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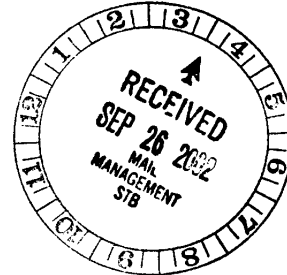
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September 26, 2002
BY HAND



Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, NW
Washington, DC 20423-0001

Re: Finance Docket 34177 - IOWA, CHICAGO & EASTERN RAILROAD
CORPORATION - ACQUISITION AND OPERATION EXEMPTION - LINES OF
I&M RAIL LINK, LLC

Dear Mr. Williams:

Enclosed for filing are an original and 10 copies of the following pleading as well as an electronic copy on 3.5" disk in WordPerfect format:

- Supplement to Petition of Cooperating Labor Organizations to Revoke Exemption

Pursuant to the confidentiality agreement CLO was required to sign in discovery, the attachments to this pleading are being filed in a sealed envelope, as required by the procedure set forth at 49 CFR 1104.14.

Thank you.

Sincerely,

Michael S. Wolly
Michael S. Wolly

Enclosures

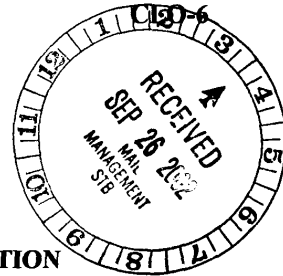
cc w/ encl.: William C. Sippel, David Neigus, Donald Griffin, Harold Ross, Mitchell Kraus,
William Phillips

206274

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34177

**IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
-- ACQUISITION AND OPERATION EXEMPTION --
LINES OF I&M RAIL LINK, LLC**



**SUPPLEMENT TO
PETITION OF COOPERATING LABOR ORGANIZATIONS
TO REVOKE EXEMPTION**

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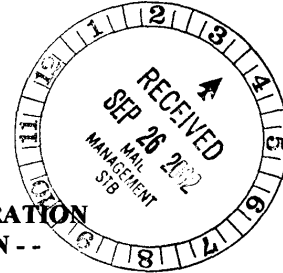
Date: September 26, 2002

CLO-6

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34177

**IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
-- ACQUISITION AND OPERATION EXEMPTION --
LINES OF I&M RAIL LINK, LLC**



**SUPPLEMENT TO
PETITION OF COOPERATING LABOR ORGANIZATIONS
TO REVOKE EXEMPTION**

The Cooperating Labor Organizations ("CLO")¹ submit this Supplement to their Petition to revoke the use of the class exemption invoked by the Iowa, Chicago & Eastern Railroad Company ("IC&E") in its Notice filed with the Board on June 7, 2002. In addition to the facts and argument set forth in their Petition, the CLO have uncovered through discovery the information described below that supports the proposition that the transaction described in IC&E's notice only can be consummated under 49 U.S.C. §11323(a)(3) and not under 49 U.S.C. §10901 as alleged in the Notice. In short, this information proves that IC&E is not "a separate, real company in its own right, responsible for its own accounts," as required by the Board for the use of the exemption.

In its Notice, the IC&E stated that it is a noncarrier subsidiary of Cedar American Rail Holdings, Inc. ("Holdings"), which itself is a wholly-owned subsidiary of Dakota, Minnesota &

¹ Brotherhood of Locomotive Engineers ("BLE"), the Brotherhood of Maintenance of Way Employes ("BMWE"), the Brotherhood of Railroad Signalmen ("BRS"), the International Association of Machinists ("IAM"), the International Brotherhood of Electrical Workers ("IBEW"), and the Transportation Communications International Union ("TCIU")

Eastern Railroad Corporation ("DM&E"). The documentation disclosed by IC&E in discovery reveals (1) IC&E is *not* financially independent but is inextricably reliant upon financial guarantees provided by both Holdings and DM&E, and (2) IC&E is operationally integrated with and reliant upon both Holdings and DM&E.

STATEMENT OF ADDITIONAL FACTS

The Asset Purchase Agreement - Exhibit A hereto

In order to purchase the assets of the IMRL, IC&E provided a Buyer Initial Escrow Deposit Note and a Buyer Secondary Escrow Deposit Note. DM&E has fully and unconditionally guaranteed payment of those obligations. IMRL is not required to first try to recover from IC&E in the event of a default; the guaranty allows IMRL immediately and directly to recover from DM&E.

The Credit Agreement - Exhibit B hereto

IC&E entered into a Credit Agreement in order to finance the transaction. The "Borrowers," identified in that Agreement, however, are *both* IC&E and DM&E. (p. 91²). The "Guarantors" are IC&E, DM&E, *and* Holdings. (p. 104, 214); they each have guaranteed "as primary obligor and not merely as surety" satisfaction of "*all* of the obligations ... against either borrower." (p. 188-194; §11.1(a))(emphasis added). The Credit Agreement makes revolving credit available to the Borrowers, but term credit available only to IC&E. (p. 120; § 2.1(a) and (b)). All of this credit is subject to the guarantees. In the event of default by either borrower, the

² References to page numbers correspond to the stickered page numbers placed on the documents by IC&E. For example, page 91 is ICE 000091.

creditor may proceed against any guarantor without first going against the borrower. (p. 193-194; § 11.10).

The Pledge and Security Agreement - Exhibit C hereto

IC&E, DM&E, and Holdings have guaranteed the obligations incurred by all of them pursuant to the Credit Agreement. In the Pledge and Security Agreement, they each pledge substantially all of their assets "as collateral security for the full, prompt and complete payment and performance when due ... of the Secured Obligations of such Grantor." (p. 242-243; §§ 2.1 and 2.2).

The Securities Purchase Agreement - Exhibit D hereto

By this document, DM&E agreed to issue up to 300,000 shares of DM&E Series D preferred stock and warrants to purchase DM&E common stock and then to apply the proceeds of that stock sale to pay down the \$61 million debt, fund the IMRL purchase, pay related fees, and pre-fund capital expenditures for IC&E. (p. 223; § 5(D)). Thus, DM&E is the de facto revenue source for the IC&E acquisition of IMRL.

The Subsidiary Guarantee - Exhibit E hereto

Holdings provided to all purchasers of DM&E Series D Preferred Stock and Warrants this "unconditional and irrevocable" guarantee: if DM&E failed to pay its obligations to them, they could recover from Holdings for their losses. Presumably, because IC&E is Holdings's main asset, this renders IC&E the source of collateral for DM&E's Series D obligations.

Communications and relations with prospective IC&E employees - Exhibits F - M

Kevin Schieffer is the President and CEO of Holdings and the President and CEO of DM&E. The document identification on the offers of employment tendered by IC&E --

"j:\kvs\word\iceoffer" -- reveals that Schieffer authored them. Exhibit F. The same document identifies Schieffer as the person employees should contact via e-mail [Schieffer has a DM&E e-mail address: kvs@dmerail.com.] if they want to serve on the "Employee Committee." Exhibit F (p. 6). He also was the IC&E representative whom employees were to contact if they had comments regarding "areas that can be improved or clarified" in a draft employment agreement for IC&E train and engine service employees. Exhibit G. Schieffer was also the contact person for DM&E and Prospective IC&E Employees on other Job Offer Options, such as health care and vacation choices, and employee contracts (Exhibit H) and wage scales (Exhibit I). Indeed, from the outset, Holdings President Schieffer coordinated the integration of virtually every operational and labor relations aspect of DM&E, Holdings and IC&E. See also Exhibits J and K. In this regard he was assisted by DM&E Vice President Operations Robert Brownell (Exhibit K, p.66; Exhibit L), DM&E VP Engineering & Transportation Steve Schwarnweber (Exhibit K, p. 65), and DM&E Chief Mechanical Officer Dan Goodwin (Id.).

IC&E will be funding the position of Employee Advocate, which will serve as a representative for, and report directly to, employees of both IC&E and DM&E. Exhibit M.

SUPPLEMENTAL ARGUMENT

"Under the "alter ego" test, the Board considers: (1) whether the noncarrier subsidiary was created to purchase the line for legitimate and substantial business reasons (e.g., insulation from financial risk, preservation of service, or time constraints) and not solely to avoid labor protection; and (2) whether the indicia of independence establish that the noncarrier subsidiary is sufficiently independent of its parent or affiliated carriers. Mountain Laurel Railroad Company -

Acquisition and Operation Exemption - Consolidated Rail Corporation, STB Finance Docket No. 31974 (STB served May 15, 1998) (Mountain Laurel)." Decision of July 22, 2002, fn. 19. Thus, IC&E may not use the Section 10901 exemption if it "is not a separate entity because it is not sufficiently independent of its parent or affiliated carriers." ICC Finance Docket No. 31205, FRVR Corp.-Acquisition & Operation Exemption-Chicago & North Western Trans. Co., slip op. at 6, served February 28, 1989 (not published). In its September 11, 2002 decision, the Board explained that it had denied CLO's request to stay this transaction because "IC&E had satisfactorily explained ... that it would be responsible for the risks and financial obligations arising from its operations" and that the financial arrangements by which "DME would guarantee certain of IC&E's start-up debt ... did not detract from IC&E's financial and operational independence." September 11 decision at 3. We submit that closer examination of the financial arrangements should cause the Board to reverse its initial conclusion.

The evidence uncovered in discovery proves that IC&E fails this test of independence. The Board is already aware that the two carriers share the same executive management. In its July 29, 2002, announcement of the closing of the acquisition transaction, Holdings confirmed that the two railroads would be "combined under common control." Exhibit N. The transactional materials establish that commonality was in place well before that.

The transactional documents prove not only the initial dependence of IC&E on DM&E, but also the continuing dependence of IC&E upon the guarantees provided by DM&E. Both entities (as well as Holdings) have pledged all of their significant assets to secure all of the obligations of the other. If the IC&E fails to meet the financing debt it has undertaken, the DM&E's assets and continued operation are at risk. That debt goes beyond the start-up, as the

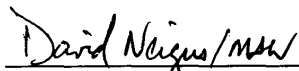
Credit Agreement provides for both revolving and term credit, all subject to the unconditional guarantees. The futures of the two railroads are inextricably tied to one another. Consequently the two are alter egos for purposes of financial survival and success.

Moreover, DM&E has already exercised significant managerial and operational control over IC&E. It has overseen the hiring of IC&E employees and established their terms and conditions of employment. It has created an integrated personnel scheme, to the point of using IC&E funds to underwrite an Employee Advocate for employees of both IC&E and DM&E. The companies are a proverbial Hydra - they may have two heads, but they rely on the same body and circulatory system to survive.

CONCLUSION

Because this information confirms that IC&E is not independent of DM&E, the transaction at issue is not an acquisition of a carrier by a noncarrier. Rather, it is the acquisition of one carrier by another, for which approval must be sought under Section 11323(a)(3). The exemption granted IC&E must be revoked.

Respectfully submitted,



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Counsel for Cooperating Labor Organizations

Date: September 26, 2002

CERTIFICATE OF SERVICE

I certify that I have this 26th day of September 2002 served a copy of the foregoing Supplement to
Petition to Revoke by overnight mail delivery upon:

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