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## Brotherhood of Locomotive Engineers

General Committee of Adjustment  
CPR-US/METRA/IMRL  
1400 E. Pugh Dr.  
Kenbell Plaza, Suite #4  
Terre Haute, IN 47802

**Executive Committee**  
Tom Rauman, 1st VC  
John Appel, 2nd VC  
Mike Audsley, 3rd VC  
Craig Thurow, S-T

April 5, 2002

205146

Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of the Secretary

APR 09 2002

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Public Record



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

Dear Sir:

On behalf of itself and its members employed by I & M Rail Link, the General Committee of Adjustment, Brotherhood of Locomotive Engineers on I & M Rail Link requests that the Surface Transportation Board file the protest accompanying this letter.

As detailed in our protest, we submit that the record establishes that the notice filed by the Iowa, Chicago and Eastern Railroad should be rejected.

Very truly yours,

Michael D. Priester  
General Chairman

Enclosures

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W. Room 700  
Washington, DC 20006  
Re: Finance Docket No. 34177

ENTERED  
Office of the Secretary

APR 09 2002

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Public Record



Fletcher & Sipple LLC  
Two Prudential Plaza, Suite 3125  
180 North Stetson Avenue  
Chicago, Illinois 60601 - 6721

Appeal to the Surface Transportation Board to STAY and REVOKE  
Concerning the Sale of I&M Rail Link Railroad to  
Iowa Chicago and Eastern Railroad

The following is an appeal by the employees of the I&M Rail Link Railroad to protest the filing of Iowa Chicago and Eastern Railroads notice in STB Finance Docket 34177  
We site several reasons why this filing should be considered under 49 U.S.C. 11323. which would include protection for the employees.

We feel that there is only one predominant reason for filing under 49 C.F.R. 1150.32 (e) and C.F.R. 1150.35 (a). It is to deny the current employees of I&M Rail Link a just and fair wage and continued employment and the continuance of benefits which they have accumulated from their past employment.

We feel that this filing is a sham and that DM&E will be the OWNER and Controller of IC&E. In their first announcements of this intention they stated in the news media that it would "More than double the size of the DM&E" (see attached news paper articles) (note:1)  
You will note in the Article published by the Argus Leader of Sioux Falls, SD on Feb. 21, 2002 there are numerous references to DM&E's acquisition and future control of I&M Rail Link which will have a name change to IC&E to avoid the obligations to I&M's employee's under 11323.

Specifically:

the Dakota Minnesota & Eastern Railroad will more than double its size and significantly expand its reach with the purchase of the I&M Rail Link, company CEO Kevin Schieffer announced Thursday.

The purchase, which observers estimate totals \$150 million, will connect the Brookings-based DM&E with the key markets of Chicago, Minneapolis and Kansas City, as well as Mississippi River ports and Iowa grain processors.

"For anybody looking at a map, it jumps out at you, the strategic implications," Schieffer said during a news conference announcing the purchase. "Now we are an origin-to-destination

railroad."

The above statements by Mr. Schieffer are for one continuous connecting railroad operated by a Railroad and not a Non Carrier as they claim.

We also appeal for the humane treatment of the current employees of IMRL who have been shortchanged in their dealings with IMRL and the stonewalling of the employees in contract negotiations and the fact that they have already given up much in their earning capabilities. In a statement issued to the I&M employees issued on Feb. 21, 2002, IMRL President and CEO Mr. Richard J. Stoeckly is quoted as saying "I would like to thank the I&M employees for all the HARD WORK and SACRIFICE (emphasis ours) that has been put into the railroad over the last five years.

( <http://www.imrail.com/PDF/IMRL%20EMPLOYEE%20ANOUNCEMENT.pdf> )

We emphasise the words hard work and sacrifice. These people have been required to work for a company that has paid sub-standard wages and refused to negotiate better wages and working conditions using the companies right to do so that is provided by the Railway Labor Act. Now a new company that the employees know nothing about has come into the picture. The first thing that they get from this "new" company is a slap in the face by informing them the new company has no obligation to them and it is not obligated to continue their employment or benefits that they have accumulated while working hard and making sacrifices for the I&M.

Why we feel this, buy-out, takeover, merger, new company or whatever label is applied should be subject to the requirements of 49 U.S. C. 11323 are as follows.

DM&E is a Class II Operating Railroad Company. I&M Rail Link is a Class II Operating Railroad Company.

On January 30, 2002 STB gave final approval to DM&E's Powder River Plan. This plan includes a connection at or near Owatonna, MN to be constructed to connect to the I&M Rail Link.

This is already approved. It is authorized, therefore we can consider it done and the railroads connected.

There is no doubt in anyone's mind that this construction will be scheduled immediately. All of DM&E's news releases and notices to employees projects this message. Note (3)

The acquisition and Control of I&M Rail Link without a doubt should be considered under 49 USC 11323.

A finding that section 11323 applies to the transaction will result in the imposition of labor protective conditions established in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock)

DM&E has posted things on their web site that would indicate that all of the control and

corporate assets will be under the control of one group of investors.

This will not be an arms length separate company. Both of these companies, IC&E and DM&E will be directly connected by rail, finances, and management. Policy and operating decisions will all be made at DM&E headquarters. Their corporate health will be directly tied to each other through one or several bank accounts.

I&M Employees should be entitled to complete information and protection. This is to them and DM&E employees is an end to end merger. We can not see anything but continued operations of all lines. Not one inch of IMRL is up for abandonment.

The purpose of 10901 was to save railroad infrastructure and to give non-carriers the opportunity to operate small, short and unprofitable railroads. The spirit of the Law was not to give opportunistic people the right to destroy the careers of hundreds of people and gobble up whole railroads.

The STB's congressional mandate is to save the nations railroad infrastructure. Not one inch of IMRL has been put up for abandonment. It (I&M) has not filed for bankruptcy or proved that it is not a viable railroad operation. Therefore STB can only honestly consider this "Merger" under 11323.

Hundreds of IMRL employees plead with you to a fair and just decision. Many IMRL employees have been involved with the property that is now IMRL for their entire careers. Some as long as 40 years or more. Many of them have gone through the Milwaukee Road Bankruptcy and it's wholesale abandonment's and layoffs for years, the takeover by Soo Line and eventually CP Rail who sold off the Railroad to IMRL. Many of the older ex Milwaukee employees should fall under the Milwaukee Restructuring act protections.

Labor protection has been a historical part of all railroad mergers. The reason for this is simple. People who have devoted their entire lives to the Railway industry and have perfected their railway skills now have skills that are totally useless in any other industry. Most business places do not have box cars to switch or track to build or Locomotives to repair. They are required under the law to be "railroad connected" to apply for any benefits they are entitled to under the Railroad Retirement Board rules for which they have paid into tens of thousands of dollars. If their railroad career is ended these benefits that they paid so dearly for are gone.

Current employees do not want to be forced to become employees of a company that is a teetering house of cards. Mr. Schieffer admits that he has not made any concrete financing arrangements. We ask that his business plan be scrutinized thoroughly. The current I&M plant has been deteriorating since that company started operations and will need massive infusions of capital to remove bottle-necks and bring it up to a competitive level that can compete effectively with major rail carriers and other modes of transport.

Will the ICE survive while Mr. Schieffer western expansion into the Powder River Basin consumes all of the resources available to finance his railroads? Note: (2)

We request that you STAY your decision on this matter until there is a full review of ALL implications. Especially the treatment of current I&M Rail Link employees.

We point out that there is a glaring concern that the STB decision of April 3, 1997 which ordered

employee protection will be ignored. On TWO (2) occasions the STB has ruled for protection of IMRL employees.

1.(Docket No. FD 33327 0 )

(DENNIS WASHINGTON ET AL-CONTINUANCE CONTROL EXEMPTION-I&M RAIL LINK LLC)

Requirements of this decision: "to apply employee protective conditions pursuant to 49 U.S.C. 11326(a). Therefore, any employees adversely affected by the control transaction will be protected by the conditions set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Paragraph 5 of that decision is copied below.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Although applicants do not expect any employees to be adversely affected by this control transaction, they have agreed to apply employee protective conditions pursuant to 49 U.S.C. 11326(a). Therefore, any employees adversely affected by the control transaction will be protected by the conditions set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

2. STB Finance Docket No. 33425]

I & M Rail Link, LLC--Trackage Rights Exemption--The Burlington Northern and Santa Fe Railway Company

Paragraph 4 of that decision is copied below:

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

We also feel that if this takeover is consummated under 10901-2 then the IMRL employees will become victims of an un-constitutional law that discriminates against them personally. Namely a law that was probably quietly assisted through congress by people who are directly involved or associated in this transaction.

ref Note (1) As an aide to Republican U.S. Sen. Larry Pressler of South Dakota, Schieffer helped with the creation of the DM&E between 1983 and 1986. It rose like a phoenix from an abandoned portion of the former Chicago & North Western Railroad. After overseeing its birth, Schieffer became head of the DM&E.

"Kevin was brought on board specifically because of his Washington contacts from his former life as a key aide to Senator Larry Pressler," Wilner said. "Kevin has performed wonderfully in his task of achieving regulatory approval for the Powder River Basin extension.

Namely: TITLE 45 > CHAPTER 16 > SUBCHAPTER VII > Sec. 7971.

Sec. 7971. - Class II railroads receiving Federal assistance

The Surface Transportation Board shall impose no labor protection conditions in approving an application under section 10902 of title 49 when the application involves a Class II rail carrier which -

(1) is headquartered in a State, and operates in at least one State, with a population of less than 1,000,000 persons, as determined by the 1990 census; and

(2)  
has, as of January 1, 1996, been a recipient of repayable Federal Railroad Administration assistance in excess of \$5,000,000

This law specifically discriminates against the current IMRL employees and no doubt Mr. Schieffer and companies will keep their headquarters in a state with less than 1,000,000 population.

We call attention to:

INTERSTATE COMMERCE COMMISSION, PETITIONER V. BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, PETITIONER V. BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.

No. 85-792 and 85-793

In the Supreme Court of the United States

October Term, 1985

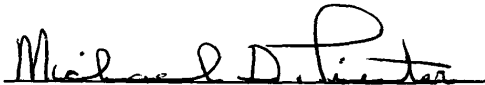
That Supreme Court Opinion ruled that the former ICC had the right to approve a transaction and that it would be "exempt from all other law, including State and municipal law"

*(This statutory language left no doubt that the ICA's exemption provision attached automatically upon Commission approval and extended as far as necessary to ensure consummation of "anything authorized or required" by the Commission approval order. See also H.R. Rep. 650, 66th Cong., 2d Sess. 64 (1920) ("An order of the commission approving a specified consolidation may be carried out notwithstanding any State or Federal restraining or prohibitory law to the contrary.").*

This alone should sway your decision to order this transaction to be filed under 11323.

We thank the Secretary for your full consideration of this appeal.

Signed



NOTE (1)

DM&E to double in size with purchase of I&M Rail Link

SIOUX FALLS, S.D. -- According to the Argus Leader, the Dakota Minnesota & Eastern Railroad will more than double its size and significantly expand its reach with the purchase of the I&M Rail Link, company CEO Kevin Schieffer announced Thursday.

The purchase, which observers estimate totals \$150 million, will connect the Brookings-based DM&E with the key markets of Chicago, Minneapolis and Kansas City, as well as Mississippi River ports and Iowa grain processors.

"For anybody looking at a map, it jumps out at you, the strategic implications," Schieffer said during a news conference announcing the purchase. "Now we are an origin-to-destination railroad."

Federal regulators must approve the deal, which comes as the DM&E is trying to reach 262 miles west with new rail to the coal fields of Wyoming's Powder River Basin.

I&M was created in 1997 from a portion of the Canadian Pacific Railway. The I&M operates on 1,700 miles in Minnesota, Iowa, Missouri, Illinois and Wisconsin. It ties into DM&E's 1,134-mile line across Minnesota and South Dakota at Owatonna, Minn.

Where the DM&E had limited interchanges with the larger railroads - gateways to the rest of the nation - the I&M has 30 such links.

Schieffer declined to announce the cost of the acquisition, but the Wall Street Journal is reporting it was \$150 million. DM&E purchased I&M assets from the Washington Organization, which also operates the Montana Rail Link and the Southern Railway of British Columbia.

Farm groups hailed the merger.

"With their ambitious expansion and rebuilding project, and now this acquisition, DM&E is taking bold moves that will have a lasting and profoundly positive impact on agriculture throughout South Dakota and Minnesota," said South Dakota Farmers Union President Dennis Wiese.

"This is another incredible leap for this 'little railroad that could,' and we appreciate DM&E's aggressive leadership to provide a first-class transportation infrastructure for our region," said South Dakota Farm Bureau President Richard Kjerstad.

Schieffer took pains to point out that the I&M purchase is separate from DM&E's \$1.5 billion reconstruction and expansion to Wyoming to haul coal to Midwest power plants.

"None of this relies on a single ounce of coal traffic," he said.

But he did note there are already four coal-fired power plants on the I&M line, and perhaps as many as a dozen can be reached from the Mississippi River.

As DM&E looks for financing for its Powder River Basin project, "this becomes a compelling transportation system," he said of the new railroad.

Frank Wilner, public relations director for the United Transportation Union and former chief of staff for the federal Surface Transportation Board that regulates U.S. railroads, said all of Schieffer's plans are contingent upon finding equity partners to build the Powder River Basin project.

"All the plans and all the acquisitions are secondary until we learn whether this railroad will even be constructed," said Wilner, the author of several books on railroad economics.

Attractive to investors

Luther Miller, executive editor of Railway Age magazine said he thinks the I&M purchase makes DM&E more attractive to at least one reputed potential investor.

"It was a very smart move on Kevin Schieffer's part. If the cost was only \$150 million, as the Wall Street Journal is speculating, it seems to be a very good buy," Miller said. "The people I have been talking to this morning suggest it (the merged railroad) would now be attractive to the Canadian Pacific. We are all watching this very closely."

Wilner, however, said the DM&E is controlled by financial speculators in San Francisco.

"There has been discussion some major utilities might fund the extension," he said. "But that seems to have less credibility, given the state of the electrical utility industry today. There is no other indication where the funding might come from."

The combined railroad's role is as a third coal hauler out of the Powder River Basin, he said.

"The challenge for the DM&E in getting financing is to demonstrate to potential investors that it can sign up customers under long-term contracts for Powder River Basin coal," he said.

DM&E has annual revenue of \$60 million, about half of the I&M's, according to Schieffer, who characterizes DM&E stockholders as railroad pension funds and institutional investors.

Both railroads operate at a profit, he said. But the DM&E's aging, decrepit track requires capital improvement, and the railroad's traffic cannot generate enough money for the construction. That is driving the expansion to Wyoming to haul coal.

The I&M line is in much better shape, Schieffer said. However, it is hard-pressed by competitors

in the states where it operates, both Schieffer and Wilner said.

"The I&MRL today faces some real struggles," Schieffer acknowledged. "There are a lot of structural issues, and it hasn't worked very well fundamentally from a financial standpoint."

The DM&E will seek approval from federal regulators for the purchase, and Schieffer hopes to have that accomplished by the middle of this year.

"From the regulatory side, this is a hands-down winner. It is pro-competition, and the little guy is getting a little bigger for a change instead of the big guy swallowing up the little," Schieffer said.

'De facto' merger moratorium

The Surface Transportation Board has looked askance at railroad mergers since it blocked a proposed merger of the Burlington Northern Santa Fe and Canadian National.

"There has been a de facto moratorium on big mergers for two or three years," said Miller, the Railway Age editor.

But since DM&E's purchase is a deal struck between two regional carriers, it is not likely to be affected by any merger ban, he said.

The DM&E's Wyoming project received federal approval in January only after a two-year environmental review that has already brought three legal challenges from opponents along the line.

With the acquisition of the I&M assets, the two railroads will operate separately as the DM&E and the Iowa Chicago & Eastern Railroad Corp. They will be commonly managed through a holding company, Cedar American Rail Holdings Inc. Schieffer will be CEO of all the entities.

"The successful coordination of two companies is always a challenge," he said. "We are approaching this challenge with an open mind, with the expectation we will learn a great deal by listening to the best from both companies."

Wilner points out "the I&MRL has very qualified operating officers who learned their craft on some of the major railroads."

The DM&E is headquartered in Brookings and the I&M in Davenport, Iowa. Whether there will be a new headquarters for the two has not been determined.

"There has been no decision at this time to move the headquarters. That will be decided in the near future," Schieffer said.

As an aide to Republican U.S. Sen. Larry Pressler of South Dakota, Schieffer helped with the creation of the DM&E between 1983 and 1986. It rose like a phoenix from an abandoned portion

of the former Chicago & North Western Railroad. After overseeing its birth, Schieffer became head of the DM&E.

"Kevin was brought on board specifically because of his Washington contacts from his former life as a key aide to Senator Larry Pressler," Wilner said. "Kevin has performed wonderfully in his task of achieving regulatory approval for the Powder River Basin extension. Whether the investors who eventually come forward believe Kevin has the skills to operate a major coal-hauling railroad remains a question for those investors."

Almost from the moment the DM&E came into being, Schieffer said, he has been acutely aware how severely the railroad was hemmed in at its eastern end. That dramatically limited available markets for shippers.

When BNSF and CN announced their planned merger, Schieffer saw that his railroad would be overshadowed by a huge competitor with virtually unlimited access to the East.

"Even though that merger did not happen, we saw how vulnerable we were in the east. We set out with a vengeance to solve our problems at the east end of our system," he said. "What had been a goal sort of became an obsession for us."

Attempts to negotiate trackage rights and marketing deals with competitors failed, Schieffer said. About 17 months ago, the DM&E began talking with the I&M about a purchase. The discussion heated up a year ago.

Schieffer characterized the lengthy negotiation as difficult but well worth it. He looked over a huge map Wednesday that depicts the new rail system.

"From a strategic standpoint," he said, "this makes us a significant national player."  
Friday, February 22, 2002

Note: (2)  
DM&E seeks investors

PIERRE, S.D. -- The next step for Dakota, Minnesota & Eastern Railroad is to line up financing as it proceeds with its expansion project into Wyoming, a wire service report.

The DM&E, which received approval from the federal Surface Transportation Board, will need at least \$1.5 billion.

Kevin Schieffer, DM&E president, says he can't discuss specifics but he is confident the money will be there. He said outside money will be required to fund the project.

Gov. Bill Janklow brought up the issue last week at his weekly news conference when he speculated the DM&E would be sold once it gets all the needed permits and acquisitions.

Schieffer said the process will require partnering, but that doesn't necessarily mean the railroad will be sold.

The project includes 280 miles of new track to link coal fields of Wyoming's Powder River Basin with markets in the east.

In addition, the railroad's existing line would be fixed up so several dozen trains could run daily across South Dakota and southern Minnesota, carrying coal for power plants.

Wednesday, February 06, 2002

Note (3) Wednesday January 30, 2002

STB News Release 02-5 refers to STB News Release 01-63 (Owatonna Construction)

>From STB News release 01-63

Surface Transportation Board Issues Final Environmental Impact Statement for "Dakota, Minnesota & Eastern Railroad's" Proposed Powder River Basin Rail Expansion Project

&#8226;For Owatonna, MN, Alternative "O-5" (replacing an existing rail diamond switch with a "Y" connection to connect DM&E's rail line with the I&M Rail Link) would be environmentally preferable because it would require minimal upgrading of the existing line. However, Alternative "O-5" could not be implemented without an agreement between UP and DM&E. If there is no agreement, Alternative "O-4" (construction and operation of a 1.7-mile loop to connect with I&M) would be the environmentally preferable route.