

BNSF



MICHAEL E. ROPER
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209027

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September 30, 2003

VIA OVERNIGHT MAIL

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

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SURFACE
TRANSPORTATION BOARD



Re: Finance Docket No. 34413, The Burlington Northern and Santa Fe Railway Company -- Trackage Rights Exemption -- Elgin, Joliet & Eastern Railway Company

Dear Secretary Williams:

Enclosed for filing are the original and ten (10) copies of a Trackage Rights Exemption relating to the above-referenced matter. Please return the duplicate of this letter, in the self-addressed stamped envelope enclosed, so that I may know the date on which the exemption was filed. A check for \$900.00 is enclosed to cover the filing fee. A 3.5 inch disc in WordPerfect 9.0 is also enclosed for the Board's use.

If anything further is needed, please contact me at (817) 352-2353.

Sincerely,

Michael E. Roper
Senior General Attorney

MER/js

cc: Michael Galassi

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TRANSPORTATION BOARD

209027

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34413

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY-- TRACKAGE RIGHTS EXEMPTION--
ELGIN, JOLIET & EASTERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

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Michael E. Roper
Senior General Attorney
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039
(817) 352-2353
(817) 352-2397 fax

Dated: September 30, 2003

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BEFORE THE

SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34413

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY-- TRACKAGE RIGHTS EXEMPTION--
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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VERIFIED NOTICE OF EXEMPTION

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1. The Burlington Northern and Santa Fe Railway Company ("BNSF") files this verified notice of exemption pursuant to 49 C.F.R. §1180.2(d)(7). Under this notice BNSF will acquire certain non-exclusive trackage rights from Elgin, Joliet and Eastern Railway Company ("EJ&E") from between Joliet, Illinois, at EJE Mile Post 1.6 and Eola, Illinois, at EJE Mile Post 20.6, a distance of approximately 19 miles, as shown on the attached map. EJ&E will grant to BNSF non-exclusive trackage rights over the tracks of EJ&E between certain EJ&E connections and interchanges with BNSF. The trackage rights are to be used by BNSF to enable BNSF to operate more efficiently.

The utilization of these trackage rights is based on a written agreement and is not filed or sought in responsive applications in a rail consolidation proceeding.

2. The following information is provided as required by 49 C.F.R. §1180.4(g)(1)(i):

Section 1180.6(a)(1)(i-iii).

EJ&E has granted trackage rights to BNSF from between Joliet, Illinois, at EJE Mile Post 1.6 and Eola, Illinois, at EJE Mile Post 20.6 over the Joint Tracks described above. BNSF will operate its own trains with its own crews over the Joint Tracks.

The carriers involved in this transaction and their business addresses are as follows:

Michael E. Roper, Senior General Attorney
The Burlington Northern and Santa Fe Railway Company
2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039

Vice President-Midwestern Operations
Elgin, Joliet & Eastern Railway Co.
1141 Maple Road
Joliet, IL 60432-1981

Questions regarding this exemption should be sent to Michael E. Roper, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161-0039. The phone number is (817) 352-2353.

Consummation of the transaction will occur on October 7, 2003, and operations under this exemption will begin thereafter. The purpose of the trackage rights is to allow BNSF to operate more efficiently.

Section 1180.6(a)(5).

The trackage involved in the trackage rights agreement is located in the State of Illinois.

Section 1180.6(a)(6).

The required map is attached hereto as Exhibit "1."

Section 1180.6(a)(7)(ii).

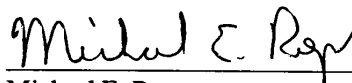
A copy of the Trackage Rights Agreement covering this transaction is attached hereto as Exhibit "2."

Applicants are agreeable to the imposition of the standard labor protective conditions imposed by the Board pursuant to 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).

This transaction does not require the filing of an environmental report or an historic report under 49 C.F.R. §1105.6(c)(4) and §1105.8(b)(3) respectively.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael E. Roper", is written over a horizontal line.

Michael E. Roper
Senior General Attorney
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY
2500 Lou Menk Drive
P. O. Box 961039
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(817) 352-2353 - Telephone
(817) 352-2397 - Fax

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34413

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY— TRACKAGE RIGHTS EXEMPTION--
ELGIN, JOLIET & EASTERN RAILWAY COMPANY

Elgin, Joliet & Eastern Railway Company ("EJ&E") has agreed to grant certain non-exclusive trackage rights to The Burlington Northern and Santa Fe Railway Company ("BNSF") from between Joliet, Illinois, at EJE Mile Post 1.6 and Eola, Illinois, at EJE Mile Post 20.6 as shown on the attached map. The non-exclusive trackage rights grant covers a total distance of approximately 19 miles.

The trackage rights will be effective on October 7, 2003, and operations under this exemption will begin on that date.

This notice is filed under §1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,
Vernon A. Williams,
Secretary.

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Michael E. Roper being duly sworn, deposes and says that he has read the foregoing notice of exemption and that the contents thereof are true and correct to the best of his knowledge and belief.

Michael E. Roper
Michael E. Roper

Subscribed and sworn to before me this 30th day of September, 2003.



My Commission expires:

Betty L. Reinert
Notary Public

EXHIBIT "1"

EXHIBIT - BNSF Trackage Rights on the EJE

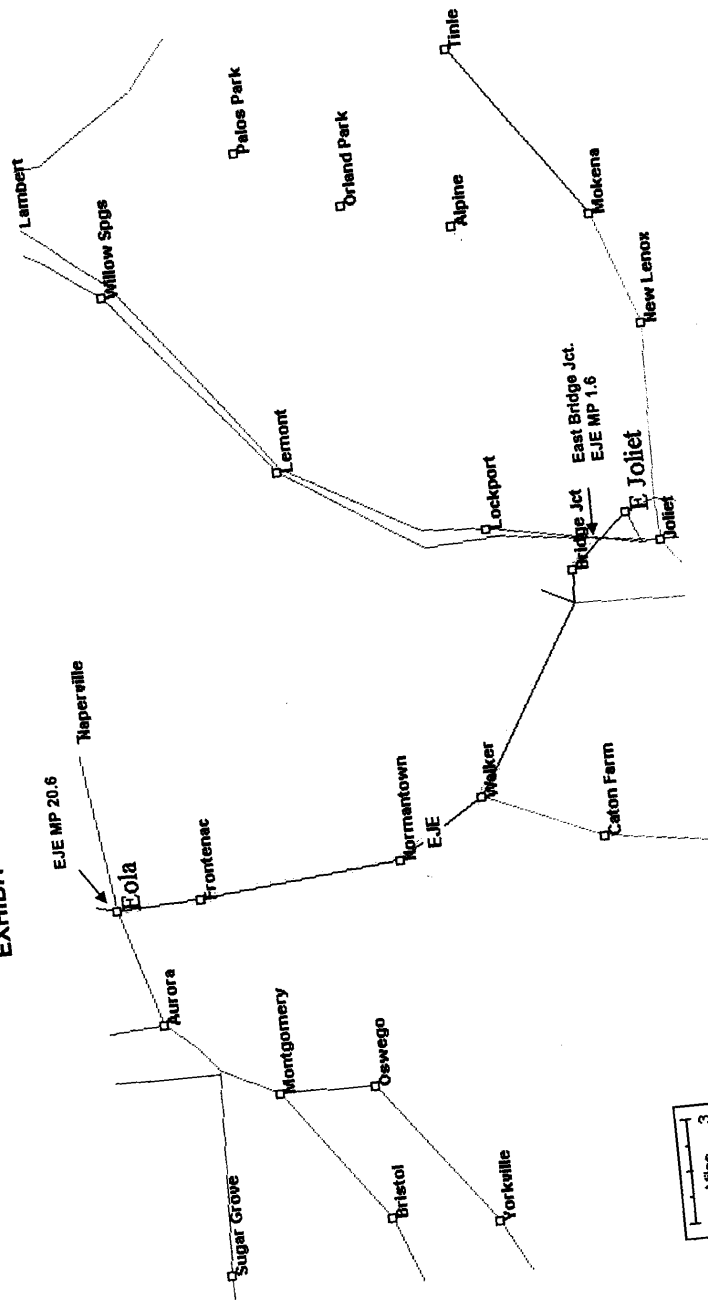


EXHIBIT A

EXHIBIT "2"

TRACKAGE RIGHTS AGREEMENT

between

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

and

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

(Eola – Joliet)

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THIS TRACKAGE RIGHTS AGREEMENT, made and entered into this 22nd day of September, 2003, by and between ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, a Delaware Corporation and subsidiary of Transtar, Inc. ("Transtar"), hereinafter referred to as "EJ&E", and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware Corporation, hereinafter referred to as "BNSF".

WITNESSETH:

WHEREAS, it is proposed that EJ&E grant to BNSF non-exclusive trackage rights over the tracks of EJ&E between certain EJ&E connections and interchanges with BNSF as more fully described in an applicable Detailed Schedule which shall be attached as Exhibit "1" and made a part hereof.

WHEREAS, the terms and conditions of this Agreement shall apply to all such movements of BNSF over the tracks of EJ&E in accordance with the non-exclusive trackage rights granted herein unless the applicability of such terms and conditions is specifically contradicted, amended or rendered ineffective by a subsequent written amendment or Detailed Schedule executed by the Parties.

WHEREAS, this Agreement shall be supplemented by a written Detailed Schedule that specifically addresses the rights and obligations of the Parties, including without limitation, the types of trains, charges, billing arrangements, operational details and interchange locations for each type of move by BNSF over EJ&E tracks.

NOW, THEREFORE, in consideration of the obligations of the Parties herein, other good and valuable consideration, the premises and the terms and conditions herein contained and intending to be legally bound, the Parties hereto agree as follows:

SECTION 1 - JOINT TRACKS DEFINED

The tracks of EJ&E as shown on the attached map and marked Exhibit "A", attached hereto and made a part hereof, and the interchanges and connections to such tracks owned by EJ&E and located on EJ&E property, shall hereinafter be referred to as the "Joint Tracks" or "Joint Trackage."

SECTION 2 - AUTHORITY TO OPERATE

(a) Subject to the terms and conditions of this Agreement and the applicable Detailed Schedule, as may be amended from time to time, EJ&E hereby grants to BNSF the non-exclusive right to operate trains, locomotives, cabooses and cars of the types set forth in the Detailed Schedule, over the Joint Tracks. Such grant of trackage rights shall not preclude EJ&E from the use of the Joint Tracks for railroad purposes of EJ&E, including the right to permit others to use the Joint Tracks and property of EJ&E, nor preclude EJ&E from granting trackage rights to additional rail carriers in any manner not inconsistent with the terms of this Agreement. This grant of trackage rights shall not

permit operation of passenger trains by BNSF. This grant of trackage rights shall at all times be subject to EJ&E's use of the Joint Tracks to perform its own rail carrier obligations, provided however, EJ&E agrees to give BNSF trains equal dispatch with the EJ&E trains, and any other party using the trackage involved, on an equitable basis.

This grant of trackage rights shall permit BNSF to operate placarded cars containing hazardous materials, provided that such cars and operations meet all federal, state, local and other requirements, and EJ&E 's dispatcher has been provided advanced written notification as to what hazardous materials are to be transported over the Joint Tracks. The Parties shall mutually establish in the applicable Detailed Schedule a reasonable time period to be allotted BNSF to traverse the specific segment of the Joint Tracks. Should such time period be exceeded, the Party responsible for causing such delay shall pay to the other Party the amount agreed upon, if any, by the Parties in the Detailed Schedule. The applicable Detailed Schedule shall also list those conditions or events, if any, that may cause BNSF to exceed the allotted time period to traverse the Joint Tracks but are deemed exceptions to the requirement that the Party responsible for causing such delay shall pay the other Party as stated above.

(b) The trackage rights granted herein shall not include or be deemed to include any right of BNSF to provide any rail service to any industry, industrial site, or property located along the Joint Tracks or accessible only from any spur track now in existence or hereafter constructed to connect with the Joint Tracks, or to use all or any portion of the Joint Tracks other than to enter onto and exit the Joint Tracks at the connections and interchanges, and solely for the purposes authorized by this

Agreement. BNSF shall not permit any third party to operate over all or any portion of the Joint Tracks except as expressly authorized to do so in the Detailed Schedule.

(c) Liability for loss, damage, injury or expense arising from the use of the Joint Tracks shall be determined in accordance with the provisions of Section 11 of this Agreement. BNSF shall be required to, as a prerequisite to these trackage rights, and annually during the term of this Agreement, provide to Transtar/EJ&E proof of insurance coverage as set forth in Section 16 of this Agreement. However, if BNSF is and remains a Class I Rail Carrier during the term of this Agreement, BNSF may, in lieu of insurance coverage described in Section 16, provide to Transtar/ EJ&E annual proof of adequate financial responsibility to secure its liability obligations.

(d) Upon request of BNSF, the EJ&E may, in its sole discretion and judgment, extend the trackage rights granted hereunder to permit BNSF's agents to operate over the Joint Tracks only to the extent and for the limited purpose of conducting business on behalf of the BNSF as otherwise authorized under this Agreement. Such permission, if granted, shall be expressly stated in the applicable Detailed Schedule and shall specifically name the additional carrier(s) who may serve as agent(s) for BNSF. BNSF's agents shall be bound by the terms and conditions of this Agreement to the same extent as BNSF. Any violation of such terms and provisions by BNSF's agents shall be treated in the same manner as though BNSF itself had violated said terms and provisions. As between the Parties, BNSF shall assume responsibility for

any and all contractual obligations of BNSF's agents, including but not limited to the liability provisions hereunder. Further, BNSF shall defend and indemnify the EJ&E for any and all liability attributable to BNSF's agents as though BNSF itself had caused or was otherwise responsible for such liability.

SECTION 3 - CONSTRUCTION, MAINTENANCE AND ADDITIONS

- (a) The construction, maintenance, repair and renewal of the Joint Trackage shall be under the exclusive direction and control of EJ&E. EJ&E shall make any changes in and/or additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. EJ&E may make any changes and/or additions to the Joint Trackage which EJ&E in its sole judgment and discretion deems necessary or desirable for the safe, efficient and economical use of the Joint Trackage by all authorized users thereof, and these shall progressively during construction become part of the Joint Trackage.

BNSF may request changes in and/or additions to the Joint Trackage which BNSF shall deem necessary or desirable to accommodate BNSF's operations beyond that required by EJ&E to accommodate its operations, and the operations of any authorized user other than BNSF, and EJ&E shall, if it, in its sole judgment and discretion concurs, construct the same at BNSF's expense

subject to Section 3(d) of this Agreement and they shall become part of the Joint Trackage

(b) blank

(c) All other capital improvements and upgrades necessary from time to time to accommodate BNSF traffic over the Joint Tracks (including but not limited to accommodations necessary as a result of growth in other than BNSF traffic) shall be at the expense of BNSF and other users (excluding EJ&E). EJ&E, if it in its sole judgment and discretion agrees to make said improvements and upgrades, may make such improvements and upgrades to accommodate BNSF traffic only when BNSF authorizes such expenditures therefor in advance of any work being performed.

(d) BNSF shall be reimbursed for the costs of additions and improvements to the Joint Tracks solely paid for by BNSF pursuant to this Agreement by any third party subsequently granted trackage rights over the Joint Tracks to the extent such third party benefits from the BNSF financed additions or improvements. Such reimbursement shall be upon terms negotiated by BNSF and EJ&E.

(e) BNSF shall construct, maintain, repair and renew at its sole cost and expense, and shall own such portions of the tracks which connect the lines of the BNSF with the Joint Tracks as are located on the right-of-way of the BNSF.

(f) blank

(g) EJ&E shall be responsible for the maintenance of the mainline Joint Tracks in accordance with the FRA Class 4 Track Safety Standards in effect on July 1, 1998 and attempt to hold speed limits as published in EJ&E timetable and bulletins as of that date, attached as Exhibit "III", unless otherwise agreed to in writing by the parties. EJ&E agrees that at all times during the continuance of this Agreement it shall be responsible for maintaining the Joint Tracks in reasonably good condition for the use herein contemplated. By this agreement, EJ&E does not guarantee the condition of the Joint Tracks or that the operations thereover will not be interrupted or that track speeds will not be altered as a result of emergencies or safety conditions. However, if such reduction in train speed occurs, EJ&E will take reasonable steps to remedy the condition to remove the speed restriction. BNSF shall not move railcars exceeding 286,000 pounds gross weight on rail unless otherwise agreed to in the applicable Detailed Schedule. EJ&E shall provide clearance for Plate Specification H on the Joint Tracks included in this agreement.

SECTION 4 - OPERATION OF THE JOINT TRACKS

(a) EJ&E shall control, manage and administer the Joint Tracks and shall direct the movement of all trains, locomotives, cars, and cabooses thereover and thereon. Trains will be dispatched in order of receipt unless operating flexibility or circumstances dictate otherwise as agreed to by the Parties from time-to-time.

(b) The operation by BNSF of its trains, locomotives, and cars over the Joint Tracks shall at all times be subject to the direction and control of EJ&E's Superintendent or other authorized representative, and at all times shall be in accordance with the rules, regulations and schedules of the Chicago Operating Rules Association (CORA) Guide and of the EJ&E, which rules, regulations and schedules shall be reasonable and fair as between the Parties hereto and any other authorized users of the Joint Tracks. Trains of the Parties hereto shall be under the control and dispatch of the EJ&E, which shall make every reasonable effort to handle trains of the Parties fairly, giving due consideration to special operating or emergency conditions which may exist. EJ&E reserves the right, in its sole discretion, upon completion of an investigation by EJ&E, to suspend or ban permanently from the Joint Tracks any employee, agent or contractor of BNSF who fails to obey such rules, regulations, schedules and operating instructions.

(c) BNSF shall have the right, with its employees and at its expense, to operate trains, locomotives, cars and cabooses over the Joint Tracks in the manner and for the purposes as stated herein and pursuant to any applicable amendments or supplements to this Agreement. EJ&E may, in its sole discretion, grant this right to

BNSF's agents and their employees as expressly stated in the applicable Detailed Schedule.

(d) BNSF Trains that do not have an FRA approved end of train device (EOT) must have an occupied caboose displaying marker(s), as prescribed by EJ&E rules.

(e) No train operated by BNSF over the Joint Trackage shall exceed 8,000 feet in length, including locomotives, cars and cabooses, unless otherwise agreed to by the Parties in the applicable Detailed Schedule.

(f) In the event that any train, locomotive, car or caboose of BNSF shall be derailed or involved in a wreck while operating over the Joint Tracks, EJ&E shall clear the derailment or wreck and shall make all necessary repairs to and replacements of the Joint Tracks and signal and associated facilities. BNSF shall pay bills rendered by EJ&E within forty (40) days of the billing date, for work and materials necessary to perform the services herein required to be performed by EJ&E, which, in accordance with the provisions of Section 11 of this Agreement, are properly allocated to BNSF in whole or in part. Bills so rendered by the EJ&E Accounting Department shall be in accordance with the EJ&E's Schedule of Surcharges and Rates for Billings to U.S. Railroads and shall be comparable to the rate schedules of U. S. Class I Railroads.

(g) If BNSF's locomotives, cars or cabooses are bad ordered en route on the Joint Tracks and it is necessary that they be set out for repairs, EJ&E shall furnish, at its sole discretion, required labor and material and perform running/light repairs or repairs

that do not require sending a car to a repair facility to make such bad ordered equipment safe for movement, and will move BNSF's locomotives, cars or cabooses after being repaired, for prompt pick up by BNSF. EJ&E will render a bill to the BNSF for the work necessary to perform the service in accordance with standard AAR billing procedures plus any additional amount required to reimburse EJ&E in accordance with the EJ&E's Schedule of Surcharges and Rates for Billings to U. S. Railroads which shall be comparable to the rate schedules of U.S. Class I Railroads. BNSF shall pay all such bills within forty (40) days of the billing date. In addition to the above charges, a transportation handling charge of \$450 per car will be assessed on any loaded or empty freight car set out of regular train movement for mechanical work/repairs to make safe for transportation.

(h) A BNSF train will not be permitted on the Joint Tracks if it is likely that such train's crew will expire ("outlaw") under the hours of service law while operating over the Joint Tracks, nor will BNSF's trains be permitted to operate on the Joint Tracks if the EJ&E, in its sole discretion, determines that there is insufficient locomotive power to handle BNSF's train. If BNSF's train becomes distressed on the EJ&E and cannot reach its destination on the EJ&E, whether due to mechanical problems or crew hours-of-service restrictions, and EJ&E, in its sole discretion, determines that BNSF's train needs to be moved with EJ&E employees and/or employees and locomotive power, EJ&E will render such service and submit a bill to the BNSF for the work necessary to perform the service in accordance with the EJ&E's Schedule of Surcharges and Rates for Billings to U. S. Railroads which shall be comparable to the rate schedules of U.S. Class I Railroads. BNSF shall pay such bill within forty (40) days of the billing date.

(i) In the event that the performance by BNSF of work of any nature upon the Joint Tracks, including the operation of trains, locomotives and cars, or repair of locomotives or cars, shall result in time claims or claims for employee protective benefits being filed against EJ&E on behalf of any of its personnel for work alleged to have been diverted from such personnel in violation of labor contract rights, EJ&E shall undertake in good faith to defend against such claims. If EJ&E shall be required by a Public Law Board or the appropriate authority to pay time claims alleged so to arise, BNSF hereby covenants and agrees to reimburse EJ&E within forty (40) days of the billing date for any payment so required to be made. As a condition precedent to reimbursement payments by BNSF, EJ&E shall have promptly notified BNSF of employee time claims or protective benefit claims. EJ&E agrees that it will not provide employee protective benefits or satisfy any such time claims except upon the approval of BNSF, or after it has been determined by the appropriate board or tribunal that such protective benefits are properly payable, or that such time claims are valid. The Parties hereto shall consult and cooperate with each other in the handling and defense of such matters, including the right to participate by BNSF at any labor arbitration involving such claims.

SECTION 5 - PAYMENTS BY BNSF

BNSF shall pay the EJ&E for the trackage rights granted herein in accordance with the rates and terms, and any adjustments, specified in the applicable Detailed Schedule. The Detailed Schedule shall without limitation specifically address the rates, types of trains and interchange locations of each type of move by BNSF over the Joint Tracks. The Detailed Schedule shall be considered as an exhibit to this Agreement, and made a part hereof. The Parties shall use their best efforts to keep confidential the proprietary commercial terms of this Agreement including the Detailed Schedule. Where the terms of this Agreement or any amendment conflict with the terms of the applicable Detailed Schedule, the terms of the instrument which was executed later in time shall control. Where this Agreement or any amendment thereto and the applicable Detailed Schedule or any amendment thereto were executed at the same time, the terms of the Detailed Schedule shall control.

SECTION 6 - INSPECTION OF RECORDS

The records of each Party hereto, insofar as they relate to matters covered hereby, shall be open upon request by the properly authorized representatives of the other Party hereto, during normal office hours for a period of three years from the date the records were created.

SECTION 7 - EXAMINATION OF BNSF EMPLOYEES

(a) All employees of BNSF engaged in or connected with its operation of trains, locomotives, and cars on the Joint Trackage shall be required to pass examinations every two years on the rules and regulations of EJ&E. In addition, all employees of BNSF engaged in or connected with its operation of trains, locomotives and cars on the Joint Tracks shall be properly certified, promoted and duly authorized to do so, as required by the rules and regulations of the Federal Railroad Administration or other governmental agency having jurisdiction over such matters. BNSF shall pay to EJ&E any expense incurred by EJ&E for such examinations; provided, however, that upon the request of BNSF, EJ&E shall qualify one or more of BNSF's supervisory officers on EJ&E's rules and regulations and such supervisory officer or officers so qualified shall be authorized to examine all employees of BNSF engaged in or connected with BNSF's operation of trains, locomotives, and cars over the Joint Tracks.

(b) BNSF shall assume the entire expense of pilot service furnished by EJ&E,

if any such pilot service is required, until such time as its crews have been qualified on EJ&E's rules as hereinabove provided. Any such pilot or pilots, while engaged at any time in directing, controlling or assisting in any handling of BNSF's trains shall be deemed, for the purpose of allocating liability under the provisions of Section 11 hereof, the exclusive employee or employees of BNSF.

SECTION 8 - SWITCH KEYS, RULE BOOKS, TIMETABLES

All train and engine movements on the Joint Tracks are governed by EJ&E's timetable, rules and regulations. BNSF may elect to place the pertinent portions of EJ&E rules and timetable into its respective employee timetables and/or to furnish its employees copies of the CORA Guide. EJ&E will ensure that the applicable information for the Joint Tracks is furnished to the BNSF for inclusion in its CORA Guide. EJ&E will provide BNSF, at BNSF's expense, all necessary switch keys, timetables, rules and regulations for the operation of BNSF's trains over the Joint Tracks.

SECTION 9 - COMPLIANCE WITH RULES AND REGULATIONS

The Parties hereto, with respect to the use of the Joint Tracks and the operation of equipment thereon and thereover, shall comply with all applicable laws and all applicable rules, regulations, ordinances and orders promulgated by any municipality, board or commission having jurisdiction for the protection of persons, the environment, or otherwise ("Orders"). If the failure of a Party hereto to comply with an Order results

in any fine, penalty, cost or charge being imposed or assessed on or against the other Party, the Party so failing shall reimburse and indemnify the other Party within thirty (30) days for or on account of such fine, penalty, cost or charge, and all expenses and attorneys' fees incurred in defending any action which may be brought against the other Party on account thereof, and shall, in the event of any such action, upon notice thereof being given to it by the other Party, defend such action free of cost, charge and expense to the other Party.

SECTION 10 - DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

"Parties": EJ&E and BNSF.

"Detailed Schedule": a written agreement between the Parties, as amended or supplemented from time to time, which shall include without limitation the charges and any operational details applicable to the grant of trackage rights over a specific segment of the Joint Tracks (referred to as "Joint Track Segment" in the Detailed Schedule). The Detailed Schedule shall be interpreted in conjunction with this Agreement except where the provisions of the Detailed Schedule and this Agreement are inconsistent, in which case, the provisions of the document executed later in time shall govern. Where this Agreement or any amendment thereto and the applicable Detailed Schedule or any amendment thereto were executed at the same time, the terms of the Detailed Schedule shall control.

SECTION 11 - LIABILITY

(a) For purposes of this Section 11:

- (1) the word "Equipment" when used herein shall mean: (i) trains, locomotives, cars, and cabooses, and (ii) inspection and maintenance, hyrail, work and wreck equipment and motor vehicles, both on and off track.
- (2) the Equipment being operated by any carrier acting as an agent for BNSF (including EJ&E) shall be considered the Equipment of BNSF.
- (3) neither BNSF nor BNSF's agents or other authorized users of the Joint Tracks shall be considered an agent of EJ&E or an entity under the care, custody or control of EJ&E while present or operating on EJ&E property pursuant to this Agreement.
- (4) "Hazardous Material" shall mean any substance:
 - (i) the release or threatened release of which requires investigation, removal or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or under common law; or

(ii) which is or becomes defined as hazardous or as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), or which is or becomes listed in the table or appendices as set forth in 49 CFR 172.101 as amended from time to time.

(5) "loss of, damage to, or destruction of" and "injury to or death of" shall include, without limitation, loss, damage, destruction, injury, or death resulting in whole or in part from the release or threatened release of any Hazardous Material.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the Equipment of either Party (but not both) being involved, that Party shall assume all liability therefor, and all costs and expenses in connection therewith, and shall indemnify the other Party against and save it harmless from any such liability, costs and expenses.

(c) When any such loss of, damage to, or destruction of any property or injury to or death of any person or persons occurs with the Equipment of both Parties only being involved:

(1) Each Party agrees to assume all liability for loss of, damage to, or destruction of the Equipment operated by it (including lading) and for injury to or death of its employees, officers, directors, agents and persons in its care, custody and control, and

(2) The Parties hereto further agree that liability for injury to or death of any other person or persons whomsoever, and loss of, damage to, or destruction of all other property (including track and road bed repairs and any other facilities required to be repaired) so occurring shall be borne equally by the Parties hereto.

(d) When any such loss of, damage to, or destruction of any property or injury to or death of any person or persons occurs with the Equipment of both Parties and of any other authorized user(s) of the Joint Tracks being involved:

(1) Each Party agrees to assume all liability for loss of, damage to, or destruction of said Equipment operated by it (including lading) and for injury to or death of its employees, officers, directors, agents and persons in its care, custody and control, and

(2) The Parties hereto further agree that liability covered by this Section 11(d) for injury to or death of any other person or persons whomsoever (except employees, officers, directors, agents and persons in the care, custody and control of such other authorized user(s)), and loss of, damage to, or destruction of all other property (including track and road bed repairs and any other facilities required to be repaired, but excluding the Equipment of such other authorized user(s)) so occurring shall be borne as between the Parties hereto by multiplying the total liability by a fraction, the numerator of which is 1, and the denominator of which is the total number of other authorized user(s) whose Equipment is involved, plus 2.

(e) Except as provided for in Sections 11(b), 11(c) and 11(d) herein, each Party shall assume all liability for injury to or death of its employees, officers, directors, agents and persons in its care, custody and control.

(f) Neither Party to this Agreement shall, under any circumstances arising under the provisions of this Agreement have any cause of action against the other for loss or damage of any kind caused by or resulting from interruption or delay to its business, or for any special, consequential, incidental, punitive, indirect or exemplary damages arising out of this Agreement, except pursuant to a right hereunder for indemnification from the other Party for payment to a person or entity not a Party hereto for such damage or loss.

(g) If a claim or suit shall be commenced against either of the Parties hereto for damages for which the other Party is ultimately liable, the Party sued or against whom the claim is asserted may give notice of such claim or suit to the other Party and thereupon the latter shall assume the defense of the claim or suit and save harmless therefrom the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages and benefits of the Parties' employees), including reasonable outside attorneys' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

(h) The Parties to this Agreement will settle as between themselves any claim for loss or damage according to the terms of this Agreement, notwithstanding any judgments or decree of a court or other tribunal in a proceeding brought by any third party not a Party to this Agreement.

(i) Notwithstanding anything expressed herein to the contrary, BNSF shall assume all liability for, and indemnify and save the EJ&E harmless from, any and all loss of, damage to, or destruction of any property sustained by any person or entity not a Party to this Agreement and any injury to or death of any person not a Party to this Agreement, or not an employee, officer, director or agent, or a person under the care, custody or control of either Party hereto, resulting from any event, accident or incident

in which the Equipment of both Parties was involved to the extent such loss, damage, destruction, injury or death arose from or was in any way connected with the release or threatened release of Hazardous Materials from Equipment operated by or on behalf of BNSF pursuant to this Agreement.

(j) Notwithstanding anything expressed herein to the contrary, EJ&E shall assume all liability for, and indemnify and save BNSF harmless from, any and all loss of, damage to, or destruction of any property sustained by any person or entity not a Party to this Agreement and any injury to or death of any person not a Party to this Agreement, or not an employee, officer, director or agent, or a person under the care, custody or control of either Party hereto, resulting from any event, accident or incident in which the Equipment of both Parties was involved to the extent such loss, damage, destruction, injury or death arose from or was in any way connected with the release or threatened release of Hazardous Materials from Equipment operated by or on behalf of EJ&E, except when EJ&E was acting as an agent for BNSF pursuant to this Agreement.

(k) EJ&E shall give BNSF written notice of the identity of any other authorized user whose use of the Joint Tracks would be first authorized during the term of this Agreement pursuant to a trackage rights agreement of a type which as of the effective date of this Agreement would be required to be filed with the Surface Transportation Board pursuant to Section 11323 of the Interstate Commerce Commission Termination Act of 1995. Notice shall be provided at least sixty (60) days prior to such other

authorized user commencing operations over the Joint Tracks to allow BNSF and such other authorized user an opportunity to reach agreement on how they will allocate liability between them when the Equipment of both is involved in an accident or incident on the Joint Tracks which gives rise to liability. If such other authorized user and BNSF are unable to reach such an agreement, or such other authorized user does not sign the attached Suggested Authorized User Liability Allocation Agreement which is marked as Exhibit "II" as amended from time-to-time and made a part hereof, within sixty (60) days after EJ&E first gave BNSF written notice as provided above, BNSF may terminate this Agreement at any time within 24 months after such other authorized user commences operation over the Joint Tracks by giving written notice to EJ&E of its intent to do so at least thirty (30) days in advance of such termination.

SECTION 12 - DEFAULT

In the event that BNSF shall default in the performance of any of its obligations to pay money hereunder and such default shall continue for a period of fifteen (15) days after the receipt of written notice from EJ&E, EJ&E shall have the right at any time thereafter to terminate this Agreement forthwith by giving written notice of termination to BNSF. In the event that BNSF shall default in the performance of any of its obligations other than to pay money hereunder, and such default shall continue for a period of sixty (60) days after the receipt of written notice from EJ&E, EJ&E shall have the right at any time thereafter to terminate this Agreement forthwith by giving written notice of termination to BNSF.

SECTION 13 - PUBLIC AUTHORITY AND PERMISSION

(a) This Agreement is contingent upon securing from the Surface Transportation Board (STB) or other regulatory body having jurisdiction authority for the operation of BNSF's trains, locomotives, cars and cabooses over the Joint Tracks. BNSF shall assume responsibility for obtaining any necessary approval or exemption from the STB or other regulatory body having jurisdiction. BNSF, at its expense, shall be responsible for filing such application for approval or Notice of Exemption with the STB or other regulatory body having jurisdiction, and shall assist and support said application or Notice of Exemption and will furnish such information and execute, deliver and file such instrument or instruments in writing, as may be necessary or appropriate to obtain such governmental consent, approval or authority. BNSF and EJ&E agree to cooperate fully to procure all such necessary consent, approval or authority.

Upon termination or expiration of this Agreement, for whatever reason, BNSF shall fully cooperate, consent, participate and jointly file with the EJ&E to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the trackage rights granted herein in accordance with the terms of this Agreement. BNSF shall assist and support EJ&E's filing and any associated proceedings, which shall include without limitation, furnishing information and executing and delivering any written instruments necessary to obtain such

governmental authority. Such filing may, in EJ&E's sole discretion, be prepared and made at any time after this Agreement has terminated, expired or BNSF has failed to extend the term of this Agreement by exercising its options as permitted in Section 15 herein. Such filing shall be coordinated by and at the expense of EJ&E. This paragraph shall not diminish BNSF's right to pursue available remedies in an abandonment proceeding as provided in Section 14 of this Agreement.

(b) Should the STB or other regulatory body having jurisdiction deny granting authority, or should same be granted subject to limitations not acceptable to either of the Parties hereto, then this Agreement shall be terminated and shall be null and void.

SECTION 14 - ABANDONMENT

EJ&E reserves to itself the exclusive right, exercisable at any time during the term of this Agreement, without concurrence of BNSF, to elect to seek to abandon all or any part of the Joint Trackage by giving six (6) months prior written notice to BNSF of its intention to do so. Prior to seeking abandonment, EJ&E shall provide BNSF with notice substantially similar in time and content to the notice it provides other authorized users of the relevant segment that it intends to abandon. BNSF shall then have the opportunity to purchase the segment to be abandoned or pursue other remedies available to BNSF by participating in the abandonment proceedings before the STB or its successor. If authority to abandon is granted by the STB or other regulatory body having jurisdiction, or if the

criteria for exemption are satisfied, then this Agreement shall terminate as to the section of the Joint Tracks so abandoned upon the effective date of such approval or exemption.

SECTION 15 - EFFECTIVE DATE - TERM

(a) This Agreement shall become effective when authority for operation by BNSF over the Joint Tracks shall have been secured from the STB or other regulatory body having jurisdiction in accordance with the provisions of Section 13 of this Agreement.

(b) Upon this Agreement becoming effective in accordance with any of the foregoing provisions of this Section, it shall remain in effect for a period of twenty-five (25) years, provided that the Agreement has not been otherwise terminated as authorized in this Agreement.

(c) This Agreement may be terminated prior to the expiration of the term specified in Section 15(b) under any one of the following circumstances:

(1) In the event of a default by BNSF under this Agreement, and such default has not been cured as prescribed hereunder;

(2) In the event of an order or exemption permitting abandonment of any portion of the Joint Trackage in accordance with Section 14 of this Agreement.

(d) No termination of this Agreement or of BNSF's trackage rights with respect to any portion of the Joint Tracks, for any reason, shall serve to relieve a Party hereto of any obligations incurred hereunder on or prior to the date of such termination.

SECTION 16 - INSURANCE

(a) Prior to the use of track provided herein, BNSF, at its sole cost and expense, shall procure and maintain during the term of this Trackage Rights Agreement, insurance adequate to cover all liability herein assumed by BNSF and to protect Transtar and EJ&E, and their Officers, Directors, Stockholders, Employees and Agents with respect to losses arising out of the use of the leased track by BNSF, its Officers, Employees, Agents, Contractors, Suppliers, etc.

Such insurance shall be placed with insurance carriers acceptable to Transtar/EJ&E and shall include but not be limited to:

- (1) Workers' Compensation/Employers Liability with an Employers Liability Limit of not less than \$1,000,000 each accident.
- (2) Commercial General Liability Insurance coverage, including contractual coverage with a limit of not less than \$1,000,000 each occurrence/\$1,000,000 Aggregate.

- (3) Commercial Automobile Liability Insurance coverage with a limit of not less than \$1,000,000 each accident.
- (4) Comprehensive Railroad Liability Insurance coverage, including contractual, F.E.L.A., and pollution liability/clean-up, with a limit of not less than \$100,000,000 each occurrence/\$100,000,000 Aggregate.
- (5) Commercial Umbrella Liability Insurance coverage with a limit of not less than \$100,000,000 each occurrence/\$100,000,000 aggregate.
- (6) All Risk Property Insurance, including flood and earthquake, in an amount not less than \$50,000,000 to provide protection for loss or damage to any Transtar/EJ&E property or the property of others in the care, custody and control of BNSF, its Officers, Employees, Agents, Contractors, Suppliers, etc.

All Risk Property Insurance including flood and earthquake in an amount satisfactory to cover any damage to BNSF's Property, Rolling Stock, Equipment, etc. in an amount not less than \$50,000,000.

The above policies shall contain Severability of Interest Clauses and Waivers of Subrogation in favor of Transtar/EJ&E, their Officers, Directors, Stockholders, Employees and Agents. In addition, the policies shall name Transtar/EJ&E, their Officers, Directors, Stockholders, Employees and Agents as Additional Insureds and

shall be endorsed to provide coverage to these Additional Insureds on a primary (non-contributory) basis.

BNSF shall furnish insurance certificates in a form acceptable to Transtar/EJ&E evidencing compliance with the foregoing requirements and stating that the Insurer will provide 30 days written notice of the cancellation of or material alteration to any of the required policies of insurance.

However, if BNSF is and remains a Class I Rail Carrier, BNSF may, in lieu of insurance coverage described in this Section 16, as a prerequisite to these trackage rights, and annually thereafter, provide to Transtar/EJ&E proof of adequate financial responsibility to secure its liability obligations under this agreement.

SECTION 17 - NOTICES - HOW GIVEN

Any notices to be served hereunder shall be served in writing and mailed to:

Vice President-Midwestern Operations
Elgin, Joliet & Eastern Railway Co.
1141 Maple Road
Joliet, IL 60432-1981

and to:

Assistant Vice President Contracts and Joint Facilities
The Burlington Northern and Santa Fe Railway Company
2600 Lou Menk Drive
Fort Worth, TX 76161-0034

SECTION 18 - SECTION HEADINGS

Section Headings are inserted for convenience only and are to be given no meaning under this Agreement.

SECTION 19 - AGREEMENT TO BE CONSTRUED LIBERALLY - NOT FOR BENEFIT OF THIRD PERSONS

This Agreement shall be construed liberally so as to secure to the Parties hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement and each and every provision hereof are for the exclusive benefit of the Parties hereto and not for the benefit of any third person.

SECTION 20 - SUCCESSORS AND ASSIGNS

This Agreement shall not be assigned by BNSF without the prior written consent of EJ&E, except in the case of: (1) an assignment to the surviving entity in the event of a merger between BNSF and the surviving entity when the surviving entity has unconditionally guaranteed all obligations of BNSF under this Agreement; (2) an assignment to the entity purchasing substantially all of BNSF's assets when the purchasing entity has unconditionally guaranteed all obligations of BNSF under this Agreement; or (3) an assignment to an affiliate of BNSF only when BNSF has unconditionally guaranteed all obligations of such affiliate and BNSF remains liable for the affiliate's failure to perform pursuant to this Agreement. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their successors and assigns.

SECTION 21 - ARBITRATION

(a) In the event any dispute or controversy arises between the Parties with respect to the rights and obligations contained in this Agreement, such dispute or controversy shall be resolved through arbitration in accordance with this Agreement and the Uniform Arbitration Act of Illinois (710 ILCS 5/1 et. seq.), as amended from time to time. The arbitration process shall commence with either Party making a written demand for arbitration and filing this demand by personal service or registered mail with

the other Party. Such demand must be made within ninety (90) days of the event giving rise to the dispute or controversy to be arbitrated and must describe the nature of the dispute or controversy. The arbitration hearing shall take place in Joliet, Illinois.

(b) Within sixty (60) days of written demand for arbitration, the Parties shall mutually agree on the selection of one person to serve as arbitrator for the dispute or controversy. Should the arbitrator resign, die, or be disqualified from service for any other reason, the Parties shall immediately agree on the selection of another arbitrator. Should the Parties fail to agree on the selection of an arbitrator, the arbitrator shall be appointed by the Chief Judge of the Twelfth Judicial Circuit Court of Illinois on application of either Party. Should the Chief Judge be unable or unwilling to appoint an arbitrator, the Parties shall apply to the American Arbitration Association (hereinafter "AAA") for appointment of an arbitrator in accordance with the rules of AAA. Unless otherwise agreed upon by the Parties, any arbitrator appointed by the Parties or by the Chief Judge shall be an individual who is experienced in railroad operation and maintenance issues and the law. The arbitrator shall not have any significant direct or indirect economic relationships or interest with either Party or their affiliates and agents. Any proposed arbitrator shall make a full disclosure prior to selection.

(c) Arbitration shall be conducted in accordance with reasonable rules established by the arbitrator. The arbitration process shall include the right to designate any information provided to the arbitrator as confidential and proprietary. The arbitrator shall set the time and location in Joliet, IL of the arbitration hearings, and deliver to

each Party by personal service or registered mail, written notice of the time, location and subject matter of the arbitration hearing. The arbitrator shall have the power to decide all procedural issues as well as determine questions of law and fact. The arbitrator's award shall be written and delivered to the Parties by personal service or registered mail. The award shall be made within ninety (90) days of the date on which the arbitrator first gave written notice to the Parties of the time, location and subject matter of the arbitration hearing, unless the Parties consent to a longer period of time in which to make an award. The award shall be final and binding on the Parties without judicial review except as permitted by applicable law. Either party may enforce the arbitration award in a court of competent jurisdiction.

(d) The arbitrator shall be paid such fees and expenses as may be agreed upon which will be split equally between the Parties. All other costs of arbitration shall be borne by the Party which incurs them.

SECTION 22 - FORCE MAJEURE

Neither Party shall be liable for damages due to delay or failure to perform any obligation under this Agreement if such delay or failure results directly or indirectly from circumstances beyond the control of such party ("Force Majeure"). Such circumstances shall include, but not be limited to, acts of God, acts of war, civil commotions, riots, strikes, lockouts, fires, water damage, floods, earthquakes, or other natural disasters. Should a Party experience such a circumstance, that Party shall as soon as reasonably

possible provide the other Party with written notification explaining the circumstances which caused such delay or failure, the date(s) on which it occurred and its expected duration.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY

By: _____

ATTEST: _____

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: _____

ATTEST: _____

EXHIBIT 1

**DETAILED SCHEDULE
FOR THE JOINT TRACK SEGMENT BETWEEN
EOLA, IL AND JOLIET, IL**

between

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

and

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

THIS DETAILED SCHEDULE, made and entered into this day 22nd of September, 2003, by and between ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, a Delaware Corporation, hereinafter referred to as "EJ&E", and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware Corporation, hereinafter referred to as "BNSF".

WITNESSETH:

WHEREAS, EJ&E and BNSF entered into a Trackage Rights Agreement dated September 22, 2003 (hereinafter referred to as "Agreement") governing the general terms and conditions with respect to the nonexclusive trackage rights granted to BNSF over various line segments of the EJ&E.

WHEREAS, this Detailed Schedule is intended to supplement and modify the terms and conditions of the Agreement as deemed necessary by the Parties for the grant of nonexclusive trackage rights over the line segment specified herein. This Detailed Schedule shall be made a part of the Agreement and incorporated therein by reference as Exhibit 1. The terms and conditions of this Detailed Schedule shall apply only with respect to the trackage rights granted over this specific line segment.

WHEREAS, the terms and conditions of this Detailed Schedule shall be interpreted in conjunction with the terms and conditions of the Agreement. However, where the terms and conditions of the Detailed Schedule are inconsistent with those of the Agreement, the terms and conditions of the document executed later in time shall control except as otherwise provided herein.

NOW, THEREFORE in consideration of the obligations of the Parties herein, other good and valuable consideration, the premises and the terms and conditions herein contained and intending to be legally bound, the Parties hereto agree as follows:

1. Joint Track Segment

The EJ&E mainline track between the BNSF connection at Eola, IL and the BNSF connection at Joliet, IL and any and all crossovers and sidings between the two locations, approximately 22 miles, as depicted on the print marked as Exhibit "A" shall hereinafter be referred to as "Joint Track Segment." BNSF is granted the right to enter and exit the Joint Track Segment at Eola, IL and Joliet, IL.

2. Usage & Daily Capacity

The Joint Track Segment shall be used by BNSF for freight train traffic only. EJ&E is offering capacity of up to a total of two (2) BNSF trains per day in any direction. EJ&E's understanding is that average train length is expected to be 2,662 feet, including locomotives. EJ&E, when able to accommodate and properly notified in advance, will accept trains greater than 3,500 feet but not exceeding 8,000 feet (including locomotives).

At least four (4) hours' advance notice to EJ&E Dispatcher's office is required to run trains between 3,500 and 8,000 feet.

Should the average train size, for the actual number of trains operated, fall below 2,000 feet for two (2) consecutive months, then the rate per car mile charges under Section 4 will be increased by a percentage amount equal to the percentage amount that the average train size is below 2,662 feet. As an example, if the average train size is below 2,662 feet

by 25% over two (2) consecutive months, then the rate per car mile will be increased by 25%. The adjusted per car mile rate shall remain in effect for the same number of months and be adjusted on a monthly basis until the average length per train meets or exceeds 2,000 feet. Should the average train size, for the actual number of trains operated, remain below 2,000 feet for more than four (4) consecutive months, BNSF has the unilateral right to cancel this agreement on sixty (60) days' notice to EJ&E.

3. **BNSF Designated Agents**

BNSF designates EJ&E as its agent provided that their crews will be in compliance with all applicable federal, state and local laws and be qualified on EJ&E rules as they pertain to this Detailed Schedule and the Agreement.

4. **Car Movement Fee**

BNSF shall pay EJ&E for each freight car/locomotive movement at the following rate:

\$.65 per car mile as defined below (Base Rate).

BNSF will pay EJ&E a sum computed by multiplying: (i) the Base Rate, as may be revised in accordance with Section 5, and / or Section 2, by (ii) the number of cars (loaded or empty) and locomotive units moved by BNSF with their own crews and power over the Joint Track Segment, (iii) by 22 miles, the length of the Joint Track Segment.

For the purpose of this Agreement:

- A. Each locomotive will count as two cars.
- B. Each platform on a multi-platform intermodal car will count as one car.
- C. Auto racks will be counted as follows: On a monthly basis, the first 1,000 auto racks will count as two cars each; all subsequent auto racks above the first 1,000

will count as 1.5 cars each. In addition, each AAR V295 articulated auto rack will count as 1.5 auto racks in the above determination of billable cars.

The Base Rate shall be subject to change to reflect any increases or decreases subsequent to the base year (base year is defined as July 1, 2003 through June 30, 2004), and shall be revised in accordance with Section 5.

Note: The above car movement charges apply to each car/locomotive moving under this agreement regardless of the direction of movement or load/empty status of the car. These rates include all Franchise and Maintenance Fees. The car movement fee shall be billed monthly by EJ&E and paid by BNSF within thirty (30) days of the billing date. On a monthly basis and within 30 days following the end of the preceding month, BNSF shall provide the EJ&E with car counts, types of cars, number of locomotives and other pertinent information necessary for billing purposes.

BNSF will furnish to EJ&E all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure will be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The minimal data requirements will be determined between EJ&E and BNSF.

5. Adjustment of Rates/Fees

The Car Movement Fee in Section 4 and the Train Movement Incentive in Section 8 shall be adjusted annually beginning July 1, 2004 and each July 1 thereafter for the term of this Detailed Schedule. The adjustments shall be based on 75% of the annual percent change

in the Unadjusted Productivity Rail Cost Adjustment Factor (RCAFU, 4Q02 = 1.000) as approved and published by the Surface Transportation Board (STB) in Ex Parte 290 Sub No. 5.

The July 1, 2004 adjustment shall be calculated as 75% of the percent change from the Third Quarter 2003 RCAFU to the Third Quarter 2004 RCAFU. Similarly, subsequent July 1 adjustments shall be calculated from the third quarter RCAFU of the immediately preceding year to the third quarter RCAFU of the current year. (See hypothetical example below).

If the STB (or any successor organization) rebases the RCAFU, the rebased values will be used in the adjustment calculations. If the RCAFU value for the Third Quarter of the immediately preceding year is not restated by the STB, the parties will restate it with a linking factor. This linking factor will utilize the methodology recommended by the Association of American Railroads (AAR). If no methodology is recommended by the AAR, the linking factor will be calculated as the ratio of the RCAFU as rebased, divided by the RCAFU on the old base, for the most recent period in which the RCAFU is published on both bases. This ratio will be the linking factor, which will be multiplied by the RCAFU value for the Third Quarter of the immediately preceding year in need of restatement, before making the current adjustment calculation.

In calculating the adjustments, all published and any linked index values will be rounded to a thousandth of an index point; all percent change calculations (both intermediate and final) will be rounded to a tenth of a percent; any linking factors will be rounded to a

thousandth of a point and the Car Movement Fee will be rounded to the nearest tenth of a cent. Delay charges in Section 8 will be rounded to the nearest whole cent. The rounding rule used will be that any fraction less than one-half will be dropped, while any fraction equal to or greater than one-half will be rounded up to the next higher value.

In the event the STB (or any successor organization) ceases to publish the RCAFU, the parties shall determine a substitute index. The substitute index shall be the index that most closely matches the structure of the RCAFU. The substitute index shall be used for the remainder of the contract. If the parties cannot agree on a substitute index within 90 days after the cancellation of the RCAFU, any party may submit the matter to be determined by binding arbitration.

All rates/charges/fees will be adjusted up or down depending on the RCAFU, but under no circumstances shall the Car Movement Fee or other rates/charges ever decrease below the base rate(s) published herein through application of the adjustment formula provided herein.

Hypothetical Example of Rate Adjustment

For July 1, 2004

RCAFU Index Values:

3Q 2003 RCAFU: 1.116

3Q 2004 RCAFU: 1.155

Annual Percent Change in RCAFU:

Percent Change: $[1.155 - 1.116] / 1.116$

$$= [0.039] / 1.116$$

RCAFU Percent Change: = .034946 or 3.5%

Application to Car Movement Fee:

Rate as of July 1, 2003: \$.65 per car mile

Adjustment Percent Change: 3.5% (from above)

New Rate as of July 1, 2004: \$.65 X [1+3.5%]

$$= \$.65 \text{ X } [1+.035]$$

$$= \$.65 \text{ X } [1.035]$$

$$= \$.65 = \$.673 \text{ (rounded to nearest tenth of a cent)}$$

All index values, percent changes, and dollar/cent amounts in the above example are for illustrative purposes only.

6. Minimum Volume/Transit Guarantee

BNSF does not guarantee any volume to EJ&E and EJ&E does not commit to any transit guarantee to BNSF.

7. Car and/or Lading Restrictions

Maximum Gross Weight on Rail (GWR) will be 286,000 lbs., maximum height will be Plate H clearance and maximum width will be 11'-0". Any car exceeding any of these

maximum restrictions will not be permitted to traverse the Joint Track Segment unless prior clearance is received from EJ&E.

8. Train Movement Incentives

BNSF will be assessed a Delay Charge by the EJ&E of \$6.54 per minute between Eola and Joliet for delays specifically attributable to BNSF, while en route on the Joint Track Segment or due to BNSF's inability to exit the Joint Track Segment for reasons not attributable or under the control of EJ&E. Thirty (30) minutes will be allotted for delay on any train prior to a delay penalty being invoked. The delay charges herein shall be adjusted at the same times and by the same percentages as the car movement fee. Delay charges shall be aggregated for each calendar month and shall be paid within thirty (30) days of the date of invoice.

9. Hazardous Material Notification

BNSF will provide notice to EJ&E prior to the issuance of a track warrant of the location of any hazardous materials in the train and information as to contents so that EJ&E may comply with its Hazardous Materials Spill Control and Contingency Plan.

10. Mileage and Car Hire

All mileage and car hire charges accruing on cars in BNSF trains moving hereunder shall be assumed by BNSF and reported and paid by it directly to the owners of such cars.

11. BNSF Investigations

BNSF will handle investigation of grade crossing accidents or other incidents arising out of its use of the Joint Track Segment and be responsible for the security of its trains while they occupy the Joint Track Segment. All accident/incident reports shall be sent to EJ&E in a timely fashion for governmental reporting. EJ&E reserves the right to conduct its

own independent investigation of any accident or incident occurring on the Joint Track Segment. Any such investigation by EJ&E, if conducted at all, shall in no way be considered as being conducted by or on behalf of BNSF or any third party. EJ&E shall take the necessary action to contact the proper authorities and medical personnel if it is first to appear at the scene of any accident or incident occurring on the Joint Track Segment.

12. Manual Operated Switches

All manually operated mainline switches utilized in the Joint Track Segment shall be realigned by BNSF for the main line track immediately after use.

13. Radio Usage

BNSF crews will use EJ&E radio frequency while traversing the Joint Track Segment.

14. Fines and Penalties

Any fine or penalty imposed or attributed to the usage of the Joint Track Segment will belong to the party who is in charge of the train.

15. General

This Detailed Schedule shall be made a part of the Agreement and incorporated therein by reference as Exhibit 1. The terms and provisions of this Detailed Schedule shall be interpreted in conjunction with the terms and conditions expressed in the Agreement.

Where the terms and conditions of this Detailed Schedule are inconsistent with the terms and conditions of the Agreement, the terms and conditions of the document executed later in time shall control. Where the Agreement or any amendment thereto and this Detailed Schedule or any amendment thereto were executed at the same time, the terms of the Detailed Schedule shall control. The terms and conditions contained in this Detailed Schedule shall apply only with respect to the trackage rights granted by EJ&E to BNSF

over the specific Joint Track Segment as defined in Section 1 of this Detailed Schedule. For purposes of interpreting the Agreement, the term "Joint Track Segment" as used in this Detailed Schedule shall be construed as meaning a portion of the Joint Tracks and thus references in the Agreement to "Joint Tracks" or "Joint Trackage" shall apply as the context may require. The term of this Detailed Schedule shall run concurrently with the term of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY

By: _____

ATTEST:

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: _____

ATTEST:

EXHIBIT - BNSF Trackage Rights on the EJE

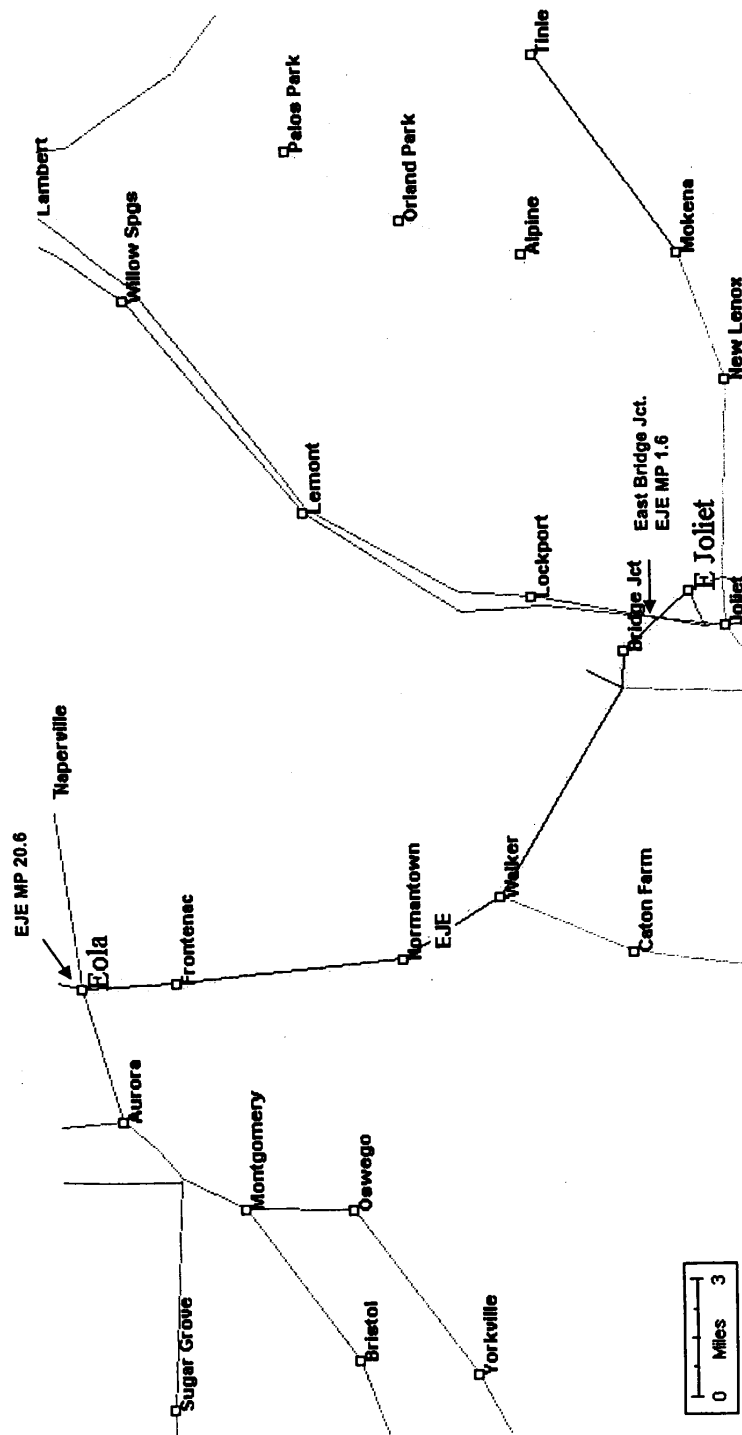


EXHIBIT A