

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-384 (Sub-No. 1X)

DELTA SOUTHERN RAILROAD, INC.–ABANDONMENT EXEMPTION–BETWEEN LAKE
VILLAGE, AR, AND SHELBURN, LA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: December 3, 2004

Delta Southern Railroad, Inc. (DSR), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 30.0-mile portion of its Lake Providence Line, between milepost 433.0, near Lake Village, AR, and milepost 463.0, near Shelburn, LA. Notice of the exemption was served and published in the Federal Register on June 10, 2004 (69 FR 32657-58).

The exemption was scheduled to become effective on July 10, 2004. As a result of subsequent proceedings,¹ the effective date of the abandonment authorization was postponed until November 6, 2004.

On October 18, 2004, Southeast Arkansas Economic Development District (SAEDD) timely filed a formal expression of intent to file an offer of financial assistance (OFA) to purchase the entire line. This filing automatically stayed the effective date of the exemption until November 16, 2004.² On October 29, 2004, DSR filed a letter stating that valuation information would not be furnished to the prospective offerors until November 10, 2004, and requested an extension for the filing of an OFA until November 23, 2004. In a letter filed on November 12, 2004, DSR stated that it was unable to furnish

¹ By a decision served on June 17, 2004, the Board granted the request of DSR to hold this proceeding in abeyance for 90 days (until September 15, 2004), to permit the parties to negotiate a settlement. In a letter filed on August 16, 2004, DSR stated that it was not willing to hold the proceeding in abeyance beyond September 15, 2004. On September 17, 2004, DSR filed a letter requesting that the Board reinstate this proceeding because the parties were unable to reach an agreement. By decision served on October 7, 2004, DSR's request to proceed with the abandonment proposal was granted, and a new effective date and procedural schedule for filing of documents were established.

² See 49 CFR 1152.27(c)(2)(i).

an appraisal of the value of the land to the offerors until that day, and therefore, it requested that the time period for filing an OFA be extended until November 30, 2004. The DSR letters of October 29, 2004, and November 12, 2004, had the effect of tolling the due date for an OFA until November 30, 2004, and extending the effective date of the exemption until December 10, 2004.³

On November 30, 2004, SAEDD and Lake Providence Port Commission (LPPC) (collectively, Offerors) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$815,000.

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). As governmental entities, Offerors are presumed to be financially responsible. See 49 CFR 1152.27(c)(1)(ii)(B).

SAEDD's and LPPC's offer is less than DSR's estimated valuation of \$1,909,000. Offerors state that the discrepancy is due to questions as to the value of DSR's property interest in the right-of-way and questions as to the value of the rail and track materials on the line. According to Offerors, DSR's land valuation appraiser assumed that the entire right-of-way was held in fee, but did not purport to have reviewed any deeds or other title documentation, and did not provide any documentation to support that assumption. Offerors state further that their own preliminary review found that more than two-thirds of the right-of-way of DSR's McGehee-Tallulah line (of which the Lake Village-Shelburn line at issue in this proceeding forms a part) is subject to reversionary interests, and that more than half of the Louisiana portion of the Lake Village-Shelburn line right-of-way is held by railroad easement rather than in fee simple. Offerors also dispute DSR's appraised value of over \$350,000 for rail and track materials. Consistent with 49 U.S.C. 10904(c), and 49 CFR 1152.27(c)(1)(ii)(C), Offerors have explained the basis for the disparity between their offer and the carrier's estimate of the purchase or acquisition price.

Because Offerors are presumed to be financially responsible and have offered financial assistance, the effective date of the exemption authorizing the abandonment 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 \$18,000. 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: Office of Proceedings, Request to Set Terms and Conditions" in the lower left hand corner.

³ See 49 CFR 1152.27(c)(2)(ii)(D).

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 decision authorizing the abandonment is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If the Offerors and DSR cannot reach an agreement concerning the rail line, either party may request the Board to establish the terms and conditions of the purchase price on or before December 30, 2004. 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, subject to possible imposition of conditions.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary