

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1071

STEWARTSTOWN RAILROAD COMPANY—ADVERSE ABANDONMENT—IN YORK
COUNTY, PA.

Decided: November 30, 2012

By decision and certificate of interim trail use or abandonment served on November 16, 2012 (November 2012 Decision), the Board, under 49 U.S.C. § 10903, granted the third-party, or “adverse,” abandonment application of the Estate of George M. Hart (Estate) for an approximately 7.4-mile line of railroad (Line) between milepost 0.0 at New Freedom and milepost 7.4 near Stewartstown, in York County, Pa., owned by the Stewartstown Railroad Company (SRC). The adverse abandonment was granted subject to trail use and environmental conditions as well as the possibility of offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to purchase the Line. The decision and certificate was scheduled to become effective on December 17, 2012, unless an OFA was filed on or before November 26, 2012, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C).

On November 20, 2012, James Riffin (Riffin) filed a petition to toll the period to submit an OFA under 49 C.F.R. § 1152.27(c)(1)(i)(C). In the petition, Riffin requests that SRC provide the information set forth in 49 C.F.R. § 1152.27(a).¹ That information includes the minimum purchase price required to acquire the Line, the most recent reports on the physical condition of the Line, and an estimate of the net liquidation value (NLV) of the Line, together with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track material in the Line, and removal cost estimates used to obtain the NLV.²

¹ On January 18, 2012, Riffin filed a notice with the Board indicating his intent to file an OFA in this proceeding. In that filing, Riffin also requested that SRC provide him and the Board the information specified in 49 C.F.R. § 1152.27(a).

² Under 49 C.F.R. § 1152.27(a)(3), the information to be provided to an OFA offeror is to include an estimate of a line’s NLV and supporting data “[i]n an exemption proceeding,” which this proceeding is not. It is appropriate in this case, however, to require SRC to provide this information here because, as this abandonment proceeding is adverse, the application filed by the Estate did not include all the firsthand information on the condition of the Line, the service performed on the Line, and the revenue and cost data attributable to the Line that would have been required in a typical abandonment application filed by the carrier itself. See Stewartstown R.R.—Adverse Aban.—in York Cnty., Pa., AB 1071 (STB served Mar. 10, 2011) (waiving the information requirements of 49 C.F.R. § 1152.22(c) and (d)); Application at 10 (noting the Estate’s “limited and incomplete” information on the condition of the Line following discovery).

In addition to the information described under § 1152.27(a), Riffin requests that the Board order SRC to provide certain other information, including (1) deed references for all parcels SRC contends it owns in fee simple, and (2) the cost of complying with certain alleged Pennsylvania regulatory requirements discussed in paragraph 7 of Riffin's petition. Riffin also requests that SRC provide an estimate of the costs associated with complying with the condition imposed in the November 2012 Decision requiring the Estate to consult with the U.S. Fish and Wildlife Service, Pennsylvania Field Office (USFWS) regarding potential impacts to the bog turtle prior to commencement of any salvage activities. Riffin asks that SRC be afforded 60 days to respond to his request and that the Board toll the period for him to submit an OFA until 10 days after SRC has provided him with the requested information.

On November 21, 2012, the Estate filed a letter indicating it has no objection to a reasonable tolling of the OFA filing deadline to permit the necessary information to be supplied. SRC did not respond to Riffin's petition.

The Board will consider requests to toll the period for filing an OFA when a railroad has failed to provide a potential offeror with the information necessary to the development of an OFA and that information is not contained in the application. See 49 C.F.R. § 1152.27(c)(1)(i)(C).³ In this case, because the information necessary to formulate the OFA has not been provided to a potential offeror, Riffin's request for tolling of the OFA filing deadline will be granted. Given the time that has passed since Riffin's original request, 30 days should be sufficient for SRC to provide the requested information. The due date for Riffin⁴ to submit an OFA will be tolled until 10 days after Riffin and the Board have received the requested information. The effective date of the abandonment will be postponed until 10 days after the due date for the filing of the OFA.

With regard to the additional information Riffin seeks outside of that required under 49 C.F.R. § 1152.27(a), we will not require SRC to provide Riffin with deed references for its property held in fee simple, as land records and deeds are available to the public. Further, we will not require SRC to include estimates of the cost of complying with the various alleged Pennsylvania state regulatory requirements discussed in paragraph 7 of Riffin's petition, as they

³ The Estate's application included a report estimating the NLV and other appraisal data prepared for the Estate. See Application, Exhibits A-D. However, because in this adverse abandonment case it is SRC, not the applicant, whose property is subject to the OFA process and the carrier's information and estimates might differ from the Estate's, it is necessary for SRC to provide the required information on its own behalf (or indicate that it agrees with the data proffered by the Estate).

⁴ No other potential offeror submitted either an OFA or a request for an extension by the November 26, 2012 deadline.

are not related to any conditions imposed by the Board on the adverse abandonment in this case.⁵ We will require SRC to estimate the anticipated cost of complying with the USFWS condition imposed in the November 2012 Decision. Because that condition is salvage-related, SRC's estimate of removal costs used to obtain the NLV should, to the extent possible, detail the cost of compliance with that condition.

In his petition, Riffin also states his intent to make six separate offers for "discrete portions" of the Line. Although the OFA statute contemplates that more than one person may submit an offer in a given case,⁶ it does not contemplate the submission of multiple, piecemeal purchase offers from the same offeror,⁷ nor is such a fragmented approach feasible in light of the short time deadlines of the OFA process. As such, Riffin is directed to limit any submission he might make to only one offer for some or all of the Line.⁸

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

It is ordered:

1. SRC is directed to provide to Riffin and the Board, by December 31, 2012, the information described under 49 C.F.R. § 1152.27(a) pertaining to abandonment applications, as discussed in this decision.
2. The time period for Riffin to file an OFA is tolled until 10 days after Riffin and the Board have received the requested information.
3. The effective date of the abandonment authority is postponed until 10 days after the due date for the filing of an OFA.

⁵ Under the Board's OFA procedures, a potential offeror is entitled only to the information specified in 49 C.F.R. § 1152.27(a). See Norfolk S. Ry.—Discontinuance of Serv. Exemption—In Hudson Cnty., N.J., AB 290 (Sub-No. 313X), slip op. at 2 (STB served Jan. 7, 2009).

⁶ See 49 U.S.C. § 10904(d)(1).

⁷ See 49 U.S.C. § 10904(c) (referring to a single "offer" submitted by a person).

⁸ As the Board previously has explained, the case Riffin cites in support of his multiple-offers approach, Railroad Ventures, Inc. v. STB, 299 F.3d 523 (6th Cir. 2002), does not stand for the proposition that the Board must permit an offeror to acquire whatever portion of the to-be-abandoned property it chooses. See Consol. Rail Corp.—Aban. Exemption—In Phila., Pa., AB 167 (Sub-No. 1191X) (STB served Oct. 26, 2012).

4. This decision is effective on its service date.

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