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BRUSSELS CINCINNATI CLEVELAND COLUMBUS DAYTON NEW YORK WASHINGTON, D.C.

November 22, 2002



Via Messenger

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Enclosed please find an original and twenty-five (25) copies of the "Petition for Leave to Intervene" (MPW-2) of Muscatine Power and Water Company ("Muscatine") to be filed in the above-referenced docket, in compliance with Decision No. 5 in the above-referenced docket. In compliance with the Board's decision in this docket served September 26, 2002, Muscatine also encloses a 3.5-inch IBM compatible floppy diskette containing an electronic copy of the foregoing pleadings compatible with WordPerfect 9.0.

Also enclosed is one additional copy of the pleading for stamp and return. Kindly date-stamp the additional copy for return to this office by messenger.

If you have any questions, please do not hesitate to contact me. My office telephone number is (202) 331-8800.

Sincerely,

Jeffrey O. Moreno
Michael H. Higgins

*Attorneys for
Muscatine Power and Water Company*

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34178



**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND CEDAR AMERICAN RAIL HOLDINGS, INC.
—CONTROL—
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION**

**PETITION FOR LEAVE TO INTERVENE
OF
MUSCATINE POWER AND WATER**

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Dated: November 22, 2002

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**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
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**PETITION FOR LEAVE TO INTERVENE
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Comes now, Petitioner, Muscatine Power and Water (“Muscatine”), pursuant to 49 C.F.R. § 1112.4, and, through its undersigned counsel, submits this Petition for Leave to Intervene in STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation*, and in support of its petition states, as follows:

1. Muscatine is the largest municipal electric utility in Iowa in terms of sales and generation. It owns and operates four coal-fired electric generating facilities, located in Muscatine, with a combined capacity of 293.55 MW, providing electricity to approximately 10,839 customers. Muscatine’s generating facilities provide power to residential consumers, businesses, and industries, and Muscatine sells its excess capacity through wholesale markets to other regional and national utilities. In addition to generating electricity, Muscatine provides water and communications products and services.

2. In order to provide fuel for its generating facilities, Muscatine purchases substantial volumes of coal from the Buckskin Mine located in the Powder River Basin (“PRB”)

of Wyoming and transports it by railroad to its plants. Muscatine currently has confidential contracts with two rail carriers to provide rail service from the PRB.

3. Because Muscatine ships substantial volumes of coal from the PRB, it has a serious interest in this proceeding, which may affect its competitive options for rail transportation service. As fully explained in its Comments filed simultaneously with this Petition, Muscatine has a significant concern that the control transaction under the Board's review could eliminate Muscatine's opportunity to make use of the so-called "contract exception" to the bottleneck rule. Thus, the transaction has the potential to affect the economics of Muscatine's power generation and its competitive position vis-à-vis other utilities.

4. As the Board is aware, on or about November 12, 2002, Muscatine late-filed a Notice of Intent to Participate in this proceeding. In a Decision served November 15, 2002, the Board rejected Muscatine's notice on the grounds that it was untimely and that Muscatine failed to serve all parties of record on the service list.¹ Through the Verified Statement of Connie R. Thede, Manager, Purchasing & Stores for Muscatine Power, attached hereto, Muscatine explains the circumstances that gave rise to the late-filing. In summary, this occurred because Muscatine was involved in negotiations with DM&E to reach a private-sector resolution to its concerns over the proposed transaction. Muscatine's need to participate in the STB proceeding arose only after it was unexpectedly unable to reach an agreement with DM&E, which occurred after the filing deadline passed. At such point, Muscatine promptly filed its notice with the Board. Muscatine believes that it would be improper for the Board to reject its comments, given that its late-filing arose from its effort to reach a private-sector resolution of its concerns, which is consistent with the Board's stated policy favoring such initiatives.

5. In the November 12th Decision, the Board provided Muscatine with the opportunity to participate in this proceeding by filing a petition for leave to intervene,

¹ STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation*, Decision No. 5 (Served Nov. 12, 2002).

accompanied by its actual comments, showing service on all parties of record, with the Board by 5:00 pm on Friday, November 22, 2002. This petition and the comments filed simultaneously demonstrate Muscatine's compliance with the Board's directives.

6. In support of this Petition, Muscatine states that the Board's consideration of the issues raised in its Comments will neither unduly disrupt the procedural schedule nor unduly broaden the issues raised in the proceeding. On the contrary, Muscatine's Comments will allow the Board to fully evaluate the competitive effects of the proposed transaction.

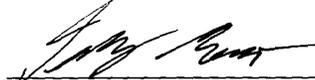
7. If the Board grants this Petition for Leave to Intervene, Muscatine has selected "MPW" as the abbreviated designation for its pleadings.

WHEREFORE, petitioner, Muscatine Power and Water, asks that it be made a party of record in this proceeding and granted leave to intervene and to participate fully in this proceeding.

Respectfully submitted,

Muscatine Power and Water

By its representatives,



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**VERIFIED STATEMENT
OF
CONNIE R. THEDE**

1. My name is Connie R. Thede. I am the Manager, Purchasing & Stores for Muscatine Power and Water ("Muscatine"), a municipal electric, water and telecommunications utility located in Muscatine, Iowa. I have been recently appointed to the Railroad Shippers Transportation Advisory Council to the Surface Transportation Board ("STB" or Board"). I have prepared this Verified Statement in support of Muscatine's Petition for Leave to Intervene to explain the circumstances that gave rise to Muscatine's late-filed Notice of Intent to Participate in the above-reference proceeding.

2. My primary responsibilities for Muscatine are the development and administration of fuel and transportation contracts to acquire coal from the Powder River Basin ("PRB"), in Wyoming. As part of my responsibilities, I regularly engage in discussions and negotiations with rail carriers that transport large volumes of coal from the PRB to Muscatine's generating facilities.

3. Since the time of the announcement that the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") was considering acquisition of the assets of I&M Rail Link ("IMRL"), Muscatine has had discussions with DM&E, regarding the consequences of the transaction. Initially, Muscatine's greatest concern involved the transition from IMRL to Iowa, Chicago & Eastern Railroad Corporation ("ICE") because of past problems encountered when IMRL took over from Canadian Pacific Rail. However, the transition occurred smoothly, without disruptions in service for Muscatine.

4. At the time that ICE acquired IMRL's assets, ICE accepted the proportional rate contract that Muscatine had in place with IMRL for delivery of PRB coal to Muscatine's electric generating station. That contract includes access to four critical gateways to Muscatine's generating station that preserves its ability to obtain competitive rates from the other Class I carriers from the PRB. Those gateways include Ottumwa, Iowa, Clinton, Iowa, Kansas City, Missouri and Owatanna, MN. Muscatine's subsequent discussions with ICE and DM&E began to focus on the importance of maintaining those gateways into the future.

5. On or about September 12, 2002, Muscatine was advised of DM&E's application for common control of ICE, which occurred at a meeting between railroad representatives, myself, and Muscatine's Fuel Procurement Committee. During that meeting it was agreed that DM&E would draft an agreement to address our concerns about the competitive effects of the transaction and to gain our support for the application. Muscatine expected that the document would be generated for our immediate review and approval.

6. Between October 1st through October 22nd, I was absent from the office on medical leave. However, DM&E did not provide the draft document until October 24th, the day after I returned

to work, and nine days after the deadline set by the Board for Muscatine to file its notice of intent to participate in this proceeding. After reviewing the document provided by DM&E, it became apparent that it was not in accordance with Muscatine's expectations or our understanding of the earlier agreement. Muscatine rejected the proposal on or about November 7, 2002.

7. Because Muscatine fully expected to reach a private agreement with DM&E, it believed that participation in the STB proceeding would be unnecessary. In order to protect its interests, Muscatine promptly filed its (albeit late) Notice of Intent to Participate in order to make its concerns known to the Board and to seek necessary regulatory relief. Muscatine's late-filed notice was rejected by the Board.

8. As fully described in its Comments, Muscatine has serious and substantial concerns about the proposed transaction, which may affect its competitive options for rail transportation service from the Powder River Basin. Muscatine greatly appreciates the opportunity that the Board has granted it to file simultaneously a Petition for Leave to Participate and Comments in this proceeding.

Verification

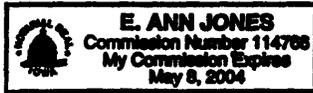
I, Connie R. Thede, verify under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on this 21st day of November, 2002.



Connie R. Thede
Manager – Purchasing & Stores
Muscatine Power and Water

STATE OF IOWA
MUSCATINE COUNTY

On this 21st day of November 2002, before me, the undersigned, a Notary Public in and for the State of Iowa personally appeared Connie R. Thede, to me personally known and she voluntarily executed the above statement.





NOTARY PUBLIC in and for the
State of Iowa

CERTIFICATE OF SERVICE

I hereby certify that I have served on this 22nd day of November, 2002, a copy of the foregoing Petition for Leave to Intervene of Muscatine Power and Water by first-class mail on all parties of record.



Aimee L. DePew