

BEFORE THE  
SURFACE TRANSPORTATION BOARD

235964

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STB Finance Docket No. 35818

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
— TRACKAGE RIGHTS EXEMPTION —  
RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

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ENTERED  
Office of Proceedings  
April 25, 2014  
Part of  
Public Record

VERIFIED NOTICE OF EXEMPTION

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**FILED**  
**April 25, 2014**  
**SURFACE**  
**TRANSPORTATION BOARD**

W. Karl Hansen  
Stinson Leonard Street LLP  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402  
(612) 335-7088

Attorneys for  
Dakota, Minnesota & Eastern Railroad Corporation

Date: April 24, 2014

Contains color

**FEE RECEIVED**  
**April 25, 2014**  
**SURFACE**  
**TRANSPORTATION BOARD**

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STB Finance Docket No. 35818

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
— TRACKAGE RIGHTS EXEMPTION —  
RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

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VERIFIED NOTICE OF EXEMPTION

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Dakota, Minnesota & Eastern Railroad Corporation, dba Canadian Pacific (“DM&E”) files this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) for overhead trackage rights over approximately 146.9 miles of the rail lines (the “Lines”) that Rapid City, Pierre & Eastern Railroad, Inc. (“RCP&E”) will acquire from DM&E pursuant to the acquisition and operation exemption filed in STB Docket No. FD 35799. The parties intend to enter into a written agreement, which is not sought in a responsive application in a rail consolidation proceeding.

Pursuant to the Surface Transportation Board’s (the “Board”) regulations at 49 C.F.R. § 1180.4(g), DM&E submits the following information.

Section 1180.6(a)(1)(i) Summary of the Proposed Transaction

DM&E proposes to acquire limited overhead trackage rights over the Line between mile post 231.5+/- near Tracy, Minnesota and mile post 250.35+/- near Florence, Minnesota to allow DM&E’s continued handling of overhead grain traffic for interchange with BNSF at Florence, and between mile post 231.5+/- near Tracy and mile post 378.4+/- near Wolsey, South Dakota to allow DM&E to receive non-revenue ballast

traffic at Brookings, South Dakota and at Wolsey, including the right to interchange those trains with BNSF or other carriers at Wolsey.

Dakota, Minnesota & Eastern Railroad Corporation's business address is 120 South Sixth Street, Suite 1000, Minneapolis, Minnesota 55402. Questions regarding this transaction can be addressed to the counsel identified on the cover page of the notice.

Section 1180.6(a)(1)(ii) Consummation Date

The transaction will be consummated on or immediately after the effective date of this Notice of Exemption, and the consummation of the acquisition of the Lines by RCP&E.

Section 1180.6(a)(1)(iii) Purpose of the Transaction

The purpose of the transaction is to allow DM&E's continued handling of overhead grain trains in conjunction with BNSF that are currently operating between Florence, MN and points on DM&E beyond Tracy, MN, and to handle non-revenue ballast trains, including the right to interchange those trains with BNSF or other carriers at Wolsey.

Section 1180.6(a)(5) States in which property of the Applicant is situated.

Following consummation of the transaction in STB Docket No. FD 35799, Dakota, Minnesota & Eastern Railroad Corporation will operate or possess property rights in Illinois, Iowa, Missouri, Kansas, Wisconsin, South Dakota, Nebraska, Wyoming, and Minnesota.

Section 1180.6(a)(6) Map

A map is provided as Exhibit 1.

Section 1180.6(a)(7)(ii) Agreements

An unexecuted draft of the public version of the trackage rights agreement is attached as Exhibit 2. A confidential copy of the draft is being submitted under seal together with a motion for a protective order. The trackage rights agreement will not be

executed until the closing of the purchase of the Lines by RCP&E. DM&E will submit a signed copy of the trackage rights agreement within 10 days of its execution pursuant to 49 CFR 1180.6(a)(7)(ii).

Section 1180.4(g)(1)(i) Labor Protection

Although DM&E does not anticipate that any employees will be adversely affected by this transaction, it recognizes that employees adversely affected by the trackage rights component of this transaction are entitled to protection under the conditions imposed in *Norfolk and W. Ry. Co. -- Trackage Rights – Burlington N., Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. -- Lease and Operate – Cal. W. R.R.*, 360 I.C.C. 653 (1980).

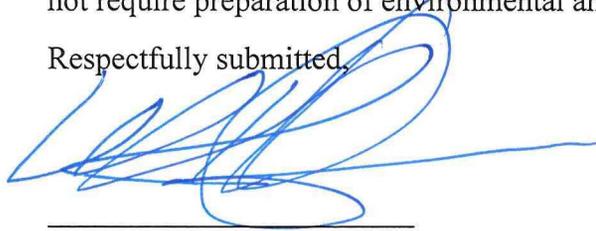
Section 1180.4(g)(2)(i) Caption Summary

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

Section 1180.4(g)(3) Environmental and Historical Documentation

Environmental and historical documentation are not required for this transaction. As provided in 49 C.F.R. § 1105.6(c)(4) and 49 C.F.R. § 1105.8(b)(3), trackage rights do not require preparation of environmental and historical reports and documentation.

Respectfully submitted,



W. Karl Hansen  
Stinson Leonard Street LLP  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402  
(612) 335-7088  
Attorneys for Dakota, Minnesota & Eastern Railroad Corporation

VERIFICATION

STATE OF MINNESOTA

COUNTY OF HENNEPIN

William M. Tuttle, being duly sworn, deposes and says that he has read the foregoing Notice of Exemption and that the contents thereof are true and correct to the best of his knowledge and belief.

William M. Tuttle

Title: General Counsel - U.S.

Subscribed and sworn to before me this 24 day of April, 2014.

Kristine Marie Williams  
Notary Public

My Commission expires:

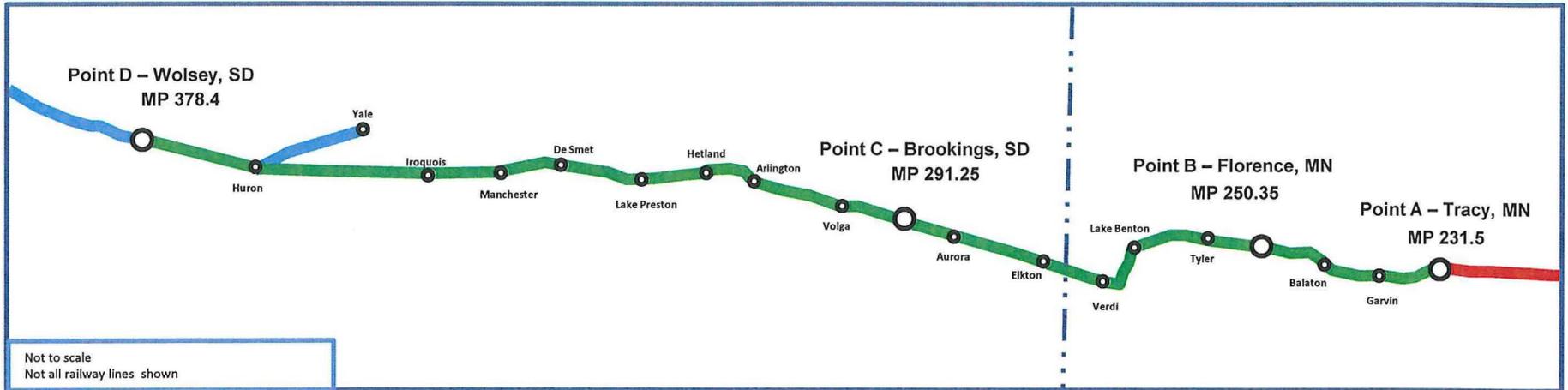
1-31-17



**EXHIBIT 1**

**Map**

Exhibit 1



- Subject Trackage
- DM&E
- RCP&E

**EXHIBIT 2**

**Draft Trackage Rights Agreement – Public Version**

**EXHIBIT 2**

**Draft Trackage Rights Agreement – Public Version**

## TRACKAGE RIGHTS AGREEMENT

**THIS AGREEMENT** is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between RAPID CITY, PIERRE & EASTERN RAILROAD, INC., a Delaware corporation, hereinafter referred to as "RCP&E", and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Delaware corporation, d/b/a CANADIAN PACIFIC, hereinafter referred to as "CP". Sometimes hereinafter, each may be referred to as a "Party" and sometimes collectively referred to as "the Parties."

### **WITNESSES THAT WHEREAS:**

A. CP has entered into an arrangement with RCP&E to sell the line of railroad between MP 231.5+/- in Tracy, MN and MP 174.7+/- in Colony, WY, between MP 97.1+/- in Rapid City, SD and MP 0.4+/- in Dakota Junction, NE, and between MP 0.4+/- in Dakota Junction, NE and MP 432.5+/- in Crawford, NE; and

B. Pursuant to the Transaction Agreement, dated as of January 2, 2014 between the Parties (the "**Transaction Agreement**"), RCP&E has agreed to grant to CP, and CP has agreed to accept from RCP&E, certain rights for CP's use of the Subject Trackage described herein in accordance with the terms and conditions set forth below;

**NOW THEREFORE**, in consideration of the premises and of all the mutual covenants herein set forth, the Parties hereto, intending to be legally bound, agree as follows:

### **ARTICLE 1** INTERPRETATION

1.1 **Defined Terms.** As used in this Agreement, including the Recitals hereto, the following terms shall have the meanings set out below:

- (a) "**Affiliate**" means with respect to a Party, any person that controls, is controlled by or is under common control with that Party.
- (b) "**Ballast**" shall mean ballast, rip rap and aggregates.
- (c) "**Capital Improvements**" means Improvements which require capital investments and expenditures to materially improve or upgrade the Subject Trackage, as defined by RCP&E capital accounting procedures.
- (d) "**Cars**" means each loaded or empty railway freight car, locomotive or similar equipment, handled by CP over the Subject Trackage.
- (e) "**Hazardous Substance**" means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing
  - (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances;

- (ii) substances that endanger the health and safety of persons; and
  - (iii) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.
- (f) **"Emergency Response Plan"** means the emergency response plan to be prepared by CP as described in Article 8.2.
- (g) **"Improvements"** means any building, structure, trackage or any other work of a physical character.
- (h) **"Trackage rights"** means the non-exclusive overhead trackage rights described in Article 2.1.
- (i) **"Trackage rights Fee"** means the fees payable by CP to RCP&E described in Article 10.2.
- (j) **"Operating Rules"** means RCP&E's operating and safety rules, timetables, special instructions, bulletins, general orders, authoritative directions and amendments, supplements and replacements thereto as communicated from time to time by RCP&E's designated operating officer to CP's designated operating officer.
- (k) **"Operating Window"** means the daily time period or periods designated by RCP&E that CP may operate on the Subject Trackage.
- (l) **"Subject Trackage"** means RCP&E's trackage between the points designated as Point "A", being approximately mile post 231.5+/- near Tracy, MN, and Point "B", being approximately mile post 250.35+/- near Florence, MN (the "Tracy to Florence segment"); between Point "A" near Tracy and Point "C", being approximately mile post 291.25+/- near Brookings, SD (the "Tracy to Brookings segment"); and between Point "A" near Tracy and Point "D", being approximately mile post 378.4+/- near Wolsey, SD (the "Tracy to Wolsey segment"), all as shown in Schedule "A". The Subject Trackage includes all track, track connections, facilities and appurtenances, signals and switches located between Points "A" and "B", "A" to "C", and "A" to "D" as such facilities and appurtenances, signals and switches are from time to time added to, modified, or removed at the sole discretion of RCP&E.
- (m) **"Trains"** means all trains, locomotives, Cars, cabooses and equipment owned, leased, used or otherwise in the possession of, control of or under operation by CP.

1.2 **Schedules.** The following Schedules are attached to and form a part of this Agreement:

<u>Schedule</u>	<u>Description</u>
A	Subject Trackage Sketch Plan
B	Rate Schedule
C	Rate Escalation
D	Insurance Coverage

**ARTICLE 2**  
**TRACKAGE RIGHTS**

2.1



CP's use of the Subject Trackage shall be in common with RCP&E and any other user of the Subject Trackage and the rights of RCP&E and such other user to use the Subject Trackage shall not be diminished by this Agreement.

2.2

In order to avoid conflicting movements and ensure the safe operation of both Parties on the Subject Trackage, the Trackage rights are subject at all times to the following conditions:

(a) 

(b) 

(c) 

(d) 

(e) 

2.3

[REDACTED]

**ARTICLE 3**  
**RESTRICTIONS ON USE**

3.1 The Trackage rights granted herein for the Tracy to Florence segment are only for the movement of overhead freight traffic to be interchanged with BNSF at Florence, MN.

[REDACTED]

3.2 The Trackage rights granted herein for the Tracy to Brookings segment and the Tracy to Wolsey segment are only for the movement of non-revenue Ballast Cars. CP may set off, pick up, or store equipment at Brookings as necessary for the loading of Ballast. [REDACTED]

[REDACTED]





**ARTICLE 5**  
**MAINTENANCE OF SUBJECT TRACKAGE**

5.1 RCP&E shall maintain, repair and renew the Subject Trackage with its own supervision and labor forces and shall maintain sufficient access on adjacent roadways as may be necessary for crews to access the Subject Trackage. RCP&E shall keep and maintain the Subject Trackage in reasonably good condition, however, RCP&E shall be bound to use only reasonable and customary care, skill and diligence in the maintenance, repair and renewal of the Subject Trackage and RCP&E does not guarantee the conditions of the Subject Trackage or that operations over it will not be interrupted. The Parties also acknowledge and agree that in order for RCP&E to perform its maintenance obligations, the Subject Trackage will be out of service from time to time for the required work blocks and RCP&E shall not be liable to CP for any loss due to delay or interruption resulting from RCP&E's performance of maintenance, repair, or renewal of the Subject Trackage.

5.2 

5.3 Nothing in this Agreement shall preclude RCP&E from discontinuing or abandoning rail operations on any part of the Subject Trackage at any time, subject to RCP&E fulfilling the applicable requirements set out by the Surface Transportation Board. Upon such discontinuance or abandonment, this Agreement shall automatically terminate as to the portion of the Subject Trackage that has been discontinued.

**ARTICLE 6**  
**OPERATION AND MANAGEMENT OF SUBJECT TRACKAGE**

6.1 The management and operation of the Subject Trackage shall be under the exclusive direction and control of RCP&E. Subject to Section 2.2, RCP&E shall have the unrestricted right to change the management and the operations on and over the Subject Trackage as RCP&E, in its sole judgment, may deem necessary, expedient or proper for the operation of the Subject Trackage.

6.2 CP shall comply with all applicable laws, regulations and rules respecting the operation, condition, inspection and safety of its Trains, while such Trains are being operated over the Subject Trackage.

[Redacted]

6.3

[Redacted]

6.4

[Redacted]

6.5

[Redacted]

6.6

[Redacted]

6.7

[Redacted]

6.8

[Redacted]

6.9

[Redacted]

[Redacted]

6.10

[Redacted]

6.11

[Redacted]

6.12

[Redacted]

6.13

[Redacted]

6.14

[Redacted]

6.15

[Redacted]

6.16

[Redacted]

6.17

[REDACTED]

**ARTICLE 7**  
**CLEARING OF WRECKS**

7.1

[REDACTED]

7.2

[REDACTED]

**ARTICLE 8**  
**ENVIRONMENTAL**

8.1 In the event that CP is required to transport Hazardous Substances over the Subject Trackage, CP shall:

- (a) comply with all applicable federal, state and municipal laws, rules and regulations including, but not limited to, applicable rules and regulations as set forth by the, Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Surface Transportation Board, and the Association of American Railroads (AAR) respecting the handling and transporting of Hazardous Substances; and
- (b) ensure its personnel comply with such applicable laws, rules and regulations and meet all the requirements and qualifications for training and certification set forth by such laws.

8.2

[REDACTED]

8.3

[REDACTED]

8.4

[REDACTED]

8.5

[REDACTED]

**ARTICLE 9**  
**MILEAGE AND CAR HIRE**

9.1 All mileage and car hire charges accruing on cars in CP's Trains on the Subject Trackage shall be on CP's account, to be reported and paid by CP.

**ARTICLE 10**  
**BILLING AND PAYMENT OF CHARGES**

10.1

[REDACTED]

10.2

[REDACTED]

[REDACTED]

[Redacted text block]

10.3

[Redacted text block]

10.4

[Redacted text block]

10.5

[Redacted text block]

10.6

[Redacted text block]

10.7

[Redacted text block]

10.8

[Redacted text block]

ARTICLE 11  
LIABILITY

[REDACTED]

11.1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.2

[REDACTED]

11.3

[REDACTED]

11.4

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11.12

[REDACTED]

11.13

[REDACTED]

11.14

[REDACTED]

11.15

[REDACTED]

**ARTICLE 12**  
**TERM AND TERMINATION**

12.1

[REDACTED]

12.2

[REDACTED]

12.3

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

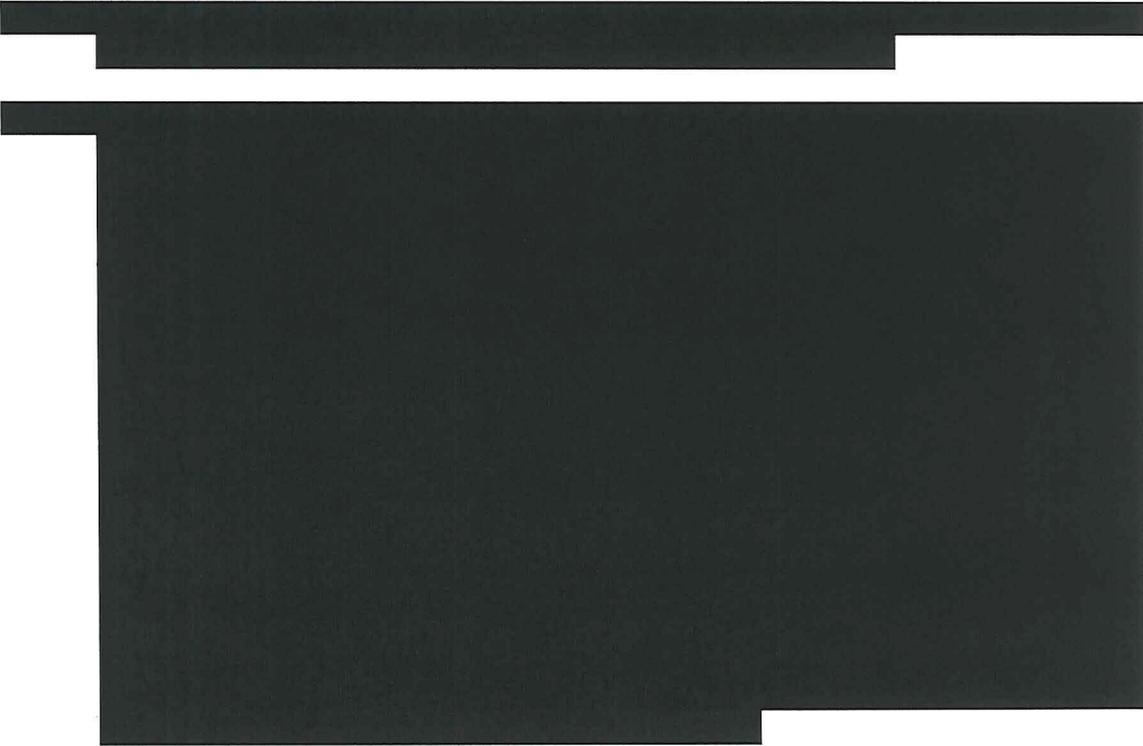
- 12.4 Termination of this Agreement for any reason shall not relieve or release any Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by any Party under the terms of this Agreement prior to the termination hereof.
- 12.5 In the event of termination of the trackage rights over all or a portion of the Subject Trackage, CP shall cooperate with RCP&E in obtaining STB discontinuance authority for the trackage rights terminated under this Agreement.

**ARTICLE 13**  
**CONFIDENTIALITY**

13.1 [REDACTED]

**ARTICLE 14**  
**DISPUTE RESOLUTION**

14.1 [REDACTED]



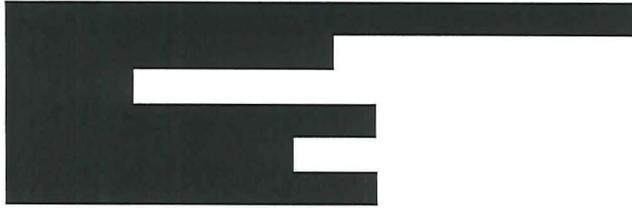
**ARTICLE 15**  
**NOTICES**

15.1 Any notice request, demand or other document required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered in person, or by courier or facsimile and addressed to the other Party as follows:

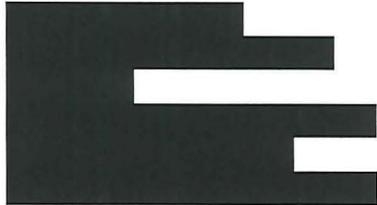
(a) if to CP:

Dakota, Minnesota & Eastern Railroad Corporation  
120 S. 6th Street, Suite 700  
Minneapolis, MN 55402  
Facsimile No.: 612 904-5981

with a copy to:



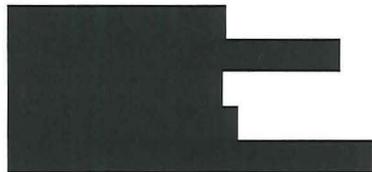
with a copy to:



(b) if to RCP&E:

Rapid City, Pierre & Eastern Railroad, Inc.  
166 E 14000 S  
Suite 140  
Draper, UT 84020  
Attention President  
Facsimile No. [       ]

with a copy to :



Any notice, if given by courier, shall be deemed to have been given or made on the date delivered. Either Party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other Party to this Agreement, in the same manner as provided above for all other written notices.

**ARTICLE 16**  
**SUCCESSORS AND ASSIGNS**

16.1



16.2



**ARTICLE 17**  
**REGULATORY APPROVAL**

17.1 Should this Agreement require the prior approval of the Surface Transportation Board (“STB”), CP will initiate and thereafter diligently pursue, at its own cost and expense, an appropriate application to secure such approval.

17.2 The Parties shall assume and hold one another harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the Parties hereunder, where such claims are predicated on labor protective conditions imposed by the Surface Transportation Board or its predecessor.

**ARTICLE 18**  
**GOVERNING LAW**

18.1



**ARTICLE 19**  
**FORCE MAJEURE**

19.1 A Party’s duties and obligations under this Agreement shall be excused and a Party shall not be liable to the other Party for any delay, loss or damage resulting from circumstances or causes beyond its reasonable control including, without limitation: an Act of God, inclement weather conditions, storms, blizzard, flood, washout, avalanche, snow slide, rockslide, earthquake, expropriation, fire or explosion, natural catastrophe of any kind, strike, lockout, walkout or other labor dispute; war; vandalism or sabotage, riot, or other civil commotion, insurrection, act of terrorism or other violence, derailment, track outage, labor shortage, electric utility power outage, locomotive or fuel shortage; any law, order or requirement of any governmental agency or authority; blockade; embargo or AAR service order; closure of origin or destination for any reason. Force majeure declarations by either Party may be limited to specific origins or destinations or railroad routes to more specifically identify the force majeure event. The Party declaring force majeure shall promptly notify the other Party of the nature of the condition and the commencement and cessation thereof.

**ARTICLE 20**  
**GENERAL**

20.1 Nothing in this Agreement shall limit the right of RCP&E to admit other companies to use, operate, dispatch or maintain the Subject Trackage or any part thereof on such terms and conditions as are satisfactory to RCP&E.

20.2 All headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

- 20.3 In this Agreement where the context so requires, the singular of any word includes the plural, and vice versa, the use of any term is generally applicable to any gender and, where applicable, to a corporation.
- 20.4 References to a "Person" shall include individuals, corporations, partnerships, associations, bodies politic and other entities, all as may be applicable in the context.
- 20.5 All words, terms and phrases used in this Agreement and not otherwise defined herein shall be construed in accordance with the generally accepted definition or meaning of such words, terms or phrases in the North American railroad industry.
- 20.6 This Agreement may not be modified or amended except in writing and executed by CP and RCP&E.
- 20.7 No waiver of any provision of this Agreement will be effective unless in writing signed by the appropriate Party, and then only in the specific instance and for the specific purpose given.
- 20.8 This Agreement constitutes the entire understanding between the Parties hereto with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and prior agreements and memorandums between the Parties hereto relating to the subject matter hereof.
- 20.9 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the day and year first above written.

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
d/b/a CANADIAN PACIFIC**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.**

Per: \_\_\_\_\_

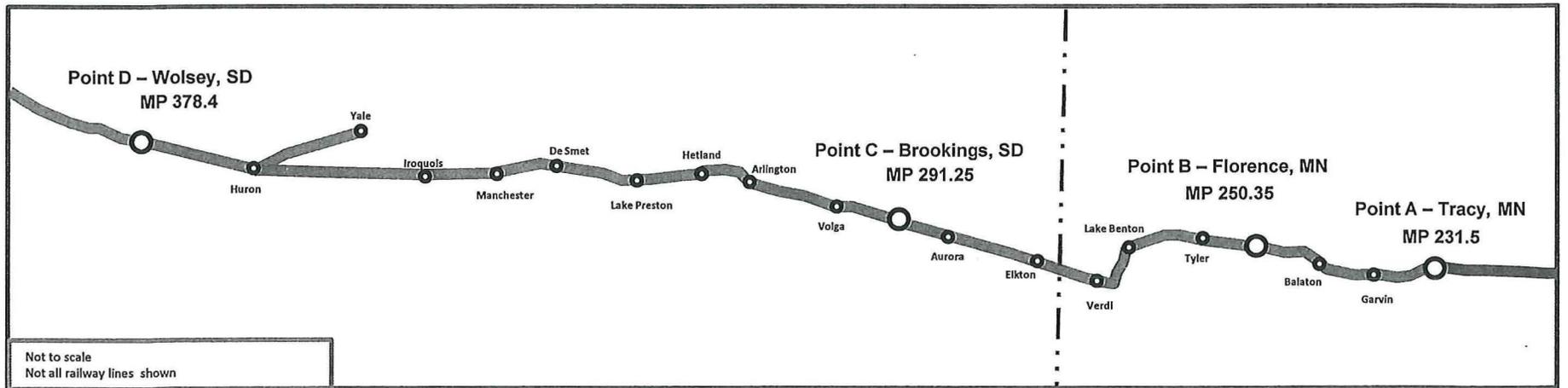
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE "A"**  
**Subject Trackage**

# Schedule A Subject Trackage

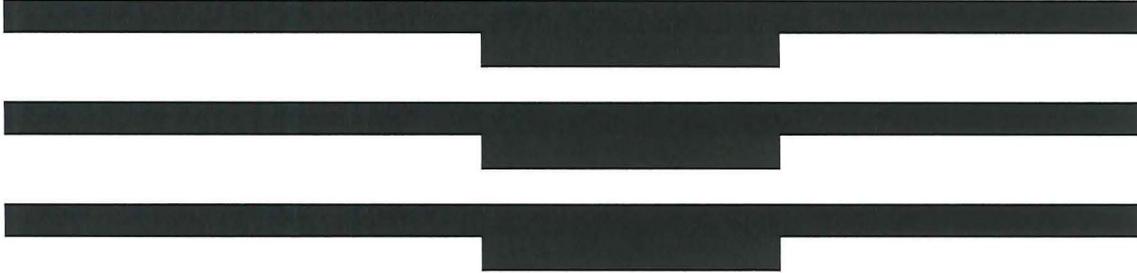


Not to scale  
Not all railway lines shown



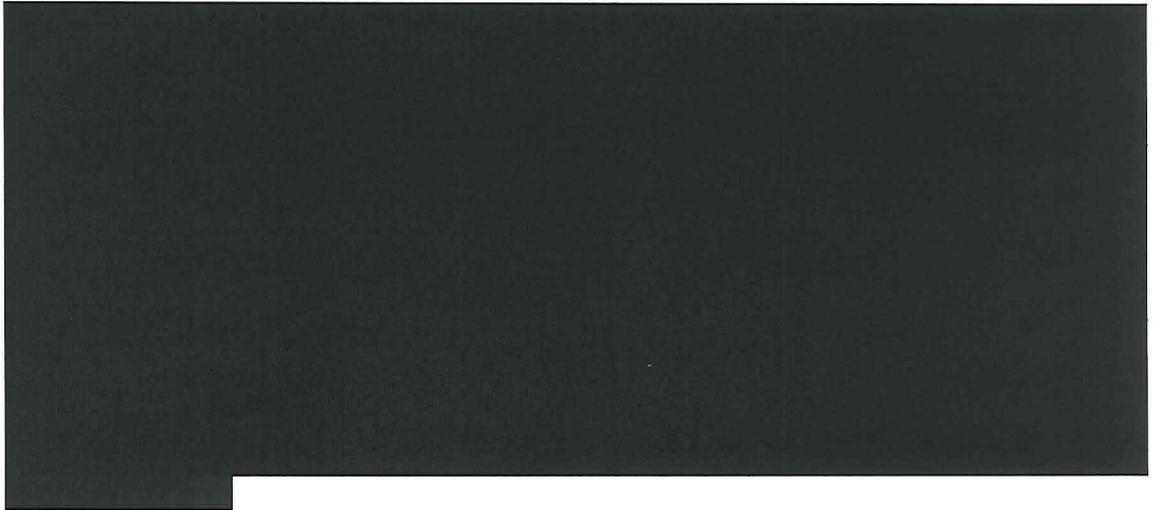
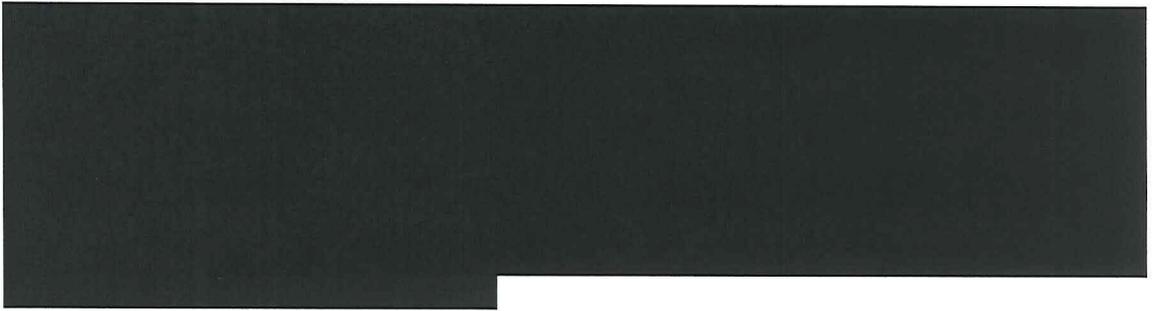
- Subject Trackage
- CP
- RCP&E

**SCHEDULE "B"**  
**Rate Schedule**

The table content is completely redacted with black bars. It appears to be a table with three rows and at least two columns, with a central column being narrower than the side columns.

SCHEDULE "C"

Rate Escalation



SCHEDULE "D"



**EXHIBIT 3**  
**Caption Summary**

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION  
FINANCE DOCKET NO. 35818

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION  
— TRACKAGE RIGHTS EXEMPTION —  
RAPID CITY, PIERRE & EASTERN RAILROAD, INC.

Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E") will grant overhead trackage rights to Dakota, Minnesota & Eastern Railroad Corporation, dba Canadian Pacific ("DM&E") between mile post 231.5+/- near Tracy, MN and mile post 378.4+/- near Wolsey, SD to allow DM&E's continued handling of overhead grain trains interchanged with BNSF at Florence, MN for origins and destinations beyond Tracy, and for DM&E's continued handling of non-revenue ballast trains including the right to interchange with BNSF or other carriers at Wolsey at Wolsey. This transaction will be consummated on or immediately after the effective date of this Notice of Exemption, and the consummation of the sale of rail lines to RCP&E in STB Docket No. FD 35799.

This Notice is filed under § 1180.2(d)(7). 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 stay the transaction.

Dated:  
By the Board,

Rachel D. Campbell, Director  
Office of Proceedings