FINANCE DOCKET NO. 32479

CADDO ANTOINE AND LITTLE MISSOURI RAILROAD COMPANY — FEEDER LINE ACQUISITION — ARKANSAS MIDLAND RAILROAD COMPANY LINE BETWEEN GURDON AND BIRDS MILL, AR

Decided August 10, 1999

The Board approves the feeder line application to acquire the Arkansas Midland Railroad Company's Norman Branch and establishes a price for the purchase and other terms of the sale.

BY THE BOARD[1]:

The Feeder Line Development Program at 49 U.S.C. 10907 enables shippers and communities to acquire marginal rail lines that are likely to be abandoned or are receiving inadequate rail service. This feeder line proceeding involving the Arkansas Midland Railroad Company's (AMR) Norman Branch line between Gurdon and Birds Mill, AR, was remanded to the Board by the United States Court of Appeals for the Eighth Circuit in 1996. *Caddo Antoine and Little Missouri R. Co. v. STB*, 95 F.3d 740 (8th Cir. 1996) (*Caddo*). The court directed that we consider the Norman Branch as a single line and determine whether the public convenience and necessity (PC&N) requires or permits sale of the entire Norman Branch under the feeder line statute, 49 U.S.C. 10907(c)(1), and, if so, what the sale price for the entire line should be.

Following the court's remand, we reopened the feeder line proceeding and directed the filing of additional evidence. On the basis of the record before us, we will now grant the feeder line application for sale of the entire Norman Branch and set a price and other terms of sale for the purchase.

[1] The ICC Termination Act of 1995 (ICCTA), which took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(c) of the ICCTA provides, in general, that, if a court remands a suit against the ICC that was pending on the date of that legislation and involves functions retained by the ICCTA, subsequent proceedings related to the case shall proceed under the applicable law and regulations in effect at the time of the subsequent proceedings. The feeder line functions at issue in this proceeding were retained and are now found at 49 U.S.C. 10907. Thus, current 49 U.S.C. 10907 will apply to this proceeding on remand.

BACKGROUND

A. *Nature of the Case*. This proceeding involves AMR's approximately 52-mile Norman Branch line in Arkansas. AMR, a subsidiary of Pinsly Railroad Company, Inc. (Pinsly), acquired the Norman Branch line from what is now the Union Pacific Railroad Company (UP) in 1992.[2] The line runs between Gurdon and Birds Mill, AR, and connects at the southern end with UP's main line. The principal shipper on the line is International Paper Co. (IP), which is located on the southernmost portion of the line, approximately 3 miles from the connection with UP. The line also serves GS Roofing Products Company, Inc. (GS Roofing), Beazer West, Inc. d/b/a Gifford-Hill & Company (Gifford-Hill), Bean Lumber Company and Curt Bean Lumber Company (Bean), and Barksdale Lumber Company (Barksdale) (collectively, Shippers), which are located on the northern part of the line extending to Birds Mill, AR.[3]

On December 3, 1993, a storm caused flooding, washouts, and landslides on the Norman Branch. On December 15, 1993, AMR notified the affected shippers and the Association of American Railroads that the resulting track conditions required it to embargo service to four stations located at or near the northern end of the line, thereby interrupting service to GS Roofing and Bean. On February 22, 1994, AMR amended the embargo to include an additional station to the south of the initially embargoed stations due to track and bridge conditions, interrupting service to Gifford-Hill. However, AMR continued to serve IP on the southern portion of the line, which was apparently not affected by the flooding.

On February 18, 1994, AMR initiated the abandonment process, at first indicating its intent to abandon the entire line, and ultimately indicating its intent to abandon the Norman Branch except for the portion serving IP. These events led to the initiation of three different actions at the ICC. First, the Caddo

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[2] The Norman Branch was one of four rail lines that AMR purchased from UP's subsidiary, the Missouri Pacific Railroad Company (MP). *See, Arkansas Midland Railroad Company, Inc. — Acquisition and Operation Exemption — Missouri Pacific Railroad Company*, Finance Docket No. 31999 (ICC served March 6, 1992); and *Pinsly Railroad Company, Inc. — Continuance in Control Exemption — Arkansas Midland Railroad Company, Inc.*, Finance Docket No. 32001 (ICC served March 6, 1992).

[3] Prior decisions in this proceeding described the Norman Branch as being 52.9 miles long between milepost 426.3 near Gurdon and milepost 479.2 at Birds Mill, AR. Subsequently, the ICC accepted CALM's assertion that the line terminates at the interchange with UP at milepost 426.87. *Dardanelle & Russellville Railroad Company — Trackage Rights Compensation — Arkansas Midland Railroad Company*, Finance Docket No. 32625 (ICC served June 22, 1995) (*Compensation I*), at 2-3. Thus, the Norman Branch is actually 52.33 miles long.

Antoine and Little Missouri Railroad Company (CALM), a non-carrier subsidiary of the Dardanelle & Russell Railroad Company (DRRC), filed a feeder line application under former 49 U.S.C. 10910 (now 49 U.S.C. 10907) and 49 CFR part 1151 to acquire the entire Norman Branch (including the 3 miles necessary to serve IP). Second, on March 18, 1994, as supplemented on March 22, 1994, DRRC and CALM requested that the ICC issue a directed service order pursuant to 49 U.S.C. 11125[4] that would allow DRRC/CALM to begin immediate operations over the entire Norman Branch. Finally, on March 21, 1999, the Shippers filed a complaint in Docket No. 41230 seeking damages from AMR and Pinsly.[5]

On March 28, 1994, shortly after the feeder line application was filed, the ICC denied the request for directed service under section 11125 because it concluded that the statutory criteria had not been met. The carrier had not been shown to lack funds to provide service, had not been ordered to discontinue operations by a court, and had not "discontinued transportation without obtaining [an abandonment] certificate." 49 U.S.C. 11125(a)(3). Pursuant to 49 U.S.C. 11123(a), however, the ICC authorized DRRC/CALM to provide voluntary interim service over the northern portion of the Norman Branch, including the portion affected by the embargo, based on its willingness to do so, and AMR's agreement to permit it to do so. The ICC also authorized DRRC/CALM to enter into an agreement with AMR to operate overhead trackage rights over the rest of the line on which AMR continued to serve IP so that DRRC/CALM could interchange directly with UP.[6]

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[4] Pursuant to 49 U.S.C. 11125, the ICC could direct service when a carrier lacked the funds to operate; a court had ordered the cessation of operations; or the railroad had unlawfully discontinued operations.

[5] The complaint alleged that AMR's cessation of service from December 1993 until March 1994 over portions of the line violated the railroad's obligation under former 49 U.S.C. 11101(a) to provide transportation or service upon reasonable request. In a decision issued March 11, 1997, we concluded that AMR and Pinsly were not liable for damages because AMR's initial determination to suspend service over washed out track was not unreasonable, and AMR acted reasonably in not repairing the line immediately. On judicial review, the court agreed with our finding that AMR acted reasonably in initially embargoing the storm-damaged line, but concluded that AMR should have repaired the track as soon as possible even though AMR made a determination shortly after instituting the embargo to abandon or otherwise dispose of it. The court remanded the damages proceeding for the Board to determine damages. *GS Roofing Products Company, et al. v. STB*, 143 F.3d 387 (8th Cir. 1998) (*GS Roofing*). The court denied a petition for rehearing and suggestion for rehearing *en banc* in July 1998.

[6] Given the condition of the line, the ICC required that before operations could commence, DRRC/CALM certify to the ICC that it had made repairs to the damaged portion of the line and that, (continued...)

DRRC/CALM began operations in early April 1994, pursuant to the ICC service order. DRRC/CALM's service continued until August 10, 1996, when it ceased operations.[7] At the request of the Shippers and with the consent of all parties including AMR, we amended Service Order No. 1516 and substituted the East Texas Central Railroad Company (ETC) as the authorized operator in September 1996.[8]

B. *The ICC's Feeder Line Proceeding*. On April 12, 1994, the ICC published its notice of acceptance of the CALM feeder line application, and a proceeding was instituted. CALM filed comments and evidence in support of its position that the public convenience and necessity required or permitted the sale of the entire Norman Branch.[9] CALM alleged that if IP was not included among the shippers it could serve on the Norman Branch, it would incur a net operating loss of $124,701, whereas it projected net operating income of $264,649 if it was permitted to acquire the entire Norman Branch and to serve all the shippers on it.

During the course of the feeder line proceeding, AMR entered into a "lease and option to purchase" agreement with Glenwood & Southern Railroad Company (GSR) for the northern portion of the line. However, the ICC subsequently disallowed GSR's lease of the line.[10] GSR then filed a competing

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[6](...continued)
in its opinion, the line was safe to operate.

[7] The parties disagreed on the amount of compensation DRRC/CALM was required to pay for trackage rights over the southern portion authorized by Service Order No. 1516. DRRC/CALM requested that the ICC set the amount of compensation it was obligated to pay AMR. The ICC did so in *Dardanelle & Russellville Railroad Company — Trackage Rights Compensation — Arkansas Midland Railroad Company* Finance Docket No. 32625 (ICC served June 3, 1996) *(Compensation 2)*, petition for rehearing and oral argument denied by decision served September 5, 1996 *(Compensation 3)*. However, by decision served December 23, 1996, we reopened the *Compensation* proceeding and stayed the effective date of the *Compensation 2* and *Compensation 3* decisions until the feeder line proceeding was resolved.

[8] *East Texas Central Railroad Company — Authority to Operate — Lines of Arkansas Midland Railroad Company*, Supplemental Order No. 7 to Service Order No. 1516 (STB served September 24, 1996).

[9] The Shippers and others submitted statements in support of CALM's application to acquire the entire line.

[10] *Caddo Antoine, et al. — Feeder Li. Acq. — Arkansas Midland R.R.*, 10 I.C.C.2d 323, 326 (1994) *(Caddo I)*.

feeder line application, which was denied on the ground that GSR had not shown that it was financially responsible, as required by former 49 U.S.C. 10910(a).[11]

In the feeder line proceeding, the ICC by decision served on April 18, 1995, granted the feeder line application only for the 49-mile northern portion of the line that AMR had sought to abandon.[12] The ICC determined that the southernmost 3-mile portion on which AMR continued to serve IP was not eligible for sale under the PC&N requirements in former section 10910(b)(1)(A)(i). CALM declined to acquire the northern portion of the line. On April 26, 1995, CALM and the Shippers filed a petition for judicial review of the ICC's feeder line decision in *Caddo*.[13]

In September 1996, the Eighth Circuit in *Caddo* reversed the ICC's feeder line decision in *Caddo 2* and remanded the proceeding for the Board to consider CALM's application to purchase the entire Norman Branch under the PC&N standards now in section 10907(c)(1). The court noted that the Norman Branch had been historically operated as a single unit and, for this reason, it disagreed with the ICC's determination that the line could be segmented.

C. *Subsequent Proceedings*. By decision issued November 15, 1996, we reopened the feeder line proceeding and invited the parties to present their views on how we should proceed on remand to consider CALM's application to purchase the entire Norman Branch as a single line.[14] After considering the parties' submissions, in a decision issued May 14, 1997, we accepted the

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[11] *Glenwood and Southern Railroad Company — Feeder Line Acquisition — Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR*, Finance Docket No 32613 (ICC served November 23, 1994).

[12] *Caddo Antoine and Little Missouri Railroad Company — Feeder Line Acquisition — Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR*, Finance Docket No. 32479 (ICC served April 18, 1995) (*Caddo 2*). The ICC's decision is set forth in Appendix C to our decision.

[13] On May 17, 1995, GSR filed a second notice of exemption in Finance Docket No. 32705 to lease and operate (with an option to purchase) the northern portion of track and to operate trackage rights over the southern portion of the line. GSR's notice became effective May 24, 1995, and was served on June 15, 1995, and published at 60 Fed. Reg. 31,494 (1995). The ICC subsequently denied a motion filed by CALM to have GSR's notice of exemption declared void *ab initio* or, in the alternative, to revoke GSR's notice of exemption. *Glenwood and Southern Railroad Company — Acquisition and Operation Exemption — Arkansas Midland Railroad Company, Inc.*, Finance Docket No. 32705 (ICC served August 8, 1995). CALM's petition for review of that decision is in abeyance in the Eighth Circuit pending the issuance of our decision on remand in the feeder line proceeding. GSR is not currently operating the line.

[14] Responses to our November 15, 1996, decision were submitted by the Shippers, AMR and GSR.

Shippers revised operating plan that assumes that ETC, not DRRC/CALM, will be the operator, and the Shippers' updated financial information to support their argument that the entire line could be successfully rehabilitated and operated by ETC for 3 years.

Our decision noted that the Shippers had clarified CALM's role in this case. According to the Shippers, CALM had been organized by its president, William K. Robbins, as a vehicle to enable the Shippers to acquire the Norman Branch. The Shippers explained, however, that effective August 30, 1996, Mr. Robbins had withdrawn from the venture due to circumstances unrelated to this proceeding. The Shippers then engaged ETC to operate the line. The Shippers submitted a copy of an agreement dated April 28, 1997, under which Mr. Robbins assigned to the Shippers all of his interest in the feeder line application, as well as the name "Caddo Antoine and Little Missouri Railroad Company" and "CALM." The Shippers stated that they were in the process of incorporating a new noncarrier entity to which they would assign their interests, including those received from Mr. Robbins. The Shippers stated that if their acquisition of the line is approved, the new corporation would hold title to it even though the Shippers would provide financial backing and exercise control over the new entity.

In the May 14, 1997, decision, we made it clear that, on remand, we would consider the feeder line application to buy the entire Norman Branch Line based on the current record, updated to reflect the circumstances that have changed and additional information we would require to ensure that we have the information we need to decide the case. Specifically, we directed the parties to submit updated evidence and argument as to whether the five criteria set forth in 49 U.S.C. 10907(c) require or permit a forced sale of the entire line. In addition, we noted that the Eighth Circuit in *Caddo* (95 F.3d at 748) indicated that we should take into account in reaching our decision on remand AMR's argument that it would suffer a grievous financial loss that would jeopardize the remainder of its rail line operations if it were required to sell the southernmost portion of the line on which it serves IP. We invited further evidence addressing the matter, particularly the views of AMR as to whether the impact of the loss of IP's traffic would be mitigated by receiving the proceeds from the sale of the line, as the Shippers had claimed.

We also invited additional evidence on the Shippers' financial responsibility and the valuation of the line. With respect to valuation, we explained that the feeder line procedures require that we determine the constitutional minimum value of the line, which is defined as "not less than the net liquidation value of such line or the going concern value of such line, whichever is greater." 49

U.S.C. 10907(b)(2). In *Caddo 2*, the ICC indicated that AMR had claimed a going concern value (GCV) of $2.65 million, but did not consider AMR's arguments about GCV because it was granting the application only for the northern portion of the line, which was a candidate for abandonment. Thus, the ICC determined that the constitutional minimum value for the northern portion of the line was the line's net liquidation value (NLV).

We noted that, while the Shippers had asked that on remand we use NLV as the value of the entire line, it is "almost certain that the line has a GCV, since it is being used to serve IP (and indeed the Shippers as well)." Therefore, we indicated that NLV may be an inappropriate standard to value the whole line and that if a GCV is claimed, the proponent should indicate the methodology used to determine that value. In addition, we requested the applicants to update the record and supply information required by our regulations with regard to ETC as operator of the line.

Finally, we rejected AMR's request that we terminate the feeder line proceeding in view of the substitution of ETC as the operator of the line. We also denied AMR's motion to strike the financial projections submitted by the Shippers relating to ETC's proposed operations and found that GSR, which had indicated that it remained interested in leasing and operating the line under the notice of exemption in Finance Docket No. 32705, had a legitimate interest in this proceeding and should be able to participate.

Pursuant to the May 14, 1997, decision, the parties submitted supplemental statements on June 27, 1997, and reply statements on July 14, 1997. The feeder line applicants submitted a rebuttal statement on July 30, 1997. The data submitted by the parties included confidential data submitted under seal.

In 1998, the Eighth Circuit in *GS Roofing* reversed our decision in the damages case and denied our petition for rehearing. Following the Court's denial of rehearing, we directed the parties to work with an Administrative Law Judge (ALJ) to attempt to reach a negotiated resolution of the pending feeder line, compensation and complaint proceedings. Several discussions were held. However, in a letter dated January 13, 1999, the Shippers advised the Board that the mediation process had reached an impasse and requested that the Board decide the pending cases. Counsel for the Shippers also suggested that it would make sense to handle the pending feeder line proceeding first, and submitted an updated "Proposed Decision" in the feeder line proceeding.

In a decision served January 26, 1999, we accepted the Shippers' letter as a motion to govern further proceedings.[15] In a reply to the motion filed on March 8, 1999, AMR asks us to hold the feeder line case in abeyance for 3 years to permit AMR to resume service over the entire Norman Branch. On March 17, 1999, the Shippers responded, opposing AMR's proposal.

We agree with the Shippers that further delay of the feeder line proceeding is not warranted and that the feeder line proceeding should be decided prior to the compensation and damages proceedings. Thus, AMR's request to hold the feeder line case in abeyance will be denied and, as directed by the Eighth Circuit in Caddo, we will now address the Shippers' feeder line application for the entire Norman Branch.

DISCUSSION AND CONCLUSIONS

Eligibility

A. *The Appropriate Standards*. The statute and our regulations require us to make certain findings in approving a feeder line application. *See*, 49 U.S.C. 10907 and 49 CFR 1151.4. We must determine if a line is eligible for forced sale. If a line is eligible, we must then determine the constitutional minimum value, and the applicant's ability to (1) purchase the line at the constitutional minimum value and (2) cover expenses associated with operating the line for the first 3 years after acquisition. 49 CFR 1151.3(a)(3).

Under section 10907(b) and 49 CFR 1151.1, a line is eligible for forced sale if: (1) the PC&N require or permit sale of the line, section 10907(b)(1)(A)(i), or (2) it appears in category 1 or 2 of the owning carrier's SDM, but the owning carrier has not filed for abandonment, section 10907(b)(1)(A)(ii). As indicated previously, the court in *Caddo* directed us to consider whether the PC&N requires or permits sale of the entire Norman Branch. To find a line eligible for sale under the PC&N standards, section 10907(c)(1) requires that we determine that:

> (A) the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;
>
> (B) the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;

[15] The Shippers' "Proposed Decision" was also made part of the record in this proceeding.

> (C) the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;
>
> (D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and
>
> (E) the sale of such line will likely result in improved railroad transportation for shippers that transport traffic over such line.

We can order a sale under the PC&N standards only where we can make all the findings under the five criteria in the statute. *PSI Energy, Inc. — Feeder Line — Norfolk Southern Corp.*, 7 I.C.C.2d 227, 233 (1991).

B. *Arguments of the Parties*. The Shippers maintain that the entire Norman Branch is eligible for forced sale under the PC&N standards in section 10907(b)(1)(A)(i). They claim that AMR refused within a reasonable time to make the necessary efforts to provide adequate service to the Shippers on the line, with the exception of IP. The Shippers assert that AMR unreasonably refused to repair the line and reinstate service and that the failure to provide service caused the Shippers collectively to suffer extensive money damage losses in the months they were without rail service.

The Shippers contend that transportation over the Norman Branch is inadequate for the majority of shippers who transport traffic over the line. By refusing to operate the northern portion of the line, they argue, AMR has provided inadequate service to the majority of shippers on the Norman Branch — a situation which was alleviated only by DRRC/CALM's and ETC's interim operations over the line.

The Shippers further argue that sale of the Norman Branch would not have a significant adverse financial effect on AMR, and in support they submitted a verified statement from Joseph J. Plaistow and Christena N. Adams of Snavely King Majoros O'Connor & Lee, Inc., economic consultants. Citing AMR financial statements which were submitted under seal, Mr. Plaistow and Ms. Adams maintain that AMR's remaining operations in Arkansas would not be harmed by sale of the entire Norman Branch. Rather, they assert, AMR would benefit by eliminating operating expenses for the line and by applying the proceeds from the sale of the Norman Branch to reduce debt and interest expenses. In addition, AMR allegedly could concentrate on operating its other lines in Arkansas, benefitting its overall operations.

The Shippers also contend that the sale of the entire Norman Branch will likely result in improved railroad transportation for all shippers that transport traffic over the line. The Shippers assert that their ownership of the entire line will lead to the rehabilitation of the entire line. Furthermore, they assert that because they will exercise control over the operator of the line, the new operation will serve their needs as well as those of IP.

AMR responds that the Shippers have not shown that the PC&N warrants sale of the entire line. AMR asserts that it tried to provide reliable and safe transportation on the Norman Branch and made reasonable efforts to correct the problems on the northern portion of the line.

AMR notes that it has never failed to provide adequate service to IP. Moreover, AMR contends that the Shippers should not be permitted to force the sale of the Norman Branch on the ground that AMR has refused to provide adequate service because it tried to provide a reasonable substitute for direct rail service to the Shippers by entering into a lease agreement with GSR, which assertedly stands ready and willing to provide service over the Norman Branch.

AMR further asserts that forced sale of the entire Norman Branch and the loss of IP as a customer[16] will have a devastating adverse financial impact on it. AMR submitted under seal a Verified Statement of James A. Bowers, a Certified Public Accountant who advises short line railroads. Mr. Bowers analyzed the financial impact on AMR of the forced sale of the Norman Branch. Mr. Bowers computed AMR's break even point, in carloads, of operating with and without the Norman Branch. He then developed the pro forma computation of the financial impact on AMR of operating without the Norman Branch. Based on 1996 data representing AMR's operations over the southern segment, Mr. Bowers determined that the forced sale of the Norman Branch will decrease AMR's operating profit by $310,000, which would be a 54% decline in AMR's operating profit. Mr. Bowers asserts that this decline would cripple AMR, and would also be devastating to Pinsly.

AMR claims further that the forced sale of the Norman Branch will adversely impact the operations on its other lines. It states that a 54% decline in net income as determined by Mr. Bowers would undoubtedly affect its ability to maintain, let alone upgrade, service levels on its remaining branches.

Finally, AMR asserts that the Shippers have failed to demonstrate how the forced sale of the Norman Branch will result in improved railroad transportation to shippers on the Norman Branch. AMR indicates that the Shippers' assertion that "the Board can rest assured that adequate rail service will be provided for the indefinite future once (1) rail operations are consolidated on the Norman Branch under one operator; (2) the payment of commercially unreasonable trackage

[16] AMR claims that IP is the second largest shipper on its system and that IP's traffic is profitable.

rights fees is eliminated; and (3) the line is rehabilitated" should give the Board little comfort given the Shippers' track record and the fact that the Shippers' initial choice of an operator for the line, DRRC/CALM, backed out of the operation.

C. *Our Analysis*. As noted, in *Caddo*, the court specifically directed that, on remand, we should treat the entire Norman Branch as a single line. Under these circumstances, we conclude that, for the reasons discussed below, the Shippers have carried their burden of satisfying the PC&N standards in this case.

1. *Adequacy of service*. The first two aspects of the PC&N standards require us to determine if AMR refused within a reasonable time to make the necessary efforts to provide adequate service to the shippers on the line and whether transportation over the line was inadequate for the majority of the shippers on it.

In *Caddo 2*, the ICC specifically found (at page 5) that the northern portion of the line on which the Shippers are located clearly qualifies for acquisition under the feeder line provisions because (1) AMR filed an SDM proposing to abandon that portion of the line, and (2) service on that portion of the line is inadequate. And in *GS Roofing*, the court specifically found that AMR did not act aggressively enough to restore adequate service to the Shippers, and that the transportation under its watch was thus inadequate. Nothing in the updated information submitted since that point gives us a basis for seeking to overrule the court's conclusions. AMR appears to provide adequate service to IP on the southernmost portion of the line, but that does not permit a finding that AMR's overall service on the entire Norman Branch was adequate. Rather, the PC&N provisions of the feeder line statute expressly require that we look at the adequacy of service from the perspective of all the shippers on the line. 49 U.S.C. 10907(c)(1)(A), (B).

In short, when the Norman Branch is considered as a single line, as the court in *Caddo* required, it is clear, as the court found in *GS Roofing*, that a majority of the shippers on the line were not being adequately served and, thus, the Shippers were justified in seeking the self-help remedy provided by the feeder line program to acquire the entire line. The Shippers were also justified in seeking to have interim service by DRRC/CALM and then ETC authorized so that they would not be without rail service while the feeder line application was being considered.

2. *Financial impact.* Our evaluation of the evidence submitted by the parties also indicates that a forced sale of the line would not have a significant adverse financial impact on AMR. AMR witness Bowers claims that the sale of the southernmost portion of the line on which IP is located would reduce AMR profits by $310,000, which would be 54% of AMR's total net profit for 1996. Mr. Bowers' revenue figure is based on a per-car calculation derived from AMR's total system revenues. He indicates that AMR realized revenue of $612,000 for handling 2,867 carloads on the Norman Branch in 1996.

However, Mr. Bowers' revenue figure is inconsistent with AMR revenues shown in Exhibit No. 4 to a verified reply statement of Mr. Plaistow and Ms. Adams, which is a copy of revenue data that AMR itself submitted to the Shippers in response to a discovery request. Exhibit No. 4 is a breakdown of the revenues realized and carloads handled for each AMR branch in 1996 for the years 1992 through 1996 and a forecast for 1997. The exhibit shows that AMR realized revenues of $425,660 for operating the Norman Branch in 1996 for the same number of carloads.

The Shippers contend that the revenue figure of $425,660 should be used rather than Mr. Bowers' figure. We agree that the $425,660 amount is the better revenue evidence given the record before us. As the Shippers state, that was the figure that the Shippers received from AMR in their discovery request. Moreover, Mr. Bowers never explained the discrepancy between his $612,000 revenue amount and the $425,660 AMR revenue figure.

Using the $425,660 revenue figure, we compute a net profit of $128,660 from AMR's operation of the southern portion of the line in 1996, which is 22% of AMR's net profit.[17] This is substantially less than the 54% decline in net income alleged by Mr. Bowers. Furthermore, in the event of the sale of the entire Norman Branch, AMR would avoid the cost of rehabilitating the approximately 49-mile northern portion of the line. Since the northern portion of the line is in very poor shape, the cost of rehabilitation would substantially reduce, if not wipe out, AMR's profits from serving IP on the southernmost portion of the line. AMR would therefore realize substantial cost savings from elimination of the northern portion of the line, which would have a positive impact on its overall bottom line. In addition, if the northern portion of the line were not rehabilitated, we presume that it would continue to be operated at a loss. Finally, AMR's own witness indicated that, without the Norman Branch, AMR will continue to generate annual anticipated profits in excess of $250,000 from its operations over the remaining 52.63 miles of track in its system.

[17] $425,660 revenues, less $297,000 variable costs, results in a net profit of $128,660.

Later in this decision, we will set the selling price of the Norman Branch at its constitutional minimum value of $1,628,727. The compensation AMR would realize from the sale of the line would neutralize any adverse financial impact from loss of traffic on this line. The selling price we have set for this line adds the GCV of the profitable southern portion on which IP is located ($726,893) to the NLV of the remainder of the line ($901,834). GCV represents the net present value of the future income stream for the southern portion. A GCV of $726,893 when invested at 17.7% (the 1996 pre tax railroad industry cost of capital rate)[18] would yield an annual payout of $128,660, which equals the net profit we computed above. Thus, apart from the rehabilitation expenses or operating losses over the northern portion of the line that AMR will avoid, receiving the GCV for the southernmost portion of the line would compensate AMR for lost income that it would have derived from IP's traffic.

AMR presently realizes compensation from the interim operations of the northern portion of the line and trackage rights over the southernmost portion of the line. These rentals and trackage rights fees would cease when the line is sold. However, given the compensation that AMR would receive from the sale of the line and AMR's operations on the rest of its system, the loss of this income would not have a significant adverse financial effect on AMR.

3. *Operational impact.* There is nothing in the record to indicate that sale of the Norman Branch would adversely affect AMR's operations on its other lines. As noted, AMR acquired four unconnected rail lines from MP in 1992. Its operations do not require the integration of the four separate lines.

4. *Improved rail service to shippers.* The circumstances here indicate that sale of the entire Norman Branch to the Shippers will likely result in improved rail service for the shippers on the line. The Shippers have made the financial commitment to purchase the line and operate it for the required three years. They are also committed to performing the rehabilitation which all parties agree is necessary, which would reduce transit times, thus improving service. By having control over the operator, the Shippers also will be assured that their service needs are a priority.

The Shippers indicate that they are committed to continuing service to IP. While IP has not actively participated in this proceeding, there is nothing in the

[18] We used the 1996 cost of capital rate because 1996 revenues and expenses were used in the parties' evidence.

record to indicate that service to it would be materially affected if the Shippers acquired the line and assumed responsibility to provide operations to IP.

AMR notes that GSR, a new carrier, is prepared to take over operating the northern portion of the line and provide service to the Shippers. However, the Shippers are not interested in having GSR serve them. Moreover, there is nothing in the record showing that GSR and/or AMR are willing to spend the funds that all parties agree would be necessary to rehabilitate the line to assure continued service in the future. Nor does it appear that the Shippers are willing to fund rehabilitation if AMR continues to own the line. Rather, if GSR were to take over operating the northern portion of the line, the apparent animosity between the Shippers and AMR will likely continue and impede future operations.

Constitutional Minimum Value

The feeder line procedures require us to determine the purchase price at the constitutional minimum value of the line. As noted, section 10907(b)(2) defines constitutional minimum value as not "less than the net liquidation value of such line or the going concern value of such line whichever is greater."

In *Caddo 2*, because the ICC granted CALM's application only for the northernmost portion of the line, which was listed as an abandonment candidate and unprofitable, the ICC determined that the constitutional minimum value of the line was its NLV. *See*, *id.* at 8. The decision set the NLV of the entire Norman Branch at $972,282; the northern portion was valued at $901,834, and the southern portion at $70,448. *See, id.* at 11. However, in *Compensation 1*, the ICC accepted DRRC/CALM's adjustment of the mileage of the line. The NLV of the entire Norman Branch was determined to be $961,096.24. *See*, May 14, 1997, decision at 5 n.7.

In the May 14, 1997, decision issued following the Court's remand in *Caddo*, we directed the parties to file additional evidence addressing the value of the line. We noted that, in *Caddo 2,* the ICC indicated that because it had granted the application only for the northern portion, which was a candidate for abandonment, it did not consider AMR's arguments about GCV. We also pointed out that, on remand, NLV may not be appropriate to value the whole line, because the line is being actively used to serve IP and the Shippers and may, therefore, have a GCV.

In response to our request for evidence as to GCV,[19] AMR submitted the statement from Mr. Bowers. Using the Shippers' traffic, revenue and expense

[19] Neither AMR nor the Shippers updated the NLV data on reopening.

projections for ETC's operations over the Norman Branch for 3 years (1997 through 1999), which were provided by the Shippers in their supplemental submissions, Mr. Bowers calculated that the GCV of the Norman Branch is \$3,674,000, if AMR operates the line, or \$3,137,000 if ETC operates the line. Mr. Bowers indicates that his higher GCV estimate if AMR operates the line indicates that AMR would incur less overhead than ETC. According to Mr. Bowers, his higher GCV figure is the more appropriate figure, given that the definition of GCV is the price at which a willing seller would sell the property at issue.

The Shippers dispute AMR's contention that the line has a GCV and argue that the entire line is unprofitable. In support, they submit the Plaistow-Adams statement which asserts that, in determining the constitutional minimum value of the line, the best data available are AMR's data for 1993. The Shippers indicate that 1993 is the last year in which AMR operated the entire Norman Branch and is the last year for which AMR produced financial data broken down by branch, by shipper, and, in the case of the Norman Branch, by segment. They state further that the data reflect that AMR realized a net loss from operations on the Norman Branch, before income taxes, of \$442,217. For this reason, they contend that the Norman Branch has no GCV, but should be valued at the NLV.

Conclusions as to Valuation. The court directed that on remand we consider the Norman Branch as a single line, and we have done so. The evidence before us, however, shows that while the entire line has a NLV, the southernmost portion of the line on which AMR profitably serves IP also plainly has a GCV. That GCV has to be taken into account in order to compensate AMR if it is to be deprived of the opportunity to serve IP in the event of a forced sale of the Norman Branch. Section 10907(b)(2) specifically provides that the constitutional minimum value of a particular line shall be the greater of the NLV or the GCV for such line. Although we are requiring AMR to sell the entire line, because it serves IP at a profit, the only fair way to value this line to provide AMR the constitutionally required minimum value is to add the GCV of the part of the line that has a GCV (the southernmost portion on which AMR serves IP) to the NLV of the remaining portion of the line.

We do not agree with Mr. Bowers that GCV for the entire line should be based on ETC's projections for operating both the northern and southern portions of the line. GCV is defined as what a line is worth as an operating business, not its break-up value. ETC's projections may or may not prove correct, but in any case, the relevant GCV here is what the line is worth to AMR as a going concern, not its projected value to the acquiring company. *United States v. Miller*, 317

U.S. 369, 375 (1942). AMR does operate over the southern portion of the line, which has a current value to AMR. Thus, ETC's projections as to that part of the line are irrelevant to AMR. And although AMR is not now operating over the northern segment, when it last did over four years ago, it did so at a loss, and indeed sought to terminate its operations over that segment. Therefore, we must conclude that ETC's projections are essentially irrelevant in the overall determination of GCV or value of the entire Norman Branch.

On the other hand, the Shippers continue to rely on AMR's operating results for 1993, the last year in which AMR operated the entire Norman Branch, to support their argument that NLV is the appropriate way to value the entire line. However, we have data from both parties showing the result of operations over the southernmost portion on which IP is located for 1996. These data clearly are more representative of current traffic levels and demand for services over the Norman Branch than the older 1993 data. Moreover, because AMR has continued to operate, and indeed is currently operating, the southernmost portion to serve IP, that portion of the line plainly has a GCV. Indeed, the Shippers themselves have presented evidence that supports this conclusion, by arguing during the ICC's feeder line proceeding that the projected difference in operating results if IP's traffic is not included is the difference between a $124,701 per year loss and $264,649 per year profit. In these circumstances, even though we have required AMR to sell the line as a single line, it is appropriate to add the GCV of the southernmost portion of the line to the NLV for the rest of the line to develop an overall valuation for this line pursuant to 49 U.S.C. 10907(b)(2).

In determining the GCV for the line's southern portion, we used data furnished by the Shippers and AMR in their supplemental filings that reflect AMR's operations over the southern portion for the year 1996. These data show that in 1996, AMR realized revenues of $425,660 for moving 2,867 cars on the southern portion. AMR reported incurring variable costs of $297,000. Applying a multiplier of 17.7% based on the 1996 pretax cost of capital rate for the railroad industry,[20] we have computed the GCV of the southern portion at $726,893.

Our GCV estimate does not include costs associated with rehabilitating the approximately 3-mile southern portion on which AMR continues to serve IP. It

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[20] In *Railroad Cost of Capital — 1996*, 2 S.T.B. 344 (1997), we found that the after-tax cost of capital for 1996 is 11.9%. The pre-tax cost of capital equivalent of this number is 17.7% (which assumes 35% Federal and 2% state tax rates) is an appropriate number for use as an earnings multiplier here. As noted, we used a 1996 cost of capital here because the parties' evidence was for 1996.

is unclear from the evidence submitted how much rehabilitation will be necessary for the southern portion. Inasmuch as trains are regularly using that portion of the line to serve IP, we have assumed that the amount of rehabilitation on that portion will be minimal. Because the purchaser would be rehabilitating primarily the northern portion, and because that portion of the line has no GCV since AMR is not operating it, the Shippers' projected rehabilitation costs for that segment are not relevant for our GCV analysis.

Also, we have not included fixed costs in our GCV for the southern portion. AMR has contended that there would be no fixed cost savings if the Norman Branch were eliminated, and there is nothing in the record that would pinpoint any fixed cost decreases. Furthermore, fixed costs, by definition, are those that do not vary with volume. Thus, we have not included fixed costs in determining GCV for the southern portion.

In *Caddo 2*, the ICC set the NLV based on evidence that valued the line in 1994. On remand, neither party has presented any supplemental evidence to update the NLV of the Norman Branch. Without additional evidence, we have no choice but to use the NLV set in *Caddo 2*, even though that value may not totally reflect current conditions on the Norman Branch.

The value of the entire line using the GCV for the southern portion and NLV for the northern portion is as follows:

Southern Segment GCV	Amount
Revenues	$425,660
Variable Costs	$297,000
Net Contribution Before Fixed Costs	$128,660
Estimated Fixed Costs	0
Net Revenue After Fixed Costs	$128,660
Earnings Multiplier	17.7%
GCV	$726,893
Northern segment NLV	$901,834
Total Value	$1,628,727

The statute provides that the constitutional minimum value of a line shall be the greater of the NLV or the GCV. 49 U.S.C. 10907(b)(2). The value of the entire line at $1,628,727, adding the GCV for the southern portion ($726,893) to the NLV for the remainder of the Norman Branch ($901,834), exceeds the NLV for the entire line ($961,096.24). Accordingly, to provide AMR the constitutionally required minimum value, we will set the selling price of the line at $1,628,727.

Financial Responsibility

The feeder line procedures require us to determine if the purchaser of the line is a "financially responsible person." The statute defines a "financially responsible person" as a person who: (1) is capable of paying the constitutional minimum value of the line; and (2) is able to assure that adequate transportation is provided over the line for at least 3 years. When it originally reviewed the application in *Caddo 2*, the ICC found (at page 6), that CALM would be able to obtain the necessary funding from the Shippers to operate the northern 49.2 mile portion of the line. We are revisiting the issue in light of the court's instruction that we determine whether CALM has the financial resources to operate the entire line, in light of DRRC/CALM's cessation of interim operations and the substitution of ETC.

The Shippers reconfirm their intent and willingness to acquire the Norman Branch, stating that they would acquire the Norman Branch through a newly formed corporation that will be jointly owned by GS Roofing, Bean, and Gifford-Hill. They indicate that GS Roofing and Bean will each pay half of the purchase price of the line. The Shippers also submitted confidential financial data under seal showing that GS Roofing and Bean have the financial resources necessary to acquire the line. GS Roofing and Bean state that each is committed to providing the necessary funds to assure rail operations for at least three years.

The Shippers state further that, in the past three years, they have covered many of the costs of rail operations over the Norman Branch over and above the freight rates they paid to UP. They explain that they shared in the purchase of locomotives and other operating equipment and track materials. They also assertedly covered the costs resulting from a major derailment in 1994. In addition, GS Roofing evidently created a separate fund which was used to purchase ties.

In their supplemental statements, the Shippers submitted new projections of future operations on the line, assertedly showing that the line will be viable after being rehabilitated, a process which is anticipated to take about three years to complete. The Shippers point out that their new projections are based on experience gained by three years of operations over the entire line. They claim that, as the line is rehabilitated, operating speeds will increase, thereby reducing operating expenses. In addition, they expect that financial results will improve because they would not have to pay trackage rights fees to AMR for operating over the southern portion.

The Shippers expect that under their ownership the line would generate additional revenues ensuring the line's future viability. Gifford-Hill, IP, and

Barksdale likely would maintain their current traffic levels. However, the Shippers anticipate that GS Roofing and Bean will increase their traffic over the Norman Branch, and, in turn, generate additional revenues. A verified statement by Curt Bean indicates that Bean has opened a new facility in Kansas City, KS, which will receive rail shipments that originate on the Norman Branch. John W. Smith testifies that GS Roofing intends to use its facility at Birds Mill as the primary source of roofing granules to supply its manufacturing facilities in Little Rock, AR, Charleston, SC, and Shreveport, LA. The Shippers expect that GS Roofing's shipments of covered hoppers from its Birds Mill facility will provide the major source of revenues realized from operating the Norman Branch.

In response to our request for additional information, the Shippers also updated the record to show that they would cover expenses for service over the line for at least 3 years after they acquire the line, as required by section 1151.3(a)(3)(ii) of our regulations. The Shippers also submitted a cash flow analysis, which is set forth in Appendix A to this decision. The data indicate that revenues will exceed expenses in each of the first 3 years of operating the line. As a result, the Shippers do not expect that they would have to provide any subsidy. However, in the event that operations are unprofitable, GS Roofing and Bean state that they are committed to providing funding necessary to assure rail operations for at least 3 years.

The Shippers further indicate that they propose to spend more than $2 million to rehabilitate the line over three years. In the first year, they propose to replace ties on all curves on a portion of the line between milepost 447 and milepost 479.2, brush-cut the entire line, and perform 17 miles of ditching and drainage work at a total estimated cost of $799,705. In year 2, they propose to replace ties on tangent track between milepost 447 and milepost 479.2, surface and dress tangent track and replace ties and rails on Gifford-Hill lead at a total estimated cost of $617,422. In the third year, they propose to replace ties, and surface and dress track between milepost 447 and milepost 426.3, at a total estimated cost of $604,691. The proposed rehabilitation is detailed in Appendix B to this decision.

The Shippers also submitted an operating plan, which indicates that, after completion of year 1, maximum speed will be increased from 5 mph to 10 mph for the portion between M.P. 447 and M.P. 479.5. The increased speed will allow CALM to make a complete turn on a daily basis, which would give the Shippers complete daily service. According to the plan, train operations during rehabilitation would be adjusted by running trains early or late so as not to disrupt construction during the day. Following completion of the initial phase of the rehabilitation process, the Shippers expect that train speed on the entire Norman Branch should be 10 mph.

According to the operating plan, following acquisition of the entire line, rail service to IP will continue on a daily basis as currently provided by AMR. With the exception of the IP operations which now are being conducted by AMR, the proposed operations will be comparable to the operations which have been conducted by DRRC/CALM and ETC since April 1994 under Service Order No. 1516.

AMR complains that the Shippers have not clarified the identity of the operator of the line or established its financial responsibility. AMR further asserts that the Shippers have not submitted adequate information regarding how the purchase will be funded. Without this information, AMR claims, the Shippers have not shown that the operator is financially responsible within the meaning of the statute. However, the Shippers have adequately explained that they reached an agreement with ETC to replace DRRC/CALM as the operator of the line. Consistent with the requirements of 49 CFR 1151.3(a)(7), ETC submitted a detailed operating plan. ETC also has provided an updated pro forma cash flow statement which details the anticipated financial situation for the first three years after acquisition. Moreover, the Shippers submitted extensive evidence under seal showing the financial condition of the prospective purchasers of the line.

We find that the Shippers have provided sufficient information to show financial responsibility within the meaning of section 10907. The Shippers have shown that they will control and provide financial backing to the operators and insure that operations are conducted for at least three years. Also, the supplemental financial information in the record shows that GS Roofing and Bean have ample resources to purchase and rehabilitate the line and finance its operations for three years. Both shippers project increases in their traffic to generate additional revenues, and both have shown that they are committed to providing the funds to acquire the line and assure that operations will continue for three years. This is adequate to satisfy the statutory requirement of financial responsibility. *See Cheney R. Co. — Feeder Line Acq.*, 5 I.C.C.2d 250, 263 (1989), *aff'd sub nom. Cheney R. Co., Inc. v. ICC*, 902 F.2d 66 (D.C. Cir.), *cert. denied*, 498 U.S. 985 (1990).

Exemption

Under section 10907(g)(1), ETC has elected to be exempt from the provisions of part A of Subtitle IV of 49 U.S.C., except the joint rate provisions of chapter 107.

Labor Protection

ICCTA removed mandatory labor protection from the feeder line procedures now in section 10907. However, the statute provides that we shall require, to the maximum extent practicable, the use of employees who would normally have performed work on the line at issue. 49 U.S.C. 10907(e). In the Proposed Decision provided by the Shippers, the Shippers suggest that ETC be required to employ AMR employees currently on the line for a 90-day probation period, and that, at the end of the probation period, each employee be evaluated for further employment. We believe the Shippers' approach represents a reasonable accommodation of the statute, and it will be imposed as a condition.

Closing Terms

To ensure the smooth transfer of the line, we will establish the following terms: (1) payment will be made by cash or certified check; (2) closing will occur within 90 days after August 12, 1999; (3) AMR will convey all property by quitclaim deed; (4) AMR will deliver all releases from any mortgages and original documents conveying interest in the right-of-way to the Shippers or their designee within 90 days from closing; (5) all taxes should be prorated as of the date of closing; and (6) deed recording fees should be paid by Shippers. Mortgage or lien releases, taxes and recording fees should be paid by AMR. The parties may modify the terms of sale by mutual agreement.

SUMMARY

Given the findings of the court in *Caddo* and *GS Roofing*, we have little choice but to conclude that the circumstances surrounding the embargo require a finding that the Shippers have met their burden as to the first two criteria of the PC&N standards in 49 U.S.C. 10907(c)(1). We also find that, at the price we are setting, a sale to the Shippers will not cripple AMR financially or operationally. Finally, we find that a sale will lead to better service.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The feeder line application is granted.
2. The Shippers must notify the Board and AMR by August 23, 1999, whether they accept or reject our determination.
3. The purchase price of the Norman Branch is set at $1,628,727. The sale is subject to the labor protection condition voluntarily undertaken by the Shippers and the other terms of sale set forth in this decision.
4. This decision is effective September 11, 1999.

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

APPENDIX A

NORMAN BRANCH

NORMAL CASH FLOW PROJECTIONS FOR THE YEARS 1, 2 & 3

	Year 1	Year 2	Year 3
Projected Revenues:			
Freight	1,473,136.00	1,512,918.00	1,553,088.00
Incidental	5,750.00	56,875.00	58,000.00
Gross Profit	1,528,886.00	1,569,793.00	1,611,088.00
Costs and Expenses:			
MOW Wages	84,764.16	87,010.41	89,316.19
Repairs & Main. - Roadway	48,550.00	49,836.58	51,157.24
Repairs & Main. - Structure	10,000.00	10,265.00	10,537.02
Signals & Interlockers	11,724.33	12,035.02	12,353.95
Other Main of Way Expense	41,392.24	42,489.13	43,615.10
Track Rehab. - Phase I, II & III	799,705.00	617,422.30	604,691.91
Wages - Mechanical	27,507.60	28,236.55	28,984.82
Locomotive Repairs	38,362.80	39,379.41	40,422.97
Car Repairs	5,000.00	5,132.50	5,268.51
Other Equipment Repairs	3,413.88	3,504.35	3,597.21
Equipment Rental	5,500.00	5,845.75	5,795.36
Equipment Depreciation	28,998.60	29,767.06	30,555.89
Other Equipment Expense	6,519.12	6,691.88	6,869.21
*Conductor Wages	56,477.20	57,973.85	59,510.15
*Engineer Wages	72,314.43	74,230.78	76,197.88
Train Fuel	124,860.94	128,169.75	131,566.25
Other Train Fuel	11,991.72	12,309.50	12,635.70
Administrative Expense	207,369.60	212,664.89	218,505.81

APPENDIX A (Continued)

Insurance	33,521.92	34,410.25	35,322.12
Other General Expense	11,460.96	11,764.68	12,076.44
Station Expense (Pike City)	3,960.60	4,065.56	4,173.29
General Depreciation	0.00	0.00	0.00
Total Cost & Expenses	1 ,633,395.10	1,473,205.19	1,483,153.04
Earnings (loss from operations)	(104,509.10)	96,587.81	127,934.96
Other Income and Expenses:			
Payroll Taxes	(64,351.76)	(66,057.08)	(67,807.59)
Income Lease of Road & Equipment	0.00	0.00	0.00
Car Hire Expense	(18,000.00)	(18,477.00)	(18,966.64)
Misc. Non-Operating Revenue	0.00	0.00	0.00
Interest Income	0.00	0.00	0.00
Misc. Income	0.00	0.00	0.00
Interest of Funded Debt	0.00	0.00	0.00
Other Income & Expense	200,000.00	0.00	0.00
Misc. Income Charges	0.00	0.00	0.00
Total Income & Expense	117,648.24	(84,534.08)	(86,774.23)
Net earnings (loss) for year	13,139.14	12,053.74	41,160.63

APPENDIX B

NORMAN BRANCH PROPOSED REHABILITATION

Year 1

CURVES ON NORTH END

Milepost 447 To Milepost. 479.2
32.2 MILES

1. Brush Cutting Entire Line (machine and operator)	$10,639.00	
2. Crossties (7' x 9' x 8'6" industrial grade)111 1,800 per mile @ $18.00 each x 17 miles		$550,800.00
3. Ballast (10,000 tons @ $4.50 per ton)		$45,000.00
4. Spikes (400 kegs @ $86.00 each)		$34,400.00
5. Tieplates (1500 @ $2.00 each)		$3,000.00
6. Surfacing and Dressing Curve (17 miles @ $.65 per ft)		$58,344.00
7. Drainage work (17 miles)		$30,000.00
8. Track Gang Labor (262 days)		$41,022.00

APPENDIX B (cont'd)

9. Leased Equipment	
1 tie inserter @ $4,000.00 month x 3 months	$12,000.00
1 tie cranes @ $2,500.00 month (each) x 3 months	$15,000.00
1 spike driver @ $3,000.00 month x 3 months	$9,000.00
1 ballast plow @ $3,500.00 month x 3 months	$10,500.00
10. Less Salvage Ties (10,000 @ $2.00 each)	($20,000.00)
Total of Year 1	$799,705.00

Year 2

TANGENT TRACK ON NORTH END

Milepost 447 To Milepost 479.2
15 Miles

1. Crossties (7' x 9' x 8'6" industrial grade)	
1,500 per mile @ $18.00 each x 15 miles	$405,000.00
2. Ballast (10,000 tons @ $4.75 per ton)	$47,500.00
3. Spikes (360 kegs @ $86.00 each)	$30,960.00
4. Bridge Ties (800 @ $35.00 each)	$28,000.00
5. Surfacing and Dressing Curves	
(15 miles @ $.55 per ft)	$43,560.00
6. Track Gang Labor (131 days)	$15,902.00
7. Leased Equipment	
1 - tie inserter @ $4,000.00 month x 3 months	$12,000.00
2 - tie cranes @ $2,500.00 month (each) x 3 months	$15,000.00
1 - spike driver @ $3,000.00 month x 3 months	$9,000.00
1 - ballast plow @ $3,500.00 month x 3 months	$ 10,500.00
Total of Year 2	$617,422.00

Year 3

SOUTHERN END

Milepost 426.3 To Milepost 447
20 Miles

1. Crossties (7' x 9' x 8'6" industrial grade)	
1,000 per mile @ $18.00 each x 20 miles	$360,000.00
2. Ballast (12,500 tons @ $4.75 per ton)	$59,375.00
3. Spikes (325 kegs @ $86.00 each)	$27,950.00
4. Surfacing and Dressing Curves	
(20 miles @ $.65 per ft)	$68,640.00
5. Track Gang Labor (142 days)	$28,326.00
6. Leased Equipment	
1 - tie inserter @ $4,000.00 month x 4 months	$16,000.00
2 - tie handler @ $1,800.00 month (each) x 4 months	$14,400.00
1 - spike gauger @ $4,000.00 month x 4 months	$16,000.00
1 - ballast plow @ $3,500.00 month x 4 months	$14,000.00
Total of Year 3	$604,691.00

APPENDIX C

This decision will be included in the bound volumes of the ICC printed reports at a later date.

SERVICE DATE
APR 18 1995

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32479

CADDO ANTOINE AND LITTLE MISSOURI RAILROAD COMPANY--FEEDER LINE ACQUISITION--ARKANSAS MIDLAND RAILROAD COMPANY LINE BETWEEN GURDON AND BIRDS MILL, AR

Decided: March 31, 1995

The Commission approves the feeder line application by Caddo Antoine and Little Missouri Pacific Railroad Company to acquire the northern segment of Arkansas Midland Railroad Company's Norman Branch. Acquisition of the southern segment of the Norman Branch is not approved.

BY THE COMMISSION:

On March 18, 1994, the Caddo Antoine and Little Missouri Railroad Company (CALM) filed a feeder line application under 49 U.S.C. 10910 and 49 CFR Part 1151 to acquire the Arkansas Midland Railroad Company's (AMR) 52.9-mile Norman Branch line between milepost 426.3 near Gurdon and milepost 479.2 at Birds Mill, AR. CALM's application was accepted by decision served April 12, 1994, and a proceeding was instituted. Under the procedural schedule adopted in that decision, competing applications were due May 12, 1994; none was filed at that time. The parties filed verified comments on June 13, 1994 and replies on July 5, 1994. Comments were also filed by the Railway Labor Executives' Association and the Regional Railroads of America (RRA), a group representing 117 regional and local railroads.

CALM's application is supported by GS Roofing Products Company, Inc. (GS), Beazer West, Inc. d/b/a Gifford-Hill & Company (GH), Bean Lumber Company and Curt Bean Lumber Company (Bean), and Barksdale Lumber Company (Barksdale) (collectively, Shippers). The Shippers, which are part owners of CALM, are located on what is designated as the 49.2-mile "northern segment" of the line between milepost 430.0 near Gurdon and milepost 479.2. International Paper Company (IP), the line's principal shipper, is located on the 3.7-mile "southern segment" of the line between milepost 426.3 and milepost 430.0. The line connects at the southern end with the Union Pacific Railroad Company (UP).

For the reasons discussed below, we will grant CALM's application to acquire the northern segment. However, we will not authorize it to acquire the southern segment.

BACKGROUND

AMR, a subsidiary of Pinsly Railroad Company (Pinsly), purchased the line, along with three others, from the UP in

February 1992.[1] According to AMR, the northern segment is a light density line that had not been properly maintained by UP. Since acquiring the line, AMR states, track conditions on the northern segment have worsened and traffic has declined. AMR indicates that it asked shippers and Federal and state government agencies for financial assistance to keep the line in service. In 1993, AMR allegedly offered to sell the northern segment to Bean. On December 3, 1993, the line was damaged by a flood. On December 15, 1993, AMR embargoed the 31-mile portion of the line between Pike City Junction and Birds Mill, citing severe flood damage. The embargo stopped rail service to GS, Bean and Barksdale, which are located on that portion. AMR avers, however, that traffic generated by IP on the southern segment has been steady since AMR acquired the line.

Several of the Shippers contested the embargo, claiming that AMR did not intend to resume service. GS filed a complaint with the Office of Compliance and Enforcement (OCE) alleging that the embargo deprived it of essential rail service. An OCE agent investigated the complaint and requested that the Federal Railroad Administration (FRA) assess the line's condition.

On February 18, 1994, AMR filed a system diagram map (SDM) designating the entire Norman Branch in category 1. On February 22, 1994, AMR expanded the embargo to include the entire northern segment, stopping service to GH. The SDM was modified on February 24, 1994, designating the northern segment in category 1 and the southern segment as category 5.

The Shippers continued their efforts to have service resumed over the line. With their support, an affiliate of CALM, the Dardanelle & Russellville Railroad Company (DRRC), on March 18, 1994, requested that the Commission authorize it to provide interim service over the northern segment and operate trackage rights over the southern segment. After receiving comments from the Shippers and AMR, the Commission, pursuant to 49 U.S.C. 11123(a), granted the request and issued Service Order No. 1516 on March 28, 1994. The order authorized DRRC to serve the northern segment and operate overhead trackage rights over the southern segment to interchange with UP. AMR is currently serving IP by operating over the southern segment. Service Order No. 1516 has been extended to May 16, 1995.[2]

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[1] <u>Arkansas Midland Railroad Company, Inc.--Acquisition and Operation Exemption--Missouri Pacific Railroad Company</u>, Finance Docket No. 31999 (ICC served Mar. 2, 1992); and <u>Pinsly Railroad Company, Inc.--Continuance in Control Exemption--Arkansas Midland Railroad Company, Inc.</u>, Finance Docket No. 32001 (ICC served Mar. 2, 1992).

[2] We are also considering a petition filed on December 2, 1994, by DRRC, CALM and the Shippers requesting that we establish the rate of compensation to be paid to AMR for trackage rights over the southern segment under Service Order No. 1516. Finance Docket No. 32625, <u>Dardanelle & Russellville Railroad Company--Trackage Rights Compensation--Arkansas Midland Railroad Company</u>.

Finance Docket No. 32479

CALM filed this feeder line application on March 18, 1994, seeking to force the sale of the entire Norman Branch.[3]

AMR has opposed the forced sale of the southern segment from the start because it wishes to continue serving IP. AMR did not initially oppose sale of the northern segment. On July 1, 1994, however, AMR executed a lease and option to purchase agreement with a noncarrier, the Glenwood and Southern Railroad Company (GSR), under which GSR would lease the northern segment, with an option to purchase it, and would operate trackage rights over the southern segment. On July 6, 1994, GSR filed a notice of exemption under 49 CFR 1150 Subpart D in Finance Docket No. 32540 to implement these plans. AMR then took the position that GSR's notice rendered CALM's application moot and that CALM's application should be dismissed.

We (1) denied the motion to dismiss CALM's feeder line application; and (2) rejected GSR's notice of exemption, but permitted GSR to file a competing feeder line application, in Caddo Antoine, et al.--Feeder Li. Acq.--Arkansas Midland RR, 10 I.C.C.2d 323 (1994) (Caddo). GSR filed a competing application in Finance Docket No. 32613 on November 7, 1994. Ultimately, we rejected GSR's competing feeder line application because it did not contain substantially all of the information required by section 1151.3. Glenwood and Southern Railroad Company--Feeder Line Acquisition--Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR, Finance Docket No. 32613 (ICC served Nov. 23, 1994, and Mar. 9, 1995).

DISCUSSION AND CONCLUSIONS

As we noted in Caddo, 10 I.C.C.2d at 325, the Feeder Railroad Development Program enables shippers and communities to acquire marginal rail lines that are likely to be abandoned or are receiving inadequate rail service. The feeder line procedures give shippers a self-help remedy for poor service or potential abandonment. The statute authorizes us to require railroads under specific circumstances to sell rail lines to financially responsible persons.

The statute and our regulations require us to make certain findings in approving a feeder line application. 49 U.S.C. 10910 and 49 CFR 1151.4. We must determine if the line is eligible for forced sale. If a line is eligible, we must then determine the constitutional minimum value, and the applicant's ability to: (1) purchase the line at the constitutional minimum value, and (2) cover expenses associated with operating the line for the first 3 years after acquisition. 49 U.S.C. 1151.3(a)(3).

Eligibility

Under section 10910(b), and 49 CFR 1151.1, a line is eligible for forced sale if: (1) it appears in category 1 or 2 of the owning carrier's SDM, but the owning carrier has not filed for abandonment, section 10910(b)(1)(A)(ii); or (2) the public convenience and necessity (PC&N) require or permit sale of the line, section 10910(b)(1)(A)(i). To find a line eligible for sale under the PC&N standards, section 10910(c)(1) requires that we determine that:

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[3] On March 21, 1994, several of the Shippers also filed a complaint in Docket No. 41230, GS Roofing Products Company, Inc., Beazer West, Inc., D/B/A Gifford-Hill & Company, Bean Lumber Company and Curt Bean Lumber Company v. Arkansas Midland Railroad and Pinsly Railroad Company, Inc., alleging that AMR refused to provide them with rail service in violation of 49 U.S.C. 11101(a). The complaint is currently pending.

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(A) the rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;

(B) the transportation over such line is inadequate for the majority of shippers who transport traffic over such line;

(C) the sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;

(D) the sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and

(E) the sale of such line will likely result in improved railroad transportation for shippers that transport traffic over such line.

Arguments of the Parties. CALM maintains that the entire Norman Branch is eligible for acquisition under the PC&N standards in section 10910(b)(1)(A)(i). CALM claims that the Norman Branch was sold to AMR as a single unit. The line was not segmented into northern and southern segments, until DRRC commenced interim operations. CALM maintains that segmenting the line would destroy the continuity of rail operations and harm shippers on the line. CALM contends further that the entire line needs to be retained as a single unit to assure that rail service would continue to the Shippers on the northern segment. CALM indicates that it wants to serve all shippers on the line, including IP. It states that it might not purchase the northern segment alone because that segment allegedly does not generate enough traffic to be operated profitably. Additionally, it believes that AMR should not be permitted to profit from the lucrative southern segment by retaining IP's traffic. CALM asserts that if its application is granted, service will improve for all shippers, including IP.

CALM asserts that forced sale of the entire line is justified under the PC&N standards. It asserts that AMR improperly embargoes the northern segment. CALM claims that AMR could have restored service to the shippers on the northern segment at minimal cost. By refusing to operate the northern segment of the line, CALM avers that AMR has provided inadequate service to the majority of shippers on the Norman Branch, leading to DRRC's successful request to provide interim operations over the northern segment.

CALM argues that a grant of its application would not have a significant adverse effect of AMR. Citing AMR financial statements submitted under seal, CALM maintains that AMR's remaining operations in Arkansas would not be harmed by sale of the entire Norman Branch. Rather, it asserts, AMR would benefit by eliminating operating expenses for the line and by applying the proceeds from the sale of the Norman Branch to reduce debt and interest expenses. In addition, AMR allegedly could concentrate on operating its other lines in Arkansas, benefiting its overall operations.

AMR disputes CALM's argument that the PC&N standards permit a forced sale of the entire line. It argues that in enacting the feeder line program, Congress did not intend to give a carrier's adversaries a mechanism to wrest away a successful operation. AMR asserts that a feeder line applicant should only be found to meet the PC&N standards if the carrier on that line is not providing adequate service to shippers. It alleges further that,

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contrary to CALM's assertions, it has made every effort to correct the problems on the northern segment.

In addition, AMR maintains that it would incur serious financial and operational trouble if it lost IP as a customer. It claims that IP is the second largest shipper on its system and that IP's traffic is profitable. AMR views the possible loss of IP's traffic as a "devastating" action that "would put the entire railroad at serious financial and operational risk."

IP indicates that AMR has provided prompt and reliable service and that it wants AMR to continue serving its plant. IP states further that it has not provided CALM with any financial support for its proposal and has not agreed to higher rates to subsidize its operations.

RRA opposes CALM's attempt to force sale of the southern segment. It is concerned that CALM is attempting to acquire a profitable segment that is being reliably served, and which the owner does not wish to sell, by lumping that segment together with a line segment that was embargoed and is a candidate for abandonment. In RRA's view, it would contravene the Congressional intent in establishing the feeder line program to permit feeder line applicants to take segments of rail lines, against the owner's will, by "seizing shippers" located near lines that are embargoed or proposed for abandonment.

Conclusions. We conclude that the feeder line statute does not authorize us to direct the forced sale of the entire Norman Branch under the PC&N standards under the circumstances of this case. The feeder line statute is intended to remedy inadequate rail service or potential abandonment. The Norman Branch may have been operated as a single line after AMR acquired it, but operations changed substantially a year ago when AMR embargoed what is now the northern segment and DRRC instituted interim service over that segment. Since then, DRRC has served the Shippers on the northern segment and has operated overhead trackage rights on the southern segment to interchange with UP. DRRC does not serve IP. AMR continues to serve IP on the southern segment. The two segments are being operated separately.

The northern segment clearly qualifies for acquisition under section 10910(b)(1)(A)(ii). That segment is listed in category 1 on AMR's SDM and thus is a candidate for abandonment. Moreover, the record here shows that service on that segment is inadequate. Thus, the Shippers are justified to use the self-help remedy in the feeder line statute to force the sale of the northern segment.

But we do not find that the southern segment qualifies for forced sale under the feeder line procedures. We agree with AMR that the feeder line statute is not intended to force a carrier operating a profitable line which is being adequately served to sell that line. AMR is apparently providing adequate service to IP, which, it seems, is the only shipper located on the southern segment. The southern segment is a category 5 line on AMR's SDM and is not a candidate for abandonment. To acquire the southern segment, CALM would have to satisfy the PC&N standards. There is nothing in this record to show that the southern segment is eligible for forced sale under the PC&N standards in section 10910(b)(1)(A)(i).

If CALM acquires the northern segment, AMR is obligated to interchange traffic with CALM and to provide reasonable, proper and equal facilities for the interchange of traffic. 49 U.S.C. 10910(d). As an alternative, of course, the parties may agree that CALM may operate, for compensation, pursuant to trackage

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rights such as those under which DRRC currently operates over the southern segment to interchange directly with UP. We expect the parties to negotiate an appropriate agreement to enable CALM to serve the Shippers should it acquire the northern segment. If the parties are unable to do so, CALM may return to the Commission and seek appropriate relief.

Financial Responsibility

Purchase price. CALM states that the acquisition cost of the line will be funded by the Shippers. It indicates that an agreement in principle has been reached in which three of the Shippers agree to take an equity position in CALM, effectively spreading the purchase price out among themselves. CALM also states that, due to the uncertainties about the acquisition cost, the amount of capital to be contributed by the Shippers, or the percentage of stock to be held by them has not as yet been determined. CALM adds that it does not intend to borrow any funds in order to acquire or operate the line. CALM'S pro forma balance sheet assumes the acquisition cost of the line will be $1 million and that all of that cost will be funded by stockholder investment.

In reply, AMR asserts that CALM failed to demonstrate financial responsibility, stating that the brief and vague assurances of shipper funding fall far short of what the Act requires an applicant to demonstrate to be a "financially responsible person." AMR states that the Commission recognized this evidentiary deficiency when it requested that CALM provide details (including specific funding sources) supporting the purchase of the line.

AMR further contends that, at this point of the proceeding, CALM should have reached a funding arrangement with each Shipper. AMR notes, however, that the Shippers have made no such commitments. AMR also points out that there is inadequate information on the financial viability of the Shippers themselves, except as to Bean's president, Curt Bean, who has indicated that he will purchase only some of CALM's equity. AMR states that this last point is important, because the personal financial wealth of an officer or stockholder of a company does not by itself equate to the financial responsibility of the company.

We find that CALM has provided sufficient information to demonstrate that it will be able to obtain the necessary funding from the Shippers. CALM's application clearly has the financial support of the shippers that it proposes to serve should it acquire the northern segment. Each of the Shippers has confirmed its commitment to provide its share of the necessary funding to enable CALM to acquire the line. By agreeing to an equity contribution, the Shippers have enabled CALM to avoid borrowing funds to acquire the line. In addition, the financial support of CALM's application by the Shippers is consistent with the Congressional purpose in the feeder line program to enable shippers and local interests to acquire marginal rail lines. In contrast, GSR's competing application, which we recently rejected, lacked local financial and operational support from shippers.

Ability to Cover Expenses for 3 Years. To demonstrate its ability to cover expenses for 3 years, CALM submits a pro forma income statement, a pro forma balance sheet, and a pro forma cash flow statement. The income statement and cash flow statement reflect operations for one year only, but CALM states that the results would be the same in each of the first 3 years after acquisition of the line. CALM's pro forma income/cash flow statement shows that revenues anticipated on the line will exceed

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anticipated costs and expenses by $264,649 for each of the first three years after acquisition.[4]

CALM's pro forma balance sheet shows an equity investment of $1 million and total liabilities of $255,000, representing notes payable to customers at no interest. The asset side of the balance sheet shows a cash balance of $127,000 and a locomotive investment of $128,000, in addition to the $1 million investment in the line itself.

AMR responds that CALM's pro forma presentation is unsupported, flawed, and inadequate to establish that applicant is financially responsible, as required by the Commission's rules. AMR argues that CALM has provided only minimal pro forma data, and that those data represent an insufficient response to the Commission's request to demonstrate financial fitness.

CALM's financial projections and maintenance and rehabilitation estimates are of minimal value in indicating future financial prospects for the line. These projections were obviously developed early in this proceeding to show how CALM would operate the entire Norman Branch, including service to IP on the southern segment. DRRC, however, has been serving the Shippers on the northern segment under Service Order No. 1516, apparently satisfactorily, for nearly a year. Particularly given our findings here concerning CALM's efforts to acquire the southern segment of the line, CALM's projections about future operations would have been more accurate and realistic had they been based on DRRC's operations.

Nevertheless, CALM's application indicates that the Shippers will commit sufficient funds to insure adequate service and maintenance of the line. The Shippers indicate that they are willing to pay higher rates to support CALM's operations. These commitments are more relevant to establishing CALM's financial responsibility than its financial projections for operation of the line. Based on DRRC's operations, the Shippers' commitments, and CALM's financial projections, we find that CALM will likely be able to cover expenses for three years.

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[4] Operating Statement
(First Three Years)

Revenue:	$1,226,750
Cost and Expenses:	
Maintenance-of-Way	$ 454,075
Maintenance-of-Equipment	(115,000)
Transportation and Traffic	294,450
General and Administrative	250,576
Per Diem	24,000
Insurance	30,000
Property Taxes	12,000
Sales and Use Tax	6,000
Miscellaneous Charges	6,000
Total Cost and Expenses:	$ 962,101
Net Operating Income:	$ 264,649
Federal and State Income Tax:	0
Net Income:	$ 264,649

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Constitutional Minimum Value

The feeder line procedures require us to determine the purchase price at the constitutional minimum value of the line. Section 10910(b)(2) defines constitutional minimum value as "not less than the net liquidation value of such line, or the going concern value of such line, whichever is greater." In its reply statement, AMR argues that the line has a going concern value (GCV) of $2.65 million. Because we are granting CALM's application only for the northern segment, which AMR has listed as an abandonment candidate, we need not consider the merits of AMR's arguments about GCV. AMR admits that the northern segment is unprofitable. We will determine the constitutional minimum value to be the line's net liquidation value (NLV).

Both CALM and AMR have presented evidence on the NLV of the Norman Branch. AMR estimates the line's NLV at $2,358,653, based on an engineering appraisal prepared for AMR by Enviro Rail, Inc. (Enviro), dated January 20, 1994. See Appendix A. CALM estimates the NLV of the line at $921,267. This estimate is based on an appraisal prepared by Mr. William D. Purcell. See Appendix B.

Net Salvage Value: CALM's president, William K Robbins, Jr. initially estimated the NLV of the line at $726,789.40, consisting of a net salvage value of $658,708.40 and real estate valued at $68,081. His testimony has been superseded by that of Mr. William D. Purcell concerning track valuation.

For the purposes of establishing the case record, we will briefly describe Mr. Robbins's statements because CALM relies upon his work as support for that of Mr. Purcell. Enviro's appraisal uses the current value of defined "Point of Sale Value" as the estimated amount that the track material might be expected to "net" to the seller at the "shipping point" in an arm's length transaction between a willing buyer and willing seller. Mr. Robbins stated that the Enviro appraisal was prepared without a physical inspection of the line and differs from a prior appraisal prepared for AMR in January 1992 by J. L. Industries (J.L.I.)[5] following an inspection of the line. Mr. Robbins noted that the two appraisals disagree about the quantities of track material that would be considered relay[6], reroll[7] or scrap. Mr. Robbins noted that the J.L.I. appraisal used a lower classification for materials than Enviro. For example, Enviro assumed that 75% of the 90lb. rail would be relay, 20% would be reroll, and only 5% would be scrap. Two years earlier, J.L.I. had estimated that 75% of the 90lb. rail would be reroll and 25% would be scrap. Mr. Robbins stated that given the additional two years and the number of derailments that have occurred on the line, it would be impossible for the quality of rail to have improved. He also disputed the relay and scrap prices used by Enviro, claiming the values are the highest seen in 50 years. Mr. Robbins further claimed that Enviro's presentation substantially inflates the removal cost estimates.

On reply, CALM replaces Mr. Robbins's estimate with a new, and more complete, appraisal prepared by Mr. Purcell. Mr.

[5] J.L.I.'s appraisal dated January 22, 1992, valued four AMR lines. It was submitted as Exhibit 11 of Robbin's initial verified statement. This appraisal is not discussed by AMR.

[6] "Relay" rail may be used--"relaid"--in its present condition.

[7] "Reroll" rail is rail that is capable of being reprocessed and used as fencing or similar commodities.

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Purcell is a private consultant involved in the valuation of track materials, maintenance, and operating procedures for shortline railroads and the rail industry. He estimates the net salvage value of the line to be $915,968.80.

Mr. Purcell inspected the entire length of the line on June 22, 1994. His overall assessment is that the portion of line starting at milepost 428.83 and continuing north of the IP spur is in the worst condition. That portion has cross level and alignment problems, and overall deterioration of the 85lb. rail. The portion of line north of the PK Junction is laid with 90lb. rail.

Mr. Purcell disagrees with portions of the three appraisals that had previously been prepared (J.L.I., Enviro, and Robbins). He specifically criticizes Enviro's appraisal because it allegedly was not based on a personal inspection of the line. As a result, he concludes that the Enviro appraisal substantially overstates the quantities of materials on the line. He further notes that the Enviro appraisal does not mention certain other material including 115lb. relay panels, placed on the line by UP before the sale to AMR.

Mr. Purcell classifies all rail as scrap or reroll because most of the rail has excessive side wear and wheel burns and, consequently, cannot be treated as relay rail. Mr. Purcell's assessment is consistent with the conclusions of the J.L.I. appraisal and Mr. Robbins that no relay rail is present. Mr. Purcell states that because of the many curves on the line (over 100) and the hilly terrain, there has been a considerable amount of wear and tear on the line. Based on his experience, Mr. Purcell subtracted a wear reduction factor of 5% for reroll and 7% on scrap materials from the material totals.

Mr. Purcell's appraisal disagrees with that of Enviro concerning the tonnage of bars, spikes, bolts and angle bars. Enviro assumed that there are 3,200 ties per mile, while Mr. Purcell's inspection showed that there are 2,800 ties per mile. As a result, the tonnages of other track materials were reduced to reflect the reduced quantities of materials. For example, Enviro estimated that 189 net tons of angle bars would be recovered in contrast to Mr. Purcell's estimate of 161 net tons. Similarly, according to Mr. Purcell, while Enviro claimed 648 net tons of tie plates, the actual amount is 486 tons. He also notes that the Enviro appraisal failed to include any tonnage for track anchors (85 tons).

Mr. Purcell believes that no value for ballast should be included. He states that the old ballast is fouled and could not be resold for use by another railroad. The new ballast is aggregate, a commodity that he says should not have been placed on the line. He adds that any potential value for the ballast would be decreased by the lack of access to the property.

The value of cross ties is also in dispute. Mr. Purcell's inspection of the line showed that there are 33,947 relay ties, 50,388 landscape ties and 73,168 scrap ties. Enviro, on the other hand, estimated 33,856 relay ties, 84,640 landscape ties and 66,784 scrap ties. Mr. Purcell claims that this discrepancy is due to Enviro's failure to physically inspect the line.

According to Mr. Purcell, Enviro's cost of removal is deficient because it did not include the cost of moving the scrap material to market. Mr. Purcell's estimate for removal costs includes transportation costs for reroll rail to major markets in Arkansas and Illinois and for scrap rail and other track material to Oklahoma markets. Mr. Purcell has also added an estimate for the repair of road crossings.

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Discussion. The burden of proof in feeder line applications falls on the offeror. We believe that CALM's criticism of Enviro's appraisal has merit. Without a recent inspection, we do not believe that the Enviro appraisal can accurately portray the current condition of the line.[6] Consequently, we believe that CALM has met its burden of proof to establish the net salvage value of track and materials. Mr. Purcell has shown that he is qualified to value track, and his recent inspection of the line provides the most up-to-date estimate. We accept Mr. Purcell's appraisal, with the modifications discussed below, as the best estimate of the net salvage value of the line. We will not discuss the merits of Mr. Robbins's estimate because Mr. Purcell's appraisal replaces the original estimate made by Mr. Robbins.[7]

We will modify Mr. Purcell's track salvage estimate by deleting any costs associated with bridge removal. Commission precedent does not require the railroad to deduct the cost of bridge removal (and add the salvage or scrap value) unless it meets the following conditions: it must be specified by local or state regulations, or the bridges must cross navigable waterways that fall under U.S. regulations. We will restate Mr. Purcell's estimate to remove the scrap value of materials ($32,983) and the cost of removal of bridges and piers & bulkheads ($16,196 and $55,000). Also, Mr. Purcell's profit to scrapper, which is computed at 10 percent, will be increased to $105,677. The net salvage value will be increased to $951,090.

Real Estate Value. AMR values the real estate at $256,400, based on a unit cost of $400 per acre for 641 acres. However, AMR did not inspect the line and the estimator was not familiar with local land values.

In contrast, CALM initially asserts that land values should be comparable to the value AMR placed on the land for taxes. Using AMR's property tax value, Mr. Robbins initially valued land at $100 per acre, assuming that AMR holds clear title to the land. Mr. Robbins's appraisal indicates that much of the area is swampy and uninhabitable, and, as a result, the land cannot used to farm or raise cattle. His $100 per acre estimate is assertedly based on his understanding of Arkansas land values for this type of terrain.

CALM also questions the title held on most of the parcels. Mr. Alfred C. Vance, a certified title abstractor, conducted a title search for CALM and determined that of the 641 acres

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[6] Nothing in the record suggests that the line was recently inspected in connection with the Enviro appraisal. The Enviro appraisal appears to be an update of the J.L.I. appraisal. The author, however, does not state that he recently inspected the line to see if the line had deteriorated in the interim. And AMR states only that it "commissioned an outside expert who physically examined the line in 1992 and prepared an updated appraisal in January 1994." See AMR Response to Application for Forced Sale of Line, filed June 14, 1994. We question the accuracy of the Enviro appraisal because the author apparently modified the quantity of materials contained on the line without actually seeing the track since at least 1992, and determined that the quality of the track (and therefore its salvage value) had improved over the 2-year period.

[7] CALM submitted Mr. Purcell's verified statement in Applicant's July 5, 1994 reply, rather than its June 13, 1994 comments in support of its application. AMR has not moved to strike the statement. We will accept it in the interest of rendering our decision on the most complete record available.

claimed by AMR, only 52.98 acres could be marketed. Based on Mr. Vance's research, CALM set the maximum land value at $5,298, using Mr. Robbins's $100 per acre value.

We accept as the best evidence of record AMR's real estate unit price of $400 per acre. CALM did not provide adequate support for its valuations of this real estate. We disagree with CALM's use of Arkansas tax records to establish the value of the real estate because they were designed for tax purposes, not appraisal purposes. Mr. Robbins's original estimate of $100 per acre is also unsupported because it is merely a "seat-of-the-pants" estimate.

We will, however, accept CALM's claim that most of the land has reversionary clauses, making its marketability doubtful. Mr. Vance appears to have thoroughly researched the titles along the right-of-way. Therefore, we will restate the total real estate value to reflect only 52.98 acres of land. Accordingly, the total real estate value is reduced to $21,192 (52.98 X $400).

NLV. In summary, we have determined the NLV of the Norman Branch to be $972,282 consisting of a net salvage value of $951,090 and a land value of $21,192. See Appendix C. Our estimate is based primarily on Mr. Purcell's net salvage value estimate as adjusted above and AMR's land value, as adjusted.

Value of Northern and Southern Segments. We also calculate an NLV for the northern segment at $901,834, and the southern segment at $70,448. See Appendix D. The respective NLV estimates of the parties did not divide the line into two segments. To compute NLV's for the respective segments, we have adjusted the NLV for the entire line as follows. The FRA inspection report determined that all the rail and other track materials on the southern segment are 85lb. weight. The value of this 85lb. rail was determined by dividing the reroll and scrap 85lb. rail components by the length of 85lb. track (20 miles). We distributed crossties equally over the 52.9 miles of main line. We assumed that the 75lb. siding would not contribute any ties. Mr. Purcell's cost of removal included both main line and sidings. Consequently, a cost-per-mile was determined by dividing the total by 57.015. Removal costs were determined by dividing the total removal costs by the total length of main track and sidings. Real estate values of the respective segments were calculated in the same fashion.

Exemption

Under section 10910(g)(1), a feeder line applicant may elect to be exempt from any of the provisions of 49 U.S.C., except the joint rate provisions of chapter 107. CALM has not indicated in its application whether it elects this exemption. If CALM wishes to proceed with acquisition of the northern segment, it may advise at that time whether it seeks an exemption.

Labor Protection

RLEA requests that labor protection be imposed. Section 10910(g) requires the selling carrier to provide an arrangement at least as protective of the employee interests as that established in section 11347. Therefore, as is customary in feeder line applications, we will impose the conditions in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), to protect AMR employees.[10] The cost of labor

[10] See e.g., Indiana Hi Rail Corp.--Feeder Line Acq., 366 I.C.C. 42, 50 (1981).

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protection may not be included in the purchase price for the line. 49 U.S.C. 10910(b)(2).

Under section 10910(e), we must require, to the extent practicable, the use of employees who would normally have performed work on the line. CALM indicates that it will employ AMR employees currently working on the line for a 90-day probation period. At the end of the probation period, each employee will be evaluated for further employment. CALM's actions appear to be consistent with section 10910(e).

Closing Terms

To ensure the smooth transfer of the line, we will establish the following terms: (1) payment will be made by cash or certified check; (2) closing will occur within 90 days after the service date of this decision; (3) AMR will convey all property by quitclaim deed; (4) AMR will deliver all releases from any mortgages and original documents conveying interest in the right-of-way to CALM within 90 days from closing; (5) all taxes should be prorated as of the date of closing; and (6) deed recording fees should be paid be CALM. Mortgage or lien releases, taxes and recording fees should be paid by AMR. The parties may modify the terms of sale by mutual agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CALM's feeder line application is approved for the 49.2-mile northern segment of the Norman Branch between milepost 430.0 and milepost 479.2.

2. CALM must notify the Commission and AMR by April 28, 1995 as to whether it accepts or rejects our determination.

3. The purchase price for the northern segment is set at $901,834. Other terms of sale are set forth in the decision.

4. The labor protection conditions in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), are imposed on AMR.

5. This decision is effective May 18, 1995.

By the Commission, Chairman Morgan, and Commissioners Simmons, McDonald, and Owen.

Vernon A. Williams
Secretary

(SEAL)

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APPENDIX A

AMR NLV ESTIMATE

Category	*Quantity*	*Unit Cost*	*Value*	*Total*
Rail 85lb.-reroll	2692 nt	$155	$417,260	
85lb.-scrap	299 nt	$120	$35,880	
90lb.-relay	3908 nt	$200	$781,600	
90lb.-reroll	1042 nt	$155	$161,510	
90lb.-scrap	260 nt	$120	$31,200	
75lb.-reroll	330 nt	$155	$51,150	
75lb.-scrap	330 nt	$120	$39,600	$1,518,200
less 5% wear		($74,894)	($74,894)	
Angle Bars	Scrap	268 nt	$120	$32,160
Relay	263 nt	$200	$52,600	$84,760
Tie Plates	Scrap	756 nt	$120	$90,720
Relay	1065 nt	$185	$197,025	$287,745
Spikes	Scrap	255 nt	$120	$30,600
Bolts	Scrap	52 nt	$120	$6,240
Ties	Relay	33,856	$8	$270,848
#1		16,928	$6	$101,568
#2		33,856	$4	$135,424
#3	33,856	$2	$67,712	$575,552
Ballast	Reuse	79350 tn	$1	$79,350
Cost of Removal	57.9 mi.	$7,000	$405,300	$405,300
Net Salvage Value				$2,102,253
Real Estate	641 acres	$400/acre	$256,400	$256,400
Net Liquidation Value				$2,358,653

Enviro indicates that it evaluated the track material using "general railroad knowledge" and the following criteria:

- Current demand for these specific types of track materials.
- Maintenance and inspection standards of the current owner.
- Ease of access to the materials.
- Distance to the nearest healthy market.
- The transportation modes available to ship the material to market.
- Location of potential sales.
- Condition and age of track materials.

Enviro's unit cost of land not supported by a formal real estate appraisal.

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APPENDIX B

CALM NLV Estimate

Category	*Quantity*	*Unit Cost*	*Value*	*Total*
Rail 85lb.-reroll	2201 nt	$151.00	$332,351	
85lb.-scrap	557 nt	$98.21	$54,703	
90lb.-reroll	3430 nt	$151.00	$517,930	
90lb.-scrap	1441 nt	$98.21	$141,521	
75lb.-reroll	167 nt	$151.00	$25,217	
75lb.-scrap	429 nt	$98.21	$42,132	$1,113,854
Angle Bars Scrap	435 nt	$107.42	$46,728	$46,728
Tie Plates Scrap	1472 nt	$107.42	$158,122	$158,122
Spikes Scrap	216 nt	$107.42	$23,203	$23,203
Blts/Anch. Scrap	128 nt	$107.42	$13,750	$13,750
Ties Relay	33,947	$6.50	$220,656	
#1 & #2	50,388	$3.25	$163,761	$384,417
Relay Rail Panels	54	$658.50	$35,559	$35,559
Bridges	4,699 ft	$7.00	$32,893	<u>$32,893</u>
Gross Total				1,808,525
Cost of Removal				
Track	57.015 mi	$5,200.00	$296,478	
Relay ties	84,355 ea	$1.40	$118,069	
Scrap ties	73,168 ea	$2.00	$146,336	
Bridges	4,699 ft	$3.60	$16,916	
Piers & Bulkhds	1	$55,000.00	$55,000	
Road Crossings	400 ft	$25.00	$10,000	
Transportation			$147,982	
Total Removal Costs				$790,781
Profit to Scrapper		@ 10%		$101,774
Net Salvage Value				$915,969
Real Estate	52.98 acres	$100.00/acre	$5,298	<u>$5,298</u>
Net Liquidation Value				$921,267

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APPENDIX C

ICC NLV Estimate

Category	*Quantity*	*Unit Cost*	*Value*	*Total*
Rail 85lb.-reroll	2201 nt	$151.00	$332,351	
85lb.-scrap	557 nt	$98.21	$54,703	
90lb.-reroll	3430 nt	$151.00	$517,930	
90lb.-scrap	1441 nt	$98.21	$141,521	
75lb.-reroll	167 nt	$151.00	$25,217	
75lb.-scrap	429 nt	$98.21	$42,132	$1,113,854
Angle Bars Scrap	435 nt	$107.42	$46,728	$46,728
Tie Plates Scrap	1472 nt	$107.42	$158,122	$158,122
Spikes Scrap	216 nt	$107.42	$23,203	$23,203
Blts/Anch. Scrap	128 nt	$107.42	$13,750	$13,750
Ties Relay	33,947	$6.50	$220,656	
#1 & #2	50,388	$3.25	$163,761	$384,417
Relay Rail Panels	54	$658.50	$35,559	$35,559
Gross Total				1,775,632
Cost of Removal				
Track	57.015 mi	$5,200.00	$296,478	
Relay ties	84,355 ea	$1.40	$118,069	
Scrap ties	73,168 ea	$2.00	$146,336	
Road Crossings	400 ft.	25.00	$10,000	
Transportation			$147,982	
Total Removal Costs				$718,865
Net				$1,056,767
Profit to Scrapper				$105,677
Net Salvage Value				$951,090
Real Estate	52.98 acres	$400.00/acre	$21,192	$21,192
Net Liquidation Value				$972,282

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APPENDIX D

Northern & Southern Segment NLV's

Category	*Total Expense*	*Miles*	*Unit Cost*
Track Materials (85lb.)	470,520	20	$23,526
Ties - Main Line Only	384,417	52.9	$7,267
Cost of Removal - Entire line	572,529	57.015	$10,042
Net			$20,751
Less profit to scrapper			$2,075
Net track salvage per mile			$18,676
Real Estate - Entire line	21,192	57.015	$372
NLV Per Mile			$19,048
NLV of southern segment	$19,048 per mile	3.7	$70,448
NLV of northern segment	$972,282 less $70,448		$901,834