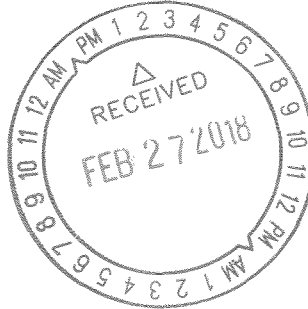


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245232

February 26, 2018

**ENTERED
Office of Proceedings
February 27, 2018
Part of
Public Record**

VIA FEDEX

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

Re: Toledo, Peoria & Western Railway Corp.
- Trackage Rights Renewal Exemption -
Tazewell & Peoria Railroad, Inc.
STB Docket No. FD 36165

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Notice of Exemption of Toledo, Peoria & Western Railway Corp. ("TPW"), together with an additional 20 copies of the maps. Also enclosed is our check in the amount of \$1300 representing the filing fee for this Notice.

Also enclosed for filing are the original and 10 copies of each of the following:

- (1) Motion of TPW for Protective Order (expedited consideration requested).
- (2) Highly Confidential Version of Amended and Restated Trackage Rights Agreement between TPW and Tazewell & Peoria Railroad, Inc. (filed under seal in a separate envelope).

Please time stamp the extra copy of this letter to indicate receipt of all of the foregoing, and return it to me in the stamped, self-addressed envelope provided for your convenience.

**FEE RECEIVED
February 27, 2018
SURFACE
TRANSPORTATION BOARD**

216859174

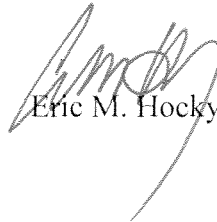
**FILED
February 27, 2018
SURFACE
TRANSPORTATION BOARD**

Cynthia T. Brown
February 26, 2018
Page 2

Please let me know if there are any questions regarding these filings. Thank you for your assistance.

Respectfully,

CLARK HILL PLC

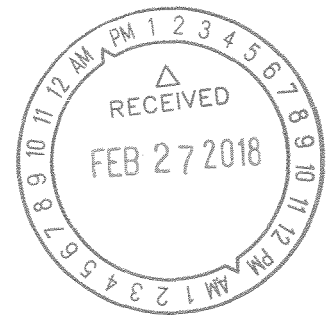


Eric M. Hocky

EMH/dml
Encls.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36165



**TOLEDO, PEORIA & WESTERN RAILWAY CORP.
– TRACKAGE RIGHTS RENEWAL EXEMPTION –
TAZEWELL & PEORIA RAILROAD, INC.**

VERIFIED NOTICE OF EXEMPTION

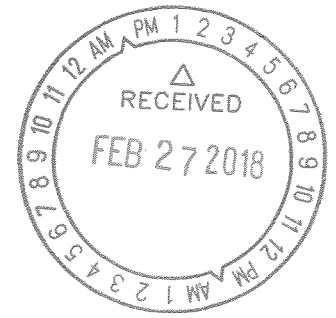
ERIC M. HOCKY
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Attorneys for Toledo, Peoria & Western
Railway Corp.

Dated: February 26, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36165



**TOLEDO, PEORIA & WESTERN RAILWAY CORP.
– TRACKAGE RIGHTS RENEWAL EXEMPTION –
TAZEWELL & PEORIA RAILROAD, INC.**

VERIFIED NOTICE OF EXEMPTION

Toledo, Peoria & Western Railway Corp. (“TPW”), a Class III railroad, submits this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), for TPW’s renewal of its trackage rights over a line of railroad leased to and operated by Tazewell & Peoria Railroad, Inc. (“TZPR”) pursuant to a written First Amendment to Amended and Restated Trackage Rights Agreement (the “Amendment”) between TPW and TZPR. The Amendment extends the term of TPW’s overhead trackage rights over TZPR’s rail line between TPW milepost 109.4 at East Peoria, IL, and TPW milepost 113.9 at Peoria, IL, a distance of approximately 4.7 miles (the “Subject Trackage”), including overhead trackage rights to handle intermodal traffic from the intermediate point of connection between TZPR and BNSF Railway Company near Durst Street to TPW Milepost 109.4 in East Peoria, IL. A map of the line is attached hereto as Exhibit A. The term of the trackage rights is being extended until December 31, 2036. The Amendment will become effective according to its terms and will be consummated on the effective date of this Notice, which shall be on or after March 27, 2018.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are: (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights renewal covered by this Notice is based upon a written agreement, a copy of which is attached hereto as Exhibit B, and is not being sought in a responsive application in a rail consolidation proceeding. Thus, the class exemption is applicable.

Supporting Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), TPW provides the following information as required by 49 C.F.R. §§1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) Summary of Proposed Transaction

The underlying trackage rights were granted to TPW by Peoria and Pekin Union Railway Company, and authorized by the Interstate Commerce Commission in Finance Docket No. 32654 in a notice served February 6, 1995.¹ The trackage rights were amended in 2001 to include an intermediate connection with BNSF Railway (then The Burlington Northern and Santa Fe Railway Company) for the handling of intermodal traffic, and authorized by the Board in Finance Docket No. 34009 in a notice served February 23, 2001. TZPR leased the Subject Trackage, as well as other rail lines, from PPU in a transaction authorized by the Board in Finance Docket No. 34544 served September 28, 2004, and succeeded to the rights of PPU under the TPW trackage rights. The parties entered into an amended and restated trackage rights agreement dated August 1, 2006 (the “2006 Restated Agreement”), that did not change the scope of the trackage rights, but which among other changes, extended the term of the trackage rights

¹ The 1995 trackage rights replaced trackage rights previously granted by PPU to TPW.

until December 31, 2016. The 2006 Restated Agreement required TPW to file with the Board for any necessary authority; perhaps believing that no authority was necessary, TPW never filed with the Board for specific authorization of the 2006 Restated Agreement. The parties have operated pursuant to the terms of the 2006 Restated Agreement. *See generally*, the joint decision in *BNSF Railway Company – Discontinuance of Trackage Rights Exemption – In Peoria and Tazewell Counties, IL*, STB Docket No. AB 6 (sub-No. 470X) (served April 26, 2011) and *Toledo, Peoria & Western Railway Corp. – Petition for Declaratory Order*, STB Docket No. FD 35404 (served April 26, 2011) (a redacted copy of the 2006 Restated Agreement was filed by TZPR in the BNSF discontinuance proceeding). TPW and TZPR have been under common control since December 31, 2012. *See Genesee & Wyoming Inc. – Control – RailAmerica, Inc., et al*, STB Docket No. FD 35654 (served December 12, 2012). However, they remain separate corporate entities, each with its own operating authority.

Pursuant to the Amendment, the overhead trackage rights granted to TPW are being renewed and extended for an additional 20 years until December 31, 2036.² The trackage rights are over TZPR's rail line between TPW milepost 109.4 at East Peoria, IL, and TPW milepost 113.9 at Peoria, IL, a distance of approximately 4.7 miles (the "Subject Trackage"), including overhead trackage rights to handle intermodal traffic from the intermediate point of connection between TZPR and BNSF Railway Company near Durst Street to TPW Milepost 109.4 in East Peoria, IL.

² The 2006 Restated Agreement was set to expire on December 31, 2016, and the parties inadvertently neglected to formally extend the term. TPW has not sought discontinuance authority and continued to operate under the terms of the trackage rights agreement. *See Thompson v. Texas Mexican Railway Company*, 328 U.S. 134 (1946); *Milford-Bennington R.R. – Trackage Rights Exemption – Boston & Maine Corp. and Springfield Terminal Ry.*, ICC Finance Docket No. 32103 (served September 3, 1993).

The name, business address and telephone number of the Applicant are:

Toledo, Peoria & Western Railway Corp.
4349 Easton Way
Suite 110
Columbus, OH 43219
(614) 479-1675

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

Eric M. Hocky
Clark Hill, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

(a)(1)(ii) Consummation Date

TPW intends to commence operations under the Amendment on or after March 27, 2018, the effective date of this notice.

(a)(1)(iii) Purpose of Transaction

The purpose of this transaction is to renew and extend the term of TPW's existing trackage rights over the Subject Trackage. TPW has had trackage rights over the Subject Trackage under the current arrangements since 1995.

(a)(5) States in which Property of the Applicant is Situated

TPW operates in the States of Illinois and Indiana. The Subject Trackage is located in Illinois.

(a)(6) Map

A map of the Subject Trackage is attached hereto as Exhibit A. Twenty extra copies of the map are also being filed together with this Notice.

(a)(7)(ii) Agreement

A copy of the Amendment is attached as part of Exhibit B. Because the 2006 Restated Agreement was not separately authorized by the Board, TPW is attaching a redacted public version of the 2006 Restated Agreement as part of Exhibit B. Applicant is filing a Motion for a Protective Order to protect the confidentiality of the commercial terms of the 2006 Restated Agreement. Highly confidential versions of the 2006 Restated Agreement are being filed under seal.

Labor Protection

Because the Amendment only involves the renewal of existing trackage rights, no employees of either TPW or TZPR are expected to be adversely affected; however, TPW understands that any employees that are adversely affected by the Amendment are entitled to protection under the conditions imposed in *Norfolk & Western Railway–Trackage Rights–Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway–Lease & Operate–California Western Railroad*, 360 I.C.C. 653 (1980).

Caption Summary

In accordance with 49 C.F.R. §1180.4(g)(2)(ii), a caption summary is attached hereto as Exhibit C.

Environmental and Historic Documentation

Pursuant to 49 C.F.R. §1105.6(c)(4) and §1105.8(b)(3), neither environmental documentation nor a historic report is required for this transaction.

Conclusion

Based on the information provided above, TPW requests that the Board issue a notice of exemption for the renewal of trackage rights that are the subject of this Notice.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Attorneys for Toledo, Peoria & Western
Railway Corp.

Dated: February 26, 2018

VERIFICATION

I, Martin Pohlod, verify under penalty of perjury that I am authorized to make this verification on behalf of the Toledo, Peoria & Western Railway Corp., and that the information included in the foregoing Notice of Exemption is true and correct to the best of my knowledge and belief.



Martin A. Pohlod
President

M.A.P.
Dated: February 20 2018

EXHIBIT A

MAP

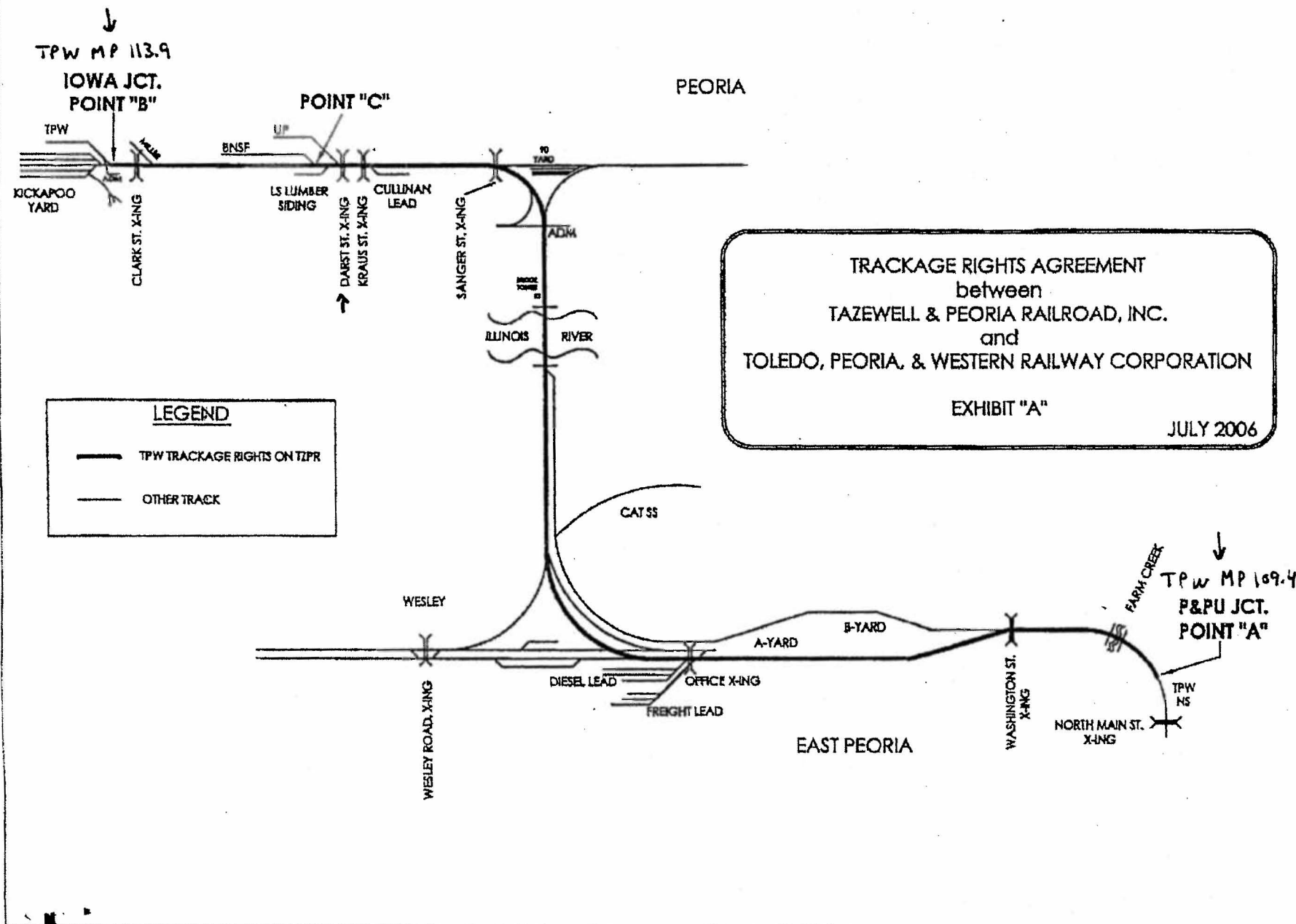


EXHIBIT B

**FIRST AMENDMENT TO
AMENDED AND RESTATED TRACKAGE
RIGHTS AGREEMENT**

AND

**AMENDED AND RESTATED TRACKAGE RIGHTS
AGREEMENT DATED AUGUST 1, 2006**

**FIRST AMENDMENT TO AMENDED AND RESTATED
TRACKAGE RIGHTS AGREEMENT**

This First Amendment to Amended and Restated Trackage Rights Agreement (this "Amendment"), dated as of January 12, 2018, by and between Tazewell & Peoria Railroad, Inc. ("TZPR") and Toledo, Peoria & Western Railway Corp. ("TPW").

WHEREAS, TZPR and TPW are parties to that certain Amended and Restated Trackage Rights Agreement dated August 1, 2006 (the "Agreement") pursuant to which TZPR granted TPW trackage rights to operate over certain TZPR trackage; and

WHEREAS, TZPR and TPW desire to amend the Agreement to extend the term thereof as set forth in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein expressed, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Terms capitalized herein and not otherwise defined will have the meanings ascribed to such terms in the Agreement.
2. Effective as of December 31, 2016, Section 11.01 of the Agreement is hereby amended and restated in its entirety as follows:

“This Agreement shall continue in full force and effect through December 31, 2036; provided, however, that either TZPR or TP&W may terminate this Agreement upon twelve (12) months’ written notice to the other.”
3. The Agreement, as amended by this Amendment, will remain and continue in full force and effect and is in all respects agreed to, ratified and confirmed hereby.
4. Any reference to the Agreement after the date hereof will be deemed a reference to the Agreement as amended by this Amendment.
5. This Amendment may be executed and delivered in the original, by facsimile, by Portable Document Format (PDF), or by any other generally accepted electronic means, in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused duly authorized representatives to execute this Amendment as of the date first written above.

TAZEWELL & PEORIA RAILROAD,
INC.

By: 

Name: Martin A. Pohled

Title: President

TOLEDO, PEORIA & WESTERN
RAILWAY CORP.

By: 

Name: Martin A. Pohled

Title: President

AMENDED AND RESTATED TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT is made this 7 day of August, 2006, by and between **TAZEWELL & PEORIA RAILROAD, INC.**, a Delaware corporation (hereinafter "TZPR"), and **TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION**, a Delaware corporation (hereinafter "TP&W") (TZPR and TP&W are sometimes referred to individually as a "Party" and together as the "Parties").

WHEREAS, TP&W now owns, maintains and operates a system of railroad within and in the vicinity of East Peoria, Illinois, and Peoria, Illinois, for the purpose of handling road haul trains; and

WHEREAS, TP&W does not own or maintain a bridge over the Illinois River between Peoria, Illinois, and East Peoria, Illinois; and

WHEREAS, TZPR owns and operates a bridge over the Illinois River and operates connecting facilities capable of handling TP&W's through train movements; and

WHEREAS, TP&W and TZPR (as assignee of Peoria and Pekin Union Railway Company, (hereinafter "PPU")) are Parties to a Trackage Rights Agreement dated November 28, 1994, and amended in January 2001 and again in October 2001 (together the "Old Agreement"), whereby PPU granted TP&W: (1) overhead trackage rights from the point of connection between TP&W and TZPR in East Peoria, Illinois (located at P&PU Junction at North Main Street) to the connection between TZPR and TP&W in Peoria, Illinois (located at the Iowa Junction south of Clark Street), and (2) overhead trackage rights to handle intermodal traffic from the point of connection between the Burlington Northern Santa Fe Railway Company (hereinafter "BNSF")

and TZPR in Peoria, Illinois (located near Darst Street) to the point of connection between TP&W and TZPR in East Peoria, Illinois (located at P&PU Junction at North Main Street) for interchange with BNSF; and

WHEREAS, the Old Agreement is scheduled to expire on [July 31], 2006; and

WHEREAS, TP&W and TZPR now desire to amend and restate the Old Agreement as set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, including the mutual and dependent covenants hereinafter set forth, TZPR and TP&W agree as follows:

Article I – Definitions

1.01 As used herein, the following terms shall have the meanings specified in this Section 1.01 (such definitions to be equally applicable to the singular and plural forms of the term defined) as follows:

“Annual Adjustment” shall have the meaning as set forth in Section 4.08(a)(iv) hereof.

“Car” means a railroad car, loaded or empty, and includes cabooses and passenger cars not for hire or a locomotive.

“Co-Liable” shall have the meaning set forth in Section 7.02(e) hereof.

“Employee” of a Party means all officers, agents, employees and contractors of that Party. Such Employees shall be treated either as “Sole Employees” or “Joint Employees”, as hereinafter specified.

“Derailment” shall have the meaning set forth in Section 12.02 hereof.

“Engine” means each unit in a consist, propelled by any form of energy.

"Equipment" shall mean trains, locomotives, cars, cabooses, end of train devices, and vehicles and machinery that are capable of being operated on railroad tracks or operated on right-of-way for purpose of the maintenance or repair thereof; provided, however, that except to the extent as expressly provided herein, nothing herein shall be construed as permitting TP&W to operate its vehicles or machinery on the TZPR Facilities.

"Hazardous Materials" means any material or substance that is defined or classified as a "hazardous substance", "hazardous material", "hazardous waste", "pollutant", "contaminant", or any other substance regulated pursuant to or that could give rise to liability under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14)), as amended; the Federal Water Pollution Control Act (33 U.S.C. § 1321), as amended; the Resource Conservation and Recovery Act (42 U.S.C. § 6903, 6921), as amended; the Clean Air Act (42 U.S.C. § 7412), as amended; the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 App. U.S.C. § 1802 (4), as amended; the Federal Insecticide and Rodenticide Act (7 U.S.C. § 136), as amended; and analogous state and local laws shall have the meaning set forth in Section 12.02.

"Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing, or operating the Joint Property (as herein defined) or in making changes in and/or additions thereto for the benefit of all of the Parties hereto, or while preparing to engage in, enroute to or from, or otherwise on duty incident to performing such service.

"Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all tools, Equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making changes in and/or additions to the Joint

Trackage for the benefit of both of the Parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service.

"Joint Trackage" shall have the meaning set forth in Section 4.01(c) hereof.

"Loss" shall mean injury to or death of any person, including Employees of the Parties hereto, and loss or damage to any property, including property of the Parties hereto and property being transported by the Parties, which arises out of an incident occurring on the Joint Trackage, and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean-up necessitated by such wreck or Derailment and shall include any liabilities for any third Party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment.

"Maintenance Fee" shall have the meaning as set forth in Section 4.08(b) hereof.

"Monthly Base Rental" shall have the meaning set forth in Section 4.08(a)(i) hereof.

"Operating Employees" are employees of TZPR whose service may be jointly used by the Parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen, which employees shall at the time of performing their services be deemed to be Sole Employees of the Party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the Parties hereto at such time as their

services may be rendered for the Parties' joint benefit.

"Noticed Party" shall have the meaning set forth in Section 14.02 hereof.

"Notifying Party" shall have the meaning set forth in Section 14.02 hereof.

"Per Car Charges" shall have the meaning set forth in Sections 4.08(a)(ii) and (iii) hereof.

"Prime Rate" shall have the meaning set forth in Section 14.07 hereof.

"Sole Employees" and "Sole Property" shall mean one or more Employees or Equipment of a Party, while engaged in, enroute to or from, or otherwise on duty to performing service for the exclusive benefit of such Party. Pilots furnished by TZPR to assist in operating Equipment of TP&W shall be considered the Sole Employees of TP&W. All such Employees, or Equipment while engaged in, enroute to or from, or otherwise on duty incident to repairing Equipment, rerailing, or clearing wrecks or Derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or Derailment shall, for the purpose of this Section VII be deemed the Sole Employees and/or Sole Property of the Party bearing the cost of repair or of the other Loss of the wreck or Derailment.

"Standards" shall have the meaning set forth in Section 12.01 hereof.

"TZPR Facilities" means TZPR's Illinois River Bridge main tracks, side tracks, switches, turnouts, signals, bridges and all its terminal and other facilities located in Peoria County and Tazewell County, Illinois as identified in bold on the map dated July 2006, marked Exhibit "A."

"Train" means an Engine with or without Cars.

1.02 Other Definitional Provisions. (a) Unless otherwise stated, terms, phrases and expressions used in this Agreement (whether or not capitalized) which pertain to railroad operations and service shall have the meaning commonly given such terms under common usage and practice of the railroad industry in 2006.

(b) All Employees, Equipment, tools and other Equipment and machinery other than as described in Section 1.01 or specifically set forth in other Sections of this Agreement shall be deemed the Sole Employees of the employing Party and the Sole Property of the using Party.

(c) Any railroad not a Party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the Parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the Parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage.

(d) For the purpose of this Section, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the Party hereto under whose detour agreement or other auspices such movement is being made.

Article II - Management and Control

2.01 The management, control and supervision of TZPR Facilities and the sole control and direction of the management, use, location, improvement and repair of same and the appointment and supervision of all officers, agents and employees necessary for such purposes shall be vested in TZPR. TZPR may assign, for the use of TP&W, a particular track or tracks, and may make changes in such assignments as the traffic and business of such line may, in the

sole discretion of TZPR, from time to time require, and TZPR may shift, relay, change or extend its tracks or roadbed, or make such improvements or addition to the same, as may, in the sole discretion of TZPR, become requisite and necessary.

Article III - General Provisions

3.01 TP&W shall have the non-exclusive use of those portions of TZPR Facilities as hereinafter set forth under Article IV for the uses set forth herein. TZPR hereby expressly reserves to itself the full right and power, at all times during the term hereof, to make contracts for the use of said TZPR Facilities, or any part thereof, by other railroad lines or other entities doing business with TZPR or being served by TZPR.

3.02 TZPR shall have the right to procure the execution and delivery of such leases, contracts, conveyances and such extensions thereof, and of its corporate franchises under the laws of the State of Delaware, as shall fully vest in it the right, power and authority to maintain for TP&W and its successors and assigns, the use and enjoyment of the rights and privileges hereby agreed to, so long as this Agreement shall remain in force and effect between the said Parties hereto. TZPR shall maintain those TZPR Facilities which are the subject of this Agreement in good working order and condition and shall provide the services and perform the covenants herein in an efficient manner.

3.03 This Agreement shall not be construed as limiting the rights of TZPR to discontinue its ownership, maintenance, improvement or operation of said joint tracks, appurtenances thereto or right-of-way therefore, nor in any way limit TZPR's right to abandon all or any part thereof at any time as it may see fit; provided, however, that in case TZPR shall

desire to abandon all or any part thereof, it shall give TP&W six (6) months' written notice of its intention to do so.

Article IV - Trackage Rights and Costs

4.01 The following trackage rights are granted by TZPR to TP&W:

(a) TZPR hereby grants to TP&W the right to operate its Engines, Cars and Trains over that portion of TZPR's track as shown by a bold line on Exhibit "A", between point A as shown on Exhibit "A", (which is the point of connection between TP&W and TZPR in East Peoria, Illinois, located at PPU Junction at North Main Street) and point B on Exhibit "A" (point B being the point of connection between TZPR and TP&W in Peoria, Illinois, located at Iowa Junction south of Clark Street in Peoria, Illinois).

(b) TZPR further grants to TP&W the right to operate its Engines, Cars and Trains over that portion of TZPR's track between Point "C" (which is the point of connection between BNSF and TZPR, near Darst Street in Peoria, Illinois), and Point "A" (which is the point of connection between TZPR and TP&W at North Main Street, in East Peoria, Illinois, commonly known as "PPU Junction"), all as shown by the bold line marked on Exhibit "A" attached hereto and made a part hereof. This grant of trackage rights shall be limited solely to the movement of TP&W intermodal TOFC/COFC railcars for interchange with BNSF at Point "C" only.

(c) The segment of TZPR track identified in Sections 4.01(a) and 4.01(b) hereof are the only part of TZPR's rail line, Equipment or property on which the Parties contemplate the grant of trackage rights (hereinafter the "Joint Trackage").

4.02 The trackage rights granted herein are overhead rights only, and TP&W shall have no rights under the foregoing grants to serve industries now connected, or which in the future may be connected, with said TZPR track or extensions thereof. Except as expressly provided for in Section 4.01(b) of this Agreement, TP&W shall not use the Joint Trackage for the purpose of effecting interchange to any railroad line. TP&W shall not use TZPR Facilities for the purpose of operating any passenger train service, provided however, that with prior written consent of TZPR (which TZPR may withhold in its sole discretion), TP&W may run business cars over the Joint Trackage.

4.03 The operation, maintenance, repair and renewal of the TZPR Facilities shall be by and under the exclusive direction and control of TZPR. TZPR shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair and renewal of said joint tracks; provided, however, that TZPR's liability in connection with its operation, maintenance, repair and renewal shall be as set forth in Article VII hereof.

4.04 If the use of the Joint Trackage, or any part thereof, shall at any time be interrupted, or traffic thereon be delayed for any cause whatsoever, TZPR shall, as soon as TZPR, in its sole opinion deem practicable, correct or restore same for the safe passage of Trains thereover. TP&W shall not have or make any claim or demand against TZPR for loss or damage, of any kind, caused by or resulting from interruptions or delays to the movement of their respective Trains, Cars, cabooses, Engines or traffic over the Joint Trackage no matter how occurring.

4.05 Should any Engine, Car or caboose of TP&W be derailed while being operated upon the Joint Trackage under this Agreement, they shall be rerailed and cleared by TZPR. The cost and expense of clearing wrecks, rerailing Cars and cabooses and repairing TZPR track shall

be paid by TP&W as a separate charge. Any such costs or expenses which are recovered by TZPR from any insurance carrier shall be credited against the amounts to be paid by the TP&W.

4.06 The movement of Engines, Cars and Trains of TP&W on the Joint Trackage shall be in accordance with the same rules and regulations as are now or may be hereafter established by TZPR for movement of its Engines, Cars and Trains. TP&W trainmen and enginemen proposing to run Engines or Trains on the Joint Trackage shall, from time to time, be required to be examined on rules of TZPR, and TP&W shall not permit its trainmen or enginemen to work upon said Joint Trackage until such employees have been examined on TZPR's rules and received from it certification evidencing TZPR's satisfaction with the results of such examination. In order to facilitate this requirement, TZPR will qualify one or more supervisory officers of TP&W on said rules and regulations and such supervisory officer or officers so qualified shall examine all employees of TP&W engaged in or connected with the operations of Trains over the Joint Trackage as required by the Federal Railroad Administration.

4.07 TP&W, in using the Joint Trackage and operating their respective Engines, cabooses and Cars thereover, shall comply with all applicable laws, rules or regulations and orders of any governmental body, board or commission having jurisdiction for the protection of persons or otherwise; and, if any failure on the part of TP&W to comply therewith, shall result in a fine, penalty or similar charge being imposed or assessed against TZPR, then TP&W shall promptly reimburse and indemnify TZPR for or on account of such fines, penalty or similar charge and all expense and attorneys' fees incurred in defending any action against TZPR on account thereof.

4.08 The charges to TP&W for the use of the trackage rights and TZPR Facilities granted in this Agreement shall consist of the following:

(a) TP&W shall pay to the TZPR for the use of TZPR Facilities, the following amounts:

- (i) [REDACTED] per month without regard to traffic volume (the "Monthly Base Rental");
- (ii) [REDACTED] per car for the first 10,000 cars (including without limitation intermodal traffic) over 45,000 cars (cars 45,001 through 55,000) handled by TP&W over all or any portion of the TZPR Facilities in any calendar year during the term of this Agreement (which car counts shall be prorated on a daily basis for any year during the term of this Agreement that is less than a full calendar year); and
- (iii) [REDACTED] per car for each subsequent car (including without limitation intermodal traffic) over 55,000 cars handled by TP&W over all or any portion of the TZPR Facilities in any calendar year during the term of this Agreement (which car count shall be prorated on a daily basis for any year during the term of this Agreement that is less than a full calendar year).

The per car charges described in Sections 4.08(a)(ii) and (iii) shall be referred to together herein as "Per Car Charges". The Per Car Charges shall be paid, if at all, beginning the month after the aggregate Subject Traffic in any calendar year during the term of this Agreement exceeds 45,000 cars (which traffic level will be prorated on a daily basis for any year during the term of this Agreement that is less than a full calendar year).

(iv) The Per Car Charges, Monthly Base Rental and Maintenance Fee (as defined in Section 4.08(b)) shall be indexed annually, beginning January 1, 2007 as follows (the "Annual Adjustment"):

- (a) the Per Car Charges, Monthly Base Rental and Maintenance Fee each shall be revised upward or downward, as of January 1 of each year during the term of this Agreement, by the percentage change in the Rail Cost Adjustment Factor, unadjusted for productivity ("RCAF-U") published by the Surface Transportation Board (the "Board"), or if the RCAF-U ceases to be published by the Board or a successor agency, by some comparable rail cost index; provided, that the Per Car Charges, Monthly Base Rental, and Maintenance Fee shall not be adjusted below the levels in place on the date of this Agreement.
- (b) the Per Car Charges, Monthly Base Rental and Maintenance Fee each shall be adjusted annually by calculating the percentage increase or decrease in the RCAF-U for the most recently completed calendar year (i.e., the RCAF-U for calendar year 2006 for the adjustment made as of January 1, 2007) as compared to the RCAF-U for the immediately preceding year (i.e., the RCAF-U for calendar year 2005 for the adjustment made as of January 1, 2007), and applying such percentage increase or decrease to each of the then-prevailing Per Car Charges, Monthly Base Rental and Maintenance Fee (as applicable). By way of example, if "A" is the final RCAF-U for 2006; "B" is the final RCAF-U for 2005; "C" is the then-prevailing Per Car Charges, Monthly Base Rental or Maintenance Fee (as applicable); and "D" is the percentage increase or decrease, the adjusted Per Car Charges, Monthly Base Rental or Maintenance Fee (as applicable), effective as of January 1, 2007, would be computed as follows:

- 1. $(A - B) / B = D$
- 2. $C + (C \times D) = \text{adjusted Per Car Charges, Monthly Base Rental or Maintenance Fee,}$

as applicable (but not less than the original
Per Car Charges, Monthly Base Rental or
Maintenance Fee, as applicable)

(b) TP&W shall pay, in addition to the Monthly Base Rental and Per Car Charges, a monthly maintenance fee equal to [REDACTED] (the total DMDE for "Maintenance Fee") per car (including without limitation intermodal traffic) handled by TP&W over all or any portion of the TZPR Facilities (the "Maintenance Fee"). The Maintenance Fee shall be subject to the Annual Adjustment; provided that the Maintenance Fee shall never be less than [REDACTED]

4.09 TP&W shall keep an accurate record of all Engines and Cars which it moves for the account of TP&W or any other road over any of the track of TZPR and shall make such reports as may be required by TZPR. TZPR and TP&W shall have the mutual right upon ten (10) days' advance notice, in writing, to audit all records of either company pertaining to the movement of Engines and Cars over TZPR tracks.

Article V - Rates and Tariffs

5.01 This Agreement does not, in any manner, affect TP&W's obligation to pay TZPR in accordance with published tariffs or contract rates.

Article VI - Payment

6.01 All payments for bills submitted under the terms of this Agreement shall be made by sight draft or certified funds issued payable to TZPR within thirty (30) days after issuance of the invoice by TZPR. If the invoice is not paid within thirty (30) days after issuance, the amount

due shall be subject to a monthly late charge of the lesser of two percent (2%) per month or the maximum allowed by law of the invoice amount.

6.02 Monthly statements for TP&W operations under this Agreement shall be submitted by TZPR to TP&W for payment, and TP&W agrees to make timely payment of all charges. Any disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment.

Article VII– Liability

7.01 General. The provisions of this Article VII shall apply only as between the Parties and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the Parties. It is the explicit intention of the Parties that no person or entity other than the Parties is or shall be entitled to bring any action to enforce any provision hereof against any of the Parties, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the Parties hereto. The provisions of this Article VII shall apply as between the Parties hereto irrespective of the terms of any other agreements between the Parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the Parties hereto.

7.02 Reimbursement and Defense. The Parties agree that:

(a) Each Party shall pay promptly Loss for which such Party shall be liable under the provisions of this Article VII, and shall indemnify the other Party against such Loss. If any suit or suits shall be brought against either of the Parties and any judgment or judgments shall be recovered which said Party is compelled to pay, and the other Party shall under the

provisions of this Agreement be solely liable therefore, then the Party which is so liable shall promptly repay on demand to the other Party paying the same any monies which it may have been required to pay, whether in the way of Loss, costs, fees or other expenses; and if the Loss in such case or cases is joint or allocated between the Parties, the Party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other Party as allocated pursuant to this Agreement;

(b) Each Party covenants and agrees with the other Party that it will pay for all Loss, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, and will forever indemnify and save harmless the other Party, its successors and assigns, from and against all liability and claims therefore, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all Loss incident thereto;

(c) Each Party shall have the sole right to settle, or cause to be settled for it, all claims for Loss for which such Party shall be solely liable under the provisions of this Article VII, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss for which such Party shall be solely liable under the provisions of this Article VII.

(d) TP&W shall provide written notice to TZPR of any accidents or events resulting in Loss within seven (7) days after its discovery or receipt of notification of such occurrence.

TPW shall hold TZPR harmless from defects in the roadbed, buildings or other property of TZPR, except as to defects for which TPW has given TZPR prior written notice and requested same to be repaired, by a reasonable time.

(e) In the event both Parties may be liable for any Loss under the provisions of this Article VII ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the Parties Co-Liable therefore, release from liability shall be taken to and in the name of all the Parties so liable; however, no such settlement in excess of the sum of Fifty Thousand Dollars (\$50,000) shall be made by or for any Party Co-Liable therefore without the written consent of the other Parties so liable, but any settlement made by any Party in consideration of Fifty Thousand Dollars (\$50,000) or a lesser sum shall be binding upon the other Parties and allocated in accordance with Section 7.04; and no Party shall unreasonably withhold its consent to a settlement proposed by the other Party; provided, however, that failure by a Party to secure consent from the other shall not release such other Party to the extent the Party who failed to obtain such consent demonstrates that the other Party was not prejudiced by such failure.

(f) In case a claim or suit shall be commenced against any Party hereto for or on account of Loss for which the other Party is or, may be solely liable or Co-Liable under the provisions of this Article VII, the Party against whom such claim or suit is commenced shall give to such other Party prompt notice in writing of the pendency of such claim or suit, and thereupon such other Party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss to the Sole Employees or Sole Property of a Party or its invitee or property in its care, custody or control, that Party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss to third Parties, Joint Employees or the Joint Trackage, the Party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss to third parties, Joint Employees or the Joint Trackage and neither or both Party's Equipment and Sole

Employees were involved in the incident, TZPR shall investigate and defend such claim or suit; provided that the other Party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident.

(g) No Party shall be conclusively bound by any judgments against the other Party, unless the former Party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the Party so notified and the other Party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

7.03 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the Party whose Equipment was wrecked, disabled, or Derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the Party whose Equipment was wrecked, disabled or Derailed; provided, that Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

7.04 Allocation. (a) Each Party shall bear all costs of Loss to its Sole Employees, patrons, invitees, and others on its Equipment, or on or about the Joint Property in

transaction of business for or with such Party, its Sole Property, or property in its care, custody, or control, except when the Loss is caused in whole or part by the acts or omissions, negligent or otherwise, of the Sole Employee(s) and/or Sole Property of only one Party hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, in which event the Party whose Sole Employees and/or Sole Property caused the Loss (in whole or part) shall bear all of the costs of such Loss.

(b) Loss to third parties, Joint Employees, or Joint Property caused in whole or part by the acts or omissions, negligent or otherwise, of Sole Employees and/or by defects in the Sole Property of only one of the Parties hereto, with or without the concurring acts or omissions of Joint Employees and/or Joint Property, shall be borne by such Party.

(c) Loss to third parties, Joint Employees or Joint Property caused in whole or in part by the acts or omissions, negligent or otherwise, of Sole Employee(s) and/or by defects in the Sole Property of both of the Parties hereto, shall be borne equally by the Parties hereto.

(d) Loss or Damage to third parties, Joint Employees or Joint Property caused solely by Joint Employees and/or Joint Property, or occurring in such a way that it cannot be determined how such Loss came about, shall be apportioned equally between the Parties hereto.

(e) The Parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss.

(f) It is understood and agreed that a number of vehicular and pedestrian crossings of the Joint Trackage presently exist, or may be constructed. TP&W agrees to accept all (vehicular and pedestrian) crossings in whatever condition they may be in during the term of

the Agreement and will not assert any claim, demand or cause of action against TZPR and will hold TZPR harmless from any claim or cause of action arising out of any crossing accident on the TZPR Facilities in which the locomotives, cars or trains of a TP&W only is involved.

(g) To the extent that the Loss in connection with an incident is not allocated pursuant to this Article VII the loss shall be allocated in accordance with applicable law.

7.05 TZPR AND TP&W EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE;

Article VIII - Default

8.01 If TP&W shall default for the period of thirty (30) days in the payment of any of its monthly payments, or of any installment or part thereof, at the time and place when and where same is required to be paid as aforesaid, TP&W shall then pay, in addition to the amount theretofore falling due, a late fee equal to two percent (2%) per month (or, if such amount exceeds the highest rate allowed by the law, the highest rate allowed by law), upon all amounts more than thirty (30) days past due with interest accruing from the date on which said amount was due and payable until the date on which such amount plus interest is paid in full. All payments made after the passage of thirty (30) days from the date due, shall first be applied to interest, and the balance shall be applied to the principal amount owed. In addition, TZPR may, commencing upon the 31st day after the date on which the payment in default was due, or any time thereafter, and for so long as such default continues, at its option, exclude all Trains and

Cars of TP&W from the tracks of TZPR until such default and all subsequently accruing defaults shall be cured, and may proceed in any appropriate action, either at law or in equity, to recover the same and any subsequently incurred default, plus attorney's fees and costs, from TP&W. TP&W shall, notwithstanding such exclusion in consequence of its default, remain bound by all the covenants herein stipulated by it to be performed.

Article IX - Assignment

9.01 TP&W shall not sell, assign, convey, transfer or sublet the rights and privileges hereby granted, or any of them, without the prior written consent of TZPR provided, however, that such consent shall not be unreasonably withheld; nor shall TP&W have the right by any contract with any other railroad, corporation or other entity, or the owner or owners of any railroad, to give to such corporation or owner, the right for its Trains to pass over or use the railroad of TZPR; provided, however, that any purchaser of the property of TP&W under any sale thereof made by virtue of any mortgage or deed of trust, or at any judicial sale thereof, may, at its option, by such sale acquire the rights of such line and, be subject to and bound by all of the covenants and provisions thereof.

Article X – Surface Transportation Board Approval

10.01 TP&W shall make application to the Board, at its sole cost and expense, for any necessary authority to carry out the transaction hereinafter described. This Agreement shall become operative and effective on the first date of operation hereunder, following the obtaining of regulatory approval from the Board. Prior to making and filing at the Board in connection

with this Agreement, TP&W shall provide a draft of such filing to TZPR for review and comment.

Article XI Term of Agreement

11.01 This Agreement shall continue in full force and effect through December 31, 2016; provided, however, that either TZPR or TP&W may terminate this Agreement upon six (6) months' written notice to the other.

11.02 TP&W shall make appropriate filings at the Board, at its sole cost and expense, to abandon or discontinue the trackage rights granted in this Agreement (i) by September 1, 2016, if this Agreement has not been terminated prior to that date, or (ii) within thirty (30) days after receiving or giving notice of termination pursuant to Section 11.01 hereof. TP&W acknowledges that time is of the essence with respect to its obligations under this Section 11.02. If TP&W fails timely to make the regulatory filings required by this Section 11.02, TP&W authorizes and grants power of attorney to TZPR to make such filings in TP&W's name and on its behalf, and TP&W shall indemnify and hold harmless TZPR for all Losses incurred by TZPR in connection therewith. The termination of this Agreement shall become effective on the effective day of any necessary order authorizing the abandonment of such trackage rights.

Article XII Compliance With Law

12.01 With respect to operation of Equipment on the Joint Trackage, each Party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any Party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another Party, such other

Party shall give prompt notice to the failing Party and the failing Party shall promptly reimburse and indemnify the other Party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other Party defend such action free of cost, charge and expense to the other Party.

12.02 (a) TP&W agrees to comply fully with all applicable Standards concerning Hazardous Materials. Except with TZPR's prior consent, TP&W covenants that it shall not treat, store or dispose of Hazardous Materials on the TZPR Facilities. TP&W further agrees to furnish TZPR (if requested) with proof, satisfactory to TZPR, that TP&W is in such compliance.

(b) In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 12.02 and 12.03 hereinafter called collectively ("Derailment")) involving Equipment of or a train operated by TP&W carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of TP&W. TP&W shall also advise the owner/shipper of the Hazardous Materials involved in the Derailment, and TZPR, immediately.

(c) In the event of a Derailment on the TZPR Facilities involving Equipment of TP&W or on a train operated by TP&W, TZPR shall assume responsibility for cleaning up any release of Hazardous Materials from TP&W's Equipment in accordance with all federal, state, or local regulatory requirements. TP&W may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort.

(d) If a Hazardous Materials release caused by a Derailment involving Equipment of TP&W, or on a train operated by TP&W, results in contamination of real property

or water on the TZPR Facilities or on real property or water adjacent to the TZPR Facilities (whether such real property or water is owned by TZPR or a third Party), TZPR shall assume responsibility for emergency cleanup conducted to prevent further damage. TP&W shall be responsible for performing cleanup efforts thereafter.

(e) If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a Derailment in the Joint Trackage involving Equipment of TP&W, or on a train operated by TP&W, TP&W shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, TZPR, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by TP&W shall only be conducted after being authorized by TZPR.

12.03 The Loss in connection with a Derailment on or affecting the TZPR Facilities, released shall be allocated between the Parties in accordance with the liability provisions set forth in this Agreement.

XIII: INSURANCE

13.01 TP & W shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

Railroad liability policy of insurance in an amount of at least Twenty-Five Million Dollars (\$25,000,000) Such insurance shall include coverage for:

(a) injury to or death of persons whomsoever, personal injury, FELA, property damage liability including but not limited to, damage or destruction of any and all property including public liability;

(i) seepage and pollution coverage resulting from a railroad accident;

- (ii) contractual liability for the liability assumed by TP&W in this Agreement;

13.02 If coverage is purchased on a "claims made" basis, TP&W hereby agrees to maintain coverage in force for a minimum of three (3) years after expiration, cancellation or termination of this contract. Annually, TP&W agrees to provide evidence of such coverage as required hereunder. All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

13.03 TP&W shall furnish to TZPR an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The insurance company(ies) issuing such policy(ies) will endeavor to notify TZPR in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from TZPR, a certified duplicate original of any required policy shall be furnished.

13.04 Any insurance policy shall be written by a reputable insurance company acceptable to TZPR With a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided. Alternatively, all or a portion of the insurance coverage outlined in this Section shall be effected under standard form policies issued by a mutually acceptable captive insurance company upon prior written consent from TZPR, which shall not be unreasonably withheld. In order to meet this standard of reasonableness, the captive insurance arrangement shall have reinsurance issued by insurers that meet the rating and limit requirements described in this Section.

13.05 Not more frequently than once every five (5) years, TZPR may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and/or underwriting practices in the insurance industry.

13.06 Failure to provide evidence as required by this Section shall entitle, but not require, TZPR to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of TP&W's obligations hereunder. The insurance coverage obtained by TP&W in accordance with this Article XIII shall not limit or modify TP&W's liability for Loss as allocated in this Agreement.

Article XIV: Arbitration

14.01 If at any time a question or controversy shall arise between the Parties hereto in connection with the Agreement upon which the Parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. The arbitration shall be held in Peoria, Illinois. Unless other procedures are agreed to by the Parties, arbitration between the Parties pursuant to this Article XIV shall be governed by the rules and procedures set forth in this Article XIV.

14.02 If the Parties are able to agree upon a single competent and neutral arbitrator within twenty (20) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any Party (the "Notifying Party") may notify the other Party (the "Noticed Party") in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the Noticed Party shall appoint an arbitrator and Notify the Notifying Party in writing of such appointment. Should the Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may

be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Illinois upon application by either Party after ten (10) days written notice to the other Party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a Party, be appointed by said judge in the manner heretofore stated.

14.03 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both Parties reasonable notice of time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

14.04 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all Parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the Parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing

prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.

14.05 Each Party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

14.06 The Parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedures Rules 26 – 37, and Federal Rules of Evidence, as each may be amended from time to time. The Parties may file dispositive motions.

14.07 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published by the Wall Street Journal.

Article XV - General Conditions

15.01 TP&W shall, at its own cost and expense, initiate by appropriate application, notice or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consents, approvals or authority from any governmental agency for the approval and sanction of this Agreement and the operations to be carried on by TP&W hereunder. TZPR, at its expense, shall assist and support said application or petition and will furnish such information

and shall execute, deliver and file such instruments as may be necessary or appropriate, to obtain such governmental approval or sanction. TP&W and TZPR agree to cooperate in the procurement of all such consents, approvals or authority.

15.02 All notices, requests, communications, waivers and demands required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been properly delivered on the following dates: (a) if delivered by hand or facsimile transmission (in each case, receipt of which is confirmed by written receipt, transaction report or equivalent), on the date delivered; (b) if sent by certified or registered mail, return receipt requested, on the fifth day after mailing; or (c) if sent by a national overnight delivery service, on the next business day, if delivered or sent as follows,

If to TZPR:

Tazewell & Peoria Railroad, Inc.
P.O. Box 139
Springfield, IL 62705
Attn: President
Fax: (217) 788-8630

TP&W:
Toledo, Peoria and Western Railway Corporation
5300 Broken Sound Blvd.
Boca Raton, FL 33487
Attn: VP Contracts
Fax: (561) 994-0396

or to such other person or address of facsimile number as the appropriate Party shall specify by notice in writing to the other Party.

15.03 Time is of the essence of this Agreement.

15.04 The waiver by any Party of any breach of this Agreement, whether in a single instance or repeatedly, shall not be construed as a waiver of rights under this Agreement to terminate same because of similar or additional breaches. Further, such waiver shall not in any

manner be construed as a waiver by any other Party to strictly adhere to the terms and conditions of this Agreement nor as a waiver of any claim for damage or other remedy by reason of any such breach.

15.05 Each Party shall execute, acknowledge and deliver such additional documents, writings or assurances as the other may periodically require so as to give full force and effect to the terms and provisions of this Agreement.

15.06 The terms and provision of this Agreement provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

15.07 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

15.08 The interpretations of the terms and provisions of this Agreement shall be governed by the laws of the State of Illinois, where it has been executed.

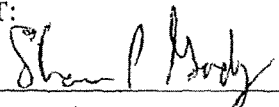
15.09 This Agreement expresses the entire agreement and understanding between TZPR and TP&W and supersedes all prior agreements and understandings relative to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated
Trackage Rights Agreement as of the date and year first above written.

TAZEWELL AND PEORIA
RAILROAD, INC., a Delaware
Corporation

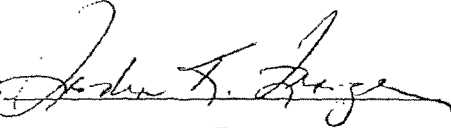
By: 
Its President

ATTEST:

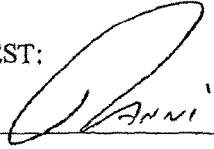
By: 

Dated: 3/2/07

TOLEDO, PEORIA AND WESTERN
RAILWAY CORPORATION

By: 

ATTEST:

By: 

Dated: 2-20-07

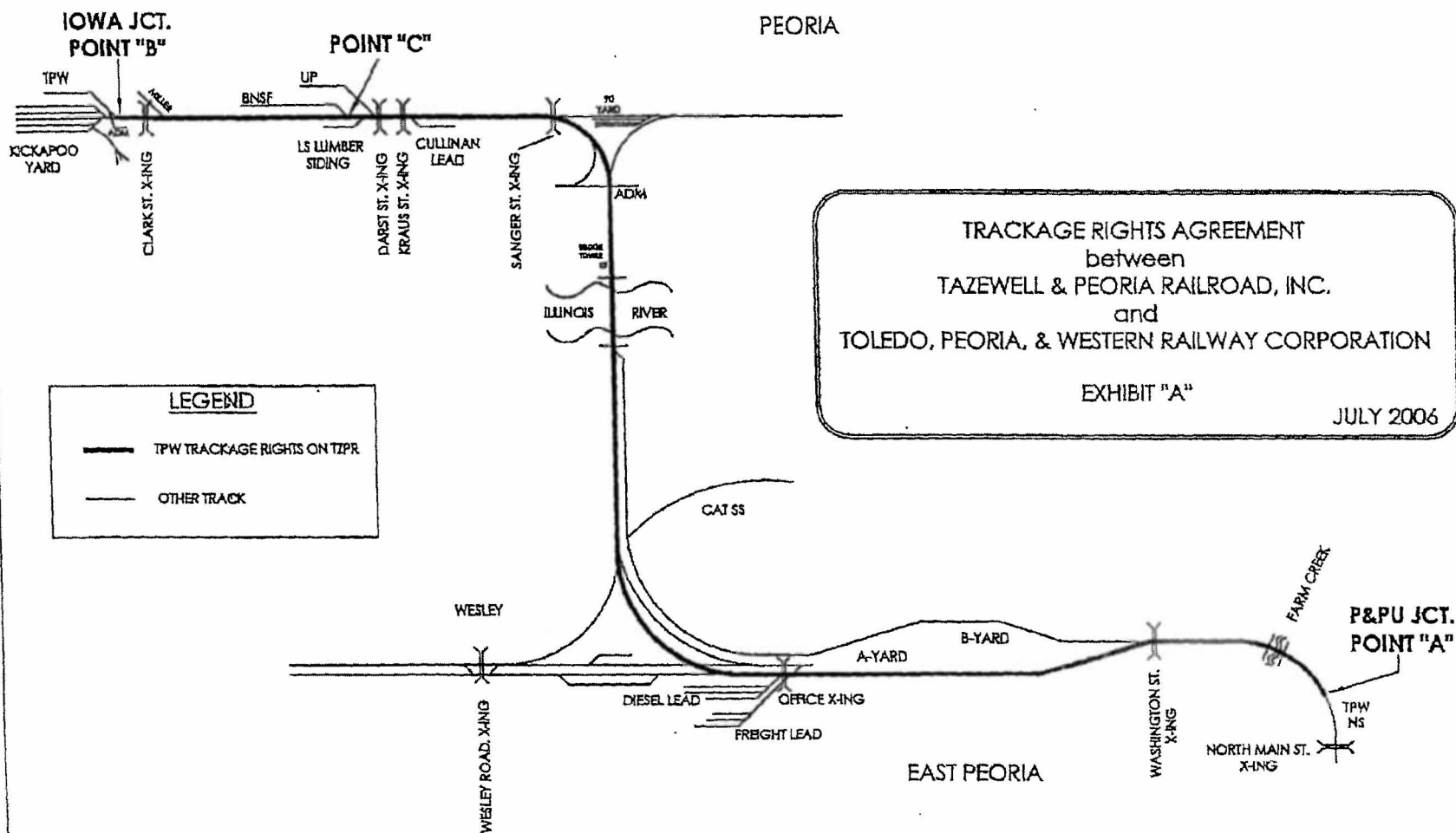


EXHIBIT C

CAPTION SUMMARY

STB Docket No. FD 36165

**TOLEDO, PEORIA & WESTERN RAILWAY CORP.
– TRACKAGE RIGHTS RENEWAL EXEMPTION –
TAZEWELL & PEORIA RAILROAD, INC.**

Tazewell & Peoria Railroad, Inc. (“TZPR”) has agreed to the renewal and extension of the grant of overhead trackage rights to Toledo, Peoria & Western Railway Corp. (“TPW”) over that portion of TZPR’s rail line between TPW milepost 109.4 at East Peoria, IL, and TPW milepost 113.9 at Peoria, IL, a distance of approximately 4.7 miles (the “Subject Trackage”), including overhead trackage rights to handle intermodal traffic from the intermediate point of connection between TZPR and BNSF Railway Company near Durst Street to TPW Milepost 109.4 in East Peoria, IL, pursuant to an amendment to the trackage rights agreement (the “Amendment”). Under the Amendment, the trackage rights will expire on December 31, 2036. TPW intends to commence operations under the Amendment on or after March 27, 2018, the effective date of this notice.

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

Dated:

By the Board,

Scott Zimmerman, Acting Director, Office of Proceedings