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FILED

JUN 13 2002

June 13, 2002

SURFACE
TRANSPORTATION BOARD
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 and original and 10 copies of the following pleadings as well as an
electronic copy of each on 3.5" disk in WordPerfect format:

- Petition of Cooperating Labor Organizations to Revoke Exemption
- Petition of Cooperating Labor Organizations to Stay Transaction

A check in the amount of \$150 to cover the filing fee for the Petition to Revoke
Exemption also is enclosed. Thank you.

ENTERED
Office of the Secretary

JUN 13 2002

Part of
Public Record

Enclosures

Sincerely,

Michael S. Wolly
Michael S. Wolly

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SURFACE
TRANSPORTATION BOARD

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

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SURFACE
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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

PETITION OF COOPERATING LABOR ORGANIZATIONS
TO REVOKE EXEMPTION

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Date: June 13, 2002

FILED

JUN 13 2002

SURFACE
TRANSPORTATION BOARD

CLO-2

**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**



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

Now come the Brotherhood of Locomotive Engineers ("BLE"), the Brotherhood of Maintenance of Way Employees ("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") (hereinafter collectively referred to as the "Cooperating Labor Organizations") petitioning this Board 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. For the reasons set forth in greater detail below, the Cooperating Labor Organizations submit 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. Because the Notice describes a transaction that cannot be consummated lawfully under 49 U.S.C. §10901, the Notice is *void ab initio* pursuant to the Board's procedures set forth at 49 C.F.R. §1150.35(f). Immediately upon the filing of this

petition, the Cooperating Labor Organizations will serve discovery upon the IC&E, the Dakota, Minnesota & Eastern Railroad Company ("DM&E"), and Cedar American Rail Holdings, Inc. ("Holdings") pursuant to 49 C.F.R. §1121.2.

STATEMENT OF FACTS

The IMRL is a rail carrier currently operating 1109 miles of rail line and 262 miles of trackage rights operations in Iowa, Illinois, Minnesota, Missouri, Wisconsin, and Kansas. IMRL purchased these assets from the Soo Line Railroad Company d/b/a Canadian Pacific Railway ("Soo") in 1997. STB Finance Docket No. 33326, I&M Rail Link, LLC—Acquisition & Operation Exemption—Certain Lines of Soo Line R.R. d/b/a Canadian Pacific Ry., served April 9, 1997 (not published).

The DM&E is a Class 2 rail carrier that began operations in 1986, following its acquisition of certain rail lines owned by the former Chicago & North Western Transportation Company. ICC Finance Docket No. 30389, Dakota, Minnesota & Eastern R.R.—Acquisition & Operation—Chicago & North Western Trans. Co., served September 8, 1986 (not published). The DM&E is a privately held company controlled by Lombard Investments, Inc., an investor group headquartered in San Francisco, California. Source, www.dmerail.com.

The IC&E is a newly created entity, established for the purpose of acquiring all of the railroad assets of the IMRL. Verified Notice of Exemption at 2. The stock of the IC&E is held by Holdings, a non-carrier subsidiary that is wholly owned by the DM&E, an existing rail carrier. Id. IC&E intends, initially, to maintain generally existing IMRL service frequency levels on the acquired carrier. Id. at 5. After the acquisition of IMRL, the IC&E and DM&E "will coordinate" their operating departments "to maximize efficiencies." DM&E Press Release,

February 21, 2002. The DM&E characterizes the transaction as providing it with “30 interchange points with every major railroad in the United States and many additional regional and short-line railroads.” Id. The CEO of DM&E, Kevin Schieffer, characterized the transaction as one benefitting DM&E, “While this acquisition is independent of our proposed new rail construction project to extend the western end of DM&E into the Wyoming Powder River Basin, it will help ensure competitive options for the new traffic generated by that project.” Id.

ARGUMENT

I. THE SUBSTANCE OF THIS TRANSACTION IS THE ACQUISITION OF ONE CARRIER, IMRL BY ANOTHER CARRIER, DM&E, FOR WHICH APPROVAL MUST BE SOUGHT UNDER SECTION 11323(a)(3)

A. The Legal And Statutory Framework

In order to properly address this petition, the Cooperating Labor Organizations submit that the Board must consider the language and history of Section 11323, and its predecessors, former Section 11343 and former Section 5 and the controlling precedent interpreting those Sections. That legal and statutory framework demonstrates the applicability of Section 11323 to this transaction and the necessity for the participation of DM&E in the instant transaction.

Former Section 5 of the Transportation Act of 1920 originally required the former Interstate Commerce Commission (“ICC” or “Commission”) to develop a plan for compulsory consolidations of rail carriers in order to foster a stronger, more efficient, and more economical rail transportation system. However, mandatory consolidations were widely opposed and Congress ultimately amended Section 5 in 1940 to reach the same end, but through voluntary consolidations which could occur only upon ICC approvals based upon determinations that the

consolidations were in the "public interest." St. Joe Paper Co. v. Atlantic Coast Line R.R., 347 U.S. 298 (1954); County of Marin v. U.S., 356 U.S. 412 (1958).

The 1940 amendments to the Interstate Commerce Act ("ICA") were designed to remedy a major problem under Section 5: the lack of effective ICC oversight regarding the acquisition of rail carriers by holding companies and other non-carriers. Section 7 of the 1940 Act created Section 5(2)(a) which provided (emphasis added):

(2)(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)--

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate any properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise . . .

Additionally former Section 5(f), also enacted as part of Section 7 of the Transportation Act of 1940, provided the following:

(4) It shall be unlawful for any person, except as provided in paragraph (2), to enter into any transaction within the scope of subparagraph (a) thereof, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however, such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after

the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph ... the words 'control of management' shall be construed to include the power to exercise control of management.

The key to this statutory interrelationship was the expanded definition of the term "control" adopted by Congress in 1940 in former Section 1(3) of the ICA. Pub. 785, §2, Chap. 722. According to the Conference Committee Report, the definition of "control" expressed in the section was designed to carry forward the interpretation of "control" expressed by the Supreme Court in Rochester Telephone Corp. v. U.S., 307 U.S. 125 (1939). See, R.R. Rep. No. 2832 at p. 63. In Rochester Telephone, the Supreme Court concluded that the term "control" as used in Section 2(b) of the Communications Act of 1934, 48 Stat. 1064, 65, indicated Congress' intention not to apply "artificial tests of control", instead control was a factual issue to be determined from the specific facts of each case. 307 U.S. at 145-46.

In U.S. v. Marshall Transport, 322 U.S. 21 (1944), the Supreme Court first applied the amended Section 5 language to hold that a non-carrier parent corporation which already controlled another carrier must join in the application of a non-carrier subsidiary created by that parent to acquire another carrier. 322 U.S. at 36. In that case, a non-carrier, Union Tank Car Company ("Union") already controlled a carrier, ("Refiners"). 322 U.S. at 32-33. Refiners made application to the ICC to acquire another carrier, ("Marshall"); however, Union did not join in the application, because it assumed that Refiners' application under the carrier sale provision of Section 5(2)(a) was sufficient. 322 U.S. at 33. In proceedings before the ICC, Union was ordered to join Refiners' application because Union would be obtaining control over an additional carrier

and when Union refused, the application was dismissed. 322 U.S. at 33-34. The Supreme Court sustained the ICC's interpretation of Section 5.

The Supreme Court observed that the issue to be decided was not whether the carrier to carrier sale provisions of Section 5(2)(a) limited or superseded the non-carrier control provisions of former Section 5(2)(a). Instead, the question was whether both provisions applied simultaneously. 322 U.S. at 36. The Court found that both applied stating, 322 U.S. at 36, thus:

[a]s a matter of statutory construction it does not follow that such parts of the proposed transaction in this case as are subject to the requirement of the non-carrier control provision can escape that requirement because the transaction also involves a purchase which falls within and satisfies the requirement of the purchase provision of the statute. Section 5(4) prohibits each of the transactions enumerated in §5(2)(a) unless approved by the Commission. And it is plain that if the proposed transaction involves Union's non-carrier control of Marshall, within the meaning of §5(2)(a), appropriate application to the Commission for its approval must be made in conformity to §5(2)(b). (emphasis added).

The Supreme Court expressly rejected Union's claim that, by having Refiners comply with the acquisition provision of the ICA, Union could extend its control indefinitely without ICC oversight, stating that "neither the language nor the legislative history of the statute admits of so narrow a construction." 322 U.S. at 37. The purpose of the ICA, according to the Court, was ICC review, generally, of all acquisitions of control, including control "effected through a contract of a controlled carrier to purchase the business of the other carrier". 322 U.S. at 39. The Court concluded by stating that, "the purpose of the Act would be defeated if outright purchase, through the medium of a controlled subsidiary carrier, of another carrier's property and operating rights, were exempted [from regulation under Section 5], while control by purchase of stock of the other carrier through the same subsidiary remained within the Act." 322 U.S. at 40. Therefore, the non-carrier holding company was required to join in the proceeding initiated by its

subsidiary. 322 U.S. at 41. Implicit in this analysis is a rejection by the Supreme Court of any attempt to bifurcate or otherwise procedurally divide what would otherwise be an indivisible transaction.

In Allegheny Corp. v. Breswick & Co., 353 U.S. 151 (1957), the Commission held that a non-carrier corporation which controlled carriers would be “considered as a carrier” (id. at 159, 160), stating that “[n]ot labels but the nature of the changed relation is crucial in determining whether a rearrangement within a railroad system constitutes an ‘acquisition of control’ under §5(2).” The Court again held that a non-carrier parent corporation of a carrier could not acquire or gain control over other carriers through an application of an already controlled carrier subsidiary which did not include the parent corporation as a party. The court stated: “a non-carrier may not gain control’ over carriers free of Commission regulation merely by operating through subsidiaries.” Id. at 169.

The same principle was applied to exclude Commission jurisdiction in County of Marin, supra. There the Supreme Court held that former Section 5(2)(a) did not permit Commission jurisdiction over the transfer of part of a carrier’s operations to a wholly-owned subsidiary in return for stock in the subsidiary, where the transaction was little more than a “paper transaction” between the two commonly owned corporations for the purpose of avoiding State regulation. Id. at 418. The Court concluded that:

There may or may not, in fact, be financial or operational justification for the proposed transaction; that question is not before us. We consider only the applicability of §5(2)(a) as a ground for Commission jurisdiction, and in so doing the question narrows to the nature of the change in relations between the companies.

Id. at 419, quoting, Allegheny v. Breswick., supra, 353 U.S. at 169.

These principles were strengthened in Gilbertville Trucking Co. v. U.S., 371 U.S. 115 (1962). There the Supreme Court held that the ICA required strict enforcement of the requirements of Section 5 and that the ICC must act affirmatively to enforce that provision such that it was required to treat all transactions as governed by Section 5 if they amounted to the exercise of control of one carrier over another, either directly or indirectly. Id. at 123. Moreover, the Supreme Court held that the ICC was charged to expand its Section 5 jurisdiction to meet any new holding company attempts to circumvent the control provisions of the ICA through the use of subsidiaries, affiliates and the like. Id. at 125. The Court noted that Section 5(2) was designed to “reach[] the elaborate corporate devices used to centralize control over the railroads ‘without Commission supervision and in defiance of the will of Congress’” because “[a]lthough Congress had intended the Transportation Act of 1920 to provide complete supervision, the Act proved inadequate to reach the holding company system.” Id. at 123-24. The Court concluded its analysis by holding that the statute’s expansive definition of the term control and its requirement for strict ICC application of the statute’s approval provisions regarding acquisition of control meant that Section 11343 “encompassed every type of control in fact . . .” Id. at 125 (emphasis added).

The force of these decisions has not been diminished by subsequent amendments to the ICA. The Railroad Revitalization and Regulatory Reform Act of 1976 (“4R Act”), Pub. L. 94-210, 90 Stat. 31-150 did not change the definition of “control” or the substantive language contained in Section 5. In 1978 Congress recodified the entire ICA. Pub. L. 95-473, 92 Stat. 1337-1470. As part of this recodification, portions of former Section 5 became Section 11343. The recodification itself was intended to “restate, without substantive change” those former

sections of the ICA. Pub. L. 95-473, S3, 92 Stat. 1466. This stricture applies to all former interpretations of the recodified sections of the ICA. American Train Dispatchers Ass'n. v. I.C.C., 671 F.2d 580, 583, n.2 (D.C. Cir. 1982). The Staggers Rail Act of 1980, Pub. L. 96-448, 94 Stat. 1895-1966, also did not change the regulatory framework established in 1940. While Congress increased the ICC's authority to exempt transactions from prior regulatory review and approval, those amendments did not change the reach of Section 11343. Additionally, there is no evidence in the Staggers Act's legislative history that shows a Congressional intent to move transactions formerly subject to Commission jurisdiction under Section 11343 to the jurisdiction of Section 10901 through the use of corporate formalities or to limit the holdings in the four Supreme Court decisions discussed above.

Finally, the ICC Termination Act of 1995 ("ICCTA"), Pub.L. 104-88, made no change to the regime first established under Section 5. The ICCTA replaced Section 11343 with a new Section 11323 that contained the same provisions as its predecessor. The Conference Report accompanying the ICCTA stated (Conf. Report 104-422 at 190):

This section (11323) replaces former section 11343. The extent of agency jurisdiction over intercarrier transactions involving mergers, trackage rights, and similar transactions remains essentially the same as under the former provision, except for new procedures limited to Class II and Class III railroads.

The "procedures limited to Class II and Class III railroads" are not applicable here.¹ Put simply, this transaction effects the consolidation of two rail carrier systems, that of the DM&E and that of the IMRL. Bhd. of R.R. Signalmen v. I.C.C., 63 F.3d 638, 642 (7th Cir. 1995).

¹Their inapplicability is discussed in Part C, infra.

The continuing vitality of the Marshall Transport line of cases is demonstrated by the decision in Lamoille Valley R.R. v. I.C.C., 711 F.2d 295 (D.C. Cir. 1983). In that case, the court noted that the decision in Marshall Transport addressed both whether the ICC could require Union to join the application and whether Union was required to do so. 711 F.2d at 326, n.66. The court observed that the Supreme Court's holding that Union was required to join the application was central to its affirmance of the ICC's overruling the initial division decision that joinder was permissive. On that basis, the D.C. Circuit rejected the Commission's argument that it had discretion to include or exclude the party (Timothy Mellon) who ultimately controlled the acquiring entity in the control proceedings. Id.

What these cases show is that since 1940, a major purpose of the federal legislation governing the combination and consolidation of carriers is effective oversight and review of those transactions. Here, the IMRL is an independent carrier that will be acquired by a wholly owned subsidiary of another rail carrier, the DM&E. The IMRL and DM&E connect in Minnesota and Iowa and the Verified Notice of Exemption clearly contemplates the coordinated operation of DM&E and IC&E. This is exactly the type of transaction for which Section 11323 and its predecessors was created. The Board must review this transaction under Section 11323 and it possesses regulatory procedures to do so.

B. The Board Must Require The DM&E To Join The Putative Acquisition Of The IMRL By The IC&E As A Matter Of Law

The putative transaction posed in the Verified Notice of Exemption concerns the IC&E's acquisition of all of the rail assets of the IMRL. However, the IC&E does not exist in isolation from other rail carriers in its corporate family. IC&E "is a newly formed, indirect non-carrier

subsidiary of [DM&E].” Verified Notice of Exemption at 2. The stock of IC&E actually is held by Holdings, “an intermediate holding company and a wholly-owned subsidiary of DM&E.” Id. The IC&E’s acquisition of IMRL is merely the first step in a complicated series of procedures designed to, ultimately, confer legal control of IC&E, the carrier, by DM&E. Under DM&E’s plan, IC&E will obtain authority to acquire IMRL on June 28, 2002, 21 days after the Verified Notice of Exemption was filed with the Board.⁶ Once that acquisition closes, Holdings will place the stock of the IC&E in an independent voting trust pending Holdings’ and DM&E’s joint application to continue in control of IC&E now that it has become a carrier. Id. at 4.

The CEO of the DM&E, the controlling entity of both Holdings and IC&E, has admitted that these procedural steps are simply a prelude to DM&E’s control of IC&E. In an April 12, 2002 memorandum to “Prospective IC&E & CARH Employees and DM&E Employees,” the CEO noted “[t]here will be a transition period where the IC&E will have its own President (from just prior to start-up [planned for June 30] until the regulatory ‘common control’ case is finalized [hopefully several months later].” April 12th Memo at 3.⁷ Once common control is authorized, the IC&E will no longer have a President. Later, the CEO notes that after common control is authorized the “CARH [Holdings] Vice President of Operations and I will be responsible for ensuring the operating functions for each railroad will coordinate closely together.” Id. That structure is logical because, as acknowledged in the Verified Notice, Holdings is controlled by

⁶That closing date is contingent on IC&E “finalizing” financing arrangements for the transaction. Verified Notice of Exemption at 3. Unless or until those arrangements are “finalized,” neither the IC&E nor any other member of its corporate family has the financial wherewithal to acquire the IMRL.

⁷The April 12th Memo is Exhibit 1.

DM&E and Holdings, in turn, controls IC&E. What is not logical is the convoluted set of trifurcated procedures the DM&E proposes to use to get to that result, separate acquisition exemption, voting trust and separate continuance in control proceeding.

The control and consolidation of DM&E, Holdings and IC&E is not restricted to relations between the CEO of DM&E and Holdings' Vice President of Operations. The April 12th Memo also noted that the three entities will "carefully coordinate and cross-utilize our locomotive and car fleets." April 12th Memo at 3. Also "[a]fter regulatory approval, both railroads will be marketed together." *Id.* at 4. The CEO explained that "I think it would be a catastrophe to get caught up in which railroad was credited with more revenue or worry about divisions between the two." *Id.* In other words, after the regulatory oversight proceedings end, the DM&E-Holdings-IC&E system will be operated as a consolidated railroad.

That result is exactly what the Marshall Transport line of cases addresses. The effort by DM&E and its corporate progeny through the use of elaborate corporate and legal devices and creative constructs to permit DM&E to acquire the IMRL without having that transaction subject to Board review and approval under Section 11323. The Supreme Court has affirmatively stated that the Board may not be swayed by such devices and constructs and must analyze and review a transaction for what it really is, not what the applicant parties try to say it is.

The tool available to the Board to analyze the actual transaction, rather than the cleverly choreographed transaction presented by the applicant, is the "real party in interest" doctrine which was designed to insure that a party obtaining control of a carrier through the use of a controlled subsidiary must join in any application in which the subsidiary would acquire control of an existing carrier. See e.g., Howard Term.--Control--El Dorado Motor Trans., 70 M.C.C.

375, 376-77 (1957); Illinois California Express--Purchase--Arizona--Utah Express, 104 M.C.C. 578, 589-90 (1968); Artim Trans. Sys.--Control & Merger--The Glenn Cartage Co., 116 M.C.C. 812, 818-19 (1974); and Schuylkill Valley Lines, Inc.--Control, 60 M.C.C. 468, 472-73 (1954).

The purpose of this doctrine is to insure that the real party in interest, the ultimate controlling entity, is before the Commission in a proceeding involving transfer of ownership of a carrier. And not, as the DM&E would have it, an after the fact continuance in control proceeding involving only IC&E, Holdings and DM&E.

The ICC's explanation of the real party in interest doctrine is explained well in Schuylkill Valley Lines. That proceeding concerned the acquisition of a motor carrier's operating rights by an individual who was not a carrier but who was a shareholder, member of the Board and manager of Schuylkill Valley Lines, which was a carrier. Additionally, Schuylkill Valley Lines was controlled by Conway Corporation, a non-carrier management firm which in turn was controlled by Thomas Conway, Jr.. An ICC trial examiner concluded that Schuylkill Valley Lines and Conway were necessary applicant parties. This ruling was contested by the individual non-carrier, Schuylkill Valley Lines and Conway who challenged the necessity for joinder under the real party in interest doctrine asserting:

that there is no connection between Schuylkill and transaction proposed; that Schuylkill rejected the opportunity to purchase the considered rights because they do not tie in with its operations; that vendee is not acting for Schuylkill in this transaction; that vendee has no blood or business relation with other officers, directors, or stockholders or Schuylkill; that Schuylkill will exercise no control over the considered operations; that there is no arrangement between vendee and Schuylkill concerning the transaction and no Schuylkill funds will be used, and that the actualities, as reflected in the record do not call for a finding of control by Schuylkill and/or the Conway Corporation, within the meaning of United States v. Marshall Transport Co., 322 U.S. 31.

60 MCC at 472. However, the Commission concluded (id. at 473) contrary to arguments of the petitioners:

the question remains as to the necessity for the joinder in this proceeding as parties applicant of The Schuylkill Valley Lines, Inc., The Conway Corporation, and Thomas Conway, Jr., as the real parties in interest, within the meaning of United States v. Marshall Transport Co., supra. This principle has not thus far been applied to a vendee, who is an individual, as here. However, we see no real basis for a distinction being made on this ground. Vendee concedes that he is subject to the direction of the board of directors of Schuylkill, and he is also subject necessarily to the control of the controlling stockholders of that carrier, through the board. We are of the opinion, and find, that Schuylkill, The Conway Corporation, and Thomas Conway, Jr., are necessary parties applicant. As stated, The Conway Corporation is a non-carrier, but it is already subject, as a motor carrier, to certain provisions of the act as provided in section 5(3).

Thus despite the fact that both the individual acquiring the motor carrier operating rights, Conway Corporation and Thomas Conway, Jr. were non-carriers, the entire transaction was subject to Section 5, and Schuylkill Valley Lines, Conway Corporation and Thomas Conway, Jr. were required to join the application as necessary parties.

Similarly, Artim Transportation concerned the acquisition of stock of a motor carrier and a merger of that carrier into ATS, a carrier affiliated with Artim, Inc., a non-carrier. The Commission held that Artim was a necessary party to the ATS acquisition transaction stating (116 M.C.C. at 819):

As a result, after the transaction, Artim, Inc., will be in control of a carrier, by virtue of its acquisition of control of a holding company that controls a carrier. Among other things, section 5(3) of the act states that whenever a person which is not a carrier is authorized by an order entered under section 5(2) to acquire control of any carrier, such person thereafter shall, to the extent provided in such order, be considered as a carrier subject to the applicable provisions of the act. Based on the foregoing the Administrative Law Judge was correct in subjecting Artim, Inc., to the applicable provisions of the act by labeling it a carrier. In addition, we feel that it is necessary to go one step further than the Administrative Law Judge. We deem it necessary that the applications in the instant proceeding be, also, signed by Art

im, Inc. The Commission has held on several occasions that an application may not lawfully be approved in the absence of an appropriate application by the real party in interest. See, Refiners Transport & Term. Corp.--Purchase--Marshall Transport, 39 M.C.C. 271. Further, the Commission has held that if the acquiring party applicant for authority under section 5 is controlled directly or indirectly, within the meaning of section 1(3)(b) of the act, by any person or persons, each such person, shall, also execute and become a party to the application. See Leaman Transp. Co., Inc.--Purchase~Whitney, 40 M.C.C. 205. In the instant proceeding, Artim, Inc., has the power to control ATS, as defined in section 1(3)(b) of the act, and, therefore, Artim, Inc., is a necessary party applicant.

Thus, the Commission has consistently held that Marshall Transport and the real party in interest doctrine require that all interested parties join in a single application and transaction which involve the acquisition of control of an existing carrier. In this case, the real party in interest is the DM&E, the corporate parent of both Holdings and IC&E. Under the real party in interest doctrine, the DM&E must join this application and the Board must consider it only under Section 11323.

C. DM&E Is Acquiring Control Of A Carrier, Not Just Rail Assets

The Cooperating Labor Organizations anticipate that DM&E, Holdings and IC&E will argue that this case does not involve an acquisition of control of a carrier because the IC&E is only the rail assets and not the common stock of IMRL. We submit, however, that given the nature of the subject transaction and applicable precedent, it is clear that for ICCTA purposes, it must be held that IC&E is acquiring a carrier, IMRL, and, through that acquisition, DM&E also is obtaining control of IMRL.. When the IC&E/IMRL transaction is consummated, IC&E "will acquire IMRL's existing rail lines acquire via assignment from IMRL approximately 275 miles of incidental trackage rights over line segments of other carriers [and] "IMRL's ownership and operational interests in the The Kansas City Terminal Railway Company; . . . IMRL's

ownership and operational interests in the so-called 'Joint Agency' in Kansas City (jointly owned by The Kansas City Southern Railway Company) . . . and IMRL's interest in jointly-owned and/or operating industry trackage in various locations." Verified Notice of Exemption at 3. After the transaction, IMRL will not be able to provide common carrier service because it will have no rail assets.

The argument that DM&E's and IC&E's acquisition of the IMRL's rail lines is not subject to Section 11323(a)(3) because IC&E putatively is purchasing IMRL's rail assets is also contrary to the language of Section 10102(3). An acquisition of all of a carrier's rail properties whether by purchase, lease or acquisition of exclusive operating rights over its right-of-way is an acquisition of control "by any other means" within Section 10102(3). That conclusion is reinforced by the language of Section 11323(b) which provides the provisions of that Section apply to acquisitions of control "regardless of how that result is reached." That analysis was ratified in Fox Valley & Western Ltd. v. I.C.C., 15 F.3d 641, 644 (7th Cir. 1994), when the court rejected a similar argument by the entity acquiring all of the rail assets of several carriers thus:

Fox Valley acquired the carrier component of these corporations and did so for the purpose of integrating multicarrier rail operations. The sellers live on as corporations, but not as carriers, for they have no rail assets, and so could not provide rail service if they wanted to.

We submit that the transaction presented to the Board involves the acquisition of a carrier, the IMRL, not just the acquisition of some of its assets.

The nature of this transaction also demonstrates why the "procedures limited to Class II and Class III railroads" referenced in Part A, supra, are inapplicable here. As we have shown, the IC&E's acquisition of the IMRL actually involves the DM&E's acquisition of IMRL, an existing

carrier. That transaction must be reviewed by the Board under Section 11323(a)(3), so that Section 10901, the noncarrier acquisition provision, does not apply and the IC&E is not entitled to use the class exemption contained at 49 C.F.R. §1150.35.

The only other "procedure" arguably available to Class II carriers such as the DM&E are those contained in Section 10902. However, by its clear terms, that Section cannot apply here. Section 10902(a) provides that "[a] Class II or Class III rail carrier providing transportation subject to the jurisdiction of the Board under this part may acquire or operate an extended or additional rail line under this section only if the Board issues a certificate authorizing such activity under subsection (c)." Although, the DM&E is a Class II rail carrier, the proposed transaction is not the acquisition or extension or addition of a rail line. Instead the transaction concerns the acquisition of an entire rail carrier, the IMRL. Acquisitions of control of existing rail carriers must be effected under Section 11323. Any argument that control of a carrier is not at issue because IC&E only is acquiring all of the rail assets of IMRL is squarely refuted by Marshall Transport and Fox Valley Western. In Marshall Transport, the Court held that purchase of a carrier's transportation assets involved acquisition of control of that carrier, noting: "the statute is thus concerned, not merely with the acquisition of control of one corporation by another but with the acquisition of control of a corporation which is doing the business of a carrier, because such control is in effect control of its carrier business." 322 U.S. at 39. The suggestion that one does not acquire control of a carrier when it acquires the carrier's rail assets which are essential to actually running a railroad, and when that transfer deprives the seller from performing carrier functions, is directly contrary to this fundamental point about the nature and purpose of Section 11323.

II. ALTERNATIVELY, IC&E IS NOT SUFFICIENTLY INDEPENDENT OF DM&E TO BE ENTITLED TO USE THE CLASS EXEMPTION CONTAINED AT 49 C.F.R. §1150.35

The Cooperating Labor Organizations respectfully submit that the discussion set forth in Part I, supra conclusively demonstrates that the acquisition of the IMRL must be subject to Board jurisdiction under Section 11323(a)(3). However, without prejudice to that position, the Cooperating Labor Organizations submit, alternatively, that the IC&E fails the former ICC's "indicia of independence" test so that the transaction is subject to Section 11323(a)(3) on those grounds as well. Because application of the "indicia of independence" test is fact intensive, the Cooperating Labor Organizations will submit only a brief argument here and will supplement this petition following the close of discovery as provided in 49 C.F.R. §1121.2.

The former ICC's "indicia of independence" test, otherwise called an "alter ego" test requires the petitioner to show either that the noncarrier acquiring entity "was created exclusively for the purpose of evading the labor protection requirements of [section 11326] or that the acquiring entity "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). The Cooperating Labor Organizations submit that the IC&E fails both tests.

First, the Board should take administrative notice that any attempt to create a noncarrier to use the Section 10901 acquisition procedures is for the purpose of evading employee protections otherwise available under Section 11326. Section 10901(c) expressly prohibits the Board from imposing employee protective conditions in a transaction subject to Section 10901 regardless of any "exceptional circumstances" that might befall the involved employees.

Second, the Cooperating Labor Organizations submit that the available information regarding this transaction strongly suggests that IC&E is not sufficiently independent of its corporate parent, DM&E. First, IC&E apparently will have a separate President only until a separate "common control" proceeding involving DM&E, Holdings and IC&E is completed. April 12th Memo at 3. After that, operations between DM&E, the corporate parent of Holdings and IC&E, will be coordinated between the CEO of DM&E and Holdings Vice President of Operations. Id. at 3. The memo identifies the prospective Holdings Vice President of Operations as R. O. Brownell (id. at 12), an individual who currently holds the position of Vice President of Operations for DM&E. Source, www.dmerail.com. Indeed all of the Holdings Vice Presidents identified in the April 12th memo currently are officers of DM&E. id. Second, DM&E and IC&E will "carefully coordinate and cross-utilize our locomotive and car fleets." Id. at 3. Third, both railroads will be marketed together and they apparently will not account for divisions of revenue to services performed. Id. at 4. In other words, after the regulatory oversight proceedings end, the DM&E-Holdings-IC&E system will be operated as a consolidated railroad.

The Cooperating Labor Organizations respectfully submit this limited evidence demonstrates that the IC&E will not be sufficiently independent of the DM&E. The acquisition of the IMRL must be reviewed by the Board as an acquisition effected by the DM&E and subject to Section 11323.

CONCLUSION

The Cooperating Labor Organizations respectfully submit the foregoing conclusively demonstrate that this transaction only can be reviewed by the Board under Section 11323.

Accordingly, the IC&E's attempt to use the class exemption contained at 49 C.F.R. §1150.35 is void ab initio and the Board must revoke the use of the class exemption.

Respectfully submitted,

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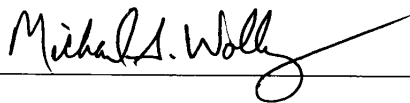
Counsel for Cooperating Labor Organizations

Date: June 13, 2002

CERTIFICATE OF SERVICE

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

William C. Sippel, Esq.
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Two Prudential Plaza
Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721



Date: June 13, 2002

EXHIBIT ONE

MEMORANDUM

TO: Prospective IC&E & CARH Employees & DM&E Employees
 FROM: Kevin V. Schieffer
 DATE: 12 April 2002
 RE: Operating Departments Start-up Issues (Employee Report)

After my initial meetings, I asked the operating department heads to conduct a series of meetings to get more detailed employee feedback as we put together the operating plan and the employee compensation package. This memo lays out the expected staffing requirements for the IC&E operating departments (transportation, engineering & mechanical), and can be found on the employee website link at "dmerail.com" (you'll need your individualized employee access code, which will be distributed in the next few days). A similar memo for administrative positions should be following shortly.

These are preliminary thoughts. I am laying them out to give you an idea of the thinking to date. If we are off the mark, let me know. I would appreciate your feedback next week when I am on the property (or e-mail me at kvs@dmerail.com).

1. General. Based on the recommendations I have received to date, I have incorporated in this memo the proposed staffing requirements and locations for positions in each of the three departments. We are still working to get the proposed salaries out to you by April 15. In addition, the following matters should be of general interest to all:

Health Care/Benefits. This is big issue for everyone. It has been and continues to be a huge issue on the DM&E. As I understand it, IMRL today has a pretty good health care package that applies to everyone. On DM&E, we have one plan for union employees and a separate one that applies to non-union employees. My position is that IC&E employees can pick from any one of the three. I do not know enough about the IMRL plan to make any recommendations. Personally, I think the DM&E non-union plan is a little richer, primarily because it includes "enhanced benefits" of three personal days and higher 401K contributions. But the trade off is that the union plan has a lower monthly contribution and has less flexibility for the Company to make adjustments on a year-to-year basis. Attached to this memo is a summary that contains a side-by-side comparison of the major provisions of all three plans.

Right now, my intention is to allow IC&E employees to vote for their preference between the three plans when hiring decisions are made. Whichever plan receives the most votes will be implemented. They are all good plans and, in my view, provide

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excellent coverage. But there are differences, and this really boils down to a matter of employee preference.

Seniority. By and large, the general idea is to leave seniority in tact for any IMRL employee we successfully recruit to IC&E. There are individual detail issues that need to be worked out for each department. But for the field positions, we don't really see any big issues regarding seniority under this approach. There will be issues to work through on consolidated office positions (e.g., dispatching, customer service, etc.), but hopefully they won't be major.

Probationary Period. We will have a standard probationary period (probably 120 days) for all future IC&E employees except for current IMRL employees who sign up in the initial period. The same will apply for Cedar American Rail Holdings ("CARH") employees, except both IC&E and DM&E employees will be grandfathered.

Vacation & holidays. I know this is a big issue for IMRL employees, and I am particularly sensitive to it because of an historical headache that resulted on the DM&E. I hope the following is pretty much consistent with what most people want (and hopefully agree is fair) but let me know if I missed something.

Except for certain IMRL employees who will be grandfathered with their existing IMRL vacation benefits, IC&E vacation policy will be as follows:

<u>YEARS OF ELIGIBLE SERVICE</u>	<u>ANNUAL LEAVE DAYS EACH YEAR</u>
After 1 Year	5 Days
After 2 Years	10 Days
After 10 Years	15 Days
After 15 Years	20 Days
After 20 Years	25 Days

IMRL employees who wish to carry forward and/or transfer their accrued vacation from IMRL would be grandfathered with their existing IMRL qualifying years of service for vacation benefits.¹

The following holidays will be recognized:

New Year's Day (January 1)
 Presidents' Day (Third Monday in February)
 Memorial Day (Last Monday in May)
 Independence Day (July 4)

¹ As an historical footnote, this is how it was done for DM&E employees at start-up of operations in 1986. However, those DM&E employees who came on with the 1996 Colony Line acquisition did not receive this benefit (but were given higher wages to offset it). This issue was discussed at length at the last DM&E Employee Committee meeting, and will be addressed as reflected in the meeting minutes.

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Labor Day (First Monday in September)
 Thanksgiving (Fourth Thursday in November)
 Day after Thanksgiving
 Christmas Eve (December 24)
 Christmas Day (December 25)
 New Year's Eve (December 31)

Corporate Structure. I have spent a great deal of time on this issue based on feedback from both IMRL and DM&F employee meetings. The idea behind our approach here is to make certain there is enough authority in the field to make decisions and command support from the office. We are consolidating where we can, but trying very hard to make certain that the field positions have all the necessary local decision-making responsibility and authority to get things done. At the same time, we are trying very hard to get a structure that doesn't result in friction between the two railroads.

Not all the issues are resolved, but here is the general idea. It is easiest to think of it organizationally as three separate employee groups who have to work closely together. They are:

1. IC&E Employees.
2. DM&E Employees.
3. CARH (Cedar American Rail Holdings) Employees.

CARH Employees will, as a practical matter, work for both railroads, with their salaries allocated between the two. The line authority will run both "up" and "down" from the field. That is to say, certain CARH employees will report to IC&E employees, and vice versa. The same will be true for DM&E. I do not pretend to think this is going to eliminate "headquarters" problems, but I am focused on making certain that field operations departments have the authority and accountability necessary to do their jobs.

There will be a transition period where the IC&E will have its own President (from just prior to start-up [planned for June 30] until the regulatory "common control" case is finalized [hopefully several months later]). After this period has expired, I anticipate that both the IC&E and DM&E engineering and transportation departments will each have their own operating department heads (i.e., Chief Transportation Officer and Chief Engineer). I haven't come to a final decision on titles or people, but these will be field positions, and my current thinking is to have each railroad's department head report to and coordinate operations through a single CARH Vice President. Because we intend to carefully coordinate and cross-utilize our locomotive and car fleets, we will have senior officers on both properties, but probably a single department head at the CARH level (i.e., Dan Goodwin).

The CARH Vice President of Operations and I will be responsible for ensuring that the operating functions for each railroad will coordinate closely together. We will

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resolve the conflicts that inevitably will arise because of the need for support staff from marketing, accounting or other functions that will be done at the CARH office (or for any other reason). I expect these conflicts will be common for a few months until we establish a routine and get the bugs worked out. After that transition period, I expect those kinds of things will become exceedingly rare, if I am doing my job.

Along those lines, my current thinking is that it will be important (once we receive final regulatory approval) to avoid accounting reports that create friction between the two railroads. After regulatory approval, both railroads will be marketed together. I think it would be a catastrophe to get caught up in which railroad was credited with more revenue or worry about divisions between the two. I am not certain yet as to the mechanics, but I would like to avoid as much as possible a situation where IC&E employees get a different annual wage increase than DM&E employees. Clearly there may be differences and we may need to go through a transition process of evening things out - and we may not need or want to get everything exactly the same. But as a general policy statement, I will be looking for ways to minimize rather than encourage competing camps between the two railroads. If this thing is going to work, we all need to be in it together. Of course there will be differences to be recognized, but where they exist we need to be fair and accountable for them.

Employee Committee Process. I encourage IC&E employees to develop their own Employee Representative Committee, with whom I will meet on a regular basis to continue to work through policy/contract issues, and a host of other operational issues. Those interested in serving on this Committee should let me know by e-mail. Their names would go on a ballot for a vote at the time of hiring so that we have a transitional Committee. If there is an employee interest, I would then propose formal elections within a month or two after operations begin. This is not mandatory. It will be up to the employees to decide whether to try it or keep it going. Let me know if there are any questions about this next week.

Contract vs. Policy. The wage and benefit terms can either be included in a contract or not. If employees desire a contract, it will have a little less flexibility, but more certainty. That would be something I would envision employees would decide through the Employee Committee voting process (or through a union representative for any department that chooses to be represented by an organized union). On DM&E, we have established non-union contracts contingent upon a time when we can put everyone's salary on an equal basis. On the IMRL, unless the employees vote to go to a "pay for performance" system (which I would *not* recommend), it would be easier to establish a contract on IC&E now. This really boils down to a flexibility vs. certainty issue. Retaining a little more flexibility allows us to be a little more aggressive with cash compensation and benefits. More certainty requires a little more conservative approach to cash and benefits. I think you will find that we have not abused flexibility on DM&E for employees who choose that route, and that it has generally been a win/win for the employee and the company (e.g., the employee gets a little more cash/benefits than is otherwise possible, and the company reduces

costs/exposure). If the company ever abuses flexibility, I assume we will lose it. I direct management accordingly.

Other issues? I think this covers most of the general issues I have heard. Department-specific issues are addressed below. If I've left anything out, its only because I didn't take good notes. So if there is any issue you would like to see addressed that hasn't been either in this section or in your department-specific section, please let me know about it next week (or via e-mail).

NOTE: All employees listed on the roster will be designated as either "IC&E" or "CARH". Those designated as IC&E would generally work for IC&E on a pretty exclusively basis. Those designated as CARH would work for both IC&E and DM&E.

2. Mechanical. Generally, the feedback I have received here is that forces are already spread pretty thin. We are still considering whether and where and how to add a new locomotive shop facility. Both Mason City and Davenport are being considered as a potential site. Also, we are exploring a continued "farm out" program. But as of start-up, here is our initial estimate of necessary forces:

- a. Field/Crafts*. There could be a considerable difference here between start-up needs and long-term needs, depending on what we do about an on-line shop facility. As of now, the tentative plan is to ultimately build a locomotive shop on-line, which is likely to increase employee staffing needs. As we see things today, it appears the logical start-up forces day one (i.e., without the shop) will be as follows:

Mechanical Forces by Location (includes some managers)

Nahant Locomotive

Foremen-2 Mechanics-16
Material Manager-1 Material Handler-1 Clerk-1

Nahant Car

Foreman-1 Mechanics-13
East Moline Mechanics-1
Muscatine Mechanics-2
Ottumwa Mechanics-2

Mason City Locomotive

Foreman-3 Mechanics-11
Material Handler-1, Clerk-1

Mason City Car

Foreman-1 Mechanics-9

TOTALS:

Foremen-7 Mechanics-54

Material Manager-1 Material Handlers-2 Clerks-2

- a. *Managers/Admin.* Mechanical Department Managers will be located in the field, generally. We expect to be recruiting both current IMRI and DM&E employees for these management positions. Where they are expected to involve responsibilities for both IC&E and DM&E operations, they will be identified as "CARH" positions:

Position	Likely Location	No.	Comments
Chief Mechanical Officer (CARH)	Huron/Davnprt/MC	1	D.L. Goodwin
Suptrndnt. of Locomotives (CARH)	Huron or Davnprt/MC	1	
Shop Manager Locomotive(IC&E)	Davenport	1	
Asst. Shop Manager Loco(IC&E)	Davenport	1	
Shop Manager Locomotive(IC&E)	Mason City	1	
Suptrndnt. Of Cars (CARH)	Huron or Davnprt/MC	1	
Shop Manager Car (IC&E)	Davenport	1	
Asst. Shop Manager Car (IC&E)	Davenport	1	
Shop Manager Car (IC&E)	Mason City	1	
Operations Analyst (CARH)	Huron or Davnprt/MC	1	
Purchasing Director (CARH)	Huron or Davnprt/MC	1	
Mgr. Haz Mat, Safety & Trng (CARH)	Huron or Davnprt/MC	1	
Mgr. Environmental (CARH)	Huron or Davnprt/MC	1	

3. Engineering Department.

- a. *Field/Crafts (includes some field management).* The following table illustrates our preliminary estimate of Engineering/MoW forces for start-up:

Section Foreman	1	Austin, MN
Track Laborers	1	Austin, MN
Track Inspectors	1	Austin, MN
Mach. Op. A	1	Austin, MN
Section Foreman	1	Wells, MN
Track Laborers	1	Wells, MN
Section Foreman	1	Bettendorf, IA
Track Laborers	1	Bettendorf, IA
Signal Maintainer	1	Bettendorf, IA
Section Foreman	1	Charles City, IA
Track Laborers	1	Charles City, IA
Section Foreman	1	Clinton, IA
Track Laborers	1	Clinton, IA
Section Foreman	1	Davenport, IA
Track Laborers	1	Davenport, IA
Track Inspectors	1	Davenport, IA
Welders	1	Davenport, IA
Welder Helpers	1	Davenport, IA

Extra Gang Foreman	1	Davenport, IA
Extra Gang Laborers	2	Davenport, IA
Mach. Op. A	1	Davenport, IA
Signal Inspector	1	Davenport, IA
Comm. Tech.	1	Davenport, IA
Section Foreman	1	Dubuque, IA
Track Laborers	1	Dubuque, IA
Section Foreman	1	Marquette, IA
Track Laborers	1	Marquette, IA
Track Inspectors	1	Marquette, IA
Welders	1	Marquette, IA
Welder Helpers	1	Marquette, IA
Mach. Op. A	1	Marquette, IA
Signal Maintainer	1	Marquette, IA
Section Foreman	1	Mason City, IA
Track Laborers	1	Mason City, IA
Track Inspectors	2	Mason City, IA
Welders	1	Mason City, IA
Welder Helpers	1	Mason City, IA
Surfacing Foreman	1	Mason City, IA
Mach. Op. A - Surfacing	1	Mason City, IA
Mach. Op. B - Surfacing	2	Mason City, IA
Mach. Op. A	1	Mason City, IA
B&B Foreman	1	Mason City, IA
B&B Electrician	1	Mason City, IA
B&B Carpenter	1	Mason City, IA
Signal Maintainer	1	Mason City, IA
Comm. Tech.	1	Mason City, IA
B&B Mach. Operators	1	Mason City, IA
Section Foreman	1	Muscatine, IA
Track Laborers	1	Muscatine, IA
Track Inspectors	1	Muscatine, IA
Mach. Op. A	1	Muscatine, IA
Signal Maintainer	1	Muscatine, IA
Section Foreman	1	New Albin, IA
Track Laborers	1	New Albin, IA
Section Foreman	1	Ottumwa, IA
Track Laborers	1	Ottumwa, IA
Track Inspectors	1	Ottumwa, IA
Mach. Op. A	1	Ottumwa, IA
Signal Maintainer	1	Ottumwa, IA
Section Foreman	1	Seymour, IA
Track Laborers	1	Seymour, IA
Section Foreman	1	Spencer, IA
Track Laborers	1	Spencer, IA
Signal Maintainer	1	Spencer, IA
Section Foreman	1	Washington, IA
Track Laborers	1	Washington, IA
Section Foreman	1	Savanna, IL

Track Laborers	1	Savanna, IL
Track Inspectors	1	Savanna, IL
Mach. Op. A	1	Savanna, IL
B&B Foreman	1	Savanna, IL
B&B Carpenter	2	Savanna, IL
Bridge Tenders	5	Savanna, IL
Signal Maintainer	1	Savanna, IL
Signal Inspector	1	Savanna, IL
B&B Mach. Operators	1	Savanna, IL
Section Foreman	1	Kirkland, IL
Track Laborers	1	Kirkland, IL
Signal Maintainer	1	Kirkland, IL
Section Foreman	1	Liberty, MO
Signal Maintainer	1	Excelsior Springs, MO
Track Laborers	1	Liberty, MO
Signal Maintainer	1	Liberty, MO
Section Foreman	1	Chillicothe, MO
Track Laborers	1	Chillicothe, MO
Track Inspectors	1	Chillicothe, MO
Welders	1	Chillicothe, MO
Welder Helpers	1	Chillicothe, MO
Surfacing Foreman	1	Chillicothe, MO
Mach. Op. A - Surfacing	1	Chillicothe, MO
Mach. Op. B - Surfacing	2	Chillicothe, MO
Mach. Op. A	1	Chillicothe, MO
B&B Foreman	1	Chillicothe, MO
B&B Carpenter	2	Chillicothe, MO
Signal Maintainer	1	Chillicothe, MO
B&B Mach. Operators	1	Chillicothe, MO
Track Inspectors	1	Various
Roadway Equipment Repairman	4	Various
Signal Maintainer	1	Various
Total	112	

- b. *Managers/Admin.* Engineering Managers will be located in the field and in the central operations office. We expect to be recruiting both current IMRL and DM&E employees for Engineering management positions. Where these management positions will involve responsibilities for both IC&E and DM&E operations, they will be identified as "CARH" positions. The following represents our current thinking as to other manager/administrative positions for IC&E:

Position	Likely Locatn.	No.	Comments
VP Engineering & Transp. (CARH)	SF	1	S.O.Scharnweber
Chief Engineer (IC&E)	Davenport	1	
Office Engineer (CARH)	SF	1	
Manager of Budgets (CARH)	SF	1	

Mgr. Safety & Training (CARH)	SF/Bkng/Dvpt	1
Mgr. Real Estate/Pub Works (CARH)	SF/Bkng/Dvpt	1
Manager of Signals, North (IC&E)	Savanna/SF	1
Manager of Signals, South (IC&E)	Otumba	1
Manager of Work Equipment (IC&E)	Dubuque	1
Manager of Maintenance (IC&E)	Mason City	1
Manager of Maintenance (IC&E)	Marquette	1
Manager of Maintenance (IC&E)	Davenport	1
Manager of Maintenance (IC&E)	Chillicothe	1
Manager of Structures (IC&E)	Savanna	1

4. Transportation.

- a. *T&E.* Based on traffic expectations to date, the following represents our current view as to T&E forces required, and other matters.

1. Forces Required. It should be noted that there are a couple of significant additional traffic movements being discussed, which would add to these numbers. But based on the traffic expectations to date, here is our initial estimate of necessary start-up forces:

BY EXTRA BOARD LOCATION

Kansas City	40 Engineers	20 Switch Foreman
Note: The engineer number includes 13 engineers for UP Haulage trains (see Endnote, below).		
Ottumwa	2 Engineers	2 Switch Foreman
Davenport/Muscatine	63 Engineers	45 Switch Foreman
Note: The engineer number includes 8 engineers for CP Haulage trains (see Endnote, below).		
Clinton	14 Engineers	2 Switch Foreman
Note: The engineer number includes 13 engineers for UP Haulage trains (see Endnote, below).		
Savanna	11 Engineers	7 Switch Foreman
Marquette/Dubuque	14 Engineers	8 Switch Foreman
Note: The engineer number includes 4 engineers for CP Haulage trains (see Endnote, below).		
Mason City	11 Engineers	9 Switch Foreman
Totals	155 Engineers	93 Switch Foreman

Note: The total engineer number includes 26 engineers for UP Haulage trains and 12 engineers for CP Haulage trains. We are in discussions with both railroads and will let you know as soon as we have any information relative to that traffic.

2. Guaranteed Extra Board. The current thinking is that we will continue with a guaranteed extra board if we are able to establish reasonable flexibility in other areas. I will discuss some ideas with you next week. We are still working on the language, which I expect to refine after next week's feedback.

- b. *Dispatching.* The anticipated dispatching forces are listed in the Management section. In total, we are assuming a need for 23 Desk Dispatchers (18 in Sioux Falls and 5 in Kansas City). We are currently planning to have 1 Chief and 4 Asst. Chiefs in Sioux Falls (*see* detail in Managers section, below).

Every dispatcher on both IMRL and DM&E today will have a new office setting no matter where the final location is determined. This allows us to tailor the design with a "clean sheet of paper" approach. We will distribute preliminary designs for comments before finalizing. But any suggestions you want to make now (while the first draft is in the process of being developed) should be sent to Beth Lynn at "gopher@dmerail.com", with a copy to me at "kvs@dmerail.com".

Based on our review to date, I understand that the Desk assignments differ significantly (e.g., CTC vs. TWC vs. combination; and different traffic levels and work requirements). Also, I understand that we may be required to move the Kansas City jobs into the KCT joint facility there, based on an earlier agreement between IMRL and UP which IC&E will inherit. For these reasons we are tentatively thinking that the Desk assignments may be grouped and allocated (or "bid", as the case may be) in 2 or 3 separate categories, on a seniority basis². Part of the thinking behind this is a perception that the desks that often require the most experienced hands have in the past attracted the most junior bids. I am sure this is a sensitive subject, but I want you to know what we're thinking and why so I can hear alternative views before finalizing a decision. I would like the current dispatchers' feedback before going too far down this road. Please call or e-mail. If we do take this approach, different Desk categories likely would have different training requirements, pay scales, etc. This is far from decided, and we plan to discuss this at length with all DM&E and MRL dispatchers before making that decision. I throw it out here only because I think you should know it is being considered, and I would like to hear the "pros and cons" from employees (especially the dispatchers) directly. If you e-mail me on this subject, please let me know if you are a dispatcher currently, or not, and send a copy to "bbrownel@dmerail.com".

Tentative Desks and schedules are provided below:

PROPOSED CARH

² The likely desk groups would be (a) the DM&E and the Corn Line desks, (b) the Iowa and Missouri desks, (c) the Kansas City (Truman Bridge) desk.

DISPATCHING CENTER ASSIGNMENTS

Sioux Falls

Asst Chief Dispatchers:

001	Asst. Chief Dispatcher	0630	Daily
002	Asst. Chief Dispatcher	1430	Daily
003	Asst. Chief Dispatcher	2230	Daily
004	Relief Asst. Chief	Various	

Total Employees 4

Trick Dispatchers:

100	Trick Dispatcher -- DM&E	0700	Daily
101	Trick Dispatcher -- IC&E North	0700	Daily
102	Trick Dispatcher -- IC&E East	0700	Daily
103	Trick Dispatcher -- IC&E Central	0700	Daily
104	Trick Dispatcher -- DM&E	1500	Daily
105	Trick Dispatcher -- IC&E North	1500	Daily
106	Trick Dispatcher -- IC&E East	1500	Daily
107	Trick Dispatcher -- IC&E Central	1500	Daily
108	Trick Dispatcher -- DM&E	2300	Daily
109	Trick Dispatcher -- IC&E North	2300	Daily
110	Trick Dispatcher -- IC&E East	2300	Daily
111	Trick Dispatcher -- IC&E Central	2300	Daily
110	Extra Board	Various	

Total Employees 18

Kansas City:

200	Asst. MTO/Dispatcher	0700	Daily
201	Asst. MTO/Dispatcher	1500	Daily
202	Asst. MTO/Dispatcher	2300	Daily
210	Relief Asst. MTO	Various	

Total Employees 5

- c. *Customer Service.* Our expectations with respect to customer service and related positions are that they would all be in one location. I am acutely aware of how painful the relocation issues are for many existing DM&E and IMRL employees. We have looked long and hard at splitting up this function (i.e., decentralizing), and also at consolidating it either in Brookings or Davenport. For a variety of reasons, that does not appear likely.

We do have flexibility for a transition period here, however, depending on employee preference. That would probably be about 60 days if there is an interest.

Also, I understand there are a number of customer service employees (and in other departments) with spouses working on the railroad. For those couples, I would encourage you to at least explore whether or not we could find a job for both spouses at the central office, as we expect many job openings and we would place a premium on getting more people with a working knowledge of the railroad at

that location. Also, even if your spouse is not a railroader, if he or she is interested in a job at IC&E or CARH, this is still an option worth exploring. I cannot make any promises, but let me know if any of you (on IMRL or DM&E) have an interest in pursuing this.

**PROPOSED CARH
CONSOLIDATED
CUSTOMER SERVICE AND CREW MANAGEMENT
HOURLY ASSIGNMENTS
Sioux Falls**

Crew Management:

001.	Crew Dispatcher	0700	Daily
002	Crew Dispatcher	0700	Daily
003	Crew Dispatcher	1500	Daily
004	Crew Dispatcher	1500	Daily
005	Crew Dispatcher	2300	Daily
006	Crew Dispatcher	2300	Daily
010	Extra Board		Various

Total Employees 10

Customer Service Center:

100	Work & Train Reporting	0700	Daily
101	Work & Train Reporting	0730	Daily
102	Work & Train Reporting	0800	Daily
103	Work & Train Reporting	1500	Daily
104	Work & Train Reporting	1530	Daily
105	Work & Train Reporting	1600	Daily
106	Work & Train Reporting	2300	Daily
107	Work & Train Reporting	2330	Daily
108	Work & Train Reporting	2400	Daily
109	Clearance/Billing	0800	M-F
110	Industry/Billing	0730	M-F
120	Extra Board		Various

Note: All jobs will be responsible for billing as the need arises.

Total Employees 29

Car Distribution:

200	Car Distributor	0730	M-F
201	Car Distributor	1530	Tu-Sa

Total Employees 2

- d. *Managers/Admin.* Transportation Managers will be located in the field and in the central operations office. We expect to be recruiting both current IMRL and DM&E employees for operations management positions. Where these management positions will involve responsibilities for both IC&E and DM&E operations, they will be identified as "CARH" positions:

Position	Likely Location	No.	Comments
VP Operations (CARH)	SF	1	R.O. Brownell
Superintendent of Operations (CARH)	SF	1	
Chief Transportation Officer (IC&E)	Davpt or Mason City	1	

Superintndnt of Transp., South (IC&E)	Kansas City	1
Superintndnt of Transp., North (IC&E)	Mason City	1
General SLE/Road Foreman(IC&E)	Davenport	1
SLE/Road Foreman, South (IC&E)	Kansas City	1
SLE/Road Foreman, North (IC&E)	Marquette	1
Mgr. Transp. Budget (CARH)	SF	1
Director of Safety & Claims (CARH)	SF	1
Manager of Safety & Claims (IC&E)	Davenport	1
Manager Car Fleet (CARH)	SF	1
Chief Operations Supervisor (CARH)	SF -	1
Asst. Chief Ops. Supervisor (CARH)	SF	4
Ops Supervisor/Dispatcher (CARH) ³	SF	18
Asst. MTO/Trnmstr/Dispatcher (IC&E)	Kansas City	5
MTO/Trainmstr/Asst. Chf. Ops (IC&E)	Kansas City	1
Manager of Customer Service (CARH)	SF	1
Asst. Mgr. of Cust. Serv. (CARH)	SF	1
MTO/Trainmaster (IC&E)	Davenport	1
Asst. MTO/Trainmaster (IC&E)	Davenport	6
MTO/Trainmaster (IC&E)	Mason City	1
MTO/Trainmaster (IC&E)	Marquette	1
MTO/Trainmaster (IC&E)	Savanna	1
MTO/Trainmaster (IC&E)	Ottumwa	1

I'm sure there are mistakes in here, and ways to improve upon it. I hope to hear from you on how we can improve, where we can do things smarter, and what you think generally. Thank you.

Attachment: Health Plan Summary Comparison

³ Operations Supervisor/Dispatcher is a management position on DM&E and a non-management position on MRL. We have not determined how this will be categorized on CARH, but include it here for purposes of this memo.