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September 15, 2021

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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
September 15, 2021
Part of
Public Record

Re: Kiski Junction Railroad, Inc. – Abandonment Exemption –
in Armstrong and Westmorland Counties, PA
Surface Transportation Board Docket No. AB 1317X

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Reply by the Kiski Junction Railroad, Inc. ("KJRR") to the Petition for Extension of Time or Expression of Intent to File an Offer of Financial Assistance filed by the Railroad Equipment Restoration Association ("RERA").

KJRR is requesting expedited consideration of the RERA Petition and the KJRR Reply because the RERA Petition triggers strict timelines under the Board's regulations at 49 C.F.R. § 1152.27(c)(1)(ii) related to expressions of intent to file offers of financial assistance.

If there are any questions related to this filing, please contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Kiski Junction Railroad Company,
Inc.

Enclosure

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1317X

KISKI JUNCTION RAILROAD, INC.
- ABANDONMENT EXEMPTION –
IN ARMSTRONG AND WESTMORELAND COUNTIES, PA

REPLY TO RERA
PETITION FOR EXTENSION OF TIME OR
EXPRESSION OF INTENT TO FILE OFA

REQUEST FOR EXPEDITED CONSIDERATION

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Counsel for Kiski Junction Railroad, Inc.

Dated: September 15, 2021

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1317X

KISKI JUNCTION RAILROAD, INC.
- ABANDONMENT EXEMPTION –
IN ARMSTRONG AND WESTMORELAND COUNTIES, PA

REPLY TO RERA
PETITION FOR EXTENSION OF TIME OR
EXPRESSION OF INTENT TO FILE OFA

Kiski Junction Railroad, Inc. (“KJRR”) is submitting this Reply in opposition to the Petition for Extension of Time or Expression of Intent to File an Offer of Financial Assistance (the “Petition”) filed by the Railroad Equipment Restoration Association (“RERA”). KJRR opposes a Board order to extend the time required for filing an expression of intent to file an offer of financial assistance (“OFA”). If the Board construes the RERA filing to be an expression of intent to file an OFA, KJRR respectfully requests that the Board reject the filing for failing to comply with the Board’s regulations requiring that RERA demonstrate that it is preliminarily financially responsible. Further, because RERA has failed to satisfy the Board’s regulations for demonstrating that it is preliminarily financially responsible, the Board should also reject the RERA demand that KJRR provide any information about the rail line to RERA.

BACKGROUND

On August 13, 2021, KJRR filed a notice of exemption under the Board’s class exemption procedures at 49 C.F.R. Part 1152, Subpart F, seeking exemption authority for its abandonment of a rail line in Armstrong and Westmoreland Counties, PA (the “Subject Line”).

KJRR filed for abandonment because no local service had been provided since August of 2018. As explained in the Environmental and Historical Report filed with the Board on July 21, 2021, the largest shipper on the Subject Line was the Logansport Mine, owned by Rosebud Mining Company, an affiliate of KJRR. The Logansport Mine closed in 2018. Following its closure, the Subject Line handled carloads of sand and feed supplement, but – as stated – the Subject Line had not provided service since August 2018. KJRR published a notice of the proposed abandonment in the Valley News Dispatch on June 23, 2021.

On September 2, 2021, the Board served and published in the Federal Register the notice of exemption.¹ The Board’s notice states that formal expressions of intent to file an OFA or an interim trail use/ rail banking requests were due by September 13, 2021.² The Board’s notice does not provide for extensions of this deadline.

Armstrong Trails, Inc. timely filed a petition for issuance of a notice of interim trail use on September 3, 2021, and KJRR filed a reply to that request on September 7, 2021 indicating a willingness to negotiate an interim trail use agreement.

RERA filed its Petition on September 13, 2021. In its filing, RERA indicates that it “only learned of the abandonment filing on September 11, 2021, a weekend and has been unable to engage council (*sic*) prior to the date prescribed in the order to submit a notice of intent.”³ RERA alternatively asks that the Board “treat this filing as a formal expression of intent to file an offer to purchase and determine that the RERA is financially responsible as provided in 49 C.F.R. § 1152.27(c)(2)(i).”⁴

¹ *Kiski Junction Railroad, Inc. – Abandonment Exemption – in Armstrong and Westmoreland Counties, Pa.*, STB Abandonment Docket No. AB1317X (served Sept. 2, 2021).

² *Id.* at slip op. at 2.

³ RERA Petition at 1.

⁴ *Id.*

The RERA Petition further demands “[t]hat the Railroad provide the information required by 49 C.F.R. § 10904 (b) (*sic*) as it relates to a proposed purchase of the rail line, including minimum purchase price required to purchase the entire line; its most recent reports on the physical condition of the railroad line involved in the proposed abandonment; and any other information necessary to allow a RERA or other offer to calculate an adequate purchase offer.”⁵

RERA indicates that it is a 501(c)(3) non-profit corporation, it states that an OFA would benefit the public by “possibly preserving the rail corridor intact for potential future common carrier use and to further the non profit educational mission for the general public.” (Emphasis added.)⁶ RERA does not indicate what its present intentions are for the line or if it knows of any shippers that would utilize the Subject Line.

ARGUMENT

I. The Board Should Reject the RERA Petition for Extension of Time because to do so would be contrary to Congress’s direction to streamline the abandonment and OFA process.

The Board’s notice established September 13 as the due date for parties to file an OFA and for trail use/rail banking. RERA has missed this deadline and now seeks an extension for filing an expression of interest after the Board’s stated deadline. The Board should reject the RERA Petition to extend the time for it to file an OFA because KJRR objects to the requested extension. Under Board precedent, the Board will not permit the late filing of an OFA over the owning carrier’s objection because to do so is contrary to Congressional “direction to streamline the abandonment and OFA process.”⁷

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

⁷ *General R.Y. Corp., d/b/a Iowa Northwestern R.R. Abandonment Exemption – In Osceola and Dickinson Counties, IA*, STB Abandonment Docket No. AB 1067 (Sub-No. 2X), slip op. at 2 (served Oct. 24, 2008).

KJRR opposes the extension because to grant it would interfere with KJRR's abandonment of an unprofitable rail line under the Board's expedited class exemption procedures. KJRR further opposes the extension because KJRR filed under the class exemption process to avail itself of its predictable and closely-controlled deadlines. Additionally, KJRR has indicated that it is willing to proceed with interim trail use negotiations.

RERA's statement that it was unaware of KJRR's notice of exemption until September 11 is not a reason for the Board to permit an extension. The public was given adequate notice of the proposed abandonment in accordance with the Board's regulations. KJRR complied with the Board's requirement for publishing a notice of the proposed abandonment in a newspaper - The Valley News Dispatch on June 23, 2021. Further, KJRR's notice was published in the Federal Register on September 2, 2021. RERA had ample opportunity to learn of KJRR's proposal to abandon the Subject Line.

The Board should reject the RERA's request for an extension because a Board order granting an extension for the stated reason of "possibly preserving the rail corridor intact for potential common carrier use"⁸ would be contrary to the Congressional direction to streamline the abandonment and OFA process. If the Board rejects the RERA Petition, the corridor may still be preserved subject to the reactivation of rail service if the Board grants Armstrong Trails, Inc. a Notice of Interim Trail Use for the Subject Line.

Finally, the Board should reject the Petition for extension because such an order would be highly prejudicial to KJRR by delaying the abandonment based on the whim of a third-party that makes no representations as to its capacity (financial or operational) to acquire the Subject Line and provide common carrier service, or whether any customers even exist on the Subject Line to

⁸ RERA Petition at 2.

whom it would provide service. As part of the OFA process, RERA would have to demonstrate that there is a continued need for rail service on some or all of the Subject Line.⁹ But RERA is unlikely to be able to make such demonstration. As stated in the KJRR Environmental and Historical Report and in its Notice of Exemption, the Subject Line has not served any customers since 2018. It formerly served the Logansport Mine, owned by Rosebud Mining Company--an affiliate of KJRR--and KJRR's largest prior customer. The Logansport Mine closed in 2018.

For all of the foregoing reasons, KJRR does not agree to an extension of the time for the filing of an expression of intent to file an OFA, and the Board should reject the RERA request.

II. The Board should reject the RERA Petition as an Expression of Intent to File an OFA Because It Fails to Satisfy the Board's Requirements for Demonstrating that RERA is Financially Responsible.

The Board should reject RERA's alternate request that its Petition be considered an expression of intent to file an OFA because the Petition does not comply with the Board's regulations under 49 C.F.R. §1152.27(c)(2)(i) requiring RERA to provide any financial information indicating that it is preliminarily financially responsible. Under the Board's regulations, an offeror must provide to the carrier and Board 1) the type of offer (subsidy or purchase) and 2) a demonstration that they are preliminarily financially responsible.

An offeror can show that it is preliminarily financially responsible by demonstrating that it has or within a reasonable time will have the financial resources to fulfilled proposed contractual obligations.¹⁰ In other words, the offeror must demonstrate that it can purchase the rail line that is subject of the abandonment. This demonstration can be made by providing evidence of responsibility such as "income statements, balance sheets, letters of credit, profit and loss statements, account statements, financing commitments, and evidence of adequate insurance

⁹ 49 C.F.R. §1152.27(c)(1)(iv)(E).

¹⁰ 49 C.F.R. §1152.27(c)(1)(iv)(B)

or ability to obtain adequate insurance.”¹¹ The amount of financial resources are determined under a formula as explained in 49 C.F.R. §1152.27(c)(1)(ii).

Here, RERA did not provide any information to satisfy the second condition, either the calculation of the financial resources needed or a demonstration that it has the financial resources necessary. Because RERA has failed to satisfy the Board’s regulations for demonstrating that it is preliminarily financially responsible, the Board should reject RERA’s request that the Petition be considered an expression of intent to file an OFA.

III. The Board should Reject the RERA request that KJRR Provide RERA with any information as it relates to the Subject Line.

In its filing, RERA requests, “[t]hat the Railroad provide the information required by 49 C.F.R. § 10904 (b) (*sic*) as it relates to a proposed purchase of the rail line, including minimum purchase price required to purchase the entire line; its most recent reports on the physical condition of the railroad line involved in the proposed abandonment; and any other information necessary to allow a RERA or other offer to calculate an adequate purchase offer.”¹² The Board should reject this demand that KJRR provide any information, because RERA has failed to meet the prerequisites for demanding the information.

The Board’s regulations require an applicant seeking abandonment to provide information to an offeror that has proven itself preliminarily financially responsible.¹³ Here, as noted above, RERA has not included any information to demonstrate that it is preliminarily financially responsible and as such, the Board should reject its demand that KJRR provide RERA with any information about the Subject Line.

¹¹ *Id.*

¹² RERA Petition at 1-2.

¹³ 49 C.F.R. §1152.27(a).

REQUEST FOR EXPEDITED CONSIDERATION

KJRR respectfully requests expedited consideration of RERA's Petition and this Reply because the Board's regulations at 49 C.F.R. §1152.27(c)(1)(ii) provide for strict timelines regarding the Board's responsibility to issue a decision regarding a demonstration of financial responsibility. The regulations state, "[i]f the Board does not issue a decision regarding the preliminary financial responsibility demonstration within 10 days of receipt of the expression of intent, the party submitting the expression of intent will be presumed to be preliminarily financially responsible and, upon request, the applicant must provide the information required under [49 C.F.R. §1152.27(a)]."

KJRR requests expedited consideration because a 10-day delay in rejecting RERA's Petition might require KJRR to provide information to RERA that KJRR should not have to provide due to RERA's failure to support its assertion that it is preliminarily financially responsible.

CONCLUSION

KJRR respectfully requests that the Board reject the RERA Petition for extension of time because KJRR does not agree to such an extension and under Board precedent, the Board will not grant an extension for the filing of an expression of intent if the owning carrier does not agree to the extension. Further, KJRR respectfully requests that the Board reject the RERA Petition alternate request to be considered an Expression of Intent to File an OFA, because the RERA filing did not satisfy the Board's regulations requiring a demonstration of preliminary financial responsibility.

Respectfully submitted,



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Counsel for Kiski Junction Railroad, Inc.

Dated: September 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Reply was served on all parties of record via email.

Mr. John David Anderson, MPA
Railroad Equipment Restoration Association
Rera.secretary@gmail.com

Mr. Brian D. Farrington
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A handwritten signature in black ink, reading "Justin J. Marks". The signature is written in a cursive, flowing style.

Justin J. Marks

Dated: September 15, 2021