B.C.D. 01-5

JAN 1 0 2001

Employer Status Determination
CBEC Railway, Inc.

This is the determination of the Railroad Retirement Board concerning the status of CBEC Railway, Inc., as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding CBEC was provided by Jon Andreasen, Counsel for CBEC, and was also taken from Interstate Commerce Commission Decision and Notice of Exemption in Finance Docket Numbers 31717 and 31718. CBEC, a wholly-owned subsidiary of Midwest Power Systems, Inc., was incorporated on July 18, 1990, to acquire from Iowa Southern Railroad, Inc. and operate a rail line of approximately 3.85 miles. Construction of the line was completed in November 1997 and railroads began using the track at that time. CBEC reports that it has no employees.

CBEC does not own any locomotives, railcars, or other physical assets, but owns and maintains a segment of rail trackage. CBEC has entered into trackage rights agreements providing rights to use CBEC right-of-way with The Burlington Northern and Santa Fe Railway Company (BA No. 1621), the Iowa-Interstate Railroad Company (BA No. 3760), and the Great Western Railway Company of Iowa, LLC (BA No. 3779). CBEC has retained the Great Western Railway Company to provide certain maintenance and repair work as needed on a time and materials basis. CBEC is a party to an Intercompany Administrative Services Agreement with MidAmerican Energy Company in accord with which certain administrative services may be provided to CBEC on a fee for service basis.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain a substantially similar definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail

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line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

In this case, CBEC owns a rail line and contracts for operation over that rail line by a number of railroads. CBEC also has arranged for maintenance and repair work on the rail line. There is no information that would indicate the CBEC Railway, Inc.'s intent in purchasing the line is primarily designed to preserve rail service rather than profit from railroading activities. The evidence of record thus indicates that CBEC has as a primary business purpose to profit from its railroad activities. Accordingly, the Board finds that CBEC became a rail carrier employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective November 1, 1997, the date rail operations began on its rail line.

Original signed by:

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