

SERVICE DATE – JULY 28, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 667X)

CSX TRANSPORTATION, INC.—ABANDONMENT
EXEMPTION—IN HARLAN COUNTY, KY

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: July 27, 2006

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 12.56-mile rail line on its Southern Region, Huntington Division-West, Cumberland Valley Subdivision, from milepost OWH-258.5 to the end of the track at milepost OWH-271.06, in Harlan County, KY. Notice of the exemption was served and published in the Federal Register on May 11, 2006 (71 FR 27530-31). The exemption was scheduled to become effective on June 10, 2006, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by May 22, 2006. On May 23, 2006, and June 8, 2006, Pardee & Curtin Realty LLC (Pardee) and Seaside Holdings, Inc. (Seaside), respectively, late-filed formal expressions of intent to file an OFA to purchase the entire line. Pardee also requested that CSXT provide it with the financial data and information necessary to determine the line's net liquidation value (NLV). By decision served June 9, 2006, the Board accepted Pardee's and Seaside's late-filed notices of intent, Pardee's request to toll was granted, and the time for filing an OFA was extended to July 12, 2006, and the effective date of the exemption was further postponed to July 22, 2006.¹ On June 16, 2006, Pardee requested that the Board further toll the time for submitting an OFA until July 20, 2006. By decision served June 29, 2006, the time period for Pardee and Seaside to file an OFA was tolled until July 20, 2006, and the effective date of the exemption was further postponed until July 30, 2006. On July 14, 2006, Seaside reported to the Board that it had received CSXT's NLV material and requested that the time period for submitting an OFA be extended until July 25, 2006, to provide additional time for it to review the material received and prepare its OFA. By decision served on July 19, 2006, the time period for Pardee and Seaside to file an OFA was extended until July 25, 2006, and the effective date of the exemption was further postponed until August 4, 2006. By letter filed on

¹ In the June 9, 2006 decision, the Board also imposed several environmental conditions, including one regarding endangered species, and a section 106 historic preservation condition. By decision served July 13, 2006, the endangered species condition was removed. The July 13 decision noted that the other conditions imposed in the June 9 decision remain in effect.

July 24, 2006, Pardee informed the Board that it was withdrawing its notice of intent to file an OFA.

On July 25, 2006, Seaside timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the 12.56-mile line for \$636,261, consisting of \$201,000 in land value and \$435,261 for track value. According to Seaside, this is the NLV established by CSXT.

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, 354 I.C.C. 472 (1981). In its OFA, Seaside provides evidence showing that it has financial resources to acquire and operate the line. Accordingly, Seaside is found to be financially responsible.

Because Seaside is financially responsible, and has offered assistance, the effective date of the exemption authorizing abandonment will be postponed.

The Board's regulations contemplate that the carrier and a financially responsible person will reach an agreement setting the terms and conditions of purchase. If they do not, either party may request the Board to do so. 49 CFR 1152.27(g). Any person filing a request to set terms and conditions must pay the requisite filing fee, set at 49 CFR 1002.29(f)(26), which currently is \$19,100.² An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: 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 decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

² The filing fee for a request to set terms and conditions increased to \$19,100 effective April 19, 2006. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services-2006 Update, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

2. If Seaside and CSXT cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before August 24, 2006. 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.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary