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SERVICE DATE – JUNE 7, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 384 (Sub-No. 2X)

DELTA SOUTHERN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN EAST
CARROLL PARISH, LA.

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: June 6, 2011

This decision finds Lake Providence Port Commission (Lake Providence) financially responsible, approves the sale of the line, and dismisses the notice of exemption.

Delta Southern Railroad, Inc. (DSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 8 miles of rail line between milepost 463.0, near Shelburn, and milepost 471.0, which is approximately a mile south of Lake Providence, in East Carroll Parish, La. Notice of the exemption was served and published in the Federal Register on November 29, 2010 (75 Fed. Reg. 73,161-62).

Under the Board's rules, the exemption was scheduled to become effective on December 29, 2010, unless it was stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by December 9, 2010. On December 8, 2010, Lake Providence filed a formal expression of intent to file an OFA to purchase the line and simultaneously served the notice of intent on DSR. This filing automatically stayed the effective date of the exemption for 10 days, until January 8, 2011. 49 C.F.R. § 1152.27(c)(2)(i). In the filing, Lake Providence stated that, by letter dated December 7, 2010, it had requested DSR to provide Lake Providence with certain information and documentation set forth in 49 C.F.R. § 1152.27(a).

By decision served on December 28, 2010 (December 2010 decision), the time period for Lake Providence to submit an OFA was tolled until 10 calendar days after DSR notified the Board in writing that it had provided Lake Providence with the requested information and documentation. That decision also postponed the effective date of the exemption until 10 calendar days after the due date for filing an OFA.

Having received no further filings from DSR or Lake Providence, the Board, by decision served on May 19, 2011, directed DSR to file, by June 1, 2011, a report explaining the status of its provision of the requested information to Lake Providence.

On May 27, 2011, Lake Providence filed an OFA under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27 to purchase the line for \$280,000 (\$35,000 per mile). Lake Providence indicates that, although DSR did not formally provide the information Lake Providence had requested, DSR and Lake Providence have been negotiating with respect to the OFA acquisition and have reached agreement on the price and other terms and conditions related to the purchase price of the subject line. Lake Providence states that there is no disparity between DSR's estimate of net liquidation value and Lake Providence's offer. On the same date, DSR filed a letter accepting Lake Providence's offer.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abans. Under NERSA, 365 I.C.C. 472 (1981). The Board's regulations presume that governmental entities, such as Lake Providence, are financially responsible. 49 C.F.R. § 1152.27(c)(1)(ii)(B). Accordingly, Lake Providence is found to be financially responsible.

When a carrier and a person offering to purchase a line under the OFA process enter into an agreement for continued rail service, the Board is required to approve the transaction and dismiss the notice of exemption. See 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(f)(2). Accordingly, the sale will be approved, and the notice of exemption will be dismissed.¹

Among the terms and conditions identified in Lake Providence's OFA is the grant of trackage rights over the 1.25± miles of track connecting the line and the private tracks owned by Lake Providence. This decision does not approve that grant of trackage rights; Lake Providence will need to obtain Board authority to obtain those rights under the appropriate Board processes.

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

It is ordered:

1. Under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(f)(2), Lake Providence is authorized to acquire and operate the line.
2. Under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(f)(2), the notice of exemption is dismissed, effective on the date the sale is consummated.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ The December 2010 decision imposed 2 environmental conditions on the abandonment. Because the line is being sold under the OFA procedures, dismissing the notice of exemption renders the environmental conditions moot.