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October 23, 2009

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225927

VIA FEDERAL EXPRESS

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



Re: **Finance Docket No. 35046 (Sub-No. 1)**
Duluth, Missabe and Iron Range Railway Company -- Trackage
Rights Exemption -- Duluth, Winnipeg and Pacific Railway Company

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption of Duluth, Missabe and Iron Range Railway Company Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated October 23, 2009. A check in the amount of \$1,200.00, representing the appropriate fee for this filing, is attached.

Please note that this filing includes a color map.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies 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. Kind regards.

Respectfully submitted,

ENTERED
Office of Proceedings
OCT 26 2009
Part of
Public Record
Thomas J. Litwiler
Attorney for Duluth, Missabe and Iron Range
Railway Company

TJL:tl

Enclosures

225927

ORIGINAL

[Contains Color Map]

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35046 (SUB-NO. 1)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

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Public Record

FILED
OCT 26 2009
**SURFACE
TRANSPORTATION BOARD**

Thomas J. Healey
Counsel - Regulatory
CN
17641 South Ashland Avenue
Homewood, Illinois 60430
(708) 332-4381

FEE RECEIVED
OCT 26 2009

Thomas J. Litwiler
Fletcher & Sippel LLC
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Chicago, Illinois 60606-2832
(312) 252-1500

**SURFACE
TRANSPORTATION BOARD**

**ATTORNEYS FOR DULUTH, MISSABE AND
IRON RANGE RAILWAY COMPANY**

Dated: October 23, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35046 (SUB-NO. 1)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Duluth, Missabe and Iron Range Railway ("DMIR"), a common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for the acquisition of overhead trackage rights over a line of railroad of Duluth, Winnipeg and Pacific Railway Company ("DWP") between Shelton Junction, Minnesota and Ranier, Minnesota, a distance of approximately 94.6 miles. The proposed trackage rights represent an amendment and extension of rights previously presented to the Board in Finance Docket No. 34424 (Sub-No. 2), Duluth, Missable and Iron Range Railway Company -- Trackage Rights Exemption -- Duluth, Winnipeg and Pacific Railway Company and Finance Docket No. 35046, Duluth, Missabe and Iron Range Railway Company -- Amended Trackage Rights Exemption -- Duluth, Winnipeg and Pacific Railway Company.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), DMIR submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

DMIR and DWP are indirect subsidiaries of Canadian National Railway Company ("CNR"). See Canadian National Railway Company and Grand Trunk Corporation -- Control --

Duluth, Missabe and Iron Range Railway Company, et al., Finance Docket No. 34424 (STB served April 9, 2004) ("CN/GLT") (CN control of DMIR).¹ DMIR and DWP operate largely parallel lines extending north toward Canada from the Twin Ports of Duluth, Minnesota and Superior, Wisconsin.

Pursuant to an arrangement dating from 2004, DMIR and DWP operate on a paired track basis between Nopeming Junction, Minnesota (near Duluth) and Shelton Junction, Minnesota with each carrier having overhead trackage rights on the other carrier's parallel line. See CN/GLT at 19-20; Duluth, Missabe and Iron Range Railway Company -- Trackage Rights Exemption -- Duluth, Winnipeg and Pacific Railway Company, Finance Docket No. 34424 (Sub-No. 2) (STB served April 9, 2004). In 2007, the parties made minor modifications to the existing trackage rights agreements on these line segments. See Duluth, Missabe and Iron Range Railway Company -- Amended Trackage Rights Exemption -- Duluth, Winnipeg and Pacific Railway Company, Finance Docket No. 35046 (STB served June 29, 2007), 72 Fed. Reg. 35740. By decision served October 19, 2009, the Board denied a petition filed by the United Transportation Union seeking to revoke the 2007 amendments and several related trackage rights arrangements in the Twin Ports area. Duluth, Winnipeg and Pacific Railway Company -- Amended Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company, Finance Docket No. 35045, et al. (STB served October 19, 2009).

Pursuant to a written Amendment Agreement to be executed by DMIR and DWP, further amending the initial 2004 agreement between the parties, DMIR now proposes to acquire overhead trackage rights over DWP's line of railroad between Milepost 70.7 at Shelton Junction,

¹ CN's U.S. rail subsidiaries, including DMIR and DWP, are held by Grand Trunk Corporation ("GTC"), a wholly-owned direct subsidiary of CNR, and report to the Board on a consolidated basis under the GTC name.

Minnesota and Milepost 165.3 at Ranier, Minnesota, a distance of approximately 94.6 miles. This continuation of DMIR's existing trackage rights will allow DMIR to operate trains from DMIR's Proctor Yard near Duluth over the DWP Nopeming Junction-Shelton Junction segment and on to the DWP terminal at Ranier. DWP, which is gaining access to DMIR's Proctor Yard via another trackage rights filing submitted concurrently herewith,² will similarly be able to operate trains via a Proctor-Rainer routing. CN is currently upgrading Proctor Yard, and relocating certain Twin Ports-area terminal functions to that yard.

The full name and address of the applicant carrier herein is as follows:

Duluth, Missabe and Iron Range Railway Company
17641 South Ashland Avenue
Homewood, Illinois 60430
(708) 332-4381

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

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

DMIR intends to consummate the proposed trackage rights transaction on November 25, 2009.

² See Finance Docket No. 35045 (Sub-No. 1), [Duluth, Winnipeg and Pacific Railway Company -- Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company](#).

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed trackage rights will further enhance the DMIR-DWP paired trackage arrangement between Nopeming Junction and Shelton Junction that has existed since 2004, and will accommodate improvements in yard facilities and changes in terminal operations being undertaken in the Twin Ports by DMIR, DWP and Wisconsin Central Ltd., another CN affiliate. DMIR's expanded trackage rights will improve crew utilization, operational flexibility and traffic fluidity in the area.

The proposed trackage rights simply extend existing DMIR's trackage rights over DWP's Nopeming Junction-Shelton Junction line to the next logical terminal. DMIR crews will continue to remain subject to their own collective bargaining agreements at all times while operating DMIR trains.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

DMIR owns or operates over rail property in the states of Minnesota and Wisconsin.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

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

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A draft of the proposed Amendment Agreement to be executed by DMIR and DWP is attached hereto as Exhibit 2. A copy of the final, signed version of the agreement will be filed with the Board within ten days of execution, pursuant to 49 C.F.R. § 1180.6(a)(7)(ii). Copies of the underlying 2004 trackage rights agreement between DMIR and DWP and the prior

2007 amendment to that agreement were previously filed with the Board in Finance Docket No. 34424 (Sub-No. 2), Duluth, Missabe and Iron Range Railway Company -- Trackage Rights Exemption -- Duluth, Winnipeg and Pacific Railway Company and Finance Docket No. 35046, Duluth, Missabe and Iron Range Railway Company -- Amended Trackage Rights Exemption -- Duluth, Winnipeg and Pacific Railway Company.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, DMIR agrees to imposition of the employee protective conditions established in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

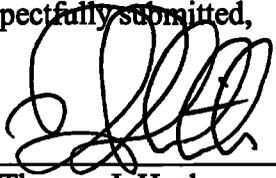
Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights by DMIR is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights by DMIR also is exempt from historic preservation reporting requirements.

Respectfully submitted,

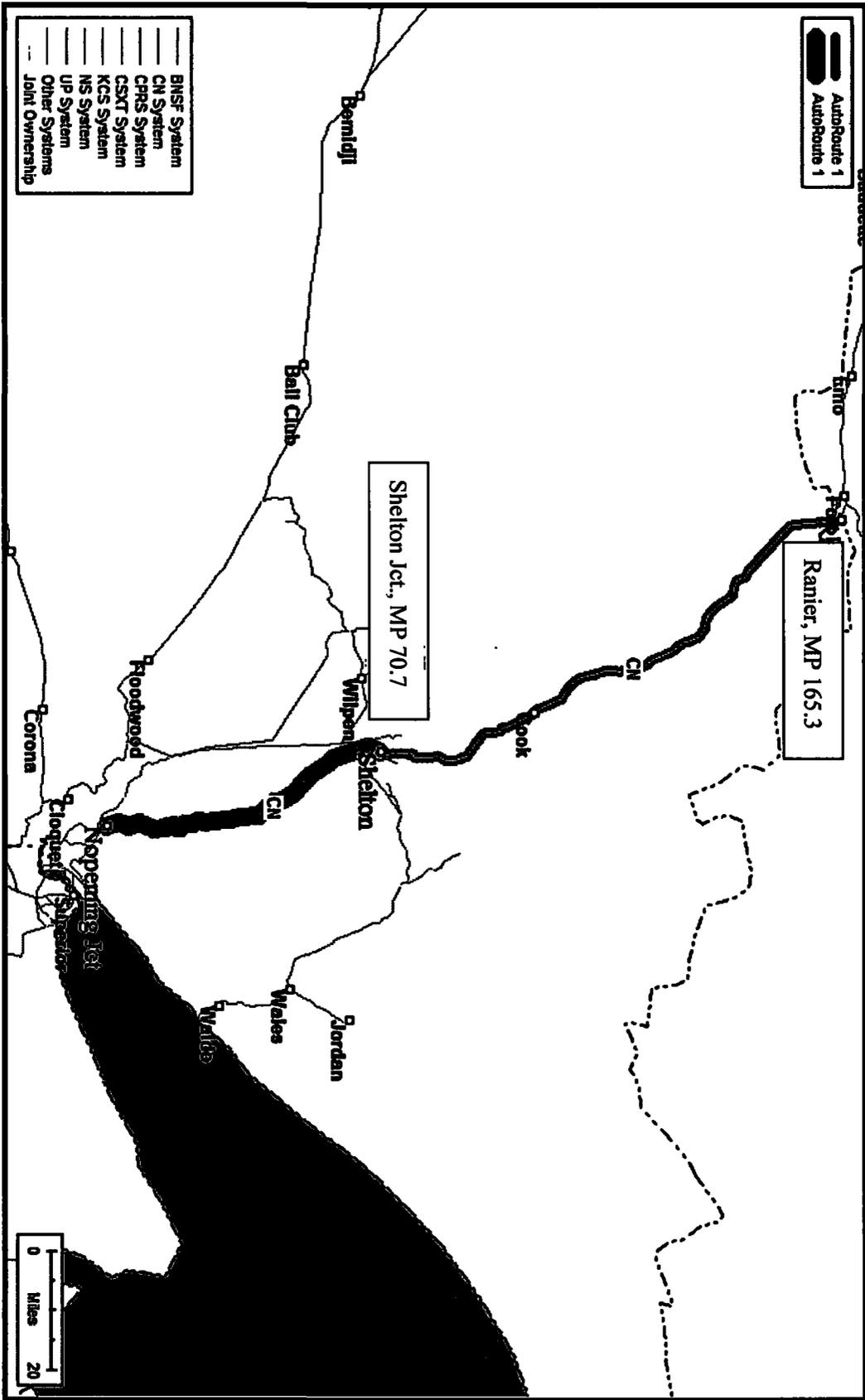
By: 

Thomas J. Healey
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29 North Wacker Drive
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**ATTORNEYS FOR DULUTH, MISSABE AND
IRON RANGE RAILWAY COMPANY**

Dated: October 23, 2009



[DRAFT]

AMENDMENT AGREEMENT

THIS AMENDMENT AGREEMENT, entered into as of this ___ day of October 2009 by and between **DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY** (hereinafter referred to as “DWP or “OWNER”), and **DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**,(hereinafter referred to as “DMIR” or “User”).

WITNESSETH:

WHEREAS, DWP and DMIR made and entered into a certain agreement on November 5, 2003, (“Trackage Rights Agreement”) which provides among other things for DMIR’s use of DWP trackage between Nopeming Junction and Shelton Junction in the State of Minnesota; and

WHEREAS, DWP and DMIR amended the Trackage Rights Agreement on June 4, 2007, which, among other things, provided for the overhead movements, reblocking cars within a single train operated by DMIR and setting out cars requiring service; and

WHEREAS, DWP and DMIR desire to amend the Trackage Rights Agreement to eliminate certain limitations and restrictions currently as it relates to the use of the Subject Trackage.

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

- 1) Section 1.1 of the Trackage Rights Agreement shall be replaced in its entirety with the following:
 - “Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate, in modified overhead freight service, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the “Subject Trackage”):
 - Between the DWP’s Nopeming Jct., Mileage 10.7 and DWP’s Ranier, Mileage 165.3, all on DWP's Rainy Subdivision, a distance of approximately 154.6 miles, all in the State of Minnesota.”
- 2) Exhibit A of the Trackage Rights Agreement shall be replaced in its entirety with a new Exhibit “A” attached hereto and made a part hereof.
- 3) No term or provision of this Amendment Agreement shall be construed as prohibiting the parties from operating under existing trackage rights agreements, in the event the parties are unable to obtain regulatory exemption or approval, as applicable, or implementing agreements that are acceptable to the parties.
- 4) Except as specifically herein modified, all other terms and conditions of the Trackage Rights Agreement shall remain in full force and effect.

[DRAFT]

IN WITNESS WHEREOF, the parties hereto execute this Amendment Agreement, in duplicate, as of the day and year first above written.

**DULUTH, WINNIPEG & PACIFIC
RAILWAY COMPANY**

By _____

Paul E. Ladue
Its: Region Director Contracts & Administration

Date: October __, 2009

**DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY**

By _____

John E. Merrill
Its: Manager Contracts

Date: October __, 2009

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35046 (SUB-NO. 1)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY

Duluth, Winnipeg and Pacific Railway Company ("DWP") will agree to grant overhead trackage rights to Duluth, Missabe and Iron Range Railway Company ("DMIR") over DWP's line of railroad between milepost 70.7 at Shelton Junction, Minnesota and milepost 165.3 at Ranier, Minnesota, a distance of approximately 94.6 miles. The trackage rights will be effective on November 25, 2009.

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: November __, 2009

By the Board

Anne K. Quinlan
Acting Secretary

VERIFICATION

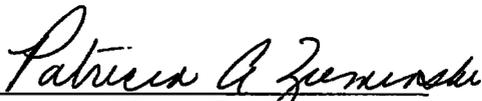
State of Illinois)
) SS:
County of Cook)

Paul E. Ladue, being duly sworn, deposes and says that he is Director, Contracts and Administration for Duluth, Missabe and Iron Range Railway Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Paul E. Ladue

SUBSCRIBED AND SWORN TO
before me this 22nd day
of October, 2009.



Notary Public

My Commission expires:

PATRICIA A. ZIEMINSKI
Notary Public
Cook County Illinois
My Commission Expires
September 25, 2010