

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-398 (Sub-No. 7X)

SAN JOAQUIN VALLEY RAILROAD COMPANY  
–ABANDONMENT EXEMPTION–  
IN TULARE COUNTY, CA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: June 20, 2008

By decision and notice of interim trail use served on June 6, 2008, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by San Joaquin Valley Railroad Company (SJVR) of a 30.57-mile portion of the South Exeter Branch between milepost 268.60 at Strathmore and milepost 299.17 at Jovista in Tulare County, CA, subject to environmental, trail use and employee protective conditions. The exemption was scheduled to become effective on July 6, 2008, unless an offer of financial assistance (OFA) was filed on or before June 16, 2008.<sup>1</sup>

On June 13, 2008, the Board of Supervisors of the County of Tulare (the County) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the 30.57-mile portion for \$555,000.<sup>2</sup> On June 17, 2008, SJVR filed a response to the County's OFA.

On June 16, 2008, Tulare Valley Railroad Company (TVRR) also timely filed a public version and confidential version under seal of its OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the above-described rail line for \$996,000.

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<sup>1</sup> In a concurrently served decision in San Joaquin Valley Railroad Company–Abandonment Exemption–in Tulare County, CA, STB Docket No. AB-398 (Sub-No. 8X) (STB served June 6, 2008), the Board denied SJVR's petition for exemption to abandon an adjoining 9.20-mile portion of the South Exeter Branch located north of the subject line between milepost 259.40 near Exeter, CA, and milepost 268.60 at Strathmore.

<sup>2</sup> In its OFA, the County also offered to acquire the adjoining 9.20-mile portion of the South Exeter Branch that was proposed for abandonment in STB Docket No. AB-398 (Sub-No. 8X) for \$295,000. The Board has no authority to consider the County's offer to purchase the adjoining portion of the South Exeter Branch as part of the OFA here. The parties may negotiate the sale of the 9.20-mile portion privately.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

The County's offer is substantially less than SJVR's estimated purchase price of \$995,574, consisting of the value of the rail and track materials less the cost of their removal.<sup>3</sup> Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), the County explains that its offer is based on a lower scrap value of rail, other track materials and turnouts at the average 2007 steel scrap price as reported by the U.S. Geological Survey (USGS), Mineral Commodity Summaries, January 2008.<sup>4</sup> The County, as a governmental entity, is presumed to be financially responsible. See 49 CFR 1152.27(c)(1)(ii)(B). The County is thus found to be financially responsible.<sup>5</sup>

TVRR states that its offer amounts to a modest premium above SJVR's estimated purchase price of \$995,574. TVRR has provided sufficient evidence in its OFA to show that it has the financial resources to purchase the rail line. TVRR has submitted a verified statement from Mr. Kern W. Schumacher, the owner of 90% of the outstanding shares of the carrier's common stock. Mr. Schumacher states that he and Ms. Rhonda. L. Nicoloff, owner of TVRR's remaining outstanding shares of stock, will guarantee the purchase price TVRR needs to pay for SJVR's rail line and to meet the shortfall, if any, in the line's operating income to assure that the line will continue to be available to provide service to shippers for at least 2 years' time. This is particularly important because the purpose of section 10904 is to preserve rail lines for continued rail service. Attached as Exhibit B, which was filed under seal, is a copy of Mr. Schumacher's Statement of Financial Condition together with an Accountant's Compilation Report and Supplementary Information, as of December 31, 2007. The financial information submitted shows that the offeror is financially responsible.

Under 49 U.S.C. 10904(f)(3) and 49 CFR 1152.27(l), when there are multiple offers, the carrier must select the offeror with which it wishes to transact business. SJVR will thus be directed to provide written notification of its selection to the Board and all parties to this proceeding by July 1, 2008.

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<sup>3</sup> SJVR's estimated purchase price did not include land value because the Union Pacific Railroad Company owns the underlying real estate.

<sup>4</sup> See, [http://minerals.er.usgs.gov/minerals/pubs/commodity/iron\\_&\\_steel\\_scrap/mcs-2008-fescr.pdf](http://minerals.er.usgs.gov/minerals/pubs/commodity/iron_&_steel_scrap/mcs-2008-fescr.pdf).

<sup>5</sup> The OFA also includes a proposal that SJVR continue to operate the rail line under a contract with the County, with a guaranteed traffic level of 200 rail cars per year and a surcharge of \$300 per car for the line. Any arrangement between the County and an operator of the line is a contractual matter, however, and is beyond the scope of the Board's authority under 49 U.S.C. 10904 to consider the County's offer to purchase the subject line.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$19,300. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: 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 decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. SJVR is directed to provide written notification of its selection of the offeror with which it wishes to transact business to the Board and all parties to this proceeding by July 1, 2008.
3. If SJVR and the party it selects cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before July 16, 2008. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary