

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 21X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—LINE IN WARREN COUNTY, MS

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: February 22, 2008

BACKGROUND

By decision served December 12, 2007, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the proposed abandonment by The Kansas City Southern Railway Company (KCSR) and the proposed discontinuance of service by Vicksburg Southern Railroad, Inc., of approximately 4.25 miles of rail line (the Line), extending from milepost 225.6 to milepost 229.85, in Vicksburg, Warren County, MS. The Board denied petitioners' request for exemptions from the offer of financial assistance (49 U.S.C. 10904) and public use (49 U.S.C. 10905) provisions. The decision noted that a notice of intent to file an offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue had been filed by Raymond B. English, the president of Foam Packaging, Inc., the only active shipper on the Line, and that a request for a notice of interim trail use under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, filed by the City of Vicksburg (City) was being held in abeyance pending completion of the OFA process. The abandonment and discontinuance exemptions were scheduled to become effective on January 11, 2008, unless they were stayed by the Board or an OFA was filed by December 21, 2007.

On December 20, 2007, English timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase approximately 1.9 miles of the Line extending from milepost 225.6 to milepost 227.5 (the Segment). On December 21, 2007, English filed a supplement to his December 20 OFA, adding James Riffin as a joint offeror, and expanding the scope of the offer to include the remaining 2.35 miles of the Line from milepost 227.5 to milepost 229.85 (the Remainder). In a decision served on December 27, 2007, English and Riffin (collectively, Offerors) were found to be financially responsible and the effective date of the exemption authorizing the abandonment was postponed to permit the OFA process to proceed. In the same decision, the Board made any request to establish the terms and conditions of the purchase due on or before January 18, 2008. On January 16, 2008, KCSR filed a petition for an extension of the deadline for a request to establish terms and conditions to January 25, 2008. The Board granted that request by decision served January 17, 2008.

On January 25, 2008, the Offerors requested that we set the terms and conditions for the sale of both the Segment and Remainder portions of the Line (Request) because the parties were unable to agree on the amount or terms of purchase.¹ In their Request, the Offerors do not suggest a purchase price for the Segment. Rather, they contend that the net liquidation value (NLV) of that portion of the Line is negative \$174,980. They reached this figure by starting with a real estate value of \$103,500, adding a total track asset and other rail materials value of \$106,320, and subtracting \$384,800 for the expense of removing track, retiring crossings, transporting scrap, and disposing of ties (\$77,000), and for environmental compliance costs (\$307,800). Riffin contends that the purchase price for the Remainder should be set at a maximum of \$45,000. Alternatively, he contends that, if the Board were to require KCSR to restore the track on the Remainder, the purchase price should be set at \$128,250. KCSR values the entire Line at \$504,615, a figure based on a real estate value totaling \$231,795 and a net salvage value of the track and track material of \$272,820.

PRELIMINARY MATTERS

On February 4, 2008, the Offerors filed three pleadings: an errata, a supplement to the Request, and a motion to strike portions of KCSR's January 30 reply. In a decision served February 6, 2008, the Board, by the Director of the Office of Proceedings: (1) rejected the motion to strike in its entirety; (2) accepted the Offerors' revised signature page, but rejected the remainder of the errata; and (3) accepted the motion to supplement the record and directed KCSR to respond to the Offerors' allegations regarding removal of a bridge on the Line.

Petition for Reconsideration. On February 11, 2008, the Offerors filed a petition for reconsideration of the Board's February 6, 2008 order. KCSR filed a reply on February 13, 2008. The Offerors request that the Board reopen and reconsider the February 6 decision rejecting (1) the Offerors' February 4 errata regarding the acreage of the Line, and, in turn, the real estate value, and Riffin's verified statement, and (2) their motion to strike portions of KCSR's January 30 reply. Pursuant to 49 CFR 1152.25(e)(4), the Board will grant a petition to reopen only if the petitioner shows material error, new evidence, or substantially changed circumstances. Because the Offerors have failed to establish any of these grounds for reopening, we will deny their request for relief.

The Offerors argue that the Director erroneously concluded that the Offerors were attempting to revalue the real estate by revising the acreage, and therefore, erred in rejecting this evidence. However, the Director rejected the acreage errata because the evidence was already in the record, and therefore, the Board already had a complete record regarding this issue, and it would have been redundant to accept this correction simply to bring into the record revised acreage figures that are already being used in the valuation.

¹ In its reply to the Offerors' request to set terms and conditions, KCSR argues that the Board should set one price for the entire Line. However, while Riffin would like to purchase the entire Line jointly with English, English is interested in only the Segment portion. Thus, two separate offers were filed, and we will set separate purchase prices for the Segment and Remainder portions.

The Offerors additionally argue that, in the interest of having a more complete record, the Board should accept Riffin's verified statement, which the Offerors claim was drafted prior to the deadline for filing a request to set terms and conditions, but was inadvertently missing from their Request. Given the tight statutory time frames for OFAs, strict compliance with the procedural schedules is essential. The Offerors again fail to show that the Board should now accept Riffin's verified statement. In the petition, Riffin states only that he omitted the verified statement because he was exhausted from drafting the petition and simply neglected to attach it. But Riffin offers no explanation for why he waited until February 4—five days after KCSR's reply and a full ten days after Riffin filed the Request—to remedy an omission that could easily have been corrected more than a week earlier. And in any event, the statement adds nothing substantive to the Offerors' Request, and thus, our disposition of this matter would be the same even if we were to accept the verified statement.

Finally, the Offerors argue that the Board erred in rejecting their motion to strike, asserting that KCSR's reply contained objectionable matter as it is defined in 49 CFR 1104.8. The Offerors specifically point to KCSR's statements that there has been no demand for service on the Remainder for at least 15 years and that the Offerors have no experience in removing rail. The Offerors also make various other arguments in further attempts to rebut KCSR's reply. The Offerors argue that they should have the right to rebut evidence even though the Board's rules clearly state that they have no such right in these abbreviated OFA proceedings. See 49 CFR 1152.27(h)(4). The Offerors had the opportunity to present all of their evidence in their Request, and they are not permitted to rebut evidence submitted in KCSR's reply, as they are attempting to do. For this reason and because nothing in KCSR's reply warrants that it be stricken under our rules, we see no basis to reconsider the Board's rejection of the Offerors' motion to strike.

The Glass Road Bridge. In a motion to supplement his request to set terms and conditions for the Remainder portion of the Line, Riffin submitted evidence that work to dismantle a bridge on the Remainder—the “Glass Road Bridge,” which apparently carries the Line over Glass Road—had recently been initiated. As noted, the Board directed KCSR to respond to the allegation. KCSR responded on February 8, 2008, noting that an official of Warren County had ordered the bridge to be removed, assertedly based on a conversation some years ago with a “local representative” of the railroad (whose name the official could not recall) to the effect that the County could do so at its own expense.² Once KCSR was notified of the

² On February 11, 2008, Riffin filed a reply to KCSR's February 8 reply regarding the bridge, and on February 13, 2008, the Offerors filed an additional reply, also concerning the bridge. That reply argued that a February 8, 2008 letter that KCSR sent to the Board contained a footnote that erroneously characterized the agency's precedent in the valuation of bridges. Offerors' filing attaches that decision. KCSR states in its February 14, 2008 response that the decision that Riffin appends to the February 13 reply is consistent with the Board's frequent practice of valuing bridges at an NLV of zero absent evidence that the abandoning carrier would be required to remove the bridge when it abandons the line. Here, however, neither side has presented that sort of evidence, and this decision adopts Riffin's own value of the bridge in the Request (\$0). The Offerors filed a response to KCSR's February 13 and 14 filings on

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actions being taken by Warren County, an official of KCSR promptly notified the County to cease its efforts to remove the bridge.

Riffin has asked us to order KCSR to restore the bridge to its condition prior to the actions of the County. The railroad argues that this would be inappropriate because Riffin assigned no value to the bridge or its component parts in his request to set terms and conditions.

At the outset, it should be noted that this issue does not bear on the matter before us today: the valuation of the property subject to the OFAs. In the Request, Riffin assigned the bridge no value, and that is the value we are assigning to it here, notwithstanding the controversy that has now arisen over how, if at all, KCSR should remedy the situation. Therefore, we will calculate the value of the Line using the evidence accepted by the Board prior to the filings regarding Warren County partially dismantling the bridge.

Nevertheless, we are troubled by the fact that the bridge was partially removed during the pendency of this proceeding. OFAs are designed for continued rail service. Removing or permitting the removal of track or other assets, including bridges, from a railroad right-of-way during the pendency of the section 10904 process tends to undermine that process because it reduces the rail assets in place when the offeror invoked section 10904, and thus can obstruct or impede the efforts of the offeror to provide rail service. See Railroad Ventures, Inc.—Aban. Exem.—Youngstown, OH & Darlington, PA, 4 S.T.B. 583 (2000). The fact that a party, or the agency, assigns no monetary value to an intact bridge does not mean that the bridge can be dismantled during the OFA process with no consequences, and does not change the fact that removing the asset might impede the efforts of the offeror to provide the service contemplated by the OFA. And although here the railroad did not itself dismantle the bridge, and it directed Warren County to cease doing so as soon as the matter was brought to its attention, the railroad nevertheless is ultimately responsible for ensuring that the rail assets in place at the time a notice of intent is filed are preserved during the OFA process.

Thus, although, as noted above, the partial removal of the bridge does not affect our valuation for purposes of the OFA sale (because neither side assigned any value to it), it is appropriate, if the terms and conditions set here for the sale of the Segment and the Remainder are accepted, to determine the extent, if any, to which the partial removal of the bridge has increased the cost of returning the Remainder to active rail service. Thus, in the event that, within 10 days of the service date of this decision, the Offerors accept the terms and conditions we have established here for the Segment and Riffin accepts the terms and conditions we have established here for the Remainder, Riffin will be permitted to file with the Board by March 24,

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February 20, 2008, in which the Offerors suggest a procedure to account for the partial removal of the bridge. Although we would normally reject this type of filing as a reply to a reply, the unique circumstances regarding the bridge warrant the Board's acceptance of the filing so far as it addresses that issue. We have considered the Offerors' proposed procedure for accounting for the alteration of the bridge. However, we believe the approach that we have adopted below would be the most equitable to all parties involved.

2008, evidence that his costs to reestablish service on the Remainder have changed because of the partial dismantling of the bridge. KCSR will have an opportunity to reply by April 14, 2008, to Riffin's evidence, which may include evidence that the bridge was unusable prior to the actions of the County and would have had to have been replaced before service could have been resumed. The Board will then determine what compensation, if any, should be ordered as a result of increased costs of restoring the Remainder to service due to the partial dismantling of the bridge.

KCSR will be directed to preserve all records, photographs, inspection reports, and any other information relevant to the condition of the Glass Road Bridge at the time English's notice of intent to file an OFA was filed with the Board, which was October 2, 2007. We offer no comment on the question of what recourse the railroad might have against Warren County for its action in dismantling the bridge, as that is an issue that should be addressed and resolved by KCSR and the County, if necessary, in the appropriate forum.

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), the Board may not set a price that is below the fair market value of the line. 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 NLV of the rail properties for their highest and best nonrail use.³ Chi. & N. W. Transp. Co.—Abandonment, 363 I.C.C. 956, 958 (1981) (Lake Geneva Line), aff'd sub nom. Chi. & N. W. Transp. Co. v. United States, 678 F.2d 665 (7th Cir. 1982). NLV includes the value of the underlying real estate plus the net salvage value of track and track materials.

The burden of proof is on the offeror, as 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 forced sale proceedings under 49 U.S.C. 10904 because the offeror may withdraw its offer at any time prior to its acceptance of the terms and conditions that the Board establishes pursuant to a party's request. The rail carrier, on the other hand, is required to sell its line to the offeror at the price the Board sets, even if the railroad views the price as too low.

Because the burden of proof is on the offeror, 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 is submitted by the carrier. If the offeror does not present such superior evidence and/or documentation, the Board accepts the carrier's estimates in these forced sale proceedings. See Burlington Northern Railroad Company—Abandonment Exemption—In

³ The parties agree that the Line has no going-concern value. Although an OFA contemplates future rail service, and English has an interest in continuing to receive rail service at his place of business, in the absence of a higher going-concern value, we value the line as if it were to be dismantled and taken out of service.

Sedgwick, Harvey and Reno Counties, KS, Docket No. AB-6 (Sub-No. 358X) (ICC served June 30, 1994), and cases cited therein. To determine the NLV, we will address below the parties' evidence on the value of the land and the track and track materials.

Land. The parties agree that the underlying real estate of the Line consists of approximately 51.51 acres, which is comprised of approximately 23 acres for the Segment and approximately 28.51 acres for the Remainder. The parties further agree that the value of the underlying real estate on the Segment is \$103,500. This figure is based on a purchase and sale agreement (PSA) between KCSR and the City, dated April 5, 2007, wherein the City offered to purchase the entire Line for \$4,500 per acre whether KCSR's interest was reversionary or in fee simple, including "any and all appurtenances thereto, any and all improvements located thereon, and any and all easements, rights-of-way[] and rights of ingress and egress related thereto, with the exception of any rail, ties, or other track material"⁴ However, the Offerors argue that the real estate of the Remainder is worth significantly less than \$4,500 per acre because it contains no track material; it is extensively overgrown with vegetation; the bridges on the Remainder have not been maintained for at least 15 years; approximately half of the Remainder is subject to reversionary interests⁵ and thus has no NLV; and the City would not purchase the Remainder without the Segment. The Offerors also claim that it would cost \$10,000 per acre to remove and dispose of vegetation on the Remainder. The Offerors offer \$3,000 per fee simple acre of the Remainder, with a cap of \$45,000. In the alternative, the Offerors argue that KCSR should be required to restore the track on the Remainder and state that, if the railroad did so, they would pay \$128,295⁶ for the Remainder (28.51 acres at \$4,500 per acre).

In response, KCSR argues that the PSA it has with the City is for the entire Line, and that the Offerors should only be allowed to buy the Line in its entirety. But the Offerors submitted a joint offer to purchase the Segment, while Riffin offered to purchase the Remainder on his own. The fact that the City is interested in purchasing the entire Line does not mean that two different entities could not elect to purchase a portion of the Line jointly, or to purchase the two portions separately.⁷

⁴ The PSA provided that KCSR would be permitted to salvage the track and track materials within 90 days of the closing date of the sale, and that any rail materials remaining after that date would become the sole property of the City.

⁵ The Offerors provide no evidence to support their claim that the Remainder is subject to reversionary interests.

⁶ In the Request, the Offerors miscalculate the price of the Remainder because they used the wrong acreage. The Offerors calculated the price at \$128,250, using 28.5 acres as the multiplier. However, the correct acreage of the Remainder is 28.51 acres, which would bring the price up to \$128,295.

⁷ KCSR additionally argues that at the very least it should be compensated for the entire value of the Line as it is represented in the PSA, which would amount to \$231,795. But there would be no basis for requiring the Offerors to pay for the entire Line if they decided to go forward with the purchase of only a portion of the Line.

We find that the real estate should be valued at \$4,500 per acre, or \$103,500 for the Segment, and \$128,295 for the Remainder. The PSA represents an arm's-length contract involving a willing and able buyer for the very real estate at issue in this case, and therefore, constitutes strong evidence of its value. We disagree with the Offerors that the Remainder's value should be decreased by the cost to prepare that portion of the Line for rail service because the proper valuation standard in proceedings for offers to purchase under section 10904 is the NLV of the rail property for its highest and best nonrail use. Lake Geneva Line, 363 I.C.C. at 958. Additionally, because the Offerors provide no proof that approximately half of the Remainder is subject to reversionary interests, we also reject that devaluation.

Based on the best evidence of record, as adjusted, we set the value of the land of the Segment at \$103,500, and the value of the land of the Remainder at \$128,295.

Track and Track Materials. The parties agree that the Segment portion of the Line has 3 turnouts, one of which is valued at \$5,000, and two of which are valued at \$1,750 each. They also agree that the Segment contains approximately 6,020 cross ties, 1,250 of which are reusable and have a value of \$18.00 each, totaling \$22,500, and 2,650 of which are landscape quality and have a value of \$6.00 each, totaling \$15,900. The parties agree that 2,120 of the cross ties are scrap quality, but disagree on the value. The parties also agree that the Segment contains 177 tons of relay-quality #112 rail, 10 tons of relay-quality #115 rail, 112 tons of a combination of #112- and #115-quality reroll rail, 75 tons of scrap rail, 10 tons of spikes, 12,038 tie plates, and 3 tons of bolts and washers. Additionally, the parties agree that the value of the rail anchors is \$3,200, and the value of the joint bars is \$1,600.

The Offerors calculate the total track asset value of the Segment at \$67,920.⁸ The Offerors have valued 187 tons of relay rail, 112 tons of reroll rail, 75 tons of scrap rail, 10 tons of spikes, 3 tons of bolts and washers, and 68 tons of tie plates at a scrap value of \$120 per ton, for a total of \$54,600.⁹ The Offerors then added \$1,600 for the joint bars, \$3,200 for the rail anchors, \$8,500 for the turnouts, and \$38,400 for the relay and landscape quality ties, values agreed upon by both parties. Subtracted from the total revenue was \$307,800 for environmental compliance costs (a figure the Offerors calculated on their own), \$45,650 for track removal costs,¹⁰ \$15,000 for retiring five crossings,¹¹ \$1,950 to transport 390 short tons of scrap

⁸ The Offerors' Request values the track materials at \$67,920. Although the calculations as presented are close, it appears the Offerors rounded up with regard to the value of the rail. 374 tons of rail at \$120 per ton equals \$44,880. The Offerors use \$44,900 for the value of the rail.

⁹ The December 20 OFA included price quotes English received from two local entities for receiving the track and track materials as scrap. One entity quoted English \$90 per ton for material to be picked up and \$95 per ton for material to be delivered. The other entity offered \$120 per net ton for material to be delivered. The Offerors used the higher quote in their calculations here.

¹⁰ The Offerors used a figure (\$4.55 per track foot) calculated by a consultant and submitted on behalf of an offeror for an OFA of another line filed November 30, 2007, in Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company—

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material,¹² and \$14,400 for the cost to dispose of railroad ties (a figure the Offerors also calculated on their own). The Offerors argue that, if KCSR's relay rail values are used in our calculations, those values should be reduced by the costs to remove, transport and handle the rail, as well as the present value of revenue. The Offerors, however, provide no evidence of those values. Additionally, the Offerors suggest that demand for #112 relay rail is low, and further argue that, combined with the aforementioned costs of carefully cutting, removing and storing the relay rail, the net salvage value would be similar to selling it locally as scrap.

Based on an on-site inspection he performed on January 15, 2008, KCSR's witness Gene Davis of R.L. Banks & Associates (RLBA), a transportation valuation and consulting firm, values the track material and ties at \$270,100, which is comprised of a gross salvage value of \$352,600 and a cost of removal totaling \$82,500. KCSR's witness Chester Culley values the track material and ties at \$272,820, which is comprised of a gross salvage value of \$355,320 and a cost of removal totaling \$82,500. KCSR explains that it has a contract with an entity that will arrange for the disposal of KCSR scrap ties at \$0.75 per tie instead of the \$2.50 per tie estimate put forth by Davis. According to KCSR, Culley had the benefit of this information, while Davis did not, which explains the difference between the two witnesses' figures. KCSR estimates that the net salvage value of the scrap cross ties is negative \$1,580 (2,106 cross ties).

KCSR argues that the Offerors err in valuing the relay and reroll quality rail as scrap. Using actual market prices from American Metal Market, L.B. Foster and RLBA, from January 15, 2008, Davis determined that there are approximately 8 tons of #115 relay rail in Fit #2 condition (\$825 per ton), totaling \$6,600; 2 tons of #115 relay rail in Fit #3 condition (\$815 per ton), totaling \$1,600; 6 tons of #115 reroll rail (\$440 per ton), totaling \$2,600; 4 tons of #115 scrap rail (\$330), totaling \$1,300; 142 tons of #112 relay rail in Fit #2 condition (\$805 per ton), totaling \$112,200; 35 tons of #112 relay rail in Fit #3 condition (\$785 per ton), totaling \$27,300; 106 tons of #112 reroll rail (\$440 per ton), totaling \$45,400; and 71 tons of #112 scrap rail (\$330), totaling \$22,700.¹³ Additionally, these market prices were used to value other scrap track material at \$385 per ton, including bolts and washers, totaling \$800, and spikes, totaling \$3,000. Davis stated that the tie plates (double shoulder, as found on the Segment) are of marketable relay quality and are worth \$7.00 per component, totaling \$81,700 (12,038 tie plates).

Davis estimated that the total cost to remove the rails, cross ties, and other track material would be \$26,000. KCSR argues that the ballast would not need to be removed, rather, the ballast and the ground beneath the ballast could remain intact. Davis stated that the total cost to

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Abandonment Exemption—In Albany County, NY, STB Docket No. AB-156 (Sub-No. 26X) (Delaware & Hudson filing).

¹¹ This figure was also drawn from the Delaware & Hudson filing.

¹² The Offerors based this figure on the \$5 per ton difference in price that English was quoted for scrap materials depending on whether the materials were picked up or delivered.

¹³ It should be noted that most of these totals were rounded down by KCSR. None were rounded up.

restore two public highway crossings and three private crossings would be \$3,800. Administrative and marketing expenses for the sale of the relay rail and scrap metal were calculated at \$39,500, while transportation costs for the relay rail and other metals were calculated at \$13,200.

We accept KCSR's estimate of the value of track and track material as the best evidence of record. The burden of proof falls on the Offerors. Here, KCSR has provided detailed expert evidence, whereas the Offerors have provided no support or documentation for their estimates of the materials or their removal and have relied, in many cases, instead on estimates and costs in other, unrelated cases. The Offerors also provided no evidence that the relay track material would have little value, and failed to support the many cost reductions they claim would be needed to properly salvage the relay rail. Additionally, the Offerors' reliance on local scrap dealer estimates fails to maximize the value of the track materials.

Finally, the Offerors argue that KCSR must replace track material removed by the railroad's predecessor, citing Busboom Grain Co. v. Interstate Commerce Commission, 830 F.2d 74 (7th Cir. 1987) (Busboom). In Busboom, the court ruled that the Board's predecessor, the Interstate Commerce Commission (ICC), did not need to stay the effectiveness of an abandonment authorization pending judicial review because the railroad was on notice that the ICC's decision might be overturned on review and, if the carrier scrapped the line, it might be required to restore the track. That holding does not mandate that a carrier replace removed or damaged track on its line under other circumstances, including the circumstances here.

To the contrary, a carrier is not required to repair or replace missing or damaged track over a portion of line that is not currently needed for rail service.¹⁴ We have even held that a carrier may remove track, as long as no shipper seeks service and as long as the carrier is prepared to restore the track should it receive a request for service. In The Baltimore and Ohio Railroad Company, Metropolitan Southern Railroad Company and Washington and Western Maryland Railway Company Abandonment and Discontinuance of Service—In Montgomery County, MD, and the District of Columbia, Docket No. AB-19 (Sub-No. 112) (ICC served Mar. 16, 1987), the Georgetown Branch Preservation Group protested the removal of track, ties and ballast on 400 feet of line of the Baltimore and Ohio Railroad (the B&O) and asked the ICC to direct the B&O to restore the track. Citing Interstate Commerce Commission v. Chicago, Rock Island & Pacific Railroad Co., 501 F.2d 908, 913 (8th Cir. 1974), the ICC denied the request, finding that it would be inequitable to require the carrier to put the line back into operating condition if the cost of track restoration would be substantial and the ICC would be expected to shortly determine whether an abandonment was authorized.

¹⁴ However, where a shipper is actively seeking rail service on a line, a railroad has a duty to keep that line in an operable condition. See Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, In Mahoning and Columbiana Counties, OH, and Beaver County, PA, STB Docket No. AB-556 (Sub-No. 2X), et al., slip op. at 19 (STB served Oct. 4, 2000), aff'd, R.R. Ventures, Inc. v. STB, 299 F.3d 523 (6th Cir. 2002).

Here, Riffin did not seek the restoration of the track on the Remainder segment until after we had concluded that KCSR should be allowed to abandon the Line. No service had been provided during the entire time of KCSR's ownership, the track having been picked up before that carrier even acquired the Line. And, notwithstanding the Offerors' assertion that another business recently expressed interest in having the Remainder segment refurbished, there has never been a claim brought to us in a timely way that any party ever made a request for service on this portion of the Line sufficient to trigger KCSR's obligation to repair the Remainder segment. Offerors do not have standing to claim that KCSR unlawfully refused in the past to repair the Remainder.

Replacing the track would be expensive, and that is an expense that Riffin properly bears in this situation. Given the lack of any use for almost 20 years and the lack of any evidence of current demand on the record, the lack of track is a preexisting condition for which KCSR should not be penalized.

Environmental Costs. The Offerors argue that salvaging the Segment would necessitate \$307,800 in environmental compliance costs. KCSR states that these costs are unnecessary and that in any event it should not be obligated to pay the costs of such environmental mitigation because the Board did not condition any abandonment authority here on KCSR undertaking those steps.

The Offerors have not met their burden of showing that the suggested environmental mitigation would be necessary, and they have provided no evidence that the track material removal would trigger the environmental remediation they contend would be necessary. Based on the Board's environmental analysis of the proposed abandonment, only one environmental condition was imposed. That condition would have required KCSR to consult the National Geodetic Survey (NGS) and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

As part of the Board's environmental analysis, KCSR was required to serve an environmental and historic report on several Federal, state, and local agencies, in compliance with the Board's environmental rules at 49 CFR 1105.7(a) and (b). Specific to the Offerors' environmental compliance costs, KCSR served copies of its environmental report on the U.S. Environmental Protection Agency Region 4, Mississippi Department of Environmental Quality, and the U.S. Army Corps of Engineers Vicksburg District. The Board received no comments from these agencies raising any concerns or indicating the need for any environmental permits related to salvage activities. Because the Offerors offer no evidence that the suggested environmental mitigation and remediation specifically apply in this proposed abandonment, costs associated with them will not be included in the valuation here.

Net Liquidation Value.

Accordingly, relying on KCSR's values, as modified, for the land, track, and track materials, we set the purchase price at \$376,320 for the Segment and \$128,295 for the Remainder. The Offerors may purchase the entire Line for \$504,615 or the Segment only. However, Riffin may not purchase the Remainder without the Segment, as that would result in

the Remainder being isolated and severed from the national rail system, which would be inconsistent with the purpose of the OFA provisions of the statute.

Terms of Sale.

In addition to the compensation specified herein, we will impose our typical OFA terms: (1) payment is to be made by cash or certified check; (2) closing is to occur within 90 days of the service date of this decision; (3) KCSR shall convey all property by quitclaim deed; and (4) KCSR shall deliver all releases from any mortgage within 90 days of closing. The parties may alter any of these terms by mutual agreement. Additionally, if within 10 days of the service date of this decision the Offerors accept the terms and conditions we have established here for the Segment and Riffin accepts the terms and conditions we have established here for the Remainder, Riffin will have an opportunity to return to the Board by March 24, 2008, with a request for the Board to determine the compensation, if any, owed by KCSR due to increased costs of restoring the Remainder to service that was caused by the partial dismantling of the bridge. KCSR will have the opportunity to respond to any such filing by April 14, 2008.

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

It is ordered:

1. The purchase price for the line is set at \$376,320 for the Segment plus \$128,295 for the Remainder, and the parties must comply with the other terms of sale discussed above.
2. To accept the terms and conditions established here, the Offerors must notify the Board and KCSR in writing, on or before March 3, 2008.
3. If the Offerors accept the terms and conditions established by this decision, the Offerors and KCSR will be bound by this decision.
4. If, on or before March 3, 2008, the Offerors accept the terms and conditions established in this decision for the Segment and Riffin accepts the terms and conditions established in this decision for the Remainder, Riffin may return to the Board by March 24, 2008, with a request for the Board to determine the compensation, if any, owed by KCSR due to increased costs of restoring the Remainder to service that was caused by the partial dismantling of the bridge. If Riffin makes such a request, KCSR may respond to any such filing by April 14, 2008.
5. If the Offerors withdraw their offer or do not accept the terms and conditions with a timely written notification, we will serve a decision by March 13, 2008, vacating the prior decision that postponed the effective date of the decision authorizing the abandonment.
6. KCSR is directed to preserve all records, photographs, inspection reports, and any other information relevant to the condition of the Glass Road Bridge as of October 2, 2007.

7. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary