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MARCH 1, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 146X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
AND DISCONTINUANCE OF TRackage RIGHTS EXEMPTION--
IN DALLAS COUNTY, TX

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: February 28, 2000

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon 2,367 feet of railroad over the Oakland Avenue Spur from station 186+62 at Malcolm X Boulevard to the end of the track at station 210+29.2 in the city of Dallas, Dallas County, TX. Notice of the exemption was served on January 24, 2000, and published in the Federal Register on January 28, 2000 (65 FR 4570-71).

The exemption was scheduled to become effective on February 23, 2000, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by John Radovich, John's Cars, Inc., John's Trains, Inc., and John's Retrofit, Inc. (referred to collectively as JOHN'S) (to purchase the entire line). This filing automatically stayed the effective date of the exemption until March 4, 2000.¹ By decision served February 18, 2000, the proceeding was reopened and the exemption was made subject to several environmental conditions and the deadline for JOHN'S to file its OFA was set for February 25, 2000.²

On February 25, 2000, an affiliate of JOHN's, John's Trains, Inc. (JTI), timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$10,935. By letter dated February 14, 2000, UP had stated that the estimated net liquidation value (NLV) of the

¹ See 49 CFR 1152.27(c)(2)(i).

² The environmental conditions required that UP: (a) consult with Mr. Ken Gathright, State Implementation Plan Development Section, concerning air quality; (b) consult Mr. Mike Howard, Floodplain Management Section, to ensure that all construction is in compliance with the Community's Flood Hazard Prevention Ordinance/Court Order; (c) contact Mr. Randy Arnett, Remediation Division, or Mr. Clyde Bohmfalk, Policy and Regulations Division, if there are any questions; and (d) prior to engaging in any salvage activities, contact the Corps' Fort Worth District to determine if permits are necessary.

line is \$44,349, which includes \$38,900 for the real estate, and \$5,449 for the track and track materials.

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).

JTI submitted, as Appendix 1, a letter from Diane Easter of Bank United, Dallas, TX, dated February 22, 2000, indicating that JTI has adequate cash to acquire and operate the line. JTI states that it will provide service over the line as a rail common carrier transporting rail passenger cars and equipment as revenue freight and holding itself out to transport freight for compensation for any shippers who may locate along the rail line. JTI also states that it has access to additional funding through affiliated companies, if required.

JTI's offer is less than UP's NLV. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), however, JTI has explained the basis for the difference between its lower NLV estimate for the line and UP's estimated NLV for the line (JTI alleges that UP has over-valued the real estate).

Because JTI is financially responsible and 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 \$14,800. 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: Application Unit, 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 in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If JTI and UP cannot agree on a purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase price on or before March 27, 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.

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3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary