

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1175)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT--
IN HUNTINGDON COUNTY, PENNSYLVANIA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: February 19, 1997

By certificate and decision served and published in the Federal Register on February 4, 1997 (62 FR 5273), the Board found that the public convenience and necessity permit the abandonment by Consolidated Rail Corporation (Conrail) of its 1.6-mile line of railroad known as the Mt. Union Industrial Track, from milepost 0.0 to milepost 1.60, in the Borough of Mt. Union, Huntingdon County, PA, subject to employee protective conditions.¹ That decision is scheduled to become effective on March 6, 1997.²

On February 14, 1997, the Kovalchick Corporation (KOVCO or offeror) filed an offer of financial assistance (OFA) under 49 U.S.C. 10904(c) to acquire the 1.6-mile line for \$1.00.

It has been determined that OFAs to acquire lines for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that its offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

KOVCO states that it is engaged in a number of businesses, including railroad equipment, coal mining equipment, and mill supply wholesale businesses. It has approximately 150 employees, located in offices and/or business facilities in the cities of Indiana, Lewistown, Josephine, and Lucerne, PA, and Lima, OH. KOVCO recites that it has informed Conrail of its intention to make this OFA at the \$1.00 offer price and that Conrail has agreed to enter into negotiations with KOVCO for the sale of the Mt. Union Industrial Track. KOVCO states that it has more than sufficient financial resources to meet its obligations under this OFA. Based on the foregoing, I find that KOVCO is financially responsible.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA) has made changes to the previous law regarding the processing of abandonments. To implement these changes, the Board has issued final rules in Abandonment and Discontinuance of Rail Lines and Rail Transportation under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996), that became effective on January 23, 1997. Because this application was filed prior to the effectiveness of the new rules, it has been processed under the former regulations.

² On February 3, 1997, the Southern Alleghenies Resource Conservation and Development Council and the Southern Alleghenies Conservancy jointly filed requests for a public use condition and a trail use condition. These requests will be handled in a separate decision. The financial assistance procedures of 49 U.S.C. 10904 take precedence over public use and trail use requests.

KOVC's offer of \$1.00 is significantly less than Conrail's estimate of \$82,338 for the net liquidation value (NLV) for the line. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), KOVC has explained the disparity by asserting that its own estimate of the NLV for the line is less than zero, based on a lower estimated real estate value and a higher estimated salvage cost associated with the five at-grade crossings on the line.

Because KOVC, a financially responsible entity, has offered financial assistance, the effective date of the certificate and decision authorizing abandonment of the line 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 \$12,700.³ 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 conservation of energy resources.

It is ordered:

1. The effective date of the certificate and decision authorizing abandonment of the line is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If Conrail and KOVC 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 March 19, 1997. 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 authorization 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

³ In Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services--1997 Update, STB Ex Parte No 542 (Sub-No. 1) (STB served Jan. 23, 1997), the Board increased this fee to \$13,500. The new fee becomes effective on February 24, 1997.

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