

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-883 (Sub-No. 1X)

ROCKY MOUNT AND WESTERN RAILROAD CO., INC.—  
ABANDONMENT EXEMPTION—IN NASH COUNTY, NC

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: May 12, 2005

Rocky Mount and Western Railroad Co., Inc. (RM&W) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 4.7 miles of railroad from approximately milepost 134.8 at or near Momeyer to the end of the rail line at approximately milepost 139.5 at or near Spring Hope, in Nash County, NC. Notice of the exemption was served and published in the Federal Register on March 9, 2005 (70 FR 11731).

The exemption was scheduled to become effective on April 8, 2005. On March 18, 2005, however, a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by the North Carolina Department of Transportation (NCDOT) to purchase the entire line, which had the effect of automatically staying the effective date of the exemption for 10 days, until April 18, 2005. NCDOT simultaneously requested RM&W to provide the following information: (1) the revenue and other data necessary to determine the amount of annual financial/subsidy assistance that would be required to retain rail transportation over the portion of the line between milepost 134.8 and milepost 138; and (2) the data related to the entire 4.7-mile line to assist in developing an estimate of the purchase price to include RM&W's estimate of the net liquidation value of the line, supporting data reflecting available real estate appraisals (including certification of whether the right-of-way is held by the railroad in fee or easement), assessment of the quality and quantity of track materials on the line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use). On April 5, 2005, NCDOT filed a petition to toll the 30-day period for submitting its OFA to allow time for it to receive the information it had requested, and, on April 8, 2005, although it had not yet received the information requested of RM&W, NCDOT filed an OFA using information it had available at that time. By decision served April 8, 2005, NCDOT was given until May 9, 2005, to supplement its OFA, and the effective date of the exemption was extended until May 19, 2005.<sup>1</sup>

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

On May 9, 2005, NCDOT filed its supplemental OFA to purchase the entire line for \$79,273 for track and property “assuming a fee simple ownership of the entire right-of-way.” NCDOT states that this offer revises and supersedes its earlier offer. NCDOT states that its offer is based on an appraisal by consulting firm R.L. Banks and an estimate of track rehabilitation costs, both of which were supplied to NCDOT on May 2, 2005.

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). As an agency of the State of North Carolina, NCDOT is presumed to be financially responsible. See 49 CFR 1152.27(c)(ii)(B). Because NCDOT, an entity that is presumed to be financially responsible, has offered financial assistance, and has provided a basis for its offer, the effective date of the exemption authorizing the abandonment will be postponed to allow negotiations between NCDOT and RM&W.

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 \$18,400.<sup>2</sup> 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 NCDOT and RM&W 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 June 8, 2005. 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.

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<sup>2</sup> The filing fee for a request to set terms and conditions increased to \$18,400, effective May 6, 2005. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2005 Update, STB Ex Parte No. 542 (Sub-No. 12) (STB served Apr. 6, 2005).

3. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary