

Before the  
SURFACE TRANSPORTATION BOARD

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| Dakota, Minnesota & Eastern Railroad            | ) |  |
| Corporation--Construction into the Powder River | ) |  |
| River Basin                                     | ) |  |

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F.D. Docket No. 33407

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Motion to Remove "Highly Confidential" Designation

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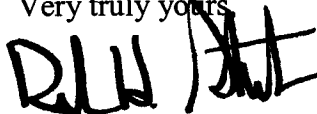
Comes now the Mid States Coalition for Progress ("MSC"), by and through counsel, and files this motion requesting the Board to remove the "Highly Confidential" designation that was previously applied to the Deposition of Kevin Schieffer dated August 14, 1998, and to all attachments thereto. In seeking this relief, MSC notes that DM&E has filed significant portions of that deposition in the public document in FD No. 34177, *Iowa, Chicago & Eastern Railroad Corporation -- Acquisition and Operation Exemption -- Lines of I&M Rail Link, LLC* and FD No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. -- Control -- Iowa, Chicago & Eastern Railroad Corporation*. Because DM&E's subsequent disclosure of the heretofore "confidential" information constitutes a waiver, the "Highly Confidential" designation should be deleted so that the entire contents of that deposition can be subjected to public scrutiny.

It is a well established principle that a voluntary disclosure of the contents of a privileged or confidential communication or document constitutes a waiver of the privilege as to all other subject matter pertaining to the disclosure. *See, e.g., Golden Valley*, 132 F.R.D. at 207-08 (N.D.Ind.1990) ("Voluntary disclosure ... waives the privilege as to remaining documents of that subject matter."); *Bowne of New York City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 484-86

(S.D.N.Y.1993) ("There is substantial case law supporting [the] position that as a matter of law, any voluntary waiver of the confidential communications waives the privilege as to all confidential communications regarding the same subject matter."); *US v. Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982). ("Any voluntary disclosure by the client to a third party waives the privilege not only as to the specific communication disclosed, but often as to all other communications relating to the same subject matter."); *In re Sealed Case*, 676 F.2d 793, 818 (D.C.Cir.1982) ("When a party reveals part of a privileged communication in order to gain an advantage in litigation, it waives the privilege as to all other communications relating to the same subject matter...."); *Edwards v. Whitaker*, 868 F.Supp. 226, 229 (M.D.Tenn. 1994) ("[V]oluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other such communications on the same subject.")

Expedited handling of this matter is requested.

Very truly yours

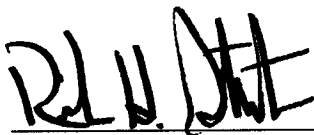


Richard H. Streeter

Dated: July 28, 2006

Certificate of Service

I, Richard H. Streeter, do hereby certify that on this 28<sup>th</sup> day of July, a true copy of the foregoing has been served on all parties of record by first-class mail, postage prepaid.



Richard H. Streeter