

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

239384

ENTERED
Office of Proceedings
October 20, 2015
Part of
Public Record

Docket No. AB 603 (Sub-No. 4X)

**V AND S RAILWAY, LLC
-- ABANDONMENT EXEMPTION --
IN PUEBLO, CROWLEY AND KIOWA COUNTIES, COLORADO**

MOTION FOR EXTENSION OF FILING DATE

KCVN, LLC and Colorado Pacific Railroad, LLC ("Offerors") hereby jointly request a very brief extension of the deadline for filing their Offer of Financial Assistance ("OFA") from October 20, 2015 to October 23, 2015, in light of the decision served in this proceeding late yesterday by the Director of the Office of Proceedings ("October 19 Decision").¹ The undersigned counsel for Offerors has conferred with counsel for V&S and is authorized to state that V&S does not object to this request for extension.

In support of this request, Offerors state the following:

1. By Decision served September 17, 2015, the Board established October 20, 2015 as the date for Offerors to submit their OFA to purchase the railroad line that is subject to abandonment in this proceeding.
2. The October 19 Decision describes how the Board, while reviewing materials provided to it by the V AND S Railway, LLC ("V&S"), discovered a potential error in the Notice

¹ Offerors submit that good cause exists for waiving the 10-day notice requirement of 49 C.F.R. §1104.7 in this instance.

of Exemption filed by V&S. Specifically, the Board noted that the documents provided by V&S "appear to indicate that part of the Towner Line passes through Otero County; V&S's verified notice of exemption and environmental report, however, indicate that the Towner Line passes through only Pueblo, Crowley, and Kiowa Counties. This segment through Otero County also appears to traverse a zip code (81050) that V&S did not disclose." October 19 Decision at 1-2.

3. The October 19 Decision orders V&S to inform the Board by October 22, 2015 if the Towner Line does not pass through Otero County and the related zip code. Presumably, if this is the case (i.e., the line does not pass through Otero County and the related zip code) then this proceeding will continue as currently scheduled.

4. If, however, V&S's Notice of Exemption was in fact erroneous, then upon informing the Board of this fact on October 22 (or through silence on October 22), "all deadlines currently associated with this proceeding, including those for filing OFAs, shall no longer be operative, and this proceeding will be held in abeyance until further order of the Board." *Id.* at 2. However, October 20 is the only current deadline for filing OFAs.

5. Further, if its Notice of Exemption was in error, sometime after October 22, 2015 V&S would be required to file a supplemental updated notice of exemption and environmental report, and the filing date of such materials would effectively re-start this exemption proceeding. The Board would then set new deadlines for the abandonment proceeding, including new deadlines for the submission of OFAs. *Id.*

6. Despite the language in paragraph 4 above, the October 19, 2015 decision does not render inoperative the October 20, 2015 date for Offerors to file their OFA, since under the decision abeyance only occurs if, on October 22, V&S advises the Board that the Towner Line does not pass through Otero County, or says nothing.

Argument

Granting a brief extension of the October 20, 2015 filing date to October 23 will not prejudice any party, since if the response from V&S on October 22 is negative (*i.e.*, the line does not pass through Otero County), then the OFA process can continue essentially on its current timeline, with little risk of Offerors having to supplement or to update the data in their OFA. On the other hand, if Offerors are required to file their OFA on October 20, before the Board learns the answer to its question, Offerors would be prejudiced if the answer is that the line does pass through Otero County. No deadline is established for V&S to update its notice of exemption and environmental report. As such, the date for re-starting this abandonment exemption proceeding is not currently known. To this initial uncertain period would be added the procedures and timelines of 49 CFR Part §1152.27 once the amended notice was filed and new deadlines were established by the Board. This overall process could result in the new date for submitting OFAs for the Towner Line being numerous months from now.

The OFA of Offerors will be less than the minimum purchase price established by V&S, which they believe substantially overstates the Net Liquidation Value of the Towner Line. Under the applicable rules governing OFAs Offerors must explain the disparities between their offer and the railroad's minimum price, and explain how the offer is calculated. 49 C.F.R. §1152.27(c)(1)(ii)(C). If Offerors file their OFA as scheduled on October 20, it will be based in large part on current rail and materials pricing and other valuation information. If the case is then held in abeyance on October 23 and restarted at some point months from now with new dates for submissions of OFA's established, then Offerors will have to update and revise their original OFA to include more recent pricing and valuation information, as well as updated

information related to the financial responsibility of Offerors. It would be much more efficient and less burdensome for Offerors present an OFA that contains current data and information on a more definite procedural schedule.

WHEREFORE, for the reasons set forth hereinabove, Offerors respectfully request that the Board briefly extend the deadline for the filing of their OFA to October 23, 2015. If the V&S's response on October 22, 2015 is in the negative and the Towner Line does not pass through Otero County and the related zip code, then the OFA can be submitted the next day and this proceeding can move forward. If the response is in the negative, under the October 19 Decision this proceeding would be held in abeyance as of October 22, and Offerors would then submit an updated OFA later "in accordance with the new deadlines concerning OFAs that the Board will set." *Id.* at 2.

Respectfully submitted,



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October 20, 2015

CERTIFICATE OF SERVICE

I do hereby certify that on this 20th day of October, 2015, I have served a copy of the foregoing Motion for Extension of Filing Date by email on the following persons:

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