

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 AN OFFER OF FINANCIAL ASSISTANCE

Decided: December 2, 2008

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 is 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 proposes to purchase the line for the total amount of \$500,000.

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 Abandonments Under NERSA, 365 I.C.C. 472 (1981).

The County's offer is substantially less than ESPN's estimated purchase price. According to the County, its offer is based on the net liquidation value determined by the Board in its November 18, 2008 decision. From the net salvage value (NSV), the County subtracts \$251,000 to reflect the declining price of steel. The County further reduces the line's NSV by estimated take up costs of \$172,000, and by \$480,000 to reflect the savings from preserving six bridges and six highway grade crossings.

The County, as a governmental entity, is presumed to be financially responsible. See 49 CFR 1152.27(c)(1)(ii)(B). Because the County, an entity that is presumed to be financially responsible, has offered financial assistance, and has provided the basis for its offer, the effective date of the exemption authorizing the abandonment will be postponed to allow negotiations between the County and ESPN.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$22,700. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

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

It is ordered:

1. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If the County and ESPN cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before December 29, 2008. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary