

206633

LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION

November 14, 2002



Diane Gerth
612-335-1463
diane.gerth@leonard.com

VIA MESSENGER

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423-00001

***Re: Dakota, Minnesota & Eastern Railroad Corporation – Control – Iowa,
Chicago & Eastern Railroad Corporation
Finance Docket No. 34178***

Dear Secretary Williams:

Enclosed for filing please find the original and ten copies of the Comments and Request for Condition of Soo Line Railroad Company, d/b/a Canadian Pacific Railway. We are concurrently serving the filing on all parties of record, and will submit a Certificate of Service shortly.

Also enclosed with this filing is a diskette containing the text of the filing in Wordperfect format, and extra copies of the filing and of this letter. Please date stamp the enclosed extra copies and return them to the messenger.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association

Diane Gerth
Diane Gerth *ry SM*

Enclosure

ENTERED
Office of Proceedings

NOV 14 2002

Part of
Public Record

1701 PENNSYLVANIA AVENUE NW SUITE 1045 WASHINGTON, D.C. 20006 TEL 202-974-6100 FAX 202-974-6101

LAW OFFICES IN MINNEAPOLIS, SAINT PAUL, MANKATO, SAINT CLOUD AND WASHINGTON, D.C.

2281409v1

WWW.LEONARD.COM

ORIGINAL

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



**COMMENTS AND REQUEST FOR CONDITION OF SOO LINE RAILROAD
COMPANY d/b/a CANADIAN PACIFIC RAILWAY**

**ENTERED
Office of Proceedings**

NOV 14 2002

**Part of
Public Record**

William Tuttle
Canadian Pacific Railway
501 Marquette Avenue, Suite 1700
Minneapolis, MN. 55402

Diane P. Gerth
James B. Bertrand
Leonard, Street & Deinard
150 S. 6th St., Suite 2300
Minneapolis, MN. 55402

ATTORNEY FOR
CANADIAN PACIFIC RAILWAY

ATTORNEYS FOR
CANADIAN PACIFIC RAILWAY

Dated: November 14, 2002

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



**COMMENTS AND REQUEST FOR CONDITION OF SOO LINE RAILROAD
COMPANY d/b/a CANADIAN PACIFIC RAILWAY**

INTRODUCTION

Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CPR") hereby submits these comments and requests for condition in response to the railroad Control application filed by Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Cedar American Rail Holdings, Inc. seeking approval and authorization of DM&E's acquisition of indirect control of Iowa, Chicago & Eastern Railroad Corporation ("IC&E").

CPR is a Class I carrier in the midwest and a former owner of the railroad properties currently owned by IC&E. Prior to IC&E's purchase of the assets of I & M Rail Link, LLC ("IMRL"), CPR had close operational and financial ties with IMRL, and was a minority owner of IMRL. Because of geographic closeness and long-term contracts assumed by IC&E upon its purchase of the assets of the IMRL, this close relationship has by necessity carried through to IC&E. Although the more direct financial ties that existed between CPR and IMRL are no longer in place, there are a number of contractual operating relationships that continue. In addition, CPR interchanges traffic with IC&E at several locations, and IC&E operates over trackage rights granted by CPR on a number of miles.

CPR'S INTEREST

CPR offers comment and requests that the Board impose a condition on the transaction because of CPR's ongoing contractual and operational ties with IC&E and concerns that any interruption of those ties would harm shippers and deprive them of competitive routing options. CPR has an interest in the financial and operational stability of IC&E because of the contractual relationships between the two that still exist. For example, CPR has contractual duties to one IC&E customer that requires that CPR to step in to provide service to that customer should IC&E fail to provide service at specified levels. IC&E has trackage rights over CPR lines into the Twin Cities over the heavily used River Subdivision. The potential for traffic diversion off of CPR at Minnesota City onto other IC&E/DM&E lines has been highlighted in the control application. Moreover, because of the unique and complex contractual agreements relating to IC&E's ability to reach the Chicago area, CPR maintains a crucial interest in assuring that IC&E has the financial stability and operational acumen to run trains into the Chicago area over IC&E's main route into the city, Metra's West Line from Pingree Grove to Cragin Junction.

Because of the contractual agreements that may require that CPR step in and provide service should IC&E fail to do so and may require CPR to guarantee certain IC&E payments to Metra should IC&E financially falter, CPR hereby submits the following concerns and respectfully requests the imposition of the following condition.

MAINTENANCE OF MINNESOTA CITY GATEWAY

CPR's primary concern surrounds the preservation of the Minnesota City Gateway that allows competitive routing for eastbound shipments over CPR as well as westbound shipments coming off of CPR. Currently, CPR maintains a gateway and physically interchanges with DM&E at Minnesota City for traffic both east and westbound. For the reasons outlined below,

CPR respectfully requests a condition be imposed that requires DM&E to keep the Minnesota City gateway open for interline division interchange traffic to allow competitive routing for grain, coal, and other shippers who currently use that gateway.

The Minnesota City gateway should remain open for interline division interchange traffic for a number of reasons that benefit the shipping public. With respect to the proposed expansion of the DM&E into the Powder River Basin, the coal traffic that would potentially move eastward on the DM&E lines across southern Minnesota has a significant mileage advantage when such trains are ultimately destined for Wisconsin and Minnesota electrical generation plants and are routed through Minnesota City and interchanged onto the CPR for delivery. If DM&E were allowed to close the Minnesota City gateway and move coal traffic over the IC&E into Chicago, it would result in a much longer routing, and would defeat the mileage advantage for upper Midwest power producers that was partly used to justify the expansion project. The mileage differential between a coal train that moves over the DM&E to Minnesota City, is interchanged with CP, and continues north and eastward to coal plants in the Twin Cities and central and northern Wisconsin and a coal train that travels over the DM&E to IC&E, eastward into Chicago, and then north into Wisconsin is significant. The success of the DM&E expansion project is based in part on the short distance mileage advantage to upper Midwest coal-generating plants. The economic and competitive advantages to Minnesota and Wisconsin plants could potentially not be realized if DM&E were to close the Minnesota City gateway and move coal to Chicago before it moved north to Wisconsin power generators. To defeat this mileage advantage would result in more miles for the coal traffic and holds the possibility of costing rail shippers and consumers more. For this reason alone, a condition requiring that the Minnesota City gateway remain open would be appropriate.

Beyond that, however, the control application and specifically the verified statement of Dr. Charles Lamberton point to over 5,000 cars (primarily grain traffic) that would be diverted away from CPR at Minnesota City and instead move on to DM&E/IC&E lines through Iowa eastward to Chicago. While shippers may potentially be benefited by the increase in routing alternatives, shippers ought to be able to choose the more direct CPR route from South Dakota and southern Minnesota to Chicago and beyond. The application outlines the potential for grain traffic to move over what is a circuitous route from Owatonna across northern Iowa. The difficulties associated with this route serve to make the Minnesota City to Chicago routing over CPR attractive to shippers, and they ought to be able to designate a route through the Minnesota City gateway over CPR. From southern Minnesota and South Dakota, the DM&E – Minnesota City – CPR – Chicago routing is more direct, is in better physical shape, and is faster than the DM&E – Owatonna – IC&E – Chicago routing. Shippers ought to be able to choose the more cost-effective route for them, and to do this, the Minnesota City gateway needs to remain a viable option.

The public interest is also served by keeping this gateway open for fertilizer shipments coming south from Canada on the CPR that are interchanged with DM&E for movement to farmers in southwestern Minnesota and South Dakota.

Although DM&E has not indicated that it intends to close the Minnesota City gateway, the information contained in the application shows the potential for the diversion of a large number of cars away from Minnesota City onto a more circuitous and potentially more expensive routing to Chicago. By imposing the condition that IC&E maintain the gateway for interline division interchange traffic, shippers are given more choice with respect to their grain movements, and the short haul advantages for the potential Powder River Basin Coal to

Minnesota and Wisconsin power plants can be realized. For these reasons, CPR respectfully requests that a condition would be imposed that would require the newly combined railroad to keep this gateway open.

CHICAGO TRACKAGE RIGHTS AGREEMENT

As the Applicants note in their control application, IC&E's ability to move traffic into the Chicago terminal remains the subject of ongoing negotiations. The former owner of the IC&E's assets, IMRL, moved traffic from Pingree Grove to Cragin Junction over a line of railroad owned by Metra (the Metra West Line). This line is one over which CPR has trackage rights and IMRL was admitted as a third party admittee as permitted under the terms of a 1985 Trackage Rights Agreement between CPR's and Metra's predecessors in interest. Disputes have arisen as to the assignability to IC&E of the contract that allowed IMRL this access to Chicago, and litigation has ensued over that issue. The litigation is currently stayed pending ongoing negotiations between the parties over a new agreement that would give IC&E more permanent rights to operate over this trackage. Currently, IC&E traffic is moving over the Metra West Line by way of a temporary detour arrangement between IC&E and Metra.

However, as yet unresolved are the fundamental issues of what specific provisions of the IMRL agreement might carry through to any new agreement of the parties. IC&E has taken the position in litigation that the IMRL agreement is assignable in whole, that CPR has no rights to object to an assignment to IC&E, and that Metra's consent to such an assignment is not required. Metra and CPR take a different view of the effects of the anti-assignment clauses in the IMRL agreement, and argue that any attempt at assignment is not effective without Metra's consent, which has not been given.

Should the parties' negotiations falter, it may be that a court will determine the applicability of an agreement that was negotiated over five years ago under very different circumstances. Whether the court chooses to impose the terms of that agreement on CPR, IC&E, and Metra or whether the court finds that no assignment has taken place, there will be implications for shippers, the freight railroads, and Metra. Although CPR is not requesting a specific condition be imposed at this juncture, it is important that the Board remain cognizant of the ongoing questions surrounding access to Chicago by a combined DM&E/IC&E over Metra's West Line and the open issues surrounding the terms of such access.

CONCLUSION

For the foregoing reasons, CPR respectfully requests that the Board impose a condition on the combined DM&E/IC&E that requires that the Minnesota City gateway remain open for interline division interchange traffic. CPR also requests that the Board recognize that there remain open questions regarding DM&E/IC&E access to Chicago over the Metra West Line, questions that may require action in the future.



Diane P. Gerth, Esq.
James J. Bertrand, Esq.
LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
Tel: (612) 335-1463
Fax: (612) 335-1657

William Tuttle, Esq.
CANADIAN PACIFIC RAILWAY
501 Marquette Avenue, Suite 1700
Minneapolis, Minnesota 55402

Counsel for Soo Line Railroad Company
d/b/a Canadian Pacific Railway