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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35023]

Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago & Eastern Railroad Corporation—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant non-exclusive temporary overhead trackage rights to the Dakota, Minnesota & Eastern Railroad Corporation (DME), and the Iowa, Chicago & Eastern Railroad Corporation (ICE)¹ (DME and ICE are referred to collectively as “User”) over BNSF’s lines between milepost 146.0 on BNSF’s Corson Subdivision at Sioux Falls, SD, and milepost 705.5 on BNSF’s Aberdeen Subdivision at Wolsey, SD, a distance of approximately 149.8 miles.²

¹ ICE is a wholly owned subsidiary of Cedar American Rail Holdings, Inc. which in turn is wholly owned by DME.

² User indicates that this is a “reinstatement” of a previous trackage rights agreement between the same parties and also involving the above-referenced track, in STB Finance Docket No. 34790, which expired on November 22, 2006. They also state that the temporary trackage rights agreement in that proceeding will be incorporated by reference in this proceeding as modified by agreement between User and BNSF signed on April 25, 2007, and filed herein. A request for a protective order was filed concurrently with this exemption and will be addressed in a separate decision.

The transaction is scheduled to be consummated on or after June 1, 2007, the effective date of the exemption (30 days after the exemption was filed). The temporary trackage rights will expire on November 22, 2007.³

The purpose of the temporary trackage rights is solely for the overhead movement of User's business cars (and engines and end-of-train devices required to operate those business cars).

As a condition to this exemption, any employee affected by the acquisition of the temporary 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), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it 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 transaction. Any stay petition must be filed on or before May 25, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35023, must be filed with the Surface Transportation Board, 395 E Street, S.W.,

³ User states that the parties have agreed on the possible extension of the temporary trackage rights. Any temporary trackage rights extension agreement must be filed with the Board.

Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: May 11, 2007.

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

Vernon A. Williams

Secretary