

STB DOCKET NO. AB-556 (SUB-NO. 2X)¹

RAILROAD VENTURES, INC.
— ABANDONMENT EXEMPTION —
BETWEEN YOUNGSTOWN, OH, AND DARLINGTON, PA,
IN MAHONING AND COLUMBIANA COUNTIES, OH,
AND BEAVER COUNTY, PA

Decided March 2, 2000

The Board finds that Columbiana County Port Authority has accepted the terms and conditions established in 4 S.T.B. 467 (2000). Railroad Ventures, Inc. ordered to transfer those property interests that formed the basis of the set terms decision. Petition by two shippers on the line to reopen the related acquisition and operation exemption decision denied.

BY THE BOARD:

In this decision, we find that Columbiana County Port Authority (CCPA) has accepted the terms and conditions established in *Railroad Ventures, Inc. — Aban. Exemp. — Youngstown, OH & Darlington, PA*, 4 S.T.B. 467 (2000) (*January 7 decision*), for the purchase, under the offer of financial assistance (OFA) procedures, of a line of railroad owned by Railroad Ventures, Inc. (RVI), and that RVI is required to transfer to CCPA those property interests that formed the basis for the *January 7 decision*. We are also denying a petition filed by two shippers on the line to reopen STB Finance Docket No. 33385.

BACKGROUND

By decision served on September 3, 1999, we exempted, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 10903, the abandonment by RVI of a 35.7-mile line of railroad extending from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile line segment near Negley, OH, and the discontinuance of service over the line by

¹ This decision embraces *Railroad Ventures, Inc. — Acquisition and Operation Exemption — Youngstown & Southern Railroad Company — Request to Set Terms and Conditions*, STB Finance Docket No. 33385. These proceedings are not consolidated and are being considered in the same decision for administrative convenience.

The Ohio & Pennsylvania Railroad Company.² The exemption was scheduled to become effective on October 3, 1999. By separate petitions filed on September 3, 1999, and on September 8, 1999, respectively, CCPA³ and Penn-Ohio Recycling, Inc. (collectively referred to as "offerors"), requested the tolling of the period for submitting an OFA. By decision served on September 10, 1999 (*September 10 decision*), the time period for filing an OFA in this proceeding was tolled until 30 days after RVI provided offerors with certain requested information and documents, and the effective date of the abandonment exemption was stayed. By letter filed on October 12, 1999, offerors reported that, on October 8, 1999, RVI fully complied with their requests for the production of documents. Accordingly, OFAs were due on November 8, 1999.

On November 8, 1999, CCPA filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line of railroad for \$419,360. By decision served on November 12, 1999, CCPA was found to be financially responsible, and the effective date of the exemption authorizing abandonment of the line was postponed to permit the OFA process to proceed.⁴ The decision also provided that, on or before December 8, 1999, either party could request that we establish the terms and conditions for the sale of the line, if no agreement was reached during negotiations.⁵ On December 8, 1999, CCPA requested that we establish the conditions and the amount of compensation for the line.

In the *January 7 decision*, we established the purchase price at \$1,080,560, consisting of \$350,000 for the land and \$730,560 for the net salvage value of track and materials, and imposed the typical terms for OFA sales.⁶ The parties were allowed to alter any of these terms by mutual agreement. We also required that CCPA accept or reject, in writing, the terms and conditions that we established by notifying us, and also RVI, within 10 days of the service date of

² This proceeding was consolidated with STB Docket No. AB-555 (Sub-No. 2X), *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.*

³ CCPA is a quasi-public agency established by the Board of County Commissioners of Columbiana County, OH.

⁴ The discontinuance of service exemption became effective on November 18, 1999.

⁵ In pertinent part, 49 CFR 1152.27(h)(6) provides:

If requested, the Board will determine the price and other terms of sale. The Board will not set a price below the fair market value of the line (including, unless otherwise agreed upon by the parties, all facilities on the line or portion necessary to provide effective transportation services).

⁶ Payment was to be made by cash or certified check, closing was to occur within 90 days of the service date of the decision (April 6, 2000), RVI was to convey the property by quitclaim deed, and RVI was to deliver all releases for any mortgages within 90 days of closing.

the decision, or by January 14, 2000. By letter filed on January 14, 2000 (January 14 letter), CCPA accepted the terms and conditions.

By letter filed on January 18, 2000, RVI objects to CCPA's January 14 letter, arguing that language in the letter indicates that CCPA seeks a fee simple interest in the right-of-way and other conditions that allegedly are inconsistent with the *January 7 decision* ordering conveyance pursuant to a quitclaim deed. RVI requests that we determine that, because of the conditional nature of the acceptance, CCPA rejected the terms and conditions established in the *January 7 decision*. By letter filed on January 19, 2000, CCPA states that it has accepted the terms and conditions of the *January 7 decision* and explains that, given the history of its dealings with RVI, the additional language in its acceptance letter indicating its understanding of the transaction was prudent and necessary.

On January 21, 2000, RVI filed a petition to vacate the *September 10 decision* postponing the effective date of the abandonment exemption, again on the grounds that CCPA's January 14 letter constitutes a rejection of the terms and conditions that were set in the *January 7 decision*. On January 27, 2000, CCPA replied, urging us to deny RVI's petition to vacate and to clarify the scope of the property to be transferred.⁷ On February 22 and February 25, 2000, RVI and CCPA, respectively, submitted letters urging an expeditious resolution by the Board. In its letter, CCPA also reiterated its request for clarification of the property interests to be transferred.

DISCUSSION AND CONCLUSIONS

Despite RVI's contention to the contrary, CCPA's January 14 letter constitutes a valid acceptance of the terms and conditions we set in our *January 7 decision*. If there was any doubt created by CCPA's inclusion within its letter of its "understanding" of the events that would be occurring at closing and thereafter, these doubts were put to rest by its acknowledgment in its subsequent filings that it had unequivocally accepted our terms and conditions.⁸ CCPA has agreed to be bound by these terms and, as such, RVI must be bound as well. Therefore, RVI's petition to vacate will be denied.

⁷ Subsequently, on February 2, 2000, RVI filed a letter expressing concern that CCPA was expecting to receive a fee simple interest in the right-of-way. Also on February 2, 2000, CCPA replied that it does not expect to receive a greater interest in the property than that which RVI acquired in its purchase of the line.

⁸ We are not persuaded by RVI's discussion of what constitutes an acceptance under contract law. For our purposes, CCPA has accepted our terms and conditions.

In its reply to RVI's petition, CCPA requests that we clarify what title interests RVI must transfer to it. Our *January 7 decision* set the price for RVI's land holdings at \$350,000. RVI had argued that it may only be required to transfer to CCPA what real estate interests are necessary for CCPA to conduct rail operations, such as a rail easement. That argument was implicitly rejected by our inclusion of the land value in our valuation of the right-of-way.⁹

CCPA asks that we find that the title to the right-of-way should not be further encumbered by liens or easements that did not exist before November 8, 1999, the date it filed its OFA evidence. Generally, a right-of-way should not be subjected to further encumbrances after the railroad files for authority to abandon a line because that is the time when interested parties are determining whether to file an OFA. In the proceeding to set terms and conditions, however, CCPA adjusted its appraisal of the line to account for certain encumbrances created after RVI sought to abandon the line. We construed this action to constitute an agreement to these encumbrances.¹⁰ CCPA has not, however, agreed to any additional encumbrances not reflected in its November 8, 1999, evidence on the value of the line.

In conclusion, we find that CCPA has accepted our terms and conditions in a manner totally consistent with our *January 7 decision*. We will require that RVI transfer the interests that formed the basis for our *January 7 decision* setting the terms and conditions for the transfer to CCPA by quitclaim deed. It is this evidence of the value of the line's assets that formed the basis for our establishment of the purchase price for the line. RVI may not unilaterally diminish the assets or their value and still be entitled to the price we set. Thus, we order RVI to transfer this line of railroad as defined here to CCPA by quitclaim deed, if CCPA tenders cash or a certified check to RVI in the amount of \$1,080,560, on or before April 6, 2000.

Petition to reopen STB Finance Docket No. 33385. On January 10, 2000, Darlington Brick and Clay Products Company and the Insul Company, Inc. (collectively petitioners), shippers on the line, filed a petition to reopen RVI's acquisition decision in *Railroad Ventures, Inc. — Acquisition and Operation Exemption — Youngstown & Southern Railroad Company*, STB Finance Docket No. 33385, *et al.* (STB served July 15, 1997). RVI did not reply.

Under 49 CFR 1115.4, a petition to reopen will be granted only upon a showing that the prior action will be affected materially because of new evidence

⁹ We assign no value to rail easements in determining the net liquidation value of a line in OFA proceedings.

¹⁰ *January 7 decision*, at 476-477.

or substantially changed circumstances or that it involves material error. Petitioners have not presented such evidence or argument and do not request that the Board make such findings. Rather, they point out that RVI has not restored service and has undertaken certain actions that will make the restoration of service more difficult. They disagree with our decisions allowing RVI to acquire the line and suggest that the Board should have followed a more stringent policy with RVI's violation of its common carrier obligations. While we do not condone certain of RVI's actions, we find that these arguments do not warrant reopening STB Finance Docket No. 33385.¹¹ Therefore, the petition will be denied.

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

It is ordered:

1. RVI's petition to vacate the September 10, 1999, decision in this proceeding, which postponed the effective date of the abandonment exemption, is denied.
2. If CCPA tenders cash or certified check to RVI on or before April 6, 2000, in the amount of \$1,080,560, RVI shall convey, by quitclaim deed to CCPA, all of its property interests, as discussed in this decision, in its 35.7-mile line of railroad extending from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile line segment near Negley, OH.
3. RVI shall deliver all releases from any mortgages to CCPA within 90 days of closing.
4. The petition of Darlington Brick and Clay Products Company and the Insul Company, Inc., to reopen STB Finance Docket No. 33385 is denied.
5. This decision is effective April 2, 2000.

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

¹¹ We rejected similar arguments made by CCPA when we denied its petition to reopen. See, *January 7 decision*, at 470-472.