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SERVICE DATE - DECEMBER 22, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC.--ABANDONMENT EXEMPTION--
IN LAS ANIMAS COUNTY, CO

Decided: December 21, 2000

As pertinent, Trinidad Railway, Inc. (Trinidad) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 30-mile line of railroad extending from milepost 2.0 at Jensen (west of Trinidad) to the end of the line at the former New Elk Mine at milepost 30.0 (east of Stonewall), in Las Animas County, CO. Notice of the exemption was served and published in the Federal Register on September 21, 2000. The exemption was scheduled to become effective on October 21, 2000, but the effective date was extended to accommodate the offer of final assistance (OFA) process of 49 U.S.C. 10904 and 49 CFR 1152.27.

On December 5, 2000, Rail Ventures, Inc. (Rail Ventures) timely filed an OFA to purchase the entire line for \$2.5 million.¹ Also on December 5, intervener Kern Valley Railroad Company (KVR) filed a petition to reject the OFA. On December 7, 2000, Rails to Trails Conservancy (RTC) filed a motion to dismiss the OFA.²

In a decision served December 8, 2000, KVR's petition to reject the OFA and RTC's motion to dismiss the OFA were denied, Rail Ventures was found to be a financially responsible entity, and the effective date of the abandonment exemption was postponed in order to permit the OFA process to proceed. The decision set January 4, 2001, as the date on or before which the buyer or seller could request the Board to establish the terms and conditions of the purchase price of the line should the parties be unable to reach agreement.

¹ Rail Ventures' pleading embraced a petition to revoke a notice of exemption filed in a related proceeding, Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc., STB Finance Docket No. 33956 (served and published Nov. 21, 2000). The embraced petition will be addressed in a separate decision.

² Issuance of a notice of interim trail use (NITU) requested by RTC has been held in abeyance pending completion of the OFA process. RTC has also filed a revocation petition in the finance proceeding.

On December 15, 2000, KVR filed an appeal of the December 8 decision.³ Also on December 15, KVR filed a request that the above-noted January 4 due date be extended to a date 30 days from the service date of the Board's decision disposing of its appeal. In support of its extension request, KVR asserts that it would be unnecessarily burdensome and costly for parties to prepare submissions in support of line valuations while an appeal is pending. On December 20, 2000, RTC also filed an appeal of the December 8 decision⁴ and a request that the OFA process be stayed pending final disposition of the related finance proceeding.

KVR's extension request has merit and will be granted.⁵ There is, however, no need to issue a stay of the OFA process at this time. Appropriate remedies can be fashioned, if necessary, when the merits of the appeals of the December 8 decision in this proceeding and of the pleadings filed in the finance docket are finally decided. Accordingly, the stay request will be denied.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. KVR's request for an extension of time is granted.
2. RTC's request that the OFA process be stayed pending disposition of the related finance proceeding is denied.
3. The date on or before which the buyer or the seller may request the Board to establish the terms and conditions of the purchase price of the subject line is extended to a date 30 days after the service date of the Board's decision ruling on the appeals filed in this proceeding.
4. The decision is effective on its service date.

³ On December 20, 2000, KVR sought leave to supplement its appeal with an attached letter from Mr. Terry Peterson, President of the Tie Yard of Omaha. That request will be dealt with in the decision handling KVR's appeal.

⁴ Under 49 CFR 1011.2(a)(7), RTC's appeal was due December 18, 2000. It will, however, be accepted and considered as no party will be prejudiced by the 2-day late filing.

⁵ This action should not be construed as prejudging the merits of the pending appeals or of the pleadings filed in the related finance docket.

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By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary