

FEE RECEIVED

JAN 09 2004

**SURFACE
TRANSPORTATION BOARD**



FILED

JAN 09 2004

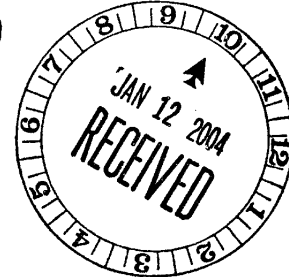
**SURFACE
TRANSPORTATION BOARD**

January 9, 2004

ENTERED
Office of Proceedings

JAN 12 2004

Part of
Public Record



Via Fax (202) 565-9004

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

**Re: Finance Docket No. 34440; 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 the following:

1. A Verified Notice of Exemption and Caption Summary pursuant to the class exemption for temporary trackage rights, 49 C.F.R. § 1180.2(d)(8).
2. A payment form in the amount of \$950.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (40).

This filing is being made by fax pursuant to the former Interstate Commerce Commission's procedures in Acceptance of Mail Via Fax, 54 Fed. Reg. 52857, December 22, 1989, 1989 WL 294480 ("1989 Notice"). As required by the 1989 Notice, an original and ten (10) copies of the attached filing, and an additional twenty (20) copies of the Exhibit 1 map are being provided to the Board by overnight delivery under separate cover.

Very truly yours,

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

cc: (w/attachments)
Sarah Whitley Bailiff, Esq. - BNSF

Law Department

UNION PACIFIC RAILROAD
1416 Dodge Street, Rm. 830, Omaha, NE 68179-0001
fx. (402) 271-5610

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TRANSPORTATION BOARD**



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TRANSPORTATION BOARD**

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Via UPS Next Day Air

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Secretary
Surface Transportation Board
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**Re: Finance Docket No. 34440; Union Pacific Railroad Company -- Temporary
Trackage Rights Exemption -- The Burlington Northern and Santa Fe
Railway Company**

Dear Mr. Williams:

This refers to the notice of exemption in the above proceeding which was filed by fax on January 9, 2004 pursuant to the former Interstate Commerce Commission's procedures in Acceptance of Mail by Fax, 54 Fed. Reg. 52857, December 22, 1989 ("1989 Notice").

As required by the 1989 Notice, enclosed with this letter are the following materials:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary pursuant to the class exemption for temporary trackage rights, 49 C.F.R. § 1180.2(d)(8).
2. The original of the payment form which was included with the January 9, 2004 fax filing.
3. Twenty (20) unbound copies of the Exhibit 1 map.

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

cc: (w/attachments)
Sarah Whitley Bailiff, Esq. - BNSF

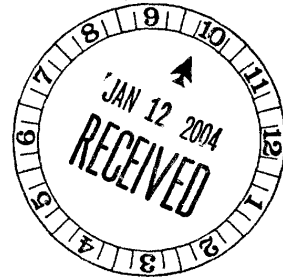
Law Department

UNION PACIFIC RAILROAD
1416 Dodge Street, Rm. 830, Omaha, NE 68179-0001
fx. (402) 271-5610

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34440



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

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VERIFIED NOTICE OF EXEMPTION

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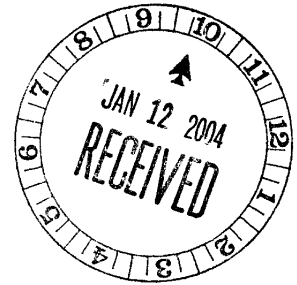
SURFACE
TRANSPORTATION BOARD

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 and Filed: January 9, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34440

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

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(8), for exemption of overhead temporary trackage rights over a line of railroad of The Burlington Northern and Santa Fe Railway Company ("BNSF") between BNSF Milepost 474.1 near Marion AR and BNSF Milepost 476.2 near Presley Junction, AR, a distance of approximately 2.09 miles¹. The temporary rights are to facilitate maintenance work on UP lines, and are intended to expire on or about September 30, 2004.

Under 49 C.F.R. § 1180.2(d)(8), the acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is

¹ The 0.01 mile difference between the milepost designations and total mileage is due to rounding.

exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings, (iii) for overhead operations only, and (iv) scheduled to expire on a specific date not to exceed one (1) year from the effective date of the exemption. The trackage rights covered by this notice are (i) covered by the written agreement attached as Exhibit 2, (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding, (iii) for overhead operations only, and (iv) will expire on or about September 30, 2004, which is less than one (1) year from the effective date of the exemption. As such, the § 1180.2(d)(8) exemption is applicable.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), UP submits the following information:

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

The transaction covered by this notice is the acquisition of temporary, overhead trackage rights by UP over approximately 2.09 miles of BNSF trackage extending from BNSF Milepost 474.1 near Marion AR, and BNSF Milepost 476.2 near Presley Junction AR.

§ 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 16, 2004.

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

The trackage rights are temporary rights, to facilitate maintenance work on UP lines, and are intended to expire on or about September 30, 2004.

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

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, 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)

A copy of the executed trackage rights agreement is attached as Exhibit 2.²

§ 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

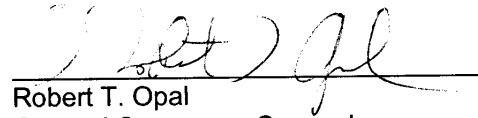
Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

² The draft Exhibit 2 agreement incorporates terms of an earlier agreement dated June 1, 1996 (the "1996 Agreement") applying to a contiguous BNSF line segment between West Memphis and Presley Junction AR. The 1996 Agreement was previously filed with the Board in the UP/SP Merger in Finance Docket No. 32760 (Sub-No. 1), see UP/SP Merger (Decision No. 44) 1 S.T.B. 233 at 563 (listing agreement as one of the Sub-No. 1 "Trackage Rights Grants to UP/SP") and 546 (Ordering Par. 12, exempting the "Sub-No. 1" trackage rights).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By:

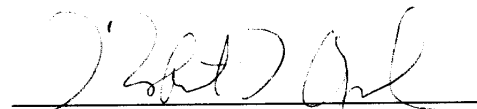
A handwritten signature in dark ink, appearing to read "R. T. Opal", is written over a horizontal line.

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

VERIFICATION

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Notice of Exemption in Finance Docket No. 34440, knows the facts stated therein, and that said facts are true as stated.

Dated: January 9, 2004.

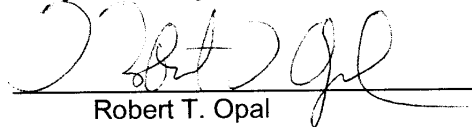

Robert T. Opal

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.

Sarah Whitley Bailiff, Esq.
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828

Dated at Omaha, Nebraska this 9th day of January, 2004.


Robert T. Opal

**TEMPORARY TRACKAGE RIGHTS AGREEMENT
MARION to PRESLEY JUNCTION, ARKANSAS
January 16, 2004 through July 31, 2004**

THIS AGREEMENT, made and entered into this 6th day of January, 2004 by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, hereinafter called "UP" or "User", and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter called "BNSF" or "Owner".

WITNESSETH:

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 alternate UP main lines are under repair; 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, is a print 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", extending between Marion in the vicinity of BNSF Milepost 474.01 and Presley Junction in the vicinity of BNSF Milepost 476.2, a distance of 2.09 miles.

Section 2. GRANT OF TRACKAGE RIGHTS.

The terms applicable to the grant of temporary bridge trackage rights over the Joint Trackage shall be the terms provided in the trackage rights agreement between UP and BN (BNSF's predecessor) dated June 1, 1996 covering UP's use of the BNSF line between West Memphis and Presley Junction (the "1996 Agreement"). If any conflict between the 1996 Agreement and this Agreement shall arise, the provisions of this Agreement shall prevail.

The temporary trackage rights granted to UP herein shall begin on January 16, 2004 and shall terminate on July 31, 2004.

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

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: *D. B. Williams*
Title: AVP Contracts and Joint Facilities

UNION PACIFIC RAILROAD COMPANY

By: *Jeffrey P. Hinson*
Title: Director Joint Facilities

EXHIBIT "1"

Hubert, AR ← Marion, AR

Line Segment 1014

Stationing: 474, 475, 476, 477, 478, 479

Mileposts: MP 474.01, MP 476.2

Presley Act

Temporary Trackage Rights

November 30, 1968

November 30, 1957

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34440**

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

The Burlington Northern and Santa Fe Railway Company has agreed to grant overhead trackage rights to Union Pacific Railroad Company for a total distance of approximately 2.09 miles between BNSF Milepost 474.1 near Marion, AR and BNSF Milepost 476.2 near Presley Junction, AR. The temporary trackage rights will be effective on January 16, 2004. The authorization will expire on or about September 30, 2004.

This Notice is filed under 49 C.F.R. § 1180.2(d)(8). 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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34440

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

VERIFIED NOTICE OF EXEMPTION

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 and Filed: January 9, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34440

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Omaha, Nebraska 68179

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

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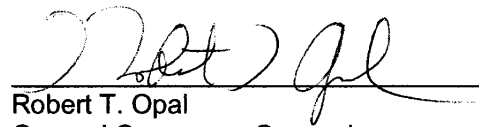
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UNION PACIFIC RAILROAD COMPANY

By:

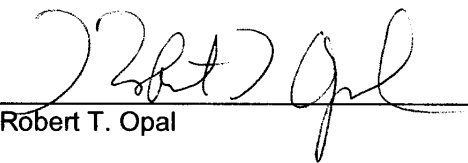
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Room 830
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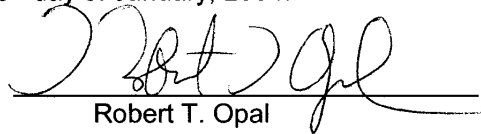

Robert T. Opal

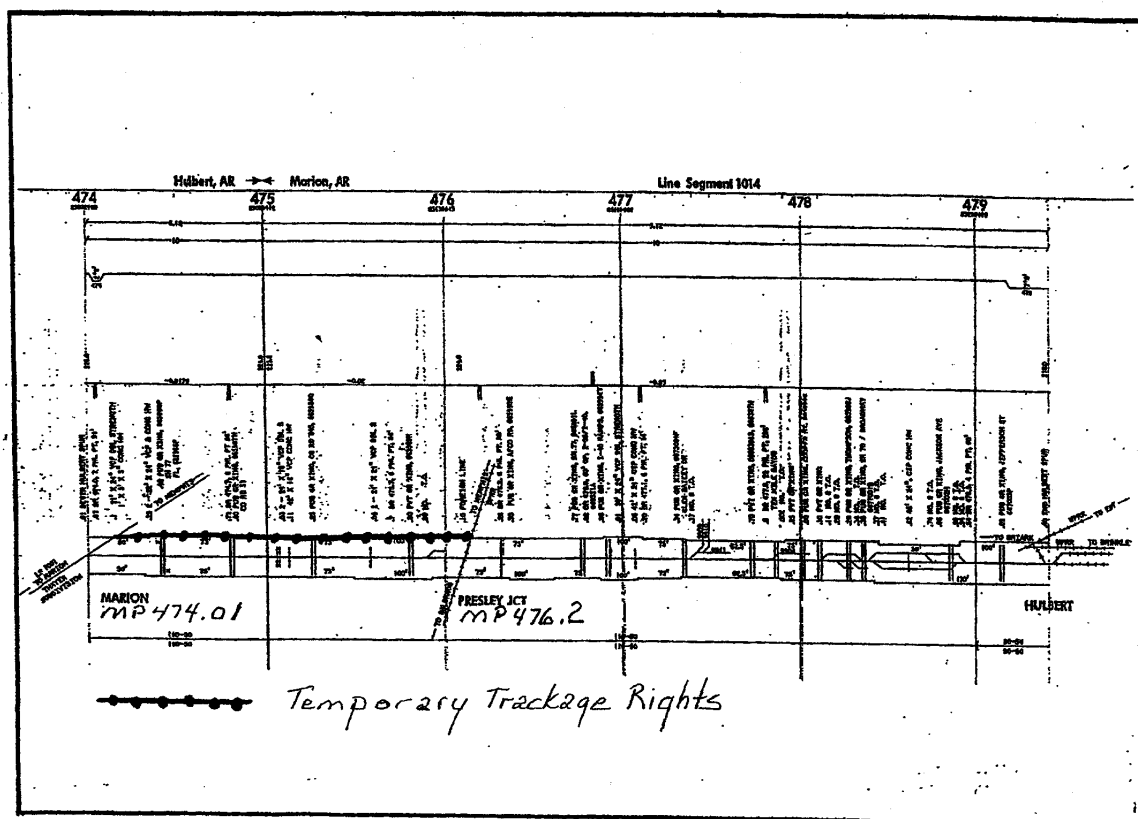
CERTIFICATE OF SERVICE

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

Sarah Whitley Bailiff, Esq.
The Burlington Northern and
Santa Fe Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828

Dated at Omaha, Nebraska this 9th day of January, 2004.


Robert T. Opal



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MARION to PRESLEY JUNCTION, ARKANSAS
January 16, 2004 through July 31, 2004**

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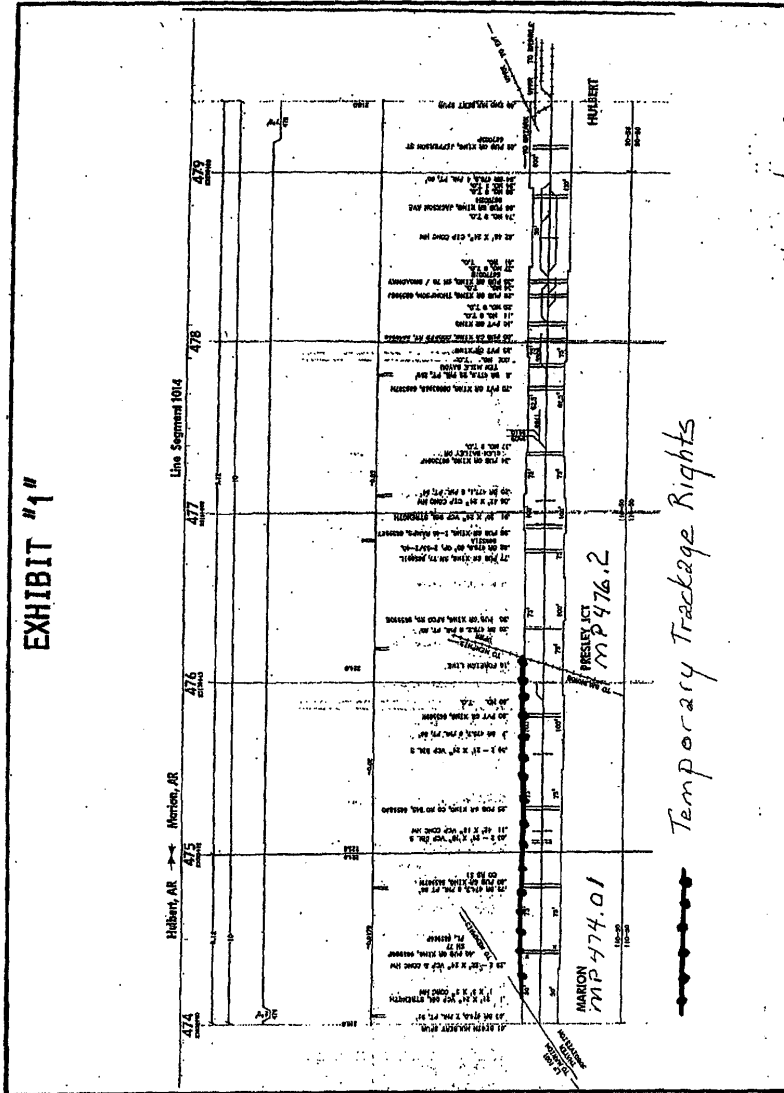
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: *D. B. Williams*
Title: AVP Contracts and Joint Facilities

UNION PACIFIC RAILROAD COMPANY

By: *Jeffrey P. Linnard*
Title: Director Joint Facilities

EXHIBIT "1"



CAPTION SUMMARY
SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34440

UNION PACIFIC RAILROAD COMPANY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
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Dated:
By the Board,

Vernon A. Williams,
Secretary