



221664
Robert T. Opal
General Commerce and FRA Counsel

February 14, 2008

Via UPS

The Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D C 20024

FEE RECEIVED
FEB 15 2008
**SURFACE
TRANSPORTATION BOARD**



Re: Finance Docket No. 34394 (Sub. No. 1), Union Pacific Railroad Company – Trackage Rights Exemption (Modification) – BNSF Railway Company

Dear Secretary Quinlan

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 \$1,000 00 for the filing fee required by 49 C F R § 1002 2(f), Part IV (40)
- 3 Twenty (20) unbound copies of the Exhibit 1 map

Please feel free to call me if you have any questions about these materials

Sincerely,

[Signature]
Robert T. Opal

ENTERED
Office of Proceedings

FEB 15 2008

Part of
Public Record

cc (w/attachments)
Sarah Bailiff (BNSF)

FILED
FEB 15 2008
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34394 (SUB-NO. 1)

UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION (MODIFICATION) --
BNSF RAILWAY COMPANY

ENTERED
Office of Proceedings

FEB 15 2008

Part of
Public Record

VERIFIED NOTICE OF EXEMPTION

FILED

FEB 15 2008

SURFACE
TRANSPORTATION BOARD

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FEB 15 2008

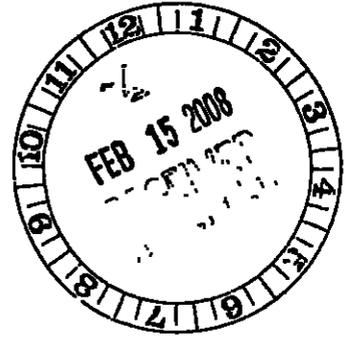
SURFACE
TRANSPORTATION BOARD

UNION PACIFIC RAILROAD COMPANY

Robert T. Opal
General Commerce and FRA Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 544-0132 (FAX)

Dated February 14, 2008
Filed February 15, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 34394 (SUB-NO. 1)

**UNION PACIFIC RAILROAD COMPANY
-- TRackage RIGHTS EXEMPTION (MODIFICATION) --
BNSF RAILWAY 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 a modification to an existing overhead trackage rights agreement covering UP's use of a BNSF Railway Company ("BNSF") line between BNSF mileposts 210 2 and 211 7, a distance of approximately 1 5 miles in Wichita, KS (the "Joint Trackage") The modification would permit UP to admit the Kansas and Oklahoma Railroad Company ("K&O") to the Joint Trackage for the sole purpose of interchanging traffic with UP on UP trackage at Wichita, as described in the "First Supplement" attached as Exhibit 2 ¹

1 The original trackage rights were exempted by a notice of exemption served August 29, 2003 in Finance Docket No 34394

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal or modification 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 modified trackage rights covered by this notice are covered by the written agreement attached as Exhibit 2, and are not being 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 provides the following information:

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

The transaction covered by this notice is the modification of an existing trackage rights agreement covering UP's use of a BNSF line between BNSF mileposts 210.2 and 211.7, a distance of approximately 1.5 miles in Wichita, KS as shown on the map attached hereto as Exhibit 1.

§ 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, Nebraska 68179

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

Robert T Opal
General Commerce and FRA Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
Tel. (402) 544-3072
Fax (402) 501-0132

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on March 15, 2008. **§ 1180.6(a)(1)(iii)**

Purpose of the Transaction

The purpose of the original trackage rights was to facilitate the City of Wichita's Central Rail Corridor Project, which is designed to minimize rail/vehicle conflicts at existing grade crossings in central Wichita by constructing grade crossings and other improvements on the BNSF route. The original agreement inadvertently omitted inclusion of a provision permitting K&O to use the joint trackage to interchange with UP, which is necessary to achieve the full benefits of the project. The First Supplement attached as Exhibit 2 addresses this omission by permitting UP to admit K&O to the Joint Trackage for solely for purposes of interchanging traffic with UP.

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

UP operates in the states of Arizona, California, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, 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)

The 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 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

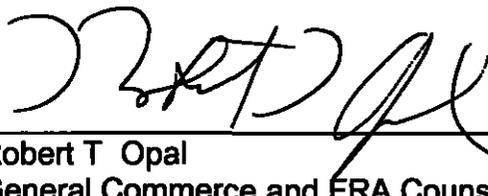
§ 1180.4(g)(3) Environmental Documentation

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)

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By


Robert T. Opal
General Commerce and FRA Counsel
1400 Douglas Street
Stop 1580
Omaha, Nebraska 68179
(402) 544-3072
(402) 501-0132 (FAX)

VERIFICATION

Robert T Opal, General Commerce and FRA Counsel of Union Pacific Railroad Company, declares under penalty of perjury that he has read the foregoing Notice of Exemption in Finance Docket No 34394 (Sub-No. 1), 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

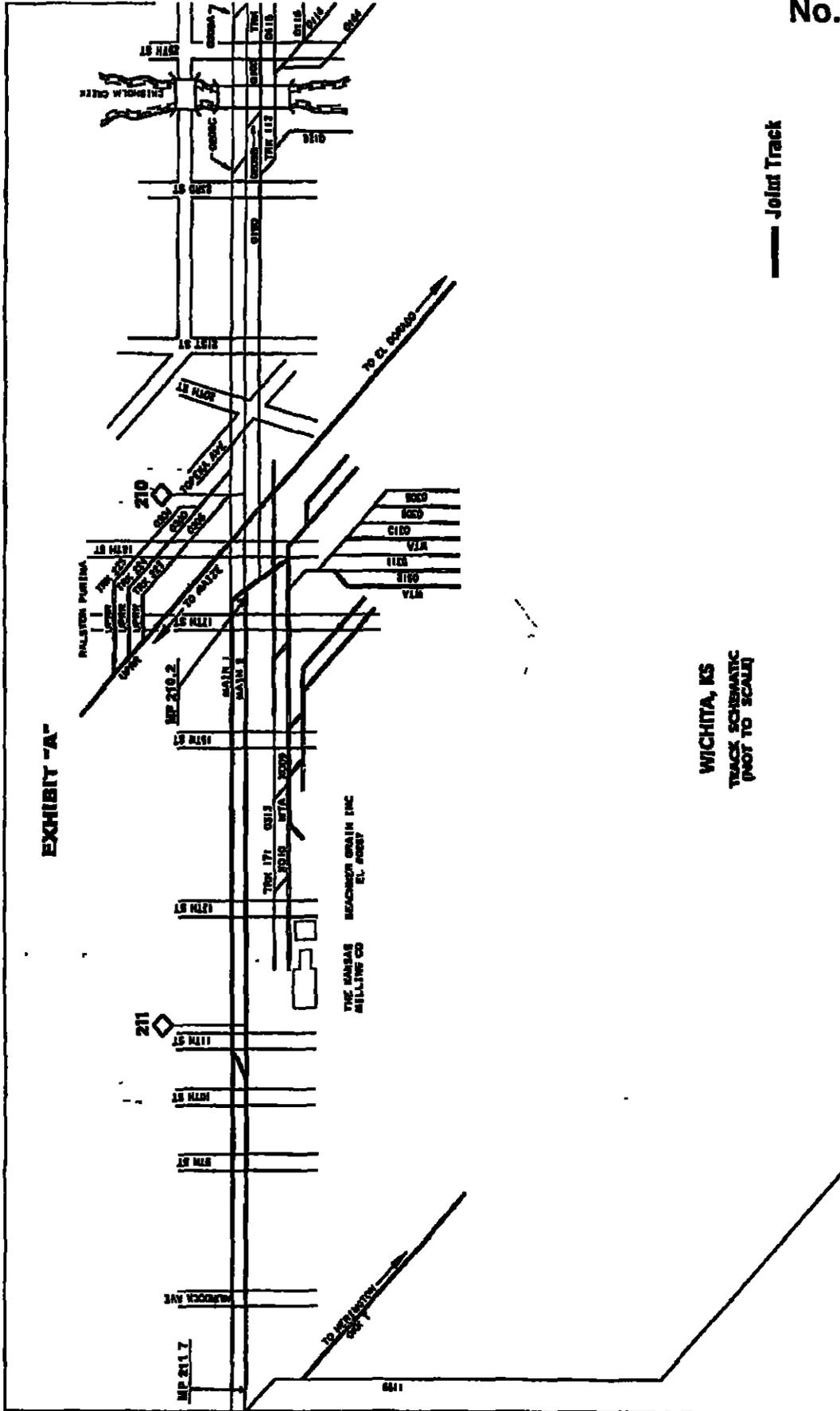
I certify that I have this day served a copy of the foregoing document upon
the following by first class United States Mail:

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

Dated at Omaha, Nebraska this 14th day of February, 2008


Robert T. Opal

EXHIBIT 1
Finance Docket
No. 34394 (Sub-No. 1)



**FIRST SUPPLEMENT TO
WICHITA, KANSAS
TRACKAGE RIGHTS AGREEMENT**

This FIRST SUPPLEMENT ("First Supplement") is made this 24th day of January, 2008, by and between BNSF Railway Company, formerly The Burlington Northern and Santa Fe Railway Company ("BNSF" or "Owner"), and Union Pacific Railroad Company ("UP" or "User").

WHEREAS, BNSF and UP are parties to an overhead trackage rights agreement dated July 29, 2003, ("Original Agreement" with the trackage covered thereunder referred to as "Joint Trackage") which was entered into to facilitate a project by the City of Wichita, Kansas to construct a central rail corridor and accommodate rail traffic within a single defined route in order to minimize rail/vehicle conflicts at numerous grade crossings, and

WHEREAS, the Original Agreement inadvertently omitted inclusion of a provision permitting the Kansas and Oklahoma Railroad Company (K&O) to use the Joint Trackage to interchange with UP at Wichita, KS; and

WHEREAS, BNSF is agreeable to permitting K&O to use the Joint Trackage to interchange with UP on UP trackage subject to the terms and conditions contained herein.

NOW THEREFORE, the parties hereto agree as follows:

- 1) Notwithstanding any provision to the contrary in the Original Agreement, the parties agree that UP shall have the right to admit K&O to the Joint Trackage for the sole purpose of facilitating interchange with UP on UP trackage at Wichita (the "Permitted Use"). When on the Joint Trackage for the Permitted Use, K&O trains and employees shall be deemed to be UP trains and employees with respect to the application of all of the terms and conditions of the Original Agreement as it may be amended from time to time.
- 2) The parties further agree that except to the extent K&O uses the Joint Trackage for any purpose as an admittee of UP, such K&O usage shall be deemed to be usage as an admittee of BNSF with respect to the application of all the terms and conditions of the Original Agreement, as it may be amended from time to time.
- 3) UP shall be fully responsible for K&O's performance of all obligations under the Original Agreement, as it may be amended from time to time, in connection with

K&O's admission to the Joint Trackage for the Permitted Use, and UP shall indemnify, defend, and shall hold harmless BNSF for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses directly or indirectly related to, arising or resulting from the Permitted Use and all acts and omissions of K&O while acting as an admittee of UP.

- 4) Pursuant to the provisions Section 7.1 of the Original Agreement, UP will not admit K&O to the Joint Trackage for the Permitted Use until the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of this First Supplement and the operations to be carried on or conducted by K&O thereunder.
- 5) Except as herein provided, all other terms of the Original Agreement will remain in full force and effect for a term coterminous with the Original Agreement as may be amended from time to time.

IN WITNESS WHEREOF, the parties have caused this First Supplement to be executed as of the date written hereinabove.

BNSF RAILWAY COMPANY

By: Chris Roberts

Printed: CHRIS A Roberts

Title: RVP South Operations

Date: 1-24-2008

UNION PACIFIC RAILROAD COMPANY

By: Jeffrey P. Grinnell

Printed: Jeffrey P. Grinnell

Title: Director Jt. Facilities

Date: 1-24-2008

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
FINANCE DOCKET NO. 34394 (SUB-NO. 1)**

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

BNSF Railway Company ("BNSF") has agreed to modify an existing overhead trackage rights agreement with Union Pacific Railroad Company ("UP") covering UP operations between BNSF milepost 210 2 and BNSF milepost 211 7, a distance of approximately 1 5 miles in Wichita, KS. The modification will correct an omission in the original agreement by permitting UP to admit the Kansas and Oklahoma Railroad Company (K&O) to the Joint Trackage solely for the purpose of interchanging traffic with UP on UP trackage in Wichita. The modified trackage rights agreement will be consummated on March 15, 2008.

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,

Anne Quinlan,
Acting Secretary