

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33395

CONTINENTAL GRAIN COMPANY, *ET AL.*—PETITION FOR WAIVER AND
CLARIFICATION

Decided: May 22, 1997

On April 25, 1997, Continental Grain Company, *et al.* (Petitioners)¹ filed a Petition Under 49 CFR 1151.2(j) for Waiver and Clarification of Specific Portions of 49 CFR 1151, which governs applications filed under 49 U.S.C. 10907, Railroad Development. On May 14, 1997, Owensville Terminal Company, Inc., (OTC) filed a Reply to Petition for Clarification.² Petitioners intend to file an application under 49 U.S.C. 10907(b)(1)(A)(ii) to acquire a line of railroad owned by OTC which extends between milepost 282.2, at or near Poseyville, IN, and milepost 271.0, at or near Owensville, IN, in Posey and Gibson Counties, IN (the line). Petitioners state that the line has been identified in category 1 on OTC's system diagram map filed with the Board pursuant to 49 CFR 1152.10.³ Petitioners further state that, to their knowledge, no abandonment application has been filed by OTC.⁴

PETITION FOR CLARIFICATION

Prior to filing an application with the Board, an applicant may file a petition to waive or clarify specific portions of 49 CFR 1151. *See* 49 CFR 1151.2(j). Petitioners request the Board's clarification of the following subsections of 49 CFR 1151.3(a):

(1) *Clarification of 49 CFR 1151.3(a)(2)--Identification of applicant.* Petitioners ask the Board to clarify whether "applicant" can consist of more than one entity;

(2) *Clarification of 49 CFR 1151.3(a)(3)--Information sufficient to demonstrate that applicant is a financially responsible person.* Petitioners ask the Board to clarify whether, if "applicant" can consist of more than one entity, each "applicant" must satisfy the requirements of

¹ Petitioners state that the involved parties, other than Continental Grain Company, will be identified when the application is filed.

² OTC notes in its reply that, although Petitioners' filing is styled as a petition for waiver and clarification, no regulations are requested to be waived.

³ Category 1 rail lines are lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date of the carrier's filing of its system diagram map with the Board. Pursuant to 49 CFR 1151, the Board, under 49 U.S.C. 10907, can require the sale of a rail line to a financially responsible person if the line appears in category 1 on the owning railroad's system diagram map.

⁴ OTC confirms in its reply that there has been no filing for an abandonment of the line. OTC states that it intends to file, in the near future, a petition for exemption for abandonment of a 6-mile segment of the line between a point north of Cynthiana, IN, and the end of the line north of Owensville, IN. OTC further states that the abandonment would not encompass Continental Grain Company's grain elevator at Cynthiana, and that if a petition for exemption were to be filed before Petitioner's feeder line application, the feeder line application could be entertained for the remainder of the line not covered by an abandonment filing, i.e., between Poseyville and a point just north of Cynthiana, IN.

financial responsibility, or whether financial responsibility requirements will be deemed satisfied by multiple applicants if but one such applicant is a financially responsible person;

(3) *Clarification of 49 CFR 1151.3(a)(5)--Offer to purchase the line.* Petitioners ask the Board to clarify whether the offer to purchase the line can be conditioned upon compliance by the owning carrier with applicable environmental laws and whether the Board can direct that an owning carrier's transfer be in compliance with all applicable laws; and

(4) *Clarification of 49 CFR 1151.3(a)(9)--Preconditions to be placed on shippers.* Petitioners ask the Board to clarify whether one precondition for a shipper to receive rail service might be a requirement for the shipper to enter into rail transportation contracts with the operator of the line.

Petitioners further request that, upon issuance of the Board's decision on this petition, they be given a reasonable period of time in which to file their application under 49 U.S.C. 10907. As the need for this request is not clear, no action will be taken on it.

DISCUSSION AND CONCLUSION

Clarification No. 1. Applications under 49 U.S.C. 10907 may be made by one, or collectively, by more than one applicant. However, the application must provide the following: (1) each applicant's name and address; (2) the name and address of the representative to receive correspondence, on behalf of the applicants, concerning the application; (3) a description of each applicant's affiliation with any railroad; and (4) if the applicant is a corporation, the names and addresses of its officers and directors. *See* 49 CFR 1151.3(a)(2)(i)-(iv).

Clarification No. 2. If an application is filed by multiple entities, the entity responsible for payment of the purchase price and for ensuring that adequate service will be provided must be clearly identified. Only that entity, which could consist of one or more individuals or business enterprises, need satisfy the requirement of financial responsibility. The financial responsibility requirements will be deemed satisfied if the application, and particularly the entity which seeks to establish that it is financially responsible (1) demonstrates its ability to pay the constitutional minimum value of the railroad line proposed to be acquired, and (2) demonstrates its ability to assure that adequate transportation will be provided over the line for a period of not less than 3 years after the acquisition of the line.

Clarification No. 3. Environmental assessments may be required in connection with applications filed under 49 U.S.C. 10907. *See* 49 CFR 1105.6(b)(4). The transaction may be exempt from environmental and historic reporting requirements if it does not result in significant changes in carrier operations that would exceed any of the environmental thresholds in 49 CFR 1105.7(e)(4) or (5). Such an exemption, however, does not limit the Board's ability to impose a condition upon the owning carrier requiring it to comply with all applicable laws including state environmental laws if found to be appropriate.⁵ The applicant should identify in the initial application any specific environmental laws it believes are relevant to the Board's consideration of the transfer of the line. These issues could have a bearing on the purchase price.

⁵ It is OTC's belief that an offer to purchase a rail line under 49 U.S.C. 10907 cannot be conditioned on the owning rail carrier's compliance with applicable environmental laws and that the Board does not have jurisdiction under the statute to enforce environmental laws. Clearly, whether proceeding by exemption or approval, the Board has jurisdiction over *all* parties to the transaction and has authority to impose appropriate conditions upon the authority granted. *See Consolidated Rail Corporation--Abandonment--Between Corry and Meadville, in Erie and Crawford Counties, PA*, Docket No. AB-167 (Sub-No. 1139) (ICC served July 18, 1995, at 4-5) (clarifying that the railroad is not entitled, in forced sales under the offer of financial assistance provisions, to limit its liability and require indemnification from the effects of environmental laws that the agency does not administer).

Clarification No. 4. If petitioners intend to establish a precondition that a shipper must enter into rail transportation contracts in order to receive service, Petitioners should state that that is their intent and provide a full explanation of the proposed precondition in the initial application. Shippers would then have an opportunity to file comments to the application addressing the proposed precondition within 60 days after the initial application is accepted.⁶ The Board then will determine whether the precondition is appropriate and fair.

It is ordered:

1. The Petition for Waiver and Clarification is granted as set forth in this decision.
2. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary

⁶ As noted in § 1151.2(a)(2), a copy of the application must be mailed by first class mail on all rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application was filed.