

December 30, 2004

VIA HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

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Mayer, Brown, Rowe & Maw LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www.mayerbrownrowe.com

Robert M. Jenkins III
Direct Tel (202) 263-3261
Direct Fax (202) 263-5261
rmjenkins@mayerbrownrowe.com

Re: Finance Docket No. 34646, Sioux Valley Regional
Railroad Authority – Trackage Rights Exemption –
Lines of the State of South Dakota

Finance Docket No. 34646 (Sub-No. 1), D&I
Railroad Company – Trackage Rights Exemption –
Sioux Valley Regional Railroad Authority

-212 903

212 904

Dear Secretary Williams:

The Burlington Northern and Santa Fe Railway Company (“BNSF”) has received copies of notices of exemption filed yesterday by the Sioux Valley Regional Railroad Authority (“Sioux Valley”) and by D&I Railroad Company (“D&I”), in the above-captioned dockets, for the acquisition and operation of trackage rights over a line of railroad between Elk Point, South Dakota, and Sioux City, Iowa (the “Elk Point-Sioux City Line”). This line is part of the “Core Lines” owned by the State of South Dakota and operated by BNSF under a 1986 Operating Agreement between BNSF’s predecessor (Burlington Northern Railroad Company) and the State. See STB Finance Docket No. 34645, *The Burlington Northern and Santa Fe Railway Company – Acquisition and Operation Exemption – State of South Dakota* (decision served December 29, 2004).

The STB previously received trackage rights exemption requests from MRC Regional Railroad Authority (“MRC”) and Dakota Southern Railway Company (“Dakota Southern”), in Finance Docket Nos. 34630 and 34630 (Sub-No. 1), involving another of the Core Lines (the “Mitchell-Sioux City Line”). The Sioux Valley and D&I exemption notices acknowledge, as did the MRC and Dakota Southern exemption notices, that Sioux Valley and D&I have not obtained BNSF’s consent to these trackage rights and that the question of BNSF’s consent, as well as the question of BNSF’s right to acquire the Core Lines under the 1986 Operating Agreement free of trackage rights encumbrances, is the subject of ongoing litigation in South Dakota state court. Sioux Valley Notice at 3; D&I Notice at 2.

BNSF on December 17, 2004, filed a letter with the Board noting that in its view the trackage rights exemption requests filed by MRC and Dakota Southern were intended improperly

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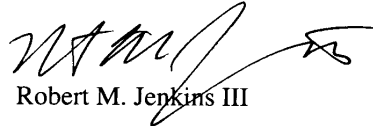
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to influence the pending state court litigation. BNSF asked that the Board confirm that in issuing those notices it was not making any determination concerning the State's contractual right to grant the trackage rights contemplated in those dockets. In response, the Board in decisions served December 29, 2004, in Docket Nos. 34630 and 34630 (Sub-No. 1) stated that "the Board has made not determination, one way or the other, concerning either the right of the State to grant these trackage rights without BNSF's consent or the right of DSRC to operate over the line without BNSF's consent. The contractual dispute respecting the scope of the rights retained by or granted to the state and/or BNSF under the 1986 Operating Agreement must be resolved in a court of competent jurisdiction." December 29 Decisions at 4.

As with the earlier MRC and Dakota Southern trackage rights exemption notices, BNSF believes that the trackage rights exemption notices filed by Sioux Valley and D&I with respect to the Elk Point-Sioux City Line are an improper attempt to influence the pending state court litigation and that the trackage rights sought would violate the 1986 Operating Agreement. Accordingly, BNSF requests that, if the Board issues the notices requested by Sioux City and D&I, the Board include the same disclaimer concerning exclusive court jurisdiction over the contractual dispute between BNSF and the State that the Board included in its decisions in Docket Nos. 34630 and 34630 (Sub-No. 1).

Sincerely yours,



Robert M. Jenkins III

Counsel for The Burlington Northern
and Santa Fe Railway Company

cc: Myles L. Tobin
Jack Parliament
Russell Hazel
John D. Fitzgerald
Gordon P. MacDougall
Richard E. Weicher
Sarah W. Bailiff