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October 16, 2002

VIA MESSENGER

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20423-0001



Re: **Finance Docket No. 34177**
Iowa, Chicago & Eastern Railroad Corporation -- Acquisition
and Operation Exemption -- Lines of I&M Rail Link, LLC

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Reply of Iowa, Chicago & Eastern Railroad Corporation to Supplement to Petition of Cooperating Labor Organizations to Revoke Exemption** and the **Motion of Iowa, Chicago & Eastern Railroad Corporation for Leave to Late-File Reply**, both dated October 16, 2002.

One extra copy of the Reply, the Motion and this letter also are enclosed. I would request that you date-stamp those items to show receipt of these filings and return them to me in the provided envelope.

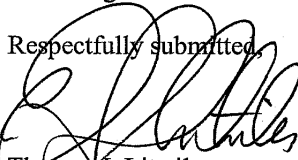
If you have any questions regarding these filings, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

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OCT 16 2002

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Public Record


Thomas J. Litwiler
Attorney for Iowa, Chicago & Eastern
Railroad Corporation

TJL:tl

Enclosures

cc: Parties on Certificate of Service

ORIGINAL

206432

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



**REPLY OF IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
TO SUPPLEMENT TO PETITION OF COOPERATING
LABOR ORGANIZATIONS TO REVOKE EXEMPTION**

ENTERED
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**ATTORNEYS FOR IOWA, CHICAGO &
EASTERN RAILROAD CORPORATION**

Dated: October 16, 2002

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



**REPLY OF IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
TO SUPPLEMENT TO PETITION OF COOPERATING
LABOR ORGANIZATIONS TO REVOKE EXEMPTION**

Iowa, Chicago & Eastern Railroad Corporation ("IC&E") hereby files this reply to the September 26, 2002 supplement to the prior petition to revoke filed herein by the so-called Cooperating Labor Organizations ("CLO").¹ Having found nothing in discovery to support their "alter ego" arguments against IC&E, CLO has simply deposited into the record numerous financing document excerpts to demonstrate what is already an acknowledged and non-consequential fact: that the acquisition and related start-up debt incurred by IC&E in connection with its purchase of the rail assets of I&M Rail Link, LLC ("IMRL") has been guaranteed by Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Cedar American Rail Holdings, Inc. ("Holdings"), IC&E's indirect and direct parents, respectively. CLO's only other "supplemental" evidence is documentation -- some of which CLO had already previously submitted to the Board -- confirming the unremarkable fact that then-common officers of IC&E and DM&E were involved in initial hiring planning on IC&E. Nothing presented by CLO even remotely demonstrates that IC&E is the "alter ego" of DM&E, or reasonably challenges the

¹ CLO consists of the Brotherhood of Locomotive Engineers, Brotherhood of Maintenance of Way Employes, Brotherhood of Railroad Signalmen, International Association of Machinists, International Brotherhood of Electrical Workers and Transportation Communications International Union.

Board's prior conclusion that IC&E is a "separate, real company in its own right, responsible for its own accounts." Decision served July 22, 2002 ("IC&E Stay Decision") at 11. The Board should proceed to deny CLO's petition to revoke IC&E's exemption herein.

BACKGROUND

On June 7, 2002, IC&E filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 to acquire approximately 1400 miles of rail lines and incidental trackage rights from IMRL. On June 13, 2002, CLO filed separate petitions to stay the IC&E/IMRL acquisition transaction and to revoke IC&E's exemption. CLO's petitions were predicated on arguments that 49 U.S.C. § 11323, rather than 49 U.S.C. § 10901, governed IC&E's acquisition of the IMRL assets because: 1) DM&E was the "real party in interest" acquiring "control" of IMRL, citing U.S. v. Marshall Transport, 322 U.S. 21 (1944); and/or 2) IC&E is the "alter ego" of DM&E. The following day, CLO served discovery requests on IC&E, DM&E and Holdings.

After a housekeeping stay, the Board denied CLO's motion to stay and allowed IC&E to consummate the IMRL acquisition transaction. In considering the likelihood of CLO's success on the merits, the Board categorically rejected CLO's Marshall Transport arguments, IC&E Stay Decision at 10-11, and CLO does not pursue that line of argument further here. The Board also determined, based on the information then before it, that IC&E was created for substantial business reasons and had sufficient indicia of independence from DM&E. IC&E Stay Decision at 11 (citing Mountain Laurel Railroad Company -- Acquisition and Operation Exemption -- Consolidated Rail Corporation, Finance Docket No. 31974 (STB served May 15, 1998) ("Mountain Laurel") at 14-17).

On July 2, 2002, IC&E responded to CLO's discovery requests, making available for review by CLO extensive documentation related to IC&E's start-up and operations. On July

16, 2002, CLO filed a motion to compel further discovery responses from IC&E. By decision served September 12, 2002, the Board denied CLO's motion to compel. The Board explained that IC&E had made available numerous documents that would allow CLO to test its alter ego argument and rebut the Board's initial finding that IC&E "was created to insulate DM&E from the financial risk associated with IMRL's rail operations; that it would operate with its own management and with its own locomotives, cars and employees, and that it would be responsible for the risks and financial obligations arising from its operations." Discovery Decision at 3. The Board reiterated that:

[w]hile observing that DME would guarantee certain of IC&E's start-up debt and share with IC&E certain management and operations, IC&E indicated, and *we concurred*, that these arrangements were not unusual between affiliated carriers and did not detract from IC&E's financial and operational independence.

Discovery Decision at 3 (emphasis added). As even a cursory review of CLO's supplemental evidence shows, rather than addressing any of the pertinent "alter ego" subjects identified by the Board, the CLO submission focuses only on start-up debt guarantees and certain shared management functions -- items which the Board has already found do "not detract from IC&E's financial and operational independence."

DISCUSSION

A. Governing Standards

Under 49 U.S.C. § 10502(d), the Board may revoke an exemption when it finds that application of a provision of the Interstate Commerce Act to a transaction is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. The party seeking revocation bears the burden of proof, and must articulate reasonable, specific concerns under the revocation criteria. E.g., Wisconsin Central Ltd. -- Exemption Acquisition and Operation -- Certain Lines

of Soo Line Railroad Company, Finance Docket No. 31102 (ICC served July 28, 1988) at 15, n.17. Where, as here, a petitioner claims that a non-carrier's acquisition of rail lines should be considered under 49 U.S.C. § 11323 rather than 49 U.S.C. § 10901 due to the non-carrier's affiliation with an existing carrier, the Board applies a two-part "alter ego" test to determine: 1) whether the non-carrier subsidiary was created to purchase the lines 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 non-carrier subsidiary was sufficiently independent of its parent or affiliated carriers. Mountain Laurel at 10.

B. Business Purpose

As IC&E has previously explained, avoiding labor protection could not logically have provided any motivation for the creation of IC&E as a new non-carrier to acquire the IMRL assets -- let alone the sole motivation for doing so. If DM&E, rather than IC&E, had acquired the IMRL assets, it would have proceeded under 49 U.S.C. § 10902 and labor protection would not have applied anyway. ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, § 327; see Dakota, Minnesota & Eastern Railroad Corporation -- Acquisition and Operation -- Colony Line Segment of Union Pacific Railroad Company, Finance Docket No. 32864 (STB served April 25, 1996).

Although CLO continues to studiously avoid the subject, it is also the case that employee impacts arising from the IC&E acquisition transaction have been extremely limited. This is thus not a situation where the avoidance of labor protection was desirable in order to allow a widespread displacement of employees. IC&E's President, Robert O. Brownell, outlined in a verified statement submitted before IC&E's start-up the contemplated headcounts, rates of

pay and benefits on IC&E. IC&E Reply to Petitions for Stay, dated June 22, 2002, Brownell V.S. at 10-13. In a supplemental verified statement included herewith at Tab 1 ("Brownell S.V.S."), Mr. Brownell provides IC&E's actual hiring and employment data subsequent to the consummation of the IC&E-IMRL asset transaction. As Mr. Brownell confirms, nearly all interested IMRL employees were offered jobs on IC&E, and in nearly every instance those employees are now working at higher rates of pay with comparable or improved benefits. Brownell S.V.S. at 3-4. Of approximately 528 permanent IMRL rank-and-file employees across all crafts who sought employment with IC&E, IC&E estimates that 34 were not offered positions -- an offer rate of 94%. Brownell S.V.S. at 3. With respect to train and engine employees -- by far the largest craft on IMRL -- IC&E hired 100% of permanent IMRL T&E employees who applied. Brownell S.V.S. at 3.²

In considering the arguments put forth by CLO -- purportedly on behalf of railroad workers -- the Board cannot overlook the fact that the vast majority of IMRL employees have been benefited rather than harmed by the IC&E acquisition transaction. At the very least, avoiding labor protection was plainly not a significant factor in structuring a transaction with such positive labor impacts.

The real reason for forming IC&E as a non-carrier subsidiary to acquire the IMRL assets is -- as the Board has already recognized -- equally clear: to insulate DM&E from the financial risk of operating a system of rail lines which has changed hands four times in the last fifteen years and previously faced serious profitability challenges. IC&E Stay Decision at 11-12. As the Board also is aware, timing issues were critical to a successful closing of the IC&E-IMRL

² Mr. Brownell previously indicated that four interested IMRL T&E employees would not be offered employment with IC&E. IC&E Stay Reply, Brownell V.S. at 10. Ultimately, however, offers were in fact extended to each of these employees as well. Brownell S.V.S. at 3.

Asset Purchase Agreement, and having IC&E acquire the IMRL assets pursuant to the non-carrier class exemption of 49 C.F.R. § 1150.31 (in conjunction with the placement of IC&E's stock in an independent voting trust pending Board authorization of DM&E-IC&E common control) allowed the transaction to close significantly earlier than if DM&E had sought to acquire the IMRL assets by filing an individual exemption petition or application under 49 U.S.C. § 10901. Indeed, completion of the transaction may not have been possible in the absence of the IC&E/non-carrier structure. Such timing considerations are, of course, an additional legitimate business purpose for choosing a particular transactional structure. Mountain Laurel at 10 ("legitimate and substantial business reasons" include "time constraints"); Chesapeake and Albemarle Railroad Company, Inc. -- Lease, Acquisition and Operation Exemption -- Southern Railway Company, Finance Docket No. 31617 (ICC served September 19, 1991) at 3-4, 9, aff'd sub nom. Railway Labor Executives Ass'n v. ICC, 999 F.2d 574 (D.C. Cir. 1993).

CLO does not attempt to challenge any of these facts or otherwise address the first prong of the "alter ego" test. IC&E plainly was formed for substantial and legitimate business purposes and not for the sole purpose of avoiding labor protection.

C. Indicia of Independence

CLO claims that IC&E is the alter ego of DM&E because during the spring of this year Kevin V. Schieffer, DM&E's President, was involved in employment planning and communications for IC&E. CLO Supplement at 3-4, 6; Confidential Exhibits F-K.³ We note that the agency has previously and explicitly found that a non-carrier subsidiary is not the alter ego of its parent simply because the parent took initial steps to hire employees for the new

³ As with its other arguments, there is nothing new in the documentary evidence that CLO submits with its Supplement. Mr. Schieffer's April 12, 2002 memo attached as Confidential Exhibit J was previously submitted as Exhibit 1 to CLO's June 13, 2002 Petition to Revoke.

company or imposed a salary scale on the new company. Staten Island Railroad Corporation -- Exemption from 49 U.S.C. 10901, Finance Docket No. 30629 (ICC served July 18, 1985), aff'd sub nom. Railway Labor Executives Ass'n v. U.S., 791 F.2d 994 (2^d Cir. 1986); Chesapeake & Albemarle, supra, at 8-9.

There is even less of an issue here since, at the time, Mr. Schieffer was not only President of DM&E but of IC&E as well. Brownell S.V.S. at 6-7. As the Board has yet again already recognized, the existence of such common management members is the norm in transactions such as this and does not constitute an absence of required independence. IC&E Stay Decision at 11. What's more, DM&E and IC&E have nothing even approaching an "integrated personnel scheme," as CLO would allege. CLO Supplement at 4, 6. IC&E employees have different rates of pay than comparable crafts on DM&E. IC&E employees have selected certain of their own benefits packages on a departmental basis, without regard to the benefits packages in place on DM&E. DM&E's employees are partially unionized, while IC&E's employees currently are not. IMRL T&E employees were previously represented by the Brotherhood of Locomotive Engineers, while DM&E T&E employees are represented by the United Transportation Union. Seniority rosters for IC&E and DM&E employees are not consolidated or integrated.⁴ The interviewing and hiring of IC&E employees was conducted by IC&E managers and officers. Brownell S.V.S. at 4-5, 6. IC&E has its own independent work force and its own distinct personnel scheme.

⁴ As has been previously discussed both in this proceeding and in the related control proceeding in Finance Docket No. 34178, Holdings is providing train and crew dispatching services to IC&E and DM&E on a contractual basis, and has a single roster of employees that perform those services. Brownell S.V.S. at 5; cf. CLO Confidential Exhibit L. In most instances, the individuals who previously performed these functions for IMRL were employees of Montana Rail Link in Missoula, Montana (an IMRL affiliate) rather than IMRL itself.

The sole "bridge" between IC&E and DM&E employees is a proposed "Employee Advocate" who would be a Holdings management employee selected by employee representatives on both IC&E and DM&E. This is a new concept, which is still in the process of being finalized and implemented. Brownell S.V.S. at 5-6. While the Employee Advocate would work with employees of both IC&E and DM&E, the position would not effectuate any integration of the two work forces or otherwise effect the different employment and personnel arrangements currently in place at IC&E and DM&E. Indeed, the Employee Advocate must be separately approved by IC&E's employee representatives, on the one hand, and DM&E's employees on the other -- reinforcing rather than diminishing the distinct and independent nature of the workforces on IC&E and DM&E. Brownell S.V.S. at 5.

As the Board is aware and Mr. Brownell reiterates in his attached statement, the other indicia of operational independence are similarly overwhelming in nature. IC&E conducts its own operations and holds out to provide common carrier rail service in its own name, with its own employees, locomotives (owned and leased) and railcar fleet. It publishes its own tariffs and enters into its own transportation and other contracts. It has its own independent management, a workforce of 570 employees, and its own locomotive and car repair facilities. After common control with DM&E, IC&E will continue to have its own local operating management (numbering near 50 managers) and to directly handle its own transportation, mechanical and engineering functions. Brownell S.V.S. at 1-3. IC&E will connect with DM&E at a single location, and the operations of the two carriers, while coordinated, will not significantly overlap.

Rail labor has previously complained that the Board does not accord sufficient weight to operational independence considerations in conducting its "alter ego" analysis.

Mountain Laurel at 10-13. In this case, it is difficult to conceive what additional operational indicia of independence could reasonably exist with respect to two commonly-controlled, connecting rail carriers. Even under rail labor's preferred interpretation of the alter ego test, there can be no basis to find that IC&E is not a *bona fide* non-carrier for purposes of invoking 49 U.S.C. § 10901.

Finally, CLO claims that IC&E does not have sufficient financial independence from DM&E due to certain loan guarantees, equity contributions and cross-collateralizations of debt undertaken in connection with the financing of IC&E's acquisition of the IMRL assets. CLO Supplement at 2-3, 5-6; Confidential Exhibits A-E. CLO's arguments simply ignore fifteen years of well-established and binding precedent on this subject. CLO complains that DM&E has guaranteed debt incurred by IC&E to acquire the IMRL assets, and that by making equity contributions to IC&E "DM&E is the *de facto* revenue source for the IC&E acquisition of IMRL." CLO Supplement at 3. Yet as the Board knows well, such arrangements are common, reasonable, and completely unpersuasive in supporting an alter ego argument:

In numerous cases, the ICC stated that the parents and affiliates of acquiring noncarrier subsidiaries can offer financial support without compromising their financial independence. Indeed, the ICC found that it was "customary" for parents to supply money for start-up expenses and initial capital as well as specific loan guarantees.

Mountain Laurel at 14 (citing Willamette & Pacific Railroad, Inc. -- Lease and Operation Exemption -- Southern Pacific Transportation Company, Finance Docket No. 32245 (ICC served September 7, 1995) at 9). See also, e.g., South Kansas and Oklahoma Railroad, Inc. -- Acquisition and Operation Exemption -- The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 31802 (Sub-No. 1) (ICC served November 27, 1992) at 5 ("We have

consistently held that loan guarantees and equity contributions by a parent company to a subsidiary do not render the subsidiary the alter ego of the parent.").

In an early and seminal "alter ego" proceeding, the ICC found that a parent's equity contribution of \$14 million and loan guarantee of \$47 million to its non-carrier subsidiary for the acquisition of rail lines did not make the subsidiary the alter ego of the parent. FRVR Corporation -- Acquisition and Operation Exemption -- Chicago and North Western Transportation Company, Finance Docket No. 31205 (ICC served February 28, 1989) at 7-8, aff'd sub nom. Railway Labor Executives Ass'n v. ICC, 914 F.2d 276 (D.C. Cir. 1990), cert. denied, 499 U.S. 959 (1991). The situation is no different here.

CLO attempts to argue that, because the IC&E debt guaranteed by DM&E includes a revolving credit facility, the DM&E guarantee extends beyond permissible "start-up" financing and makes IC&E the alter ego of DM&E. CLO Supplement at 5-6. As is explained in the verified statement of Kurt V. Feaster, DM&E's Vice President of Finance and Chief Financial Officer, attached hereto at Tab 2 ("Feaster V.S."), however, the revolving credit facility was utilized by IC&E to fund a portion of the IMRL acquisition price and provide initial working capital and is a common and important element of a new company's start-up of operations. Feaster V.S. at 6. Furthermore, even where specific, affiliate-guaranteed debt has been utilized for post-closing expenses, the Board has declined to find that the parent and subsidiary are financially dependent. Mountain Laurel at 14-15 (guaranteed loan that extended beyond start-up expenses to cover track rehabilitation did not make non-carrier the alter ego of its affiliate).

Nor does the contingent IC&E guarantee of defined DM&E debt obligations incurred in connection with the acquisition financing affect the alter ego analysis of IC&E and DM&E. The presence of such limited "upstream" guarantees does not detract from the financial

independence of the non-carrier subsidiary. Mountain Laurel at 4, n.8, 14 (non-carrier had sufficient financial independence from carrier affiliate notwithstanding non-carrier's guarantee of bank loan to carrier affiliate). Indeed, in Mountain Laurel the fact that the banks had sought the non-carrier's guarantee was taken as evidence that the non-carrier "was regarded as a separate substantive entity." Id. at 6. As noted by Mr. Feaster, the IC&E cross-collateralization of DM&E debt -- which will not become effective unless and until the common control of DM&E and IC&E is authorized and consummated -- is not uncommon in the parent-subsidary relationship and was necessary in order to obtain the financing that IC&E utilized to acquire the IMRL assets. Feaster V.S. at 6-8. IC&E's contingent guarantee extends only to the specific obligations of DM&E under the recent financing transaction, and IC&E is in no way responsible, now or in the future, for any other obligations, liabilities, debts or expenses of DM&E.

The inverse of this is, of course, true as well: beyond its equity contributions and guarantee of IC&E's start-up financing, DM&E bears no financial responsibility for the on-going service, losses, risks, liabilities or obligations associated with IC&E's operations of its rail system. IC&E is solely responsible for the performance of its common carrier, contractual and other obligations. It is solely responsible for its own accounts, including among other things the payment of the wages and benefits of its employees, lease payments on its cars and locomotives, the cost of materials and supplies including fuel, the payment of trackage rights and other railroad joint facility fees, office rent, real estate taxes, utility bills and car hire expenses. Brownell S.V.S. at 1-2; Feaster V.S. at 5-6, 9. DM&E does not guarantee or otherwise assure any of these IC&E obligations or payments.

Mr. Feaster describes in detail the particular structure and operation of the financing arrangements entered into in conjunction with the IC&E acquisition transaction.

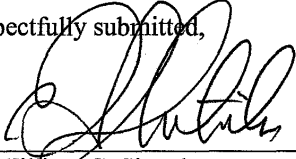
Feaster V.S. at 2-4, 5-9. Ultimately, DM&E's risk with respect to IC&E is limited to DM&E's initial "investment" in IC&E, i.e., the amount of DM&E's equity contribution and loan guarantee provided in connection with IC&E's start-up. Feaster V.S. at 6. Beyond that, IC&E is solely responsible for its own operations and any resulting profits or losses. DM&E has not and will not subsidize IC&E's on-going operations, and will not share in the financial risks associated with those operations -- which, given the recent history of the IC&E rail lines, are formidable. Under undisputed, controlling Board precedent, these factors conclusively demonstrate that IC&E has sufficient indicia of financial independence from DM&E and is properly considered a non-carrier under 49 U.S.C. § 10901 in this proceeding.

CONCLUSION

At best, CLO is simply going through the motions in this proceeding, responding to an impulse to oppose any Section 10901 acquisition undertaken by a non-carrier affiliated with an existing rail carrier. The fact that this transaction has primarily benefited rather than harmed IMRL employees; that the risk insulation considerations in forming a new non-carrier subsidiary have seldom been more manifest or compelling than here; that IC&E will operate essentially as a stand-alone carrier with a range of "indicia of independence" not exceeded in any recent proceedings -- none of these seem to matter to rail labor. Their supplemental arguments here are simply a rehash of issues already addressed in the initial stages of this proceeding or in long-standing agency precedent. CLO has made no credible showing that IC&E should be considered the "alter ego" of DM&E, and CLO's attempt to transform this *bona fide* non-carrier acquisition under 49 U.S.C. § 10901 into a transaction under 49 U.S.C. § 11323 should be rejected.

WHEREFORE, IC&E respectfully requests that the Board deny the petition to
revoke of the Cooperating Labor Organizations.

Respectfully submitted,

By: 

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**ATTORNEYS FOR IOWA, CHICAGO &
EASTERN RAILROAD CORPORATION**

Dated: October 16, 2002

**SUPPLEMENTAL VERIFIED STATEMENT
OF
ROBERT O. BROWNELL**

My name is Robert O. Brownell. I am President of Iowa, Chicago & Eastern Railroad Corporation ("IC&E"). I previously submitted a verified statement in this proceeding as part of IC&E's Reply to Petitions for Stay, dated June 22, 2002.

The purpose of this statement is to address the unfounded allegations of the Cooperating Labor Organizations ("the labor unions") in their Supplement to Petition to Revoke Exemption, dated September 26, 2002, that IC&E is not sufficiently independent of the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") operationally and managerially to allow use of the Board's non-carrier acquisition class exemption. As discussed below, the facts do not support the labor unions' claim.

What I said in my earlier statement regarding the operational and financial independence of IC&E remains true today. IC&E operates its own trains, with its own locomotives, cars and employees. It operates with its own management (discussed further below). It holds out to provide service in its own name. It negotiates and signs contracts in its own name. It "publishes" its own rates. It is shown in the routing in its own name. It has its own locomotive and car repair facilities. It is solely responsible for bearing the costs and expenses of its own operations, such as paying the wages of 570 IC&E employees, making lease payments on over 3,300 cars and 64 locomotives, paying the cost of materials and supplies including track materials and fuel used in its operations, and paying trackage rights, haulage, detour and other railroad joint facility fees, office rent, real estate taxes, utility bills and car hire expenses. DM&E neither bears nor guarantees any of these costs and expenses.

DM&E has provided certain financing for the acquisition transaction and has guaranteed certain acquisition and start-up debt of IC&E. As part of the overall financing package required by the lenders, and once common control has been approved, IC&E will guarantee certain financial obligations of DM&E relating to the acquisition. But IC&E remains solely responsible for the costs, expenses and economic risks associated with its own operations.

Contrary to the labor unions' claim, IC&E and DM&E do not share the same management. Below is a list of the senior management of IC&E:

Robert O. Brownell, President
Richard D. Awe, Chief Operating Officer
John C. Brooks, General Manager Marketing and Sales
Keith Beckel, Chief Transportation Officer
Clyde Mittleider, Superintendent - North
Greg Maass, Superintendent - South
Steven O. Scharnweber, Vice President Engineering
Dean Holloway, Director of Maintenance
Daniel L. Goodwin, Chief Mechanical Officer
Mack Hailey, General Superintendent Mechanical

None currently holds any position with DM&E or Cedar American Rail Holdings, Inc. ("Holdings"), the parent of IC&E and wholly-owned subsidiary of DM&E.

The Chief Operating Officer, the Chief Marketing Officer, the Chief Transportation Officer, the Superintendent - South and the Director of Maintenance for IC&E are all former IMRL employees. The General Superintendent Mechanical is a former Burlington Northern and TTX employee. None of these gentlemen has ever had any affiliation with DM&E or Holdings.

As a former Union Pacific operating officer, I was hired one month after the transaction was announced to oversee planning for and operation of IC&E. While IC&E was in the formation stages, and before it began active recruitment efforts, I briefly served as Vice President - Operations of DM&E. I resigned that position as my duties as President of IC&E

became full time. Since that time, I have held no position and have had no affiliation with DM&E or Holdings. The Vice President Engineering and the Chief Mechanical Officer for IC&E formerly held similar positions with DM&E, but resigned those positions prior to closing and now work full time for IC&E. The Superintendent - North for IC&E was formerly a Manager - Train Operations for DM&E. However, he resigned that position with DM&E before the closing. In addition, virtually all of the middle management of IC&E, including the entire marketing department, consist of former IMRL employees. After common control with DM&E, IC&E and DM&E will have a limited number of common upper management officers, but IC&E will continue to have its own local operating management (numbering nearly 50 managers) and will continue to directly handle its own transportation, mechanical and engineering functions.

Let me also reconfirm what I told the Board previously regarding the transaction's lack of adverse impact on employment. Of approximately 528 permanent IMRL rank-and-file employees across all crafts who sought employment with IC&E, I estimate that only 34 were not offered positions -- an offer rate of 94%. With respect to train and engine employees -- by far the largest craft on IMRL -- IC&E hired 100% of permanent IMRL T&E employees who applied. (While I indicated in my previous statement that IC&E did not expect to offer employment to 4 interested IMRL T&E employees, ultimately offers were extended to each of them.)

Moreover, most former IMRL employees received a raise for the first time in many years when they hired on with IC&E. In the Mechanical Department, IMRL pay rates ranged from \$10.53 to \$13.02 per hour. On IC&E, they range from \$11.25 to \$17.25 per hour. In the Engineering Department, IMRL pay rates ranged from \$10.97 to \$16.10 per hour. On IC&E, they range from \$13.00 to \$18.50 per hour. In the T&E area, IMRL pay rates for

engineers were \$137.67 to \$217.00 (daily trip rate) and for switchmen/assistant engineers were \$119.35 to \$202.00 (daily trip rate). In comparison, IC&E pay rates for engineers are \$150.00 to \$229.00 (daily trip rate) and for switchmen/assistant engineers \$130.00 to \$214.00 (daily trip rate). Moreover, IC&E rates have provision for overtime after 8-10 hours, whereas only the very lowest rates on IMRL had a provision for overtime. The IMRL rate of pay for customer service clerks was \$11.42 per hour. The IC&E rate of pay for customer service clerks is \$13.67 per hour.

With respect to benefits, IC&E gave all IC&E employees (all hourly and salaried employees who accepted positions) the right to vote on which of three health care plans they would like the company to have. Former IMRL employees were also given a choice on how to handle vacation time accrued in IMRL's service and were allowed to retain their seniority for both vacation and job preservation purposes. IMRL employees required to relocate received an allowance for moving expenses. Any notion that IC&E was formed for the purpose of avoiding labor protection or to reduce employee wages or benefits is nonsense.

Moreover, the labor unions' claim of the existence of an "integrated personnel scheme" on DM&E/IC&E is simply not true. IC&E and DM&E are not the same company. Rates of pay are not the same. Craft descriptions are not the same. Unionized/non-unionized status of crafts on IC&E and DM&E are not the same (nor are they likely to be in the future). IMRL T&E employees were previously represented by the Brotherhood of Locomotive Engineers, while DM&E T&E employees are represented by the United Transportation Union. While employees on each railroad can make group decisions (such as on adopting a health care plan), they make them separately, not on a combined basis. Labor relations/human resources on IC&E are handled by an IC&E manager, while those on DM&E are handled by a DM&E

manager. All interviews and hiring decisions on IC&E are handled by me or other IC&E managers. There are no consolidated or integrated seniority rosters for DM&E and IC&E employees.

The documents attached by the labor unions to their petition pertaining to dispatching and crew management functions do not show otherwise. As IC&E advised the Board in connection with obtaining informal approval of the proposed voting trust agreement, IC&E contracts with Holdings to provide dispatching and crew management services. Holdings also provides dispatching and crew management services to DM&E. The employees performing dispatching and crew management services for IC&E are all employees of Holdings. The dispatchers have a dovetailed seniority roster with prior rights, and the crew management employees have a dovetailed seniority roster without prior rights. But none are employees of IC&E or DM&E. IMRL's lines had been dispatched from Missoula, Montana by IMRL affiliates Montana Rail Link/The Washington Group. Prior to the transaction with IC&E, Montana Rail Link notified IMRL that it wished to terminate its dispatching of IMRL's lines. Accordingly, IC&E elected to contract with Holdings to provide dispatching and crew management services to IC&E.

Similarly, the innovative Employee Advocate position hardly constitutes proof of "an integrated personnel scheme" on the two railroads. Under the concept, a Holdings management employee will be selected and approved by an Employee Committee of DM&E employees and separately by an Employee Committee of IC&E employees. While the Employee Advocate would work with employees of both IC&E and DM&E, the position would not effectuate any integration of the two work forces or otherwise affect the different employment and personnel arrangements currently in place at IC&E and DM&E. Recently, the two

Committees met to create a list of candidates to be interviewed for the position. Once selected, the Employee Advocate will report to both of the Committees, not to any officers of DM&E or IC&E. Although IC&E will absorb the cost of the position in the first instance, IC&E intends to bill DM&E for its share of that cost. The existence of the shared Employee Advocate position is not indicative of an "integrated personnel scheme."

Finally, I would like to address the labor unions' claim that in the period prior to closing, certain present and former DM&E managers "coordinated the integration of virtually every operational and labor relations aspect of DM&E, Holdings and IC&E." This is simply not true. At the time that the APA with IMRL was signed in early February, 2002 and planning for operations began in earnest, IC&E was not an operating company. It had no assets, no managers and no employees. Its three officers were the same officers as when the company was formed in 2001. Consequently, the company necessarily had to rely on key DM&E managers to move the planning process forward until IC&E managers were in place and could take over the task.

When I became President of IC&E in May of 2002, I assumed overall responsibility for the hiring and planning process on IC&E. Additional managers and staff were hired to assist in the process. As I discussed in my previous verified statement, I personally participated in 59 department and "town hall" meetings with IMRL employees. My staff officers at IC&E and I personally conducted over 350 individual interviews with IMRL transportation department employees alone. All hiring decisions were made by me or another IC&E officer, not by DM&E.

Until I became President, Kevin Schieffer, the President of DM&E, also served as President of IC&E and remained Chairman of IC&E until just prior to closing when he resigned that position. Throughout the phase leading up to the closing, he was an officer of IC&E and his

involvement in the process was entirely appropriate. Similarly, it was entirely proper and appropriate that Mr. Scharnweber and Mr. Goodwin who were later named to senior management positions with IC&E participated in the early phases of planning, including recruiting and hiring in the departments they currently head at IC&E today.

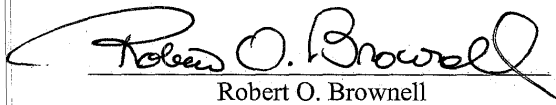
Regardless, it is clear that even during the pre-closing planning period, the two companies were being managed as two companies. That the two companies today have different rates of pay and benefit plans, different craft descriptions and different craft policies is proof of that fact.

IC&E is not the alter ego of DM&E. The labor unions' petition to revoke should be denied.

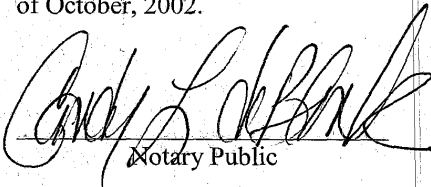
VERIFICATION

State of Iowa)
)
County of Scott) SS:

Robert O. Brownell, being duly sworn, deposes and says that he is President of Iowa, Chicago & Eastern Railroad Corporation, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.


Robert O. Brownell

SUBSCRIBED AND SWORN TO
before me this 15th day
of October, 2002.


Notary Public

My Commission expires:

My Commission Expires: March 10, 2007

**VERIFIED STATEMENT
OF
KURT V. FEASTER**

My name is Kurt V. Feaster. I am Vice President - Finance and Chief Financial Officer for Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"). I joined DM&E as Chief Financial Officer in 1992 and assumed my present position in 1996. Before joining DM&E, I was Vice President - Finance and Chief Financial Officer for the Wheeling & Lake Erie Railway Company (1990-1992) and Chief Financial Officer for Montana Rail Link (1987-1990). From 1985 to 1987, I was Deputy Director of the Railroad Accounting Principles Board. Prior to that, I served in various financial and accounting positions with the Soo Line Railroad Company, the Bessemer and Lake Erie Railroad Company, the Duluth, Missabe and Iron Range Railway Company and the Elgin, Joliet and Eastern Railway Company. I am a Certified Public Accountant and hold a Bachelor of Science degree in business administration from Illinois State University and an MBA from the University of Illinois.

I am familiar with the financing arrangements put in place to fund the acquisition of the assets of I&M Rail Link, LLC ("IMRL") by Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), having participated in the negotiations on the financing package leading up to the closing of the acquisition transaction on July 29, 2002.

The purpose of my statement is to respond to the assertions of the Cooperating Labor Organizations ("the labor unions") in their Supplement to Petition to Revoke Exemption, dated September 26, 2002, pertaining to the financing of IC&E's acquisition of the assets of IMRL. As discussed below, the labor unions have misunderstood or misinterpreted the nature and scope of the financing arrangements and the obligations of IC&E, DM&E and IC&E's parent Cedar American Rail Holdings, Inc. ("Holdings") thereunder. As IC&E previously advised the

Board, DM&E provided certain funds to IC&E for the acquisition transaction and agreed to guarantee certain acquisition and start-up debt of IC&E. But IC&E remains solely responsible for its day-to-day business and financial obligations, and is not the "alter ego" of DM&E.

Just prior to the closing of IC&E's acquisition of the assets of IMRL, IC&E, DM&E and Holdings entered into three separate but related financing transactions:

(1) The "Credit Agreement," dated July 26, 2002, under which (i) IC&E obtained a term loan and a revolving loan facility secured by the value of the assets to be acquired by IC&E from IMRL and by IC&E's accounts receivable and materials and inventory; and (ii) DM&E obtained from the same lenders a revolving loan facility, secured by DM&E's assets, accounts receivable and materials and inventory.

(2) The "Subordinated Debt Agreement," dated July 26, 2002, under which DM&E obtained an unsecured term loan; and

(3) The "Series D Preferred Stock and Warrant Financing," dated July 26, 2002, under which DM&E obtained certain equity financing.

As part of the Series D Preferred Stock and Warrant Financing, DM&E entered into a Securities Purchase Agreement, dated July 26, 2002, pursuant to which DM&E sold approximately 280,000 shares of Series D Preferred Stock and Warrants to Purchase Shares of Common Stock. In connection with the Credit Agreement, DM&E, IC&E and Holdings also entered into a Pledge and Security Agreement, dated July 26, 2002, under which each party to the Credit Agreement pledges the assets of that party as collateral security for the repayment of that party's obligations under the Credit Agreement.

Under these financing arrangements:

- (i) the proceeds from IC&E's term loan under the Credit Agreement were applied by IC&E toward payment of the purchase price for the IMRL assets and related fees and expenses;
- (ii) the proceeds at closing from IC&E's revolving loan facility under the Credit Agreement were applied by IC&E toward payment of the purchase price for the IMRL assets and related fees and expenses, and for IC&E working capital and general corporate purposes;
- (iii) the proceeds at closing from DM&E's revolving loan facility under the Credit Agreement were used by DM&E for working capital and general corporate purposes;
- (iv) the proceeds from DM&E's unsecured loan under the Subordinated Debt Agreement were used by DM&E to help fund the IC&E acquisition of IMRL's assets and related fees and expenses, to provide an unsecured loan to IC&E to be used for IC&E's working capital and payment of certain closing costs and related fees and expenses in connection with the acquisition, and to repay existing DM&E debt obligations; and
- (v) the proceeds from DM&E's sale of preferred stock and warrants were used by DM&E to make an equity investment in IC&E through Holdings to help fund the IC&E acquisition of IMRL's assets and related fees and expenses, to repay existing DM&E debt obligations and to pre-fund certain capital expenditures of DM&E.

At the insistence of the lenders, these financing arrangements were negotiated simultaneously as part of an overall financing package. We were told that this was necessary to arrange financing for the acquisition transaction.

The labor unions claim that these arrangements and certain provisions of the Asset Purchase Agreement ("APA"), dated February 4, 2002, between IC&E and IMRL demonstrate that IC&E is not sufficiently independent of DM&E for IC&E to qualify for the Board's non-carrier acquisition class exemption. They're wrong.

The Asset Purchase Agreement

The labor unions assert that a provision in the APA that established a "Buyer's Initial Escrow Deposit Note" and a "Buyer's Secondary Escrow Deposit Note," both of which were guaranteed by DM&E, shows a lack of sufficient financial independence by IC&E from DM&E. The labor unions have misunderstood the scope and purpose of these notes.

In the APA, each party agreed to pay the other a fee -- commonly referred to as a "break-up fee" -- if the transaction failed to close as a result of the non-performance of the first party under the APA. The obligation to pay the break-up fee was secured by the placement of certain notes and cash into escrow accounts. Due to the fact that, from the time the APA was initially executed in early February, 2002 to the closing in late July, 2002, IC&E (as a newly-formed non-carrier entity) had only limited assets with which to secure its obligation, IMRL requested and DM&E agreed to guarantee IC&E's obligation to fund the escrow accounts. In other words, DM&E guaranteed IC&E's payment of the break-up fee should IC&E incur it. This is a common arrangement in the formation and start-up of a new corporate subsidiary. Of course, the transaction did close, no break-up fee was incurred by IC&E and the notes and cash

in the escrow accounts were released back to the parties at the closing. DM&E's guarantee with respect to the escrow deposit notes terminated at the same time.

The Credit Agreement

As discussed above, IC&E and DM&E are both signatories to the Credit Agreement. However, the labor unions do not mention that the Credit Agreement provides for separate secured borrowings by DM&E and IC&E from the same lenders. Under the Credit Agreement, IC&E obtained a term loan secured by the assets it would acquire from IMRL. IC&E also obtained a revolving loan secured by IC&E's accounts receivable and inventory and materials, and DM&E separately obtained a revolving loan secured by DM&E's accounts receivable and materials and inventory. The respective revolving loans to DM&E and IC&E under the Credit Agreement are for different amounts, with different repayment obligations and are secured by entirely different assets. Although each borrowing is subject to certain common covenants, each has covenants (such as the need to maintain specified financial ratios during the term of the borrowing) that apply only to that borrowing. Although theoretically the parties could have covered these separate borrowings in two separate agreements, the lenders advised DM&E and IC&E that it would not be practicable to syndicate the loans if they were handled separately.

The Credit Agreement provides for a guarantee by DM&E and Holdings of IC&E's obligations under the Credit Agreement. The existence of such a guarantee does not and cannot make IC&E the "alter ego" of DM&E as alleged by the labor unions. Such guarantees are not at all unusual in acquisition or start-up financing arrangements for a new subsidiary company, which can face difficulty in obtaining independent financing given the absence of a definitive earnings history. That was certainly the case here with respect to IC&E. Yet DM&E's

guarantee is limited specifically to the liabilities to the lenders that IC&E incurred under the Credit Agreement in connection with IC&E's acquisition of the IMRL assets and start-up of operations. DM&E has not incurred any open-ended liability in connection with those arrangements, or otherwise guaranteed the losses, obligations or liabilities that IC&E may incur as it carries out its on-going operations and conducts business as a rail common carrier. Essentially, the DM&E loan guarantee under the Credit Agreement, along with DM&E's equity investment in IC&E and unsecured loan to IC&E, represent DM&E's limited "investment" in IC&E. With respect to IC&E, DM&E has not incurred and does not face any liability beyond this initial defined investment.

The labor unions attempt to argue that, because "term loans" and "revolving loans" are involved here, DM&E's guarantee of IC&E's loan obligations extends beyond permissible "start-up" debts and expenses. Yet as explained above, the proceeds of IC&E's term loan were used to acquire the IMRL assets, while the proceeds of IC&E's revolving loan were used both to acquire the IMRL assets and to provide IC&E with initial working capital for general corporate purposes. These items are appropriate (and indeed necessary) components of a new company's initial capitalization, and their inclusion as start-up debts incurred by IC&E and guaranteed by DM&E was entirely proper.

I would note that the Pledge and Security Agreement entered into in connection with the Credit Agreement -- and separately cited by the labor unions -- does not itself create any guarantee, but simply secures the guarantees provided for in the Credit Agreement. That document provides no further or independent support for the labor unions' "alter ego" arguments.

As the labor unions briefly note, the Credit Agreement also provides for a future guarantee by IC&E of DM&E's obligations under the Credit Agreement. Such guarantee would

not become effective unless and until common control of IC&E and DM&E is authorized by the Board. Thus, if for any reason common control authority is not obtained, IC&E's guarantee would never become effective. In the post-control context where IC&E has become a wholly-owned indirect subsidiary of DM&E, such cross-collateralizations of debt among parents and subsidiaries are common and reasonable -- especially in connection with a transaction where a smaller company seeks to finance through a subsidiary the acquisition of the assets of a larger one. As with DM&E's guarantee of IC&E's start-up debt, the prospective IC&E guarantee is limited to defined DM&E loan obligations to the lenders -- the proceeds of which, in each instance, were at least partially utilized by DM&E in connection with the IC&E-IMRL acquisition transaction. The lenders in this case advised us that the contingent IC&E guarantee was necessary to obtaining the overall financing for the acquisition transaction. The loan documents do not provide for any contingent IC&E guarantee beyond these initial debt financings. More importantly, IC&E has assumed no obligation or liability for any of the ongoing operations and responsibilities of DM&E.

As we have explained to the Board elsewhere, while Holdings will (assuming favorable Board action in the pending DM&E/IC&E common control case) function as a "holding company" for DM&E and IC&E, it is technically DM&E that will sit atop the corporate chain. Post-control, IC&E will essentially be an asset of DM&E, and it would be difficult to argue in that circumstance that DM&E could not pledge the stock of IC&E as a guarantee for DM&E's debt. Against this backdrop, a more direct IC&E guarantee of certain DM&E debt incurred in connection with the acquisition transaction is a difference more in form than substance. Such a one-time guarantee is not the same as assuming responsibility for the ongoing, day-to-day financial obligations of the other railroad. The current or future existence of

defined, limited cross-collateralization guarantees between parent and subsidiary here does not make IC&E the alter ego of DM&E.

The Securities Purchase Agreement

The labor unions are correct that a portion of the money obtained from the equity financing undertaken pursuant to the Securities Purchase Agreement was used by DM&E to make an equity investment in IC&E. The labor unions are incorrect, however, in their statement that DM&E will also "pre-fund capital expenditures on IC&E" using proceeds from this financing. That is not what the Securities Purchase Agreement says, and DM&E intends to utilize proceeds from the financing to pre-fund certain of its own capital expenditures, mostly relating to DM&E's proposed line extension into the Powder River Basin in Wyoming. DM&E could "pre-fund" IC&E capital expenditures only indirectly, by making additional equity investments in IC&E, and could use money from the issuance of preferred stock to do so. But the decision of how to fund any such capital expenditures would be IC&E's alone and would be unrelated to the "use of proceeds" provisions of the Securities Purchase Agreement.

The "Subsidiary Guarantee" provided by Holdings in connection with the Securities Purchase Agreement is no more germane to the labor unions' "alter ego" arguments than the guarantees associated with the Credit Agreement and discussed above. Once again, the equity financing obtained by DM&E from the sale of the preferred stock and warrants, which enabled DM&E to make an equity contribution to IC&E (through Holdings), was part of the overall financing package for the acquisition transaction. Providing such a guarantee was essential to obtaining financing for the acquisition transaction. As with the other limited, start-up "guarantees" included in the financing package, the existence of such a guarantee does not affect

the day-to-day business and financial obligations of DM&E, which DM&E alone remains responsible for.

While the financing arrangements associated with the IMRL acquisition transaction are at times admittedly complex, one fact is exceedingly clear: now that the initial acquisition transaction has closed, it is IC&E that is solely responsible for IC&E's continuing, day-to-day operational, service and financial obligations. The same is unequivocally true for DM&E. The limited guarantee and pledge of assets as collateral were part of an integrated start-up financing package put together to finance IC&E's acquisition of the assets of IMRL and were essential to obtaining financing of that transaction. IC&E is not the alter ego of DM&E. The labor union's petition to revoke the acquisition exemption should be denied.

VERIFICATION

State of South Dakota)
)
County of Minnehaha)

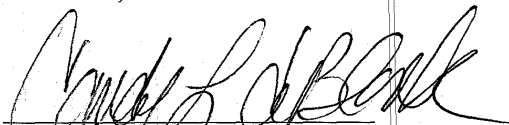
SS:

Kurt V. Feaster, being duly sworn, deposes and says that he is Vice President - Finance of Dakota, Minnesota & Eastern Railroad Corporation, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.



Kurt V. Feaster

SUBSCRIBED AND SWORN TO
before me this 15th day
of October, 2002.


Notary Public

My Commission expires:

My Commission Expires: March 10, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2002, a copy of the foregoing
**Reply of Iowa, Chicago & Eastern Railroad Corporation to Supplement to Petition of
Cooperating Labor Organizations to Revoke Exemption** was served by facsimile and
overnight delivery upon:

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Zwerdling, Paul, Leibig, Kahn & Wolly, P.C.
1025 Connecticut Avenue, N.W.
Suite 712
Washington, DC 20036-5420

William L. Phillips, Esq.
General Counsel
Brotherhood of Railroad Signalmen
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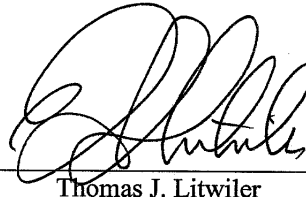
and by first-class mail, postage prepaid, upon:

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Thomas J. Litwiler