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SERVICE DATE - JUNE 15, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1182X)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT
EXEMPTION--IN INDIANA COUNTY, PA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: June 12, 1998

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an 11.80-mile portion of the Blairsville Secondary Track between milepost 5.70± and milepost 17.50±, in Indiana County, PA. Notice of the exemption was served and published in the Federal Register on March 12, 1998 (63 FR 12148-49). The exemption was scheduled to become effective on April 11, 1998, but a formal expression of intent filed by Kovalchick Corporation (KOV) to file an offer of financial assistance (OFA) to purchase the entire line automatically stayed the effective date of the exemption until April 21, 1998. KOV simultaneously requested Conrail to provide it with the financial data and information prescribed in 49 CFR 1152.27(a). On March 30, 1998, Conrail filed a request for a 60-day extension in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to permit it to develop and submit the required information. By decision served April 10, 1998, Conrail was directed to provide KOV with the requested information and the deadline for KOV to file its OFA was extended to June 10, 1998. The effective date of the exemption was further postponed until June 20, 1998.¹

On June 10, 1998, KOV submitted an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line in cash for \$270,000. KOV states that, according to Conrail, the estimated net liquidation value (NLV) of the line is \$337,756.

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).

KOV states that it is engaged in a number of businesses, including railroad equipment, coal mining equipment, and mill supply wholesale businesses, and that it has approximately 150 employees, located in offices and/or business facilities in the cities of Indiana, Lewiston, Josephine,

¹ Also, the April 10, 1998 decision provided that the request by the Cambria and Indiana Trail Council for issuance of a notice of interim trail use under the National Trails System Act, and for a public use condition under 49 U.S.C. 10905, would be held in abeyance pending completion of the OFA process.

and Lucerne, PA, and in Lima, OH. KOVC states that it has sufficient financial resources to meet its obligations under this OFA and that it is making an all-cash offer. KOVC also states that the Board has previously found it to be financially responsible in Consolidated Rail Corporation--Abandonment--In Huntingdon County, Pennsylvania, STB Docket No. AB-167 (Sub-No. 1175) (STB served Feb. 19, 1997). Based on the information provided, I find that KOVC is financially responsible.

KOVC's offer is less than Conrail's estimated NLV. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), however, KOVC explains the disparity by asserting that its estimate is based on changed market conditions for the rail and track materials on the line, particularly with respect to unit prices for scrap rail and track materials, differing preliminary analysis of the condition and value of ties, and the exclusion of any NLV for ballast on the line.

Because KOVC, a financially responsible entity, has offered financial assistance, the effective date of the exemption authorizing abandonment of the line will be postponed.

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 decision does 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 of the line is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If Conrail and KOVC 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 July 10, 1998. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision, and issue a Decision and Notice of Interim Trail Use/or Abandonment effective on its service date.

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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