

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1067 (Sub-No. 1X)

IOWA NORTHWESTERN RAILROAD—ABANDONMENT EXEMPTION—IN OSCEOLA  
AND DICKINSON COUNTIES, IA

Decided: May 2, 2008

On January 29, 2008, Cooperative Elevator Association (CEA) filed a petition to reopen this proceeding based on changed circumstances and to consider the requests for a public use condition filed by the Iowa Natural Heritage Foundation<sup>1</sup> and the Iowa Trails Council.<sup>2</sup> This decision will deny CEA's request to reopen this proceeding for the reasons discussed below.

BACKGROUND

On March 3, 2001, General Railway Corporation, d/b/a Iowa Northwestern Railroad (IANW) entered into a Sale and Repurchase Agreement with Dickinson Osceola Railroad Association (DORA) to operate and purchase an approximately 37.21-mile line of railroad, extending from current milepost 215.00 at a point west of Superior, IA, to milepost 252.30 at a point west of Allendorf, IA, in Dickinson and Osceola Counties (the Line).<sup>3</sup> DORA purchased the Line from the UP on April 4, 2001.<sup>4</sup>

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<sup>1</sup> On January 17, 2006, the Iowa Natural Heritage Foundation filed a request for a public use condition for the entire line, on behalf of itself, the Osceola County Conservation Board, the Dickinson County Trails Board, and the Dickinson County Trails Alliance.

<sup>2</sup> On January 18, 2006, the Iowa Trails Council filed a request for a public use condition for the portion of the line extending from milepost 237.5 to milepost 252.3, on behalf of the Cities of Sibley and Allendorf, and the Osceola County and Dickinson County conservation boards.

<sup>3</sup> CEA refers to the Line extending from milepost 79.34 to milepost 116.55. These mileposts reflect the milepost numbers used by Union Pacific Railroad Company (UP) at the time it sold the Line. The Chicago and North Western Transportation Company (which later merged into UP) purchased the Line from the Rock Island Railroad. The IANW uses the Rock Island Railroad's original milepost numbers for the Line rather than UP's milepost numbers.

<sup>4</sup> See Dickinson Osceola Railroad Association—Acquisition and Operation Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34008 (STB served Mar. 5, 2001).

On May 2, 2001, the Board authorized IANW to operate the Line through a notice of exemption filed under 49 CFR 1150.31 in 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 and published May 11, 2001) (66 FR 24181).

By decision served on April 10, 2006, the Board granted IANW’s petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue operations over a 17.05-mile portion of the Line extending from milepost 235.25 near Lake Park, IA, to the end of the Line at milepost 252.3 near Allendorf, IA, in Osceola and Dickinson Counties, IA (17.05-mile portion of the Line), subject to employee protective conditions (April 2006 decision).<sup>5</sup> Although IANW had filed a petition for abandonment authority, the Board could not grant IANW abandonment authority because IANW had not previously obtained authorization from the Board to buy the Line. Rather, IANW had only received authorization to operate over the Line. As a result, the Board stated, it could only grant IANW authority to discontinue service over the 17.05-mile portion of the Line that IANW sought to abandon.

On May 19, 2006, IANW filed a verified notice of exemption under 49 CFR 1150.31 for authority to acquire the Line, which IANW maintained it had purchased from DORA in November 2001. By decision served on May 25, 2006, the Board’s Chairman issued a “housekeeping” stay of the effective date of IANW’s notice of exemption to permit full consideration of issues presented in a petition to reject or revoke the acquisition exemption filed by DORA and the Iowa Central Railroad Company. In addition, the Board’s Chairman directed IANW to file an amended notice of exemption under 49 CFR 1150.41, instead of 49 CFR 1150.31, because IANW had become a rail carrier after having obtained authority to operate the Line in 2001.<sup>6</sup> IANW filed its amended notice of exemption under 49 CFR 1150.41 to acquire the Line on June 1, 2006.<sup>7</sup> In a decision served on June 15, 2007, the Board lifted the housekeeping stay and made the exemption authorizing IANW to acquire the Line effective on that date.<sup>8</sup>

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<sup>5</sup> See Iowa Northwestern Railroad—Abandonment Exemption—In Osceola and Dickinson Counties, IA, STB Docket No. AB-1067 (Sub-No. 1X) (STB served Apr. 10, 2006).

<sup>6</sup> See General Railway Corporation, d/b/a Iowa Northwestern Railroad—Exemption for Acquisition of Railroad Line—In Osceola and Dickinson Counties, IA, STB Finance Docket No. 34867 (STB served May 25, 2006).

<sup>7</sup> See General Railway Corporation, d/b/a Iowa Northwestern Railroad—Exemption for Acquisition of Railroad Line—In Osceola and Dickinson Counties, IA, STB Finance Docket No. 34867 (STB served July 3, 2006, and published July 5, 2006, at 71 FR 38208).

<sup>8</sup> General Railway Corporation, d/b/a Iowa Northwestern Railroad—Exemption for Acquisition of Railroad Line—In Osceola and Dickinson Counties, IA, STB Finance Docket No. 34867 (STB served June 15, 2007).

## DISCUSSION AND CONCLUSION

Under the Board's governing statute and implementing regulations, the Board may reopen and reconsider a prior Board decision on the ground of material error, new evidence, or substantially changed circumstances. See 49 U.S.C. 722(c); 49 CFR 1115.3(b). CEA asserts that the Board's grant of authority to purchase the Line from DORA in STB Finance Docket No. 34867 is a substantially changed circumstance and removes the sole impediment to the abandonment process in this proceeding. Therefore, CEA requests that the Board reopen this proceeding to allow the public use condition requests previously filed to move forward.

While IANW's status with regard to the Line has changed, that change is not a substantially changed circumstance with regard to the discontinuance authority granted in the April 2006 decision and does not retroactively affect the outcome of the April 2006 decision. In the April 2006 decision, IANW requested abandonment authority but was granted authority only to discontinue its common carrier service obligation over the 17.05-mile portion of the Line at issue. Imposition of a public use condition was not appropriate because the entity with Board authorization to own the Line at that time, DORA, had a residual common carrier obligation to provide service on the Line.

The acts of acquiring authority from the Board to purchase the Line and then of consummating that purchase, after authority to discontinue service has been granted for a portion of that Line, does not turn that discontinuance authority into authority to abandon the Line. Separate abandonment authority must be acquired. Here, IANW has now been authorized to purchase all of DORA's interest in the Line, including its residual common carrier obligation. Therefore, if IANW wishes to abandon the Line or any portion of the Line, it must seek abandonment authority from the Board. At that point, a request for a public use condition would be appropriate.

It is ordered:

1. CEA's request to reopen this proceeding is denied.
2. This decision is effective on its date of service.

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

Anne K. Quinlan  
Acting Secretary