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SERVICE DATE - NOVEMBER 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 119X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN ROCK, GREEN AND DANE COUNTIES, WI

REQUEST TO SET TERMS AND CONDITIONS

Decided: October 29, 1998

In a decision served on June 23, 1998, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by the Union Pacific Railroad Company (UP) of a 15-mile line of railroad known as the Harvard Subdivision (herein, the Line), extending from railroad milepost 119.0 near Evansville to railroad milepost 134.0 near “MX”, a crossing of Wisconsin & Southern Railroad Company, near Madison, in Rock, Green and Dane Counties, WI, subject to trail use, public use, environmental, and standard employee protective conditions.¹ The decision authorizing abandonment and discontinuance was scheduled to become effective on July 23, 1998, unless an offer of financial assistance (OFA) was filed on or before July 2, 1998. By decision served July 14, 1998, the time for filing an OFA was tolled 60 days until August 31, 1998, and the effective date of the exemption was stayed until September 20, 1998.

On August 31, 1998, the City of Fitchburg/The Village of Oregon Partnership (the Partnership) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the Line. By decision served September 4, 1998, the Partnership was found to be financially responsible. The effective date of the exemption authorizing abandonment of the Line was postponed to permit the OFA process to proceed. The decision also provided that, on or before September 30, 1998, either party could request that the Board establish the terms and conditions for the sale of the Line, if no agreement was reached during negotiations.

On September 30, 1998, the Partnership requested that the Board establish the conditions and amount of compensation for the Line. The Partnership has offered \$591,426 for the track structure and \$222,000 for the real estate, the latter of which consists of 170 acres of non-reversionary right-of-way. On October 5, 1998, UP filed a reply to the Partnership's request. In a

¹ Notice of the filing of the petition was published in the Federal Register (60 FR 14173-74) on March 24, 1998.

letter dated September 14, 1998, and in reply, UP agreed to the Partnership's bottom line valuation of \$591,426 for the track structure.²

Therefore, the remaining issue in terms of the purchase of the Line is a \$598,000 disparity between the Partnership's offer of \$222,000 and UP's asking price of \$820,000 for the real estate.

DISCUSSION AND CONCLUSIONS

Valuation and evidentiary standards. Proceedings to set conditions and compensation are governed by the provisions of 49 U.S.C. 10904(d)-(f). Under section 10904(f)(1)(B), we may not set a price that is below the fair market value of the Line. In Chicago and North Western Transp. Co.—Abandonment, 363 I.C.C. 956, 958 (1981) (Lake Geneva Line), aff'd sub nom. Chicago and North Western Transp. Co. v U.S., 678 F.2d 665 (7th Cir. 1982), it was determined that, in the absence of a higher going concern value for continued rail use, the proper valuation standard in proceedings for offers to purchase under section 10904 is the net liquidation value (NLV) of the rail properties for their highest and best nonrail use. NLV includes the value of the real estate plus the net salvage value of track and materials (gross salvage less removal costs).

In proceedings to set conditions and compensation, the burden of proof is on the offeror, the proponent of the requested relief. See Lake Geneva Line, 363 I.C.C. at 961. Placing the burden of proof on the offeror is particularly appropriate in these proceedings because the offeror may withdraw its offer at any time. The rail carrier, on the other hand, is required to sell its line to the offeror at the price we set, even if the railroad views the price as too low.

The burden of proof standard requires that, absent probative evidence supporting the offeror's estimates, the rail carrier's evidence is accepted. In areas of disagreement, the offeror must present more specific evidence or analysis or provide more reliable and verifiable documentation than that which the carrier submits. Absent specific evidence supporting the offeror's estimates and contradicting the rail carrier's estimates, the fact that the burden of proof is on the offeror requires that we accept the carrier's estimates in these forced sales proceedings. See Burlington Northern Railroad Company—Abandonment Exemption—In Sedgwick, Harvey and Reno Counties, KS, Docket No. AB-6 (Sub-No. 358X) (ICC served June 30, 1994) and cases cited therein. We address below the value of the real estate.

The Partnership claims to have valued the real estate based on actual sales or commonly accepted land values (assessments), making adjustments for date of sale, size, configuration and location of property. Their witness, Mr. John A. Raup,³ used statistical data from the Department of

² See the Partnership's Exhibit A, letter from UP, and UP's reply, at 1-2.

³ A real estate specialist with the Wisconsin Department of Transportation. See Request to
(continued...)

Agriculture and used the assessed land value of several adjoining properties. Five parcels were valued on their tax assessments. He valued one parcel using statistical data. He claims that the resulting real estate value is \$220,000 and that the resulting total net liquidation value for the Line is \$813,426. He contends that UP used an improper across-the fence (ATF) methodology for its valuation.

UP claims a real estate value of \$817,465.88, rounded up to \$820,000. The land was valued as a transportation corridor using ATF appraisal methodology.⁴ UP states that it assumes that the corridor has a value consistent with the value of adjacent land. UP's value does not contain adjustments for size, shape, topography or access, however. UP notes that part of the rail line is located in urban areas, i.e., within the City of Fitchburg and the Village of Oregon. UP has submitted evidence of a recent offer for UP property in the Village of Oregon by Trachte Channelframe Building for \$80 per square foot, which equates to \$35,000 per acre. UP asserts that "[t]his property is very similar to a substantial portion of the right-of-way involved in this OFA because it is urban and is located in the City of Oregon, Wisconsin." Peterson Verified Statement at 3. UP also notes that the Wisconsin Department of Natural Resources (WDNR) paid \$25,000 per acre for a 4.2 acre portion of another abandoned UP rail line in Fitchburg. UP claims that 33 acres of the Line are urban and that 137 acres are primarily agricultural.

The Partnership's estimate is unreliable because tax assessments are not necessarily an accurate measure of market value. The assessments are based on rural land only and do not include the value of urban right-of-way. Because there is significant urban property on this segment, the Partnership's estimate is artificially low.

UP's ATF value also is flawed because it does not include any adjustments for size, topography or access. The Board includes ATF adjustments to modify the price of comparable parcels to fit the specific requirements of land included in the right-of-way. Indeed, UP's own data includes two prices, the ATF value used in this proceeding and an adjusted "Market Value" that includes adjustments for location, topology and neighborhood quality. Although UP's adjustments are for the comparables — not the parcels on the right-of-way -- they recognize that most parcels of land will require some adjustments to fit their specific locations or intended use.

Given the record before us, we find that the Market Value prices, approximately 47% of the ATF value, should be used to set this line's real estate value. This valuation uses the values of comparable parcels and adjusts them to reflect the fact that UP has not shown that the right-of-way parcels would afford the same benefits to a purchaser as do the purportedly comparable parcels.

³(...continued)
Set Terms and Conditions, Exhibit B.

⁴ See Reply, Exhibit B, verified statement of Rod D. Peterson (UP's Manager-Real Estate).

Applying the market value adjustment to UP's unadjusted ATF of \$817,465.88, reduces the real estate value to \$386,844.⁵

Summary. The purchase price for the Line is set at \$978,270, consisting of \$591,426 for track materials and \$386,844 for the real estate.

To ensure an orderly transfer of the Line, we will establish our typical terms: (1) payment will be made by cash or certified check; (2) closing will occur within 90 days of the service date of this decision; (3) UP shall convey all property by quitclaim deed; and (4) UP shall deliver all releases from any mortgage within 90 days of closing. The parties may alter any of these terms by agreement.⁶

It is ordered:

1. The Partnership's extension request is denied.
2. The purchase price for the 15-mile rail line known as the Harvard Subdivision, extending from railroad milepost 119.0 near Evansville to railroad milepost 134.0 near "MX" (a crossing of Wisconsin & Southern Railroad Company near Madison) is set at \$978,270. Other terms of sale must comply with the provisions discussed above.
3. Within 10 days of the service date of this decision, the Partnership must accept or reject, in writing, the terms and conditions established here by notifying the Board and UP.
4. If the Partnership accepts the terms and conditions established by this decision, the Partnership and UP will be bound by this decision.
5. If the Partnership withdraws its offer or does not accept the terms and conditions with a timely written notification, the Board shall issue a decision within 20 days of the service date of this decision vacating the prior decision that postponed the effective date of the decision authorizing abandonment.
6. This decision is effective on its service date.

⁵ We recognize that multiplying this ratio times the overall value will result in a simple average that arguably could understate the Line's actual real estate value. However, UP's data did not include sufficient detail to determine the market value for each line segment parcel.

⁶ The Partnership has also requested an approximately 170-day extension of time in which to accept or reject the conditions and compensation established by the Board for the sale of the Line. The statute at 49 U.S.C. 10904 does not permit such an extension, and the request will therefore be denied.

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By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary