

## 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 ) ORDER NO. 30939  
KOOTENAI COUNTY, IDAHO )

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### INTRODUCTION AND BACKGROUND

On August 10, 2009, the Commission received BNSF Railway Company's ("BNSF") Petition for Exemption filed with the Surface Transportation Board (STB). On August 28, 2009, the STB issued a notice instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b) and notes that a final decision will be issued by November 27, 2009. *See* STB Docket No. AB-6 (Sub-No. 468X). On September 17, 2009, the Commission issued a Notice of Proposed Abandonment and Notice of Telephonic Hearing to be held on September 22, 2009 in the Commission's Hearing Room. *See* Order No. 30903.

### THE PROPOSED ABANDONMENT

BNSF stated in its Petition seeking an abandonment exemption 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." *Petition* at 4. BNSF also stated 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.*

### PUBLIC HEARING AND COMMENTS

The Commission held a telephonic public hearing on September 22, 2009. The Commission took the testimony of Wendy Gabriel, City Administrator, Coeur d'Alene, Idaho ("City"). *See Telephonic Hearing Transcript* at 7. Ms. Gabriel conveyed the support of the City for the proposed abandonment. *Id.* Ms. Gabriel noted that "North Idaho College Foundation has just acquired a large portion of property adjacent to the railroad" and confirmed the existence of

a master development plan involving several local educational institutions, including North Idaho College. *Id.* An opportunity exists to utilize the section of land involved in the proposed abandonment for a “centennial [public] trail along the lake shore.” *Id.* According to Ms. Gabriel, the rail line has not been utilized since the departure of the DeArmond Mill approximately “one to two years ago. . . .” *Id.* at 8. Finally, Commissioner Kempton queried Ms. Gabriel as to whether the City planned to utilize the rail line for commuter traffic by rail. *Id.* at 9. Ms. Gabriel testified that the City had no such plans. *Id.*

The Commission also took the testimony of Don Johnston who has owned and operated a warehouse business adjacent to the right-of-way located on the Line since 1946. *Id.* at 10. Mr. Johnston emphasized that he had “no objection to the abandonment” but was concerned that “the family partnership [will be] able to own, maintain and operate a warehouse business at this location.” *Id.* The warehouse business does not utilize the rail line in the operation of its business. *Id.* at 11. Mr. Johnston believed that the transfer of the right-of-way would not preclude existing warehouse operations. *Id.* at 14.

#### **DISCUSSION AND FINDINGS**

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 then publish a notice in the Federal Register within 20 days. Unless the STB stays the proceeding or rules otherwise, the Railroad may then abandon the rail line 30 days after the notice is published in the Federal Register.

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) to determine 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).

The Commission has carefully reviewed all of the filings in this case, as well as the public testimony offered at the telephonic hearing. The Commission finds that: (1) the existing rail line subject to the proposed abandonment does not offer a potential for profitability; (2) the proposed abandonment would not have an adverse affect on the area surrounding the rail line; and (3) abandonment of the rail line would not impair access to any Idaho shippers on the rail line. Therefore, the Commission finds that issuing comments to the STB in this case is not warranted.

### **ORDER**

IT IS HEREBY ORDERED that this case be closed. The Commission will not file comments with the STB regarding this abandonment.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *Idaho Code* §§ 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30<sup>th</sup>  
day of October 2009.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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