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STREET
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MAY 19 2005

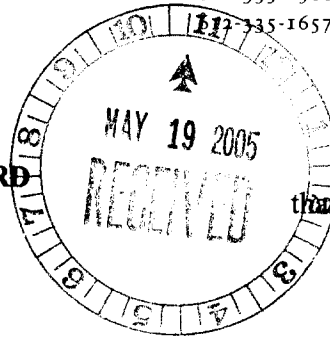
**SURFACE
TRANSPORTATION BOARD**

May 18, 2005

VIA FEDERAL EXPRESS OVERNIGHT

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

214018
150 SOUTH FIFTH STREET SUITE 2300
MINNEAPOLIS, MINNESOTA 55402
612-335-1500 MAIN
612-335-1657 FAX



Thanh G. Bui
612-335-7088
thanh.bui@leonard.com

**Re: Finance Docket No. 34705; Soo Line Railroad Company d/b/a Canadian Pacific
Railway – Temporary Trackage Rights Exemption – Union Pacific Railroad
Company**

Dear Secretary Williams:

Enclosed for filing in the above proceeding are the following materials:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the class exemption for temporary trackage rights, 49 C.F.R. § 1180.2(d)(8).
2. The original payment form in the amount of \$1,000.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV(40)(iv).
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please acknowledge receipt of the enclosed materials by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association

By

Thanh G. Bui

cc: Brian Aman, BNSF (w/ enclosures)
Sarah W. Bailiff, BNSF (w/ enclosures)
Chuck Hubbard, CPR (w/ enclosures)
Bill Tuttle, CPR (w/ enclosures)

ENTERED
Office of Proceedings

MAY 19 2005

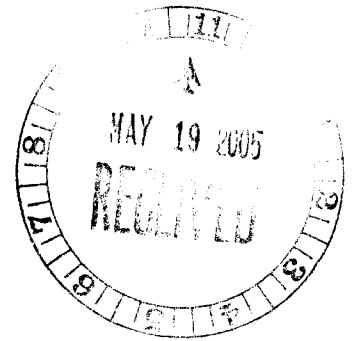
Part of
Public Record

FEE RECEIVED

MAY 19 2005

**SURFACE
TRANSPORTATION BOARD**
WWW.LEONARD.COM

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34705

**SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

**ENTERED
Office of Proceedings**

MAY 19 2005

**Part of
Public Record**

**SOO LINE RAILROAD COMPANY D/B/A
CANADIAN PACIFIC RAILWAY**

Thanh G. Bui
Attorney for Soo Line Railroad Company d/b/a
Canadian Pacific Railway
Leonard, Street and Deinard, PA
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
(612) 335-1500
(612) 335-1657 (fax)

FEE RECEIVED
MAY 19 2005
**SURFACE
TRANSPORTATION BOARD**

Dated and Filed: May 18, 2005

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**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34705

**SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CPR") 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 Ardoch, ND and Erskine, MN, a distance of approximately 84.6 miles. The temporary trackage rights are intended to permit CPR to bridge its train service while the main lines of its affiliated shortline are out of service due to certain programmed track, roadbed and structural maintenance as referred to in the agreement attached as Exhibit 2. The rights are to expire on or about July 31, 2005.

Under 49 C.F.R. § 1180.2(d)(8), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, (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 July 31, 2005, 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), CPR 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 CPR between Ardoch, ND and Erskine, MN, a distance of approximately 84.6 miles.

§ 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:

Soo Line Railroad Company d/b/a Canadian Pacific Railway
501 Marquette Avenue
Minneapolis, MN 55402

Questions regarding this transaction are to be addressed to the representatives named below:

Thanh G. Bui
Attorney for Soo Line Railroad Company d/b/a Canadian Pacific Railway
Leonard, Street and Deinard, PA
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
(612) 335-1500
(612) 335-1657 (fax)

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on June 1, 2005.

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

The trackage rights are temporary rights intended to permit CPR to bridge its train service while the main lines of its affiliated shortline are out of service due to certain programmed track, roadbed and structural maintenance. The rights are to expire on or about July 31, 2005.

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

CPR operates in the states of North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Indiana, Kentucky, and Michigan.

§ 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.

§ 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 R. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980). The applicable labor protection conditions for the discontinuance of temporary trackage rights are those imposed in Oregon Short Line Railroad Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979).

§ 1180.4(a)(2)(i) Caption Summary (Exhibit 3)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

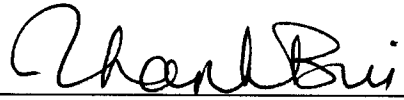
§ 1180.4(g)(3) Environmental Documentation

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).

Respectfully submitted,

**SOO LINE RAILROAD COMPANY D/B/A
CANADIAN PACIFIC RAILWAY**

By: 

Thanh G. Bui

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

Leonard, Street and Deinard, PA

150 South Fifth Street, Suite 2300

Minneapolis, Minnesota 55402

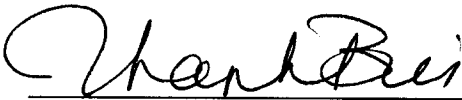
(612) 335-1500

(612) 335-1657 (fax)

VERIFICATION

Thanh G. Bui, Counsel for Soo Line Railroad Company d/b/a Canadian Pacific Railway,
under penalty of perjury, declares and verifies that she has read the foregoing Notice of
Exemption in Finance Docket No. 34705, knows the facts stated herein, and that said facts are
true as stated.

Dated: May 18, 2005.



Thanh G. Bui

SWORN TO BEFORE ME this
18th day of May, 2005

NOTARY PUBLIC

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.

Brian Aman
Director Joint Facility Contracts
Burlington Northern and Santa Fe Railway
Company
2500 Lou Menk Drive
P.O. Box 961039
Fort Worth, TX 76161-0039

Sarah W. Bailiff
Counsel
Burlington Northern and Santa Fe Railway
Company
2500 Lou Menk Drive
P.O. Box 961039
Fort Worth, TX 76161-0039

Dated at Minneapolis, MN this 18th day of May, 2005.



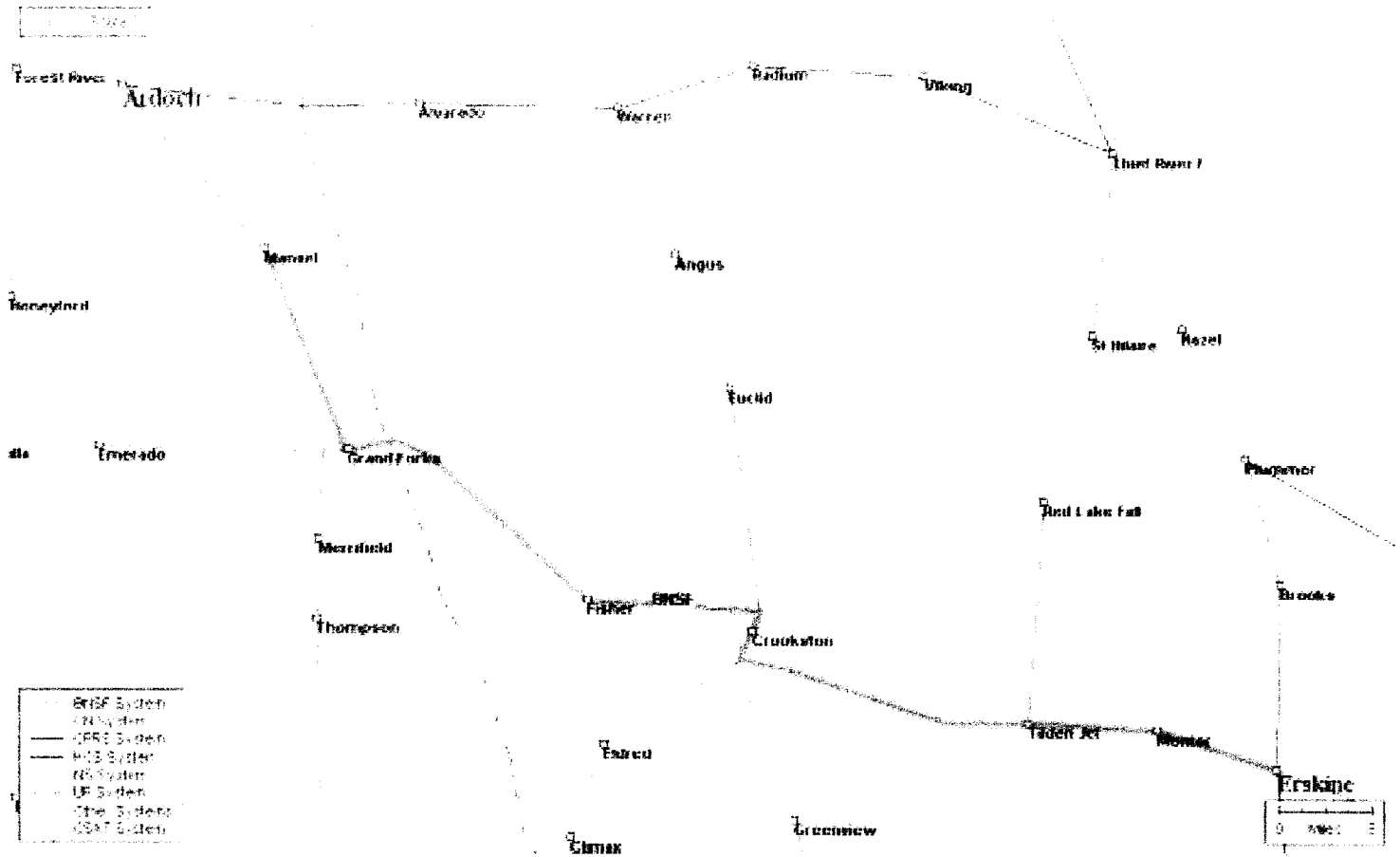
Thanh G. Bui

SWORN TO BEFORE ME this
18th day of May, 2005

NOTARY PUBLIC

Temporary Trackage Rights
Ardoch, ND to Erskine, MN
Miles = 84.6
Print Dated: 3/22/2005

EXHIBIT 1
FINANCE DOCKET NO. 34705



TEMPORARY TRACKAGE RIGHTS AGREEMENT
Ardoch, ND to Erskine, MN

THIS AGREEMENT, made and entered into this 23rd day of March, 2005 by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, hereinafter called "BNSF" or "Owner", and Soo Line Railroad, d.b.a. **CANADIAN PACIFIC RAILWAY**, hereinafter called "CPR" or "User".

WITNESSETH:

WHEREAS, BNSF is the owner and operator of certain lines of railroad extending between CPR connections over BNSF's railroad system; and

WHEREAS, CPR desires to obtain temporary overhead trackage rights on certain lines of BNSF's railroad, for the sole purpose of bridging its train service while the main lines of its affiliated shortline are out of service due to certain programmed track, roadbed and structural maintenance; 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 dated March 22, 2005 which depicts the portion of line of railroad of BNSF over which CPR will be granted temporary trackage rights hereinafter referred to as the "Joint Trackage" (as further defined in Exhibit "B" of this agreement, attached hereto and by this reference incorporated herein).

Section 2. **GRANT OF TRACKAGE RIGHTS.**

The General Conditions covering the grant of temporary bridge trackage rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this agreement shall arise, the provisions of this agreement shall prevail. Subject to the terms and conditions of Exhibit "B", BNSF grants to CPR and its affiliated shortline, Northern Plains Railroad (NPR) acting as agent for CPR the temporary nonexclusive right to use the Joint Trackage for the operation by their employees of the Equipment (as defined in Exhibit "B" of this agreement) that is in their account while moving

over the Joint Trackage in common with BNSF and such other railroad company or companies as BNSF has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered BNSF for the purpose of this agreement. Said grant of rights shall be on BNSF's trackage between Ardoch, ND and Erskine, MN a total distance of approximately 84.6 miles. The temporary trackage rights granted to BNSF herein shall begin on June 1, 2005 and shall terminate on July 31, 2005. Trains will be limited to 7,500 feet (including locomotives) and 1.0 HPT.

It is understood and agreed that:

(a) the movement of CPR/NPR trains, with CPR/NPR locomotives, and NPR crews shall require CPR to provide qualified pilots for NPR crews not qualified over the Joint Trackage.

(b) CPR will be responsible for the 1,000 mile inspection and fueling requirements of their trains and locomotives

(c) The CPR or its agent shall notify the BNSF Chief Dispatcher (817-234-6011) of the request for movement 8 hours prior to their scheduled departure time.

It is understood and agreed that neither CPR nor NPR shall have the right to:

(1) set out, pickup CPR or NPR cars or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or

(2) serve any industry, team or house track now existing or constructed in the future along the Joint Trackage which heretofore has not been served by CPR or its agent NPR prior to the date of this Agreement; or

(3) permit or admit any third party, other than mentioned in (a) above, the use of all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or on the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or on the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of BNSF; provided, however, that the foregoing shall not prevent CPR or NPR as the case may be, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this agreement.

Section 3. **MAINTENANCE AND OPERATION OF TRACKAGE.**

BNSF, at its expense, shall maintain the Joint Trackage in a manner permitting operation at no less than the track standard designated in the timetable in effect on the date of this agreement and shall permit CPR or NPR to operate at such speeds unless by mutual written agreement a different standard is provided. In the event that for, operating convenience, necessity or emergency, BNSF permits or directs CPR or NPR to use adjacent BNSF track and track connections between or beyond the terminal of the Joint Trackage as an alternative route, then and in such event, such trackage, track connections and appurtenances shall be deemed to be part of the Joint Trackage and shall be governed by all the provisions of this Agreement.

Section 4. **MEASUREMENT OF TRACKAGE RIGHTS TRAINS.**

BNSF and CPR agree that CPR's or its agents use of the temporary trackage rights granted herein by BNSF shall be for a maximum of two (2) trains in each direction per week. The temporary trackage rights granted to BNSF herein shall begin on June 1, 2005 and shall terminate on July 31, 2005. Trains shall be limited to 7,500 feet (including locomotives) and 1.0 HPT.

There may be situations where BNSF will not be able to allow CPR or NPR train operation on the Joint Trackage. In the event of refusal to grant such train operation on the Joint Trackage, neither CPR nor NPR shall have any claim of any nature against the BNSF by reason of such refusal.

Section 5. **CONNECTIONS AND ADDITIONS.**

The entire cost of construction of any connection necessary for the implementation of the Temporary Trackage Rights granted in this Agreement shall be at CPR's expense. BNSF, at CPR's expense, shall construct, own and maintain the part of any connection on BNSF's property.

Section 6. **COMPENSATION.**

As compensation for the temporary trackage rights CPR shall pay BNSF twenty-five (\$25.00) dollars per train mile plus pilot expense.

Section 7 **LIABILITY.**

Any liability for loss, damage, injury or death which arises from the operation under this Agreement shall be assumed, settled and paid as provided by Exhibit "B", General Conditions,

attached hereto.

Section 8. TERM AND TERMINATION.

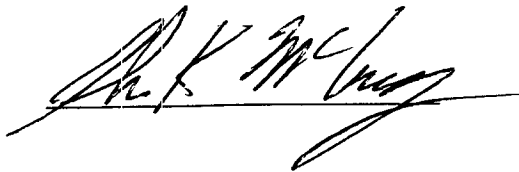
Subject to the provisions of Section 7.2, 7.3 and 7.4 of Exhibit "B", this agreement shall become effective upon the date CPR first commences operations over the Joint Trackage pursuant to this agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon terms and conditions satisfactory to CPR, and shall remain in effect for the period of time specified in Section 2 hereof.

Section 9. AGENCY OF NPR

Notwithstanding any provision to the contrary all obligations (including obligations of liability and indemnity) under this agreement shall remain the obligations of CPR notwithstanding the fact that certain rights granted hereunder may be exercised by NPR as authorized agent of CPR.

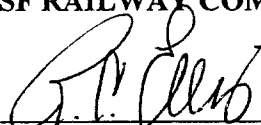
IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

WITNESS:

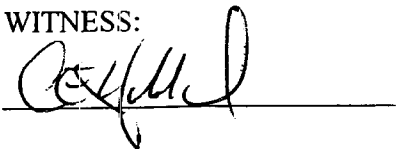


BNSF RAILWAY COMPANY

by:

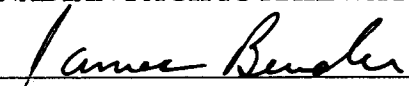

Title: GST

WITNESS:



CANADIAN PACIFIC RAILWAY

by:


Title: Dir. Interline Mgmt.

Temporary Trackage Rights
 Ardoch, ND to Erskine, MN
 Miles = 84.6
 Print Dated: 3/22/2005

EXHIBIT "A"

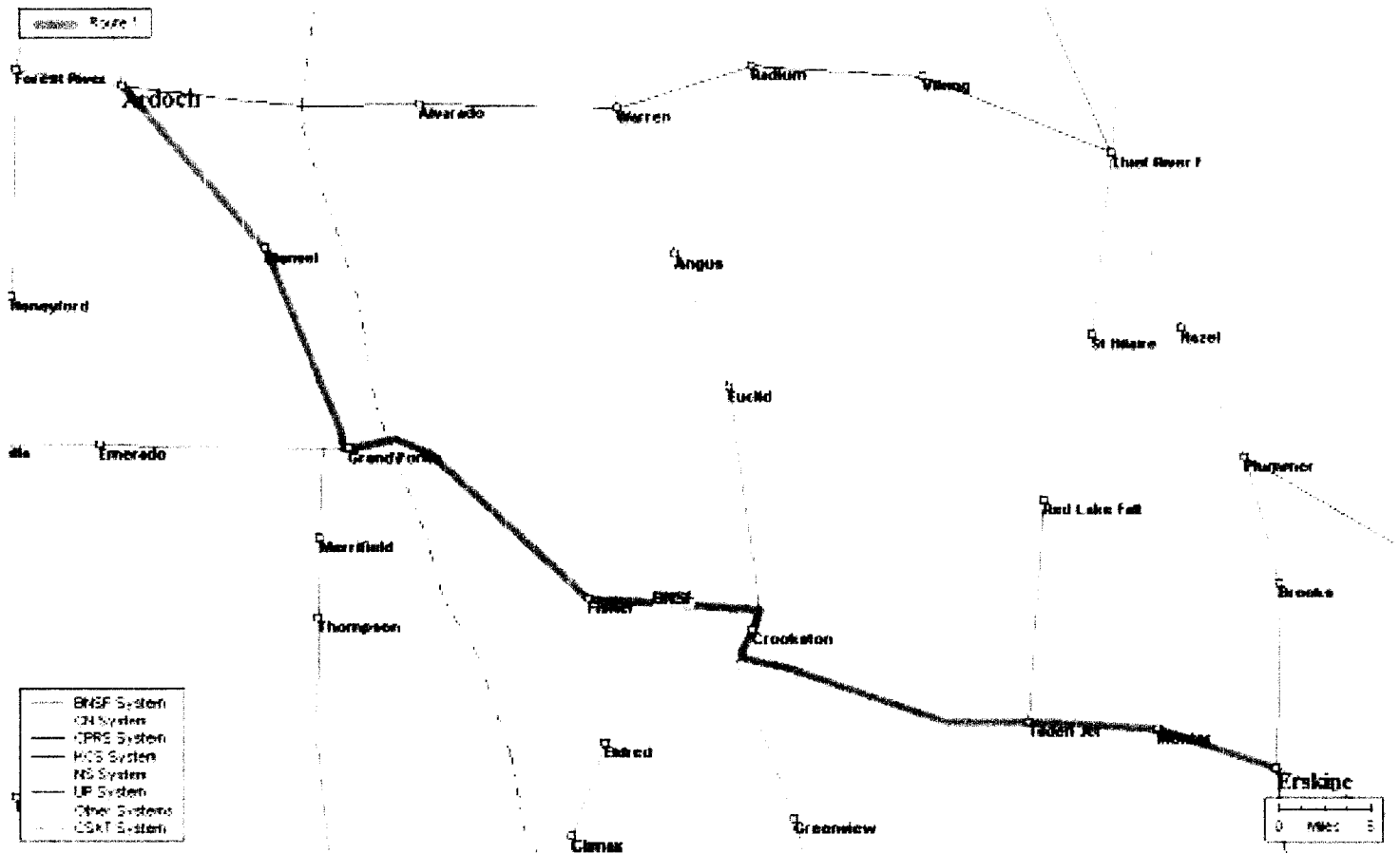


EXHIBIT "B"
GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement to which this Exhibit "B" is appended. The term "Agreement" will include this Exhibit "B".

1.2 "Owner" shall mean the party granting the right to use the Joint Trackage (as that term is hereinafter defined).

1.3 "User" shall mean the party granted by the Agreement the right to use the Joint Trackage including NPR acting as authorized agent of said party. Where more than one party is granted by the Agreement the right to use the Joint Trackage, User shall mean those parties collectively.

1.4 "Joint Trackage" shall mean trackage of Owner as described in the Agreement including necessary right-of-way and appurtenances and support facilities thereof, and all Changes in and/or Additions to (as that term is hereinafter defined), thereto now or in the future located as are required or desirable for the operation of the trains of the parties hereto.

1.5 "Equipment" shall mean trains, locomotives, cars, cabooses, vehicles, and machinery which are capable of being operated on railroad tracks, or operated on right-of-way for purpose of the maintenance or repair thereof.

1.6 "Annual" shall mean a calendar year.

1.7 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car, subject to modification by mutual agreement of the parties based upon changes in railroad technology.

1.8 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the Surface Transportation Board, (hereinafter called "STB"), or any replacement of such system prescribed by the applicable federal regulatory agency and used by the parties hereto.

1.9 "Changes in and/or Additions to" and "Additions" (including retirements) shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts as defined by Uniform System of Accounts for Railroad Companies as prescribed by the STB as of the effective date of the Agreement.

1.10 "Car Miles" shall mean the Car Miles operated by the parties over the Joint Trackage of Owner. For the purpose of counting Car Miles, Owner shall take the count of Car Miles for any third party which it may admit to the use of the Joint Trackage. Switch engines while performing yard service, switch movements on Joint Trackage while setting out and picking up

cars at intermediate stations, business cars and hy-rail and inspection cars, Equipment engaged in work service pertaining to maintenance or operation of and Changes in and/or Additions to the Joint Trackage shall not be counted. Each passenger car, freight car, and caboose shall be counted as one car. Each locomotive consist, regardless of the number of locomotive units in such consist, shall be counted as four (4) cars. Each platform in an articulated unit of two or more platforms shall be counted as one car.

1.11 "Car Mileage Proportion" shall mean the Car Miles operated by one party divided by the total car miles operated by all parties using the Joint Trackage, or a particular zone if the Joint Trackage is zoned, during the same time period.

1.12 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

Section 2. MAINTENANCE CHANGES IN AND/OR ADDITIONS, OPERATION AND CONTROL

2.1 User shall construct, maintain, repair, and renew, at its sole cost and expense, and shall own such portions of the tracks which connect the respective lines of the parties at the termini of the Joint Trackage as are located on the right-of-way of User and to the clearance point in right-of-way of Owner. Owner grants to User a license over that portion of Owner's property between right-of-way line and clearance point in order for User to maintain such trackage. Owner shall construct, maintain, repair, and renew, at the sole cost and expense of User, and shall own the portions of the track connections between said tracks of the parties hereto between the headblock and clearance point located on the right-of-way of Owner.

2.2 The construction, maintenance, repair, and renewal of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall make any Changes in and/or Additions to the Joint Trackage which may be required by law, and progressively during construction these shall become part of the Joint Trackage. Owner may make any Changes in and/or Additions to the Joint Trackage which Owner deems necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and these shall progressively during construction become part of the Joint Trackage. User may request Changes in and/or Additions to the Joint Trackage which User shall deem necessary or desirable for the safe, efficient, and economical use of the Joint Trackage by the parties, and Owner shall, if it concurs, construct the same upon such terms and conditions as may be agreed upon and they shall become part of the Joint Trackage. Owner shall make no retirement, withdrawal, elimination or disposal of any part of the Joint Trackage which would permanently or materially impair the usefulness thereof to User.

2.3 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Owner. Owner shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient, or proper for the operations thereof herein intended. Trains of the parties hereto shall be given equal dispatch, according to their class.

2.4 Owner shall employ all persons necessary to construct, operate, maintain, repair, and renew the Joint Trackage. Owner shall be bound to use only reasonable and customary care, skill, and diligence in the construction, operation, maintenance, repair, and renewal of the Joint Trackage and in managing same. The Joint Trackage shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the parties and of such other railroad companies as Owner has heretofore admitted or may hereafter admit to use of the Joint Trackage. In the event there are conditions from time to time which require emergency slow orders with respect to any location on the main tracks comprised in the Joint Trackage, Owner shall, with reasonable promptness, repair such conditions so as to permit the removal of such emergency slow orders. Notwithstanding anything to the contrary contained in the Agreement, User shall not, by reason of Owner's performing or failing or neglecting to perform any construction, operation, maintenance, repair, renewal, or management of the Joint Trackage, have or make against Owner any claim or demand for any loss, damage, destruction, injury, or death whatsoever resulting therefrom. User shall be given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.5 All officers, agents, and employees of Owner engaged in the management, operation, and maintenance of the Joint Trackage shall perform their duties in a fair, impartial, and just manner.

2.6 User, at its expense, shall install and maintain upon its Equipment such equipment, radios, or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Owner, for operation of trains upon the Joint Trackage. User will not, however, be required to install any equipment or devices not in use on Equipment of Owner. Owner shall consult with User prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

2.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage, or expense of any kind, caused by or resulting from such interruption or delay.

2.8 Owner may from time to time substitute any track or tracks for those delineated in the Agreement for use by User provided there shall at all time be afforded User a continuous route of equal utility for the operations of its Equipment within the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, the Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

2.9 Each party shall be responsible for furnishing, at its own expense, all labor, fuel, and train supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party hereto does furnish such labor, fuel, or train supplies to another party hereto, the party receiving same shall promptly, upon receipt of billing therefor, reimburse the party furnishing same for its reasonable costs thereof.

2.10 The operation by User on or along the Joint Trackage shall at all times be in accordance with the rules, instructions, and restrictions of Owner, but such rules, instructions, and restrictions shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.11 User shall be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.12 The total cost of clearing a derailment, cleaning up any Hazardous Materials released during such derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 4 of these General Conditions.

2.13 In the event of release of Hazardous Materials caused by faulty equipment or third parties, cleanup will be conducted and total costs resulting therefrom shall be borne by the parties as stated in Sections 2.11 and 2.12 of these General Conditions.

2.14 All employees of User engaged in or connected with the operations of User on or along the Joint Trackage shall be required to pass periodic examination on the rules of Owner related to the Joint Trackage, provided, with respect to such examinations that, upon request of User, owner shall qualify one or more of User's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Joint Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by owner to assist in operating trains of User over the Joint Trackage.

2.15 If any employee of User shall neglect, refuse, or fail to abide by Owner's rules, instructions, and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of Owner, be prohibited by User from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal, or failure on the part of any employee of User, then upon such notice presented in writing, owner and User shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses, and employees. Notice of such investigations to employees of User shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If, in the judgment of Owner, the result of such investigation warrants, such employee shall, upon written request of Owner, be withdrawn by User from service on the Joint Trackage, and User shall release and indemnify Owner from and against any and all claims and expenses because of such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such occurrence.

2.16 If any Equipment of User is bad ordered enroute on the Joint Trackage and it is necessary that it be set out, such bad ordered Equipment shall, after being promptly repaired, be promptly picked up by User. Unless otherwise agreed, Owner may, upon request of User and at User's expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner while in any manner so engaged or while enroute to or returning to Owner's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Owner after repairing such Equipment for User, move directly to perform service for Owner's benefit rather than return to Owner's terminal, then User's exclusive time and liability will end when owner's employees depart for work to be performed for Owner's benefit. In the case of such repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs. Owner shall then prepare and submit billing directly to and collect from the car owner for car-owner responsibility items as determined under said Interchange Rules. Owner shall also submit billing to and collect from User any charges for repair to freight cars that are car-owner responsibility items, as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor.

2.17 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission has been granted by Owner. The costs and expenses of clearing derailments and wrecks shall be at User's expense unless otherwise provided for in allocation of liability in Section 5 of this Exhibit "B".

2.18 In the event Equipment of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment, or any other cause not resulting from an accident or derailment, and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The costs and expenses of furnishing motive power or of rendering such other assistance shall be at User's expense.

2.19 In the event any accident, derailment, or wreck, hereinafter called "derailment" involving units on or in a train operated by User or for User by Owner carrying hazardous

materials, substances, or wastes, as defined pursuant to federal or state law, hereinafter called "Hazardous Materials" shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of User. User shall also advise the owner/shipper of the Hazardous Materials involved in the derailment, and Owner, immediately.

Unless otherwise agreed by the parties, Owner shall assume responsibility for cleaning up any release of such Hazardous Materials from User's cars in accordance with all federal, state, or local regulatory requirements. User may have representatives at the scene of the derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 4 of the General Conditions.

If Hazardous Materials must be transferred to undamaged cars, User shall perform the transfer, provided, however, that if the Hazardous Materials are in damaged cars that are blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

Section 3. BILLING DEFAULT

3.1 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing form shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by the Owner. User shall pay to Owner at the Office of the Treasurer of Owner or at such other location as Owner may from time to time designate, all the compensation and charges of every name and nature which in and by the Agreement User is required to pay in lawful money of the United States within sixty (60) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period.

3.2 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, and payments shall be made subject to subsequent adjustment; provided no exception to any bill 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 is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is required, after the last day of the calendar month in which the roadway completion report is made covering such project, with retirements and Additions being reflected as appropriate adjustments to valuation bases retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.3 So much of the books, accounts, and records of each party hereto as are related to the subject matter of the Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

All books, accounts, and records shall be maintained to furnish readily full information for each item in Accordance with 49 U.S.C. Section 11161 et seq. and the related regulations of the STB in 49 C.F.R. Part 1201, 1-3, et seq.

3.4 Should any amount become payable by Owner to User under the Agreement, the provisions of Section 3.1 through 3.3 of this Exhibit "B" shall apply with User as the billing party and Owner as the paying party.

3.5 Should User fail to make any payment when due which User is obligated to make under the Agreement, or fail in any other respect to perform as required under the Agreement, and such default shall continue for a period of six (6) months after notice in writing of such default is given by Owner to User, owner may at its election exclude User from the use of the Joint Trackage. Thereupon User shall surrender to Owner all said Joint Trackage and shall have no claim or demand upon it, by suit at law or otherwise, on account of said exclusion, provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed, pending the decision in such arbitration or litigation, cause of forfeiture hereunder.

Owner may waive such default subsequent, but no action of Owner in waiving any default shall affect any default of User or impair any rights of Owner resulting therefrom.

Section 4. COMPLIANCE WITH LAWS

4.1 User shall not treat, store or dispose of petroleum products or hazardous waste or hazardous substances, as defined in (i) the Resource Conservation and Recovery Act, as amended, or (ii) the Comprehensive Environmental Response Compensation and Liability Act, as amended, or (iii) subsequent legislation regulating discharges into the environment, on the Joint Trackage.

4.2 Responsibility for Environmental Claims (as defined in Section 4.6, below) as between the parties shall be borne as follows:

a) User shall be responsible for Environmental Claims to the extent they result from (i) the use of, or presence upon, the Joint Trackage by User or its contractors or invitees, or (ii) the negligence or willful misconduct of User, its contractors or invitees in operations on or over the Joint Trackage.

b) Owner shall be responsible for Environmental Claims to the extent that User is not responsible for such claims pursuant to Section 4.2.a, above.

4.3 Each party shall release the other party to the extent it is responsible for an Environmental Claim, and, to the extent of such responsibility, shall defend, indemnify, protect and save harmless such other party from and against such Environmental Claim and costs associated therewith, including, but not limited to, environmental consultant fees, Attorneys' fees and third party claims.

4.4 In the event of any incident, accident, derailment, or vehicle striking or being struck by Equipment (hereinafter "Derailment") involving Equipment operated by a party hereto carrying (i) hazardous materials, substances or wastes, as defined pursuant to Federal or State Law, or (ii) pollutants (hereinafter collectively referred to as "Hazardous Materials") shall occur on the Joint Trackage, any report required by Federal, State or local authorities shall be the responsibility of such party. Each party shall advise the other party immediately of the occurrence of a Derailment involving Equipment operated by the party carrying Hazardous Materials.

Unless otherwise agreed by the parties Owner shall undertake any Response Action (as defined in Section 4.5, below) in accordance with all Federal, State, or local regulatory requirements necessitated by a release of Hazardous Materials on Owner's right-of-way underlying the Joint Trackage from Equipment operated by either party hereto upon the occurrence of a Derailment. User shall have data or a representative available at the scene of any Derailment involving Equipment operated by it to provide information concerning the characteristics of Hazardous Materials released.

If following a Derailment upon the Joint Trackage Hazardous Materials must be transferred to undamaged cars or other vehicles, unless otherwise agreed by the parties, the party whose Equipment was involved in such Derailment shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged cars of a train of User that are blocking the Joint Trackage, Owner shall transfer the Hazardous Materials; provided further that transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.5 In the event any cleanup, response, removal or remediation of any environmental condition on the Joint Trackage is necessary (collectively referred to herein as "Response Action"), neither party shall be entitled to any damages, actual or consequential, by reason of the Response Action' 8 interference with the other party's use of the Joint Trackage. Owner and its contractors shall have full, unrestricted and unconditional access to the Joint Trackage for the purpose of completing or engaging in a Response Action for which Owner has any responsibility or, at Owner's option, a Response Action which Owner has undertaken should User fail to diligently pursue and complete such Response Action to the satisfaction of Owner; provided, however, that any Response Action (i) shall be undertaken and completed pursuant to a work plan (including a schedule) submitted to the other party for its review and, in the case of Owner, approval, and (ii) shall not unreasonably, in terms of duration or otherwise, restrict the other party's use of the Joint Trackage. Either party's completion of any of the other party's obligations hereunder shall not be deemed a waiver of such obligations under the Agreement. Owner shall have the right, but not the obligation, to conduct reasonable inspections of any Response Action of User and User shall provide Owner all information requested by Owner regarding any Response Action of User or any Environmental Claims for which User is responsible.

4.6 The term "Environmental Claim" means the direct costs of any cleanup, response, removal, remediation, natural resource damage, closure and/or post-closure required by any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Agreement.

4.7 The liability and indemnity provisions of this Section 4 shall continue in full force and effect regardless of whether this Agreement is terminated pursuant to any other provision, or the Joint Trackage is abandoned and vacated by User.

4.8 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Tracks or any other property damaged thereby shall be borne by the party or parties liable therefor pursuant to the allocation of liability in Section 5 of this Exhibit "B".

Section 5. LIABILITY

5.1 **General.** The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive Owner or User of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 5 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

5.2 **Definitions and Covenants.** The parties agree that for the purposes of this Section 5:

- (a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;
- (b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User while engaged in such

operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;

- (c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;
- (d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Changes in and/or Additions to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;
- (e) "Loss and/or Damage" shall mean injury to or death of any person, including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on, the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third-party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and/or Damage shall be reduced by any amount recovered from third parties;
- (f) Operating Employees of Owner whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;

- (g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;
- (h) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a third party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;
- (i) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 Reimbursement and Defense. The parties agree that:

- (a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgment shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;
- (b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by third party or parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

- (c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;
- (d) User shall provide written notice to Owner of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;
- (e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.
- (f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to third parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Owner shall investigate and defend such claim or suit; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;
- (g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or

permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 Wrecks and Derailment. The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailling Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed or caused such damage. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or Derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or Derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or Derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or Derailment.

5.5 Allocation.

- (a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault.
- (b) Loss and/or Damage to third parties (i.e., any person or entity other than a party hereto, a Sole Employee of either party, a Joint Employee or an invitee of either party) or their property, to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

(I) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, that party shall bear and pay all of such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, such Loss and/or Damage shall be borne and paid by those parties in accordance with a comparative negligence standard, whereby each such party shall bear and pay a portion of the Loss and/or Damage equal to the degree of causative fault or percentage of responsibility for the Loss and/or Damage attributable to that party without regard to laws limiting recovery if one party is more than fifty percent (50%) at fault.

(iii) Loss and/or Damage to third parties or Joint Employees occurring in such a way that it cannot be determined how such Loss and/or Damage came about shall be apportioned equally between the parties, provided that, without limitation, User shall not bear or incur any liability for claims, suits, demands, judgments,

losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

- (c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in subsection (a) of this Section 5.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable for the acts or omissions (negligent or otherwise) of any other party's Employee.

5.6 OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS; AND (3) INDEMNITY FOR ACTS OR ALLEGED ACTS OF GROSS NEGLIGENCE OF THE INDEMNIFIED PARTY, OR OTHER CONDUCT ON THE PART OF THE INDEMNIFIED PARTY FOR WHICH PUNITIVE DAMAGES MIGHT BE SOUGHT.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, then, upon the written request of either party setting forth the issue in dispute, such question or controversy shall be submitted to arbitration. If the parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within thirty (30) days after the party desiring such arbitration (the "Demanding Party") shall notify in writing the other party or parties to such dispute (the "Noticed Parties), such dispute shall be submitted to such single arbitrator. Otherwise, the Demanding Party shall appoint an arbitrator and notify the Noticed Parties in writing of such appointment. Within twenty (20) days after receipt of said notice, the Noticed Parties shall each appoint an arbitrator and notify the Demanding Party in writing of such

appointment. Should any Noticed Party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the Demanding Party and the arbitrators for the other Noticed Parties, if any, shall select one for the Noticed Party so failing and, if they cannot agree, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District in which the headquarters office of the Demanding Party is located upon application by any party after ten (10) days' written notice to all other parties. The arbitrators so chosen, if an even number, shall select one additional arbitrator, to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by said judge in the manner heretofore stated.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in said notice of demand for arbitration, shall give all 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 they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. 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 in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. 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.

Each party to the arbitration shall pay the 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.

6.2 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

Section 7. GOVERNMENTAL APPROVAL. ABANDONMENT

7.1 User shall, at its own 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 the Agreement and the operations to be carried on by User thereunder. Owner, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. User and Owner agree to cooperate fully to procure all such necessary consent, approval, or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of the Joint Trackage, Owner shall have no obligation hereunder to provide tracks for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such tracks for User's use.

7.3 Under the terms hereinafter stated, and to the extent that Owner may lawfully do so, owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Trackage by giving six (6) months prior written notice to User of its intention so to do.

If, at the time of such election, User is the only party (other than owner) having the right to use the Joint Trackage, Owner shall, concurrently with its Notice of Abandonment, and to the extent it is legally able to do so, give to User the option to purchase said Joint Trackage or the part or parts thereof to be abandoned at the net liquidation value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to owner the amount of money required to purchase said Joint Trackage to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Trackage so purchased by User. Contemporaneously with such payment, by instrument or instrument, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest, and equity, in and to the Joint Trackage so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to make appropriate application to secure all necessary governmental authority for such abandonment. User agrees that at such time it will concurrently make application for all necessary governmental authority for abandonment of its right to operate over the Joint Trackage. The Agreement shall terminate as to the section of Joint Trackage so abandoned upon the effective date of such approval by governmental authority.

7.4 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered, and renounced any and all right possessed by User to operate over that part of the Joint Trackage to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any

manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release, and discharge of User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner will remove from Owner's right-of-way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Trackage.

7.5 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 the Agreement. However, in the event the parties agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties shall enter into a separate written agreement providing that User shall bear all cost and expense for any such retained or additional employees, including, without limitation, all cost and expense associated with labor protection payments which are made by Owner and which would not have been incurred had such retention or provision of employees for the sole benefit of User not been required.

Section 8. OTHER CONSIDERATIONS

8.1 Nothing in the Agreement contained shall limit the right of Owner to admit other companies to the use of the Joint Trackage or any part thereof on such terms and conditions as are satisfactory to Owner, provided such admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in the Agreement. Except where expressly provided otherwise herein, such other companies presently or hereafter admitted to the use of the Joint Trackage or any part thereof by Owner shall be considered Owner for the purpose of the Agreement. User shall have no right to admit any person, firm, or corporation to the use of the Joint Trackage.

8.2 The Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successor lessees, and assigns, but no sale, assignment, mortgage, or lease by User of any interest or right given it under the Agreement, separate and apart from a corporate merger, sale, assignment, mortgage or lease of User's railroad in its entirety, shall be valid or binding without the prior written consent of Owner, which consent will not unreasonably be withheld.

8.3 The Agreement and each and every provision hereof is 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 person to recover by way of damages or otherwise against any Of the parties hereto.

8.4 All notices, demands, requested, or submissions Which are required or permitted to be given pursuant to the Agreement shall be given by either party to the other in writing by serving the same upon the Vice President of Operations of each company.

8.5 If any covenant or provision of the Agreement not material to the right of User to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of the Agreement.

8.6 In the event there shall be any conflict between the provisions of this Exhibit "B" and the Agreement, the provisions of the Agreement shall prevail.

8.7 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34705**

**SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

The Burlington Northern And Santa Fe Railway Company ("BNSF") has agreed to grant overhead, temporary trackage rights to Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CPR") on BNSF's line between Ardoch, ND and Erskine, MN, a distance of approximately 84.6 miles.

The temporary trackage rights will permit CPR to bridge its train service while the main lines of its affiliated shortline are out of service due to certain programmed track, roadbed and structural maintenance. The rights are to expire on or about July 31, 2005.

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