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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL., - CONTROL -
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

**PETITION FOR CLARIFICATION OF
MUSCATINE POWER AND WATER**

Muscatine Power and Water ("Muscatine") hereby files this Petition for Clarification of Decision No 11, served by the Surface Transportation Board ("Board") on September 30, 2008. In Decision No 11, the Board authorized acquisition of the Dakota, Minnesota & Eastern Railroad Corporation ("DME") by the Canadian Pacific Railway Company ("CP") (collectively the "Applicants"). That Decision also denied Muscatine's Request for Conditions upon this acquisition Decision No. 11 at 16-17.

In denying Muscatine's Request for Conditions, the Board has confused two separate contractual agreements between Muscatine, DME and the Iowa, Chicago & Eastern R.R. Corp. ("ICE"). As a result of this confusion, the Board has misrepresented those agreements and their contents in a manner that could prejudice Muscatine's contract rights in any future dispute with the Applicants over the correct interpretation of those agreements. Therefore, Muscatine asks the Board to clarify Decision No 11 with respect to these agreements as more fully described herein.

First, there is a December 16, 2002 letter agreement between Muscatine, DME and ICE in settlement of Muscatine's objections to DME's acquisition of ICE in 2002 ("Settlement Agreement").¹ Muscatine attached the Settlement Agreement as Exhibit 2 to its Request for Conditions filed on March 4, 2008. The Settlement Agreement does not contain an expiration date.

Second, there is a January 1, 1998 rail transportation contract between Muscatine and ICE ("Transportation Contract"). That contract, which was entered into several years before the Settlement Agreement, expires in 2012.

In Decision No. 11, however, the Board has incorrectly stated that the Settlement Agreement also expires in 2012:

MP&W acknowledges that its concerns flow from DM&E's acquisition of IC&E in 2003. In connection with that acquisition, MP&W reached an agreement with DM&E/IC&E in which DM&E/IC&E agreed not to take any action to close the IC&E interchanges with BNSF or UP, and to offer, upon request, segment contract rates or proportional common carrier rates via those interchanges to Muscatine Station. Applicants state that DM&E/IC&E will continue to be bound by this contractual agreement with MP&W through its expiration in 2012, and CPRC will be similarly bound if the proposed transaction is consummated. Therefore, this transaction is not an event that would alter MP&W's competitive circumstances at all and it is protected from any perceived effects from a prior merger for several years. Although MP&W fears that CPRC will be less likely to extend the current agreement, that agreement was not Board-imposed, and MP&W also has no assurance that an independent DM&E would be willing to extend the agreement beyond 2012.

Decision No. 11 at 17 [underline added]. The underlined text accepts as fact the Applicants' assertion that the Settlement Agreement will expire in 2012, despite the absence of any expiration date in the document itself. Although Muscatine has rejected that position, Decision

¹ See Dakota, Minnesota & Eastern R.R. Corp. et al.—Control—Iowa, Chicago & Eastern R.R. Corp., STB Finance Docket No. 34178 (served Feb. 3, 2003)

No. 11 implies no disagreement, when in fact it is the Applicants' attempt to insert an expiration date into the Settlement Agreement that prompted Muscatine's Request for Conditions. Now that the Board has denied Muscatine's Request, Muscatine desires to reserve all of its contractual rights to demand specific performance of the Settlement Agreement in the courts beyond 2012

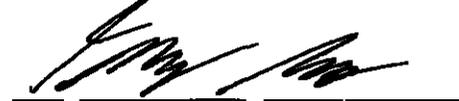
The above-quoted text from Decision No. 11, however, could be construed by a court as an interpretation by the Board of the Settlement Agreement. But, of course, the Board may not interpret the Settlement Agreement, which is a private contract beyond the Board's jurisdiction.

Therefore, in order to avoid this confusion and the prejudice that could result, Muscatine asks the Board to clarify that (1) Decision No. 11 does not resolve the parties' disagreement over the expiration of the Settlement Agreement, and (2) any statements in Decision No. 11 with respect to the Settlement Agreement are without prejudice to enforcement of Muscatine's contract rights as determined by a court with proper jurisdiction.

Respectfully submitted,

Muscatine Power and Water

By its Attorneys,



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October 20, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have served on this 20th day of October, 2008, a copy of the foregoing "Petition for Clarification" by first-class mail on all parties of record in this proceeding.



Jeffrey O. Moreno