

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-883 (Sub-No. 1X)

ROCKY MOUNT AND WESTERN RAILROAD CO., INC.—ABANDONMENT
EXEMPTION—IN NASH COUNTY, NC

Decided: April 8, 2005

Rocky Mount and Western Railroad Co., Inc. (RM&W) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 4.7 miles of railroad from approximately milepost 134.8 at or near Momeyer to the end of the rail line at approximately milepost 139.5 at or near Spring Hope, in Nash County, NC. Notice of the exemption was served and published in the Federal Register on March 9, 2005 (70 FR 11731).

The exemption was scheduled to become effective on April 8, 2005. On March 18, 2005, however, 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 the North Carolina Department of Transportation (NCDOT), which had the effect of automatically staying the effective date of the exemption for 10 days, until April 18, 2005. NCDOT simultaneously requested RM&W to provide the following information: (1) the revenue and other data necessary to determine the amount of annual financial/subsidy assistance that would be required to retain rail transportation over the portion of the line between milepost 134.8 and milepost 138; and (2) the data related to the entire 4.7-mile line to assist in developing an estimate of the purchase price to include RM&W's estimate of the net liquidation value of the line, supporting data reflecting available real estate appraisals (including certification of whether the right-of-way is held by the railroad in fee or easement), assessment of the quality and quantity of track materials on the line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use).

By letter filed on April 5, 2005, NCDOT requests that the time period for submitting its OFA be tolled for 30 days. NCDOT states that RM&W indicated that the requested information could take two to four weeks for submission. That same day NCDOT also filed a letter in which it states that RM&W does not object to the requested extension, but counsel for RM&W subsequently filed a letter on that date stating that counsel for RM&W was not part of the communication between NCDOT and RM&W and that RM&W would review the request and respond by April 8, 2005.

By reply filed on April 8, 2005, counsel for RM&W argues that the NCDOT extension request was due on April 1 (citing 49 CFR 1152.25(d)(4)), and was thus not timely filed. In the

meantime, because it had not been granted an extension of the April 8 due date for its OFA, NCDOT filed an OFA on April 8, 2005, using information it had available.

Under section 1152.52(d)(4), it appears that the request for an extension should have been filed by April 4, 2005, and thus that it was filed one day late. Because RM&W has evidently failed to provide the requested information, however, NCDOT evidently felt that it was forced to file its offer with only part of the information that would be useful to it in offering financial assistance. Under the circumstances, the request to toll the due date of the OFA for 30 days will be considered a request to supplement the OFA and will be granted to allow NCDOT to supplement its offer. As a result, any supplement to the OFA will be due on May 9, 2005, and the effective date of the exemption will be further extended to May 19, 2005.

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

It is ordered:

1. The time period for NCDOT to supplement its OFA is tolled until May 9, 2005.
2. The exemption will become effective on May 19, 2005.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary