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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-477 (Sub-No. 2X)

OWENSVILLE TERMINAL COMPANY, INC.—ABANDONMENT EXEMPTION—IN GIBSON AND POSEY COUNTIES, IN

Decided: February 25, 1998

We are denying a petition filed by the Gibson County Farm Bureau Cooperative Association (the Farm Bureau) seeking to reopen this proceeding. Our decision, served November 7, 1997, in this proceeding, granted the Owensville Terminal Company, Inc. (OTC), an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, giving OTC permission to abandon a 6.0-mile line of railroad known as the Cynthiana-Owensville line. The rail line runs from milepost 277.0 north of Cynthiana to milepost 271.0 north of Owensville in Gibson and Posey Counties, IN.

Before the November 7 decision became effective, the Farm Bureau timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase a 2-mile segment of the line between milepost 273.0 and milepost 271.0. A decision served November 20, 1997, found the Farm Bureau financially responsible and postponed the effective date of the exemption for the 2-mile segment to permit the OFA process to proceed. The exemption permitting abandonment of the remainder of the Cynthiana-Owensville line became effective on December 7, 1997. Subsequently, the Farm Bureau requested that the Board establish the conditions and amount of compensation for sale of the 2-mile segment. Thereafter, in a decision served on January 16, 1998, the Board established the terms for transfer of the segment and set the purchase price at $120,500. On January 26, 1998, the Farm Bureau notified the Board that it accepted the terms and conditions set in the January 16 decision. A decision served on February 3, 1998, dismissed the abandonment exemption for the 2-mile segment, effective on the date the sale is consummated.

In its petition to reopen, which was filed on January 12, 1998, the Farm Bureau asserts that OTC committed material error by substantially understating the line's estimated net liquidation value (NLV) in its petition for exemption.[1] The Farm Bureau claims that OTC represented that the NLV for the entire Cynthiana-Owensville line was $127,354. However, during the OFA negotiations, the Farm Bureau states that it was advised that OTC had made several mistakes in calculating the NLV. OTC's revised NLV for the 2-mile segment was $216,500.

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[1] OTC certified that it served a copy of the exemption petition on the Farm Bureau on July 21, 1997.

The Farm Bureau argues that it was substantially prejudiced because OTC misrepresented the line's NLV in the exemption petition. The Farm Bureau claims that it relied on the NLV in OTC's exemption petition, and decided not to protest the proposed abandonment. Instead, the Farm Bureau states that it believed it could purchase the 2-mile segment under the OFA procedures for $42,454.00, which was one-third of the NLV represented by OTC for the 6-mile line in its exemption petition. The Farm Bureau further contends that OTC never attempted to correct the substantial mistakes and errors made in its petition or to clarify the NLV. The Farm Bureau maintains that, because of these alleged misrepresentations, it has been deprived of its right to protest the abandonment. It requests that the abandonment proceeding be reopened with respect to the 2-mile segment that has not been abandoned.

OTC replied on January 22, 1998, disputing that it misrepresented the value of the line. OTC notes that the valuation in Appendix 5 to the petition was labeled "Net salvage value of track materials, metals only" and did not include land or ties. OTC further argues that it was not obligated to include an NLV estimate in its exemption petition. OTC also argues that, if its valuation was mistaken, this was harmless error and did not affect the abandonment decision. It further notes that, had it valued the line at its revised estimated NLV, its opportunity costs for continued operation of the line would also have increased, thus providing greater support for authorization of the abandonment.

DISCUSSION AND CONCLUSIONS

Under 49 CFR 1152.25(e)(4), a petition to reopen an abandonment proceeding must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. The Farm Bureau has not shown that reopening this proceeding is warranted.

Farm Bureau contends that it decided against filing a protest against OTC's petition to abandon due to the low value the railroad put on the line in its petition. The Farm Bureau recites that it relied on its ability to acquire the line on terms it could easily afford, only to find that OTC substantially increased the value of the line when the time came to negotiate, and later, to ask the Board to set terms and conditions.

This petition is the opportunity to advance the arguments for denying OTC's petition that Farm Bureau says it would have made earlier had it not been misled. But the Farm Bureau has failed to advance a single point that would support denying the abandonment, either now or in response to the original petition. The Farm Bureau does not challenge the Board's conclusion that traffic on the line has declined from an average of 349 cars per year to 26, or that continued operation of the line would obligate OTC to incur substantial rehabilitation and opportunity costs. Indeed, since, as the Farm Bureau notes, the line's value is higher than originally represented, the opportunity costs are even higher than the costs cited to support the abandonment.

Farm Bureau might have protested the abandonment petition had OTC originally claimed a higher value for the line. But the petition to reopen fails to disclose, and we do not see, anything that would indicate that such a protest would have provided any basis for denying the abandonment. That being the case, we see no reason to reopen and reverse our prior decision.

Moreover, Farm Bureau has failed to establish that OTC's initial valuation estimate constituted a material misrepresentation that would warrant the reopening of our decision granting the abandonment exemption. As OTC points out, that estimate did not include the value of ties on the line or of the land associated with the line, and the exhibit setting forth OTC's valuation was adequately labeled. Accordingly, we will deny the Farm Bureau's petition to reopen.

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

It is ordered:

1. The Farm Bureau's petition to reopen is denied.

2. This decision is effective on the date served.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary