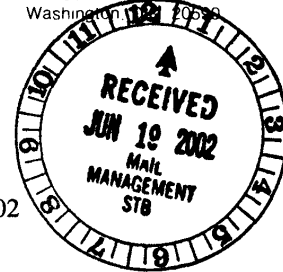




U.S. Department of
Transportation

General Counsel

205660
400 Seventh St., S.W.
Washington, D.C. 20590



June 19, 2002

Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 34177

Dear Secretary Williams:

Enclosed herewith are the original and ten copies of the Comments of the United States Department of Transportation in the above-referenced proceeding. There is also a computer diskette of this document, convertible into Word Perfect. I have included as well an additional copy of the Department's comments that I request be date-stamped and returned with the messenger.

Respectfully submitted,

Paul Samuel Smith
Senior Trial Attorney

Enclosures

cc: William C. Sippel, Esq.

ENTERED
Office of the Secretary
JUN 19 2002
Part of
Public Record

Before the
Surface Transportation Board
Washington, D.C.



Iowa, Chicago & Eastern Railroad Corporation –
Acquisition and Operation Exemption –
Lines Of I&M Rail Link, LLC

205660

Finance Docket No. 34177

Comments of the United States Department of Transportation

ENTERED
Office of the Secretary
JUN 19 2002
Part of
Public Record

Introduction

Through a wholly-owned subsidiary, the Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) seeks to acquire and operate certain rail lines and assets of I&M Rail Link, LLC (“IMRL”). For this purpose the DM&E subsidiary, the Iowa, Chicago & Eastern Railroad Corporation, has filed a Verified Notice of Exemption with the Surface Transportation Board (“STB” or “Board”). The Board has invited comments on this matter on the basis of expressions of concern by various interested parties. Notice served June 12, 2002. Absent action by the STB, the transaction will be consummated on or after June 28, 2002. Id. at 2, 3.

The Board has recently given final approval to DM&E’s construction of a rail line into the Powder River Basin (“PRB”) coal fields in Wyoming. Because it recognized that successful completion of that project would transform DM&E into a major transporter of coal, the STB required the preparation of a comprehensive environmental impact statement (“EIS”), in order to identify both the project’s impacts and appropriate mitigation measures. The instant transaction further extends the DM&E system, and thus

makes it more likely that large volumes of PRB coal will be transported via what are now IMRL lines. The United States Department of Transportation ("DOT" or "Department") therefore wishes to express a potential concern that this transaction will expand the community and environmental impacts of the PRB project. We accordingly urge the Board to affirm that all communities on the expanded DM&E system may bring such concerns before the agency in the oversight proceeding previously established.

Background

The Board recently gave final approval to a DM&E request to construct and operate some 280 miles of new rail line that will extend the DM&E rail system into the PRB. STB Finance Docket No. 33407, Decision served January 28, 2002 ("PRB Decision"); *see also* Decision served December 10, 1998 ("1998 Decision") (approving the transportation-related aspects of the construction project). In that proceeding the STB accepted and relied upon DM&E projections that by 2010 it could be carrying up to 100 million tons of coal annually, in up to 34 unit-trains a day, from the PRB. PRB Decision at 8, 36-37.

Successful implementation of what the STB characterized as "the largest and most challenging rail construction proposal ever to come before the Board," would thus have significant environmental consequences. This would be particularly true in those areas experiencing a dramatic increase in the number of trains, with respect to noise, highway/rail grade crossing safety, air quality, water resources, wetlands, etc. *Id.* at 8-9. The STB accordingly imposed a broad array of mitigation measures designed to address both general and specific concerns, including requiring compliance with settlement

agreements negotiated between DM&E and more than fifty individual communities. *See Id.* at 13, 20-27, Appendix A.

The Board also established a continuing oversight process: for two years after DM&E begins to transport coal from the PRB, the STB will monitor compliance with the mitigation conditions, and it will allow “communities or other interested parties [to] seek redress if there are unanticipated problems or if there is a material change in the facts or circumstances” on which the existing conditions are based. *Id.* at 27.

For present purposes it is important to note that in the course of that proceeding the Board recognized that DM&E would hand off some significant amount of PRB unit-train traffic to other railroads for delivery to receivers off of the DM&E system.

DM&E’s Plan depends on its ability to interchange cars with other railroads. The application identifies three primary interchange points with other railroads: (1) [Union Pacific] at Mankato, MN; (2) I&M Rail Link at Owatonna, MN; and (3) [Union Pacific, Canadian Pacific,] and I&M at Winona/Minnesota City, MN.

1998 Decision at 54.

The Board nonetheless refused to impose conditions for the benefit of “down-line” communities like Winona that would experience increased train traffic, because in the agency’s view it could not require DM&E “to take action on property it does not own” and because the other railroads were not before it in the proceeding. PRB Decision. at 27.

Discussion

The Department supports the enhanced competition and environmental benefits that the PRB construction project will bring to the transportation of low-sulphur coal.

Our present concern is solely with the project's potential for adverse impacts beyond those recognized in the EIS and recently addressed by the Board.

As noted, the STB has assessed the likely consequences of the PRB project on communities located directly on the DM&E and has imposed mitigation measures. *Id.*, *passim*. It has also accepted the fact that unforeseen impacts warranting additional remedial action could affect such communities, and it has committed to considering these matters in its oversight proceeding. *Id.* at 27.

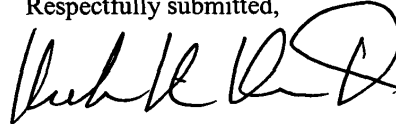
The instant transaction will result in the ownership and control of IMRL by the DM&E. In other words, for all practical purposes it will increase the number of communities located on DM&E lines. Consistent with the rail industry's practice of favoring routes that extend the length of haul on each carrier's own system, the transaction would also logically seem to increase the likelihood that unit-trains of PRB coal will travel farther within the (now larger) DM&E system. DOT believes that the combination of these circumstances may therefore add to the number of communities on the DM&E system that are affected by significantly more unit trains of PRB coal.

Whether this ultimately turns out to be the case, of course, depends on DM&E routing and other commercial decisions. But if it does, some impacts on heretofore "down-line" communities like Winona that were deemed ineligible for mitigation measures will now be "on line," and therefore should be considered for relief from demonstrable harms. DOT believes that the Board should express the same solicitude for communities on the IMRL lines that now face the prospect of significantly increased train traffic that it has already demonstrated for similarly situated communities on DM&E lines.

Conclusion

The Department accordingly urges the Board to affirm that communities located on the IMRL lines to be acquired by DM&E will be able to seek redress for unanticipated problems through the environmental oversight process established in Finance Docket No. 33407.

Respectfully submitted,

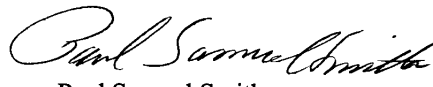
A handwritten signature in black ink, appearing to read 'Kirk K. Van Tine', written in a cursive style.

KIRK K. VAN TINE
General Counsel

June 19, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the foregoing Comments of the United States Department of Transportation in STB Finance Docket No. 34177 to be served by facsimile transmission, upon William C. Sippel, counsel of record for the Iowa, Chicago & Eastern Railroad Corporation.


Paul Samuel Smith

June 19, 2002