

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 230X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN LASSEN
COUNTY, CA, AND WASHOE COUNTY, NV

Decided: September 12, 2008

By decision served on January 26, 2007 (January decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Union Pacific Railroad Company (UP) of a 21.77-mile rail line in Washoe County, NV, and Lassen County, CA, and a .57-mile rail line in Lassen County (collectively, Line).¹ The exemption was scheduled to become effective on February 25, 2007, but three timely notices of intent to file an offer of financial assistance (OFA) to purchase the Line were filed, including one filed by Nevada Central Railroad (NCR) and one filed by RTI Railroad Services (RTI). NCR and RTI (together, potential offerors) requested that the due date to file an OFA be tolled so that UP could provide them with the financial data and information prescribed in 49 CFR 1152.27(a).

By decision served on February 2, 2007 (February decision), the Board tolled the time period to file an OFA until 10 days after UP provided potential offerors with the prescribed information. In a filing dated March 27, 2008, UP asserted that it had provided net liquidation value (NLV) information for the Line to potential offerors and requested that the Board remove the tolling of the time period for filing of an OFA in this proceeding. NCR filed various motions and a reply, arguing that UP had not provided it with all of the prescribed information.

By decision served on August 5, 2008, the Board found that, because UP failed to provide potential offerors with all of the prescribed information, the self-executing condition in the February decision was not met. The Board then directed UP to provide NCR with its most recent report on the physical condition of the Line, as well as the documents that UP used to establish its NLV for the Line (directed information), and to certify to the Board that it had done so by August 15, 2008. The Board ordered that, once UP provided NCR with that information and certified to the Board that it had done so, the period for filing an OFA would expire 10 days thereafter.

¹ The January decision made the exemption subject to employee protective conditions, as well as various environmental and historic preservation conditions, all of which remain in effect.

On August 15, 2008, UP certified to the Board (August 15 certification) that it had provided NCR with the directed information.² After review of that information, it appears that UP has met the requirements set forth in 49 CFR 1152.27(a). Accordingly, the due date for filing an OFA was August 25, 2008. Neither of the potential offerors filed an OFA by that date.

On August 29, 2008, NCR filed a "Notice of Substitution," advising the Board that NCR had transferred all title, name, rights, and material property (including all filings with the Board) to "Robert Alan Kemp, d/b/a Nevada Central Railroad." On the same date, Robert Alan Kemp (Kemp) filed a request to extend the due date for him to file an OFA until September 14, 2008. In a letter filed on September 8, 2008, UP states that it is willing to extend the OFA filing period until September 14, 2008, and indicates that, according to UPS, Kemp received the directed information on September 5, 2008.

In previous filings, Kemp has represented that he was an officer and legal representative of NCR. In NCR's most recent filing, Kemp represents that all of the assets of NCR have been transferred to him. Kemp appears to be closely affiliated with NCR. However, because no OFA sale has yet occurred, Kemp does not need to meet the criteria for substitution under 49 CFR 1152.27(i)(1) (if that is what Kemp was attempting to do through his notice of substitution). Because the OFA proceeding is in a preliminary state, the substitution request will be granted. In light of UP's concurrence, Kemp's extension request also will be granted. However, the due date for Kemp to file an OFA will be extended until September 15, 2008, because the requested date, September 14, 2008, is a Sunday.

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

It is ordered:

1. NCR's request to substitute Kemp in place of NCR in this proceeding is granted.
2. Kemp's extension request is granted and modified, as discussed above. The due date for Kemp to file an OFA in this proceeding is extended until September 15, 2008.

² On August 19, 2008, UP filed a clarification to its August 15 certification, informing the Board that the United Parcel Service (UPS) had informed UP that NCR had moved and that no forwarding address had been left at NCR's former office. UP states that it attempted to contact NCR by telephone, but received a recording that the phone was no longer in service and that no forwarding number was available. A copy of the UPS tracking detail was attached to UP's filing.

3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary