

DECISION

STB Docket No. AB-33 (Sub-No. 112X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN LANCASTER COUNTY, NE

OFFER OF FINANCIAL ASSISTANCE

Decided: October 7, 1997

By decision served September 24, 1997, the Board granted the Union Pacific Railroad Company (UP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.88-mile segment of its Lincoln Branch between milepost 494.76, near 10th Street, and milepost 492.88, near 33rd Street, in Lincoln, NE. The exemption was scheduled to become effective on October 24, 1997, unless an offer of financial assistance (OFA) was filed with the UP and the Board by October 3, 1997. On October 3, 1997, Lincoln Lumber Company (LLC) filed an OFA to purchase a portion of the segment between 19th Street and the west edge of 24th Street for \$178,323.77.

In the September 24, 1997 decision, the Board determined that the net liquidation value of the portion of the line between 19th Street and 24th Street is \$263,779. While UP estimated the market value of land to be \$306,000, the Board reduced the valuation to \$255,000, because the UP's valuation had included an unreasonable assemblage factor adjustment. The Board also accepted a track net salvage value of \$8,779 based on UP's valuation.

LLC contends that UP's land value is unduly high because: (1) UP's across-the-fence value (ATF) was not correctly derived; (2) UP failed to adjust the ATF value for specific conditions in the area of the subject property in deriving gross land value; and (3) UP failed to adjust gross value by factors for time required to sell the property and the costs of sales to arrive at net land value. Also, LLC contends that UP's estimate of track materials is overstated because UP's reply statement uses a cost of removing road crossing that is substantially less than the corresponding cost used in its petition for exemption.

An OFA need not be detailed, but an offeror must show that it is financially responsible and must explain any disparity between its offer and the rail carrier's estimated value of the assets sought to be acquired under 49 U.S.C. 10904.

LLC has submitted a verified statement of its president, Don Hamill, and letters from several banks indicating that LLC has more than \$2 million in cash available to acquire and operate the line. The financial information submitted shows that LLC is a financially responsible entity. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), LLC has also explained the basis for the disparity between its offer and UP's estimated valuation.

Because LLC, a financially responsible entity, has offered financial assistance, the effective date of the exemption authorizing abandonment of the portion between 19th Street and the edge of 24th Street will be postponed, pending completion of the OFA process. Unless otherwise ordered, the exemption authorizing abandonment of the remainder of the segment will become effective as scheduled on October 24, 1997.

Any person filing a request to set terms and conditions must pay the requisite filing fee, as set forth at 49 CFR 1002.2(f)(26), which is currently \$13,500. An original and 10 copies of the request should be submitted along with the filing fee, in an envelope bearing the docket number of the proceeding along with the words: "Attention: Application Unit, Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The effective date of the exemption authorizing abandonment of the portion of the line between 19th Street and 24th Street is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If the railroad and the offeror cannot agree on the purchase price for the line, either party may request, on or before November 3, 1997, that the Board establish the terms and conditions of the purchase. If no agreement is reached and no request is made by that date, the Board will serve a decision vacating this decision and allowing the abandonment authorization to become effective.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary