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SERVICE DATE - LATE RELEASE JANUARY 16, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-477 (Sub-No. 2X)

OWENSVILLE TERMINAL COMPANY, INC.—ABANDONMENT
EXEMPTION—IN GIBSON AND POSEY COUNTIES, IN

REQUEST TO SET TERMS AND CONDITIONS

Decided: January 16, 1998

By decision served November 7, 1997, we granted the Owensville Terminal Company, Inc. (OTC), an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Cynthiana-Owensville line. The rail line runs from milepost 277.0 north of Cynthiana to milepost 271.0 north of Owensville, a distance of 6.0 miles, in Gibson and Posey Counties, IN. The exemption was scheduled to become effective on December 7, 1997, unless an offer of financial assistance (OFA) was filed with the OTC and the Board by November 17, 1997. On November 17, 1997, the Gibson County Farm Bureau Cooperative Association (the Farm Bureau) filed an OFA to purchase a 2-mile segment of the line between milepost 273.0 and milepost 271.0 for \$42,452.¹

In a decision served November 20, 1997, the Farm Bureau was found financially responsible. The effective date of the exemption authorizing abandonment of the 2-mile segment was postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.² The decision also provided that, before December 17, 1997, either party could request that the Board establish the terms and conditions for the sale of the segment if no agreement were reached during negotiations.³

¹ OTC's petition for exemption estimated the net liquidation value (NLV) of the entire line at \$127,354. OTC's NLV estimate was based on the net salvage value of track and materials and included no value for land. The Farm Bureau's offer for the 2-mile segment was one-third of OTC's NLV estimate for the entire 6-mile line.

² The exemption permitting abandonment of the remainder of the line became effective on December 7, 1997.

³ In a decision served December 16, 1997, we denied OTC's appeal of the November 20 decision.

On December 18, 1997, the Farm Bureau requested that the Board establish the conditions and amount of compensation.⁴ The Farm Bureau revised its offer and now contends that the fair market value of the segment is \$4,539.78, consisting of \$20,825.00 for the land less \$16,285.22 for the negative net salvage value of track and materials (based on estimated gross salvage value of \$113,757.28 and estimated liquidation costs of \$130,042.50). OTC responds that the fair market value of the segment is \$216,500, consisting of \$125,000 for the land and \$91,500 for the net salvage value of track and materials. We will set the fair market value of the segment at \$120,500, consisting of \$29,000 for the land and \$91,500 for the net salvage value of the track and materials.⁵

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 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 be 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 burden of proof requires that we accept the carrier's estimates in these forced sales proceedings. See Burlington Northern Railroad Company—Abandonment Exemption—In Sedgwick, Harvey and Reno Counties, KS, Docket No.

⁴ The Farm Bureau's request was filed on December 18, 1997, which was one day late. OTC does not claim to have been prejudiced by the delay, and we will consider the request.

⁵ On January 12, 1998, the Farm Bureau filed a petition to reopen the exemption proceeding, asserting that it had previously decided not to oppose OTC's petition for exemption because it believed it could purchase the 2-mile segment at issue in this decision based on OTC's representations in that petition regarding the NLV of the entire 6-mile line. We will address the Farm Bureau's petition to reopen subsequently in a separate decision.

AB-6 (Sub-No. 358X) (ICC served June 30, 1994) and cases cited therein. We address below the various issues in this case.

The Farm Bureau notes that its general manager, James Elliott, stated in an affidavit dated December 6, 1997, that, in October 1997, OTC offered to sell the entire Cynthiana-Owensville line to another party for \$150,000. According to Mr. Elliott, the offeree declined to accept the offer after making its own determination that the salvage value for entire line was no more than \$120,000. The Farm Bureau asserts that these prices should be considered in establishing the fair market value of the segment here. OTC responds that the offer referred to by Mr. Elliott was part of a broader transaction for a proposed settlement of litigation and did not reflect the fair market value of the rail line.

The offer referred to by Mr. Elliott was not made as part of an OFA proceeding, where the offeror is compelled to pay the purchase price. Rather, the offer was made during negotiations to settle litigation outside our purview. There is not enough information about the offer to enable us to determine whether it is relevant to consider in setting the fair market value here. Compare, Wyoming and Colorado Railroad Company, Inc.—Abandonment Exemption—Jackson County, CO, Docket No. AB-307 (Sub-No. 2X) (ICC served Sept. 15, 1995). Thus, we will not consider the offer as indicating the fair market value of the line.

Land value. The total land area in this proceeding is 18 acres, consisting of 16 acres in the operating right-of-way and 2 acres outside the right-of-way. The right-of-way is approximately 60 feet in width. Copies of deeds submitted by OTC indicate that it owns a fee simple interest in the right-of-way.

In its request to set terms and conditions, the Farm Bureau estimates the land value at \$20,825.00. In support, the Farm Bureau submitted a report which had been prepared by Edward P. Evert of the Geneva Group, a transportation consulting firm. Mr. Evert determined that only the 5.95 acres of the right-of-way which adjoins the Farm Bureau's property would be merchantable. He indicated that the remaining property is located next to a state highway or wetlands, or is overgrown with trees, and, in his view, is not marketable for sale to adjacent property owners for agricultural uses. The report bases its market value estimate on a comparative sale of railroad property at \$5,494.51 per acre when rail service was available. Noting that rail service is no longer available, Mr. Evert discounted the land value to \$3,500 per acre.

OTC's land value estimate is based on an appraisal by Robert R. Fowler, a real estate appraiser who is a principal in the firm of Real Property Management. Mr. Fowler's appraisal includes the 2 acres of non-corridor property that OTC leases to the Farm Bureau and other industries. OTC claims that the 2 acres contain spur tracks into premises operated by the Farm Bureau and other industries and are required for the performance of rail service. Thus, according to Mr. Fowler, the Farm Bureau is obligated to purchase the 2 acres together with the 16 acres the offeror wants to buy. According to Mr. Fowler, the leased property generated income of \$9,600 per year. Using a 10% capitalization rate, Mr. Fowler valued the property under lease at \$96,000. Mr. Fowler indicates that there are 4 leases on the non-corridor property. Two of the leases are held by

the Farm Bureau and generate lease income for OTC of \$6,100 per year. The other leases are with Owensville Lumber Co. (\$2,500 per year) and Floyd Anderson (\$1,000 per year). OTC asserts that the highest and best use of the 2 acres is “income generating property.”

Mr. Fowler also valued the 16 acres of the right-of-way at \$29,000, based on a rate of \$1,800 per acre. This appraisal is based on the value of comparable parcels of agricultural land with values ranging as high as \$2,500 to \$3,000 per acre. The comparative values were discounted by 50% to account for the narrow right-of-way. OTC disputes the Farm Bureau’s assertions that the portions of the right-of-way have no market value because they are located next to a highway, are covered by trees, or are located on a fill. OTC argues that these factors merely alter the use of the land, and that the land might be used as an addition to a roadway, or for drainage, or for consolidation into an adjoining use. OTC states that its 50% reduction of the value to arrive at the \$29,000 valuation of the land took into account the specific limitations in the use of the land.

We accept OTC’s real estate appraisal because it values the 16 acres in the right-of-way according to accepted methodology. OTC makes appropriate adjustments to reflect the configuration of the rail corridor by reducing the values. Also, OTC’s appraisal has not been effectively contradicted by the Farm Bureau.

We do not accept OTC’s assertion that the 2 acres of leased land should be included in the value of the right-of-way. We note that OTC used the term “non-corridor property” to describe the four leased parcels. We generally do not include land outside the operating right-of-way corridor in our estimate of NLV for a line, which is the standard for valuing a line for OFA purposes. Cf. Illinois Central Gulf Railroad Company—Abandonment—In Christian, Macon, and Shelby Counties, IL, Docket No. AB-43 (Sub-No. 136) (ICC served Aug. 15, 1986). While the 2 acres purportedly contain spur trackage, there is no showing that the 2 acres are necessary for the actual performance of continued transportation operations over the line, or that the economic viability of such service is dependent upon the receipt of rental income from the 2 acres of land. Consequently, we will not include any value for these 2 acres in our restatement of the NLV for the line. Sale of the leased property may be negotiated outside the scope of the OFA process.

Track and materials. The Farm Bureau estimates the net salvage value of track and material of the segment at a negative \$16,285.22. This estimate is derived from Mr. Evert’s report, which calculated the gross value of track and material at \$113,757.28, and the total removal costs at \$130,042.50. Mr. Evert calculated removal costs as follows: \$11,000 for dismantling the line, \$8,542.50 for disposing of scrap ties, \$12,500.00 for transporting scrap ties, \$66,000.00 for grade elimination and paving costs, and \$32,000 for the replacement of the Black River culvert.

In response, OTC submitted a verified statement from Richard Sykes, a consultant to B. Sykes, Ltd., a railroad construction and supply company, who estimates the net salvage value of the segment to be \$91,500. Mr. Sykes calculated the gross value of track and materials at \$112,921.50, the removal costs at \$16,581.00, with the costs for removing and restoring grade crossings at \$3,840 and costs for removing the Black River culvert at \$1,000.

The parties' estimates of the gross value of the track and materials and their estimates of the track removal costs are comparable. Thus, under the burden of proof standard, we will accept OTC's estimate for gross salvage value of track and materials and the track removal costs (excluding removal costs for ties).

The parties differ primarily in their estimates of the costs of the removal of ties and the cost of the restoration of the right of way. Mr. Evert estimates that it would cost \$8,542.00 to dispose of scrap ties and \$12,500 to transport them to Evansville, IN, for disposal. Mr. Sykes submitted a letter from Tie Yard in Omaha, NE, offering to pay OTC \$10,000 to purchase and remove all ties on the line, with the purchaser responsible for disposal and transportation of the scrap ties. We believe that the \$10,000 offer to purchase is better evidence than the Farm Bureau's assertion that tie disposal costs are greater than the value of the ties. Accordingly, under our burden of proof standard, we accept OTC's removal costs for ties.

The Farm Bureau asserts that under Ind. Code § 8-3-1-21.1. et seq., and Gibson County Local Ordinance No. 1997-4, OTC would be required to restore grade crossings and would also be required to replace a culvert over the Black River. Mr. Evert estimates that it would cost \$66,000 to eliminate and repave two grade crossings and \$32,000 to construct a new culvert. Mr. Evert indicates that these estimates are based on prices provided by Stone Construction Company at Owensville.

Mr. Sykes estimates that removal and restoration of the two grade crossings would cost \$3,840, based on a cost of \$4 per square foot. To support this estimate, Mr. Sykes submitted two contracts with CSX Transportation, Inc., showing removal and restoration of paved grade crossings at \$4 per square foot. One of the contracts involved a line in Indiana. Mr. Sykes states further that OTC would be required to remove the Black River culvert, but would not be required to replace the culvert or construct a new culvert. Based on his experience, Mr. Sykes estimates that removal of the culvert would cost no more than \$1,000. The estimate is based on an average of 3.5 hours to remove a culvert at approximately \$100 per hour for labor and equipment.

Under the state statute, OTC would be required to restore the grade crossings. However, the statute appears to be limited to removing crossing control devices, railroad insignia, and rails, and reconstruction of that part of the highway so that it conforms to the standards of the contiguous roadway. OTC's estimate for restoring the grade crossings is based on recent contract prices. The Farm Bureau's estimate is high compared to other abandonments and has not been adequately supported. Mr. Evert has not explained how he arrived at his estimate for restoring the grade crossings. As a result, we will accept OTC's estimated cost for grade crossing restoration.

The local ordinance cited by the Farm Bureau appears to require that OTC remove the Black River culvert, but does not require OTC to replace the culvert. As a result, we will accept OTC's estimate for removing the culvert.

Accordingly, we will accept OTC's net salvage value of \$91,500.

Summary. The purchase price for the sought right-of-way is set at \$120,500, consisting of \$29,000 for the land and \$91,500 for the net salvage value of track and 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) OTC shall convey all property by quitclaim deed; and (4) OTC 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 milepost 273.0 and milepost 271.0 is set at \$120,500. Other terms of sale must comply with the provisions discussed above.

2. Within 10 days of the service date of this decision, the Farm Bureau must accept or reject, in writing, the terms and conditions established here by notifying the Board and OTC.

3. If the Farm Bureau accepts the terms and conditions established by this decision, the Farm Bureau and OTC will be bound by this decision. The Farm Bureau may not transfer or discontinue service on the line prior to the end of the second year after consummation of the sale, nor may it transfer the line, except to OTC, prior to the end of the fifth year after consummation of the sale.

4. If the Farm Bureau 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.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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We do not accept OTC’s assertion that the 2 acres of leased land should be included in the value of the right-of-way. We note that OTC used the term “non-corridor property” to describe the four leased parcels. We generally do not include land outside the operating right-of-way corridor in our estimate of NLV for a line, which is the standard for valuing a line for OFA purposes. Cf. Illinois Central Gulf Railroad Company—Abandonment—In Christian, Macon, and Shelby Counties, IL, Docket No. AB-43 (Sub-No. 136) (ICC served Aug. 15, 1986). While the 2 acres purportedly contain spur trackage, there is no showing that the 2 acres are necessary for the actual performance of continued transportation operations over the line, or that the economic viability of such service is dependent upon the receipt of rental income from the 2 acres of land. Consequently, we will not include any value for these 2 acres in our restatement of the NLV for the line. Sale of the leased property may be negotiated outside the scope of the OFA process.

Track and materials. The Farm Bureau estimates the net salvage value of track and material of the segment at a negative \$16,285.22. This estimate is derived from Mr. Evert’s report, which calculated the gross value of track and material at \$113,757.28, and the total removal costs at \$130,042.50. Mr. Evert calculated removal costs as follows: \$11,000 for dismantling the line, \$8,542.50 for disposing of scrap ties, \$12,500.00 for transporting scrap ties, \$66,000.00 for grade elimination and paving costs, and \$32,000 for the replacement of the Black River culvert.

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The parties differ primarily in their estimates of the costs of the removal of ties and the cost of the restoration of the right of way. Mr. Evert estimates that it would cost \$8,542.00 to dispose of scrap ties and \$12,500 to transport them to Evansville, IN, for disposal. Mr. Sykes submitted a letter from Tie Yard in Omaha, NE, offering to pay OTC \$10,000 to purchase and remove all ties on the line, with the purchaser responsible for disposal and transportation of the scrap ties. We believe that the \$10,000 offer to purchase is better evidence than the Farm Bureau's assertion that tie disposal costs are greater than the value of the ties. Accordingly, under our burden of proof standard, we accept OTC's removal costs for ties.

The Farm Bureau asserts that under Ind. Code § 8-3-1-21.1. et seq., and Gibson County Local Ordinance No. 1997-4, OTC would be required to restore grade crossings and would also be required to replace a culvert over the Black River. Mr. Evert estimates that it would cost \$66,000 to eliminate and repave two grade crossings and \$32,000 to construct a new culvert. Mr. Evert indicates that these estimates are based on prices provided by Stone Construction Company at Owensville.

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Under the state statute, OTC would be required to restore the grade crossings. However, the statute appears to be limited to removing crossing control devices, railroad insignia, and rails, and reconstruction of that part of the highway so that it conforms to the standards of the contiguous roadway. OTC's estimate for restoring the grade crossings is based on recent contract prices. The Farm Bureau's estimate is high compared to other abandonments and has not been adequately supported. Mr. Evert has not explained how he arrived at his estimate for restoring the grade crossings. As a result, we will accept OTC's estimated cost for grade crossing restoration.

The local ordinance cited by the Farm Bureau appears to require that OTC remove the Black River culvert, but does not require OTC to replace the culvert. As a result, we will accept OTC's estimate for removing the culvert.

Accordingly, we will accept OTC's net salvage value of \$91,500.

Summary. The purchase price for the sought right-of-way is set at \$120,500, consisting of \$29,000 for the land and \$91,500 for the net salvage value of track and 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) OTC shall convey all property by quitclaim deed; and (4) OTC shall deliver all releases from any mortgage within 90 days of closing. The parties may alter any of these terms by agreement.

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It is ordered:

1. The purchase price for the portion of the segment between milepost 273.0 and milepost 271.0 is set at \$120,500. Other terms of sale must comply with the provisions discussed above.

2. Within 10 days of the service date of this decision, the Farm Bureau must accept or reject, in writing, the terms and conditions established here by notifying the Board and OTC.

3. If the Farm Bureau accepts the terms and conditions established by this decision, the Farm Bureau and OTC will be bound by this decision. The Farm Bureau may not transfer or discontinue service on the line prior to the end of the second year after consummation of the sale, nor may it transfer the line, except to OTC, prior to the end of the fifth year after consummation of the sale.

4. If the Farm Bureau 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.

By the Board, Chairman Morgan and Vice Chairman Owen.

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EB

SERVICE DATE - LATE RELEASE JANUARY 16, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-477 (Sub-No. 2X)

OWENSVILLE TERMINAL COMPANY, INC.—ABANDONMENT
EXEMPTION—IN GIBSON AND POSEY COUNTIES, IN

REQUEST TO SET TERMS AND CONDITIONS

Decided: January 16, 1998

By decision served November 7, 1997, we granted the Owensville Terminal Company, Inc. (OTC), an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad known as the Cynthiana-Owensville line. The rail line runs from milepost 277.0 north of Cynthiana to milepost 271.0 north of Owensville, a distance of 6.0 miles, in Gibson and Posey Counties, IN. The exemption was scheduled to become effective on December 7, 1997, unless an offer of financial assistance (OFA) was filed with the OTC and the Board by November 17, 1997. On November 17, 1997, the Gibson County Farm Bureau Cooperative Association (the Farm Bureau) filed an OFA to purchase a 2-mile segment of the line between milepost 273.0 and milepost 271.0 for \$42,452.¹

In a decision served November 20, 1997, the Farm Bureau was found financially responsible. The effective date of the exemption authorizing abandonment of the 2-mile segment was postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.² The decision also provided that, before December 17, 1997, either party could request that the Board establish the terms and conditions for the sale of the segment if no agreement were reached during negotiations.³

¹ OTC's petition for exemption estimated the net liquidation value (NLV) of the entire line at \$127,354. OTC's NLV estimate was based on the net salvage value of track and materials and included no value for land. The Farm Bureau's offer for the 2-mile segment was one-third of OTC's NLV estimate for the entire 6-mile line.

² The exemption permitting abandonment of the remainder of the line became effective on December 7, 1997.

³ In a decision served December 16, 1997, we denied OTC's appeal of the November 20 decision.

On December 18, 1997, the Farm Bureau requested that the Board establish the conditions and amount of compensation.⁴ The Farm Bureau revised its offer and now contends that the fair market value of the segment is \$4,539.78, consisting of \$20,825.00 for the land less \$16,285.22 for the negative net salvage value of track and materials (based on estimated gross salvage value of \$113,757.28 and estimated liquidation costs of \$130,042.50). OTC responds that the fair market value of the segment is \$216,500, consisting of \$125,000 for the land and \$91,500 for the net salvage value of track and materials. We will set the fair market value of the segment at \$120,500, consisting of \$29,000 for the land and \$91,500 for the net salvage value of the track and materials.⁵

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 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 be 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 burden of proof requires that we accept the carrier's estimates in these forced sales proceedings. See Burlington Northern Railroad Company—Abandonment Exemption—In Sedgwick, Harvey and Reno Counties, KS, Docket No.

⁴ The Farm Bureau's request was filed on December 18, 1997, which was one day late. OTC does not claim to have been prejudiced by the delay, and we will consider the request.

⁵ On January 12, 1998, the Farm Bureau filed a petition to reopen the exemption proceeding, asserting that it had previously decided not to oppose OTC's petition for exemption because it believed it could purchase the 2-mile segment at issue in this decision based on OTC's representations in that petition regarding the NLV of the entire 6-mile line. We will address the Farm Bureau's petition to reopen subsequently in a separate decision.

AB-6 (Sub-No. 358X) (ICC served June 30, 1994) and cases cited therein. We address below the various issues in this case.

The Farm Bureau notes that its general manager, James Elliott, stated in an affidavit dated December 6, 1997, that, in October 1997, OTC offered to sell the entire Cynthiana-Owensville line to another party for \$150,000. According to Mr. Elliott, the offeree declined to accept the offer after making its own determination that the salvage value for entire line was no more than \$120,000. The Farm Bureau asserts that these prices should be considered in establishing the fair market value of the segment here. OTC responds that the offer referred to by Mr. Elliott was part of a broader transaction for a proposed settlement of litigation and did not reflect the fair market value of the rail line.

The offer referred to by Mr. Elliott was not made as part of an OFA proceeding, where the offeror is compelled to pay the purchase price. Rather, the offer was made during negotiations to settle litigation outside our purview. There is not enough information about the offer to enable us to determine whether it is relevant to consider in setting the fair market value here. Compare, Wyoming and Colorado Railroad Company, Inc.—Abandonment Exemption—Jackson County, CO, Docket No. AB-307 (Sub-No. 2X) (ICC served Sept. 15, 1995). Thus, we will not consider the offer as indicating the fair market value of the line.

Land value. The total land area in this proceeding is 18 acres, consisting of 16 acres in the operating right-of-way and 2 acres outside the right-of-way. The right-of-way is approximately 60 feet in width. Copies of deeds submitted by OTC indicate that it owns a fee simple interest in the right-of-way.

In its request to set terms and conditions, the Farm Bureau estimates the land value at \$20,825.00. In support, the Farm Bureau submitted a report which had been prepared by Edward P. Evert of the Geneva Group, a transportation consulting firm. Mr. Evert determined that only the 5.95 acres of the right-of-way which adjoins the Farm Bureau's property would be merchantable. He indicated that the remaining property is located next to a state highway or wetlands, or is overgrown with trees, and, in his view, is not marketable for sale to adjacent property owners for agricultural uses. The report bases its market value estimate on a comparative sale of railroad property at \$5,494.51 per acre when rail service was available. Noting that rail service is no longer available, Mr. Evert discounted the land value to \$3,500 per acre.

OTC's land value estimate is based on an appraisal by Robert R. Fowler, a real estate appraiser who is a principal in the firm of Real Property Management. Mr. Fowler's appraisal includes the 2 acres of non-corridor property that OTC leases to the Farm Bureau and other industries. OTC claims that the 2 acres contain spur tracks into premises operated by the Farm Bureau and other industries and are required for the performance of rail service. Thus, according to Mr. Fowler, the Farm Bureau is obligated to purchase the 2 acres together with the 16 acres the offeror wants to buy. According to Mr. Fowler, the leased property generated income of \$9,600 per year. Using a 10% capitalization rate, Mr. Fowler valued the property under lease at \$96,000. Mr. Fowler indicates that there are 4 leases on the non-corridor property. Two of the leases are held by

the Farm Bureau and generate lease income for OTC of \$6,100 per year. The other leases are with Owensville Lumber Co. (\$2,500 per year) and Floyd Anderson (\$1,000 per year). OTC asserts that the highest and best use of the 2 acres is “income generating property.”

Mr. Fowler also valued the 16 acres of the right-of-way at \$29,000, based on a rate of \$1,800 per acre. This appraisal is based on the value of comparable parcels of agricultural land with values ranging as high as \$2,500 to \$3,000 per acre. The comparative values were discounted by 50% to account for the narrow right-of-way. OTC disputes the Farm Bureau’s assertions that the portions of the right-of-way have no market value because they are located next to a highway, are covered by trees, or are located on a fill. OTC argues that these factors merely alter the use of the land, and that the land might be used as an addition to a roadway, or for drainage, or for consolidation into an adjoining use. OTC states that its 50% reduction of the value to arrive at the \$29,000 valuation of the land took into account the specific limitations in the use of the land.

We accept OTC’s real estate appraisal because it values the 16 acres in the right-of-way according to accepted methodology. OTC makes appropriate adjustments to reflect the configuration of the rail corridor by reducing the values. Also, OTC’s appraisal has not been effectively contradicted by the Farm Bureau.

We do not accept OTC’s assertion that the 2 acres of leased land should be included in the value of the right-of-way. We note that OTC used the term “non-corridor property” to describe the four leased parcels. We generally do not include land outside the operating right-of-way corridor in our estimate of NLV for a line, which is the standard for valuing a line for OFA purposes. Cf. Illinois Central Gulf Railroad Company—Abandonment—In Christian, Macon, and Shelby Counties, IL, Docket No. AB-43 (Sub-No. 136) (ICC served Aug. 15, 1986). While the 2 acres purportedly contain spur trackage, there is no showing that the 2 acres are necessary for the actual performance of continued transportation operations over the line, or that the economic viability of such service is dependent upon the receipt of rental income from the 2 acres of land. Consequently, we will not include any value for these 2 acres in our restatement of the NLV for the line. Sale of the leased property may be negotiated outside the scope of the OFA process.

Track and materials. The Farm Bureau estimates the net salvage value of track and material of the segment at a negative \$16,285.22. This estimate is derived from Mr. Evert’s report, which calculated the gross value of track and material at \$113,757.28, and the total removal costs at \$130,042.50. Mr. Evert calculated removal costs as follows: \$11,000 for dismantling the line, \$8,542.50 for disposing of scrap ties, \$12,500.00 for transporting scrap ties, \$66,000.00 for grade elimination and paving costs, and \$32,000 for the replacement of the Black River culvert.

In response, OTC submitted a verified statement from Richard Sykes, a consultant to B. Sykes, Ltd., a railroad construction and supply company, who estimates the net salvage value of the segment to be \$91,500. Mr. Sykes calculated the gross value of track and materials at \$112,921.50, the removal costs at \$16,581.00, with the costs for removing and restoring grade crossings at \$3,840 and costs for removing the Black River culvert at \$1,000.

The parties' estimates of the gross value of the track and materials and their estimates of the track removal costs are comparable. Thus, under the burden of proof standard, we will accept OTC's estimate for gross salvage value of track and materials and the track removal costs (excluding removal costs for ties).

The parties differ primarily in their estimates of the costs of the removal of ties and the cost of the restoration of the right of way. Mr. Evert estimates that it would cost \$8,542.00 to dispose of scrap ties and \$12,500 to transport them to Evansville, IN, for disposal. Mr. Sykes submitted a letter from Tie Yard in Omaha, NE, offering to pay OTC \$10,000 to purchase and remove all ties on the line, with the purchaser responsible for disposal and transportation of the scrap ties. We believe that the \$10,000 offer to purchase is better evidence than the Farm Bureau's assertion that tie disposal costs are greater than the value of the ties. Accordingly, under our burden of proof standard, we accept OTC's removal costs for ties.

The Farm Bureau asserts that under Ind. Code § 8-3-1-21.1. et seq., and Gibson County Local Ordinance No. 1997-4, OTC would be required to restore grade crossings and would also be required to replace a culvert over the Black River. Mr. Evert estimates that it would cost \$66,000 to eliminate and repave two grade crossings and \$32,000 to construct a new culvert. Mr. Evert indicates that these estimates are based on prices provided by Stone Construction Company at Owensville.

Mr. Sykes estimates that removal and restoration of the two grade crossings would cost \$3,840, based on a cost of \$4 per square foot. To support this estimate, Mr. Sykes submitted two contracts with CSX Transportation, Inc., showing removal and restoration of paved grade crossings at \$4 per square foot. One of the contracts involved a line in Indiana. Mr. Sykes states further that OTC would be required to remove the Black River culvert, but would not be required to replace the culvert or construct a new culvert. Based on his experience, Mr. Sykes estimates that removal of the culvert would cost no more than \$1,000. The estimate is based on an average of 3.5 hours to remove a culvert at approximately \$100 per hour for labor and equipment.

Under the state statute, OTC would be required to restore the grade crossings. However, the statute appears to be limited to removing crossing control devices, railroad insignia, and rails, and reconstruction of that part of the highway so that it conforms to the standards of the contiguous roadway. OTC's estimate for restoring the grade crossings is based on recent contract prices. The Farm Bureau's estimate is high compared to other abandonments and has not been adequately supported. Mr. Evert has not explained how he arrived at his estimate for restoring the grade crossings. As a result, we will accept OTC's estimated cost for grade crossing restoration.

The local ordinance cited by the Farm Bureau appears to require that OTC remove the Black River culvert, but does not require OTC to replace the culvert. As a result, we will accept OTC's estimate for removing the culvert.

Accordingly, we will accept OTC's net salvage value of \$91,500.

Summary. The purchase price for the sought right-of-way is set at \$120,500, consisting of \$29,000 for the land and \$91,500 for the net salvage value of track and 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) OTC shall convey all property by quitclaim deed; and (4) OTC 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 milepost 273.0 and milepost 271.0 is set at \$120,500. Other terms of sale must comply with the provisions discussed above.

2. Within 10 days of the service date of this decision, the Farm Bureau must accept or reject, in writing, the terms and conditions established here by notifying the Board and OTC.

3. If the Farm Bureau accepts the terms and conditions established by this decision, the Farm Bureau and OTC will be bound by this decision. The Farm Bureau may not transfer or discontinue service on the line prior to the end of the second year after consummation of the sale, nor may it transfer the line, except to OTC, prior to the end of the fifth year after consummation of the sale.

4. If the Farm Bureau 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.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary