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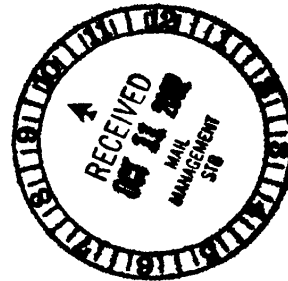
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October 10, 2002

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. 34178**
Dakota, Minnesota & Eastern Railroad Corporation
and Cedar American Rail Holdings, Inc. -- Control --
Iowa, Chicago & Eastern Railroad Corporation

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and twenty-five copies of a **Motion to Amend Protective Order** (DME-5), dated October 10, 2002. A 3.5-inch computer diskette containing the text of the Motion and the proposed protective order is attached.

One extra copy of the Motion 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.

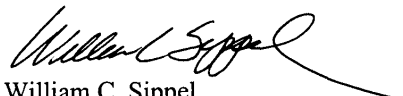
Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

ENTERED
Office of Proceedings

OCT 11 2002

Part of
Public Record


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

WCS:tjl

Enclosures

cc: Parties on Certificate of Service

ORIGINAL

DME-5



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

MOTION TO AMEND PROTECTIVE ORDER

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEYS FOR
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RAILROAD CORPORATION**

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

Dated: October 10, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

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EXPEDITED CONSIDERATION REQUESTED

Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"), Cedar American Rail Holdings, Inc. ("Holdings") and Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), collectively herein "Applicants," respectfully request that the Board amend the Protective Order previously issued by the Board in this proceeding to provide for a "Highly Confidential" designation for information provided or material produced in discovery.

By petition filed with the Board on August 8, 2002 and designated DME-1, Applicants requested entry of a protective order to govern the exchange of certain information among Applicants and the provision of information by a party in response to a discovery request. The proposed order sought by Applicants provided only for a "Confidential" designation for information provided or materials produced in discovery. Applicants indicated that in light of the minor nature of the proposed transaction, Applicants at that time did not see a need for a "Highly Confidential" designation. DME-1 at 2, n.1. By Decision No. 1, served August 14, 2002, the Board granted Applicants' Petition and entered the requested protective order.

On August 29, 2002, Applicants filed with the Board an Application (designated DME-2) pursuant to 49 U.S.C. §§ 11323-11325 and 49 C.F.R. § 1180.2(c) for DM&E and Holdings to control IC&E. DM&E also filed a related application for terminal trackage rights pursuant to 49 U.S.C. § 11102 in Finance Docket No. 34178 (Sub-No. 1) and a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(7) in Finance Docket No. 34178 (Sub-No. 2).

By Decision No. 2, served September 26, 2002, the Board accepted the Application and related filings, found the proposed transaction to be "minor" in nature, and issued a procedural schedule.

Subsequent to issuance of Decision No. 2, Applicants were served with a First Set of Discovery Requests from the Union Pacific Railroad Company ("UP") which, among other things, seeks certain information and documents from Applicants of a highly confidential nature. While Applicants continue to believe that discovery of confidential information and documents of this nature is unnecessary and unwarranted in a minor transaction such as this one, Applicants nevertheless expect to voluntarily provide highly confidential items in response to UP's discovery requests.

Accordingly, to protect the confidentiality of materials reflecting the terms of contracts, shipper-specific traffic data, and other confidential and/or proprietary information in the event that such materials are produced, Applicants request that the Board modify the protective order in this proceeding to include a "Highly Confidential" designation. A proposed protective order incorporating this modification is attached as Appendix A. The proposed protective order is substantially identical to those entered in prior control proceedings before the Board that included a "Highly Confidential" designation. See, e.g., Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company,

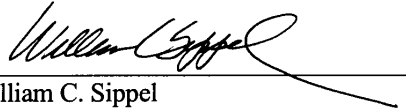
Burlington Northern Santa Fe Corporation, and The Burlington Northern and Santa Fe Railway Company -- Common Control, Finance Docket No. 33842, Decision No. 2 (STB served January 12, 2000); Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Incorporated -- Control -- Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, Finance Docket No. 33556, Decision No. 1 (STB served February. 26, 1998); CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corporation, Finance Docket No. 33388, Decision No. 1 (STB served April 16, 1997).

Because responses to UP's discovery requests are due on October 21, 2002, Applicants respectfully request that the Board give this matter expedited consideration and issue a decision to be effective by Friday, October 18, 2002.

WHEREFORE, Applicants respectfully request that the Board given this petition expedited consideration and enter the proposed protective order attached hereto as Appendix A.

Respectfully submitted,

By:



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RAILROAD CORPORATION**

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

Dated: October 10, 2002

PROPOSED PROTECTIVE ORDER

1. For purposes of this Protective Order:
 - (a) "Application" means the application filed in this docket seeking authorization for Dakota, Minnesota & Eastern Railroad Corporation (DMER) and Cedar American Rail Holdings, Inc. (CARH) to acquire control of Iowa, Chicago & Eastern Railroad Corporation (IC&E).
 - (b) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.
 - (c) "Confidential Information" 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, or other data bases, and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information.
 - (d) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 5 or 6 of this Protective Order, and any Confidential Information contained in such materials.
 - (e) "Proceedings" means those before the Surface Transportation Board (Board) concerning the application in STB Finance Docket No. 34178, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 34178 or from any related proceedings before the Board.

2. Personnel of DMER and CARH (collectively, DM&E) and of IC&E, including outside consultants and attorneys for DM&E or IC&E (representatives), may exchange Confidential Information for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, unless and until their application in the Proceedings is approved.

3. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of DM&E and IC&E or their affiliates are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such proceedings and will not be deemed a violation of 49 U.S.C. 11323 or 11904, or any other relevant provision of the ICC Termination Act of 1995.

4. If the application is disapproved by the Board, or if the application is approved but control is not effected, or if no application is filed, then all Confidential Documents, other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these Proceedings and except as provided elsewhere in this Order, must be destroyed¹ or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents.

5. If any party to these Proceedings determines that any part of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

6. Any party producing material in discovery to another party to these Proceedings, or submitting material in pleadings or other documents filed or served, may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information, as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

7. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

8. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Order.

9. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by

¹ "Destroy" shall mean shredding of paper documents and destruction of computer-memory devices (e.g., floppy diskettes).

filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenge(s).

10. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose.

11. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

12. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

13. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request of a Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

14. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

15. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at

any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 12 of this Protective Order.

16. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, 5, or 6 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11323 or 11904 or of any other relevant provision of the ICC Termination Act of 1995.

17. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

18. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party, unless that party has consented in writing to the disclosure.

Exhibit A

UNDERTAKING - CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on October ___, 2002, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34178 and related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 34178, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 34178 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleading and other documents filed with the Board.

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 information or confidential documents shall be entitled to specific performance and injunctive and/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: _____

Exhibit B

UNDERTAKING - HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside counsel or an outside consultant for _____, for whom I am acting in this proceeding. I have read the Protective Order served on October ___, 2002, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34178 and related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 34178, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 34178 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

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OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

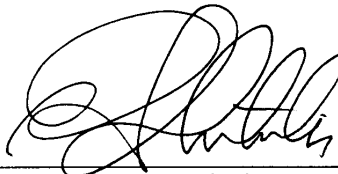
CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2002, a copy of the foregoing

Motion to Amend Protective Order (DME-5) was served by overnight delivery upon:

David L. Meyer, Esq.
Michael L. Rosenthal, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401

and by first class mail, postage prepaid, upon all other known parties of record in Finance Docket
No. 34178.

A handwritten signature in black ink, appearing to read 'T. Litwiler', is written over a horizontal line.

Thomas J. Litwiler