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united transportation union



May 12, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD
395 E STREET S. W.
WASHINGTON, DC 20423**

**ENTERED
Office of Proceedings**

MAY 19 2008

**Part of
Public Record**

RE: Finance Docket No. 35081

CANADIAN PACIFIC RAILROAD COMPANY, et al - CONTROL

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

UTU LOCAL 911 REPLY LETTER TO CANADIAN PACIFIC'S LETTER

DATED 4-18-08 THE FILING OF THEIR REPLY. Pages 65, 66 and 67.

Canadian Pacific needs to explain the Minnesota City Gateway to the STB on how they plan on executing the extra Coal and Ethanol Trains and Combination Trains to get to Chicago. In Canadian Pacific's reply filing dated 4/18/08 on Page 66 the second paragraph states *"Local 911 does not suggest how such operation might occur in the absence of either (1) a consolidation of work that would be subject to the New York Dock requirement of notice and an implementing agreement or (2) a new grant of trackage rights by SOO to DM&E or IC&E, which would carry its own employee protective conditions. In either event, any affected employees of SOO would be protected by the appropriate protective conditions"*. ****CP has never responded to our concerns and has failed to produce any labor protections that would cover current CP employees.**

This burden falls on CP Railroad to explain and not Local 911. Local 911 feels that CP should negotiate a settlement between the affected parties, rather than address a resolution imposed by a Government decree. Local 911 has asked for CP to voluntarily settle the issues addressed in our letter dated February 28, 2008, and received by the STB Board.

As far as CP stating in their letter filed on 4/18/08, page 67, paragraph two it states, *"However, the lines in question were divested by SOO in 1997 and have not been part of the SOO System for more than a decade"*.

Local 911 would like to point out that CP owned 33 1/3% until July 22, 2002 when they sold all of their 33 1/3% of the IMRL that they (CP) owned to the DM&E Railroad to help form the IC&E Railroad. CP helped pioneer the IC&E Railroad. July 22, 2002 to October 5, 2007 is not a decade and when CP filed their application, it seems more like five years, two months and a few days and not more than a decade as CP is misrepresenting as a fact.



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Local 911 would also like to address the issue that CP has created on page 67, second paragraph, where it states, *"finally, Local 911 apparently wants the Board to direct that Train service jobs on IC&E lines, now conducted by IC&E using its own employees, should be taken away from those employees (who are BLET-Represented) and given to SOO Employees (who are UTU-Represented)"*.

Local 911 would like to make it clear, if any CP equity jobs would be imposed that BLET holds the representation for the Engineers and UTU holds the representation for Train Service Employees. So, why does CP feel Local 911 is raiding BLET jobs?

**** (The fact is that Canadian Pacific Railway is just being divisive to divert attention away from the issues that need to be discussed and resolved. It is clear that CP is trying to cause in-fighting between the UTU and BLE&T to divert the issue at hand.)**

Instead of addressing the issues of our letter, once again, in CP's original application filing dated October 5, 2007, Finance Docket Number 35081, Appendix F, DM&E blocking plans and schedule, pages 3 & 4; it clearly shows IC&E only running one train a day in and out of St. Paul.

Now CP has taken the position to say on Page 67 of the April 18, 2008 reply *"filing that IC&E will continue to operate its own trains and will continue to employ its own employees and SOO will not operate IC&E trains."*

But they do not bother about adding a sentence saying IC&E will not operate SOO Trains, favoring lower wages that could cause hardship to current CP Employees if CP starts to give extra trains to IC&E Crews and say it is IC&E freight, when in fact it has been proved that the IC&E only has one train a day in and out of St. Paul per Appendix F, operating plan pages 3 & 4.

CP does make a verified statement on Page 66 dated 4/18/08 of the reply filing, third paragraph where it states *"Moreover, Applicants have no plans to shift existing traffic from SOO trains to IC&E trains."* Local 911 would hope that the STB would make CP uphold their statements so there is no exchanging of trains or jobs to create a lower pay scale in place of the one that is currently in place and manned by CP Employees. Frankenberg also states in October 5, 2007 Application; page 4. *"It is not anticipated that the transaction will result in any operational changes that will adversely affect any SOO employees."*

Please impose protection for CP Employees that may be adversely affected. Canadian Pacific says that their employees are already protected. However, only the pre-1985 employees are protected under the employee protection agreement (EPA), not post-1985 employees.

**** (It is UTU Local 911 position to request the Surface Transportation Board make whole the this portion of the IC&E Railroad back to the Canadian Pacific as a Class One Railroad. Protective conditions for all employees should be mandated. Lifetime guarantees implemented because of the history of the line being sold and purchased back, four times, with dates listed below. Essentially, impose the sort of Employee Protection that would be applied in a Merger Transaction.)**

Local 911 does recognize the verified statements incorporating DM&E and IC&E only for convenience in the briefs and the DM&E does not have trackage rights on CP. Frankenberg V.S. page 2 states *"(for convenience, I will refer to DM&E and IC&E collectively herein as DM&E); Foot V.S. page 1 (for convenience, I will refer to DM&E and IC&E collectively as DM&E); Graham V.S. page 2 (for convenience, I will refer to DM&E and IC&E collectively as DM&E). These quotes came from the October 5, 2007 filing. The Board should recognize CP's statements, Appendix F, Pages 3 & 4, as credible evidence to where the IC&E crews only operate one train a day in and out of St. Paul. Also, as credible evidence that could be recognized in CP's original filing dated October 5, 2007, "Application, exhibit 13- Page 32, second paragraph it states: in both cities, DM&E delivers cars to the CP yard (one train per day at St. Paul, Minnesota and three trains per week at Chicago, Bensenville Yard), and CPR performs switching, interchange, and local termination service on behalf of the DME"* **** (The facts are that the DM&E does not deliver any trains to St. Paul Yard or Chicago, Bensenville Yard. The IC&E Railroad does.)** The statement Application, exhibit 13- Page 32, second paragraph it states: *in both cities, DM&E delivers cars to the CP yard (one train per day at St. Paul, Minnesota and three trains per week at Chicago, Bensenville Yard), is incorrect.*

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Therefore, any extra freight would obviously come from CP and therefore CP Crews should be entitled to any extra trains in and out of these terminals other than what was mentioned in the applicant's original October 5, 2007 filing, Appendix F. After all, IC&E has only produced the amount of trains in and out of St. Paul for a number of years which is covered under Appendix F, Pages 3 & 4.

The Board should compel the applicants to provide meaningful information to how CP plans on running the extra freight trains out of Minnesota City and any extra freight that comes in and out of St. Paul. CP denies that they will absorb DM&E/IC&E and in their reply letter dated April 18, 2008, page 67 paragraph two where they state, "*Local 911's misconceived request seems to assume, contrary to fact, that CPR intends to absorb IC&E into CPR's existing SOO operations, and that IC&E trains will simply become SOO trains*". In CP's application filing dated October 5, 2007, exhibit 13 - Page 29 they make the statement "Until CPR is able to fully exercise control of DM&E and IC&E. Also, in the same filing, Frankenberg verified statements on Pages 5 & 6 which states, "CPR cautions, however, the greater changes is possible once it has assumed control".

CP has bought the Kansas City Corn Lines twice; once in 1985 and now on October 5, 2007. With the history of the sale of these lines, it clearly shows some type of labor protection should be implemented and perhaps some CP equity jobs put back in place.

The Kansas City Corn Lines have been bought and sold four different times in the last 22 years. The first time, CP/SOO bought the Kansas City Corn Lines on February 19, 1985 along with buying other Milwaukee Road sections. The second time on April 4, 1997, CP selling to the IMRL Railroad; third time on July 22, 2002 CP selling it's 33 1/3% to the DM&E to form the IC&E Railroad and now the fourth time, October 5, 2007 with CP buying the DM&E / IC&E Railroad that incorporates the former Kansas City Corn Lines.

The UTU 911 Seniority Issues and Concerns:

Multiple overlapping of Seniority Districts between Local 911 Crews and IC&E Crews and the Gateway in and out of Minnesota City DM&E Crews that will be affected by this proposed purchase:

1. St. Paul MN to La Crosse WI- Local 911 Crews Seniority District to the gateway on to Chicago.
2. St. Paul to La Crescent MN- Milepost 159-Local 911 Crews Seniority District to the gateway on to Kansas City
3. Humboldt to Northfield, MN&S Savage Line- Seniority District St. Paul 911 Crews.
4. St. Paul to Cornus Junction (old IM Line) - Seniority District St. Paul 911 Crews.
5. Minnesota City to Winona, interchange with the IC&E —St. Paul 911 Crews.

For the record we as UTU Local 911 do not oppose the purchase of the DM&E / IC&E Railway. We are requesting that all existing work and interchange rules will remain intact, appropriate labor protections will be afforded, and the wage and compensation packages on each respective property will be raised to the highest standard of the acquiring carrier. Furthermore, that all the safety standards required of a first class railroad be in effect for the entire system in question.

Respectfully Submitted,



Dennis W. Towner

UTU Local 911 Secretary/Treasurer
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Attachments Enclosed

cc J. H. Nelson, General Chairman GO261
P. J. Quail, MN State LR Director

D. Changes in Yards and Terminals

Increasing velocity, maintaining a balanced design, and designing a service within a network frame are key to a solid foundation for train service. The JOP philosophy shared by CPR and DME will facilitate continued service improvements. A true hub and spoke design, with yards producing blocks of traffic of sufficient volume to expedite handling across corridors and gateways, improves and enhances overall network fluidity. A key area of focus will be to simplify operations at gateways, and to increase economies of scale to these points.

Applicants' terminal operations at the St. Paul, MN and Chicago, IL should not be affected by the transaction. Currently, CPR (SOO Line) has terminal services agreements with DM&E and IC&E covering the Chicago, IL and St. Paul terminals. In both cities, DME delivers cars to the CPR yard (one train per day at St. Paul, MN and three trains per week at Chicago Bensenville yard), and CPR performs switching, interchange, and local termination service on behalf of DME. This cooperative approach has resulted in seamless service. Applicants anticipate that operations at these terminals will be conducted without significant change following implementation of the transaction.

Applicants have identified a few potential opportunities for small changes near Chicago, IL. For example, CPR's interchange with DME is currently three times per week. Local LDS2 operates out of Davis Junction on Tuesday, Thursday & Saturday to IHB Norpaul, and Monday Wednesday & Friday to Bensenville yard. Although Applicants do not currently plan to change that service, their overall review of Chicago, IL traffic flows may identify opportunities to adjust traffic patterns in a manner that would improve traffic flows and fluidity.

After approval of the transaction, Applicants will review existing DME interchanges (including interchanges between the DM&E and IC&E) to ensure traffic is moving not only in an optimal pattern, but also in the optimal blocks. The Minnesota City, MN DM&E/IC&E

3. Other Operating and System Design Areas to be Reviewed After Approval of the Transaction.

Following approval of the transaction, Applicants will review data and information concerning the operations of their systems more closely to determine whether there may be additional opportunities for operating and service design improvements. CPR uses a sophisticated computer modeling program (*Minitrak*) that will allow Applicants to evaluate various service design ideas and to determine whether such approaches might enhance traffic flows and other important operating and service metrics. Such modeling may identify opportunities that Applicants have not yet contemplated. Until CPR is able to fully exercise control of DM&E and IC&E, and to incorporate detailed traffic data on DME's volumes, origins, destinations, etc. into CPR's computer tools, Applicants cannot fully evaluate or model projected traffic flows or potential efficiencies.

In addition, it might be possible to identify, in cooperation with connecting carriers, ways to adjust current blocking patterns to expedite the movement of traffic through busier terminal areas. The current flow of freight traffic to, from, or through Chicago, IL presents the largest area to explore in terms of how traffic patterns could be improved with our interline partners. For example, Applicants will consider the feasibility of building an NS block at DME's Huron yard, for set off at Winona, that could be handled directly to NS in CPR's Train No. 288 service (St Paul to NS Calumet), thereby avoiding reworking of traffic at Clearing Yard. The current DM&E/IC&E interchanges will also be reviewed to ensure that traffic is moving not only in an optimal pattern, but also in the optimal blocks.

In the longer term, changes in the supply chain for ethanol could require CPR-DME to consider the possibility of introducing unit train service. Unit train service reaches its optimum efficiency when the origin can load all cars in 24 hours, and when the destination can unload all

signatory employees, on an individual basis, of the availability of monetary and other benefits that are different from, and in some instances in addition to, benefits that may be available to those employees under the *New York Dock* conditions.

At least 552 DME employees who are not represented by labor organizations have entered into individual "employee protection agreements" with DME. Each such agreement provides for, among other things, severance payments and other benefits if certain events affecting the signatory employee should occur within a specified period following a change of control of DM&E. Each agreement provides that the employee's severance payment will be reduced by the amount of benefits, if any, received under the *New York Dock* conditions.

In addition, at least 235 unrepresented employees in DME's Mechanical and Engineering Departments have entered into individual agreements, commonly referred to by DME as "Post-PRB Agreements." Each such agreement provides for, among other things, up to six years' wage-protection and other benefits if certain events should affect the signatory employee within three years after the agreement's effective date, as a result of the acquisition of DM&E by another railroad.

whether further efficiencies can be realized, for example, through utilization of economies of scale or elimination of redundant facilities.

E. Employee Protective Conditions

Applicants anticipate that, in accordance with the requirements of 49 U.S.C. § 11326(a), the Board will impose the employee protective conditions set forth in *New York Dock Ry. -Control-Brooklyn Eastern Dist. Terminal*, 360 I.C.C. 60, *aff'd*, *New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979). The *New York Dock* conditions provide extensive monetary benefits to employees who are dismissed or displaced as a result of the transaction on which the conditions have been imposed. The conditions provide a measure of compensation for the costs of relocation. Moreover, the conditions require that the carriers give advance notice to employees and their representatives of operational changes that may result in the dismissal or displacement of employees, or the "rearrangement of forces," and provide an opportunity for the negotiation of implementing agreements in connection with such operational changes. Employees who are not represented by labor organizations are afforded substantially the same levels of protection as are provided to represented employees under the *New York Dock* conditions.

Neither CPR nor DME has negotiated a protective arrangement with any labor organization in connection with the proposed transaction. CPR is committed to resolving labor and employee issues that may arise in connection with this transaction through negotiation, wherever possible.

F. Existing Protective Arrangements Affecting DME's Unrepresented Employees

DME has entered into individual agreements with many of its unrepresented employees. These agreements, which are probably unique in the railroad industry, assure the

proposed transaction is essentially end-to-end. It is not anticipated that the transaction will result in any operational changes that will adversely affect any SOO employees. The planned operational change that is described in the Operating Plan (Exhibit 13), and in the Verified Statement of Vern Graham -- which will involve the handling by SOO of traffic between Minnesota City and Chicago that is currently handled by IC&E between Nora Springs, IA and Chicago -- will likely have no significant effect on SOO employees, because cars moving from or to Minnesota City will simply be added to trains currently operated by SOO over its own lines.

D&H is not contiguous to either SOO or DME, and it is not anticipated that the transaction will cause any operational changes that will adversely affect any D&H employees.

D. Effect Of The Proposed Transaction On DME Employees

As described in the Operating Plan, Applicants plan to implement an operational change that will affect the handling of certain DME traffic to and from Chicago. Currently, traffic moves in DM&E trains east from Huron, SD through Waseca, MN, to Owatonna, MN, and then south to Nora Springs, IA. From Nora Springs, this traffic moves on IC&E trains through Dubuque, IA, to Chicago. This is daily service, one train per day in each direction. It is planned that the traffic from Huron, instead of being routed from Owatonna south to Nora Springs, will continue east on DM&E's line to the DM&E/SOO connection at Minnesota City, MN. There, the cars will be added to SOO trains that operate twice daily between the Twin Cities and Chicago. This change in traffic routing will affect DME employees in two ways. First, there will be a reduction of two crew starts per day (one crew start includes two train and engine service employees) on trains operating on the lines from Waseca to Nora Springs. This will affect employees who report for work at Waseca, and draw their assignments from a crew

CPR-2 DME-1

APPENDIX F:
DME Blocking Plans and Schedule

DM&E

Division of Maintenance & Equipment

Iowa Department of Transportation
Rail Division**IC&E**

Iowa Department of Transportation

SCHEDULE ID		MNCSP		DAYS OF OPERATION		MTWTFSS	
ORIGIN		KANSAS CITY		DESTINATION		ST PAUL	
STATION	DAY	ARRV	DEPT	BLOCKS FROM ME	CONNECTIONS TO	FROM	INSTRUCTIONS
KANSAS CITY	1		1400	1 - KC SUB SHORTS 2 - MARQUETTE 3 - MUSCATINE 4 - EPC 5 - DAVIS JCT/BVILE 6 - DUBUQUE JCT 7 - IPSICO/NAHANT 8 - DAVENPORT 9 - ST PAUL		KOS ENBF UP	
LIBERTY	1	1500	1800	3 - MUSCATINE		UP	PU UP KC BEND BLOCK 2
EXCELSIOR SPGS	1	1700	1800	9 - ST PAUL			S/O, PU IN BLOCK
OTTUMWA	2	0100	0200	3 - MUSCATINE		ENBF	CREW CHANGE, S/O, PU
MUSCATINE	2	0600	0700	2 - MARQUETTE 4 - EPC			S/O BLOCK 3 INCL UP KC PU IN BLOCK
NAHANT	2	0800	1800	1 - DUBUQUE 2 - RIVER JCT 3 - MARQUETTE 4 - ST PAUL	MMACC LNAB LNA	LNA4 IAIS	S/O BLOCKS 4, 5, 7, 8 PU IN BLOCK CREW CHANGE POWER CHANGE
SABULA JCT	2		2100				BYE
DUBUQUE	2 3	2330	0100		LDQ CNC	CNC	S/O BLOCK 1, PU IN BLOCK
MARQUETTE	3	0400	0500	4 - ST PAUL	MMCMC	MMCMQ	S/O BLOCK 3, PU CREW CHANGE
RIVER JCT	3	0600	0630		CPR		S/O BLOCK 2
ST PAUL	3	1300			CPR		
DESCRIPTION HANDLES EXPEDITED MANIFEST TRAFFIC BETWEEN KANSAS CITY AND ST PAUL LKC LOCAL HANDLE TRAIN KC JOINT AGENCY TO LAWSON. DOES SHORT WORK EXCELSIOR SPGS ON M, W, F. WORKS LIBERTY/MOSEBY JCT ON T, T, B. KC SUB ROAD CREW LIMITED TO TWO STOPS BETWEEN POLO-OTTUMWA.							
ROUTE MILES				638.2			
ROAD RUN TIME				35 HOURS			
TERMINAL TIME				12 HOURS			
TOTAL SCHEDULE TIME				47 HOURS			
HPTON REQUIREMENT				0.8			
RESTRICTIONS				NONE			

SCHEDULE ID		MSPKG		DAYS OF OPERATION		MTWTFSS	
ORIGIN		ST PAUL		DESTINATION		KANSAS CITY	
STATION	DAY	ARRV	DEPT	BLOCKS FROM HE	CONNECTIONS		INSTRUCTIONS
ST PAUL	1		0700	1 - ICE		CPR	
RIVER JCT	1	0630	0800			CPR	PU
MARQUETTE	1	0800	1700	1 - DUBUQUE 2 - DAVIS JCT 3 - IPSCO 4 - MUSCATINE GRAIN 5 - EXCELSIOR SPGS 6 - KC UP 7 - KC JOINT AGENCY 8 - DAVENPORT		MMCMQ	SWITCH TRAIN CREW CHANGE
DUBUQUE	1	2000	2100	8 - DAVENPORT	CNIC	CNIC	S/O BLOCK 1, PU ON HE
SAMOA	1	2300	2330		MNACC		S/O BLOCK 2
NAHANT	2	0200	0700	1 - KC SUB SHORTS 2 - MUSCATINE 3 - EXCELSIOR SPGS 4 - KC UP 5 - KC JOINT AGENCY	IAIS	IAIS	S/O BLOCKS 5, 10 PU IN BLOCK CREW CHANGE POWER CHANGE
MUSCATINE	2	0800	0800	4 - KC UP 5 - KC JOINT AGENCY			S/O BLOCK 2, PU IN BLOCK
OTTUMWA	2	1300	1600	5 - KC JOINT AGENCY			S/O BLOCK 1, PU IN BLOCK CREW CHANGE
EX SPRINGS	2	2200	2230				S/O BLOCK 3
LIBERTY	2	2330	2358		UP		S/O BLOCK 4
KANSAS CITY	3	0100			KCS BNSF		
DESCRIPTION HANDLES EXPEDITED MANIFEST TRAFFIC FROM ST PAUL TO KANSAS CITY. TUESDAY AND THURSDAY HANDLES VOLTZ NS AUTOS.							
ROUTE MILES				656.2			
ROAD RUN TIME				39 HOURS			
TERMINAL TIME				16 HOURS			
TOTAL SCHEDULE TIME				48 HOURS			
HPTON REQUIREMENT				0.8			
RESTRICTIONS				NONE			