

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

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ORAL ARGUMENT

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IN THE MATTER OF: :

INTERMOUNTAIN POWER AGENCY, :

Complainant, :Docket
No. 42136

v. :

UNION PACIFIC RAILROAD COMPANY, :

Defendant :

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Thursday,
November 14, 2013
Surface Transportation Board
Suite 120
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on for
hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

DANIEL R. ELLIOTT III, Chairperson
ANN D. BEGEMAN, Vice Chairperson
FRANCIS P. MULVEY, Commissioner

APPEARANCES:

On Behalf of Intermountain Power
Agency:

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P-R-O-C-E-E-D-I-N-G-S

(9:32 a.m.)

CHAIRMAN ELLIOTT: Good morning.

Welcome. Today we're going to hear oral argument in the case of Intermountain Power Agency versus Union Pacific Railroad Company, STB Docket No. 42136. You all look like veterans of these proceedings, so I'm not going to go through the preliminaries. I think you know how these lights work.

And my understanding is, each side had been allotted 20 minutes per side, and that IPA has decided to take 15 minutes on opening and five minutes for rebuttal, that is correct? So that's how the lights will be handled, so why don't we begin?

MR. LOFTUS: Good morning, Chairman Elliot, Vice Chairman Begeman, Commissioner Mulvey. My name is Michael Loftus, with the firm of Slover & Loftus, appearing on behalf of IPA. I'm accompanied at counsel's table by my partner Andy Kolesar,

1 and I would like to note for the Board's --
2 the presence of John Aguilar of the Los
3 Angeles Department of Water and Power, which
4 is the fuel purchasing and operating agent of
5 the Intermountain Power Agency. John is also
6 a witness in this proceeding.

7 I'd like to begin by addressing
8 the issues that the Board flagged in the
9 decision scheduling this argument, and then
10 we'll address a few other major issues as time
11 permits. I've provided to the Board some oral
12 argument exhibits, they're all from the
13 existing record before the Board, and I'd ask
14 you to turn to Oral Argument Exhibit Number 1,
15 and that is a schematic of the Intermountain
16 Standalone Railroad, the IRR, which has been
17 presented in the evidence by IPA in this case.

18 UP argues that if the Board finds
19 that the IRR's revenues exceed the IRR's
20 costs, the Board needs to conduct a cross-
21 subsidy analysis under Otter Tail, to
22 determine the amount of the prescribed rates,

1 in other words, to see if the prescribed rate
2 should be limited under Otter Tail. Thank
3 you.

4 In Otter Tail, the Board uses a
5 schematic that appears at Page 10 of that
6 decision, and it describes in connection with
7 that three shippers. Shipper One is the
8 complaining shipper and the rail facility is
9 required to transport its traffic, who are
10 identified as the core facilities.

11 Shipper Two is a shipper who also
12 uses the core facilities, and in addition,
13 secondary facilities that serve Shipper Two,
14 but not the complaining shipper. Shipper
15 Three uses only the secondary facilities and
16 none of the core facilities.

17 The Otter Tail limitation applies
18 only in situations involving Shipper Three
19 traffic. In this case, there is no Shipper
20 Three traffic, and as a result, there is no
21 Otter Tail cross-limitation concern. Now, I
22 ask you to turn to Oral Argument Exhibit

1 Number 2, which is a schematic of the segment
2 near Lynndyl, and it shows the mainline moving
3 down, it's the dotted line, residual UP, then
4 solid below that, going down to the center of
5 the page, and it shows the IRR Lynndyl Yard to
6 the right of that.

7 UP claims that the crossover
8 traffic moving between Lynndyl and Milford on
9 the IRR does not share any facilities with the
10 issue traffic, and it has two strained
11 theories as to why that is so. The first is
12 that the mainline and the yard tracks are
13 separate and distinct rail facilities.

14 Now, this exhibit, or this
15 schematic, presented by UP is somewhat
16 misleading, I think, when you look at the
17 degree of separation between the mainline and
18 the yard tracks. If you look at Exhibit
19 Number 3, it contains portions of two exhibits
20 submitted in the record, the first, 3B2 from
21 IPA's evidence, and the second is from UP's
22 evidence.

1 I want to go to the very first
2 page of that exhibit and if you look at the
3 upper left-hand corner where you see milepost
4 665 --

5 COMMISSIONER MULVEY: Excuse me.
6 Maybe I'm getting old, but these pages are all
7 numbered the same 3B2, 3B2. There is a
8 reference to a Page 2 of 7, on Page 3 of 7,
9 which page are you referring to exactly?

10 MR. LOFTUS: That is a little
11 confusing. I apologize for that. I'm
12 referring to Page 2 of 7.

13 COMMISSIONER MULVEY: Okay. Thank
14 you.

15 MR. LOFTUS: Which is also the
16 very first page after the cover sheet for
17 Exhibit Number 3.

18 COMMISSIONER MULVEY: Thank you.

19 MR. LOFTUS: If you look at the
20 upper left-hand corner, Milepost 665.70, that
21 is the beginning of the 1.55 miles of common
22 facilities that is utilized by the issue

1 traffic and by the crossover traffic. And you
2 see the red lines there, those are the Lynndyl
3 Yard tracks.

4 If you turn to the second page of
5 that exhibit, about 3/4 of the way down the
6 length of that page, there's a faint milepost
7 designation, Milepost 664.15. If you can make
8 that out. That is where the Intermountain
9 Plant spur separates from the mainline, and
10 then it curves away from the mainline and
11 heads off to the power plant.

12 So as that exhibit and UP's
13 exhibit all indicate, the tracks are very
14 close together. In fact, the distance from
15 the mainline to the first yard track is 15
16 feet, which is about the distance from me to
17 your desk there; your dais. The second track
18 is about 15 feet beyond that.

19 Now, the rail industry, as the
20 Board knows, is a network industry. It
21 operates the system in the manner that is most
22 efficient for the network, and in an area like

1 this, where you have three tracks, those
2 tracks will be utilized to handle the trains
3 moving through the area in the manner that is
4 the most efficient and achieves the best
5 throughput given the number, the spacing, and
6 the direction of the trains.

7 The IRR is a standalone railroad
8 designed to operate as a least cost, most
9 efficient railroad, and it does operate in
10 that fashion utilizing all three of those
11 tracks for the traffic that moves through
12 there.

13 The UP's second rationale for why
14 crossover traffic does not share any
15 facilities is that none of the crossover
16 traffic moves over the mainline. IPA's
17 opening evidence RTC model shows that the
18 northbound crossover traffic uses 1.55 miles
19 of the mainline. On its opening, IPA
20 hardwired the RTC model to route all of the
21 southbound crossover traffic through the
22 Lynndyl Yard.

1 It did that as a simplification
2 measure. When UP said that this magically
3 separated the traffic in a manner that there
4 was no sharing of facilities, on rebuttal, IPA
5 went back to its RTC model and allowed the
6 system to use the mainline for southbound
7 crossover traffic if the mainline was
8 available.

9 And in fact, when it was run that
10 way, southbound crossover traffic did use the
11 mainline as well as the side tracks in the
12 Lynndyl Yard. UP, in its RTC model, hardwired
13 it so that all of the crossover traffic in
14 both directions would move through the yard
15 and none would move over the mainline.

16 Of course, that seals their
17 argument that there's no sharing of
18 facilities, but that is not the way the RTC
19 model requires it. It did it that way only
20 because it was told to.

21 In summary, there is no Shipper
22 Three traffic because all of the crossover

1 traffic moving between Lynndyl and Milford
2 shares 1.55 miles of the core facilities, and
3 therefore, qualifies as a Shipper Two for
4 purposes of the Otter Tail analysis.

5 I'd like to turn, briefly, to
6 address two other subjects. The first is a
7 category of traffic that UP has excluded from
8 the traffic group as defined by IPA. And
9 these are premium intermodal trains, referred
10 to as Z-Trains, that move eastbound from LA to
11 either Denver or Chicago.

12 UP argues that these trains should
13 be excluded from the traffic group because the
14 transit time over the Milford to Lynndyl
15 segment of the IRR is longer than UP's actual
16 transit time in its operations. It charges
17 that, as a result, the IRR service would be
18 "significantly inferior" to the service that
19 UP provides.

20 IPA has demonstrated in its
21 rebuttal evidence that the additional time
22 required for transit when IRR handles the

1 traffic through that segment, approximately 30
2 minutes, is not consequential in any manner
3 with regard to the Z-Train traffic, and here's
4 why.

5 Number one, the Z-Train traffic
6 moves from LA, approximately 1400 miles to
7 Denver, and approximately 2800 miles to
8 Chicago. The shippers for that traffic are
9 concerned about the arrival time of those
10 trains at the destination. That's when
11 they're able to get the containers off and to
12 move them on as need be.

13 When you look at the impact of
14 this 30 minutes over that distance, when you
15 compare the transit times for the entire
16 movement from LA to Denver, or from LA to
17 Chicago, it is a truly minuscule number in
18 terms of a percent of the impact on the total
19 transit time.

20 I can't say the numbers because
21 they are confidential, but those percentages
22 appear at Page 21 of the IPA brief.

1 In addition, the Z-Train traffic
2 spends a substantial period of time idling in
3 UP yards awaiting further movement and that
4 time also provides a cushion in terms of any
5 possible impact of that 30 minutes.

6 And the evidence IPA presented
7 also shows a significant interval of time for
8 many containers between train arrivals and
9 further handling of that container, which also
10 provides a further cushion against any impact
11 of that 30 minutes as far as the shipper
12 itself is concerned.

13 The other category of traffic that
14 -- at this point, I will stop and I will add
15 any further comments with my rebuttal unless
16 --

17 CHAIRMAN ELLIOTT: Question first.
18 Mr. Mulvey?

19 COMMISSIONER MULVEY: I want to
20 ask you a question about the Z-Trains. You
21 admit that the Z-Train traffic would take 30
22 minutes longer -- Isn't it the Board's

1 requirement that the service be at least
2 equivalent, if not superior? If that is the
3 case, should we resolve this issue in UP's
4 favor? Because 30 minutes is 30 minutes. It
5 is longer. It's not equivalent in service.

6 MR. LOFTUS: In answering that, I
7 would say two things. First, let me be clear,
8 30 minutes is our number. They have some
9 different numbers and some are lower than
10 that, and some are higher, depending upon what
11 months you use. We compared the IRR's peak
12 week to the UP's peak week. They say that's
13 not right, but we think it is right. That's
14 the apples-to-apples comparison. That's how
15 we get our 30 minutes.

16 As to whether the Board precedent
17 requires that, because it takes 30 minutes
18 longer, game over, the answer is no. The
19 Board does not. It's been addressed in a
20 number of cases. We discussed those
21 precedents in our brief; each of them. You
22 will find that what the Board's really saying

1 is, and it uses these precise words in some of
2 the cases that, you have to demonstrate that
3 you're going to meet the shipper's needs.

4 And the situations where the Board
5 has disallowed things that a complaining
6 shipper tried to do with a standalone railroad
7 are things like making all the trains a
8 uniform length of 115 cars on the standalone
9 railroad, when in fact, many of the trains are
10 90 or 95 cars long on the railroad, and that
11 was CSX.

12 Three other cases also found the
13 train length to be a problem. In another
14 case, the standalone railroad set a limit of
15 115 cars per train, but yet, the actual
16 operations by UP, the railroad in that case,
17 had a lot of trains that were longer than
18 that, so the Board would not accept 115.

19 Those significant changes that
20 impacted operations, or contract requirements,
21 and as the evidence we presented demonstrates,
22 there is no significant impact in terms of the

1 needs of the shipper, which, as I mentioned,
2 relates to the movement from LA to Denver. We
3 don't have another case like this in the
4 precedents where you are looking at a time
5 difference.

6 In most of the standalone cost
7 cases, it hasn't been an issue because it was
8 clearly longer, even when you take into -- or
9 shorter, even when you take into
10 consideration, the interchange times. Thank
11 you.

12 VICE CHAIRMAN BEGEMAN: If I could
13 just continue with Frank's question, which was
14 a question I had as well. So you're suggesting
15 30 minutes is a non-issue. What would be an
16 issue? At what point do you tip the scale too
17 far? And I'd also like to know how you were
18 able to determine that it's the shipper's view
19 that 30 minutes is a non-issue.

20 MR. LOFTUS: Well, our basic view
21 on whether the shipper would see it as an
22 issue has to do whether the shipper would even

1 be aware of it. In the evidence that we have
2 presented indicates that the shipper would
3 not, that it would be -- that the performance
4 that the shipper encountered would not be
5 affected by the differential and the time
6 because there are various other periods that
7 occur in the chain of railroad handling of the
8 containers before they get to the shipper that
9 would more than absorb that 30 minutes.
10 That's the point there.

11 As to where do you draw the line,
12 if not 30, you know, how much is it? I can't
13 honestly say I have an answer for that, but it
14 would truly have to be, I would say, at least
15 two or three times that before it would have
16 an impact.

17 COMMISSIONER MULVEY: Following up
18 on the consequential resource significance of
19 a number, does an overlap really exist between
20 the IRR and in UP at Lynndyl? I mean, aren't
21 you creating an overlap where one doesn't
22 exist, even under your own RTC modeling? Your

1 argument says only 2 of 65 trains in a 7-day
2 modeling period have any overlap at all.

3 So this is a tiny amount. You say
4 the 30 minutes for the Z-Trains is a tiny
5 amount. So why is that amount not significant
6 and why is the timing amount sufficient to
7 avoid the cross-subsidy analysis that UP
8 proposes?

9 MR. LOFTUS: Well, the Board's
10 conceptual framework for the cross-subsidy
11 analysis is clear. You have core facilities.
12 Those are the facilities that are utilized by
13 the complaining shipper. If another shipper
14 uses core facilities and other facilities,
15 then it is Shipper Two. This traffic, when it
16 is handled in the way an efficient railroad
17 would handle it, would utilize all three
18 tracks, the mainline and the R tracks, to
19 handle the trains moving over this segment,
20 regardless of whether a crossover or -- well,
21 the issue traffic will all move on the
22 mainline regardless, because it peels off.

1 But you refer to only a few of the
2 southbound, but all of the northbound
3 crossover trains move over the mainline at
4 Lynndyl under the RTC model. So there is a
5 significant amount of the crossover traffic
6 that moves over the mainline. In addition, we
7 believe that it is a false distinction to
8 claim that the track yards in the mainline are
9 not the same rail facility in the context of
10 the Board's analysis of cross-subsidies.

11 COMMISSIONER MULVEY: Thank you.

12 CHAIRMAN ELLIOTT: One follow-up
13 question. Let's say, hypothetically, by your
14 argument against UP's Otter Tail cross-
15 subsidization argument, what if, instead, we
16 went to the light density line and did a PPL
17 cross-subsidy analysis, and we exclude the
18 1.55 miles, would the Board be correct in
19 looking at it that way as opposed through the
20 Otter Tail analysis that UP proposed?

21 MR. LOFTUS: Well, what I'm
22 hesitating about is, when you say eliminate

1 the -- you know, clearly, a PPL analysis could
2 be done. We don't believe there is any PPL
3 Montana cross-subsidy threshold, cross-subsidy
4 concern. The UP would have the burden of
5 showing same if there is under the Board
6 precedent, and we don't believe that they
7 have.

8 They have presented a template, if
9 you will, which we have problems with, which
10 we pointed out in our filings, but we believe
11 that such an analysis would show that there's
12 no threshold cross-subsidy concern with this
13 system.

14 CHAIRMAN ELLIOTT: Okay. Thank
15 you.

16 MR. LOFTUS: Thank you.

17 CHAIRMAN ELLIOTT: Thank you.
18 Counsel for Union Pacific. You have 20
19 minutes.

20 MR. ROSENTHAL: Thank you, and I
21 plan to refer to some slides that I have.
22 Good morning. Just to begin with, you know,

1 gentlemen, you have it exactly right that you
2 can do a PPL cross-subsidy test, we did it,
3 and the evidence is in the record. The issues
4 that IPA had with it were some minor issues
5 about how you allocate some particular types
6 of costs, you know, G&A-types costs; taxes.

7 But the critical point, the really
8 critical point, is that this Otter Tail case
9 and the Shipper Three was really a function of
10 that case. There was this Shipper Three in
11 Otter Tail that didn't share any of the
12 facilities with the issue traffic, and BN had
13 argued to take out that traffic, and the Board
14 said, no, we're going to leave it in and
15 explain it.

16 But the Board realized that the
17 situation presented an important point about
18 taking the PPL Montana test to the next step,
19 and I'm going to talk about that in more
20 detail, but that next step applies to the PPL
21 Montana test. It really has nothing to do
22 with whether there's Shipper Three traffic or

1 whether there isn't.

2 I mean, it's interesting the way
3 they designed the SARR with this tiny overlap,
4 if any overlap, to try to include all this
5 traffic, and I'd like to talk about their
6 design and how that was used to create a
7 cross-subsidy. But whether there is an
8 overlap or isn't an overlap really is
9 irrelevant to applying this second step of
10 Otter Tail.

11 The economic theory behind it
12 works whether or not there is this Shipper
13 Three that doesn't share facilities. So I
14 don't really want to make such a big deal of
15 it because the economic point is that, if
16 you're going to apply that PPL test and draw
17 a line, you have to have the segment that's
18 self-sustaining in a contestable world.
19 That's what the second half of that Otter Tail
20 test says.

21 And again, it's where you draw the
22 line for the PPL test, you can draw it

1 anywhere you want on the issue route. You
2 don't have to include all of the core
3 facilities. And you would apply the test in
4 the same way whether there is or isn't a
5 Shipper Three. It would apply to the Shipper
6 Two traffic.

7 So the overlap is interesting for
8 the SARR design, but ultimately, it's not
9 determinative of how you apply that second
10 level cross-subsidy test. And I really do
11 want to spend most of my time addressing the
12 issue that the Board put in its oral argument
13 notice, whether IPA's SAC model includes an
14 improper cross-subsidy and whether the Board
15 should apply the modified test that we
16 proposed.

17 You know, our proposal is a
18 logical extension of the Board's reliance on
19 ATC to allocate crossover revenue when looking
20 at cross-subsidies. And we think it would
21 greatly simplify SAC cases by reducing the
22 incentives that shippers have to extend their

1 SARRs in order to create cross-subsidies in
2 their favor. We think that would ultimately
3 reduce the benefits on the parties and the
4 Board in these types of cases.

5 But I want to begin, briefly, by
6 talking about some of the revenue and cost
7 evidence in this case, because if you hold IPA
8 to your established standards of proof, you're
9 not going to need to address the other issues,
10 because standalone revenues don't exceed
11 standalone costs, and the case would end
12 there.

13 And this case should end there
14 because IPA's evidence substantially
15 overstates SARR revenues and understates SARR
16 costs. One of the issues was these Z-Trains,
17 which IPA assumes the SARR is going to pick up
18 at Milford, bridge over its line, and hand it
19 back to UP at Lynndyl, and it assumes it's
20 going to get this revenue even though it's not
21 matching UP's transit times.

22 Another, perhaps even more

1 important, example was when IPA started out
2 its case by assuming that UP would pick up
3 some traffic that was on the SARR and hand it
4 over to IPA in exchange for this really tiny
5 fee, where IPA then, on rebuttal, changed its
6 method of operation.

7 And there are a number of places
8 where IPA also understates SARR costs, you
9 know, through their counts of locomotives,
10 their fuel assumptions, the number of
11 employees, their salaries, and IPA implicitly
12 admitted many, many of these problems on
13 rebuttal by submitting entirely new evidence
14 in attempt to address them.

15 And the rules say that the Board
16 shouldn't consider this new material. The
17 Board's rules are designed to deter this kind
18 of catch-me-if-you-can litigation, but even if
19 you could consider it, you shouldn't. You
20 know, IPA's tactics in putting in this
21 evidence on rebuttal deprived UP of a fair
22 opportunity to reply, but we discovered some

1 serious problems, even in the short time that
2 we had to prepare our brief, and, you know, we
3 could have addressed them in much more detail
4 if IPA had followed the rules and submitted
5 its evidence in its opening statement so that
6 we could have addressed them on reply,
7 including these Z-Train issues that Mr. Loftus
8 spent some time on.

9 And I'm happy to come back to
10 these points and talk about the specific ones,
11 but I do want to make sure I talk about the
12 cross-subsidy issue. And the cross-subsidy
13 issue flows from the way that IPA designed its
14 SARR and selected its crossover traffic. And
15 this case provides an unusually clear
16 illustration of how shippers can undermine the
17 SAC test by using crossover traffic to create
18 cross-subsidies in their favor.

19 So how did IPA create a cross-
20 subsidy? Well, as you know, this is IPA's
21 second challenge to UP's Provo to Lynndyl
22 rates. In the first case, they also

1 challenged UP's rates from two origins east of
2 Provo; the Skyline Mine and the Savage Coal
3 Terminal.

4 And in the first case, I'm going
5 to try to go to my slides now, IPA replicated
6 UP's route from Price to Provo, and then it
7 went on from Provo to Lynndyl, and then it
8 added this segment south of Lynndyl to
9 Milford, even though its trains really, you
10 know, don't move south of Lynndyl.

11 Now, the first time around, IPA
12 made a mistake in its ATC calculations. UP
13 pointed out that IPA couldn't win once the
14 mistake was corrected, and after some back and
15 forth, IPA wound up dismissing that case and
16 filing a new complaint. So what's the
17 difference between the first case and the
18 second one? This is really killing the drama.
19 There we go.

20 The only major difference is that
21 IPA amputated the portion of its SARR from
22 Price to Provo, which meant it had to drop its

1 challenge to UP's rates from Skyline and
2 Savage. So now, IPA's SARR replicates UP's
3 route from Provo to Lynndyl, you have this,
4 again, long segment from Lynndyl to Milford,
5 doubling the SAR, even though the trains don't
6 move over it.

7 And, you know, this was curious to
8 us because shippers complain that the SAC test
9 is too expensive and too time-consuming, and
10 then you had somebody bring a case, abandon
11 two mines where they could possibly get
12 relief, and then build a SARR twice as long as
13 necessary. So why did they do this? There
14 are two reasons.

15 First, IPA recognized that the
16 SAR's cost to build and operate the Price
17 segment would be much greater than the SAR's
18 revenue allocation for the segment. The Price
19 segment was dragging the SARR down, and IPA
20 didn't need to build the segment to still get
21 some revenue credit when traffic that moved
22 over that segment moved over the Provo to

1 Lynndyl segment, and from Lynndyl to Milford.

2 Second, because the SARR no longer
3 included the Price segment, the extra
4 contribution from this higher density Milford
5 segment didn't have to be distributed over the
6 Price segment. It could go back to the Provo
7 to Lynndyl segment. And the reason that IPA
8 built this Milford segment is, basically, the
9 reverse of the reason for not building the
10 Price segment.

11 It's inexpensive to construct and
12 operate relative to the revenue they're
13 allocated. And this is what I was talking
14 about when I said that shippers can undermine
15 the SAC test to the SARR design and traffic
16 selection process. The issue traffic in this
17 case doesn't use either the Price segment or
18 the Milford segment.

19 So IPA could choose whether or not
20 to build them, and they chose to build a
21 profitable Milford segment, even though their
22 traffic really doesn't use it, and really,

1 most of the traffic on that doesn't share any
2 facilities with their traffic, and they didn't
3 build the Price segment, even though,
4 actually, most of the traffic on that segment
5 does share facilities with their traffic.

6 And, you know, this was a choice.
7 Shippers do the math before they settle on
8 their SARR design. They figure this out. And
9 absent some major miscalculation, a shipper is
10 never going to build more than the core
11 facilities unless there's some benefit to be
12 gained from gaming the revenue allocation
13 process.

14 And usually, railroads couldn't
15 prove this. We'd have to go build a longer
16 SARR to make our point, and there'd be all
17 sorts of disputes about whether we'd done it
18 or not. But in this case, there really can't
19 be a dispute about what happened because IPA
20 built the SARR in the first case. It tried to
21 build a low-cost SARR and it didn't have a
22 winning case. So we can see what happens when

1 you choose between building and using the
2 revenue allocations.

3 So now, in one sense, this is a
4 crossover traffic problem, but in the very
5 important sense, it's a cross-subsidy problem,
6 because what's happening here is, IPA is using
7 revenue from the Milford segment to subsidize
8 reductions in its own rates. And the Board's
9 current internal cross-subsidy test isn't
10 sensitive enough to fully address this issue,
11 and that's why we proposed our new test.

12 So to explain it, we did -- let me
13 go back and look at the Milford segment, and
14 basically, there are two types of traffic that
15 are moving over the Milford segment, some of
16 the traffic, mostly coal, sharing -- also
17 moves over the Provo to Lynndyl segment, like
18 the issue traffic. That's the light green.

19 The other traffic, which is mostly
20 intermodal traffic, never moves over the Provo
21 to Lynndyl segment. IPA designed the SAR,
22 again, to bridge this traffic between Milford

1 and Lynndyl, and it hands the traffic back off
2 the UP. And it was the second traffic that
3 made us pause.

4 So in our reply evidence, we
5 showed how the Board would apply the PPL
6 Montana internal cross-subsidy test to see if
7 IPA created a cross-subsidy that favored the
8 issue traffic, and we illustrated this test
9 using IPA's opening evidence. Our evidence
10 said you shouldn't even get to this point
11 because revenues don't exceed costs, so we
12 used IPA's evidence.

13 And we applied the internal cross-
14 subsidy test to test the portion of the SARR
15 from Provo to a point just north of Lynndyl,
16 where Mr. Loftus' map showed the lines, you
17 know, just came together, and we did that so
18 that we were cutting off any argument about
19 whether this intermodal traffic was in or out.
20 We picked a spot where it was out.

21 And essentially, you perform the
22 Board's test by assigning all of the SARR

1 revenue from any traffic that moves over the
2 segment we were testing, that north segment,
3 and determine whether those revenues exceed
4 the traffic's attributable costs, which are
5 the costs to build that segment, and then the
6 variable costs of operating south of it.

7 If revenues don't exceed the
8 attributable costs, there's plainly an
9 impermissible cost-subsidy. It means that
10 that segment, which isn't a necessary part of
11 the route for the issue traffic, isn't self-
12 sustaining. It's not self-sustaining, and
13 that's why the shipper lost in PPL Montana and
14 Otter Tail.

15 But even if revenues exceed costs,
16 which they did in our illustration, there's an
17 important second step that's also directed to
18 detect and prevent cross-subsidies, and the
19 Board described this test in Otter Tail where
20 it said that the internal cross-subsidy test
21 also establishes the limits on potential
22 relief.

1 So we calculated that limit on
2 relief, and what you do is, you apply the
3 Board's maximum mark-up methodology to the
4 results of the first step of the PPL test; of
5 the internal cross-subsidy test. And that
6 produced the rates that you see in the third
7 column here, which is from our reply evidence.
8 And again, this is all based on IPA's opening
9 evidence. By IPA's reply, they had agreed that
10 their RVCs needed to be much higher, but we
11 were using IPA's opening evidence because
12 that's what we had at the time.

13 And essentially, these ratios
14 establish the limits on potential rate relief.
15 And you can see those are higher than where
16 IPA had calculated at the time was the maximum
17 in all years but, I think, 2013. And what
18 that means, what this notion means, is that,
19 you can't take traffic from south of the line
20 that we drew and use it to prescribe rates
21 overall that are lower than these rate levels
22 or else it would also be creating a cross-

1 subsidy.

2 Now, why is that? It's because
3 the Board recognized in Otter Tail that if
4 rates were set any lower after application of
5 the whole SAC test to the entire SAR, and you
6 came up with lower rates, then if you applied
7 the internal cross-subsidy test again to the
8 nearest segment using those new rates, you'd
9 fail the test.

10 So in other words, the Board would
11 have been setting rates at a level that would
12 have created a cross-subsidy, and that was
13 what the Board -- that was, sort of, the
14 insight in Otter Tail, that you can't set
15 rates so low after applying your own cross-
16 subsidy test to the whole SAR, that you create
17 any portion of the SARR that's not self-
18 sustaining in a contestable world.

19 That was Otter Tail and that has
20 nothing to do with whether there is or isn't
21 a Shipper Three, that's just applied to the
22 results of the first step of the Board's test.

1 And in our illustration, again, application of
2 the Board's current test confirmed that IPA's
3 SAC model had at least some impermissible
4 cross-subsidy because the SAC test performed
5 on the entire SARR produced rate levels below
6 the limits on potential relief.

7 But we looked at this and we
8 thought, why does the current test assign all
9 SARR revenues from any traffic that touches
10 the segment north of the line to that segment?
11 Isn't it likely that some of this revenue is
12 really needed to support the fixed costs at
13 other segments south of the line, or maybe
14 someplace entirely off the SARR all together?

15 And the Board's current test makes
16 sense in light of its history. When the Board
17 adopted this test in PPL Montana, it didn't
18 really have a revenue allocation method that
19 it was confident in using to allocate revenues
20 on a geographic basis. It was using a
21 modified mileage prorate to allocate crossover
22 revenues.

1 But now the Board uses ATC, and
2 the Board has said that ATC is the best method
3 of allocating crossover revenues by geography
4 short of performing a full SAC test. That's
5 the whole purpose of ATC and the Board places
6 tremendous confidence in ATC. It's used to
7 allocate crossover revenue between on-SARR and
8 off-SARR segments, and those allocations are
9 hugely important in SAC cases.

10 In every modern rate case, the
11 revenues from crossover traffic dwarfs the
12 revenues from issue traffic. If ATC isn't
13 doing its job, then the results in all of
14 these SAC cases are meaningless. So why not
15 use ATC when testing the SARR for internal
16 cross-subsidies? If it's good enough to
17 allocate revenue between on-SARR and off-SARR
18 segments to perform the SAC cross-subsidy
19 test, why isn't it good enough to allocate
20 revenue within the SARR to perform the
21 internal cross-subsidy test?

22 The Board has said that the

1 internal cross-subsidy test is just as
2 important, just as mandated by the guidelines.
3 If a railroad isn't allowed to rely on cross-
4 subsidies, neither is the shipper in
5 challenging the rates.

6 We think it has to be the case.
7 If you're going to use ATC in one case, you
8 have to use it in the other. You can't have
9 separate sets of rules applying to cross-
10 subsidies created by railroads and cross-
11 subsidies created by shippers. And adopting
12 our test would have, you know, pretty
13 substantial benefits.

14 If ATC is accurately allocating
15 crossover revenues to prevent subsidization,
16 then its use in the internal cross-subsidy
17 test would make that test much more effective,
18 much more accurate. Second, if you can more
19 accurately identify these internal cross-
20 subsidies, there'd be much less of an
21 incentive to engage in what we saw here; the
22 building of, literally, extra SARR facilities

1 in an attempt to take advantage of these types
2 of internal cross-subsidies.

3 You know, IPA had argued in their
4 rebuttal that, you know, what we're really
5 doing is restricting the SARR to replicating
6 its own core facilities. We're sort of
7 saying, you know, in future cases, you could
8 never do more than build Provo to Lynndyl.
9 That's not exactly right.

10 The law acknowledges that the SARR
11 still gains from building all the way down to
12 Milford, there are the costs of interchange at
13 Lynndyl that you'd have to take into account,
14 they get those efficiencies, the SARR could
15 still build from, you know, origin to
16 destination to handle the issue traffic, but
17 in most cases, the results under our test
18 would probably be close to what you'd get if
19 you confine a SARR to its core facilities.

20 But we don't see anything wrong
21 with that and we don't think the Board should
22 either, because it already uses ATC to

1 allocate revenues when testing for cross-
2 subsidies, and it's fair to both sides. The
3 same rule applies when testing the railroad
4 for cross-subsidies, and when testing the
5 shipper's SARR for cross-subsidies.

6 I just want a minute on equity
7 flotation costs. The issue there is really
8 very straightforward. These are just costs of
9 raising equity. If you go out into the market
10 and you need to raise equity, you need to pay
11 Goldman Sachs, or whoever you do it, to raise
12 the equity. It's just like when a SARR goes
13 out, has to design the SAR, you've got to pay
14 the engineer to do the design costs.

15 Here, IPA's capital structure
16 assumed a certain amount of equity, we went
17 out, we looked and we said, because the Board
18 has said railroads haven't had enough evidence
19 in what these costs are, we looked at a bunch
20 of transactions of about the same size, in the
21 same time period, we came up with what the fee
22 is for raising equity, and we put it in there,

1 and we think that's a cost that the Board
2 should clearly include.

3 Again, the same as designing a
4 railroad, it's a cost that the SARR incurs to
5 get up and running, and, you know, under the
6 Board's rules, we presented, you know,
7 feasible, realistic evidence. IPA has
8 nothing. They came up with some excuses about
9 why our evidence wasn't good enough, but
10 that's too late. Under the Board's rules, if
11 they don't address an issue like this on
12 opening, and we present a feasible, realistic
13 alternative, you know, under the Board's
14 rules, again, the Board has to use our
15 evidence, and we think it's accurate.

16 We think it's accurate. This
17 isn't a matter of game playing. This is
18 something that's been excluded, I think, for
19 too long from the costs of building a SAR.

20 COMMISSIONER MULVEY: Thank you.
21 I know that we set focus in this hearing on
22 ATC, and crossover traffic, and the like, but

1 I would like to turn back to an earlier part
2 of your testimony, your evidence, which deals
3 with some of the specifics, some of the cost
4 drivers which your numbers involved, if you
5 would focus on some of the more important ones
6 and there I'm talking about wages, salary
7 streams, overhead -- et cetera.

8 What you're saying that the
9 purpose of the standalone cost test is to
10 design a railroad that is efficient. And I
11 think you're making the charge that they've
12 gone over -- that IPA went over that and went
13 beyond efficiency and created, in some ways,
14 a cost structure that was unrealistic. Do you
15 want to comment on that and focus on what you
16 think were the more important factors that
17 were understated?

18 MR. ROSENTHAL: Sure. Well, I
19 think that's right. We have a number of
20 comparisons throughout the test, throughout
21 our evidence, that show where, in this, you
22 know, particular case, they've gone, you know,

1 by looking at some ratios, they've gone, sort
2 of, far beyond what the Board has accepted in
3 other cases.

4 I think one of the big examples
5 here, actually, maybe they're related, the
6 number of locomotives and the amount of fuel
7 on the cost side, you know, essentially, what
8 they've done is, they said, for the IPA issue
9 traffic, you know, let's assume we have, you
10 know, we didn't put three, we disagree whether
11 it's three or four trains, we think it's four,
12 they think it's three, let's say we have three
13 trains, we've got to operate them 220 days of
14 the year, you know, that's, you know, 0.6 of
15 a year, so we need 0.6 times three trains
16 because it takes a, you know, one-day round
17 trip.

18 You know, meanwhile, they're
19 assuming that these locomotives are going to
20 be ready to move their issue coal back and
21 forth on call, they assume they're going to
22 have these locomotives, but they don't provide

1 enough locomotives so that it is available, so
2 that's one big area where they've understated
3 costs.

4 They then try to look at the fuel
5 for these locomotives and they say, you know,
6 we're going to operate them faster, we're
7 going to operate our trains faster than UP
8 operates their trains, and yet, somehow, we're
9 going to, you know, burn less fuel. So I
10 mean, those are a couple of the, actually,
11 pretty sizable ones that matter.

12 You know, again, there are a
13 number of places where they assume that they
14 can, you know, do maintenance using only two
15 crews, you know, or two teams, to cover very
16 long distances; longer than in prior case.
17 You know, we've gone through a lot of them,
18 but, you know, the troubling thing here is
19 that this has been, sort of, a catch-me-if-
20 you-can-type of litigation.

21 You know, there are places where
22 we've come and we've said, look, you know, you

1 say you use one ratio, you're going to justify
2 the fringes and benefits based on all of the
3 railroads, you know, and it's 41 percent, and
4 we come back and we say, well, actually,
5 that's okay, but the real number is 44
6 percent. And then they come in and they say,
7 oh, well, you know, if you just look at BN and
8 KCS, you know, it's 42 percent.

9 You know, there are a number of
10 those, and, I mean, that's okay. There's some
11 back and forth, and I'm not meaning to be too
12 critical, but I would really urge the Board to
13 apply its evidentiary rules. They really are
14 pretty clear and they're meant to prevent this
15 sort of thing.

16 COMMISSIONER MULVEY: But it's
17 also true that the IRR would be using newer
18 more fuel-efficient locomotives and so, if you
19 use the UP average, which would be an older
20 set of locomotives, they would be using new
21 ones in a single startup company, one could
22 assume that the railroads would have new

1 locomotives, they'd be more fuel-efficient,
2 and perhaps, more powerful as well?

3 MR. ROSENTHAL: Well, I mean, I
4 don't know. I don't know. I mean, they're
5 trying -- you know, I guess there are two
6 things. One, there's no evidence of that.
7 They speculate in there that, well, maybe we'd
8 be using more efficient locomotives, but the
9 other point is, under their plan, you know,
10 they're not just using their own locomotives,
11 and this is part of this, how many locomotives
12 they have.

13 They're assuming they're going to
14 get locomotives from other people. They're
15 sending some locomotives offline and other
16 locomotives are coming online, so they're also
17 going to get a mix of locomotives on their
18 network, so they can't say that they're always
19 going to have new stuff. And they tried this,
20 you know, new SARR thing in some of these
21 maintenance costs as well.

22 They said, oh, we're going to

1 have, you know, great track, you know, we only
2 have to worry about, you know, a little bit of
3 maintenance, a little bit of ditch digging,
4 ditch clearing, whatever, and they had a
5 witness who said, oh you know, I worked on --
6 again, on rebuttal. They put this guy in on
7 rebuttal. Said, oh, I worked on, you know,
8 work beat when it was formed and we didn't
9 really have high maintenance costs, but the
10 costs here actually have to be over the ten-
11 year SARR period.

12 We're looking at the peak period,
13 and one of the problems with looking at this,
14 you know, new railroad is that, you can't just
15 look on day one. You know, we're talking
16 about its operations ten years out when it's
17 no longer quite so new. So, you know, that
18 explanation doesn't quite cut it for those
19 costs either.

20 COMMISSIONER MULVEY: Thank you.

21 CHAIRMAN ELLIOTT: A quick
22 question. Going back to the beginning of your

1 argument with respect to your PPL analysis.
2 How did that analysis play out versus your
3 argument, you know, I guess, Otter Tail-type
4 argument? I mean, what were the comparisons?

5 MR. ROSENTHAL: I'm sorry. I'm
6 not sure I understand what you mean. You
7 know, we did --

8 CHAIRMAN ELLIOTT: I mean, as I
9 understand it, in your analysis, IPA, based on
10 your cross-subsidy analysis, would lose, is
11 that right?

12 MR. ROSENTHAL: Well, no.
13 Actually, no. I mean, again, first, I have to
14 say that we were doing this test based on
15 IPA's opening evidence. We were trying to
16 illustrate this.

17 CHAIRMAN ELLIOTT: Okay.

18 MR. ROSENTHAL: You know, it was
19 for illustrative purposes only. We don't know
20 how it would play out because a lot of this
21 depends on things like what traffic,
22 ultimately, is in the analysis at the end of

1 the day, and what are the costs.

2 CHAIRMAN ELLIOTT: Sure.

3 MR. ROSENTHAL: So all that's
4 going to matter. But what we showed was that,
5 if you apply just, sort of, the standard
6 Board's PPL analysis, that first step wouldn't
7 have kicked the case out. IPA would not have
8 lost. There was not a cross-subsidy.

9 But what we showed, and what I was
10 illustrating with that chart with the three
11 columns, if you then, again, using just the
12 standard, you know, not using ATC, but the
13 Board's standard analysis, with the Otter Tail
14 insight that this test also has to serve on a
15 limit of relief, then we showed that there
16 would be a limit, and the limit would be
17 higher than you'd get after running the full
18 SAC test, which I think -- which shows a
19 cross-subsidy.

20 It shows that you couldn't really
21 sustain those lower SAC rates. Again, I mean,
22 that test, it doesn't mean they would lose, it

1 means that the maximum amount received would
2 be slightly higher than if you did the full
3 SAC test. Now, again, even applying -- and we
4 have another chart in there in our reply which
5 shows what would happen if you used our ATC
6 version, and it's similar.

7 IPA doesn't lose in our analysis,
8 you don't get the result in PPL and Otter
9 Tail, they don't get kicked out, but when you
10 apply the second test, again, the maximum RVCs
11 are higher, so there's, you know, a cross-
12 subsidy. How well those RVC numbers play out
13 after the traffic, I can't tell you, but in no
14 case does it say that they absolutely lose in
15 our examples.

16 In our examples, there's still a
17 rate reduction, it's just less than you'd get
18 if you applied the SAC test without accounting
19 for these cross-subsidies.

20 CHAIRMAN ELLIOTT: Thank you.
21 That does answer my question.

22 COMMISSIONER MULVEY: I have one

1 other question. IPA says that your crossover
2 traffic proposal is, in fact, a movement-
3 specific adjustment which runs counter to the
4 Board's directives. Does your approach
5 require a movement-specific adjustment to the
6 IRR overhead traffic in a way that violates
7 the spirit of the Board's precedents on such
8 adjustments?

9 I mean, your approach does require
10 modifying, for example, train lengths, empty
11 car return ratios, and train type, et cetera,
12 isn't that right?

13 MR. ROSENTHAL: Well, it's a
14 slightly different issue. A crossover
15 proposal is just an application of the PPL
16 test. We also had suggested some changes.
17 You know, again, we think if the Board is
18 going to use ATC to test cross-subsidies that
19 the railroad creates, it ought to test cross-
20 subsidies the shipper creates.

21 We think there are improvements
22 that could be made to ATC and we were, you

1 know, frankly, motivated by some of the
2 Board's suggestions in the APCO case about
3 ways that you might modify ATC to reflect the
4 characteristics of the movements, you know, as
5 they operate over the SAR, and we would be
6 making changes to URCS.

7 You know, I don't think they're
8 movement-specific URCS. I think we're really
9 modifying ATC. You know, ATC already breaks
10 up the cost of the traffic into separate
11 buckets. You're already departing from URCS.
12 You're taking out interchange costs and things
13 like that, so I see it really as a
14 modification to ATC, and that really is a
15 movement-specific cost.

16 COMMISSIONER MULVEY: Okay. So
17 you're saying, basically, it's a cost
18 allocation issue and it's not really a
19 movement-specific adjustment.

20 MR. ROSENTHAL: I think it's an
21 adjustment to ATC, which is already -- you
22 know, which is using URCS, but I wouldn't

1 really consider it a movement-specific
2 adjustment. The other point is, one of the
3 things that has troubled the Board in the past
4 about movement-specific adjustments is that,
5 you're changing the cost allocation of a
6 particular movement.

7 And the way our methodology works,
8 we're not changing the costs of any movement.
9 Again, we're re-allocating the costs within
10 the movement, so the totals still add up. You
11 know, we haven't changed the costs of any one
12 movement. We're shifting the costs to reflect
13 the operations over the segment the SARR is
14 replicating.

15 COMMISSIONER MULVEY: One more
16 general question. Aren't the railroads really
17 advocating, and I know you're speaking for
18 Union Pacific, but railroads in general, are
19 advocating that crossover traffic should not
20 be included in the analysis, and so, how does
21 that square with the Board's recent and
22 historic precedent about crossover traffic?

1 MR. ROSENTHAL: Okay. You know,
2 if I thought I could come up here and win with
3 an argument for excluding crossover traffic,
4 I'd make it, but, you know, we've gone through
5 715, we've talked about ATC, the Board seems
6 committed to using ATC, and now what we're
7 saying is, you know, if you're going to use
8 ATC to test for cross-subsidies when it's, you
9 know, the railroad that's accused of creating
10 a cross-subsidy, you ought to use it when
11 you're testing for cross-subsidies that the
12 shippers are trying to create through their
13 standalone railroads.

14 So, you know, I got to work within
15 the Board's rules. If you're willing to toss
16 crossover traffic out, that would be great.
17 We submitted evidence that showed the results
18 of the case if you're inclined to go that way,
19 and, you know, that's in the record too, so
20 you could go that way.

21 We also submitted evidence that
22 addressed the other Board proposals in ex

1 parte 715, the idea of only including train
2 load traffic as crossover, or requiring them
3 to originate or terminate the traffic. The
4 evidence is in there if you're inclined to go
5 that way, but if you're going to, you know,
6 stick with the current formulation, at least
7 for now, until we can convince you otherwise,
8 we've got an ATC-based test that we think it
9 fair to both sides, and an improvement over
10 the Board's current test.

11 COMMISSIONER MULVEY: Thank you.

12 CHAIRMAN ELLIOTT: Thank you, Mr.
13 Rosenthal. And I think you have five minutes
14 on rebuttal.

15 MR. LOFTUS: Thank you. I'd like
16 to be clear about what's going on here with
17 the UP's ATC proposal for cross-subsidy
18 purposes. Standalone costs require grouping
19 for captive shippers to have any hope
20 whatsoever of sharing in the economies of
21 scale, scope, and density available to the
22 incumbent railroads.

1 Crossover traffic in Otter Tail
2 was described by the Board as an indispensable
3 part of standalone cost cases at this juncture
4 if shippers are going to have a chance at all
5 to get any relief. Mr. Rosenthal makes it
6 sound like, oh, happy day. You know, when the
7 Board developed its cross-subsidy analysis, it
8 didn't have an ability to allocate revenues
9 well, and that was a limitation on what it
10 could do.

11 But we now have ATC, so now you
12 can do what the Board really wanted to do all
13 along. That's not true at all. What the
14 Board did in the cross-subsidy analysis is, it
15 said that Shipper Two traffic, traffic that
16 uses core facilities and also secondary
17 facilities, that traffic, the contribution can
18 all go to sharing the costs of the core
19 facilities for the shipper.

20 What they're proposing now is that
21 you take Shipper Two traffic, and instead of
22 allowing all the contribution to go to the

1 offset costs on the core facilities, that you
2 divide the contribution between the core
3 facilities and the secondary facilities. The
4 Board did not have anything like that on its
5 mind in Otter Tail.

6 If you look at Page 10, and I'm
7 going to read a quote, they're talking about
8 the sharing of Shipper Three, you can have
9 Shipper Three because they can at least offset
10 costs on the secondary facilities, even though
11 they can't offset costs on the primary
12 facilities.

13 The Board said, "Even if the
14 revenue contribution from Shipper Three were
15 sufficient to cover the entire capital cost of
16 the secondary facilities, then all of the
17 revenue from Shipper Two could be used to
18 share the expenses of the core facilities that
19 would not entail a cross-subsidy."

20 So the Board wasn't thinking
21 about, you know, trying to divide up the
22 contribution from the Shipper Two traffic

1 between the core facilities and the non-core
2 secondary facilities. The ATC system was
3 devised for an entirely different purpose. It
4 uses an entirely different universe of costs.

5 ATC relies on the incumbent's
6 system average costs. It relies on the
7 incumbent's traffic densities in the real
8 world. The cross-subsidy analysis, you look
9 at PPL and you look at Otter Tail, it relies
10 on the SAC from the bottom-up costs, and it
11 excludes the non-attributable costs.

12 So it's a different universe of
13 costs that are used for making the division.
14 My time is short and I want to hit a couple of
15 other things quickly. We did not, in some
16 underhanded fashion, design this system to
17 create the overlap. The issue traffic moves
18 over the UP mainline down this 1.5 miles.
19 There's no other way to get that issue traffic
20 to where it's going without going over that
21 segment.

22 The first through change point on

1 the UP after that is Milford and there are
2 good operational reasons for using that as a
3 stopover point. I don't want to go beyond my
4 time; be happy to answer any questions.

5 COMMISSIONER MULVEY: No.

6 VICE CHAIRMAN BEGEMAN: Just one
7 question. Since you requested that we hold the
8 hearing, was there one particular aspect that
9 you wanted to convey to us that you didn't
10 feel was adequately conveyed in the record, or
11 did you just want to provide the overview that
12 you've been able to do so far?

13 MR. LOFTUS: Thank you for that
14 question. There are a couple of things that
15 I would like to mention very briefly. Sorry
16 for taking so long. I'm trying to find the
17 reference I was looking for. There are two
18 points with regard to the UP local traffic
19 that Mr. Rosenthal had mentioned in his
20 remarks.

21 And with regard to that traffic,
22 there were two points that UP raised on its

1 brief about IPA's evidence. It said that IPA
2 had ignored the need to provide empty cars for
3 the movement of the local traffic in its
4 evidence, and that is not correct, and I would
5 just simply direct the Board to IPA Rebuttal
6 Work Paper Local RTC Trains.xlsx, which
7 reveals that there were a number of empty cars
8 sufficient to handle the loads delivered to
9 each origin.

10 UP also suggested that IPA failed
11 to include all of the local trains that UP
12 moves in the real world, and that is true, but
13 the reason was that IPA did not put all of the
14 local traffic that UP actually hauls on that
15 segment on to its system. And IPA put on a
16 number of trains adequate for the traffic it
17 handled.

18 It did use actual start times for
19 the trains that the UP ran. There was -- I
20 don't think I made reference to the
21 confidential work paper, that reveals one of
22 the important elements of our explanation that

1 the half-hour difference in transit time over
2 the Milford to Lynndyl segment would not
3 really have a meaningful impact on the
4 shippers from the LA origin to the
5 destination.

6 That highly-confidential exhibit
7 shows the arrival time of the Z-Trains at
8 destination, whether they're within normal
9 business hours or outside of normal business
10 hours, and support the point we had made in
11 that regard. Nothing further. Thank you.

12 VICE CHAIRMAN BEGEMAN: All right.
13 Well, you know, each rate case that is
14 presented becomes more interesting, more
15 complicated, some actually more complicated
16 than the particular case that we're talking
17 about here. We spent the last hour and 15
18 minutes talking about the hypothetical and
19 arguing over what each side has tried to work
20 within the Board's rules. But we've got
21 shippers here, we've got a railroad here, and
22 I hope that you will not resist the chance to

1 keep talking and trying to resolve your
2 differences in the real world.

3 COMMISSIONER MULVEY: Thank you.
4 This is my last hearing. I just want to say,
5 it seems that in the last nine years or so,
6 these cases have gotten even more complicated
7 over time, and we keep trying to simplify
8 things, but every time we try to simplify
9 things it seems to add another level of
10 complexity. So to some extent, I'll be happy
11 not to be hearing these cases anymore, but let
12 me just echo what Ann says, I do hope that you
13 can negotiate a settlement on this, but, all
14 parties can agree upon and make use of our
15 mediation processes. Thank you very much for
16 coming.

17 CHAIRMAN ELLIOTT: Thank you much,
18 Counsel, for your time and excellent argument.
19 Thanks, Frank, for your service and this
20 hearing is hereby adjourned. Thank you.

21 (Whereupon, the hearing in the above-
22 entitled matter was concluded at 10:42 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Intermountain Power Agency
v. Union Pacific Railroad Co.

Before: Surface Transportation Board

Date: 11-14-13

Place: Washington, DC

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INTERMOUNTAIN POWER AGENCY)	
)	
)	
Complainant,)	
)	
v.)	Docket No. 42136
)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendant.)	
)	

**Oral Argument Exhibit Nos. 1-3 of
Intermountain Power Agency**

Includes Public Materials from the Existing Record

INTERMOUNTAIN POWER AGENCY

By: C. Michael Loftus
 Christopher A. Mills
 Andrew B. Kolesar III
 Daniel M. Jaffe
 Stephanie M. Archuleta
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Dated: November 14, 2013

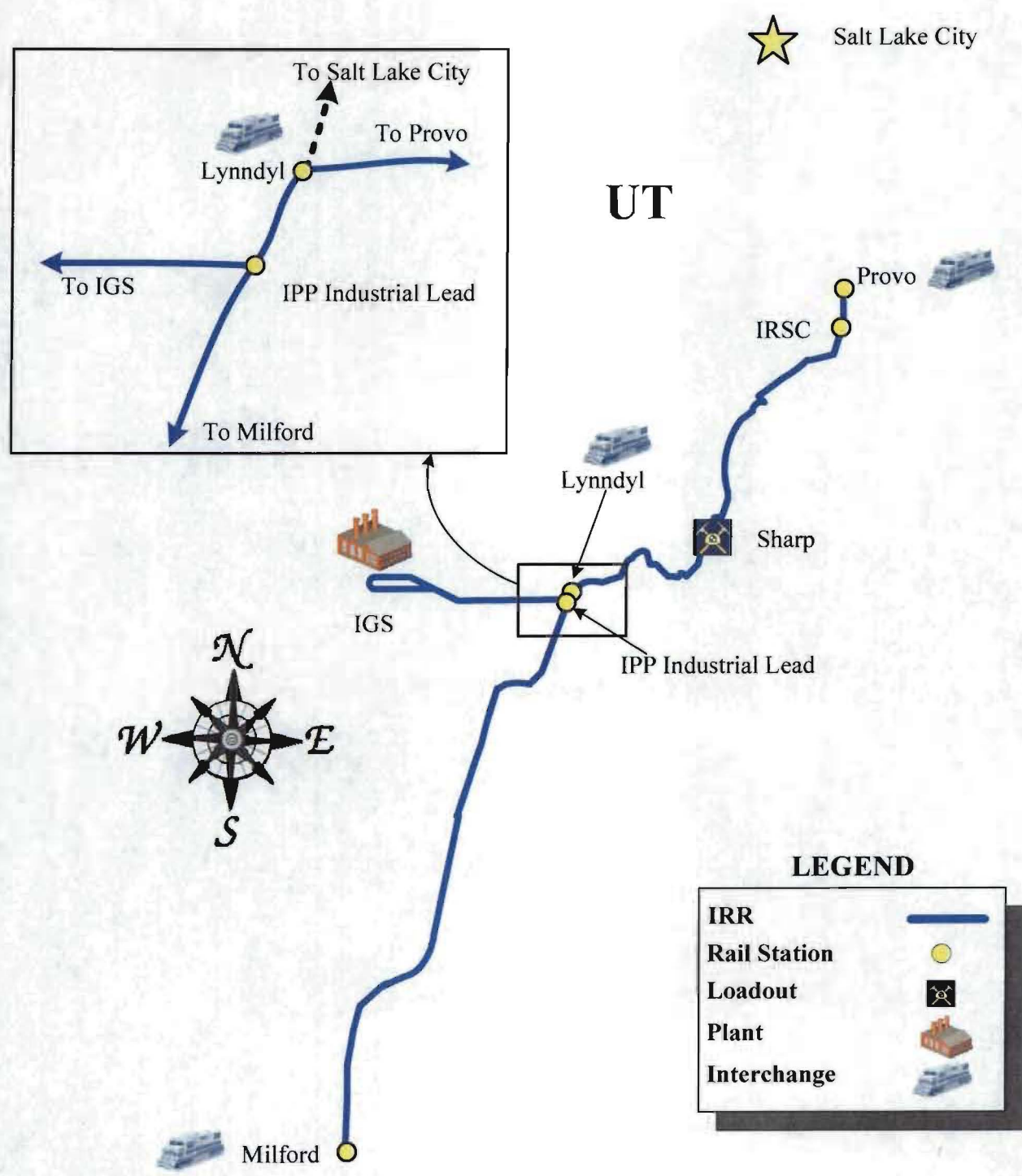
Attorneys for Complainant

IPA Oral Argument Exhibit No. 1

Source: IPA Opening Exhibit III-A-1

Schematic Of The Intermountain Stand-Alone Railroad ("IRR")

WY



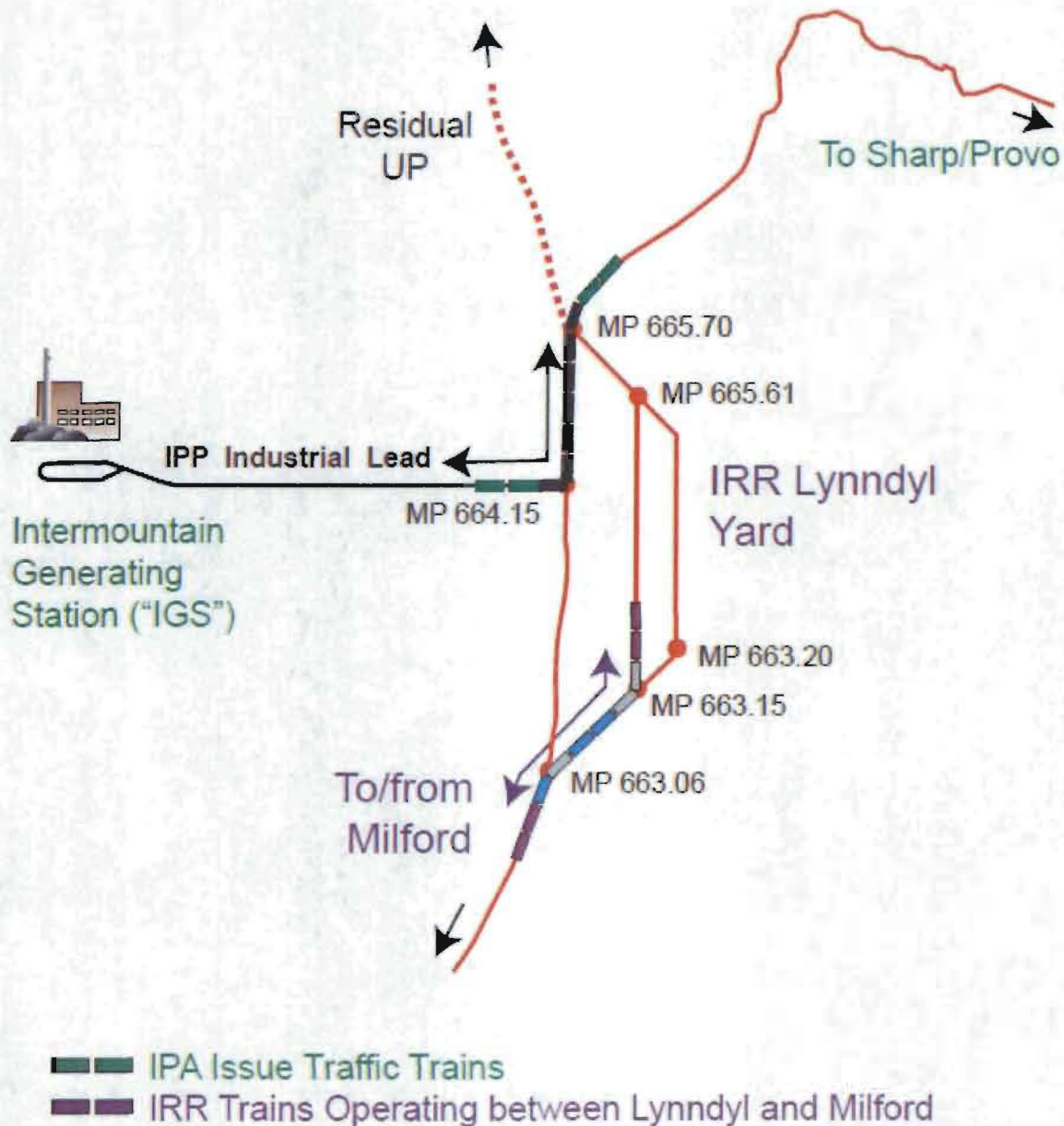
IGS = Intermountain Generating Station
IRSC = Intermountain Railcar Service Center

IPA Oral Argument Exhibit No. 2

Source: UP's Reply Argument at p. 13
and UP's Brief at p. 54

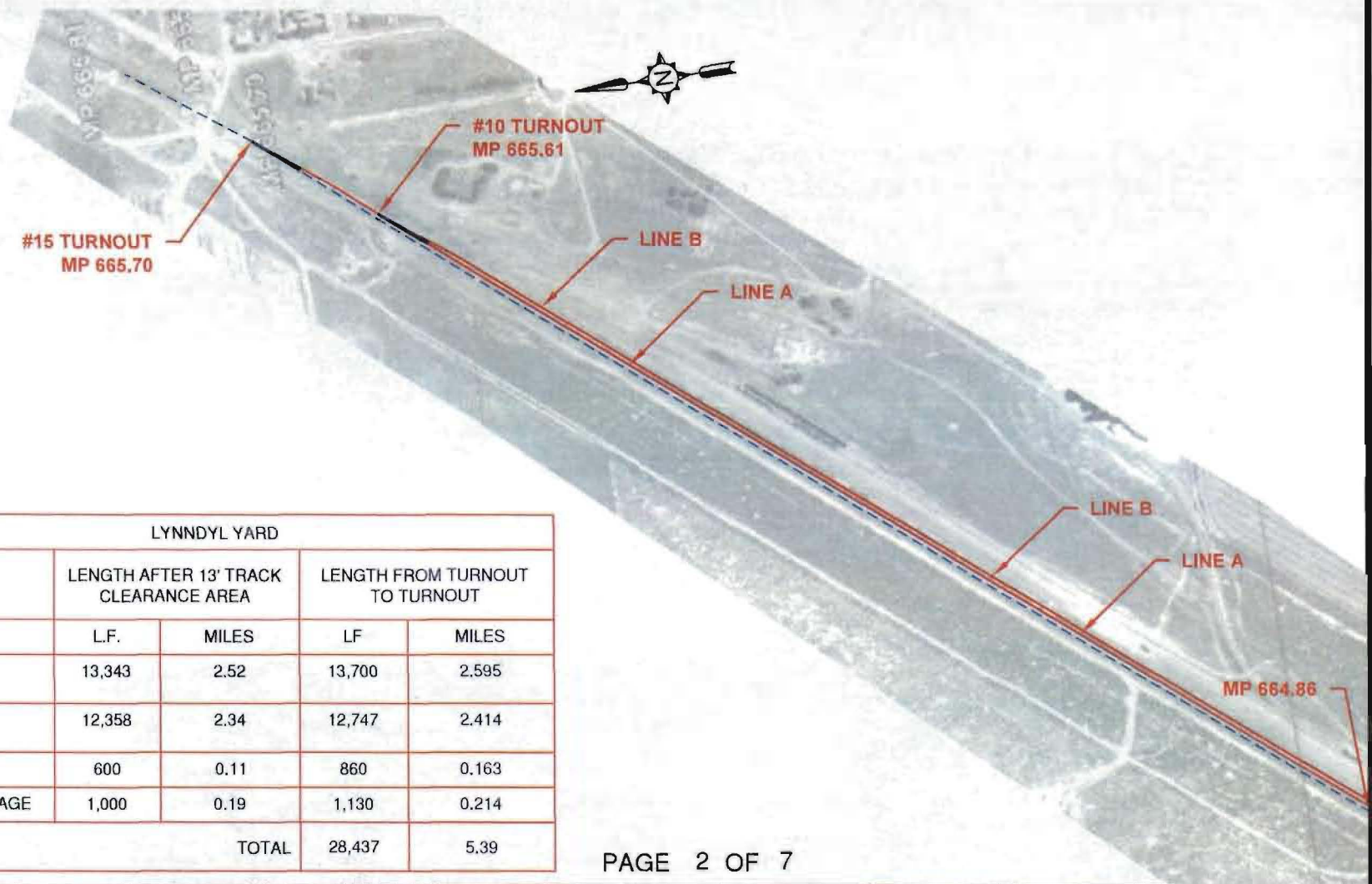
UP Lynndyl Schematic

(This schematic appears in UP's Reply Argument at p. 13 and in UP's Brief at p. 54)



IPA Oral Argument Exhibit No. 3

Source: IPA Opening Evidence, Exhibit III-B-2 (pages 2 through 4)
UP Reply Evidence, Exhibit III-B-2 (pages 2 through 4)



LYNNDYL YARD				
	LENGTH AFTER 13' TRACK CLEARANCE AREA		LENGTH FROM TURNOUT TO TURNOUT	
LINE	L.F.	MILES	LF	MILES
A	13,343	2.52	13,700	2,595
B	12,358	2.34	12,747	2,414
SETOUT	600	0.11	860	0.163
M.O.W. STORAGE	1,000	0.19	1,130	0.214
TOTAL			28,437	5.39

PAGE 2 OF 7

SUBDIVISION: **LYNNDYL**
LYNNDYL YARD
 MP 665.70 TO 664.86

DATE: **12/07/12**
 SCALE: 1" = 500'

LEGEND:

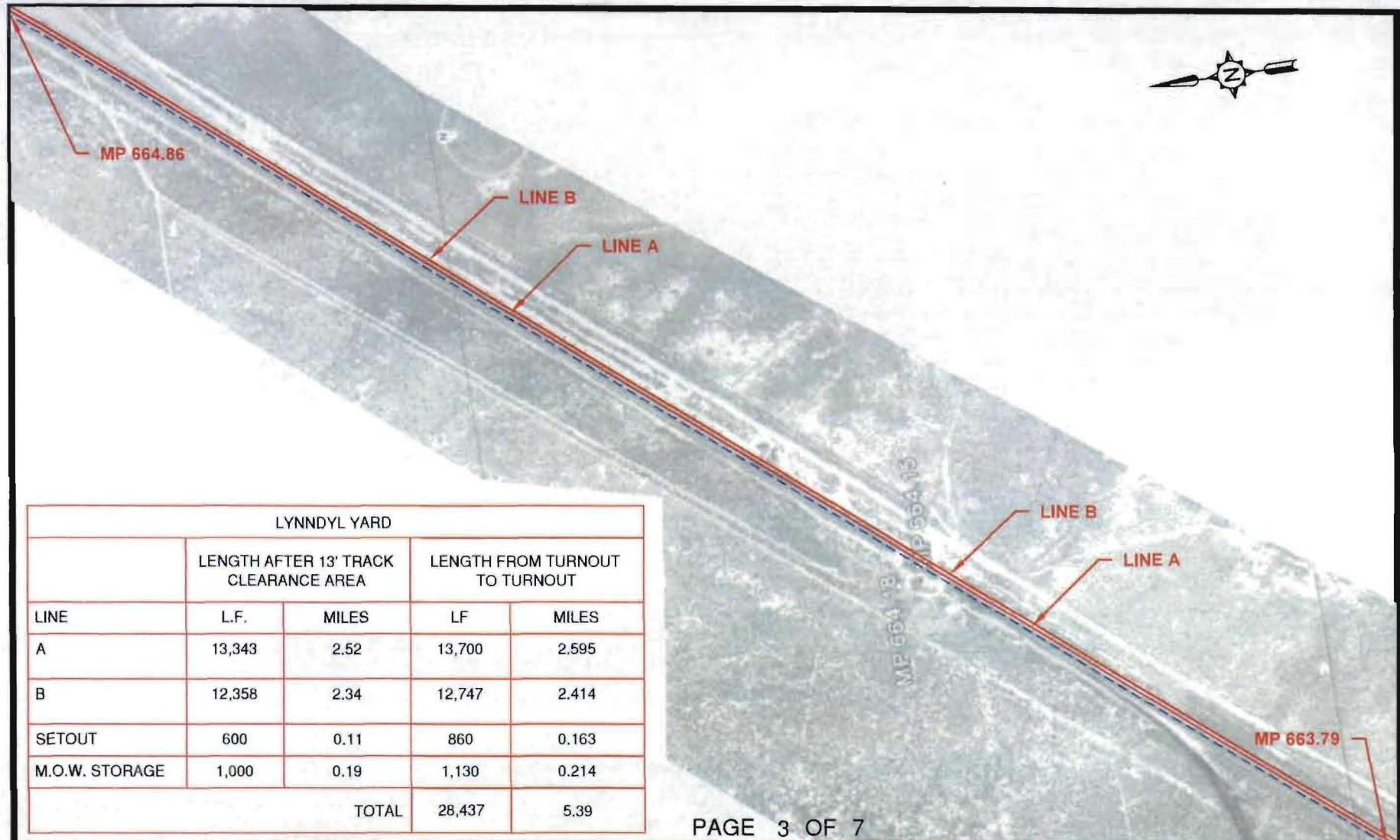
- - - - - 136# STANDARD CWR
 - - - - - 115# CWR CLASS 1 RELAY

20 = TURNOUT TYPE*

- (FED)
 1 FAILED EQUIPMENT DETECTOR WITH
 NUMBER OF TRACKS COVERED
 HB = HOT BEARING DETECTOR
 DE OR DED = DRAGGING EQUIPMENT DETECTOR
 HW = HOT WHEEL DETECTOR
 (AEI)
 1 AUTOMATIC EQUIPMENT IDENTIFICATION
 SCANNER WITH NUMBER OF TRACKS COVERED

- * TURNOUT TYPES
 20 - #20 ELECTRIC
 15E - #15 ELECTRIC
 15 - #15 HAND-THROWN
 10S - #10 SPRING
 10 - #10 HAND-THROWN
 10E - #10 ELECTRIC

EXHIBIT:
III-B-2



PAGE 3 OF 7

SUBDIVISION: **LYNNDYL**
LYNNDYL YARD
 MP 664.86 TO 663.79

DATE: **12/07/12**
 SCALE: 1" = 500'

LEGEND:

- 136# STANDARD CWR
 ----- 115# CWR CLASS 1 RELAY

● 20 = TURNOUT TYPE*



FAILED EQUIPMENT DETECTOR WITH
 NUMBER OF TRACKS COVERED
 HB = HOT BEARING DETECTOR
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 HW = HOT WHEEL DETECTOR

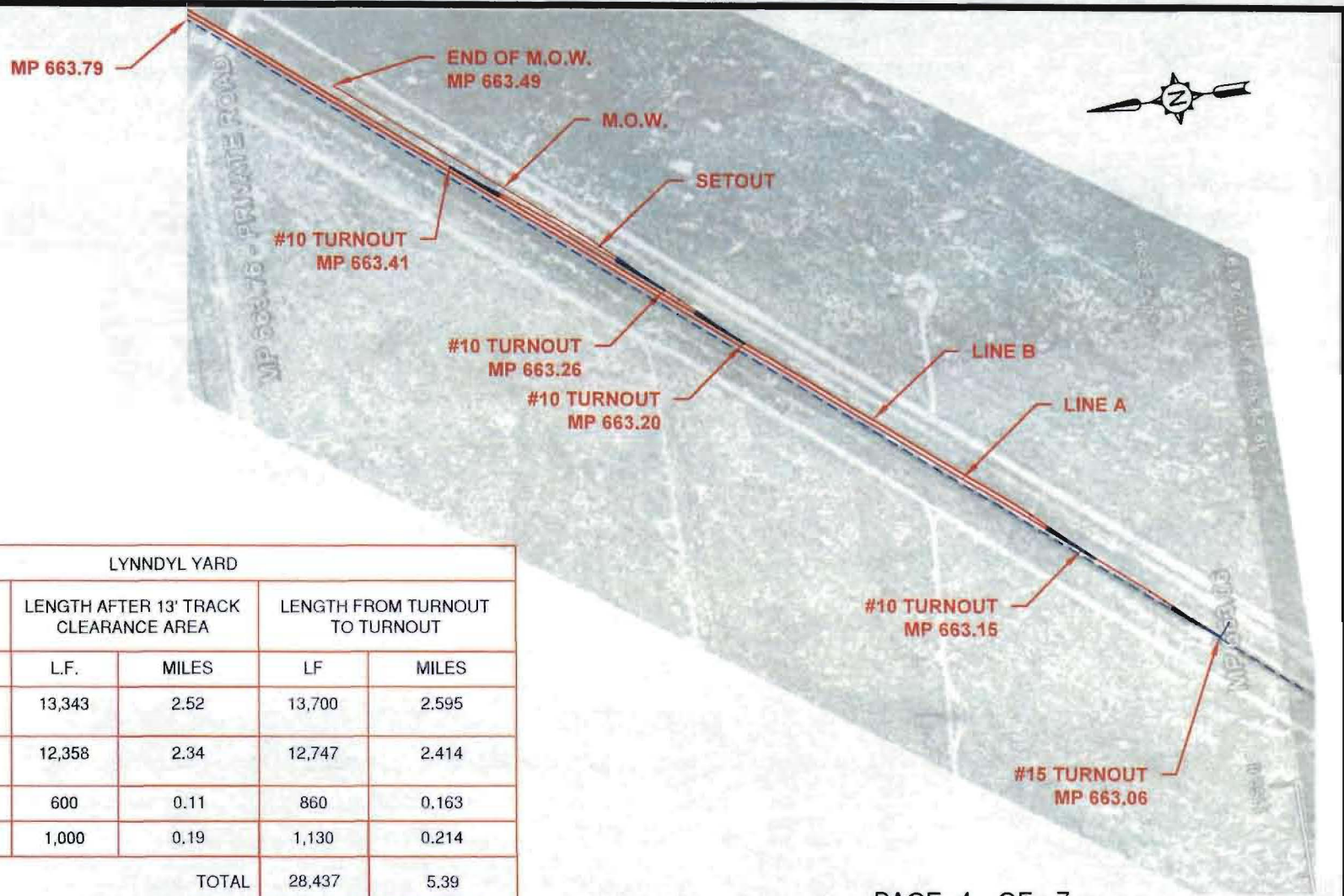


AUTOMATIC EQUIPMENT IDENTIFICATION
 SCANNER WITH NUMBER OF TRACKS COVERED

* TURNOUT TYPES

20 - #20 ELECTRIC
 15E - #15 ELECTRIC
 15- #15 HAND-THROWN
 10S - #10 SPRING
 10- #10 HAND-THROWN
 10E - #10 ELECTRIC

EXHIBIT:
III-B-2



LYNNDYL YARD				
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LINE	L.F.	MILES	LF	MILES
A	13,343	2.52	13,700	2.595
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M.O.W. STORAGE	1,000	0.19	1,130	0.214
TOTAL			28,437	5.39

PAGE 4 OF 7

SUBDIVISION: **LYNNDYL**
LYNNDYL YARD
 MP 663.79 TO 663.06

DATE: **12/07/12**
 SCALE: 1" = 500'

LEGEND:

----- 136# STANDARD CWR
 ----- 115# CWR CLASS 1 RELAY

● 20 = TURNOUT TYPE*



FAILED EQUIPMENT DETECTOR WITH
 NUMBER OF TRACKS COVERED
 HB = HOT BEARING DETECTOR
 DE OR DED = DRAGGING EQUIPMENT DETECTOR
 HW = HOT WHEEL DETECTOR



AUTOMATIC EQUIPMENT IDENTIFICATION
 SCANNER WITH NUMBER OF TRACKS COVERED

*** TURNOUT TYPES**

20 - #20 ELECTRIC
 15E - #15 ELECTRIC
 15- #15 HAND-THROWN
 10S- #10 SPRING
 10- #10 HAND-THROWN
 10E- #10 ELECTRIC

EXHIBIT:
III-B-2

#15 TURNOUT
MP 665.70

#10 TURNOUT
MP 665.61

LINE B

LINE A

LYNNDYL YARD				
LINE	LENGTH AFTER 13' TRACK CLEARANCE AREA		LENGTH FROM TURNOUT TO TURNOUT	
	L.F.	MILES	L.F.	MILES
A	13,343	2.52	13,700	2.595
B	12,358	2.34	12,747	2.414
C	5,000	0.945	5,326	1.008
SETOUT	600	0.11	860	0.163
M.O.W. STORAGE	1,000	0.19	1,130	0.214
TOTAL			28,437	5.39
TOTAL			32,903	6.23

IRR

PAGE: 2 OF 7

SUBDIVISION: LYNNDYL
LYNNDYL YARD

MP 665.70 TO 664.86

DATE: 04/02/13

SCALE: 1"=500"

LEGEND:

--- 136# STANDARD CWR
--- 115# CWR CLASS 1 RELAY

20' TURNOUT TYPE*

(FED) FAILED EQUIPMENT DETECTOR WITH
NUMBER OF TRACKS COVERED

HB - HOT BEARING DETECTOR
DE OR DED - DRAGGING EQUIPMENT DETECTOR
HW - HOT WHEEL DETECTOR

(AEI) AUTOMATIC EQUIPMENT IDENTIFICATION
SCANNER WITH NUMBER OF TRACKS COVERED

* TURNOUT TYPES

20 - #20 ELECTRIC
15E - #15 ELECTRIC
15 - #15 HAND-THROWN
10S - #10 SPRING
10 - #10 HAND-THROWN
10E - #10 ELECTRIC

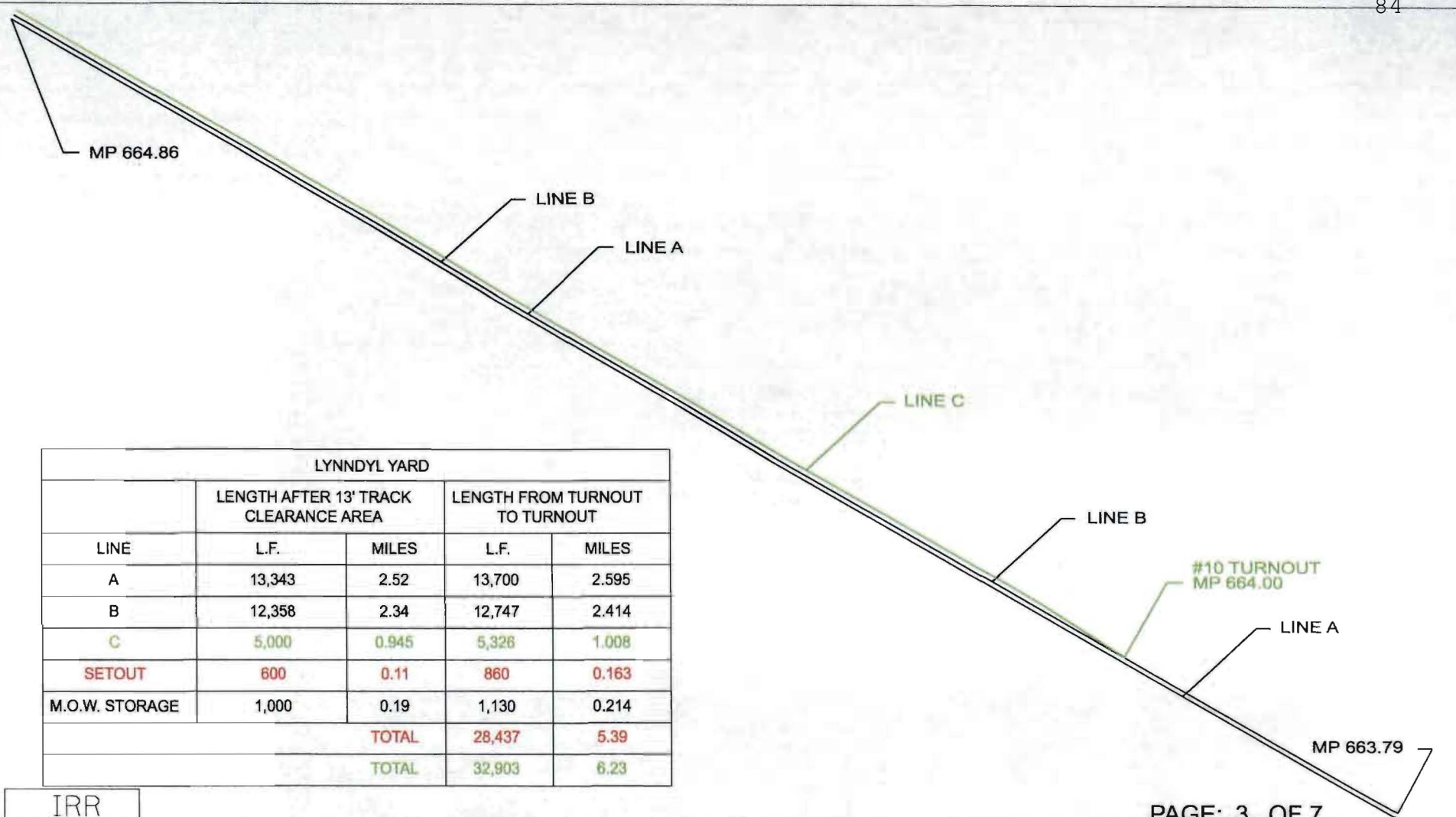
RED = REMOVE

GREEN = ADD

PREPARED BY:

STV/RALPH WHITEHEAD
ASSOCIATES

III-B-2
UP REPLY EXHIBIT:



IRR

PAGE: 3 OF 7

SUBDIVISION: **LYNNDYL**
LYNNDYL YARD

MP 664.86 TO 663.79

DATE: 04/02/13
 SCALE: 1"=500"

LEGEND:

--- 136# STANDARD CWR
 --- 115# CWR CLASS 1 RELAY

20' TURNOUT TYPE*

(FED) FAILED EQUIPMENT DETECTOR WITH
 NUMBER OF TRACKS COVERED

HB - HOT BEARING DETECTOR
 DE OR DED - DRAGGING EQUIPMENT DETECTOR
 HW - HOT WHEEL DETECTOR

(AEI) AUTOMATIC EQUIPMENT IDENTIFICATION
 SCANNER WITH NUMBER OF TRACKS COVERED

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 15E - #15 ELECTRIC
 15 - #15 HAND-THROWN
 10S - #10 SPRING
 10 - #10 HAND-THROWN
 10E - #10 ELECTRIC

RED = REMOVE

GREEN = ADD

PREPARED BY:



STV/RALPH WHITEHEAD
 ASSOCIATES

III-B-2

UP REPLY EXHIBIT

MP 663.79

END OF M.O.W.
MP 663.49

M.O.W.

SETOUT

#10 TURNOUT
MP 663.41#10 TURNOUT
MP 663.26#10 TURNOUT
MP 663.20

LINE B

LINE A

#10 TURNOUT
MP 663.15#15 TURNOUT
MP 663.06

LYNNDYL YARD

LINE	LENGTH AFTER 13' TRACK CLEARANCE AREA		LENGTH FROM TURNOUT TO TURNOUT	
	L.F.	MILES	L.F.	MILES
A	13,343	2.52	13,700	2.595
B	12,358	2.34	12,747	2.414
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SETOUT	600	0.11	860	0.163
M.O.W. STORAGE	1,000	0.19	1,130	0.214
		TOTAL	28,437	5.39
		TOTAL	32,903	6.23

IRR

PAGE: 4 OF 7

SUBDIVISION: **LYNNDYL**
LYNNDYL YARD

MP 663.79 TO 663.06

DATE: 04/02/13

SCALE: 1"=500"

LEGEND:

--- 136# STANDARD CWR
--- 115# CWR CLASS 1 RELAY

20' TURNOUT TYPE*

(FED) FAILED EQUIPMENT DETECTOR WITH
NUMBER OF TRACKS COVERED

HB - HOT BEARING DETECTOR
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(AEI) AUTOMATIC EQUIPMENT IDENTIFICATION
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15 - #15 HAND-THROWN
10S - #10 SPRING
10 - #10 HAND-THROWN
10E - #10 ELECTRIC

RED = REMOVE

GREEN = ADD

PREPARED BY:

STV/RALPH WHITEHEAD
ASSOCIATES

III-B-2
UP REPLY EXHIBIT:

UNION PACIFIC'S ORAL ARGUMENT EXHIBITS

Intermountain Power Agency

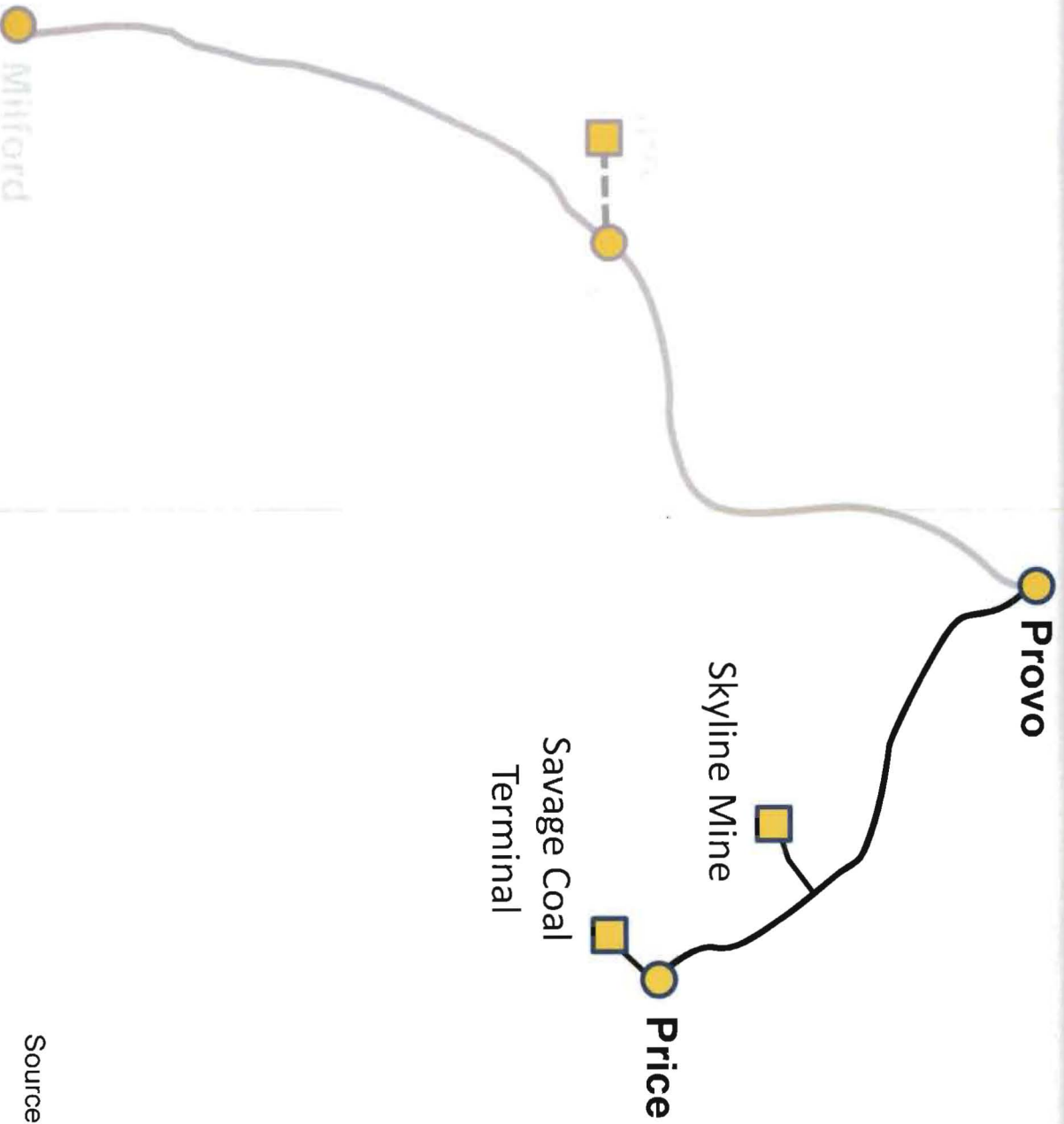
v.

Union Pacific Railroad Company

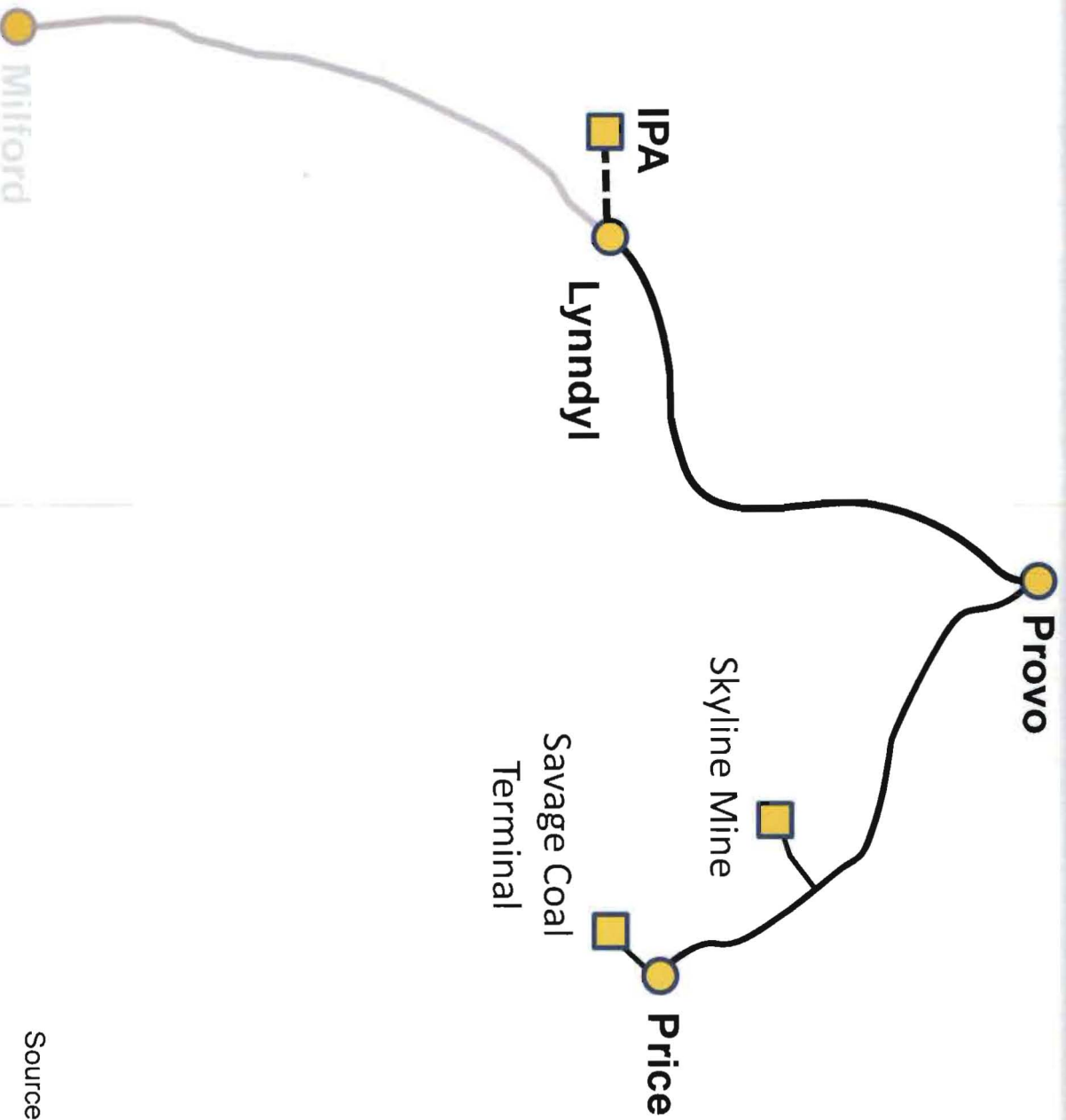
STB Docket No. 42136

November 14, 2013

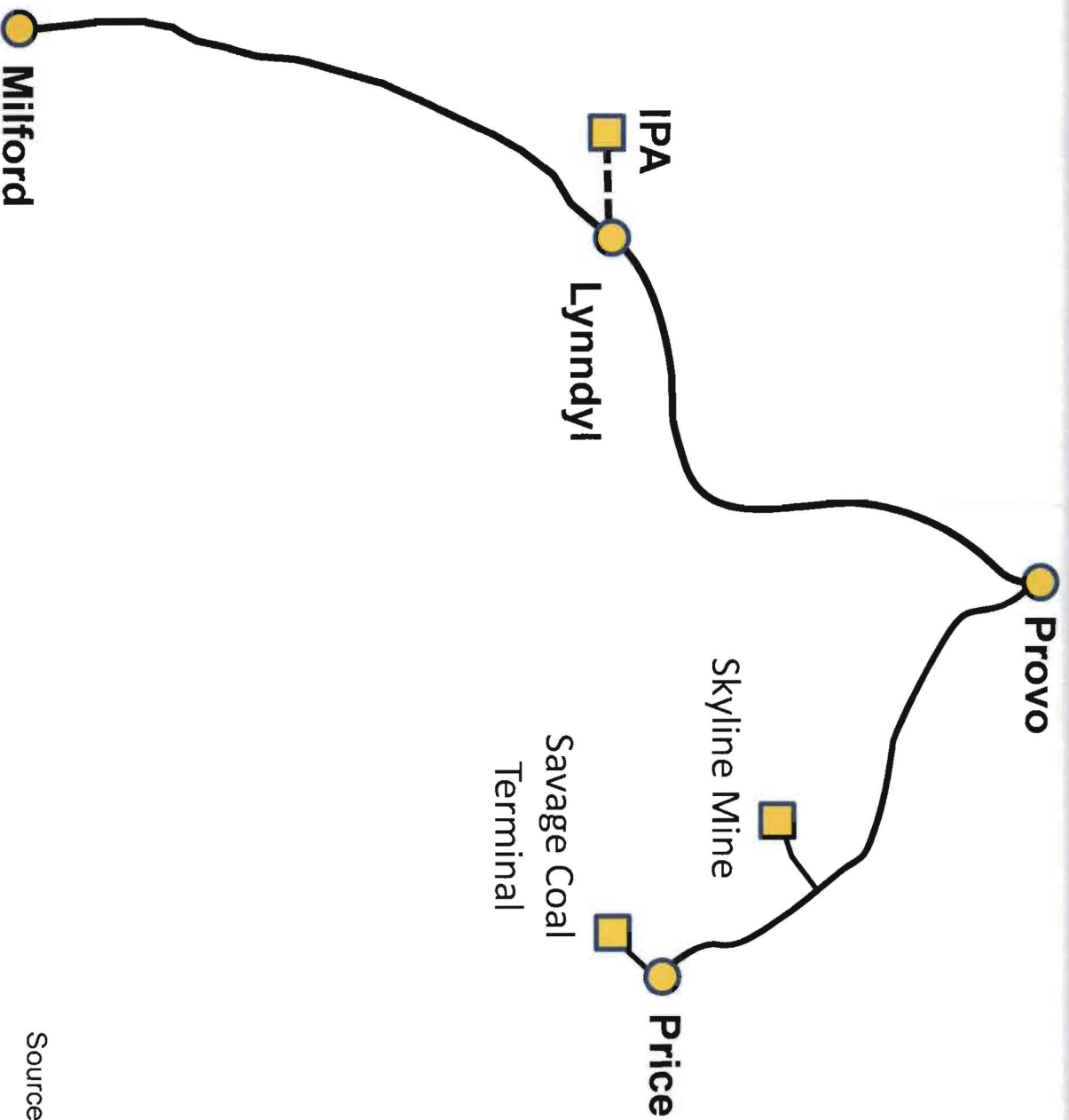
IRR I—Price to Provo



IRR I--Price to Lynndyl

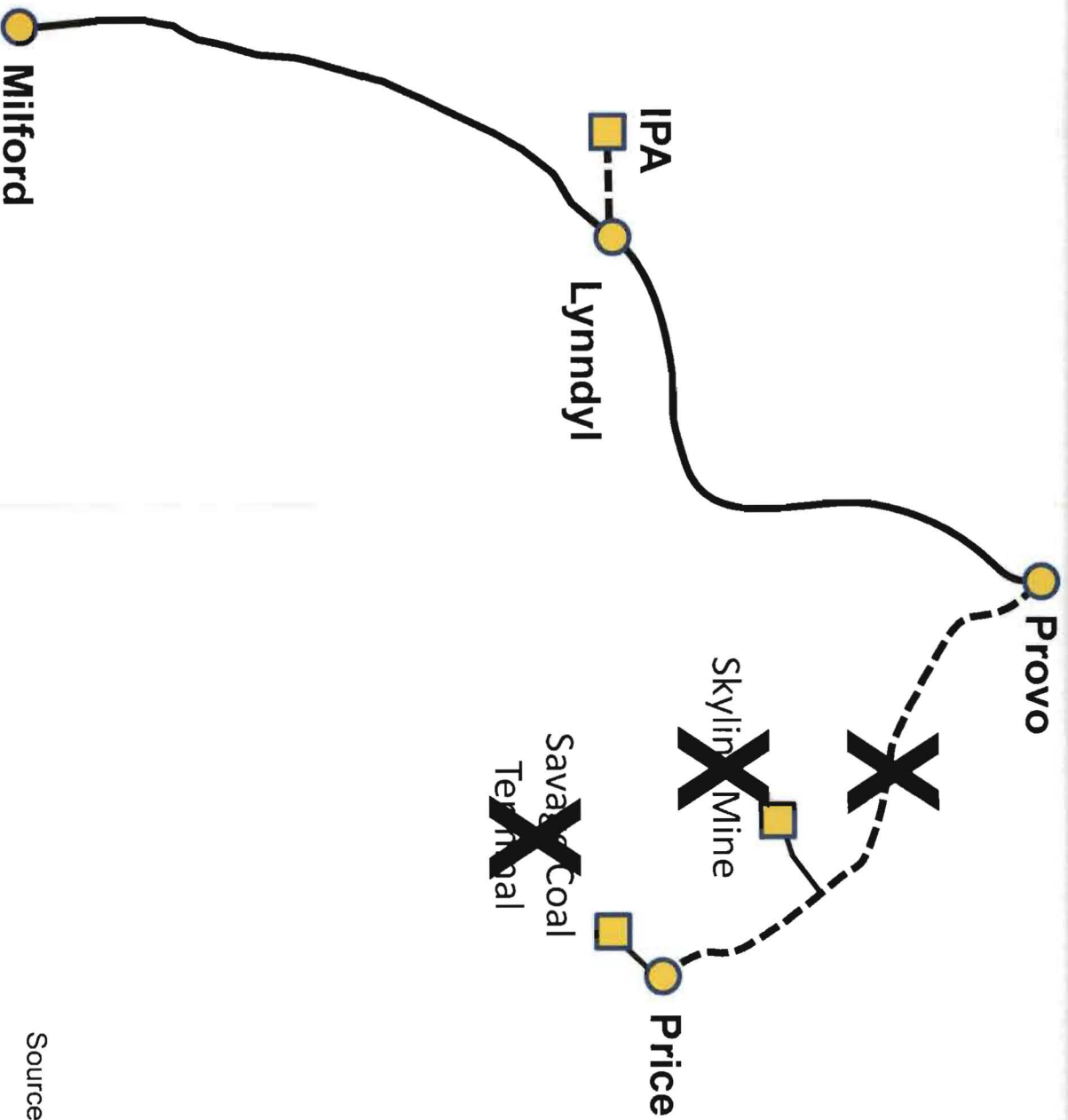


IRR I--Price to Milford



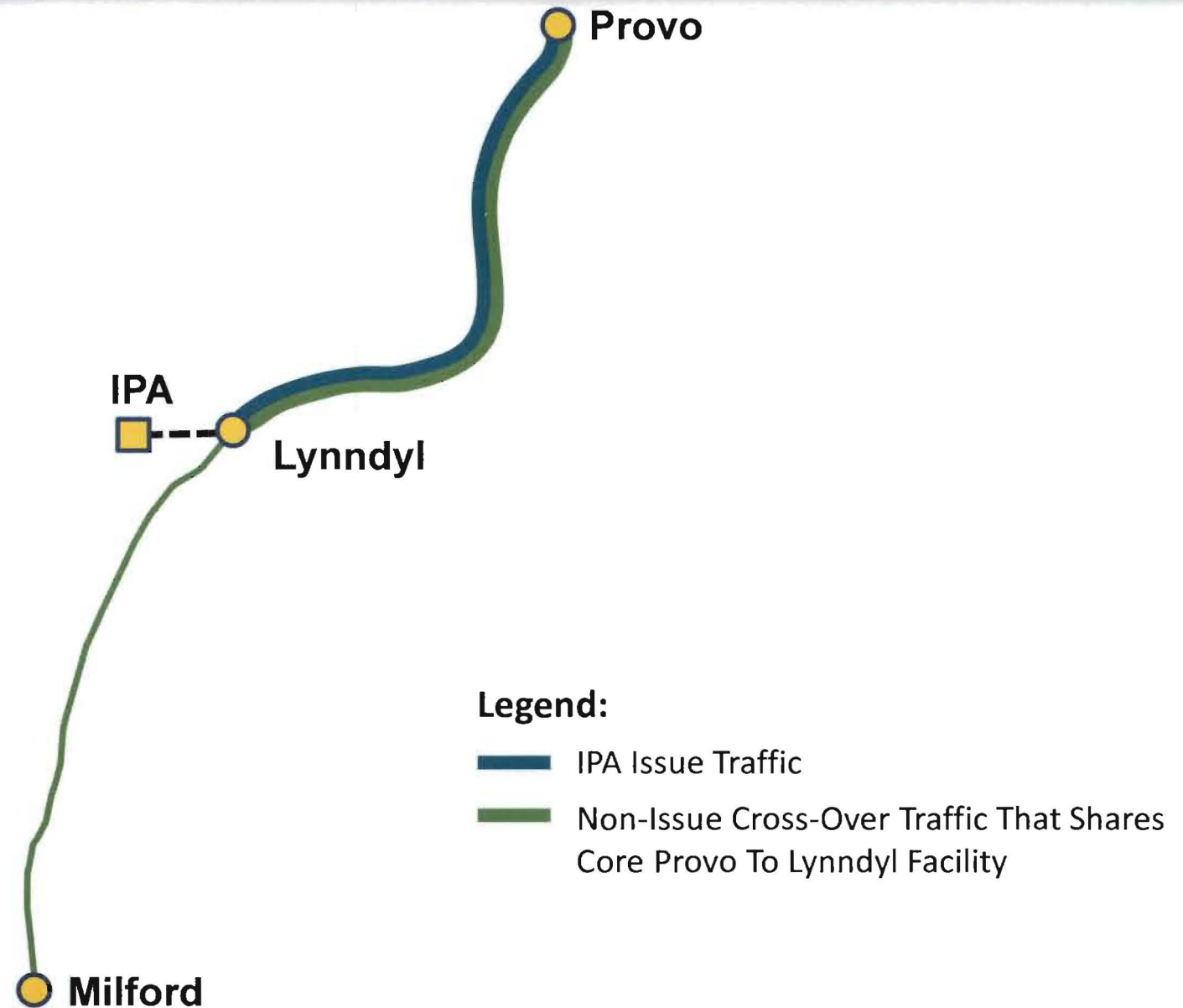
Source: UP Reply at 2.

IRR II--Drops Price to Provo Segment

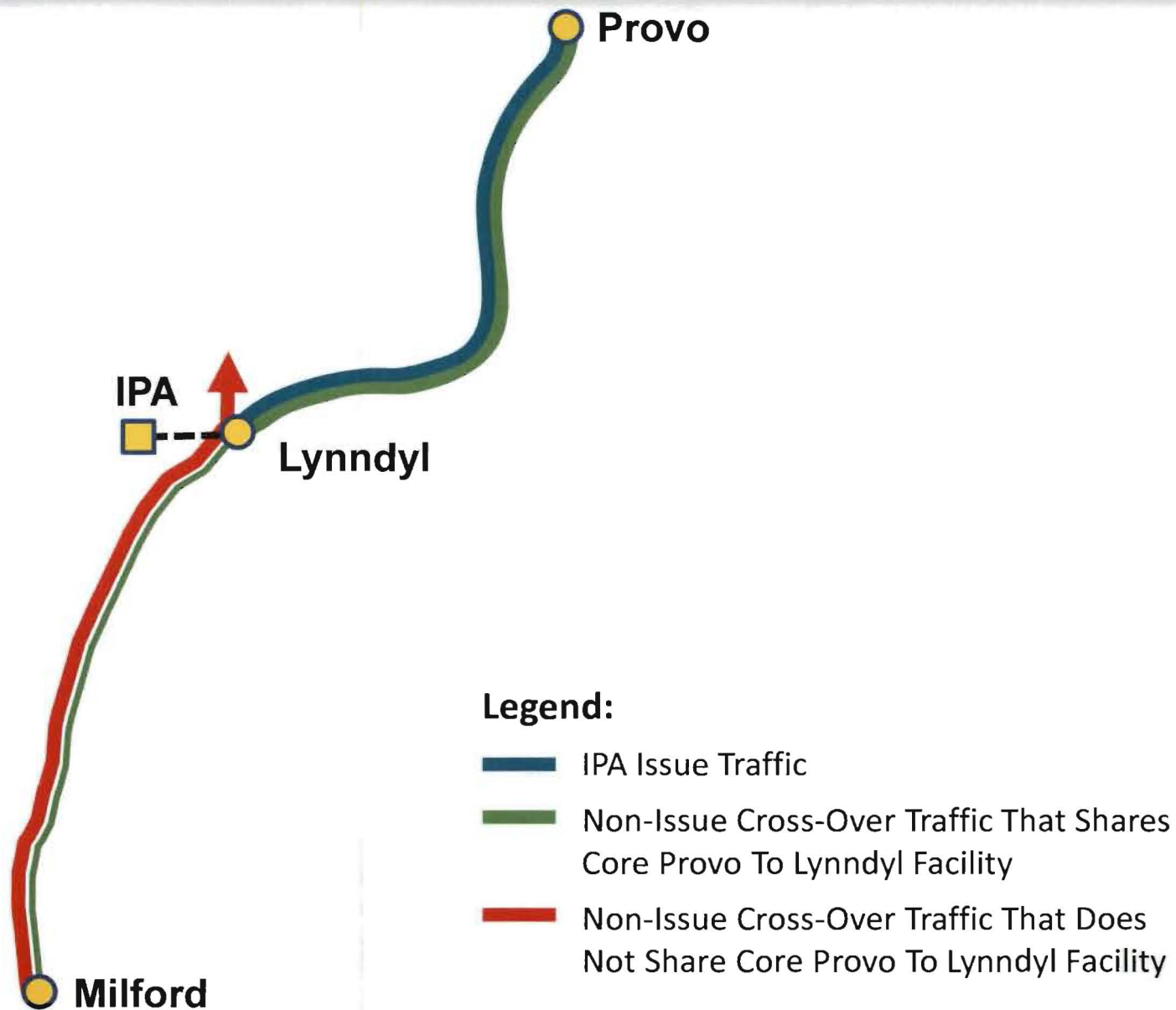


Source: UP Reply at 2.

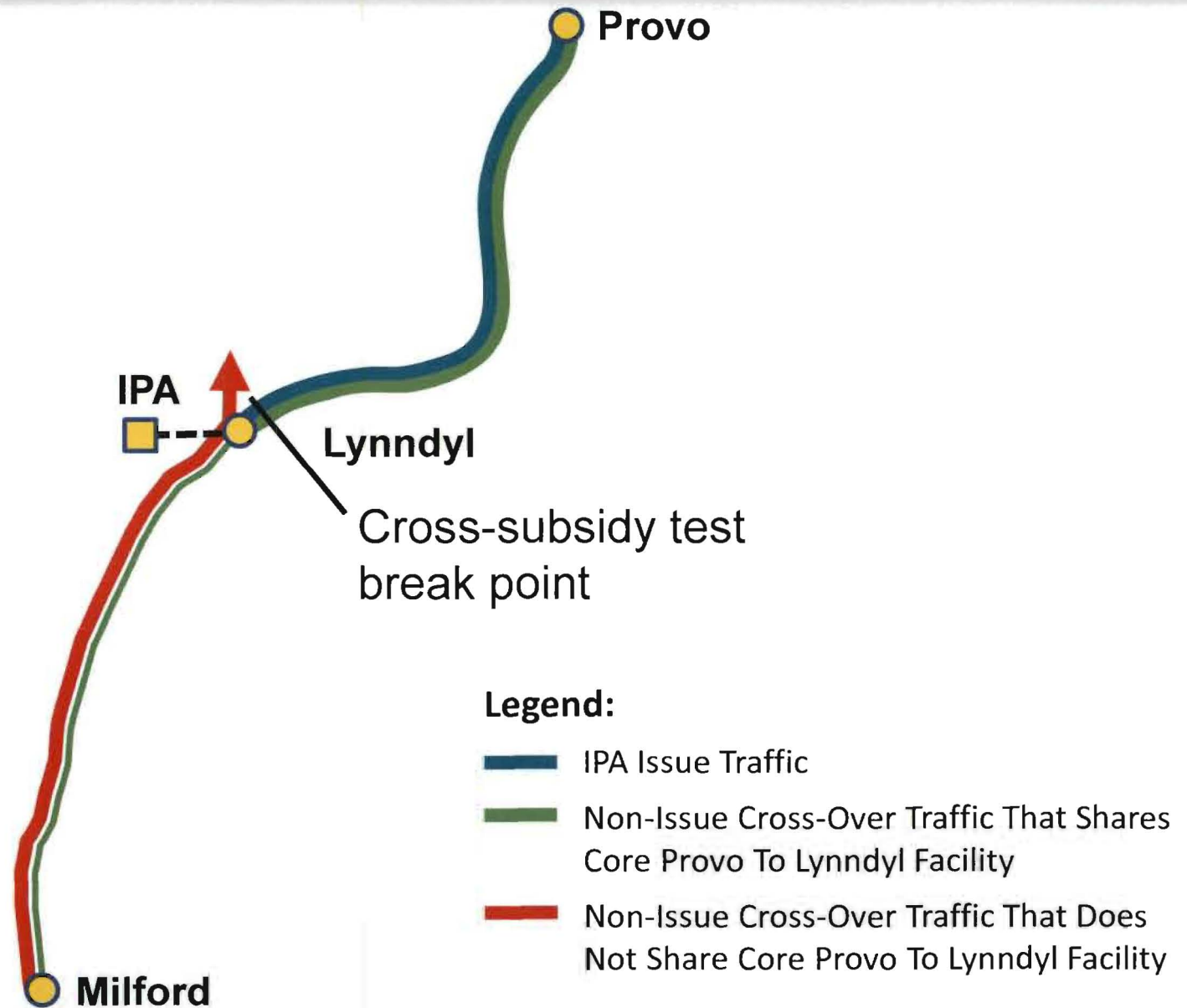
IRR Traffic Movements



IRR Traffic Movements



Cross-Subsidy Test



Source: UP Reply at
III.H-16 to III.H-22.

IPA Cross-Subsidy MIMM Results

Year	IPA Maximum R/VC	Cross-Subsidy R/VC
2012	218.0	221.1
2013	219.3	217.0
2014	199.5	212.6
2015	193.8	214.2
2016	189.3	213.3
2017	186.3	211.7
2018	185.2	212.1
2019	183.5	212.4
2020	178.7	205.8
2021	177.4	208.6
2022	177.0	212.5

Source: UP Reply at III.H-18, Table III.H.5.

PUBLIC VERSION**BEFORE THE
SURFACE TRANSPORTATION BOARD**

INTERMOUNTAIN POWER AGENCY

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY

Defendant.

Docket No. 42136

**Oral Argument Exhibit No. 4 of
Intermountain Power Agency***Non-Public
Material has been Redacted*

INTERMOUNTAIN POWER AGENCY

By: C. Michael Loftus
 Christopher A. Mills
 Andrew B. Kolesar III
 Daniel M. Jaffe
 Stephanie M. Archuleta
 SLOVER & LOFTUS LLP
 1224 Seventeenth Street, N.W.
 Washington, D.C. 20036
 (202) 347-7170

Dated: November 14, 2013

Attorneys for Complainant

**PUBLIC VERSION
INFORMATION SUBJECT TO PROTECTIVE ORDER
HAS BEEN REDACTED**

IPA Oral Argument Exhibit No. 4

Z-Train Average Transit Times and Arrival Times At Destination

<u>Origin</u>		<u>Destination</u>		<u>Average</u>	<u>Arrival Time</u>	
<u>City</u>	<u>State</u>	<u>City</u>	<u>State</u>	<u>Transit Time</u>	<u>Business</u>	<u>Non-Business</u>
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(Hours) 1/</u>	<u>Hours</u>	<u>Hours 3/</u>
				<u>(5)</u>	<u>2/</u>	<u>(7)</u>

- 1.
- 2.
- 3.
- 4.
- 5.

REDACTED

-
- 1/ Transit time is defined as difference between departure from origin station and arrival at destination station. Averages are based on UP Z-Trains operating over the IRR route from July 1, 2011 to June 30, 2012.
- 2/ "Business Hours" defined as 8:00 am to 6:00 pm.
- 3/ "Non-Business Hours" defined as 6:01 pm to 7:59 am.

Source: IPA Rebuttal e-workpaper "Z Train Transit Time.xlsx," Tab "Summary." IPA cites this workpaper in its Rebuttal Narrative at III-C-43 n.38.