

SERVICE DATE – JUNE 26, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1296X

R. J. CORMAN RAILROAD PROPERTY, LLC—ABANDONMENT EXEMPTION—
IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENN.

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: June 26, 2020

R. J. Corman Railroad Property, LLC (RJC Railroad Property), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a railroad line extending from milepost 0.95 at or near Oneida, Tenn., to the end of the line at milepost 42.0 at or near Devonia, Tenn., a distance of approximately 41.05 miles in Scott, Campbell, and Anderson Counties, Tenn. (the Line).¹ Notice of the exemption was served and published in the Federal Register on March 9, 2020 (85 Fed. Reg. 13,696).

On March 19, 2020, Arkansas-Oklahoma Railroad Co. (AOK), a Class III rail carrier that states that it has been operating in Oklahoma for approximately 24 years, filed a notice of intent to file an offer of financial assistance (OFA), under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27, so that it could purchase the Line. On April 20, 2020, AOK late-filed a motion to extend the deadline to file an OFA, and, following a reply by RJC Railroad Property, by decision served on May 26, 2020, the Board extended the OFA deadline to June 9, 2020.

On June 3, 2020, AOK requested a further extension of the OFA deadline. After a reply by RJC Railroad Property, by decision served on June 9, 2020, the Board extended the OFA deadline to June 23, 2020.

On June 23, 2020, AOK filed an OFA to purchase the Line for \$424,958. On the same day, Campbell County, Tenn., National Coal, LLC (National Coal), and the North East Tennessee Railroad Authority (NETRA) each filed letters supporting the acceptance of AOK's OFA. On June 24, 2020, Evergreen Packaging also filed a letter in support.

For the reasons discussed below, the OFA will be rejected.

¹ The verified notice also embraced Docket No. AB 875 (Sub-No. 1X), R. J. Corman Railroad Company/Bardstown Line—Discontinuance Exemption—in Scott, Campbell, & Anderson Counties, Tenn., in which R. J. Corman Railroad Company/Bardstown Line sought an exemption to discontinue service over the Line.

DISCUSSION AND CONCLUSIONS

To submit an OFA under 49 C.F.R. § 1152.27(c)(2)(iii), an offeror must set forth its offer in detail and meet the requirements for the contents of an offer found at 49 C.F.R. § 1152.27(c)(1)(iv). Once submitted, an OFA is reviewed by the Director of the Office of Proceedings to determine whether the offer satisfies the standards of 49 U.S.C. § 10904(d) and the Board's regulations. 49 C.F.R. § 1011.7(a)(2)(ii). For the reasons discussed below, AOK's OFA will be rejected.

Under § 1152.27(c)(1)(iv)(E), an offeror must demonstrate through evidence that there is a continued need for rail service on the line.² The Board adopted this requirement, which was consistent with prior precedent, in Offers of Financial Assistance, EP 729 (STB served June 29, 2017). In that decision, the Board stated that “an OFA proponent must make a strong showing of need” and “will be required to show specific and concrete evidence of a continued need for rail service to make the showing required by this rule, and in all proceedings the Board will consider the totality of the circumstances in evaluating the evidence submitted by offerors.” Id. 14-15.

Here, although AOK has provided evidence of general community support for its OFA, as discussed below, it has not sufficiently demonstrated “a continued need for rail service” on the Line under § 1152.27(c)(1)(iv)(E). This abandonment exemption is for a line of railroad with no active shippers, and on which there has been no service since 2013. (Verified Notice 4.) To support its claim that there is a need for service, AOK includes copies of previously docketed submissions by Anderson County, Tenn., and the Tennessee Mining Association (TMA). But those submissions, while indicating community support for preserving the Line, provide no specific detail demonstrating any commercial need for rail service. (See OFA, App. 3-4.) Anderson County states only that it was working “to preserve this asset for our county and region,” while TMA merely asserts that “[p]reservation of this rail line will protect future, affordable access by Tennessee mining companies to undeveloped coal reserves in Anderson County, in addition to supporting imminent freight needs.” (Id.)

Other than these two submissions, AOK's offer states only that NETRA “will submit statements in support of this Offer and other information and documents that support a finding

² The regulation further states that: “Examples of evidence to be provided include: Evidence of a demonstrable commercial need for service (as reflected by support from shippers or receivers on the line or other evidence of an immediate and significant commercial need); evidence of community support for continued rail service; evidence that acquisition of freight operating rights would not interfere with current and planned transit services; and evidence that continued service is operationally feasible[.]” § 1152.27(c)(1)(iv)(E). The Board has explained that these are “the types of evidence the Board will look for when considering the totality of the circumstances. . . , not specific requirements; offerors will not be strictly required to meet any one of (or all) the criteria to show a continued need for rail service.” Offers of Financial Assistance, EP 729, slip op. at 17.

that there is a strong public need for the Oneida Line.” (*Id.* at 4.) NETRA, in its submission, simply states that a mill supervisor at Evergreen Packaging’s Royal Blue Chip Mill stated that “loggers from the region remain in need of this Line” to move logs to the mill and other destinations. (NETRA Letter 2.) Evergreen Packaging, which filed separately, also states “keeping this Line in the national rail system would be crucial for our company that needs rail service and could use the Line to bring logs to the wood chip plant.” (Evergreen Packaging Letter 2.) However, Evergreen provided no evidence that it has previously used the Line or that it has plans to use the Line for rail service in the future. There has been no rail service on the Line for seven years and there is no detail suggesting an imminent commercial need for rail service. NETRA also asserts that a “large volume importer of foreign wood” has an interest in shipping on the Line, but it provides no more details. (NETRA Letter 2.)

NETRA’s letter also notes that there is a coal mine located on the Line owned by National Coal. (*Id.*) National Coal, a shipper that last tendered traffic in 2013, (RJC Railroad Property Reply 3, May 6, 2020), filed in support of the OFA, but states only that it “hope[s] to resume shipment on [the Line] when the market recovers.” (Nat’l Coal Letter 1, June 23, 2020.) This statement, however, like those discussed above, is too generalized and speculative to form the basis of an OFA forced sale. See *Kulmer v. STB*, 236 F.3d 1255, 1258 (10th Cir. 2001) (upholding the agency’s rejection of an OFA where traffic projections of the potential shippers were “too indefinite and insufficient to support continued freight rail operations”).³

Lacking in the record is specific information such as statements from actual prospective users of the Line explaining their intent to use freight rail service in the foreseeable future or the actual volume of shipments they anticipate making. For example, there is no explanation of why “loggers from the region” or the “importer of foreign wood” have not used freight rail in the past seven years and what would cause them to start using such service.

Finally, NETRA states that there is a company that would like to begin excursion train service on the Line, (NETRA Letter 3), and Campbell County states that it supports an excursion railway, (Campbell County Letter 1.) However, “[t]he OFA process is designed for the purpose

³ The agency’s decision in *Illinois Central Railroad Co.—Abandonment Exemption—in Perry County, Ill.*, AB 43 (Sub-No. 164X) (ICC served Nov. 8, 1994), which predated the revision of the OFA rules, does not warrant a different outcome. In that case, the coal company wishing to preserve the option for service offered a subsidy, which the agency stated could continue for a limited period of time. Although the subsidy defeated the abandonment, it permitted the railroad to keep the property, and to resume service if demand returned in the reasonable future. See also *Burlington N. & Santa Fe Ry.—Aban. Exemption—in King Cty., Wash.*, 3 S.T.B. 634, 644 (1998) (distinguishing *Perry County* and noting that there, the offeror’s willingness to subsidize service manifested a strong intent to use the line for rail service), *aff’d sub nom., Redmond-Issaquah R.R. Pres. Ass’n v. STB*, 223 F.3d 1057, 1061-63 (9th Cir. 2000). Here, an OFA would force the sale of the Line by the railroad without sufficient evidence that there is a need for rail service.

of continuing to provide freight rail service[.]” Roaring Fork R.R. Holding Auth.—Aban. Exemption—in Garfield, Eagle, & Pitkin Ctys., Colo., 4 S.T.B. 116, 119 (1999), aff’d sub nom., Kulmer, 236 F.3d at 1256-57. And although the Board has previously stated that “nothing in [§] 10904 precludes a line from being acquired under the OFA procedures to provide combined passenger/freight service[.]” the purpose of the OFA process is to allow continued freight rail service. See Offers of Financial Assistance, EP 729, slip op. at 17 (quotation omitted). While the Board may take into account that passenger service might enhance the financial feasibility of freight operations, given that the record here does not otherwise demonstrate a continued need for freight rail service, evidence of an excursion railway on its own cannot justify an OFA. See, e.g., Atchison, Topeka & Santa Fe Ry.—Aban. Exemption—in Atchison Cty., Kan., AB 52 (Sub-No. 79X), slip op. at 1 (ICC served Apr. 13, 1995).

Based on the totality of the circumstances here, AOK has failed to demonstrate a need for continued rail service sufficient to warrant permitting a forced sale of the Line through the OFA process. See CSX Transp., Inc.—Aban. Exemption—in Trumbull Cty., Ohio, AB 55 (Sub-No. 779X), slip op. at 3 (STB served Aug. 30, 2018); Roaring Fork, 4 S.T.B. at 119-20. As such, AOK’s OFA will be rejected and the OFA process concluded.

Because the deadline to file an OFA had passed before AOK filed its first motion to extend it, on April 17, 2020, the Board imposed a notice of interim trail use or abandonment (NITU) under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, and a public use condition under 49 U.S.C. § 10905.⁴ Those conditions, along with the effective date of the abandonment, were stayed pending the outcome of the OFA process in the Board’s May 26, 2020 decision, and further stayed in the June 9, 2020 decision. Now that the OFA process has concluded, the abandonment exemption is effective and the NITU and public use negotiating periods are reestablished.⁵ If RJC Railroad Property and the prospective trail sponsors reach an interim trail use/rail banking agreement during the NITU negotiating period, the Line would remain within the Board’s jurisdiction as part of the interstate rail network and available for possible future reconstruction and reactivation of rail service if needed. Additionally, AOK, National Coal, or any other interested person may, of course, negotiate with RJC Railroad Property outside the OFA process to purchase the Line for continued rail use. See, e.g., Mid-Mich. R.R.—Aban. Exemption—in Kent, Ionia, & Montcalm Ctys., Mich., AB 364 (Sub-No. 14X), slip op. at 5 (STB served Sept. 26, 2008).

⁴ It should be noted that interim trail use/railbanking is intended to preserve established railroad rights-of-way for future reactivation of rail service and to protect transportation corridors, which would allow for resumption of rail service should there be a demand for it in the future.

⁵ Negotiations for trail use and public use may proceed as directed in the April 17, 2020 order. Specifically, under the NITU, negotiations for trail use may proceed until April 17, 2021, and public use public use negotiations may proceed until October 15, 2020.

It is ordered:

1. AOK's OFA is rejected.
2. The abandonment exemption is effective.
3. The NITU and public use negotiating periods imposed on April 17, 2020 are reestablished.
4. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.