

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 21X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—LINE IN WARREN COUNTY, MS

Decided: February 28, 2008

BACKGROUND

By decision served February 22, 2008, the Board, under 49 U.S.C. 10904(f)(1), set the terms and conditions for Raymond B. English (English) and James Riffin (Riffin) (collectively, Offerors) to jointly purchase 1.9 miles of rail line (the Segment) from The Kansas City Southern Railway Company (KCSR). The Segment extends from milepost 225.6 to milepost 227.5 in Vicksburg, Warren County, MS. In the same decision, the Board also set the terms and conditions for Riffin individually to purchase 2.35 miles of the same line extending from milepost 227.5 to milepost 229.85 (the Remainder). The Board set the purchase price at \$376,320 for the Segment and at \$128,295 for the Remainder. Pursuant to 49 U.S.C. 10904(f)(2) and 49 CFR 1152.27(h)(7), the Board ordered the Offerors to notify it and KCSR in writing by March 3, 2008, whether they will accept the terms and conditions established by the agency. The Board further ordered that, if the terms and conditions were accepted for both the Segment and the Remainder, Riffin would then be permitted to return to the Board with a request that we determine the compensation, if any, owed by KCSR due to any increased costs of restoring service on the Remainder caused by the partial dismantling of the Glass Road Bridge during the pendency of the proceeding under section 10904.

On February 26, 2008, the Offerors filed a motion to stay the March 3, 2008 deadline by which they must accept the terms and conditions for the forced sale of the line. The Offerors argue that the condition of the Glass Road Bridge as of October 2, 2007, the date when English filed a notice of intent to file an offer of financial assistance, is relevant to the purchase price of the subject portions of the line. Consequently, the Offerors request that the Board stay that date to a date no later than 10 days after KCSR provides the Offerors with a copy of any evidence it intends to submit to the Board relating to the condition of the Glass Road Bridge as of October 2, 2007. The Offerors also ask the Board to order KCSR to provide them with that evidence, as well as any and all information KCSR has regarding the condition of all other bridges on the line, including bridges that are not on the portion of the line that is being abandoned.¹ Finally, the

¹ The portion of line that is the subject of the forced sale here is the southernmost section of a 6.85-mile branch that begins at milepost 223.0. KCSR has not sought abandonment authority for the portion of line between milepost 223.0 and milepost 225.6.

Offerors request authority from the Board to depose all individuals who have any knowledge or information about the bridges that are on any portion of the line. KCSR filed a reply in opposition to Offerors' motion on February 27, 2008.

DISCUSSION AND CONCLUSIONS

The factors to be considered in addressing a motion for stay are: (1) whether there is a strong likelihood that petitioners will prevail on the merits; (2) whether petitioners would be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958). Parties seeking a stay carry the burden of persuasion on all of the elements required for a stay. See generally Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

The Offerors have failed to make the showing required under these standards and, indeed, have failed to even address any of the relevant factors for a stay. Moreover, as stated in the Board's February 22 decision, the condition of the Glass Road Bridge has no bearing on the valuation of the property that is subject to the offers of financial assistance, as evidenced by the fact that neither the parties nor the Board assigned the bridge any value in this proceeding. The Glass Road Bridge is relevant to this proceeding only to the extent that its partial dismantling may have adversely affected the cost to restore service on the line. See R.R. Ventures, Inc.—Aban. Exem.—Youngstown, OH & Darlington, PA, 4 S.T.B. 583 (2000). At this juncture, however, where there is no going-concern value for a line, as is the case with the Segment and the Remainder, the cost to restore service on that line is not a figure the Board uses when calculating the price to be paid to the abandoning railroad in a forced sale. See Chi. & N. W. Transp. Co.—Abandonment, 363 I.C.C. 956, 958 (1981), aff'd sub nom. Chi. & N. W. Transp. Co. v. United States, 678 F.2d 665 (7th Cir. 1982). The partial dismantling of the bridge has no bearing on the purchase price for the line, and thus provides no basis for extending the March 3, 2008 deadline.

As a result, the discovery order sought by the Offerors is premature. If the Offerors accept the terms and conditions set by the Board, and pursue a determination of the effects of the dismantling of the Glass Road Bridge on the costs to restore service, the Offerors may bring any discovery disputes to the Board at that time.

For these reasons, the Offerors' requests will be denied.

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

It is ordered:

1. The Offerors' request for a stay is denied.

2. The Offerors' request for additional relief is denied as premature.
3. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary