this moment and will go today.

Kevin D. Ready
Southern Region -
Office - 402-636-7626
Cell - 402-378-3806

<graycol.gif>"Norwood, Zachary B" ---06/09/2019 10:47:49 AM---*** STOP. EXTERNAL EMAIL. USE CAUTION ***

From: "Norwood, Zachary B" <Zachary.Norwood@BNSF.com>
To: "BDSTARR@up.com" <BDSTARR@up.com>, UP South System Operations Desk <southnetsupts@up.com>, "Kevin D. Ready" <KDREADY@UP.COM>ere.
Date: 06/09/2019 10:47 AM
Subject: Fwd: UP Rockport Destination Trains

---

## *** STOP. EXTERNAL EMAIL. USE CAUTION ***

These BNSF trains have been sitting in UP ML sidings going on 2 and 3 days now. Customers are out of product as well.

I'm at the point I'm going to have the local team refrain from putting any more crews on the trains until someone can actually confirm the trains will move. Destination is begging for the trains and BNSF has been crewing them. This is simply preference of other movement on / off the Rockport. We're burning through thousands of dollars to sit.

Begin forwarded message:

**From:** "Beals, Bob O" <Bob.Beals@BNSF.com>
**Date:** June 8, 2019 at 10:01:37 PM CDT
**To:** "Kevin D. Ready" <KDREADY@UP.COM>, "austinHDC@up.com" <austinHDC@up.com>, "westtexashdc@up.com" <westtexashdc@up.com>
**Cc:** "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Wadkins, Gwen" <Gwendolyn.Wadkins@BNSF.com>, "Theerman, Kenny J" <Kenny.Theerman@BNSF.com>, "Christian, Ty D" <Ty.Christian@BNSF.com>, "Leodoro, John P" <John.Leodoro2@BNSF.com>, "Post, Sammy" <Samuel.Post@BNSF.com>, OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>, "Norwood, Zachary B" <Zachary.Norwood@BNSF.com>
**Subject: FW: UP Rockport Destination Trains**

We were just contacted and informed by the UPRR, the following trains would not be moving until early morning on account of 2 coal trains needing to move off of the Rockport Subdivision. This will cause additional delays to the 2 trains that are delayed as follows:

- U EOLSOX0 15/UCWSOJ 05 – at Goodwin (65hours) for Southton
- U BWFELT0 12/UCWELT 04 – at Lockhart (36+ hours) for Elmendorf

I have been in contact with the customers and explained the situation, but one is out of product and the other needs the train ASAP prior to being out of product.

The U EOLSOX0 15/UCSSOJ 05 has had 2 crews on board to run per UPCM directives. We have ordered the previous crews today and also have the following crew covering these trains:

REDACTED - TO BE PLACED ON PUBLIC FILE

- U EOLSOX0 15/UCWSOJ 05 – 1202/8th
- U BWFELT0 12/UCWELT 04 – 1205/8th

We currently have the following crews available to cover these trains:

- o/d 1700/8th ( called to cover UP Sosan and the UP Rockport trains)
- o/d 2305/8th (called to cover UP Rockport trains)

We need assistance with making all moves to occur.

Also, there is a U SLOELT0 06T/ USYSOJ 09 that is enroute from Houston for Elmendorf. They have agreed to accept delivery on 06/09/19 if we deliver the U BWFELT0 12/UCWELT 04.

Any assistance is greatly appreciated.

**Bob Beals** | ***BNSF*** **Railway** | **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** | 9835 Fischer Rd, Von Ormy, TX 78073 | Bob.Beals@bnsf.com | **Cell: 915-526-4287**

**From:** Norwood, Zachary B
**Sent:** Saturday, June 8, 2019 8:34 PM
**To:** Beals, Bob O <Bob.Beals@BNSF.com>
**Subject:** Re: UP Rockport Destination Trains

Seeing what I can find out

On Jun 8, 2019, at 8:14 PM, Beals, Bob O <Bob.Beals@bnsf.com> wrote:
Still haven't moved. I sent out my original email at 0432. I heard a rumor there MAYBE a vehicle strike. Unconfirmed.

Thank you for what you do. You are in the trenches deeper then me.

**Bob Beals** | ***BNSF*** **Railway** | **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** | 9835 Fischer Rd, Von Ormy, TX 78073 | Bob.Beals@bnsf.com | **Cell: 915-526-4287**

**From:** Brewer, Lance R
**Sent:** Saturday, June 8, 2019 8:00 PM
**To:** Beals, Bob O <Bob.Beals@BNSF.com>
**Subject:** Fwd: UP Rockport Destination Trains

Lance Brewer
GDT Red River Division

---

**From:** Norwood, Zachary B
**Sent:** Saturday, June 8, 2019 6:55:50 PM
**To:** Brewer, Lance R
**Cc:** Bailiff, Sarah W; Thompson, Janssen; Templeton, Olivia E
**Subject:** Fwd: UP Rockport Destination Trains

As info
Zach Norwood
Director Trackage Rights (HDC)
713 458 8008

Begin forwarded message:
**From:** "Kevin D. Ready" <KDREADY@UP.COM>
REDACTED - TO BE PLACED ON PUBLIC FILE
**Date:** June 8, 2019 at 6:46:18 PM CDT
**To:** Zachary Norwood <Zachary.Norwood@BNSF.com>, Damian Clarke <DCLARKE@up.com>, "David R. Lounsberry" <DRLOUNSB@UP.COM>
**Cc:** UP South System Operations Desk <southnetsupts@up.com>, OPR DL NOC GDT <OPRDLNOCGDT@bnsf.com>
**Subject: Re: UP Rockport Destination Trains**

**EXTERNAL**

**EMAIL**

Corridor told me he was going to run both of them and that if the dispatcher said you won't move soon she meant minutes not hours.

On Jun 8, 2019, at 18:24, Norwood, Zachary B <Zachary.Norwood@bnsf.com> wrote:

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

Any assistance to run to destination will be appreciated. Don't want to continue burning crews and blocking sidings

Zach Norwood
Director Trackage Rights (HDC)
713 458 8008

Begin forwarded message:
**From:** "Beals, Bob O" <Bob.Beals@BNSF.com>
**Date:** June 8, 2019 at 4:23:30 PM CDT
**To:** "Kevin D. Ready" <KDREADY@UP.COM>
**Cc:** "Theerman, Kenny J" <Kenny.Theerman@BNSF.com>, "Post, Sammy" <Samuel.Post@BNSF.com>, "Christian, Ty D" Ty.Christian@BNSF.com , "Brewer, Lance R" Lance.Brewer@BNSF.com , OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>, "Norwood, Zachary B" <Zachary.Norwood@BNSF.com>
**Subject: RE: UP Rockport Destination Trains**
Kevin, Just wanted to let you know we have a 1202 extra shuttle on the U EOLSOX0 25 at Goodwin and a 1205 on train U BWFELT0 12 at Lockhart per directions from the UPCM. The word we have received from the DS is they weren't going to move soon. If you can verify we have a movement plan in place I would appreciate it so I can let the facilities know to have crews available upon arrival.

Thank you again for your assistance.

**Bob Beals**| *BNSF* Railway| **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** |9835 Fischer Rd, Von Ormy, TX 78073| Bob.Beals@bnsf.com|**Cell: 915-526-4287**

**From:** Kevin D. Ready [mailto:KDREADY@UP.COM]
**Sent:** Saturday, June 8, 2019 6:53 AM
**To:** Beals, Bob O <Bob.Beals@BNSF.com>
**Subject:** Re: UP Rockport Destination Trains

**EXTERNAL**

**EMAIL**

I did not receive anything from you this morning, maybe some sort of filter is getting it.

Let me get with my guys, we will get them moving. I will call you personally after the morning calls if that works. .

Kevin D. Ready
Southern Region -
Office - 402-636-7626
Cell - 402-378-3806

REDACTED - TO BE PLACED ON PUBLIC FILE

<image001.gif>"Beals, Bob O" ---06/08/2019 06:46:37 AM---*** STOP. EXTERNAL EMAIL. USE CAUTION ***

From: "Beals, Bob O" <Bob.Beals@BNSF.com>
To: "Kevin D. Ready" <KDREADY@UP.COM>, "austinHDC@up.com" <austinHDC@up.com>, "westtexashdc@up.com" <westtexashdc@up.com>, "Brenten D. Starr" <BDSTARR@up.com>
Cc: "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Wadkins, Gwen" <Gwendolyn.Wadkins@BNSF.com , "Theerman, Kenny J" Kenny Theerman@BNSF com , "Christian, Ty D" Ty Christian@BNSF com , "Post, Sammy" <Samuel.Post@BNSF.com>, OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>
Date: 06/08/2019 06:46 AM
Subject: UP Rockport Destination Trains

---

## *** STOP. EXTERNAL EMAIL. USE CAUTION ***

Kevin,

Following up on an email I had sent earlier this morning to you.
I am asking for your assistance with putting in place a good movement plan to move the following trains today, which are parked near San Antonio that need to be delivered on the UP Rockport Subdivision:

- U EOLSOX0 15/UCWSOJ 05 at Goodwin (50+ hours) for Southton
- U BWFELT0 12/UCWELT 04 – at Lockhart (36+ hours) for Elmendorf

It is very important we get these trains delivered on account of customers in need of the product, power needed elsewhere on the UP Rockport Sub, and future inbound traffic. We have had 2 crews on the UCWSOJ 05 at Goodwin and didn't move at all.

Please let me know when you have a plan in place and I will have crews on these trains for movement.

I appreciate your assistance.

**Bob Beals** | ***BNSF* Railway** | **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** | 9835 Fischer Rd, Von Ormy, TX 78073 | Bob.Beals@bnsf.com | **Cell: 915-526-4287**

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intended recipient. Any use, review, disclosure, copying, distribution or reliance by others, and any forwarding of this email or its contents, without the express permission of the sender is strictly prohibited by law. If you are not the intended recipient, please contact the sender immediately, delete the e-mail and destroy all copies.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

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**EXHIBIT 34**

REDACTED - TO BE PLACED ON PUBLIC FILE

# FILED UNDER SEAL

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

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

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**EXHIBIT 35**

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Thursday, May 2, 2019 11:28 AM
**To:** Duncan, Paul B <Paul.Duncan@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Templeton, Olivia E <Olivia.Templeton@BNSF.com>; Norwood, Zachary B <Zachary.Norwood@BNSF.com>; Tylick, James <James.Tylick@BNSF.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** Foreign Line Non-productive start increase Q1 YOY '18-'19

---

All,

After many weeks/months of poor handling and various skirmishes regarding UPRR dispatching of our trains, along with sharing countless escalations with many in this group, I have been looking at various slices of data exhibiting what we all know to be much worse treatment and handling of our business by the UPRR. Below is one of the data sets I came upon that really shows the increase of non-productive starts (multiple relief crews) as compared to the same period last year for all trains that run over the joint line, central Texas, Angleton, and Memphis trackage rights. Unfortunately these aren't all of the trains and starts in the report, I just pulled out the most significant variances, as well as included some trains that are new business to us this year, yet still being handled as poorly as the rest of our trains.

Some of us will remember that Q1 2018 also had periods where conditions of the UPRR in Houston and Beaumont were as poor as they have been for periods in Q1 2019, yet far worse outcomes for our business have resulted in 2019 under similar conditions, save PSR/Unified Vision 2020.

[redacted]

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

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SURFACE TRANSPORTATION BOARD

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

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BNSF RAILWAY COMPANY
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UP/SP MERGER CONDITIONS

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

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**EXHIBIT 36**

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>

**Sent:** Friday, July 23, 2021 8:10 AM

**To:** mjhopkins@up.com; Jeff W. Moore <JWMOORE@up.com>

**Cc:** Coleman S. Bell <CSBELL@UP.COM>; Kenny Theerman (Kenny.Theerman@BNSF.com); Donn, Frank A <Frank.Donn@BNSF.com>; Molyneaux, Ross E <Ross.Molyneaux@BNSF.com>; Robin Taylor (Robin.Taylor@BNSF.com); Timothy L. Wooley <TIMWOOLEY@UP.COM>

**Subject:** M PTNHOU / BN387

---

Mike,

Yesterday we had 387 announced to depart PTRA at around 0530 in the morning. He departed sometime after and advanced to Pierce on the east belt. He sat there all day killing the 1st crew, and the 2nd crew that we put on the train, taking a 3rd crew to get the train into Houston SOYD. I cannot stress enough how unacceptable it is for any carrier to have to use 3 crews to get a train 7 miles. I'd like to understand from you why our train was handled this way yesterday.

*Lance R. Brewer | General Director Red River Division*

BNSF RAILWAY

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

---

**EXHIBIT 37**

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>
**Sent:** Thursday, June 13, 2019 9:19 AM
**To:** Brenten D. Starr <BDSTARR@up.com>; Kenneth A. Gomez <KAGOMEZ@up.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** RE: UPRR dispatching and handling of BNSF

---

Okay. I would be much more interested in getting some explanation of how we got here and why these trains were not handled in the first place dating back 2-3 days ago.

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

**From:** Brenten D. Starr [mailto:BDSTARR@up.com]
**Sent:** Thursday, June 13, 2019 9:17 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Kenneth A. Gomez <KAGOMEZ@up.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** Re: UPRR dispatching and handling of BNSF

**EXTERNAL EMAIL**

Lance,

I will go through these trains with the team this am. I am in Spring and will work through we will give you an update this afternoon.

**Brent D. Starr**
General Superintendent - Southern Region
Harriman Dispatching Center | 850 Jones Street | Omaha, NE 68102
Tel: 402.636.7235| Cell: 402.718.7480 |Email: bdstarr@up.com




From: "Brewer, Lance R" <Lance.Brewer@BNSF.com>
To: "Brenten D. Starr (BDSTARR@up.com)" <BDSTARR@up.com>
Cc: "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>
Date: 06/13/2019 09:10 AM
Subject: UPRR dispatching and handling of BNSF

---

*** STOP. EXTERNAL EMAIL. USE CAUTION ***

Brent,

Comprehensive list of trains that haven't been handled by the UPRR despite us having had crews on all of these for the last 12 hours, and some for the last 3-12 hour shifts:

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19 trains total. All trains but 5 have crews on them or 1st shift jobs arriving to them this morning. No more extra crews, relief orders, or free jobs to handle remaining 5 until other trains move. Until this is cleaned up to my satisfaction I have asked Gwen to not allow any additional trains into the Houston complex.

Houston Complex & Joint Line - 10 trains

H TEAAMY1 12 @ Pierce
H MEMHOU1 10 @ Winfield Rd.
H BNTHOU1 12 @ Pierce
Y HOU2851 12 @ Katy Neck
Y HOU2811 11 @ Dallerup
Y HOU2811 12 @ East Yard Englewood
Y HOU2831 12 @ Market St.
Y DYT2881 12 @ Mesa XO
Y HOU2851 11 @ Hatchery
H LALHOU1 11 @ Ames
H DYTCSX1 12 @ China

Mykawa Sub - 5 trains

G WRKPTN9 04 @ HD 3
U GFDPLU0 21 @ Pearland
G HASLDH9 05 @ Mykawa
Y GAT2842 12 @ HD 6
Y GAT2841 12 @ MP 27

Houston Sub - 4 trains

H TEAPTX1 12 @ Casey
H TEAEGW1 11 @ Orr
H TEAEGW1 12 @ Casey
H TEADYT1 12 @ Simmons

Lance Brewer | BNSF Railway Co. [cid:image001.png@01CD3590.2E0B55F0] | General Director - Red River Division | * lance.brewer@bnsf.com<mailto:lance.brewer@bnsf.com> | * (713) 847-3189

[attachment "image001.png" deleted by Brenten D. Starr/UPC]

**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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**EXHIBIT 38**

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Friday, June 14, 2019 8:29 AM
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Duncan, Paul B <Paul.Duncan@BNSF.com>; Templeton, Olivia E <Olivia.Templeton@BNSF.com>; Norwood, Zachary B <Zachary.Norwood@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>; Igoe, Matthew J <Matthew.Igoe@bnsf.com>
**Cc:** Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** RE: BNSF trains tied down in complex

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Morning update below. Count down to 9 trains, with 4 new trains added, and 5 still not moving or made to destination from original 19 yesterday.

*Lance Brewer* | **BNSF Railway Co.** | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

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**From:** Brewer, Lance R
**Sent:** Thursday, June 13, 2019 1:58 PM
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Duncan, Paul B <Paul.Duncan@BNSF.com>; Templeton, Olivia E <Olivia.Templeton@BNSF.com>; Norwood, Zachary B <Zachary.Norwood@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>; Igoe, Matthew J <Matthew.Igoe@bnsf.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** RE: BNSF trains tied down in complex

Mid-day progress report….of 19 trains we have had 4 moved by the UP to destination in 5 hours. See below…

*Lance Brewer* | **BNSF Railway Co.** | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

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**From:** Brewer, Lance R
**Sent:** Thursday, June 13, 2019 9:05 AM
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Duncan, Paul B <Paul.Duncan@BNSF.com>; Templeton, Olivia E <Olivia.Templeton@BNSF.com>; Norwood, Zachary B <Zachary.Norwood@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>; Igoe, Matthew J <Matthew.Igoe@bnsf.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** RE: BNSF trains tied down in complex

Comprehensive list of trains that haven't been handled by the UPRR despite us having had crews on all of these for the last 12 hours, and some for the last 3-12 hour shifts:

19 trains total. All trains but 5 have crews on them or 1st shift jobs arriving to them this morning. No more extra crews, relief orders, or free jobs to handle remaining 5 until other trains move.

Houston Complex & Joint Line – 10 trains

~~H TEAAMY1 12 @ Pierce *(arrived PTRA 0940)*~~
~~H MEMHOU1 10 @ Winfield Rd. *(has moved 6 miles and sits currently at Gulf Coast Jct. still not into the complex – HOS 2020 and UPRR will likely use all of them)*~~
~~H BNTHOU1 12 @ Pierce *(arrived SOYD 1300 – 2nd crew from 65 miles away)*~~

~~Y HOU2851 12 @ Katy Neck *(now at Market St. – moved 4 miles 2nd crew died, now have 3rd yard crew on train with a Basin Yard daylight today UP crew doubling ahead of them)*~~
Y HOU2811 11 @ Dallerup *(still there – when we offered a crew to move UPRR Sr. Mgr. said it's out of the way and he needs to move other UP/BNSF traffic first)*
~~Y HOU2811 12 @ East Yard Englewood *(arrived Dayton 1030)*~~
~~Y HOU2831 12 @ Market St. *(arrived Dayton 1115)*~~
~~Y DYT2881 12 @ Mesa XO *(still there with daylight extra job on board)*~~
~~Y HOU2851 11 @ Hatchery *(still there with daylight yard job on board)*~~
~~H LALHOU1 11 @ Ames *(Still there – no relief crew called due to no route to run on UP Houston Sub until trains move ahead)*~~
H DYTCSX1 12 @ China *(Still there with 1145 relief crew on board) (3rd crew now on board after dying on JL last night – hope to make LAL with this one)*

*Additional trains parked since departing yesterday in the complex –*

Y HOU2851 13 @ Booth Yard – lost all power last night enroute & having to relay new power to train with 2nd yard crew
Y HOU2831 13 @ EJ Siding – blocked behind 285 above with power SI – will have to put 2nd crew on train
Y HOU2891 13 @ Pasadena – blocked by 285 above – will have to put 2nd crew on train

Mykawa Sub – 5 trains

~~G WRKPTN9 04 @ HD 3 *(still there – no crew acct. train ahead DOL)*~~
U GFDPLU0 21 @ Pearland *(still there – 1400 HOS crew (2nd) died without turning a wheel) (did not move last night due to congestion – called for 0700 this morning with 3rd crew)*
~~G HASLDH9 05 @ Mykawa *(has moved 3 miles into the complex and is stopped not moving at Cullen St. with daylight yard job still on board)*~~
Y GAT2842 12 @ HD 6 *(nowhere to go with trains ahead enroute to Dayton not moving – not crewed) (train moved 10 miles and is now parked in east belt yard – will have 3rd crew on today trying to make Dayton)*
~~Y GAT2841 12 @ MP 27 *(still there with no clear route to SOYD w/ trains above ahead)*~~

Houston Sub – 4 trains

~~H TEAPTX1 12 @ Casey *(made it 10 miles to Pierce on the east belt then Died – will have to find 2nd crew to move)*~~
H TEAEGW1 11 @ Orr *(still there – no route with trains ahead not moving) (staging for slot after 1300 into EGW – did not call the TEAEGW-13 out of TEA last night)*
~~H TEAEGW1 12 @ Casey *(still there – no route into complex – this crew dies at 1500)*~~
~~H TEADYT1 12 @ Simmons *(has made it to Casey – with no route into complex – this crew dies at 1600)*~~

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

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**From:** Brewer, Lance R
**Sent:** Thursday, June 13, 2019 7:44 AM
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Duncan, Paul B <Paul.Duncan@BNSF.com>; Templeton, Olivia E <Olivia.Templeton@BNSF.com>; Norwood, Zachary B <Zachary.Norwood@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>; Igoe, Matthew J <Matthew.Igoe@bnsf.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** FW: BNSF trains tied down in complex

9 trains in the Houston Complex that haven't moved due to UP handling. 2 of them are from 2 days ago (11th). We put 1st shift jobs yesterday on all trains tied down in the complex to get them to destination. Not one of the 1st shift jobs moved, they sat on trains all day. Then we had 2 Ag trains on the Mykawa sub along with 3 manifest trains on the Houston Sub that we were told could not come in last night because we had too many trains tied down in the complex. So the UPRR in essence is now not handling us to move old trains in the complex that have died with crews on them multiple times, then using that against us to not allow more trains to arrive complex or depart our yards when they are the reason nothing moved in the first place while we had crews sit on them all day.

I am growing tired of getting our butt kicked all day and having our face shoved in the mud with no accountability for the blatant ignorance of our train movement needs from the UP. There is always an excuse that is given, but yet they somehow seem to remain current or get current while we sit idle and our yards woller in Opcon 3 for weeks on end.

We had 5 crews over the last two days on a TEAEGW that sat on the Houston Sub not being taken into the complex. It finally got in last night after midnight with the 5th crew on the train. I have 2 more on the Houston sub not being taken into the complex. All the while on UP calls this morning Englewood leadership contends that they are wide open for trains, so this must be that UP dispatch just won't take our trains.

I can and will keep fighting this fight down here providing the narrative on what is taking place, but at some point someone other than us locally is going to have to raise some cane for this to change or at least have a meaningful discussion or response as to why we continue to have trains sit for days on end and hundreds of crews each month used with no productivity.

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | ✉ lance.brewer@bnsf.com | ☎ (713) 847-3189

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**From:** Taylor, Robin B
**Sent:** Thursday, June 13, 2019 7:03 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** FW: BNSF trains tied down in complex

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**From:** Baker, Jill L
**Sent:** Thursday, June 13, 2019 4:48 AM
**To:** Harris, Jon E <Jon.Harris@BNSF.com>; Molyneaux, Ross E <Ross.Molyneaux@BNSF.com>; Hale, Darren T <Darren.Hale@BNSF.com>; Davis, Tyler A <Tyler.Davis2@BNSF.com>; Taylor, Robin B <Robin.Taylor@BNSF.com>; Angela M. Whitlock <AMWHITLO@UP.COM>; Eric M. Fleming <EMFLEMIN@UP.COM>; Fitzgerald, Joe <Joe.Fitzgerald@BNSF.com>; Bradley, William H <William.Bradley@BNSF.com>
**Cc:** Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>; Wadkins, Timothy R <Timothy.Wadkins@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Zahm, Richard D <Richard.Zahm@bnsf.com>; King, Brandon E (Dayton Trainmaster) <Brandon.King3@BNSF.com>
**Subject:** BNSF trains tied down in complex

**Tied Down**

- 281 – 11 – tied down at Dollar Up
- 285 – 11 – tied down Hatchery – Security Called
- 288 – 12 – tied down at Mesa
- 284 – 2 – 12 –(goes to Dayton) tied down in HD 6
- 281 – 12 – tied down at Market – 311 enroute at 0430
- 284 – 12 – (comes to Houston Yd) tied down at Algoa – 312 enroute at 0330

**Recrewed with live crew currently**

- 285 – 12 – Underwood – has HOU0904 on HOS 1109
- 180 – 12 – Englewood Yard with 386 on HOS 1110
- 283 – 12 – at Pasatx with HOU0906 on HOS 1158

****Can not get the Y HOU384 out due to SI – SI complete will start to double up around 0500
****Have asked to call the H HOULAL1 13 – called for 0730
****G HASLDH9 05 – tied down at Mykawa siding – had 386 planned for it, but 281 @ Market blocking route

Jill Baker
Houston Terminal Trainmaster
817-867-2105

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

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

---

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

---

**EXHIBIT 39**

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Taylor, Robin B <Robin.Taylor@BNSF.com>
**Sent:** Monday, March 28, 2022 7:58 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** UP Trains holding in Houston

Either holding for power connection or crew rest, nothing on South Texas leg (Algoa – Corpus). They have used Lloyd yard to drop a few cars off. David G had call yesterday and stated if trains are on Toll Road that all power is to be stripped, advanced into EGW / Settegast.

**EXTERNAL EMAIL**

| Houston | 9 Total Trains Held | 315 Total Hours Held | 315 Total Hours Held @Loc |
|---|---|---|---|
| [redacted] | | | |

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## Verified Statement of Lance R. Brewer

## 1. Background and Qualifications

I am Lance R. Brewer, General Manager, Division Operations for the Red River Division at BNSF Railway Company ("BNSF"). In my role, I am responsible for oversight of all rail operations in BNSF's Red River Division, which covers Texas, Oklahoma, parts of Arkansas, and Louisiana, including engagement with UP's operations departments. My employment with BNSF began in 2000, and I have held various operating roles of increasing responsibility over the course of my career with BNSF.

The purpose of my Verified Statement is to describe some of the ways that UP has frustrated BNSF's attempts to utilize its rights under the Restated and Amended Settlement Agreement ("RASA"). The documents and correspondence included with my Verified Statement, are true and correct copies of BNSF documents and correspondence, and reflect only a small fraction of the noncompliance from UP that

I encounter on a daily basis.[1] UP systematically de-prioritizes BNSF's traffic and despite our attempts to document these violations and confront UP, BNSF has seen no meaningful improvement in UP's compliance.

**2. UP's Unilateral Imposition of the "BNSF Rockport Process"**

Under the RASA, UP is obligated to dispatch BNSF trains "exactly as if they were trains of the same class [as UP] and given equal treatment with trains of [UP]." Brewer Ex. 1 at 61 (RASA). UP's actions on the Rockport Subdivision, which serves the area around Elmendorf, Texas, do not give BNSF trains equal treatment. The proper protocol for dispatching trains under the RASA is laid out in Exhibit D to the RASA, known as the "Dispatching Protocols." *Id.* The Rockport Subdivision is a critical line that runs out of San Antonio that BNSF needs to reach in order to service key customers. BNSF's trains on the Rockport Subdivision are dispatched by UP at UP's Harriman Dispatching Center in Omaha, Nebraska.

The "BNSF Rockport Process" is a written document created and distributed by UP to its dispatchers and managers, including at the Harriman Dispatching Center. The Rockport Process was circulated at the latest by 2016,[2] and was revised

[1] The following examples are based on e-mail correspondence that I have retained over the course of my responsibilities over the Red River Division. These communications are simply examples of the ongoing issues BNSF faces and represent only a sample of the documentary evidence in my possession. Because many incidents are discussed by phone or directly with UP, any gaps in time between the incidents documented below is not indicative of a lack of issues during such times. As explained, these issues are persistent and continuing and would be further revealed with access to the evidence that is currently in UP's possession.

[2] Brewer Ex. 2 (September 20, 2016 emails between BNSF and UP).

in 2018.[3] The document has again been revised numerous times, including on December 22, 2020 and May 5, 2021.[4] The various iterations of the Rockport Process state that its purpose is to "[p]rovide consistent service on the BNSF Elmendorf trains across the Austin and West Texas Corridors"[5] and to "standardize the planning, communication, and execution of running BNSF Elmendorf trains from Caldwell to destination."[6] The Rockport Process mandates BNSF on-duty time on BNSF's own system as a precondition for being granted a slot to operate onto UP trackage.[7] The restrictions imposed by the Rockport Process apply exclusively to BNSF trains;[8] UP does not require its own trains to comply with the same operating windows.

This Rockport Process was unilaterally created and implemented by UP without BNSF's consultation or agreement. On March 19, 2021, I sent a formal written communication to Jason B. Jones (UP's General Director, Transportation), with copies to other UP employees, David W. Hughes, David Giandinoto, Brian W. McGavock, and Matthew F. Lyons, in which I stated that the protocol "*was never agreed upon by [] BNSF, nor were we ever consulted or notified of its creation and implementation by your team prior to its execution.*"[9] Because UP unilaterally created and imposed the Rockport Process, BNSF has limited visibility into whether and to

[3] Brewer Ex. 3 (July 22, 2018 document titled "BNSF Elmendorf Trains Communication Process").
[4] *See* Brewer Ex. 4 (March-April 2021 emails between BNSF and UP), at 4; Brewer Ex. 5 (June 2021 emails between BNSF and UP), at 2.
[5] Brewer Ex. 2 at 3.
[6] Brewer Ex. 3 at 1.
[7] *Id.*
[8] *Id.*
[9] Brewer Ex. 6 (March 2021 emails between BNSF and UP), at 1.

what extent UP's dispatchers and managers remain governed by the Rockport Process.

When BNSF's operating teams have attempted to work within or around this Process, UP's operating team has advised that "their hands are tied by this documented process and absolute windows."[10] The Process thus operates as an absolute bar to BNSF access outside the designated window, regardless of operational circumstances. Throughout the time since the Rockport Process was implemented, BNSF has tried to explain to UP that the Process violates the Dispatching Protocols and must be rescinded.[11]

### 3. Eagle Pass Dispatching Disparities Illustrate UP's Unequal Treatment of BNSF Traffic.

Under the RASA, BNSF was granted trackage rights between San Antonio and Eagle Pass, Texas "with parity and equal access to the Mexican border crossing at Eagle Pass." Brewer Ex. 1 at 15. BNSF has the contractual right to interchange with Ferromex ("FXE") at Eagle Pass on equal terms with UP. *Id.* at 16. The RASA's Dispatching Protocols obligate UP to provide "equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier." *Id.* at 61. The equal dispatching obligation applies to Eagle Pass.

Specifically, BNSF's contractual rights at Eagle Pass include: {[redacted]

[redacted]

[10] *Id.* at 2.
[11] *See id.* at 1–2.

[redacted] }}

{{ [redacted] }}

Interchange mix within each window is to be based on trains' passing time at the Spofford, Texas[13] Automatic Equipment Identification ("AEI") reader—the measurement point for determining slot priority—on a first-come, first-served basis. Operational planning calls are conducted twice daily and include UP, BNSF, and FXE representatives.

The Eagle Pass gateway has capacity for approximately 18 train movements per day. BNSF's available staging capacity includes space for at least 4 trains at Ryan's Ruin (including the BNSF Horan track). BNSF has invested {{ [redacted] }} in enhancing capacity at Eagle Pass, per discussions and coordination with UP on the need for enhanced yard capacity for BNSF trains to improve

[12] *See* Brewer Ex. 7 (June 1, 1996 Sealy, TX to Waco & Eagle Pass, TX TRA), at 3–8.
[13] A station roughly 30 miles north of the Eagle Pass Gateway.

interchange operations.[14] Despite this significant investment, BNSF has been unable to realize the benefit of these improvements because UP controls access to the border and disproportionately allocates it to itself. If BNSF had equal use of mainline staging, BNSF's capacity could increase substantially.

**a. UP's Unequal Dispatching and Slot Allocation Practices at Eagle Pass.**

Over the course of my tenure on BNSF's Red River Division, UP has engaged in a persistent and systematic pattern of unequal dispatching and slot allocation at the Eagle Pass gateway. I provide several principal examples below.

Slot Allocations

The interchange protocol provides that border-crossing slots are to be allocated based on Spofford AEI reader passage time, on a first-come, first-served basis. In practice, UP consistently allocates priority border crossing slots to itself, over BNSF's trains, even when BNSF trains passed the Spofford AEI reader first. In a series of correspondence in 2020, for example, BNSF repeatedly identified unequal slot allocations and other dispatching inequalities. Despite identifying clear violations of UP's obligations, UP dug in.[15] Contemporaneous communications with UP

[14] Brewer Ex. 8 (March 2020 emails between BNSF and UP).

[15] On October 28, 2020, Tessa Miner of BNSF emailed Tom Blevins of UP stating: "We really need to be given as many slots as the UP receive today and always for that matter. How can you explain that you get 4 and we get 2 when that is clearly not parity?" Mr. Blevins responded that "there are times like yesterday where we have more trains than available slots," ignoring that—as I responded—"who has more volume[] . . . is irrelevant to the protocol that is supposed to be followed." Instead, as I pointed out, what matters is the order in which trains arrive, with trains served on a first-come first-serve basis. Brewer Ex. 9 (October 2020 emails between BNSF and UP), at 3, 6.

demonstrate how UP attempted to sidestep its obligations and failed to remedy its clear violations.[16]

This pattern continued into 2024, when another series of correspondence illustrates how BNSF was unable to resolve the inequitable slot allocation. BNSF was again met with non-engagement from UP.[17] When UP did respond, UP's alleged

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On July 29, 2020, Bob Beals of BNSF reported: "Last night BNSF had 3 trains in position and was only given 2 southbound slots." He requested assistance in "obtaining at least some [p]arity and getting our proper slots so we can interchange our traffic." UP responded that the slot track was "not available" and UP could only provide slots for three trains "if opportunity arises." Brewer Ex. 10 (July 2020 emails between BNSF and UP), at 3–4.

[16] On October 29, 2020, I emailed Mr. Blevins directly, stating: "It really does not lend credence to the success of the process following protocol measures, to just state that UP had more trains. You could very well have more trains, but we could have more slots due to our trains having passed Spofford well before those UP trains. That at its core is why you even get these types of inquiries. Because no one knows whether that is the case because slots at the border are never referred to or measured in this manner." As described above, *supra* n.15, Mr. Blevins ignored BNSF's concerns stating that "the key here is to spend our time as ONE TEAM . . . vs debating he said she said '[s]tuff' to protect all business." Brewer Ex. 9 at 1, 3.

On August 5, 2020, I emailed Robert Ellis of UP: "We have three trains in position to exchange in the SB window 1200-1800, and as you can see below we are being told quantity of UP trains is a deciding factor in why we are only receiving 2 slots. Number of trains for a carrier is not to be a factor in the determination of slots, in fact using the UP's own claim as recent as three months ago among senior leaders trains should pass into Mexico in the order of arrival in which they passed Spofford." Brewer Ex. 11 (August 2020 emails between BNSF and UP), at 1.

On March 30, 2020, an internal BNSF report documented: "During the 0500 conference call we were informed that we will only receive 2 [s]lot[s] vs the 4 for the UPRR (FYI both RR offered 4 train)." Brewer Ex. 12 (March 30, 2020 BNSF emails), at 3.

[17] On February 8, 2024, Erica Stigall of BNSF reported: "The local team has advised us that BNSF will only be granted 01 slot and UPRR will have 03. We've attempted to resolve the discrepancy with the local team, however, we've been unsuccessful." Only after multiple follow-ups did UP agree to provide equal slots for BNSF. Brewer Ex. 13 (February 2024 emails between BNSF and UP), at 1.

On June 6, 2024, Ms. Stigall reported to UP: "Per Spofford times, BNSF should have a minimum of 02 slots in the current Southbound window. UP has granted BNSF

justification for the unequal slot allocation included factors like train length, which is not relevant to the allocation of slots.[18] Even when UP agreed with BNSF on the slot allocation based on Spofford AEI reader passage times, UP deviated from the allocation when it suited UP's interests.[19] Between September 4 and September 10, 2024, multiple emails documented BNSF repeatedly being limited to one slot when Spofford AEI reader passage times indicated BNSF should have received two or three slots. A representative BNSF communication stated: "Another example of inequitable handling at the bridge. Per Spofford times, slots should be 03 UP / 02 BNSF. BNSF is being limited to 01 slot."[20]

The examples of correspondence included herein highlight UP's complete lack of commitment to the slot allocation principles. Despite agreeing on a clear process for determination of slot allocation, UP intentionally deviates from the process in its own interest to BNSF and its customers' detriment. Even in the face of clear evidence of noncompliance, UP has failed to address its behavior.

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only 01 slot." Following a meeting between UP and BNSF's local operating team, BNSF was still told it would only have one slot. Brewer Ex. 14 (June 6, 2024 emails between BNSF and UP), at 1.

[18] On June 25, 2024, Ms. Stigall reported: "During the previous Southbound window, it was 03 UP and 0 BNSF." And the next window would be "04 UP and 01 BNSF." Brewer Ex. 15 (June 18-26, 2024 emails between BNSF and UP), at 1. BNSF received zero slots in an entire southbound window while UP received three.

[19] On June 18, 2024, Ms. Stigall reported: "Per Spofford times, the midnight Southbound window should be 03 UP & 02 BNSF. The UP team has stated the slot will be 04 UP and 01 BNSF citing BNSF train lengths as the driver. Slots are not designated based upon train lengths." *Id.* at 3–4.

[20] *See* Brewer Ex. 16 (September 3-10, 2024 emails between UP and BNSF re: "Eagle Pass Slots – Next Southbound Window").

Access to Staging and Slot Tracks

UP regularly prevents BNSF from using the slot track at Clark's Park, for which BNSF {{[redacted]}} to construction costs, and from staging trains at High School Crossing, while allowing its own trains to do so freely.

For example, on August 29, 2018, BNSF reported to UP that Steven Bybee of UP had communicated that BNSF trains would "no longer be lined-up at High School Crossing until the start of Southbound Windows and that we would have to park trains in Ryan's Ruin until the windows start."[21] Meanwhile, at the same time, "3 UPRR trains were lined-up at High School Crossing at the end of the Southbound Window . . . these trains are scheduled to go across ahead of BNSF Train plus they were allowed to line up on the Mainline at High School Crossing."[22] UP thus denied BNSF the very staging position it freely afforded to its own trains, giving UP trains a positional advantage for the next interchange window.

These problems have persisted for years without clarity or resolution. Less than a year ago, in October 2025, Olivia Power of BNSF emailed UP: "What is UP's process for advancing a BNSF train to the Slot Track to position us for a southbound window? And, what has BNSF's utilization of the Slot Track been over the past month? The Slot Track is part of the 'Joint Trackage' and as such, BNSF must have equal utility of the track."[23]

[21] Brewer Ex. 17 (August 2018 emails between BNSF and UP), at 3.
[22] *Id.*
[23] Brewer Ex. 18 (October 2025 emails between BNSF and UP), at 2.

{{ }} This denial rate demonstrates that BNSF is systematically prevented from using infrastructure it helped fund.

UP's Non-Engagement and Failure to Remedy

BNSF has raised these issues at multiple levels within UP's organization and through the formal JSC process, without resolution. UP's own senior leadership has acknowledged the problem while simultaneously claiming that it is unable to address it. The examples of communications below highlight UP's failure to engage with BNSF's complaints despite clear evidence of UP's noncompliance.

On September 13, 2024, David Hughes of UP responded to me in an email in which he stated: "I cannot say whether BNSF or UP local management is being transparent with the issues to you or simply passing blame." Mr. Hughes further stated: "I cannot tell you why you are seeing what you are seeing. I have not been allowed to replace our Director of Joint Facilities in Ft Worth. That position was created to help monitor and resolve [parity] issues like these."[25] To my knowledge, this position has still not been filled.

In March 2020, BNSF wrote to UP stating: "Parity across the Eagle Pass Gateway: BNSF invested {{ }} in enhancing capacity at Eagle Pass, per

[24] Brewer Ex. 19 (March 2021 BNSF JSC Meeting Presentation), at 13.
[25] Brewer Ex. 20 (September 2024 emails between BNSF and UP), at 2.

discussions and coordination with UP on the need for enhanced yard capacity for BNSF trains to improve interchange operations at Eagle Pass. We are dismayed to see continued deprioritization of BNSF's trains in favor of UP's trains interchanging across the border with FXE. We have repeatedly tried to bring some visibility to this at the local level without success. BNSF is entitled to equal access at the Mexico border. It is our expectation that UP will adhere to these terms and provide BNSF with equal slots, i.e. where 6 slots exist and each carrier has enough trains at Eagle Pass to cross, BNSF will receive 3, UP will receive 3."[26]

Despite this and numerous other communications, UP has taken no meaningful corrective action. The discriminatory slot allocation practices documented in this statement have continued unabated from 2018 through the present.

**4. Houston Complex Delays**

The Houston Terminal Complex is one of the largest and most critical rail junctions in the United States. It is the point at which BNSF and UP trains converge for access to the Port of Houston, Gulf Coast chemical and petrochemical facilities, intermodal terminals, and transload operations. BNSF and UP trains operate on joint trackage within the Complex under specific dispatching protocols established as conditions of the UP/SP merger.

**Joint Dispatching Center**. As a condition of the UP/SP merger, a regional dispatching center was established at UP's command center in Spring, Texas, which

[26] Brewer Ex. 8 at 1.

has been operational since March 15, 1998.[27] In addition to UP and BNSF lines in the Houston Complex, this dispatching center has responsibility for jointly dispatching: (a) the 50/50 line (Dawes to Iowa Junction/Avondale); (b) the lines of the Houston Belt & Terminal Railway Company ("HBT"); (c) the lines of the Port Terminal Railroad Association ("PTRA"); and (d) the trackage in the Houston terminal area that was owned and dispatched by Southern Pacific.[28] These jointly dispatched lines are supposed to be dispatched by UP and BNSF employees under the supervision of a neutral joint director,[29] although UP often unilaterally makes dispatching decisions on these lines.

**CMA Agreement Dispatching Standards**. Under the applicable agreements, BNSF and UP agreed to use the dispatching protocol previously adopted pursuant to the Chemical Manufacturers Association Agreement dated April 18, 1996 ("CMA Agreement"), *see* Brewer Ex. 1 at 1–2, which provides that trains of the same class will be treated equally, so that all carriers in Houston and along the Gulf Coast will be able to provide the same quality of service to shippers.

**Clear Route Protocol**. The RASA provides: "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." Brewer Ex. 1 at 36.

[27] Brewer Ex. 21 (March 1998 Consolidated Dispatching Center Agreement).
[28] *Id.* at 2.
[29] *Id.* at 4.

**Dispatching Protocol Provisions**. The Dispatching Protocols—which are fully applicable in the Houston Complex—contain the following relevant provisions: Section 2 requires equal dispatching without any discrimination in promptness, quality of service, or efficiency; Section 3 requires written instructions to dispatchers for equal treatment of tenant railroad trains; Section 7 requires equitable train priority assignments; Section 8 requires first-come, first-served access; and Section 12 requires that performance evaluation of dispatching personnel take into account the tenant railroad's train performance. *See* Brewer Ex. 1 at 61–63.

Taken together, these agreements require that BNSF trains be dispatched through the Houston Complex on equal terms with UP trains, using the most efficient available routes to minimize congestion. The neutral joint director is supposed to serve as an oversight mechanism to ensure this result. As described below, this framework has failed in practice.

**a. Dispatching Violations and Operational Impediments in the Houston Complex**

Throughout my tenure in BNSF's Red River Division, UP has engaged in a persistent pattern of dispatching BNSF trains through the Houston Terminal Complex in an unequal and discriminatory manner.

Systematic Priority of UP Trains Over BNSF Trains

The core problem in the Houston Complex is that UP dispatchers routinely prioritize UP trains over BNSF trains, resulting in BNSF trains being held for extended periods while UP trains continue to operate. This manifests in multiple ways: BNSF trains sitting for hours or days without being given signal routes;

multiple BNSF crews expiring on trains that do not move; UP trains being advanced ahead of BNSF trains that were ready to depart first; and BNSF yard transfers not being dispatched while UP yard transfers operate freely. The following correspondence with UP exemplifies the de-prioritization that BNSF faces and has faced on a daily basis in Houston.

On June 13, 2019, I sent a communication to UP identifying 19 BNSF trains that "haven't been handled by the UPRR despite us having had crews on all of these for the last 12 hours, and some for the last 3-12 hour shifts." I stated: "No more extra crews, relief orders, or free jobs to handle remaining 5 until other trains move. Until this is cleaned up to my satisfaction I have asked Gwen [Pruiett-Wadkins, of BNSF] to not allow any additional trains into the Houston complex." I further demanded: "I would be much more interested in getting some explanation of how we got here and why these trains were not handled in the first place dating back 2-3 days ago."[30]

On June 6, 2019, I emailed Brenten Starr, Kenneth Gomez, and Mike Hopkins at UP: "Absolutely nothing has changed in the way we are handled in the complex after our sit down. What is it going to take for us to move traffic without having to ask for every signal?"[31] This communication reflected my frustration that despite a face-to-face meeting to address these very issues, UP's discriminatory dispatching continued unchanged.

[30] Brewer Ex. 22 (June 13, 2019 emails between BNSF and UP), at 1–2.
[31] Brewer Ex. 23 (June 6, 2019 emails between BNSF and UP), at 1.

On June 8, 2019, I emailed Brian McGavock and Brenten Starr of UP: "We sat all day with cuts that didn't move with EGW terminators holding in complex all day. I have burned every extra board crew I have while 6 different crews were called to move trains in complex yesterday and didn't turn a wheel. Called Brent all day, called Tim all day. Got no where. This is why we are where we are and it will take all week to recover. Nothing in the complex is being prioritized as discussed in workshop."[32]

In an earlier incident, on May 9, 2019, I reported that seven of the previous day's trains were "still hanging out in the complex."[33] The detailed reporting from BNSF's operational team documented the following specific examples of delays occurring on that date:

"No Transfer Job made it to its destination today on 1st Shift; BNSF is putting 2nd crews on every train; these are 1-way transfers." Train HOU185 (South Yard to Strang) departed that morning, and was "still holding at [Underwood] Crossing at 2000." Train HOU180 (Englewood to South Yard) had its crew transported, the train built by approximately 1030, air-test completed and ready to depart by approximately 1145; yet the dispatcher did not provide a route until approximately 1730. The train made it to one board just outside South Yard and then had to be recrewed due to hours of service expiration.[34]

The same report documented that Train CYS182 (Casey Yard to South Yard) was "still not allowed out of Belt Jct since 0730 this morning." The TEAPTX {[redacted]

[32] Brewer Ex. 24 (June 8, 2019 emails between BNSF and UP), at 1.
[33] Brewer Ex. 25 (May 9, 2019 emails between BNSF and UP), at 3.
[34] Brewer Ex. 26 (May 2019 internal BNSF emails), at 3.

[redacted]}} had its 3rd crew on the train since the previous day; the train "was still holding at Casey as of 1945 this evening; crew was on train today for over 12 hrs and was not given a route to PTRA." BNSF's report noted that it took escalation to UP's most senior levels to get the train moved, and that "PTRA is going to protect the late arrival to keep from shutting down {{[redacted]}} on the PTRA."[35]

BNSF's staff reported: "It has gotten to the point that between SOYD personnel, my SDC team, myself, or Janssen are having to interject and ask/pry for every signal that these trains get. There is virtually no attention being paid to these trains unless we start raising questions and escalate the issue above dispatchers and corridor managers." Staff also reported: "On two occasions last night Gwen had to get downright insistent with the UP here in the SDC and take signals from their trains onto the Mykawa before they would even listen to what she was asking for."[36]

On January 18, 2019, I documented BNSF trains "that started with crews on duty before 0800 this morning, and they are having to wait on a train called at noon today [to be] able to make destination with one crew before expiring."[37] This reflects later arriving UP trains being dispatched ahead of BNSF trains that were ready earlier—a direct violation of the first-come, first-served protocol.[38]

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[35] *Id.*
[36] *Id.* at 1.
[37] Brewer Ex. 27 (January 2019 emails between BNSF and UP), at 1.
[38] As another example, on May 21, 2019, PTRA was told by UP's Corridor Manager that a BNSF train "could not depart due to volume in the Houston Complex." Brewer Ex. 28 (May 2019 emails between BNSF and UP), at 3.

On July 23, 2021, I emailed Mike Hopkins and Jeff Moore at UP: "Yesterday we had 387 announced to depart PTRA at around 0530 in the morning. He departed sometime after and advanced to Pierce on the east belt. He sat there all day killing the 1st crew, and the 2nd crew that we put on the train, taking a 3rd crew to get the train into Houston SOYD. I cannot stress enough how unacceptable it is for any carrier to have to use 3 crews to get a train 7 miles."[39]

These instances illustrate UP's continuing failure to adhere to equal priority. BNSF is clearly not "given equal treatment with trains of [UP]." Brewer Ex. 1 at 61. As the examples of communications herein illustrate, BNSF's attempts to resolve these issues with UP have been met with stonewalling.

UP Staging Trains on Shared Infrastructure, Blocking BNSF

UP stores its own trains on the East and West Belt mainline tracks within the Houston Complex, physically blocking BNSF trains from moving. This practice has been documented since at least 1997.

In October 1997, BNSF reported to the Surface Transportation Board that

[redacted]}}

[39] Brewer Ex. 29 (July 2021 email between BNSF and UP), at 1.
[40] Brewer Ex. 30 (BNSF October 1997 Quarterly Progress Report on Merger Control and Operations), at 202.

In May 2019, BNSF reported "over the last several days starting to see several UPRR trains staging on the East and West Belt; these trains appear to be going toward the Palestine Sub; hearing that various work events at Lloyd Yard are causing back ups onto the East and West Belt."[41] UP's operational problems elsewhere in its network were thus being externalized onto BNSF by UP's blocking of shared infrastructure in the Houston Complex.

In March 2022, Robin Taylor of BNSF reported to me that 9 UP trains were holding in the Houston Complex for a combined total of 315 hours, blocking routes needed by BNSF trains.[42]

Excessive Relief Crews Due to Dispatching Failures

The persistent failure to dispatch BNSF trains in the Houston Complex forces BNSF to consume multiple crews per train movement—a direct and quantifiable harm caused by UP's discriminatory dispatching.

In February 2018, I reported to Rob Reilly of BNSF that over a 10-day period, the average Initial Terminal Delay ("ITD") on BNSF transfer jobs in the Houston Complex was 4.3 hours.[43] The HOU180 transfer to Englewood averaged 5.7 hours of delay.[44]

On February 8, 2018, the average ITD on transfer jobs reached 8.5 hours.[45] I reported relief transfer crew starts of 2.5 per day (25 over 10 days) and road relief

[41] Brewer Ex. 28 at 4.
[42] Brewer Ex. 31 (March 2022 internal BNSF email), at 1.
[43] Brewer Ex. 32 (February 2018 BNSF internal emails), at 5.
[44] *Id.*
[45] Brewer Ex. 33 (February 8, 2018 BNSF internal emails), at 2.

crew starts of 1 per day (10 over 10 days).[46] These are all additional crew starts consumed solely because UP did not dispatch BNSF trains in a timely manner.

In the first quarter of 2019, BNSF documented a significant increase in "non-productive starts" (crew starts in which trains do not move at all) compared to the first quarter of 2018.[47] A non-productive crew start represents a crew that reported for duty, was assigned to a BNSF train, and expired without the train being dispatched. Each such start represents wasted BNSF resources directly attributable to UP's failure to route BNSF trains.

**b. UP's Failure to Address Dispatching Issues**

BNSF has repeatedly raised these issues through formal and informal channels, including direct communications with UP senior leadership, formal requests for dispatching protocol reviews, and multiple JSC meetings. UP's response has ranged from dismissive to non-responsive.

In May 2019, following BNSF's formal request for a dispatching protocol review based on the pattern of incidents documented above, UP responded that "[t]here were no dispatching protocol issues" and claimed that UP had "held ourselves 4 times the rate their trains were delayed."[48] UP's Kenneth Gomez concluded with: "[w]hat's cool about it is we never cut them off on their trackage rights like they cut us off twice in 24 hours on their Mykawa Sub."[49] This response entirely ignored the systematic pattern BNSF had documented over months of operations.

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[46] Brewer Ex. 32 at 5.
[47] Brewer Ex. 34 (May 2019 BNSF internal emails).
[48] Brewer Ex. 28 at 1.
[49] *Id.*

On April 8, 2020, BNSF sent a summary of dispatching issues to UP noting: "[w]e are seeing a rise in these metrics. Our transit time between Caldwell, San Antonio, and Eagle Pass continue to materially degrade. We are also having to stage trains for 24 hours or more awaiting permission to enter our trackage rights at Caldwell. We do not understand how holding our trains off for 24 hours or more can be reconciled with a first-come first-served protocol."[50] This communication addressed network-wide problems that are inextricably connected to the Houston Complex dispatching failures.

The Houston dispatching issues have been raised at JSC meetings in August 2019, March 2021, May 2022, and July 2024, among other occasions, without resolution.[51] At the August 2019 JSC, BNSF specifically requested "Procedures for assigning dispatching priorities or rankings to UP trains and information about how those procedures are applied to UP trains."[52] To my knowledge, UP has not provided this information.

[50] Brewer Ex. 8 at 1.
[51] Brewer Ex. 35 (August 2019 JSC Meeting Agenda); Brewer Ex. 36 (March 2021 JSC Agenda); Brewer Ex. 37 (May 2022 JSC Presentation), at 2; Brewer Ex. 38 (July 2024 Presentation).
[52] Brewer Ex. 35 at 1.

## VERIFICATION

I, Lance Brewer, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on August 26, 2026 /s/ *Lance Brewer*

Lance Brewer

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 1

REDACTED - TO BE PLACED ON PUBLIC FILE

03/01/02

**RESTATED AND AMENDED AGREEMENT**

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

WITNESSETH:

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

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

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

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

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1. **Western Trackage Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. **I-5 Corridor**

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

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

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

3. **Southern California Access**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. **St. Louis Area Coordinations**

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

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

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

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

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

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

8. **Additional Rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Trackage Rights - General Provisions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. **Term**

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

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

12. **Adjustment of Charges**

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

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

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

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

13. **Assignability**

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

14. **Government Approvals**

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

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

15. **Arbitration**

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

16. **Further Assurances**

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

17. **No Third Party Beneficiaries**

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

UNION PACIFIC RAILROAD COMPANY

By:_____
Title:_____

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By:_____
Title:_____

**Exhibits to Restated and Amended BNSF Settlement Agreement**

Exhibit A – List of "2-to-1" Points

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

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

Exhibit D -- Dispatching Protocols

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

Exhibit F -- Overhead Trackage Rights Lines

REDACTED - TO BE PLACED ON PUBLIC FILE

**EXHIBIT A**

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# 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

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EXHIBIT B

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# EXHIBIT B

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

## Concept

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

## Covered Territory

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

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

and points in

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

## Traffic Covered

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

## Proportional Rates

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

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

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

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

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

## Application

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

## Service

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

## Third Party Consultant

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

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

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

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

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

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

B. Compute BNSF Division on a Specific Move

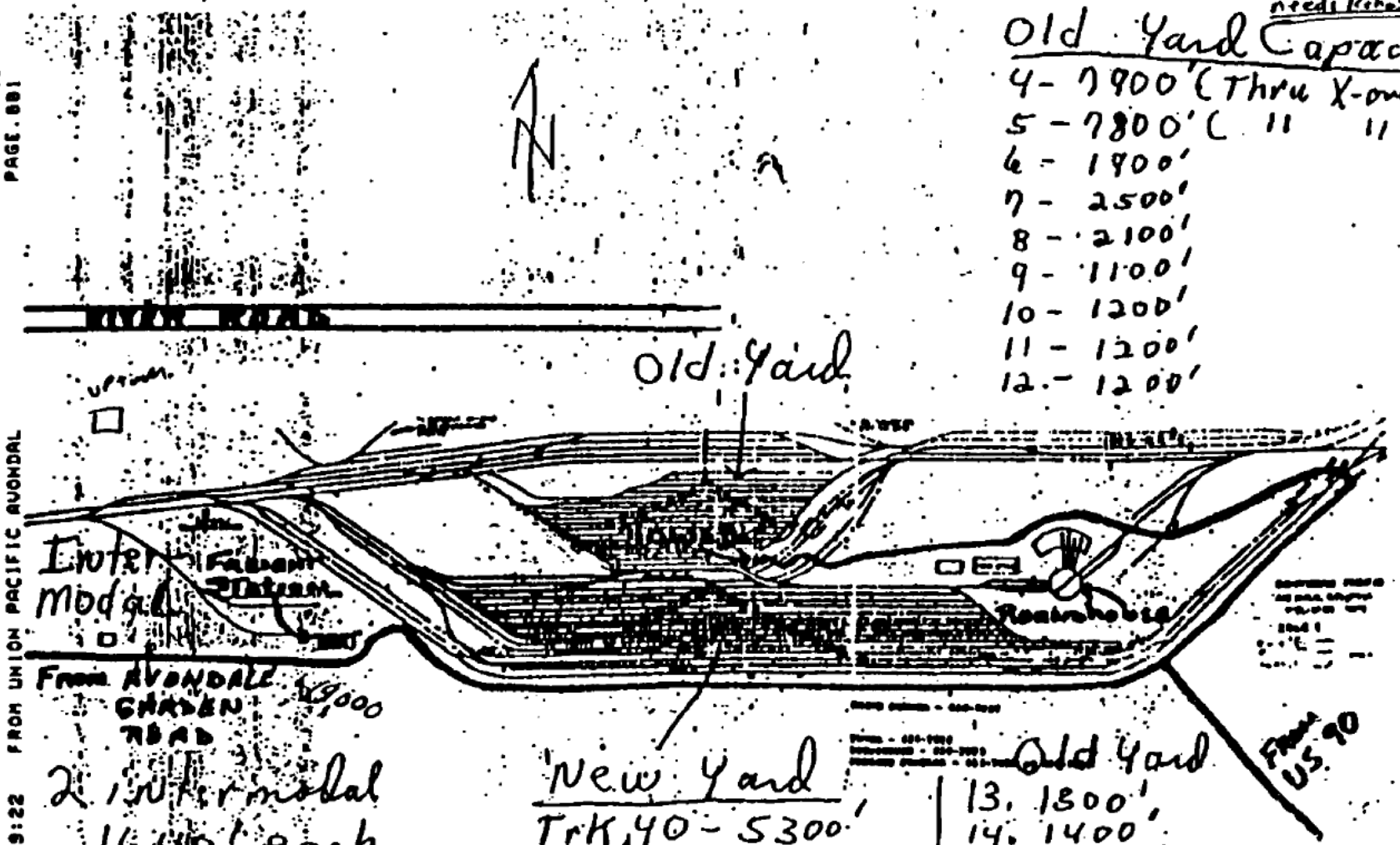
(A) x (5) x (3)
$0.06 x 300 x 100 = $1800
$0.06 x 200 x 50 = $ 600

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**EXHIBIT C**

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# S.P. Avondale Yard




Old Yard Capacity (needs Rehab)

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

New Yard

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

Old Yard

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

SEP 24'95 11:21 FR UP SPRING 713-350793 13 358 7593 TO 82715555 P.01/01
SEP 24 '95 9:22 FROM UNION PACIFIC AVONDAL PAGE.001
TOTAL PAGE.001

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**EXHIBIT D**

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April 24, 1996

# BNSF - UP/SP DISPATCHING PROTOCOLS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**EXHIBIT E**

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## 2-To-1 Point Identification Protocol

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

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

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

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

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

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

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

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

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

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

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

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

AGREED TO AND ACCEPTED BY:

UNION PACIFIC RAILROAD COMPANY

John H. Ransom

Date: June 24, 1998

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Peter J. Rickershauser

Date: June 26, 1998

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 2

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**From:** Walley, Gerrad H <Gerrad.Walley@BNSF.com>
**Sent:** Tuesday, September 20, 2016 12:17 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** FW: BNSF Elmendorf Process **Read**
**Attach:** BNSFelmendorfprocess.doc

---

**From:** Devault, Brad D
**Sent:** Tuesday, September 20, 2016 11:33 AM
**To:** Walley, Gerrad H <Gerrad.Walley@BNSF.com>; OPR DL Spring Terminal Managers <OPRDLSpringTerminalManagers@BNSF.com>
**Subject:** FW: BNSF Elmendorf Process **Read**

Brad DeVault | BNSF Railway | Director of Transportation – Red River Division | O: (281) 350-7553 | C: (832) 221-4968

**From:** Kenneth A. Gomez [mailto:KAGOMEZ@up.com]
**Sent:** Tuesday, September 20, 2016 9:41 AM
**To:** Devault, Brad D <Brad.Devault@BNSF.com>
**Subject:** Fw: BNSF Elmendorf Process **Read**

EXTERNAL EMAIL

UNION PACIFIC
BUILDING AMERICA™

150 YEARS

**Kenneth A. Gomez**
**Superintendent**
**Southern Region**
**24125 Old Aldine Westfield Rd.**
**Spring, TX 77373-9015**
**832-482-8956 Cell**
**281-350-7171 Office**
**kagomez@up.com**

----- Forwarded by Kenneth A. Gomez/UPC on 09/20/2016 09:40 AM -----

From: Matthew D. Maly/UPC
To: SOUTHSUPTS@UP.COM, Douglas S. Webb/UPC@UP, Kenneth A. Gomez/UPC@UP, Eric M. Fleming/UPC@UP, Troy T. Slinkard/UPC@UP, "Austin Corridor Manager" <austinhdc@up.com>
Date: 09/20/2016 09:25 AM
Subject: BNSF Elmendorf Process **Read**

---

Here is the standard process for running BNSF Elmendorf trains. Today, a plant will shut down due to the UP not being able to deliver an Elmendorf train in a timely manner. This is a big deal gents. I suggest you read the process and memorize it. I can assure you it will be asked about again.

I will go over this document with each of you in the coming days.

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# BNSF Elmendorf Process

BUILDING AMERICA™

Goal: Provide consistent service on the BNSF Elmendorf trains across the Austin and West Texas Corridors.

Challenges: Elmendorf trains traverse down Austin main two track, against the flow of UP north trains out of San Antonio. To accommodate, traffic must be flipped out of San Antonio to Austin main track one.

Process:

1. When advised of a BNSF Elmendorf train, UP Corridor manager must advise the BNSF Chief of any circumstances that will impede the progress of this train. Including (but not limited to):
   a. YEY71 schedule (Mon-Fri)
   b. Curfews
   c. Traffic flows out of San Antonio

2. The ideal window for this train to operate on the Austin Subdivision is between the hours of 0500-2300 Monday through Friday, and anytime Saturday and Sunday. This is due to the YEY71 local working Austin main track one.

3. It will be the BNSF's responsibility to communicate any/all future Elmendorf trains during the standard conference call times. Likewise, UP personnel will begin the planning phase to accommodate.

**Matt D. Maly**
Corridor Manager Southern Region
850 Jones Street | Omaha, NE 68102
☏ 402.636.7443 | ✉ mdmaly@up.com

**

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# BNSF Elmendorf Process

BUILDING AMERICA℠

Goal: Provide consistent service on the BNSF Elmendorf trains across the Austin and West Texas Corridors.

Challenges: Elmendorf trains traverse down Austin main two track, against the flow of UP north trains out of San Antonio. To accommodate, traffic must be flipped out of San Antonio to Austin main track one.

Process:

1. When advised of a BNSF Elmendorf train, UP Corridor manager must advise the BNSF Chief of any circumstances that will impede the progress of this train. Including (but not limited to):
   a. YEY71 schedule (Mon-Fri)
   b. Curfews
   c. Traffic flows out of San Antonio

2. The ideal window for this train to operate on the Austin Subdivision is between the hours of 0500-2300 Monday through Friday, and anytime Saturday and Sunday. This is due to the YEY71 local working Austin main track one.

3. It will be the BNSF's responsibility to communicate any/all future Elmendorf trains during the standard conference call times. Likewise, UP personnel will begin the planning phase to accommodate.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 3

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# BNSF Elmendorf Trains

BUILDING AMERICA™

## Communication Process

***Revised July 22, 2018***

### *Overview*

The ultimate purpose of this document is to standardize the planning, communication, and execution of running BNSF Elmendorf trains from Caldwell to destination. The challenges we have faced revolve around the required routing of the train via Austin Main #2 southbound, as well as, limited capacity on the Rockport Subdivision. This document will lay out the communication standards and actions that must be taken by the UPRR and BNSF to be successful in running this train to destination.

### *Standard Call Window At Temple*

Any train coming from the BNSF at Temple that is destined for Elmendorf/Southton should be on duty at Temple between 0800 – 1600.

Hitting this call window will allow the trains to arrive after the daily local windows are complete and afford a better opportunity to proceed to destination without interruption. Trains that are called outside of this standard window will be held on the BNSF Railroad short of Caldwell.

### *Communication Process & Action Items*

- BNSF will notify the Austin Corridor Manager of their intention to call an Elmendorf/Southton train out of Temple.
- Austin Corridor Manager will confirm that it falls within the Standard Calling Window, as defined above.
- Once the train is actively running on the UPRR, the Austin Corridor Manager will notify the West Texas Corridor Manager and the BN Cadet Terminal Manager when the train departs Smithville.
- Notification will include an estimated time of arrival at Ajax.
- West Texas Corridor Manager will use this information to adjust the traffic flows accordingly to support this train southbound via Austin Main #2.
- BN Cadet Terminal Manager will ensure the crew has hours of service to reach destination.

### *Escalation Process*

- In the event of a service interruption or inability to provide a route for this train, the Austin or West Texas Corridor Manager will notify the BN Cadet Terminal Manager, as well as, the UP Director/Regional Supt on duty.
- Notifications are to be made prior to the train tying down online.

### *Contact Information*

| | |
|---|---|
| • Austin Corridor Manager | (402) 636-7306 |
| • West Texas Corridor Manager | (402) 636-7422 |
| • BN Cadet Terminal Manager | (210) 419-1418 |
| • UP Director | (402) 636-7626 |
| • UP Regional Supt | (402) 636-7452 |

Communication is the key to success!!!

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 4

**From:** David W. Hughes <DWHUGHES@up.com>
**Sent:** Tuesday, April 6, 2021 11:28 AM
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Subject:** Re: FW: HDC Personnel Announcement

REDACTED - TO BE PLACED ON PUBLIC FILE

**EXTERNAL EMAIL**

Please tell Lance I will follow up with our team. I do not have the name of Jason Jones' replacement yet. That was where I was trying to go first after I learned that he had left the company.

-dwh

"Bailiff, Sarah W" ---04/06/2021 10:47:58 AM---* PROCEED WITH CAUTION - This email was sent from outside the Company *

From: "Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com>
To: "David W. Hughes (DWHUGHES@up.com)" <DWHUGHES@up.com>
Date: 04/06/2021 10:47 AM
Subject: FW: HDC Personnel Announcement

## * PROCEED WITH CAUTION - This email was sent from outside the Company *

I'm attaching Lance Brewer's note to Jason Jones' about UP's refusal to rescind its Central TX protocol document and dispatch BNSF per the Dispatch Protocol.

I know you feel this is a matter that the local ops teams should attempt to resolve. I disagree – as it requires direction from UP's contract team to its operating team as to whether UP's unilateral imposition of UP's Central TX protocol, including absolute windows only for UP, is consistent with the RASA, our TRA and the Dispatch Protocol. Nevertheless, Lance has indulged your request that he communicate his concerns with UP's operating team, and he continues to be ignored.

Lance had attempted to engage Jason Jones, to no avail. And when Jason Jones left UP, he promptly followed up with Lischer. No response. We have also raised this at two prior JSC meetings, with no resolution – let alone engagement-- on it from UP.

Again, we are requesting UP (whether that is your JF team, your legal team, your local ops team, or your ops leadership team, or all of the foregoing) review UP's internal protocol document for our Central TX service to the Elmendorf Branch, along with UP's dispatch practices pursuant to that document. BNSF is entitled to equal treatment, and the document on its face incontrovertibly mandates preferential treatment of UP trains operating the branch over BNSF trains that are held out as a result of UP-dictated absolute windows for UP trains.

Your assistance in straightening this out will be appreciated.

Sarah

**From:** Brewer, Lance R
**Sent:** Friday, March 19, 2021 2:15 PM
**To:** talische@up.com
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** FW: HDC Personnel Announcement

Tom,

Good afternoon. In light of the below I just received, please find attached a message I had escalated to Jason just this afternoon. If needed I'd be happy to provide to someone else in your organization for handling. Thanks.

**From:** Taylor, Robin B
**Sent:** Friday, March 19, 2021 12:00 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>
**Subject:** Fwd: HDC Personnel Announcement

REDACTED - TO BE PLACED ON PUBLIC FILE

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**From:** David R. Lyons <drlyons@up.com>
**Sent:** Friday, March 19, 2021 9:05:40 AM
**To:** Taylor, Robin B <Robin.Taylor@BNSF.com>
**Subject:** Fwd: HDC Personnel Announcement

**From:** "Thomas A. Lischer" <TALISCHE@up.com>
**Date:** March 19, 2021 at 08:20:01 CDT
**Subject: HDC Personnel Announcement**

Jason Jones has decided to pursue another opportunity outside of the company and is no longer with Union Pacific, We will be working through his backfill over the next week or so and will communicate to the team when we have an update. Until that backfill is determined, please work with your management chain to escalate issues to me and the HDC senior leadership team.

Thank you!

Thomas A. Lischer – SVP HDC Network Operations
Union Pacific Railroad | 850 Jones Street
Omaha, NE 68102 | (O): 402.636.7400 (C): 402.660.9741 | TALISCHE@up.com




**

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**
----- Message from "Brewer, Lance R" <Lance.Brewer@BNSF.com> on Fri, 19 Mar 2021 18:12:56 +0000 -----

**To:** "Jason B. Jones" <JBJONES1@up.com>, "David W. Hughes" <DWHUGHES@up.com>, David Giandinoto <DGIANDIN@up.com>, "Brian W. McGavock" <BWMCGAVOCK@UP.COM>, "Matthew F. Lyons" <MFLYONS@UP.COM>

**cc:** "Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com>, "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Gabriel, Jon" <Jon.Gabriel@BNSF.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>

**Subject:** FW: BNSF Trains Improperly Required to Hold at Caldwell/Temple in Preference to UP Trains Operating on the Rockport Sub

Jason,

As you will see in the thread below, our respective joint facilities teams have been exchanging correspondence regarding the BNSF's growing and continuing concern over the protocol that has been unilaterally distributed to UP dispatchers as well as managers in the Harriman Center under your supervision and responsibility. As you and others in the Harriman are certainly aware, this protocol and restrictions that are being placed on BNSF trains, and distributed in writing to your officers and dispatchers was never agreed upon by the BNSF, nor were we ever consulted or notified of its creation and implementation by your team prior to its execution.

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While our joint facilities teams may or may not continue to debate the matter, I am also aware of the proper escalation sequence on issues of this nature, and that they must first be afforded the opportunity to be addressed and response provided through the ranks of our operating teams. As most of your team is aware, and if not I can provide ample documentation of multiple instances where we have escalated this dispute regarding the Rockport Sub access and this document to yourself and many members of the UP Harriman Center team, we have made our disagreement with the implementation of this protocol widely known over the course of the last few years in writing, conference calls, and in meetings with UPRR operating and dispatching teams.

Even in light of those past escalations and requests for you and the UPRR to cease the distribution of this process document (titled below as "BNSF Rockport Process") and adhere properly to the BSNF-UP/SP Dispatching Protocols, I am again in this case making a formal request to you and your operating leadership within the UPRR and the Harriman Center to (1) immediately rescind this unauthorized "process" document; and (2) your assurance that, in accordance with Section 3 of the Dispatch Protocol, your local operating team and those responsible for dispatching this corridor are re-educated by written directive on UP's obligations concerning the Dispatch Protocol, which I will share with you Section 3 language stating:

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

In addition to this formal request, I am also requesting a response to this correspondence from you or your Supervisor affirming completion of the requested action above.

**From:** Bailiff, Sarah W
**Sent:** Thursday, March 18, 2021 7:15 AM
**To:** David W. Hughes (DWHUGHES@up.com) <DWHUGHES@up.com>
**Cc:** Brian W. McGavock <BWMCGAVOCK@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; White, Tyler <Tyler.White2@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** BNSF Trains Improperly Required to Hold at Caldwell/Temple in Preference to UP Trains Operating on the Rockport Sub

David,

UP's Operating Team refers to a process "revised on December 2020 with all parties" concerning operating of trains to the Rockport Sub (also referred to as the Elmendorf Branch). That white paper appears to be the absolute gospel according to UP's operating personnel whenever we have attempted to request parity in our joint operations on the Elmendorf Branch. The myth seems to be that the document was a jointly prepared document that both UP and BNSF have agreed will govern the parties' operations for this corner of UP's property. And yet it was solely prepared by UP and revised solely by UP in December 2020. We have never consented to that document controlling our operations. This "BNSF Rockport Process" document imposes operating restrictions on BNSF contrary to the RASA and the Dispatch Protocol, as it requires BNSF to hold trains at Caldwell awaiting entry to our trackage rights in preference to UP trains which, unlike BNSF trains, are granted absolute windows and priority operating rights. Moreover, it mandates BNSF on-duty time on its own system as a precondition of being granted a slot to operate. Nothing in the RASA or the Dispatch Protocol grants UP the right to impose such restrictions on off-line operations as a condition to operate onto UP trackage. And I am unaware of any similar situation on the BNSF system where BNSF issues similar mandates to UP and routinely holds out UP for the better part of a day – every day.

We have tried through our local operating teams to work around this "BNSF Rockport Process" document, but notwithstanding that continuing dialogue and assurances that UP will look to see if BNSF can be afforded rights to operate the branch at times/locations where UP is not using it (regardless of UP's clear obligations under the Dispatch Protocol). However, when it comes down to actually running the trains, UP's operating team advises their hands are tied by this documented process (see below) and absolute windows.

We request (1) immediate rescission of this unauthorized "process" document; and (2) your assurance that, in accordance with Section 3 of the Dispatch Protocol, your local operating team and those responsible for dispatching this corridor are re-educated by written directive on UP's obligations concerning the Dispatch Protocol including the following terms:

- BNSF trains are to be given equal dispatch without ANY discrimination in promptness, quality of service or efficiency. (Section 2)
- The competitiveness of BNSF's operations shall not be adversely affected by the fact that UP owns the track. (Section 2)

- Information as to assignment of train priorities is to be shared with BNSF, and those assignments must be made equitably. (Section 7)
- BNSF's entry to its trackage rights must be provided to BNSF on a **first-come, first-served basis**, subject to applicable train priorities and specific operating conditions of both railroads. If strict application of the first come first served rule is difficult or uncertain, deviations from that standard may only be implemented by joint agreement with BNSF. (Section 8)
- Performance evaluation of UP's employees and supervisors responsible for dispatching BNSF's trains shall take into account BNSF's train performance on UP's lines and UP's effectiveness in cooperating with BNSF personnel and meeting BNSF's service requirements in the same manner as such factors are considered with respect to UP's own trains. (Section 12)

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**From:** Nathan A. Kamprath [mailto:NAKAMPRA@up.com]
**Sent:** Tuesday, March 16, 2021 10:13 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Brian W. McGavock <BWMCGAVOCK@UP.COM>; Jason B. Jones <JBJONES1@up.com>; John M. Hopkins <JMHOPKIN@UP.COM>; Jamal W. Chappell <JWCHAPPE@up.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Matthew F. Lyons <MFLYONS@UP.COM>; SouthSrDir@up.com; SUPT-NETWORK (SUPT-NETWORK@UP.COM) <SUPT-NETWORK@UP.COM>
**Subject:** RE: BNSF Train denied at Caldwell U CWELJ 14

**EXTERNAL EMAIL**

This is still the same process that was recently revised on December 2020 with all parties.
Nothing has changed..

if you need us to send a copy of whole process I can attach.

# BNSF Rockport Process

UNION PACIFIC BUILDING AMERICA

Revised December 22, 2020

Overview: Provide consistent service on the BNSF Elmendorf/Southton trains across the Austin and West Texas Corridors. The ultimate purpose of this document is to standardize the planning, communication, and execution of running BNSF Elmendorf/Southton trains from Caldwell to destination.

Challenges: Elmendorf/Southton trains traverse down Austin main track two, against the flow of UP north trains out of San Antonio, as well as limited capacity on the Rockport Subdivision. To accommodate, traffic must be flipped out of San Antonio to Austin main track one. This document will lay out the communication standards and actions that must be taken by the UPRR and BNSF to be successful in running these trains to destination.

Standard Call Window at Temple
Any train coming from the BNSF at Temple that is destined for Elmendorf/Southon should be on duty at Temple between 0800-1600.

This call window will allow the trains to arrive after the daily local windows are complete and afford a better opportunity to proceed to destination without interruption. Trains that are called outside of this standard window will be held on the BNSF Railroad short of Caldwell.

**Nathan A. Kamprath**
Union Pacific Railroad | Sr. Director Operations - Southern Region
Ph 402.636.7063 | Cell 402.619.3350 | Esker Fax:402.501.1870
Email nakampra@up.com | www.uprr.com, LATA:N102996
HDC| 850 Jones St. | Omaha, NE 68102



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"Miner, Tessa D" ---03/16/2021 09:49:46 PM---* PROCEED WITH CAUTION - This email was sent from outside the Company *

From: "Miner, Tessa D" <Tessa.Miner@BNSF.com>
To: "Brian W. McGavock" <BWMCGAVOCK@UP.COM>, "SouthSrDir@up.com" <SouthSrDir@up.com>, "SUPT-NETWORK (SUPT-NETWORK@UP.COM)" <SUPT-NETWORK@UP.COM>
Cc: "Matthew F. Lyons" <MFLYONS@UP.COM>, "John M. Hopkins" <JMHOPKIN@UP.COM>, "Jamal W. Chappell" <JWCHAPPE@up.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Theerman, Kenny J" <Kenny.Theerman@BNSF.com>, "Jason B. Jones" <JBJONES1@up.com>
Date: 03/16/2021 09:49 PM
Subject: RE: BNSF Train denied at Caldwell U CWELJ 14

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# * PROCEED WITH CAUTION - This email was sent from outside the Company *

UP Team,
We are once again having to potentially re-crew a train that we have been told on multiple occasions that this was not the case.

U CWELJ 14 is being refused due to “time limits” that have been discussed by both parties BNSF and UP and agreed that they should not exist.

Brian,
I am referring to your message below to “stop holding trains and bring them” so that all parties know it is ok to run.

I am also including the HDC Team, Mr. Jones, and whomever else needs to know that the trains to El Mendorf/Rockport Sub are no longer to be held.

Please call me if there are questions.

**Tessa Miner | BNSF Railway | Director of Trackage Rights | (713) 825 -8631 C | (817) 352-7332 O**

**From:** Brian W. McGavock [mailto:BWMCGAVOCK@UP.COM]
**Sent:** Saturday, March 13, 2021 7:41 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Matthew F. Lyons <MFLYONS@UP.COM>; John M. Hopkins <JMHOPKIN@UP.COM>; Jamal W. Chappell <JWCHAPPE@up.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Jason B. Jones <JBJONES1@up.com>
**Subject:** Re: BNSF Train denied at Caldwell

**EXTERNAL**
**EMAIL**

Stop holding trains and bring them
Sent from my iPhone

On Mar 13, 2021, at 8:17 AM, Miner, Tessa D <Tessa.Miner@bnsf.com> wrote:

# * PROCEED WITH CAUTION - This email was sent from outside the Company *

UP,

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Please see below information on the reason BNSF train was denied. It's a new one to me. We were denied because of an 8 hour Amtrak window??

I believed eve the CM is stating the "paper" that is talking about the Elmedorf window. After our meeting last week, I thought this was being handled. Can you please provide an update where we are at with letting everyone know our trains CAN run inside this window?

-UP denied taking the U SLOPUX0 01T / UCWEGJ 05 off at Caldwell onto the Giddings Sub due to it being called outside of their expected call time to get it delivered onto the Rockport Sub. UP Corridor Manager Mark Clemmer stated that there is a letter out that states the specific call times for Elemendorf / Southton trains to be called out of Temple and believes it to be between 0800 - 1600 based on Amtrak coming south. He stated he would try and find letter and email it to me.

Tessa Miner

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 5

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>
REDACTED - TO BE PLACED ON PUBLIC FILE
**Sent:** Wednesday, June 16, 2021 11:17 AM
**To:** jmoore@up.com
**Cc:** Lance Brewer (Lance.Brewer@BNSF.com)
**Subject:** FW: UP Austin(Subdivision) Service Interruption

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Jeff,

We still need to discuss this relative to Kevin's comments and explanation around the Austin Sub. Let me know when you are available.

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**From:** Miner, Tessa D
**Sent:** Tuesday, June 15, 2021 2:21 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** FW: UP Austin(Subdivision) Service Interruption

Here is the communication. I have not seen anything else from Moore or anyone else after this was sent.

Tessa Miner
Director of Trackage Rights - Omaha
713-825-8631 C
817-352-7332 O

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**From:** Kevin D. Ready <KDREADY@UP.COM>
**Sent:** Monday, June 7, 2021 12:28 PM
**To:** Jeffrey Moore <JWMOORE@up.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; South SrDir <SouthSrDir@up.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>
**Subject:** RE: UP Austin(Subdivision) Service Interruption

**EXTERNAL EMAIL**

You are correct, there is no calling restriction because of the Rockport subdivision. The corridor manager is referencing the window for us to switch the current on traffic on Austin 2. We run **0** trains south on Austin #2, so switching the entire flow is quite a significant process. That is why we have set the daily window up for the BNSF to ensure they are not recrewing their trains an excessive amount.

# BNSF Rockport Process

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BUILDING AMERICA™

Revised May 5, 2021

Overview: Provide consistent service on the BNSF Elmendorf/Southton trains across the Austin and West Texas Corridors. The ultimate purpose of this document is to standardize the planning, communication, and execution of running BNSF Elmendorf/Southton trains from Caldwell to destination.

Challenges: Elmendorf/Southton trains traverse down Austin main track two, against the flow of UP north trains out of San Antonio. To accommodate, traffic must be flipped out of San Antonio to Austin main track one. This document will lay out the communication standards and actions that must be taken by the UPRR and BNSF to be successful in running these trains to destination.

Standard Call Window at Temple

Any train coming from the BNSF at Temple that is destined for Elmendorf/Southton should be on duty at Temple between 0800-1600.

This call window is due to capacity departing Austin Sub main track two and will afford a better opportunity to proceed to destination without interruption. This process does not prevent the BNSF from calling the train out of Temple but trains that are called outside of the standard window will be held on the BNSF Railroad short of Caldwell.

Communication Process & Action Items

- BNSF will notify the Austin Corridor Manager of their intention to call an Elmendorf/Southton train out of Temple
- Austin Corridor Manager will confirm that it falls within the standard calling window as defined above
- Once the train is actively running on the UPRR, the Austin Corridor Manager will notify the West Texas Corridor Manager and the BNSF Cadet Terminal Manager when the train departs Smithville
- Notification will include an estimated time of arrival at Ajax
- West Texas Corridor Manager will use this information to adjust the traffic flows accordingly to support this train southbound via Austin main track 2

Escalation Process

- In the event of a service interruption or inability to provide a route for this train, the Austin or West Texas Corridor Manager will notify the BNSF Cadet Terminal Manager, as well as, the SOD/Network Supt on duty
- Notifications are to be made prior to the train tying down online

Contact Information

| | |
|---|---|
| • Austin Corridor Manager | (402) 636-7306 |
| • West Texas Corridor Manager | (402) 636-7422 |
| • BNSF Cadet Terminal Manager | (210) 419-1418 |
| • UP SOD | (402) 636-7062 |
| • UP Network Supt | (402) 636-7068 |

Kevin D. Ready
Southern Region
Cell - 402-378-3806

"Jeffrey Moore" ---06/07/2021 12:21:52 PM---Please ensure the Austin Corridor understands there are no calling windows.. Jeff

From: "Jeffrey Moore" <JWMOORE@up.com>
To: "Miner, Tessa D" <Tessa.Miner@BNSF.com>, "South SrDir" <SouthSrDir@up.com>
Cc: "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Christian, Ty D" <Ty.Christian@BNSF.com>
Date: 06/07/2021 12:21 PM
Subject: RE: UP Austin(Subdivision) Service Interruption

Please ensure the Austin Corridor understands there are no calling windows..

Jeff

**From:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Sent:** Monday, June 7, 2021 11:26 AM
**To:** South SrDir <SouthSrDir@up.com>
REDACTED - TO BE PLACED ON PUBLIC FILE
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Jeffrey Moore <JWMOORE@up.com>
**Subject:** Fwd: UP Austin(Subdivision) Service Interruption

# * PROCEED WITH CAUTION - This email was sent from outside the Company *

UP team,
We are being restricted again from calling trains at Temple. After many discussions between BNSF and UP, we were told that these windows will no longer be in effect and BNSF should not be restricted to call trains.

Can someone let us know why we are being held from calling trains at Temple?

Tessa Miner

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**From:** Christian, Ty D <Ty.Christian@BNSF.com>
**Sent:** Monday, June 7, 2021 11:22 AM
**To:** Nine, Joshua Michael; Beals, Bob O
**Cc:** Theerman, Kenny J; Leodoro, John P; Miner, Tessa D
**Subject:** RE: UP Austin(Subdivision) Service Interruption

There should be no Rockport call windows out of Temple. Sounds like the education/communication opportunity remains on the UP side. Will discuss again with UP during this week's JSC call. Thanks.

Ty Christian
402-461-9177

-----Original Message-----
From: Nine, Joshua Michael <Joshua.Nine@BNSF.com>
Sent: Monday, June 7, 2021 10:27 AM
To: Beals, Bob O <Bob.Beals@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>
Cc: Theerman, Kenny J <Kenny.Theerman@BNSF.com>
Subject: RE: UP Austin(Subdivision) Service Interruption

Austin Corridor Manager Christopher Gutierrez just responded back about our inquiry about our Rockport trains and he stated we can still call our trains that need to be delivered to Southton and Purcell within our normal 0800 - 1600 call times out of Temple. So the U OGISOX0 07T is good to call upon arrival to Temple this afternoon.

Thank you,
Joshua Nine
Terminal Trainmaster
Cadet Yard
9835 Fischer Rd.
Von Army, TX 78073
(210) 419 – 1418 work cell
"Safety doesn't happen by accident!"

-----Original Message-----
From: Beals, Bob O
Sent: Monday, June 7, 2021 9:50 AM
To: Christian, Ty D <Ty.Christian@BNSF.com>; Nine, Joshua Michael <Joshua.Nine@BNSF.com>
Cc: Theerman, Kenny J <Kenny.Theerman@BNSF.com>
Subject: RE: UP Austin(Subdivision) Service Interruption

No, they are on the other Austin Main Track.  We are in the process about asking for clearance onto the Rockport Sub for the U OGISOX0 07T that will be coming to Temple later today.  Will let you know what response we get shortly.

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Bob Beals | BNSF Railway | Senior Trainmaster/Road Foreman of Engines – San Antonio, TX  | 9835 Fischer Rd, Von Ormy, TX  78073 | Bob.Beals@bnsf.com | Cell: 915-526-4287

-----Original Message-----
From: Christian, Ty D
Sent: Monday, June 7, 2021 9:10 AM
To: Beals, Bob O <Bob.Beals@BNSF.com>; Nine, Joshua Michael <Joshua.Nine@BNSF.com>
Cc: Theerman, Kenny J <Kenny.Theerman@BNSF.com>
Subject: RE: UP Austin(Subdivision) Service Interruption

Will they foul the route on the main during clearing?

Ty Christian
402-461-9177

-----Original Message-----
From: Beals, Bob O <Bob.Beals@BNSF.com>
Sent: Monday, June 7, 2021 9:08 AM
To: Christian, Ty D <Ty.Christian@BNSF.com>; Nine, Joshua Michael <Joshua.Nine@BNSF.com>
Cc: Theerman, Kenny J <Kenny.Theerman@BNSF.com>
Subject: RE: UP Austin(Subdivision) Service Interruption

The SIDOL has been update with 0 impacts and route around as well as closed out.

Bob Beals | BNSF Railway | Senior Trainmaster/Road Foreman of Engines – San Antonio, TX  | 9835 Fischer Rd, Von Ormy, TX  78073 | Bob.Beals@bnsf.com | Cell: 915-526-4287

-----Original Message-----
From: Christian, Ty D
Sent: Monday, June 7, 2021 9:05 AM
To: Nine, Joshua Michael <Joshua.Nine@BNSF.com>
Cc: Beals, Bob O <Bob.Beals@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>
Subject: RE: UP Austin(Subdivision) Service Interruption

Please update the message below with any new info/impacts at 1000.

Ty Christian
402-461-9177

-----Original Message-----
From: Nine, Joshua Michael <Joshua.Nine@BNSF.com>
Sent: Monday, June 7, 2021 8:04 AM
To: Whiting, Gregory W <Gregory.Whiting@BNSF.com>; Sims, William E <William.Sims1@BNSF.com>; LARSMBSIDOL <LARSMBSIDOL@bnsf.com>; Service, Interruption Desk <ServiceInterruptionDesk@BNSF.com>; Wade-Walker, Che A <Che.Wade-Walker@BNSF.com>; Sandegren, Shawn M <Shawn.Sandegren@BNSF.com>; Landers, William <William.Landers@BNSF.com>; Wadkins, Timothy R <Timothy.Wadkins@BNSF.com>; Devine, Justin <Justin.Devine@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Keim, Matthew <Matthew.Keim@BNSF.com>; Davis, Tyler A <Tyler.Davis2@BNSF.com>; Zenor, Charles <Charles.Zenor@BNSF.com>; Grinie, Nicolas <Nicolas.Grinie@BNSF.com>; Howe, Jonathan <Jonathan.Howe@BNSF.com>; Steptoe, Jonathan A <Jonathan.Steptoe@BNSF.com>; Hestermann, Chad <Chad.Hestermann@BNSF.com>; Jack.Pearl@BNSF.com; Donn, Frank A <Frank.Donn@BNSF.com>; Raquet, Tobias N <Tobias.Raquet@BNSF.com>; Faulkner, Jeff E <Jeff.Faulkner@bnsf.com>; Stethem, Ryan R <Ryan.Stethem@BNSF.com>; Henderson, Michael C <Michael.Henderson2@BNSF.com>; Wood, Chad W <Chad.Wood@BNSF.com>; Fidler, Patrick William <Patrick.Fidler@BNSF.com>; Cooper, Alexander m <Alexander.Cooper@BNSF.com>; Arcade, Justin <Justin.Arcade@BNSF.com>; Gibson, Salina G <Salina.Gibson@BNSF.com>; Langford, Charles M <Charles.Langford2@BNSF.com>; Post, Sammy <Samuel.Post@BNSF.com>; Baker, Jill L <Leslee.Baker@BNSF.com>; Jansante, Timothy <Timothy.Jansante@BNSF.com>; Webb, Kyle <Kyle.Webb@BNSF.com>; Habiger, Gerald <Gerald.Habiger@BNSF.com>; Russell, Marc <Marc.Russell@BNSF.com>; Badillo, Luis I <Luis.Badillo@BNSF.com>; Wood, Jody R <Jody.Wood@BNSF.com>; Goodling, Seth <Seth.Goodling@BNSF.com>; Kemppainen, Kayla J <Kayla.Kemppainen@BNSF.com>; Mclaughlin, Nathan P <Nathan.Mclaughlin@BNSF.com>; OPR DL Chief DS Southern <OPRDLChiefDSSouthern@bnsf.com>; Curbo, Brandon S <Brandon.Curbo@BNSF.com>; Dickey, Dana <Dana.Dickey@BNSF.com>; Bowns, Justin P <Justin.Bowns@BNSF.com>; Harper, Chad M <Chad.Harper@BNSF.com>; Wood, Shawn C <Shawn.Wood@BNSF.com>; Mccaskey, Joshua R <Joshua.Mccaskey@BNSF.com>; Whitt, Chris <Chris.Whitt@BNSF.com>; Johnson, Cale L

<Cale.Johnson@BNSF.com>; Marie.Pacheco@BNSF.com; Kuhn, Todd M <Todd.Kuhn@BNSF.com>; Vincent, Sean D <Sean.Vincent@BNSF.com>; Estes, Jeffrey C <Jeffrey.Estes@BNSF.com>; Chaffee, John B <John.Chaffee@BNSF.com>; Ashworth, Christopher A <Christopher.Ashworth@BNSF.com>; Bradley, William H <William.Bradley@BNSF.com>; Sweetwood, Wesley D <Wesley.Sweetwood@BNSF.com>; Marquez, Randy <Randy.Marquez@BNSF.com>; Kreiling, Derrie J <Derrie.Kreiling@BNSF.com>; Hutchins, Nathaniel <Nathaniel.Hutchins@BNSF.com>; Vaughn, Jaymya J <Jaymya.Vaughn@BNSF.com>; Stout, Joshua A <Joshua.Stout@BNSF.com>; Karl.Granger2@BNSF.com; Jon.Harris@BNSF.com; Ward, Henry E <Henry.Ward@BNSF.com>; Darrell.Kitchen@bnsf.com; Pennix, Andre D <Andre.Pennix@BNSF.com>; Sanders, Tracey G <Tracey.Sanders2@BNSF.com>; Wade, Johnny W <Johnny.Wade@BNSF.com>; Brewer, Sammy J <Sammy.Brewer@BNSF.com>; Hartline, Jason M <Jason.Hartline@BNSF.com>; Lyons, Patrick J <Patrick.Lyons@BNSF.com>; Lee, Charles B <Charles.Lee2@BNSF.com>; Brandon.Kenward@bnsf.com; Grabman, Stephen P <Stephen.Grabman2@BNSF.com>; Timothy.Huffman2@BNSF.com; Knapp, Micheal D <Micheal.Knapp@BNSF.com>; Ball, Adam W <Adam.Ball@BNSF.com>; Shearer, Andrew L <Andrew.Shearer@BNSF.com>; Bricker, Joel E <Joel.Bricker@BNSF.com>; Plott, Jake <jake.plott@bnsf.com>; Thomas, Tyler N <Tyler.Thomas@BNSF.com>; Scott, Jerry F <Jerry.Scott@BNSF.com>; Bobby.Curry@bnsf.com; IABU DL OPS North <IABUDLOPSNorth@BNSF.com>; IABU DL OPS South <IABUDLOPSSouth@BNSF.com>; Pawlowski, Ryan <Ryan.Pawlowski@BNSF.com>; Vargas, Eluterio <Eluterio.Vargas@BNSF.com>; Christopher.Williamson@BNSF.com; Brock, Bryan eugene <Bryan.Brock@BNSF.com>; Lelak, David Allen <David.Lelak@BNSF.com>; Andrea.McElroy@BNSF.com; Harris, Ebony Nichole <Ebony.Harris@BNSF.com>; Chandler, Wyatt Jay <Wyatt.Chandler@BNSF.com>; Babarovich, David Cale <David.Babarovich@BNSF.com>; Schildhammer, Adam <Adam.Schildhammer@BNSF.com>; Mills, Voynette Narvell <Voynette.Mills@BNSF.com>; Kalowski, Steve M <Steve.Kalowski@bnsf.com>; Heusler, Phillip E <Phillip.Heusler@BNSF.com>; Tiffin, Dwayne K <Dwayne.Tiffin@bnsf.com>; West, David L <David.West@BNSF.com>; Robinson, Paul S <Paul.Robinson@bnsf.com>; Cleveland, Scott M. <Scott.Cleveland@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; oprdlspringmcodepartment@bnsf.com; NOC GDT <NOCGDT@bnsf.com>; OPR DL Spring Terminal Managers <OPRDLSpringTerminalManagers@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Crawford, Steve E <Steve.Crawford@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Lee, Richard J <Richard.Lee3@BNSF.com>; Carson, Casey J <Casey.Carson2@BNSF.com>; Dante.Zuniga@BNSF.com; Alexander, John A <John.Alexander@BNSF.com>; Cheek, Charles W <Charles.Cheek@BNSF.com>; Thomas, Tamarr <Tamarr.Thomas@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Rehak, Mitchell C <Mitchell.Rehak@BNSF.com>; Ramsbacher, Katy <Katy.Ramsbacher@BNSF.com>; Young, Seth <Seth.Young@BNSF.com>; Nine, Joshua Michael <Joshua.Nine@BNSF.com>; Waltner, Travis D <Travis.Waltner@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>; De leon, Jamie R <Jamie.Deleon@BNSF.com>; Sydney.Rossiter@BNSF.com; Felan, Aldo <Aldo.Felan2@BNSF.com>; Cesar.Prieto@BNSF.com; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Juan.Felan@BNSF.com; Ruiz, Juan R <Juan.Ruiz@BNSF.com>; Aranda, Arturo D <Arturo.Aranda@BNSF.com>; Duchemin, Matthew K <Matthew.Duchemin@BNSF.com>

REDACTED - TO BE PLACED ON PUBLIC FILE

Cc: Nine, Joshua Michael <Joshua.Nine@BNSF.com>
Subject: UP Austin(Subdivision) Service Interruption

Exception Date: 06/06/2021
Exception Time: 12:17
Exception Code: O
Track: Main
Mile Post: 219.01
Train ID: GSJO3D_04
Note: DERAILMENT
Desc: S.A.T.D. Abe Thiessen just contacted me and informed me that a UP grain train, GSJ03D 04 just derailed at Q219 (Jude) on the Austin Subdivision. There were no injuries or hazmat involved and there is a route around incident. However may delay some traffic due to only being able to use one main through area.

Spoke with on duty Austin Corridor Manager Christopher Gutierrez and he was able to give me an update that cars are still being re-railed and he currently doesn't have an estimated time of repair or opening, we still have a route around location and are not being delayed currently.
Loads: 0
Empties: 0
Tons: 0
Length: 0
Direction: East
Lead:
Engineer:
Conductor:
Brakeman:
DP:
Expected Dols: 1
Total Trains Delayed: 1, BNSF Trains Delayed: 0, Foreign Trains Delayed: 1

Exception Number: 562733
Repeater History: https://dataviz.bnsf.com/#/site/BNSF/views/SIRepeaterTrains-Mobile_16070141447290/MobileView?TrainSymbol=GSJO3D_04

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 6

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Friday, March 19, 2021 1:13 PM
**To:** Jason B. Jones <JBJONES1@up.com>; David W. Hughes <DWHUGHES@up.com>; David Giandinoto <DGIANDIN@up.com>; Brian W. McGavock <BWMCGAVOCK@UP.COM>; Matthew F. Lyons <MFLYONS@UP.COM>
**Cc:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Gabriel, Jon <Jon.Gabriel@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** FW: BNSF Trains Improperly Required to Hold at Caldwell/Temple in Preference to UP Trains Operating on the Rockport Sub

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Jason,

As you will see in the thread below, our respective joint facilities teams have been exchanging correspondence regarding the BNSF's growing and continuing concern over the protocol that has been unilaterally distributed to UP dispatchers as well as managers in the Harriman Center under your supervision and responsibility. As you and others in the Harriman are certainly aware, this protocol and restrictions that are being placed on BNSF trains, and distributed in writing to your officers and dispatchers was never agreed upon by the BNSF, nor were we ever consulted or notified of its creation and implementation by your team prior to its execution.

While our joint facilities teams may or may not continue to debate the matter, I am also aware of the proper escalation sequence on issues of this nature, and that they must first be afforded the opportunity to be addressed and response provided through the ranks of our operating teams. As most of your team is aware, and if not I can provide ample documentation of multiple instances where we have escalated this dispute regarding the Rockport Sub access and this document to yourself and many members of the UP Harriman Center team, we have made our disagreement with the implementation of this protocol widely known over the course of the last few years in writing, conference calls, and in meetings with UPRR operating and dispatching teams.

Even in light of those past escalations and requests for you and the UPRR to cease the distribution of this process document (titled below as "BNSF Rockport Process") and adhere properly to the BSNF-UP/SP Dispatching Protocols, I am again in this case making a formal request to you and your operating leadership within the UPRR and the Harriman Center to (1) immediately rescind this unauthorized "process" document; and (2) your assurance that, in accordance with Section 3 of the Dispatch Protocol, your local operating team and those responsible for dispatching this corridor are re-educated by written directive on UP's obligations concerning the Dispatch Protocol, which I will share with you Section 3 language stating:

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

In addition to this formal request, I am also requesting a response to this correspondence from you or your Supervisor affirming completion of the requested action above.

---

**From:** Bailiff, Sarah W
**Sent:** Thursday, March 18, 2021 7:15 AM
**To:** David W. Hughes (DWHUGHES@up.com) <DWHUGHES@up.com>
**Cc:** Brian W. McGavock <BWMCGAVOCK@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; White, Tyler <Tyler.White2@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** BNSF Trains Improperly Required to Hold at Caldwell/Temple in Preference to UP Trains Operating on the Rockport Sub

David,

UP's Operating Team refers to a process "revised on December 2020 with all parties" concerning operating of trains to the Rockport Sub (also referred to as the Elmendorf Branch). That white paper appears to be the absolute gospel according to UP's operating personnel whenever we have attempted to request parity in our joint operations on the Elmendorf Branch. The myth seems to be that the document was a jointly prepared document that both UP and BNSF have agreed will govern the parties' operations for this corner of UP's property. And yet it was solely prepared by UP and revised solely by UP in December 2020. We have never consented to that document controlling our operations. This "BNSF Rockport Process" document imposes operating restrictions on BNSF contrary to the RASA and the Dispatch Protocol, as it requires BNSF to hold trains at Caldwell awaiting entry to our trackage rights in preference to UP trains which, unlike BNSF

trains, are granted absolute windows and priority operating rights. Moreover, it mandates BNSF on-duty time on its own system as a precondition of being granted a slot to operate. Nothing in the RASA or the Dispatch Protocol grants UP the right to impose such restrictions on off-line operations as a condition to operate onto UP trackage. And I am unaware of any similar situation on the BNSF system where BNSF issues similar mandates to UP and routinely holds out UP for the better part of a day – every day.

We have tried through our local operating teams to work around this "BNSF Rockport Process" document, but notwithstanding that continuing dialogue and assurances that UP will look to see if BNSF can be afforded rights to operate the branch at times/locations where UP is not using it (regardless of UP's clear obligations under the Dispatch Protocol). However, when it comes down to actually running the trains, UP's operating team advises their hands are tied by this documented process (see below) and absolute windows.

We request (1) immediate rescission of this unauthorized "process" document; and (2) your assurance that, in accordance with Section 3 of the Dispatch Protocol, your local operating team and those responsible for dispatching this corridor are re-educated by written directive on UP's obligations concerning the Dispatch Protocol including the following terms:

- BNSF trains are to be given equal dispatch without ANY discrimination in promptness, quality of service or efficiency. (Section 2)
- The competitiveness of BNSF's operations shall not be adversely affected by the fact that UP owns the track. (Section 2)
- Information as to assignment of train priorities is to be shared with BNSF, and those assignments must be made equitably. (Section 7)
- BNSF's entry to its trackage rights must be provided to BNSF on a **first-come, first-served basis**, subject to applicable train priorities and specific operating conditions of both railroads. If strict application of the first come first served rule is difficult or uncertain, deviations from that standard may only be implemented by joint agreement with BNSF. (Section 8)
- Performance evaluation of UP's employees and supervisors responsible for dispatching BNSF's trains shall take into account BNSF's train performance on UP's lines and UP's effectiveness in cooperating with BNSF personnel and meeting BNSF's service requirements in the same manner as such factors are considered with respect to UP's own trains. (Section 12)

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**From:** Nathan A. Kamprath [mailto:NAKAMPRA@up.com]
**Sent:** Tuesday, March 16, 2021 10:13 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Brian W. McGavock <BWMCGAVOCK@UP.COM>; Jason B. Jones <JBJONES1@up.com>; John M. Hopkins <JMHOPKIN@UP.COM>; Jamal W. Chappell <JWCHAPPE@up.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Matthew F. Lyons <MFLYONS@UP.COM>; SouthSrDir@up.com; SUPT-NETWORK (SUPT-NETWORK@UP.COM) <SUPT-NETWORK@UP.COM>
**Subject:** RE: BNSF Train denied at Caldwell U CWELJ 14

**EXTERNAL EMAIL**

This is still the same process that was recently revised on December 2020 with all parties.
Nothing has changed..

if you need us to send a copy of whole process I can attach.

# BNSF Rockport Process

BUILDING AMERICA™

Revised December 22, 2020

Overview: Provide consistent service on the BNSF Elmendorf/Southton trains across the Austin and West Texas Corridors. The ultimate purpose of this document is to standardize the planning, communication, and execution of running BNSF Elmendorf/Southton trains from Caldwell to destination.

Challenges: Elmendorf/Southton trains traverse down Austin main track two, against the flow of UP north trains out of San Antonio, as well as limited capacity on the Rockport Subdivision. To accommodate, traffic must be flipped out of San Antonio to Austin main track one. This document will lay out the communication standards and actions that must be taken by the UPRR and BNSF to be successful in running these trains to destination.

Standard Call Window at Temple

Any train coming from the BNSF at Temple that is destined for Elmendorf/Southon should be on duty at Temple between 0800-1600.

This call window will allow the trains to arrive after the daily local windows are complete and afford a better opportunity to proceed to destination without interruption. Trains that are called outside of this standard window will be held on the BNSF Railroad short of Caldwell.

**Nathan A. Kamprath**
Union Pacific Railroad | Sr. Director Operations - Southern Region
Ph 402.636.7063 | Cell 402.619.3350 | Esker Fax:402.501.1870
Email nakampra@up.com | www.uprr.com, LATA:N102996
HDC| 850 Jones St. | Omaha, NE 68102

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"Miner, Tessa D" ---03/16/2021 09:49:46 PM---* PROCEED WITH CAUTION - This email was sent from outside the Company *

From: "Miner, Tessa D" <Tessa.Miner@BNSF.com>
To: "Brian W. McGavock" <BWMCGAVOCK@UP.COM>, "SouthSrDir@up.com" <SouthSrDir@up.com>, "SUPT-NETWORK (SUPT-NETWORK@UP.COM)" <SUPT-NETWORK@UP.COM>
Cc: "Matthew F. Lyons" <MFLYONS@UP.COM>, "John M. Hopkins" <JMHOPKIN@UP.COM>, "Jamal W. Chappell" <JWCHAPPE@up.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Theerman, Kenny J" <Kenny.Theerman@BNSF.com>, "Jason B. Jones" <JBJONES1@up.com>
Date: 03/16/2021 09:49 PM
Subject: RE: BNSF Train denied at Caldwell U CWELJ 14

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## * PROCEED WITH CAUTION - This email was sent from outside the Company *

UP Team,
We are once again having to potentially re-crew a train that we have been told on multiple occasions that this was not the case.

U CWELJ 14 is being refused due to "time limits" that have been discussed by both parties BNSF and UP and agreed that they should not exist.

Brian,
I am referring to your message below to "stop holding trains and bring them" so that all parties know it is ok to run.

I am also including the HDC Team, Mr. Jones, and whomever else needs to know that the trains to El Mendorf/Rockport Sub are no longer to be held.

Please call me if there are questions.

**Tessa Miner | BNSF Railway | Director of Trackage Rights | (713) 825 -8631 C | (817) 352-7332 O**

**From:** Brian W. McGavock [mailto:BWMCGAVOCK@UP.COM]
**Sent:** Saturday, March 13, 2021 7:41 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Matthew F. Lyons <MFLYONS@UP.COM>; John M. Hopkins <JMHOPKIN@UP.COM>; Jamal W. Chappell <JWCHAPPE@up.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Jason B. Jones <JBJONES1@up.com>
**Subject:** Re: BNSF Train denied at Caldwell

**EXTERNAL EMAIL**

Stop holding trains and bring them
Sent from my iPhone

On Mar 13, 2021, at 8:17 AM, Miner, Tessa D <Tessa.Miner@bnsf.com> wrote:

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

UP,
Please see below information on the reason BNSF train was denied. It's a new one to me. We were denied because of an 8 hour Amtrak window??

I believed eve the CM is stating the "paper" that is talking about the Elmedorf window. After our meeting last week, I thought this was being handled. Can you please provide an update where we are at with letting everyone know our trains CAN run inside this window?

-UP denied taking the U SLOPUX0 01T / UCWEGJ 05 off at Caldwell onto the Giddings Sub due to it being called outside of their expected call time to get it delivered onto the Rockport Sub. UP Corridor Manager Mark Clemmer stated that there is a letter out that states the specific call times for Elemendorf / Southton trains to be called out of Temple and believes it to be between 0800 - 1600 based on Amtrak coming south. He stated he would try and find letter and email it to me.

Tessa Miner

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 7

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 8

**From:** Duncan, Paul B <Paul.Duncan@BNSF.com>
**Sent:** Monday, March 30, 2020 4:53 PM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** 'David Giandinoto' <DGIANDIN@up.com>; Hunt Cary <huntcary@up.com>; cmsanbor@up.com; Garland, Matthew C <Matthew.Garland@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** BNSF/UP Joint Operating Challenges in Texas/Gulf Region

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Team,

On the heels of our Joint Service Committee meeting in late August, we were pleased to see our joint efforts to improve operational efficiency in the Texas and Gulf regions take shape. We would like to see sustained progress for the long run; however, over the past month and a half we have become concerned that the momentum gained has been significantly eroding. Our local teams have been escalating issues of concern but have not seen the communication reciprocated or acted upon. Here are some matters we would like to call attention to:

- **Houston Complex and Joint Line:** Velocity in the Houston complex has been lethargic over the past several weeks. UP's increasing practice of staging trains for Englewood and Livonia and holding off trains into the Houston Complex has adversely impacted BNSF's operations. We understand that UP may have shifted volumes to the Houston complex from other areas that are driving these challenges. We have also asked to be included in and consulted regarding changes to train plans impacting the Houston complex and the 50/50 Line, as these changes impact the delicate balance that must be maintained for all carriers to operate efficiently, however those requests have gone unanswered. Most recently, we have seen impacts along the East Belt with trains tripling on the main impacting throughput.

- **Recrews and Train Delays on BNSF's Trackage Rights**: We are seeing a rise in these metrics. Our transit time between Caldwell, San Antonio, and Eagle Pass continue to materially degrade. We are also having to stage trains for 24 hours or more awaiting permission to enter our trackage rights at Caldwell. We do not understand how holding our trains off for 24 hours or more can be reconciled with a first-come first-served protocol.

- **UP Priority on the Elmendorf Branch:** In order to accommodate UP locals operating on the Elmendorf Branch, UP has continued to impose windows which exclude BNSF operations on the branch. Prioritizing UP's own traffic to the exclusion of BNSF's traffic conflicts with the Dispatch Protocol under which BNSF is assured equal access to its trackage rights lines on a first come first served basis. Discontinuance of this discriminatory practice is requested.

- **Parity across the Eagle Pass Gateway:** BNSF invested [redacted] in enhancing capacity at Eagle Pass, per discussions and coordination with UP on the need for enhanced yard capacity for BNSF trains to improve interchange operations at Eagle Pass. We are dismayed to see continued deprioritization of BNSF's trains in favor of UP's trains interchanging across the border with FXE. We have repeatedly tried to bring some visibility to this at the local level without success. BNSF is entitled to equal access at the Mexico border. It is our expectation that UP will adhere to these terms and provide BNSF with equal slots, i.e. where 6 slots exist and each carrier has enough trains at Eagle Pass to cross, BNSF will receive 3, UP will receive 3. In the past week, not once has BNSF received an equal number of southbound slots at Eagle Pass, and we are very concerned about a sustained adverse trend there.

- [redacted]

All of these issues underscore the need to reconvene our Joint Service Committee in the near term (whether in person or virtually as circumstances may dictate), and as you know we have scheduled a formalized meeting in May. Meanwhile, these issues are vital to the success of our joint operations and cannot and should not wait until mid-late May to get addressed. We are aware that UP as well as BNSF are experiencing broader issues with UP's own operational changes and challenges, etc., and the unprecedented issues we both face with the spread of COVID-19, but those issues should not impact the simple need for and ability to deliver equally and fairly. As envisioned by the STB, the CMA, and BNSF when UP committed to the terms of our Dispatch Protocol and our various merger agreements, BNSF must be enabled to effectively operate with UP on equal footing.

I realize we are both operating in unusual circumstances at the moment, and we each have a host of issues competing for our attention. COVID 19 has certainly been disruptive to both our systems, but that is all the more reason there needs to be a fair and efficient sharing of capacity, which is in the national interest. I appreciate you looking into the matters outlined, and hopefully, when we convene a dialogue in May these issues will have been fully addressed. Meanwhile, I look forward to hearing from you soon on this in the near term.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 9

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Thursday, October 29, 2020 2:18 PM
**To:** Thomas C. Blevins <TCBLEVIN@UP.COM>
**Cc:** David Giandinoto <DGIANDIN@up.com>; David W. Hughes <DWHUGHES@up.com>; James C. Brooks <JCBROOKS@up.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Jamal W. Chappell <JWCHAPPE@up.com>; Robert X. Ellis Jr <RXELLISJ@up.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Shane J. Klein <SJKLEIN@UP.COM>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** RE: Team BNSF - Eagle Pass
**Attach:** FW_ Internal Alert HTPLEAP128D ForeignLineDelay - EAP.msg

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My last note to the group today absent any reply to my previous question. We are regularly asked by the UPRR to provide real time examples for the group to use as items to provide proof of the issues we face and often escalate so they can be resolved. Attached is occurring as we speak down at Eagle Pass on a train we have had a crew sitting on waiting to be let out of Ryan's Ruin.

---

**From:** Brewer, Lance R
**Sent:** Thursday, October 29, 2020 9:25 AM
**To:** Thomas C. Blevins <TCBLEVIN@UP.COM>
**Cc:** David Giandinoto <DGIANDIN@up.com>; David W. Hughes <DWHUGHES@up.com>; James C. Brooks <JCBROOKS@up.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Jamal W. Chappell <JWCHAPPE@up.com>; Robert X. Ellis Jr <RXELLISJ@up.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Shane J. Klein <SJKLEIN@UP.COM>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** RE: Team BNSF - Eagle Pass

Yes Tom, but to my point this is only the times by Spofford. It only helps if you can show that the trains actually crossed the border in this same order to prove the protocol is being followed. Can you show that?

---

**From:** Thomas C. Blevins [mailto:TCBLEVIN@UP.COM]
**Sent:** Thursday, October 29, 2020 9:06 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Cc:** David Giandinoto <DGIANDIN@up.com>; David W. Hughes <DWHUGHES@up.com>; James C. Brooks <JCBROOKS@up.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Jamal W. Chappell <JWCHAPPE@up.com>; Robert X. Ellis Jr <RXELLISJ@up.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Shane J. Klein <SJKLEIN@UP.COM>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** RE: Team BNSF - Eagle Pass

**EXTERNAL EMAIL**

Lance,

You bring up a great point.....and that is the arrival time at Spofford process we base our decisions on when planning out the Southbound interchange plans,,,,,,,,Below is a recent example of what you reference.

I believe the key here is to spend our time as ONE TEAM to figure out ways to get to 30 plus trains per day vs debating he said she said "Stuff" to protect all business.

I look forward to working with anyone on your team to assist in getting us there.....

| Date | Window | Train | By Spofford |
|---|---|---|---|
| 10/26/2020 | 2200 - 0600 | MLFRS 25 | 10/24/2020 22:00 |
| | | ISAEG 25 | 10/26/2020 3:34 |
| | | OG1VG 24 | 10/26/2020 6:20 |
| | | ACDEGJ 24 | 10/26/2020 5:31 |
| | | 2GWEGJ 24 | 10/26/2020 16:14 |
| | | ACWEGJ 24 | 10/26/2020 3:29 |
| | | MLFRS 26 | 10/25/2020 22:00 |
| | | AMLEGR 19 | 10/25/2020 1:28 |
| | | | |
| 10/27/2020 | 2200 - 0600 | GSSD3G 19 | 10/26/2020 23:10 |
| | | ASPEGR 27 | 10/27/2020 20:04 |
| | | MEWTO 26 | 10/27/2020 21:19 |
| | | QCWEGJ 25 | 10/27/2020 20:57 |
| | | GSYEGJ 26 | 10/27/2020 11:58 |
| | | OE2EJ 26 | 10/27/2020 23:07 |
| | | QCWEGJ 26 | 10/28/2020 2:05 |
| | | | |
| 10/28/2020 | 1200 - 1800 | MLFTOX 28 | 10/28/2020 1:06 |
| | | MLFRS 27 | 10/26/2020 22:00 |
| | | GCWEGJ 22 | 10/28/2020 7:56 |
| | | MLFRSB 28 | 10/27/2020 10:00 |
| | | 2GSYEGJ 26 | 10/28/2020 5:17 |
| | | MEWTO 24 | 10/26/2020 7:18 |

Thomas Blevins
South Texas Service Unit

"Brewer, Lance R" ---10/29/2020 08:56:17 AM---* PROCEED WITH CAUTION - This email was sent from outside the Company *

From: "Brewer, Lance R" <Lance.Brewer@BNSF.com>
To: "Thomas C. Blevins" <TCBLEVIN@UP.COM>, "Miner, Tessa D" <Tessa.Miner@BNSF.com>, "Leodoro, John P" <John.Leodoro2@BNSF.com>, "Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com>, "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>
Cc: "Robert X. Ellis Jr" <RXELLISJ@up.com>, "David W. Hughes" <DWHUGHES@up.com>, "Jamal W. Chappell" <JWCHAPPE@up.com>, "James C. Brooks" <JCBROOKS@up.com>, "Shane J. Klein" <SJKLEIN@UP.COM>, "David Giandinoto" <DGIANDIN@up.com>
Date: 10/29/2020 08:56 AM
Subject: RE: Team BNSF - Eagle Pass

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*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Tom,

We all know that between all carriers there is a lot of volume wanting to traverse the border. What I think would be more helpful is to talk about the slots that are received in terms of whether or not the slots that were given were given according to when the trains passed Spofford or left Laughlin. It really does not lend credence to the success of the process following protocol measures, to just state that UP had more trains. You could very well have more trains, but we could have more slots due to our trains having passed Spofford well before those UP trains. That at its core is why you even get these types of inquiries. Because no one knows whether that is the case because slots at the border are never referred to or measured in this manner. It is always in terms of who has more volume, which is irrelevant to the protocol that is supposed to be followed.

Regarding the slot track your example is one instance where a UP train was placed there, but what about the numerous times we have a train that could be advanced closer to the border and placed in the slot track with no UP train there and we're denied, only to have a UP train go by us at Eagle Pass and take the slot track after the fact.

**From:** Thomas C. Blevins [mailto:TCBLEVIN@UP.COM]
**Sent:** Thursday, October 29, 2020 8:44 AM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** Robert X. Ellis Jr <RXELLISJ@up.com>; David W. Hughes <DWHUGHES@up.com>; Jamal W. Chappell <JWCHAPPE@up.com>; James C. Brooks <JCBROOKS@up.com>; Shane J. Klein <SJKLEIN@UP.COM>; David Giandinoto <DGIANDIN@up.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** Team BNSF - Eagle Pass

**EXTERNAL EMAIL**

I received multiple emails from Team BNSF and replying to everyone on this note vs sending out multiple emails

Tessa,,
Regarding your statement " We really need to be given as many slots as the UP receive today and always for that matter."
Nothing would make us happier than to be able to interchange every train as they arrive to the border,,, unfortunately, that is not a reality as there are times like yesterday where we have more trains than available slots.
Per yesterdays conversation with BNSF Leodoro,,,, UPRR had 8 trains and BNSF had 4 to interchange during 1200-1800 window - We interchanged a total of 6 trains (which is standard for 6 hour window) with 4 UPRR and 2 BNSF interchanging - rolling 2 BNSF and 4 UPRR. ***((UPRR rolled 50% of traffic - BNSF rolled 50% of traffic)***

Sarah,
Referencing allowing BNSF to stage trains in the UPRR Slot track at Clarks Park,,, We do allow for

this move provided there is not a UPRR train parked in this track. ***(example : 2ACWEGJ 24 was in fact staged in slot track last night)***
I have also performed audits to make sure this process is followed and it was determined that most of the time we never received requests from local BNSF personnel and when requests were made we did in fact allow BNSF to stage in slot provided the track was not occupied by a UPRR train staging for the next Southbound window.

We will continue to work to get everyone current as we are all still recovering from recent system tie gang that started at the international rail bridge resulting in having only 16 hours to interchange traffic. This gang is currently on off cycle but returns next week and will be on the territory until late December.

Please contact this office if have any questions regarding this matter.

Thomas Blevins
South Texas Service Unit

----- Forwarded by Thomas C. Blevins/UPC on 10/29/2020 08:04 AM -----

From: "Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com>
To: "tcblevin@up.com" <tcblevin@up.com>
Cc: "David W. Hughes (DWHUGHES@up.com)" <DWHUGHES@up.com>, "Miner, Tessa D" <Tessa.Miner@BNSF.com>
Date: 10/28/2020 11:49 AM
Subject: **Slot Track Usage at Eagle Pass**

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*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Tom,

Literally every day I see reports similar to the ones below from this morning, in which BNSF requests permission to stage on SLOT Track at Eagle Pass, with permission denied. BNSF contributed well in excess of [redacted] toward the investment of trackage at Eagle Pass and has a right to use that trackage. I believe Tessa Miner and others have raised this with you before – so this should not be new to you. But we have not seen any progress towards getting any usage of the staging track or any meaningful ability to get a return on our investment. This was raised with David Hughes and John Turner last week in Fort Worth as well, and we had hoped to see some movement from UP at Eagle Pass on this. Seeing none, I raised it again with David Hughes on Friday. He indicated any issues concerning use of the slot track (or whatever the trackage is called) should be raised with you first.

So, to that end, I am appealing to you to ensure BNSF gets fair use of the asset that it invested in along with UP. I would appreciate your review of your team's daily denials of BNSF's right to stage on the slot track and address the matter promptly. Beyond that, we continue to be concerned about the allocation of slots and methodology of meting out interchange slots, but for the moment, I'll start out with the simpler ask that we be allowed to use the slot track that is part of the BNSF/UP joint facility.

Thank you.

Sarah W. Bailiff
AVP Contracts & Joint Facilities
BNSF Railway Company
817-352-2354
817-247-1422 cell

**From this morning's report:**

1. **G–STLEAP6–20 (*84 cars*)** TA, but failed to IC during the ongoing Tuesday October 27 2200 – 0600hrs SEW, due to UP MYO Xavier A. Lopez stating BNSF would only be allowed ***THREE (3 = 37.5%) slots vs UP FIVE (5 = 62.5%) slots (UP trains GSSDG19 / MEWTO24 / ASPEGR27 / MEWTO26 / MLFRS27).*** BNSF Ops decision made to deliver **H–TPLEAP1–25 / G–HUTEAP2–22 / H–TPLEAP1–26,** due to crews having enough HOS to deliver to the FXE. Permission requested to stage **G–STLEAP6–20** on SLOT Track and have readily in position for upcoming Wednesday October 28 1200 – 1800hrs noon SEW was ***DENIED***. ***G–STLEAP6–20 TA Tuesday October 27 @ 1755hrs, staged in HORAN Track 302, and will attempt to IC during the upcoming 1200 – 1800hrs noon SEW, if UP will allow us to do so***.

2. **G–BETEAP1–21 (*112 cars*)** TA, but failed to IC during the ongoing Tuesday October 27 2200 – 0600hrs SEW, due to UP MYO Xavier A. Lopez stating BNSF would only be allowed ***THREE (3 = 37.5%) slots vs UP FIVE (5 = 62.5%) slots (UP trains GSSDG19 / MEWTO24 / ASPEGR27 / MEWTO26 / MLFRS27).*** BNSF Ops decision made to deliver **H–TPLEAP1–25 / G–HUTEAP2–22 / H–TPLEAP1–26,** due to crews having enough HOS to deliver to the FXE. Permission requested to stage **G–BETEAP1–21** on SLOT Track and have readily in position for upcoming Wednesday October 28 1200 – 1800hrs noon SEW was ***DENIED***. ***G–BETEAP1–21 TA Tuesday October 27 @ 2110hrs, staged in HORAN Track 298, and will attempt to IC during upcoming Wednesday October 28 1200 – 1800hrs noon SEW, if UP will allow us to do so***.

----- Forwarded by Thomas C. Blevins/UPC on 10/29/2020 08:04 AM -----

From: "Miner, Tessa D" <Tessa.Miner@BNSF.com>
To: "tcblevin@up.com" <tcblevin@up.com>
Cc: "Jamal W. Chappell (JWCHAPPE@up.com)" <JWCHAPPE@up.com>, "Power, Olivia E" <Olivia.Power@BNSF.com>
Date: 10/28/2020 04:03 PM
Subject: FW: EAGLE PASS SLOT PLAN - 10/28 @ 0800

---

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Tom,
We really need to be given as many slots as the UP receive today and always for that matter. How can you explain that you get 4 and we get 2 when that is clearly not parity? Also, how does this fall under the dispatching protocol when we should same treatment as the UP towards the FXE bridge? It should always fall under 1st come and 1st serve basis in the order of the trains that have passed Spofford. We are plan our trains under this protocol you have given us. When we are not allowed our maximum amount of slots and the UP clearly has doubled the amount of trains to FXE compared to ours, we are not being treated in a fair and just manner.

Can you please provide me with why we are not getting our slots? And why you think that 4 UP to 2 BNSF is remotely equal?

**Tessa Miner | BNSF Railway | Director of Trackage Rights | (713) 825 -8631 C | (817) 352-7332 O**

**From:** Leodoro, John P
**Sent:** Wednesday, October 28, 2020 2:20 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Donn, Frank A <Frank.Donn@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Beals, Bob O <Bob.Beals@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>
**Subject:** RE: EAGLE PASS SLOT PLAN - 10/28 @ 0800

FYI- UPRR is holding with their plan of 4 UPRR and 2 BNSF in the current Window, Mr. Blevins claims they are rolling 4 trains for this window therefore we are to roll 2..

No communication on tonight's window..

JP Leodoro
San Antonio Terminal Manager
773-230-8849 (cell)

**From:** Leodoro, John P
**Sent:** Wednesday, October 28, 2020 7:54 AM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Frank P Hernandez (Frank.Hernandez@BNSF.com) <Frank.Hernandez@BNSF.com>; Donn, Frank A <Frank.Donn@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Beals, Bob O <Bob.Beals@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>
**Subject:** FW: EAGLE PASS SLOT PLAN - 10/28 @ 0800

Tessa- We may need some help with pushing for additional slots. Only receiving 2 slots today will not work with 10 trains between EP and Caldwell.

JP Leodoro
San Antonio Terminal Manager
773-230-8849 (cell)

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**From:** Leodoro, John P
**Sent:** Wednesday, October 28, 2020 7:44 AM
**To:** Beals, Bob O <Bob.Beals@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>; OPR DL Energy Desk Managers <OPRDLEnergyDeskMgrs@BNSF.com>; OPR DL Chief DS Southern <OPRDLChiefDSSouthern@bnsf.com>; OPR DL Eagle Pass OPS <OPRDLEaglePassOPS@BNSF.com>; OPR DL Eagle Pass Interchange <OPRDLEaglePassInterchange@BNSF.com>; OPR DL Southeast MCO Desk <OPRDLSoutheastMCODesk@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** EAGLE PASS SLOT PLAN - 10/28 @ 0800

The Eagle Pass lineup will remain heavy with **27 Southbound trains in the next 99 hours** and 5 Northbound trains projected from FXE in the next 24hr. Currently 10 Southbound trains between Eagle Pass and Temple with 3 onhand and one arriving this morning. We were informed we only have 2 slots as of the 0500 call which we are working on securing a 3rd and 4th .

Review the plan and work with the San Antonio team on any slot plan changes.



JP Leodoro
San Antonio Terminal Manager
773-230-8849 (cell)

----- Forwarded by Thomas C. Blevins/UPC on 10/29/2020 08:04 AM -----

From: "Leodoro, John P" <John.Leodoro2@BNSF.com>
To: "Tom Blevins" <TCBLEVIN@UP.COM>
Date: 10/28/2020 05:36 PM
Subject: Fwd: EAGLE PASS 1700HRS UP / BNSF PLANNING CALL

---

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

From what I can see below our 4 trains are all ahead of yours. So is it safe to say that will have 4 slots tonight?

| 1800 – 2400 NIW | 0000 – 0600 SEW |
|---|---|
| 1. BNSF 89 EMPTY GRAIN | 1. GMNXEAP520 @ TRK 300 |
| 2. UP EMPTY | 2. GADREAP823 @ TRK 301 |
| 3. UPLR | 3. HTPLEAP127 @ TRK 400 |
| 4. UPTX | 4. VABQEAP419 @ ANACACHO |
| 5. UP BEER / UPLI | 5. GLINEAP321 @ CADET |
| 6. BNSF 80 MANIFEST | 6. AMLEGR22 @ AMISTAD |
| 7. BNSF 110 EMPTY GRAIN | 7. AMLEGR21 @ AMANDA |
| 8. | 8. MLFRS28 |
| 9. | 9. ISAEG28 @ SAIT |
| 10. | 10. MEWTO27 |
| 11. | 11. GLJO3G21 |

JP Leodoro
BNSF Railway
San Antonio Terminal Manager
Red River Division
773 230 8849 (C)

Sent from my iPhone

Begin forwarded message:

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** "Felan, Aldo" <Aldo.Felan2@bnsf.com>
**Date:** October 28, 2020 at 5:24:06 PM CDT
**To:** "Leodoro, John P" <John.Leodoro2@bnsf.com>
**Cc:** "Beals, Bob O" <Bob.Beals@bnsf.com>, "Mercado, Fernando" <Fernando.Mercado@bnsf.com>, MKT DL Eagle Pass Coordinator <MKTDLEaglePassCoordinator@bnsf.com>, "Felan, Aldo" <Aldo.Felan2@bnsf.com>
**Subject: EAGLE PASS 1700HRS UP / BNSF PLANNING CALL**

During the 1700hrs conference call UP offered ***6*** SB trains and BNSF offered ***5*** SB trains. ***UP MTO Adrian Ibarra*** advised that he needed to look at what time trains arrived at Spofford before advising how S/B slots would be divided up and get back to me.

Please see below. This is what was offered on the call to FXE for the next 2 windows and info was also given to UP MYO on duty. Thank you.

**Interchange Projections:**

| 1800 – 2400 NIW | 0000 – 0600 SEW |
|---|---|
| 1. BNSF 89 EMPTY GRAIN | 1. GMNXEAP520 @ TRK 300 |
| 2. UP EMPTY | 2. GADREAP823 @ TRK 301 |
| 3. UPLR | 3. HTPLEAP127 @ TRK 400 |
| 4. UPTX | 4. VABQEAP419 @ ANACACHO |
| 5. UP BEER / UPLI | 5. GLINEAP321 @ CADET |
| 6. BNSF 80 MANIFEST | 6. AMLEGR22 @ AMISTAD |
| 7. BNSF 110 EMPTY GRAIN | 7. AMLEGR21 @ AMANDA |
| 8. | 8. MLFRS28 |
| 9. | 9. ISAEG28 @ SAIT |
| 10. | 10. MEWTO27 |
| 11. | 11. GLJO3G21 |
| 12. | 12. |

| 0600 – 1200 NIW | 1200 – 1800 SEW |
|---|---|
| 1. 120 MANIFEST | 1. HTPLEAP128 |
| 2. 103 EMPTY GRAIN | 2. VALTEAP426 |
| 3. UPLI | 3. GTMREAP221 |
| 4. 100 EMPTY GRAIN | 4. GSJOEAP323 |
| 5. UPTX | 5. MLFRSB29 |
| 6. UPLR / EGPA | 6. AMLEGR25 |
| 7. UPLR | 7. MEWTO28 |
| 8. 120 MANIFEST | 8. |
| 9. | 9. |
| 10. | 10. |
| 11. | 11. |
| 12. | 12. |

**Aldo Felan**
**Eagle Pass Division Trainmaster**
**BNSF Railway Red River Division**
**Office : 254-771-4719**
**Cell : 830-421-7137**

**

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**

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**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 10

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Hernandez, Frank P <Frank.Hernandez@BNSF.com>
**Sent:** Wednesday, July 29, 2020 6:28 AM
**To:** Kaiser, Paul C <Paul.Kaiser@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>; Duncan, Paul B <Paul.Duncan@BNSF.com>; Stone, David W <David.Stone@BNSF.com>; Smith, Dan A <Dan.Smith2@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** RE: Eagle Pass Slots

[redacted]ve
[redacted]ly
[redacted]ble
[redacted].

Gracias. Saludos.

***Frank P. Hernandez***
***BNSF General Director of Transportation (U.S. / Mexico Operations)***
***U.S.A. Cell: 915–345–8962***
***MEXICO Cell if calling from USA: (011–521)–444–188–4089***
***Not a single snowflake steps up & assumes responsibility during an avalanche..... – W.M. Stephens*** 32

**From:** Power, Olivia E <Olivia.Power@BNSF.com>
**Sent:** Tuesday, July 28, 2020 10:02 PM
**To:** Brewer, Lance R<Lance.Brewer@BNSF.com>; Kaiser, Paul C <Paul.Kaiser@BNSF.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Stone, David W <David.Stone@BNSF.com>; Smith, Dan A <Dan.Smith2@BNSF.com>
**Subject:** RE: Eagle Pass Slots

[redacted].

[redacted]!

Great work!
Olivia

**From:** Brewer, Lance R
**Sent:** Tuesday, July 28, 2020 2:11 PM
**To:** Kaiser, Paul C <Paul.Kaiser@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Stone, David W <David.Stone@BNSF.com>; Smith, Dan A <Dan.Smith2@BNSF.com>
**Subject:** RE: Eagle Pass Slots

[redacted]

**From:** Kaiser, Paul C
**Sent:** Tuesday, July 28, 2020 1:40 PM
**To:** Power, Olivia E <Olivia.Power@BNSF.com>; Brewer, Lance R<Lance.Brewer@BNSF.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Stone, David W <David.Stone@BNSF.com>; Smith, Dan A <Dan.Smith2@BNSF.com>
**Subject:** RE: Eagle Pass Slots

[redacted],
[redacted]il.
[redacted]n
[redacted].

[redacted]

[redacted]

**From:** Power, Olivia E
**Sent:** Monday, July 27, 2020 12:49 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Kaiser, Paul C <Paul.Kaiser@BNSF.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** RE: Eagle Pass Slots

[redacted]

[redacted].

**From:** Brewer, Lance R
**Sent:** Monday, July 27, 2020 12:18 PM
**To:** Kaiser, Paul C <Paul.Kaiser@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** FW: Eagle Pass Slots

[redacted].

**From:** Miner, Tessa D
**Sent:** Monday, July 27, 2020 12:12 PM
**To:** Hernandez, Frank P <Frank.Hernandez@BNSF.com>
**Cc:** Beals, Bob O <Bob.Beals@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** RE: Eagle Pass Slots

[redacted]

**Tessa Miner | BNSF Railway | Director of Trackage Rights | (713) 825 -8631 C | (817) 352-7332 O**

**From:** Hernandez, Frank P
**Sent:** Monday, July 27, 2020 10:55 AM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Beals, Bob O <Bob.Beals@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** Re: Eagle Pass Slots

[redacted]s

[redacted]n

Sent from my iPhone

> On Jul 27, 2020, at 9:27 AM, Miner, Tessa D <Tessa.Miner@bnsf.com> wrote:
>
> Bob,

REDACTED - TO BE PLACED ON PUBLIC FILE

Dialogue with Tom is below. He is going to try to get us 3 across, but will definitely make sure our 2 trains happen. I also requested use of slot track and he said it is not available.

**Tessa Miner | BNSF Railway | Director of Trackage Rights | (713) 825 -8631 C | (817) 352-7332 O**

---

**From:** Thomas C. Blevins [mailto:TCBLEVIN@UP.COM]
**Sent:** Monday, July 27, 2020 9:07 AM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Jamal W. Chappell <JWCHAPPE@up.com>
**Subject:** Re: Eagle Pass Slots

EXTERNAL EMAIL

Slot is not available but we will make a hard run at getting 2 slots for BN,,,if opportunity arises we may even get 3 - but As you know, it is all contingent on how our FXE team across the river processes Traffic

Thanks

Sent from my iPhone

On Jul 27, 2020, at 9:00 AM, Miner, Tessa D <Tessa.Miner@bnsf.com> wrote:

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

If there is any way we can get 3 across, it will be very helpful. However if not, can make sure we keep the 2 promised?
Also, will there be a way to utilize the slot track to position for tonight's window?

Tessa Miner
713.825.8631

On Jul 27, 2020, at 8:53 AM, Thomas C. Blevins <TCBLEVIN@up.com> wrote:

EXTERNAL EMAIL

The plan formulated this morning due to train arrivals was 4 UP 2 BN split on next window

We will be lucky to get 6 south as FXE has been a little sluggish on processing

Sent from my iPhone

On Jul 27, 2020, at 8:50 AM, Miner, Tessa D <Tessa.Miner@bnsf.com> wrote:

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Tom,
We have a heavy south bound lineup. Today and this evening. We really need to get at least 3 slots This afternoon and tonight so we don't have to start staging trains and congesting Eagle Pass north routes.
Can you help?
Tessa Miner

---

**From:** Beals, Bob O <Bob.Beals@BNSF.com>
**Sent:** Monday, July 27, 2020 7:27:12 AM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>
**Subject:** Eagle Pass Slots

Good Morning Tessa,

I am requesting your assistance to obtain at least 3 slots during the 1200/27 southbound window on account we will have 4 trains in position to interchange. Last night BNSF had 3 trains in position and was only given 2 southbound slots, 0423 (G EMEEAP9 21/3GCWEGJ 24) and 0600 (V PEAEAP4 24/ASYEGJ 25). The G LMSEAP9 21/2GCWEGJ 25 arrived in the Carl Siding at 2130 on 07/26 and was not advanced.

Today we will have 4 trains at Eagle Pass for the 1200/27 southbound window:

- HTPLEAP126D / QCWEGJ26 @ EP Track 302

- GLMSEAP921A / 2GCWEGJ25 @ CARL
- GABIEAP923A / GCWEGJ25 @ UVALDE
- GFUNEAP924A / GCWEGJ26 @ SECO

We were only given another 2 slots during the 0500 call as shown below:

<image001.png>

Please assist us with obtaining at least some Parity and getting our proper slots so we can interchange our traffic. We also have another 3-4 trains that may be in position for the 0001/28 southbound slot. We have heavy southbound lineup into Eagle Pass with 24 trains over the next 99 hours planned. We don't want to refuse traffic from FXE on account of our southbound traffic along with the lack of southbound slots.

Your assistance is greatly appreciated.

**Bob Beals**| ***BNSF* Railway**| **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** |9835 Fischer Rd, Von Ormy, TX 78073| Bob.Beals@bnsf.com|**Cell: 915-526-4287**

**

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**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 11

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>
**Sent:** Wednesday, August 5, 2020 11:41 AM
**To:** rxellisj@up.com
**Cc:** Power, Olivia E <Olivia.Power@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>
**Subject:** FW: EAGLE PASS SLOT PLAN- 08/05/ 1030, PAGE

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Robert,

We have three trains in position to exchange in the SB window 1200-1800, and as you can see below we are being told quantity of UP trains is a deciding factor in why we are only receiving 2 slots. Number of trains for a carrier is not to be a factor in the determination of slots, in fact using the UP's own claim as recent as three months ago among senior leaders trains should pass into Mexico in the order of arrival in which they passed Spofford. What is transpiring in Eagle Pass today and reasons we are getting from your own officers is in direct contrast to what the UP claims should be taking place. Why is the protocol as stated not being followed by the UP and your team in Eagle Pass?

---

**From:** Mercado, Fernando
**Sent:** Wednesday, August 5, 2020 11:33 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL Eagle Pass Interchange <OPRDLEaglePassInterchange@BNSF.com>; OPR DL Southeast MCO Desk <OPRDLSoutheastMCODesk@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** RE: EAGLE PASS SLOT PLAN- 08/05/ 1030, PAGE

Lance,

Good morning, UP stated they have more train than BNSF and is the reason BNSF is only getting 2 slots.

Regards
Fernando Mercado | BNSF Railway Red River Division
Division Trainmaster
820 E. Rio Grande St. Eagle Pass, TX 78852
M: 830.325.0144 | O: 254.771.4719
Fernando.Mercado@BNSF.com

---

**From:** Brewer, Lance R
**Sent:** Wednesday, August 5, 2020 11:30 AM
**To:** Mercado, Fernando <Fernando.Mercado@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL Eagle Pass Interchange <OPRDLEaglePassInterchange@BNSF.com>; OPR DL Southeast MCO Desk <OPRDLSoutheastMCODesk@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** RE: EAGLE PASS SLOT PLAN- 08/05/ 1030, PAGE

What reason was given as to why?

---

**From:** Mercado, Fernando
**Sent:** Wednesday, August 5, 2020 10:52 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL Eagle Pass Interchange <OPRDLEaglePassInterchange@BNSF.com>; OPR DL Southeast MCO Desk <OPRDLSoutheastMCODesk@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** RE: EAGLE PASS SLOT PLAN- 08/05/ 1030, PAGE

Team,

UP Sr MTO Adrian G. Ibarra has just informed me that BNSF will only be allowed to deliver 2 southbound trains during the August 5th 1200 – 1800 noon SEW.

As per UP VALTEAP403A will roll for the August 6th 0000 – 0600 midnight SEW.

We will have 5 trains for the August 6th 0000 – 0600 midnight SEW.

Regards
Fernando Mercado | BNSF Railway Red River Division
Division Trainmaster
820 E. Rio Grande St. Eagle Pass, TX 78852
M: 830.325.0144 | O: 254.771.4719

Fernando.Mercado@BNSF.com

**From:** Leodoro, John P
**Sent:** Wednesday, August 5, 2020 10:34 AM
**To:** OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL Eagle Pass Interchange <OPRDLEaglePassInterchange@BNSF.com>; OPR DL Southeast MCO Desk <OPRDLSoutheastMCODesk@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>
**Subject:** EAGLE PASS SLOT PLAN- 08/05/ 1030

The Eagle Pass lineup will remain heavy with 20 Southbound trains in the next 99hours with 8 train between Eagle Pass and Temple. Please review the plan below and work with the SA team on any slot plan changes..

Northbound: Pulling 3 this morning with 3 more projected for each of the next 3 window

- H EAPCDT1 04- O/d 0830
- H EAPCDT1 05- O/d 1005
- X EAPCCD9 05- ETD 1600 – Crew rested at 1515
- D EAPEAP2 05- ETC 1900- Crew rested at 1900
- X EAPMKS9 06- ETD 2030- Crew rested at 2030
- H EAPCDT1 06- ETD 0030



JP Leodoro
San Antonio Terminal Manager
773-230-8849 (cell)

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 12

**From:** Hernandez, Frank P <Frank.Hernandez@BNSF.com>
**Sent:** Monday, March 30, 2020 10:19 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Cc:** Duncan, Paul B <Paul.Duncan@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>; Gabriel, Jon <Jon.Gabriel@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Subject:** RE: EAGLE PASS INTERCHANGE SLOT PLAN 0715/30

[redacted]

***Frank P. Hernandez***
***BNSF General Director of Transportation (U.S. / Mexico Operations)***
***U.S.A. Cell: 915–345–8962***
***MEXICO Cell if calling from USA: (011–521)–444–188–4089***
***The defining moment in our lives is not driven by a given event, but rather by the manner in which we handled that event….. – fph*** ***154***

---

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Monday, March 30, 2020 9:07 AM
**To:** Duncan, Paul B <Paul.Duncan@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>; Gabriel, Jon <Jon.Gabriel@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>

REDACTED - TO BE PLACED ON PUBLIC FILE

**Subject:** RE: EAGLE PASS INTERCHANGE SLOT PLAN 0715/30

[redacted]

---

**From:** Duncan, Paul B
**Sent:** Monday, March 30, 2020 8:03 AM
**To:** Thompson, Janssen <Wesley.Thompson@BNSF.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>; Gabriel, Jon <Jon.Gabriel@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>
**Subject:** RE: EAGLE PASS INTERCHANGE SLOT PLAN 0715/30

Do we have an idea from UP as to how many they are staging south of Spofford for the border if any?

---

**From:** Thompson, Janssen
**Sent:** Monday, March 30, 2020 7:58 AM
**To:** Garland, Matthew C <Matthew.Garland@BNSF.com>; Duncan, Paul B <Paul.Duncan@BNSF.com>; Gabriel, Jon <Jon.Gabriel@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>
**Subject:** FW: EAGLE PASS INTERCHANGE SLOT PLAN 0715/30

This further supports the email from Frank on the UPRR not giving BNSF Parity at Eagle Pass; additionally we did try and escalate yesterday to Harriman Center which is documented SIDOL. Will send you a copy of the note in case UPRR states otherwise.

If you need any additional information please let me know.

Thanks,

J

---

**From:** Leodoro, John P
**Sent:** Monday, March 30, 2020 7:30 AM
**To:** Christian, Ty D <Ty.Christian@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>; Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>
**Cc:** Leodoro, John P <John.Leodoro2@BNSF.com>; Beals, Bob O <Bob.Beals@BNSF.com>
**Subject:** FW: EAGLE PASS INTERCHANGE SLOT PLAN 0715/30

Running count for last 5 days of Southbound Interchange:

30th : 3 UPRR/ 2 BNSF- With plans for UPRR to receive 4 Slots vs 2 BNSF slots for the 1200/30 window
29TH : 7 UPRR / 3 BNSF
28th : 6 UPRR/ 5 BNSF

27TH : 7 UPRR/ 4 BNSF
26TH : 5 UPRR/ 5 BNSF

JP Leodoro
BNSF Railway
San Antonio Terminal Manager
Red River Division
Cell 773 230 8849

---

**From:** Leodoro, John P
**Sent:** Monday, March 30, 2020 7:20 AM
**To:** OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Eagle Pass OPS <OPRDLEaglePassOPS@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL Temple <OPRDLTemple@BNSF.com>; OPR DL Eagle Pass Interchange <OPRDLEaglePassInterchange@BNSF.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Prieto, Cesar CGP <Cesar.Prieto@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Ronnie E <Ronnie.Johnson@bnsf.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** EAGLE PASS INTERCHANGE SLOT PLAN 0715/30

The Eagle Pass Gateway will remain steady with **22 Southbound trains in 99 hours (7**trains between Caldwell and Eagle Pass). During the 0500 conference call we were informed that we will only receive 2 Slot vs the 4 for the UPRR (FYI both RR offered 4 train). We will continue to push for additional slots as the window approaches. Please contact the SA team with any exceptions to ensure we are keeping Eagle Pass fluid.

NOTE- **MOW Window:** 18' Del Rio sub bridge window 0200-2000/30 (EAP – no call 1800-29 to 1500-30 / TPL – no call 1000-29 to 0700-30)

200 – 108 cars GPKEAP922
201 – 92 cars GCNBEAP5 25
298 - Clear for morning NB Pull
300 – 112 cars GCULEAP9 24
301 – 73 cars H EAPCDT2 30
302 – 100 cars GSJOEAP324



JP Leodoro
BNSF Railway
San Antonio Terminal Manager
Red River Division
Cell 773 230 8849

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 13

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Thursday, February 8, 2024 6:28 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** Fwd: Eagle Pass Southbound Slot Plan

---

Just received a call from Adrian the SMTO. Southbound slots will be 02 BNSF and 02 UP in the next Southbound window.

Director of Trackage Rights l BNSF Railway l 817-751-4607

---

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Thursday, February 8, 2024 6:15:37 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; David Giandinoto <DGIANDIN@up.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; David W. Hughes <DWHUGHES@up.com>
**Subject:** Fwd: Eagle Pass Southbound Slot Plan

Good Evening.

Mr. Giandinoto, we're experiencing some slot plan parity issues at Eagle Pass. Based upon the Spofford times, BNSF should have a minimum of 02 slots during the upcoming Southbound window. The local team has advised us that BNSF will only be granted 01 slot and UPRR will have 03. We've attempted to resolve the discrepancy with the local team, however, we've been unsuccessful. Your assistance in resolving this matter would be greatly appreciated.

Thank you.

Director of Trackage Rights l BNSF Railway l 817-751-4607

---

**From:** Stigall, Erica S
**Sent:** Thursday, February 8, 2024 4:38:50 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Adrian Ibarra <AGIBARRA@up.com>; bwmcgavock (bwmcgavock@up.com) <bwmcgavock@up.com>
**Subject:** Eagle Pass Southbound Slot Plan

Good Afternoon Tom & Adrian,

Please provide some insight on the next Southbound slots. We're being advised that BNSF will only have 01 slot and UPRR will have 03.

Per the Spofford AEI times, BNSF should have a minimum of 02 slots if we're doing a total of 04 trains during this window. The below trains were by Spofford before the ASBEGR 06. Additionally, there is not an AEI by Spofford that matches the 02/07 1000 time stamp for the MLFRS 08. We understand that the traffic arrives 12-24 hours ahead for the train build.

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QCWEGJ 05 (H TPLEAP1 06) – Spofford Time: 0915 on 2/07
QCWEGJ 06 (H TPLEAP3 05) – Spofford Time: 1416 on 02/07

Per the Spofford times and priority for intermodal traffic: BNSF should have 03 slots pending the MLFRS 08 or, a minimum of 02 slots if the cars for the MLFRS 08 did arrive ahead of the QCWEGJ 06.
QCWEGJ 05 (H TPLEAP1 06) – Spofford Time: 0915 on 2/07
ZCWEGJ 08 (Z ALTEAP8 07)

Please advise.

Thank you.

**Erica Stigall | BNSF Railway | Director of Trackage Rights | 817-751-4607**

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 14

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Thursday, June 6, 2024 3:02 PM
**To:** Brian McGavock <bwmcgavock@up.com>; Steven Bybee <SLBYBEE@up.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Erin Batt <ENMCCABE@UP.COM>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; David W. Hughes <DWHUGHES@up.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>
**Subject:** Re: Eagle Pass Slots

---

Local teams just had a meeting, they're still being told 01 BNSF slot.

---

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Thursday, June 6, 2024 1:58 PM
**To:** Brian McGavock <bwmcgavock@up.com>; Steven Bybee <SLBYBEE@up.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Erin Batt <ENMCCABE@UP.COM>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; David W. Hughes <DWHUGHES@up.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>
**Subject:** Re: Eagle Pass Slots

Adding the slot plan for additional context. Based on the times, BNSF should actually have 03 slots. Please advise.

Thank you.

---

**From:** Stigall, Erica S
**Sent:** Thursday, June 6, 2024 1:25:27 PM
**To:** Brian McGavock <bwmcgavock@up.com>; Steven Bybee <SLBYBEE@up.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Erin Batt <ENMCCABE@UP.COM>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; David W. Hughes <DWHUGHES@up.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>
**Subject:** Eagle Pass Slots

Good afternoon, UP Team.

I'm requesting some assistance with a slot discrepancy issue at Eagle Pass.

Per Spofford times, BNSF should have a minimum of 02 slots in the current Southbound window.

UP has granted BNSF only 01 slot. We've attempted to address to discrepancy with the local team, however, in the last few hours, they've yet to provide a response or explanation.

Your assistance is greatly appreciated.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 15

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>
**Sent:** Wednesday, June 26, 2024 8:11 AM
**To:** Stigall, Erica S <Erica.Stigall@BNSF.com>; HDC Network Supt <hdcnetworksupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Brian McGavock <bwmcgavock@up.com>; Erin Batt <ENMCCABE@UP.COM>; David W. Hughes <DWHUGHES@up.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>
**Subject:** RE: Eagle Pass Slots

---

Brian McGavock or Erin Batt,

Have we change procedurally something in the operation that no longer considers order of passing trains at Spofford for both carriers in lining up slots over the international bridge? I have seen numerous examples shared where we are not getting BNSF trains southbound across the bridge that have arrived well ahead of other UP trains that are getting slot preference.

*Lance R. Brewer | General Manager - Red River Division*

BNSF RAILWAY

---

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Tuesday, June 25, 2024 10:08 PM
**To:** HDC Network Supt <hdcnetworksupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Brian McGavock <bwmcgavock@up.com>; Erin Batt <ENMCCABE@UP.COM>; David W. Hughes <DWHUGHES@up.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>
**Subject:** Re: Eagle Pass Slots

Good evening,

The MYO has informed the local team that the next Southbound window will be 04 UP and 01 BNSF. During the previous Southbound window, it was 03 UP and 0 BNSF.

BNSF currently has the following Southbound trains between Caldwell and Eagle Pass:
03 in the yard at Eagle Pass
01 T/D on the UP mainline
01 planned to hold at Cadet
01 Z train running towards Eagle Pass

Please advise how we're determining the slots for the Southbound windows so the team can plan accordingly.

Thank you.

---

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Wednesday, June 19, 2024 10:18:38 PM
**To:** HDC Network Supt <hdcnetworksupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Brian McGavock <bwmcgavock@up.com>; Erin Batt <ENMCCABE@UP.COM>; David W. Hughes <DWHUGHES@up.com>

REDACTED - TO BE PLACED ON PUBLIC FILE

**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>
**Subject:** Re: Eagle Pass Slots

Good evening,

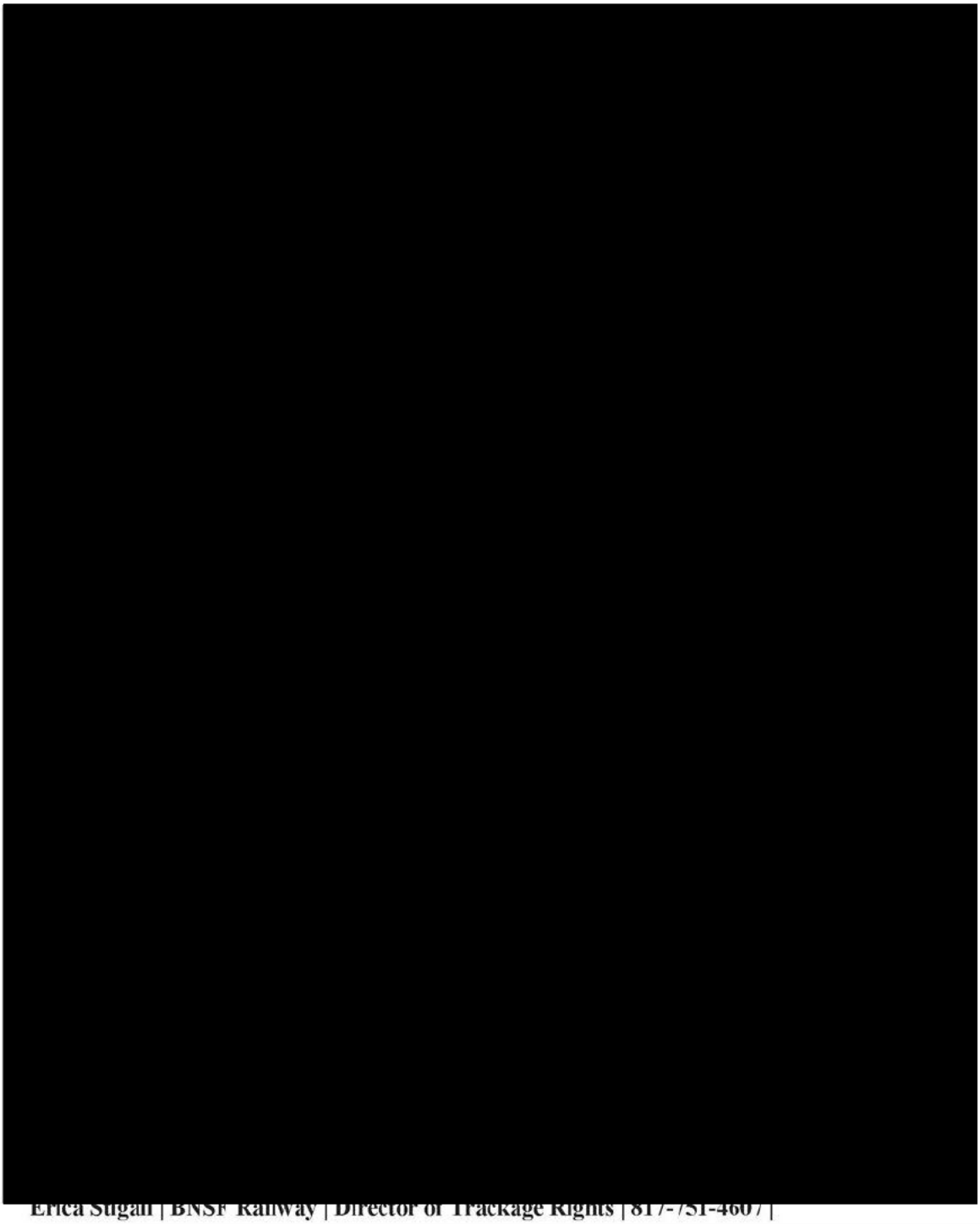
Appears we have another slot plan discrepancy for tonight's 0000-0600 Southbound window.

Per Spofford times, the slots should be 02 BNSF and 03 UP. Currently, BNSF is only receiving 01 slot and UP 04.

Spofford times:
ZCWEGJ 19 (Z ALTEAP8 18)- 2123 6/19 - Priority traffic, automatic slot
ZYCEG 18 - at SAIT - Priority traffic, automatic slot
MLFRS 19 - 0000 6/18 (Per UP Slot Plan)
AMLEG 16 - 0856 6/19
ASYEGJ 16 (V PEAEAP4 16) - 0946 6/19
GSB27G 15 - 1720 6/19 - THIS TRAIN SHOULD BE ROLLED TO THE NEXT WINDOW AND BNSF SHOULD DELIVER THE ASYEGJ 16

BNSF does not have the capacity to continue to hold trains at Eagle Pass. This results in congestion and UP denying BNSF access to trackage rights at Caldwell citing a lack of stagging locations at Eagle Pass.

Please advise.



Erica Stigall | BNSF Railway | Director of Trackage Rights | 817-731-4607 |

---

**From:** Stigall, Erica S
**Sent:** Tuesday, June 18, 2024 7:08 PM
**To:** HDC Network Supt <hdcnetworksupt@up.com>; Steven Bybee <SLBYBEE@up.com>; bwmcgavock (bwmcgavock@up.com) <bwmcgavock@up.com>; Erin Batt <ENMCCABE@UP.COM>; David W. Hughes <DWHUGHES@up.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>
**Subject:** Eagle Pass Slots

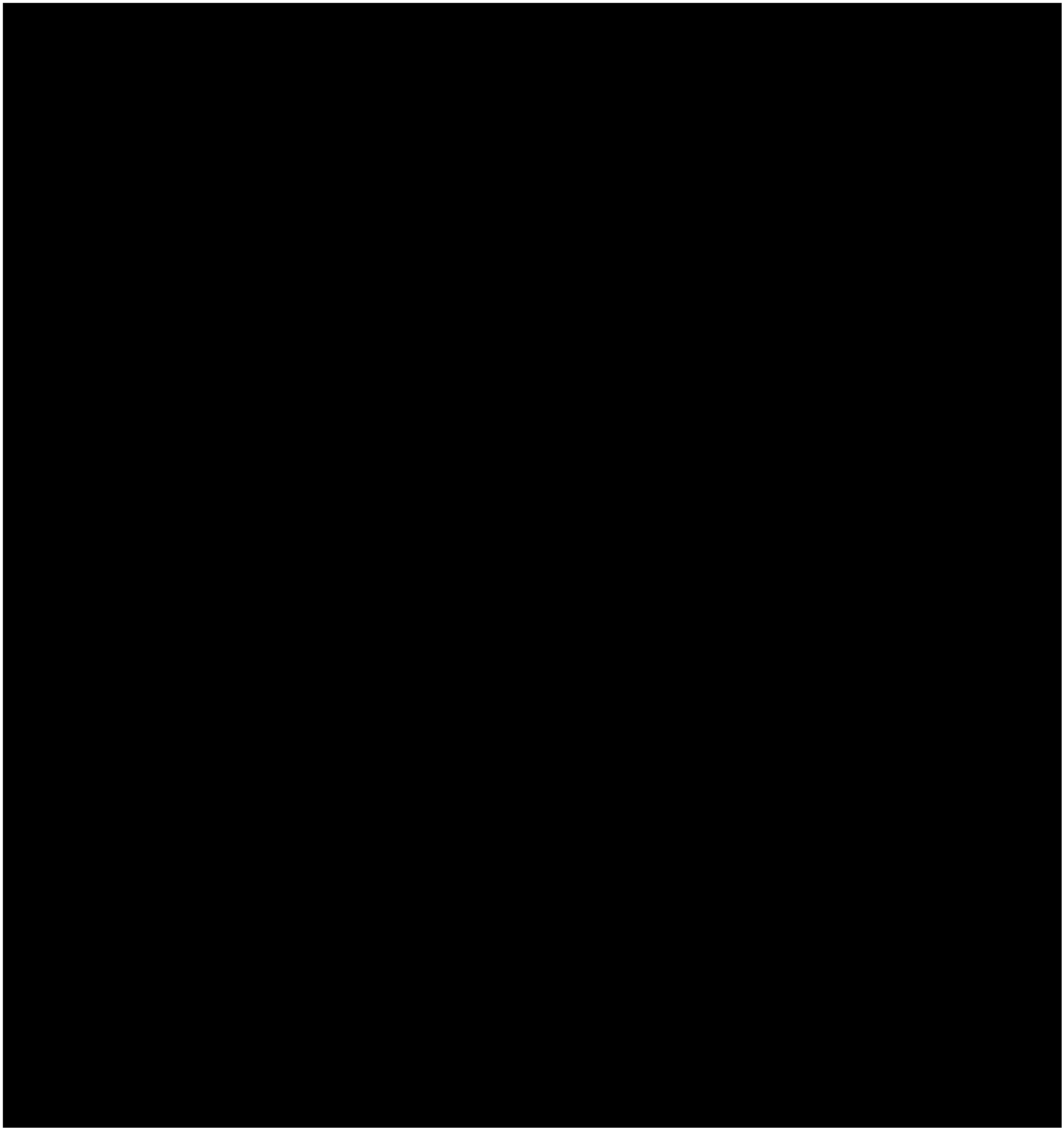
Good Evening,

Requesting assistance with the Eagle Pass slot plan. Per Spofford times, the midnight Southbound window should be 03 UP & 02 BNSF. The UP team has stated the slot will be 04 UP and 01 BNSF citing BNSF train lengths as the driver.

Slots are not designated based upon train lengths. BNSF has, and will continue to maximum train lengths based upon capacity.

Based upon Spofford times, the midnight 6/19 window should be as follows:
AMLEG 15 – 2217 6/17
QCWEGJ 16 (H TPLEAP1 16) – 2251 6/17
QCWEGJ 17 (H TPLEAP1 17) – 0910 6/18
GSRR7G 04 – 1355 6/18
ZYCEG 17 – Inbound

Please advise.



Thank you.

**Erica Stigall | BNSF Railway | Director of Trackage Rights | 817-751-4607**

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 16

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Tuesday, September 10, 2024 7:47 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Sundem, Chad <Chad.Sundem@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>
**Cc:** Garland, Matthew C <Matthew.Garland@BNSF.com>; Hower, Katie B <Katie.Hower@BNSF.com>
**Subject:** Re: Eagle Pass Slots - Next Southbound Window

---

Per Spofford times and Z priority handling (automatic slot in first available window) we should have 03 slots in the upcoming Southbound window.

Haven't gotten anything from the HDC other than the plans are handled locally by the Service Unit.

---

**From:** Sundem, Chad <Chad.Sundem@BNSF.com>
**Sent:** Monday, September 9, 2024 7:53:09 PM
**To:** Stigall, Erica S <Erica.Stigall@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>
**Cc:** Garland, Matthew C <Matthew.Garland@BNSF.com>; Hower, Katie B <Katie.Hower@BNSF.com>
**Subject:** FW: Eagle Pass Slots - Next Southbound Window

Info.

---

**From:** Sundem, Chad
**Sent:** Monday, September 9, 2024 7:51 PM
**To:** Steven Bybee <SLBYBEE@up.com>
**Cc:** Hower, Katie B <Katie.Hower@BNSF.com>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window

Good evening – can we get the VPs on call shortly (soon) and resolve this. Every single window seems to be a mystery even after our conversation.
Local interpretation seems to follow logic that is different than we discussed.
I added Katie to this – she's our VP for Service Design.
Appreciated.
Chad

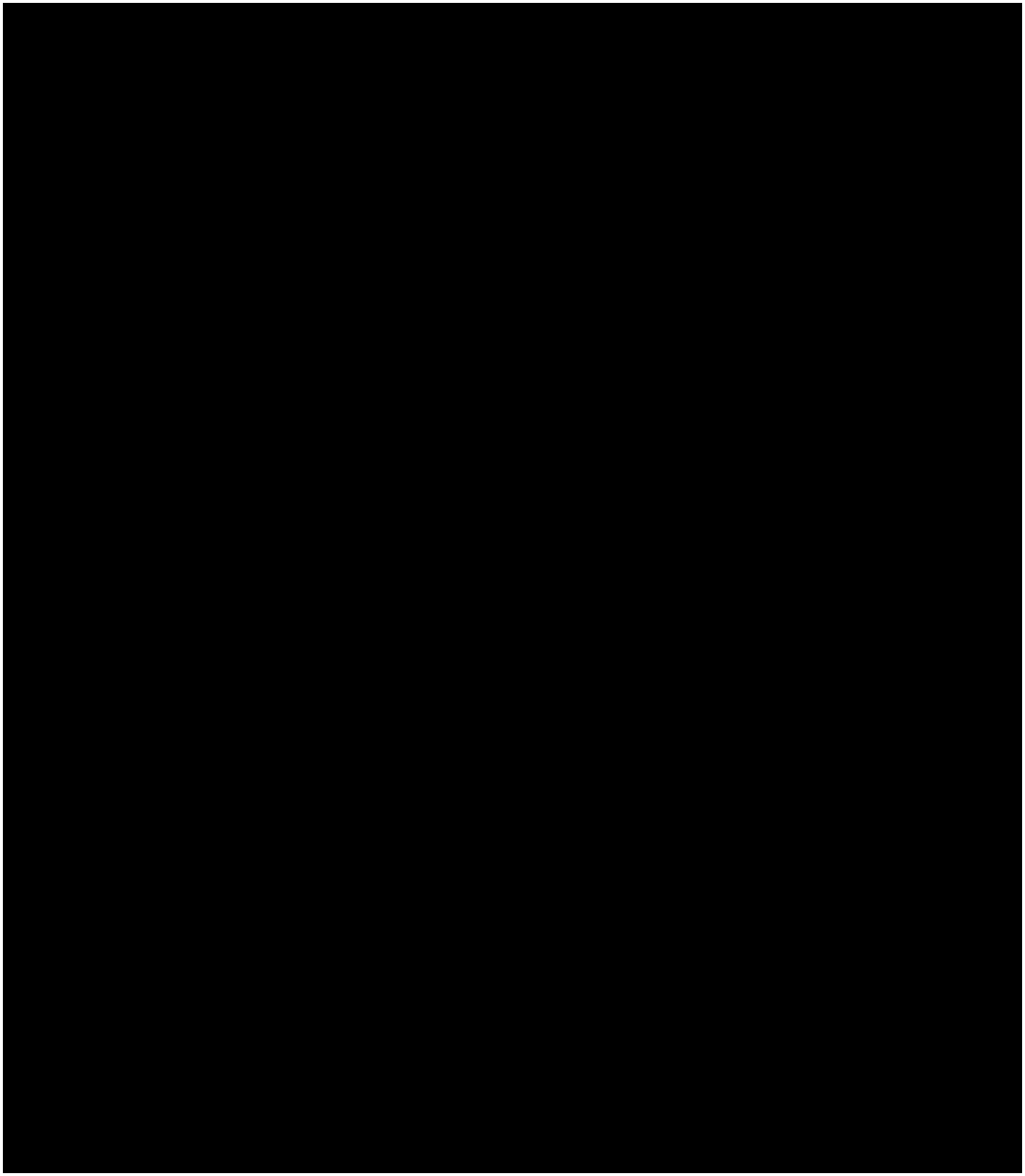
---

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Monday, September 9, 2024 7:41 PM
**To:** Adrian Ibarra <AGIBARRA@up.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <kdready@up.com>; Timothy Goetz <tegoetz@up.com>; Tyler Hans <tjhans@up.com>; Cary Amos <CBAMOS@up.com>
**Subject:** Re: Eagle Pass Slots - Next Southbound Window

UP Team,

Please confirm whether BNSF will have 01 or 02 slots in the 0000-0600 Southbound window. Current slot plan shows 01 slot,

however, Spofford times indicate BNSF should have a minimum of 02 slots.



---

**From:** Adrian Ibarra <AGIBARRA@up.com>
**Sent:** Sunday, September 8, 2024 7:15:49 PM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>;

Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <kdready@up.com>; Timothy Goetz <tegoetz@up.com>; Tyler Hans <tjhans@up.com>; Cary Amos <CBAMOS@up.com>
**Subject:** Re: Eagle Pass Slots - Next Southbound Window

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# EXTERNAL EMAIL

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Get Outlook for iOS

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**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Sunday, September 8, 2024 6:50:18 PM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Lance.Brewer@BNSF.com <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; kenny.theerman@bnsf.com <kenny.theerman@bnsf.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; micah.hammond@bnsf.com <micah.hammond@bnsf.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <KDREADY@UP.COM>; Timothy Goetz <tegoetz@up.com>; Tyler Hans <tjhans@up.com>; Cary Amos <CBAMOS@up.com>
**Subject:** Re: Eagle Pass Slots - Next Southbound Window

*** PROCEED WITH CAUTION - This email was sent from outside the company. ***

UP Team,

Please advise why BNSF is being limited to 01 slot when the Spofford times clearly indicate BNSF should have a minimum of 02 slots.

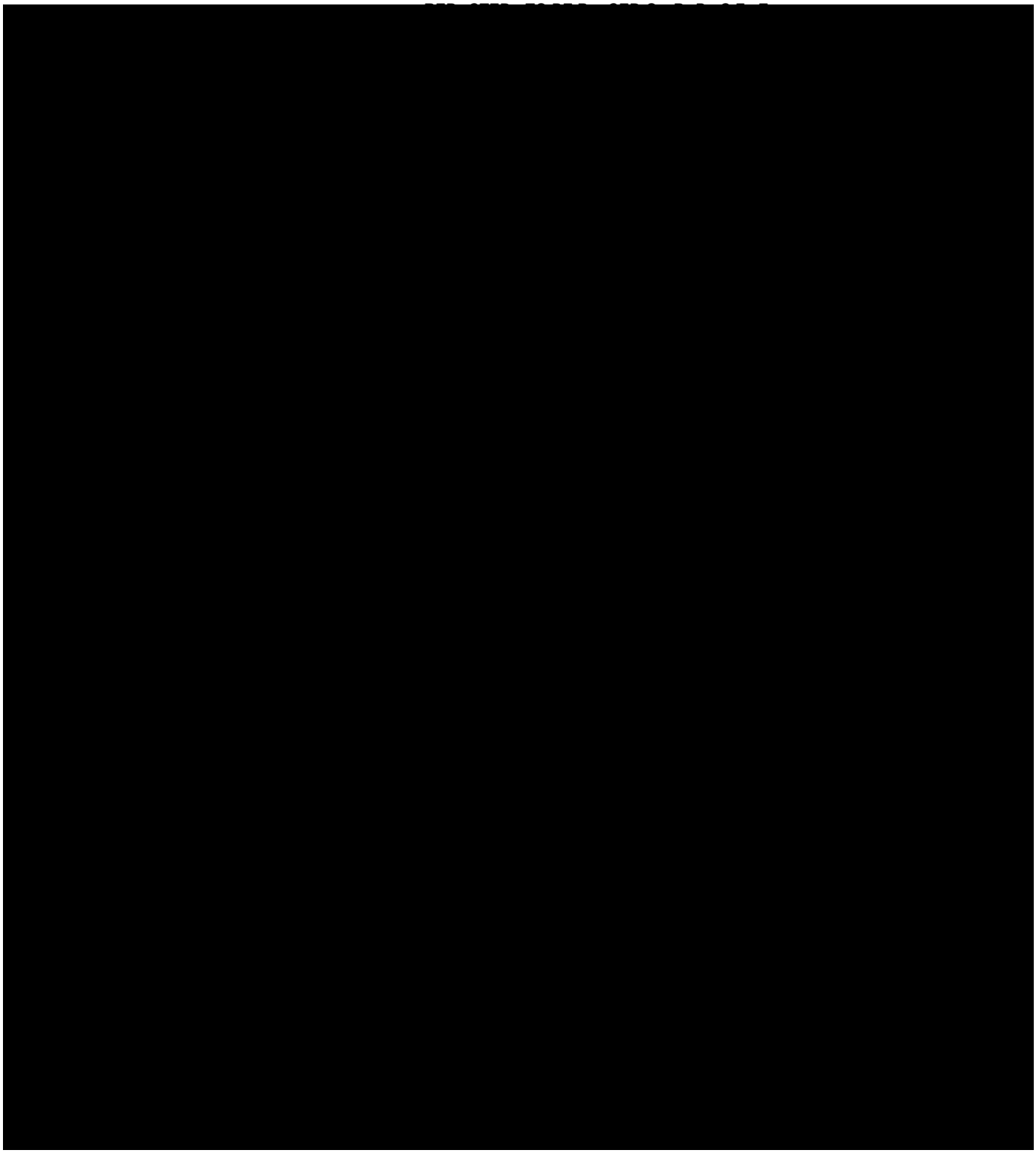
[redacted]

---

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Saturday, September 7, 2024 9:43:21 AM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <kdready@up.com>; Timothy Goetz <tegoetz@up.com>; Tyler Hans <tjhans@up.com>; Cary Amos <CBAMOS@up.com>
**Subject:** Re: Eagle Pass Slots - Next Southbound Window

Another example of inequitable handling at the bridge. Per Spofford times, slots should be 03 UP / 02 BNSF. BNSF is being limited

to 01 slot.



---

**From:** Stigall, Erica S
**Sent:** Thursday, September 5, 2024 6:13:55 PM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <kdready@up.com>; Timothy Goetz <tegoetz@up.com>; Tyler Hans

<[tjhans@up.com](mailto:tjhans@up.com)>; Cary Amos <[CBAMOS@up.com](mailto:CBAMOS@up.com)>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window

REDACTED - TO BE PLACED ON PUBLIC FILE

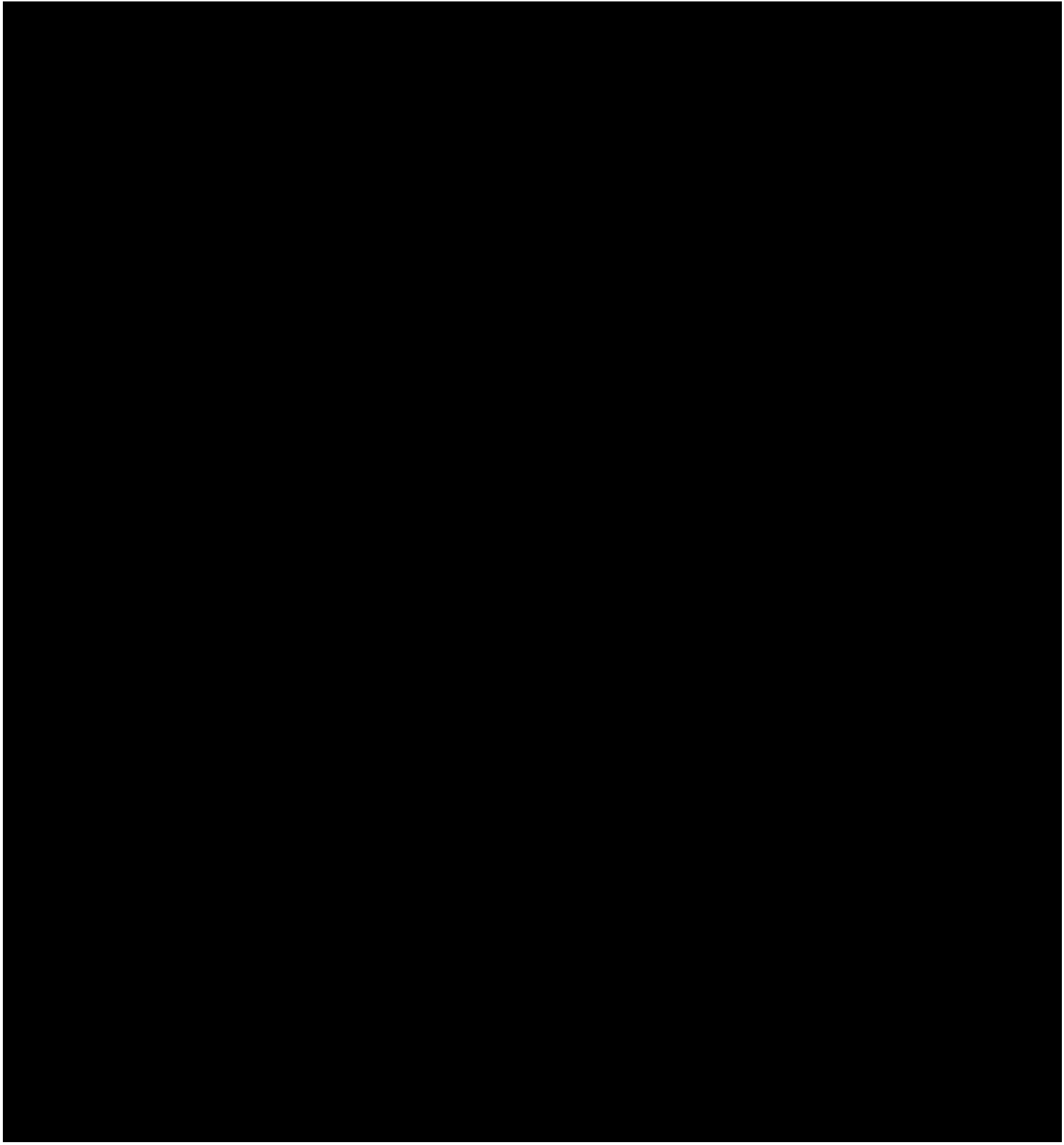
UP team,

Per the slot plan provided by UP at 1653, the slots for the next Southbound window are currently 04 UP/ 01 BNSF. Upon further review, it appears the slots should be 03 UP/ 02 BNSF. Please advise how the slots are being designated and confirm that BNSF will have 02 slots in the 0000-0600 window.

**Per Spofford Times and Priority traffic slotting, the slots should be 03 UP/ 02 BNSF**

1. MLFRS 05 (although no corresponding AEI time, understand this train runs daily)
2. ZYCEG 04 – Priority Automatic Slot
3. Z ALTEAP8 03/ZCWEGJ 04 – Priority Automatic Slot (Train is right behind the ZYCEG 04)
4. GSLF9H 29 Spofford time 1613 9/03 ***OR*** swap Spofford time with another UP train
5. GSNI2H 28 – Train is still at Amanda VALTEAP401A / ACWEGJ31 – Spofford time 1458 9/04
6. AMLEG 01 – Train is still at Johnstone
7. ANYEGR 31 – Train is still t/d at Spofford
8. AMLEG 31 – Train is still at Amistad

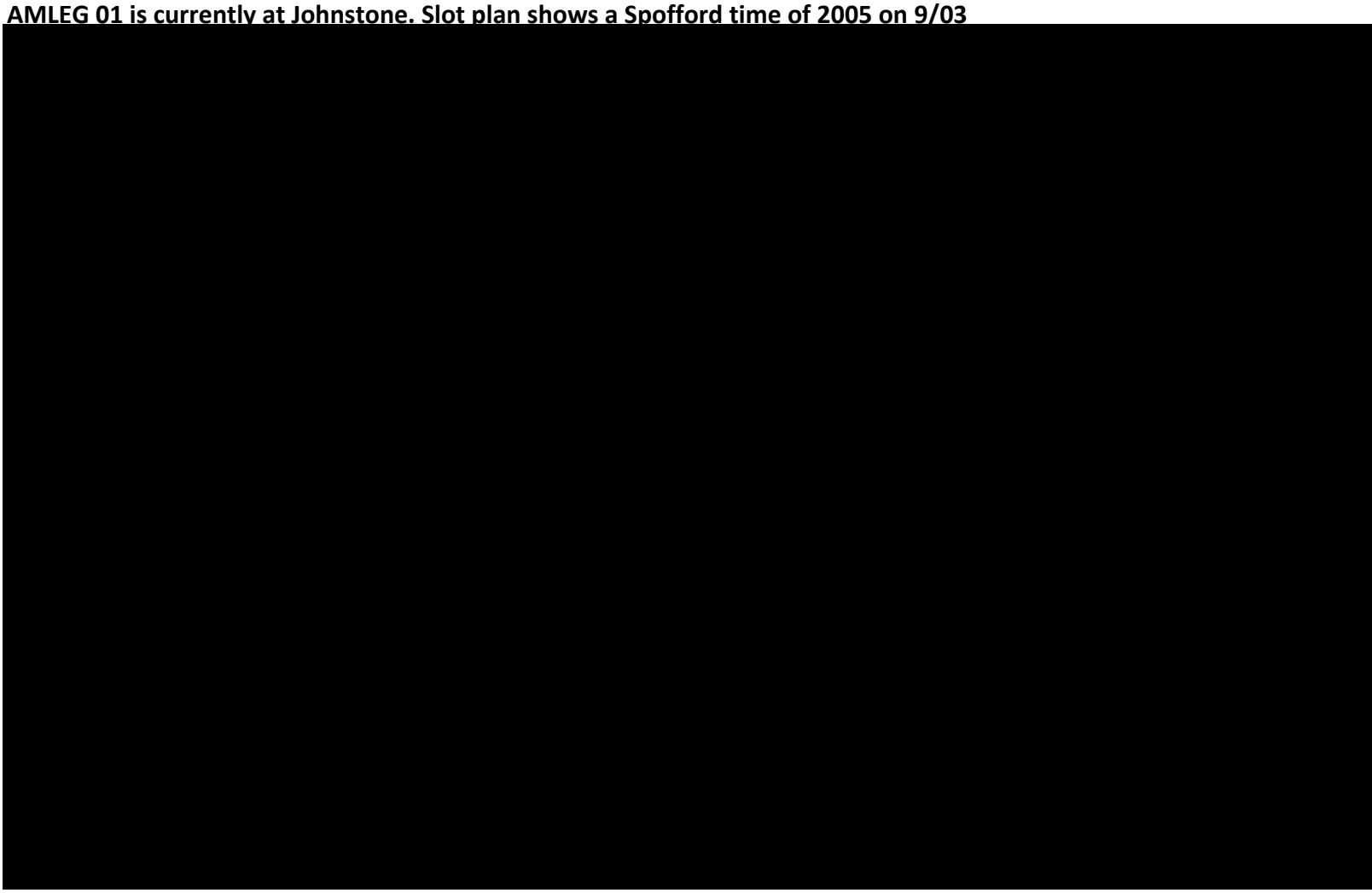
**UP Slot Plan Published at 1653**



**The GSNI2H 28 Spofford time 0221 on 9/02 . The train is still at Amanda.**



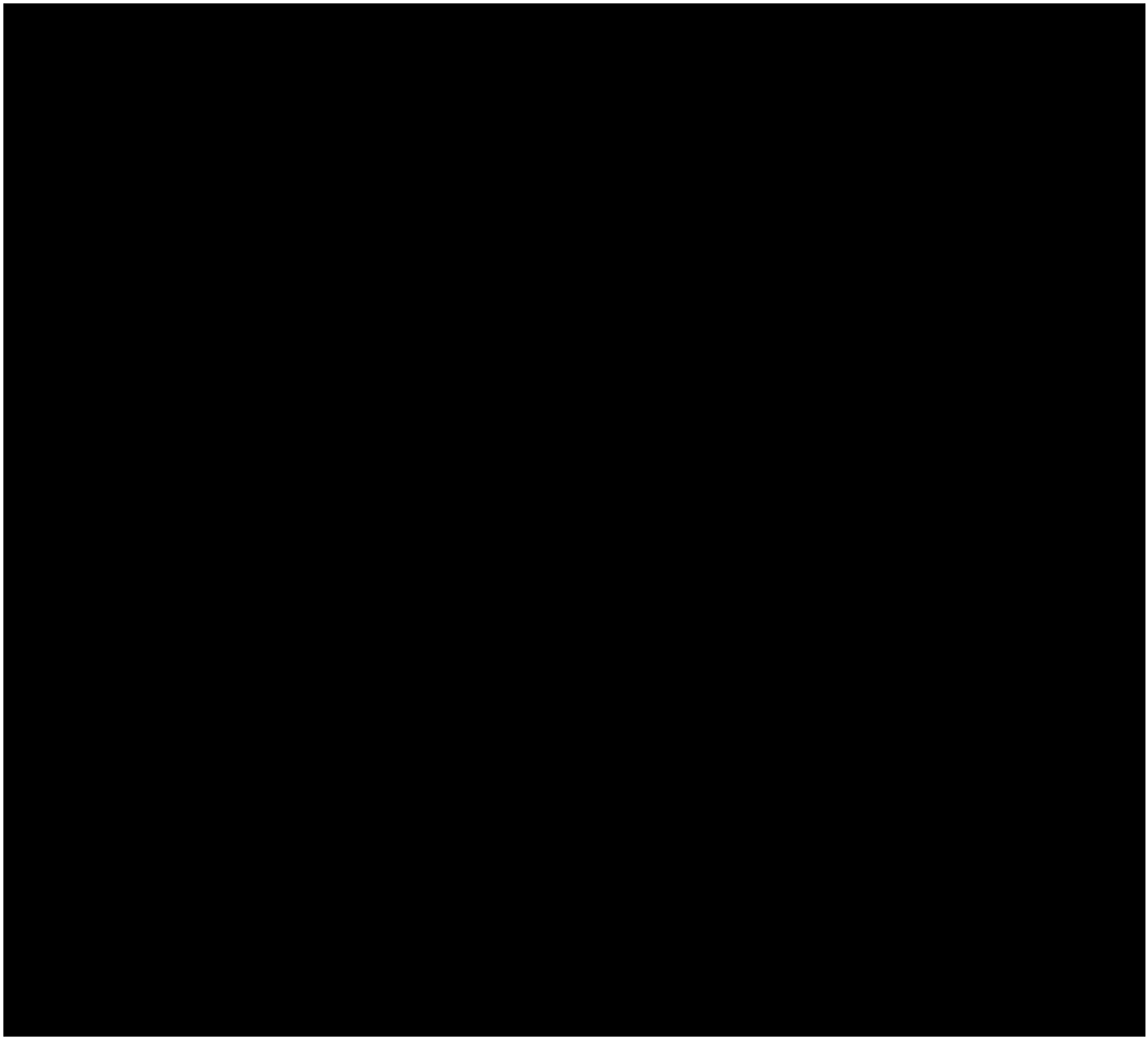
**AMLEG 01 is currently at Johnstone. Slot plan shows a Spofford time of 2005 on 9/03**



**ANYEGR 31 Spofford time shows 2316  on 9/03. T/D on the main, never went South at Spofford.**



**AMLEG 31 Spofford time shows 0532 on 9/02. Train still t/d at Amistad**



**From:** Stigall, Erica S
**Sent:** Wednesday, September 4, 2024 8:54 AM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <kdready@up.com>; Timothy Goetz <tegoetz@up.com>; Tyler Hans <tjhans@up.com>; Cary Amos <CBAMOS@up.com>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window
**Importance:** High

Mr. Blevins,

Please advise when we started running trains west of Spofford towards Pinto and counting that as the “Spofford time” for slots? These trains are physically t/d on the UP mainline and never entered the UP Eagle Pass sub, yet they’re being given times for slots? I’m sure we all prefer not to go back and forth about slots. All we’re asking here is for UP to follow the guidelines that UP created without attempting to work the system.

GSRK7G 29 is physical t/d at Pinot, yet has a Spofford time of 0349 9/03?



GSNI2H 28 t/d at Amanda yet has a Spofford time of 0221 09/03?



**From:** Thomas Blevins <TCBLEVIN@UP.COM>
**Sent:** Wednesday, September 4, 2024 8:29 AM
**To:** Stigall, Erica S <Erica.Stigall@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J

<Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <kdready@up.com>; Timothy Goetz <tegoetz@up.com>; Tyler Hans <tjhans@up.com>; Cary Amos <CBAMOS@up.com>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window

REDACTED - TO BE PLACED ON PUBLIC FILE

# EXTERNAL EMAIL

This “TENTATIVE PLAN” is based on Spofford arrivals
We will finalize our plans after we meet with FXE, as stated,,,,,,,,***BASED ON FXE ACCEPTANCE***. Which will more than likely change due to their issues in Torreon and will probably not take 4 loaded grains on 2nd window.
Will contact Daniel once our plans are finalized. Thanks

[redacted]

**Sent:** Wednesday, September 4, 2024 8:21 AM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Lance.Brewer@BNSF.com; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; kenny.theerman@bnsf.com; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; micah.hammond@bnsf.com; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <KDREADY@UP.COM>; Timothy Goetz <tegoetz@up.com>; Tyler Hans <tjhans@up.com>; Cary Amos <CBAMOS@up.com>
**Subject:** Re: Eagle Pass Slots - Next Southbound Window

*** PROCEED WITH CAUTION - This email was sent from outside the company. ***

Tom,

Please explain the rationale behind the 4 UP / 01 BNSF slots for the next Southbound window. I thought we agreed, per Spofford times, the slots should be 03 UP / 02 BNSF.

**From:** Thomas Blevins <TCBLEVIN@UP.COM>
**Sent:** Wednesday, September 4, 2024 8:15 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Stigall, Erica S <Erica.Stigall@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; Kevin Ready <kdready@up.com>; Timothy Goetz <tegoetz@up.com>; Tyler Hans <tjhans@up.com>; Cary Amos <CBAMOS@up.com>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window

# EXTERNAL EMAIL

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This is our tentative Southbound window plans for next 2 windows - Contingent on FXE accepting our trains. Thanks All,

1st window 4 UP 1 BNSF
2nd window 3 UP 2 BNSF



---

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Wednesday, September 4, 2024 7:25 AM
**To:** Lance.Brewer@BNSF.com; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; kenny.theerman@bnsf.com; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; micah.hammond@bnsf.com; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>
**Subject:** Re: Eagle Pass Slots - Next Southbound Window

* PROCEED WITH CAUTION. This email was sent from outside the company. *
Mr. Blevins has confirmed 03/02 for the next window.

Thank you.

---

**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Wednesday, September 4, 2024 7:23:25 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>
**Subject:** Re: Eagle Pass Slots - Next Southbound Window

Good Morning,

Please confirm BNSF will have 02 slots in the next Southbound window. The slot plan currently illustrates a 04 UP / 01 BNSF spilt. Per Spofford times, slots should be 03 UP / 02 BNSF. Please advise.

**BNSF Spofford Times:**

1. H TPLEAP101/2QCWEGJ01 – 09/02 1654
2. G SIPEAP322/GCWEGJ31 – 09/03 0656



---

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Tuesday, September 3, 2024 7:52 PM

**To:** Sundem, Chad <Chad.Sundem@BNSF.com>; Adrian Ibarra <AGIBARRA@up.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window

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Adrian,

As we now understand it all calls for both us and the UPRR are being suspended on trains heading to Eagle Pass until 1930 tomorrow. At what points of origin or entrance to this route and track segments are those calls being held?

*Lance R. Brewer*
*General Manager – Red River Division*




---

**From:** Sundem, Chad <Chad.Sundem@BNSF.com>
**Sent:** Tuesday, September 3, 2024 7:08 PM
**To:** Adrian Ibarra <AGIBARRA@up.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window

Thanks Adrian.

---

**From:** Adrian Ibarra <AGIBARRA@up.com>
**Sent:** Tuesday, September 3, 2024 7:02 PM
**To:** Stigall, Erica S <Erica.Stigall@BNSF.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window

**EXTERNAL EMAIL**

---

BN Team,

Next SB window will be a 3 UP /2 BN Split per Spofford Times

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**From:** Stigall, Erica S <Erica.Stigall@BNSF.com>
**Sent:** Tuesday, September 3, 2024 5:38 PM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Adrian Ibarra <AGIBARRA@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; HDC Network Supt <HDCNetworkSupt@up.com>; Steven Bybee <SLBYBEE@up.com>; Erin Batt <ENMCCABE@UP.COM>; David Hughes <DWHUGHES@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; kenny.theerman@bnsf.com; Johnson, Cale L <Cale.Johnson@BNSF.com>; Lance.Brewer@BNSF.com; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; micah.hammond@bnsf.com; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Sundem, Chad <Chad.Sundem@BNSF.com>; Clevenger, Ronald J <Ronald.Clevenger@BNSF.com>; Johnson, Sara L <Sara.Johnson@BNSF.com>
**Subject:** RE: Eagle Pass Slots - Next Southbound Window

*** PROCEED WITH CAUTION - This email was sent from outside the company. ***

UP Team,

Following up on this. Appears the slots for the next Southbound window should 03 UP & 02 BNSF. Please advise.

**1200-1800 WINDOW (Operating off cadence)**

1. Z ALTEAP802/2ZCWEGJ 02 – Priority – Automatic Slot
2. ZYGEG 01 – Priority – Automatic Slot
3. H EMPEAP4 29/2QCWEGJ29 – 8/31 2130
4. MEWEG 01 – 09/01 2226
5. MLFRS 02 – 09/01 1000 – ***No corresponding AEI time at Spofford***?

[redacted]

The GSRK7G 29 slotted during the 1200-1800 Southbound window is still tied down at Pinto: If the intended symbol was the GSLF9H 29 at Carl, the 1200-1800 slots remain 03 UP/ 02 BNSF as the Z trains get a slot in the first available window and the H EMPEAP/2QCWEGJ29 arrived Spofford ahead of the GSLF9H 29.

[redacted]

Per the UP slot plan published at 1253, the 0000-0600 split is currently 04 UP & 01 BNSF. This is also appears to be inaccurate. Based on Spofford times, the window should be as follows:

**0000-0600 WINDOW (Operating off cadence)**

1. MEWEG 02 – 09/03 0333

2. MNLEG 31 – 9/02 0501
3. H TPLEAP101/2QCWEGJ01 – 09/02 1654
4. G SIPEAP322/GCWEGJ31 – 09/03 0656
5. GSRK7G 29 ? – 9/03 1613

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**From:** Stigall, Erica S
**Sent:** Tuesday, September 3, 2024 4:03 PM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Adrian Ibarra <AGIBARRA@up.com>; Andrey A. Drozdov <aadrozdo@up.com>; HDC Network Supt <hdcnetworksupt@up.com>
**Cc:** Christian, Ty D <Ty.Christian@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Brezovar, Brian M <Brian.Brezovar@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>
**Subject:** Eagle Pass Slots - Next Southbound Window
**Importance:** High

UP Team,

Please confirm BNSF will have a minimum of 02 slots in the next Southbound window so the team can plan crews/stagging locations accordingly. FXE has confirmed they will take the trains.

Thank you.

**Erica Stigall | BNSF Railway | Director of Trackage Rights | 817-751-4607**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 17

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Sent:** Friday, August 31, 2018 7:01 PM
**To:** Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Cc:** Igoe, Matthew J <Matthew.Igoe@bnsf.com>; Farmer, Katie M <Katie.Farmer@bnsf.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>; White, Tyler <Tyler.White2@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Templeton, Olivia E <Olivia.Templeton@BNSF.com>; Norwood, Zachary B <Zachary.Norwood@BNSF.com>
**Subject:** FW: FW: Eagle Pass Slot Plan - 1330/29- updated

[redacted]

Sarah
817-352-2354
817-247-1422 cell

---

**From:** Bailiff, Sarah W
**Sent:** Friday, August 31, 2018 9:53 AM
**To:** 'David W. Hughes' <DWHUGHES@up.com>
**Subject:** RE: FW: Eagle Pass Slot Plan - 1330/29- updated

And?

S
817-352-2354

817-247-1422 cell

---

**From:** David W. Hughes [mailto:DWHUGHES@up.com]
**Sent:** Thursday, August 30, 2018 12:14 PM
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Subject:** Re: FW: Eagle Pass Slot Plan - 1330/29- updated

**EXTERNAL EMAIL**

Sorry, I was at a Dr. appointment when you reached out. to me. I went home instead of coming back to the office.

Meeting is scheduled for late this afternoon... Date changed to include Brent Starr who has replaced Kurt Zalar.... I will reach out when we get done....

-dwh

"Bailiff, Sarah W" ---08/29/2018 08:13:18 PM---This email originated from outside of the company. Please use discretion if opening attachments or

From: "Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com>
To: "David W. Hughes (DWHUGHES@up.com)" <DWHUGHES@up.com>
Date: 08/29/2018 08:13 PM
Subject: FW: Eagle Pass Slot Plan - 1330/29- updated

---

This email originated from outside of the company. Please use discretion if opening attachments or clicking on links.

David,

Called you and missed you earlier, so I'm leaving an email.

I'm following up on our conversation over the weekend. You had indicated you would look into what was going over the Eagle Pass gateway and get back to me. I had asked whether trains were still being allowed to line up at the High School Crossing so that they would be ready when the southbound window opens, since we had been given some indication from local operating personnel that we would not be allowed to stage at High School Crossing - at all. And then we've heard, we will not be able to stage at High School Crossing until after the start of the southbound window. In any event, I do not think either edict is appropriate. But the point is we have received mixed messages on this and believe we are entitled at the very least to some transparency and dialogue on what is going on there and why our trains are being directed to park and then be run around.

The message below went out to Messrs. McGavock and Starr this afternoon and has been circulated to our internal leadership. There is extreme concern over UP's erratic dispatching practices here and how to remedy the situation, and I ask again for your help in understanding what is going on and how we can best address these issues.

I look forward to hearing from you.

Sarah
817-352-2354
817-247-1422 cell

REDACTED - TO BE PLACED ON PUBLIC FILE

From: Thompson, Janssen
Sent: Wednesday, August 29, 2018 3:17 PM
To: 'Brian W. McGavock' <BWMCGAVOCK@UP.COM<mailto:BWMCGAVOCK@UP.COM>>; 'Brent Starr (BDSTARR@up.com<mailto:BDSTARR@up.com>)' <BDSTARR@up.com<mailto:BDSTARR@up.com>>
Cc: Lance Brewer (Lance.Brewer@BNSF.com<mailto:Lance.Brewer@BNSF.com>) <Lance.Brewer@BNSF.com<mailto:Lance.Brewer@BNSF.com>>; 'CAWILBOU@up.com' <CAWILBOU@up.com<mailto:CAWILBOU@up.com>>
Subject: Eagle Pass Slot Plan - 1330/29- updated

Brian/Brent,

Below is a brief recap of the Slot Plan from the 1300 call this afternoon….

Can you provide some additional insight on the slotting plans/protocols for Eagle Pass? I am confused after our conversations and the one our Local Ops Team had on Saturday….

Steven Bybee communicated that trains would no longer be lined-up at High School Crossing until the start of Southbound Windows and that we would have to park trains in Ryan's Ruin until the windows start.

Curious if this practice has changed? This morning BNSF Train was by Spofford at 0213 and had previously been communicated that it would most likely make the 0001-0600 Window; however we were told the train had to go into Ryan's and would not cross in this window. We asked to put it in line and were told no. Approximately 3 hrs later 3 UPRR trains were lined-up at High School Crossing at the end of the Southbound Window starting around 0600; now these trains are scheduled to go across ahead of BNSF Train plus they were allowed to line up on the Mainline at High School Crossing.

Additionally because we were not allowed to have the same access as UPRR on lining up trains at High School Crossing; we then had to park the G-RUFEAP at Carl; which in turn another UPRR train north of this one is going to come down and go across in 1201-1800 window. In short 2 BNSF trains are getting running around in this window and if we would have had the same access then we should have crossed 2 trains in this window.

Lastly understand that it was communicated on the last Slot Window that BNSF will only get 1 slot/window for the next 3 windows and it does not matter when our trains arrive, etc…. The bases was traffic is backed up coming into gateway and everyone has to hold trains…

Looking for some clarification on lining up trains at High School Crossing; are only BNSF Train(s) not going to be allowed to line-up between windows? Is UPRR changing the protocol on slots across through Eagle Pass; previously the order was based on passing at Spofford?

Janssen

1201 - 1800 Southbound 08/29th ( UPRR4 / BNSF 1)-
H TPLEAP1 27 - Works Cadet- Plan to call

0001 - 0600 Southbound 08/30th ( UPRR4 / BNSF 1)-
H TPLEAP1 28 - Planned call for 1430 out of SA

1201 - 1800 Southbound 08/30th ( UPRR4 / BNSF 1)-
G RUFEAP9 26A - Staged at Carl-

0001 - 0600 Southbound 08/31th ( UPRR 4 / BNSF 1)
G EDUEAP8 24 - AT Caldwell-

**

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**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 18

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**From:** McCord, R Cole <Russell.McCord@BNSF.com>
**Sent:** Wednesday, October 8, 2025 3:38 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Katie Novak <KNNOVAK@UP.COM>; David Hughes <DWHUGHES@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; dehinds@up.com
**Cc:** Morehouse, Craig <Craig.Morehouse@BNSF.com>; Andrey Drozdov <AADROZDO@UP.COM>; Steven Bybee <SLBYBEE@up.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Felan, Aldo <Aldo.Felan2@BNSF.com>; Mercado, Fernando <Fernando.Mercado@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>
**Subject:** RE: Eagle Pass Interchange Concerns
**Attach:** EAP SB Interchange.msg

---

Good afternoon –

Path forward, would ask we receive 2 BN slots per SB window next 3 windows to get current. Spofford arrivals will support.

Sunday into Monday for the bottleneck. Primary driver is the equity in slots during the 0001-0600 SB windows the last 5 days weighing 5 BN vs 20 UP slots, some of which Spofford arrivals support UP slot decisions and some that BN should have been given an additional slot.

Appreciate the oversight in obtaining the next 3 SB windows and slot needs.

Friday 3rd
- 0001 – 0600 (1 Slot / 1 train ready)
- 1201 – 1800 (0 Slots / 1 train ready train held for 24' – UPRR reason window closed early SB to get back on standard)

Saturday 4th
- 0001 – 0600 (1 slot / 2 train ready)
- 1201 – 1800 (1 slot / 2 trains ready)

Sunday 5th
- 0001 – 0600 (1 slot / 2 trains ready)
- 1201 – 1800 (1 slot / 3 trains trains)

Monday 6th
- 0001 – 0600 (1 slot / 3 trains ready)
- 1201 – 1800 (3 slots / 4 trains ready)

Tuesday 7th
- 0001 – 0600 (2 slots downgraded toward 1 slot in the evening / 3 trains ready - Spofford arrivals reflected 2 BN slots, denied per T Blevins email attached)
- 1201 – 1800 (2 slots / 3 trains ready)

Wednesday 8th

- 0001 – 0600 (1 slots / 3 trains ready – Spofford arrivals reflected only 1 BN slot and matched UP decision)
- 1201 – 1800 (2 slots / 4 trains ready)

***Cole McCord*** | Terminal Supt Central & West Texas | Russell.McCord@BNSF.com

---

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Wednesday, October 8, 2025 12:10 PM
**To:** Power, Olivia E <Olivia.Power@BNSF.com>; Thomas Blevins <TCBLEVIN@UP.COM>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Katie Novak <KNNOVAK@UP.COM>; David Hughes <DWHUGHES@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; dehinds@up.com
**Cc:** Morehouse, Craig <Craig.Morehouse@BNSF.com>; Andrey Drozdov <AADROZDO@UP.COM>; Steven Bybee <SLBYBEE@up.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>; Felan, Aldo <Aldo.Felan2@BNSF.com>; Mercado, Fernando <Fernando.Mercado@BNSF.com>; McCord, R Cole <Russell.McCord@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>
**Subject:** RE: Eagle Pass Interchange Concerns

Our local team I've added here should provide some information related to questions and claims below. Team, please engage as to handling over the last week.

Lance Brewer | General Manager - Red River Division



---

**From:** Power, Olivia E <Olivia.Power@BNSF.com>
**Sent:** Wednesday, October 8, 2025 12:05 PM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Katie Novak <KNNOVAK@UP.COM>; David Hughes <DWHUGHES@up.com>; Andrey Drozdov <AADROZDO@UP.COM>; dehinds@up.com
**Cc:** Morehouse, Craig <Craig.Morehouse@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Andrey Drozdov <AADROZDO@UP.COM>; Steven Bybee <SLBYBEE@up.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** RE: Eagle Pass Interchange Concerns

UP Team – What is UP's process for advancing a BNSF train to the Slot Track to position us for a southbound window? And, what has BNSF's utilization of the Slot Track been over the past month?

The Slot Track is part of the "Joint Trackage" and as such, BNSF must have equal utility of the track.

Please advise.
Olivia

---

**From:** Thomas Blevins <TCBLEVIN@UP.COM>
**Sent:** Wednesday, October 8, 2025 11:54 AM
**To:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Katie Novak <KNNOVAK@UP.COM>; David Hughes <DWHUGHES@up.com>; Andrey Drozdov <AADROZDO@UP.COM>
**Cc:** Morehouse, Craig <Craig.Morehouse@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Andrey Drozdov <AADROZDO@UP.COM>; Steven Bybee <SLBYBEE@up.com>
**Subject:** RE: Eagle Pass Interchange Concerns

# EXTERNAL EMAIL

Afternoon gents, I worked thru the weekend at Eagle Pass and was not notified of any issues from the BNSF. I did notice we were a little crew light to support BNSF movement for the interchange process.
JP reached out to me yesterday evening asking for an additional Southbound slot at which time I notified him that due to Spofford arrival times the window would be 04UP/01BN.
If we move trains faster North and South this may allow for additional slots each direction within standard window time. Has anyone reached out to the FXE from your end?

More than happy to work with the team to get the BN caught up based on our standards. Thank you in advance, TB

---

**From:** Steven Bybee <SLBYBEE@up.com>
**Sent:** Wednesday, October 8, 2025 10:55 AM
**To:** Thomas Blevins <TCBLEVIN@UP.COM>; kenny.theerman@bnsf.com; Katie Novak <KNNOVAK@UP.COM>; David Hughes <DWHUGHES@up.com>; Andrey Drozdov <AADROZDO@UP.COM>
**Cc:** Morehouse, Craig <Craig.Morehouse@BNSF.com>; Lance.Brewer@BNSF.com; Power, Olivia E <Olivia.Power@BNSF.com>
**Subject:** Re: Eagle Pass Interchange Concerns

Adding in local team, seeing the emails between them there is additional context on performance.

I will circle back with the service unit later today, currently traveling.

Get Outlook for iOS

---

**From:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>
**Sent:** Wednesday, October 8, 2025 11:34 AM
**To:** Steven Bybee <SLBYBEE@up.com>
**Cc:** Morehouse, Craig <Craig.Morehouse@BNSF.com>; Lance.Brewer@BNSF.com <Lance.Brewer@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>
**Subject:** Eagle Pass Interchange Concerns

*** PROCEED WITH CAUTION - This email was sent from outside the company. ***

Mr. Bybee,

I am reaching out and asking for some help at Eagle Pass to get interchange current. We are seeing variability going back to last Friday that has caused a lot of issues and back log of trains on BNSF recrew's etc..... We are seeing the deviation occur with the night interchange windows after the morning calls and slot plan committed too almost every day. The communication to try and resolve this has been unsuccessful at local level. We have lost 4-5 slots in last 5 days going southbound and 3 north - the congestion is affecting both north and southbound BNSF volume. FXE has now reached out stating they are seeing congestion on their railroad now because of the slot that we are getting.

When we lose slots, we are forced to yard trains southbound, so we don't impact the mainline siding meet/pass. We have not been allowed to use the slot track to position ourselves better and we are not getting a slot for our Z trains as they show up consistent with how it's been handled in the past.

We need some help today to try and get current our volume has not change, we are not getting parity with slots at the border that we need to stay current.

Please let me know if you have questions.

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SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 19

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# FILED UNDER SEAL

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SURFACE TRANSPORTATION BOARD

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

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

---

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

---

## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 20

**From:** Power, Olivia E <Olivia.Power@BNSF.com>
**Sent:** Friday, September 13, 2024 9:17 AM
**To:** Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** FW: Eagle Pass Calling plan 0600 / 13TH - UPDATE

REDACTED - TO BE PLACED ON PUBLIC FILE

---

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Friday, September 13, 2024 8:57 AM
**To:** David Hughes <DWHUGHES@up.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>
**Subject:** RE: Eagle Pass Calling plan 0600 / 13TH - UPDATE

Appreciate the prompt response David and the contextual detail provided. And rest assured, I am not yelling at you, just a bit weary of the same types of items we've tried to remedy for years. And my type would have been in all CAPS if I was. 😊

*Lance R. Brewer* **|** *General Manager - Red River Division*

---

**From:** David Hughes <DWHUGHES@up.com>
**Sent:** Friday, September 13, 2024 8:38 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>
**Subject:** RE: Eagle Pass Calling plan 0600 / 13TH - UPDATE

**EXTERNAL EMAIL**

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Lance,

It is good to hear from you. We used to bump into one another down in Spring; but I do not get down to Texas as much as I would like anymore. And you have not yelled at me in a while, so it is good to hear from you again.

*Why do we continue to see BNSF receiving 1 SB slot when we have trains verifiably by Spofford ahead of trains you are running across ahead?*
Lance, I do not know the answer to your question. A good while ago, I tried to listen into the border call, but the call was in Spanish, and I had no idea what was going on. I know that UP is very frustrated with FXE performance here in Omaha. However, I cannot speak informatively about local decisions. But I have followed up a couple of times discreetly with the UP team. Let me cover one example:

> I saw one communication about a UP train (sorry I did not keep the TrainID) being place in front of a BNSF train. So I asked about the train. I was told that track occupancy issues had caused the train to wait on the E/W main. When the AMTRAK passing became imminent, the train was moved west of the wye and into a siding. BNSF was about to be held on the main until the UP train could be pulled back down the other leg of the wye, but BNSF was short on crew time. So the BNSF train was allowed to proceed to Ryan Ruin with the understanding that the time the UP train passed the wye would be used instead of the reader time. However, when the data was presented, BNSF "forgot" about the deal that was cut locally.

Lance. I cannot vouch for what discussions are had locally. I cannot say whether UP was clear in explaining the

problem or whether there was an actual agreement locally or whether someone's silence was taken a concurrence. I cannot say whether dispatching should have placed the UP train in a siding east of the wye sooner. I cannot say whether BNSF or UP local management is being transparent with the issues to you or simply passing blame. UP managers complain to me about BNSF only seeing their problems. BNSF managers complain to me about UP not listening to their problems.

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But your question above is more fundamental. BNSF does not feel it is being treated fairly, and when BNSF attempts to put data to that concern, UP does what I just did above and say "well except….." Lance, I do realize my response is not satisfying. But I do believe the issues are more complex than a simple spreadsheet. UP is having to hold trains deep in our network because FXE performance issues so dissatisfying. I would assume BNSF is having to do the same thing. FXE seems to play the two norther carriers against one another to obscure their own shortcomings. And then when we could work together, we do not seem to communicate effectively locally.

So again, I cannot tell you why you are seeing what you are seeing. I have not been allowed to replace our Director of Joint Facilities in Ft Worth. That position was created to help monitor and resolve issues like these. I am doing what I can to be fair and open minded to both sides and I will continue to do what I can to help bridge communication between UP and BNSF where I can. But I am unable to monitor and deescalate tension like we have done in the past without a counterpart to Erica. If I can get that position replaced, we will certainly reengage as we have done in the past. The best I can do at this time is point BNSF and UP transportation teams back to each other to resolve these matters locally and escalate up the chain of command when that does not work.

-dwh

---

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Friday, September 13, 2024 7:19 AM
**To:** David Hughes <DWHUGHES@up.com>
**Cc:** Sundem, Chad <Chad.Sundem@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Lance.Brewer@BNSF.com; kenny.theerman@bnsf.com; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; erica.stigall@bnsf.com
**Subject:** FW: Eagle Pass Calling plan 0600 / 13TH - UPDATE

*** PROCEED WITH CAUTION - This email was sent from outside the company. ***

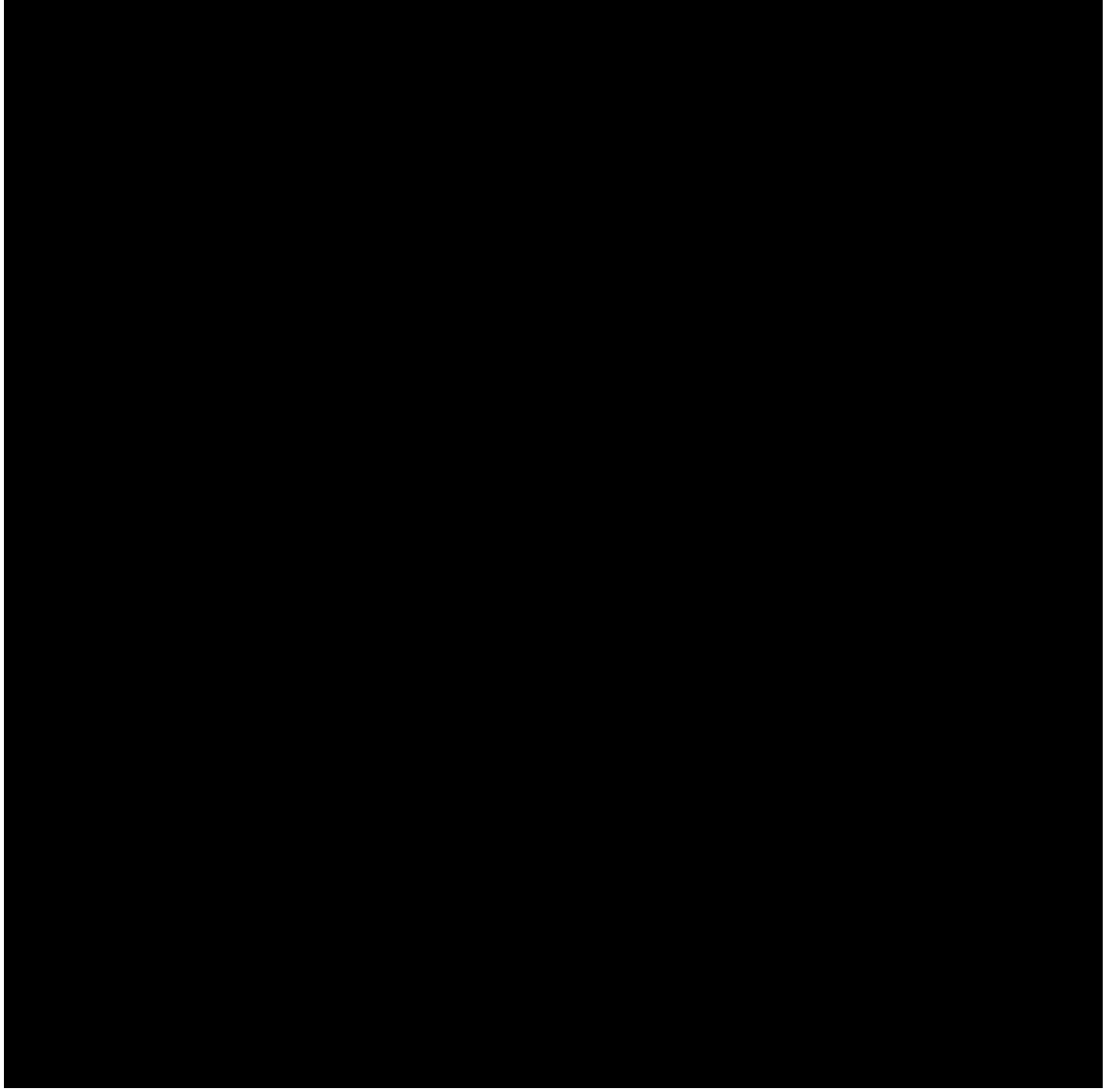
David,

Why do we continue to see BNSF receiving 1 SB slot when we have trains verifiably by Spofford ahead of trains you are running across ahead?

MNLEG10, AMLEG09, & your ZYCEG11 which hasn't even gotten to Spofford yet should not be running ahead of our GSVL3E03. That should be the 2nd slot for us.

And now you have cut us off from bring trains to Caldwell in the name of too many on the trackage. You are hindering us on both ends by not allowing us slots across the border, then using our train counts that can't run down to EAP to cut us off at Caldwell. This is blatant preference to UPRR trains and operation.

Your local team continues to just do whatever they want and claim they are doing it in the name of fluidity, however we are far from fluid, and are consistently the carrier not receiving parity every window. This has to stop.



*Lance R. Brewer* **|** *General Manager - Red River Division*

**From:** Duchemin, Matthew K <Matthew.Duchemin@BNSF.com>
**Sent:** Friday, September 13, 2024 7:07 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** RE: Eagle Pass Calling plan 0600 / 13TH - UPDATE

Confirmed 01 slot in the current SB window based on Spofford arrival time. UPRR has cut us off at Caldwell. 02 trains in EAP, 03 trains between San Antonio and Eagle Pass and 01 train South of Caldwell. As soon as arrival tracks open in Eagle Pass, we will pick

up what is holding on the Galveston Sub. We will request to advance the HTPLEAP113 to Cadet to stage there since it has work.

REDACTED - TO BE PLACED ON PUBLIC FILE

Matthew K. Duchemin | Terminal Trainmaster | San Antonio, TX | 210-419-1418

---

**From:** Duchemin, Matthew K <Matthew.Duchemin@BNSF.com>
**Sent:** Friday, September 13, 2024 6:34 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** RE: Eagle Pass Calling plan 0600 / 13TH - UPDATE

**UPDATE** – Just informed we are only getting 01 slot in the ongoing SB window, Aldo is working with local UP ops now in attempt to have a 2nd slot South. Please keep 06 hour spacing on ALL EAP trains out of Temple. We are going to see bunching on trains into EAP and will end up having to tie trains down online.

First SB train on the bridge, BNSF will have 02 slots v 03 for UPRR. Projecting 02 NB pulls from FXE in the morning window, no information provided for the evening window.



[redacted]

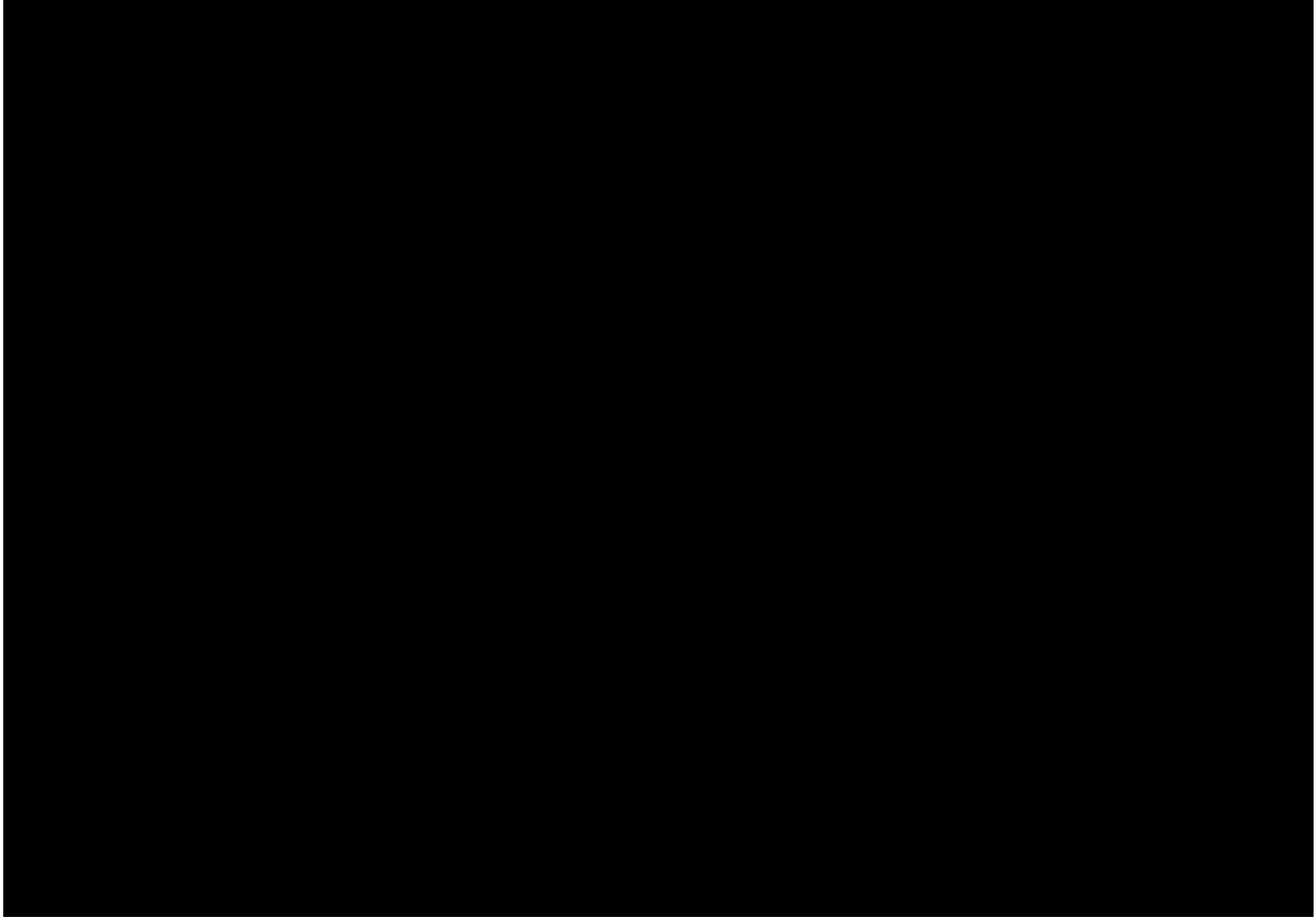
200 – 88 cars HTPLEAP108 / 2 B/O ON E/E
201 – CLEAR (FXE PULL – Intermodal)
298 – 69 cars VALTEAP410
300 – CLEAR (HEMPEAP405 lands)
301 – 100 cars HEAPCDT113 (3 CBP HOLDS)
302 – CLEAR (HTPLEAP111 lands)

Matthew K. Duchemin | Terminal Trainmaster | San Antonio, TX | 210-419-1418

**From:** Duchemin, Matthew K
**Sent:** Thursday, September 12, 2024 5:58 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** Eagle Pass Calling plan 0600 / 12TH - UPDATE

Interchange with the FXE remained sluggish overnight, the flow is just now beginning to go South and we have 02 confirmed slots. We pulled 02 from FXE in the previous NB window and have been informed we will only have 01 NB pull in the upcoming window. The 02 trains holding at Cadet will be called out this morning.

[redacted]



200 – 87 cars HTPLEAP108
201 – 89 cars HEAPCDT112
298 – CLEAR
300 – 80 cars VALTEAP409
301 – 110 cars GBWKEAP903 (Will interchange during this SB window)
302 – 113 cars XEAPABA912

611 – 79 cars VALTEAP407 (Moving to interchange)

Matthew K. Duchemin | Terminal Trainmaster | San Antonio, TX | 210-419-1418

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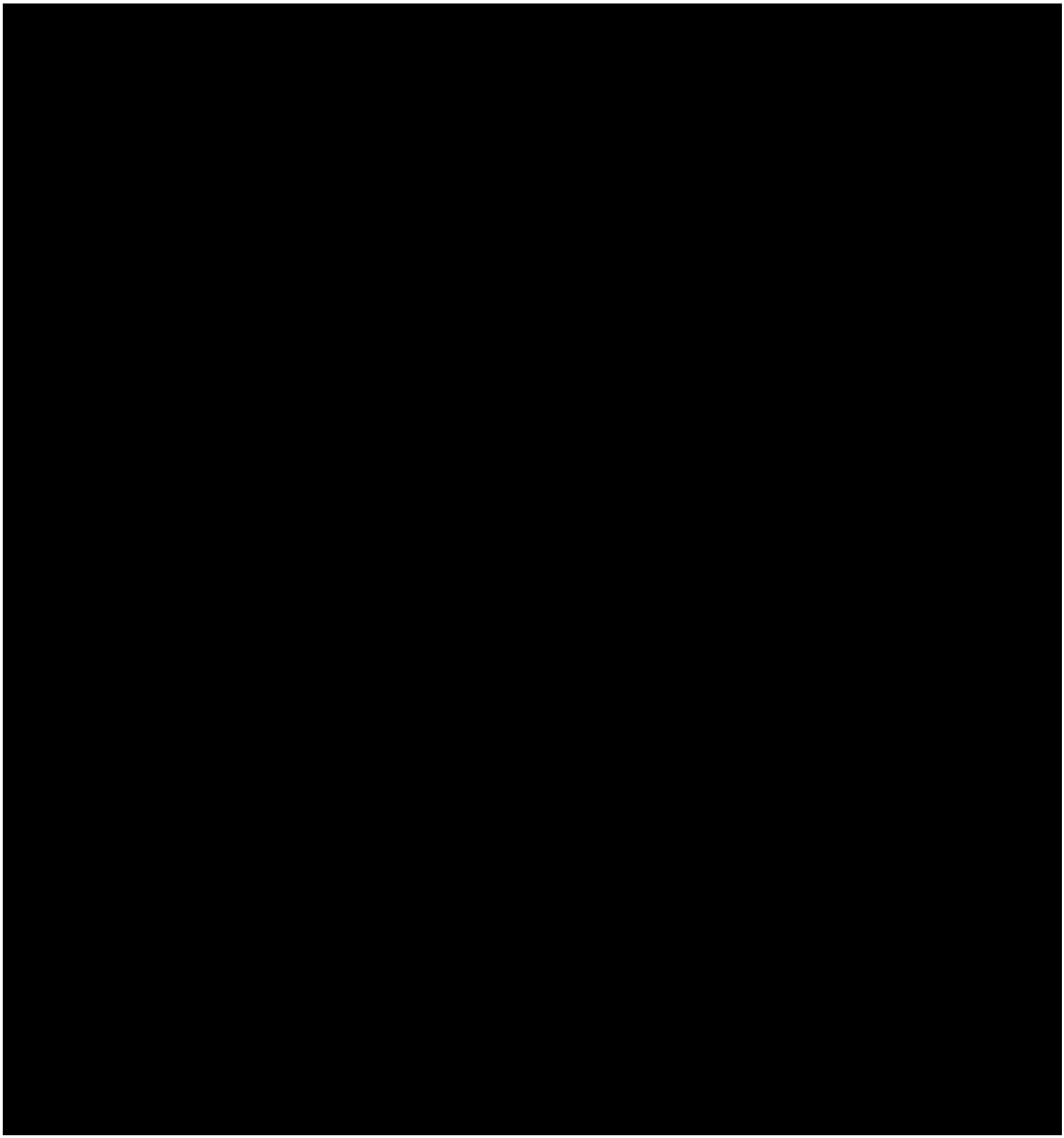
**From:** Duchemin, Matthew K <Matthew.Duchemin@BNSF.com>
**Sent:** Wednesday, September 11, 2024 11:01 AM
**To:** Leodoro, John P <John.Leodoro2@BNSF.com>; OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>; OPR DL BOPSEE <OPRDLBOPSEE@BNSF.com>; OPR DL Chief DS Spring <OPRDLChiefDSSpring@bnsf.com>; OPR DL NOC GDT <OPRDLNOCGDT@BNSF.com>; OPR DL Temple <OPRDLTemple@BNSF.com>
**Cc:** Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Hammond, Micah S <Micah.Hammond@BNSF.com>; Mcbride, Jason K <Jason.McBride@bnsf.com>; Christian, Ty D <Ty.Christian@BNSF.com>; Stigall, Erica S <Erica.Stigall@BNSF.com>; Mendoza, Daniel <Daniel.Mendoza@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** Eagle Pass Calling plan 1100 / 11TH - UPDATE

We've been told we will only have 01 slot in the upcoming SB window instead of 02, with a 04 UPRR v 01 BNSF split, going off Spofford times. At this time we do not have any trains tied down on CENTEX trackage rights, however we will be at capacity in Eagle Pass and Cadet. BNSF will receive 01 train in the ongoing NB window, the Z EAPCHI814A (7607').

Natural spacing in traffic coming from Temple at the moment, please keep 6 hour spacing on all EAP train following the next call out of Temple.

There is a call at 1115 between all three Railroads, more to come.

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Matthew K. Duchemin | Terminal Trainmaster | San Antonio, TX | 210-419-1418

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 21

REDACTED - TO BE PLACED ON PUBLIC FILE

# FILED UNDER SEAL

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 22

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>
**Sent:** Thursday, June 13, 2019 9:19 AM
**To:** Brenten D. Starr <BDSTARR@up.com>; Kenneth A. Gomez <KAGOMEZ@up.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** RE: UPRR dispatching and handling of BNSF

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Okay. I would be much more interested in getting some explanation of how we got here and why these trains were not handled in the first place dating back 2-3 days ago.

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

**From:** Brenten D. Starr [mailto:BDSTARR@up.com]
**Sent:** Thursday, June 13, 2019 9:17 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Kenneth A. Gomez <KAGOMEZ@up.com>
**Cc:** Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** Re: UPRR dispatching and handling of BNSF

**EXTERNAL EMAIL**

Lance,

I will go through these trains with the team this am. I am in Spring and will work through we will give you an update this afternoon.

**Brent D. Starr**
General Superintendent - Southern Region
Harriman Dispatching Center | 850 Jones Street | Omaha, NE 68102
Tel: 402.636.7235| Cell: 402.718.7480 |Email: bdstarr@up.com




From: "Brewer, Lance R" <Lance.Brewer@BNSF.com>
To: "Brenten D. Starr (BDSTARR@up.com)" <BDSTARR@up.com>
Cc: "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>
Date: 06/13/2019 09:10 AM
Subject: UPRR dispatching and handling of BNSF

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*** STOP. EXTERNAL EMAIL. USE CAUTION ***

Brent,

Comprehensive list of trains that haven't been handled by the UPRR despite us having had crews on all of these for the last 12 hours, and some for the last 3-12 hour shifts:

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19 trains total. All trains but 5 have crews on them or 1st shift jobs arriving to them this morning. No more extra crews, relief orders, or free jobs to handle remaining 5 until other trains move. Until this is cleaned up to my satisfaction I have asked Gwen to not allow any additional trains into the Houston complex.

Houston Complex & Joint Line - 10 trains

H TEAAMY1 12 @ Pierce
H MEMHOU1 10 @ Winfield Rd.
H BNTHOU1 12 @ Pierce
Y HOU2851 12 @ Katy Neck
Y HOU2811 11 @ Dallerup
Y HOU2811 12 @ East Yard Englewood
Y HOU2831 12 @ Market St.
Y DYT2881 12 @ Mesa XO
Y HOU2851 11 @ Hatchery
H LALHOU1 11 @ Ames
H DYTCSX1 12 @ China

Mykawa Sub - 5 trains

G WRKPTN9 04 @ HD 3
U GFDPLU0 21 @ Pearland
G HASLDH9 05 @ Mykawa
Y GAT2842 12 @ HD 6
Y GAT2841 12 @ MP 27

Houston Sub - 4 trains

H TEAPTX1 12 @ Casey
H TEAEGW1 11 @ Orr
H TEAEGW1 12 @ Casey
H TEADYT1 12 @ Simmons

Lance Brewer | BNSF Railway Co. [cid:image001.png@01CD3590.2E0B55F0] | General Director - Red River Division | * lance.brewer@bnsf.com<mailto:lance.brewer@bnsf.com> | * (713) 847-3189

[attachment "image001.png" deleted by Brenten D. Starr/UPC]

**

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**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 23

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>
**Sent:** Thursday, June 6, 2019 7:47 AM
**To:** Brenten D. Starr (BDSTARR@up.com)
**Subject:** FW: Internal Alert YHOU285105T ForeignLineDelay - DYT pa ge

---

4 crews on two trains, moved 6 miles. But Eric wants to get sideways like I have no reason to be upset with not moving trains.

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

**From:** Theerman, Kenny J
**Sent:** Thursday, June 6, 2019 7:44 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** RE: Internal Alert YHOU285105T ForeignLineDelay - DYT pa ge

G WELLDH9-22 has moved from Mykawa to Cullen with two crews, 186 is backing it up this morning to finish it off
G COKLDH9-28 is on its second crew still on the Mykawa waiting to go in behind this train

**From:** Brewer, Lance R
**Sent:** Thursday, June 06, 2019 7:17 AM
**To:** Brenten D. Starr (BDSTARR@up.com) <BDSTARR@up.com>; Kenneth A. Gomez <KAGOMEZ@up.com>; Mike Hopkins (JMHOPKIN@UP.COM) <JMHOPKIN@UP.COM>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Wooley, Tim <Tim.Wooley@BNSF.com>; Taylor, Robin B <Robin.Taylor@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** FW: Internal Alert YHOU285105T ForeignLineDelay - DYT pa ge

Absolutely nothing has changed in the way we are handled in the complex after our sit down. What is it going to take for us to move traffic without having to ask for every signal?

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

**From:** Baker, Jill L
**Sent:** Wednesday, June 5, 2019 11:25 PM
**To:** OPR DL Houston Trainmaster <OPRDLHoustonTrainmaster@BNSF.com>; Taylor, Robin B <Robin.Taylor@BNSF.com>; Wooley, Tim <Tim.Wooley@BNSF.com>; Eric M. Fleming <EMFLEMIN@UP.COM>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Hale, Darren T <Darren.Hale@BNSF.com>; Harris, Jon E <Jon.Harris@BNSF.com>; Molyneaux, Ross E <Ross.Molyneaux@BNSF.com>
**Subject:** RE: Internal Alert YHOU285105T ForeignLineDelay - DYT page

Y HOU285 still has not left Strang yard – has 68 cars and is NOT an IH train.

**From:** Baker, Jill L
**Sent:** Wednesday, June 5, 2019 8:51 PM
**To:** OPR DL Houston Trainmaster <OPRDLHoustonTrainmaster@BNSF.com>; Taylor, Robin B <Robin.Taylor@BNSF.com>; Wooley, Tim <Tim.Wooley@BNSF.com>; Eric M. Fleming <EMFLEMIN@UP.COM>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Hale, Darren T

<Darren.Hale@BNSF.com>; Harris, Jon E <Jon.Harris@BNSF.com>; Molyneaux, Ross E <Ross.Molyneaux@BNSF.com>
**Subject:** FW: Internal Alert YHOU285105T ForeignLineDelay - DYT page

Strang states as soon as the MSRHO gets out of the way – cut is ready to go – we do not have anyone to protect 3rd shift – will need to push train out of Strang to Dayton.

---

**From:** Baker, Jill L
**Sent:** Wednesday, June 5, 2019 8:45 PM
**To:** OPR DL Dayton Trainmasters <OPRDLDaytonTrainmasters@BNSF.com>; OPR DL Houston Trainmaster <OPRDLHoustonTrainmaster@BNSF.com>; OPR DL Spring Joint Desk <OPRDLSpringJointDesk@BNSF.com>; OPR DL Spring Terminal Managers <OPRDLSpringTerminalManagers@BNSF.com>; Baker, Jill L <Leslee.Baker@BNSF.com>; LNS.SIDOL@TEXT.BNSF.COM
**Cc:** Baker, Jill L <Leslee.Baker@BNSF.com>
**Subject:** Internal Alert YHOU285105T ForeignLineDelay - DYT

Add Comment to Alert 548275

**Comments:**

**Alert Time:**
06/05/2019 20:39 CT
**TSP Departure/Goal:**
06/05/2019 23:59
**Train:**
YHOU285105T
**Description:**
Y HOU185 released to DS at1453, pulled from South Yard at 1750, Y HOU285 relieved crew at Booth Yard. Trains that moved infront of arrival are as follows: PT243J, LHU14, LHG58, MSRHO. There is not a 380 to protect train, will need to expedite in and get train to Dayton - HOS 0357
**Recovery Plan:**
move train to Dayton
**Interchange Carrier Abbreviation:**
up
**Business Unit:**
Manifest Merchandise
**Interline Service Agreement Date Time:**
06/05/2019 23:00
**Deliver or Receive:**
Deliver
**Planned Slot Time:**
**Estimated DD/RR Time:**
**Offered:**

**Offered Date Time:**

**Reason:**

Congestion

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 24

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>
**Sent:** Saturday, June 8, 2019 9:56 AM
**To:** Brian W. McGavock <bwmcgavock@up.com>; Brenten D. Starr <bdstarr@up.com>; Norwood, Zachary B <Zachary.Norwood@BNSF.com>
**Subject:** Re: BNSF South Yard - Not taking anymore trains as of 2249-07.

---

We sat all day with cuts that didn't move with EGW terminators holding in complex all day. I have burned every extra board crew I have while 6 different crews were called to move trains in complex yesterday and didn't turn a wheel. Called Brent all day, called Tim all day. Got no where. This is why we are where we are and it will take all week to recover. Nothing in the complex is being prioritized as discussed in workshop.

Lance Brewer
GDT Red River Division - BNSF

---

**From:** Brian W. McGavock <bwmcgavock@up.com>
**Sent:** Saturday, June 8, 2019 12:16 AM
**To:** Brenten D. Starr; Brewer, Lance R; Norwood, Zachary B
**Subject:** Fwd: BNSF South Yard - Not taking anymore trains as of 2249-07.

**EXTERNAL EMAIL**

Sent from my iPhone

Begin forwarded message:

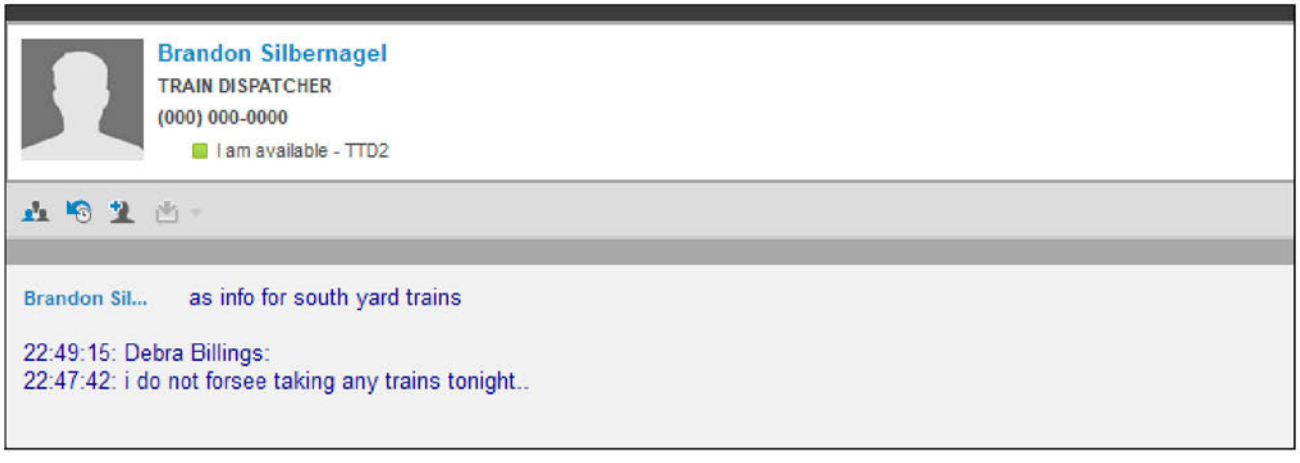
**From:** "David R. Lyons" <drlyons@up.com>
**Date:** June 7, 2019 at 10:59:38 PM CDT
**To:** tlivingston@kcsouthern.com, jrampy@kcsouthern.com, mmontalvo@kcsouthern.com, alewis@kcsouthern.com, bshofner@kcsouthern.com, rbartoskewitz@kcsouthern.com, struitt@KCSouthern.com, nnance@KCSouthern.com, rhilario@kcsouthern.com, "harry Littlejohn" <HLittlejohn@KCSouthern.com>, "Richard W. Minnis Jr" <RWMINNIS@up.com>, "Angela M. Whitlock" <AMWHITLO@UP.COM>, "Gregory Riojas" <GRIOJAS@UP.COM>, James.Papillion@BNSF.com, James.Hays@BNSF.com, "Temicka M. Collett" <TMCOLLETT@UP.COM>, "David R. Lyons" <drlyons@up.com>, david.lyons@BNSF.com, "Orson D. Robinson" <ODROBINS@up.com>, "Troy L. Cox" <TLCOX@UP.COM>, "Wilton M. Lopez" <WMLOPEZ@up.com>, "Lakishia Batson" <LBATSON1@up.com>, "Cedric O. Bryant" <COBRYANT@UP.COM>, "Mark J. Latham" <MJLATHAM@UP.COM>, "De'Ederick O. Hamilton" <DOHAMILT@UP.COM>, "Eric M. Fleming" <EMFLEMIN@UP.COM>, "Kenneth A. Gomez" <KAGOMEZ@up.com>, "Brian W. McGavock" <BWMCGAVOCK@UP.COM>, "Chad A. Wilbourn" <Q2hhZCBBLiBXaWxib3Vybi9VUENAVVA=@lnt.noninternet.sub>, Wesley.Thompson@BNSF.com, Lance.Brewer@BNSF.com, Gerrad.Walley@BNSF.com, Gwendolyn.Wadkins@BNSF.com, Robin.Taylor@BNSF.com, DTS@ptra.com, JNorwood@ptra.com, DHimel@ptra.com, Stephen.Fry@BNSF.com, "Jaime J. Martinez" <JJMARTIN@UP.COM>, "Brian E. Gorton" <BEGORTON@up.com>, "Casey K. Clark" <CKCLARK@UP.COM>, ericdhoward@up.com, "Tara L. Hogan" <TLHOGAN@UP.COM>, Robert.Boemio@BNSF.com, Micheal.Dover@BNSF.com, "Phillip L. Arnold" <PLARNOLD@UP.COM>, "Cerwin T. Fleming" <ctflemin@up.com>, "Richard F. Tidwell" <RFTIDWEL@up.com>, "Michele Caver" <MCAVER1@up.com>, "Anthony D. Eshalomi" <adeshalo@up.com>, Adam.Curry2@BNSF.com, "Cliff L. Bowman" <CLBOWMAN@up.com>, "Sachin S. Palani" <SSPALANI@up.com>, "Scott B. Palmatary" <sbpalmat@up.com>, "Preston R. Lawless" <PRLAWLES@UP.COM>, "Jose Garcia" <jgarcia03@up.com>, "Kenneth W. Stuart" <KWSTUART@up.com>, "John M. Hopkins" <JMHOPKIN@UP.COM>, "Kevin R. Boyd" <KRBOYD@up.com>, "Matthew F. Lyons" <MFLYONS@UP.COM>, "Jason B. Jones" <JBJONES1@up.com>, "Kevin D. Ready" <KDREADY@UP.COM>, "Rhonda D. Gipson" <RDGIPSON@up.com>, "Jeff W. Moore" <JWMOORE@up.com>, "Timothy L. Wooley" <TIMWOOLEY@UP.COM>, Zachary.Norwood@BNSF.com, "Greg D. Workman" <GDWORKMA@up.com>, "Jacob M. Gilsdorf" <JMGILSDO@UP.COM>, darren.Hale@BNSF.com, "Kurt L. Meyer" <KLMEYER@UP.COM>, "Anthony A. Ault" <aaault@up.com>, "Lizabeth S. Brubeck" <lsbrubeck@up.com>, flange@ptra.com, Brian.Hauber@BNSF.com, "Sara E. Rogers"

<serogers@up.com>, "Christopher Tuhanowski" <ctuhano@up.com>, "Aswad B. Gardner" <ABGARDNE@UP.COM>, "Becky C. Zorn" <bczorn@up.com>, "Kenneth G. Mcdonald" <KGMCDONA@UP.COM>, "Rodney A. Mace" <RAMACE@up.com>, "Chris Hinojosa" <CHINOJOS@UP.COM>, "Larry R. Bell" <lrbell@up.com>, "Alexzandria M. Talamantez" <amtalama@up.com>, "Brenten D. Starr" <BDSTARR@up.com>, "Raymond E. Peeler" <REPEELER@up.com>, "Brandon L. King" <blking@up.com>, "Brandon E. Filer" <BEFILER@UP.COM>, "Michael A. Azzarello" <maazzare@up.com>, "ruth Becker" <RBecker@KCSouthern.com>, matthew.Garland@bnsf.com, "Glen I. Ivy" <GIIVY@UP.COM>, "Mark C. Miner" <MCMINER@up.com>, "Brad A. Moore" <bamoore@up.com>, "Jason D. Perry" <jdperry@up.com>, "Rohan Moharir" <rmohari@up.com>, "Thomas C. Walters" <tcwalter@up.com>, "beaumont Team" <Beaumont_Team@UP.COM>, "opr DL lafayette" <OPRDLLafayette@BNSF.com>, "opr DL beaumont Trainmasters" <OPR_DL_Beaumont_Trainmasters@BNSF.com>, "opr DL spring Joint Desk" <OPRDLSpringJointDesk@BNSF.com>, "opr DL spring terminal Managers" <OPRDLSpringTerminalManagers@BNSF.com>, "Hunt Cary" <huntcary@up.com>

**Subject: BNSF South Yard - Not taking anymore trains as of 2249-07.**

As of 2249, BNSF South yard is Refusing to take any more inbounds. Message from TD2 dispatcher.

Trains Affected on Houston Sub.
Y DYT2881 07 - HOS 0349 - YDYNSJ 07 - currently at Fauna - Will end up DOL Mesa?
H LALHOU1 06 - HOS 0730 - QIJNSJ 06 - currently at Dayton - Will have to end up DOL Crosby? Fauna?




Respectfully,

David R. Lyons
UPRR & BNSF Joint Line Corridor
Union Pacific Railroad - Spring, TX
(281) 350-7231

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

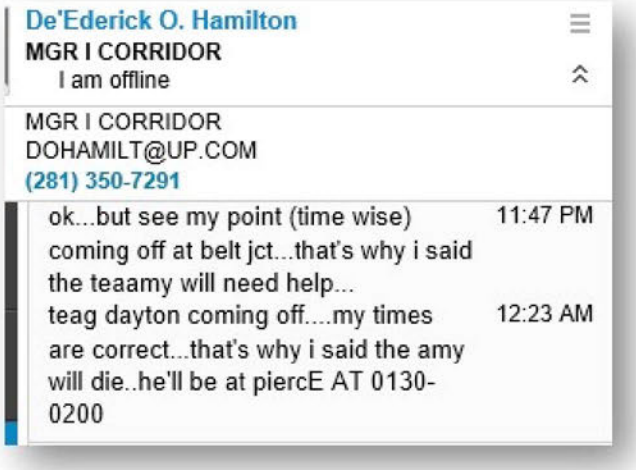
## EXHIBIT 25

REDACTED - TO BE PLACED ON PUBLIC FILE

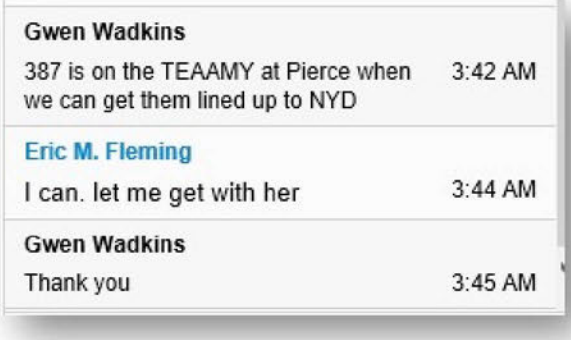
**From:** Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>
**Sent:** Thursday, May 9, 2019 9:01 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Timothy L. Wooley <TIMWOOLEY@UP.COM>
**Cc:** Brenten D. Starr <BDSTARR@up.com>; Kenneth A. Gomez <KAGOMEZ@up.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>
**Subject:** RE: Houston Terminal Y symbols

---

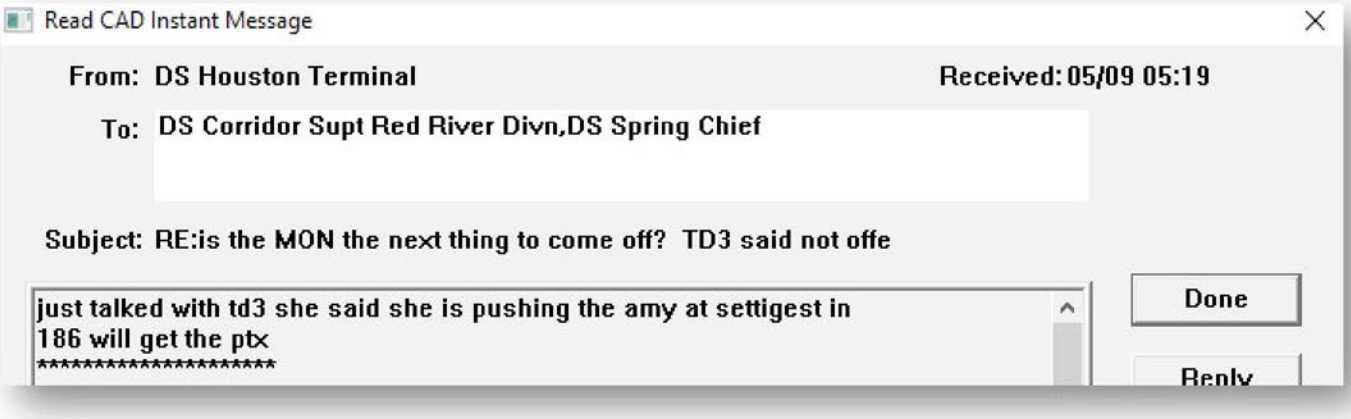
After talking to De' and Eric, requesting another relief crew for the TEAAMY to get it in – we arranged having HOU387 pick up at Pierce and take into NYD, then rebound on OB.




Train came off and crew swapped out – was told it was going in. At 0340 SYD TM sent message to let me know the train hadn't moved yet so sent message to Eric in writing and walked over to see what the issue was. He said he already told DS to move it so it would go in.




A little after 5, PTRA called me asking where the AMY and 387 crew was. (thought it was already in) - I scanned my screens and could not find the train so I walked back over to see where train was. Eric told me it was at Settegast holding for UP to wye power and run a 9000k by so crossings weren't blocked. While I was over there I asked about the coal at Belt Jct to come off and was told it wasn't offered – went to Houston terminal desk to ask why and he was on radio so came back to desk to send cad where again info received was train at Settegast.




From the evening of the 7th until morning of the 9th I continually threw crews with multiple conversations only to result in one delay or another. This is RR101 – should not be this hard.

---

**From:** Brewer, Lance R
**Sent:** Thursday, May 9, 2019 8:31 AM
**To:** Timothy L. Wooley <TIMWOOLEY@UP.COM>; Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>
**Cc:** Brenten D. Starr <BDSTARR@up.com>; Kenneth A. Gomez <KAGOMEZ@up.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** RE: Houston Terminal Y symbols

Gwen, you lived it last night, what happened?

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

---

**From:** Timothy L. Wooley [mailto:TIMWOOLEY@UP.COM]
**Sent:** Thursday, May 9, 2019 8:29 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Cc:** Brenten D. Starr <BDSTARR@up.com>; Kenneth A. Gomez <KAGOMEZ@up.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>
**Subject:** RE: Houston Terminal Y symbols

EXTERNAL EMAIL

By looking at all the CAD OS Points on the train it did not yard at Settegast.
I took it's normal route from Belt Jct. to the PTRA North Yard.

Tim Wooley
Joint Director
O: 281-350-7228
C: 832-482-8959

"Brewer, Lance R" ---05/09/2019 08:18:34 AM---*** STOP. EXTERNAL EMAIL. USE CAUTION ***

From: "Brewer, Lance R" <Lance.Brewer@BNSF.com>
To: "Brenten D. Starr" <BDSTARR@up.com>, "Kenneth A. Gomez" <KAGOMEZ@up.com>, "Timothy L. Wooley" <TIMWOOLEY@UP.COM>
Cc: "Thompson, Janssen" <Wesley.Thompson@BNSF.com>

Date: 05/09/2019 08:18 AM
Subject: RE: Houston Terminal Y symbols

---

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

I'd also like to know why our TEAAMY train last night was lined into Settegast and put away?

*Lance Brewer* | **BNSF Railway Co.** | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

**From:** Brenten D. Starr [mailto:BDSTARR@up.com]
**Sent:** Thursday, May 9, 2019 8:15 AM
**To:** Kenneth A. Gomez <KAGOMEZ@up.com>; Timothy L. Wooley <TIMWOOLEY@UP.COM>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** Fw: Houston Terminal Y symbols

EXTERNAL
EMAIL

What are the plans to move the trains Lance is concerned about?

Also what do we need to adjust to keep them current once we get this cleaned up?

**Brent D. Starr**
General Superintendent - Southern Region
Harriman Dispatching Center | 850 Jones Street | Omaha, NE 68102
Tel: 402.636.7235| Cell: 402.718.7480 |Email: bdstarr@up.com

BUILDING AMERICA®

----- Forwarded by Brenten D. Starr/UPC on 05/09/2019 08:13 AM -----

From: "Brewer, Lance R" <Lance.Brewer@BNSF.com>
To: "Brenten D. Starr (BDSTARR@up.com)" <BDSTARR@up.com>
Date: 05/09/2019 08:12 AM
Subject: FW: Houston Terminal Y symbols

---

*** STOP. EXTERNAL EMAIL. USE CAUTION ***

7 of yesterday's trains still hanging out in the complex.

Lance Brewer | BNSF Railway Co. [cid:image001.png@01CD3590.2E0B55F0] | General Director - Red River Division | * lance.brewer@bnsf.com<mailto:lance.brewer@bnsf.com> | * (713) 847-3189

From: Molyneaux, Ross E

REDACTED - TO BE PLACED ON PUBLIC FILE

Sent: Thursday, May 9, 2019 8:03 AM
To: Brewer, Lance R <Lance.Brewer@BNSF.com>; Wadkins, Gwen <Gwendolyn.Wadkins@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Baker, Jill L <Leslee.Baker@BNSF.com>; Hale, Darren T <Darren.Hale@BNSF.com>; Taylor, Robin B <Robin.Taylor@BNSF.com>; Wooley, Tim <Tim.Wooley@BNSF.com>; Davis, Tyler A <Tyler.Davis2@BNSF.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Curry, Adam B <Adam.Curry2@BNSF.com>
Subject: Houston Terminal Y symbols

Y-HOU3121-08 - on the extra Y-HOU1804-09 cut in the old yard - air testing the cut - will be relieved by the Y-HOU1801-09 to take to EGW - UP has agreed to take this cut and the TEAEGW
Y-HOU3131-08 - shoving Total BP cars from the old yard to the East belt to relieve yard congestion with BP running at reduced capacity
Y-HOU3241-08 - on the Y-HOU2851-08 - currently being delayed by the UP due to the EWSR being prioritized ahead of this move from ST016 to the Katy neck. Elevated to Kenny Gomez who stated the EWSR would be clear of their location at 0715 and they were still blocked at 0740. Will most likely die on HOS - train has IH and will require security
Y-HOU3871-08 - delivered the TEAAMY and has lights to double up to bring the 387 pull back - will be protected by the Y-HOU9021-09
Y-HOU3861-08 - on the H-CDTHOU1-03 - train will yard once the Y-HOU185 departs on the 281 cut that is built for Dayton (52 plastic cars that arrived on the Y-GAT2841-08 this morning)
Y-HOU9091-08 - on the Y-HOU1824-09 - crew is ready to depart with 41 cars for Casey
Y-HOU9101-08 - on the H-PTNTUL8-08 - (HOS 1158)

Y-HOU1801-09 - will relieve the Y-HOU3121-08 for the 180 extra cut
Y-HOU1871-09 - will take their cut that is air tested and the crew is adding the power to depart.
Y-HOU1861-09 - go to the H-TEAPTX1-08 at Casey
Y-HOU1851-09 - taking the 281 cut of 52 plastic cars to Dayton
Y-HOU9031-09 - will get the X-PTNFAN9-09 - on duty at 0757
Y-HOU9041-09 - will get the Y-DYT2881-08 at Dawes
Y-HOU9021-09 - will protect the Y-HOU3871-08

Arrivals and Departures
Y-HOU1801-09 - train out and then the Y-HOU2881-08 in
Y-HOU1851-09 on the 281 cut gets out and the H-CDTHOU1-03A comes in

Ross Molyneaux| BNSF Railway Houston, TX | Assistant Terminal Superintendent | * Ross.Molyneaux@BNSF.com|<mailto:Ross.Molyneaux@BNSF.com%7C> * 817-867-2206

**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 26

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Thursday, May 9, 2019 5:05 PM
**To:** Thompson, Janssen <Wesley.Thompson@BNSF.com>; Duncan, Paul B <Paul.Duncan@BNSF.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** RE: Request Review of Dispatching Protocol in Houston - May 8

---

Further update on moves we had remaining this morning from yesterday, those struck through are the only trains that have been handled to present, the remainder are still hanging out and have yet to complete moves.

~~Y-HOU3121-08 – on the extra Y-HOU1804-09 cut in the old yard – air testing the cut – will be relieved by the Y-HOU1801-09 to take to EGW – UP has agreed to take this cut and the TEAEGW~~
~~Y-HOU3131-08 – shoving Total BP cars from the old yard to the East belt to relieve yard congestion with BP running at reduced capacity~~
Y-HOU3241-08 – on the Y-HOU2851-08 – currently being delayed by the UP due to the EWSR being prioritized ahead of this move from ST016 to the Katy neck. Elevated to Kenny Gomez who stated the EWSR would be clear of their location at 0715 and they were still blocked at 0740. Died on HOS – train has IH and will require security
~~Y-HOU3871-08 – delivered the TEAAMY and has lights to double up to bring the 387 pull back – will be protected by the Y-HOU9021-09~~
~~Y-HOU3861-08 – on the H-CDTHOU1-03~~
Y-HOU9091-08 – on the Y-HOU1824-09 – crew not yet to Casey (4th crew)
Y-HOU9101-08 – on the H-PTNTUL8-08 – (Dead relief being called)

Y-HOU1871-09 – Not yet to PTRA
~~Y-HOU1861-09 – go to the H-TEAPTX1-08 at Casey~~
Y-HOU1851-09 – taking the 281 cut of 52 plastic cars to Dayton – not in yet
Y-HOU9031-09 – will get the X-PTNFAN9-09 – on duty at 0757 – not moved
Y-HOU9041-09 – will get the Y-DYT2881-08 at Dawes (UPRR crew on board not moving)

So as you can see we have made not quite half of the progress we needed to today. It has gotten to the point that between SOYD personnel, my SDC team, myself, or Janssen are having to interject and ask/pry for every signal that these trains get. There is virtually no attention being paid to these trains unless we start raising questions and escalate the issue above dispatchers and corridor managers.

On two occasions last night Gwen had to get downright insistent with the UP here in the SDC and take signals from their trains onto the Mykawa before they would even listen to what she was asking for. In one interaction between her and the joint corridor manager Tomeka Collett UPRR she was basically told that enough of her questions had been answered and that Tomeka was done answering her and to go away. Another Senior Corridor Manager by the name of Kendrick, when told by Gwen how one of our trains had been sitting for hours while UP trains continued to run by, simply stated to her, "I don't care".

Although we were assured weeks ago by McGavock and Starr that work events with UP trains at yards around Houston were being curtailed due to all of the congestion and gridlock, they are indeed still going on at multiple locations. Just yesterday there was a 12k' UP train hanging back in the terminal for hours due to work events being done at Lloyd Yard.

I have had a couple of conversations today with Brent Starr about all of these issues and other dating back to last week when some of the same egregious handling was taking place. I of course got the feedback that they should not be handling us this way, it was something they'd work on, and next week when we're all in the SDC we'll get it fixed. I expressed to him that nowhere on our railroad where they run do they have to beg and plead at this level of engagement to get signals and run trains, and that it was completely unacceptable to run this complex this way. He

stated he agreed, but nothing more on resolution. Regarding the comments from the joint corridor manager to Gwen last night, this is not the first issue we've had with Tomeka, and I have asked Brent Starr to remove her immediately from this position. He assured me he would and is working on getting that done. It was just a week ago that he and I had a similar conversation about her and her treatment of BNSF trains and leaders.

I am concerned that this "next week" mentality is going to be yet another instance in which they presume we will all just talk and air out issues in the confines of the joint meeting as is always done with no real behavior change on their part. That will not be enough if Haley and team expect that to be acceptable conversation around the matter. It needs to be behind closed doors amongst leaders who can do something about it and specific details outlined as to what will change, how, and when.

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

---

**From:** Thompson, Janssen
**Sent:** Wednesday, May 8, 2019 10:02 PM
**To:** Duncan, Paul B <Paul.Duncan@BNSF.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** Fwd: Request Review of Dispatching Protocol in Houston - May 8

Below is recap of the challenges we faced today in the Houston Complex.

Not sure if this is the best approach; however we are still struggling daily with getting appropriate handling from UP on BNSF trains through Houston Complex. In short it is not unusual that we have to escalate almost every train departure out of South Yard; before we get any handling...

Additionally hearing multiple comments that UPRR Terminal Team is having their Terminal Directors Call the UP Corridor Managers or Dispatchers directly to facilitate their train departures. This appears to be putting higher level pressure on getting priority for UPRR trains. Believe this is a similar approach the UPRR took several years ago which led us to putting on the Terminal Managers in the SDC so we would have a voice and a presences in front of the UPRR.... I do not want to see us have to take this approach again; however very concerned with how UPRR is basically not dispatching as outlined in the various agreements.

We will continue to document the delays we are seeing....

Paul understand you are having a meeting with Tom and Cindy next week at the SDC; hopefully this provides you with some specific examples of the handling we are getting on a frequent basis.

Janssen Thompson - iPad

---

**From:** Thompson, Janssen <wesley.thompson@bnsf.com>
**Sent:** Wednesday, May 8, 2019 9:45 PM
**To:** Brent Starr

REDACTED - TO BE PLACED ON PUBLIC FILE

**Cc:** Brewer, Lance R; Norwood, Zachary B

**Subject:** Request Review of Dispatching Protocol in Houston - May 8

Brent,

I am requesting that we do a replay and review on the train movements through the Houston Complex for May 8.

Here are some details regarding BNSF Trains;

No Transfer Job made it to its destination today on 1st Shift; BNSF is putting 2nd crews on every train; these are 1-way transfers...

Yard Transfers:

HOU185 - South Yard to Strang; built and departed South Yard this morning; train was still holding at Undreswood Crossing at 2000; BNSF placing HOU285 crew on train; after deliver will pull 85+ cars.

HOU187 - South Yard to PTRA - train was parked this afternoon at Dollar Up; (2 days in a row)

CYS182 - Casey Yard to South Yard - as of 2000 train is still not allowed out of Belt Jct since 0730 this morning; due to TEAPTN and SNAPTN ahead....

HOU180 - Englewood to South Yard I/C - crew was transported to Englewood; train was built at approx 1030; air-test completed and ready to depart at approx 1145; dispatcher lined out at approx 1730; train made it to 1 board; just outside South Yard and train had to be recrewed.

Additional Trains:

SNAPTN - Unit train for PTRA - required 2 crews to deliver it to PTRA from Casey

TEAPTX - [redacted] 3rd Crew is on then train since yesterday; train was still holding at Casey as of 1945 this evening; crew was on train today for over 12 hrs and was not given a route to PTRA; understand train should be departing shortly and PTRA is going to protect the late arrival to keep from shutting down [redacted] on the PTRA.

PTNEAP - BNSF put outbound crew on train at approximately 0030 at the PTRA; train had to be recrewed in the Houston Complex at approx 1230 this afternoon

DPKAUN - PTRA told by UP Corridor Manager that train could not depart due to volume in the Houston Complex; this delayed arrival of Unit Train for Deer Park; train now being released for 0100 departure.

Recognize both RRs had a tough May 7 with rainfall and flooding events which hampered some of the operations coming into and out of Houston Complex; however this does not explain the above delays since these routes were not affected by the flooding events.

Lastly; over the last several days starting to see several UPRR trains staging on the East and West Belt; these train appear to be going toward the Palestine Sub; hearing that various work events at Lloyd Yard are causing back ups onto the East

and West Belt; can you verify this?

If you have any questions please contact Lance; since I will be out of the office tomorrow.

Thanks,

Janssen Thompson - iPad

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SURFACE TRANSPORTATION BOARD

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

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

---

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

---

## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 27

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brenten D. Starr <BDSTARR@up.com>
**Sent:** Saturday, January 19, 2019 7:46 AM
**To:** John M. Hopkins <JMHOPKIN@UP.COM>; Timothy L. Wooley <TIMWOOLEY@UP.COM>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Kenneth A. Gomez <KAGOMEZ@up.com>
**Subject:** Fw: 2200 South Yard Transfer Update

---

**EXTERNAL EMAIL**

The situation below are issue that we need to be escalating when they are happening so we can fix the issues real time.

Mike do a deep dive on why we did not move the train when crew was ready.

**Brent D. Starr**
General Superintendent - Southern Region
Harriman Dispatching Center | 850 Jones Street | Omaha, NE 68102
Tel: 402.636.7235| Cell: 402.718.7480 |Email: bdstarr@up.com




----- Forwarded by Brenten D. Starr/UPC on 01/19/2019 07:44 AM -----

From: "Brewer, Lance R" <Lance.Brewer@BNSF.com>
To: "Martin, David J" <David.Martin@BNSF.com>, "Baker, Jill L" <Leslee.Baker@BNSF.com>, "Boemio, Robert P" <Robert.Boemio@BNSF.com>, "Harris, Jon E" <Jon.Harris@BNSF.com>, "Davis, Tyler A" <Tyler.Davis2@BNSF.com>, OPR DL Spring Joint Desk <OPRDLSpringJointDesk@BNSF.com>, "Wooley, Tim" <Tim.Wooley@BNSF.com>, "Brenten D. Starr (BDSTARR@up.com)" <BDSTARR@up.com>
Cc: "Thompson, Janssen" <Wesley.Thompson@BNSF.com>
Date: 01/18/2019 10:46 PM
Subject: RE: 2200 South Yard Transfer Update

---

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Understand. It is unfortunate that we have these two trains that started with crews on duty before 0800 this morning, and they are having to wait on a train called at noon today able to make destination with one crew before expiring.

*Lance Brewer*|BNSF Railway Co. |General Director • Red River Division| lance.brewer@bnsf.com| (713) 847-3189

**From:** Martin, David J
**Sent:** Friday, January 18, 2019 10:32 PM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Baker, Jill L <Leslee.Baker@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>; Harris, Jon E <Jon.Harris@BNSF.com>; Davis, Tyler A <Tyler.Davis2@BNSF.com>; OPR DL Spring Joint Desk <OPRDLSpringJointDesk@BNSF.com>; Wooley, Tim <Tim.Wooley@BNSF.com>; Brenten D. Starr (BDSTARR@up.com) <BDSTARR@up.com>
**Subject:** RE: 2200 South Yard Transfer Update

Yes sir HOU180 has been waiting for a route out of Englewood to SOYD, I•ve reached out UP SR that we have been waiting for train and to bring it. UP is bring the MAGHO off MyKawa currently at East belt running short on hours (HOS 0001) and they are also single tracking at Market St. The HOU187 has been waiting for traffic going into NOYD the YGP60, LRNRNJ, MPBPT, LHO70 as well as the MAGHO currently at East yard. UP SR has assured me via telephone that after the MAGHO goes in they will bring me the HOU180

and the HOU187 will go into NOYD

**From:** Brewer, Lance R
**Sent:** Friday, January 18, 2019 10:16 PM
**To:** Martin, David J <David.Martin@BNSF.com>; Baker, Jill L <Leslee.Baker@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>; Harris, Jon E <Jon.Harris@BNSF.com>; Davis, Tyler A <Tyler.Davis2@BNSF.com>; OPR DL Spring Joint Desk <OPRDLSpringJointDesk@BNSF.com>; Wooley, Tim <Tim.Wooley@BNSF.com>; Brenten D. Starr (BDSTARR@up.com) <BDSTARR@up.com>
**Subject:** RE: 2200 South Yard Transfer Update

Questions below.

*Lance Brewer*|**BNSF Railway Co.** |General Director  Red River Division| lance.brewer@bnsf.com| (713) 847-3189

**From:** Martin, David J
**Sent:** Friday, January 18, 2019 9:55 PM
**To:** Baker, Jill L <Leslee.Baker@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>; Harris, Jon E <Jon.Harris@BNSF.com>; Davis, Tyler A <Tyler.Davis2@BNSF.com>
**Subject:** 2200 South Yard Transfer Update

- ~~**YHOU281-17**- YHOU186 arrived train 1445, advanced to Fauna 1515, holding for QIJNSJ, RMTME, MAVEW, GKRMSJ, QVPAQ, RIBMN  arrived DAYTTX 1732~~
- **Y HOU180-18**  Announced to South Yard at 1720, HOU211 protecting blocked by LRNRNJ  last commentary references 1720  what have they been waiting for the last 4 40
- **Y HOU187-18**  Departed South Yard at 1830  currently holding at Lawndale for YGP60 to clear, has lights to DLRUP at 1830 waiting for LRNRNJ lined into NOYD.  last commentary references 1830  what have they been waiting for the last 3 30
- **Y HOU2851 17**- Lined up to Crosby at 1830- HOU280 protecting
- **YHOU281**-18- 34 cars  Arrived Market at 1830 behind the YGP60, ENYPCM and LRNRNJ
- **YHOU283**-18- Crew at Pasadena 90 cars, crew delivered the H TEAPTX1 17 to Pasadena as 1st move and using the power off PTX for pull from Pasadena  Announced to UP DS at 1730  Holding for HOU289, MPBSR, YBS80 to clear
- **YHOU289**-18  Light Power to Pasadena 77 cars back- Lined up to Pasadena JCT at 1930, lined up to TRW 30 at 2145
- **YHOU285-18**  Crew at Strang, will depart with 50 cars- Departed Strang at 1930 lined up to Pasadena Jct waiting for the MSRSP to clear
- **TEADYT-18** - at Belt Jct.  YHOU286 protecting  been holding for lights since 1830  have spoken with Tim Wooley and he has agreed to bring off  has the TEAAMY hos 0130 stuck behind and route blocked for H HOUTUL8 18 (OD 1600)-Lined up to Fauna at 2015 waiting for a route to Dayton
- **Y DYT2881 18**- Departed Dayton at 2030, lined up to Hatchery following MAVEW
- **YHOU384-19**  Spotted car department working tracks now.

Thanks.

*Lance Brewer*|**BNSF Railway Co.** |General Director  Red River Division| lance.brewer@bnsf.com| (713) 847-3189

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

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

---

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

---

## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 28

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brenten D. Starr <BDSTARR@up.com>
**Sent:** Monday, May 13, 2019 10:34 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** Fw: Request Review of Dispatching Protocol in Houston - May 8

---

**EXTERNAL EMAIL**

sorry for the delay.

**Brent D. Starr**
General Superintendent - Southern Region
Harriman Dispatching Center | 850 Jones Street | Omaha, NE 68102
Tel: 402.636.7235| Cell: 402.718.7480 |Email: bdstarr@up.com

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----- Forwarded by Brenten D. Starr/UPC on 05/13/2019 10:33 AM -----

From: Kenneth A. Gomez/UPC
To: Brenten D. Starr/UPC@UP
Date: 05/10/2019 02:19 PM
Subject: Fw: Request Review of Dispatching Protocol in Houston - May 8

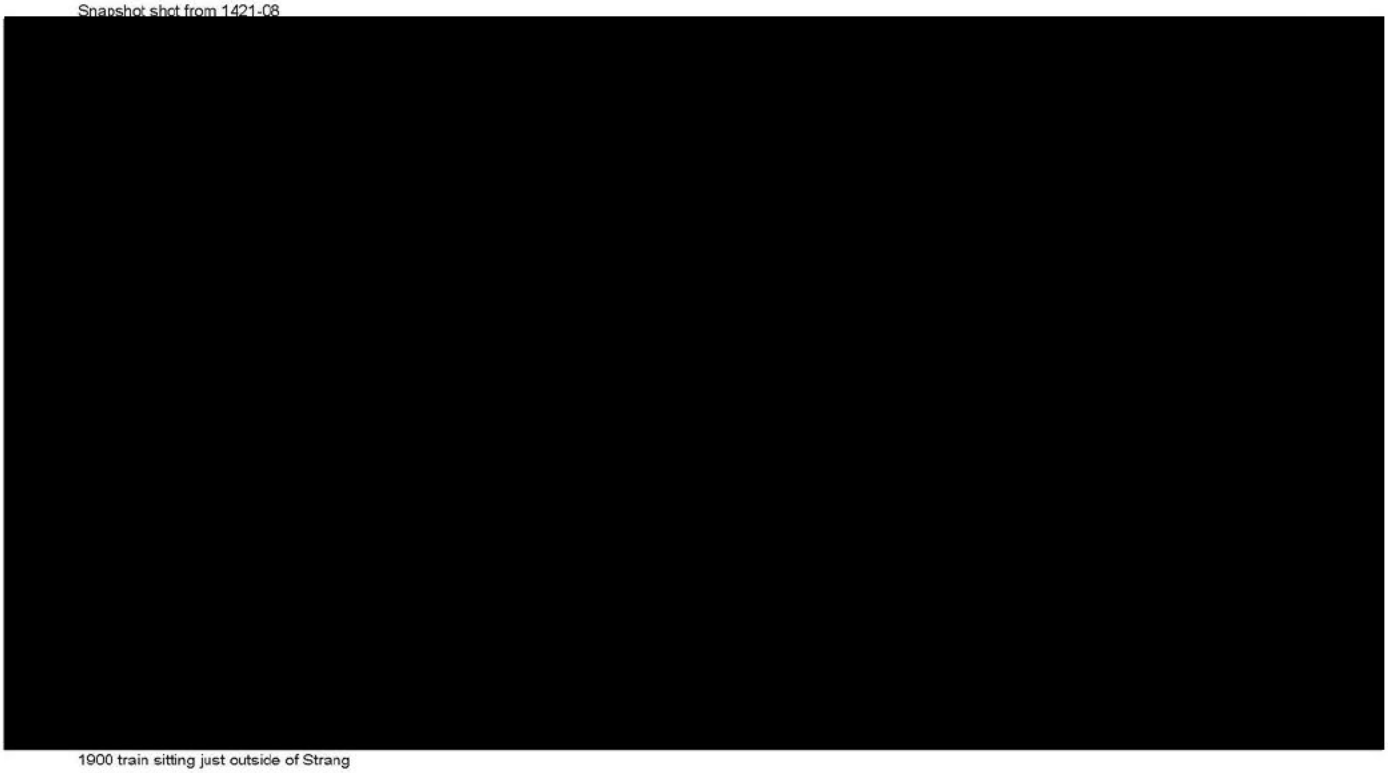
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For transparency, UP called 17 re-crews for weather, washout and associated congestion in the Houston complex on 5/8.
UP held 22 trains for a cumulative 162 hours(6 hours on average) for these incidents. There were no dispatching protocol issues. We held ourselves 4 times the rate their trains were delayed.
What's cool about it is we never cut them off on their trackage rights like they cut us off twice in 24 hours on their Mykawa Sub.
The trains they talk about on their Houston Sub were also directly affected by the same incidents listed above and below.

---

YH185J-08 CF 0730-10 Did not depart South Yard until 1130 4 hours CTTD. for a 21 car train. This 4 hour delay killed this train. Not UP 1 UP train on the West Belt at the time of departure. On the opposite track.
The train ran through Booth yard. When it got to the other end to come out toward Pasadena it was blocked by YH388J-07, LHG42-08 and MEWPT-08. If you look at the snapshot below PTRA has the MEWPT yarding in two separate cuts. The same move the had the PT330J making yesterday morning when BNSF alleged UP's MEWSR blocked their Stang transfer when in actuality it was PTRA.

So this train was 3 moves out when it was ready to leave Booth.
-
Snapshot shot from 1421-08



1900 train sitting just outside of Strang

[redacted]

-

YHOU187-08 CF 0707 - Departed South yard at 1341. Got to Dallar Up at 1530. It could not move further as we had a rock train stopped that was waiting for the opening of the Glidden Sub washout. If you remember on 5/8 we had the Glidden Sub washout that impacted 14 trains not counting any that BNSF ran via their Mykawa Sub. Simultaneously, we had an impassable broken rail at Mesa drive that caused us to single track at that location for 6 hours. We also have weather driven signal issues at EB061 that had trains stopped(UP trains too) in 4 different directions. Maintainer found to be a bad IJ at the location.

-

YH180J-08 - IF the train was ready to leave at 1145 as suggested. the the time the RDPDT was still on the main at Market St. holding for the opening of the Glidden Sb. MOLEW and BN 187 were on the EB moving and we were fixing schedule for repair defects on the WB right outside of south yard. At 1540 we are patrolling the EB for weather and have a single control point, EB061 in Monitor and the left crossover out of correspondence

1540-08 Notice, there are no UP trains moving out here either

[redacted]


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150 YEARS

**Kenneth A. Gomez**
**Superintendent**
**Southern Region**
**24125 Old Aldine Westfield Rd.**
**Spring, TX 77373-9015**
**832-482-8956 Cell**
**281-350-7171 Office**
**kagomez@up.com**


----- Forwarded by Kenneth A. Gomez/UPC on 05/10/2019 11:29 AM -----

From: Kenneth A. Gomez/UPC
To: Brenten D. Starr/UPC@UP
Date: 05/09/2019 08:54 AM
Subject: Re: Fw: Request Review of Dispatching Protocol in Houston - May 8

---

Brent,

I worked 14 hours on Tuesday and 13 hours yesterday. In that time, BNSF approached me 1 time about their train movement in the Houston Terminal. Kenny Theeman consulted me yesterday about two trains at 1645. I gave him a plan for those 2 trains that was made with the corridor manager on duty. Since I've returned from vacation that is the only interaction I have had from BNSF. No one has called me at work or on my cell. Nor have I been included in any electronic correspondence regarding their train movements or lack their of. I saw Gwen and Brewer in passing yesterday but neither even

acknowledged me.

Kenneth A. Gomez
Superintendent
Southern Region
24125 Old Aldine Westfield Rd.
Spring, TX 77373-9015
832-482-8956 Cell
281-350-7171 Office
kagomez@up.com

From: Brenten D. Starr/UPC
To: Kenneth A. Gomez/UPC
Date: 05/09/2019 06:33 AM
Subject: Fw: Request Review of Dispatching Protocol in Houston - May 8

---

**Brent D. Starr**
General Superintendent - Southern Region
Harriman Dispatching Center | 850 Jones Street | Omaha, NE 68102
Tel: 402.636.7235| Cell: 402.718.7480 |Email: bdstarr@up.com

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----- Forwarded by Brenten D. Starr/UPC on 05/09/2019 06:33 AM -----

From: Brenten D. Starr/UPC
To: "Thompson, Janssen" <Wesley.Thompson@bnsf.com>
Cc: "Brewer, Lance R" <Lance.Brewer@bnsf.com>, Zachary Norwood/UPC, Gwendolyn.Wadkins@BNSF.com
Date: 05/08/2019 11:24 PM
Subject: Re: Request Review of Dispatching Protocol in Houston - May 8

---

Janssen,

I will look into the operations for 5/08.

We are extremely congested due multiple weather issue in and around the complex.

Sent from my iPhone

On May 8, 2019, at 9:45 PM, Thompson, Janssen <Wesley.Thompson@bnsf.com> wrote:

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

Brent,
I am requesting that we do a replay and review on the train movements through the Houston Complex for May 8.

Here are some details regarding BNSF Trains;
No Transfer Job made it to its destination today on 1st Shift; BNSF is putting 2nd crews on every train; these are 1-way transfers...

Yard Transfers:
HOU185 - South Yard to Strang; built and departed South Yard this morning; train was still holding at Undreswood Crossing at 2000; BNSF placing HOU285 crew on train; after deliver will pull 85+ cars.

HOU187 - South Yard to PTRA - train was parked this afternoon at Dollar Up; (2 days in a row)

CYS182 - Casey Yard to South Yard - as of 2000 train is still not allowed out of Belt Jct since 0730 this morning; due to TEAPTN and SNAPTN ahead....

HOU180 - Englewood to South Yard I/C - crew was transported to Englewood; train was built at approx 1030; air-test completed and ready to depart at approx 1145; dispatcher lined out at approx 1730; train made it to 1 board; just outside South Yard and train had to be recrewed.

Additional Trains:
SNAPTN - Unit train for PTRA - required 2 crews to deliver it to PTRA from Casey
TEAPTX - Plastic Empty Train for Chemical Customers; 3rd Crew is on then train since yesterday; train was still holding at Casey as of 1945 this evening; crew was on train today for over 12 hrs and was not given a route to PTRA; understand train should be departing shortly and PTRA is going to protect the late arrival to keep from shutting down Chemical Customers on the PTRA.

PTNEAP - BNSF put outbound crew on train at approximately 0030 at the PTRA; train had to be recrewed in the Houston Complex at approx 1230 this afternoon

DPKAUN - PTRA told by UP Corridor Manager that train could not depart due to volume in the Houston Complex; this delayed arrival of Unit Train for Deer Park; train now being released for 0100 departure.

Recognize both RRs had a tough May 7 with rainfall and flooding events which hampered some of the operations coming into and out of Houston Complex; however this does not explain the above delays since these routes were not affected by the flooding events.

REDACTED - TO BE PLACED ON PUBLIC FILE
Lastly; over the last several days starting to see several UPRR trains staging on the East and West Belt; these train appear to be going toward the Palestine Sub; hearing that various work events at Lloyd Yard are causing back ups onto the East and West Belt; can you verify this?

If you have any questions please contact Lance; since I will be out of the office tomorrow.

Thanks,

Janssen Thompson - iPad

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

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

---

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

---

## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 29

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61C2D4A466F74E6AA425689F5D599A6C-B144494>

**Sent:** Friday, July 23, 2021 8:10 AM

**To:** mjhopkins@up.com; Jeff W. Moore <JWMOORE@up.com>

**Cc:** Coleman S. Bell <CSBELL@UP.COM>; Kenny Theerman (Kenny.Theerman@BNSF.com); Donn, Frank A <Frank.Donn@BNSF.com>; Molyneaux, Ross E <Ross.Molyneaux@BNSF.com>; Robin Taylor (Robin.Taylor@BNSF.com); Timothy L. Wooley <TIMWOOLEY@UP.COM>

**Subject:** M PTNHOU / BN387

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Mike,

Yesterday we had 387 announced to depart PTRA at around 0530 in the morning. He departed sometime after and advanced to Pierce on the east belt. He sat there all day killing the 1st crew, and the 2nd crew that we put on the train, taking a 3rd crew to get the train into Houston SOYD. I cannot stress enough how unacceptable it is for any carrier to have to use 3 crews to get a train 7 miles. I'd like to understand from you why our train was handled this way yesterday.

*Lance R. Brewer | General Director Red River Division*

BNSF RAILWAY

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SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 30

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

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 31

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Taylor, Robin B <Robin.Taylor@BNSF.com>
**Sent:** Monday, March 28, 2022 7:58 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Johnson, Cale L <Cale.Johnson@BNSF.com>
**Subject:** UP Trains holding in Houston

Either holding for power connection or crew rest, nothing on South Texas leg (Algoa – Corpus). They have used Lloyd yard to drop a few cars off. David G had call yesterday and stated if trains are on Toll Road that all power is to be stripped, advanced into EGW / Settegast.

EXTERNAL EMAIL

[redacted]

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

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 32

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SURFACE TRANSPORTATION BOARD

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

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

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

---

## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 33

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Bahruth, Joshua R <Joshua.Bahruth@BNSF.com>
**Sent:** Thursday, February 8, 2018 8:37 AM
**To:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Lawler, Gregory G <Gregory.Lawler@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Bates, Scot A <Scot.Bates@bnsf.com>; Robertson, Brooke M <Brooke.Robertson@BNSF.com>
**Cc:** Petersen, Aaron M <Aaron.Petersen@BNSF.com>; Walley, Gerrad H <Gerrad.Walley@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>; Snell, Michelle L <Michelle.Snell@BNSF.com>
**Subject:** RE: Houston Complex 06:30 Morning Update - 02-08-2018

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Lance,

The information you received is correct. The UP 86 yesterday did not exit the steel lead till 21:30. Due to this delay we had to send the DYT201 out to relive the DYT101 as none of the work was completed due to the UP blockage. DYT201 completed the DYT101 work and they were then relived by the DYT302 at Gulf Siding. DYT302 is in route to Dayton with the pulls from [redacted]. DYT301 has been unable to depart the train from Dayton to line congestion on the branch.

**Recovery Plan:**
DYT101 is going to take the DYT301 train after the arrival of the DYT302, and begin work on [redacted].
We will call an extra at Dayton to relive the DYT101 they will complete the DYT101 work and head steel lead to service [redacted].
[redacted].
DYT301 will start out of Dayton and we expect to be back on schedule and head down to start regular work.
[redacted].

**Communication:**
[redacted] This has been the common theme with all customers on the branch that have been effected by these delays and I know that all concerns have been a point of discussion with the UP local Management who we met with last week. (Brian Gorton – Rick Tidwell)

[redacted]

We will keep you updated on status of our handling as we work through this issue and any additional concerns that are identified.

JRB

---

**From:** Brewer, Lance R
**Sent:** Thursday, February 8, 2018 8:10 AM
**To:** Bahruth, Joshua R <Joshua.Bahruth@BNSF.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Lawler, Gregory G <Gregory.Lawler@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Bates, Scot A <Scot.Bates@bnsf.com>; Robertson, Brooke M <Brooke.Robertson@BNSF.com>

REDACTED - TO BE PLACED ON PUBLIC FILE

**Cc:** Petersen, Aaron M <Aaron.Petersen@BNSF.com>; Walley, Gerrad H <Gerrad.Walley@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>
**Subject:** RE: Houston Complex 06:30 Morning Update - 02-08-2018

So I'm hearing UP 86 had us blocked on the DYT Branch and we did not switc[redacted]. This is a huge deal. I would like to know the recovery plan, when exactly they will receive their switch, and who we have talked to at [redacted] explaining the exception as well as what their reaction and feedback was.

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

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**From:** Bahruth, Joshua R
**Sent:** Thursday, February 8, 2018 6:32 AM
**To:** Reilly, Rob M <Rob.Reilly@bnsf.com>; Lawler, Gregory G <Gregory.Lawler@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Cc:** Petersen, Aaron M <Aaron.Petersen@BNSF.com>; Walley, Gerrad H <Gerrad.Walley@BNSF.com>; Boemio, Robert P <Robert.Boemio@BNSF.com>
**Subject:** Houston Complex 06:30 Morning Update - 02-08-2018

## *Yesterday's Performance:*

**Relief Starts:**
Relief transfer (PTRA-DYT; PTRA-HOU; DYT-HOU) starts: 7
Road Relief crew starts: 0

**ITD Yesterday On yard Transfers:** *(HOU180 HOU-EGW) (HOU185 HOU-STR) (HOU187 HOU-PTRA) (HOU188 HOU-DYT) (CSY182 HOU-CSY) (DYT283 PTX-DYT) (HOU285 STR- DYT) (HOU289 PTX-HOU) (DYT289 DYT-HOU) (HOU388 PTRA-HOU)*
Average ITD on transfer jobs was 8.5hrs.
Biggest hitters has been:
Y HOU1801 07-ITD – 6hrs.
Train delivered to Englewood, HOU809 extra was called to relieve them from East yard due to no route. Held waiting on QAGLI 2 to go by.
Y HOU1871 07-ITD – 14hrs.
Crew had a pickup in east belt yard of PTRA blocked traffic that was shuttled out due to congestion. UP senior instructed train to pull up to Cullen and ran a UP Q train around them, then instructed to shove back and make their pick up in east belt yard in route to PTRA. Train arrived 02:07 02/08.
Y HOU1851 07- ITD – 6hrs.
Train relieved at gas crossing by the HOU285. Cut arrived Strang.
Y HOU1881 07- ITD – 7hrs.
Departed and was relieved at Market St. waiting for a route. Train is made it to Fauna UP on main and leader lost air pressure Mech is working on motor now.
Y HOU2851 07- 9hrs.
Train held in Strang UP for LHG51,MPBSR. Tied down at Market St. pending a 1st shift job relief.
Y HOU2831 07-9hrs.
Train ran on West Belt to Pierce Main 1 to keep route clear for the UPRR (Y HOU70).

**ITD On Originating Manifest Trains:**
Average ITD on Originating 53 minutes on 2 trains measured. (Houston & Dayton)

**Yard Inventory: 919**
Bunching of inbound traffic caused by line congestion within the complex has driven up inventory.
*This will result in lost production with TP48 in Houston SYD due to the tracks that are needed work working limits are currently occupied by the HOULAL1-08 outbound.*

## *Current Complex Status:*

**Houston Sub**
H TEAHOU1 07-100 cars at Casey TX CSY182 will bring down
H TEAPTX1 07- Train arriving Manchester Yard now.

**Houston SOYD outbound**
H HOUSLA1 07-79 cars being air tested now called for 0530 hou382 will double out.
H HOULAL1 08-114 cars being air tested called for 0535 out of Silsbee
Y HOU3841 08-53 cars trying to get signals now
H HOUTUL8 08-87 cars

**Houston SOYD Inbound**
H BNTHOU1 07-126 cars train died at Fauna UP hou186 will dog catch.
H TEAHOU1 07-100 cars csy182 will bring down
Y GAT2841 07-96 cars tied down in hd3 in order to relieve inventory levels for TP48 to work.
Y HOU3881 07-100 cars 9autos crew is at North yard had to finish yarding hou187 now on train
Y DYT2891 07-68 cars still in Dayttx due to no route.

**Houston Complex transfers**
Y HOU2851 07-Tied down at Market St. with security watching train. Have hou188 take train in
Y HOU2831 07-Tied down at Peirce have hou181 take train in
HOU386-H DYTTUL1 07 TW to Casey TX.

**OUTBOUND UNIT TRAINS:**
U PTNPAN0 04- Train departing PTRA N-YARD.
X LDHONI9 06- 0758 extra job will air test and pull
X PTNGDN9 08-0759 extra job will pull
X LDHHUT8 07- Pending ETR

**Josh Bahruth** | **BNSF Railway** | **Terminal Superintendent** | ✉ Joshua.Bahruth@BNSF.com | Office: 817-867-2110 | BB: 682-225-9635
***"Recognition Gains Repetition."***

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

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

---

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

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 34

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**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Thursday, May 2, 2019 11:28 AM
**To:** Duncan, Paul B <Paul.Duncan@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Reilly, Rob M <Rob.Reilly@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Templeton, Olivia E <Olivia.Templeton@BNSF.com>; Norwood, Zachary B <Zachary.Norwood@BNSF.com>; Tylick, James <James.Tylick@BNSF.com>; Garland, Matthew C <Matthew.Garland@BNSF.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** Foreign Line Non-productive start increase Q1 YOY '18-'19

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All,

After many weeks/months of poor handling and various skirmishes regarding UPRR dispatching of our trains, along with sharing countless escalations with many in this group, I have been looking at various slices of data exhibiting what we all know to be much worse treatment and handling of our business by the UPRR. Below is one of the data sets I came upon that really shows the increase of non-productive starts (multiple relief crews) as compared to the same period last year for all trains that run over the joint line, central Texas, Angleton, and Memphis trackage rights. Unfortunately these aren't all of the trains and starts in the report, I just pulled out the most significant variances, as well as included some trains that are new business to us this year, yet still being handled as poorly as the rest of our trains.

Some of us will remember that Q1 2018 also had periods where conditions of the UPRR in Houston and Beaumont were as poor as they have been for periods in Q1 2019, yet far worse outcomes for our business have resulted in 2019 under similar conditions, save PSR/Unified Vision 2020.

[redacted]

*Lance Brewer* | BNSF Railway Co. | General Director – Red River Division | lance.brewer@bnsf.com | (713) 847-3189

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 35

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Draft Agenda
Joint Service Committee Meeting
August 13, 2019
Spring Dispatching Center, Houston, TX

1. Houston Complex Operation and Oversight
   a. Train Stop Study
   b. UP Metrics Review: Settegast, Englewood, Dayton
   c. BNSF Metrics Review: Houston, Dayton, Lacassine, Lafayette
   ~~a.~~d. Procedures for assigning dispatching priorities or rankings to UP trains and information about how those procedures are applied to UP trains. Reporting on how UP priorities are applying to BNSF trains. (UP priority: Passenger, premium, everything else). Ensure they are applied equally.
   ~~b.~~e. Oversight of the Joint Director for HBT, PTRA and 50-50 Line
   ~~c.~~f. Dispatching protocol for Houston complex

2. General Dispatch Protocol Matters
   a. Directives/guidance/training and incentive compensation metrics applicable to dispatchers (and all dispatch supervisors) of joint territory
   b. Train length parity
   c. Establish Joint sub-committee reporting to the JSC and agreed to reporting and monitoring

~~2.~~3. Jointly Owned 50-50 Line
   a. Joint coordination on capacity modeling and new customer development (ITAs)
   b. Dayton Train Performance including service to local customers
   c. Beaumont - Mainline work events and UP windows for locals
   d. Dispatching protocol for joint line

~~3.~~4. New Orleans
   a. Consolidated rail operations with Joint Director oversight
   b. Alignment on operating plan among all carriers: NS, CSX, NOPB, UP and BNSF
   c. Train performance and dispatch protocol joint line and Livonia to West Bridge Junction

~~4.~~5. Central Texas
   a. Operating Protocol
      i. Rockport Sub/Elmendorf Branch
      ii. Directional flow operations
   b. Auto Train performance on UP's Corpus Christi Sub
   c. Eagle Pass dispatch protocol and equal access to Mexico border

~~5. General Dispatch Protocol Matters~~
   ~~a. Directives/guidance/training and incentive compensation metrics applicable to dispatchers (and all dispatch supervisors) of joint territory~~
   ~~b. Train length parity~~

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~~c. Establish Joint sub-committee reporting to the JSC and agreed to reporting and monitoring~~

~~6. Metrics Review~~

~~a. UP Metrics Review: Settegast, Englewood, Dayton~~

~~b. BNSF Metrics Review: Houston, Dayton, Lacassine, Lafayette~~

~~c.~~d. ~~Procedures for assigning dispatching priorities or rankings to UP trains and information about how those procedures are applied to UP trains. Reporting on how UP priorities are applying to BNSF trains. (UP priority: Passenger, premium, everything else). Ensure they are applied equally.~~

*Note subtopics listed are not intended to be an exhaustive list of all matters for discussion.

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 36

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# Agenda
# UP/BNSF Joint Service Committee and Operations Coordination Meeting
# Conference Call
# March 4, 2021
# 1230 – 1430 CT

Antitrust Briefing

Various Joint Service Committee Items:

- Houston Complex Operation and Oversight:
  - BNSF/UP Joint Report on operations
    - Complex Performance
    - Houston complex workshops – priority
    - Review Houston joint metrics

- Jointly Owned 50-50 Line:
  - BNSF/UP Joint Report on operations
    - Joint Line performance
    - Performance Measurements used by Local Management

- Central Texas:
  - General Operating Overview
    - Performance Measurements used by Local Management
  - Rockport Sub/Elmendorf Branch Windows
    - Southport Siding on Rockport Sub
  - Eagle Pass Gateway performance update
    - Possible new interchange windows
    - International Crews
    - Slot Track Usage at Eagle Pass

- New Orleans:
  - Gateway performance update
  - Update on CTC/PTC

- Other issues/items for discussion?
  - Next Meeting Dates
    - May 20th
    - August 18th
    - November 17th

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 37

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## VERIFIED STATEMENT OF LANCE R. BREWER

## EXHIBIT 38

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

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## Verified Statement of Olivia E. Power

## 1. Introduction and Summary

My name is Olivia E. Power. I am the Assistant Vice President of Contracts & Joint Facilities for BNSF Railway Company ("BNSF"). I have been in this position since August 1, 2023. Prior to my current position, I served as a Director for Contracts & Joint Facilities with BNSF from March 2014 to July 31, 2023. I have held roles in Contracts & Joint Facilities with BNSF since December 2009. From October 2005 to December 2009, I worked in various roles in Finance and Accounting with BNSF. I began working at BNSF in Engineering in 2005.

In my current role, I lead a BNSF team responsible for overseeing, drafting, analyzing, negotiating, and administering BNSF's contracts for shared railroad assets and jointly owned companies with other rail carriers, including trackage rights agreements, merger-related agreements, and similar joint operating contracts

between BNSF and other railways on shared-use lines and within major operating terminals. BNSF's Joint Facilities team administers over 8,000 miles of trackage rights on foreign lines (non-BNSF-owned lines); over 7,000 miles of foreign carrier trackage rights (non-BNSF railroads) on BNSF's network; and over 3,000 miles of haulage rights via foreign carriers. The team also has budgetary responsibility for BNSF's extensive network of trackage and operating rights, haulage rights, and jointly-owned company arrangements.

As Assistant Vice President for Contracts & Joint Facilities, I have acquired substantial knowledge about BNSF's relationship with Union Pacific Railroad Company ("UP") arising out of the Restated and Amended Settlement Agreement ("RASA") that the Surface Transportation Board (the "Board") imposed as a condition of UP's 1996 merger of the rail carriers controlled by UP and those controlled by Southern Pacific Rail Corporation ("SP") (the "Merger"). I am submitting this Verified Statement to explain to the Board: (1) UP's failure to adhere to the dispatching process and principles of neutrality required under the RASA; (2) BNSF's documentation of service elections submitted to UP under the RASA, and UP's delay and denial of those service elections; (3) UP's refusal to update the trackage rights agreements ("TRAs") provided for in the RASA and attempts to renegotiate new TRAs; and (4) the joint infrastructure investments that BNSF and UP have contributed to under the RASA.

I have reviewed the BNSF documents and communications referenced in my Verified Statement and confirm that they are true and correct copies thereof.

### 2. UP Violates the Dispatching Processes and Principles of Neutrality that Protect BNSF Under the RASA.

Section 9(d) of the RASA imposes a categorical neutrality requirement that "[t]rains 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." These principles stem from the BNSF-UP/SP Dispatching Protocols, which BNSF, SP, and UP representatives agreed to on April 24, 1996. *See* RASA Ex. D ("Dispatching Protocols"). UP must issue written instructions to all dispatching personnel that "trains of the tenant are to be dispatched exactly as if they were trains of the same class of the owner and given equal treatment with trains of the owner." Dispatching Protocols § 3. The parties must share their priority-assignment procedures, and the owner must dispatch the tenant's trains according to those priorities. *Id.* § 7. Entry to joint trackage must be provided "on a first-come, first-served basis," subject to relative train priorities. *Id.* § 8. The Dispatching Protocols created a Joint Service Committee charged with reviewing priority assignments "to ensure that they are applied equitably by both railroads." *Id.* § 7.

The express purpose of the Dispatching Protocols is "[t]o ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track." *Id.* § 2. The Dispatching Protocols are essential to BNSF's ability to utilize the trackage rights it receives from UP.

Unequal dispatching prevents BNSF from exercising its trackage rights in parity with UP, thereby depriving BNSF and its customers of the benefits provided for in the UP/SP merger agreement.

Over the past several years, in the absence of Board oversight, dispatching parity has eroded. While BNSF has attempted to raise these issues with UP, UP has refused to cooperate with BNSF. For example, at the Eagle Pass location, BNSF experienced "continued deprioritization of BNSF's trains in favor [of] UP's trains interchanging across the border," an issue that BNSF has "repeatedly tried to bring . . . visibility to . . . without success."[1] Similarly, at the Houston Complex, "UP's increasing practice of staging trains . . . and holding off trains into the Houston Complex has adversely impacted BNSF's operations."[2] But when BNSF asks "to be included in and consulted regarding changes to train plans impacting the Houston complex," UP ignores BNSF.[3]

The dispatching issues that UP causes are acute and take several forms. These include (1) imposing absolute operating windows only on BNSF trains and not on UP trains, constituting discriminatory treatment; (2) imposing dispatching processes without BNSF's consent; (3) replacing first-come, first-served access with UP-dictated windows; and (4) forcing BNSF trains to hold while UP locals operate with de facto priority. These issues are demonstrated by extensive contemporaneous documentary evidence that is attached to this Verified Statement, and discussed in the

[1] Power Ex. 1 (March 30, 2020 emails between BNSF and UP).
[2] *Id.*
[3] *Id.*

Supplemental Petition and the Verified Statement of Lance Brewer. Such communications are just examples of the numerous instances of dispatching issues caused by UP. These issues persist at many locations shared by BNSF and UP.

For instance, at the Elmendorf Branch, also known as the Rockport Subdivision, UP has imposed what is known as the "BNSF "Rockport Process." Under the Rockport Process, UP makes unilateral dispatching decisions and imposes restrictions without BNSF's consent or input and over BNSF's objections.[4] In fact, UP has at times had a local train "that works 6 days a week on the Rockport Sub," while BNSF is prevented from running trains on the Rockport Subdivision altogether when that UP local is active.[5] In addition, UP gives priority to multiple kinds of trains over BNSF trains, and high recrew rates at Rockport are the result of UP local and coal trains running past BNSF trains stuck on limited sidings.[6] Similar issues exist elsewhere across the Gulf Coast region.[7]

In other instances of unequal dispatch—which occur at the Houston Complex and elsewhere—UP holds BNSF trains at sidings while running UP trains past them on the main lines. This results in significant delays for BNSF trains but do not for UP trains. Instances where "UP [does] exactly what [it] want[s] regardless of window direction and protocol," "are frequent," and at Eagle Pass and elsewhere, "[p]arity is

[4] Power Ex. 2 (March 13-19, 2021 emails between BNSF and UP).
[5] *See* Power Ex. 3 (March 28, 2025 BNSF internal emails).
[6] Power Ex. 4 ("June 2022 BNSF presentation); Power Ex. 5 (June 8-9, 2019 emails between BNSF and UP).
[7] *See, e.g.*, Power Ex. 6 (June 21, 2019 letter from Paul Duncan (BNSF) to Cynthia Sanborn (UP); Power Ex. 7 (May 24, 2023 BNSF/UP Joint Service Committee Agenda).

seldom adhered to."[8] Moreover, the long wait times at sidings—seven hours or more—mean that BNSF ends up using additional crews due to UP-imposed delays.[9] When made aware of these issues, UP routinely downplays the seriousness of such matters.[10]

UP also fails to provide the appropriate resources to ensure parity in dispatching. While a BNSF employee is stationed at UP's Omaha dispatching center as a liaison for operating, train handling, and dispatching issues arising between the parties, there is no UP counterpart at BNSF's dispatching center in Fort Worth, although I understand that this position was specifically created to monitor and resolve dispatching disparities between UP and BNSF. UP's dispatching practices have resulted in significant disparities between BNSF and UP across the trackage rights lines, causing, for example, BNSF's "transit times between Caldwell, San Antonio, and Eagle Pass [to] continue to materially degrade."[11]

**3. UP Delays or Denies BNSF's Service Elections**

Under the RASA's service election protocol, BNSF must notify UP of the manner in which BNSF elects to provide service and the specific details of its operating plan at least 45 days prior to BNSF initiating service to a customer. Within 30 days of UP's receipt of BNSF's proposed operating plan, UP is required to notify BNSF of its approval or disapproval of BNSF's operating plan. *See, e.g.*, RASA § 1(d).

[8] Power Ex. 8 (August 26-28, 2017 emails between BNSF and UP).
[9] *Id.*
[10] *Id.*
[11] Power Ex. 1.

Based on my administration of the election process and my review of BNSF's election database and saved correspondence, I have observed that UP routinely prolongs the service election process through a set of recurring tactics. These tactics have grown more pronounced in recent years, and their cumulative effect forces BNSF to respond to several onerous requests while customers are forced to wait many months to receive assurance of BNSF service.

UP frequently and unnecessarily prolongs the service election process and denies requests on pretextual grounds. UP often provides only minimal explanations for its denials, and because the RASA imposes no deadline on UP's responses to follow-up communications, UP responds even more slowly after its initial response. For example, BNSF issued an election to directly serve {{[redacted]}} in American Fork, Utah, on October 10, 2024.[12] On November 5, 2024, UP responded stating only that it had "reviewed BNSF's request and {{[redacted]}} does not meet the requirements for access in Section 1(a) of the RASA."[13] BNSF issued an amended service election that same day.[14] Over two months later, on January 24, 2025, UP again denied the election, stating only that "RASA Section 1(b) is not applicable to {{[redacted]}} . . . and accordingly BNSF access to this

[12] Power Ex. 9 (October 10, 2024 letter from Toni Hanson (BNSF) to Ryan Pichler (UP))
[13] Power Ex. 10 (November 5, 2024 letter from Ryan Pichler (UP) to Toni Hanson (BNSF)).
[14] Power Ex. 11 (November 5, 2024 letter from Toni Hanson (BNSF) to Ryan Pichler (UP)).

facility is not granted."[15] On February 13, 2025, BNSF responded that it was "troubled by UP's decision and the lack of any explanation."[16] Ultimately, following two months of further negotiations, UP agreed to "contact BNSF to schedule a meeting to initiate discussion" regarding "facilitat[ing] BNSF's access pursuant to RASA Section 8(i)."[17] However, when the parties attempted to negotiate a new TRA to serve {{[redacted]}}, UP substantially delayed the process by failing to timely provide BNSF with its proposal.[18]

When UP does substantively respond, its explanations are often pretextual or contradictory. An example is UP's recurring assertion that it is unable to locate the customer at the given address or that the customer has not yet been established as a located industry in UP's system. UP uses these explanations even when customers have been located at the same address, or have been in UP's system, for years. UP frequently uses these explanations to claim that BNSF's elections are "premature" and that no further response is required. Through these tactics, UP effectively imposes a pre-clearance requirement on BNSF that does not appear in the RASA. For example, BNSF issued a service election to directly serve {{[redacted]}} at Eagle Pass, Texas on April 17, 2024.[19] UP responded that the customer "has not yet been established as a located industry on Union Pacific" and that "BNSF's request

[15] Power Ex. 12 (January 24, 2025 letter from Ryan Pichler (UP) to Toni Hanson (BNSF)).
[16] Power Ex. 13 (February 13, 2025 letter from Toni Hanson (BNSF) to Ryan Pichler (UP)).
[17] Power Ex. 14 (April 15, 2025 letter from Ryan Pichler (UP) to Toni Hanson (BNSF)).
[18] *Id.*; Power Ex. 15 (Notes of April 22, 2025 UP/BNSF meeting).
[19] Power Ex. 16 (April 17, 2024 letter from Toni Hanson (BNSF) to Ryan Pichler (UP)).

for confirmation of access to the facility . . . is premature."[20] UP stated that it was "actively working to locate this customer on UP lines, and once located UP will then entertain a BNSF request for access to the facility."[21] BNSF responded by providing an invoice dated April 27, 2024, that located the customer in Eagle Pass and reiterating that UP confirm its approval of the customer election.[22] In response, UP confirmed its denial, stating that the referenced invoice involved a "holdover train from the previous owners of the facility" and that the customer was "not considered to be a located industry or New Shipper on Union Pacific."[23] While UP stated it "continues to actively work with" the customer "on track infrastructure that will support the future rail needs of the facility," it maintained that it would not "entertain a BNSF request for access to the facility" "[u]ntil such time as these plans are completed and approved by Union Pacific."[24]

In another example from April 2026, BNSF elected to directly serve {{[redacted]}}, a customer at a facility in Clearfield, Utah.[25] Thirty days later, UP denied access on the grounds that {{[redacted]}} "has not yet been established as a located industry on UP."[26] UP stated that it was "actively working to locate this

[20] Power Ex. 17 (May 17, 2024 letter from Ryan Pichler (UP) to Toni Hanson (BNSF)).
[21] *Id.*
[22] Power Ex. 18 (June 3, 2024 letter from Toni Hanson (BNSF) to Ryan Pichler (UP)); Power Ex. 19 (April 27, 2024 Customer Invoice).
[23] Power Ex. 20 (June 18, 2024 letter from Ryan Pichler (UP) to Toni Hanson (BNSF)).
[24] *Id.*
[25] Power Ex. 21 (April 22, 2026 letter from Michael Pruneau (BNSF) to Ryan Pichler (UP)).
[26] Power Ex. 22 (May 21, 2026 letter from Ryan Pichler (UP) to Michael Pruneau (BNSF)).

customer, and once located UP will then entertain a BNSF request for access to the facility."[27] BNSF has been unable to serve {{[redacted]}} for months due to UP's conduct.

Moreover, even UP's approvals of access can function as effective denials. In a number of elections, UP has granted only nominal or conditional approval while attaching operating conditions on BNSF that are more onerous than those UP imposes on its own service. These conditions include demands for separate agreements, infrastructure investments, or operational restrictions on BNSF. One such example is BNSF's March 2022 election seeking to directly serve {{[redacted]}} in Fruita, Colorado.[28] There, UP stated that it had "no record of {{[redacted]}} seeking to establish a transload or customer location in Fruita, CO."[29] After significant back-and-forth, UP conditionally approved BNSF's service election, subject to significant contractual and infrastructure requirements.[30] These types of conditions create added costs and delays for BNSF and its customers. In some cases,

[27] *Id.*
[28] Power Ex. 23 (March 4, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)).
[29] Power Ex. 24 (March 25, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)).
[30] Power Ex. 25 (April 7, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)); Power Ex. 26 (April 12, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)); Power Ex. 27 (May 2, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)); Power Ex. 28 (May 2, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)); Power Ex. 29 (May 5, 2022 letter from Mike Martucci (BNSF) to Chris Sanford (UP)); Power Ex. 30 (May 6, 2022 letter from Chris Sanford (UP) to Mike Martucci (BNSF)); Power Ex. 31 (May 26-August 1, 2022 emails between UP and customer; internal BNSF emails re: same).

these additional restrictions can render the approved access commercially impracticable, thereby defeating the election in practice.

Taken together, UP's delay tactics substantially lengthen the election process and make it materially more difficult for BNSF to establish service at locations where it is entitled to serve customers by offering competitive rail service. Further examples of improperly delayed or denied service elections by UP are discussed in the Supplemental Petition and the Verified Statement of Nicholas Hill, Ph.D. This information has been compiled in an internal spreadsheet tracking BNSF's service elections. Among other things, the spreadsheet contains information on UP's response times and the outcomes of service elections, and it covers approximately [redacted] service elections that have occurred since the Merger. Due to historical variations in how BNSF has tracked its service elections in the decades since the Merger, the spreadsheet may not capture all of BNSF's service elections, but it contains the readily available information that BNSF has maintained in the ordinary course of business.

**4. UP Refuses to Update and Seeks to Re-Negotiate Implementing Trackage Rights Agreements.**

BNSF's rights under the RASA are operationalized through TRAs covering individual lines over which BNSF has secured trackage rights. In many instances, TRAs have not been comprehensively updated since their execution in 1996. Thus, many TRAs include terms and conditions that no longer accurately reflect the parties' rights and obligations, which have been amended by the Board and the RASA since their original execution. The TRAs' outdated provisions must be read together with

the terms reflected in the RASA and the Board's decisions, which are often inconsistent.

BNSF has frequently tried to update the implementing TRAs to bring them in line with the RASA and the Board's decisions. As BNSF informed UP in 2009, "[i]t is important that these [TRAs] are updated to ensure consistency of these agreements with the [RASA] and recent [Board] rulings and related matters concerning the RASA."[31] UP has consistently refused to implement BNSF's requested changes, stating that "there is no compelling reason to spend a significant amount of time and effort to update the TRAs" since "UP will continue to be guided by the [RASA] when questions related to the TRAs arise."[32] But when disputes arise over the TRAs, UP has instead stated that the TRAs "are separate agreements with their own provisions" and sought to renegotiate their terms.[33] BNSF has made good-faith concessions to UP in the negotiating process in the interest of reaching a comprehensive solution.[34] Even when UP has committed to reviewing and finalizing TRAs, its responses are often significantly delayed. For example, in a January 7, 2022 meeting, UP's David Hughes acknowledged a need [redacted]}}[35]

[31] Power Ex. 32 (October 1, 2009 emails between UP and BNSF)
[32] *Id. See, e.g.*, Power Ex. 33 (August 23, 2011 emails from counsel for UP to counsel for BNSF).
[33] Power Ex. 34 (March 3, 2026 letter from David Hughes (UP) to Olivia Power (BNSF)).
[34] Power Ex. 35 (January 8, 2013 email from BNSF to UP).
[35] *See, e.g.*, Power Ex. 36 (Notes of January 7, 2022 UP/BNSF conversation).

UP has also sought to force BNSF to negotiate entirely new TRAs at certain points, making it impossible for BNSF to provide customers with a firm assurance of competitive service. For example, in 2025, BNSF and UP agreed that three facilities in Utah, {{[redacted] are located at 2-to-1 points and that existing BNSF trackage rights did not reach them. In similar situations, UP insisted that BNSF negotiate entirely new TRAs at points not located on a trackage rights line, but sought to enter agreements that [redacted]}}.[36]

UP also insisted on negotiating new TRAs at multiple other locations, including the Woods Cross Industrial Lead.[37] Since UP informed BNSF that it would prevent BNSF from accessing [redacted] at the Woods Cross Industrial Lead on November 15, 2023, the parties have engaged in a years-long negotiating process regarding a new TRA, but have reached an impasse given UP's inconsistent positions about the terms and conditions of BNSF's access rights.[38] Similarly, at the Cedar Bayou Industrial Park near Houston, which is now operated by a shortline railroad, TGS, UP insisted on negotiating a new TRA that differed from terms consistent with the RASA.[39] UP's proposal offered BNSF a ten-year TRA, even though BNSF already had longstanding operating rights under the RASA, the Board's

[36] Power Ex. 15.
[37] Power Ex. 37 (Agenda for April 22, 2025 UP/BNSF meeting).
[38] Power Ex. 38 (September 26, 2023 letter from Mark Simon (UP) to Mike Martucci (BNSF)).
[39] Power Ex. 39 (March 30, 2023 emails between BNSF and UP).

orders, and the 50-50 Line Agreement (a separate agreement covering trackage jointly owned by UP and BNSF).[40] Like the other TRA negotiations that UP insisted on, the TGS negotiations to the Cedar Bayou Industrial Park have lingered for years and reached an impasse given UP's insistence on new terms.[41]

The failure to update the TRAs to align with the RASA and Board decisions, as well as the need to negotiate entirely new TRAs to access certain customers, creates uncertainty about BNSF's ability to access the customer facilities in question. UP's delay and insistence on renegotiation of template TRAs means customers are left wondering about whether BNSF will be able to provide service. Shippers make siting and routing decisions based on the strength of assured competitive options. Thus, UP's manufactured ambiguity prevents BNSF from providing an alternate source of the competitive service, which these customers lost as a result of the UP/SP merger.

**5. BNSF Contributes to Jointly Funded Infrastructure**

When UP and BNSF intend to serve New Shipper Facilities that were located following the Merger, the RASA provides that UP and BNSF "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." RASA § 9(c)(v). The RASA's cost-sharing provisions also provide that a carrier that later elects to provide service to a New Shipper Facility must pay

[40] *Id.*
[41] Power Ex. 37.

50% of the capital investment plus interest. *Id.* Additionally, any other capacity improvements made by UP on trackage rights lines are shared by BNSF and UP on a usage-proportionate basis and those improvements become part of the joint trackage and subject to the same Dispatching Protocols governing BNSF's use. The purpose of these provisions is to ensure that BNSF can use the capital assets it has jointly funded to serve new shippers and provide competitive service equal to that of UP.

Among other facilities, BNSF has invested {{[redacted]}} of dollars alongside UP to construct shared facilities at the Baytown Branch, the Rockport Subdivision/Southton Siding, and Eagle Pass.

But contemporaneous documentary evidence in my possession, copies of which are attached to this Verified Statement, and which are discussed in the Supplemental Petition, and attached to or discussed in the Verified Statement of Lance Brewer, demonstrates that UP consistently denies BNSF access to jointly funded infrastructure. During the negotiation of the RASA, the parties intended that jointly needed infrastructure would be jointly available and jointly funded. But BNSF is often denied access to jointly funded infrastructure. For example, at Eagle Pass, BNSF is consistently denied the right to access a new slot track and the main line near the border to stage export trains, despite investing {{[redacted]}} of dollars in joint infrastructure to enhance yard capacity and improve interchange operations there.[42]

[42] Power Ex. 40 (September 2, 2014 emails between UP and BNSF); Power Ex. 1.

## VERIFICATION

I, Olivia E. Power, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on August 26, 2026

/s/ *Olivia E. Power*

Olivia E. Power

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 1

**From:** Duncan, Paul B <Paul.Duncan@BNSF.com>
**Sent:** Monday, March 30, 2020 4:53 PM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** 'David Giandinoto' <DGIANDIN@up.com>; Hunt Cary <huntcary@up.com>; cmsanbor@up.com; Garland, Matthew C <Matthew.Garland@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** BNSF/UP Joint Operating Challenges in Texas/Gulf Region

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Team,

On the heels of our Joint Service Committee meeting in late August, we were pleased to see our joint efforts to improve operational efficiency in the Texas and Gulf regions take shape. We would like to see sustained progress for the long run; however, over the past month and a half we have become concerned that the momentum gained has been significantly eroding. Our local teams have been escalating issues of concern but have not seen the communication reciprocated or acted upon. Here are some matters we would like to call attention to:

- **Houston Complex and Joint Line:** Velocity in the Houston complex has been lethargic over the past several weeks. UP's increasing practice of staging trains for Englewood and Livonia and holding off trains into the Houston Complex has adversely impacted BNSF's operations. We understand that UP may have shifted volumes to the Houston complex from other areas that are driving these challenges. We have also asked to be included in and consulted regarding changes to train plans impacting the Houston complex and the 50/50 Line, as these changes impact the delicate balance that must be maintained for all carriers to operate efficiently, however those requests have gone unanswered. Most recently, we have seen impacts along the East Belt with trains tripling on the main impacting throughput.

- **Recrews and Train Delays on BNSF's Trackage Rights**: We are seeing a rise in these metrics. Our transit time between Caldwell, San Antonio, and Eagle Pass continue to materially degrade. We are also having to stage trains for 24 hours or more awaiting permission to enter our trackage rights at Caldwell. We do not understand how holding our trains off for 24 hours or more can be reconciled with a first-come first-served protocol.

- **UP Priority on the Elmendorf Branch:** In order to accommodate UP locals operating on the Elmendorf Branch, UP has continued to impose windows which exclude BNSF operations on the branch. Prioritizing UP's own traffic to the exclusion of BNSF's traffic conflicts with the Dispatch Protocol under which BNSF is assured equal access to its trackage rights lines on a first come first served basis. Discontinuance of this discriminatory practice is requested.

- **Parity across the Eagle Pass Gateway:** BNSF invested [redacted] in enhancing capacity at Eagle Pass, per discussions and coordination with UP on the need for enhanced yard capacity for BNSF trains to improve interchange operations at Eagle Pass. We are dismayed to see continued deprioritization of BNSF's trains in favor of UP's trains interchanging across the border with FXE. We have repeatedly tried to bring some visibility to this at the local level without success. BNSF is entitled to equal access at the Mexico border. It is our expectation that UP will adhere to these terms and provide BNSF with equal slots, i.e. where 6 slots exist and each carrier has enough trains at Eagle Pass to cross, BNSF will receive 3, UP will receive 3. In the past week, not once has BNSF received an equal number of southbound slots at Eagle Pass, and we are very concerned about a sustained adverse trend there.

- [redacted]

All of these issues underscore the need to reconvene our Joint Service Committee in the near term (whether in person or virtually as circumstances may dictate), and as you know we have scheduled a formalized meeting in May. Meanwhile, these issues are vital to the success of our joint operations and cannot and should not wait until mid-late May to get addressed. We are aware that UP as well as BNSF are experiencing broader issues with UP's own operational changes and challenges, etc., and the unprecedented issues we both face with the spread of COVID-19, but those issues should not impact the simple need for and ability to deliver equally and fairly. As envisioned by the STB, the CMA, and BNSF when UP committed to the terms of our Dispatch Protocol and our various merger agreements, BNSF must be enabled to effectively operate with UP on equal footing.

I realize we are both operating in unusual circumstances at the moment, and we each have a host of issues competing for our attention. COVID 19 has certainly been disruptive to both our systems, but that is all the more reason there needs to be a fair and efficient sharing of capacity, which is in the national interest. I appreciate you looking into the matters outlined, and hopefully, when we convene a dialogue in May these issues will have been fully addressed. Meanwhile, I look forward to hearing from you soon on this in the near term.

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 2

REDACTED - TO BE PLACED ON PUBLIC FILE

**From:** Brewer, Lance R <Lance.Brewer@BNSF.com>
**Sent:** Friday, March 19, 2021 1:13 PM
**To:** Jason B. Jones <JBJONES1@up.com>; David W. Hughes <DWHUGHES@up.com>; David Giandinoto <DGIANDIN@up.com>; Brian W. McGavock <BWMCGAVOCK@UP.COM>; Matthew F. Lyons <MFLYONS@UP.COM>
**Cc:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Gabriel, Jon <Jon.Gabriel@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>
**Subject:** FW: BNSF Trains Improperly Required to Hold at Caldwell/Temple in Preference to UP Trains Operating on the Rockport Sub

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Jason,

As you will see in the thread below, our respective joint facilities teams have been exchanging correspondence regarding the BNSF's growing and continuing concern over the protocol that has been unilaterally distributed to UP dispatchers as well as managers in the Harriman Center under your supervision and responsibility. As you and others in the Harriman are certainly aware, this protocol and restrictions that are being placed on BNSF trains, and distributed in writing to your officers and dispatchers was never agreed upon by the BNSF, nor were we ever consulted or notified of its creation and implementation by your team prior to its execution.

While our joint facilities teams may or may not continue to debate the matter, I am also aware of the proper escalation sequence on issues of this nature, and that they must first be afforded the opportunity to be addressed and response provided through the ranks of our operating teams. As most of your team is aware, and if not I can provide ample documentation of multiple instances where we have escalated this dispute regarding the Rockport Sub access and this document to yourself and many members of the UP Harriman Center team, we have made our disagreement with the implementation of this protocol widely known over the course of the last few years in writing, conference calls, and in meetings with UPRR operating and dispatching teams.

Even in light of those past escalations and requests for you and the UPRR to cease the distribution of this process document (titled below as "BNSF Rockport Process") and adhere properly to the BSNF-UP/SP Dispatching Protocols, I am again in this case making a formal request to you and your operating leadership within the UPRR and the Harriman Center to (1) immediately rescind this unauthorized "process" document; and (2) your assurance that, in accordance with Section 3 of the Dispatch Protocol, your local operating team and those responsible for dispatching this corridor are re-educated by written directive on UP's obligations concerning the Dispatch Protocol, which I will share with you Section 3 language stating:

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

In addition to this formal request, I am also requesting a response to this correspondence from you or your Supervisor affirming completion of the requested action above.

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**From:** Bailiff, Sarah W
**Sent:** Thursday, March 18, 2021 7:15 AM
**To:** David W. Hughes (DWHUGHES@up.com) <DWHUGHES@up.com>
**Cc:** Brian W. McGavock <BWMCGAVOCK@UP.COM>; Brewer, Lance R <Lance.Brewer@BNSF.com>; White, Tyler <Tyler.White2@BNSF.com>; Power, Olivia E <Olivia.Power@BNSF.com>; Helm, Jon H <Jon.Helm@bnsf.com>; Miner, Tessa D <Tessa.Miner@BNSF.com>
**Subject:** BNSF Trains Improperly Required to Hold at Caldwell/Temple in Preference to UP Trains Operating on the Rockport Sub

David,

UP's Operating Team refers to a process "revised on December 2020 with all parties" concerning operating of trains to the Rockport Sub (also referred to as the Elmendorf Branch). That white paper appears to be the absolute gospel according to UP's operating personnel whenever we have attempted to request parity in our joint operations on the Elmendorf Branch. The myth seems to be that the document was a jointly prepared document that both UP and BNSF have agreed will govern the parties' operations for this corner of UP's property. And yet it was solely prepared by UP and revised solely by UP in December 2020. We have never consented to that document controlling our operations. This "BNSF Rockport Process" document imposes operating restrictions on BNSF contrary to the RASA and the Dispatch Protocol, as it requires BNSF to hold trains at Caldwell awaiting entry to our trackage rights in preference to UP trains which, unlike BNSF

trains, are granted absolute windows and priority operating rights. Moreover, it mandates BNSF on-duty time on its own system as a precondition of being granted a slot to operate. Nothing in the RASA or the Dispatch Protocol grants UP the right to impose such restrictions on off-line operations as a condition to operate onto UP trackage. And I am unaware of any similar situation on the BNSF system where BNSF issues similar mandates to UP and routinely holds out UP for the better part of a day – every day.

We have tried through our local operating teams to work around this "BNSF Rockport Process" document, but notwithstanding that continuing dialogue and assurances that UP will look to see if BNSF can be afforded rights to operate the branch at times/locations where UP is not using it (regardless of UP's clear obligations under the Dispatch Protocol). However, when it comes down to actually running the trains, UP's operating team advises their hands are tied by this documented process (see below) and absolute windows.

We request (1) immediate rescission of this unauthorized "process" document; and (2) your assurance that, in accordance with Section 3 of the Dispatch Protocol, your local operating team and those responsible for dispatching this corridor are re-educated by written directive on UP's obligations concerning the Dispatch Protocol including the following terms:

- BNSF trains are to be given equal dispatch without ANY discrimination in promptness, quality of service or efficiency. (Section 2)
- The competitiveness of BNSF's operations shall not be adversely affected by the fact that UP owns the track. (Section 2)
- Information as to assignment of train priorities is to be shared with BNSF, and those assignments must be made equitably. (Section 7)
- BNSF's entry to its trackage rights must be provided to BNSF on a **first-come, first-served basis**, subject to applicable train priorities and specific operating conditions of both railroads. If strict application of the first come first served rule is difficult or uncertain, deviations from that standard may only be implemented by joint agreement with BNSF. (Section 8)
- Performance evaluation of UP's employees and supervisors responsible for dispatching BNSF's trains shall take into account BNSF's train performance on UP's lines and UP's effectiveness in cooperating with BNSF personnel and meeting BNSF's service requirements in the same manner as such factors are considered with respect to UP's own trains. (Section 12)

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**From:** Nathan A. Kamprath [mailto:NAKAMPRA@up.com]
**Sent:** Tuesday, March 16, 2021 10:13 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Brian W. McGavock <BWMCGAVOCK@UP.COM>; Jason B. Jones <JBJONES1@up.com>; John M. Hopkins <JMHOPKIN@UP.COM>; Jamal W. Chappell <JWCHAPPE@up.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Matthew F. Lyons <MFLYONS@UP.COM>; SouthSrDir@up.com; SUPT-NETWORK (SUPT-NETWORK@UP.COM) <SUPT-NETWORK@UP.COM>
**Subject:** RE: BNSF Train denied at Caldwell U CWELJ 14

**EXTERNAL EMAIL**

This is still the same process that was recently revised on December 2020 with all parties.
Nothing has changed..

if you need us to send a copy of whole process I can attach.

# BNSF Rockport Process

BUILDING AMERICA™

Revised December 22, 2020

Overview: Provide consistent service on the BNSF Elmendorf/Southton trains across the Austin and West Texas Corridors. The ultimate purpose of this document is to standardize the planning, communication, and execution of running BNSF Elmendorf/Southton trains from Caldwell to destination.

Challenges: Elmendorf/Southton trains traverse down Austin main track two, against the flow of UP north trains out of San Antonio, as well as limited capacity on the Rockport Subdivision. To accommodate, traffic must be flipped out of San Antonio to Austin main track one. This document will lay out the communication standards and actions that must be taken by the UPRR and BNSF to be successful in running these trains to destination.

Standard Call Window at Temple

Any train coming from the BNSF at Temple that is destined for Elmendorf/Southon should be on duty at Temple between 0800-1600.

This call window will allow the trains to arrive after the daily local windows are complete and afford a better opportunity to proceed to destination without interruption. Trains that are called outside of this standard window will be held on the BNSF Railroad short of Caldwell.

**Nathan A. Kamprath**
Union Pacific Railroad | Sr. Director Operations - Southern Region
Ph 402.636.7063 | Cell 402.619.3350 | Esker Fax:402.501.1870
Email nakampra@up.com | www.uprr.com, LATA:N102996
HDC| 850 Jones St. | Omaha, NE 68102

BUILDING AMERICA®

"Miner, Tessa D" ---03/16/2021 09:49:46 PM---* PROCEED WITH CAUTION - This email was sent from outside the Company *

From: "Miner, Tessa D" <Tessa.Miner@BNSF.com>
To: "Brian W. McGavock" <BWMCGAVOCK@UP.COM>, "SouthSrDir@up.com" <SouthSrDir@up.com>, "SUPT-NETWORK (SUPT-NETWORK@UP.COM)" <SUPT-NETWORK@UP.COM>
Cc: "Matthew F. Lyons" <MFLYONS@UP.COM>, "John M. Hopkins" <JMHOPKIN@UP.COM>, "Jamal W. Chappell" <JWCHAPPE@up.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Theerman, Kenny J" <Kenny.Theerman@BNSF.com>, "Jason B. Jones" <JBJONES1@up.com>
Date: 03/16/2021 09:49 PM
Subject: RE: BNSF Train denied at Caldwell U CWELJ 14

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## * PROCEED WITH CAUTION - This email was sent from outside the Company *

UP Team,
We are once again having to potentially re-crew a train that we have been told on multiple occasions that this was not the case.

U CWELJ 14 is being refused due to "time limits" that have been discussed by both parties BNSF and UP and agreed that they should not exist.

Brian,
I am referring to your message below to "stop holding trains and bring them" so that all parties know it is ok to run.

I am also including the HDC Team, Mr. Jones, and whomever else needs to know that the trains to El Mendorf/Rockport Sub are no longer to be held.

Please call me if there are questions.

**Tessa Miner | BNSF Railway | Director of Trackage Rights | (713) 825 -8631 C | (817) 352-7332 O**

**From:** Brian W. McGavock [mailto:BWMCGAVOCK@UP.COM]
**Sent:** Saturday, March 13, 2021 7:41 PM
**To:** Miner, Tessa D <Tessa.Miner@BNSF.com>
**Cc:** Matthew F. Lyons <MFLYONS@UP.COM>; John M. Hopkins <JMHOPKIN@UP.COM>; Jamal W. Chappell <JWCHAPPE@up.com>; Brewer, Lance R <Lance.Brewer@BNSF.com>; Theerman, Kenny J <Kenny.Theerman@BNSF.com>; Jason B. Jones <JBJONES1@up.com>
**Subject:** Re: BNSF Train denied at Caldwell

**EXTERNAL EMAIL**

Stop holding trains and bring them
Sent from my iPhone

On Mar 13, 2021, at 8:17 AM, Miner, Tessa D <Tessa.Miner@bnsf.com> wrote:

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

UP,
Please see below information on the reason BNSF train was denied. It's a new one to me. We were denied because of an 8 hour Amtrak window??

I believed eve the CM is stating the "paper" that is talking about the Elmedorf window. After our meeting last week, I thought this was being handled. Can you please provide an update where we are at with letting everyone know our trains CAN run inside this window?

-UP denied taking the U SLOPUX0 01T / UCWEGJ 05 off at Caldwell onto the Giddings Sub due to it being called outside of their expected call time to get it delivered onto the Rockport Sub. UP Corridor Manager Mark Clemmer stated that there is a letter out that states the specific call times for Elemendorf / Southton trains to be called out of Temple and believes it to be between 0800 - 1600 based on Amtrak coming south. He stated he would try and find letter and email it to me.

Tessa Miner

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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 3

**From:** Graham, Matthew S <Matthew.Graham2@BNSF.com>
**Sent:** Friday, March 28, 2025 10:40 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Power, Olivia E <Olivia.Power@BNSF.com>
**Cc:** Hamilton, Eric <Eric.Hamilton@BNSF.com>; Martucci, Mike <Mike.Martucci@BNSF.com>; Leodoro, John P <John.Leodoro2@BNSF.com>
**Subject:** Rockport Sub DS Process - [redacted] Trains

---

Greetings Team.

Rockport Sub—-Purcell/([redacted] trains), Southton, Elmendorf---process.

After touring and evaluation of the UP Rockport Sub with Terminal Manager Leodoro...it has come to light that the UP has a process that is not an agreement (that I know of), where BNSF is only allotted a 12-hour window from 1800-0600 to spot/pull.

The UP has a Local (YEY61) that works 6 days a week on the Rockport Sub—-5 days regular and tag job on Saturdays from 0600-1800.
The local takes 12 hours each day working and only gets 1 warrant for the entire Rockport Subdivision (their entire shift).

We need to address this process with the UP and see if the Dispatcher/Corridor Manager can instruct the (YEY61) to continue communication with the dispatcher throughout their shift. Ideally if BNSF has a S/B train between 0600-1800, the dispatcher could communicate with the (YEY61) to get 2 warrants and roll-up/release the track to Southton siding. This would expedite BNSF trains destined for Purcell, Southton, and Elmendorf to Southton siding, rather than holding at Goodwin or Bracken, which creates about an 8–12-hour delay with new crew/shuttle jobs to deliver/pull.

**Action Item:**
***Plan is to discuss the dispatching process with the South Texas Sr. Lane Director. See if we could address our customer service concerns for the trains Arriving/Departing the Rockport Sub by adjusting the dispatching protocol and communication process for the (YEY61) on the Rockport Sub.

Have a Safe Day!

---

Matthew S Graham | *BNSF Railway* | Director of Trackage Rights – Omaha, NE | ☎Cell: 346-328-1013

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

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

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 4

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# ELMENDORF Unit Train Performance Concerns



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# Summary

We continue to experience delays on Handling from the UPRR when requesting access to and from the Rockport Sub with our Unit trains for Elmendorf. The poor handling has continued to result in significant delay for our customers to receive their product. Additionally, BNSF continues to experience increased recrew rates between Temple, TX and Elmendorf that continues to impact our crew availability within the San Antonio complex and overall fluidity. These continued delays have been persistent over the previous 6 months and have been increasingly challenging over the past 45-60 days with increased volume.

The following slides will provide additional details and performance toward Elmendorf. Provided on these slides are samples of run times on and off the Rockport Sub for the last 45 days.

# Elmendorf Inbounds

REDACTED - TO BE PLACED ON PUBLIC FILE

## Temple, TX to Elmendorf - **Avg 44.1 hrs - Last 45 days**



# Elmendorf Outbounds

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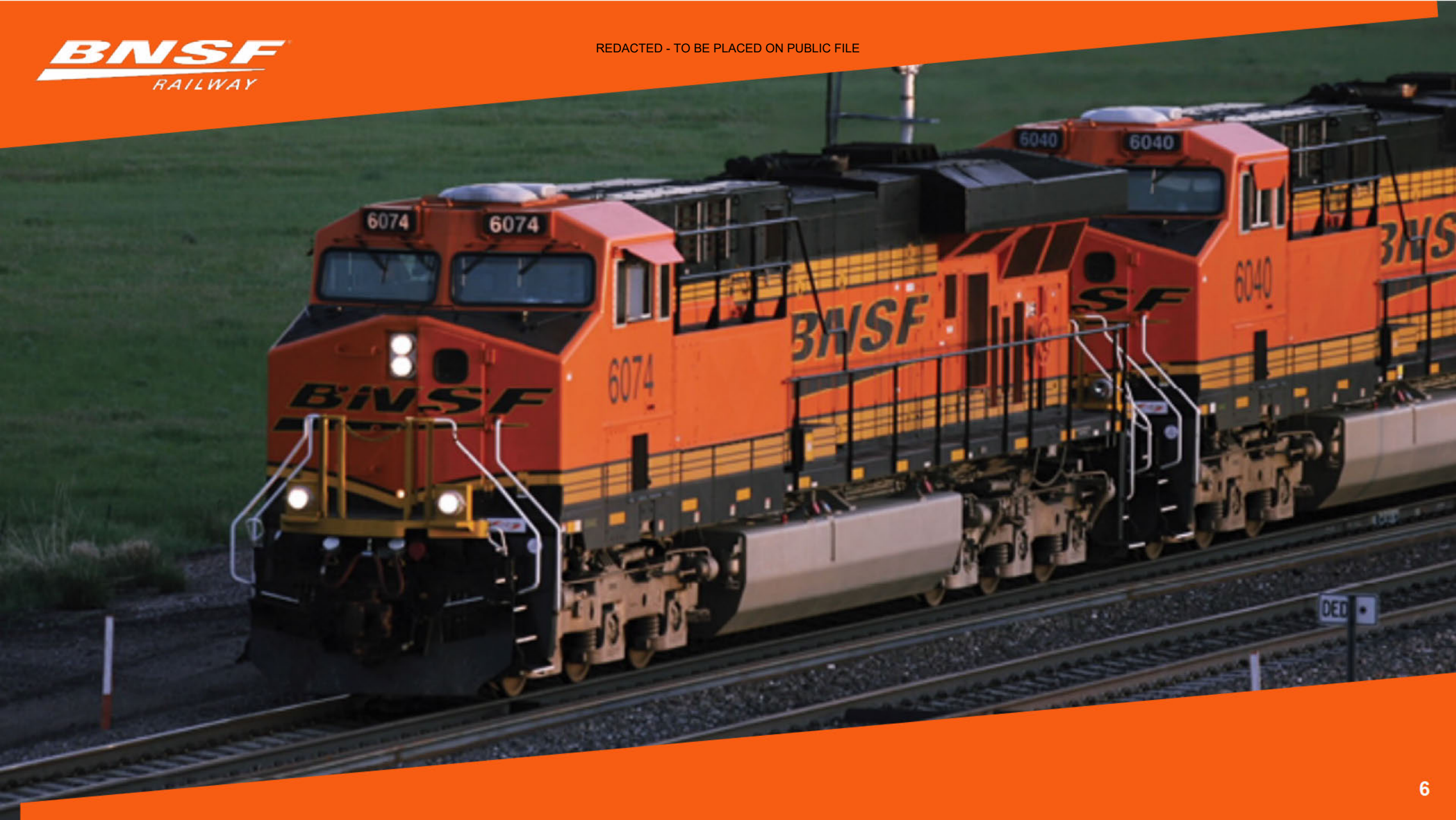
## Elmendorf to Temple, TX - **Avg 19.3 hrs - Last 45 days**



# Delays

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- UPRR Local:
  - Local works 6 days a week and nothing is allowed on sub while they are working their customers.
- UPRR needing to build a route:
  - Train traverse against the flow of traffic off the Austin Sub MT2 to Rockport
- Congestion on Rockport:
  - [redacted] coal trains and UPRR Local given priority over BNSF trains following MOW
- Mow on Rock Port Sub
  - UPRR MOW track work continues through June 2018
- UPRR Coal trains
  - UPRR will always prioritize the [redacted] Coal trains movement.


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

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 5

**From:** Norwood, Zachary B <Zachary.Norwood@BNSF.com>
**Sent:** Sunday, June 9, 2019 11:45 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Templeton, Olivia E <Olivia.Templeton@BNSF.com>
**Cc:** Brewer, Lance R <Lance.Brewer@BNSF.com>; Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Thompson, Janssen <Wesley.Thompson@BNSF.com>; Hamilton, Eric <Eric.Hamilton@BNSF.com>
**Subject:** Re: UP Rockport Destination Trains

---

[redacted]

On Jun 9, 2019, at 11:37 AM, Templeton, Olivia E <Olivia.Templeton@bnsf.com> wrote:

[redacted]

Sent from my iPhone

On Jun 9, 2019, at 11:25 AM, Norwood, Zachary B <Zachary.Norwood@bnsf.com> wrote:

> Interesting perspective on Parity from Kevin, based on directional running....
>
> Begin forwarded message:
>
> **From:** "Norwood, Zachary B" <Zachary.Norwood@BNSF.com>
> **Date:** June 9, 2019 at 11:22:39 AM CDT
> **To:** "Kevin D. Ready" <KDREADY@up.com>
> **Subject: Re: UP Rockport Destination Trains**
>
> If there are service interruptions going on it is definitely in all our best interests if the CM's go back to distributing them. I haven't seen much in the communication pipeline about SI's other than what I've gotten from you. Which means the BNSF leaders aren't likely aware these things are going on either.
> It doesn't seem like Parity when we're getting reports of coal and locals on the Rockport moving. I get what you are saying about the Austin #2. But, if that's the operational issue, the various trackage agreements in place in Central Texas allows UP to use #1 at your discretion. UP is choosing not to put BNSF on #1 at their discretion. And we now have customers out of product...
>
> Zach Norwood
> Director Trackage Rights (HDC)
> 713 458 8008
>
> On Jun 9, 2019, at 11:00 AM, Kevin D. Ready <KDREADY@up.com> wrote:
>
> **EXTERNAL EMAIL**
>
> Zach,
>
> That is not the case at all. The bottle neck is the need to traverse the wrong direction on Austin main 2, a move we do not typically do at all. This is the definition of parity, we have run the exact same amount of trains**(0)** in that direction on the Austin #2. Our recrew rate and speed for

the Austin will clearly show that you are not the only railroad burning through money on this route.

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This started with the derailment at Taylor which caused us to tie down trains on Austin 2. We have had non-stop incidents and crew issues since and are still trying to recover. I will shore up the communication part with my team when issues arise so we do not have any miscommunication going forward.. All that being said it is my understanding that you have live crews on the trains right this moment and will go today.

Kevin D. Ready
Southern Region -
Office - 402-636-7626
Cell - 402-378-3806

<graycol.gif>"Norwood, Zachary B" ---06/09/2019 10:47:49 AM---*** STOP. EXTERNAL EMAIL. USE CAUTION ***

From: "Norwood, Zachary B" <Zachary.Norwood@BNSF.com>
To: "BDSTARR@up.com" <BDSTARR@up.com>, UP South System Operations Desk <southnetsupts@up.com>, "Kevin D. Ready" <KDREADY@UP.COM>ere.
Date: 06/09/2019 10:47 AM
Subject: Fwd: UP Rockport Destination Trains

---

## *** STOP. EXTERNAL EMAIL. USE CAUTION ***

These BNSF trains have been sitting in UP ML sidings going on 2 and 3 days now. Customers are out of product as well.

I'm at the point I'm going to have the local team refrain from putting any more crews on the trains until someone can actually confirm the trains will move. Destination is begging for the trains and BNSF has been crewing them. This is simply preference of other movement on / off the Rockport. We're burning through thousands of dollars to sit.

Begin forwarded message:

**From:** "Beals, Bob O" <Bob.Beals@BNSF.com>
**Date:** June 8, 2019 at 10:01:37 PM CDT
**To:** "Kevin D. Ready" <KDREADY@UP.COM>, "austinHDC@up.com" <austinHDC@up.com>, "westtexashdc@up.com" <westtexashdc@up.com>
**Cc:** "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Wadkins, Gwen" <Gwendolyn.Wadkins@BNSF.com>, "Theerman, Kenny J" <Kenny.Theerman@BNSF.com>, "Christian, Ty D" <Ty.Christian@BNSF.com>, "Leodoro, John P" <John.Leodoro2@BNSF.com>, "Post, Sammy" <Samuel.Post@BNSF.com>, OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>, "Norwood, Zachary B" <Zachary.Norwood@BNSF.com>
**Subject: FW: UP Rockport Destination Trains**

We were just contacted and informed by the UPRR, the following trains would not be moving until early morning on account of 2 coal trains needing to move off of the Rockport Subdivision. This will cause additional delays to the 2 trains that are delayed as follows:

- U EOLSOX0 15/UCWSOJ 05 – at Goodwin (65hours) for Southton
- U BWFELT0 12/UCWELT 04 – at Lockhart (36+ hours) for Elmendorf

I have been in contact with the customers and explained the situation, but one is out of product and the other needs the train ASAP prior to being out of product.

The U EOLSOX0 15/UCSSOJ 05 has had 2 crews on board to run per UPCM directives. We have ordered the previous crews today and also have the following crew covering these trains:

REDACTED - TO BE PLACED ON PUBLIC FILE

- U EOLSOX0 15/UCWSOJ 05 – 1202/8th
- U BWFELT0 12/UCWELT 04 – 1205/8th

We currently have the following crews available to cover these trains:

- o/d 1700/8th ( called to cover UP Sosan and the UP Rockport trains)
- o/d 2305/8th (called to cover UP Rockport trains)

We need assistance with making all moves to occur.

Also, there is a U SLOELT0 06T/ USYSOJ 09 that is enroute from Houston for Elmendorf. They have agreed to accept delivery on 06/09/19 if we deliver the U BWFELT0 12/UCWELT 04.

Any assistance is greatly appreciated.

**Bob Beals** | ***BNSF* Railway** | **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** | 9835 Fischer Rd, Von Ormy, TX 78073 | Bob.Beals@bnsf.com | **Cell: 915-526-4287**

**From:** Norwood, Zachary B
**Sent:** Saturday, June 8, 2019 8:34 PM
**To:** Beals, Bob O <Bob.Beals@BNSF.com>
**Subject:** Re: UP Rockport Destination Trains

Seeing what I can find out

On Jun 8, 2019, at 8:14 PM, Beals, Bob O <Bob.Beals@bnsf.com> wrote:
Still haven't moved. I sent out my original email at 0432. I heard a rumor there MAYBE a vehicle strike. Unconfirmed.

Thank you for what you do. You are in the trenches deeper then me.

**Bob Beals** | ***BNSF* Railway** | **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** | 9835 Fischer Rd, Von Ormy, TX 78073 | Bob.Beals@bnsf.com | **Cell: 915-526-4287**

**From:** Brewer, Lance R
**Sent:** Saturday, June 8, 2019 8:00 PM
**To:** Beals, Bob O <Bob.Beals@BNSF.com>
**Subject:** Fwd: UP Rockport Destination Trains

Lance Brewer
GDT Red River Division

---

**From:** Norwood, Zachary B
**Sent:** Saturday, June 8, 2019 6:55:50 PM
**To:** Brewer, Lance R
**Cc:** Bailiff, Sarah W; Thompson, Janssen; Templeton, Olivia E
**Subject:** Fwd: UP Rockport Destination Trains

As info
Zach Norwood
Director Trackage Rights (HDC)
713 458 8008

Begin forwarded message:
**From:** "Kevin D. Ready" <KDREADY@UP.COM>
REDACTED - TO BE PLACED ON PUBLIC FILE
**Date:** June 8, 2019 at 6:46:18 PM CDT
**To:** Zachary Norwood <Zachary.Norwood@BNSF.com>, Damian Clarke <DCLARKE@up.com>, "David R. Lounsberry" <DRLOUNSB@UP.COM>
**Cc:** UP South System Operations Desk <southnetsupts@up.com>, OPR DL NOC GDT <OPRDLNOCGDT@bnsf.com>
**Subject: Re: UP Rockport Destination Trains**

**EXTERNAL**

**EMAIL**

Corridor told me he was going to run both of them and that if the dispatcher said you won't move soon she meant minutes not hours.

On Jun 8, 2019, at 18:24, Norwood, Zachary B <Zachary.Norwood@bnsf.com> wrote:

***** STOP. EXTERNAL EMAIL. USE CAUTION *****

Any assistance to run to destination will be appreciated. Don't want to continue burning crews and blocking sidings

Zach Norwood
Director Trackage Rights (HDC)
713 458 8008

Begin forwarded message:
**From:** "Beals, Bob O" <Bob.Beals@BNSF.com>
**Date:** June 8, 2019 at 4:23:30 PM CDT
**To:** "Kevin D. Ready" <KDREADY@UP.COM>
**Cc:** "Theerman, Kenny J" <Kenny.Theerman@BNSF.com>, "Post, Sammy" <Samuel.Post@BNSF.com>, "Christian, Ty D" Ty.Christian@BNSF.com , "Brewer, Lance R" Lance.Brewer@BNSF.com , OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>, "Norwood, Zachary B" <Zachary.Norwood@BNSF.com>
**Subject: RE: UP Rockport Destination Trains**
Kevin, Just wanted to let you know we have a 1202 extra shuttle on the U EOLSOX0 25 at Goodwin and a 1205 on train U BWFELT0 12 at Lockhart per directions from the UPCM. The word we have received from the DS is they weren't going to move soon. If you can verify we have a movement plan in place I would appreciate it so I can let the facilities know to have crews available upon arrival.

Thank you again for your assistance.

**Bob Beals**| *BNSF* Railway| **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** |9835 Fischer Rd, Von Ormy, TX 78073| Bob.Beals@bnsf.com|**Cell: 915-526-4287**

**From:** Kevin D. Ready [mailto:KDREADY@UP.COM]
**Sent:** Saturday, June 8, 2019 6:53 AM
**To:** Beals, Bob O <Bob.Beals@BNSF.com>
**Subject:** Re: UP Rockport Destination Trains

**EXTERNAL**

**EMAIL**

I did not receive anything from you this morning, maybe some sort of filter is getting it.

Let me get with my guys, we will get them moving. I will call you personally after the morning calls if that works. .

Kevin D. Ready
Southern Region -
Office - 402-636-7626
Cell - 402-378-3806

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<image001.gif>"Beals, Bob O" ---06/08/2019 06:46:37 AM---*** STOP. EXTERNAL EMAIL. USE CAUTION ***

From: "Beals, Bob O" <Bob.Beals@BNSF.com>
To: "Kevin D. Ready" <KDREADY@UP.COM>, "austinHDC@up.com" <austinHDC@up.com>, "westtexashdc@up.com" <westtexashdc@up.com>, "Brenten D. Starr" <BDSTARR@up.com>
Cc: "Brewer, Lance R" <Lance.Brewer@BNSF.com>, "Thompson, Janssen" <Wesley.Thompson@BNSF.com>, "Wadkins, Gwen" <Gwendolyn.Wadkins@BNSF.com , "Theerman, Kenny J" Kenny Theerman@BNSF com , "Christian, Ty D" Ty Christian@BNSF com , "Post, Sammy" <Samuel.Post@BNSF.com>, OPR DL San Antonio <OPRDLSanAntonio@BNSF.com>
Date: 06/08/2019 06:46 AM
Subject: UP Rockport Destination Trains

---

## *** STOP. EXTERNAL EMAIL. USE CAUTION ***

Kevin,

Following up on an email I had sent earlier this morning to you.
I am asking for your assistance with putting in place a good movement plan to move the following trains today, which are parked near San Antonio that need to be delivered on the UP Rockport Subdivision:

- U EOLSOX0 15/UCWSOJ 05 at Goodwin (50+ hours) for Southton
- U BWFELT0 12/UCWELT 04 – at Lockhart (36+ hours) for Elmendorf

It is very important we get these trains delivered on account of customers in need of the product, power needed elsewhere on the UP Rockport Sub, and future inbound traffic. We have had 2 crews on the UCWSOJ 05 at Goodwin and didn't move at all.

Please let me know when you have a plan in place and I will have crews on these trains for movement.

I appreciate your assistance.

**Bob Beals** | ***BNSF* Railway** | **Senior Trainmaster/Road Foreman of Engines – San Antonio, TX** | 9835 Fischer Rd, Von Ormy, TX 78073 | Bob.Beals@bnsf.com | **Cell: 915-526-4287**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 6

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**PAUL B. DUNCAN**
*Vice President Service Design*
*& Transportation Support*

**BNSF Railway**
2600 Lou Menk Drive
Fort Worth, TX 76131
(817)352-3464
paul.duncan@bnsf.com

June 21, 2019

Cynthia M. Sanborn
Vice President Network Planning and Operations
1400 Douglas Street
Omaha, NE, 68179

VIA Hand Delivery and EMAIL: cmsanbor@up.com

**Re: Request to Convene Joint Service Committee**

Dear Cindy:

We have become increasingly concerned with the performance of BNSF trains operating on "jointly dispatched" territory under the purported control of the Joint Director at Spring and other UP dispatched joint trackage. Per the UP/SP Dispatching Protocols, BNSF trains are entitled to enter joint trackage on a "first-come, first-served basis," and thereafter be subject to equal handling by employees and supervisors whose performance, and related comp structure, is evaluated on the basis of the train performance of not only UP's trains, but also BNSF's trains. Recently, our local operating team has been in contact with UP multiple times a day in efforts to stem BNSF's recrew rates and to get and keep BNSF's trains moving, especially in the Gulf Coast region. BNSF recrews on territory managed or dispatched by UP employees remain the highest on BNSF's system, and we see no progress or improvement in the poor performance of BNSF's trains.

The UP/SP Dispatching Protocols' purpose is to ensure our trains are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of our operations on the joint trackage is not adversely affected by the fact that UP may own, manage, or materially influence the operations along the joint trackage. Toward that end, we request that the Joint Service Committee reconvene to review and implement a collective plan to improve our joint operations and ensure these goals are being fulfilled as the parties intended. The Committee should also review whether 1) the dispatching protocols are suitably communicated to, understood and followed by personnel involved in dispatching or supervising of dispatching of BNSF's trains 2) BNSF trains are consistently being accepted on a first-come, first served basis; 3) BNSF trains on-line are given parity and equal treatment with UP trains; 4) those personnel and supervisory personnel responsible for directing train movements on behalf of UP are being evaluated and compensated based on the performance of BNSF's trains as well as UP trains; and 5) the oversight and supervisory control of the "jointly dispatched" trackage is managed by the Joint Director.

We recommend the Committee convene at Spring, Texas in approximately one month's time from the date of this letter. Please advise with options for a few dates that would be suitable for UP. Once we have a date firmed up, we will follow up with a proposed draft agenda and exchange of committee appointees.

Meanwhile, for purposes of this review, we request that UP forward all available train performance measurement data for UP, BNSF, and KCS trains operating in the Houston Complex, including the Houston Belt & Terminal and the PTRA, and all such trains operating on the 50-50 Joint Line. Additionally, we request:

- UP's most current dispatch protocol directives or guidelines provided to UP dispatchers who handle the 50-50 Line, the HB&T, and/or the PTRA

- All details and documentation on the 24-hour Houston Train Stop Study

- Information since January 1, 2019, on train ID, transit time and recrew rates of trains originating and/or departing the following locations:
    - San Antonio (including trains destined to the Rockport Sub)
    - Eagle Pass
    - Houston (including PTRA, Englewood and Settegast)
    - Dayton (Robinson Yard or Dayton Yard)
    - Beaumont
    - New Orleans Gateway (including trains lined onto the HPL Bridge at West Bridge transiting to East Bridge Junction)

- Performance of identified "Pace Setting Trains" for the Houston complex, including:
    - YG384J – Departing South Yard between 0100-0300
    - YH283J, YH285J and YH281J – Arrival time at Dayton
    - Performance of UP and BNSF outbound trains from Dayton departing on time

This material should be provided not less than seven business days prior to the date of the Joint Service Committee meeting so that we have adequate time for meaningful review.

We are hopeful that reconvening the Joint Service Committee can help facilitate improved transparency and joint coordination to ensure the objectives of the dispatch protocols are met and overall joint operations see marked improvement.

Finally, I would note that KCS has concerns about its train performance as well. If UP is amenable to KCS's attendance at the JSC meeting, we are certainly not opposed to that and believe that may help provide additional perspective on the state of our joint operations in the Gulf Coast region.

We look forward to hearing from you.

Sincerely,

Paul B. Duncan

Cc: Matt Igoe
Matt Garland
Sarah Bailiff

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 7

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# FILED UNDER SEAL

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

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 8

**From:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Sent:** Monday, August 28, 2017 3:10 PM
**To:** Templeton, Olivia E <Olivia.Templeton@BNSF.com>; Chapman, Dentin D <Dentin.Chapman@BNSF.com>
**Subject:** FW: Eagle Pass

REDACTED - TO BE PLACED ON PUBLIC FILE

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**From:** Danielson, David S (Operations)
**Sent:** Sunday, August 27, 2017 2:52 PM
**To:** Igoe, Matthew J Matthew.Igoe@bnsf.com ; Hernandez, Frank P Frank.Hernandez@BNSF.com
**Subject:** FW: Eagle Pass
**Importance:** High

Matt,

Tom Blevins is the UP Director, his team manages Eagle Pass – his response below. The K train mentioned is a Priority UP intermodal train that runs from Sait, Tx to Eagle Pass.

We have equal access to the bridge and I am not sure priority of train should matter more/less than equal access.

To me if BNSF arrives in time for a delivery window, BNSF train should go in that window.

They also occasionally have heart burn that we take a slot for a 43 or less car train when volumes are heavy.

He did not mention that until saying they pulled it in their yard to stage first out.

DSD

**From:** Thomas C. Blevins [mailto:TCBLEVIN@UP.COM]
**Sent:** Sunday, August 27, 2017 11:42 AM
**To:** Danielson, David S (Operations) <David.Danielson@bnsf.com>
**Cc:** Steven L. Bybee <SLBYBEE@up.com>; Dan Witthaus <DWITTHAU@up.com>
**Subject:** Re: Eagle Pass

EXTERNAL EMAIL

Hello Me Danielson,

The KSAEG is an intermodal train that will always take priority if operation allows.

The MLFRS was ready to move out of our Kinney County facility at Spofford last night before the BNSF arrival but was held back a bit due to traffic ahead. (

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Cars were actually on hand 12 hrs before BNSF arrival)

We did allow your 43 car train to stage in our interchange yard to be first in line for the next window

Hope this clears up any confusion regarding this matter

Thanks

On Aug 27, 2017, at 11:22 AM, Danielson, David S (Operations) <David.Danielson@bnsf.com> wrote:

This email originated from outside of the company. Please use discretion if opening attachments or clicking on links.

---

Tom do you know what happened here why BNSF train did not go – note below? Also looked like we put on a extra crew to make it go smoothly?

Thanks

DSD

**H–TPLEAP1–25 (43 cars)** TA but failed to IC during ongoing 0000 – 0600hrs midnight SEW. Arrived 4th in line to IC, but was run around by **UP trains KSAEG26 (intermodal) @ 0415hrs & MLFRS (manifest) @ 0530hrs. H–TPLEAP1–25** ended up 6th in line to IC and FXE only accepted 5 trains. Train will stage 1st out at High School. ***TA 0300hrs, RULE 15 APPLIED, and will DD during upcoming SEW, date***.

---

**From:** Hernandez, Frank P
**Sent:** Sunday, August 27, 2017 7:01 AM
**To:** Igoe, Matthew J <Matthew.Igoe@bnsf.com>
**Cc:** Danielson, David S (Operations) <David.Danielson@bnsf.com>
**Subject:** RE: Eagle Pass
**Importance:** High

Matt, muy buenos días. Deja vu all over again. This this verbiage comes from the TM going off duty at this moment. You will also see it on today's EAGLE PASS Current Status & 7 day Forecast Report, which will go out later this morning. UP managed to IC all of their trains and BNSF, *again*, did not. We even called an extra crew to assist with the IC last night and still failed to IC the train. So much for UP's argument that even when they run around us, we still deliver during the same IC Window. Enjoy the remainder of your weekend. Saludos.

**H–TPLEAP1–25 (43 cars)** TA but failed to IC during ongoing 0000 – 0600hrs midnight SEW. Arrived 4th in line to IC, but was run around by **UP trains KSAEG26 (intermodal) @ 0415hrs & MLFRS (manifest) @ 0530hrs. H–TPLEAP1–25** ended up 6th in line to IC and FXE only accepted 5 trains. Train will stage 1st out at High School. ***TA 0300hrs, RULE 15 APPLIED, and will DD during upcoming SEW, date***.

***Frank P. Hernandez***

***BNSF General Director of Transportation (U.S. / Mexico Operations)***

***U.S.A. Cell: 915–345–8962***

***MEXICO Cell if calling from USA: (011–521)–444–188–4089***

***It is due to someone else's kindness that we are granted the pleasure of working….. – fph***

---

**From:** Hernandez, Frank P
**Sent:** Saturday, August 26, 2017 5:44 PM
**To:** Igoe, Matthew J <Matthew.Igoe@bnsf.com
**Cc:** Danielson, David S (Operations) <David.Danielson@bnsf.com>
**Subject:** RE: Eagle Pass
**Importance:** High

Matt, you are spot on. Here is what the EAGLE PASS TM provided me a while ago:

**From:** Ruiz, Ramon
**Sent:** Saturday, August 26, 2017 1:17 PM
**To:** Hernandez, Frank P <Frank.Hernandez@BNSF.com>
**Cc:** Trejo, Edgar <Edgar.Trejo@BNSF.com>
**Subject:** FW: Eagle Pass

Buenas tardes Frank,

Before I left last night I had spoken to the MYO David Sanchez about letting us come down to Clark's Park with our **H–TPLEAP1–24** and lineup for the midnight window. I was told by Mr. Sanchez that we could not bring the train down to Clark's until they outbounded a train and that we might have to follow the **MLFTO** in, but to follow up with the night MYO Raziel Romero. The **MLFTO** departed Laughlin ahead of our **H–TPLEAP1–24**. Our **H–TPLEAP1–24** was about to turn the corner at Spofford and I wanted to leave Aldo landing instruction for our train. I told him that we would not be able to bring the train in our yard due to capacity and that he had to follow up with MYO Raziel Romero on when they would be able to take our train at Clark's Park.

Here is what transpired after I left.

***The UPRR had the MLFTO come in from Laughlin and staged at the high school, 1st out (Matt, the UP train had a clear shot to the bridge / high school. No switching ahead).***

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We were supposed to follow the **MLFTO** down to Clark's with our **H–TPLEAP1–24** and be 2nd out at the high school but were not allowed to do so by MYO Raziel Romero.

Romero stated that he had 2 more trains for the southbound midnight window and that he had to make sure they had a landing spot before we could come down to Clark's.

These were the 2 trains that ran around us at Carl, **KSAEG25** (intermodal) @ 2200hrs and **MLFRS25** (manifest) @ 0200hrs.

This pushed back our **H–TPLEAP1–24** from 2nd to 4th in line to interchange.

Finally we did have the G-MNSEAP5-18 arrive at 0525hrs 5th in line but was not allowed to come down because the UPRR & FXERR agreed to try to get back on normal directional windows and this train if interchanged would have extended the window out longer. This train was staged in our yard track 200.

Regards,

Matt, what the TM tells me in the above summary is a common occurrence at EAGLE PASS. Parity is seldom adhered to. Furthermore, while an argument can be made that our train(s) might still make the same IC Window, we do not always have the luxury of making it to the bridge with the same inbound crew, which taxes our Road Switcher or worse, we end up using another crew, instead of delivering with the same inbound crew. 7hrs is a long time to sit in any siding. Saludos.

***Frank P. Hernandez***

***BNSF General Director of Transportation (U.S. / Mexico Operations)***

***U.S.A. Cell: 915–345–8962***

***MEXICO Cell if calling from USA: (011–521)–444–188–4089***

***It is due to someone else's kindness that we are granted the pleasure of working….. – fph***

---

**From:** Igoe, Matthew J
**Sent:** Saturday, August 26, 2017 1:29 PM
**To:** Hernandez, Frank P <Frank.Hernandez@BNSF.com>; Danielson, David S (Operations) <David.Danielson@bnsf.com>
**Subject:** RE: Eagle Pass

We meet with the UP in FTW next week – assume this is a topic I should bring up as needing attention. I do not watch it

daily but get the sense treatment is not fair and equitable.

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**From:** Hernandez, Frank P
**Sent:** Saturday, August 26, 2017 1:09 PM
**To:** Danielson, David S (Operations) <David.Danielson@bnsf.com>
**Cc:** Igoe, Matthew J <Matthew.Igoe@bnsf.com>
**Subject:** Re: Eagle Pass

I am awaiting more detailed info from the TM on duty last night. Should have it later today when he comes back. Saludos

Sent from my iPhone

On Aug 26, 2017, at 10:44 AM, Danielson, David S (Operations) <David.Danielson@bnsf.com> wrote:

> The way I read it Matt, they take 5 trains per window. Our train could have arrived 1st for the window. For operational reasons the UP held it back and our train went 4th In the same window it arrived for, instead of 1st
>
> I don't know if they were switching ahead, or the others arriving were short on time.
>
> I think and Frank correct me if I'm wrong - If our train delivers in the window it arrived for, we are OK with that if there are operational considerations made lining up the order for delivery.
>
> DSD

---

**From:** Hernandez, Frank P
**Sent:** Saturday, August 26, 2017 10:09 AM
**To:** Igoe, Matthew J <Matthew.Igoe@bnsf.com>
**Cc:** Danielson, David S (Operations) David.Danielson@bnsf.com
**Subject:** RE: Eagle Pass

Muy buenos días Matt. Your interpretation is accurate. Such occurrences are frequent. Not much more that I can add. David might have something. Saludos.

***Frank P. Hernandez***

***BNSF General Director of Transportation (U.S. / Mexico Operations)***

***U.S.A. Cell: 915–345–8962***

***MEXICO Cell if calling from USA: (011–521)–444–188–4089***

**From:** Igoe, Matthew J
**Sent:** Saturday, August 26, 2017 10:01 AM
**To:** Danielson, David S (Operations) <David.Danielson@bnsf.com>; Hernandez, Frank P <Frank.Hernandez@BNSF.com>
**Subject:** Eagle Pass

What am I missing here?

Should I take the way it reads – the UP did exactly what they wanted regardless of window direction and protocol?

DD @ 0700hrs, date Manifest (117 cars + Locos 4 BNSF / GACX54577) TA Carl siding @ 2000hrs and was forced to hold at Carl siding for approximately 7hrs due to UP MYO Raziel Romero not allowing H–TPLEAP1–24 to line up on main line, in anticipation of upcoming 0000-0600hrs midnight SEW. UP MYO Raziel Romero stated he was not ready for train. H–TPLEAP1–24 was then run around by UP trains KSAEG25 (intermodal) @ 2200hrs and MLFRS25 (manifest) @ 0200hrs. Finally TA @ 0320hrs, 4th in line to IC during 0000-0600hrs midnight SEW.  TA 0320hrs & estimated DD 0630hrs, date.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 9

REDACTED - TO BE PLACED ON PUBLIC FILE

**Toni Hanson**
*Manager Contracts and Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-5213
Email: toni.hanson@bnsf.com

October 10, 2024

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

Re: Access to [redacted]

Dear Ryan:

Please accept this letter as BNSF's formal election request to access [redacted] at [redacted] and initiate service pursuant to the Restated and Amended Settlement Agreement ("RASA") between BNSF and UP dated March 1, 2002. This is a New Shipper Facility located at a named 2-to-1 point to which BNSF was expressly granted access in Section 1(a) of the RASA.

BNSF intends to serve this facility directly (using UTAH as our agent) with service planned to commence 45 days from the date of this letter (on or after Nov. 24, 2024). 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 1(d) of the RASA, please confirm approval of BNSF's election in writing within 30 days' receipt of this letter (Nov. 9, 2024). 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,

Toni Hanson

Toni Hanson
Manager Contracts and Joint Facilities
BNSF Railway

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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 10

BUILDING AMERICA®

November 5, 2024

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

Dear Toni:

Please refer to BNSF's letter dated October 10, 2024, seeking Union Pacific's confirmation of BNSF access to [redacted] located at [redacted]. The letter states that access is pursuant to Section 1(a) of the Restated and Amended Settlement Agreement ("RASA") between UP and BNSF dated March 1, 2002. The letter also states that [redacted] is a New Shipper Facility located at a named 2-to-1 point, and that the BNSF intends to serve this facility directly through its agent UTAH Railway with a planned service start date of November 24, 2024.

Union Pacific has reviewed BNSF's request and [redacted] does not meet the requirements for access in Section 1(a) of the RASA.

In addition, Union Pacific has not received a response from BNSF to Union Pacific's questions related to the RASA definition of "New Shipper Facilities". The questions were previously sent to BNSF via email on October 15, 2024, and are included for reference below.

Union Pacific's questions related to the RASA definition of "New Shipper Facilities" were:

1. Will you please advise what commodity or commodities that [redacted] is currently or plans to ship to and from this facility?
2. Will you advise who the prior customer at this location was, and what commodity or commodities that customer shipped to and from this facility?

Sincerely,

Ryan Pichler

Ryan Pichler
Senior Manager Commercial & Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Justin Barager

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 11

REDACTED - TO BE PLACED ON PUBLIC FILE

**Toni Hanson**
*Manager Contracts and Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-5213
Email: toni.hanson@bnsf.com

November 5, 2024

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

Re: Access to [redacted] – Amended letter - existing transload facility

Dear Ryan:

Please accept this letter as BNSF's formal election request to access [redacted] at [redacted] and initiate service pursuant to the Restated and Amended Settlement Agreement ("RASA") between BNSF and UP dated March 1, 2002. This is **an Existing Transload Facility** located at a named 2-to-1 point to which BNSF was expressly granted access in Section 1(b) of the RASA.

BNSF intends to serve this facility directly (using UTAH as our agent) with service planned to commence 45 days from the date of this letter (on or after Dec. 20, 2024). 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 1(d) of the RASA, please confirm approval of BNSF's election in writing within 30 days' receipt of this letter (Dec. 5, 2024). 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,

Toni Hanson

Toni Hanson
Manager Contracts and Joint Facilities
BNSF Railway

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 12

BUILDING AMERICA®

January 24, 2025

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

Toni:

Please refer to BNSF's letter dated December 26, 2024, providing documentation that shows the date [redacted] located at [redacted] was established as a transload facility. The letter had attached a letter from [redacted] dated December 12, 2024, stating they became a transload facility at that location in 1993. Union Pacific acknowledges that [redacted] meets the requirements of Existing Transload Facilities as defined in the Definitions Section of the Restated and Amended Settlement Agreement ("RASA") between UP and BNSF dated March 1, 2002.

Also please refer to BNSF's letter dated November 5, 2024, seeking Union Pacific's confirmation of BNSF access to [redacted] located at [redacted]. The letter states that access is pursuant to Section 1(b) of the RASA, that [redacted] is an Existing Transload Facility located at a named 2-to-1 point, and that the BNSF intends to serve this facility directly through its agent UTAH Railway with a planned service start date of December 20, 2024.

RASA Section 1(b) is not applicable to [redacted] located at 9[redacted], and accordingly BNSF access to this facility is not granted.

As BNSF access is not granted, please do not commence operations until such time that access could be granted.

Ryan Pichler

Ryan Pichler
Senior Manager Commercial & Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Justin Barager

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SURFACE TRANSPORTATION BOARD

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

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 13

REDACTED - TO BE PLACED ON PUBLIC FILE

**Toni Hanson**
*Manager Contracts and Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-5213
Email: toni.hanson@bnsf.com

February 13, 2025

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

Dear Ryan:

Please refer to UP's letter dated January 24, 2025, in which BNSF is not granted access to [redacted] at [redacted]. BNSF is troubled by UP's decision and the lack of any explanation other than to say "RASA Section 1(b) is not applicable." In fact, BNSF has access to [redacted] under RASA Section 1(b), and BNSF intends to begin direct service to [redacted] through BNSF's agent UTAH Railway, effective immediately.

In your January 24, 2025 letter, UP acknowledged that [redacted] is an Existing Transload Facility under the RASA. [redacted] is located at [redacted], which is a 2-to-1 Point listed on Exhibit A to the RASA. Therefore, BNSF has access to [redacted] under RASA Section 1(b), which states that "BNSF shall receive access on [Trackage Rights Lines] to . . . Existing Transload Facilities at points listed on Exhibit A [the RASA]."

There is no question that BNSF has access to [redacted], a 2-to-1 Point, using the Provo Industrial Lead. Indeed, UTAH Railway, acting as BNSF's agent, has been operating on the Provo Industrial Lead providing service to [redacted] at [redacted] since July 22, 2011 (see attached letter).

Since our election letter on November 5, 2024, BNSF has worked diligently to respond to UP's requests for information and we are concerned with the delay incurred by UP's failure to specify the basis for its denial of our election. UP not granting BNSF direct access deprives [redacted] of its right to a fully competitive two-carrier service guaranteed by them under the Surface Transportation Board's merger conditions and the RASA.

BNSF will proceed with our current access to the Provo Industrial Lead to directly serve [redacted] via our agent UTAH Railway, effective immediately.

Sincerely,

Toni Hanson

Toni Hanson
Manager Contracts and Joint Facilities
BNSF Railway

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**Chris Bigoness**
*Manager Merger Customer Access*
*Network Strategy*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB 3rd Floor
Fort Worth, TX 76131
Phone: 817-867-6697
Fax: 817-352-7154
Email: chris.bigoness@bnsf.com

July 22, 2011

Mr. Daniel P. Hartmann
Senior Director Interline
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Service to Existing Industry in [redacted] at 2 to 1 Pont – [redacted]

Dear Dan,

This is a courtesy letter to inform UP of BNSF's intent to initiate approved direct service to the [redacted] facility at [redacted] with Utah Railway (UTAH) acting as BNSF's agent.

Though BNSF never initiated the approved direct service to this facility, UP previously granted BNSF access and approved BNSF direct service (using UTAH as our Agent) prior to the establishment of a formal service protocol to an existing industry. This notification is provided to UP to ensure your internal systems are updated. BNSF will conduct direct service (using UTAH as our Agent), over the Provo Industrial Lead via Lakota Junction utilizing the revenue station of Geneva, UT. Prior to commencement of service, BNSF's local Operations personnel will contact UP's local Operations personnel to discuss any concerns.

Sincerely,

Christopher P. Bigoness
Manager Merger Customer Access
BNSF Railway

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 14

BUILDING AMERICA®

April 15, 2025

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

Toni:

Please refer to BNSF's letter dated April 4, 2025, seeking Union Pacific's confirmation of BNSF access to [redacted] located at [redacted]. The letter states that access is pursuant to Section 1(b) of the Restated and Amended Settlement Agreement ("RASA") between UP and BNSF dated March 1, 2002, and that [redacted] is located at [redacted] which is a 2-to-1 Point listed in Exhibit A to the RASA. The letter also states that BNSF intends to serve this facility directly through its agent UTAH Railway effectively immediately.

UP agrees that [redacted] is a 2-to-1 Point listed in Exhibit A to the RASA. However, [redacted] is located off the Provo Industrial Lead which was the former Union Pacific main line pre-merger. The Provo Industrial Lead is a 49 U.S.C. 10901 "line of road" per the RASA Definitions Section (Definition of Trackage Rights Lines), and accordingly BNSF does not have direct access. The relevant and governing section of RASA is 8 (i). Pursuant to RASA Section 8 (i), UP 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."

To facilitate BNSF's access pursuant to RASA Section 8 (i), UP will contact BNSF to schedule a meeting to initiate discussion.

In the interim, BNSF does not have current direct access to the Provo Industrial Lead, and cannot commence operations until such time access may be granted.

Ryan Pichler

Ryan Pichler
Senior Manager Commercial & Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Justin Barager

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 15

REDACTED - TO BE PLACED ON PUBLIC FILE

# FILED UNDER SEAL

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 16

REDACTED - TO BE PLACED ON PUBLIC FILE

**Toni Hanson**
*Manager Contracts and Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-5213
Email: toni.hanson@bnsf.com

April 17, 2024

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

Re: Access to [redacted] at Eagle Pass, TX

Dear Ryan:

Please accept this letter as BNSF's formal election request to access [redacted] at [redacted] Eagle Pass, TX 78852 and initiate service pursuant to the Restated and Amended Settlement Agreement ("RASA") between BNSF and UP dated March 1, 2002. This is a New Shipper Facility located along a Trackage Rights Line, on the Eagle Pass Subdivision, to which BNSF was expressly granted access in Section 4(a) of the RASA. Prior tenant, which UP approved access to, was [redacted] will be shipping [redacted] whereas the prior tenant shipped [redacted]

BNSF intends to serve this facility directly to commence 45 days from the date of this letter (on or after June 1, 2024). 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 4(d) of the RASA, please confirm approval of BNSF's election in writing within 30 days' receipt of this letter (May 17, 2024). 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,

Toni Hanson

Toni Hanson
Manager Contracts and Joint Facilities
BNSF Railway

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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

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

---

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

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 17

BUILDING AMERICA®

May 17, 2024

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

Dear Toni:

Please refer to your letter dated April 17, 2024, seeking Union Pacific's confirmation of BNSF access to [redacted], Eagle Pass, TX 78852. BNSF has requested to serve this facility directly with a planned service start date of June 1, 2024.

As of the date of this letter, [redacted] has not yet been established as a located industry on Union Pacific. Accordingly, the BNSF's request for confirmation of access to the facility located at [redacted] Eagle Pass, TX 78852 is premature. UP is actively working to locate this customer on UP lines, and once located UP will then entertain a BNSF request for access to the facility.

As [redacted] is no longer located at [redacted], Eagle Pass, TX 78852, Union Pacific's prior confirmation of BNSF access to this service location is terminated.

Sincerely,

Ryan Pichler

Ryan Pichler
Senior Manager Commercial & Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Derek Hinds
Stephanie Weekly
Tyler White
Eric Watkins

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 18

REDACTED - TO BE PLACED ON PUBLIC FILE

**Toni Hanson**
*Manager Contracts and Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-867-5213
Email: toni.hanson@bnsf.com

June 3rd, 2024

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

Re: UP Response to [redacted] on May 17th, 2024

Dear Ryan:

BNSF elected service to [redacted], Eagle Pass, TX 78852 on April 17, 2024. UP's letter dated May 17, 2024 stated that [redacted] has not yet been established as a located industry on Union Pacific and as such BNSF's confirmation of access to this facility is premature.

Please find the attached invoice from UP to [redacted] for shipment date of April 27, 2024, where shipper is [redacted] and Revenue Origin is Eagle Pass, TX. Therefore, BNSF requests that UP reconsider its prior position and confirm approval of BNSF's election to this New Shipper Facility pursuant to Section 4(d) of the RASA.

Given the timeline from the original election notification, sent on April 17, 2024, service was to commence on or after June 1, 2024, therefore, please provide a response confirming BNSF's access by end of business day June 5, 2024, and expediated of the service plan approval once submitted.

Sincerely,

Toni Hanson

Toni Hanson
Manager Contracts and Joint Facilities
BNSF Railway

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 19

REDACTED - TO BE PLACED ON PUBLIC FILE

# FILED UNDER SEAL

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 20

BUILDING AMERICA®

June 18, 2024

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

Dear Toni:

With reference to the BNSF's letters dated April 17, 2024, and June 3, 2024, seeking Union Pacific's confirmation of BNSF access to [redacted], Eagle Pass, TX 78852, as Union Pacific stated in our May 17, 2024, letter to the BNSF, we have not yet established [redacted] as a located industry and New Shipper on Union Pacific. For clarity, the BNSF's June 3, 2024, letter references an attached invoice that was provided in a separate email.

The unit train of [redacted] that shipped from [redacted] on April 27, 2024, was a holdover train from the previous owners of the facility [redacted] and it is Union Pacific's current understanding based on our conversations with [redacted] that at this time they do not intend to ship additional unit trains of [redacted] In addition, the only commodity election Union Pacific has received from the BNSF is for [redacted]

As previously explained, Union Pacific continues to actively work with [redacted] on track infrastructure that will support the future rail needs of the facility. Until such time as these plans are completed and approved by Union Pacific, [redacted] is not considered to be a located industry or New Shipper on Union Pacific.

As stated in Union Pacific's May 17, 2024, letter, once [redacted] is established as a New Shipper, Union Pacific will then entertain a BNSF request for access to the facility.

Sincerely,

Ryan Pichler

Ryan Pichler
Senior Manager Commercial & Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Derek Hinds
Stephanie Weekly
Tyler White
Eric Watkins

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 21

REDACTED - TO BE PLACED ON PUBLIC FILE

**Michael Pruneau**
*Manager Contracts and Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB-GL
Fort Worth, TX 76131
Phone: 817-593-1109
Email: michael.pruneau@bnsf.com

April 22, 2026

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

Re: BNSF Service to [redacted]

Dear Ryan:

Please accept this letter as BNSF's formal election to initiate service to [redacted] pursuant to the Restated and Amended Settlement Agreement ("RASA") between BNSF and UP dated March 1, 2002. This is a New Shipper Facility.

BNSF will serve this facility directly with Utah Railway as our Agent with service planned to commence 45 days from the date of this letter (on or after June 6, 2026). The Utah Railway will service this facility on Tuesday and Thursday. The crew will come on duty at 0500 MTN in Ogden and is estimated to arrive from 0900 to 1100 MTN. The train will enter and exit station Clearfield at CP C811 (MP 811.6). Upon UP's confirmation of this operating plan, BNSF's local Operations personnel will be available to discuss any concerns with UP's local Operations personnel.

In accordance with Section 1(d) of the RASA, please confirm approval of BNSF's election in writing within 30 days' receipt of this letter (May 22, 2026).

Sincerely,

Michael Pruneau
Manager Contracts and Joint Facilities
BNSF Railway

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 22

BUILDING AMERICA®

May 21, 2026

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

Michael:

Please refer to BNSF's letter dated April 22, 2026, seeking Union Pacific's confirmation of BNSF access to [redacted] located at [redacted]. The letter states that [redacted] is a New Shipper Facility, and that access is pursuant to the Restated and Amended Settlement Agreement ("RASA") between UP and BNSF dated March 1, 2002. The letter also states that BNSF intends to serve this facility directly with Utah Railway as its agent with service planned to commence on or after June 6, 2026.

As of the date of this letter, [redacted] has not yet been established as a located industry on UP. Accordingly, BNSF's request for confirmation of access to the facility located at [redacted] is premature. UP is actively working to locate this customer, and once located UP will then entertain a BNSF request for access to the facility.

Ryan Pichler

Ryan Pichler
Commercial and Interline Strategy

CC: Tanya Spratt
David Hughes
Sean Frazier
Olin Dirks
Justin Barager

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 23

REDACTED - TO BE PLACED ON PUBLIC FILE

**Mike Martucci**
*Manager Contracts & Joint Facilities*

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

March 4, 2022

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

Re: Access to [redacted] at the station of [redacted]

Dear Chris:

Please accept this letter as BNSF's formal election request to access [redacted], and initiate service pursuant to the Restated and Amended Settlement Agreement ("RASA") between BNSF and UP dated March 1, 2002, Section 1(b). This is a new shipper facility with a change in ownership, along with nature and purpose, located along the trackage rights line. The customer will transload from [redacted] at [redacted]

BNSF intends to serve this facility directly with our existing train service planned to commence 45 days from the date of this letter (on or after April 18, 2022). 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 1(d) of the RASA, please confirm approval of BNSF's election in writing within 30 days' receipt of this letter (April 3, 2022). 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,

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

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

---

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 24

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

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

March 25, 2022

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 March 4, 2022, seeking UP confirmation of BNSF access to [redacted] at Fruita, CO. Union Pacific has no record of [redacted] seeking to establish a transload or customer location in Fruita, CO

Since UP has no record of [redacted] at Fruita, it is premature for UP to respond formally either approving or disapproving BNSF access.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

---

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

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 25

REDACTED - TO BE PLACED ON PUBLIC FILE

**Mike Martucci**
*Manager Contracts & 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 7, 2022

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

Re: Access to [redacted], at the station of Fruita, CO

Dear Chris:

I'm following up on your letter dated March 25, 2022 regarding UP's response to BNSF's request to directly serve [redacted] at the station of Fruita, CO. The statement that UP has no record of [redacted] seeking to establish a transload or customer location in Fruita, CO is simply irrelevant.

Per the RASA, Section 1, subparagraph (d), it states:

"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 I(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."

This section makes no reference to UP needing to have record of a customer seeking to establish a location, and there are no conditions provided in the RASA that justify withholding UP's confirmation of access to a new shipper facility. Accordingly, your withholding response violates the terms of the RASA.

[redacted] has already executed a lease inclusive of land, [redacted] and buildings (the site) at [redacted], which are the rightful owners of the land and appurtenances. Please see the attached exhibit showing the land boundary and the track in question. They have performed rehab on this private industry track to bring it to standard, and it was approved by our Engineering team for operation by BNSF the week of March 21, 2022. This location was previously rail served by a [redacted] customer, which is why we elected to service this site under the premise of a new customer facility, with a change in both ownership and nature and purpose.

Again, we request your review of the initial election request for BNSF to directly serve [redacted] submitted on March 4, 2022, and provide your approval as soon as possible to ensure BNSF is in a position to provide a competitive rail service offering to this new facility as envisioned by the RASA.

[redacted]

Sincerely,

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 32760 (SUB-NO. 52)

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 26

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

1400 DOUGLAS STREET
OMAHA, NEBRASKA 68179
402-544-3105

April 12, 2022

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 March 4, 2022 and follow up letter of April 7, 2022 , seeking UP confirmation of BNSF access to [redacted] at Fruita, CO.

Union Pacific confirms BNSF request for direct customer access effective April 14, 2021 subject to the following conditions:

- Prior to initiating service, the operating managers at each carrier must agree to a specific, written operating plan that may not be changed without agreement from authorized personnel at both parties in writing. BNSF operations must not impinge on Amtrak operations on the Green River sub.
- Prior to initiating service, UP must have an executed track agreement for the track owner and a joint use agreement for the track user(s) at New Customer Facility.
- As with all BNSF access requests arising from the Agreement of March 1, 2002, in the event capital investments are necessary to provide rail service to the facility as described in this letter, BNSF is required to share equally in such investments prior to initiating service as pursuant to the applicable agreements.

BNSF may not initiate service until all of the conditions have been met.

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 32760 (SUB-NO. 52)

---

BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

---

# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 27

**Mike Martucci**
*Manager Contracts & Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB GL
Fort Worth, TX 76131
Phone: 817-867-0804
Email: mike.martucci@bnsf.com

May 2, 2022

Mr. Chris Sanford
Manager Commercial & Interline Strategy
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Access Approval to [redacted], at the station of Fruita, CO

Dear Chris:

I'm following up on your letter dated April 12, 2022 regarding UP's approval for BNSF's access to directly serve [redacted] at the station of Fruita, CO. Regarding the conditions set, BNSF's local division leadership has provided UP their written operating plan to serve this customer and have received affirmation of such plan.

We understand UP is working with [redacted] to progress an ITA to authorize UP's entry upon [redacted] track. Meanwhile, for expediency BNSF has been granted its own authority to enter upon track in order to commence service immediately. We are aware of no necessary investments associated with access to this track, and a separate UP agreement with the customer is not a pre-condition to BNSF service set out in the RASA. Thus, we plan to commence serving [redacted] immediately.

Sincerely,

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 32760 (SUB-NO. 52)

---

BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

---

# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 28

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

1400 DOUGLAS STREET
OMAHA, NEBRASKA 68179
402-544-3105

May 2, 2022

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 earlier today advising of BNSF's intention to commence service [redacted] prior to a track agreement being executed.

Your letter states "We understand UP is working with [redacted] to progress an ITA to authorize UP's entry upon [redacted] track." In this specific instance [redacted] is working with UP to gain access to UP track. Union Pacific owns about 400' of track between the clearance point and the switch for [redacted] BNSF does not have the right to grant customer access over Union Pacific owned industry track without an agreement from Union Pacific.

This letter serves to reiterate the conditions in Union Pacific's confirmation letter of April 12, 2022 – "Prior to initiating service, UP must have an executed track agreement for the track owner and a joint use agreement for the track user(s) at New Customer Facility" – and – "Prior to initiating service, the operating managers at each carrier must agree to a specific, written operating plan that may not be changed without agreement from authorized personnel at both parties in writing. BNSF operations must not impinge on Amtrak operations on the Green River sub"

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Sarah Bailiff
Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 32760 (SUB-NO. 52)

---

BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

---

# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 29

**Mike Martucci**
*Manager Contracts & Joint Facilities*

**BNSF Railway Company**
2500 Lou Menk Drive
AOB GL
Fort Worth, TX 76131
Phone: 817-867-0804
Email: mike.martucci@bnsf.com

May 5, 2022

Mr. Chris Sanford
Manager Commercial & Interline Strategy
Union Pacific Railroad Company
1400 Douglas Street, STOP 1350
Omaha, NE 68179

Re: Access Approval to [redacted], at the station of Fruita, CO

Dear Chris:

I'm following up on your letter dated May 2, 2022 regarding UP's approval for BNSF's access to directly serve [redacted] at the station of Fruita, CO. You indicate that [redacted] is working with UP to gain access to UP track, and in particular, approximately 400' of track between the clearance point and the switch for [redacted]. Please see the attached schematic showing the yellow hatched line past the clearance point for [redacted]. [redacted] is a privately owned industry track, which as previously stated is being leased by a third party to [redacted] for their operation. [redacted] will not be operating over UP's track, and therefore will not be seeking access over UP's track whatsoever. They will have a static unload facility near the warehouses alongside [redacted], and will not be moving any cars once placed by BNSF.

BNSF was granted access to service [redacted] as a new shipper facility, along a trackage rights line. We understand your position to be that a UP ITA must be executed prior to any service commencing, since customer cars will traverse the 400' section of UP owned track? Can you please clarify this point? Per the terms of the RASA, we have formally requested access to serve this facility under the guidance and language of the RASA, and no language provides that a UP ITA is a condition of BNSF's ability to use its trackage rights to service any customer. We therefore ask you remove the condition that an ITA between [redacted] and UP as a precursor to serving this facility.

Sincerely,

Mike Martucci
Manager Contracts & Joint Facilities
BNSF Railway



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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 32760 (SUB-NO. 52)

---

BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

---

# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 30

REDACTED - TO BE PLACED ON PUBLIC FILE

# UNION PACIFIC RAILROAD COMPANY

CHRIS SANFORD
SENIOR MANAGER –
COMMERCIAL & INTERLINE
STRATEGY

1400 DOUGLAS STREET
OMAHA, NEBRASKA 68179
402-544-3105

May 6, 2022

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 yesterday requesting clarification of Union Pacific's position that an ITA must be executed prior to commencement of service.

BNSF's assertion the customer will not operate over Union Pacific owned track is unenforceable in the absence of an industry track agreement.

This letter serves to again reiterate the conditions in Union Pacific's confirmation letter of April 12, 2022 – "Prior to initiating service, UP must have an executed track agreement for the track owner and a joint use agreement for the track user(s) at New Customer Facility" – and – "Prior to initiating service, the operating managers at each carrier must agree to a specific, written operating plan that may not be changed without agreement from authorized personnel at both parties in writing. BNSF operations must not impinge on Amtrak operations on the Green River sub"

Sincerely,

Chris Sanford
Senior Manager Commercial & Interline Strategy

CC: Sarah Bailiff
Olivia Power
Jon Helm
Kate Sieverson
Tanya Spratt
Justin Barager
Mark Simon
David Hughes
Jamal Chappell
Olin Dirks
Kelsey Ruggles

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BEFORE THE
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 32760 (SUB-NO. 52)

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

---

# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 31

**From:** Van Meter, Lindsay
**Sent:** Monday, August 1, 2022 5:15 PM
**To:** Martucci, Mike
**Subject:** RE: AccessUP: [redacted] Gary, CO --- UPRR Service Notification Feedback

Mike,

The pin shows where the private crossing is located. It is only for forklift traffic to unload centerbeam flatcars.

[redacted]

**From:** Martucci, Mike
**Sent:** Monday, August 1, 2022 2:33 PM
**To:** Van Meter, Lindsay
**Subject:** RE: AccessUP: [redacted], Gary, CO --- UPRR Service Notification Feedback

I have a hard stop at 4 Central today, but are you in tomorrow to discuss?

**From:** Van Meter, Lindsay <Lindsay.VanMeter@BNSF.com>
**Sent:** Monday, August 1, 2022 2:06 PM
**To:** Martucci, Mike <Mike.Martucci@BNSF.com>
**Subject:** FW: AccessUP: [redacted], Gary, CO --- UPRR Service Notification Feedback

As info……. Sounds like UP is now telling [redacted] that there is about $50k worth of track repairs required to get the track in service (I assume this is in regards to the lead getting to [redacted] track – red below).

[redacted]

**From:** [redacted]
**Sent:** Monday, August 1, 2022 12:14 PM
**To:** Van Meter, Lindsay <Lindsay.VanMeter@BNSF.com>
**Subject:** Fwd: AccessUP: [redacted], Gary, CO --- UPRR Service Notification Feedback

**EXTERNAL EMAIL**

Is this even legal at what the UP is pulling on this customer. This is tantamount to harassment. I am recommending [redacted] get the STB involved immediately to see if violations and fines are in order.

What is your company's experience with this type of situation?

[redacted]

Sent from my iPhone

Begin forwarded message:

**From:** [redacted]
**Date:** August 1, 2022 at 9:14:17 AM MDT
**To:** [redacted]
**Cc:** [redacted]
**Subject: FW: AccessUP:** [redacted]**, Gary, CO --- UPRR Service Notification Feedback**

[redacted] see below this is outrageous ? you already fixed the track I thought?

[redacted]

---

**From:** [redacted]
**Sent:** Monday, August 1, 2022 7:55 AM
**To:** [redacted]
**Subject:** Fw: AccessUP: [redacted] Gary, CO --- UPRR Service Notification Feedback

FYI....

[redacted]

---

**From:** Alisha Elgan <ACELGAN@up.com>
**Sent:** Friday, July 29, 2022 10:52 AM
**To:** [redacted]
**Cc:** Keegan Jones <krjones01@up.com>; Christina Quindt <CQuindt@up.com>; Madison McAllister

<mgmcalli@up.com>; Alisha Elgan <ACELGAN@up.com>
**Subject:** RE: AccessUP: [redacted] Gary, CO --- UPRR Service Notification Feedback

Good Morning, [redacted]

Hope all is well with you. I wanted to introduce you to Keegan Jones. He is taking over your account for Halsie in the Sales team.

By way of updates~

1. UPRR Operating has approved Rail Access
2. Engineering has completed the track inspection on UPRR owned track and determined that track rehab in the amount of $53,628.00 is required to bring the track to In-Service status. Keegan and Christina will call you regarding the track rehab cost.
3. IPP team has reviewed and determined that an on-site is required to review the current crossing to ensure it is compliant to UPRR safety standards. The onsite fee is $7,500.00

[redacted]

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

**From:** Alisha Elgan
**Sent:** Monday, June 6, 2022 4:22 AM
**To:** [redacted] Halsie Guenther <halsie.guenther@up.com>; Madison

McAllister <mgmcalli@up.com>
**Subject:** RE: AccessUP: [redacted] Gary, CO --- Location Analysis

[redacted]
It was great meeting you last week at your site.

Thanks for confirming that the car types and car lengths will be 50~ boxcars and 73~ centerbeams. I have updated the below steps on where we are at in the URR Review process.

[redacted]

**Madison,**
A private crossing was also installed over this [redacted]track. That info is not on the UP Track Agreement Application form. I will request from IPP that they assign a DOT #.

**Halsie,**
[redacted] is taking over this project for [redacted] as the point of contact.

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

**From:** Alisha Elgan
**Sent:** Tuesday, May 31, 2022 9:58 PM
**To:** [redacted]

**Cc:** Halsie Guenther <halsie.guenther@up.com>; Madison McAllister <mgmcalli@up.com>; [redacted]

**Subject:** RE: AccessUP: [redacted] Gary, CO --- Location Analysis

Adding [redacted] to this string.

Hi [redacted]
I will be in Fruita tomorrow morning if either of you will be around.

Meanwhile, please let me know the following info:

Please verify the following 2 items with your UPRR served shippers:

- What will be the rail car types used?
- What will be the rail car length(s)?

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

---

**From:** Alisha Elgan
**Sent:** Thursday, May 26, 2022 6:03 PM
**To:** [redacted]
**Cc:** Halsie Guenther <halsie.guenther@up.com>; Madison McAllister <mgmcalli@up.com>
**Subject:** RE: AccessUP: [redacted], Gary, CO --- Location Analysis

Hi [redacted]

Per our call today,

Please verify the following 2 items with your UPRR served shippers:

- What will be the rail car types used?
- What will be the rail car length(s)?

I have attached your completed track application form that Halsie in UP Sales sent you. Real Estate Track Mgr, Madison, will use this to draft the necessary track agreement(s) upon Operating, IPP and Engineering approvals.

[redacted]

[redacted]

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

---

**From:** Alisha Elgan
**Sent:** Thursday, May 26, 2022 3:39 PM
**To:** [redacted]
**Subject:** FW: AccessUP: [redacted] Gary, CO --- Location Analysis

Hi [redacted]

I tried giving you a call but got your VM. I was unable to leave a VM due to it being full. Please give me a call when you are able.

I have a few Operational type questions for you before I can request formal feedback from Operating on service approval.

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

**From:** Alisha Elgan
**Sent:** Thursday, May 26, 2022 2:51 PM
**To:** [redacted] Halsie Guenther <halsie.guenther@up.com>
**Subject:** FW: AccessUP: [redacted], Gary, CO --- Location Analysis

Thank you, [redacted]

I am waiting on UPRR Real Estate Track Mgr to confirm for me UPRR's track ownership footprint. I have a feeling based on some system research that UPRR does NOT own from the POS to the gate on track # [redacted] but I will see what Real Estate says and get back to you all.

Note: UPRR Engineering team will inspect UPRR owned track only.

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

Phone: 719-424-0457
Email: ACElgan@up.com

www.up.com

**From:** [redacted]
**Sent:** Thursday, May 26, 2022 1:36 PM
**To:** Alisha Elgan <ACELGAN@up.com>
**Subject:** Re: AccessUP: [redacted], Gary, CO --- Location Analysis

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Alisha,

Please see the attached track inspection report. [redacted] inspected from the gate to the EOT. Also attached is the scope of work for our crew to perform repairs based upon the track inspection. Please call with any questions. Thanks,

[redacted]

-----Original Message-----
From: Alisha Elgan <ACELGAN@up.com>
To: [redacted]
Cc: Halsie Guenther <halsie.guenther@up.com>; [redacted]
Sent: Thu, May 26, 2022 1:13 pm
Subject: RE: AccessUP: [redacted], Gary, CO --- Location Analysis

Hi [redacted]
Thanks for confirming track # [redacted] I will do some research on that location and then will call you later today with some operational type questions.

[redacted]
Please send me the private track inspection report that shows that the privately owned section of track is FRA compliant.

**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

www.up.com

---

**From:** [redacted]
**Sent:** Thursday, May 26, 2022 1:03 PM
**To:** Alisha Elgan <ACELGAN@up.com>
**Cc:** Halsie Guenther <halsie.guenther@up.com>; [redacted]
**Subject:** RE: AccessUP: [redacted], Gary, CO --- Location Analysis

# * PROCEED WITH CAUTION - This email was sent from outside the Company *

Hi there we would like UP service on track [redacted] we had [redacted] already come out and repair the spur

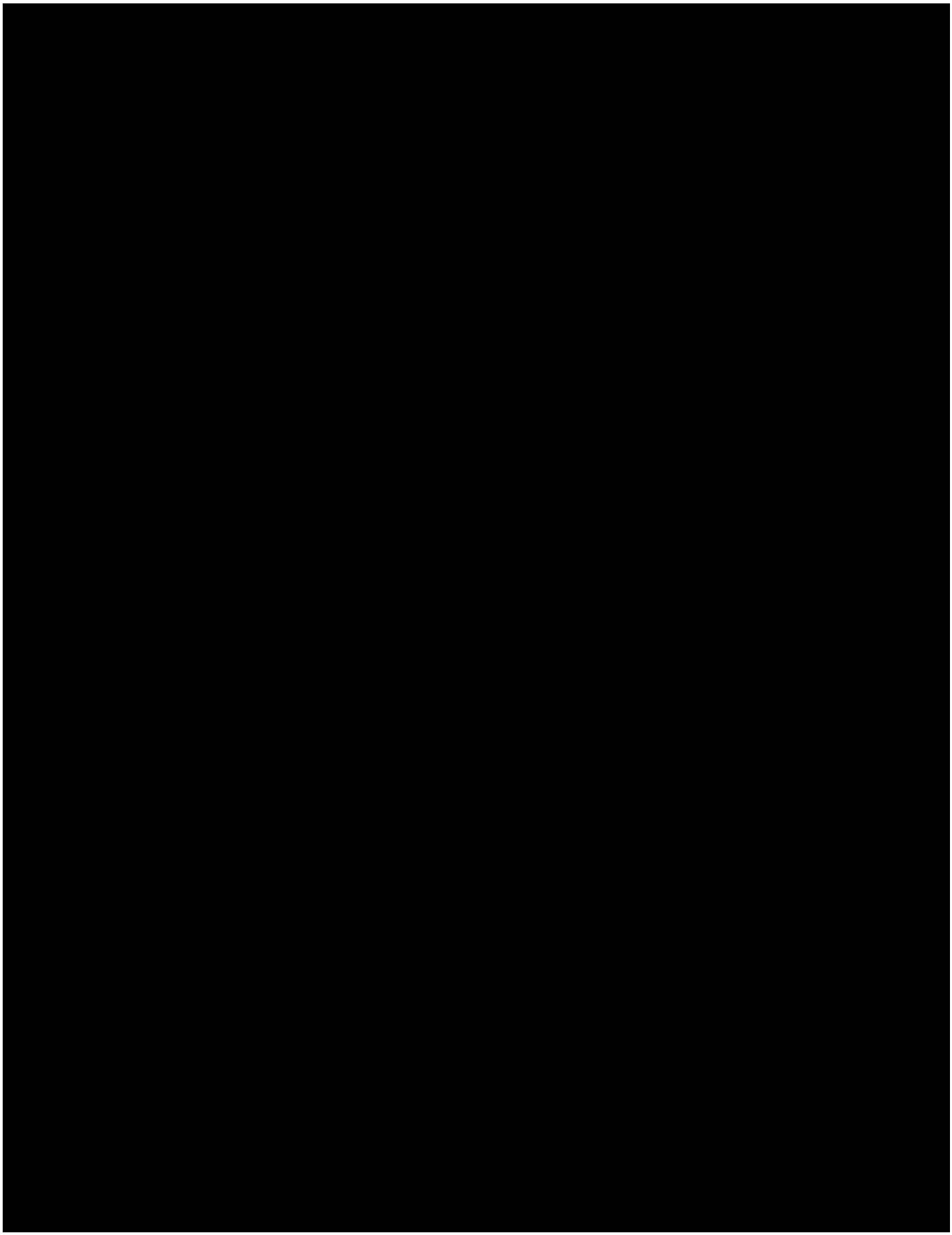
---

**From:** Alisha Elgan <ACELGAN@up.com>
**Sent:** Thursday, May 26, 2022 12:39 PM
**To:** [redacted]
**Cc:** Halsie Guenther <halsie.guenther@up.com>
**Subject:** AccessUP: [redacted], Gary, CO --- Location Analysis

Good Afternoon, [redacted]

I received an AccessUP project where you would like to get setup with rail. This facility appears to be between tracks [redacted]

Using the map below, what track # do you want UPRR rail service on (the track #'s are the last 3 digit # in blue)?






**Thank You,**
**Alisha Elgan**
Manager – CO, ID, WY and MT
Network, Economic & Industrial Development

**Phone**: 719-424-0457
**Email**: ACElgan@up.com

**www.up.com**



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FINANCE DOCKET NO. 32760 (SUB-NO. 52)

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

---

# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 32

**From:** GSTURM@up.com
**Sent:** Thursday, October 1, 2009 10:39 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Cc:** MHEMMER@UP.COM; LEWZOREK@up.com; WGBARR@up.com; Aman, Brian H <Brian.Aman@bnsf.com>; Wilson, Connie J <Connie.Wilson@bnsf.com>; Clark, Kristy D <Kristy.Clark@BNSF.com>; Schulze, Mark A <Mark.Schulze@bnsf.com>; Rickershauser, Pete J Pete.Rickershauser@bnsf.com ; Weicher, Richard E Richard.Weicher@bnsf.com ; Bredenberg, Rollin D <Rollin.Bredenberg@bnsf.com>; Cobb, Sydney M <Sydney.Cobb@BNSF.com>; Thowe, Travis B <Travis.Thowe@bnsf.com>; Hayes, William P <William.Hayes@bnsf.com>
**Subject:** Re: UP/SP Settlement Agreement Implementing Trackage Rights Agreements - Updates
**Attach:** Houston to Brownsville TRA 061009.doc; Redline.doc; Chart.doc

---

Sarah,
This is in reference to the attached e-mail and your note of September 25, 2009 on the subject of updating the various trackage rights agreements ("TRAs") related to the March 2, 2002 UP/SP - BNSF Restated and Amended Settlement Agreement ("Settlement Agreement"). After review of this proposal by Joint Facilities and the Law Department, UP has come to the conclusion that since the Settlement Agreement prevails in the event of a conflict between it and the TRAs, there is no compelling reason to spend a significant amount of time and effort to update the TRAs. UP will continue to be guided by the Settlement Agreement when questions related to the TRAs arise. Please let me know if you have any questions. Thanks.

"Bailiff, Sarah W" <Sarah.Bailiff@bnsf.com> To "'GSTURM@up.com'" <GSTURM@up.com>
07/02/2009 08:06 PM cc "Bredenberg, Rollin D" <Rollin.Bredenberg@bnsf.com>, "Rickershauser, Pete J" <Pete.Rickershauser@bnsf.com>, "Schulze, Mark A" <Mark.Schulze@bnsf.com>, "Weicher, Richard E" <Richard.Weicher@bnsf.com>, "Clark, Kristy D" <Kristy.Clark@BNSF.com>, "Hayes, William P" <William.Hayes@bnsf.com>, "Aman, Brian H" <Brian.Aman@bnsf.com>, "Thowe, Travis B" <Travis.Thowe@bnsf.com>, "Cobb, Sydney M" <Sydney.Cobb@BNSF.com>, "Wilson, Connie J" <Connie.Wilson@bnsf.com>
Subject UP/SP Settlement Agreement Implementing Trackage Rights Agreements - Updates

George,

As you know the Implementing Agreements that accompany the UP/SP Merger Settlement Agreement have not been updated since they were executed in 1996 and in some respects erroneously reflect the rights and obligations of the parties, as they have been amended by the STB over time. It is important that these trackage rights agreements are updated to ensure consistency of these agreements with the Restated and Amended Settlement Agreement (RASA) and recent STB rulings and related matters concerning the RASA. Toward that end, we decided to start with an agreement that doesn't seem to have an extreme amount of controversy attached to it at the moment (Houston-Brownsville) to begin to develop a model for moving forward on other implementing trackage rights agreements.

Accordingly, attached for your review is a draft of a proposed Restated and Amended Trackage Rights Agreement for Houston-Brownsville. Also included is a redline against the original 1996 version and a chart identifying principal substantive changes and underlying source material. Although we will be reviewing the General Conditions as well, I have not included any proposed changes for them yet, as this is a fairly hefty read as it is. Nevertheless, from a quick scan of the General Conditions, it appears -- fortunately -- that part of the TRA's is fairly constitutional in nature and may not require much, if any, updating.

This is a preliminary nonbinding discussion draft for your review and consideration. Finalization of any trackage rights agreement of this nature will require formal approval BNSF's senior management, and accordingly, all or part of this draft is subject to change or withdrawal for any reason or no reason and my forwarding this draft to you does not reflect a binding offer to amend our agreement.

I look forward to your feedback, George, and I hope you and your family have a safe and pleasant holiday weekend.

Sarah

(See attached file: Houston to Brownsville TRA 061009.doc)(See attached file: Redline.doc)(See attached file: Chart.doc)
**

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

---

# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 33

**From:** Weicher, Richard E <Richard.Weicher@bnsf.com>
**Sent:** Friday, August 26, 2011 9:58 AM
REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>; Rankin, David T <David.Rankin@BNSF.com>; Estes, Courtney B <Courtney.Estes@BNSF.com>
**Subject:** FW: Restated and Amended Houston, Texas to Brownsville, Texas Trackage Rights Agreement
**Attach:** Restated and Amended UP Analysis - Houston-Brownsville TRA-color coded 2011.06.28 EBDv1.pdf

[redacted]

Rick Weicher

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**From:** John Shiner [mailto:John.Shiner@hro.com]
**Sent:** Tuesday, August 23, 2011 3:33 PM
**To:** Weicher, Richard E
**Subject:** Restated and Amended Houston, Texas to Brownsville, Texas Trackage Rights Agreement

Rick –

Following our recent call, I attach a copy of the "Restated and Amended" Houston to Brownsville Agreement as redrafted by BNSF. We have reviewed the proposed changes and, as I shared with you, find them unacceptable. In the redraft, we have identified some, but not all, of the proposed revisions which Union Pacific cannot support. I suggest a call during which we can discuss in greater detail all of the issues which cause us concern. Please provide some convenient dates and times.

<<Restated and Amended UP Analysis - Houston-Brownsville TRA-color coded 2011.06.28 EBDv1.pdf>>

John R. Shiner - Partner
**Holme Roberts & Owen LLP**
At L.A. Live
800 West Olympic Boulevard ~ Fourth Floor | Los Angeles, California | 90015
telephone: 213.572.4320 | fax: 213.572.4400 | email: john.shiner@hro.com
www.hro.com
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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 34

BUILDING AMERICA®

March 3, 2026

*Via Certified Mail and Email*

Olivia Power – AVP Contracts and Joint Facilities
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131

Dear Olivia,

In accordance with the "GTM Rates" provisions of the parties' June 1, 1996, Denver, Colorado to Stockton and San Jose, California, the Houston, Texas to Valley Junction, Illinois, the Sealy, Texas to Waco and Eagle Pass, Texas, and the Houston, Texas to Brownsville, Texas Trackage Rights Agreements (the "Implementing Agreements"), Union Pacific is requesting to "jointly review the operations of the adjustment mechanism and renegotiate its application." Union Pacific has determined that the "rates and charges for the trackage rights and services" do not "reflect the same basic relationship to operation costs as upon execution." It is Union Pacific's position that the current rates do not reflect the same basic relationship to operating costs as they did in June 1996.

As you're aware Union Pacific sent a similar request on June 20, 2025, regarding renegotiation of the rates under the parties' Restated and Amended Agreement ("RASA"). Because the RASA and Implementing Agreements are separate agreements with their own provisions, Union Pacific is preserving all rights under the RASA and Implementing Agreements. I look forward to your engagement on this matter.

Respectfully,

David W. Hughes
AVP Joint Facilities & Interline Operations

**UNION PACIFIC RAILROAD**
1400 Douglas Street, MS 1180
Omaha, Nebraska 68179

**David W. Hughes**
AVP Joint Facilities & Interline
Network Planning & Operations

**P:** 402-544-0046
**F:** 402-501-0025
**E:** dwhughes@up.com

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 35

**From:** Thowe, Travis B
**Sent:** 08 January 2013 13:15:28
**To:** George Sturm
**CC:** Bailiff, Sarah W; Thowe, Travis B
**Subject:** RE: DRAFT - Houston - Brownsville TRA Redline

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**Attachments:** Houston to Brownsville TRA 01 06 2013 - BNSF Redline .doc; BNSF Redline - Hou-Brownsville Sub Gen Cond 01 06 2013.doc

George – Attached is the latest redline version of the Houston-Brownsville TRA. This includes removal of several items we discussed on our last conference call , even if we may feel there may be merit or validity to the deleted language so that we can move forward where we do have agreement. You will note the items we agreed to include in the edited documents show up in redline. (For example if "upon" was to replace "on" then the "up" still shows up in redline). There are two outstanding items we can discuss further on Thursday a) 2d (UP review) & b) 2p (BNSF review). I have also taken the liberty of updating the General Conditions. I took the final version of the Glidden Sub Gen Cond we just worked on and modified one provision regarding the Capital Ex Settlement signed in 2010.

I will update the bridge line for Thursday's call shortly.

Travis

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 36

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BNSF RAILWAY COMPANY
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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 37

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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 38

BUILDING AMERICA®

September 26, 2023

Mr. Mike Martucci
Manager- Contracts and Joint Facilities
Burlington Northern Santa Fe
2500 Lou Menk Drive
Fort Worth, TX 76131

To Mr. Martucci:

Union Pacific (UP) has become aware [redacted] serving as Burlington Northern Santa Fe's (BNSF's) Agent, has been traversing the Woods Cross Industrial Lead to serve [redacted] from the track connecting to that lead. Neither BNSF nor its [redacted] have any rights to serve [redacted] from the Woods Cross Industrial Lead on the west side of the [redacted] facility. BNSF and its [redacted] continue to have access to [redacted] via the two tracks connected to the Salt Lake City Sub on the east side of the [redacted] facility.

Union Pacific will cease to allow [redacted] to serve [redacted] via the Woods Cross Industrial Lead effective November 15, 2023.

Sincerely,

Mark Simon
Senior Director – Short Line & Interline
Union Pacific Railroad
1400 Douglas St, Stop: 1350
Omaha, Ne 68179

[redacted]

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 39

**From:** Bailiff, Sarah W </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=96E84C50FDB24066B2AA11D3B4DAF943-B803193>
REDACTED - TO BE PLACED ON PUBLIC FILE
**Sent:** Thursday, March 30, 2023 1:14 PM
**To:** David Hughes <DWHUGHES@up.com>
**Subject:** RE: Trackage rights discussion

David,

We have considered your offer to grant us a 10 year trackage rights arrangement to operate where we already have longstanding rights to operate pursuant to the terms of the UP/SP Merger Settlement Agreement, orders of the STB, and the 50-50 Line Agreement. We respectfully decline.

We are planning to use our its existing rights to access [redacted] on and after April 1. Please advise promptly with confirmation that those rights will be honored so that various parties may plan accordingly.

Sarah
817-352-2354
817-247-1422 cell

**From:** David Hughes <DWHUGHES@up.com>
**Sent:** Thursday, March 30, 2023 10:45 AM
**To:** Bailiff, Sarah W <Sarah.Bailiff@bnsf.com>
**Subject:** Trackage rights discussion

*** This email includes an ATTACHMENT from outside of BNSF and could contain malicious links. Ensure email is from a **trusted** sender before opening the attachment.

Never enter your login credentials if prompted. Click the **Email Alert** button on the Outlook toolbar to send SPAM email to Security.

**EXTERNAL EMAIL**

Sarah,

I am running short on time to hear back whether BNSF would consider our discussed approach regarding TGS.

I am attaching a trackage rights agreement that has been hastily put together and has not been run by UP Law, but give you something to show your peers. We obviously would work with BNSF on your edits and we would have edits of our own to this document.

Please let me know if this is something BNSF is interested in. I am working on the temp rights we discussed today to buy us more time.

-dwh

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

---

## VERIFIED STATEMENT OF OLIVIA E. POWER

## EXHIBIT 40

**From:** Crossett, Brandon S <Brandon.Crossett@bnsf.com>
**Sent:** Tuesday, September 2, 2014 7:54 AM REDACTED - TO BE PLACED ON PUBLIC FILE
**To:** Templeton, Olivia E <Olivia.Templeton@BNSF.com>
**Subject:** FW: Eagle Pass Operations BNSF/UPRR

---

As the world turns.

**From:** Crossett, Brandon S
**Sent:** Tuesday, September 2, 2014 7:52 AM
**To:** 'rdlopez@up.com'; Brian W. McGavock (BWMCGAVOCK@UP.COM)
**Cc:** Danielson, David S (Operations); Boemio, Robert P; Kennedy, John P; Stephens, William M
**Subject:** Eagle Pass Operations BNSF/UPRR

Are these instructions from Fernando Garza or from the UPRR executive team? I am available here in the SDC or by cell 832-250-5459.

Ruben, I still haven't heard from Paige so I do not have her email address.

---

**From:** Hernandez, Frank P
**Sent:** Tuesday, September 2, 2014 5:09 AM
**To:** Danielson, David S (Operations)
**Subject:** Eagle pass

over 7hrs LATER, we are still stopped with an IC Window is only 6hrs in duration. Pretty hard to get in position for the directional change in the IC Window, when it takes 7hrs to move about 13 miles.

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**From:** Hernandez, Frank P
**Sent:** Tuesday, September 02, 2014 5:02 AM
**To:** Danielson, David S (Operations)
**Subject:** Eagle Pass

UP MYO Fernando Garza has taken the following positions:

1. BNSF will not be allowed to deliver on a first come, first into Mexico basis.
2. BNSF will not be allowed to use the new SLOT track or main line for staging of our export trains, although we pay for that right.
3. BNSF will not be allowed to come out of Ryan's in order to deliver an export train, unless any Northbound pull from FXE to BNSF has already been pulled and yarded.
4. BNSF will be forced to comply with items 1 – 3 above, unless they have more than one crew on duty. As is the case here, we could have 100 crews on duty and we would still be going nowhere.
5. Fernando Garza has made it known to BNSF that we have no right to perform work off of their main track. We have statistically demonstrated to UP that we perform such work on well less than 1% of all the cars we interchange, yet their position remains the same.
6. Any delay by BNSF, real or perceived on his part, is unacceptable and will not be tolerated.
7. We have now been stopped over 6 hours, while UP continues to switch at CLARK's PARK and continues to block the route. Rules that are arbitrarily imposed upon BNSF are not applied to the UP.
8. Hard to accurately measure our Team's true productivity and efficiency, when we are against this type of "*trackage RIGHTS and PARITY*", day in and day out.

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**From:** Valdivia, Ricardo
**Sent:** Tuesday, September 02, 2014 4:23 AM
**To:** Hernandez, Frank P; Mora, Cindy B
**Cc:** Henry, Don K; Ruiz, Ramon; Gloria, Leon; Felan, Aldo; Valdivia, Ricardo
**Subject:** pull from FXE

Good morning! ***We pulled 3rd from FXE yesterday Monday 09/01 at 21:55hrs*** a combo train (***35 manifest / 118 Empty Taconite***) and this train still stage at Clarks park track 013 since this morning at 00:45hrs due to congestions in Clarks park and we did not get route to go to Ryan's yet, this is the status

REDACTED - TO BE PLACED ON PUBLIC FILE

2155 - Train arrived at the bridge
2230 - Started pulling train across International bridge. Had to wait on CBP to inspect locomotives.
2246 - Finished pull.
2300 - Departed lower yard.
0025 - Arrived Clark's Park. Was waiting in slot track around 50 minutes
0045 - Train tied down at Clark's park.

The argument that UP MYO Fernando Garza gave me is that all tracks were full and the only track available for us it was track 013, but on this track are UP cars on the east end, so we must wait until one outbound depart from Clarks and pick up the cars from track 013 and then we will following that UP outbound train, estimated time is around 0500 hrs.

I will advise when we depart from Clarks.

Regards

Ricardo Valdivia

BNSF AFO

REDACTED - TO BE PLACED ON PUBLIC FILE

BEFORE THE

SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 32760 (SUB-NO. 52)

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BNSF RAILWAY COMPANY

—PETITION FOR REVIEW—

UP/SP MERGER CONDITIONS

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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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**Verified Statement of Michael R. Baranowski**

**AUGUST 26, 2026**

## PART I - INTRODUCTION

1. I am Michael R. Baranowski of FTI Consulting, Inc.

2. I am a Senior Managing Director in FTI's Network Industries Strategies group. I have over forty years of experience in railroad commercial and regulatory matters, including analyzing railroad traffic and revenue patterns, evaluating railroad operations, calculating and projecting the costs of all aspects of railroad service, analyzing contribution and profitability, analyzing damages claims, calculating damages, and determining the reasonableness of railroad rates and charges. I have testified numerous times before the Surface Transportation Board ("STB"), federal courts, arbitration panels and other federal and state regulatory agencies regarding economic issues related to transportation. A copy of my Curriculum Vitae that includes my testimony over the past ten years is included as Exhibit A to this statement. I have not authored any publications in the past ten years.

3. BNSF Railway Company ("BNSF") has asked me to review operational data and historical market share trends in order to present my expert opinion on BNSF's claims of anticompetitive behavior by Union Pacific Railroad Company ("UP") in violation of the conditions imposed by the STB to maintain competition in the railroad industry following the 1996 merger of UP and Southern Pacific Railroad Corporation ("SP"). BNSF raised these concerns in its November 28, 2025, filing ("BNSF Petition for Review") before the STB. *BNSF Ry. Co.—Pet. for Rev.—UP/SP Merger Conditions*, FD 32760 (Sub-No. 52) (filed

Nov. 28, 2025). Specifically, in this filing BNSF asserted that UP's "repeated resistance and obstruction" has had implications for BNSF's ability to replace the market competition the merger conditions were intended to preserve, and asked the STB to initiate a procedural schedule for reviewing and enforcing these conditions. *Id.* at 2, 4. Pursuant to the 2002 Restated and Amended Settlement Agreement ("RASA") that UP and BNSF executed to delineate BNSF's rights following the UP/SP merger, these conditions guarantee BNSF certain contractual rights including (1) equal and non-discriminatory dispatching rights on the lines over which the parties have granted each other trackage rights ("Trackage Rights Lines"); (2) the right to serve, *inter alia*, customers at facilities that were open to both UP and SP service and no other railroad service at the time of the merger ("2-to-1 shippers" at "2-to-1 points") as well as new facilities located on Trackage Rights Lines and certain points enumerated in the RASA; and (3) the use of certain implementing Trackage Rights Agreements ("TRAs") that put BNSF's trackage rights into operational effect in accordance with the RASA and STB decisions. Utilizing BNSF operational, service, and business data, industry-wide market share and pricing data I derived from the Confidential Carload Waybill Sample ("CCWS"), as well as my expert experience, I analyze whether UP has adhered to the conditions imposed on it by the Board and the RASA and the competitive effects of UP's behavior. My analysis and expert opinion are presented in the sections below.

## PART II – EXECUTIVE SUMMARY

4. As asserted by BNSF in its Petition for Review, UP's actions (or lack thereof) have implications for BNSF's ability to maintain the competition that the merger conditions were intended to preserve. The operational and service data I analyzed demonstrates that UP has limited BNSF's ability to serve customers BNSF is contractually entitled to access under the RASA and that UP has imposed unequal dispatching treatment on BNSF at shared service areas and on trackage rights lines. I also analyzed CCWS market share and pricing data which indicates that {{ }}.

5. Analysis of the data I relied on shows elements of discrimination favoring UP trains over BNSF trains on RASA trackage rights segments. Such discrimination appears to be routine and has observable effects on BNSF operations. As further confirmation, BNSF's comparative metrics for operations over these same UP-owned segments are {{ }}. Lastly, analysis of market share and pricing trends demonstrates {{ }}.

6. At this stage, BNSF lacks the ability to fully develop all comparative statistics. While BNSF's data presents a compelling picture of the operational

[1] Covering Texas, Oklahoma, Louisiana, and parts of Arkansas, *see* Figure 11.

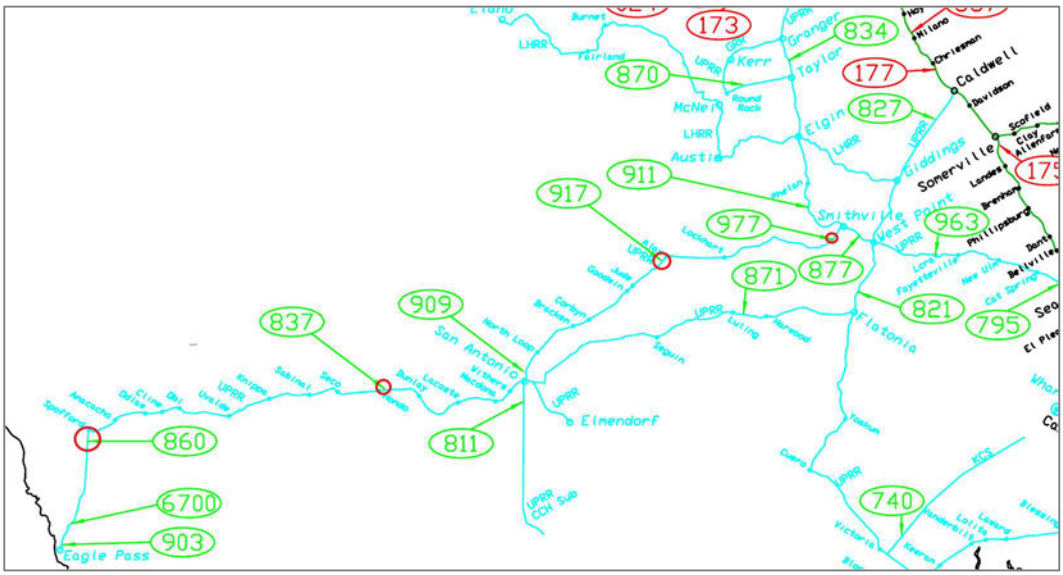
difficulties UP imposes on BNSF, UP possesses additional data that is comparable to the data that I analyzed in this statement. This additional data is obtainable in discovery and would allow me to compare BNSF's performance against UP's to further refine my analysis.

**PART III – DISCRIMINATION OF BNSF TRAINS AND OBSERVABLE EFFECTS**

7. Using BNSF (and, where available, UP) operational data and CCWS traffic records, I identified clear evidence of UP discrimination against BNSF trains on RASA trackage rights segments and the resulting impact of this discrimination on BNSF's operations.

8. First, because many of the difficulties experienced by BNSF in operating over the trackage rights segments occur in Southwestern Texas, I analyzed available automatic equipment identification ("AEI") transponder reader information on the UP-owned RASA trackage rights segments for which UP provides BNSF data. These readers capture relevant train, locomotive, and freight car information for both BNSF and UP equipment and include timestamps showing when equipment passes the reader. This data allows me to, among other things, identify the order in which trains pass each reader and thereby calculate average transit times for trains between readers. A map depicting the UP AEI readers to which BNSF has access in southern Texas is shown below.

*Figure 1: Map of Foreign-Line BNSF AEI Readers in South Texas*[2]




9. A critical RASA trackage rights operational segment for both BNSF and UP is the corridor between San Antonio, Texas and the border crossing at Eagle Pass, Texas. Each carrier utilizes this segment to interchange U.S.-Mexico shipments with Ferromex ("FXE") at the Eagle Pass international gateway. It is my understanding that trains destined for Eagle Pass are subject to a first-arrival, first-departure operating protocol, under which the order in which trains pass the Spofford, Texas AEI reader—roughly 30 route miles north of the Eagle Pass gateway—determine the order in which those same trains are dispatched through Eagle Pass. I reviewed the relevant AEI reader data to determine whether this occurs in practice.

10. My analysis shows that AEI readings from readers #860 (Spofford) and #903 (Eagle Pass) indicate that {{[redacted]

[redacted]}}

[2] *See* Baranowski Workpaper "HC - AEI Reader Map.pdf"

[redacted]}}.

*Figure 2: Jan - Dec 2025 Train Skips Summary (Spofford to Eagle Pass)*[3]

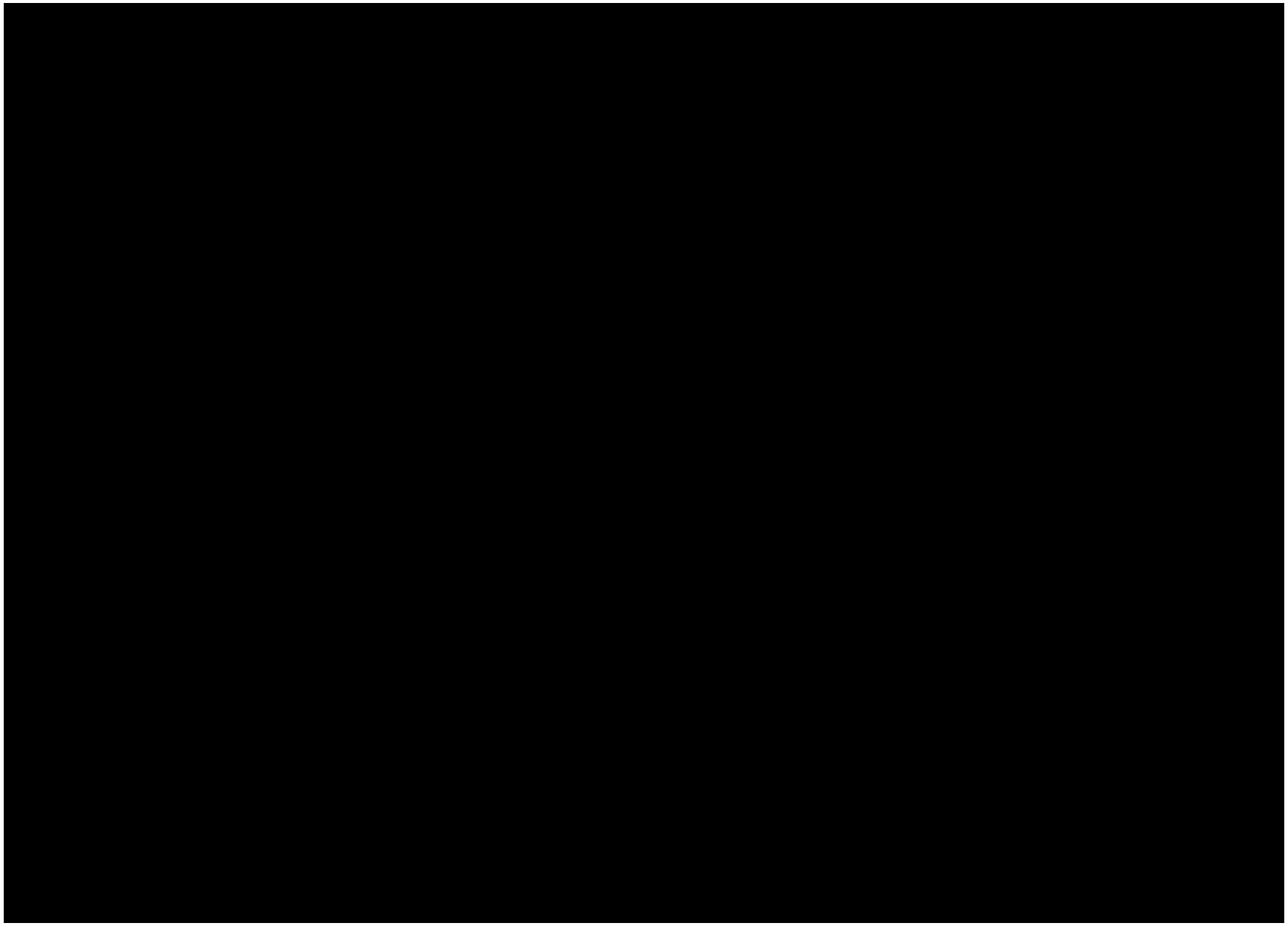
[redacted]

11. To give an example of a specific skip-over incident, {{[redacted]}}.

12. {{[redacted]}}.

[3] *See* Baranowski Workpaper "HC - AEI Data Analysis.xlsx", at tab "Figure 2".

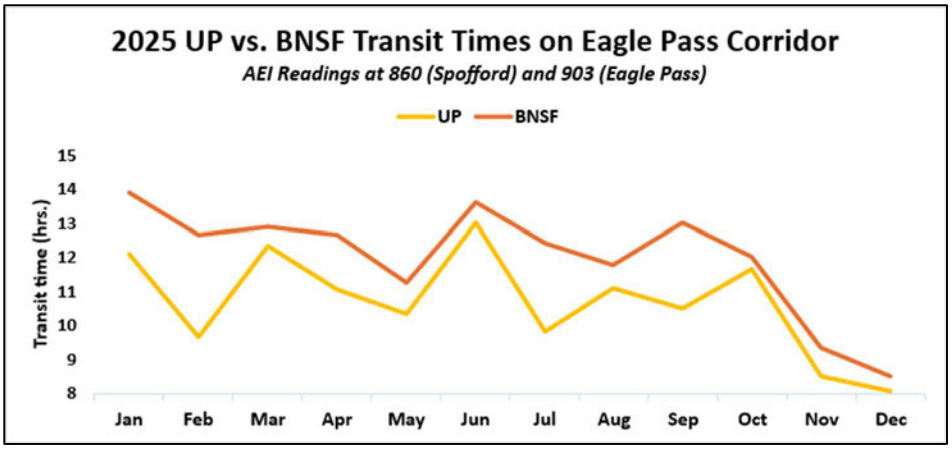
*Figure 3: Stringline Chart from AEI Transponder Readings - Eagle Pass Train Sequence (12/15/25 - 12/20/25) with 12/16 breakout*[4]



[4] *See* Baranowski Workpaper "HC - AEI Data Analysis.xlsx", at tab "Figure 3".

13. {{[redacted]}}.

*Figure 4: BNSF vs. UP Eagle Pass Transit Time Comparisons (2025)*[5]




14. UP's discrimination against BNSF trains in favor of its own trains has observable impacts on BNSF's operations on other RASA trackage rights segments. For this analysis, I reviewed BNSF performance metrics for 2025 across its Texas customer industry locations. These metrics allow me to identify, at the shipment level, BNSF's success (or failure) in completing spots and pulls at customer industry locations. The data also allows me to identify the BNSF serving yard staging service into or out of these industry locations. BNSF's Dayton, TX, yard is the serving yard for the UP-owned Baytown Branch segment east of Houston.

[5] *See* Baranowski Workpaper "HC - AEI Data Analysis.xlsx", at tab "Figure 4."

15. Unlike many other RASA trackage rights that are overhead in nature, the RASA provides BNSF direct access to customers on the Baytown Branch—customers that would otherwise be served only by UP. As shown in the chart below, {{ }}.

*Figure 5: 2025 Total Spot/Pull Failures at Major BNSF Texas Serving Yards*[6]



16. The data also show that BNSF {{ }}.

[6] BNSF's Pearland yard is excluded due to >50% missing data entries in fields denoting spot and pull success/failure. *See* Baranowski Workpaper "HC - BNSF TX Serving Yards Analysis.xlsx", at tab "Charts".

*Figure 6: 2025 Industry Scores at Major BNSF Texas Serving Yards*[7]



17. {{ }}. I analyzed market share and pricing trends since 1990 for traffic originating on the Baytown Branch serviced by Dayton yard.

{{ }}

[7] Again, BNSF's Pearland yard is excluded due to >50% missing data entries in fields denoting spot and pull success/failure. *See* Baranowski Workpaper "HC - BNSF TX Serving Yards Analysis.xlsx", at tab "Charts".

[redacted]}}.

*Figure 7: Carload and R/VC Trends for Baytown Originating Shipments (1990-2023)*[8]



18. To test whether UP's dispatching conduct on the Baytown Branch is associated with degraded BNSF operating performance, I analyzed actual audio recordings of communications on the UP dispatcher channel at Dayton Yard 52 on the Baytown Branch for January through June 2026. The audio was transcribed, and the transcript output was consolidated and cleaned so that the review focused on spoken radio communications. Non-spoken material, duplicate transcript entries,

[8] *See* Baranowski Workpaper "HC - Baytown Volume and RVC Summary.xlsx", at tab "Chart".

timestamp artifacts, automated messages, and unrelated channel traffic were not treated as responsive communications.

19. For background, BNSF personnel advised that BNSF crews make initial calls to UP before entering the branch and may proceed to Esperson Siding if those calls receive no response. If a response is not received at Esperson, the crew must wait before proceeding any further.[9]

20. I used the transcriptions to identify unanswered-call events on the UP dispatcher channel at Dayton Yard 52. I compared the unanswered BNSF-to-UP radio call events identified from the Dayton Yard 52 transcripts with BNSF's car-level performance data. The Dayton correlation analysis includes {{ }}.

21. Repeated call attempts by the same crew within the same operating episode were consolidated into a single event. An event was treated as unanswered when the cleaned transcript did not contain a genuine, contextually attributable response to the BNSF caller. The resulting event file was then matched by date to the daily and weekly operating-performance data used in the comparisons below.

22. The daily comparison shows that performance was poorer on days with unanswered calls. {{ }}.

[9] The transcript records do not establish the crew's location for many unanswered events, and therefore this analysis does not treat every event as a documented delay.

*Table 1: Daily Performance by Unanswered Call Event Status*[10]

[redacted]

*Figure 8: Daily Failure Rate Comparison*[11]

[redacted]

23. The severity comparison points in the same direction. {{[redacted]}}.

[10] *See* Baranowski Workpaper "HC - Radio Transcript Analysis", at tab "Tables".
[11] *See* Baranowski Workpaper "HC – Radio Transcript Analysis", at tab "Charts".

*Figure 9: Daily Over-Plan Hours Comparison*[12]



24. For the weekly analysis, I focused on event-day share, defined as the share of days in each week containing at least one unanswered BNSF-to-UP event. This measure captures how persistently unanswered communications occurred during each week, rather than simply counting repeated calls.

25. As measured by Pearson coefficient,[13] I found a moderate positive linear relationship under the interpretive convention described below: {{ }}. The 95% confidence interval remains above zero and the p-value is below 0.05. The $R^2$ of 0.213 means that {{ }}

[12] *See* Baranowski Workpaper "HC - Radio Transcript Analysis", at tab "Charts".

[13] Pearson's correlation coefficient, reported as r, measures the direction and strength of a linear relationship and ranges from -1 to +1. Positive values mean the variables tend to increase together. Values closer to an absolute value of 1 indicate a stronger linear relationship. $R^2$ is the square of Pearson r and measures the share of variation in one variable accounted for by the fitted linear relationship. The p-value and 95% confidence interval address statistical uncertainty.

[redacted]}.

The Spearman coefficient[14] of 0.486 is similar in direction and magnitude to Pearson r, supporting the conclusion that {{[redacted]}}.[15]

26. Taken together with the daily comparisons, the weekly results provide consistent evidence that {{[redacted]}}.

*Table 2: Weekly Event-Day Share Statistical Results*[16]

[redacted]

[14] Spearman's rank correlation, reported as ρ, provides a robustness check based on ranks and is less sensitive to nonnormality and outliers.

[15] Interpretation standard: Report Pearson r with its 95% confidence interval, p-value, and $R^2$; use Spearman as a robustness check when normality or outliers are questionable. See Patrick Schober, Christa Boer & Lothar A. Schwarte, Correlation Coefficients: Appropriate Use and Interpretation, 126 Anesthesia & Analgesia 1763-1768 (2018), doi:10.1213/ANE.0000000000002864.

[16] *See* Baranowski Workpaper "HC - Radio Transcript Analysis", at tab "Tables".

*Figure 10: Weekly Event-Day Share and Car-Level Failure Rate*[17]



27. Additional transcript review identified {{ }}. The confirmed Esperson results point in the same direction as the full-pool analysis. {{ }}.

*Table 3: Full-Pool and Confirmed Esperson Results*[18]



[17] *See* Baranowski Workpaper "HC - Radio Transcript Analysis", at tab "Charts".
[18] *See* Baranowski Workpaper "HC - Radio Transcript Analysis", at tab "Tables".

28. Examples from January 2026 provide a clear illustration of how {{[redacted]}}.

29. On January 18, 2026 the transcript records a crew being directed to {{[redacted]}}.[20]

30. The pattern continued later in the month. On January 27, 2026, the transcript documents a crew {{[redacted]}}.[24]

[19] *See* Baranowski Workpaper "HC - Baytown Branch Radio Transcript Example - Jan 18 2026.docx", at time [00:15:15]. This workpaper comes from the larger radio transcript workpaper .zip file "HC - Baytown Branch Crew Radio Transcripts.zip".
[20] *See* Baranowski Workpaper "HC - Radio Transcript Analysis", at tab "Calc - Eperson", at row 8
[21] *See* Baranowski Workpaper "HC - Baytown Branch Radio Transcript Example - Jan 27 2026.docx", at time [00:01:38]. This workpaper comes from the larger radio transcript workpaper .zip file "HC - Baytown Branch Crew Radio Transcripts.zip".
[22] *See* Baranowski Workpaper "HC - Radio Transcript Analysis", at tab "Calc - Eperson", at row 9
[23] *See* Baranowski Workpaper "HC - Baytown Branch Radio Transcript Example - Jan 28 2026.docx". This workpaper comes from the larger radio transcript workpaper .zip file "HC - Baytown Branch Crew Radio Transcripts.zip".
[24] *See* Baranowski Workpaper "HC - Radio Transcript Analysis", at tab "Calc - Eperson", at row 10

31. Viewed together, these January 2026 examples document multiple occasions on which crews were instructed to {{[redacted]}}.

32. Separate transcript passages provide additional context regarding holding, sequencing, blockage, and extended waiting. {{[redacted]}} The passages document movement order, although the transcripts do not state every operating consideration underlying the decisions.[26]

33. On June 17, 2026, the transcript recorded, [redacted]

[25] *See* Baranowski Workpaper "HC - Baytown Branch Radio Transcript Example - Mar 16 2026.docx". This workpaper comes from the larger radio transcript workpaper .zip file "HC - Baytown Branch Crew Radio Transcripts.zip".
[26] *See* Baranowski Workpaper "HC - Baytown Branch Radio Transcript Example - Jun 21 2026.docx". This workpaper comes from the larger radio transcript workpaper .zip file "HC - Baytown Branch Crew Radio Transcripts.zip".
[27] *See* Baranowski Workpaper "HC - Baytown Branch Radio Transcript Example - Jun 19 2026.docx". This workpaper comes from the larger radio transcript workpaper .zip file "HC - Baytown Branch Crew Radio Transcripts.zip".

[redacted]}}.[28]

34. The full-pool analysis shows that {{[redacted]}}. Taken together, these examples strengthen the conclusion that documented communication and movement constraints were associated with poorer Dayton operating performance.

**PART IV – COMPARATIVE METRICS SHOWING RELATIVELY POOR OPERATIONS FOR BNSF TRAINS OPERATING ON UP-OWNED RASA SEGMENTS**

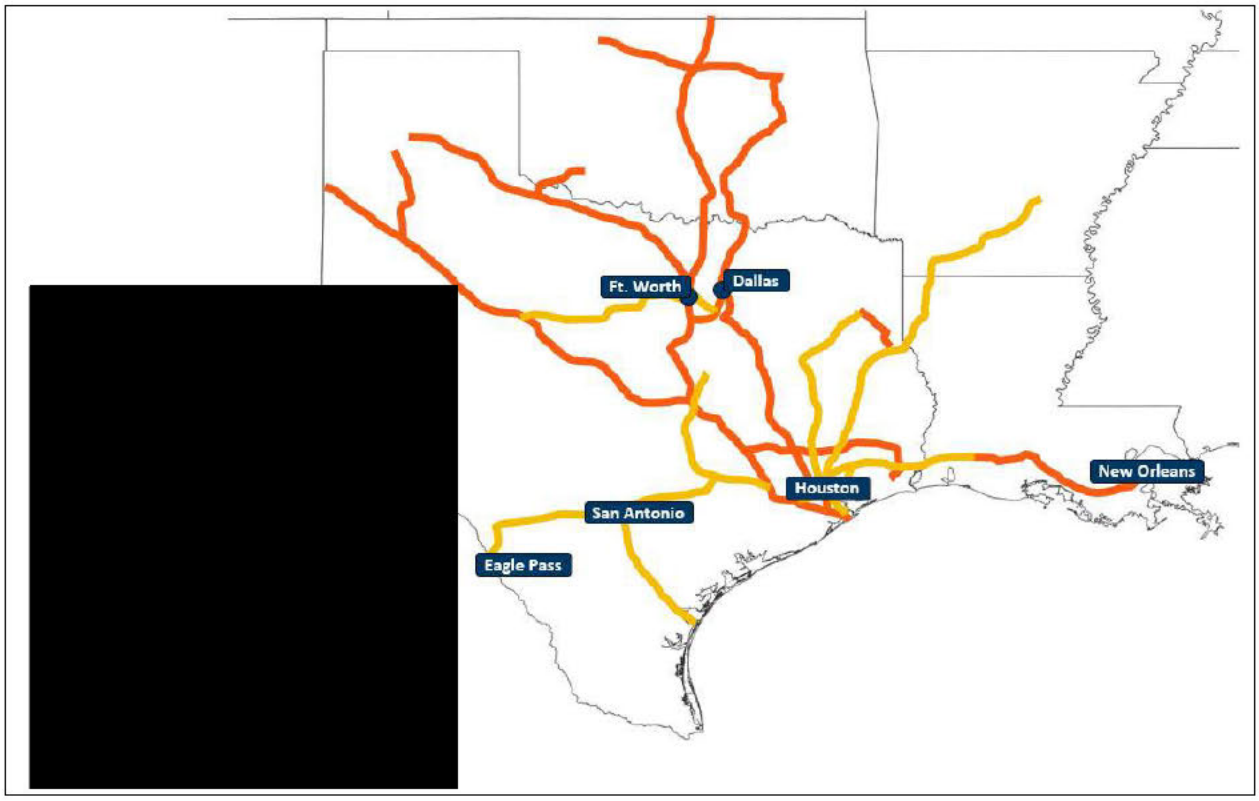
35. In addition to clear evidence of UP's discrimination of BNSF trains and the impacts of this discrimination on BNSF's operations, there are observable differences between BNSF's operational performance on the RASA trackage rights segments and its operations elsewhere on its system. Several comparative metrics, including crew call data and train delay data, suggest that {{[redacted]

[28] *See* Baranowski Workpaper "HC - Baytown Branch Radio Transcript Example - Apr 10 2026.docx". This workpaper comes from the larger radio transcript workpaper .zip file "HC - Baytown Branch Crew Radio Transcripts.zip".

[redacted]}}. These examples are presented below.

36. First, I determined that BNSF's recrew rates (or crew recall rates) for its operations on RASA trackage rights segments are higher than recrew rates for its owned trackage on the Red River Division. Recrew starts are incurred when the regular crew start is unable to complete a given move within federally mandated hours-of-service limits. To reach this conclusion, I analyzed BNSF crew call data for the Red River Division spanning May 2021 through June 2026 and containing both regular crew starts and recrew starts. As the graphic below shows, on the Red River Division, BNSF is consistently forced to recrew its trains operating over UP-owned RASA segments at a rate {{[redacted]}} the recrew rate for BNSF trains operating over BNSF-owned track.

*Figure 11: Red River Division - Map and Recrew Rate Comparison (May 2021 - June 2026)*[29]




37. The BNSF crew call data also explains that {[redacted]}}}.[30]

38. Next, I analyzed BNSF-systemwide train delay data for 2023, 2024, and 2025. Among other things, these data identify where a train delay has occurred, if the site of the delay was a BNSF-owned or a trackage rights segment, the reason for the delay using a code, and the duration of the delay. The data show clearly that {[redacted]

[29] *See* Baranowski Workpaper "HC - Red River Division Map and Recrew Chart.pptx".
[30] *See* Baranowski Workpaper "HC - Red River Division Map and Recrew Chart.pptx".

[redacted]}}.

*Figure 12: BNSF Train Delay Duration Comparison (2023-2025)*[31]



39. In addition to train delay data, BNSF maintains in its normal course of operations delay reporting and alert logs detailing BNSF crewmembers' commentary on individual delay incidents. I analyzed two such data sets:

a. Service Interruption/Delay on Line performance reports ("SIDOL data"): generated from BNSF's normal-course service interruption reporting, the SIDOL data specifies the affected BNSF train ID, the

[31] *See* Baranowski Workpaper "HC - BNSF Delay Data Analysis.xlsx", at tab "Figures"

corridor, the date and duration of the delay, and comments from BNSF crew describing why a delay has occurred. The SIDOL data I have is limited to BNSF trains operating on UP-owned corridors in Texas and Louisiana.

b. Alert List data: This data specifies the location and date of the alert and contains comments describing the nature of the alert. The Alert List data provided to me is limited to BNSF trains operating on owned and trackage rights segments in the Red River Division.

40. Across both data sets, BNSF crews operating over RASA segments frequently note instances of UP operators prioritizing the movement of a UP train (or, as is often the case, multiple UP trains) over a BNSF train, adding potential insight into the reason why train delays on UP-owned RASA segments are found to be so long in duration in Figure 12 above. {{[redacted]}}.[32]

41. For example, the following note was recorded in the SIDOL data on {{[redacted]}}[33]

[32] *See* Baranowski Workpaper "HC - BNSF SIDOL Data Analysis.xlsx" at tab "Calculations".
[33] *See* Baranowski Workpaper "HC - BNSF SIDOL Data Analysis.xlsx" at tab "Raw BNSF SIDOL Data", at cell K130.

This BNSF train was {{[redacted]}}.[34]

The Alert List data conveys much of the same information. {{[redacted]}}.[36]

42. As shown by the analyses in this section, it is consistently more difficult for BNSF to operate trains and service customers on UP-owned RASA segments compared to its own trackage.

[34] *See* Baranowski Workpaper "HC - BNSF SIDOL Data Analysis.xlsx" at tab "Calculations".
[35] *See* Baranowski Workpaper "HC - All Events 2025-26 AlertList.xls" at row 1681.
[36] *See* Baranowski Workpaper "HC - All Events 2025-26 AlertList.xls" at row 1771.

## PART V – MARKET SHARE TRENDS ARE CONSISTENT WITH BNSF'S OPERATIONAL DATA

43. Observed market share trends are consistent with patterns in the operational data indicating {{ }}.

*Figure 13: {{ }} Market Share Evolution at RASA 2-to-1 Stations*[37]



*Figure 14: {{ }} Market Share Evolution at RASA 2-to-1 Stations*[38]



[37] *See* Baranowski Workpaper "HC - Market Share Workpaper.xlsx", at tab "Market Share Charts".
[38] *See* Baranowski Workpaper "HC - Market Share Workpaper.xlsx", at tab "Market Share Charts".

*Figure 15: {{ }} Market Share Evolution at RASA 2-to-1 Stations*[39]



*Figure 16: {{ }} Market Share Evolution at RASA 2-to-1 Stations*[40]



[39] *See* Baranowski Workpaper "HC - Market Share Workpaper.xlsx", at tab "Market Share Charts".
[40] *See* Baranowski Workpaper "HC - Market Share Workpaper.xlsx", at tab "Market Share Charts".

*Figure 17: {[redacted]} Market Share Evolution at RASA 2-to-1 Stations*[41]



44. Similarly, pre-merger pricing parity in these commodity markets between UP and SP at RASA 2-to-1 stations {[redacted]}.

[41] *See* Baranowski Workpaper "HC - Market Share Workpaper.xlsx", at tab "Market Share Charts".

*Figure 18: UP and SP R/VCs at RASA 2-to-1 Stations Pre-Merger*[42]



*Figure 19: UP and BNSF R/VCs at RASA 2-to-1 Stations Present Day*[43]



45. The resulting impact to customers has been {{

[42] *See* Baranowski Workpaper "HC - Market Share Workpaper.xlsx", at tab "RVC Charts".
[43] *See* Baranowski Workpaper "HC - Market Share Workpaper.xlsx", at tab "RVC Charts".

[redacted]}}.

*Figure 20: R/VC Evolution at RASA 2-to-1 Stations*[44]



**PART VI – BENEFIT OF ADDITIONAL DISCOVERY**

46. As stated above, my ability to further assess patterns of unequal treatment by UP on RASA segments is limited. However, my conclusions derived from internal BNSF operational, service, and business data strongly suggest that analyzing relevant metrics and data maintained in the normal course of operations by UP and obtained through discovery could reveal additional conduct by UP that prevents BNSF from maintaining the competition that the merger conditions were intended to preserve.

47. Additional discovery of ordinary-course operational, service, and business records from UP would permit direct comparisons of the results of the analyses I conducted with BNSF's operational, service, and business data to those of

[44] *See* Baranowski Workpaper "HC - Market Share Workpaper.xlsx", at tab "RVC Charts".

UP. While my analyses of BNSF's data demonstrate that {{ }}. Additional discovery that would aid further analysis includes but is not limited to UP train event data, crew call data, train delay data and reporting, and internal performance metrics.

48. UP train event data (combined with BNSF train event data) would allow me to compare service frequency and transit times between UP trains and BNSF trains on important operational segments beyond Eagle Pass. While BNSF has access to UP AEI reader data on the Eagle Pass corridor that provided limited insights on UP train performance, BNSF does not have comparable UP AEI reader access on most other RASA trackage rights segments. Train event data would allow me to evaluate instances of {{ }}.

49. Additional UP operational data such as spot-and-pull data would allow for greater comparison of UP recrew rates and reasoning, delay frequency, length, and reasoning, as well as the overall rates at which UP is able to meet its delivery time commitments for its customers. While the internal BNSF metrics I analyzed allow for effective comparison of {{ }}

[redacted]

[redacted]

[redacted]

[redacted]}}.

# Michael Baranowski

EXHIBIT A

Senior Managing Director
Economic Consulting

8251 Greensboro Drive, Suite 1111 – McLean, VA 22102
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**Education**

B.S. in Accounting, Fairfield University

Supplemental Finance Studies, Kean College

Mike Baranowski heads FTI's Network Industries Strategies practice and provides strategic, financial, and economic consulting services to the telecommunications and railroad and pipeline transportation industries. He has special expertise in analyzing and developing complex costing and cash flow models, conducting detailed operations analysis, and transportation engineering. Much of his work involves providing oral and written expert testimony before courts, arbitration panels and regulatory bodies.

He is a recognized expert in railroad regulatory economics and has assisted FTI's railroad clients in a broad range of litigation and regulatory engagements involving pricing of services, contract disputes, damage calculations and analyses of the specific effects of pending or proposed changes in policy or regulation.

Some of Mr. Baranowski's representative experience includes:

- Development of strategic litigation analyses for large network industry regulatory rate proceedings based on the theory of Constrained Market Pricing and the Stand-Alone cost test. Theory assumes the existence of a hypothetical, efficient competitor and involves detailed analysis of short and long run operations, expenses, capital expenditures and revenues.
- Analysis of market dynamics effecting pricing and development of a suite of modeling tools to assess the regulatory risk of tariff and contract transportation rates for a mix of commodities and services based on key cost drivers and forecasts.
- Expert testimony related to the determination of damages in a variety of commercial contract disputes in the railroad, telecommunications, pipeline and trucking industries.
- Evaluation of market effects of proposed railroad mergers and identification of merger related efficiencies and quantification of the associated savings.

- Going concern and liquidation value estimates for railroad related assets as the basis for trackage rights and competitive access compensation.
- Develop detailed cost and revenue allocation metrics to assess relative profitability of individual asset groups or segments of complex network industries.

Mr. Baranowski holds a B.S. in Accounting from Fairfield University in Fairfield, Connecticut and has pursued supplemental finance studies at Kean College in Union, New Jersey.

## Select Railroad Testimony

### Surface Transportation Board

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|---|---|
| August 26, 2016 | Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher |
| October 11, 2016 | Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Comment of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher |
| October 26, 2016 | Ex Parte No. 711 (Sub-No. 1) Reciprocal Switching, Opening Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski |
| November 7, 2016 | Ex Parte No. 431 (Sub-No. 4) Review of the General Purpose Costing System, Reply Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher |
| March 6, 2017 | Docket No. 42142 Consumers Energy Company v. CSX Transportation, Inc., Supplemental Reply Evidence of CSX Transportation, Inc. |
| January 12, 2018 | Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Petition to Establish Conditions of Use and Compensation, Verified Statement of Michael R. Baranowski |
| July 16, 2018 | Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal, Verified Statement of Michael R. Baranowski |
| April 26, 2019 | Docket No. 42144 North American Freight Car Association, et al v. Union Pacific Railroad Company, Verified Statement of Michael R. Baranowski |
| January 26, 2021 | Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Opening Statement on Compensation, Verified Statement of Michael R. Baranowski |
| January 29, 2021 | Ex Parte No. 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Benton V. Fisher |

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| April 12, 2021 | Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Reply Statement on Compensation, Verified Statement of Michael R. Baranowski |
| May 12, 2021 | Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, BNSF Rebuttal Statement on Compensation, Verified Statement of Michael R. Baranowski |
| June 21, 2021 | Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Canadian Pacific Applicants' Response to KCS Reply, Verified Statement of Michael R. Baranowski |
| October 29, 2021 | Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Verified Statement of Michael R. Baranowski |
| February 14, 2022 | Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching, supplemental Comments of the Association of American Railroads, Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski |
| May 27, 2022 | Docket No. FD 35743, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) – Canadian National Railway Company, Post-Interim Decision Opening Submission of CN, Verified Statement of Michael R. Baranowski |
| July 12, 2022 | Docket No. FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern, Railroad Control Application, Reply Verified Statement of Michael R. Baranowski on behalf of Applicants |
| August 22, 2022 | Docket No. FD 35743, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) – Canadian National Railway Company, Post-Interim Decision Rebuttal Submission of CN, Verified Statement of Michael R. Baranowski |
| February 23, 2023 | Ex Parte No. 771, Alternative to URCS, Opening Comments of AAR, Verified Statement of Michael R. Baranowski |
| September 22, 2023 | Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Motion of The Association of American Railroads to Extend the Comment Period, Verified Statement and Written Testimony of Michael R. Baranowski and Nathaniel S. Zebrowski |
| December 20, 2023 | Ex Parte No. 711 (Sub-No. 2), Reciprocal Switching for Inadequate Service, Reply Comments of The Association of American Railroads, Reply Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski |
| May 3, 2024 | Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Opening Statement and Evidence, Verified Statement of Michael R. Baranowski and Nathan Zebrowski |
| September 23, 2024 | Docket No. FD 32760 (Sub-No. 46) BNSF Railway Company - Terminal Trackage Rights -- Kansas City Southern Railway Company and Union Pacific Railroad Company, Reply Supplementary Statement on Compensation, Verified Statement of Michael R. Baranowski |

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|---|---|
| March 14, 2025 | Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Reply Statement and Evidence, Reply Verified Statement of Michael R. Baranowski and Nathan Zebrowski |
| October 23, 2025 | Docket No. NOR 42180, Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. v. BNSF Railway Company, BNSF Railway Company's Reply Statement and Evidence, Veriried Reply Statement of Michael R. Baranowski and Nathaniel S. Zebrowski |
| April 20, 2026 | Docket No. FD 22218, Atchison, Topeka & Santa Fe Railway Company -- Operating Rights -- Southern Pacific Transportation Co., BNSF Railway Company's Supplemental Submission, Supplemental Verified Statement of Michael R. Baranowski and Nathan Zebrowski |

**U.S. District Court for the Northern District of Texas, Fort Worth Division**

| | |
|---|---|
| November 7, 2017 | Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Expert Report of Michael R. Baranowski |
| November 22, 2017 | Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Reply Expert Report of Michael R. Baranowski |
| December 21, 2017 | Civil Action No. 4:16-cv-1061-O, BNSF Railway Company v. Panhandle Northern Railroad LLC, Rebuttal Expert Report of Michael R. Baranowski |

**U.S. District Court for the Western District of Washington**

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| December 15, 2023 | U.S. District Court for the Western District of Washington, Case No. 2:15-CV-00543-RSL, Swinomish Indian Tribal Community v. BNSF Railway Company, Expert Report of Michael R. Baranowski |
| February 16, 2024 | U.S. District Court for the Western District of Washington, Case No. 2:15-CV-00543-RSL, Swinomish Indian Tribal Community v. BNSF Railway Company, Rebuttal Expert Report of Michael R. Baranowski |

**Business Court of Texas, Eighth Division**

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|---|---|
| April 29, 2026 | Business Court of Texas, Eighth Division, Cause No. 25-BC08A-0023, BNSF Railway Company vs. CF&I Steel LP d/b/a Rocky Mountain Steel Mills, Report of Michael R. Baranowski |
| August 12, 2026 | Business Court of Texas, Eighth Division, Cause No. 25-BC08A-0023, BNSF Railway Company vs. CF&I Steel LP d/b/a Rocky Mountain Steel Mills, Reply Statement and Supplement of Michael R. Baranowski |

**Arbitrations and Mediations**

| | |
|---|---|
| April 14, 2017 | American Arbitration Association Case No. 01-15-0004-4830 and 01-15-0004-4931, Arbitration Between FirstEnergy Generation LLC and CSX Transportation, Inc. & BNSF Railway Company, Expert Report of Michael R. Baranowski |
| November 22, 2017 | American Arbitration Association Case No. No. 01-16-0003-6208, CSXT Transportation, Inc. v. JEA and Florida Power & Light Co., Expert Report of Michael R. Baranowski |

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| January 26, 2018 | American Arbitration Association Case No. No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Expert Report of Michael R. Baranowski |
| February 16, 2018 | American Arbitration Association Case No. 01-16-0005-5615, BNSF Railway Company & Norfolk Southern Railway Company v. FirstEnergy Generation, LLC, Rebuttal Expert Report of Michael R. Baranowski |
| February 23, 2018 | American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski |
| April 17, 2018 | American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski |
| June 22, 2018 | JAMS REF #1100088262, BNSF Railway Company v. Union Pacific Railroad Company, Expert Report of Michael R. Baranowski |
| March 25, 2019 | American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Expert Report of Michael R. Baranowski |
| April 26, 2019 | American Arbitration Association Case No. 01-17-0000-0130, J.B. Hunt Transport, Inc. and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski |
| January 18, 2021 | American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Report of Michael R. Baranowski on Behalf of BNSF & NS |
| February 5, 2021 | American Arbitration Association Case No. 01-18-0001-3283, BNSF Railway Company & Norfolk Southern Railway Company, and Dynegy Midwest Generation, LLC, Expert Reply Report of Michael R. Baranowski on Behalf of BNSF & NS |
| January 14, 2022 | Arbitration between The Port of Vancouver, USA and BNSF Railway Company, Reply Expert Report of Michael R. Baranowski |
| May 9, 2025 | American Arbitration Association Case No. 01-24-0000-5997, Schneider National Carriers, Inc. vs. BNSF Railway Company, Verified Statement of Michael R. Baranowski on behalf of BNSF Railway Company |

## Select Pipeline Testimony

### Federal Energy Regulatory Commission

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|---|---|
| November 20, 2019 | Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony of Michael R. Baranowski on behalf of Colonial Pipeline |
| March 20, 2020 | Docket Nos. OR18-7-002, et al. (Consolidated), Epsilon Trading, et al v. Colonial Pipeline Company, Prepared Answering Testimony to Trial Staff of Michael R. Baranowski on behalf of Colonial Pipeline |

# VERIFICATION

I, Michael R. Baranowski, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Michael Baranowski

Michael R. Baranowski

Executed: August 26, 2026

BEFORE THE
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 32760 (SUB-NO. 52)

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BNSF RAILWAY COMPANY
—PETITION FOR REVIEW—
UP/SP MERGER CONDITIONS

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# BNSF RAILWAY COMPANY'S SUPPLEMENTAL PETITION FOR REVIEW AND ENFORCEMENT OF THE UP/SP MERGER CONDITIONS

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Verified Statement of Nicholas Hill, PhD

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# 1. Preliminaries

## 1.1. Qualifications

(1) I am a Partner at Bates White Economic Consulting specializing in antitrust analysis. I have extensive experience applying economic principles to antitrust cases. Prior to working at Bates White, I served for three years as an Assistant Section Chief in the Economic Analysis Group of the US Department of Justice's Antitrust Division. In that role, I supervised teams of economists on a number of important antitrust enforcement actions, including Aetna-Humana, Comcast-Time Warner Cable, Halliburton-Baker Hughes, and the United-Delta Newark slots litigation. The Aetna-Humana team received an Attorney General's Award for Distinguished Service, while the other three teams received Antitrust Division Awards of Distinction. Prior to serving as an assistant chief in the Antitrust Division, I was a staff economist at the Federal Trade Commission for a year and a half, and a staff economist at the Antitrust Division for seven years.

(2) During my government service, I worked on antitrust investigations and litigations related to a wide range of industries, including airlines, banking, casinos, health insurance, pharmaceuticals, pulp and paper products, transportation, and telecommunications. Since moving to the private sector, I have been retained by clients, both public and private, in a range of industries, including banking, chemicals, dairy, healthcare, oil-field services, pulp and paper products, software, and transportation equipment.

(3) I have testified eight times in federal court. I testified in 2018 for the Federal Trade Commission in its successful challenge of the chemical industry merger between Tronox and Cristal. In 2019, I testified on behalf of Evonik and PeroxyChem in successful defense of their merger. I testified in 2020 on behalf of the Federal Trade Commission in its successful challenge of the proposed joint venture between Peabody Energy and Arch Resources. I testified on two matters in 2022. First, I testified on behalf of U.S. Sugar and Imperial Sugar in successful defense of their merger. Second, I testified on behalf of the Department of Justice in its successful challenge of the proposed merger of the book publishers Penguin Random House and Simon & Schuster. In 2023, I testified on behalf of JetBlue and Spirit in defense of their merger. In 2024, I testified on behalf of the Federal Trade Commission in its successful challenge to the proposed merger of Kroger and Albertsons. Finally, I testified in 2026 in the plaintiff States' successful monopolization case against Live Nation Entertainment.

(4) I have a PhD in Economics from Johns Hopkins University and a master's degree in Quantitative Development Economics from the University of Warwick in the United Kingdom. My curriculum vitae, which discloses my publications, is attached as Appendix A.

(5) A list of the materials upon which I relied when forming my opinion is provided in Appendix B. My work on this matter is ongoing, and my opinions are formed using the information available to me as of the date of this statement. I reserve the right to amend or supplement this verified statement if additional information is made available. If other verified statements come to my attention, I may choose to update my opinions or respond to such verified statements as necessary.

## 1.2. Assignment

(6) On 28 November 2025, BNSF Railway Company ("BNSF") submitted a petition in front of the Surface Transportation Board ("the Board") for review, enforcement, and modification of the merger conditions of the merger between the Union Pacific Railroad ("UP") and the Southern Pacific Rail Corporation ("SP") ("UP/SP merger").

(7) I have been asked by counsel for BNSF to analyze the impact of the UP/SP merger and the alleged conduct of UP after the UP/SP merger on freight rates paid by shippers. My assignment in this matter is twofold. The first task is to evaluate whether UP's alleged conduct under the service election protocol established by the Restated and Amended Settlement Agreement (the "RASA") may reduce BNSF's ability to compete. The second task is to evaluate whether the UP/SP merger has led to any material reduction in competition compared to the pre-merger world.[1]

[1] Restated and Amended Settlement Agreement between Union Pacific Railroad Company and Burlington Northern and Sante Fe Railway Company, March 2, 2002, at 6 [hereinafter, the "RASA"].

# 2. Summary of conclusions

(8) In this statement I examine the impact on competition of UP's alleged conduct and the UP/SP merger. I reach a number of conclusions.

(9) First, I conclude that economic research is consistent with UP's alleged conduct lessening competition and harming shippers. By delaying or denying BNSF's service elections to serve customers that should benefit from BNSF's competitive service, UP can effectively raise BNSF's costs, delay BNSF's service, and create uncertainty for BNSF's customers.

(10) Second, consistent with this academic work, my empirical analysis finds that {{[redacted]}}.

(11) Third, I empirically evaluate the effect of the merger on shippers at a 2-to-1 point or on a trackage rights line as defined by the RASA ("2-to-1 shippers") by analyzing the Board's Confidential Carload Waybill Sample ("Waybill") data from 1991 to 2006.[2] I do so by comparing the freight rate trend for 2-to-1 shippers that were affected by the merger to that of shippers that were unlikely to have been affected by the UP/SP merger (the "control group"). My analysis shows that {{[redacted]}}.

(12) Finally, the empirical analyses described above are based on the data that are currently available. Additional data from UP would likely be helpful to further examine the impact of the merger and UP's alleged conduct.

[2] The RASA at 2, 3. Surface Transportation Board, Confidential Carload Waybill Sample, 1990–2024.

# 3. Background

(13) In 1996, UP merged with SP, linking 35,000 miles of track.[3] In approving this merger, the Board imposed a series of conditions intended to preserve competition for 2-to-1 shippers located at certain geographic points who were only served pre-merger by UP and SP.[4] These shippers would have otherwise become captive shippers under the merged firm. The merger conditions were designed to prevent a loss of competition by enabling BNSF to provide competitive service to shippers who would otherwise have become captive.

(14) The merger conditions included: (1) granting BNSF trackage rights over the combined UP and SP network to serve shippers at 2-to-1 points and (2) allowing shippers to elect to be served by BNSF when establishing new facilities at 2-to-1 points and along the trackage rights lines.[5]

(15) The Board also implemented, as a condition of the merger, a comprehensive settlement between UP and BNSF to enshrine competition-preserving rights. This settlement as restated and amended, the RASA, was approved by the Board in 2002 and is still binding today.[6]

(16) In approving the merger, the Board also established a five-year oversight period to evaluate whether the conditions set were sufficient to maintain competition.[7] After five years, in 2001, the Board concluded the conditions were largely working as intended.[8] Under the RASA, the Board, in connection with its continuing jurisdiction, gave BNSF the responsibility of overseeing the access rights granted to it.[9]

(17) BNSF has alleged that UP has engaged in obstructive conduct in violation of the merger conditions and the RASA. BNSF alleges that this conduct has reduced BNSF's ability to maintain the competition that the merger conditions were intended to preserve, to the detriment of shippers. The alleged actions include improperly delaying and denying BNSF service elections, unequal train dispatching practices, and refusing to engage in updating or establishing new trackage right agreements.[10]

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3 BNSF Railway Company—Petition for Review—UP/SP Merger Conditions, Finance Docket No. 32760 (Sub-No. 52) (Surface Transportation Board November 28, 2025), at 4 [hereinafter "BNSF Petition"].

4 BNSF Petition at 4, 5.

5 BNSF Petition at 5.

6 The RASA at 1.

7 BNSF Petition at 6.

8 *See* BNSF Petition at 6.

9 BNSF Petition at 2.

10 BNSF Petition at 12, 23.

# 4. Economic analysis of the effect of the alleged conduct and the UP/SP merger on competition

(18) In this section, I analyze UP's alleged conduct and the effect of the merger through an economic lens. I begin by using the economics literature to evaluate whether UP's alleged conduct could harm shippers. I then analyze data on the rate at which UP denies BNSF's service elections to determine if it is consistent with reduced competition. Finally, I use the Waybill data to examine whether the merger likely resulted in a reduction in competition.

## 4.1. Economic framework

(19) BNSF argues that UP has denied BNSF's elections to serve new shippers at a 2-to-1 point or on a trackage rights line through a variety of delay and deny strategies, thereby reducing BNSF's ability to compete for such customers.[11] Economic research suggests that these alleged types of conduct are likely to be anticompetitive (i.e., to lessen competition to the detriment of shippers).

(20) The RASA was designed to give BNSF the ability to compete effectively with UP. Under the RASA, BNSF may elect to serve customers directly, via reciprocal switch, or via third-party service with UP's consent.[12] To initiate service, BNSF begins by sending a service election to UP. UP is required to respond to BNSF's initial service elections within a specified time frame (30 days in the event of New Shipper Facilities on Trackage Rights lines and 2-to-1 Points as defined in the RASA).[13] However, UP has no deadline to respond to subsequent communications regarding the same service election should UP deny or delay the initial service election.[14]

(21) BNSF alleges that UP unnecessarily prolongs the service election process and, in some cases, denies service elections on pretextual grounds and by other, sometimes contradictory, reasons.[15] This forces BNSF to reply to each new ground for denial, and BNSF often needs to challenge such denials before the Board or through private negotiation, thus delaying the service election process.[16] BNSF further alleges that UP often delays service by withholding operating-plan approvals or conditioning such approvals on unjustified requirements, even after acknowledging BNSF's access rights.[17] Delays of

[11] BNSF Petition at 8.

[12] The RASA at 6.

[13] The RASA at 8.

[14] BNSF Petition at 22; The RASA at 14.

[15] BNSF Petition at 14.

[16] BNSF Petition at 14.

[17] For example, in BNSF's March 4, 2022 service election involving a new shipper facility, {{[redacted]}}, UP first responded on March 25, 2022 and stated that UP had no record of this customer seeking to establish a location. *See* Workpapers (Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company, email message to Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company (March 25, 2022)). BNSF

this type impair BNSF's ability to serve customers or cause customers to incur significant transload costs, which reduce BNSF's competitiveness.

### 4.1.1. Raising rivals' costs

(22) Economic research finds that a firm that controls an approval process, input, interface, license, standard, or distribution channel can harm competition by denying an approval or delaying a decision long enough to raise rivals' costs, create uncertainty, degrade service quality, or deter entry.

(23) A firm can gain market power by making a rival firm's operations more costly or less effective.[18] Delay and deny strategies can raise rival's costs by increasing uncertainty, extending the time lag between signing a contract and serving a customer, causing missed customer opportunities, or making the rival seem unreliable.[19] Delay in processing orders is one way to impose such costs.[20] Such cost-predation strategies may be profitable whether the rival firm exits or not, and the predating firm may reap gains even in the short run.[21] Thus, UP's alleged delay-and-deny conduct could lead to higher costs for BNSF. Such conduct would reduce BNSF's ability to compete and thereby harm 2-to-1 shippers.

objected and notified UP that the customer in question had already leased the land and performed significant work on the track to bring it to operating standard. *See* Workpapers (Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company, email message to Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company (April 7, 2022)). On April 12, 2022, UP confirmed BNSF's request for access but imposed multiple conditions. *See* Workpapers (Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company, email message to Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company (April 12, 2022)). BNSF continued to object to some of UP's conditions, and UP further delayed BNSF's access to serve this customer. *See* Workpapers (Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company, email messages to Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company (May 2, 2022; May 6, 2022)).

[18] *See* Steven C. Salop and David T. Scheffman, "Raising Rivals' Costs," *AEA Papers and Proceedings* 73, no. 2 (May 1983): 267–271.

"Economists and courts have long been concerned with conduct that creates or enhances market power by disadvantaging rivals. A variety of cost-raising strategies can be used to disadvantage rivals or drive them out of the market without the need to set low prices. For example, while AT&T was not found liable for predatory pricing, it did not escape liability for denying rivals equal access." Steven C. Salop and David T. Scheffman, "Cost-Raising Strategies," *Journal of Industrial Economics* 36, no. 1 (September 1987), at 19.

[19] As stated in footnote 17 of my statement and in BNSF's Supplemental Petition, even when UP conditionally confirms BNSF's election request, it is still able to delay fulfillment of service for months by imposing additional conditions on service to the customer. *See BNSF Railway Company's Supplemental Petition for Review and Enforcement of the UP/SP Merger Conditions,* Finance Docket No. 32760 (Sub-No. 52) (Surface Transportation Board August 26, 2026).

[20] Nicholas Economides, "The Incentive for Non-Price Discrimination by an Input Monopolist," *International Journal of Industrial Organization* 16, no. 3 (May 1998): 271–284.

[21] Steven C. Salop and David T. Scheffman, "Raising Rivals' Costs," *AEA Papers and Proceedings* 73, no. 2 (May 1983): 267–271; Steven C. Salop and David T. Scheffman, "Cost-Raising Strategies," *Journal of Industrial Economics* 36, no. 1 (September 1987): 19–34.

### 4.1.2. Exclusionary conduct

(24) Exclusionary conduct is a commonly used term to describe practices that one firm might undertake to deny its rival access to some or all of a market.[22] Exclusion can occur when a firm obtains the ability to prevent rivals from accessing necessary inputs, distribution, or customers.[23] In such a situation, the rival loses not only the immediate sales denied to it by the exclusionary conduct but also future sales that it would gain from customers who, but for the exclusion, might have made introductory or exploratory purchases that would potentially lead to larger future contracts. The rival is also denied the opportunity to establish its reputation with those end customers.

(25) As a result, the rival firm is disadvantaged in the long term, and the dominant firm benefits from both increased sales of its current services and reduced competition for its services in the future. Conduct of this type can be anticompetitive when it weakens the rival as a future competitor, enhances the dominant firm's market power, harms consumers, or creates negative contracting externalities.[24]

(26) UP's alleged delays or denials of service elections would, if true, be examples of exclusionary conduct that would impair BNSF's ability to compete with UP. In particular, the alleged delays are, if true, an example of "cheap exclusion."[25] Cheap exclusion is conduct that involves little cost and risk to the firm engaging in it, both in absolute terms and when compared to the potential gains it may bring, and is therefore a potentially attractive way to acquire or maintain market power.

(27) According to the RASA, BNSF is required to give UP 45 days notice prior to starting service at a new 2-to-1 point or along a trackage rights line, and UP has 30 days after receiving such a notice to reply.[26] There is no time restriction on subsequent UP responses, so this process can become elongated. For example, UP could claim that the shipper facility in BNSF's original election has not yet been established with UP when it responds on the 30th day.[27] If BNSF disputes this in writing, UP

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22 B. Douglas Bernheim and Randal Heeb, "A Framework for the Economic Analysis of Exclusionary Conduct," *Oxford Handbook of International Antitrust Economics*, Vol. 2, eds. Roger D. Blair and D. Daniel Sokol (Oxford University Press, 2015), 3–39.

23 *See* Steven C. Salop, "The Raising Rivals' Cost Foreclosure Paradigm, Conditional Pricing Practices, and the Flawed Incremental Price-Cost Test," *Antitrust Law Journal* 81, no. 2 (2017): 371–422.

24 B. Douglas Bernheim and Randal Heeb, "A Framework for the Economic Analysis of Exclusionary Conduct," *Oxford Handbook of International Antitrust Economics*, Vol. 2, eds. Roger D. Blair and D. Daniel Sokol (Oxford University Press, 2015), 3–39.

25 Susan A. Creighton, D. Bruce Hoffman, Thomas G. Krattenmaker, and Ernest A. Nagata, "Cheap Exclusion," *Antitrust Law Journal* 72, no. 3 (2005): 975–996.

26 The RASA at 7–8.

27 BNSF filed a service election on April 22, 2026 for a customer, {{[redacted]}}, at Clearfield, Utah. *See* Workpapers (Michael Pruneau, Manager Contracts and Joint Facilities, BNSF Railway Company, email message to Ryan Pichler, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company (April 22, 2026)). UP responded on May 21, 2026, 30 days later, to inform BNSF that the customer "has not yet been established on a located industry on UP," though UP was "actively working to locate this customer, and once located UP will then entertain a BNSF request for access to the facility." *See* Workpapers (Ryan Pichler, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company, email message to Michael Pruneau, Manager Contracts and Joint Facilities, BNSF Railway Company (May 21, 2026)).

has no obligation to respond in any particular time window. If the service elections of potential new 2-to-1 shippers are lengthened as a result, it could impair BNSF's ability to compete.

## 4.2. Impact on BNSF

(28) To serve a new shipper at a 2-to-1 point or along a trackage rights line specified in the RASA, BNSF must first notify UP of its service plan and receive written approval of the plan from UP. I use data on service elections submitted by BNSF to UP to examine the impact of the election process on BNSF.[28] My analysis shows that {{[redacted]}}.

(29) Figure 1 depicts {{[redacted]}}.

(30) These findings are consistent with {{[redacted]}}.

[28] These data comprise {{[redacted]}}. Due to historical variations in how BNSF has tracked its service elections in the decades since the merger, the spreadsheet contains the readily available information BNSF has maintained in the ordinary course of business, although it may not capture all of BNSF's service elections under the RASA.

[29] Ideally, I would compile and analyze a full database of service elections to examine denial patterns over time. This project would require data from UP in addition to data from BNSF to understand the full scope of denials, their prevalence, and the reasons behind them.

**Figure 1. Rate at which UP denies BNSF service elections, 1999–2026**



Source: "Customer Access Summary - 12.8.2025_clean.xlsx"
Notes: The sample size for the 1999–2001 period is small (3 observations) relative to the other periods in the data set.

## 4.3. Impact on shippers

(31) The RASA conditions were intended to preserve competition for shippers who otherwise would have become captive shippers following the merger. To test whether the RASA conditions have been successful, I analyze whether these 2-to-1 shippers paid higher freight rates after the merger. I do so by using the Board's Waybill data from 1991 to 2006 to evaluate freight rates on routes that include at least one 2-to-1 point (the "treatment routes").[30] To control for other rail industry changes, I compare the rates on the treatment routes to the rates on a set of control routes that are unlikely to have been affected by the merger (the "control routes").[31]

(32) More specifically, I use regression analysis to compare freight rates on the treatment and the control routes from 1991 to 2006 and account for other factors that may have influenced freight rates.[32] These

[30] I identify treatment routes by checking the origin and destination stations in the Waybill data. If at least one of the origin and destination stations of a route is a 2-to-1 point identified in the RASA and the route was not served by BNSF in the pre-merger period, I label the route as a treatment route.

[31] I select as my control routes any route that was served and only served by UP in the pre-merger period (1991–1995), the STB oversight period (1997–2001), and the post-merger period (2002–2006). As these routes were consistently served by UP only, the UP/SP merger is unlikely to have impacted these routes.

[32] Regression analysis evaluates a statistical relationship between an outcome of interest (dependent variable) and a set of

factors include, for each shipment: the variable cost per ton-mile, the shipping distance, the weight, the density of the shipment, the number of carloads, car ownership, and rate type.[33]

(33) I evaluate the impact of the UP/SP merger by estimating the differences between rates on the treatment and the control routes during the STB oversight period (1997–2001) and the post-merger period (2002–2006) relative to the differences during the pre-merger period (1991–1995).[34] Analyzing these windows around the merger helps isolate its effect while controlling for the influence of other changes in the rail industry.[35]

(34) For both the treatment and the control routes, I require that the route-commodity pairings must appear in or before 1993 (mid-point of the pre-merger period) and in or after 2004 (mid-point of the post-merger period). This ensures that each route-commodity pairing has a significant presence in the data. I also exclude empty shipments and shipments associated with locomotives or cabooses.[36, 37]

(35) To calculate the freight rate, I divide the total revenue on a shipment by the product of the shipment's weight and its shipping distance.[38] I convert these rates into 1991 dollars using the GDP deflator published by the U.S. Bureau of Economic Analysis to adjust for inflation.[39] I also limit my analysis to single-leg shipments where the originating and terminating railroads are the same carrier, as rates are likely more accurately associated with the relevant carrier for these shipments.[40]

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control variables. Waybills in 1996 are excluded from this analysis.

33 Density is defined as the annual tonnage of shipments for each route. Rate type is defined by an indicator of whether the freight revenue figure is a calculated number which has been derived either from existing tariffs or from appropriate values if no tariff is in place.

34 This impact is identified by the coefficients for the interaction terms between the treatment routes indicator and each of the two time periods after the UP/SP merger.

35 This analysis uses a difference-in-differences model. *See* Joshua D. Angrist and Jörn-Steffen Pischke, *Mostly Harmless Econometrics: An Empiricist's Companion* (Princeton University Press, 2009), § 5.2.

The three periods cover a reasonable time window around the merger. *See* Orley Ashenfelter and Daniel Hosken, "The Effect of Mergers on Consumer Prices: Evidence from Five Mergers on the Enforcement Margin," *Journal of Law and Economics* 53, no. 3 (August 2010): 435 ("We prefer an event window that is long enough to capture any change in price associated with the change in market structure but short enough to avoid any contaminating effects from other changes in the market.").

36 A shipment is considered to be empty if it has an STCC code denoting empty shipments or has an expanded billed weight of zero. STCC codes that typically represent empty shipments include the following: "42 CONTAINERS, CARRIERS OR DEVICES, SHIPPING, RETURNED EMPTY" and "3741 LOCOMOTIVES OR PARTS." *See* Railinc, "2024 Surface Transportation Board Carload Waybill Sample Reference Guide," April 10, 2026, https://www.stb.gov/wp-content/uploads/2024-STB-Waybill Reference-Guide.pdf, at 6, 154, 157.

37 Locomotives are identified as waybills with an AAR equipment type beginning with the letter "D" and cabooses as shipments with an AAR equipment type of "M930" or STB car type of "54." *See* Railinc, "2024 Surface Transportation Board Carload Waybill Sample Reference Guide," April 10, 2026, https://www.stb.gov/wp-content/uploads/2024-STB-Waybill Reference-Guide.pdf, at 162.

38 I use billed weight in tons. Freight weight statistics, published by the Board, are based on billed rather than actual lading weights. *See* Railinc, "2024 Surface Transportation Board Carload Waybill Sample Reference Guide," April 10, 2026, https://www.stb.gov/wp-content/uploads/2024-STB-Waybill Reference-Guide.pdf, at 185.

39 *See* U.S. Bureau of Economic Analysis, "Table 1.1.4. Price Indexes for Gross Domestic Product," accessed July 8, 2026.

40 For multi-leg shipments, while the Waybill data provides revenue splits, they are estimates for each split instead of

(36) I focus on traffic associated with deregulated commodities, as the freight rates for such commodities are not constrained by regulation and are therefore likely to reflect better any changes in the competitive landscape.[41] I analyze the two deregulated commodities that have sufficient data to reliably estimate my regression model: {{[redacted]}}.[42, 43]

(37) Figure 2 depicts, {{[redacted]}}.

actual revenues. *See* Railinc, "2024 Surface Transportation Board Carload Waybill Sample Reference Guide," April 10, 2026, https://www.stb.gov/wp-content/uploads/2024-STB-Waybill Reference-Guide.pdf, at 64. ("Revenue splits are calculated by Railinc in the following manner: the waybill's expanded freight revenue figure is divided by the number of 100-mile blocks traveled by each railroad in the route. The origin railroad is apportioned revenue for an additional block, to allow for pick-up and switching expenses. Likewise, the termination railroad is credited with revenue for an additional block, to allow for delivery expenses.")

41 *See In re Rail Freight Fuel Surcharge Antitrust Litigation* (No. II), MDL No. 2925, Miscellaneous No. 20-008, Memorandum Opinion, at 7 (D.D.C. June 27, 2025). ("Another way to categorize railroad traffic is distinguishing rate-regulated traffic, which is subject to rules enacted and enforced by the Surface Transportation Board ("STB"), and private contract or rate-unregulated traffic. *See* Defs.' Mem. at 11. This dispute only involves the latter, rate-*unregulated* traffic. *Id.*")

42 These commodities are identified at the seven-digit commodity level using the following STCC codes: {{[redacted]}} were deregulated in 1993. *See* Rail General Exemption Authority, Transportation Equipment, 58 Fed. Reg. 4355, 4355 (January 14, 1993) (to be codified at 49 C.F.R. pt. 1039).

43 Note that all the observations on the treatment routes were served by UP only (i.e., BNSF was unable to effectively win customers on these routes). Thus, any rate increases identified by the regression analysis reflect increases in UP's rate.

44 To calculate the percent impact implied by the regression coefficient, one can use the following formula: (exp(coefficient value) – 1) × 100.

**Figure 2. Effect of the UP/SP merger on freight rates of {{ }}**



Source: Confidential Carload Waybill Sample; "2-to-1 Station SPLC xWalk_082129.xlsx"; U.S. Bureau of Economic Analysis, "Table 1.1.4. Price Indexes for Gross Domestic Product," accessed July 8, 2026.
Notes: The effects for {{ }} are statistically significant at standard significance levels.

(38) The figure shows that {{ }}.

(39) Figure 2 also shows that {{ }}.

[45] In particular, the effects are statistically significant for both {{ }} at the 1 percent level. Appendix C provides more details on the regression results for these two deregulated commodities.

[46] This difference is statistically significant for {{ }} at the 5 percent level.

# 5. Benefit of additional discovery

(40) I use currently available data for the analyses in this statement. Additional data would allow me to further examine the alleged conduct of UP and the effect of the merger on shippers. Access to such data would allow me to perform several studies that would likely be informative.

(41) First, sales data from UP would enable a more robust assessment of the impact of the merger because these data would capture freight rates in more detail (e.g., allow me to account for rebates, discounts, and revenue split across legs). Sales data from UP could also allow me to broaden my sample of shipments and further examine the impact of the merger.

(42) Second, access to UP's service election data would allow for a more comprehensive understanding of UP's conduct. My analysis of delayed or denied elections is based on BNSF's data. Adding UP's data to the analysis could allow me to examine the impact of UP's conduct on a larger universe of service elections. UP's internal documents on service elections might also provide useful context on UP's decisions, such as the reasons for rejections or delays.

(43) Third, UP's customer-route level sales opportunity data could be useful to assess the competitive impact of the merger on customers. Such data could be used to compare competition for 2-to-1 shippers to competition for shippers who were unlikely to have been affected by the UP/SP merger. In addition, UP's data on customer opportunities could potentially be useful to identify incidents, if any, where UP leveraged the information submitted in BNSF's customer elections to win back a customer that was planning to switch to BNSF. Finally, documents related to the conversion of customers from BNSF to UP could provide further context that may help substantiate or clarify any patterns identified in the data.

# VERIFICATION

I, Nicholas Hill, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.



Nicholas Hill

Executed: August 26, 2026

# Appendix A. Curriculum vitae of Nicholas Hill

## A.1. Summary of experience

Nicholas Hill has served as an economic expert for private clients, the Department of Justice, and the Federal Trade Commission. He has testified in federal court and the Federal Trade Commission's administrative court. He developed the capacity closure model, which is often used to analyze mergers in commodity industries. Prior to joining Bates White, Dr. Hill served as assistant section chief in the Economic Analysis Group of the Department of Justice's Antitrust Division, where he received the US Attorney General's Award for Distinguished Service and was an economist in the Bureau of Economics at the Federal Trade Commission. Dr. Hill has been named to the Who's Who Legal list of Competition Economists since 2020 and has been recognized as a Global Elite Competition Thought Leader since 2022.

## A.2. Education

- PhD, Economics, Johns Hopkins University
- MSc, Quantitative Development Economics, University of Warwick
- BA, Economics and International Studies, University of Warwick

## A.3. Professional experience

- Bates White Economic Consulting, Washington, DC
  - Partner, 2018–present
  - Principal, 2017–2018
- Department of Justice
  - Assistant Section Chief, Antitrust Division, 2014–2017
  - Economist, Antitrust Division, 2006–2013
- Federal Trade Commission, Economist, Bureau of Economics, 2013–2014
- Johns Hopkins University, Visiting Professor, Fall 2007
  - Microeconomic Theory I

## A.4. Testimony, declarations, and expert reports

- *In re Broiler Chicken Antitrust Litigation*
  - 1:16 cv-08637 (N.D. Ill. Feb. 16, 2022). Testimony and expert report, 2023; expert report, 2026.
- *Broadcast Music, Inc. v. Sirius XM Radio LLC F/K/A Sirius XM Radio Inc.*
  - 1:24-cv-06896 (S.D.N.Y 12 September 2024): Expert report, 2026.
- *United States of America v. Live Nation Entertainment, Inc.*
  - 1:24-cv-03973 (S.D.N.Y. 23 May 2024): Testimony, 2026; Expert report, 2025.
- *United States v. Hewlett Packard Enterprise Co. and Juniper Networks Inc.*
  - 55:25-cv-00951 (N.D. Cal. Jan 30, 2025): Testimony, expert report, and declaration, 2025 and 2026.
- *Federal Trade Commission et al. v. Syngenta Crop Protection AG et al.*
  - 1:22-cv-00828 (M.D.N.C. 29 September 2022): Testimony and expert report, 2025.
- *Approved Oil Co. of Brooklyn, Inc. v. Sprague HP Holdings LLC*
  - 1:25-cv-00242 (E.D.N.Y. Jan. 15, 2025): Declaration, 2025.
- *Federal Trade Commission et al. v. The Kroger Company and Albertsons Companies, Inc.*
  - 3:24-cv-00347 (D. Oregon. Dec. 10, 2024): Testimony and expert report, 2024.
- *Henry, et. al. v. Brown University, et al.*
  - 1:22-cv-00125 (N.D. Ill. Feb. 6, 2023): Testimony and expert report, 2024 and 2025.
- *United States et al. v. JetBlue Airways Corp. and Spirit Airlines, Inc*.
  - 1:23-cv-10511 (D. Mass. Mar. 7, 2023): Testimony and expert report, 2023.
- *Garavanian et al. v. JetBlue Airways Corp. and Spirit Airlines, Inc*.
  - 1:23-cv-10678 (D. Mass. Mar. 29, 2023): Testimony and expert report, 2023.
- *United States v. Bertelsmann SE* (Penguin Random House-Simon & Schuster case)
  - 1:21-cv-02886 (D.D.C. Nov. 2, 2021). Testimony and expert report, 2022.
- *United States v. U.S. Sugar Corp. et al*.
  - 1:21-cv-01644 (D. Del. Nov. 23, 2021). Testimony and expert report, 2022.
- *Federal Trade Commission v. Peabody Energy Corp. et al.*
  - 4:20-cv-00317 (E.D.Mo. Feb. 26, 2020). Testimony and expert report, 2020.
- *Federal Trade Commission v. RAG-Stiftung et al.* (Evonik-PeroxyChem case)

- 1:19-cv-02337 (D.D.C. Jan. 24, 2020): Testimony and expert report, 2019.

- *Federal Trade Commission v. Tronox Limited et al.*
  - 1:18-cv-01622 (D.D.C. Sept. 12, 2018): Testimony and expert report, 2018.
  - FTC Matter/File No. 171 0085, Docket 9377: Testimony, 2018.
- US Department of Justice, Antitrust Division. Newspaper matter. Expert witness, 2017.
- Federal Trade Commission. Jewelry industry matter. Expert witness, 2014.
- *United States v. Abitibi Consolidated, Inc.*
  - 1:07-cv-01912 (D.D.C. Aug. 8, 2008): Declaration, 2008.

## A.5. Publications

- "The SPRB Coal Cases, Market Definition, and Analytical Durability." (With Christian Salas, Aparna Sengupta, and Arthur Zhou). *Antitrust Magazine Online* (February 2022).
- "Heterogeneous Effects of Consolidation on Premiums in Medicare Part D." (With Mathis Wagner). *Journal of Health Economics* (December 2021).
- "Supply Substitution and Market Definition: Lessons from *FTC v. RAG-Stiftung*." (With Randy Chugh and Andrew J. Ewalt). *Antitrust Source* (October 2020).
- "Updating Retail Bank Merger Review for the Internet Age." (With Mark Botti, Sheridan Rogers, and Mathis Wagner) *Antitrust Magazine* 34, no. 2 (2020).
- "Race and Employment Outcomes: Evidence from NBA Coaches." (With Marc Remer) *Economic Inquiry* (March 2020).
- "Four Key Aspects of the Tronox/Cristal Litigation." (With Dom Vote and Nathan Wilson) *Antitrust Source* (October 2019).
  - Nominated for Best Business Article, Mergers category, 2020 Antitrust Writing Awards.
- "Is 5-to-4 the New 4-to-3? A View from the United States." (With Keith Waehrer) *Competition Law and Policy Debate* 5, no. 2 (2019): 50–54.
- "Aetna-Humana and Algorithmic Market Definition in the Guidelines." (With Kostis Hatzitaskos and Brad T. Howells) *Antitrust Source* (October 2017).
  - Nominated for Best Business Article, Mergers category, 2018 Antitrust Writing Awards.
- "Economics at the Antitrust Division 2014–2015. Comcast/Time Warner Cable and Applied Materials/Tokyo Electron." (With Nancy Rose and Tor Winston) *Review of Industrial Organization* 47 (2015): 425–35.

- "The Year in Review: Economics at the Antitrust Division, 2007–2008." (With Ken Heyer) *Review of Industrial Organization* 33 (2008): 247–62.
- "Analyzing Mergers Using Capacity Closures." EAG Discussion Paper Series 08-8 (2008). Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1262317.

## A.6. Recent presentations and panels

- "Building Effective Expert Testimony," Panelist, 2025 ABA Antitrust Law Spring Meeting, April 3, 2025.
- "Looking Back, Looking Ahead: Reflections on Biden-Era Antitrust Enforcement and Predications for the New Administration," Panelist, New York State Bar Association Annual Meeting, January 16, 2025.
- "Pricing in the Airline Industry," Panelist, DLA Piper podcast, June 7, 2024.
- "Assessing the Biden Administration's Antitrust Agenda: Looking Backward, Looking Forward," Panelist, Fifth Annual Antitrust and Tech Conference, December 12, 2023.
- "US Merger Guidelines: A Comprehensive Look at the Draft," Panelist, Concurrences webinar, October 18, 2023.
- "Merger Litigation under the New Guidelines," Panelist, American Bar Association Antitrust Section workshop "The New Merger Guidelines Workshop: Evolution or Revolution?" September 6, 2023.
- "What You Need to Know about the Revised Merger Guidelines." Panelist, webinar, July 26, 2023.
- "The Role of Experts and Economic Analysis in Antitrust Cases." Panelist, 2023 Antitrust Law & Economics Institute for Federal Judges, May 9, 2023.
- Presentation on *United States v. Bertelsmann SE* (Penguin Random House-Simon & Schuster case) to Harvard Law School Antitrust Association, April 14, 2023.
- "Mergers: Return of Monopsony as an Antitrust Concern." Panelist, GCR Live: Law Leaders Global, February 2, 2023.
- "Merger Enforcement." Panelist, Georgetown Law Global Antitrust Enforcement Symposium, September 14, 2021.
- "Dissecting the *FTC v. Peabody/Arch Coal* Merger Challenge." Panelist, ABA webinar, November 20, 2020.

- "Fundamentals of Economics," Panelist, 2019 ABA Antitrust Law Spring Meeting, March 27, 2019.
- "Effective Engagement: Working with the Government." Panelist, 2018 ABA Antitrust Law Spring Meeting, April 12, 2018.
- "Antitrust and the Payer-Provider Relationship: Do I Need to Care about This?" Panelist, American Health Lawyers Association webcast, October 26, 2017.
- "Natural Experiments in Merger Analysis." Hal White Antitrust Conference, June 2016.
- "Fundamentals of Economics." Panelist, ABA Spring Meeting, Section of Antitrust Law, April 2016.
- "Economic Issues Raised in the Comcast-Time Warner Cable Merger." Panelist, ABA Section of Antitrust Law, February 2016.
- "Mergers that Enhance Purchasing Clout—Current Thinking on Monopsony and Bargaining Power." Capitol Forum Future of Broadband Conference, 2015.
- "The Economics of Efficiencies." Antitrust Economics for Young (and Old) Lawyers, FCLI, 2015.
- Hoover IP Squared Conference. Discussant, 2015.
- "US Antitrust Law Fundamentals for Chinese Practitioners Series: Basic Economics for Antitrust Lawyers." Panelist, ABA, 2013.
- Panelist, Fordham Competition Law Institute Course for Agency Economists, 2012.
- Joint DOJ-FTC Data Usage Workshop, 2011.
- DOJ Merger Guidelines Market Definition Training, 2011.
- DOJ-EU-FTC Antitrust Workshop, 2011.

## A.7. Honors and awards

- *Who's Who Legal* Competition Economist, 2020–present
- Thought Leader in Competition, 2021–present
- Global Elite Thought Leader in Competition, 2022
- Lexology Client Choice Award, Competition Economists in the United States, 2021
- GCR Economist of the Year (short listed), 2020, 2023
- US Attorney General's Award for Distinguished Service, 2017, Aetna–Humana

- Antitrust Division Award of Distinction, 2016, United–Delta Newark Slots
- Antitrust Division Award of Distinction, 2016, Halliburton–Baker Hughes
- Antitrust Division Award of Distinction, 2015, Comcast–Time Warner Cable
- FTC Certificate of Appreciation, 2014, Expert Witness on jewelry industry matter
- Best work by an EAG Staff Economist, Department of Justice: Written work, 2009–2010
- Best support by an EAG Staff Economist, Department of Justice: Litigation, 2008–2009
- Best work by an EAG Staff Economist, Department of Justice: Theory, 2007–2008

# Appendix B. Materials relied upon

## B.1. Case Materials

- BNSF Railway Company—Petition for Review—UP/SP Merger Conditions, Finance Docket No. 32760 (Sub-No. 52) (Surface Transportation Board November 28, 2025).
- BNSF Railway Company's Supplemental Petition for Review and Enforcement of the UP/SP Merger Conditions, Finance Docket No. 32760 (Sub-No. 52) (Surface Transportation Board August 26, 2026).
- Restated and Amended Settlement Agreement between Union Pacific Railroad Company and Burlington Northern and Sante Fe Railway Company, March 2, 2002.
- Email from Ryan Pichler, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company, to Michael Pruneau, Manager Contracts and Joint Facilities, BNSF Railway Company (May 21, 2026).
- Email from Michael Pruneau, Manager Contracts and Joint Facilities, BNSF Railway Company, to Ryan Pichler, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company (April 22, 2026).
- Email from Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company, to Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company (April 7, 2022).
- Email from Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company, to Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company (March 25, 2022).
- Email from Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company, to Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company (April 12, 2022).
- Email from Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company to Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company (May 2, 2022).
- Email from Chris Sanford, Senior Manager Commercial & Interline Strategy, Union Pacific Railroad Company, to Mike Martucci, Manager Contracts & Joint Facilities, BNSF Railway Company (May 6, 2022).

## B.2. Data

*Highly Confidential Data*

- "Customer Access Summary - 12.8.2025_clean.xlsx".
- "2-to-1 Station SPLC xWalk_082129.xlsx" (obtained from FTI workpaper, "HC - Market Share Workpaper.xlsx", 2-to-1 Station SPLC xWalk).
- Surface Transportation Board, Confidential Carload Waybill Sample, 1990–2024.

*Publicly Available Data*

- U.S. Bureau of Economic Analysis. "Table 1.1.4. Price Indexes for Gross Domestic Product," available at https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey&_gl=1*sttoh8*_ga*MTI4MTAwMTY2Mi4xNzg0NjY2OTU5*_ga_J4698JNNFT*czE3ODQ2NjY5NTgkbzEkZzEkdDE3ODQ2Njg2MjYkajUxJGwwJGgw#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNdLCJkYXRhIjpbWyJjYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJOSVBBX1RhYmxlX0xpc3QiLCI0Il1dfQ==. Accessed July 8, 2026.
- US Bureau of Labor Statistics. "PPI industry data for Line-haul railroads, not seasonally adjusted," Series PCU482111482111, https://data.bls.gov/PDQWeb/pc. Accessed July 20, 2026.

## B.3. Literature and Publications


- Angrist, Joshua D., and Jörn-Steffen Pischke. *Mostly Harmless Econometrics: An Empiricist's Companion*. Princeton University Press, 2009.
- Ashenfelter, Orley, and Daniel Hosken. "The Effect of Mergers on Consumer Prices: Evidence from Five Mergers on the Enforcement Margin." *Journal of Law and Economics* 53, no. 3 (August 2010): 417–466.
- Blair, Roger D., and D. Daniel Sokol, editors. *Oxford Handbook of International Antitrust Economics*, Vol. 2. Oxford University Press, 2015.
- Creighton, Susan A., D. Bruce Hoffman, Thomas G. Krattenmaker, and Ernest A. Nagata. "Cheap Exclusion." *Antitrust Law Journal* 72, no. 3 (2005): 975–996.
- Economides, Nicholas. "The Incentive for Non-Price Discrimination by an Input Monopolist." *International Journal of Industrial Organization* 16, no. 3 (May 1998): 271–284.
- Salop, Steven C. "The Raising Rivals' Cost Foreclosure Paradigm, Conditional Pricing Practices, and the Flawed Incremental Price-Cost Test." *Antitrust Law Journal* 81, no. 2 (2017): 371–422.
- Salop, Steven C., and David T. Scheffman. "Raising Rivals' Costs." *AEA Papers and Proceedings* 73, no. 2 (May 1983): 267–271.

- Salop, Steven C., and David T. Scheffman. "Cost-Raising Strategies." *Journal of Industrial Economics* 36, no. 1 (September 1987): 19–34.

## B.4. Publicly Available Materials

- *In re Rail Freight Fuel Surcharge Antitrust Litigation* (No. II), MDL No. 2925, Miscellaneous No. 20-008, Memorandum Opinion (D.D.C. June 27, 2025).
- Rail General Exemption Authority, Transportation Equipment, 58 Fed. Reg. 4355, 4355 (January 14, 1993) (to be codified at 49 C.F.R. pt. 1039).
- Railinc. "2024 Surface Transportation Board Carload Waybill Sample Reference Guide." April 10, 2026. https://www.stb.gov/wp-content/uploads/2024-STB-Waybill Reference-Guide.pdf.

# Appendix C. Regression analysis

(44) [redacted]

**Figure 3. Detailed regression results for** [redacted]

[redacted]

(45) [redacted]

[redacted]

[redacted]

**Figure 4. Updated regression results after adding or dropping various control variables**

[redacted]

(46) [redacted]

[48] [redacted]

**Figure 5. Updated regression results when using alternative freight rate measures and samples**



**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Liam Timmons

Liam Timmons

*Counsel for BNSF Railway Company*

August 26, 2026