

Law Department

UNION PACIFIC RAILROAD COMPANY



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206034

August 13, 2002



**Via UPS Next Day Air**

DID# 0102009002

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: Finance Docket No. 34242 (Sub-No. 1); Union Pacific Railroad  
Company --Temporary Trackage Rights Exemption --The Burlington  
Northern and Santa Fe Railway Company

Dear Mr. Williams:

Enclosed for filing in the above proceeding are an original and 10 copies of a Petition for Partial Revocation of Class Exemption to Permit Expiration of Temporary Trackage Rights. Also enclosed is a payment form in the amount of \$150.00 for the filing fee required by 49 C.F.R. § 1002.2(f)(61).

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,

Robert T. Opal  
General Commerce Counsel  
Direct dial: 402/271-3072  
Fax: 402/271-5610

ENTERED  
Office of Proceedings

AUG 14 2002

Part of  
Public Record

cc w/attachments:  
Yolanda Grimes Brown, Esq. - BNSF

**FEE RECEIVED**

**FILED**

AUG 14 2002

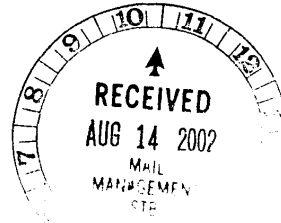
AUG 14 2002

**SURFACE  
TRANSPORTATION BOARD**

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

\_\_\_\_\_  
**FINANCE DOCKET NO. 34242 (SUB-NO. 1)**  
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**UNION PACIFIC RAILROAD COMPANY  
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**  
\_\_\_\_\_

**PETITION FOR PARTIAL REVOCATION OF CLASS EXEMPTION  
TO PERMIT EXPIRATION OF TEMPORARY TRACKAGE RIGHTS**

**UNION PACIFIC RAILROAD COMPANY**

Robert T. Opal  
General Commerce Counsel  
1416 Dodge Street  
Room 830  
Omaha, NE 68179  
(402) 271-3072

Dated: August 13, 2002  
Filed: August 14, 2002

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

\_\_\_\_\_  
**FINANCE DOCKET NO. 34242 (Sub-No. 1)**



\_\_\_\_\_  
**UNION PACIFIC RAILROAD COMPANY  
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

\_\_\_\_\_  
**PETITION FOR PARTIAL REVOCATION OF CLASS EXEMPTION  
TO PERMIT EXPIRATION OF TEMPORARY TRACKAGE RIGHTS**

Pursuant to 49 U.S.C. § 10502(d) and the regulations of the Surface Transportation Board at 49 C.F.R. § 1121, Union Pacific Railroad Company ("UP") and The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby seek partial revocation of the Board's trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), in Finance Docket No. 34242 as necessary to allow the UP/BNSF trackage rights arrangement which is the subject of this proceeding to expire, as expressly desired by both parties, on or about November 23, 2002. Revoking the class exemption as necessary to allow that action is consistent with the rail transportation policy of 49 U.S.C. § 10101 and will promote efficient and competitive rail service.

## **DISCUSSION**

In the Notice of Exemption filed concurrently with this Petition, and pursuant to 49 C.F.R. § 1180.2(d)(7), UP seeks to acquire temporary overhead trackage rights on BNSF trackage extending approximately 221.2 miles between BNSF Milepost 460.0 near Sweetwater, TX and BNSF Milepost 655.7 near Clovis, NM. UP will be performing maintenance and repairs on its main line and will use these trackage rights as an alternative route for UP's traffic while the work is being performed. However, UP is only seeking, and BNSF is only willing to grant, temporary operating rights over BNSF during the period of maintenance activity on UP's trackage. Without the temporary trackage rights to which the parties have agreed, it is unlikely that any other arrangement can be reached to allow UP to operate over BNSF's line, and UP would face the possibility of severe operational problems on the trackage for which maintenance is scheduled.

While UP and BNSF have expressly agreed that these trackage rights are only temporary, trackage rights authorized under the existing class exemption normally would remain effective indefinitely – regardless of any durational contract provisions. See, e.g., Finance Docket No. 33712 (Sub-No. 1), Union Pacific Railroad Company -- Trackage Rights Exemption -- The Burlington Northern and Santa Fe Railway Company, (served March 12, 1999). Accordingly, UP and BNSF are filing this Petition to permit the trackage rights to expire as provided in the underlying trackage rights agreement.

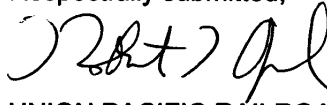
The Board has granted petitions to permit temporary trackage rights to expire (either as exemptions or partial revocations) similar to that sought herein, see Finance Docket No. 31562, Union Pacific R. Co. and Missouri Pacific R. Co (served March 12,

1999); Finance Docket No. 33657 (Sub-No. 1), Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, (served November 10, 1998); Finance Docket No. 33574 (Sub-No. 1), The Burlington Northern and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, ( served April 24, 1998); Finance Docket No. 33572 (Sub-No. 1); Union Pacific Railroad Company--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company, (served April 23, 1998); and Finance Docket No. 32959 (Sub-No. 1), Union Pacific Railroad Company -- Trackage Rights Exemption -- Chicago, Central & Pacific Railroad Company, (served July 25, 1996).

Granting this Petition to permit the trackage rights to expire in accordance with the underlying agreement would be entirely consistent with the exemption standards of 49 U.S.C. § 10502. Limiting the term of the trackage rights is consistent with the limited scope of the transaction covered by the Notice of Exemption in Finance Docket No. 34242 and will have no adverse impact on shippers on the line as the trackage rights that are the subject of the requested exemption are for overhead service only. In fact, the grant of this Petition is essential for the benefits of the trackage rights in Finance Docket No. 34242 to be realized. As noted above, the temporary nature of the trackage rights is a key part of the agreement of the two carriers, and the trackage rights would not have been granted without this feature. Denial of the this Petition would result in a loss of all these benefits, since the parties are unlikely to reach any other feasible arrangement which would allow UP to use BNSF's line.

WHEREFORE, UP and BNSF respectfully request the Board to partially revoke the Class Exemption for trackage rights to the extent necessary to permit the trackage rights authorized in STB Finance Docket No. 34242 to expire on or about November 23, 2002, in accordance with the terms of the underlying trackage rights agreement.

Respectfully submitted,



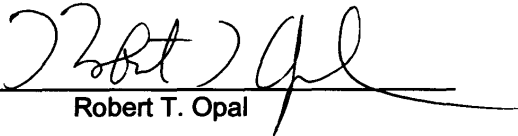
UNION PACIFIC RAILROAD COMPANY  
Robert T. Opal  
General Commerce Counsel  
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Omaha, NE 68179  
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**CERTIFICATE OF SERVICE**

I certify that I have this day served a copy of the foregoing document upon  
the following by first class United States mail.

Yolanda Grimes Brown, Esq.  
The Burlington Northern and  
Santa Fe Railway Company  
3017 Lou Menk Drive  
P.O. Box 961039  
Fort Worth, TX 76161-0039

Dated at Omaha, Nebraska this 13th day of August 2002.

  
Robert T. Opal