

28648
EB

SERVICE DATE - DECEMBER 16, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-477 (Sub-No. 2X)

OWENSVILLE TERMINAL COMPANY, INC.—ABANDONMENT
EXEMPTION—IN GIBSON AND POSEY COUNTIES, IN

OFFER OF FINANCIAL ASSISTANCE

Decided: December 12, 1997

By decision served November 7, 1997, we granted the Owensville Terminal Company, Inc. (OTC) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Cynthiana-Owensville line. The rail line runs from railroad milepost 277.0 north of Cynthiana to railroad milepost 271.0 north of Owensville, a distance of 6.0 miles, in Gibson and Posey Counties, IN. The exemption was scheduled to become effective on December 7, 1997, unless an offer of financial assistance (OFA) was filed with the OTC and the Board by November 17, 1997. On November 17, 1997, the Gibson County Farm Bureau Cooperative Association (Farm Bureau) filed an OFA to purchase a 2-mile segment of the line between railroad milepost 273.0 and railroad milepost 271.0 for \$42,452.

A decision served November 20, 1997, determined that the Farm Bureau is financially responsible and postponed the effective date of the exemption authorizing abandonment of the 2-mile segment to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed. The exemption permitting abandonment of the remainder of the Cynthiana-Owensville line became effective December 7, 1997.

On November 21, 1997, OTC appealed the November 20 decision, claiming that the Farm Bureau is not seeking to acquire the line for continued rail service. OTC asserts that the segment the Farm Bureau is seeking to acquire does not connect with another rail line. OTC states that, after it abandons the segment between milepost 273.0 and milepost 277.0, there will be a 4-mile gap between the 2-mile segment that the Farm Bureau seeks to acquire and the remainder of the line. OTC notes further that the line had, at one time, extended an additional 5.6 miles from milepost 271.0 to Mt. Vernon, IN, but that segment had been abandoned by CSX Transportation, Inc. (CSXT) more than 10 years ago. CSX Transportation Inc.—Exemption— Abandonment in Gibson County, IN, Docket No. AB-55 (Sub-No. 205X) (ICC served June 25, 1987). OTC claims that the Farm Bureau is seeking to acquire the 2-mile segment for its own private nonrail use. OTC asserts that, under these circumstances, the OFA should be rejected.

In response, the Farm Bureau asserts that it intends to use the 2-mile segment of OTC's line for continued rail service, claiming that it proposes to operate the 2-mile segment together with the former CSXT line which allegedly is being reactivated. In support of this claim, the Farm Bureau submitted affidavits from James Elliott, the Farm Bureau's General Manager, and Earl Settle,

president of Tippecanoe Terminals, Incorporated (Tippecanoe). Mr. Elliott states that Tippecanoe has reached a tentative agreement to acquire the abandoned 5.6-mile line between milepost 271.0 and Mt. Vernon from CSXT. Mr. Elliott indicates that Tippecanoe will rehabilitate the former CSXT line for rail service and also will grant to Farm Bureau an easement to enable it to access CSXT's line at Fort Branch, IN. Mr. Elliott indicates that the Farm Bureau needs this rail service to bring in fertilizers and to transport grain from its elevators and that it proposes to use the OTC trackage to store 100-car grain trains.

Mr. Settle states that Tippecanoe is developing a bulk terminal and commercial warehouse in Gibson County, IN, and has agreed to purchase CSXT's abandoned rail line. Mr. Settle states that, even though the line had been abandoned, the track structure is intact and still physically connects to the CSXT rail system at Fort Branch, IN. He states that Tippecanoe has agreed to grant the Farm Bureau an easement between milepost 271.0 and the switch connection with CSXT's line at Mt. Vernon so that it could ship and receive traffic directly from CSXT.

DISCUSSION AND CONCLUSIONS

The OFA procedures require that an offeror demonstrate that it will provide continued or uninterrupted rail service. See Conrail Abandonment of the Portion of the West 30th Street Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 493N) (ICC served Jan. 13, 1987). The Farm Bureau states that it intends to resume continued rail service over the 2-mile segment when Tippecanoe acquires the 5.6-mile line from CSXT. The Farm Bureau proposes to use the former CSXT line to move traffic to and from the connection with CSXT at Mr. Vernon. To accomplish this, the Farm Bureau would also have to obtain authorization to provide service over the 5.6-mile line to be acquired by Tippecanoe.¹

The Farm Bureau proposal to provide continued rail service is consistent with the intent of Congress in enacting section 10904. The evidence presented by the Farm Bureau is strong enough to allow the negotiation process to go forward. If subsequent events disclose that the Farm Bureau's proposal is not a bona fide offer to provide continued rail service, any authority granted under section 10904 in this proceeding may and will be revoked.

There is nothing in the statute that obligates an offeror to operate rail service in the same manner as had been performed by the abandoning carrier. OTC's exemption petition indicated that

¹ We note that Mr. Settle indicates Tippecanoe does not intend to seek common carrier authority to provide rail service, but would do so to secure rail service to Farm Bureau and others. Tippecanoe would not be required to obtain Board approval to acquire the abandoned line. However, if Tippecanoe seeks to operate the line as a rail common carrier, it would also be required to obtain Board authorization.

traffic generated by shippers on the Cynthiana-Owensville line would have moved south through Cynthiana and interchanged with other carriers in the vicinity of Poseyville, IN. The Farm Bureau proposes to route its traffic north for interchange with CSXT. The significant factor is that the Farm Bureau intends to continue rail service over the 2-mile segment.

Accordingly, we will deny OTC's appeal of the November 20 decision.

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

It is ordered:

1. OTC's appeal is denied.
2. This decision is effective on the date served.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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In response, the Farm Bureau asserts that it intends to use the 2-mile segment of OTC's line for continued rail service, claiming that it proposes to operate the 2-mile segment together with the former CSXT line which allegedly is being reactivated. In support of this claim, the Farm Bureau submitted affidavits from James Elliott, the Farm Bureau's General Manager, and Earl Settle,

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DISCUSSION AND CONCLUSIONS

The OFA procedures require that an offeror demonstrate that it will provide continued or uninterrupted rail service. See Conrail Abandonment of the Portion of the West 30th Street Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 493N) (ICC served Jan. 13, 1987). The Farm Bureau states that it intends to resume continued rail service over the 2-mile segment when Tippecanoe acquires the 5.6-mile line from CSXT. The Farm Bureau proposes to use the former CSXT line to move traffic to and from the connection with CSXT at Mr. Vernon. To accomplish this, the Farm Bureau would also have to obtain authorization to provide service over the 5.6-mile line to be acquired by Tippecanoe.¹

The Farm Bureau proposal to provide continued rail service is consistent with the intent of Congress in enacting section 10904. The evidence presented by the Farm Bureau is strong enough to allow the negotiation process to go forward. If subsequent events disclose that the Farm Bureau's proposal is not a bona fide offer to provide continued rail service, any authority granted under section 10904 in this proceeding may and will be revoked.

There is nothing in the statute that obligates an offeror to operate rail service in the same manner as had been performed by the abandoning carrier. OTC's exemption petition indicated that

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Accordingly, we will deny OTC's appeal of the November 20 decision.

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

It is ordered:

1. OTC's appeal is denied.
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