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SERVICE DATE - LATE RELEASE OCTOBER 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-547X

ROARING FORK RAILROAD HOLDING AUTHORITY--ABANDONMENT EXEMPTION--  
IN GARFIELD, EAGLE AND PITKIN COUNTIES, CO

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: October 30, 1998

By decision and notice of interim trail use or abandonment served on October 16, 1998, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Roaring Fork Railroad Holding Authority (RFRHA), of a 33.44-mile line of railroad known as the Aspen Branch, extending from milepost 360.22 near Glenwood Springs to the end of the line at milepost 393.66 near Woody Creek, in Garfield, Eagle and Pitkin Counties, CO, subject to trail use, historic preservation, environmental and employee protective conditions. The exemption was scheduled to become effective on November 15, 1998, unless an offer of financial assistance (OFA) was filed on or before October 26, 1998.

On October 26, 1998, Crystal, Roaring Fork, Colorado Railroad & Minerals LLC (CRF) filed a letter purporting to be a "notice of its intent to file an offer of financial assistance" to purchase the involved rail line. However, in proceedings involving a petition for exemption for abandonment, the Board's regulations, as adopted 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, and June 27, 1997), no longer provide for a notice of intent to file an OFA. Instead, as outlined at 49 CFR 1152.27(b)(2), the OFA itself must be filed within 120 days after the filing of the petition for exemption or 10 days after the service of a Board decision granting the exemption, whichever occurs sooner (in this instance, as previously stated, by October 26, 1998). Under 49 CFR 1152.27(c)(1)(ii), the offeror must include in its OFA a demonstration that it is financially responsible to purchase or subsidize the line, and it must supply specified information regarding the amount of the subsidy or purchase.<sup>1</sup> CRF has not provided this necessary information and, accordingly, its pleading will be rejected.

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<sup>1</sup> If a potential offeror needs an estimate of the annual subsidy or minimum purchase price required to keep the line in operation and has not received such information promptly after requesting the railroad for such information, the potential offeror can petition the Board to toll the 10-day period for submitting OFAs. However, such a request must be made within 5 days after service of the decision granting the petition for exemption. See 49 CFR 1152.27(c)(1)(i)(C). No such request was received by the Board in this proceeding.

Also, on October 26, 1998, Morris H. Kulmer and Kern W. Schumacher (the offerors) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the entire line and they say they are prepared to pay \$8.5 million.

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).

The offerors have submitted a letter from Fred A. Moreton & Company of Salt Lake City, UT, a provider of surety bonds and other instruments of credit, dated October 26, 1998, to support the assertion that they have the financial resources to purchase the line. The financial information submitted shows that the offerors are financially responsible.

The offer is equal to the amount RFRHA paid to acquire the line. The offerors state that they have not received any data from RFRHA to enable them to make a more informed judgment as to the worth of the line.

Because the offerors are financially responsible and have offered financial assistance, the effective date of the decision authorizing 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 \$14,600. 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. CRF's notice of intent is rejected.
2. The effective date of the exemption is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
3. If RFRHA and the offerors 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 November

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25, 1998. 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.

4. This decision is effective on its service date.

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

Vernon A. Williams  
Secretary