

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-914X

McCLOUD RAILWAY COMPANY—ABANDONMENT AND DISCONTINUANCE
OF SERVICE EXEMPTION—IN SISKIYOU, SHASTA, AND
MODOC COUNTIES, CA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: June 28, 2006

By decision served on October 14, 2005, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by McCloud Railway Company (MCR) of approximately 80 miles of rail line in Siskiyou and Shasta Counties, CA, and the discontinuance of service provided under a grant of trackage rights over a 31.4-mile line owned by BNSF Railway Company in Siskiyou and Modoc Counties, CA.¹ The Board granted the exemption subject to standard employee protective conditions and environmental conditions. The exemption was scheduled to become effective on November 13, 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)(1) was filed by October 24, 2005, 10 days after the October 14 decision's service date.

On October 6, 2005, Seaside Holdings, Inc. (Seaside) filed a pleading styled a "Notice of Intent to File an Offer of Financial Assistance" to purchase the 80 miles of rail line proposed for abandonment. In the filing, Seaside also requested that MCR provide it with information necessary to formulate its OFA.

On October 17, 2005, MCR filed a petition to toll the 10-day period for submitting an OFA. MCR explained that it could not promptly furnish certain data sought by Seaside, and requested that an OFA be made due 10 days after the carrier provides the data to Seaside. In a decision served on October 19, 2005, the Board granted the request and directed MCR to notify the agency when it had furnished the information so that the due date for filing OFAs could be determined for the record. On

¹ The 80 miles of rail line include: (1) a rail line between milepost 3.3 east of McCloud and the end of the track at milepost B-61 at or near Burney; (2) a rail line between milepost B-19 at or near Bartle and milepost B-31.4 at or near Hambone; (3) a rail line between milepost B-58 at or near Berry and milepost S-7 at or near Sierra; and (4) a rail line between milepost B-31.6 at or near Bear Flat and milepost P-3.93 at or near Pondosa.

June 15, 2006, MCR notified the Board that it was providing the information concerning the estimated Net Liquidation Value (NLV) of the rail line to Seaside and others on June 16, 2006.

On June 26, 2006, Seaside timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the 80 miles of line for \$1,580,374, consisting of \$291,419 for real estate and \$1,288,955 for the net salvage value of the rail assets on the line.

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). In its OFA, Seaside provides evidence showing that it has financial resources to acquire and operate the line. Accordingly, Seaside is found to be financially responsible.

MCR's appraisal values the land at \$291,419 and the net salvage value of track and materials at \$4,363,784. Seaside accepts MCR's land value, but disagrees with the railroad's estimated NLV for track and materials. The offeror claims, based on an appraisal conducted by Mr. Okroy of A&K Railroad Materials, Inc., that MCR's appraisal overvalues the price of the track materials, underestimates the removal costs, ignores the scrap-tie disposal cost, and fails to include a salvager's overhead costs or profits. Consistent with 49 CFR 1152.27(c)(1)(ii)(C), Seaside has explained the basis for the difference between its lower estimate for the value of the line and the carrier's estimated value of the line.

Because Seaside is financially responsible and has offered assistance, the effective date of the exemption authorizing the abandonment will be postponed.

The Board's regulations contemplate that the carrier and a financially responsible person will reach an agreement setting terms and conditions of purchase; but if they do not, either party may request the Board to do so. 49 CFR 1152.27(g). 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 \$19,100.² An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: 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.

² The filing fee for a request to set terms and conditions increased to \$19,100 effective April 19, 2006. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services-2006 Update, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

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 exemption 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 Seaside and MCR cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before July 26, 2006. 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.

3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary