

Law Department

UNION PACIFIC RAILROAD COMPANY



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October 15, 2002



Via UPS Next Day Air

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

Re: Finance Docket No. 34249; 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 is a copy of the executed trackage
rights agreement.

Please indicate receipt of the enclosed 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

OCT 16 2002

Part of
Public Record

206423

TEMPORARY TRACKAGE RIGHTS AGREEMENT FORT WORTH, TX TO TEMPLE, TEXAS

THIS AGREEMENT, made and entered into this 13 day of August, 2002 by and between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" or "Owner", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP" or "User".

WHEREAS, BNSF is the owner and operator of certain lines of railroad extending between UP connections over BNSF's railroad system; and

WHEREAS, UP desires to obtain temporary overhead trackage rights upon certain lines of BNSF's railroad, for the sole purpose of bridging its train service while UP's main lines are out of service due to certain programmed track, roadbed and structural maintenance; and

WHEREAS, BNSF is agreeable to said temporary trackage rights but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties.

Section 1. TRACKAGE SUBJECT TO AGREEMENT.

Attached hereto, marked Exhibits "A", and by this reference incorporated herein, which depicts the portion of line of railroad of BNSF over which UP will be granted temporary trackage rights hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this agreement, attached hereto and by this reference incorporated herein).

Section 2. GRANT OF TRACKAGE RIGHTS.

The General Conditions covering the grant of temporary bridge trackage rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this agreement shall arise, the provisions of this agreement shall prevail. Subject to the terms and conditions of Exhibit "B", this agreement, and UP's agreement to file a "Petition for Partial Revocation of Class Exemption and for Temporary Exemption of Trackage Rights", which requests revocation of the temporary trackage rights on the dates indicated in this Section 2, jointly with its "Notice of Exemption" filing for the trackage rights with the STB, BNSF grants to UP the temporary nonexclusive right to use the Joint Trackage for the operation by its employees of the Equipment (as defined in Exhibit "B" of this agreement) that is in its account while moving over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered BNSF for the purpose of this agreement. UP further agree that BNSF, at its sole discretion, shall have the right to limit the number of UP trains moving under the rights granted herein. Said grant of rights shall be between Fort Worth, TX in the vicinity of BNSF's Milepost 6.1 and Temple, TX BNSF's Milepost 218.1, a distance of 129.2 miles, for the period of September 9, 2002 through October 24, 2002.

BNSF will not perform the 1000-mile inspection and will not be providing fuel for the UP locomotives.

It is understood and agreed that UP shall not have the right to:

(a) set out, pick up or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or

(b) serve any industry, team or house track now existing or constructed in the future along the Joint Trackage which heretofore has not been served by UP; or

(c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an

agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of UP; provided, however, that the foregoing shall not prevent UP, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this agreement.

Section 3. MAINTENANCE AND OPERATION OF TRACKAGE.

BNSF, at its expense, shall maintain the Joint Trackage in a manner permitting operation at no less than the track standard designated in the timetable in effect on the date of this agreement and permit UP to operate at such speeds unless by mutual written agreement a different standard is provided. In the event that for, operating convenience, necessity or emergency, BNSF permits or directs UP to use adjacent BNSF track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement.

Section 4. LIMITATIONS AND MEASUREMENT OF TRACKAGE RIGHTS TRAINS.

UPRR's use of the temporary trackage rights granted herein shall be for a maximum of (4) UPRR trains per day. Coal trains will be limited to 128 cars with .7 HPT with DP power 2 and 1. Coal trains with less than .7 RPT will not be accepted. Freight trains will be limited to 7000' and will require 1.2 HPT. Freight trains with less than 1.2 HPT will not be accepted. UPRR trains will need to be spaced not less than (4) hours apart. All Trains will receive fair and equitable dispatching.

In exchange for the aforementioned temporary trackage rights UP agrees to grant similar temporary trackage rights to BNSF, identified under separate agreement. In addition to other payments to be made under the Agreement but in lieu of the \$9.00 per train mile rate, BNSF and UP agree to utilize train miles as the unit of measurement for equalization of temporary trackage rights trains.

Section 5. LIABILITY.

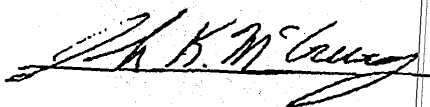
Any liability for loss, damage, injury or death which arises from the operation under this Agreement shall be assumed, settled and paid as provided by Exhibit "B", General Conditions, attached hereto.

Section 6. TERM AND TERMINATION.

Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this agreement shall become effective upon the date UP first commences operations over the Joint Trackage pursuant to this agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to UP, and shall remain in effect for the period of time specified in Section 2 hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

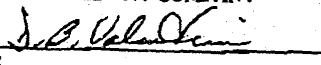
WITNESS:



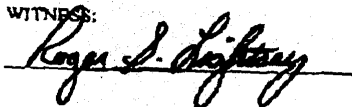
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By:

Title:



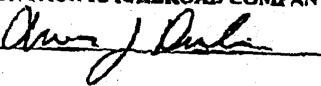
WITNESS:



UNION PACIFIC RAILROAD COMPANY

By:

Title:



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PRINT TIMESEP. 3. 4:05PM

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Exhibit "A"

