



April 12, 2004

Via E-File

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

**Re: Finance Docket No. 34488; Union Pacific Railroad Company – Trackage
Rights Exemption – SOO Line Railroad Company d/b/a Canadian Pacific
Railway**

Dear Mr. Williams:

This refers to the Notice of Exemption filed April 5, 2004 in the above proceeding.

As permitted by Board rules, Exhibit 2 to the Notice was a draft agreement. Enclosed with this letter is a copy of the final agreement as executed by the parties.

This filing is being made by E-Mail pursuant to the rules adopted by the Board in Ex Parte No. 641, effective April 8, 2004.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert T. Opal".

Robert T. Opal
General Commerce Counsel
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cc: (w/attachment)
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Law Department

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"UP"

**TRACKAGE RIGHTS AGREEMENT
COMUS, MN to ROSEMOUNT, MN**

THIS TRACKAGE RIGHTS AGREEMENT dated April 7, 2004, is made by and between Union Pacific Railroad Company, 1400 Douglas Street, Omaha, NE 68179 ("UP"), and SOO Line Railroad Company, d/b/a Canadian Pacific Railway, 501 Marquette Avenue South, Minneapolis, MN 55440 ("CPR"), sometimes collectively referred to below as the "Parties" or individually referred to below as "Party."

WITNESSETH:

WHEREAS, UP successor in interest to rights and obligations of the Chicago and North Western Transportation Company, successor in interest to Chicago, Rock Island and Pacific Railroad Company, successor in interest to Burlington, Cedar Rapids and Northern Railway Company of Iowa, ("BCR&N"), under an agreement dated November 23, 1901 made by the Chicago, Milwaukee and St. Paul Railway Company, predecessor in interest to CPR, and all effective supplements thereto ("1901 Agreement") pertaining to trackage rights over CPR trackage between Comus (Erin) and Rosemount, Minnesota; and

WHEREAS, the 1901 Agreement has expired under its original term, however, it has been extended by mutual agreement by the Parties until June 30, 2004; and

WHEREAS, UP desires and CPR consents to allowing UP to maintain, repair, renew and dispatch CPR trackage between Comus and Rosemount, Minnesota under the terms and conditions provided for herein; and

WHEREAS, in order to promote the more efficient and economical movement of freight in the accounts of CPR and UP between Comus, MN and Rosemount, MN, UP and CPR desire to enter into this trackage rights arrangement pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of all the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided CPR hereby grants to UP the non-exclusive right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over trackage owned by CPR (hereinafter referred to as "Joint Line"), as described in Section 1.2 below.

1.2 Attached to, incorporated in and made a part of this Agreement is a print dated August 17, 2003, marked Exhibit "A", which shows the Joint Line between the points designated as Point "A" (MP 306.5 on UP's Albert Lea Subdivision at or in the vicinity of Comus, MN), and Point "B" (MP 333.5 on UP's Albert Lea Subdivision at or in the

vicinity of Rosemount, MN). The Joint Line includes all of CPR'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 as mutually agreed to between CPR and UP. The Parties understand that the Joint Line does not include yard tracks at Rosemount, MN or Northfield, MN.

1.3 The Trackage Rights herein granted shall provide UP the full and unrestricted right to do all business of a common carrier at any and all points on the Joint Line.

Section 2. INTENT AND RESTRICTIONS ON USE

2.1 The Trackage Rights granted herein are for the full, joint and equal use of the Joint Line by UP, in common with CPR and such other company or companies as CPR shall at any time permit to use the same or any part thereof.

2.2 UP shall have the right to admit Progressive Rail Incorporated to the use of the Joint Line without CPR's concurrence. UP shall have the right to admit any other third party to the use of the Joint Line only after having first requested and received written concurrence from CPR.

2.3 UP shall not have the right to use CPR's yard facilities at Northfield, MN and Rosemount, MN without the prior written consent of CPR.

2.4 UP shall not contract, or make any agreement to provide haulage over the Joint Line of 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 UP (the foregoing shall not prevent UP, 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).

Section 3. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTION

3.1 Existing connections to, or facilities along, the Joint Line which are jointly used by the Parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under such agreements.

3.2 If, in the opinion of UP, (i) a new or upgraded connection is required to permit its entry to or exit from the Joint Line, or (ii) other upgrades to the Joint Line (including but not limited to capacity capital, switches, power switches, signals, and communications) is required for its operational efficiency, CPR will, unless such improvements will have a material adverse effect on CPR's operations, cooperate with UP. Such construction and/or upgrade shall be at UP's sole cost and expense.

Section 4. MAINTENANCE OF JOINT LINE.

4.1 CPR as the Joint Line owner consents, and UP shall maintain, repair and renew the Joint Line with its own supervision and labor forces. UP shall keep and maintain the Joint Line in reasonably good condition for the use herein contemplated, but UP does not guarantee the conditions of the Joint Line or that operations thereover will not be interrupted. UP shall take all reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its commercially reasonable efforts to avoid such interruptions. Furthermore, except as may be otherwise provided in Section 12, CPR shall not by reason of failure or neglect on the part of UP to maintain, repair or renew the Joint Line, have or make any claim or demand against UP or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees, for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever or of any nature suffered by CPR resulting from such failure or neglect.

Section 5. ADDITIONS, BETTERMENTS AND ALTERATIONS

5.1 UP, having first obtained CPR's written approval, may from time to time and at its sole cost and expense, make changes in, additions and betterments to or retirements from the Joint Line as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become part of the Joint Line and such retirements shall be excluded from the Joint Line.

5.2 In the event changes in or additions and betterments to the Joint Line, including changes in the communication or signal facilities, are required to accommodate UP's operations beyond that required by CPR to accommodate its operations, UP may construct the additional or altered facilities at its sole expense and discretion. UP shall thereafter maintain such additional or altered facilities at its sole expense.

5.3 Capacity related betterments in and/or additions to the Joint Line other than those covered by Sections 5.1 and 5.2 above shall be agreed to in advance by CPR and UP. The cost of any such betterments and/or additions shall be shared by CPR and UP based on the Car Mile Proportion of each for the twelve (12) month period immediately prior to the month work on the project is commenced. The term "Car Mile Proportion" means the proportion of locomotive and car miles operated upon or over the Joint Line or any portion thereof by UP and CPR, respectively, to the total number of locomotive and car miles operated over or upon the Joint Line or any portion thereof. For the purpose of determining the Parties' Car Mile Proportions (i) each locomotive unit shall count as two (2) cars, and (ii) the use of the Joint Line by any third party shall be attributed to the Party admitting the third party.

5.4 The Parties recognize that at the time of this agreement the Joint Line is currently maintained to FRA Class 3 standards. In the event UP desires to downgrade said standards below FRA Class 2, UP shall obtain written concurrence from CPR before making such change.

5.5 All additions and betterments to Joint Line shall be owned and considered the property of CPR, provided, however, in the event that the Joint Line is sold or abandoned at some time in the future, UP will participate in the sale or salvage proceeds to the extent of the depreciated value of the material furnished by UP or the second-hand market value of said material, whichever is greater.

Section 6. OPERATION AND MANAGEMENT OF JOINT LINE

6.1 The management and operation of the Joint Line shall be under the exclusive direction and control of UP. UP shall have the right to change the management of and the operations on and over the Joint Line as it may deem necessary, expedient or proper for the operation of the Joint Line; provided however, that the Joint Line shall be dispatched in accordance with the UP-CPR Dispatching Protocols, dated August 17, 2003, attached hereto marked Exhibit "B".

6.2 UP and CPR shall comply with the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment or trains, locomotives, cars and equipment under its control while such trains, locomotives, cars and equipment are being operated over the Joint Line. Notwithstanding any other provisions herein, each Party (the "Indemnifying Party") shall indemnify, protect, defend, and save harmless the other Party, its subsidiaries and affiliates, and all of their respective directors, officers, agents and employees (collectively, the "Indemnified Party"), from and against all fines, penalties and liabilities imposed upon the Indemnified Party under such laws, rules, and regulations by any public authority or court of competent jurisdiction, when attributable solely to the failure of the Indemnifying Party to comply with its obligations in this Section 6.2.

6.3 When operating over the Joint Line, UP's and CPR's locomotives and crews shall be equipped to communicate with the operators of the segments of Joint Line on radio frequencies then normally used in directing train movements on the Joint Line. UP's and CPR's locomotives shall be (i) adequately powered to maintain the maximum authorized freight speeds as provided by UP's operating rules, with a minimum requirement of horsepower per ton rating of 1 to 1, and (ii) equipped with such cab signals, LSL and other safety equipment that is required by law or instruction for the operation over any portion or all of the Joint Line.

6.4 UP and CPR shall each, at its sole expense, install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices (including but not limited to EOT's with functioning telemetry) as may now or in the future be mandated by the

Federal Railroad Administration, or other governing body having authority, for the safe and efficient operation of trains over the Joint Line.

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

6.6 While operating over the Joint Line UP and CPR trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Joint Line as published in Railway Line Clearances. No train of either Party shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by UP's operating rules and regulations without the prior consent of the other Party.

6.7 In the event that a train of CPR shall be forced to stop on the Joint Line due to mechanical failure of its equipment or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of CPR fails to maintain the speed required by UP on the Joint Line, or if in emergencies, crippled or otherwise defective cars are set out of CPR's trains on the Joint Line, UP shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Line, and CPR shall reimburse UP for the actual cost of rendering CPR any such assistance.

6.8 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Joint Line, such work shall be done by UP, and CPR shall reimburse UP for the cost thereof with respect to cars in CPR's account, unless mutually agreed in writing otherwise.

6.9 All employees of UP and CPR engaged in the operation of UP and CPR trains over the Joint Line shall be required to qualify for entry onto the Joint Line by passing periodic examinations on the operating and safety rules of UP in addition to the Joint Line's physical characteristics. CPR shall make such arrangements with UP as may be required to ensure that all of its employees who shall operate its trains, locomotives, cars and equipment over the Joint Line are qualified for operation thereover. CPR shall pay to UP, upon receipt of bills therefor, any and all costs incurred by UP in connection with the qualification of such employees of CPR, which costs may include, but are not limited to, those costs addressed in Section 9 of this Agreement including the cost of pilots furnished by UP, until such time as such employees are deemed by the appropriate examining officer of UP to be properly qualified for operation as herein

contemplated. UP may require that such qualification trips be repeated if the subject CPR employee has not made a trip over the Joint Line within a reasonable period of preceding time, but only to the same extent as would be required of UP's own employees. Pending qualification or requalification of subject employees, UP shall furnish a pilot or pilots, at the expense of CPR, to allow operation as contemplated in this Agreement. For purposes of Section 12 of this Agreement, any employee of UP acting as a pilot for CPR will be considered an employee of CPR.

6.10 If any employee of CPR neglects, refuses or fails to abide by UP's rules, safety rules, instructions or restrictions governing the operation over the Joint Line, UP shall in writing so notify CPR. UP shall have the right to require CPR to promptly withhold any CPR employee from service over the Joint Line pending the result of formal investigation of the alleged neglect, refusal or failure. After the notice is given to CPR, UP 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. The investigation shall be conducted in accordance with the terms and conditions of the agreements between CPR and its employees. If the result of such investigation warrants, any subject CPR employee so investigated shall upon written request by UP be restricted by CPR from operating on the Joint Line, and CPR shall release and indemnify UP from and against any and all claims and expenses related to such restriction; provided, however, that UP shall not unreasonably exercise this right of restriction.

6.11 Neither Party hereto shall require the other Party's crews to perform any work beyond that required by such other Party's current labor agreements, subject to any modifications that may result from future labor agreements, while said crews are on the other Party's property and/or subject to the other Party's supervision. Should either Party require the other Party's crews to perform additional services over and above that contemplated herein, and such services result in penalty claims being progressed, that Party shall reimburse the other Party for the cost of all such claims. It is agreed that the Party subject to the claims shall notify the other Party of such claims so that the movement(s) causing the claim(s) can be corrected to avoid liability.

6.12 To promote more efficient train operations over the Joint Line, CPR shall (1) submit all schedules of its train operations over the Joint Line to UP, and (2) provide UP with advance notice of the estimated time of arrival of trains, and documentation, prior to entering the Joint Line.

Section 7. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in UP's and CPR's trains on the Joint Line shall be assumed by UP and CPR, respectively, and reported and paid by UP and CPR, respectively and governed by the applicable AAR Car Hire Rules. Car hire charges accruing on cars in Admittees' trains shall be the responsibility of the Party on whose behalf the Admittee was operating under.

Section 8. BAD ORDERS AND LIGHT RUNNING REPAIRS

If any cars, cabooses, or locomotives of CPR are bad ordered en route on the Joint Line and it is necessary that they be set out, those cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by CPR. UP may, upon request of CPR and at the exclusive expense of CPR, unless otherwise provided for in the Field and Office Manuals of the Interchange Rules of the Association of American Railroads, 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, and submitted pursuant to, the Field and Office Manuals of the Interchange Rules of the Association of American Railroads.

Section 9. COMPENSATION AND BILLING OF CHARGES

9.1 For and in consideration of the rights herein contained and in addition to the costs and expenses herein elsewhere provided, each Party shall compensate the other Party as follows:

- a) UP shall pay CPR an annual rental in monthly installments equal to one-half (1/2) of ten percent (10%) of the value of the Joint Line which has been established only for the purposes of this Agreement as \$2,600,000.
- b) UP shall pay CPR an annual amount equal to one-half (1/2) of all taxes and assessments, both general and special, levied against the Joint Line by any governmental agency.
- c) CPR shall reimburse UP monthly CPR's Car Mile Proportion of UP's cost to maintain and operate the Joint Line.
- d) The compensation provided for in a) and b), above, shall not increase or decrease as a result of either Parties admittance of a third party.

9.2 CPR shall on or about the fifteenth day of each month provide UP an accounting of its use of the Joint Line for the prior month. Such use of the Joint Line shall be furnished to UP's Manager Billing or designated representative and shall include a detailed listing of loaded and empty car movements over the Joint Line. Such detailed listing, to the extent available, shall be forwarded to UP in an electronic format, and shall include car initial and numbers, date of movements and the points traversed over the Joint Line and such other information as UP may reasonably request. Where technically possible, the Parties shall exchange data on all loaded and empty cars by Electronic Data Interchange (EDI) transmission.

9.3 It is expressly understood and agreed that the payments described in this Section 9 to be paid by UP and by CPR do not, in any case, include any cost or expense which may be incurred by UP or CPR on account of loss of or damage to property, or injury to or death of any person or persons arising out of, or in connection with, the operation by UP and CPR upon or over the Joint Line. It is agreed by and between the Parties that such items of cost or expense shall be borne and paid by the Parties according to the provision of Section 12 hereof.

9.4 Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with customary surcharges, overhead percentages and equipment rentals (subject to audit) as specified at the time any work is performed by UP.

9.5 The payment of bills shall not be delayed or payment refused or reduced on the face amount of bill rendered because of errors in supporting details which are not material relative to the billed amount, but bills shall be paid as rendered and exception to charges shall be taken in writing addressed to the officer of UP or CPR as the case may be, responsible for the issuance of the bill; provided, however, that (i) no exception to any charge shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill containing said charge was rendered, and (ii) no bill shall be rendered later than three (3) years (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established.

Section 10. CLAIMS AND SETTLEMENTS

10.1 Except as provided in Section 10.2, all claims, injuries, deaths, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the Party bearing the liability, cost and expense therefor under the provisions of this Agreement. The Parties shall be bound by the Freight Claim Rules, Principles and Practices of the AAR as to the handling of any claims for the loss of or damage to lading.

10.2 Each Party will investigate, adjust and defend all cargo related liability claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.

10.3 In the event a claim or suit is asserted against one of the Parties hereto which is the other Party's duty hereunder to investigate, adjust or defend, then unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

10.4 All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and

expenses in applying the liability provisions set forth herein, except that salaries or wages of full-time claim agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by the employing Party.

10.5 Excluding cargo related liability claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds Fifty Thousand Dollars (\$50,000).

10.6 It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions or apportionments provided in Section 12.

10.7 Except as provided for in Section 6.10 herein, each Party hereto agrees to indemnify and hold harmless the other Party, its parent corporation, subsidiaries and affiliates, and each and all of its and their respective directors, officers, agents and employees, from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of labor claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, or arising under its collective bargaining agreements with its employees; provided, however, that UP agrees that it will assume and indemnify, defend and hold harmless CPR against and from employee protective conditions imposed by a governmental agency, including without limitation the Surface Transportation Board ("STB"), upon the agency's approval or exemption of this Agreement and operations hereunder.

Section 11. CLEARING OF WRECKS

11.1 Whenever CPR's use of the Joint Line requires rerailing, wrecking service or wrecking train service, unless otherwise mutually agreed, UP shall perform or provide such service, including the repair and restoration of roadbed, track and structures, at CPR's sole reasonable expense, except that UP in its sole discretion may use a third party to perform such rerailing service at CPR's sole reasonable expense.

11.2. The cost, liability and expense of an incident requiring the services described in Section 11.1, above, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, equipment and salvage involved in a wreck that are owned or used by, or are under the management and control of, CPR at the time of such wreck shall be promptly delivered to CPR, unless the Parties otherwise agree.

Section 12. LIABILITY

12.1 The responsibility and liability between the Parties for (i) any personal injury or death of any person (including employees of a Party or of third parties), (ii) any damage to real or personal property of any person (including property of a Party or of third parties), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorneys' fees resulting from the use of the Joint Line as described herein, all of which are collectively referred to as a "Loss", will be allocated between the Parties as set forth below in this Section 12.1. For purposes of this Section 12.1 a third party operating on and over the Joint Line as an admittee of one or both of the Parties shall be referred to as an "Admittee":

- (a) If a Loss occurs on the Joint Line and involves the trains, cars and locomotives of only one of the Parties, then that Party is solely responsible for the Loss, even if the Loss is caused partially or completely by the other Party.
- (b) If a Loss occurs on the Joint Line involving the trains, cars and locomotives of more than one Party, then (i) each Party is solely responsible for any Loss to its own employees, locomotives and equipment and to equipment in its own revenue account including lading, and (ii) each Party is responsible for fifty percent (50%) of any Loss to the Joint Line and any Loss sustained by a third party other than an Admittee, regardless of the proportionate responsibility between them as to the cause of the Loss.
- (c) For purposes of assigning responsibility for a Loss under this Section as between the Parties, (i) a Loss involving only one Party and a third party (other than an Admittee) shall be the sole responsibility of such Party, and (ii) a Loss involving an Admittee while operating on or over the Joint Line shall be the responsibility of the Party on whose behalf the Admittee was acting at the time the Loss occurred.
- (d) A Loss sustained by any employee of UP while maintaining, repairing or renewing the Joint Line shall be shared by CPR and UP based on their respective Car Mile Proportion; provided, however, that UP shall solely bear a Loss sustained by any employee of UP while maintaining, repairing or renewing any betterment of or addition to the Joint Line whose cost is to be borne solely by UP under the provisions of this Agreement.
- (e) Whenever any liability, cost, or expense is assumed by or apportioned to a Party hereto under the provisions of this Section, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its parent corporations, subsidiaries and affiliates, and each and all of its and their respective directors, officers, agents and employees, from and against that liability, cost and expense assumed by that Party or apportioned to it, regardless

of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the Indemnified Party (including its parent corporations, subsidiaries and affiliates) and/or its directors, officers, agents, or employees.

(f) In every case of death or injury suffered by an employee of either Party hereto, when compensation to such employee or such employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either (or both) of the Parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party (ies) shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(g) For purposes of determining liability, pilots furnished by UP to CPR pursuant to this Agreement shall be considered as the employees of CPR while such pilots are on duty as pilots.

(h) If a claim or suit shall be commenced against either of the Parties for a Loss for which the other Party is ultimately liable, the Party sued or against whom the claim is asserted may give notice of such claim or suit to the other Party and thereupon the latter shall assume the defense of the claim or suit and save harmless therefrom the Party sued or against whom the claim is asserted. The Party liable hereunder shall also be responsible and indemnify the other Party for all costs and expenses associated with defending the claim or suit (excluding the salaries, wages and benefits of the Parties' employees), including reasonable outside attorneys' fees. Where both Parties are liable hereunder, each Party shall bear its own costs and expenses associated with defending the claim or suit.

Section 13. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of a Party (the "Defaulting Party") to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the other Party (the "Non-Defaulting Party"), the Non-Defaulting Party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by the Non-Defaulting Party of any prior breach thereof, to terminate this Agreement. The exercise of such rights by the Non-Defaulting Party shall not impair its rights under this Agreement or any cause or causes of action it may have against the Defaulting Party, including for the recovery of damages.

Section 14. REGULATORY APPROVAL

Should this Agreement require the prior approval of the Surface Transportation Board ("STB"), UP at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval.

Section 15. ABANDONMENT AND DISCONTINUANCE OF JOINT LINE.

15.1. UP shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Joint Line or any portion(s) thereof. CPR shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the Joint Line or any portion(s) thereof. Before filing an application for regulatory approval of such abandonment, CPR shall give UP ninety (90) days' advance notice in writing of its intention to do so in order that UP may determine whether it desires to purchase the Joint Line (or portion(s) thereof to be abandoned) or to discontinue its use thereof.

15.2. If UP desires to purchase all or any portion(s) of the Joint Line on its or their abandonment by CPR, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of 49 U.S.C. Section 10904 and CPR receives more than one such offer, CPR will exercise its statutory right to negotiate with UP rather than with the other offeror(s). Thereafter, the rights and obligations of the Parties in respect to UP's acquisition of the Joint Line shall be governed by applicable provisions of the law.

15.3. In any one of the circumstances listed below UP shall be deemed to have determined that it does not desire to purchase the Joint Line, or any portion(s) thereof as applicable, and that it desires to discontinue its use thereof:

(i) UP fails to submit an offer of financial assistance to purchase the Joint Line within the time prescribed by statute and applicable regulations; or

(ii) UP, having made an offer of financial assistance to purchase the Joint Line, but being unable to reach agreement with CPR as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale; or

(iii) UP, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance; or

(iv) UP, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event UP shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Joint Line (or any portion(s) thereof to be abandoned). If UP does not promptly file such an

application, CPR shall be deemed to have been given UP's power of attorney to take such action on UP's behalf.

15.4 In the event any application filed by CPR is granted but an application filed by UP under Subsection 15.3, above, is denied by the proper regulatory authority, the Parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Joint Line (or the applicable portion(s)) to UP (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.

15.5 In the event CPR abandons the Joint Line (or portion(s) thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the Parties shall cooperate and take such action as is necessary to assure that UP either promptly terminates its operations over the segment(s) to be abandoned or purchases said segment(s) at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.

15.6. In the event CPR's application for authority to abandon is denied, UP will withdraw any application it has filed under Subsection 15.3, above.

15.7. Except as otherwise expressly agreed in writing, in the event any actions taken by the Parties under this Section 15 result in an obligation imposed by any competent authority on any Party hereto to protect the interests of affected employees, the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

15.8. Notwithstanding any other provision of this Agreement, if CPR abandons its use of the Joint Line or any portion(s) thereof, and ceases all use of the same, and further UP does not discontinue its rights or purchase such portion(s) of the Joint Line pursuant to this Section 15, UP shall assume the total cost and expense to operate and maintain those portions of the Joint Line so abandoned.

Section 16. TERM

16.1 This Agreement shall be effective the day and the year first written above or, in the event STB approval is required, on the date such approval becomes effective, and shall remain in full force and effect for an initial term of twenty-five (25) years (the "Initial Term") and shall continue in full force and effect thereafter for two (2) successive renewal periods (each, a "Renewal Period") of twenty-five (25) years each under the same terms and conditions unless UP notifies CPR in writing at least six (6) months prior to the expiration of the Initial Term or any Renewal Period of its termination of the Agreement effective as of the conclusion of the Initial Term or applicable Renewal Period, as appropriate.

16.2 Termination of this Agreement for any reason shall not relieve or release either Party from any obligation assumed or from any liability which may have arisen or been incurred by a Party under the terms of this Agreement prior to the termination hereof.

Section 17. ARBITRATION

17.1 If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration; provided, however, that under this Section (i) arbitration may not be used to determine violations of criminal or antitrust laws and (ii) no award of consequential or punitive damages shall be within the power of any arbitrator or arbitration panel. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 17 shall be governed by the rules and procedures set forth herein.

17.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the Northern District of Illinois upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said judge in the manner heretofore stated.

17.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said judge shall appoint another to act in the arbitrator's place.

17.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the

same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

17.5 Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

17.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

17.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 18. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. Except as otherwise provided in Section 2.2, above, UP shall not transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of CPR, which consent shall not be unreasonably withheld if assignment or transfer is to a successor of all or substantially all the property and franchise of UP.

Section 19. NOTICES

19.1 Except as may be otherwise provided in this Agreement or as may be otherwise mutually agreed to by the Parties from time to time, any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified mail, postage prepaid, upon the date so personally delivered or on the second day of uninterrupted postal service following the date so mailed, and shall be addressed to the persons at the following addresses:

If to UP:

Vice President – Operations
Union Pacific Railroad Company

1400 Douglas Street, MC-1180
Omaha, NE 68179

If to CPR:

Director of Interline Management
Canadian Pacific Railway
1200 Jorie Boulevard
Oak Brook, Illinois 60521

with a copy to:

Manager Interline Agreement Management
Canadian Pacific Railway
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta Canada T2P 4Z4

19.2 Either Party may provide changes to its address or addressees by furnishing a notice of such change to the other Party in the same manner as provided above for all other written notices.

Section 20. GOVERING LAW

It is the intention of the parties hereto that the laws of the State of Minnesota shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties hereto.

Section 21. COUNTERPARTS

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

UNION PACIFIC RAILROAD
COMPANY

By B. B. Brune
Its Sr. Director - Joint Facilities

Date 4-1-2004

SOO LINE RAILROAD COMPANY
d/b/a Canadian Pacific Railway

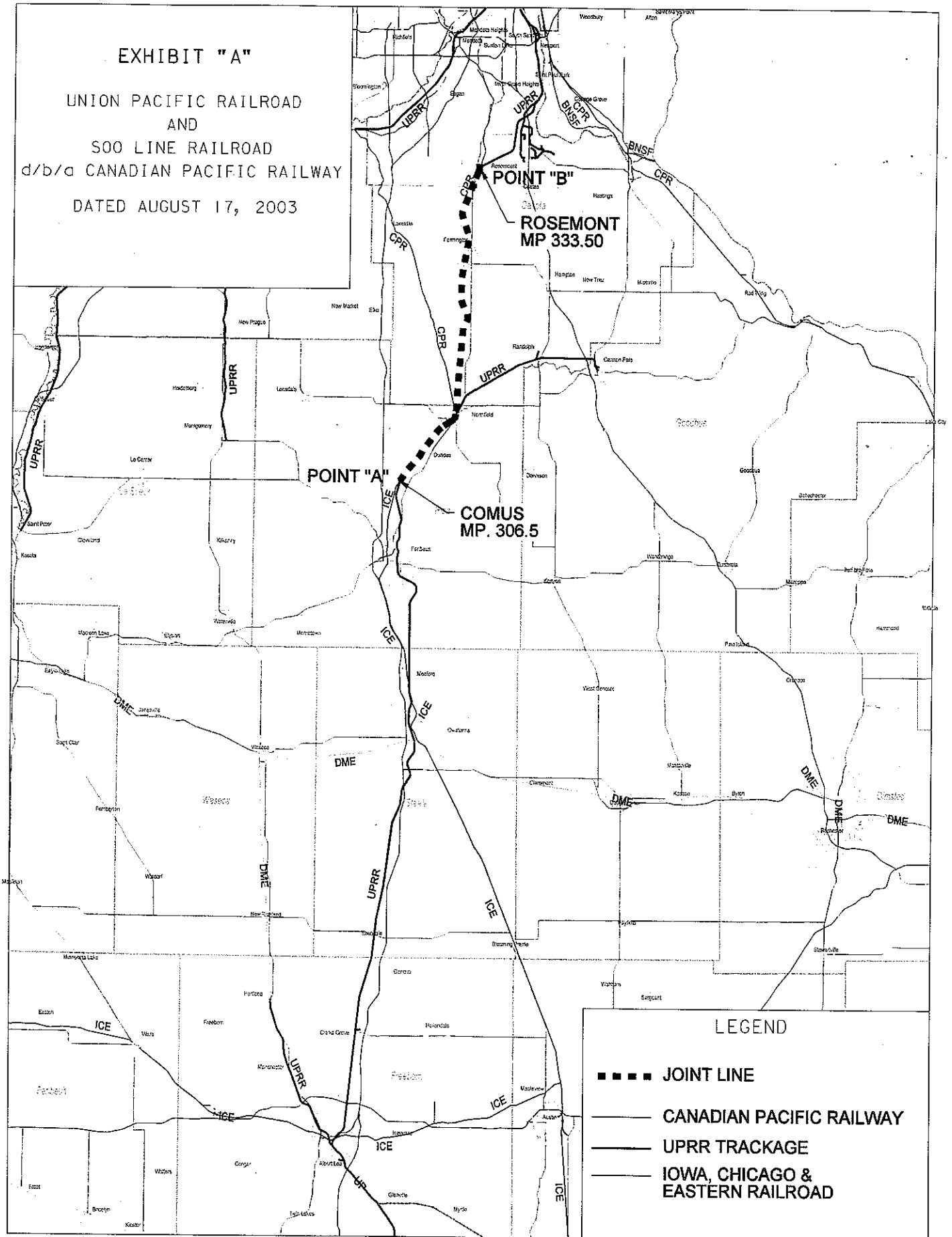
By Tom Laughlin
Its GENERAL MANAGER - INTERLINE MANAGEMENT

Date 4/7/04

EXHIBIT "A"

UNION PACIFIC RAILROAD
AND
SOO LINE RAILROAD
d/b/a CANADIAN PACIFIC RAILWAY

DATED AUGUST 17, 2003



LEGEND

■■■■ JOINT LINE

— CANADIAN PACIFIC RAILWAY

— UPRR TRACKAGE

— IOWA, CHICAGO & EASTERN RAILROAD

UP – CPR DISPATCHING PROTOCOLS

August 17, 2003

1. Scope: These protocols apply on all segments of Joint Line used by Union Pacific Railroad Company ("UP") and Canadian Pacific Railway ("CPR") and their subsidiaries and affiliates. For the purpose of this Agreement, Joint Line is defined as tracks used by both parties and controlled by one of the parties. For purposes of these protocols, the party controlling a segment of the Joint Line will be referred to as the "Controller" of such segment and the other party will be referred to as the "User" of such segment.
2. Purposes: To ensure that Controller and User trains operating on Joint Line are given equal dispatch without any prejudice, partiality or discrimination in promptness, quality of service or efficiency and in such manner as will afford the most economical and efficient manner of movement of all traffic. To ensure User operations on Joint Line are not adversely affected by the fact that Controller controls the Joint Line.
3. General Instructions: Controller will issue written instructions to all personnel (including supervisors) responsible for train dispatching on Joint Line that User trains are to be (1) dispatched exactly as if they were trains of the same class of Controller and (2) given equal treatment with trains of Controller. These instructions will be issued at agreed intervals or at the request of User.
4. Monitoring Systems: Controller will provide User with timely and accurate information about the status of User trains operating over Joint Line.
5. Train Information: User will provide Controller regularly updated, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over Joint Line, preferably using electronic data interchange. Controller and User will mutually establish run time standards by train category based on expected train volumes for User. If train volumes are different than expected, then adjustments to run time standards will be made by mutual agreement. User will provide current reliable information about trains approaching Joint Line, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching Joint Line, sufficiently in advance to allow dispatchers to plan for them. Controller will provide to User substantially the same advance notice of planned maintenance-of-way projects, enroute delays for track maintenance, line closures and train or equipment restrictions as is provided Controller's transportation personnel. Controller and User will consult in advance about maintenance-of-way windows resulting from planned maintenance projects so as to minimize disruptions to the operations of both carriers. Decisions as to terminal departure times, priorities for meeting and passing trains and destination terminal receiving times shall be made on a non-discriminatory basis.

6. Specific Instructions: Controller will permit User to transmit instructions regarding the requirements of specific trains and shipments to designated dispatching center employees responsible for handling those trains.
7. Train Priorities/Run Time Standards: Controller will provide User current procedures for assigning dispatching priorities or rankings to trains and information sufficient to show how those procedures are applied to its own trains. User will assign priorities or rankings to its train operating on Joint Line using Controller's procedures and Controller will dispatch User trains in accordance with those priorities or rankings. It is understood that technological advances in computer aided dispatching might result in changes to priority assignment methodologies. The parties agree to discuss technological changes which might affect priority assignment methodologies prior to implementation. The Joint Service Committee, if any, established by the parties with respect to operations over the Joint Line will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads.
8. Entry to Joint Line: At points where User trains enter Joint Line, entry will be provided by Controller on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. If operating circumstances make strict application of this principle difficult or uncertain, Controller and User will jointly establish standards for determining sequence of entry to Joint Line. The parties will communicate daily on any conflicts concerning entry to Joint Line to gain resolution.
9. Communication: Controller will provide to User, and keep current, lists of dispatching personnel responsible for dispatching Joint Line and contact numbers. Controller and User will designate more supervisory employees to serve as the day-to-day contacts for communications about operating charges, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.
10. Access to Dispatching Center: Appropriate officials of User will be admitted at any time to dispatching facilities and personnel responsible for dispatching Joint Line will be made available to User to review the handling of trains on Joint Line (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to the review). It is understood that management and supervision of dispatching operations is the responsibility of Controller.

11. Performance Management: Controller and User will cooperate to develop train performance evaluation methods under which the performance of User's trains, during specific time frames, over specific sections of Joint Line can be compared to the performance of Controller's trains on the same sections of Joint Line for the same train category and priority, for the same period of time.
12. Personnel Incentives and Evaluation: In evaluating the performance of employees and supervisors responsible for dispatching Joint Line, Controller will consider train performance of User's trains and effectiveness in cooperating with User personnel and meeting User service requirements in the same manner as such factors are considered with respect to Controller's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of Controller's trains, performance of User's trains shall be considered on the same basis to the extent feasible.
13. Disagreements: The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them within ten (10) days. If a matter is not resolved to the satisfaction of both parties it will be presented to Joint Service Committee. If a satisfactory resolution cannot be achieved by Joint Service Committee, the matter will be submitted to binding summary arbitration as provided for in Section 17 above.
14. Modifications: The ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of Controller and User on Joint Line, and they may be modified at any time by mutual written agreement, consistent with that objective.