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SERVICE DATE - LATE RELEASE MARCH 30, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 132X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT  
EXEMPTION--IN RIO GRANDE AND MINERAL COUNTIES, CO

Decided: March 30, 1999

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 and discontinue service over a 21.6-mile line of railroad known as the Creede Branch, extending from milepost 299.3 near Derrick to the end of the line at milepost 320.9 at Creede, in Rio Grande and Mineral Counties, CO. Notice of the exemption was served and published in the Federal Register on January 25, 1999 (64 FR 3740-41). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on February 24, 1999, but formal expressions of intent to file an offer of financial assistance (OFA) were timely filed by the February 4, 1999 due date by the Denver & Rio Grande Railway Historical Foundation (D&RGHF) (to purchase or to acquire by donation the entire line), by South Fork-Creede Railway Corridor Preservation, Group Inc. (SFCR) (to purchase the entire line), and by the Rio Grande & San Juan Railroad Co. (RG&SJ) (to purchase the entire line). These filings automatically stayed the effective date of the exemption until March 6, 1999.<sup>1</sup>

SFCR and RG&SJ also requested UP to provide the financial data and information prescribed in 49 CFR 1152.27(a). On February 4, 1999, and February 19, 1999, RG&SJ and SFCR, respectively, filed petitions to toll the 30-day period for submitting their OFAs. By decision served February 23, 1999, the proceeding was reopened, the deadline to file an OFA was extended to March 26, 1999, and the effective date of exemption was further postponed to April 5, 1999.<sup>2</sup> On March 26, 1999, RG&SJ timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to

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<sup>1</sup> See 49 CFR 1152.27(c)(2)(i).

<sup>2</sup> The February 23, 1999 decision also provided that the request by the State of Colorado Parks for issuance of a notice of interim trail use under the National Trails System Act, and for a public use condition under U.S.C. 10905, would be held in abeyance pending completion of the OFA process and imposed several environmental conditions that required UP: (a) retain its interest in and take no steps to alter the historic integrity of the line in its entirety until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (b) consult with the Army Corps of Engineers, Albuquerque District, prior to salvaging the right-of-way to determine if permits are required under section 404 of the Clean Water Act, 33 U.S.C. 2344; (c) consult with the Colorado Department of Public Health and Environment, Hazardous Materials Waste and Management Division, Grand Junction, CO, prior to salvage operations and report the results of such consultation to SEA; and (d) comply with the recommendation of the USDA Forest Service.

purchase the entire line for \$302,000. RG&SJ states that, according to UP, the estimated net liquidation value (NLV) of the line is \$778,616.

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).

RG&SJ states that it is a Colorado corporation owned by local investors and it possesses the economic wherewithal to acquire the line. RG&SJ submitted, under seal,<sup>3</sup> a confidential financial statement by its financial backers. The statement demonstrates that RG&SJ is financially responsible.

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

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 RG&SJ 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

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<sup>3</sup> Concurrently with its OFA, RG&SJ 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 of the Board, served concurrently with this decision, the motion was granted.

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April 26, 1999. 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