

BEFORE THE SURFACE TRANSPORTATION BOARD

304700

North Coast Railroad Authority –)
Abandonment Exemption –) AB 1305X
In Mendocino, Trinity and Humboldt Counties, CA)

ENTERED
Office of Proceedings
June 6, 2022
Part of
Public Record

Objection and Motion to Reject Seeker Enterprise
Notice of Intent to File an Offer of Financial Assistance

Great Redwood Trail Agency (“GRTA”), formerly named North Coast Railroad Authority (“NCRA”) and hereinafter referred to “NCRA/GRTA,” is an agency of the State of California, and seeks abandonment authority for the line of railroad extending from MP 139.5 (Willits) to end of line at, inter alia, MP 300.5 (Samoa).

Seeker Enterprises (“Seeker”) has filed a “Notice of Intent to File an Offer of Financial Assistance, hereinafter “Notice of Intent,” to acquire two segments of the line (MP 284.75 to MP 287.75 near or within City of Eureka; and MP 300.01 to MP 297.5, near Samoa). NCRA/GRTA objects for the reasons stated below, and to the extent necessary, moves for prompt rejection of Seeker’s Notice of Intent.

An OFA for this kind of rail excursion is not permitted. Seeker states in the first sentence of its Notice of Intent that it desires these two isolated segments of NCRA/GRTA’s properties for use for Seeker’s “railbike recreational service” doing business as “Rail Runners.” Rail Runners is further described as a pedal-

powered recreational operation in Exhibit B to the Seeker Notice of Intent. Seeker thus makes no pretense of providing freight service on either segment which it proposes to file an OFA. Seeker's projected use is for rail bikes. Further, Seeker's Exhibit B as well as its purported showings (including insurance) concerning financial responsibility are devoted to running recreational rail bike excursions.¹

This Board's precedent has long precluded use of the OFA remedy and procedures for excursion rail purposes such as contemplated by Seeker. E.g., The Atchison, Topeka and Santa Fe Railway Co. – Abandonment Exemption – in Atchison County KS, AB 52 (Sub-no. 79X), served April 13, 1995, 1995 ICC Lexis 76, and cases cited (OFA procedures not available for excursion rail proposals). The Seeker Notice of Intent must accordingly be rejected.

Seeker's Notice of Intent does not conform the Board's requirements concerning showings of preliminary financial responsibility. In any event, Seeker fails to show preliminary financial responsibility. Seeker at p. 2 of its Notice of Intent indicates it only intends to show financial responsibility for a rail bike operation (providing insurance quotes for same). It then conflates that showing with some of the requirements of this Board's regulations relating not only to

¹ Moreover, the segments Seeker seeks obviously are not intended for freight use. They do not pretend to connect a freight shipper to the interstate rail network.

preliminary financial responsibility showings but also some showings required if an OFA is filed.

As to preliminary financial responsibility, Seeker says it wants 5.51 miles of track. It then claims (based on an extrapolation from a 2020 case and not on any quote received within the past 30 days) that rail is worth \$51.62 per short ton. Seeker at 2. It then doubles that “for inflation.” This is still not a quote in the last 30 days. According to NCRA/GRTA consultants, scrap and reroll rail is currently quoted delivered at prices in excess of \$600/ton.² In any event, Seeker does not comply with the requirement that it base its rail steel estimate on a quote within 30 days of submission.³ Thus Seeker’s claim that the preliminary financial responsibility” is \$119,160 lacks evidentiary support required under its applicable regulation. In addition, Seeker’s claim to have the money is suspect. Seeker, an LLC, is a separate legal entity from Francis (Uri) Driscoll, yet it seems to rely on a home escrow line of credit for Francis Driscoll, and on other Driscoll assets. So far as the record shows, Seeker itself has nothing. In all events, Seeker’s purported showing of preliminary financial responsibility is not compliant with the Board’s

² See email attached as Exhibit A.

³ 49 CFR 1152.27(c)(1)(ii) provides that “the preliminary financial responsibility amount shall be the sum of the rail steel scrap price per ton (dated within 30 days of the submission of the expression of intent), times 132 short tons per track mile or 117.857 long tons per track mile, times the length of the line in miles, plus \$4,000 times the number of miles of track times two.” (Emphasis added.)

applicable regulation. This is an independent reason for rejection of the Seeker notice of intent to file an OFA.⁴

Conclusion. Seeker's Notice of Intent to File an OFA is for an unpermitted purpose and lacks a proper showing of preliminary financial responsibility. It must accordingly be rejected.

Certificate of Service. I hereby certify service by email attachment on June all parties of record in AB 1305X per the STB website service list as of June 5, 2022, and in particular upon Seeker's representative (Francis Driscoll at info@railrunner-usa.com per the STB website).

Respectfully submitted,

s/ Charles H. Montange

Charles H. Montange
Law Offices of Charles H. Montange
426 NW 162nd St.
Seattle, WA 98177
(206) 546-1936, fax -- 3739
Rail counsel for NCRA/GRTA

For filing: June 6, 2022

cc. All parties of record

⁴ NCRA/GRTA is not commenting at this time on other "claims" or "showings" by Seeker because they are only relevant if Seeker is permitted to file an OFA. Nothing herein should be construed to mean that NCRA/GRTA in any way concedes that Seeker has met, or ever could meet, the requirements for an OFA specified in, inter alia, 49 C.F.R. 1152.27(c)(1)(iv), including but not limited to actual financial responsibility, rail need, community support, and so on. NCRA/GRTA of course reserves all rights in this connection.

Exhibit A
Quote in Last 30 Days on Scrap/Reroll Prices Delivered

Reroll & Scrap Rail Prices

Frontier-Yahoo/Inbox

Montey Sneed <monteysneed@+++++++ >

To:C. Montange

Sat, Jun 4 at 5:53 PM

Chuck

Per your request.

Reroll and scrap rail are being priced the same.

Per Dave Buff of Chicago Heights Steel the price delivered to the mill as of May 21st .is \$625 per gross ton.

Thanks,

Montey Sneed