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OFFICE OF PROCEEDINGS  
Clearance Branch

STB Finance Docket No. 34177

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION – ACQUISITION AND  
OPERATION EXEMPTION – LINES OF I&M RAIL LINK, LLC

January 30, 2007

MEMORANDUM TO SECTION CHIEF RUTSON:

The Board voted by notation on January 30, 2007, to approve the recommendation contained in the memorandum of the Section of Environmental Analysis (SEA) circulated on January 26, 2007. In the memorandum, SEA recommends the preparation of an Environmental Impact Statement in this proceeding.

Andrea Pope-Matheson

cc: Chairman Nottingham  
Vice Chairman Buttrey  
Commissioner Mulvey  
Office of Congressional and Public Services  
General Counsel Hanson  
Director Konschnik  
Deputy Director Dettmar  
Deputy Director Farr

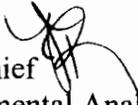
#EO-407

**SURFACE TRANSPORTATION BOARD**  
**OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS**  
**AND ADMINISTRATION**

**MEMORANDUM**

January 26, 2007

TO: The Board

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

RECOMMENDATION: Based on our review of Applicants' Environmental Appendix, the comments received to Applicants' Environmental Appendix, and Applicants' response to the comments, the Section of Environmental Analysis (SEA) believes that the Board must conduct further environmental review of the potential environmental impacts of Dakota, Minnesota & Eastern Railroad Corporation (DM&E) coal trains from the Powder River Basin (PRB) moving over the former I&M Rail Link (IMRL) system as a result of DM&E's acquisition of the former IMRL lines. Specifically, SEA recommends preparation of an Environmental Impact Statement (EIS), which will afford the most legally defensible and, ultimately, the most efficient means of completing the necessary environmental review.

**BACKGROUND**

On December 28, 2006, the Eighth Circuit Court of Appeals affirmed the Board's decision authorizing DM&E to construct and operate a new rail line into Wyoming's PRB following an extensive environmental review. Thus, DM&E now has final Board approval to build that new line. See Dakota, Minnesota & Eastern R.R. – Construction into the Powder River Basin, Finance Docket No. 33407 (STB served Feb. 15, 2006), aff'd, Mayo Foundation et al. v. STB, No. 06-2031 et al. (8th Cir. Dec. 28, 2006) (Construction).

In a separate proceeding, the Board authorized the acquisition of the IMRL by the Iowa, Chicago & Eastern R.R. (IC&E) and DM&E (collectively, the Applicants) (Acquisition). See the Board's decisions issued July 22, 2002, Feb. 3, 2003, and Oct. 18, 2006, and SEA's prior memo dated July 26, 2006. In approving the acquisition, the Board found that no environmental impacts would result from DM&E and IC&E simply stepping into the shoes of IMRL, with respect to IMRL's existing operations. But the Board recognized that there could be cumulative environmental effects of its approval of the Construction and the Acquisition that should be examined under the National Environmental Policy Act (NEPA). Because the Board was not prepared to examine those cumulative effects at that time, it conditioned its approval of the

Acquisition case upon a routing restriction that precludes DM&E from transporting any PRB coal over the former IMRL system until the Board has considered the anticipated cumulative environmental impacts of the two cases.

In May 2006, Applicants sought to have the routing restriction lifted. In the October 2006 decision, the Board directed the Applicants to prepare an Environmental Appendix to assist the Board in determining whether further environmental review is necessary under NEPA, and, if so, whether the Board should prepare a full EIS or a more limited Environmental Assessment (EA). The Applicants submitted an Environmental Appendix that included their estimate of the number of DM&E coal trains per day (between 5 and 8) that would move over some segments of the former IMRL beginning in 2009 and projected out two years, to 2011.

Applicants served the Environmental Appendix on all parties of record in the Acquisition case and published a notice in newspapers of general circulation in each county and municipality located on the former IMRL with a population greater than 5,000. The notice explained that the Environmental Appendix was available, how to obtain a copy, and how to submit comments to SEA by December 11, 2006. SEA also prepared a Federal Register notice, published on November 22, 2006, containing the same information on document availability and how, when, and where to submit comments.

SEA received a number of comments on Applicants' Environmental Appendix, including comments from the U.S. Department of Transportation (DOT); Iowa DOT; Illinois DOT; Mayo Foundation (with Sierra Club and Mid State Coalition for Progress); City of Dubuque, Iowa; City of Owatonna, Minnesota; Burlington Northern Railroad; and U.S. Environmental Protection Agency (EPA). The comments, along with DM&E's reply, which the Board received on January 12, 2007, are available on the Board's website. To permit the Board to decide how to proceed with the remaining environmental issues as soon as possible, SEA has reviewed this matter on a priority basis.

Several commenters have strongly argued for a thorough review of the anticipated cumulative impacts of the two DM&E proceedings.<sup>1</sup> U.S. DOT has noted that the major previous obstacle to SEA's ability in the Construction case to consider potential environmental impacts on communities along the former IMRL lines of DM&E coal trains—the inability to impose mitigation on a carrier that was not a party to the action before the Board<sup>2</sup>—has been removed because DM&E now owns the former IMRL system and all relevant entities (DM&E, IC&E, and IMRL) are now parties before the Board. Iowa DOT has taken the position that Iowa communities along the former IMRL lines should be afforded the same opportunities for environmental review and mitigation as had been afforded affected communities in Minnesota, Wyoming, and South Dakota in the Construction case. Burlington Northern and Illinois DOT have urged that further environmental analysis of the Chicago region should be conducted in the Acquisition case. The City of Dubuque has asked for an EIS and appropriate mitigation for that

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<sup>1</sup> The City of Owatonna was the only commenter to specifically support DM&E's position that no further environmental review is necessary. EPA submitted a form indicating, that after a cursory review of the Environmental Appendix, EPA had no comment.

<sup>2</sup> See Final EIS at 8-3 to 8-5; Construction, 6 S.T.B. 8, 34 (2002).

City to address concerns about train traffic through that community, or a restriction limiting an increase of rail traffic over the former IMRL lines to the 5-8 trains per day estimated by DM&E. Burlington Northern and other commenters have also questioned the traffic estimates and information on projected routings of PRB coal traffic in DM&E's Environmental Appendix, given DM&E's prior evidence in the Construction case that it plans to carry substantial coal traffic on the new rail line from the PRB—as much as 100 million tons of PRB coal annually, or 34 coal trains per day.

## DISCUSSION

Applicants have argued in their Environmental Appendix that there is no need for further environmental review because virtually all of the PRB coal traffic that would move over the former IMRL lines as a result of the Construction and Acquisition cases would have been routed that way even without the acquisition. The record in the Construction case supports its claim that DM&E contemplated routing PRB coal trains over the IMRL lines from the time DM&E filed its application for construction authority in 1998. However, the fact that the movement of DM&E coal trains over the IMRL has long been anticipated does not mean that the potential environmental impacts of these movements have been analyzed. To the contrary, as SEA explained in the Final EIS in the Construction case issued in November 2001, while the EIS assessed impacts on the City of Owatonna, which is on DM&E's existing line in Minnesota (because it was known at that time that some DM&E PRB coal trains would interchange with IMRL there), SEA did not analyze the potential effects on any communities in Iowa along the IMRL line “[b]ecause no reasonably foreseeable estimate of DM&E rail traffic operating over the [IMRL] through Owatonna [could] be determined” (at 8-4) and because, in any event there would have been no basis—prior to the acquisition—for the Board to impose any mitigation on IMRL (at p. 8-5). Thus, as pointed out by several of the commenters, the Board has not conducted the same level of environmental review for those people living along the former IMRL system as it has for those living in the communities along the proposed new and existing DM&E rail lines in Wyoming, South Dakota, and Minnesota. That is what SEA believes the Board must look at in order to conduct the previously deferred review of the cumulative impacts of the two DM&E cases.

Applicants have also argued that not enough PRB coal traffic would move over the former IMRL lines to warrant environmental review under the Board's own guidelines (which provide that environmental review generally will be conducted where there will be an increase of 8 trains per day (3 in non-attainment areas)). However, SEA has concerns about the credibility and adequacy of the traffic projections and information submitted by DM&E in the Environmental Appendix about how it plans to route its PRB coal traffic. As several commenters note, environmental review in the Construction case was based on forecasts of up to 34 coal trains per day coming out of the PRB on DM&E's new rail line. These 34 coal trains must be projected to move somewhere, but Applicants' Environmental Appendix does not explain why only 5-8 of those trains would be routed over former IMRL lines. Nor does it indicate how many trains per day are projected to move on each of the other available routings that would not include any former IMRL lines. Thus, SEA could not recommend issuing a categorical exclusion or a Finding of No Significant Impact here. Instead, SEA believes that the Board should undertake a further environmental review in this case.

That leaves the question of whether an EA or a full EIS should be prepared. SEA believes that an EIS is called for here for the Board to meet its obligations under NEPA. An EIS was prepared in the Construction case, and it can be argued that the same level of environmental review should be afforded for the affected communities on the former IMRL lines. Moreover, an EA would not be legally sufficient if the analysis should reveal potentially significant environmental impacts that would remain after any further mitigation imposed by the Board. Finally, in complicated and controversial cases it can take almost as much time to prepare a thorough EA, as it does to prepare a full EIS.

There should be time here to complete the EIS before DM&E's planned commencement date for handling PRB coal traffic. As Applicants make clear in their Environmental Appendix, the earliest time PRB coal traffic would move over the former IMRL lines is 2009, which gives ample time to complete an appropriate environmental review, assuming we have the full cooperation of the Applicants. It should be noted that, in the meantime, DM&E may initiate track improvement and maintenance work on the former IMRL lines and carry any commodities other than PRB coal on these lines, whenever it chooses.

Should the Board agree with this recommendation, SEA's next steps will be to retain an independent third-party contractor to assist SEA in the EIS process, prepare and publish a Notice of Intent (which begins the EIS process), and secure from Applicants the information needed to prepare a draft scope of the EIS for public review and comment.

So that SEA can proceed as quickly as possible with initiation of any further environmental review, SEA requests a Board vote on this recommendation, on a no-objection basis, by noon on Tuesday, January 30, 2007.

cc: Konschnik  
Hanson