

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 297X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN  
LAFAYETTE COUNTY, MO.

Decided: April 19, 2011

This decision accepts the “Notice of Stipulation To Abandonment” filed by Robert Alan Kemp, d/b/a Nevada Central Railroad (NCR) on April 11, 2011. Because NCR and Union Pacific Railroad are willing to negotiate outside the OFA process for acquisition of all or part of the line at issue in this case, NCR’s February 28, 2011 expression of intent to file an offer of financial assistance (OFA) is withdrawn, and NCR’s combined (1) motion to extend the deadline for requesting an extension of time to file an OFA, and (2) petition for extension of time to file an OFA, filed on March 31, 2011, are denied as moot.

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 2.91 miles of a line of railroad, known as the Lexington Industrial Lead, extending from milepost 246.49 near Myrick to milepost 243.58 near Lexington, in Lafayette County, Mo. Notice of the exemption was served and published in the Federal Register on February 18, 2011 (76 Fed. Reg. 9,634-35).

Under the Board’s rules, the exemption was scheduled to become effective on March 22, 2010, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by February 28, 2011. On February 28, 2011, NCR timely filed a formal expression of intent to file an OFA, in which it also requested UP to provide NCR with certain information regarding the line, including information prescribed in 49 C.F.R. § 1152.27(a).<sup>1</sup> Filing an expression of intent automatically stays the effective date of a notice of exemption for 10 days (here, until April 1, 2011).<sup>2</sup> Thus, in this case OFAs were due by March 18, 2011 (30 days after publication of the notice of exemption in the Federal Register).<sup>3</sup> Under the Board’s regulations, however, the Board will entertain petitions to toll that 30-day deadline if a railroad fails to provide a potential OFA offeror promptly with the information the offeror has requested under 49 C.F.R.

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<sup>1</sup> On March 1, 2011, NCR filed corrections to its February 28 filing, and, on March 14, 2011, it filed a “Notice of Oral Stipulation” to its March 1 filing.

<sup>2</sup> 49 C.F.R. § 1152.27(c)(2)(i).

<sup>3</sup> 49 C.F.R. § 1152.27(c)(2)(ii)(B). Because day 30 was Sunday, March 20, OFAs were due on Friday, March 18. See 49 C.F.R. § 1152.25(d)(4).

§ 1152.27(a).<sup>4</sup> In this case, any petition to toll was due by March 15, 2011.<sup>5</sup> No such petition was filed, and no OFA was filed.

By decision served on March 29, 2011, the proceeding was reopened at the request of the Board's Office of Environmental Analysis (OEA), and the exemption was made subject to 2 salvage-related consultation conditions and a public use condition. In the same decision, the Board noted that, because no OFA or petition to toll the time period for filing an OFA had been filed, the exemption would become effective on April 1, 2011.

On March 31, 2011, NCR filed a combined (1) motion to permit a late-filed petition to extend the OFA filing deadline, and (2) petition to extend the OFA filing deadline. On April 1, 2011, UP replied, requesting that the Board deny NCR's motion and petition. UP stated that it is willing to continue negotiating with NCR on an arms-length basis concerning acquisition of all or any portion of the subject line, track structure, and right-of-way, but not under the OFA process.

On April 11, 2011, NCR filed a "Notice of Stipulation To Abandonment," in which NCR "stipulat[es]" to UP's abandonment of the line in reliance on UP's stated willingness to continue to negotiate with NCR to acquire all or part of the line outside the OFA process. It appears that, in substance, NCR is agreeing to forego the OFA process and instead to continue to negotiate, as UP has offered, outside of that process. Therefore, NCR's "stipulation" will be construed as a request to withdraw its expression of intent to file an OFA, and that request will be granted. Because NCR is agreeing to forego the OFA process, the relief it requested in its March 31 filing, which relates to extensions of time for certain steps of the OFA process, is not necessary and therefore is denied as moot.

It is ordered:

1. NCR's expression of intent to file an OFA is withdrawn.
2. NCR's (a) motion to permit a late-filed petition for an extension of time to file an OFA and (b) petition for an extension of time to file an OFA are denied as moot.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>4</sup> 49 C.F.R. § 1152.27(c)(2)(ii)(C).

<sup>5</sup> See id.