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SERVICE DATE - LATE RELEASE JANUARY 7, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-556 (Sub-No. 2X)

RAILROAD VENTURES, INC.--ABANDONMENT EXEMPTION--BETWEEN  
YOUNGSTOWN, OH, AND DARLINGTON, PA, IN MAHONING AND COLUMBIANA  
COUNTIES, OH, AND BEAVER COUNTY, PA

STB Finance Docket No. 33385

RAILROAD VENTURES, INC.--ACQUISITION AND OPERATION EXEMPTION--  
YOUNGSTOWN & SOUTHERN RAILROAD COMPANY

REQUEST TO SET TERMS AND CONDITIONS

Decided: January 6, 2000

By decision served on September 3, 1999, we exempted, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 10903, the abandonment by Railroad Ventures, Inc. (RVI), of a 35.7-mile line of railroad extending from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile line segment near Negley, OH, and the discontinuance of service over the line by The Ohio & Pennsylvania Railroad Company.<sup>1</sup> The exemption was scheduled to become effective on October 3, 1999. By separate petitions filed on September 3, 1999, and on September 8, 1999, respectively, Columbiana County Port Authority (CCPA)<sup>2</sup> and Penn-Ohio Recycling, Inc. (collectively referred to as "offerors"), requested the tolling of the period for submitting an offer of financial assistance (OFA). By decision served on September 10, 1999, the time period for filing an OFA in this proceeding was tolled until 30 days after RVI provided offerors with certain requested information and documents, and the effective date of the abandonment exemption was stayed. By letter filed on October 12, 1999, offerors reported that, on October 8, 1999, RVI fully complied with their requests for the production of documents. Accordingly, OFAs were due on November 8, 1999.

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<sup>1</sup> This proceeding was consolidated with STB Docket No. AB-555 (Sub-No. 2X), The Ohio & Pennsylvania Railroad Company — Adverse Discontinuance of Service Exemption — Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA.

<sup>2</sup> CCPA is a quasi-public agency established by the Board of County Commissioners of Columbiana County, OH.

On November 8, 1999, CCPA timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line of railroad for \$419,360. By decision served on November 12, 1999, CCPA was found to be financially responsible. The effective date of the exemption authorizing abandonment of the line was further postponed to permit the OFA process to proceed.<sup>3</sup> The decision also provided that, on or before December 8, 1999, either party could request that we establish the terms and conditions for the sale of the line, if no agreement was reached during negotiations.

On December 8, 1999, CCPA requested that we establish the conditions and amount of compensation for the line. CCPA's revised offer of \$441,700 to purchase the entire line is based on the net liquidation value (NLV) for the line, consisting of a net salvage value (NSV)<sup>4</sup> of \$91,705.67 for the track and materials, and \$350,000 for the land.<sup>5</sup> On December 13, 1999, RVI filed a reply to CCPA's request. RVI contends that the NLV for the line should be \$2,261,490, consisting of an NSV of \$788,560 for the track and materials, and \$1,472,930 for the land. Based on our review of the evidence, we find that the NLV for the line is \$1,080,560, consisting of an NSV of \$730,560 for the track and materials, and \$350,000 for the land.

#### OTHER MATTERS

Grade Separated Crossing Settlement Agreement. CCPA asks that we find that the terms of the November 5, 1999 Grade Separated Crossing Settlement Agreement (Agreement), between RVI and Boardman Township (Boardman), are contrary to the public interest and unenforceable to the extent that: (1) they are binding on any parties other than RVI and Boardman; and (2) they require the construction of a grade separated crossing at the line's intersection with Ohio State Route 224, as a condition precedent to the restoration of rail service. RVI, anticipating this request, filed a statement on December 1, 1999, opposing the request and addressing CCPA's arguments.

Specifically, the Agreement states that "RVI or its successors and assigns (hereinafter referred to as 'Line Owner') agree to undertake the necessary planning, construction, and future maintenance of a grade separated crossing at State Route 224 and at such other road crossings as may be determined by [Boardman] . . . ." Designating it the "Crossing Project," the Agreement requires the Line Owner, within 3 months from the date the line is reactivated for continued rail service, to prepare and submit for the approval of Boardman and various state authorities detailed plans and cost estimates for the acquisition of additional property necessary for the construction of the new grade separated crossing, including adjustments to the public highway, which will carry the rail line over or under Route 224 and other designated road crossings. According to the Agreement,

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<sup>3</sup> The discontinuance of service exemption became effective on November 18, 1999.

<sup>4</sup> NSV is the gross salvage value of track and materials less removal costs.

<sup>5</sup> To arrive at \$441,700, CCPA presumably rounded its \$91,705.67 NSV figure to an even \$91,700.

the Line Owner is responsible for all of the costs and expenses associated with the Crossing Project. While these specific terms state that the Line Owner has 3 months from the date the line is reactivated for rail service to submit the plans and “. . . metes and bounds descriptions of any property to be appropriated for the construction of the Crossing Project . . .,” a later provision overrides the time period and requires, among other things, completion of the project and submission to Boardman of a 2-year maintenance bond on the improvements, before rail service can be resumed in full. The Agreement specifically restricts CCPA’s contemplated unit train operations under its OFA.

CCPA argues that the Agreement creates a condition precedent to the restoration of rail service and is prohibitively expensive, likely exceeding the line’s NLV. If the Agreement is enforceable, CCPA states that it will have no choice but to discontinue its efforts to acquire the line. RVI states that it is concerned about its potential liability based on concerns expressed by Boardman about the impact of the possible reactivation of the rail line on the public health and safety. RVI submits that it entered into the Agreement with Boardman to avoid potential liability and the intervention by Boardman in this proceeding.<sup>6</sup>

While the Board encourages privately negotiated agreements, any contractual restrictions that unreasonably interfere with common carrier operations are deemed void as contrary to public policy. See Hanson Natural Resources Company — Non-Common Carrier Status — Petition for a Declaratory Order, Finance Docket No. 32248, slip op. at 3 (ICC served Dec. 5, 1994). See also, *United States v. Baltimore & O. R. R.*, 333 U.S. 169, 177-78 (1948) (Finding that parties may not enter into trackage rights agreements that abrogate rights and responsibilities under the statutory provisions of the Interstate Commerce Act). RVI’s Agreement with Boardman contains such contractual restrictions. By creating conditions precedent to the resumption of rail service, most particularly CCPA’s contemplated rail service under its OFA, such restrictions unreasonably interfere with the OFA process and the common carrier operations required by 49 U.S.C. 10904(f)(4)(A).<sup>7</sup> These terms of the Agreement also circumvent our exclusive statutory authority to set the terms and conditions of the sale under 49 U.S.C. 10904(f)(1). Accordingly, we will grant CCPA’s request and find that the terms of the Agreement that assign obligations to any party other

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<sup>6</sup> On December 17, 1999, Boardman filed a motion for leave to intervene in this proceeding for the sole purpose of addressing issues related to the Agreement’s enforceability. Boardman requests that we establish a procedural schedule for the submission of argument. Because of the strict time constraints of a set terms proceeding, we cannot allow intervention and further pleadings. Accordingly, the motion will be denied. We note that Boardman’s interests are similar to those of RVI and the record is sufficient for us to rule on the issue.

<sup>7</sup> That subsection provides as follows: “No purchaser of a line or portion of line sold under [section 10904] may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.”

than RVI and Boardman, and require construction of a grade separated crossing as a condition precedent to the restoration of rail service,<sup>8</sup> are void as against public policy.

Motion to stay and petition to reopen. On December 23, 1999, CCPA filed a motion to stay this proceeding for the time it will take us to consider its concurrently filed petition to reopen STB Finance Docket No. 33385, which authorized RVI's acquisition of this line of railroad.<sup>9</sup> Also, on December 23, 1999, ORDC filed a statement in support of CCPA's petition to reopen.<sup>10</sup> On January 4, 2000, Add-Iron Corporation also filed a letter in support of CCPA's position on reopening. Also on January 4, 2000, RVI replied in opposition to CCPA's stay and reopening requests.

The standards governing disposition of a petition for stay are: (1) whether the petitioner is likely to prevail on the merits; (2) whether the petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other interested parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). As discussed below, the criteria for stay have not been met in this case.

CCPA seeks reopening of the acquisition notice of exemption in STB Finance Docket No. 33385 based on material error in the decision served on July 15, 1997, in that proceeding, and on

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<sup>8</sup> CCPA requests that we render only these two aspects and not the entire Agreement invalid to ensure that Boardman has recourse under Ohio law against RVI for its remaining obligations under the Agreement.

<sup>9</sup> By notice served and published in the Federal Register on April 24, 1997 (62 FR 20061), RVI was exempted from the prior approval requirements of 49 U.S.C. 10901 to allow it to acquire and operate the subject line. At the time the notice was served, a petition to reject, revoke, or stay the notice of exemption, which was jointly filed on April 8, 1997, by the Ohio Rail Development Commission (ORDC) and CCPA, was pending. Also pending was a petition for declaratory order, filed on February 5, 1997, in STB Docket No. 41991, by ORDC and CCPA. Because both proceedings involved the same issues, they were consolidated and the petitions were denied in Railroad Ventures, Inc. — Acquisition and Operation Exemption — Youngstown & Southern Railroad Company, STB Finance Docket No. 33385, et al. (STB served July 15, 1997).

<sup>10</sup> On December 30, 1999, Penn-Ohio Recycling, Inc. (Penn-Ohio), filed motions to intervene in support of CCPA's stay and reopening requests. Intervention will not be granted as Penn-Ohio's interests are similar to CCPA's and the record is sufficient for us to address the pertinent issues without Penn-Ohio's participation.

new evidence that it hopes to discover and introduce.<sup>11</sup> CCPA evidently believes that reopening the acquisition proceeding will enable it to obtain more comprehensive relief than this set terms proceeding will provide. To ensure that we will have the requisite jurisdiction to provide that relief if it prevails on reopening, CCPA seeks a stay of the set terms proceeding until we have ruled on its petition to reopen.<sup>12</sup>

Because CCPA has already filed its petition to reopen STB Finance Docket No. 33385, we will consider it and rule on the merits of CCPA's petition at this time. CCPA argues that it was material error to grant the underlying acquisition notice of exemption over the objections and evidence of CCPA, ORDC, and the shippers located on the line. CCPA does not explain how this was material error other than the fact that the July 15, 1997 decision did not adopt its arguments. CCPA also argues that it was material error for the Board, after monitoring RVI's efforts to restore service, to fail to rectify the situation.

In rejecting RVI's 2-year out-of-service abandonment notice of exemption and allowing RVI to refile for abandonment authority, provided that it submitted sufficient information to enable us to determine whether the line of railroad could be operated at a profit, we considered these same arguments and found that an abandonment proceeding could be an acceptable approach for resolving the service issues surrounding RVI's acquisition of the line and for accommodating any interest in continued rail service. 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. 1X), et al., slip op. at 5-6, (STB served Jan. 22, 1999). CCPA does not address the action taken in that decision. Instead, it focuses on the original acquisition notice, which has long since been administratively final, and RVI's subsequent actions with regard to restoring service on the line, and urges us to follow the precedent in The Land Conservancy of Seattle and King County — Acquisition and Operation Exemption — The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33389 (STB served Sept. 26, 1997) (Land Conservancy), that acquisition exemptions are for the purpose of providing continued rail service, and revoke RVI's acquisition exemption.<sup>13</sup>

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<sup>11</sup> CCPA proposes a 90-day schedule that includes a 45-day period for discovery.

<sup>12</sup> CCPA submits that, absent a stay, if it declines to accept the set terms and conditions, the line will be abandoned and jurisdiction will be lost.

<sup>13</sup> Land Conservancy, which is pending review in the Ninth Circuit, does not support the relief CCPA seeks. In Land Conservancy, we revoked an acquisition exemption where (1) a petition for abandonment was filed less than 2 months after the acquisition and (2) there were what appeared to be preexisting plans to use the property as a trail. To protect the integrity of the Board's processes, we revoked the authority for the acquisition, and ordered the reconveyance of the line so as to permit the railroad to pursue abandonment, thereby allowing interested persons to make an OFA or seek a trail condition. Here, of course, there already has been an abandonment proceeding  
(continued...)

We find no material error in the July 15, 1997 decision declining to reject or revoke or stay the notice of acquisition exemption, or in our subsequent actions. As far as reopening for the purpose of obtaining new evidence, we will not allow CCPA to conduct a fishing expedition in discovery. See FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Docket No. 42022, slip op. at 3 (STB served Apr. 17, 1998); and Sierra Pacific Power Company and Idaho Power Company v. Union Pacific Railroad Company, STB Docket No. 42012, slip op. at 4 (STB served Apr. 16, 1998). This is particularly true in light of the lateness of this request.<sup>14</sup> Other than the Agreement with Boardman, which we dealt with in the previous section, there is no other new evidence presented by CCPA.

Accordingly, CCPA has not met the requirements for reopening an administratively final decision under 49 CFR 1115.4. It has not shown material error and it has proffered no new evidence. Therefore, the petition to reopen STB Finance Docket No. 33385 will be denied.

Having determined that CCPA has not shown that reopening of the original acquisition proceeding is warranted, we cannot find that CCPA would be irreparably harmed in the absence of a stay.<sup>15</sup> On the other hand, the issuance of a stay would harm other interested parties by unduly prolonging this litigation. Resolving the future of the subject line now, however, is in the public interest. If CCPA accepts the terms and conditions that we establish below, rail service may be resumed more quickly. If CCPA rejects the terms of sale, rail banking and interim trail use also may proceed more expeditiously.<sup>16</sup> Accordingly, the request for a stay of this proceeding will be denied.

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<sup>13</sup>(...continued)

and an OFA has been filed, to allow for continued rail operations.

<sup>14</sup> CCPA has not explained why it could not have filed its petition to reopen earlier, rather than waiting until the eleventh hour of the set terms proceeding—a proceeding that it requested.

<sup>15</sup> As noted, CCPA requested a stay to provide time for us to consider its petition to reopen. However, we have ruled on that petition in this decision. Therefore, no stay is required here.

<sup>16</sup> CCPA cites Hayfield Northern R. Co. v. Chicago & N.W. Tr. Co., 467 U.S. 622, 633 (1984), in support of its argument that absent a stay we will lose jurisdiction if it declines to accept the set terms and conditions and the abandonment is consummated. CCPA fails to take into account that there are outstanding trail use and public use conditions and that we would retain jurisdiction over the line throughout the period of rail banking/interim trail use. See 16 U.S.C. 1247(d); 49 CFR 1152.29. Furthermore, we remain available to take appropriate action should this case go to court and it is remanded. See Busboom Grain Co. v. ICC, 830 F.2d 74, 75 (7th Cir. 1987) (stay of abandonment decision pending judicial review not required because the action permitted by the agency's order is not irreversible).

Motion to strike. As discussed below, RVI introduced evidence as to the NLV of the land based on use of the right-of-way as an assembled corridor. CCPA moves to strike, arguing that RVI should not be allowed to present new valuation evidence at this stage of the proceeding. RVI argues that our regulations do not place a limitation on the evidence that may be submitted in support of valuations. We will not limit RVI's discretion to present its case as it chooses. Therefore, we will deny the motion to strike.

Request to reject. CCPA contends that RVI has undertaken a series of transactions that alter the value of the line's NLV. Specifically, CCPA asserts that RVI sold certain parcels of the right-of-way, and is attempting to sell others, without authorization and in violation of the OFA procedures. These transactions include: (1) the sale of utility crossing easements to First Energy Corporation (Ohio Edison Company) for \$893,000;<sup>17</sup> (2) the assignment of all right, title, and interest to income, proceeds, accounts receivable, royalties, and other payments arising from third party agreements which are attributable to the line;<sup>18</sup> (3) the sale of a 4.012-acre segment to Boardman Township Park District (Park District) for \$140,000;<sup>19</sup> and (4) a contingent agreement for the sale of approximately 20.6 acres of the right-of-way for a 4.2-mile bicycle trail. Aside from their financial impact, which CCPA attempts to adjust for in its valuation of the property, CCPA submits that, to the extent these transactions thwart the OFA process by compromising the ability of CCPA or its operator to restore safe and responsive rail service, they must be rejected. RVI responds that it has done nothing to inhibit or preclude the acquisition and use of appropriate surface rights along this corridor for continued rail operations.

As far as the financial impact of these transactions are concerned, this will be dealt with, where appropriate, in our calculation of the NLV for the line. We find no evidence of record of a binding agreement that could obstruct future rail operations, and therefore, we will deny CCPA's request to reject. We turn now to the only remaining issue before us — the request to set terms and conditions for the purchase of this line under 49 U.S.C. 10904.

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<sup>17</sup> In a letter filed on September 24, 1999, RVI states that these easement rights involve crossing rights for power lines over slightly in excess of 42 acres of the right-of-way. According to RVI, existing utility line crossings and occupations have been converted from license agreements to permanent easements and, as such, have no impact on the use of the right-of-way for continued rail operations.

<sup>18</sup> CCPA asserts that the assignee is commonly controlled by the same individuals who control RVI. CCPA notes the additional step undertaken by RVI of entering into the Agreement discussed above.

<sup>19</sup> RVI points out that the purchase and sale agreement, dated November 8, 1999, is explicitly made subject to continued rail service on the line.

## TERMS AND CONDITIONS

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 NSV of track and materials.

In proceedings to set conditions and compensation, 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 that we establish 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 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. Absent specific evidence supporting the offeror's estimates and contradicting the rail carrier's estimates, the fact that the burden of proof is on the offeror 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. We address below the value of the track and materials, and the land.

Track and materials. The NSV of the track and materials in RVI's petition for exemption was based on an appraisal prepared by R/W Specialists, Inc. (R/W). CCPA's consultant, Gary E. Landrio, analyzed R/W's appraisal and agrees with the quantity and condition of the track and materials, but adjusts the NSV estimate downward to account for: (1) an average cost per mile of \$15,035.50 for dismantling the track in place;<sup>20</sup> (2) a cost of \$366,702.93 for disposal of defective ties, i.e., ties that are unmarketable for either relay or landscape use;<sup>21</sup> and (3) a cost of \$58,000 to

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<sup>20</sup> Mr. Landrio states that this figure is based on a survey of likely local bidders. The actual bids, however, are not submitted for review.

<sup>21</sup> Mr. Landrio uses R/W's \$3.00 per tie disposal cost, but lowers R/W's ratio of defective ties from 99% to 90%.

restore highway grade crossings upon abandonment and removal of the track, as required by the Ohio and Pennsylvania Public Utility Commissions.<sup>22</sup>

Since the filing of its petition for exemption, RVI submitted the R/W appraisal to several national rail salvage companies that are actively involved in the purchase, removal and resale of railroad track and materials, and invited those companies to submit a firm offer to acquire and remove all track and materials from the line. A&K Railroad Materials, Inc. (A&K),<sup>23</sup> and Azcon Scrap, Inc., submitted offers of \$788,560 and \$800,000, respectively. Accordingly, RVI states that the NSV for track and materials should be at least \$788,560.

We agree with RVI that A&K's bid is persuasive evidence of the NSV for track and materials on the line, subject to an adjustment for the restoration of grade crossings.<sup>24</sup> To account for the need to restore grade crossings, CCPA's estimate of \$58,000 for this work, which RVI does not dispute, will be deducted from RVI's NSV of \$788,560. This results in an NSV for track and materials of \$730,560.

Land. CCPA submits a detailed appraisal, prepared by John Rossi, which values the land in the right-of-way at \$450,000 or about \$1,481 per acre, using an across-the-fence (ATF) methodology,<sup>25</sup> with appropriate adjustments.<sup>26</sup>

As discussed earlier, RVI bases its NLV for land on use of the right-of-way as an assembled corridor. Unless there is a specific documented interest expressed by a potential purchaser of an intact corridor, we do not consider this to be an acceptable method of valuation for NLV purposes. The highest and best non-rail use is to sell parcels to adjoining landowners or other interested parties. See Boston and Maine Corporation — Abandonment — In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 83), et al., slip op. at 4 (STB served July 1, 1998).

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<sup>22</sup> Mr. Landrio states that the average minimum cost is \$1,000 per crossing.

<sup>23</sup> We note that Mr. Landrio identified A&K as one of the local companies that he surveyed in arriving at his average cost per mile for dismantling the track. See supra note 21.

<sup>24</sup> A&K's offer did not include the removal of bridges or restoration of grade crossings. CCPA does not address bridge removal costs, and, therefore, they will not be included.

<sup>25</sup> An ATF methodology estimates land values by determining the value, usually by recent sale, of comparable adjacent or nearby parcels of land.

<sup>26</sup> Mr. Rossi considered size, shape, topography, adjacent land use, and zoning along with access to logical valuation segments. His evaluation takes into consideration appropriate advertising brokerage and closure costs which would be involved in marketing the right-of-way segments. The adjusted value was then discounted to net present value to reflect time of sale for each segment of the appraised property. Based on this criteria, Mr. Rossi arrived at a total real estate value.

RVI contends that the highest and best use of the right-of-way is as an assembled corridor, but it fails to support this contention with an executed sales contract or even an offer for an assembled corridor.<sup>27</sup> Rather, it refers to two independent appraisals, submitting one for our review, and copies of purchase agreements with Park District and Ohio Edison Company, representing sales for trail use and utility easements, respectively. RVI also presents evidence of interest in purchasing sections of the right-of-way from various groups, but no firm offers to purchase the entire right-of-way, much less an executed sales contract.

Based on the above discussion, we find that CCPA, not RVI, has used the appropriate methodology in this case. CCPA's real estate appraisal appears complete and adequately supported and its ATF values are appropriately adjusted. The values appear reasonable based on the comparable sales data presented. Accordingly, we find CCPA's estimate of the land value acceptable, as modified below to account for RVI's assignment of lease and interest income, which CCPA contends is worth \$100,000.<sup>28</sup> Because RVI's transfer of this interest would result in taking income from the line, it would reduce the value of the property. Accordingly, we will reduce the land value by \$100,000 to compensate for this loss of income. Consequently, the land value for the entire right-of-way is established at \$350,000 based on CCPA's appraisal, and the adjustment for the loss of income.

Summary. The purchase price for the right-of-way is \$1,080,560, consisting of \$350,000 for land and \$730,560 for NSV of track and materials.

Should CCPA elect to purchase the line, to ensure an orderly transfer of the line, we will establish the 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) RVI shall convey all property by quitclaim deed; and (4) RVI 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.

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<sup>27</sup> In Portland Traction Company — Abandonment Exemption — In Multnomah and Clackamas Counties, OR, Docket No. AB-225 (Sub-No. 2X), slip op. at 5 (ICC served Jan. 10, 1990), an executed sales contract was found to be the best evidence of the right-of-way's marketability and NLV in a case involving an offer for an assembled nonrail corridor.

<sup>28</sup> This information was submitted under seal, but we have found it necessary to put this information in the public record.

It is ordered:

1. Boardman's motion for leave to intervene and Penn-Ohio's motion for leave to intervene are denied.
2. CCPA's motion to stay, petition to reopen, motion to strike, and request to reject, are denied.
3. The purchase price for RVI's 35.7-mile line of railroad extending from milepost 0.0 at Youngstown, OH, to milepost 35.7 at Darlington, PA, and a connecting 1-mile line segment near Negley, OH, is set at \$1,080,560. Other terms of sale must comply with the provisions discussed above.
4. Within 10 days of the service date of this decision, CCPA must accept or reject, in writing, the terms and conditions established here by notifying the Board and RVI.
5. If CCPA accepts the terms and conditions established by this decision, CCPA and RVI will be bound by this decision.
6. If CCPA 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 and interim trail use.
7. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary