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united transportation union



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Surface Transportation Board
395 E Street S W.
Washington, DC 20423

RE. Finance Docket No. 35081, Canadian Pacific Railway Company, et al. -- Control --
Dakota Minnesota & Eastern Railroad Corporation, et al.

Dear Surface Transportation Board Members,

Local 911 UTU is the biggest Union Local that CP Rail has in North America and more members in this Local can be adversely affected by the DME/ICE CP Line Purchases than any other Local.

It would be a detrimental for the STB to allow the CP Railroad to allow the DME or ICE Crews to operate out of the Minnesota City gateway onto the CP Rail main line, other than trackage rights already in effect. It should be pointed out to the STB that under the 1997 CP/IMRL Line Sale and the July 22, 2002 IMRL/DME Line Sale that these Railroads were to only use Minnesota City gateway as an interchange point and CP Crews would take freight cars or trains out of Minnesota City with CP Crews.

Operation of trains or any freight out of Minnesota City onto CP Railroad main line goes to the CP Crews.

It would not be right for the CP to merely use ICC Authorization to achieve and grant the DME or ICE trackage rights out of Minnesota City gateway to lower labor costs on account that DME and ICE Railroad Employee's wages are cheaper than CP Railroad Employee's

Bottom line, if any freight moves out of Minnesota City it should be manned by CP Crews. Otherwise, it will be an arrangement or merely a device to evade a Collective Bargaining Agreement.

The other concern that Local 911 has is that the ICE Railroad runs into St. Paul with trackage rights, one train a day in and one train a day out which was formally CP freight prior to the 1997 CP/IMRL spin off.

The one ICE train a day operates from St. Paul to Kansas City seven days a week.

If CP gets the STB regulatory approval then CP would most likely funnel or re-route freight down it's former CP lines "ICE" to Kansas City on account of cheaper wages.

Local 911 is asking the STB to personally have CP make a commitment to Local 911 for CP equity jobs to be put in place if CP plans on running more than one train a day in or out of St Paul from the ICE Railroad. This may otherwise cause labor problems because the extra freight will come from CP. The ICE Crews stand to gain extra trains in and out of St. Paul which would create unfair labor practice.



CP Crews should be entitled to any extra freight that comes out of the St. Paul terminal going down to Kansas City on their former lines, or any extra freight coming into St. Paul. The extra freight will come to the ICE lines if the CP gets the STB approval.

Local 911 position is that CP will most likely funnel extra freight to the ICE Crews which will be unfair to Local 911 members.

Also, the Local 911's final concern is that the STB should make CP restore some of their former CP lines, which are now ICE lines, with CP equity jobs that were once held by CP Employee's before the 1997 line sale, if CP truly wants their former lines back.

Local 911 only supports this line sale if CP Railroad grants some type of protection to Local 911 members. After all, DME and ICE already has protection put in writing for their employee's for this line sale.

Thank you
Sincerely



Dennis w Towner
Secretary/Treasurer
UTU Local 911
715 D Maple Hills Dr E
Maplewood, MN 55117



Division of Eastern Airlines Corporation



Cedar American Rail Holdings Inc.



Interstate Commerce Commission

SCHEDULE ID		MKCSP		DAYS OF OPERATION		M T W T F S S	
ORIGIN		KANSAS CITY		DFSTINATION		ST PAUL	
STATION	DAY	ARRV	DEPT	BLOCKS FROM H/E	CONNECTIONS		INSTRUCTIONS
					TO	FROM	
KANSAS CITY	1		1400	1 - KC SUB SHORTS 2 - MARQUETTE 3 - MUSCATINE 4 - BRC 5 - DAVIS JCT/BVILLE 6 - DUBQ/RIV JCT 7 - IPSCO/NAHANT 8 - DAVENPORT 9 - ST PAUL		KCS BNSF UP	
LIBERTY	1	1500	1800	3 - MUSCATINE		UP	P/U UP 1/2 BEHIND BLOCK 2
EXCELSIOR SPGS	1	1700	1800	9 - ST PAUL			S/O, P/U IN BLOCK
OTTUMWA	2	0100	0200	3 - MUSCATINE		BNSF	CREW CHANGE, S/O, P/U
MUSCATINE	2	0600	0700	2 - MARQUETTE 4 - BRC			S/O BLOCK 3 INCL UP 1/2 P/U IN BLOCK
NAHANT	2	0800	1800	1 - DUBUQUE 2 - RIVER JCT 3 - MARQUETTE 4 - ST PAUL	MNACC LNA5 LNA	LNA4 IAIS	S/O BLOCKS 4, 5, 7, 8 P/U IN BLOCK CREW CHANGE POWER CHANGE
SABULA JCT	2		2100				BYE
DUBUQUE	2	2330			LDQ	CNIC	S/O BLOCK 1 P/U IN BLOCK
	3		0100		CNIC		
MARQUETTE	3	0400	0500	4 - ST PAUL	MMQMC	MMCMQ	S/O BLOCK 3, P/U CREW CHANGE
RIVER JCT	3	0800	0830		CPR		S/O BLOCK 2
ST PAUL	3	1300			CPR		
DESCRIPTION HANDLES EXPEDITED MANIFEST TRAFFIC BETWEEN KANSAS CITY AND ST PAUL LKC LOCAL HANDLE TRAIN KC JOINT AGENCY TO LAWSON DOES SHORT WORK EXCELSIOR SPGS ON M, W, F WORKS LIBERTY/MOSEBY JCT ON T, T, S KC SUB ROAD CREW LIMITED TO TWO STOPS BETWEEN POLO-OTTUMWA							
ROUTE MILES				638.2			
ROAD RUN TIME				35 HOURS			
TERMINAL TIME				12 HOURS			
TOTAL SCHEDULE TIME				47 HOURS			
HP/TON REQUIREMENT				0.8			
RESTRICTIONS				NONE			



Dubuque, Alton/Des Moines to Anderson Railroad Corporation



Central American Rail Holdings, Inc.



Irwin, Chicago & Kansas Railroad Corporation

SCHEDULE ID		MSPKC		DAYS OF OPERATION		MTWTFSS	
ORIGIN		ST PAUL		DESTINATION		KANSAS CITY	
STATION	DAY	ARRV	DEPT	BLOCKS FROM H/E	CONNECTIONS		INSTRUCTIONS
					TO	FROM	
ST PAUL	1		0100	1 - ICE		CPR	
RIVER JCT	1	0530	0600			CPR	P/U
MARQUETTE	1	0900	1700	1 - DUBUQUE 2 - DAVIS JCT 3 - IPSCO 4 - MUSCATINE GRAIN 5 - EXCELSIOR SPGS 6 - KC UP 7 - KC JOINT AGENCY 8 - DAVENPORT		MMCMQ	SWITCH TRAIN CREW CHANGE
DUBUQUE	1	2000	2100	8 - DAVENPORT	CNIC	CNIC	S/O BLOCK 1, P/U ON H/E
SAMOA	1	2300	2330		MNACC		S/O BLOCK 2
NAHANT	2	0200	0700	1 - KC SUB SHORTS 2 - MUSCATINE 3 - EXCELSIOR SPGS 4 - KC UP 5 - KC JOINT AGENCY	IAIS	IAIS	S/O BLOCKS 5, 10 P/U IN BLOCK CREW CHANGE POWER CHANGE
MUSCATINE	2	0800	0900	4 - KC UP 5 - KC JOINT AGENCY			S/O BLOCK 2, P/U IN BLOCK
OTTUMWA	2	1300	1500	5 - KC JOINT AGENCY			S/O BLOCK 1, P/U IN BLOCK CREW CHANGE
EX SPRINGS	2	2200	2230				S/O BLOCK 3
LIBERTY	2	2330	2359		UP		S/O BLOCK 4
KANSAS CITY	3	0100			KCS BNSF		
DESCRIPTION HANDLES EXPEDITED MANIFEST TRAFFIC FROM ST PAUL TO KANSAS CITY TUESDAY AND THURSDAY HANDLES VOLTZ NS AUTOS							
ROUTE MILES				638.2			
ROAD RUN TIME				33 HOURS			
TERMINAL TIME				15 HOURS			
TOTAL SCHEDULE TIME				48 HOURS			
HP/TON REQUIREMENT				0.8			
RESTRICTIONS				NONE			

parties to New DML-2 at 111-49, DMR-9 at 31-56, Letter of South Dakota Governor William J. Janklow, dated December 12, 2002.

Parties Supporting The Terminal Trackage Rights Application The terminal trackage rights application is supported by 9 parties. See DML-9 at 39-56, Letter of South Dakota Governor William J. Janklow, dated December 12, 2002.¹¹ We have also received a number of letters from Members of Congress supporting the terminal trackage rights application.

Countervailing Parties *WAB&F/CF&P* Countervailing submissions were filed by Atkinson Electric Cooperative Corporation (AFCC), Minnesota Power and Water Company (MP&W), the Western Coal Traffic League (WCTL), MidAmerican Energy Company (MidAmerican), Soo Line Railroad Company, Utah Canadian Pacific Railway (CPR), the Canadian Rail Division of the Regional Transportation Authority of Northwest Illinois and Michigan, the Brotherhood of Locomotive Engineers (BLE), the Iowa Department of Transportation (IDOT), and the United States Department of Transportation (DOT). The evidence, arguments, and requests for affirmative relief in these submissions are summarized in Appendix B.

Countervailing Parties *Terminal Trackage Rights* Submissions were filed by UP, WCTL, the City of Omaha, IDOT, and DOT. The evidence and arguments in these submissions are summarized in Appendix C.

Summary of Decision In this decision, we are approving DML-2's acquisition of control of ICAL, subject to the standard New York/Dakota labor protective conditions.¹² We are also denying DML-2's terminal trackage rights application in the Sub-No 1 docket. Further, we are exempting the DML-2/CF&P/ANR trackage rights issue in the Sub-No 2 docket subject to the standard Dakota

¹¹ Letter from Development Corporation, MP&W Steel Inc., the Southern Crumwell Shippers Association, the Iowa Miners and Shippers Association, the City of Jackson, MN, and South Dakota Governor William J. Janklow.

¹² The supporting parties are the Minnesota Department of Transportation, Southern Crumwell Shippers Association, South Dakota Grain & Feed Association, Iowa-Minnesota Shippers Association, Agular & JTC, MP&W Steel Inc., Grain Processing Corporation, the City of Jackson, MN, and South Dakota Governor William J. Janklow.

¹³ *New York/Dakota* - Control - Brooklyn Eastern Dist., 360 F.3d 60 (4-9-01) (1979) (New York/Dakota).

and Western labor protective conditions.¹⁴ We are denying all other requests sought by the various parties to this proceeding.

THE DML-2/CF&P CONTROL, APPLICATION AND THE RELATED ISSUES

Dakota Minnesota & Eastern Railroad Corporation DML-2 owns or operates approximately 1,100 route miles of all lines (including approximately 750 route miles of main lines and approximately 383 route miles of branch lines) in Wyoming, South Dakota, Nebraska, Minnesota, and Iowa. DML-2's principal route extends from Coalinga, California, through Rapid City, SD, in Wyoming. Branch lines extend from Rapid City to Crazy Hill, NE, and Chadron, NE, from Rapid City to Omaha, SD, from Wobeser, SD, via trackage rights on The Burlington Northern and Santa Fe Railway Company (BNSF), from Rapid City to Mankato, SD, from Rapid City to Wadena, MN, and from Rapid City to Mankato, MN, via Mankato, MN, via trackage rights on UP. DML-2 also has a currently inactive branch line extending from Huron, SD, to Yule, SD, and currently inactive trackage rights on BNSF extending from Yule, SD, to Watertown, SD. In addition, DML-2 operates via trackage rights over CPR between Minnesota, MN, and Wisconsin, MN, and over short segments of UP-owned trackage in Minnesota and Wisconsin.

DML-2's principal yard and terminal facilities are located at Rapid City, Pierre, and Huron, SD, and at Tracy and Wadena, MN. DML-2's trackage rights with UP at Mankato and Wadena, MN, and at Mason City, IA, with UP at Minnesota City, MN, with BNSF at Wobeser, Akabon, and Redfield, SD, and at Cheyenne, WY, and with Northern Railway, Inc., at Chadron, NE. DML-2 can also contract via its essential trackage rights on UP's Huron-Mason City line, restricted interchange with CLRR at Glenwood, MN, and with IAHR at Mankato, IA. Although the lines of DML-2 and ICAL cross at grade and connect in Cranberry, MN, DML-2 and ICAL cannot, for the

¹¹ *Norfolk and Western Ry. Co. Trackage Rights*, 354 F.3d 610-15 (1978) (Norfolk and Western as modified in *Minnesota Coast Ry. Inc. Lease and Operate*, 350 F.3d 671, 667 (1980) (Stender, J. Con.).

¹² DML-2's Harland-Mason City trackage rights are restricted to interchanging traffic with UP at Mason City and to interchanging traffic with the Chicago & North Western Railway, Inc., at Chadron, NE. DML-2's Cedar River Railroad Company (CRLR) Canadian National Railway Company (CN subsidiary) at Chadron, NE.

¹³ The DML-2/CF&P trackage rights are limited to traffic that originates or terminates at points on UP's lines. The DML-2/ANR interchange at Yule is limited to traffic that originates or terminates at points other than Cedar Rapids, IA on IAHR's line.

most part) interchange at that location due to restrictions on DM&E's trackage rights on the UP-owned track through Overtona

Iowa Chicago & Eastern Railroad Corporation IC&E owns or operates approximately 1,397 route miles of rail lines (including approximately 796 route miles of main lines and approximately 611 route miles of secondary or branch lines) in Minnesota, Iowa, Kansas, Missouri, Wisconsin, and Illinois (IC&E, which acquired these lines on July 29, 2002 from I&M Rail Inc., I.C. (I&M), in an asset acquisition transaction, began its operations on these lines on July 30, 2002. IC&E's principal routes extend from Chicago, IL, to Sibley Junction, IA, and from there both southward to Kansas City, MO, and northwest to Minneapolis-St. Paul, MN. Significant secondary routes — known as the Corn Lines — extend across Southern Minnesota from Jackson, MN, to Ramsey, MN, and across Northern Iowa from Sheldon, IA to Maquokette, IA. Branch lines extend from Davis Junction, IL, through Rockford, IL, and Bekin, WI, to Jamesville, WI, from Mason City, IA, to Cornus, MN,¹⁹ from Wills, MN, to Minnesota Lake, MN, from Davenport, IA, to Albany, IL, via trackage rights on BNSF, and from Davenport, IA, to Paltz, IA. IC&E has overhead trackage rights over other railroads at a number of locations, including over CPR between River Junction, MN, and Matran Park, MN, and between Cornus, MN, and Rosemount, MN,²⁰ over IANR between Nora Springs, IA and Plymouth Junction, IA (connecting two IC&E line segments), and over Metra's West Line²¹ between Pingree Grove, IL, and Cragen Junction in Chicago, IL.²²

IC&E's principal yard and terminal facilities are located at Davenport, IA, Ottumwa, IA, Muscatine, IA, Maquokette, IA, Mason City, IA, West Davenport, IA, Savannah, IL, and Davis Junction, IL. IC&E owns a non-controlling stock interest in the Kansas City Terminal Railway

¹⁹ See Iowa, Chicago & Eastern Railroad Corporation — Acquisition and Operation Exemption — Lines of I&M Rail Link, LLC, STB Finance Docket No. 34177 (STB served June 12, 2002, June 26, 2002, July 22, 2002, and January 21, 2003) (I&M/IC&E Asset Acquisition)

²⁰ The Faribault, MN-Cornus, MN segment of the Mason City, IA-Cornus, MN line is not currently in service

²¹ The Cornus-Rosemount trackage rights are not currently in use

²² Applicants claim that IC&E acquired, its assignee from I&M, I&M's rights to use Metra's West Line. This claim, however, has been the subject of a dispute between IC&E and Metra, and, in view of Metra's initial refusal to allow IC&E to access the West Line, IC&E seeks relief from Chicago and is initially burdened by other railroads — Iowa Interstate Railroad, LLC (IAIS) and Chicago, Central & Pacific Railroad Company (CC&P), a CN subsidiary) — pursuant to existing arrangements. Applicants have advised that IC&E commenced operations over the West Line in early September 2002 pursuant to a "temporary detour agreement" between IC&E and Metra, and that IC&E's alternative access routes via IAIS and CC&P also remain in place. See Docket No. 34177 at 5 n.7

Company (KCT), a switching and terminal carrier in Kansas City, Kansas (KSN), and is also a joint owner, with The Kansas City Southern Railway Company (KCS), of the Joint Agency "yard facility" in Kansas City, MO. IC&E interchanges traffic with The Bell Railway Company (BRC) at Cragen Junction/Clearing, IL, with BNSF at East Moline, IL, Mt. Line II, Belvidere, IA, Ottumwa, IA, Minneapolis/St. Paul, MN, and Kansas City, MO with CDR at Charles City, IA, and Lytle, MN, with CRP at Dubuque, IA, and Rockford, IL, with the Chicago & North Western Railway (CNR) at Chikawille, MO, with the Elgin, Joliet & Eastern Railway Company (EJ&E) at Spaulding, IL, with Illinois Railroad, Inc. (IRNI), at Deser Junction, IL, with the Havana Harbor Rail Railroad Company (HH) at Franklin Park, IL, with IAIS at Rock Island, IL, and Davenport, IA, with IANR at Nora Springs, IA, and Plymouth Junction, IA, with IATR at Mason City, IA, with KCS at Kansas City, MO, with the Minnesota Commercial Railway Company (MCR) at Minneapolis/St. Paul, MN, with Norfolk Southern Railway Company (NS) at Birmingham, MO, and Kansas City, MO, with CPR at Fergusville, IL, Maquokette/St. Paul, MN, Northfield, MN, and River Junction, MN, with ITR at Clinton, IA, Emmetsburg, IA, Mason City, IA, Sheldon, IA, Minneapolis/St. Paul, MN, Kansas City, MO, and Jamesville, WI, and with W&S at Jamesville, WI. IC&E also interchanges with all major line-haul carriers at Chicago, through intermediate switching services provided by BRC, IIR, and CPR.²³

Cedar American Rail Holdings Holdings is the beneficial owner of all of the outstanding common stock of IC&E, which is being held in an independent voting trust pending the outcome of this control proceeding. Applicants indicate that, if the control application is approved and consummated, Holdings will function as a holding company for both DM&E and IC&E. Holdings will oversee the management and coordination of operations on the DM&E/IC&E system and perform maintenance and administrative services for both DM&E and IC&E.²⁴

Nature of the Control Transaction Applicants contemplate the acquisition, by DM&E, of indirect control of IC&E through the termination of the voting trust in which the IC&E stock is currently held and the distribution of that stock to Holdings, which will allow Holdings to exercise control over the IC&E stock. Applicants indicate that if and when control is unopposed, Holdings will oversee the management and coordination of operations of DM&E and IC&E, which will remain separate entities and conduct their own operations with their own employees.

²³ IC&E's overhead traffic rights on CPR's River Junction-Twin Cities line do not allow IC&E to interchange with DM&E at Minnesota City, MN, or Winona, MN (two points at which DM&E lines connect with CPR's line)

²⁴ DM&E's existing capital structure did not easily allow for the creation of a holding company in the normal corporate chain position above DM&E. Holdings was created as a wholly owned subsidiary of DM&E and technically is positioned in the corporate chain between DM&E and IC&E

Public Interest Justifications. Applicants contend that common control will improve applicants' operating and financial performance by allowing both railroads to serve their customers more effectively and to compete more effectively in the mid-Missouri transportation market with Class I railroads, motor carriers, and barges. According to applicants, customers on both carriers will benefit from better equipment, continuous unit utilization, improved service patterns, and other operating efficiencies made possible by the larger and more diversified traffic base and greater financial resources of the combined DM&E/IC&E system. Applicants anticipate that common control will provide a more stable and reliable environment for shippers on both railroads. Applicants further contend that grain shippers on both DM&E and IC&E will benefit from having access to a combined, consolidated system fleet of over 6,100 covered hopper cars, and that common control will provide shippers and receivers with new routing and service options and more efficient and competitive single-system access to significant new markets and gateways.

More specifically, applicants maintain, with respect to DM&E, that common control will give shippers new, single-system rail access to the longer river shipping season at Mississippi River ports south of Winona, MN, and that grain shippers will enjoy, for the first time, direct single-system service to the major rail gateways of Chicago and Kansas City. New single-system routes to major grain processing plants on IC&E, new direct, joint-line routes to processors elsewhere in Iowa (such as on IANR in Cedar Rapids), and "neutral" alternate access to significant long-haul destination markets in the south-central United States. And common control, applicants maintain, will guarantee that DM&E will have neutral eastern routings for coal movements from the Powder River Basin (PRB) in Wyoming, if and when DM&E constructs its recently-approved line into the PRB.²²

Applicants maintain, with respect to IC&E, that after many years of doubt regarding the viability of the rail lines now owned by IC&E, common control will reinvigorate the IC&E lines to a stable, reliable, and essential component of the regional rail network in the north-central United States. Grain shippers on IC&E's lines, applicants argue, will gain potential new routes to the Pacific Northwest for export, while grain receivers on IC&E's lines and elsewhere in Iowa will be assured continued reliable, independent, and long-term access to grain from origins both on IC&E's own lines and on DM&E's lines in southern Minnesota and South Dakota. And, applicants assert, IC&E's largest customer, a steel manufacturing firm near Dawson, IA, will have single-system service for additional scrap that currently originates on DM&E but must now be interchanged to an intermediate carrier for interchange to IC&E.

²² See Dakota, Minnesota & Eastern Railroad Corporation Construction Plan, The Powder River Basin, STB Finance Docket No. 33407 (STB served Jan. 30, 2002) (PRB Construction), and, for judicial review, *proceeding sub nom. Mid States Coalition for Congress et al. v. Surface Transportation Board et al.*, No. 02-1359 et al. (8th Cir. filed Feb. 1, 2002).

Applicants further contend that the proposed control transaction is completely "end-to-end" and will have no adverse impact on competition. According to applicants, DM&E and IC&E serve no common industrial nodes and do not currently interchange traffic at any location,²³ and, therefore, common control will not result in any real or even in existing rail-to-rail competition at any point or in any market. Applicants state that no shipper will lose competitive rail service or access to any existing routing options, that common control will have no adverse impact on the competition of essential transportation services by DM&E, IC&E, or by any other railroad, and that diversion of traffic from other railroads will be minimal.²⁴

Environmental Considerations. Applicants contend that, under 49 CFR 1105.6(c)(2)(k), the DM&E/IC&E common control proposal is exempt from environmental reporting requirements because common control will not result in changes in carrier operations that will exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5). Applicants anticipate that common control will result in only a minor increase (no more than seven rail trains per week) in traffic over IC&E's rail line between Owatonna, MN, and Mason City, IA. They state that this increase will be offset by a roughly corresponding decrease in train operations over DM&E's Wadena, MN-Ishland, MN, line and UP's Ishland, MN-Mason City, IA, line (which includes UP's "Spine Line" route between Albert Lea, MN, and Mason City, IA), and that anticipated traffic increases elsewhere on the combined DM&E/IC&E system will be handled in existing scheduled train movements.

Historic Preservation. Applicants contend that, under 49 CFR 1105.8(b)(1) and (3), the DM&E/IC&E common control proposal is exempt from historic preservation reporting requirements. Applicants explain that rail operations will continue after consummation of common control, and there will not be a substantial change in the level of maintenance of railroad property; that further Board approval will be required to abandon any service, and that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

²³ Although the routes operated by DM&E and IC&E intersect at five locations (Albert Lea, MN; Owatonna, MN; Mason City, IA; Minnesota City, MN; and Winona, MN), DM&E and IC&E do not currently interchange traffic at any of these locations, primarily because DM&E or IC&E operates no restricted package rights at each of these locations that will not allow for a DM&E/IC&E interchange. DM&E has not explained its rationale for seeking to establish a DM&E/IC&E connection at Owatonna as opposed to any of the other possible points.

²⁴ Applicants anticipate that, as a result of common control, approximately 9,850 carloads of traffic will be diverted to the combined DM&E/IC&E system annually, generating annual revenues of approximately \$8.1 million. Applicants indicate that, for the most part, these anticipated diversion requests extensions of haul on existing DM&E or IC&E facilities from shippers favoring the single-system service offerings of the combined DM&E/IC&E.

The DM&E Control Application. Relief Sought By CRR CRR has raised issues involving (1) the Minnesota City gateway, and (2) Metra's West Line for the reasons given below. We are denying the relief requested by CRR.

(1) The Minnesota City Gateway CRR is concerned that a symmetrically controlled DM&E will leave DM&E/IC&E railroads in a weakened and vulnerable position. DM&E-CRR meetings via Minnesota City (CRR therefore asks that we impose a condition that would require the combined DM&E/IC&E to keep the Minnesota City gateway open for "interchange traffic." CRR contends that this would give shippers more choices for the grain movement and private "short haul" advantages for potential PRB coal movements to Minnesota and Wisconsin ports.

We will not grant the "open gateway" condition sought by CRR. The condition would disadvantage the combined DM&E/IC&E from existing traffic via the Owanima gateway even if doing so were more efficient than a DM&E-CRR routing via Minnesota City. The shipping public will benefit if the combined DM&E/IC&E has the flexibility to operate via the most efficient routing. We do not share CRR's apparent concern that a combined DM&E/IC&E will tend to favor a "long-haul" DM&E-IC&E routing that is less efficient than a short-haul DM&E-CRR routing. The competitive pressures that DM&E/IC&E will face from existing others, NRSI and UP will be such that any effort to use an inefficient "long-haul" routing will risk the competitive loss of the traffic.

(2) Metra's West Line Metra, which owns the "West Line" into Chicago, has disputed DM&E's claim that IC&E acquired J&N's mailage rights over the West Line. Initially, in view of Metra's refusal to allow IC&E to access the West Line, IC&E mailed to Metra Chicago was handled by J&N and C&E's parent to handle arrangements. Later, IC&E and Metra negotiated a "temporary debar agreement" pursuant to which IC&E can operate over the West Line. The dispute between DM&E and Metra remains the subject of negotiations, and neither DM&E/IC&E nor Metra has asked us to take any action respecting this matter. Metra, in fact, has advised that it is optimistic that the negotiations will address its concerns, and that it now believes that it is in a position to protect its interest in any event.³⁴

CRR is not as optimistic about the outcome of these negotiations and raises concerns that if negotiations fail future litigation could have, as a result, "implications" for shippers, the freight markets, and Metra.³⁵ CRR has shown that potential issues regarding IC&E's access to Chicago over the

³⁴ Metra accordingly does not oppose the common control transaction.

³⁵ While the precise nature of CRR's interest in this matter is not entirely clear, it appears that CRR, which in fact, owned the rail lines now owned by IC&E and which had a minority ownership (continued)

West Line could arise, but as DCOI has said, no party has demonstrated that any action by us regarding access to Chicago over the West Line is currently warranted now, when the parties are still in the process of negotiating an arrangement for use of the West Line and DM&E coal traffic from the PRB routing (Chicago) via the Metra line or any other line) has not yet begun.

The DM&E/IC&E Control Application, Labor Protection Under 49 U.S.C. 11326 (with exceptions not pertinent here), the imposition of labor protection is mandatory when approval is sought for a transaction under §5 11324 and 11375. In the absence of a need for greater protection, the New York Dock conditions are appropriate for this type of transaction. Because no need for greater protection has been shown here, "these conditions will be approved."

The DM&E/UP Terminal Leverage Rights Application Applicants' systems meet 11 Owanima, MN, but the current control interchange traffic on others use can meet that need because of restrictions on DM&E's use of track owned by UP. As the record shows, these restrictions, date from DM&E's creation, when, in return for a more favorable sales price, DM&E agreed that UP's predecessor would part only with overhead leverage rights, in 1978, it bought Owanima. The result was, and is, a 2.4-mile "strand" of track, in Owanima owned by UP but interconnected to the rest of the UP system. Pursuant to 49 U.S.C. 1112(d),³⁶ applicants have requested terminal leverage rights on approximately 3700 feet of this strand of track to enable DM&E to connect and interchange traffic with IC&E at Owanima. Applicants claim that, without the terminal leverage rights, the work on DM&E

³⁶ (continued)

interest in DM&E, has its own (independent) West Line leverage rights and, also a generator of certain long-term contracts that have been assumed by IC&E. CRR contends, in this regard, that in view of a contractual arrangement that would require CRR to make certain IC&E payments to Metra if IC&E fails financially, CRR has an interest in assuming that IC&E exercises an "assertion" over the West Line transaction.³⁷

³⁷ There is no allegation that rail customers will be adversely affected by the common transaction.
³⁸ H.L., a railway labor organization, contends, in essence, that the DM&E/IC&E control transaction and the IC&E/DM&E Asset Acquisition transaction are, in reality, a single transaction (i.e., the acquisition, by DM&E, of control of J&N) and should be treated as such. This argument has already been considered and rejected. See the IC&E/DM&E Asset Acquisition decision served July 30, 2002, and January 21, 2003.

³⁹ Under 49 U.S.C. 11112(d), we may require a railroad to allow its terminal facilities, including maintenance tracks for a reasonable distance outside the limits of, to be used by another railroad if the use is practicable, in the public interest, and will not, substantially, impair the ability of the owning railroad to handle its own traffic.

DMA&E's PRB Construction Project. WCTC contends that as it argued in its pleading filed in the DMA&E construction case, DMA&E's PRB construction project is an important private sector investment initiative that will provide competitive and service benefits for coal shippers. WCTC further contends that there is sufficient public demand for the project, that DMA&E's business projections are achievable, and that the project, once completed, will improve DMA&E's existing services and provide needed additional rail infrastructure capacity in the West and Midwest. WCTC indicates that it continues to support DMA&E's PRB project because (in WCTC's view) that project will result in enhanced PRB rail competition, demonstrable service improvements and efficiencies, and an increase in the capacity of the national rail system, all while increasing incentives for the existing PRB incumbents (UP and BNSF) to be better and more responsive rail service providers and marketplace competitors. And, WCTC adds, we should resist any invitation to re-litigate issues that were fully resolved in the PRB Construction case, because (WCTC advises) re-litigation of such issues would only serve to divert attention away from the relevant issues and hamper our ability to efficiently process the instant proceeding on the merits.

DMA&E/IC&E Common Control. WCTC contends that the IC&E lines (which, WCTC notes, run between Chicago, Kansas City, and the Twin Cities, and across northern Iowa and southern Minnesota) are an important connection and access link on the eastern part of the DMA&E system, that will allow DMA&E to reach its current and future customer base. WCTC further contends that approval of DMA&E/IC&E common control will help preserve rail service to existing and future customers on both the DMA&E lines and the IC&E lines. And, WCTC adds, DMA&E/IC&E common control should improve DMA&E's existing services, and provide needed additional rail infrastructure capacity in the West.

MidAmerican Energy Company. MidAmerican, which is IC&E's largest shipper by volume, ships about 13 million tons a year of PRB coal to its generating stations in Iowa. MidAmerican advises that IC&E delivers PRB coal, from interchanges with other railroads, to MidAmerican's Louisa station near Turland, IA, and its Riverside station in Henderson, IA. MidAmerican further advises that the availability of secure, efficient, and competitive rail service is extremely important to MidAmerican's competitiveness within its own utility market.

MidAmerican reports that, in the past, railroad acquisition and integration problems have created serious service disruptions. MidAmerican indicates, however, that, to date, IC&E has done a remarkable job in executing a smooth transition. MidAmerican advises that, because the transition has thus far gone well and because MidAmerican anticipates continued service improvements with full integration of DMA&E and IC&E, it supports DMA&E/IC&E common control. MidAmerican contends that common control will be in the public interest, will enhance the stability of both carriers, and will present opportunities to improve rail service for shippers on IC&E, including MidAmerican. And, MidAmerican adds, a regional partnership between DMA&E and IC&E, and the various synergies the two carriers should be able to achieve, will help ensure the long-term viability of critical components of the lower rail transportation infrastructure, and, in conjunction with DMA&E's proposed line construction

into the PRB, will create a new single system transportation option that could meet MidAmerican's coal shipping needs.

Soot Line/Alta Canadian Pacific Railway. CPR, a Class I rail road, is a former owner of the railroad properties now owned by IC&E. CPR advises that, prior to the IC&E/IC&M asset acquisition transaction, CPR had three separate rail and finite asset units, and its primary ownership interest in IC&M (CPR further advises that, because of geographic closeness and long-term contracts assumed by IC&E upon its purchase of the assets of IC&M, the close CPR/IC&M relationship has by necessity earned through to IC&E, and that, although the actual financial asset deal existed between CPR and IC&M no longer exists, a number of certain legal relationships will do exist). CPR indicates, by way of example, that it has contractual duties to some IC&E customers that will require CPR to provide service to that customer if IC&E fails to provide service at specified levels. CPR also indicates that, in view of a contractual agreement that may require CPR to guarantee certain IC&E payments to Alcoa (IC&E fabric's financial ally), CPR has an interest in assuring that IC&E has the financial stability and operational acumen to run mines into the Chicago area over IC&E's main route into the city. Alcoa's "West Line" from Pungree (mine in Oregon Junction). And, CPR adds, its interest in DMA&E/IC&E common control also reflects the fact that IC&E has truckage rights on CPR's River Junction-Twin Cities line, and interchanges traffic with CPR at several locations.

Minnesota Coal Gateway. CPR contends that, even though DMA&E has not explicitly indicated an intention to close the DMA&E/IC&E PR gateway to Minnesota City, action should be taken to keep that gateway open, as requests DMA&E traffic moving north and east over CPR (north via CPR's Minnesota City-Twin Cities line and east via CPR's River Junction-Chicago line) and also as respects CPR traffic moving west over DMA&E. The shipping public, CPR argues, will benefit if the Minnesota City gateway is kept open for interline diversion interchange traffic.

(1) As respects PRB coal moving to plants in the Twin Cities and central and northern Wisconsin, CPR fears that DMA&E will divert this traffic from its most natural routing (the DMA&E/CPR routing via Minnesota City and the Twin Cities) and force it onto a more circuitous routing (the DMA&E/IC&E routing via Ovationia and Chicago). CPR warns, however, that a DMA&E effort to close the Minnesota City gateway and route coal traffic via IC&E into Chicago would defeat the rationale advanced by Upper Midwest power producers that provided partial justification for DMA&E's PRB construction project. In this regard, CPR argues, a condition requiring that the Minnesota City gateway remain open would be appropriate.

(2) As respects grain traffic originated by DMA&E in South Dakota and southern Minnesota and moving to Chicago, CPR fears that DMA&E will divert this traffic from a DMA&E/CPR routing (via Minnesota City) to a DMA&E/IC&E routing (via Ovationia). CPR, though it concedes that shippers may potentially be benefited by the increase in routing alternatives, insists that shippers should nevertheless have the right to choose the DMA&E/IC&E route via Minnesota City, which CPR claims is the better physical shape, is more direct, is faster, and (all things considered) is more cost-effective than

the DM&E/IC&E route via Dwanunu. And, CPR adds, a shipper's right to choose the DM&E/CPR route can only be preserved if the Minnesota City gateway remains a viable option.

(3) CPR further contends that the public interest would also be served by keeping the Minnesota City gateway open for fertilizer shipments coming south from Canada on CPR that are interchanged with DM&E at Minnesota City for movement to farmers in southwestern Minnesota and South Dakota.

Metra's West Line CPR advises (in its comments filed November 14, 2002) that, as applicants had previously noted in their primary application, filed August 29, 2002, IC&E's ability to move traffic into the Chicago terminal remains the subject of ongoing negotiations. CPR explains that CPR has trade rights over Metra's West Line pursuant to a 1985 Tradeage Rights Agreement (the 1985 TRA) between CPR's and Metra's predecessors in interest, that I&M, which moved traffic from Chicago via the West Line, was admitted to the West Line as a "third party admittee" under the terms of the 1985 TRA, that, however, disputes have arisen as to the assignability to IC&E of the contract thereunder entered to as the I&M agreement) that allowed I&M this access to Chicago, and litigation has ensued that the litigation has been stayed pending negotiations between the parties over a new agreement that would give IC&E more permanent rights to operate over the West Line, and that, although IC&E traffic has already begun moving over the West Line, it has been moving pursuant to a temporary detour arrangement between IC&E and Metra.

CPR further advises that certain issues respecting the specific provisions of the I&M agreement that might carry through to any new IC&E agreement have not yet been resolved. CPR indicates that IC&E has taken the position that the I&M agreement is assignable in whole, that CPR has no right to object to an assignment to IC&E, and that Metra's consent to such an assignment is not required. CPR further indicates that Metra and CPR have taken the position that no attempt at assignment can be effective without Metra's consent, which (CPR notes) has not yet been given.

CPR cautions that, if negotiations fail, the applicability of the various terms of the I&M agreement may be determined in court. CPR adds that, whether the court chooses to impose the terms of the I&M agreement on CPR, IC&E, and Metra, or whether the court finds that no assignment has taken place, there will be implications for shippers, the freight railroads, and Metra.

Relief Requested By CPR (1) As respects the Minnesota City gateway, CPR asks that a condition be imposed that would require the complainant DM&E/IC&E to keep this gateway open for "interline division interchange traffic" to allow competitive routing for grain, coal, and other shippers who currently use that gateway. This condition, CPR adds, would give shippers more choice, with

respect to their grain movements, and would also allow the realization of "short haul" advantages for potential DM&E/PRR coal movements to Minnesota and Wisconsin ports.³⁴

(2) As respects Metra's West Line, CPR has not asked that a specific condition be imposed, but it has asked that we recognize that there remain open questions regarding IC&E's access to Chicago over this line, and that these questions may require action on our part in the future.

Applicants' Response To CPR (1) Applicants contend that CPR's "Minnesota City gateway" condition should be rejected because CPR has presented no evidence that DM&E has any plan or intent to cancel its interchange with CPR or otherwise "choke" the Minnesota City gateway. Following common custom,³⁵ CPR has made no showing that Federal intervention is necessary to protect against loss of efficient routing opportunities for shippers,³⁶ and, in any event, the IC&E and the Board have long held that gateway protection conditions are anti-competitive, and not in the public interest.³⁷

(2) Applicants contend that, although IC&E's access to Chicago via Metra's West Line remains the subject of negotiations among IC&E, Metra and CPR, there is no basis for concern. Negotiations to settle litigation over the assignment to IC&E of the traffic rights held by I&M over Metra's line, applicants advise, have been ongoing, and substantial progress has been made toward an

³⁴ Although one version of the condition sought by CPR would keep the Minnesota City gateway open to allow competitive routing options for shippers who currently use that gateway," CPR's comments at 3, it is clear that CPR has in mind that the open gateway condition would also apply to PRR coal shipments that do not "turnout" (see the DM&E/IC&E PR Minnesota City gateway). See also CPR's comments at 5 (the simplest version of the condition sought by CPR would merely require the combined DM&E/IC&E to keep this gateway open).

³⁵ Applicants note that, despite what CPR has suggested, Minnesota City is not truly an "open" gateway. Applicants explain that although IC&E and CPR are currently through Minnesota City on overhead trackage rights over CPR's line and physically could interchange traffic with DM&E, the trackage rights agreement between CPR and IC&E prohibits IC&E from interchanging any traffic with DM&E at Minnesota City.

³⁶ Applicants note that no shipper filed comments expressing concern over future routing opportunities via Minnesota City. And, applicants add, IC&E presented no evidence of any shipper support for its proposed condition.

³⁷ See CSA (SFO, et al. - Conrail Inc. et al., 1 S.T.B. 196, 303 (1997)) (We continue to believe that conditions of this type [a "routing condition" that would have preserved a railroad's existing routings with respect to the merger applicants] are anti-competitive, and contrary to the public interest).