

29575
DO

SERVICE DATE - SEPTEMBER 4, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 119X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION—
IN ROCK, GREEN AND DANE COUNTIES, WI

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: September 3, 1998

By decision served on June 23, 1998, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Union Pacific Railroad Company (UP), of a 15-mile line of railroad known as the Harvard Subdivision, extending from milepost 119.0 near Evansville to milepost 134.0 near "MX", a crossing of Wisconsin and Southern Railroad Company, near Madison, in Rock, Green and Dane Counties, WI, subject to trail use, public use, environmental and employee protective conditions. The decision authorizing abandonment and discontinuance was scheduled to become effective on July 23, 1998, unless an offer of financial assistance (OFA) was filed on or before July 2, 1998. By decision served July 14, 1998, the time for filing an OFA was tolled 60 days until August 31, 1998, and the effective date of the exemption was stayed until September 20, 1998.

On August 31, 1998, the City of Fitchburg/The Village of Oregon Partnership (the Partnership) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$813,426.

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 its offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). As a governmental entity, the Partnership is presumed to be financially responsible. See 49 CFR 1152.27(c)(1)(ii)(B). The Partnership is thus found to be financially responsible.

The Partnership's offer is substantially less than UP's estimated purchase price of \$1,623,515 (\$803,515 for the track materials plus \$820,000 for the real estate). Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), the Partnership explains the disparity by asserting that the real estate and track materials may be worth considerably less than the amount determined by UP if its methodology for calculating the value of the real estate is considered and the August 21, 1998 prices stated in the American Metal Market Newsletter and additional track removal costs are factored in.

Because the Partnership, a financially responsible entity, has offered financial assistance, the effective date of the decision authorizing abandonment and discontinuance 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 \$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. The effective date of the decision authorizing abandonment and discontinuance 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 UP and the Partnership 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 September 30, 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 and discontinuance 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