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SERVICE DATE - SEPTEMBER 18, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-492 (sub-No. 2X)

FILLMORE WESTERN RAILWAY COMPANY--
ABANDONMENT EXEMPTION--IN FILLMORE COUNTY, NE

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: September 17, 2001

Fillmore Western Railway Company (FWRY) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinues to abandon a line of railroad between: (a) milepost 1.7 near Fairmont and milepost 10.0 near Geneva, NE; and (b) milepost 8.1 near Fairmont, NE, and milepost 23.0 near Milligan, NE, a distance of approximately 23.2 miles in Fillmore County, NE. Notice of the exemption was served and published in the Federal Register on June 27, 2001 (66 FR 34328-29). Under 49 CFR 1152.59(d)(3), the exemption was scheduled to become effective on July 27, 2001, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Provident Industries, LLC (PI) to purchase a portion of the right-of-way between milepost 8.1 near Fairmont and milepost 23.0 near Milligan. That filing stayed the effective date of the exemption until August 6, 2001. PI also requested FWRY to provide the financial data and information prescribed in 49 CFR 1152.27(a). On July 18, 2001, PI filed a petition to toll the period for submitting an OFA for the portion of the line between milepost 8.1 near Fairmont and milepost 23.0 near Milligan, until August 27, 2001, or until 20 days after PI's receipt of the information required to be furnished by FWRY. By decision served July 20, 2001, the time period for PI to file its OFA was extended until August 27, 2001, or 20 days after PI's receipt of the requested information, whichever was later, and the effective date of the exemption as to the pertinent portion of the right-of-way was further postponed until September 5, 2001, or 30 days after PI's receipt of the required information, whichever was later.

On August 27, 2001, PI timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the portion of the line between milepost 8.1 and milepost 23.0 for \$305,103. By decision served August 31, 2001, the Acting Director of the Office of Proceedings found PI financially responsible and its offer sufficient to further postpone the effective date of the exemption for that portion to permit the OFA process under 49 U.S.C. 10905 and 49 CFR 1152.27 to proceed. Also, the August 31, 2001 decision identified September 26, 2001, as the date on or before which the buyer or seller could request the Board to establish the terms and conditions of the purchase for that portion of the line.

On September 10, 2001, pursuant to 49 CFR 1011.2(a)(7), and 49 CFR 1152.27(e)(2), FWRY appealed the August 31 decision, stating that PI's OFA should be rejected. By facsimile dated and received on September 17, 2001, PI requests an extension until September 24, 2001, to file its reply to FWRY's appeal and for an extension until October 1, 2001, of the due date for the filing of its request for the establishment of terms and conditions. PI states that FWRY's representative does not object to the extension request related to PI's reply to FWRY's appeal and does not object to the proposed extension of the deadline for PI to request terms and conditions as long as FWRY is granted a similar extension for its reply to that request. Because the extension requests are reasonable and are not opposed, they will be granted.

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

It is ordered:

1. The due date for PI to file its reply to FWRY's appeal is extended to September 24, 2001.
2. If PI and FWRY cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before October 1, 2001. Replies to the request will be due on October 9, 2001.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary