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SERVICE DATE - DECEMBER 14, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-472 (Sub-No. 1X)

DAKOTA RAIL, INC.—ABANDONMENT EXEMPTION—IN McLEOD, CARVER, AND
HENNEPIN COUNTIES, MN

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: December 13, 2001

By decision served on November 30, 2001, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Dakota Rail, Inc. (Dakota Rail), of its entire rail line from milepost 24.6, near Wayzata, to the end of the line at milepost 68.5, in Hutchinson, a distance of approximately 43.9 miles, in McLeod, Carver, and Hennepin Counties, MN, subject to public use, environmental, and historic conditions. The exemption was scheduled to become effective on December 30, 2001, unless an offer of financial assistance (OFA) was filed on or before December 10, 2001.

On December 10, 2001, Hennepin County Regional Railroad Authority (HCRRA)¹ timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the entire 43.9-mile line for \$5 million. On December 12, 2001, the City of Minnetonka Beach, MN (Minnetonka Beach), filed a motion to dismiss HCRRA's OFA. Minnetonka Beach asserts, among other things, that HCRRA is unable and does not intend to provide rail freight service, but seeks to acquire the line for other public purposes, such as a recreational trail. In its reply, also filed on December 12, 2001, HCRRA states that at least three shippers have expressed interest in restoration of freight rail service on the line, and that it intends to provide such service, as it has on two other rail lines. The motion to dismiss will be denied.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). As a governmental entity, HCRRA is presumed to be financially responsible. See 49 CFR 1152.27(c)(1)(ii)(B). HCRRA is thus found to be financially responsible.

According to HCRRA, Dakota Rail has asserted that the line has a value of \$5.8 million for purposes of OFA negotiations. HCRRA states that its offer of \$5 million is based upon

¹ HCRRA is a governmental entity and political subdivision of the State of Minnesota. It describes its statutory purpose as the preservation and improvement of local rail service for agriculture, industry and passenger traffic.

financial information provided by Dakota Rail, including estimated net liquidation value and real estate appraisal information for the right-of-way. HCRRA's offer is reasonably close to the value asserted by Dakota Rail so as to provide a basis for negotiations and is consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C).

HCRRA has stated its intention to provide rail freight service over the line. Because HCRRA is financially responsible and has offered financial assistance, the effective date of the exemption authorizing the abandonment will be postponed.²

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$14,800. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of the proceeding, along with the words "Attention: Application Unit, Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. Minnetonka Beach's motion to dismiss the OFA is denied.
2. The effective date of the exemption authorizing the abandonment is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
3. If Dakota Rail and HCRRA cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before January 9, 2002. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.

² Minnetonka Beach requests that, if the OFA process is allowed to go forward, the Board should impose a condition on the use of the right-of-way if rail service is interrupted in the future. Because HCRRA's offer is bona fide, it is neither necessary nor appropriate to consider this request at this time.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary