



July 2, 2008

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The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Suite 101
Washington, D.C. 20423-0001

Subject: Finance Docket No. 35081 – *Canadian Pacific Railway Company, et al. – Control – Dakota Minnesota & Eastern Railroad Corporation, et al.*

Dear Acting Secretary Quinlan:

Enclosed for filing in the above proceeding is the Metra's Brief in Support of Its Request for Conditions (METRA-4).

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Robert P. vom Eigen', written in a cursive style.

Robert P. vom Eigen

RVE:dmo

Encls:

cc: Michael C. Noland (w/encl.)
Parties of Record (w/ encl.)

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

Finance Docket No. 35081

CANADIAN PACIFIC RAILWAY COMPANY, *ET AL.* – CONTROL –
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., *ET AL*

METRA’S BRIEF IN SUPPORT OF ITS REQUEST FOR CONDITIONS

Metra has shown in its Request for Conditions (METRA-2) and in its Rebuttal to Applicants’ Response to Comments and Requests for Conditions (METRA-3) that CP’s acquisition of control of the DM&E will have immediate adverse impacts on Metra’s essential commuter services over its Milwaukee District West and North Lines that will occur regardless of whether CP constructs the Powder River Basin coal line. For instance, CP asserts in its Response to Comments and Requests for Conditions (CPR-14/DM&E-14) that by virtue of its acquisition of indirect control IC&E, it will be permitted to admit an additional third party carrier to the West and North Lines.¹ Metra has shown in its previous pleadings why imposition of conditions is necessary and is in the public interest to prevent that additional burden upon these lines and to extend to Metra’s North Line the protections negotiated in 2003 in the context of CP’s admission of IC&E to the West Line.

¹ CPR-14/DM&E-14 at 90.

Metra will not burden the Board with a reiteration of arguments already presented. However, we do believe it important to inform the Board that there has been no meaningful progress between Metra and CP in negotiation of a settlement to the issues raised by Metra in this proceeding. Somewhat to the surprise of Metra, CP announced in its Response to Comments that the parties “are currently discussing potential amendments to the existing agreement to accommodate changes in traffic patterns that may result from the proposed transaction.”² In fact, at the time of that statement there were no substantive discussions underway, and as explained in the Rebuttal Verified Statement of Mr. Bauer, the first substantive meeting did not occur until May 19, 2008, the date of Metra’s Rebuttal filing. See Bauer Rebuttal V.S. at ¶10.

Although the parties have signed a non-disclosure agreement that precludes discussion of the substance of these negotiations, Metra can report that: (1) there have been no meetings or substantive discussions since the May 19 meeting; (2) no substantive progress has been made towards addressing the concerns raised in Metra’s previous filings, and (3) CP has proposed no “potential amendment to the existing agreement to accommodate changes in traffic patterns that may result from the proposed transaction.”

Therefore, Metra respectfully requests that Board impose the following conditions upon its approval of this transaction:

1. CP shall transfer to Metra the right to control and dispatch train operations over the North and West Lines from Metra’s Consolidated Control Center in Chicago;
2. CP shall not commence operation of any PRB coal trains over the West or North Lines until Metra has completed construction of necessary capacity improvements as determined in accordance with provisions equivalent to those contained in the CP/Metra Trackage Rights Agreement and the ICE Chicago Trackage Rights Agreement which are necessary to preserve Metra’s service capabilities over the North and West Lines;

² CPR-14/DM&E-14 at 89.

3. The expense of such capacity improvements shall be borne solely by CP, to the extent they are required solely for the movement of such coal trains or other CP/DM&E/IC&E trains.
4. CP shall pay Metra (i) the Excess Train Charge or Coal Train Charge, as specified in §3.1 and §3.2 of the ICE Chicago Trackage Rights Agreement, adjusted annually in accordance with the Agreement in connection with any DM&E/IC&E traffic transported via the North Line, (ii) a charge for the increased traffic in connection with any DM&E/IC&E traffic transported via the North Line calculated on the same basis as specified for Increased Traffic in §3.1 of the ICE Chicago Trackage Rights Agreement, and (iii) an annual rental charge to Metra for introduction of the DM&E/IC&E traffic to the North Line pursuant to the same provisions under which rental is paid pursuant to the Metra/CP Trackage Agreement and the 1997 Agreement, see Section V, *infra*, for operations over the West Line;
5. When implementing the preceding condition, any trains originated or terminated along the DM&E/IC&E lines that operate over the West Line or the North Line, regardless of the ownership of the locomotives powering such trains, shall be counted as IC&E trains for purposes of the ICE Chicago Trackage Rights Agreement, the Metra/CP Trackage Agreement and any other agreement governing the North Line.
6. CP and its affiliates shall acknowledge that its rights to admit third party carriers to the West and North lines have been satisfied and that it may not admit any third party carrier in the future to the West or North Lines; and

7. CP shall negotiate with Metra such agreements as appropriate to implement the preceding conditions, with a right of either party to petition the Board to impose further conditions reasonably necessary to achieve the objectives of these conditions.

Respectfully submitted,



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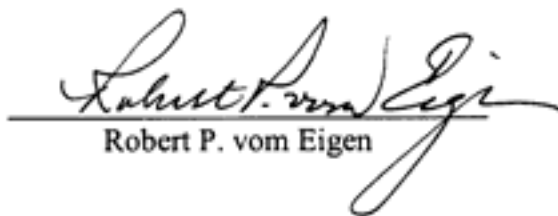
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COUNSEL FOR METRA

July 2, 2008

CERTIFICATE OF SERVICE

I hereby certify this 2nd day of July 2008 that I have caused Metra's Brief in Support of It's Request for Conditions (METRA-4) to be electronically served with the Board and served first class mail, postage pre-paid, on all parties of record in the aforementioned proceeding.



Robert P. vom Eigen