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July 16, 2002

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

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Office of Proceedings

JUL 17 2002

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Public Record



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

Dear Secretary Williams:

Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), the noticing party in the above-captioned proceeding, addresses herein the untimely filing of the owners of I&M Rail Link, LLC ("IMRL") with respect to IC&E's proposed acquisition of IMRL's rail lines, and also addresses more fully issues relative to The Kansas City Southern Railway Company ("KCS").

Filing by IMRL's Owners

We are in receipt (via first class mail, delivered yesterday) of the July 10, 2002 letter filing of Soo Line Railroad Company, d/b/a Canadian Pacific Railway ("CP") and I&M Holdings, LLC ("Holdings" and, together with CP, the "Owners") as owners of IMRL. The Owners' letter is remarkably illuminating.

IMRL's board of directors -- consisting entirely of representatives of the Owners, and presumably acting in a good faith exercise of their fiduciary duties -- voted unanimously in favor of the proposed sale of IMRL's assets to IC&E. IMRL did that only after the IMRL owners' own recapitalization proposal to senior lenders was rejected. The Owners' suggestion that a back-up deal is waiting in the wings for IMRL defies the facts of this case.

The Owners' letter is instructive, however, in connecting the dots of various other actions taken by them with respect to the sale of IMRL's assets to IC&E. Against the backdrop of that letter, the purpose of CP's very public cancellation of various economically insignificant agreements with IMRL (written in ominous sounding language) -- and the Owners' dissemination of the cancellation letters to IMRL shippers in an apparent attempt to frighten them -- becomes much more clear. So too the threat by a Holdings affiliate to terminate dispatching services for IMRL, and CP's declaration that IMRL is within the "zone of

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insolvency" and may lose the right to operate over trackage rights into Chicago. IC&E Reply to Motions for Stay, dated June 22, 2002, at Tabs C and D. The Owners' purported overriding concern with "uninterrupted service" to IMRL shippers, Owners Letter at 2, was nowhere to be seen in these actions.

Taken together, the Owners' letter and other actions convey the impression that they are not only waiting but working for the IC&E transaction to fail, so that the Owners can extract a better deal. But to suggest that their restructuring proposal -- already rejected by the senior creditors and still itself contingent on obtaining federal government financing -- is an alternative to IC&E's proposal is misleading. There is no basis for the current Owners to suggest to the Board that it would be any more acceptable to IMRL's board and lenders now than it was before. The Owners attempt to paint the senior creditors as the culprits, but fail to point out that their proposal demanded that the senior creditors fund the largest portion of the recapitalization through debt forgiveness. In fact, the Owners agreed to put up very little. They rely on contingent federal FRA funds that have not been granted as the principal source of proceeds for the cash component. They demand that the senior creditors forgive the bulk of the loan for the exclusive benefit of the Owners. And when the senior creditors decline to accept the proposal, they suggest to the STB that the IMRL board was "pressured" into accepting a better deal.

The "status quo" option that the Owners seek to invent is no option at all. They provide no support to suggest it would be accepted by the senior creditors now when they repeatedly rejected it in the past. Ultimately, CP invites the Board to take a *Titanic*-size gamble: that -- notwithstanding the Owners' unwillingness to step up and provide real support for IMRL as a going concern, and notwithstanding the plain inadequacy of the Owners' "offer" in the eyes of those ultimately responsible for deciding such matters, and notwithstanding the fifteen months it has taken to work out the IMRL-IC&E acquisition transaction -- the Board can deny the IC&E transaction and be assured that IMRL will quickly end up in safe, secure hands rather than in financial disarray or bankruptcy. Where, as here, the sole bases for such a gamble are the unverified and self-serving musings of investors engaged in a last-ditch effort to salvage some portion of their interest in a failed enterprise, the invitation must be dismissed out of hand.

The Board's task here is to protect the public interest, not disappointed investors or disgruntled potential suitors. Despite the Owners' veiled references to "service disruptions" and their unsuccessful attempts to create the illusion of such disruptions for their benefit, the public interest both allows and requires the IC&E transaction to proceed. IC&E has assured effective, competitive access to its major terminals, and has demonstrated the various adequate alternatives available to replace the service agreements cancelled by CP. Shippers and connecting carriers have withdrawn prior questions regarding these subjects, and now strongly and unanimously support the transaction. Indeed, there is no opposition on the merits of the

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transaction from any party except rail labor, whose efforts to date actually have helped prove the largely beneficial nature of the transaction for IMRL employees. Notwithstanding the Owners' transparent desire for another opportunity to force even greater losses on their creditors, IC&E and all other interested parties are ready, willing and able to proceed with the transaction -- which still remains the best, and most likely last, opportunity to preserve effective, viable rail service on the IMRL lines.

Thus, contrary to the Owners' assertions, the record clearly supports IC&E's statement that "there is no status quo option for IMRL if this transaction is thwarted by regulatory delay." It is the senior lenders who will determine the fate of IMRL in the event the IC&E proposal is not timely approved, and they have made their position clear. The "alternative" suggested by CP and Holdings has been offered, considered and rejected. In the absence of the IC&E acquisition, the banks will pursue their alternative legal remedies. "The status quo is not an option." Verified Statement of Thomas E. McGraw, Bank of Montreal, filed July 2, 2002, at 2. There is no basis to suggest the defunct proposal of the Owners is a viable option for the future of IMRL.

Kansas City Southern

In its Reply dated June 22, 2002 to the motions for stay herein, IC&E commented briefly on the issues raised by KCS's June 19, 2002 filing and noted its intention to follow up on that matter. See IC&E Stay Reply, Schieffer V.S. at 2, Brownell V.S. at 14-15. Since then IC&E has again discussed various matters with KCS directly. While KCS takes no opposing position to the IC&E acquisition, it has highlighted its interest in three current relationship subjects and two more general subjects regarding the future. We address each of these five issues in order.

Relationships Between KCS and IMRL/IC&E

KCS pointed out three contractual relationships between KCS and IMRL, expressing concern that they be preserved. Each of the three agreements is included in the agreements to be assigned to and assumed by IC&E as part of the Asset Purchase Agreement, a fact which has been verified to KCS in writing since its comments were filed.

- A. *Marketing Alliance.* Specifically with reference to the Marketing Alliance discussed in KCS's filing, KCS will continue to enjoy the rights and benefits conferred by that agreement as they relate to grain, Chicago access, transloads and services. In the event an alternative routing to Chicago is used by IC&E, as it relates to KCS the route would be 35 miles shorter than the one used today. Because the trains will stay in IC&E's account over either routing, there will be no pricing difference to KCS and

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the service should be as good as or better than exists today. The access to connecting railroads is virtually identical via either routing to Chicago.

- B. *Joint Agency.* IC&E will also assume IMRL's interests in the so-called "Joint Agency" agreement in Kansas City. There are no changes proposed to that agreement, and it will continue without interruption with IC&E assuming all current IMRL rights and responsibilities thereunder. While it is an important agreement, IC&E is aware of no material issue or matter under the agreement that would be affected by this transaction.
- C. *KCT Ownership.* Similarly, IC&E will acquire all of IMRL's shares in the Kansas City Terminal Railway Company, and has an identical interest in providing a small railroad voice in the management of that facility.

IMRL/IC&E's Future

KCS raises two additional basic points of interest with respect to the future of what is today the IMRL property: financial strength and independence.

- A. *Financial Strength.* KCS correctly notes the need for a financially viable carrier with sufficient funds to maintain the IMRL routes to competitive standards and provide a motive power fleet to reliably move traffic. IC&E agrees, and believes the record already reflects substantial improvement of IC&E over IMRL in that regard. For example, IC&E already has obtained a much newer, substantially upgraded locomotive fleet compared to that used by IMRL today. With respect to financial strength, the record is replete with documentation of IMRL's current financial problems. There is little doubt that IC&E will be in a much stronger position financially, and we are aware of no party who seriously questions that obvious fact.
- B. *Independence.* KCS notes the importance that any purchaser of IMRL's assets be independent of Union Pacific Railroad Company ("UP") and The Burlington Northern and Santa Fe Railway Company ("BNSF"). It adds that KCS could lose competitive advantages if the current IMRL assets were owned by a carrier that also served points competitive to the KCS system. While this is an issue that might be more appropriately addressed in the common control case, IC&E has represented to KCS and represents to the Board now that neither UP nor BNSF has any ownership interest or other stake in any aspect of the proposed IC&E acquisition. Further, no carrier that serves points competitive to the KCS system -- and, for that matter, no rail

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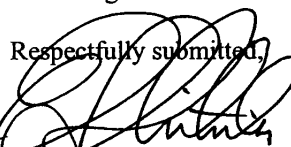
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carrier of any kind (other than IC&E's affiliate, the Dakota, Minnesota & Eastern Railroad Corporation) -- has any such stake or interest in the acquisition.

IC&E's interests in the KCS relationship are consistent with those of IMRL in all respects. It is in the interest of both railroads to work together to add new traffic and better serve existing customers. We agree that KCS should not suffer any material competitive disadvantage as a result of the IC&E acquisition, or face a material adverse impact on the commercial relationship it enjoys today with IMRL. Similarly, we expect both parties would acknowledge that neither should expect to obtain an unfair advantage it does not enjoy relative to the other today. The relationship between these two properties is strong because it makes sense in the marketplace, because it provides real opportunities for future growth for both carriers, and because neither party has undue advantage over the other -- unlike the situation in far too many other Class I/Class II railroad relationships. We agree that it is important to maintain the existing relationship between these two carriers. IC&E fully expects to build on the relationship, and to work to improve competition and new traffic opportunities for customers on both railroads.

Ten copies of this letter are enclosed for filing with the Board. One extra copy of this letter also is enclosed. I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,


Thomas J. Litwiler
Attorney for Iowa, Chicago & Eastern
Railroad Corporation

TJL:tl

Enclosures

cc: Mr. David M. Konschnik
Parties of record