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BEFORE THE
SURFACE TRANSPORTATION BOARD

FILED

JUN 8 2006

SURFACE
TRANSPORTATION BOARD

216733
FINANCE DOCKET NO. 34871



WYOMING DAKOTA RAILROAD PROPERTIES, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

MAYO CLINIC ROCHESTER
PETITION TO REJECT OR
REVOKE EXEMPTION

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Dated: June 8, 2006

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Mayo Clinic Rochester (Mayo) hereby urges the Board to reject or revoke the exemption sought by Wyoming Dakota Railroad Properties, Inc. (WDRPI) in the above referenced docket. In that submission, WDRPI seeks to acquire the authority issued in FD 33407 to Dakota, Minnesota & Eastern Railroad Corporation (DM&E) to construct and operate approximately 280 miles of rail line between Wall, SD and the Powder River Basin (PRB).

WDRPI represents that it is a newly formed entity within the DM&E corporate family created specifically to undertake construction and operation of the new PRB line. It is asserted that WDRPI will not be involved in rehabilitation of DM&E's existing east west line between Wall, SD and Winona, MN, and apparently would not operate over the existing DM&E line that will connect with the PRB line that is to be constructed. Thus, WDRPI activities are to be confined to construction and operation of the new 280 mile line (unless another member of the DM&E Corporate family is subsequently designated to operate the new line).

It is asserted that WDRPI will comply with all environmental conditions and mitigation measures imposed by the Board in FD 33407 with respect to the new line. However, WDRPI refuses to undertake responsibility for rehabilitation, maintenance and operation of DM&E's existing line. In this regard the great majority of the mitigation conditions ordered by the Board in FD 33407 directly affect rehabilitation, maintenance and operation of DM&E's existing line to mitigate the adverse environmental impacts expected to result from movement of PRB coal over the existing DM&E line. The following are representative of the conditions that directly affect DM&E and its existing line.

Conditions affecting reconstruction, operation and equipment utilization on DM&E's existing line include the following.

- 1A. Grade crossing protection on the existing DM&E line in South Dakota and Minnesota.
- 1B2. Maintenance of existing rail and grade crossing warning devices.
3. Emergency Response
provision of information concerning construction activity and scheduled changes in operation along DM&E's existing system.
4. Consultation with Rochester, Owatonna and Mankato, MN and South Dakota communities on DM&E's existing line to coordinate train movements and emergency response.
5. Coordination with State Departments of Transportation, counties and communities concerning installation of message boards and notification signs.

6. Provision of permanent signs at existing DM&E grade crossings displaying toll free numbers and 24 hour answering service.
7. DM&E required to consult with communities along its existing line to identify alternative safety measures to eliminate the need to sound train horns.
8. DM&E required to install reflective material on the back of passive crossing devices on its existing line.
9. DM&E required to minimize trains blocking grade crossings throughout its system.
10. DM&E required to properly maintain its existing line.
11. Prior to initiating project related construction, DM&E required to develop comprehensive plan to prevent spills of petroleum and other hazardous materials.
12. DM&E required to comply with DOT Hazardous Materials Regulations.
13. DM&E required to consolidate with US EPA, Minnesota Department of National Resources and Minnesota Pollution Control Agency in determining location of hazardous materials sites and to comply with applicable laws concerning such sites.
14. DM&E is required to develop internal emergency response plans and to provide such plans to relevant State and local entities prior to moving coal trains from PRB.

15. DM&E is required to notify the US Fish and Wildlife Service and appropriate State agencies in the event of a reportable hazardous materials release.
17. Prior to initiating any construction activities, DM&E is to develop a comprehensive plan for fire prevention and suppression including assurance that to extent possible all locomotives are suitably equipped to minimize the threat of fire.
22. DM&E required to make Operation to Lifesaver programs available to communities and organizations on its existing line.
24. DM&E is required to assure that approaches to existing grade crossings are constructed or reconstructed to AASHTO standards.
26. DM&E required to consult with State Departments of Transportation in Minnesota, South Dakota and Wyoming to ensure that project related construction and reconstruction are consistent with State and local transportation plans.

Of the remaining 121 conditions imposed by the Board in the Construction proceeding, 89 apply specifically to reconstruction and operation of DM&E's existing line including the requirement for installation of two grade separate crossings in Rochester (Condition 121); the requirement that DM&E Upper Management meet with Mayo Clinic to coordinate how best to minimize project related impacts on the Clinic (Condition 122); and, the requirement that prior to transporting 50 million tons of coal annually through Rochester, MN, DM&E coordinate with local interests on development of additional grade crossing devices (Condition 123). Finally, DM&E is required to

provide quarterly reports to SEA documenting the status of its mitigation implementation for each condition (Condition 147).

The Notice of Exemption indicates that WDRPI and DM&E have not yet executed an agreement providing for transfer of DM&E's authority to construct and operate the PRB line and other rights and interests of DM&E with respect to the PRB line. However, the Notice specifically states that WDRPI is not to be involved in rehabilitation of DM&E's existing east west line between Wall, SC and Winona, MN and will not be involved in operating over DM&E's existing line.

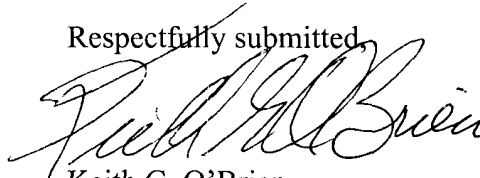
This is not a simple corporate restructure involving substitution of one business form (corporation) for another (partnership) in terms of assuming rights and obligations granted by the Board as was the situation in *Acquisition and Operation Exemption—Tongue River Railroad Company*, Finance Docket No. 33644 (STB served November 13, 1998). Here it is proposed to change not only the actors, but also the project that the Board actually authorized. WDRPI is at this point essentially a corporate shell without any credit or operating history. Yet, it seeks to assume responsibility for undertaking one of the largest projects, if not the largest, to come before the Board on no more than blind faith.

The authority granted by the Board is also being dramatically altered. The proposed exemption would essentially sever the grant of authority to construct and operate the new line from responsibility for specific conditions required of DM&E to mitigate significant environmental impacts that will directly affect Mayo and the City of Rochester as a result of PRB coal moving over DM&E's existing line through Rochester. The lack of direct involvement by WDRPI in rehabilitation, maintenance and operation

of DM&E's line through Rochester raises serious doubts about responsibility for and enforceability of conditions designed specifically to mitigate construction related harm to Mayo and Rochester or to other communities located on DM&E's existing line. The Notice of Exemption is conspicuously silent concerning compliance with these conditions. Furthermore, the Board's Decision of February 15, 2006, is currently pending review by the Eight Circuit in *Mayo Foundation, et al. v. STB, et al.*, Nos. 06-0231, 06-2032, 06-2047 and 06-2048. Of course, the Court has exclusive jurisdiction over the matter under review. Because the Notice of Exemption involves an unusual partial substitution in a matter subject to the Court's jurisdiction, a serious question arises as to the legal sufficiency of the contemplated transaction.

In the circumstances, Mayo urges the Board to reject or revoke the proposed exemption as not within the limited scope of the class exemption set forth at 49 C.F.R. 1050.31, *et seq.* and to find that regulation of the proposed transfer of authority is necessary to assure compliance with conditions that directly affect DM&E and its rehabilitation, maintenance and operation of its existing line that runs through Rochester, MN in close proximity to the facilities of Mayo Clinic Rochester.

Respectfully submitted,



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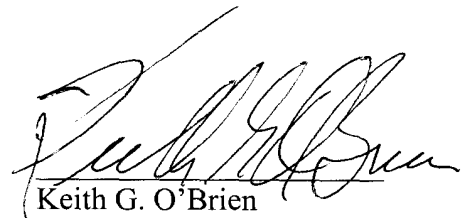
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Dated: June 8, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of June, 2006, served a copy of the foregoing Mayo Clinic Rochester Petition to Reject or Revoke Exemption upon the following by first class mail, postage prepaid:

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