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Before the

SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36873 (Sub-No. 28)

TOLEDO, PEORIA & WESTERN RAILWAY CORP. - TRACKAGE RIGHTS BETWEEN LOGANSPORT, INC AND FT. WAYNE, IN AND LEIPSIC, OH - NORFOLK SOUTHERN RAILWAY COMPANY

STB Docket No. FD 36873 (Sub-No. 29)

TOLEDO, PEORIA & WESTERN RAILWAY CORP. - TRACKAGE RIGHTS BETWEEN WATSEKA, IL AND VARIOUS POINTS IN/NEAR CHICAGO, IL - UNION PACIFIC RAILROAD COMPANY

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Office of Chief Counsel
November 18, 2026
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RESPONSIVE APPLICATION OF TOLEDO, PEORIA & WESTERN RAILWAY CORP.

In accordance with the Board's Decision No. 30 served in this proceeding on August 18, 2026, Toledo, Peoria & Western Railway Corp. ("TPW") submits this Responsive Application. In a separate filing, TPW is simultaneously submitting its Comments and Request for Conditions.

Background

TPW is a Class III railroad that operates over approximately 224 miles of track in Illinois and Indiana. As relevant to the Proposed Transaction, TPW interchanges with Union Pacific Railroad Company ("UP") in Sommer, Watseka and Chenoa, Illinois, and with Norfolk Southern Railway Company ("NS") in Logansport, Indiana.

Statutory Framework

Pursuant to 49 U.S.C. § 11324(c), the Board is authorized to impose conditions to prevent harm to the public interest. Under section 11324(c), the "Board may impose conditions governing the transaction, including … the granting of trackage rights and access to other facilities."

The Board's regulations at 49 C.F.R. § 49 C.F.R. 1180.3(h), require a rail carrier seeking a trackage rights condition to submit a responsive application. Section 1180.2 explains that proposed transactions under Section 11323 "involving more than one common carrier by railroads are of four types: Major, significant, minor, and exempt."

A significant transaction, according to section 1180.2(b), "is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance." A transaction is not significant if a determination can be made either: "(1) that the transaction clearly will not have any anticompetitive effects, or (2) that any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs." 49 C.F.R. §§1180.2(b)(1) and (2).

In accordance with section 1180.2(c), a "minor Transaction is one which involves more than one railroad and which is not a major, significant, or exemption transaction."

Argument – the Board should find this trackage rights application is a minor application.

In TPW's simultaneous filing, it explains why the Board should impose its requested trackage rights as a condition.

Here, TPW respectfully requests that the Board treat the TPW application as a minor application.

By the plain language of the Board's regulations at section 1180.2(a), TPW's responsive application is not a major transaction because it is not a control or merger involving two or more class I railroads. Likewise, the TPW responsive application for trackage rights is not an exempt transaction because section 1180(d)(7), a responsive application for trackage rights cannot be an exempt transaction.

This transaction should be treated as a minor transaction because it does not meet the threshold under 49 C.F.R. 1180.2(b), for a significant transaction. The Board has stated:

> Under 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as "minor"—and thus not having regional or national transportation significance—if a determination can be made that either: (1) the transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as "significant" if neither of these determinations can be made." [1]

Here, the TPW responsive application will not have any anticompetitive effects. The request for trackage rights is to ensure that TPW has some ability to offset the unarguable loss of competition and optionality its customers and markets will confront if the Board approves UP's control of NS. As a railroad operating in the watershed region, both competing with NS on one end of the railroad for traffic interchanging with UP and other western carriers on the other as well as competing with UP on one end for traffic interchanging with NS and other eastern carriers on the other, an UP-NS combination forecloses what is currently a viable and competitive option. The expected harm from this foreclosure would also has a negative financial impact to the TPW which could lead to a change in certain essential services it provides.

Supporting Information

In accordance with the provisions of 49 C.F.R. § 1180.0(a), TPW provides the following information as required by 49 C.F.R. §§ 1180.6(a) and 1180.8(c):

Section 1180.6(a)(1)(i): A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

[1] *See Canadian Nat'l Ry.—Control—Iowa N. Ry.* (Decision No. 1), FD 36744 et al., slip op. at 6-7 (STB served Feb. 29, 2024).

TPW is a Class III railroad that operates over approximately 224 miles of track in Illinois and Indiana. As relevant to the Proposed Transaction, TPW interchanges with UP in Sommer, Watseka and Chenoa, Illinois, and with NS in Logansport, Indiana.

If the Board approves UP's application to control NS, TPW is seeking the following trackage rights

1. Logansport, IN - Ft. Wayne, IN - Leipsic, OH. Trackage rights over NS between Logansport, IN, Fort Wayne, IN and Leipsic, OH, allowing for continuous TPW train movements between Logansport and Leipsic, and including

    a. The right to interchange with Indiana & Ohio Railway Company ("IORY") in Leipsic, OH, a route of approximately 131.8 miles[2] as shown on the map at Exhibit B. 1; and

    b. The right to interchange with Chicago, Ft. Wayne & Eastern Railroad in Ft. Wayne, IN, a route of approximately 71.0 miles[2] as shown on the map at Exhibit B. 1.

2. Watseka, IL - Various Points in and near Chicago, IL: Trackage rights over UP between Watseka, IL and Chicago, IL area gateways, to allow interchange, and including

    a. The right to interchange with Indiana Harbor Belt Railway ("IHB") at Dolton Junction with the ability to go east or west to access IHB's Blue Island Yard and Gibson Yard, a route of approximately 66.2 miles[2] as shown on maps at Exhibit B. 2-3; and

    b. The right to interchange with Belt Railway of Chicago ("BRC") at or in the environs of 80th Street Junction, Chicago, IL, a route of approximately 80.5 miles[2] as shown on maps at Exhibit B. 2-3.

Presently, the UP-TPW Watseka connection track is in the southwest quadrant of the UP-TPW diamond. As part of the trackage rights request, UP must consent to TPW making a reverse move south onto UP's mainline in order to use its proposed trackage rights to proceed north to Chicago. Similarly, for TPW southbound trains from Chicago, TPW requests UP's consent to take head

[2] Approximate mileage calculated utilizing PC*Miler.

room on UP's mainline at Watseka to clear the connection track turnout in order to make a reverse movement back onto TPW. Additionally, if TPW wants to make a progressive move for the train movements to/from Chicago, TPW requests the right and full cooperation of UP to construct a connection track(s) at TPW's sole option and cost.

TPW's name, business address, and telephone number are as follows:

Toledo, Peoria & Western Railway Corp.
1990 East Washington Street, East Peoria IL 61611
(800) 757-7387, Ext. 879

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are:

Justin J. Marks	Eric M. Hocky
Clark Hill PLC	Clark Hill PLC
601 13th Street N.W.	Two Commerce Square
Suite 600	2001 Market St. Suite 2620
Washington, DC 20005	Philadelphia, PA 19103
(202) 772-0916	(215) 640-8523
UPNScontrol@clarkhill.com	UPNScontrol@clarkhill.com

Section 1180.6(a)(1)(ii): Proposed Time Schedule for Consummation of the Proposed Transaction

TPW is prepared to execute the TPW / UP-NS Trackage Rights Agreement upon Board approval of the TPW application.

Section 1180.6(a)(1)(iii): Purpose Sought to be Accomplished by the Proposed Transaction

The purpose of the proposed trackage rights is to offset the harms to the public interest if the Board were to approve UP's application to control NS by improving competition and ensuring the long-term viability of TPW to provide essential rail service to its customers.

1180.6(a)(1)(iv): The nature and amount of any new securities or other financial arrangements

This subsection is not applicable to this Responsive Application, because the trackage rights that TPW seeks do not necessitate any new securities or other financial arrangements.

Section 1180.6(a)(2): Public Interest Justifications including (i): Effect of the Proposed Transaction on Competition

The TPW is more than a simple feeder line to any specific Class I rail carrier. This responsive application would enable it to serve a wider group of customers and markets in the watershed providing a useful and needed purpose in very limited arena of contiguous rail freight networks. Connectivity to the IORY is an important remedy for TPW as it provides an alternative gateway option, particularly to Chicago, and enables it to enhance modal competition to pursue short haul truck dominated routes. Those shipments when converted from highway traffic, will have a beneficial impact on the environment, improve safety for motorists and reduce the cost burden of highway maintenance on the public.

(ii): Financial Considerations

TPW proposes paying a trackage rights charge from Logansport, IN to Fort Wayne, IN to Leipsic, OH of [redacted] per car mile and [redacted] per intermodal container mile, which are the current charges that NS pays Chicago, Fort Wayne & Eastern Railroad for trackage rights between [redacted] under the [redacted]. TPW proposes paying a trackage rights charge from Watseka, IL to the various points in and near Chicago, IL of [redacted] per car mile which is the current charge that UP pays Illinois & Midland Railroad, Inc. for trackage rights between [redacted] under the [redacted], along with [redacted] per intermodal container mile. If the Board approves this Responsive

Application, these terms shall be incorporated into the proposed trackage rights agreement per Exhibit D.

(iii): Effect of Increase of Total Fixed Charges Resulting from the Proposed Transaction

This subsection is not applicable to this Responsive Application, because the trackage rights that TPW seeks do not necessitate any new securities or other financial arrangements.

(iv): Effect of the Proposed Transaction upon the Adequacy of Transportation Services to the Public

The TPW trackage rights will greatly promote regional rail traffic that a combined UP-NS will be less incentivized to handle. It also has the potential to allow the TPW the opportunity to build additional traffic that will offset some of the financial harm caused by loss of traffic to a newly combined UP-NS, especially as they will have such a presence in the market. The traffic generated by these proposed rights does not harm the UP-NS. Furthermore, this would preserve the scarce resource of a contiguous long-reaching freight rail line as an alternate to the only two Class I freight rail networks east of the watershed.

(v): Effect of the Proposed Transaction on Employees

The TPW trackage rights will not impact any employees of UP or NS.

(vi): Effect of the inclusion in the Proposed Transaction of Other Railroads

Effect of the inclusion in the Proposed Transaction is not relevant in this Responsive Application because TPW's trackage rights requests do not involve the merger or control of at least two Class I railroads under 49 U.S.C. § 11324(b)(2) and (d).

Section 1180.6(a)(3): Other Supporting Material

The following material filed in FD 36873 is incorporated herein:

Comments and Requests for Conditions by TPW.

Verified Statement of Marty Pohlod.

Section 1180.6(a)(4): Opinion of Counsel

The opinion of TPW's counsel is that the trackage rights requested in this Responsive Application satisfy the requirements of law and will be legally authorized and valid if approved by the Board. See Exhibit C.

Section 1180.6(a)(5): States Where Applicants Own Property

TPW operates on owned and leased track in Illinois and Indiana.

Section 1180.6(a)(6): Maps – Exhibits A and B

A map of the TPW is attached as Exhibit A:1. A map of the TPW proposed trackage rights is attached as Exhibits B: 1-3.

Section 1180.6(a)(7)(i): Description of the Transaction

Refer above to Section 1180.6(a)(1)(i).

Section 1180.6(a)(7)(ii): Agreement – Exhibit D

The proposed agreement containing significant terms of the proposed trackage rights agreement are submitted with this Responsive Application as Exhibit D.

Section 1180.6(a)(7)(iii): Information Regarding the Consolidated Entity

This subsection is not applicable to this Responsive Application because it does not propose a consolidation or merger.

Section 1180.6(a)(7)(iv): Court Order

This subsection is not applicable to this Responsive Application, because neither a trustee, receiver, assignee, nor personal representative of TPW is an Applicant herein.

Section 1180.6(a)(7)(v): Property Involved in the Proposed Transaction

Refer above to Section 1180.6(a)(1)(i).

Section 1180.6(a)(7)(vi): Principal Routes, Termini, Points of Interchange, and Amount of Mileage Involved

Refer above to Section 1180.6(a)(1)(i).

Section 1180.6(a)(7)(vii): Government Financial Assistance

This subsection is not applicable to this Responsive Application, because no government financial assistance is involved.

Section 1180.4(c)(2)(i): Signatures, Oaths, and Certifications

Certifications by the appropriate corporate officers are included herein as Exhibit E .

Section 1180.8(c): For minor transactions: Operating Plan-Minor

Although Section 1180.8(c) generally requires the submission of an "Operating Plan-Minor" as part of a minor application, TPW is not in a position to provide an operating plan in connection with the trackage rights requested herein. The operating plan for the requested trackage rights, referenced above in Section 1180.6(a)(1)(i), both before and after the proposed transaction, is fully within the control of NS and UP. TPW does not anticipate that the grant of the trackage rights will result in any significant changes in the patterns or types of service provided by NS or UP over the subject lines. If the trackage rights are ordered by the Board, TPW requests it is given trackage rights for up to one train per day, seven days a week, in each direction and that its train size be limited to the maximum length of any sidings on the subject lines. Additionally, if TPW desires to run more than one train per day across the subject lines then it requests allowance to do so on the basis that the TPW is responsible for the costs of any capital improvements to NS or UP's track infrastructure (such as sidings) to accommodate the additional traffic above one train

per day. If the Board approves this Responsive Application, these terms shall be incorporated into the proposed trackage rights agreement as per Exhibit D, if not already included therein.

Respectfully submitted,



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Counsel for Toledo, Peoria & Western Railway Corp.

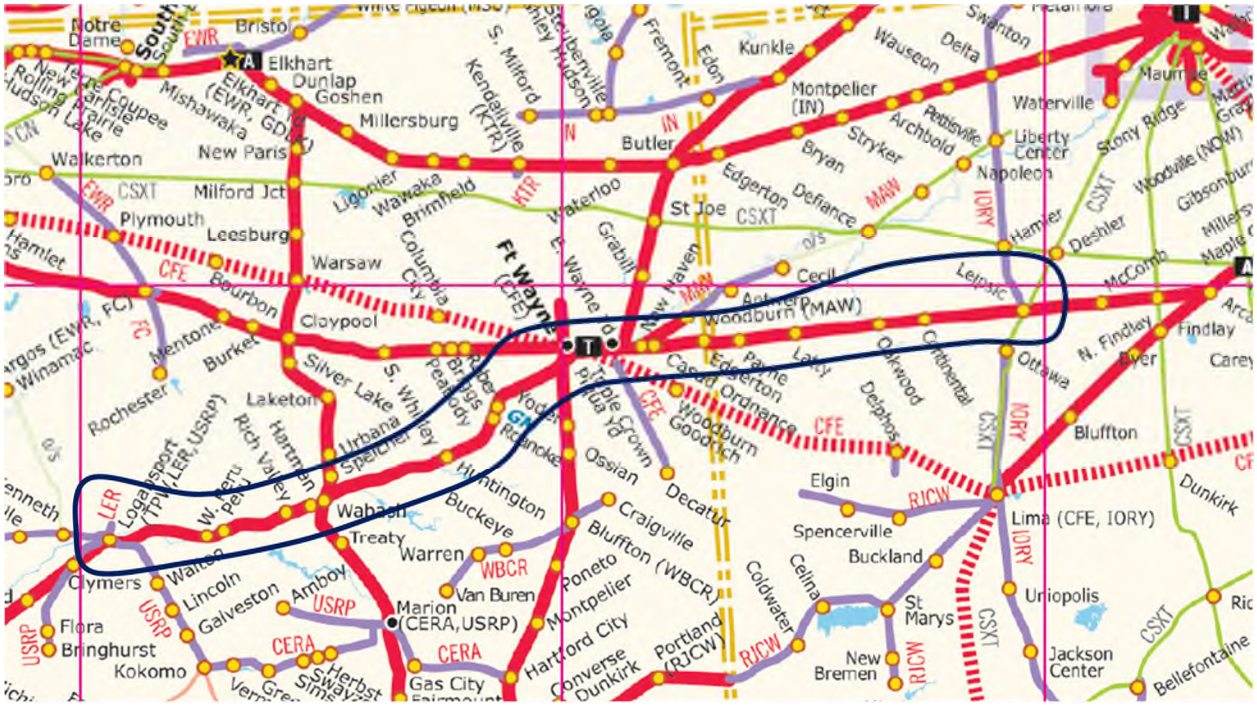
Dated: November 18, 2026

Exhibit A: TPW Map



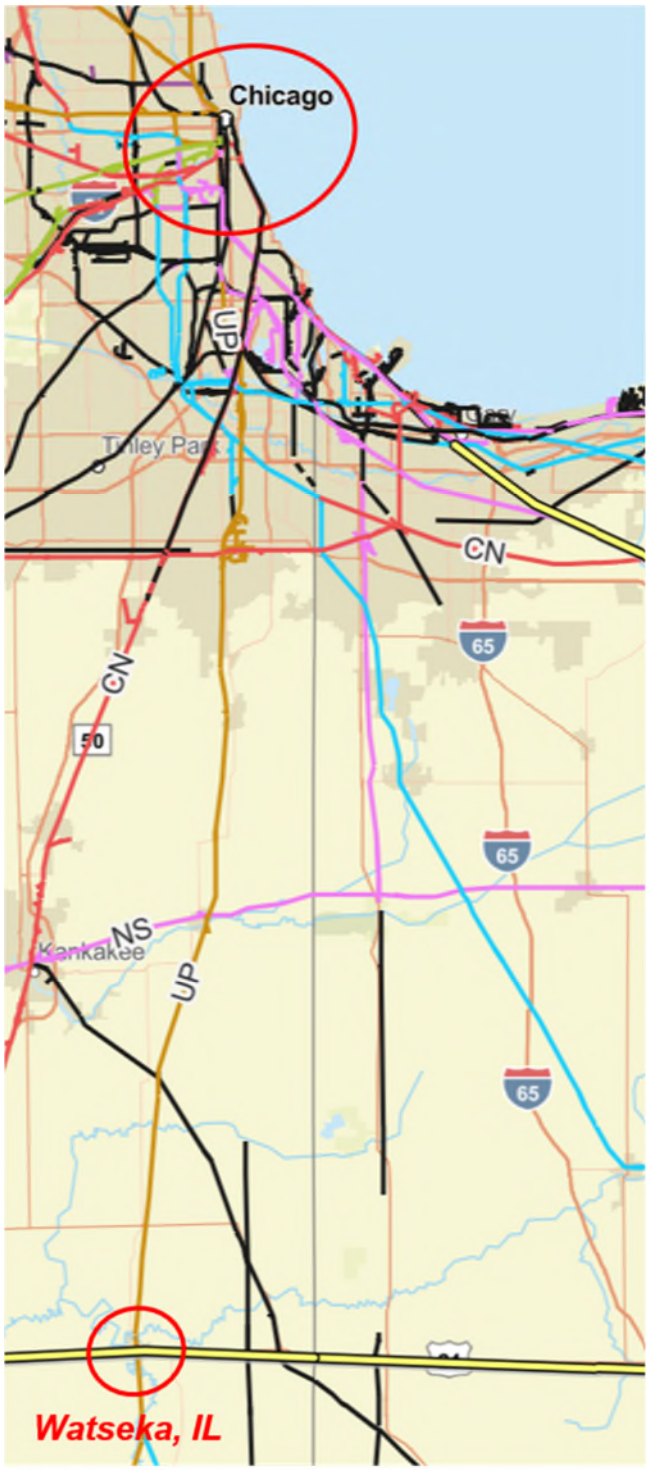
Exhibit B: TPW Requested Trackage Rights Map

B.1 Logansport, IN to Ft. Wayne, IN to Leipsic, OH



Map is based on NS System Map.

B.2 Watseka, IL to Various Points in and near Chicago, IL



Map is based on GIS Map.

B.3 Various Points in and near Chicago, IL: (a) IHB - Dolton Junction, Blue Island Yard and Gibson Yard, and (b) BRC - environs of 80th Street Junction



Map is based on NS System Map.

Exhibit C: Opinion of Counsel

OPINION OF COUNSEL FOR
TOLEDO, PEORIA & WESTERN RAILWAY CORP.

As counsel for Toledo, Peoria & Western Railway Corp. ("TPW"), I am familiar with the transaction proposed in the Responsive Application of TPW. It is my opinion that the transaction proposed in the Responsive Application meets all requirements of law, will be legally authorized and valid if approved by the Surface Transportation Board, is within the corporate power of TPW, and will not result in any breach, violation or default of any provisions of TPW's Articles of Incorporation or Bylaws.

Allison Fergus
General Counsel and Corporate Secretary
Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820

Attorney for Toledo, Peoria & Western Railway Corp.

Dated this 18th day of November, 2026

Exhibit D: Proposed Trackage Rights Agreement

See enclosed proposed trackage rights agreement beginning on the following page.

TRACKAGE RIGHTS AGREEMENT
between
UNION PACIFIC RAILROAD COMPANY/
NORFOLK SOUTHERN RAILWAY COMPANY
and
[SHORT LINE RAILROAD COMPANY]
between
[Trackage Rights Location]

THIS TRACKAGE RIGHTS AGREEMENT (the "Agreement") made and entered into this [***] day of [***], 2027, by and between UNION PACIFIC RAILROAD COMPANY/NORFOLK SOUTHERN RAILWAY COMPANY, a [***] corporation, whose principal place of business is Omaha, Nebraska (together referred to herein as "UPRR"), and [*****], a Delaware limited liability company (hereinafter called "Short Line RR"), each being hereinafter sometimes severally called "Party" and collectively called "Parties."

WITNESSETH:

WHEREAS, Short Line RR desires to have trackage rights on UPRR between [Insert Trackage Rights Location as set out in the responsive application]; and

WHEREAS, UPRR as owner is agreeable to granting such rights to [Short Line RR] as user under the following terms and conditions;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is agreed between the Parties as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, UPRR hereby grants to [Short Line RR] the right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of UPRR's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

A. From the Parties' connection at [insert location as set out in the responsive application].

B. To the connection at [insert location as set out in the responsive application].

ARTICLE 2. USE OF SUBJECT TRACKAGE

A. [Short Line RR]'s use of the Subject Trackage shall be in common with UPRR and any other user of the Subject Trackage, and UPRR's right to use the Subject Trackage shall not be diminished by this Agreement. UPRR shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

B. [Short Line RR] may use the Subject Trackage solely for the purpose of the overhead movement of its own trains between the end points of the Subject Trackage up to [insert any operating restrictions on capacity or frequency as set out in the responsive application], except to the extent permitted in an interchange agreement.

C. Except as may otherwise be provided by this Agreement, [Short Line RR] shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of UPRR, preclude the emergency use by [Short Line RR] of such auxiliary tracks as may be designated by UPRR for such purposes.

D. Except as may otherwise be provided by this Agreement, UPRR shall have exclusive control of the management and operation of the Subject Trackage. [Short Line RR] shall not have any claim against UPRR for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by [Short Line RR] is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTION ON USE

A. The Trackage Rights herein granted are granted for the sole purpose of [Short Line RR] using the same for bridge traffic only between the terminals of the Subject Trackage, and only for interchange with [insert interchange partner as set out in the responsive application]. [Short Line RR] shall not perform any local freight service whatsoever at any point located on the Subject Trackage.

B. Shipments transported by [Short Line RR] over the Subject Trackage are limited to shipments moving solely in the account of [Short Line RR]. [Short Line RR] shall not transport any other shipments over the Subject Trackage unless otherwise provided in a written amendment to this Agreement.

C. As of the date hereof, the Parties acknowledge and agree that [Short Line RR] is not currently required under Federal law to equip its locomotives with an onboard PTC apparatus or to bear any cost or responsibility for installing a PTC system in order to traverse the Subject Trackage. UPRR acknowledges and agrees that [Short Line RR], until required under Federal law, rule or regulation, shall be permitted to traverse the Subject Trackage without equipping its locomotives with an onboard PTC apparatus and [Short Line RR] is not responsible for installing a PTC system.

D. In the event that [Short Line RR] is required in the future under Federal law, rule or regulation to install a PTC system or to equip its locomotives with an onboard PTC apparatus to traverse the Subject Trackage ("[Short Line RR]'s Future PTC Requirement"), [Short Line RR] shall be responsible for its own costs incurred in connection with [Short Line RR]'s Future PTC Requirement.

E. If [Short Line RR]'s Future PTC Requirement is triggered, the Parties agree to work cooperatively to ensure that [Short Line RR]'s PTC system and/or onboard PTC apparatus will be interoperable with UPRR's PTC system on the Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

A. When operating over the Subject Trackage, [Short Line RR]'s locomotives and crews shall be equipped to communicate with UPRR on radio frequencies normally used by UPRR in directing train movements on the Subject Trackage.

B. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of UPRR's representative or his designee.

ARTICLE 5. COMPENSATION

A. The factor to be used in calculating payments to be made by [Short Line RR] for the Trackage Rights covered by this Agreement shall be $[__] cents per car mile and $[__] cents per intermodal container mile [both as set forth in the responsive application], loaded or empty (hereinafter referred to as the "Current Charge"). For the avoidance of doubt, each well of an articulated car shall count as one (1) car. Each locomotive and caboose, for the purpose of this Agreement shall be counted as one (1) car. For the avoidance of doubt, there will be no charge for any cars interchanged by [Short Line RR] with UPRR.

B. [Short Line RR] shall pay UPRR a sum computed by multiplying (i) the Current Charge by (ii) the number of cars and / or intermodal containers (loaded and empty), and locomotive and units moved by [Short Line RR] with its own crews and power over the Subject Trackage that are interchanged with [insert interchange partner as set forth in the responsive application], by (iii) the miles of Subject Trackage used.

C. [Short Line RR] shall furnish UPRR information concerning all loaded and empty cars and / or intermodal containers in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.

D. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month twelve months after the Effective Date of this Agreement to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the AAR. In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the West District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year and applying that percent to the Current Charge.

E. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2022; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2023; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

(1) $(B - A) / A = D$

(2) $(D \times C) + C$ = revised Current Charge, effective July 1 of the year being revised.

F. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties. In the absence of agreement, the Parties shall submit the matter to binding arbitration as provided hereinafter.

ARTICLE 6. PAYMENT OF BILLS

A. All payments called for under this Agreement shall be made by [Short Line RR] within forty five (45) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement shall be open at all reasonable times to inspection by the other Party for a period of three (3) years from the date of billing.

B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in this Article, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by UPRR at the time any work is performed by UPRR for [Short Line RR].

ARTICLE 7. MAINTENANCE OF SUBJECT TRACKAGE

A. UPRR shall maintain, repair and renew the Subject Trackage with its own supervision and labor. UPRR shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but UPRR does not guarantee the condition of the Subject Trackage at any time during the term hereof or that operations thereover shall not be interrupted. Furthermore, except as may be otherwise provided in Article 14, [Short Line RR] shall not by reason of failure or neglect on the part of UPRR to maintain, repair or renew the Subject Trackage, have or make any claim or demand against UPRR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by [Short Line RR] resulting from any such failure or neglect.

B. UPRR may, at the expense of [Short Line RR], perform such additional maintenance as [Short Line RR] may reasonably require or request.

ARTICLE 8. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

A. Existing connections or facilities that are jointly used by the Parties shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.

B. Any additional connections to the Subject Trackage which may be required shall be subject to the UPRR 's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:

(i). [Short Line RR] or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of [Short Line RR] or others which connect the respective lines of the Parties.

(ii). UPRR shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of [Short Line RR] such portions of the additional tracks located on the right-of-way of UPRR that connect the respective lines of the Parties. Upon termination of this Agreement, UPRR may at its option remove the portion of such trackage and appurtenances as may be located on property of UPRR, at the sole cost and expense of [Short Line RR]. The salvage material removed shall be released to [Short Line RR] or, as otherwise agreed upon, UPRR shall credit [Short Line RR] the current fair market value for said salvage.

ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

A. UPRR, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

B. If the Parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required solely to accommodate [Short Line RR]'s operations beyond that required by UPRR to accommodate its operations, UPRR shall construct the additional or altered facilities and [Short Line RR] shall pay to UPRR the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities. All such additional or altered facilities shall be owned by UPRR.

ARTICLE 10. MANAGEMENT AND OPERATIONS

A. [Short Line RR] shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. [Short Line RR] shall indemnify, protect, defend, and save harmless UPRR and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon UPRR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of [Short Line RR] to comply with its obligations in this regard.

B. [Short Line RR] in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of UPRR, and the movement of [Short Line RR]'s trains (locomotives and cars) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of UPRR. [Short Line RR]'s trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by UPRR's operating rules and regulations without the prior consent of UPRR.

C. [Short Line RR] shall make such arrangements with UPRR as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and [Short Line RR] shall pay to UPRR, upon receipt of bills therefor, any cost incurred by UPRR in connection with the qualification of such employees of [Short Line RR], as well as the cost of pilots furnished by UPRR, until such time as such employees are deemed by the appropriate examining officer of UPRR to be properly qualified for operation as herein contemplated.

D. UPRR may conduct an investigation at its option if an [Short Line RR] employee working on UPRR's property is alleged to have violated UPRR's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, UPRR shall schedule the investigation and notify [Short Line RR]'s local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the [Short Line RR]'s employee(s) of the investigation. UPRR's scheduling of the investigation must comply with the time limits provided in the applicable labor agreement on [Short Line RR]'s railroad. UPRR shall provide its regulations, supplements, and safety rules to [Short Line RR] at no cost.

E. If UPRR conducts an investigation, UPRR shall have the right to exclude from the Subject Trackage any employee of [Short Line RR] except officers, determined by UPRR, as the result of UPRR's investigation or hearing described below, to be in violation of UPRR's rules, regulations, orders, practices or instructions.

F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein UPRR desires to bar [Short Line RR]'s employee from service on UPRR's territory pending an investigation by UPRR, immediate verbal notification shall be given to the appropriate Transportation Officer of [Short Line RR] so that proper written notice can be issued to the employee.

G. If UPRR conducts an investigation, its officer shall conduct the investigation, but an officer of [Short Line RR] shall be present to assure compliance with [Short Line RR]'s labor agreement and practices with respect to investigation procedures. After the investigation is concluded, UPRR shall promptly furnish [Short Line RR] with two copies of the investigative hearing transcript and a recommendation as to the discipline to be assessed. [Short Line RR]'s Transportation Officer shall arrange to assess discipline, subject to receipt of UPRR's recommended discipline, within the applicable time limits. If UPRR recommends dismissal, [Short Line RR] reserves the right to change the recommendation to the extent of barring the individual from operating over UPRR's territory.

H. UPRR shall reimburse [Short Line RR] for all payments that [Short Line RR] might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by UPRR and assessed by [Short Line RR]. [Short Line RR] agrees to notify UPRR before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, UPRR shall be given an opportunity to review [Short Line RR]'s submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which [Short Line RR] may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

I. The trains, locomotives, cars and equipment of [Short Line RR], UPRR, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either Party and in such manner as shall afford the most economical and efficient manner of movement of all traffic, which provides that trains of the parties hereto shall be given equal, non-discriminatory dispatch.

J. In the event that a train of [Short Line RR] shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among [Short Line RR]'s crew, or due to mechanical failure of [Short Line RR]'s equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of [Short Line RR] fails to maintain the speed required by UPRR on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of [Short Line RR]'s trains on the Subject Trackage, UPRR shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew [Short Line RR]'s train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and [Short Line RR] shall reimburse UPRR for the cost of rendering any such assistance.

K. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by UPRR, and [Short Line RR] shall reimburse UPRR for the cost thereof.

L. In the event UPRR and [Short Line RR] agree that UPRR should retain employees or provide additional employees for the sole benefit of [Short Line RR], the Parties shall enter into a separate agreement under which [Short Line RR] shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by UPRR and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 11. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in [Short Line RR]'s trains on the Subject Trackage shall be assumed by [Short Line RR] and reported and paid by it directly to the owner of such cars.

ARTICLE 12. CLEARING OF WRECKS

Whenever [Short Line RR]'s use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, UPRR shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 13 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by [Short Line RR] at the time of such wreck, shall be promptly delivered to it.

ARTICLE 13. LIABILITY

The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgements, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the Parties, then the involved Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.

B. If a Loss occurs on the Subject Trackage involving the trains and locomotives of both UPRR and [Short Line RR], then: (i) each Party is solely responsible for any Loss to its own employees, locomotives and equipment in its own account, including lading, and (ii) the Parties are equally responsible for any Loss to the Subject Trackage and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

C. For purposes of assigning responsibility of a Loss under this Article as between the Parties, a Loss involving one of the Parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one Party to this Agreement.

D. Whenever any liability, cost, or expense is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.

E. Notwithstanding any provision of this Article 13 to the contrary, each Party shall assume and bear all responsibility for any Loss caused by acts or omissions of any its employees while under the influence of drugs or alcohol.

F. In every case of death or injury suffered by an employee of either [Short Line RR] or UPRR, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said Parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

G. For purposes of determining liability under this Article, pilots furnished by UPRR to [Short Line RR] pursuant to this Agreement shall be considered as the employees of [Short Line RR] while such employees are on duty as pilots.

H. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 8.B(ii), all work performed by UPRR shall be deemed performed for the sole benefit of [Short Line RR] and, [Short Line RR] shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of UPRR. [Short Line RR] shall protect, indemnify, and save harmless UPRR and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which [Short Line RR] is responsible.

I. If any suit or action shall be brought against either Party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

J. In the event of a Loss as set out herein, the Parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.

K. Neither Party shall have the right to prosecute any claim or make any demand against the other Party for any indirect, special or consequential damages, including but not limited to loss, damage or liability accruing to it by reason of any interference with, interruption of or delay in the operating of its trains, engines or cars or the transportation of its freight on account of delays or interruption in the use of any portion of said tracks used jointly under the terms hereof.

L. Notwithstanding any and all of the forgoing provisions of this Article 13, in the event a Loss occurs with the trains and locomotives of both UPRR and [Short Line RR], and such Loss is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Loss. The Parties agree that, for purposes of this Article 13.L, "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

ARTICLE 14. CLAIMS

A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

B. Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and CFR 1005, or in accordance with any applicable transportation contract.

C. In the event a claim or suit is asserted against UPRR or [Short Line RR] which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by such Party.

E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or CFR 1005, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Fifty Thousand Dollars ($50,000).

F. Each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

G. It is understood that nothing in this Article 14 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

ARTICLE 15. INSURANCE

A. During the term of this Agreement [Short Line RR], at its sole cost and expense, shall procure and maintain in effect a policy of Comprehensive Railroad liability insurance, with limits of not less than Twenty-five Million Dollars ($25,000,000) single limit, bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to, or destruction of property, including the loss of use thereof, in any one occurrence, including contractual liability insurance, which names UPRR as an additional insured. Failure to procure and maintain such insurance in force shall constitute a breach of this Agreement. [Short Line RR] shall provide a minimum of thirty (30) days' advance written notice to UPRR prior to any material changes to or cancellation of such policy.

B. This Insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility, which are rated "A-" or better by either Best's Insurance Reports, Standard & Poor's Insurance Rating Service or Moody's Investors Service. UPRR reserves the right to reject as inadequate coverage by an insurance company rated less than "A-" by the aforementioned rating services.

C. The insurance shall be evidenced by a current certificate furnished by [Short Line RR] to UPRR as an additional insured with its return of the executed Agreement. Subsequently, annual renewal certificates of insurance shall be furnished to:

Union Pacific Railroad Company
[Insert Contact
Information]

D. Such certificates shall be subject to the prior approval of UPRR's Insurance Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to UPRR. In addition, [Short Line RR] shall provide UPRR's Insurance Department notice of any claim arising under this Agreement and any other correspondence dealing with insurance and insurance matters directly relating to this Agreement.

E. During the term of this Agreement, it is understood that UPRR is self-insured.

ARTICLE 16. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of [Short Line RR] to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from UPRR, UPRR shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by UPRR of any prior breach thereof, to terminate the Trackage Rights and [Short Line RR]'s use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by UPRR shall not impair its rights under this Agreement or any cause or causes of action it may have against [Short Line RR] for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), [Short Line RR] at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. UPRR shall assist and support efforts of [Short Line RR] to secure any necessary STB approval of this Agreement.

B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, [Short Line RR], solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 18. ABANDONMENT OF SUBJECT TRACKAGE

Notwithstanding the provisions of Article 19, UPRR may abandon the Subject Trackage during the term of this Agreement or any renewals thereof, upon giving [Short Line RR] not less than ninety (90) days' written notice of UPRR's intent to abandon. In the event regulatory authority is required to effect such abandonment, [Short Line RR] shall not interfere with UPRR's actions to seek and to exercise such authority. In the event regulatory authority is required for [Short Line RR] to discontinue its own operations over the Subject Trackage, [Short Line RR] shall seek and exercise such regulatory authority at the same time that UPRR seeks regulatory authority to abandon the Subject Trackage. UPRR and [Short Line RR] shall exercise the abandonment and discontinuance authority within thirty (30) days from the date UPRR and [Short Line RR] obtain the aforementioned regulatory authority. Upon the date established by UPRR for abandonment of the Subject Trackage by its aforesaid notice to [Short Line RR] or upon the above specified date of exercise of the regulatory authority to abandon and discontinue operations, whichever is later, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either Party from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. The foregoing provisions shall govern the Parties notwithstanding the provisions of 49 U.S.C. Section 10904 or any other provisions of law, and [Short Line RR] hereby expressly waives any rights it may possess to subsidize operations on the Subject Trackage or to acquire the Subject Trackage pursuant to said provisions of law. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 19. TERM

A. This Agreement shall become effective following the latest date of: (i) the date first written above; (ii) following receipt of any required regulatory approvals or exemptions from any regulatory agency, with respect to the Transaction; and (iii) the satisfaction or waiver by the Party entitled to waive any conditions precedent to the Transaction (the "Effective Date") and shall continue in full force and effect until terminated as provided herein or by mutual agreement of both Parties. The Parties shall memorialize the Effective Date through an exchange of written correspondence.

B. Intentionally Omitted.

C. Within thirty (30) days following the date of this Agreement, [Short Line RR], at its sole expense, shall submit to the STB (or successor agency) regulatory filing(s) to obtain any necessary authority or exemption to exercise the Trackage Rights. UPRR will join in any such application or pleading to the STB, upon request of [Short Line RR]. [Short Line RR] shall provide UPRR with an opportunity to review and comment on [Short Line RR]'s regulatory filing prior to their submission to the STB. In the event that one or more parties oppose the granting of the regulatory authority or exemption sought by [Short Line RR] or appeal a determination to grant such authority or exemption, [Short Line RR] shall promptly respond to such opponents and shall pursue in good faith appeals of any adverse decision by the STB.

D. Termination of this Agreement shall not relieve or release either Party from any obligation assumed or from any liability which may have arisen or been incurred by either Party under the terms of this Agreement prior to the termination hereof.

E. Upon termination of this Agreement prior to the expiration of the Term, and if [Short Line RR] obtained approval or exemption from the STB to operate pursuant to this Agreement, [Short Line RR] shall immediately make the necessary filing with the STB to discontinue [Short Line RR]'s rights covered by this Agreement. Should [Short Line RR] fail to make such a filing within thirty (30) days of said termination, UPRR shall be deemed to have been given [Short Line RR]'s power of attorney to take such action on [Short Line RR]'s behalf and [Short Line RR] shall not oppose such a filing, and shall be responsible for reimbursing UPRR for any reasonable cost associated with said filing, including but not limited to attorney and filing fees. [Short Line RR] agrees that monetary damages will not be a sufficient remedy in the event it breaches this provision, and agrees that specific performance or other injunctive relief would be appropriate under the circumstances.

ARTICLE 20. FORCE MAJEURE

UPRR shall not be responsible to [Short Line RR] for delays of any kind under this Agreement nor for failure to perform under this Agreement if such failure to perform is caused by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, terrorism, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, pandemic, strike, lockout or labor disputes experienced by the Parties, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations and other events beyond the reasonable control of UPRR. UPRR shall provide [Short Line RR] with prompt written notice of any event of force majeure and shall take reasonable steps to resolve such event. Once the force majeure event is resolved, UPRR shall notify [Short Line RR] in writing, and UPRR shall promptly re-institute operations pursuant to this Agreement.

ARTICLE 21. ARBITRATION

Other than a claim for injunctive relief, any dispute arising between the Parties with respect to this Agreement that is not resolved within thirty (30) days of the date of the written notice of the dispute shall be determined exclusively by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The Parties shall request that the arbitrator selected shall be knowledgeable in railroad commercial transactions. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the Parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 22. SUCCESSORS AND ASSIGNS

This Agreement shall enure to the benefit of and be binding upon the successors and permitted assigns of the Parties; provided, that neither Party shall have the right to assign this Agreement, by merger, operation of law, or otherwise, without the prior written consent of the other Party, which consent may be withheld at the discretion of that Party.

ARTICLE 23. NOTICE

All notices required to be given by one Party to the other, shall be in writing and addressed as follows:

TO UPRR: [Union Pacific Railroad Contact Information]

TO [Short Line RR Contact Information]:

ARTICLE 24. GENERAL PROVISIONS

A. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.

B. This Agreement contains the entire understanding of the Parties and supersedes any and all written and oral understandings between the Parties.

C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both Parties.

D. Unless otherwise defined herein, all words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

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

F. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division, or combination thereof, for the determination of legality, so that if any separate division is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every other separate division, or any combination thereof.

G. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the Parties, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, cars or equipment are owned or leased by one Party to this Agreement and are in the possession or account of the other Party to this Agreement, such locomotives, cars and equipment shall be considered those of the other Party under this Agreement.

H. This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.

I. No Party may disclose the provisions of this Agreement to a third party, excluding a parent, affiliate or subsidiary company and the attorneys, accountants, consultants, officers and employees of such party, parent, affiliate or subsidiary company, without the written consent of the other Party, except as otherwise required by law, regulation or ruling.

J. Except as may be expressly provided by this Agreement, nothing in this Agreement shall modify or amend any other agreement between UPRR and [Short Line RR].

K. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

L. The recitals to this Agreement are hereby expressly incorporated into this Agreement as if restated in their entirety herein.

M. All matters related to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida, without giving effect to any choice or conflict of laws, provision or rule that would cause the application of laws of any jurisdiction other than the State of Florida.

IN WITNESS WHEREOF the Parties have caused these presents to be executed by their duly authorized officers as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: _____

[SHORT LINE RAILROAD]

By: _____

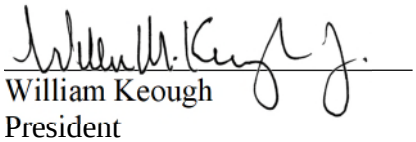
As its: _____

[EXHIBIT A MAPS TO BE INSERTED as set out in the responsive application]

Exhibit E: Signatures, Oaths, and Certifications

Section 1180.4(c)(2)(i): Signatures, Oaths, and Certifications

I, William Keough, declare under penalty of perjury that I am President of Toledo, Peoria & Western Railway Corp. ("TPW"); that I am one of the executive officers duly authorized to sign, to verify, and to file this Responsive Application on behalf of TPW; that I have knowledge of the matters contained in this Responsive Application; and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.



William Keough
President

Executed on this 18th day of November, 2026

I, Allison Fergus, certify that I am General Counsel and Corporate Secretary of Genesee & Wyoming Inc., parent entity of Toledo, Peoria & Western Railway Corp., Responsive Applicant herein, and that William Keough, President is duly authorized to sign, verify, and to file this Responsive Application on behalf of Responsive Applicant.

Allison Fergus
General Counsel and Corporate Secretary
Genesee & Wyoming Inc.

Executed this 18th day of November, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November 2026, the foregoing document was served by first-class mail or email upon all parties of record on counsel for Union Pacific Railroad Corporation, Norfolk Southern Railroad Corporation, the Department of Justice, the U.S. Department of Transportation and the administrative law judge assigned in this proceeding.



_____

Justin J. Marks