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August 6, 2004

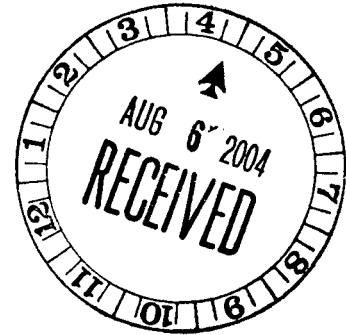
BY HAND DELIVERY

The Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

FILED

AUG 06 2004

U.S. DEPARTMENT OF
TRANSPORTATION BOARD



Re: STB Finance Docket No. 34535, Kansas & Oklahoma Railroad, Inc. –
Trackage Rights Exemption – Atlantic & Pacific Railroad and
Transportation Company

Dear Secretary Williams:

At the request of counsel for Kansas & Oklahoma Railroad, Inc. ("KO"), we are filing an original and 10 copies of the notice of exemption of KO in the above-referenced proceeding. Also enclosed are (i) a check in the amount of \$950 to cover the filing fee for this proceeding, and (ii) 20 additional unbound copies of the maps attached to the notice of exemption as Exhibit A.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rose-Michele Weinryb".

Rose-Michele Weinryb

Enclosures

ENTERED
Office of Proceedings

AUG 09 2004

Part of
Public Record

AUG 09 2004

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

KANSAS & OKLAHOMA RAILROAD, INC.
- TRACKAGE RIGHTS EXEMPTION -
ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY



FEE RECEIVED

STB FINANCE DOCKET NO. 34535

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR § 1180.2(d)(7)

FILED

AUG 06 2004

Brief Summary of the proposed transaction:

49 CFR §1180.6(a)(1)(i)

FILED
SURFACE
TRANSPORTATION BOARD

Kansas & Oklahoma Railroad, Inc. ("KO") files with the Surface Transportation Board ("Board") this Verified Notice of Exemption, under 49 CFR §1180.2(d)(7). KO seeks Board authority to acquire local and overhead trackage rights over a line of railroad leased by Atlantic & Pacific Railroad and Transportation Company ("APR") from KO, extending from the point of interchange with KO's main line at approximately milepost ("m.p.") 87.0 (at or near Chase, KS) to the point of interchange with KO's main line at approximately m.p. 91.0 (at or near Silica, KS) ("Subject Line").

Applicant's name, address and telephone number:

49 CFR § 1180.6(a)(1)(i)

Kansas & Oklahoma Railroad, Inc.
315 W. 3rd Street
Pittsburg, Kansas 66762
(620) 231-2230

Applicant's counsel to receive correspondence:

49 CFR § 1180.6(a)(1)(i)

Craig Richey, Esq.
Kansas & Oklahoma Railroad, Inc.
315 W. 3rd Street
Pittsburg, Kansas 66762
(620) 231-2230

Proposed time schedule for consummation:

49 CFR § 1180.6(1)(ii)

KO anticipates that it will exercise the trackage rights on or after the seventh day subsequent to the date on which this notice of exemption was filed with the Board

Purpose sought to be accomplished:

49 CFR § 1180.6(a)(iii)

APR has filed a notice of exemption to lease and operate the Subject Line in Atlantic & Pacific Railroad and Transportation Company –Lease and Operation Exemption – Kansas & Oklahoma Railroad, Inc., STB Finance Docket No. 34451. The trackage rights sought here will permit KO to continue to provide rail service over the Subject Line.

States in which applicant's property is located:

49 CFR § 1180.6(a)(5)

KO owns and operates connecting rail line in the States of Kansas and Colorado.

A map of KO's rail line:

49 CFR § 1180.6(a)(6)

A map of KO's rail line and the Subject Line are attached hereto as Exhibit A. Twenty additional unbound copies also are included.

Agreement:

49 CFR Sec. 1180.6(a)(7)(ii)

A copy of the Trackage Rights Agreement is attached hereto as Exhibit B.

Labor Protection:

49 CFR §1180.4(g)(i)

KO does not object to the imposition of the level of labor protection set forth 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).

Environmental and historic reporting requirements:

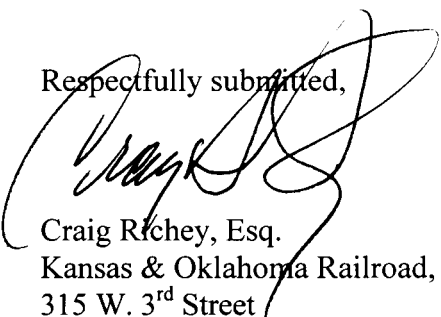
49 CFR §§ 1105.6, 1105.7, 1105.8

Environmental documentation normally need not be prepared for an acquisition of trackage rights. 49 CFR § 1105.6(c)(4); Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company, STB Finance Docket No. 33508 (served Sept. 14, 1999), *aff'd* Lee's Summit v. STB, 231 F.3d 39, 41 (D.C. Cir. 2000).

Historic reports are normally not required in connection with a carrier's acquisition of trackage rights that will not substantially change the level of maintenance of railroad property. 49 CFR § 1105.8(b)(3). As KO's acquisition of the trackage rights will not substantially lower the maintenance levels of the pertinent rail line, no historic report is required.

(Signature on following page)

Respectfully submitted,



Craig Richey, Esq.
Kansas & Oklahoma Railroad, Inc.
315 W. 3rd Street
Pittsburg, Kansas 66762
(620) 231-2230

Attorney for:

Kansas & Oklahoma Railroad, Inc.

Dated: August 5th, 2004

F:\99340\001\ttwg1015.3 notice exempt tr rts.doc

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

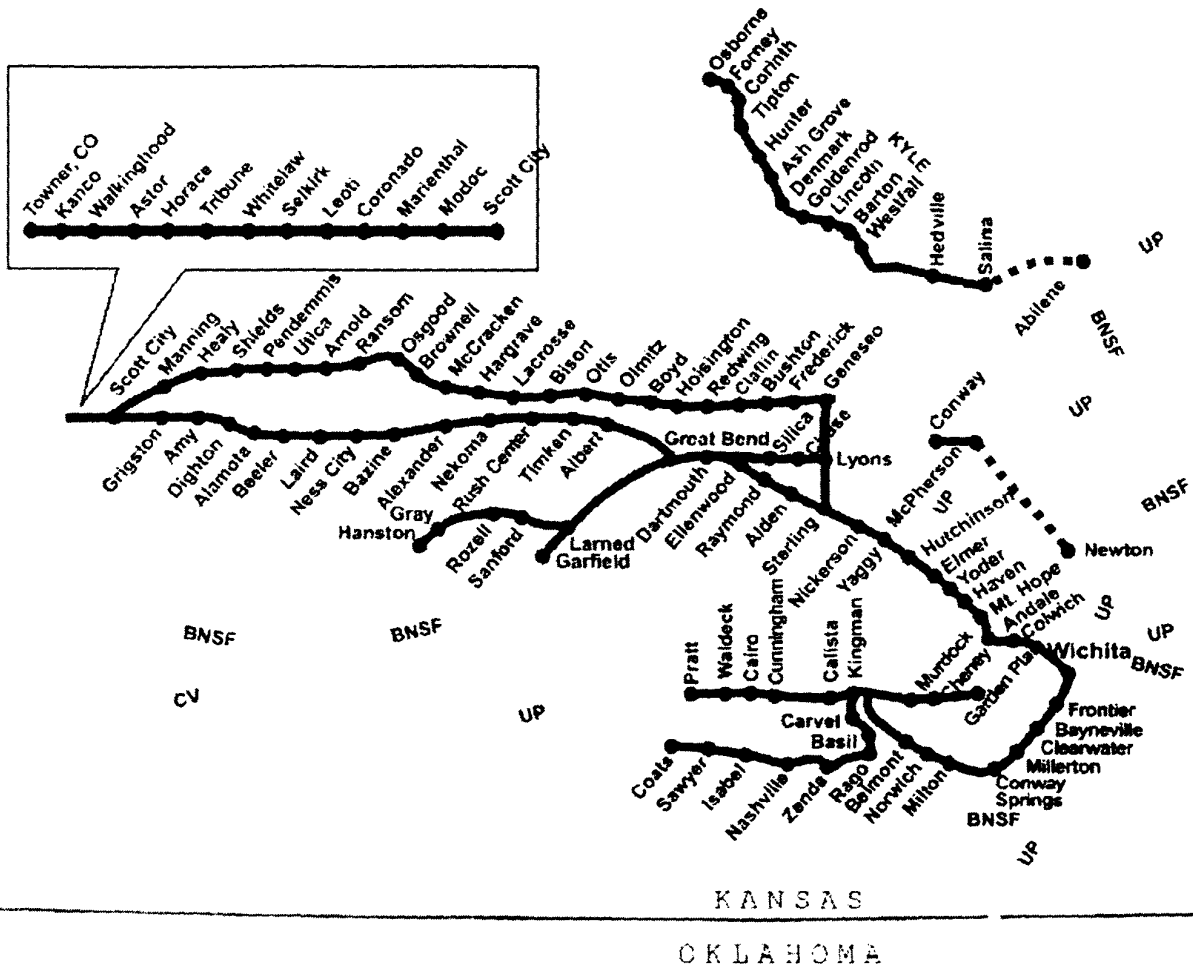
**KANSAS & OKLAHOMA RAILROAD, INC.
– TRACKAGE RIGHTS EXEMPTION –
ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY**

STB FINANCE DOCKET NO. 34535

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR § 1180.2(d)(7)**

EXHIBIT A

MAP



LEGEND:

Kansas & Oklahoma RR (—)

Trackage Rights VIA UP (.....)

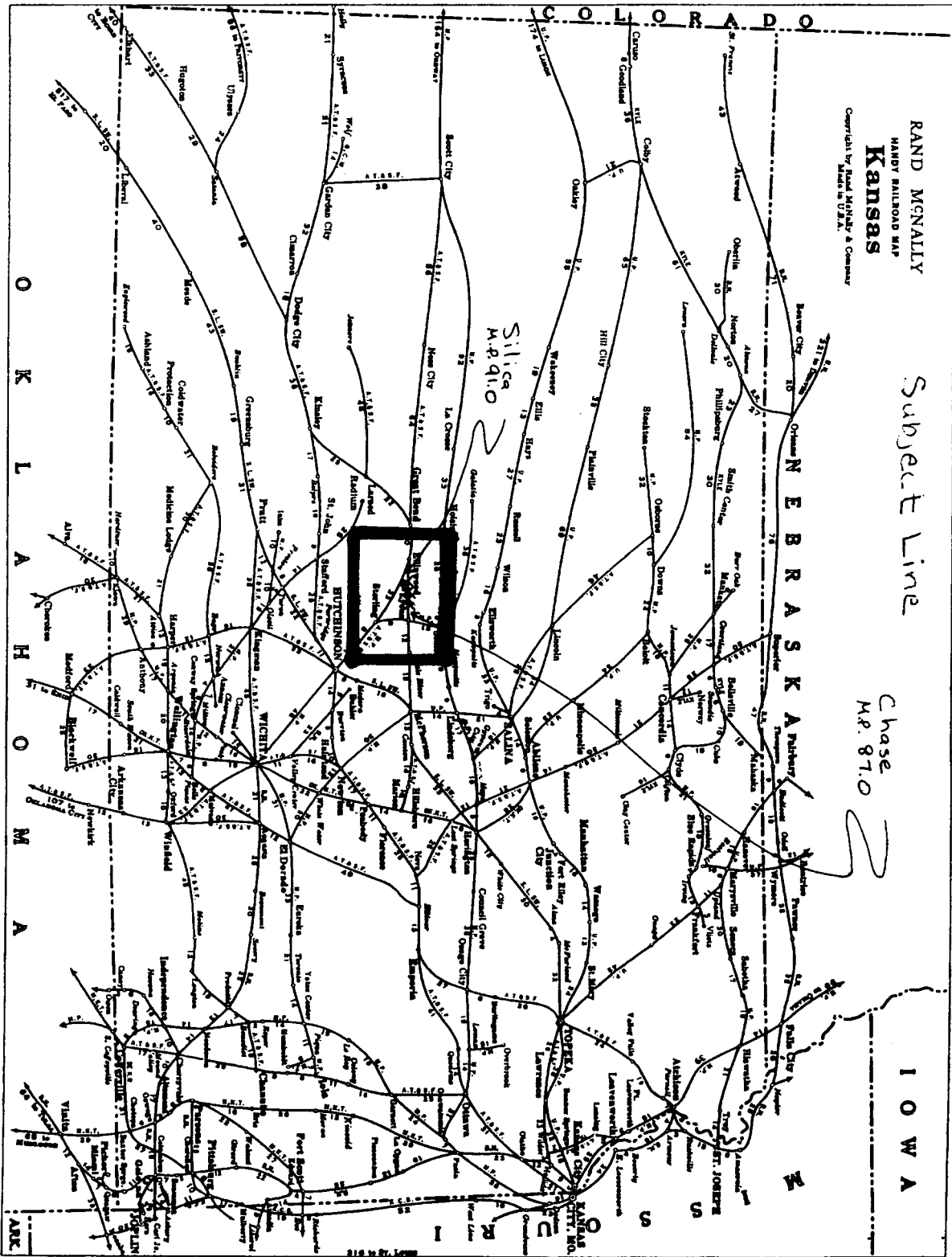
Interchanges

- UP - HUTCHISON, MCPHERSON, SALINA, WICHITA
- BNSF - ABILENE, HUTCHISON, NEWTON, WICHITA
- KYLE - OSBURNE
- SKOL - WICHITA

RAND McNALLY
HARDY RAILROAD MAP
Kansas
Copyright by Rand McNally & Company
Made in U.S.A.

Subject Line

Chase
M.P. 87.0



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**KANSAS & OKLAHOMA RAILROAD, INC.
– TRACKAGE RIGHTS EXEMPTION –
ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY**

STB FINANCE DOCKET NO. 34535

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR § 1180.2(d)(7)**

EXHIBIT B

TRACKAGE RIGHTS AGREEMENT

TRACKAGE RIGHTS AGREEMENT
between
ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION
COMPANY
and
KANSAS & OKLAHOMA RAILROAD, INC.

AGREEMENT

THIS AGREEMENT, entered into as of this 31st day of July 2004, by and between ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY ("APR") and KANSAS & OKLAHOMA RAILROAD, INC. ("K&O" or "USER").

WITNESSETH:

WHEREAS, the Surface Transportation Board, in its decision in STB Finance Docket No. 34451, *Atlantic & Pacific Railroad and Transportation Company – Lease and Operation Exemption – Kansas & Oklahoma Railroad* (not printed), served July 20, 2004, authorized APR to lease from K&O a 4-mile line of railroad;

WHEREAS, APR desires to grant K&O trackage rights over the 4-mile line of railroad; and

WHEREAS, K&O is agreeable to receiving the trackage rights to conduct operations over the line under the terms and conditions set forth in this Agreement.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. GRANT OF TRACKAGE RIGHTS

(a) Subject to the terms and conditions herein provided, APR hereby grants to K&O the right to operate its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of railroad (hereinafter referred to as the "Subject Trackage"):

Local trackage rights between milepost 87.0, at or near Chase, KS, and milepost 91.0, at or near Silica.

The term "local trackage rights", as used above, includes: (1) the right to operate trains over the line described; (2) the right to interchange with all carriers at all junctions on the line described; and (3) the right to serve all shippers, sidings, and team tracks located on the line described.

SECTION 2. USE OF SUBJECT TRACKAGE

(a) User's use of the Subject Trackage shall be in common with APR and any other user of the Subject Trackage, and APR's right to use the Subject Trackage shall not be diminished by this Agreement.

(b) User shall have the right to operate in either direction over the Subject Trackage and to store cars and other equipment on the Subject Trackage.

SECTION 3. COMPENSATION

In exchange for maintaining the Subject Trackage, User will not be required to remit to APR any payment for the use of the Subject Trackage.

SECTION 4. MAINTENANCE OF SUBJECT TRACKAGE

User shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. User shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated. APR does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted.

SECTION 5. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

Any additional connections to the Subject Trackage which may be required shall be constructed, maintained, repaired, and renewed by User at its sole cost, liability and expense.

SECTION 6. ADDITIONS, RETIREMENTS, AND ALTERATIONS

User, at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage 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 a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

SECTION 7. MANAGEMENT AND OPERATIONS

User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless APR and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon APR or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

SECTION 8. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

SECTION 9. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service, or wrecking train service, User shall perform such service, including the repair and restoration of road bed, track, and structures. The cost and expense thereof, including, without limitation, loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 10 hereof.

SECTION 10. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars, or equipment of, or in the account of User being involved, without the trains, locomotives, cars, or equipment of, or in the account of APR being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 9 hereof, and shall forever protect, defend, indemnify, and save harmless APR and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of APR or its directors, officers, agents, or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars, or equipment of, or in the account of APR being involved, without the trains, locomotives, cars, or equipment of, or in the account of User being involved, APR shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 9 hereof, and shall forever protect, defend, indemnify, and save harmless User and its director, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars, or equipment of, or in the account of both APR and User being involved, APR and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including, without limitation,

loading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including, without limitation, the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation, land, air, water, wildlife, and vegetation, so occurring shall be borne equally by APR and User, including, without limitation, all cost and expense referred to in Section 9 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its 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 indemnitee or its directors, officers, agents, or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or 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, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 9 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either User or APR, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said 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 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.

(f) Notwithstanding the provisions of Section 14(e) of this Agreement, for the purposes of this Section 10 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 11. INVESTIGATION

(a) Except as provided in Subsection (b) hereof, 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.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against APR or User which is the other'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.

(d) 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 in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, 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 Twenty Five Thousand Dollars (\$25,000).

(f) Nothing in this section shall modify or supersede the provisions of Section 10 hereof.

SECTION 12. TERMINATION

This Agreement shall terminate upon the termination of the Lease Agreement between APR and K&O dated July 31, 2004 ("Termination Date").

SECTION 13. ARBITRATION

Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and

expenses of its own witnesses, experts, and counsel. The compensation, costs, and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 14. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

(g) All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Kansas without regard to principles of conflicts of law.

SECTION 15. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that User 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 the APR, which consent will not be unreasonably withheld, except that the rights granted by this Agreement shall pass to the successor of substantially all of the property of User.

SECTION 16. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

If intended for APR:

ATTN: Carl Rowan
Atlantic & Pacific Railroad and Transportation Company
5101 River Road
Suite 207
Bethesda, MD 20816

With a copy to:

ATTN: Mark Sidman
Weiner Brodsky Sidman Kider PC
1300 19th St., NW
Washington, DC 20036

If intended for K&O:

Kansas & Oklahoma Railroad, Inc.
315 W. 3rd St.
Pittsburg, KS 66762

SECTION 17. COMMENCEMENT AND TERMINATION

(a) This Agreement shall take effect on July 31, 2004 ("Commencement Date"), and shall continue in full force and effect until the Termination Date.

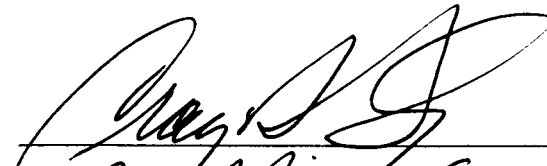
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written

**ATLANTIC & PACIFIC RAILROAD
AND TRANSPORTATION COMPANY**



Carl Rowan Jr. President

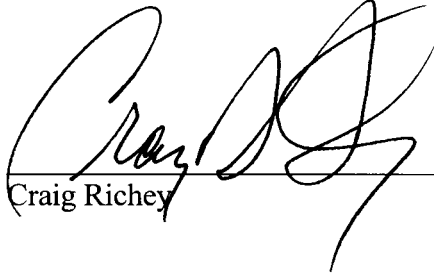
**KANSAS & OKLAHOMA RAILROAD,
INC.**



*Craig R. Riches, General Counsel
& Asst-Sec.*

VERIFICATION

I, Craig Richey, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file the foregoing pleading.



Craig Richey

Dated: August 5th, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**KANSAS & OKLAHOMA RAILROAD, INC.
– TRACKAGE RIGHTS EXEMPTION –
ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY**

STB FINANCE DOCKET NO. 34535

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR § 1180.2(d)(7)**

Atlantic & Pacific Railroad and Transportation Company has agreed to grant local and overhead trackage rights to Kansas & Oklahoma Railroad, Inc.. The trackage rights extend from the point of interchange with KO's main line at approximately milepost ("m.p.") 87.0 (at or near Chase, KS) to the point of interchange with KO's main line at approximately m.p. 91.0 (at or near Silica, KS). KO anticipates that it will exercise the subject trackage rights on or after the seventh day following filing of its notice of exemption with the Surface Transportation Board.

This notice is filed under § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(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