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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34867

**GENERAL RAILWAY CORPORATION D/B/A
IOWA NORTHWESTERN RAILROAD COMPANY –
EXEMPTION FOR ACQUISITION OF RAILROAD LINE –
IN OSCEOLA AND DICKINSON COUNTIES, IA**

**GENERAL RAILWAY CORPORATION'S REPLY IN OPPOSITION TO MOTION TO
CLARIFY DECISION AND MOTION TO STAY**

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**ATTORNEYS FOR GENERAL RAILWAY
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Dated: July 11, 2007

General Railway Corporation d/b/a Iowa Northwestern Railroad ("GRC") hereby files this Reply in opposition to the Motion to Clarify Decision and Motion to Stay ("Motion") filed by the Dickinson Osceola Railroad Association ("DORA") in this proceeding on July 5, 2007.¹ GRC respectfully requests that the Board deny DORA's Motion in its entirety because it is without merit, based on recycled arguments and pure speculation, and fails to address any of the applicable requirements for obtaining the extraordinary relief sought by DORA. Rather than seeking any legitimate clarification of the Board's June 15, 2007 decision in this proceeding ("June 15th Decision"), DORA's latest pleading appears to be a desperate attempt to buy more time to dredge up the same arguments the Board already has rejected in this and related proceedings.

In its Motion, DORA requests "clarification" of the June 15th Decision because DORA claims that it "leaves open to question what authority [the Board] has granted [GRC] over the already discontinued" portion of the GRC line of railroad between Allendorf and Lake Park, Iowa. DORA's Motion at 2. DORA itself may be confused about (and disappointed by) the significance of the Board's decision, but that doesn't entitle DORA to the interim stay and extra time for mounting another challenge that it now seeks. As explicitly stated in the June 15th Decision, the Board previously granted GRC's petition for exemption to discontinue service over its line of railroad between Allendorf and Lake Park² but did not grant GRC's request for abandonment authority because GRC had not yet obtained authority from the Board to acquire the relevant line

¹ Although part of the caption of DORA's Motion refers to both Finance Docket No. 34867 and Finance Docket No. 34037, it is evident from the remainder of the caption and the body of the Motion itself (which is not a model of clarity) that DORA is seeking only to clarify and stay the effectiveness of the Board's June 15, 2007 decision in Finance Docket No. 34867.

² On May 30, 2006, GRC notified the Board that it had consummated that discontinuance authority.

segment. Now that the Board has issued its June 15th Decision allowing GRC's notice of exemption to acquire the line of railroad between Allendorf and Superior (which includes the segment between Allendorf and Lake Park) to become effective, GRC has the right (if it so desires) to seek Board authority for the abandonment of the Allendorf-Lake Park segment or other segments of GRC's line of railroad. There is no mystery about the significance of the Board's decision in this regard and thus no reason for the Board to stay the effectiveness of its decision or give DORA extra time to rehash the same invalid arguments that it already has made in this proceeding.

Under the guise of seeking clarification, DORA's true motive is to reargue for the revocation of GRC's common carrier authority based on the same arguments and speculation that the Board rejected in the June 15th Decision in this proceeding and in Finance Docket No. 34037.³ See DORA's Motion at 3 (which requests that GRC's "authority should be revoked"). DORA fails to introduce any new evidence of materially changed circumstances,⁴ does not establish that the Board's previous decision contained any material error, and engages in rampant speculation about GRC's alleged intention to "scrap the remainder of the line without authority."⁵

³ Curiously, DORA's Motion was filed by Mr. Daniel A. LaKemper and not by their previous counsel in this proceeding. Mr. LaKemper previously filed pleadings in this proceeding on behalf of a purported entity called Iowa Central Railroad, which filed an OFA request after GRC sought abandonment authority from the Board.

⁴ The only new claim made by DORA alleges that GRC is in "default" of its property tax payments. DORA's Motion at 3. Even assuming this claim was true, DORA fails to explain how it is at all relevant to the clarity and effectiveness of the Board's June 15th Decision. DORA repeats previous allegations about GRC's "continued refusal to respond to customer requests" without providing any specific evidence that GRC has violated its common carrier obligation to provide service upon reasonable request.

⁵ GRC has no intention of "scrapping" its line of railroad between Lake Park and Superior without obtaining any necessary authority from the Board. DORA's speculation about GRC's future intent is without foundation.

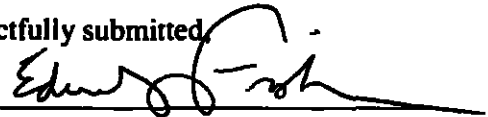
Moreover, DORA fails to even allege that it meets the requirements for obtaining a stay of the Board's June 15th Decision. A party seeking a stay must establish that. (1) there is a strong likelihood that it will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed; and (4) the public interest supports the granting of the stay. Hilton v. Braunskull, 481 U.S. 770, 776 (1987); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). In addition, a party seeking a stay carries the burden of persuasion on all the elements required for such extraordinary relief. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). DORA has not even made any argument (much less carried its burden) with respect to any of the required elements. Moreover, DORA has not explained how or why it should be entitled to a stay of the Board's June 15th Decision based on a request for "clarification" about GRC's authority.⁶

DORA asks the Board for a grace period of 21 days after the filing of its Motion "to prepare its brief and affidavits in support of its Motion." DORA's Motion at 3. The Board's rules do not permit a party to file a motion and then submit any alleged support that it can develop for that motion three weeks later. DORA has failed to provide any reason why it should be entitled to such extraordinary relief. In the interest of administrative finality and fairness, the Board should make it clear that DORA has no right to submit additional evidence in support of its Motion.

⁶ Even if DORA's motion were construed as a petition for reconsideration under 49 C.F.R. § 1115.3(f), DORA would have been required to file its stay request within ten days of the Board's June 15th Decision.

In conclusion, DORA has failed to provide any adequate justification for why it should be given three additional weeks to develop evidence in support of a purported request for clarification that it really designed to reargue the merits of the Board's June 15th Decision. Moreover, DORA has failed to make any showing that it is entitled to a stay of the effectiveness of the Board's June 15th Decision, the significance of which is clear. Thus, DORA's Motion should be denied in its entirety and with prejudice.

Respectfully submitted,

By: 

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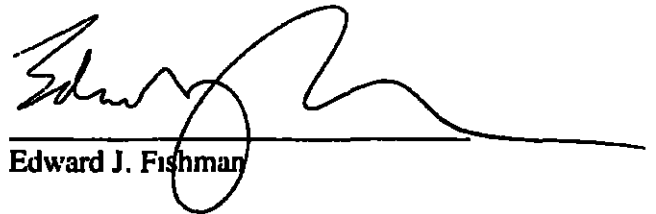
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**ATTORNEYS FOR GENERAL
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Reply In Opposition to the Motion to Clarify Decision and Motion to Stay* was served by first-class mail, postage prepaid, upon the following on this 11th day of July, 2007:

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