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November 29, 2005

VIA HAND-DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

NOV 29 2005

Part of
Public Record

215228

Re: **Finance Docket No. 34789**
Dakota, Minnesota & Eastern Railroad Corporation –
Trackage Rights Exemption -- BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(7)**, of Dakota, Minnesota & Eastern Railroad Corporation, dated November 29, 2005. A disk containing the Caption Summary is enclosed. A check in the amount of \$1,000.00, representing the appropriate fee for this filing, is attached.

I have included an extra copy of this transmittal letter and would request that you date-stamp this to show receipt of this filing and return it to me in the envelope provided.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

Michael J. Barron, Jr.

MJB: arw

Enclosures.

cc: Adrian L. Steel, Jr., Esq.

215228

BEFORE THE
SURFACE TRANSPORTATION BOARD

NOV 29 2005
RECEIVED

FINANCE DOCKET NO. 34789

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

FILED
Office of Public Hearings
NOV 29 2005
Part of
public record

FILED
NOV 29 2005
FINANCE DOCKET NO. 34789

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875
(312) 252-1500

**ATTORNEY FOR
DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION**

Dated: November 29, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34789

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Pursuant to an agreement executed between Dakota, Minnesota & Eastern Railroad Corporation and BNSF Railway Company (hereinafter referred to as "Owner"), Dakota, Minnesota & Eastern Railroad Corporation ("User") files this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7) for the purpose of supplementing existing trackage rights over a line of railroad on Owner's track as set forth below. This supplemental agreement, a copy of which is attached hereto, is referred to herein as "Supplement."

Pursuant to 49 C.F.R. § 1180.4(g), User submits the following information:

**SECTION 1180.6(a)(1)(i)
DESCRIPTION OF THE PROPOSED TRANSACTION**

User presently has trackage rights on Owner's track at Aberdeen, South Dakota pursuant to a 1975 agreement between the Chicago, Milwaukee, St. Paul & Pacific (predecessor in-interest of Owner) and the Chicago & North Western Transportation Company (predecessor in-interest of User), which agreement was supplemented in 1986 (the 1975 agreement and the 1986 amendment are collectively referred to as "Agreement"). The State of South Dakota, acting through the State Department of Transportation, as successor-in-interest to the South Dakota Railroad Authority ("State") owns the certain tracks north of BNSF's Aberdeen Yard and north

of BNSF's east-west mainline through Aberdeen, which State-owned tracks are located between Aberdeen and Kidder, South Dakota ("Rail Line"). By agreement dated November, 22, 2005, BNSF and DME have agreed to supplement the terms of the Agreement as described herein.

Pursuant to the Supplement executed between Owner and User, User proposes to supplement its existing trackage rights over Owner's line of railroad as set forth below and referred to as "Joint Trackage":¹

In addition to the trackage and interchange rights granted under the Agreement and subject to further terms and conditions set forth in the Supplement, Owner will permit User and State (or State's designee, i.e., the State's designated operator acting as agent for the State) to interchange traffic at Aberdeen in connection with movement of traffic to, from or via the Rail Line pursuant to provisions below:

1.) Subject to all other terms and conditions set forth in the Agreement and the Supplement, Owner will permit User and State (or State's designee) to interchange with one another in Owner's Aberdeen Yard via the Interchange Access Line (BNSF's Geneseo Sub Milepost 118.60 to Milepost 115.08) without restrictions for traffic which either originates or terminates on the Rail Line.

2.) Subject to all other terms and conditions set forth in the Agreement and the Supplement, Owner shall permit User and State or State's designee to interchange with one another at Aberdeen Yard via the Interchange Access Line for traffic originating or terminating on User in South Dakota, moving to or from points served by Canadian Pacific Railway's network as it existed as of April 25, 2005 in:

North Dakota (not including Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and Owner (e.g., industries at Valley City and Minot); and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines), provided such interchange rights extend only to movements of agricultural commodities (STCC's 01 and 20), fertilizers, ethanol, bentonite clay, and forest products, and further subject to additional unit train restrictions pertaining to North Dakota points.

3) Also, subject to the terms of the Supplement, Owner grants User the non-exclusive overhead rights to use additional trackage on Owner's Geneseo Subdivision from Milepost 118.60 to Milepost 115.08² (the "Interchange Access Line" referenced hereinabove) in

¹ User will withdraw this Notice if the sale to BNSF Railway Company described in FD 34794 does not close.

² The attached agreement erroneously shows Milepost 115.1. The correct Milepost is 115.08.

conjunction with User's existing trackage rights in order to facilitate interchange of cars between User and State, by and through State's designee, on the State-owned trackage north of Aberdeen in lieu of interchange on Owner's trackage at Aberdeen Yard for traffic authorized for interchange pursuant to this Supplement.

The full name and address of the User is:

Dakota, Minnesota & Eastern Railroad Corporation
140 North Phillips
Sioux Falls, South Dakota 57104

Any questions concerning this Notice should be sent to the applicant's representative at the following address:

Michael J. Barron, Jr.
Attorney for Dakota, Minnesota & Eastern Railroad Corporation
FLETCHER & SIPPEL LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606
(312) 252-1500

SECTION 1180.6(a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

User intends on consummating this transaction no sooner than December 6, 2005.

SECTION 1180.6(a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED

Subject to the terms and conditions of the Supplement, Owner grants User the expanded rights at Aberdeen, SD so that that User may interchange at Aberdeen with the State (by and through the State's designee) authorized interchange traffic moving to, from or via a state-owned Rail Line on Owner's trackage.

The Supplement reference to milepost 115.1 should read Milepost 115.08, and accordingly the parties intend to amend the Supplement's milepost reference and file the amendment letter with the STB.

SECTION 1180.6(a)(5)
STATES IN WHICH APPLICANT'S PROPERTY IS LOCATED

User owns rail property located in the states of South Dakota, Minnesota, Wyoming, Nebraska and Iowa.

SECTION 1180.6(a)(6)
MAP – EXHIBIT 1

A map of the rail line over which User proposes to acquire trackage rights is attached hereto as Exhibit 1.

SECTION 1180(a)(7)(ii)
AGREEMENT – EXHIBIT 2

A copy of the Supplement between Owner and User is attached hereto as Exhibit 2.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTIVE CONDITIONS

User does not anticipate any adverse labor impacts as a result of this transaction. Nevertheless, as a condition of this exemption, User agrees to imposition of the employee protective conditions established in Norfolk and Western Ry. Co. – Trackage Rights – Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. – Lease and Operate, 260 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 hereto.

SECTION 1180.4(g)(3)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights also is exempt from historic preservation reporting requirements. The proposed trackage rights will not substantially change the level of maintenance of any railroad property.

Respectfully submitted,

By: Michael J. Barron, Jr.

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875
(312) 252-1500

**ATTORNEY FOR
DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION**

Dated: November 29, 2005

OFFICIAL SOUTH DAKOTA RAIL MAP

John Traboy

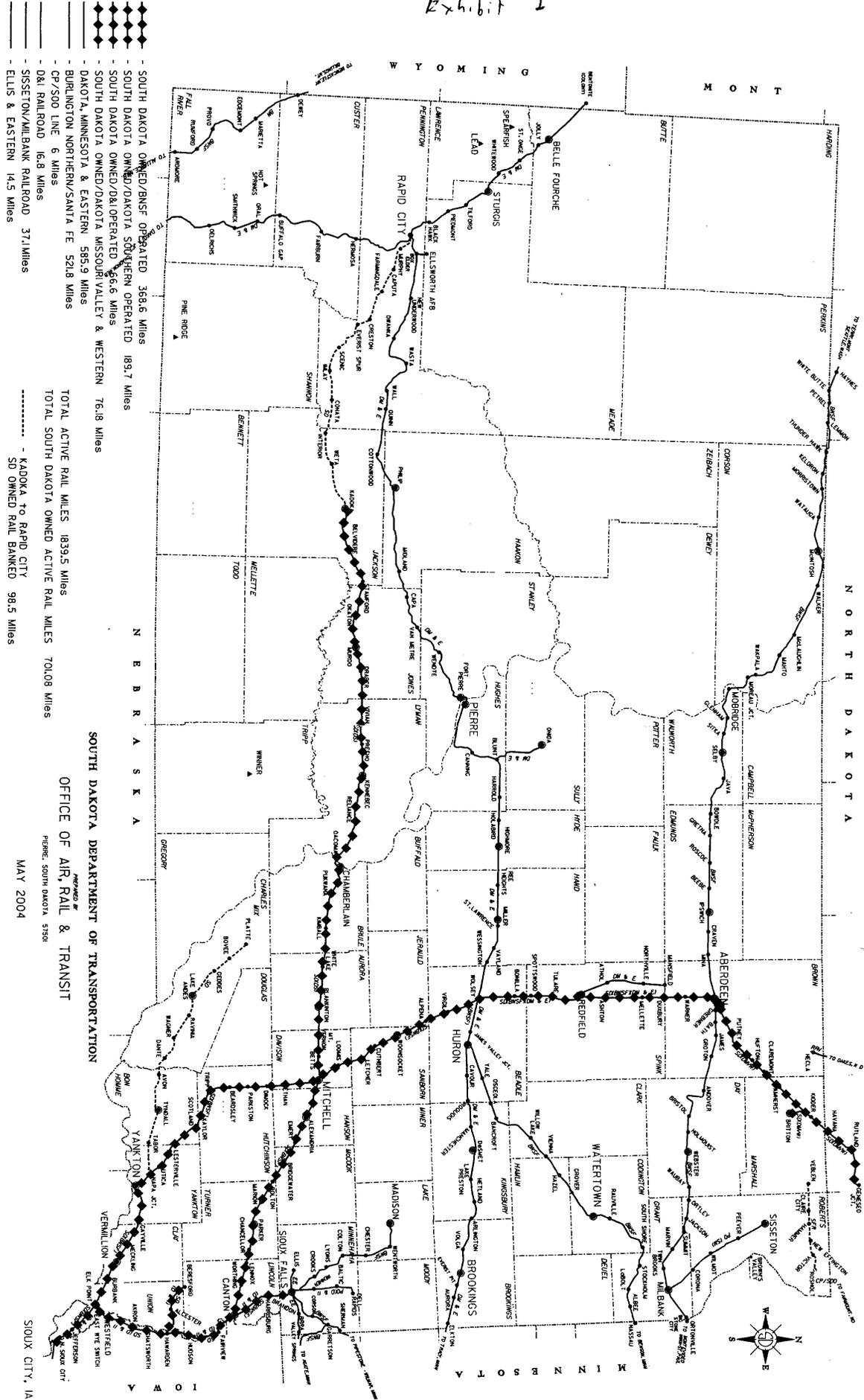


Exhibit 2
Redacted

**SUPPLEMENT TO ABERDEEN, SOUTH DAKOTA
INTERCHANGE AND TRackage RIGHTS AGREEMENT**

THIS SUPPLEMENT is made and entered into this 22nd day of November, 2005, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (hereinafter referred to as "**BNSF**") and the **DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**, a Delaware corporation (hereinafter referred to as "**DME**").

WITNESSETH:

WHEREAS, BNSF, as a successor in interest to the Chicago, Milwaukee, St. Paul and Pacific and DME (as a successor to the former Chicago and North Western Transportation Company) are parties to an agreement dated August 13, 1975, ("1975 Agreement") granting the DME the right to operate its trains over certain lines of BNSF railroad at Aberdeen, South Dakota; and

WHEREAS, the 1975 Agreement was further supplemented on October 8, 1986 granting DME expanded trackage rights in Aberdeen, SD ("1986 Supplement") (collectively, the 1975 Agreement and the 1986 Supplement are referred to as "Agreement"); and

WHEREAS, BNSF and the South Dakota Railroad Authority ("Authority") a governmental agency of the State of South Dakota entered into an Agreement for Donation of Certain Assets, Rights and Obligations, dated as of June 15, 2001 (the "Donation Agreement"), as amended from time to time, under which BNSF donated to Authority certain BNSF lines between Aberdeen and Kidder, South Dakota ("Rail Line"); and

WHEREAS, BNSF and the State of South Dakota, a body politic by and through the South Dakota Rail Authority Board and the South Dakota Department of Transportation entered into that certain Settlement Agreement Between BNSF Railway Company and the State of South Dakota, dated April 25, 2005 ("Settlement Agreement"); and

WHEREAS, said Settlement Agreement contemplates certain amendments to the Agreement expanding DME's trackage rights to interchange with the Authority's designated operator for the Rail Lines.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

In addition to the trackage and interchange rights granted under the Agreement and subject to further terms and conditions set forth in this supplement ("Supplement") BNSF will permit DME and Authority (or Authority's designee as defined in the Donation Agreement) to interchange traffic at Aberdeen in connection with movement of traffic to, from or via the Rail Line on BNSF-owned trackage pursuant to provisions below:

1.) Subject to all other terms and conditions set forth in the Agreement and this Supplement, BNSF will permit DME and Authority (or Authority's designee) to interchange with one another in BNSF's Aberdeen Yard via the Interchange Access Line (as defined in Section 6) without restrictions for traffic which either originates or terminates on the Rail Line.

2.) Subject to all other terms and conditions set forth in the Agreement and this Supplement, BNSF shall permit DME and Authority or Authority's designee to interchange with one another at Aberdeen Yard via the Interchange Access Line for traffic originating or terminating on DME in South Dakota, moving to or from points served by Canadian Pacific Railway's network as it existed as of April 25, 2005 in:

(a) North Dakota (not including Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot); and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines); subject to the following terms:

(i) These rights extend only to movements of agricultural commodities (STCC's 01 and 20), fertilizers, ethanol, bentonite clay, and forest products;

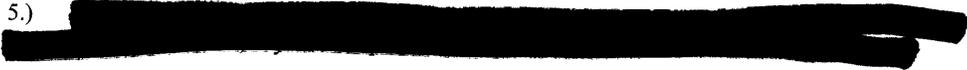
(ii) These rights do not extend to movements of coal or any commodity not listed in section (i) above absent advance written waiver of BNSF; and

(iii) For North Dakota points, these rights will also exclude any unit train movements, unit trains being defined as trains of [REDACTED] cars or more of a single commodity moving from a single origin to a single destination pursuant to a single bill of lading.

3.) Except as expressly provided in (1) and (2) above, DME shall not interchange for movement, move, or cause to be moved, traffic on, over, or via the Rail Line or the Interchange Access Line.

4.) No trackage for railcar or rail equipment storage capacity at Aberdeen will be provided by BNSF to facilitate the interchange movements referenced in this Supplement. Cars and trains interchanging at Aberdeen yard between DME and Authority or Authority's designee shall not be held in Aberdeen yard longer than a period of 12 hours from arrival to departure ("Interchange Free Time") unless otherwise approved by BNSF. The parties will comply with Association of American Railroads interchange standards for notification of arrival. Cars and trains exceeding Interchange Free Time shall, on direction by BNSF's local operating personnel, depart BNSF property immediately. Any cars or locomotives allowed to be held in Aberdeen on BNSF trackage beyond the Interchange Free Time at the discretion of BNSF local operating personnel may, at BNSF's option and without prejudice to any other rights or remedies available at law or in equity, be charged a holding fee of [REDACTED] per car per day and [REDACTED] per locomotive per day for each 24-hour period hour or fraction thereof, provided that such charges shall not apply to the extent Interchange Free Time is exceeded as a result of events of force majeure beyond the reasonable control of DME and/or Authority or Authority's designee operating the Rail Line or

acts of BNSF. In the event Interchange Free Time is materially exceeded on 60 percent or more of all trains interchanged in Aberdeen yard within a six-month period, BNSF may at its option and without prejudice to any other rights or remedies available at law or in equity, on 30 days' written notice and opportunity to cure, suspend rights of interchange within Aberdeen yard until operating and/or infrastructure changes are demonstrated or additional support trackage is constructed and placed in service at no net cost to BNSF which would reasonably assure that efficient interchange operations can be reinstated. Suspension of interchange operations within BNSF's Aberdeen yard shall not preclude the DME and the Authority's designee from performing interchange on State-owned trackage as described in Paragraph 6 hereinbelow.

5.) 

6.) In the event that DME and Authority, by and through Authority's designee, elect to interchange cars on the State-owned trackage north of Aberdeen in lieu of interchange on BNSF's trackage at Aberdeen yard for traffic authorized for interchange pursuant to Sections 1 and 2 of this Supplement, BNSF shall hereby grant DME the non-exclusive rights to use additional trackage ("Joint Track") on BNSF's Geneseo Subdivision from Milepost 118.60 to Milepost 115.1 ("Interchange Access Line"), in conjunction with its existing trackage rights on BNSF trackage pursuant to the Agreement, for the operations of its trains, locomotives and cars in common with BNSF, the Authority, the Authority's designee and such other railroad company or companies BNSF has heretofore permitted or may hereinafter at any time in the future admit to the joint use of all or any part of the Joint Track, provided, however, such through movement and interchange beyond the Interchange Access Line does not allow any party to circumvent or breach, in whole or in part, the interchange restrictions specified in Sections 1-5 above.

7.) Wherever access rights granted herein result in operations on BNSF lines, such operations shall be subject to BNSF's exclusive management, dispatch control, compliance with BNSF operating rules, compliance with BNSF and industry standard electronic, data exchange requirements.

8.) Wherever access rights granted herein result in transport of dead-in-tow locomotive on or over BNSF lines shall be subject to the operating restrictions and all terms and conditions contained in BNSF's dead-in-tow locomotive tariff in effect at the time of transport.

9.) Wherever access rights granted herein result in operations on BNSF lines of any transport of high, wide, or dimensional cars or cars or equipment subject to special handling, such as weight, speed, or clearance restrictions or accommodations shall require advance approval of local BNSF operating personnel. In the event such movement(s) is approved, the movement thereof shall be in accordance with all BNSF operating and mechanical rules and restrictions in effect at the time of the proposed transport and any additional commercial or liability conditions applicable to such movements generally on BNSF's system.

10.) (a) Prior to initial commencement of operations, BNSF and DME will consult on volumes to be moved on a lane-specific basis, methods of operation and interchange, and

necessary changes in infrastructure, if any, to permit unobstructed operations for both BNSF and DME.

(b) All such capital investments, if any, necessary for initial commencement of operations under this Supplement are set forth in that letter agreement between BNSF and the State of South Dakota dated November 22, 2005 ("Improvement MOA") and such improvements, if any, to the extent related to and required for the performance of operations under this Supplement, shall be performed as a condition of exercise of the rights under this Supplement, in accordance with the terms of the Improvement MOA. The terms of the Improvement MOA are attached hereto as Exhibit "I-MOA", and to the extent applicable to this Supplement the terms thereof shall be deemed a part of this Supplement. The terms of this Supplement shall be subject to and conditioned upon the terms of the Improvement MOA. :

11.) Cars interchanged between DME and Authority or Authority's designee using rights granted pursuant to the terms of the Agreement as supplemented herein shall remain in the accounts of their respective railroads effecting interchange between themselves. BNSF shall not be subject to any car hire, per diem or car mileage liabilities for those cars interchanged between DME and Authority or Authority's designee. BNSF shall not be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on equipment in the respective accounts of DME or Authority or Authority's designee, and DME shall indemnify defend and hold harmless BNSF for and against any such payment or reporting obligations.

12.) Subject to fulfillment of any express conditions set forth herein to the exercise of the rights hereunder, this Supplement shall be effective upon ("Effective Date") the later of the:

- a.) the date last signed below;
- b.) the date this Supplement is approved, if required, pursuant to Section XV of the Agreement; or
- c.) the date of dismissal of all litigation referenced in the Settlement Agreement;

13.) Except as otherwise stated herein, all other terms and conditions of the Agreement shall remain in full force and effect without amendment or supplement thereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Supplement to be executed as of the date written above.

BNSF RAILWAY COMPANY

By: 

Printed: Peter J. Rickershauser

Title: VP Network Development

Date: November 22, 2005

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

By: _____

Printed: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Supplement to be executed as of the date written above.

BNSF RAILWAY COMPANY

By: _____

Printed: _____

Title: _____

Date: _____

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

By: 

Printed: L.A. Anderson
Sr. Vice Pres - Marketing

Title: _____

Date: Nov. 22, 2005

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34789

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

BNSF Railway Company ("Owner") has agreed to supplement existing trackage rights of Dakota, Minnesota & Eastern Railroad Corporation ("User") at Aberdeen, South Dakota as follows:

User has existing trackage rights on Owner's track at Aberdeen, South Dakota pursuant to a 1975 agreement between the Chicago, Milwaukee, St. Paul & Pacific (predecessor in-interest of Owner) and the Chicago & North Western Transportation Company (predecessor in-interest of User), which agreement was amended in 1986 (the 1975 agreement and the 1986 amendment are collectively referred to as "Agreement"). The State of South Dakota, acting through the State Department of Transportation, as successor-in-interest to the South Dakota Railroad Authority ("State") owns the tracks between Aberdeen and Kidder, South Dakota ("Rail Line").

In addition to the trackage and interchange rights granted under the Agreement and subject to further terms and conditions set forth in a supplemental agreement ("Supplement") Owner will permit User and State (or State's designee, i.e., the State's contract operator acting as agent for the State) to interchange User's traffic at Aberdeen in connection with movement of traffic moving to, from or via the Rail Line pursuant to provisions below:

- 1.) Subject to all other terms and conditions set forth in the Agreement and the Supplement, Owner will permit User and State (or State's designee) to interchange with one another in Owner's Aberdeen Yard via the Interchange Access Line (as defined hereinbelow) without restrictions for traffic which either originates or terminates on the Rail Line.
- 2.) Subject to all other terms and conditions set forth in the Agreement and the Supplement, Owner shall permit User and State or State's designee to interchange with one another at Aberdeen Yard via the Interchange Access Line for traffic originating or terminating on User in South Dakota, moving to or from points served by Canadian Pacific Railway's network as it existed as of April 25, 2005 in:

North Dakota (not including Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot); and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines), provided such interchange rights extend only to movements of agricultural commodities (STCC's 01 and 20), fertilizers, ethanol, bentonite clay, and forest products, and further subject to additional unit train restrictions pertaining to North Dakota points.

3) Also, Owner grants User the non-exclusive rights to use additional trackage on Owner's Geneseo Subdivision from Milepost 118.60 to Milepost 115.08 (also referred to herein as the "Interchange Access Line") in conjunction with User's existing trackage rights in order to facilitate interchange of cars between User and State, by and through State's designee, on the State-owned trackage north of Aberdeen in lieu of interchange on Owner's trackage at Aberdeen Yard for traffic authorized for interchange pursuant to this Supplement.

The trackage rights will be effective on or after December 6, 2005.

This Notice is filed under 49 C.F.R. § 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 automatically stay the transaction.

Dated: _____

By the Board

Vernon A. Williams
Secretary

VERIFICATION

State of South Dakota)

County of Minnehaha)

SS:

Lynn A Anderson being duly sworn, deposes and says the he is Sr. Vice Pres.
Dakota, Minnesota & Eastern that he has read the foregoing Notice of Exemption and
Railroad Corp.
knows the facts asserted therein, and that the same are true as stated.

L. Anderson

Subscribed and Sworn to
Before me this 23rd day of
November, 2005

Linda M. Arter
Notary Public

My Commission Expires 01/09

