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215223

November 29, 2005

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VIA HAND-DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20423-0001

Re: **Finance Docket No. 34794**
BNSF Railway Company –
Acquisition and Operation Exemption – State of South Dakota

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Motion for Protective Order**, of South Dakota Department of Transportation, dated November 29, 2005. A disk containing the text of the proposed protective order is enclosed.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

Michael J. Barron, Jr.

Michael J. Barron, Jr.

MJB: arw

Enclosures.

cc: Adrian L. Steel, Jr., Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 34794

BNSF RAILWAY COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
STATE OF SOUTH DAKOTA

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MOTION FOR PROTECTIVE ORDER
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

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ATTORNEY FOR
SOUTH DAKOTA DEPARTMENT
OF TRANSPORTATION

Dated: November 29, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34794

BNSF RAILWAY COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
STATE OF SOUTH DAKOTA

MOTION FOR PROTECTIVE ORDER
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

Pursuant to 49 C.F.R. § 1104.14(b), South Dakota Department of Transportation ("DOT") hereby requests that the Board issue a protective order allowing DOT to file under seal the Settlement Agreement, along with an amendment thereto (collectively the "Settlement Agreement"), which is the subject of this proceeding.

BNSF Railway Company ("BNSF") has filed a notice of exemption pursuant to 49 C.F.R. § 1150.30 et. seq. for the acquisition and operation of railroad lines described in the notice of exemption filed in this docket. DOT requests a protective order for the Settlement Agreement. The agreement has been the subject of extensive private negotiations between the parties, and contains commercially sensitive and confidential information the public release of which would cause competitive or other injury to the parties. Public disclosure of the complete agreement also is not necessary for the consideration or disposition of BNSF's notice of exemption.

DOT thus requests that the Board accept the complete Agreement for filing under seal and adopt the proposed protective order contained in the appendix hereto to govern access to the agreement. This approach is consistent with that taken by the Board in prior similar circumstances. See, e.g., The Kansas City Southern Railway Company – Trackage Rights Exemption – Illinois Central Railroad Company, Finance Docket No. 34309 (STB served

February 4, 2003); CSX Transportation, Inc. – Trackage Rights Exemption – Norfolk Southern Railway Company, Finance Docket No. 34254 (STB served October 24, 2002).

WHEREFORE, DOT respectfully requests that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted,

By: Michael J. Barron, Jr. /als
Michael J. Barron, Jr.
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**ATTORNEY FOR
SOUTH DAKOTA DEPARTMENT
OF TRANSPORTATION**

Dated: November 29, 2005

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the Settlement Agreement and amendment enclosed herein.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to South Dakota Department of Transportation ("DOT") of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without written consent of DOT or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on User at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 § C.F.R. 1104.14.

6. If any party intends to use Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceedings arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. All parties must comply with all provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, _____, have read the Protective Order governing the filing of Confidential Information by South Dakota Department of Transportation ("DOT") in STB Finance Docket No. 34794 and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Finance Docket No. 34794 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be sufficient remedy for breach of this Undertaking, and that DOT shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Signature: _____

Position: _____

Affiliation: _____