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ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

FINANCE DOCKET NO. 34771

Part of
Public Record



**UNION PACIFIC RAILROAD COMPANY AND WICHITA TERMINAL ASSOCIATION
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY**

FILED

2005

FAC.

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") and Wichita Terminal Association ("WTA") submit this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of (i) UP's acquisition of local trackage rights over a line of railroad of BNSF Railway Company between BNSF milepost 209.3 and BNSF milepost 212.5, a distance of approximately 3.2 miles in Wichita, KS (the "Joint Trackage"), and (ii) WTA's exercise of the trackage rights as UP's agent.

Under 49 C.F.R. § 1180.2(d)(7), 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, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this

filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

As required by 49 C.F.R. § 1180.4(i), UP and WTA provide the following information:

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

The transaction covered by this notice is (i) UP's acquisition of local trackage rights over a line of railroad of BNSF Railway Company between BNSF milepost 212.5, a distance of approximately 3.2 miles in Wichita, KS, as shown on the map attached hereto as Exhibit 1, for the purpose of accessing the Ralston Purina Plant (its successors and assigns) in Wichita, and (ii) WTA's exercise of the trackage rights as UP's agent.

§ 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 applicants are:

Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

Wichita Terminal Association
1537 Barwise Street
Wichita, Kansas 67214

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

Robert T. Opal
General Commerce Counsel
Union Pacific Railroad Company
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
Tel: (402) 544-3072
Fax: (402) 501-0132
E-Mail: rtopal@up.com

§ 1180.6(a)(1)(ii) Consummation Date

The agreements will be consummated on November 1, 2005.

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

The trackage rights are related to the City of Wichita's Central Rail Corridor Project. The purpose of the rights is to give UP access via BNSF to the Ralston-Purina Plant (its successors and assigns) in lieu of UP's existing access to this facility. Under its agreement with BNSF, UP may utilize the trackage rights either by providing service itself or by employing Wichita Terminal Association (WTA) as its agent. UP has elected to utilize WTA as its agent.

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

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin and Wyoming. WTA operates in the state of Kansas.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

Robert T. Opal
General Commerce Counsel
Union Pacific Railroad Company
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
Tel: (402) 544-3072
Fax: (402) 501-0132
E-Mail: rtopal@up.com

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§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

Drafts of the agreements containing the significant terms proposed are attached as Exhibit 2.¹

§ 1180.4(g)(1)(i) Labor Protection

The applicable labor protection conditions are those imposed in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

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

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

§ 1180.4(g)(3) Environmental Documentation

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

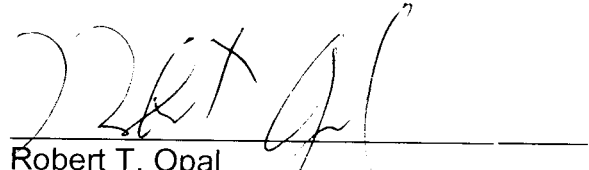
¹ Copies of the executed agreements will be provided to the Board after they are finalized and executed.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

WICHITA TERMINAL ASSOCIATION

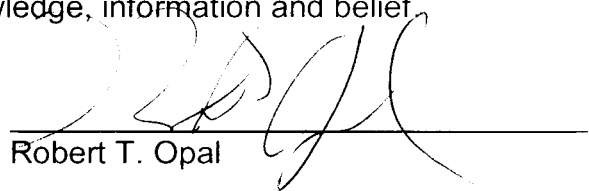
By:

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

Robert T. Opal
General Commerce Counsel
Union Pacific Railroad Company
1400 Douglas Street
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 501-0132 (FAX)
rtopal@up.com

VERIFICATION

Robert T. Opal, General Commerce Counsel of Union Pacific Railroad Company, declares under penalty of perjury that he has read the foregoing Notice of Exemption in Finance Docket No. 34771, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.


Robert T. Opal

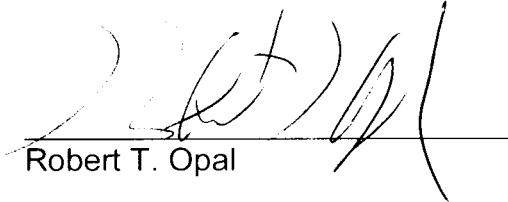
CERTIFICATE OF SERVICE

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

Sarah Whitley Bailiff, Esq.
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76161-2828

Danny R. Miller
General Manager/Superintendent
Wichita Terminal Association
1537 Barwise Street
Wichita, KS 67214

Dated at Omaha, Nebraska this 21st day of October, 2005


Robert T. Opal

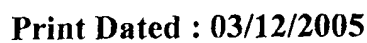


EXHIBIT 2

Finance Docket
No. 34771

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TRACKAGE RIGHTS AGREEMENT WICHITA, KANSAS

THIS AGREEMENT made as of this 21st day of October, 2005, between **BNSF RAILWAY COMPANY**, a Delaware corporation (hereinafter referred to as "Owner" or "BNSF") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter referred to as "User" or "UP").

WITNESSETH:

WHEREAS, BNSF owns a line of railroad consisting of track structure extending through Wichita Kansas, between BNSF'S "North Jct." Milepost 211.7 and BNSF's Milepost 209.5 on BNSF'S Arkansas City Subdivision, as shown by the solid line on the attached print dated March 12, 2005 (and identified as Exhibit "A") and further described in Section 1.6 of Exhibit "B", which shall be referred to herein as the "Joint Trackage"; and

WHEREAS, BNSF and UP are parties to an agreement dated June 29, 1932, as supplemented and amended, hereinafter called the "WTA Agreement", relating to the ownership, maintenance, and operation of jointly owned property, including tracks, in Wichita which is operated and maintained for by an Association formed for that purpose, known as the Wichita Terminal Association hereinafter called "WTA"; and

WHEREAS, The City of Wichita proposed construction of a central rail corridor between BNSF MP 209.3 and MP 212.5 to accommodate rail traffic within a single defined route in order to minimize rail/vehicle conflicts at numerous grade crossings and will entail removal of the railroad grade crossings at 18th Street; and

WHEREAS, UP desires to serve its customer, the Ralston Purina Plant (its successors and assigns), hereinafter called "RPP", located on UP's rail line severed by the central rail corridor by; (a) continuing to provide direct service to RPP via the Joint Trackage, or (b) employing WTA as its agent to serve RPP pursuant to the terms of the July 17, 2001 Supplement to the WTA Agreement hereinafter called the "2001 Supplement"; and

WHEREAS, UP desires to use the Joint Trackage for the sole purpose of overhead movement of its cars between UP's yard in Wichita, KS and BNSF connection to the RPP ; and

WHEREAS, BNSF and UP wish to set forth the terms and conditions under which said limited trackage rights may be exercised.

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

Section 1. General Conditions; Conflicts Between Provisions:

The General Conditions set forth in Exhibit "B" attached hereto is hereby made a part of this Agreement. All capitalized term used and not otherwise defined in this Agreement shall have the meaning ascribed to it in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

Section 2. UP's Rights:

(a) Subject to the terms and conditions contained herein, BNSF grants to UP the nonexclusive right to use the Joint Trackage for the limited operation of Equipment in UP's account 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 in the future admit to the joint use of all or part of the Joint Trackage (provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted in this Agreement), such other railroad company or companies to hereinafter be considered BNSF for the purposes of this Agreement, it being understood and agreed that UP shall not have the right to:

- (i) Switch industries or transload upon the Joint Trackage except RPP near MP 209.8 at Wichita; or
- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided in Sections 2.12, 2.13 and 2.14 of Exhibit B; or
- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Trackage, except RPP near MP 209.8 at Wichita; or
- (iv) Permit or admit any third party to the use of all or any portion of the Joint Trackage, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of UP; provided, however, that the foregoing shall not prevent UP, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement; or

- (v) Connect with any other railroad at any location along the Joint Trackage;
or
 - (vi) Build-in to or build out from any point on or along the Joint Trackage; or
 - (vii) Interchange with any other railroad or perform haulage services for any other railroad on or along the Joint Trackage.
- (b) The rights granted in Section 2 (a), above, shall be for rail traffic of all kinds and commodities, for a maximum of one switching movement per day ("Maximum"), permitting UP continued service to the RPP.
- (c) All cars handled by UP will remain in the car hire account of UP while on BNSF pursuant to these trackage rights;
- (d) BNSF will have the right on reasonable notice and at its expense to audit the compliance of UP with this agreement no more than once annually;
- (e) Notwithstanding the provisions of Section 2 (a) (iv), Owner shall permit User, at User's option, to employ WTA as User's agent to exercise the rights granted by Owner to User pursuant to this Agreement, with the following understandings:
- (i) The WTA shall fully comply with all terms and conditions of this Agreement, and User shall assume and guarantee all the liabilities arising from the agent's operations under this Agreement.

Section 3. Compensation:

- (a) For the use of the Joint Trackage in the operation of its trains there along and thereover, and in addition to other payments to be made under this Agreement UP shall remit to BNSF monthly, a sum of Five dollars (\$5.00) per Car. UP will provide a listing monthly to BNSF for all Cars moved by car initial, car number.
- (b) Subsection "a" of this Section 3 shall be adjusted annually (January 1 each year) by seventy five (75) percent of the AAR Railroad Cost Indexes, Rail Cost Recovery (RCR) Indexes, Annual Indexes of Chargeout Prices and Wage Rates (1977=100) Table A West Materials, prices, wage rates and supplements combined (excl. fuel) ("index"). In the event the Index is no longer maintained, the parties shall select a substantially similar Index and failing to agree on such an Index, the matter shall be referred to binding arbitration under Section 6 of the General Conditions. The ratio between the Index for the year immediately prior to any year in which an

increase or decrease is to be made effective and the Index for the year 1995 shall be developed, and the Car rate shall be increased or decreased in direct proportion to such ratio. In no case shall the adjusted Car rate be less than the base rate in Section 3 (a). The Car rate shall be deemed to include ordinary and programmed maintenance of the Joint Trackage, operating expenses, interest rental, depreciation and taxes.

Section 4. Liability:

Liability for all loss and damage of any kind whatsoever will be apportioned pursuant to the General Conditions, however, in the event WTA serves as UP's agent, liability will be apportioned pursuant to the 2001 Supplement and the WTA agreement.

Section 5. Retirement of Rail Crossings and Interlocking:

Upon the Effective Date of this Agreement and with establishment of UP service to RPP via the Joint Trackage, (i.) the railroad crossing diamonds at 18th Street pursuant to the July 15, 1883 agreement between UP and BNSF and (ii.) the appurtenant interlocking system pursuant to the December 30, 1950 interlocking agreement between UP, BNSF and WTA will be retired.

Section 6. Term:

Subject to and conditioned upon approval of the U.S. Department of Transportation Surface Transportation Board ("STB"), if required, this Agreement shall be effective as of the date STB approval is effective ("Effective Date"), and shall remain in effect for the Term stated in the General Conditions.

Section 7. Notices:

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP:

Executive Vice President-Operation
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

With a copy to:

General Manager Joint Facilities
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

If intended for BNSF:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

AVP Contracts and Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 7.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: *Jeffrey P. Hinnell*
Its: *Director Jt. Facilities*

THE BNSF RAILWAY COMPANY

By: _____

Its: _____

EXHIBITS “A” and “B”

Exhibits A and B to the trackage rights agreement will be filed with the final, executed copy of the agreement.



BUILDING AMERICA

Draft

October __, 2005

Danny R. Miller
General Manager/Superintendent
Wichita Terminal Association
1537 Barwise Street
Wichita, KS 67214

Subject: UP Trackage Rights on BNSF to serve Ralston

Dear Mr. Miller,

As you are aware the July 17, 2001 Supplement to the June 29, 1923 agreement relating to the ownership and operation of the Wichita Terminal Association ("WTA") provides for UP to utilize WTA as its agent to switch certain industries currently served by UP.

UP and BNSF have entered into a trackage rights agreement dated October __, 2005 (the "Trackage Rights Agreement"), wherein BNSF granted UP trackage rights on BNSF's Arkansas City Subdivision thereby permitting UP's access to its customer, Ralston Purina, to replace the access it is losing due to the removal of the 18th Street diamonds as part of the Wichita Central Corridor project. The Trackage Rights Agreement permits UP to utilize WTA as its agent to exercise the rights granted and to provide service to Ralston Purina.

Therefore, UP proposes to utilize WTA as its agent under the Trackage Rights Agreement to serve Ralston Purina pursuant to the terms of the 2001 Supplement. This agreement, if accepted by WTA, will be effective on November 1, 2005 and will remain in effect until a.) Termination of the 2001 Supplement or b.) The agreement is terminated by UP upon ninety (90) days written notification.

This letter is prepared in duplicate, if WTA is in agreement with its terms please sign both copies and return one to me.

Sincerely,

AGREED AND ACCEPTED:

WICHITA TERMINAL ASSOCIATION

By: _____

Title: _____

Date: _____

Jeffrey P. Grinnell
Director Joint Facilities

UNION PACIFIC RAILROAD
1400 Douglas Street, Stop 1180, Omaha, NE 68179
ph: (402) 544-4104 fax: (402) 501-0318

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34771**

**UNION PACIFIC RAILROAD COMPANY AND WICHITA TERMINAL ASSOCIATION
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY**

BNSF Railway Company ("BNSF") will agree to grant local trackage rights to Union Pacific Railroad Company ("UP") between BNSF milepost 209.3 and BNSF milepost 212.5, a distance of approximately 3.2 miles in Wichita, KS, and UP will agree to utilize Wichita Terminal Association ("WTA") as its agent to exercise the trackage rights. The underlying agreements will be consummated on November 1, 2005.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). 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