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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34388

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
OMAHA PUBLIC POWER DISTRICT**

FILED

AUG 4 - 2003

**SURFACE
TRANSPORTATION BOARD**

VERIFIED NOTICE OF EXEMPTION

FEE RECEIVED
AUG 4 - 2003
**SURFACE
TRANSPORTATION BOARD**

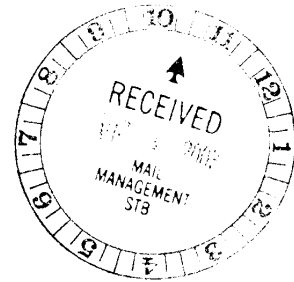
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Office of Proceedings
AUG - 2003
Part of
Public Record

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

Dated: August 1, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34388

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
OMAHA PUBLIC POWER DISTRICT**

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 local trackage rights over the entire line of railroad of Omaha Public Power District ("OPPD") between Milepost 6.0 near Arbor and Milepost 56.3 near College View a distance of approximately 50.3 miles in Otoe and Lancaster Counties, NE, as shown on the map attached hereto as Exhibit 1.¹

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

¹ OPPD acquired this trackage in Finance Docket No. 33447, Omaha Public Power District – Acquisition – The Burlington Northern and Santa Fe Railway Company, (STB served September 12, 1997).

applications in rail consolidation proceedings. The trackage rights covered by this notice are covered by the written agreement attached as Exhibit 2, and are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

As required by 49 C.F.R. § 1180.4(i), UP provides the following information:

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

The transaction covered by this notice is the acquisition of local trackage rights by UP over the entire line of railroad of Omaha Public Power District ("OPPD") between Milepost 6.0 near Arbor and Milepost 56.3 near College View and a distance of approximately 50.3 miles in Otoe and Lancaster Counties, NE (the "Rail Line"), as shown on the map attached hereto as Exhibit 1

§ 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
1416 Dodge Street
Omaha, Nebraska 68179

Questions regarding this transaction are to be addressed to the representative named below:

Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
Tel. (402) 271-3072
Fax (402) 271-5610

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on January 1, 2004.

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

The purpose of the trackage rights is to permit UP to provide service over the Rail Line to OPPD's Nebraska City Power Station and to shippers other than OPPD located along the Rail Line.

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

UP operates in the states of Arizona, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, Oklahoma, Oregon, South Dakota, 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)

The trackage rights agreement (with confidential pricing terms redacted) is attached as Exhibit 2. Unredacted copies are being filed under seal together 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).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By:

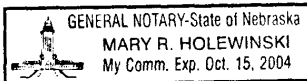


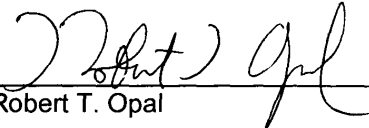
Robert T. Opal
General Commerce Counsel
1416 Dodge Street
Room 830
Omaha, Nebraska 68179
(402) 271-3072
(402) 271-5610 (FAX)

VERIFICATION

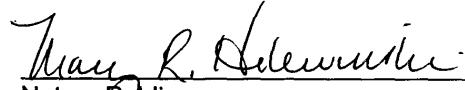
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, being first duly sworn, deposes and says that he has read the foregoing Notice of Exemption in Finance Docket No. 34388, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.




Robert T. Opal

Subscribed and sworn to before me this 1st day of August, 2003.


Notary Public

My Commission expires:

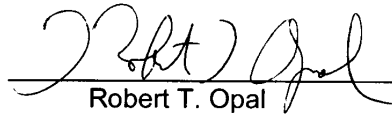
October 15, 2004

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:

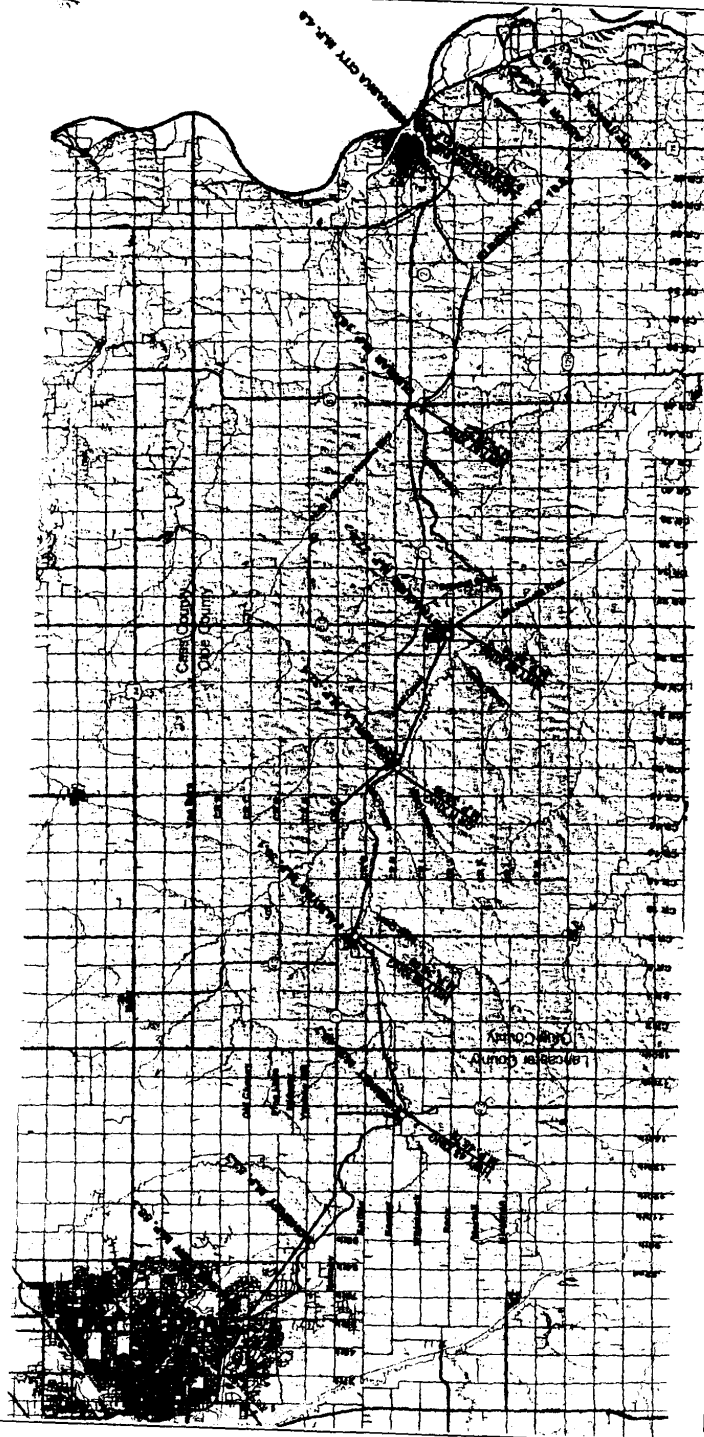
Omaha Public Power District
Attention: Division Manager – Fuels
444 South 16th Street
Omaha, NE 68102-2247

Dated at Omaha, Nebraska this 1st day of August, 2003.


Robert T. Opal

Arbor Rail Line

Arbor, NE (M.P. 4.2) to College View, NE (M.P. 56.3)



Railroads
 — OPPD
 — Burlington Northern Railroad
 — Union Pacific Railroad

OPPD
 Omaha Public Power District

Revised: April 2001

TRACKAGE RIGHTS AGREEMENT

THIS Trackage Rights Agreement ("Agreement") is made and entered this ^{25th} day of ^{July}, 2003 between Omaha Public Power District, a public corporation and political subdivision of the State of Nebraska, whose headquarters are in Omaha, Nebraska ("OPPD"), and Union Pacific Railroad Company a Delaware corporation, whose headquarters are in Omaha, Nebraska ("UP").

WITNESSETH

WHEREAS, OPPD is the owner of a rail line and certain other rights-of-way and assets located in the State of Nebraska between College View (MP 56.3) and Arbor (MP 6.0) (hereafter "Rail Line") (The Rail Line is depicted in the map attached hereto as Exhibit A);

WHEREAS, upon acquiring the Rail Line, OPPD acquired the underlying obligation to provide common carrier rail service to shippers located along the Rail Line;

WHEREAS, UP and OPPD have entered into a Rail Transportation Contract whereby UP will provide deliveries of coal to OPPD's Nebraska City Power Station ("NCPS") over the Rail Line commencing January 1, 2004;

WHEREAS, OPPD desires that UP assume OPPD's underlying common carrier obligation and responsibility to provide rail service upon reasonable request to shippers other than OPPD ("Non-OPPD Shippers") located along the Rail Line; and

WHEREAS, UP, in addition to delivering coal to NCPS, desires to assume OPPD's underlying common carrier obligation and to fulfill all of the responsibilities and requirements of a common carrier with respect to Non-OPPD Shippers located along the Rail Line;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. TERM

This Agreement shall become effective as of 12:01 a.m. January 1, 2004 (the "Effective Date") and shall continue in effect for a term of five (5) years unless earlier terminated pursuant to the provisions of Section 15, below (the period of time from the Effective Date through and including the date on which the Agreement expires or terminates is referred to hereinafter as the "Term"); *provided however*, that the Term of this Agreement as to UP's use of the Rail Line for deliveries of coal to NCPS shall be concurrent with the term of the Rail Transportation Contract and any succeeding agreements between UP and OPPD for coal deliveries to NCPS.

2. COMMON CARRIER OBLIGATION

2.1 UP hereby assumes and agrees to fulfill any and all common carrier obligations and responsibilities that relate to OPPD and Non-OPPD Shippers located along the Rail Line, arising under federal, state, or local laws or authorities, including the common law of Nebraska. UP agrees to perform all common carrier operations related to the Rail Line by performing rail transportation service upon reasonable request of any Non-OPPD Shipper located on the Rail Line, including but not limited to freight train service, haulage, industry switching, and interchange service with other rail carriers whose tracks connect to the Rail Line.

2.2 In fulfilling the common carrier obligations related to the Rail Line, UP agrees to provide such common carrier rail service to all Non-OPPD Shippers that are located on the Rail Line upon the effective date of this Agreement and to any Non-OPPD Shipper that may locate on the Rail Line during the term of this Agreement.

2.3 UP shall have the option of fulfilling its common carrier obligation for Non-OPPD Shippers through substituted service provided to any Non-OPPD Shipper on the Rail Line.

3. USE AND OPERATION OF THE RAIL LINE

OPPD hereby grants UP the authority to use and operate its trains over the Rail Line pursuant to the terms and conditions set forth herein; *provided, however*, that OPPD shall maintain the sole and exclusive authority to permit any other rail carrier to use or operate over the Rail Line (each, a "Third Party User"); *provided further, however*, that the use of or operation over the Rail Line by any Third Party User(s) shall not interfere with UP's use of and operation over the Rail Line as permitted by this Agreement.

4. DISPATCHING OF TRAINS

4.1 UP hereby acknowledges and agrees that unit train movements of coal to or from NCPS, shall have priority over all other railroad operations performed over the Rail Line.

4.2 The dispatching of trains over the Rail Line and the coordinating of train scheduling, control and communications over the Rail Line shall be performed pursuant to agreements reached between and among UP and Third Party Users. UP agrees to promptly engage in negotiations to arrive at such agreements with such other rail carriers proposed by OPPD as Third Party Users.

4.3 UP shall coordinate with Third Party Users' train scheduling, control, dispatching, communications and issuance of train orders associated with traffic of Non-OPPD Shippers transported over the Rail Line. UP shall provide all necessary communications systems, including a system with repeater stations, required to fulfill its obligations under this section and to ensure that all train operations are dispatched and performed safely. UP shall also designate a supervisor who will monitor and provide detailed day-to-day supervision of the operations over the Rail Line.

5. INTERCHANGES WITH CARRIERS

To the extent that UP engages in interchange operations with other railroads, UP hereby agrees to the following:

- (a) Any interchange operations between UP and The Burlington Northern and Santa Fe Railway Company ("BNSF") shall occur at the interchange established by BNSF and OPPD at College View, Nebraska and shall be performed pursuant to and consistent with the Interchange Agreement between OPPD and BNSF in effect on the date of this Agreement, or, in the event that Interchange Agreement is terminated, an interchange agreement between UP and BNSF in substantially the same form as the Interchange Agreement.
- (b) Any operations proposed by UP to effect interchange with a carrier other than BNSF must be authorized by OPPD in writing.

6. COMPENSATION

6.1

6.2

6.3

REDACTED

6.4

6.5

7. BILLING AND PAYMENT

- 7.1 If the number of carloads of non-coal traffic transported by UP over the Rail Line exceeds five hundred (500) during any calendar year during the Term, OPPD shall invoice UP for the Charges, adjusted as provided in Section 6, above, on a monthly basis.
- 7.2 All undisputed payments on invoices submitted by OPPD under Subsection 7.1 shall be due and payable within thirty (30) days following their receipt by UP.

- 7.3 In the event UP disputes the amount of the charges which have been invoiced by OPPD, UP shall notify OPPD of the amount in question and the parties shall have 45 days in which to attempt to resolve the dispute through good faith discussions. If OPPD and UP cannot resolve the dispute within the 45 day period, the dispute shall be subject to resolution pursuant to the provisions of Section 14, below.

8. EQUIPMENT

- 8.1 UP shall provide the locomotives required for the safe and efficient operation of trains it operates over the Rail Line, and for maintaining, fueling, and lubricating such locomotives. UP shall provide sufficient rolling stock and other equipment needed to perform the coal and common carriage services it provides over the Rail Line and shall perform any required inspections of railroad freight cars that it operates over the Rail Line.
- 8.2 All locomotives and equipment employed by UP in operations over the Rail Line shall comply with all applicable safety and maintenance standards and all applicable federal, state, and local laws, regulations and ordinances. UP shall also complete and submit to the appropriate federal, state, or local authorities or other entities all prescribed reports related to locomotives and other equipment utilized by UP in operations over the Rail Line.

9. TRAIN CREWS AND PERSONNEL

UP shall employ experienced, qualified and properly trained crews to perform its freight train operations over the Rail Line. UP shall be solely responsible for hiring, supervising and compensating the train crews and any other personnel necessary to fulfill its obligations hereunder and to provide and administer all unemployment, retirement, disability or any other employee benefits associated with such employment.

10. CONSTRUCTION OF FACILITIES

OPPD shall maintain the sole and exclusive authority to approve the construction or installation of any additional tracks, structures or facilities that would connect to or adjoin the Rail Line.

11. MAINTENANCE

- 11.1 OPPD, or a third-party contractor retained by OPPD, shall be responsible for maintaining the Rail Line in accordance with applicable federal, state and local safety standards to a minimum FRA Class 2 standard; *provided, however*, that UP shall report promptly to OPPD, or its third-party contractor, any defects in the track or related structures or any repairs required to be made to the Rail Line of which UP becomes aware during the course of its operations over the Rail Line.
- 11.2 UP may conduct inspections of the Rail Line; *provided, however*, that UP shall notify OPPD of UP's desire to conduct such an inspection five (5) days prior to the date of

inspection. Any such inspections shall be conducted jointly with OPPD, and/or its maintenance contractor, and UP.

12. INDEMNIFICATION

- 12.1 UP shall defend, indemnify and hold OPPD harmless from and against any and all losses, claims, demands, liability, penalties, damages, expenses, attorneys' fees, judgments, and/or settlements, of every kind and nature, including for personal injury or death or claim of injury or death of any and all persons, or damage or claim of damage to any and all property, and including the Rail Line itself (collectively, "Losses"), arising out of UP's use, operation upon and control of the Rail Line and, in particular, but without limiting any of the foregoing, arising out of any act or omission on the part of UP occurring in connection with its use, operation upon, and control of the Rail Line, and all Losses arising out of the use, operation upon, and control of the Rail Line by UP, except to the extent that any such Losses result from or are occasioned by any negligent act or omission of OPPD and/or a Third Party User, or any employee, director, officer or agent thereof.
- 12.2 OPPD shall defend, indemnify and hold UP harmless from and against any Losses arising out of any negligent act or omission on the part of OPPD, except to the extent that any such Losses result from or are occasioned by any negligent act or omission of UP, its employees, directors, officers, or agents.
- 12.3 A party (the "Indemnified Party") seeking indemnification from the other party (the "Indemnifying Party") pursuant to the preceding provisions of this Section 12 shall promptly notify the Indemnifying Party of any claim for which indemnification is sought, and shall promptly deliver to the Indemnifying Party the original or a true copy of any summons or other process, pleading or notice issued in any suit or other proceeding in connection therewith. The Indemnifying Party shall defend any such suit with attorneys of its own selection. The Indemnified Party shall have the right, at its discretion, to participate in such defense at its own expense.
- 12.4 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF PROFITS, BUSINESS LOSSES, OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. COMPLIANCE WITH LAWS

All responsibilities incurred by either party under this Agreement and all operations performed by UP over the Rail Line shall conform to all applicable federal, state, and local, laws, statutes, and regulations. Each party agrees to indemnify and hold the other party harmless from and against any and all claims, suits, damages, penalties or fines that arise from the indemnifying party's failure to comply with such laws, statutes and regulations.

14. DISPUTE RESOLUTION.

- 14.1. If a claim or controversy should arise between the parties which involves a disputed amount of \$100,000 or less, either party may, upon giving the other party at least ten (10) days prior written notice ("Arbitration Notice"), initiate binding arbitration in accordance with Subsection 14.2 hereof.
- 14.2. The arbitration shall be conducted by a single arbitrator. The arbitrator shall be chosen in accordance with and the arbitration governed by the provisions of the Commercial Arbitration Rules of the American Arbitration Association and the provisions of this section 14.2 (the latter of which shall be controlling in the event of a conflict). The Federal Arbitration act, 9 USC §§ 1-16, shall govern the arbitrability of all disputes. All arbitration proceedings shall take place in Omaha, Nebraska. The arbitrator shall hold a hearing within forty-five (45) working days of appointment, and shall issue an award on the matters submitted for decision within sixty (60) working days of the hearing. The award shall be in writing and shall specify the findings of fact and conclusions of law that support the award. Except as otherwise agreed by the parties after the Arbitration Notice, the procedure for the arbitration shall be governed by the Federal Rules of Civil Procedure, as amended, and the Federal Rules of Evidence, as amended. The arbitrator shall not have authority to award punitive damages. Either party may request from the arbitrator injunctive relief solely to maintain the status quo until the dispute between the parties is resolved. Each party shall bear its own costs and attorneys' fees in connection with the arbitration, and the parties shall share equally the reasonable fees and expenses of the arbitrator. The arbitrator's award may be enforced in a state or federal court of competent jurisdiction located in the State of Nebraska.
- 14.3. The parties agree that if at any time a claim or controversy shall arise between the parties concerning a matter not referred to in Subsection 14.1 hereof, upon which the parties cannot agree or resolve by negotiation, then any action to resolve such claim or controversy shall be instituted and maintained in a state or federal court of competent jurisdiction located in the State of Nebraska. None of the parties shall raise a defense of the lack of personal jurisdiction over that party.

15. TERMINATION FOR DEFAULT

If during the Term either party breaches any of its obligations hereunder and fails to correct such breach within thirty (30) days of receiving written notice from the other party of the breach, the non-breaching party may terminate this Agreement by giving ten (10) days' written notice of termination to the breaching party.

16. REPORTING

UP shall be responsible for and shall perform all applicable reporting, accounting, and document retention requirements related to the common carriage railroad operations that it performs pursuant to this Agreement. UP shall provide OPPD with a copy of all reports, accounts and data that it is required to produce to any federal, state or local authority or other entities, including, without limitation, the Association of American Railroads.

17. TAXES

OPPD shall be responsible for all applicable local, state and federal government taxes that relate to the Rail Line. UP shall be responsible for all applicable local, state and federal government taxes that relate to UP's equipment, personnel, crews, or any other taxable item owned or provided by UP in performing its obligations hereunder.

18. NOTICES

Any notice or other correspondence required or permitted hereunder, except as otherwise provided herein, shall become effective upon receipt and shall be deemed to have been properly given or delivered when made in writing and delivered personally to the party to whom directed, or when sent by United States certified mail or Western Union telegraph, with all necessary postage and charges fully prepaid, return receipt requested (or in the case of a telegram, confirmation of delivery), and addresses to the party to whom directed at its below specified address:

Notices to OPPD: Omaha Public Power District
 Attention: Division Manager - Fuels
 444 South 16th Street
 Omaha, NE 68102-2247

Notices to UP: Vice President – Operations
 Union Pacific Railroad Company
 1416 Dodge Street, Room 1206
 Omaha, NE 68179

These addresses may be changed upon giving written notice in the manner provided above.

19. CHOICE OF LAW

This Agreement shall be governed by and construed according to the law of the State of Nebraska, without regard to its conflict of laws principles. Should any provision of this Agreement be deemed unenforceable for any reason, such provision shall be deemed null and void, but the other provisions of this Agreement shall remain in full force and effect.

20. ASSIGNMENT

This Agreement may not be assigned by either party to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld; *provided, however*, that either party may assign this Agreement (1) to a corporation, limited liability, partnership or other entity that its controls, is controlled by or in common control with, or (2) in connection with its merger or consolidation or the sale of all or substantially all of its assets. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

21. MODIFICATION

This Agreement may not be modified or amended except by an instrument in writing signed by both parties.

22. SECTION HEADINGS

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate by their duly authorized representatives.

OMAHA PUBLIC POWER DISTRICT

By: *L. J. Wicks*
Title: Vice President

Date: *July 25, 2003*

*approved
SMB 7/25/03*

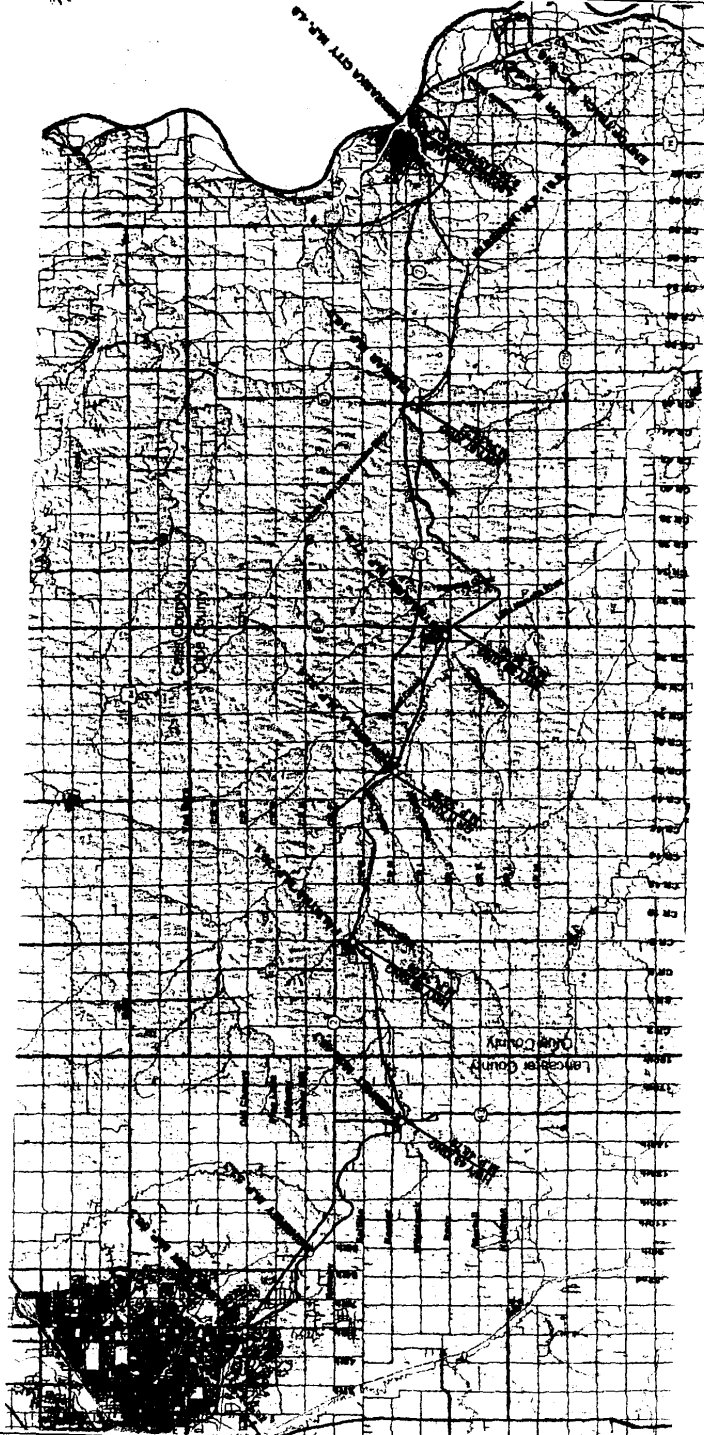
UNION PACIFIC RAILROAD COMPANY

By: *B. B. Brum*
Title: *Sr. Director - Joint Facility*

Date: *July 21, 2003*

Arbor Rail Line

Arbor, NE (M.P. 4.2) to College View, NE (M.P. 56.3)



Railroads
OGP
Burlington Northern Railroad
Union Pacific Railroad

Revised: April 2001

OPPD
OCCUPANCY PUBLIC DEVELOPMENT

EXHIBIT 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION FINANCE DOCKET NO. 34388

UNION PACIFIC RAILROAD COMPANY -- TRACKAGE RIGHTS EXEMPTION -- OMAHA PUBLIC POWER DISTRICT

Omaha Public Power District ("OPPD") has agreed to grant local trackage rights to Union Pacific Railroad Company ("UP") over OPPD's entire line of railroad of between Milepost 6.0 near Arbor and Milepost 56.3 near College View, a distance of approximately 50.3 miles in Otoe and Lancaster Counties, NE. The trackage rights will be effective on January 1, 2004.

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:
By the Board,

Vernon A. Williams,
Secretary