

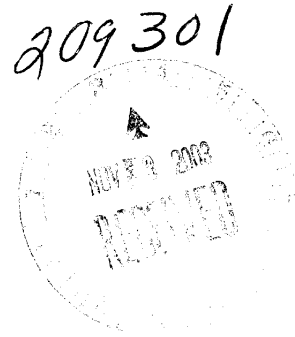
BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34433

SOO LINE RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
WISCONSIN & SOUTHERN RAILROAD COMPANY

SOO LINE RAILROAD COMPANY'S
VERIFIED NOTICE OF TRACKAGE RIGHTS EXEMPTION

MOTION FOR A PROTECTIVE ORDER



ENTERED
Office of Proceedings
NOV - 8 2003
Part of
Public Record

Diane P. Gerth (#180786)
LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION
150 South Fifth Street
Minneapolis, MN 55402
Telephone: (612) 335-1500

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Pursuant to 49 C.F.R. § 1104.14(b), Soo Line Railroad Company, d/b/a Canadian Pacific Railway Company, Inc. ("CPR") hereby submits to the Board under seal a copy of the Trackage Rights Agreement that is being submitted as an Exhibit to CPR's above captioned notice of trackage rights exemption. CPR hereby moves for a protective order with respect to the Trackage Rights Agreement. The proposed protective order is necessary to protect commercially sensitive data contained in the document. With this motion, a redacted version of the Agreement is submitted for inclusion in the public records.

Accordingly, CPR requests that the Board enter a protective order providing that the Trackage Rights Agreement, Exhibit B to the subject notice of exemption, be kept confidential and not be made part of the public docket.

Attached to this motion are an original and ten copies of the Trackage Rights Agreement, enclosed in an envelope marked "Confidential Material Subject to a Request for Protective

Order,” pursuant to 49 C.F.R. § 1104.14(a). Also enclosed are an original and ten copies of the redacted version of the Agreement.

Respectfully submitted,



October 30, 2003

Diane P. Gerth (#180786)
LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION
150 South Fifth Street
Minneapolis, MN 55402
Telephone: (612) 335-1500

Attorneys for Soo Line Railroad Company
d/b/a Canadian Pacific Railway Company

APPENDIX 1-9

Grant-Back Rights to CP Watertown/Madison

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT dated _____, 200__ is made between
WISCONSIN & SOUTHERN RAILROAD CO., 5300 North 33rd Street, Milwaukee, WI 53209 ("WSOR"),
and
SOO LINE RAILROAD COMPANY, doing business as Canadian Pacific Railway, 501 Marquette Ave. S., P.O.
Box 530, Minneapolis, MN 55440 ("CPR");

sometimes collectively referred to below as "the Parties."

RECITALS

1. Under terms and conditions of the Asset Purchase Agreement ("APA") dated _____, 200__ made by and between WSOR and CPR, WSOR became owner of CPR's line of railroad between Watertown and Madison, Wisconsin; and

2. CPR desires trackage rights over and upon WSOR's line for the operation of its trains, locomotives, cars and cabooses by its crews and for interchange with WSOR; and

3. WSOR is willing to grant these trackage rights, under the terms and conditions set forth in this Agreement.

IN CONSIDERATION of the mutual and dependent covenants by each of the Parties, they have agreed as follows:

Section 1. GRANT OF RIGHTS

Attached to, incorporated in and made a part of this Agreement is a print dated _____, 200__, marked Exhibit A, which shows in solid red line the trackage owned and operated by WSOR in and around Watertown and Madison, Wisconsin between points "A" and "B"; hereinafter wholly referred to as "Subject Trackage". Subject Trackage includes all of WSOR's trackage, track connections, facilities and appurtenances, signals and switches located between these points, as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of WSOR. Subject to the terms and conditions contained in this Agreement, WSOR grants to CPR the nonexclusive rights to use the Subject Trackage for the operation of its trains, locomotives, cars and cabooses. Said equipment shall be operated over the Subject Trackage in common with WSOR, and such other railroad company or companies as WSOR may at any time in the future admit to the use of all or any part of the Subject Trackage. CPR's rights upon the Subject Trackage is as follows:

- (a) CPR, may set out, pick up, or store equipment or switch industries upon all or any part of the Subject Trackage, as necessary to:
 - (i) handle locomotives, cars or cabooses bad ordered en route;
 - (ii) interchange cars with WSOR at any and all existing or future interchange facilities located on or connected to the Subject Trackage;
 - (iii) transport both revenue and non-revenue rail cars to and from Gillen Pit (indicated as Point C on Exhibit A), at its present or future location; and
 - (iv) transport both revenue and non-revenue cars on the Subject Trackage containing railroad materials or supplies, including, but not limited to, ballast, rail, ties, signal equipment, grade crossing materials, and appurtenances thereto.
- (b) Except as provided in the preceding, CPR shall not:

- (i) serve any industry, team or house track now existing or located at any time in the future along the Subject Trackage;
- (ii) permit or admit, without permission in writing from WSOR, any third party to the use of all or any part of the Subject Trackage, nor under the guise of doing its own business, contract, or make any agreement to handle as its own over the Subject Trackage the trains, locomotives, cars or cabooses of any third party which in the normal course of business would not be considered as the trains, locomotives, cars or cabooses of CPR;
- (iii) Construct tracks connecting to the Subject Trackage without the written consent of WSOR.

provided, however, that the foregoing shall not prevent CPR, pursuant to a run-through agreement with any railroad, or a bona fide equipment lease, from using the locomotives and cabooses of another railroad as its own under this Agreement, nor shall it prevent CPR from handling in its own trains automotive related commodities and associated empty cars in the revenue and car hire accounts of third parties.

Section 2. CONSTRUCTION, REPAIR, MAINTENANCE, ADDITIONS TO, OPERATION, CONTROL AND USE OF THE SUBJECT TRACKAGE

2.1 Except as otherwise agreed herein, the construction, maintenance, repair and renewal of the Subject Trackage together with the discretion to add, modify, or remove facilities and appurtenances, signals and switches, along the Subject Trackage shall be under the exclusive direction and control of WSOR. WSOR shall make any additions, modifications, or removals to or along the Subject Trackage which WSOR deems necessary or desirable for the safe, efficient, and economical use of the Subject Trackage by the Parties, and such additions or modifications shall become part of the Subject Trackage upon completion of construction. If CPR requests construction of additions or improvements to the Subject Trackage, "Additions," WSOR may agree to make the Additions for the benefit of both, and compensation by CPR to WSOR for the Additions shall be determined in accordance with the provisions of this Agreement. In the event WSOR does not agree to make the requested Additions, CPR may request WSOR to construct said Additions at the sole expense of CPR. In that event, except where such Additions are made to the Subject Trackage as it exists as and is located of the date of APA, CPR will have exclusive use of the Additions. WSOR shall not unreasonably deny the request of CPR for additions or improvements to the Subject Trackage. Subject Trackage improvements constructed at the sole expense of either Party shall be owned by WSOR.

2.2 Except as herein otherwise specifically provided, the management and operation of the Subject Trackage shall be under the exclusive direction and control of WSOR. WSOR shall have the unrestricted right to change the management of and operations on and over the Subject Trackage as, in its judgment, may be necessary, expedient or proper for the operation of the Subject Trackage pursuant to this Agreement; provided that any such change shall not materially interfere with CPR's right to use the Subject Trackage for the purpose defined in Section 1. Additionally, WSOR will consult with CPR prior to the addition of new users on the Subject Trackage for the purpose of considering agreeable operational changes that may be necessary to avoid delays to CPR operations as a result of the additional user.

2.3 WSOR shall at its cost and expense supply all materials, equipment and personnel and anything else required to:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]

Subject to the preceding, WSOR shall operate, maintain, repair and renew the Subject Trackage to a standard not less than FRA Class 1, and 263,000 pounds gross rail load per car of forty (40) feet or longer over pulling forces. FRA Class 1 standards shall be evaluated in respect to the rules and regulations in effect at the time any work is actually performed. WSOR shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair, renewal and management of the Subject Trackage and CPR shall not, by reason of WSOR's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Subject Trackage, have or make against WSOR any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from WSOR's performance, failure or neglect, except as otherwise provided in Section 4 hereof. CPR shall have the right to inspect the Subject Trackage at any time, including the right to employ test and evaluation equipment, rail-mounted vehicles, or any other equipment or rolling stock deemed necessary for CPR to perform such inspections. Such equipment shall not be subject to any revenue claims or tariffs of WSOR. In case WSOR shall fail to repair any defect or maintain the Subject Trackage to the FRA class required in this Section within a reasonable time after CPR has given to WSOR written notice specifying the defect or maintenance standard failure and requesting that it be repaired or maintained, then CPR shall have the right to make the necessary repairs or perform the maintenance and WSOR shall reimburse CPR for the entire cost thereof.

2.4 CPR shall install and maintain upon its trains, locomotives, cars and cabooses such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of WSOR, for the safe and efficient operation of trains over the Subject Trackage. If any change to CPR equipment or devices is necessitated by non-freight rail transportation or an increase in track speed, CPR shall not be required to make such changes unless and until CPR is reimbursed for the costs that will be incurred by CPR in connection with such changes.

2.5 If the use of the Subject Trackage is at any time interrupted or traffic over the Subject Trackage is delayed for any cause, WSOR shall, with reasonable diligence, restore the line for the passage of trains of the Parties. Neither Party shall have or make any claim against the other for loss or damage of any kind resulting from such interruption or delay, except for interruption of CPR's access to Gillen Pit for any period of 30 days or more where the predominate cause of the interruption is not the result of an Act of God or other natural event.

2.6 Each Party shall be responsible for furnishing, at its own expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Subject Trackage.

2.7 The operation of CPR over the Subject Trackage shall at all times be in accordance with the rules, instructions and restrictions of WSOR, but such rules, instructions and restrictions shall be reasonable, just and fair between all parties using the Subject Trackage and shall not unjustly discriminate against any of them. These rules and instructions shall include, but not be limited to, operating rules, timetables, special instructions, bulletins, general orders and authoritative directions of train dispatchers and operating officers. WSOR will not make any rule or restriction applying to CPR's trains that does not apply with equal force to WSOR's trains.

2.8 CPR shall be responsible for all mileage allowances and car hire charges accruing on cars in CPR's account on the Subject Trackage and CPR shall report and pay the allowances and charges direct to the owners of such cars.

2.9 All employees of CPR engaged in the operation of CPR trains over the Subject Trackage shall be required to qualify for entry onto the Subject Trackage by passing periodic examinations on the rules of WSOR; provided that with respect to such examinations, upon request of CPR, WSOR shall qualify one or more of CPR's supervisory officers who will then examine and certify to WSOR the qualification of CPR's employees. In addition to examination, WSOR may condition qualification of CPR's employees under this provision upon the completion of a reasonable number of trips over the Subject Trackage piloted by a qualified employee, and require that such qualification trips be repeated if the subject CPR employee has not made a trip over the Subject Trackage within a reasonable period of preceding time. Pending qualification of subject employees, WSOR shall furnish a pilot or pilots, at the expense of CPR, to allow operation as contemplated in this Agreement. For purposes of Section 4 of this Agreement, any employee of WSOR acting as a pilot for

CPR will be considered an employee of CPR.

2.10 If any employee of CPR, in the sole opinion of WSOR, neglects, refuses or fails to abide by WSOR's rules, instructions or restrictions governing the operation over the Subject Trackage, WSOR shall in writing so notify CPR. WSOR shall have the right to require CPR to withhold any CPR employee from service over the Subject Trackage pending the result of formal investigation of the alleged neglect, refusal or failure. After the notice is given CPR, WSOR and CPR shall promptly hold a joint investigation in which each of the Parties shall bear its own expenses for its own employees and witnesses. Notice of such investigation to CPR employees shall be given by CPR officers, and failure to give proper notice shall not bar WSOR from restricting the subject CPR employee. The investigation shall be conducted in accordance with the terms and conditions of schedule agreements between CPR and its employees, but failure by CPR to comply with the schedule agreements shall not bar WSOR from restricting subject CPR employees. If, in the sole judgment of WSOR, the result of such investigation warrants, any subject CPR employee so investigated, or which CPR has failed to investigate after proper notice under this Agreement, shall upon written request by WSOR be restricted by CPR from operating on the Subject Trackage, and CPR shall release and indemnify WSOR from and against any and all claims and expenses because of such restriction, but WSOR shall not unreasonably exercise this right of restriction.

2.11 If any locomotives, cars or cabooses of CPR are bad ordered en route on the Subject Trackage and it is necessary that they be set out, those locomotives, cars or cabooses shall, after being promptly repaired, be promptly picked up by CPR. WSOR may, upon request of CPR and at CPR's expense, furnish required labor and material to perform light repairs required to make such bad ordered equipment safe and lawful for movement, and billing for this work shall be at rates prescribed in the Field and Office Manuals of the Interchange Rules of the Association of American Railroads. WSOR shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items called for by said Interchange Rules, and shall prepare and submit billing to and collect from CPR for handling line responsibility items under said Interchange Rules. If WSOR performs repairs to CPR equipment other than freight cars, WSOR shall prepare and submit billing directly to and collect from CPR.

Section 3. COMPENSATION AND BILLING

3.1 CPR shall pay WSOR monthly during the term of this Agreement, the total amount equal to ~~_____~~ per car mile for each locomotive, car, loaded or empty, and caboose, for miles actually operated, on or over the Subject Trackage which shall constitute the Base Charge; except that cars handled over the Subject Trackage for purposes of interchange shall be excluded from such charge.

3.2 ~~_____~~ Base Charge as set forth in Section 3.1 hereinabove shall be adjusted upward or downward effective July 1 of each year, beginning July 1, 2003 by use of the Annual Index of Charge-Out Prices and Wage Rates (1977=100), Series Q-MPW included in "Indexes of Railroad Material Prices and Wage Rates" (excluding fuel) for the Western District issued by the Association of American Railroads, but in no case shall the said charges ever be less than the amount hereinabove agreed. The adjustment formula for the Base Charge, ~~_____~~ as follows:

(1) $(B - A)/A = D$

(2) $(D \times .70 \times C) + C = \text{Adjusted Charge effective annually July 1}$

Where: A = the index number for year prior to year for B

B = the index number for year prior to the year of adjustment

C = Base Charge (as adjusted if previously adjusted)

D = percent increase or decrease

If the base for the annual Indexes of Charge-Out Prices and Wage Rates issued by the Association of American Railroads shall be changed from the year 1977, appropriate revision shall be made in the base (established as herein provided) for the calendar year 2003. If the Association of American Railroads or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates (or of any relevant component), the Parties agree to use the Index of Producer Prices of the United States Department of Labor Bureau of Labor Statistics, in its place.

3.3 Except as otherwise specifically provided for, bills rendered pursuant to this Agreement shall be prepared in conformity with and additives applied thereto in accordance with the then-current reasonable billing practices of WSOR as previously accepted and agreed to by CPR. CPR shall furnish WSOR, within thirty (30) days after the end of each month, a statement showing the number of cars, engines and cabooses operated over each segment of the Subject Trackage during the month; except, however, cars, locomotives and cabooses operated over the Subject Trackage between CPR's trackage and the WSOR interchange track in Madison for the sole purpose of interchange shall not be included. Each locomotive unit, whether in the operating locomotive consist or dead-in-train, and each caboose, for the purposes of this Agreement, shall be treated as one car. All payments called for under this Section shall be made by CPR within sixty (60) days after invoice. Charges not billed within two (2) years of their being incurred shall be deemed waived. The payment of bills shall not be delayed nor payment refused or shorted on payment of the face amount of bill rendered because of errors in supporting details which are not serious and important, but bills shall be paid as rendered and exception taken in writing addressed to the officer of WSOR responsible for the issuance of the bill. WSOR will adjust the next subsequent billing if exception is valid. No exception to any bill shall be honored if filed after two (2) years from the last day of the calendar month during which the bill was rendered; provided, however, that nothing in this Section will bar the rendering and collection of bills arising from the operation of Section 4, below.

3.4 The records of all Parties hereto, insofar as they relate to matters covered by the Trackage Rights Agreement, shall be open at all reasonable times to inspection by the properly authorized representative of the other Parties hereto.

3.5 In the event of default by either Party in making any payment called for by this Agreement, or in fulfilling any other term of the Agreement, the complaining Party will notify the other Party in writing that it considers that Party to be in default, giving full explanation of the amount or nature of the default. If such default is not resolved to the satisfaction of the complaining Party within sixty (60) days after the notice is mailed, the complaining Party may invoke arbitration as provided in Section 6 hereof if applicable. If Section 6 is not applicable, the complaining Party may institute the appropriate legal or equitable action. In the event that the subject default is, in the opinion of the complaining Party, a failure to carry out the decision of the arbitrator, the complaining Party shall be free to seek enforcement of this Agreement in the courts, and the Parties expressly intend that the courts consider the decision of the arbitrator to be contractually binding on both Parties.

3.6 Waiver of a default in any given instance or many similar instances shall not be construed as a waiver in any other instance. Failure of a Party to enforce its remedies in any one instance or many similar instances shall not constitute a waiver of the right to enforce its remedies in any other instance.

Section 4. LIABILITY

Definition: Whenever the expression "**Loss or Damage**" is used in this section, it means all costs, liabilities, judgments, fines, fees (including without limitation reasonable attorneys' fees and disbursements) and expenses of any nature arising from or in connection with death of or injury to persons, including without limitation employees of the Parties, or damage to or destruction of property including without limitation property of the Parties, Equipment and their contents, or the Subject Trackage, in connection with operations of the Parties over or on the Subject Trackage.

Definition: Whenever the expression "**proportionally by the Parties**" is used in this Section 4, it means that expenses will be borne in proportion to the total car miles of each Party (and any other third party user admitted by WSOR), over any part of a segment of the Subject Trackage on which the Loss or Damage occurs during the three calendar months prior to the month of the occurrence, or if the occurrence is in any of the first three (3) months of operation under this Agreement, such lesser period as precedes the date of occurrence. For the purposes of determining proportionality as herein provided, locomotive units and cabooses shall not be considered a car.

For purposes of this Agreement, locomotives, trains, cars, cabooses and property of third parties admitted by WSOR shall be deemed locomotives, trains, cars, cabooses or property of WSOR and the employees of any Party while operating, maintaining or directing operations along the Subject Trackage shall not be considered as joint employees but will remain the sole employees of that Party.

4.1 The Parties shall undertake to comply with all applicable federal, state and local laws or regulations, and all applicable rules, regulations or orders promulgated by any court, agency, municipality, board or commission. If any failure of any Party to comply with such laws, rules, regulations or orders in respect to the use of the Subject Trackage results in any fine, penalty, cost or charge being assessed against the other Parties, the Party which failed to comply agrees to reimburse promptly and indemnify the other Parties for such amount.

4.2 Notwithstanding anything else contained in this Agreement, liability for Loss or Damage resulting from or in connection with the operation of trains, locomotives, cars, cabooses or maintenance-of way motorized equipment and inspection vehicles (including equipment owned by others for which a party to this Agreement is responsible), ("Equipment") of either Party, or in connection with the presence on the Subject Trackage of Equipment of either Party, shall be borne and paid by the Parties as follows:

- (a) When the same shall involve the Equipment of only one of the Parties, regardless of any third party involvement, all Loss or Damage, including but not limited to, restoration and repair of the Subject Trackage and third party persons or property will be borne by that Party.
- (b) When the same shall involve the Equipment of both or all of the Parties, Loss or Damage shall be borne by each Party as to its own employees, property, or property in its custody (except for damage to the Subject Trackage). As to third party persons or property (other than Equipment as defined herein) and the Subject Trackage, Loss or Damage shall be borne equally by the Parties involved.

4.3 Liability for Loss or Damage not involving the Equipment of either Party, or where the identity of the Equipment involved is unknown, shall be borne and paid by the Parties as follows:

- (a) Liability for Loss or Damage shall be borne by each Party as to its own employees, property, or property in its custody. As to third party persons or property (other than those covered by Section 4.3(b) below), Loss or Damage shall be borne by the Party on whose property the Loss or Damage occurs.
- (b) Third party claims for Loss or Damage arising out of the killing or injuring of livestock or the setting of fires on or along the Subject Trackage, when caused by the Equipment or employee of one of the Parties, shall be handled or settled by the Party whose Equipment or employee caused such Loss or Damage, but if it cannot be determined whose Equipment or employee caused such Loss or Damage, the claim will be handled or settled on behalf of both Parties in the first instance by WSOR, and the Loss or Damage will then be borne proportionally by the Parties.

4.4 Each Party agrees that it will pay for all Loss or Damage, the risk of which it has herein assumed, the judgment of any court to the contrary notwithstanding, and will forever indemnify and save harmless the other Parties, their successors and assigns, from such payment; provided, however, the indemnifying Party shall be assigned any rights which the indemnified Parties may have against any third party or parties for recovery of any indemnified amount.

4.5 In the event that two or more Parties hereto shall be liable under this Agreement for Loss or Damage, and the same shall be compromised and settled by voluntary payment of money or valuable consideration by one of the Parties, the settling Party shall obtain a valid and enforceable release from liability for both Parties, specifically naming Canadian Pacific Limited, Soo Line Railroad Company, Soo Line Corporation, Wisconsin & Southern Railroad Co. and their respective parents, subsidiaries and affiliated companies, and all of their officers, agents, and employees, etc. No Party shall make any such compromise or settlement in excess of

five thousand dollars (\$5,000) without prior, written authority of the other Parties having liability, but any settlement made by one Party in consideration of five thousand dollars (\$5,000) or less shall be a settlement releasing all liability of all Parties and shall be binding upon all Parties.

4.6 In case a lawsuit or lawsuits shall be commenced against any Party hereto for or on account of any Loss or Damage for which the other Party would be solely or jointly liable under this Agreement, the Party thus sued shall give the other Party timely written notice of the pendency of such suit, and thereupon the Party so notified shall assume or join in the defense thereof, and if the Party so notified is liable therefore under this Agreement, such Party shall save harmless the Party so sued from all Loss or Damage in accordance with the liability allocation set forth in this Agreement. Neither Party shall be bound by any judgment against the other Party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified, and said opportunity to join in the defense of the action has been afforded, the Party so notified shall to the extent of its liability under this Agreement be bound by such judgment.

4.7 If Equipment of CPR is wrecked or derailed on the Subject Trackage, WSOR shall pick up and remove said Equipment, and CPR shall bear the entire cost of such service except that if WSOR does not have the necessary personnel or equipment, CPR may furnish both as required, at its own expense; provided, however, that in the case of a minor derailment where the derailed Equipment can be promptly re-railed by re-railers or blocking by CPR's employees, then in such event CPR may, at its sole expense, re-rail such Equipment unless WSOR's supervisory employees direct otherwise.

4.8 It is understood and agreed that a number of vehicular crossings on the Subject Trackage presently exist, or may be constructed. CPR agrees to accept all crossings in whatever condition they may be during the term of this Agreement and will not assert any claim, demand or cause of action against WSOR and will hold WSOR harmless from any claim, demand or cause of action arising out of any crossing accident on the Subject Trackage in which the Equipment of CPR only is involved; provided, however, that nothing in this Section 4.8 shall relieve CPR or WSOR from liability arising from its gross negligence or intentional acts.

4.9 Detour of foreign line equipment under Standard Industry Detour Agreements over the Subject Trackage is at the sole discretion and permission of WSOR.

4.10 The allocations of Loss and Damage in this Section 4 and the provisions herein for indemnification are intended solely for the benefit of the Parties and their directors, officers, agents, employees, parents, subsidiaries and affiliates. Section 4 does not create any rights for non-Parties.

4.11 In the event of a resale of the Assets as defined in Paragraph 1 of the Asset Purchase Agreement to the Wisconsin River Rail Transit Commission or the Wisconsin Department of Transportation, this Section 4.11 shall become effective and replace Section 4.10 herein.

(a) The allocations of Loss and Damage in this section 4 and the provisions herein for indemnification are intended solely for the benefit of the Parties and their directors, officers, agents, employees, parents, subsidiaries and affiliates. Except as provided in this Section 4.11, Section 4 does not create any rights for non-Parties.

4.12 In respect to the allocation of loss, damage, and liability in between CPR and any present or future non-freight rail operations on the Subject Trackage, CPR shall have the benefit and protection of the better of the terms, as determined by CPR, of this agreement, or the provisions applicable to WSOR pursuant to any agreement or arrangement between WSOR and such third-party operator. WSOR shall include a provision similar to this section in any such non-freight rail agreement concerning the Subject Trackage.

Section 5. INSURANCE

5.1 WSOR, at its own cost or expense, will procure and maintain in effect during the term of this Agreement, a policy or policies of insurance covering the liability to which WSOR is or may be subject under this Agreement. Such policy shall name CPR as an additional insured which shall provide the following total

insurance coverage:

Third party liability coverage covering injury to or death of persons and damage to property in any one occurrence in the amount of not less than ten million dollars (\$10,000,000) with a maximum deductible of two hundred fifty thousand dollars (\$250,000) per occurrence. Such coverage shall include all employees and shall insure named Insureds against workmen's compensation and Federal Employer's Liability Act claims. CPR agrees to cooperate in the processing of insurance claims.

5.2 If the insurance procured by WSOR pursuant to this Section takes the form of a claims-made policy and is cancelled or allowed to expire without renewal, WSOR will provide evidence of insurance that provides per occurrence and annual aggregate limits not less than those required pursuant to Section 5.1. Such coverage must be retroactive to the original inception date of the cancelled or non-renewed policy. WSOR further agrees promptly to give written notice to CPR of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company at:

Director, Risk Management
Canadian Pacific Railway
401 9th Ave SW
Gulf Canada Square
6th Floor SE
Calgary, Alberta, Canada T2P 4Z4

5.3 At any time not less than sixty (60) days prior to an anniversary date of this Agreement, CPR, in consideration of current and reasonably anticipated claims and litigation costs, may notify WSOR of CPR's intent to increase the amount of insurance required by this Agreement or to require that the terms and conditions of such insurance be modified. Should WSOR object to any such increase or modification, WSOR and CPR will attempt in good faith to negotiate a resolution of their disagreement. If WSOR and CPR are not able to agree and such disagreement continues for thirty (30) days past the anniversary date of this Agreement, then the matter or matters in disagreement will be submitted to arbitration pursuant to Section 6 hereof.

5.4 Each policy of insurance obtained by WSOR pursuant to the requirement of this Section will contain provisions requiring that the insurance carrier give CPR, through CPR's Director of Risk Management, at least thirty (30) days notice in writing of any proposed policy cancellation or any modification of the terms and conditions of any policy of insurance WSOR is required to provide under this Section.

5.5 The terms and conditions of each policy of insurance obtained by WSOR to satisfy the requirements of this Section will be subject to the approval of CPR, which approval shall not be unreasonably withheld or delayed. At least thirty (30) days prior to the effective date of this Agreement pursuant to Section 5.2 hereof, WSOR will furnish to CPR Rail's Director of Risk Management, an accurate copy of each policy of insurance obtained pursuant to the requirements of this Section. Neither compliance with this requirement nor CPR's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of WSOR to provide the specific insurance coverage required by this Section.

Section 6. ARBITRATION

Any irreconcilable dispute arising between the Parties with respect to this Agreement involving amounts of Five-hundred-thousand dollars (\$500,000) or less shall be settled through binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the Parties.

Section 7. GOVERNMENT APPROVAL

7.1 CPR shall, at its own expense, initiate and prosecute the necessary application for approval from any

governmental agency having jurisdiction to approve this Agreement. WSOR, at its own expense, shall assist and support such application and will furnish such information and execute, deliver and file such instrument or instruments in writing as may be necessary and appropriate to obtain such approval. In the event approval is denied or granted subject to conditions not acceptable to the Parties (other than standard labor protective conditions set forth at Norfolk & Western Ry.--Trackage Rights--Burlington Northern, Inc., 354 I.C.C. 605 (1978), modified sub nom. Mendocino Coast Ry.--Lease & Operate--California Western R.R., 360 I.C.C. 653 (1980), as modified by any subsequent decisions of the Interstate Commerce Commission or Surface Transportation Board applicable to trackage rights agreements generally), then this Agreement shall be void.

7.2 In the event CPR desires to abandon the rights conferred by this Agreement, CPR shall, at its own expense, initiate and prosecute the necessary application for approval from any governmental agency having jurisdiction to approve abandonment, and WSOR agrees not to oppose such abandonment.

Section 8. OTHER CONSIDERATIONS

8.1 This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns; provided, however, CPR agrees that it shall not transfer, sell or assign its interest in this Agreement to any successor who does not have insurance coverage at least as protective as required of WSOR under provisions of Section 5 hereof.

8.2 The Parties agree that CPR, on behalf of all Parties hereto, shall have the right to negotiate with the National Railroad Passenger Corporation, or any other entity, public or private, the terms and conditions for operation of passenger rail service over the Subject Trackage in conjunction with service routed over CPR's own lines. Such terms and conditions agreed to by CPR shall apply equally to CPR and WSOR; and compensation shall be shared on a pro-rata basis of total mileage operated by each passenger train routed over the Subject Trackage.

THE PARTIES hereto have caused this Agreement to be duly executed on the dates and at the places indicated, and agree that the laws of the State of Wisconsin will apply to its interpretation.

In the Presence of:

Witness

SOO LINE RAILROAD COMPANY
doing business as Canadian Pacific Railway

By _____

Its _____

Date _____

In the Presence of:

Witness

WISCONSIN & SOUTHERN RAILROAD CO

By _____

Its _____

Date _____