

225102

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
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Chicago, Illinois 60606-2832

THOMAS J. LITWILER
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May 12, 2009

VIA FEDERAL EXPRESS

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings

MAY 13 2009

Part of
Public Record

Re: **Docket No. AB-337 (Sub-No. 6X)**
Dakota, Minnesota & Eastern Railroad Corporation –
Discontinuance of Trackage Rights Exemption –
In Worth and Cerro Gordo Counties, IA and Freeborn County, MN

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Dakota, Minnesota & Eastern Railroad Corporation Pursuant to 49 C.F.R. § 1152.50**, dated May 12, 2009. A check in the amount of \$3,700, representing the appropriate fee for this filing, is attached.

Please note that the Notice includes a color map.

One extra copy of the Notice and this letter also are enclosed. Please date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Dakota, Minnesota & Eastern
Railroad Corporation

TJL:tl

Enclosures

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-337 (SUB-NO. 6X)

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN WORTH AND CERRO GORDO COUNTIES, IA AND FREEBORN COUNTY, MN

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**VERIFIED NOTICE OF EXEMPTION OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
PURSUANT TO 49 C.F.R. § 1152.50**

FEE RECEIVED

MAY 13 2009

**SURFACE
TRANSPORTATION BOARD**

FILED
MAY 13 2009
**SURFACE
TRANSPORTATION BOARD**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

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

Dated: May 12, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-337 (SUB-NO. 6X)

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN WORTH AND CERRO GORDO COUNTIES, IA AND FREEBORN COUNTY, MN

**VERIFIED NOTICE OF EXEMPTION OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
PURSUANT TO 49 C.F.R. § 1152.50**

Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") hereby submits this Verified Notice of Exemption under 49 C.F.R. § 1152.50 for the discontinuance of DM&E's overhead trackage rights on a line of railroad of Union Pacific Railroad Company ("UP") extending from milepost 107.0 at Hartland, Minnesota to milepost 119.4 at Albert Lea, Minnesota, and from milepost 251.6 at Albert Lea to milepost 192.8 at Mason City, Iowa (the "Hartland-Mason City Line"), a total distance of approximately 48.2 miles in Freeborn County, Minnesota and Worth and Cerro Gordo Counties, Iowa. A map showing the trackage rights to be discontinued is attached hereto as Exhibit A.

In accordance with the requirements of 49 C.F.R. § 1152.50(d)(2), DM&E submits the following information:

General Corporate Information: 49 C.F.R. § 1152.22(a)(1) - (2)

DM&E is a Class II common carrier by rail which owns or operates approximately 2400 route miles of rail lines in nine states in the Upper Midwest. DM&E began operations in 1986 after acquiring rail lines in Minnesota and South Dakota from Chicago & North Western Transportation Company ("CNW"), a UP predecessor. See Dakota, Minnesota & Eastern Railroad

Corporation -- Acquisition and Operation Exemption -- Chicago and North Western Transportation Company, Finance Docket No. 30889 (ICC served September 8, 1986) ("DM&E Acquisition"). DM&E's rail lines now include those of its former affiliate Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), which was merged into DM&E on December 31, 2008. Canadian Pacific Railway Company, et al. -- Corporate Family Transaction -- Iowa, Chicago & Eastern Railroad Corporation, Finance Docket No. 35202 (STB served December 12, 2008); see Dakota, MN & Eastern et al. -- Control -- Iowa, Chicago & Eastern, 6 S.T.B. 511 (2003). DM&E is a wholly-owned, indirect subsidiary of Canadian Pacific Railway Company. Canadian Pacific Railway Company, et al. -- Control -- Dakota, Minnesota & Eastern Railroad Corporation, Finance Docket No. 35081 (STB served September 30, 2008).

The complete name and address of DM&E is:

Dakota, Minnesota & Eastern Railroad Corporation
140 North Phillips Avenue
Sioux Falls, SD 57104
(605) 782-1200

Relief Sought: 49 C.F.R. § 1152.22(a)(3)

Pursuant to the Board's class exemption for the discontinuance of trackage rights, codified at 49 C.F.R. § 1152.50(b), DM&E seeks to discontinue its overhead trackage rights over UP's Hartland-Mason City Line, extending from milepost 107.0 at Hartland, Minnesota to milepost 119.4 at Albert Lea, Minnesota, and from milepost 251.6 at Albert Lea to milepost 192.8 at Mason City, Iowa (with a milepost equation at Manly, Iowa, where milepost 225.0 = milepost 202.0), a total distance of approximately 48.2 miles in Freeborn County, Minnesota and Worth and Cerro Gordo Counties, Iowa.

DM&E acquired these overhead trackage rights from UP's predecessor CNW in 1986, at the same time that DM&E acquired (as relevant here) CNW's rail line from Winona,

Minnesota to Rapid City, South Dakota, and a connecting line from Waseca, Minnesota to Hartland, Minnesota. See DM&E Acquisition, supra. The Hartland-Mason City trackage rights -- on CNW's branch line from Hartland to Albert Lea, Minnesota, and on CNW's so-called "Spine Line" from Albert Lea to Mason City -- permitted DM&E to conduct interchange with CNW at Mason City.¹

In 2003, DM&E acquired trackage rights over IC&E's line between Owatonna, Minnesota and Mason City. See Dakota, MN & Eastern R. Corp. -- Control -- Iowa, Chicago & Eastern, 6 S.T.B. 511, 531, 534 (2003).² In the intervening years, DM&E-UP interchange traffic has moved via the IC&E routing to Mason City rather than via DM&E's Hartland-Mason City trackage rights over UP. DM&E and UP have now reached formal agreement whereby DM&E will discontinue its Hartland-Albert Lea-Mason City trackage rights over UP, and instead will connect and interchange with UP in Mason City via the former IC&E lines and a short distance of UP's Mason City terminal trackage.

Because DM&E's trackage rights on the Hartland-Mason City Line are restricted to the movement of overhead traffic, no local traffic has been handled pursuant to those rights for at least two years. As indicated, overhead DM&E traffic on the UP Hartland-Mason City Line can be and has been rerouted over other lines.³ The proposed discontinuance will permanently

¹ DM&E's Winona-Rapid City line and CNW's Spine Line crossed on a grade separation at Owatonna, Minnesota, but no connection or interchange was possible at that location.

² Embracing Finance Docket No. 34178 (Sub-No. 2), Dakota, Minnesota & Eastern Railroad Corporation -- Trackage Rights Exemption -- Iowa, Chicago & Eastern Railroad Corporation and Iowa Northern Railway Company. As indicated above, IC&E has recently been merged with DM&E, so that DM&E now owns the Owatonna-Mason City line as well as the other former IC&E rail lines in the Mason City area.

³ The Hartland-Mason City trackage rights included limited rights to interchange traffic with Canadian National/Cedar River Railroad Company ("CEDR") at Glenville, Minnesota and with Iowa Northern Railway Company ("IANR") at Manly, Iowa. DM&E today conducts interchange with those carriers via its former IC&E Owatonna-Mason City line at Lyle, Minnesota (for CEDR) and Plymouth Junction, Iowa (for IANR).

remove DM&E trains from UP's busy Spine Line route between Albert Lea and Mason City and will complete the parties' arrangements to improve and streamline interchange operations in Mason City.

Map: 49 C.F.R. § 1152.22(a)(4)

A map showing the location of the Hartland-Mason City Line over which DM&E seeks to discontinue its overhead trackage rights is attached hereto as Exhibit A.

Applicant's Representative: 49 C.F.R. § 1152.22(a)(7)

Any correspondence regarding the proposed discontinuance should be sent to DM&E's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2832
(312) 252-1500

ZIP Codes Traversed: 49 C.F.R. § 1152.22(a)(8)

The Hartland-Mason City Line traverses United States Postal Service ZIP Codes 56042, 56007, 56036, 50459, 50448, 50456 and 50401.

Qualification for Class Exemption: 49 C.F.R. § 1152.50(b)

DM&E certifies that no local traffic has moved via the Hartland-Mason City Line trackage rights for at least two years and that any overhead traffic formerly handled via those trackage rights can be rerouted over other lines. DM&E further certifies that no formal complaint by a user of the Hartland-Mason City Line trackage rights service (or a state or local governmental entity acting on behalf of such user) regarding cessation of service on the line

either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two years. See Certification and Verification of J. Edward Terbell, attached hereto as Exhibit B.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

DM&E intends to consummate the discontinuance of its overhead trackage rights on the Hartland-Mason City Line on or shortly after July 2, 2009.

Suitability for Other Public Purposes: 49 C.F.R. § 1152.22(e)(4)

Not applicable. Because this is a trackage rights discontinuance proceeding and not an abandonment, public use conditions would be unavailable. E.g., BNSF Railway Company -- Discontinuance of Trackage Rights Exemption -- In Kootenai County, ID, Docket No. AB-6 (Sub-No. 466X) (STB served March 4, 2009).

Notice Requirement: 49 C.F.R. §§ 1152.50(d)(2), 1105.11, 1105.12

A certification that the agencies designated in 49 C.F.R. § 1152.50(d)(1) have been served with written pre-filing notice of the proposed discontinuance is attached hereto as Exhibit C. A certification that, in accordance with 49 C.F.R. § 1105.12, DM&E has published notice of the proposed discontinuance in a newspaper of general circulation in each county through which the Hartland-Mason City Line passes is attached hereto as Exhibit D. Because preparation of an Environmental/Historic Report is not required for the proposed discontinuance of trackage rights, the notice requirements of 49 C.F.R. §§ 1105.7(b) and 1105.11 are not applicable to this proceeding.

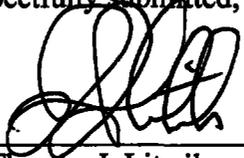
Labor Protection: 49 C.F.R. § 1152.50(d)(2)

The appropriate level of labor protection for the transaction proposed herein is that set forth in Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979). No DM&E employees will be adversely affected by the proposed discontinuance.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c)(6), DM&E's proposed discontinuance of trackage rights over UP's Hartland-Mason City Line is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(a) and (b), the proposed discontinuance also is exempt from historic preservation reporting requirements. Discontinuance will not result in the lease, transfer or sale of a railroad's line, sites or structures, and further STB approval is required for UP to abandon any portion of the Hartland-Mason City Line.

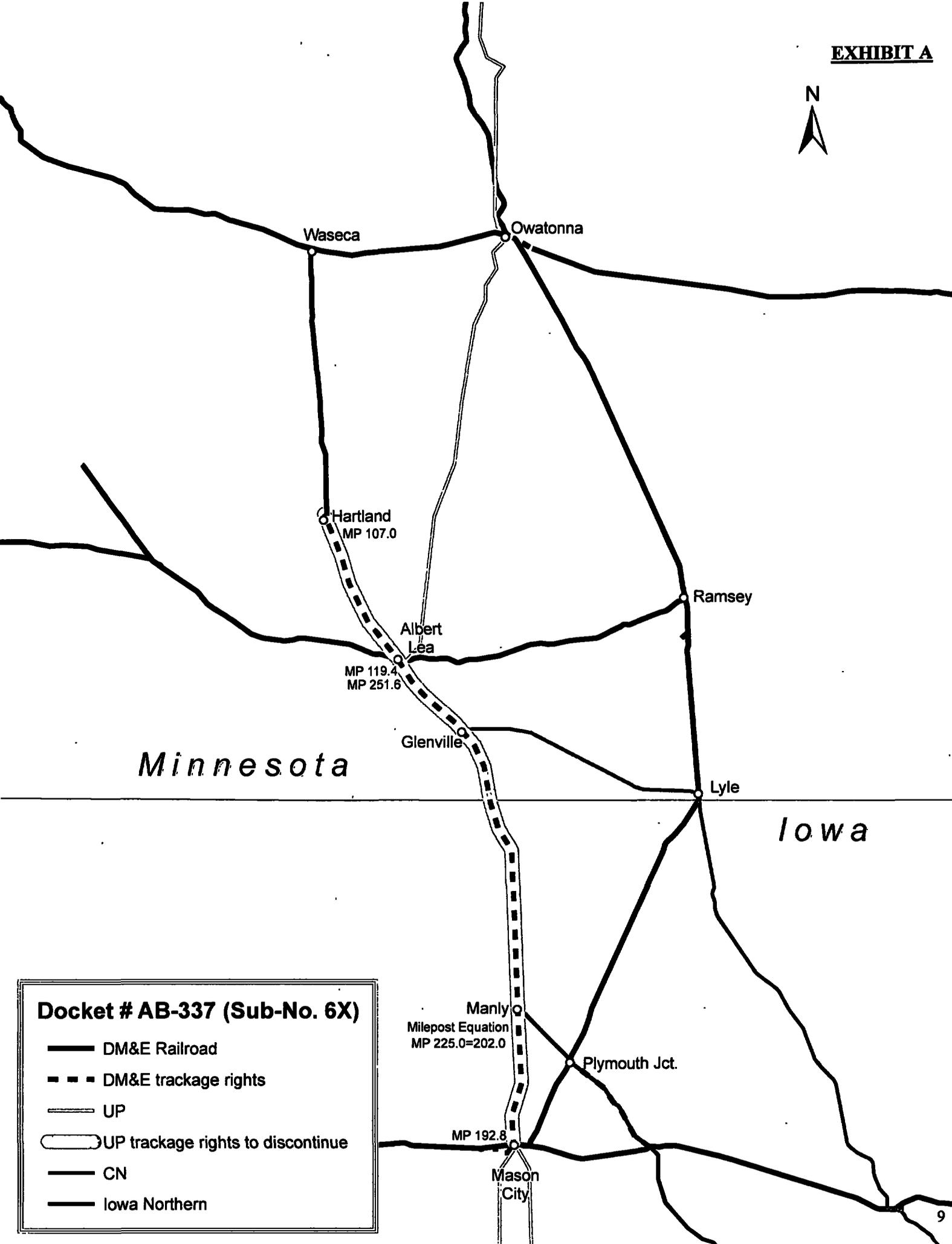
Respectfully submitted,

By: 

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

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

Dated: May 12, 2009



Docket # AB-337 (Sub-No. 6X)

-  DM&E Railroad
-  DM&E trackage rights
-  UP
-  UP trackage rights to discontinue
-  CN
-  Iowa Northern

CERTIFICATION AND VERIFICATION

State of South Dakota)
) ss:
County of Minnehaha)

J. Edward Terbell, being duly sworn, deposes and says that he is Executive Vice President - Operations of Dakota, Minnesota & Eastern Railroad Corporation and that:

1) No local traffic has moved via DM&E's trackage rights over the rail line of Union Pacific Railroad Company between Hartland, Minnesota and Mason City, Iowa for at least two years; any DM&E overhead traffic formerly handled on the line can be rerouted over other lines; and no formal complaint filed by a user of DM&E rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two years; and

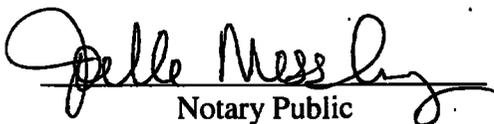
2) He has read the foregoing Notice of Exemption and knows the facts asserted therein, and the same are true as stated.





J. Edward Terbell

SUBSCRIBED AND SWORN TO
before me this 7th day
of May, 2009.


Notary Public

My Commission expires: 11/10/2014

CERTIFICATE OF NOTIFICATION

I hereby certify that on May 1, 2009, written notice in the form attached hereto and containing the information specified in 49 C.F.R. § 1152.50(d)(1) was served by first class mail, postage prepaid, upon the following agencies designated in that subsection:

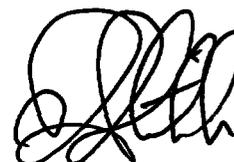
Minnesota Department of Transportation
Office of Freight, Rail & Waterways
Mail Stop 470
395 John Ireland Boulevard
St. Paul, MN 55155

Iowa Department of Transportation
Office of Rail Transportation
800 Lincoln Way
Ames, IA 50010

Military Surface Deployment & Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

National Park Service
Recreation Resources Assistance Division
P.O. Box 37127
Washington, DC 20013-7127

Ms. Abigail R. Kimbell
Chief of the Forest Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-0003



Thomas J. Litwiler

COPY

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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Suite 920
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THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

May 1, 2009

Ms. Abigail R. Kimbell
Chief of the Forest Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-0003

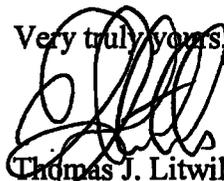
Re: **Docket No. AB-337 (Sub-No. 6X)**
Dakota, Minnesota & Eastern Railroad Corporation --
Discontinuance of Trackage Rights Exemption --
In Worth and Cerro Gordo Counties, IA and Freeborn County, MN

Dear Ms. Kimbell:

On or about May 12, 2009, Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") expects to file with the Surface Transportation Board a notice of exemption for the discontinuance of DM&E's overhead trackage rights on a line of railroad of Union Pacific Railroad Company extending from milepost 107.0 at Hartland, Minnesota to milepost 119.4 at Albert Lea (Curtis), Minnesota, and from milepost 251.6 at Albert Lea to milepost 192.8 at Mason City, Iowa (with a milepost equation at Manly, Iowa, where milepost 225.0 = milepost 202.0), a total distance of approximately 48.2 miles in Freeborn County, Minnesota and Worth and Cerro Gordo Counties, Iowa. The line traverses United States Postal Service ZIP Codes 56042, 56007, 56036, 50459, 50448, 50456 and 50401. DM&E's notice of exemption will be filed pursuant to 49 C.F.R. § 1152.50(b).

We are notifying you of the proposed discontinuance in accordance with the requirements of 49 C.F.R. § 1152.50(d)(1). Should you have any questions or need additional information regarding this proposed discontinuance, please feel free to contact me at 312-252-1508. Kind regards.

Very truly yours



Thomas J. Litwiler
Attorney for Dakota, Minnesota & Eastern
Railroad Corporation

TJL:tl

CERTIFICATE OF PUBLICATION

I hereby certify that:

1. I have contacted the following newspapers of general circulation for the counties in which the subject rail line in this proceeding is located, and arranged for the publication of a Notice of Intent to Discontinue Trackage Rights, in the form attached hereto, pursuant to 49 C.F.R. § 1105.12:

Freeborn County, MN	-	<i>The Albert Lea Tribune</i> 808 West Front Street Albert Lea, MN 56007
Worth County, IA	-	<i>Northwood Anchor</i> 801 Central Avenue Northwood, IA 50459
Cerro Gordo County, IA	-	<i>The Globe Gazette</i> 300 North Washington Avenue P.O. Box 271 Mason City, IA 50401-0271

2. The Notice of Intent to Discontinue Trackage Rights was published in *The Albert Lea Tribune* on May 7, 2009, in the *Northwood Anchor* on May 6, 2009 and in *The Globe Gazette* on May 6, 2009.

3. A proof of publication from *The Albert Lea Tribune* is attached. Proofs of publication from the two other above-listed newspapers will be filed with the Board upon receipt.



Thomas J. Litwiler

Dated: May 11, 2009

**AFFIDAVIT
OF PUBLICATION
State of Minnesota
SS.
COUNTY OF FREEBORN**

Danielle Boss, being duly sworn on oath says that she is the publisher or authorized agent and employee of the publisher of the newspaper known as The Albert Lea Tribune and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualification as a qualified newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

May 7, 2009

and printed below is a copy of the lower-case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice:

abcdefghijklmnopqrstuvwxyz

BY: 
PUBLISHER/AUTHORIZED AGENT

Subscribed and sworn to before me this 7th day of May, 2009

BY: 
Notary Public



**Notice of Intent
to Discontinue
Trackage Rights
-
Dakota,
Minnesota &
Eastern
Railroad
Corporation**

Dakota, Minnesota & Eastern Railroad Corporation (DM&E) gives notice that on or about May 12, 2009, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 C.F.R. 1152 Subpart F - Exempt Abandonments and Discontinuances permitting the discontinuance of DM&E's overhead trackage rights on approximately 48.2 miles of rail line of Union Pacific Railroad Company between milepost 107.0 at Hartland, Minnesota and milepost 119.4 at Albert Lea (Curtis), Minnesota, and between milepost 251.6 at Albert Lea and milepost 192.8 at Mason City, Iowa (with a milepost equation at Manly, Iowa, where milepost 225.0 = milepost 202.0), traversing United States Postal Service ZIP Codes 56042, 56007, 56036, 50459, 50443, 50458 and 50401 in Freeborn County, Minnesota and Worth and Cerro Gordo Counties, Iowa. The proceeding will be docketed as No. AB-337 (Sub-No. 6X). The proposed discontinuance is exempt from the Board's environmental and historic reporting requirements, 49 C.F.R. 1105.6(c) and 1105.8(b). Interested persons may make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation

Board, Washington, DC 20423 or by calling that office at 202-245-0235. Appropriate offers of financial assistance to continue rail service can be filed with the Board. Public use conditions and rail banking/trails use are not available in proceedings involving only a discontinuance and not an abandonment. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 395 E Street, S.W., Washington, DC 20423 [see 49 C.F.R. 1104.1(a) and 1104.3(a)], and one copy must be served on DM&E's representative [see 49 C.F.R. 1104.12(a)]. Questions regarding offers of financial assistance or the Board's discontinuance procedures may be directed to the Board's Office of Public Assistance, Governmental Affairs & Compliance at 202-245-0233. Copies of any comments or requests for conditions should be served on DM&E's representative at the following address: Thomas J. Utwiler, Esq. Fletcher & Sippel LLC 29 North Wacker Drive Suite 920 Chicago, Illinois 60606-2832 (312)252-1500 Published in the Albert Lea Tribune on the 7th day of May, 2009