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SERVICE DATE – LATE RELEASE JULY 29, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1022 (Sub-No. 1X)

ARIZONA & CALIFORNIA RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN SAN BERNARDINO AND RIVERSIDE COUNTIES, CA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: July 29, 2009

By petition filed on March 12, 2009, Arizona & California Railroad Company (ARZC) sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 49.40-mile rail line (the line) between milepost 0.0 at Rice and milepost 49.4 at Ripley, in San Bernardino and Riverside Counties, CA. Notice of the exemption filing was served and published in the Federal Register on April 1, 2009 (74 FR 14862). By decision served June 30, 2009 (June 30 Decision), the Board granted the abandonment, subject to conditions. The abandonment exemption was scheduled to become effective on July 30, 2009, unless stayed by the Board or an offer of financial assistance (OFA) was filed by July 10, 2009.

BG&CM Railroad, Inc. (BG&CM) filed an OFA on July 10, 2009. By decision served on July 15, 2009, the Board rejected (without prejudice to refiling) BG&CM's OFA because BG&CM did not provide sufficient evidence of financial responsibility. On July 22, 2009, BG&CM refiled an OFA in the form of a purchase offer for the line in its entirety for \$1,830,000.

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). BG&CM asserts that it is financially responsible because its owner is the same individual who owns Railroad Materials Salvage Inc. (RMS)—a company that has more than \$2 million of time deposits in a bank.¹ By verified statement submitted with BG&CM's OFA, Michael Williams states that he is the sole owner of both RMS and BC&GM, and that he will “commit unequivocally to cause funds equal to the purchase price of the rail line [in this docket] to be transferred from RMS to BG&CM to pay that purchase price.” (BG&CM's OFA App. 2, July 22, 2009.) Williams also states that “[i]n the event that revenues from operating that rail line during the first two years of operation by

¹ BG&CM submits a July 8, 2009 letter from Casey Whitaker, Vice President, Landmark Bank, Willow Springs, MO, to verify its claims (BG&CM's OFA App. 1, July 22, 2009).

BG&CM are not sufficient to offset corresponding operating costs, I also commit, as sole owner of RMS, to cause RMS to transfer funds to BG&CM to pay for any such operating shortfall.” Id.

BG&CM’s submission demonstrates that it has the financial resources to acquire the line for the proposed \$1.8 million purchase price. In addition, the verified statement from Williams pledging to offset operating cost shortfalls, along with the credible prospect of revenue from existing shippers (who lost service because of the embargo), demonstrates that BG&CM has the financial resources to operate the line.² Accordingly, BG&CM is found to be financially responsible.

Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), BG&CM notes that there is a disparity between the amount offered (\$1,830,000) and ARZC’s valuation for the line (\$3,850,480) submitted in the petition for abandonment. June 30 Decision, at 6. BG&CM claims that ARZC’s total valuation for the line is deficient because it has inadequately supported its valuation of the line’s real estate; as a result, BG&CM has assigned a zero value to the line’s land, in accord with the Board’s finding in the June 30 Decision, at 6. As a result, BG&CM states that its offer is based entirely on the net salvage value (NSV) of the track materials. BG&CM notes, however, that its estimate of the NSV is \$319,480 less than ARZC’s NSV for the line because BG&CM has used lower unit values—which are described by BG&CM as “based on current values as experienced by BG&CM.” (BG&CM’s OFA 3, July 22, 2009.) As required, BG&CM has explained the basis for the disparity between its offer and ARZC’s valuation.

Because BG&CM is financially responsible and has offered financial assistance, the effective date of the exemption authorizing the abandonment will be postponed.

The Board’s regulations contemplate that the carrier and a financially responsible person will reach an agreement setting the terms and conditions of the purchase. If they do not, either party may request the Board to do so. 49 CFR 1152.27(g). 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.

² This is distinguishable from Union Pacific Railroad Company—Abandonment Exemption—in Lassen County, CA, and Washoe County, NV, STB Docket No. AB-33 (Sub-No. 230X) (STB served Jan. 27, 2009), appeal docketed, No. 09-70576 (9th Cir. Feb. 27, 2009), where, although a notice was filed, there was no verified statement supporting the offeror, and where there was no realistic prospect of traffic on the rail segment at issue.

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 BG&CM and ARZC cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before August 21, 2009. 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 date of service.

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

Anne K. Quinlan
Acting Secretary