

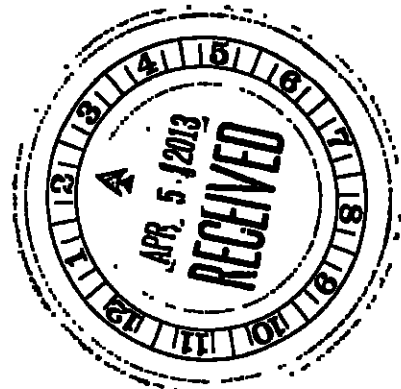
UNION PACIFIC RAILROAD
1400 Douglas Street, Stop 1580
Omaha, Nebraska 68179

P 402 544 4735

Jeromy M Berman Assistant General Attorney

234027

April 4, 2013



Via UPS Overnight

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 35728; Union Pacific Railroad Company -- Trackage Rights Exemption -- Elgin, Joliet and Eastern Railway Company

Dear Ms Brown

Enclosed for filing in the above proceeding are the following:

- 1 An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7).
- 2 A payment form in the amount of \$1,200.00 for the filing fee required by 49 C.F.R. § 1002.2(f)
3. Twenty (20) unbound copies of the Exhibit 1 map

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

Very truly yours,


Jeremy M. Berman

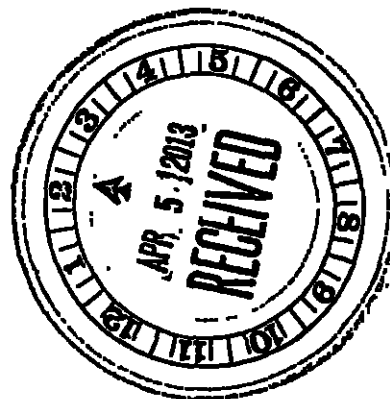
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Public Record



BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. FD 35728

UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

FILED

APR 5 - 2013

VERIFIED NOTICE OF EXEMPTION SURFACE
TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY

Elisa B. Davies
Jeremy M. Berman
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-4735
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SURFACE
TRANSPORTATION BOARD

Dated: April 4, 2013
Filed: April 5, 2013

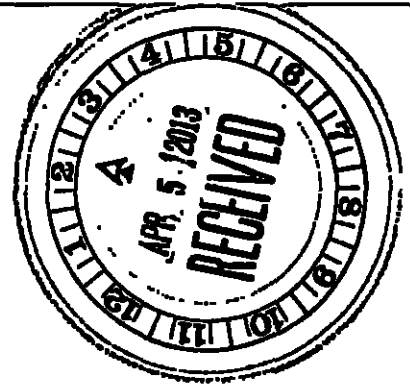
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 35728



**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7) for exemption of overhead trackage rights over approximately 25.2 miles between Milepost 0.0 (at or near Joliet, IL) and Milepost 25.2 (at or near Chicago Heights, IL), approximately 9.2 miles between Milepost 36.2 (at or near Griffith, IN) and Milepost 45.4 (at or near Gary, IN) and approximately 6.6¹ miles between Milepost 45.4 (at or near Gary, IN) and Milepost 6.0 (at or near Goff, IN) for a total distance of approximately 41.0 miles on the Elgin, Joliet and Eastern Railway Company (EJ&E).²

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this Notice are based on the written

¹ Station equation at Kirk Yard at or near Gary, IN.

² The trackage rights agreement was validly executed between UP and EJ&E on December 18, 2012. As of January 1, 2013, the agreement is valid and binding on Wisconsin Central Ltd., as EJ&E's successor-in-interest. See Wisconsin Central Ltd. – Intra-Corporate Family Merger Exemption – Elgin, Joliet And Eastern Railway Company, STB Finance Docket No. 35630 (served June 8, 2012).

agreement attached hereto as Exhibit 2,³ and are not filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable

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

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

The transaction covered by this Notice is the acquisition of overhead trackage rights by UP over approximately 41.0 miles of EJE's trackage extending between Joliet, Illinois (EJ&E Milepost 0.0) and Chicago Heights, Illinois (EJ&E Milepost 25.2), between Griffith, Indiana (EJ&E Milepost 36.2) and Gary, Indiana (EJ&E Milepost 45.4) and between Gary, Indiana (EJ&E Milepost 45.4) and Goff, Indiana (EJ&E Milepost 60).

UP currently maintains trackage rights over 11 miles of EJ&E's rail line between milepost 25.2 near Chicago Heights, IL, and milepost 36.2 near Griffith, IN. See Union Pacific Railroad Company – Trackage Rights Exemption – Elgin, Joliet and Eastern Railway Company, STB Finance Docket No. 33347 (served February 18, 1997). UP later acquired and currently maintains trackage rights over EJ&E's rail line between milepost 18 near Joliet, IL, through West Chicago, IL (milepost 29), to the end of EJ&E's ownership at milepost 75.0 near Waukegan, IL, a distance of approximately 76 miles. See Union Pacific Railroad Company – Trackage Rights Exemption – Elgin, Joliet and Eastern Railway Company, STB Finance Docket No. 33821 (served December 20, 1999).

³ A redacted copy of the agreement for the public record is attached as Exhibit 2. UP has filed a Motion for Protective Order along with an unredacted copy of the agreement to protect confidential commercial terms in the agreement.

The trackage rights covered by this Notice will provide UP connections with its current trackage rights in Joliet, Chicago Heights and Griffith, providing UP with a complete route, via trackage rights, around the Chicago area.

§ 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
(402) 501-3773 (FAX)
jmberman@up.com

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on May 5, 2013.

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

The overhead trackage rights covered by this Notice will provide UP with a connection to its existing trackage rights allowing UP to more efficiently route trains through the Chicago area

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

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

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

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

A redacted public copy of the executed trackage rights agreement is attached as Exhibit 2. An unredacted copy of the agreement is being filed separately 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).

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

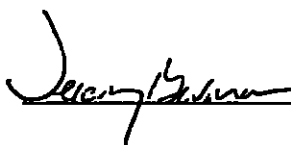
A caption summary of this transaction suitable for publication in the Federal Register is attached as Exhibit 3

§ 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 acquisition also is exempt from historic preservation reporting requirements. See 49 C.F.R. § 1105.8(b)(3).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By: _____

Elisa B. Davies
Jeremy M. Berman
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-4735
(402) 501-3773 (FAX)
jmberman@up.com

EXHIBIT 1

Trackage Rights Union Pacific Railroad Company and Elgin, Joliet and Eastern Railway Company

- Additional Trackage Rights
per Supplemental Agreement
December 18, 2012
- Existing Trackage Rights
- UPRR



"UP"

FIRST AMENDMENT TO TRACKAGE RIGHTS AGREEMENT

THIS FIRST AMENDMENT ("First Amendment") to the Trackage Rights Agreement (as defined below), is hereby made and entered into this 18th day of December 2012, by and between ELGIN, JOLET AND EASTERN RAILWAY COMPANY, an Illinois corporation now a wholly owned subsidiary of CANADIAN NATIONAL RAILWAY COMPANY ("CN") and GRAND TRUNK CORPORATION ("GTC") (formerly known as EJ&B West Company and hereinafter referred to as ("EJ&R")), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter referred to as "UP"). As used in this First Amendment, the term "Party" refers to either UP or EJ&R and the term "Parties" refers collectively to both UP and EJ&R.

WITNESSETH:

WHEREAS, CN and GTC acquired control of EJ&B following the effective date of the Surface Transportation Board's ("STB's") grant of authority in Decision No. 16 (served Dec. 24, 2008) in STB Finance Docket No. 35087; and

WHEREAS, EJ&R, as successor to the former Elgin, Joliet and Eastern Railway Company, a Delaware corporation and subsidiary of Transtar, Inc. (hereinafter referred to as "Former EJ&B"), and UP are parties to a trackage rights agreement dated December 7, 1998 ("Trackage Rights Agreement"), which grants UP trackage rights to operate its trains over the line of the EJ&R between Joliet, IL, and Waukegan, IL ("1998 Joint Tracks"), subject to various terms and conditions; and

WHEREAS, EJ&B (as successor to the Former EJ&B) and UP are also parties to a trackage rights agreement dated January 23, 1997 ("1997 Trackage Rights Agreement"), which grants UP trackage rights over the line of EJ&B between Chicago Heights, IL, and Griffith, IL ("1997 Joint Tracks"), subject to various terms and conditions; and

WHEREAS, EJ&B (as successor to the Former EJ&R) and UP are parties to various arrangements memorialized through letters and e-mails whereby certain of UP's trains may be operated between West Chicago and various agreed upon points on the EJ&B using EJ&R crews ("Haulage Rights"); and

WHEREAS, EJ&R, as successor to certain assets of the Former EJ&B, is the owner of the 1997 Joint Tracks, the 1998 Joint Tracks, and the line segments over which UP's trains run under the Haulage Rights; and

WHEREAS, the Parties wish to merge UP's trackage rights under the 1997 Trackage Rights Agreement into the Trackage Rights Agreement such that the Trackage Rights Agreement will supersede and replace the 1997 Trackage Rights Agreement and the 1997 Trackage Rights Agreement may then be terminated; and

WHEREAS, the Parties wish to so terminate the 1997 Trackage Rights Agreement; and

WHEREAS, EJ&E wishes to grant to UP, and UP wishes to obtain from EJ&E, additional overhead trackage rights for EJ&E's lines between Joliet, IL, and Chicago Heights, IL, and between Griffith, IN, and Goff, IN ("2012 Joint Tracks"), which in addition to filling in the gap of UP's trackage rights on the EJ&E, would allow UP, at its discretion and upon one hundred and eighty (180) days advance written notice, to operate via trackage rights instead of Haulage Rights, some or all of the trains for which it presently has Haulage Rights without changing the routes for such trains; and

WHEREAS, UP has no current or reasonably foreseeable need, but may at some future time, if circumstances change, wish to use the 2012 Joint Tracks between Joliet, IL, and EJ&E, Eastern Subdivision, Milepost J-43.9, to enter or exit at existing or new connections with CSX Transportation, Inc. ("CSX"), Norfolk Southern Railway Company ("NS") and Chicago SouthShore & South Bend Railroad ("CSSSB") (other than with CSX at Curtis Yard or NS at Pine Junction), and EJ&E wishes to grant UP the rights to do so.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. Terms used in this First Amendment shall, unless otherwise defined herein, have the meanings assigned to them herein for purposes of the Trackage Rights Agreement or otherwise attributed to them in the Trackage Rights Agreement.
2. The cover page of the Trackage Rights Agreement is amended by striking "(JOLIET-WAUKEGAN)."
3. Section 1 ("Joint Tracks Defined") of the Trackage Rights Agreement is amended by striking the existing provision (including section title) and replacing it with the following:

"SECTION 1 - DEFINITIONS

Except as otherwise provided, the following definitions shall apply to the terms hereinafter used in this Agreement, including exhibits hereto:

- (a) As used hereinafter in the body of this Agreement, the terms "1997 Joint Tracks" or "1997 Joint Trackage" shall mean the 1997 Joint Track Segment, as defined in Section 1 of Exhibit 1 to this Agreement.
- (b) As used hereinafter in the body of this Agreement, the terms "1998 Joint Tracks" or "1998 Joint Trackage" shall mean the 1998 Joint Track Segment, as defined in Section 1 of Exhibit 1 to this Agreement.
- (c) As used hereinafter in the body of this Agreement, the terms "2012 Joint Tracks" or "2012 Joint Trackage" shall mean the 2012 Joint

Track Segment, as defined in Section 1 of Exhibit 1 to this Agreement.

- (d) As used hereinafter in the body of this Agreement, the 1997 Joint Tracks, the 1998 Joint Tracks, and the 2012 Joint Tracks shall hereinafter be referred to collectively as the "Joint Tracks" or "Joint Trackage."
- (e) The acquisition of control by CN and GTC of EJ&E under the authority granted by the Surface Transportation Board ("STB") in Decision No. 16 (served Dec. 24, 2008) in STB Finance Docket No. 35087 shall hereinafter be referred to as the "Transaction."
- (f) The operating plan submitted by CN and reviewed by the STB for purposes of reviewing and approving the Transaction in STB Finance Docket No. 35087 shall hereinafter be referred to as the "CN-EJ&E Operating Plan."
- (g) The existing commercial arrangements between EJ&E and UP whereby UP trains for certain traffic may be operated by EJ&E crews on EJ&E's lines between, among other points, West Chicago, IL, and Goff, IN, West Chicago, IL, and Griffith, IN, and West Chicago, IL, and Joliet (Plaines), IL, shall hereinafter be referred to as "Haulage Rights."
- (h) The term "EJ&E" shall mean Elgin, Joliet and Eastern Railway Company and its carrier affiliates EJ&E and its carrier affiliates shall be considered a single party for purposes of this Agreement, and shall not be considered third parties to this Agreement, either individually or collectively."
- (i) The term "Detailed Schedule" shall mean a written agreement between the Parties, as amended or supplemented from time to time, which shall include without limitation the charges and any operational details applicable to the grant of trackage rights over a specific segment of the Joint Tracks (referred to as "Joint Track Segment" in the Detailed Schedule). The Detailed Schedule shall be interpreted in conjunction with this Agreement except where the provisions of the Detailed Schedule and this Agreement are inconsistent; in which case, the provisions of the document executed later in time shall govern. Where this Agreement or any amendment thereto and the applicable Detailed Schedule or any amendment thereto were executed at the same time, the terms of the Detailed Schedule shall control.

4. Subsection (c) of Section 3 ("CONSTRUCTION, MAINTENANCE AND ADDITIONS") of the Trackage Rights Agreement is amended by striking the existing provision in its entirety and replacing it with the following:

"(c) Notwithstanding other provisions stated in this Section 3, unless otherwise mutually agreed, UP shall have no obligation to contribute to the capital improvements in the CN-EJ&E Operating Plan.

5. Subsection (f) of Section 3 ("CONSTRUCTION, MAINTENANCE AND ADDITIONS") of the Trackage Rights Agreement is amended by striking the first paragraph thereof and replacing it with the following:

"Notwithstanding anything herein to the contrary, EJ&E shall have sole discretion in determining what capital improvements, additions and upgrades, if any, are made, along the Joint Tracks. Subject to the applicable Detailed Schedule and Section 3(c) of this Agreement, the cost of those capital improvements, additions and upgrades that are not requested by UP to accommodate its traffic pursuant to Sections 3(b) and 3(c) of this Agreement and benefit both Parties shall be allocated to the Parties on terms as provided in the applicable Detailed Schedule or as otherwise agreed upon on a case-by-case basis."

6. Subsection (g) of Section 3 ("CONSTRUCTION, MAINTENANCE AND ADDITIONS") of the Trackage Rights Agreement is amended by striking the existing provision in its entirety and replacing it with the following:

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

Notwithstanding anything herein to the contrary, EJ&E shall have sole discretion in determining what maintenance is performed along the Joint Tracks.

7. Section 5 ("PAYMENTS BY UP") of the Trackage Rights Agreement is amended by striking the existing provision in its entirety and replacing it with the following:

"UP shall pay the EJ&E for the trackage rights granted herein in accordance with the rates and terms, and any adjustments, specified in the applicable Detailed Schedule. The rate however shall never be adjusted to be less than the rate that was previously in effect. The Detailed Schedule shall without limitation specifically address the rates, types of trains and interchange locations of each type of move by UP over the Joint Tracks. The Detailed Schedule shall be considered as an exhibit to this Agreement, and made a part hereof. The Parties shall use their best efforts to keep confidential the proprietary commercial terms of this Agreement including the Detailed Schedule. Where the terms of this Agreement or any amendment conflict with the terms of the applicable Detailed Schedule, the terms of the instrument which was executed later in time shall control. Where this Agreement or any amendment thereto and the applicable Detailed Schedule or any amendment thereto were executed at the same time, the terms of the Detailed Schedule shall control. No payments required under this Agreement shall be withheld or partially withheld because of any dispute as to the correctness of items in the bill so rendered, nor shall such payments be withheld or partially withheld as an offset to any other matter in dispute. Any discrepancies reconciled by the Parties shall be adjusted in the accounts of a subsequent month.

8. Section 10 ("DEFINITIONS") of the Trackage Rights Agreement is amended by striking the existing provision in its entirety.

9. The cover page of Exhibit 1 ("Detailed Schedule") to the Trackage Rights Agreement is amended by striking "FOR THE JOINT TRACK SEGMENT BETWEEN JOLIET, IL AND WAUKEGAN, IL" and replacing it with "FOR THE EJ&E JOINT TRACKAGE."

10. UP's trackage rights over the EJ&E shall extend from Waukegan to Kirk Yard (Milepost J-43.9) as further described herein. Section 1 ("Joint Track Segment") of Exhibit 1 ("Detailed Schedule") to the Trackage Rights Agreement is amended by striking the existing provision its entirety (including the Section title) and replacing it with the following:

"1. Joint Track Segments

(a) The two mainline tracks between the CN connection at Griffith, IN, and the UP connection at Chicago Heights, IL, and any and all crossovers and sidings between the two locations, approximately 11 miles, as depicted on the print marked Exhibit "A," attached hereto and made a part hereof, shall hereinafter be referred to as "1997 Joint Track Segment "

(b) The mainline track between the UP connection at Joliet, IL, and the UP connection at Waukegan, IL, and any and all crossovers and sidings between the two locations, approximately 76 miles, as depicted on the print marked Exhibit "B," attached hereto and made a part hereof, shall hereinafter be referred to as "1998 Joint Track Segment."

(c) The mainline track (i) between the UP connection at Joliet, IL and the UP connection at Chicago Heights, IL, (ii) between the CN connection at Griffith, IN, and the Yard Trackage at Kirk Yard in Gary, IN, and (iii) between the Yard Trackage at Kirk Yard in Gary, IN, and the connection with the Chicago South Shore and South Bend Railroad ("CSS&SB") at Goff, IN, in each case including any and all crossovers and sidings between the two locations, approximately 38 miles, as depicted on the print marked Exhibit "C," attached hereto and made a part hereof, shall hereinafter be referred to as "2012 Joint Track Segment."

(d) The 1997 Joint Track Segment, the 1998 Joint Track Segment, and the 2012 Joint Track Segment shall hereinafter be referred to collectively as the "Joint Track Segment."

11. Section 2 ("Usage") of Exhibit 1 ("Detailed Schedule") to the Trackage Rights Agreement is amended by striking the existing provision in its entirety (including the Section title) and replacing it with the following:

"2. Additional Usage Rights, Limitations, and Requirements

(a) The Joint Track Segment shall be used by UP only for freight train traffic, and only for trains with a maximum length of 7,500 feet, excluding locomotives. EJ&E will attempt, but under no circumstances be required or obligated, to accommodate UP by allowing UP trains exceeding 7,500 feet, including locomotives, to traverse the Joint Track Segment if, and only if, UP provides EJ&E at least four (4) hours advance notification of its desire to do so. Should EJ&E operate trains in excess of 7,500 feet, UP will be allowed to do so also subject to Section 2 (d) below.

(b) UP is granted the right to enter and exit the Joint Track Segment at: West Chicago, IL; Spaulding, IL; Rondout, IL; Upton, IL; Joliet, IL; East Joliet, IL; Matteson, IL; Chicago Heights, IL; Griffith, IN; Kirk Yard at Gary, IN; and Goff, IN. Although UP has no current or reasonably foreseeable need for new connections or interchanges via the 2012 Joint Track Segment, in order to prepare for the possibility that at some future time circumstances may change and UP may require new connections or interchanges, UP shall have the right to enter and exit the 2012 Joint Track Segment, between Joliet, IL, and RJ&E, Eastern Subdivision, Milepost J-43.9, for the purpose of connecting or interchanging

traffic directly with itself, CSX, NS, and CSS&SB or their successors or assigns at any existing connection or at any new connections that UP may construct at its sole cost and expense, excluding CSX at Curtis and NS at Pine.

(c) Subject to the limitations stated herein, UP may use its trackage rights over the Joint Track Segment to operate rail traffic which UP presently has Haulage Rights.

UP's trackage rights operations shall be limited to operating its traffic over the Joint Track Segment, with the total monthly average number of UP trains per day limited, by segment, to the Base Number of UP Trains as indicated in the CN Operating Plan as shown in Table A. EJ&E is willing to permit UP to operate additional trackage rights trains provided that sufficient capacity exists and the total number of trains is below the Base Number of Total Trains for that segment as shown in Table A, and a mutually agreeable operating plan as provided in Section 2 (d) below. However, if and when EJ&E determines there is no longer sufficient capacity and if the total number of trains exceeds the Base Number of Total Trains for that segment in Table A, UP must reduce its number of trains to the Base Number of UP trains on Table A or pay for any additional capacity required at UP sole cost and expense to accommodate UP's trains in order to maintain fluid operations.

(d) The Parties agree that, prior to UP's exercise of the trackage rights outlined in Section 2(b) and 2(c) of this Detailed Schedule, they shall jointly establish an operating plan, including arrangements to avoid delays on the line (including, if necessary, additional delay charges), and coordinate UP's use of the line with other users, with approval of such operating plan not to be unreasonably withheld.

(e) EJ&E and UP agree to establish performance targets, provided however that EJ&E does not guarantee or otherwise promise to provide any particular transit or running times over the Joint Trackage nor are there penalties associated with the train performance. EJ&E and UP agree to establish quarterly joint performance reviews to discuss options for performance improvement and mutually agreeable adjustments to performance targets.

(f) In the event the STB requires additional environmental mitigation in connection with the Transaction triggered by UP's operations, UP shall fund any such mitigation. EJ&E will use its best efforts to cooperate with UP in opposing or reducing any such mitigation requirements. If additional mitigation is required due wholly or in part to increased operations by other users of a given line segment, the cost of STB-required mitigation should be shared on the basis of the incremental train approach in Section 9 of the Detailed Schedule (subject to existing agreements with other existing tenants).

12. **Section 4 ("Franchise Fee") of Exhibit 1 ("Detailed Schedule") to the Trackage Rights Agreement is amended by striking the text of the existing provision in its entirety and replacing it with the following:**

"UP shall pay UJ&B the following per car mile fee for each mile a loaded or empty car is operated by UP over the Joint Track Segment: (i) for Bulk and General Traffic the per car mile fee shall be _____; and (ii) for Intermodal and Auto Traffic the per car mile fee shall be _____. These per car mile rates are effective February 1, 2012, and are subject to escalation in accordance with Section 5 of this Exhibit 1, Detailed Schedule.

For purposes of this Agreement, each locomotive unit shall count as two (2) cars; and each caboose and each platform of an articulated car shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the ULMER Specification Manual. The second character in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code (S566) would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 53' containers in each well. (Car count data for articulated units are subject to change upon development of technology to separate units by car numbers.)

"The per car mile fee shall be billed monthly by UJ&B and paid by UP within forty (40) days of the billing date. On a monthly basis and within thirty (30) days following the end of the preceding month, UP shall provide the UJ&B with car counts, types of cars, trailing tons, number of locomotives and other pertinent information necessary for billing purposes."

13. **Section 5 ("Escalation") of Exhibit 1 ("Detailed Schedule") to the Trackage Rights Agreement is amended as follows:**

(a) by striking the text of the first paragraph thereof and replacing it with the following.

"The per car mile fee set forth in Section 4 shall be divided into a Fixed Portion of _____ with the balance referred to as the 'Adjustable Portion.'"

(b) by striking the references to "February 1, 2000" in the second and third paragraphs and replacing them with "February 1, 2009."

(c) by striking the reference to "1999 RCAFU" in the third paragraph and replacing it with "2008 RCAFU."

(d) by striking the reference to "2000 RCAFU" in the third paragraph and replacing it with "2009 RCAFU."

(e) by striking the text of the seventh (last paragraph) in its entirety. By way of reference, the first sentence in the paragraph hereby stricken reads "Under no circumstances shall the franchise fee ever decrease through application of the escalation formula provided herein."

14. Section 7 ("Train Movement Incentives") of Exhibit 1 ("Detailed Schedule") to the Trackage Rights Agreement is amended by striking the existing provision in its entirety and replacing it with the following:

"(a) Each train movement will be allotted 90 minutes to traverse the 1997 Joint Track Segment. On eastbound movements, time will commence with issuance of the track warrant at Balino and end when the UP train clears the 1997 Joint Track Segment at Griffith. On westbound movements, time will commence with issuance of the track warrant at Griffith and end when the UP train clears the 1997 Joint Track Segment at Chicago Heights. For time in excess of 90 minutes, UP will be assessed a delay charge by EJ&E of _____ per minute per train, unless the excess time is due to delays caused by ~~UP~~ or another EJ&E rail carrier affiliate.

In the event of an accident and/or incident on the 1997 Joint Track Segment, or to the extent a delay is not specifically attributable to UP, the above stated time limits will not apply.

Delay charges under this Subsection 7.(a) will be aggregated for each calendar month and shall be paid within forty (40) days of the date of invoice.

(b) For the 1998 Joint Track Segment, UP will be assessed a delay charge by EJ&E of (i) _____ per minute between Joliet and West Chicago, and (ii) _____ per minute between West Chicago and Waukegan for delays specifically attributable to UP, while en route on the Joint Track Segment or due to UP's inability to exit the Joint Track Segment for reasons not attributable to or under the control of EJ&E or another CN rail carrier affiliate. Delay charges shall be aggregated for each calendar month and shall be paid within forty (40) days of the date of invoice. Fifty percent (50%) of the annual calendar delay charges shall be held in a fund of EJ&E to be used for future capital improvement on the 1998 Joint Track Segment while this Agreement is in effect.

(c) If a delay occurs on the 2012 Joint Track Segment that is specifically attributable to UP, while en route on the Joint Track Segment or due to UP's inability to exit the Joint Track Segment for reasons not attributable to or under the control of EJ&E or another CN rail carrier affiliate, then delay charges shall promptly be established for the UP origin/destination train pair involved

(d) The delay charges in Subsections 7.(a) and 7.(b) are effective February 1, 2012. The delay charges provided for in this Section 7 (including any future delay charges established pursuant to Subsection 7.(c)) shall be adjusted in accordance with Section 5."

15. Section 9 ("Capital Improvement Allocation") of Exhibit 1 ("Detailed Schedule") to the Trackage Rights Agreement is amended by striking the existing provision in its entirety and replacing it with the following:

EJ&E and UP agree that all future capacity improvements on the Joint Trackage will be determined and costs allocated based on the following:

- a) EJ&E and UP agree that incremental capacity improvements will be based on incremental trains projected over a reasonable time period.
- b) EJ&E and UP agree to establish a base number of trains operating upon which capacity is measured. The parties agree that base number of trains per segment is the number of trains submitted in CN's Operating Plan as indicated in Table A below.

Table A, Freight Trains per Day contained in CN's Operating Plan
contained in STB Finance Docket No. 35087

Rail Line Segment Description			Freight - Trains/Day per STB Filing	
Segment Number	From Station	To Station	Base Number of Total Trains	Base Number of UP Trains
11	West Chicago	East Siding	31.6	3.0
10	East Siding	Walker	39.5	3.0
9	Walker	Bridge Junction	42.3	3.0
8	Bridge Junction	Rock Island Jct	42.3	1.5
7	Rock Island Jct	Mattoon	28.3	1.5
6	Mattoon	Chicago Hls	31.6	1.5
5	Chicago Hls	Griffith	34.2	1.5
4	Griffith	Van Loon	28.6	0.5
3	Van Loon	Ivanhoe	29.7	0.5
2	Ivanhoe	Cavanaugh	29.8	0.5
1	Cavanaugh	Gary	31.8	0.5

- c) For future additional capacity and cost allocation, EJ&E and UP will each project the number of incremental trains by year for next 3 years including incremental trains of all other third party users. EJ&E and UP will then jointly agree as to the incremental capacity required by year to handle the incremental trains as projected. The cost of the additional incremental capacity will then be allocated between EJ&E, UP and any third party (subject to existing agreements with other existing tenants) based on the ratio (or percent) of the number of which the EJ&E, UP and third party incremental trains projected exceed the number by which an individual user exceeds its base number as shown above in Table A.

d) As a truing mechanism, three years after completion of the incremental capacity project, EJ&E and UP will compare the actual to projected incremental train usage and adjust/reimburse the incremental dollars contributed by EJ&E, UP and any third party, as the case may be, to reflect the parties' actual incremental train usage as compared to the base.

e) If EJ&E admits any additional trackage rights tenants to the Joint Trackage and/or if EJ&E allows any current tenants to increase the frequency, class or speed of their operation, UP will not be responsible for the incremental capacity, if any, sufficient to offset all effects of their operations (subject to existing agreements with other existing tenants).

f) EJ&E will assist third parties (including UP) in making reasonable efforts to be compensated for a share of any additional incremental capital that each third party may have invested in the line prior to increasing the number of trains by users other than EJ&E. Compensation to such third parties will not be EJ&E's responsibility, but the responsibility of the passenger agency or third-party trackage rights tenant. EJ&E will in no way be limited from recovery from third parties of capital expenditures that EJ&E has previously made.

g) In the event that UP desires to operate trackage rights trains for the purpose of connecting or interchanging traffic directly with CSX or NS as provided in Section 2(b), such interchange shall not occur on EJ&E main tracks and UP shall be required to pay EJ&E for the construction and maintenance of signalized thirty (30) mile per hour sidings to support such interchange.

16. Exhibit 1 to the Trackage Rights Agreement is amended by adding to the end thereof as a new Exhibit A the map that is Exhibit A to the 2007 Trackage Rights Agreement.
17. Exhibit 1 to the Trackage Rights Agreement is amended by moving to the end thereof as a new Exhibit B the map that is presently Exhibit A to the Trackage Rights Agreement.
18. Exhibit 1 to the Trackage Rights Agreement is amended by adding to the end thereof as a new Exhibit C the map attached hereto and marked Exhibit C.
19. As the 1997 Trackage Rights Agreement has hereby been replaced and superseded by the 1998 Trackage Rights Agreement, the Parties agree by mutual consent that the 1997 Trackage Rights Agreement is hereby terminated.
20. Except as otherwise stated herein, all other terms and conditions of the Trackage Rights Agreement shall remain in full force and effect.

21. The Parties agree that, upon execution of this First Amendment and authorization by the STB of this First Amendment, except for Articles 9-b. and 9-d., all terms and conditions of the agreement dated December 22, 2008 sometimes referred to as the "2008 Settlement Agreement" shall terminate. CN and UP expressly agree that Articles 9-b. and 9-d. of the 2008 Settlement Agreement shall survive termination of the 2008 Settlement Agreement and remain in force in perpetuity.
22. The provisions of this First Amendment are subject to and contingent upon UP obtaining Surface Transportation Board review and authority as required by law

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the date written above.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

By: Paul E. Ladue
Printed: Paul E. Ladue
Title: Region Director Contracts & Administration

UNION PACIFIC RAILROAD COMPANY

By: Lance F. Fries
Printed: LANCE FRIES
Title: EVP-D

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 35728**

**UNION PACIFIC RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

Elgin, Joliet & Eastern Railway Company ("EJ&E") has agreed to grant overhead trackage rights to Union Pacific Railroad Company ("UP") between Joliet, Illinois (EJ&E Milepost 0.0) and Chicago Heights, Illinois (EJ&E Milepost 25.2), between Griffith, Indiana (EJ&E Milepost 36.2) and Gary, Indiana (EJ&E Milepost 45.4) and between Gary, Indiana (EJ&E Milepost 45.4) and Goff, Indiana (EJ&E Milepost 6.0). The trackage rights will become effective on M 2013.

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: April __, 2013

By the Board,

Rachael D. Campbell
Director, Office of Proceedings

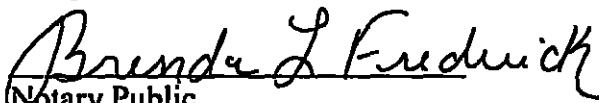
VERIFICATION

I, Bryce B. Bump, Senior Director Joint Facilities of Union Pacific Railroad Company, under penalty of perjury, declare and verify that I have read the foregoing Notice of Exemption in Finance Docket No 35728, know the facts stated therein, and believe that said facts are true as stated.

Dated: April 4, 2013


Bryce B. Bump

SUBSCRIBED AND SWORN TO
before me this 4th day
of April, ~~2012~~ 2013


Notary Public

My Commission expires:

