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SERVICE DATE – APRIL 30, 2008

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32023 (Sub-No. 1)]

BNSF Railway Company—Trackage Rights Exemption—Dakota, Minnesota & Eastern
Railroad Corporation

Pursuant to a written amendment to a trackage rights agreement, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) has agreed to modify an existing trackage rights agreement¹ to grant overhead trackage rights to BNSF Railway Company (BNSF) between milepost 145.00 and milepost 148.50, a distance of approximately 3.5 miles, in Yale, SD.²

This transaction will be consummated on May 17, 2008, the effective date of the exemption (30 days after the exemption was filed), or once the transaction contemplated in STB Finance Docket No. 35125 is consummated, whichever is later.

¹ The original trackage rights extended between milepost 160.33, in Huron, and milepost 148.50, in Yale, in Beadle County, SD, and were exempted by the Interstate Commerce Commission, the predecessor to the Board, in Burlington Northern Railroad Company—Trackage Rights Exemption—Dakota, Minnesota & Eastern Railroad Corporation, Finance Docket No. 32023 (ICC served Apr. 14, 1992).

² This transaction is predicated upon the Board's approval of the petition for exemption in STB Finance Docket No. 35125, Dakota, Minnesota & Eastern Railroad Corporation—Acquisition Exemption—Line of BNSF Railway Company, filed March 25, 2008, in which DM&E seeks to acquire from BNSF the same 3.5-mile line at issue in the present matter. The instant transaction would constitute a grant back to BNSF of trackage rights over the line following the proposed line sale to DM&E.

The purpose of the proposed transaction is to amend the 1992 trackage rights agreement to extend BNSF's overhead trackage rights from milepost 148.50 to milepost 145.00 in Yale once that line is acquired by DM&E. This transaction will allow BNSF to reach its pre-existing trackage rights on DM&E's east-west main line between Huron and Wolsey, SD.

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 by May 9, 2008 (at least 7 days before the exemption becomes effective).

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.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32023 (Sub-No. 1), 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 Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

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Decided: April 22, 2008

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

Anne K. Quinlan

Acting Secretary