

UNION PACIFIC RAILROAD
1400 Douglas Street, Stop 1580
Omaha, Nebraska 68179

Jeremy M. Berman Assistant General Attorney

P 402 544 4735

April 4, 2013



234025

Via UPS Overnight

Ms Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D C. 20024

Re: STB Docket No. FD 35727; Union Pacific Railroad Company -- Trackage Rights Exemption -- Illinois Central Railroad Company

Dear Ms Brown

Enclosed for filing in the above proceeding are the following.

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C F R. § 1180 2(d)(7).
2. A payment form in the amount of \$1,200.00 for the filing fee required by 49 C F.R § 1002.2(f)
3. Twenty (20) unbound copies of the Exhibit 1 map.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

Very truly yours,


Jeremy M. Berman

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Office of Proceedings
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Part of
Public Record



234025

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 35727

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
ILLINOIS CENTRAL RAILROAD COMPANY**



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VERIFIED NOTICE OF EXEMPTION

FILED

APR - 5 2013

**SURFACE
TRANSPORTATION BOARD**

UNION PACIFIC RAILROAD COMPANY

Elisa B. Davies
Jeremy M. Berman
1400 Douglas Street
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(402) 544-4735
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jmberman@up.com

FEE RECEIVED
APR 5 - 2013
SURFACE
TRANSPORTATION BOARD

Dated: April 4, 2013
Filed: April 5, 2013

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 35727

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
ILLINOIS CENTRAL RAILROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7) for exemption of overhead trackage rights over approximately 8.0 miles between Milepost 21.0 (at or near Markham, IL) and Milepost 29.0 (at or near Matteson, IL) on the Illinois Central Railroad Company's (IC) Chicago Subdivision.

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 Notice are based on the written agreement attached hereto as Exhibit 2,¹ and are not filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

¹ A redacted copy of the agreement for the public record is attached as Exhibit 2. UP has filed a Motion for Protective Order along with an unredacted copy of the agreement to protect confidential commercial terms in the agreement.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), UP submits the following information:

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

The transaction covered by this Notice is the acquisition of overhead trackage rights by UP over approximately 8.0 miles of IC's trackage extending between Markham, Illinois (IC Milepost 21.0) and Matteson, Illinois (IC Milepost 29.0).

Through predecessor railroads, UP currently maintains trackage rights over approximately 60 miles of IC's rail line between milepost AO-36.7 near Joliet, IL, and milepost 21.0 near Markham, IL. See Chicago, Missouri & Western Railway Company – Exemption Acquisition and Operation – Illinois Central Gulf Railroad Company, Finance Docket No. 30911; Rio Grande Industries, Inc., et al. – Purchase and Trackage Rights – Chicago, Missouri & Western Railway Company Line Between St. Louis, MO And Chicago, IL, Finance Docket No. 31522. The trackage rights covered by this Notice will provide UP a connection with its current trackage rights over the Wisconsin Central Ltd. (formerly Elgin, Joliet and Eastern Railway Company) line² near Matteson, IL.

The trackage rights covered by this Notice are granted in a Supplemental Agreement to the 1990 agreement granting UP trackage rights between Joliet and Markham. The Supplemental Agreement also removes a numerical limitation found in the 1990 agreement, on the number of trains UP may operate over the track governed by the original agreement, and provides for capacity improvements on CN's Joliet Subdivision.

² See the Notice of Exemption filed by UP in Docket No. FD 35728 on April 5, 2013 for a description of these trackage rights.

§ 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.

Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

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

Jeremy Berman
1400 Douglas Street
Union Pacific Railroad Company
STOP 1580
Omaha, NE 68179
(402) 544-4735
(402) 501-3773 (FAX)
jberman@up.com

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on May 5, 2013

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

The overhead trackage rights covered by this Notice will provide UP with a connection to its existing trackage rights allowing UP to more efficiently route trains through the Chicago area.

§ 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.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

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

A redacted public copy of the executed trackage rights agreement is attached as Exhibit

2. An unredacted copy of the agreement is being filed separately along with a motion for protective order.

§ 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). UP's proposed trackage rights acquisition also is exempt from historic preservation reporting requirements. See 49 C.F.R. § 1105.8(b)(3).

Respectfully submitted,

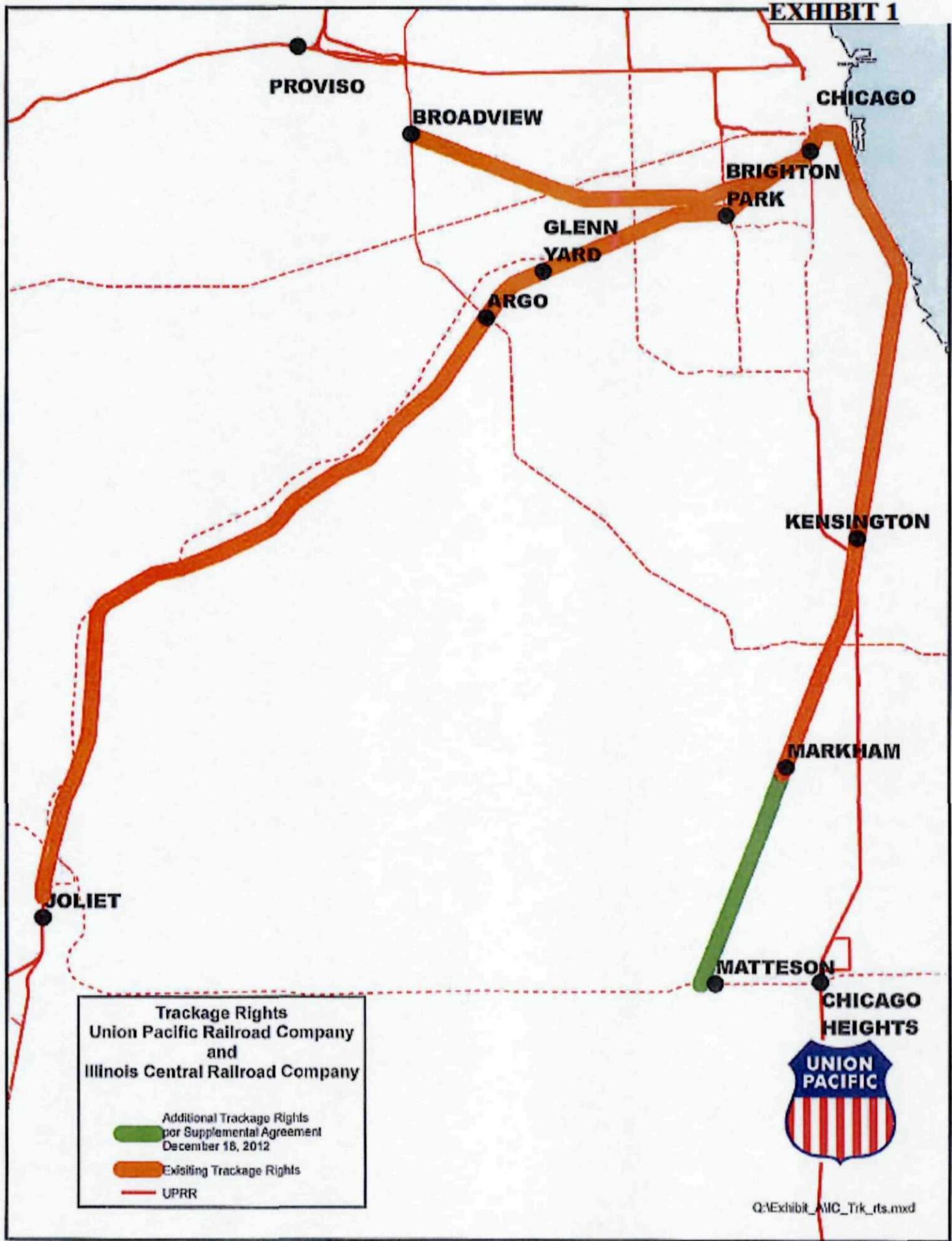
UNION PACIFIC RAILROAD COMPANY

By:

A handwritten signature in black ink, appearing to read "Jeremy M. Berman", written over a horizontal line.

Elisa B. Davies
Jeremy M. Berman
1400 Douglas Street
STOP 1580
Omaha, NE 68179
(402) 544-4735
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jmberman@up.com

EXHIBIT 1



"UP"

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, made and entered into this 18th day of December, 2012, by and between ILLINOIS CENTRAL RAILROAD COMPANY, an Illinois corporation (hereinafter called "Owner" or "CN") and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter called "User" or "UP");

RECITALS:

WHEREAS, the SPCSL Corp., (predecessor of the UP), and CN, made and entered into a certain agreement dated June 1, 1990, as amended and supplemented, which provides among other things for UP trains to operate on trackage rights between Joliet, Illinois and Markham Yard at Homewood, Illinois ("Joint Trackage") over CN's Joliet, Freeport and Chicago Subdivisions ("Trackage Rights Agreement"); and

WHEREAS, predecessor companies of the UP, and CN, made and entered into a certain agreement dated January 30, 1996, which provided among other things for the Parties to amend the Trackage Rights Agreement to provide among other things, for certain expanded rights, additional connections, train usage limitation, compensation for capital improvements, and adjustment to trackage rights compensation ("1996 Settlement Agreement") attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, UP desires to operate additional daily trackage rights trains over the Joint Trackage and Owner and User now desire to further supplement said Trackage Rights Agreement to, among other things as described below, further define the terms and conditions regarding User's exercise of its rights under the 1996 Settlement Agreement pursuant to the terms and conditions as agreed to hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the parties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to enter into this Supplemental Agreement subject to the terms and conditions contained herein;

1. Trackage Rights Settlement Terms.

No later than December 31, 2012, in satisfaction of and to extinguish all terms and conditions of Section 7 of the 1996 Settlement Agreement, UP shall pay to CN the amount of million at which time the train count restrictions defined in the 1996 Settlement Agreement are removed entirely and the trackage rights rate reset to per car mile (escalated as of January 1, 2012).

2. Additional Grant of Rights.

A new sub-paragraph is hereby added to Section 1 of the Trackage Rights Agreement whereby the definition of Joint Trackage shall also include the following track segment:

- Between Markham Yard at or near Milepost 21 and CN's connections at Matteson with the Elgin, Joliet and Eastern Railroad Company at or near Milepost 20, (including the western and eastern connecting tracks at Matteson), all on CN's Chicago Subdivision.

3. Planned Capacity Improvements.

In supplement to the Trackage Rights Agreement, CN hereby agrees to construct, at UP's sole cost and expense, the following capacity improvements on the Joliet Subdivision to accommodate additional UP trackage rights trains that UP desires to operate on the Joliet Subdivision:

- No. 15 universal crossover just west of Argo at approximately MP 13.10
- No. 20 universal crossover at approximately MP 19.40
- Single leg right hand No. 20 crossover from track #2 to track #1 at approximately MP 29.10

CN and UP mutually agree to monitor operations and performance of additional UP trains on the Joliet Subdivision after the improvements in Section 3 above are completed. Any additional capacity required to accommodate additional UP trains shall be at UP's sole cost and expense.

4. Argo Siding

At such time as the Argo siding on CN's Joliet Subdivision (approximately MP 13.1 to MP 14.8) is deemed necessary by UP, the siding will be constructed by CN at UP's sole cost and expense. CN will own, operate and dispatch the siding. In general, the primary purpose of the siding shall be for UP trains, however the siding is not reserved for UP's exclusive use and CN, or other tenants may use the siding in order to maximize the fluidity and flexibility of the line but no UP trains should be delayed if the siding is used for a non UP train.

5. Dispatching and Operation Protocols

At such time as the capacity improvements described in Section 3 above are completed and placed in service, and subject to the further limitations and requirements of this Supplemental Agreement:

- a) CN shall allow UP to operate additional trains on the Joint Trackage in accordance with slots to be defined and agreed upon in writing by the Parties.
- b) UP trains shall not exceed 10,000 feet in length, unless CN operating rules provide for additional train lengths.
- c) UP trackage rights trains shall be operated in accordance with all dispatching provisions in the Trackage Rights Agreement, however UP understands that the passenger train operation (Amtrak and Metra) shall be afforded priority. Further, CN does not guarantee or otherwise promise that operations over the Joint Trackage will not be interrupted.
- d) UP shall ensure that its trains; i) have a clear route (or available offline staging capacity) beyond the Joint Trackage; ii) are not staged, hold, stored, or parked on the Joint Trackage (except at the direction of CN or as provided in Section 4 above), or otherwise unreasonably interfere with the joint use of the Joint Trackage; iii) are staffed with qualified crews that have sufficient hours of service remaining to clear the Joint Trackage; and iv) restore all connection switches for mainline movement on and by CN.

6. Future Capacity Improvements

CN and UP agree that future capacity improvements on the Joint Trackage will be determined based on the following:

- a) CN and UP agree that incremental capacity improvements will be based on incremental trains projected over a reasonable time period.
- b) CN and UP agree to establish a base number of trains operating upon which capacity is measured. CN and UP agree that the base number of trains are as indicated in Table A below.

Table A
(to be completed in accordance with Section 6.d)
Trains per day on Joliet Subdivision

Subdivision	Base Number of CN Trains	Base Number of UP Trains	Base Number of Amtrak Trains	Base Number of Metra Trains
Joliet Sub				

- c) Upon completion of the improvements outlined in Section 3 above, CN and UP will review the operation and performance of additional UP trains, and any additional capacity required to accommodate UP trains shall be at UP sole cost and expense.
- d) Upon completion of the operations review and determination of additional capacity (if any) beyond that outlined in Section 3 is determined, the base number of trains operating by all users will be established as of that date and inserted into Table A above.
- e) In the future, for additional capacity, CN and UP will each project the number of incremental trains by year for next 3 years including incremental trains of all other third party users. CN and UP will then jointly agree to as to the incremental capacity required by year to handle the incremental trains as projected. The cost of the additional incremental capacity will then be allocated between CN, UP and any third party based on the ratio (or percent) of the number of CN, UP and third party incremental trains projected compared to the number of total incremental trains projected and as compared to the base in Table A.
- f) As a pricing mechanism, three years after completion of the incremental capacity project, CN and UP will compare the actual to projected incremental train usage and adjust/reimburse the incremental dollars contributed by CN, UP and any third party, as the case may be, to reflect the parties' actual incremental train usage as compared to the base.

7. Third Party Users.

If CN admits any additional trackage rights tenants to the Joint Trackage and/or if CN allows any current tenants to increase the frequency, class or speed of their operation, UP will not be responsible for the incremental capacity, if any, sufficient to offset all effects of their operations. However, UP will be responsible at its own expense for completion of the improvements in Section 3 and for any additional cost to accommodate UP trains prior to establishing the base. UP will also participate in the cost of any incremental capacity as provided in Section 6.

CN will assist third parties (including UP) in making reasonable efforts to be compensated for a share of any additional incremental capital that they may have invested in the line prior to increasing the number of trains by users other than CN. Compensation to such third parties will not be CN's responsibility, but the responsibility of the passenger agency or third-party trackage rights tenant. CN will in no way be limited from recovery from third parties of capex CN has previously made.

8. Performance Targets.

Subject to completion of the improvements described in Section 3, Owner and User agree to establish performance targets, provided however that CN does not guarantee or otherwise promise to provide any particular transit or running times over the Joint Trackage nor are there penalties associated with the train performance. Owner and User agree to establish quarterly joint performance reviews to discuss options for performance improvement and mutually agreeable adjustments to performance targets.

9. IDOT.

CN and UP will work together in planning for and in discussions and negotiations with the Illinois Department of Transportation (IDOT) as it may pertain to operation of additional passenger service on the Joliet Subdivision sponsored by IDOT including High Speed Passenger Rail service between Joliet and St. Louis on the UP. CN will do its own capacity analysis of its line to determine the necessary capacity improvements and CN shall coordinate all necessary improvements on the line.

10. Term and Termination.

This Supplemental Agreement shall be co-terminous with the Trackage Rights Agreement and any extension thereof.

11. Recitals.

The Recitals set forth above are hereby incorporated into the body of this Supplemental Agreement as if fully set forth herein.

12. Invalid Provision.

If any provision in this Supplemental Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Supplemental Agreement for each party remain valid, binding and enforceable.

13. Effect of Supplement.

Except as specifically modified by this Supplemental Agreement and the 1996 Settlement Agreement, all of the terms and conditions of the Trackage Rights Agreement shall apply. All capitalized terms used but not defined herein shall have the same meanings given to such terms in the Trackage Rights Agreement. Except as otherwise provided herein, any disputes arising or concerning the interpretation or implementation of this Supplemental Agreement shall be resolved pursuant to the terms of the dispute resolution procedures in the Trackage Rights Agreement.

14. Counterparts.

This Supplemental Agreement may be signed in counterparts, each of which shall be deemed an original, and when taken together shall constitute one document. The execution and delivery of facsimile and/or electronic mail copies of this Supplemental Agreement shall be deemed delivery of an original signature and effective as such.

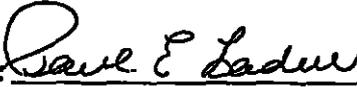
Except as specifically herein modified, all other terms and conditions of the Trackage Rights Agreement shall remain in full force and effect

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

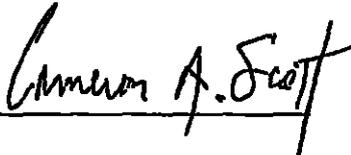
WITNESS:



ILLINOIS CENTRAL RAILROAD COMPANY

By:  _____

WITNESS:



UNION PACIFIC RAILROAD COMPANY

By:  _____

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 35727**

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
ILLINOIS CENTRAL RAILROAD COMPANY**

Illinois Central Railroad Company ("IC") has agreed to grant overhead trackage rights to Union Pacific Railroad Company ("UP") between Markham, Illinois (IC Milepost 21 0) and Matteson, Illinois (IC Milepost 29.0) on IC's Chicago Subdivision. The trackage rights will become effective on May 5, 2013.

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: April __, 2013

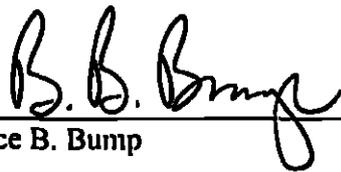
By the Board,

Rachael D. Campbell
Director, Office of Proceedings

VERIFICATION

I, Bryce B. Bump, Senior Director Joint Facilities of Union Pacific Railroad Company, under penalty of perjury, declare and verify that I have read the foregoing Notice of Exemption in Finance Docket No. 35727, know the facts stated therein, and believe that said facts are true as stated.

Dated: April 4, 2013


Bryce B. Bump

SUBSCRIBED AND SWORN TO
before me this 4th day
of April, ~~2012~~: 2013


Notary Public

My Commission expires:

