

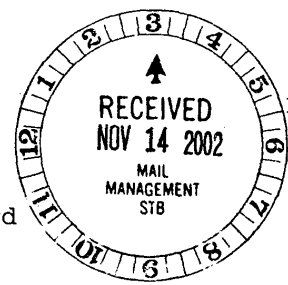
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ORIGINAL

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BY HAND ORIGINAL



November 14, 2002

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0000

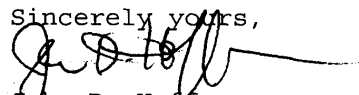
RE: STB Finance Docket No. 34178 (Sub-No. 1), Dakota,
Minnesota & Eastern Railroad Corporation
-- Terminal Trackage Rights -- Union Pacific
Railroad Company

Dear Mr. Williams:

I am enclosing for filing in the above-captioned proceeding
an original and 25 copies of the comments submitted by the City
of Owatonna, MN. Additionally, I am enclosing a copy of the
City's filing on a computer disk formatted in MS Word.

Please date stamp and return for our files one copy of this
letter.

ENTERED
Office of Proceedings
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Part of
Public Record

Sincerely yours,

John D. Heffner

Enclosures

cc: William Sippel, Esq.
all service list parties
Mark Walbran, Esq.
Hon. Gregory Sparks

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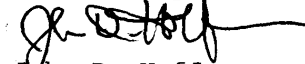
**RE: STB Finance Docket No. 34178 (Sub-No. 1), Dakota,
Minnesota & Eastern Railroad Corporation
-- Terminal Trackage Rights -- Union Pacific
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Dear Mr. Williams:

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Please date stamp and return for our files one copy of this letter.

Sincerely yours,


John D. Heffner

Enclosures

cc: William Sippel, Esq.
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Mark Walbran, Esq.
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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34178 (Sub-No. 1)



DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- TERMINAL TRACKAGE RIGHTS --
UNION PACIFIC RAILROAD COMPANY

APPLICATION FOR TERMINAL TRACKAGE RIGHTS

COMMENTS SUBMITTED BY
THE CITY OF OWATONNA, MN

Respectfully submitted,

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Dated: November 14, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34178 (Sub-No. 1)



DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
-- TERMINAL TRackage RIGHTS --
UNION PACIFIC RAILROAD COMPANY

APPLICATION FOR TERMINAL TRackage RIGHTS

COMMENTS SUBMITTED BY
THE CITY OF OWATONNA, MN

I.
INTRODUCTION AND PROCEDURAL BACKGROUND

The City of Owatonna, MN ("Owatonna"), a city in the State of Minnesota located along the right of way of Applicant Dakota, Minnesota & Eastern Railroad Corporation (hereafter "Applicant" or "DM&E"), files these comments supporting DM&E's request for terminal trackage rights in the above-captioned proceeding.

By way of background, on August 28, 2002, DM&E and Cedar American Rail Holdings, Inc., filed an application with the Board in a related proceeding¹ for authority to control the Iowa,

¹ Docketed as FD No. 34178, Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings - Control - Iowa, Chicago, & Eastern Railroad Corporation.

Chicago & Eastern Railroad Corporation ("ICE"). Concurrently, the DM&E also filed an application in the related above-captioned proceeding for terminal trackage rights over a short (3,700 foot) segment of track in Owatonna, MN,² owned by the Union Pacific Railroad Company ("UP"). By decision served September 26, 2002, the Board accepted DM&E's control application and set a schedule for the filing of comments and requests for relief by interested parties.

II.
OWATONNA'S STATEMENT OF INTEREST

Owatonna is a political subdivision established under Minnesota law. Located about 70 miles south of the Twin Cities and 70 miles west of the Mississippi River in southeastern Minnesota, Owatonna has a population of 20,577. Owatonna lies along U.S. Interstate Highway I-35W and U.S. Highway 14.

² Between MP 88.6 and MP 87.9.

Owatonna also lies at the crossing of three freight railroads, the DM&E, ICE (formerly known as I&M RailLink, L.L.C. or "IMRL"), and the UP. DM&E, an east-west class II carrier formed in 1986 from secondary lines of the former Chicago And North Western Transportation Company ("CNW"), presently operates from Winona (on the west bank of the Mississippi River) through downtown Owatonna westward into South Dakota. DM&E does not own any track in downtown Owatonna. Rather, it traverses downtown Owatonna on a short (2.4 mile) segment of track³ over which DM&E has overhead trackage rights from UP. This track does not physically connect with UP's system and no UP trains operate over it.

On January 30, 2002, the Board granted an application (hereafter "the PRB extension construction application") DM&E filed in 1998 for authority to build a 262 mile extension into Wyoming's Powder River Basin.⁴ Once DM&E completes this construction, it will be transformed from a light density grain carrying class II regional railroad into a new coal hauling class I railroad. According to information DM&E submitted with its construction application, DM&E anticipates operating up to 37 daily freight trains on its mainline, 34 trains handling coal

³ Between MP 88.6 and MP 86.2.

⁴ Docketed as FD No. 33407, Dakota, Minnesota & Eastern Railroad Corporation, Construction into the Powder River Basin.

traffic. Owatonna understands that most of these trains will operate through its city limits.

ICE is another class II regional carrier. In the Spring of 2002 DM&E established ICE as a new railroad to acquire the railroad properties owned and operated by IMRL. Pursuant to a series of notices and decisions served by the Board on June 12, June 26, and July 22, 2002,⁵ ICE acquired IMRL's assets and operations on or about July 30, 2002. Pending the filing and approval of the subject control application, DM&E placed ICE's ownership in a voting trust. IMRL itself was originally established from rail lines it purchased from CP Rail in 1997.⁶ ICE's present Owatonna rail trackage and service consists of a light density branch line operating in a north-south direction though downtown Owatonna linking Austin with Faribault, MN. In its application for authority to construct its PRB extension, DM&E originally announced plans to connect its line with that of IMRL at Owatonna,⁷ permitting its coal trains originating in

⁵ The Board originally served a notice on June 12 announcing the proposed acquisition. Subsequently, by notice served June 26, it imposed a "housekeeping stay", which it removed in its decision served July 22.

⁶ See, STB FD No. 33326, I&M Rail Link, LLC, Acquisition and Operation Exemption - Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway (served April 2, 1997).

⁷ DM&E had originally proposed to effect this connection by constructing a short 2.94 mile long track segment approximately 2.0 miles east of Owatonna. The STB's Final Environmental Impact Statement (EIS) identifies this connection

Wyoming to serve customers located or accessed by the former IMRL [now ICE] route system. The DM&E/ICE track connection⁸ at Owatonna continues to be a key feature of the subject control application.

Finally, UP owns and operates a north-south mainline on the west side of the City, the former Rock Island Railroad's "Spine Line" between Minneapolis and Kansas City which UP acquired in 1993 as part of its acquisition of control of the CNW. This line does not connect with any other rail lines serving Owatonna.

Owatonna's interest in this proceeding stems from its 1999 participation in the DM&E PRB extension construction case. Owatonna was concerned that the PRB extension could transform

as "O-3."

⁸ Historically, these two lines crossed at a grade level diamond in downtown Owatonna. Recently, ICE engineering forces replaced the crossing diamond with a connecting track accessing each line by means of a switch. However, contractual restrictions imposed in the CNW/DM&E Owatonna track lease assumed by UP forbid DM&E from moving any through traffic between the two lines.

DM&E from a regional carrier with a modest traffic base and minimal frequency levels into a virtual coal conveyor belt operating through the heart of the City. Moreover, DM&E projected that as many as 10 of these trains would turn at Owatonna to move northwards onto the ICE.

Owatonna initially opposed DM&E's connection to the former IMRL line, urging the Board to consider a bypass it proposed be constructed outside the city limits. In comments filed in June, 1999 and December, 2000, Owatonna told the Board that DM&E's proposed connecting track (either Alternatives 0-3 or 0-4) would have a significant adverse impact on the City's quality of life, stating that construction and operation of this track would present numerous adverse effects on street and pedestrian traffic, public safety, property values, emergency vehicle access, environmental considerations, and the quality of life generally. Alternatively, Owatonna urged that DM&E be permitted to connect directly with IMRL [now ICE] utilizing the existing "intown connection" designated by the SEA as "Alternative 0-5" which is the subject of this terminal track rights application. Ultimately, the City withdrew its bypass request after signing a settlement agreement ["the Community Partnership Agreement"] with the DM&E.

The SEA determined that Alternative 0-5 appeared to be the "environmental preferable alternative" because it would

require minimal upgrading on the existing rail line right of way. Inasmuch as DM&E has apparently been unable to secure UP's consent to use the existing track connection for through DM&E/ICE traffic, it has filed the subject application for terminal trackage rights which Owatonna fully supports.

III.
THE TERMINAL TRackage RIGHTS
PUBLIC INTEREST STANDARD
AS IT SHOULD APPLY TO THE DM&E APPLICATION

As DM&E correctly states in its application, the Board must grant terminal access (including terminal trackage rights) pursuant to 49 U.S.C. section 11102, if the Board finds such use "to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." 49 U.S.C. section 11102(c). Owatonna supports DM&E's terminal trackage rights request because, as the City will show, it would promote the public interest.⁹

⁹ In its terminal trackage rights application, DM&E addresses the various prerequisites for a grant of such rights, including the facility's qualification as a "terminal," the public interest, practicability of trackage rights operations and non-impairment of the line-owner's operations, and compensation.

While Owatonna supports DM&E's position on each of these prerequisite issues, the City focuses its attention in this filing on the issue that it is particularly well suited to address - the public interest.

Terminal access requests that are **not** related to railroad control or consolidation proceedings have, over time, faced more exacting standards developed through agency and federal court "common law," even though the relevant statutory provision has remained essentially the same for decades. The devolution of the agency's interpretation of the terminal access statute culminated with the so-called *Midtec* standard set forth in *Midtec Paper Corp. v. Chicago and North Western*, 3 I.C.C. 2d 171 (1986). The *Midtec* standard requires, in addition to the basic prerequisites for any terminal access request, that the party seeking terminal access relief must also show that the incumbent carrier has engaged in competitive abuse. To Owatonna's knowledge, not one terminal access request to which the *Midtec* standard applies has ever succeeded. But terminal access requests have been granted, post-*Midtec*, in connection with railroad consolidation proceedings.

For terminal trackage rights petitions linked to railroad control applications, the "exacting *Midtec* precedent" does not apply. *Union Pacific Corp. - Control and Merger - Southern Pacific Rail Corp.*, STB Finance Docket No. 32760, Decision No. 44, slip op. at 169 (STB served Aug. 12, 1996)

(hereafter "*UP/SP*") (in determining whether the *Midtec* standard applied in the case of a transaction under review pursuant to what is now 49 U.S.C. sections 11323-11325, the Board definitively concluded that "it is inappropriate" to apply *Midtec* in the context of the *UP/SP* proceeding, clarified that *Midtec* does not apply in terminal access requests linked to consolidation cases, and embraced instead the "broad 'public interest' standard that is in section [11102(a)] itself"). As *UP/SP* makes clear, DM&E's request for trackage rights in the Owatonna terminal area will hinge upon whether the request is in the public interest.

The public interest standard has been met in instances where, as here, the applicant, in relation to its efforts to consolidate its system of commonly-held rail lines, is "bridging a gap" that must be filled to effectively link the system together. See, *UP/SP* at 168 (terminal trackage rights request was granted to bridge gaps in a network of lines to be operated by The Burlington Northern and Santa Fe Railway); *Southern Pacific Trans. Co. v. ICC*, 736 F.2d 708, 723 (D.C. Cir. 1984). As the DM&E filings show, the contracts governing its use of UP-owned trackage in Owatonna create a "paper barrier" that would result in an operational gap in the DM&E/ICE system. According to DM&E's terminal access application, although the DM&E-leased line of UP intersects with a line of ICE in Owatonna, actual

interchange via this connection is severely limited by contractual provisions that have inured to the benefit of CNW and now UP for roughly 16 years.

The Board should adhere to the precedent clarified in *UP/SP*, apply the broad public interest standard that is in 49 U.S.C. section 11102(c) itself, and grant DM&E terminal trackage rights application.

IV.
DM&E'S TERMINAL TRACKAGE RIGHTS
ARE IN THE PUBLIC INTEREST

All too frequently, the public interest in inter- and intra-modal competition (including the Board's attention to whether a transaction preserves or enhances competition) has overshadowed another, equally significant public interest - the interests of the communities through which the rail lines in question run or will run. Owatonna is prompted to file this reply in support of DM&E because it is convinced that the terminal trackage rights DM&E seeks will benefit not only the general shipping public (including existing and potential shippers on DM&E and ICE in the Owatonna area), but also the general population in and around Owatonna. Specifically, consistent with the public interest, a grant of DM&E's terminal trackage rights application will permit Owatonna to protect the health, safety, and tranquility of its community, encourage economic development in the greater Owatonna area consistent with

community plans, and promote the strength of DM&E and ICE, thereby enabling the two railroads to better attend to rail physical plant and safe operations in and around the city.

A.
DM&E's TERMINAL TRACKAGE RIGHTS WOULD
PROMOTE THE HEALTH, SAFETY, AND WELFARE
OF THE CITIZENS OF OWATONNA

The "public interest" standard utilized by the STB in determining whether to grant DM&E's terminal access request necessarily includes a consideration of the impacts of Applicant's consolidation proposal on the City's quality of life. See, e.g., Construction And Operation - Indiana & Ohio Ry. Co., 9 I.C.C.2d 783, 787-8 (1993) ("[i]n deciding railroad construction applications under the Interstate Commerce Act ...we apply the relevant provision - here sec. 10901 - in light of the rail transportation policy (RTP), set out at 49 U.S.C. sec. 10101a....the RTP, at sec. 10101a(8), specifically makes it the policy of the United States Government, in regulating the railroad industry-'to operate transportation facilities and equipment without detriment to the public health and safety.'") There, the ICC went on to note with approval the comment by protestants in that proceeding that the RTP is a "statement of the public interest." Id. And the Board has previously stated that environmental impacts including safety impacts are important considerations in making its public interest determination. STB FD. No. 33556, Canadian National Railway Company, Grand Trunk

Corporation, And Grand Trunk Western Railroad Incorporated -
Control - Illinois Central Corporation - Chicago, Central and
Pacific Railroad Company, and Cedar River Railroad Company
(Decision No. 37) ____ S.T.B. ____ (1999).

In evaluating the DM&E construction application, the Board and the SEA sought public comments concerning its environmental impacts and the appropriate levels of mitigation required. Owatonna initially submitted comments urging the construction of a 10.9 mile bypass route to the south of the City. Subsequently, after signing the above-mentioned Community Partnership Agreement, City submitted comments with the Board (to the Section of Environmental Analysis) dated December 19, 2000, reiterating its concerns about Alternatives 0-3 and 0-4 and strongly supporting DM&E's use of the existing "in-town" connection (Alternative 0-5). In those comments, the City identified the following as serious adverse environmental and socio-economic impacts on the community inherent in Alternatives 0-3 and 0-4:

- DM&E's track alignment effectively bisects the City;
- Additional trains will result in increased air and noise pollution;
- Owatonna's "sensitive" populations near the rail line will suffer unreasonably and disproportionately;
- Owatonna's emergency response systems (fire, police,

and ambulance) will be hindered;

- Increased exposure to train activity magnifies the likelihood of accidents; and
- Greater train activity reduces the property values of neighborhoods along the DM&E route.

Although some of these concerns are obvious, several require further explanation, particularly in light of the current control application. Should the Board grant DM&E's terminal trackage rights request, a train coming off the DM&E could move directly onto the ICE for a southbound move (or vice versa). In the case of a northbound move onto the ICE, the DM&E train would first have to cross ICE's line before reversing direction and proceeding north.¹⁰ But should the Board deny that request, a train connecting from the DM&E track to the ICE track by means of either Alternative 0-3 or Alternative 0-4 would be forced to make a big loop around the City before continuing its journey, requiring a much longer trip. As a result, each of the impacts identified above would be magnified as the public would be exposed to these impacts not once, but twice. Trains would be forced to travel additional mileage (1.25 additional track miles), encounter two additional grade crossings, move at slower speeds through the City limits before being able to accelerate again, and generate additional air and noise pollution and

¹⁰ The locomotives would run around the train and would then pull it over

vibration. The additional exposure of pedestrians and automobile traffic associated with this "double pass" presents the potential for more rail/pedestrian and rail/highway accidents. Moreover, the delays necessarily encountered as a result of the curves and switches inherent in Alternative O-4 could cause traffic to back up at busy crossings. Similarly, train acceleration and deceleration necessitated by the use of Alternative O-4 would generate additional engine exhaust and noise and noise due to "slack action" and the related vibration (and resulting impacts on buildings).

Accordingly, Owatonna recognizes that DM&E's use of the existing direct connection afforded by Alternative O-5 represents the best "public interest" solution available under the circumstances.

B.
DM&E's TERMINAL TRACKAGE RIGHTS
WOULD BEST PROMOTE ECONOMIC DEVELOPMENT
IN AND AROUND OWATONNA

A fundamental interest of any community is its economic prosperity. The DM&E/ICE control application coupled with DM&E's terminal trackage rights application would immediately enhance Owatonna's ability to foster growth and develop new jobs.

As DM&E's filings have shown, while it and ICE serve Owatonna, the two carriers cannot effectively interchange traffic the connecting track before heading north.

between themselves due to a 16-year-old "paper barrier" in favor of UP. This paper barrier has effectively eliminated routing, gateway, and market options for shippers located along DM&E's and ICE's respective lines. While Owatonna and outlying communities are interested in attracting new rail-served industries to promote local economic development, the City recognizes that potential industry will not look as favorably upon sites located along DM&E and ICE, simply because the lack of a viable interchange through Owatonna artificially restricts rail service options. Consequently, the artificial "gap" in the DM&E/ICE system is more than a 16-year-old restriction on the local railroads - it is also a burden borne by the surrounding communities.

Granting DM&E's terminal trackage rights application would lift this long-standing barrier created at the behest of CNW and now employed to the advantage of UP, promote the free flow of commerce, and afford existing and potential shippers in the Owatonna area access to rail-served markets and gateways that are limited only by the scope of the combined DM&E/ICE systems. Approval of DM&E's terminal trackage rights would therefore immediately benefit Owatonna and the surrounding community in future efforts to attract and plan for rail-served industries, and such new industry would increase employment opportunities for Owatonna's citizens.

C.
GRANTING THIS APPLICATION WOULD
RESULT IN AN IMPROVED OWATONNA RAIL PLANT
AND SAFER OPERATIONS

Having reviewed DM&E's control application, Owatonna observes that the largest single operational change identified in the accompanying operating plan involves train and service routings in and around Owatonna. These changes in turn appear to depend upon a grant of DM&E's terminal trackage rights relief and the effective implementation of those rights once granted. Owatonna observes that anticipated operational changes will come as part of a \$3 million rehabilitation project that will improve the condition of the Austin-Owatonna segment of ICE's Owatonna-Mason City line, and increase track speeds on this line (which are currently limited to 10 miles per hour) to 25 miles per hour. See, p. 9 of Operating Plan at p. 47 of control application.]

Although not entirely clear from the DM&E/ICE control application, it appears unlikely that ICE would undertake any such track improvements should the Board deny DM&E's trackage rights relief. If so, then Owatonna would lose the benefits accruing to the community from improved rail physical plant on ICE and DM&E, including better and safer railroad track conditions, increased train speeds through town, and faster transit times at grade crossings.

Finally, Owatonna recognizes that a grant of DM&E's terminal trackage rights request will result in more efficient

operations over the commonly controlled DM&E/ICE systems. These two rail systems will better prosper if such operating efficiencies are achieved, and they will be in a better financial position to ensure that the rail physical plant in Owatonna is maintained to the highest safety standards possible.

V.
CONCLUSION

Accordingly, Owatonna urges the Board to approve promptly DM&E's application for terminal trackage rights.

Respectfully submitted,



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(507) 451-1173

Dated: November 14, 2002

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that the foregoing Application For Terminal Trackage Rights was served this 14th day of November, 2002, by mailing true copies thereof, postage prepaid to the following persons at the addresses listed below:

Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

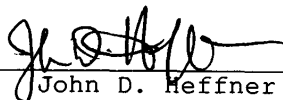
Secretary of the United States
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All parties on the Service List


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November 12, 2002

BY HAND

Hon. Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RE: Docket No. AB-596, New York City Economic Development Corporation - Adverse Abandonment - New York Cross Harbor Railroad, Inc.

Dear Secretary Williams:

I am writing on behalf of the New York Cross Harbor Railroad ("NYCH") in connection with the letter filed on October 21, 2002, in the above-captioned proceeding by counsel for the New York City Economic Development Corporation ("NYCEDC"). NYCEDC improperly suggests that NYCH has been dilatory in its efforts to reach an agreement with NYCEDC, CP Rail, and the New York & Atlantic Railroad Company ("NY&A") for NYCH's use of the 65th Street Yard facility. NYCEDC asks the Board to promptly issue a ruling authorizing this adverse abandonment.

The Board should recognize NYCEDC's request for what it is: an effort to involve the Board in the ongoing negotiations over the use of this property. NYCH asks the Board to refrain from taking any action for 60 days in order to give the parties sufficient opportunity to resolve their problems without regulatory interference. Failing that, NYCH requests that the Board assign this matter for mediation by a neutral party.

Hon. Vernon A. Williams
November 12, 2002
Page two

NYCH wants the Board to know that it has not been the one delaying any discussions or negotiations. Immediately after NYCEDC agreed to file a letter with the Board holding these proceedings in abeyance, it sought a meeting with NYCEDC, CP Rail (which holds the rights to operate NYCEDC's 65th Street Yard and float facilities), and NY&A (which operates the facility for CP Rail). The City agreed to meet but only if the Federal Railroad Administration ("FRA") would convene a meeting under sec. 403 of the Railroad Revitalization and Regulatory Reform Act (because of NYCEDC's perception that such a meeting would raise anti-competitive issues for which antitrust immunity would be necessary). NYCEDC asked NYCH to contact the FRA to institute a meeting and, as the attached letter shows, NYCH promptly undertook to do that. Ultimately, FRA advised that this matter did not require any participation by the FRA. Then, after numerous attempts to schedule a meeting at a mutually acceptable time, date, and place, a meeting took place at NYCEDC's offices on May 30, 2002. NYCEDC, NYCH, and NY&A officials and counsel attended the meeting. CP Rail could not attend.

At that meeting, NYCH's then President (and current board member) Ron Bridges informed the meeting participants that NYCH had decided that it would not oppose NYCEDC's application and would terminate local service in Brooklyn provided that it could continue to interchange traffic with NY&A in Brooklyn and could use 65th Street Yard for that purpose. NYCH reminded NYCEDC of its statement in these proceedings that it would make 65th Street Yard available to NYCH. See, discussion in the second paragraph of the August 22, 2002, letter from NYCEDC counsel Charles Spitulnik to the undersigned. NYCH repeatedly asked for NYCEDC to provide an agreement. NYCEDC responded that NYCH should contact CP Rail and/or NY&A for an agreement. NYCH then contacted both CP Rail (officials Steve Lawrence and Dave Marsh) and NY&A (General Manager Fred Krebs) for an agreement. They replied that the 65th Street Yard operating agreement between NYCEDC and CP Rail gave NYCH the right to serve 65th Street Yard for the purpose of interchange and that NYCH need only finalize the arrangements with NYCEDC. NYCH's counsel understands that at a meeting held on around September 16, 2002, NY&A's Bruce Lieberman even advised

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November 12, 2002
Page three

NYCEDC's Alice Cheng that all three railroads, NYCH, NY&A, and CP Rail, have an agreement on the operation of 65th Street yard including the float operations and all that is lacking is NYCEDC's willingness to allow NYCH to use the float bridges. Ms. Cheng had no response.

At that point CP Rail agreed to prepare an agreement to define the actual interchange of railcars and specifying the liability regarding the transfer of freight between the NYCH and NY&A. CP Rail undertook to prepare this document and assigned the job of drafting it to its outside counsel, Leonard, Street and Dienard. However, CP Rail's counsel, Barry McGrath, advised the undersigned counsel that a finished agreement would take a couple of weeks to prepare in view of the need for counsel to obtain information from the operating department and have the appropriate personnel review the final draft. As soon as CP Rail presents NYCH with a signature ready agreement and it signs an interchange agreement with NY&A, NYCH must then reach financial terms with NYCEDC as well for the use of its property. It is for this reason that NYCH needs the additional time.

Finally, I must take issue with NYCEDC for its continuing diatribe that NYCH is financially irresponsible for its alleged failure to pay the monthly \$2,200 franchise fee. NYCH has diligently paid this fee and is current with all money due. NYCH would be happy to furnish copies of the cancelled checks if so requested.

NYCH hopes to resolve its differences with NYCEDC very shortly and has been attempting to do so for several months. Requested meetings and inquiries as to the status and urging expediency in resolving this matter have been ignored. On October 23, 2002 NYCH encountered mechanical problems which prohibited it from floating railcars for several days. NYCH having reached an interim agreement with NY&A and CP, asked the NYEDC for an emergency means to use the float bridges at 65th street to facilitate rail service between New Jersey and New York and between the NYCH and NY&A. Now, over two weeks later, NYCEDC still has not come up with permission to use the new float bridges on a temporary basis.

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November 12, 2002
Page four

We therefore ask the Board continue to hold this proceeding in abeyance for another 60 days in order to allow negotiations to proceed. Failing that, NYCH requests that the Board assign this matter for mediation by a neutral party.

Sincerely yours,



John D. Heffner

Enclosures

cc: David Konschnik, Esq.
All parties
Barry McGrath, Esq.
Mr. Ronald Bridges
Mr. Wayne Eastman

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November 13, 2002

BY FAX AND MAIL

Hon. Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RE: Docket No. AB-596, New York City Economic Development Corporation - Adverse Abandonment - New York Cross Harbor Railroad, Inc.

Dear Secretary Williams:

I am writing on behalf of the New York Cross Harbor Railroad ("NYCH") in connection with the above-captioned proceeding to clarify a statement made in a letter filed with the Board yesterday. NYCH does not want a statement made on page three of its letter to be misconstrued.

There NYCH stated that it had reached what it termed an "interim agreement with NY&A and CP..." That agreement referred to an informal emergency understanding made between NYCH personnel and operating personnel of NY&A and CP Rail to permit NYCH to use on a temporary basis the 65th Street car float facilities to move traffic between Brooklyn and New Jersey. NYCH's own float bridge facility at 51st Street was flooded and inoperable. NYCH secured the consent of NY&A and CP Rail to make their facilities available for its needs on an emergency basis in order to be able to move traffic while it repaired its own facilities. However, NYCH was still unable to use that facility absent NYCEDC's consent.

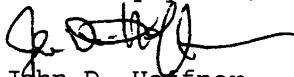
Hon. Vernon A. Williams
November 13, 2002
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The emergency has now past and NYCH does not mean to imply that the above tentative understanding constituted any agreement without NYCEDC's agreement and with the details of NYCH temporary use left unresolved.

NYCH appreciates the opportunity to clarify this statement.

I am submitting an original and 10 copies of this letter by first class mail as the official filing.

Sincerely yours,



John D. Heffner

cc: David Konschnik, Esq. (by fax)
Charles Spitulnik (by fax)
Thomas A. McFarland (by mail)
Barry McGrath, Esq. (by fax)
Mr. Ronald Bridges
Mr. Wayne Eastman