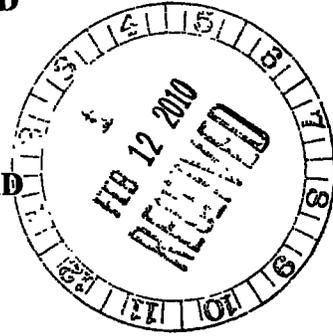


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EXPEDITED HANDLING REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Finance Docket No. 35352

**PETITION OF NEBKOTA RAILWAY, INC.
and WEST PLAINS CO.
FOR A DECLARATORY ORDER**

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Attorneys for Petitioners

DATE FILED: February 12, 2010

**ENTERED
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**SURFACE
TRANSPORTATION BOARD**

EXPEDITED HANDLING REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35352

**PETITION OF NEBKOTA RAILWAY, INC.
and WEST PLAINS CO.
FOR A DECLARATORY ORDER**

INTRODUCTION

Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, NEBKOTA RAILWAY, INC., (“NRI”) and WEST PLAINS CO., (“WPC”) (collectively “Petitioners”) hereby petition the Board to issue a Declaratory Order to terminate controversy and remove uncertainty with respect to the rights of Petitioners and those of NEBRASKA NORTHWESTERN RAILROAD, INC. (“NNW”) and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION (“DM&E”) regarding the competitive impact and public interest of a proposed purchase by NNW of a 7.22-mile rail line from DM&E and the lease by NNW of a 20.88-mile rail line also from DM&E. More particularly, as will be discussed below, NNW will neither originate nor terminate any traffic on the rail lines to be purchased and leased, and has no relationship to any shipper or other entity that does originate or terminate traffic on those lines. Further, the acquisitions at issue are solely for the purpose of interjecting NNW into the middle of routings involving NRI and NRI’s parent company WPC thereby permitting NNW to extract revenues or other

premiums for performing no necessary public transportation services. Petitioners request a determination that conduct of this nature is inconsistent with the public convenience and necessity under 49 U.S.C. § 10901 (c) and an unreasonable practice under 49 U.S.C. § 10702.

STATEMENT OF FACTS

In Finance Docket No. 35346, *Nebraska Northwestern Railroad, Inc.—Purchase, Lease and Operation Exemption—Dakota, Minnesota & Eastern Railroad Corporation*, Petitioners are seeking the rejection or stay of a class exemption from 49 U.S.C. § 10901 for purchase by NNW from DM&E of a 7.22-mile rail line between Milepost 404.5 at or near Chadron, NE and Milepost 411.72 at or near Dakota Junction, NE and for lease by NNW from DM&E of a 20.88-mile rail line between Milepost 411.72 at or near Dakota Junction, NE and Milepost 432.6 at or near Crawford, NE. A copy of that pleading along with the Appendices attached thereto is attached to this Petition as Exhibit A, and the facts set forth in Exhibit A are incorporated and adopted by reference herein.

In addition to the facts contained in Exhibit A, it is critical to note that NNW will neither originate nor terminate traffic on the lines that it is seeking to purchase and lease, and it has no real prospects of handling any traffic other than that currently moving via the NRI, substantially all of which is wheat belonging to NRI's parent company WPC. Further, freight movements on the line to be purchased between Chadron and Dakota Junction are currently being performed by NRI under a haulage agreement with DM&E that is cancelable upon 30 days notice. (Exhibit A, Appendix 2) Accordingly, the result of the purchase would be to make WPC and NRI hostage to the NNW demands for a percentage of freight revenues while performing no necessary services.

As early as 2005, NRI and WPC representatives traveled to Sioux Falls, South Dakota to meet with DM&E officials to discuss DM&E's future plans regarding the rail lines at issue here. At that time, DM&E officials informed NRI and WPC that DM&E was not yet sure as to its future plans for those lines. However, DM&E officials informed WPC and NRI that its long term plans would likely include sale or abandonment of DM&E assets in and around Chadron, NE. NRI and WPC were assured by the DM&E officials that they would be kept apprised of DM&E's plans and would be given the opportunity to participate in any disposition of the DM&E lines. In October, 2008, NRI entered into a haulage agreement with DM&E that allowed NRI to provide the service to WPC that was so vital to NRI's and WPC's continuing viability in the Chadron area. However, DM&E and NNW have now entered into a purchase and lease agreement that would allow NNW to void that haulage agreement and foreclose NRI and WPC from operations over the purchased line without the agreement of the NNW, and without a ransom payment to NNW for the right to operate over the line.

ARGUMENT

As noted above, in finance Docket 35346, NNW is seeking to utilize the Class Exemption for the Acquisition and Operation of Rail Lines issues by the Board's predecessor under 49 U.S.C. 10505. The Class Exemption permits a non-carrier to acquire the assets of an active rail line without addressing the otherwise applicable "public convenience and necessity" test of 49 U.S.C. 10901(c). In granting this exemption, the Interstate Commerce Commission related its reasoning for finding that the exemption would operate in the public interest. The Commission stated:

Transfer of a line to a new carrier that can operate the line more economically or more effectively than the existing carrier serves

shipper and community interests by continuing rail service, and allows the selling railroad to eliminate lines it cannot operate economically. Transfer before financial crisis (with attendant plans for abandonment) helps assure continued viable service.

Finally, we note that shortlines are dependent on local traffic for their survival, and thus have a greater incentive than class I carriers to provide local shippers with service tailored to their needs....Shortlines frequently are able to reduce operating costs and thus keep rates competitive.

Ex Parte No. 392 (Sub-No. 1), *Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C. 2d 810, 813 (1985).

Plainly, the Commission did not anticipate the Class Exemption being used as a financial tool for the betterment of sharp investors rather than as a mechanism to maintain needed rail services. Here, however, the NNW investor group is misusing the Class Exemption in its private interests rather than in the public interest.

In view of the facts surrounding the transactions at issue, the Board should not permit the transactions to go forward without conditions that will allow for the continued operations over the acquired lines of railroad without service or economic disruptions. The Board should open a proceeding for the purpose of determining whether the Class Exemption should be restricted so that it does not automatically apply in situations where the acquiring shortline railroad is unlikely to provide transportation services but merely intends to avail itself of an economic opportunity to extract a premium from the shortline currently operating the line to be acquired. In the alternative, the Board should require the acquiring shortline to reach an agreement for the operation of the acquired line or lines that is consistent with the public convenience and necessity and not an unreasonable burden on commerce.

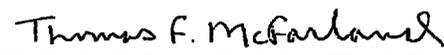
CONCLUSION

In order to allow NRI to continue to meet its obligations to provide rail service over the lines being acquired by NNW, and continue to provide essential rail services to WPC, the Board should issue an order clarifying the extent of the Class Exemption for 49 U.S.C. 10901 to limit its application to those circumstances where the acquiring shortline is: (a) actually performing rail service; (b) not unreasonably interfering with the operations of the incumbent shortline already providing services; (c) not seeking to extract a payment from the incumbent shortline to permit it to provide services; and (d) not interfering with the economic welfare of the only substantive shipper on the line.

Respectfully submitted,



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Attorneys for Petitioners

VERIFICATION

My name is BRYCE WELLS and I am (title) of NebKota Railway, Inc.

I declare under penalty of perjury that the facts set forth in the foregoing Petition for Declaratory Order are true and correct. Further, I certify that I am qualified and authorized to file this testimony.

Executed this day of February 12, 2010.

Bryce Wells / P.M.D.
Bryce Wells

EXHIBIT A

LAW OFFICE
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THOMAS F. MCFARLAND

February 5, 2010

By e-filing

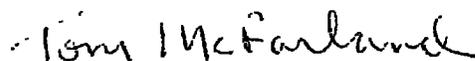
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Finance Docket No. 35346, *Nebraska Northwestern Railroad, Inc. -- Purchase, Lease and Operation Exemption -- Dakota, Minnesota & Eastern Railroad Corporation*

Dear Chief:

Hereby transmitted is a Joint Petition For Rejection Or Stay Of Class Exemption for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Petitioners

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Exhibit A

BEFORE THE
SURFACE TRANSPORTATION BOARD

NEBRASKA NORTHWESTERN)
RAILROAD, INC. -- PURCHASE, LEASE) FINANCE DOCKET
AND OPERATION EXEMPTION --) NO. 35346
DAKOTA, MINNESOTA & EASTERN)
RAILROAD CORPORATION)

JOINT PETITION FOR REJECTION
OR STAY OF CLASS EXEMPTION

WEST PLAINS CO.
4800 Main Street, Suite 274
Kansas City, MO 64112

NEBKOTA RAILWAY, INC.
111 North Main Street
Chadron, NE 69337

Petitioners

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Attorneys for Petitioners

DATE FILED: February 5, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

NEBRASKA NORTHWESTERN)	
RAILROAD, INC. -- PURCHASE, LEASE)	FINANCE DOCKET
AND OPERATION EXEMPTION --)	NO. 35346
DAKOTA, MINNESOTA & EASTERN)	
RAILROAD CORPORATION)	

**JOINT PETITION FOR REJECTION
OR STAY OF CLASS EXEMPTION**

Pursuant to 49 C.F.R. § 1150.32(c), NEBKOTA RAILWAY, INC. ("NRI") and WEST PLAINS CO. ("WPC") hereby jointly petition for rejection or stay of a class exemption from 49 U.S.C. § 10901 for purchase by Nebraska Northwestern Railroad, Inc. ("NNW") from Dakota, Minnesota & Eastern Railroad Corporation ("DME") of a 7.22-mile rail line between Milepost 404.5 at or near Chadron, NE and Milepost 411.72 at or near Dakota Junction, NE and for lease by NNW from DME of a 20.88-mile rail line between Milepost 411.72 at or near Dakota Junction, NE and Milepost 432.6 at or near Crawford, NE.

A Notice of Exemption for those transactions was filed by NNW on January 25, 2010. Unless rejected or stayed, an exemption for that purchase and lease will become effective on February 24, 2010. *See* 49 C.F.R. § 1150.32(b).

IDENTITY AND INTEREST OF PROTESTANTS

As an aid to understanding of the interest of Protestants, there is attached to this Petition as Appendix 1 a railroad map of South Dakota and northwestern Nebraska. Reference to that map illustrates the current configuration of rail lines in the area under consideration.

NRI is a Class III rail carrier subject to the jurisdiction of the Board. NRI owns approximately four miles of rail line at and east of Chadron, NE.^{1/} NRI's rail line is shaded in yellow on Appendix 1.

NRI's tracks connect with DME at Chadron, NE. NRI transports traffic between Dakota Junction, NE and Chadron, NE pursuant to a haulage agreement with DME. A copy of that Haulage Agreement dated October 14, 2008 is attached to this Petition as Appendix 2. As a result of the Haulage Agreement, NRI's interchange with DME is at Dakota Junction, not at Chadron. Substantial rail traffic moves via the interchange between NRI and DME at Dakota Junction. The trackage between Dakota Junction and Chadron over which NRI provides haulage is shaded in pink on Appendix 1.

NRI has overhead trackage rights over DME between Chadron and Crawford, NE, via Dakota Junction, which enables NRI to interchange with BNSF Railway Company (BNSF) at Crawford. The segment of track between Chadron and Dakota Junction (pink on Appdx. 1) over which NRI has trackage rights is the same trackage over which NRI provides haulage. Inasmuch as the Trackage Rights Agreement between NRI and DME does not permit interchange between NRI and DME at Dakota Junction, NRI's rail service at Dakota Junction is dependent on the continued existence of the DME-NRI Haulage Agreement. The trackage between Dakota Junction and Crawford that constitutes the second leg of NRI's trackage rights over DME is shaded in blue on Appendix 1.

^{1/} NRI's rail line is a segment of Chicago and North Western Railway Company's "Cowboy Line," portions of which were acquired by NRI in the mid 1990s in lieu of abandonment.

The significant point illustrated on Appendix 1 and explained in the foregoing is that NRI currently has the benefit of direct connections with two overland rail carriers: DME at Dakota Junction and BNSF at Crawford.

WPC is an employee-owned merchant of agricultural products. NRI is wholly-owned by WPC. As here pertinent, WPC has shipped substantial quantities of wheat from an elevator on DME at Chadron to points in the East and Southeast via DME to Chicago, utilizing NRI haulage rights from Chadron to connection with DME at Dakota Junction. WPC has also shipped wheat from that elevator to points in the East and Southeast via BNSF to Chicago or points beyond, utilizing NRI trackage rights over DME between Chadron and Crawford. The ability of WPC to utilize NRI haulage rights and NRI trackage rights to connect directly to two overland carriers for traffic east and southeast of Chicago has been an important benefit to WPC in terms of rail rates and rail service.

On December 22, 2009, WPC's elevator on DME at Chadron was destroyed by fire. WPC intends to build a new elevator on NRI a short distance east of Chadron to replace the elevator lost to fire. It will continue to be vital to WPC for NRI to have direct connections from that new elevator to two overland rail carriers on traffic east and southeast of Chicago.

As DME's connecting carrier via haulage at Dakota Junction, and as DME's trackage rights tenant between Chadron and Crawford, NRI would clearly be the logical purchaser and/or lessee if DME were to sell or lease the Chadron-Dakota Junction-Crawford trackage. On several occasions, representatives of WPC-NRI have expressed to representatives of DME a desire to purchase and/or lease that trackage if DME were to sell, lease, or abandon it. However, DME

now proposes to sell and lease that trackage to a newly-formed carrier, NNW, which has had no prior history or connection with that trackage.

NRI and WPC are seeking rejection, or, at a minimum, stay of the proposed purchase and lease because on the basis of the facts discernible at this time, (1) those transactions would have a serious adverse effect on both NRI and WPC as a result of NRI's loss of its direct connection with DME at Dakota Junction; and (2) safety would be seriously compromised as a result of operation by multiple rail carriers between Chadron and Crawford without any operating protocols being in place.

STANDARDS FOR REJECTION OR STAY OF CLASS EXEMPTIONS

In *Winimac Southern Ry. Co. - Trackage Rights Exempt. - A&R Line, Inc.*, 2009 WL 53358 (Finance Docket No. 35208, decision served January 9, 2009), the Board explained circumstances that would warrant rejection of a class exemption, viz. at *1; emphasis added:

In general, the notice of exemption process is an expedited means of obtaining Board authority in certain classes of transactions, defined in the Board's regulations, that ordinarily do not require greater regulatory scrutiny. Thus, notices of exemption are intended to be used for routine and non-controversial cases (citing *Northeast Interchange Railway, LLC - Lease and Operation Exemption - Line in Croton-on-Hudson, NY*, STB Finance Docket No. 34734 [STB served Nov. 17, 2005], and *James Riffin dba the Northern Central Railroad - Acquisition and Operation Exemption - in York County, PA*, STB Finance Docket No. 34501 [STB served Feb. 23, 2005]). In cases where unresolved issues arise, the Board will reject a notice (citing *FPN-USA, Inc. - Operation Exemption - Tijuana-Tecate Short Line*, STB Finance Docket No. 35155, [STB served Aug. 8, 2008], and *Pro-Go Corp. - Operation Exemption - in Suffolk County, NY*, STB Finance Docket No. 35120 [STB served Mar. 13, 2008] . . .

Rejection of a Notice of Exemption does not necessarily mean that the proposed acquisition will not be approved. Rejection affects only the manner of processing of the acquisition. Rejection means that an Application under 49 U.S.C. § 10901 or a Petition for

Exemption under 49 U.S.C. § 10502 must be filed if the acquisition is to be considered because procedures associated with such Applications and Petitions allow for appropriate deliberative consideration of issues raised by the proposed acquisition.

Likewise, in *Consolidated Rail Corp. - Exempt. - Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH*, 1998 WL 224657 (Docket No. AB-167 [Sub-No. 1088X], decision served September 7, 1988), the Board's predecessor, the Interstate Commerce Commission, explained circumstances under which a class exemption will be stayed, viz. at 2; emphasis added:

The exemption will be stayed pending detailed review. The line qualifies for the class exemption. (footnote omitted). However, the protestors raise numerous questions that warrant further investigation. The result of Conrail's proposal here is to break the continuity of this line. The parties have raised questions of resultant routing efficiency, deliberate downgrading, and effect of the proposal on economic development in the region and on energy issues, among others. The effect of the abandonment on transportation patterns and opportunities should be studied in greater depth.

As will be shown below, application of those standards dictates rejection, or, at minimum, stay of the proposed class exemption for NNW's purchase and lease of the involved rail lines.

ARGUMENT

As made clear in the foregoing decisions, not all class exemptions for noncarrier acquisition of rail lines are consistent with public convenience and necessity, and certainly not all such exemptions should be processed under fast-track, notice-of-exemption procedure. To be sure, it may generally be in the public interest for rail lines of overland carriers to be acquired by shortlines, which often are more adept at cultivating and serving local traffic originated or

terminated on those lines. However, where, as here, a noncarrier acquisition would have serious adverse competitive and safety effects, the Board's power under 49 U.S.C. § 10901(c) to condition such an acquisition to eliminate or to substantially ameliorate such adverse effects comes into play, *viz.*; emphasis added:

The Board shall issue a certificate authorizing (a noncarrier acquisition) . . . unless the Board finds that such (acquisition is) inconsistent with public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions . . . the Board finds necessary in the public interest.

The Board's power to impose conditions on a class exemption for noncarrier rail line acquisition under 49 U.S.C. § 10502(a) is necessarily co-extensive with its power to impose conditions in approving an application for noncarrier rail line acquisition under 49 U.S.C. § 10901(c).

The challenge, in a case of that kind, is to approve the noncarrier acquisition so that the new shortline is free to develop originated and terminated traffic on the newly-acquired rail lines, while at the same time fashioning conditions to eliminate or substantially ameliorate the adverse competitive and safety effects of the acquisition. NRI and WPC suggest such an arrangement in the pages that follow, but the issues associated with that scenario cannot be given adequate consideration under highly-accelerated notice-of-exemption procedure. Consequently, NNW's Notice of Exemption should be rejected, and NNW should be required to file an Application under 49 U.S.C. § 10901 or a Petition for Exemption under 49 U.S.C. § 10502(a) if it continues to seek Board authority for the proposed acquisition. At a minimum, the effective date of the class exemption should be stayed pending closer scrutiny of the transaction by the Board.

Considering NNW's proposed acquisition in light of the legal standards explained in the decisions cited above, there are at least two serious "unresolved issues" that would arise from

that proposal, both of which “warrant further investigation,” and both of which require “stud(y) in greater depth” than is possible under accelerated class exemption procedure.

The first such unresolved issue is the serious adverse effect on both NRI and WPC that would result from NRI’s loss of a direct connection to DME at Dakota Junction. As noted, the Haulage Agreement between DME and NRI (Appendix 2) provides haulage by NRI of traffic over DME between Chadron and Dakota Junction, NE. The DME-NRI Haulage Agreement will be inherited by NNW as successor-owner of the Dakota Junction-Chadron rail line. That Haulage Agreement is cancellable without cause on 30 days’ notice. NNW would be able to terminate the Haulage Agreement and establish its own freight charge for transportation between Chadron and Dakota Junction under AAR Accounting Rule 11. That freight charge would likely be much higher than the charge presently paid by DME to NRI for haulage of DME traffic between Chadron and Dakota Junction. The presence of NNW between Chadron and Dakota Junction would block NRI’s direct connection with DME at Dakota Junction.

The adverse effect on Protestants from NRI’s loss of a direct connection to DME at Dakota Junction would be devastating. NRI would be deprived of the substantial revenue that it currently derives from haulage payments by DME. In 2009, haulage for DME via Dakota Junction constituted nearly 95 percent of NRI’s total traffic. It is doubtful that NRI would be able to survive that substantial loss of traffic and revenue. The Board’s power to impose conditions in financial transactions is designed to eliminate or to substantially ameliorate that kind of harm to a rail carrier’s ability to continue to provide essential rail services. *Lamoille Valley RR Co. v. ICC*, 711 F.2d 295, 313 (D.C. Cir. 1983).

WPC, too, would be significantly injured as a result of NRI's loss of a direct connection with DME. As noted, NNW's Rule 11 freight charge for transportation between Chadron and Dakota Junction would be likely to appreciably exceed the haulage charge that DME currently pays to NRI for that transportation. DME would be unlikely to absorb that increased charge out of the freight charge that it has assessed for transportation between Chadron and Chicago. As a consequence, WPC would be forced to pay the increase in freight charge that would result from NNW's Rule 11 freight charge. That would seriously harm WPC's competitive position in the market for grain from Nebraska origins to points in the East and Southeast via Chicago.

An unconditioned acquisition by NNW would harm rail competition itself. Whereas at present NRI can directly interchange with both DME at Dakota Junction and BNSF at Crawford, NNW's acquisition would deprive NRI of its direct connection with DME. Loss of that competition between DME and BNSF would expose WPC and NRI to increased rates and reduced service levels via NRI's then-captive interchange with BNSF. The Board's conditioning power is also designed to prevent such harm from loss of rail competition. *Lamoille Valley RR v. ICC, supra*, 711 F.2d at 309 (“ . . . (T)here are two potential results from consolidations that would ill serve the public -- reduction of competition and harm to essential services . . .”).

Protestants suggest that the legitimate interests of both NNW and NRI would be harmonized if the Board were to authorize NNW's proposed acquisition, subject to the condition that NRI be provided with haulage rights or trackage rights over NNW between Chadron and Dakota Junction under terms substantially the same as exist in the Haulage Agreement between DME and NRI (Appendix 2). Under that resolution of issues, NNW would be free to develop

local originated and terminated traffic on the acquired rail lines, yet NRI would retain its direct connection with DME that is vital to its continued ability to provide rail service.

A second unresolved issue would arise from the ability of two rail carriers to operate between Chadron and Dakota Junction (i.e., NNW as owner and NRI as trackage rights tenant), and the ability of three rail carriers to operate between Dakota Junction and Crawford (i.e., DME as owner-lessor, NNW as lessee, and NRI as trackage rights tenant), without there being any operating protocols in place to ensure the safety of such dual or triple operations. The Board has determined that operations by a new rail carrier over trackage already operated by an existing carrier should not commence until operating protocols to ensure safe operations are in place.

*Central Illinois R. Co. - Operation Exempt. - Rail Line of the City of Peoria, et al. in Peoria and Peoria Heights, Peoria County, IL, 2005 STB LEXIS 113 (Finance Docket No. 34518, decision served February 23, 2005) viz., at *14, emphasis added:*

... CIRY cannot operate the Kellar Branch until coordination protocols are in place. Due to the dispute in the record, the parties should, within 30 days of the effective date of this decision, jointly certify that protocols are in place. If the parties cannot reach agreement as to the terms of such protocols, they should bring their dispute to this agency for mediation. Such mediation will be conducted by the Board's Office of Compliance and Enforcement.

CONCLUSION AND REQUESTED RELIEF

Protestants submit that the foregoing identifies serious unresolved economic, competitive, and operational issues that cannot be adequately addressed and resolved in the restrictive time frame available under accelerated notice-of-exemption procedure. Accordingly, NNW's Notice of Exemption should be rejected, and NNW should be required to file a formal Application under 49 U.S.C. § 10901 or a Petition for Exemption under 49 U.S.C. § 10502(a) if it continues to

progress the proposed acquisition. Under those more deliberative procedures, such unresolved issues can receive the careful consideration and analysis that they deserve. At a very minimum, if the Notice is not rejected, the effective date of the Notice should be stayed pending the Board's more deliberative consideration and resolution of such issues.

Respectfully submitted,

WEST PLAINS CO.
4800 Main Street, Suite 274
Kansas City, MO 64112

NEBKOTA RAILWAY, INC.
111 North Main Street
Chadron, NE 69337

Petitioners

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Thomas F. McFarland

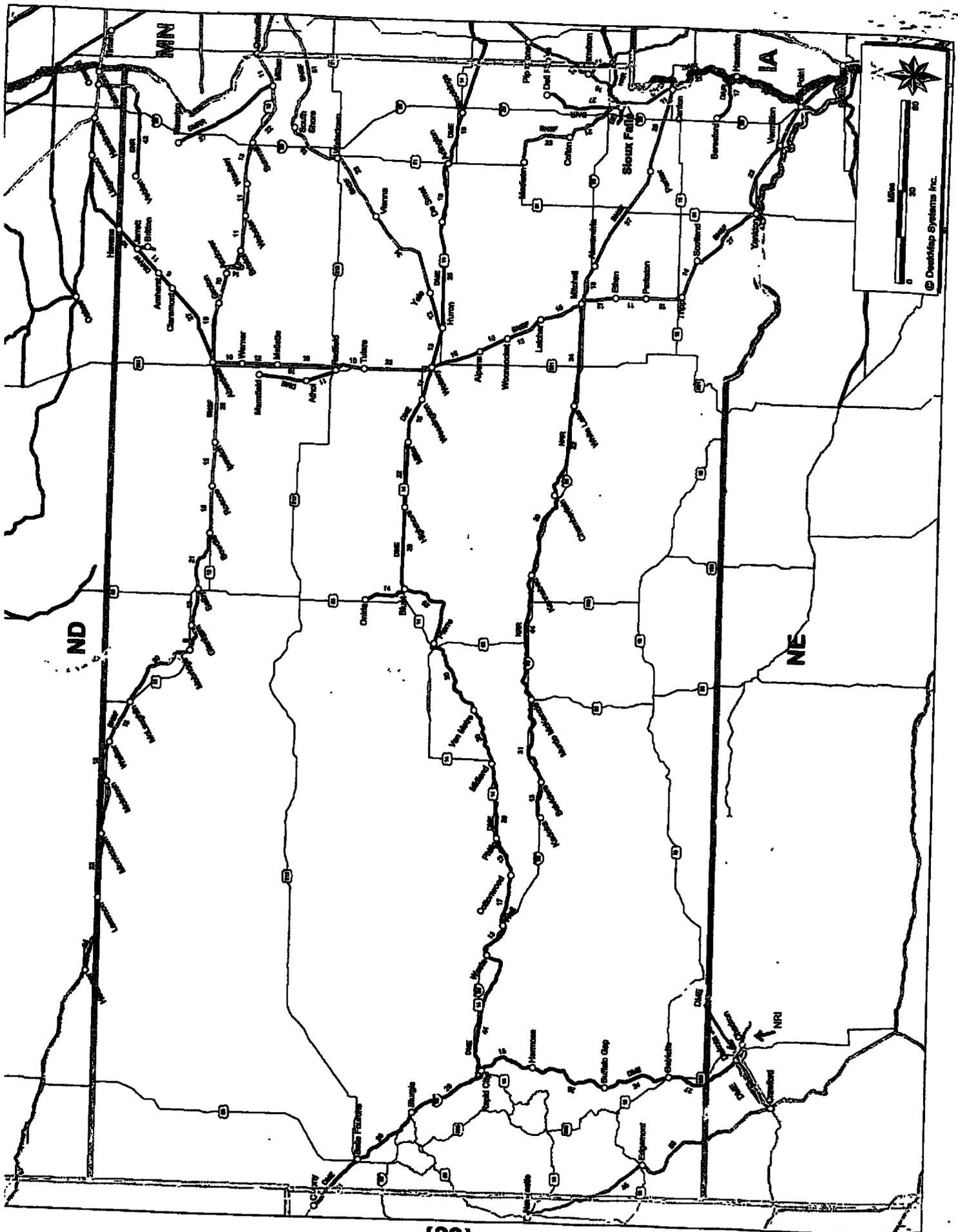
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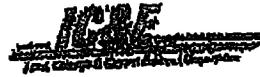
DATE FILED: February 5, 2010

APPENDIX 1

SOUTH DAKOTA



APPENDIX 2



**Haulage Agreement between
Dakota, Minnesota & Eastern Railroad Corp.
and Nebraska Railway, Inc.**

Tuesday, October 14, 2008

Nebraska Railway, Inc. (NRI) agrees to move cars for the account of Dakota, Minnesota & Eastern Railroad Corp (DM&E) between DM&E stations of Chadron NE and Dakota Jct, NE, at the rate of **\$100 per car, round trip**. Please note that this is different from the earlier proposal, in that there is no differentiation for size of units moved:

**Fees are in dollars per car;
Fees are round trip - to/from Dakota Junction to Chadron;**

Applicable fee to be determined by number of cars physically left by DM&E at Dakota Jct. in a single delivery, with instructions to NRI for movement to Chadron, or number of cars at Chadron DM&E instructs, in a single calendar day, NRI to move to Dakota Jct.

Applies to empty or loaded cars (any contents except as provided immediately below).

Does NOT apply on cars placarded as hazardous or on cars requiring perishable protective service (for either add 25%).

Car handled by NRI under this haulage emengement remain in DM&E car hire account.

NRI trackage rights usage fees to be waived by DM&E on DM&E haulage cars.

Fees include all incidental switching, spotting, pulling, etc. at Chadron NE as instructed by DM&E.

NRI to provide DM&E customer service Center with all car event times, spots, pulls, etc.

This agreement may be cancelled by either party upon thirty (30) days written notice.

Note: Does not apply to cars handled by NRI from, or to, beyond Chadron on NRI. NRI will continue to handle "Chadron DM&E" Interchanged traffic to/from

DM&E\My Documents\Cedar American Staff\Nebraska KR\Revised Haulage Agreement - Proper - Revised.doc

Dakota Jct. on a convenience/courtesy basis, unless or until DM&E requests otherwise.

The liability clause in current Trackage Rights Agreement will apply.

A copy of the Original Agreement, is hereto attached, and marked as Exhibit A.

For the NRI:

For the DM&E:



UNStoweMy Documents\Cadst American Staff\Nobkohn RB\Revised Haulage Agreement -
Proper - Revised.doc



CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2010, I served the foregoing document, Petition For Rejection Or Stay Of Class Exemption, on Michael Blaszak by e-mail, *blaszak@blaszak.interaccess.com*, and by first-class, U.S. mail, postage prepaid, 211 Leitch Avenue, LaGrange, IL 60525-2162.

Thomas F. McFarland

Thomas F. McFarland

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35352

CERTIFICATE OF SERVICE

I, John C. Kruesi, Jr., being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by PAUL M. DONOVAN, Attorney for Petitioners, to print this document. I am an employee of Counsel Press.

On the 12th Day of February, 2010, I served the within **PETITION OF NEBKOTA RAILWAY, INC. and WEST PLAINS CO. FOR A DECLARATORY ORDER** upon:

Michael W. Blaszak, Esq.
211 South Leitch Avenue
LaGrange, Illinois 60525-2162

via Express Mail, by causing 2 true copies of each, enclosed in a properly addressed wrapper, to be deposited in an official depository of the U.S. Postal Service.

Unless otherwise noted, the original and 10 copies have been sent to the STB by hand delivery on this date.

February 12, 2010