



DEPARTMENT OF THE ARMY
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
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Mr. Jonathon Binet
United States Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: DoD Comment Regarding Offers of Financial Assistance (Docket No. EP 729)

Dear Mr. Binet:

We respond to the STB's request for comment on Docket Number EP 729 which was published in the Federal Register on October 5, 2016. EP 729 is a notice of proposed rulemaking regarding offers of financial assistance (OFA) related to prospective railroad abandonments and discontinuances of service.

We find that most changes the Board proposed under Docket Number EP 729 are either beneficial in nature, or neutral. However, the proposed requirement that the federal government entities make escrow deposits is inordinately burdensome, and of little practical benefit since government entities are presumed to be financially responsible. Our submission suggests a minor modification of the wording of 152.27(c)(iv)(D) to accommodate the unique needs of the federal government and our national defense. Enclosed, please find comments from the Military Surface Deployment and Distribution Command (SDDC).

Should any questions arise regarding SDDC's comments, please do not hesitate to contact me at (618) 220-5796 or via e-mail at david.j.dicenso.civ11@mail.mil. Thank you for your consideration of the enclosed.


DAVID J. DICENSO
Attorney-Advisor

SURFACE TRANSPORTATION BOARD
49 CFR PART 1152
[DOCKET NO. EP 729]
OFFERS OF FINANCIAL ASSISTANCE
ADVANCED NOTICE OF PROPOSED RULEMAKING

COMMENTS FROM
RAILROADS FOR NATIONAL DEFENSE PROGRAM
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
TRANSPORTATION ENGINEERING AGENCY

This statement is in regard to the Surface Transportation Board (STB) Federal Register Docket Number EP 729 which was published in the Federal Register on October 5, 2016. This is a notice of proposed rulemaking concerning offers of financial assistance (OFA) related to prospective railroad abandonments and discontinuances of service.

On behalf of the Department of Defense, the Military Surface Deployment and Distribution Command (SDDC) has an ongoing interest concerning proposed changes to the railroad abandonment process.

By way of background, the Transportation Engineering Agency of SDDC (SDDCTEA), through the Railroads for National Defense (RND) Program, works with each military Service to identify its requirements for civil sector rail service. The Services' needs and requirements are then integrated into civil sector plans. The October 2013 report, "Strategic Rail Corridor Network (STRACNET) and Defense Connector Lines", is the formal document that designates civil rail lines most important to national defense. This designation comprises over 36,000 miles of integrated and interconnected lines for the movement of defense cargo throughout the United States in peace and war. There are approximately 120 military installations and other locations involved in the movement of defense forces and material to ports of embarkation for deployment. These sites require rail service to accomplish their assigned mission and are served by lines designated as part of the STRACNET and connectors between STRACNET lines and military installations and critical ports.

Occasionally, the rail carriers that own these lines make a financial determination that operating a line is no longer profitable and seek to abandon it. If a rail line is important to national defense, the Department of Defense must be able to enter the abandonment process to prevent the abandonment. One of the tools for preventing an abandonment is the OFA. SDDC represents the interests of all the military Services in preserving rail service before the STB. However, the funding stream for an OFA would not pass through SDDC, and in fact, different funding streams would be used to preserve rail service at military installations of each of the different military Services.

Railroads are to be operated in the public interest. If it is in the public interest that a money-losing railroad line remain in operation, then it is reasonable to expect some government entity to come forward with an OFA, preserving the public interest of continued operation, while not damaging the private interest by forcing a railroad company to continue to operate a railroad line that serves the public interest at an uncompensated loss. Clearly, national defense is one aspect of the public interest. It is important, and in some cases critically important, to preserve rail service on defense-important lines, and that any transition of ownership/operation occur seamlessly, without any interruption of rail service.

SDDC agrees with the Board's decision to continue the presumption in the Code of Federal Regulations § 1152.27 that any government entity is financially responsible. We do however question the benefit of requiring a government entity to make an escrow payment in order to file an OFA. Certainly the Federal Government, and in particular, the Department of Defense, has demonstrated that it is financially responsible in having already acquired and operated railroad lines subject to abandonment that are important to national defense. For example, after the Illinois Central Gulf (ICG) received authority to abandon their line from Hopkinsville to Nashville [AB 43 Sub No. 70F], the Army bought the portion of the line from ICG that serves Fort Campbell. The Army bought this line directly from ICG and did not use the OFA process. Also, in this case, the Army bought the line after the common carrier obligation on it was extinguished, so the Army operated it as an extension of the Fort Campbell utility railroad. Nevertheless, the Army has successfully operated and maintained this railroad for over 30 years, clearly demonstrating financial responsibility.

An escrow requirement would be especially problematic for federal entities that are considering filing an OFA. Given the appropriations process that the federal government operates under, rapidly being able to budget money for an OFA escrow deposit may be difficult in the timeframes set forth by the board. An escrow deposit may also create difficulties if it must be made in one fiscal year but the actual need for payment for subsidized railroad operation does not begin until the next fiscal year. Certain appropriations are available for obligation only in the fiscal year in which they were appropriated. Funds that are not expended in the fiscal year in which they were appropriated may be subject to unavailability for obligation in the following fiscal year without resubmitting a new requirement.

For the Department of Defense, the escrow payment creates an additional challenge. SDDC is the organization within the Department of Defense that will file to prevent abandonments before the STB. However, the funding for OFAs will come from other entities within the Department of Defense [which will vary depending upon which military installation is threatened with losing rail service]. SDDC is confident that necessary coordination and funding arrangements can be completed before any actual payment of defense money pursuant to an OFA occurs. However, completing the coordination and funds transfers in time to provide an escrow deposit on the schedule that the STB envisions may be impossible.

SDDC finds that most changes the Board proposes under docket number EP 729 are either beneficial or neutral. However, the proposed requirement that government entities make escrow deposits is quite burdensome, and of little benefit since government entities are presumed to be financially responsible (and the Department of Defense has a history of demonstrating such responsibility). Therefore, SDDC suggests that the proposed wording for 1152.27 (c) (iv)(D) be changed to read, "(D) Demonstrate that the offeror, if a non-government entity, has placed in escrow with a reputable financial institution funds equaling 10% of the preliminary financial responsibility amount calculated pursuant to paragraph (c)(1)(ii) of this section;"

The Department of Defense rarely participates in abandonment cases since most proposed railroad abandonments do not involve railroad lines that are important to national defense. However, if an abandonment application is filed and we recognize an important national defense interest, the OFA process must remain flexible enough to fully support Department of Defense interests in preserving militarily important railroad lines, and not unduly burden the Department of Defense.



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