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SEC

SERVICE DATE – JUNE 7, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35023

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN RAILROAD CORPORATION—TEMPORARY
TRACKAGE RIGHTS EXEMPTION—BNSF RAILWAY COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: June 6, 2007

By motion filed May 2, 2007, Dakota, Minnesota & Eastern Railroad Corporation (DME), and the Iowa, Chicago & Eastern Railroad Corporation (ICE) (DME and ICE are referred to collectively as “User”), seek a protective order under 49 CFR 1104.14(b) to protect the confidential and commercially sensitive terms of the temporary trackage rights agreement signed on April 25, 2007, between User and BNSF Railway Company (BNSF).¹ User concurrently filed a notice of exemption under 49 CFR 1180.2(d)(8) for User’s acquisition from BNSF of non-exclusive temporary overhead trackage rights described in the agreement.

Good cause exists to grant the motion for protective order. Issuance of the protective order ensures that the railroads’ confidential information will be used solely for this proceeding and not for other purposes.

The motion conforms with the Board’s rules at 49 CFR 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, and the unredacted temporary trackage rights agreement shall be subject to the Protective Order and Undertaking contained in the Appendix to this decision.²

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ This agreement incorporates by reference the previously protected trackage rights agreement between the same parties in STB Finance Docket No. 34790, except as modified by the April 25, 2007 agreement.

² A proposed protective order and undertakings were included with the motion.

It is ordered:

1. User's motion for protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The unredacted temporary trackage rights agreement submitted in STB Finance Docket No. 34790, as modified by the April 25, 2007 agreement, is incorporated in STB Finance Docket No. 35023, and will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the appropriate attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the Agreement between Dakota, Minnesota & Eastern Railroad Corporation and the Iowa, Chicago & Eastern Railroad Corporation (collectively "User") and BNSF Railway Company filed in STB Finance Docket No. 34790, as modified by the April 25, 2007 agreement, and incorporated into STB Finance Docket No. 35023.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to User of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without written consent of User or an order of the Board, solely for use in connection with these and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on User at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use Confidential Information at hearings in the two subject dockets or in any related Board proceedings, or in any judicial review proceedings arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. Any party that files with the Board a document containing Confidential Information must simultaneously file with the Board a public version of that document.

8. All parties must comply with all provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING - CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on June 7, 2007, governing the production and use of Confidential Information in STB Finance Docket No. 35023, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any data or information obtained pursuant to that Protective Order, or to use or to permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35023, any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with STB Finance Docket No. 35023 and/or with any related proceedings. I further agree not to disclose any data or information obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____

Dated: _____