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May 30, 2012

ENTERED
Office of Proceedings

MAY 30 2012

Part of
Public Record

BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Docket No. 42136, Intermountain Power Agency
v. Union Pacific Railway Company

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of the Complaint of Intermountain Power Agency. We also are enclosing three disks containing electronic versions of the filing and enclosing the filing fee in the amount of \$350. Finally, we have enclosed an additional copy of the filing to be date-stamped and returned to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,



C. Michael Loftus
An Attorney for Intermountain Power Agency

Enclosures

cc: Counsel for Defendant

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
MAY 30 2012
MANAGEMENT
STB

INTERMOUNTAIN POWER AGENCY)
10653 South River Front Parkway, Suite 120)
South Jordan, Utah 84095)
Complainant,)
v.)
UNION PACIFIC RAILROAD COMPANY)
1400 Douglas Street)
Omaha, Nebraska 68179-1260)
Defendant.)

232374

Docket No. 42136

ENTERED
Office of Proceedings
MAY 30 2012
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Public Record

FILE RECEIVED

COMPLAINT

MAY 30 2012

**SURFACE
TRANSPORTATION BOARD**

FILED

MAY 30 2012

**SURFACE
TRANSPORTATION BOARD**

INTERMOUNTAIN POWER AGENCY

Of Counsel:

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By: C. Michael Loftus
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Dated: May 30, 2012

Attorneys & Practitioners

megawatt hours of energy each year from its two coal-fired units and serves approximately 2 million customers. The two IPP generating units have a total capacity of 1,800 MW and consume a total of approximately 4 to 6 million tons of coal per year.

2. IPP's output is committed, through long-term power sale contracts, to 36 utility entities located in Utah and California (which in turn serve customers in Utah, California, Colorado, Wyoming, Arizona, Nevada, and Idaho). In particular, IPP's generation rights are held, respectively, by the Los Angeles Department of Water and Power ("LADWP") (44.6%), five California cities (30%), twenty-three municipal Utah purchasers (14%), six cooperative Utah purchasers (7%), and one investor-owned Utah purchaser (4%). In addition to being the largest consumer of the electricity generated at IPP, LADWP also acts as the fuels purchasing and operating agent for IPP. Actual operation of IPP is carried out by the Intermountain Power Service Corporation.

3. UP is a common carrier railroad engaged in the transportation of freight in interstate commerce. UP is subject to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.*, and to the jurisdiction of the Board.

4. On December 10, 2010, UP published the rates subject to challenge in this Complaint. On December 22, 2010, IPA filed a complaint, docketed as *Intermountain Power Agency v. Union Pacific R.R.*, Docket No. 42127, challenging the same rates that are the subject of this Complaint and rates from two other origins that are not the subject of the instant Complaint.

5. On May 2, 2012, IPA moved for leave to withdraw its complaint in Docket No. 42127, and requested that the Board dismiss that complaint without

prejudice. On May 22, 2012, UP filed a reply to IPA's motion ("UP Reply"). In its Reply, UP acknowledged that IPA is entitled to file a new complaint challenging the rates from the Provo interchange, but asserted that IPA should be prohibited from seeking reparations for any period preceding the dismissal of the complaint in Docket No. 42127. *See* UP Reply at 2, 4-5, 17.

6. Under the circumstances, it is appropriate for IPA to file this new Complaint at the present time. UP will not be prejudiced by this case moving forward now and discovery will not be impacted by the pendency of the motion to dismiss Docket No. 42127. Moreover, the Board need not resolve the question of the appropriate reparations period for this case prior to the submission of evidence and a determination that the challenged rates exceed a maximum reasonable level. *See, e.g., Cargill Inc. v. BNSF Ry.*, Docket No. 42120 (Decision served Jan. 4, 2011) at 6.

7. IPA has shipped, and anticipates it will continue to ship, at least 2.5 to 3.5 million tons of coal per year from the Provo interchange through the end of the 10 year prescriptive period. IPP has shipped, and will continue to ship, the balance of its coal supplies during the time period (*i.e.*, approximately 2.5 million tons per year) from non-issue origins. Depending on future coal supply requirements, IPA's annual transportation of coal from the Provo interchange could rise above the 2.5 to 3.5 million level.

8. IPA has a long-term contract with URC to transport URC-originated Utah coal to Provo, Utah, where URC interchanges the contract coal traffic to UP for

delivery to IPP. UP is the only rail carrier capable of receiving coal in interchange at Provo and transporting it to IPP.

9. All of the coal from the issue interchange is delivered to IPP exclusively by rail, which is the only economically feasible means of transporting the substantial annual volumes required by IPP. The IPP plant is located along UP's main line between Salt Lake City, Utah, and Los Angeles, California and UP is the only rail carrier capable of serving the plant. Neither motor carrier service nor any other transportation alternative presents effective competition for UP's rail transportation of such coal volumes from any origin/loadout whose coal moves through Provo to IPP. Accordingly, UP possesses "qualitative" market dominance over IPA's coal movements under 49 U.S.C. § 10707. Indeed, UP conceded in Docket No. 42127 that it possesses qualitative market dominance over the issue traffic from the issue interchange. *See* UP's Reply Narr., Docket No. 42127, filed Nov. 10, 2011 (Public Version), at II-1.

10. UP is currently transporting coal from the issue origin to IPP pursuant to the common carrier pricing document that is the subject of this Complaint. No contract for such service exists between the parties, and the last such contracts expired on December 31, 2010.

11. As noted *supra*, the common carrier rates being challenged were published on December 10, 2010. *See* Exhibit No. 1 hereto at 8-9. UP's common carrier rates for service to IPP in shipper-supplied cars from the issue interchange were \$7.13 per ton (286k Capacity Cars) and \$7.27 per ton (263k capacity cars) as of January 1, 2011.

12. UP's common carrier rate quotations are subject to a fuel surcharge. *See* Exhibit No. 1 at 6 ("Rates shall be subject to the fuel surcharge as published in Item 695-series of Tariff UP 6007-series, unless otherwise specified in the Rate Item."); *id.* at 8 ("Prices are subject to Fuel surcharges").

13. The common carrier transportation charges established by UP in its December 10, 2010 rate quotation are substantially in excess of 180% of the variable cost of the associated service. Accordingly, the jurisdictional threshold established under 49 U.S.C. § 10707(d) is satisfied. UP conceded in Docket No. 42127 that it possessed quantitative market dominance over the issue traffic from the issue interchange. *See* UP's Reply Narr., Docket No. 42127, filed Nov. 10, 2011 (Public Version), at II-1.

14. Because UP possesses market dominance over coal transportation to IPP from the issue interchange, the Board has jurisdiction to adjudicate the reasonableness of UP's rates, rules and practices applicable to that transportation.

15. The common carrier transportation rates established by UP in its December 10, 2010 common carrier rate quotation as applied to IPA's coal traffic exceed the maximum reasonable levels permitted under 49 U.S.C. §§ 10107(d)(1) and 10702, and therefore are unlawful.

16. In accordance with 49 C.F.R. § 1111.1(a), the reasonableness of UP's rates should be examined using the Constrained Market Pricing principles set forth in *Coal Rate Guidelines – Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987) ("*Guidelines*"), as subsequently interpreted and applied in proceedings before the Board. The use of

Constrained Market Pricing principles is appropriate because coal shipments to IPP via UP involve high volume, repetitive unit train traffic.

17. This Complaint shall be deemed to apply to and likewise challenge any changes to the provisions of UP's common carrier rate quotations for the issue service, or any tariffs, circulars or publications referenced therein, that affect the level of the challenged rates, as well as to any new tariffs or circulars that affect the level of the rates applied to the issue coal transportation service to IPP.

18. Neither this proceeding nor the granting of the relief requested herein will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, Complainant IPA prays that Defendant UP be required to answer the charges herein, and that after a hearing and investigation conducted pursuant to 49 U.S.C. § 10704(a)(1) and the Board's implementing regulations, the Board: (1) find the challenged rates to be unreasonable in violation of 49 U.S.C. §§ 10701(d)(1) and 10702; (2) prescribe lawful maximum rates and charges, and, to the extent shown to be necessary, reasonable rules and practices, as requested by IPA and demonstrated by the evidence to be adduced herein; (3) award reparations to IPA pursuant to 49 U.S.C. § 11704(b), to be calculated based on the record of this proceeding, and the Board's determinations with respect to the prescribed maximum reasonable rate levels and the time period(s) for which IPA is entitled to recover reparations; and (4) grant to IPA such other and further relief as the Board may deem proper based on said record.

Respectfully submitted,

INTERMOUNTAIN POWER AGENCY

By:

C. Michael Loftus

Christopher A. Mills

Andrew B. Kolesar III

Daniel M. Jaffe

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(202) 347-7170



Of Counsel:

Slover & Loftus LLP

1224 Seventeenth Street, N.W.

Washington, D.C. 20036

(202) 347-7170

Dated: May 30, 2012

*Attorneys for Intermountain Power
Agency*

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1111.3, I hereby certify that this 30th day of May, 2012, I have caused a copy of the foregoing Complaint to be served on the Chief Legal Officer of the Defendant via overnight courier at the following address:

J. Michael Hemmer, Esq.
Sr. VP-Law and General Counsel
STOP 1580
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179


Andrew B. Kolesar III



UP TARIFF 4222

UNIT TRAIN COAL COMMON CARRIER TARIFF

Publication of rates, terms and conditions applying on:

**Unit Coal Trains with movement from, to or via the
Union Pacific Railroad Company**

**Issued By:
G. A. NAVALKAR - MANAGER PRICING SERVICES**

**Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179**

**Issued: June 22, 2010
Effective: July 1, 2010**

UP 4222



UP 4222

Item: 1
DEFINITION OF ITEM SYMBOLS

DEFINITION OF ITEM SYMBOLS

- A or [a] = Add
- C or [c] = Change
- D or [d] = Decrease
- I or [i] = Increase
- X or [x] = Expire



UP 4222

Item: 5
GOVERNING RULES

GOVERNING RULES DOCUMENTS

This publication is governed, except as otherwise specifically provided herein, by the provisions of publications below as amended from time to time:

Bureau of Explosives	BOE 6000-series
Directory of Hazardous Materials Shipping Description	(Issued by RAILINC)
Official Railroad Station List	OPSL 6000-series
Official Railway Equipment Register	RER-series
Standard Transportation Commodity Code	STCC 6001-series
Uniform Freight Classification	UFC 6000-series
Union Pacific Railroad Company Accessorial Tariff	UP 6004-series
Union Pacific Railroad Governing Rules for Regulated Traffic	UP 6007-series
Union Pacific Railroad General Rules for Coal Trains	UP 6602-series; UP 6603-series; and UP 6605-series
Association of American Railroads "AAR Interchange Rules" Manual	(Issued by AAR)
Association of American Railroads "Open Top Loading Rules Manual"	(Issued by AAR)

Issued: June 22, 2010
Effective: July 1, 2010

UP 4222

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Item: 5
Concluded on this page



UP 4222

Item: 11
REVISIONS/CANCELLATIONS

REVISIONS/CANCELLATIONS

Unless otherwise provided, as this Pricing Document (or items contained herein) is revised, current letter suffixes cancel prior suffixes. Letter suffixes will be used in alphabetical sequence starting with A. Example: Pricing Document 3000-A cancels 3000, 3000-B cancels 3000-A; item 100-A cancels Item 100, Item 100-B cancels Item 100-A.



UP 4222

Item: 100
GENERAL RULES AND DEFINITIONS

General Rules and Definitions

For purposes of applying this Tariff, the following will govern.

Commodity/Coal: Coal, a mineral substance whose Standard Transportation Commodity Code (STCC) as set forth in the Standard Transportation Commodity code tariff ICC STCC 6001-Series, begins with the two digits 11.

Origin(s): Coal mine origins as specified in individual Rate Items.

Destination(s): Rail station capable of receiving trainloads of Coal as specified in individual Rate Items.

Shipper: Party who is paying the freight charges under this Tariff. Shipper shall have the same meaning as Customer.

UP: Union Pacific Railroad Company

Railroad: UP and any other rail carrier that is a party to this Tariff for a joint rate to the specified Destination as listed in Items 1000-9999 of this Tariff.

Rates: Are in U.S. dollars and cents per net ton of 2,000 lbs. Rates apply only for Coal consumed at the station(s) noted in the Item Description of the Rate Item, unless otherwise provided. Railroad may adjust or cancel Rates subject to 20 days' notice for increases.

Rate Item: Schedule of Rates, charges, and terms applicable to particular Destination, as listed in Items 1000-9999 of this Tariff.

Diversions: Diversions may be permitted under certain circumstances, as provided in UP Circular 6602-series; 6603-series or 6605-series.

Request for Service: Transportation under this Tariff will take place on lines which are subject to intense use and operational limitations. In order to maximize the utilization of the rail lines and loading facilities for the benefit of all parties involved in transportation of Coal from Origins, UP must coordinate with the mine operators and Shippers. Shipper requesting transportation under this Tariff must provide a "Monthly Coal Tonnage Forecast" as provided in Item 250 of UP Circular 6602-series; 6603-series or 6605-series. That Item defines the monthly process for the submission of forecasts by both the receivers of coal and the producers who will load those tons for shipment via UP. This condition applies in addition to any specific notice requirements stated in this Tariff.

Shipper Owned or Leased Equipment: Railcars owned, leased or otherwise furnished by Shipper for transportation under this Tariff.

Railroad Owned or Leased Equipment: Railcars owned, leased or otherwise furnished by Railroad, subject to availability, for transportation under this Tariff.

Equipment: If Rate Item for Destination specifies Shipper Owned or Leased Equipment, Shipper will provide suitable equipment at no charge to Railroad. Railcars shall be compatible with the loading facility and the unloading facility.

All railcars used for transportation under this Tariff shall be open-top hopper or gondola railcars, and shall have a marked capacity sufficient to meet the Minimum Lading Weight per Railcar as specified in the Rate Item for

Issued: June 22, 2010
Effective: July 1, 2010
Expiration: December 31, 2025

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Continued on next page

Destination.

Loaded railcars shall not exceed the maximum gross-weight-on-rail ("GWOR") associated with the route of movement, but in no case greater than 286,000 lbs. In some corridors the GWOR will be less than 286,000 lbs, in which case Railroad will note in the applicable Rate Item the maximum weight capability on the route of movement.

Such railcars shall also meet or exceed the Association of American Railroads ("AAR") Interchange Rules, as amended from time to time, and shall have been inspected and approved by UP for safety in accordance with Federal Railroad Administration ("FRA") regulations, as amended from time to time. Railcars must also comply with Item 226 of UP 6602-series; 6603-series and 6605-series.

Transportation under this Tariff is subject to the provisions of the AAR Interchange Rules, including those rules governing railcar repair, maintenance, damage, or destruction, in a manner prescribed by the "Field Manual of Interchange Rules" and the "Office Manual of Interchange Rules" adopted by and currently in use by the AAR.

Maximum Volume: The maximum volume that Railroad will transport under each Rate Item is specified in the Rate Item.

Trainsets: UP reserves the right, in its sole judgement, to limit the number of trainsets that will be in service pursuant to each Rate Item in order to retain fluidity or to meet loading schedules, or if adding trainsets in active service would not materially increase delivered tonnage.

Annual Volume Estimate: For planning purposes, Shipper shall advise Railroad of its intent to ship under this Tariff as specified in Monthly Coal Tonnage Forecast. In addition, not later than July 1 each year, Shipper shall provide to Railroad an estimate of tons of Coal anticipated to be loaded in the next calendar year by month ("Annual Volume Estimate"). This information should include tons from each of its suppliers and origins as soon as it is known. The nominated tonnage must be ratable. A monthly nomination is ratable if it is no more than 10% greater or 10% less than one-twelfth of the annual total. If Shipper decides to begin shipments within any time-frame other than a full calendar year basis, then Shipper shall provide Railroad an Annual Volume Estimate for the remaining months of that calendar year, at least ninety calendar days prior to the first shipment, unless otherwise mutually agreed. The Annual Volume Estimate must be submitted electronically via UP's secured website ([www.uprr.com/customers/energy Bulk Train Planner](http://www.uprr.com/customers/energy/BulkTrainPlanner)), and may be revised at any time prior to October 1 each year.

Service: Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes, denial of or limitation of access to track controlled by any party other than Railroad, excessive demand, or events outside the control of the Railroad. Railroad intends to use reasonable efforts to deliver the Annual Volume Estimate and the Monthly Coal Tonnage Forecast furnished by Shipper but has no binding obligation to comply with these planning estimates.

In no event shall Railroad be liable for any service guarantee. Further, to the extent allowed by law, under no circumstances will Railroad be liable for any direct, indirect, actual or consequential damages or any other liability, or additional costs of any kind arising out of or caused by service interruptions, reductions, or excessive demand.

Freight Charges: Freight charges shall be calculated based on the greater of the actual lading weight of all Coal in a train as determined by weighing pursuant to the rules in UP Circular 6602-series; 6603-series or 6605-series, or the minimum tender per shipment weight, which is specified by Destination in the Rate Item. Rates shall be subject to the fuel surcharge as published in Item 695-series of Tariff UP 6007-series, unless otherwise specified in the Rate Item.

Payment: Railroad may invoice Shipper by means of mail or electronic transfer of documentation. Shipper shall pay the amount invoiced by means of mail or electronic transfer of funds within 15 calendar days after date of invoice. Late payment and other credit terms shall be in accordance with UP's credit terms as published in Rule 62 of UFC 6000-series. If Shipper fails to pay in accordance with the requirements or if, in UP's sole discretion, adverse credit conditions occur which could affect Shipper's ability to meet payment terms, UP may revoke credit privileges and institute any one or more of the Revocation of Credit and Other Remedies procedures outlined in UFC 6000-series.

Notices: Notices to UP should be addressed to:

Attn: General Director- Logistics and Demand
Union Pacific Railroad
Marketing and Sales Energy Group
Stop 1260
1400 Douglas Street
Omaha, NE 68179
Fax (402) 501-0163

Other General Rules: Shipments made under this Tariff shall be subject to Circular UP 6602-series; 6603-series or 6605-series or their successors, which contain the General Loading Rules, Accessorial Charges and Fuel Surcharge for Coal Trains moving via UP, and related items.

Services or other matters not specifically addressed in this Tariff shall continue to be governed by and paid for in accordance with rules, regulations, statutory provisions and provisions of the applicable tariffs, rules circulars, publications or in other applicable rate and service terms established under 49 U.S.C. Section 11101 or 10702. Such rules, regulations and provisions, as amended from time to time, are herein incorporated by reference without being specifically listed. To the extent any such rules, regulations or provisions as they relate to the parties hereto are inconsistent with the terms of this Tariff, the terms of this Tariff shall govern. When reference is made in this Tariff to tariffs, circulars, items, notes, rules, etc., such references are continuous and include revisions and supplements to and successive issues of such tariffs, circulars, items, notes, rules, etc.

In the event of any conflict between the terms of this Tariff and the terms of the Rate Item, the provisions of the Rate Item shall govern.



UP 4222

Item: 6200-A
Itm Desc: UT, Lynndyl, IPA Generating Station

Unit Coal Trains from Origins in Utah
to IPA Generating Station, Lynndyl, UT

For billing purposes use the following rate authority: UP 4222-6200-A

STCC/GROUP	STCC	DESCRIPTION
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11		Coal
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Prices are subject to Fuel surcharges.

GENERAL RULE ITEM 6200

The Maximum Volume that Railroad will transport under this item is 6,500,000 Net Tons per calendar year.

Shipper shall provide its Annual Volume Estimate for 2011 to Railroad by December 31, 2010

Rates for trains interchanged to UP at Provo, Utah are contingent on utilization of UP locomotives and a new run-through power agreement between UTAH and UP.

GENERAL APPLICATION RULES FOR ITEM 6200-A

1. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks.
2. Mileage allowance payment on private equipment will not apply.
3. Free time to unload will be 6 hour(s).

APPLICATION AND RATES

COLUMN	RATE APPLICATION RULES
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 100 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p> <p>Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11, AND Applies when immediately prior movement was via rail on the UTAH.</p>

	Col 1 Rate	Route Code/Group
STCC: 11 Coal		
From: UT, PROVO		
To: UT, LYNDYL	727	UP

Issued: December 10, 2010
Effective: January 1, 2011
Expiration: December 31, 2025

UP 4222

Page: 1 of 3
Item: 6200-A
Continued on next page

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 115 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p> <p>Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11, AND Applies when immediately prior movement was via rail on the UTAH.</p>	
		Col 1 Rate
		Route Code/Group
STCC: 11 Coal		
From: UT, PROVO		
To: UT, LYNN DYL		7 13
		UP

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 100 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p>	
		Col 1 Rate
		Route Code/Group
STCC: 11 Coal		
From: UT, SAVAGE		
To: UT, LYNN DYL		10 40
		UP

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 115 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p>	
		Col 1 Rate
		Route Code/Group
STCC: 11 Coal		
From: UT, SAVAGE		
To: UT, LYNN DYL		10 20
		UP

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 100 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p>	

	Col 1 Rate	Route Code/Group
STCC: 11 Coal		
From: UT, SHARP		
To: UT, LYNN DYL	3 49	UP
From: UT, SKYLINE		
To: UT, LYNN DYL	10 79	UP

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	Rates are in U.S. dollars Per Net Ton. Subject to a minimum lading weight of 115 tons per car. Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).	
	Col 1 Rate	Route Code/Group
STCC: 11 Coal		
From: UT, SHARP		
To: UT, LYNN DYL	3 37	UP
From: UT, SKYLINE		
To: UT, LYNN DYL	10 60	UP

Exhibit No. 1 Page 10 of 11

Union Pacific Railroad

