

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1305X

NORTH COAST RAILROAD AUTHORITY
—ABANDONMENT EXEMPTION—
IN MENDOCINO, TRINITY, AND HUMBOLDT COUNTIES, CAL.

Decided: June 10, 2022

On May 14, 2021, 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.

After the proceeding was held in abeyance to permit the Board to resolve certain jurisdictional issues,² 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 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. Three notices of intent to file an OFA, in which the parties have attempted to demonstrate preliminary financial responsibility as required by 49 C.F.R. § 1152.27(c), have been received by the Board. Under 49 C.F.R. § 1152.27(c)(1)(ii), if the Board does not issue a decision regarding a preliminary financial responsibility

¹ NCRA's name was changed to Great Redwood Trail Agency, effective March 1, 2022. (NCRA Letter 6, Jan. 10, 2022.)

² NCRA'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 NCRA 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).

demonstration within 10 days of receipt, the party submitting the notice of intent will be presumed to be preliminarily financially responsible.

On May 31, 2022, Seeker Enterprises LLC (Seeker) filed a notice of intent to file an OFA to purchase a portion of the Line extending from milepost 284.75 to milepost 287.75 and milepost 297.5 to milepost 300.01, for railbike recreational service. NCRA replied on June 6, 2022, arguing that Seeker's notice of intent should be rejected because, among other things, its notice fails to demonstrate preliminary financial responsibility. Seeker replied on June 7, 2022.

Seeker's notice of intent does not comply with the Board's requirements at 49 C.F.R. § 1152.27(c)(2)(i). The regulations specify the information required in a notice of intent to file an offer, including a showing of preliminary financial responsibility based on a calculation using information specified at 49 C.F.R. § 1152.27(c)(1)(ii).³ Specifically, in calculating its preliminary financial responsibility, Seeker failed to obtain a quote, dated within 30 days of the submission of its expression of intent, for the pricing of rail steel scrap per ton. (See Seeker Notice of Intent 2.) Additionally, although Seeker provides a copy of a home equity line of credit to support its claim of preliminary financial responsibility, the documentation does not make clear the amount of funds available to Seeker, as of the date of its filing, for purchase of the rail segment it seeks to acquire.⁴ Because Seeker's notice of intent does not comply with the Board's requirements, it will be rejected.⁵

On May 31, 2022, Mendocino Railway (MR) also filed a notice of intent to file an OFA to purchase a portion of the Line extending from milepost 139.5 to milepost 152.5. Thereafter, on June 6, 2022, NCRA filed a reply opposing MR's notice of intent. NCRA questions MR's financial fitness and argues, among other things, that MR's operations are, and have always

³ Pursuant to 49 C.F.R. § 1152.27(c)(1)(ii), for persons seeking to purchase a line, the preliminary financial responsibility amount shall be the sum of the rail steel scrap price per ton (dated within 30 days of the submission of the expression of intent), times 132 short tons per track mile or 117.857 long tons per track mile, times the length of the line in miles, plus \$4,000 times the number of miles of track times two.

⁴ The Board further notes that, while not a requirement at this stage of the proceeding, 49 C.F.R. § 1152.27(c)(1)(iv)(D) requires an offeror to demonstrate it has placed in escrow with a reputable financial institution funds equaling 10% of the preliminary financial responsibility amount. Here, it is questionable whether Seeker's proposal to hold out and leave untouched a personal retirement account would satisfy the escrow requirement. In addition, an offeror must be able to demonstrate that its OFA is for "continued rail freight service." See Redmond-Issaquah R.R. Pres. Ass'n v. Surface Transp. Bd., 223 F.3d 1057, 1061 (9th Cir. 2000); see also Kulmer v. Surface Transp. Bd., 236 F.3d 1255, 1257 (10th Cir. 2001).

⁵ Seeker requests that if the Board rejects its notice of intent, the Board "allow [Seeker] time to cure its [n]otice" by proceeding under 49 C.F.R. § 1152.28 (public use procedures) and 49 C.F.R. § 1152.29 (prospective use of rights-of-way for interim trail use and railbanking). (Seeker Reply 2.) Seeker, however, has filed neither a request for a public use condition nor a request for an interim trail use/rail banking condition.

been, confined to excursion rail and bike operations. (NCRA Reply 1-4, 6, June 6, 2022.) On June 8, 2022, MR submitted a filing in response to NCRA’s opposition.

While NCRA questions MR’s general financial fitness, NCRA does not question whether MR made the required showing of preliminary financial responsibility, and MR appears to have done so (notwithstanding that MR may have overstated the necessary preliminary financial responsibility amount).

On June 1, 2022, North Coast Railroad Company, L.L.C. (NCRCo) late-filed a notice of intent to file an OFA to purchase the Line.⁶ NCRCo requests leave to late-file, stating that its counsel was unable to complete the filing by the May 31, 2022 deadline due to “unforeseen vacation travel delays and related issues associated with securing the information necessary to submit” the notice. (NCRCo Notice of Intent 2-3.) It further asserts that, while it is mindful of the Board’s strict regulations related to the OFA process, no party would be prejudiced by the notice’s acceptance. (*Id.* at 3.) NCRA filed a response opposing NCRCo’s late-filed notice arguing, among other things, that NCRCo’s notice is untimely and does not demonstrate preliminary financial responsibility.⁷

NCRCo’s notice of intent will be rejected. NCRCo has not articulated a sufficient reason why its notice could not have been filed by the May 31 deadline, especially given that NCRCo has been an active participant in this proceeding and has noted, in previous filings, its intent to file an OFA. Moreover, NCRA objects to the late filing. *See, e.g., Gen. Ry.—Aban. Exemption—in Osceola & Dickinson Cntys., Iowa*, AB 1067 (Sub-No. 2X) (STB served Oct. 24, 2008) (denying a request to accept a late-filed notice of intent to file an OFA where the justification for the late filing was insufficient and the carrier objected); *see also Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903*, 1 S.T.B. 894, 909-10 (1996) (explaining that, in enacting the ICC Termination Act of 1995, Congress shortened the time for the Board to process OFAs under 49 U.S.C. § 10904). NCRCo acknowledges the Board’s regulations, which reflect Congress’s enactment of strict time limits for the OFA process. *See, e.g., Lassen Valley Ry.—Aban. Exemption—in Washoe Cnty., Nev. & Lassen Cnty., Cal.*, AB 1074X, slip op. at 1 (STB served Sept. 7, 2011). The Board generally will enforce the deadline for notices of intent to file an OFA, set out in 49 C.F.R. § 1152.27(c)(1)(i), where the railroad seeking to abandon or discontinue objects to a late-filed notice in accord with

⁶ NCRCo’s notice of intent to file an OFA appears to include mileage for the Arcata & Mad River subsidiary. However, abandonment of that segment was consummated and it is no longer within the Board’s jurisdiction. *See Arcata & Mad River R.R.—Aban. Exemption—in Humboldt Cnty., Cal.*, AB 241X (ICC served Apr. 23, 1985); *see also N. Coast R.R. Auth.*, AB 1305X, slip op. at 3-5. Therefore, the Arcata & Mad River subsidiary is not subject to the OFA process.

⁷ Several commenters filed letters in support of NCRA’s motions to reject the three notices arguing, among other things, that there are no active shippers on the Line and no party has supplied any evidence of shippers with enough business to justify the costs of restoring the Line to service. *See, e.g., Cal. State Sen. Mike McGuire Letter 2*, June 10, 2022. The Board will address these comments at a later stage in the OFA process.

“Congress’s direction to streamline the abandonment and OFA process.” Lassen Valley Ry., AB 1074X, slip op. at 1.

The effective date of the exemption is automatically stayed until June 29, 2022 (40 days after notice of the exemption was served and published in the Federal Register), pursuant to 49 C.F.R. § 1152.27(c)(2)(i).

It is ordered:

1. Seeker’s notice of intent to file an OFA is rejected.
2. NCRCo’s request that the Board accept its late-filed notice of intent to file an OFA is denied, and its notice of intent is rejected.
3. The decision is effective on its service date.

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