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SERVICE DATE - APRIL 15, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 131X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--  
IN CAMERON COUNTY, TX

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: April 14, 1999

By decision served on April 2, 1999, 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 7.14-mile line of railroad known as the Brownsville Branch, extending from milepost 197.90 near Naranjo Road to milepost 205.04 near E. Van Buren Street, in Brownsville, Cameron County, TX, subject to public use, environmental, and employee protective conditions. The exemption was scheduled to become effective on May 2, 1999, unless an offer of financial assistance (OFA) was filed on or before April 12, 1999.

On April 9, 1999, Rio Valley Railroad, Inc. (the offeror),<sup>1</sup> timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase that portion of the line between the north right-of-way of Farm-to-Market Road No. 3248, also known as Alton Gloor Boulevard, at approximately milepost 199.96, and the northern terminus of the rail line at the point of connection to UP's rail line that extends east-southeast to the Port of Brownsville, TX, at milepost 197.90, a distance of approximately 2.06 miles, for \$16,700.<sup>2</sup>

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, 365 I.C.C. 472 (1981).

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<sup>1</sup> The offeror is a Class III rail carrier that owns and/or leases several rail lines in Texas, and has trackage rights over a UP line also in Texas. All of the rail lines are operated by Rio Valley Switching Company (RVSC) pursuant to operating agreements with the offeror. The offeror and RVSC are affiliates of Ironhorse Resources, Inc. (IRI), a noncarrier company that is also affiliated with other Class III rail carriers. The offeror states that, under 49 CFR 1152.27(i)(1), a corporate affiliate of offeror may be substituted as a purchaser prior to consummation of the purchase. If such a substitution is made, IRI will create the acquiring entity.

<sup>2</sup> According to the offeror, the offer of \$16,700 represents a mileage-prorated amount for track materials (\$14,364) based on UP's claim of \$49,787 for the entire 7.14-mile line plus a similar proportion of the right-of-way (\$2,336) based on an estimate of the amount of land multiplied by \$100 per acre.

The offeror has submitted a letter from Douglas Distler, President of First Bank in O'Fallon, IL (First Bank), dated April 6, 1999, indicating that the offeror and RVSC, as affiliates of IRI, have access to a line of credit sufficient to purchase the above-described portion of the line. The financial information submitted shows that the offeror is financially responsible.<sup>3</sup>

Because the offeror is financially responsible and has offered financial assistance, the effective date of the decision authorizing abandonment on that portion of the line between the north right-of-way of Farm-to-Market Road No. 3248, also known as Alton Gloor Boulevard, at approximately milepost 199.96, and the northern terminus of the rail line at the point of connection to UP's rail line that extends east-southeast to the Port of Brownsville, TX, at milepost 197.90, 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 \$14,800. 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 exemption authorizing abandonment on that portion of the line between the north right-of-way of Farm-to-Market Road No. 3248, also known as Alton Gloor Boulevard, at approximately milepost 199.96, and the northern terminus of the rail line at the point of connection to UP's rail line that extends east-southeast to the Port of Brownsville, TX, at milepost 197.90, 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 offeror 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 May 10, 1999.

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<sup>3</sup> Under 49 CFR 1152.27(i)(1), an offeror may only substitute its corporate affiliate as the purchaser, prior to consummation, if the Board has determined either that the original offeror has guaranteed the financial responsibility of its affiliate or that the affiliate has demonstrated financial responsibility in its own right. Here, the letter from First Bank shows that the affiliates of IRI are financially responsible, should the offeror decide to substitute one of them prior to consummation.

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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