

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1065X

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

Decided: January 13, 2011

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 (75 Fed. Reg. 69,520). The exemption was scheduled to become effective on December 14, 2010, unless stayed by the Board or unless its effectiveness was postponed by the filing of a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904. Pursuant to 49 C.F.R. § 1152.27(c)(2), the OFA was due on 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. In the filing, the Town requested that ISW provide it with the information set forth in 49 C.F.R. § 1152.27(a), including supporting documentation, and an estimated date on which it would furnish the information and documentation. The Town stated that it would seek a further extension of that effective date such that upon receipt of the 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 stated that it had not received the requested information and documentation, and requested that the time period for it to submit an OFA be tolled until 10 days after it received the data requested from ISW. By copy of a letter to the Town dated December 8, 2010, ISW informed the Board that it was providing the Town with the requested information. By decision served on December 10, 2010, the Town's request was granted. The time period for the Town to file an OFA was tolled until December 20, 2010, and the effective date of the exemption was postponed until December 30, 2010.

On December 20, 2010, the Town timely filed an OFA under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c) to purchase the entire 17.2 miles of rail line for \$376,600. ISW replied and questioned whether the Town is financially responsible and a bona fide offeror.

In a decision served on December 23, 2010, the Board ruled on the Town's OFA. The Board rejected ISW's concerns as unsubstantiated and found the Town to be financially responsible. Accordingly, the Board postponed the effective date of the exemption authorizing the abandonment and noted that requests to set terms and conditions for the purchase of the line would be due by January 19, 2011.¹

ISW filed an appeal of the December 23 decision on December 30, 2010. ISW continues to question if the Town is financially responsible and a bona fide offeror. ISW has sent discovery requests to the Town on those matters. Additionally, ISW states that it wishes to explore alternatives to abandonment with the Town. To pursue such negotiations and provide time to complete the discovery process, ISW asks that the Board toll the OFA process for 30 days.²

The Town filed its reply on January 13, 2011, in which it opposes the appeal. Additionally, the Town objects to responding to ISW's discovery requests and to holding the proceeding in abeyance as requested, citing the expedited nature of the OFA process. The Town, however, goes on to request an exemption, pursuant to 49 U.S.C. § 10502(a), from the OFA requirements at 49 U.S.C. § 10904(e) so that the Town may delay filing its request to set terms and conditions for the purchase of the line until a reasonable time after the Board's disposition of ISW's appeal and abeyance request.

ISW's request to hold the OFA process in abeyance for 30 days is reasonable and will be granted. Tolling the OFA process for 30 days could encourage negotiations, and private negotiations could result in the preservation of freight service on the line. The Board favors private-sector resolutions. Tolling the OFA process also will not harm any of the parties to the proceeding. The OFA deadlines are in place to protect the railroad, and the railroad itself has requested the delay. The Town has not expressed an urgent need to reinstate rail service over these lines, which have been out of service for at least 2 years, and, indeed, has made its own request for delay. Moreover, tolling the OFA process will afford the Board the time needed to address ISW's appeal and the Town's exemption request prior to the due date for a request to set terms and conditions for the purchase of the line. Accordingly, the OFA process is tolled for 30 days and requests to set terms and conditions are now due on February 18, 2011.

¹ On November 17, 2010, the Indiana Trails Fund, Inc. (ITF) filed a request for the issuance of a notice of interim trail use (NITU) for the 17.2-mile line of railroad under the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. § 10905. In the December 23 decision, the Board found that ITF has satisfied the criteria for these conditions, but postponed issuing the NITU and imposing the public use condition pending completion of the OFA process. The Board also imposed several environmental conditions on the abandonment authority.

² ISW filed a supplement to its appeal and request to hold the OFA process in abeyance on January 12, 2011.

It is ordered:

1. The request to hold the OFA process in abeyance for 30 days is granted.
2. Requests for the Board to establish the terms and conditions of the purchase price are now due February 18, 2011.
3. This decision is effective on its service date.

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