

STB EX PARTE NO. 729

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ADVANCED NOTICE OF PROPOSED RULEMAKING
OFFERS OF FINANCIAL ASSISTANCE

REPLY COMMENTS OF JAMES RIFFIN
TO THE STB'S FINAL OFA RULES

1. James Riffin herewith offers his Comments regarding the STB's June 28, 2017 Served Decision giving Notice of the STB's proposed Final Revisions to the STB's Offer of Financial Assistance ("OFA") Regulations.

2. Riffin commends the STB for the well thought out, well argued, and well written decision. The decision strikes an appropriate balance between the competing interests. The decision, coupled with the proposed revisions to the OFA regulations, provides a prospective OFA Offeror with sufficient guidance to determine whether to file an OFA Offer, and if the decision is made to file an OFA Offer, the information the OFA Offeror needs to provide to the STB, and the criteria by which an OFA Offer will be judged. The Decision also puts carriers on notice that a carrier needs to compile 49 CFR 1152.27 (a) information **before** it files to abandon a line of railroad, as opposed to compiling the information **after** the information is requested, thereby delaying unnecessarily the proceeding.

SUGGESTIONS

3. On p. 6 of the Decision, the STB made the following statement:

“The Board will clarify 49 C.F.R. § 1152.27(c)(1)(ii) to provide that the length of the line listed in the carrier’s abandonment or discontinuance filing (**or the length the potential offeror seeks to purchase**, as discussed further below) should be used in the calculation in place of the actual length of track. This language is reflected in the Appendix.” Bold added.

4. The Final Rule states:

(ii) *Preliminary financial responsibility*. Persons submitting an expression of intent to file an offer of financial assistance as described in paragraph (c)(1)(i) or paragraph (c)(2)(i) must demonstrate that they are financially responsible, under the definition set forth in paragraph (c)(1)(iv)(B), for the calculated preliminary financial responsibility amount of the rail line they seek to subsidize or purchase. If they seek to subsidize, the preliminary financial responsibility amount shall be \$4,000 (representing a standard annual per-mile maintenance cost) **times the number of miles of track**. If they seek to purchase, the preliminary financial responsibility amount shall be the sum of (a) 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 (b) \$4,000 **times the number of miles of track** times two.” Bold and CAPS added.

5. Normal statutory interpretation rules state that if the language in a rule / statute is different from the language used in the discussion preceding the promulgation of the rule / statute, the actual language in the rule / statute controls.

6. While the discussion in the decision at p. 6 clearly states that “**the length the potential offeror seeks to purchase**,” is the length to be used in the calculation, the rule, as currently written, also clearly states: “**times the LENGTH OF THE LINE in miles**.”

7. Riffin argues that the rule, as written, is at best ‘ambiguous,’ and at worst, clearly contradicts the rule as discussed in the body of the Decision.

8. Since the purpose for revising the rule is to clarify the criteria for filing an OFA offer, Riffin suggests the following few words (in bold italics) be added to the Final Rule:

(ii) *Preliminary financial responsibility*. Persons submitting an expression of intent to file an offer of financial assistance as described in paragraph (c)(1)(i) or paragraph (c)(2)(i) must demonstrate that they are financially responsible, under the

definition set forth in paragraph (c)(1)(iv)(B), for the calculated preliminary financial responsibility amount of the rail line they seek to subsidize or purchase. If they seek to subsidize, the preliminary financial responsibility amount shall be \$4,000 (representing a standard annual per-mile maintenance cost) times the number of miles of track. ***the potential offeror seeks to subsidize.*** If they seek to purchase, the preliminary financial responsibility amount shall be the sum of (a) 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 in miles ***that the potential offeror seeks to purchase,*** plus (b) \$4,000 times the number of miles of track ***that the potential offeror seeks to purchase,*** times two.” Bold and *italics* added.

9. Riffin would further suggest that either at the beginning of 1152,27, or at the end of 1152.27, the following additional language should be added:

“Source: EP 729, Served June 29, 2017.”

10. Doing so will ‘advise’ a novice OFA offeror, to read the Final EP 729 Decision, and the cases cited therein.

11. Remember: This Rule will be read by ‘novice’ OFA offerors many years in the future. Long after the existing ‘players’ in this proceeding are no longer around.

12. It took Riffin 14 years to learn the OFA rules / criteria. The new rule, coupled with the June 29, 2017 Decision and the cases cited therein, will enable a novice OFA Offeror / Practitioner, to learn the OFA rules / criteria, after five hours or so of reading. That should make the OFA process much more efficient, and should preclude (or at least diminish) the number of unlikely-to-succeed (some may call ‘abusive’) OFA Offers being filed.

13. Riffin believes that the new Rule, coupled with the June 29, 2017 Decision and the cases cited therein, now makes it clear that an OFA offeror must convince the STB that the OFA Offeror’s Offer:

A. Is likely to result in ‘continued freight rail service,’ (Which may be augmented with some form of passenger rail service E.g. The *Strausburg PA* rail line, which offers and provides both freight rail service and ‘tourist / excursion’ rail service.)

B. Which is ‘feasible.’ (Can physically be made to happen.)

C. And that it is helpful if the OFA Offeror can obtain, in the short amount of time within which one must determine whether to file an OFA offer, statements of some sort (Verified, if possible) from potential shippers.

14. And it is very helpful to the OFA Offeror to know what types of ‘proof of financial responsibility’ the STB is looking for (and more importantly, what the STB is **not** looking for / will not accept).

15. Riffin thanks the STB, and the other parties that provided comments, and arguments in support of those comments, for the time and effort they devoted to improving the OFA regulations / procedures.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on or before the 5th Day of July, 2017, the above Reply Comments were served on the parties of record in the EP 729 proceeding, by e-mail.

James Riffin¹

¹ Presently, and for a number of additional weeks, Riffin can only e-mail copies of his filings. (He is hospitalized.) On June 1, 2017, Riffin was riding his bicycle. A car turned in front of Riffin when Riffin was 20 or so feet from the car. Riffin hit the car at 20 or so MPH. He broke two leg bones (he presently cannot walk), 5 ribs, and a finger. His left arm was ‘degloved..’ (Think ‘scalped,’) He lost 8 inches of colon and 2 pints of blood. Evidently God still has a reason for keeping Riffin here on Earth. Not so for another cyclist in Baltimore. He got hit by three cars and died. If there are typos in this filing, the reader now knows why. (Try typing with one finger.)