

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34867

GENERAL RAILWAY CORPORATION
d/b/a IOWA NORTHWESTERN RAILROAD

-ACQUISITION EXEMPTION-

RAIL LINE OF THE DICKINSON OSCEOLA RAILROAD ASSOCIATION

PETITION TO REJECT OR REVOKE
PETITION TO STAY

EXPEDITED HANDLING REQUESTED

DICKINSON OSCEOLA RAILROAD ASSOCIATION
IOWA CENTRAL RAILROAD CO.

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Dated: May 23, 2006.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34867

GENERAL RAILWAY CORPORATION
d/b/a IOWA NORTHWESTERN RAILROAD

-VERIFIED NOTICE OF EXEMPTION-
RAIL LINE OF THE DICKINSON OSCEOLA RAILROAD ASSOCIATION

PETITION TO REJECT OR REVOKE
PETITION TO STAY

Comes now the DICKINSON OSCEOLA RAILROAD ASSOCIATION (“DORA”) and IOWA CENTRAL RAILROAD CO. (collectively “Petitioners”), and respectfully request that the Board reject or revoke, *ab initio*, the Verified Notice of Exemption filed by General Railway Corporation in Finance Docket No. 34867, and, in the alternative, to Stay the Exemption, pending the Board’s full consideration of the pleadings in this proceeding.

On May 19, 2006, General Railway Corporation, which does business as Iowa Northwestern Railroad (“IANW”) filed a Verified Notice of Exemption with the Board seeking an exemption for the “acquisition” of a line of railroad, most of which it has already scrapped; has obtained Board authority to discontinue service over (See AB-1067-1-X, served April 10, 2006); over the remainder of which it is not operating; and during the pendency of a Board proceeding to revoke its operating authority over said remainder (See FD 34037, filed May 8, 2006).

To say that IANW’s current filing is disingenuous would be to restate the obvious. The Notice admits that IANW already has obtained authority to discontinue its operation

from MP 235.25 to MP 252.3, and makes no explanation of why it would seek to acquire a rail line it has just obtained discontinuance authority for, and has already scrapped. The Notice asserts that “GRC [IANW] remains the operator of the line between MP 215.00....and MP 235.25.” This is, of course, extremely misleading, since IANW has completely ceased service over this segment of the line. The Notice neglects to make any assertion that IANW intends to resume service. The Notice also falsely states that “Since the assumption of operations on the line in 2001, GRC [IANW] has made diligent efforts to operate the line in an industrious manner.” In truth, IANW has refused to provide service, scrapped most of the line without authority, and, DORA is informed and believes, breached its contract with Union Pacific Railroad, resulting in the Union Pacific’s embargo of the Line and refusal to interchange.

Finally, the allegation that there is an agreement with DORA is false. No such agreement currently exists. The “agreement” referred to by IANW is no longer in effect. IANW failed to fulfill the precondition that it “obtain all necessary authority to purchase and operate a rail line from the federal Surface Transportation Board.” (See Page 6, Section 10, of the agreement attached as “Exhibit D” to IANW’s Notice).

DORA currently has a suit pending in the Iowa District Court for Osceola County (No. EQ-CV-017009) to quiet title in this property in DORA. Obviously, DORA has no intention of conveying the property to IANW.

IANW’s failure to obtain Board authority or exemption several years ago, and its subsequent destruction of DORA’s property cannot be remedied by this filing. Board authority or exemption is not a mere formality. The Board is not a simple recording clerk. The Board has a statutory responsibility to further the national transportation policy. As the Board stated in SF&L Railway, Inc. – Acquisition and Operation Exemption – Toledo,

Peoria & Western Railway Corporation between LaHarpe and Peoria, IL, FD 33995

(served October 17, 20002), “the main purpose of the entry provisions of the statute is to promote the availability of rail service.”

IANW has no intention, bona fide or otherwise, to operate this line, or any part thereof. This filing is an ex-post-facto attempt to remedy its past failure to comply with both the statute and its contract, and thus, hopefully, defeat DORA’s lawsuit, to which the Board should not be a party to.

The Board should summarily reject the Notice on the grounds that (1) it does not describe a transaction that falls within the scope of 49 CFR §1150.41; (2) IANW lacks the intention (and, indeed, the ability) to provide any common carrier service; and (3) The Notice is materially false and misleading.

In the alternative, the effective date of IANW’s exemption should be stayed, pursuant to 49 C.F.R. §1150.45(f), pending the Board’s establishing a procedural schedule in this proceeding. As set forth below, this Petition to Stay the Exemption satisfies each of the four standards used by the Board in determining the merits of a Stay Petition.

BACKGROUND:

General Railway Corporation obtained a lease and operation exemption over the Line at issue in FD 34037 (Served May 11, 2001). That Notice stated an intent to later file for acquisition, but such was never done. General Railway Corporation (doing business as Iowa Northwestern Railroad), went on to provide inadequate service, prompting a lawsuit from the Line’s major shipper (Cooperative Elevator Association v. General Railway Corporation, U.S. District Court for the Northern District of Iowa Case No. 5:04-cv-04069-MWB); and a refusal to interchange by Union Pacific Railroad

Company. INAW scrapped most of the Line and filed for “abandonment” only after being ordered to do so by the District Court (See AB-1067-1-X). Iowa Central Railroad Co. filed a precautionary Notice of Intent to File an Offer of Financial Assistance, but could not go forward with the purchase, since the Board granted discontinuance authority.

Before obtaining discontinuance authority over the scrapped segment of the Line, IANW completely ceased service on the remainder of the Line. IANW currently has no motive power and no freight equipment on the Line; the real estate taxes are in arrears; and, Petitioners are informed and believe, the Secretary of State of Iowa has revoked General Railway Corporation’s authority to do business in Iowa.

DORA filed suit against IANW in Osceola County District Court on April 14, 2006, to quiet title in the Line in itself. IANW now seeks to use the Board to shield itself from the legal consequences of its actions and inactions, so that it can keep its ill-gotten gains.

I. The Verified Notice of Exemption is Defective on its Face and Should be Summarily Rejected or Revoked, *ab initio*.

A. THE NOTICE DOES NOT DESCRIBE A TRANSACTION SUBJECT TO 49 C.F.R. §1150.41.

IANW presumably filed its Notice pursuant to 49 C.F.R. §1150.41, which sets forth the procedures for certain exempt transactions under 49 U.S.C. §10902.

IANW’s Notice claims to be a “purchase” exemption, but purchasing a rail line as a carrier carries with it an common carrier operating obligation. Any suggestion that IANW intends to operate the line, or any part thereof, as a common carrier, is

demonstrably false. The Exemption was established to “facilitate entry into the rail business” (See 49 U.S.C. §10101(7)). It was not facilitated to allow entities to acquire title to rail assets they do not intend to operate.

B. THE NOTICE DOES NOT MEET THE REQUIREMENTS OF 49 C.F.R. §1150.41, AND IS MATERIALLY FALSE AND MISLEADING.

As detailed above, the Notice is both false and misleading. The Notice does not meet the requirements of the Exemption. This is obviously not a common transaction, and plainly is one that merits more scrutiny. For the reasons already stated, the true facts raise numerous issues that the Board should consider.

C. THE VERIFIED NOTICE OF EXEMPTION SATISFIES THE STANDARD FOR REJECTION.

The Notice, on its face, fails to describe a transaction that meets the requirements of the exemption. The Board’s predecessor granted a petition to reject a Notice of Exemption in West Side Rail Line Development Foundation, Inc. – Exemption – Purchase of a Portion of the West 30th Street Secondary Track in New York, NY, Finance Docket No. 30795 (Served April 10, 1986), not because of any false or misleading statement, but rather because the transaction failed to meet the standards of the class exemption.

More to the point, however, this proceeding is analogous to SF&L Railway, Inc. – Acquisition and Operation Exemption – Toledo, Peoria & Western Railway Corporation between LaHarpe and Peoria, IL, FD 33995. In that proceeding, the Board, in a Decision served October 17, 20002, revoked the exemption, finding that the “ultimate intent” of the

SF&L was to “abandon and salvage the Line.” In this case, IANW has already salvaged most of the Line, and clearly intends the same fate to befall the remainder. IANW has no intention to provide rail service. The Board’s statement in SF&L is equally appropriate here, “it is clear to us that the actions taken by Respondents reflect instead a scheme to use our processes to obtain active rail assets with a view toward dismantling and selling them.”

The precedents are clear in this situation. The Notice should be similarly rejected.

II. The Four Criteria for Issuance of a Stay are Satisfied.

In the event the Board does not reject the Notice summarily, it should stay the effective date pursuant to 49 C.F.R. §1150.45(f).

The four standards to be considered in determining whether to grant a stay are:

- (1) that there is a strong likelihood that the movant will prevail on the merits;
- (2) that the movant will suffer irreparable harm in the absence of a stay;
- (3) that other interested parties will not be substantially harmed; and
- (4) that the public interest supports the granting of the stay.

See Bulkmatic Railroad Corporation – Acquisition and Operation Exemption – Bulkmatic Transport Company; Bulkmatic Railroad Corporation – Operation Exemption – Bulkmatic Transport Company, Finance Docket Nos. 34145 and 34179 (Served March 5, 2002).

This Petition meets those standards.

There is a strong likelihood that the Petitioners will prevail on the merits of this proceeding.

Petitioners will suffer irreparable harm if the Board does not grant the stay, as it will totally confuse the status of that part of the Line already scrapped and over which the

Board has granted IANW's discontinuance, and it will intrude upon the province of the courts in determining the respective rights of the parties as to the contracts involved.

No interested party will be substantially harmed by granting the stay. IANW is not providing any service, nor does it have any intention of doing so. Staying this acquisition exemption will not substantially harm anybody.

The public interest also supports the granting of the stay. The public interest is served by orderly regulation of the rail system. Allowing this exemption to proceed would only create confusion. Nor is the public interest served by allowing carriers to ignore the law, except when it is in their interest to comply, in an untimely manner, so as to "game" the legal system.

Since allowing this Notice to become effective would only reward a wrongdoer, it would be prudent to stay this proceeding until the Board has decided the legal issues surrounding this matter. This was the position the Board took in Union Pacific Railroad Company – Operation Exemption – In Yolo County, CA, Finance Docket No. 34252 (Served November 8, 2002), and Petitioners respectfully suggest the Board should follow that precedent in this case, if it determines that further proceedings are necessary.

III. CONCLUSION

This Notice of Exemption is defective. It is an attempt to after-the-fact comply with the statute, in order to enhance IANW's legal position in pending litigation. It is not about rail service. IANW is not meeting its common carrier obligations.

IANW sought and obtained only a lease and operation exemption for the Line at issue. It ceased service and scrapped most of the Line without authority. It then filed to

abandon the portion already scrapped, and has been granted discontinuance authority. It is currently providing no service to any part of the Line. It is the defendant in a lawsuit seeking to quiet title in the very property it now asks the Board to permit it to acquire. Indeed the title to its Notice omits the word “operation”. Such omission is telling.

This Notice is an abuse of the class exemption process.

The Board may reject or revoke an exemption if its finds that (1) the notice of exemption contained false and/or misleading information;¹ (2) regulation is necessary to carry out the rail transportation policy of 49 U.S.C. §10101;² or (3) rejection/revocation is necessary to ensure the integrity of the Board’s processes³. All three grounds exist in this proceeding. The Notice should be rejected or revoked, or, at least, stayed, pending the Board’s review of the matter.

Respectfully submitted,



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¹ See Save the Rock Island Committee, Inc. v. St. Louis Southwestern Railway Co., Docket No. AB-39 (Sub-No. 18X) (I.C.C. served April 1, 1994).

² See Indiana Hi-Rail Corporation – Lease and Operation Exemption – Norfolk and Western Railway Company Line Between Rochester and Argos, IN, and Exemption from 49 U.S.C. 10761, 10762 and 11141, Finance Docket No. 32162 et. al. (STB served January 30, 1998).

³ See Minnesota Comm. Rwy., Inc. – Trackage Exemption – BN RR. Co., 8 I.C.C.2d 31(1991); Land Conservancy – Acquisition and Operation – Burlington Northern, 2 S.T.B. 673 (1997), reconsideration denied, STB Finance Docket No. 33389 (STB served May 13, 1998), petition for judicial review dismissed sub no. The Land Conservancy of Seattle and King County v. STB, 238 F.3d 429 (9th Cir. 2000).

VERIFICATION

I, Kirk Grau, Acting Director of DORA., verify under penalty of perjury that I have read the above and foregoing Petition to Reject/Revoke or Stay; that I have knowledge of the facts stated therein; and that those facts are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file the foregoing document.

/s/ Kirk Grau

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served by electronic mail, and by sending it U.S. Mail, all charges paid, this 23rd day of May, 2006, to the following:

Daniel L. Hartnett, Esq.
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