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SERVICE DATE – JANUARY 30, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 305X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
SOMERSET COUNTY, PA

Decided: January 29, 2009

By decision served on January 16, 2009 (January 2009 decision), the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C.10903 the abandonment by Norfolk Southern Railway Company (NSR) of a 1.80-mile line of railroad known as the South Fork Industrial Track, extending between milepost QS 14.40 and milepost QS 16.20 in Somerset County, PA, subject to standard employee protective conditions. The January 2009 decision also denied NSR's request to be exempted from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. Provided no OFA had been filed by the January 26, 2009 due date, the abandonment exemption was scheduled to become effective on February 15, 2009.

On January 26, 2009, Kiski Junction Railroad, Inc. (KJR), timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the 1.80-mile line. KJR states that it is a Class III railroad that shares common ownership with Rosebud Mining, the sole shipper on the line, and has the equipment and personnel to be able to operate the line. KJR also states that the purchase price for the line would generally be net liquidation value (NLV) but that NSR did not set forth an NLV in its petition. KJR offers to purchase the line for \$10, contending that, based upon ongoing discussions between the parties, KJR and NSR would be able to reach an agreement on the NLV. KJR asserts that it is entitled to credits against the purchase price for amounts that have been contributed to NSR toward the rehabilitation and reopening of the line, and that those credits would reduce the purchase price for KJR to a nominal amount.

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). In this instance, KJR has failed to make either showing. KJR's statement of financial responsibility is an assertion unsupported by concrete financial evidence such as income statements, balance sheets, letters of credit, or other financial statements. And KJR's \$10 purchase offer does not begin to approximate the net liquidation value of a 1.80-mile rail line; indeed, KJR concedes as much. Its claim that it is entitled to credits against the purchase price for amounts that have been contributed to NSR for the rehabilitation of the line is unsupported by any evidence and is not corroborated by NSR. Nor does KJR provide evidence that it has the resources to meet a purchase price set at anything above a nominal value. Accordingly, the OFA will be rejected.

KJR candidly admits that it has filed its OFA as a protective measure because the Board denied NSR's request for an exemption from the OFA process. KJR explains that NSR had agreed to sell the line to Rosebud Mining after abandonment for operation as private track. Although KJR and Rosebud Mining prefer to have the line abandoned and to operate it as private track, KJR states that it has filed its OFA to protect their interest in the line in the event that other OFAs were filed. But no other OFAs have been filed, and the deadline has passed. Thus, rejecting KJR's OFA will not harm Rosebud Mining's and KJR's ability to acquire the line outside of the OFA process and operate it as private track as they prefer; indeed, it should facilitate that process.

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 the conservation of energy resources.

It is ordered:

1. KJR's offer of financial assistance is rejected.
2. The exemption authorized by the Board's January 2009 decision will become effective on February 15, 2009, subject to the standard employee protective conditions.
3. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary