

Decided: August 16, 2006.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. E6-13898 Filed 8-21-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34872]

#### **Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Intra-Corporate Family Transaction Exemption—Wyoming Dakota Railroad Properties, Inc.**

Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and its subsidiary, Cedar American Rail Holdings, Inc. (CARH), have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. In a concurrently filed verified notice of exemption in STB Finance Docket No. 34871, Wyoming Dakota Railroad Properties, Inc. (WDR), a newly created subsidiary of CAHR, seeks authority to acquire DM&E's Board issued authority to construct and operate<sup>1</sup> some 280 miles of rail line. The instant notice of exemption will allow DM&E and CARH to continue in control of WDR once the new entity acquires DM&E's construction authority and becomes a rail carrier.<sup>2</sup>

The parties had intended to consummate the transaction on June 20, 2006, the date the authority sought in STB Finance Docket No. 34871 was to become effective. However, in a decision served on June 19, 2006, the effective date of the two exemptions was stayed so that the Board could consider issues raised by various parties filing petitions to revoke/reject the exemption sought in STB Finance Docket No. 34871. The Board, among other things, lifted the stay and denied the petitions to reject/revoke the other exemption in a decision served on August 14, 2006, and effective on August 24, 2006. As a result of that decision, the exemption will become effective on August 24, 2006. The transaction sought in this exemption will be consummated when the transaction sought in STB Finance Docket No. 34871 is consummated.

<sup>1</sup> See *Dakota, MN & Eastern R.—Construction—Powder River Basin*, 3 S.T.B. 847 (1998), 6 S.T.B. 8 (2002), and *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Feb. 15, 2006).

<sup>2</sup> CAHR currently controls a rail carrier, Iowa, Chicago & Eastern Railroad Corporation.

The purpose of the substitution and continuance in control transactions is to create options to facilitate financing of the construction project and to insulate DM&E's shareholders from the risk associated with that project.

This is a transaction within a corporate family of the type exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34872, must be filed with the Surface Transportation Board, 1225 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on William C. Sippel, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: August 15, 2006.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

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Secretary.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34871]

#### **Wyoming Dakota Railroad Properties, Inc.—Acquisition and Operation Exemption—Dakota, Minnesota & Eastern Railroad Corporation**

Wyoming Dakota Railroad Properties, Inc. (WDR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 and 49 CFR 1150.35 to acquire the authority granted to Dakota, Minnesota & Eastern Railroad Corporation (DM&E) to construct and

operate some 280 miles of rail line.<sup>1</sup> Specifically, the lines authorized for construction and operation include: (1) A 262.03-mile rail line extending from a point near Wasta, SD, to connect with 11 coal mines located south of Gillette, WY, in the Powder River Basin; (2) a 13.31-mile rail line in the Mankato, MN area; and (3) a 2.94-mile rail line near Owatonna, MN.<sup>2</sup>

WDR is a newly created subsidiary of Cedar American Rail Holdings, Inc. (CARH), a subsidiary of DM&E.<sup>3</sup> WDR explains that utilizing a separate company from DM&E to build and operate the new rail lines will enhance financing options for the project and create options to limit the risk to DM&E's shareholders. The subsidiary further explains that substituting it for DM&E will not alter the nature, effect, or implementation of the construction project as previously considered and approved by the Board. Moreover, WDRPI claims that it will comply with all environmental conditions and other legal requirements pertaining to the construction.

Pursuant to 49 CFR 1150.35(a), a noncarrier must comply with the notice requirements of 49 CFR 1150.32(e). The Board granted WDR's petition for waiver of these requirements in a decision served on August 14, 2006, and effective on August 24, 2006. In that same decision, the Board denied petitions for revocation of this exemption and lifted a June 19, 2006 housekeeping stay of the effectiveness of the instant exemption and the exemption sought in STB Finance Docket No. 34872. Although the instant exemption will thus be effective on August 24, 2006, WDR expects to commence construction of the subject rail line upon finalization of financing arrangements, and to commence operations on the line during 2009.

<sup>1</sup> See *Dakota, MN & Eastern R.—Construction—Powder River Basin*, 3 S.T.B. 847 (1998), 6 S.T.B. 8 (2002), and *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Feb. 15, 2006).

<sup>2</sup> WDR notes that once constructed, it or another rail carrier in the DM&E corporate family will operate the new lines. It states that in the latter circumstance, the operator will seek separate and appropriate Board authority prior to the commencement of rail service. WDR explains that, should WDR operate on the newly constructed lines, it and DM&E expect to exchange trains and change crews at Middle West Staging and Marshaling Yard at Wall, SD. The Mankato line and Owatonna line would likely be operated by DM&E pursuant to a separate lease or trackage rights arrangement with WDR.

<sup>3</sup> Concurrently, CAHR and DM&E have jointly filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(3) in STB Finance Docket No. 34872 to continue in control of WDR once WDR becomes a rail carrier. CAHR currently controls a Class II rail carrier, Iowa, Chicago & Eastern Railroad Corporation.