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March 8, 2002

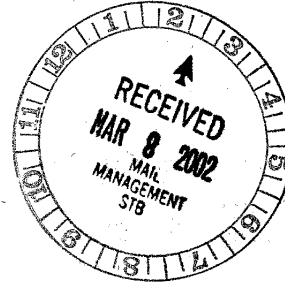
BY HAND DELIVERY

The Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

FILED

MAR 0 8 2002

**SURFACE
TRANSPORTATION BOARD**



Re: Finance Docket No. 34068; Twin Cities & Western Railroad Company,
Douglas M. Head, Charles H. Clay, Kent P. Shoemaker and William F.
Drusch - Continuance in Control Exemption - Minnesota Prairie Line,
Inc.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceedings are an original and 10 copies of the petition for exemption of Twin Cities & Western Railroad Company, Douglas M. Head, Charles H. Clay, Kent P. Shoemaker and William F. Drusch to continue in control of the Minnesota Prairie Line, Inc., upon that company's becoming a carrier. Also enclosed is our check in the amount of \$6,500 to cover the filing fee.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

FEE RECEIVED

MAR 0 8 2002

**SURFACE
TRANSPORTATION BOARD**

Enclosures

cc: Charles H. Clay
William F. Drusch

Sincerely,

Troy W. Garriss

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Office of the Secretary
MAR 08 2002
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB FINANCE DOCKET NO. 34068

**TWIN CITIES & WESTERN RAILROAD COMPANY, DOUGLAS M. HEAD,
CHARLES H. CLAY, KENT P. SHOEMAKER AND WILLIAM F. DRUSCH
- CONTINUANCE IN CONTROL EXEMPTION -
MINNESOTA PRAIRIE LINE, INC.**

**PETITION FOR EXEMPTION
FROM
49 U.S.C. § 11323**

TWIN CITIES & WESTERN
RAILROAD COMPANY
DOUGLAS M. HEAD
CHARLES H. CLAY
KENT P. SHOEMAKER
WILLIAM F. DRUSCH

By their counsel:

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Dated: March 8, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34068

**TWIN CITIES & WESTERN RAILROAD COMPANY, DOUGLAS M. HEAD,
CHARLES H. CLAY, KENT P. SHOEMAKER AND WILLIAM F. DRUSCH
– CONTINUANCE IN CONTROL EXEMPTION –
MINNESOTA PRAIRIE LINE, INC.**

**PETITION FOR EXEMPTION
FROM
49 U.S.C. § 11323**

Pursuant to 49 U.S.C. § 10502 and 49 CFR Part 1121, Twin Cities & Western Railroad Company ("TCW"), a class III carrier, and Messrs. Douglas M. Head, Charles H. Clay, Kent P. Shoemaker and William F. Drusch, all noncarrier individuals (the "Individuals") (together TCW and the Individuals referred to herein as the "Petitioners") hereby petition the Surface Transportation Board (the "Board") to exempt from the prior approval requirements of 49 U.S.C. § 11323 Petitioners' continuance in control of the Minnesota Prairie Line, Inc. ("MPL"), TCW, Red River Valley & Western Railroad Company ("RRVW") and Rutland Line, Inc. ("RLI"), upon MPL's becoming a rail carrier. At present, MPL is a noncarrier, wholly-owned subsidiary of TCW. MPL will become a carrier upon consummation of its lease and operation of all or part of approximately 94 miles of track located in Minnesota (the "Subject Line"), as more fully described below. Under the terms of the lease, MPL's operation of the Subject Line is contingent upon MPL obtaining authority to perform common carrier operations.

FACTS

The Minnesota Valley Regional Rail Authority, (the “Authority”), a political subdivision of the State of Minnesota, owns the Subject Line, approximately 94 miles of track extending from approximately milepost 51.4, at or near Norwood, MN (at the point of connection with TCW’s main line), to approximately milepost 145.7, at or near Hanley Falls, MN. A map of the Subject Line is attached hereto as Exhibit A. The Authority bought the Subject Line from the Chicago and North Western Transportation Co. in the early 1980s, after the line was abandoned.¹ In subsequent years, several railroads attempted to acquire and operate the Subject Line without success.² The most recent operator filed for bankruptcy in August 2000,³ and it is believed that no rail freight service has been provided over the Subject Line since that time. In addition, the Subject Line is now virtually inoperable, because it has not been maintained. The Authority, however, is determined to preserve rail service over the line. Thus, the Authority is currently securing funding from the State of Minnesota to perform required rehabilitation.

¹ Cf. Chicago and North Western Transportation Co. – Abandonment Between Norwood and Madison, MN, ICC Docket No. AB-1 (Sub-No. 142) (served Dec. 2, 1982), *corrected in decision* served Dec. 10, 1982.

² The carriers attempted to purchase the line through successive assignments of a contract for deed, under which the buyers gained possession of, but the Authority retained legal title to, the Subject Line, pending fulfillment of certain contractual conditions. Most recently, Cascade Rail Corp., Inc. (“Cascade”) attempted to operate the Subject Line, through the acquisition of 100 percent of the stock of the Minnesota Central Railroad Co. (“MCTA”) in late 1999. See Cascade Rail Corp., Inc. – Acquisition and Control Exemption – Minnesota Central Railroad Company, STB Finance Docket No. 33804 (served Oct. 18, 1999). MCTA had taken assignment of the contract for deed in or about January 1995. See Minnesota Central Railroad Company – Acquisition and Operation Exemption – Rail Lines of MNVA Railroad, Inc., ICC Finance Docket No. 32628 (served Jan. 5, 1995). In or about October 1999, however, shortly after Cascade’s acquisition of MCTA, the Authority notified MCTA that the carrier had defaulted on the contract for deed and the Authority thereafter regained the State law possessory right to the Subject Line (see Minnesota Central Railroad Co. v. Minnesota Valley Regional Rail Authority, Minnesota District Court for the County of Renville, Eighth Judicial District, Case No. C2-0-267).

³ On August 22, 2000, MCTA filed for bankruptcy. See United States Bankruptcy Court, Eastern District of Wisconsin, Case No. 00-27913 MDM, Notice of Bankruptcy.

The Authority also solicited potential operators for the Subject Line, and has selected TCW to perform rail operations. TCW is a class III rail carrier controlled by the Individuals, who together own all the common stock of TCW and/or hold significant positions of management at TCW or membership on TCW's board of directors. TCW is affiliated with two other class III carriers, RRVW and RLI, both of which are also owned and/or controlled by the Individuals. Despite the common control of the Affiliates, each of the carriers is operated as a separate entity.

TCW, RRVW and RLI (together, the "Affiliates") own and/or operate various rail lines, as follows. Maps of the lines of the Affiliates are attached to this petition as Exhibit B. TCW owns and operates approximately 143.87 miles of rail line from Hopkins, MN to Appleton, MN, and approximately 1.11 miles of track (including a railroad bridge over the Minnesota River), from approximately milepost 26.00, at or near Bloomington, MN, to approximately milepost 27.11, at or near Savage, MN. TCW also has trackage rights from approximately milepost 578.93, at or near Appleton, MN, to approximately milepost 612.74, at or near Milbank, SD. From Hopkins, TCW has trackage rights to reach various points in the Twin Cities Terminal Area, including St. Paul, Savage and Camden in North Minneapolis.

RRVW owns and operates approximately 431 route miles of rail line principally in North Dakota.⁴ RRVW also has trackage rights from approximately milepost 6.04, at or near Wahpeton Junction, ND, to approximately milepost 8.00, at or near Brushvale, MN; and from

⁴ This figure excludes the two segments recently the subject of abandonment proceedings. See Red River Valley & Western Railroad Company – Abandonment Exemption – in Dickey County, ND and Brown County, SD, STB Docket No. AB-391 (Sub-No. 8X) and Red River Valley & Western Railroad Company – Abandonment Exemption – in LaMoure and Barnes Counties, ND, STB Docket No. AB-391 (Sub-No. 9X).

approximately milepost 27.40, at or near Lucca, ND, to approximately milepost 42.90, at or near Sheldon, ND.

RLI owns approximately 23 miles of rail line from approximately milepost 42.67, at or near Geneseo Junction, ND, to approximately milepost 65.60, at or near the North Dakota/South Dakota border; has overhead trackage rights over the lines of the Burlington Northern Santa Fe Railway Company ("BNSF") from approximately milepost 212.32, at or near Breckenridge, MN, to approximately milepost 195.6, at or near Aberdeen Line Junction, MN, and from approximately milepost 0.00, at or near Aberdeen Line Junction, to approximately milepost 0.60 at or near BN Junction, MN; and has trackage rights over a rail line jointly owned by the BNSF and Soo Line Railroad Company from approximately milepost 0.60, at or near BN Junction, via Hankinson, ND, to approximately BNSF milepost 42.67, at or near Geneseo Junction.

TCW formed the subsidiary MPL to lease the Subject Line from the Authority in order to separate the risks of the transaction. MPL will enter an agreement with TCW, whereby TCW will perform the actual rail operations as MPL's agent (the "Operating Agreement"). MPL will seek Board authority for the acquisition and operations, either through the Board's modified certificate procedures under 49 CFR § 1150, Subpart C, or the Board's notice of exemption procedures at 49 CFR § 1150, Subpart D. Once the lease of the Subject Line becomes effective following receipt of necessary regulatory authority, MPL will become a class III carrier controlled by Petitioners.

After leasing the Subject Line, MPL will continue to be maintained and managed as a separate entity from the Affiliates, with its own books, records and accounts. Dealings between MPL and the Affiliates, including without limitation the Operating Agreement between MPL and TCW, and the provision of services by any of the Affiliates to MPL, will be contractual in nature

and based upon fair and reasonable business dealings and the anticipated costs and expenses of providing rail service to the shippers. MPL will assume all the direct financial risks of the lease of the Subject Line as well as other related obligations.

Board approval under 49 U.S.C. § 11323 is required for the acquisition of control of one rail carrier by another, and the acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of other rail carriers, unless such persons receive exemption from application of this provision. 49 U.S.C. §§ 11323(a)(3), 11323(a)(5), 10502. Petitioners here petition for an exemption under Section 10502 from the requirements of Section 11323 to permit Petitioners to continue to control MPL and the Affiliates following MPL's becoming a carrier. Petitioners are foreclosed from using the class exemption of 49 CFR § 1180.2(d)(2), because the Subject Line connects with TCW at Norwood, MN.

Realizing that a petition proceeding such as this takes longer than the modified certificate or notice of exemption proceedings MPL intends to use for its acquisition and operation exemption, Petitioners have filed this petition in advance, with the goal of avoiding the need to establish a voting trust pending a decision in this proceeding.

ARGUMENT

I. CONTROL OF MPL BY PETITIONERS SATISFIES THE CRITERIA FOR AN EXEMPTION UNDER 49 U.S.C. § 10502.

The acquisition of control of a rail carrier by any number of rail carriers, and the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers, require prior Board authorization. 49 U.S.C. §§ 11323(a)(3) and 11323(a)(5). After consummating the lease of the Subject Line from the Authority, MPL will become a rail common carrier subject to Board jurisdiction. Because TCW is itself a carrier, and the Individuals already

control the Affiliates, Petitioners' control of MPL thus would be subject to the prior approval requirements of 49 U.S.C. § 11323, unless exempted.

Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when the Board finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (the "RTP") 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. 49 U.S.C. § 10502.

A. The Exemption Is Not Inconsistent With, But Instead Advances the RTP.

Detailed scrutiny of this transaction under Section 11323 is not needed to carry out the objectives of the RTP. *See* 49 U.S.C. § 10101. On the contrary, exemption from Section 11323 furthers several of these objectives. By reducing the administrative expense and delay of the application process, and by permitting Petitioners to assist in restoration of rail service over the Subject Line without unwarranted risk to Petitioners' existing assets, exemption of this transaction will "minimize the need for Federal regulatory control," 49 U.S.C. § 10101(2), and "reduce regulatory barriers to entry into and exit from the industry," 49 U.S.C. § 10101(7).⁵

In addition, by enabling Petitioners expeditiously to restore rail service over the Subject Line and facilitate the integration of certain administrative and operating functions, creating a seamless connection with TCW's main line at Norwood (the primary interchange for traffic on the Subject Line), an exemption will also "promote a safe and efficient rail transportation system by allowing carriers to earn adequate revenues" (49 U.S.C. § 10101(3)), "ensure the development

⁵ *See RailAmerica, Inc. – Control Exemption – RailTex, Inc.*, STB Finance Docket No. 33813 (served Jan. 7, 2000); *Rochester and Southern Railroad, Inc. and Genesee and Wyoming Industries, Inc. – Exemption*, ICC Finance Docket No. 30779 (served July 13, 1986), *aff'd sub nom. Railway Labor Executives' Ass'n v. I.C.C.*, 819 F.2d 1172 (D.C. Cir. 1987).

and continuation of a sound rail transportation system . . . to meet the needs of the public and the national defense” (49 U.S.C. § 10101(4)), “foster sound economic conditions in transportation and [] ensure effective competition and coordination between rail carriers and other modes” (49 U.S.C. § 10101(5)), and “encourage honest and efficient management of railroads” (49 U.S.C. § 10101(9)).

By permitting restoration of service over the Subject Line by TCW, under the guidance of the named Petitioners, who are highly experienced, qualified professionals familiar with the demanding requirements for operating a rail line under the conditions prevalent in this region of Minnesota, exemption will also ensure the operation of “transportation facilities and equipment without detriment to the public health and safety” (49 U.S.C. § 10101(8)), and encourage “safe and suitable working conditions in the railroad industry” (49 U.S.C. § 10101(11)).

Finally, the exemption would expedite handling and resolution of Board proceedings. 49 U.S.C. § 10101(15). Other aspects of the RTP will not be adversely affected. On the other hand, requiring a full-blown application proceeding in this case would contravene these very goals of the RTP. Moreover, the delay and expense of such a proceeding would risk rendering the transactions worthless to Petitioners, delaying the restoration of rail service where there currently is none, if not eliminating the opportunity to restore rail service on the Subject Line altogether.

For these reasons, exemption of the control transaction is not inconsistent with the RTP, but rather would advance these national policy goals.

B. The Proposed Control Transaction Is Of Limited Scope.

The proposed control by the Petitioners of MPL is a transaction of “limited scope.” The Petitioners’ control of MPL will merely add to the small group of class III carriers already under Petitioners’ control, one additional, but corporately distinct, class III rail carrier leasing from a governmental entity approximately 94 miles of marginal track. The viability of the Subject Line

has long been an issue. The line was first abandoned by the CNW almost 20 years ago, and the last previous operator filed bankruptcy, ceasing operations approximately 1½ years ago. MPL will be separately managed, and will assume the direct and indirect risks of leasing the Subject Line. Any business dealings between MPL and the Affiliates will be contractual in nature and commercially reasonable.

Neither the proposed control transaction, nor the related lease by MPL of the Subject Line, will result in adverse changes in rail operations on the Subject Line. In fact, there will likely be no continuation of service absent this transaction. Moreover, the common control of MPL and the Affiliates will not affect the nature of the previously authorized and continued separate operations of any of the affiliated carriers. *Cf. H. Peter Claussen and Linda C. Claussen – Continuance in Control Exemption – Georgia & Florida Railroad Co., Inc.*, ICC Finance Docket No. 32681 (served June 23, 1995) (simply adding a separately incorporated shortline to a group of class III carriers already under common control is a transaction of limited scope). In addition, this is entirely an “end-to-end” transaction. *Compare* maps at Exhibits A and B. Under such circumstances, the transaction is clearly of limited scope.

C. Regulation Of The Proposed Control Transaction Is Not Necessary To Protect Shippers From An Abuse Of Market Power.

Because the proposed continuance in control transaction is of limited scope, the Petitioners need not demonstrate, and the Board need not find, that the proposed transaction will not result in the abuse of market power. *See, e.g., Indiana Rail Road Company – Petition for Exemption – Acquisition and Operation – Illinois Central Railroad Company – Line Between Sullivan, IN and Browns, IL*, 6 I.C.C.2d 1004 (1990). In any event, there is no threat of an abuse of market power here. *See, e.g., Douglas M. Head, Kent P. Shoemaker, and Charles H. Clay –*

Continuance in Control Exemption – Rutland Line, Inc., STB Finance Docket No. 33501 (served Jan. 7, 1998).

The proposed transaction will facilitate the restoration of rail service over a line that currently has none. Shippers currently located on the line have been without rail service for approximately 1½ years. The survival of such shippers during this long absence of rail service is ample evidence that they are not dependent upon rail service.

II. IMPOSITION OF LABOR CONDITIONS WOULD BE INAPPROPRIATE.

Because all carriers involved in the contemplated transaction are class III carriers, the imposition of labor protective conditions on the proposed transactions would not be appropriate. 49 U.S.C. § 11326(c). *See also* Genesee & Wyoming, Inc. – Continuance in Control Exemption – Illinois & Midland Railroad, Inc., STB Finance Docket No. 32863 (served Oct. 1, 1997), *aff'd sub nom.* International Brotherhood of Locomotive Engineers, American Train Dispatchers Department v. Surface Transportation Board and United States of America, 172 F.3d 919 (D.C. Cir. 1998).

III. THE PROPOSED CONTROL TRANSACTION WILL NOT SIGNIFICANTLY AFFECT THE ENVIRONMENT OR ENERGY CONSERVATION.

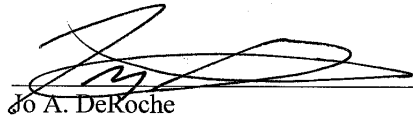
The proposed control transaction would not have a significant impact on the quality of the human environment or on energy conservation. Control of MPL by the Petitioners will not result in significant changes in railroad operations, service or traffic levels, as might an abandonment or construction of a rail line. Petitioners expect that the proposed control transaction will not result in traffic diversions or operating changes exceeding applicable thresholds set forth in 49 CFR §§ 1105.7(e)(4) and (5). Accordingly, pursuant to 49 CFR § 1105.6(c)(2), no environmental documentation is required in connection with the proposed transaction. In addition, because the contemplated transaction involves the common control of MPL in a manner that will not

substantially diminish the level of maintenance of the railroad property, no historic report is needed. 49 CFR § 1105.8(b)(3).

CONCLUSION

For these reasons, Petitioners request that the Board grant this petition for exemption for TCW and the Individuals to continue in control of MPL, TCW, RRVW and RLI, upon MPL's becoming a carrier.

Respectfully submitted,



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Attorneys for
Twin Cities & Western Railroad Company
Douglas M. Head
Charles H. Clay
Kent P. Shoemaker
William F. Drusch

Dated: March 8, 2002

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

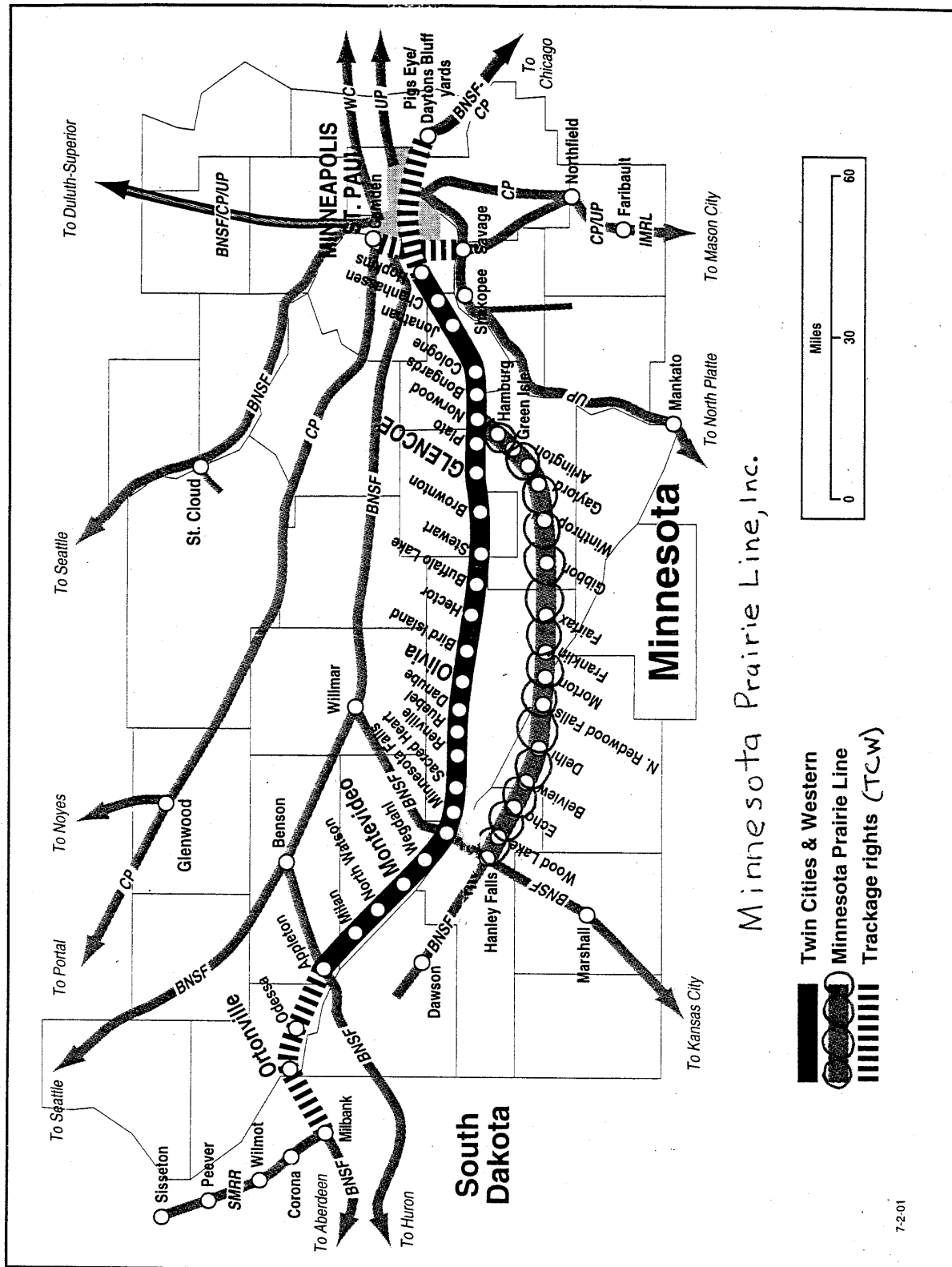
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- CONTINUANCE IN CONTROL EXEMPTION -
MINNESOTA PRAIRIE LINE, INC.**

**PETITION FOR EXEMPTION
FROM
49 U.S.C. § 11323**

EXHIBIT A

MAP OF SUBJECT LINE



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

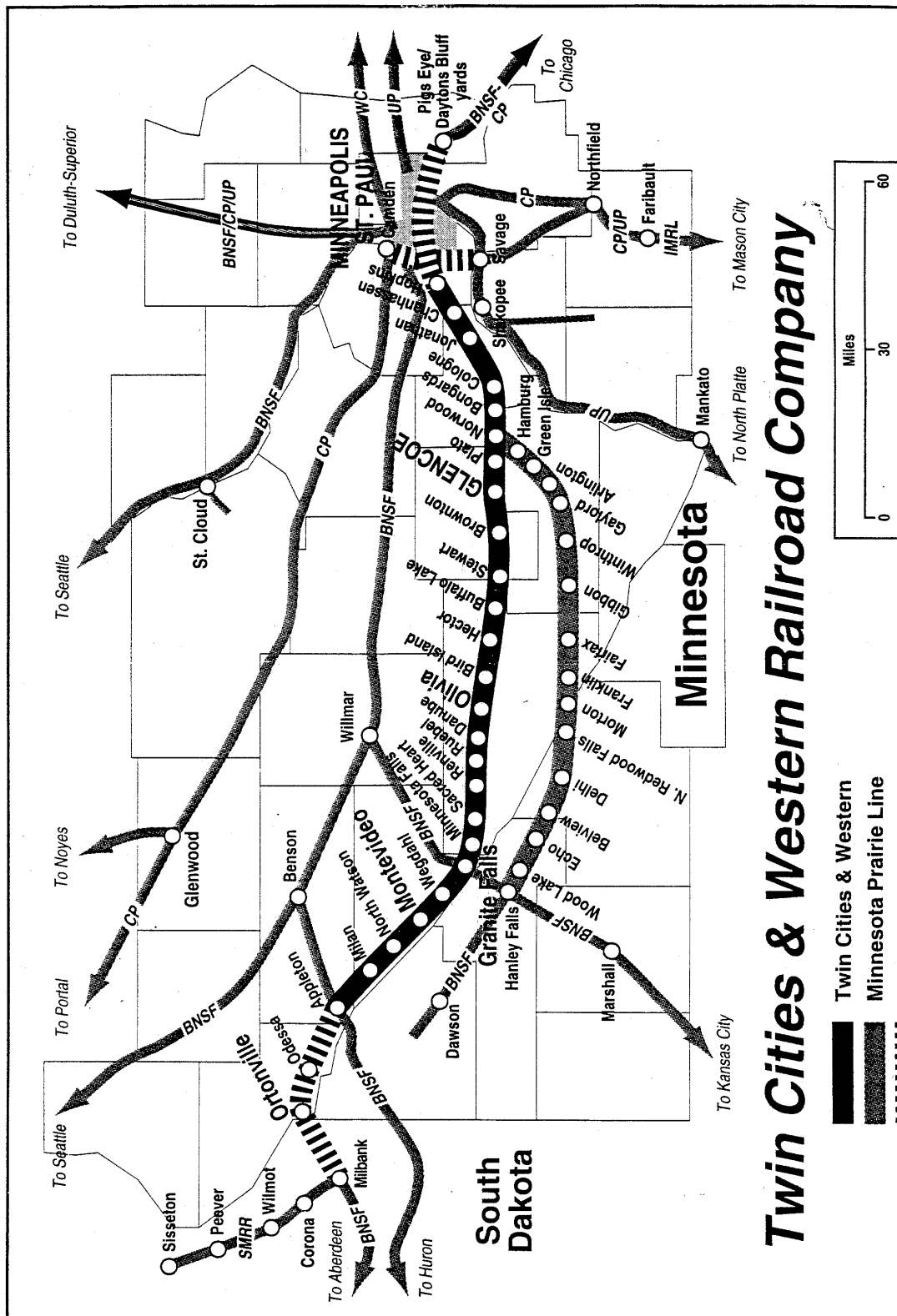
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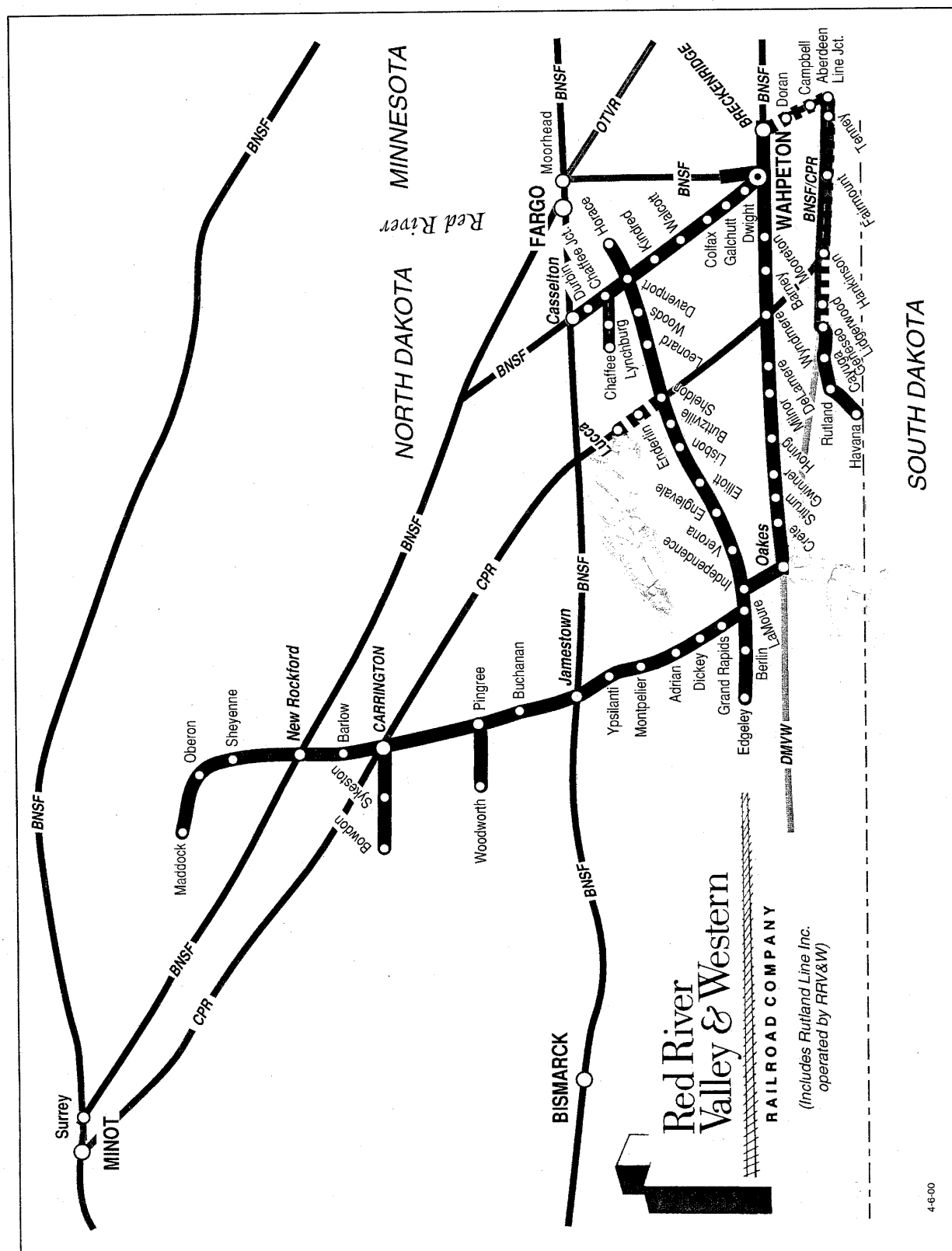
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**PETITION FOR EXEMPTION
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EXHIBIT B

MAPS OF AFFILIATES





VERIFICATION

I, William F. Drusch, declare and verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Verification.

A handwritten signature in black ink, reading "William F. Drusch", with a long, sweeping horizontal flourish extending to the right.

William F. Drusch
President
Twin Cities & Western
Railroad Company

Dated: March 8, 2002