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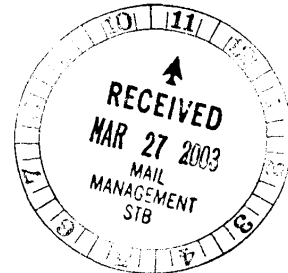
MAR 27 2003

Part of
Public Record

March 27, 2003

BY HAND

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



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

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

Dear Secretary Williams:

This letter addresses DM&E's proposed timetable for responding to UP's Petition for Emergency Service Order in its letter to the Board dated March 24, 2003 (DME-16).

UP believes that the Board can and should act immediately to enjoin DM&E's unauthorized operations over UP's trackage, without awaiting DM&E's proposed "complete response" next Wednesday, April 2.¹ UP has amply demonstrated the appropriateness of Board action, and DM&E has now responded with a lengthy verified statement from its President that reinforces rather than refutes the need for the

¹ Given DM&E's ability to submit a lengthy verified statement, it is apparent that DM&E had a reasonable opportunity to respond fully to UP's Petition but chose instead to defer that response for more than a week. UP did not begin preparing its Petition until March 20 – the day before it was filed – after UP contacted DM&E about information UP had received suggesting that DM&E intended to commence its unauthorized operations and DM&E refused to deny those reports. *Rebensdorf V.S.* at 4-5. In any event, the public interest would be disserved by allowing DM&E's own delay to work a continuation of its unauthorized operations.

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Hon. Vernon A. Williams

March 27, 2003

Page 2

Board to act to bar DM&E's unauthorized operations. Even if DM&E's letter and verified statement were not viewed as a formal response to UP's Petition, the Board has statutory authority and inherent authority to enjoin the unauthorized operations without hearing further from DM&E. *See* 49 U.S.C. § 721(b)(4).²

DM&E's letter and accompanying verified statement demonstrate the need for immediate Board action. DM&E's verified statement reveals that DM&E rejects the basic premise of the Board's decision in this case – that it must reach agreement with UP or build its own new connection at Owatonna. Instead, as Mr. Schieffer makes clear, DM&E intends to use its dispatching control of the UP trackage at Owatonna to usurp for itself the right to use that trackage to connect with the IC&E, and has in fact *already* begun to operate trains in that manner.³ Indeed, Mr. Schieffer touts the fact that DM&E has been conducting these unauthorized operations for more than a week,⁴ notwithstanding that DM&E told the Board that it “would be unable to effectuate the new competitive traffic routings made possible by the DM&E/IC&E combination” and could not “make possible DM&E's operation via trackage rights over IC&E's line between Owatonna and Mason City” without a Board grant of terminal trackage rights.⁵

UP believes that this situation warrants immediate Board action. While UP has been negotiating in good faith – as contemplated by the Board's decision denying DM&E's request for terminal trackage rights – DM&E apparently has concluded that those negotiations do not suit its interests, and it has therefore chosen to disregard the need for agreement (or new construction) to carry out the operations it desires. DM&E's actions seek to circumvent rather than abide by the Board's ruling and contradict the

² DM&E misunderstands UP's statement that it is not seeking “preliminary injunctive relief.” The relief UP seeks is *permanent* rather than merely preliminary, but in all events UP seeks relief *immediately*.

³ Although DM&E asserts that it will temporarily refrain from using the connection to divert traffic from existing DM&E-UP routings, that step does nothing to alter the fact that the operations that DM&E has already commenced violate UP's property rights and the Board's processes for authorizing trackage rights operations. Moreover, UP has no effective means of determining whether DM&E is in fact complying with its self-imposed limitation on the DM&E-IC&E traffic being routed via Owatonna.

⁴ UP filed its petition after receiving information that DM&E intended to commence operations over UP's trackage this past Monday, March 24. When UP asked Mr. Schieffer late last week to disclose DM&E's intentions, he declined (Rebensdorf V.S. at 4-5), even though it is now clear DM&E had already been carrying out those operations for several days.

⁵ DM&E Terminal App. at 3.

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Hon. Vernon A. Williams

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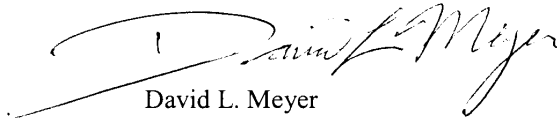
Page 3

crystal clear (and uncontroversial) representations DM&E made to the Board about its lack of authority to connect with IC&E via Owatonna. DM&E should not be allowed to continue with its usurpatious and disrespectful conduct.

An original and twenty-five copies of this letter are enclosed for filing with the Board. One additional copy is also enclosed to be date-stamped and returned to our messenger.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "David L. Meyer". The signature is written in dark ink and is positioned above the printed name.

David L. Meyer

cc: David M. Konschnik (by hand)
William C. Sippel, Esq. (by facsimile)
Parties of Record