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SERVICE DATE - FEBRUARY 24, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-437 (Sub-No. 2X)

KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT  
EXEMPTION--IN RENO, PRATT AND STAFFORD COUNTIES, KS

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: February 22, 1999

Kansas Southwestern Railway, L.L.C. (KSW) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 64.27-mile line of railroad on the Iuka Branch between milepost 609.97, at Olcott and milepost 630.13 at Iuka, and the portion of its Stafford Branch between milepost 610.0, at Olcott and milepost 654.11 at Radium, in Reno, Pratt and Stafford Counties, KS. Notice of the exemption was served and published in the Federal Register on December 28, 1998 (63 FR 71537-38).

The exemption was scheduled to become effective on January 27, 1999, but a formal expression of intent to file an offer of financial assistance (OFA) to purchase the entire line filed by the Denver Rock Island Railroad (DRI) effectively stayed the effective date of the exemption for 10 days until February 6, 1999.<sup>1</sup> DRI simultaneously requested that KSW provide it with the financial data and information prescribed in 49 CFR 1152.27(a). On January 22, 1999, DRI filed a petition to toll the period for submitting OFAs for an additional two weeks. By decision served January 29, 1999, the time period for DRI to file an OFA was tolled until February 19, 1999, and the effective date of the exemption was further postponed until March 1, 1999.<sup>2</sup>

On February 19, 1999, DRI submitted an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$514,160. DRI states that, according to KSW, the estimated net liquidation value (NLV) of the line is \$1,411,712.

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).

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<sup>1</sup> See 49 CFR 1152.27(c)(2)(i).

<sup>2</sup> Also, the January 29, 1999 decision provided that the request by the Iowa Trails Council for issuance of a notice of interim trail use under the National Trails System Act, and for a public use condition under 49 U.S.C. 10905, would be held in abeyance pending completion of the OFA process.

DRI states that it is a Class III railroad formed in 1993 to purchase and operate 13 miles of rail line in Denver, CO. In its five years of operation, it has increased traffic volumes on its railroad by 26% and increased revenues by \$193,820. DRI also states that it owns locomotives, rolling stock, cranes, dump trucks, and additional railroad-related equipment sufficient to maintain operations over existing and additional lines. DRI further states that financing is available through an asset-based loan using the scrap value of the lines as the asset, and that it has sufficient financial resources to meet its obligations under this OFA. Based on the information provided, I find that DRI is financially responsible.

DRI's offer is less than KSW's estimated NLV. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), however, DRI has explained the basis for the difference between its lower NLV estimate for the Iuka and Stafford Branches and KSW's estimated NLV for these lines, attributing at least part of the difference to the fact that it does not include KSW's "income tax savings" of \$338,000.

Because DRI, a financially responsible entity, has offered financial assistance, the effective date of the exemption authorizing abandonment of the line will be postponed.

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 \$14,600. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of the proceeding, along with the words "Attention: Application Unit, 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 does not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The effective date of the decision authorizing abandonment of the line is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If KSW and DRI cannot agree on a purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase price on or before March 22, 1999. If no agreement is reached and no request is submitted by that date, the Board will serve a

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decision vacating this decision, and issue a Decision and Notice of Interim Trail Use or Abandonment effective on its service date.

3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary