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ENTERED
Office of Proceedings

MAR 25 2008

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March 24, 2008

VIA FEDERAL EXPRESS

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

221908



Re: **Finance Docket No. 35125**
Dakota, Minnesota & Eastern Railroad Corporation –
Acquisition Exemption – Line of BNSF Railway Company

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition for Exemption of Dakota, Minnesota & Eastern Railroad Corporation**, dated March 24, 2008. A check in the amount of \$5,700, representing the appropriate fee for this filing, and a diskette containing the text of the Petition in MS Word 2003 format also are enclosed. Please note that expedited consideration of the Petition is requested.

An extra copy of the Petition and of this transmittal letter are included as well. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

FEE RECEIVED

MAR 25 2008

**SURFACE
TRANSPORTATION BOARD**

Respectfully submitted,

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

TJL:tl

Enclosures

cc: Shippers on Certificate of Service

FILED

MAR 25 2008

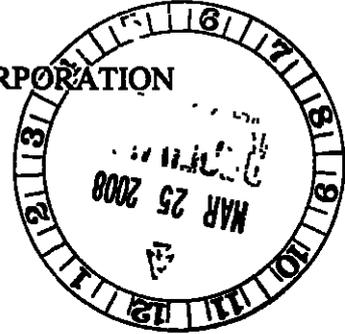
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35125

22/908

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- ACQUISITION EXEMPTION --
LINE OF BNSF RAILWAY COMPANY



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Public Record

PETITION FOR EXEMPTION OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

EXPEDITED CONSIDERATION REQUESTED

FEE RECEIVED

MAR 25 2008

**SURFACE
TRANSPORTATION BOARD**

FILED

MAR 25 2008

**SURFACE
TRANSPORTATION BOARD**

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
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**ATTORNEYS FOR DAKOTA, MINNESOTA &
EASTERN RAILROAD CORPORATION**

Dated: March 24, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35125

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- ACQUISITION EXEMPTION --
LINE OF BNSF RAILWAY COMPANY**

**PETITION FOR EXEMPTION OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

Pursuant to 49 U.S.C. § 10502 and the regulations of the Surface Transportation Board (the "Board") at 49 C.F.R. § 1121, Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") submits this petition for an exemption from the prior review and approval requirements of 49 U.S.C. § 10902 for DM&E's acquisition of approximately 3.5 miles of rail line owned by BNSF Railway Company ("BNSF") in Yale, South Dakota (the "Yale Extension"). The Yale Extension serves a single grain elevator, which strongly supports the proposed acquisition. As demonstrated further below, exemption of this transaction clearly is warranted under the relevant standards of Section 10502.

The proposed acquisition arises from a cooperative effort by DM&E, BNSF, the State of South Dakota, the East Central Regional Railroad Authority and South Dakota Wheat Growers ("SDWG") to ensure the continuation and viability of rail service to SDWG's Yale elevator. When the transaction is completed, the Yale elevator will be served by DM&E via a direct and efficient line from the south, rather than by a BNSF line from the north.

DM&E requests expedited consideration of this petition, such that a decision approving the proposed acquisition would be effective on or before June 13, 2008 and allow DM&E to provide service for the spring wheat harvest which begins shortly thereafter. A copy

of this petition has been served on SDWG, which is the only shipper on the Yale Extension and which, as noted, strongly supports both the proposed transaction and the request for expedited consideration.

A map showing the Yale Extension and other rail lines in the vicinity is attached hereto as Exhibit A. In support of this Petition for Exemption, DM&E submits the following:

I. BACKGROUND

A. Identification of Parties

Petitioner DM&E is a Class II common carrier by rail which operates approximately 1100 route miles of rail lines in Minnesota, South Dakota, Wyoming, Nebraska and Iowa. DM&E's main line extends from Winona, Minnesota across southern Minnesota and South Dakota to Rapid City, South Dakota and Colony, Wyoming. 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); Dakota, Minnesota & Eastern Railroad Corporation -- Acquisition and Operation -- Colony Line Segment of Union Pacific Railroad Company, Finance Docket No. 32864 (STB served April 25, 1996). The Board has given final approval under 49 U.S.C. § 10901 for a proposal by DM&E to extend its rail line further westward into the Powder River Basin coal fields of northeastern Wyoming. Dakota, MN & Eastern R. -- Construction -- Powder River Basin, 3 S.T.B. 847 (1998); 6 S.T.B. 8 (2002); Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, Finance Docket No. 33407 (STB served February 15, 2006).

DM&E controls Iowa, Chicago & Eastern Railroad Company ("IC&E"), a Class II rail carrier which owns or operates approximately 1300 route miles of trackage in the states of

Iowa, Illinois, Kansas, Missouri, Minnesota and Wisconsin. Dakota, MN & Eastern et al. --

Control -- Iowa, Chicago & Eastern, 6 S.T.B. 511 (2003).¹

The complete name and address of petitioner DM&E is:

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

BNSF is a Class I common carrier by rail which owns or operates approximately 32,000 route miles of rail line in 28 states in the central and western United States and in two Canadian provinces.

B. The Subject Rail Line

The Yale Extension extends from milepost 145.0 to milepost 148.5, a distance of approximately 3.5 miles, in Yale, South Dakota. It connects at milepost 148.5 with DM&E's line southwest to Huron, South Dakota, and at milepost 145.0 with BNSF's line northeast to Watertown, South Dakota. All three segments were part of a single, Watertown-Huron branch line owned by Great Northern Railway Company, a BNSF predecessor. At Huron, the branch connects with DM&E's main east-west line across South Dakota.

In 1992, DM&E acquired the Huron-Yale segment, from milepost 160.33 at Huron to milepost 148.5 at Yale, pursuant to an offer of financial assistance. Burlington Northern Railroad Company -- Abandonment Exemption -- In Beadle County, SD, Docket No.

¹ Canadian Pacific Railway Company ("CP") recently acquired the stock of DM&E, which was placed in a voting trust pending Board approval of CP control of DM&E and IC&E. Canadian Pacific Railway Company, et al. -- Control -- Dakota, Minnesota & Eastern Railroad Corp., et al., Finance Docket No. 35081, decision accepting application served December 27, 2007. DM&E's proposed acquisition of the Yale Extension is unrelated to the CP-DM&E transaction, and will proceed independently of that transaction.

AB-6 (Sub-No. 336) (ICC served February 20, 1992).² At the same time, DM&E obtained overhead trackage rights on BN's remaining line from Yale to Watertown. Dakota, Minnesota & Eastern Railroad Corporation -- Trackage Rights Exemption -- Burlington Northern Railroad Company, Finance Docket No. 32024 (ICC served April 14, 1992).³ BN was granted back overhead trackage rights on the Huron-Yale segment, allowing BN to reach a retained yard in Huron and its pre-existing trackage rights on DM&E's east-west main line between Huron and Wolsey, South Dakota. Burlington Northern Railroad Company -- Trackage Rights Exemption -- Dakota, Minnesota & Eastern Railroad Corporation, Finance Docket No. 32023 (ICC served April 14, 1992).⁴

BNSF has recently used the Yale Extension solely for the purpose of serving the SDWG elevator at Yale with a train operating from Watertown. Neither BNSF nor DM&E have operated on the DM&E line between Yale and Huron for several years. Because of a washout that occurred in the fall of 2007, BNSF's line into Yale from Watertown is currently inoperable.

² At the time, BNSF was known as Burlington Northern Railroad Company ("BN").

³ These rights provided DM&E with an alternative to its own branch line into Watertown, which originated in Brookings, South Dakota. DM&E subsequently abandoned its Brookings-Watertown line in Dakota, Minnesota & Eastern Railroad Corporation -- Abandonment Exemption -- In Brookings, Hamlin, Deuel and Codington Counties, SD, Docket No. AB-337 (Sub-No. 1X) (ICC served January 19, 1993).

⁴ BN's prior trackage rights on DM&E's main line between Huron and Wolsey were granted in Burlington Northern Railroad Company -- Trackage Rights Exemption -- Chicago and North Western Transportation Company, Finance Docket No. 30075 (ICC served January 12, 1983) and Burlington Northern Railroad Company -- Trackage Rights Exemption -- Dakota, Minnesota and Eastern Railroad Corporation, Finance Docket No. 30075 (Sub-No. 1) (ICC served May 6, 1988). DM&E's main line crosses a north-south BNSF line at Wolsey.

C. The Proposed Transaction

Pursuant to a Purchase and Sale Agreement executed by BNSF and DM&E, DM&E proposes to acquire the Yale Extension from BNSF. BNSF will have overhead trackage rights on the line.⁵

DM&E will use the Yale Extension to provide rail service to the SDWG Yale elevator, and to any other shippers that may locate on the line in the future. Service will be provided on an as-needed basis with a train assignment from Huron, with the frequency of service expected to be higher during the harvest seasons.

State-sponsored repairs and improvements are currently being conducted on DM&E's Huron-Yale line in order to allow the resumption of rail operations on that segment. No repairs are needed on the Yale Extension for DM&E's service over that trackage. Future rehabilitation of the lines may involve a transfer of the lines to a state-related agency; any necessary STB approval for such transactions would be obtained before they occur. DM&E's assumption of rail service to the Yale elevator is the result of several years of discussions between the State, SDWG, DM&E, BNSF and the East Central Regional Railroad Authority.

II. JURISDICTION AND STATUTORY STANDARDS

Pursuant to 49 U.S.C. § 10902, enacted by the ICC Termination Act of 1995,⁶ a Class II rail carrier may acquire a line of railroad from another carrier if the Board finds that the acquisition is not inconsistent with public convenience and necessity. 49 U.S.C. § 10902(a), (c). Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation under

⁵ DM&E's existing overhead trackage rights on the Yale Extension will merge into DM&E's ownership of that line once the transaction proposed herein is consummated. See Norfolk and Western Railway Company -- Acquisition Exemption -- Consolidated Rail Corporation, Finance Docket No. 32957 (STB served August 15, 1996) at 1, n.3.

⁶ Pub. L. No. 104-88, 109 Stat. 803 (1995).

Part A of Subtitle IV of Title 49 of the U.S. Code (including Section 10902) if the Board finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the Interstate Commerce Commission would use its expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

An exemption from the requirements of Section 10902 for DM&E's acquisition of the Yale Extension would be fully consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application for review and approval under Section 10902, is unnecessary to carry out the rail transportation policy of 49 U.S.C. § 10101. In fact, exemption from such review and approval would further several of the objectives

established in the transportation policy. Moreover, the proposed transaction is of limited scope and will not result in any abuse of market power.

III. EXEMPTION CRITERIA

A. Regulation Is Not Necessary to Carry Out the Rail Transportation Policy Of 49 U.S.C. § 10101.

DM&E's acquisition of the Yale Extension is wholly consistent with the rail transportation policy outlined in 49 U.S.C. § 10101. The proposed transaction will assure the preservation and viability of rail service to the Yale elevator, and is strongly supported by the elevator itself. See March 24, 2008 letter from South Dakota Wheat Growers, attached hereto as Exhibit B. As such, exemption will promote the continuation of a sound rail system to meet the needs of the public. 49 U.S.C. § 10101(4). Acquisition of the Yale Extension will allow DM&E to provide direct and efficient service in lieu of BNSF's longer route, enhancing effective rail management and the competitive benefits of DM&E's service. Thus, this transaction also will promote efficiency, coordination and competition among rail carriers and other transport modes. See 49 U.S.C. §§ 10101(4), (5) and (9).

Granting the relief sought herein will advance several other goals enumerated in the rail transportation policy as well. Section 10101 provides that the Board should minimize the need for federal regulatory control over the rail transportation system, reduce the barriers to entry into and exit from the rail transportation industry and provide for the expeditious resolution of all proceedings. 49 U.S.C. §§ 10101(2), (7) and (15). The statutory exemption contained in Section 10502 obviates the need for the expensive and time-consuming processes attendant to a proceeding under Section 10902. By limiting the level of regulatory review of this transaction and by relying upon the adequate and more expeditious exemption procedure, the Board would minimize the burden of unnecessary regulation on this transaction. E.g., Livonia, Avon &

Lakeville Railroad Corporation -- Acquisition and Operation Exemption -- Line of Consolidated Rail Corporation, Finance Docket No. 32754 (STB served March 11, 1996) at 4.

B. Regulation Is Not Necessary to Protect Shippers From an Abuse of Market Power

DM&E's acquisition of the Yale Extension will have no adverse impact on competition. Rail service previously provided to a single industry by BNSF will now be provided by DM&E instead. Approval of this transaction will not lessen competition or transportation options for that shipper or for businesses that may locate on the line in the future. Instead, the proposed acquisition will ensure and enhance the continuation of efficient and competitive rail service on the line. See, e.g., Iowa Interstate Railroad, Ltd. -- Sublease Exemption -- CSX Transportation, Inc., Finance Docket No. 34796 (STB served January 18, 2006) at 2 (regulation not needed to prevent abuse of market power where one railroad "will merely replace [another] as the carrier."). Accordingly, the transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

C. The Transaction Is Limited in Scope

Because regulation is not necessary to protect shippers from an abuse of market power, DM&E need not demonstrate that the proposed transaction is of limited scope. 49 U.S.C. § 10502(a)(2); Fort Worth & Western Railroad Company, Inc. -- Lease Exemption -- St. Louis Southwestern Railway Company, Finance Docket No. 32955 (STB served September 5, 1996) at 3. Nevertheless, it is clear that DM&E's acquisition of the Yale Extension satisfies this criterion as well. The proposed transaction involves the acquisition of a short, 3.5-mile rail line in a single locale and used to serve a single shipper. That shipper supports the proposed transaction. Accordingly, the Board should find that this transaction is of limited scope within the meaning of Section 10502(a)(2)(A).

IV. LABOR PROTECTION

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. The applicable level of labor protection for this transaction is that specified by 49 U.S.C. § 10902(d) and Wisconsin Central Ltd. -- Acq. Exem. -- Union Pacific R. Co., 2 S.T.B. 218 (1997), rev'd in part sub nom. Association of Amer. Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998). DM&E's acquisition of the Yale Extension from BNSF is not expected to result in the dismissal of any BNSF employees.

DM&E has posted and served the 60-day labor notice required by 49 C.F.R. § 1121.4(h), and is certifying its compliance with that requirement concurrently with the filing of this petition.

V. ENVIRONMENTAL ASSESSMENT

A petition for exemption must comply with the Board's environmental reporting requirements, if applicable. 49 C.F.R. § 1121.3(a). Under 49 C.F.R. § 1105.6(c)(2), DM&E's proposed acquisition of the Yale Extension is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed acquisition of the Yale Extension by DM&E also is exempt from historic preservation reporting requirements. DM&E's acquisition of the line is for the purpose of continuing rail operations. Further Board approval would be required as a prerequisite to any abandonment or discontinuance of service, and there are no plans in connection with this transaction to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

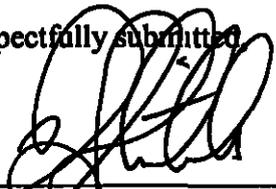
VI. EXPEDITED CONSIDERATION

DM&E requests that the Board expedite its consideration of this petition and issue its decision to be effective on or before June 13, 2008. That is when traffic demands from the forthcoming spring wheat harvest will arise, and it is critical that DM&E be able to provide service to the Yale elevator by that time. BNSF's line to Yale from Watertown is currently inoperable, and all involved parties have agreed to the provision of rail service to Yale by DM&E from Huron. Failure to conclude the proposed transaction by the end of June could result in a seasonal loss of rail service to the Yale elevator.

The Yale elevator -- the only shipper on the line -- has been an active participant in and supporter of the proposed transaction, and specifically urges the expedited consideration of this matter. See Exhibit B. Particularly given that support and the extremely limited scope of the proposed transaction, expedited consideration will not prejudice any party and is warranted under the circumstances.

WHEREFORE, DM&E respectfully requests that the Board grant an exemption from the provisions of 49 U.S.C. 10902 for DM&E's acquisition of BNSF's line of railroad between milepost 145.0 and milepost 148.5 in Yale, South Dakota, and allow such exemption to become effective on or before June 13, 2008.

Respectfully submitted

By: 

William C. Sippel

Thomas J. Litwiler

Fletcher & Sippel LLC

29 North Wacker Drive

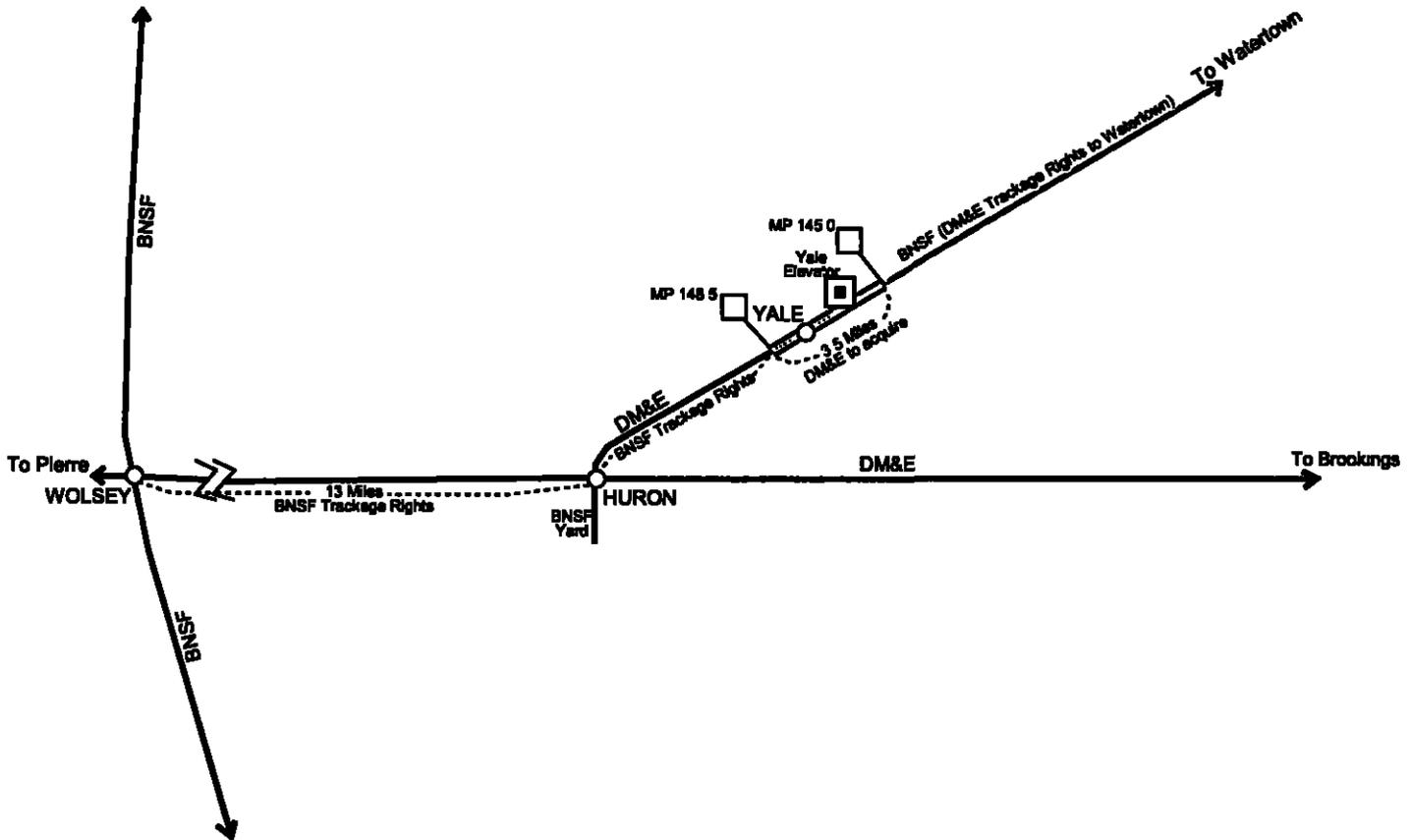
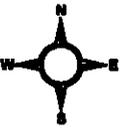
Suite 920

Chicago, Illinois 60606-2832

(312) 252-1500

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

Dated: March 24, 2008



**Finance Docket No. 35125
DM&E Petition for Exemption
Map Exhibit A**

	DM&E
	BNSF
	DM&E (BNSF Trackage Rights)
	BNSF (DM&E Trackage Rights)
	Line to be acquired



March 24, 2008

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: Finance Docket No. 35125
Dakota, Minnesota & Eastern Railroad Corporation --
Acquisition Exemption -- Line of BNSF Railway Company

Dear Ms. Quinlan:

South Dakota Wheat Growers strongly supports the Dakota, Minnesota & Eastern Railroad's acquisition of the rail line that serves our elevator in Yale, South Dakota. We have actively participated in the discussions over the last several years regarding such an acquisition, and believe it is necessary to preserve competitive and efficient rail service to our facility.

We also strongly encourage the Surface Transportation Board to take action on this matter by mid-June, so that DM&E rail service will be available for the spring wheat harvest. Our members would be severely disadvantaged if the acquisition cannot be completed by then.

Thank you for the Board's attention to these matters.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gerry Crawford".

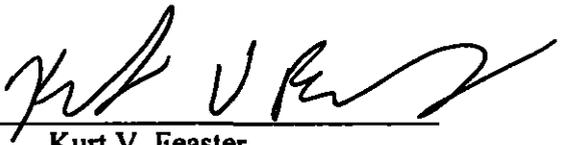
Gerry Crawford
South Dakota Wheat Growers
Yale Facility Manager

cc: Sheldon Cotton, DM&E

VERIFICATION

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

Kurt V. Feaster, being duly sworn, deposes and says that he is Senior Vice President Finance and Chief Financial Officer of Dakota, Minnesota & Eastern Railroad Corporation, that he has read the foregoing Petition for Exemption and knows the facts asserted therein, and that the same are true as stated.



Kurt V. Feaster

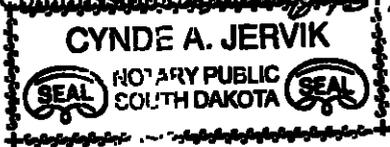
SUBSCRIBED AND SWORN TO
before me this 20 day
of March, 2008.

**Kurt V. Feaster, Chief Financial Officer
Treasurer & Ass't Secretary**



Notary Public

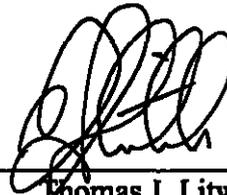
My Commission expires: 6/15/13



CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2008, a copy of the foregoing
Petition for Exemption of Dakota, Minnesota & Eastern Railroad Corporation was served
by first class mail, postage prepaid, upon:

Mr. Gerry Crawford
Manager
South Dakota Wheat Growers
P.O. Box 127-128
Yale, SD 57386



Thomas J. Litwiler