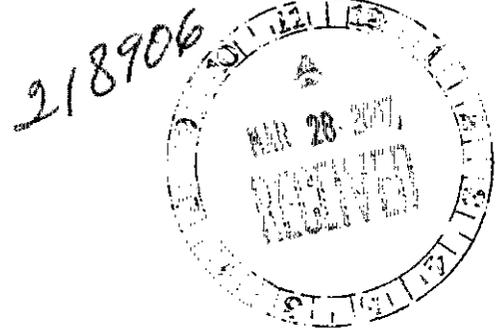


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27 March 2007

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20036

Chillicothe-Brunswick Rail Maintenance)
Authority -- Discontinuance Exemption --) AB 1001X
-- Livingston, Linn and Chariton)
Counties, Missouri)

Opposition to Notice of Intent to File OFA;
Opposition to Stay Request;
Please distribute immediately

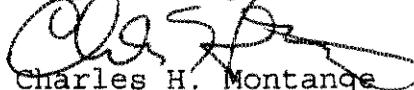
Dear Secretary Williams:

Enclosed please find Chillicothe-Brunswick Rail Maintenance Authority's (CBRMA's) opposition to the Notice of Intent to File OFA which Vandalia Railroad evidently filed on March 26. Contrary to the Board's rules, Vandalia failed timely to serve CBRMA, and CBRMA has yet to receive a service copy. We have observed the filing only by monitoring the Board's website.

For the reasons stated in the enclosed opposition, all relief should be denied to Vandalia.

As Vandalia's Notice is presumably before the Board at this time, we request that this Opposition be immediately circulated to relevant decisionmakers.

Respectfully submitted,



Charles H. Montange
for CBRMA

cc. Counsel

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BEFORE THE SURFACE TRANSPORTATION BOARD

Chillicothe-Brunswick Rail Maintenance)
Authority -- Discontinuance Exemption --) AB 1001X
Livingston, Linn and Chariton Counties, MO)

Opposition to Notice of Intent to File
Offer of Financial Assistance, including
Opposition to Leave to File,
Motion to Reject,
and Opposition to "Tolling"

Chillicothe-Brunswick Rail Maintenance Authority (CBRMA) opposes the Notice of Intent to File Offer of Financial Assistance (NotOFA) filed by Vandalia Railroad Company, a unit of Pioneer Railcorp, on March 26, 2007. The NotOFA not only is untimely but also misapprehends the offer of financial assistance (OFA) process as applied to discontinuances.

1. NotOFA is untimely. This Board served the notice of exemption in this proceeding on February 23, 2007. The relevant STB regulations provide that expressions of intent to file an OFA must be filed within ten (10) days of a notice of exemption. 49 C.F.R. 1152.27(c)(2). The notice of exemption on its face provided that "formal expressions of intent to file an OFA under 49 C.F.R. 1152.27(c)(2) must be filed by March 5, 2007." The notice of exemption is effective on March 28.

Vandalia Railroad Company filed its NotOFA on March 26--21 days late.

Under 49 C.F.R. 1152.27(c)(2), formal expressions of intent must comply with 49 C.F.R. 1152.25(d)(1)-(3). 49 C.F.R. 1152.24(d)(1) provides that pleadings covered by that subparagraph be received at the Board by the date specified.

The only exception (for documents deposited three days earlier by registered, certified or express mail) is obviously not relevant to a pleading like Vandalia's NotOFA because the NotOFA was prepared 21 days late, not just filed 21 days late, on its face.

This Board's precedent prescribes strict enforcement of OFA filing deadlines and procedures unless voluntarily waived by all parties. E.g., Union Pacific RR Co. -- Abandonment Exemption -- in Bexar County, TX, AB 33 (Sub-no. 162X), served June 10, 2002 (late-filed OFA rejected); Bad Water Line-- Exemption -- in Fremont County, WY, AB 346 X, served April 10, 1991 (late-filed OFA rejected); Roaring Fork Railroad Holding Authority -- Abandonment Exemption -- in Garfield, Eagle and Pitkin Counties, AB 547 X, served Oct. 30, 1998 (incomplete OFA filing rejected).

Parties interested in engaging in the OFA process are properly expected to comply with filing deadlines and requirements in order to avoid unwarranted and unnecessary delays in abandonment proceedings, which in general are kept on a strict schedule in order to comply with railroad transportation policies like that in 49 U.S.C. 10101(7), statutory deadlines (like that in 49 U.S.C. 10903), and the intent of exemption procedures to reach expeditious conclusions.

Vandalia offers no excuse for its tardiness. This is not a case where a party got the pleading into the mail by the due

date, or simply "forgot" to tender the filing fee, or otherwise made some minor error through inexperience. Mr. LaKemper is in-house general counsel for Pioneer Railcorp, and a quick perusal of this Board's website under filings indicates he has ample experience with Board processes.

Here Vandalia's NotOFA was filed "long after the deadline for filing OFAs and on that basis alone, the Board no longer has jurisdiction...." Union Pacific, supra.

2. Wrong OFA. Vandalia's NotOFA on its face states that its proposed "OFA is to purchase the interests of the Chillicothe-Brunswick Rail Maintenance Authority ... in the rail line between Mile Post 226.0 at Chillicothe and Milepost 188.56 near Brunswick...." The Vandalia pleading clearly indicates an intent to purchase, not an intent to subsidize. As a result, this Board lacks jurisdiction to grant Vandalia's request.

This is a discontinuance exemption proceeding. The Board's precedent is clear that OFA's to purchase are not applicable in discontinuance proceedings. E.g., Central Illinois RR Co. -- Discontinuance of Service Exemption -- in Peoria County, IL, AB-1066X, served Nov. 21, 2005 (rejecting effort by a Pioneer Railcorp subsidiary to file a notice of intent to file an OFA to purchase in a discontinuance proceeding) (hereinafter referred to as "CIRY"); CSX Corp.-- Discontinuance Exemption -- in Knox County, TN, AB 55 (Sub-no. 641X), served Jan. 2, 2004, slip. op. p. 2. See also Greenville County Economic Dev. Corp. -- Abandonment and Discontinuance

Exemption -- in Greenville County, SC, AB 490 (Sub-no. 1X), served Oct. 12, 2005, slip op. at 7 n.7 (OFA to purchase only in abandonment purchase; OFA to subsidize in the discontinuance portion).

The only permitted OFA's in discontinuance proceedings are OFA's to subsidize continued operation. E.g., Central Railroad Co. of Indianapolis -- Discontinuance of Service Exemption -- in Clinton, et al Counties, IN, AB 289 (Sub-no. 4X), served Jan. 15, 1999 (OFA's only for subsidy permitted in discontinuance proceedings); Perry County Port Authority d/b/a/ Hoosier Southern Railroad -- Discontinuance Exemption -- in Spencer County, IN, AB 554X, served Oct. 19, 1998 (same). As this Board explained to Pioneer's Pioneer Industrial Railroad subsidiary,

"OFAs to purchase a line, like the one [the Pioneer subsidiary] states it will file, are not authorized in discontinuance proceedings; OFAs are limited to subsidies to provide continued rail service."

CIRY, supra, slip op. at 2.

As in CIRY, the Board does not have jurisdiction over the abandonment of any portion of the line which Vandalia Railroad indicates it wishes to purchase. See CBRMA's Notice of Exemption filed February 4, 2007, at pp. 1-2 n.2 (history of rail line).

This Board and its predecessor do not appear ever to have allowed an OFA to purchase in the context of a discontinuance, and Vandalia provides no basis to deviate from that uniform

precedent here.

Vandalia's NotOFA to purchase must therefore be rejected as beyond the Board's jurisdiction.

3. Opposition to Vandalia's tolling request. Vandalia also requests a 30-day stay in the effectiveness of the exempt discontinuance authority. The only stated basis for this stay request is that Vandalia seeks "an adequate opportunity to review and analyze the material" it requests from CBRMA. The information it seeks from CBRMA relates to a purchase OFA, not to a subsidy OFA.

Vandalia does not meet the requirements for a stay. It did not tender its request for a stay by March 5, 2007, as required by this Board's order. It does not make any of the showings required for a stay (probability of success on the merits, irreparable injury absent a stay, no harm to others, public interest). It cannot show probability of success on the merits, because the purchase OFA it intends to file is not allowed. It cannot show irreparable injury to itself because it would be economically irrational for it to make a subsidy OFA. It cannot show lack of harm to others. (CBRMA understands several persons claiming to be adjoining landowners have already objected.)

The OFA statute anticipates granting requests for 30-day stays only after (a) a timely filing of a notice of intent to file an OFA (49 C.F.R. 1152.27(c)(1)), and (b) a bona fide request for relevant financial information. 49 C.F.R. 1152.27(c)(2)(ii)(C). Here Vandalia was not timely, and has not

yet made a bona fide request of CBRMA, let alone given CBRMA an opportunity promptly to respond. Indeed, CBRMA has not been contacted by Vandalia, nor has CBRMA received any service copy of the NotOFA. Even if seeing the NotOFA on the STB website constitutes serving a request for information on CBRMA (we would be shocked if it did), the NotOFA is not a bona fide request, because it is not tendered for the only kind of OFA permitted here OFA (a subsidy OFA, not a purchase OFA).

Furthermore, under the regulations, assuming a timely NotOFA, a stay petition for information was supposed to be filed no later than March 20 (25 days after service of the Notice of Exemption), and was supposed to have attached to it the alleged bona fide request for information. Vandalia not only fails to meet that deadline, but also fails to meet the attachment requirement. It cannot meet the attachment requirement because it never made a bona fide request in the first place. In short its stay request does not meet the requirements of 49 C.F.R. 1152.27(c)(2)(ii)(C); instead, it violates all the requirements stated there.

For all these reasons, the stay request must be denied.

4. A subsidy OFA makes no sense here. There is no rational basis to believe Vandalia could harbor any interest in a subsidy OFA. This line has sustained serious flood damage. To begin service upon it will require substantial upfront rehabilitation costs. CBRMA believes the amount exceeds \$5,000,000. But CBRMA has had no customers on the line since

2004. The only remaining customers on the line are located between MP 226 (Chillicothe) and MP 218.25 (Norville), and Motive Rail already serves those customers. Other potential customers are locating on the mainline railroads traversed by the line at issue and do not require any service.

Vandalia itself is not a customer, has no facility on the line, and has no motivation to provide service except to others. As a result, it presumably would only subsidize this line if it can somehow liquidate and retrieve its investment. But that is impossible given the limited (one year) duration of a subsidy OFA.

No rational railroad would agree to pay millions in upfront costs to rehabilitate this line when it would lose all this investment at the end of one year. Certainly Vandalia provides no basis to dispute this conclusion.

In addition, under the statute, City of Chillicothe is entitled to "a reasonable return on the value of the line." 49 U.S.C. § 10904(f)(a)(C). Reasonable return is generally the value of the line times the industry cost of capital. CBRMA is not the owner of the line and cannot speak to its value, except to state that the value of the line from MP 226 to MP 188.56 must be at least \$1,000,000 based on offers stated in the local press. The current factor employed to determine opportunity costs (return) is 12.2%. See Railroad Cost of Capital -- 2005, Ex Parte 558 (Sub-no. 9), served Sept. 20, 2006. Thus, the City would be entitled to an annual lease rental fee of no less than

\$124,000 (12.2% times \$1,000,000), or \$10,333 per month, from Vandalia. A subsidizer would have to be prepared to pay out that amount in addition to the upfront rehabilitation costs. It is extremely unlikely that Vandalia would be interested in that kind of commitment since there are no customers.

CBRMA has no current employees, office or equipment. It operates through its board, which is otherwise employed elsewhere. In order to provide service pursuant to a subsidy, CBRMA would be required immediately to rent space and to hire employees and consultants (including consultants and staff to plan and administer the rehabilitation). It would also have to re-acquire or lease rail equipment to provide on-call service if the rehabilitation could be completed in one year. Since CBRMA expects no revenues (there are no customers), all of these costs would have to be borne by Vandalia, and Vandalia would receive no benefit. No rational entity situated in Vandalia's position would make a subsidy OFA to start-up CBRMA again in the circumstances. Any chance of return of investment would be years out, but the subsidizer would lose all its investment without any return at the end of the first year.

In short, there is simply no basis in the Vandalia NotOFA for an OFA, let alone a stay for information to make an OFA.

The only realistic way to preserve this line for possible future rail use is pursuant to 16 U.S.C. § 1247(d). That will not require payment of a subsidy for rail restart and rail rehabilitation. A motion seeking issuance of a Notice of

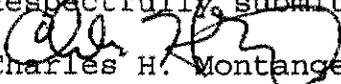
Interim Trail Use, is currently pending, and its issuance presumably turns on whether this Board determines it has jurisdiction due to CBRMA's prior leasehold interest. There is precedent for railbanking a leasehold interest on discontinuance. In contrast, the uniform precedent indicates that the only OFA potentially available here is a subsidy OFA. No one has made even an informal, much less a formal, indication of any intent to make such an OFA, because it would not be economically reasonable in the circumstances here.

5. Service. Finally, the NotOFA was not properly served. The Board's rules require express when a hand or equivalent delivery is made on the Board. 49 C.F.R. 1104.12(a). Vandalia used the U.S. Mail, first class here. That obviously prejudices CBRMA's interests by foreshortening notice.

Conclusion

Vandalia should be denied leave to file its NotOFA, the NotOFA should be rejected or dismissed, no stay should be granted, and no other relief should be granted to Vandalia.

Respectfully submitted,


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Seattle, WA 98177
(206) 546-1936
Counsel for CBRMA

Certificate of Service

I certify service by express service, next business day deliver, this 27th day of March 2007 upon Mr. LaKemper (Vandalia) and Mr. Kahn (Rupp, et al.).

