

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF UNION PACIFIC )**  
**RAILROAD COMPANY'S INTENT TO ) CASE NO. UPR-R-08-01**  
**ABANDON THE COEUR D'ALENE )**  
**INDUSTRIAL LEAD FROM MP 7.5 TO MP )**  
**8.97 IN KOOTENAI COUNTY, IDAHO ) ORDER NO. 30716**  
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On July 3, 2008, Union Pacific Railroad notified the Commission that it intended to file a petition with the Surface Transportation Board (STB) to abandon a portion of the Coeur d'Alene Industrial Lead located in Kootenai County, Idaho. This short stretch of track is approximately 1.29 miles in length running from milepost (MP) 7.5 near Gibbs to the end of the line at MP 8.79 in Coeur d'Alene. The STB is the federal entity authorized to grant or deny rail line abandonments.

On November 3, 2008, Union Pacific filed its combined Environmental and Historical Report for the line. On November 26, 2008, the Commission issued its abandonment notice and scheduled a telephonic hearing for December 11, 2008. At the hearing, the Commission left the record open for two weeks so that interested persons could submit written comments.

**THE PROPOSED ABANDONMENT**

Union Pacific indicated that it will file a petition seeking an abandonment "exemption" with the STB on or after November 17, 2008. 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. Unlike the traditional abandonment process, the exemption process allows a railroad to abandon a rail line in as few as 30 days. Under the exemption process, there is no requirement to file a notice of intent to abandon or annual system diagram map showing rail lines in jeopardy. To be eligible to file a petition for exemption, a railroad must certify: (1) 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; or (2) circumstances (such as in this case) otherwise support abandonment and the abandonment will not adversely affect national rail policy. 49 C.F.R. § 1152; Order Nos. 28540 and 30330. Under the exemption procedure, the STB will publish a notice in the Federal Register within twenty (20) days after the

petition for exemption is filed. 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.

The Coeur d'Alene Industrial Lead generally runs in a northwest to southeast direction from the Union Pacific mainline between Spokane and Athol. This line was originally constructed in 1911 by the Coeur d'Alene and Pend Oreille Railway Company. UP Environmental Report at 3. In 2004, Union Pacific abandoned 5.29 miles of track from the "middle" portion of the Coeur d'Alene Industrial Lead. The present abandonment pertains to the eastern "end" of the line that was isolated by the previous abandonment. The line runs parallel to Northwest Boulevard in Coeur d'Alene.

As Union Pacific indicated in its Environmental and Historical Report, this line historically served Stimson Lumber Company's DeArmond Stud Mill. *Id.* at 3. Union Pacific reported that it ceased operations on the line in October 2003 but continued to serve the mill via an adjacent BNSF line pursuant to a haulage agreement. Union Pacific stated all production at the DeArmond Mill ended in May 2008 and the mill is currently being dismantled. *Id.* at 4. Union Pacific maintained that the property is being converted for other, non-industrial uses. *Id.*

The Railroad asserted the right-of-way proposed for abandonment may be suitable for other public purposes, including use as a recreational trail. *Id.* at 3. "UP has entered discussions with the Coeur d'Alene City Attorney's office and a developer regarding the possible relocation of an existing trail onto the line's right of way. At present, the trail proposed for relocation runs along the Coeur d'Alene River, approximately 250 feet [south of] the Line." *Id.* Union Pacific reports that the line's right-of-way is approximately 100 feet wide. *Id.* at 12.

### **THE PUBLIC HEARING AND COMMENTS**

The Commission convened a telephonic public hearing in this matter on December 11, 2008. Dan Harbeke with Union Pacific's Public Affairs Office entered an appearance but did not present evidence on behalf of Union Pacific. The Commission also took the testimony from a person who owns a warehouse in Coeur d'Alene located on railroad property.<sup>1</sup>

The Commission Staff presented the testimony of Ellis Hire. Tr. at 4; Staff Exh. 105. Mr. Hire testified that the line was used to serve the DeArmond Stud Mill, but the mill was being dismantled. When he viewed the right-of-way in August 2008, a salvage worker advised him

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<sup>1</sup> During the hearing, it was determined that the warehouse is located on property leased from the BNSF Railroad. Tr. at 20. Consequently, the testimony was not directly related to the abandonment of the Union Pacific line in question.

that the gondola car currently at the mill would be the last one transported over the line. He found no signs of current or future customers on the line proposed for abandonment. Tr. at 14. Given the lack of shippers and the fact the mill was dismantled, he determined abandonment of the line would not adversely affect the area being served or impair the access to vital goods and markets. Tr. at 15-16.

The Commission also received two written comments. In a letter dated August 26, 2008, the City Attorney for Coeur d'Alene supported the abandonment. More specifically, his letter stated that he did not "believe that this abandonment will adversely affect Idaho or the citizens of Coeur d'Alene. There are currently no rail shippers on this line and I am not aware of any prospective shippers." Exh. 106.

The Commission also received comments from Pan-American Railway. In its letter, Pan-American expressed an interest "in purchasing the railway and developing a log transload facility moving logs from lake Coeur d'Alene to mills north of town particularly the Riley Creek lumber mill at Chilco." Pan-American's CEO, Peter Cooper, insisted that the rail line in question "is critical in maintaining a rail link to the lake as part of an intermodal transportation corridor and freight transload facility." He noted that the rail line proposed for abandonment has a history of industrial activity. Acquiring the line would allow Pan-American to remove 15,000 truck trips per year from U.S. Highway 95.

### **DISCUSSION AND FINDINGS**

Although the authority to grant or deny a railroad abandonment rests with the STB and is governed by federal law, the Commission does have an obligation under state law to hold a public hearing regarding the abandonment. *Idaho Code* § 62-424. As stated above, the purpose of the hearing is for the Commission to determine whether the abandonment would adversely affect the area being served.

We first turn to Pan-American's interest in purchasing the line proposed for abandonment. Federal law recognizes that any person may offer to purchase a rail line that is proposed for abandonment. 49 U.S.C. § 10904(c). Offers to purchase rail lines designated for abandonment are to be filed with the affected railroad and the STB. *Id.*; *see also* 49 C.F.R. § 1152.27. It is for the STB, not this Commission, to approve offers of financial assistance or purchase. Thus, Pan-American's offer to purchase the line should be directed to Union Pacific and the STB.

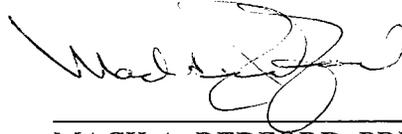
Based upon our review of the record, the testimony offered at the public hearing and the written comments, we find that Idaho shippers will not be adversely affected by the abandonment. The mill that this line served no longer exists. The City and Staff maintained that the abandonment would not adversely affect Idaho. We conclude that the abandonment will not adversely affect the area, will not impede the access of shippers to goods and markets, and there is little likelihood that this line has the potential for profitability. Should Pan-American's offer be accepted by Union Pacific and/or approved by the STB, the abandonment will not occur.

### **ORDER**

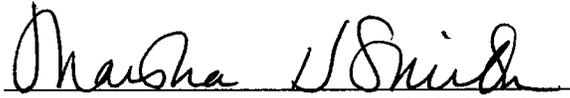
IT IS HEREBY ORDERED that this case be closed. The Commission will not file comments with the STB regarding this abandonment.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. UPR-R-08-01 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 this case. 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 20<sup>th</sup>  
day of January 2009.



MACK A. REDFORD, PRESIDENT

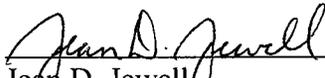


MARSHA H. SMITH, COMMISSIONER



JIM D. KEMPTON, COMMISSIONER

ATTEST:



Jean D. Jewell  
Commission Secretary

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