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VIA U.S. MAIL

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



Re: **Finance Docket No. 34789**
Dakota, Minnesota & Eastern Railroad Corporation –
Trackage Rights Exemption – BNSF Railway Company

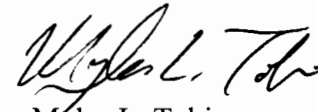
Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are eleven redacted amended copies of the **Supplement to Aberdeen, South Dakota Interchange and Trackage Rights Agreement**. As referenced in the Notice of Exemption, the enclosed copies contain an initialed correction on page 3, Section 6, changing “Milepost 115.1” to “Milepost 115.08.”

I have included an extra copy of this transmittal letter and would request that you date-stamp this to show receipt of this filing and return it to me in the envelope provided.

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

Respectfully submitted,


Myles L. Tobin

MLT: arw
Enclosures.
cc: Mr. Adrian L. Steel, Jr.

FD 34789

**SUPPLEMENT TO ABERDEEN, SOUTH DAKOTA
INTERCHANGE AND TRACKAGE RIGHTS AGREEMENT**

THIS SUPPLEMENT is made and entered into this 22nd day of November, 2005, 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, as a successor in interest to the Chicago, Milwaukee, St. Paul and Pacific and DME (as a successor to the former Chicago and North Western Transportation Company) are parties to an agreement dated August 13, 1975, ("1975 Agreement") granting the DME the right to operate its trains over certain lines of BNSF railroad at Aberdeen, South Dakota; and

WHEREAS, the 1975 Agreement was further supplemented on October 8, 1986 granting DME expanded trackage rights in Aberdeen, SD ("1986 Supplement") (collectively, the 1975 Agreement and the 1986 Supplement are referred to as "Agreement"); and

WHEREAS, BNSF and the South Dakota Railroad Authority ("Authority") a governmental agency of the State of South Dakota entered into an Agreement for Donation of Certain Assets, Rights and Obligations, dated as of June 15, 2001 (the "Donation Agreement"), as amended from time to time, under which BNSF donated to Authority certain BNSF lines between Aberdeen and Kidder, South Dakota ("Rail Line"); and

WHEREAS, BNSF and the State of South Dakota, a body politic by and through the South Dakota Rail Authority Board and the South Dakota Department of Transportation entered into that certain Settlement Agreement Between BNSF Railway Company and the State of South Dakota, dated April 25, 2005 ("Settlement Agreement"); and

WHEREAS, said Settlement Agreement contemplates certain amendments to the Agreement expanding DME's trackage rights to interchange with the Authority's designated operator for the Rail Lines.

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

In addition to the trackage and interchange rights granted under the Agreement and subject to further terms and conditions set forth in this supplement ("Supplement") BNSF will permit DME and Authority (or Authority's designee as defined in the Donation Agreement) to interchange traffic at Aberdeen in connection with movement of traffic to, from or via the Rail Line on BNSF-owned trackage pursuant to provisions below:

1.) Subject to all other terms and conditions set forth in the Agreement and this Supplement, BNSF will permit DME and Authority (or Authority's designee) to interchange with one another in BNSF's Aberdeen Yard via the Interchange Access Line (as defined in Section 6) without restrictions for traffic which either originates or terminates on the Rail Line.

2.) Subject to all other terms and conditions set forth in the Agreement and this Supplement, BNSF shall permit DME and Authority or Authority's designee to interchange with one another at Aberdeen Yard via the Interchange Access Line for traffic originating or terminating on DME in South Dakota, moving to or from points served by Canadian Pacific Railway's network as it existed as of April 25, 2005 in:

(a) North Dakota (not including Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot); and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines); subject to the following terms:

(i) These rights extend only to movements of agricultural commodities (STCC's 01 and 20), fertilizers, ethanol, bentonite clay, and forest products;

(ii) These rights do not extend to movements of coal or any commodity not listed in section (i) above absent advance written waiver of BNSF; and

(iii) For North Dakota points, these rights will also exclude any unit train movements, unit trains being defined as trains of [REDACTED] cars or more of a single commodity moving from a single origin to a single destination pursuant to a single bill of lading.

3.) Except as expressly provided in (1) and (2) above, DME shall not interchange for movement, move, or cause to be moved, traffic on, over, or via the Rail Line or the Interchange Access Line.

4.) No trackage for railcar or rail equipment storage capacity at Aberdeen will be provided by BNSF to facilitate the interchange movements referenced in this Supplement. Cars and trains interchanging at Aberdeen yard between DME and Authority or Authority's designee shall not be held in Aberdeen yard longer than a period of 12 hours from arrival to departure ("Interchange Free Time") unless otherwise approved by BNSF. The parties will comply with Association of American Railroads interchange standards for notification of arrival. Cars and trains exceeding Interchange Free Time shall, on direction by BNSF's local operating personnel, depart BNSF property immediately. Any cars or locomotives allowed to be held in Aberdeen on BNSF trackage beyond the Interchange Free Time at the discretion of BNSF local operating personnel may, at BNSF's option and without prejudice to any other rights or remedies available at law or in equity, be charged a holding fee of [REDACTED] per car per day and [REDACTED] per locomotive per day for each 24-hour period hour or fraction thereof, provided that such charges shall not apply to the extent Interchange Free Time is exceeded as a result of events of force majeure beyond the reasonable control of DME and/or Authority or Authority's designee operating the Rail Line or

acts of BNSF. In the event Interchange Free Time is materially exceeded on 60 percent or more of all trains interchanged in Aberdeen yard within a six-month period, BNSF may at its option and without prejudice to any other rights or remedies available at law or in equity, on 30 days' written notice and opportunity to cure, suspend rights of interchange within Aberdeen yard until operating and/or infrastructure changes are demonstrated or additional support trackage is constructed and placed in service at no net cost to BNSF which would reasonably assure that efficient interchange operations can be reinstated. Suspension of interchange operations within BNSF's Aberdeen yard shall not preclude the DME and the Authority's designee from performing interchange on State-owned trackage as described in Paragraph 6 hereinbelow.

5.) [REDACTED]

115.08
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6.) In the event that DME and Authority, by and through Authority's designee, elect to interchange cars on the State-owned trackage north of Aberdeen in lieu of interchange on BNSF's trackage at Aberdeen yard for traffic authorized for interchange pursuant to Sections 1 and 2 of this Supplement, BNSF shall hereby grant DME the non-exclusive rights to use additional trackage ("Joint Track") on BNSF's Geneseo Subdivision from Milepost 118.60 to Milepost ~~115.1~~ 115.1¹ ("Interchange Access Line"), in conjunction with its existing trackage rights on BNSF trackage pursuant to the Agreement, for the operations of its trains, locomotives and cars in common with BNSF, the Authority, the Authority's designee and such other railroad company or companies BNSF has heretofore permitted or may hereinafter at any time in the future admit to the joint use of all or any part of the Joint Track, provided, however, such through movement and interchange beyond the Interchange Access Line does not allow any party to circumvent or breach, in whole or in part, the interchange restrictions specified in Sections 1-5 above.

7.) Wherever access rights granted herein result in operations on BNSF lines, such operations shall be subject to BNSF's exclusive management, dispatch control, compliance with BNSF operating rules, compliance with BNSF and industry standard electronic, data exchange requirements.

8.) Wherever access rights granted herein result in transport of dead-in-tow locomotive on or over BNSF lines shall be subject to the operating restrictions and all terms and conditions contained in BNSF's dead-in-tow locomotive tariff in effect at the time of transport.

9.) Wherever access rights granted herein result in operations on BNSF lines of any transport of high, wide, or dimensional cars or cars or equipment subject to special handling, such as weight, speed, or clearance restrictions or accommodations shall require advance approval of local BNSF operating personnel. In the event such movement(s) is approved, the movement thereof shall be in accordance with all BNSF operating and mechanical rules and restrictions in effect at the time of the proposed transport and any additional commercial or liability conditions applicable to such movements generally on BNSF's system.

10.) (a) Prior to initial commencement of operations, BNSF and DME will consult on volumes to be moved on a lane-specific basis, methods of operation and interchange, and

necessary changes in infrastructure, if any, to permit unobstructed operations for both BNSF and DME.

(b) All such capital investments, if any, necessary for initial commencement of operations under this Supplement are set forth in that letter agreement between BNSF and the State of South Dakota dated November 22, 2005 ("Improvement MOA") and such improvements, if any, to the extent related to and required for the performance of operations under this Supplement, shall be performed as a condition of exercise of the rights under this Supplement, in accordance with the terms of the Improvement MOA. The terms of the Improvement MOA are attached hereto as Exhibit "I-MOA", and to the extent applicable to this Supplement the terms thereof shall be deemed a part of this Supplement. The terms of this Supplement shall be subject to and conditioned upon the terms of the Improvement MOA.

11.) Cars interchanged between DME and Authority or Authority's designee using rights granted pursuant to the terms of the Agreement as supplemented herein shall remain in the accounts of their respective railroads effecting interchange between themselves. BNSF shall not be subject to any car hire, per diem or car mileage liabilities for those cars interchanged between DME and Authority or Authority's designee. BNSF shall not be responsible for the reporting and payment of any mileage, per diem, use, or rental charges accruing on equipment in the respective accounts of DME or Authority or Authority's designee, and DME shall indemnify defend and hold harmless BNSF for and against any such payment or reporting obligations.

12.) Subject to fulfillment of any express conditions set forth herein to the exercise of the rights hereunder, this Supplement shall be effective upon ("Effective Date") the later of the:

- a.) the date last signed below;
- b.) the date this Supplement is approved, if required, pursuant to Section XV of the Agreement; or
- c.) the date of dismissal of all litigation referenced in the Settlement Agreement;

13.) Except as otherwise stated herein, all other terms and conditions of the Agreement shall remain in full force and effect without amendment or supplement thereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Supplement to be executed as of the date written above.

BNSF RAILWAY COMPANY

By: 
Printed: Peter J. Rickershauser
Title: VP Network Development
Date: November 22, 2005

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

By: _____
Printed: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Supplement to be executed as of the date written above.

BNSF RAILWAY COMPANY

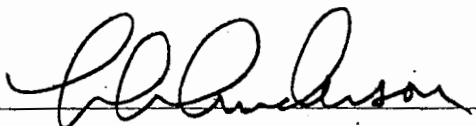
By: _____

Printed: _____

Title: _____

Date: _____

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

By:  _____

Printed: L.A. Anderson
Sr. Vice Pres - Marketing

Title: _____

Date: Nov. 22, 2005