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SERVICE DATE – NOVEMBER 26, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1020X

EAST PENN RAILROAD, LLC—ABANDONMENT EXEMPTION—IN BERKS AND
MONTOMGERY COUNTIES, PA

Decided: November 26, 2008

By decision served on November 18, 2008, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by East Penn Railroad, LLC (ESPN) of an 8.6-mile line of railroad extending from milepost 0.0 at Pottstown to milepost 8.6 at Boyertown, in Berks and Montgomery Counties, PA. This grant of authority is subject to public use, trail use, environmental, and standard employee protective conditions. The exemption is scheduled to become effective on December 18, 2008, unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) is filed by November 28, 2008.

On November 19, 2008, Berks County, PA (the County), filed a request asking that the Board toll the due date for filing an OFA. The County included with its request a letter to ESPN asking that the railroad produce information necessary for the County to formulate an OFA to purchase the line. In particular, the County requests the most recent report on the physical condition of the rail line, the carrier's estimate of the net liquidation value (NLV) of the line, data supporting the NLV, and the line's minimum purchase price.

On November 25, 2008, ESPN filed a reply in opposition to the County's tolling request. ESPN states that the material requested by the County has already been provided by ESPN in its filings in this proceeding or in its response to discovery requests. The railroad further asserts that the tolling provisions contained in 49 CFR 1152.27(c)(1)(i)(C) are intended to assist entities that have made timely and *bona fide* requests for OFA information and not an entity that waits until the last minute to make its request.

The County's tolling request will be denied. As noted by ESPN, the material sought by the County is already in the record, and the County does not explain what information it believes is missing. In addition, the County has already had the information for a sufficient amount of time to analyze it and has not explained why it needs additional time to file an OFA.

It is ordered:

1. The County's tolling request is denied.

2. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary