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SERVICE DATE – MARCH 16, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-490 (Sub-No. 1X)

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION –
ABANDONMENT AND DISCONTINUANCE EXEMPTION – IN GREENVILLE
COUNTY, SC

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: March 15, 2006

By decision and notice of interim trail use or abandonment served on October 12, 2005, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Greenville County Economic Development Corporation (GCEDC) of approximately 11.8 miles of rail line, extending from milepost 0.0 in Greenville, SC, to milepost 11.8 in Travelers Rest, SC (Northern Segment), and the discontinuance of service by GCEDC over 3.29 miles of rail line, extending from milepost AJK 585.34 in East Greenville, SC, to milepost AJK 588.63 in Greenville (Southern Segment), Greenville County, SC. The exemption was subject to environmental, public use, and trail use conditions, and was scheduled to become effective on November 11, 2005, unless an offer of financial assistance (OFA) was filed on or before October 24, 2005.

On October 3, 2005, Western Carolina Railway Service Corporation (WCRSC) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire Northern Segment. In a decision served on October 27, 2005, the effective date of the exemption was postponed to permit the OFA process to proceed and November 16, 2005, was set as the due date for any request to establish the terms and conditions of the purchase of the Northern Segment. By decision served on November 15, 2005, at the joint request of WCRSC and GCEDC, the due date for a request to set terms and conditions was extended to February 14, 2006.

On February 14, 2006, WCRSC requested that we set the terms and conditions for the sale of the Northern Segment because the parties were unable to agree on the sale price. In its request, WCRSC contends that, because the net liquidation value (NLV) of the line is a negative number, another method to determine the sales price is necessary. WCRSC's negative NLV of -\$1,657,219 is based entirely on its estimate of the net salvage value (NSV) of the line,¹ which is determined by subtracting its estimated salvage cost of \$2,124,455 (including removal of

¹ WCRSC does not provide a real estate estimate based on its position that the GCEDC does not have a fee simple interest in any portion of the right-of-way.

bridges) from the \$467,236 gross salvage value of the track and materials. In lieu of using NLV, WCRSC has proposed a purchase price for the Northern Segment of \$46,268, by taking the historical value of the line from the quitclaim deed, \$78,000, less an annual depreciation of 4.5% per mile per year from 1999 forward.

On February 21, 2006, as amended February 23, 2006, GCEDC replied to the request to set terms and conditions. GCEDC contends that the NLV of the line is \$1,166,184, consisting of \$772,000 for land and an NSV of \$394,184 for track and track materials. GCEDC argues that WCRSC has not met its burden of demonstrating that its valuation is more reliable and verifiable than GCEDC's own valuation.

Additionally, GCEDC disputes the finding made in the October 27, 2005 decision that WCRSC is a "financially responsible person" and that it has submitted financial information showing that it has access to sufficient financial resources to acquire and operate the line. GCEDC has provided no specific evidence in support of its assertions. There is no reason to believe, based on the evidence already in the record, that WCRSC will not be able to buy the line and provide service.

On March 2, 2006, WCRSC filed a motion to strike portions of GCEDC's reply evidence.² While titled a motion to strike, the filing appears to be a reply to GCEDC's reply, a filing not permitted by our rules. See 49 CFR 1104.13(c). Therefore, we will deny the motion.

TERMS AND CONDITIONS

Valuation and Evidentiary Standards. Proceedings to set conditions and compensation are governed by the provisions of 49 U.S.C. 10904(d)-(f). Under section 10904(f)(1)(B), the Board may not set a price that is below the fair market value of the line. In the absence of a higher going-concern value for continued rail use,³ the proper valuation standard in proceedings for offers to purchase under section 10904 is the NLV of the rail properties for their highest and best nonrail use. Chicago and North Western Transp. Co.—Abandonment, 363 I.C.C. 956, 958 (1981) (Lake Geneva Line), aff'd sub nom. Chicago and North Western Transp. Co. v. U.S., 678 F.2d 665 (7th Cir. 1982). NLV includes the value of the underlying real estate plus the NSV of track and track materials.

The burden of proof is on the offeror, as the proponent of the requested relief. See Lake Geneva Line, 363 I.C.C. at 961. Placing the burden of proof on the offeror is particularly appropriate in forced sale proceedings under 49 U.S.C. 10904 because the offeror may withdraw its offer at any time prior to its acceptance of the terms and conditions that the Board establishes pursuant to a party's request. The rail carrier, on the other hand, is required to sell its line to the offeror at the price the Board sets, even if the railroad views the price as too low.

² GCEDC replied to the motion to strike on March 7, 2006.

³ There is no going-concern value here because the line has been out of service since December 1997. Although an OFA contemplates future rail service, in the absence of a higher going-concern value, we value the line as if it were to be dismantled and taken out of service.

Because the burden of proof is on the offeror, absent probative evidence supporting the offeror's estimates, the rail carrier's evidence is accepted. In areas of disagreement, the offeror must present more specific evidence or analysis or provide more reliable and verifiable documentation than that which is submitted by the carrier. If the offeror does not present such evidence and/or documentation, then the Board accepts the carrier's estimates in these forced sale proceedings. See Burlington Northern Railroad Company — Abandonment Exemption — In Sedgwick, Harvey and Reno Counties, KS, Docket No. AB-6 (Sub-No. 358X) (ICC served June 30, 1994), and cases cited therein. To determine the NLV, we will address below the parties' evidence on the value of the land and the track and track materials.

Land.

WCRSC argues that this right-of-way is not held in fee simple, but that GCEDC has only an easement interest in the property and, accordingly, that the land should be valued at zero. WCRSC, does not, however, provide any independent evidence of the quality of the title to support its contention. Rather, it simply points to GCEDC's own title insurance policy, which insures the corridor as an easement.

GCEDC, by contrast, argues that one must look to the actual language of the deeds to determine how the land is owned. GCEDC has provided verified statements from apparently qualified parties in the area of state property law, showing that, based on an examination of the language of the deeds, approximately 43.93 acres of land, out of a corridor totaling approximately 57.57 acres of land, are held in fee simple. GCEDC further explains that the purpose of the insurance policy WCRSC relies on was to protect the availability of the corridor for future rail service and that the only interest that GCEDC needed to insure for that purpose was an easement interest to provide rail service on the rail corridor. According to GCEDC, it was easier and less expensive to insure only the easement for rail service. We therefore find that WCRSC has not met its burden of demonstrating that its evidence is more reliable and verifiable than that of GCEDC.

In its February 23, 2006 evidence, GCEDC also provided an independent valuation of the acreage that is held in fee simple. GCEDC's initial appraised value of \$738,000 will be accepted. In its February 23 supplemental filing, GCEDC sought to amend its original valuation, asserting that the value of the fee simple real estate is \$34,000 more than its expert originally estimated. GCEDC, however, has not clearly explained how it determined what property had been omitted in its initial filing and how the omission affects the total appraisal value of the property. Accordingly, we rely on GCEDC's original valuation of \$738,000, as the best evidence of the land value.

Track and Track Materials.

In determining the line's value, WCRSC relied on the results of inquiries it had made of contractors, valuation services, and reference materials accepted by engineering professionals concerning the NSV of the track and of the costs related to removing the track and materials, including the bridges. GCEDC asserts that WCRSC's calculation of a negative NSV is

erroneous and flawed and should be rejected by the Board because WCRSC's value overstates removal costs and understates salvageable materials and the associated values. We disagree. WCRSC has provided persuasive evidence that the bridges on the line are unsafe for any use and that for the purpose of NSV they do not have a resale value. To use the line in any form, WCRSC argues that the bridges must be removed and that the removal costs should be reflected in the NSV. GCEDC does not provide an expert opinion refuting WCRSC's evidence regarding the condition of the line and the bridges and in fact refers to WCRSC's valuations when making its own valuations of the line.

Net Liquidation Value.

Accordingly, we find, based on the evidence presented, that WCRSC has met its burden in challenging the NLV offered by GCEDC. Under our regulations, for the purpose of valuing rail property under an OFA, any asset with a negative net salvage value shall be valued at zero. See 49 CFR 1152.34(c)(1)(iii)(A)(2). We value the track and other materials at \$0, and set the purchase price for the line at \$738,000, which we find to be the value of the land.

Terms of Sale.

In addition to the compensation for this line specified herein, we will impose our typical OFA terms: (1) payment is to be made by cash or certified check; (2) closing is to occur within 90 days of the service date of this decision; (3) GCEDC shall convey all property by quitclaim deed; and (4) GCEDC shall deliver all releases from any mortgage within 90 days of closing. The parties may alter any of these terms by mutual agreement.

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

It is ordered:

1. WCRSC's motion to strike is denied.
2. The purchase price for the line is set at \$738,000, and the parties must comply with the other terms of sale discussed above.
3. To accept the terms and conditions established here, WCRSC must notify the Board and GCEDC in writing, on or before March 27, 2006.
4. If WCRSC accepts the terms and conditions established by this decision, WCRSC and GCEDC will be bound by this decision.
5. If WCRSC withdraws its offer or does not accept the terms and conditions with a timely written notification, we will serve a decision by April 5, 2006, vacating the prior decision that postponed the effective date of the decision and notice authorizing interim trail use or abandonment.

6. This decision is effective on its service date.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary