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FLETCHER & SIPPEL LLC

Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721

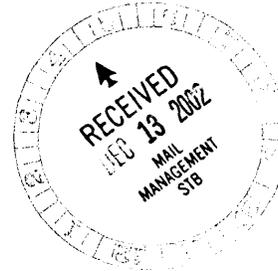
Phone: (312) 540-0500
Fax: (312) 540-9098
www.fletcher-sippel.com

December 12, 2002

William C. Sippel
(312) 540-9451
wsippel@fletcher-sippel.com

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006



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

**Finance Docket No. 34178 (Sub-No. 1)
Dakota, Minnesota & Eastern Railroad Corporation --
Terminal Trackage Rights -- Union Pacific Railroad Company**

206854

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are an original and twenty-five copies of **Applicants' Rebuttal** (DME-9), dated December 12, 2002. A 3.5-inch computer diskette containing the text of the rebuttal in Word 2000 format is attached.

One extra copy of the rebuttal and this letter also are enclosed. Please date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

William C. Sippel
Attorney for Dakota, Minnesota & Eastern
Railroad Corporation and Cedar American
Rail Holdings, Inc.

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Enclosures

cc: Parties on Certificate of Service

DME-9

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34178
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND CEDAR AMERICAN RAIL HOLDINGS, INC.
-- CONTROL --
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

FINANCE DOCKET NO. 34178 (Sub-No. 1)
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
- TERMINAL TRACKAGE RIGHTS -
UNION PACIFIC RAILROAD COMPANY

APPLICANTS' REBUTTAL

ENTERED
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Part of
Public Record

David L. Knudson
Scott B. Anderson
Davenport, Evans, Hurwitz
& Smith, L.L.P.
206 West 14th Street
Sioux Falls, South Dakota 57104
(605) 336-2880

**ATTORNEYS FOR
IOWA, CHICAGO & EASTERN
RAILROAD CORPORATION**

William C. Sippel
Myles L. Tobin
Thomas J. Litwiler
Fletcher & Sippel LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721
(312) 540-0500

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

Dated: December 12, 2002

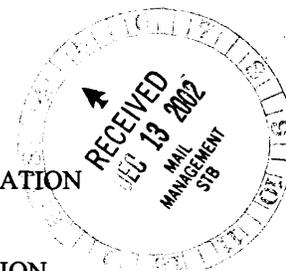
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34178

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

-- CONTROL --

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION



FINANCE DOCKET NO. 34178 (Sub-No. 1)
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
- TERMINAL TRACKAGE RIGHTS -
UNION PACIFIC RAILROAD COMPANY

APPLICANTS' REBUTTAL

Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"), Cedar American Rail Holdings, Inc. and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (collectively "Applicants") hereby submit their reply to the filings made by various parties in these proceedings on or about November 14, 2002. This submission, for simplicity entitled "Applicants' Rebuttal" includes Applicants' response to comments, requested conditions and other opposition filings and Applicants' rebuttal in support of the primary application ("the Control Application") in Finance Docket No. 34178 and the related Application for Terminal Trackage Rights ("the Terminal Application") in Finance Docket No. 34178 (Sub-No. 1).

Under 49 U.S.C. § 11324(b), the Board must approve the Control Application:

"unless it finds that --

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

- (2) The anticompetitive effects of the transaction outweigh the public interest in freight surface transportation in any region of the United States."

The record in this proceeding conclusively demonstrates that the proposed control transaction meets this standard and must be approved.

Only four parties raised any issues at all with respect to this end-to-end consolidation.¹ Of these, only one, the Brotherhood of Locomotive Engineers ("BLE"), opposes the transaction outright. Another, Muscatine Power and Water Company has reached a tentative settlement with Applicants and, subject to documentation, is expected to support the transaction. Neither of the other two claim that the proposed transaction would not benefit the public interest. They seek only to have the Board's approval of the transaction conditioned to protect their private interests. In contrast, the proposed transaction is strongly supported by a broad base of affected interests including connecting carriers, the Iowa Department of Transportation, the Minnesota Department of Transportation, local communities, individual shippers and shipper associations.²

In Part I of this submission, we show that the concerns of parties raising issues are unwarranted and that no basis has been presented by any party to condition approval of the proposed transaction.

¹ The four parties are the Brotherhood of Locomotive Engineers, Soo Line Railroad d/b/a Canadian Pacific Railway, Arkansas Electric Cooperative Corporation and Muscatine Power and Water Company. Although Union Pacific Railroad ("UP") opposes the Terminal Application, it takes no position on the Control Application.

² In addition to support statements filed as part of the Control Application and the statements filed with this submission, the Iowa Department of Transportation ("IADOT"), MidAmerican Energy Company and the Western Coal Traffic League separately filed comments strongly supporting approval of the Control Application. IADOT also supports grant of the Terminal Application. The United States Department of Transportation filed comments but took no position on the merits of the Control Application or the related Terminal Application.

In Part II, we show that, notwithstanding UP's opposition, the related Terminal Application for terminal trackage rights over 3700 feet of UP trackage at Owatonna, Minnesota meets the standards of 49 U.S.C. § 11102 and should be granted.

I. NO BASIS EXISTS TO DENY OR CONDITION APPROVAL OF THE PROPOSED TRANSACTION.

A. BLE Has Failed to Show that the Application Should be Denied.

BLE is the only party seeking denial of the Control Application. However, none of BLE's comments relate to any claimed adverse effect of the control transaction on employees of DM&E or IC&E. In seeking denial of the application, BLE simply repeats the same arguments raised by BLE and certain other labor organizations in the acquisition proceeding in Finance Docket No. 34177 in support of their position to revoke IC&E's acquisition exemption.³ As fully discussed in IC&E's replies filed in that proceeding, those arguments are wholly without merit. There is no need to re-argue them here.

Applicants do not anticipate that any existing DM&E or IC&E employees will be adversely affected by the proposed control transaction. Control Application at 19-20.⁴ BLE fails to point to any harm to employees from common control or to show why the labor protection set forth in New York Dock Ry. -- Control -- Brooklyn Eastern Term. Dist., 360 I.C.C. 60 (1979), the applicable level of labor protection for this transaction, would not adequately protect any adversely affected employees. BLE's arguments provide no basis to deny the Control Application.

³ No other labor organization filed comments on the control transaction or joined in BLE's comments.

⁴ Page references herein are to the consecutive numbering used in each filing.

B. CP's Gateway Protection Condition Should be Denied.

In its Comments and Request for Condition, Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CP"), does not seek denial of the Control Application, nor does it claim that the transaction will not provide important public benefits. Rather, CP requests that the Board condition its approval of the transaction to require DM&E to keep open what CP characterizes as "the Minnesota City gateway" (an interchange point between DM&E and CP at Minnesota City, Minnesota) "for interline division interchange traffic to allow competitive routing for grain, coal and other shippers who currently use that gateway."

CP's proposed condition should be denied. CP presents no evidence that DM&E has any plan or intent to cancel its interchange with CP or otherwise "close" the Minnesota City gateway following control.⁵ Nor does CP make any showing that Board intervention is necessary to protect against loss of efficient routing opportunities for shippers.⁶

Furthermore, the Board and its predecessor the Interstate Commerce Commission have long held that gateway protection conditions are anticompetitive and not in the public interest. Detroit, Toledo & Ironton Railroad v. United States, 725 F.2d 47 (6th Cir. 1984) (aff'g, in part and rev'g in part Traffic Protective Conditions, 366 I.C.C. 112 (1982)). As the Board stated in denying a gateway protection condition proposed by the Illinois Central Railroad in the Conrail transaction:

"We continue to believe that conditions of this type are inefficient, anticompetitive, and contrary to the public interest."

⁵ Minnesota City is not today an "open" gateway. Although IC&E also operates through Minnesota City on overhead trackage rights over CP's line and physically could interchange traffic with DM&E, the trackage rights agreement between CP and IC&E prohibits IC&E from interchanging any traffic with DM&E at Minnesota City.

⁶ No shipper filed any comments expressing any concern over future routing opportunities via Minnesota City. CP presents no evidence of any shipper support for its proposed condition.

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corporation, 3 S.T.B. 196, 303 (1998).

CP also asks -- but does not request any relief -- that the Board "remain cognizant" of the fact that IC&E's access to Chicago over the line owned by Metra, the Chicago rail commuter authority between Pingree Grove, Illinois and Chicago remains the subject of negotiations among IC&E, Metra and CP.⁷

CP's purpose in making such a comment is unclear, but in any event, there is no basis for concern. Negotiations to settle litigation over the assignment to IC&E of the trackage rights held by I&M Rail Link, LLC ("IMRL") over Metra's line have been ongoing, and substantial progress has been made toward an agreement that would replace IMRL's rights with new long term IC&E trackage rights over the line. This is confirmed by the comments of Metra itself filed in this proceeding in which Metra advised the Board that the negotiations have progressed sufficiently that a "satisfactory resolution" is likely.

C. Arkansas Electric Cooperative Corporation's Gateway Protection and Other Conditions Should be Denied.

Arkansas Electric Cooperative Corporation ("AECC") also does not oppose common control of DM&E and IC&E, but seeks to have the Board impose certain conditions on its approval of the transaction. Although the wording of AECC's proposed conditions is confusing and the meaning and scope of the proposed conditions are unclear, AECC indicates that they are intended to assure that the combination of DM&E and IC&E "does not foreclose new coal routing opportunities in the future."

⁷ Since early September, IC&E trains have been operating over Metra's line pursuant to a temporary detour agreement between IC&E and Metra. IC&E's alternative access routes to Chicago via the Iowa Interstate Railroad and the Chicago Central & Pacific Railroad remain in place.

AECC's proposed conditions should be denied. Not only does AECC fail to provide any justification for its proposed conditions, it fails to even identify what routes it is seeking to protect. None of the power plants operated by AECC and its supporters are located on either DM&E or IC&E. Moreover, approval of common control of DM&E and IC&E would not in any way prevent AECC from proceeding with whatever plans it has to construct whatever lines it wants to propose in order to handle Powder River Basin ("PRB") coal. Although AECC refers to an unidentified "potential alternative PRB coal carrier," and makes vague references to a need to protect unidentified routes with IC&E via Kansas City, it provides no description of what routes it seeks to protect or even where its proposed line would connect with IC&E.

Nor does AECC support with any evidence its allegation that DM&E has shown a "hostile attitude" toward joint line routings with other carriers. Nothing could be further from the truth. DM&E's PRB project has long contemplated the movement of DM&E-originated PRB coal via numerous efficient joint line routings with many other carriers.

AECC also provides no evidence to support its claim that common control of DM&E and IC&E will somehow harm DM&E's plans to construct its line into the PRB. To the contrary, as discussed in the Control Application, common control will open new single system routes for any coal that would originate on DM&E's line into the PRB should that line be constructed. Moreover, common control of DM&E and IC&E is supported by Mid American Energy Company, a major receiver of PRB coal at two locations served by IC&E, and by the Western Coal Traffic League, a major association of shippers and receivers of western coal.

To the extent AECC has issues with DM&E's proposed PRB project, this is the wrong proceeding. As WCTL said in its comments, the Board should resist efforts to relitigate the DM&E PRB case in this proceeding.

AECC's proposed conditions should be denied.

II. UP'S OBJECTIONS TO THE TERMINAL TRACKAGE RIGHTS APPLICATION ARE WITHOUT MERIT.

The Terminal Application filed in Finance Docket No. 34178 (Sub-No. 1) involves a request by DM&E for an order pursuant to 49 U.S.C. § 11102 for terminal trackage rights over approximately 3,700 feet of trackage owned by UP in Owatonna, Minnesota. As discussed in the Terminal Application, use of this short segment of UP trackage by DM&E is necessary to "bridge the gap" between DM&E and IC&E and establish a direct connection and unrestricted interchange between them. Currently, these railroads do not connect with each other at any location. Without this relief, DM&E and IC&E would not be able to efficiently, economically and timely effectuate the new competitive traffic routings made possible by their combination.

The segment over which DM&E seeks trackage rights is, for UP, quite literally an "island." UP conducts no operations over the trackage, has not conducted any such operations for 16 years and, in fact, the trackage is not even connected to the rest of the UP system. Verified Statement of Robert L. Wessler, attached to the Terminal Application ("Wessler V.S."), at 14-15.

UP opposes the requested terminal trackage rights on three grounds: (1) the UP trackage involved is not a terminal facility; (2) the requested rights do not meet the statutory "public interest" standards; and (3) the Board should leave the negotiation of any such rights to private negotiation between UP and DM&E. UP's arguments have no merit, whatsoever. As will be discussed below, the positions taken by UP in this proceeding are contrary to the facts, contrary to well-accepted and abundant law, and indeed, are contrary to the position taken by UP itself, when UP sought terminal trackage rights over certain short segments of The Kansas City

Southern Railway Company as a part of UP's own merger proceeding in Finance Docket No. 32760 (Sub-No. 9).

A. The UP Trackage DM&E Seeks to Use is a Terminal Facility.

The Board and its predecessor have repeatedly held that the term "terminal facilities" in Section 11102(a) should be interpreted broadly because the purpose of that section is highly remedial. Rio Grande Industries, et al. - Purchase and Trackage Rights - Chicago, Missouri & Western Railway Company Line Between St. Louis, MO and Chicago, IL, 5 I.C.C.2d 952, 979 (1989) ("CMW"); see also Southern Pacific Transportation Company v. ICC, 736 F.2d 708, 723 (D.C. Cir. 1984), cert denied, 469 U.S. 1208 (1985) ("Southern Pacific"); CSX Corp - Control - Chessie & Seaboard, C.L.I., 363 I.C.C. 521, 585 (1980) ("CSX").

Railroad property constitutes a terminal facility if it is located in a cohesive commercial area, is used for the transfer of freight, as well as for line-haul movements through the terminal. Rio Grande Industries, Inc., et al. - Purchase and Related Trackage Rights - Soo Line Railroad Company Between Kansas City, MO and Chicago, IL, Finance Docket No. 31505 (ICC served November 13, 1989) at 10-11; Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 447 (1996) ("UP/SP").

UP suggests that the Board does not have jurisdiction over the UP trackage which DM&E seeks to use because it allegedly does not constitute a "terminal facility." As shown in the attached Rebuttal Verified Statement of Robert L. Wessler ("Wessler R.V.S."), UP is simply wrong.

As discussed by Mr. Wessler, the track segment involved squarely meets the Board's definition of a terminal facility. The trackage is located in the heart of the 5th largest city in southern Minnesota, and has been used for both switching and interchange movements as well

as linehaul movements through the terminal. Wessler R.V.S. at 23-24.

UP argues that Owatonna is hardly a "cohesive commercial area" within the scope of Section 11102(a) citing Golden Cat Division of Ralston Purina Company v. St. Louis Southwestern Railroad, STB Docket No. 41550 (STB served April 25, 1996) ("Golden Cat"). Indeed, UP is quite disparaging of Owatonna and alternately describes it as "a rural outpost" with "indistinguishable [rail facilities] from those at any of the many isolated rural points along the nation's railroads" UP Comments at 19, 23.

Perhaps Owatonna is not exactly the Houston, Chicago or even Omaha that UP is used to, but it is, by any measure, a "cohesive commercial area." As discussed in the Rebuttal Verified Statement of Mr. Wessler, Owatonna is a city of over 20,000 people. It is 5th largest city in southern Minnesota and the county seat for Steele County. It is one of the few small cities in the country that is served by three freight railroads and a major interstate highway. Owatonna has more than 500 retail, wholesale and professional firms and over 40 industrial firms. Its retail trade area consists of \$285 million of purchasing power. Wessler R.V.S. at 23.

Golden Cat, cited heavily by UP in support of its position, offers nothing to the contrary here. The trackage in Golden Cat was little more than an "X" on a map located in a rural, unincorporated area eight miles northwest of the nearest community. Owatonna, on the other hand, is a significant Minnesota industrial center that plays a vital part in the economic infrastructure of southern Minnesota.

UP also contends that the Owatonna trackage itself does not constitute a recognized terminal facility as there are no freight yards, classification yards, team tracks, engine facilities or car facilities. However, the STB has clearly stated that "terminal facilities" exist where the trackage is used for switching and interchange movements as well as for linehaul

movements through the terminal. This is precisely the use that has been made of the Owatonna trackage. As Mr. Wessler states, within the framework of the extremely limited rights granted to DM&E on the Owatonna trackage, DM&E uses UP trackage today to switch the siding to Owatonna Concrete in Owatonna. Some years ago, DM&E used the trackage to switch the sidings to Miles Homes and Interstate Mills until the former went out of business and the latter removed its rail siding. Prior to the creation of DM&E in 1986, the Chicago and North Western Transportation Co. (the predecessor of UP) and the Milwaukee Road (the predecessor of Soo Line Railroad and IMRL) interchanged cars at Owatonna over a portion of the UP trackage via a track connection which still exists between the two main lines. See map attached hereto as Appendix B. The historic function of this track is readily apparent from the name of the track which is still known today as "the transfer track." Wessler R.V.S. at 23. Similarly, the restrictive UP Owatonna trackage agreements do allow DM&E and IC&E to perform interchange in connection with, and only with, industries located at Owatonna, and such interchange has been performed in years past.⁸ DM&E mainline operations also take place over a portion of the trackage (between the western switch and the eastern switch to the IC&E). IC&E mainline operations also occur over the same segment.

It is indeed ironic that UP would point to DM&E's limited usage of the Owatonna segment as a basis for its argument, when it is precisely the UP restriction on DM&E/IC&E interchange which has prohibited more extensive use of the trackage for terminal purposes. Had these restrictions been lifted at some point in the last 16 years, there is no question that the terminal facilities themselves would have been more extensively used. Absent the contractual

⁸ UP points to DM&E discovery responses indicating that the Owatonna trackage is not used for switching and interchange operations. However, UP's discovery requests only asked for the use of the trackage since January 1, 2000, and that is the time period for which DM&E's response was provided. Prior to January 1, 2000, the trackage had been used for switching and interchange operations.

restrictions, Owatonna would have been the only direct connection and interchange between DM&E and IMRL. However, even with the broad and onerous restrictions placed upon the trackage by UP, DM&E and IC&E have performed the type of operations on the trackage that bring the trackage within the framework and meaning of "terminal facilities." Golden Cat, cited by UP, dealt with an industry track located out in the middle of nowhere, serving a single industry. Such is not the circumstance here.

Moreover, UP's own arguments previously asserted to the Board in Finance Docket No. 32760 (Sub-No. 9) underscore UP's own belief (when UP is the one seeking the rights) that the actual use of the terminal trackage is not in and of itself dispositive. There, UP argued to this Board:

"What KCS is really arguing is that trackage cannot be a terminal facility unless switching or interchange is actually performed on the track, or industries are switched from it. As pointed out by Mr. Hord, under this view, there would be no such thing as a Chicago, or a Kansas City terminal - just a collection of disconnected 'terminal islands' scattered throughout an area. . . . Not surprisingly, the two cases cited by KCS on this point do not in any way support its 'terminal island' concept. RGI/Soo supra, questions whether a 42-mile rural track segment could be considered part of the Kansas City 'terminal area,' and whether a 10.24-mile bypass west of Chicago could be considered part of the 'Chicago Terminal.' There is nothing in this decision to suggest that there is simply a series of disconnected 'terminal islands' in Kansas City and Chicago. If anything, this decision makes clear that the criteria for terminal facilities is whether the facility is within a 'cohesive commercial area.' Midtec Paper Corp v. Chicago & N.W.T Co., 3 I.C.C.2d 171, 179 (1986) ["Midtec"], held a 7.9-mile track segment in Wisconsin to a 'terminal facility' because it was within a cohesive commercial area."

UP Comments, Exhibit 9 at 4-5.

Here, not only is the Owatonna trackage within a cohesive commercial area, but the trackage has actually been utilized for terminalling operations. It is a terminal facility within the meaning of the statute.

B. The Terminal Trackage Rights Are in the Public Interest.

The terminal trackage rights sought by DM&E in this proceeding are unquestionably in the public interest. The purpose of the rights is to provide an unrestricted, efficient, direct connection between DM&E and IC&E and thereby permit DM&E/IC&E to provide the new routing and competitive rail service contemplated by the transaction. In addition to creating a direct connection and interchange between DM&E and IC&E, the rights will also make possible the establishment of unrestricted interchanges between DM&E and the Cedar River Railroad (part of the Canadian National system) at Lyle, Minnesota and the Iowa Northern Railway at Plymouth Jct./Nora Springs, Iowa. These rights will allow DM&E and IC&E to "bridge the gap" at Owatonna and handle rail traffic on a single system basis. This is precisely the purpose for which terminal trackage rights are best suited. Southern Pacific, 736 F.2d at 723-724 (noting prior ICC decisions ordering "bridge the gap" terminal trackage rights).

UP claims that the Midtec standard rather than the broader public interest test should apply in this proceeding. This is patently erroneous. As the Board determined in the Union Pacific/Southern Pacific merger,

"whether the ICC ever applied its relatively exacting Midtec precedent in the context of a merger is the matter of some debate. In any event, we believe it is inappropriate to do so here and to the extent that ICC cases suggest otherwise, we specifically overrule them. Instead, we will apply the broad 'public interest' standard that is in Section 11103(a) [now Section 11102(a)] itself."

UP/SP, 1 STB at 448-449. Similarly, in CMW, the ICC granted terminal trackage rights in a merger context and specifically refused to apply the Midtec standard (as embodied in the Intramodal Rail Competition Rules) stating:

"In analyzing the various trackage rights sought here, we will not apply the competitive access rules adopted in Intramodal Rail Competition, 1 I.C.C.2d 822 (1985), 49 C.F.R. Part 1144. Those rules address the addition of another carrier to the market outside the context of acquisition or merger proceedings."

5 I.C.C.2d at 980, n.30.

Once again, when seeking terminal trackage rights in its own consolidation transaction, UP had no difficulty in recognizing the correct standard. In its rebuttal arguments in support of terminal trackage rights in the context of the UP/SP merger, UP argued that:

"the UP/MP/WP public interest standard is alive and well in merger cases. . . . Midtec, supra, involved a request by a shipper who was served by a single railroad to get a second railroad into its facility. The case has nothing to do with a merger or consolidation, or conditions imposed in such cases. Midtec does not purport to overrule UP/MP/WP, disagree with its reasoning, or even discuss standards for mergers and consolidations."

UP Comments, Exhibit 9 at 8.

UP also curiously asserts that the broad public interest standard may only be utilized to remedy the anticompetitive effects of a merger in contrast, presumably, to the circumstance here where the "bridge the gap" rights will be utilized to promote and facilitate the pro-competitive effects of the merger. The STB has never created such a distinction. Indeed, "bridge the gap" terminal trackage rights have been ordered to facilitate remedies to anticompetitive merger effects, UP/SP, 1 STB at 447-448; CSX, 363 I.C.C. at 583; as well as to facilitate the pro-competitive effects of the transaction itself. CMW, 5 I.C.C.2d at 979. There is no logical basis to distinguish between the two.

Finally, UP asserts that the bridging of the gap by granting terminal trackage rights over this 3700 foot track is totally unnecessary, because DM&E already possesses Board authority obtained in Finance Docket No. 33407 to construct a 1.7-mile loop track on the east side of Owatonna, thereby connecting the DM&E and IC&E railroads. In fact, it is true that DM&E could build this 1.7-mile connection in lieu of operating across the existing 3700 foot section of UP "island" track that UP does not use and no longer has access to. However, as Mr. Wessler points out, it is likely that the cost of constructing this 1.7-mile track would be substantial and the completion of which would take up to two years, thereby significantly delaying the clear competitive effects of this transaction. Indeed, the cost of constructing the connection may not be justified on the basis of control-related diversions alone. Wessler R.V.S. at 28.

The question which DM&E must respectfully ask, and which UP has failed to answer, is "why does this make sense?" Why from a public interest standpoint would it be preferable to forego use of an existing 3,700 foot segment of track, which UP does not use and which is not even connected to the rest of its system and which requires no additional construction, and instead insist that DM&E should construct a potentially cost prohibitive 1.7-mile track through a new area of Owatonna, incurring environmental impacts on the public and causing significant delay in making the benefits of the transaction available to shippers? The 1.7-mile construction alternative cited by UP was approved as part of a much different case that involved different traffic volumes and economic assumptions.

The STB and the Board have often held that the purpose of Section 11102(a) "is to avoid 'unnecessarily duplicated' lines." Southern Pacific, 736 F.2d at 723; Spokane, Portland

and Seattle Railroad, 348 I.C.C. 109, 142-43 (1975). Here, requiring the construction of a duplicate line would not be in the public interest.

Strong public support exists for granting the terminal trackage rights in lieu of necessitating construction of the 1.7-mile alternative connection. In its comments filed in this proceeding, the City of Owatonna has advised that the granting of these terminal trackage rights would promote the health, safety and welfare of the citizens of Owatonna. The City points out that construction of the 1.7-mile loop track would necessarily involve a variety of adverse impacts, including: (1) the additional track would bisect the city; (2) additional populations along the new track would be adversely affected; (3) additional and unnecessary grade crossings would have to be constructed thereby multiplying the number of potential train and auto/pedestrian contacts; (4) the duplicate tracks would multiply the risk of impeding Owatonna's emergency response systems; and (5) the duplicate tracks would impede Owatonna's economic development. To the same effect, the Minnesota Department of Transportation has urged that the terminal trackage rights be granted in lieu of the necessity of constructing the loop track.⁹

In granting "bridge the gap" terminal trackage rights, the Board has concluded that, when determining the public interest, the Board must take into consideration not only the interests of the shippers using the service involved, and the interests of the carriers, but also the interests of the residents of the impacted communities. The Board has evaluated whether the terminal trackage rights would generate substantial public benefits, by way of improved service capabilities and environmental and safety concerns. And where those public benefits exist, the

⁹ See also the attached comments of the Southern Grainbelt Shippers Association, the South Dakota Grain and Feed Association, the Farmers Cooperative Association on behalf of the Iowa/Minnesota Shippers Association, Agriance, LLC, IPSCO Steel, Inc. and Grain Processing Corporation.

proposed use of the terminal rights is practicable and will not impair the ability of the host railroad to handle its own business, those rights have been granted. CSX, 363 I.C.C. at 583.

Here, the public interest balance sheet is clear. The grant of terminal trackage rights will facilitate prompt effectuation of the benefits of this transaction, it is in the interests of the local community in the area of the trackage rights, it will prevent the unnecessary construction of duplicative lines, and it will not impair whatsoever UP's ability to handle its own business.

C. Private Negotiations Are Not Likely to Result in the Acquisition of Terminal Trackage Rights.

Section 11102(b) provides that compensation for joint use of terminal facilities is to be established by the parties involved, or if the parties are unable to agree, by the Board. Contrary to UP's assertion, DM&E is prepared to negotiate compensation terms with UP as provided in Section 11102(b). DM&E hardly expects to use the trackage "for free" as alleged by UP. However, private negotiation with UP outside the framework of Section 11102 is not likely to prove fruitful, and rather, would substantially delay the public benefits of this transaction.

UP suggests that it is willing to negotiate for acquisition of these terminal trackage rights by DM&E. However, UP has apparently forgotten that the restrictions on DM&E's ability to interchange traffic at Owatonna with the Soo Line, IMRL and now IC&E have existed for the past 16 years, without significant change. Moreover, as Messrs. Schieffer and Wessler state in their accompanying Rebuttal Verified Statements, DM&E and UP have been engaged in negotiations for these rights, without success. Indeed, any discussions have consistently included additional requirements of unreasonable concessions from DM&E (and later IC&E) that were unrelated to the Owatonna facilities and the proposed transaction. Wessler R.V.S. at 24. Mr. Schieffer, who has negotiated this issue with UP and its predecessor

the Chicago and North Western Transportation Company ("CNW"), makes clear that without STB relief in this case, UP is highly unlikely to ever grant such rights on any commercially viable terms. Rebuttal Verified Statement of Kevin V. Schieffer ("Schieffer R.V.S.") at 35.

Moreover, contrary to UP's gratuitous assertions to this Board, UP has no real incentive whatsoever to grant these rights. As UP asserted in its comments, when DM&E purchased its rail lines from the Chicago and North Western Transportation Co. ("CNW") in 1986, CNW "expected DM&E to feed its on-line traffic to the CNW (now UP) system." UP Comments at 8; Verified Statement of Jerold B. Groner at 33. And, for the past 16 years, UP kept the restrictions on interchange in place as a paper barrier to force DM&E to continue feeding its traffic to UP. UP has no incentive to do anything other than impede DM&E's ability to divert traffic away from UP.¹⁰

In fact, as indicated in the diversion study included as part of the Control Application, DM&E anticipates diverting approximately \$1.7 million in revenue annually from UP through its ability to connect with and directly interchange traffic with the IC&E. Every day that UP holds on to this paper barrier at Owatonna, it holds on to traffic that might be diverted on to the IC&E system. In short, UP indeed has incentives, but those incentives are to keep DM&E from directly interchanging traffic with IC&E.

Perhaps not surprisingly, UP took a different view when it was the one seeking terminal trackage rights. In the UP/SP merger, UP believed that the negotiation process offered

¹⁰ UP asserts that the paper barrier at Owatonna was an integral part of the pro-competitive transaction in which DM&E purchased several hundred miles of rail lines from CNW and that DM&E could have acquired the Owatonna trackage if it had been willing to pay CNW's exorbitant price demand. Applicants respectfully submit that the world has changed much in the past 16 years. The CNW has been gobbled up by the UP, and is now part of the largest rail system in North America. DM&E is no longer simply a feeder line to the former CNW. Rather, it is engaged in a transaction to become an effective competitor to other railroads operating through the Midwest, including UP, and elimination of the Owatonna paper barrier is an integral component of that competitiveness. Schieffer R.V.S. at 35-36.

pursuant to Section 11102(a) was more than adequate for the negotiation of compensation. And, just as DM&E urges here, in the UP/SP merger, UP urged that the parties be permitted to commence trackage rights operations immediately upon consummation of consolidation in order to rapidly effectuate the benefits of the merger transaction. UP Comments, Exhibit 8 at 128.

In UP/SP, the Board adopted UP's approach of implementing the terminal trackage rights immediately, with the Board reserving jurisdiction to set compensation if the parties were unable to reach agreement. Similarly, this approach was adopted in Union Pacific's acquisition of the Missouri Pacific and the Western Pacific railroads. Union Pacific - Control - Missouri Pacific, Western Pacific, 366 I.C.C. 459, 574-76 (1982), ("UP/MP/WP") aff'd Southern Pacific, 736 F.2d at 722-23. Here, as in UP/SP and UP/MP/WP, DM&E requests that it be permitted to commence the trackage rights operations immediately upon consummation of the underlying transaction. DM&E will negotiate compensation terms in good faith with UP and it hopes UP will negotiate in good faith as well. If an agreement cannot be reached, the Board retains jurisdiction to set those terms.

UP's objections are without merit and provide no basis to deny the Terminal Application.

WHEREFORE, Applicants respectfully request that the Board grant the Control Application and the related Terminal Application and deny the requests for conditions.

Respectfully submitted,

By: 
William C. Sippel
Myles L. Tobin
Thomas J. Litwiler
Fletcher & Sippel LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721
(312) 540-0500

David L. Knudson
Scott B. Anderson
Davenport, Evans, Hurwitz &
Smith, L.L.P
206 West 14th Street
Sioux Falls, South Dakota 57104
(605) 336-2880

**ATTORNEYS FOR
IOWA, CHICAGO & EASTERN
RAILROAD CORPORATION**

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

Dated: December 12, 2002

**REBUTTAL VERIFIED STATEMENT
OF
ROBERT L. WESSLER**

My name is Robert L. Wessler. I am Chief Transportation Officer for the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). I previously submitted a verified statement in support of DM&E's Application for Terminal Trackage Rights in Finance Docket No. 34178 (Sub-No. 1) (the "Terminal Application") wherein DM&E seeks permission to use, without restriction, approximately 3,700 feet of trackage of the Union Pacific Railroad ("UP") at Owatonna, Minnesota. The purpose of this rebuttal statement is to respond to the Comments of the UP dated November 14, 2002, including the verified statement of Jerold Groner contained therein.

In my earlier statement, I described the rail facilities serving Owatonna, the pertinent UP trackage and DM&E's proposed use of it, and the contractual restrictions that largely prohibit DM&E from using the trackage to connect to or interchange traffic with the Iowa, Chicago & Eastern Railroad Corporation ("IC&E"). I pointed out that the UP trackage DM&E seeks to use is part of a 2.4-mile UP "island," owned by UP but over which UP conducts no operations whatsoever and which is not even physically connected to the rest of the UP system. I also pointed out that as a result of certain track changes in Owatonna this year, no new tracks or construction would be necessary to implement the rights sought by DM&E.

In his statement, Mr. Groner asserts that the trackage over which DM&E seeks terminal rights is not a "terminal facility" nor part of any "terminal" at Owatonna. He states that "the best thing that the Board can do in this case is to deny the requested terminal trackage rights and leave it up to the UP and DM&E to work out a private arrangement." He also asserts that, in the absence of any agreement with UP, there is "nothing unreasonable" in requiring DM&E to

construct the 1.7 mile alternative connection between DM&E and IC&E east of Owatonna authorized by the Board in Finance Docket No. 33407 ("the alternative connection").

Mr. Groner is simply wrong. His assertion that Owatonna is not a terminal because it is not a "cohesive commercial area" makes no sense. According to recent data from the United States Census Bureau, Owatonna is a city of over 20,000 people. It is the 5th largest city in southern Minnesota. It is the county seat for Steele County. It is one of few small cities in the country that is served by three freight railroads and a major interstate highway (I-35). According to the City's website (a copy of which is attached as Appendix A), Owatonna has more than 500 retail, wholesale and professional firms and over 40 industrial firms. Its primary and secondary retail trade area consists of \$285 million of purchasing power. UP's attempt to portray this area as the equivalent of a cornfield doesn't wash.

The UP trackage which DM&E seeks to use is located entirely within the City of Owatonna and has been used for switching and limited interchange operations as well as for line haul movements through Owatonna. DM&E currently uses the track to switch the siding to Owatonna Concrete in Owatonna. Some years ago, DM&E used the trackage to move cars to the sidings to Miles Homes and Interstate Mills at Owatonna until the former went out of business and the latter removed its rail siding. Prior to the creation of the DM&E in 1986, it is my understanding that the Chicago and North Western Transportation Co. (the predecessor of UP) and The Milwaukee Road (the predecessor of Soo Line and IMRL) interchanged cars at Owatonna. They did so via use of a track still known today as "the transfer track." See map attached as Appendix B. DM&E also interchanged a few cars with the Soo Line Railroad at Owatonna in the late 1980's. That relatively little traffic has been interchanged at Owatonna in recent years reflects the effect of the trackage rights restrictions that severely limit such an

interchange. I find it particularly ironic that UP, holding the restrictions against interchange in its hand, argues that the absence of significant volumes of interchange traffic at Owatonna proves that there is no terminal or terminal facility. Owatonna is a terminal and the UP's trackage is a terminal facility.

Although Mr. Groner states that he is confident a private agreement can be reached that would allow DM&E to use the trackage as contemplated in the Terminal Application, we have little basis to be optimistic. DM&E has negotiated for years with UP and its predecessor the Chicago and North Western ("CNW") regarding use of the existing connection and removal of other paper barriers to competition. As discussed further in the accompanying Rebuttal Verified Statement of DM&E President and Chief Executive Officer Kevin Schieffer, we have never come close to a commercially viable agreement. Any discussions have consistently included additional requirements of unreasonable concessions from DM&E (and later IC&E) that were unrelated to the Owatonna facilities and the proposed transaction. The financial incentives for UP are not directed toward reaching an agreement with DM&E. Applicants' diversion analysis projects that with a direct connection and interchange between DM&E and IC&E, Applicants would divert 1700 carloads representing \$1.7 million dollars in revenue annually from UP. The fact is that UP benefits financially from every day that a competitive connection and interchange between DM&E and IC&E is delayed. If the Board were to deny the Terminal Application, I don't believe that UP would have any real incentive to agree to anything.

Perhaps not surprisingly, Mr. Groner doesn't spend any time discussing what the effect on the public interest would be if an agreement with UP did not occur. In that circumstance, DM&E could be forced to construct the alternative connection authorized in Finance Docket No. 33407. Such an outcome would cause unnecessary harm to the public

interest and result in a waste of transportation resources.

First, having to construct the alternative connection would necessarily delay -- possibly significantly delay -- the public benefits of the proposed control transaction, including the new independent routing and service options and single system access to new markets and gateways that would be available to shippers once a connection and interchange have been established. Once DM&E concluded that an agreement with UP was not going to occur, DM&E would have to begin the process of acquiring the necessary right-of-way for the alternative connection. I estimate that right-of-way acquisition could take a year or more to complete, especially if it became necessary for DM&E to have to resort to condemnation to acquire some of the right-of-way. Only after the right-of-way was secured could construction commence. I estimate it would take at least one full construction season after right-of-way acquisition to complete construction of the connection. How quickly construction can be completed depends on when you can start. In Minnesota, the work season generally runs from May to October. Thus, if DM&E had no choice but to construct the alternative construction, and allowing time for negotiation and right-of-way acquisition, it is likely that construction of the connection would not begin until 2004. Delays in obtaining the right-of-way or bad weather could easily push the completion date to years from now. In contrast, granting the Terminal Application and allowing operations to begin (while appropriate compensation is determined by agreement or Board action) would allow the public to begin realizing the benefits of the transaction immediately following issuance of terminal trackage rights authority by the Board.

Contrary to Mr. Groner's claim, there is no need to delay commencement of DM&E operations pending rehabilitation of IC&E's track. DM&E can begin operating trains over IC&E's lines south of Owatonna immediately after the Board's decision. Although the

portion of IC&E's line between Owatonna and Blooming Prairie, a distance of approximately 18 miles, is currently "excepted track," the line is in service. Trains can and do run over the line. Commencement of DM&E operations over the line to the interchanges with IC&E, Chicago, Central & Pacific (Canadian National) and Iowa Northern need not be delayed pending rehabilitation of the line.

Applicants' operating plan calls for upgrading IC&E's line south of Owatonna to FRA Class 2. That level of utility would allow a single DM&E crew to make the run from Waseca, Minnesota to Mason City, Iowa and return. Between Ramsey and Mason City, a distance of approximately 42 miles (representing approximately 58% of the entire line between Owatonna and Mason City), the line is already maintained to Class 2 standards. No rehabilitation of this segment is needed or planned. On the line between Owatonna and Blooming Prairie, Minnesota, this past fall IC&E installed over 2000 ties sufficient to bring the line up close to Class 1 condition. I am aware that as soon as weather conditions permit in 2003, IC&E plans to install additional ties and ballast and to surface the line between Owatonna and Ramsey sufficient to bring that segment up to Class 2 standards. At that point, the entire IC&E line between Owatonna and Mason City would be Class 2. IC&E has told us that, conservatively, it would take 8 weeks to complete full rehabilitation. Due to the relative infrequency of train operations on the line, all of the track work can be done "under traffic." Thus, assuming a normal work season commencing May 1, all of the track work to rehabilitate the line to Class 2 would be completed by the end of June, 2003. Thus, operations -- and the benefits to shippers from the new routes and interchanges -- would begin immediately and full utilization would be achieved only five months after the Board's decision. Shippers would begin to enjoy the benefits of the transaction years sooner than if DM&E had to construct the alternative connection.

Second, having to construct the alternative connection would also mean that the public would incur environmental impacts that would not be incurred if the Board grants the Terminal Application. Although the Section of Environmental Analysis and the Board itself concluded that construction of the 1.7-mile connection east of town ("Alternative O-5") was acceptable from an environmental standpoint, SEA's analysis recognized that there would indeed be adverse environmental impacts on the public from construction of the new connection, including impacts on wetlands, vegetation, soils, cultural resources, loss of prime farmland, disturbance to farming operations and rural residences, and new grade crossings in an area that currently does not have any. SEEA also observed that the preferable alternative would be to simply use the existing connection, but noted its lack of jurisdiction to implement that alternative. In that case, there was no legal option. With the subsequent acquisition of DM&E, this option has emerged in a way that benefits both Owatonna and the shipping public. The benefit to the public interest in avoiding these impacts is described at length in the comments filed by the City of Owatonna urging the Board to grant the Terminal Application.

Using the existing trackage at Owatonna as contemplated in the Terminal Application, requires no additional construction whatsoever and entails no such environmental impacts. In September, IC&E completed the replacement of the old diamond crossing at Owatonna with a track switch. As discussed in my earlier verified statement, the purpose of this change was to eliminate speed restrictions associated with the diamond and avoid the cost of maintaining the diamond. Completion of this work, however, also had the effect of physically implementing "Alternative O-5" analyzed by the SEA in the Environmental Impact Statement in the PRB construction case and found by the SEA and the Board to be environmentally preferable to constructing the alternative connection. Only the trackage agreements with UP prevent DM&E

from using the current trackage to connect with IC&E.

Third, having to construct the alternative connection would also result in an unnecessary expenditure of capital resources that should be dedicated to promoting the safety of our existing line. The cost of constructing 1.7 miles of new rail line including land acquisition and in-town construction would be substantial and would represent an unnecessary drain of resources under the circumstances. Indeed, the cost of constructing the connection (authorized as part of DM&E's PRB project) may be difficult to justify on the basis of control-related traffic diversions alone. Granting the Terminal Application assures that the public will realize the pro-competitive benefits of the proposed transaction.

DM&E has not attempted to "short circuit" or "bypass" negotiations with UP as UP has alleged. DM&E has negotiated with UP for years to find a commercially viable way to provide meaningful competition, and continues to negotiate with UP. However, we cannot reasonably predict that there will be a realistic and workable agreement with UP in the short term, and we are highly confident that there will not be one if the Board denies the Terminal Application. Granting the Terminal Application is the only way to assure that the public benefits of the transaction are realized and not delayed, that the public does not unnecessarily incur the environmental impacts associated with having to construct the alternative connection and that substantial capital resources will not be wasted on constructing a redundant piece of trackage.



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WEATHER
 12/09/2002
 2:37 PM
 39 °F
 SUNNY
[details](#)

City of Owatonna
 540 West Hills Circle
 Owatonna, MN 55060
 507-444-4300
[Email](#)

Owatonna has emerged from its agricultural heritage as a community with a diverse economy, including a strong industrial, financial and service base. Owatonna is the home of many nationally renowned firms such as Federated Mutual Insurance Company, Owatonna Tool Company (SPX), Jostens, Wenger Company and others. Unlike many rural Minnesota communities, Owatonna is experiencing annexations, increased traffic count, new building starts and new housing efforts, as well as street and airport improvements.

Owatonna's primary and secondary retail trade area consists of 285 million dollars of purchasing power. Ideally situated on three primary highway systems, Interstate 35 and U.S. Highways 14 and 218, Owatonna presents an ideal location for retail shoppers. The three shopping areas are the Cedar Mall/Oakdale shopping area on the south side, Hoffman Drive and the north side shopping area and the downtown area in the heart of the city. All three areas are united in their promotional efforts to make Owatonna an exciting place to shop.

Owatonna has a total of more than 500 retail, wholesale and professional firms supporting its large industrial base. Boasting over 40 industrial firms, Owatonna's business community provides jobs for a labor force in excess of 17,000 people.

The City of Owatonna owns four industrial parks: Crane Creek Industrial Site, Ebeling Industrial Area, Alexander Industrial Park

Owatonna Area Chamber of Commerce and Tourism

320 Hoffman Drive
 (507) 451-7970
 Fax: (507) 451-7972

The Owatonna Area Chamber Commerce and Tourism is a business membership organization which encourages the coordinated efforts of businesses, professional firms and community-minded individuals to maintain a health business climate in the Owatonna and Steele County area.

The Chamber is a public-relations counselor, a legislative representative at all levels of government, an information bureau, and a research and promotion organization.

The Owatonna Chamber provides creative business leadership and effective coordination of interested parties in solving community concerns.

The Chamber has a variety of information on community businesses and services. It also operates a Convention and Visitor's Bureau.

The City of Owatonna has had an Economic Development Authority since 1992, and the

and Sanders Industrial Addition. These four sites total an area of over 200 available acres within 1/2 mile of I-35, fully served by municipal infrastructure and direct rail access to the Dakota, Minnesota and Eastern Railroad, and Union Pacific Railroad.

The Community Profile for Owatonna containing detailed information about the city as well as listings of available commercial and industrial properties can be viewed at the Minnesota Department of Trade and Economic Development [MNPRO](#) website.

Southern Minnesota Initiative Foundation

Loan program for qualified for-profit organizations with interest rates not exceeding 10% and grant program for qualifying non-profit organizations.

Eligibility of Loan Clientele: Businesses engaged in technologically innovative projects, value-added manufacturing, agriprocessing, agricultural marketing, child care, elderly care, handicapped care, information industries, and tourism.

Service Area: 20 counties in southeast Minnesota

Contact: (507) 455-3215 or
www.smifoundation.org

Owatonna Business Incubator

1065 24th Ave. S.W.
P.O. Box 505
Owatonna, MN 55060
(507) 451-0517
Fax (507) 455-2788
E-Mail obi@mninc.net

A non-profit organization since 1988, the Owatonna Business Incubator's goal is to provide a facility in which small and start-up businesses can grow, prosper, and contribute to the surrounding community's economic base

In 1998, a new 40,000 square foot facility

EDA oversees a wide range of development initiatives from the sale of industrial property, financial packaging and marketing, revolving loan fund and Tax Increment Financing. In 1998, the City of Owatonna, in conjunction with the Owatonna Area Chamber of Commerce and the Owatonna Business Incubator, created an economic development partnership that builds on the strengths of all three organizations to meet the development needs of retail, business, and industry.

Inquiries can be directed to the following offices:

City of Owatonna Community Development Director (507) 444-4344

Owatonna Area Chamber of Commerce President (507) 457-7970

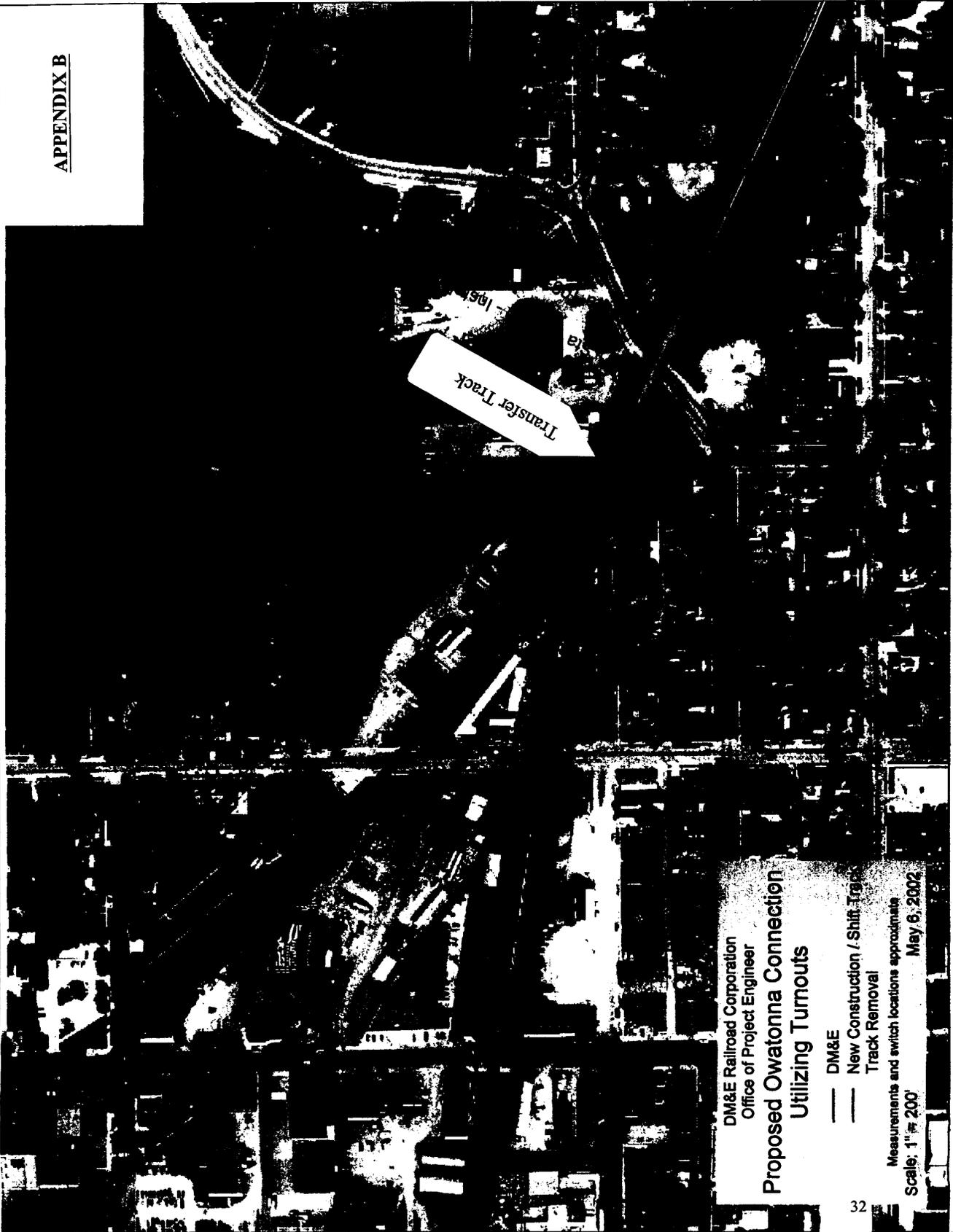
Owatonna Business Incubator Director (507) 451-0517

was constructed which gives you access to:

- Manufacturing space with loading docks
- Convenient location and accessibility off I-35
- Shared Conference rooms, restrooms, parking.
- Office suites wired for phone and data.
- Copy & Fax Machines.
- Mail pick-up & delivery.
- Custodial & maintenance services
- Phone systems & furniture rental
- Referral to community expertise

The Owatonna Business Incubator offers virtually all the amenities a young business needs in this competitive business climate.

APPENDIX B



DM&E Railroad Corporation
Office of Project Engineer

**Proposed Owatonna Connection
Utilizing Turnouts**

— DM&E
— New Construction / Shift-Track
— Track Removal

Measurements and switch locations approximate
Scale: 1" = 200' May 6, 2002

VERIFICATION

State of South Dakota)
) SS:
County of Minnehaha)

Robert L. Wessler, being duly sworn, deposes and says that he is Chief Transportation Officer of Dakota, Minnesota & Eastern Railroad Corporation, that he has read the foregoing Rebuttal Verified Statement, knows the facts asserted therein, and that the same are true as stated.


Robert L. Wessler

SUBSCRIBED AND SWORN TO
before me this 12 day of
December, 2002.


Notary Public

My Commission Expires:

CYNDE JERVIK
My Commission Expires
June 15, 2006

**REBUTTAL VERIFIED STATEMENT
OF
KEVIN V. SCHIEFFER**

My name is Kevin V. Schieffer. I am President and Chief Executive Officer of Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Cedar American Rail Holdings, Inc. ("Holdings"). I previously submitted a verified statement in support of the Application for approval and authorization of DM&E's acquisition of control of the Iowa, Chicago & Eastern Railroad Corporation ("IC&E") through ownership of IC&E's stock by Holdings. I have reviewed the Comments of Union Pacific Railroad ("UP"), including the Verified Statement of Jerold B. Groner, filed in opposition to DM&E's Application for Terminal Trackage Rights ("the Terminal Application"). In that Application, DM&E seeks permission to use, without restriction, approximately 3,700 feet of UP trackage at Owatonna, Minnesota in order to establish a competitive connection and interchange with IC&E.

I have personally negotiated numerous deals with UP, many of which involved Mr. Groner in his capacity as Senior Manager - Interline Marketing for UP. I also worked with him in his prior capacity at the Chicago and North Western Transportation Co. ("CNW"). UP has been and continues to be an important partner to the DM&E. We have maintained and continue to maintain good relations and respect for them.

In this case, however, I take strong exception to UP's characterization that "a negotiated compromise is likely absent Board intervention."

We have been in negotiations with CNW/UP for years concerning the original CNW paper barriers to competition. The UP is smart and tough and understandably motivated by self-interest, just as is DM&E. In this particular case, UP's interests are served by maintaining this anticompetitive block. DM&E's interests here happen to be aligned with pro-

competitive access. Our request in this case is not to seek the Board's involvement in negotiations between private parties. It is based on the overwhelming public benefits which in this case happen to be aligned squarely with DM&E's interests and against UP's, as demonstrated by the strong support statements from the States of Iowa, Minnesota, South Dakota and the City of Owatonna itself, the City of Jackson, Minnesota, and directly from the shipping public.

The bottom line is that we have tried to negotiate a resolution to this issue on and off for years. We have been and remain in good faith negotiations with UP to reach a settlement in this case. The only realistic chance for private agreement between DM&E and UP on this issue is if an agreement is reached prior to the Board's decision on DM&E's Terminal Application.

If the Board grants the Terminal Application, I would agree with UP that the parties could privately negotiate the compensation issues. If the Board denies the Terminal Application, however, UP would be foolish to reverse its long-standing position and enter into a commercially viable agreement that allows meaningful benefits to the public and shippers on both DM&E and IC&E -- and to shippers on UP. UP is not foolish.

UP argues that the original DM&E deal negotiated with CNW 16 years ago was specifically designed to prevent the interchange of traffic at Owatonna. That is true. But, 17 years ago, circumstances were much different. CNW was a small Class I railroad in a transportation world where there were many more Class I's to deal with in reaching competitive markets. DM&E was a much smaller carrier, serving a much smaller shipper base than we have today. As a practical matter, we were an overhead carrier that originated less than 50% of our own traffic. Today, we're the originating carrier for over 90% of our traffic, and our customer base on the existing DM&E has more than doubled (and with the acquisition of control of IC&E

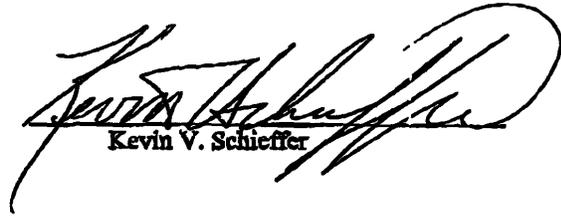
will have increased six-fold). Moreover, the line blocked by CNW in 1986 was owned and controlled not by IC&E, but by the Soo Line Railroad. While the circumstances in 1986 would have had very positive private benefits for DM&E, it would not have had the sweeping benefits to the shipping public that will flow to customers on both the much different DM&E of 2002 and the completely different connecting line that (if common control is approved), can be aggressively marketed and operated by a single origin to destination carrier that can provide truly meaningful regional competition to major markets throughout the United States. In the world of 1986, DM&E was a very small overhead carrier with extremely limited ability to provide meaningful competition to a handful of customers. The combined DM&E/IC&E of 2003 can -- if the Board allows -- become a truly effective and competitive regional carrier for customers in a 10 state area.

UP is wrong to suggest that this is a mere private contract dispute that the Board has no basis to address. Terminal access here is public policy in its purest form. We agree that the Board should not get involved in this case to either attack or protect the private interests of either party to a contract. The Board's decisions in past terminal trackage rights cases have appropriately been blind to private interest and focused on the public's interest. The contract aspects of this case as they relate to private parties are incidental to the overwhelming public policy opportunities being choked by the Owatonna paper barrier restrictions. If the Board were to follow UP's argument to its logical conclusion, terminal rights could never be granted.

I strongly urge the Board to grant the Terminal Application.

VERIFICATION

I, Kevin V. Schieffer, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to make this statement.


Kevin V. Schieffer

Dated: December 12, 2002



Minnesota Department of Transportation

Transportation Building

395 John Ireland Boulevard
Saint Paul, Minnesota 55155-1899

December 4, 2002

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423-0000

Re: STB Finance Docket No. 34178 (Sub-No. 2), Dakota,
Minnesota & Eastern Railroad Corporation – Terminal
Trackage Rights – Union Pacific Railroad Company
Comments Submitted by the City of Owatonna, MN

Dear Mr. Williams:

I'm writing this letter on behalf of the Minnesota Department of Transportation in support of the City of Owatonna, MN and their comments to the Surface Transportation Board, dated November 14, 2002, regarding the DM&E's application for terminal trackage rights.

Mn/DOT agrees with the City of Owatonna's assertion that using the "in town" connection and granting DM&E unrestricted terminal access would "permit Owatonna to protect the health, safety, and tranquility of its community, encourage economic development in the greater Owatonna area consistent with community plans, and promote the strength of DM&E and ICE . . ." By gaining trackage rights over the existing Union Pacific tracks, absent *all anti-competitive barriers*, the DM&E isn't forced to consume land the City of Owatonna could otherwise use for future development. Thus, this alternative serves the public interest and represents the best alternative for the DM&E and the City of Owatonna.

I encourage the STB to consider the City of Owatonna's comments and grant the DM&E's terminal trackage rights request. Thank you for your time and consideration.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Al Vogel'.

Al Vogel, Director
Office of Freight, Railroads & Waterways

cc. Lynn Anderson, DM&E
Doug Weiszhaar, Acting Commissioner

***Southern
Grainbelt
Shippers
Association***

(507) 439-6244

P.O. BOX 6 Hanska, MN 56041

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MATHOWETZ
CONSTRUCTION

December 6, 2002

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington D.C. 20423-0001

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

Dear Secretary Williams:

I am writing on behalf of the Southern Grainbelt Shippers Association, as its Secretary/Treasurer. Southern Grainbelt Shippers Association, directly and indirectly, represent thousands of agricultural, commercial and industrial users of rail services in Southern Minnesota who are dependent upon existing rail infrastructure. (See attached Exhibit A listing direct current members.) Southern Grainbelt Shippers Association has previously expressed its strong support for the proposed common control of the Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) and the Iowa, Chicago & Eastern Railroad Corporation (“IC&E”), which will create significant transportation benefits for Southern Minnesota agricultural, commercial and industrial users of rail services.

Southern Grainbelt Shippers Association is submitting this additional statement to specifically express its strong support for the terminal trackage rights sought by DM&E to allow a direct connection between DM&E and IC&E at Owatonna, Minnesota. It is our understanding that there has been opposition to that request on the basis that DM&E should be required to construct a several-mile bypass around Owatonna to create that connection. Requiring such a construction project would take significant time to complete,

Southern Grainbelt Shippers Association

Page 2

Mr. Vernon A. Williams

and would substantially delay the significant benefits that is anticipated from DM&E-IC&E common control.

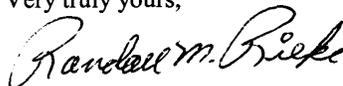
Significant benefits include the dramatic impact on market access for commodities and products bought and sold in the Southern Minnesota area. Providing an improved rail infrastructure that is more reliable and efficient ensures greater prosperity for the businesses, communities and consumers of Southern Minnesota. Common control of DM&E-IC&E will transform DM&E's existing operations so that it can offer existing and prospective shippers of non-coal commodities vastly improved service, new marketing opportunities and more efficient and safer operations. Agriculture is the single largest industry in DM&E's service area. Expanded access to new markets will allow producers to compete far more effectively in the broader national and international marketplace. Improvement of the rail infrastructure will lead to improved rail car supply. It will also offer competitive and effective rail connections allowing increased access to the national transportation system. These significant public interest benefits should not be delayed while a cumbersome, inefficient and unnecessary rail line construction is undertaken.

As the Surface Transportation Board is aware, DM&E is in the process of continuing its rehabilitation of its existing infrastructure, resulting in significant benefits to Southern Minnesota agricultural, commercial and industrial users of the rail services in Southern Minnesota. Any requirement of DM&E to spend money on unnecessary additional rail lines only takes away from such important rehabilitation.

Allowing terminal trackage rights to provide a direct connection between DM&E and IC&E at Owatonna, Minnesota will result in continuing benefits to the shippers of Southern Minnesota. We trust that the Board will take action to facilitate the new routing alternatives and improved rail service offerings that a combined DM&E-IC&E can provide. Southern Grainbelt Shippers Association strongly encourages the Board's approval of common control and the related terminal trackage rights.

I declare under penalty of perjury under the laws of the United States of Minnesota that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,



Randall M. Rieke
Secretary/Treasurer for
Southern Grainbelt Shippers Association

EXHIBIT A

**Southern Grainbelt Shippers Association
Membership List**

All American Co-op
P.O. Box 148
Center Ave #1
Eyota, MN 55934

Amiret Grain Company
P.O. Box 46
Amiret, MN 56112
Shannon Christianson

Archer Daniels Midland Co.
P.O. Box 728
3rd & Harper
Mankato, MN 56001
John McGowan

Assoc. Milk Prod. Inc.
P.O. Box 98
312 Center Street
Dick Wuttke

Balaton Elevator Co.
P.O. Box 147
Balaton, MN 56115

Bornhoft Concrete Inc.
Rr 1, Box 49
Tyler, MN 56178
John Bornhoft

Brown County Ag Co.
P.O. Box 325
Highway 14 E
Sleepy Eye, MN 56085
Dean Christenson

Brown Printing Co.
P.O. Box 1549
2300 Brown Ave.
Waseca, MN 56093-0571
Jim Kozan

Cargill Inc.
200 N. Riverfront Dr
Mankato, MN 56001
Bruce Carlson

Cenex / Land O Lakes
1249 South Street
Tracy, MN 56175
Ron Beens

Cenex Harvest States
P.O. Box 476
Hartland, MN 56042
Don Pederson

Cenex Harvest States
P.O. Box 69
988 Riverview Drive
Winona, MN 55987-0096
Larry Laber

Cenex Harvest States
P.O. Box 1098
Tracy, MN 56175
Bob Anderson

Cenex Harvest States
120 West Lincoln
Tyler, MN 56178
Cory Evans

Cenex Harvest States
P.O. Box 64089
St. Paul, MN 64089
Larry Holst

Cenex Harvest States
P.O. Box 64796
St. Paul, MN 55164-0796
Dan Mack

Cenex Harvest States
2020 S. Riverfront Drive
Mankato, MN 56002
Bill Mullin

Central Trading & Recycling
P.O. Box 218
New Richland, MN 56072
Terry Pooley

Del Monte Foods, Inc.
P.O. Box 407
Highway 14 W.
Sleepy Eye, MN 56085
Jim Knetsch

Energy Economics
109 South Street S.E.
Dodge Center, MN 55927
Mark Donaldson

Farmers Co-operative of Hanska
P.O. Box 6
Hanska, MN 56041-0006
Randall Rieke

Farmers Plant Food Inc. P.O. Box 6 Verdi, MN 56179 Clyde Knudson	Gopher State Scrap & Metal 3401 3 rd Ave. Mankato, MN 56001 Pat Daley	Greenway Co-op 320 Byron Ave. Byron, MN 55920 Mike Kuhlmann
Greenway Co-op 135 West Front Street Claremont, MN 55924 Scott Feller	Greenway Corp. P.O. Box 275 Claremont, MN 55924 Joe Winkels	Harvestland Co-op P.O. Box 278 Morgan, MN 56266 George Dunn
Harvestland Co-op P.O. Box 148 Springfield, MN 56087 Gordy Jensen	Hi Yield Products P.O. Box 506 Hartland, MN 56042 Jan Reed	Knight Seed Co. Inc. P.O. Box 989 151 West 126 th Street Burnsville, MN 55337
Lake Benton Farmers Elevator P.O. Box 309 Lake Benton, MN 56149	Lewiston Feed & Produce Co. P.O. Box 309 105 Main Street E. Lewiston, MN 55952	Lin's Used Iron & Metal Depot P.O. Box 623 420 5 th Ave S.E. Dodge Center, MN 55927
Mathiowetz Construction Co. 30676 Country Road 24 Sleepy Eye, MN 56085 Brian Mathiowetz	McNeilus Steel Co. P.O. Box 429 Dodge Center, MN 55927 Dan Blaisdell	Meadowland Farmers Co-op P.O. Box 338 Lamberton, MN 56152 Gordon Woelfel
Mid-America Brokerage Co. 1602 South Washington St. New Ulm, MN 56073 Dick Seeboth	Midwest Manufacturing 6765 Highway 14 E. Rochester, MN 55904 Ted Basacker	MN Grain & Feed Assoc. 852 Grain Exchange 400 South 4 th Street Minneapolis, MN 55415 Bob Zelenka
MN Regional Railroads Assoc. 145 University Ave. W. Suite 450 St. Paul, MN 55103-2044 John Apitz	MN Agri-Growth Council 408 Saint Peter Street Suite 20 Skyway St. Paul, MN 55102-1130 Myron Just	New Ulm Quartzite Quarries RR #5 P.O. Box 21 New Ulm, MN 56073 Jeff Carlstrom
New Ulm Steel & Recycling P.O. Box 3 218 19 th South Street New Ulm, MN 56073 Walt Luneberg	Northern Con-Ag Inc. 3131 Fernbrook Lane Suite 121 Plymouth, MN 55447 Joe Egan	Ochs Brick Co. 801 East Rock Street Springfield, MN 56087 Phil Weller

Owatonna Concrete Products
P.O. Box 294
Owatonna, MN 55060
Dave Seykora

Progressive Ag Center
P.O. Box 636
942 Wabasha Ave.
St. Charles, MN 55972
Todd Stockdale

Seneca Foods Corp.
P.O. Box 9
1217 3rd Ave. S.E.
Rochester, MN 55903
Brad Duncanson

Tamarack Materials
1638 3rd Ave. S.E.
Rochester, MN 55904
Jim Holman

Winona River and Rail
1000 East 3rd Street
Winona, MN 55987
Jeff Kuhn

Peterson Grain & Brokerage Co.
9116 13th Street S.W.
Meriden, MN 56093-6707
Daniel Peterson

Rochester Iron & Metal Recyc.
1950 3rd Ave. S.E.
Rochester, MN 55904
Gene Jennings

Sioux Valley Ready Mix
P.O. Box 70
1716 N. Front Street
New Ulm, MN 56073
Steve Rentz

Tri-State Grease & Tallow Co.
P.O. Box 792
1220 South Valley St.
New Ulm, MN 56073

Winona County Farm Bureau
P.O. Box 189
220 East Main Street
Lewiston, MN 55952

Pillsbury Company
200 South 6th Street
MS 22R2
Minneapolis, MN 55402-1464
Tom A. Jones

Sanborn Farmers Elevator
P.O. Box 67
Sanborn, MN 56083
Thomas Arndorfer

Sleepy Eye Farmers Elevator Co.
P.O. Box 429
27875 County Rd. 27
Sleepy Eye, MN 56085
Carlin Johnson

Watowan Farm Service
P.O. Box 456
New Richland, MN 56072
Mike McNeil

SOUTH DAKOTA
GRAIN & FEED

ASSOCIATION

December 10, 2002

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Greetings from South Dakota and the 200 or so members and associate members of the South Dakota Grain & Feed Association, of which I am the executive secretary. The membership is predominantly made up of grain elevators and shippers large and small. It could be argued that because of our geographical position, we are as far as any state in the nation from our major markets. As such, our existence depends on modern and competitive rail service. To that end, we have supported the Dakota Minnesota & Eastern Railroad's (DM&E) expansion plans that now include the IC&E Railroad, which they recently acquired. A significant number of our members are served by the DM&E, and we have petitioned the Surface Transportation Board on their behalf a number of times in the past.

Many hurdles have been overcome, but others remain. Today we wish to request that terminal trackage rights be granted the DM&E to allow direct connection to the IC&E at Owatonna, Minnesota. Without these rights, an expensive and time-consuming bypass project would be required. Frankly, investors have their limits both in terms of time and resources. The project's opponents have, for whatever selfish interests, adopted a plan to create every conceivable obstacle possible. We cannot let them hamper and endlessly stall efforts to sustain and improve light-density rail service to agricultural shippers.

Whether we like it or not, agriculture in the United States can no longer act as if it had no competitors. The world is shrinking at a remarkable rate. Next year, for example, South America is expected to produce more soybeans than the United States and most if not all

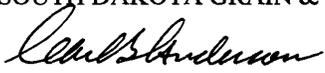
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at lower production and transportation costs. We need projects like the DM&E's to go forward to keep United States' agriculture in competition.

We ask the Board to take action, without delay, on existing routing alternatives necessary for vital and competitive rail service that a combined DM&E-IC&E can provide to eliminate the attending paper barrier.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Respectfully submitted,
SOUTH DAKOTA GRAIN & FEED ASSOCIATION


Carl G. Anderson
Executive Secretary

STBDM&E.120902.doc

VERIFIED STATEMENT
Of
Farmers Cooperative Association
On behalf of
Iowa/Minnesota Shippers Association

My name is Larry Olsen. I am Grain Manager for the Farmers Cooperative Association. The Iowa/Minnesota Shippers Association has a membership made up of various rail shippers and receivers located on the Iowa Chicago & Eastern Railroad in Southern Minnesota and Northern Iowa, as well as grain companies, brokers and other resellers.

Carloads handled by our members totals over 43,000 annually. A wide variety of commodities moved include: corn, soybeans, distiller's grains, soybean meal, ethanol, scrap metal, various fertilizer, canned vegetables, tallow, lumber and wood products, aggregates, plastics, salt, frozen meats and chemicals. These commodities move to/from local IC&E Railroad stations as well as through interchanges with other rail carries to/from points throughout the United States. The availability of secure, efficient and competitive rail service is extremely important to the Shippers and Receivers, and to our competitiveness within our own markets.

Service. In the past, the Iowa and Minnesota shippers/receivers have been hard hit by railroad acquisitions and integration problems that have created serious service disruptions and very serious supply problems to the Shippers and our customers. Given that history, we were very concerned about the IC&E acquisition at the outset of this case. But IC&E has, to date, been a welcome exception to the rule of serious integrated-related service problems that have plagued other railroad acquisitions. The lack of service problems is particularly remarkable given the fact that we understand that

this acquisition involved a complete transfer of the dispatching functions of both the IC&E and the DM&E to a new location with new equipment and software, and we understand that the billing system of the IC&E has been changed over to a new program to accommodate both railroads, and given the fact that much of the IMRL's past support system functions previously handled by its affiliates (the Montana Rail Link) have been largely assumed by DM&E. In short, IC&E has done a remarkable job in executing a smooth transition to date. This is especially notable with the increased movements of grain and grain products, which have resulted in record levels of movements for the past two months. We are confident that the transaction will continue smoothly, and look forward to continued service improvements with full integration of IC&E and DM&E.

Common Control The Iowa/Minnesota Shippers Association strongly supports the proposed common control of IC&E and Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). We believe that the proposed affiliation of IC&E and DM&E will be in the public interest, will enhance the stability of both carriers, and presents opportunities to strengthen market opportunities and improve rail service for all shippers on IC&E.. A regional partnership between IC&E and DM&E, and the various synergies the two carriers should be able to achieve, will help ensure the long-term viability of critical components of Iowa rail transaction infrastructure.

Terminal Access The common control transaction also would create new competitive single-system transportation options for meeting our crucial grain and non-grain marketing needs. We support DM&E's request for terminal trackage rights at Owatonna, MN to allow a direct connection between the DM&E and IC&E rail systems, which will provide significant transportation benefits such as potential Pacific Northwest

markets for Southern Minnesota and Iowa shippers as well as the benefits of equipment utilization by both carriers that can be recognized by a direct connection. We feel that for the potential transportation of products for the effective and efficient common control of the two railroads, direct access needs to be granted.

The proposed control transaction will, we believe, further secure the long-term position of the IC&E rail lines as viable and competitive components of the national rail network. The Iowa/Minnesota Shippers Association encourages the Board's favorable and timely consideration of the IC&E-DM&E control transaction.

I, Larry Olsen, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

A handwritten signature in cursive script, appearing to read "Larry Olsen", written over a horizontal line.

Dated: 11-26, 2002

**Agriliance, LLC
Support Statement for
DM&E-IC&E Control Transaction**

My name is Tracy Mack. I am Manager Logistics of Agriliance, LLC. Agriliance is a Regional Cooperative marketing twelve million tons of fertilizer annually. We own river warehouses at Muscatine, IA on the IC&E and at Winona, MN served by the DM&E. These two railroads also serve over thirty of our customers.

Our past experience with railroad mergers has been significant service deterioration while the reorganization takes place, but we have experienced excellent service from both IC&E and DM&E. There have been no major service disruptions on these carriers.

Agriliance supports joint control of these two carriers, as we believe that will enhance competitiveness and allow us to reach additional markets, and our customers to have more sourcing options.

Agriliance also supports DM&E's request for terminal trackage rights at Owatonna, MN to allow direct connection between the DM&E and IC&E. Fewer carriers in the route will improve transit time and save costs, making DM&E and IC&E financially stronger, and able to continue the excellent service they provide their customers. Agriliance encourages the Board's favorable and timely consideration of this control transaction.

I, Tracy Mack, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Tracy A Mack

Dated 12/4/2002

VERIFIED STATEMENT
of
David M. Otte
on behalf of
IPSCO STEEL INC.

My name is David M. Otte, Transportation Manager for IPSCO Steel Inc. in Montpelier, IA. In my position, I am responsible for all transportation related functions for both inbound and outbound movements for this facility including rail, barge and motor carrier. I have held this position with IPSCO Steel Inc. since September of 1995. Prior to my employment at IPSCO Steel Inc., I have held various Operational, Management and Marketing positions with Leaseway Warehousing, the EJ&E Railway, Inland Steel, Alternative Transportation Systems and the Burlington Northern Railroad.

IPSCO Steel Inc. is a manufacturer of hot rolled steel coil and discrete plate. Our facility in Montpelier, IA employs approximately 400 employees and an additional 200 subcontractors. This facility has an annual production capacity of approximately 1,000,000 NT and relies heavily on rail service provided by the Iowa, Chicago and Eastern Railroad (IC&E). We ship approximately 70% of our total production and receive approximately 90% of our inbound raw material (scrap iron) by rail. Much of our finished product is shipped almost exclusively by rail to several other IPSCO divisional facilities throughout the United States and Canada. Reliable, efficient and competitive rail service is critical to IPSCO Steel Inc. in maintaining a competitive edge in our markets.

The IC&E has performed admirably since it's acquisition of the former I & M Rail Link. As with any transition of this magnitude, problems were anticipated but were minimal compared to other rail acquisitions over the last several years. The IC&E has shown a willingness to quickly address any problems and appears to be Customer focused in meeting our daily transportation needs and continuing to increase their participation in our traffic.

Many functions of the railroads, including, but not limited to, Dispatching, Billing and Equipment Control have been transferred to a new location with new personnel for both the IC&E and Dakota, Minnesota & Eastern Railroad Corporation (DM&E). IPSCO Steel Inc. has experienced very few problems in any of these areas once we worked through some during the initial start up period.

IPSCO Steel Inc. fully supports the proposed Common Control of the DM&E and IC&E and believes the proposed affiliation is in the public interest by increasing financial stability, presenting opportunities for increased traffic and reduced operating costs.

The combination of the two carriers under Common Control would offer IPSCO Steel Inc. several more cost effective options for the purchase of scrap steel, our primary raw material source and open up opportunities for more competitive rail service to customers in the Northern tier.

In order to facilitate reduced operating costs and more effective better operational synergies, IPSCO Steel Inc. also supports the carriers' request for terminal trackage rights at Owatonna, MN for direct interchange of traffic between the DM&E and IC&E.

We believe that the proposed common control transaction further enhances long term growth and financial security for the carriers and ensures a viable regional rail transportation network for the areas to be served by the DM&E and IC&E.

I, David M. Otte, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I am qualified and authorized to file this statement.



Dates: December 11, 2002



*Grain Processing Corporation
1600 Oregon Street, Muscatine, Iowa 52761
Phone: 563-264-4477 ♦ Fax: 563-264-4860
Email: bob_willis@grainprocessing.com*

VERIFIED STATEMENT
of
ROBERT J. WILLIS
on behalf of
GRAIN PROCESSING CORPORATION

My name is Robert J. Willis. I am the Vice President - Transportation for Grain Processing Corporation ("GPC") in Muscatine, Iowa. In my position, I am responsible for the transportation of all inbound and outbound products used and produced by GPC. I have been employed by GPC in my current position since 1991.

GPC is a processor of corn and producer of a variety of corn products such as ethyl alcohol, corn starch, gluten meal, distillers grains, steepwater and corn oil. Our facility in Muscatine employs more than 600 people and handles over 8500 railcars annually through our facility at Muscatine. GPC is today served by Iowa, Chicago & Eastern Corporation ("IC&E"), which recently acquired the rail lines of I & M Rail Link ("IMRL"). IC&E delivers corn from various online origins to GPC's processing plants in Muscatine, Iowa and Maysville, Indiana. Additionally, GPC ships over the IC&E railroad the above named corn products through interchanges with other rail carriers to destinations throughout the United States. The availability of secure, efficient and competitive rail service is extremely important to GPC, and to our competitiveness within our own markets.



In the past, GPC has been hard hit by railroad acquisitions and integration problems that have created serious service disruptions and very serious supply problems to GPC and our customers. Given that history, we were very concerned about the IC&E acquisition at the outset of this purchase. But IC&E has to date been a welcome exception to the rule of serious integrated-related service problems that have plagued other railroad acquisitions. The lack of service problems is particularly remarkable given the fact that, as we understand, this acquisition involved a complete transfer of the dispatching functions of both the IC&E and the DM&E to a new location with new people, new equipment and software, and we understand the billing system of the IC&E has been changed over to a new program to accommodate both railroads and given the fact that much of the IMRL's past support system functions previously handled by its affiliates (the Montana Rail Link) have been largely assumed by DM&E. In short, IC&E has done a remarkable job in executing a smooth transition to date. We are confident that the transaction will continue smoothly and look forward to continued service improvements with full integration of IC&E and DM&E.

GPC strongly supports the proposed common control of IC&E and Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). GPC believes that the proposed affiliation of IC&E and DM&E will be in the public interest, as it enhances the stability of both carriers, presents opportunities to strengthen grain related market opportunities and improves rail service for shippers on IC&E, including GPC. A regional partnership between IC&E and DM&E, and the various synergies the two carriers should be able to achieve, will help ensure the long-term viability of critical components of Iowa rail transaction infrastructure.



The common control transaction also would create new competitive single-system transportation options for meeting our crucial grain sourcing needs. GPC supports DM&E's request for terminal trackage rights at Owatonna, MN to allow a direct connection between the DM&E and IC&E rail systems, which will provide significant benefits for both railroads to insure future transportation of grain and for the effective and efficient common control of the two railroads.

The proposed control transaction will, we believe, further secure the long-term position of the IC&E rail lines as viable and competitive components of the national rail network. GPC encourages the Board's favorable and timely consideration of the IC&E-DM&E control transaction.

I, Robert J. Willis, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

A handwritten signature in cursive script that reads 'Robert J. Willis'. The signature is written in black ink and is positioned above a horizontal line.

Robert J. Willis
Vice President – Transportation

City of Jackson

Resolution No. 90-1202

WHEREAS, the Iowa, Chicago & Eastern Railroad (IC&E) is seeking approval from the Surface Transportation Board to acquire the I&M Rail Link's (IMRL) rail lines; and

WHEREAS, the Dakota, Minnesota & Eastern Railroad Company (DM&E) is seeking approval to be commonly controlled with IC&E; and

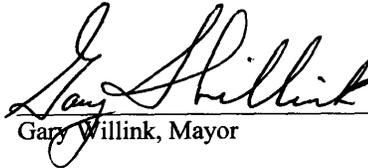
WHEREAS, there has been a smooth transition to date in transferring IC&E's dispatching functions, new equipment and software and that of the DM&E to a new location for the purpose of accommodating both railroads; and

WHEREAS, the availability of secure, efficient and competitive rail service to shippers in this area, such as the Farmers Cooperative Association in Jackson, is vital to their success, the success of their customers, and a benefit to our community as a whole.

NOW, THEREFORE, BE IT RESOLVED that the Jackson City Council supports IC&E's acquisition of the IMRL rail lines and the Common Control application of the DM&E.

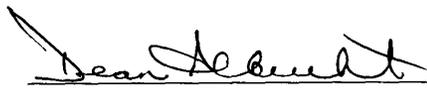
BE IT FURTHER RESOLVED that the Jackson City Council support's DM&E's request for terminal trackage rights at Owatonna, MN which will provide the ability to access additional, competitive markets thereby benefiting shippers in our area of the state.

Duly passed, approved and adopted this 3rd day of December, 2002.



Gary Willink, Mayor

Attest:



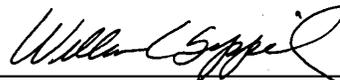
Dean Albrecht, City Administrator

Corporate Seal of the
City of Jackson,
Minnesota

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2002, a copy of the foregoing **Applicants' Rebuttal (DME-9)** was served upon all parties of record in Finance Docket No. 34178 and Finance Docket No. 34178 (Sub-No. 1) by first-class mail, postage prepaid.

Dated at Chicago, Illinois this 12th day of December, 2002.



William C. Sippel