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SERVICE DATE - AUGUST 31, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-492 (sub-No. 2X)

FILLMORE WESTERN RAILWAY COMPANY--
ABANDONMENT EXEMPTION--IN FILLMORE COUNTY, NE

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: August 29, 2001

Fillmore Western Railway Company (FWRY) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments and Discontinues to abandon a line of railroad between: (a) milepost 1.7 near Fairmont and milepost 10.0 near Geneva, NE; and (b) milepost 8.1 near Fairmont, NE, and milepost 23.0 near Milligan, NE, a distance of approximately 23.2 miles in Fillmore County, NE. Notice of the exemption was served and published in the Federal Register on June 27, 2001 (66 FR 34328-29). Under 49 CFR 1152.59(d)(3), the exemption was scheduled to become effective on July 27, 2001, but a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Provident Industries, LLC (PI) to purchase a portion of the right-of-way between milepost 8.1 near Fairmont and milepost 23.0 near Milligan. That filing stayed the effective date of the exemption until August 6, 2001. PI simultaneously requested FWRY to provide it with the financial data and information prescribed in 49 CFR 1152.27(a).

On July 18, 2001, PI filed a petition to toll the period for submitting an OFA for a portion of the line between milepost 8.1 near Fairmont and milepost 23.0 near Milligan, until August 27, 2001, or until 20 days after PI's receipt of the information required to be furnished by FWR. By decision served July 20, 2001, the time period for PI to file its OFA was extended until August 27, 2001, or 20 days after PI's receipt of the requested information, whichever is later, and the effective date of the exemption as to the pertinent portion of the right-of-way was further postponed until September 5, 2001, or 30 days after PI's receipt of the required information, whichever is later.

On August 27, 2001, PI timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase a portion of the line between milepost 8.1 near Fairmont and milepost 23.0 near Milligan for \$305,103. PI states that, according to FWRY, the estimated net liquidation value (NLV) for that portion of the right-of-way is \$625,881.¹

¹ PI states that its offer includes a request for incidental trackage rights over the Burlington Northern and Santa Fe Railway Company (BNSF) at or near Fairmont, if necessary to permit

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 the offer is reasonable. See Conrail Abandonments Under NERSA, 35 I.C.C. 472 (1981). PI has submitted a letter from Ted C. Wright, representative of San Juan Industries, LLC (SJI), stating that SJI and PI are affiliates and have assets of \$1,865,000. The financial information submitted shows that PI is a financially responsible entity.

PI's offer of \$305,103 consists of \$218,853 for track materials and \$86,250 for the underlying real estate. The offer is less than FWRY estimated NLV of \$625,881 which consists of \$452,881 for track materials and \$173,000 for real estate. Consistent with our regulations at 49 CFR 1152.27(c)(1)(ii)(C), PI explains the disparity between its purchase price is based on its preliminary valuation of the right-of-way.

Because PI, a financially responsible entity, has offered financial assistance, the effective date of the exemption authorizing abandonment of the line will be postponed for the portion of the line between milepost 8.1 to milepost 23.0.²

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 \$14,800. 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 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 decision authorizing abandonment of a portion of the line between milepost 8.1 and milepost 23.0 is further postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

efficient interchange of traffic between PI and BNSF at Fairmont following PI's acquisition of the line segment. PI must file a separate notice of exemption under 49 CFR 1180.2(d)(7) to acquire trackage rights.

² The abandonment exemption for the remainder of the line between milepost 1.7 near Fairmont and milepost 10.0 near Geneva, NE, became effective on July 27, 2001.

2. If FWRY and PI cannot agree on a purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase price on or before September 26, 2001. 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, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary