

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36627

TGS CEDAR PORT RAILROAD LLC
—OPERATION EXEMPTION—
IN CHAMBERS COUNTY, TEX.

REPLY TO OPPOSITION AND TGSC REQUEST FOR “CONFIRMATION”

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Union Pacific Railroad Company is filing this reply to address factual and legal errors contained in the pleadings filed by TGS Cedar Port Railroad LLC (TGSC) and BNSF Railway Company (BNSF) on April 24, 2023, including errors relating to new issues raised by TGSC and BNSF, and to address TGSC’s affirmative request for “confirmation” regarding Union Pacific’s hypothetical liability for damages.¹ As discussed below, TGSC’s and BNSF’s pleadings ignore or misrepresent the facts and law and go well beyond the issues raised by Union Pacific. But regardless of whether TGSC’s and BNSF’s arguments have any merit (they do not), the pleadings confirm TGSC’s original representations about the post-exemption state of competition were both misleadingly incomplete and incompatible with a summary notice proceeding. TGSC was, at a minimum, obligated to squarely acknowledge the competition issue in

¹ To the extent this filing may constitute a reply-to-a-reply, Union Pacific requests the Board’s leave to submit it in the interest of compiling a full record. *See, e.g., U S Rail Corp.—Constr. & Operation Exemption—Brookhaven Rail Terminal*, FD 35141, slip op. at 6 n.7 (STB served Jan. 6, 2023); *Grand Elk R.R.—Acquis. Exemption—Lines of Wis. Cent. Ltd. in the State of Mich.*, FD 36503, slip op. at 6 n.4 (STB served Dec. 20, 2021); *Grafton & Upton R.R.—Pet. for Declaratory Ord.*, FD 36518, slip op. at 2 n.3 (STB served Nov. 3, 2021); *Sanimax USA LLC v. Union Pac. R.R.*, NOR 42171, slip op. at 1 n.2 (STB served Nov. 2, 2021); *City of Alexandria, Va.—Pet. for Declaratory Ord.*, FD 35157, slip op. at 2 (STB served Nov. 6, 2008).

its exemption notice. TGSC did not. Under Board precedent, TGSC's failure to describe the issue in a non-misleading manner renders the exemption void ab initio.

1. TGSC is a bottleneck carrier. TGSC erroneously claims Union Pacific's petition posits that TGSC's new common carrier status transformed Union Pacific into a bottleneck carrier for the Park.² By authorizing TGSC's operation as a common carrier, *the Board made TGSC a bottleneck carrier.* Before TGSC commenced common carrier operations, Park shippers were served by Union Pacific and BNSF, and they voluntarily used private switching provided by Trans-Global Solutions, Inc. (TGSi). Now, Park shippers are served "by only one carrier"—TGSC—"the bottleneck carrier."³ In other words, regardless of whether BNSF has rights under the March 1, 2002 Restated and Amended Settlement Agreement (RASA) to interchange with TGSC, the Board's authorization of TGSC's common carrier operations substantially changed the competitive status quo by reducing the number of common carrier railroads serving shippers in the Park from two to one—*i.e.*, from Union Pacific and BNSF to a single, bottleneck carrier, TGSC.⁴

2. The RASA precludes BNSF from interchanging with TGSC. TGSC erroneously claims the RASA does not address "the particular set of facts present here."⁵

² See TGSC Reply at 9.

³ *Id.* at 9 n.11 (quoting *Policy Alternatives to Increase Competition in the Rail Industry*, EP 688, slip op. at 2 (STB served Apr. 14, 2009)).

⁴ TGSC's exemption was thus very different from those that were anticipated when the class exemption was adopted. See *Class Exemption—Acquisition & Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 817 (1985) ("Proposals under this class exemption generally will maintain the *status quo* and will not change the competitive situation.").

⁵ TGSC Reply at 14.

As TGSC recognizes, the RASA grants BNSF rights to interchange with short lines in only three circumstances, none of which exists here. BNSF may interchange with:

- (i) specifically named short lines in certain geographic areas;⁶
- (ii) “any short-line railroad which, prior to [September 25, 1995], could interchange with both UP and SP and no other railroad;”⁷ and
- (iii) “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”⁸

TGSC says the third circumstance presents the “closest analogue” to its situation, but TGSC acknowledges it does not qualify because it did not construct a new line to a Trackage Rights Line.⁹ TGSC questions why BNSF would agree to the “construction” requirement,¹⁰ but BNSF does not deny it agreed or claim it intended some other result.¹¹ BNSF half-heartedly claims Union Pacific’s grant of BNSF interchange rights in three circumstances does not restrict BNSF from interchanging with short lines under other circumstances.¹² However, BNSF would have no right to use Trackage Rights

⁶ See Union Pacific Petition, Ex. A, RASA § 5(b).

⁷ *Id.*, RASA § 8(j).

⁸ *Id.*, RASA § 8(k).

⁹ TGSC Reply at 15. The Board’s authorization of common carrier operations where a carrier constructs a new line to a Trackage Rights Line would not reduce competition; rather, it would allow provision of rail service to locations that were not rail served.

¹⁰ See *id.* at 11.

¹¹ See BNSF Reply at 8. As discussed in more detail below, Section 8(k) of the RASA was designed to *expand* BNSF’s interchange rights, but only to the degree specified in the RASA.

¹² See BNSF Reply at 8.

Lines to interchange with any short lines absent a grant of interchange rights by Union Pacific—that is why the RASA addressed BNSF’s interchange rights in the first place.¹³

BNSF also erroneously claims the issue here is addressed by Section 8(i) of the RASA.¹⁴ Section 8(i) addresses a very different issue the parties recognized when they entered into their original settlement agreement. Section 8(i) provides for BNSF access to shippers covered by the agreement but not located near lines BNSF would acquire or over which BNSF would obtain trackage rights—shippers that “will not be able to avail themselves of BNSF service *by virtue of the trackage rights and line sales contemplated by this Agreement.*”¹⁵ Section 8(i) does not address shippers in the Park, who *could* avail themselves, and *did* avail themselves, of BNSF service using trackage rights granted in RASA. The access issue here arose only *by virtue of the Board’s decision authorizing TGSC’s operation as a common carrier*. In sum, Section 8(i) addresses a distinct problem unrelated to the issue here; it does not expand BNSF’s rights to interchange with short lines.¹⁶

¹³ BNSF also fails to address the implementing agreement governing the specific rights at issue, which takes a belt-and-suspenders approach, stating that BNSF “shall not have the right to . . . [c]onnect with or interchange with any other railroad except as may hereinafter be provided.” Union Pacific Petition, Ex. B, Houston, Texas, to Iowa Junction, Louisiana Trackage Rights Agreement, § 2(a)(v).

¹⁴ See BNSF Reply at 8.

¹⁵ Union Pacific Petition, Ex. A., RASA § 8(i); *see also* Railroad Merger Application Vol. 1 (UP/SP-22), Verified Statement of John H. Rebensdorf at 296–97 (Nov. 30, 1995) (“Accordingly, we agreed with BN/Santa Fe that for those ‘2-to-1’ customers who could not be reached by the trackage rights and line sales described in the Agreement, we would make alternative arrangements to ensure the preservation of competitive service.”).

¹⁶ *See also Union Pacific/Southern Pacific Merger (General Oversight)*, 5 S.T.B. 1159, 1163 (2001) (“As we have previously determined, the [Section 8(i)] omnibus clause was included in the BNSF Agreement only to protect ‘the relatively few 2-to-1 points that were not explicitly covered by the trackage rights and line sales provided for in that

BNSF also claims it has a right to interchange with TGSC under its 50/50 Line Operating Agreement (the “50/50 Agreement”) with Union Pacific.¹⁷ BNSF’s claim has two flaws. *First*, the 50/50 Agreement does not grant BNSF access to the Cedar Bayou Industrial Lead. The Lead is not one of the “former SP branches and spurs connecting to” the “former SP Lafayette Subdivision;”¹⁸ rather, it connects to the former Southern Pacific’s Baytown Subdivision. BNSF obtained access to the Lead through the RASA.¹⁹ *Second*, BNSF does not identify any provision of the 50/50 Agreement that grants it access to short lines. Thus, even if the 50/50 Agreement applied, BNSF’s argument would fail for the same reason its argument regarding the RASA fails—the 50/50 Agreement does not grant BNSF the interchange rights it claims to have.²⁰

3. The RASA’s “construction” provision is “contractually distinct.” TGSC erroneously says there is no reason Union Pacific would allow BNSF to interchange with a short line that constructs a new line to a Trackage Rights Line but not a private carrier operating in an industrial park that decides to become a regulated short line.²¹ Granting BNSF rights to interchange with a short line in TGSC’s position would require Union

agreement.” (quoting *Union Pacific/Southern Pacific Merger*, 4 S.T.B. 879, 880 (2000))).

¹⁷ See BNSF Reply at 9.

¹⁸ See BNSF Reply, Ex. B (definition of “Customer Access Trackage”).

¹⁹ See UP Reply Ex. A, RASA § 5(a) (reference to “East Baytown”).

²⁰ The 50/50 Agreement was not part of a condition imposed in *Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp.* (Decision No. 44), 1 S.T.B. 233 (1996). Accordingly, disputes regarding the 50/50 Agreement’s interpretation must be arbitrated in accordance with the agreement’s terms. See BNSF Reply, Ex. B, § 10 (Arbitration, Proceedings and Award).

²¹ See TGSC Reply at 15.

Pacific to bear the potential burdens associated with new short line-BNSF interchanges on its lines when those additional burdens are not necessary to give BNSF the benefit of access to shippers on those new short lines and thus not necessary to fulfill the purposes of the RASA.²² TGSC says Union Pacific would bear no additional burdens *in this case* because TGSC plans to conduct all interchange operations on its own lines.²³ But TGSC's response concedes the fundamental validity of the distinction drawn by the RASA. Moreover, as the Board knows, interchange arrangements are not forever frozen in place,²⁴ and neither TGSC nor BNSF guarantees they would never try to move their interchange to a location that would impose operational burdens on Union Pacific.

TGSC also disregards the history of the construction requirement in questioning why BNSF would have agreed to such a provision. Section 8(k) of the RASA was not part of the original settlement agreement the Board imposed as a condition in *Decision No. 44*; rather, it reflects a negotiated *expansion* of BNSF's rights that occurred five years after the Board approved the Union Pacific/Southern Pacific merger.²⁵ Previously, BNSF had *no* right under the RASA to interchange with short lines that were not named in the RASA or that could not interchange with both Union Pacific and Southern Pacific before the execution of the original settlement agreement. In its Reply, BNSF does not

²² See Union Pacific Petition at 5–6.

²³ See TGSC Reply at 20.

²⁴ See generally *Wisconsin Cent. Ltd.—Pet. for Declaratory Order—Interchange with Soo Line R.R.*, FD 36397 (STB served Oct. 30, 2020) (addressing issues arising when carrier terminated interchange agreement and designated new interchange location), *rev'd sub nom. Wis Cent. Ltd. v. STB*, 20 F.4th 292 (7th Cir. 2021).

²⁵ See Union Pacific Petition at 5 n.11; see also Joint Submission of Restated and Amended BNSF Settlement Agreement (UP/SP-386; BNSF-92), Table “Principal Amendments to BNSF Settlement Agreement” (July 25, 2001) (excerpt attached hereto as Exhibit A).

explain what it was thinking when negotiating expanded rights. But BNSF has always fought aggressively to expand its rights under the RASA. BNSF presumably negotiated the broadest expansion it considered appropriate, recognizing Union Pacific's concerns and the low likelihood the Board would authorize creation of a new bottleneck carrier.

4. No provision of the RASA requires expanding BNSF's limited rights to interchange with short lines so BNSF can interchange with TGSC. Contrary to TGSC's and BNSF's claims, Union Pacific *never* promised in the RASA or anywhere else that no shipper that gained access to BNSF through a merger condition could never lose access "no matter the future, unanticipated circumstances."²⁶ Union Pacific certainly never agreed to ensure shippers could never be adversely affected by future actions authorized by the Board.

BNSF relies on language from the RASA that has no bearing on either TGSC or shippers in the Park. Specifically, BNSF relies on a statement in the Section 8(i) of the RASA that:

[i]t 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*.²⁷

But none of the shippers in the Park are "'2-to-1' Shipper Facilities." Under the RASA, "'2-to-1' Shipper Facilities" means "all Shipper Facilities that were open to both UP and

²⁶ TGSC Reply at 16.

²⁷ See BNSF Reply at 7 (quoting RASA § 8(i)) (emphasis added).

SP . . . and no other railroad when the 1995 Agreement was executed”²⁸ As TGSC acknowledges, US Steel was the only shipper on the site of the Park prior to the Union Pacific/Southern Pacific merger, and it is no longer in the Park.²⁹ For the same reason, no shipper currently in the Park “had direct competition or competition by means of siting, transload or build-in/build-out from only *UP and SP pre-merger*.”

TGSC also offers no support for its claim that Union Pacific promised to expand BNSF’s interchange rights under the RASA to offset such unanticipated future actions as the Board’s authorization of TGSC’s operation as a common carrier. TGSC highlights snippets of Union Pacific statements made in merger oversight proceedings, but the quoted language actually spotlights the flaws in TGSC’s arguments.

First, TGSC highlights language stating: the “universe of ‘2-to-1’ facilities are all shippers facilities located on ‘2-to-1’ shortlines.”³⁰ However, as discussed above and in Union Pacific’s Petition, TGSC is not a short line covered by the RASA. TGSC is not covered by the RASA because it was not served pre-merger by both Union Pacific and Southern Pacific, and thus it was not “rendered . . . captive” to Union Pacific by the Union Pacific/Southern Pacific merger.³¹

Second, TGSC highlights language stating: “the definition of ‘2-to-1’ includes any existing facility.”³² However, the remaining portion of the statement makes clear

²⁸ Union Pacific Petition, Ex. A (definition of “‘2-to-1’ Shipper Facilities”).

²⁹ See TGSC Reply at 3–4.

³⁰ *Id.* at 16.

³¹ *Union Pacific/Southern Pacific Merger (Oversight)*, 3 S.T.B. 987, 997 (1998); see also *id.* at 1022 (rejecting short line’s claim that its situation was “more akin to that of a 2-to-1 shortline” than a 3-to-2 short line).

³² TGSC Reply at 16.

that an “existing facility” means a facility “that had direct access [to both Union Pacific and Southern Pacific] *at the time of the merger*.”³³ As discussed above, TGSC’s filing confirms that none of the shippers in the Park was there at the time of the merger.

Third, TGSC (mis)quotes a Union Pacific witness who said: “whenever a customer was served by the two railroads [Union Pacific and Southern Pacific] and only the two railroads or a shortline that only connected to the two railroads, we opened that up to a competitive alternative.”³⁴ TGSC says its circumstances match those facts “precisely.”³⁵ However, if TGSC connected to Union Pacific and Southern Pacific before the merger, it would have been covered by Section 8(j) of the RASA. TGSC never “connected to” both Union Pacific and Southern Pacific before the merger, so BNSF has no right to interchange with TGSC under Section 8(j), or any other provision of the RASA.

Fourth, TGSC says the RASA does not identify TGSC as a short line with access to BNSF because the parties’ purpose “in identifying protected short lines” in the RASA was to identify short lines with shippers reachable “pre-merger by only UP and SP and ‘no other Class I railroad.’”³⁶ Again, TGSC’s quote makes Union Pacific’s point: the RASA does not grant BNSF the right to interchange with TGSC because TGSC was never served by the *pre-merger* Union Pacific and Southern Pacific.

In sum, nothing in the RASA requires expansion of BNSF’s rights to allow BNSF to interchange with TGSC.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 16–17.

5. Decision No. 44 does not justify expanding BNSF's interchange rights.

TGSC and BNSF also erroneously claim Union Pacific is acting anticompetitively by refusing to expand BNSF's interchange rights, and they urge Board to reopen *Decision No. 44* to expand BNSF's rights.³⁷ Union Pacific is not seeking to reduce competition; to the contrary, it is seeking to restore the vigorously competitive environment that existed for shippers in the Park before the Board authorized TGSC to become a bottleneck carrier.³⁸

A reopening of *Decision No. 44* would require a separate proceeding, so Union Pacific will not address here the many reasons why a reopening would be inappropriate. The Board approved the Union Pacific/Southern Pacific merger without a condition requiring Union Pacific grant BNSF rights to interchange with *any* new short line connecting to a Trackage Rights Line. And no one disputes the merger conditions were working as intended to ameliorate any merger-related harm at the Park before the Board authorized TGSC's operation as a common carrier. The Board's decision to alter the competitive environment some twenty-five years after the Union Pacific/Southern Pacific merger cannot justify expanding the conditions imposed on Union Pacific.

³⁷ See BNSF Reply at 10; TGSC Reply at 17–19, 21.

³⁸ TGSC also complains that Union Pacific terminated its industry track agreement (ITA) with TGSI. See TGSC Reply at 8. Union Pacific told TGSI that it intended to terminate the ITA because its relationships with short lines are governed by interchange agreements, not ITAs. TGSC knows this. In fact, TGSC reports in its Reply that TGSC “advised UP that a negotiated resolution of this matter would also include, among other things, negotiation of an appropriate interchange agreement to replace the industry track agreement (‘ITA’) that had governed the exchange of railroad traffic between TGSI and UP.” *Id.* at 7.

6. The Board should deny TGSC's request for "confirmation." Finally, the Board should deny TGSC's request to "confirm" Union Pacific would not be "immune" from liability "under potentially-applicable state and federal laws" if it were to "block TGSC-BNSF interchange," if the Board rules Union Pacific "is not legally entitled to block TGSC-BNSF interchange."³⁹ As stated in its Petition, Union Pacific intends to allow BNSF to pick up and set out traffic in the Park for existing customers while its petition is pending.⁴⁰ The Board should decline TGSC's invitation to address Union Pacific's hypothetical liability in hypothetical circumstances involving undefined "potentially-applicable state and federal laws."

Respectfully submitted,

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May 3, 2023

³⁹ TGSC Reply at 22.

⁴⁰ See Union Pacific Petition at 7 n.19.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2023, I caused a copy of the foregoing document to be served by email all counsel of record in Docket No. FD 36627.

/s/ Michael L. Rosenthal

UP/SP-386

BNSF-92

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 32760 (Sub-No. 21)

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

(OVERSIGHT)

JOINT SUBMISSION OF RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT

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UP/SP-386

BNSF-92

BEFORE THE
SURFACE TRANSPORTATION BOARD

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
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Finance Docket No. 32760 (Sub-No. 21)

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-- CONTROL AND MERGER --

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(OVERSIGHT)

JOINT SUBMISSION OF RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT

The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union
Pacific Railroad Company ("UP") submit the attached Restated and Amended BNSF

Settlement Agreement for review and approval by the Surface Transportation Board. As UP and BNSF have previously advised the Board and all parties of record to these proceedings, UP and BNSF have engaged in negotiations over the past several months to update the original September 25, 1995 Settlement Agreement (as amended by the first and second supplemental agreements) to incorporate the conditions imposed by the Board in Decision No. 44 and subsequent Board decisions interpreting and clarifying those conditions.

UP and BNSF have reached agreement on the majority of the changes to be made to the Settlement Agreement, and a list of the principal changes proposed to the Settlement Agreement is attached hereto. The issues that remain unresolved are as follows: the definition of "2-to-1" Points; the definition of "Existing" and "New Transload Facilities"; restrictions on certain BNSF trackage rights lines; and BNSF access to team tracks.¹ UP and BNSF are each separately filing comments addressing the reasons why they believe that their proposed alternatives should be adopted by the Board.

The attached Restated and Amended BNSF Settlement Agreement contains the proposed changes on which UP and BNSF have agreed, and it also contains UP's and BNSF's separate proposals on the four issues where the parties have been unable to reach final agreement. Also attached is a red-lined version of the Restated and Amended BNSF Settlement Agreement which identifies the proposed changes from the original 1995 Settlement Agreement (as supplemented). UP and BNSF propose that interested parties file their comments on the proposed Restated and Amended BNSF

¹ It should be noted that BNSF and UP have resolved their differences with respect to the definition of "New Shipper Facilities" since their July 2, 2001 submissions.

Settlement Agreement on August 17, 2001, together with their comments on UP's and BNSF's Annual Reports. UP and BNSF will then reply to each other and to comments from the other parties on September 4, 2001.

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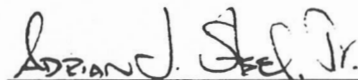
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Principal Amendments to BNSF Settlement Agreement^{1/}

<u>Section(s)</u>	<u>Change</u>
Definitions	Adds definition of "Shipper Facilities"
Definitions	Adds definition of "'2-to-1' Points"*
Definitions	Adds definition of "'2-to-1' Shipper Facilities"
Definitions	Adds definition of "New Shipper Facilities"
Definitions	Adds definition of "Trackage Rights Line"
Definitions	Clarifies when New Shipper Facilities are "on" a Trackage Rights Line
Definitions	Adds definition of "Existing Transload Facilities"***
Definitions	Adds definition of "New Transload Facilities"*
1(a)	Adds Overhead Trackage Rights between Binney Jct. and Roseville, CA for directional operations
1(a)	Designates BNSF trackage rights between Elvas (Elvas Interchange) and Stockton, CA as Overhead Trackage Rights*
1(c), 3(d), 4(c), 5(c) and 6(e)	Clarifies BNSF's access at "2-to-1" Points and on Trackage Rights Lines
1(d), 3(h), 4(d), 5(d) and 6(f)	Conforms language to corresponding preceding sections
1(e)	Provides certain rights to BNSF in the event UP vacates its Sparks, NV intermodal facility
1(g)	Restates traffic restrictions on "Cal-P" and Donner Pass lines

^{1/} The amendments identified in this chart are in addition to those made by the First and Second Supplements to the original September 25, 1995 BNSF Settlement Agreement.

* BNSF and UP offer alternative proposals with respect to this issue.

** UP does not agree that this new definition is required.

<u>Section(s)</u>	<u>Change</u>
4(a)	Adds BNSF trackage rights to CPSB Elmendorf plant
4(a)	Adds BNSF trackage rights between Round Rock and McNeil, TX for interchange with CMTA operator
4(b)	Changes CMTA operator interchange from Elgin to McNeil
4(b)	Provides for sale of yards in Brownsville and San Antonio, TX
5(a)	Includes reference to Term Sheet Agreement
5(a)	Adds trackage rights to Port Arthur, TX and Harbor, LA
5(b)	Removes CMA Agreement restrictions on BNSF access to Lake Charles area shippers
5(g)	Deletes provision concerning sale of SP's line between Iowa Junction and Avondale to BNSF
6(c)	Adds language to implement Entergy build-in/build-out condition
6(d)	Adds and deletes language to implement (i) BNSF right to interchange Lake Charles area traffic with KCS at Shreveport and Texarkana and (ii) TUE access condition
7(e)	Adds BNSF Overhead Trackage Rights between Pacific and Labadie, MO
8(i)	Clarifies that the parties' intention is to preserve competition for "2-to-1" customers and all other shippers who had direct competition or competition by means of siting, transload or build-in/build-out pre-merger
8(i)	Clarifies that BNSF has access to "2-to-1" Shipper Facilities, Existing Transload Facilities and New Shipper Facilities at omnibus points
8(k)	Adds BNSF right to interchange with certain short-lines establishing a new post-merger interchange on a Trackage Rights Line
8(l)	Adds expanded CMA Agreement build-in/build-out condition

<u>Section(s)</u>	<u>Change</u>
8(o)	Adds language to provide that if UP determines not to renew a BNSF-served transload facility's lease, UP is required to renew the lease for the remaining term of the contract (up to 24 months) between BNSF and the facility
8(p)	Adds BNSF language to provide BNSF with right to purchase or lease unused team tracks at "2-to-1" points***
9(d)	Adds language incorporating dispatching protocols
9(d)	Adds Houston "clear route" language
9(d)	Adds language providing for owner notification to tenant if a Joint Trackage line and/or associated facility is to be sold or retired and providing that the sale be made subject to the Settlement Agreement
9(g)	Clarifies that all referenced locations include areas within switching limits designated by tariff in effect on 9/25/95
9(h)	Adds language specifically providing that tenant carrier has the right to build yards and other facilities to support its trackage rights operations
9(j)	Adds BNSF equal access to SP Gulf Coast SIT facilities
9(n)	Adds provision on directional operations

*** UP does not agree that the new language is needed.