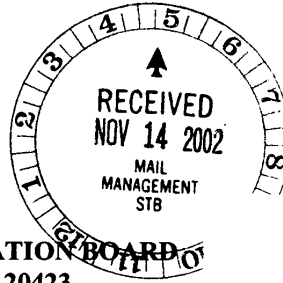


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AECC-1

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

STB Finance Docket No. 34178

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

COMMENTS OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION

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November 14, 2002

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423



STB Finance Docket No. 34178

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

COMMENTS OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION

Arkansas Electric Cooperative Corporation ("AECC") respectfully submits its Comments regarding the application of Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. (hereinafter collectively "DM&E") to exercise control over Iowa, Chicago & Eastern Railroad Corporation ("IC&E"). These Comments are submitted in accordance with Decision No. 2 issued in this proceeding.¹

I. INTRODUCTION

AECC is a membership based generation and transmission cooperative which provides wholesale electric power to electric cooperatives, which in turn serve approximately 400,000 customers located in each of the seventy-five counties in Arkansas. In order to serve its member distribution cooperatives, AECC has entered into arrangements with other utilities within the state to share generation and transmission facilities. The coal-fired generation facilities in which AECC holds an interest, consisting of the White Bluff plant at Redfield, the Independence plant at Newark, and the Flint Creek plant at Gentry, utilize in excess of fourteen million tons annually

¹ Decision No. 2, served Sept. 26, 2002.

of Powder River Basin ("PRB") coal. AECC's share of this PRB coal is approximately 5,000,000 tons.

AECC assiduously has supported the development and maintenance of competitive rail service. To this end, AECC has supported the construction application of the Dakota, Minnesota & Eastern Railroad ("DM&E") for a new rail line into the PRB. AECC was a member of the Committee to Improve American Coal Transportation ("IMPACT"), which filed extensive comments in the Board's review of its rail merger procedures (Ex Parte 582 (Sub-No. 1)). AECC also participated in the UP/SP oversight proceeding. AECC's interest in the acquisition of IC&E by DM&E arises out of its overriding interest in assuring competitive rail options for the movement of PRB coal.

Joining and supporting AECC in these Comments are Dominion Resources, Entergy and Midwest Generation. These utilities are situated similarly to AECC and support competitive movement of PRB coal. Statements evidencing the support of these utilities for the position expressed by AECC herein are associated with these Comments.

The proceeding before the Board is the second step in a two-step transaction entailing the acquisition of the rail lines of I&M Rail Link, LLC ("IMRL") by DM&E. The first step was reflected in Finance Docket No. 34177, in which IC&E acquired the rail lines of IMRL through the Board's exemption process. Notwithstanding controversies regarding that transaction, the Board allowed the exemption to occur;² and the transaction was consummated on July 30, 2002.³ In this second step of the transaction, DM&E seeks to acquire *de jure* control over the line of IMRL.

² *Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC*, Finance Doc. No. 34177, Decision served July 22, 2002 ("IC&E/IMRL").

II. COMMENTS

While essentially end-to-end in nature, the combination of DM&E and IC&E has the potential to generate anti-competitive effects. This potential flows from (i) the extension of DM&E into the Powder River Basin ("PRB") in Wyoming, to serve its rich coal fields, as recently authorized by the Board,⁴ and (ii) control by DM&E over the rail lines of the former IMRL and the consequential loss of IMRL as a "neutral connection" for a potential alternative PRB rail carrier, particularly including an alternative carrier designed to serve the central and southeastern states which lie south of DM&E's intended service territory. In addition, the IMRL transaction seems likely to imperil the ability of DM&E to pursue construction of its authorized PRB line extension. That would impact not only DM&E, but also the utilities and their customers who will lose the benefits that would flow, both directly and indirectly, from the DM&E PRB project.

The basis for AECC's concern is set forth in the associated Verified Statement of Michael A. Nelson. Mr. Nelson details the risks to the DM&E PRB extension arising out of the acquisition of the IMRL lines,⁵ and DM&E's hostile attitude toward offering the IMRL lines for neutral connections even for traffic that would not be competitive with that of DM&E.⁶ Such an attitude is in conflict with the Board's announced policy that consolidating carriers should maintain open gateways and neutral connections.⁷ While the Board's policy pronouncement

³ See Letter from Fletcher & Sippel LLC to Mr. Vernon A. Williams, Secretary, Surface Transportation Board, Aug. 6, 2002.

⁴ *Dakota, Minnesota & Eastern Railroad Corporation Construction Into the Powder River Basin*, STB Fin. Doc. No. 33407 (served Jan. 30, 2002).

⁵ See Verified Statement at § 6.

⁶ *Id.* at § 8.

⁷ See *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No.1) at 25-26 ("Numerous parties ... stress that gateways must be kept open not just physically but economically. . . . We agree . . ." (June 11, 2001)).

occurred in the context of consolidations of Class I railroads, competitive considerations also apply in consolidations involving Class II carriers.⁸

AECC raised its concerns about the potential foreclosure effects of a DM&E/IMRL combination in the IC&E/IMRL consolidation proceeding.⁹ In allowing that exemption to go forward, the Board stated that it “will handle AECC’s filing in a future decision in this proceeding.”¹⁰ No decision has been rendered on the petitions to revoke the IC&E/IMRL exemption; and in any event, the acquisition of the IMRL lines has been consummated. AECC’s intention is not to stop the transaction from occurring, but rather to assure that the combination of DM&E and IMRL (via IC&E) does not foreclose new coal routing opportunities in the future. Accordingly, this proceeding presents an appropriate—and indeed necessary-- time and place to address AECC’s concerns.

As set forth in Mr. Nelson’s Verified Statement, the Board should condition any approval of DM&E control over IC&E upon:

- (i) DM&E affording access to the former lines of IMRL for any new rail carrier serving the PRB on cost-based (including return on investment), non-discriminatory terms and conditions;
- (ii) DM&E providing updated information on financing its PRB construction project;
- (iii) DM&E identifying and addressing remedial measures for the cross-over effects between the acquisition of the IMRL and the PRB extension, including the ability to reach

⁸ See 49 U.S.C. § 11324 (d).

⁹ See Petition to Revoke Exemption and Comments of Arkansas Electric Cooperative Corporation, Finance Docket No. 34177 (July 18, 2002).

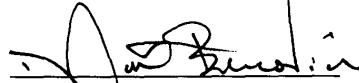
¹⁰ IC&E/IMRL at 3-4, n. 6.

Chicago in an efficient manner that will serve unit train coal as well as merchandise traffic (as identified in Section 6 of Mr. Nelson's Verified Statement), and

(iv) Requiring DM&E to maintain neutral connections at Kansas City for PRB coal with any new railroad serving the PRB which may connect with the former IMRL lines at that location.

WHEREFORE, THE PREMISES CONSIDERED, Arkansas Electric Cooperative Corporation, for itself and those supporting these Comments, respectfully requests the Surface Transportation Board to condition any approval of the DM&E acquisition of control over IC&E as discussed in these Comments.

Respectfully Submitted,



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Attorney for Arkansas Electric
Cooperative Corporation

November 14, 2002

Dominion Resources Services, Inc.
5000 Dominion Boulevard, Glen Allen, VA 23060



November 14, 2002

To whom it may concern:

Dominion Resources, Inc ("Dominion") is an investor owned utility headquartered in Richmond, Virginia. Dominion has more than 15,000 employees serving 3.9 million electric and gas customers in five states and an electric generation portfolio of over 24,000 megawatts. Two of our coal fired plants located in Illinois, that were formerly owned by Commonwealth Edison, consume over 5 million tons of PRB coal annually.

Dominion supports the efforts of Arkansas Electric Cooperative in Surface Transportation Board ("Board") Finance Docket 34178 to preserve the rail competition that could be provided by an independent IMRL. Dominion urges the Board to ensure that control of IMRL by DME does not foreclose or interfere with new transportation options that IMRL could prospectively provide in cooperation with new PRB access (other than DME) oriented to serve the large market for PRB coals in the central U.S.

Sincerely,

A handwritten signature in cursive script that reads "James O. Mawyer".

James O. Mawyer
Transportation Planning Specialist
Dominion Energy Clearinghouse
Market Origination - Coal
5000 Dominion Boulevard
Glen Allen, Virginia 23060

STB 34178



Entergy Services, Inc.
Parkwood II Building, Suite 300
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The Woodlands, TX 77380
Tel 281 297 3521

Jeffrey G. Herndon, PE
Manager
Coal Supply

November 14, 2002

To Whom It May Concern:

Entergy Corporation is a major integrated energy company engaged in power production, distribution operations and related diversified services. Entergy has more than 15,000 employees, and owns, manages or invests in power plants generating more than 30,000 megawatts of electricity domestically and internationally. Entergy delivers electricity to about 2.6 million customers in portions of Arkansas, Louisiana, Mississippi and Texas. In this region, Entergy holds interests in four major coal-fired generating stations, and owns over 2,300 MW of coal-fired generation capacity. Virtually all of the coal burned at these plants originates in the PRB.

Entergy supports the efforts of AECC in STB Finance Docket 34178 to preserve the rail competition that could be provided by an independent IMRL. Entergy urges the Board to ensure that control of IMRL by DME does not foreclose or interfere with new transportation options that IMRL could prospectively provide in cooperation with a new PRB access (other than DME) oriented to serve the large market in the central U.S.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeffrey G. Herndon".

Nov-14-02 01:54pm From-MIDWEST GENERATION

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**MIDWEST
GENERATION EME, LLC**

An EDISON INTERNATIONAL Company

R. Michael Bales
Director, Fuels

November 14, 2002

To Whom It May Concern:

Midwest Generation is a subsidiary of Edison Mission Energy. It is an independent power producer, and owns or manages over 5,645 megawatts of generation capacity. It owns and operates six major coal-fired generation stations in northern and central Illinois that were formerly owned by Commonwealth Edison, and is a major consumer of PRB coal.

Midwest Generation supports the efforts of AECC in STB Finance Docket 34178 to preserve the rail competition that could be provided by an independent IMRL. Midwest Generation urges the Board to ensure that control of IMRL by DME does not foreclose or interfere with new transportation options that IMRL could prospectively provide in cooperation with a new PRB access (other than DME) oriented to serve the large market in the central U.S.

Sincerely,

R. Michael Bales

One Financial Place
440 South LaSalle Street
Suite 3500
Chicago, IL 60605
Tel: 312 583 6041

**VERIFIED STATEMENT
OF
MICHAEL A. NELSON**

1. Qualifications

My name is Michael A. Nelson. I am an independent transportation systems analyst with over 20 years of experience advising clients on rail transportation issues. My office is in North Adams, Massachusetts. Prior to February 1984, I was a Senior Research Associate at Charles River Associates, an economic consulting firm in Boston, Massachusetts.

I have directed or participated in numerous consulting assignments and research projects in the general field of transportation. My work typically involves developing and applying methodologies based on operations research, microeconomics, statistics and/or econometrics to solve specialized analytical problems.

Of particular relevance to this statement, I provided testimony before this Board regarding the proposal of the Dakota, Minnesota & Eastern Railroad (DME) to construct a third rail access to the Powder River Basin (PRB) in Finance Docket No. 33407, and also provided testimony in the ICE/IMRL case (Finance Docket No. 34177). I have assisted 10 major electric utilities and power producers in the analysis of rail transportation options for movement of PRB coal to over 30 large coal-fired generating stations. This work has included consideration of existing transportation options, as well as new options that prospectively could be created using route alignments other than that proposed by DME. In last year's UP/SP merger oversight proceedings, I provided testimony before this Board on behalf of the Cowboy Railroad Development Company (CRDC), a group of utilities pursuing development of a new PRB outlet via Kansas City. In addition, I have performed competitive and/or statistical analyses as a witness in several rail merger and acquisition cases. These cases include Finance Docket No. 31505, in which Rio Grande Industries acquired authority to purchase (from Soo) the Kansas City to Chicago line that now is part of IMRL. I have also consulted to a number of shippers, railroads (U.S., Canadian and Mexican) and governmental bodies on various other railroad issues. This work has provided me with perspective on the role of IMRL in domestic coal transportation, and the potential effects of the proposed transaction.

Outside of my rail experience, I have provided extensive testimony regarding methods for analyzing the cost structure of the U.S. Postal Service in five dockets before the Postal Rate Commission. In addition, I have assisted in the preparation of numerous other verified statements presented before various regulatory and legal bodies, and authored many technical reports and articles in transportation journals.

I received my bachelor's degree from the Massachusetts Institute of Technology in 1977. In 1978, I received two master's degrees from MIT, one in Civil Engineering (Transportation Systems) and one from the Alfred P. Sloan School of Management, with concentrations in economics, operations research, transportation systems analysis and public sector management. My curriculum vitae is attached as Exhibit A.

2. Subjects Covered in This Statement

I have been asked by Arkansas Electric Cooperative Corporation (AECC) to analyze the competitive issues associated with the proposed control of ICE by DME, and to clarify AECC's interests in this area.¹ This testimony expands upon and incorporates in part the testimony I provided in the ICE/IMRL

¹ On July 19, 2002, counsel for ICE submitted a letter to the STB seeking to discredit and undermine AECC's filing in Finance Docket No. 34177. That letter contained several specific errors and misrepresentations regarding AECC and its interests. My current testimony seeks to ensure that the Board's assessments are based on accurate information, and not misled – to quote from ICE's counsel – by applicants' "self-interested posturing".

case, which identified and discussed issues related to the role of IMRL in U. S. coal transportation, and the issues associated with the eventual control of IMRL by DME. In my current testimony, I clarify the public interest considerations that substantiate AECC's position, and the need for very careful Board consideration of the issues raised by the proposed transaction.

This testimony addresses the following specific topics:

- AECC's role as a significant coal shipper, and its lengthy history of involvement in pro-competitive initiatives involving coal transportation;
- Prospective benefits of the DME project to AECC and similarly-situated shippers;
- Increasing uncertainty regarding the financial viability of the DME coal project;
- Detrimental effects of the proposed transaction on the DME coal project;
- PRB access options other than DME, and their relationship to IMRL;
- DME's anticompetitive posture; and,
- Recommended steps to ensure that the original competitive role of IMRL is preserved and that a complete record is available upon which to base the assessment of the proposed transaction.

Each of these is addressed below.

3. AECC and its Pro-competitive History

AECC has a substantial ownership interest in each of the three major coal-fired generating stations located in Arkansas, including the Independence plant at Newark, the White Bluff plant at Redfield and the Flint Creek plant at Gentry. These plants burn a combined total of approximately 14.5 million tons of PRB coal annually, of which the AECC share is approximately 5 million tons. While other utilities act as representatives of AECC in the procurement of coal transportation, AECC is financially responsible for the coal and coal transportation services that it consumes. AECC's annual payments for PRB coal transportation typically are in the range of \$60-75 million. Put another way, the payments made by AECC for PRB coal transportation are equivalent in magnitude to all of the payments currently made to DME by all of its shippers combined.

AECC has long been among the most active utilities in support of competition in coal transportation, and has consistently sought to improve available coal transportation options. Long before DME's proposed PRB access project came to light, AECC was one of the initial supporters of the ETSI coal slurry pipeline concept, and is one of the principal beneficiaries of the major award of antitrust damages in that case. In the area of rail regulation, AECC has individually sponsored filings before this Board in UP/SP merger oversight and the ICE/IMRL case. It co-sponsored the filing by the Committee to Improve American Coal Transportation (IMPACT) in Ex Parte 582 (Sub-No. 1), and is a member of CURE. In the area of a new PRB access, AECC has individually sponsored a significant amount of research and development, and is also a member of the CRDC group.

As a result of these activities, AECC has considerable familiarity with competitive issues associated with rail movement of PRB coal. Its primary incentive in this area is to support the preservation of existing competitive options and the development of improved options where feasible. In my view, this type of support for competition is an integral part of the reliance on competition as a substitute for regulation envisioned under the Staggers Act.

4. Benefits of DME Project to AECC and Similarly-Situated Shippers

While applicants apparently now wish to marginalize AECC, DME's own past actions, as well as the past actions of other similarly-situated utilities, demonstrate that AECC has a fully legitimate interest in the DME acquisition of the former IMRL assets, at least insofar as that acquisition relates to the DME coal project. In its original filing in the construction case (STB Finance Docket No. 33407), DME incorporated numerous statements of support that it had solicited from individual utilities. While some of those utilities would receive improved transportation options if the DME project were to be constructed, many would not.

For example, the coal-fired plant operated by the Ames Municipal Electric System² is located in the middle of Iowa. It is local to UP, far removed from potential DME connections and could not be effectively reached via DME. Similarly, the Joppa plant owned by Electric Energy, Inc.³ is located in the southernmost part of Illinois, a few miles west of Metropolis, IL. The Board has already recognized that DME routes to this area would be highly circuitous (and thus competitively ineffective) in comparison with UP and BNSF routes that bypass Chicago.⁴ This finding also applies to AEP⁵, whose Cook coal terminal (used to move PRB coal to AEP's Ohio River plants) is located at Metropolis.

DME sought and obtained support from such utilities on the explicit premise that its project would expand rail capacity from the PRB, and thereby produce indirect benefits even for utilities that would not be able to make effective use of DME routings. Such utilities believed that expanded capacity would be at least marginally beneficial to overall system fluidity, leading to decreased cycle times and increased reliability. This, in turn, would lead to improved efficiency in the use of shipper-owned cars, and reduced fleet size and coal stockpile requirements. In this way, DME itself has relied on the premise that indirect benefits would likely to accrue to utilities, such as AECC, that are not in the DME market area.

The possible significance of indirect benefits was reinforced by the participation of other utilities in the construction case. For example, Kansas City Power & Light and the Lower Colorado River Authority (TX) joined a group of utilities in sponsoring a reply to project opponents.⁶ When perceived indirect benefits motivated such utilities to actively support the proposed project, DME made no attempt to claim those utilities had no valid interests.

Applicants' attempts in Finance Docket No. 34177 to discredit AECC are particularly incongruous in light of the fact that DME on multiple occasions has sought and received statements of support for its coal project from AECC.⁷ As shown by the examples contained in Exhibit B, DME has repeatedly contacted AECC to enlist its support. Each time, AECC has supplied that support, making specific reference to capacity-related benefits. AECC thus has an interest – fostered and relied upon by DME itself – in actions DME may take related to its coal project.

5. Growing Uncertainty Regarding the Viability of the DME Coal Project

Even without the proposed IMRL transaction, a number of developments since the Board's initial approval have raised the level of uncertainty about the financial viability of the DME coal project. These include the following:

- Competitive rate level. In the DME construction case, DME (and the Board) assumed that UP and BNSF would have variable costs of about 7.9-8.0 mills per ton-mile, and therefore would not compete below a rate level of 8.25mills/ton-mile. However, in its decision served May 14, 2001 in NOR 42051, the STB determined that as of early 2000, the variable cost floor for UP's movements of PRB coal to

² See Application for Construction and Operation Authority, Finance Docket No. 33407 (February 20, 1998) [hereafter, "Construction Application"], Volume 2 at 45.

³ Construction Application, Volume 2 at 73.

⁴ In its discussion of the "Ohio River Market" beginning on page 28 of the Decision served December 10, 1998 in Finance Docket No. 33407, the Board concluded that "both BNSF and UP have shorter routes to the Ohio River market than would DM&E". Footnote 59 in that document quantifies DME's 220-mile disadvantage in comparison with UP's route to the Joppa plant.

⁵ Construction Application, Volume 2 at 43.

⁶ Finance Docket No. 33407, "Reply Evidence and Argument in Support of the Transportation Aspects of the Application by the Western Coal Traffic League et al.", dated October 5, 1998.

⁷ This also nullifies applicants' attempt to portray AECC's position as an attempt to "eliminate competition." AECC (properly) found the original filing in Finance Docket No. 34177 to be false and misleading. It does not oppose the proposed merger, provided that suitable conditions are imposed to preserve the pre-merger competitive capabilities of IMRL. See below.

the Edgewater⁸ generating station in Sheboygan, WI was \$7.25/ton from the Antelope mine, and \$7.59/ton from Black Thunder. Based on the mileage calculator on the UP website⁹, this equates to a variable cost of 5.93 mills per ton-mile for the Antelope move, and 6.09 mills per ton-mile for Black Thunder. These costs are approximately 2 mills below the UP/BNSF cost level of 7.9-8.0 mills per ton-mile that DME (and the Board) relied on in establishing the assumed "competitive" rate level of 8.25 mills per ton-mile. Because variable costs and competitive rates are lower than had been assumed, DME's revenues would be significantly lower than originally projected.

- **Service differential.** DME's revenue projections also incorporated a rate premium based on DME's purported cycle time advantage. This alleged advantage rested upon the assumption that BNSF and UP coal trains average 15 mph. The railroad performance monitoring program established by the Board in the wake of the UP service meltdown reveals that UP and BNSF coal trains routinely average 20-24 mph, which equates to cycle times that are equivalent to (and sometimes better than) those projected for DME. Again, the new information downgrades the level of likely DME revenues.
- **Volume levels.** The volume projections relied on by DME (and the Board), which entail an initial volume of 40 million tons annually increasing to 100 million tons, have been publicly repudiated by DME's own financial advisors. DME financial consultant Schroder has concluded that those numbers are overly optimistic, suggesting a maximum volume level of approximately 70 million tons.¹⁰ More recently, as reported in the trade press¹¹, DME investment advisor Morgan Stanley expects the traffic volume would be more like 25 million tons annually. Again, the new information downgrades the level of likely DME revenues.

While literally dozens of utilities have embraced the concept of the DME project and its promised benefits, the project has apparently never had a viable financing plan, and its financial prospects have only dimmed with the passage of time. A growing body of evidence now calls into question the financial viability of the DME proposal, even if DME did not attempt to acquire the former IMRL.

6. Undocumented "Cross-over" Effects of Proposed Transaction on DME Project

The proposal by DME to acquire the former IMRL has raised several issues that further call into question the viability of the coal project. As disclosed and discussed in the initial filing by Ag Processing (AGP) in Finance Docket No. 34177, the planned acquisition of IMRL by ICE triggered a response by Canadian Pacific that threatened to undercut IMRL's ability to reach various markets and interchange locations. Subsequently, ICE has reported that it has reached agreements with CCP (CN) and Iowa Interstate to provide access to Chicago for its northwestern and Kansas City lines, respectively. However, even if ICE has taken steps to address connectivity issues at Chicago, the proposed transaction raises several issues with respect to DME's PRB access project that do not appear to have been addressed, including the following:

A. Capital Costs and Financial Fitness

DME's original plan for reaching Chicago did not include the costs of any capital improvements needed to enable IMRL to support the type of heavy-haul operation contemplated in the DME project. Indeed, DME's coal project market study, upon which the Board relied in granting its approval, did not even include IMRL in its list of feasible options for reaching Chicago.¹² The Board therefore cannot determine whether the additional costs associated with DME's planned reliance on IMRL will jeopardize the financial feasibility of the entire coal project.

⁸ Included in the Verified Statement of Charles E. Mann, contained in Volume 2 of DME's application (dated February 20, 1998) in Finance Docket No. 33407 [hereafter, "VS Mann"], Table 2 at 23.

⁹ This shows that the UP mileage from the Antelope mine to Sheboygan is 1223 miles, and from Black Thunder it is 1247 miles.

¹⁰ DME has posted this Schroder finding on its website, apparently embracing it.

¹¹ See Coal Week, 11/12/01.

¹² VS Mann at 26.

B. Market Impacts and Competitiveness

As the Board is well aware, the competitiveness of alternative routes for volume coal movements is highly dependent upon such factors as route mileage and cost differentials. Even if ICE has made alternative arrangements with CCP to reach Chicago, or if it eventually reaches a settlement that would enable it to use the original IMRL route, there is currently no way for the Board to determine whether the financial terms associated with its access to Chicago will support the financial and competitive performance of the DME project as originally planned.¹³

C. Access to Major Markets

In its opening comments in Finance Docket No. 34177, AGP identified Northfield, MN as one of the locations where interchange agreements between IMRL and CP were being terminated as a result of the ICE/IMRL transaction. While ICE's reply dismisses this loss due to the absence of current interchange at this point, it does not address the fact that such interchange would be a critical component of DME's ability to serve substantial portions of the core markets for its coal project. DME's market study specifically relies on the proposition that a DME-IMRL-CP route (via Northfield) will offer a large mileage advantage in comparison with the incumbent carriers for movements to and through Minneapolis/St. Paul.¹⁴ This mileage advantage, in turn, supports the premise that DME will capture over 60% of the "Upper Midwest Rail" market.¹⁵ Similarly, the DME market study relies in part on the availability of interchange between IMRL and WC at Minneapolis/St. Paul (via Northfield) to reach Wisconsin docks for service to the "Great Lakes" market,¹⁶ again supporting the premise of a DME market share of over 60%. These two markets alone account for almost 60% of DME's projected total tonnage. If this issue is not addressed, there can be no assurance that DME will be able to serve its core markets in the manner it, and the Board, has projected.

D. Alignment

To some extent, use of IMRL to reach Chicago calls into question the entire rationale for using the DME mainline to reach the PRB. More specifically, one of IMRL's lines extends west as far as Sheldon, IA, part of a former Milwaukee Road right-of-way that extends all the way to Rapid City. DME's planned new construction crosses this line in the vicinity of Creston, SD. From that point, using the former Milwaukee route to reach Charles City, IA (and thence to Chicago) would be approximately 70 miles shorter than the DME route (via Owatonna). The Board has not considered and does not have the information necessary to consider this (potentially more efficient and competitive) alternative alignment.

Overall, DME's new plan to use IMRL to reach Chicago creates the appearance of conflict with several aspects of its PRB project. Above and beyond the environmental issues that the Board has properly recognized, there are interactions between the IMRL acquisition and the coal project that DME has not disclosed. Until there is proper assessment of such "cross-over effects", the Board, AECC and other utilities have no way to determine whether the IMRL transaction comes at the hidden cost of delaying or eliminating the benefits of the DME coal project.

¹³ Ironically, ICE proposes to rely on haulage agreements with CCP and IAIS to ensure its ability to reach Chicago after demonstrating some of the operational and financial problems that can arise under such agreements. See page 4 of the Verified Statement of Robert Brownell in Finance Docket No. 34177, dated June 22, 2002, which discusses IMRL's experiences in providing haulage service (to UP).

¹⁴ For example, the DME-IMRL-CP route to the Xcel/Northern States Power High Bridge plant is estimated to be 223 miles shorter than the UP-CP route, while the DME-IMRL-WC (which assumes unfettered access by IMRL to Minneapolis/St. Paul) route to the Wisconsin Public Service Pulliam plant is estimated to be 220 miles shorter than the UP-WC route. See VS Mann at 20.

¹⁵ VS Mann, Table 4 at 32.

¹⁶ VS Mann at 26.

7. PRB Access Options Other Than DME

With mounting uncertainty regarding the viability of the DME project, and the large south-central destination area for PRB coal that would not receive new transportation options even if the DME project were constructed, a number of utilities have become increasingly interested in possible alternative means of establishing a new rail access to the PRB. My supplemental verified statement in the DME construction case observed that restoration of the former CNW "Cowboy Line" across northern Nebraska – CNW's original choice for creating its own access to the PRB – offers the potential for significant mileage reductions in comparison with existing UP and BNSF routes to the midwest and points south.¹⁷ Subsequently, the CRDC group, as described in its filing last year in UP/SP merger oversight, has developed information regarding prospective new routes to reach from the PRB to Kansas City, a major prospective outlet point.

Given the geographical distribution of actual and prospective PRB coal movements, an outlet at Kansas City is far more valuable for many utilities than any outlet that relies on the DME main line (with or without IMRL). The availability of neutral rail connections at Kansas City, such as IMRL, is therefore intrinsically of interest to the large group of utilities (such as AECC) that prospectively would benefit from the creation of a new Kansas City outlet.

A new PRB outlet via Kansas City could prospectively make productive use of the former IMRL Kansas City line for several specific types of flows:

- Movements to a number of large rail-served plants in eastern Iowa, for which such a routing could offer stronger transportation options than those that would result from the DME project;
- Movements to selected rail-served plants in Wisconsin and northeastern Iowa, for which such a routing could offer transportation options comparable to those that would result from the DME project;
- Movements to plants that can be effectively served via Mississippi River dock facilities; and,
- Movements to a number of large rail-served plants in northern/central Illinois and northern Indiana that could be reached through a connection to EJE at Joliet established via the same type of agreement with IAIS as ICE has established for other traffic moving northeastward on the Kansas City line.

Unfortunately, the process through which DME is acquiring IMRL threatens the availability of the IMRL connection at Kansas City. As documented in the initial filing by AGP, the availability of an IMRL connection at Kansas City has been explicitly threatened by CP. Absent further investigation, there appear to be no assurances that the merger entity will enjoy the degree of connectivity at Kansas City previously held by IMRL.

8. DME's Anticompetitive Posture

Compounding the threat to physical connectivity is the manner in which DME control would eliminate IMRL's previous neutrality with respect to any new PRB entrant other than DME. From the perspective of its own coal project, DME has no real use for the IMRL's ability to reach Kansas City. The DME route from the PRB to Kansas City (via Owatonna) would be on the order of 1350 miles, over 500 miles longer than existing UP and BNSF routes.

However, under DME control, it is evident that the former IMRL would tend not to cooperate with a new PRB entrant other than DME, even if DME's own coal project still lacked funding. Applicants' anticompetitive view of other new PRB access initiatives is readily apparent in the ICE letter response to AECC's filing in Finance Docket No. 34177. That letter contains a series of false assertions offered to mislead the STB into believing that that (a) AECC isn't really a shipper; (b) AECC has no valid interests in

¹⁷ Finance Docket No. 33407, Supplemental Verified Statement of Michael A. Nelson, contained in "Mid-States Coalition for Progress's Motion for Leave to File Supplemental Opposition Evidence", dated October 28, 1998, at 18-19.

the case; (c) AECC's interests rest solely in an "improbable" project,¹⁸ etc. The letter manifests applicants' willingness to use this Board and its processes to obstruct other parties who may have a chance to create a viable new PRB access.¹⁹

In part, this posture is an understandable but shortsighted consequence of DME's inability to finance its coal project.²⁰ It is understandable because DME has sunk substantial resources²¹ into its project so far, and apparently believes its best chance to realize a return on that investment can be achieved by preventing others from establishing a new PRB service. However, it is shortsighted because it overlooks the symbiosis that DME could achieve by cooperating with a new line that served large markets DME could not reach.²² At a minimum, for example, the two lines could hypothetically share much of the new mine access trackage – analogous to the way UP and BNSF share the Joint Line – reducing the capital burden DME would have to handle on its own to establish its proposed service.

Unfortunately, applicants have clearly demonstrated their intention to suppress other PRB access initiatives rather than to cooperate. However, the Board's grant of construction authority to DME did not include a patent on new PRB accesses. The Board should therefore ensure that the proposed transaction is conditioned so that future PRB entrants other than DME can make use of former IMRL assets under the types of (highly competitive) terms IMRL could and would have offered to attract new business.

9. Specific Actions to Preserve Competition and Provide a Complete Record

1. Order that former IMRL assets will be available (via trackage rights or other suitable means) to any viable new PRB access other than DME for specific movements on terms reflecting the former IMRL's willingness and ability to compete for incremental business.
2. Require a formal statement from applicants regarding the status of financing for their coal project.
3. Ensure that cross-over effects between the proposed transaction and the coal project, as discussed in Section 6 (above) are properly identified and documented.
4. Require proof that IMRL's connectivity at Kansas City is being preserved, and that the terms of its access to Kansas City, Chicago and other relevant points are not compromised in a manner that hinders competitiveness for volume coal movements.

In considering the propriety of imposing such conditions, the Board should retain sight of the fact that AECC, and the other utilities that join and support groups like CRDC, are the customers that make up much of the market for a potential new PRB access. The Board should ensure that DME's private interests do not override the public interest in preserving existing rail competition and fostering the development of new competitive options where feasible.

¹⁸ Having had the opportunity to analyze the financial merits of the DME project as well as several of the possible alternatives, I would characterize the DME project as the improbable one.

¹⁹ Applicants' willingness to do so after soliciting and making use of support from that same party is particularly troubling, and could reasonably lead the Board to question the credibility of DME's representations.

²⁰ See applicants' responses (DME-8) to AECC Discovery Request No. 3, attached as Exhibit C.

²¹ On the order of \$40 million, according to a quote from Kurt Feaster, vice president and chief financial officer of DME, that appears in the August 14, 2002 edition of the Rapid City Journal.

²² On multiple occasions I have developed and discussed with utility parties different concepts through which a new access via Kansas City could cooperate with DME in a mutually beneficial manner.

I certify under penalty of perjury the foregoing to be true and correct, based on my knowledge and information.


Michael A. Nelson

November 14, 2002

Exhibit A – Nelson Curriculum Vitae

MICHAEL A. NELSON

149 Corinth Street
North Adams, MA 01247

EDUCATION

M.S. Civil Engineering, Massachusetts Institute of Technology

M.S. Management, Alfred P. Sloan School of Management, Massachusetts Institute of Technology

B.S. Management, Massachusetts Institute of Technology

Concentrations in transportation systems, economics and operations research.

EXPERIENCE

Mr. Nelson is an independent transportation systems analyst. He provides management and economic consulting and litigation support. His work typically involves developing and applying methodologies based on operations research, microeconomics, statistics and/or econometrics to solve specialized analytical problems, as illustrated by the following examples of his experience:

A. Railroad

On behalf of Arkansas Electric Cooperative Corporation (AECC), Mr. Nelson submitted a statement to the Surface Transportation Board (STB) in Finance Docket No. 34177. This statement addressed the current and potential competitive roles of I&M Rail Link (IMRL) in domestic coal transportation, and the prospective impacts associated with control of IMRL by the Dakota, Minnesota and Eastern Railroad (DM&E).

On behalf of the Town of Easton (MA), Mr. Nelson identified and corrected a series of substantial errors and inconsistencies in the Final Environmental Impact Report for the proposal by the Massachusetts Bay Transportation Authority (MBTA) to provide new commuter rail service to

New Bedford and Fall River. This extended Mr. Nelson's previous analyses, which had identified and documented a series of significant errors in the development of the MBTA's conclusions regarding the alleged infeasibility of a key alternative route. Mr. Nelson also identified and made preliminary assessments of other alignment and operational possibilities that had been inappropriately omitted from consideration.

For the Mexican railroad TFM, Mr. Nelson provided guidance regarding the identification of different types of competitive and efficiency issues raised by the proposed merger of the other two principal Mexican railroads, Ferromex and Ferrosur. The merger was denied by both the national transportation and antitrust authorities.

For the Cowboy Railroad Development Company (CRDC), a group of major electric utilities, Mr. Nelson directed the identification and evaluation of alternative routes and strategies for creating a new railroad access across Nebraska to coal mines in the Powder River Basin (PRB) area of Wyoming.

As part of the work for CRDC, Mr. Nelson analyzed the degree to which the merger of the Union Pacific (UP) and Southern Pacific (SP) railroads foreclosed competitive routes that could be offered by a new PRB rail carrier. The results of this analysis were submitted to the STB in Finance Docket 32760 (Sub-No.21), which provided oversight of the UP/SP merger and its impacts.

For a major electric utility, Mr. Nelson performed a detailed analysis of rail transportation options for PRB coal movements to the Sunflower Electric generating station at Holcomb, KS. The results of this analysis were used by the utility in assessing the merits of investing in a planned expansion of that facility.

For an assortment of major electric utilities and power producers, Mr. Nelson has performed detailed analyses of rail transportation options, including build-outs, for a total of over 30 large coal-fired generating stations. The results of these analyses have served as the basis for management decisions that are projected to save many millions of dollars in fuel costs.

On behalf of AECC, Mr. Nelson submitted a statement to the STB in Finance Docket 32760 (Sub-No.21). This statement addressed competitive issues resulting from the UP/SP railroad merger, with a particular focus on the effect of trackage rights compensation levels.

On behalf of the Committee to Improve American Coal Transportation (IMPACT), Mr. Nelson submitted a statement to the STB in Ex Parte 582 (Sub-No. 1). This statement addressed a wide range of issues related to rail merger policy.

For a major Class 1 railroad, Mr. Nelson assisted senior management staff in the design and evaluation of a potential construction project.

For the Mid-States Coalition for Progress (a group of landowners), Mr. Nelson analyzed the proposal by DME to construct an extension of its line into the PRB. Mr. Nelson developed estimates of DME's volumes and unit revenue levels on the basis of a plant-by-plant analysis, taking into account likely future market conditions and the competitive capabilities of the UP and Burlington Northern Santa Fe (BNSF). Mr. Nelson's analysis was filed at the STB (Finance Docket No. 33407).

For the National Railroad Passenger Corporation (AMTRAK), Mr. Nelson investigated issues related to the definition of "express" traffic that AMTRAK is permitted to carry (STB Finance Docket No. 33469). Mr. Nelson analyzed relevant data from the STB Rail Waybill Sample and the Census of Transportation, and investigated the factors affecting use of Amtrak by the U.S. Postal Service. The definition of "express" eventually adopted by the STB was consistent with Mr. Nelson's findings.

For the Moffat Tunnel Commission (Colorado), Mr. Nelson analyzed the factors affecting future railroad use of that tunnel, which traverses the Continental Divide and serves the principal Colorado coal fields on the UP line that formerly was the Denver and Rio Grande Western Railroad (DRGW) main line west of Denver. The tunnel had historically been owned by the Commission (and leased to the railroad), but under sunset legislation was being offered for public sale. Mr. Nelson's analysis included study of the utilization of Colorado/Utah vs. PRB coals in

the context of the central corridor conditions imposed by the STB in the UP/SP merger.

For Canadian Pacific Railway (CP), Mr. Nelson performed detailed studies of competitive and traffic issues associated with the acquisition and break-up of Conrail by Norfolk Southern and CSX (Finance Docket No. 33388). These studies included analyses of competitive issues in the area served by the former Delaware and Hudson (a CP subsidiary) and in the midwest, competitive issues involving coal traffic throughout the Conrail service area, and traffic impacts associated with potential remedial conditions. CP relied upon the results of Mr. Nelson's studies in reaching its settlements with Applicants in that case.

For SP, Mr. Nelson provided expert testimony before the Interstate Commerce Commission (ICC) in Finance Docket No. 32133 (the proposed control of C&NW by UP). This testimony was based primarily on Mr. Nelson's analyses of data from the Rail Waybill Sample, which identified substantial numbers of specific flows for which the proposed transaction created different types of potential competitive problems (including losses of point-to-point competition, source competition, competition in grain originations, and shipper leverage). In addition, Mr. Nelson's testimony utilized Rail Waybill Sample data to demonstrate the occurrence of merger-related foreclosure from previous UP acquisitions, and provided statistical support for SP's traffic study. Mr. Nelson also conducted a detailed investigation of the impact of the merger on source competition for western coal.

For Rio Grande Industries (RGI), Mr. Nelson provided expert testimony before the ICC in Finance Docket No.'s 31505 (the proposed acquisition by RGI of Soo's Kansas City - Chicago line) and 31522 (the proposed acquisition by RGI of the Chicago, Missouri and Western line between St. Louis and Chicago) based on his analysis of Rail Waybill Sample data. This testimony involved analysis of potential cumulative anti-competitive effects from the proposed transactions, development of time-series estimates of rail traffic volumes and carrier shares in different flows, and assessment of the statistical reliability of the portions of the testimony of other RGI witnesses that were based on Rail Waybill Sample data.

Also for RGI, Mr. Nelson provided expert testimony before the ICC in Finance Docket No. 32000, the consolidation of SP and DRGW. This testimony involved analysis of Rail Waybill Sample data to determine rail traffic volumes in different flows, the statistical reliability of studies conducted by other RGI witnesses, and potential competitive problem flows associated with a consolidation of SP and KCS.

For DRGW, Mr. Nelson provided expert testimony before the ICC in Finance Docket No. 30800 (the acquisition of MKT by UP) based on his analysis of Rail Waybill Sample data. This testimony involved examination of intramodal competition in the central corridor, development of traffic flow databases utilized by other witnesses, assessment of the statistical reliability of other witnesses' studies, and analysis of issues related to use of market share data from waybill samples to evaluate the competitive impact of the proposed merger.

Also for DRGW, Mr. Nelson provided extensive expert testimony before the ICC regarding a number of issues raised by the proposed merger of SP with ATSF (Finance Docket No. 30400):

- * Mr. Nelson provided a detailed comparison of the economic and operating characteristics of the intercity trucking and railroad industries, with a particular focus on long-haul markets. Mr. Nelson's analysis of the trucking industry utilized the National Motor Transport Data Base (NMTDB). For this study, Mr. Nelson developed and implemented analytical techniques that compensate for the non-random sampling procedures employed in the gathering of the NMTDB, making it possible to use this source to reliably conduct studies at the industry and corridor level. The Commission adopted the results of Mr. Nelson's study verbatim in its analysis of the anti-competitive consequences of the proposed merger.

- * Using the NMTDB and the Rail Waybill Sample, Mr. Nelson analyzed the extent to which rail pricing and services on selected traffic are determined by competing intercity trucking alternatives available to shippers. This analysis was conducted at a highly detailed level, and included explicit accounting for the handling characteristics of each rail commodity and the operating economics of the corresponding truck equipment needed.

* Mr. Nelson analyzed the tests applied by various economists in the proceedings, including those of the U.S. Departments of Justice and Transportation, to identify rail traffic that would most likely be subject to anti-competitive effects in the wake of the proposed merger. Mr. Nelson identified circumstances under which these tests systematically yield invalid results, and provided guidelines for their proper application.

* Mr. Nelson identified improvements needed in the merger applicants' initial methodology for estimating the rail traffic diversions that likely would result from the proposed merger.

* In addition to this expert testimony, Mr. Nelson served as principal investigator for several studies underlying testimony offered by other witnesses, addressing issues related to intramodal (rail) competition, product and source competition, shipper benefits and leverage and trackage rights compensation. Mr. Nelson also conducted a number of special studies on request for other witnesses and counsel.

For a private client, Mr. Nelson participated in a study of the purchase and utilization of jumbo covered hopper cars by shippers and railroads. This study involved extensive analysis of the Rail Waybill Sample and other data sources, and included a detailed examination of historical car shortages in light of economic and traffic conditions, and other related factors. The results of Mr. Nelson's work were incorporated in testimony before the ICC.

As a subcontractor to consulting firms, Mr. Nelson has participated in a number of other rail-related studies. These include (1) analysis of Rail Waybill Sample data to address issues stemming from traffic protective conditions at the Jacksonville (FL) gateway between FEC and CSX, and (2) analysis of CN's Port Huron-Sarnia tunnel project and the alternative of a tunnel at Detroit-Windsor.

B. Postal Service

For Magazine Publishers of America (MPA) acting on behalf of a coalition of periodicals mailers, Mr. Nelson analyzed several issues related to the purchased transportation costs incurred by the Postal Service. This included

identification of feasible cost reductions and efficiency improvements, as well as development of needed refinements in the methods used by the Postal Service to analyze transportation costs. The results of this analysis were presented to the Postal Rate Commission (PRC) in the R2000-1 omnibus rate case. A portion of the identified costing refinements has been adopted by the Postal Service.

Mr. Nelson identified and developed opportunities for a major publisher to create more efficient and desirable price/service options by avoiding selected costs in its mailings of periodicals. This work included consideration of transportation, delivery and unfunded retirement liability costs.

For Foster Associates (under contract to the Postal Service), Mr. Nelson worked in the following areas:

- * Delivery costing - Mr. Nelson developed a series of refinements in delivery cost analysis procedures. These refinements included analysis of driving time on motorized letter routes, collection costing and extensive revision of costing for special purpose routes and special delivery messengers. In support of the new methodologies, Mr. Nelson developed data collection plans and assisted in the development of survey instruments and innovative procedures to gather new field data from carrier and messenger operations. He conducted extensive analysis of the new data, including development of data cleaning and weighting procedures, analysis program logic, and specifications for new econometric models. He also identified an overlap in costing systems that produced a "double-count" of delivery activity performed by personnel other than special delivery messengers but charged to LDC 24 (Cost Segment 9). He developed spreadsheet modifications needed to incorporate the costing refinements and new data, and eliminate the "double-count" problem. The results of Mr. Nelson's delivery costing work were presented before the PRC in the R97-1 omnibus rate case. The PRC adopted 9 out of 10 of Mr. Nelson's recommended methodological changes, 2 with commendations.

- * New products - Mr. Nelson identified the cost basis for a number of potential new product offerings involving Express Mail and Priority Mail, and developed the analytical framework and information needed to support their implementation. This included design and analysis of

a new field study of relevant Express Mail piece characteristics, which was also presented by Mr. Nelson in the R97-1 rate case.

* Litigation support - In Docket No. R94-1, Mr. Nelson reviewed intervenor testimony regarding city delivery carrier and transportation issues, and developed discovery and cross-examination topics for Postal Service counsel.

* IOCS - Mr. Nelson developed refinements in IOCS data gathering procedures to improve the validity and precision of available information regarding Express Mail activities. Mr. Nelson then interpreted the initial results from the new data and provided suggestions for improvements in Express Mail costing procedures.

* Postal AMR - Mr. Nelson developed a plan for analyzing the street time costs associated with a proposal to have postal vehicles perform automated meter reading for utility companies.

* Eagle Network - Mr. Nelson developed a potential methodology for attributing the costs of dedicated air transportation services procured by the Postal Service.

For United Parcel Service (UPS), Mr. Nelson provided extensive expert testimony before the PRC in Docket No. R90-1. This testimony presented Mr. Nelson's studies of cost causality and/or elasticity within the city delivery carrier, special delivery messenger, vehicle service driver, purchased highway transportation and expedited air network operations of the Postal Service. These studies, which involved application of operations research techniques and development of econometric models and other statistical analyses based on postal data, were referenced and relied upon extensively by the PRC in its Opinion and Recommended Decision. To a considerable degree, these studies represented extensions and refinements of Mr. Nelson's previous studies, which were presented before the PRC in Mr. Nelson's testimony in Docket No. R87-1, and in Docket No. RM86-2B, a rulemaking proceeding established in part to explore issues raised in testimony before the PRC in Docket No. R84-1 for which Mr. Nelson served as principal investigator.

C. Other

Mr. Nelson participated in an airport master planning study for Sydney, Australia. For this study, he developed a comprehensive set of site selection criteria and evaluation measures.

Until February 1984, Mr. Nelson was a Senior Research Associate at Charles River Associates (CRA), an economic research and consulting firm, where his work experience included the following:

Freight Transportation

Mr. Nelson served as Manager of Consulting Services for the National Motor Transport Data Base (described above), which at the time was sponsored by CRA. In this position, he was responsible for handling client requests for information from the database, including problem definition, sampling issues, conduct of analyses and reporting of results. He conducted specific analyses for a number of public and private clients.

Mr. Nelson served as principal investigator for a study of motor carrier safety and traffic characteristics. This study involved extensive analysis of a number of databases, including the FHWA "Loadometer" Study, the 1977 Census of Transportation, the ICC "Empty/Loaded" Survey, and the NMTDB. The results of his work were incorporated in testimony before the U.S. District Court on behalf of a private client engaged in litigation with a state over the use of twin trailers.

Mr. Nelson participated in several other projects providing support for motor carriers involved in litigation cases. For these clients he performed detailed financial analyses of motor carrier operations and traffic in different settings, and assisted in the preparation of testimony and briefs. Mr. Nelson also served as an internal consultant on a number of CRA's other motor carrier, railroad, and freight transportation studies.

For the U.S. Department of Transportation (DOT), Mr. Nelson was principal investigator of a study to develop a conceptual framework and data collection strategy for analyzing the impacts of the motor carrier regulatory

reforms implemented under the Motor Carrier Act of 1980. For this project, Mr. Nelson was responsible for identifying and selecting specific research issues, data requirements, data sources and analytical techniques.

In a study for the Office of the Secretary of Transportation, Mr. Nelson made extensive use of probabilistic modeling techniques to develop quantitative estimates of potential fuel conservation resulting from selected aspects of proposed motor carrier regulatory reforms.

For DOT, Mr. Nelson was principal investigator for a study of the merits of alternative approaches that could be utilized by the ICC to implement the inflation-based index for allowable rate adjustments by railroads mandated by the Staggers Rail Act of 1980. For this study he analyzed the ICC's proposed approach and developed specific conclusions and recommendation in a number of issue areas, including selection of the basic index, productivity adjustments, treatment of profit and non-recurring expenses, frequency of index adjustment, rate averaging, regional differences, collective ratemaking and fuel surcharges. The results of this study were used by DOT in formulating its response to the ICC's proposed approach.

For a private client, Mr. Nelson analyzed the logistical considerations involved in siting a plant to process imported high-value mineral ores. This study, which was part of a larger study to assess the overall economic feasibility of plant construction and operation, involved comparisons of costs and other attributes of a variety of modes and modal combinations, including rail, inland waterway, motor carrier and TOFC.

In a study of urban freight consolidation alternatives conducted for the U.S. Department of Energy (DOE), Mr. Nelson utilized principles of network analysis, simulation and queuing theory to evaluate and critique the merits of previous studies, and recommend research approaches for analysis of route and terminal consolidation strategies.

Also for DOE, Mr. Nelson was a major contributor to a study of potential fuel-use changes that could occur in response to dramatic fuel price increases. Mr. Nelson's work focused on the freight and intercity passenger transportation sectors and included analyses of opportunities for

improvements in fuel efficiency by each mode under different fuel price increase scenarios, as well as modal shifts and net traffic reductions caused by resulting cost (and rate) increases.

Passenger Transportation

Mr. Nelson served as principal investigator for a series of Service and Management Demonstration Evaluations conducted for DOT. For three parallel assessments of the feasibility of user-side subsidies, and one demonstration of taxicab regulatory reforms and paratransit service innovations, he developed instruments for and implemented several surveys, conducted data analysis and prepared Final Evaluation Reports. For an assessment of alternative transit transfer policies, he developed research issues and data requirements, selected and supervised interviews of over 40 transit properties, and wrote or was responsible for all major deliverables. He assisted DOT in the development of research issues to be addressed in demonstrations of innovative checkpoint paratransit services and in the review of a proposed paratransit policy.

Also for DOT, Mr. Nelson was principal investigator of a study of methods to improve transit productivity and cost-effectiveness. This study involved the identification and documentation of 146 distinct productivity-enhancement measures that have been implemented at U.S. transit properties, assessment of the transferability of each measure to different settings, and development of impact magnitude estimates. Prior to this project, Mr. Nelson developed over two dozen ideas for possible innovations to improve transit productivity and cost effectiveness.

Mr. Nelson participated in a financing study of the New York Metropolitan Transportation Authority's proposed multi-billion dollar capital improvement program. Mr. Nelson's responsibilities in this project involved econometric analysis of operating costs, with a particular emphasis on identifying the variability of different cost components with alternative future levels of rapid rail, bus, and commuter rail activity. The results of his work were incorporated in the MTA's Official Statement for the successful initial offering of \$250 million in transit revenue bonds.

For DOT, Mr. Nelson participated in a study to develop technical guidelines for use by local planners to satisfy alternatives analysis requirements. For this study he developed a matrix-based method for determining data requirements in different scenarios, and played a major role in the development of a method for generating locally responsive alternatives to high-capital transit investments using multicriteria decision techniques.

For the Massachusetts Port Authority, Mr. Nelson participated in a study to forecast future levels of passenger and air cargo activity at Logan International Airport. For this study, Mr. Nelson supervised data collection efforts, developed methods for synthesizing data from diverse sources (FAA, CAB, Port Authority records, etc.) to yield relevant market segment size estimates, and analyzed seasonality and short-term peaking phenomena.

Mr. Nelson also participated in a quantitative assessment of the market penetration potential and associated impacts of electric vehicles for the Electric Power Research Institute (EPRI).

Thesis

In his graduate thesis at M.I.T., which fulfilled the thesis requirements for two Master's degrees, Mr. Nelson developed a comprehensive review of the theoretical and practical shortcomings encountered in the use of linear programming in a real time multiple vehicle routing and scheduling system (dial-a-ride). Based on network analysis techniques, he then developed a set of heuristic algorithms that avoided the shortcomings inherent in the linear programming (LP) approach. The performance of these algorithms was simulated by computer and found to meet or exceed the LP's performance in a variety of scenarios drawn from actual operating data.

TESTIMONY

Surface Transportation Board, Finance Docket No. 34177

- Verified Statement, 7-18-02

Surface Transportation Board, Finance Docket No. 32760
(Sub-No. 21)

- Verified Statement, 8-17-01

Surface Transportation Board, Finance Docket No. 32760
(Sub-No. 21)

- Verified Statement, 8-18-00

Postal Rate Commission, Docket No. R2000-1

- Direct Testimony, MPA-T-3, 5-22-00

Surface Transportation Board, Ex Parte 582 (Sub-No. 1)

- Statement, 5-16-00

Surface Transportation Board, Finance Docket No. 33407

- Verified Statement, 8-31-98
- Supplemental Verified Statement, 10-28-98

Surface Transportation Board, Finance Docket No. 33469

- Verified Statement, 11-10-97
- Reply Verified Statement, 11-25-97

Postal Rate Commission, Docket No. R97-1

- Direct Testimony, USPS-T-19, 7-10-97

Interstate Commerce Commission, Finance Docket No. 32133

- Verified Statement, SP-20 (Volume 2), 11-29-93
- Rebuttal Verified Statement, SP-41 (Volume 2), 7-28-94

Postal Rate Commission, Docket No. R90-1

- Direct Testimony, UPS-T-1, 7-16-90
- Rebuttal Testimony, UPS-RT-1, 10-1-90

Interstate Commerce Commission, Finance Docket No. 31505

- Verified Statement, RGI-14/SOO-14 (Volume 2), 9-15-89
- Rebuttal Verified Statement, RGI-55/SOO-55, 2-15-90

Interstate Commerce Commission, Finance Docket No. 31522

- Verified Statement, RGI-7/CMW-7 (Volume 2), 8-25-89

Interstate Commerce Commission, Finance Docket No. 32000

- Verified Statement, RGII-10, 2-22-88
- Verified Opposition and Rebuttal Statement, RGII-59, 6-1-88

Postal Rate Commission, Docket No. R87-1

- Direct Testimony Concerning Special Delivery Messenger and City Delivery Carrier Street Time Costs, UPS-T-1, 9-14-87
- Rebuttal Testimony, UPS-RT-5, 11-23-87
- Statement Regarding SDWAFS Analyses, 12-1-87

Interstate Commerce Commission, Finance Docket No. 30800

- Verified Statement, DRGW-13, 4-7-87
- Verified Statement, DRGW-24, 7-13-87

Postal Rate Commission, Docket No. RM86-2B

- Direct Testimony Concerning City Delivery Carrier Street Time Costs, UPS-T-1, 12-1-86

Interstate Commerce Commission, Finance Docket No. 30400

- Verified Opposition Statement, DRGW-20, 11-21-84
- Verified Opposition Statement, DRGW-23, 12-10-84 (with Paul H. Banner)
- Verified Rebuttal Statement, DRGW-33, 5-29-85

SELECTED PUBLICATIONS

Reports Prepared for Charles River Associates

User-Side Subsidy Demonstration Project: Lawrence, Massachusetts. Final Evaluation Report. Prepared for U.S. Department of Transportation. October, 1983.

Analysis of Labor Conditions and Union Status in the Intercity Trucking Industry. Final Report. Prepared for U.S. Department of Transportation. August, 1983.

Actions Being Taken by Transit Operators to Improve Performance. Final Report. Prepared for U.S. Department of Transportation. April, 1983.

User-Side Subsidy Demonstration Project: Montgomery, Alabama. Final Evaluation Report. Prepared for U.S. Department of Transportation. December, 1982.

Plan for Monitoring the Impacts of Regulatory Reforms Implemented Under the Motor Carrier Act of 1980. Final Report. Prepared for U.S. Department of Transportation. October, 1982.

New York City Transit Authority Revenue Feasibility Study: Economic Analyses and Projections. Final Report. Prepared for Metropolitan Transportation Authority, New York, NY. In part. October, 1982.

Taxi Regulatory Revisions in Dade County, Florida. Data Collection Plan. Prepared for U.S. Department of Transportation. April, 1981.

Analysis of Rail Cost-Plus Pricing Systems. Prepared for U.S. Department of Transportation. March, 1981.

Net Demand for Oil Imports: Preliminary Estimates of Short-Run Price Elasticities. Prepared for the U.S. Department of Energy. In part. December, 1980.

User-Side Subsidy Demonstration Project: Kinston, North Carolina. Final Evaluation Report. Prepared for U.S. Department of Transportation. October, 1980. Executive Summary reprinted in Taxicab Management November/December, 1981.

Potential Fuel Conservation from Regulatory Reform of the Trucking Industry. Prepared for Office of the Secretary of Transportation. July, 1980.

Operator Guidelines for Transfer Policy Design. Prepared for U.S. Department of Transportation. June, 1980.

State of the Art of Current Practices for Transit Transfers. Prepared for U.S. Department of Transportation. June, 1980.

"Generation of Transportation Alternatives." Technical Monograph prepared for U.S. Department of Transportation. January, 1979.

"Definition of Transportation Alternatives." Technical Monograph prepared for U.S. Department of Transportation. November, 1978.

Preliminary Analysis of Alternative Proposals to Encourage Efficient Service Concepts in Urban Freight Movement. Prepared for U.S. Department of Energy. In part. October, 1978.

Other Publications

Nelson, Michael and Daniel Brand. 1982. "Methods for Identifying Transportation Alternatives." Transportation Research Record 867.

Nelson, Michael, Daniel Brand and Michael Mandel. 1982. "State of the Art Current Bus Transfer Practices." Transportation Research Record 854.

Nelson, Michael and Jane Piro. March, 1982. "Implementation and Impacts of the Kinston, North Carolina User-Side Subsidy Demonstration Project." Specialized Transportation Planning and Practice.

Nelson, Michael and Paul H. Banner. 1981. "Analysis of Alternative Railroad Cost Recovery Procedures." Proceedings - Twenty-Second Annual Meeting of the Transportation Research Forum.

Nelson, Michael, Daniel Brand and Michael Mandel. 1981. "Use and Consequences of Timed Transfers on U.S. Transit Properties." Transportation Research Record 798.

Mellman, Robert, Michael Nelson and Jane Piro. 1980.
"Forecasts of Passenger and Air Cargo Activity at Logan
International Airport." Transportation Research Record 768.

Nelson, Michael. 1978. "Evaluation of Potential
Replacements for Failing Conventional Transit Services."
M.S. Thesis, Massachusetts Institute of Technology,
Department of Civil Engineering and Alfred P. Sloan School
of Management.

Exhibit B – DME/AECC Correspondence



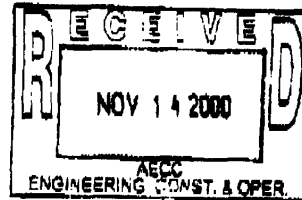
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

337 22ND AVENUE SOUTH
PO BOX 178
BROOKINGS SD 57006
605 697 2400
605 697 2499 FAX

John L. Waltman
Vice President Energy

November 8, 2000

Mr. Steve Sharp, P.E.
Principal Engineer, Fuels and Civil
Arkansas Electric Coop Corporation
PO Box 194208
Little Rock, AR 72219-4208



Dear Steve:

I'm writing to request a written statement from your Company to the STB supporting the DM&E Project. The STB Environmental Review public comment period is now in progress. Organizations opposing the Project are mounting an extensive letter writing campaign. Because numbers of letters count as well as the quality of letter content, we are also requesting personal/individual letters from other employees in your Company on our behalf. Please help us with both Company and individual letters to secure a favorable ruling for the Project.

DM&E's experts on regulatory matters have developed a set of talking points, attached, tailored for utilities. It is self-explanatory. Utility comments in the areas referenced will carry the most weight because of relevance to the Environmental Review. Additional information and talking points can be found at our web site at www.dmerail.com

The STB guidelines for a letter are as follows:

Public Comment: Written comments on the Draft EIS must be submitted to the STB. For comments over five pages long, please send an original and ten copies. For comments five pages long and less, an original alone may be submitted. Please send all comments to the following address:

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

In the lower left-hand corner of the envelope, please include the following:

Attention: Victoria Rutspa
Environmental Project Manager
Environment Filing

With a solid demonstration of need and support from the utility industry, we are confident that we will receive final authority and permits to construct the Project. We need your Company's support letter to the STB, and would appreciate a copy of your letter. And last, I want to thank you, once again, for your help in moving this Project through the regulatory process.

With Kindest Regards,

John
John L. Waltman
Vice President Energy

Enclosures

*Hope life is good to you these days.
Please give us a hand with this
request if you can.
Thanks! John*

January 4, 2001

Mr. John Waltman By facsimile to 605-697-2499
Vice President Energy
DM&E Railroad Corporation
P.O. Box 178
Brookings, SD 57006

Re: Letter of Support

Dear Mr. Waltman:

Please find enclosed a letter of support for your project that I have sent by FedEx to the Surface Transportation Board. We believe your project could provided needed additional transportation capacity for coal shipments from the PRB and we support any activity that will increase competition for coal transportation.

If there is anything else in regards to this type of support for your project that we might be able to help with, feel free to contact me. Good luck.

Sincerely,



Steve Sharp, P.E.
Principal Engineer, Fuels & Civil

xc: Maurice Robinson
Bob Lyford



Arkansas Electric Cooperative Corporation

A Touchstone Energy® Partner 

8000 Scott Hamilton Drive
P.O. Box 194208
Little Rock, Arkansas 72219-4208
(501) 570-2200

January 2, 2001

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K. Street N.W.
Washington, D.C. 20423-0001

Attn: Victoria Rutson
Environmental Project Manager
Environmental Filing

Re: Support for the DM&E Project-Environmental Filing

Dear Secretary:

Arkansas Electric Cooperative Corporation(AECC) is a generation and transmission cooperative and is the power supplier for 16 of Arkansas' electric cooperatives. With 1,940 megawatts of generation resources, those 16 electric distribution cooperatives serve more than 360,000 homes, farms, businesses and industries in Arkansas. Out of our total generation resources, 1,432 megawatts come from coal-fired plants that burn low-sulfur coal from the Powder River Basin(PRB) in Wyoming. The transportation of this coal by railroad is a major portion, as much as two-thirds, of the cost of the delivered fuel. Providing a reliable and economical fuel supply for our powerplants is my primary responsibility at AECC.

AECC supports the Dakota, Minnesota & Eastern(DM&E) Railroad's project to construct a new rail line to the PRB. We believe that there is a clear need for the additional capacity out of the PRB and that the increased competition will improve both the reliability and the economics of moving coal by rail.

The mines in the PRB are currently served by one railroad or at most two railroads. Having only two railroads that can transport these hundreds of millions of tons of fuel for the nations power plants is not enough. Many of the power plants that burn PRB coal can only be served by one of the two large railroads that have access to the PRB. Even though AECC's power plants could not be directly served by the DM&E project, its successful implementation would

The Electric Cooperatives of Arkansas
Your Local Energy Partner

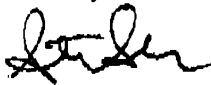
free up capacity on the railroads that do serve our area. This might create enough unused, incremental capacity that the railroads would offer lower rates. Also, if the DM&E is constructed, it would create a short, direct route from the PRB to the upper Mississippi River. Two of our power plants could take delivery of coal by barge. We do have potential future sites for coal-fired power plants that could accept coal delivered by barge from the Mississippi River. Also, there may be another railroad that interconnects with the DM&E that could deliver directly to our area. Through such interconnections, a third rail option might be possible. We believe that anything that increases competition for our coal transportation business will help to lower the cost. Keeping coal transportation costs down will help keep the cost of electricity reasonable for our customers in Arkansas.

During the past several years, the demand for coal from the PRB has exceeded the existing railroads' capacity. While trying to meet this increased demand, the existing railroads have not met the service expectations of their existing coal transportation customers. We believe the project proposed by DM&E would increase rail capacity for PRB coal, a very important national resource, and would result in better and more reliable service on the rail transportation system in general.

We believe it is in the public interest that the reliability of rail transportation for coal not be allowed to deteriorate and that the consumer not be asked to pay higher rates for electricity due to constraints on the transportation of fuel. Even with construction of the DM&E project it appears that there will be enough demand for rail transportation that the existing railroads will need to increase their capacity to keep up with the demand.

AECC supports DM&E's project to construct a new rail line from the Powder River Basin. We urge the STB to allow the timely completion of this project as it will promote competitive transportation of coal. Many shippers will benefit, as well as the large portion of the public whose electrical service comes from coal-fired generating plants.

Sincerely,



Steve Sharp, P.E.
Principal Engineer-Fuels and Civil

DM&E

make new file if needed

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

337 22ND AVENUE SOUTH
PO BOX 178
BROOKINGS SD 57006
605 697 2400
605 697 2499 FAX

John L. Waltman
Vice President Energy

September 14, 1998

Steve Sharp
Principal Engineer, Fuel & Civil
Arkansas Electric Cooperative Corp.
8000 Scott Hamilton Dr.
PO Box 194208
Little Rock AR 72219-4208

RECEIVED

SEP 21 1998

Dear Mr. Sharp:

A.E.C.C.
Eng. Const. & Oper.

I am writing to request an issue specific letter of support to Surface Transportation Board ("STB") on behalf of the DM&E Railroad Powder River Basin Project (PRB).

In an Order dated 7/15/98, the STB described the three-part test to be utilized in reviewing the DM&E Construction Application under Docket 33407. The three parts are enumerated as (1) financial fitness; (2) "is there a public demand or need for the proposed service?" and; (3) "will the new competition be in the public interest and not harmful to existing carriers/services?"

In order to win approval, we need to specifically address each piece of the three-part test. DM&E requests your assistance to help create a very strong electric industry response to Part 2, public demand or need, and Part 3, the new competition is in the public interest and not harmful to existing carriers.

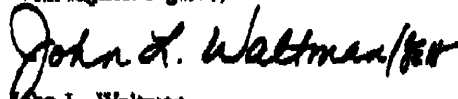
We would like your letter of support to focus specifically on these two issues. I have provided a list of talking points on each of these issues and have attached a letter outline which may be helpful in composing a response.

The DM&E must file its reply briefs and additional support letters with the STB by September 21, 1998. Since this falls on a Monday, we would like to receive your support letter by Friday, September 18, 1998. We need the letter to be addressed to Mr. Vernon L. Williams, Secretary; however, the letter should be express mailed to me so that the DM&E can take care of the filing. An STB ruling on the Construction Application is expected on November 3, 1998.

DM&E will provide the electric industry with vitally needed PRB coal haulage capacity and will bring fresh competition to the coal transportation system which has settled into market share equilibrium. In doing so, DM&E will help your company control generating costs with environmentally friendly PRB coal.

We deeply appreciate your support and the assistance you have given us in achieving our mutual goals.

With highest regards,



John L. Waltman
Vice President Energy

JLW:lma:joh(jlw@mail.bay.com)

Enclosures



**Arkansas Electric
Cooperative Corporation**

P. O. Box 194208
Little Rock, Arkansas 72219-4208
(501) 570-2200

September 23, 1998

Mr. John Waltman
Vice President Energy
DM&E Railroad Corporation
337 22nd Avenue South
Brookings, SD 57006

Re: Letter of Support

Dear Mr. Waltman:

Please find enclosed a letter of support for your application to the Surface Transportation Board for approval of construction of a new rail line to the Powder River Basin (PRB). I believe your project could provide needed additional transportation capacity for coal shipments from the PRB.

If there is anything else in regards to this type of support for your project that we might be able to help with, feel free to contact me. Good luck.

Sincerely,

Steve Sharp, P.E.
Principal Engineer, Fuels & Civil

cc: Maurice Robinson
Gary Voigt
Bob Lyford



**Arkansas Electric
Cooperative Corporation**

P. O. Box 194208
Little Rock, Arkansas 72219-4208
(501) 570-2200

September 21, 1998

Ms. Linda Morgan, Chairperson
Surface Transportation Board
1925 K. Street, N.W.
Washington, D.C. 20423-0001

Re: Support for STB Approval of the DM&E Construction Application

Dear Ms. Morgan:

Arkansas Electric Cooperative Corporation(AECC) is a generation and transmission cooperative that is the power supplier for 16 of Arkansas' electric cooperatives. With 1,940 megawatts of generation resources, those 16 electric distribution cooperatives serve more than 360,000 homes, farms, businesses and industries in Arkansas. Out of our total generation resources, 1,432 megawatts come from coal-fired plants that burn low-sulfur coal from the Powder River Basin(PRB) in Wyoming. The transportation of this coal by railroad is a major portion of the cost of the delivered fuel. Providing a reliable and economical fuel supply for our powerplants is my primary responsibility at AECC.

AECC supports the Dakota, Minnesota & Eastern(DM&E) Railroad's application for approval of construction of a new rail line to the PRB. We believe that there is a clear need for the additional capacity out of the PRB and that the increased competition will improve both the reliability and the economics of moving coal by rail.

The mines in the PRB are currently served by one railroad or at most two railroads. Additional competition would help maintain market pressure on rail transportation. Keeping coal transportation costs down will help keep the cost of electricity reasonable for our customers in Arkansas.

During the past several years, the demand for coal from the PRB has exceeded the existing railroads' capacity. While trying to meet this increased demand, the existing railroads have not met the service expectations of their existing coal transportation customers. We believe the project proposed by DM&E would increase rail capacity for PRB coal, a very important national resource, and would result in better and more reliable service on the rail transportation system in general.

Every forecast indicates that more and more coal will be needed from the PRB for electric generation. With the existing railroads struggling to deliver the amount of coal presently needed, we believe they will be unable to handle the large increases that are forecast. We believe it is in the public interest that the reliability of rail transportation for coal not deteriorate and that the consumer not be asked to pay higher rates for electricity. Even with construction of the DM&E project it appears that there will be enough demand for rail transportation that the existing railroads will need to increase their capacity significantly to keep up with the demand.

AECC supports DM&E's application for approval of construction of a new rail line from the Powder River Basin.

Sincerely,



Steve Sharp, P.E.
Principal Engineer-Fuels and Civil

Exhibit C – DM&E’s Responses to AECC Discovery

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

**RESPONSES OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
CEDAR AMERICAN RAIL HOLDINGS, INC. AND
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
TO ARKANSAS ELECTRIC COOPERATIVE COOPERATION'S
FIRST SET OF DISCOVERY REQUESTS TO APPLICANTS**

David L. Knudson
Scott B. Anderson
Davenport, Evans, Hurwitz
& Smith, L.L.P.
206 West 14th Street
Sioux Falls, South Dakota 57104
(605) 336-2880

**ATTORNEYS FOR
IOWA, CHICAGO & EASTERN
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Thomas J. Litwiler
Myles L. Tobin
Fletcher & Sippel LLC
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Chicago, Illinois 60601-6721
(312) 540-0500

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

Dated: November 4, 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

**RESPONSES OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
CEDAR AMERICAN RAIL HOLDINGS, INC. AND
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
TO ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S
FIRST SET OF DISCOVERY REQUESTS TO APPLICANTS**

Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"), Cedar American Rail Holdings, Inc. ("Holdings") and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (collectively, "Applicants") hereby submit these responses to the First Set of Discovery Requests to Applicants propounded by Arkansas Electric Cooperative Corporation ("AECC"):

GENERAL OBJECTIONS

The following general objections are made with respect to all of the discovery requests. Additional specific objections are stated in response to individual discovery requests.

1. Applicants object to AECC's discovery requests collectively and individually to the extent those discovery requests seek information that is neither relevant to the Control Application and related matters pending before the Board in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

2. Applicants object to AECC's discovery requests to the extent those discovery requests seek information or documents for the period prior to January 1, 1998.

3. Applicants object to AECC's discovery requests to the extent those discovery requests seek confidential or proprietary information or documents.

4. Applicants object to AECC's discovery requests collectively and individually to the extent that AECC requests information that is subject to the attorney-client privilege, the attorney work product doctrine or any other legal privilege.

DISCOVERY REQUESTS

Subject to and without waiver of the General Objections set forth above, Applicants respond individually to the discovery requests propounded by AECC to Applicants as follows:

REQUEST NO. 1.

Produce all studies, analyses, reports, memorandums, letters, proposals and meeting and other contact notes concerning the provision of rail transportation service by DM&E or any other applicant to any electric utility in the states of Illinois, Indiana, Iowa or Wisconsin for coal moving from the Powder River Basin.

RESPONSE:

Applicants object to Request No. 1 on the basis that it seeks information that is neither relevant to the Control Application and related matters pending before the Board in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Applicants further object to Request No. 1 on the basis that it is overly broad and unduly burdensome, and seeks documents submitted to or related to the Surface Transportation Board proceeding in Finance Docket No. 33407. Subject to and without waiver of such objections, Applicants respond as follows:

Responsive documents can be found in the record in Finance Docket No. 33407 at the Surface Transportation Board. Other responsive documents consisting of data pertaining to shipments of Powder River Basin coal transported by IMRL in year 2001, are being produced.

REQUEST NO. 2.

Produce all documents which form the basis of, support or otherwise bear on the following statement at page 10 of the Application: "Finally, the transaction assures DM&E will continue to have neutral eastern routings for coal movements from the Powder River Basin in Wyoming, should DM&E proceed to construct its recently-approved line into the PRB."

RESPONSE:

The verified statements of DM&E President Kevin V. Schieffer and Professor Charles Lamberton, contained in the Control Application at pages 56-66 and 77-10 are responsive to Request No. 2. Applicants believe that AECC already has in its possession a copy of these verified statements.

REQUEST NO. 3.

With regard to the quote in Request 2 above, (i) explain the statement "should DM&E proceed to construct its recently-approved line into the PRB;" (ii) produce all documents bearing on the current status of plans to finance construction of the recently-approved line into the PRB, and (iii) produce all documents bearing on plans to construct the recently-approved line into the PRB, including all documents involving potential users of DM&E's PRB rail service.

RESPONSE:

(i) Applicants believe that the statement is self-explanatory, but to the extent that further explanation is necessary, Applicants' response is that, until the line into the PRB is built, it is not a certainty that it will be built.

(ii) Applicants object to Request No. 3(ii) on the basis that this discovery request seeks information that is neither relevant to the Control Application and related matters pending before the Board in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Applicants further object on the basis that this discovery request is overly broad and unduly burdensome and seeks documents related to the proceeding before the Surface Transportation Board in Finance Docket No. 33407. Subject to and without waiver of such objection, Applicants respond as follows:

Financing for DM&E's PRB line is in a preliminary stage and is not yet in place.

(iii) Applicants object to Request No. 3(iii) on the basis that this discovery request seeks information that is neither relevant to the Control Application and related matters pending before the Board in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. Applicants further object on the basis that this discovery request is overly broad and unduly burdensome and seeks documents related to the proceeding before the Surface Transportation Board in Finance Docket No. 33407. Subject to and without waiver of such objection, Applicants respond as follows:

Responsive documents can be found in the record in Finance Docket No. 33407 at the Surface Transportation Board.

REQUEST NO. 4.

Produce all documents that describe and constitute the alternative access to Chicago that applicants have established with Canadian National Railway Company or its subsidiaries.

RESPONSE:

The responsive document contains a confidentiality provision prohibiting its disclosure without the consent of Canadian National Railway Company. Applicants have sought permission to provide a copy of the document to AECC.

REQUEST NO. 5.

Produce all documents that describe and constitute the alternative access to Chicago applicants have established with Iowa Interstate Railroad.

RESPONSE:

The responsive document is being produced.

REQUEST NO. 6.

Produce all documents that describe and constitute the haulage agreement with Union Pacific Railroad prior to its termination.

RESPONSE:

Applicants object to Request No. 6 on the basis that the phrase "the haulage agreement with Union Pacific Railroad prior to its termination" is vague and ambiguous. Applicants further object to Request No. 6 on the basis that the request seeks information that is neither relevant to the Control Application and related matters pending before the Board in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, in that (1) the request relates to Union Pacific's traffic, and not to any traffic of Applicants, and (2) to the extent haulage agreements with Union Pacific Railroad ("UP") have been terminated, such agreements

were between UP and I&M Rail Link LLC ("IMRL") and were terminated by UP upon closing of IC&E's acquisition of the assets of IMRL and are no longer in effect.

Respectfully submitted,

David L. Knudson
Scott B. Anderson
Davenport, Evans, Hurwitz &
Smith, L.L.P.
206 West 14th Street
Sioux Falls, South Dakota 57104
(605) 336-2880

**ATTORNEYS FOR
IOWA, CHICAGO & EASTERN
RAILROAD CORPORATION**

By: 

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Thomas J. Litwiler
Myles L. Tobin
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(312) 540-0500

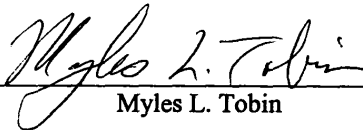
**ATTORNEYS FOR
DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION AND CEDAR
AMERICAN RAIL HOLDINGS, INC.**

Dated: November 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2002, a copy of the foregoing
**Responses of Dakota, Minnesota & Eastern Railroad Corporation, Cedar American Rail
Holdings, Inc. and Iowa, Chicago & Eastern Railroad Corporation to Arkansas Electric
Cooperative Corporation's First Set of Discovery Requests to Applicants (DME-8),** was
served by overnight delivery upon:

Martin W. Bercovici, Esq.
Keller and Heckman, LLP
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001


Myles L. Tobin

CERTIFICATE OF SERVICE

I, Tammy L. Hines, hereby certify that on this 14th day of November, 2002, that I served a copy of the foregoing Comments of Arkansas Electric Cooperative Corporation by first class mail, postage prepaid, unless otherwise indicated, upon the following parties of record:

Paul A. Cunningham
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801 Pennsylvania Avenue, N.W.
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Minneapolis, MN 55402

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International President
Brotherhood Of Locomotive Engineers
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Cleveland, OH 44113-1702

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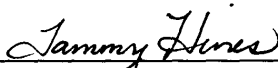
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Cockeysville, MD 21030-1711


Tammy L. Hines