

So, You Want To Buy A Railroad

By WILLIAM L. REID, SR/WA

In recent years, a new element has surfaced in the arena of land use—it is conservation. We are simply running out of land while our population continues to increase. Thus, the conservation of land is becoming almost as important as the conservation of energy. Out of this need for land conservation has come an increased emphasis on the so-called "Corridor Concept" for rights-of-way—wherein a number of different uses are made of the same corridor. Transmission lines, pipelines, railroads, telephone lines, and even highways all occupy the same corridor. By being together, less space is required for each one than would individually be required, so that the total width of the corridor is much less and land is, in fact, conserved. It is out of this need for conservation and the utility corridor that a new look at abandoned railroad rights-of-way has surfaced.

The Railroad Reorganization Act, which was aimed at aiding financially poor railroads in the eastern part of the country, has had the effect of hastening the abandonment of numerous rail lines that have become unprofitable. As these lines receive their formal abandonments from both Federal and state authorities, they become available for purchase, and utility companies and others are taking a good look at them.

We must first recognize that, in most instances, the State Department of Transportation where the railroad lies has the first option to purchase the land being abandoned. The right-of-way can then be converted to highway or recreational use, such as bike and hiking trails. In some cases, the state has actually operated a railroad. But even if the state does purchase the right-of-way, there is a strong compatibility between utilities' uses and recreational pursuits, such as hiking trails. And the advantage of acquiring a direct route between two points that is already essentially cleared of trees and already has created a severance makes the investigation even more worthwhile.

There are certainly some problems from the utility standpoint. One is matching

up the end points. The railroad usually wants to sell an entire right-of-way and the utility company will often have to purchase a little more than it actually needs to accommodate the railroad's desires. But, with a little effort, the utility can usually sell the unneeded portion to a third party.

Another problem is finding out what is available and when. The laborious process by which a railroad is formally abandoned is difficult for lay people to understand. It is also very time consuming so that, frequently, the utility company does not have time enough to wait for the land to become available. This would seem, then, to require even more advanced planning on the utility's part. In some cases, the taking of a license or a lease from the railroad may be necessary to hold the right-of-way until it is available or the utility may have to postpone construction for a few months.

A third problem is the inability of many railroads to move promptly. After the abandonment proceedings are concluded, the railroad must secure an appraisal and it must determine the price. Frequently, it does not have enough people to do these things. Then, after the price has been negotiated, a great length of time is usually required to consummate the purchase.

Then there is the problem of title. Most railroad rights-of-way were acquired a century or more ago. Some deeds say the land is for railroad use only and even have some sort of a reverter written into them. The legal effect of this reverter must be studied, and court decisions vary as to its effect. In other cases, it is unclear whether the railroad right-of-way is by fee or easement and the utility company or other purchaser needs to weigh carefully the risks that it takes. Many railroads will not prove up their title, will not even give title insurance, and so the utility is left with this unusual expense.

How to deal fairly with adjoining owners is another problem to be faced by the purchaser. Most of these people, particularly in rural areas, would love to own the railroad running through their property and

the utility company is normally willing for this to occur. A Utility Easement would be reserved upon property purchased from the railroad and then the fee title would be sold off to the adjoining owners. But this, too, has some inherent problems. Plat Acts and similar legislation often come into play. This can make the sell-off to adjoining owners very time consuming and expensive, if some form of registration under these Acts is required. Furthermore, adjoining owners will likely not be willing to pay as high a price for the land because it is built up, covered with ballast, and will require a number of years of cultivation and fertilizing before a good crop can be achieved.

But, serious as these problems appear to be, the advantage of acquiring this partially cleared right-of-way during this time of high inflation can be readily demonstrated.

It was out of this need for conservation and in recognition of these problems that my employer, Consumers Power Company, decided to attempt to purchase a 16.5-mile abandoned railroad running from Jackson to Jonesville, Michigan. The rail line had not been used for a number of years and was overgrown with brush. Much of the track remained in place but it had been removed and paved over at the road crossings. The right-of-way is to be utilized for a 138 KV single-pole transmission line and, therefore, additional clearing outside of the right-of-way will be required at several points along the way, as well as guy rights at most of the angle points. Operator and lessee of the railroad was the Michigan Central Railroad which later became a part of the Penn Central system. Title to the land was held by the Fort Wayne and Jackson Railroad which did not maintain offices in its corporate name. They finally were located and agreed to go along with the sale provided the details could be worked out to the satisfaction of the lessee.

The appraisal problem can be summed up in one single issue: Is it appropriate in a long, narrow strip of land like this to apply

an assemblage factor when it is sold because of the extra cost of assembling it in the first place, or should a liquidation factor be applied since the market for such strips is very limited? I suspect that anyone attempting to establish the market value of an abandoned railroad will come face to face with this issue and there is no clear answer to the question. In our case, the railroad ran through lands of varying quality and use. Closer to Jackson and its suburban areas, there were subdivisions with fine new homes. To the south, there were average to better-than-average farmlands and the line ran through an area of considerable oil and gas field activity. The railroad appraiser, of course, applied an assemblage factor and came up with an appraisal about 25 percent higher than ours. There was little debate as to the comparable sales that made up the basic value of the lands. In this case, a compromise was reached that gave the railroad credit for holding the land for a long period of time, but conversely recognized the difficulty it would have if it attempted to break the package up into a large number of small parcels. The savings in cost of selling the land to a single purchaser was noted, and the railroad gave recognition to the cost involved in converting the roadbed to agricultural use.

After many, many months of negotiation, the acquisition was completed in

1979 and the necessary adjoining rights are now being secured. Fortunately, there was adequate lead time in planning for construction, so that negotiations could proceed at a deliberate pace. This will not always be the case.

It appears that there will be a lot more abandoned railroads offered for sale all around the country in the next few years and we believe that utility rights-of-way will be an appropriate use for many of them. What, then, can each party to the negotiations do to make them easier and to bring about the acquisitions in a more timely fashion?

I believe that utility companies must work harder at liaison in this area, both with the railroads and with the State Departments of Transportation. They need to seek out information at an early date concerning proposed abandonments, often a difficult chore. Utilities need to keep improving their advance planning so that the need for rights-of-way of this type will be known well in advance. Only in this way will there be ample time to make the acquisition and to develop a purchase price that is fair to both parties.

Finally, utility companies need to plan more concentrated use of the corridor. There is a real advantage to obtaining a cleared right-of-way for the line in question and sometimes this can be accomplished with little sacrifice by moving a short distance to an abandoned railroad.

But railroads also have some things to do if they are going to effectively sell their abandoned rights-of-way and promptly convert these assets to much needed cash.

First, they must be more willing to prove up their title and to give title commitments. They need to begin a program early in the abandonment process of checking all of their titles, going over their deeds, and finding just exactly what they have. Second, they need to find ways of accomplishing their work faster. Third, and perhaps most important of all, they need to make sure that the local utilities know of their plans in ample time for the utilities to plan their facilities and to acquire the right-of-way. Even if the utility company does not need to acquire the right-of-way for longitudinal use, the railroad should be willing to grant easements in advance of sale for all existing crossings and incidental occupancies.

If we return to the thesis with which we began, that conservation of land is an important element as we move into the decade of the '80s, then it is the responsibility of all of us in this business and the organizations we represent to seek to make greater use of abandoned railroad rights-of-way as utility corridors. Yes, the use of abandoned railroads for utility company rights-of-way is the right way to go.



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