

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34178¹

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

— CONTROL —

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

Decision No. 10

Decided: July 9, 2003

The Board will dismiss the petitions previously filed by Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and Union Pacific Railroad Company (UP), thereby bringing this proceeding to a conclusion. This action is warranted because the parties, in accordance with a prior Board directive, have resolved their dispute through private-sector negotiations.

On February 3, 2003, in Decision No. 7: (1) the Board approved, subject to the standard New York Dock labor protective conditions,² the acquisition by the DM&E of control of the Iowa, Chicago & Eastern Railroad Corporation (IC&E); (2) the Board denied DM&E's request for a 49 U.S.C. 11102 "terminal trackage rights" order that would have required UP to permit DM&E to operate, without restriction, over an approximately 3,700-foot segment of UP track in Owatonna, MN, and urged DM&E and UP to resolve the terminal trackage rights issue through negotiation; and (3) the Board authorized, subject to the standard Norfolk and Western labor protective conditions,³ operation by DM&E, pursuant to overhead trackage rights, on the IC&E line between Owatonna, MN, and Mason City, IA, and on the Iowa Northern Railway Company line between Plymouth Junction and Nora Springs, IA.

¹ This decision embraces STB Finance Docket No. 34178 (Sub-No. 1), Dakota, Minnesota & Eastern Railroad Corporation — Terminal Trackage Rights — Union Pacific Railroad Company, and STB Finance Docket No. 34178 (Sub-No. 2), Dakota, Minnesota & Eastern Railroad Corporation — Trackage Rights Exemption — Iowa, Chicago & Eastern Railroad Corporation and Iowa Northern Railway Company.

² New York Dock Ry. — Control — Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979).

³ Norfolk and Western Ry. Co. — Trackage Rights — BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc. — Lease and Operate, 360 I.C.C. 653, 664 (1980).

In accord with the Board's longstanding policy to promote private-sector resolutions of disputes, on February 21, 2003, in Decision No. 8, the Board extended the deadline for filing petitions for reconsideration of the February 3 decision so that the parties could continue negotiations with respect to DM&E's use of UP trackage at Owatonna.

On March 19, 2003, DM&E (having not yet reached a resolution of the Owatonna issue with UP) filed its DME-13 petition for reconsideration and reopening of Decision No. 7. DM&E asserted that, pursuant to a contract with UP, it could operate trains despite the Board's denial of terminal trackage rights. DM&E nevertheless asked that the Board reconsider the denial of DM&E's terminal trackage rights application and find that DM&E has satisfied the criteria of 49 U.S.C. 11102(a) with respect to the relevant 3,700-foot segment of UP track in Owatonna. DM&E asked, alternatively, that the Board reopen this matter and confirm that, pursuant to 49 U.S.C. 11321(a), the terms and conditions of the existing DM&E/UP Owatonna trackage rights agreement are overridden to the extent necessary to allow direct DM&E/IC&E train movements over the 3,700-foot UP segment.

On March 21, 2003, UP filed its UP-5 petition for an "emergency order" enjoining DM&E from engaging in certain assertedly unauthorized operations over the 3,700-foot segment of UP track in Owatonna that was the subject of the DME-13 petition. The Board, UP argued, should reaffirm its conclusion in Decision No. 7 that DM&E has no authority to operate over UP's Owatonna trackage to connect with IC&E in Owatonna and should enjoin DM&E from engaging in such unauthorized operations.

In the interim, the parties continued their negotiations and have now reached a private-sector resolution of the issue regarding terminal trackage rights at Owatonna. By separate letters dated June 25, 2003, DM&E and UP have advised that they "have now reached and executed an agreement resolving the issues between the parties with respect to Owatonna" and "have settled their dispute as to DM&E's rights to use UP's trackage in Owatonna." DM&E and UP have each further advised that, "[u]nder the settlement, DM&E will have the unrestricted right to use UP's trackage at Owatonna for handling or interchange of traffic to or from Iowa, Chicago & Eastern Railroad Corporation." DM&E and UP have also advised that, in view of the settlement, they are withdrawing their DME-13 and UP-5 petitions, respectively; and each adds that it has no objection to the withdrawal of the other's petition.

Accordingly, the DME-13 and UP-5 petitions will be dismissed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The DME-13 petition, filed March 19, 2003, is dismissed with prejudice.

2. The UP-5 petition, filed March 21, 2003, is dismissed with prejudice.
3. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary