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ATTORNEYS AT LAW

WALLACE G. HILKE
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204 639

December 14, 2001

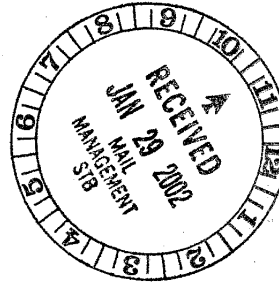
VIA FACSIMILE & U.S. MAIL

Surface Transportation Board
Office of the Secretary
Vernon A. Williams
Case Control Unit
1925 K Street NW
Washington, DC 20423-0001

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Office of the Secretary

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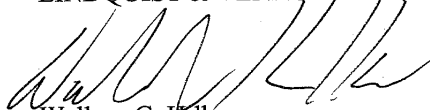
Re: Dakota Rail, Inc. – Abandonment Exemption (Between Wayzata and Hutchinson) in
McLeod, Carver and Hennepin Counties, MN STB Docket No. AB 472 (Sub. No. 1X)

Dear Secretary Williams:

Enclosed for filing please find the original and ten copies of the Reply Memorandum in
Support of Motion to Dismiss HCRRA's OFA. By this letter the City of Minnetonka Beach also
serves all parties of record to the abandonment proceeding (Certified Service List attached to the
enclosed.)

Very truly yours,

LINDQUIST & VENNUM P.L.L.P.


Wallace G. Hilke

WGH/jkg
Enclosure

cc: Service list (w/enc.)

Doc# 1461354\1

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Surface Transportation Board
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Re: Dakota Rail, Inc. – Abandonment Exemption (Between Wayzata and Hutchinson) in
McLeod, Carver and Hennepin Counties, MN STB Docket No. AB 472 (Sub. No. 1X)
Reply Memorandum in Support of Motion to Dismiss HCRRA's OFA

Dear Secretary Williams:

The City of Minnetonka Beach respectfully submits this reply memorandum in support of
its motion to dismiss HCRRA's OFA.

Remarkably, HCRRA's response undermines its own position. The controlling legal
standard for OFA's is clear:

Where, as here, the line is not currently active, there must be some
assurance that shippers are likely to make use of the line if continued
service is made available, and that there is sufficient traffic to enable the
operator to fulfill its commitment to provide that service.

*Roaring Fork Railroad Holding Authority-Abandonment Exemption-in Garfield, Eagle and
Pitkin Counties, CO*, 1999 STB Lexis 299, *9 STB Docket No. AB-547X (STB served May 21,
1999) (emphasis supplied). HCRRA's response offers no evidence that shippers are likely to
make use of this derailment-prone line if continued service is made available or, more

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importantly, that there will be sufficient traffic to finance the refurbishment of the line at the cost of \$11,000,000. Rather, HCRRA reemphasizes that it will provide continuous freight service **only if** it proves to be economically viable. The HCRRA has not pledged a single dollar to make the repairs and upgrades necessary to give the line a realistic chance of survival. There is simply no assurance from HCRRA that it will take essential steps, including refurbishing the line, in order to fulfill its obligation under the OFA to provide freight service.

HCRRA cites and relies on the STB's decision in *Fillmore Western Railway Company-Abandonment Exemption*, STB Docket No. AB-492 (STB-No. 2X) (served October 23, 2001). In that case, a former customer of the line came forward with a submission stating that it would definitely make use of the line for freight service. In the present case, the STB has already determined that continued operation of the line for freight service is not economically viable and there is no evidence that a single shipper will be able to afford the rates HCRRA will have to charge to provide continuous freight service on the Dakota Rail line.

Finally, HCRRA argues that it has some experience in operating a freight line, by claiming that it has two rail lines "over which freight traffic has traveled for several years." This statement is misleading in that HCRRA does not actually operate either of the lines. By HCRRA's own admission, both lines were operated by other entities under an agreement to use HCRRA-owned track. Moreover, even if HCRRA can claim to have operated those lines, it has experienced a 50% failure rate as an operator, as HCRRA acknowledges that one of the lines has failed!

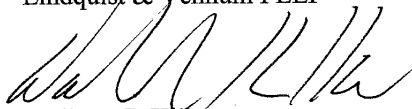
LINDQUIST & VENNUM P.L.L.P.

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In reality, HCRRA has submitted no evidence that it is capable of providing freight service. In order for this to be a meaningful claim, HCRRA would have to demonstrate that it is somehow more capable than the line's three previous owners, who all failed to turn a profit operating this line. Further, HCRRA again fails to provide any evidence that it is willing to invest \$11,000,000 dollars beyond the purchase price to refurbish and upgrade the Dakota Rail line. Without such an investment, the deteriorated rail line will never be restored to a condition where freight trains could operate safely. Obviously, given the current economic climate and Minnesota's two billion-dollar budget shortfall, HCRRA cannot afford, nor has it committed public funds in its 2002 budget, to upgrade and operate this historically unprofitable line.

Read as a whole, HCRRA's submission merely highlights the extreme improbability that it will actually deliver freight service on the Dakota Rail Line.

Respectfully Submitted,
Lindquist & Yennum PLLP



Wallace G. Hirke

Counsel to Minnetonka Beach

cc: Attached List (via U.S. Mail)

AFFIDAVIT OF SERVICE BY FEDERAL EXPRESS & U.S. MAIL

Re: Dakota Rail, Inc. – Abandonment Exemption (Between Wayzata and Hutchinson)
in McLeod, Carver and Hennepin Counties, MN STB Docket No. AB 472 (Sub.
No. 1X)

[illegible]

Jennifer K. Grove, being duly sworn, states that on December 14, 2001, she served:

Reply Memorandum in Support of Motion to Dismiss HCRRA's OFA

upon the following:

Dakota Rail, Inc
c/o Gary Laakso, Esq.
Vice President Regulatory Counsel
Rail America, Inc.
5300 Broken Sound Boulevard NW 2nd Fl.
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Norwesco, Inc.
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St. Bonifacius, MN 55375

Lester Building Systems
1111 2nd Avenue S
Lester Prairie, MN 55354

3M Company
Building #31 - Tape Plant
915 Highway 22 South
Hutchinson, MN 55350

Glencoe Butter and Produce Agriculture
818 East Ninth Street
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Glencoe, MN 55336

Louis E. Gitomer, Esq.
Of Counsel
Ball Janik LLP
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Washington, DC 20005

Hutchinson Iron & Metal, Inc.
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Hutchinson, MN 55350

3M Company
Building #14 - Mag. Plant
915 Highway 22 South
Hutchinson, MN 55350

Polyfoam, Inc.
116 Pine Street
Lester Prairie, MN 55354

Integrated Ingredients
35 Adams Street NE
Hutchinson, MN 55350

Butler Rural Systems
2nd Avenue SE
Lester Prairie, MN 55354

Mr. Al Vogel
Office of Freight, Railroads & Waterways
Department of Transportation
395 John Ireland Boulevard Mail Stop 470
925 Kelly Annex
St. Paul, MN 55155-1899

Mr. Douglas F. Bryant
Superintendent
Suburban Hennepin Regional Park District
12615 County Road 9
Plymouth, MN 55441

Honorable Mike Bloom
Mayor
City of the Village of Minnetonka Beach
PO Box 146
Minnetonka Beach, MN 55361

Sheldon Nies
McLeod County Regional Railroad Authority
1118 Jefferson Street S
Hutchinson, MN 55360

Honorable James L. Oberstar
US House of Representatives
Washington, DC 20515

Rail Development Section
Department of Transportation Rm. 810
State Transportation Building
St. Paul, MN 55155

Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4037

Office of the Governor
State Capitol
St. Paul, MN 55155-1002

Thomas F. McFarland, Esq.
Norwesco, Inc.
208 South LaSalle Street, Ste. 1890
Chicago, IL 60604-1194

Mr. John Siegfried
Executive Director
Carver County Regional Rail Authority
Carver County Government Center
Human Services Building
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Chaska, MN 55318

Mr. Ronald G. Fuchs
City Planner
City of Minnetrista
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Minnetrista, MN 55364-9552

Dean Lotter
City of Minnetrista Administrator
7701 County Road 110 W
Minnetrista, MN 55364-9552

Minnesota Historical Society
Historic Preservation Office - Review &
Compliance Department
345 Kellogg Boulevard W
St. Paul, MN 55101

Office of Division
Department of Transportation
818 Transportation Building
St. Paul, MN 55155-1802

Rail Manager Minnesota
Minnesota Department of Transportation
Transportation Building Rm. 820
St. Paul, MN 55155

Department of Transportation
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Honorable Mark R. Kennedy
US House of Representatives
Washington, DC 20515

Jay Lindgren
Metropolitan Council
230 East 5th Street
St. Paul, MN 55101-1626

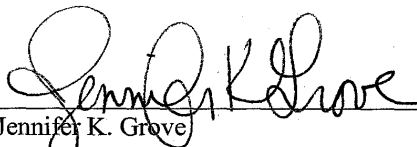
State Conservationist
Soil Conservation Service
375 Jackson Street
600 Farm Credit Building
St. Paul, MN 55101-1854

US Fish and Wildlife Service
US Department of Interior
Twin Cities Field Office
4101 East 8th Street
Bloomington, MN 55425

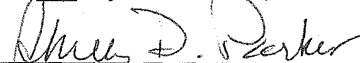
Honorable Martin Olav Sabo
US House of Representatives
Washington, DC 20515

US Army Corps of Engineers
Attn: NCSCO-RF
190 5th Street E.
St. Paul, MN 55101-1637

by mailing a copy via U.S. Mail thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at Minneapolis, Minnesota.


Jennifer K. Grove

Subscribed and sworn to before me
this 14th day of December, 2001.


Notary Public

