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March 8, 2005



BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

ENTERED
Office of Proceedings

MAR 10 2005

Part of
Public Record

Re: Docket No. AB-512X, Sierra Pacific Industries -- Abandonment Exemption -- In Amador County, CA -213502

Docket No. AB-880X, SierraPine -- Discontinuance Exemption -- In Amador County, CA -213503

Dear Secretary Williams:

On behalf of Martell Industrial Center, LLC ("Martell"), we file this petition for leave to file a reply ("Reply") to the March 7, 2004, response (the "Response") of counsel for Sierra Pacific Industries and SierraPine (together, "Railroads"). In the Response, counsel for Railroads argue that the deadline for Martell to submit its offer of financial assistance ("OFA") in the above-referenced proceedings should be limited to 10 days after Martell's receipt of the information from the Railroads. This petition is necessary in light of some of the statements made by Railroad's counsel.

A. *Incorrect Statement of Regulations.*

In the Response, the Railroads' counsel incorrectly cites 49 C.F.R. § 1152.27(c)(1)(i)(B) for the proposition that "[t]he Board's regulations allocate a relatively brief period of time (10 days) for the *preparation and submission* of OFAs following the granting of a petition for exemption." (Empahsis added.) This is an incorrect statement of the regulations. Section 1152.27(c)(1)(i)(B) provides, in relevant part, that "[a]n offer, or notification of a previously filed offer, must be *filed* and served no later than 10 days after the service of the Board decision granting the application or petition for exemption." Nowhere in that Section does the Board limit the amount of time an offeror has *to prepare* an OFA to 10 days. To the contrary, the Board's regulations explicitly require a railroad, upon request, to provide a potential offeror

“promptly” with information necessary to submit an OFA, *see* 49 C.F.R. § 1152.27(a), and a potential offeror is permitted to make such a request at any time after the railroad has filed its abandonment/discontinuance petition.

Accordingly, the Board’s regulations provide diligent offerors, who request the relevant information early from an abandoning/discontinuing railroad, close to 100 days to review the information to which they are entitled under section 1152.27(a). Martell requested that the Railroads provide it with information pursuant to section 1152.27(a) more than 80 days before the original OFA deadline. Despite the regulatory requirement that the Railroads “promptly” provide them with the requested information, Railroads have yet to provide Martell with *any* information it requested. Now, in its Response, counsel for Railroads claim that 10 days is sufficient for Martell to review all the requested materials, verify the accuracy of such materials and submit an OFA. Such a statement is curious in light of the fact that it has taken Railroads almost 3 months (and counting) to conduct an appraisal and to look for and assemble other requested information about its own rail line.¹ If Railroads had complied with section 1152.27(a), Martell would have had more than 60 days to prepare and file an OFA. The dilatory tactics of the Railroads should not be rewarded.

B. Board Has Repeatedly Granted Extensions of OFA Deadline in Excess of 10 Days.

In the Response, the Railroads cites two cases for the proposition that “[i]n recent decisions the Board has granted extensions of time of a duration consistent with that [10 day] schedule,” and refers to Martell’s 60 day request as “extraordinary.” However, in a 1999 decision the STB granted a 30-day extension of the OFA deadline from the date the potential offerors received the requested information, and in that case, the railroad already had provided the offerors with some information. *See* STB Docket Nos. AB-556 (Sub-No. 2X) and AB-555 (Sub-No), *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA, and The Ohio & Pennsylvania Railroad Company – Adverse Discontinuance of Service Exemption – Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, served September 10, 1999.

In addition, the Board has repeatedly extended the original OFA deadline for 30 or more days. *See* STB Finance Docket No. AB-33 (Sub-No. 119X), *Union Pacific Railroad Company – Abandonment Exemption – In Rock, Green and Dane Counties, WI*, served July 14, 1998 (granting 60-day extension); STB Docket No. AB-565 (Sub-No. 3X), *New York Central Lines, LLC – Abandonment Exemption—In Berkshire County, MA*, served September 11, 2001 (granting 30-day extension); STB Docket No. AB-565 (Sub-No. 4X), *New York Central Line*,

¹ In addition, some of the information requested by Martell was merely the underlying data that supported statements in the Railroads’ November 12, 2004, petition. Accordingly, such information should have been compiled already by the Railroads and immediately available to Martell.

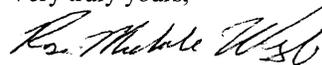
LLC – Abandonment Exemption – In Vermillion and Warren Counties, IN, served December 21, 2001 (granting 30-day extension); STB Docket No. AB-55 (Sub-No. 569X), *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey and Noble Counties, OH*, served June 24, 1999 (granting 30-day extension); STB Docket Nos. AB-556 (Sub-No. 2X) and AB-555 (Sub-No.), *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA, and The Ohio & Pennsylvania Railroad Company – Adverse Discontinuance of Service Exemption – Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, served September 10, 1999 (granting 30-day extension). It is inconceivable that the Board granted such extensions with the expectation that the railroads would not provide the information to the offerors until 10 days prior to the new deadline.²

Given the fact that (i) Martell requested the information to which it is entitled more than 80 days before the original OFA deadline, and (ii) Railroads have made no attempt to comply with the Board's regulations to provide Martell *promptly* with *any* of the information Martell requested, it is appropriate for the Board to extend the deadline for Martell to submit an OFA until 60 days after Martell receives the requested information from Railroads.

C. *Conclusion*

For the foregoing reasons, Martell respectfully requests that the Board accept this Reply. Enclosed for filing in the above-referenced proceeding are an original and 10 copies of this letter. Please acknowledge receipt of the Reply by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,



Rose-Michele Weinryb

cc: Richard A Allen, Esq. (by facsimile and first-class mail)

² If that were the case, the Board simply would have extended the deadline for 10 days from the date of the offeror's receipt of the required information.