

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

Decided: January 26, 2018

On December 19, 2017, CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. § 1152 subpart F—Exempt Abandonments to abandon an approximately 62.3-mile rail line on its Northern Region, Louisville Division, Hoosier Subdivision between milepost 00Q 251.7, near Bedford, and milepost 00Q 314.0, near New Albany, in Clark, Floyd, Lawrence, Orange, and Washington Counties, Ind. (the Line). The Line traverses United States Postal Service Zip Codes 47150, 47172, 47106, 47143, 47165, 47167, 47108, 47452, 47446, and 47421 and serves the stations of Orleans (milepost 00Q 262), Leipsic (milepost 00Q 267), Campbellsburg (milepost 00Q 273), Salem (milepost 00Q 284), Pekin (milepost 00Q 295), and Borden (milepost 00Q 300). On January 8, 2018, notice of the exemption was served and published in the Federal Register (83 Fed. Reg. 936). The exemption is scheduled to take effect on February 7, 2018.

On January 16, 2018, Paul Didelius filed a notice of intent to file an offer of financial assistance (OFA) to purchase an approximately 32.3-mile segment of the Line between milepost 00Q 251.7 near Bedford, and approximately milepost 00Q 284.0 near Salem, Ind.¹ On January 17, 2018, the Indianapolis Metropolitan Railway (MRY) filed a notice of intent to file an OFA to purchase the entire Line.

On January 24, 2018, CSXT filed motions to reject the notices of intent submitted by Mr. Didelius and MRY. As CSXT notes, the Board adopted a final rule modifying its OFA procedures on June 29, 2017. See Offers of Financial Assistance, EP 729 (STB served June 29, 2017); see also 82 Fed. Reg. 30,997 (July 5, 2017). That rule became effective on July 29, 2017. The rule made changes to the information required in a notice of intent to file an OFA, including a new requirement that potential offerors make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly-available information. Offers of Financial Assistance, EP 729, slip op. at 6-9, 25-26. Mr. Didelius' and MRY's notices of intent to file an OFA (including any relevant supplements and amendments)

¹ Mr. Didelius filed a supplement to his notice of intent and a separate correction on January 18, 2018.

do not comply with the Board's new requirements at 49 C.F.R. § 1152.27(c)(2)(i). As such, a determination of preliminary financial responsibility cannot be made.

In another recent abandonment proceeding where a notice of intent was rejected for similarly not complying with the new rule, the Board granted an appeal, noting that there appears to be a lack of public awareness about the changes to the OFA rule, referring specifically to the notices of intent filed in this proceeding. Union Pac. R.R.—Aban. & Discontinuance of Service Exemption—in Cerro Gordo Cty., Iowa, AB 33 (Sub-No. 327X), slip op. at 4-5 (STB served Jan. 26, 2018). In light of the Board's decision in that proceeding, Mr. Didelius and MRY will be permitted to supplement their notices by February 5, 2018, to comply with the Board's new OFA rule. Any supplements will be reviewed by the Board for compliance with 49 C.F.R. § 1152.27(c)(2)(i).

Accordingly, CSXT's motions to reject Mr. Didelius' and MRY's notices of intent will be denied. Furthermore, the effective date of the exemption will be postponed appropriately to accommodate the OFA process.

It is ordered:

1. CSXT's motions to reject the notices of intent filed by Mr. Didelius and MRY are denied.
2. Mr. Didelius and MRY have until February 5, 2018, to supplement their notices of intent so as to comply with the Board's new OFA rule.
3. If no supplements to the notices of intent to file an OFA are received by February 5, 2018, this exemption will be effective on February 25, 2018, unless stayed pending reconsideration.
4. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.