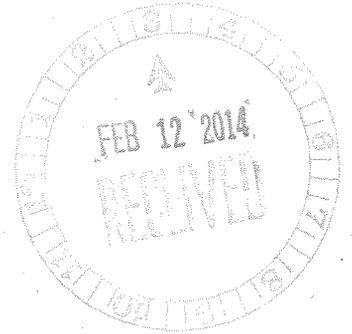


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February 12, 2014  
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Public Record

BEFORE THE  
**SURFACE TRANSPORTATION BOARD**  
STB DOCKET NO. FD 35799



**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.  
-- ACQUISITION AND OPERATION EXEMPTION  
INCLUDING INTERCHANGE COMMITMENT --  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

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**NOTICE OF INTENT TO FILE NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. §1150.35**

*(contains color images)*

ERIC M. HOCKY  
CLARK HILL PLC  
One Commerce Square  
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Dated: February 12, 2014

Attorneys for  
Rapid City, Pierre & Eastern Railroad, Inc.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.  
-- ACQUISITION AND OPERATION EXEMPTION  
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**NOTICE OF INTENT TO FILE NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. §1150.35**

Rapid City, Pierre & Eastern Railroad, Inc. (“RCP&E” or “Applicant”), a non-carrier, hereby files this Notice of Intent pursuant to 49 C.F.R. §1150.35(a), and states that, on or after February 27, 2014, it intends to file a verified notice of exemption to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific Railway (“DM&E”), and to operate, approximately 670 miles of rail lines located west of Tracy, Minnesota (the “DM&E West Lines”). RCP&E will also be acquiring incidental trackage rights over lines of DM&E and over connecting lines of other carriers. The rights being acquired are more fully described in the summary of the transaction included in the Required Information (see pp. 3-4 below). The rail lines to be acquired and/or operated are shown on the attached Exhibit A, and are shown on the map attached as Exhibit B. The projected revenues of RCP&E will make it a Class II rail carrier once it commences operations.

RCP&E is a wholly-owned subsidiary of Genesee & Wyoming Inc. (“GWI”), a non-carrier holding company. GWI’s control of RCP&E when it becomes a carrier, together with the other carriers in GWI’s corporate family, will be the subject of a notice of exemption to be filed in STB Docket No. FD 35800.

## Required Information

In accordance with the provisions of 49 C.F.R. §1150.35, and §1150.33 as incorporated therein, RCP&E submits the following information:

### **1150.33(a) Full name and address of Applicant.**

Rapid City, Pierre & Eastern Railroad, Inc.  
166 E 14000 S  
Suite 140  
Draper, UT 84020

### **1150.33(b) Name, address and telephone number of representative of Applicant.**

Eric M. Hocky  
Clark Hill PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
(215) 640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

### **1150.33(c) Statement that agreement has been reached.**

RCP&E and DM&E entered into a definitive Transaction Agreement on January 2, 2014.

### **1150.33(d) The operator of the property.**

DM&E is the current operator of the DM&E West Lines, with the exception of the Crawford subdivision which is operated by Nebraska Northwestern Railroad, Inc. (“NNW”) pursuant to a lease agreement.

### **1150.33(e) A brief summary of the proposed transaction.**

RCP&E is a non-carrier formed for the purpose of acquiring the DM&E West Lines from DM&E, and operating them as an independent regional carrier with continuing connections to DM&E and the Canadian Pacific Railway (“CP”) rail system, as well as to BNSF Railway Company (“BNSF”), Union Pacific Railroad Company (“UP”) and NNW. RCP&E also will acquire incidental trackage rights over lines of DM&E and, subject to any necessary consents,

over connecting lines of other carriers. The approximately 670 miles of rail lines and rights to be acquired and operated are more fully described on Exhibit A and are shown on the map attached as Exhibit B.

Notwithstanding the transfer of the lines described above, DM&E is retaining the common carrier obligation with respect to the handling of coal to, from and over the DM&E West Lines through December 31, 2030, and RCP&E will not acquire the common carrier obligation during that period.<sup>1</sup> To facilitate the exercise of its retained rights, DM&E is reserving an easement over the DM&E West Lines that will enable it to provide coal service. (There is not currently any coal service provided to, from or over the DM&E West Lines.) A copy of the reserved coal easement that will be included in every deed that is recorded is attached hereto as Exhibit C.

Additionally, RCP&E will grant DM&E trackage rights between Tracy, Minnesota and Wolsey, South Dakota, that will allow DM&E to continue to handle through grain trains with BNSF that are operating today between Florence and points on DM&E beyond Tracy, and to handle non-revenue ballast trains including the right to interchange such trains with BNSF at Wolsey. DM&E will make a separate filing with the Board for an exemption for the trackage rights being granted by RCP&E to DM&E.

RCP&E is a wholly-owned subsidiary of GWI. As such, it will benefit from GWI's safety and training programs, and from the expansive reach of GWI's national marketing and commercial resources, all of which will supplement the locally based railroad. In STB Docket

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<sup>1</sup> The acquisition by RCP&E also does not include any of the rights of DM&E or its affiliates to build into the Powder River Basin. *See Wyoming Dakota Railroad Properties, Inc. – Acquisition and Operation Exemption – Dakota, Minnesota & Eastern Railroad Corporation*, STB Finance Docket No. 34871 (decision served August 14, 2006, and notice of exemption served August 22, 2006).

No. 35800, GWI will seek an exemption to control RCP&E when it becomes a carrier, in common with the other carriers in its corporate family. The control is eligible for the exemption because the lines of RCP&E do not connect with the lines of any other carriers in GWI's corporate family, the transaction is not part of a series of anticipated transactions that would connect them, and no Class I carrier is involved.

RCP&E also provides the following additional information as required under 49 C.F.R. §1150.33(e):

**(1) The name and address of the railroad transferring the subject property.**

Dakota, Minnesota & Eastern Railroad Corporation  
120 S. 6<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402

**(2) The proposed time schedule for consummation of the transaction.**

The parties expect to consummate the transaction as soon as ten days after the exemption becomes effective, assuming all other conditions of closing have been satisfied by that time.

**(3) The mileposts of the subject property.**

The mileposts of the DM&E West Lines are shown on Exhibit A attached hereto.

**(4) The total route miles being acquired.**

The total route miles being acquired are 672.88 ±, as shown on Exhibit A attached hereto.

**1150.33(f) Map of the subject property.**

A map of the DM&E West Lines is attached hereto as Exhibit B.

**1150.33(g) A certificate that revenues will not exceed those of a Class III carrier.**

Not applicable.

**1150.33(h)(1) Information for transactions imposing interchange commitments.**

RCP&E certifies that the proposed acquisition involves an interchange commitment. As part of the transaction, RCP&E will be acquiring the Colony Line as identified in Exhibit A and shown on Exhibit B, and will be assuming certain rights and obligations arising under the agreements pursuant to which DM&E acquired the Colony Line from UP in 1996. Among the assumed obligations will be those obligations under the existing Colony Line Car Supply, Services and Divisions Agreement (“CSSDA”), for the remainder of the term as set forth in the CSSDA. As required under 49 C.F.R. §1150.33(h)(1), the following additional information is provided by RCP&E:

(i) As noted above, the CSSDA contains an interchange commitment that affects interchange with carriers other than UP at the following interchange points as shown on the map attached as Exhibit B: Florence and Tracy, Minnesota; Dakota Jct. and Crawford, Nebraska; and Wolsey, Aberdeen, Yale and Watertown, South Dakota. The interchange commitment was negotiated as part of the overall economic package in the original transaction between DM&E and UP which was approved by the Board.

(ii) A complete version of the CSSDA is being submitted as part of the Confidential Appendix being submitted herewith.<sup>2</sup>

(iii) A list of the shippers who currently use or who have used the Colony Line in the last two years, and which are subject to the interchange commitment is attached hereto as Exhibit D.

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<sup>2</sup> RCP&E has filed a motion for a protective order which remains pending at the Board. However, the Confidential Appendix and the confidentiality of the information contained therein is protected separately as set forth in the Board’s regulations at 49 C.F.R. §1150.33(h)(1). Access to such information is governed by the Board’s regulations at 49 C.F.R. §1150.33(h)(2).

(iv) The aggregate number of carloads originated or terminated within the last two years by the shippers identified in subparagraph (iii) above is being submitted as part of the Confidential Appendix.

(v) RCP&E hereby certifies, as set forth in the certificate of service, that it has provided notice of the proposed transaction and the interchange commitment by serving a copy of this Notice of Intent on the shippers identified in subparagraph (iii) above.

(vi) NNW and BNSF connect with the Colony Line at Dakota Jct. and Crawford, Nebraska. Additionally, BNSF and DM&E connect elsewhere with the DM&E West Lines that RCP&E will be acquiring and operating.

(vii) The CSSDA requires that any acquirer of the Colony Line assume the requirements of the CSSDA, including the interchange commitment, and thus, there was no discussion or negotiation of the acquisition with and without the commitment. RCP&E does not have an estimate of the difference between the acquisition price with and without the assumption of the interchange commitment, or of the difference in price with and without the interchange commitment that would have applied when DM&E acquired the Colony Lines from UP in 1996. Accordingly, RCP&E requested an estimate of the difference from DM&E as permitted by the Board. *Information Required in Notices and Petitions Containing Interchange Commitments*, STB Docket No. EP 714 (served September 5, 2013), slip op. at 5-6. Copies of the RCP&E request and the DM&E response are included in the Confidential Appendix.

(viii) The caption of this proceeding reflects the existence of an interchange commitment.

**1150.35(b)(1) General statement of service intentions.**

RCP&E initially expects to continue service at substantially the same level as is currently being provided by DM&E. This generally will include two through trains to and from Tracy, Minnesota, service as warranted to and from BNSF, three trains a week between Huron and UP at Mankato, five local trains (consisting of two locals serving customers on the Black Hills Subdivision, two locals serving customers on the Huron Subdivision, and one local serving customers on branch lines near Huron), and two yard assignments each day. Crews will generally operate five days per week at all locations, except between Huron and Tracy where crews will operate seven days per week. Seasonal unit trains will be operated as extras outside this regularly scheduled service. While initially continuing existing levels of service, RCP&E believes that it can bring to its operation of the DM&E West Lines a focused attention to customer service and safety that are the trademarks of the GWI subsidiary railroads. RCPE will continuously monitor traffic volumes and expects to add train starts if required to maintain necessary levels of service efficiency.

RCP&E will maintain access to the DM&E and CP rail systems for its customers through an interchange with DM&E at Tracy, Minnesota. RCP&E and its customers will also maintain the current access to BNSF (at Wolsey, Aberdeen, Yale and Watertown, South Dakota, at Florence, Minnesota, and at Crawford, Nebraska via NNW), NNW (at Dakota Jct., Nebraska) and UP (at Mankato, Minnesota). RCP&E expects to build relationships with DM&E/CP, BNSF and UP, and to provide enhanced access to the national rail system for the customers it will serve.

**1150.35(b)(2) General statement of labor impacts.**

While there may be some impact on labor, RCP&E is taking steps that it expects will minimize that impact. DM&E estimates that there are approximately 215 employees currently working on the DM&E West Lines. Representatives of RCP&E have had four “town hall” meetings<sup>3</sup> with DM&E employees who are working on the DM&E West Lines about positions that will be available on RCP&E. Additionally, RCP&E has complied with the notice requirements set forth in 49 C.F.R. §1150.32(e) by posting the available positions at the workplaces of the DM&E employees working on the DM&E West Lines, serving a copy on the national offices of the labor unions of those employees, and filing its certification with the Board.<sup>4</sup> As shown in the notice, RCP&E expects to hire approximately 180 employees for the various positions needed at start-up. RCP&E believes that the wages and benefits that it is offering are substantially similar to those provided by DM&E to the employees working on the DM&E West Lines. RCP&E also expects that some of the potentially affected DM&E employees will be able to exercise their rights under their existing agreements with DM&E to move to other positions on the DM&E.

RCP&E has started accepting applications for employment. It expects to conduct interviews and make its hiring decisions as soon as possible to minimize uncertainty in the workforce.

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<sup>3</sup> The meetings were held in Brookings and Huron, South Dakota, on January 15, 2014, and in Pierre and Rapid City, South Dakota on January 16, 2014.

<sup>4</sup> The certification was filed with the Board on January 28, 2014. A copy is attached hereto as Exhibit E.

## Service

In accordance with the requirements of 49 C.F.R. §1150.35(a), and as discussed in the discussion of labor impacts above, RCP&E has complied with the notice requirements of 49 C.F.R. §1150.32(e).

In accordance with the requirements of 49 C.F.R. §1150.35(c), RCP&E is serving copies of this Notice of Intent on the Governor of each State in which the DM&E West Lines are located (South Dakota, Minnesota, Nebraska and Wyoming), the Department of Transportation or equivalent agency in each such State, the national offices of the labor unions with employees on the DM&E West Lines, and on shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the DM&E West Lines in the most recent 12 months for which data is available (beginning with the largest shipper and working down).<sup>5</sup> In addition, RCP&E is serving a copy of the Notice of Intent upon those shippers who will be entitled to service of the Notice of Exemption under 49 C.F.R. §1150.33(h). A certificate of service is attached hereto.

Respectfully submitted,

  
ERIC M. HOCKY  
CLARK HILL PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103  
(215) 640-8500  
[ehocky@clarkhill.com](mailto:ehocky@clarkhill.com)

Dated: February 12, 2014

Attorneys for  
Rapid City, Pierre & Eastern Railroad, Inc.

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<sup>5</sup> RCP&E is serving the 10 largest shippers which represent approximately 75% of the volume of traffic during 2012, the last year for which RCP&E has complete traffic data.

## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following by U.S. first class mail, postage pre-paid:

Terence M. Hynes  
Sidley Austin LLP  
1501 K Street, NW  
Washington DC 20005  
[thynes@sidley.com](mailto:thynes@sidley.com)

Hon. Dennis Daugard  
Office of the Governor  
500 E Capitol Ave  
Pierre, SD 57501

Darin Bergquist, Secretary  
South Dakota Department of Transportation  
Becker-Hansen Building  
700 East Broadway Avenue  
Pierre, SD 57501-2586

Hon. Dave Heineman  
Office of the Governor  
P.O. Box 94848  
Lincoln, NE 68509-4848

Nebraska Department of Roads  
Attention: Rail & Public Transportation Division  
PO Box 94759  
1500 Nebraska Highway 2  
Lincoln, NE 68509-4759

Tom Sorel, Commissioner  
Minnesota Department of Transportation  
Transportation Building, MS-100  
395 John Ireland Boulevard  
St. Paul, MN 55155-1899

Hon. Matt Mead  
Office of the Governor  
State Capitol  
200 West 24th Street  
Cheyenne, WY 82002-0010

John Cox, Director  
Wyoming Department of Transportation  
5300 Bishop Boulevard  
Cheyenne, WY 82009-3340

Erika A. Diehl-Gibbons  
Assistant General Counsel  
SMART – Transportation Division  
(formerly United Transportation Union)  
24950 Country Club Blvd., Ste. 340  
North Olmsted, OH 44070-5333

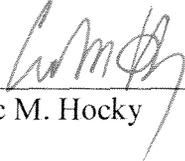
Dan Pickett  
President  
Brotherhood of Railroad Signalmen  
917 Shenandoah Shores Road  
Front Royal, VA 22630

Freddie N. Simpson  
President  
Brotherhood of Maintenance of Way  
Employes Division of the IBT  
41475 Gardenbrook Road  
Novi, MI 48375-1328

R. Thomas Buffenbarger  
International President  
The International Association of Machinists and Aerospace Workers  
9000 Machinists Place  
Upper Marlboro, Maryland 20772-2687

Joseph Guerrieri, Jr.  
Carmen Parcelli  
Guerrieri, Clayman, Bartos & Parcelli, PC  
(counsel to IAM District Lodge 19)  
1900 M. Street, NW  
Suite 700  
Washington, DC 20036

and to the shippers shown on the attached list who represent approximately 75% of the volume of local traffic and traffic originating or terminating on the DM&E West Lines, and who include the shippers subject to the interchange commitment identified on Exhibit D.

  
Eric M. Hocky

Dated: February 12, 2014

Craig Havlik  
Manager, Rail Transportation  
**American Colloid Co.**  
2870 Forbs Avenue  
Hoffman Estates, IL 60192

Ken Applegate  
Vice President, Transportation Services  
**Valero Marketing & Supply Co.**  
One Valero Way  
San Antonio, TX 78249-1616

Dan Mack  
Vice President, Transportation  
**CHS Inc.**  
5500 Cenex Drive  
Inver Grove Heights, MN 55077-1733

Roger Krueger  
Sr. Vice President, Grain  
**South Dakota Wheat Growers Assoc.**  
908 Lamont Street South  
Aberdeen, SD 57401

Rick Jones  
Manager, Transportation  
**Bentonite Performance Minerals LLC**  
3000 N. Sam Houston Parkway, East  
Houston, TX 77032

Tom Kersting  
President & CEO  
**South Dakota Soybean Processors**  
100 Caspian Avenue  
P.O. Box 500  
Volga, SD 57071

Tom Lien, CEO  
**Dakota Mill & Grain Inc.**  
P.O. Box 2340  
Rapid City, SD 57709-2340

Randy Brown, Vice President - Grain  
**Harrold Grain Company**  
**Harrold Terminal LLC**  
19723 321<sup>st</sup> Avenue  
Harrold, SD 57536

Tim Luken, General Manager  
**Oahe Grain Corp.**  
300 Ash Avenue  
Onida, SD 57564

Stevie Ambrose  
Vice President, Sales & Logistics  
**GCC Dacotah Inc.**  
600 South Cherry Street, 10<sup>th</sup> Floor  
Glendale, CO 80246

**EXHIBIT A**

**DESCRIPTION OF ACQUIRED LINES AND RIGHTS**

## DM&E West Lines

### 1. Acquired Lines

#### (a) Huron Subdivision

Between Tracy, MN MP 231.5 and Huron<sup>6</sup> MP 362.7, a distance of 131.2 miles

#### (b) Pierre Subdivision

Between Huron MP 362.7 and Ft. Pierre MP 484.4, a distance of 121.7 miles

#### (c) PRC Subdivision

Between Ft. Pierre MP 484.4 and Pressler Jct. MP 649.2, a distance of 164.8 miles

#### (d) Black Hills Subdivision

Between Dakota Jct., NE MP 0.4 and Bentonite/Colony, WY MP 174.7, a distance of 174.3 miles

#### (e) Crawford Subdivision<sup>7</sup>

Between Dakota Jct., NE MP 411.72± and Crawford, NE MP 432.5±, a distance of 20.78 miles

#### (f) Onida Subdivision

Between Onida MP 97.5 and Blunt MP 115.1, a distance of 17.6 miles

#### (g) Mansfield Subdivision

Between Redfield MP 39.7 and Mansfield MP 66.9, a distance of 27.2 miles

#### (h) Yale Spur<sup>8</sup>

Between Yale MP 145.0 and Huron MP 160.3±, a distance of 15.3 miles

### 2. Incidental Trackage Rights

#### (a) Over lines owned and operated of DM&E

Between Tracy, MN MP 231.5 and Mankato, MN MP 142.4, a distance of 89.1 miles

#### (b) Over lines operated by BNSF (as operator for State of South Dakota, as successor to Chicago, Milwaukee, St. Paul and Pacific Railroad Company), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company

Between Wolsey MP 70.50 and Aberdeen MP 777.04, a distance of 72.04 miles

#### (c) Over lines owned and operated by BNSF, being assigned to RCP&E by DM&E

Between Yale MP 148.5 and Watertown MP 90.72, and yard trackage at Huron MP 160.33 to the end of track, a distance of 58.65 miles

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<sup>6</sup> All end points are located in South Dakota unless otherwise noted.

<sup>7</sup> Leased to NNW.

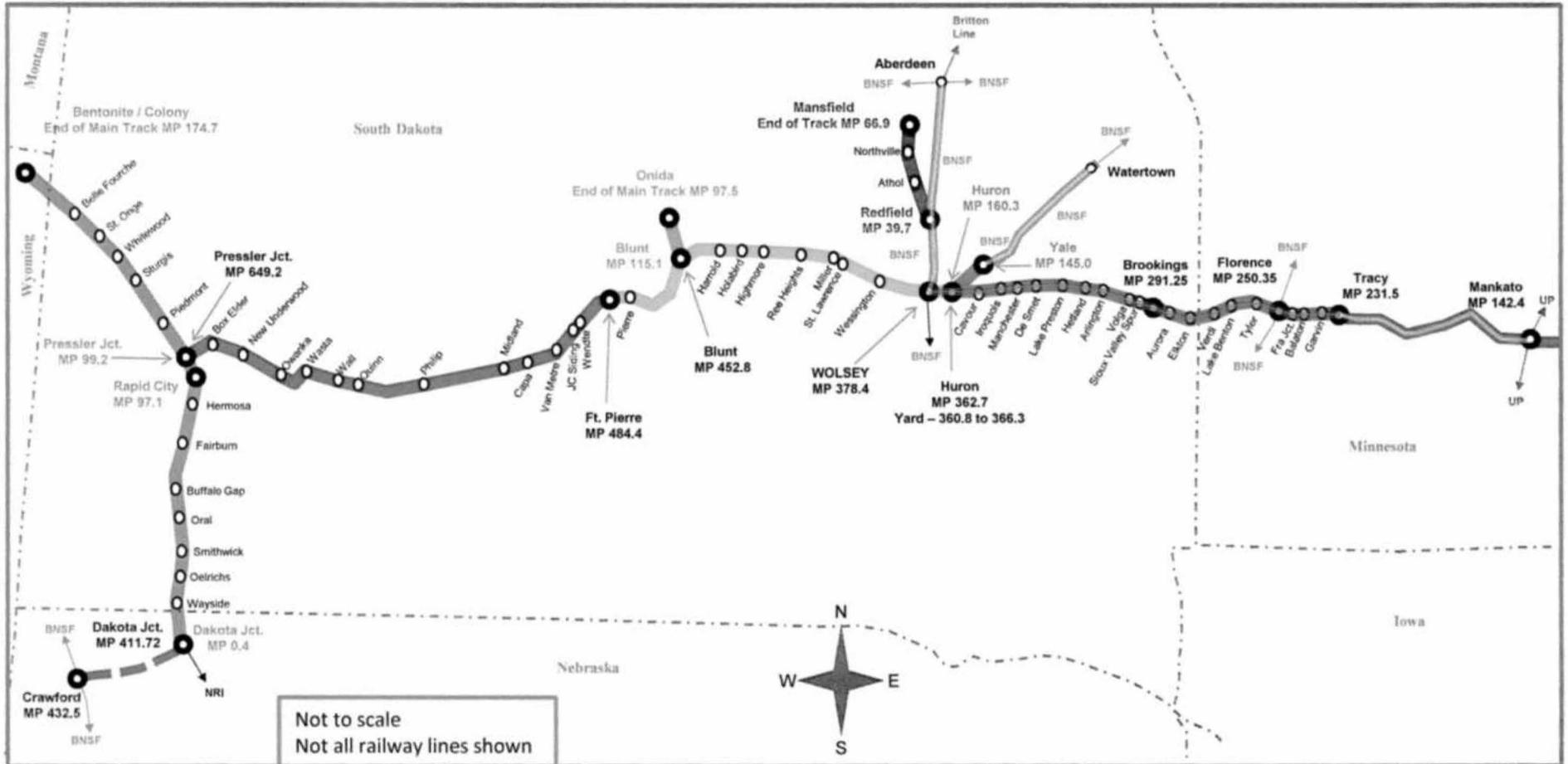
<sup>8</sup> Subleased from East Central Railroad Authority; sublease being assigned by DM&E.

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**EXHIBIT B**

**MAP**

# Main System Map for STB – Slide 1 of 2



# Main System Map for STB – Slide 2 of 2

## LEGEND

LINES	
	CP
	Huron
	Yale
	Mansfield
	Pierre
	Onida
	PRC
	Black Hills
	Crawford

NEWCO TRACKAGE RIGHTS	
	-Tracy to Mankato
	-Wolsey to Aberdeen (BNSF)
	-Yale to Watertown (BNSF)

CP TRACKAGE RIGHTS	
	-Tracy to Florence
	-Tracy to Brookings
	-Tracy to Wolsey

**EXHIBIT C**

**FORM OF RESERVED COAL EASEMENT**

**(FORM OF EXHIBIT D TO DEED)**

**Reserved Coal  
Service Rights and Easements**

1. Reservation of Easement. Subject to the terms and conditions set forth below, Grantor excepts from the Real Property hereby quitclaimed, and reserves unto itself, and does not transfer an exclusive and unconditional easement (this “**Easement**”) in gross for a term of years commencing as of the date hereof and terminating on December 31, 2030, at 11:59 p.m. Chicago Time (subject to Section 5, the “**Term**”), over, under and on the Real Property, including all facilities constructed thereon as improved from time to time, for the Exclusive Uses.

“**Exclusive Uses**” means the following purposes in connection with the provision of common carrier coal service by Grantor (which common carrier coal service rights and obligations shall automatically transfer from Grantor to Grantee upon the expiration of the Term):

(a) accessing, installing, placing, altering, repairing, renewing, replacing, rehabilitating, improving, constructing, operating and maintaining new and existing rail tracks, rails, ties, ballast, track material, structures, improvements and facilities for hauling, stockpiling, transferring, processing, or storing coal from any source on or along the Real Property, including other related capital improvements to the Real Property to support the foregoing (all of the foregoing together with any additional real property acquired by Grantor for the foregoing, is referred to as “**Coal Easement Facilities**”); and

(b) undertaking the “**PRB Expansion**,” consisting of any of (i) the construction and operation of a new line of railroad that extends between any point on the Real Property and coal mines in the Powder River Basin area of Wyoming or Montana,

as defined in STB Finance Docket No. 33407 (the “**New Construction**”) and improvements or rehabilitation to the rail lines of the Grantee reasonably relating thereto as set forth in paragraph (a) above, (ii) the entering into of mine access agreements related to coal from in and around the Powder River Basin area of Wyoming and Montana (“**PRB Coal**”) in connection with the Real Property, and (iii) the construction of any rail lines that would connect or interchange the Real Property with (A) any New Construction or (B) any rail line or transportation facility of a third party that ships PRB Coal or serves mines producing PRB Coal;

(c) whether or not Grantor undertakes the PRB Expansion, transporting coal from any source on the Real Property; and

(d) the exclusive right to disturb the right-of-way or move earth for any of the foregoing purposes.

Grantor’s exercise of its Exclusive Use to transport coal on the Real Property shall only be pursuant to the Haulage Agreement (identified in Exhibit B of this Quit Claim Deed) or such other written agreement as may be mutually agreed upon by Grantor and Grantee.

2. Exclusive Use Rights. Without limiting the generality of this Easement reserved herein, this Easement reserved by Grantor shall be exclusive to Grantor, and shall exclude Grantee as well as third parties from using the Real Property for the Exclusive Uses (subject to Grantee’s right and obligation to transport coal for Grantor under the Haulage Agreement (identified in Exhibit B of this Quit Claim Deed) or other written agreement as may be mutually agreed upon between Grantor and Grantee, including any agreement necessary to effect the provisions of this Easement and subject to the other provisions of this Easement), as follows, in each case, during the Term:

(a) This Easement reserves to Grantor the exclusive right and obligation, including common carrier rights and obligations, to transport coal by rail to, from or over the Real Property (which common carrier right and obligation to transport coal shall automatically transfer from Grantor to Grantee upon the expiration of the Term).

(b) This Easement reserves to Grantor the exclusive right (but not the obligation) to commence and complete (including the exclusive right to make any decision regarding the commencement, design, construction, or completion of) the New Construction and the PRB Expansion.

(c) Subject to any Permitted Encumbrances affecting the Real Property as of the date of this Quit Claim Deed (“**Existing Encumbrances**”), the easement rights reserved herein shall be exclusive to Grantor and its agents, licensees, contractors, successors and assigns.

(d) Grantee shall not construct or operate and shall not grant to any other party the right to construct or operate any Coal Easement Facilities on, over, under or through the Real Property or any portion of the Real Property without the prior written consent of Grantor, which consent Grantor may grant, withhold, condition or delay in its sole discretion. Notwithstanding the foregoing, Grantor shall not unreasonably withhold, condition or delay its consent to any proposed exercise or grant of rights for rehabilitating, improving, constructing, operating and maintaining new and existing rail tracks and facilities for purposes other than hauling, stockpiling, transferring, processing, or storing coal (“**Subsequent Encumbrances**”), provided such Subsequent Encumbrances do not materially interfere with Grantor’s Exclusive Use. In no event shall Grantor’s consent be deemed to have been granted, nor shall Grantor’s authority to

grant, withhold, condition or delay such consent be deemed to have been waived, except in writing by Grantor.

3. Unobstructed Access. Subject to any Existing Encumbrances and Subsequent Encumbrances, the Haulage Agreement and any other agreements between Grantor and Grantee, Grantor shall have rights to access, ingress and egress over and across the Real Property to the extent necessary to access the Coal Easement Facilities for the purpose of rehabilitating, improving, altering, relocating, constructing, installing, inspecting, maintaining, repairing, replacing or removing any Coal Easement Facilities (including any improvements to the Railroad Facilities or Grantee's lines incidental to the Coal Easement Facilities, "**Coal Facilities Work**"), including emergency maintenance and repairs, for the purpose of planning and designing Coal Facilities Work, or any other purpose consistent with the terms of this Easement, provided that Grantor (a) shall comply with any additional requirements set forth in other provisions of this Easement, (b) shall provide Grantee with at least five (5) business' days written notice (except in the event of an emergency) before entering onto the Real Property, (c) shall not unreasonably interfere with Grantee's use of the Real Property for railroad purposes, or any other purpose for which the Real Property may be used, including, without limitation, Grantee's common carrier rail operations, (d) shall not unreasonably interfere with the rights of any third parties under any Existing Encumbrances or any Subsequent Encumbrances, (e) shall use its best efforts not to disturb or damage any railbed, track, ties, pipe or any other improvements, structures or facilities or personal property located upon or under the Real Property (the "Railroad Facilities"), and shall restore, at Grantor's sole cost and expense, any Railroad Facilities Grantor does disturb or damage, (f) at Grantor's sole cost and expense, after completion, remove from the Real Property all personal property and equipment used in the construction, maintenance or repair work and

restore the Real Property to at least the condition that existed prior to such construction, maintenance or repairs, and (g) shall comply with Grantee's standard requirements for entry onto its property, including entering into Grantee's customary right of entry form and any other customary undertakings in connection therewith, and the provision of insurance.

4. Construction and Alteration of Coal Easement Facilities. Grantor shall have the right, at its sole cost and expense, to undertake Coal Facilities Work that shall not unreasonably interfere with Grantee's use of the Real Property for railroad purposes or any other purpose for which the Real Property may be used and shall not unreasonably interfere with the rights of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise, as follows:

(a) Grantor shall notify Grantee in writing, with preliminary plans and specifications for the proposed Coal Facilities Work.

(b) At Grantor's expense, Grantor and Grantee shall cooperate in developing final plans and specifications, a budget, and a schedule for completion of the proposed Coal Facilities Work that are reasonably acceptable to Grantor and Grantee.

(c) Grantor shall perform or contract for performance of such Coal Facilities Work, on the terms Grantor would perform the work on its own behalf on its own property, with its own forces or through solicitation of proposals or bids from third parties reasonably acceptable to Grantee.

(d) Before Grantor commences any Coal Facility Work, Grantor shall provide Grantee with reasonable evidence that Grantor has made financial arrangements to complete such work in accordance with the approved plans and schedule.

(e) Grantor will reimburse Grantee for reasonable costs and expenses incurred by Grantee in connection with Grantee's design, construction and monitoring of Coal Facility Work or Grantee's cooperation with Grantor in connection with Grantor's design, construction and monitoring of Coal Facility Work.

Except to the extent required by law, regulation or court order, Grantee shall not disclose or furnish to any third party (other than its representatives or any regulatory body or other governmental authority) any copy of any plans for any Coal Easement Facilities without the consent of Grantor, which consent will not be unreasonably withheld, conditioned or delayed.

Grantor and Grantee shall reasonably cooperate with each other in structuring any expenditures on improvements to the Property pursuant to this Section 4 to minimize any adverse tax consequences to Grantee or Grantor or any reimbursement therefore. If Grantee is ever required to include for purposes of federal or state income tax or any other tax (including property and ad valorem taxes) the value of, or any income or gain attributable to, all or any portion of the Coal Easement Facilities, then Grantor shall pay Grantee an amount equal to the additional taxes resulting therefrom.

5. Ownership of Coal Easement Facilities. All Coal Easement Facilities (but not any incidental improvements to the Railroad Facilities or Grantee's lines and not any real property acquired by Grantor in connection with the Exclusive Uses) will be the sole property of Grantor during the term of this Easement. Any real property acquired and paid for by Grantor in connection with the Exclusive Uses will be owned by Grantee during and following expiration of the term of this Easement. Upon expiration of this Easement (at the end of the term or earlier termination of this Easement by Grantor), Grantor shall advise Grantee of the depreciated net book value of the Coal Easement Facilities other than real property acquired by Grantor during

the Term and incidental improvements to the Railroad Facilities or Grantee's lines. To the extent the depreciated net book value of the Coal Easement Facilities (other than real property) at the time of such expiration (including any extension thereto) or termination is no more than \$10.00, Grantee shall not be obligated to pay Grantor any amount for such Coal Easement Facilities, and the Easement will terminate. To the extent the depreciated net book value of the Coal Easement Facilities (other than real property) is more than \$10.00, Grantee shall have the option to either extend the term of the Easement (until the time that such value is no more than \$10.00) or purchase the Coal Easement Facilities for an amount equal to the depreciated net book value (other than real property) thereof. If Grantee elects to extend the term of the Easement, it shall be permitted at any time thereafter to terminate the Easement by providing written notice to Grantor of such termination and paying Grantor an amount equal to the depreciated net book value at the time such termination notice is provided. "Depreciated net book value" means an amount equal to any expenditures on the Coal Easement Facilities, reduced, for purposes of this Easement, by depreciation calculated based on Grantor's GAAP accounting treatment at the time the construction occurs, from the date of the expenditure to the date of expiration or termination.

Grantor and Grantee shall reasonably cooperate with each other in structuring any reimbursement pursuant to this Section 5 to minimize any adverse tax consequences to Grantee or Grantor or any reimbursement therefore. If Grantee is ever required to include for purposes of federal or state income tax or any other tax (including property and ad valorem taxes) the value of, or any income or gain attributable to, all or any portion of the Coal Easement Facilities, then Grantor shall pay Grantee an amount equal to the additional taxes resulting therefrom.

Grantee shall pay Grantor any such amounts within 30 days after Grantee exercises any right that would require payment pursuant to the preceding paragraph of this Section 5. Such 30

day period, however, shall be freely extended as reasonably necessary to resolve any dispute or ambiguity in the amount to be paid or method of payment

Upon payment in full, Grantor shall quit claim (and take any other action necessary to transfer ownership of) its interests in the Coal Easement Facilities to Grantee.

6. Maintenance of Coal Easement Facilities. After completion of any construction described in Section 4, at Grantee's sole cost and expense, Grantee shall maintain and repair all Coal Easement Facilities (including any additions thereto pursuant to Section 4 and any improvements to the Railroad Facilities incidental to the Coal Easement Facilities) in good condition and repair and in accordance with all applicable laws, regulations or ordinances, and with the specifications and standards established by Grantee for its railroad facilities.

7. Mechanic's and Other Liens. Grantor shall not suffer any mechanic's or other lien or encumbrance to be filed against the Real Property by reason of any work, labor, services or materials performed or furnished at Grantor's, its successors', assigns' or licensees' request or otherwise on behalf of or for the benefit of Grantor, its successors, assigns or licensees or any third party, including without limitation any financing source, in connection with construction, operation, or maintenance of the Coal Easement Facilities or otherwise. If such lien or encumbrance shall at any time be filed, Grantor shall forthwith, at Grantor's sole cost and expense, promptly cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, in a manner acceptable to Grantee, but Grantor shall have the right to contest any and all such liens or encumbrances, provided that Grantor, at Grantor's sole cost and expense, shall first deposit with Grantee a bond or other security satisfactory to Grantee in such amounts as Grantee shall require and provided further, that Grantor shall thereafter diligently and continuously proceed to cause such lien or encumbrance to be removed

and discharged. If Grantor shall fail to cause such lien or encumbrance to be discharged within thirty (30) days after being notified of the filing thereof, Grantee may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Grantee, and the amount so paid by Grantee and all costs and expenses incurred by Grantee in procuring the discharge of such lien or encumbrance, including reasonable attorney's fees and fees and expenses of other agents, shall be reimbursed by Grantor to Grantee on demand.

8. Use of Real Property by Grantee. Grantee shall have the right to use the Real Property in any manner not inconsistent with this Easement. Grantor expressly agrees it will not, through its use of the privileges and authority granted herein, unreasonably interfere with Grantee's operations on the Real Property or the operations of third parties using the Real Property, or any portion thereof or without Grantee's permission, unreasonably interfere with the rights or privileges of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise. Nothing herein shall be construed to limit the right of Grantee to make repairs, alterations, changes, improvements, or additions determined by Grantee to be in its interests; provided such repairs, alterations, changes, improvements or additions do not unreasonably interfere with Grantor's use of the Coal Easement Facilities.

Grantee may at any time, for any reason, and in its sole discretion, seek Surface Transportation Board ("STB") authority (or an exemption therefrom) to abandon freight service, over all of, or any segment of, the Real Property. Grantor agrees to cooperate with, and not to directly or indirectly oppose, Grantee's abandonment efforts, and to seek abandonment or discontinuance authority for any common carrier or trackage rights applicable to the line for which Grantee is seeking abandonment or discontinuance. Grantor shall have the option to

purchase any segment for which Grantee is seeking abandonment, either through the STB's offer of financial assistance procedures or outside of such procedures, for net liquidation value as determined under the standards applied by the STB at that time. In connection with such purchase, Grantor shall be responsible for compliance with applicable STB requirements.

9. Indemnification. Grantor does hereby indemnify and hold harmless Grantee and Grantee's owners, officers, directors, managers, employees, contractors, agents, representatives, licensees and invitees from and against any and all liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments arising from, in connection with or relating to, acts or omissions of, or use of the Real Property by, Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees related to the Coal Easement Facilities or Railroad Facilities or otherwise related to the Real Property, including but not limited to, costs related to any personal injury, death or property damage occurring as a result of such acts or omissions or use and tax liabilities or obligations to the extent arising from Grantor's repairs, alterations, changes, improvements, or additions related to the Real Property, except to the extent such liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments relate to or arise from the willful misconduct or gross negligence of Grantee or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees, provided Grantor shall not be required to provide indemnification for any of the foregoing if settled or compromised by Grantee without Grantor's prior written consent (not to be unreasonably withheld).

Grantee does hereby indemnify and hold harmless Grantor and Grantor's officers, directors, managers and employees from and against any and all liabilities, damages, costs,

expenses, losses, actions, causes of action, suits, claims or judgments to the extent arising from, in connection with or relating to, grossly negligent acts or omissions of Grantee or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees (other than, for the avoidance of doubt, Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees) related to the Coal Easement Facilities, including but not limited to, costs related to any personal injury, death or property damage occurring as a result of such gross negligence, except to the extent such liabilities, damages, costs, expenses, losses, actions, causes of action, suits, claims or judgments relate to or arise from the willful misconduct or negligence of Grantor or its owners, officers, directors, managers, employees, contractors, agents, representatives, licensees or invitees. Grantee shall be entitled to assume the defense of any of the foregoing, and Grantee shall not be required to provide indemnification for any of the foregoing if settled or compromised by Grantor without Grantee's prior written consent (not to be unreasonably withheld).

Notwithstanding the foregoing, the parties mutually waive any claims for indirect, consequential, punitive or exemplary damages, including loss of profits or income.

10. Restrictive Covenants. Grantee for itself and its successor and assigns, covenants and agrees that prior to the expiration of the Term, except pursuant to the Haulage Agreement – Coal, this Reserved Coal Service Rights and Easements and the other agreements entered into in connection herewith, Grantee shall not (i) directly or indirectly take any action which results in any Milestone Payment becoming due and payable, (ii) hold itself out as a “transferee, successor or assign” of Grantor or SOO Line Holding Company, as those terms are used in the DM&E Merger Agreement, or make any public statement or take any position in litigation that Grantee

and its successors and assigns or any of their Affiliates is such a “transferee, successor or assign” of Grantor or SOO Line Holding Company or (iii) take any action in violation of Section 5.08 of the Transaction Agreement. “**Milestone Payments**” means “Construction Milestone Payments” and “Coal Milestone Payments” that may be due under, and as such terms are defined in the DM&E Merger Agreement and similar payments that may be due under the Amended and Restated Dakota, Minnesota & Eastern Railroad Corporation Warrant dated November 4, 2005 and Effective October 3, 2007 between Grantor and Kevin V. Schieffer (as in effect on January 2, 2014) and the First Amendment to the Dakota, Minnesota & Eastern Railroad Corporation Director Change In Control Agreement (as in effect on January 2, 2014) entered into in connection with the DM&E Merger Agreement. “**DM&E Merger Agreement**” means the Agreement and Plan of Merger dated as of September 4, 2007 among Soo Line Holding Company, Soo Line Properties Company, Canadian Pacific Railway Company and Grantor as in effect on January 2, 2014.

11. Enforcement of Restrictive Covenants. Grantee acknowledges and agrees that Grantor would suffer irreparable damage in the event that Grantee failed to observe, perform or enforce any of the Restrictive Covenants, or any other covenants, restrictions and agreements of this Easement in accordance with their specific terms. Grantee accordingly agrees that Grantor and its Affiliates shall be entitled to seek an injunction or injunctions to specifically enforce the performance of this Easement in accordance with its terms. In addition to the right to seek specific performance of this Easement, Grantor and its Affiliates shall have the right to seek any of its direct damages and reasonable attorney fees, including without limitation, any amounts paid or due and owing by Grantor to any third party as a result of a breach of the Restrictive Covenants or any other covenants, restrictions and agreements of this Easement, including

without limitation (a) Milestone Payments which become due as a result of Grantee's breach of this Easement and (b) 100% of all linehaul revenue received by Grantee derived from transporting coal by rail to, from or over the Real Property in violation of this Easement, or any other revenue received by Grantee derived from an Exclusive Use in violation of this Easement at any time during the term of this Easement. For the avoidance of doubt, any actions taken directly or indirectly by Grantor that result in any Milestone Payment becoming due and payable shall not be a breach of this Easement by Grantee.

12. Default. In the event either party believes that the other party has breached any of the covenants or agreements contained herein, the party asserting the default shall notify the other party of said breach in writing. Should a party fail to correct any breach or condition, other than the prohibition against use of the Real Property for Exclusive Uses or any Restrictive Covenant, within 10 days after receiving written notice of default, then the non-defaulting party may pursue any remedy available at law or equity other than termination; provided, however, in the case of a condition violated, other than the prohibition against use of the Real Property for Exclusive Uses or any Restrictive Covenant, that cannot be cured with due diligence within said 10 day period, the defaulting party shall be entitled to such additional time to correct the condition as may be reasonably necessary, but no more than 60 additional days, provided that the defaulting party gives the other party written notice of its need for additional time, prior to the expiration of the initial 10 day period, and provided that the defaulting party shall not be entitled to the benefit of the additional 60 day period if the default unreasonably interferes with the use of the Real Property for railroad purposes or unreasonably interferes with rights of any third parties under any Existing Encumbrances, Subsequent Easement Facilities or otherwise.

Notwithstanding the foregoing, if the event of default consists of Grantee using or allowing others to use the Real Property for Exclusive Uses or a breach of any Restrictive Covenant, Grantee shall be deemed to be in default immediately on occurrence of the breach, and Grantor shall be entitled to exercise any remedy available at law or in equity immediately upon discovery of the breach.

In all events of default, the party asserting the default shall have available all rights and remedies provided at law or in equity (provided Grantee shall not have the right to terminate this Easement under any circumstances), and defaulting party shall not interpose the defense that specific performance should not be available on the basis of the availability of an adequate remedy at law.

13. Grantee's Covenants Run With Land. This Easement constitutes an easement in gross. The burdens imposed on the Grantee, as owner of the fee interest in the Real Property, shall run with the land and be binding upon future owners of the Real Property or any interest therein for the Term of this Easement. The rights and obligations of Grantor shall be binding on Grantor and its successors and permitted assigns. Grantor shall not assign this Easement or its rights or obligations under this Easement without any necessary regulatory approvals. Subject to such regulatory approvals, Grantor may assign its rights and obligations under this Easement to an entity controlled by, controlling or under common control with Grantor, provided that Grantor shall provide Grantee with written notice of any such assignment within five (5) days after such assignment occurs; provided, no such assignment by Grantor shall relieve Grantor of any of its obligations under this Easement.

14. Notices. All notices, requests, demands, consents and other communications required or permitted under this Easement shall be in writing and shall be deemed to have been

duly and properly given on the date of service if delivered personally, or, if mailed, on the third business day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first business day following deposit with a nationally recognized overnight courier service (e.g., FedEx), postage prepaid, in any event addressed appropriately as follows:

If to Grantee: Rapid City, Pierre & Eastern Railroad, Inc.  
c/o Genessee & Wyoming Inc.  
20 West Avenue  
Darien, Connecticut  
Attention:General Counsel  
Facsimile: (203) 656-1148

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

With a copy to: James Clements, AVP Commercial Performance  
Canadian Pacific Railway  
Building 1  
7550 Ogden Dale Road SE  
Calgary, AB T2C 4X9 Canada

with a copy to:

Paul Guthrie, Esq.  
Canadian Pacific Railway  
Building 1  
7550 Ogden Dale Road SE  
Calgary, AB T2C 4X9 Canada

with a copy to:

Real Estate Department  
Canadian Pacific Railway  
900 Canadian Pacific Plaza  
120 South Sixth Street  
Minneapolis, Minnesota 55402  
Tele: (612) 904-6143  
Real Estate - US@cpr.ca

Either party may change its address for purposes of this Section by giving the other party written notice of the new address in the manner set forth above.

15. Amendment. This Easement shall not be amended except by written agreement executed by Grantor and Grantee, or their successors and permitted assigns, which agreement shall be duly recorded in the land records where the Real Property is located.

16. No Dedication. The provisions of this Easement shall not be deemed to constitute a dedication for public use or to create any right in the general public.

17. Counterparts. This Easement may be executed in counterparts, each of which may be deemed an original but together shall constitute but one and the same instrument.

18. Entire Agreement. This Easement, together with the agreements referenced herein, constitutes the entire agreement between the Parties relating to its subject matter and, except as provided herein, no other representations, warranties or agreements, oral or written, will be binding on the Parties with respect to such subject matter.

[signatures on next page]





**EXHIBIT D**

**SHIPPERS SUBJECT TO INTERCHANGE COMMITMENT**

American Colloid Co.

Bentonite Performance Materials LLC

**EXHIBIT E**

**CERTIFICATION OF COMPLIANCE WITH  
REGULATIONS RELATING TO  
NOTICE OF INTENT TO DM&E EMPLOYEES**

# CLARK HILL | THORP REED

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Eric M. Hocky  
T 215.640.8523  
F 215.640.8501  
Email: ehocky@clarkhill.com

235362  
ENTERED  
Office of Proceedings  
January 28, 2014  
Part of  
Public Record

Clark Hill Thorp Reed  
One Commerce Square  
2005 Market Street  
Suite 1000  
Philadelphia, PA 19103  
T 215.640.8500  
F 215.640.8501

clarkhillthorpreed.com

January 28, 2014

## VIA ELECTRONIC FILING

Cynthia T. Brown  
Chief, Section of Administration - Office of  
Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024

**Re: Rapid City, Pierre & Eastern Railroad, Inc. -  
Acquisition and Operation Exemption -  
Dakota, Minnesota & Eastern Railroad Corporation  
STB Docket No. FD 35799  
*Certificate of Compliance with 49 CFR 1150.32(e)*  
*(contains color images)***

Dear Ms. Brown:

Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E") hereby certifies that as of January 27, 2014, the enclosed Notice was posted at the workplaces of the employees on the DM&E West Lines that RCP&E intends to acquire from Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). A certificate of DM&E evidencing the posting and the locations posted is also enclosed.

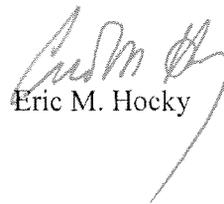
RCP&E also certifies that it has served a copy of this letter, including the Notice, on the national offices of all labor unions with employees on the DM&E West Lines as shown on the attached certificate of service.

Cynthia T. Brown  
January 28, 2014  
Page 2

Please let me know if you have any questions regarding this filing. Thank you for your assistance.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/dml

Encls.

cc: All persons on the attached certificate of service

Cynthia T. Brown  
January 28, 2014  
Page 3

### CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2014, copies of the foregoing letter, certificate of posting and Notice were served on the following persons by the method indicated:

*By U.S. mail, postage prepaid:*

Malcom B. Futhey, Jr  
International President  
United Transportation Union  
24950 Country Club Blvd., Ste. 340  
North Olmsted, OH 44070-5333

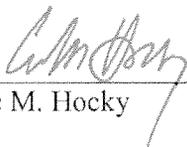
Dan Pickett  
President  
Brotherhood of Railroad Signalmen  
917 Shenandoah Shores Road  
Front Royal, VA 22630

Freddie N. Simpson  
President  
Brotherhood of Maintenance of Way  
Employees Division of the IBT  
41475 Gardenbrook Road  
Novi, MI 48375-1328

R. Thomas Buffenbarger  
International President  
The International Association of Machinists and Aerospace Workers  
9000 Machinists Place  
Upper Marlboro, Maryland 20772-2687

*By electronic mail:*

Terence M. Hynes  
Sidley Austin LLP  
1501 K Street, NW  
Washington DC 20005  
[thynes@sidley.com](mailto:thynes@sidley.com)

  
\_\_\_\_\_  
Eric M. Hocky

Before the

**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.  
- ACQUISITION AND OPERATION EXEMPTION -  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**NOTICE OF INTENT DIRECTED TO EMPLOYEES OF  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

Pursuant to the regulations of the Surface Transportation Board (the "Board") at 49 CFR §1150.32(e), Rapid City, Pierre & Eastern Railroad, Inc. ("RCP&E"), a newly formed subsidiary of Genesee & Wyoming Inc. ("GWI"), hereby gives notice of its intent to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific ("DM&E"), approximately 670 miles of railroad representing all of DM&E's rail lines west of Tracy, MN, together with incidental trackage rights, all as more fully described on Exhibit A attached hereto. On or after February 10, 2014, RCP&E intends to file a notice of intent to seek an exemption to acquire the lines pursuant to 49 CFR § 1152.35. RCP&E anticipates commencing operations as early as the second or third week of April, 2014, subject to the receipt of all necessary regulatory approvals and satisfaction of the other conditions of closing.

As a result of the transaction, RCP&E preliminarily estimates that it will be hiring for the positions shown on the list attached as Exhibit B. The number and types of positions listed represent RCP&E's current good faith estimate of the positions it expects to have available. The number of positions may change.

RCP&E employees will be provided with railroad retirement, medical insurance, holidays, vacation and other benefits consistent with the benefits currently provided to employees of other railroad subsidiaries of GWI.

RCP&E is an equal opportunity employer. RCP&E employees will be selected based upon their experience and suitability of the jobs that may be offered. Successful applicants will be required to pass a standard background check, pre-employment drug and alcohol screen, complete a medical questionnaire, and take a physical exam. Employees subject to Federal Railroad Administration certification qualifications will be required to provide proof that their certifications are current.

Any DM&E employee interested in obtaining further information concerning positions that RCP&E may have available, should contact Matthew Adams, HR Director, at [RCPEapplications@gwrr.com](mailto:RCPEapplications@gwrr.com).

Applications for employment should be made by sending a cover letter and resume stating the applicant's experience, in chronological order, and providing references for any employment held during the last five (5) years and any rail industry employment held at any time. The applicant may apply for multiple job opportunities and must be sure to list those job opportunities, in order of interest, in his/her cover letter. The applicant must be available to start work by the seventh day prior to the effective date of the acquisition.

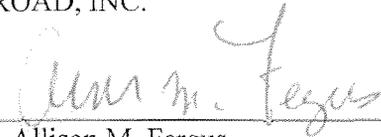
Cover letters and resumes should be sent by regular or electronic mail to Rapid City, Pierre & Eastern Railroad, Inc. as follows:

Matthew Adams  
HR Director  
Rapid City, Pierre & Eastern Railroad, Inc.  
166 E. 14000 Street, Suite 140  
Draper, UT 84020  
[RCPEapplications@gwrr.com](mailto:RCPEapplications@gwrr.com)

RAPID CITY, PIERRE & EASTERN  
RAILROAD, INC.

Dated: January 23, 2014

By:



Allison M. Fergus  
Secretary

**EXHIBIT A**  
**DM&E WEST LINES**

## DM&E West Lines

### 1. Acquired Lines

#### (a) **Huron Subdivision**

Between Tracy, MN MP 231.5 and Huron<sup>1</sup> MP 362.7, a distance of 131.2 miles

#### (b) **Pierre Subdivision**

Between Huron MP 362.7 and Ft. Pierre MP 484.4, a distance of 121.7 miles

#### (c) **PRC Subdivision**

Between Ft. Pierre MP 484.4 and Pressler Jct. MP 649.2, a distance of 164.8 miles

#### (d) **Black Hills Subdivision**

Between Dakota Jct., NE MP 0.4 and Bentonite/Colony, WY MP 174.7, a distance of 174.3 miles

#### (e) **Crawford Subdivision<sup>2</sup>**

Between Dakota Jct., NE MP 411.72± and Crawford, NE MP 432.5±, a distance of 20.78 miles

#### (f) **Onida Subdivision**

Between Onida MP 97.5 and Blunt MP 115.1, a distance of 17.6 miles

#### (g) **Mansfield Subdivision**

Between Redfield MP 39.7 and Mansfield MP 66.9, a distance of 27.2 miles

#### (h) **Yale Spur<sup>3</sup>**

Between Yale MP 145.0 and Huron MP 160.3±, a distance of 15.3 miles

### 2. Incidental Trackage Rights

#### (a) **Over lines owned and operated of DM&E**

Between Tracy, MN MP 231.5 and Mankato, MN MP 142.4, a distance of 89.1 miles

#### (b) **Over lines operated by BNSF (as operator for State of South Dakota, as successor to Chicago, Milwaukee, St. Paul and Pacific Railroad Company), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company**

Between Wolsey MP 70.50 and Aberdeen MP 777.04, a distance of 72.04 miles

#### (c) **Over lines owned and operated by BNSF, being assigned to RCP&E by DM&E**

Between Yale MP 148.5 and Watertown MP 90.72, and yard trackage at Huron MP 160.33 to the end of track, a distance of 58.65 miles

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<sup>1</sup> All end points are located in South Dakota unless otherwise noted.

<sup>2</sup> Leased to NNW.

<sup>3</sup> Subleased from East Central Railroad Authority; sublease being assigned by DM&E.

**EXHIBIT B**  
**ESTIMATED POSITIONS AVAILABLE**

# RCPE Job List

Dept	New Job Title	Total by Job	Huron	Rapid City	Pierre	Brookings	Philip	Belle Fourche	Wall	Miller	Draper	FLSA	Grade	Min\$	Mid\$	Max\$	Bonus
G&A	General Manager II	1		1								E	12	\$78,000	\$109,200	\$140,400	20%
G&A	Director, Sales & Marketing	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Director, Engineering	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Director, Safety & Compliance	1		1								E	11	\$66,700	\$93,300	\$120,100	15%
G&A	Assistant General Manager	1	1									E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Sales & Marketing	1	1									E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Human Resources	1									1	E	10	\$57,000	\$79,700	\$102,600	12%
G&A	Manager, Training	1	1									E	9	\$48,700	\$68,100	\$87,700	10%
G&A	Accountant	1		1								E	8	\$42,000	\$58,700	\$75,600	5%
G&A	IT Support Technician	1		1								E	7	\$37,500	\$50,600	\$63,800	5%
G&A	Office Manager	1		1								E	7	\$37,500	\$50,600	\$63,800	5%
G&A	Clerk	2	1	1								NE	5	\$13.85	\$18.65	\$23.56	5%
	13		4	8	0	0	0	0	0	0	1						
Trans	Trainmaster	6	3	3								E	9	\$48,700	\$68,100	\$87,700	10%
Trans	Engineer	41	20	16	5							NE	7	\$18.03	\$24.33	\$30.67	5%
Trans	Conductor	42	21	16	5							NE	6	\$15.82	\$21.30	\$26.92	5%
	89		44	35	10	0	0	0	0	0	0						
MoW	Roadmaster	2		1		1						E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Supervisor, Signals	1		1								E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Supervisor, Structures	1				1						E	9	\$48,700	\$68,100	\$87,700	10%
MoW	Signal Maintainer	5	1	2		1	1					NE	7	\$18.03	\$24.33	\$30.67	5%
MoW	Foreman, MOW	10	1	1	1	2	1	1	2	1		NE	7	\$18.03	\$24.33	\$30.67	5%
MoW	Track Inspector	7	2	2	1	1	1					NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Track Machine Operator	4				2			2			NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Welder	2	2									NE	6	\$15.82	\$21.30	\$26.92	5%
MoW	Track Laborer	17	2	4	2	3	2	1	2	1		NE	5	\$13.85	\$18.65	\$23.56	5%
MoW	Bridge Foreman	1		1								NE	5	\$13.85	\$18.65	\$23.56	5%
MoW	Bridge Laborer	3		3								NE	5	\$13.85	\$18.65	\$23.56	5%
	53		8	15	4	11	5	2	6	2	0						
Mech	Manager, Mechanical	1	1									E	9	\$48,700	\$68,100	\$87,700	10%
Mech	Supervisor, Mechanical	3	2	1								NE	8	\$18.03	\$24.33	\$30.67	5%
Mech	Mechanical Foreman	2	2									NE	7	\$18.03	\$24.33	\$30.67	5%
Mech	Mechanic	7	6	1								NE	6	\$15.82	\$21.30	\$26.92	5%
Mech	Electrician	5	4	1								NE	6	\$15.82	\$21.30	\$26.92	5%
	18		15	3	0	0	0	0	0	0	0						
Car	Mechanical Foreman	1		1								NE	7	\$18.03	\$24.33	\$30.67	5%
Car	Car Repairman	6	4	2								NE	6	\$15.82	\$21.30	\$26.92	5%
	7		4	3	0	0	0	0	0	0	0						
	<b>Total Headcount</b>	<b>180</b>	<b>75</b>	<b>64</b>	<b>14</b>	<b>11</b>	<b>5</b>	<b>2</b>	<b>6</b>	<b>2</b>							

Before the  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35799

**RAPID CITY, PIERRE & EASTERN RAILROAD, INC.  
- ACQUISITION AND OPERATION EXEMPTION -  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

**CERTIFICATE OF POSTING**

The attached Notice of Intent Directed to Employees was posted at Rapid City, South Dakota, Huron, South Dakota, Pierre, South Dakota, Miller, South Dakota, Belle Fourche, South Dakota, Brookings, South Dakota and Tracy, Minnesota.

I, Susan C. Bobb, Managing Director, Human Resources, U.S. of Dakota, Minnesota & Eastern Railroad Corporation, certify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on January 27, 2014.



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Susan C. Bobb

**CONFIDENTIAL APPENDIX**  
**INFORMATION REGARDING INTERCHANGE COMMITMENT**

**[PURSUANT TO 49 C.F.R. §1150.33(h)(1), THE INFORMATION AND DOCUMENTS CONTAINED HEREIN ARE TO BE KEPT CONFIDENTIAL WITHOUT THE NEED FOR THE FILING OF A MOTION FOR A PROTECTIVE ORDER UNDER 49 C.F.R. §1104.14(a). THE CONFIDENTIAL APPENDIX IS BEING FILED UNDER SEPARATE COVER.]**

**CONFIDENTIAL APPENDIX**

**INFORMATION REGARDING INTERCHANGE COMMITMENT**

**[PURSUANT TO 49 C.F.R. §1150.33(h)(1), THE INFORMATION AND DOCUMENTS CONTAINED HEREIN ARE TO BE KEPT CONFIDENTIAL WITHOUT THE NEED FOR THE FILING OF A MOTION FOR A PROTECTIVE ORDER UNDER 49 C.F.R. §1104.14(a). THE CONFIDENTIAL APPENDIX IS BEING FILED UNDER SEPARATE COVER.]**