

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-491 (Sub-No. 2X)

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES,
INC.—ABANDONMENT EXEMPTION—IN CLEARFIELD, JEFFERSON, AND INDIANA
COUNTIES, PA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: December 4, 2008

R.J. Corman Railroad Company/Pennsylvania Lines, Inc. (RJCP), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 7-mile segment of a line of railroad known as the Hillman Branch, extending from milepost 0 near McGees to the end of the line at milepost 7 near Hillman, in Clearfield, Jefferson, and Indiana Counties, PA (the line). Notice of the exemption was served and published in the Federal Register on October 7, 2008 (73 FR 58710-11). The exemption was scheduled to become effective on November 6, 2008, unless it was stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) was filed by October 17, 2008.

On October 15, 2008, P&N Coal Company, Inc. (P&N or petitioner), filed a formal expression of intent to file an OFA either to subsidize operations over the line or to purchase the line. This filing automatically stayed the effective date of the exemption for 10 days, until November 16, 2008,¹ and extended the due date for an OFA to be filed until November 6, 2008. In the filing, P&N requested that RJCP provide it with the information set forth in 49 CFR 1152.27(a), including RJCP's estimate of the annual subsidy and minimum purchase price required to keep the line in operation, the physical condition of the line, and traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue operation over the line.² On November 3, 2008, P&N requested, pursuant to

¹ See 49 CFR 1152.27(c)(2)(i).

² P&N indicated that this information should include RJCP's estimate of the net liquidation value of the line, supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in a line, and removal cost estimates (including the cost of transporting removed materials to the point of sale or salvage), and an estimate of the costs of rehabilitating the line to Federal Railroad Administration safety requirements. P&N also requested that it be allowed access to documents pursuant to 49 CFR 1152.27(d), and that RJCP provide the records, accounts, appraisals, working papers, and other

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49 CFR 1152.27(c)(2)(ii)(C), that the 30-day time period for filing an OFA be tolled an additional 30 days. On November 5, 2008, P&N filed an OFA but, in that filing, it requested that it have an opportunity to supplement or amend its OFA. By decision served on November 5, 2008, the due date for submitting an OFA was further tolled until December 8, 2008, so that P&N would have the opportunity to supplement or amend the OFA, and the effective date of the exemption was postponed until December 18, 2008.

On December 2, 2008, P&N filed a revised OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$186,576.

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). P&N has submitted financial information, showing that it has the financial resources to acquire and operate the line. P&N is thus found to be financially responsible.

P&N's offer is substantially less than RJCP's minimum purchase price of \$1,066,703. P&N contends that its valuation differs from that of RJCP primarily in four areas: ties; switches; rails, siding, other track materials (OTM) and scrap prices; and real estate. According to P&N, its offer is based on current market values for the materials and a fair value for the real estate based upon recent local comparable sales. P&N has provided data from the Kovalchick Salvage Company in support of its proposed values for ties and switches. P&N explains the disparity between its and RJCP's values for rails, siding, OTM, and scrap by stating that the values are derived from different methodologies. P&N contends that its methodology reflects the Board's preference for using the most recent scrap value, rather than an average value taken over 6 months. Regarding its proposed real estate values, P&N argues that its valuation is based on comparable sales of similar abandoned lines, whereas RJCP has based its valuation on one sale of an urban line not comparable to the line at issue here. Consistent with 49 U.S.C. 10904(c), and 49 CFR 1152.27(c)(1)(ii)(C), P&N has explained the basis for the difference between its lower estimate for the line and RJCP's estimated value for the line.

Because P&N is financially responsible and has offered financial assistance, the effective date of the exemption authorizing the abandonment will be postponed.

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 \$22,700. An original and 10 copies of the request should be submitted, along with the fee, in an envelope bearing the docket number of this

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documents used in preparing any exhibits for an abandonment or discontinuance application filed, or other records, reports, and data in the possession of the carrier seeking exemption.

proceeding, along with the words “Attention: 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 the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If P&N and RJCP cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before January 2, 2009. 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.

Anne K. Quinlan
Acting Secretary