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KARI MORILL

**FEE RECEIVED**

APR 17 2008

April 17, 2008

**SURFACE  
TRANSPORTATION BOARD**

BY HAND DELIVERY

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**FILED**

APR 17 2008

**SURFACE  
TRANSPORTATION BOARD**

ENTERED  
Office of Proceedings

APR 17 2008

Part of  
Public Record

Re: STB Finance Docket No. 32023 (Sub-No. 1), BNSF Railway  
Company – Trackage Rights Exemption – Dakota, Minnesota &  
Eastern Railroad Corporation

Dear Acting Secretary Quinlan:

Attached for filing with the Board please find the original and ten copies of the Verified Notice of Exemption pursuant to the provisions of 49 C.F.R. § 1180.2(d)(7) covering the amendment to a trackage rights agreement between BNSF Railway Company and Dakota, Minnesota & Eastern Railroad Corporation. Enclosed is a check in the amount of \$1,000 to cover the filing fee.

Also attached is a CD containing the Notice of Exemption.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me

Sincerely yours,



Karl Morell

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO 32023 (SUB-NO. 1)**

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

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

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**Karl Morell  
Of Counsel  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307**

**Attorney for:  
BNSF RAILWAY COMPANY**

**Dated: April 17, 2008**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 32023 (SUB-NO 1)**

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

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

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**BNSF Railway Company ("BNSF"), submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7), for exemption of an amendment to an existing trackage rights agreement. The amendment would grant BNSF trackage rights over a segment of rail line being acquired by Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") from BNSF.**

**Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights covered by this notice are based on an amendment to the original trackage rights agreement, attached as Exhibit B, and are not being sought in a responsive application in a rail consolidation proceeding.**

**Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), BNSF submits the following information:**

## **Section 1180.6 Supporting Information**

### **(a)(1)(i) Description of Proposed Transaction**

In Finance Docket No. 32023, *Burlington Northern Railroad Company – Trackage Rights Exemption – Dakota, Minnesota & Eastern Railroad Corporation* (not printed), served April 14, 1992, the Board's predecessor exempted the original overhead trackage rights over the 11.83-mile rail line located between Milepost 160.33, at Huron, and Milepost 148.50, at Yale, in Beadle County, SD.<sup>1</sup>

On March 25, 2008, DM&E filed with the Board, in Finance Docket No. 35125, a Petition for Exemption to acquire from BNSF the 3.5-mile rail line located between Mileposts 145.00 and 148.50, in Yale, SD. As part of that transaction, DM&E has agreed to amend the original 1992 trackage rights agreement in order to extend BNSF's overhead trackage rights over the 3.5-mile rail line once it is acquired by DM&E. The amended trackage rights will allow BNSF to reach its pre-existing trackage rights on DM&E's east-west main line between Huron and Wolsey, SD. See Finance Docket No. 30075, *Burlington Northern Railroad Company – Trackage Rights Exemption – Chicago and North Western Transportation Company* (not printed), served January 12, 1983; Finance Docket No. 30075 (Sub-No. 1), *Burlington Northern Railroad Company – Trackage Rights Exemption – Dakota, Minnesota and Eastern Railroad Corporation* (not printed), served May 6, 1988.

The transaction covered by this notice is the amendment of the 1992 trackage rights agreement ("1992 Agreement") covering BNSF's use of DM&E's rail line between Mileposts

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<sup>1</sup> DM&E acquired the 11.83-mile rail line from BNSF through an offer of financial assistance in Docket No. AB-6 (Sub-No. 336X), *Burlington No. R. Co. – Aband. Exempt. – In Beadle County, SD* (not printed), served February 20, 1992.

148.50 and 145.00, once that rail line is acquired by DM&E. A map of the rail line is attached as Exhibit A.

Name and address of tenant railroad:

BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, Texas 76131

Questions regarding this transaction are to be addressed to BNSF's counsel:

Karl Morell  
Of Counsel  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, DC 20005  
(202) 638-3307

**(a)(1)(ii) Consummation Date**

The Trackage Rights will be consummated as soon as the transaction contemplated in STB Finance Docket No. 35125 is consummated, but no sooner than the effective date of this Notice of Exemption.

**(a)(1)(iii) Purpose Sought to be Accomplished**

The First Amendment to 1992 Agreement will enable BNSF to access its pre-existing trackage rights between Huron and Wolsey, SD, which, in turn, will provide BNSF alternative access to its north-south rail line at Wolsey, SD.

**(a)(5) List of States in which the Party's Property is Situated**

The involved trackage rights are located in the State of South Dakota.

**(a)(6) Map**

A map illustrating the trackage rights is attached as Exhibit A.

**(a)(7)(ii) Agreement**

A copy of the First Amendment to the 1992 Agreement is attached as Exhibit B.

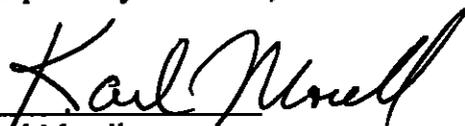
**Labor Protection**

BNSF is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in *Norfolk and Western Ry. Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1878), as modified by *Mendocino Coast Ry., Inc. – Lease and Operate*, 360 I.C.C. 653 (1980).

**Environmental and Historic Matters**

Environmental and historical impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, an environmental and historical report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R § 1105.6(c)(4) and .8(b)(3).

Respectfully submitted,



Karl Morell  
Of Counsel  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
BNSF Railway Company

Dated: April 17, 2008



**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

**STB FINANCE DOCKET NO. 32023 (SUB-NO. 1)**

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

**Dakota, Minnesota & Eastern Railroad Corporation (DM&E) has agreed to grant overhead trackage rights to BNSF Railway Company (BNSF), over the rail line located between milepost 145.00 and milepost 148.50, in Yale, SD, a distance of approximately 3.5 miles.**

**The trackage rights will be consummated upon the consummation of the transaction contemplated in STB Finance Docket No. 35125, pursuant to which DM&E will acquire the 3.5-mile rail line from BNSF.**

**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 stay the transaction.**

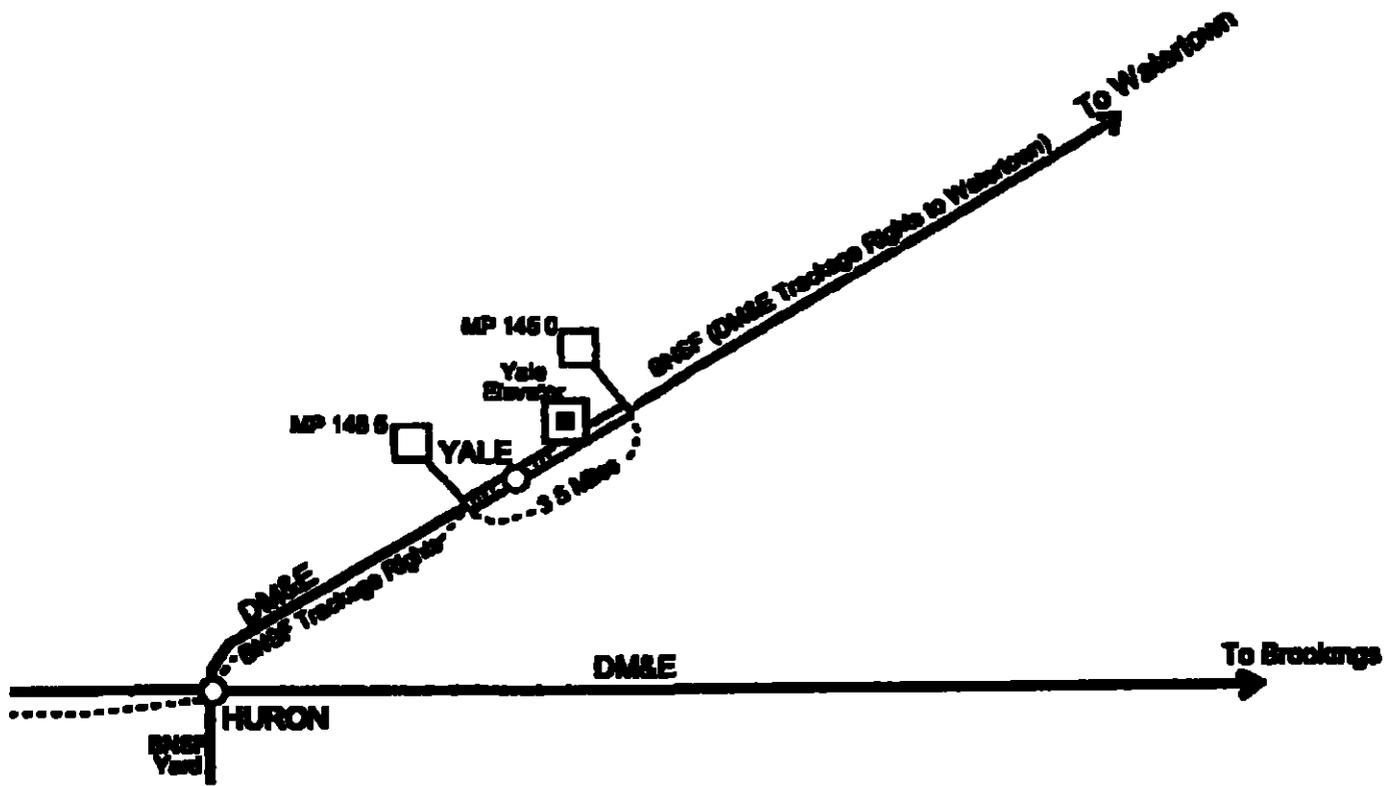
**Dated:**

**By the Board,**

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**Anne K. Quinlan  
Acting Secretary**

**EXHIBIT A**



## **EXHIBIT B**

### **FIRST AMENDMENT TO TRACKAGE RIGHTS AGREEMENT YALE, SD TO HURON, SD**

**THIS AMENDMENT ("Amendment") is made and entered into this 3rd day of October, 2007, 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, formerly the Burlington Northern Railroad Company and DME are parties to a trackage rights agreement dated February 1, 1992 ("Agreement") granting BNSF the right to operate its trains over certain lines of DME railroad between Yale, SD and Huron, SD, and**

**WHEREAS, BNSF and the DME are parties to an agreement involving the purchase and sale of certain BNSF real and person property between Milepost 145 0 and Milepost 148 5 at Yale, SD ("Purchase and Sale Agreement"); and**

**WHEREAS, said Purchase and Sale Agreement contemplates certain amendments to the trackage rights Agreement.**

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

- 1) **The Agreement's trackage rights limits near Yale, SD shall be extended from milepost 148 5 to 145 0. Accordingly, the Joint Trackage shall extend from Yale, SD milepost 145 0 to Huron, SD, Milepost 160.33 a distance of 15 33 miles, and the train mile and per car mile rates as provided in Section 3.1(a) of the Agreement shall be applied to the agreed length of 15.33 miles**
- 2) **Section 7 2 of the Agreement shall be deleted in its entirety and replaced with a new Section 7 2 as follows:**

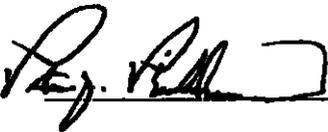
**This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, it being expressly understood that either party shall have the right to assign or retain all or part of its rights and obligations under this Agreement at any time**

- 3) **The parties acknowledge and agree that certain provisions governing BNSF's reservation of rights to connect its trackage rights under the Agreement, as amended herewith with BNSF's trackage rights between Huron and Wolsey pursuant to the terms of Section 17 2(b) of the Purchase and Sale Agreement dated October 3, 2007 shall be deemed incorporated herein by reference and made a part of this Agreement**

- 4) The terms of this First Amendment shall be deemed effective as of the date all necessary Governmental Approvals have been obtained. BNSF shall seek and obtain all such approvals as may be necessary for this Amendment to become effective.
- 5) Except as otherwise stated herein, all other terms and conditions of the Agreement shall remain in full force and effect

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date written above

**BNSF RAILWAY COMPANY**

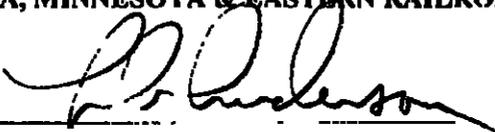
By: 

Printed: Peter J Ricksbauer

Title VP Network Development

Date: 3/15/08

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**

By: 

Printed L.A Anderson  
Sr Vice Pres - Marketing

Title: \_\_\_\_\_

Date: 2-14-08