

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-43 (Sub-No. 163)

ILLINOIS CENTRAL RAILROAD COMPANY--ABANDONMENT--
BETWEEN ABERDEEN JUNCTION AND KOSCIUSKO,
IN HOLMES AND ATTALA COUNTIES, MS

Decided: January 13, 1997

On September 30, 1996, Illinois Central Railroad Company (Illinois Central) filed an application under 49 U.S.C. 10903 to abandon a 21.70-mile rail line between milepost H-0.20 at Aberdeen Junction and milepost H-21.90 at Kosciusko, in Holmes and Attala Counties, MS. Public notice was properly given.

Protests were filed by the City of Durant, MS, the Attala Company, Attala County, the City of Kosciusko, and jointly by the Mississippi Department of Transportation (MSDOT) and the Mississippi Public Service Commission (MSPSC). Comments in opposition to the proposed abandonment were filed by MSDOT, State House of Representatives Member Mary Ann Stevens, jointly by the Attala Industrial Development Corporation and the Economic Development Authority of Attala County, and by the Mississippi Department of Economic and Community Development. The United Transportation Union filed a request for the imposition of labor protective conditions.

Upon review of the protests and comments, the Board, by order of the Director of the Office of Proceedings, served November 14, 1996, instituted an investigation into the proposed abandonment under the modified procedure and denied requests for oral hearing. Illinois Central and protestants were ordered to submit additional evidence or supporting documentation on various issues. In addition, Illinois Central and MSDOT were ordered to inform the Board regarding the status of MSDOT's purported offer of \$500,000 for the purchase of the line.¹

Illinois Central filed its opening statement on November 29, 1996. Protestants filed initial and reply statements on December 9, 1996, and Illinois Central filed reply

¹ On September 30, 1996, the same day the application was filed, MSDOT made a formal offer of \$500,000 to purchase the line. Illinois Central advised MSDOT that it would accept the offer, with the following qualifications: (1) the sale would be to the State of Mississippi, (2) the State would have to commit to operating the line for at least 2 years, (3) the sale would be based on Illinois Central's standard purchase terms, and (4) Illinois Central would have the right to recover the difference between the line's net liquidation value and the \$500,000 if the State ultimately abandoned the line. Illinois Central believes that \$500,000 represents less than half of the line's value. The railroad says it is concerned that the State might buy the line, hold it for less than 2 years, and then sell or salvage it for double the purchase price. MSDOT has indicated that it finds the carrier's qualifications (3) and (4) unacceptable.

and rebuttal on December 19, 1996.² Upon review of the record, we conclude that the abandonment application should be granted. Our analysis follows.

TRAFFIC, OPERATIONS AND REVENUES

The subject line consists of 21.7 miles of main track and 1.52 miles of side track. Illinois Central uses the line for local service. No overhead or bridge traffic has moved over the line during the past 2 years. Service on the line is provided by three-man crews operating out of Durant, MS, and scheduled service is offered 3 days a week. Applicant identifies three significant users on the line: International Paper Company, Charles Donald Timber Company (Charles Donald), and protestant Attala Company.³

Illinois Central wants to abandon the line because the railroad says that the line is a financial drain. The applicant does not believe that the line, or any portion of it, can be operated profitably, even if necessary rehabilitation and maintenance were performed. According to the applicant, the general condition of the line is fair to poor and falls below Federal Railroad Administration (FRA) class 1 standards.

Applicant avers that traffic handled on the line has been minimal and is declining. The railroad states that it has received no guarantees of increased future traffic and is unaware of any changes in future traffic patterns that would enable the line to operate at a profit on a regular basis.

Charles Donald and International Paper use Illinois Central for the outbound transportation of pulpwood. Attala Company uses the rail carrier for the inbound transportation of grains and grain products. During the base year (the 12 months ending March 31, 1996), the rail carrier transported 457 and 1,454 carloads of pulpwood, respectively, for Charles Donald and International Paper, and 128 carloads of grain for Attala Company, for a total of 2,039 carloads. During the first quarter of 1996, Illinois Central carried 473 carloads of pulpwood and 33 carloads of grain for its customers. For the forecast year (the 12 months ending August 31, 1997), the applicant projects that it would handle 506 carloads of pulpwood for Charles Donald, 1,782 carloads of pulpwood for International Paper, and 128 carloads of grain for Attala Company, for a total of 2,416 carloads. Applicant forecasts that this traffic will generate revenue of \$1,004,853.⁴ Applicant also projects "all other revenue and income" of \$2,130

² On November 27, 1996, the Public Utilities Committees of the Mississippi Senate and House of Representatives submitted a resolution of November 18, 1996, requesting the Board to deny the application or impose specified environmental conditions. It does not appear that the submission by these nonparties was served on applicant. However, as MSDOT has included the document in its statement filed December 9, the document is properly in the record.

³ Applicant identifies this company as Attala Mills Company, but it is apparent that applicant is referring to the protestant.

⁴ This figure is reasonable compared with the base year revenues of \$846,981 generated by the 2,039 carloads handled.

for both the base and forecast years. Protestants do not dispute Illinois Central's traffic projections, and we will accept Illinois Central's revenue figures.

ON-BRANCH AVOIDABLE COSTS

On-branch avoidable costs are costs that Illinois Central will cease to incur if it abandons the line. Applicant estimates that total on-branch avoidable costs for the forecast year are \$456,813.

Our review of applicant's detailed computations of various cost items which comprise on-branch avoidable costs reveals that they generally were compiled and computed in accordance with our applicable abandonment regulations and are reasonable. None of the protestants disputes applicant's on-branch cost estimates. We will, however, specifically discuss one cost item-- maintenance-of-way (MOW).

Illinois Central estimates MOW to be \$160,042. This estimate equates to \$7,468 per mile.⁵ Total MOW cost excluding bridge maintenance equates to \$4,342 per mile. Protestants declined to provide any MOW estimate.

We have analyzed applicant's MOW estimate by type of expense and find it reasonable. We note, however, that the railroad failed fully to comply with our request to provide support for all unit costs and quantities used to develop MOW. Instead, Illinois Central used system average composite costs (e.g., average costs per mile) developed from a database of the current price of materials and the cost of labor, based on composite inventory values and historical costs. Although Illinois Central claimed that the system has proven extremely reliable, it failed to provide any evidence of its reliability. Nevertheless, as protestants have not addressed this item, and the total appears reasonable, we will accept applicant's figures.

OFF-BRANCH AVOIDABLE COSTS

Off-branch avoidable costs are the costs associated with the traffic before it comes on to, and after it leaves, the line. Illinois Central estimates that total off-branch avoidable costs are \$1,521,425 for the forecast year.

Applicant's off-branch cost data were compiled and computed in accordance with the applicable abandonment regulations. The railroad's detailed computations of the individual cost categories appear reasonable. No protestant has disputed the off-branch cost data. We will accept applicant's figures.

REHABILITATION COSTS

Illinois Central estimates rehabilitation costs at \$3,087,814. The cost of rehabilitating the bridges on the line accounts for more than two-thirds of these costs. Track and bridge rehabilitation are discussed separately below.

⁵ Applicant has reduced the total of 21.7 miles on the line to 21.43 miles for MOW calculations because trackage between mileposts 21.63 and 21.90 has been removed.

Track Rehabilitation.

Illinois Central operates the line as "excepted" track, which means it fails to meet FRA class 1 track safety standards. Those are FRA's lowest standards, the level of maintenance required to allow a train to operate at 10 m.p.h. Applicant's witness Don Gallery judges the rail on the line to be in poor to fair condition and the tie and surface conditions to be extremely poor.

A carrier seeking abandonment authority is permitted to claim the cost of rehabilitating the line to meet FRA class 1 standards. We therefore must look for evidence that the track in fact falls below FRA class 1 safety standards.

According to the track inspection report prepared by Mr. Gallery in April 1996, the number of defective ties per mile ranges from 21 to 52 ties. Using applicant's total of 3,250 ties per mile, this number represents less than 2% defective ties, far exceeding FRA class 1 requirements. We could find in the report no indication of defective ties at joints. A condition of skewed ties was noted, but there is no FRA regulation prohibiting skewed ties.

Applicant's witness Daniel Drier, in his net salvage computation, states that, "Nearly all of the rail on the line is in good condition and reusable." This conflicts with Mr. Gallery's statement that the condition of the rail is poor to fair. Mr. Gallery's report contains no indications of poor ballast conditions. Applicant notes that the line has no anchors, but there is no FRA class 1 requirement that the line have anchors.

Although applicant indicates that there have been four derailments on the line during the past 2 years, based on the above inconsistencies and deficiencies in the evidence submitted, we do not have sufficient evidence to permit us to conclude that the track fails to meet FRA class 1 safety standards. Therefore, we must disallow track rehabilitation costs.

Bridge Rehabilitation.

There are 58 bridges on the line, 3 of which require immediate rehabilitation, according to a report prepared by Osrose Wood Preserving, Inc., in March 1994. Of the 2,800 feet of total length of the three bridges, 1,746 feet built prior to 1923 would need to be rehabilitated. The cost of these repairs is shown below:

Bridge @ MP 0.8:	\$	612,720
Bridge @ MP 1.5:		404,040
Bridge @ MP 1.7:		<u>921,300</u>
Total	\$	1,938,060

Additional bridge work (caps, stringers, legs, bridge ties) of \$175,980 brings the total bridge rehabilitation to \$2,114,040. No one objects to the railroad's estimates of bridge repair. They are supported by a detailed report. We accept Illinois Central's bridge rehabilitation estimate.

OPPORTUNITY COSTS

Opportunity costs (or total return on value) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under Abandonment Regulations - Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base that is the sum of: (1) allowable working capital; (2) the net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base, also called the "valuation of the road properties," is then multiplied by the nominal rate of return, which is 17.5%.⁶ The resulting figure is then adjusted by applying a holding gain (or loss), which is the increase or decrease in value that a carrier will expect to realize by holding the assets for 1 additional year.

Illinois Central projects this total return to be \$98,905 (\$721,636 value of properties times 17.5% nominal rate of return, less \$27,381 holding gain). We have recalculated this total return to be \$83,879 (\$610,590 restated value of properties times 17.5%, less \$22,974 holding gain).

Valuation of road properties.

a. Working capital. Illinois Central projects this component to be \$10,723. Applicant's computation was made in accordance with applicable regulations and is reasonable. Protestants do not challenge the figure.

b. Net liquidation value (NLV). NLV is comprised of net salvage value and net land value. Illinois Central projects NLV to be \$1,095,226 (\$849,843 salvage value plus \$245,383 land value). We find applicant's salvage value to be supported by the record and we accept it. We have reduced the net land value (discussed below) from applicant's estimate of \$245,383 to \$69,120. Our restated NLV thus is \$918,963 (\$849,843 salvage value plus \$69,120 land value).

1. Net salvage value of the line. Illinois Central estimates track net salvage value to be \$849,843. This estimate is based on a gross salvage value total of \$1,139,088 less removal costs of \$289,245. Protestants argue that the NLV is only \$243,317 based on an analysis by A&K Railroad Materials, Inc. A&K's valuation includes rail, bars, tie plates, ties, OTM (other track materials), and ballast, and excludes bridge removal and grade crossing restoration.

There are problems with A&K's valuation. Chiefly, A&K states that it values all material as scrap, although it admits that it has not even seen the track. This is a serious deficiency. The value of rail as scrap is far less than the value of rail that may be reused. Characterizing rail as scrap

⁶ The 17.5% pre-tax nominal cost of capital rate is determined from the after-tax cost of capital (11.7%) developed in Railroad Cost of Capital-1995, 1 S.T.B. 46 (1996). It is based on the three capital components - debt, common equity, and preferred equity; the capital structure mix of these three components; and an adjustment for Federal and state income taxes. It is computed by adjusting the after-tax costs of common and preferred equity to reflect the fact that a 37% tax rate has been applied. The cost of debt is not adjusted.

must be based on an inspection or similar support. A&K has not offered any such support for its estimate. Further, A&K's quantities do not match those of the railroad, which based its analysis on a visual inspection of the line. Also, A&K fails to provide the unit costs used for rail, ties, OTM, and ballast even though it was requested to do so in our decision served November 12, 1996. Further compounding the problem is A&K's including the right-of-way for 195 acres in its valuation but not giving any indication as to A&K's valuation of that acreage. Given these deficiencies, we are unable to accord significant weight to A&K's valuation.

Illinois Central's net salvage value estimate equates to \$39,657 per mile. The applicant's estimate is based on a detailed verified statement by its director of materials management, Daniel C. Drier. Mr. Drier asserts that approximately 90% of the track on the line could be sold as reusable rail. He based that assessment on a visual inspection of the line, on foot and by hi-rail vehicle. He supported his value of the sale price of the 90-pound rail with two estimates of \$260 per net ton and \$310 per net ton, both of which exceed the \$230 per ton claimed by the railroad. He offered a reasonable explanation for the value of the \$210 per ton value of the 85-pound rail. Mr. Drier similarly supported the other elements of his valuation. Because the railroad's witness supported his estimates, and because the protestant's characterization of the rail as unreusable scrap is not supported, we will accept the railroad's net salvage value figure.

2. Net land value. In April 1995, Illinois Central's witness Robert Fowler appraised the 274.42 acres on the line at \$342,384. He now states that the land he believes to be merchantable (120 acres, or 44% of the total acreage) has a value of \$272,648. He bases his value on 12 comparable sales and on personal inspections. Applicant deducts 10% for disposition costs to compute a net land value of \$245,383.

Protestants' witness James Adams argues that Mr. Fowler's value for all 274.42 acres equates to \$1,248 per acre, whereas Mr. Fowler's value for the merchantable land equates to a much higher \$2,272 per acre. Mr. Adams questions why the merchantable land has an appreciably higher unit value and notes that values realized in recent rural land sales range from \$200 to \$750 per acre. If the land is used for timberland, Mr. Adams contends, reasonable values would be \$200 to \$400 per acre.

Mr. Adams also states that 1.20 miles of land runs through towns and is mostly located on the rear of lots fronting the street. He believes that 3/4 mile of the right-of-way is on leasehold property. Mr. Adams claims that he was unable to do an appraisal or a review of Mr. Fowler's appraisal because he lacked maps showing the location of the 120 acres of merchantable land.

In rebuttal, Mr. Fowler indicates that much of the property to which Illinois Central holds merchantable title is located in or near Kosciusko, and that values for this city property are high relative to the rural property along much of the line.

The Illinois Central's proposed land valuation is not supported by its analysis. The railroad's witness Fowler concedes that "[o]f the total 21.7 miles of rail line subject to

this appraisal approximately 20.5 miles runs through and adjacent to rural areas." Nor does witness Fowler dispute the statement of protestant's witness Adams that, of the 1.2 miles that runs through Kosciusko, most is located in the rear of lots, and that three-fourths of a mile is leasehold property. That being the case, we cannot accept the Illinois Central's statement that the 120 acres should be valued at an average of \$2,272 an acre because most of the 120 acres is "located in or near Kosciusko, and that values for this city property are high relative to the rural property along much of the line." This assertion is contravened by witness Fowler's own testimony that virtually all of the line lies outside the town and runs through rural areas. On the basis of this record, we must base the line's value on the comparable sales offered by witness Fowler in rural areas. Moreover, given that the right of way is only 100 feet wide, it is difficult to see how this land could be used for residential or commercial purposes. For this reason, we will base the valuation on the comparable sales in rural areas for agricultural purposes. These sales, enumerated in witness Fowler's Exhibit RRF-1 at pages 7 through 18, are sales nos 1-2 and 4-6. The average of those 5 sales is \$640 per acre. Accordingly, we will restate land value as follows:

Land with merch. title:	120 acres @ \$640	=	\$76,800
Less 10% disposition costs:			<u>(\$ 7,680)</u>
	Net land value		\$69,120

c. Income tax consequences. Illinois Central projects the income tax consequence of disposal of properties to be \$384,313 (\$1,038,685 gain on sale times a 37% tax rate). Applicant made its computation in accordance with our regulations, but it must be recomputed to reflect our restatement of land valuation. As discussed, we have restated net land value, the effect of which is to decrease the amount of "gain on sale" of property disposal and thereby the income tax consequences. Our restatement projects tax consequences to be \$319,096 (\$862,422 gain on sale times 37%).

Nominal return on value.

As noted, to compute total return on value, we must multiply the investment base by the nominal rate of return. Using a rate of return of 17.5%, Illinois Central projects its return to be \$126,286 (\$721,636 valuation of properties times 17.5%). We have recomputed this amount to be \$106,853 (restated valuation of \$610,590 times 17.5%).

Holding gain.

As noted, the resulting figure above is adjusted by applying a holding gain, which is the increase in value that a carrier will expect to realize by holding the assets for 1 additional year. We compute the holding gain here by multiplying the NLV by a holding gain rate of 2.5%.⁷ Illinois Central projects the

⁷ The regulations in Abandonment Regulations--Costing, 5 I.C.C.2d 483 (1988), require that a holding gain be based on the most recent Gross Nation Product (GNP) deflator. The most recent full year average GNP deflator rate is 2.5%. See Table 7.2, Survey of Current Business, August 1996, Bureau of Economic
(continued...)

holding gain to be \$27,381 (\$1,095,226 NLV times 2.5%). We have recomputed the holding gain to be \$22,974 (\$918,963 restated NLV times 2.5%).

SUMMARY OF COST AND REVENUE EVIDENCE

The evidence shows that, for the forecast year, total revenue attributable to the line will be \$1,006,983. Net on-branch avoidable costs of \$456,813 and net off-branch avoidable costs of \$1,521,425 result in a forecast year operating loss of \$971,255. When our restated economic costs of \$83,879 are added, the total avoidable costs increase to \$1,055,134. The record also shows that rehabilitation costs of \$2,114,040, as restated, are required to bring the line into conformity with FRA class 1 standards. (A complete summary of revenue and cost data is set forth in the appendix).

SHIPPER AND COMMUNITY INTERESTS

As noted above, Illinois Central has identified three shippers as significant users of its service on the line. Of the three, only Attala Company has opposed the application.

The Attala Company, situated in Kosciusko, markets feeds to the farming industry in central Mississippi. This shipper depends on Illinois Central for the delivery of bulk grains, grain products, and proteins that the Attala Company uses for the manufacture of 95% of its products. During the past 3 years, Attala Company has received an average of 165 carloads of raw materials annually. Some is traffic that moves from their origin points to Kosciusko via the applicant. Some originates on the lines of other carriers and is interchanged to the Illinois Central for delivery.

The Attala Company has 31 full-time employees, 55% of whom are minorities. The shipper says that the loss of rail service would leave it with three options: (1) closing the facility, (2) relocating its plant; or (3) down-sizing to accommodate raw materials delivered by means other than rail. The Attala Company estimates that making the minimum modifications necessary to facilitate receiving shipments other than by rail would cost more than \$170,000. The shipper asserts that the choice of any of these options will adversely impact it, Kosciusko, and Attala County.

The City of Kosciusko and Attala County express similar concerns. These protestants indicate that a considerable segment of their work force, a large portion of which is made up of minorities, is employed in the timber industry. Historically, timber products have been shipped or received by rail. Thus, the loss of rail service assertedly would have an adverse effect on the work force. The protestants state, further, that they have used rail service for many years for the delivery of materials that they use in the construction and maintenance of roads. Protestants assert that the absence of rail service is likely to cause a considerable increase in their transportation costs.

The City of Durant likewise is concerned that abandonment

(...continued)

Analysis, United States Department of Commerce.

might cause a loss of jobs for residents of the area, many of whom are minorities, who rely on the harvesting and hauling of timber and pulpwood. Durant also is concerned that abandonment might result in additional heavy truck traffic on the city's major streets. It believes that a loss of rail service could cause the addition of 8,000 truckloads of logs to its streets, leading to traffic hazards and road damage.

MSDOT and MSPSC are concerned that there might be significant structural and environmental impacts on the highway system in the affected area due to the increased number of trucks that would have to travel over the local highways if the rail line were to be abandoned. The remaining participating State agencies join MSDOT and MSPSC in expressing general concern that abandonment might have an adverse economic impact on local communities and businesses. Protestants aver that continued rail service is vital to the survival of small towns that have few transportation options. MSDOT asserts that industrial expansion in central Mississippi will be curtailed, and that new industries will not relocate there, without the availability of rail service.

Illinois Central disputes the Attala Company's claims that an expenditure of \$170,000 would be required to modify its facility to accommodate the receipt of inbound shipments. Applicant asserts that the Attala Company has a truck dock that has room for up to six trucks at one time and that this shipper actively utilizes trucks for its daily transportation needs. Given the small amount of traffic that the Attala Company receives by rail, applicant contends, conversion of the traffic to truck would require no more than one or two truck deliveries a day. Even if the claimed expenditure were required, applicant argues, there is no showing that such an expenditure would require the Attala Company to close its facility, relocate, or curtail operations.

Illinois Central also disputes protestants' claims that abandonment might result in additional heavy truck traffic on major streets. Applicant points out that International Paper and Charles Donald currently truck their pulpwood and long logs to Kosciusko, where these commodities are then transloaded to railcars. Abandonment will not result in the diversion of rail movements to motor carriage, applicant argues. Instead, existing motor movements simply would be rerouted to different railheads in lieu of Kosciusko.

ALTERNATIVE TRANSPORTATION

Illinois Central asserts that there is substantial alternative rail and motor transportation available to shippers. According to applicant, alternative rail service over Illinois Central's lines is available at Durant, MS, approximately 6 miles to the north of the subject line, and at Vaiden, MS, approximately 22 miles to the north of the subject line. Service by the Columbus and Greenville Railway Company is available at Winona, MS, 30 to 35 miles north of the line. The Kansas City Southern Railway Company offers service at Ackerman, MS, some 31 miles northeast of Kosciusko.

Applicant lists more than 70 motor carriers that serve the area. Applicant indicates that shippers have access to Mississippi State Highways 12, 14, 35, and 43, which crisscross

the area, as well as to U.S. Highway 51 and U.S. Interstate Highway 55, which run north and south at or near Aberdeen Junction.

DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment is whether the present or future public convenience and necessity permit the proposed abandonment. 49 U.S.C. 10903(d). In implementing this standard, we must balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. Colorado v. United States, 271 U.S. 153 (1926).

The Board must determine whether the burden on the railroad from continued operation of the line is outweighed by the burden on the shippers and public parties from the loss of rail service. This involves a question of whether, and to what degree, shippers will be harmed if rail service is no longer available. The fact that shippers are likely to incur some inconvenience and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operation of uneconomic and excess facilities. Protestants must show that the harm to shippers and communities outweighs the demonstrated harm to Illinois Central and interstate commerce resulting from continued operation of the line. See Chicago and North Western Transp. Co.--Abandonment, 354 I.C.C. 1, 7 (1977).

In determining whether to grant or deny an abandonment application, we consider a number of factors, including operating profit or loss, other costs the carrier may experience (including rehabilitation and economic costs), and the effects on shippers and communities. No one factor is conclusive. See Cartersville Elevator, Inc. v. ICC, 724 F.2d 668, aff'd on reh'g, en banc, 735 F.2d 1059 (8th Cir. 1984).

Here, the factors weigh in favor of abandonment. The record shows that continued operation of the line will impose a substantial economic burden on Illinois Central, involving a forecast year operating loss of \$971,255. When opportunity costs of \$83,879 are factored in, Illinois Central's annual loss increases to \$1,055,134. In addition, the record shows that the line requires rehabilitation expenditures of \$2,114,040. The record does not reveal any realistic prospects for increased traffic levels in the future. Accordingly, we must conclude that the line will continue to produce heavy losses if abandonment is denied.

In considering the potential harm to shippers, we note that only one of the three significant users of the line has appeared in opposition here. The two shippers who would account for some 2,300 outbound carloads of pulpwood during the forecast year have not opposed the application. Only the Attala Company, which receives an average of 165 carloads of raw materials annually, has protested the application.⁸ This shipper has stated that authorization of abandonment will leave it with three undesirable

⁸ Kosciusko and Attala County claim to use rail service for the transportation of road construction and maintenance materials, but the extent of such use has not been shown.

options, including the option of spending more than \$170,000 to make modifications to facilitate receiving shipments by motor carriage. Protestant has not, however, provided support for this figure. Neither this shipper nor any other has come forward to promise significant increases in shipping levels. Finally, we also note that the Attala Company already makes use of area truck service for its transportation needs.

State agencies and local communities have expressed general concerns that abandonment might have an adverse economic impact on the area served by the line. MSDOT has asserted that, without the availability of rail service, industrial expansion will be curtailed and new industries will not relocate to central Mississippi. The potential for these adverse effects must, however, be weighed against the certainty that the Illinois Central is incurring losses on this line, and that continuing to do so will adversely affect the railroad's ability to provide adequate rail service throughout its system.

The protesting state and local interests also express concern that abandonment might result in additional heavy truck traffic on local streets and highways, leading to traffic hazards and road damage. The record, however, does not support such claims. To the contrary, it appears that Attala Company's truck shipments would increase by only one or two truckloads a day, and that those of International Paper and Charles Donald might not increase at all.⁹ In any event, we have considered not only the possible inconvenience of increased motor carrier traffic, but also the hazard of continued operation by Illinois Central over a rail line that is in need of rehabilitation. There have been four derailments on the line during the past 2 years. The condition of the line can only worsen if substantial expenditures are not made immediately, and such expenditures have not been shown to be economically justified.

The statute provides a mechanism for those who want to continue rail service that the Board has authorized to be abandoned. Under 49 U.S.C. 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an offer of financial assistance to acquire the line or subsidize the losses of the existing operator. Applicant and state interests appear to be engaged in ongoing negotiations regarding the line. The State may wish to take advantage of our procedures to make an offer of financial assistance for the line.

On balance, we conclude that any harm to shippers and the community from the abandonment of the subject line is outweighed by the demonstrated harm to Illinois Central and the burden on interstate commerce through continued operation of the line. We, therefore, will grant the abandonment application.

⁹ As earlier noted, applicant claims that these latter two shippers, which currently truck their shipments to Kosciusko for subsequent movement by rail, will simply truck the shipments to a different railhead.

LABOR PROTECTION

In approving this abandonment application, we must ensure that rail employees are protected. 49 U.S.C. 10903(b)(2). We have found that the conditions imposed in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), satisfy the statutory requirements, and we will impose those conditions here.

ENVIRONMENTAL ISSUES

The Board also is required to consider the environmental and energy impacts of the proposed abandonment. The Board's Section of Environmental Analysis (SEA) issued an environmental assessment on November 7, 1996, and requested comments.

In its EA, SEA examined the environmental impacts of the proposal. Areas of consideration included, but were not limited to, energy consumption, air and water quality, noise levels, endangered species, and public safety. SEA concluded that, based on the information provided from all sources and subject to conditions, the proposed abandonment, if implemented, will not significantly affect the quality of the human environment.

First, SEA has noted that the Mississippi Department of Environmental Quality (MSDEQ) has expressed concern about contamination at a railroad-owned site near Kosciusko that MSDEQ identifies as the "ICG-Arnold Oil Site". Illinois Central has identified this site as a 150-foot by 250-foot parcel of land adjacent to the right-of-way near milepost 17.7. The parcel is included in the abandonment application but is not part of the right-of-way. SEA has considered comments on the matter and recommends that the following condition be imposed on any decision granting abandonment authority: Illinois Central shall consult with the MSDEQ and, in the event that any remediation is necessary, Illinois Central shall develop a remediation work plan and not dispose of the 150-foot by 250-foot parcel of land adjacent to the right-of-way near milepost 17.7 until the remediation of the contamination is complete. Also, Illinois Central shall advise SEA of the results of its consultations and provide SEA with a copy of the MSDEQ-approved mitigation plan.

SEA has also indicated that the Mississippi Department of Archives and History has stated that two brick arch bridges (at milepost 14.60 and milepost 15.60) are potentially eligible for the National Register of Historic Places. Following consideration of comments, SEA recommends that the following condition be imposed on any decision granting abandonment authority: Illinois Central shall retain its interest in and take no steps to alter the historic integrity of two brick arch bridges at milepost 14.60 and milepost 15.60 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Finally, SEA has noted that the National Geodetic Survey (NGS) has identified 11 geodetic markers along the rail line and requests 90 days' notice to plan relocation of any markers that may be disturbed or destroyed. Following the consideration of comments, SEA recommends that the following condition be imposed on any decision granting abandonment authority: Illinois Central shall consult with the NGS and provide it with 90 days' notice prior to disturbing or destroying any geodetic markers.

We agree with SEA's recommendations and will adopt them.

We find:

1. The present and future public convenience and necessity permit abandonment of the above-described line of railroad, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the condition that Illinois Central shall consult with the Mississippi Department of Environmental Quality and, in the event that any remediation is necessary, Illinois Central shall develop a remediation work plan and not dispose of the 150-foot by 250-foot parcel of land adjacent to the right-of-way near milepost 17.7 until the remediation of the contamination is complete. Also, Illinois Central shall advise the Board's Section of Environmental Analysis of the results of its consultations and provide SEA with a copy of the MSDEQ-approved mitigation plan; (3) the condition that Illinois Central shall retain its interest in and take no steps to alter the historic integrity of two brick arch bridges at milepost 14.60 and milepost 15.60 until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and (4) the condition that Illinois Central shall consult with the National Geodetic Survey and provide it with 90 days' notice prior to disturbing or destroying any geodetic markers.

2. Abandonment of the line will not result in a serious, adverse impact on rural and community development.

3. As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Notice of the above findings will be published in the Federal Register on January 17, 1997. Financial assistance offers must be filed with the Board and the railroad by January 28, 1997. Financial assistance offers must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c).

2. Offers of financial assistance and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

3. Unless otherwise ordered by the Board, this decision will be effective and abandonment may be carried out on February 12, 1997, unless, prior to that date, the Board finds that one or

more financially responsible persons have offered financial assistance (through subsidy or purchase) regarding the line.¹⁰

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

¹⁰ Under 49 U.S.C. 10904(c), offers to subsidize or purchase the line must be made within 4 months after the application is filed, and, under 49 U.S.C. 10904(d), the Board has 15 days after the expiration of the 4-month period to find that a financially responsible person has filed such an offer. The 4-month period expires January 28, 1997.