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**Before the  
Surface Transportation Board  
Washington, D.C.**

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Canadian Pacific Railway Company, et al.,	)	
-- Control --	)	F.D. No. 35081
Dakota, Minnesota & Eastern Railroad Corp , et al.	)	
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**ENVIRONMENTAL COMMENTS OF THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION**

Introduction

The Surface Transportation Board ("STB" or "Board") in this proceeding has before it the application of the Canadian Pacific Railway Company ("CP") to acquire the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and its wholly-owned subsidiary, the Illinois, Chicago & Eastern Railroad Corporation ("IC&E").<sup>1</sup> The Applicants have contended that, with one potential exception, their transaction qualifies for a categorical exclusion from otherwise applicable environmental documentation and review requirements. CP-2/DME-2 at 19-25. They propose a condition to address the exception. In reliance upon the information set forth by the Applicants, the United States Department of Transportation ("DOT" or "Department") agrees that the proposed transaction qualifies for a categorical exclusion. DOT also accepts the condition proposed to address environmental harms arising from the possible exception.

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<sup>1/</sup> The CP and DM&E/IC&E are collectively referred to herein as "Applicants."

### Background

The CP and its affiliated carriers operate an extensive rail network stretching more than 13,000 miles throughout the United States and Canada. The DM&E and its subsidiary, the IC&E, operate over approximately 3,800 miles of track in eight Midwestern states. *Id.* at 1-3. The CP and DM&E systems meet at only four points: Chicago, Illinois, and Minnesota City, La Crescent, and St. Paul in Minnesota. *Id.* at 4. After the acquisition, the CP (through an affiliated entity, SOO Holdings) would own the DM&E, the IC&E, and their parent corporation, Cedar American Rail Holdings. *Id.* at 7, 17. The Applicants submit that the operational changes brought about by their transaction will not surpass the Board's rail activity thresholds that trigger the submission of environmental documentation and review. *Id.* at 19-23.

### Acquisition-Related Rail Activities

Relevant STB rules require applicants seeking regulatory approval to submit detailed environmental documentation if their transaction results in changes that exceed various rail activity thresholds, measured in annual ton-miles of traffic, number of trains per day, or carload activities at rail yards. 49 C.F.R. §§ 1105.6(c)(2), 1105.7(e)(5). Thresholds differ depending upon whether the projected activity would take place in "attainment" or in "non-attainment" areas, as measured against the National Ambient Air Quality Standards established under the Clean Air Act.

For "attainment" areas the changes that require added environmental information and scrutiny are an addition of eight trains per day on pertinent line segments, an increase of one hundred percent in rail traffic as measured in annual ton-miles, or an additional

one hundred percent in rail yard carload activity. 49 C.F.R. § 1105.7(e)(5)(i). For lines in "non-attainment" areas, the thresholds are increases of fifty percent in annual ton-miles, three trains per day, or an additional twenty percent in rail yard carload activity. 49 C.F.R. § 1105.7(e)(5)(ii).

The Applicants project only very small growth in each of these indicia of rail activity, none of which exceed the applicable regulatory thresholds in either attainment or non-attainment areas. CP-2/DME-2 at 20-24.<sup>2</sup> They therefore conclude that no detailed environmental data or analysis is required. *Id.* The Board has preliminarily agreed. Decision No. 4 (served December 27, 2007) at 14.

The Department concurs that the operational and traffic changes projected by the Applicants fall below the STB's thresholds triggering more significant environmental analysis. There is no evidence of record contrary to these projections, and we are aware of no other basis warranting a different conclusion. On this basis DOT agrees that no additional documentation or assessment of these activities appears to be necessary.

#### Powder River Basin Coal Traffic

There is one potential exception to the conclusion that no significant environmental consequences appear to result from this transaction: coal traffic from the Powder River Basin ("PRB") of Wyoming. The Applicants accurately recount that DM&E has received permission to construct a rail line into the PRB CP-2/DME-2. at 3, note 1. The Board in that proceeding ordered the preparation of an Environmental Impact Statement ("EIS") to study the effects both of the construction of the rail line

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<sup>2</sup>/ For example, Applicants estimate only a 17 percent increase in annual rail ton-miles, which includes projected growth in ethanol traffic. *Id.* at 21-23

itself and of subsequent large volumes of coal traffic on the DM&E lines. Ultimately, numerous mitigating conditions were imposed.

Shortly thereafter the DM&E acquired the IC&E. After a dispute about the need for an environmental analysis of the impacts of PRB coal traffic on the IC&E lines, the STB mandated preparation of an EIS. See Decision No. 4 at 13, notes 8 and 9. That EIS has been deferred because of uncertainty over whether the PRB line would actually be built, the lack of agreements with PRB mines, and the absence of any contracts with coal shippers. Id. All of these factors made it impossible to conduct a meaningful evaluation. To ensure proper fulfillment of its responsibilities, however, the Board prohibited PRB coal traffic on IC&E lines until the required information was submitted and the EIS completed. Id.<sup>3</sup>

The Applicants are well aware of this history, and they report that each of these uncertainties continue. CP indicates that it has not yet decided whether to construct the PRB line, and that it has not entered into any contracts with shippers or coal mine owners. CP-2/DME-2 at 24. After consulting with the Board's Section of Environmental Analysis, the Applicants suggest that the deferral of the subject EIS should continue. Id.

*The Applicants have recognized as well that the Board should examine the impacts of PRB coal traffic not only over the lines of the IC&E, but also over the lines of the CP. Id. at 25. In these circumstances the Applicants have proposed to expand the above condition so that PRB coal may not be transported over the lines of either IC&E or CP until the necessary information is filed and the examination is complete. Id. The*

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<sup>3</sup> The condition also requires the DM&E to inform the Board of the commencement of any construction on the PRB line and to submit detailed operational and environmental information. Id.

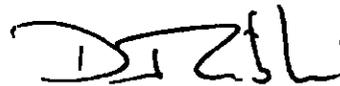
STB has preliminarily agreed with the Applicants and accepted this resolution. Decision No. 4 at 14-15.

The Department considers this a reasonable condition under the circumstances. Continuing uncertainty prevents the submission of information such as the volumes and routings of coal traffic, rendering meaningful analysis of impacts impossible at this point. Although there now seems more reason to expect that the PRB line will in fact be built and that coal traffic will follow,<sup>4</sup> the proposed condition appropriately protects against the prospect of environmental harm in the interim.

**Conclusion**

For the reasons given above, the Department agrees that no additional environmental data or review of the proposed transaction is required at this point. A condition preventing PRB coal traffic from moving on the lines of the IC&E and CP until the receipt and analysis of information about its impacts is also appropriate under the circumstances.

Respectfully submitted,



D.J. GRIBBIN  
General Counsel

February 4, 2008

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<sup>4</sup>/ CP has agreed to pay DM&E shareholders roughly an additional \$1 billion if PRB construction begins and if PRB coal traffic reaches a certain volume by specified dates. CP-2/DME-2 at 7, 12

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I have caused a copy of the Environmental Comments of the United States Department of Transportation in Finance Docket No. 35081 to be served by first class mail, postage prepaid, upon all Parties of Record in this proceeding.

  
Paul Samuel Smith

February 4, 2008