

Opening Statement for STB Finance Docket No. 34178

Chairman Nober, Vice Chairman Burkes, Commissioner Morgan:

This past August 29th, Dakota, Minnesota & Eastern Railroad Corporation filed two applications with the Board: a merger application that seeks approval for DM&E's acquisition of control of Iowa, Chicago & Eastern Railroad Corporation through dissolution of a voting trust, and a terminal trackage rights application that seeks an order that would permit DM&E to operate, without restriction, over a short segment of Union Pacific Railroad track in Owatonna, MN.

The draft decision before you includes two main recommendations.

First, the draft recommends that the Board approve the merger application, subject only to the standard New York Dock conditions. Because this merger does not involve two or more Class I railroads, the relevant statute requires the Board to approve the merger application unless there will be adverse competitive impacts that are both "likely" and "substantial." Because these two railroads serve no common industries and do not currently interchange traffic at any location, this merger will not result in any reduction in existing rail-to-rail competition at any point or in any market. And no party has demonstrated that any conditions are needed to preserve competition.

Second, because the terminal trackage rights sought by DM&E are neither necessary nor appropriate to provide the full benefits of the merger, the draft recommends that the Board deny the terminal trackage rights application. In a proceeding that led to the Board's approval last January of the construction by DM&E of an Owatonna connection between its line and the line now operated by IC&E, DM&E had explained that the common sense result would be to facilitate a private agreement between itself and Union Pacific which would obviate the need for construction at Owatonna. We agree. Both DM&E and Union Pacific now have strong incentives to negotiate an agreement under which DM&E would be permitted to connect with IC&E via existing Union Pacific trackage in Owatonna — the same result that would be achieved if terminal trackage rights were granted. And, because the real dispute between DM&E and Union Pacific is likely to focus on the cost of this connection, we think it appropriate to note that the Board's well-established policy of encouraging private sector dispute resolution whenever possible is particularly applicable in disputes involving compensation.

We would be happy to take any questions that the Board might have.