

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF BNSF RAILWAY COMPANY FOR) CASE NO. BNR-R-09-01
APPROVAL TO ABANDON A 6.23 MILE)
SECTION OF ITS RAIL LINE IN) NOTICE OF
KOOTENAI COUNTY, IDAHO) PROPOSED ABANDONMENT
)
) **NOTICE OF**
) **TELEPHONIC HEARING**
)
) **ORDER NO. 30903**

PROCEDURAL BACKGROUND

On August 10, 2009, the Commission received BNSF Railway Company's ("BNSF") Petition for Exemption filed with the Surface Transportation Board (STB). *Petition for Exemption*, Docket NO. AB-6 (SUB-NO. 468X) at 3.

On August 28, 2009, the STB issued a notice instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b).

STATE LAW

Although the authority to grant or deny abandonment rests with the STB and is governed by federal law, the Commission has an obligation under state law to hold a public hearing regarding the abandonment, and to represent the State in STB abandonment proceedings if deemed necessary. *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 a 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).

NOTICE OF PROPOSED ABANDONMENT

YOU ARE HEREBY NOTIFIED that BNSF filed a Petition for Exemption with the Surface Transportation Board (STB) requesting an exemption from the federal prior approval

requirements found in 49 U.S.C. §§ 10903-10905 to abandon a 6.23 mile section of its rail line in Kootenai County, Idaho. *Petition for Exemption* at 3.

YOU ARE FURTHER NOTIFIED that BNSF proposes to abandon a portion of its rail line located between Milepost 6.10 near Post Falls and Milepost 12.33 at Coeur d'Alene, Kootenai County, Idaho (the "Line"). *Id.*

YOU ARE FURTHER NOTIFIED that BNSF states in its Petition that there "are no shippers remaining on the Line" and that "there has been no overhead traffic on the Line for many years prior to that." *Id.* at 4.

YOU ARE FURTHER NOTIFIED that BNSF also states that it has received a "firm offer to purchase the Line between Milepost 12.33 and Milepost 8.66" so that it may be developed in accordance with the Coeur d'Alene Education Corridor Master Plan. *Id.* The remaining portion of the Line, between Milepost 8.66 and Milepost 6.10, "will be converted to industry track and used for storage of surplus rail cars." *Id.* The City of Coeur d'Alene has reached a tentative agreement with the federal Bureau of Land Management (BLM) to exchange the federal right-of-way located on the Line "for land in the general area that is more suitable to BLM's purposes." *Id.*

YOU ARE FURTHER NOTIFIED that the exemption process allows railroads to abandon rail lines if the abandonment is of limited scope and does not adversely affect national rail policy. 49 U.S.C. §§ 10502 and 10101. Under STB procedures, once the exemption is filed, the STB must publish a notice in the Federal Register within 20 days. Unless stayed, the railroad may then abandon the rail line 30 days after the notice is published in the Federal Register.

NOTICE OF TELEPHONIC HEARING

YOU ARE FURTHER NOTIFIED that the Commission has scheduled a telephonic hearing in this matter to commence at **10:00 A.M. (MOUNTAIN DAYLIGHT TIME) ON SEPTEMBER 22, 2009, IN THE COMMISSION HEARING ROOM, 472 WEST WASHINGTON STREET, BOISE, IDAHO.** Persons wishing to offer their testimony telephonically or listen to the proceedings may dial toll-free **(866) 680-0146: Participant Code 295999.** The purpose of the hearing is to take public testimony as to whether the BNSF Railway Company's abandonment of an approximately 6.23 mile section of rail line in Kootenai County, Idaho would be adverse to Idaho's public interest. The railroad, any shipper, local government leaders, and any other interested persons are encouraged to testify.

YOU ARE FURTHER NOTIFIED that all hearings will be conducted in accordance with the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

YOU ARE FURTHER NOTIFIED that the BNSF's Petition for Exemption, together with any attachments have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices. The Petition and Reports are also available on the Commission's web site at www.puc.idaho.gov by clicking on "File Room" and then "Rail Cases."

YOU ARE FURTHER NOTIFIED that all hearings in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). Persons needing the help of a sign language interpreter or other assistance in order to participate in or to understand testimony and argument at a hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

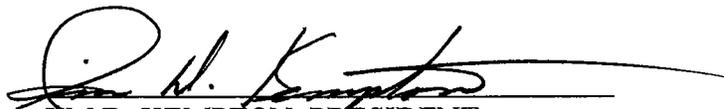
IDAHO PUBLIC UTILITIES COMMISSION
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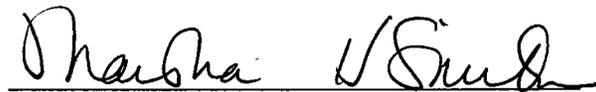
YOU ARE FURTHER NOTIFIED that the Commission has jurisdiction over this matter pursuant to *Idaho Code* § 62-424.

ORDER

IT IS HEREBY ORDERED that the Commission shall convene a public hearing in this matter as set out above.

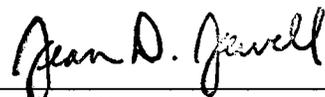
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17th
day of September 2009.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:BNR-R-09-01_np