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Via Electronic Filing

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The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

**Re: Finance Docket No. 34867
General Railway Corporation d/b/a Iowa Northwestern Railroad – Acquisition
Exemption – Rail Line of the Dickinson Osceola Railroad Association**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is **General Railway Corporation's Reply In Opposition To The Petition To Reject, Revoke or Stay Exemption..**

Please contact me if you have any questions regarding this matter. Thank you.

Respectfully submitted,

Edward J. Fishman
Counsel for General Railway Corporation

cc: David Konschnik, Office of Proceedings

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34867

GENERAL RAILWAY CORPORATION D/B/A
IOWA NORTHWESTERN RAILROAD COMPANY –
ACQUISITION EXEMPTION – RAIL LINE OF
DICKINSON OSCEOLA RAILROAD ASSOCIATION

**GENERAL RAILWAY CORPORATION'S REPLY IN OPPOSITION TO THE
PETITION TO REJECT, REVOKE OR STAY EXEMPTION**

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**ATTORNEYS FOR THE GENERAL
RAILWAY CORPORATION**

Dated: May 25, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34867

GENERAL RAILWAY CORPORATION D/B/A
IOWA NORTHWESTERN RAILROAD COMPANY –
ACQUISITION EXEMPTION – RAIL LINE OF
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**GENERAL RAILWAY CORPORATION'S REPLY IN OPPOSITION TO THE
PETITION TO REJECT, REVOKE OR STAY EXEMPTION**

The General Railway Corporation d/b/d Iowa Northwestern Railroad Company ("GRC") respectfully submits this Reply In Opposition to the Petition To Reject, Revoke or Stay filed on May 23, 2006 by Dickinson Osceola Railroad Association ("DORA") and Iowa Central Railroad Co. ("ICRC")(collectively, "Petitioners") in this proceeding (the "Petition To Reject"). GRC urges the Board to deny the Petition to Reject because it is without merit. While heavy on accusatory rhetoric, the Petition to Reject fails to establish any legal basis for the relief that it seeks.

Background

In a Notice of Exemption served and published in the Federal Register on May 11, 2001, GRC acquired the right to operate over the approximately 37.21-mile line of railroad that was owned at the time by DORA between approximately milepost 215 at a point west of Superior, Iowa and approximately milepost 252.3 at a point west of Allendorf, Iowa (the "Subject Line"). See General Railway Corporation d/b/a Iowa Northwestern Railroad Corporation – Operation Exemption – Line of Dickinson Osceola Railroad Association, STB Finance Docket No. 34037 (STB served May 11, 2001). In that notice of exemption and the subsequent Federal Register

notice issued by the Board, it was specifically stated that “ownership of the line is expected to be transferred to GRC from DORA in the near future.” Id. Therefore, GRC obtained Board authority to operate the Subject Line in May 2001 and at that time notified the Board that it was planning to acquire ownership of the Subject Line from DORA in the near future.

DORA had acquired the Subject Line from Union Pacific Railroad Company (“UP”) in April 2001. Pursuant to a Sale and Repurchase Agreement between GRC and DORA dated March 3, 2001 (attached as Exhibit D to GRC’s Verified Notice of Exemption in this proceeding), GRC paid UP \$375,000 for DORA’s acquisition of the Subject Line and DORA agreed to transfer ownership of the line to GRC shortly thereafter. The transfer from DORA to GRC took place pursuant to a Quitclaim Deed that was recorded in Osceola County, Iowa on November 1, 2001 (see Exhibit C to GRC’s Verified Notice of Exemption in this proceeding). Since that time, GRC has been the owner and operator of the Subject Line.

Due to an inadvertent oversight, and given its unfamiliarity with the Board’s numerous rules and regulations¹, GRC failed to file a separate notice of exemption with the Board to authorize its acquisition of the Subject Line from DORA. This oversight was brought to GRC’s attention by the Board’s April 10, 2006 decision in Docket No. AB-1067 (Sub-No. 1X), Iowa Northwestern Railroad – Abandonment Exemption – In Osceola and Dickinson Counties, IA. In that decision, the Board authorized GRC to discontinue common carrier service over the portion of the Subject Line between approximately milepost 235.25 near Lake Park and the western end of the line at approximately milepost 252.3 west of Allendorf (the “Discontinued Segment”) but

¹ Until today, GRC has engaged in these STB proceedings without the assistance of experienced STB counsel. GRC never had any intention of deceiving the Board or misusing the Board’s processes. GRC’s failure to file a separate notice of exemption for the acquisition was inadvertent, since it explicitly notified the Board of its intention to acquire the Subject Line from DORA. The Petitioners’ suggestions to the contrary are unfounded.

denied GRC's request to abandon the Discontinued Segment because of its inadvertent failure to file a separate notice of exemption to acquire the Subject Line. In effect, the Board notified GRC that it would have to file a notice of exemption for its acquisition of the Subject Line (after-the-fact) before it could seek abandonment authority from the Board.

On May 19, 2006, GRC filed a Verified Notice of Exemption under 49 U.S.C. 10902 and 49 C.F.R. § 1150.42 *et. seq.* to correct its inadvertent failure to obtain an exemption from acquisition authority in 2001.² The Verified Notice of Exemption corrects the technical oversight made by GRC several years ago and provides GRC with the exemption it needs to authorize its acquisition of the Subject Line from DORA in 2001.

Petition To Reject or Revoke Exemption

In order to justify their request to reject or revoke the Verified Notice of Exemption filed by GRC in this proceeding, Petitioners claim that they must establish either (i) that the notice contained false and/or misleading information, or (ii) that rejection/revocation is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 or to ensure the integrity of the Board's processes. See Petition to Reject at 9. Despite making a number of questionable allegations and superfluous arguments about whether GRC has fulfilled its common carrier obligation, Petitioners fail to meet their own burden in this proceeding.

² Although GRC's Verified Notice of Exemption refers on page 3 to 49 C.F.R. § 1150.31 *et seq.*, GRC now understands upon the advice of STB counsel that its notice should be considered under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41 *et seq.* because, at the time that it acquired the Subject Line from DORA, GRC was authorized to operate the Subject Line as a Class III common carrier and therefore would have had to file its notice of acquisition exemption under 49 U.S.C. § 10902. GRC paid the appropriate filing fee for this type of proceeding and its May 19, 2006 notice meets all of the requirements of 49 C.F.R. § 1150.41 *et seq.*, so there has been no harm from this mistaken reference to § 1150.31 *et seq.* and the Petitioners' construed it as a notice under 49 U.S.C. § 10901 (see Petition To Reject at 5).

Petitioners claim that the notice contains “false and/or misleading information” (see Petition to Reject at 5) but fail to provide any specific support for that claim. Petitioners’ claims that there allegedly was no Sale and Repurchase Agreement with DORA, that DORA has no present intention of conveying the property to GRC, and that GRC allegedly has no present intention of operating the Subject Line are either preposterous and/or irrelevant here. DORA already sold the Subject Line to GRC in 2001 pursuant to the Sale and Repurchase Agreement. Petitioners’ legal argument about the validity of that sale under the Sale and Repurchase Agreement belongs before the courts. GRC already obtained operating authority from the Board and therefore the only matter at issue in this proceeding is GRC’s acquisition authority. Moreover, GRC has been authorized to discontinue operations on the Discontinued Segment, provided common carrier service on the Subject Line between 2001 and 2003, and has been prohibited from providing further service on the remaining active portion of the Subject Line as a result of the UP embargo. Therefore, the Petitioners’ have made no showing that any material part of the Verified Notice of Exemption is false and/or misleading.

Similarly, the Petitioners’ have made no showing that rejection/revocation of the notice is necessary to carry out the rail transportation policy of 49 U.S.C. § 101010 or to ensure the integrity of the Board’s processes. Petitioners’ rather disingenuously question why GRC would file for acquisition authority (see Petition To Reject at 3), knowing full well that the Board essentially instructed GRC to do so in the April 10, 2006 abandonment decision. Therefore, Petitioners’ claim that GRC is abusing the Board’s processes here is unfounded. There is no evidence that GRC’s failure to failure a separate notice of exemption in 2001 in connection with its acquisition of the Subject Line was anything other than an inadvertent oversight. See

Kenosha Auto Transport Corp. – Control, 85 M.C.C. 731, 736 (1960). There has been no abuse of the Board's processes here.

Moreover, Petitioners' fail to demonstrate that revocation or rejection is somehow necessary to carry out the rail transportation policy. Petitioners' make a number of unsupported allegations about whether GRC intends to fulfill its common carrier obligation on the portion of the Subject Line other than the Discontinued Segment, allegations that Petitioners' also have raised in a separate Petition To Revoke in Finance Docket No. 30437. Those arguments are not relevant to whether GRC is entitled to file an acquisition notice here to correct a technical oversight associated with its acquisition of the Subject Line in 2001. The Board has allowed similar notices to be filed in other proceedings. See, e.g., Finance Docket No. 34481, Horsehead Corp.–Petition for Acquisition and Operation Exemption–Chestnut Ridge Railway Company (STB served March 12, 2004)(granting Horsehead's request for an exemption authorizing its acquisition and operation of the subject rail line and making the exemption retroactive back to December 23, 2003, when Horsehead acquired the line through a bankruptcy auction).

Petition For Stay

Petitioners' also fail to support their request for a stay of the effective date of the Notice of Exemption. They have not shown a strong likelihood of prevailing on the merits of their claim for the reasons set forth above. They have not shown that they will suffer any irreparable harm as a result of the Verified Notice of Exemption becoming effective or that the public interest is somehow harmed by allowing the Verified Notice of Exemption to become effective. In fact, it appears that one of Petitioners' motives is to file an OFA to acquire the Discontinued Segment from GRC. By allowing the Verified Notice of Exemption to become effective, the Board will give GRC the ability (if it so chooses) to renew its request for abandonment of the

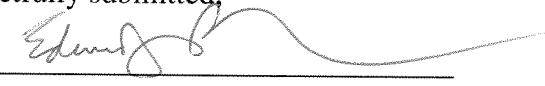
Discontinued Segment. This will give Petitioners' the ability to refile their OFA. Finally, Petitioners' have failed to prove that the public interest supports the issuance of a stay. They claim without support that allowing the Notice of Exemption to become effective will create "confusion," but it is clarity and a technical correction for a historical event that already occurred (transfer of the Subject Line to GRC, which paid UP for the Subject Line and received title to the Subject Line from DORA pursuant to the Quitclaim Deed filed in Osceola County in 2001) that is the purpose of the Verified Notice of Exemption filed in this proceeding.

Conclusion

For the foregoing reasons, the Board should deny the Petition to Reject and allow the Verified Notice of Exemption filed in this proceeding by GRC under 49 U.S.C. 10902 and 49 C.F.R. § 1150.41 *et seq.* to become effective.

Respectfully submitted,

By: _____


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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2006 a copy of the foregoing Reply In Opposition to Petition to Reject was served as indicated below on the following:

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