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SERVICE DATE – LATE RELEASE FEBRUARY 13, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1020X

EAST PENN RAILROAD, LLC—ABANDONMENT EXEMPTION—IN BERKS AND
MONTGOMERY COUNTIES, PA

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: February 13, 2009

By decision served on November 18, 2008, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by East Penn Railroad, LLC (ESPN) of an 8.6-mile line of railroad extending from milepost 0.0 at Pottstown to milepost 8.6 at Boyertown, in Berks and Montgomery Counties, PA. This grant of authority was made subject to public use, trail use, environmental, and standard employee protective conditions. The exemption was scheduled to become effective on December 18, 2008, unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) was filed by November 28, 2008.

On November 26, 2008, the Board of Commissioners of the County of Berks, acting on behalf of the County of Berks, PA (the County), timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the entire 8.6-mile line. The County noted in a clarification filed on November 28, 2008, that it proposed to purchase the line for the total amount of \$500,000.

In a decision served on December 2, 2008, the Board, by the Director of the Office of Proceedings, found the County to be financially responsible and postponed the effective date of the exemption to permit the OFA process to proceed.

On December 24, 2008, the County filed a request asking that the Board set the terms and conditions of the line sale. The County completed its filing by submitting a supplement on December 29, 2008. Also on December 29, 2008, the railroad filed a preliminary reply to the County's request to set terms and conditions. ESPN filed a final reply on December 31, 2008.

By decision served on January 28, 2009, the Board set the purchase price for the line at \$2,162,018 and established terms for its transfer. The County was given until February 9, 2009, to withdraw its offer or to refuse to accept the terms and conditions set by the Board. On February 9, 2009, the County filed a letter stating that it did not wish to purchase the line based on the terms and conditions set by the Board.

When an entity offering to purchase a line later is not willing to accept the terms and conditions set by the Board, the Board will serve a decision vacating the decision that postponed the effective date of the decision granting the abandonment exemption. See 49 U.S.C. 10904 and 49 CFR 1152.27(h)(7). Accordingly, the OFA process will be terminated, and the December 2 decision will be vacated to permit the prior abandonment authorization for the 8.6-mile line to become effective on the service date of this decision. Because a sale of the line will not occur under the OFA provisions, the trail use condition and public use condition imposed in the Board's decision served on November 18, 2008, will run 180 days from the service date of this decision (until August 12, 2009).

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

It is ordered:

1. The OFA process in this proceeding is terminated.
2. The December 2, 2008 decision is vacated to the extent that it postponed the effective date of the abandonment exemption to permit the OFA process to proceed. The abandonment exemption will be effective on the service date of this decision, subject to the previously imposed conditions.
3. This decision is effective on the date of service.

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

Anne K. Quinlan
Acting Secretary