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EB

SERVICE DATE - LATE RELEASE DECEMBER 3, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 112X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN LANCASTER COUNTY, NE

REQUEST TO SET TERMS AND CONDITIONS

Decided: December 1, 1997

In a decision served September 24, 1997, we granted the Union Pacific Railroad Company (UP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.88-mile segment of its Lincoln Branch between milepost 494.76, near 10th Street, and milepost 492.88, near 33rd Street, in Lincoln, NE.¹ The exemption was scheduled to become effective October 24, 1997, unless an offer of financial assistance (OFA) was filed with the UP and the Board by October 3, 1997. On October 3, 1997, Lincoln Lumber Company (LLC) filed an OFA to purchase a portion of the segment between 19th Street and the west edge of 24th Street for \$178,323.77.²

¹ We also imposed an interim trail use/rail banking condition under 16 U.S.C. 1247(d) for a portion of the segment between 18th Street (milepost 494.166) and 33rd Street (milepost 492.88). On October 14, 1997, the National Association of Reversionary Property Owners (NARPO) filed a petition to reopen the September 24, 1997 decision to vacate the interim trail use/rail banking condition. The portion LLC seeks to acquire here is included in the portion subject to the interim trail use/rail banking condition. Accordingly, NARPO's petition will be considered in a separate decision to be issued after the OFA process has been completed.

² In the September 24 decision, we estimated the NLV of the portion between 19th Street and 24th Street at \$263,779, consisting of real estate valued at \$255,000 and net track salvage value of \$8,779. The real estate value was originally derived from a real estate appraisal by Dennis J. Knudsen for the 1.88-mile segment, which was conducted in 1995. UP witness Michael P. Horn adjusted Mr. Knudsen's real estate appraisal and estimated the land value of the portion between 19th Street and 24th Street to be \$306,000. The adjusted value included an "assemblage value" of \$51,000. In the September 24 decision, we rejected the assemblage value, noting that UP failed to show that anyone wanted the land assembled for a particular purpose, and thus arrived at the \$255,000 figure. The net salvage value of track and materials of \$8,779 was based on calculations by UP Witness Sylvester Bobo.

By decision served October 8, 1997, LLC was found financially responsible. The effective date of the exemption authorizing abandonment of the portion between 19th Street and 24th Street was postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.³ The decision also provided that, before November 3, 1997, either party could request that the Board establish the terms and conditions for the sale of the portion of the line if no agreement was reached during negotiations.

On November 3, 1997, LLC requested that the Board establish the conditions and amount of compensation. LLC increased its offer and now contends that the fair market value of the portion is \$199,730, consisting of \$196,999 for the land and \$2,731 for the net salvage value of the track and materials. UP responds that the fair market value of the portion is \$359,467, consisting of \$351,120 for the land and \$8,347 for the net salvage value of track materials. We will set the fair market value of the portion at \$300,947, consisting of \$292,600 for the land and \$8,347 for the net salvage value of track materials.

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 terms, 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

³ The exemption authorizing abandonment of the remainder of the segment became effective on October 24, 1997.

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 various issues in this case.

Land value. In its request to set terms and conditions, LLC estimates the land value at \$196,999. LLC's estimate is based on a verified statement from James D. Jennings, a real estate appraiser. Mr. Jennings indicates that he reviewed the UP appraisal prepared by Mr. Knudson and inspected the subject property in October 1997. He notes that Mr. Knudsen's appraisal was conducted in October 1995, more than 2 years ago. Mr. Jennings also points out that Mr. Knudsen's appraisal improperly included an assemblage value. He disputes several comparable land sales considered by Mr. Knudsen, and he maintains that Mr. Knudsen failed to consider the sale price of a lumber yard that is comparable to the property involved here. Mr. Jennings also noted that UP's appraised value does not reflect the fact that the property contains drainage ditches and culverts.

Based on comparative sales contained in Mr. Knudsen's appraisal, Mr. Jennings recalculates the total retail gross value of the right-of-way to be \$239,509, based on a cost per square foot of \$1.28 (\$0.96 per square foot for the land located within the 100-year flood plain). Mr. Jennings then reduced the land value for sales and administrative costs, including overhead costs for delayed sales; property taxes and insurance; and legal and sales expenses for an average time to sell factor of 1½ years from the time of abandonment at a 10% discount rate, resulting in a land valuation of \$196,999.

In response, UP submitted a new appraisal by Mr. Knudsen, dated October 28, 1997. Mr. Knudson reinspected the property and reviewed 29 land sales occurring between July 1992 and October 1996. He then focused on four sales as the most comparable to the property sought by LLC. Two of the sales were of abandoned railroad rights-of-way, which included drainage ditches and culverts. One of the comparative sales was property located in a flood plain. Mr. Knudsen states that he did not adjust the value of property in the flood plain because no permanent structure would likely be constructed on those portions of the right-of-way. He assumed fee simple title to all the property and included a small parcel not included in LLC's offer. Mr. Knudsen appraised the real estate at \$355,000, based on a cost per square foot of \$1.60. He also included an assemblage value of 20%, resulting in a total value of \$426,000 for the property.

UP Witness Horn adjusted Mr. Knudsen's appraisal and removed one parcel consisting of 30,600 square feet, which is subject to a reversionary interest. He also removed one parcel containing 8,400 square feet which LLC does not want to acquire. Using Mr. Knudson's base of \$1.60 per square foot, he reduced the appraised value by \$62,400 and adjusted the land value to \$292,600, without an assemblage factor.

Mr. Horn further determined the value of the right-of-way to be \$351,120, including an assemblage value. He asserts that an assemblage value is warranted here, on the ground that there is significant interest in acquiring the right-of-way. He states that the City of Lincoln, NE (City) seeks

to acquire the right-of-way for use as a hiking/biking trail that would connect the University of Nebraska's main campus with an existing trail now ending at 33rd street. In addition, he states that the Cushman Company (Cushman), which has a facility next to the Lincoln Branch, has indicated by letter dated October 23, 1997, that it is interested in acquiring a portion of the right-of-way adjacent to its facility from 19th street to approximately 390 feet east of 22nd Street. Given this level of interest, Mr. Horn asserts that the right-of-way probably would be sold by the end of 1997, but no later than March 1998. As a result, he disagrees with LLC's contention that it would take an average of 1½ years to sell this property.

Mr. Horn asserts that reducing the property value for overhead expenses, including in-house sales expenses, maintenance and insurance, is not warranted here. He states that UP will sell the property "in-house" (will not use an agent) and therefore will not incur any expenses for commissions. Allegedly, maintenance expenses such as weed control would be small because most of the property LLC offered to purchase is covered by ballast or is under lease pursuant to which the lessees have been required to maintain the property, including weed control, and that there should not be any substantial weed growth on the property from now through March 1998. Also, Mr. Horn states, UP is self insured up to a certain level, and will not incur any expense for insurance.

We accept UP's real estate appraisal, because it is more current, because it contains reasonable comparative sales, and because it has not been effectively contradicted by LLC. However, we do not agree with UP that an assemblage value should be applied here. Generally, an assemblage value is not factored in because the right-of-way is usually sold off piecemeal to adjacent landowners. An assemblage value may be applied, for example where an executed valid sales contract for the assembled nonrail corridor has been entered into the record as evidence of fair market value. See Portland Traction Company— Abandonment Exemption—In Multnomah and Clackamas Counties, OR, Docket No. AB-225 (Sub-No. 2X) (ICC served Jan. 4, 1990). To make its case, however, a railroad must present evidence of a firm commitment of a purchaser to pay the assemblage value. Although UP provided evidence that Cushman is interested in acquiring a portion of the line, the letter simply shows that preliminary discussions have begun. The same is true for the City's alleged interest in the line for interim trail use. There is no indication in the record that Cushman or the City will pay a premium above the fair market value for an assembled corridor.

Although we reject UP's application of an assemblage value, we agree with UP that the purchase price should not be reduced for administrative costs of sale, as claimed by LLC. UP indicates that it would sell the property itself and would not incur costs to pay commissions. Any other costs appear to be minimal. In similar cases, these requested reductions have been rejected. See Conrail Abandonment In Chicago, IL, Docket No. AB-167 (Sub-No. 970N) (ICC served May 5, 1987). Similarly, UP's claim that it can sell the right-of-way within several months appears reasonable, and we therefore see no justification for a time of sale discount. See Seaboard System Railroad, Inc.—Abandonment—In Bibb, Jones, and Baldwin Counties, GA, Docket No. AB-55 (Sub-No. 99) (ICC served Feb. 12, 1985). Accordingly, we accept UP's appraisal value of \$292,600 as the value of the real estate.

Track and materials. LLC accepts all of UP’s track salvage costs except road crossing removal and rehabilitation. LLC maintains that UP has overstated its track salvage estimate because of an apparent inconsistency in road crossing rehabilitation costs. LLC states that UP has priced the cost to remove the road crossings included in this line segment (108 track feet) at a lower cost than the average for the entire line (561 track feet). The lower cost of removal and rehabilitation results in a higher net salvage. LLC states that this calculation is incorrect because nowhere in UP’s evidence or workpapers was any mention made of different types of road crossings on the line. Therefore, LLC contends that UP should have applied the line’s average road crossing removal cost of \$122 per track foot to the crossings within the portion sought for purchase by LLC. Using the \$122 per track foot road crossing removal costs reduces the net salvage value to \$2,731.

In reply, UP Witness Bobo stands by his calculations using a lower cost of removal and rehabilitation. He asserts that, for the three crossings on the portion LLC seeks to acquire, the cost of \$66 per track foot shown for the individual crossings on the line segment (subsequently revised to \$70 per track foot to correct a calculation error), which represents an average cost for the three specific crossings at issue, is more appropriate than the average removal cost for the entire line. We agree.

The specific estimated removal costs for each of the three crossings are shown below:

Revised Road Crossing Cost of Removal				
Location	Crossing Type	Length (Ft).	Unit Cost	Total
M.P. 493.76 (23rd Street)	Asphalt & Plank	32	\$55.36	\$1,771.52
M.P. 493.80 (22nd Street)	Asphalt	40	\$55.36	\$2,214.40
M.P. 493.90 (21st Street)	Concrete	<u>36</u>	\$99.07	<u>\$3,566.52</u>
Total		108		\$7,552.44

Average: \$69.93 (rounded to \$70).

Applying the \$70 per foot removal cost to the 108 feet of crossings removed on the portion results in total removal costs of \$7,560. Applying that removal cost produces an overall net salvage value for the portion as follows:

Gross Salvage Value		\$22,662
Less Track Removal	\$4,221	
Less Switch & Crosstie Removal	\$2,534	
Less Road Crossing Rehabilitation	\$7,560	

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Net Salvage Value	\$8,347

Because specific road crossing rehabilitation costs are superior to the average costs used by LLC, we accept UP's road crossing rehabilitation unit costs, and its net salvage value of track and materials of \$8,347.⁴

Summary. The purchase price for the sought right-of-way is set at \$300,947, consisting of \$292,600 for land and \$8,347 for net salvage value of track materials.

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.

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

It is ordered:

1. The purchase price for the portion of the segment between 19th Street and the west edge of 24th Street line is set at \$300,947. Other terms of sale must comply with the provisions discussed above.
2. Within 10 days of the service date of this decision, LLC must accept or reject, in writing, the terms and conditions established here by notifying the Board and UP.
3. If LLC accepts the terms and conditions established by this decision, LLC and UP will be bound by this decision.
4. If LLC 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.
5. This decision is effective on its service date.

⁴ UP could have simply applied the actual \$7,552.44 removal value to the salvage value formula, but use of the \$70 average value in fact cuts in favor of LLC by producing a lower net salvage value.

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By the Board, Chairman Morgan and Vice Chairman Owen.

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Secretary

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2. Within 10 days of the service date of this decision, LLC must accept or reject, in writing, the terms and conditions established here by notifying the Board and UP.
3. If LLC accepts the terms and conditions established by this decision, LLC and UP will be bound by this decision.
4. If LLC 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.
5. This decision is effective on its service date.

⁴ UP could have simply applied the actual \$7,552.44 removal value to the salvage value formula, but use of the \$70 average value in fact cuts in favor of LLC by producing a lower net salvage value.

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REQUEST TO SET TERMS AND CONDITIONS

Decided: December 1, 1997

In a decision served September 24, 1997, we granted the Union Pacific Railroad Company (UP) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.88-mile segment of its Lincoln Branch between milepost 494.76, near 10th Street, and milepost 492.88, near 33rd Street, in Lincoln, NE.¹ The exemption was scheduled to become effective October 24, 1997, unless an offer of financial assistance (OFA) was filed with the UP and the Board by October 3, 1997. On October 3, 1997, Lincoln Lumber Company (LLC) filed an OFA to purchase a portion of the segment between 19th Street and the west edge of 24th Street for \$178,323.77.²

¹ We also imposed an interim trail use/rail banking condition under 16 U.S.C. 1247(d) for a portion of the segment between 18th Street (milepost 494.166) and 33rd Street (milepost 492.88). On October 14, 1997, the National Association of Reversionary Property Owners (NARPO) filed a petition to reopen the September 24, 1997 decision to vacate the interim trail use/rail banking condition. The portion LLC seeks to acquire here is included in the portion subject to the interim trail use/rail banking condition. Accordingly, NARPO's petition will be considered in a separate decision to be issued after the OFA process has been completed.

² In the September 24 decision, we estimated the NLV of the portion between 19th Street and 24th Street at \$263,779, consisting of real estate valued at \$255,000 and net track salvage value of \$8,779. The real estate value was originally derived from a real estate appraisal by Dennis J. Knudsen for the 1.88-mile segment, which was conducted in 1995. UP witness Michael P. Horn adjusted Mr. Knudsen's real estate appraisal and estimated the land value of the portion between 19th Street and 24th Street to be \$306,000. The adjusted value included an "assemblage value" of \$51,000. In the September 24 decision, we rejected the assemblage value, noting that UP failed to show that anyone wanted the land assembled for a particular purpose, and thus arrived at the \$255,000 figure. The net salvage value of track and materials of \$8,779 was based on calculations by UP Witness Sylvester Bobo.

By decision served October 8, 1997, LLC was found financially responsible. The effective date of the exemption authorizing abandonment of the portion between 19th Street and 24th Street was postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.³ The decision also provided that, before November 3, 1997, either party could request that the Board establish the terms and conditions for the sale of the portion of the line if no agreement was reached during negotiations.

On November 3, 1997, LLC requested that the Board establish the conditions and amount of compensation. LLC increased its offer and now contends that the fair market value of the portion is \$199,730, consisting of \$196,999 for the land and \$2,731 for the net salvage value of the track and materials. UP responds that the fair market value of the portion is \$359,467, consisting of \$351,120 for the land and \$8,347 for the net salvage value of track materials. We will set the fair market value of the portion at \$300,947, consisting of \$292,600 for the land and \$8,347 for the net salvage value of track materials.

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 terms, 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

³ The exemption authorizing abandonment of the remainder of the segment became effective on October 24, 1997.

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 various issues in this case.

Land value. In its request to set terms and conditions, LLC estimates the land value at \$196,999. LLC's estimate is based on a verified statement from James D. Jennings, a real estate appraiser. Mr. Jennings indicates that he reviewed the UP appraisal prepared by Mr. Knudson and inspected the subject property in October 1997. He notes that Mr. Knudsen's appraisal was conducted in October 1995, more than 2 years ago. Mr. Jennings also points out that Mr. Knudsen's appraisal improperly included an assemblage value. He disputes several comparable land sales considered by Mr. Knudsen, and he maintains that Mr. Knudsen failed to consider the sale price of a lumber yard that is comparable to the property involved here. Mr. Jennings also noted that UP's appraised value does not reflect the fact that the property contains drainage ditches and culverts.

Based on comparative sales contained in Mr. Knudsen's appraisal, Mr. Jennings recalculates the total retail gross value of the right-of-way to be \$239,509, based on a cost per square foot of \$1.28 (\$0.96 per square foot for the land located within the 100-year flood plain). Mr. Jennings then reduced the land value for sales and administrative costs, including overhead costs for delayed sales; property taxes and insurance; and legal and sales expenses for an average time to sell factor of 1½ years from the time of abandonment at a 10% discount rate, resulting in a land valuation of \$196,999.

In response, UP submitted a new appraisal by Mr. Knudsen, dated October 28, 1997. Mr. Knudson reinspected the property and reviewed 29 land sales occurring between July 1992 and October 1996. He then focused on four sales as the most comparable to the property sought by LLC. Two of the sales were of abandoned railroad rights-of-way, which included drainage ditches and culverts. One of the comparative sales was property located in a flood plain. Mr. Knudsen states that he did not adjust the value of property in the flood plain because no permanent structure would likely be constructed on those portions of the right-of-way. He assumed fee simple title to all the property and included a small parcel not included in LLC's offer. Mr. Knudsen appraised the real estate at \$355,000, based on a cost per square foot of \$1.60. He also included an assemblage value of 20%, resulting in a total value of \$426,000 for the property.

UP Witness Horn adjusted Mr. Knudsen's appraisal and removed one parcel consisting of 30,600 square feet, which is subject to a reversionary interest. He also removed one parcel containing 8,400 square feet which LLC does not want to acquire. Using Mr. Knudson's base of \$1.60 per square foot, he reduced the appraised value by \$62,400 and adjusted the land value to \$292,600, without an assemblage factor.

Mr. Horn further determined the value of the right-of-way to be \$351,120, including an assemblage value. He asserts that an assemblage value is warranted here, on the ground that there is significant interest in acquiring the right-of-way. He states that the City of Lincoln, NE (City) seeks

to acquire the right-of-way for use as a hiking/biking trail that would connect the University of Nebraska's main campus with an existing trail now ending at 33rd street. In addition, he states that the Cushman Company (Cushman), which has a facility next to the Lincoln Branch, has indicated by letter dated October 23, 1997, that it is interested in acquiring a portion of the right-of-way adjacent to its facility from 19th street to approximately 390 feet east of 22nd Street. Given this level of interest, Mr. Horn asserts that the right-of-way probably would be sold by the end of 1997, but no later than March 1998. As a result, he disagrees with LLC's contention that it would take an average of 1½ years to sell this property.

Mr. Horn asserts that reducing the property value for overhead expenses, including in-house sales expenses, maintenance and insurance, is not warranted here. He states that UP will sell the property "in-house" (will not use an agent) and therefore will not incur any expenses for commissions. Allegedly, maintenance expenses such as weed control would be small because most of the property LLC offered to purchase is covered by ballast or is under lease pursuant to which the lessees have been required to maintain the property, including weed control, and that there should not be any substantial weed growth on the property from now through March 1998. Also, Mr. Horn states, UP is self insured up to a certain level, and will not incur any expense for insurance.

We accept UP's real estate appraisal, because it is more current, because it contains reasonable comparative sales, and because it has not been effectively contradicted by LLC. However, we do not agree with UP that an assemblage value should be applied here. Generally, an assemblage value is not factored in because the right-of-way is usually sold off piecemeal to adjacent landowners. An assemblage value may be applied, for example where an executed valid sales contract for the assembled nonrail corridor has been entered into the record as evidence of fair market value. See Portland Traction Company—Abandonment Exemption—In Multnomah and Clackamas Counties, OR, Docket No. AB-225 (Sub-No. 2X) (ICC served Jan. 4, 1990). To make its case, however, a railroad must present evidence of a firm commitment of a purchaser to pay the assemblage value. Although UP provided evidence that Cushman is interested in acquiring a portion of the line, the letter simply shows that preliminary discussions have begun. The same is true for the City's alleged interest in the line for interim trail use. There is no indication in the record that Cushman or the City will pay a premium above the fair market value for an assembled corridor.

Although we reject UP's application of an assemblage value, we agree with UP that the purchase price should not be reduced for administrative costs of sale, as claimed by LLC. UP indicates that it would sell the property itself and would not incur costs to pay commissions. Any other costs appear to be minimal. In similar cases, these requested reductions have been rejected. See Conrail Abandonment In Chicago, IL, Docket No. AB-167 (Sub-No. 970N) (ICC served May 5, 1987). Similarly, UP's claim that it can sell the right-of-way within several months appears reasonable, and we therefore see no justification for a time of sale discount. See Seaboard System Railroad, Inc.—Abandonment—In Bibb, Jones, and Baldwin Counties, GA, Docket No. AB-55 (Sub-No. 99) (ICC served Feb. 12, 1985). Accordingly, we accept UP's appraisal value of \$292,600 as the value of the real estate.

Track and materials. LLC accepts all of UP’s track salvage costs except road crossing removal and rehabilitation. LLC maintains that UP has overstated its track salvage estimate because of an apparent inconsistency in road crossing rehabilitation costs. LLC states that UP has priced the cost to remove the road crossings included in this line segment (108 track feet) at a lower cost than the average for the entire line (561 track feet). The lower cost of removal and rehabilitation results in a higher net salvage. LLC states that this calculation is incorrect because nowhere in UP’s evidence or workpapers was any mention made of different types of road crossings on the line. Therefore, LLC contends that UP should have applied the line’s average road crossing removal cost of \$122 per track foot to the crossings within the portion sought for purchase by LLC. Using the \$122 per track foot road crossing removal costs reduces the net salvage value to \$2,731.

In reply, UP Witness Bobo stands by his calculations using a lower cost of removal and rehabilitation. He asserts that, for the three crossings on the portion LLC seeks to acquire, the cost of \$66 per track foot shown for the individual crossings on the line segment (subsequently revised to \$70 per track foot to correct a calculation error), which represents an average cost for the three specific crossings at issue, is more appropriate than the average removal cost for the entire line. We agree.

The specific estimated removal costs for each of the three crossings are shown below:

Revised Road Crossing Cost of Removal				
Location	Crossing Type	Length (Ft).	Unit Cost	Total
M.P. 493.76 (23rd Street)	Asphalt & Plank	32	\$55.36	\$1,771.52
M.P. 493.80 (22nd Street)	Asphalt	40	\$55.36	\$2,214.40
M.P. 493.90 (21st Street)	Concrete	<u>36</u>	\$99.07	<u>\$3,566.52</u>
Total		108		\$7,552.44

Average: \$69.93 (rounded to \$70).

Applying the \$70 per foot removal cost to the 108 feet of crossings removed on the portion results in total removal costs of \$7,560. Applying that removal cost produces an overall net salvage value for the portion as follows:

Gross Salvage Value		\$22,662
Less Track Removal	\$4,221	
Less Switch & Crosstie Removal	\$2,534	
Less Road Crossing Rehabilitation	\$7,560	

	(\$14,315)
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Net Salvage Value	\$8,347

Because specific road crossing rehabilitation costs are superior to the average costs used by LLC, we accept UP's road crossing rehabilitation unit costs, and its net salvage value of track and materials of \$8,347.⁴

Summary. The purchase price for the sought right-of-way is set at \$300,947, consisting of \$292,600 for land and \$8,347 for net salvage value of track materials.

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.

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

It is ordered:

1. The purchase price for the portion of the segment between 19th Street and the west edge of 24th Street line is set at \$300,947. Other terms of sale must comply with the provisions discussed above.
2. Within 10 days of the service date of this decision, LLC must accept or reject, in writing, the terms and conditions established here by notifying the Board and UP.
3. If LLC accepts the terms and conditions established by this decision, LLC and UP will be bound by this decision.
4. If LLC 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.
5. This decision is effective on its service date.

⁴ UP could have simply applied the actual \$7,552.44 removal value to the salvage value formula, but use of the \$70 average value in fact cuts in favor of LLC by producing a lower net salvage value.

STB Docket No. AB-33 (Sub-No. 112X)

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary