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February 24, 2006



VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings

FEB 24 2006

Part of
Public Record

Dear Secretary Williams:

This refers to STB Docket No. AB-988X, Nebkota Railway, Inc.—Abandonment Exemption—In Sheridan and Cherry Counties, NE, and to the Status Report filed by the Nebraska Game and Parks Commission (“NGPC”) and Rails to Trails Conservancy (“RTC”), filed February 17, 2006.

Nebkota Railway, Inc. (“NRI”), by its letter dated January 26, 2006, previously advised the Board that it would accept the imposition of a trails condition and that is prepared to negotiate the transfer of the right-of-way between Rushville and Merriman, including the bridges, trestles and culverts, to NGPC for recreational use, pursuant to 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29, if and when the proposed abandonment were approved by the Board. NRI went on to state that, under the circumstances, the request of NGPC and RTC for a public use condition had been obviated.

In their Status Report, NGPC and RTC seek a Board determination that NRI similarly will need to convey the right-of-way of its Chadron-to-Rushville railroad line, including the bridges, trestles and culverts, to NGPC for recreational use, pursuant to 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29, if and when it ever were to seek the Board’s authority to abandon the line.

The abandonment of NRI’s Chadron-to-Rushville line has not been proposed, and neither an application nor a petition to abandon it is before the Board. Accordingly, it would be inappropriate for the Board to speculate what, if any, position NRI may take in a subsequent abandonment proceeding and should determine the instant proceeding on the facts of record before it. Indiana Sugars, Inc. v. I.C.C., 694 F.2d 1098, 1100 (7th Cir. 1982); Docket No. AB-1

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(Sub- No. 1), Chicago and North Western Transportation Company—Abandonment and Discontinuance of Trackage Rights—Between Hopkins and Chaska, MN, served February 4, 1988.

NGPC and RTC ask the Board to hold that the obligation to convey the right-of-way is imposed upon NRI by the terms of a Master Agreement, a copy of which previously was submitted by NGPC and RTC with their Reply, filed January 10, 2006. Whether the Master Agreement requires such action by NRI is not a matter which should be determined by the Board. The Board ordinarily does not construe contracts, deferring to the courts matters of contract interpretation. STB Finance Docket No. 34608, Ohio Valley Railroad Company—Petition to Restore Switch Connection and Other Relief, served February 23, 2005; STB Docket No. 42053, The Town of Woodbridge, NJ, et al. v. Consolidated Rail Corporation, served December 1, 2000; Burlington Nor. R. Co.—Order for Just Compensation, 7 I.C.C.2d 74, 77 (1990).

Accordingly, NRI asks that the relief which NGPC and RTC seek by the Status Report should be denied.

Ten copies of this letter are enclosed to permit your circulation of it. An additional copy is enclosed for you to stamp to acknowledge your receipt of it and to return via the messenger.

A copy of this letter has been served upon NGPC and RTC by facsimile transmitting a copy of it to their counsel.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Charles Montagne, Esq.