

Before the
Surface Transportation Board
Washington, D.C.

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Canadian Pacific Railway Company, et al.,)
-- Control --)
Dakota, Minnesota & Eastern Railroad Corp., et al.)
_____)

F.D. No. 35081

**INITIAL COMMENTS OF THE
UNITED STATES DEPARTMENT OF TRANSPORTATION**

Introduction

The Canadian Pacific Railway Company ("CP") in this proceeding has applied to the Surface Transportation Board ("STB" or "Board") for approval to acquire the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and its wholly-owned subsidiary, the Iowa, Chicago & Eastern Railroad Corporation ("IC&E").¹ Pursuant to the procedural schedule established herein, the United States Department of Transportation ("DOT" or "Department") hereby submits its preliminary comments on the transaction. Decision No. 4, served December 27, 2007.

At this point the record consists for the most part of the application and related pleadings from the Applicants, as well as submissions concerning the appropriate application of the National Environmental Policy Act ("NEPA") in this case. The Department has already submitted its views as to the latter.² On the non-environmental

¹/ The CP, DM&E, and IC&E are collectively referred to herein as "Applicants." Consistent with the Application and the STB's usage, references to DM&E include the IC&E unless otherwise indicated.

²/ DOT-2, filed February 4, 2008. We expect to participate further in the NEPA-related aspects of this proceeding at the appropriate time.

aspects of this transaction, no party has yet submitted any substantive evidence or argument. Given the incomplete state of the record in this regard, DOT takes no position on the merits of the proposed consolidation at this time. Consistent with STB-recognized past practice, in these circumstances the Department will reserve judgment pending a review of the initial comments of other parties, and we anticipate expressing our substantive views on reply. Decision No. 4 at 8.³

The Applicants have also submitted their Safety Integration Plan ("SIP") for the proposed consolidation. Because SIPs are produced pursuant to Federal Railroad Administration ("FRA") rules⁴ and, in part, via coordination with the FRA, we have some greater appreciation of their content, preparation, and implications than other pleadings filed to date by the Applicants. Thus, DOT offers its substantive comments on the SIP in this case below.

The Application

CP and its railroad affiliates operate a transcontinental network stretching over 13,000 miles in the United States and Canada.⁵ CP's rail system serves all major Canadian cities from Vancouver to Montreal, as well as fourteen U.S. States and the cities of Chicago, Minneapolis/St. Paul, and, via trackage or haulage rights, New York and Philadelphia. Most of CP's traffic consists of bulk commodities, merchandise

³ Reply comments are now due April 18, 2008. That is the last round of pleadings from the parties now scheduled -- the Board has not yet decided whether to require briefs -- so such submissions would not be able to take into account the (simultaneously filed) reply evidence and arguments of other parties.

⁴ 49 C.F.R. § Part 244

⁵ CP's U.S. rail subsidiaries are the Soo Line Railroad Co. and the Delaware & Hudson Railway Co.

freight, and intermodal traffic; its fiscal year 2006 revenue totaled approximately \$4.4 billion. CPR-2/DME-2 at 1-2.

The DM&E is a large Class II rail carrier serving eight States over roughly 2,500 miles, as well as the cities of Minneapolis/St. Paul, Chicago, and Kansas City.⁶ Its major traffic consists of agricultural commodities, bentonite, caolin clay, and forest products. DM&E interchanges traffic with all seven Class I rail carriers. Total 2006 revenues approximated \$263 million.⁷

The Applicants submit that this consolidation will benefit both railroads and the public interest. The geographic reach of the CP rail network will expand, allowing it access to new traffic (such as ethanol and corn) and providing expanded single line service and more efficient routing options to shippers on both carriers. Access to CP's financial resources will increase DME's efficiency and safety, and enhance the prospects for construction of a new rail line to the PRB. Id. at 8-10.

The Applicants assert that this transaction is strongly pro-competitive for four reasons: First, it represents an almost entirely "end-to-end" combination of systems with minimal overlap; there are only four locations at which the carriers intersect. Second, the traffic bases are complementary rather than competitive. Third, within the areas served by both Applicants, no shipper at any rail station that currently enjoys competitive rail service options will have fewer than two such options after the merger. Fourth, there will be no adverse impacts on short line carriers connecting with the Applicants. Id., Exhibit

⁶/ CP at one time owned the lines that now comprise the IC&E. CPR-2/DME-2 at 9.

⁷/ The Board in recent years has approved DM&E's request to construct a new rail line into the Powder River Basin ("PRB") coal area of Wyoming, but that line has yet to be built. Id. at 2-3

12 at 7-15; Verified Statements (“VS”) of Ray Foot and John H. Williams. See also CPR-7/DME-7, Supplemental VS of Williams.

Preliminary Comments

The role of the Department in this proceeding is ultimately grounded both in the statutory provisions that govern this transaction, and in DOT’s responsibilities as the Executive Department of the United States established by Congress “to provide general leadership in identifying and solving transportation problems,” and to that end the Secretary of Transportation “shall provide leadership in the development of transportation policies and programs.”⁸

As already noted, the Department will not take a position on the merits of the application at this time. Neither will DOT now offer any views on the question of whether conditions should be required in the public interest as part of any approval by the Board. It is clear, however, that the proposed merger presents issues of importance to the public. Applicable statutory provisions require the STB to examine the transaction’s true impact upon competition and upon the human environment, including safety, affected communities, and rail passenger operations. See 49 U.S.C. § 11324(d); 42 U.S.C. §§ 4321 et seq. Once individual parties have proffered their evidence and arguments on these subjects, DOT will analyze the record and submit its substantive position on the merits, including whether conditions should be imposed.

⁸/ 49 U S C §§ 101(b)(5) and 301(2), respectively

Safety Integration Plan Comments

A SIP requires applicants to a pending railroad merger to devote significant resources to ensure that their proposal, if approved, will be implemented in a way that maintains the highest level of safety. See Canadian National Railway, et al. – Control – Illinois Central Corp, et al., 4 S.T.B. 122, 176-77 (1999). This entails close cooperation between rail carriers and the FRA, particularly where, as here, one of those carriers (the DM&E) has not operated at that level in the past.⁹

In this case, the Applicants submitted a draft SIP to FRA in December of 2007 FRA reviewed that document and provided Applicants with specific comments on certain aspects of the draft, such as grade crossings and information technology integration. The Department is pleased to report that the Applicants have cooperated fully throughout this process and that the SIP submitted in this proceeding on February 4 appropriately addresses all of the issues raised by FRA. It only remains to be noted that because a SIP is an evolving document, adjustments may be needed in various particulars as experience and judgment dictate in the course of implementation of any approval the Applicants may receive for their consolidation. Id.

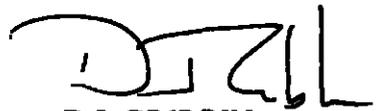
DOT accordingly urges that the Board condition its approval in the usual fashion with respect to SIPs: that the Applicants be instructed to continue to cooperate with FRA until FRA informs the STB that the transaction has been safely implemented. Id.

⁹/ In light of its shortcomings with respect to safety, in recent years DM&E has operated under a compliance agreement with FRA. See 49 C.F.R. §§ 209.201, 207. Additional attention and resources have resolved most of FRA's concerns; it anticipates resolution of the few that remain later this year.

Conclusion

The Department appreciates this opportunity to participate in a proceeding of real significance to railroads, shippers, and the general public. We look forward to development of the record on other issues and to contributing to a sound final decision. The SIP prepared for the proposed consolidation meets with FRA's safety concerns. We anticipate further cooperation between FRA and CP in ensuring a satisfactory implementation of the SIP, and we urge that any approval granted by the Board be conditioned to that effect.

Respectfully submitted,

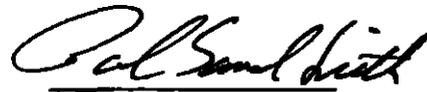
A handwritten signature in black ink, appearing to read 'D.J. GRUBB', written over a horizontal line.

D.J. GRIBBIN
General Counsel

March 4, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the Initial 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

March 4, 2008