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SERVICE DATE - APRIL 19, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 3X)¹

NEW YORK CENTRAL LINES, LLC — ABANDONMENT
EXEMPTION — IN BERKSHIRE COUNTY, MA

IN THE MATTER OF A REQUEST TO SET TERMS AND CONDITIONS

Decided: April 18, 2002

On July 24, 2001, New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (herein referred to collectively as CSX) filed a notice of exemption under 49 CFR 1152 subpart F for NYC to abandon, and for CSXT to discontinue service over, approximately 1.91 miles of railroad (the Line) in the City of Pittsfield, in Berkshire County, MA, between MP QBY-0.59 and MP QBY-2.50. Notice of the exemption was served and published in the Federal Register on August 13, 2001 (66 FR 42582-83).

Housatonic Railroad Company (Housatonic) subsequently filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 to purchase the Line for \$27,750. The effective date of the abandonment exemption was postponed in order to permit the OFA process to proceed. However, Housatonic and CSX did not reach an agreement on the terms of sale. Therefore, Housatonic filed a request on March 21, 2002, for the Board to set the terms and conditions of the sale pursuant to 49 U.S.C. 10904(e) and (f).

¹ The notice issued on August 13, 2001, embraced STB Docket No. AB-55 (Sub-No. 595X), CSX Transportation, Inc. — Discontinuance of Service Exemption — in Berkshire County, MA.

Overview.

Housatonic's Request. (1) CSX's appraiser divided the Line into three parcels.² Housatonic requests that we establish separate prices for those parcels so that Housatonic would have the option to choose to purchase either: (a) Parcel 1 alone; (b) Parcels 1 and 2; or (c) the entire Line (Parcels 1, 2, and 3). Housatonic further asks us to set the purchase price based upon a trackage rights agreement dated March 31, 1982, between Consolidated Rail Corporation (Conrail) and Boston & Maine Corporation (B&M) (1982 Conrail/B&M Agreement). Housatonic argues that a purchase option provision of that agreement is binding on CSX (as successor to Conrail) and permits Housatonic (as successor to B&M) to purchase the Line at a discount from net liquidation value (NLV). Although Housatonic calculates the NLV of the Line to be \$23,742, it maintains that the purchase option provision of the 1982 Conrail/B&M Agreement gives Housatonic the right to purchase the Line for a price of \$11,367, and that we should therefore set the purchase price for the Line at \$11,367.

(2) Housatonic also requests that we establish a procedure and timetable for the transaction under which: (a) within 10 days of the service date of this decision, Housatonic would be required to notify CSX of its decision as to whether and which parcels Housatonic wishes to purchase, subject to Housatonic's completion of an environmental review; (b) Housatonic would have 60 days to conduct an environmental review; (c) the closing date for payment and conveyance would be within 90 days of the service date of this decision; and (d) CSX would be required to deliver, upon closing, all releases from any mortgages. Housatonic further requests that we direct that conveyance be by quitclaim deed, without additional covenants or agreements by either party.

(3) Because the Line does not now connect with any of its other lines, Housatonic asks that we further require CSX to provide Housatonic with incidental trackage rights over the CSX line in Pittsfield from the connection with Housatonic's Berkshire Line (formerly known as the Canaan Secondary) to and through North Adams Junction Yard to the Line, for the purpose of "bridging" traffic between Housatonic's Berkshire Line and the Line and providing an interchange in Pittsfield with CSX. Housatonic indicates that these trackage rights would run on

² Parcel 1, the southernmost parcel, extends through an industrial/commercial area from MP QBY-0.59 to a point approximately 800 feet north of Crane Avenue. Parcel 2, the middle parcel, extends from that point through a residential area to the southerly boundary of the Berkshire Concrete Company. Parcel 3, the northernmost parcel, extends through an industrial area from the Berkshire Concrete Company north through the Berkshire Concrete Plant to the end of the Line at MP QBY-2.50.

the North Adams Secondary Track from MP 0.59³ to MP 0.0, and thence over connecting tracks of CSX's Boston & Albany Main Line from CP-147 (approximately MP 147.80) to the connection with Housatonic's Berkshire Line at CP-150 (approximately MP 150.75). Housatonic further asks us to mandate that the Line be considered a part of Housatonic's existing Berkshire Line for traffic and ratemaking purposes.

CSX's Response. By pleading filed on March 26, 2002, CSX argues that Housatonic has not justified its valuation of the Line or the imposition of the special terms and conditions that it seeks, that the 1982 Conrail/B&M Agreement does not apply here, and that overall Housatonic has failed to meet its burden of proof under the OFA process. CSX contends that the fair market value of the Line is \$450,000; that we should not separately value segments of the Line and allow Housatonic to choose the segments it will purchase; that we should impose only standard OFA terms and conditions; that we should not impose the incidental trackage rights sought by Housatonic; and that we should not order that the Line be considered a part of Housatonic's Berkshire Line for traffic and ratemaking purposes.

Summary Of Decision. After considering the evidence and arguments submitted by the parties, we are setting the purchase price for the entire Line at its NLV, which we find to be \$215,053; we are denying Housatonic's request that it be allowed to pick which segments of the Line to purchase; we are imposing only customary OFA closing terms; we are denying Housatonic's request for the imposition of incidental trackage rights; and we are denying Housatonic's request for an order requiring that the Line be treated as a part of Housatonic's Berkshire Line for traffic and ratemaking purposes.

TERMS AND CONDITIONS

Valuation And Evidentiary Standards. Under section 10904(f)(1)(B), we may not set an OFA sale price below the fair market value of the line. Where, as here, there is no evidence of a higher going concern value for continued rail use, we set the price at the NLV of the 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 both the value of the real estate and the net salvage value of track and materials (gross salvage value less removal costs).

³ It would appear that MP 0.59 on the North Adams Secondary Track is the same point as MP QBY-0.59.

In proceedings to set conditions, the burden of proof as to compensation is on the offeror, as the proponent of the requested relief. See Lake Geneva Line, 363 I.C.C. at 961.⁴ Thus, in areas of disagreement, the offeror must present more detailed evidence or analysis or provide more reliable and verifiable documentation than that which the carrier submits. Absent detailed evidence supporting the offeror's estimates and contradicting the carrier's estimates, we accept the carrier's estimates in a forced sale context. 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. See also Fillmore Western Railway Company — Abandonment Exemption — in Fillmore County, NE, STB Docket No. AB-492 (Sub-No. 2X) (STB served Nov. 1, 2001), slip op. at 2-3.

Matters Agreed Upon. Housatonic and CSX agree that the land is owned in fee simple by CSX and that the NLV of the track and track materials on the Line is zero.

Conflicting Valuations. Housatonic and CSX do not agree on the value of the land that comprises the right-of-way of the Line.

Housatonic's real estate appraisal was prepared by Norman Benedict Associates, Inc. (Benedict). At Housatonic's request, Benedict appraised the Line in two distinct sections: a "Central-Southern" or "B" section that consists of the first 1.41 miles of the Line (MP 0.59 to MP 2.00); and a "Northern" or "A" section that consists of the last 0.50 mile of the Line (MP 2.00 to MP 2.50). These two sections were further divided into subsections B:6, B:5, B:4, B:3, A:2, and A:1. Housatonic indicates that CSX's Parcel 1 corresponds to Housatonic's subsections B:6, B:5, and B:4;⁵ that CSX's Parcel 2 corresponds to Housatonic's subsections B:3

⁴ Placing the burden of proof on the offeror is particularly appropriate in an OFA context, which involves an involuntary taking of property, because the offeror may withdraw its offer if it considers the price that we set to be too high, while the carrier must sell its line to the offeror at that price even if it considers the price to be too low.

⁵ Subsection B:6 runs from Merrill Road (at the southernmost end of Parcel 1) to Dalton Avenue. Subsection B:5 runs from Dalton Avenue to Crane Avenue. Subsection B:4 runs from Crane Avenue to a point approximately 800 feet north of Crane Avenue (at the northernmost end of Parcel 1).

and A:2;⁶ and that CSX's Parcel 3 corresponds to Housatonic's subsection A:1.⁷ Based on the Benedict Appraisal, Housatonic contends that the gross liquidation value (GLV) of the Line is \$53,950 (consisting of \$32,621 for Parcel 1; \$1 for Parcel 2; and \$21,328 for Parcel 3); and that the NLV of the Line is \$23,742 (which Housatonic calculated by subtracting \$7,636 for restoration of two grade crossings; \$10,000 for repair of broken culverts; \$7,500 for erosion control measures; and \$5,072 for selling expenses).

CSX's real estate appraisal was prepared by Schulte Realty Advisors, LLC (Schulte). CSX advises that Schulte divided the Line into three parcels because of the similar valuation characteristics within each parcel.⁸ Schulte then conducted an analysis of across-the-fence (ATF) sales to derive its initial valuations for the relevant parcels. Finally, Schulte reviewed the topography and use of each parcel and, based on that review, lowered its valuations. Based on the Schulte Appraisal, CSX contends that the GLV of the property is \$1,277,169 (consisting of \$705,993 for Parcel 1; \$449,513 for Parcel 2; and \$121,663 for Parcel 3); that the "adjusted value" of the Line (GLV less all deductions except selling expenses) is \$532,290 (\$352,997 for Parcel 1; \$112,378 for Parcel 2; and \$66,915 for Parcel 3); and that the NLV of the Line (after deducting selling expenses) is \$450,000.

As a threshold matter, we do not find the parties' challenges to the credentials of the other party's appraiser(s) to be compelling; both parties submitted detailed appraisals. Therefore, we will examine each appraisal.

Corridor Value. Housatonic claims that the Schulte Appraisal is overstated because a "corridor value" was applied to the valuation. Although the Schulte Appraisal suggests that a continuation of the right-of-way as a corridor would produce the highest values, ultimately that appraisal concludes that the highest and best use of the Line is liquidation. The real estate values contained within the Schulte Appraisal are based on comparable sales of individual parcels,

⁶ Subsection B:3 runs from the point approximately 800 feet north of Crane Avenue (at the southernmost end of Parcel 2) north to MP 2.0. Subsection A:2 runs from MP 2.0 to the southerly boundary of the Berkshire Concrete Company (at the northernmost end of Parcel 2).

⁷ Subsection A:1 runs from the southerly boundary of the Berkshire Concrete Company (at the southernmost end of Parcel 3) north to MP QBY-2.50 (at the northernmost end of Parcel 3).

⁸ The Schulte Appraisal suggests that the rail line that it valued is approximately 2.5 miles in length, see CSX's Response, Volume II at 3 and 12 (the page citations in Volume II are to the page numbers in the upper righthand corner). The context indicates, however, that the Schulte Appraisal actually embraces only the 1.91-mile Line. See id. at 15-20.

adjusted to fit the size and topography of such parcels; no “corridor” premium was placed on the real estate parcel values.

Land Area. Although Housatonic and CSX have agreed that the Line has a land area of 18.21 acres or 793,351 square feet (sq. ft.),⁹ based on CSX’s digitized valuation maps,¹⁰ neither appraisal reflects that exact amount of land area. The Benedict Appraisal uses 21.28 acres, or 926,900 sq. ft.;¹¹ the Schulte Appraisal uses 18.13 acres or 789,742 sq. ft.¹² including grade crossings, and 17.36 acres or 756,117 sq. ft. (not including grade crossings) for valuation purposes. The digitized valuation maps that are the basis for the parties’ agreement on an 18.21-acre (or 793,351 sq. ft.) figure have not been made part of the record, and so we may not use them as the basis for our land area calculation. Because the discrepancy between the calculations in the Schulte Appraisal and the maps is small, we will use the acreage and square footage calculations relied upon in the Schulte Appraisal (17.36 acres, or 756,117 sq. ft.) for our valuation.

Valuation Of Parcel 1 (Subsections B:4, B:5, and B:6). CSX valued all of Parcel 1 based on a 50/50 split between commercial and industrial, a \$5.00 per sq. ft. commercial value, and a \$1.25 per sq. ft. industrial value, resulting in a \$3.13 per sq. ft. assimilated value. To obtain the commercial value, CSX examined four comparable commercial sales, ranging from \$4.67 to \$11.63 per sq. ft.; but because the opportunities for new development were judged to be limited, CSX concluded that a unit value of \$5.00 per sq. ft. would be reasonable. To obtain the industrial value, CSX looked at eight comparable sales, ranging from \$0.63 to \$4.92 per sq. ft. Eliminating the high and low sales narrowed the sales range to between \$1.06 and \$1.43 per sq. ft., and CSX used the midpoint between these figures (\$1.25 per sq. ft.).

Housatonic contends that the Schulte Appraisal is overstated because the four commercial comparables included buildings, thereby increasing the value of the property. CSX responds that the improvements to the comparables were demolished after purchase, and that each comparable was adjusted for the building removal.

⁹ An acre is a unit of area equal to 43,560 sq. ft.

¹⁰ See Housatonic’s Request at 14 (“Housatonic believes that the CSXT computation [of land area, according to CSXT’s digitized valuation maps] is accurate.”); see also Housatonic’s Request, Exhibits E and F (Housatonic has adopted the 793,351 sq. ft. calculation that is apparently derived from CSX’s digitized valuation maps).

¹¹ See Housatonic’s Request, Exhibit C-1 at 38 and 47.

¹² See CSX’s Response, Volume II at 20, 22, and 25.

We agree with Housatonic that including the value of buildings overstates the land value. The demolition of the buildings after each sale does not remove the questionability of including improved property as a comparable. Moreover, we see no evidence that Schulte adjusted the land value to reflect removing the buildings from each comparable sale. Therefore, we reject the Schulte Appraisal for the base, unit price.

Housatonic used eight comparable sales for a combined industrial/commercial category that occurred within the past 3 years, estimating a gross median value of \$50,084 per acre (\$1.15 per sq. ft.). To account for the quality of use and neighborhood quality of subsections B:5 and B:6 in comparison to this gross median value, Housatonic applied a -40% adjustment to the \$50,084, resulting in an adjusted comparable of \$30,050 per acre (\$0.69 per sq. ft.). This figure does not appear to be unreasonable and, as the best evidence of record, we rely on Housatonic's figure for the base valuation of subsections B:5 and B:6.

Housatonic claims that subsection B:4 includes some residential property that should be valued at only \$1 per acre because it is in wetlands and thus has little if any resale value. However, Housatonic has failed to substantiate its claim that there is any such residential land in this subsection. Therefore, we will not make any adjustment for residential land in subsection B:4 and thus we treat subsection B:4 in the same fashion as subsections B:5 and B:6.

Both parties agree that the value of Parcel 1 must be further discounted for its topography and limited utility. Accordingly, CSX reduced the value of Parcel 1 by an additional 50%, based on a 30% topography adjustment and a 20% utility adjustment. Housatonic, on the other hand, reduced its adjusted comparable figure by an additional 75%, based on its assumption that only a few abutting landowners would be interested in purchasing the adjacent portions of the Line due to the elongated nature of the portions and lack of access to the land.

We will accept CSX's reductions to land value. Housatonic has not shown that the physical proportions of the land lessen the value of the land as drastically as it contends. Because Housatonic has not shown why CSX's reductions are not reasonable, we use CSX's 50% discount.

In sum, for Parcel 1, we accept Housatonic's adjusted comparable figure as the base value for the land, but we accept CSX's reductions to that base value. Accordingly, we will restate the value of Parcel 1 by multiplying the area of Parcel 1 (225,557 sq. ft.) by a base value of \$0.69 per sq. ft., and then multiplying by 0.5 (to account for the -30% topography adjustment and the -20% utility adjustment) for a land value (prior to deductions for restoration of crossings, culvert repair, erosion control, and selling expenses) of \$77,817.

Valuation Of Parcel 2 (Subsections B:3 and A:2). For this parcel, the adjacent zoning is residential along both sides.¹³ CSX used values of \$0.25 per sq. ft. for residential acreage and \$3.60 per sq. ft. for residential lots. CSX contends that, although the right-of-way is too narrow for lot development alone, adjacent landowners could merge a portion of the Line with another lot, which could then be used for residential construction. CSX used a mix of 70/30 (residential acreage to residential lots) to estimate an overall unit cost of \$1.26 per sq. ft.

Housatonic valued Parcel 2 at only \$1 per acre due to surrounding wetlands and subsurface soil conditions, but adds that, if we place any higher value on this acreage, we should value it solely as residential acreage without any building lots. Housatonic points out that the maps included with both appraisals show that the Line has no road frontage in the residential zones, as required by Section 4.302 of the Pittsfield Zoning Ordinance. Housatonic also questions whether the setback requirements would allow housing to be built.

Housatonic further asserts that wetland restrictions also reduce the value of this real estate to a nominal level. Approximately 80% of the land falls within a designated flood zone. Approximately 66% of the land is designated as inland/wetlands, on which, according to Housatonic, the Massachusetts Department of Environmental Protection will not allow development. Finally, much of the real estate is “land locked” by existing utilities in the area.

We reject Housatonic’s contention that the land cannot be put to residential use. We have reviewed the pertinent portions of the Pittsfield Zoning Ordinance and the Massachusetts wetlands regulations, and neither appears to prohibit building of residential structures, as long as various regulatory approvals are obtained. Only Section 4.302 of the Pittsfield Zoning Ordinance places restrictions on new lots because of frontage limitations. However, as CSX notes, landowners could merge the land from this right-of-way with their current holdings to develop new lots.

We accept CSX’s residential land values because we find its valuation for residential land more credible. We will therefore calculate the value of Parcel 2 by multiplying the area of Parcel 2 (356,756 sq. ft.) by a unit cost of \$1.26 per sq. ft. and by applying CSX’s topography adjustment of -50% and its utility adjustment of -25%, for a land value for Parcel 2 (prior to deductions for culvert repair, erosion control, and selling expenses) of \$112,378.

Valuation Of Parcel 3 (Subsection A:1). Adjacent zoning is industrial along both sides of Parcel 3. CSX, citing a range of industrial sales from \$0.63 to \$4.92 per sq. ft., estimates

¹³ Developments along the easterly side include a mobile home park and additional single family homes. Along the westerly side is open wetland area that borders the Western Massachusetts Power Company line, which itself borders the Oak Hill Residential Community.

comparable sales would be \$0.70 per sq. ft. Housatonic relies on the same eight comparable sales that it used for Parcel 1 subsections B:5 and B:6. To account for the land quality and quality of use here, Housatonic applied a -20% adjustment to the gross median value of \$50,084, resulting in an adjusted comparable of \$40,067 per acre (\$0.92 per sq. ft.).

Again, Housatonic complains that CSX's comparables included buildings. As discussed above, we agree that CSX has overstated its unit costs by including land containing buildings. Therefore, we will accept Housatonic's adjusted figure as the base valuation of Parcel 3.

Housatonic reduces the land value by 75% on the basis of its claims that there are few uses for the property; that its unique shape reduces its value; that there are no available utilities; and that the only prospective purchasers would therefore be the current contiguous owners. CSX, on the other hand, reduces the value of this parcel by -25% for topography and -20% for utility.

Again, Housatonic has failed to substantiate its reductions. We will therefore accept CSX's lesser reductions, and we will calculate the value of Parcel 3 by multiplying the area of Parcel 3 (173,804 sq. ft.) by a base value of \$0.92 per sq. ft., and then multiplying by 0.55 (to account for the -25% adjustment for topography and the -20% adjustment for utility), for a land value for Parcel 3 (prior to deductions for culvert repair, erosion control, and selling expenses) of \$87,945.

The Cost Of Restoration Of Crossings, Culvert Repair, And Erosion Control. Housatonic calculated costs of \$7,636 for restoration of crossings, \$10,000 for culvert repair, and \$7,500 for erosion control. Because CSX does not dispute these figures, we will accept Housatonic's calculations. We will allocate the \$7,636 restoration of crossings cost to Parcel 1, because Housatonic's maps indicate that all of the crossings are in Parcel 1. Because Housatonic has not documented the location of the culvert repairs and erosion control, we will allocate the \$10,000 culvert repair cost and the \$7,500 erosion control cost to all three parcels as a weighted average of each parcel's value. Thus, of the \$10,000 culvert repair cost, \$2,800 will be allocated to Parcel 1, \$4,000 to Parcel 2, and \$3,200 to Parcel 3. Of the \$7,500 erosion control cost, \$2,100 will be allocated to Parcel 1, \$3,000 to Parcel 2, and \$2,400 to Parcel 3.

Sales Costs. Housatonic and CSX agree that there should be a 15% reduction for sales costs, and that this charge should be calculated after all other deductions have been made. We accept this figure and calculation.

NLV Of Parcel 1: \$55,489. As previously noted, our restated valuation of Parcel 1 (prior to deductions for restoration of crossings, culvert repair, erosion control, and selling expenses) is \$77,817. The NLV of Parcel 1 is calculated first by subtracting the \$7,636 restoration of crossings cost, the \$2,800 culvert repair cost, and the \$2,100 erosion control cost (which yields

\$65,281); and then by subtracting \$9,792 in selling expenses, which yields a Parcel 1 NLV of \$55,489.

NLV Of Parcel 2: \$89,571. As previously noted, our restated valuation of Parcel 2 (prior to deductions for culvert repair, erosion control, and selling expenses) is \$112,378. The NLV of Parcel 2 is calculated first by subtracting the \$4,000 culvert repair cost and the \$3,000 erosion control cost (which yields \$105,378); and then by subtracting \$15,807 in selling expenses, which yields a Parcel 2 NLV of \$89,571.

NLV Of Parcel 3: \$69,993. As previously noted, our restated valuation of Parcel 3 (prior to deductions for culvert repair, erosion control, and selling expenses) is \$87,945. The NLV of Parcel 3 is calculated first by subtracting the \$3,200 culvert repair cost and the \$2,400 erosion control cost (which yields \$82,345); and then by subtracting \$12,352 in selling expenses, which yields a Parcel 3 NLV of \$69,993.

NLV Of The Line: \$215,053. The NLV of the entire Line is calculated as \$215,053. This equals the sum of the separately calculated NLVs for Parcels 1, 2, and 3.

The 1982 Conrail/B&M Agreement. Housatonic contends that the 1982 Conrail/B&M Agreement gives it a “contract right” to purchase the Line at a discount from NLV. CSX claims that the Agreement is not applicable here because Housatonic has not demonstrated a valid assignment of the Agreement from B&M to Housatonic; the parties have not been operating as if the Agreement was in force; and the Agreement’s purchase option was wholly tied to the B&M trackage rights that the Interstate Commerce Commission authorized B&M to discontinue in 1992. See Boston & Maine Corp.–Discontinuance of Trackage Rights Exemption–In Berkshire County, MA, Docket No. AB-32 (Sub-No. 47X), slip op. at 2-3 (ICC served Aug. 25, 1992).

We are not persuaded that the 1982 Conrail/B&M Agreement is necessarily indicative of the fair market value of the Line, and Housatonic has therefore failed to establish that we should rely on it in our determination of NLV. The Agreement’s purchase option was part of a larger transaction, and we have no basis for concluding that, as a stand-alone transaction, the price of the option would not have been any different. However, our decision here is without prejudice to Housatonic’s right to seek a determination in an appropriate judicial forum, that as a matter of state contract law, it can now exercise the Agreement’s purchase option and ask the court to order an appropriate adjustment in the price that Housatonic will have paid for the Line.

Segmentation. We are denying Housatonic’s request that it be afforded a right to choose which segments of the Line it wishes to purchase. Segmentation may be appropriate in an OFA context where it would facilitate continued rail service. Here, however, Housatonic has not identified any traffic or operational considerations that it wishes to take into consideration, nor has it explained why it has not yet been able to determine what portions of the Line it would need

in order to provide for continued rail service. Therefore, it has not supported its request for a segmented approach. Accordingly, we are setting the price for purchase of the entire Line – and that is what Housatonic must decide within 10 days whether or not to purchase for continued rail service – unless CSX agrees to sale of a lesser portion of the Line.

Closing Conditions. Housatonic has requested closing conditions that differ from our customary OFA conditions. Housatonic has requested that its notification of acceptance of the terms and conditions established in this decision (due by the 10th day after the date of service of this decision) be made subject to its completion, within 60 days, of an environmental review, and that CSX be required to deliver, upon closing, all releases from any mortgages.

We will not impose the special closing conditions requested by Housatonic. Housatonic has not explained why it could not have conducted an environmental review in the 7 months that have passed since Housatonic first filed its formal expression of intent to file an OFA. Absent compelling circumstances, all information that could affect the price and the offeror's decision whether or not to accept the terms that we set should be collected by the parties prior to the time that we are asked to set terms, given the 10-day statutory time frame for accepting or rejecting those terms.¹⁴

Housatonic's "deliver all releases upon closing" request could require CSX to incur, prior to closing, costs that we generally do not require carriers to incur until after closing. Housatonic has not provided a reason for us to depart from our customary practice and has not shown any special need for requiring CSX to incur such costs prior to closing.

As is customary in OFA sales where we are called upon to set terms, if Housatonic elects to proceed with the purchase of the Line at the price set in this decision: (1) payment must be made by cash or certified check; (2) closing must occur within 90 days of the service date of this decision; (3) CSX must convey all property by quitclaim deed; and (4) CSX must deliver all releases from any mortgages within 90 days of closing. The parties, of course, may alter any of these terms by mutual agreement.

¹⁴ In 1411 Corporation–Abandonment Exemption–In Lancaster County, PA, STB Docket No. AB-581X, slip op. at 6 (STB served Apr. 12, 2002), we included a pre-closing environmental review (and liability) condition only because the owner of the line had already agreed to such a condition in a sales contract with a third party, we found the arm's-length contract to be the best evidence of fair market value in that case, and the purchase price in the contract could not be divorced from other relevant contract terms that necessarily affected the purchase price.

Incidental Trackage Rights. Housatonic has requested a grant of incidental trackage rights running on the North Adams Secondary Track from MP 0.59 to MP 0.0, and thence over CSX's Boston & Albany Main Line from CP-147 to the connection with Housatonic's Berkshire Line at CP-150. We will not grant this request. The goal of the OFA process is to facilitate the continuation of rail service. The trackage rights sought here are not necessary to meet this goal because traffic on the Line could access other portions of the national rail network, or reach the Line from other portions of the national rail network, through other, less intrusive means – here through an interchange with CSX at MP 0.59 on CSX's North Adams Secondary Track. Of course, if Housatonic proceeds to purchase the Line, the parties will be free to negotiate other arrangements that they may find suitable for moving traffic to and from the Line.

Consideration As Part of Housatonic's Berkshire Line. Finally, we will not grant Housatonic's request that we require that the Line be considered a part of Housatonic's Berkshire Line for traffic and ratemaking purposes. Housatonic has not explained the basis for this request nor has it justified such action on our part.

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

It is ordered:

1. The purchase price for the Line is set at \$215,053, and the parties must comply with the other terms of sale discussed above.
2. To accept the terms and conditions established here, Housatonic must notify the Board and CSX, in writing, on or before April 29, 2002.
3. If Housatonic accepts the terms and conditions established by this decision, Housatonic and CSX will be bound by this decision.
4. If Housatonic withdraws its offer or does not accept the terms and conditions with a timely written notification, we will serve a decision by May 9, 2002, vacating the prior decision that postponed the effective date of the decision authorizing abandonment.

5. This decision is effective April 19, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary