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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35799]

Rapid City, Pierre & Eastern Railroad, Inc.—Acquisition and Operation Exemption
Including Interchange Commitment—Dakota, Minnesota & Eastern Railroad Corporation

Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E),¹ a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.35 to acquire from Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific (DM&E)² and to operate approximately 670 miles of rail lines known as the DM&E West Lines in Minnesota, South Dakota, Nebraska, and Wyoming. RCP&E would also acquire approximately 219 miles of incidental trackage rights over connecting lines of DM&E and other carriers. RCP&E and DM&E entered into an agreement regarding this transaction on January 2, 2014.³ This transaction would result in RCP&E's becoming a Class II rail carrier.

¹ RCP&E is a wholly owned subsidiary of Genesee & Wyoming Inc. (GWI).

² In Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad, FD 35081 (STB served Sept. 30, 2008), the Board approved an application allowing Canadian Pacific Railway Company (CP) to acquire indirect control of DM&E and DM&E's wholly owned rail subsidiary, Iowa, Chicago & Eastern Railroad Corporation (IC&E).

³ The Board is waiving the requirement that RCP&E submit an additional 10 copies of both the Public and Highly Confidential versions of the agreement. As noted by RCP&E, each document is hundreds of pages long, and it would be unduly

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Acquired Lines.⁴ The specific lines to be acquired by RCP&E include: (1) Huron Subdivision between Tracy, Minn., at milepost 231.5 and Huron, S.D., at milepost 362.7, a distance of 131.2 miles; (2) Pierre Subdivision between Huron at milepost 362.7 and Ft. Pierre, S.D., at milepost 484.4, a distance of 121.7 miles; (3) PRC Subdivision between Ft. Pierre at milepost 484.4 and Pressler Jct., S.D., at milepost 649.2, a distance of 164.8 miles; (4) Black Hills Subdivision between Dakota Jct., Neb., at milepost 0.4 and Bentonite/Colony, Wyo., at milepost 174.7, a distance of 174.3 miles; (5) Crawford Subdivision between Dakota Jct. at milepost 411.72± and Crawford, Neb., at milepost 432.5±, a distance of 20.78 miles; (6) Onida Subdivision between Onida, S.D., at milepost 97.5 and Blunt, S.D., at milepost 115.1, a distance of 17.6 miles; (7) Mansfield Subdivision between Redfield, S.D., at milepost 39.7 and Mansfield, S.D., at milepost 66.9, a distance of 27.2 miles; and (8) Yale Spur⁵ between Yale, S.D., at milepost 145.0 and Huron, S.D., at milepost 160.3±, a distance of 15.3 miles.

Notwithstanding the sale of the lines described above, DM&E would retain the common carrier obligation with respect to the handling of coal to, from, and over the

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burdensome and expensive to meet the requirement here. Moreover, RCP&E has submitted an electronic version of each document on a disk.

⁴ DM&E is the current operator of the DM&E West Lines, with the exception of the Crawford Subdivision, which is operated by Nebraska Northwestern Railroad, Inc., pursuant to a lease agreement with DM&E.

⁵ The Yale Spur is subleased from the East Central Railroad Authority, and the sublease is being assigned by DM&E.

DM&E West Lines until December 31, 2030, and RCP&E would not assume the common carrier obligation to handle coal shipments during that period.⁶

Incidental Trackage Rights. The specific incidental trackage rights that RCP&E will acquire are over lines: (1) owned and operated by DM&E between Tracy at milepost 231.5 and Mankato, Minn., at milepost 142.4, a distance of 89.1 miles; (2) operated by BNSF Railway Company (BNSF), being assigned to RCP&E by DM&E, as successor to Chicago and Northwestern Transportation Company between Wolsey, S.D., at milepost 70.50 and Aberdeen, S.D., at milepost 777.04, a distance of 72.04 miles; and (3) owned and operated by BNSF, being assigned to RCP&E by DM&E between Yale at milepost 148.5 and Watertown, S.D., at milepost 90.72, and yard trackage at Huron at milepost 160.33 to the end of track, a distance of 58.65 miles.⁷

RCP&E certifies that the proposed transaction involves an interchange commitment. As part of the transaction, RCP&E will be acquiring DM&E's "Colony Line." RCP&E will be assuming certain interchange rights and obligations arising under the existing agreements that were executed when DM&E acquired the Colony Line from Union Pacific Railroad Company in 1996. Among those assumed obligations will be certain obligations under the existing Colony Line Car Supply, Services, and Divisions

⁶ The acquisition by RCP&E also does not include any of the rights of DM&E or its affiliates to build into the Powder River Basin. See Wyo. Dakota R.R. Prop.—Acquis. & Oper. Exemption—Dakota, Minn. & E. R.R., FD 34871 (STB served Aug. 14, 2006).

⁷ Additionally, RCP&E would grant DM&E trackage rights between Tracy and Wolsey to allow DM&E to continue to handle overhead grain trains in conjunction with BNSF that are operating today between Florence, Minn., and points on DM&E beyond Tracy, and to handle non-revenue ballast trains, including the right to interchange such trains with BNSF at Wolsey. DM&E is expected to file a separate notice of exemption with the Board for trackage rights granted by RCP&E to DM&E.

Agreement (CSSDA) for the remainder of the term of the CSSDA. As required under 49 C.F.R. § 1150.33(h)(1), RCP&E provided additional information concerning the interchange commitment.⁸

This transaction is related to a concurrently filed verified notice of exemption in Genesee & Wyoming Inc.—Continuance in Control Exemption—Rapid City, Pierre & Eastern Railroad, Inc., Docket No. FD 35800, wherein GWI seeks Board approval under 49 C.F.R. § 1180.2(d)(2) to continue in control of RCP&E, upon RCP&E's becoming a Class II rail carrier.⁹

The earliest the transaction could be consummated is April 25, 2014, the effective date of the exemption (45 days after the exemption was filed).¹⁰ The parties expect to consummate the transaction shortly after the exemption becomes effective, assuming all other conditions to closing have been satisfied by that time.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke would not automatically stay the effectiveness of

⁸ See Verified Notice of Exemption 7-8.

⁹ The DM&E West Lines also are the subject of an ongoing proceeding before the Board. In that proceeding, the State of South Dakota, by and through its Department of Transportation (State), filed a petition asking the Board to enforce three representations allegedly made by CP during the 2008 acquisition-of-control proceeding regarding investments that CP would make in DM&E and IC&E (collectively in that proceeding, DME). The Board issued decisions allowing the State to engage in discovery concerning those claims and setting a procedural schedule. See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R., FD 35081 (Sub-No. 2) (STB served Dec. 20, 2013, and Mar. 10, 2014). Discovery remains ongoing in that proceeding.

¹⁰ See 49 C.F.R. § 1150.35(e).

the exemption. Petitions for stay must be filed no later than April 11, 2014, which is 14 days before the exemption could become effective.¹¹

An original and 10 copies of all pleadings, referring to Docket No. FD 35799 must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: March 24, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹¹ See 49 C.F.R. § 1150.35(f).