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SERVICE DATE – FEBRUARY 27, 2009

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35191]

Wisconsin & Southern Railroad Co.—Trackage Rights Exemption—Union Pacific  
Railroad Company

Pursuant to a written trackage rights agreement, Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to Wisconsin & Southern Railroad Co. (WSOR) over a line of railroad extending between UP milepost 4.0 in Kohler, WI, and UP milepost 1.2 at Kohler Junction near Sheboygan, WI, a distance of approximately 2.8 miles.<sup>1</sup>

This transaction is related to a concurrently filed petition for exemption for the acquisition and operation of certain other rail lines in Wisconsin & Southern Railroad Co.—Acquisition and Operation Exemption—Union Pacific Railroad Company, STB Finance Docket No. 35144. In that proceeding, WSOR seeks an exemption under 49 U.S.C. 10502 to acquire and operate a permanent exclusive freight operating easement over 10.95 miles of railroad known as the Kohler Industrial Lead that is currently owned by UP. WSOR states that the State of Wisconsin Department of Transportation (WisDot)

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<sup>1</sup> A redacted version of the proposed trackage rights agreement between UP and WSOR was filed with the notice of exemption. The full version of the draft agreement was concurrently filed under seal along with a motion for protective. The motion is being addressed in a separate decision. As required by 49 CFR 1180.6(a)(7)(ii), the parties must file a copy of the executed agreement within 10 days of the date the agreement is executed.

has executed an agreement to purchase the right-of-way and railroad assets comprising the line from UP, with WSOR to acquire the freight easement and associated common carrier obligation directly from UP. WSOR also seeks to acquire and operate approximately 1,000 feet of UP spur track. WSOR has requested expedited action in this proceeding.

This transaction is also related to a concurrently filed petition for declaratory order in Wisconsin Department of Transportation—Petition for Declaratory Order—Rail Line in Sheboygan County, WI, STB Finance Docket No. 35195. In that proceeding, WisDot seeks a finding that its acquisition of the right-of-way and railroad assets will not render it a rail common carrier.

WSOR states that it proposes to consummate this transaction on or about April 15, 2009.

The trackage rights agreement will allow WSOR to provide rail service to the facilities of the Cargill Malt Plant in Kohler and to interchange with UP in Sheboygan.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions 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).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed at least 7 days before the exemption becomes effective.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35191, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, 1750 K Street, N.W., Suite 200, Washington, DC 20006, and on Mack H. Schumate, Union Pacific Railroad Company, 101 N. Wacker Drive, Suite 1920, Chicago, IL 60606.

Board decisions and notices are available on our website at “[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: February 20, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary