

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-1000 (Sub-No. 1X)

GEORGIA SOUTHWESTERN RAILROAD, INC.—ABANDONMENT AND
DISCONTINUANCE EXEMPTION—IN HARRIS AND MERIWETHER COUNTIES, GA

Decided: December 19, 2007

By decision served on December 10, 2007, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Georgia Southwestern Railroad, Inc. (GSWR), of 43 miles of rail line extending between milepost R-12.0 at Florida Rock and milepost R-55.0 at Allie, in Harris and Meriwether Counties, GA (the line), subject to certain conditions.¹ The Board indicated that an offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue on the line must be received by December 20, 2007, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The decision also noted that, on October 22, 2007, Kern Valley Railroad Company (KVRC) filed a formal expression of intent to file an OFA to purchase the line and asked GSWR to provide the information specified at 49 CFR 1152.27(a).

On December 17, 2007, KVRC filed, under 49 CFR 1152.27(c)(1)(i)(C), a request to toll the 10-day period for submitting its OFA until 10 days after it has received additional information that it requested from GSWR.² KVRC acknowledges that GSWR permitted a physical inspection of the line, but particularly asks for: a list of the lengths, weight, and condition of the rails and other track materials; a copy of a bid to purchase the track materials; identification of which parcels in the right-of-way are owned in fee and which are easement grants; and a copy of any agreements to purchase the real estate comprising the right-of-way, with disclosure of the purchase price.

¹ The Board also issued a Notice of Interim Trail Use for the line under the National Trail Systems Act, 16 U.S.C. 1247(d). In addition, the Board granted an exemption from the prior approval requirements of 49 U.S.C. 10903 authorizing GSWR's discontinuance of overhead trackage rights over a line owned by Central of Georgia Railroad Company between milepost R-2.0 north of Columbus and milepost R-12.0 at Florida Rock, in Harris County.

² Under 49 CFR 1152.27(c)(1)(i)(C) and 1152.25(d)(4), the due date for a petition to toll the 10-day filing deadline for OFAs was December 14, 2007. KVRC's petition will be accepted and considered in this case, but this acceptance should not be construed as a general ruling that would apply in other cases.

GSWR filed in opposition to KVRG's request on December 18, 2007, stating that it had provided KVRG with all of the information needed to make an OFA: track charts; September 2007 track inspection reports; full size valuation maps; evidence of the sale of an adjacent parcel; and evidence of a pending sale of another adjacent parcel (the latter two relevant to the value of the real estate). Moreover, GSWR invited KVRG to make a bid for the track materials and the underlying real estate outside of the OFA process, and KVRG made such a bid on November 20, 2007.³ In its bid, KVRG stated that its review of the title showed that the majority of the real estate is held as a railroad easement and assigned values to both the real estate and the track materials.

GSWR states that KVRG's bid was lower than other bids for the track materials and offers still being negotiated to purchase the real estate in the right-of-way for a trail. GSWR indicates that it allowed KVRG to rebid until December 20, when GSWR intends to finalize the sale of the track materials to the highest bidder, Tie Yard of Omaha (Tie Yard). GSWR indicates that the only document it has not provided to KVRG is Tie Yard's bid for the track materials because doing so would permit KVRG to undermine the bidding process.

KVRG has obtained information that fulfills the requirements of 49 CFR 1152.27(a) and has assessed the value of the track materials and real estate comprising the line, as evidenced by KVRG's bid made outside of the OFA process. The statute imposes strict time limits for the filing of an OFA. Here, KVRG's request is opposed by GSWR and tolling is unnecessary as KVRG has the information to make a timely OFA filing without the extension it is seeking. Accordingly, the request to toll the deadline for filing an OFA will not be granted. KVRG remains free to submit an OFA by the due date (December 20, 2007) and, if the parties cannot agree to terms, KVRG has the right to ask the Board to set the purchase price and other terms of sale.

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

³ One email concerning the bid is in the name of KVRG and another is in the name of an affiliated company, V&S Railway, LLC. The same person sent both emails.

It is ordered:

1. KVRC's request for tolling of the due date for the OFA is denied.
2. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary