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November 8, 2006

Re: **Finance Docket No. 34177**
Iowa, Chicago & Eastern Railroad Corporation – Acquisition
and Operation Exemption – Lines of I&M Rail Link, LLC

Dear Reader:

As explained in more detail below, the Surface Transportation Board (the "STB" or the "Board") has directed Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") to circulate the attached Environmental Appendix related to the above captioned proceeding for public review and comment.

As you may know, on June 7, 2002, IC&E filed a notice of exemption to acquire and operate the lines of I&M Rail Link, LLC ("IMRL") ("Acquisition transaction"). On August 29, 2002, DM&E and its subsidiary Cedar American Rail Holdings, Inc. filed an application with the Board seeking STB approval for control of IC&E. In decisions issued on July 22, 2002 and February 3, 2003, the Board approved IC&E's acquisition of IMRL and DM&E's control of IC&E.

Four years before the IC&E acquisition proceedings had begun, DM&E had, through a separate and unrelated STB proceeding, sought approval for the extension of its rail lines into Wyoming's Powder River Basin ("PRB"). The Board granted preliminary approval for DM&E's construction and operation of the PRB line in 1998 and subsequently issued full approval in early 2002.

In the Acquisition transaction and the DM&E/IC&E control transaction, the Board concluded that these transactions would not result in significant operational changes with respect to non-PRB traffic and thus those transactions did not require a formal environmental review under the National Environmental Policy Act ("NEPA") and the Board's environmental rules. In DM&E's and IC&E's view, the Acquisition transaction does not materially alter the traffic projections or routings related to the PRB construction case, and accordingly qualifies for a categorical exclusion under NEPA¹ and the Board's environmental rules² in that area as well.

¹ 42 U.S.C. § 4321.

² 49 C.F.R. Part 1105.

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DM&E and IC&E have previously filed documentation in this proceeding³ explaining the basis for their conclusion that the Acquisition transaction falls into "a category of actions that do not individually or cumulatively have a significant effect on the human environment."⁴ Consistent with longstanding Board precedent in other cases and in order to afford the public an opportunity to review and comment on DM&E's and IC&E's conclusion that the transaction would not result in significant environmental impacts, the STB directed DM&E and IC&E to prepare an Environmental Appendix providing further information to support that conclusion. The STB's Section of Environmental Analysis ("SEA") has reviewed the Environmental Appendix.

In a decision in the Acquisition transaction case on October 18, 2006,⁵ the Board directed IC&E and DM&E to distribute the attached Environmental Appendix for public review and comment to the SEA. Accordingly, SEA is inviting written comments by December 11, 2006 on all aspects of the Environmental Appendix, including whether there is any reason to expect that the cumulative effects of these transactions (i.e., the incremental impact of the Acquisition transaction in the context of the PRB transaction) could result in potentially significant environmental impacts warranting preparation of further environmental documentation. Based on SEA's consideration of all timely written comments and its own independent review of all available information, SEA will recommend to the Board whether there is a need for formal environmental review in this case. The Board will then determine whether a categorical exclusion covers this proposal, or alternatively, whether an Environmental Assessment or Environmental Impact Statement should be prepared.

If you wish to submit written comments, please provide SEA with a signed original. (At this time, the Board is unable to accept electronic or faxed copies of comments.) Comments must be received by December 11, 2006 and should be sent to SEA at the address provided below:

Finance Docket No. 34177
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

³ DM&E/IC&E submission dated May 11, 2006.

⁴ 40 C.F.R. § 1508.4: *see also* 49 C.F.R. § 1105.6(c).

⁵ A copy of the Board's decision is included as Exhibit C to the Environmental Appendix.

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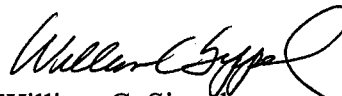
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Please write the following in the lower left-hand corner of the envelope:

Environmental Filing

Please be as specific as possible in your comments. Thank you for your interest.

Very truly yours,

A handwritten signature in black ink, appearing to read "William C. Sippel", with a large, sweeping flourish extending from the end of the signature.

William C. Sippel
Attorney for Iowa, Chicago & Eastern
Railroad Corporation and Dakota, Minnesota &
Eastern Railroad Corporation

Enclosure

cc: Ms. Victoria J. Rutson, SEA
All parties of record

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1. INTRODUCTION

On June 7, 2002, Iowa, Chicago & Eastern Railroad Corporation ("IC&E") filed a notice of exemption with the Surface Transportation Board (the "Board" or "STB") to acquire and operate the rail lines of I&M Rail Link, LLC ("IMRL"). On August 29, 2002, Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Cedar American Rail Holdings, Inc. ("CARH") filed an application with the Board seeking STB approval for their control of IC&E. In decisions issued on July 22, 2002 and February 3, 2003,¹ the Board approved IC&E's acquisition of the IMRL lines and DM&E's control of IC&E and found that the transactions would result only in insignificant environmental impacts, deferring for the future consideration of the cumulative impacts, if any, of those transactions together with the Board's approval of DM&E's application to construct a line into Wyoming's Powder River Basin ("PRB").² The operations of the two railroads have proceeded smoothly for the last three years, and have borne out DM&E's and IC&E's predictions and the Board's conclusions.

Four years before the IC&E acquisition proceedings (the "Acquisition case") had begun, DM&E had, through a separate and unrelated STB proceeding, sought approval for the extension of its rail lines into the PRB (the "Construction case"). The Board granted approval to DM&E in the Construction case in 1998 and early 2002. The "cumulative impacts" of the IC&E

¹ Iowa, Chicago & Eastern Railroad Corporation -- Acquisition and Operation Exemption -- Lines of I&M Rail Link, LLC, Finance Docket No. 34177 (STB served July 22, 2002) ("IC&E Acquisition") and Dakota, MN & Eastern et. al. -- Control -- Iowa, Chicago & Eastern, 6 S.T.B. 511 (2003) ("DM&E-IC&E Control"). These decisions may be viewed by going to the Board's web site at <http://www.stb.dot.gov> and clicking on the box labeled "Decisions & Notices" under "E-Library," clicking on "By Year and Month of Service Date" and navigating to the issuance date for the decision.

² The entire text of the 2002 application which detailed the projected traffic changes affected by the transaction is posted on the Board's web site. The application may be viewed by going to <http://www.stb.dot.gov> and clicking on the box labeled "Filings" under "E-Library." The application is listed under August 29, 2002, identified by Filing ID No. 206127 and Docket No. FD 34178 0.

acquisition transaction (i.e., the incremental impacts of the Acquisition case over and above the earlier Construction case) are the subject of the current proceeding.

At the time of DM&E's original PRB project filings in the Construction case, the current IC&E lines were owned by IMRL. There was no indication or expectation that IMRL would sell those lines, and the PRB project did not contemplate and was not predicated on such a sale. IMRL was nonetheless a critical part of the PRB project and, as reflected in regulatory filings and other materials in the Construction case, was already at that time the assumed and preferred routing for much of the Construction case traffic. As a result, before committing significant resources to developing the PRB project, DM&E had worked out important arrangements with IMRL to ensure it would have unfettered access to use IMRL to reach certain markets. DM&E did not require similar assurances from routing connections that were not considered as good. The movement of significant Construction case traffic via the IMRL lines was thus planned and expected at the time of the 2002 Acquisition case.

DM&E and IC&E recently discussed the cumulative impacts of these two transactions (the 1998 Construction case and the 2002 Acquisition case) with the Board's Section of Environmental Analysis ("SEA") and explained their position (discussed in more detail below) that the IC&E acquisition transaction qualifies for a "categorical exclusion" from environmental analysis under the National Environmental Policy Act of 1969 ("NEPA") and the Board's environmental rules -- that is, that it falls into "a category of actions that do not individually or cumulatively have a significant effect on the human environment."³ DM&E, IC&E and SEA believe that it is important that the public be afforded an opportunity to review and comment on DM&E/IC&E's conclusion that the cumulative impacts of these transactions would not be significant and do not warrant further environmental documentation. SEA, therefore,

³ 40 C.F.R. § 1508.4; 49 C.F.R. § 1105.6(c).

recommended to the Board that DM&E and IC&E prepare an Environmental Appendix providing further information to support their conclusion. On October 18, 2006, the Board directed DM&E/IC&E to prepare and distribute an Environmental Appendix for public review and comment.⁴

The Environmental Appendix and related materials are set forth below. Please review them, and if you wish to submit comments, please follow the directions below in the "Public Participation" section. SEA invites comments by December 11, 2006, on all aspects of this Environmental Appendix and on whether the incremental impacts of the Acquisition case in the context of the Construction case have the potential to be significant and would warrant the preparation of further environmental documentation. Based on SEA's consideration of all timely comments and its own independent review of all available information, SEA will recommend to the Board whether a categorical exclusion covers this transaction, or alternatively, whether an EA or EIS should be prepared.

II. DESCRIPTION OF THE TRANSACTION

DM&E is a Class II rail carrier, headquartered in Sioux Falls, South Dakota.⁵ DM&E owns and operates approximately 1,100 route miles of line and trackage rights in five Midwestern and Plains states (South Dakota, Minnesota, Iowa, Nebraska and Wyoming). IC&E is also a Class II carrier which was formed to acquire from IMRL and operate approximately

⁴ See Exhibit C, Finance Docket No. 34177, Iowa, Chicago & Eastern Railroad Corporation -- Acquisition and Operation Exemption -- Lines of I&M Rail Link, LLC, decision served October 18, 2006.

⁵ The Board's regulations divide railroads into three classes based on annual carrier operating revenues (in 1991 dollars). Class I railroads are those with over \$250 million in adjusted annual carrier operating revenues; Class II railroads are those with adjusted annual revenues of more than \$20 million but less than \$250 million; and Class III railroads are those with adjusted annual revenues of \$20 million or less. See 49 C.F.R. Part 1201, General Instructions 1-1(a).

1,400 miles of rail lines and trackage rights in Illinois, Iowa, Kansas, Missouri, Minnesota and Wisconsin.

IC&E's acquisition of IMRL's assets was completed on July 29, 2002. Shortly thereafter, DM&E (and its subsidiary CARH) filed an application seeking approval to control IC&E. The Board approved control on February 3, 2003. The DM&E/IC&E/IMRL set of transactions involved an entirely end-to-end coupling of the existing DM&E and former IMRL (now IC&E) systems with no overlapping or parallel routes. DM&E and IC&E did not plan and have not implemented any construction or abandonment of rail lines as a result of these transactions. DM&E/IC&E have maintained existing rail gateways affected by the transaction and operations over the past four years have provided significantly improved service on the IC&E lines.

Unrelated to this transaction, but referenced because of the traffic it involves, is the DM&E's Construction case. Four years before the IC&E acquisition proceeding was begun, and well before IMRL was even available for acquisition, DM&E had through a separate and unrelated STB proceeding sought approval for the extension of its rail lines into the PRB coal fields in Wyoming. The Board approved DM&E's construction and operation of the 262-mile PRB line from South Dakota into Wyoming by decisions issued in 1998 and 2002, and reissued that approval earlier this year following a partial remand from a federal appellate court.⁶ Construction of this rail line will include the movement of coal from the PRB via DM&E to Midwestern and eastern utilities. As noted in the Construction case proceeding, traffic resulting

⁶ Dakota, MN & Eastern R. -- Construction -- Powder River Basin, 3 S.T.B. 847 (1998) ("PRB Construction I"); 6 S.T.B. 8 (2002) ("PRB Construction II"); Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, Finance Docket No. 33407 (STB served February 15, 2006) ("PRB Construction III"); Mid States Coalition for Progress v. STB, 345 F.3d 520 (8th Cir. 2003). The Board recently authorized transfer of this construction authority to a newly-created DM&E subsidiary. See Wyoming Dakota Railroad Properties, Inc. -- Acquisition and Operation Exemption -- Dakota, Minnesota & Eastern Railroad Corporation, Finance Docket No. 34871 (STB served August 14, 2006). References to DM&E include this subsidiary where appropriate.

from that transaction was expected to move over the lines that were then owned by the IMRL via an interchange with DM&E at Owatonna, Minnesota. IC&E's acquisition of the IMRL lines was not and is not expected to make IMRL routings any more or less attractive or economically efficient for DM&E's PRB traffic than was previously the case.

Maps showing 1) the combined DM&E-IC&E system including the proposed PRB extension and 2) the IC&E line segments relevant to the analysis in this Environmental Appendix are attached as Exhibits A-1 and A-2, respectively.

III. PURPOSE AND NEED

As explained in more detail in the 2002 IC&E notice of exemption and DM&E control application, the IC&E acquisition transactions were intended to provide more effective service to the customers of IC&E and DM&E and enhance their ability to compete in the increasingly concentrated rail marketplace that surrounds them. As anticipated, IC&E and DM&E believe the transactions have provided shippers and receivers with enhanced competition, better equipment utilization, improved plant maintenance, new opportunities for single line service, and other operating efficiencies. The transactions also have helped both railroads' financial position and ability to invest in their infrastructure.

As both DM&E/IC&E and the STB noted in 2002, the IC&E acquisition transactions were not necessary for the pre-existing PRB project to proceed, and were not intended (or expected) to materially affect the PRB project. The STB explained at the time that "[t]he DME construction project is an independent project that has its own utility and benefits whether or not the instant [IC&E] acquisition goes forward . . . the acquisition transaction and the construction project are separate and distinct -- not 'two links of a single chain' . . .").⁷ DM&E/IC&E sought and the Board granted authority for the DM&E/IC&E/IMRL set of transactions not because of

⁷ IC&E Acquisition at 16, n.34.

any dependence or effect on the PRB project but because those transactions "will produce a stronger rail system that will be better able to offer improved services to their existing shippers."⁸

DM&E and IC&E thus intend and expect no meaningful increase in coal traffic on IC&E's former IMRL lines as a result of the IC&E Acquisition case. Material amounts of PRB coal will move via the former IMRL lines as a result of the Construction case (and as previously expected and discussed in that case) but the Acquisition case will not materially change that traffic quantity or flow. As shown in Exhibit B, DM&E and IC&E have set out an unprecedented nine-year traffic study from the 2002 date of the Acquisition case that analyzes these coal movements.⁹ For the first six years following the IC&E's acquisition of IMRL's lines, no new PRB coal traffic whatsoever will move -- either as a result of this Acquisition case or as a result of the Construction case. When traffic movements resulting from the Construction case commence in projected years seven, eight and nine (2009, 2010 and 2011), DM&E and IC&E expect that there will be no significant changes in the level or routing of that coal traffic that are caused by the Acquisition case.

IV. THE STB's REGULATORY REVIEW PROCESS

The Board is an independent federal regulatory agency with jurisdiction over certain surface transportation matters, including railroad line constructions, acquisitions and mergers. See 49 U.S.C. §§ 10901, 11323-11325. When the Board determines, based on a transaction's economic and competitive merits, that it is consistent with the public interest, the Board is required by statute to approve and authorize the proposed construction, merger or acquisition. In determining the public interest, the Board's well-established and court-approved practice is to

⁸ DM&E-IC&E Control, 6 S.T.B. at 526.

⁹ STB merger and acquisition proceedings normally only look at a three-year time horizon.

weigh the gains in operating efficiency and marketing capability realized through a particular railroad consolidation against any consequent reduction in competition.

In the case of railroad line constructions, mergers or acquisitions, a Board decision approving a transaction would not require the railroads involved to transport more freight or transport existing freight by any specific route. Rather, the Board's decision is intended to allow railroads to expand their rail line systems by acquiring facilities of other railroads and, thereby, operate more efficiently and compete more effectively with other railroads and transportation modes. Railroads make decisions on an ongoing basis regarding which routes they will use in response to changes in market conditions, the economy and shipper demands.

In the proceedings here, the STB has already determined that DM&E's construction of the PRB line, its control of IC&E, and IC&E's acquisition of IMRL's rail lines are all in the public interest.

V. NEPA AND ITS IMPLEMENTING REGULATIONS

NEPA¹⁰ generally requires federal agencies to consider "to the fullest extent possible" environmental consequences "in every recommendation or report on major federal actions significantly affecting the quality of the human environment."¹¹ Regulations governing implementation of NEPA have been promulgated by the Council on Environmental Quality ("CEQ")¹² and by the Board.¹³ SEA is responsible for conducting environmental review on

¹⁰ 42 U.S.C. §§ 4321, et seq.

¹¹ 42 U.S.C. § 4332(2)(C).

¹² 40 C.F.R. Parts 1500-1508.

¹³ 49 C.F.R. Part 1105.

behalf of the Board, evaluating potential environmental impacts, and recommending environmental mitigation conditions to the Board.¹⁴

Under the CEQ and STB regulations, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the agency to prepare a full environmental impact statement ("EIS").¹⁵ Actions that may or may not have a significant environmental impact ordinarily require the agency to prepare a more limited environmental assessment ("EA").¹⁶ An EA is a document containing environmental analysis sufficient for the STB to determine whether it should prepare an EIS or make a finding that the transaction will have no significant environmental impact.

Finally, actions whose environmental effects are ordinarily insignificant may normally be excluded from NEPA review.¹⁷ Included in this category are rail line acquisitions and control transactions that would not result in operational changes that exceed certain thresholds -- generally an increase in rail traffic of at least eight trains a day or an increase of 100% in traffic volume (measured in gross ton miles annually) on a particular line segment.¹⁸

¹⁴ In imposing environmental mitigation conditions, the Board has consistently focused on the potential environmental impacts that would result directly from transaction-related changes in activity levels on existing rail lines and at rail facilities. The Board typically does not require mitigation for pre-existing environmental conditions, such as the effects of current railroad operations.

¹⁵ 40 C.F.R. § 1501.4(a)(1); 49 C.F.R. §§ 1105.4(f), 1105.6(a).

¹⁶ 40 C.F.R. § 1501.4(c); 49 C.F.R. §§ 1105.4(d), 1105.6(b).

¹⁷ 40 C.F.R. §§ 1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. § 1105.6(c), (d).

¹⁸ 49 C.F.R. § 1105.6(c)(2)(i). If transaction-related changes in rail operations are projected to exceed the thresholds for review, then SEA, on behalf of the STB, would prepare either an EA or an EIS, addressing the effects of the transaction on such issues as: freight rail operation safety, hazardous materials safety, passenger rail safety, emergency vehicle response, highway at-grade crossing delay, traffic and roadway systems, energy, air quality, noise, cultural resources, land use, natural resources, environmental justice, and how the transaction may contribute to cumulative effects.

Table 1
THE BOARD'S THRESHOLDS FOR ENVIRONMENTAL ANALYSIS

System Component	Noise	Air Quality Attainment^a and Maintenance Areas	Air Quality Nonattainment^b Areas
Rail Line Segments	Increase of 8 trains per day, or 100% increase in annual gross ton-miles		Increase of 3 trains per day, or 50% increase in annual gross ton-miles
Rail Yards	100% increase in carload activity per day		20% increase in carload activity per day
Intermodal Facilities	Increase of 50 trucks per day, or 10% in average daily traffic volumes on any affected road segment		

^a Air quality attainment areas are those where ambient air pollution levels meet National Ambient Air Quality Standards established to protect human health.

^b Air quality nonattainment areas are those where ambient air pollution levels fail to meet National Ambient Air Quality Standards established to protect human health.

Source: 49 C.F.R. § 1105.7(e).

On the other hand, rail line acquisition transactions where the incremental impacts do exceed the thresholds in the Board's rules have enough potential for significant impacts to warrant further environmental documentation and the preparation of an EA (or a full EIS).¹⁹

VI. APPLICABILITY TO THIS CASE

DM&E and IC&E assert that IC&E's acquisition of the IMRL lines, as it affects the DM&E PRB construction, will have insignificant cumulative environmental impacts and therefore no further formal environmental review is necessary under NEPA and the Board's environmental rules. The Acquisition case considered in conjunction with the Construction case is expected to result in only de minimis incremental changes in carrier operations, none of which would exceed the thresholds triggering environmental review established in the Board's environmental regulations.²⁰ Exhibit B details the projected traffic changes on the IC&E system

¹⁹ 49 C.F.R. §§ 1105(b)(4), 1105.7(e)(5)(i)(A).

²⁰ 49 C.F.R. § 1105.7(e)(4) and (5).

arising from the baseline effects of the Construction case and the cumulative impacts of the Acquisition case.

While Exhibit B includes information on projected changes in the number of PRB-related trains per day on IC&E line segments through 2011, it does not attempt to project a percentage increase in the annual gross ton miles that might move on those line segments five years from now. The STB generally does not apply the gross ton mile calculation in proceedings involving new rail line construction, since the baseline tonnage is zero and thus the first ton of new traffic would automatically exceed the 100% threshold.²¹ Since any PRB coal traffic on the former IMRL lines will result from new line construction, there is similarly no reason to require inclusion of that data. Moreover, because PRB coal traffic will not commence moving until sometime in calendar year 2009, application of the "percentage increase in gross ton miles" thresholds would require a construction of hypothetical baseline non-PRB coal traffic densities on IC&E's lines for a period three to five years from the present. It would be virtually impossible to reliably or meaningfully predict that future non-PRB baseline traffic, which will be dependent on a host of unpredictable factors such as the state of the U.S. economy, the amount of new industry construction in and around DM&E and IC&E, changes in shipper transportation patterns, etc. Normally the gross ton mile thresholds are applied against current, actual traffic baselines. Here, however, there is no reasonable basis or ability to calculate a 2009-2011 baseline of non-PRB traffic tonnages against which to compare theoretical gross ton mile increases resulting from movement of PRB traffic.

In addition to showing train per day data for IC&E line segments, Exhibit B also shows PRB-related changes in yard activity at the five IC&E yards on the IC&E routes over which such

²¹ 49 C.F.R. § 1105.7(e)(5)(i)(C). Technically, in such instances the mathematical calculation contemplated by the regulations is not possible.

traffic would move. Because all PRB traffic will be handled in unit trains that will not be yarded en route, the yard activity criteria are functionally irrelevant for that traffic and show zero in each category.²² Similarly, the threshold criteria regarding intermodal facilities and truck traffic would not be applicable in considering PRB traffic movements in this case.

Based on the information in Exhibit B, DM&E and IC&E believe that the IC&E acquisition transaction remains exempt under 49 C.F.R. § 1105.6(c)(2)(i) from environmental review.²³ To assist SEA in determining whether there is any need for further environmental review, the Board requested that DM&E and IC&E prepare this Environmental Appendix, which provides general information about the proposal, including maps and additional analysis supporting their conclusion that this transaction does not warrant environmental documentation. SEA has reviewed this Environmental Appendix.

To facilitate public review and comment on all aspects of the Environmental Appendix, the Board, in its decision served October 18, 2006 (a copy of which is attached hereto as Exhibit C), directed DM&E and IC&E to make publicly available for review and comment this Environmental Appendix. DM&E and IC&E will serve a copy of this Environmental Appendix on parties of record in the Acquisition case and will publish a notice in newspapers of general circulation in each county and each on-line municipality with a population greater than 5,000 through which affected IC&E rail line segments pass alerting the public that the Environmental Appendix is available and explaining how to obtain copies and submit comments. Interested

²² As with the gross ton mile thresholds discussed above, it would be otherwise difficult to gauge a hypothetical 2009-2011 baseline of activity at these yards against which to measure any new PRB-related activity. That circumstance is mooted here by the fact that, by their nature, unit train movements of PRB traffic have no impact on yard activity in any event.

²³ Pursuant to 49 C.F.R. § 1105(8)(b)(1), the transaction also is exempt from review under the National Historic Preservation Act. The sale of IMRL's rail lines to IC&E was "for the purpose of continued rail operations where further STB approval is required to abandon any service."

parties desiring to submit comments should submit such comments to SEA by December 11, 2006.

The Board explained in its decision that, based on SEA's consideration of all timely comments and its own independent review of all available environmental information, SEA will recommend to the Board whether there is a need for formal environmental review in this case. The Board will then determine whether to issue a finding of no significant environmental impact ("FONSI"), or, alternatively, whether an EA or EIS should be prepared in this case.

VII. DM&E's AND IC&E's ANALYSIS

As contemplated by the Board in its October 18, 2006 decision, the information provided in this Appendix evaluates whether the IC&E acquisition transaction would affect the movement of PRB coal originating on the new DM&E line authorized in the PRB Construction case, giving rise to so-called "cumulative impacts" that would exceed the Board's thresholds for conducting an environmental review. Because no such traffic changes are forecast and no increase in PRB coal traffic moving over the former IMRL lines will result, the acquisition transaction considered cumulatively with other transactions will not have significant environmental impacts and does not require the preparation of further environmental documentation.

DM&E/IC&E anticipate that IC&E's acquisition of the IMRL lines will not result in meaningful traffic diversions or changes in routings or operating patterns for PRB coal handled by DM&E. The primary purpose of the 2002 IC&E acquisition of IMRL's lines was not to facilitate or enhance the PRB line construction project. It was a stand-alone transaction, separate from and unrelated to the PRB line construction project and of independent utility and potential profitability for IC&E. The acquisition transaction did not contemplate or rely on the diversion of DM&E-originated PRB coal from anticipated interline routes over other rail carriers to

routings via IC&E and the former IMRL lines. In its review of the transaction the STB likewise confirmed that the IMRL acquisition and the construction project were separate and distinct, rather than "two links of a single chain."²⁴

Before the Acquisition case, the interchange of PRB coal between DM&E and IMRL at Owatonna, Minnesota (the only available potential direct interchange point between DM&E and IMRL²⁵) was an important component of the Construction case. DM&E sought and obtained authority in the Construction case to build a direct DM&E-IMRL connection at Owatonna, and discussed at length there the important role that IMRL would play as an interchange partner via the Owatonna gateway for PRB coal traffic. IMRL/Owatonna routings were a significant component of DM&E's interchange and routing options for most target markets, and IMRL was an active supporter of DM&E's PRB build-in project. DM&E viewed IMRL as an aggressive Class II carrier with a low cost structure, and a neutral carrier without competing economic interests in developing new PRB coal service with DM&E. DM&E and IMRL had negotiated for a range of arrangements relating to the movement of PRB coal, and the movement of such coal through the Owatonna interchange and over IMRL's rail lines was a contemplated and expected result of the Construction case, independent of the subsequent IC&E-IMRL acquisition transaction.

Because IMRL was already the preferred route to the markets it effectively reached, and because in turn it was already planned and expected that PRB coal to certain markets would be routed via IMRL's lines, no additional PRB coal traffic is expected to be diverted to the former IMRL lines as a result of the Acquisition case. DM&E/IC&E's analysis shows that where IMRL

²⁴ IC&E Acquisition at 16, n.34.

²⁵ While IMRL operated (and IC&E now operates) on overhead trackage rights through Winona and Minnesota City, Minnesota, those trackage rights did not allow interchange with DM&E-owned lines or routes at those locations.

was the best route before the IC&E Acquisition case, those lines remain the most efficient route after the acquisition. That analysis also demonstrates that the DM&E/IC&E/IMRL set of transactions did not otherwise create new markets or enhanced routings for coal traffic arising from the Construction case. DM&E/IC&E divided PRB coal traffic into seven segments, and in each instance carefully analyzed whether the IC&E acquisition transaction gives rise to changes in marketing, operating or service considerations that would cause PRB coal traffic to flow over IC&E in ways different than originally contemplated with IMRL. As detailed in a prior DM&E/IC&E submission dated May 11, 2006,²⁶ except for currently unforeseen or exceptional circumstances, there is no likely increase in the routing and movement of DM&E-originated PRB coal over the former IMRL lines as a result of the IC&E transaction. While projecting traffic flows 3-6 years out (and nine years from the initial IC&E acquisition) is difficult to do, it can be said with a high degree of confidence that whatever traffic does move will not change because of the Acquisition case.

With respect to the important Chicago gateway market, IMRL previously and IC&E currently is expected to be the most efficient and favored routing for PRB traffic. However, the traffic congestion, capacity problems and related service issues endemic to Chicago are expected to require alternative routings to ensure consistent service, and DM&E has accordingly ensured that it has numerous options to reach Chicago. Additionally, most of DM&E's market to Chicago is or can be quoted as gateway moves, which means that specific railroad pairings or routes will not be fixed even after transportation contracts are entered into. DM&E/IC&E project that on average just under two-thirds of PRB Chicago traffic will move via the former IMRL lines and that one-third will move via other routings. This reflects the relative advantages

²⁶ This submission may be viewed by going to <http://www.stb.dot.gov> and clicking on the box labeled "Filings" under "E-Library." The filing is listed under May 12, 2006, identified by Filing ID No. 216538 and Docket No. FD 34177 0.

and attractiveness of IMRL/IC&E routings for such traffic, compared to the other interline routing options available to DM&E, tempered by the congestion, capacity and service realities of dealing with Chicago traffic. These considerations and projections are not affected by IC&E's acquisition of the IMRL lines.

Similarly, disadvantaged IMRL routings for PRB traffic have not become more favorable as a result of the IC&E acquisition. For example, the Acquisition case will not -- indeed, cannot -- result in the diversion of Twin Cities and Wisconsin coal traffic from a more efficient northern routing to a less efficient DM&E-Owatonna-IC&E-Chicago gateway routing. Canadian Pacific ("CP") previously raised this issue, indicating that "[a]s respects PRB coal moving to plants in the Twin Cities and central and northern Wisconsin, CPR fears that DM&E will divert this traffic from its most natural routing (the DM&E/CPR routing via Minnesota City and the Twin Cities) and force it onto a more circuitous routing (the DM&E/IC&E routing via Owatonna and Chicago)."²⁷ The Board rejected that scenario, explaining that "[w]e do not share CPR'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-CPR routing. The competitive pressures that DM&E/IC&E will face from, among others, BNSF and UP will be such that any attempt to use an inefficient 'long-haul' routing will risk the competitive loss of the traffic."²⁸ DM&E/IC&E's analysis confirms that the STB's conclusion was correct and that the Acquisition case will not result in the routing diversion of any PRB coal traffic onto the former IMRL lines. Efforts to do so would render those "out of route" markets competitively inaccessible and make the PRB project non-viable.

²⁷ DM&E-IC&E Control, 6 S.T.B. at 546.

²⁸ DM&E-IC&E Control, 6 S.T.B. at 527.

Because the Acquisition case does not substantially change the operating and marketing metrics for the routing of DM&E-originated PRB coal, DM&E/IC&E believe that the acquisition transaction will not result in any shift of additional PRB coal trains onto the former IMRL lines or otherwise result in any incremental environmental effects when considered in conjunction with the Construction case.

As indicated above, "cumulative impacts" are defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions" ²⁹ In considering such impacts, an agency considers the "incremental impact" of a proposed action in the context of a prior action, but does not examine (or re-examine) the impacts of the prior action itself. ³⁰ As discussed above, DM&E/IC&E have thus analyzed to what extent, if any, the acquisition transaction itself will result in routing changes for DM&E-originated PRB coal, leading to an additional increment of coal trains on the lines of the former IMRL. Exhibit B presents expected changes in traffic volumes over the relevant IC&E line segments for a nine-year period, from the consummation of the acquisition transaction in 2002 through the third year of forecast PRB coal movements in 2011, that will occur as a result of the acquisition transaction. As shown there, the IC&E acquisition transaction will not result in any meaningful diversions of PRB coal to IC&E routings from the routings they otherwise would have been expected to traverse. Because there are thus no cumulative impacts to address under the relevant regulatory criteria, DM&E/IC&E believe that the acquisition transaction qualifies for a categorical exclusion under NEPA and that no further environmental documentation is required in this matter.

²⁹ 49 C.F.R. § 1508.7.

³⁰ Department of Transportation v. Public Citizen, 541 U.S. 572, 769-770 (2004).

DM&E/IC&E note that the nine-year traffic forecast that they have provided here far exceeds the three-year environmental review period utilized in other STB proceedings, and that their forecast shows no coal traffic impacts of any type -- cumulative or otherwise -- during the initial six years following the IC&E acquisition transaction. That fact itself warrants a finding of no significant impact. Assessing merger or acquisition impacts for over nine years beyond the transaction in question is unprecedented, and should not be applied in this case.

Even reaching out more than nine years, the Acquisition case does not involve an "incremental impact" to add to other "past, present, and reasonably foreseeable future actions." The coal traffic projected in the last three years of the period, from 2009 to 2011, is traffic forecast to have moved via the IMRL lines solely as a result of the Construction case, and is neither directly nor indirectly related to the Acquisition case currently under review. The Board's consistent practice has been to address and mitigate only those environmental impacts that result directly or cumulatively from the transaction before it, and not to consider environmental impacts relating to existing conditions or transactions authorized in other cases. For this reason, also, the IC&E acquisition transaction will not result in any significant impacts. DM&E/IC&E thus believe the acquisition transaction qualifies under the categorical exclusions of 49 C.F.R. §§ 1105.6(c)(2)(i) and 1105.7(e) and does not require further environmental review, and that issuance of a finding of no significant impact (or "FONSI") is warranted.

DM&E and IC&E note that even if all of the Construction case-related traffic that would have moved over the former IMRL lines were considered here -- a dramatically and inappropriately expanded notion of acceptable review under NEPA with respect to the Acquisition case -- no location on the former IMRL lines would experience five (5) loaded coal trains per day. See Exhibit B. Indeed, no location in Illinois and with a single exception no line

segment in Iowa would have more than the eight (8) total trains per day (loaded and empty) that is the normal threshold for environmental review.³¹ Because a short segment of IC&E's line is located in Kane County, Illinois, which as part of the "Chicago-Gary-Lake County Area" is a non-attainment area under the Clean Air Act, train counts there would technically exceed the three train/day limit for non-attainment areas. Yet such coal traffic would move through the Chicago-Gary-Lake County Area in any event -- either on the lines of BNSF or UP if DM&E was not able to obtain such traffic, or on the lines of CP if DM&E did obtain the traffic and routed via Minnesota City and CP rather than via Owatonna and the former IMRL lines.

On a single IC&E segment, from Owatonna, MN to Nora Springs, IA, train counts for all PRB coal traffic -- whether related to the IC&E Acquisition case or not and including both loaded and empty trains -- are only slightly over 8 trains/day in the furthest out years of 2010-2011. Some of these trains will be destined to on-line power plants on IC&E's former IMRL line in Muscatine and Fruitland, Iowa, and thus under any rational scenario would indisputably still have moved via IMRL in the absence of the IC&E acquisition. Many of these trains will actually be DM&E trains (as is the case today), operating via existing trackage rights over IC&E to connections with Canadian National at Lyle, MN or Iowa Northern at Nora Springs, IA. Trackage rights operations are themselves generally subject to a categorical exclusion from environmental review,³² and without these trains total PRB traffic levels even on this segment are below the 8 train/day threshold. Ultimately, traffic impacts from PRB coal on the former IMRL lines will not generally exceed impacts for which the SEA normally conducts

³¹ Because DM&E and IC&E anticipate routing some trains via CN and Iowa Northern between Lyle, MN/Nora Springs, IA and Dubuque, IA as an alternative to IC&E's line between those points, Exhibit B shows a lower number of trains per day on those segments (Nora Springs-Marquette and Marquette-Dubuque) than on the adjoining IC&E line segments.

³² 49 C.F.R. § 1105.6(c)(4).

no environmental review. Particularly given the lack of any basis to include such traffic as a "cumulative impact" of the IC&E transaction in the first place, a categorical exclusion from further environmental review for the Acquisition case is required and warranted here.

VIII. DM&E's AND IC&E's PRELIMINARY CONCLUSION

For the reasons discussed above, DM&E and IC&E believe that the incremental impacts of the IC&E transaction in conjunction with the PRB transaction are immaterial and well below the thresholds for environmental review, as shown in Exhibit B to this Environmental Appendix. Because the cumulative impact of the transactions would not be significant, the IC&E transaction qualifies for a categorical exclusion from environmental review under the STB's rules and there is no need for further environmental documentation.

IX. PUBLIC PARTICIPATION

To facilitate public review and comment on all aspects of the DM&E/IC&E Environmental Appendix, the Board's decision (attached as Exhibit D) directed DM&E and IC&E to make copies of the Environmental Appendix available to the public for review and comment. DM&E and IC&E will serve a copy of this Environmental Appendix on parties of record in the Acquisition case and will publish a notice in newspapers of general circulation in each county and each on-line municipality with a population greater than 5,000 through which affected IC&E rail line segments pass alerting the public that the Environmental Appendix is available and explaining how to obtain copies and submit comments. Interested persons desiring to file comments should file such comments with the SEA by December 11, 2006.

The Board's purpose in directing DM&E and IC&E to distribute this Environmental Appendix to the public is to encourage public and agency involvement and consultation to gain input on any potentially significant environmental impacts related to the cumulative impact of

these transactions so that the Board can assess public concerns and issues in determining whether further environmental analysis is necessary.

SEA encourages the public to participate in the review of the cumulative impact of the IC&E Acquisition case and the PRB Construction case by commenting on this Environmental Appendix, during the 30-day comment period, which ends on December 11, 2006. SEA invites written comments on all aspects of the DM&E/IC&E Environmental Appendix and whether there is any reason that this transaction could result in potentially significant environmental impacts warranting preparation of further environmental documentation. Comments may be submitted to the address below.

The STB will post the entire text of this Environmental Appendix, including exhibits, on the Board's web site. The Appendix may be viewed by going to <http://www.stb.dot.gov> and clicking on the box labeled "Filings."

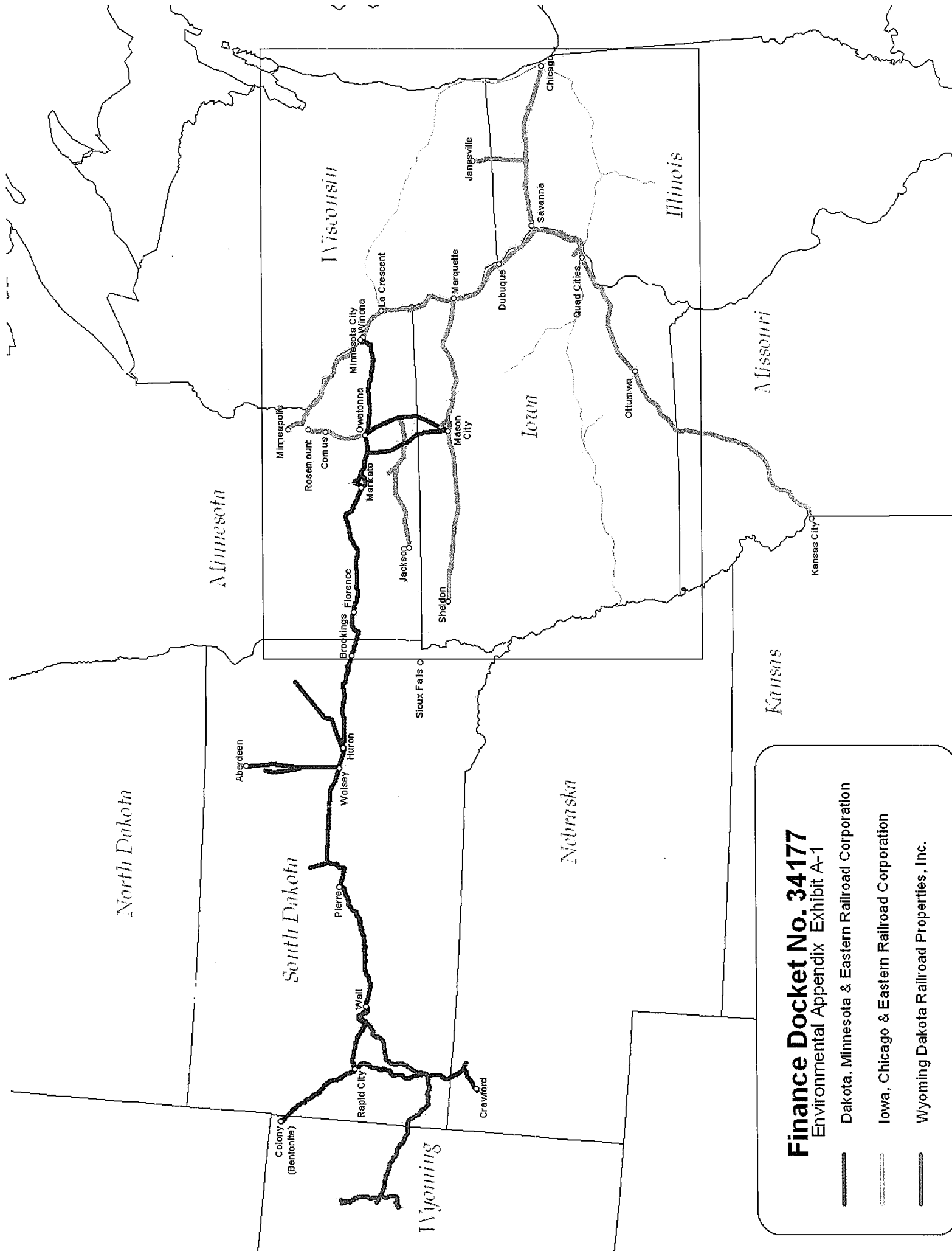
When submitting comments, please provide one signed original to:

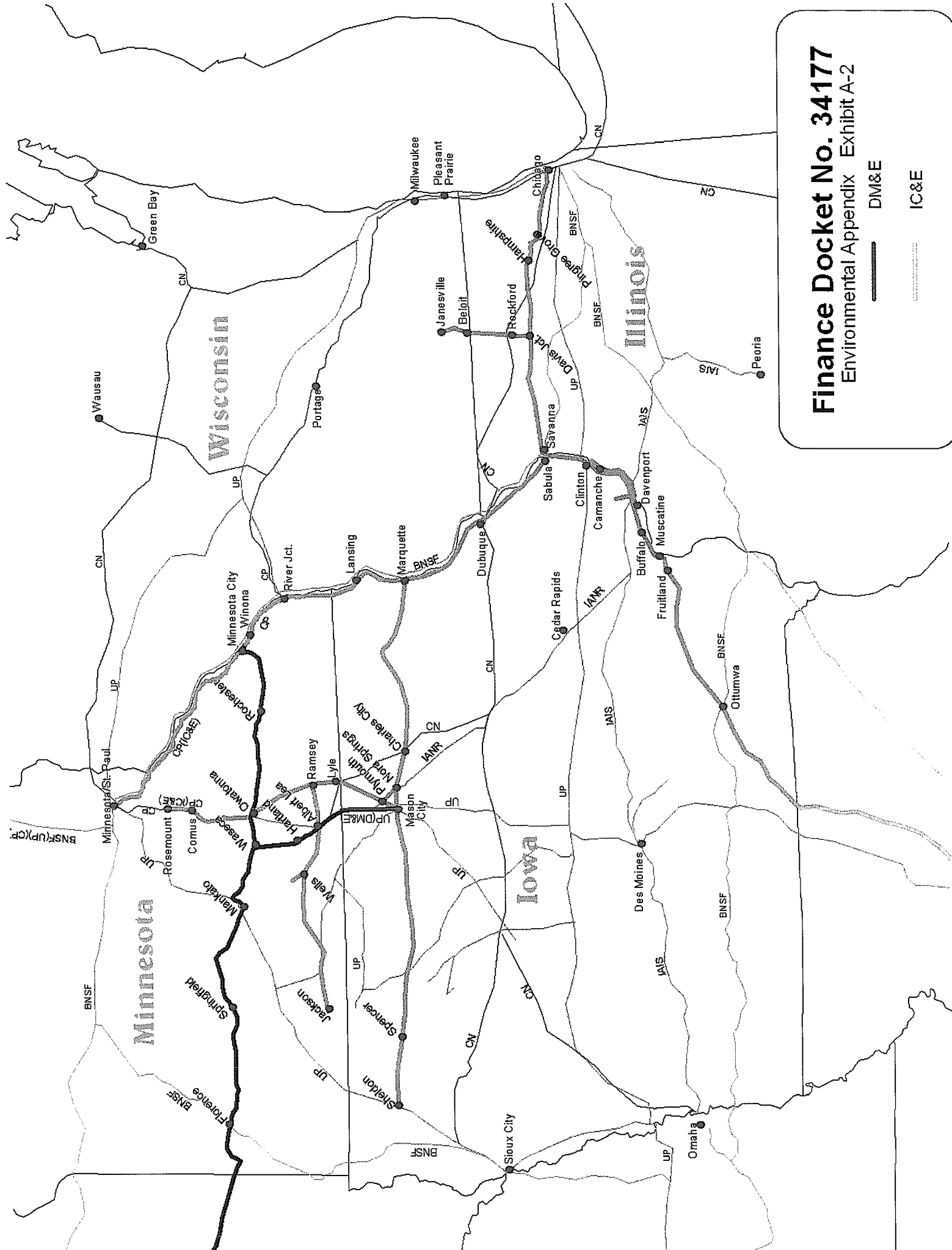
Finance Docket No. 34177
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Include the following notation in the lower left-hand corner of the envelope:

Environmental Filing

The Board cannot accept oral comments or comments submitted electronically by e-mail at this time. If you have questions, please contact Ms. Victoria Rutson of the Board's Section of Environmental Analysis at (202) 565-1530.





Finance Docket No. 34177

Environmental Appendix Exhibit A-2

DM&E

IC&E

Exhibit B

[illegible]

Rail Line Segment Description			Length	Freight Trains/Day 2009-2011												Thresholds Met or Exceeded	
Segment Number	From Station	To Station	Miles	Threshold Trains/Day	2009		2010		2011		2010		2011		Air Quality	Noise	
					Base(1)	Merged(2)	Difference	Base(1)	Merged(2)	Difference	Base(1)	Merged(2)	Difference				
1	Owatonna, MN	Nora Springs, IA	73.8	8	1.15	*1.15	0.00	9.11	*9.11	0.00	9.90	*9.90	0.00	N	N		
2	Nora Springs, IA	Marquette, IA	106.3	8	0.58	0.58	0.00	4.42	4.42	0.00	4.81	4.81	0.00	N	N		
3	Marquette, IA	Dubuque, IA	55.2	8	0.56	0.56	0.00	4.18	4.18	0.00	4.57	4.57	0.00	N	N		
4	Dubuque, IA	Sabula, IA	42	8	1.01	1.01	0.00	7.10	7.10	0.00	7.88	7.88	0.00	N	N		
5	Sabula, IA	Hampshire, IL	89.9	8	0.80	0.80	0.00	5.05	5.05	0.00	5.63	5.63	0.00	N	N		
6	Hampshire, IL	Pingree Grove, IL	6.5	3	0.80	0.80	0.00	5.05	5.05	0.00	5.63	5.63	0.00	N	N		
7	Marquette, IA	Lansing, IA	27	8	0.01	0.01	0.00	0.24	0.24	0.00	0.25	0.25	0.00	N	N		
8	Sabula, IA	Davenport, IA	51.5	8	0.21	0.21	0.00	2.05	2.05	0.00	2.25	2.25	0.00	N	N		
9	Davenport, IA	Muscatine, IA	28.8	8	0.12	0.12	0.00	0.61	0.61	0.00	0.67	0.67	0.00	N	N		
10	Muscatine, IA	Fruitland, IA	6.8	8	0.10	0.10	0.00	0.10	0.10	0.00	0.10	0.10	0.00	N	N		

(1) Note: Pre-Acquisition route DM&E-IMRL

(2) Note: Post Acquisition route DM&E-IC&E

* Of this total number of trains on this segment, .13 trains in 2009, 2.04 trains in 2010 and 2.16 trains in 2011 are DM&E trains operated via existing trackage rights over IC&E to Lyle, MN or Nora Springs, IA.

37048
EB

SERVICE DATE – OCTOBER 18, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34177

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION – ACQUISITION AND
OPERATION EXEMPTION – LINES OF I&M RAIL LINK, LLC

Decided: October 17, 2006

This proceeding involves the acquisition by Iowa, Chicago & Eastern Railroad Corporation (IC&E) of the former lines of I&M Rail Link (IMRL). In this decision, we modify the environmental condition imposed in the July 2002 decision,¹ deferring Board consideration of any potential cumulative environmental effects resulting from the construction and operation of a new rail line into the Powder River Basin (PRB) by IC&E's parent company, Dakota, Minnesota & Eastern Railroad Corporation (DM&E).² The condition precludes DM&E from routing PRB coal traffic over the IMRL lines until the Board considers the cumulative environmental impacts. DM&E and IC&E (collectively, petitioners) now ask the Board to lift that condition on the ground that there would be no potentially significant cumulative environmental impacts from the authorities granted in the two proceedings. To enable us to assess this request, we are directing petitioners to prepare environmental documentation for public review and comment setting out the basis for their assertion that there would be no potentially significant cumulative impacts. This process should assist us in determining what, if

¹ Iowa, Chicago & Eastern Railroad Corporation – Acquisition and Operation Exemption – Lines of I&M Rail Link, LLC, STB Finance Docket No. 34177 (STB served July 22, 2002) (Acquisition).

² In Dakota, Minnesota & Eastern R.R. – Construction Powder River Basin, 6 S.T.B. 8 (2002), the Board authorized DM&E to construct and operate some 280 miles of new rail line so that it could reach coal mines in Wyoming's PRB. In Mid States Coalition for Progress v. STB, 345 F.3d 520 (8th Cir. 2003), the court vacated and partially remanded that decision. The Board addressed the issues remanded by the court and again approved this rail construction in Dakota, Minnesota & Eastern Railroad Construction into the Powder River Basin, STB Finance Docket No. 33407 (STB served Feb. 15, 2006) (DM&E Construction). Judicial review of that decision is pending in Mayo Foundation et al. v. STB, Nos. 06-2031 et al. (8th Cir. filed Apr. 14, 2006).

DM&E was recently permitted to transfer its construction authority to a newly created DM&E subsidiary, Wyoming Dakota Railroad Properties, Inc. See Wyoming Dakota Railroad Properties, Inc. – Acquisition and Operation Exemption – Dakota, Minnesota & Eastern Railroad Corporation, STB Finance Docket No. 34871 (STB served Aug. 14, 2006). For convenience, we will continue to refer to this line as DM&E's new line into the PRB.

any, level of further environmental review is warranted here. In the meantime, we will not modify the previously imposed routing restriction. This decision explains the procedure we will follow.

BACKGROUND

On June 7, 2002, IC&E filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate the rail lines and assets of IMRL, a Class II rail carrier. At that time, IC&E was a noncarrier subsidiary of Cedar American Rail Holdings, Inc., a noncarrier and wholly owned subsidiary of DM&E. The Board initially issued a temporary housekeeping stay, but in Acquisition lifted that stay and allowed the acquisition to go forward,³ subject to two environmental conditions that are at issue here (ordering paragraphs 2 and 3).⁴

In a separate proceeding, the Board approved DM&E's acquisition of indirect control of IC&E in February 2003.⁵ No environmental review was undertaken there because the Board found that the common control by itself would not result in significant operational changes,⁶ and thus qualified for a "categorical exclusion" (for actions whose environmental effects are ordinarily insignificant) from the requirements for environmental analysis under the National

³ IC&E's notice was filed pursuant to our class exemption from the prior approval requirements of 49 U.S.C. 10901 for rail line acquisitions by a noncarrier that will become a Class I or Class II carrier as a result of the acquisition. IC&E's notice of exemption was served June 12, 2002, and published June 17, 2002 (67 FR 41297). By letter filed August 7, 2002, IC&E notified the Board that it had consummated its acquisition of IMRL's rail assets on July 29, 2002, and had commenced rail operations over the former IMRL lines on July 30, 2002.

⁴ Those conditions state:

2. IC&E is precluded from handling any trains moving to or from the line approved for new construction in [DM&E Construction] over what are now IMRL lines until we have conducted any appropriate environmental review and issued a further decision permitting such operations.

3. If [DM&E] is subsequently authorized to control IC&E, to allow the Board to meet its obligations under the environmental laws, the Board must be notified if and when [DM&E] starts construction of the new line, and the Board must be provided with information regarding anticipated additional trains handling traffic on the new line that would move on the IMRL lines.

⁵ See Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. – Control – Iowa, Chicago & Eastern Railroad Corporation, 6 S.T.B. 511 (2003) (DM&E Control).

⁶ No parties or commenters have contended that preparation of environmental documentation for DM&E Control is warranted.

Environmental Policy Act, 42 U.S.C. 4321-43 (NEPA).⁷ See DM&E Control, 6 S.T.B. at 531-33; 49 CFR 1105.6(c)(2), 1105.7(e).⁸

In a petition filed on May 12, 2006, petitioners now seek to reopen Acquisition under 49 CFR 1115.4 and 1117.1 to modify the environmental conditions imposed in ordering paragraphs 2 and 3. Petitioners claim that the environmental conditions have impeded DM&E's ability to secure financing for its rail construction project. They argue that it is unnecessary to wait until rail line construction actually begins before the Board can determine what level of environmental review, if any, may be warranted here. Essentially, petitioners argue that the addition of the IMRL lines to the DM&E system does not materially affect the amount of DM&E-originated PRB coal traffic that would be routed over the IMRL lines. They note that DM&E's plan to route PRB coal trains over the IMRL lines had been an important component of DM&E's application in the DM&E Construction case from the outset and that there would be no likely increases in the routing and movement of DM&E-originated PRB coal over the IMRL lines as a result of Acquisition. See Petition at 16, 22-24.

Petitioners suggest that the Board use a similar approach here to what was done in Norfolk Southern Railway Company – Trackage Rights Exemption – Meridian Speedway LLC, STB Finance Docket No. 34821 (STB served Mar. 7, 2006) (Meridian Speedway), where the Board requested public comment on petitioners' position that formal environmental review was unnecessary and later terminated the environmental review process because the comments did not indicate that the preparation of formal environmental documentation was warranted.

⁷ Under the regulations of the Council on Environmental Quality (CEQ) and the Board, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review. 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c). Such activities can be covered by a "categorical exclusion," which CEQ defines, at 40 CFR 1508.4, as

... a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no effect in procedures adopted by a federal agency in implementation of these regulations ... and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

An agency's procedures for categorical exclusions "shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect," thus requiring the preparation of environmental documentation. *Id.* But absent extraordinary circumstances, once a project is found to fit within a categorical exclusion, no further NEPA procedures are required.

⁸ In DM&E Control, the Board took note of the conditions imposed in Acquisition, which precluded the handling of any traffic to or from the new PRB line over the IMRL lines until an appropriate environmental review has been conducted in the acquisition case. 6 S.T.B. at 532-33.

Petitioners further argue that the restriction on routing DM&E coal trains over the IMRL lines is unnecessary and should be lifted, because the environmental review can and should be resolved and terminated or concluded before the new line is operational (which would not be before 2009).

The Board has received comments on the petition from the U.S. Department of Transportation (U.S. DOT), the Iowa Department of Transportation (Iowa DOT), and the City of Dubuque, Iowa. The commenters generally support petitioners' request to proceed now with the determination of what level of environmental review, if any, is appropriate in the acquisition case. All of the commenters, however, are opposed to removing the routing restriction until any appropriate environmental review has been conducted.⁹ Petitioners filed a response to the comments of U.S. DOT.

On July 26, 2006 the Board's Section of Environmental Analysis (SEA) prepared a memorandum presenting its views on the pleadings before us. SEA's memorandum has been made part of the record in this case.

DISCUSSION AND CONCLUSIONS

After careful consideration of all of the pleadings and SEA's memorandum, we agree that certain modifications to the conditions originally imposed here are appropriate. First, we agree that it is not necessary to wait until DM&E actually begins construction of its new line to determine the level of environmental review, if any, that is appropriate here to consider any cumulative effects of the two proceedings. Neither SEA nor any of the commenters have raised specific concerns about this part of the petition. Moreover, it was never the Board's intent to unduly delay either proceeding. Rather, the Board wanted to ensure that DM&E's plans were sufficiently definite and specific so as to allow meaningful projections as to the possible cumulative environmental effects. See DM&E Control, 6 S.T.B. at 533; Acquisition, slip op. at 15-19. Both in their petition and previously in the DM&E Construction case, petitioners have provided information regarding potential coal traffic from DM&E's new PRB line that may be routed over the IMRL lines. Indeed, U.S. DOT indicates that "sufficiently specific routing and operational information appears to be available on which to make a decision as to the level of environmental review and the mitigation conditions, if any, that might be appropriate."

However, we will not lift the routing restriction at this time. We must first determine whether there are any potential significant cumulative adverse effects, so as to require preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS),¹⁰ or whether we can issue a finding of no significant impact (FONSI), which would complete the remaining environmental review.

⁹ Senator Tom Harkin of Iowa also filed a letter opposing the removal of the routing restriction until any appropriate mitigation is in place.

¹⁰ An EIS is the detailed written statement required by the National Environmental

Accordingly, as petitioners suggest, we will follow an approach similar to that used in Meridian Speedway and other recent merger, acquisition, and control proceedings where the applicant railroads believed that their transaction qualified for a categorical exclusion from the requirement for an environmental analysis under NEPA.¹¹ Therefore, we direct petitioners to prepare an Environmental Appendix containing sufficient detail to assist us in determining whether preparation of an EA or EIS is necessary, or whether no further environmental analysis is necessary under NEPA and the Board's environmental rules.

Documents are available on the Board's website to serve as a guide in preparing the Environmental Appendix. In addition, petitioners may consult with SEA regarding the types of information that should be included in the Environmental Appendix, the appropriate procedures for providing an adequate opportunity for notice and comment on the Environmental Appendix in the project area, and the appropriate length of the public comment period. Petitioners should submit the Environmental Appendix to SEA prior to issuing the document to the public, so that SEA can ensure that the Environmental Appendix is complete.

Preparation and distribution of an Environmental Appendix by petitioners for public review and comment on any potentially significant impacts related to the cumulative effects, if any, of the acquisition and DM&E Construction will give SEA, and ultimately the Board, the information needed to consider public concerns and issues in determining the level of environmental review, if any, that is needed to meet the Board's NEPA responsibilities. After SEA considers the public comments and conducts its own independent evaluation of the Environmental Appendix and all other available information, SEA will make a recommendation to the Board regarding what level of environmental review, if any, is warranted here.

In light of the above, the conditions imposed in the ordering paragraphs Number 2 and 3 of our July 22, 2002 decision in this proceeding are modified to read as follows:

Policy Act, 42 U.S.C. 4331 et seq. (NEPA) for "major federal actions significantly affecting the quality of the human environment. 42 U.S.C. 4332(2)(C). See 40 CFR 1508.11; 49 CFR 1105.4(f); 1105.6(a). Actions that may or may not have a significant environmental effect ordinarily require preparation of a more limited EA. 40 CFR 1501.4(c); 49 CFR 1105.4(d), 1105.6(b).

¹¹ See STB Finance Docket No. 34342, Kansas City Southern – Control – The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company; STB Finance Docket No. 34000, Railroad Control Application, Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc. – Control – Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.; Meridian Speedway.

(2) DM&E is precluded from transporting any Powder River Basin coal trains over the former IMRL rail lines until the Board issues a decision finding that the environmental review process is completed and, upon weighing and considering the complete record, allows such operations by DM&E over those rail lines.

(3) DM&E shall prepare an Environmental Appendix for review by the Board's Section of Environmental Analysis (SEA). Once SEA has approved the content of the Environmental Appendix, DM&E shall make the Environmental Appendix publicly available in the project area for review and comment in a manner deemed appropriate by SEA, and request that comments be sent directly to SEA. Following its review of all comments received, SEA will recommend to the Board what level of further environmental review, if any, is appropriate.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The two conditions set forth above are substituted for ordering paragraphs (2) and (3) set forth in our decision served July 22, 2002, in this proceeding.
3. This decision is effective on its date of service.

By the Board,

Vernon A. Williams
Secretary