

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DON HOWELL

DATE: MAY 11, 2006

SUBJECT: BNSF RAILWAY'S ABANDONMENT IN COEUR D'ALENE,
CASE NO. BNR-R-06-1

On April 13, 2006, the Commission issued a Notice that BNSF Railway Company intended to abandon 2.12 miles of railroad right-of-way in Coeur d'Alene, Idaho. The Notice also established a deadline for intervention. Parties desiring to intervene were directed to do so no later than April 26, 2006. Although the Commission received two written comments, there were no petitions for intervention.

THE ABANDONMENT

The rail line and right-of-way in question runs between Milepost (MP) 12.33 and MP 14.45 within the city limits of Coeur d'Alene. The section of right-of-way being proposed for abandonment generally runs from the Coeur d'Alene City Park adjacent to Northwest Boulevard, across the front of the Coeur d'Alene Resort, down East Front Avenue over to East Mullan Avenue and terminates at the Coeur d'Alene Golf Resort. The Notice observed that the majority of track from the affected right-of-way was removed in the 1980s. Notice at 1. Consequently, there were no reported shippers on the line. *Id.*

BNSF's outside counsel indicates that the Railroad will utilize the "exemption" abandonment proceeding with the Surface Transportation Board (STB). To be eligible to file a Notice for Exemption, the Railroad must usually certify that no rail traffic has moved on the line for the past two years and there are no outstanding complaints about the lack of rail service. At least 20 days prior to the filing of a Notice of Exemption, the Railroad must serve its Environmental Report on the PUC, the City of Coeur d'Alene and Kootenai County. 49 C.F.R. § 1105.7(b). As of the date this memorandum was prepared, the BNSF has not filed its

Environmental Report. Once the Notice of Exemption is filed, the STB will publish a notice in the Federal Register within 20 days. Thirty (30) days after the notice is published in the Federal Register, the Railroad is permitted to abandon the rail line unless the STB stays the abandonment.

STATE LAW

Although the authority to grant or deny an abandonment rests with the STB, the Commission does have a state abandonment proceeding. *Idaho Code* § 62-424 provides that the "Commission shall schedule a public hearing on the proposed abandonment." The purpose of the hearing is for the Commission to determine whether the abandonment would: (1) adversely affect the area being served; (2) impair the access of Idaho shippers to vital goods and markets; and (3) whether the rail line has the potential for profitability. If the Commission finds that the abandonment would be adverse to the public interest, then it may represent the state in the STB abandonment proceeding. *Idaho Code* § 62-424(2).

As previously mentioned, no person petitioned to intervene in this matter. The Commission Staff has examined the right-of-way and is prepared to offer testimony at a Commission hearing.

COMMISSION DECISION

Does the Commission desire to schedule a public hearing? If so, where and when?
Does the Commission desire to schedule the public hearing after it receives the Railroad's Environmental Report?



Don Howell

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