

SERVICE DATE – OCTOBER 21, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1305X

GREAT REDWOOD TRAIL AGENCY
—ABANDONMENT EXEMPTION—
IN MENDOCINO, TRINITY, AND HUMBOLDT COUNTIES, CAL.

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: October 20, 2022

On May 14, 2021, the Great Redwood Trail Agency (GRTA), formerly named North Coast Railroad Authority (NCRA)¹ filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon 175.84 miles of rail line from milepost 139.5 at Commercial Street in Willits to milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost 300.5 near Samoa, and milepost 301.8 near Korbel, in Mendocino, Trinity and Humboldt Counties, Cal.² After the proceeding was held in abeyance to permit the Board to resolve certain jurisdictional issues,³ the Board lifted the abeyance on May 17, 2022, and on May 20, 2022, notice of the exemption was served and published in the Federal Register (87 Fed. Reg. 31,056). The Board's notice indicated that the exemption would become effective on

¹ NCRA's name was changed to Great Redwood Trail Agency, effective March 1, 2022. (GRTA Letter 6, Jan. 10, 2022.) The proceeding has been recaptioned accordingly.

² Concurrently with the filing of its verified notice, GRTA filed a request for issuance of a notice of interim trail use or abandonment (NITU) to establish interim trail use/rail banking on the line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29.

³ GRTA's verified notice described the line sought to be abandoned as including the Arcata & Mad River subsidiary, between milepost 295.57, near Korblex, and milepost 301.8, near Korbel, a distance of approximately 6.23 miles. (Verified Notice 1 n.1.) By decision served on May 17, 2022, the Board determined that abandonment of the Arcata & Mad River subsidiary had previously been consummated, removing that segment from the Board's jurisdiction. N. Coast R.R. Auth.—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. at 3-5 (STB served May 17, 2022). Therefore, the line GRTA sought to abandon was defined to consist of 169.61 miles extending between milepost 139.5, near Willits and milepost 284.1 near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, and milepost 300.5 near Samoa (the Line).

June 19, 2022, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) was filed by May 31, 2022.

On May 31, 2022, Mendocino Railway (MR) filed a notice of intent to file an OFA to purchase a 13-mile portion of the Line extending from milepost 139.5 to milepost 152.5. The filing of the notice of intent automatically stayed the effective date of the exemption until June 29, 2022, pursuant to 49 C.F.R. § 1152.27(c)(2)(i). Thereafter, on June 14, 2022, MR timely petitioned to toll the OFA filing deadline, stating that GRTA had not yet provided the OFA-related information MR had requested under 49 C.F.R. § 1152.27(a), and that such information was not contained in the verified notice of exemption. (MR Pet. to Toll 1.) By decision served on June 24, 2022, the Board granted MR's petition to postpone the deadline for filing an OFA until 30 days after GRTA certifies to the Board that it had provided to MR the information required by 49 C.F.R. § 1152.27(a). GRTA filed its certification on September 15, 2022.

On October 15, 2022, MR filed an OFA to purchase, for \$5,483,039.00, a 13-mile portion of the Line, extending from milepost 139.5 to milepost 152.5. In its OFA, MR alternatively proposes to purchase only the 50-foot right-of-way (for the 13-mile segment) necessary for rail service, thereby allowing GRTA to keep the remaining portion of the right-of-way for GRTA's intended trails use. Should the Board accept MR's alternative proposal, MR states that its purchase price would be, at most, \$1,895,213.00. For the reasons discussed below, the OFA will be rejected.⁴

DISCUSSION AND CONCLUSIONS

To submit an OFA under 49 C.F.R. § 1152.27(c)(2)(iii), an offeror must set forth its offer in detail and meet the requirements for the contents of an offer found at 49 C.F.R. § 1152.27(c)(1)(iv). Once submitted, an OFA is reviewed by the Director of the Office of Proceedings to determine whether the offer satisfies the standards of 49 U.S.C. § 10904(d) and the Board's regulations. 49 C.F.R. § 1011.7(a)(2)(ii).

Under § 1152.27(c)(1)(iv)(B), an offeror must demonstrate that it is financially responsible. To demonstrate financial responsibility, the offeror must have, or within a reasonable time obtain, the financial resources to fulfill proposed contractual obligations.

⁴ On October 17, 2022, GRTA filed a motion to strike certain portions of MR's OFA arguing, among other things, that MR's evidence was obtained illegally. MR filed a letter on October 18, 2022, preliminarily responding to GRTA's motion and noting that it intends to subsequently file a timely reply. On October 19, 2022, the California Coastal Commission and Friends of the Eel River filed a joint motion to dismiss MR's OFA. GRTA submitted an additional filing on October 19, 2022, urging the Board to reject MR's OFA. On that same date, MR submitted a filing suggesting that the motion to dismiss should be stricken from the record and that "the substantial majority" of an unspecified GRTA filing should also be stricken. October 20, 2022, MR submitted opposition to GRTA's October 19 filing, asserting, among other things, that the filing should be stricken from the record. Because MR's OFA will be rejected on other grounds, the motion to strike and the motion to dismiss will be denied as moot.

§ 1152.27(c)(1)(iv)(B). The Board will accept as evidence of financial responsibility income statements, balance sheets, letters of credit, profit and loss statements, account statements, financing commitments, and evidence of adequate insurance or ability to obtain adequate insurance. Id. Here, MR submitted with its notice of intent to file an offer a bank statement demonstrating that it met the preliminary financial responsibility amount calculated pursuant to § 1152.27(c)(1)(ii)—but MR has failed to demonstrate in its OFA that it has, or within a reasonable amount of time will have, the funds necessary to not only acquire the 13-mile rail segment, but to rehabilitate, maintain, and operate it as well.

A review of the record indicates that, since 1998, the Line has been subject to a safety-related emergency order imposed by the Federal Railroad Administration (FRA) prohibiting railroad operations on it. (Verified Notice 1-2.) Further, the record is replete with examples of the Line having been characterized as susceptible to repeated landslides, tunnel collapses, and repetitive rehabilitation. (See, e.g., Cal. State Sen. Mike McGuire Letter 2, June 10, 2022.) Thus, the record contains ample evidence indicating that the 13-mile rail segment would require significant rehabilitation in order to make it operable. Indeed, by MR's own admission, based on its own inspection of the 13-mile rail segment, MR estimates that it would cost \$7,242,814.00 to rehabilitate the track to excepted status and an additional \$1,652,640.00 (or a total of \$8,895,454.00) to rehabilitate the track to Class I status. (See OFA 14-15.) At a minimum, under its own calculations MR would therefore need \$12,725,853 to cover the costs for acquisition and rehabilitation of the 13-mile rail segment. However, after consideration and review of MR's financial statement ending September 30, 2022, and bank confirmation of MR's funds as of October 14, 2022, MR does not have sufficient funds to cover the acquisition and rehabilitation costs, let alone the cost of regular maintenance, which MR does not specifically address.⁵ See, e.g., Consol. Rail Corp.—Aban. Exemption—in Phila., Pa., AB 167 (Sub-No. 1191X), slip op. at 8 (STB served Oct. 26, 2012) (affirming Director's decision to reject an OFA because offeror did not have funds to both acquire the line and to rehabilitate the line and install safety equipment). Furthermore, MR offers no specific plan for accessing the additional funds required to cover these costs.⁶

Based on the foregoing, MR has failed to demonstrate that it is financially responsible to acquire, operate, and maintain the above-mentioned 13-mile rail segment. Additionally, MR's proposed alternative, which would allow MR to acquire only the 50-foot right-of-way necessary

⁵ In a subsequent filing submitted on October 20, 2022, MR also suggests that it might obtain additional funds for rehabilitation of the 13-mile segment indirectly through a Railroad Rehabilitation & Improvement Financing Loan for which it has applied for funds to repair one of its existing rail lines. MR, however, provides no information on the likelihood of receiving the loan, nor on the amount of funds that would be available for rehabilitation of the line at issue here. MR's suggestions concerning this loan are speculative, at best.

⁶ The Board further notes that, while MR states that it has entered into an agreement with a shipper located on the 13-mile rail segment on both compensation and volume of traffic to be shipped by rail annually, (see OFA 18), and intends to rehabilitate the segment such that it could be used for rail service within a year, (see OFA 15), MR does not adequately demonstrate nor specify a plan for rehabilitation, including how the rehabilitation would be funded. Thus, the revenue that could be generated by serving that potential shipper is also speculative.

for rail service while allowing GRTA to keep all land it owns in excess of the right-of-way for trails use, will be rejected. MR provides no rationale or legal support for how this alternative approach could be implemented, and as MR acknowledges, Board precedent is clear that the selective parceling approach to an OFA is not appropriate and also constitutes grounds for rejecting the OFA. Consol. Rail Corp.—Aban. Exemption—in Phila., Pa., AB 167 (Sub-No. 1191X), slip op. at 4 (STB served Mar. 14, 2012). Indeed, under the Trails Act, an active rail line within the Board’s jurisdiction is railbanked for future possible reactivation while the right-of-way is used for an interim trail. Here, MR proposes to split the right-of-way to allow the rail line to continue to be available for freight rail service so that it can create, in essence, a new corridor that would be available to be railbanked for interim trial use (and subject to rail reactivation) under the Trails Act, even though there is currently no rail line on that part of the right-of-way. Such an approach does not appear to be consistent with the Trails Act, and MR cites no support for it.⁷

Because MR has not demonstrated financial responsibility, MR’s OFA will be rejected and the OFA process concluded. Pursuant to the June 24, 2022 decision in this docket, GRTA’s abandonment authority will become effective on October 25, 2022.⁸ Environmental conditions, public use conditions, and requests for issuance of notices of interim trail use and rail banking under the Trails Act will be addressed in a future decision before that date.

It is ordered:

1. MR’s OFA is rejected.
2. GRTA’s motion to strike is denied as moot.
3. California Coastal Commission and Friends of the Eel River’s motion to dismiss is denied as moot.
4. The abandonment exemption will be effective on October 25, 2022.

⁷ This does not mean that a rail carrier cannot allow for a trail to coexist adjacent to a rail line providing service under the Board’s jurisdiction. Separate and apart from the Trails Act, a rail carrier can allow alternative uses within the right-of-way, as long as those alternative uses do not interfere with the provision of rail service under the Board’s jurisdiction. Moreover, if a rail line is ultimately railbanked under the Trails Act, the agency has found that light rail and other non-jurisdictional uses of a right-of-way may not necessarily be incompatible with the Trails Act. See, e.g., Balt. & Ohio R.R.—Aban. & Discontinuance of Serv.—in Montgomery Cnty., Md. & D.C., AB 19 (Sub-No. 112) (ICC decided Feb. 22, 1990) (finding light rail use not incompatible with trails use under the Trails Act).

⁸ By decision served on June 21, 2022, the Board’s Office of Environmental Analysis recommended, as a condition to the abandonment exemption, that eight environmental conditions be imposed.

5. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.