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August 7, 2002

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VIA FEDERAL EXPRESS

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

Re: **Finance Docket No. 34178**
Dakota, Minnesota & Eastern Railroad Corporation and
Cedar American Rail Holdings, Inc.—Control — Iowa, Chicago
& Eastern Railroad Corporation

Dear Secretary Williams:

Enclosed for filing with the Board in the above-captioned proceeding are an original and ten copies of a **Petition for Protective Order (DME-1)**, dated August 7, 2002.

Please note that Petitioners have requested expedited consideration of the Petition. Feel free to contact me should any questions arise regarding this filing.

One extra copy of the Petition and this letter 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. Thank you for your assistance on this matter.

Respectfully submitted,

ENTERED
Office of Proceedings

AUG 8 2002

Part of
Public Record

William C. Sippel
Attorney for Dakota, Minnesota & Eastern
Railroad Corporation and Cedar American Rail
Holdings, Inc.

WCS:pea
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34178

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND CEDAR AMERICAN RAIL HOLDINGS, INC.

-- CONTROL --

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION



PETITION FOR PROTECTIVE ORDER

EXPEDITED CONSIDERATION REQUESTED

ENTERED
Office of Proceedings

AUG 8 2002

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William C. Sippel
Thomas J. Litwiler
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**ATTORNEYS FOR DAKOTA, MINNESOTA
& EASTERN RAILROAD CORPORATION
and CEDAR AMERICAN RAIL
HOLDINGS, INC.**

Dated: August 7, 2002

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DM&E-1

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34178

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND CEDAR AMERICAN RAIL HOLDINGS, INC.
- CONTROL -
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION



PETITION FOR PROTECTIVE ORDER

EXPEDITED CONSIDERATION REQUESTED

Dakota, Minnesota & Eastern Railroad Corporation ("DMER"), Cedar American Rail Holdings, Inc. ("Holdings"), (collectively with DMER, where appropriate "DM&E") and Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), collectively herein "Applicants," will shortly file with the Board an Application pursuant to 49 U.S.C. §§ 11323-11325 and 49 C.F.R. § 1180.2(c) for DMER to control IC&E through ownership of the stock of Holdings, IC&E's parent. The stock of IC&E is currently held in a voting trust pending Board action on the Application. DM&E hereby requests that the Board enter the protective order attached hereto as Appendix A to govern the exchange of certain information among the Applicants. DM&E requests expedited consideration of this request.

Preparation of the Application to be filed herein encompasses the exchange of certain information between the Applicants, including traffic data and tapes which contain shipper-specific information. Presentation of this information as relevant in the Application should assist the Board in developing a thorough understanding and analysis of the proposed

control transaction. Unrestricted exchange of such information between Applicants before control is authorized, however, implicates the confidentiality provisions of 49 U.S.C. § 11904 and issues of premature control. As in prior merger and control proceedings before the Board and its predecessor, the Interstate Commerce Commission, DM&E seeks entry of the attached protective order to govern that exchange of information and to ensure compliance with 49 U.S.C. § 11323 and 11904.

The proposed protective order is substantively identical to those entered in prior control proceedings at the Board; see, e.g., Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc. -- Control and Merger -- Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd., Finance Docket No. 34000 (STB served February 5, 2001) ("CN/WC"); Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated -- Control -- Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, Finance Docket No. 33556 (STB served February 26, 1998) ("CN/IC"). As in those cases, the attached protective order also includes provisions to govern the exchange of confidential information between Applicants and other parties in the course of any discovery that might be sought in this proceeding.¹

The proposed common control of DM&E and IC&E is a minor transaction pursuant to 49 C.F.R. § 1180.2(c). Accordingly, no advance notice of intent is required under 49

¹ Unlike those cases, DM&E does not seek and the proposed order does not include a special "highly confidential" designation for information provided or material produced in discovery. In light of the minor nature of the proposed transaction, DM&E does not see a need for such a designation at this time. See Illinois Central Corporation and Illinois Central Railroad Company -- Control -- CCP Holdings, Inc., Chicago, Central & Pacific Railroad Company and Cedar River Railroad Company, Finance Docket No. 32858 (STB served January 24, 1996) ("IC/CCP").

C.F.R. § 1180.4(b) and Applicants intend to file their Application as soon as possible. Because the Application cannot be completed until the attached protective order is in place, DM&E respectfully requests that the Board give this matter expedited consideration and issue a decision to be effective by Wednesday, August 14, 2002. This is similar to the expedited scheduled followed in CN/WC and IC/CCP, where the Office of the Secretary entered the proposed protective order one week after applicants' petition therein was filed.

WHEREFORE, DM&E respectfully requests that the Board give this petition expedited consideration and enter the proposed protective order attached hereto as Appendix A.

Respectfully submitted,

By: 
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(312) 540-0500

**ATTORNEYS FOR DAKOTA, MINNESOTA
& EASTERN RAILROAD CORPORATION
and CEDAR AMERICAN RAIL
HOLDINGS, INC.**

Dated: August 7, 2002

APPENDIX A

FINANCE DOCKET NO. 34178
PROPOSED PROTECTIVE ORDER

1. For purposes of this Protective Order, "confidential information and data" means traffic data (including but not limited to waybills, abstracts, study movement sheets and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specific traffic data, and the confidential terms of contracts with shippers. Personnel of Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"), Cedar American Rail Holdings, Inc. ("Holdings") and Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), including outside consultants and attorneys, may exchange confidential information and data for the purpose of this or any related proceeding, but not for any other business, commercial or other competitive purpose, unless and until the application in Finance Docket No. 34178 is approved.

2. To the extent that any meetings, conferences, exchanges of data or other cooperative efforts between representatives of DM&E, Holdings and IC&E are held and carried out for purposes of this or any related proceeding, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the disposition of such proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904.

3. If the application in Finance Docket No. 34178 is ultimately denied, or if control is not effected, or if no application is filed, all confidential information and data, as defined in paragraph 1 of this Protective Order, exchanged by IC&E with DM&E or Holdings by

their representatives or affiliates, in preparing the application for filing and in the course of this and any related proceeding will be returned to the originating party or destroyed.

4. To the extent that material reflecting the terms of contracts, shipper-specific traffic data, other traffic data or other confidential or proprietary business information is produced pursuant to a request for discovery by any party to this or any related proceeding, such material must be treated as confidential. Such material, any copies, and any data derived therefrom:

- a. Shall be designated and stamped as "CONFIDENTIAL" and shall be used solely for the purpose of this or any related proceeding, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.
- b. Shall not be disclosed in any way or to any person without the written consent of the party producing the materials or an order of the Board or the Administrative Law Judge, if any, presiding in this or any related proceeding, except: (i) to employees, counsel or agents of the party requesting such material, solely for use in connection with this or any related proceeding, or any judicial review proceeding arising therefrom, provided that such employee, counsel or agent has been given and has read a copy of this Protective Order and agrees to be bound by its terms prior to receiving access to such material; and (ii) to any participant in this or any related proceeding who is not an employee, counsel or agent of the requesting party only in the course of public hearings in such proceedings.

- c. If produced through discovery, must be destroyed, and notice of such destruction served on the Board, the presiding Administrative Law Judge, if any, and the party producing the material, either at such time as the party receiving the material withdraws from this and any related proceeding, or at such time as this proceeding, any related proceeding, and any judicial review proceeding arising therefrom are completed, whichever comes first.
- d. If contained in any pleading filed with the Board, in order to be kept confidential, shall be treated in accordance with the procedure set forth at 49 C.F.R. § 1104.14. See 48 FR 44826-27 (1983).

5. If any party intends to use “CONFIDENTIAL” material at hearings in this or any related proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such “CONFIDENTIAL” material to the Administrative Law Judge, if any, the Board, or the reviewing court, as appropriate, under seal, and shall accompany such submission with a written request to the Administrative Law Judge, if any, the Board or to the court to (a) restrict attendance at the hearings during discussion of such “CONFIDENTIAL” material, and (b) restrict access to the portion of the record or briefs reflecting discussion of such “CONFIDENTIAL” material in accordance with this Protective Order.

6. If any party intends to use “CONFIDENTIAL” material in the course of any deposition in this or any related proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent and all other counsel attending the deposition, and all portions of the deposition at which any “CONFIDENTIAL” material is used

shall be restricted to persons who may review that material under this Protective Order. All portions of deposition transcripts or exhibits that consist of or disclose "CONFIDENTIAL" material shall be kept under seal and treated as "CONFIDENTIAL" material in accordance with the terms of this Protective Order.

7. To the extent that material reflecting the terms of contracts, shipper-specific traffic data, other traffic data, or other confidential or proprietary business information is produced by a party in this or any related proceeding and held and used by the receiving person in compliance with paragraphs 1, 2, and 4 of this Protective Order, such production, disclosure, and use of the material and of the data that the material contains are deemed essential for the disposition of this and any related proceeding and will not be deemed a violation of 49 U.S.C. § 11323 or 11904.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, _____, have read the Protective Order served on August __, 2002, governing the production of confidential documents in STB Finance Docket No. 34178, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in Finance Docket No. 34178 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under the Protective Order to any person who is not also bound by the terms of the Order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that applicants or other parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____