



over the Jaype Branch for more than two years, it had discussions with “a potential customer” to see if business could be developed for the branch. These discussions were unsuccessful so the Railroad decided to petition the STB to abandon the line.

### **THE ABANDONMENT PETITION**

On July 14, 2004, Great Northwest filed its Petition for Exemption to abandon the Jaype Branch line. Although the Railroad had initially intended to abandon the entire 31 miles of the Jaype Branch, the Railroad discarded abandonment of the first 3.5 miles and only sought abandonment of the latter 27.5 miles. Petition at 1 n. 1. Because no rail traffic has moved over the latter portion of the line for more than three years, the Railroad filed for an abandonment exemption under 49 U.S.C. § 10502.

In its Petition, the Railroad noted that Potlatch Corporation shipped approximately 20,000 carloads of logs and finished plywood annually over the line during the 1980s. These carloads declined to approximately 3,500 by the end of the 1990s. *Id.* at 5. The Railroad asserted that Potlatch has not shipped any cars over the subject line since June 2001. “Since then Potlatch has demolished the plywood mill near Jaype and shifted its log traffic originating along the Line to trucks.” *Id.*

Although Great Northwest did not appear at the Commission’s June 28 public hearing, the Railroad mentioned the hearing in its Petition. It observed that a few witnesses testified “about potential industries that could locate along the Line if rail service were retained.” *Id.* However, the Railroad asserted that the STB has consistently held that “speculation about future traffic is not a sound basis to deny an abandonment exemption.” *Id.* at 6 (emphasis added). Even though a former shipper (Idaho Lime) might ship up to 500 cars of lime a year under the right conditions, it admitted at the PUC’s hearing to having not shipped a single carload since 1998. *Id.* Given the lack of foreseeable traffic, Great Northwest concluded that the branch “is not economically viable now and has no potential of being profitably operated in the . . . future.” *Id.* Consequently, Great Northwest requested that the STB exempt it from the normal abandonment proceedings given the fact that no traffic has moved over the 27.5 miles of the branch line for more than three years.

### **THE COMMISSION’S PUBLIC HEARING**

At the time of the Commission’s public hearing on June 28, the Railroad intended to abandon the entire 31 miles and had not yet modified its abandonment petition by forgoing its

plans to abandon the first 3.5 miles of the branch. Consequently, several public witnesses testified that abandonment of the first 3.5 miles should be disallowed because that portion of the line is still in active service. In particular, Don Konkol testified that his sawmill (Konkolville Lumber) shipped 182 cars in 2003 and 89 cars so far this year over the 3.5-mile portion. His sawmill is located at or about MP 3.5.

Other witnesses urged the Commission to deny abandonment based upon the potential for future traffic. Several witnesses discussed various proposals for returning rail traffic to the line. For example, they suggested that it was possible that Idaho Lime might be able to begin rail shipments. State Representative Charles Cuddy provided a written statement suggesting there might be a new energy facility developed at Jaype or that lime deposits adjacent to the railroad could be developed. Other witnesses indicated that there was still substantial amounts of harvestable timber adjacent to the rail line and that it made good economic sense for Potlatch to renew log shipments via the rail line. Although a Potlatch representative was present at the hearing, he did not testify. Three economic development specialists said it would be more difficult to bring economic development opportunities to the area if the rail line were abandoned.

The three Clearwater County Commissioners also testified they were disappointed about the abandonment. Commissioner Curfman stated that the Railroad should be a partner in economic development. Both he and Commissioner Leach testified that if the line is abandoned, it should be rail banked to preserve the right-of-way for possible future development.

Finally, the Idaho Department of Lands submitted written comments. The State is a reversionary property owner on the part of the line to be abandoned. The Department recommended that if abandonment is granted, then the bridges, culverts, and concrete barriers should be removed. The Department was concerned that allowing these structures to remain in the bed of Orofino Creek could result in debris accumulating against the structures. This could lead to flooding downstream. That being said, the Department does support rail banking or converting the line to Rails-to-Trail. In either of those instances, the maintenance of and liability for the railroad trestles and other structures would be the responsibility of the acquiring entity.

### **DISCUSSION**

At the outset, we note that it is the STB that has the authority to grant or deny abandonment. We also observe that Great Northwest only petitioned the STB to abandon the last 27.5 miles of the branch. In other words, the Railroad did not seek to abandon the first 3.5 miles

of the branch still used by an active rail shipper, Konkolville Lumber. Given the presence of an active shipper, abandonment of the first 3.5 miles of the line would have been unreasonable and would likely have prompted a protest by this Commission.

As stated in our Notice, the purpose of the Commission's public hearing is 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. *Idaho Code* § 62-424. Based upon our review of the Company's Application and the testimony offered at our public hearing, we find that Idaho shippers will not be adversely affected. The portion of the line proposed for abandonment has no active shippers and has not had any rail car shipments for more than three years. Potlatch has closed its Jaype mill and has found other means to transport its log shipments.

We also find there is little likelihood that this line has a potential for profitability for two reasons. First, as indicated in the Railroad's Petition and the testimony at our public hearing, no traffic has moved over the 27.5 miles of the branch for more than three years. Given this lack of traffic and revenue, it is evident that the Jaype Branch has not generated any revenue to defray the costs of retaining or maintaining this branch. Under STB regulations, abandonment is typically granted by the STB if the Railroad certifies that no traffic has moved over the line for at least two years. 49 C.F.R. § 1152.50.

Second, although several public witnesses suggested there may be a potential for new traffic if either Potlatch or other shippers would begin using the line, there were no firm commitments. As noted above, a Potlatch representative attended the hearing but did not testify. Great Northwest's Petition recited the historic shipments of Potlatch. It also indicated that negotiations with Potlatch to resume rail shipments were unsuccessful. Despite the best intentions of those testifying, there is no evidence in our record that Potlatch intends to renew its use of the branch. Idaho Lime is in a similar situation. Although several witnesses speculated that Idaho Lime might develop a market for agricultural lime, the owner indicated that he had not shipped on the line since 1998. While we agree that abandonment of the line will reduce the opportunities for economic development, the STB does not require railroads to retain lines that are no longer in use. Unfortunately, we find there is no substantial evidence that this line has a potential for profitability.

One other item merits discussion. The Idaho Departments of Lands and Environmental Quality both expressed concerns about bridges and other structures remaining in Orofino Creek. It is our understanding that the State agencies intend to file environmental comments with the STB. We encourage them to do so.

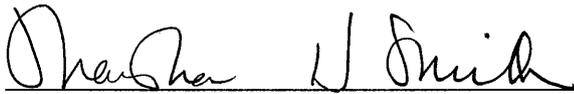
**ORDER**

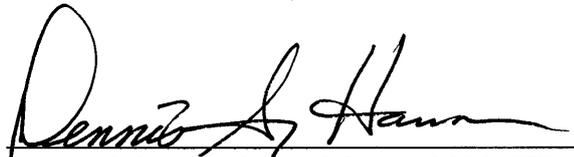
IT IS HEREBY ORDERED that this case be closed. The Commission will not file comments with the STB.

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 or in interlocutory Orders previously issued in Case No. GNW-R-04-1. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17<sup>th</sup> day of August 2004.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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