

30502
DO

SERVICE DATE - LATE RELEASE SEPTEMBER 10, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-556 (Sub-No. 2X)

RAILROAD VENTURES, INC.--ABANDONMENT EXEMPTION--BETWEEN
YOUNGSTOWN, OH, AND DARLINGTON, PA, IN MAHONING AND COLUMBIANA
COUNTIES, OH, AND BEAVER COUNTY, PA

STB Docket No. AB-555 (Sub-No. 2X)

THE OHIO & PENNSYLVANIA RAILROAD COMPANY--ADVERSE DISCONTINUANCE
OF SERVICE EXEMPTION--BETWEEN YOUNGSTOWN, OH, AND DARLINGTON, PA, IN
MAHONING AND COLUMBIANA COUNTIES, OH, AND BEAVER COUNTY, PA

Decided: September 10, 1999

By decision served on September 3, 1999 (September 3 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Railroad Ventures, Inc. (RVI), of a 35.7-mile line of railroad extending from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile line segment near Negley, OH, and the discontinuance of service over the line by The Ohio & Pennsylvania Railroad Company (OPRC). The exemption was scheduled to become effective on October 3, 1999, unless stayed by the Board or unless a formal offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) was filed within 10 days of the service date of the September 3 decision or by September 13, 1999.

On September 3, 1999, Columbiana County Port Authority (CCPA) filed a petition to toll the 10-day period for submitting an OFA for at least 30 days or until October 13, 1999. On September 8, 1999, Penn-Ohio Recycling, Inc. (Penn-Ohio), filed a petition to toll the period for submitting an OFA until 30 days after all requested documents and information have been furnished. Additionally, Penn-Ohio requests that its filing be considered as a reply under 49 CFR 1104.13(a) in support of CCPA's September 3 petition. (CCPA and Penn-Ohio will be collectively referred to as offerors.) Also, on September 8, 1999, the Ohio Rail Development Commission filed a letter in support of CCPA's petition.

CCPA states that, on August 3, 1999, it requested RVI to provide it with the financial data and information prescribed in 49 CFR 1152.27(a). On August 10, 1999, RVI provided CCPA with some of the information. RVI advised CCPA that it did not have a large administrative staff and suggested that CCPA arrange for copying of the valuation maps and deeds for the line at RVI's offices during normal business hours. CCPA states, however, that the appraiser it retained to conduct an appraisal of the rail line real estate, Mr. John Rossi of Real Estate Appraisal Associates,

was denied access by RVI to relevant valuation maps and deeds. CCPA requests that Mr. Rossi be given access to the relevant documents and that RVI also be required to provide information concerning the existence of any licenses, leases, easements or other burdens on the right-of-way in addition to specific information previously requested.¹

Penn-Ohio states that, on July 26, 1999, as supplemented on July 29, 1999, and on August 5, 1999, it also requested RVI to provide specified documents and information under 49 CFR 1152.27(a). On August 10, 1999, RVI provided Penn-Ohio with some of the information but refused to provide other relevant information allegedly because it is not required by Board regulations. Penn-Ohio requested, but RVI refused to provide, copies of any offers for purchase of the rail line property, any contracts for the sale of rail line property, and any occupancy agreements (leases, licenses, easements, etc.). RVI also advised Penn-Ohio that it should arrange for copying the valuation maps and deeds for the line at RVI's offices.

RVI has advised offerors that it must have assurances that they have the financial and operational capabilities to proceed in accordance with the OFA regulations and suggests that offerors schedule a meeting with RVI's representative to identify the nature of the interest they wish to acquire. RVI may not require such assurances before providing offerors the information required by 49 CFR 1152.27(a).² Offerors must state, in their offers, the nature of the interest they intend to acquire for continued rail service. It is the province of the Board, not RVI, to determine, after an offer is filed, whether the offeror is financially responsible. See 49 CFR 1152.27(e)(2).

Under 49 CFR 1152.27(c)(1)(i)(C), the Board will entertain petitions to toll the 10-day period for filing OFAs when a petitioner has failed to provide a potential offeror with the information necessary for the development of its OFA that is not contained in the petition. Accordingly, the time period for filing an OFA in this proceeding will be tolled until 30 days after RVI provides offerors with the requested information and documents, and the effective date of the abandonment exemption will also be stayed.³

The Board will order RVI promptly to provide offerors with all of the information required by 49 CFR 1152.27(a), including supporting data and access to maps and deeds and any

¹ Penn-Ohio specifically supports CCPA's petition to require RVI to comply with 49 CFR 1152.27(a) in regard to deeds, valuation maps and supporting data.

² The OFA regulations require RVI to cooperate fully in providing offerors with the information necessary to develop an adequate subsidy or purchase offer. See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C.2d 164, 165 (1987).

³ Because this extension grant is not date specific, RVI is requested to notify the Board when it has furnished the requested documents and information to offerors so that the due date to file OFAs and the effective date of the exemption can be determined for the record.

information⁴ necessary to ascertain the nature, and hence value,⁵ of RVI's title to the right-of-way to permit offerors to prepare their offers for submission to the Board.

By letter filed on September 9, 1999, OPRC takes no position on CCPA's petition, but requests that, if an extension is granted, the Board clarify that such an extension does not delay the effective date of OPRC's discontinuance exemption. OPRC's request will be denied because OFAs contemplate subsidy for continued operation as well as purchase of the line, and thus we cannot rule out the possibility of a subsidy offer at this time.

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

It is ordered:

1. RVI is ordered promptly to provide offerors with all of the information required by 49 CFR 1152.27(a), including supporting data and access to maps and deeds and any information bearing on the nature of RVI's title to the right-of-way, to permit them to prepare their offers for submission to the Board.

2. The time period for CCPA and Penn-Ohio to file an OFA is extended until 30 days after RVI provides them with the requested documents and information.

3. The effective date of the abandonment exemption is extended until 40 days after RVI provides the offerors with the requested documents and information, unless before that date the Board determines that a financially responsible person has offered financial assistance.

4. OPRC's request is denied.

⁴ If RVI believes that some of the information requested, such as prior offers to purchase the property and existing occupancy agreements are proprietary and confidential, it may request the Board to issue a protective order under 49 CFR 1104.14 before furnishing such information to offerors.

⁵ RVI stated in letters to offerors that the question of fee title is not pertinent because, if this right-of-way is not acquired for continued railroad operation under an OFA, RVI has agreed to the imposition of a Notice of Interim Trail Use and will convert the right-of-way to trail use which precludes the vesting of reversionary interests. This is incorrect. The nature of RVI's title is pertinent in an OFA proceeding because, if offerors propose to purchase the line for continued rail service, the purchase price must take into account all encumbrances on the title, such as reversionary interests.

STB Docket No. AB-556 (Sub-No. 2X), et al.

5. This decision is effective on its service date.

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

Vernon A. Williams
Secretary