

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 35081

CANADIAN PACIFIC RAILWAY COMPANY, ET AL  
- CONTROL -  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL

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**COMMENTS OF  
THE CITY OF OWATONNA, MN**

Respectfully submitted,

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Due: March 4, 2008

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INTRODUCTION

The City of Owatonna, MN (“the City or “Owatonna”) files these comments in connection with the application by Canadian Pacific Railway Company, Et Al (“CPR”), Dakota, Minnesota & Eastern Railroad Corp., Et Al (“DM&E”), and Iowa, Chicago & Eastern Railroad Corp. (“IC&E”),<sup>1</sup> (hereafter “Applicants”) for authority under 49 U.S.C. 11323 *et seq.* for CPR to acquire control of the Dakota, Minnesota & Eastern and Iowa, Chicago, and Eastern Railroads . The City neither opposes nor supports the proposed control transaction. Rather the City submits these comments so

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<sup>1</sup> Dakota, Minnesota & Eastern Railroad Corp. is under common control with the Iowa, Chicago & Eastern Railroad Corp. Collectively these companies will be referred to as “DM&E” or the “DM&E System.”

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that the Board will have a better understanding of the concerns of on-line communities such as Owatonna and their affected citizens in deciding whether or not to grant this application and, if granted, whether or not to impose conditions to protect the interests of those citizens.

### FACTUAL STATEMENT

Owatonna is a City and political subdivision of approximately 24,000 people located in southern Minnesota, approximately 60 miles southwest of the Twin Cities. It lies at the convergence of three rail lines: the Union Pacific (former Rock Island Railroad) “Spine Line” from Minneapolis to Kansas City; the mainline of the DM&E from Minnesota City (Winona), MN, to Rapid City, SD, and points west; and a branch line of the IC&E from the Twin Cities through Owatonna to Austin, MN. The DM&E and IC&E lines cross in downtown Owatonna and any interchange of traffic between the DM&E and the IC&E would take place in downtown Owatonna.

Owatonna is no stranger to proceedings before the Board. It participated in Board proceedings in response to the DM&E’s plans to extend its railroad to serve the Powder River Basin (PRB) coal fields in Wyoming. It also appeared before the Board in connection with the DM&E’s application for authority to acquire control of the IC&E and IC&E’s proposal to acquire lines of the former IMRL. The City and the

DM&E executed a “community partnership agreement” addressing the City’s concerns in connection with the DM&E PRB extension. The City and the IC&E negotiated a similar “community partnership agreement” with the IC&E addressing certain concerns of the City relating to grade crossing protection and whistle blowing. Owatonna has approved and executed that agreement and is waiting for the IC&E’s execution of that document. Owatonna and CPR officials and their respective counsel have also conferred by telephone regarding the City’s concerns about the instant transaction and have received some level of comfort from CPR officials.

#### COMMENTS

Owatonna is submitting these comments in connection with the impact that the acquisition of the DM&E/IC&E System into CPR could have upon Owatonna’s “quality of life.” A casual reading of the application and the supporting materials suggests that the impact will be barely noticeable. CPR has advised the public in its application that the extension of the DM&E into the PRB is by no means a foregone conclusion and that it (CPR) would not handle any PRB-originated coal traffic absent an additional and thorough environmental analysis. Moreover, in the DM&E/IC&E control application, those parties promised not to move any PRB-originated coal traffic absent a similar and thorough environmental analysis. Accordingly,

Owatonna should have few concerns about the movement of numerous coal trains through Owatonna either to Winona for CPR interchange or switching to the IC&E at Owatonna for movement south to Austin, MN. Similarly, a review of applicant's materials reveals some minor operational changes that will have little adverse impact on the City or its citizens.<sup>2</sup> DM&E's current through train operating via Owatonna handles about 35-40 cars per train. While the carloadings will likely increase through aggressive marketing, that train with even an increased traffic level would be modest by class I or class II railroad standards.

However, comments submitted by other parties to this proceeding highlighted some other concerns. For example, the Mayo Clinic suggested that DM&E would begin moving substantial numbers of cars of ethanol, a hazardous commodity, over its line through Rochester, MN, adjacent to Mayo's facilities. Mayo and other parties have highlighted the amount of deferred maintenance on the DM&E System and the fact that the DM&E's safety record is much worse than many other class II carriers. See, Mayo Clinic Reply in Opposition to Applicants' Motion to Establish a Procedural Schedule, filed October 24, 2007, at 5, 7, and 8. Those assertions combined

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<sup>2</sup> Currently, DM&E's daily Huron, SD, to Chicago, IL, train is interchanged from the DM&E to the IC&E at Owatonna. This train will be rerouted to operate to Chicago via Winona and CPR eliminating the IC&E interchange and also eliminating a DM&E local from Owatonna to Winona. Instead, the IC&E will initiate a new daily local train from Owatonna to points south. Applicants' Operating Plan, Exhibit 13, at 27.

with the prospect of even a modest amount of hazardous material traffic led Owatonna to seek some further comfort from CPR. In response, CPR advised Owatonna through counsel that a significant amount of the ethanol traffic would move westbound to a BNSF Railway interchange, bypassing the City completely. As to the eastbound traffic, the ethanol traffic might be routed in any of three different ways, one bypassing Owatonna completely.<sup>3</sup> Another option would be to run it through Owatonna to Winona and the CPR interchange there, obviating the transfer to the IC&E at Owatonna, a higher concern of the City.

The City then asked CPR for some fairly simple information as to the current condition of the DM&E and IC&E track through Owatonna and where the \$300 million it intends to spend to rehabilitate the DM&E's deteriorated track and facilities might be spent with specific reference to Owatonna.<sup>4</sup> Owatonna was a little surprised by the nature of CPR's response. CPR stated rather glibly,<sup>5</sup>

“CPR has not yet determined the locations at which the planned

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<sup>3</sup> The ethanol traffic would leave the DM&E at Waseca (west of Owatonna) and head south to Albert Lea, MN.

<sup>4</sup> Among other things, Owatonna asked CPR about the existing DM&E and IC&E track conditions through Owatonna (FRA track class and presence of any longstanding slow orders) and what specific things CPR will do to address them. For example, Owatonna suggested that Applicants might reply that the subject line(s) are at an FRA class II standard with 32 slow orders due to rotted ties, fouled ballast, and worn 110 lb. rail and that, post-rehabilitation, the line would be upgraded to an FRA class III standard with no permanent slow orders, that fouled ballast would be renewed, there would be a thorough tie replacement and surfacing program, and worn rail would be replaced with 132 lb. welded rail.

<sup>5</sup> In a letter from CPR counsel Terence M. Hynes, Esq., to the undersigned counsel for Owatonna.

\$300 million in additional capital will be deployed, or the precise nature of the improvements that it will make at each location.”

Owatonna cannot believe that CPR would not have obtained at least some of this information as part of its transaction due diligence. Moreover, it should be readily available from the DM&E/IC&E engineering department records.

CONCLUSION

The City of Owatonna urges the Board in reviewing this transaction to consider not only its potential impacts on communities along the route but to ask the Applicants about their plans to restore the DM&E/IC&E System to a good state of maintenance capable of handling the proposed traffic volumes.

Respectfully submitted,



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City Attorney for Owatonna

Due: March 4, 2008

## CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the foregoing  
Comments of the City of Owatonna, MN was served on March 4, 2008 to all  
known Parties of Record.



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John D. Heffner