

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



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**DOCKET NO. FD 35974 (Sub-No. 1)**

239484

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**UNION PACIFIC RAILROAD COMPANY  
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --  
BNSF RAILWAY COMPANY**

ENTERED  
Office of Proceedings  
November 3, 2015  
Part of  
Public Record

**PETITION FOR PARTIAL REVOCATION OF CLASS EXEMPTION  
TO PERMIT EXPIRATION OF TEMPORARY TRACKAGE RIGHTS**

UNION PACIFIC RAILROAD COMPANY

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**Dated:** October 30, 2015

FEE RECEIVED  
November 3, 2015  
SURFACE  
TRANSPORTATION BOARD

FILED  
November 3, 2015  
SURFACE  
TRANSPORTATION BOARD

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**PETITION FOR PARTIAL REVOCATION OF CLASS EXEMPTION  
TO PERMIT EXPIRATION OF TEMPORARY TRackage RIGHTS**

Pursuant to 49 U.S.C. § 10502(d) and the regulations of the Surface Transportation Board at 49 C.F.R. § 1121, Union Pacific Railroad Company ("UP") hereby seeks partial revocation of the Board's trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7),<sup>1</sup> in Docket No. FD 35974, as necessary to allow the UP/BNSF trackage rights arrangement which is the subject of this proceeding to expire, as expressly desired by both parties, on December 31, 2018. Revoking the class exemption as necessary to allow that action is consistent with the rail transportation policy of 49 U.S.C. § 10101 and will promote efficient and competitive rail service.

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<sup>1</sup> The trackage rights covered by the Notice of Exemption in this docket are intended to be temporary in nature. However, because the trackage rights are being granted for a term of more than one year the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8) does not apply.

## DISCUSSION

Concurrently with this Petition, UP is filing a Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(7), covering temporary trackage rights. The trackage rights apply over a line of BNSF Railway Company ("BNSF") between BNSF Milepost 579.3 near Mill Creek, OK to BNSF Milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles, and are intended to allow the movement of loaded and empty UP ballast trains to be used in UP maintenance of way projects. The Notice of Exemption filed concurrently herewith covers trackage rights that will expire on December 31, 2018.

While UP and BNSF expressly intend that these trackage rights are only temporary, trackage rights authorized under the § 1180.2(d)(7) class exemption normally would remain effective indefinitely, regardless of any durational contract provisions. See, e.g., STB Ex Parte No. 282 (Sub. No. 20) Railroad Consolidation Procedures -- Exemption for Temporary Trackage Rights (not printed), served February 10, 2003, pp. 2-3 ("Temporary Trackage Rights"). Accordingly, UP is filing this Petition to permit the temporary trackage rights to expire on December 31, 2018, as provided in the underlying trackage rights agreement.

The Board has routinely granted petitions to permit temporary trackage rights to expire (either as exemptions or partial revocations) similar to that sought herein, see, e.g., Temporary Trackage Rights, supra, p. 3; Docket No. FD 34554 (Sub-No. 1), Union Pacific Railroad Company -- Trackage Rights Exemption -- The Burlington Northern and Santa Fe Railway Company, served November 24, 2004; Docket No. FD 34242 (Sub. No. 1), The Burlington Northern and Santa Fe Railway Company -- Trackage Rights Exemption -- Union Pacific Railroad Company, served October 7, 2002.

Granting this Petition to permit the trackage rights to expire in accordance with the

underlying agreement would be entirely consistent with the exemption standards of 49 U.S.C. § 10502. Limiting the term of the trackage rights is consistent with the limited scope of the transaction covered by the Notice of Exemption in this docket and will have no adverse impact on shippers. The grant of this Petition is essential for the benefits of the trackage rights in this docket to be realized. As noted above, the temporary nature of the trackage rights is a key part of the agreement of the two carriers, and the trackage rights would not have been granted without this feature. Denial of this Petition would result in a loss of all these benefits, since the parties are unlikely to reach any other feasible arrangement which would allow UP to use BNSF's line.

The applicable labor protective conditions for the discontinuance of the temporary trackage rights pursuant to this petition are those imposed in Oregon Short Line Railroad Co. -- Abandonment – Goshen, 360 I.C.C. 91 (1979).

UP respectfully requests the Board to partially revoke the Class Exemption for trackage rights to the extent necessary to permit the trackage rights authorized in this docket to expire on or December 31, 2018, in accordance with the terms of the underlying trackage rights agreement.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

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**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.

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Dated at Omaha, Nebraska this <sup>2<sup>nd</sup></sup>~~30<sup>th</sup>~~ day of <sup>November</sup>~~October~~, 2015.

  
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Jeremy M. Berman