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November 14, 2002



WCTL-1

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

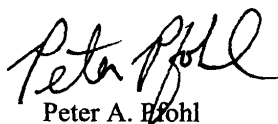
Re: STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern
Railroad Corporation and Cedar American Rail Holdings, Inc. --
Control -- Iowa, Chicago & Eastern Railroad Corporation*

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find an original and 25 copies of the Comments of Western Coal Traffic League ("WCTL-1"). A copy of these Comments is also included in electronic form on the enclosed diskette.

We have included an extra copy of the filing. Please indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,


Peter A. Pfohl

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Office of Proceedings

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Part of
Public Record

Enclosures

cc: All Parties of Record

WCTL-1

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 34178



COMMENTS OF
WESTERN COAL TRAFFIC LEAGUE

ENTERED
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Dated: November 14, 2002

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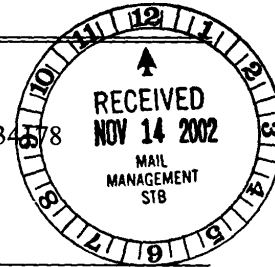
Attorneys for
Western Coal Traffic League

WCTL-1

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 34578



COMMENTS OF
WESTERN COAL TRAFFIC LEAGUE

The Western Coal Traffic League ("WCTL") hereby submits these Comments in response the Surface Transportation Board's ("STB's") Decision served on September 26, 2002 in this proceeding. That Decision accepted for consideration the application (and related filings) filed by the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"), Cedar American Rail Holdings, Inc., and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (collectively "Applicants") seeking approval and authorization under the governing statutes for the DM&E's acquisition of indirect control of IC&E and related trackage rights relief (the "DM&E Control Application"). The Board also invited "comments, protests, requests for conditions, and any other evidence and argument" on the application (and related filings). The comments of WCTL are set forth below.

I.

IDENTITY AND INTEREST

WCTL is a voluntary association formed in 1976 whose regular membership is composed of shippers and receivers of coal mined west of the Mississippi River.¹ WCTL is the only association composed exclusively of those who ship, receive, and pay the applicable charges on high-volume movements of western coal. WCTL members ship in excess of 100 million tons of western origin coal annually.

WCTL members are major purchasers of Powder River Basin ("PRB") region coal. Through its Application, DM&E seeks to extend the eastern part of its existing rail system to be able to better reach and serve its current and future customer base, including its future PRB coal customers. WCTL is particularly interested in this proceeding to the extent that the transaction (together with the DM&E's PRB rail line construction/rehabilitation project as approved by the STB in STB Finance Docket No. 33407) might bring about increased intramodal competition amongst rail carriers and railroad service improvements for the provision of rail transportation service to WCTL member facilities.

¹WCTL members include: Alliant Energy; Arizona Electric Power Cooperative, Inc.; Associated Electric Cooperative, Inc.; Center Point Energy; Central Louisiana Electric Company, Inc.; City of Austin, Texas; City Public Service Board of San Antonio; Kansas City Power & Light Company; Lower Colorado River Authority; MidAmerican Energy Company; Minnesota Power; Nebraska Public Power District; NRG Power Marketing Inc.; Omaha Public Power District; Texas Municipal Power Agency; Western Resources, Inc.; Wisconsin Public Service Corporation; and Excel Energy.

II.

WCTL COMMENTS

A. The DM&E Application is in the Public Interest

The Board is seeking comments from interested parties on the DM&E Control Application and related filings. Several WCTL members constitute a portion of the core market for which DM&E has targeted its PRB coal transportation services, and WCTL is on record as supporting the DM&E's PRB construction project -- of which the present acquisition application is, in part, an outgrowth.

Among other things, WCTL demonstrated in the DM&E's PRB construction proceeding (Finance Docket No. 33407) that the project is an important private sector investment initiative that will provide competitive and service benefits for coal shippers. WCTL also demonstrated in the same docket that there is sufficient public demand for the project, that DM&E's business projections are achievable, and that the project once completed will improve DM&E's existing services and provide needed additional rail infrastructure capacity in the West and Midwest. See e.g., Reply Evidence and Argument in Support of the Transportation Aspects of the Application by WCTL, et al., STB Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation - Construction into the Powder River Basin (filed Oct. 5, 1998). WCTL continues to support the DM&E PRB Construction project because the transaction will result in enhanced PRB rate competition, demonstrable service improvements and efficiencies,

and an increase in the capacity of the national rail system -- all while increasing incentives for the existing PRB incumbents, Union Pacific Railroad Company and The Burlington Northern & Santa Fe Railway Company, to be better and more responsive rail service providers and marketplace competitors.

The instant proceeding is, in part, an outgrowth of the DM&E PRB project. See e.g., DM&E Control Application, V.S. Schieffer at 7-8. The lines of the former I&M Rail Link ("IMRL") that are involved in this proceeding, consisting of lines running between Chicago, Kansas City, and the Twin Cities, and across northern Iowa and southern Minnesota, are an important connection and access link on the eastern part of the DM&E system to be able to reach its current and future customer base.

1. Approval of the Transaction will Help Preserve
Rail Service to Existing/Future Customers

In its application, DM&E testifies as to the "many years of doubt and concern regarding the viability" of the former IMRL. DM&E Control Application at 2. It also testifies as to the fact that the transaction will help it become a better business:

This combination does for existing DM&E customers and IC&E customers the same thing it does for future utility customers following PRB Project implementation: It gives them (a) new access to new markets not available to them today (e.g., DM&E grain to Iowa processors and the potential for IC&E grain movements to the Pacific Northwest); (b) additional competitive rail routings from which to choose; (c) faster service through seamless operation from origin to destination (rather than

limited 'feeder line service' or an 'overhead connection'); (d) improved service reliability and greater predictability because of coordinated operations and open communication/information (e.g., daily operational changes, and advance planning ability); and (e) new marketing opportunities that can be efficiently accomplished with a single system move that can be an effective alternative to Class Is, and the ability for direct decision-making in negotiations. The list goes on.

Id., V.S. Schieffer at 6-7.

The Board has held that the acquisition of alleged marginal carriers participating in highly concentrated markets, such as the situation faced by the former IMRL, are in the public interest as they will enable the carrier and its customers to be better off from a competition and service efficiency standpoint. See e.g., STB Docket No. 32760, Union Pacific Corp. et al. - Control and Merger - Southern Pacific Rail Company, et al., 1 S.T.B. 233 (1996).

Like DM&E and IC&E, the Chicago and North Western Transportation Company ("CNW") was also a marginal carrier with an underutilized rail system when it sought authority to construct the lines necessary to enable it to access the PRB. In the CN&W Connector Line case, the ICC determined that the rejection of the application would leave C&NW in a "static" position, and thereby render the carrier vulnerable to potential economic and competitive difficulties. See Finance Docket No. 28934, Chicago and North Western Transportation Company Construction and Operation of a Line of

Railroad in Niobrara and Goshen Counties, Wyoming and in Sioux and Scotts Bluff Counties, NE (ICC Decision served Oct. 7, 1980) at 20-21. Instead, agency approval was deemed necessary, at least in part, as a means of affording CNW an opportunity to compete on a more equal footing with the incumbent PRB carrier (BNSF) which would help strengthen CNW's competitive position in the marketplace and thereby improve the overall efficiency of the national rail system. Id.² Board approval is similarly warranted here.

Additionally, the acquisition of indirect control of IC&E and related trackage rights relief sought by the DM&E through its Application, together with DM&E's proposed PRB project, should improve DM&E's existing services, and provide needed additional rail infrastructure capacity in the West. This will be to the benefit of DM&E's existing customers, whose service should be improved as a result of DM&E's upgraded and modernized railroad.

As discussed above, WCTL believes that, based upon the information included in the DM&E Control Application, Board approval of the transaction is warranted.³

² CNW was ultimately successful in gaining access to the PRB, and as the Board is well aware, the results speak for themselves.

³ WCTL Member MidAmerican Energy Company ("MidAmerican") is solely served by the IC&E at destination at two of its coal-fired generating stations. (MidAmerican is also participating individually in this proceeding as a party of record.) WCTL will be reviewing the comments filed by interested parties, and it reserves the right to participate further in this proceeding, as its interests may require, to ensure that its members' interests are fully protected.

B. The Board Should Resist Efforts to Relitigate
the DM&E PRB Construction Case

The Board's January 30, 2002 decision granting final approval of the DM&E PRB project (in Finance Docket No. 33407) was the culmination of an exhaustive, four-year long proceeding reviewing the transportation and environmental aspects of the plan. (The Board's decision includes some 147 mitigation measures addressing the environmental/safety impacts of the project). That decision is currently on appeal before the United States Court of Appeals for the Eighth Circuit. Several of the parties to DM&E's PRB construction proceeding (and party opponents involved in the pending case on appeal) are parties of record in this proceeding. The many claims made by parties to the DM&E's PRB construction proceeding were raised, fully evaluated, and finally decided on the merits in that proceeding. Accordingly, the Board should resist any invitations by opponents to the DM&E's PRB construction project to relitigate issues fully resolved in that proceeding, which would only serve to divert attention away from relevant issues and hamper the Board's ability to efficiently process this proceeding on the merits.

III.

CONCLUSION

For the reasons set forth above, WCTL respectfully requests that the STB approve the DM&E Control Application.

Respectfully submitted,

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Dated: November 14, 2002

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Western Coal Traffic League (WCTL-1) was served this 14th day of November, 2002 by first-class mail, postage prepaid upon all parties of record to this proceeding.


Peter A. Pfohl