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SERVICE DATE - LATE RELEASE AUGUST 17, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-493 (Sub-No. 7X)

TRACK TECH, INC.--ABANDONMENT EXEMPTION--IN ADAIR AND
UNION COUNTIES, IA

Decided: August 17, 1998

By decision served on July 2, 1998, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Track Tech, Inc. (Track Tech), of a 19.70-mile line of railroad between milepost 1.45 near Creston, and milepost 21.15 at the end of the line in or near Greenfield, in Adair and Union Counties, IA, subject to public use, trail use, environmental, and standard employee conditions.¹ The exemption was scheduled to become effective on August 1, 1998, 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)(1) was filed by July 13, 1998.

On July 2, 1998, Green Valley Chemical Company (Green Valley), with the consent of Track Tech, filed a petition to toll the 10-day period for submitting an OFA for the portion of the line between milepost 1.45 and milepost 5.45 for an additional 30 days. By decision served July 10, 1998, the time period for Green Valley to file an OFA was tolled until August 12, 1998, and the effective date of the abandonment exemption with respect to the part of the line between milepost 1.45 and milepost 5.45 was further stayed until September 1, 1998.

On August 12, 1998, Green Valley timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c)² to purchase the track between milepost 1.45 and milepost 5.45 for \$83,000.³

¹ Notice of the filing of the petition was published in the Federal Register on April 6, 1998 (63 FR 16859).

² Green Valley simultaneously filed a motion for a protective order with respect to a financial statement prepared by KPMG Peat Marwick, LLP (the KPMG Report) that Green Valley submitted in support of its OFA. By decision served August 17, 1998, Green Valley's motion was granted.

³ Green Valley's offer is limited to purchasing the track and track materials because the underlying real estate is owned by The Burlington Northern and Santa Fe Railway Company (BNSF). According to Green Valley, it is actively negotiating with BNSF for acquisition of the land.

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. Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

Green Valley has submitted the KPMG Report which indicates that it has adequate cash and other financial resources to acquire and operate the line. The financial information submitted shows that Green Valley is a financially responsible entity.

Because Green Valley, a financially responsible entity, has offered financial assistance, the effective date of the exemption authorizing abandonment of the portion of the line between milepost 1.45 and milepost 5.45 will be further postponed.⁴

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 \$14,600. 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 decision authorizing abandonment with respect to the part of the line between milepost 1.45 and milepost 5.45 is further postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If Track Tech and Green Valley cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before September 11, 1998. 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 authorization to become effective.

⁴ Green Valley states that Track Tech has agreed orally to the purchase price and the parties are in the process of reducing their oral understanding to writing. Green Valley requests that a decision be entered approving the transaction and dismissing the exemption. Such a decision is premature and cannot be entered until the parties reach a final agreement and notify the Board.

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3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary