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SERVICE DATE - LATE RELEASE FEBRUARY 22, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 3X)¹

NEW YORK CENTRAL LINES, LLC—ABANDONMENT
EXEMPTION—IN BERKSHIRE COUNTY, MA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: February 21, 2002

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively applicants) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for NYC to abandon and CSXT to discontinue service over approximately 1.91 miles of railroad between milepost QBH-0.59 and milepost QBY-2.50 in Pittsfield, Berkshire County, MA. Notice of the exemption was served and published in the Federal Register on August 13, 2001 (66 FR 42582-83). The exemption was scheduled to become effective on September 12, 2001, but on August 27, 2001, Housatonic Railroad Company (Housatonic) late-filed a notice of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) to purchase the entire line.²

On September 17, 2001, Housatonic filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$27,750.³ Housatonic stated that it had not received the

¹ The notice issued on August 13, 2001, embraced STB Docket No. AB-55 (Sub-No. 595X), CSX Transportation, Inc.—Discontinuance of Service Exemption—in Berkshire County, MA.

² By decision served September 7, 2001, the proceeding was reopened, Housatonic's late-filed notice of intent was accepted, the exemption was made subject to several environmental conditions, and the due date for Housatonic to file its OFA was established as September 12, 2001, and the effective date of the exemption was automatically stayed until September 22, 2001. On September 6, 2001, Housatonic filed a petition to toll the period for submitting an OFA for 30 days (until October 12, 2001), stating that CSXT had not provided it with the financial data prescribed in 49 CFR 1152.27(a). By decision served September 11, 2001, the time period for Housatonic to file its OFA was extended until October 12, 2001, and the effective date was further postponed until October 22, 2001.

³ Concurrently with its OFA, Housatonic filed a motion for a protective order requesting that the financial statements be kept under seal and that the Board order that the parties to the proceeding not disclose the information in the financial statements. By decision of the Secretary
(continued...)

information requested from CSXT and had been informed that the information was unlikely to be available before October 12, 2001. Housatonic stated that it therefore submitted its OFA based upon the information available to it. Housatonic also stated that it “reserves the right to revise its offer of financial assistance if it deems a revision to be appropriate upon receipt of the requested information. By decision served on September 21, 2001, it was determined that Housatonic’s OFA would be reviewed after the October 12, 2001 due date for OFAs and CSXT was directed to provide Housatonic with the requested information in accordance with 49 CFR 1152.27(c)(2)(ii)(D).⁴ By decisions served November 9, 2001, and December 19, 2001, the deadline for CSXT to develop and submit the required information sought by Housatonic was extended to February 11, 2001. The deadline for Housatonic to file its OFA was extended to February 19, 2002, and the effective date of the exemption was extended until March 1, 2002.

On February 19, 2002, Housatonic filed its revised OFA to purchase the entire line for \$27,750 (the amount originally offered). Housatonic states that CSXT provided its calculation of net liquidation value of the track and track structures on December 13, 2001, and that, on January 20, 2002, CSXT furnished it with a copy of its net liquidation value appraisal of the land. Housatonic further states that it asked CSXT to provide it with a proposed purchase price for the line, but CSXT failed to specify a minimum price. Housatonic states that it has not changed its offering price as a result of the information provided by CSXT, but revised its offer in other respects. Housatonic asserts that the net liquidation value of the portion of the line being abandoned is \$26,814.⁵ Housatonic thus maintains that its \$27,750 offer exceeds the net liquidation value of the line.⁶

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 the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

³(...continued)
served September 21, 2001, the motion was granted.

⁴ The September 21, 2001 decision also stated that review of Housatonic’s OFA would be premature at that time, because Housatonic had not received the requested information from CSXT.

⁵ The \$26,814 valuation is based on an appraisal obtained by Housatonic, reflecting a \$61,000 total market value, which Housatonic reduces by \$34,186 for expenses Housatonic says CSXT would have to incur to comply with liquidation-related legal requirements and for marketing, sales, and legal expenses associated with the liquidation process.

⁶ Housatonic states that, in a letter it received from CSXT dated December 12, 2001, CSXT advised that the track materials have no salvage value. Accordingly, the parties have apparently agreed that the net liquidation value of track and track materials is zero.

Housatonic states that it has the financial resources to acquire the line, perform any necessary rehabilitation, and to operate the line for at least 2 years. In addition, with its confidential version of the revised OFA, Housatonic submitted its balance sheet as of December 31, 2001, which indicates that Housatonic has sufficient current cash and cash equivalents to cover the proposed price and any operating or rehabilitation costs. Housatonic adds that, in addition to its financial resources, it has an inventory of 100% of the ties required for necessary rehabilitation and the machinery and maintenance work on the line. The financial information submitted shows that Housatonic is a financially responsible entity.

Because Housatonic, a financially responsible entity, 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 \$15,600. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Case Control 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 decision authorizing abandonment of the line is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If Housatonic and CSXT 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 21, 2002. 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.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary