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June 9, 2006

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

Re: **Finance Docket No. 34871**
Wyoming Dakota Railroad Properties, Inc. -- Acquisition and
Operation Exemption -- Dakota, Minnesota & Eastern Railroad Corp.

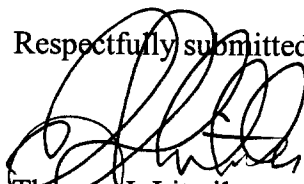
Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Petition for Waiver of Requirements of 49 C.F.R. § 1150.32(e)**, dated June 9, 2006. A check in the amount of \$200.00, representing the appropriate fee for this filing, is attached.

One extra copy of the Petition and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Wyoming Dakota
Railroad Properties, Inc.

TJL:tl

Enclosures

ENTERED
Office of Proceedings

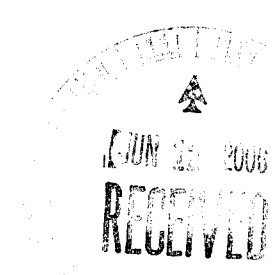
Part of
Public Record

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34871

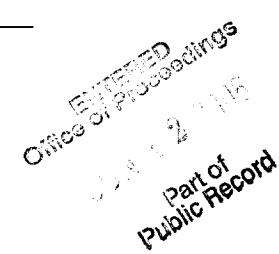
WYOMING DAKOTA RAILROAD PROPERTIES, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION



216740

**PETITION FOR WAIVER OF
REQUIREMENTS OF 49 C.F.R. § 1150.32(e)**

EXPEDITED CONSIDERATION REQUESTED



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**ATTORNEYS FOR WYOMING DAKOTA
RAILROAD PROPERTIES, INC.**

Dated: June 9, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34871

WYOMING DAKOTA RAILROAD PROPERTIES, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

**PETITION FOR WAIVER OF
REQUIREMENTS OF 49 C.F.R. § 1150.32(e)**

Wyoming Dakota Railroad Properties, Inc. ("WDRPI") hereby petitions the Board for a waiver of the 60-day labor notice requirements of 49 C.F.R. § 1150.32(e), to the extent those requirements may be applicable to the proposed transaction in this proceeding. As there are neither an "affected line" currently in existence nor any "employees on the affected lines," compliance with the notice provisions of 49 C.F.R. § 1150.32(e) is not possible and waiver is appropriate.

On May 12, 2006, WDRPI filed a notice of intent pursuant to 49 C.F.R. § 1150.35(a) in this proceeding, indicating its intention to file a verified notice of exemption pursuant to 49 C.F.R. § 1150.31, *et seq.* to acquire the authority issued by the Surface Transportation Board under 49 U.S.C. § 10901 to Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") to construct and operate approximately 280 miles of rail line between Wall, South Dakota and the Powder River Basin region of northeastern Wyoming and in Minnesota (the "PRB Line").¹ WDRPI subsequently filed its notice of exemption on May 30,

¹ The subject construction and operation authority was obtained by DM&E in Dakota, MN & Eastern R. -- Construction -- Powder River Basin, 3 S.T.B. 847 (1998), 6 S.T.B. 8 (2002); Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, Finance Docket No. 33407 (STB served February 15, 2006). Concurrently with the

2006. In both its notice of intent and its notice of exemption, WDRPI indicated that, "[g]iven that there are no 'affected line(s)', no 'employees on the affected line(s)' and no 'workplace of the employees on the affected lines' involved in the proposed transaction, the provisions of 49 C.F.R. § 1150.32(e) and 1150.35(c)(3) are inapplicable here." WDRPI Notice of Intent at 6-7; WDRPI Notice of Exemption at 7.

Board staff has now indicated that, notwithstanding the circumstances, WDRPI must either certify compliance with the requirements of 49 C.F.R. § 1150.32(e) or seek waiver of that provision. We are aware of a prior, similar proceeding where the applicant in fact "certified" compliance with Section 1150.32(e) while claiming that the provision "has no applicability to this transaction" and, apparently, providing no actual notice to anyone. Tongue River Railroad Company, Inc. -- Acquisition and Operation Exemption -- Tongue River Railroad Company, Finance Docket No. 33644 (STB served October 8, 1998 and November 13, 1998). WDRPI is not comfortable certifying "compliance" with a regulation that does not apply -- indeed, cannot be applied -- to the instant transaction.

WDRPI therefore seeks waiver of 49 C.F.R. § 1150.32(e) as it might otherwise apply in this proceeding.² The Board has previously granted such waivers in appropriate circumstances. Here, the "affected rail line" does not presently exist, and will not exist for several years. By definition, there are no employees or workplaces "on the line." It is not clear

filing of WDRPI's notice of exemption in this docket, DM&E and Cedar American Rail Holdings, Inc. filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(3) in Finance Docket No. 34872, Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. -- Intra-Corporate Family Transaction Exemption -- Wyoming Dakota Railroad Properties, Inc. to continue in control of WDRPI once WDRPI becomes a rail carrier.

² To the extent necessary, WDRPI also seeks waiver of 49 C.F.R. § 1150.35(c)(3), which similarly provides for notice to representatives of "employees on the affected line(s)."

how WDRPI could technically comply with a notice and posting requirement in this context even if it sought to.

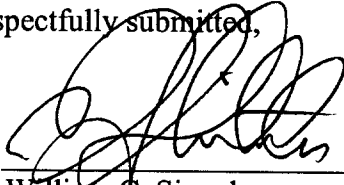
The purpose of the 60-day notice requirement is to ensure that employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 -- Advance Notice, 2 S.T.B. 592 (1997). That purpose would not be thwarted if the waiver requested here is granted. It will be several years in any event before the subject rail line is completed and operations begin, and there are no employees currently on the line who would or could be adversely affected by the proposed transaction. As the Board has held in numerous prior instances, under such circumstances waiver is appropriate. E.g., Reading Blue Mountain and Northern Railroad Company -- Operation Exemption -- Locust Valley Line, Finance Docket No. 34785 (STB served January 10, 2006) at 2 ("Because there are no employees working on the subject line, there is no need to post in the workplace any advance notice to employees or notify any labor unions."); The Indiana Rail Road Company -- Acquisition Exemption -- Line of Monon Rail Preservation Corporation, Finance Docket No. 34531 (STB served November 22, 2004) at 3 ("[T]here are no employees of Monon, INRD or any other carrier employed on the line. Consequently, there is no need for advance notice here because posting notice would be a futile act, providing notice to no one.").

WDRPI requests expedited consideration of this petition, and issuance of the requested waiver in as timely a manner as possible. WDRPI's exemption is scheduled to become effective on June 20, 2006, and the formation of WDRPI is intended to facilitate financing and capital options and flexibility for the PRB Line construction project. Particularly given the

absence of any existing employees on the line -- and, indeed, of the line itself -- expedited consideration of this waiver request is warranted.

WHEREFORE, WDRPI respectfully requests that the Board grant this petition and waive the advance notice provisions of 49 C.F.R. § 1150.32(e) for the proposed transaction.

Respectfully submitted,

By: 

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RAILROAD PROPERTIES, INC.**

Dated: June 9, 2006