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January 30, 2024
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January 30, 2024

Via E-Filing

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 36755
Union Pacific Railroad Company--Trackage Rights Exemption—Omaha Public Power
District**

Dear Ms. Brown:

Enclosed for filing in the above proceeding are: (1) a notice of exemption pursuant to the 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 \$1,500 for the notice of exemption was paid using Pay.gov. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Tanya Spratt

Tanya L. Spratt

FILED
January 30, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
January 30, 2024
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36755

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
OMAHA PUBLIC POWER DISTRICT**

VERIFIED NOTICE OF EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Tanya L. Spratt
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-4735
tspratt@up.com

Dated: January 30, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36755

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
OMAHA PUBLIC POWER DISTRICT**

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 trackage rights over a line of railroad of Omaha Public Power District (“OPPD”) between Milepost 5.9 near Arbor, Nebraska, and Milepost 56.3 near College View in Lincoln, Nebraska, and an additional 475 foot section of track extending from Milepost 5.9, for a total distance of approximately 54.8 miles.

UP originally acquired these trackage rights pursuant to an agreement dated July 25, 2003.¹ The original agreement was set to expire on its own terms as of December 31, 2020. UP and OPPD agreed to negotiate for an extension of the agreement and operations under the agreement continued. UP and OPPD have now executed a new agreement that provides UP with substantially similar trackage rights and will allow operations to continue as they have since 2003 without material change.

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

¹*Union Pac. R.R.—Trackage Rights Exemption—Omaha Pub. Power Dist.*, FD 34388 (STB served Aug. 22, 2003).

are: (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 trackage rights by UP over approximately 54.8 miles of OPPD's trackage between Milepost 5.9 near Arbor, Nebraska, and Milepost 56.3 near College View in Lincoln, Nebraska, and an additional 475 foot section of track extending from Milepost 5.9, as shown on the maps attached hereto as Exhibit 1. Renewal of these trackage rights will allow operations to continue as they have since 2003 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:

Tanya Spratt
1400 Douglas Street

Union Pacific Railroad Company
STOP 1580
Omaha, NE 68179
(402) 544-4735
tspratt@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

The trackage rights covered by this Notice will allow UP to continue operating as it has since 2003.

§ 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)

Map are provided as Exhibit 1.

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

An executed, redacted public copy of the trackage rights agreement is attached as Exhibit 2. UP has also filed an executed, unredacted copy of the agreement 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/ Tanya Spratt

Tanya L. Spratt
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-4735
tspratt@up.com

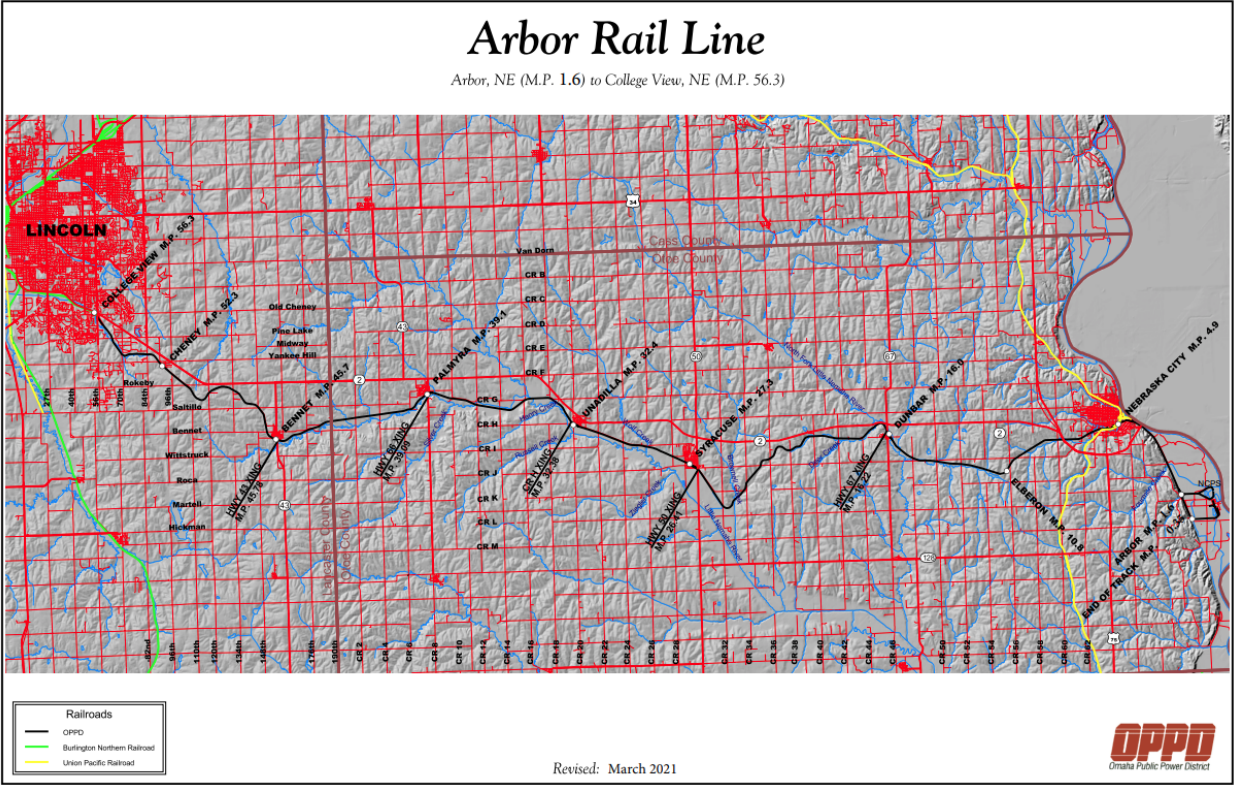
VERIFICATION

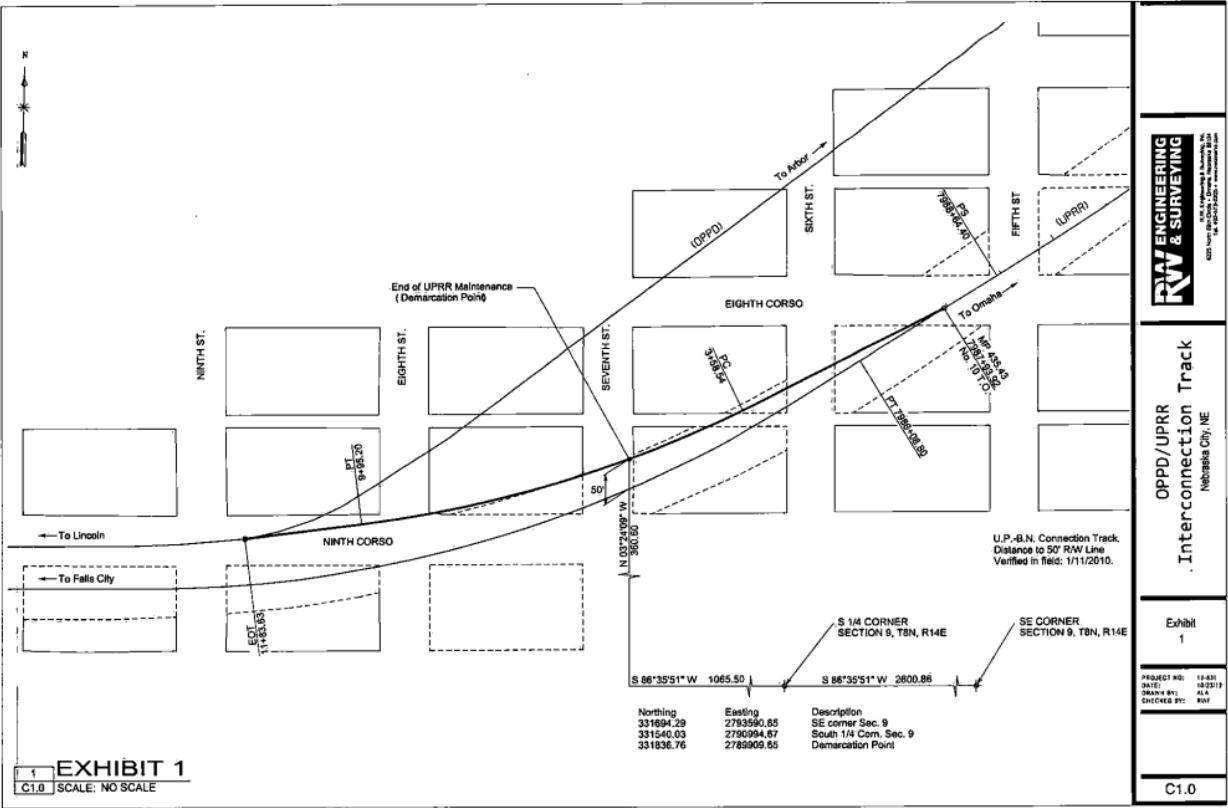
I, Melissa Grosz, Director Joint Facilities for Union Pacific Railroad Company, under penalty of perjury, declare and verify that I am authorized to make this verification and I have read the foregoing Notice of Exemption, know the facts stated therein, and believe that said facts are true as stated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

Dated: January 30, 2024

/s/ Melissa Grosz

Melissa Grosz







TRACKAGE RIGHTS AGREEMENT

THIS Trackage Rights Agreement ("Agreement") is made and entered this 14th day of November, 2023 between Omaha Public Power District, a public corporation and political subdivision of the state of Nebraska, whose headquarters are in Omaha, Nebraska ("OPPD"), and Union Pacific Railroad a Delaware corporation, whose headquarters are in Omaha, Nebraska ("UP").

WITNESSETH

WHEREAS, OPPD is the owner of a rail line and certain other rights-of-way and assets located in the State of Nebraska between College View (MP 56.3) and Arbor (MP 1.6) and an approximate 475 foot section of a connecting track extending from MP 5.9 on the former BNSF main line to a point located at Northing 331836.76 and Easting 2789909.65 (the Demarcation Point), collectively hereinafter ("Rail Line"). Further, the remainder of the connecting track from the terminus of OPPD's ownership to the Demarcation Point to the point of connection with UP's main line track is owned by UP, shown on Exhibit A and Exhibit 1, attached to and made a part of this Agreement;

WHEREAS, upon acquiring the Rail Line, OPPD acquired the underlying obligation to provide common carrier freight rail service to shippers located along the Rail Line;

WHEREAS, OPPD desires that UP, on a non-exclusive basis, assume OPPD's underlying common carrier obligation and responsibility to provide rail service upon reasonable request to rail shippers other than OPPD ("Non-OPPD Shippers") now or hereafter located along the Rail Line; and

WHEREAS, UP desires to provide, on a non-exclusive basis, assume OPPD's underlying common carrier obligation and responsibility to rail service upon reasonable request to Non-OPPD Shippers now or hereafter located along the Rail Line;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. TERM

This Agreement shall become effective as January 1, 2021 (the "Effective Date") and shall continue in effect through December 31, 2027 (the "Term"), unless earlier terminated pursuant to the provisions of Section 14 below. Payments and other rights, remedies or obligations arising under the Agreement prior to its termination or expiration shall survive termination or expiration of this agreement and remain due and payable.



2. COMMON CARRIER OBLIGATION

UP hereby assumes and agrees to fulfill, non-exclusively, any and all common carrier obligations and responsibilities that relate to OPPD and Non-OPPD Shippers located along the Rail Line, arising under federal, state or local laws or authorities, including the common law of Nebraska. UP agrees to perform, non-exclusively, all common carrier operations related to the Rail Line by performing rail transportation service upon reasonable request of any Non-OPPD Shipper located on the Rail Line, including but not limited to freight train service, haulage, industry switching, and interchange service with other rail carriers whose tracks connect to Rail Line.

3. USE AND OPERATION OF THE RAIL LINE

- 3.1 OPPD hereby grants UP non-exclusive, local trackage rights to use and operate its trains and locomotives over the Rail Line pursuant to the terms and conditions set forth in this Agreement; provided, however, that OPPD shall maintain the sole and exclusive authority to permit any other rail carrier to use or operate over the Rail Line (each, a "Third Party User"); provided further, however, that subject to Section 4, the use of or operation over the Rail Line by any Third Party User(s) shall not unreasonably interfere, with UP's use of and operation over the Rail Line as permitted by this Agreement.
- 3.2 OPPD and UP shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by UP thereunder. OPPD and UP agree to cooperate fully to procure all such necessary consent, approval or authority.

4. DISPATCHING OF TRAINS

- 4.1 UP hereby acknowledges and agrees that unit train movements of coal to or from the Nebraska City Power Station ("NCPS") shall have priority over all other railroad operations performed over the Rail Line.
- 4.2 UP also acknowledges that the BNSF Railway Company ("BNSF") shall have exclusive direction and control of all operations (including dispatching) on, over and along the respective segments of the Rail Line as in its judgment may be reasonably necessary or desirable for the economical and safe operating thereof for the combined use of all parties using the Rail Line. At all times, dispatching shall be in accordance with the rules, instructions, and restrictions of BNSF, which OPPD has required, as a condition of granting



BNSF dispatching authority, shall be reasonable, just and fair between all parties using the Rail Line, and shall not unjustly discriminate against any of them.

- 4.3 UP agrees to coordinate with BNSF concerning train scheduling, control, dispatching, communications and issuance of train orders associated with traffic of Non-OPPD Shippers transported over the Rail Line. UP further agrees to provide at its sole cost and expense all necessary communications equipment to allow UP to communicate with BNSF's dispatching systems in order to ensure that all train operations are dispatched and performed safely.

5. COMPENSATION

6. BILLING AND PAYMENT

- 6.1 OPPD shall invoice UP for the Charges, adjusted as provided in Section 5, above, on a monthly basis.
- 6.2 All undisputed payments on invoices submitted by OPPD under Subsection 6.1 shall be due and payable within thirty (30) days following their receipt by UP.



- 6.3 In the event UP disputes the amount of the Charges which have been invoiced by OPPD, UP shall notify OPPD of the amount in question and the parties shall have 45 days in which to attempt to resolve the dispute through good faith discussions. If OPPD and UP cannot resolve the dispute within the 45-day period, the dispute shall be subject to resolution pursuant to the provisions of Section 13 below.

7. EQUIPMENT

- 7.1 UP shall provide the locomotives required for the safe and efficient operation of trains it operates over the Rail Line, and for maintaining, fueling, and lubricating such locomotives. UP shall provide sufficient rolling stock and other equipment needed to perform the common carriage services it provides over the Rail Line and shall perform any required inspections of railroad freight cars that it operates over the Rail Line.
- 7.2 All locomotives and equipment employed by UP shall comply with all applicable safety and maintenance standards and all applicable federal, state, and local laws, regulations and ordinances. UP shall also complete and submit to the appropriate federal, state, or local authorities or other entities all prescribed reports related to locomotives and other equipment utilized by UP in operations over the Rail Line.
- 7.3 BNSF or its authorized agents have primary responsibility for re-railing or clearing any locomotive or equipment that is derailed, wrecked, or otherwise disabled while upon the Rail Line, outside of the NCPS plant gates located near MP 1.6 of the Rail Line, provided however, BNSF may permit UP the opportunity to re-rail or clear UP-operated locomotives or equipment that become derailed, wrecked, or otherwise disabled while upon the Rail Line. UP agrees that under any such arrangement with BNSF, UP shall use reasonable efforts to re-rail or clear UP-operated locomotives and/or equipment in a manner that minimizes delays and/or interruption of the movement of unit trains of coal over the Rail Line. Except to the extent provided otherwise in Section 11.2 of this Agreement, the reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled locomotives and/or equipment and any loss or damage incidental thereto shall not be borne by OPPD.

8. TRAIN CREWS AND PERSONNEL

UP shall employ experienced, qualified and properly trained crews to perform its freight train operations over the Rail Line. UP shall be solely responsible for hiring, supervising and compensating its train crews and any other personnel necessary to fulfill its obligations hereunder and to provide and administer all unemployment, retirement, disability or any other employee benefits associated with such employment.



9. CONSTRUCTION OF FACILITIES

OPPD shall maintain the sole and exclusive authority to approve the construction or installation of any additional tracks, structures or facilities that would connect to or adjoin the Rail Line.

10. MAINTENANCE

10.1 OPPD, or a third-party contractor retained by OPPD, shall be responsible for maintaining the Rail Line in a good and workmanlike manner in accordance with applicable federal, state and local safety standards to a minimum FRA Class 2 Safety Standards. In addition, the Rail Line shall be maintained to a standard suitable, consistent with industry custom and practice, for trains with a maximum weight limit of 286,000 pounds, provided, however, that UP shall report promptly to OPPD, or its third-party contractor, any defects in the track or related structures or any repairs required to be made to the Rail Line of which UP becomes aware during the course of its operations over the Rail Line.

10.2 UP may conduct inspections of the Rail Line; provided, however, that UP shall notify OPPD of UP's desire to conduct such an inspection five (5) days prior to the date of inspection. Any such inspections shall be conducted jointly with OPPD, and/or its maintenance contractor, and UP.

10.3 OPPD, or its third-party contractor, shall make reasonable efforts to ensure that UP is given reasonable advance notice of maintenance plans and schedules.

11. INDEMNIFICATION



12. COMPLIANCE WITH LAWS

All responsibilities incurred by either party under this Agreement and all operations performed by UP over the Rail Line shall conform to all applicable federal, state, and local, laws, statutes, and regulations. Each party agrees to indemnify and hold the other party harmless from and against any and all claims, suits, damages, penalties or fines that arise from the indemnifying party's (or its contractors' or agents') failure to comply with such laws, statutes and regulations.

13. DISPUTE RESOLUTION

Any dispute between the parties that cannot be resolved by negotiation and agreement of the parties shall be decided by a court, without a jury, in the District Court of Douglas County, Nebraska or the United States District Court for the District of Nebraska. The parties hereby consent and submit to the exclusive jurisdiction of the District Court of Douglas County, Nebraska and the United States District Court for the State of Nebraska (or, if such courts do not have subject matter jurisdiction over such dispute, in any other state or federal court located in the State of Nebraska), and hereby waive any objection based on venue or forum non conveniens with respect to any legal action or proceeding instituted in connection with or related to this Agreement. THE PARTIES WAIVE THEIR RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT.



14. TERMINATION FOR DEFAULT

If during the Term either party breaches any of its obligations hereunder and fails to substantially correct such breach within thirty (30) days of receiving written notice from the other party of the breach, the non-breaching party may terminate this Agreement by giving ten (10) days' written notice of termination to the breaching party.

15. REPORTING

UP shall be responsible for and shall perform all applicable reporting, accounting, and document retention requirements related to the common carriage railroad operations that it performs pursuant to this Agreement. UP shall provide OPPD with a copy of all reports, accounts and data that it is required to produce to any federal, state or local authority or other entities, including, without limitation, the Association of American Railroads.

16. TAXES

OPPD shall be responsible for all applicable local, state and federal government taxes that relate to the Rail Line. UP shall be responsible for all applicable local, state and federal government taxes that relate to UP's equipment, personnel, crews, or any other taxable item owned or provided by UP in performing its obligations hereunder.

17. NOTICES

Any notice or other correspondence required or permitted hereunder, except as otherwise provided herein, shall become effective upon receipt and shall be deemed to have been properly given or delivered when made in writing and delivered personally to the Party to whom directed, or when sent by United States first class mail or an express letter service and addressed to the party to whom directed at its below specified address:

Notices to OPPD: Omaha Public Power District
 Attention: Attn: Manager of Energy Commodities
 444 South 16th Street
 Omaha, NE 68102-2247
 Email: ebassingthwaighte@oppd.com

Notices to UP: Union Pacific Railroad Company
 Attn: General Director Joint Facilities
 1400 Douglas Street, STOP 1180
 Omaha, Nebraska 68179-1180
 Email: DWHUGHES@up.com



These addresses may be changed upon giving written notice in the manner above provided.

18. CHOICE OF LAW

This Agreement shall be governed by and construed according to the law of the State of Nebraska, without regard to its conflict of laws principles. Should any provision of this Agreement be deemed unenforceable for any reason, such provision shall be deemed null and void, but the other provisions of this Agreement shall remain in full force and effect.

19. ASSIGNMENT

This Agreement may not be assigned by either party to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that either party may assign this Agreement (1) to a corporation limited liability, partnership or other entity that it controls, is controlled by or in common control with, or (2) in connection with its merger or consolidation or the sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

20. MODIFICATION

This Agreement may not be modified or amended except by an instrument in writing signed by both parties.

21. SECTION HEADINGS

All section headings in this Agreement are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

22. NO THIRD-PARTY BENEFICIARIES

This Agreement is made and intended for the benefit of the parties hereto and their respective successors and permitted assigns and for no other parties.

Signature Page Follows



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

OMAHA PUBLIC POWER DISTRICT

DocuSigned by:
By: Jeff Bishop
65F902772CFE45A...

Title: Chief Financial Officer

Date: November 14, 2023

UNION PACIFIC RAILROAD COMPANY

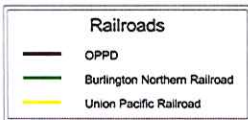
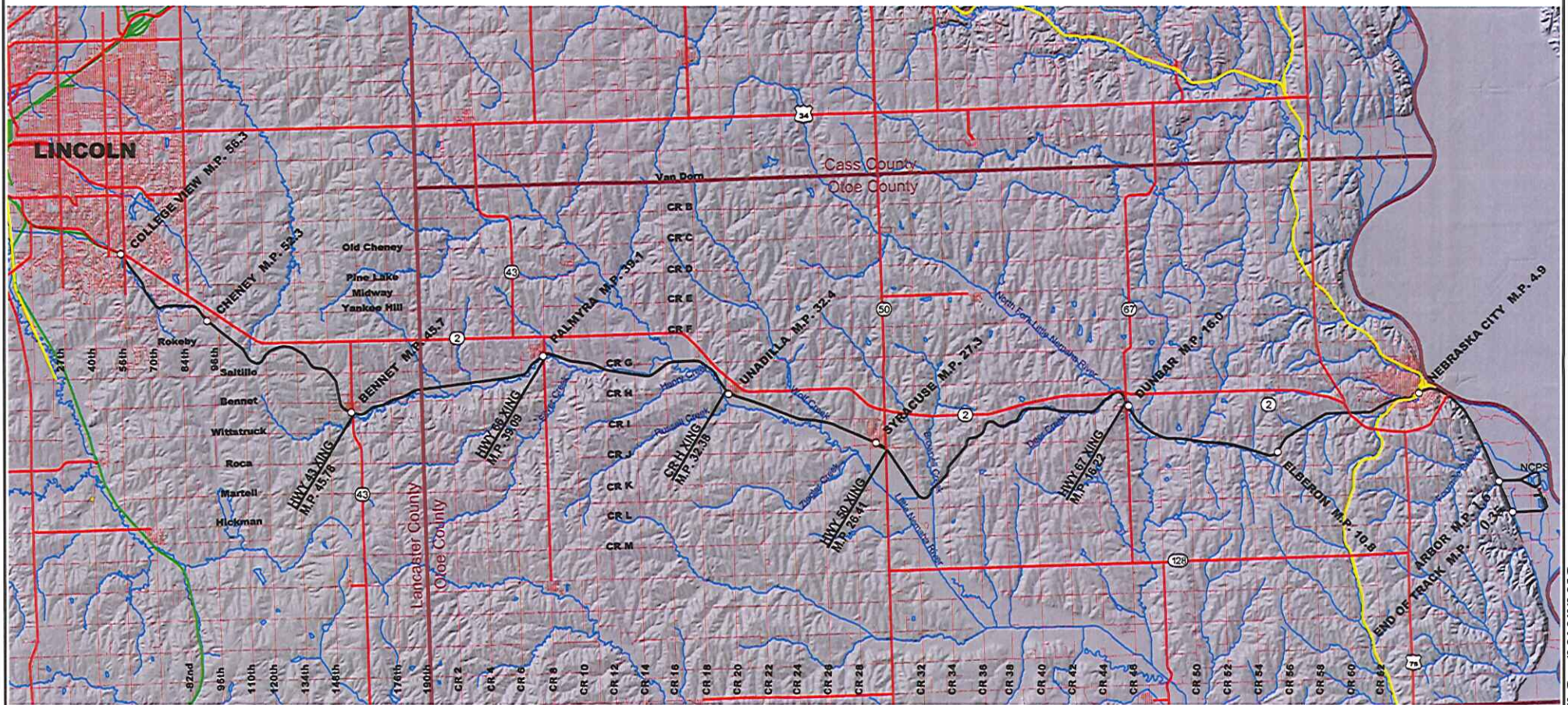
By: David Hughes

Title: GO JTF

Date: 11/17/23

Arbor Rail Line

Arbor, NE (M.P. 1.6) to College View, NE (M.P. 56.3)



Revised: March 2021

OPPD
Omaha Public Power District

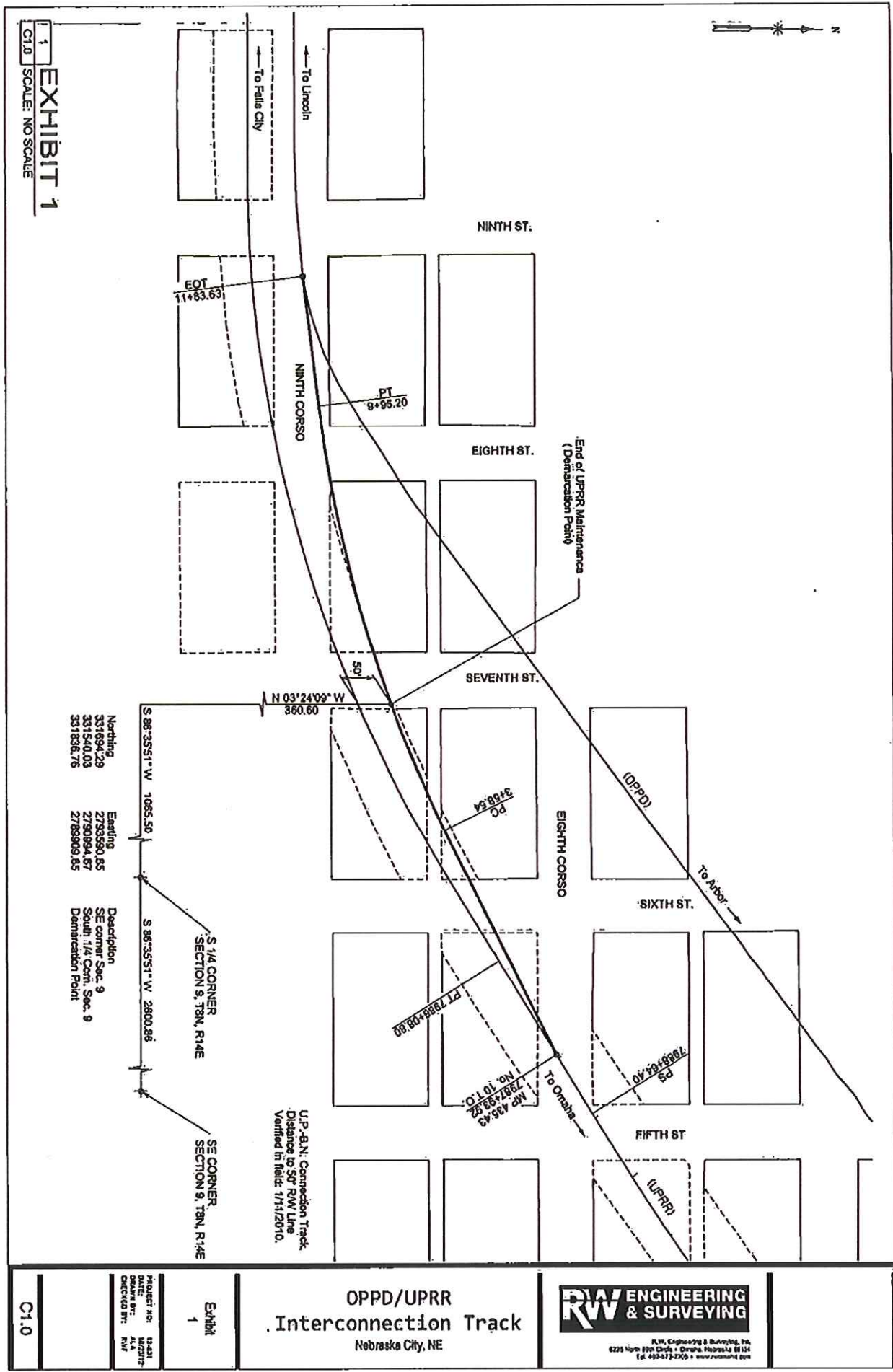


EXHIBIT 1
C1.0 SCALE: NO SCALE

PROJECT NO: 13431
DATE: 10/20/17
DRAWN BY: A.A.
CHECKED BY: R.W.
C1.0

Exhibit
1

OPPD/UPRR
Interconnection Track
Nebraska City, NE

RW ENGINEERING
& SURVEYING

R.W. Engineering & Surveying, Inc.
6225 North 8th Circle • Omaha, Nebraska 68134
Tel. 402-677-2200 • www.rwengineers.com

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 36755**

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
OMAHA PUBLIC POWER DISTRICT**

Omaha Public Power District (“OPPD”) has agreed to a grant trackage rights to Union Pacific Railroad Company (“UP”) between Milepost 5.9 near Arbor, Nebraska, and Milepost 56.3 near College View in Lincoln, Nebraska, and an additional 475 foot section of track extending from Milepost 5.9, for a total distance of approximately 54.8 miles miles. The trackage rights covered by this Notice are being granted to allow for UP’s continued operations.

The trackage rights will become effective on or after February 29, 2024

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: February 19, 2024

By the Board,

Director, Office of Proceedings