

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION CO.

**UNION PACIFIC RAILROAD COMPANY'S
REPLY TO MOTION TO COMPEL**

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July 16, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION CO.

**UNION PACIFIC RAILROAD COMPANY’S
REPLY TO MOTION TO COMPEL**

The Board should deny BNSF’s June 26, 2024, motion to compel. Union Pacific has offered to provide all the information to which BNSF is entitled under the procedural schedule the parties jointly proposed and the Board entered on December 4, 2023.

I. Background

In accordance with the Board’s procedural schedule, the parties filed opening statements and evidence on May 3, 2024. The schedule then permitted the parties to conduct “written discovery on *opening statements and evidence*” by May 23.¹ BNSF filed a set of eight discovery requests.² Union Pacific objected to three requests that did not seek discovery on its opening statement and evidence, but instead sought to expand discovery requests BNSF previously made and Union Pacific answered. Two of BNSF’s

¹ See *Atchison, Topeka & Santa Fe Ry.—Operating Rights—So. Pac. Transp. Co.*, FD 22218, (STB served Dec. 4, 2023) (emphasis added).

The parties had engaged in several months of discovery prior to filing their opening statements and evidence. See *Atchison, Topeka & Santa Fe Ry.—Operating Rights—So. Pac. Transp. Co.*, FD 22218, (STB served May 15, 2023) (reopening proceeding and establishing discovery period); *Atchison, Topeka & Santa Fe Ry.—Operating Rights—So. Pac. Transp. Co.*, FD 22218, (STB served July 13, 2023) (extending discovery period).

² See BNSF’s Third Set of Discovery Requests to Union Pacific (May 23, 2024) (attached hereto as Exhibit A).

objectionable requests seek trackage rights agreements and rates; the other seeks traffic forecasts. Union Pacific also objected to an unduly broad request seeking information about intangible assets, but after BNSF explained why it was seeking the information, Union Pacific offered to provide a narrower, focused response. BNSF is entitled to nothing more.

II. Argument

A. BNSF is not entitled to additional trackage rights agreements.

On June 28, 2023, in the main discovery phase of this case, BNSF asked Union Pacific to produce all trackage rights agreements it has entered since January 1, 2018.³ Union Pacific produced the requested agreements. Union Pacific did not refer to or rely on trackage rights agreements with BNSF or any other railroad in its opening evidence. Nonetheless, on May 23, 2024, BNSF again asked Union Pacific to produce copies of trackage rights agreement, but it expanded its initial request for agreements “entered since January 1, 2018” and now seeks all trackage rights agreements “currently in effect,”⁴ as well as documents showing current rates under those agreements.⁵

BNSF’s requests for additional trackage rights agreements plainly go beyond the limited scope of discovery permitted by the procedural schedule. BNSF is not seeking discovery on Union Pacific’s opening statement and evidence. BNSF justifies its request by saying “UP’s opening statement and evidence puts at issue whether the compensation

³ See BNSF’s Second Set of Discovery Requests to Union Pacific, Request No. 59 (June 28, 2023) (attached hereto as Exhibit B).

⁴ See Exhibit A, BNSF’s Third Set of Discovery Requests to Union Pacific, Request No. 63.

⁵ See *id.*, Request No. 64.

provided to UP for BNSF’s access to the Kern-Mojave Line is fair and equitable.”⁶ But that is no justification for additional discovery at this stage of the proceeding: this entire proceeding is about Union Pacific’s effort to obtain fair and equitable compensation for BNSF’s access to the Tehachapis Line. BNSF also says it needs the discovery to rebut an assertion by Union Pacific’s expert economist, Dr. Mathur, that the “‘CE method results in interest rental payments that are reasonable relative to BNSF’s Mojave-Kern traversing traffic.’”⁷ However, BNSF also urged the Board to apply the CE method in its opening evidence, stating: “BNSF believes that the Board should use the capitalized earnings method to determine the valuation of the Kern-Mojave Line.”⁸ BNSF is too far across the stream to change horses now. Furthermore, BNSF could not properly use the new information it requested to submit a new analysis supporting a newly developed rate-setting method in its reply evidence, because Union Pacific would have no opportunity to submit a rebuttal analysis under the procedural schedule.

B. BNSF is not entitled to additional traffic forecast data.

On May 24, 2023, in the main discovery phase of this case, BNSF asked Union Pacific to produce its traffic forecasts prepared from 2019 through the present relating to traffic traversing the Tehachapis Line.⁹ Union Pacific produced the requested forecasts. Union Pacific did not refer to or rely on those traffic forecasts in its opening evidence.

⁶ BNSF Mot. at 6.

⁷ *Id.* at 6 (*quoting* Union Pacific Op., Mathur V.S. at 66).

⁸ BNSF Op. at 13; *see also* BNSF Op., Verified Statement of Michael R. Baranowski and Nathan Zebrowski at 3 (“[W]e believe that the Board should use the capitalized earnings approach.”).

⁹ *See* BNSF’s First Set of Discovery Requests to Union Pacific, Request No. 32 (May 24, 2023) (attached hereto as Exhibit C).

Nonetheless, on May 23, 2024, BNSF expanded on its prior request and asked Union Pacific to produce traffic forecasts prepared from 2013 through 2018.¹⁰

BNSF claims it needs the forecasts to address Dr. Mathur’s statement that “‘UP’s and BNSF’s system-wide profits grew by compound annual rates of 3.2 and 2.9 percent per year respectively in the decade between 2013 and 2022.’”¹¹ However, BNSF does not explain why it needs old traffic *forecasts* to reply to a statement about *actual growth*. BNSF also says it needs additional forecast data “to assess the validity of Dr. Mathur’s assumptions regarding whether the ‘market’s expectations for future growth’ are consistent with UP’s own forecasts for growth in traffic over the Kern-Mojave Line.”¹² However, Dr. Mathur made no such assumptions. Dr. Mathur simply explained why economic theory supports applying a market-based multiplier, rather than an inverse cost of capital multiplier, under the CE method.¹³ Furthermore, BNSF never explains how it would use forecast data to test the “market’s expectations for future growth,” or why it also needs Union Pacific forecasts from 2013 through 2018 when, as it acknowledges, “UP produced monthly forecast data for 2019-2026” in response to BNSF’s prior discovery requests.¹⁴

¹⁰ See Exhibit A, BNSF’s Third Set of Discovery Requests to Union Pacific, Request No. 65.

¹¹ BNSF Mot. at 8 (*quoting* Mathur V.S. at 58).

¹² *Id.* at 9 (*quoting* Mathur V.S. at 59).

¹³ See Union Pacific Op., Mathur V.S. at 59 (“I consider the interest rental base calculated using a market-based multiplier to be most appropriate from an economic perspective, because market-based multipliers reflect the market’s expectations of future growth, whereas the inverse cost of capital multiplier implicitly assumes no growth.”).

¹⁴ BNSF Mot. at 9.

C. Union Pacific is willing to provide data regarding intangible assets.

BNSF’s May 23, 2024, discovery requests included a request for all “Documents and Communications related to any appraisals or valuations of intangible assets UP has conducted or commissioned from 2019 to present.”¹⁵ Although Union Pacific did not address intangible assets in its opening evidence, BNSF explained the request relates to a portion of Union Pacific’s opening evidence where, in accordance with Board precedent, Dr. Mathur used the book value of Union Pacific’s road property and equipment assets in developing the market-based earnings multiplier.¹⁶ Although Board precedent does not provide for consideration of intangible assets in developing the earnings multiplier, Union Pacific was willing to provide BNSF with the same type of information about intangible assets that the Board uses in connection with road property and equipment assets—*i.e.*, information regarding the book value of the assets. BNSF rejected that compromise, insisting instead on all “Documents and Communications related to any appraisals or valuations of intangible assets UP has conducted or commissioned from 2019 to present.” BNSF has not explained why Union Pacific should have to scour its records for and produce “all” of its documents and communications relating to “any” appraisals or valuations of intangible assets for a five-year period, when Union Pacific is willing to provide information regarding the value of its intangible assets comparable to the information that is available regarding its road property and equipment assets.

Union Pacific remains willing to provide the information regarding intangible assets that it previously offered to produce.

¹⁵ See Exhibit A, BNSF’s Third Set of Discovery Requests to Union Pacific, Request No. 66.

¹⁶ See Union Pacific Op., Mathur V.S. at 60 & n.156.

III. Conclusion

For the reasons stated above, the Board should deny BNSF's motion to compel.

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Attorneys for Union Pacific Railroad Company

July 16, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2024, I caused a copy of the foregoing document to be served by email on all parties of record in this proceeding.

/s/ Michael L. Rosenthal

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION COMPANY

**BNSF RAILWAY COMPANY'S
THIRD SET OF DISCOVERY REQUESTS TO UNION PACIFIC**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, BNSF Railway Company (“BNSF”) hereby requests that Union Pacific Railroad Company (“UP”) respond to and produce documents responsive to the following discovery requests to the offices of Steptoe LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, no later than June 7, 2024.

DEFINITIONS

1. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
2. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.
3. “BNSF Railway Company” or “BNSF” means BNSF Railway Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.
4. “Communication” means any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.

5. “Concerning” means relating to, referring to, describing, reflecting, evidencing, constituting, or comprising.

6. “Class I Railroad” means a carrier designated by the Surface Transportation Board as having an annual operating revenue of \$900 million or more after applying the railroad revenue deflator formula shown in Note A of 49 C.F.R. Part 1201. *See* 49 C.F.R. Part 1201; *see also* *Mont. Rail Link, Inc.—Pet. for Rulemaking—Classification of Carriers*, EP 763 (STB served Apr. 5, 2021).

7. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form.

8. “Including” means including without limitation.

9. “Interstate Commerce Commission” or “ICC” mean the predecessor agency for the Surface Transportation Board.

10. “Relating to” means mentioning, discussing, reflecting, containing, concerning, embodying, stating, dealing with, or making reference to or relating to in any way.

11. “STB” or “Board” mean the Surface Transportation Board.

12. “SSW Compensation” means the framework used by the Board and the ICC in prior trackage rights compensation cases, as first set forth in *St. Louis Sw. Ry.—Trackage Rts. Over Mo. Pac. R.R.—Kan. City to St. Louis*, 1 I.C.C.2d 776 (1984) and *St. Louis Sw. Ry.—Trackage Rts. Over Mo. Pac. R.R.—Kan. City to St. Louis*, 4 I.C.C.2d 668 (1987) (collectively, *SSW Compensation*).

13. “Tehachapis Line,” also referred to as “Kern Mojave Line” or “Line,” mean the 67.8-mile railroad line and all associated appurtenances between Kern Junction and Mojave, California owned by Union Pacific Railroad Company.

14. “Union Pacific Railroad Company” or “UP” means Union Pacific Railroad Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

15. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

1. If UP objects to any portion of any Discovery Request, they should identify the portion to which they object, state the basis for the objection, and respond to the remainder. If UP has objections, UP's counsel are requested to promptly confer with undersigned counsel for BNSF so that UP's objections can be promptly addressed and resolved.

2. If UP asserts a claim of privilege as to Documents sought in these Requests, UP should list, for each such Document, the Document's date, signatory or signatories, author(s), addressee(s), each other person who received a copy, the subject matter of the Document, its location and custodian, and the basis for the claim of privilege. Such information should be supplied in sufficient detail to permit BNSF to assess the applicability of the privilege claimed.

3. If any of the requested Documents was but is no longer in UP's possession or subject to their control, state what disposition was made of it and when, and explain the reasons for such disposition.

4. If a Document is provided in response to a Request, identify which Document(s) is (are) being provided to answer that Request, including any Bates numbers; if UP is asked to identify Documents, provide a brief description of the Documents, including any Bates numbers. If UP refers BNSF to the workpapers that they have already provided to respond to a Request, please identify the Bates number(s) of the workpaper(s) responsive to the Request.

5. Each Discovery Request should be responded to upon UP's entire knowledge from all sources and all information and Documents in UP's possession or otherwise available to UP, including information from agents, representatives, consultants, or attorneys, and information that is known to each of them.

6. Where a Discovery Request calls for information with respect to "each" one of a particular type of matter, event, Person, or entity, of which there is more than one, separately list, set forth or identify for each thereof all of the information called for in the Request.

7. The term "Identify":

- a. When used in reference to an individual shall require a statement of the individual's full name; present and/or last known position, employment, job title and/or business affiliation;

present and/or last known business address and telephone number; and present and/or last known residential address and telephone number.

- b. When used in reference to businesses or corporations shall mean to state the business or corporation's legal name, the names under which it does business, its form (proprietorship, corporation, partnership, association or business trust, etc.), the date and place of its inception and/or incorporation, identification of its principal proprietors, partners and/or officers, its present and/or last known address, its principal place of business and its relationship, in any, to each of you.
- c. When used with references to Documents shall require a statement of the date thereof, the type of Document, the author or speaker, and if different, the signer or signers, the addressee, the substance thereof, their present or last known location or custodian, and all other means of identifying them. If any such Document was, but is no longer in your possession or subject to your control, state the deposition that was made of it, the reason for such deposition, and your corporation policy, practice or procedure of Document destruction or retention.
- d. When used with reference to any communication, meeting, act, occurrence, statement or conduct (hereinafter collectively "act") requires you to:
 - i. Describe the substance of the event or events constituting such an act;
 - ii. Identify each and every person participating in such act;
 - iii. Identify all other persons present when such act occurred;
 - iv. State whether any minutes, notes, memoranda, accounts, statement, agreements, Documents or any other record relating to the act was made;
 - v. State whether such record now exists; and
 - vi. Identify the person presently having possession, custody or control of such record.

8. In no event should UP fail to respond to a Request, or leave a response blank. If the answer to the Request is, for example, "none," "unknown," or "not applicable," such statement should be made as the answer.

9. These Requests are deemed continuing, and it is requested that supplemental responses and production be provided as additional information or Documents become available.

10. Unless otherwise provided, there is no time period limitation on these Discovery Requests.

INTERROGATORIES

60. Identify any trackage rights agreements in effect between January 1, 2010 and the present between UP and any other carrier where UP proposed that the parties to such trackage rights agreements determine compensation by using the “Capitalized Earnings” methodology (or any aspect of such methodology) that UP has proposed the Board use in this proceeding. *See* UP Opening Statement & Evidence, Mathur V.S. at Sec. V. (May 3, 2024). Identify and describe each proposal, including the party to which UP made the proposal, the UP personnel involved in or with knowledge of such proposal, and whether such proposal resulted in an executed trackage rights agreement.

61. Describe how to interpret the meaning of each unique value in the field “VNTG_ID” in UP-MK-001911-HC.xlsx.

REQUESTS FOR PRODUCTION

62. Produce all Documents and Communications relating to any proposal identified in Request No. 60, including any trackage rights agreements, amendments, renewals, restatements, and supplements.

63. Produce all trackage rights agreements and amendments, renewals, restatements, supplements, thereto that UP has entered into with any Class I railroad, other than BNSF, that are currently in effect.

64. Produce Documents sufficient to show the current compensation rate for any trackage rights agreements, and amendments, renewals, produced in response to Request 63.

65. Produce traffic forecast data for the period between 2013 to 2018 for the Tehachapis Line in an equivalent format to the traffic forecast data for the 2019 to 2026 period contained in UP-MK-001911-HC.xlsx.

66. Produce Documents and Communications related to any appraisals or valuations of intangible assets that UP has conducted or commissioned from 2019 to present.

67. Produce all documents UP relied on in preparing answers to Interrogatories 60-61.

Respectfully submitted,

/s/ Peter W. Denton

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Counsel for BNSF Railway Company

Dated: May 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2024, I have caused the foregoing *BNSF Railway Company's Third Set of Discovery Requests to Union Pacific* 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

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION CO.

**BNSF RAILWAY COMPANY'S
SECOND SET OF DISCOVERY REQUESTS TO UNION PACIFIC**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, BNSF Railway Company (“BNSF”) hereby requests that Union Pacific Railroad Company (“UP”) respond to and produce documents responsive to the following discovery requests to the offices of Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, no later than July 13, 2023.

DEFINITIONS

1. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
2. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.
3. “BNSF Railway Company” or “BNSF” means BNSF Railway Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.
4. “Communication” means any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.

5. “Concerning” means relating to, referring to, describing, reflecting, evidencing, constituting, or comprising.

6. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form.

7. “Including” means including without limitation.

8. “Relating to” means mentioning, discussing, reflecting, containing, concerning, embodying, stating, dealing with, or making reference to or relating to in any way.

9. “STB” or “Board” means the Surface Transportation Board.

10. “Tehachapis Line” means the 67.8-mile railroad line and all associated appurtenances between Kern Junction and Mojave, California owned by Union Pacific Railroad Company.

11. “Union Pacific Railroad Company” or “UP” means Union Pacific Railroad Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

12. “1967 ICC Order” means *Atchison, T. & S.F. Ry. Co.—Operating Agreement*, 331 I.C.C. 367 (1967) as modified by 333 I.C.C. 342 (1968).

13. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

1. If UP objects to any portion of any Discovery Request, they should identify the portion to which they object, state the basis for the objection, and respond to the remainder. If UP has objections, UP’s counsel are requested to promptly confer with undersigned counsel for BNSF so that UP’s objections can be promptly addressed and resolved.

2. If UP asserts a claim of privilege as to Documents sought in these Requests, UP should list, for each such Document, the Document’s date, signatory

or signatories, author(s), addressee(s), each other person who received a copy, the subject matter of the Document, its location and custodian, and the basis for the claim of privilege. Such information should be supplied in sufficient detail to permit BNSF to assess the applicability of the privilege claimed.

3. If any of the requested Documents was but is no longer in UP's possession or subject to their control, state what disposition was made of it and when, and explain the reasons for such disposition.

4. If a Document is provided in response to a Request, identify which Document(s) is (are) being provided to answer that Request, including any Bates numbers; if UP is asked to identify Documents, provide a brief description of the Documents, including any Bates numbers. If UP refers BNSF to the workpapers that they have already provided to respond to a Request, please identify the Bates number(s) of the workpaper(s) responsive to the Request.

5. Each Discovery Request should be responded to upon UP's entire knowledge from all sources and all information and Documents in UP's possession or otherwise available to UP, including information from agents, representatives, consultants, or attorneys, and information that is known to each of them.

6. Where a Discovery Request calls for information with respect to "each" one of a particular type of matter, event, Person, or entity, of which there is more than one, separately list, set forth or identify for each thereof all of the information called for in the Request.

7. The term "Identify":

- a. When used in reference to an individual shall require a statement of the individual's full name; present and/or last known position, employment, job title and/or business affiliation; present and/or last known business address and telephone number; and present and/or last known residential address and telephone number.
- b. When used in references to businesses or corporations shall mean to state the business or corporation's legal name, the names under which it does business, its form (proprietorship, corporation, partnership, association or business trust, etc.), the date and place of its inception and/or incorporation, identification of its principal proprietors, partners and/or officers, its present and/or last known address, its principal place of business and its relationship, in any, to each of you.

- c. When used with references to Documents shall require a statement of the date thereof, the type of Document, the author or speaker, and if different, the signer or signers, the addressee, the substance thereof, their present or last known location or custodian, and all other means of identifying them. If any such Document was, but is no longer in your possession or subject to your control, state the deposition that was made of it, the reason for such deposition, and your corporation policy, practice or procedure of Document destruction or retention.
- d. When used with reference to any communication, meeting, act, occurrence, statement or conduct (hereinafter collectively “act”) requires you to:
 - i. Describe the substance of the event or events constituting such an act;
 - ii. Identify each and every person participating in such act;
 - iii. Identify all other persons present when such act occurred;
 - iv. State whether any minutes, notes, memoranda, accounts, statement, agreements, Documents or any other record relating to the act was made;
 - v. State whether such record now exists; and
 - vi. Identify the person presently having possession, custody or control of such record.

8. In no event should UP fail to respond to a Request, or leave a response blank. If the answer to the Request is, for example, “none,” “unknown,” or “not applicable,” such statement should be made as the answer.

9. These Requests are deemed continuing, and it is requested that supplemental responses and production be provided as additional information or Documents become available.

10. Pursuant to 49 C.F.R. § 1114.27, responses to requests for admission should be served as soon as possible, and in no event later than 15 days from the date of service hereof, unless agreed otherwise. As set forth in 49 C.F.R. § 1114.27, each request for admission response should admit the matter, object to the request and provide the reasons therefor, or specifically deny the matter or set forth in detail the reasons why UP cannot truthfully admit or deny the matter. The other requirements of Section 1114.27 should also be met. UP should contact the undersigned promptly to discuss any objections or questions regarding these requests for admission with a view to resolving any disputes or issues of interpretation informally and expeditiously.

11. Unless otherwise provided, there is no time period limitation on these Discovery Requests.

DISCOVERY REQUESTS

54. Admit that, but for the tunnel clearance improvement projects that occurred at or around 1994 as referenced in the parties' Joint Stipulation Agreement, double-stack intermodal service would not be possible on the Tehachapis Line.

55. Describe any and all alternative routes for double-stack intermodal traffic that traverses the Tehachapis Line that UP has used or may consider using in the future. State the basis for UP's description and identify all Documents and Communications relating to that description.

56. To the extent not covered in Discovery Request No. 50, please produce documents sufficient to show how interest rental payments under the 1967 ICC Order were calculated, including, but not limited to, information on the usage share, the valuation base, and the interest rental rate, from 1993 to present.

57. Produce all Documents and Communications related to UP's decision to terminate the Joint Stipulation Agreement.

58. Produce Documents sufficient to show operating timetables and track charts for all tracks on the Tehachapis Line in effect as of December 31, 1994.

59. Produce all Trackage Rights Agreements and amendments, renewals, restatements, supplements, etc. thereto that UP has entered into since January 1, 2018.

Respectfully submitted,

/s/ Peter W. Denton

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Counsel for BNSF Railway Company

Dated: June 28, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2023, I have caused the foregoing *BNSF Railway Company's Second Set of Discovery Requests to Union Pacific* 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*

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 22218

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—OPERATING RIGHTS—
SOUTHERN PACIFIC TRANSPORTATION CO.

**BNSF RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS TO UNION PACIFIC**

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, BNSF Railway Company (“BNSF”) hereby requests that Union Pacific Railroad Company (“UP”) respond to and produce documents responsive to the following discovery requests to the offices of Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, no later than June 8, 2023.

DEFINITIONS

1. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
2. “Any” shall be construed as “all” and vice versa, as necessary to bring within the scope of the Request all information that might otherwise be construed to be outside of its scope.
3. “BNSF Railway Company” or “BNSF” means BNSF Railway Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.
4. “Communication” means any transmission or receipt of information by one or more persons or between two or more persons by means including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, text messages, instant messages, other computer linkups, written memoranda, and in-person conversations.

5. “Concerning” means relating to, referring to, describing, reflecting, evidencing, constituting, or comprising.

6. “Document” has the broadest meaning permissible under 49 C.F.R. § 1114.30, including but not limited to electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form.

7. “Including” means including without limitation.

8. “Relating to” means mentioning, discussing, reflecting, containing, concerning, embodying, stating, dealing with, or making reference to or relating to in any way.

9. “STB” or “Board” means the Surface Transportation Board.

10. “Tehachapis Line” means the 67.8-mile railroad line and all associated appurtenances between Kern Junction and Mojave, California owned by Union Pacific Railroad Company.

11. “Union Pacific Railroad Company” or “UP” means Union Pacific Railroad Company, and its predecessors and successors in interest, as well as the present and former directors, officers, employees, agents, managing agents, representatives, attorneys, predecessors, successors, parents, subsidiaries, affiliates, divisions, area offices, and regional offices of the foregoing companies; and all persons acting or purporting to act on their behalf.

12. The use of the singular shall be deemed to include the plural, as appropriate in context.

INSTRUCTIONS

1. If UP objects to any portion of any Discovery Request, they should identify the portion to which they object, state the basis for the objection, and respond to the remainder. If UP has objections, UP’s counsel are requested to promptly confer with undersigned counsel for BNSF so that UP’s objections can be promptly addressed and resolved.

2. If UP asserts a claim of privilege as to Documents sought in these Requests, UP should list, for each such Document, the Document’s date, signatory or signatories, author(s), addressee(s), each other person who received a copy, the subject matter of the Document, its location and custodian, and the basis for the

claim of privilege. Such information should be supplied in sufficient detail to permit BNSF to assess the applicability of the privilege claimed.

3. If any of the requested Documents was but is no longer in UP's possession or subject to their control, state what disposition was made of it and when, and explain the reasons for such disposition.

4. If a Document is provided in response to a Request, identify which Document(s) is (are) being provided to answer that Request, including any Bates numbers; if UP is asked to identify Documents, provide a brief description of the Documents, including any Bates numbers. If UP refers BNSF to the workpapers that they have already provided to respond to a Request, please identify the Bates number(s) of the workpapers(s) responsive to the Request.

5. Each Discovery Request should be responded to upon UP's entire knowledge from all sources and all information and Documents in UP's possession or otherwise available to UP, including information from agents, representatives, consultants, or attorneys, and information that is known to each of them.

6. Where a Discovery Request calls for information with respect to "each" one of a particular type of matter, event, Person, or entity, of which there is more than one, separately list, set forth or identify for each thereof all of the information called for in the Request.

7. The term "Identify":

- a. When used in reference to an individual shall require a statement of the individual's full name; present and/or last known position, employment, job title and/or business affiliation; present and/or last known business address and telephone number; and present and/or last known residential address and telephone number.
- b. When used in references to businesses or corporations shall mean to state the business or corporation's legal name, the names under which it does business, its form (proprietorship, corporation, partnership, association or business trust, etc.), the date and place of its inception and/or incorporation, identification of its principal proprietors, partners and/or officers, its present and/or last known address, its principal place of business and its relationship, in any, to each of you.
- c. When used with references to Documents shall require a statement of the date thereof, the type of Document, the author

or speaker, and if different, the signer or signers, the addressee, the substance thereof, their present or last known location or custodian, and all other means of identifying them. If any such Document was, but is no longer in your possession or subject to your control, state the deposition that was made of it, the reason for such deposition, and your corporation policy, practice or procedure of Document destruction or retention.

- d. When used with reference to any communication, meeting, act, occurrence, statement or conduct (hereinafter collectively “act”) requires you to:
 - i. Describe the substance of the event or events constituting such an act;
 - ii. Identify each and every person participating in such act;
 - iii. Identify all other persons present when such act occurred;
 - iv. State whether any minutes, notes, memoranda, accounts, statement, agreements, Documents or any other record relating to the act was made;
 - v. State whether such record now exists; and
 - vi. Identify the person presently having possession, custody or control of such record.

8. In no event should UP fail to respond to a Request, or leave a response blank. If the answer to the Request is, for example, “none,” “unknown,” or “not applicable,” such statement should be made as the answer.

9. These Requests are deemed continuing, and it is requested that supplemental responses and production be provided as additional information or Documents become available.

10. Unless otherwise provided, there is no time period limitation on these Discovery Requests.

DISCOVERY REQUESTS

1. Produce, with no date limitation, (a) copies of all land valuation maps related to tracks on the Tehachapis Line, and (b) all Documents, including but not limited to deeds or other instruments of grant or conveyance, related to the parcels identified on those land valuation maps.

2. Produce, with no date limitation, Documents sufficient to identify all donated rights of way and/or land grants, including easements, on the Tehachapis Line. The Documents provided should include but not be limited to the following for each donated or easement land parcel:

- a. The parcel number;
- b. The exact location of the parcel, including county and state;
- c. Valuation section and map number;
- d. Original railroad acquiring the parcel;
- e. Type of instrument and/or title, e.g., easement, right-of-way deed, quit claim deed, condemnation, grant;
- f. The size of the parcel in square feet or acres;
- g. The date of the transaction;
- h. The names of the parties to the transaction; and
- i. Any dollar amount associated with the transaction.

3. Produce all Documents related to any sale, appraisal, abandonment, disposition, or acquisition of land (improved and unimproved) that UP completed on the Tehachapis Line, including but not limited to Documents showing the location of the parcel, size of the parcel, the valuation of the parcel by UP, the sale or acquisition price, a description of any improvements to the parcel, the value of any improvements, the date of sale, the date of disposition, and any characteristics of the parcel such as land use, utilities, access and topography, for the years 2012 to the present.

4. Produce Documents sufficient to show the amount that UP pays annually by location from 2017 to present, including relevant milepost boundaries, for right of way easements on the Tehachapis Line.

5. Produce Documents sufficient to show the following with respect to grading construction activities from 2017 through present undertaken or proposed at any time, or currently ongoing, on any tracks on the Tehachapis Line:

- a. Number of cubic yards of excavation of:
 - i. Common earth,
 - ii. Loose rock,
 - iii. Solid rock, and
 - iv. Unclassified material;
- b. Number of cubic yards of embankment of:
 - i. Common earth,
 - ii. Loose rock,
 - iii. Solid rock, and

- iv. Unclassified material;
- c. Number of cubic yards of borrow of:
 - i. Common earth,
 - ii. Loose rock,
 - iii. Solid rock, and
 - iv. Unclassified material;
- d. Linear feet of pipe installed for lateral drainage;
- e. Number of cubic yards of rip rap placed for the protection of the roadway;
- f. Location, type and quantity of retaining walls;
- g. Construction method, including but not limited to the number of cubic yards of masonry or other similar material used for retaining walls;
- h. Number of acres cleared;
- i. Number of acres grubbed; and
- j. Number of acres seeded.

6. To the extent UP incurred any of the following expenditures during the years 2017 to the present on any tracks on the Tehachapis Line, produce Documents sufficient to show the costs UP incurred during each year for the following:

- a. Cost per cubic yard of excavation for:
 - i. Common earth,
 - ii. Loose rock,
 - iii. Solid rock, and
 - iv. Unclassified material;
- b. Cost per cubic yard of embankment for:
 - i. Common earth,
 - ii. Loose rock,
 - iii. Solid rock, and
 - iv. Unclassified material;
- c. Cost per cubic yard of borrow for:
 - i. Common earth,
 - ii. Loose rock,

- iii. Solid rock, and
 - iv. Unclassified material;
- d. Cost per linear foot of drainage installed;
 - e. Cost per cubic yard of rip rap (installed), separated between material and labor;
 - f. Unit cost for each material type used for retaining walls, separated between material and labor;
 - g. Cost per acre for clearing timber and any credits reflecting the sale of timber;
 - h. Cost per acre for grubbing;
 - i. Cost per acre for seeding;
 - j. Cost per acre for weed spray (including necessary chemicals);
 - k. Cost per acre or per mile for brush cutting; and
 - l. Cost per square yard for geotextile fabric.
7. Produce Documents sufficient to show culvert/drainage pipe locations, size (diameter), length, height of cover, number of tracks crossed, type, and cost of material and installation on the Tehachapis Line.
8. Produce all Documents containing current operating timetables and track charts applicable for all tracks on the Tehachapis Line.
9. Produce all Documents relating to any transactions, including but not limited to purchases, sales, dispositions, or leases, of any track assets on the Tehachapis Line to which UP was a party from 2012 to the present.
10. Produce, in a computer-readable format to the extent available, all Documents showing the rail inventory by weight of rail and installation date, including all information maintained by UP pertaining to those inventories for all tracks on the Tehachapis Line.
11. Produce Documents sufficient to show an inventory of ties by grade and installation date by track identifier and beginning and ending milepost for all tracks on the Tehachapis Line.
12. Produce Documents sufficient to show an inventory of ballast by material and size by track identifier and beginning and ending milepost for all tracks on the Tehachapis Line.

13. Produce Documents sufficient to show an inventory of turnouts by location, size and weight, separated between power switch and hand-thrown switch, for all tracks on the Tehachapis Line.

14. Produce, in computer-readable format to the extent available, Documents sufficient to show individual tracks, connections to the main line, turnouts, communications, signals and elevations for all tracks on the Tehachapis Line.

15. Produce Documents sufficient to show the cost that UP has incurred for the following track materials from 2017 to the present:

- a. Average system-wide cost per linear foot and/or ton by weight of rail for both new and relay rail;
- b. Turnouts by type, size and weight; and
- c. Other track materials (Ties, Tie Plates, Rail Anchors, Spikes, etc.).

16. Produce Documents sufficient to show the average cost per cubic yard paid by UP for ballast by type and size used on the UP system during each of the years 2017 to the present.

17. Produce Documents sufficient to show the following for each construction and rehabilitation project which exceeded \$250,000 in cost and was completed by UP, or an outside contractor acting on UP's behalf, since January 1, 2017 in the State of California:

- a. The date the project was started;
- b. The date the project was completed;
- c. Whether the project was new construction or rehabilitation;
- d. Whether the project was performed "under traffic," i.e., traffic continued to move through the construction area;
- e. A complete copy of the Authorization for Expenditure ("AFE") or similar document and description of all columns and data contained within the document;
- f. A complete copy of the Roadway Completion Report or any successor Document;
- g. All invoices underlying each AFE and/or Roadway Completion Report; and
- h. Any Documents relating to funding provided by government or entities for such projects.

18. Produce Documents sufficient to show the following for each new construction and/or addition and betterment project which exceeded \$250,000 in cost and was completed by UP, or an outside contractor acting on UP's behalf, since January 1, 1962 on the Tehachapis Line:

- a. The date the project was started;
- b. The date the project was completed;
- c. Whether the project was performed "under traffic," i.e., traffic continued to move through the construction area;
- d. A complete copy of the Authorization for Expenditure ("AFE") or similar document and description of all columns and data contained within the document;
- e. A complete copy of the Roadway Completion Report or any successor Document;
- f. All invoices underlying each AFE and/or Roadway Completion Report; and
- g. Any Documents relating to funding provided by government or entities for such projects.

19. Produce Documents sufficient to show the tunnels or former tunnels that have been constructed or removed (by day lighting or other means) by UP or its predecessors, detailing location (line segment and milepost), length, number of tracks in the tunnel, tunnel dimensions including clearances, construction method and time period of construction, and the cost per linear foot to construct or remove the tunnel, for any tunnels located on the Tehachapis Line.

20. Produce Documents, including bridge lists or other Documents, sufficient to show the following information for all bridges located on the Tehachapis Line:

- a. Location;
- b. Type;
- c. Year built;
- d. Number of tracks;
- e. Total length;
- f. Number of spans;
- g. Type(s) of spans;
- h. Length of each span;
- i. Load rating;

- j. Clearances;
- k. Height;
- l. Skew;
- m. Curvature;
- n. A description of what is being crossed (e.g., name of body of water, highway or road (including name or number), navigable waterway);
- o. Whether it is a movable bridge; and
- p. Whether or not the bridge is in service.

21. Produce Documents sufficient to show the following information related to the construction or replacement by UP, in part or in whole, of each bridge on its system from 2017 to the present:

- a. The location of the bridge, by line segment and milepost;
- b. The design for each bridge;
- c. An itemized listing of the bridge components being constructed or replaced (including quantities);
- d. The estimated cost, by component, for each of the components (identified in response to Subpart c. above) being constructed or replaced;
- e. The actual cost, by component, for each of the components (identified in response to Subpart c. above) being constructed or replaced;
- f. The total cost of the bridge;
- g. The total length of the bridge;
- h. Whether the project was new construction or rehabilitation;
- i. Whether the project was performed “under traffic,” i.e., traffic continued to move through the construction area;
- j. All costs incurred as a function of performing the project under traffic, e.g., flagging costs, temporary signal costs, realignments, delays and all other costs that would not be included if the bridge was new construction;
- k. The construction Documents and contracts for the construction and/or rehabilitation; and
- l. Any cost sharing between UP and another entity.

22. Produce Documents sufficient to show the following information for each UP Communications Site used in communications related to operations on the Tehachapis Line:

- a. The number of microwave towers, LMR towers, combined towers, or other communications equipment location (shown separately for each category);
- b. The latitude and longitude coordinates of each tower or other communications equipment location;
- c. The height of each tower in feet above the ground and also in feet above sea level;
- d. The number of microwave antennae on each tower and the status of each antenna (i.e., whether it is operational); The number of LMR antennae on each tower and the status of each antenna (i.e., whether it is operational);
- e. The latitude and longitude coordinates of other communications sites that can link via microwave or radio from this site or a topological map of the communication system; and
- f. The acres of land owned or leased by UP for these sites and the cost of purchase or lease.

23. Produce, in computer-readable format to the extent available, Documents sufficient to show the location and type of communications devices, signals and PTC related apparatus used for train operations on the Tehachapis Line.

24. Produce Documents sufficient to show following information with regard to UP's detectors, including but not limited to hot bearing, wide/high load, and dragging/failed equipment detectors, ("FED") on the Tehachapis Line:

- a. The location of all FEDs on the Tehachapis Line; and
- b. The cost UP has incurred for each FED installed from 2017 to the present.

25. Produce Documents sufficient to show the costs incurred by UP for compliance with the PTC mandate on the Tehachapis Line and the proportion of this amount reimbursed by BNSF and any other party.

26. Produce, in computer-readable format to the extent available, Documents sufficient to show the following information for each at-grade and grade-separated road crossing on the Tehachapis Line:

- a. Geographic location, i.e., city, county and state;

- b. Rail location, i.e., railroad, line name, division, subdivision and milepost;
- c. Whether public or private;
- d. Name of road being crossed;
- e. Width;
- f. Length;
- g. Type of construction;
- h. Number of tracks;
- i. Type of protective devices;
- j. Date of initial installation at the location;
- k. Total cost of the initial installation and the amount borne by UP, if any; and
- l. Identification of the party responsible for ongoing maintenance of any such structures.

27. For each crossing identified in response to Request No. 26, produce Documents, for each year from 2017 to the present, sufficient to show, separately for each crossing, any monies received by UP from any other party to compensate UP for the use of the crossing, including but not limited to monies for construction, maintenance and easement payments.

28. Produce Documents sufficient to show the location, linear feet, type of fencing, cost per foot and year installed for all fencing installed by UP currently in place on the Tehachapis Line.

29. Produce all Documents, including but not limited to agreements, from 2017 to the present, evidencing, relating to, or reflecting, any funding, whether in the form of a grant, loan, contribution, or subsidy, provided to (or will be provided to) UP by any governmental or quasi-governmental agency related to operations or investment in track and/or facilities on the Tehachapis Line, specifically including, but not limited to expansion projects, overhead bridges and at-grade crossings.

30. Produce all studies, analyses, or reports conducted by or for UP from 2012 to the present concerning the profitability of UP's traffic traversing all or part of Tehachapis Line.

31. Produce all studies, analyses, or reports conducted by or for UP from 2012 to the present concerning the profitability of BNSF's traffic traversing all or part of Tehachapis Line.

32. Produce all forecasts and projections and all Documents related to such forecasts or projections prepared by or for UP from 2019 through the present, or in UP's possession, of future traffic volumes and/or revenues for freight traffic by traffic group (including any breakdowns of any such forecasts or projections, whether by commodity classification, geographic region, line segment, or any other category) related in any way to traffic traversing all or part of the Tehachapis Line. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies, authorizations for expenditures, marketing studies, operating expense budgets, capital budgets, investment of public money, grant agreements, construction agreements, or mergers with or acquisitions of other carriers.

33. Produce system-wide car and, where applicable, container, movement event data for all traffic touching the Tehachapis Line for each year or partial year from 2019 to the present.

34. Produce system-wide train event data for all trains touching the Tehachapis Line for each year or partial year from 2019 to the present.

35. Produce Documents sufficient to identify all intermodal containers that moved over the Tehachapis Line in double-stack service from 2019 to the present.

36. Produce Documents sufficient to show the density information described below for UP's entire system for each year or partial year from 2019 to the present in a computer readable database or electronic spreadsheet, including all record layouts, all field descriptions, data definitions and data dictionaries/decoders required to utilize the data. The density database should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and SPLC at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains) by segment expressed in net ton-miles, or in the alternative, (ii) total density (both directions including empty and loaded trains) by segment expressed in gross ton-miles plus appropriate factors that can be used to convert gross ton-miles to net ton-miles on each unique density segment; and
- f. Density information (i) for segments that UP utilizes via trackage

rights (or other joint facility or joint use agreements) on another railroad, (ii) for segments where another railroad(s) operates by trackage rights (or other joint facility or joint use agreements) over UP segments and (iii) an identification of such densities in (i) and (ii) that are included in the total densities provided in response to subpart e. above.

37. Produce all Documents, including databases, data warehouses, and computer programs (with all documentation related to these databases and computer programs), in a computer-readable format, that include the information listed below for each movement, loaded or empty, traversing all or part of the Tehachapis Line handled by UP for each year or partial year 2019 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code (“STCC”));
- b. Origin station and state;
- c. Destination station and state;
- d. For shipments that originated on UP’s system, the date and time the shipment was originated;
- e. For shipments UP received in interchange, the on-junction station, state, and Standard Point Location Code (“SPLC”);
- f. For shipments UP received in interchange, the road received from;
- g. For shipments UP received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, off-junction station, state and SPLC;
- i. For shipments given in interchange, the road to which they were given;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on UP’s system, the date and time the shipment was terminated;
- l. Origin Freight Station Accounting Code (“FSAC”);
- m. Destination FSAC;
- n. Origin SPLC;
- o. Destination SPLC;
- p. Number of railcars;
- q. Number of intermodal containers/trailers;

- r. Tons (Net);
- s. Railcar tare weight;
- t. Intermodal container/trailer tare weight;
- u. Total freight revenues from origin to destination, including any adjustments thereto, along with a description of the adjustment (i.e., add to or subtract from gross revenue);
- v. UP's share or division of the total freight revenues, including any adjustments thereto;
- w. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and UP's division thereof provided in response to Subparts (v) and (w) above;
- x. Total deductions from revenues broken into the following categories: origin switching payments, destination switching payments, trackage/haulage payments, and other.
- y. The contract, agreement, tariff, pricing authority, etc., that the shipment is billed under, including the amendment and item numbers;
- z. Waybill number and date;
- aa. Trailer on Flat Car ("TOFC")/ Container on Flat Car ("COFC") plan;
- bb. Car/trailer/container initial for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer initials);
- cc. Car/trailer/container number for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer number);
- dd. Total loaded movement miles;
- ee. Total empty movement miles;
- ff. Miles used to derive applicable fuel surcharges;
- gg. Applicable fuel surcharge rate;
- hh. Total loaded miles on the UP system;
- ii. Total empty miles on the UP system;
- jj. AAR car-type, and where applicable, container-type, code;
- kk. Provider of car and trailer/container (e.g., UP-owned, UP-leased, shipper, or foreign road); and

ll. For each intermodal shipment, the intermodal service plan code and the intermodal line of business code.

38. Produce Documents sufficient to describe any and all insurance policies related to UP's ownership of, use of, and operations on the Tehachapis Line sufficient to identify for each policy, but not limited to, the type and level of coverage provided, the policy term limits, applicable deductibles, policy costs and premiums, and claims made under the policy to date.

39. Produce Documents sufficient to show UP's operating expenses by major railroad operating expense categories (including but not limited to train crew wages, locomotive ownership, locomotive operations and maintenance (including fuel), maintenance of way, freight car ownership and maintenance, depreciation, ad valorem taxes, loss and damage, general and administration, dispatching) for the years 2019 to the present for the Tehachapis Line.

40. Produce Documents sufficient to show detailed costs for each year for capital maintenance (regular, periodic replacement of track and bridge components) and routine maintenance (inspections, spot maintenance, lubricating, etc.) of all assets on the Tehachapis Line from 2012 to present, including all available details pertaining to the locations of the assets for which costs were incurred.

41. Produce all studies, analyses, or reports related to identifying and quantifying costs incurred by UP as a result of extraordinary events (e.g., fire, flood, vandalism) affecting UP assets on the Tehachapis Line from 2017 to present.

42. Produce Documents sufficient to show how monthly usage share figures are developed for purposes of billing provisions under the trackage rights agreement.

43. Produce all Documents related to any valuation analyses or studies performed by or at the request of UP from 1992 to the present related to the Tehachapis Line.

44. Produce all Documents relating to the sale of any line segments by UP from 2012 to the present.

45. Produce all Documents prepared from 2019 to present related to, or reflecting, any planned capacity enhancements or capital improvements to tracks and facilities on the Tehachapis Line, including but not limited to Documents containing estimated or actual construction costs and Documents related to changes in rail rates or rail pricing strategy in connection with any such plans.

46. Produce UP's federal income tax returns for each year since 2019 to present.

47. Produce UP's income tax returns for the State of California for each year since 2019 to present.

48. Produce Documents sufficient to show UP's state and local property tax assessments and payments for the Tehachapis line for each year since 2019 to present.

49. Produce Documents sufficient to show all rights UP has granted to pipeline, telecom, and other companies to use its owned and/or jointly owned right-of-way on the Tehachapis Line, and annual revenues derived from such rights and usage for each year since 2019 to present, including identifying whether, and if so, how, such annual revenues affected the cost amounts billed BNSF under the maintenance and operations provisions of the trackage rights agreement in place at the time.

50. Produce Documents sufficient to show gross book investment and accumulated depreciation for each ICC account (per 49 CFR Part 1201) by year of acquisition or installation for all assets located on the Tehachapis Line for assets in place at the end of 2022, including the following:

- a. Identification of whether the asset is part of the joint line, exclusively used by UP, or exclusively used by BNSF, including information on all changes made to such classifications over time;
- b. Identification of the amount added to the interest rental base and the amount billed to BNSF at the time of installation or thereafter under addition and betterment provisions of the trackage rights agreement in place at the time, or otherwise chargeable to property accounts; and
- c. Identification of the amount billed to BNSF at the time of installation or thereafter, including at the time of retirement, under maintenance and operations provisions of the trackage rights agreement in place at the time, or otherwise chargeable to accounts other than property accounts reported above in (b).

51. Produce documents sufficient to show the portion of the amount reported by UP in its 2022 Annual Report R-1 to the Surface Transportation Board Schedule 200 Line 49 – Other long-term liabilities and deferred credits related to BNSF's capital contributions to the Tehachapis Line.

52. Produce all Communications between UP and BNSF related to tunnel clearance improvements on Tehachapis Line that occurred at or around 1994 as referenced in the parties' Joint Stipulation Agreement.

53. To the extent not covered in Discovery Request No. 50, produce Documents sufficient to show the amount of the tunnel clearance improvement project costs paid by BNSF and UP, and the amount reimbursed by UP to BNSF.

Respectfully submitted,

/s/ Peter W. Denton

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Counsel for BNSF Railway Company

Dated: May 24, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2023, I have caused the foregoing *BNSF Railway Company's First Set of Discovery Requests to UP* 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*