

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-565 (SUB-NO. 3X)

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

~~DOCKET NO. AB-55 (SUB-NO. 595X)~~

~~CSX TRANSPORTATION, INC. DISCONTINUANCE OF SERVICE IN BERKSHIRE
COUNTY, MA~~

PETITION TO REOPEN DECISION SETTING TERMS AND CONDITIONS

ENTERED
Office of the Secretary

APR 29 2002

Part of
Public Record

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Dated: April 29, 2002

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PETITION TO REOPEN DECISION SETTING TERMS AND CONDITIONS

CSX Transportation, Inc. and New York Central Lines, LLC (collectively referred to as “CSX”) respectfully request the Surface Transportation Board (the “Board”) to reopen to a very limited extent the decision served April 19, 2002 that set terms and conditions under 49 U.S.C. §10904 for the forced sale of the 1.91-mile railroad line between milepost QBY-0.59 and milepost QBY-2.50 in Pittsfield, Berkshire County, MA (“The Line”).

CSX believes that under the requirements of 49 U.S.C. §10904(f)(1), the Board must render its decision within 30 days and in no case shall the Board set a price which is below the fair market value of the line. CSX contends that the Board should exercise its discretion to reopen this proceeding in order to correct indisputable errors, because, based on the indisputable evidence of record, the Board set a price below the fair market value. *Union Pacific Railroad Company—Abandonment Exemption—in Lancaster County, NE*, STB Docket No. AB-33 (Sub-No. 112X) (STB served March 2, 1998).

On April 19, 2002, the Board set the terms and conditions for Housatonic Railroad Company (the "Housatonic") to acquire the Line under 49 U.S.C. §10904 (the "Decision"). This Petition to Reopen is limited to the Valuation of Parcel 1 (pages 6-7). CSX contends that the Board made mathematical errors when it accepted only portions of Housatonic's evidence and rejected CSX's evidence in its entirety.¹

There are two issues that CSX believes require recalculation by the Board: (1) the value per square foot of the commercial and industrial land; and (2) the double-count of the reductions to land value urged by Housatonic and adopted by the Board.

1. VALUE PER SQUARE FOOT.

CSX's valuation of Parcel 1 is based on the across-the-fence ("ATF") sale of commercial and industrial property. Housatonic valued Parcel 1 at \$50,084 per acre or \$1.15 per square foot, after a tortured analysis and several pre-adjustment reductions in value. Housatonic's Request to Set Terms & Conditions dated March 21, 2002, page 14 (the "Request"). CSX valued Parcel 1 at \$3.13 per square foot (\$136,428 per acre) based on a pure ATF comparison. CSX's Response dated March 26, 2002, Volume II, page 35 (the "Response").

The Board adopted Housatonic's plaint that CSX's ATF valuation included land and buildings. As the Board was made aware, after acquisition these buildings were demolished, leading to the logical conclusion that the buildings did not add value to the land, as claimed by Housatonic, but that they reduced the value of the property because the purchase price had to be adjusted to take into account the cost of demolition. CSX was very conservative in adopting only the purchase price.

Industrial Acreage.

¹ Housatonic essentially presented its opening case in its appraisal. Then it received CSX's appraisal on January 20, 2002. Housatonic then prepared an analysis of the CSX appraisal, which it submitted to the Board. Housatonic's analysis of the CSX appraisal is analogous to a "rebuttal statement". However, contrary to usual practice, the Board did not adopt the facts presented in Housatonic's "rebuttal statement" that were less favorable to Housatonic than those in its appraisal.

Housatonic's attack on CSX's valuation of industrial acreage was based on a property that does not even appear in the CSX appraisal. Housatonic claims that CSX included a 1.16 acre parcel in its appraisal that included a building. Request at 15. A review of the CSX appraisal shows that CSX did not rely on the valuation of any 1.16 acre parcel. Response Volume II at 32-33. CSX valued a 0.14 acre parcel (Response Volume II, page 32, item 4 under industrial land sales), but then excluded that appraisal of \$4.92 per square foot because of the substantial deviation from the other appraisals CSX reviewed.² In addition, the evidence presented by Housatonic assigned a value of \$58,000 to 1.16 acres (the equivalent of \$1.15 per square foot), almost identical to the CSX average of \$1.19 per square foot. See Request, Exhibit G, unnumbered pages 4-7. Moreover, as can be seen from Exhibit G, the buildings on that property date from 1940, at the latest, except for a mobile home that dates from 1969, not the type of buildings to add value to land.

Based on the facts presented by CSX and Housatonic, the Board should have recalculated the average value per square foot of industrial land to be \$1.19.

Commercial Acreage.

The Board accepted Housatonic's argument that three of the four properties that CSX used to value the commercial acreage had buildings and were not comparable values. Request at 15. Again, Housatonic ignored the demolition of the buildings as a factor that leads to a greater value of the property. More importantly, the evidence presented by Housatonic provided a valuation for the land portion of the three properties Housatonic challenged. Request, Exhibit H. Based on Housatonic's evidence, the four commercial properties valued by CSX have the following land value:

² CSX also discarded the two low appraisals as also deviating from the apparent norm of valuation for this land. Housatonic however, only discarded the upper valuation of \$4.92 per square foot, but not the lower valuations of \$0.63 and \$0.72 per square foot. Including all eight of CSX's valuations results in an average of \$1.53 per square foot. Excluding the three divergent valuations (one high and two low) results in an average value of \$1.19 per square foot.

Sale No.	1	2	3	4
Land Assessment	\$57,700	\$140,800	\$75,000	\$144,000
Acreage	0.554	1.408	0.369	1.440
Price per acre	\$104, 150	\$100,000	\$203,250	\$100,000
Price per square foot	\$2.39	\$2.30	\$4.67	\$2.30

Without the buildings, these properties are assessed at an average of \$2.92 per square foot based on Housatonic's own evidence.

Overall Valuation of Parcel 1

The Board calculated the value of Parcel 1 by accepting the CSX 50/50 split of industrial and commercial property. Averaging the industrial property value of \$1.19 per square foot and the commercial property value of \$2.92 per square foot yields an average of \$2.055 per square foot. Using the 225,557 square feet for Parcel 1 adopted by the Board results in an unadjusted value of Parcel 1 of \$463,520. The adjusted value will be calculated after the following discussions of the double-count of adjustments made by the Board.

2. DOUBLE-COUNT OF THE REDUCTIONS TO LAND VALUE.

The Board adopted Housatonic's 40% adjustment to Housatonic's land valuation and then also applied CSX's land adjustments of 50% for Parcel 1. Decision at 7. However, Housatonic's adjustments are for the same conditions as CSX's reductions.

Housatonic adopted a total 40% adjustment for "Land's Quality" and "Quality of Use." Request, Exhibit C-1, page 50. These are the factors that were used in the CSX appraisal, "Topography/Elevation" and "Utility" to adjust the value of the land downward. Response, Volume II, page 35.

The Board adopted both the Housatonic and CSX adjustments to the value of the land. The result was reducing the value of the land twice for the same reasons, thereby reducing the value of Parcel 1 by 70% (Decision at 7). Eliminating the double-count would reduce the value of Parcel 1 by only 50% instead of 70%. Aside from the unfairness of double-counting a deduction for the same purpose, the double-count by the Board improperly reduces the value of

Parcel 1 below the "fair market value of the line" mandated by the statute.³

After the double count for adjustments is eliminated, the following value should be assigned to Parcel 1.

Parcel	1
Gross valuation	\$463,520
Adjustment	50%
Net valuation	\$231,760

3. RECALCULATED NET LIQUIDATION VALUE.

The net liquidation value for all three Parcels is recalculated below using the recalculations made to Parcel 1 above, and adopting the cost of restoration of crossings, culvert repair, and erosion control, and the sales costs adopted by the Board.

Parcel	1	2	3	Total
Gross Valuation	\$231,760	\$112,378	\$ 87,945	
Restoration	\$ 12,536	\$ 7,000	\$ 5,600	
Sub-total	\$219,224	\$105,378	\$ 82,345	
Sales	\$ 32,884	\$ 15,807	\$ 12,352	
Net Liquidation Value	\$186,340	\$ 89,571	\$ 69,993	\$345,904

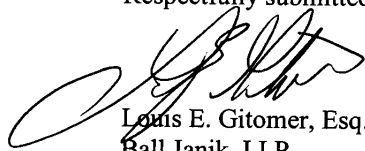
³ The Board properly disregarded Housatonic's third reduction in value to Parcels 1 and 3. Decision at 7 and 9.

CONCLUSION

CSX respectfully requests the Board to reopen this proceeding, recalculate the purchase price of the line as described above using the indisputable evidence set forth above submitted by CSX and Housatonic, and to set the purchase price for the Line at **\$345,904**, a valuation that is not below the fair market value of the line.

Respectfully submitted,

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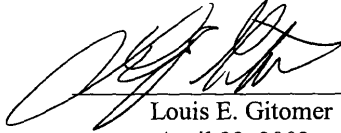
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Dated: April 29, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Response of CSX Transportation, Inc. and New York Central Lines, LLC to Request to Set Terms and Conditions by Housatonic Railroad Company, Inc. to be served upon counsel for the Housatonic Railroad Company, Inc. by hand delivery and express mail.



Louis E. Gitomer
April 29, 2002