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December 22, 2004

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

ENTERED
Office of Proceedings

DEC 27 2004

Part of
Public Record

Re: **Finance Docket No. 34630 - 212858**
**MRC Regional Railroad Authority -- Trackage Rights
Exemption -- Lines of the State of South Dakota**
Finance Docket No. 34630 (Sub-No. 1) - 212859
**Dakota Southern Railway Company -- Trackage Rights
Exemption -- MRC Regional Railroad Authority**

Dear Secretary Williams:

On behalf of MRC Regional Railroad Authority ("MRC"), Dakota Southern Railroad Company ("Dakota Southern") and the State of South Dakota, I am writing to briefly respond to letter of The Burlington Northern and Santa Fe Railway Company ("BNSF") dated and filed December 17, 2004 in the above-captioned dockets. BNSF's letter purports to address the Notices of Exemption filed by MRC and Dakota Southern in these matters.

BNSF does not and cannot point to any false misleading information in the Notices that would render them void *ab initio*, does not seek a stay, and does not offer any support for its naked claim that the notices are "ultra vires and a sham transaction." While contractual consent issues will be decided as appropriate in other forums, we are puzzled by BNSF's urging that the Board "qualify" any action it takes with a disclaimer of jurisdiction over these transactions. BNSF Letter at 2. The Board plainly has jurisdiction over the proposed trackage rights acquisition transactions presented in the Notices, and it should not suggest otherwise in the Notices of Exemption it issues in these proceedings.

We also note that, contrary to BNSF's implication (BNSF Letter at 2, n.1), the State's recent Motion to Dismiss BNSF's state court litigation against the State is based on far more than the Notices of Exemption in these proceedings. Most significantly, in that litigation BNSF seeks specific performance and injunctive relief to compel the physical transfer of state-

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owned rail lines to BNSF, in clear derogation of the Board's jurisdiction over such transactions and without having obtained or even sought appropriate Board authorization. That unexplained jurisdictional contradiction is the primary basis and focus of the State's Motion to Dismiss.

Ten copies of this letter are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope. Thank you for your assistance on this matter.

Very truly yours,



Myles L. Tobin
Attorney for State of South Dakota

MLT:tjl

Enclosures

cc: Kenneth W. Cotton, Esq.
Mr. George Alexander Huff, IV
Robert M. Jenkins III, Esq.