

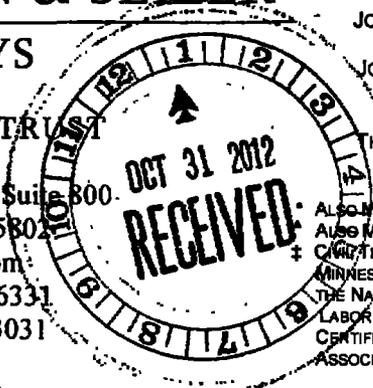
233284

JOHNSON, KILLEN & SELLER
ATTORNEYS

STEVEN J. SEILER *
JOHN N. NYS *
STEVEN C. FECKER
ROBERT J. ZALLAR
ROBERT C. PEARSON *
JAMES A. WADE * ‡
JOSEPH J. ROBY, JR. * ‡ ◊
NICHOLAS OSTAPENKO *
RICHARD J. LEIGHTON * ▲
JOSEPH V. FERGUSON *
ALOK VIDYARTHI
PAUL W. WOJCIAK *
ROY J. CHRISTENSEN *
JESSICA L. DURBIN
DIANA BOUSCHOR DODGE *
MICHELE L. MILLER
PETER J. RAUKAR

A TRADITION OF TRUTH
230 West Superior Street, Suite 800
Duluth, Minnesota 55802
www.duluthlaw.com
Telephone: 218-722-6331
Facsimile: 218-722-3031

JOHN J. KILLEN, RETIRED
JOSEPH B. JOHNSON
(1919-2000)
THOMAS A. CLURE
(1938-2010)



ALSO MEMBER OF WISCONSIN BAR
ALSO MEMBER OF NORTH DAKOTA BAR
COURT TRIAL SPECIALIST CERTIFIED BY THE
MINNESOTA STATE BAR ASSOCIATION AND
THE NATIONAL BOARD OF TRIAL ADVOCACY
LABOR & EMPLOYMENT LAW SPECIALIST
CERTIFIED BY THE MINNESOTA STATE BAR
ASSOCIATION

October 25, 2012

WRITER'S E-MAIL ADDRESS:
rchristensen@duluthlaw.com

Hon. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street SW, Room 100
Washington, DC 20024

ENTERED
Office of Proceedings

OCT 26 2012

Part of
Public Record

VIA OVERNIGHT DELIVERY

Re: Northern Plains Railroad, Inc. – Temporary Trackage Rights Exemption
Soo Line Railroad Company
STB Finance Docket No. 35690

Dear Chief Brown:

Please find enclosed for filing the unbound original and ten bound copies of the Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(8) for the temporary trackage rights agreement between Northern Plains Railroad, Inc. and Soo Line Railroad Company. I also enclose a check in the amount of \$1,200 as the filing fee pursuant to 49 C.F.R. § 1002.2.

Enclosed please find a duplicate copy of this letter and self-addressed stamped envelope to be stamped with the filing date and returned to the undersigned. Please contact me if you have any questions.

Yours very truly,

Roy J. Christensen
Roy J. Christensen

RJC/clg Enc.

FEE RECEIVED

OCT 26 2012

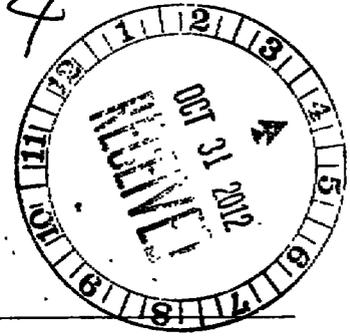
SURFACE
TRANSPORTATION BOARD

FILED

OCT 26 2012

SURFACE
TRANSPORTATION BOARD

233284



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35690

NORTHERN PLAINS RAILROAD, INC.
— TEMPORARY TRackage RIGHTS EXEMPTION —
SOO LINE RAILROAD COMPANY

ENTERED
Office of Proceedings

OCT 26 2012

Part of
Public Record

VERIFIED NOTICE OF EXEMPTION

FILED

OCT 26 2012

SURFACE
TRANSPORTATION BOARD

NORTHERN PLAINS RAILROAD, INC.

Johnson, Killen & Seiler, P.A.
By Roy J. Christensen, Esq.
230 W. Superior Street, Suite 800
Duluth, MN 55802
Phone: 218-722-6331
Fax: 218-722-3031

Attorneys for Northern Plains Railroad, Inc.

Date: October 25, 2012

FILED
OCT 26 2012
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35690

NORTHERN PLAINS RAILROAD, INC.
— TEMPORARY TRACKAGE RIGHTS EXEMPTION —
SOO LINE RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION

Northern Plains Railroad, Inc. ("NPR") files this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(8) for temporary overhead trackage rights over Soo Line Railroad Company's ("Soo Line") line of railroad between Mahnomon, MN and Erskine, MN, a distance of approximately 24.7 miles. The temporary trackage rights are intended to permit NPR to bridge its train service during certain programmed track, roadbed and structural maintenance on trackage it leases from Soo Line. The parties have entered into a written agreement, which is not sought in a responsive application in a rail consolidation proceeding.

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 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 December 24, 2012, which is less than one year from the effective date of the exemption. Accordingly, the § 1180.2(d)(8) exemption is applicable.

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

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

The transaction covered by this notice is NPR's acquisition of temporary, overhead trackage rights over Soo Line's line of railroad between Mahnomen, MN and Erskine, MN, a distance of approximately 24.7 miles.

§ 1180.6(a)(1)(i) Summary of the Proposed Transaction

The temporary rights intended to permit NPR to bridge its train service during certain programmed track, roadbed and structural maintenance on trackage it leases from Soo Line. The trackage rights will expire on or about December 24, 2012. Applicant NPR's business address is 100 Railroad Avenue, P.O. Box 38, Fordville, ND 58231. Questions regarding this transaction can be addressed to counsel identified on the cover page of the notice.

§ 1180.6(a)(1)(ii) Consummation Date

The transaction will be consummated on the later of November 26, 2012 or the effective date of this Notice of Exemption.

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

See response to Section 1180.6(a)(1)(i).

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

NPR owns or operates on lines of railroad in the states of North Dakota and Minnesota.

§ 1180.6(a)(6) Map

A map is provided as **Exhibit 1**.

§ 1180.6(a)(7)(ii) Agreement

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).

§ 1180.4(a)(2)(i) Caption Summary

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

§ 1180.4(g)(3) Environmental and Historical Documentation

Environmental and historical documentation are not required for this transaction. As provided in 49 C.F.R. § 1105.6(c)(4) and 49 C.F.R. § 1105.8(b)(3), trackage rights do not require preparation of environmental and historical reports and documentation.

Dated: October 25, 2012

JOHNSON, KILLEN & SEILER, P.A.

By 
Roy J. Christensen

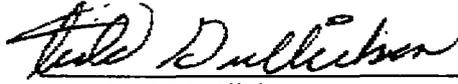
230 W. Superior Street, Suite 800
Duluth, MN 55802
Phone: 218-722-6331

Counsel for Northern Plains Railroad, Inc.

VERIFICATION

STATE OF NORTH DAKOTA

Todd Gullickson, being duly sworn, deposes and says that he has read the foregoing Notice of Exemption and that the contents thereof are true and correct to the best of his knowledge and belief.



Todd Gullickson

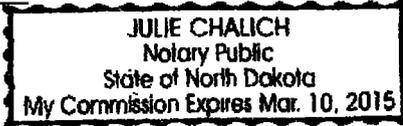
Subscribed and sworn to before me
this 5th day of October, 2012.

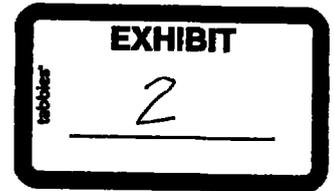


NOTARY PUBLIC

My Commission expires:

March 10, 2015





TEMPORARY RELOCATION of EXCHANGE AGREEMENT

THIS AGREEMENT dated October 4th, 2012 is made between SOO LINE RAILROAD COMPANY, d/b/a Canadian Pacific Railway, 120 South 6th Street, Suite 500, Minneapolis, MN 55402 ("CPR"); and Northern Plains Railroad, P.O. Box 38, Devils Lake, North Dakota 58231("NPR"); sometimes individually referred to herein as a "Party" or sometimes collectively referred to herein as the "Parties".

RECITALS:

A. The Parties are signatory to an Exchange and Operating Agreement dated July 19, 2010, ("Renewed Agreement") providing for the operation of certain CPR trackage in North Dakota and Minnesota and the exchange between the Parties of locomotives, trains, loaded and empty cars, other rolling stock and other maintenance-of-way motorized equipment, ("Equipment"); and

B. Section 1.1 of the Renewed Agreement provides for the exchange of Equipment, between the Parties upon tracks at both Kenmare, ND and Thief River Falls, MN locations; and

C. The exchange location at Thief River Falls, MN will be temporarily inaccessible for traffic originating or terminating west of Oslo MN during the period November 26th through December 24th, 2012 resulting from bridge work performed at Oslo, MN; and

D. CPR has entered into a temporary trackage rights agreement with the BNSF Railway ("BNSF") governing the use of trackage by CPR and/or its

appointed agent between Ardoch, ND and Erskine, MN, ("BNSF Agreement");
and

E. To avoid any service disruptions, NPR and CPR desire to enter into a temporary Equipment exchange agreement.

NOW, THEREFORE, in consideration of the mutual and dependent covenants by each of the Parties, CPR and NPR agree as follows.

Section 1. Use of Trackage to Reach Exchange Locations

1.1 During the term of the bridge outage at Oslo, MN CPR hereby consents and grants NPR overhead bridge rights to use the following segments of track for the sole purpose of exchanging Equipment with CPR, hereinafter referred to as "Approach Trackage."

(a) CPR's connection with the BNSF at mp 364.2 +/- south and east to the BNSF connection with CPR's Detroit Lakes Subdivision at mp 273.9 +/-, ("BNSF Controlled Track"); and

(b) CPR trackage between mp 273.9 +/- on the Detroit Lakes Subdivision to the siding located at mp 249.1 +/- at Mahnomen, MN; and

(c) sufficient tail room as required south of Mahnomen, MN to effectuate exchange of Equipment with CPR.

(d) trackage in subparagraph Section 1.1(b) and (c) in addition to Exchange Tracks, defined below, shall be controlled by CPR.

Section 2. Temporary Exchange Tracks

2.1 CPR grants to NPR the use of the side tracks between mp 250.2 +/- and 249.1 +/- (Mahnomen), as well as mp 251.0 +/- and 252.8 +/- (Marsh Creek) on CPR's Detroit Lakes Subdivision for the sole purpose of exchanging Equipment on the exchange trackage, hereinafter referred to as "Exchange Tracks."

2.2 Approach Trackage and Exchange Tracks shall hereinafter collectively be referred to as Subject Trackage.

2.3 CPR shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair, renewal and management of the Subject Trackage; and CPR shall not, by reason of CPR's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Subject Trackage, have or make against the other Party any claim or demand for loss, damage, destruction, injury or death whatsoever resulting from CPR or its agents performance, failure or neglect, except as otherwise provided in Section 3 herein. In the event the use of the Subject Trackage is interrupted or traffic delayed at any time for any cause, neither Party shall have any claim against the other Party for liability for loss or damage of any kind resulting from interruption or delay of interchange.

2.3 CPR shall furnish and cause to be furnished the employees and all necessary supplies for the maintenance and operation for the Subject Trackage.

2.4 NPR's use of the Subject Trackage shall, at all times, be under the control of CPR or BNSF as the case may be and in accordance with its safety rules, regulations and restrictions of that particular railroad.

Section 3. EXCHANGE RULES

3.1 Except as otherwise contained herein, the rules of the AAR governing exchange of rail cars between railroads shall govern the exchange of Equipment under this Agreement.

3.2 Equipment shall be considered exchanged to NPR at the time NPR departs Mahnomen or Marsh Creek siding with said Equipment. Equipment shall be considered exchanged to CPR when NPR's locomotive is uncoupled from the Equipment on the designated Exchange Tracks at Mahnomen, and Marsh Creek MN. Neither Party shall use the Exchange Tracks in such manner as to interfere unreasonably with the use thereof by the other Party. Each Party, in placing or leaving Equipment hereunder, shall place or leave such Equipment in such position as not to obstruct or interfere unreasonably with the operation or use of any other trackage.

3.3 The exchange times defined in Section 3.2 shall apply so long as this Temporary Exchange Agreement is in effect.

3.4 Upon request by CPR, NPR agrees, providing time permits, to block the cars exchanged to CPR at no additional charge to CPR. The identification of the blocks may vary and will be determined on a day-to-day basis and communicated through the normal discussions between the Parties concerning operating coordination.

Section 4. LIABILITY

4.1 Definitions:

(a) Whenever the expression "Loss or Damage" is used in this Section, it means all costs, liabilities, judgments, fines, fees (including without limitation reasonable attorneys' fees and disbursements) and expenses of any nature arising from or in connection with death of or injury to persons, including

without limitation employees of the Parties, or damage to or destruction of property including without limitation property (including Equipment as defined in this Section 4.1(b) of the Parties and the Subject Trackage, in connection with operations of the Parties over or on the Subject Trackage.

(b) For purposes of this Agreement, "Equipment" shall be defined as trains, locomotives, cars, cabooses and maintenance-of-way motorized equipment being exchanged, and inspection vehicles including the equipment owned by others for which a Party to this Agreement is responsible.

4.2 Both Parties shall undertake to comply with all applicable federal, state and local laws and regulations, and all applicable rules, regulations or orders promulgated by any governmental or regulatory body. If any failure of either Party to comply with such laws, rules, regulations or orders in respect to the use of the Subject Trackage results in any fine, penalty, cost or charge being assessed against the other Party, the Party which failed to comply agrees to reimburse promptly and indemnify the other Party for such amount.

4.3 The employees of each Party while operating, maintaining or directing operations along the Subject Trackage shall not be considered as joint employees but will remain the sole employees of said Party.

4.4 Notwithstanding anything else contained in this Agreement, liability for Loss or Damage resulting from the use of, or in connection with the presence of the Equipment or property of either Party on the Subject Trackage, shall be borne and paid by the Parties as follows:

(a) Except as contained in 4.4(b), Loss and Damage, wherever said Loss and Damage occurs, involving Equipment placed or operated on the Subject Trackage for the purpose of exchange shall be the responsibility of the Party last operating on the Subject Trackage prior to the occurrence of the Loss

and Damage. Operating shall mean coupling, uncoupling, switching, moving, or otherwise handling the cars being exchanged.

(b) When the same shall involve the Equipment of both of the Parties when operating on the Subject Trackage at the same time for the purpose of exchange, Loss or Damage shall be borne by each Party as to its own employees, property, or property in its custody (except for damage to the Subject Trackage and any trackage connecting thereto). Claims for loss, injury or damage to third party persons or property and the Subject Trackage and trackage connecting thereto shall be borne equally by the Parties involved.

4.5 Each Party agrees that it will pay for all loss, damage and expense, the risk of which it has herein assumed, the judgment of any court to the contrary notwithstanding, and will forever indemnify and save harmless the other Party, its successors and assigns, from such judgment.

4.6 In the event that both Parties hereto shall be liable under this Agreement for any Loss or Damage, claim, demand, suit settled by voluntary payment of money or valuable consideration by one of the Parties, the settling Party shall obtain a valid and enforceable release from liability releasing both NPR and Soo Line Railroad Company, Soo Line Corporation and their parents, specifically naming Canadian Pacific Limited, their subsidiaries and affiliated companies, their successors and assigns, and all of their directors, officers, agents and employees, etc. Neither Party shall make any such compromise or settlement in excess of five thousand dollars (\$5,000) without authority of the other Party having liability, but any settlement made by one Party in consideration of five thousand dollars (\$5,000) or less shall be a settlement releasing all liability of both Parties and shall be binding upon all Parties.

4.7 In case a lawsuit or lawsuits shall be commenced against either Party for or on account of any damage or injury for which the other Party would be solely or jointly liable under this Agreement, the Party thus sued shall give the other Party timely written notice of the pendency of such suit, and thereupon the Party so notified shall assume or join in the defense thereof, and if the Party so notified is solely liable therefore under this Agreement, such Party shall save harmless the Party so sued from all loss, cost and expense so determined by this Agreement. Neither Party shall be concluded by judgment against the other Party unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified, and said opportunity to join in the defense of the action has been afforded, the Party so notified shall to the extent of its liability under this Agreement be concluded by such judgment.

4.8 If the Equipment of CPR is wrecked or derailed on the Subject Trackage, CPR shall pick up or arrange to have picked up and remove said Equipment and the derailling Party shall bear the entire cost of such service unless otherwise provided for under Section 4.4; provided, however, that in the case of a minor derailment where the derailed Equipment can be promptly rerailed by the use of rerailers or blocking by NPR's employees, NPR may rerail such Equipment at its sole expense unless specifically advised to the contrary.

Section 5. INSURANCE

5.1 NPR shall carry full and adequate insurance coverage for the operation of the NPR, in amounts and in such form as required under this Section. NPR will furnish CPR an accurate copy of each policy of insurance obtained pursuant to the requirements of this Section. Without limiting the generality of the foregoing, NPR shall acquire and maintain at all times during the term of this Agreement, in a form with an insurance company acceptable to CPR, comprehensive

general liability insurance covering railroad operations and extending to cover the contractual obligations assumed by NPR under this Agreement. Such insurance shall provide a limit of not less than ten million dollars (\$10,000,000.00) for any one occurrence with a self-insured retention or deductible not to exceed seventy five thousand dollars (\$75,000.00). In the event NPR fails to maintain the levels of insurance coverage required in this Section 5, or fails to properly notify CPR of said coverage, after giving NPR written notice of noncompliance and ten (10) days from receipt of such notice within which to comply, CPR may require NPR to suspend operations over the Subject Trackage until such time as NPR complies with the insurance requirements hereunder.

5.2 All insurance required of NPR under this Section shall show Soo Line Railroad Company as an additional insured and contain a cross liability endorsement evidencing that such insurance shall apply to NPR and CPR in the same manner and to the same extent as if a separate policy had been issued to each. Such coverage shall include all employees and shall insure named Insureds against workmen's compensation and Federal Employer's Liability Act claims. CPR agrees to cooperate in the processing of insurance claims.

5.3 If the insurance procured by NPR, pursuant to this Section, takes the form of a claims-made policy and is canceled or allowed to expire without renewal, NPR will provide evidence of insurance that provides per occurrence and annual aggregate limits not less than those required pursuant to Section 5.1. Such coverage must be retroactive to the original inception date of the canceled or non-renewed policy. NPR further agrees promptly to give CPR written notice, if required, of any claim or notice of incident or notice of potential claim that is required to be reported to its liability insurance company.

5.4 NPR shall acquire and maintain All Risks property insurance on locomotives, trains, cars, cabooses and property of others in their care, custody and control. CPR shall be provided with a waiver of subrogation whereby NPR's Insurer agrees to waive any rights, remedies or relief, to which they might become entitled by subrogation against Soo Line, and a loss payable clause in favor of NPR and CPR as their respective interests may appear.

5.5 If Insurer or NPR proposes to cancel or modify the terms and conditions of any policy of insurance NPR is required to provide under this Section, NPR will notify CPR in writing at least thirty (30) days in advance of the effective date of any such policy cancellation or modification. In the case of cancellation or modification by a NPR insurance carrier, NPR agrees to notify CPR as soon as possible after receipt of notice by NPR.

5.6 It is further provided and agreed that any insurance coverage acquired hereunder by either Party will in no manner restrict or limit the liabilities assumed by said Party hereunder.

5.7 Notification required by the Parties in this Section shall be made to the following:

To CPR:

Director of Interline
401 9th Avenue SW
Gulf Canada Square, Suite 500
Calgary, Alberta T2P 4Z4

To NPR:

President
P.O. Box 38
Fordville, ND 58231

Section 6. ARBITRATION

Any dispute arising between the Parties with respect to this Agreement involving five hundred thousand dollars (\$500,000) or less shall be settled through binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final

and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne equally by the Parties. Notification of a Party's intent to invoke arbitration is to be made in writing as prescribed in Section 8.3 herein.

Section 7. DEFAULTS

The failure of CPR or NPR to enforce its remedies made available by any default or failure by NPR or CPR shall not constitute a waiver of such default or failure and shall not be construed to extend to any future default or failure, whether a similar nature or otherwise, nor to impair CPR's or NPR's right of termination resulting there from.

Section 8. OTHER CONSIDERATION

8.1 This Agreement shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns; except NPR shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder to any successor without obtaining the prior written consent of CPR.

8.2 This Agreement shall take effect on the date executed by the final Party to sign and shall continue in force until terminated by either Party by serving at least thirty (30) days notice upon the other Party in writing of intention to terminate same or the termination of the BNSF Agreement. Termination of this Agreement shall not release either Party from any liability or obligation which either Party may have incurred under this Agreement prior to the effective date of termination. The termination of this Agreement shall not affect in any way other agreements that may be in effect between CPR and NPR.

8.3 Notifications required by either Party under this Agreement, except for the notifications required in Section 5, will be made to:

To CPR:
Director of Interline
401 9th Avenue SW
Gulf Canada Square, Suite 500
Calgary, Alberta T2P 4Z4

To NPR:
President
P.O. Box 38
Fordville ND 58231

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in duplicate, each part being an original, on the dates indicated and agree that the laws of the State of North Dakota will apply in its interpretation and application.

SOO LINE RAILROAD COMPANY
d/b/a Canadian Pacific Railway

NORTHERN PLAINS RAILROAD

By: *A. depl. Bameiro*

By: *[Signature]*

Its: Director Interline

Its: President

Date: October 4, 2012

Date: October 15, 2012

EXHIBIT 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 35690**

**NORTHERN PLAINS RAILROAD, INC.
--TEMPORARY TRACKAGE RIGHTS EXEMPTION --
SOO LINE RAILROAD COMPANY**

Soo Line Railroad Company "Soo Line" has agreed to grant overhead, temporary trackage rights to Northern Plains Railroad, Inc. ("NPR") over Soo Line's line or railroad between Mahnomen, MN and Erskine, MN, a distance of approximately 24.7 miles.

The temporary trackage rights will permit NPR to bridge its train service while the main lines of its affiliate shortline are out of service due to certain programmed track, roadbed and structural maintenance. The rights are to expire on or about December 24, 2012.

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,