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SERVICE DATE - MARCH 28, 1997

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

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: March 25, 1997

By decision served and notice published in the Federal Register (62 FR 2711) on January 17, 1997, the Board found that the public convenience and necessity permitted abandonment by Illinois Central Railroad Company (Illinois Central) of its 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, subject to labor protective, environmental, and historic conditions. The decision authorizing abandonment was scheduled to become effective on February 12, 1997, unless an offer of financial assistance (OFA) was filed with Illinois Central and the Board on or before January 28, 1997.

On January 28, 1997, the Mississippi Department of Transportation (MSDOT or offeror) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$500,000. By a decision served January 31, 1997, the offeror, a governmental entity, was found financially responsible. The decision therefore postponed the effective date of the decision authorizing abandonment in order to permit the OFA process to proceed. The decision provided that, on or before February 27, 1997, either the railroad or the offeror could request that we establish the terms and conditions for the sale of the line if no agreement was reached. On February 27, 1997, MSDOT filed a request that we establish the conditions and amount of compensation for the sale of the line. Illinois Central replied on March 4, 1997.

In its request, MSDOT summarizes its recent negotiations with Illinois Central and requests that we review its offer of February 25, 1997. On that date, MSDOT again offered \$500,000 to purchase the line, with the land value component being \$200,000. Among other conditions, the offer was subject to the condition that, in the event MSDOT abandoned the line and salvaged track materials, Illinois Central would be entitled to all proceeds in excess of \$300,000, up to a maximum of \$218,000.

In its reply, Illinois Central indicates that its former conditional acceptance of MSDOT's below-net liquidation value (NLV) offer of \$500,000 was predicated on settling the abandonment case and avoiding continuing operating losses, neither of which occurred. The railroad argues that MSDOT's reliance on the unsuccessful settlement discussions to support its figure is misplaced. The railroad now requests that MSDOT pay it the fair market value of the line, i.e., its actual NLV, which Illinois Central contends is \$1,095,226, comprised of a net salvage value of \$849,843 and a net land value of \$245,383.

## DISCUSSION AND CONCLUSIONS

Valuation and evidentiary standards. Proceedings to set conditions and compensation are governed by the provisions of 49 U.S.C. 10904(e) and (f). Under section 10904(f)(1)(B), we may not set a price that is below the fair market value of the line. In the leading case in this area, Chicago and North Western Transp. Co.--Abandonment, 363 I.C.C. 956 (1981) (Lake Geneva Line), aff'd sub nom. Chicago and North Western Transp. Co. v. United States, 678 F.2d 665 (7th Cir. 1982), it has been determined that, in the absence of a higher going concern value for continued rail use, the proper valuation standard in proceedings under (the predecessor to) 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 value 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.

MSDOT's proposed purchase price of \$500,000, even if subsequently supplemented by \$218,000 in the event of abandonment by the State, is far below the NLV of \$918,963 that we accepted in our decision authorizing abandonment. MSDOT offers no support for its figures. The fact that Illinois Central indicated during settlement negotiations that, under certain conditions, it might accept that figure does not constitute support for that figure here. But the parties have never entered into, or otherwise reached an agreement. To use figures discussed in settlement negotiations would ignore the express intent of the railroad and would chill such negotiations. We therefore reject the basis of MSDOT's offer.

We now turn to consideration of Illinois Central's NLV evidence. As noted, NLV is comprised of net salvage value and net land value.

Net salvage value. In our decision authorizing abandonment, we accepted Illinois Central's track net salvage figure of \$849,843. The figure is based on a gross salvage value total of \$1,139,088 less removal costs of \$289,245. The railroad does not request reconsideration of that figure here, and we will use it to determine NLV.

Net land value. In our decision authorizing abandonment, we determined net land value to be \$69,120. In its reply to MSDOT's request to set terms, Illinois Central contends that we significantly undervalued the real estate. As noted in our decision, Illinois Central's witness Robert Fowler initially appraised the 274.42 acres on the line at \$342,384. He based his valuation on 12 comparable area sales and his personal inspection of the line. Then, stating that the land he believed to be merchantable totaled 120 acres, or 44% of the total acreage, he multiplied the original figure by 44% and arrived at a value of \$272,648. He then deducted 10% for disposition costs to compute a net land value of \$245,383. This is the figure that the railroad would have us use. It contends that we discarded its witness's detailed analysis without justification. We disagree.

As discussed in our January 17 decision, of the total 21.7 miles of rail line subject to Mr. Fowler's appraisal, approximately 20.5 miles run through and adjacent to rural areas.

Rather than specifying the location of the lots to which Illinois Central holds merchantable title and making appropriate adjustments, Mr. Fowler employed the expedient of assuming that the relevant 120 acres is precisely proportional to the percentages of the total acres that are urban, suburban, and rural. There is no support for that assumption. Moreover, Illinois Central did not previously and, despite our rejection of its figures, has not now specified the actual location of any property to which it holds merchantable title. It has not shown that it, in fact, owns and can convey any of the higher valued lots in or near the city of Kosciusko.

Because Illinois Central has stated that it knows that title to some of the right-of-way is merchantable and some is not, it is reasonable to assume that Illinois Central knows which parcels are merchantable. Illinois Central could support the assertion of its witness Fowler that "1.2 miles [of the line] runs through the town of Kosciusko and IC has merchantable title to much of this property." The railroad has chosen not to do so, notwithstanding the fact that it knows we rejected its argument, made in support of its NLV calculations used to support its statement of opportunity costs, that we should simply accept the railroad's assertion that 44% of the 1.2 miles of rail line located in or near Kosciusko is held by the railroad under merchantable title.

Because the railroad has declined to identify the location of the portions of the right-of-way to which it holds merchantable title, we have no basis to value the right-of-way at anything higher than agricultural land. Indeed, we note that 20.5 of the 21.7 miles of involved rail line run through and adjacent to rural areas. Thus, we believe it reasonable to base the valuation of the right of way here on the comparable sales in rural areas for agricultural purposes.

As we previously stated, the average price of the five comparable rural sales presented is \$640 per acre. The 120 acres thus would sell for \$76,800. Subtracting 10% disposition costs (\$7,680) yields a net land value of \$69,120, which we find to be the acceptable real estate value of the right-of-way for purposes of this proceeding.

Summary. The purchase price for the subject line is set at \$918,963, which includes a net salvage value of the line of \$849,843 and a net real estate value of \$69,120. 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) Illinois Central shall convey all property by quitclaim deed; and (4) Illinois Central 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 the conservation of energy resources.

It is ordered:

1. The purchase price for the line is set at \$918,963. Other terms of sale must comply with the provisions discussed above.

2. MSDOT must accept or reject, in writing, the terms and conditions established here by notifying the Board and Illinois Central on or before April 7, 1997.

3. If MSDOT accepts the terms and conditions established by this decision, MSDOT and Illinois Central will be bound by this decision.

4. If MSDOT withdraws its offer or does not accept the terms and conditions with a timely written notification, we will serve by April 17, 1997 a 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