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SERVICE DATE – JUNE 15, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34037

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

Decided: June 13, 2007

This decision denies a petition by the Dickinson Osceola Railroad Association (DORA) to revoke the notice of exemption under 49 CFR 1150.31 filed by the General Railway Company (GRC) in this proceeding.

BACKGROUND

On March 3, 2001, GRC entered into a Sale and Repurchase Agreement with DORA to operate and purchase an approximately 37.21-mile line of railroad (the Line), 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. According to GRC, DORA purchased the Line from the Union Pacific Railroad Company (UP) on April 4, 2001, one day after GRC had paid UP directly \$375,000 for the Line.<sup>1</sup> DORA designated GRC as the exclusive rail operator on the Line pending the subsequent sale from DORA to GRC, at which point GRC would become the sole owner. DORA transferred ownership of the Line to GRC by quitclaim deed recorded on November 1, 2001.<sup>2</sup>

On May 2, 2001, the Board authorized GRC 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).

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<sup>1</sup> See Dickinson Osceola Railroad Association—Acquisition and Operation Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34008 (STB served Mar. 5, 2001).

<sup>2</sup> See GRC Verified Notice of Exemption, Exhibit C, STB Finance Docket No. 34867 (filed May 19, 2006).

By decision served on April 10, 2006, we granted GRC'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 portion of the Line,<sup>3</sup> subject to employee protective conditions.<sup>4</sup> Although GRC had filed a petition for abandonment authority, we explained in our decision that we could not grant GRC abandonment authority because GRC had not previously obtained authorization from the Board to buy the Line. Rather, GRC had only received authorization to operate over the Line. As a result, the Board stated, it could only grant GRC authority to discontinue service over the portion of the Line that GRC sought to abandon.<sup>5</sup>

On May 8, 2006, DORA filed a petition to revoke the exemption that gave GRC the right to operate over the Line in 2001. On May 30, 2006, GRC filed a reply opposing DORA's request. By a decision served on July 28, 2006, we instituted a proceeding to consider the issues presented in DORA's petition and GRC's reply.

### POSITIONS OF THE PARTIES

In its petition, DORA argues that GRC's exemption should be revoked because GRC unlawfully discontinued service on the Line without obtaining Board authority and violated its common carrier obligation. Specifically, DORA alleges that GRC scrapped the 17.05-mile portion of the Line from Lake Park to Allendorf that it later sought to abandon before obtaining proper Board authority<sup>6</sup> and has since ceased service on the entire Line. DORA argues that GRC

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<sup>3</sup> GRC sought to abandon 17.05 miles of the Line, extending from milepost 235.25 near Lake Park, IA, to the end of the Line at milepost 252.30 near Allendorf, IA.

<sup>4</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) (April 2006 Discontinuance Decision).

<sup>5</sup> In a related proceeding, GRC has belatedly sought authority to acquire the Line by filing a verified notice of exemption under 49 CFR 1150.31. The Board's Chairman issued a "housekeeping" stay of the effective date of that exemption to permit the Board to fully consider the issues presented in a petition filed by DORA and Iowa Central Railroad Company to reject or revoke the exemption or to stay its effectiveness. 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). The request to reject or revoke the exemption will be decided in a separate Board decision in STB Finance Docket No. 34867.

<sup>6</sup> DORA also states that, in July 2004, CEA filed a complaint in the U.S. District Court for the Northern District of Iowa, Western Division, alleging that GRC had removed track and track materials and discontinued use on the Line without obtaining Board approval. In a decision entered on August 16, 2005, and modified on November 19, 2005, the district court adopted a magistrate's prior recommendation to grant the relief requested by CEA. The court directed GRC to apply for abandonment authority from the Board and not to remove any additional rail, rail components or materials from the Line until it received Board authorization.

violated its common carrier obligation by failing to respond to an October 3, 2005 request for a delivery of rail cars from the Cooperative Elevator Association (CEA), a commercial shipper located on the Line.

In reply, GRC argues that DORA's allegations do not justify the relief it seeks. GRC contends that DORA has not supported its claim that GRC unlawfully discontinued service on the Line. Furthermore, GRC states that it intends to keep the Superior to Lake Park portion of the Line available for service when the UP embargo that has prevented commercial traffic from moving onto or off of the Line to UP since 2003 is lifted, and that DORA has not shown otherwise. GRC notes that it has not requested authority to abandon or discontinue service over the Superior to Lake Park portion of the Line and argues that its actions on the Line show that it hopes to keep the Line active and profitable. GRC states that it operated excursion and dinner trains for tourists on the Line from 2001 through 2004. GRC indicates that in 2005 it gave a non-profit railway historical society permission to run the excursion and dinner trains on a no-fee basis using cars leased by GRC. GRC also states that it provided railcar storage to UP customers throughout 2004, moving railcars out to the UP interchange when requested by car owners who received permits from UP to move cars to the interchange for pickup. Finally, GRC indicates that it has sought new business on the Line.

GRC also disputes that it violated its common carrier obligation. GRC argues that both DORA and CEA were aware of the UP embargo at the time CEA made the request for service. GRC contends that its common carrier obligation under 49 U.S.C. 11101 is to provide transportation or service upon reasonable request and that CEA's request was not reasonable under the circumstances. GRC also notes that CEA is located on the segment of the Line over which GRC has already obtained Board authority to discontinue operations.

## DISCUSSIONS AND CONCLUSIONS

Under 49 U.S.C. 10502(d), we may revoke an exemption if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. Where appropriate, the Board can revoke a notice of exemption to review the bona fides of a transaction to protect the integrity of its processes. Minnesota Comm. Ry., Inc. –Trackage Exempt. –BN RR. Co., 8 I.C.C.2d 31 (1991). The party seeking revocation must provide reasonable, specific concerns to demonstrate that revocation of the exemption is warranted. See I&M Rail Link LLC–Acquisition and Operation Exemption–Certain lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998). A notice that contains false or misleading information is void ab initio. Our review of the record here leads us to conclude that DORA has not justified the relief it seeks.

In support of its petition, DORA has claimed to show that GRC has failed to provide appropriate common carrier rail service and has unlawfully discontinued service and salvaged rail assets without prior discontinuance authority from the Board. But even assuming those allegations were proven, they could not form the basis for revoking the operation exemption acquired by GRC in 2001. Instead, to support revocation, DORA must meet the criteria set forth above.

GRC sought and obtained authority to operate the Line in 2001, and operated it until the UP embargo in 2003 ended shipments to and from the lone shipper on the line, CEA. CEA originated 150, 100 and 225 cars of grain in 2001, 2002, and 2003, respectively, and received 34, 39, and 68 cars, in each of those respective years.<sup>7</sup> DORA does not allege, nor is there any evidence in the record, that GRC's 2001 notice of exemption contained any false or misleading statements. Nor is there evidence to show that regulation of the transaction is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. DORA does not allege an abuse of the Board's process in the 2001 proceedings or a sham transaction. Instead, all of DORA's allegations concern GRC's conduct after it began operations in 2001. There are administrative remedies for failure to provide service that could be pursued if a party wants the Board to consider service-related claims. But the revocation of operating authority that is sought in this proceeding at this late date is not justified here. Therefore, DORA's petition will be denied.

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

It is ordered:

1. DORA's petition to revoke is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary

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<sup>7</sup> See April 2006 Discontinuance Decision.