

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34867

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

Decided: July 13, 2007

This decision denies the motion of the Dickinson Osceola Railroad Association (DORA) for stay and clarification of the agency's decision denying DORA's petition to reject or to revoke the notice of acquisition exemption filed in this proceeding by the General Railway Corporation (GRC).<sup>1</sup>

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. Braunskill, 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) (Holiday Tours); Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). On a motion for stay, "it is the movant's obligation to justify the . . . exercise of such an extraordinary remedy." Cuomo v. United States Nuclear Regulatory Comm'n, 772 F.2d 972, 978 (D.C. Cir. 1985). The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

DORA filed its motion for stay and clarification on July 5, 2007, to which GRC replied in opposition on July 11, 2007. The request for stay and clarification will be denied. First, DORA's motion does not even recite Holiday Tours criteria, much less offer any evidence or argument to show that its stay request meets any of them. Second, DORA filed its motion for a stay late. Pursuant to 49 CFR 1115.3, a petition to stay a decision of the Board is due within 10 days of the date on which the decision is issued. DORA's request was due on June 25, 2007. It was not filed until July 5, 2007.

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<sup>1</sup> DORA's motion is captioned with both the acquisition exemption proceeding in STB Finance Docket No. 34867 and the operation exemption proceeding in STB Finance Docket No. 34037, but the text of the motion clearly indicates that DORA's motion concerns only the former. The Board's prior decisions set forth the background of these proceedings.

Third, review of DORA's stay request in light of the applicable criteria yields no basis for granting its request. DORA has shown no likelihood of prevailing on the merits of what it terms a "motion for clarification." DORA does not cite any support for such a filing in the statute, Board regulations, or Board precedent. Parties seeking review of a Board decision may seek reconsideration or reopening, and must show material error, new evidence or changed circumstances. DORA may not avoid the obligation of meeting those standards merely by assigning a different label to its request for relief.<sup>2</sup> DORA's motion recites unsupported, unspecific allegations regarding GRC's service, payment of taxes and movement of equipment, none of which is shown to be relevant to any entitlement to relief. DORA's statement that it will offer support for its request for relief in 21 days offers no reason why DORA cannot supply that support now. Thus, this motion for clarification and for stay appears to be merely an effort to protract this proceeding.

Finally, DORA makes no showing that it will suffer immediate and irreparable harm absent the imposition of a stay, nor does it make any showing that imposition of a stay would not harm other interested parties, or that a stay would support the public interest.

For all these reasons, DORA's request for relief will be denied.

It is ordered:

1. DORA's motion for clarification and stay is denied.
2. This decision is effective on its date of service.

By the Board, Charles D. Nottingham, Chairman.

Vernon A. Williams  
Secretary

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<sup>2</sup> A petition for reconsideration also requires the payment of a filing fee.