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SERVICE DATE - SEPTEMBER 12, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X

TRINIDAD RAILWAY, INC.—ABANDONMENT EXEMPTION—
IN LAS ANIMAS COUNTY, CO

Decided: September 11, 2001

In September 2000, Trinidad Railway, Inc. (Trinidad) invoked the class exemption procedures at 49 CFR 1152.50 to abandon a 28-mile segment of rail line between milepost 2.0 at Jansen and the end of its line at the former New Elk Mine at milepost 30.0, in Las Animas County, CO. Prior to the scheduled effective date of the abandonment authority, Rail Ventures, Inc. (Rail Ventures or Offeror) timely filed a notice of its intent to invoke the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 in order to acquire the line to enable future restoration of rail service. That filing, and subsequent extensions, stayed the effective date of the abandonment authority.¹ On December 5, 2000, Rail Ventures filed its OFA, offering to buy the line for \$2.5 million.

In a decision served December 8, 2000, the Director of our Office of Proceedings, acting under delegated authority, found that Rail Ventures was a financially responsible entity. The Director denied a request by Kern Valley Railroad Company (Kern Valley) that the OFA be rejected and a request by RTC that the OFA be dismissed.

Subsequent to receiving notice of Rail Ventures' forthcoming OFA, on October 31, 2000, Trinidad sold its entire 30-mile line (including the 28-mile segment for which it sought abandonment authority in this proceeding) to Kern Valley, which subsequently invoked the class exemption procedures at 49 CFR 1150.31 to obtain authorization for the purchase. Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc., STB Finance Docket No. 33956 (notice served and published Nov. 21, 2000). Kern Valley conceded that it did not acquire the line segment to provide rail service, but rather to salvage the rail property once it was abandoned. But Kern Valley also acknowledged that the line remained subject to the section 10904 process, to RTC's request for issuance of a NITU, and to other conditions that we placed on our approval of the abandonment.

¹ The Rails to Trails Conservancy (RTC) has requested issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), in order to negotiate for the acquisition of the right-of-way for rail banking and interim use as a trail. However, because an OFA takes priority over a request for a NITU, RTC's request has been held in abeyance pending the outcome of the OFA process.

In a decision served August 13, 2001, we disposed of various pleadings challenging the propriety of Kern Valley's acquisition and of Rail Ventures' OFA. In essence, we affirmed the prior decisions approving Kern Valley's purchase and finding Rail Ventures a financially responsible entity. We set September 12, 2001, as the date by which Kern Valley or Rail Ventures could request us to establish the terms and conditions for an OFA purchase of the line if the parties were unable to agree on a purchase price.

On August 30, 2001, Rail Ventures filed a petition to compel Kern Valley to disclose the purchase price it paid for the line and to extend the date for requesting the establishment of terms and conditions for financial assistance pending such disclosure.² Rail Ventures indicates that, on August 22, 2001, it requested Kern Valley to disclose: (1) the purchase price it paid for the portion of line between mileposts 2.0 and 15.11, (2) the purchase price it paid for an easement over the portion of line between mileposts 15.11 and 30.0, and (3) the purchase price it paid for the portion of the line between mileposts 0.0 and 2.0, which is apparently not subject to the abandonment exemption.³ The Offeror states that, on the following day, Kern Valley refused to disclose the information.

Rail Ventures argues that, as Kern Valley admittedly purchased the line to salvage it (rather than to provide rail service), the price Kern Valley actually paid for the line less than 10 months ago should be disclosed as evidence of the current net liquidation value (NLV) of the rail line. While Kern Valley has taken the position that the purchase price for the line is not among the data to which a potential offeror is entitled under the Board's governing regulations at 49 CFR 1152.27, Rail Ventures notes that, pursuant to 49 U.S.C. 10904(b)(4), the abandoning rail carrier must promptly provide not only certain specified information, but also "any other information that the Board considers necessary to allow a potential offeror to calculate an

² Since that date, Kern Valley has asked leave to withdraw Trinidad's notice of exemption for abandonment of the line and Trinidad has filed a verified notice of exemption to lease the line back from Kern Valley and to operate it. Rail Ventures has stated its intention to oppose the request for withdrawal of the abandonment proposal. Rail Ventures has filed a petition to stay the effectiveness of the exemption covered by Trinidad's notice of exemption to lease back and operate the line. In addition, RTC has asked us to reconsider our decision (issued August 13, 2001) authorizing the sale of the line to Kern Valley. Finally, Kern Valley has asked us to disqualify Rail Venture's counsel from continuing to represent that company in this proceeding. After allowing time for responses to be filed, we will separately rule on these pending requests.

³ Rail Ventures submits documents showing that, while Kern Valley purchased the rail line land and trackage between mileposts 2.0 and 15.11, it purchased only the track materials and an easement for rail purposes over the land between mileposts 15.11 and 30.0.

adequate subsidy or purchase offer.” Rail Ventures requests that we find that the price Kern Valley paid must be disclosed.⁴

DISCUSSION AND CONCLUSIONS

We agree with Rail Ventures regarding its discovery request for the purchase price of the line. Our regulations at 49 CFR 1152.27(a)(3) require that an abandoning carrier provide, inter alia, “supporting data reflecting available real estate appraisals.” Certainly, the recent rail line sale figure can be a valuable component of an appraisal. Moreover, the information is relevant to Rail Ventures’ formulation of an offer. We therefore will grant its request that we compel Kern Valley to disclose that information.

We will also require Kern Valley to grant access to Rail Ventures to inspect the line in order to assess its condition. Such access and inspection are also relevant to Rail Ventures’ formulation of a purchase price in a request to set terms and conditions.

We will treat the request for an extension of time as a request for an exemption, under 49 U.S.C. 10502, from the timing provisions of 49 U.S.C. 10904(e) and for relief from the related regulatory requirements at 49 CFR 1152.27(g). Under section 10502, we must issue an exemption from a rail provision of our statute when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

The exemption will permit Rail Ventures to make an offer that will facilitate our issuance of an informed decision in this case. Our issuance of an informed decision, in turn, will facilitate continued rail service, where appropriate, which will further the rail transportation policy. Such action will obviously protect the interests of potential shippers.

⁴ Rail Ventures also requests that, pending Kern Valley’s disclosure of this information, the Board extend the date for requesting establishment of terms and conditions for the purchase of the line. By petition filed September 5, 2001, Rail Ventures also states that Kern Valley has denied access to the line for Rail Ventures’ consultants seeking to determine the line’s value for purposes of asking us to set terms and conditions under 49 U.S.C. 10904(e) and 49 CFR 1152.27(g). Rail Ventures also asks that we extend its due date to request that we set terms and conditions until such access is granted and the requested inspection is made.

The due date for petitions to set terms and conditions for the purchase of the line will be extended to 10 days from the date Rail Ventures receives the purchase price information and has been granted the access specified above.⁵

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

It is ordered:

1. Kern Valley must promptly provide Rail Ventures the purchase price information discussed above. Kern Valley must also grant access to Rail Ventures to inspect the line.

2. If Rail Ventures and Kern Valley cannot agree on a purchase price for the line, either party may request the Board to establish the terms and conditions for the purchase on or before a date 10 days after the date Rail Ventures receives the relevant purchase price information and is granted access to the line. If no agreement is reached and no request is submitted by that date, the Board will serve a decision partially vacating this decision and allowing the abandonment exemption to become effective, subject to trail use or other appropriate conditions.

3. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

⁵ Because the extension is not date specific, Rail Ventures must notify the Board when it has received the requested information from Kern Valley and has been granted the sought access by Kern Valley so that the due date and the effective date can be determined.