28859 SERVICE DATE - LATE RELEASE FEBRUARY 20, 1998
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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-491X

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES—
ABANDONMENT EXEMPTION—IN CAMBRIA COUNTY, PA

REQUEST TO SET TERMS AND CONDITIONS

Decided: February 19, 1998

By decision served December 12, 1997, R. J. Corman Railroad Company/Pennsylvania Lines (RJCP) was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 9.6-mile line of railroad, known as the Blacklick Secondary. The line runs between milepost 6.4 at Ebensbury Junction and milepost 16, near Nanty Glo, in Cambria County, PA. The exemption was scheduled to become effective on January 11, 1998, unless an offer of financial assistance (OFA) was filed with RJCP and the Board by December 22, 1997. On December 22, 1997, the Cambria and Indiana Railroad Company (C&I), a rail carrier, filed an OFA to purchase a 4.05-mile segment of the line, between milepost 6.4 and milepost 10.45189, for $294,452.

By decision served December 24, 1997, C&I was found financially responsible.[1] The effective date of the exemption authorizing abandonment of the 4.05-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 noted that, on or before January 21, 1998, either party could request that the Board establish the terms and conditions for sale of the segment if no agreement was reached during negotiations.

On January 21, 1998, the C&I requested that the Board established the conditions and amount of compensation. C&I reduced its offer and now contends that the fair market value of the segment is $241,622, consisting of $14,545 for the land and $227,077 for the net salvage value of track and materials. RJCP responds that the fair market value of the segment is $450,988,

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[1] C&I states that it is a subsidiary of Bethlehem Steel Corporation.

[2] The exemption authorizing abandonment of the remainder of the Blacklick Secondary became effective on January 11, 1998.

consisting of $14,545 for the land and $436,443 for the net salvage value of track and materials.[3] We find the fair market value of the segment to be $341,774.

DISCUSSION AND CONCLUSIONS

Valuation and evidentiary standards. Proceedings to set conditions and compensation are governed by the provisions of 49 U.S.C. 10904(d)-(f). Under section 10904(f)(1)(B), we may not set a price that is below the fair market value of the line. In Chicago and North Western Transp. Co.—Abandonment, 363 I.C.C. 956, 958 (1981) (Lake Geneva Line), aff'd sub nom. Chicago and North Western Transp. Co. v. U.S., 678 F.2d 665 (7th Cir. 1982), it was determined that, in the absence of a higher going concern value for continued rail use, the proper valuation standard in proceedings for offers to purchase under section 10904 is the net liquidation value (NLV) of the rail properties for their highest and best nonrail use. NLV includes the value of the real estate plus the net salvage value of track and materials (gross salvage 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. Placing the burden of proof on the offeror is particularly appropriate in these proceedings because the offeror may withdraw its offer at any time prior to its acceptance of terms and conditions established by the Board 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 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. AB-6 (Sub-No. 358X) (ICC served June 30, 1994) and cases cited therein.

C&I's valuation is based on a verified statement from its chief engineer, Patrick R. Loughlin. RJCP's valuation is based on a verified statement of Gary B. Pettengill, its Vice President– Operations. Mr. Loughlin and Mr. Pettengill indicate that they jointly inspected the line to determine the quantities of track, ties and other materials. Apparently, RJCP also provided C&I with unit prices it used for its NLV estimate. The parties agree that the land value of the segment is $14,545. They also agree on the types and quantities of material. However, they disagree on the price and quality of materials and removal costs.

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[3] RJCP's valuation on page 13 of its reply statement contained a mathematical error, which we corrected.

Rail. Apparently, there are at least 6 sizes of rail on the line ranging from 130-lb. to 155-lb. Mr. Loughlin values the rail at $160,637.

He states that, although his inspection of the line did not show any 155-lb. or 152-lb. rail, he accepted the quantities that RJCP had provided to C&I. However, Mr. Loughlin indicates that RJCP overpriced 152-lb. and 155-lb. rail at $350 per ton. Mr. Loughlin prices the 152-lb. and 155-lb. rail at $175 per ton. He notes that 152-lb. and 155-lb. rail are not being made, and that there is almost none for sale on the market. Mr. Loughlin states that he was informed by a producer of rail that rail heavier than 140-lb. has not been made in at least eight years, indicating that there is no demand for these sizes of rail. He further maintains that RJCP would do well to realize $175 per ton, particularly since the rail is worn significantly. He values the 152-lb. and 155-lb. rail at a total of $31,192.

Mr. Loughlin prices the 140-lb rail at $300 per ton, rather than the $350 per ton value used by RJCP. He claims that RJCP's unit cost is overstated because it does not adequately reflect wear. Mr. Loughlin values the 140-lb. rail at a total of $17,037.

Mr. Loughlin prices the 130-lb. rail at $150 per ton, rather than the $175 per ton as claimed by RJCP, citing the limited market for 130-lb. rail. He notes that the most common types of rail being produced today are 115-lb. and 132-lb. While some new 130-lb. rail may be produced, he claims that the market is declining and quite limited. He notes that the 130-lb. rail was particularly worn, with wear in excess of one inch in depth at some locations and with wear on both sides. Mr. Loughlin values the 130-lb. rail at a total of $91,935.

Mr. Loughlin accepts RJCP's price of $175 per ton for 131-lb., 132-lb. and 133-lb.rail. He agrees with RJCP that the total value for these sizes of rail is $20,473.25.

Mr. Pettengill values the rail at a total of $209,991. He contends that his $350 per ton price for 155-lb., 152-lb., and 140-lb. rail is fair and reasonable. He states that RJCP currently uses 155-lb. and 152-lb. rail on other RJCP lines. According to Mr. Pettengill, RJCP plans to inventory the 155-lb., 152-lb. and 140-lb. rail salvaged from the line and reuse the rail on other RJCP lines, side tracks and yards. In addition, Mr. Pettengill states that the rail could be used by an RJCP affiliate for construction of industrial sidings and yard track. Mr. Pettengill values the 155-lb., 152-lb., and 140-lb. rail at a total of $82,260.50.

Mr. Pettengill states that RJCP will not relay the 130-lb. rail, but would sell it for re-roll. He cites a recent issue of American Metal Market, indicating that the current market value for re-rolled rail is at least $160 per ton. He avers that prices on re-roll rail fluctuate significantly over short periods of time, and that RJCP would probably hold the rail until a higher price became available. He maintains that RJCP could realize $175 per ton and he submits a quote from Jersey Shore Steel Company for $175.00 per ton. He values the 130-lb. rail at a total of $107,257.50

We accept RJCP's valuation for the rail. C&I has not submitted any quotations or other market-based information in support of its unit prices for rail. It either makes downward percentage adjustments to the price of new rail or adjusts RJCP's estimates. As noted, RJCP has submitted a quote in support of its reroll rail price of $175 per ton for its 130-lb. rail and has not presented any support for other unit prices. But, C&I's price for the 155-lb. and 152-lb. rail at $175 per ton is the same unit price that RJCP uses for 130 to 133-lb. reroll rail. However, reroll rail is a lower quality rail than relay and therefore commands a lower price. While C&I fails to address whether the 155-lb. and 152-lb. rail can be used for relay purposes, RJCP claims that this rail can be relaid on its own system. Because C&I states that it did not observe either of these rail sizes during its inspection, it is not in a position to make a determination regarding condition. As a result, there is no evidence that the 155-lb. and l52-lb. rail should be considered as reroll quality and thus priced lower than relay rail. Therefore, we will consider 152 and 155-lb. rail as relay quality rail for valuation purposes.

We agree that RJCP has established a need for 152 and 155-lb. rail sizes with affiliates elsewhere in its company. But the carrier has not indicated any near-term use of the rail, something we found in previous abandonments before accepting retail prices. RJCP does not indicate the source of its unit price of 152 and 155-lb. rail, even after C&I disputed this value figure in its initial offer. But C&I's price is not based on relay quality rail and we cannot accept its figure unless there is evidence indicating that the condition of the rail warrants this lower valuation. Lacking this evidence from C&I, we accept RJCP's price of $350 per ton for 152-lb. and 155-lb. rail.

Because RJCP demonstrated that it had a use for the much heavier than usual 152-lb. and l55-lb. rail, we will accept the carrier's assertion that it also can use the slightly heavier than usual 140-lb. rail. Accepting RJCP's uncontroverted claim that it can relay this rail, we will accept the seller's argument that it should be valued at $350 per ton, rather than the per ton amount claimed by C&I.

The parties agree that the value of 131, 132 and 133-lb. rail is $20,473.25.

RJCP has supported its claim of $175 per ton for 130-lb. rail with an offer to purchase from Jersey Shore Steel Company. C&I's arguments that the price should be lower do not overcome this strong evidence. Consequently, we will use RJCP's reroll rail price for 130-lb. rail.

Ties. Mr. Loughlin values ties at a negative $0.50. He states that he inspected the line and determined that 10% of the ties are relay quality, 30% are landscape quality, and 60% are scrap quality. He notes that almost all of the ties are deeply cut in the middle. Mr. Loughlin prices relay ties at $13,464, based on a price per tie of $12. He indicates that his price is derived from $20 per tie cost for new ties incurred by C&I and other Bethlehem Steel railroads. He estimates a total value for landscape ties at $10,101, based on a price per tie of $3. According to Mr. Loughlin, scrap ties do not have a positive value and may in fact cost more to remove and dispose of than they are worth; he prices scrap ties at a negative $23,565.50. Overall, Mr. Loughlin finds that the ties on the line have a negative value of $0.50.

Mr. Pettengill responds that, based on his experience, there is no difference between the quality of ties on the subject line and those salvaged on other RJCP rail lines. He indicates that RJCP has been able to relay about 50% of the ties salvaged. He further estimates that 35% of the ties can be sold as landscape ties. He indicates, however, that he has not done a specific tie evaluation for the line.

Mr. Pettengill estimates that the current market for relay ties is more than $14, citing what he claims is a recent sale of relay ties for $12.75 each, allegedly used in a construction project by an RJCP affiliate in Ohio. In addition, Mr. Pettengill submits a quote from another affiliate indicating that landscape ties were sold for at least $8.00 per tie.

We accept C&I's determination of tie condition, because it is based on a detailed inspection of one mile of the line. RJCP has not done a tie evaluation. Therefore it has no basis on which to criticize C&I's evaluation.

Neither party has submitted adequate supporting information for tie pricing. C&I has not presented any quotations to support Mr. Loughlin's estimate. RJCP's valuation of relay ties is based on a contract indicating the retail price of relay ties. However, while RJCP argues that it is its own source for relay ties and would have to buy them on the open market otherwise, we find that RJCP has not justified use of a retail valuation. Although we have accepted retail pricing of reclaimed material in certain isolated cases, it has always been linked to a specific size and near-term use. Neither of these conditions has been addressed by RJCP. In addition, if reclaimed material cannot be used in a short time, the opportunity cost of holding the material in stock will negate the difference between retail and wholesale pricing relatively quickly. Further, ties will continue to deteriorate while stored, while reclaimed rail will not. Without some indication of immediate need, we cannot accept RJCP's pricing of relay ties. We find that C&I's pricing of $12.00 per tie for relay ties is the better evidence, and we value relay ties at a total of $13,464.

C&I's valuation of landscape ties at $3.00 per tie is not supported by any evidence. RJCP has submitted evidence to support an approximate $8.00 per tie value for landscape ties.[4] Consequently, we accept the $8.00 valuation for landscape ties for a total value for landscape ties of $26,936.

We reject C&I's negative value for scrap ties. Under 49 CFR 1152.34(c)(1)(iii)(A)(2), assets at a negative value are valued at zero. Moreover, Mr. Pettengill did not include a price for scrap ties in his valuation. Accordingly, we will value scrap ties at zero. The total value for all ties is $40,400.

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[4] Although Mr. Pettengill priced landscape ties in his statement, RJCP did not include the values for landscape ties in its final price for the line. See RJCP reply p. 13.

<u>Other Track Material</u> (OTM). Mr. Loughlin agrees with RJCP's prices for compromise bars, rail anchors and one turnout. He disagrees, however, with RJCP's price for tie plates and joint bars. Mr. Loughlin says that he discounted tie plates to reflect the estimated value of bent plates he says he detected during inspection. He discounted joint bars by 60% to reflect the age and wear and limited market for this material.

Mr. Pettengill asserts that C&I does not indicate the extent of bent plates used in reducing its unit costs for tie plates and further asserts that there is no support for C&I's contention that there is a limited market for joint bars. He states that RJCR can reuse these materials on its other lines. Mr. Pettengill states that his prices are based on salvage projects carried out by an affiliated company.

C&I does not dispute the price that RJCP claims to be reasonable for tie plates and joint bars. Rather, the buyer says that those prices should be discounted because the plates are bent and the bars are worn. But C&I offers no support for the discounted price it proposes. If a purchaser offers an alternative price to the one claimed by the carrier being forced to sell, it is incumbent on the buyer to provide support for the price it is asserting. This C&I has not done. We therefore find that C&I has not offered sufficient evidence or argument to justify our setting aside the value claimed by RJCP in favor of that asserted by C&I.

<u>Ballast</u>. Mr. Loughlin claims that the ballast on the line is contaminated with coal and earth and is not reusable. As a result, Mr. Loughlin has determined that the ballast can only be used for fill. He prices ballast at $21,542, based on $1.50 per ton.

Mr. Pettengill asserts that the ballast on the subject line may be reused on RJCP's lines, but probably could not be resold. He states that, despite its condition, the carrier routinely reuses ballast on other lines. He values the ballast at $4.50 per ton for substitute ballast.

RJCP's evidence does not support its ballast price of $4.50 per ton. It submitted a quotation ranging from $8.90 to $11.00 per ton for crushed stone ballast. But that quotation is not applicable to the subject line. Generally, ballast is not valued as a recoverable asset. In unusual cases, some value may be assigned to ballast in abandonments of main lines where there are significant amounts of ballast. Mr. Pettengill indicates RJCR may use ballast elsewhere in its system. But he does not indicate any recovery cost that RJCR would incur, an item that may have a significant impact on the overall valuation of the ballast. Because of the evidentiary deficiencies noted above, and because the ballast may not be suitable for resale purposes, we will accept C&I's value.

<u>Removal costs</u>. C&I's Mr. Loughlin estimates that removal of tracks and ties would cost $42,768, based on $2.00 per track foot. He predicates this estimate on a system-wide average of actual costs on Bethlehem Steel railroads. The estimate includes the cost of labor without benefits. Mr. Loughlin also estimates the cost for restoring and repaving one grade crossing on the line at $5,000. He bases his estimate on his experience with 22 grade crossings on other abandoned C&I lines.

Mr. Pettengill estimates removal cost of $19,693, based on $0.92 per track foot. He states that his estimate is derived from an affiliated salvage company which bids on railroad salvage and construction projects. He acknowledges that RJCP has not calculated actual costs per foot for track removal. Further, Mr. Pettengill argues that C&I's salvage bids on its abandoned lines are not relevant to this line. Mr. Pettengill also contends that C&I's grade crossing restoration cost is overstated because the estimate does not reflect the fact that the state usually grants a carrier 90% of grade crossing removal costs. Mr. Pettengill estimates that the grade crossing on the subject line would cost $1,000 to restore and that the net cost of removing the crossings after receipt of state aid would be $100.

C&I's method of computing removal cost is based on a system-wide accumulation of actual costs, without overheads, and appears to be reasonable. On the other hand, RJCP's removal cost estimate is not based on actual track removal costs. RJCP also is speculating on whether the state will grant funds to remove the grade crossing on the line. Without assurance that the state will fund removal costs, we cannot assume that the state will do so. C&I's recent experience in the same state with an adjacent line indicates that the state does not necessarily assist with grade crossing restoration. As a result, we accept C&I's estimate of $47,768 for track removal costs.

Accordingly, the net salvage value of the track and materials is $327,229.

Summary. The purchase price for the sought right-of-way is $341,774, consisting of $14,545 for land and $327,229 for net salvage value of track and materials. See Appendix.

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) RJCP shall convey all property by quitclaim deed; and (4) RJCP 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 is set at $341,774. Other terms of sale must comply with the provisions discussed above.

2. Within 10 days of the service date of this decision, C&I must accept or reject, in writing, the terms and conditions established here by notifying the Board and RJCP.

3. If C&I accepts the terms and conditions established by this decision, C&I and RJCP will be bound by this decision. C&I 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 RJCP, prior to the end of the fifth year after consummation of the sale.

4. If C&I 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

APPENDIX

NET LIQUIDATION VALUE

SEGMENT BETWEEN MILEPOST 6.4 AND MILEPOST 10.45189

	RCJR	C&I	STB Restatement
Land	$14,545	$14,545	$14,545
Rail	$209,991	$160,637	$209,991
Ties	78,554	(1)	40,400
OTM	103,064	92,666	103,064
Ballast	64,627	21,542	21,542
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Gross Salvage Value	$456,236	$274,845	$374,997
Cost to remove, track	19,693	42,768	42,768
Grade crossing restoration	100	5,000	5,000
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Subtotal, Cost to remove	$19,793	$47,768	$47,768
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Net Salvage Value	$436,443	$227,077	$327,229
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Net Liquidation Value	$450,988	$241,622	$341,774