

222391



Gabriel S. Meyer  
Assistant General Attorney

May 16, 2008

Via UPS Overnight

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

**FILED**

MAY 19 2008

**SURFACE  
TRANSPORTATION BOARD**



**Re: Finance Docket Nos. 35145 and 35146; Union Pacific Railroad Company –  
Temporary Trackage Rights Exemptions – Illinois Central Railroad  
Company and Illinois and Midland Railroad Company**

Dear Secretary Quinlan

Attached, please find Union Pacific Railroad Company's two Verified Notices of Exemption, concurrently filed in the above-referenced matters. The Notices relate to two separate trackage rights agreements, which together will allow UP to detour traffic around scheduled track maintenance activity on its own line in Springfield, IL, using rail lines of Illinois Central Railroad Company, and Illinois and Midland Railroad Company.

Enclosed are the following materials:

- 1 Originals and ten (10) copies of each 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)(8)
- 2 A payment form in the amount of \$2,000.00 for the filing fees (\$1,000.00 for each filing) required by 49 C.F.R. § 1002.2(f), Part IV (40)
- 3 Twenty (20) unbound copies of each of the Exhibit 1 maps

Please do not hesitate to contact me if you have any questions.

Sincerely,

*Gabriel S Meyer*

Gabriel S. Meyer

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Office of Proceedings

MAY 19 2008

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Public Record

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MAY 19 2008

**SURFACE  
TRANSPORTATION BOARD**

cc (w/attachments)  
Paul Ladue--Illinois Central Railroad Company  
Spencer White-- Illinois and Midland Railroad Company

BEFORE THE  
SURFACE TRANSPORTATION BOARD

\_\_\_\_\_  
FINANCE DOCKET NO. 35145  
\_\_\_\_\_



UNION PACIFIC RAILROAD COMPANY  
-- TEMPORARY TRackage RIGHTS EXEMPTION --  
ILLINOIS CENTRAL RAILROAD COMPANY

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VERIFIED NOTICE OF EXEMPTION

UNION PACIFIC RAILROAD COMPANY  
Gabriel S. Meyer  
Assistant General Attorney  
1400 Douglas Street  
STOP 1580  
Omaha, NE 68179  
(402) 544-1658  
(402) 501-3393 (FAX)

Dated: May 16, 2008  
Filed: May 19, 2008

**FEE RECEIVED**

MAY 19 2008

SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35145**

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**UNION PACIFIC RAILROAD COMPANY  
-- TEMPORARY TRackage RIGHTS EXEMPTION --  
ILLINOIS CENTRAL RAILROAD COMPANY**

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**VERIFIED NOTICE OF EXEMPTION**

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(8) for exemption of an overhead, temporary trackage rights agreement over lines of railroad of Illinois Central Railroad Company ("CN"). The temporary trackage rights extend from CN's connection with UP at IC Junction (near Isles) to CN's connection with Illinois and Midland Railroad Company at Avenue Tower (Milepost 191.9), a total distance of approximately 4.6 miles in Springfield, IL.<sup>1</sup> The temporary rights are to facilitate maintenance work on UP lines, and are intended to become effective June 19, 2008 and expire on or about June 25, 2008.

Under 49 C.F.R. § 1180.2(d)(8), the acquisition of temporary 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

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<sup>1</sup> UP is concurrently filing, in STB Finance Docket No. 35146, a Verified Notice of Exemption for temporary overhead trackage rights via Illinois and Midland Railroad Company ("IMRR"). Together, the temporary trackage rights via CN and IMRR will form a contiguous route allowing UP traffic to detour around maintenance of way activities on UP's line in Springfield, IL.

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 (1) year from the effective date of the exemption. The trackage rights covered by this Notice (i) are 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) are for overhead operations only, and (iv) will expire on or about June 25, 2008, which is less than one (1) year from the effective date of the exemption. As such, the § 1180 2(d)(8) exemption is applicable.

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 temporary, overhead trackage rights by UP over approximately 4.6 miles of CN trackage in Springfield, IL. The trackage rights extend from CN's connection with UP at IC Junction (near Isles) to CN's connection with Illinois and Midland Railroad Company at Avenue Tower (Milepost 191.9).

**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:

Gabriel S. Meyer  
Assistant General Attorney  
1400 Douglas Street  
STOP 1580  
Omaha, NE 68179  
(402) 544-1658  
(402) 501-3393 (FAX)

**§ 1180.6(a)(1)(ii) Consummation Date**

The agreement will be consummated on June 19, 2008.

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

The temporary trackage rights will facilitate maintenance work on UP lines, and are intended to expire on or about June 25, 2008

**§ 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)**

An executed copy of the trackage rights agreement showing the principal terms is attached as Exhibit 2. The parties executed the agreement on May 14, 2008.

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

**1180.4(g)(2)(iii) 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: *Gabriel S. Meyer*  
Gabriel S. Meyer  
Assistant General Attorney  
1400 Douglas Street  
STOP 1580  
Omaha, NE 68179  
(402) 544-1658  
(402) 501-3393 (FAX)

**VERIFICATION**

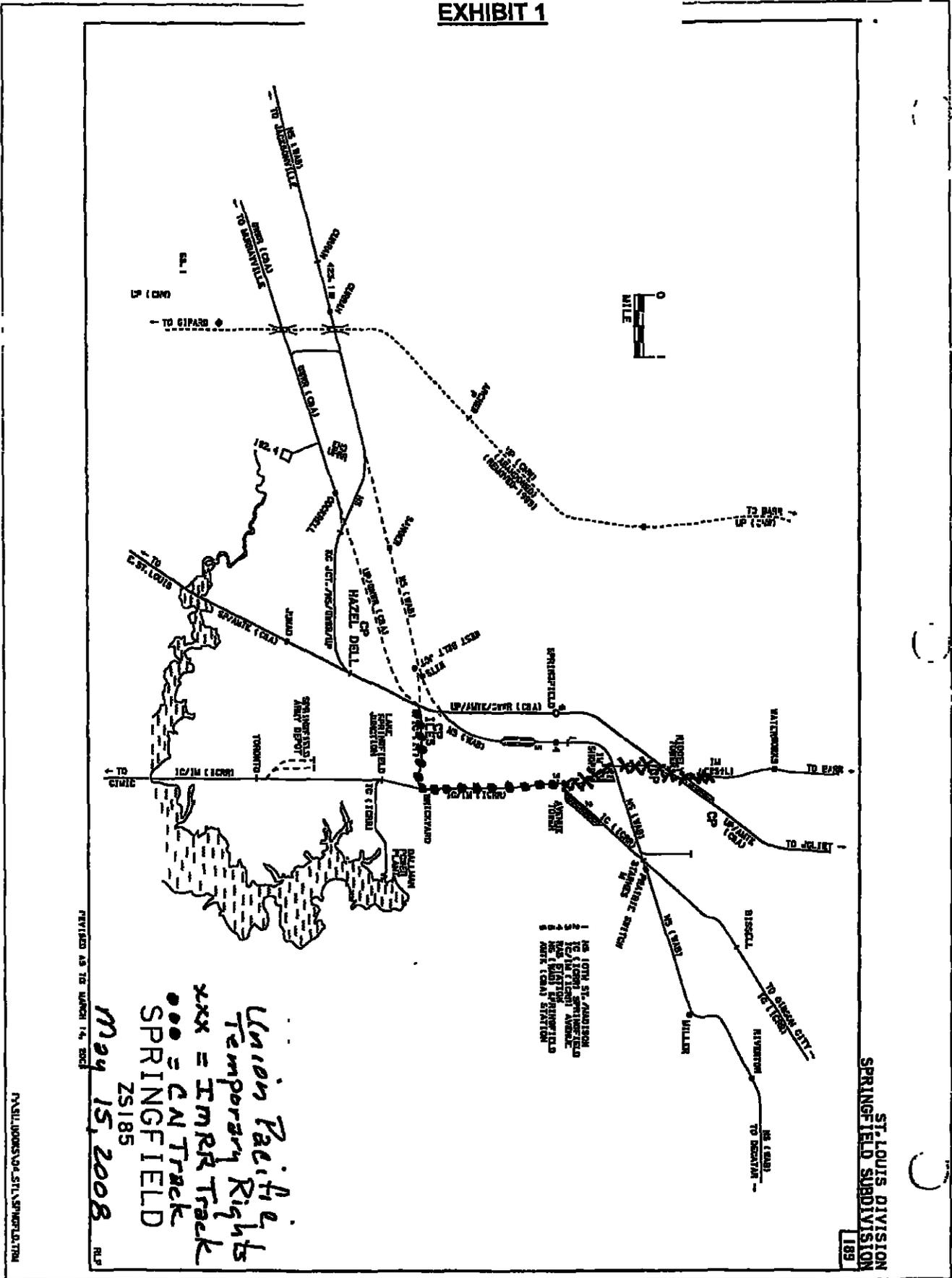
I, Gabriel S Meyer, Assistant General Attorney of Union Pacific Railroad Company, under penalty of perjury, declare and verify that I have read the foregoing Notice of Exemption in Finance Docket No. 35145, know the facts stated therein, and believe that said facts are true as stated.

**Dated:** May 16, 2008

  
\_\_\_\_\_  
Gabriel S. Meyer



EXHIBIT 1



**FINANCE DOCKET NO. 35145**  
**EXHIBIT 2**

**TEMPORARY TRACKAGE RIGHTS AGREEMENT**

**SPRINGFIELD, IL**

**THIS AGREEMENT (Agreement") entered into as of this 14th day of May 2008, by and between ILLINOIS CENTRAL RAILROAD COMPANY (hereinafter referred to as "CN" or "OWNER") and UNION PACIFIC RAILROAD COMPANY, (hereinafter referred to as "UP" or "USER").**

**WHEREAS, CN owns and operates a segment of railroad located Springfield, Illinois; and**

**WHEREAS, UP desires to obtain temporary trackage rights over CN's lines of railroad in Springfield, IL for the sole purpose of bridging its train service while UP's line through Springfield, IL is out of service due to certain programmed track, roadbed and structural maintenance; and**

**WHEREAS, CN agrees to grant UP limited temporary overhead trackage rights but only on the terms and conditions set forth herein:**

**NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:**

**SECTION 1.0            GRANT OF TEMPORARY TRACKAGE RIGHTS**

1.1 Subject to UP's agreement to file a "Petition for Partial Revocation of Class Exemption and for Temporary Exemption of Trackage Rights", which requests revocation of the temporary trackage rights on the dates indicated in Section 3 (or otherwise file a temporary trackage rights exemption pursuant to 49 C.F.R. 1180.2(d)(8)), jointly with its "Notice of Exemption" filing for the trackage rights with the Surface Transportation Board, and the terms and conditions herein provided, Owner hereby grants to User the temporary nonexclusive right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- Between CN's connection with UP off the Beltline (IC Junction) near Isles and CN's connection with the I&M Railroad at Avenue Tower MP 191.9. Approximate total miles for detour route is approx 4.6 miles.

**SECTION 2.0            USE OF SUBJECT TRACKAGE**

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

### **SECTION 3.0 RESTRICTION ON USE**

3.1 The temporary trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

3.2 UP's use of the temporary trackage rights granted herein by CN shall be limited to two (2) trains per day to be operated in the time slot between 1300 and 1600.

3.2.1 Upon receiving prior authority from CN's Transportation Officer in Champaign, IL and CN's Rail Traffic Control Center in Homewood, IL, UP may be permitted to operate in alternative time slots, provided that there is no interference with Amtrak passenger trains and CN's local train operation.

3.3 The temporary trackage rights granted to UP herein shall be in effect from June 19, 2008 through June 25, 2008.

3.4 UP shall have sufficient fuel for the entire movement on CN.

3.5 UP shall not change crews on the Subject Trackage.

3.6 UP shall not permit or admit any third party to the use of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this Agreement.

3.7 UP shall not connect or interchange with itself or with any other railroad at any location along the Joint Trackage other than at the points defined in Section 1 on the Subject Trackage.

### **SECTION 4.0 COMPENSATION**

4.1 For UP's use of the temporary trackage rights, UP shall pay to CN a flat rate in the amount of \$1,027.04 per train. In addition, UP shall pay charges for any other services rendered and supplies furnished by CN as a result of UP's operations on the Subject Trackage and provided by mutual advance agreement. These charges shall be based on Owner's cost, plus reasonable additives according to the joint facility accounting procedures of Owner. The services and supplies for which User may be charged include, but are not limited to, furnishing locomotives and helper power (including light mileage to and from the point of service) as requested by User or as reasonably required by User, turning engines and/or trains on wye, furnishing fuel and other train supplies, performing car and engine repairs, and supplying pilots and/or train or engine crews (including deadhead or light mileage to and from point of service).

### **SECTION 5.0 PAYMENT OF BILLS**

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by Owner for User.

#### **SECTION 6.0                    MAINTENANCE OF SUBJECT TRACKAGE**

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

#### **SECTION 7.0                    CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

7.2 Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:

- (i) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto; and
- (ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner, which connect the respective lines of the parties hereto.
- (iii) Upon termination of this Agreement, Owner may at its option remove portion of trackage and appurtenances located on property of Owner, at the sole cost and

expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner will credit User the current fair market value for said salvage.

#### **SECTION 8.0                    ADDITIONS, RETIREMENTS AND ALTERATIONS**

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request

#### **SECTION 9.0                    MANAGEMENT AND OPERATIONS**

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by

any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify Owner's Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Operating Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an Officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee)

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

9.15 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided

#### **SECTION 10.0            MILEAGE AND CAR HIRE**

10.1 All mileage and car hire charges accruing on cars in User's account in User's trains on the Subject Trackage shall be assumed by User and reported and paid by it directly to the owner of such cars.

#### **SECTION 11.0            CLEARING OF WRECKS**

11.1 Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to,

and destruction of any property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

## **SECTION 12.0            LIABILITY**

12.1 The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third parties), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by the parties to this Agreement or by third party users, all of which are collectively referred to as a "Loss", will be allocated as follows:

- (a) CN (including its subsidiaries and affiliates, and all of its respective directors, officers, agents, and employees) shall not be held liable for or on account of any loss, damage, or delay, to the trains, engines, cars or other property of any kind of either company, nor to freight, baggage or other property of any kind carried in or upon such trains, engines or cars, nor for or on account of any injury to or death of passengers or employees of either company, or for or on account of any injury to the person or property of any other individual or individuals, company or companies, corporation or corporations whatsoever, which may be incurred or sustained by reason of such trains being detoured, or by reason of such trains being delayed in such detouring, in whatever manner the same may be caused or occasioned, whether by or through the negligence of CN, its agents or servants, or by reason of defects in tracks, structures, or facilities furnished by CN, or otherwise, it being understood and agreed that all risk of such delays, loss, damage, injury and death shall be and is hereby assumed by UP, and UP shall and will hold harmless the CN from and against all liabilities or claims for all such delay, loss, damage, injury and death and shall and will execute and deliver, or cause to be executed and delivered, to CN, upon request, a full and complete release, satisfaction and discharge of all claims therefore, and will pay, or cause to be paid, all costs and expenses incurred by either party in the clearing of wrecks and repairs to equipment, track and property in which by reason of detour movements covered by this Agreement the engines, trains, or cars of UP are concerned, expenses and attorney's fees incurred in defending any action which may be brought against CN on account of any such claim or liability and any judgment which may be rendered against CN on account thereof UP shall pay all fines, penalties, costs and expenses imposed upon or incurred by the CN by reason of any violation by UP of the Safety Appliance or other State or Federal Laws, and hold CN harmless therefrom
- (b) In every case of death or injury suffered by an employee of either CN or UP, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and UP under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, UP shall not be released from paying any such future installments by reason of the expiration or other

termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- (c) If any suit or action shall be brought against the CN for damages which under the provisions of the Agreement are in whole or in part the responsibility of UP, UP shall be notified in writing by CN, and UP shall have the right and be obligated to take part in the defense of such suit and shall pay all judgment and cost, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- (d) For purposes of determining liability, pilots furnished by CN to UP pursuant to this Agreement shall be considered as the employees of UP while such employees are on board or getting on or off trains of UP.
- (e) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- (f) Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon
- (g) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Section 7, all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance, repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.

### **SECTION 13.0            INVESTIGATION AND CLAIMS**

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefore under the provisions of this Agreement

13.2 Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

13.4 All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

13.5 Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

#### **SECTION 14.0 DEFAULT AND TERMINATION**

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

#### **SECTION 15.0 ARBITRATION**

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

#### **SECTION 16.0 REGULATORY APPROVAL**

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter

18.5 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

18.6 All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CN or UP to any party other than CN's and UP's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other party.

#### **SECTION 19.0 SUCCESSORS AND ASSIGNS**

19.1 No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party (ies) to this Agreement.

#### **SECTION 20.0 NOTICE**

20.1 Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

**If to Owner:**

**Region Director Contracts and Administration  
Illinois Central Railroad Company  
17641 South Ashland Avenue  
Homewood, IL 60430**

**If to User:**

**Director Joint Facilities  
Union Pacific Railroad Company  
1400 Douglas Street, STOP 1180  
Omaha, NE 68179**

If to User:

Director Joint Facilities  
Union Pacific Railroad Company  
1400 Douglas Street, STOP 1180  
Omaha, NE 68179

20.2 Either party may provide changes in the above addresses to the other party by personal service or certified mail

**SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION**

21.1 This Agreement shall take effect on the date User commences operations over the Subject Trackage as defined in Section 3.0 (which date is referred to herein as the "Commencement Date") The Commencement Date shall not be prior to the effective date of any required regulatory approvals, and shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

21.2 This Agreement shall continue in full force and effect for the period of time specified in Section 3.0 hereof.

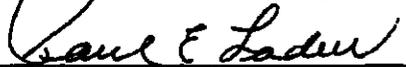
21.3 Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

WITNESS



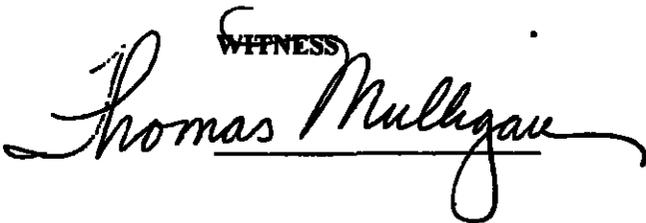
ILLINOIS CENTRAL RAILROAD COMPANY

By: 

Its: Region Director Contracts & Administration

Date: May 14, 2008

WITNESS



UNION PACIFIC RAILROAD COMPANY

By: 

Its: Director Joint Facilities

Date: May 14, 2008



**EXHIBIT 3**  
**STB FINANCE DOCKET NO. 35145**

**CAPTION SUMMARY**

**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**  
**FINANCE DOCKET NO. 35145**

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

Illinois Central Railroad Company ("CN") has agreed to grant temporary, overhead trackage rights to Union Pacific Railroad Company over approximately 4.6 miles of CN trackage in Springfield, IL, extending from CN's connection with UP at IC Junction (near Isles) to CN's connection with Illinois and Midland Railroad Company at Avenue Tower (Milepost 191.9). The temporary trackage rights will become effective on June 19, 2008. The authorization will expire on or about June 25, 2008.

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,

Anne K. Quinlan,  
Acting Secretary