

Law Department

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610

October 10, 2003

FILED

OCT 14 2003

**SURFACE
TRANSPORTATION BOARD**



Via UPS Next Day Air

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No.34417; Union Pacific Railroad Company -- Temporary
Trackage Rights Exemption -- The Burlington Northern and Santa Fe
Railway Company

Dear Mr. Williams:

I am enclosing the following material for filing in the above proceeding:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7).
2. A payment form in the amount of \$950.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

FEE RECEIVED

OCT 14 2003

**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

Robert T. Opal
General Commerce Counsel
Direct dial: 402/271-3072
Fax: 402/271-5610

cc: (w/attachments)
Sarah Whitley Bailiff, Esq. - BNSF

**ENTERED
Office of Proceedings**

OCT 14 2003

**Part of
Public Record**

209097

2090977
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34417



UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRackage RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

FEE RECEIVED

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SURFACE
TRANSPORTATION BOARD

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SURFACE
TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

Dated: October 10, 2003
Filed: October 13, 2003

ENTERED
Office of Proceedings
OCT 14 2003
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34417

**UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRackage RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of local trackage rights over a line of railroad of The Burlington Northern and Santa Fe Railway Company between, BNSF Milepost 114.5 and BNSF Milepost 117.0 near Endicott, Nebraska, a distance of 2.5 miles.¹ The trackage rights are temporary rights, on account of severe washouts on BNSF's own route to Endicott, and are intended to permit UP to serve the shipper at Endicott until BNSF's own route can be repaired or other

¹ Since the temporary trackage rights covered by this filing are "local" rather than "overhead" rights, the filing is not being made under the Board's new class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8). As such, UP is filing a separate petition for partial revocation of the exemption to permit the trackage rights to expire as provided in the underlying agreement.

arrangements can be made for continued rail service to this shipper. The rights are to expire on or about October 15, 2004.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidations proceedings. The trackage rights covered by this notice are covered by the written agreement attached as Exhibit 2, and are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), UP submits the following information:

§ 1180.6(a)(1) Description of Proposed Transaction

The transaction covered by this notice is the acquisition of temporary, local trackage rights by UP between BNSF Milepost 114.5 and BNSF Milepost 117.0 near Endicott, Nebraska, Texas, a distance of 2.5 miles.

§ 1180.6(a)(1)(I) Summary of the proposed transaction.

See answer to § 1180.6(a)(1), above.

§ 1180.6(a)(1)(I) Name, business address and telephone number of applicant, and the name of counsel to whom questions can be addressed.

The name and business address of the applicant is:

Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Questions regarding this transaction are to be addressed to the representative named below:

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
Tel. (402) 271-3072
Fax (402) 271-5610

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on October 20, 2003.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The trackage rights are temporary rights, on account of severe washouts on BNSF's own route to Endicott, and are intended to permit UP to serve the shipper at Endicott until BNSF's own route can be repaired or other arrangements can be made for continued rail service to this shipper. The rights are to expire on or about October 15, 2004.

§ 1180.6(a)(5) States in which the Applicant Operates

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

A draft of the trackage rights agreement containing the significant terms proposed is attached as Exhibit 2.²

§ 1180.4(g)(1)(I) Labor Protection

The applicable labor protection conditions are those imposed in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

§ 1180.4(g)(2)(i) Caption Summary (Exhibit 3)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

§ 1180.4(g)(3) Environmental Documentation

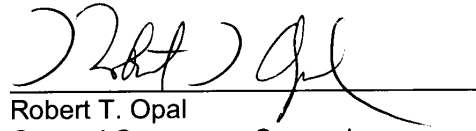
Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

² As provided in 49 C.F.R. 1180.6(a)(7)(Note 3), a copy of the executed agreement will be provided to the Board after it is finalized and executed

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By:

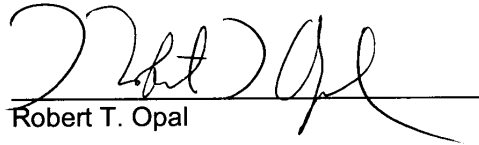
A handwritten signature in black ink, appearing to read "Robert T. Opal", written over a horizontal line.

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

VERIFICATION

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Notice of Exemption in Finance Docket No. 34417, knows the facts stated therein, and that said facts are true as stated.

Dated: October 10, 2003.

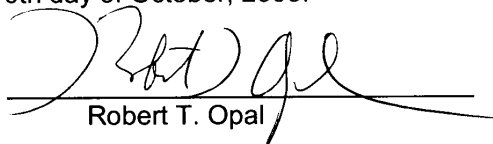

Robert T. Opal

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon
the following by first class United States mail.

Sarah Whitley Bailiff, Esq.
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828

Dated at Omaha, Nebraska this 10th day of October, 2003.


Robert T. Opal

O

[illegible]

**Temporary Trackage Rights Agreement
Endicott, NE MP 117.0 to MP 114.5**

THIS AGREEMENT, made and entered into this 22nd day of September, 2003 by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" or "Owner", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP" or "User".

WHEREAS, BNSF is the owner and operator of certain lines of railroad extending between UP connections over BNSF's railroad system; and

WHEREAS, UP desires to obtain temporary Trackage Rights upon certain lines of BNSF'S railroad, for the sole purpose of bridging its train service to Endicott Clay Products.

WHEREAS, BNSF is agreeable to said temporary Trackage Rights but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties.

Section 1. **TRACKAGE SUBJECT TO AGREEMENT.**

Attached hereto, marked Exhibit "A" and by this reference incorporated herein, is a print, which depicts the portion of line of BNSF railroad over which UP will be granted temporary Trackage Rights hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this agreement, attached hereto and by this reference incorporated herein).

Section 2. **GRANT OF TEMPORARY TRACKAGE RIGHTS RIGHTS.**

The General Conditions covering the grant of temporary Trackage Rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this agreement shall arise, the provisions of this agreement shall prevail. Subject to the terms and conditions of Exhibit "B" this agreement, BNSF grants to UP the temporary nonexclusive right to use the Joint Trackage (as defined in Exhibit "B" of this agreement) that is in its account while moving over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered BNSF for the purpose of this agreement. Said grant of rights shall be between BNSF MP 117.0 and BNSF MP 114.5 at Endicott, Nebraska.

It is understood and agreed that:

(a) UP shall not have the right to set out, pickup or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling of cars to and from Endicott Clay Products.

(b) to serve any industry, team or house track now existing or constructed in the future along the Joint Trackage which heretofore has not been served by UP; or

(c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to Trackage Rights trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of UP; provided, however, that the foregoing shall not prevent UP, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this agreement.

(d) UPRR locomotives shall have sufficient fuel for the entire movement on BNSF and UPRR will be responsible for the 1,000 mile inspection of their trains.

(e) temporary Trackage Rights period shall be limited to 360 days from the effective date of this contract.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE.

BNSF, at its expense, shall maintain the Joint Trackage in a manner permitting operation at no less than the track standard designated in the timetable in effect on the date of this agreement and permit UP to operate at such speeds unless by mutual written agreement a different standard is provided. In the event that for, operating convenience, necessity or emergency, BNSF permits or directs UP to use adjacent BNSF track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement.

Section 4. COMPENSATION FOR TEMPORARY TRACKAGE RIGHTS.

As compensation for the temporary Trackage Rights as above set forth, User shall pay to Owner, one (\$1.00) dollar, for each loaded rail car movement in the temporary Trackage Rights Corridor.

Section 5. LIMITATIONS AND MEASUREMENT OF TEMPORARY TRACKAGE RIGHTS TRAINS.

UP and BNSF agree that UP's use of the Trackage Rights granted herein shall be used only to switch Endicott Clay Products.

Section 6. **LIABILITY**

Any liability for loss, damage, injury or death which arises from the operation under this Agreement shall be as provided in the Haulage Agreement between BNSF and UP dated _____.

Section 7. **TERM AND TERMINATION.**

Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this agreement shall become effective upon the date UP first commences operations over the Joint Trackage pursuant to this agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to UP, and shall remain in effect for the period of time specified in Section 2 hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

WITNESS:

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY**

By: _____

WITNESS:

UNION PACIFIC RAILROAD COMPANY

By: _____

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EXHIBIT B

(To be included with executed Agreement)