STB FINANCE DOCKET NO. 34335

KEOKUK JUNCTION RAILWAY COMPANY-FEEDER LINE ACQUISITION–LINE OF TOLEDO PEORIA, AND WESTERN RAILWAY CORPORATION BETWEEN LA HARPE AND HOLLIS, IL

Decided October 28, 2004

The Surface Transportation Board grants the feeder line application of Keokuk Junction Railway Company to acquire a 76-mile line of railroad owned by the Toledo, Peoria & Western Railway Corporation.

BY THE BOARD:

Keokuk Junction Railway Company (KJRY), a Class III railroad controlled by Pioneer Railcorp (Pioneer), a noncarrier holding company, asks us to use our authority under 49 U.S.C. 10907 to order the Toledo, Peoria & Western Railway Corporation (TP&W) to sell a 76-mile rail line in western central Illinois to KJRY. The line (referred to here as the La Harpe-Hollis Line or the Line) runs eastward from a connection to KJRY's line at La Harpe, IL (milepost 194.5), to Hollis, IL (milepost 118.5), where it connects with a line of the Union Pacific Railroad Company (UP). TP&W is a Class III railroad controlled by RailAmerica, Inc. (RailAmerica), a noncarrier holding company. A map depicting the Line is attached as Appendix A.

BACKGROUND

The 71.5-mile portion of the Line between milepost 194.5 near La Harpe and milepost 123.0 at Mapleton (La Harpe Line) has been the subject of extensive prior litigation before the Board. After operating the La Harpe Line for many years, TP&W sold the right to operate over it, along with the rail, ties, and certain improvements on it, to SF&L Railway, Inc. (SF&L).[1] The sale was later challenged, and, upon determining that SF&L had acquired the La Harpe Line with the improper intent to abandon and salvage it, the Board directed SF&L to reconvey the line to TP&W. *SF&L Railway, Inc.–Acquisition and Operation Exemption–Toledo, Peoria, and Western Railway Corporation Between La Harpe and Peoria, IL*, 6 S.T.B. 408 (2002) (*SF&L I*) *clarified* STB Finance Docket No. 33995 (STB served January 31, 2003) (*SF&L II*). Pursuant to the Board's directive, TP&W reacquired the La Harpe Line on February 10, 2003.

While the Board was considering administrative appeals of the *SF&L I* decision, KJRY sought authority under 49 U.S.C. 11123 and 49 *CFR* 1146 to provide temporary alternative rail service over the La Harpe Line. The Board denied that request based on TP&W's assurances that it would resume operations over the La Harpe Line once it reacquired that line. *Keokuk Junction Railway Company–Alternative Rail Service–Line of SF&L Railway, Inc.*, STB Finance Docket No. 34310 (STB served February 14, 2003).

KJRY then filed this "feeder line" application on April 9, 2003, for a forced sale of the Line under 49 U.S.C. 10907.[2] That provision directs the Board to require a railroad to sell a rail line, which the incumbent railroad either has slated for abandonment or is not adequately serving, when a financially responsible person applies to buy the line at a price not less than the constitutional minimum value. Constitutional minimum value is the higher of the line's going concern value (GCV) (i.e., its value as a viable business) or its net liquidation value (NLV).

KJRY's initial application was found to be deficient (in a decision served on May 9, 2003). On June 9, 2003, KJRY filed an amended application, styled a "supplement," in which it offered (at 21) to purchase the La Harpe-Hollis Line, together with a connecting segment known as the Mapleton Industrial Spur and Wye Facilities (the Spur), for an estimated GCV of $3,461,434. The 2.5-mile Spur connects to the La Harpe-Hollis Line at

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[1] *SF&L Railway, Inc.–Acquisition and Operation Exemption–Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995 (STB served and published at 66 FR 9410-11 on February 7, 2001).

[2] When this provision (formally codified at 49 U.S.C. 10910) was originally enacted in 1980, Congress gave it the title "Feeder Railroad Development Program." Feeder lines are branch lines that "feed" traffic onto the main lines. Congress projected that branch lines, rather than main lines, would be the likely candidates for applications under section 10907.

milepost 121.5 at Kolbe, IL, and serves the Mapleton Industrial Park, the source of the largest concentration of traffic on TP&W's system. KJRY alternatively offered to purchase only the La Harpe-Hollis Line, for an estimated NLV of $3,284,605, leaving TP&W as the exclusive owner and operator of the Spur. Under that alternative proposal, to afford TP&W access to the Spur, KJRY would grant TP&W, at no fee, trackage rights over the Line between Hollis and Kolbe (a distance of about 3 miles).

The Board accepted KJRY's amended application, subject to KJRY filing an environmental report in compliance with 49 *CFR* 1105.7, and adopted a procedural schedule for filing competing applications, verified statements, comments, and verified replies, in a decision served on July 9, 2003. TP&W and the United Transportation Union-Illinois Legislative Board (UTU-IL) appealed that decision and requested that we either reject or require KJRY to clarify the amended application. Those appeals were denied and a new procedural schedule was set in a decision served on September 26, 2003.

In the meantime, KJRY filed a second petition for authority to provide temporary alternative rail service, this one on the La Harpe-Hollis Line. The Board denied that petition because the alleged service inadequacy was rate-based and rate disputes do not "constitute service disruptions or inadequacies within the meaning of 49 U.S.C. 11123." *Keokuk Junction Railway Company–Alternative Rail Service–Line of Toledo, Peoria, and Western Railway Corporation*, 7 S.T.B. 83 (2003) (*KJRY–Alt. Serv.–TP&W*).

TP&W and UTU-IL filed verified statements and comments (Comments) in opposition to the feeder line application on October 16, 2003. KJRY filed a verified reply (Reply) on November 7, 2003. In its Reply, KJRY withdrew its request to acquire the Mapleton Spur. KJRY now seeks to acquire only the La Harpe-Hollis Line.

DISCUSSION AND CONCLUSIONS

The Public Convenience and Necessity Determination

KJRY seeks to acquire this rail line under the public convenience and necessity standard of 49 U.S.C. 10907(b)(1)(A)(i). To find a line eligible for sale under that standard, the Board must find, under 49 U.S.C. 10907(c)(1), 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;
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> (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 be likely to result in improved railroad transportation for shippers that transport traffic over such line.

KJRY in its application contends that it has met the five criteria and therefore its application should be granted. TP&W, by contrast, argues that KJRY has failed to show that any of these five criteria are met here.

(A) Refusal to provide adequate service.

TP&W has provided no service over the Line since February 10, 2003, when it reacquired the La Harpe Line pursuant to our order. TP&W claims that it has been ready, willing, and able to provide rail service since then, but that it has received no requests for service. However, the record here clearly demonstrates that shippers want service, while TP&W has actively discouraged use of the Line west of Kolbe.

As KJRY points out, the September/October 2003 edition of the *Official Railway Guide* (*Railway Guide*)[3] does not show any TP&W interchanges on the Line west of Mapleton.[4] Similarly, the TP&W website does not reference the portion of TP&W's system west of Mapleton.[5] Moreover, the map that TP&W continues to display on its website shows the western terminus of its system to be Mapleton.

The record further indicates that TP&W's rate practices demonstrate that it is not interested in marketing or offering service for the Line. TP&W's lumber, fertilizer, and scrap metals tariffs do not include rates to points west of Mapleton.[6] Moreover, unlike UP and The Burlington Northern and Santa Fe Railway Company (BNSF), TP&W has repeatedly refused to supply rate factors to KJRY to permit it to construct rates for through movements over the Line. And for the local services for which TP&W nominally provides rates, it has raised its rates on the Line to prohibitively high levels. For example, when TP&W reacquired the Line, Farmers Elevator Company (Farmers) ordered 18 cars from TP&W to ship corn from Sciota, IL, to La Harpe for interchange to KJRY. Farmers canceled the order after being quoted TP&W's rate.[7]

The record shows that other shippers have had similar experiences. In a letter dated April 9, 2003, a representative of Colusa Elevator Company

[3] The *Railway Guide* is the railroad industry catalogue of points served by every rail carrier in the country.

[4] KJRY Reply, Exhibit 1.

[5] *Id.*, Exhibit 2.

[6] *Id.*, Exhibits 3, 4, and 7.

[7] TP&W Comments at 76 (V.S. Michael J. Klass).

(Colusa) stated that "the rates being quoted for any grain transit east are currently 3-4 times higher than was quoted before the SF&L debacle. In essence the rates have stopped any business we want to do."[8] United Paving Construction, Inc., the operator of an on-line transloading facility, in a letter filed August 11, 2003, complained that its off-line supplier, Rogers Group/Newton County Stone Company, "indicated * * * reluctance by TP&W to quote rates or provide service. When those rates finally did come through, they were clearly unreasonable as compared to previous years."[9] Roquette America, Inc. (Roquette), in a letter dated April 4, 2003, stated that "TP&W has not responded in a timely manner to requests for rates and when they have replied, rates have not been competitive. One example was a rate quote of $705 for a move that SF&L charged $275 which is $75 higher than the rate we had received from the TP&W prior to the SF&L's purchase of this portion of track."[10]

Finally, TP&W's previous history concerning this Line — including its failed effort to sell the La Harpe Line to SF&L so that SF&L could abandon and salvage it,[11] and TP&W's subsequent unsuccessful effort to substitute itself for SF&L in SF&L's notice of exemption to abandon the La Harpe Line — underscore TP&W's failure to recognize and meet the service demands for the Line.[12]

Claims that rates are too high are not generally considered in cases brought under 49 U.S.C. 11123, which is limited to addressing short-term emergencies on a temporary basis. Section 10907, however, focuses on longer-term concerns, and its legislative history supports the use of the section where there is evidence that an incumbent has engaged in conduct or charged rates in an effort to drive traffic away from a line. The Conference Report accompanying the Staggers Rail Act of 1980 states that section 10907 is to "[provide], through acquisition, a viable alternative to poor service or total abandonment." H.R. Rep. No. 1430, 96th Cong., 2d Sess. 125 (1980). The House report, in discussing a provision in the House version that would have required railroads to seek buyers for lines that were candidates for abandonment, explained that: "The [Board] may find that a rail carrier applying a [rate increase] * * * is de facto abandoning the surcharged line and require the abandoning carrier to attempt to find a purchaser for the line." H.R. Rep. No. 1035, 96th Cong., 2d Sess. 71 (1980). Although that provision was modified — to remove any onus on the owning carrier to find a new operator — it is clear that Congress envisioned an incumbent's rates and practices to be potentially relevant to a feeder line application.

[8] KJRY Application at 123.
[9] *Id.* at 128.
[10] *Id.* at 132.
[11] *See SF&L I* and *SF&L II*.
[12] *See SF&L Railway, Inc.–Abandonment Exemption–in Hancock, McDonough, Fulton and Peoria, Counties, IL*, STB Docket No. AB-448 (Sub-No. 2X) (STB served September 23, 2002); *SF&L II* (dismissing SF&L's petition for an abandonment exemption and denying TP&W's motion to substitute itself for SF&L).

Thus, it is appropriate that we consider the evidence tendered by KJRY, and by the shippers supporting its application, that TP&W raised rates to discourage shippers from tendering traffic.

In sum, we find that TP&W has not made the necessary efforts to provide adequate service to shippers on the Line.

(B) Inadequacy of transportation.

Five of the six shippers located on the Line — Farmers; Blandinsville Elevator; Hitchcock Scrap Yard, Inc.; West Central FS, Inc./Bushnell; and West Central FS, Inc./Sciota — regard TP&W's service as inadequate and support KJRY's application. The sixth on-line shipper, Archer Daniels Midland (ADM), diverted all of its traffic to truck and is not expected to use the Line in the future.

Five of the 10 overhead shippers — Roquette, Colusa, Central Iron & Metals, La Harpe Elevator, and Elkem Carbon-Keokuk (formerly Midwest Carbide) — also criticize TP&W's rates and service as inadequate. A sixth overhead shipper, Griffin Wheel (Griffin), a supplier of materials for UP, rerouted its traffic via Fort Madison, IA, out of concern that regular train operations over the Line would no longer be continued. The five overhead shippers that have not complained about TP&W's service — CF Industries, Inc., Caterpillar Foundry, Goldschmidt, SPI Polyoils, and Lonza Group — are located on the Mapleton Spur which TP&W will retain and thus are not part of the application.

Accordingly, on this record we find that transportation is inadequate for a majority of the shippers that transport traffic over the Line.

(C) Financial effect of the sale on TP&W.

TP&W claims that it would suffer a significant adverse financial effect if forced to sell the Line. It argues that KJRY has offered far less than the Line's market value and that TP&W's financing arrangements, if it is forced to sell the Line, would require it to supply replacement collateral or use cash to pay down debt, which would reduce its liquidity. Additionally, TP&W contends that the proposed trackage rights over the 3-mile portion of the Line necessary to access the Spur would foist on TP&W half of the cost of operating the Line, most of which would not be incurred absent the proposed sale to KJRY.

These arguments lack merit. Under 49 U.S.C. 10907(b)(1), we cannot and would not set the sale price at less than fair market value. Moreover, the charges to TP&W under the proposed trackage rights agreement for the most part would be either nominal (e.g., the $1 annual fee for the trackage rights) or relatively minor and related to specific services KJRY might be asked to perform if TP&W does not carry out its operations in a responsible way (e.g., the charge that would apply if KJRY's help is requested for TP&W trains that derail on the Line, the fees that would apply if KJRY must provide pilots or rules examiners for TP&W crews, and charges to replace rulebooks, switch keys, or timetables that are lost by TP&W employees). And the one charge that would be substantial — the requirement that KJRY and TP&W share equally the cost of constructing any new connecting track or facilities that might be needed on the 3-mile Hollis-Kolbe segment of the Line — would apply only if TP&W continues to park trains on the 3-mile segment of the Line or engage in other practices on that segment that would obstruct the Line's use.[13] Thus, it is largely within TP&W's ability to avoid any substantial charges for the trackage rights.

TP&W claims that all of the highly profitable Mapleton Spur traffic will be lost if KJRY's application is granted. TP&W cites to the verified statement of Warren C. Wilson, UP's Senior Manager for Rail Line Planning, to support this claim. But Wilson's statement only addressed KJRY's now-withdrawn request to acquire the Mapleton Spur. (Wilson stated that if TP&W were to acquire the Spur, UP would exercise the trackage rights it has over TP&W to serve Spur shippers directly, rather than replacing TP&W with KJRY as the Spur's switching railroad or sorting Spur traffic for both KJRY and TP&W.)[14] KJRY's amended application excludes the Spur, TP&W will continue to be the only switching carrier serving the Spur, and UP will have no need to sort Spur traffic. Thus, there is no reason to believe TP&W would lose any Spur revenue.

We conclude that TP&W should benefit financially from the proposed sale. It would receive fair market value for the Line, which will be substantially more than the $2.18 million it received from SF&L in 2000 for the sale of the operating easement, rail, ties, and improvements of the slightly shorter LaHarpe Line. In addition, TP&W will retain ownership of the highly profitable Mapleton Spur, it will not have to compete with KJRY for Spur traffic, and it will have virtually cost-free trackage rights over the 3-mile segment of the Line necessary to access the Spur without having to contribute to the segment's upkeep and maintenance. Finally, TP&W's traffic volume may expand with KJRY-routed shipments moving over the Line.

(D) Effect of the sale on TP&W's operational performance.

Even though it has spent years trying to remove the La Harpe Line from the national railroad system, TP&W now claims that the forced sale of the slightly longer La Harpe-Hollis Line would adversely affect its overall operational performance, reducing the level of service it would be able to provide and increasing the rates it would have to charge. But TP&W conducts no operations, and has not provided service, over the 71.5-mile La Harpe Line for some time. Moreover, TP&W will have trackage rights over the 3-mile segment of the Line necessary to access the Mapleton Spur. Thus, we do not see how the Line's sale could have a significant adverse operational effect on TP&W.

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[13] *See* KJRY Supplement, Appendix 3, Exhibit C.
[14] TP&W Comments at 48 (V.S. of Wilson).

(E) Improved rail transportation for shippers.

The shippers that support KJRY's application all used the Line to tender or receive shipments before it was sold to SF&L, and many have tried unsuccessfully to obtain service since then. These shippers support the forced sale of the Line to KJRY. KJRY has expressed a strong desire to restore operations over the Line, and this application bears witness to its determination to do so.

TP&W accuses KJRY of being an unsafe operator, citing an incident in which the Federal Railroad Administration (FRA) and the Illinois Commerce Commission (ILCC) became involved. According to TP&W, as a result of an unauthorized operation by KJRY, FRA and ILCC threatened to bar KJRY and Pioneer from operating railroads and to force them to divest their railroad assets for safety reasons. KJRY provides a different account of the incident and maintains that it is an experienced and safe operator that has had no unduly negative experience with FRA or ILCC. KJRY also claims that more recent FRA data establish that it has a very positive safety record.

Although we take safety considerations into account in carrying out the Interstate Commerce Act, FRA is the agency primarily charged with safety regulation. FRA, which is familiar with the alleged incident, has not suggested to us that KJRY is unfit to operate or that it should not be authorized to take over the Line. Accordingly, TP&W's unsubstantiated safety allegations do not provide cause to deny this application.

UTU-IL also argues that the sale of the La Harpe-Hollis Line would not result in improved transportation for shippers, claiming that TP&W's continued operation of the Line "was found necessary to preserve the competitive balance between carriers, shippers, and communities" in *Burlington Northern et al.–Merger–Santa Fe Pacific et al.*, 10 I.C.C.2d 661 (1995) (*BN/SF Merger*) and *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996) (*UP/SP Merger*). According to UTU-IL, TP&W has the connections in the Peoria area and further east that are important to maintaining the required competitive balance, and for which KJRY cannot provide an adequate substitute.

UTU-IL misconstrues the merger concerns of the Interstate Commerce Commission (ICC) and the Board as applying to *eastward* movements through Peoria. In fact, the ICC determined in *BN/SF Merger* that the settlement agreement negotiated by BNSF and the former Southern Pacific Transportation Company (SP) would, among other things, permit SP to interchange traffic with TP&W on the Line at Bushnell (milepost 170.5) and thus preserve intramodal competition for the *westward* movements of Keokuk-area shippers. Prior to the merger, KJRY-routed shipments moved west in single-line service via the former Burlington Northern Railroad Company (BN) or in interline service via TP&W at La Harpe and the former Atchison, Topeka and Santa Fe Railway Company at Bushnell. After the merger, KJRY-routed shipments were expected to move west in single-line service via BNSF or in interline service via TP&W at La Harpe and SP (now UP) at Bushnell. *See BN/SF Merger*, 10 I.C.C.2d at 778. (1995) (In *UP/SP*

Merger, the Board determined that the combined UP and SP would accept and fulfill the terms of the BNSF-SP settlement agreement with respect to Bushnell and, as a result, there was no need for additional conditions in this regard. *See UP/SP Merger* at 279-280 and 467 (1996).)

KJRY's operation of the La Harpe-Hollis Line will not undercut the merger-related conditions imposed by the ICC and the Board to preserve routings for the western movements of KJRY-routed shipments. No shippers have appeared on this record to suggest otherwise. Moreover, KJRY's purchase of TP&W's La Harpe-Lomax line, which included trackage rights over BNSF, *see Keokuk Junction Railway Co.–Acquisition and Operation Exemption–West End of the Toledo, Peoria, and Western Railway Corporation*, STB Finance Docket No. 34143 (STB served January 11, 2002), allows KJRY to interchange westward routed traffic with UP at Fort Madison, a more direct connection.

In any event, TP&W has not been providing service over most of the Line for some years and this is unlikely to change in the foreseeable future. The trackage rights agreement would ensure that TP&W can continue to serve the Mapleton Spur and provide whatever overhead operations it provides today. Thus, it is hard to see how this transaction could adversely affect competition.

Finally, TP&W argues that KJRY would be unable to serve the Line profitably, and hence would be unable to provide improved service. The financial feasibility of KJRY's proposal is discussed below, in connection with our analysis of the applicant's financial responsibility. As discussed there, we find KJRY's proposed purchase feasible.

Accordingly, we find that granting KJRY's application would lead to improved service for shippers on the Line.

Summary. KJRY's evidentiary showing, taken as a whole, shows that KJRY has satisfied each of the five statutory criteria and clearly supports a finding that the public convenience and necessity permit the sale of the La Harpe-Hollis Line to KJRY. The fact that no service has been provided on most of the Line since the La Harpe Line was reacquired by TP&W, notwithstanding the demand for service on the part of the Line's shippers, provides strong support for this finding. Indeed, TP&W's entire course of conduct with respect to the Line and the La Harpe Line has been contrary to the behavior that can be expected of a carrier ready and willing to provide rail service. KJRY, on the other hand, maintains that it can provide rail service at competitive rates and is eager to do so. The evidence supports our finding that the sale of the Line would not have a significant adverse effect on TP&W's operations or its financial condition and that the proposed sale would be likely to result in improved transportation for the shippers that have used, and wish to resume using, the Line. Accordingly, under section 10907, we must direct the sale of the Line to KJRY.

Valuation

Under 49 U.S.C. 10907(b)(1), we set the purchase price of a line at its constitutional minimum value, which is defined in 49 U.S.C. 10907(b)(2) as "not less than the net liquidation value of such line, or the going concern value of such line, whichever is greater." KJRY contends that in this case the higher value is the NLV, which it now claims (in its Reply) is $3,321,745.[15] TP&W contends that the Line has a constitutional minimum value ranging from $7,653,906 (based on an NLV of $6,316,951 for the 71.5-mile segment Western Segment and $1,336,955 for the 4.5-mile segment Eastern Segment) to $17,059,779 (based on an NLV of $9,218,759 for the Western Segment and a GCV of $7,841,000 for the Eastern Segment). As discussed below, we conclude that the Line has a constitutional minimum value of $3,940,756. A detailed summary of our valuation restatement is set out in Appendix B of this decision.

Valuation Standard. TP&W and KJRY agree that the traffic originating or terminating on the Western Segment is inadequate to give it a GCV that is higher than NLV, and it is not apparent how the Eastern Segment, without the Mapleton Spur traffic, could have a GCV higher than NLV. The Eastern Segment neither originates nor terminates traffic; its only value to TP&W is in the access it provides to the traffic-heavy Mapleton Spur. With TP&W retaining ownership of, exclusive access to, and all the revenues from, the Mapleton Spur, and receiving virtually cost-free trackage rights to continue serving the Spur, the Eastern Segment cannot have a separate, higher GCV. Thus, we need only calculate the NLV of the Line, which consists of the salvage value of the physical assets and the value of the land.[16]

1. *Salvage Value.* For the Western Segment,[17] KJRY estimated the quantity and weight of track and siding and the quantity of "other track material" (OTM) using a list of track materials TP&W prepared in 1998 and subsequently updated in connection with the sale of the La Harpe Line to SF&L. According to KJRY, the Western Segment contains 71.3 miles of main-line track of various weights — from 90-lb. jointed rail (Jtd.) to 131-lb. continuous welded rail (CWR) — and 8.7 miles of 80-lb. siding and auxiliary

[15] This figure reflects a computation error on KJRY's part, as it includes both KJRY's original land value for the Line ($106,336) and its revised land value ($37,140). The correct figure should be $3,215,409.

[16] KJRY's decision to exclude the Spur from its application moots an issue raised in its initial proposal, i.e., whether part of the property sought to be acquired could be valued using the NLV methodology and the other part could be valued using the GCV methodology.

[17] Because KJRY originally presented its valuation estimates in two parts, one for the western 71.5 miles, the Western Segment, and the other for the eastern 4.5 miles, the Eastern Segment, our analysis is set out in two parts, even though both are valued using the NLV standard.

track. KJRY obtained several price quotes, ranging from $250 to $400 per ton for "relay" rail,[18] from secondhand rail suppliers; it then deducted the estimated cost of removing, picking up, sorting, and transporting the rail to obtain a net salvage value (NSV) of between $100 and $160 per ton. KJRY selected $140 per ton as the average NSV for all grades of track (13,081 tons) and $40 per ton as the NSV for scrap (2,077 tons), for an estimated rail NSV of $1,914,420. The NSV for OTM was estimated at 20% of the NSV for the rail ($1,914,420 X 0.20 = $382,884), yielding an estimated NSV for track and OTM for the Western Segment of $2,297,304.

Also with respect to the Western Segment, KJRY estimated that there are 3,300 ties per mile on the main-line track and 2,700 ties per mile on the sidings; that 40% of the main-line ties are reusable as railroad ties, 10% are reusable for landscaping, and the remaining 50% are not reusable; and that 10% of the siding ties are reusable as railroad ties, 10% are reusable for landscaping, and the remaining 80% are not reusable. Using salvage values of $7 per tie for rail use and $3 per tie for landscape use and a cost of $3 per tie to remove and dispose of non-usable ties, KJRY estimated an NSV of $343,308 for ties. KJRY estimated an NSV of $348,221 for ballast, based on an estimated 348,221 cubic yards of ballast with an average salvage value of $1 per ton, and an NSV of $0 for bridges and buildings.

Combining the NSV of the rail, OTM, ties, and ballast, KJRY obtained a total NSV for the Western Segment of $2,988,833. KJRY then prorated the total NSV of the Western Segment to obtain a unit value per mile, which it multiplied by 4.5 miles to yield a total NSV for the Eastern Segment of $195,772. The result was a combined NSV (without real estate) of $3,178,261 for the entire 76-mile La Harpe-Hollis Line.

TP&W's NSV analysis was prepared by Mark D. Garvin, Chief Engineer for the railroads controlled by TP&W's parent company (RailAmerica). Using TP&W's most recent track charts and a physical inspection of the Line made by hi-rail on September 8 and 9, 2003, Garvin valued the Western Segment's rail, OTM, turnouts, and crossing signals at $5,155,509. According to Garvin, the Western Segment contains 77.46 miles of various weight rail — from 70-lb. Jtd. to 131-lb. CWR. He divided the rail into three qualities: (1) relay; (2) reroll (rail that is one grade better than scrap and is used for making fence posts or "rebar"); and (3) scrap. Based on "recent sales in the local western Illinois area,"[19] he valued the relay at $280 to $450 per ton, the reroll at $158 per ton, and the scrap at $102 per ton, for a total of $4,028,574. Additionally, he valued the OTM at $983,094 (relay at $185 per ton and scrap at $110 per ton), the crossing signals at $72,000 (36 signals at $2,000 each), and the turnouts at $71,841 (20 relay turnouts at $3,000-$3,500 each and 10 scrap turnouts at $110 per ton).

Using the same procedure, Garvin valued the Eastern Segment's rail, OTM, turnouts, and crossing signals at $446,772. According to Garvin, the Eastern Segment contains 4 miles of 115-lb. Jtd. relay rail valued at $307,648

[18] Relay rail is rail that has been used and may be used again –"relaid"– in its present condition.

[19] TP&W Comments at 89 (V.S. of Garvin).

($400 per ton) and 0.5-mile of 115-lb. Jtd. reroll rail valued at $13,563 ($158 per ton), for a total of $321,211. Additionally, Garvin valued the OTM at $70,097 ($185 per ton), the crossing signals at $6,000 (3 signals at $2,000 each), and the turnouts at $49,464 (14 relay turnouts at $3,000-$3,500 each and 5 scrap turnouts at $110 per ton).

TP&W accepted KJRY's tie and ballast valuation of $691,529 for the Western Segment and prorated it on a per-mile basis between the Western and Eastern Segments. This resulted in an understatement of that valuation because the proration was used to divide the $691,529 between the Western and Eastern Segments and not to develop a separate valuation for the Eastern Segment. When properly prorated, the tie and ballast valuation of the La Harpe-Hollis Line is $735,355 ($691,529 for the Western Segment and $43,826 for the Eastern Segment), yielding a total TP&W valuation before salvage costs are deducted of $6,293,285 ($5,808,574 for the Western Segment and $484,711 for the Eastern Segment).

Based on price quotes from recent bids in the area, Garvin estimated that it would cost $60 per ton to dismantle CWR, $45 per ton to dismantle Jtd. rail, $49,000 to remove the 49 relay turnouts, $39,000 to remove the 39 signals, $15 per ton for shipping to Chicago, IL, and $84,000 to restore 84 crossings. Using these costs, he calculated that it would cost $1,502,553 to salvage the Line ($1,397,654 for the Western Segment and $104,899 for the Eastern Segment), and he estimated that the Line has a total NSV (without real estate) of $4,790,733 ($4,410,920 for the Western Segment and $379,813 for the Eastern Segment).

On March 17, 2004, TP&W filed a petition to supplement the record, which included a verified statement and revised valuation charts prepared by Garvin. TP&W claimed that the price of steel had increased by approximately 110% since October 2003, when it filed its Comments. According to Garvin, the scrap steel that he had priced at $110 per ton was now selling for $230 per ton. His revised valuation charts updated the unit prices for relay, reroll, and scrap rail and OTM, yielding a revised total NSV (without real estate) of $5,866,930 ($5,452,270 for the Western Segment and $414,660 for the Eastern Segment).

In a reply filed on March 29, 2004, KJRY argues that TP&W's supplemental petition should be rejected, as the record has closed. Alternatively, KJRY argues that Garvin's revised valuation charts lack verifiable support from an independent source and in any event do not represent anything more than a temporary market fluctuation. KJRY also questions the reliability of the unit prices in the revised valuation charts. For example, KJRY observes that, while TP&W claims to have increased its $110 per ton price used for scrap OTM to $230 per ton, TP&W actually increased its $102 per ton price used for scrap rail to $230 per ton and increased its $110 per ton price used for scrap OTM to $240 per ton. KJRY contends that there are other unexplained inconsistencies in the revised valuation charts as well. It points out that the price used for scrap rail was increased by 118%, whereas the price used for scrap OTM was increased by 125%; the price used for reroll was increased by 63%; the prices used for relay were increased from

4% to 20% for various weights of Jtd. and CWR but were unchanged for 115-lb. Jtd. and CWR; the price used for relay OTM was increased by 35%; and the price used for relay turnouts was unchanged.

On June 8, 2004, KJRY filed a petition to supplement the record, if TP&W's supplemental petition is not rejected as untimely, to introduce evidence that the price of steel scrap had dropped dramatically since TP&W's supplemental petition was filed. KJRY submitted copies of two lists of scrap iron and steel prices published by *American Metal Market* (*AMM)*, a daily publication for the metals and recycling industries. The lists show that between March 8 and June 7, 2004, the delivered-to-Chicago price of No. 1 heavy melt scrap iron and steel declined by $75, from $255 to $180 per gross ton, and that the delivered-to-Chicago price of reroll declined by $30, from $260 to $230 per gross ton.

TP&W filed a reply on June 28, 2004, objecting to KJRY's supplemental petition. TP&W also submitted a list from the June 24, 2004 edition of *AMM*, which it claims shows that the price of scrap iron and steel has begun to rise again and that the price of reroll has continued to rise since TP&W's supplemental petition was filed.

Our valuation relies primarily on the data supplied by TP&W. TP&W's valuations are based on current track charts, recent price quotes, and a physical inspection of the Line, whereas KJRY's valuations are based on older data, averages, and estimates. Moreover, in our valuation we reflect increases in the price of scrap iron and steel. *See CSX Transportation, Inc. – Abandonment Exemption–in LaPorte, Porter and Starke Counties, IN*, STB Docket No. AB-55 (Sub-No. 643X) (STB served April 30, 2004) (*CSX Aband.* at 7-8). However, in view of the recent volatility in the scrap iron and steel and reroll markets and the time that has elapsed since this case was filed, it would not be appropriate to select a single date for the purpose of pegging a price for these commodities. Rather, we average the price of scrap over the time period involved. *See, e.g., Chicago and North Western Transportation Company–Abandonment Between Marshalltown (Powerville) and Cedar Falls Junction and Between Hicks and Dike–in Marshall, Tama, Grundy and Blackhawk Counties, IA*, Docket No. AB-1 (Sub-No. 211) (ICC served December 14, 1988) (average used to calculate opportunity costs where scrap prices had reached the high end of the trading range); *Norfolk and Western Railway Company– Abandonment Between New Castle and Rushville, in Henry and Rush Counties, IN*, Docket No. AB-10 (Sub-No. 11) (ICC served February 11, 1983) (average used to establish a purchase price where scrap prices had become depressed).

Our valuation uses a unit price for scrap steel of $157.16 per ton, the composite monthly average for No. 1 heavy melt steel scrap from April 2003 (the month the feeder line application was filed) through July 2004 (the last month of available data). As shown in Appendix C, this composite monthly average is based on the Mineral Industry Surveys for Iron and Steel Scrap of the United States Geological Survey, which in turn is based on aggregated monthly data from *AMM* and *Iron Age,* another trade publication.

Although similar data for reroll shipped to Chicago seems to exist in *AMM*, it is not available to us. As a result, our valuation relies on the unit values submitted by TP&W in its original valuation charts. However, TP&W may supplement the record, within 30 days from the service date of this decision, with a composite monthly average unit price for reroll using *AMM* and, if available, *Iron Age* data, for the April 2003-May 2004 time period. If TP&W elects to do so, KJRY will then have 10 days to file a reply. The time period for KJRY to accept or reject the terms of sale will be adjusted accordingly.

Our valuation relies on the unit values for relay rail and OTM that TP&W submitted in its original valuation charts. These unit values, and the unit values for reroll and relay turnouts, must be adjusted, however, because (unlike the *AMM* and *Iron Age* figures) they are based on retail, rather than wholesale, prices, and TP&W has not shown that the relay would be used on a specific project at a particular time and location to save it the cost of purchasing similar relay at retail prices. Thus, we reduce the retail price by 15% to eliminate the retail profit component, and by 5% to eliminate inventory costs. *See, e.g., CSX Aband.* at 8-9; *SF&L Railway, Inc.–Abandonment Exemption–in Ellis and Hill Counties, TX*; *Request to Set Terms and Conditions*, Docket No. AB-448 (Sub-No. 1X) (STB served July 30, 1996) at 18 (retail prices for track materials reduced by 20% to reflect wholesale prices); R. S. Means, *Heavy Construction Cost Data* at 8 (01310-620-0400) (17th ed. 2002).

We use KJRY's tie and ballast valuation, which TP&W has not disputed (even though TP&W used a slightly lower number to develop its estimates), but reduce it to $735,051 to correct for proration errors.

Because the Line was in existence prior to the construction of the roads and highways that cross it, we cannot accept TP&W's $78,000 crossing signal valuation. Absent evidence to the contrary, we assume that the State of Illinois and/or local highway authorities paid for the crossing signals and their installation, not TP&W or its predecessors. *See* 49 *CFR* 1201.2-17(b). Similarly, our valuation excludes the $39,000 TP&W included for crossing signal removal. Because we assume that the State of Illinois and/or local highway authorities paid for the crossing signals and their installation, we also assume, absent evidence to the contrary, that the State and/or local highway authorities, and not TP&W, would be responsible for their removal.

TP&W's salvage cost estimate is disputed by KJRY only to the extent it does not include bridge removal and environmentally sound scrap tie disposal costs. There is no evidence, however, that any bridges would require removal and what the removal costs would be. Nor is there any evidence on the cost of chipping and burning the scrap ties in an environmentally suitable manner. Thus, our valuation does not include bridge removal or additional scrap tie disposal costs.

In sum, we find that the La Harpe-Hollis Line has a total NSV of $3,899,121.

2. *Land Value.* Lacking sufficient information on the quantity of land in the right-of-way or the quality of TP&W's interest in it, KJRY assumed that TP&W has a fee interest in 50% of the land and that the right-of-way of the Western Segment has a value of $100,000. KJRY then valued the right-of-way of the Eastern Segment, on a pro rata basis, at $6,336.

TP&W's land valuation was performed by Todd N. Cecil, RailAmerica's Vice President of Real Estate, who inspected the entire 76-mile right-of-way on the ground and by air between August 12 and 14, 2003. He valued the right-of-way both as an assembled rail transportation corridor and, alternatively, as separate, unrelated parcels of non-rail real estate (piecemeal).

For his assembled corridor valuation, Cecil divided the right-of-way into 294 land parcels, to reflect adjacent zoning and land use patterns. Using an "across the fence" analysis,[20] he identified 54 comparable properties in the vicinity of the Line that were sold in the recent past. He increased their sale price by 5% per year to account for the time that elapsed since their sale, and made further upward adjustments to account for differences in location and topography between the comparable parcels and the parcels being valued. Cecil disregarded reversionary interests that would vest upon liquidation of the property, normally accounted for in an NLV analysis, because his methodology assumed that the right-of-way would be sold for continued rail service. Similarly, he did not reduce the value of the parcels to account for easements for road and street rights-of-way. Nor did he make any deductions for size, unusual shape (long and narrow), or access problems that could detract from the use and value of the properties.

Cecil divided the (upwardly adjusted) property values by their acreage to obtain their unit value per acre, which he multiplied on a pro rata basis to value the corresponding corridor parcels.[21] This analysis yielded an assembled rail corridor land value of $5,579,145 ($4,006,532 for the Western Segment and $1,572,613 for the Eastern Segment).

Cecil then developed "enhancement factors" to reflect what he claims would be the considerable costs (e.g., ordinary legal, condemnation-related legal, litigation avoidance, community resistance, and time value of money) that would be avoided by the purchase of a ready-made assembled corridor These factors are based on such considerations as the length of the corridor, the sizes of the typical land parcels through which the corridor runs (reflecting the intensity of adjacent development), and the nature of adjacent land use. Applying an enhancement factor of 40% for the more urban, industrial and commercial real estate between Hollis and Mapleton, and 20% for the more rural, agricultural real estate between Mapleton and La Harpe, Cecil obtained an assembled corridor value of $7,009,497 ($4,807,839 for the Western Segment and $2,201,658 for the Eastern Segment).

TP&W acknowledges that a piecemeal, unassembled valuation has traditionally been used for feeder line real estate valuation but asks us to depart from that precedent here. TP&W argues that the piecemeal valuation

[20] An across the fence or comparables analysis identifies properties that are adjacent to or near the parcels being valued.

[21] TP&W Comments at 112-115 (V.S. of Cecil).

approach has been used on the theory that the subject line would otherwise be abandoned. Thus, TP&W contends, feeder line cases were viewed as being analogous to abandonment cases, where the NLV methodology and a piecemeal land valuation are used to evaluate offers of financial assistance (OFAs) under 49 U.S.C. 10904 (formerly 49 U.S.C. 10905).[22] TP&W points out that the first feeder line case, *Indiana Hi-Rail Corp.–Feeder Line Acq.*, 366 I.C.C. 42 (1981), and most of the other early cases involved lines designated for abandonment. TP&W argues that the La Harpe-Hollis Line has not been designated for abandonment and has a GCV, as demonstrated by the prior sale to SF&L, by KJRY's prior purchase efforts, and by this application. Accordingly, TP&W argues that an assembled-corridor valuation would be more appropriate where, as here, there is a demand for continued rail use. Also supporting the assembled-corridor valuation, TP&W argues, are the other revenue-generating ancillary uses of the right-of-way for electric power lines, telecommunications facilities, and water, storm and sewer pipe lines.

Corridor enhancement factors are contrary to the concept of the NLV-based valuation, which is based on the value of the property to the owner, not to the prospective purchaser. *See, e.g., C&NW v. U.S.*, 678 F.2d at 668-670, citing *United States v. Miller*, 317 U.S. 369, 375 (1943) (*Miller*). The only exception has been where documented non-rail uses are established by signed sales contracts or firm offers for all or a portion of a rail corridor. *See, e.g., Lake Geneva*, 3 I.C.C. at 959; *Railroad Ventures*, 4 S.T.B. at 477; modified Railroad Ventures, Inc.–Acquisition and Operation Exemption–Youngstown & Southern Railroad Company, 5 S.T.B. 283, 298-300 (2000).

Here the use of an enhancement factor for continued rail use in an NLV valuation would not produce a realistic valuation under either the liquidation (NLV) or continued rail service (GCV) scenarios. If a right-of-way were purchased as piecemeal real estate, reversionary interests, easements, odd lot sizes and similar factors would affect the prices that the properties could command. If it were purchased as a rail line, the price would be based on its potential to earn revenue by providing rail service, not on the value of the realty for alternative purposes. Through the use of enhancement factors for continued rail use, TP&W seeks to combine into an NLV analysis both the NLV and GCV methodologies to give itself the highest valuation offered by either approach, a result that would blur the statutory distinction between the two methodologies and could not be achieved in the real world. The use of enhancement factors for continued rail use would also violate court precedent that precludes a condemnee from inflating the value of his properties by asking for more than what the property would be worth to him if the property were not taken by condemnation. *See Miller*, 317 U.S. at 375; *CNW v. U.S.*, 678 F.2d at 668-670.

[22] *See Chicago and North Western Transp. Co.–Abandonment,* 363 I.C.C. 956 (1981) (*Lake Geneva), aff'd sub nom. Chicago and North Western Transp. Co. v. United States,* 678 F.2d 665 (7th Cir. 1982) (*C&NW v. U.S.*); *Railroad Ventures, Inc.–Acquisition and Operation Exemption–Youngstown & Southern Railroad Company (Request to Set Terms and Conditions),* 4 S.T.B. 467 (2000) (*Railroad Ventures*).

For his unassembled, or piecemeal, valuation, Cecil analyzed the real estate deeds of the land parcels making up the right-of-way, reduced the acreage of parcels encumbered by road and street rights-of-way, and excluded parcels with reversionary interests. He developed values for the remaining parcels by: (1) locating comparables among the 54 properties referred to in the corridor valuation; (2) dividing the time-adjusted sale price of the appropriate comparables by their acreage to obtain unit values; (3) adjusting the resulting unit values, where necessary, to account for differences in such factors as location, shape, size, access, physical orientation, and topography; and (4) multiplying the acreage of the fee-owned parcels by the final unit values of the comparables to obtain values for the fee-owned parcels. He discounted the resulting land values by 8% to account for commissions, administrative costs, advertising, and promotion. He further discounted the values by 5%, on an end-of-year basis, to account for a 3-year sell-off period, reflecting his belief that most of the property is very marketable and likely to sell within a short period of time.[23] This yielded a total piecemeal land valuation of $2,863,173 ($1,906,031 for the Western Segment and $957,142 for the Eastern Segment).

KJRY hired Brian Mooty, an Illinois real estate attorney in practice since 1986, to analyze TP&W's ownership interest in the right-of-way. Mooty examined each of the more than 200 deeds appended to Cecil's verified statement. Dividing the deeds into 18 rows based on their form and language, Mooty concluded that 6 of the 18 rows, equating to 31.657 acres, contained deeds that granted a fee interest and that the other 12 rows contained deeds that granted easements.[24] However, KJRY takes issue with 3.417 acres that Mooty found to be held in fee. KJRY relies on the verified statement of Daniel A. LaKemper, general counsel for KJRY and several other Class III railroads (including railroads that are affiliated with Pioneer and other non-affiliated railroads).[25] KJRY claims that TP&W owns only 28.24 acres of marketable property.

KJRY hired L. Arlen Higgs, an independent, Illinois-certified local real estate appraiser to review Cecil's rail corridor valuation study. Higgs questions the 54 comparable land sales used by Cecil, claiming that they involve properties adjoining active rail lines, which are valued higher for their industrial and commercial potential. He also objected to Cecil's adjustments which discounted comparable land values by 10% to 20%. Higgs developed his own analysis, using the sales over a 15-year period of six abandoned Illinois rights-of-way to neighboring or nearby landowners. To account for unusual shapes, left-over ballast, and the limited purchaser pool, he developed an average discount factor of 70%, based on his finding that these six abandoned rights-of-way sold at a 51% to 84% discount.[26] He also adjusted Cecil's sales period projections using a 4-year sell-off period, which he claims

[23] TP&W Comments at 117-120 (V.S. of Cecil).

[24] KJRY Reply (V.S. of Mooty).

[25] KJRY Reply, Exhibit 18 (V.S. of La Kemper) at 7 (analyzing the deed on page 189 of the Addendum to Cecil's verified statement).

[26] KJRY Reply at 52–53.

is more realistic.[27] Higgs applied the 70% discount factor and 4-year sales period projection to Cecil's $5,227 per acre valuation to obtain an adjusted per acre valuation of $1,568 which it multiplied by the 28.24 acres of marketable property determined by LaKemper, to yield a total land value of $37,140.

The huge discrepancy between the real estate values claimed by TP&W and KJRY chiefly reflects the difference in the acreages claimed to be held in fee. TP&W claims to have a fee interest in approximately 672 acres, whereas KJRY puts that acreage at only 28.24. Cecil is neither an attorney nor an Illinois resident and offers no analysis in support of his acreage figure. He merely lists parcels and identifies them as fee interests. Nor does TP&W warrant the marketability of the title of any of the parcels. By comparison, the title opinion prepared by Mooty, an independent, Illinois-licensed real estate attorney with extensive experience in commercial and residential Illinois real estate, is based on an analysis of the deeds. He accepted as fee title quitclaim deeds that purport to transfer fee title, as well as warranty deeds; cited language in those deeds that indicated easements for rail use rather than fee title; and cited state court precedent to support his conclusions. LaKemper is not independent and does not purport to have similar knowledge or experience in Illinois real estate. His rationale for eliminating the 3.417 acres is not supported by a complete title search and not persuasive. Therefore, we rely on Mooty's total of 31.657 acres owned in fee.

The other bases for the discrepancy in real estate valuations are the differences in the parties' appraisal methodologies. As KJRY notes, TP&W's comparables analysis was based on sales of property adjoining active rail lines, not on sales of abandoned rail lines in Illinois. Properties adjoining active rail lines ordinarily command higher prices than abandoned rail properties in a rural area, most of which would be purchased for agricultural purposes.

In contrast, the comparables analysis used by Higgs, an Illinois-certified real estate appraiser, relied on six sales of abandoned rail rights-of-way in Illinois over the past 15 years. The prices commanded by these sales are much lower, yielding a significantly lower discount factor, but the comparisons are more appropriate. We also find that KJRY's argument in favor of a somewhat longer projected sell-off period than that proposed by TP&W is persuasive. Accordingly, we find that the 31.657 acres Mooty determined to be owned by TP&W in fee have a total value of $41,635.

3. *Net Liquidation Value.* In sum, we find that the La Harpe-Hollis Line has a total NSV of $3,899,121 ($5,362,6747 in gross salvage value, less $1,463,553 in salvage costs) and an NLV of $3,940,756 ($3,899,121 in NSV and $41,635 in land value).

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[27] KJRY Reply at 53-54 and n.27.

Financial Responsibility

Under 49 U.S.C. 10907(b)(1)(B), a feeder line applicant must demonstrate that it is "financially responsible." To do so, the applicant must demonstrate that it can (1) pay the value set for the line and (2) cover the expenses of serving the line for at least the first 3 years. 49 U.S.C. 10907(a).

The evidence demonstrates that KJRY would be able to finance its acquisition of the Line. KJRY was found financially responsible in the Board decision served July 9, 2003, based on its submission of: (1) a copy of a letter from the National City Bank of Michigan/Illinois (National City) committing to a $7 million, 5-year loan to finance the purchase of "TP&W's west end;" (2) a copy of a resolution by Pioneer's Board of Directors authorizing Guy L. Brenckman, President of both KJRY and Pioneer and Chief Executive Officer of the latter, and J. Michael Carr, Treasurer and Chief Financial Officer of both KJRY and Pioneer, to close on the bank loan and issue corporate guarantees to ensure that KJRY will have the use of the loan proceeds and other funds to the extent necessary to purchase the La Harpe-Hollis Line and Mapleton Spur and operate them for the 3-year statutory period; and (3) two sets of pro forma financial statements.

The National City letter specified that the loan had to be accepted and closed on prior to August 31, 2003, but that the date could be extended at the bank's option. KJRY subsequently submitted copies of monthly letters from National City, the most recent of which extends the loan closing date through January 31, 2005, and retains the right to extend further the loan closing date. The National City letters and the resolution of Pioneer's Board of Directors establish that KJRY has the resources needed to finance the purchase of the Line at the price set in this decision.

KJRY has presented an operating plan to show that it could cover the expenses of serving the Line for the first 3 years. KJRY's evidence consists of 3 years of pro forma cash operating statements, along with detailed analyses of carload and revenue projections and a detailed set of footnotes explaining the nature of the proposed operation. KJRY's pro formas assumed an annual debt service based on a NLV of $3,284,605 amortized at 6% over 10 years. They show that, for the 3-year period after the acquisition of the Line, total projected operating revenues would exceed total projected operating expenses by 250%, 267%, and 300%, respectively, and that the annual debt service would not exceed more than 38%, 34%, and 28%, respectively, of projected earnings before income taxes and depreciation.

TP&W contends that KJRY's pro forma statements are fundamentally flawed. TP&W argues that the projected maintenance-of-way (MOW) costs neither reflect the generally accepted minimum per mile nor account for past maintenance deficiencies; that the maintenance-of-equipment revenues and expenses are overstated and understated, respectively; that the transportation expenses omit access fees for operating over UP track between Hollis and Peoria and understate fuel, labor (including overtime and layover expenses), and car hire costs; and that the administrative expenses omit management, start-up training, and loss and damage costs, and understate real estate taxes, legal fees, and marketing costs. TP&W also contends that the pro forma statements fail to account for such start-up costs as restoring track, cutting brush around grade crossings, weed control, positioning equipment, negotiating new contracts with connecting carriers, and finding, screening and drug testing new employees. In addition, TP&W contends that the pro forma statements understate the debt service for the purchase of the Line by using an NLV of $3,284,605.

In TP&W's view, KJRY's 3-day a week service plan is too limited to satisfy the needs of large shippers like Roquette, would make it more difficult to meet carload projections, and would result in increased car hire charges and other expenses. Additionally, TP&W argues that KJRY's plan to use the Line to compete with UP and BNSF for overhead traffic is impractical. With a 10 mph speed limit, time-consuming interchanges at Keokuk and Hollis, and connecting lines that operate at 40-70 mph, TP&W claims that the Line would not be able to function as an integral part of a transcontinental movement or attract time sensitive overhead traffic when more efficient lower-cost options are available.

TP&W submitted two restatements of KJRY's pro formas: (1) one uses KJRY's freight revenue projections but reduces operating revenues by 6% and increases operating expenses by 73%; and (2) the other adjusts KJRY's freight revenue projections downward, reduces operating revenues by 9% and increases operating expenses by 82%. Under the restated pro formas, the Line would not operate profitably until the second year under KJRY's revenue projections and not until the third year under TP&W's adjusted revenue projections. TP&W contends that the Line would not operate profitably under either set of revenue projections if the Line's debt service is revised upward to reflect its value under any of TP&W's valuations of the Line.

In response, KJRY claims that the MOW costs that it used in its analysis are in fact higher than those used by TP&W both in its analysis of the Mapleton Spur's profitability and its opposition to KJRY's petition in *KJRY–Alt. Serv.–TP&W*, *supra.* KJRY dismisses the claim that additional MOW would be needed to make up for former deficiencies, referring to TP&W's statement that the Line is in FRA Class 1 condition and ready to operate. KJRY states that it has not decided whether to seek trackage rights over UP between Hollis and Peoria and, referring to TP&W's Petition to Reject Application at 14, claims that TP&W drastically overstates the access fees that would be incurred if such rights were granted. Additionally, KJRY states that it excluded the administrative and supervisory costs that Pioneer assumes for all of its rail carrier subsidiaries and notes that supervisory costs were also excluded from TP&W's analysis of the Mapleton Spur.

KJRY states that its projected labor costs are based on the compensation it pays to its current employees and that overtime would be avoided by filling out the schedules of its existing employees and adding two new employees. Applying TP&W's fuel cost projections, which assume "a train length that m, could reach around 40 cars (loaded and empty),"[28] KJRY states, would yield 12,480 carload movements a year, a traffic volume significantly larger than its first year projection and inconsistent with TP&W's lower projection. Additionally, KJRY notes that TP&W's 3-year fuel cost projections exceed those of the United States Department of Energy. KJRY contends that its car hire cost projections are based on its years of familiarity with the shippers who use the Line; that TP&W's higher real estate taxes reflect a significant overstatement of the quality of its title; and that TP&W's start-up cost figures are overstated and inconsistent with its claim that the Line is in FRA Class 1 condition and ready to operate.

KJRY's freight revenue projections appear to be based on its knowledge of, and dealings with, the shippers that used the La Harpe-Hollis Line; a 1998 document obtained from TP&W's prior owners that reviewed the Line's traffic and revenue projections; and the knowledge and experience of Catherine Busch, a former marketing manager for TP&W. And while KJRY did not submit specific shipper documentation, the letters of 11 of the overhead and on-line shippers that support the feeder line application,[29] and in particular the November 3, 2003 letter from Roquette,[30] demonstrate that there is significant shipper interest in using the Line. Nevertheless, KJRY's freight revenue projections must be adjusted downward to reflect the loss of traffic from ADM and Griffin, and its operating revenue projections must be adjusted downward in the absence of evidentiary support for the significant car repair revenues that are claimed.

KJRY's expense projections and explanatory footnotes appear to be based on forecasts related to Pioneer's system average costs and take into account operating efficiencies that would accrue to KJRY as a Pioneer subsidiary. KJRY's expense projections must be adjusted downward to reflect the reduction in car repair revenues. Otherwise, on a percentage basis KJRY's expense projections appear comparable by category to the expenses of Class I railroads.

With the downward revenue and expense adjustments discussed above, KJRY's pro forma statements appear reasonable, and they more than adequately support KJRY's claim that it would be able to operate the La Harpe-Hollis Line profitably and provide shippers with improved service for the requisite 3-year period. TP&W's restatements of KJRY's pro formas, on the other hand, appear to be based primarily on assertions, assumptions, and conclusions that lack substantive support and are contradicted in a number of instances by statements in TP&W's own submissions.

Exemptions, Trackage Rights, and Prescriptions

Under 49 U.S.C. 10907(g)(1), a feeder line applicant may elect to be exempt from any of the provisions of the Interstate Commerce Act other than the joint rate provisions of chapter 107. KJRY states that it is not requesting

[28] TP&W Comments at 169 (V.S. of W. Graham Claytor).
[29] KJRY Application, Appendix 3, Exhibit A.
[30] KJRY Reply, Exhibit 15.

any exemptions. Additionally, a feeder line applicant may request trackage rights from the selling carrier, 49 U.S.C. 10907(d), and/or a prescription of joint rates and divisions, 49 U.S.C. 10907(f). KJRY does not seek trackage rights or a joint rates and divisions prescription at this time. Instead, it plans to interchange traffic with TP&W at Hollis and/or with UP at or near UP's Sommer Yard.

Labor Protection

Under 49 U.S.C. 10907(e), the Board must require "to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section." UTU-IL requests that KJRY be required to use TP&W employees under rates of pay, rules, and working conditions no less favorable than those that apply to TP&W employees under collective bargaining agreements with the union. UTU-IL further requests that TP&W employees be permitted to operate KJRY trains without having to resign or be displaced from their jobs with TP&W.

KJRY states that the proposed purchase should not result in displacing current TP&W operating employees, noting that TP&W would continue to have sole access to the Mapleton Spur and has not operated the Line west of Mapleton since December 2001. Similarly, in view of the little track maintenance that has been performed on the Western Segment and the limited track maintenance that has been performed on the Eastern Segment, KJRY claims that there are no TP&W employees who have spent a majority of their working time performing labor that would be discontinued as a result of the proposed purchase.

KJRY also states that it does not anticipate needing additional operating employees in the near term to provide service over the Line. To the extent the Eastern Segment requires rehabilitation, KJRY says it would use its own forces or outside contractors. In the event additional employees are needed, KJRY states that it would accept applications from former TP&W employees displaced as a direct result of the proposed purchase and accord them priority over other, equally qualified employees.

Neither TP&W nor UTU-IL has identified any TP&W employees who would be affected as a direct result of the proposed purchase. Considering that TP&W has not operated the bulk of the Line for almost 3 years and will continue to operate the Mapleton Spur as it has in the past, it appears unlikely that TP&W employees would be affected significantly. In the event it must hire new employees to operate or maintain the Line, we will require that KJRY, consistent with the statute and its own assurances, offer employment on a priority basis to qualified TP&W employees who previously worked on the Line. KJRY will not be required, however, to continue the rates of pay, rules, and working conditions that existed under TP&W. *See, e.g., Cheney R. Co.–Feeder Line Acq.*, 5 I.C.C.2d 250, 275 (1989).

Closing Terms

To ensure the smooth transfer of the 76-mile La Harpe-Hollis Line, the following terms traditionally used in OFA and feeder line proceedings will be imposed: (1) payment must be made by cash, certified check, or electronic transfer to an account designated by TP&W at closing; (2) closing must occur within 90 days after the service date of this decision; (3) TP&W must convey all property by quitclaim deed; (4) TP&W must deliver all releases from any mortgages and original documents conveying interest in the right-of-way to KJRY within 90 days from closing; (5) all taxes must be prorated as of the date of closing; and (6) deed recording fees must be paid by KJRY. Mortgage or lien release taxes or recording fees must also be paid by TP&W. TP&W will be required to turn over to KJRY, within 30 days after closing, all TP&W records concerning the property being purchased, including any and all deeds, valuation maps, easement records, engineering drawings, contracts, bridge inspection records, and all other records related to the property being purchased. The terms of sale may be modified by mutual agreement.

Environmental Concerns

We adopt the analysis and conclusions contained in the environmental assessment (EA) prepared by the Section of Environmental Analysis, served on December 29, 2003. For the reasons set forth in the EA, we conclude that the proposed feeder line sale would not significantly affect the human environment or the conservation of energy resources.

It is ordered:

1. KJRY's petition to reject the supplement filed by TP&W on March 17, 2004, and TP&W's motion to strike the supplement filed by KJRY on June 8, 2004, are denied.

2. KJRY's feeder line application to purchase the 76-mile La Harpe-Hollis Line is granted.

3. The purchase price for the Line is set at $3,940,756, and the other terms of sale are prescribed as set forth in this decision.

4. KJRY must notify the Board and TP&W by December 2, 2004, whether it wishes to proceed under the terms prescribed in this decision. That date will be adjusted in a later decision if TP&W supplements the record with a composite monthly average unit price for reroll within the 30-day period provided in the decision.

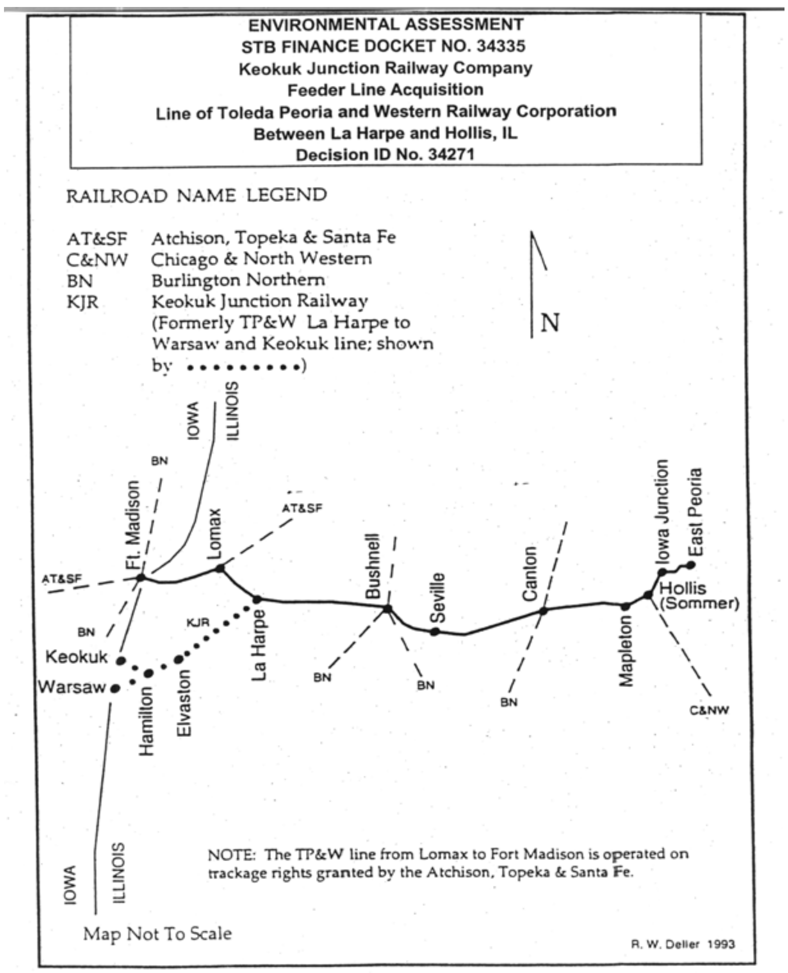
5. KJRY must hold open until December 2, 2004, its offer to enter into the trackage rights agreement contained in Appendix 3, Exhibit C, of KJRY's June 9, 2003 Supplement. That date will be adjusted if TP&W supplements the record on reroll.

6. KJRY must offer employment on a priority basis to qualified TP&W employees who worked on the Line in the event KJRY must hire new employees to operate or maintain the Line.

7. This decision is effective on November 27, 2004.

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

APPENDIX A



Note: This 1993 map does not reflect the changes in ownership that have occurred as a result of such mergers and acquisitions as *BN/SF Merger, UP/SP Merger*, and *West End.*

APPENDIX B

Description	KJRY Estimate (71.5 miles)	KJRY Estimate[31] (76 miles)	TP&W Oct. 16, 2003 Estimate (76 miles)	TP&W Mar. 17, 2004 Estimate (76 miles)	STB (76 miles)
Rail, all	$1,914,420	$2,030,902	$4,349,785	$4,949,068	$3,610,167
OTM	$382,884	$412,004	$1,053,191	$1,523,834	$917,075
Ties and Ballast	$691,529	$735,355	$691,004	$691,005	$735,051
Signals	0	0	$78,000	$78,000	0
Turnouts	N/A	N/A	$121,305	$127,576	$100,381
Gross Salvage Value	$2,988,833	$3,178,261	$6,293,285	$7,369,483	$5,362,674
Liquidation Costs	N/A	N/A	($1,502,553)	($1,502,553)	($1,463,553)
Total NSV	$2,988,833	$3,178,261	$4,790,733	$5,866,930	$3,899,121
Real Estate	$100,000	$106,336	$2,863,173	$2,863,173	$41,635
TOTAL NLV	$3,088,833	$3,284,605	$7,653,906	$8,730,103	$3,940,756

[31] The figures in this column do not add up because KJRY prorated the Line from 71.5 miles to 77.5 miles (instead of the actual 78.5 miles) and then used a cost-per-mile figure based on 71miles (instead of the actual 71.5 miles) when it reduced the length of the Line to 76 miles, reflecting its decision to exclude the Mapleton Spur from its application. As a result of these rounding and proration errors, KJRY's NLV figure of $3,284,605 is $8 higher than the actual sum of its NSV and real estate figures ($3,178,261 + $106,336 = $3,284,597).

APPENDIX C

Composite Prices for No. 1 Heavy Melting Steel Scrap

	American Metal Market	Iron Age
Period	$/ton	$/ton
Apr.-03	$119.80	$115.92
May-03	$109.04	$107.38
June-03	$106.13	$104.57
July-03	$111.21	$109.63
Aug.-03	$123.32	$119.17
Sept.-03	$128.35	$125.83
Oct.-03	$130.67	$127.92
Nov.-03	$144.03	$141.29
Dec.-03	$159.88	$155.50
Jan.-04	$177.47	$179.84
Feb.-04	$224.09	$222.50
Mar.-04	$250.05	$238.13
Apr.-04	$208.76	$201.33
May-04	$170.55	$161.25
June-04	$165.00	$160.33
July-04	$215.30	$214.96
Avg. Apr. 03-July 04	$158.98	$155.35
Average for both sources	$157.16	

Note: Data obtained from the October 2004 edition of the Mineral Industry Surveys for Iron and Steel Scrap, which is published monthly by the United States Geological Survey.