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August 5, 2004



Via E-Filing

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

ENTERED
Office of Proceedings

AUG 10 2004

Part of
Public Record

Re: Finance Docket No. 34526; Union Pacific Railroad Company -- Trackage
Rights Exemption -- The Burlington Northern and Santa Fe Railway
Company (Executed Agreement)

Dear Mr. Williams:

This refers to the Notice of Exemption filed July 23, 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 pursuant to STB's procedures for E-Filings as adopted in Ex Parte No. 651, effective April 8, 2004.

Very truly yours,

Robert T. Opal
General Commerce Counsel
Direct dial: 402/271-3072
Fax: 402/271-5610
E-Mail: rtopal@up.com

cc: (w/attachment)
Sarah Whitley Bailiff, Esq. -- BNSF
sarah.bailiff@bnsf.com

Law Department

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
fx. (402) 501-0127

This **THIRD SUPPLEMENTAL AGREEMENT** made this 30, day of July, 2004, ("Execution Date") between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, hereinafter called "UP".

WITNESSETH:

WHEREAS, BNSF owns and operates a line of railroad extending approximately 5.24 miles between Dover, MP 1406.3, and Sandpoint, Idaho, MP 1402.41, including to ES 49+88.2 (the "Joint Trackage"), as shown on Exhibit "A", which UP acquired the nonexclusive right to use under an agreement dated October 24, 1986, by and between Spokane International Railroad Company and Burlington Northern Railroad Company, UP's and BNSF's respective predecessors in interest (the "Original Agreement"), as amended by supplemental agreements dated September 11, 1992 (the "First Supplement"), and September 13, 2000 (the "Second Supplement") with the (the Original Agreement, the First Supplement and the Second Supplement are hereinafter collectively referred to as the "Agreement"); and

WHEREAS, UP has requested the right to provide maintenance for the Joint Trackage and BNSF is willing to allow UP to provide maintenance for the Joint Trackage under the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. Effective as of the Effective Date (as such term is defined in Section 8, below), BNSF hereby grants to UP, and UP hereby accepts from BNSF, the exclusive right and obligation to maintain, repair and renew the Joint Trackage, including all signal systems that are within the limits of the Joint Trackage, under the Agreement to FRA Class 2 standards.

UP shall also reimburse BNSF for any costs that BNSF may incur on property adjacent to the Joint Trackage as a result of UP's maintenance of the Joint Trackage, such as but not limited to, signal or communications costs.

2. Sections 3.A. and 3.B. of the Original Agreement, as amended, shall be deleted in their entirety and the following language substituted in their place:

As interest rental, UP agrees to pay BNSF monthly payments of \$6,250.00. Said amount may be subject to reasonable revision by BNSF upon thirty (30) days' written notice to UP prior to each anniversary of the Effective Date of this Agreement. In the event of early termination of this Agreement, prepaid payments shall be pro-rated.

3. Section 3.D. of the Original Agreement, as amended, shall be deleted in its entirety and the following language shall be substituted in its place:

Except as provided for below in the event of catastrophic expense, during the term of this Third Supplement, UP agrees to maintain the Joint Trackage for the use of both parties at its own sole cost and expense.

Catastrophic expense, to the extent it is required to maintain the Joint Trackage to FRA Class 2 standards, such as, but not limited to, that arising from flood, earthquake or acts of God, etc., in excess of One Hundred Thousand Dollars (\$100,000) for each occurrence, shall be billed and apportioned on the basis of the parties' GTMs operated over the Joint Trackage for the twelve (12) month period ending immediately prior to the first day of the month of occurrence.

4. The following sections of the Agreement's General Conditions are hereby amended by (a) deleting the word "Owner" and substituting in its place the word "User" and (b) deleting the word "User" and substituting in its place the word "Owner", wherever they appear in such sections: Sections 2.2, 2.3, 2.4, 2.5, 2.8, 2.11, 2.12, 2.13 and 2.14.
5. Each party shall be responsible for any labor claims of, and shall bear the cost of employee protection payable to, its own employees, and the employees of companies affiliated with it, to the extent resulting from the entry into or operation of this Third Supplemental Agreement.
6. Notwithstanding Section 2 of the Second Supplemental Agreement, all dispatching decisions by UP affecting the movement of Equipment on the Joint Trackage shall be made pursuant to the BNSF-UP/SP Dispatching Protocols then in effect between BNSF and UP.
7. Notwithstanding any provision to the contrary in the Agreement, BNSF agrees that UP is allowed to make the changes and improvements to the Joint Trackage, including connections, as such may be agreed to from time to time in writing by UP and BNSF's respective Engineering Departments. All changes, additions, capital maintenance, improvements or betterments shall be made solely at UP's cost and expense unless so requested to be made by BNSF.

The Automatic Equipment Identification ("AEI") reader located on BNSF's right of way on the Joint Trackage shall continue to be monitored and maintained by BNSF employees.

8. This Third Supplemental Agreement and any rights granted hereunder may not be assigned by UP in whole or in part without the prior written consent of BNSF except as such may occur as a result of a merger, corporate reorganization, consolidation, change of control or sale of all or substantially all of UP's assets. This Third Supplemental Agreement and the rights hereunder shall be binding upon the successors and permitted assigns of the parties.

9. This Third Supplemental Agreement shall become effective on the date that all necessary consent, approval or authority of the transaction contemplated herein has been secured from any appropriate governmental agency or agencies (the "Effective Date") and shall remain in effect for 25 years from the Execution Date. UP and BNSF shall each, at its respective cost and expense, initiate by appropriate application or petition, and thereafter diligently prosecute, proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of this Third Supplemental Agreement and the operations to be carried on or conducted by UP hereunder. UP and BNSF agree to cooperate fully to procure all such necessary consent, approval or authority.

Upon termination or expiration of this Third Supplement, for whatever reason, UP shall fully cooperate, consent, participate and jointly file with BNSF to obtain from the STB or other regulatory body having jurisdiction thereover authority to terminate and discontinue the rights granted herein in accordance with the terms of this Third Supplement. UP shall assist and support BNSF's filing and any associated proceedings to facilitate any termination or expiration, which shall include without limitation, furnishing information and executing and delivering any written instruments necessary to obtain such governmental authority. Such filing may, in BNSF's sole discretion, be prepared and made at any time after this Third Supplement has been terminated or expired. Such filing shall be coordinated by and at the expense of BNSF. Upon termination of the Third Supplement, the Original Agreement, as supplemented other than as by the Third Supplement, shall once again be in full force and effect. Any liability created under the Third Supplement shall survive any termination of the Third Supplement.

10. Other than as specifically modified herein, the Agreement shall remain in full force and effect.

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

**THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY**

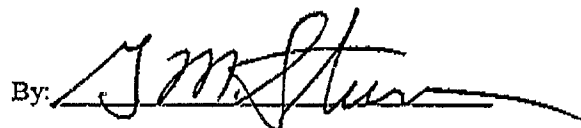
UNION PACIFIC RAILROAD COMPANY

By: 

Printed: Rollin Bredenberg

Title: VP Service Design

Date: 7/30/2004

By: 

Printed: George M. Sturm

Title: General Manager Joint Facilities

Date: July 30, 2004