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June 28, 2006

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## VIA FEDERAL EXPRESS

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, DC 20006



Re: **Finance Docket No. 34871**  
**Wyoming Dakota Railroad Properties, Inc. -- Acquisition and**  
**Operation Exemption -- Dakota, Minnesota & Eastern Railroad Corp.**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Reply of Wyoming Dakota Railroad Properties, Inc. to Petitions to Revoke of Mayo Clinic Rochester, City of Rochester and Olmsted County, Minnesota**, dated June 28, 2006.

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

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

ENTERED  
Office of Proceedings

JUN 29 2006

Part of  
Public Record

Respectfully submitted,

William C. Sippel  
Attorney for Wyoming Dakota  
Railroad Properties, Inc.

WCS:tjl

Enclosures

cc: Parties on Certificate of Service

ORIGINAL

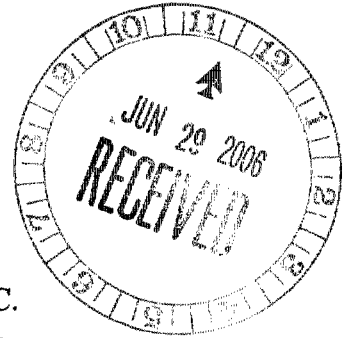
BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 34871

WYOMING DAKOTA RAILROAD PROPERTIES, INC.  
-- ACQUISITION AND OPERATION EXEMPTION --  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

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**REPLY OF WYOMING DAKOTA RAILROAD PROPERTIES, INC.  
TO PETITIONS TO REVOKE OF MAYO CLINIC ROCHESTER,  
CITY OF ROCHESTER AND OLMSTED COUNTY, MINNESOTA**

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**ATTORNEYS FOR WYOMING DAKOTA  
RAILROAD PROPERTIES, INC.**

Dated: June 28, 2006

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 34871

WYOMING DAKOTA RAILROAD PROPERTIES, INC.  
-- ACQUISITION AND OPERATION EXEMPTION --  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

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**REPLY OF WYOMING DAKOTA RAILROAD PROPERTIES, INC.  
TO PETITIONS TO REVOKE OF MAYO CLINIC ROCHESTER,  
CITY OF ROCHESTER AND OLMSTED COUNTY, MINNESOTA**

Pursuant to the Board's decision served on June 19, 2006 in this matter and in Finance Docket No. 34872,<sup>1</sup> Wyoming Dakota Railroad Properties, Inc. ("WDRPI") hereby replies to the petitions to revoke WDRPI's class exemption herein filed by Mayo Clinic Rochester ("Mayo"), the City of Rochester, Minnesota ("Rochester") and Olmsted County, Minnesota ("Olmsted") (collectively, the "Mayo interests").<sup>2</sup> As a practical matter, these three petitions are from a single source -- the self-styled "Rochester Coalition," directed by the interests of the Mayo Clinic. The Mayo interests are long-standing opponents of the proposal to develop a new, competitive rail alternative into the Powder River Basin of northeastern Wyoming (the "PRB Project"), and their poorly disguised goal here is simply to interfere with

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<sup>1</sup> 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. The Board's decision indicated that the two dockets have not been consolidated, and that there has been no challenge to the transaction proposed in Finance Docket No. 34872. A housekeeping stay was entered with respect to Finance Docket No. 34872 solely because of the nature of its relationship with this proceeding. Decision at 1, n.1 and 2, n.4.

<sup>2</sup> The Mayo and Olmsted petitions also purport to seek "rejection" of WDRPI's notice of exemption. Their pleadings, however, are addressed (in substance, if not in name) to arguments for revocation under 49 U.S.C. § 10502(d).

project financing -- which is the primary purpose of WDRPI's creation and its exemption in this proceeding. That exemption makes it more likely, not less, that the PRB Project will be completed, and will improve, not degrade, the financial viability of the project. That, of course, is the real problem for the Mayo interests. None of their contrived arguments have any merit, and their petitions to revoke should be denied.

By decisions in Dakota, MN & Eastern R. -- Construction -- Powder River Basin, 3 S.T.B. 847 (1998) ("PRB I"), 6 S.T.B. 8 (2002) ("PRB II") and Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, Finance Docket No. 33407 (STB served February 15, 2006) ("PRB III") (collectively, "PRB Construction"), the Board gave approval under 49 U.S.C. § 10901 for Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") to construct an extension of its rail line from Wall, South Dakota to the Powder River Basin coal fields and two short segments in Minnesota, a total distance of approximately 280 miles (the "PRB Line").<sup>3</sup> DM&E's proposed PRB Project included an extensive rehabilitation of DM&E's existing rail line between Wall and Winona, Minnesota, without which the PRB Project would be impossible and would not proceed. While the Board found that it had no regulatory jurisdiction over the proposed rehabilitation, it did include the rehabilitation (and related operations) in its environmental review of the PRB Line construction. PRB I, 3 S.T.B. at 862. Ultimately, the Board imposed a variety of environmental conditions with respect to both the PRB Line construction and related rehabilitation. See PRB III at 22-51.

On May 12, 2006, WDRPI filed a notice of intent under 49 C.F.R. § 1150.35(d) to acquire the construction and operation authority granted to DM&E in PRB Construction with

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<sup>3</sup> DM&E is the parent of Cedar American Rail Holdings, Inc. ("CARH"), and WDRPI is a new wholly-owned subsidiary of CARH.

respect to the PRB Line. WDRPI's notice of exemption was filed on May 30, 2006.<sup>4</sup> As noted in the notice of exemption, WDRPI was created to provide investment flexibility as DM&E seeks financing for the PRB Project. WDRPI specifically indicated that its creation and substitution for DM&E as the actual authority holder for construction of the PRB Line "will not change the nature, effect or implementation of the project" or any of the "transportation, traffic, operational or environmental factors considered and addressed by the Board" in PRB Construction. WDRPI Notice of Exemption at 1, 5. And WDRPI specifically acknowledged that it would acquire DM&E's construction authority "subject to all environmental, routing and other conditions" and would "comply fully with all environmental conditions and mitigation measures imposed by the Board . . . ." WDRPI Notice of Exemption at 4, 5.

Simultaneously with the filing of WDRPI's notice of exemption, DM&E and CARH jointly filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(3) in Finance Docket No. 34872 to continue in control of WDRPI once WDRPI acquires the construction and operation authority for the PRB Line and becomes a rail carrier. While the entire WDRPI transaction is essentially an intra-corporate family transaction, DM&E and WDRPI used the two-step approach because of Board precedent indicating that a newly-formed non-carrier's acquisition of an affiliate's existing construction and operation authority was subject to Board jurisdiction under 49 U.S.C. § 10901 and was appropriately submitted under the class exemption at 49 C.F.R. §§ 1150.31, et seq. Tongue River Railroad Company, Inc. -- Acquisition and Operation Exemption -- Tongue River Railroad Company, Finance Docket No. 33644 (STB served November 13, 1998) ("Tongue River") at 3-4.

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<sup>4</sup> By petition filed June 12, 2006, WDRPI sought waiver of the 60-day notice provision of 49 C.F.R. § 1150.32(e) to the extent it applied to the proposed transaction. That petition is pending at the Board.

The Mayo interests now claim that this straightforward intra-corporate transaction somehow raises doubts about whether anyone is responsible for environmental mitigation conditions imposed in PRB Construction with respect to DM&E's existing line and (apparently) whether those conditions will be carried out. These concerns are nonsensical. The Board's conditions are *conditions of construction authority*. They plainly follow the right to construct, and -- regardless of whether the holder of the authority or an affiliate does the work -- the authority holder must demonstrate that the conditions are met or it loses its authority. Thus, while the rehabilitation of DM&E's existing line is non-jurisdictional, the conditions imposed in PRB Construction with respect to that rehabilitation must be met if the PRB Line is to be constructed. Whether that is by WDRPI directly or through its affiliate, the new rail line cannot be built otherwise.

WDRPI, of course, specifically acknowledged this in its notice of exemption. The conditions with respect to DM&E's existing line continue to apply, and the STB retains authority to ensure compliance. If WDRPI could not "get" its affiliate DM&E to fulfill the environmental mitigation conditions on the existing DM&E line, WDRPI would either have to directly satisfy those conditions itself or forego construction of the PRB Line. To state that hypothetical demonstrates its strained premise, but it in fact disposes of the equally strained complaints of the Mayo interests.

Those parties have fixated in their petitions on the language in WDRPI's notice of exemption that "WDRPI will not be involved in the rehabilitation of DM&E's existing east-west main line . . . ." WDRPI Notice of Exemption at 5. Yet that is simply a factual statement indicating that such rehabilitation would be performed by DM&E. Because the rehabilitation of DM&E's existing line is non-jurisdictional, there would be no STB authority to transfer to

WDRPI with respect to that action in any event. The "bifurcation" charge by the Mayo interests is simply a distraction -- unless the Board's extension of its environmental review to DM&E's existing line was somehow meant to deprive DM&E of the availability of financing mechanisms used in other significant line constructions. See Chicago & N.W. Transp. Co. -- Construction, 363 I.C.C. 905, 931-934 (1981) (construction of rail lines in connection with the Powder River Basin project of Chicago & North Western Transportation Company ("CNW") undertaken by new CNW subsidiary Western Railroad Properties, Inc.).

As explained in the attached verified statement of Kurt Feaster, the Senior Vice President Finance and Chief Financial Officer for DM&E and WDRPI, financing for the PRB Project will be structured to provide the necessary funds to the member of the DM&E corporate family doing the work. "DM&E will have available to it all of the funds it needs to rehabilitate its line and implement the environmental conditions related to that line. The same will be true for WDRPI." Feaster V.S. at 3. Given that the PRB Project cannot proceed without both the construction of the new PRB Line (by WDRPI) and the rehabilitation of the existing DM&E east-west line (by DM&E), any other approach would be self-defeating.<sup>5</sup> Feaster V.S. at 3. The fact that WDRPI may facilitate obtaining a portion of the funding needed for the overall project does not change that.

To avoid any further baseless assertions on this subject, DM&E has formally acknowledged in this docket, Finance Docket No. 34872 and the PRB Construction docket that it

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<sup>5</sup> We do not take the Mayo interests' petitions to raise any legitimate argument that DM&E/WDRPI would undertake the PRB Line construction without upgrading DM&E's existing line. DM&E has repeatedly and consistently stated that the construction and rehabilitation are integral components of the same project. So have the Mayo interests. Olmsted Petition to Revoke at 3 ("[T]here is no question that, in order to run coal trains from the PRB through South Dakota and Minnesota, DM&E's existing line requires significant investment and upgrade.").

will remain, after transfer of construction and operation authority for the PRB Line to WDRPI, directly responsible for the environmental and mitigation conditions imposed in PRB Construction with respect to DM&E's existing rail lines. See Exhibit A hereto.

The Mayo interests also try to argue that the creation of WDRPI and the transfer to it of the construction and operation authority for the PRB Line somehow negates or alters the "financial fitness" analysis conducted by the Board in PRB Construction. Yet that analysis necessarily and properly focused on the financial viability of the PRB project itself -- and nothing about the WDRPI transaction affects the viability of the overall project. PRB I, 3 S.T.B. at 866-892; PRB II, 6 S.T.B. at 41-47; Feaster V.S. at 4 ("The total revenue, debt and cash flow are the same under either scenario. No matter how you slice the pie, it still adds up to the same whole pie."). Ironically, if WDRPI has any effect here it would be to reduce the cost of project debt or equity -- thus improving a factor already considered by the Board in making its positive financial fitness determination in the PRB Construction proceeding. PRB I, 3 S.T.B. at 886-888.

Rochester goes so far as to invite the Board to become enmeshed in the intra-corporate division of rates between WDRPI and DM&E on PRB coal movements. Rochester Petition to Revoke at 4. The Board should decline this trite invitation. DM&E and WDRPI will obviously divide revenues in a way that "equitably compensates each family participant for the operating and capital costs it incurs related to the handling of PRB coal over its line and provides it with sufficient net profit to service its debt obligations." Feaster V.S. at 4. The Board need not take DM&E's word for this; as the Board has observed numerous prior times, the financial marketplace will assure that both WDRPI and DM&E will have sufficient cash flow to meet their obligations and service the debt -- or financing will not be forthcoming. Feaster V.S. at 4; PRB I, 3 S.T.B. at 892 ("[T]he ultimate determination of the financial viability of the project will

be made by the financial markets."); PRB II, 6 S.T.B. at 46 ("[W]e know that, if the financial community is not persuaded that this line would attract the levels of traffic needed to justify the investment, this line will not be built, notwithstanding our approval.").

Rochester's unintentionally rhetorical argument makes just this point:

[I]t is clear that the WDRPI divisions must be adequate from the viewpoint of the financing sources. What divisions will be left to DM&E? And will those revenues be adequate to secure the financing necessary for the 60% of total expenditures reflected by the rebuild component of DM&E's original proposal?

Rochester Petition to Revoke at 4. Well, exactly. If DM&E's revenues are not adequate to secure financing for the rehabilitation of DM&E's existing line, then the PRB Project does not go forward -- and the Mayo interests are presumably satisfied.

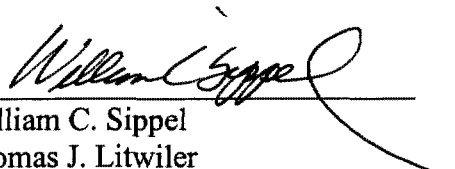
Ultimately, the financial fitness test is meant to protect existing rail shippers and assure that their future rail service is not jeopardized. Mayo and Olmsted are not shippers, and Rochester (whose Rochester Public Utilities division is a receiver of coal) makes no arguments reflecting its status as a shipper. None of DM&E's other shippers have appeared here or believe that WDRPI's creation and role in the PRB Project will adversely affect them. The Mayo interests are free to expropriate the arguments of others as their own, but in so doing they are neither credible nor persuasive.

In revocation proceedings under 49 U.S.C. § 10502(d), the party seeking revocation bears the burden of proof, and must articulate reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and regulation of the transaction is necessary. E.g., I&M Rail Link, LLC -- Acq. & Oper. Exem. -- Canadian Pacific Ry., 2 S.T.B. 167, 174 (1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8<sup>th</sup> Cir. 1998). Here, the Mayo interests have shown no reason why regulation of this transaction is

necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. See Tongue River at 4-5. The creation of WDRPI changes but one thing: the ability of DM&E to obtain favorable financing of the PRB Project. No one is surprised that the Mayo interests don't like that, and that they have once again taken the opportunity to do whatever they can to impede the PRB Project. Their motives are suspect, and their arguments are without merit.

WHEREFORE, WDRPI respectfully requests that the Board deny the petitions to revoke, lift the housekeeping stay entered by the June 19<sup>th</sup> decision in this docket and Finance Docket No. 34872, and allow WDRPI's exemption to become effective.

Respectfully submitted,

By: 

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Thomas J. Litwiler  
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29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEYS FOR WYOMING DAKOTA  
RAILROAD PROPERTIES, INC.**

Dated: June 28, 2006

**FLETCHER & SIPPEL LLC**

ATTORNEYS AT LAW

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June 28, 2006

**VIA FEDERAL EXPRESS**

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

Re: **Finance Docket No. 33407**  
**Dakota, Minnesota & Eastern Railroad Corporation --**  
**Construction Into the Powder River Basin**

**Finance Docket No. 34871**  
**Wyoming Dakota Railroad Properties, Inc. -- Acquisition and**  
**Operation Exemption -- Dakota, Minnesota & Eastern Railroad Corp.**

**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.**

Dear Secretary Williams:

By decisions in Finance Docket No. 33407 at 3 S.T.B. 847 (1998) and 6 S.T.B. 8 (2002) and served February 15, 2006 (collectively, "PRB Construction"), Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") was granted authority under 49 U.S.C. § 10901 to construct and operate approximately 280 miles of rail line from Wall, South Dakota to the Powder River Basin in northeastern Wyoming and in Minnesota (the "PRB Line"). The Board imposed 147 environmental mitigation conditions and an environmental oversight period on DM&E in connection with the grant of construction authority to DM&E. A number of those conditions related to the rehabilitation of DM&E's existing rail line between Wall and Winona, Minnesota, to be undertaken in conjunction with the PRB Line construction.

By notice of exemption in Finance Docket No. 34871, Wyoming Dakota Railroad Properties, Inc. ("WDRPI"), a new, indirect non-carrier subsidiary, seeks to acquire DM&E's construction and operation authority for the PRB Line. By notice of exemption in Finance Docket No. 34872, DM&E and an intermediate holding company seek to continue in control of WDRPI once the latter becomes a rail carrier.

# FLETCHER & SIPPEL LLC

Mr. Vernon A. Williams  
June 28, 2006  
Page 2

Implicit in the acquisition of the PRB Line construction authority by a wholly-owned DM&E subsidiary, over which DM&E simultaneously seeks control, is the understanding that DM&E remains responsible with WDRPI for ensuring that all of the conditions attached to that authority are satisfied. The PRB Line could not be constructed otherwise. The particular conditions relating to DM&E's existing line run with the authority to construct the PRB Line, and must be met regardless of which particular corporate affiliate holds the authority or owns the existing line. Nonetheless, given opposing parties' attempts to create an issue where none exists, DM&E hereby acknowledges and agrees that, upon WDRPI's acquisition of the construction and operation authority for the PRB Line, DM&E will remain responsible for and subject to all environmental mitigation and oversight conditions in Finance Docket No. 33407 to the extent they relate to DM&E's existing rail lines. This includes Condition No. 120 relating to Negotiated Agreements with local communities.

Ten copies of this letter are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope.

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

Respectfully submitted,



William C. Sippel  
Attorney for Dakota, Minnesota & Eastern  
Railroad Corporation

WCS:tjl

Enclosures

**VERIFIED STATEMENT  
OF  
KURT V. FEASTER**

My name is Kurt V. Feaster. I am Senior Vice President Finance and Chief Financial Officer for the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"), its wholly-owned subsidiary Cedar American Rail Holdings, Inc. ("CARH"), and CARH's wholly-owned subsidiaries the Iowa, Chicago & Eastern Railroad Corporation ("IC&E"), and newly-formed Wyoming Dakota Railroad Properties, Inc. ("WDRPI"). I have served as DM&E's Chief Financial Officer for nearly 14 years and assumed my present position in 2002.

I am very familiar with how rail transactions and projects are financed, having handled the negotiation of the financing for IC&E's acquisition of the assets of I&M Rail Link, LLC in 2002, the refinancing of DM&E's senior debt in 1994, the financing of DM&E's acquisition of Union Pacific's Colony Line in 1996, the refinancing of DM&E's and IC&E's long-term debt in 2003, and numerous equipment financings. Currently, I am personally involved in the negotiations to arrange financing for the construction of the new rail line between Wall, South Dakota and the Powder River Basin region of northeastern Wyoming and in Minnesota (the "PRB Line") and for the rehabilitation of DM&E's existing line in order to handle the PRB coal trains (collectively, the "PRB Project").

The purpose of my statement is to answer the questions posed by the STB in its June 19, 2006 Decision in these proceedings and respond to the assertions of the Mayo Clinic Rochester, the City of Rochester, Minnesota and Olmsted County, Minnesota (collectively "the Mayo interests") in their respective petitions to reject/revoke WDRPI's May 26, 2006 Notice of Exemption. In that Notice of Exemption, WDRPI seeks an exemption from the Board for an intra-corporate family transaction in which WDRPI's parent DM&E would transfer its STB

authority to construct and operate the proposed PRB Line to its wholly-owned subsidiary WDRPI.

As discussed below, DM&E will continue to be responsible for implementing the previously imposed environmental mitigation conditions on DM&E's existing line. DM&E will be provided with all of the funds necessary to upgrade its line and implement the environmental conditions applicable to that line. WDRPI will be responsible for constructing the new PRB Line and for implementing the previously imposed environmental mitigation conditions applicable to that Line and will be provided with all of the funds necessary to carry out these tasks.

The suggestion of the Mayo interests that the transfer of construction authority from DM&E to its subsidiary WDRPI might somehow deprive DM&E of the funding needed to carry out the planned rehabilitation of DM&E's line and implement the environmental conditions applicable to that line, or would somehow relieve DM&E of the need to even do the work, is nonsense. Any such suggestion fundamentally misunderstands how financing of the PRB Project will be structured, and ignores the fact that rehabilitation of DM&E's existing line is essential to the entire PRB Project. It also ignores the plain language of the Board's decision in the PRB construction proceeding that the authority can be exercised only if the 147 environmental conditions imposed therein are implemented.

Financing for the PRB Project will be structured so as to provide the necessary funds to the member of the DM&E corporate family that does the work. DM&E will borrow sufficient money and raise sufficient equity to rehabilitate its line and pay for environmental mitigation on that line. It will be able to service any debt it incurs from the net profit it receives from the revenue it earns for transporting PRB coal over its line. WDRPI will borrow sufficient money and raise sufficient equity to construct the new PRB Line and pay for environmental

mitigation on that Line. It will be able to service any debt it incurs from the net profit it receives from the revenue it earns for transporting PRB coal over its line. In other words, the dollars needed to complete each part of the PRB Project including construction, rehabilitation, and environmental mitigation will be available to the member of the corporate family doing the work. Thus, DM&E will have available to it all of the funds it needs to rehabilitate its line and implement the environmental conditions related to that line. The same will be true for WDRPI. It was never our intent, nor did we ever contemplate, that transfer of the DM&E's STB construction authority to WDRPI would in any way deprive DM&E or WDRPI of the funds needed to carry out these tasks.

Any financing plan or other action that would have the effect of denying such funds to DM&E would be self-defeating. As extensively discussed in the DM&E's Application in the PRB Project, DM&E's existing line physically cannot support the handling of PRB coal trains without rehabilitation. Coal originating on WDRPI simply could not move beyond Wall, South Dakota. There would be no purpose in constructing the new PRB Line without the ability to move PRB coal trains over the DM&E east of Wall. DM&E will obtain the financing it needs to carry out the planned rehabilitation of its line and to implement the environmental conditions on that line the same as if WDRPI was not involved.

Moreover, the Board's decision authorizing construction is quite clear that the authority can be exercised only if the conditions imposed by the Board are implemented. Without compliance with the conditions, there is no authority to construct the new line. DM&E would not take any action that would cause a violation of the Board's order, or that would jeopardize its or WDRPI's construction authority. One cannot use another entity to avoid

obligations imposed by the Board. Any such action would deprive both entities of the authority to complete the project.

Just as the proceeds from financing will be available to the member of the corporate family that does the work, each member receiving such funds will be responsible for repayment of any loan obligation it incurs to do the work. Each member will service its debt obligations from the net profits it receives from the revenue it earns for handling the coal over its line. Although it is too early in the process to have worked out the final division of revenue between WDRPI and DM&E for the transportation of WDRPI-originated PRB coal over their respective lines, we plan to divide the revenue in a way that equitably compensates each family participant for the operating and capital costs it incurs related to the handling of PRB coal over its line and provides it with sufficient net profit to service its debt obligations. In other words, the same revenue and net profit and the same amount of debt that DM&E would have earned and incurred if WDRPI was not involved, will be split between the participating members of the same DM&E corporate family. The total revenue, debt and cash flow are the same under either scenario. No matter how you slice the pie, it still adds up to the same whole pie. Ultimately, the financing plan, including the division of revenue, must be acceptable in the financial marketplace. STB intervention is not needed to ensure that DM&E and WDRPI will have adequate cash flow. Lenders will not lend without sufficient cash flow to service the debt.

Although total revenue, debt and cash flow remain the same with or without WDRPI, what WDRPI brings to the financial equation is enhanced financing options and flexibility for the Project. Using a separate company to construct and operate the PRB line creates options to reduce dilution to existing DM&E common shareholders. In fact, WDRPI is modeled on the structure utilized by the Chicago & North Western Railway which formed a

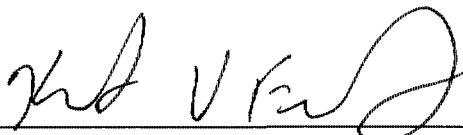
subsidiary Western Railroad Properties, Inc. ("WRPI") to construct its line into the Powder River Basin in the 1980s allowing for limited investment in WRPI by the Union Pacific Railroad. Transfer of DM&E's construction authority to its subsidiary WDRPI offers additional flexibility in financing the PRB Project so that the substantial public benefits of the PRB Project will be realized. And, the responsibility to implement the conditions remains unaffected.

I urge the Board to deny the petitions of the Mayo interests to reject/revoke WDRPI's Notice of Exemption.

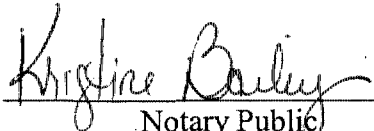
**VERIFICATION**

State of Illinois                    )  
                                          )  
County of Cook                    )       SS:

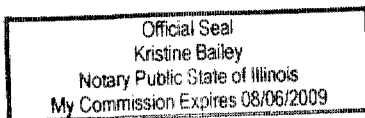
Kurt V. Feaster, being duly sworn, deposes and says that he is Senior Vice President Finance and Chief Financial Officer of Dakota, Minnesota & Eastern Railroad Corporation, Iowa, Chicago & Eastern Railroad Corporation, and Cedar American Rail Holdings, Inc., that he has read the foregoing statement, knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Kurt V. Feaster

SUBSCRIBED AND SWORN TO  
before me this 27 day  
of June, 2006.

  
\_\_\_\_\_  
Notary Public

My Commission expires:



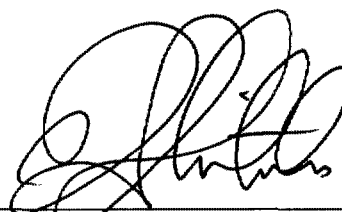
**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of June, 2006, a copy of the foregoing **Reply of Wyoming Dakota Railroad Properties, Inc. to Petitions to Revoke of Mayo Clinic Rochester, City of Rochester and Olmsted County, Minnesota** was served by overnight delivery upon:

Keith G. O'Brien, Esq.  
Rea, Cross & Auchincloss  
1050 Seventeenth Street, N.W.  
Washington, DC 20036

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Washington, DC 20036

Elizabeth H. Schmiesing, Esq.  
Faegre & Benson LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

A handwritten signature in black ink, appearing to read 'T. Litwiler', is written over a horizontal line.

Thomas J. Litwiler