

SURFACE TRANSPORTATION BOARD
OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS
AND ADMINISTRATION

MEMORANDUM

July 26, 2006

TO: David M. Konschnik, Director
Office of Proceedings

FROM: Victoria Rutson, Chief
Section of Environmental Analysis

SUBJECT: STB Finance Docket No. 34177, Iowa, Chicago & Eastern Railroad Corporation –
Acquisition and Operation Exemption – Lines of I&M Rail Link, LLC and

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

RECOMMENDATIONS: SEA recommends that the Board modify Environmental
Conditions Numbers 2 and 3 previously imposed in the Finance Docket No. 34177
captioned above to read as follows:

DM&E shall prepare an Environmental Appendix for the review of the Board's
Section of Environmental Analysis (SEA). Once SEA has approved the content
of DM&E's Environmental Appendix, DM&E shall make the Environmental
Appendix publicly available in the project area for review and comment in a
manner deemed appropriate by SEA, and request that comments be sent to SEA.
Following its review of all comments received, SEA will recommend to the Board
what level of formal environmental review, if any, is necessary. DM&E is
precluded from transporting any Powder River Basin coal trains over the IMRL
rail lines until the Board issues a decision finding that the environmental review
process is completed and, upon weighing and considering the complete record,
allows such operations by DM&E over the IMRL rail lines.

Background

Iowa, Chicago & Eastern Railroad Corporation (IC&E) and Dakota, Minnesota &
Eastern Railroad (DM&E)(collectively, petitioners) have petitioned the Board to partially reopen
the Board decision served July 22, 2002, in Finance Docket No. 34177 to modify two
environmental conditions (Numbers 2 and 3) imposed by the Board. These two conditions state
the following:

2. IC&E is precluded from handling any trains moving to or from the line approved for new construction in DME Construction over what are now the I&M Rail Link (IMRL) lines until we have conducted any appropriate environmental review and issued a further decision permitting such operations.
3. If DME is subsequently authorized to control IC&E, to allow the Board to meet its obligations under the environmental laws, the Board must be notified if and when DM&E starts construction of the new line, and the Board must be provided with information regarding anticipated additional trains handling traffic on the new line that would move on the IMRL lines.

In the July 22, 2002 decision, the Board reasoned that the acquisition and control would result in only modest changes in carrier operations and would not exceed the Board's thresholds for environmental review set forth at 49 CFR 1105.6(c)(2)(i) and 1105.7(e)(4) and (5). The Board, therefore, found the acquisition and control cases "categorically excluded" from NEPA – that is, that preparation of neither an Environmental Impact Statement or Environmental Assessment of the acquisition itself was warranted because the projected changes in rail traffic would be slight, resulting in negligible environmental impact.

The Board noted, however, that if the DM&E Construction case (which the Board had already permitted) were to be financed and built, it was possible that substantial additional DM&E coal trains would move over the IMRL rail lines, which are the subject of the proceedings here. However, without knowing the extent of DM&E's rail traffic coming to and from the Powder River Basin and moving over the IMRL lines, the Board could not make a decision on the appropriate level of environmental review, or even determine if a formal environmental review was necessary. (Under the Board's environmental rules, acquisitions and control cases are "categorically excluded" from environmental review if the action would not result in increases in train traffic beyond certain thresholds spelled out in 49 CFR 1105.7(e)(4) and (5).) Therefore, the Board imposed the two conditions referenced above to preserve the environmental status quo.

Petitioners IC&E and DM&E state that these two conditions have had the effect of impeding DM&E's ability to secure financing for its rail construction project. They further state that it is no longer necessary for DM&E to wait until rail line construction begins for SEA and the Board to go forward with whatever level of environmental review may be warranted in these cases. Petitioners IC&E and DM&E assert that they are ready and able now to prepare the required information to allow the Board to initiate the environmental review process in these proceedings. According to petitioners, the uncertainties that existed in 2002 regarding the DM&E Construction proceeding have been resolved and that a prompt conclusion of the environmental issues is necessary because the advantages and disadvantages of routing options available to different markets, in light of the acquisition transaction, are now generally known.

In addition to modifying the two environmental conditions, petitioners also urge the Board to adopt the environmental review process used in Finance Docket No. 34821, Norfolk Southern Railway Company – Trackage Rights Exemption – Meridian Speedway LLC (Meridian Speedway). There, SEA prepared a so-called "Environmental Notice," based on

information submitted by applicants to afford the public an opportunity to review and comment on petitioners' contention that the transaction before the Board there qualified for a categorical exclusion and did not warrant environmental review.

Discussion

Based on petitioners' representations and for the reasons set forth below, SEA believes that it is appropriate to modify the environmental conditions imposed in the IMRL transactions. SEA disagrees with petitioners, however, that the Environmental Notice process used in Meridian Speedway is appropriate here.

The Board has received comments from the U.S. Department of Transportation (U.S. DOT), the Iowa Department of Transportation (Iowa DOT), the City of Dubuque, Iowa, and a reply by petitioners. The commenters raise concerns regarding potential environmental impacts caused by increased numbers of coal trains operating on the IMRL lines, but generally do not oppose petitioners' request to modify the environmental conditions to permit work on the environmental review process to commence before rail line construction in DM&E Construction begins.

Both U.S. DOT and Iowa DOT encourage the Board to modify the environmental conditions and permit the environmental review process to proceed now. In light of these comments, and in the absence of concerns regarding the initiation of environmental review, SEA recommends that the Board modify Environmental Conditions 2 and 3 imposed in FD 34177 to read as follows:

DM&E shall prepare an Environmental Appendix for the review of the Board's Section of Environmental Analysis (SEA). Once SEA has approved the content of DM&E's Environmental Appendix, DM&E shall make the Environmental Appendix publicly available in the project area for review and comment in a manner deemed appropriate by SEA, and request that comments be sent to SEA. Following its review of all comments received, SEA will recommend to the Board what level of formal environmental review, if any, is necessary. DM&E is precluded from transporting any Powder River Basin coal trains over the IMRL rail lines until the Board issues a decision finding that the environmental review process is completed and, upon weighing and considering the complete record, allows such operations by DM&E over the IMRL rail lines.

The commenters raise far more concerns regarding petitioners' suggestion that the Board prepare an Environmental Notice based on information supplied by DM&E and issue the notice for 20 day public review and comment. In essence, they assert that communities in Iowa will see an increase in coal trains operating over the IMRL rail lines, and as a result, the same level of environmental review and environmental mitigation should be applied to them, as well as the communities involved in DM&E Construction. Commenters assert that a 20-day public review and comment period would be insufficient given the potential environmental impacts from increased coal trains.

SEA agrees with commenters that the Environmental Notice process used in Meridian Speedway is not appropriate here. Meridian Speedway involved trackage rights and raised no controversy among the communities located in the project area. Here, concerns have been raised. SEA therefore believes that the “Environmental Appendix” approach used in other Board proceedings¹ is more appropriate for these proceedings. The Environmental Appendix is a document prepared by an applicant that provides sufficient detail about a proposed transaction to assist SEA in determining whether preparation of an EA, EIS, or categorical exclusion are necessary. When DM&E has developed sufficiently detailed information about projected routings and levels of coal train traffic per day likely to operate over the IMRL rail lines, it may proceed with preparing an Environmental Appendix. Documents are available on the Board’s website to serve as a guide for DM&E in preparing its Environmental Appendix.

In addition, DM&E may meet with SEA at any time to ensure that its Environmental Appendix is acceptable and that its plans for distributing the Environmental Appendix are adequate to provide a fulsome opportunity for notice and comment in the project area. DM&E is free to include a discussion of what level of environmental review, if any, is appropriate given the specific operational data set forth in its Environmental Appendix. After the close of the comment period, SEA will review all comments received and will make a recommendation to the Board regarding what, if any, formal environmental is warranted.²

SEA believes that the solution set forth above responds to DM&E’s concerns that the prior environmental conditions imposed by the Board created an impediment to DM&E’s quest to secure financing for its rail construction project. Preparation and distribution of an Environmental Appendix by DM&E for public review and comment will preserve the Board’s ability to determine what, if any, formal environmental review should be conducted, and therefore does not compromise the Board’s NEPA responsibilities in the acquisition proceeding.

¹ STB Finance Docket No. 34342, Kansas City Southern Railway Company, Gateway Eastern Railway Company, And The Texas Mexican Railway Company; STB Finance Docket No. 34000, Railroad Control Application, Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc. – Control – Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.

² Petitioners also argue that the Environmental Notice is suitable here because the Board has already conducted an exhaustive environmental review of increased rail traffic over the IMRL rail lines in DM&E Construction. This is not so. SEA stated in the DM&E Construction EIS that because it lacked specific information regarding numbers of DM&E trains that were projected to travel over the IMRL rail lines, it could not assess the potential environmental impacts to communities adjacent to the IMRL.