

STB DOCKET NO. AB-556 (SUB-NO. 2X)

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

Decided April 5, 2000

The Board directs Railroad Ventures, Inc. to show cause: (1) why its October 28, 1999, transfer of the subsurface and air rights to the right-of-way is not voidable; and (2) why the entire property considered in determining the value of the line in the set terms decision, 4 S.T.B. 467 (2000), should not be transferred to Columbiana County Port Authority.

BY THE BOARD:

By petition filed on March 28, 2000,¹ Columbiana County Port Authority (CCPA) seeks to clarify what assets are to be transferred under our decision, *Railroad Ventures, Inc. — Aban. Exem. — Youngstown, OH & Darlington, PA*, 4 S.T.B. 467 (2000) (*January 7 decision*) in which we established, under the offer of financial assistance (OFA) procedures, a purchase price of \$1,080,560 for the involved line of railroad, consisting of \$350,000 for the land comprising the right-of-way and \$730,560 for the net salvage value of track and materials. RVI filed a reply on April 3, 2000.

CCPA submitted, with its petition, a copy of a quitclaim deed, dated October 28, 1999, that transferred in fee simple the subsurface and air rights to the involved right-of-way from Railroad Ventures, Inc. (RVI), to its affiliate, Venture Properties of Boardman, Inc. (VPB). CCPA obtained the copy of the quitclaim deed from a third party; RVI had not previously provided CCPA with a copy or submitted it on the record in this proceeding. Because CCPA was not aware of the existence of the deed and we were not informed of it, this evidence was not part of the basis on which we established the purchase price of the land to be sold to CCPA. Rather, our determination was based on evidence that RVI

¹ The petition was styled as a petition for declaratory order, but it does not address the criteria for a declaratory order; rather it seeks specific relief regarding this proceeding. Accordingly, we are treating the petition as a request for clarification and will address the merits of the petition in a subsequent decision.

was transferring to VPB only its interests in utility easements that existed in the right-of-way before November 8, 1999. The transfer of the subsurface and air rights, however, may affect the value of the land and the purchase price that we set in our *January 7 decision*.

RVI made this transfer of subsurface and air rights after October 8, 1999, the date on which RVI provided CCPA with certain information and documents required by our decision served on September 10, 1999. Indeed, in our September 10 decision, we had ordered RVI to provide all of the information required by 49 CFR 1152.27(a), including supporting data and access to maps and deeds and any information bearing on the nature of RVI's title to the right-of-way, to permit the preparation of an OFA. CCPA based its appraisal of the value of the land on the information provided by RVI on October 8, 1999, and we in turn relied on CCPA's appraisal in setting the purchase price in the *January 7 decision*.

We believe RVI was under a continuing duty to inform CCPA if the information that it provided on October 8, 1999, changed. By transferring assets after October 8, 1999, and failing to immediately inform the offeror and the Board, RVI has undermined the OFA process. Accordingly, we will require RVI to show cause why the transfer of the subsurface and air rights after October 8, 1999, is not voidable.

In its reply, RVI maintains that CCPA was aware of additional encumbrances that RVI imposed on the property before CCPA's appraisal evidence was filed and that the Board accounted for the reduced value in the *January 7 decision*. We are not persuaded by RVI's argument, however, as our decision, which valued the real property at \$350,000, took into account certain existing, identified encumbrances but did not take into account the additional encumbrances that only now have been brought to the attention of the Board. In addition, RVI is continuing to attempt property transfers that we had not contemplated and that would further diminish the value of the property to be transferred to CCPA through the OFA process. In its current reply, RVI argues that CCPA's appraisal acknowledged that lesser interests would be conveyed to it by deducting \$100,000 both for the reduction of the right-of-way width to 66 feet and for other proposed changes. However, we note that in RVI's reply to CCPA's request to establish terms and conditions of sale, filed on December 13, 1999, RVI states that the \$100,000 deduction was for "* * * existing occupations, license agreements and right of ways previously granted to third parties." These matters should be clarified in RVI's subsequent statements to us.

On March 21, 2000, CCPA submitted copies of so-called specimen deeds that it desires RVI to use to execute the transfer of assets. On March 30, 2000, RVI responded with a modified quitclaim deed that it desires to use for the

transfer. RVI's proposed deed would narrow the right-of-way and excludes specified parcels, industrial track, spur, and other properties that were included in our January 7 determination of the value of the property.² We will require RVI to show cause why the entire property that we considered in our January 7 determination should not be transferred to CCPA.

RVI has 15 days from the service date of this decision to respond to this show cause order, and to serve a copy of its response on CCPA. CCPA may respond to RVI's filing within 10 days of its receipt of RVI's response to this decision. While these matters are pending, we will hold this proceeding in abeyance until a further order of the Board. Thus, the April 6, 2000, deadline for consummation of the OFA is postponed and a new deadline will be established by the Board upon resolution of the issues discussed in this decision.

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

It is ordered:

1. Within 15 days of April 5, 2000, the service date of this decision, RVI is directed to show cause: (1) why its October 28, 1999, transfer of the subsurface and air rights to the right-of-way at issue is not voidable; and (2) why the entire property considered in our January 7 determination of the value of the line should not be transferred to CCPA. RVI must serve a copy of its response to the Board on CCPA. CCPA may respond within 10 days of its receipt of RVI's response to the Board.

2. This proceeding is held in abeyance until further order of the Board.

3. This decision is effective April 5, 2000.

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

² By letter filed on March 31, 2000, RVI submits a further modification to its proposed quitclaim deed to allow the conveyance of a 4.2 acre parcel to Boardman Township Park District (Park District), stating that this transfer was approved in our *January 7 decision*. RVI's position is incorrect. The purchase and sale agreement between RVI and the Park District, dated November 8, 1999, and included in the record we considered, was subject to the condition that the right-of-way be rail banked to permit the property to be used by the Park District as a recreational trail. Thus, the transfer of this land to the Park District was not contemplated in our *January 7 decision* because, if CCPA purchases the land under our OFA procedures, the purchase would take precedence over trail use. The proposed transfer by RVI to the Park District directly contravenes our March 3, 2000, decision, in which we stated that "RVI may not unilaterally diminish the assets or their value and still be entitled to the price we set." Accordingly, RVI may not transfer this parcel to the Park District.