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October 15, 2007

VIA FEDERAL EXPRESS FEE RECEIVED

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

OCT 16 2007

**SURFACE
TRANSPORTATION BOARD**

Re: **Finance Docket No. 35088**
Iowa, Chicago & Eastern Railroad Corporation --
Acquisition Exemption -- Line of BNSF Railway Company

Office of Proceedings
ENTERED
OCT 16 2007
Part of
Public Record

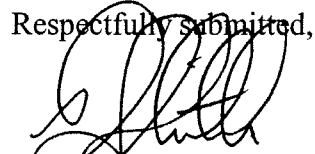
Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition for Exemption of Iowa, Chicago & Eastern Railroad Corporation**, dated October 15, 2007. A check in the amount of \$5,700, representing the appropriate fee for this filing, and a diskette containing the text of the Petition in MS Word 2003 format also are enclosed. Please note that expedited consideration of the Petition is requested.

An extra copy of the Petition and of this transmittal letter are included as well. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



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

TJL:tl

Enclosures

cc: Shippers on Certificate of Service

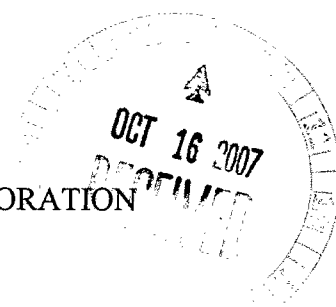
FILED
OCT 16 2007
**SURFACE
TRANSPORTATION BOARD**

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35088

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
-- ACQUISITION EXEMPTION --
LINE OF BNSF RAILWAY COMPANY



PETITION FOR EXEMPTION OF
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

EXPEDITED CONSIDERATION REQUESTED

ENTERED
Office of Proceedings
OCT 13 2007
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FEE RECEIVED

OCT 16 2007

**SURFACE
TRANSPORTATION BOARD**

FILED
OCT 16 2007
SURFACE
TRANSPORTATION BOARD

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

Dated: October 15, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35088

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
-- ACQUISITION EXEMPTION --
LINE OF BNSF RAILWAY COMPANY

**PETITION FOR EXEMPTION OF
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION**

Pursuant to 49 U.S.C. § 10502 and the regulations of the Surface Transportation Board (the "Board") at 49 C.F.R. § 1121, Iowa, Chicago & Eastern Railroad Corporation ("IC&E") submits this petition for an exemption from the prior review and approval requirements of 49 U.S.C. § 10902 for IC&E's acquisition of approximately 18.5 miles of rail line owned by BNSF Railway Company ("BNSF") and extending from near East Moline to near Albany, Illinois (the "Albany Line"). IC&E currently has trackage rights and conducts all rail freight operations on the Albany Line, and the proposed acquisition will simply unify ownership of the line with IC&E's existing operations. There will be no changes in the current operations of IC&E or in rail service to any shipper. As demonstrated further below, exemption of this transaction clearly is warranted under the relevant standards of Section 10502.

IC&E requests expedited consideration of this petition, such that a decision approving the proposed acquisition would be effective on or before December 28, 2007 and allow the parties to consummate the transaction by year-end. A copy of this petition has been served on all active shippers on the Albany Line.

A map showing the Albany Line and other rail lines in the vicinity is attached hereto as Exhibit A. In support of this Petition for Exemption, IC&E submits the following:

I. BACKGROUND

A. Identification of Parties

Petitioner IC&E is a Class II common carrier by rail which owns or operates approximately 1300 route miles of rail line in the states of Iowa, Illinois, Kansas, Missouri, Minnesota and Wisconsin. IC&E's principal routes extend from Chicago, Illinois to Sabula Junction, Iowa, and from there both south through the Quad Cities to Kansas City, Missouri and north to Minneapolis/St. Paul, Minnesota. Significant secondary routes extend across southern Minnesota from Ramsey to Jackson and across northern Iowa from Marquette to Sheldon. Branch lines extend from Davis Junction, Illinois through Rockford, Illinois and Beloit, Wisconsin to Janesville, Wisconsin; from Mason City, Iowa to Comus, Minnesota; from Wells to Minnesota Lake, Minnesota; from Davenport to Eldridge, Iowa; and from Davenport to Albany, Illinois (via trackage rights on BNSF). The latter branch includes the Albany Line which is the subject of the proposed transaction in this docket.

IC&E began operations in July 2002, upon acquisition of the rail lines of I&M Rail Link, LLC. See Iowa, Chicago & Eastern Railroad Corporation -- Acquisition and Operation Exemption -- Lines of I&M Rail Link, LLC, Finance Docket No. 34177 (STB served June 12, 2002 and July 22, 2002), 6 S.T.B. 499 (2003). IC&E is a wholly-owned, indirect subsidiary of Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"), a Class II rail carrier which operates approximately 1100 route miles of rail lines in Minnesota, South Dakota, Wyoming, Nebraska and Iowa. See Dakota, MN & Eastern et al. -- Control -- Iowa, Chicago & Eastern, 6 S.T.B. 511 (2003).¹

¹ Canadian Pacific Railway Company ("CP") recently acquired the stock of DM&E, which was placed in a voting trust pending Board approval of CP control of DM&E and IC&E. Canadian Pacific Railway Company, et al. -- Control -- Dakota, Minnesota & Eastern

The complete name and address of petitioner IC&E is:

Iowa, Chicago & Eastern Railroad Corporation
140 North Phillips Avenue
Sioux Falls, SD 57104
(605) 782-1200

BNSF is a Class I common carrier by rail which owns or operates approximately 32,000 route miles of rail line in 28 states in the central and western United States and in two Canadian provinces.

B. The Subject Rail Line

The Albany Line extends from a connection with another BNSF line at milepost 1.74 near East Moline, Illinois, to the end of track at milepost 20.31 at Ceffco, Illinois, near Albany, a distance of approximately 18.57 miles. The Albany Line historically was part of a through route of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (the "Milwaukee Road") between the Quad Cities and Savanna, Illinois.² The portion of the line between Albany and Savanna was abandoned in the 1970's and early 1980's. Soo Line Railroad Company ("Soo") acquired the remainder of the line in 1985 as part of its broader acquisition of the Milwaukee Road out of bankruptcy.

In 1995, Soo and Burlington Northern Railroad Company ("BN," a predecessor of BNSF) undertook a restructuring of their operations in the Quad Cities area as part of the dissolution of the Davenport, Rock Island & North Western Railway Company ("DRI"), a switching carrier jointly owned by Soo and BN. That restructuring essentially resulted in Soo's ownership of the parties' Quad Cities trackage west of the Mississippi River, and BN's ownership

Railroad Corp., et al., Finance Docket No. 35081, application filed October 5, 2007. IC&E's proposed acquisition of the Albany Line is unrelated to the CP-DM&E transaction, and will proceed independently of that transaction.

² This route was often referred to as the Milwaukee Road's "Nitrin Line."

of all trackage east of the river. As part of the restructuring, BN acquired the Albany Line from Soo. Canadian Pacific Ltd., Canadian Pacific (U.S.) Holdings Inc., Soo Line Corporation and Soo Line Railroad Company -- Control -- Davenport, Rock Island and North Western Railway Company, Finance Docket No. 32579 (ICC served February 10, 1995).³ Soo retained local trackage rights over the Albany Line, as well as trackage rights on BN from a connection with Soo's main line at Davenport, Iowa to East Moline (the "Davenport-East Moline Line") to access the Albany Line. Soo Line Railroad Company -- Trackage Rights Exemption -- Burlington Northern Railroad Company, Finance Docket No. 32579 (ICC served October 24, 1994).⁴

Soo's trackage rights on the Albany Line and the Davenport-East Moline Line were assigned to I&M Rail Link, LLC ("IMRL") when IMRL acquired Soo's rail lines in the area in 1997. See I&M Rail Link, LLC -- Acq. & Oper. Exem. -- Canadian Pacific Ry., 2 S.T.B. 167 (1997) ("IMRL Acquisition"), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998). Those rights were in turn assigned to IC&E when it acquired IMRL's lines in 2002.

In 2006, BNSF and IC&E obtained exemption authority to, respectively, abandon and discontinue service over the outer five miles of the Albany Line, from milepost 20.31 at Ceffco to milepost 25.40 in Albany.⁵ BNSF Railway Company -- Abandonment Exemption -- In

³ Embracing, among other dockets, Finance Docket No. 32579 (Sub-No. 2), Burlington Northern Railroad Company -- Acquisition -- Certain Lines of Soo Line Railroad Company, which covered BN's acquisition of the Albany Line.

⁴ BN acquired the Davenport-East Moline Line (which crosses the Mississippi River on the Crescent Bridge) from DRI as part of the parties' restructuring of their Quad Cities operations. In addition to providing access to the Albany Line, Soo's trackage rights on the Davenport-East Moline Line also allowed Soo to serve local industries on that line.

⁵ The mileposts on the Albany Line were redesignated after the 1994 operational restructuring. Previously, mileposts increased in a southward direction, with milepost 0 at the historic origin of the line in Savanna. Today, milepost 0 is at East Moline, and the mileposts rise as the line extends toward Albany.

Rock Island and Whiteside Counties, IL, Docket No. AB-6 (Sub-No. 435X) (STB served December 27, 2005).⁶

IC&E has provided all rail service on the Albany Line since IC&E's start-up of operations, and it is believed that BNSF had not conducted its own rail operations on the line for several years prior to that. There are four active shippers on the Albany Line, at Cordova and Ceffco, generating approximately 1,800 annual carloads of traffic. IC&E currently provides rail service on the line three days per week, utilizing an IC&E switching job based in East Moline.

C. The Proposed Transaction

Pursuant to a Purchase and Sale Agreement which has been agreed to and currently is being executed by BNSF and IC&E, IC&E proposes to acquire BNSF's ownership interest in the Albany Line. The transaction resulted from BNSF's notice under the existing trackage rights agreement between the parties that BNSF intended to abandon the Albany Line. That notice triggered a right of first refusal for IC&E to acquire the Albany Line, which IC&E has exercised.⁷

No changes in existing rail freight operations and service will result from the proposed transaction. IC&E will continue to provide service to shippers on the Albany Line in

⁶ Embracing Docket No. AB-987X, Iowa, Chicago & Eastern Railroad Corporation -- Discontinuance of Service Exemption -- In Rock Island and Whiteside Counties, IL. Pending resolution of a final environmental condition, BNSF has not consummated its abandonment of the segment, and the Board has extended the consummation date for the abandonment to December 31, 2007. See decision in Docket No. AB-6 (Sub-No. 435X) served December 14, 2006. BNSF anticipates consummating the abandonment by year-end. IC&E consummated its discontinuance authority on the segment on April 12, 2006.

⁷ IC&E's existing trackage rights on the Albany Line will merge into IC&E's ownership of that line once the transaction proposed herein is consummated. See Norfolk and Western Railway Company -- Acquisition Exemption -- Consolidated Rail Corporation, Finance Docket No. 32957 (STB served August 15, 1996) at 1, n.3. IC&E will continue to have trackage rights over BNSF's Davenport-East Moline Line to reach the Albany Line.

the same manner that it does today.⁸ IC&E will now simply be the owner of, rather than a tenant on, a rail line on which IC&E has been the sole service provider for several years. IC&E's ownership of the Albany Line in place of BNSF will help assure that IC&E can continue to provide adequate service to shippers into the future.

II. JURISDICTION AND STATUTORY STANDARDS

Pursuant to 49 U.S.C. § 10902, enacted by the ICC Termination Act of 1995,⁹ a Class II rail carrier may acquire a line of railroad from another carrier if the Board finds that the acquisition is not inconsistent with public convenience and necessity. 49 U.S.C. § 10902(a), (c). Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation under Part A of Subtitle IV of Title 49 of the U.S. Code (including Section 10902) if the Board finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the Interstate Commerce Commission would use its expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with

⁸ Rising traffic levels on the Albany Line may result in an increase in service at some point in the future.

⁹ Pub. L. No. 104-88, 109 Stat. 803 (1995).

the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

An exemption from the requirements of Section 10902 for IC&E's acquisition of the Albany Line would be fully consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application for review and approval under Section 10902, is unnecessary to carry out the rail transportation policy of 49 U.S.C. § 10101. In fact, exemption from such review and approval would further several of the objectives established in the transportation policy. Moreover, the proposed transaction is of limited scope and will not result in any abuse of market power.

III. EXEMPTION CRITERIA

A. Regulation Is Not Necessary to Carry Out the Rail Transportation Policy Of 49 U.S.C. § 10101.

IC&E's acquisition of the Albany Line is wholly consistent with the rail transportation policy outlined in 49 U.S.C. § 10101. The proposed transaction will allow IC&E to assume ownership and full control of a rail line over which it has exclusively provided service for several years, and thus will enhance effective rail management and the long-term stability of IC&E's operations. As such, exemption will promote efficiency, coordination and competition among rail carriers and other transport modes. See 49 U.S.C. §§ 10101(4), (5) and (9). IC&E's acquisition of the Albany Line will assure the preservation of that line, and allow BNSF to redeploy the value of an unused (by BNSF) asset elsewhere. Thus, this transaction also will

promote the continuation of a sound rail system to meet the needs of the public. 49 U.S.C. § 10101(4).

Granting the relief sought herein will advance several other goals enumerated in the rail transportation policy as well. Section 10101 provides that the Board should minimize the need for federal regulatory control over the rail transportation system, reduce the barriers to entry into and exit from the rail transportation industry and provide for the expeditious resolution of all proceedings. 49 U.S.C. §§ 10101(2), (7) and (15). The statutory exemption contained in Section 10502 obviates the need for the expensive and time-consuming processes attendant to a proceeding under Section 10902. By limiting the level of regulatory review of this transaction and by relying upon the adequate and more expeditious exemption procedure, the Board would minimize the burden of unnecessary regulation on this transaction. E.g., Livonia, Avon & Lakeville Railroad Corporation -- Acquisition and Operation Exemption -- Line of Consolidated Rail Corporation, Finance Docket No. 32754 (STB served March 11, 1996) at 4.

B. Regulation Is Not Necessary to Protect Shippers From an Abuse of Market Power

IC&E's acquisition of the Albany Line will have no adverse impact on competition. Rail operations on the Albany Line will not change in any manner. No shipper will lose access to any rail service which it currently receives. Indeed, the proposed transaction will simply "bring the line under the control of the only operator that currently is using it to provide rail service. . . ." Consolidated Rail Corporation -- Control and Operation Exemption -- Clearfield and Mahoning Railway Company, Finance Docket No. 32256 (ICC served December 7, 1995) at 8; see also, e.g., Consolidated Rail Corporation -- Purchase Exemption -- Property of Chicago and Western Indiana Railroad Company in Chicago, IL, Finance Docket No. 31932 (ICC served October 29, 1991) at 2 (no likelihood of market power abuse where transaction

"merely shifts ownership of the line to the rail carrier that has been the physical provider of rail service . . .").

Approval of this transaction will not lessen competition or transportation options for shippers on the Albany Line or for businesses that may locate on the line in the future, particularly given BNSF's expressed intent to abandon its interests in the line. Instead, the proposed acquisition will ensure the continued efficiency of IC&E's service by providing IC&E with a direct ownership interest in a rail line that has been operated solely as part of IC&E's rail system since 2002. Accordingly, the transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

C. The Transaction Is Limited in Scope

Because regulation is not necessary to protect shippers from an abuse of market power, IC&E need not demonstrate that the proposed transaction is of limited scope. 49 U.S.C. § 10502(a)(2); Fort Worth & Western Railroad Company, Inc. -- Lease Exemption -- St. Louis Southwestern Railway Company, Finance Docket No. 32955 (STB served September 5, 1996) at 3. Nevertheless, it is clear that IC&E's acquisition of the Albany Line satisfies this criterion as well. The proposed transaction involves the acquisition of a short, 18-mile rail line in a single state, on which IC&E is already the sole service provider pursuant to trackage rights. There are only four active shippers on the line, and no change in operations will occur. Accordingly, the Board should find that this transaction is of limited scope within the meaning of Section 10502(a)(2)(A).

IV. LABOR PROTECTION

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. The applicable level of labor protection

for this transaction is that specified by 49 U.S.C. § 10902(d) and Wisconsin Central Ltd. -- Acq. Exem. -- Union Pacific R. Co., 2 S.T.B. 218 (1997), rev'd in part sub nom. Association of Amer. Railroads v. STB, 162 F.3d 101 (D.C. Cir. 1998). IC&E's acquisition of the Albany Line from BNSF is not expected to result in the dismissal of any BNSF employees.

IC&E is in the process of posting and serving the 60-day labor notice required by 49 C.F.R. § 1121.4(h), and will certify its compliance with that requirement no later than 60 days prior to December 28, 2007 (the requested effective date for a Board decision in this proceeding).

V. ENVIRONMENTAL ASSESSMENT

A petition for exemption must comply with the Board's environmental reporting requirements, if applicable. 49 C.F.R. § 1121.3(a). Under 49 C.F.R. § 1105.6(c)(2), IC&E's proposed acquisition of the Albany Line is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed acquisition of the Albany Line by IC&E also is exempt from historic preservation reporting requirements. IC&E's acquisition of the line is for the purpose of continuing IC&E's existing rail operations. Further Board approval would be required as a prerequisite to any abandonment or discontinuance of service, and there are no plans in connection with this transaction to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

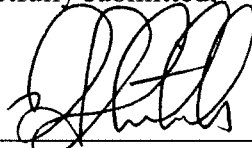
VI. EXPEDITED CONSIDERATION

IC&E requests that the Board expedite its consideration of this petition and issue its decision to be effective on or before December 28, 2007. BNSF and IC&E desire to consummate the transaction by year-end, in accordance with the terms of the Purchase and Sale

Agreement between the parties. IC&E wishes to exercise full control of the Albany Line -- over which it alone operates -- as soon as possible. The transaction will have no effect on existing rail service to shippers, and IC&E has served a copy of this petition on all active shippers on the line. Particularly given that notice and the extremely limited scope of the proposed transaction, expedited consideration will not prejudice any party and is warranted under the circumstances.

WHEREFORE, IC&E respectfully requests that the Board grant an exemption from the provisions of 49 U.S.C. 10902 for IC&E's acquisition of BNSF's line of railroad between East Moline and Ceffco, Illinois, and allow such exemption to become effective on or before December 28, 2007.

Respectfully submitted,

By: 

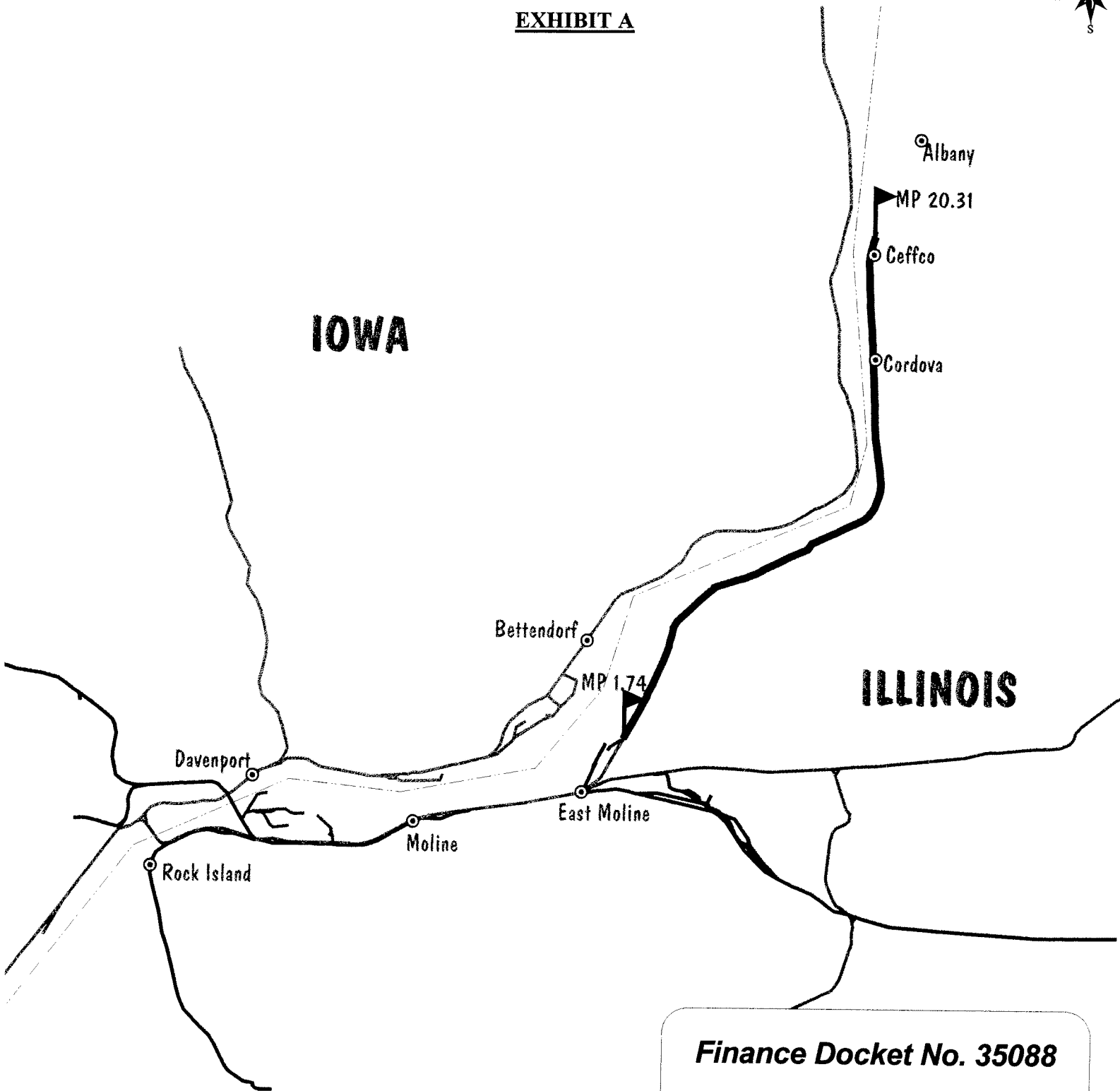
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**ATTORNEYS FOR IOWA, CHICAGO &
EASTERN RAILROAD CORPORATION**

Dated: October 15, 2007



EXHIBIT A



VERIFICATION

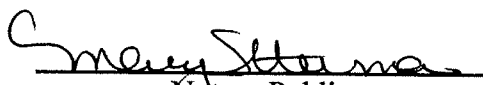
State of South Dakota)
)
County of Minnehaha) SS:

Lynn A. Anderson, being duly sworn, deposes and says that he is Senior Vice President - Marketing of Iowa, Chicago & Eastern Railroad Corporation, that he has read the foregoing Petition for Exemption and knows the facts asserted therein, and that the same are true as stated.



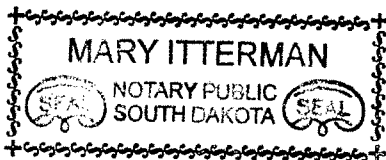
Lynn A. Anderson

SUBSCRIBED AND SWORN TO
before me this 12 day
of October, 2007.



Notary Public

My Commission expires: 3-20-2010



CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2007, a copy of the foregoing
Petition for Exemption of Iowa, Chicago & Eastern Railroad Corporation was served by
first class mail, postage prepaid, upon:

Mr. Tom D. Hamel
Transportation Specialist
3M Logistics
3M Center, Building 225-5M-07
St. Paul, MN 55144

Mr. Ken Zintak
Manager, Transportation
CF Industries, Inc.
4 Parkway North, Suite 400
Deerfield, IL 60015-2590

Mr. Matthew J. Miceli
Director, Intermediates
Plains Marketing Canada, L.P.
888 3rd Street S.W., Suite 1400
Calgary, Alberta, Canada T2P 5C5

Mr. Scott Rome
Director Transportation
Westway Trading Corporation
365 Canal Street, Suite 2900
New Orleans, LA 70130



Thomas J. Litwiler