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LAW OFFICES OF
LOUIS E. GITOMER

LOUIS E. GITOMER
LOU_GITOMER@VERIZON.NET

THE ADAMS BUILDING, SUITE 301
600 BALTIMORE AVENUE
TOWSON, MARYLAND 21284 4022
(202) 466-6532
FAX (410) 332-0885

June 17, 2008

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 F Street, S.W.
Washington, D.C. 20423

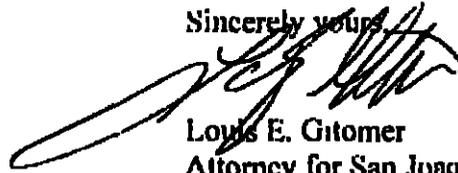
RE Docket No. AB-398 (Sub-No. 7X), *San Joaquin Valley Railroad
Company—Abandonment Exemption—in Tulare County, CA
(Between Strathmore and Jovista)*

Dear Acting Secretary Quinlan:

Enclosed for e-filing is a Response to the offer of financial assistance filed by
Tulare County. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for San Joaquin Valley Railroad Company

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No AB-398 (Sub-No 7X)

SAN JOAQUIN VALLEY RAILROAD COMPANY---ABANDONMENT EXEMPTION---IN
TULARE COUNTY, CA (BETWEEN S I R A I H M O R E AND J O V I S T A)

RESPONSE TO OFFER OF FINANCIAL ASSISTANCE

Scott G. Williams Esq
Senior Vice President & General Counsel
RailAmerica, Inc
5300 Broken Sound Boulevard N W
Second Floor
Boca Raton, FL 33487
(561) 226-1757

Louis E. Gitomer, Esq
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(202) 466-6532

Attorneys for SAN JOAQUIN VALLEY
RAILROAD COMPANY

Dated. June 17, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No AB-398 (Sub-No 7X)

SAN JOAQUIN VALLEY RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
TULARE COUNTY, CA (BETWEEN STRATHMORE AND JOVISTA)

RESPONSE TO OFFER OF FINANCIAL ASSISTANCE

The San Joaquin Valley Railroad Company (“SJVR”) responds to the Offer of Financial Assistance filed on June 13, 2008 by the Tulare County, CA. SJVR does not object to conducting negotiations under 49 U.S.C. §10904 for Tulare County to acquire the South Exeter Branch, a 30.57-mile line of railroad between Strathmore, CA, milepost 268.60, and Jovista, CA, milepost 299.17 in Tulare County, CA (the “Jovista Line”). However, SJVR disputes the basis for Tulare County’s calculation of the net liquidation value of the Line. SJVR is also willing to negotiate operations over the Jovista Line with Tulare County and the sale of the 9.20-mile rail line between Exeter, CA, milepost 259.40, and Strathmore, CA, milepost 268.60 in Tulare County, CA (the “Exeter Line”), but not under the OFA Process.

BACKGROUND

SJVR filed a Petition for Exemption to abandon the Jovista Line on February 19, 2008 (the “Petition”). After opposition was filed and SJVR responded, the Surface Transportation Board (the “Board”) granted the Petition.¹ A Petition for Exemption to abandon the Exeter Line was filed on February 28, 2008 and denied by the Board.²

¹ *San Joaquin Valley Railroad Company—Abandonment Exemption— in Tulare County, CA*, STB Docket No. AB-398 (Sub-No 7X) (STB served June 6, 2008)

² *San Joaquin Valley Railroad Company Abandonment Exemption—in Tulare County, CA*, STB

ARGUMENT

Tulare County filed the OFA seeking (1) to acquire the Jovista Line for \$555,000, (2) to acquire the Exeter Line for \$295,000, and (3) to have SJVR operate both lines with a traffic guaranty of a minimum of 200 carloads per year and a \$300 per car surcharge on the Jovista Line

1. The Jovista Line.

SJVR is willing under the OFA Process to negotiate the sale of the Jovista Line to Tulare County. SJVR does not question that Tulare County, as a government entity, is a financially responsible person. However, in order to foster negotiations and avoid a claim by Tulare County that it was surprised, SJVR takes issue with the net liquidation value (the "NLV") of the track structure suggested by Tulare County.

Tulare County bases its NLV on the quantity of material supplied by SJVR. SJVR confirms that Tulare County is using the correct quantity of material. However, SJVR wants to point out two errors in Tulare County's calculation. First, SJVR has asserted that the 90 and 112 pound rail and OTM is relay or reroll, however, Tulare County, without any justification treats all rail and OTM as less valuable scrap. Second, Tulare County calculates the "scrap value of the line at the average 2007 steel scrap price reported by the USGS." OFA at 3-4

With regard to whether certain of the rail should be classified as relay, reroll, or scrap, the "offeror has the burden of proof as to all issues in dispute."³

Because the burden of proof is on the offeror, absent probative evidence supporting the offeror's estimates, the rail carrier's evidence is accepted. In areas of disagreement, the offeror must present more specific evidence or analysis or provide more reliable and verifiable documentation than that which is submitted by the carrier. If the offeror does not present such superior evidence and/or

Docket No. AB-398 (Sub-No. 8X) (STB served June 6, 2008)

³ 49 C.F.R. §1152.27(h)(3)

documentation, the Board accepts the carrier's estimates in these forced sale proceedings⁴

SJVR has inspected the Jovista Line and concluded that there is substantial relay and reroll rail, which is more valuable than scrap rail

Tulare County uses an average value of scrap rail that is from six to eighteen months old. As soon as the abandonment was granted and SJVR received heightened interest from third parties in acquiring the Jovista Line, SJVR updated the NLV of the track and material because of the substantial recent increases in the value of steel. The value of the rail and other track material is based on Chicago scrap prices as of June 9, 2008. Based on the increase in the value of steel, as of June 13, 2008, SJVR estimates the NLV of the track and material in the Jovista Line to be \$2,812,470. The spreadsheet with these valuations is attached as Exhibit 1.⁵ When the Board is asked to determine the NLV for a line that has been authorized for abandonment, the Board uses actual recent market prices and has rejected calculations of NLV that "fail[] to maximize value of track materials."⁶

The purpose of the forgoing is to indicate to Tulare County the NLV of the Jovista Line under the OFA Process, which is substantially higher than the offer made by Tulare County.

2. The Exeter Line.

⁴ *The Kansas City Southern Railway Company—Abandonment Exemption—Line in Warren County, MS, in the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-103 (Sub-No. 21X) (STB served February 22, 2008) at 5, See *Burlington Northern Railroad Company—Abandonment Exemption—In Sedgwick, Harvey and Reno Counties, KS*, ICC Docket No. AB-6 (Sub-No. 358X) (ICC served June 30, 1994), and cases cited therein.

⁵ In Exhibit 1, NT is the abbreviation for net ton at 2000 lbs/ton and GT is the abbreviation for gross ton at 2240lbs/ton. Scrap and reroll are sold by the GT. There is a higher scrap price per ton for OTM because of its small size, which requires less processing prior to melting.

⁶ *The Kansas City Southern Railway Company—Abandonment Exemption—Line in Warren County, MS, in the Matter of a Request to Set Terms and Conditions*, STB Docket No. AB-103 (Sub-No. 21X) (STB served February 22, 2008) at 9.

SJVR is willing to voluntarily negotiate the sale of the Exeter Line to Tulare County. However, since the Board denied the abandonment of the Exeter Line, SJVR contends that it is not subject to the OFA Process and asks the Board to clarify that the Exeter Line is not subject to the OFA Process at this time.

With respect to the NLV offered by Tulare County for the Exeter Line, it suffers from the same infirmities as the NLV for the Jovista Line. SJVR has recalculated the NLV of the Exeter Line based on June 13, 2008 values and determined that the NLV of the track and material is \$1,670,354. See Exhibit B.

3. SJVR Operations of the Jovista and Exeter Lines.

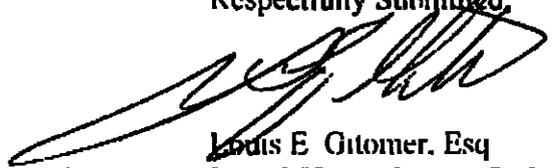
SJVR is willing to voluntarily negotiate with Tulare Valley to see if the parties can reach an agreement for SJVR to operate the two lines if they are acquired by Tulare County. However, SJVR contends that 49 U.S.C. §10904 does not provide for the forced operation of a line authorized for abandonment when the offeror is seeking to acquire the line instead of subsidizing it. In the case of a subsidy, an offeror is required to make the railroad whole for continued operations for up to one year under 49 U.S.C. §10904(a). As to continued operations over the lines by SJVR if they are acquired by Tulare County, SJVR requests that the Board clarify that such negotiations are not subject to the OFA, but that SJVR and Tulare Valley can attempt to reach an agreement through voluntary negotiations.

CONCLUSION

SJVR respectfully requests the Board to (1) accept the OFA filed by Tulare County for the purpose of commencing negotiations between Tulare County and SJVR for the Jovista Line, (2) clarify that negotiations for the Exeter Line are not subject to the OFA Process, and must be voluntarily negotiated by Tulare County and SJVR, and (3) clarify that negotiations for SJVR to operate the Jovista Line and the Exeter Line if they are acquired by Tulare County are not subject to the OFA Process, and must be voluntarily negotiated by Tulare County and SJVR

Respectfully Submitted,

Scott G. Williams Esq
Senior Vice President & General Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard N W
Second Floor
Boca Raton, FL 33487
(561) 226-1757



Louis E. Gitomer, Esq
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(202) 466-6532
Lou_Gitomer@verizon.net

Attorneys for SAN JOAQUIN VALLEY
RAILROAD COMPANY

Dated June 17, 2008

EXHIBIT 1-NET LIQUIDATION VALUE OF THE JOVISTA LINE

Liquidation Value of Railroad Asset

San Joaquin Valley Railroad- Exeter South - MP 268.6 to MP 299.17

June 13, 2008

Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Total \$ GT
112lb	jnt	2	187.26	374.53	334.40	relay	\$1,000		\$374,528	
112lb	jnt	1	187.26	187.26	167.20	reroll		\$725		\$121,220
75lb	jnt	30.32	121.44	3682.06	3287.55	scrap		\$605		\$1,988,970
90lb	jnt	0.2	150.48	30.10	26.87	reroll		\$725		\$19,482
110lb	jnt	0.2	178.11	35.62	31.81	scrap		\$605		\$19,242
Totals		33.72		4309.57	3847.83					\$2,523,443

Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Total \$ GT
112lb	jnt	3	84.0	252.00	225.00	relay	\$1,000		\$252,000	
75lb	jnt	30.32	50.0	1516.00	1353.57	scrap		\$745		\$1,008,411
90lb	jnt	0.2	50.0	10.00	8.93	relay	\$1,000		\$10,000	
110lb	jnt	0.2	57.0	11.40	10.18	scrap		\$745		\$7,583
Totals		33.72		1789.40	1597.68					\$1,277,994

Ties (Removal & Market)						Signal Appliances			
Class	%	Miles	Total Ties	Price Ea.	Total	Type	Quantity	Unit Price	Total
#1 Relay	15%	33.7	15174	\$8	\$121,392	Lights	13	\$2,500	\$32,500
#2 Relay	0%	33.7		\$6		Gates	3	\$5,000	\$15,000
Landscape	40%	33.7	40464	\$4	\$161,856	Total all Signals			
Scrap	45%	33.7	45522			\$47,500			
Total Tie Value					\$283,248				

Turnouts										
Weight	Type	Qty.	NT/TO	Total NT	Total GT	Class	Price EA	Price GT	Total \$ Each	Total \$ GT
75lb	No 10	13	1.9	25.09	22.40	scrap		\$745		\$16,689
112lb	No 11	5	4.5	22.60	20.18	relay	\$4,500		\$22,500	
110lb	No 10	3	4.5	13.75	11.92	relay	\$4,000		\$12,000	
90lb	No 10	10	1.9	19.30	17.23	relay	\$2,500		\$25,000	
Totals		31		80.34	71.73					\$76,189

Liquidation Costs				
	Unit	Cost	Quantity	Total
Dismantle Rail (CWR)	NT	\$65		
Dismantle Rail (Jointed)	NT	\$50	6099 NT	\$304,948.6
Transport Rail & OTM	NT	\$65	6179 NT	\$401,655.2
Remove Ties	EA	\$2	101,160	\$202,320.0
Transport Ties	EA	\$3	101,160	\$303,480.0
Remove Relay Turnouts	EA	\$2,500	31	\$77,500.0
Remove Crossing Signal	EA	\$1,500	16	\$24,000.0
Restore Crossings	EA	\$2,000	41	\$82,000.0

Gross Liquidation Value	\$4,208,374
Total Liquidation Costs	
	\$1,395,904
Net Liquidation Value	
	\$2,812,470

EXHIBIT 2-NET LIQUIDATION VALUE OF THE EXETER LINE

Liquidation Value of Railroad Asset

San Joaquin Valley Railroad- Excter South - MP 259.4 to MP 268.6

June 13, 2008

Rail										
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Total \$ GT
112lb	jnt	3	187.26	561.79	501.60	relay	\$1,000		\$561,792	
112lb	jnt	3.6	187.26	674.15	601.92	reroll		\$725		\$436,392
75lb	jnt	5.1	121.44	619.34	552.99	scrap		\$605		\$334,556
Totals		11.7		1855.29	1656.51		Total Rail Value		\$1,332,740	

OTM										
Weight	Jnt./CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total \$ NT	Total \$ GT
112lb	jnt	6.6	84.0	554.40	495.00	relay	\$1,000		\$554,400	
75lb	jnt	5.1	50.0	255.00	227.68	scrap		\$745		\$169,621
Totals		11.7		809.40	722.68		Total OTM Value		\$724,021	

Ties (Removal & Market)						Signals & Appliances			
Class	%	Miles	Total Ties	Price Ea.	Total	Type	Quantity	Unit Price	Total
#1 Relay	15%	11.7	5265	\$8	\$42,120	Lights	3	\$2,500	\$7,500
#2 Relay	0%	11.7		\$6		Gates	7	\$5,000	\$35,000
Landscape	40%	11.7	14040	\$4	\$56,160	Total all Signals \$42,500			
Scrap	45%	11.7	15795						
Total Tie Value					\$98,280				

Turnouts										
Weight	Type	Qty.	NT/TO	Total NT	Total GT	Class	Price EA	Price GT	Total \$ Each	Total \$ GT
75lb	#10	4	1.9	7.72	6.89	scrap		\$745		\$5,135
112lb	No 11	3	4.5	13.56	12.11	relay	\$4,500		\$13,500	
Totals		7		21.28	19.00		Total Turnout Value		\$18,635	

Liquidation Costs				
	Unit	Cost	Quantity	Total
Dismantle Rail (CWR)	NT	\$65		
Dismantle Rail (Jointed)	NT	\$50	2665 NT	\$133,234.3
Transport Rail & OIM	NT	\$65	2686 NT	\$174,587.8
Remove Ties	EA	\$2	35,100	\$70,200.0
Transport Ties	EA	\$3	35,100	\$105,300.0
Remove Relay Turnouts	EA	\$2,500	7	\$17,500.0
Remove Crossing Signal	FA	\$1,500	10	\$15,000.0
Restore Crossings	EA	\$2,000	15	\$30,000.0

Gross Liquidation Value	\$2,216,176
Total Liquidation Costs	\$545,822
Net Liquidation Value	\$1,670,354

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Response in Docket No AB-398 (Sub-No 7X), *San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare County, CA (Between Strathmore and Jovista)*, was mailed via first class mail, postage prepaid, on June 16, 2008, to the following parties

Tulare County Economic Development Corporation
4500 S Laspina Street
Tulare, CA 93274

Tulare County Association of Governments
5961 S Mooney Boulevard
Visalia, CA 93277

Tulare County Board of Supervisors
Administration Building
2800 West Burrel Avenue
Visalia, CA 93291

Fritz R Kahn, Esq.
Fritz R Kahn, P C
1920 N Street, NW (8th fl)
Washington, DC 20036



Louis E. Gitomer
June 17, 2008