



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-565 (Sub-No. 3X)

205381

NEW YORK CENTRAL LINES, LLC
--ABANDONMENT EXEMPTION--
BERKSHIRE COUNTY, MA.

STB Docket No. AB-55 (Sub-No. 595X)

205382

CSX TRANSPORTATION, INC.
DISCONTINUANCE OF SERVICE IN BERKSHIRE COUNTY, MASSACHUSETTS

MEMORANDUM OF HOUSATONIC RAILROAD COMPANY
IN OPPOSITION TO PETITION TO REOPEN
DECISION SETTING TERMS AND CONDITIONS

ENTERED
Office of the Secretary

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Public Record

Edward J. Rodriguez
General Counsel
Housatonic Railroad Company, Inc.
P.O. Box 687
Old Lyme, Connecticut 06371
(860) 434-4303

May 10, 2002

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BACKGROUND

On March 21, 2002, Housatonic Railroad Company, Inc. ("Housatonic") filed a Request to Set Terms and Conditions, pursuant to 49 U.S.C. 10904, for the purchase by Housatonic of a 1.91 mile section of railroad line in Pittsfield, Berkshire County, Massachusetts which was the subject of an abandonment exemption proceeding filed by New York Central Lines, LLC and CSX Transportation, Inc. ("CSX"). On April 19, 2002 the Surface Transportation Board served a decision that set terms and conditions for the purchase. On April 26, 2002, Housatonic notified the Board and the parties that Housatonic accepted the terms and conditions as set by the Board. On April 29, 2002, CSX filed a petition to reopen the April 19 decision, seeking to modify the purchase price.

STANDARD FOR REVIEW

The statute authorizing the Board to establish terms and conditions, 49 USC 10905(f)(2), and the regulations implementing it, 49 CFR 1152.27(h)(7), do not provide for reopening a decision. The rules at 49 CFR 1152.27 were adopted in Abandonment of Railroad Lines & Discontinuance of Service, 365 I.C.C. 249, 261 (1981), where the Commission plainly stated that decisions setting terms and conditions would not be subject to an administrative appeal and would be appealable only to the courts. The Commission explained that these decisions were intended by Congress to be final and that allowing appeals in this circumstance would introduce a delay that would be inconsistent with the statutory scheme.

In Buffalo Ridge Railroad, Inc., Abandonment Exemption Between Manley, MN and Brandon, SD, 9 I.C.C. 2d 778 (1993) the Commission discussed the governing statute and regulations and determined that the decision was an administratively final action not subject to administrative appeal, but concluded that

“The Commission may, however, at any time on its own initiative, reopen an administratively final action of the Commission based upon material error, new evidence, or substantially changed circumstances. See 49 U.S.C. 10327(g).”

In the Buffalo Ridge case, the railroad had filed a petition to reopen the decision claiming that the decision contained material error, was not supported by the evidence, and made findings beyond the Commission’s jurisdiction. Buffalo Ridge Railroad claimed that the purchase price established by the Commission was too low. The Commission opened its decision to correct a mathematical error which the Commission discovered, and set a new, lower purchase price; but the Commission declined to consider the issues raised by Buffalo Ridge.

The Surface Transportation Board considered a Petition to Reopen a decision setting terms and conditions in Union Pacific Railroad Co., Abandonment Exemption in Lancaster County, NE, STB Docket Number AB-33 (Sub-No. 112X), (February 27, 1998). Citing Buffalo Ridge, the Board clarified the conditions under which it would reopen an OFA decision setting terms and conditions. The Board reaffirmed that there is no right of administrative appeal in such cases and that section 10904 limited the ability of the Board to consider petitions to reopen in OFA cases. The Board then stated:

“In Buffalo Ridge, as noted, the ICC limited its review to the correction of a mathematical error. We will therefore limit our review of appeals from OFA decisions to the correction of similar indisputable errors.”

In the Union Pacific case, the Board found that the claims of error “failed to meet the extremely restrictive standards for obtaining a discretionary review of a decision setting terms and conditions” and denied the petition.

RELIEF REQUESTED BY CSX

CSX has requested the Board to open the decision in this case to correct mathematical errors which CSX claims were made by the Board in its decision. However, the CSX argument is directed at challenging the rationale and judgment of the Board, not in correcting mathematical errors. The petition focuses on two issues, the base unit value per square foot for Parcel 1 and certain reductions to the base value.

1. BASE VALUE PER SQUARE FOOT

In its Request to Set Terms and Conditions, Housatonic pointed out that the base unit value for commercial/industrial land established by the CSX appraisal was flawed because the commercial comparables consisted primarily of land with buildings, rather than vacant land. Although CSX responded that the improvements to the comparables were demolished after purchase, and that each comparable was adjusted for the building removal, the Board found no evidence in the CSX appraisal that any adjustment was made. In fact, the appraisal failed to even mention that the comparables included buildings. Under the circumstances, the Board was fully justified in finding the CSX base unit values for Parcel 1 to be unreliable.

In its Petition to Reopen, CSX repeats its position that the existence of buildings on the comparables did not add value to the land but fails to point to any analysis in the CSX appraisal which would support that position. More importantly, CSX does not claim a mathematical error by the Board but rather challenges the judgment of the Board in finding the CSX unit values for Parcel 1 to be unreliable. Clearly, the standard of review is not satisfied.

Having rejected the unit values established by the CSX appraiser, the Board accepted the values established by the Housatonic appraiser as the most reliable values established by the evidence of record. Again, no mathematical error is alleged.

2. REDUCTIONS TO LAND VALUE

CSX claims that the Board erred in its application of the adjustments to land values by erroneously "double-counting". A review of the Decision clearly indicates that the Board knew

exactly what it was doing. The first step in determining the net liquidation value is to establish a base unit value. The unit value is determined by identifying roughly comparable properties and adjusting the value for factors such as neighborhood quality and date of sales to refine the "comparable" value. The Housatonic appraisal concluded that the adjusted comparable value was \$0.69 per square foot and the Board accepted that value as being not unreasonable and the best evidence of record.

The second step in determining the net liquidation value is to adjust the comparable unit value for topography and utility. The Housatonic appraiser applied an adjustment of -75% to the adjusted unit value of \$0.69. Clearly, the appraiser would not have done so if the topography and utility adjustments had already been made. The Board rejected the Housatonic adjustment in favor of the -50% adjustment applied by the CSX appraiser and applied the adjustment in a mathematically correct manner. There was no indisputable error.

CSX FAILURE TO MEET STANDARD OF REVIEW

As set forth above, CSX has failed to establish a mathematical or indisputable error in the Board's decision and the Petition to Reopen should be denied.

Housatonic accepted the decision of April 19 as final and, on April 26, 2002, filed a notice with the Board accepting the terms and conditions established by the Board. Housatonic has not and does not request the Board to reopen the decision. However, to the extent that the Board will be reviewing its April 19 decision, Housatonic takes this opportunity to direct the Board's attention to one area where Housatonic believes that the Board might have made a mistake of a type which the Board might want to consider correcting on its own initiative.

In reviewing the valuation of Parcel 2, the Board rejected Housatonic's contention that the land could not be put to residential uses. While the Board agreed with Housatonic that the right-of-way is too narrow and lacks road access for lot development, the Board found that adjacent "landowners could merge the land from this right-of-way with their current holdings to develop new lots."

Having reached the conclusion that the land in Parcel 2 could not be used alone for residential development, but could merged with other property and then used for residential development, the Board in effect found that the land in Parcel 2 was residential acreage.¹

The Board accepted CSX's residential land values, finding them more credible than Housatonic's. However, consistent with the Board's conclusion regarding the use of the land, we believe that the Board intended to use CSX's value for residential acreage. In fact, the Board computed the net liquidation value of Parcel 2 using CSX's mixed unit price of \$1.26 per square foot for residential acreage and residential lots, instead of using CSX's value of \$0.25 per sq. foot for residential acreage. Housatonic believes that the Board inadvertently used the wrong number. If the Board agrees that there was an error, the corrected NLV for Parcel 2 is \$13,702.

¹Residential lots are parcels of residentially zoned property upon which residential structures may be erected under applicable zoning regulations. Residential acreage is residentially zoned property which does not, by itself, constitute residential lots. As residential acreage, property may be subdivided or merged with other property to create residential lots.

CONCLUSION

The Board should reject the Petition to Reopen filed by CSX because it fails to establish a mathematical or indisputable error.

Respectfully Submitted
Housatonic Railroad Company, Inc.

By Edward J. Rodriguez
Edward J. Rodriguez
General Counsel
Housatonic Railroad Company, Inc
P.O. Box 687
Old Lyme, Connecticut 06371
(860) 434-4303

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Memorandum of Housatonic Railroad Company in Opposition to CSXT's Petition to Reopen to be served upon counsel to New York Central Lines, LLC and CSX Transportation, Inc. by facsimile and by United States Mail, postage prepaid.

Edward J. Rodriguez
Edward J. Rodriguez
May 10, 2002