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October 29, 2021

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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024

**Re: STB Docket No. FD 36557
Union Pacific Railroad Company--Trackage Rights Exemption--BNSF Railway Company**

Dear Ms. Brown:

Enclosed for filing in the above proceeding are: (1) a notice of exemption pursuant to the temporary trackage rights class exemption at 49 C.F.R. § 1180.2(d)(7); and (2) a motion for protective order and unredacted version of the trackage rights agreement.

The filing fees of \$1,400 for the notice of exemption was paid using Pay.gov. Please feel free to contact if you have any questions.

Sincerely,

/s/ Jeremy Berman

Jeremy M. Berman

FILED
October 29, 2021
SURFACE
TRANSPORTATION BOARD

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October 29, 2021
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36557

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Jeremy M. Berman
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-4735
jmberman@up.com

Dated: October 29, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36557

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF 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 for renewal of trackage rights over a line of railroad of BNSF Railway Company (“BNSF”) between Milepost 1120.7 near Stockton and Milepost 1164.50 near Port Chicago for a total distance of approximately 45 miles in California.

UP current operates these trackage rights pursuant to an agreement dated August 21, 1992.¹ The agreement was set to expire on its own terms as of August 13, 2014. UP and BNSF agreed to negotiate for an extension of the agreement and operations under the agreement continued. UP and BNSF have now executed an amendment to the agreement to extend the term, among other changes. Under the amendment, operations will continue as they have since 1992 without material change.

Under 49 C.F.R. § 1180.2(d)(7), the renewal 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

¹ UP’s acquisition of rights from Milepost 1154.10 to Milepost 1164.50 was authorized by the Interstate Commerce Commission in *Union Pacific--Trackage Rights Exemption--ATSF Rwy. Co.*, FD 32153 (ICC served Oct. 1, 1992). UP originally acquired the rights from Milepost 1120.7 to Milepost 1154.10 through UP’s predecessor, Western Pacific Railroad Company. These rights were originally authorized in *Sacramento Northern Rwy. Trustees Abandonment, Etc.*, FD 18617, 295 ICC 73 (1955).

(i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this Notice: (i) are based on a written agreement, and (ii) are not filed or sought a responsive application 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 the Proposed Transaction

The transaction covered by this Notice is the renewal of overhead trackage rights by UP over approximately 45 miles of BNSF's trackage extending between Milepost 1120.7 near Stockton and Milepost 1164.50 near Port Chicago in California. Renewal of these trackage rights will allow operations to continue as they have since 1992 without material change.

§ 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
1400 Douglas Street
Omaha, NE 68179

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

Jeremy Berman
1400 Douglas Street
Union Pacific Railroad Company
STOP 1580
Omaha, NE 68179
(402) 544-4735

jmbberman@up.com

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated upon the effective date of this Notice of Exemption.

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

Renewal of the trackage rights covered by this Notice will allow UP to continue operating as it has since 1992.

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

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, 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)

An executed, redacted public copy of the trackage rights renewal is attached as Exhibit 2. UP has also filed an executed, unredacted copy of the renewal along with a motion for protective order.

§ 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). The applicable labor protective conditions for the discontinuance component of the trackage rights are those set forth in *Oregon Short Line R.R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

§ 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). UP's proposed trackage rights renewal also is exempt from historic preservation reporting requirements. *See* 49 C.F.R. § 1105.8(b)(3).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: /s/ Jeremy Berman

Jeremy M. Berman
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-4735
jmberman@up.com

VERIFICATION

I, Melissa Grosz, Director Joint Facilities for Union Pacific Railroad Company, under penalty of perjury, declare and verify that I am authorized to make this verification and I have read the foregoing Notice of Exemption, know the facts stated therein, and believe that said facts are true as stated to the best of my knowledge, information and belief.

Dated: October 27, 2021

/s/ Melissa Grosz

Melissa Grosz

EXHIBIT 1

Trackage Rights - UP on BNSF

Stockton to Pittsburg to Port Chicago



**AMENDMENT TO
STOCKTON TO PITTSBURG TO PORT CHICAGO, CA
TRACKAGE RIGHTS AGREEMENT**

THIS AMENDMENT (hereinafter called "**Amendment**") is entered this 25th day of June, 2021 ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, and successor to The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as "**BNSF**" and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, and successor to **UNION PACIFIC RAILROAD COMPANY**, a Utah corporation, hereinafter referred to as "**UP**",

RECITALS:

WHEREAS, BNSF and UP are parties to an agreement dated August 21, 1992, as amended, whereby BNSF granted UP the right to operate its trains, locomotives and cars between Stockton, Pittsburg and Port Chicago, CA ("**Agreement**"); and

WHEREAS, the Agreement was set to expire by its terms as of August 13, 2014; and

WHEREAS, BNSF and UP now desire to extend the term of the Agreement.

AGREEMENT:

NOW, THEREFORE, the parties mutually agree as follows:

1. **Name of Parties.** The term "Santa Fe" shall be deleted as it appears in the Agreement and shall be replaced by the term "BNSF". The term "Pacific" shall be deleted as it appears in the Agreement and shall be replaced by the term "UP".
2. **Compensation.** Section 9(a) of the Agreement shall be deleted in its entirety and shall be replaced with the following:

3. **Term and Termination.**

Subject to the provisions of Sections 7.2, 7.3 and 7.4 of Exhibit "B" and subject to and conditioned upon approval of the Surface Transportation Board ("STB"), if required, this Amendment shall renew and extend the Agreement as amended herein and shall apply retroactively to August 14, 2014 ("**Application Date**") and shall remain in effect for a period of twenty-five (25) years from the Effective Date of this Amendment (hereinafter called "**Term**"). After the initial Term, the Agreement, as amended by this Amendment, shall automatically renew for one year terms thereafter unless terminated by either party giving at least twelve (12) months' advance written notice of that party's desire to not renew the term. This section shall supersede Section 11 of the Agreement.

4. **Ratification.** Except as amended by this Amendment, all of the terms and provisions of the Agreement are hereby reaffirmed and remain in full force and effect and apply to the terms of this Amendment. If there is a conflict between the terms and provisions of the Agreement and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall control.

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

BNSF RAILWAY COMPANY

By: Paul Duncan

Printed: Paul Duncan

Title: VP Service Design

UNION PACIFIC RAILROAD COMPANY

By: John W. Turner

Printed: John W. Turner

Title: VP Network Planning + Ops.

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 36557**

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY**

BNSF Railway Company (“BNSF”) has agreed to a renewal of trackage rights to Union Pacific Railroad Company (“UP”) between Milepost 1120.7 near Stockton and Milepost 1164.50 near Port Chicago for a total distance of approximately 45 miles in California. The trackage rights covered by this Notice are being renewed to allow for UP’s continued operations.

The trackage rights renewal will become effective on or after November 28, 2021

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: November 18, 2021

By the Board,

Director, Office of Proceedings