

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

MICHAEL J. BARRON, JR.
(312) 252-1511
mbarron@fletcher-sippel.com

Phone (312) 252-1500
Fax (312) 252-2400
www.fletcher-sippel.com

219219

May 1, 2007

VIA OVERNIGHT COURIER

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

FILED

MAY 2 2007



Re: **Finance Docket No. 35023**
Dakota, Minnesota & Eastern Railroad Corporation and Iowa,
Chicago & Eastern Railroad Corporation – Temporary Trackage
Rights Exemption – BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(8)**, of Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago & Eastern Railroad Corporation, dated May 1, 2007. A disk containing the Caption Summary is enclosed. A check in the amount of \$1,000.00, representing the appropriate fee for this filing, is attached.

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,

ENTERED
Office of Proceedings

Michael J. Barron, Jr.
Michael J. Barron, Jr.

RECEIVED

MJB: arw

Enclosures

cc: Sarah J. Bailiff

OFFICE
OF THE INSPECTOR GENERAL
U.S. DEPARTMENT OF JUSTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35023

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA CHICAGO & EASTERN RAILROAD CORPORATION
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)

Michael J Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR
DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION AND
IOWA, CHICAGO & EASTERN RAILROAD
CORPORATION**

Dated: May 1, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 30523

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
-- TEMPORARY TRackage RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

Pursuant to an agreement executed between Dakota, Minnesota & Eastern Railroad Corporation ("DME") and BNSF Railway Company (hereinafter referred to as "Owner"), DME and Iowa, Chicago & Eastern Railroad Corporation ("ICE")¹ (collectively DME and ICE are referred to as "User") file this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(8) for the acquisition of temporary trackage rights over a line of railroad on Owner's track as set forth below.

Pursuant to 49 C.F.R. § 1180.4(g), User submits the following information:

**SECTION 1180.6(a)(1)(i)
DESCRIPTION OF THE PROPOSED TRANSACTION**

Pursuant to an agreement ("Agreement") executed between Owner and User (copy attached herein), User proposes to acquire non-exclusive temporary overhead trackage rights

¹ Iowa, Chicago & Eastern Railroad Corporation is a wholly-owned subsidiary of Cedar American Rail Holdings, Inc. which in turn is wholly-owned by Dakota, Minnesota & Eastern Railroad Corporation. Pursuant to the trackage rights agreement filed herewith ICE may exercise rights of DME as "User" provided that all obligations under the agreement shall extend to both DME and ICE, and DME shall guarantee performance of ICE acting as User under the Agreement.

solely for the overhead operation of User's business cars over Owner's line of railroad as set forth below and referred to as "Joint Trackage":

Sioux Falls, South Dakota (Owner's Milepost 146.0 on the Corson, South Dakota subdivision) and Wolsey, South Dakota (Owner's Milepost 705.5 on the Aberdeen subdivision) a distance of approximately 149.8 miles.

The full name and address of the User is:

Dakota, Minnesota & Eastern Railroad Corporation
140 North Phillips
Sioux Falls, South Dakota 57104

Iowa, Chicago & Eastern Railroad Corporation
140 North Phillips
Sioux Falls, South Dakota 57104

In addition to other terms and conditions of the Agreement, User will not have rights to use the Joint Trackage for freight service, nor for providing for-hire passenger service.

Any questions concerning this Notice should be sent to the representative named below:

Michael J. Barron, Jr.
FLETCHER & SIPPEL LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606
(312) 252-1500

SECTION 1180.6(a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

User intends on consummating this transaction no sooner than June 1, 2007. User's authority shall expire on November 22, 2007. Although the term of this temporary trackage rights agreement shall be less than one year, BNSF covenants that until November 22, 2015, in the event this Agreement shall not have terminated early as a result of material default of DME and DME shall not otherwise be in material default of the terms of this Agreement, BNSF

shall agree to DME's requests to establish new temporary trackage rights arrangements on each year, effective November 22, on the same terms hercof. In no event shall BNSF be required to establish permanent trackage rights. See decision served in Finance Docket No. 34790, Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago & Eastern Railroad Corporation—Temporary Trackage Rights Exemption—BNSF Railway Company, decision served December 19, 2005.

SECTION 1180.6(a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED

Subject to the terms and conditions herein contained, Owner grants to User the temporary trackage right to use the Joint Trackage solely for the overhead operation of User's business cars, (and engines and end-of-train devices required to operate same) on Owner's line of railroad between Sioux Falls, South Dakota and Wolsey, South Dakota.

SECTION 1180.6(a)(5)
STATES IN WHICH APPLICANT'S PROPERTY IS LOCATED

User owns rail property located in the states of South Dakota, Minnesota, Wyoming, Nebraska, Illinois, Missouri, Iowa and Wisconsin

SECTION 1180.6(a)(6)
MAP – EXHIBIT A

A map of the rail line over which User proposes to acquire trackage rights is attached hereto as Exhibit A.

SECTION 1180(a)(7)(ii)
AGREEMENT – EXHIBIT B

A copy of the Agreement between Owner and User is attached hereto as Exhibit B.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTIVE CONDITIONS

User does not anticipate any adverse labor impacts as a result of this transaction. Nevertheless, as a condition of this exemption, User agrees to imposition of the employee protective conditions established in Norfolk and Western Ry. Co. - Trackage Rights – Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. – Lease and Operate, 360 I.C.C. 653 (1980). The applicable labor protective conditions for the discontinuance of the temporary trackage rights are those imposed in Oregon Short Line Railroad Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

SECTION 1180.4(g)(2)(i)
CAPTION SUMMARY

A caption summary of this transaction suitable for publication in the Federal Register is attached hereto.

SECTION 1180.4(g)(3)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights also is exempt from historic preservation reporting requirements. The proposed trackage rights will not substantially change the level of maintenance of any railroad property.

Respectfully submitted,

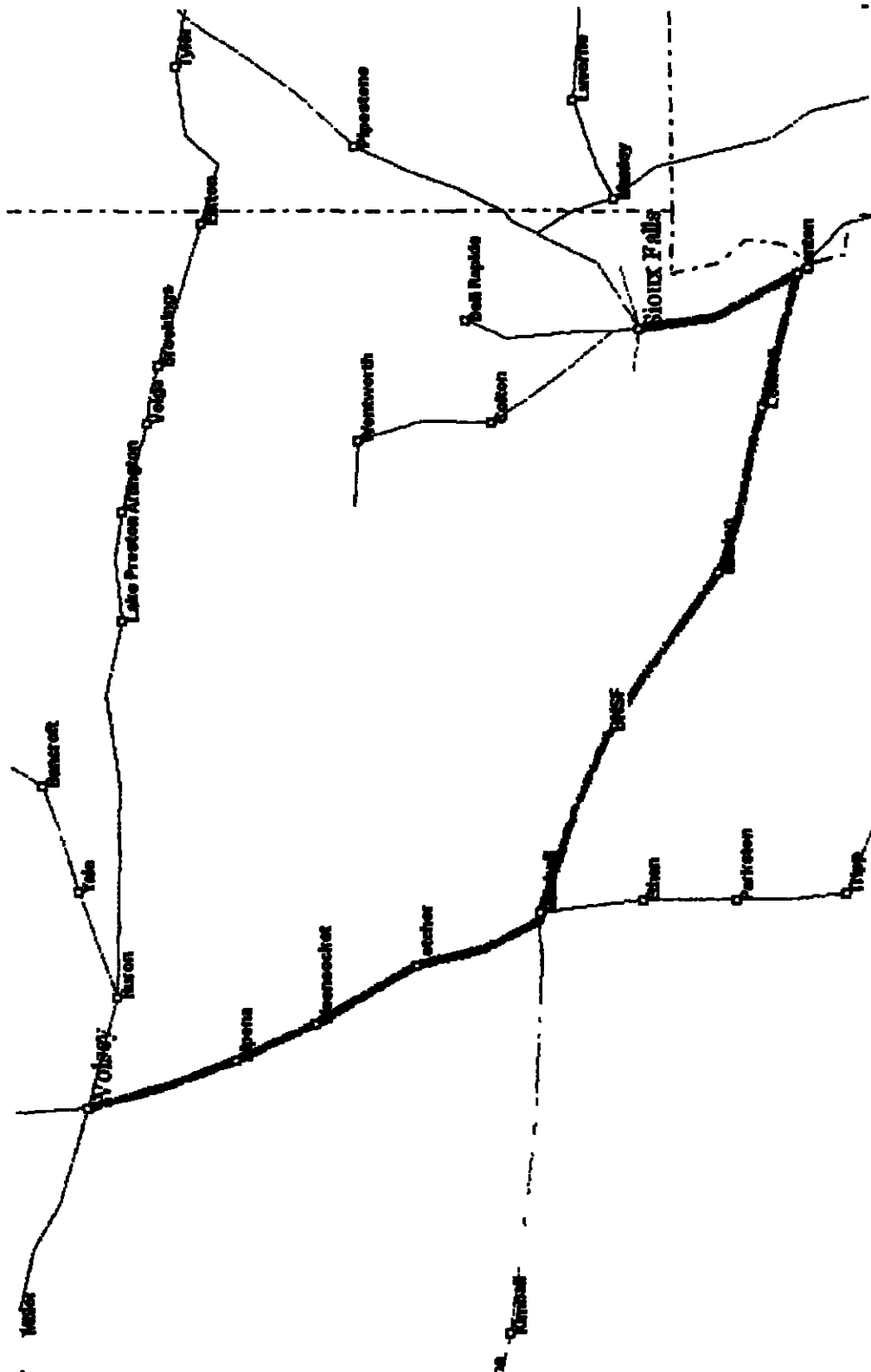
By: 

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR
DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION AND
IOWA, CHICAGO & EASTERN RAILROAD
CORPORATION**

Dated: May 1, 2007

Exhibit A
DME Temporary Trackage Rights
Between Wolsey and Sioux Falls



**TEMPORARY TRACKAGE RIGHTS AGREEMENT
DME BUSINESS CARS
BETWEEN SIOUX FALLS, SD AND WOLSEY, SD**

THIS AGREEMENT is made and entered into this 25 day of April, 2007 ("Execution Date"), by and between BNSF Railway Company, a Delaware corporation (hereinafter referred to as "BNSF" or "Owner") and the Dakota, Minnesota & Eastern Railroad Corporation, a Delaware corporation (hereinafter referred to as "DME" or "User").

WITNESSETH:

WHEREAS, BNSF and DME are subject to an agreement ("Temporary Trackage Rights Agreement") dated November 22, 2005 which grants DME temporary trackage rights over BNSF tracks between Wolsey, SD and Sioux Falls, SD for the sole purpose of moving DME business cars over said tracks; and

WHEREAS, said Temporary Trackage Rights Agreement expired by its term on November 22, 2006, and BNSF and DME desire to reinstate the Temporary Trackage Rights one (1) additional year and clarify the operations that will be allowed pursuant to the Temporary Trackage Rights Agreement.

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

- 1.) The Temporary Trackage Rights Agreement shall be reinstated and incorporated by reference herein subject to the amendments and supplemental terms referenced hereinbelow.
- 2.) Pursuant to Section 12 (b), the parties hereto agree to extend the terms of the Temporary Trackage Rights Agreement from the Effective Date (as defined below) through November 22, 2007.
- 3.) Section 2. **GRANT OF TEMPORARY TRACKAGE RIGHTS** will be deleted in its entirety and replaced by the following new Section 2:

Section 2. GRANT OF TEMPORARY TRACKAGE RIGHTS

The General Conditions covering the grant of temporary trackage rights are set forth in Exhibit "B". If any conflict between Exhibit "B" and this Temporary Trackage Rights Agreement shall arise, the provisions of this Temporary Trackage Rights Agreement shall prevail. Subject to the terms and conditions of Exhibit "B", this Temporary Trackage Rights Agreement, and User's agreement to file a "Notice of Exemption" filing for approval of these trackage rights with the U.S. Department of Transportation, Surface Transportation Board ("STB"), Owner grants to User the nonexclusive right to use the Joint Trackage for the operation by User's employees of the Equipment, consisting of business cars, engines and end of train devices, all as defined below and further defined herein and in Exhibit "B" of this Temporary Trackage Rights Agreement that is in User's account while moving over the Joint Trackage in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Joint Trackage, such other railroad company or companies to hereinafter be considered Owner for the purpose of this Temporary Trackage Rights Agreement. Said grant of overhead Temporary Trackage Rights shall be for continuous uninterrupted movement unless directed otherwise by BNSF between:

Sioux Falls, SD (Owner's Milepost 146.0 on the Corson, SD subdivision) and
Wolsey, SD, (Owner's Milepost 705.5 on the Aberdeen subdivision) a distance of
approximately 149.8 Miles

Except as may be expressly provided otherwise herein, it is understood and agreed that in the exercise of rights under this Agreement, User shall not have a right to:

- (a) set out, pickup or store cars, or switch upon the Joint Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or
- (b) move any other equipment over the Joint Trackage other than User's business cars, (Note: for purposes of this Agreement, business cars shall mean the private, not-for-hire passenger cars owned or leased by DMB) as well as user's engines and end of train devices required to move said business cars; or
- (c) serve any industry, team or house track now existing or constructed in the future along the Joint Trackage; or
- (d) enter or exit the Joint Trackage other than at Wolsey, SD; or
- (e) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor have the right to detour trains of any other railroad over or upon the Joint Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment over or upon the Joint Trackage, or any portion thereof, the Equipment of any third party which in the normal course of business would not be considered the Equipment of User; or

- (f) transport or interchange any traffic on or to the Joint Trackage which results in, facilitates, or induces a breach of the terms of any agreement between Owner and User; or
 - (g) connect with itself (except as expressly provided otherwise herein) or any other rail carrier; or
 - (h) transport passengers for hire; or
 - (i) transport any freight; or
 - (j) make any stops, cause any delays, or make any other movements of any kinds along the Joint Trackage with the exception of emergencies or as otherwise may be directed by BNSF.
- 4.) Except as otherwise stated herein, all other terms and conditions of the Temporary Trackage Rights Agreement shall be reinstated in full force and effect as of the reinstated Effective Date.
- 5.) The term of this Agreement shall become effective as of the date STB authority for this Agreement becomes effective ("Effective Date") and shall remain in effect through November 22, 2007. In the event DME fails to obtain STB authority for this Agreement, the terms herein shall be null and void.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Temporary Trackage Rights Agreement the day and year first written above.

BNSF RAILWAY COMPANY

By: 

Printed: Peter J. Rickershauser

Title: Vice President, Network Development

Date: April 25, 2007

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

By: 

Printed: J. E. Terbe II

Title: Executive Vice President Operations

Date: April 25, 2007

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35023

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
-- TEMPORARY TRackage RIGHTS EXEMPTION --
BNSF RAILWAY COMPANY**

BNSF Railway Company ("Owner") has agreed to grant overhead temporary trackage rights to Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago & Eastern Railroad Corporation (collectively called "User") between Owner's Milepost 146.0 on the Corson Subdivision at Sioux Falls, South Dakota, and Owner's Milepost 705.5 on the Aberdeen Subdivision at Wolsey, South Dakota, a distance of 149.8 miles solely for overhead movement of User's business cars. The trackage rights will be effective on or after June 1, 2007. User's authority shall expire on November 22, 2007. Although the term of this temporary trackage rights agreement shall be less than one year, BNSF covenants that until November 22, 2015, in the event this agreement shall not have terminated early as a result of material default of DME and DME shall not otherwise be in material default of the terms of this agreement, BNSF shall agree to DME's requests to establish new temporary trackage rights arrangements on each year, effective November 22, on the same terms hereof. In no event shall BNSF be required to establish permanent trackage rights.

This Notice is filed under 49 C.F.R. § 1180.2(d)(8). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: _____

By the Board

**Vernon A. Williams
Secretary**

VERIFICATION

State of South Dakota)

County of Minnehaha)

SS:

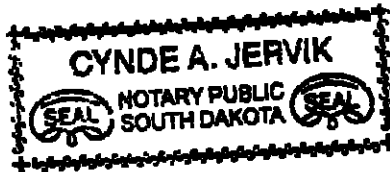
J. E. Terbell being duly sworn, deposes and says the he is EVA of Dakota,

Minnesota & Eastern Railroad Corporation, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Subscribed and Sworn to
Before me, this 30 day of
April, 2007


Notary Public



My Commission Expires: 6-15-12