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SERVICE DATE – JUNE 25, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 163X)¹

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN LAMAR
AND FANNIN COUNTIES, TX

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: June 24, 2003

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for UP to abandon and Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER) to discontinue service over a 33.5-mile portion of the Bonham Subdivision between milepost 94.0, near Paris, and milepost 127.5, east of Bonham, in Lamar and Fannin Counties, TX (the line). Notice of the exemption was served and published in the Federal Register on May 19, 2003 (68 FR 27142).

The exemption was scheduled to become effective on June 18, 2003, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Fannin Rural Rail Transportation District (FRRTD), a political subdivision of the State of Texas, to purchase the entire line. This filing automatically stayed the effective date of the exemption until June 28, 2003.² On June 13, 2003, FRRTD filed a request to toll the time period for submitting its OFA, stating that UP provided the financial data and information prescribed in 49 CFR 1152.27(a) on or about June 11, 2003, but that additional time was needed to evaluate the material and prepare the OFA. By decision served on June 19, 2003, the time period for FRRTD to file an OFA was extended until June 23, 2003, and the effective date of the exemption was postponed until July 3, 2003.

On June 20, 2003, FRRTD timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$496,314.

¹ The notice served in this proceeding embraced STB Docket No. AB-364 (Sub-No. 8X), Texas Northeastern Division, Mid-Michigan Railroad, Inc. — Discontinuance of Service Exemption — in Lamar and Fannin Counties, TX.

² See 49 CFR 1152.27(c)(2)(i).

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 apparent political subdivision of the State of Texas, FRRTD is presumed to be financially responsible. See 49 CFR 1152.27(c)(1)(ii)(B). Also, FRRTD has satisfied the requirements of 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), in explaining the basis for the disparity between its offer and the carrier's estimate of the purchase or acquisition price.

Because FRRTD, an entity that is presumed to be financially responsible, has offered financial assistance, the effective date of the exemption authorizing the abandonment 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 \$16,700. 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: 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 FRRTD and UP cannot reach an agreement concerning the rail line, either party may request the Board to establish the terms and conditions of the purchase price on or before July 21, 2000. 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, subject to possible imposition of conditions.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary