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SERVICE DATE - LATE RELEASE NOVEMBER 12, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-556 (Sub-No. 2X)¹

RAILROAD VENTURES, INC.--ABANDONMENT EXEMPTION--BETWEEN
YOUNGSTOWN, OH, AND DARLINGTON, PA, IN MAHONING AND COLUMBIANA
COUNTIES, OH, AND BEAVER COUNTY, PA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: November 12, 1999

By decision served on September 3, 1999, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Railroad Ventures, Inc. (RVI), of a 35.7-mile line of railroad extending from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile line segment near Negley, OH, and the discontinuance of service over the line by The Ohio & Pennsylvania Railroad Company. The exemption was scheduled to become effective on October 3, 1999. By separate petitions filed on September 3, 1999, and on September 8, 1999, respectively, Columbiana County Port Authority (CCPA)² and Penn-Ohio Recycling, Inc. (Penn-Ohio) (collectively referred to as "offerors"), requested that the Board toll the period for submitting an offer of financial assistance (OFA). By decision served on September 10, 1999, the time period for filing an OFA in this proceeding was tolled until 30 days after RVI provided offerors with certain requested information and documents, and the effective date of the abandonment exemption was stayed. By letter filed on October 12, 1999, offerors notified the Board that, on October 8, 1999, RVI fully complied with their requests for the production of documents. Accordingly, OFAs were due on November 8, 1999. On November 8, 1999, CCPA timely filed an OFA to purchase the entire line of railroad for \$419,360.

¹ This proceeding is consolidated with STB Docket No. AB-555 (Sub-No. 2X), The Ohio & Pennsylvania Railroad Company--Adverse Discontinuance of Service Exemption--Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA. Under the terms of the Board's decision served on September 10, 1999, the discontinuance of service exemption, granted in the decision served on September 3, 1999, will become effective on November 18, 1999, unless an offer to subsidize operations is received. The time for filing offers having passed and no subsidy offer having been received, the discontinuance of service exemption will become effective as scheduled.

² CCPA is a quasi-public agency established by the Board of County Commissioners of Columbiana County, OH.

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). As a governmental entity, CCPA is presumed to be financially responsible. See 49 CFR 1152.27(c)(1)(ii)(B). Moreover, CCPA submitted a copy of its audited financial statement for the year ending December 31, 1998, prepared by Ohio's Auditor of State, showing assets totaling \$9,097,478, and provided a letter of credit from National City Bank for \$1 million, which CCPA states will be available for acquisition of the line. CCPA also submitted subscription agreements in the amount of \$50,000 each from three shippers served by the line—Insul Company, Inc., Penn Ohio Recycling, Inc., and 165 Limited Partners.³ Accordingly, CCPA is found to be financially responsible.

CCPA's offer of \$419,360 consists of \$350,000 for the underlying real estate and \$69,360 for the track structure. The offer is less than RVI's estimated net liquidation value (NLV) of \$1,607,555, which consists of a net real estate value of \$1,162,555 and a net track salvage value of \$445,000. Consistent with our regulations at 49 CFR 1152.27(c)(1)(ii)(C), CCPA explains the disparity between its purchase price offer and RVI's NLV estimate.

CCPA's offer is based on an independent appraisal, conducted by Mr. John F. Rossi of Real Estate Appraisal Associates of Warren, OH. Mr. Rossi concludes that the real estate value of the line is \$450,000. This estimate is based on an "across the fence" methodology,⁴ which compared a recent sale of crossing and longitudinal easements to Ohio Edison Company. The real estate value was then reduced by \$100,000 to reflect the diminution of potential income from the property resulting from RVI's October 29, 1999 sale of existing occupations, licenses, agreements and easements, previously granted to third parties, to Venture Properties of Boardman, Inc. CCPA explains that Mr. Rossi had included the potential income from these existing agreements in arriving at his \$450,000 real estate value estimate. Accordingly, CCPA's final estimate of the total value of the real estate is \$350,000. CPA uses RVI's estimated track value of \$445,000, but notes that RVI did not include the cost of disposing of approximately 125,214 bad cross ties, representing approximately 99% of the cross ties on the line. Using RVI's own estimate of tie disposal costs, CCPA reduces RVI's estimate by \$375,642, resulting in a total track value of \$69,360.

³ In addition, CCPA states that Darlington Brick and Clay Products Company has verbally agreed to support acquisition of the line in a like amount. CCPA also provided a letter of intent from the Ohio Rail Development Commission to commit up to \$500,000 for the acquisition and rehabilitation of the line and to grant up to \$300,000 to CCPA's contract operator. These commitments are subject to contingencies.

⁴ Land values are estimated by determining the value, usually by recent sale of comparable adjacent parcels of land.

Because CCPA is financially responsible and has offered financial assistance, the effective date of the exemption authorizing abandonment will be further postponed, pending completion of the OFA process.⁵

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

It is ordered:

1. The November 18, 1999 effective date of the exemption authorizing abandonment is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If RVI and CCPA cannot agree on the purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase on or before December 8, 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.

⁵ CCPA is concerned about a recent agreement between RVI and Boardman Township and requests that the Board clarify that, upon a proper showing, it will reopen any third party agreement that would thwart an offeror's bona fide efforts to acquire and restore service over the subject rail line. CCPA requests that the Board evaluate or render unenforceable any provisions of a third party agreement that interferes with restoration of common carrier rail service over an existing line, or that is otherwise contrary to the public interest. While the agreement could be unenforceable, it is premature to consider at this time.

STB Docket No. AB-556 (Sub-No. 2X)

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

Vernon A. Williams
Secretary