

32558
SEC

SERVICE DATE - FEBRUARY 15, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-581X

1411 CORPORATION—ABANDONMENT EXEMPTION—IN LANCASTER COUNTY, PA

STB Docket No. AB-529X

MIDDLETOWN & HUMMELSTOWN RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN LANCASTER COUNTY, PA

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: February 14, 2002

These proceedings concern the transfer of a 2.5-mile rail line in Lancaster County, PA (the M&H line) under the forced sale provisions of 49 U.S.C. 10904. This decision denies a request by the Borough of Columbia (Columbia) for additional time to prepare and submit a pleading regarding issues already addressed in an administratively final decision.

BACKGROUND

By decision served April 12, 2001, the 1411 Corporation and the Middletown & Hummelstown Railroad Company (M&H) were granted an exemption under 49 U.S.C. 10502 and 10903 to abandon service over the M&H line.¹ The abandonment authority was scheduled to become effective on May 12, 2001, unless an offer of financial assistance (OFA) to purchase the line for continued railroad use was submitted under 49 U.S.C. 10904 and 49 CFR 1152.27(c) by May 11, 2001.

Frank Sahd Salvage Center, Inc. (Sahd) timely filed a formal expression of intent to file an OFA, and the Board therefore postponed the abandonment authority, by decisions served on

¹ Due to the circumstances set out in the notices, both Applicants needed to seek authority to abandon the 2.5-mile line segment.

May 8 and May 10, 2001.² On July 11, 2001, Sahd filed an OFA, and by decision served on July 16, 2001, Sahd was found to be a financially responsible entity.

Shawnee, which had acquired an option to buy the property for use as a trail, sought to block Sahd's OFA by requesting that the Board either exempt these proceedings from the application of section 10904 or dismiss Sahd's OFA. Shawnee argued that Sahd's offer to buy the line was not motivated by a desire to provide continued rail service and that an overriding public interest required the Board to set aside the OFA process in this case. By decision served on September 6, 2001 (September 6 decision), the Board denied Shawnee's request to exempt these proceedings from the OFA process, found that Sahd's OFA was bona fide, and denied Shawnee's request to dismiss the OFA.

In a decision served on October 18, 2001 (the October 18 decision), the Board set the terms and conditions of the sale of the line. Closing of the sale was to occur by January 16, 2002. On November 29, 2001, Sahd filed a petition for clarification of the October 18 decision, pursuant to 49 CFR 1117.1, and requested expedited consideration of that petition. By decision served on December 4, 2001, the deadline for closing was postponed pending a Board decision addressing the petition for clarification.

On February 8, 2002, the Borough of Columbia (Columbia) filed a motion seeking 30 days additional time to prepare and submit a response or other appropriate pleading. Columbia states that it is concerned about the purpose of Sahd's OFA and that the additional time is needed to make a presentation to the Board regarding Columbia's position on future use of the line.

Sahd filed in opposition to Columbia's motion on February 13, 2002. Sahd notes that Columbia's reply to the petition for clarification was due on December 19, 2001, and that Columbia fails to offer any explanation for its delay.

DISCUSSION

Although Columbia's request for additional time is nominally directed at the petition for clarification, which is currently pending before the Board, it appears that Columbia really seeks to reargue the question of whether Sahd should be permitted to pursue an OFA.³ That is a matter

² The May 8 decision also held in abeyance, pending completion of the OFA process, a request from Shawnee Run Greenway, Inc. (Shawnee) for issuance of a notice of interim trail use and rail banking under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and a public use condition under 49 U.S.C. 10905.

³ Columbia incorrectly states that Sahd's petition for clarification called for the reopening of the OFA determination and suggests that the Board, "in essence, stayed the OFA proceeding." But Sahd merely sought clarification of the terms and conditions that the Board set

that has already been addressed and resolved in the Board's administratively final September 6 decision. While the Board may reopen and reconsider an administratively final decision at any time where there is material error, new evidence or substantially changed circumstances,⁴ Columbia has not alleged material error or substantially changed circumstances here, nor has it proffered new evidence. Accordingly, there is no basis upon which to grant Columbia's request.

It is ordered:

1. Columbia's motion is denied.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

for the sale in its October 18 decision, not of the Board's September 6 decision that the OFA should proceed.

⁴ See 49 U.S.C. 722(c).