

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 21X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—LINE IN WARREN COUNTY, MS

Decided: February 6, 2008

By decision served December 12, 2007, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the proposed abandonment by The Kansas City Southern Railway Company (KCSR) and the proposed discontinuance of service by Vicksburg Southern Railroad, Inc., of approximately 4.25 miles of rail line (Line), extending from milepost 225.6 to milepost 229.85, in Vicksburg, Warren County, MS. The Board denied petitioners' request for exemptions from the offer of financial assistance (49 U.S.C. 10904) and public use (49 U.S.C. 10905) provisions. The decision noted that a notice of intent to file an offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue had been filed by Raymond B. English, the president of Foam Packaging, Inc., the only active shipper on the Line, and a request for a notice of interim trail use under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, filed by the City of Vicksburg was held in abeyance pending completion of the OFA process. The abandonment and discontinuance exemptions were scheduled to become effective on January 11, 2008, unless stayed by the Board or an OFA was filed by December 21, 2007.

On December 20, 2007, Mr. English timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase approximately 1.9 miles of the Line extending from milepost 225.6 to milepost 227.5 (Segment). On December 21, 2007, Mr. English filed a supplement to his December 20 OFA, adding James Riffin, identified as an existing Class III rail carrier, as a joint offeror, and expanding the scope of the offer to include the remaining 2.35 miles of the Line from milepost 227.5 to milepost 229.85 (Remainder). In a decision served on December 27, 2007, Mr. English and Mr. Riffin (collectively, Offerors) were found to be financially responsible and the effective date of the exemption authorizing the abandonment was postponed to permit the OFA process to proceed. In the same decision, the Board made any request to establish the terms and conditions of the purchase due on or before January 18, 2008. On January 16, 2008, KCSR filed a petition for an extension of this deadline to January 25, 2008, which the Board granted by decision served January 17, 2008.

On January 25, 2008, Offerors filed a request that the Board set the terms and conditions for the sale of the Line (Request) because the parties were unable to agree on the sale price. KCSR filed its reply on January 30, 2008. On February 4, 2008, Offerors filed three pleadings:

an errata; a supplement to the Request; and a motion to strike portions of KCSR's January 30 reply.

An offeror must submit its case-in-chief in its original request to set terms and conditions, and rebuttals or evidence submitted subsequently will be rejected. See 49 CFR 1152.27(h)(4). The Board is required to render its decision within 30 days of a request to set terms and conditions (see 49 U.S.C. 10904(f)(1)(A)), and strict adherence to the Board's procedural rules regarding such a request is necessary to meet that deadline.

Offerors' motion to strike is nothing but a thinly veiled reply to KCSR's reply. They dispute the qualifications of the railroad's witnesses, the evaluations made by those witnesses, and the arguments made by KCSR based on the evidence submitted by its witnesses. In its reply to the Request, KCSR has kept within the parameters of the case that Offerors filed in asking the Board to set the terms and conditions for the forced sale of the Line. It has submitted nothing that ought to be stricken. Rather, Offerors' motion must be rejected, not only as an impermissible reply to a reply but because it is an attempt to circumvent a statutory scheme designed to produce a decision on a complex issue in a highly abbreviated period of time.

Offerors' errata sheet contains one legitimate technical correction, a revised signature page, which will be accepted. The other two proposed "corrections" will be rejected. One—an attempt to correct the acreage, and, in turn, the real estate value—is redundant in that the correct acreage appears elsewhere in the record. The other, a verified statement by Mr. Riffin, is not errata at all, but is an attempt to bolster the arguments made in the Request. Had Offerors wished to submit a verified statement, they should have done so in their case-in-chief.

Finally, Offerors submitted a motion to supplement their request to set terms and conditions. For the same reason that the Board prohibits the submission of rebuttals or replies to replies, it also disfavors attempts to supplement the record. Here, however, Offerors submit evidence that a bridge on the Line, which apparently was in place when Offerors filed their Request, is being or has been removed. That issue bears on the matter before the Board and seems to be information that Offerors would not have had when they filed their Request to set terms and conditions. Therefore, KCSR will be directed to address the alleged removal of the bridge by close of business on Monday, February 11, 2008. Additionally, KCSR is directed to keep the status quo intact while the OFA process plays out.

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

It is ordered:

1. Offerors' revised signature page is accepted.
2. Offerors' revised acreage and real estate value are rejected.
3. Offerors' verified statement of Mr. Riffin is rejected.
4. Offerors' motion to strike is rejected in its entirety.
5. Offerors' motion to supplement the record is accepted.
6. KCSR is directed to respond to Offerors' allegation concerning the removal of a bridge on the Line by close of business Monday, February 11, 2008.
7. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary