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FAX COVER LETTER

Date : July 19, 2002
To : Mr. Vernon A. Williams
Secretary
Company : Surface Transportation Board
Fax No. : 202-565-9003
Phone No. : 202-565-1650
From : T.J. Litwiler
Re : Finance Docket No. 34177
Comments : Hard copies of the attached are being sent via overnight delivery for filing at the Board.

Completed by : TJL
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VIA FACSIMILE AND FEDERAL EXPRESSMr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006Re: **Finance Docket No. 34177**
Iowa, Chicago & Eastern Railroad Corporation – Acquisition
and Operation Exemption – Lines of I&M Rail Link, LLC

Dear Secretary Williams:

Late yesterday afternoon, Arkansas Electric Cooperative Corporation ("AECC") filed a "Petition to Revoke Exemption and Comments" in the above-captioned proceeding. AECC does not ship any traffic via the lines of I&M Rail Link, LLC ("IMRL") that Iowa, Chicago & Eastern Railroad Corporation ("IC&E") seeks to acquire in this proceeding. It does not seek a stay of the IC&E-IMRL transaction. AECC and its witness, Michael A. Nelson, have no interest in IC&E's acquisition of the IMRL lines. Their motivations relate solely to an implausible idea about re-building the abandoned "Cowboy Line" across northern Nebraska to serve the Powder River Basin ("PRB") coalfields in Wyoming, and how the eventual common control of IC&E and Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") might affect that putative project. See AECC Comments at 2 ("AECC's interest in the acquisition of IMRL by IC&E and its parent DM&E arise out of its support for competitive rail options for the movement of PRB coal."); Nelson V.S. at 1-2.

AECC's comments are grossly out of time with respect to IC&E's acquisition of IMRL's lines, and plainly premature with respect to any effects of DM&E-IC&E common control. All of AECC's comments regarding coal transportation and the proper regulatory provisions for considering the proposed transaction could have been made at any time after IC&E's notice of exemption was filed on June 7, 2002. AECC instead waited six weeks, until the eve of a Board decision regarding consummation of the IC&E transaction, before providing any indication of an objection. Those objections, in turn, relate solely to alleged impacts that, even if plausible, could arise only as a result of common control of DM&E and IC&E. AECC apparently decided to get a head start, however, and increase its leverage by seeking to disrupt the IC&E acquisition transaction here.

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AECC claims that, once IC&E's acquisition of the IMRL lines is complete, common control of DM&E and IC&E is a "*fait accompli*" and a common control proceeding before the Board will be "merely *pro forma* in nature." AECC Comments at 7-8. That's nonsense. The two-step acquisition and control process utilized here follows unbroken ICC/STB precedent, and the Board of course will have full authority in the control proceeding to impose conditions necessary to remedy any competitive harms that AECC or other parties might prove. AECC's purported issues can be addressed fully in that proceeding, and IC&E also will respond more completely to AECC's petition to revoke in the ordinary time for so doing.¹ The point here is that none of AECC's argument in this regard relate in any way to the pending stay matters before the Board.

AECC also claims that IC&E's exemption herein is *void ab initio* because IC&E "misrepresented" its acquisition by assignment of trackage rights into the Chicago terminal. Of course, AECC ships no traffic at all on IMRL, let alone via the Chicago gateway, and the shipper and carrier parties whose traffic does move via Chicago on IMRL have withdrawn their objections to the transaction and stated their full satisfaction with IC&E's ability to handle their traffic. Moreover, IC&E misrepresented nothing with respect to its proposed acquisition. As part of its asset purchase agreement with IMRL, IC&E acquires IMRL's rights to operate over Metra tracks into Chicago as an admittee of Soo Line Railroad Company ("CPR"). Consistent with its practices as demonstrated in our response to the IMRL owners' letter to the STB, CPR has not yet acknowledged that assignment as it is contractually required to do. But that does not affect IC&E's rights -- IC&E believes that the Chicago trackage rights issue will be resolved amicably, but in any event IC&E is acquiring legal rights therein. The fact that IC&E successfully arranged back-up access to alleviate manufactured concerns does not change the underlying fact that the acquisition includes the assigned Chicago trackage rights. Third-party objections to that assignment are baseless, and we do not see how the subsequent, independent and unlawful actions of other parties can convert IC&E's notice of exemption into a false or misleading document. In the meantime, however, IC&E has assured that it will have effective, competitive access to the Chicago terminal in any circumstances. Where IMRL's own shippers are confident in those arrangements, there is no need for the Board to look any further -- and certainly not to the self-interested posturing of a non-shipper like AECC.

The Board should proceed to lift the housekeeping stay in this matter, deny the remaining petition to stay, and allow the proposed IC&E-IMRL acquisition transaction to be consummated.

¹ Given the fact that AECC's position is a blatant attempt to *prevent competition by eliminating a potential competing route* into the Powder River Basin to increase the prospects for their "Cowboy Line" alternative, we look forward to responding to the merits of their claims at the appropriate time.

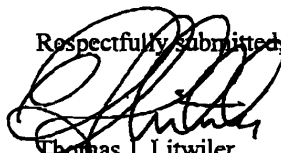
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Ten copies of this letter are enclosed for filing with the Board. One extra copy of this letter also is enclosed. I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope. I certify that a copy of this letter has been served by overnight delivery on counsel for AECC, and by first-class mail, postage prepaid, on all other parties of record herein.

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
Martin W. Bercovici, Esq.
Parties of record