

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1190X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON  
COUNTY, NJ

Decided: August 12, 2009

This decision directs Eric Strohmeyer and James Riffin, offerors, to show cause why the Board should not exempt from 49 U.S.C. 10904 the portion of the subject rail line for which the offerors have filed an offer of financial assistance.

BACKGROUND

Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS) jointly filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service for Conrail to abandon, and for CSXT and NS to discontinue service over, a 2.27-mile portion of a line of railroad known as the Lehigh Valley Main Line (the line), between railroad milepost 2.90± and railroad milepost 5.17±, in Jersey City, Hudson County, NJ. Notice of the exemption was served and published in the Federal Register on December 9, 2008 (73 FR 74801-02). The exemption was scheduled to become effective on January 8, 2009, unless it was stayed by the Board or unless 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 December 19, 2008.

On December 19, 2008, CNJ Rail Corporation (CNJ)<sup>1</sup> filed a formal expression of intent to file an OFA<sup>2</sup> to purchase the line and a request to toll the time period for filing an OFA.<sup>3</sup> In the filing, CNJ requested that Conrail provide it with the information set forth in 49 CFR 1152.27(a), as well as certain additional information relating to Conrail's present, prior, or future use of the line, including all valuation maps for the line. By decision served on January 7, 2009, the Board granted CNJ's request to toll the deadline for filing an OFA until 10 days after Conrail

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<sup>1</sup> Offeror Strohmeyer is CNJ's Vice President.

<sup>2</sup> The offerors provide no explanation as to why the OFA was submitted in the name of Strohmeyer and Riffin, rather than in the name of the entity that filed the notice of intent to file the OFA, CNJ. Moreover, contrary to Riffin's assertion, the Board has not yet ruled on Riffin's common carrier status.

<sup>3</sup> This filing automatically stayed the effective date of the exemption for 10 days, until January 18, 2009. See 49 CFR 1152.27(c)(2)(i).

provided CNJ with the information required under 49 CFR 1152.27(a). In a letter dated January 22, 2009, Conrail purported to specifically address CNJ's request for a minimum purchase price to acquire the line.

On February 6, 2009, Conrail reported to the Board that it had provided CNJ with the "last remaining piece of information required under the [Board's] rules." Conrail also asserted that the deadline for submitting an OFA was February 5, 2009, and that date had passed without Conrail receiving an OFA. Conrail therefore requested that the Board issue a decision approving the notice of exemption, effective February 12, 2009. In response, by letter dated February 9, 2009, CNJ asserted that the January 22, 2009 letter from Conrail did not meet the criteria under 49 CFR 1152.27(a) because CNJ had requested information for the entirety of the line and Conrail supplied CNJ with information about only the portion of the line that Conrail currently owned. CNJ stated that it did not intend to include in its OFA any part of the line that was previously sold, but requested the additional information so that CNJ could complete its due diligence. CNJ asked that the Board take no action until it could consider a forthcoming motion by CNJ to compel Conrail to provide the line's minimum purchase price. On February 12, 2009, Conrail filed a letter in opposition to the CNJ request, asserting that it had provided all the relevant information at its disposal. On April 2, 2009, Conrail filed a motion to dismiss or reject CNJ's notice of intent to file an OFA, to which CNJ replied.

By decision served May 26, 2009, the Board denied Conrail's April 2, 2009 motion, and directed Conrail to provide CNJ with a minimum purchase price for the line that meets the requirements of 49 CFR 1152.27(a) and to certify to the Board that it had done so. CNJ was instructed that any OFA would be due 10 days after Conrail provided CNJ with a minimum purchase price for the line.

On July 30, 2009, Conrail filed with the Board a letter it sent to CNJ. In that letter, Conrail explains that it divided the line into three parcels, and that it received appraisals for Parcels A and B. Conrail states that Parcel A is valued at \$13,600,000 and consists of "5.73 acres between Chapel and East Linden Avenues," and Parcel B is valued at \$90,000 and consists of ".06 acres along the south side of Communipaw Avenue." Conrail explains that it did not seek an appraisal for Parcel C, the remainder of the line, because that portion of the line is no longer owned by Conrail. Consequently, Conrail assigned Parcel C a value of \$0. Conrail explains that none of the parcel valuations include a value for track material because no rail structures remain on the line.

The offerors filed an OFA for Parcel C on August 7, 2009, and supplemented their OFA on August 10, 2009. They offer \$5 for "all the track material, bridges, and any and all other items on, appurtenant to, or associated with, the [l]ine, including any and all interests, legal or equitable, that [Conrail] may have in, or which is associated with, the [l]ine, including all licensing and any other agreements associated with the line." The offerors argue that the portion of Parcel C that lies between milepost 3.00 and milepost 4.53, and the portion of Parcel C that lies between milepost 4.90 and milepost 5.17, could both connect to the national rail network via Conrail's National Docks Branch if switches were installed. They state that Dameo Trucking, Inc., of Bridgewater, N.J., presently located 25 miles from Parcel C, seeks a location for an

additional transload facility. The offerors also state that they seek to use the line for storage of rail cars, track material and maintenance-of-way equipment.

### DISCUSSION AND CONCLUSIONS

The facts of this case, and the OFA that the offerors filed on August 7, 2009 and supplemented on August 10, 2009, require that the Board consider whether to grant an exemption from the provisions of 49 U.S.C. 10904. Under 49 U.S.C. 10502(a)(1), the Board may exempt an abandonment from the statutory OFA provisions of 49 U.S.C. 10904 if applying the provision is not necessary to carry out the transportation policy of 49 U.S.C. 10101. The Board has exempted abandonments from section 10904 when the line proposed for abandonment is needed for a valid public purpose and there is no overriding public need for rail service on the line.<sup>4</sup>

In its February 9, 2009 filing, in note 2, offeror Strohmeyer—at that time appearing “on behalf of CNJ Rail Corporation”—acknowledges Conrail had already transferred to New Jersey Transit much of the line Conrail sought authority to abandon, and represented that: “CNJ does *not* intend to include in its OFA any section, or portion, of the line that has been previously sold to New Jersey Transit for their Light Rail maintenance facilities or commuter parking lots.” Despite this statement, offerors now seek to purchase that portion of the line, Parcel C. The record here indicates that the parcel is owned by New Jersey Transit, is currently being used for mass transit purposes, and has not seen an active shipper in at least two years.

In addition, the offerors assert, with no accompanying evidence, that if they acquire Parcel C (or whatever rights Conrail maintains in Parcel C) Dameo Trucking *might* seek to locate a transload facility on the line. The Board has received no statement from Dameo Trucking, no business plan, financial forecasts, or any other evidence to support the assertions of the offerors.

For these reasons, the Board will consider exempting the Parcel C portion of the transaction from 49 U.S.C. 10904, pursuant to the provisions of 49 U.S.C. 10502. Therefore, offerors Strohmeyer and Riffin will be ordered to show cause why Parcel C should not be exempted from 49 U.S.C. 10904. Conrail will be afforded an opportunity to respond. The effective date of the abandonment exemption will be postponed until further order of the Board.

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

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<sup>4</sup> E.g., BNSF Railway Company—Petition for Declaratory Order, STB Finance Docket No. 35164 et al., slip op. at 9-10 (STB served May 20, 2009) (relocation of a highway; no local traffic for 10 years), appeal docketed, No. 09-1161 (D.C. Cir. June 11, 2009); Norfolk Southern Railway Company—Abandonment Exemption—In Norfolk and Virginia Beach, VA, STB Docket No. AB-290 (Sub-No. 293X) (STB served Nov. 6, 2007) (public transit plans; no active shippers), petition for review dismissed, sub nom. Riffin v. STB, No. 07-1483 (D.C. Cir. Apr. 22, 2009); CSX Transportation, Inc.—Abandonment Exemption—In Pike County, KY, STB Docket No. AB-55 (Sub-No. 653X), slip op. at 1, 2-3 (STB served Sept. 13, 2004) (expansion of a highway; no local traffic).

It is ordered:

1. Strohmeier and Riffin will respond to this show cause order by September 1, 2009.
2. Conrail will reply to the offerors' response to the show cause order by September 11, 2009.
3. The effective date of the abandonment exemption is postponed until further order of the Board.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary