



Santa Fe rail line. Notice at 3. The Notice also stated that a portion of the line to be abandoned may be reclassified for use as an industrial track and that the 100-foot right-of-way for the line does not contain any federally granted right-of-way property. *Id.*

On October 13, 2004, the Commission received the Railroad's Combined Environmental and Historical Report regarding the line to be abandoned. As previously mentioned, Union Pacific filed its Notice of Exemption on November 26, 2004. Unlike the traditional abandonment process, the exemption process allows a railroad to abandon a rail line in an expedited proceeding. To be eligible to file a Notice of Exemption, a railroad must 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 on the line. Under the exemption process, the STB will publish a notice in the Federal Register within 20 days after the Petition for Exemption is filed. Thirty days after the notice is published in the Federal Register, the railroad is permitted by STB regulations to abandon the rail line unless the STB stays the abandonment.

#### **THE COMMISSION'S ABANDONMENT RESPONSIBILITIES**

Although the authority to grant or deny rail line abandonments rests with the STB, *Idaho Code* § 62-424 requires that the Commission schedule a public hearing when railroads propose to abandon a rail line. The purpose of the public 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 adversely affect the area being served and the line has a potential for profitability, then the Commission may represent the State of Idaho in the STB abandonment proceeding.

#### **THE COMMISSION'S PUBLIC HEARING**

Neither Union Pacific nor any shipper testified at the Commission's public hearing. The Commission did receive testimony from two public witnesses. The first witness was the Coeur d'Alene City Attorney, Michael Gridley. He presented a letter from the City of Coeur d'Alene indicating the City does not object to the abandonment of the line. The letter states that the "abandonment will not adversely affect the area being served and will not impair the access of Idaho shippers to vital goods and markets." He also presented a letter from the North Idaho Centennial Trail Foundation. Once Union Pacific filed its abandonment Notice, the Foundation's letter said it would file a public use condition and a request for interim trail use.

Mr. Gridley testified that the City of Coeur d'Alene and the Trail Foundation both seek to have this portion of the line rail banked. Rail banking preserves the right-of-way in the event that rail service is restored at some point in the future.

Peter Cooper also testified and indicated his desire to purchase this line segment. Tr. at 5. He suggested that rail operations could continue, while at the same time allow a portion of the right-of-way to be used as a trail. Continuing rail operation would eliminate the substantial cost of reconstructing new tracks if the line were rail banked and then returned to service at a later time. Tr. at 6-7.

### **DISCUSSION**

At the outset, we note that it is the STB that has the authority to grant or deny rail line abandonments. 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 a potential for profitability. *Idaho Code* § 62-424. Based upon the testimony and the letters offered at our hearing, we find that Idaho shippers will not be adversely affected. The portion of the rail line proposed for abandonment has no active shippers and has not had any rail car shipments for more than two years. Thus, we conclude that there is little likelihood that this line has a potential for profitability.

We recognize that Mr. Cooper expressed an interest in purchasing this line and making a portion of the right-of-way available for trail usage. Mr. Cooper is free to pursue purchase of the rail line as provided for in federal law and STB regulations. 49 U.S.C. § 10904. Even if he were to purchase the line, he indicated a willingness to consider trail usage. In summary, we find that Idaho's public interest will not be adversely affected by the abandonment.

One other issue merits discussion. The Idaho Department of Environmental Quality previously submitted environmental comments to the railroad in preparation of Union Pacific's Environmental Report. We are hopeful that the Railroad will adequately address DEQ's concerns. As was the case with the recent abandonment of Jaype Line, we are confident that DEQ will file environmental comments with the STB as it deems necessary.

### **ORDER**

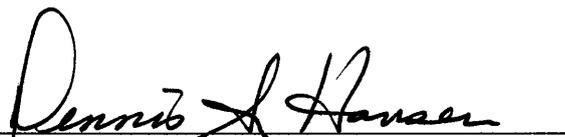
IT IS HEREBY ORDERED that this case be closed. The Commission will not file comments with the STB.

THIS IS A FINAL ORDER. Any person interested in this Order issued in this Case No. UPR-R-04-1 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 previously issued in this Case No. UPR-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 6<sup>th</sup> day of December 2004.

  
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PAUL KJELLANDER, PRESIDENT

Out of the Office on this Date  
MARSHA H. SMITH, COMMISSIONER

  
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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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