

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1065X

INDIANA SOUTHWESTERN RAILWAY CO.—ABANDONMENT EXEMPTION—
IN POSEY AND VANDERBURGH COUNTIES, IND.

Decided: December 10, 2010

Indiana Southwestern Railway Co. (ISW) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 17.2 miles of interconnecting rail lines extending between: (1) milepost 227.5 at Poseyville, Ind., and milepost 240.2 near German Township, Ind. (approximately 12.7 miles); and (2) milepost 277.5 at Cynthiana, Ind., and milepost 282.0 at Poseyville, Ind. (approximately 4.5 miles). Notice of the exemption was served and published in the Federal Register on November 12, 2010 (73 Fed. Reg. 69,520). The exemption was scheduled to become effective on December 14, 2010, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by November 22, 2010.

On November 18, 2010, the Town of Poseyville, Ind. (the Town) filed a formal expression of intent to file an OFA to purchase ISW's 17.2-mile line of railroad proposed for abandonment. This filing automatically stayed the effective date of the exemption until December 22, 2010.¹ In the filing, the Town requested that ISW provide it with the information set forth in 49 C.F.R. § 1152.27(a), including: (1) ISW's estimate of the minimum purchase price of the line; (2) ISW's most recent reports on the physical condition of the line; (3) ISW's estimate of the net liquidation value of the rail line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in the rail line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use); and (4) to the extent that ISW's estimate of net liquidation value includes real estate in the rail line right-of-way, provide evidence of its marketable fee title to any such real estate. In addition, the Town requested that ISW estimate the date on which it will furnish the information and documentation. The Town stated that it would seek a further extension of that effective date such that upon receipt of such information and documentation the Town would have at least 10 days prior to the extended effective date within which to file its OFA.

By petition filed on December 8, 2010, the Town states that, to date, it has not received the requested information and documentation, and requests that the time period for it to submit an OFA be tolled until 10 days after it has received the date requested from ISW. By copy of a

¹ See 49 C.F.R. § 1152.27(c)(2)(i).

letter to the Town dated December 8, 2010, ISW informed the Board that it was providing the Town with the requested information.

The Board will consider requests to toll the period for filing an OFA when a petitioner 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 petition. See 49 C.F.R. § 1152.27(c)(2)(ii)(C). In this case, because the information necessary to formulate an OFA apparently only now has been provided and the Town's OFA is otherwise due on December 10, 2010, the Town's request will be granted. Accordingly, the Town's OFA will be due to the Board by December 20, 2010, and the effective date of the exemption will be extended until December 30, 2010.

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

It is ordered:

1. The time period for the Town to file an OFA is tolled until December 20, 2010.
2. The effective date of the exemption is postponed until December 30, 2010.
3. This decision is effective on its service date.

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