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April 16, 2012

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**SURFACE
TRANSPORTATION BOARD**

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Denver Rock Island Railroad v. Union Pacific Railroad Company
Docket No. NOR 42135

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket are an original and two copies of Union Pacific's Answer to Complaint to Commence Arbitration Under 49 C.F.R. § 1108.7(a). Also enclosed is a check for \$75.00 to cover the filing fee.

Please indicate receipt and filing by date-stamping the enclosed extra copy and returning it to our messenger.

Thank you for your assistance.

Sincerely,



Michael L. Rosenthal
Counsel for Union Pacific Railroad
Company

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**SURFACE
TRANSPORTATION BOARD**

Enclosures

cc: Thomas F. McFarland, Esq. (by overnight mail)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

APR 16 2012
RECORDED

DENVER ROCK ISLAND RAILROAD)
COMPANY,)
)
Complainant,)
)
v.)
)
UNION PACIFIC RAILROAD COMPANY,)
)
Defendant.)

Docket No. NOR 42135

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**ANSWER TO COMPLAINT TO COMMENCE ARBITRATION
UNDER 49 C.F.R. § 1108.7(a)**

Union Pacific Railroad Company (“UP”) hereby answers the complaint of Denver Rock Island Railroad Company (“DRIR”) filed on March 16, 2012. To the extent UP does not specifically admit an allegation in the complaint, that allegation is denied. UP’s answer is organized in accordance with the numbered headings that appear in DRIR’s complaint.

1. The Nature of the Dispute

To the extent the statements under the first numbered heading of the complaint consist of DRIR’s characterizations of DRIR’s dispute with UP and the relief DRIR seeks, no answer is required.

UP denies that DRIR needs additional trackage rights or haulage rights over UP in the Denver area to obtain access to BNSF Railway Company (“BNSF”) for traffic that originates or terminates at DRIR’s Silver Yard.

UP admits that it is a Class I rail carrier and a signatory to the Railroad Industry Agreement, dated September 10, 1998, as amended (“RIA”), and that DRIR attached a copy of

the RIA to the complaint as Appendix 2. UP lacks knowledge or information sufficient to form a belief as to whether DRIR is a signatory to the RIA. UP admits that if a dispute under the RIA's "New Routes" provision arises between Class I and Class III carriers that are signatories to the RIA and the dispute cannot be resolved through discussion and negotiation, the RIA provides that the dispute may be submitted to arbitration under the Surface Transportation Board's arbitration rules codified in 49 C.F.R. Part 1108.

UP denies that the dispute involved in DRIR's complaint falls within Example 7 of Exhibit C of the RIA. UP admits that DRIR's complaint does not involve a "Paper Barrier," as the term is used in the RIA. UP denies that DRIR's attempt to obtain trackage or haulage rights is consistent with the principles set forth in the "Routing Alternatives and Access" provisions in Section III or the "New Routes" provision in Section IV of the RIA.

2. The Complaint

1. UP admits that DRIR is a Class III rail carrier that provides service over three non-continuous rail lines in Denver, Colorado, area and that:

(a) DRIR has local trackage rights over a UP-owned line, commonly known as the Airlawn Lead, which allow DRIR to serve the Airlawn Industrial Park and a yard commonly known as Silver Yard;

(b) DRIR owns a line commonly known as the Stock Yard Lead, which allows DRIR to serve a yard commonly known as Denver Stockyards; and

(c) DRIR owns a line commonly known as the North Washington Industrial Park Lead, which allows DRIR to serve a yard commonly known as North Washington Park.

UP denies the remaining allegations in Paragraph 1.

2. UP admits that the Airlawn Lead, the Stock Yard Lead, and the North Washington Industrial Park Lead connect to UP's East Denver Belt Line, and that DRIR's only physical connection with BNSF is at Denver Stockyards via the Stock Yard Lead. UP denies the remaining allegations in Paragraph 2.

3. UP admits that the distance over UP's East Denver Belt Line between the switch for the Airlawn Lead and the switch for the Stock Yard Lead is less than one mile, and that DRIR could not operate its own trains from Silver Yard to the Stock Yard Lead without operating over UP-owned track. UP denies the remaining allegations in Paragraph 3.

4. UP admits that in 2005, UP acquired the Airlawn Lead from DRIR and granted DRIR local trackage rights over the Airlawn Lead, which allowed DRIR to provide rail service to shippers at Airlawn Industrial Park. UP denies the remaining allegations in Paragraph 4.

5. UP admits that trackage owned by DRIR near Airlawn Industrial Park is commonly known as Silver Yard and admits on information and belief that DRIR constructed Silver Yard after UP granted DRIR local trackage rights over the Airlawn Lead. UP lacks knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5.

6. UP lacks knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7. Denied.

8. UP admits that DRIR has requested trackage rights over UP's East Denver Belt Line between the switch for the Airlawn Lead and the switch for Stock Yard Lead, limited to traffic that originates or terminates at Silver Yard, so DRIR could physically interchange that

traffic with BNSF, and that UP has declined to grant such trackage rights. UP denies the remaining allegations in Paragraph 8.

9. UP admits that it has declined to grant DRIR trackage rights over UP's East Denver Belt Line and that UP presently transports traffic moving to or from Silver Yard between DRIR and BNSF for a stated switching charge per car. UP lacks knowledge of rates quoted by BNSF for traffic moving to or from Silver Yard. UP denies the remaining allegations in Paragraph 9.

10. UP lacks knowledge of BNSF's line-haul rates, DRIR's switching charges for traffic moving to or from Silver Yard (though UP is aware that DRIR has published certain charges in Freight Tariff DRIR 8000-B), and DRIR's view of "customary charges for trackage rights (or haulage rights)." UP denies the remaining allegations in Paragraph 10. By way of further response, UP alleges that it presently transports traffic moving to or from Silver Yard between DRIR and BNSF for a stated switching charge per car.

11. Denied. By way of further response, UP alleges that it had trackage rights over Denver & Rio Grande Western Railway Company ("DRGW") over a portion of what is now UP's East Denver Belt Line and that the amount of traffic over the portion of the East Denver Belt Line at issue in this case has greatly increased since UP acquired DRGW.

12. Denied.

13. Denied.

14. Denied.

15. Admitted.

16. Denied.

17. Denied.

3. Statutory Basis of the Board's Jurisdiction

DRIR's allegations under this heading state legal conclusions which require no response. UP denies that DRIR is entitled to relief under 49 U.S.C. § 11102(a) or the RIA.

4. Statement of the Issues as to Which Arbitration Is Sought

UP is willing to arbitrate whether it must grant the haulage rights requested by DRIR under the guidelines for "New Routes" contained in Exhibit C, Example 7 of the RIA.

5. Relief Sought

DRIR's statement of the relief that DRIR seeks requires no response.

6. Verification

UP admits that the verification of Thomaz Z. Mars is attached to DRIR's complaint as Appendix 5.

7. Willingness to Arbitrate and Be Bound

DRIR's statement of that DRIR is willing to arbitrate requires no response.

8. Demand That UP Arbitrate and Be Bound.

UP is prepared voluntarily to agree to arbitrate this matter pursuant to the arbitration rules at 49 C.F.R. Part 1108. However, under the RIA, a Class II or III rail carrier cannot obtain trackage rights over a Class I carrier in an arbitration over the "New Routes" provision of the RIA without the Class I carrier's consent, and UP does not consent to an arbitration that would result in an award of trackage rights to DRIR.

Respectfully submitted,

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April 16, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2012, I caused a copy of the Answer to Complaint to Commence Arbitration Under 49 C.F.R. § 1108.7(a) to be served by email and overnight mail, postage prepaid, on:

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Spencer F. Walters