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May 15, 2023

VIA E-FILING

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

Re: **STB Docket No. FD 36627, TGS Cedar Port Railroad, LLC—Operation Exemption—In Chambers County, Tex.**

Dear Ms. Brown,

BNSF¹ hereby provides this limited response to the sur-reply filed by UP in the above-captioned proceeding on May 3, 2023, in order to correct the record on a key factual issue.² Contrary to UP's claims in the sur-reply, BNSF in fact accesses Cedar Port shippers pursuant to operating rights obtained in the 50/50 Line agreements, and those rights do not restrict BNSF from interchanging with TGSC in order to serve the Cedar Port shippers.

First, the Cedar Bayou Industrial Lead is very clearly one of the "former SP branches and spurs connecting to" the "former SP Lafayette Subdivision," and therefore is subject to the 50/50 Line agreements. UP wrongly alleges otherwise.

¹ The acronyms and defined terms used herein are the same as those used in the BNSF Reply filed in this proceeding on April 24, 2023.

² While the Board's rules, 49 C.F.R. § 1104.13(c), do not permit a reply to a reply, the Board often accepts such replies in the interest of compiling a more complete record. To the extent that the Board deems it necessary, and to the extent that the Board grants UP similar relief with respect to its sur-reply, BNSF hereby seeks leave to provide this limited response to new issues raised in the UP sur-reply.

(UP Sur-Reply 6, May 3, 2023.) BNSF has explained that the Lead is connected to the Baytown Branch, which is in turn connected to the 50/50 Line. (BNSF Reply 3, Apr. 24, 2023.) The map attached here as Exhibit A depicts these lines. Each of the Baytown Branch and the Cedar Bayou Industrial Lead were formerly owned by SP before the UP/SP merger and thus are “former SP branches and spurs connecting to” the “former SP Lafayette Subdivision.” Nothing in the 50/50 Line agreements restricts the universe of covered “branches and spurs” to those that connect directly to the 50/50 Line itself.

Second, UP is wrong that the 50/50 Line agreements that govern BNSF movements to Cedar Port and TGSC must affirmatively grant BNSF the rights to interchange with other railroads accessible via the 50/50 Line or former SP branches and spurs connecting thereto. (See UP Sur-Reply 6.) As BNSF has explained, BNSF is a one-half owner of the 50/50 Line, and the 50/50 Line Operating Agreement requires UP and BNSF to be treated equally in operations on the relevant line segments. (BNSF Reply 9.) If UP can use these lines to interchange with TGSC, then so can BNSF.

Finally, BNSF disagrees with UP’s interpretation of the RASA, as expanded upon in UP’s sur-reply. As BNSF has explained, “the **affirmative** grant of BNSF interchange rights to certain short-line railroads in the RASA does not **restrict** BNSF from interchanging with a new short-line railroad in order to fulfill BNSF’s responsibility to access 2-to-1 shippers such as those located at Cedar Port.” (*Id.* at 8.)

But if the Board agrees with UP’s narrow textual reading of the RASA, then the Board must clarify that UP cannot block BNSF’s ability to provide line-haul service to customers who were guaranteed competitive line-haul service by the Board in 1996 simply because a common carrier railroad replaces a private railroad as the provider of first-mile/last-mile service to those customers.

BNSF is particularly concerned about the statement in the TGSC reply that UP would “forego adverse legal action as long as TGSC . . . agreed to UP’s specified commercial terms for traffic movements to and from the Park.” (TGSC Reply 7, Apr. 24, 2023.) The Board should not allow UP to continue to use the uncertainty that UP has concocted regarding BNSF’s access rights as leverage in commercial negotiations.

If the Board deems it necessary to reopen the UP/SP merger approval decision, as UP suggests in its sur-reply at 11, in order to clarify that UP cannot

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disenfranchise customers in this manner, then BNSF would welcome the opportunity to explain why the Board should take such a step.

Sincerely,

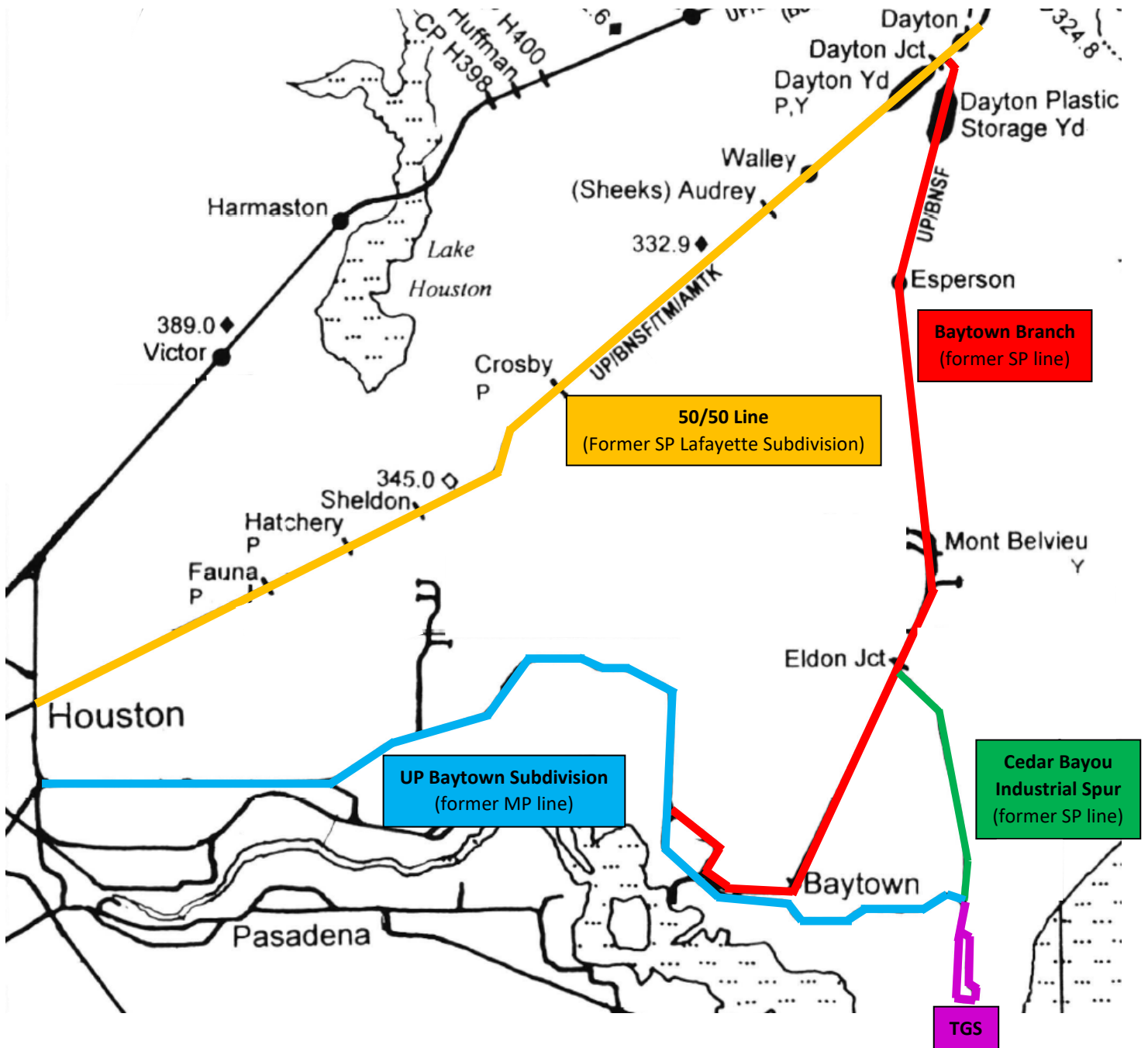
/s/ Peter W. Denton

Peter W. Denton
Attorney for BNSF Railway Company

cc: Onika K. Williams
Adrian L. Steel, Jr.
All Parties of Record

Exhibit A

**Map Depicting the 50/50 Line, the Baytown Branch, and
the Cedar Bayou Industrial Lead**



CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2023, I have caused the foregoing letter to be served electronically or by first-class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Onika K. Williams

Onika K. Williams
Attorney for BNSF Railway Company