

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-512X

SIERRA PACIFIC INDUSTRIES—ABANDONMENT EXEMPTION—
IN AMADOR COUNTY, CA

STB Docket No. AB-880X

SIERRAPINE—DISCONTINUANCE EXEMPTION—IN AMADOR COUNTY, CA

Decided: March 11, 2005

By decision served on February 25, 2005, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Sierra Pacific Industries, Inc. (SPI) of a line of railroad extending from milepost 0.0 at Ione to milepost 12.0 at Martell, in Amador County, CA, and the discontinuance of service over the line by SierraPine (SPI and SierraPine will collectively be referred to as Railroads). The exemptions were scheduled to become effective on March 27, 2005, unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) was filed by March 7, 2005, 10 days after the February 25 decision's service date.

On February 28, 2005, Martell Industrial Center, LLC (MIC) filed a petition to toll the 10-day period for submitting an OFA. According to MIC, it requested that the Railroads provide it with information necessary to file an OFA on December 13, 2004. However, the Railroads have still not provided the requested data. Consequently, MIC requests that the deadline for its OFA be tolled until 60 days after the date on which the Railroads provide it with the information it requested in the December 13 letter. MIC, generally, has requested data concerning: (1) the Railroads' estimate of the net liquidation value of the line; (2) the Railroads' estimate of the annual subsidy to sustain rail operations; (3) the Railroads' estimate of the costs to rehabilitate the line to Federal Railroad Administration Class 1 safety standards; and (4) notice of transportation requests, complaints, and lawsuits relating to or affecting the line.

The Railroads replied on March 7, 2005. They state that, although they are assembling the information requested by MIC, they object to the length of time requested by the potential offeror to file an OFA. The Railroads claim that 49 CFR 1152.27(c)(1)(i)(B) provides that an OFA is to be prepared and filed 10 days after the Board grants a petition for exemption. Also, the Railroads argue that recent decisions demonstrate that the Board has made OFAs due 10 days after the potential offeror receives the requested data from the carrier. The Railroads claim that, because MIC has failed to justify why it needs more than 10 days to review the data and submit its OFA, MIC's OFA should be due 10 days after it receives the requested data.

On March 8, 2005, MIC filed a reply and requested that the Board accept it. Although replies to replies are generally not permitted, this filing will be accepted in the interests of a complete record. Furthermore, the pleading was filed in time for it to be adequately considered without jeopardizing the Board's ability to meet the deadline imposed by 49 CFR 1152.27(c)(1)(i)(C).

In its filing, MIC refutes the Railroads' assertions that Board rules provide only 10 days for a potential offeror to prepare an OFA. MIC also takes issue with the Railroads' assertion that the Board generally grants extensions that only make an OFA due 10 days after the potential offeror receives the data. MIC claims that the OFA should be due 60 days after it receives the data from the Railroads because it initially requested the information 80 days before the OFA filing due date and the Railroads have made no attempt to comply with Board regulations to provide MIC promptly with any of the requested information.

MIC's petition will be granted in part. Because the Railroads have failed to provide MIC promptly with the information necessary for development of its OFA, the period for filing an OFA will be tolled. See 49 CFR 1152.27(c)(1)(i)(C). However, under the circumstances presented here, it appears reasonable to make the OFA due 45 days from the date that MIC receives the data. This due date should give MIC ample time in which to review the information and formulate its OFA.

Moreover, it does not appear that the Railroads will be harmed by making an OFA due 45 days after MIC receives the data. Because this line has been embargoed, SierraPine will not incur additional costs from providing service. Also, it does not appear that postponing the effective date of the decision granting abandonment and discontinuance authority will impinge upon any plans to dispose of the property.

While it is true that 49 CFR 1152.27(c)(1)(i)(B) provides that an OFA must be filed and served 10 days after the Board grants a petition for exemption, the rule contemplates that the potential offeror has had a period of time running from when notice of the petition was published in the Federal Register to request the data, for the carrier then promptly to provide the data, and for the offeror then to prepare an OFA. As a consequence, an offeror normally has had far longer than 10 days to prepare an OFA if it requested the appropriate information early after the notice was published in the Federal Register and the carrier promptly provided it, as contemplated by Board rules.

Accordingly, an OFA will be due 45 days after the Railroads give MIC the data requested in its December 13 letter, and the effective date of the abandonment and discontinuance exemptions will also be postponed until 10 days after the due date for the

filing of MIC's OFA. The Railroads are urged promptly to provide MIC with the requested information.

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

It is ordered:

1. The Railroads are directed to provide MIC with the information it requested in its December 13, 2004 letter, and to notify the Board in writing that they have done so. The deadline for MIC to file its OFA is tolled until 45 days following the date that the Railroads provide MIC with this information.
2. The effective date of the exemption is postponed until 10 days after the due date for MIC's filing of its OFA.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² The Railroads state that they will notify the Board when they have furnished the requested information to MIC so that the due date for filing an OFA and the effective date of the exemptions can be determined for the record.