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June 16, 2006

BY UPS OVERNIGHT MAIL

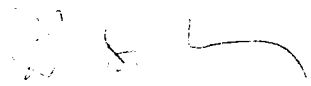
Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20006

**Re: Petition of Olmsted County to Reject or Revoke Exemption
Finance Docket No.: 34871**

Dear Secretary Williams:

Enclosed for filing on behalf of Olmsted County, Minnesota, please find the original and 10 copies of Petition of Olmsted County to Reject or Revoke Exemption. One extra copy of the Petition and this letter are enclosed. I request that you date-stamp those items to show receipt of filing and return to me in the envelope provided. I have also enclosed a check in the amount of \$200.00 for the filing fee.

Sincerely,


Elizabeth H. Schmiesing

Enclosures
MI:1329004.01

ELIZABETH H. SCHMIESING
Office of the Secretary
Surface Transportation Board
Federal
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34871

WYOMING DAKOTA RAILROAD PROPERTIES, INC.
-- ACQUISITION AND OPERATION EXEMPTION --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

PETITION OF OLMSTED COUNTY TO
REJECT OR REVOKE EXEMPTION

FILED
Office of Proceedings
JUN 19 2006
Part of
Public Record

Olmsted County ("Olmsted") hereby urges the Board to reject or revoke the exemption sought by Wyoming Dakota Railroad Properties, Inc. ("WDRPI") in the above-referenced docket. WDRPI has filed a Verified Notice of Exemption (the "Notice") in connection with its intent to acquire the construction and operation authority issued to the Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") with respect to approximately 262 miles of new rail line running from the Powder River Basin in Wyoming into South Dakota, connecting with DM&E's existing line. The authority to construct and operate that line was provided in the Board's Decision in Surface Transportation Board Finance Docket No. 33407: Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin (Feb. 15, 2006) (the "Decision"). As part of the Decision, the Board imposed one hundred and forty-seven (147) environmental mitigation measures as conditions to DM&E's construction of the new line. Decision at 22-51. The vast majority of those measures, however do not relate to the line that WDRPI intends to construct and operate; rather, most of those measures

affect only DM&E's existing line through South Dakota and Minnesota. This portion of the line runs directly through Olmsted County. WDRPI has explicitly stated that it will not be involved in the rehabilitation or operation of DM&E's existing line. Notice at 5.

Despite the fact that WDRPI will have no involvement with the rehabilitation or operation of DM&E's existing line, WDRPI claims that it will comply with all of the Board's environmental conditions and mitigation measures imposed in the Decision. *Id.* WDRPI does not explain, however, how it will comply with the environmental mitigation measures required for the existing line while not participating in the rehabilitation or operation of that line.

Numerous of the required mitigation measures directly affect Olmsted County.

For example, the Board is requiring DM&E to:

- apply its grade-crossing protection formula to crossings on the existing line;
- coordinate with affected communities, including Rochester, Minnesota (the largest city in Olmsted County) on emergency response issues;
- develop a Spill Prevention Control and Counter Measure Plan to address hazardous material issues during reconstruction and operation of the line, including a requirement that the applicant comply with its Plan and applicable regulations in the event of a spill;
- consult and coordinate with state Departments of Transportation and local road authorities on transportation issues; and
- establish Community Liaisons to work with local communities on a variety of concerns.¹

See Decision at 22-51.

The Board has also imposed numerous conditions that must be met during reconstruction, including on-the-ground measures regarding use and storage of equipment

¹ These measures are identified as examples only. By no means is this a complete list of the measures directly affecting Olmsted County.

in residential areas; restoration of areas disturbed by construction-related activities; and use of best management practices to minimize sedimentation and soil erosion. *Id.*

Nowhere does WDRPI explain how it intends to carry out these mitigation measures, which must be implemented onsite as reconstruction occurs, when it will not be involved with the rehabilitation of the existing line. The Board must reject or revoke the exemption in order to address these serious issues.

To the extent that WDRPI does *not* intend to carry out mitigation measures pertaining to the existing line, it provides no precedent for severing the mitigation conditions from the grant of authority to build the new line. Throughout the long history of FD 33407, DM&E's proposal has always been presented as a single project - there is no question that, in order to run coal trains from the PRB through South Dakota and Minnesota, DM&E's existing line requires significant investment and upgrade. WDRPI has failed to show that its proposed partitioning of the Board's Decision will cause no change in the nature, effect or implementation of the Project.

WDRPI states that the transaction underlying its Notice is designated to "enhance financing options and flexibility for the project," and provides as an example a scenario whereby the new line will be financed separately from the rest of the project because such financing "may be attractive for investors with interest in a new line dedicated to coal rather than a general freight railroad." Notice at 4-5. WDRPI does not explain, however, how such financing would ensure the completion of the mitigation measures on the existing line as required by the Decision. All WDRPI offers is the conclusory statement that "WDRPI will. . . comply fully with all environmental conditions and mitigation measures imposed by the Board. . . ." Notice at 5. The very next line of the

Notice, however, confirms that “WDRPI will not be involved in the rehabilitation of DM&E’s existing east-west main line between Wall, South Dakota and Winona, Minnesota.” *Id.* Without evidence that, after completion of the underlying transaction, both entities will have financial resources adequate to meet the obligations set forth in the Board’s Decision, the Board cannot ensure that the transportation policy under 49 U.S.C. § 10101 will be carried out.

The authority cited by WDRPI is inapposite. The Board’s decision in *Tongue River Railroad Co. --- Acquisition and Operation Exemption --- Tongue River Railroad Company*, Finance Docket No. 33644 (November 9, 1998) is not, as claimed by WDPRI, “nearly identical” to the exemption claimed here. As the Board noted in that decision, that transaction involved “only a change in the form of ownership of the company that will construct and operate a line that already has been partially authorized.” *Id.* Here, however, WDPRI acknowledges that it will not participate in a portion of the work directly affected by the Decision. The transaction proposed here is more than a simple “change in form of ownership.”

For the foregoing reasons, Olmsted respectfully requests the Board (1) reject or revoke the proposed exemption as outside the limited scope of the class exemption set forth at 49 C.F.R. 1050.31, *et seq.* and (2) find that Board review of the proposed transfer of authority is necessary to assure compliance with conditions that directly affect DM&E and its rehabilitation, maintenance and operation of its existing line that runs through Olmsted County.

Respectfully submitted,



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612-766-7000

Of Counsel:

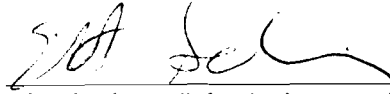
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Counsel for Olmsted County, Minnesota

Dated: June 16, 2006

I, Elizabeth H. Schmiesing, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

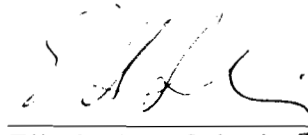
Executed on June 16, 2006.



Elizabeth H. Schmiesing

I hereby certify that I have served all parties of record in this proceeding with this document by UPS Overnight mail.

Dated: June 16, 2006

A handwritten signature in black ink, appearing to read 'E. Schmiesing', is written over a horizontal line.

Elizabeth H. Schmiesing