39519 SERVICE DATE – NOVEMBER 20, 2008
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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35160

OREGON INTERNATIONAL PORT OF COOS BAY—FEEDER LINE APPLICATION—
COOS BAY LINE OF THE CENTRAL OREGON & PACIFIC RAILROAD, INC.

Decided: November 19, 2008

By decision served on October 31, 2008 (October 31 Decision), we ordered the Central Oregon & Pacific Railroad, Inc. (CORP) to sell the Coos Bay Line (the Line)[1] to the Oregon International Port of Coos Bay (the Port) under 49 U.S.C. 10907. In this decision, we establish the purchase price of the Line at its constitutional minimum value of $16,605,987.

BACKGROUND

In the October 31 Decision, we found that the Line met the criteria for a forced sale under 49 U.S.C. 10907. We also found the Port to be a financially responsible entity and thus eligible to purchase the Line. Accordingly, we ordered the current owner of the Line—CORP—to sell the Line to the Port. Our order was contingent on the Port's accepting the terms of sale we established in the October 31 Decision and agreeing to a purchase price reflecting the constitutional minimum value of the Line. We indicated that this minimum value would be established in a subsequent decision.

The October 31 Decision established the methodology by which we would determine the Line's constitutional minimum value. We concluded that the best evidence of the Line's constitutional minimum value included the market price of scrap steel as of October 31, 2008, rather than the salvage offers proffered by CORP or an average of scrap steel prices over a period of time. Because the market data for October 31 were not yet available, we ordered the parties to submit evidence on the net salvage value (NSV) of the Line using American Metals Market (AMM) scrap steel prices from October 31, 2008, once available. On November 5, 2008, the Port submitted evidence in response to the October 31 Decision. CORP filed a reply on November 7, 2008. On November 10, 2008, CORP filed a petition for a technical correction to the Board's calculation of the Line's real estate value. On November 12, 2008, the Port filed a response to CORP's November 7 and November 10 filings.

[1] The Line runs from Danebo, OR (milepost 652.114), to Cordes, OR (milepost 763.130).

In its November 5, 2008 submission, the Port submitted evidence of scrap steel prices from AMM as of October 31, 2008. The Port also submitted evidence of the price of relay rail, a category of higher quality rail not included in scrap steel prices. The Port calculated the NSV of the Line to be either $7,767,139 updating scrap, tie and relay prices, or $8,563,777 updating only tie and scrap steel prices. Adding the Port's NSV without the updated relay rail prices ($8,563,777) to the real estate value established by the Board in the October 31 Decision ($6,771,878) results in a net liquidation value (NLV) of $15,335,655. The Port also submits argument that the Board should reconsider its determinations regarding the costs of bridge removal and tunnel closure.

In reply, CORP calculates the updated NSV of the Line at $9,848,939, a figure which reflects updated scrap and tie prices but not updated relay rail prices. CORP argues that the October 31 Decision limits supplemental evidence to filings on the issue of AMM scrap steel prices. CORP submits that its updated NSV results in an NLV of $16,620,817 when combined with the real estate value.

CORP also submits a new offer from L.B. Foster, dated November 6, 2008, to purchase the track assets on the Line. CORP suggests that the Board could use the offer to establish the fair market value and the NLV of the Line. In the alternative, CORP argues that the Board should consider a different method of valuing the Line other than using the market prices from October 31.

## DISCUSSION AND CONCLUSIONS

Technical Correction. We will correct an apparent error in the Board's real estate valuation. In the October 31 Decision, the Board determined that, in valuing the Line's real estate, CORP made an error in its discounted cash flow calculations in determining the gross potential land sales at the beginning of year three because we were unable to replicate CORP's calculated figure. Accordingly, in establishing the real estate value in our October 31 Decision, we adjusted CORP's figures. In its November 10 filing, CORP now explains that its figure for the gross potential sales at the beginning of year three was indeed correct because it included in year three sales that were deferred in years one and two. In determining the value of the land in the October 31 Decision, we did not realize that CORP included deferred sales from years one and two in its year three calculations and so our adjusted figure undercounted these sales. Because we now understand that CORP did not make a calculation error, we will accept its figure of $7,230,863 as the best evidence of record for the value of the land.[2]

Evidentiary Issues. Both the Port and CORP, in their November 5 and 7, 2008 filings, respectively, exceeded the scope of the Board's order requesting the submission of specific

[2] The Port has asserted that this adjustment is more properly the subject of a petition for reconsideration and that it does not agree with the adjustment. Because the need for this adjustment arises from the Board's previous restatement of CORP's figures to correct what the Board mistakenly concluded was an error and because the adjustment can be made easily, we conclude that adjustment now is proper.

updated evidence related to AMM scrap steel prices. The October 31 Decision specifically prohibited the parties from using their November 5 and 7 submissions to seek reconsideration of the Board's determinations rendered in that decision.[3] See October 31 Decision at 12.

We will not consider the information contained in the Port's November 5, 2008 filing concerning the price of relay rail or any adjustments to the NSV based on updated relay rail prices. This information is outside the scope of supplemental evidence ordered by the October 31 Decision. Rather, the Board will rely on the valuation of relay rail from the Port's September 12, 2008 filing ($9,907,300). In the October 31 Decision we found that the Port's September 12 quantities were the best evidence of record. The Port's September 12 filing is still the best evidence of record of the valuation of relay material. Likewise, we will continue to rely on the value of the ties and non-steel materials in the Port's September 12, 2008 filing ($1,203,400) rather than the later figure ($1,398,900) provided by both the Port and CORP in their November filings. The Port's September 12, 2008 NSV was validated by comparison with the NSV submitted by CORP on August 29, 2008. Adopting different subsidiary figures, such as the proffered updates for ties and related material, would undercut the validity of the September 12, 2008 baseline total. That is because accepting the new figure for ties would raise the Port's NSV figure above that proffered by CORP based on the estimates of Unitrac and L.B. Foster.

We will also not consider here arguments put forth by the Port regarding the costs of bridge removal and tunnel closure or the new salvage offer submitted by CORP. Arguments and evidence on these subjects—as well as those regarding any changes in relay steel prices—constitute requests for reconsideration of determinations made in the October 31 Decision. Such requests may be filed pursuant to the standards in 49 CFR 1115.3 and within the timeframe established by our November 7, 2008 decision.

We will address, in this decision, one additional issue raised by CORP in its November 7 filing that directly relates to our discussion of scrap steel prices in the October 31 Decision. CORP notes that the drop in scrap steel prices between October 29—the last date for which the Board had data prior to its decision—and October 31—the day of the decision—was very large. CORP argues that, instead of relying on the AMM scrap steel prices from October 31 in valuing the Line's scrap metal assets, the Board should rely on the November 6 L.B. Foster bid that CORP submitted. In the alternative, CORP argues that the Board should consider other unspecified alternative methods.

In the October 31 Decision, we concluded that the record evidence had demonstrated that the upward spike in scrap steel prices when this proceeding began in July was an anomaly. We further observed that prices had not, at that point, fallen below historical levels, and that we had no reason to conclude that an anomalous downward spike was occurring. See October 31 Decision at 10-11. While CORP is correct that scrap prices have now fallen below where they have been historically, we have no evidence to suggest that the downward trend is a short-term

[3] Arguments for reconsideration should be set forth in a petition for reconsideration. See 49 CFR 1115.1 et seq. The October 31 Decision did not prohibit the filing of such petitions.

anomaly, as the March-July spike demonstrably was. The Board takes notice of the fact that commodity prices in general have fallen significantly in the face of the current far-reaching international financial difficulties.[4] While no one can reliably predict whether and when scrap steel prices will rise again, we do not regard the October 31 drop in steel prices as artificially low under current market conditions, and we do not believe that any other valuation approach would be more appropriate here.[5]

Adjustments to Cost of Money and Profit Expenses. The cost of money and profit expenses are components of "Administrative and Marketing Expenses" used in computing the Line's NSV. In the Port's November 5 filing, in its scenario that does not include updated relay prices, the cost of money is $331,226 and the profit is $1,758,849. These two expenses have a direct relationship to the value of the track. As track values increase or decrease, so do the profit and the cost of money. Although the Port provides updated cost of money and profit expenses, its updates reflect not just the decrease in scrap steel prices, but also a decrease in the value of relay rail, ties, and non-steel materials. As discussed above, we have rejected the newly proffered evidence related to anything other than scrap steel prices. Use of the Port's costs of money and profit figures in these circumstances would not be reasonable, as those figures would not directly correlate with our determined track liquidation figures.

The Port has not provided the Board with a formula to permit us to replicate the computation of those two expense items as applied to the salvage values we have accepted. Thus, we will compute new figures for the costs of money and profit by determining the ratio of the two expenses to the track liquidation value in the Port's November 5 filing and adjusting those expenses so that they have the same ratio to the track liquidation value we are accepting here. As discussed above, the track liquidation value we are accepting here excludes any increased value for relay rail and ties. Thus, in the Port's November 5, 2008 submission, the cost of money ($331,226) is 2.1897% of the gross liquidation value (GLV) ($15,126,400), and the expense of profit ($1,758,849) is 11.6277% of the GLV. In this decision, we find the Line's GLV to be $15,963,400.[6] Therefore, applying the same ratios from the November 5 filing and

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[4] U.S. retail sales also fell by 2.8 percent in October, the largest monthly decline on record. Press Release, U.S. Census Bureau, Advance Monthly Sales for Retail Trade and Food Services, October 2008 (Nov. 14, 2008), www.economicindicators.gov.

[5] We are aware of statements by our predecessor agency, the Interstate Commerce Commission, which appear to express some reluctance to force a line sale during a depressed market for scrap steel. See, e.g., Norfolk and Western Ry. Co.—Abandonment Between New Castle and Rushville, In Henry and Rush Counties, IN, Docket No. AB-10 (Sub-No. 11) (ICC served Feb. 11, 1983). But such a policy would not be appropriate here where the public convenience and necessity standard for a forced sale is otherwise met, and would be inconsistent with our responsibilities under 49 U.S.C. 10907(c).

[6] The Board's GLV is based on the Port's September 12 valuation of relay rail ($9,907,300), plus the updated price of scrap and reroll materials ($4,852,700), plus the Port's September 12 valuation of ties and non-steel materials ($1,203,400).

using the GLV found in this decision, we calculate the cost of money to be $349,554 and the expense of profit to be $1,856,173.

Using our calculations for the cost of money and the expense of profit, we determine that the NSV of the Line is $9,375,124. Adding the NSV of the Line ($9,375,124) to the value of the land underlying the Line ($7,230,863) results in a total NLV—and resulting purchase price—of $16,605,987.

Extension of Time. On November 7, 2008, Congressman Peter A. DeFazio filed a request that the Board grant the Port an additional 120 days, in addition to the 90 days provided in the October 31 Decision, to complete the sale of the Line, should the Port accept the terms and conditions established by the Board. Congressman DeFazio indicates that the Port needs additional time to gather the funding to purchase the Line. The record before us does not support granting the request. The primary purpose of the feeder line program is to facilitate the resumption of adequate service on the affected line when the existing carrier has failed to provide that service. Most shippers on the Coos Bay Line have been without rail service since September 2007. The shippers' statements in the record testify to the hardships they are enduring due to lack of rail service. We will not prolong the consummation of a transaction designed to restore service beyond the period customarily allocated to allow a successful applicant to prepare for the closing of the sale.

Moreover, the Port has not requested an extension of time. In its application, the Port testified that it is financially responsible and has access to the funds necessary to purchase the Line, including a $12.5 million loan commitment from Umpqua Bank and $7 million in cash. This total amount exceeds the purchase price of the Line established in this decision. The Port also cited its income from its business operations in the Charleston marina complex, real estate leases, and a local tax base in support of its status as a financially responsible entity. We expect that the Port will take advantage of the loan commitment and other available sources of funds if that is what is necessary to enable the Port to acquire the Line. In sum, nothing in the record affords us any basis upon which to take the action requested at this time. Should the Port find that it needs additional time to complete the transaction, the Port may file a motion to reopen.

It is ordered:

1. The real estate valuation in the October 31 Decision is technically corrected as described herein.

2. The purchase price for the Line is set at $16,605,987 and other terms of the sale are prescribed as set forth in the Board's October 31, 2008 decision in this proceeding.

3. The Port must notify the Board and CORP by December 1, 2008, whether it wishes to proceed under the terms prescribed in this decision and the Board's October 31, 2008 decision in this proceeding.

4. Congressman DeFazio's request for an extension of time is denied.

5. If the Port accepts the terms and conditions established by the Board for the sale of the Line, closing must occur on or before February 18, 2009 (90 days from the service date of this decision).

6. This decision is effective on its service date.

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

Anne K. Quinlan
Acting Secretary