

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE PROPOSED)
ABANDONMENT OF A SECTION OF) CASE NO. UPR-R-10-01
UNION PACIFIC RAILROAD)
COMPANY'S RAIL LINE FROM)
MILEPOST 0.9 TO MILEPOST 1.75, A)
TOTAL DISTANCE OF 0.85 MILES, IN) ORDER NO. 32135
CANYON COUNTY, IDAHO)**

INTRODUCTION

On September 14, 2010, Union Pacific Railroad Company ("UP" or "Company") issued a letter declaring that UP intends to request authority from the Surface Transportation Board ("STB") to abandon and discontinue service, from Milepost 0.9 to Milepost 1.75, on the Stoddard Industrial Lead ("the Line") in Nampa, Canyon County, Idaho. UP's action before the STB is referenced as Docket No. AB-33 (Sub-No. 294X). In addition, the Company attached a map outlining the portion of the rail line it intends to abandon.

On October 13, 2010, the Commission held a public hearing in Nampa, Idaho, regarding UP's proposed abandonment. At the hearing, the Commission heard from several parties, including potential shippers with businesses located on the section of the rail line UP is seeking to abandon.

On December 2, 2010, UP submitted its Combined Environmental and Historical Report with the STB. In the filing, UP stated that it planned to file a formal Notice of Exemption to abandon the Line with the STB on or after December 14, 2010.

THE PROPOSED ABANDONMENT

UP stated that it is requesting "assistance in identifying any potential effects of this action. . . ." *UP Letter* at 1. Pursuant to federal law and STB regulations, UP is required to submit an Environmental Report to the STB analyzing the potential environmental impact caused by the proposed abandonment. *Id.* UP states that it does not "anticipate any adverse environmental impacts." *Id.*

A preliminary investigation conducted by Commission Staff revealed several potential shippers along the .85 mile section of the rail line subject to abandonment. These shippers are currently trucking their goods to another section of the rail line for service because UP has not adequately maintained the .85 mile section of the Stoddard Industrial Lead. These shippers have continuously expressed interest in receiving rail service at their business situs.

PUBLIC HEARING AND COMMENTS

At the public hearing, the Commission heard and carefully considered the testimony of numerous individuals regarding UP's proposed abandonment. The Commission listened to the testimony of Ellis Hire, Staff Railroad Section Investigator, describing the condition of the Line, and the adjacent area. *See Tr.* at 7-16. Mr. Hire described the Line as being in disrepair, stating that the pavement at the Second Street crossing "was all broke up around the tracks." *Tr.* at 13. On or about July 30, 2010, UP notified Mr. Hire that "they were going to fix it." *Id.* When Mr. Hire visited the crossing in order to verify the repair, he noted that the Company had "actually paved over the crossing right over the top of the rails . . ." and "started taking some rail out. . . ." *Id.*

The Commission also heard from officials from the city of Nampa, Idaho, *see Id.* at 17-24, and several shippers located on the Line, *see Id.* at 25-44.

Ms. Larita Schandorff, representative for the Nampa Bicycle and Pedestrian Citizens Advisory Group, testified that the group views the portion of land subject to abandonment as a "critical piece in linking the south side of our city to the north side providing families safe access to downtown and . . . provide a vital link for students to an elementary school . . . adjacent to this corridor." *Id.* at 4. The City of Nampa and public comments posted to the Commission's website supported this view.

Ms. Claire Bowman, Senior Transportation Planner for the City of Nampa, Idaho, noted that "this line has already had an abandonment south of milepost 1.75." *Id.* at 17. "Two-and-a-quarter miles . . . were abandoned in 1993" and "[, i]n 1994, that ground was turned over to the City of Nampa through a rails to trails project. . . ." *Id.*

Mr. Rodney Ashby, City Planner for the City of Nampa, Idaho, confirmed that the comprehensive plan for future land use included the utilization of the land subject to abandonment. *Id.* at 21. Mr. Ashby stated that the city is "currently under the development of a bike and pathway plan . . ." and that "this piece [from Iowa Street to near Second Street] is critical to that development." *Id.* at 22.

Mr. Phillip Weitz, owner of TVM Recycling ("TVM"), and Brett Lolley, representative of Seminis Vegetable Seeds ("Seminis"), testified that their respective businesses are located on the Line. *Id.* at 26, 36. Mr. Weitz commented that shipping has not occurred on the Line "for probably . . . six years. . . ." *Id.* at 26. Mr. Lolley offered that Seminis has most likely not received rail service on the Line since 2005. *Id.* at 36. Both TVM and Seminis have been required, at their own

expense, to transload their products to Caldwell, Idaho, and Kuna, Idaho. *Id.* at 26, 40. Although it fails to provide service, UP does not reimburse TVM or Seminis for their costs of transloading. *Id.* at 26, 44.

The Commission received public comments from several residents of Nampa, Idaho, advocating the abandonment of the Line so that it could be utilized as a bike or pedestrian pathway.

Mr. Pete Wagner, Regional Administrator of the Idaho Department of Environmental Quality, offered preliminary comments outlining the relevant environmental criteria for assessing the proposed abandonment.

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 it is deemed necessary. *Idaho Code* § 62-424 states 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 then being served; (2) impair an Idaho community’s access to vital goods and markets; and (3) whether the rail line has a potential for profitability. *Idaho Code* § 62-424(1). 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, including the testimony offered at the public hearing. Although the Commission finds that the shippers on this branch have been poorly served, we cannot find that the proposed abandonment would be adverse to the public interest, nor will it impair the community’s access to vital goods and markets.

The Commission acknowledges the shippers’ collective opposition to the proposed abandonment. Undoubtedly, their business operations would be significantly enhanced if UP had not stopped providing rail service to them at their business locations. However, testimony

presented at the public hearing suggested that the cost of repairing the Line now and making it suitable for rail service would not be a viable option for the shippers. *Tr.* at 28.

Additionally, it must be emphasized that primary regulatory authority governing the continuation of rail service on the Line resides with a federal agency, the STB, and not with the Commission. UP's failure to maintain the Line and ensure rail service to the shippers demonstrates its lack of commitment to its smaller customers. UP could have acted in a more collaborative manner with the shippers and possibly averted the need to abandon the Line.

Nevertheless, the Commission's review is not limited to simply the potential economic impact the proposed abandonment might have upon shippers on the Line. The Commission must also consider other interests within the community-at-large. Officials representing the City of Nampa stated that the city's long-range plan includes the utilization of the Line as a critical pathway linking residential neighborhoods to its downtown area. City planners testified that the area subject to abandonment would become a "primary route" for bicyclists and pedestrians traveling from those neighborhoods to downtown Nampa. *Id.* at 24.

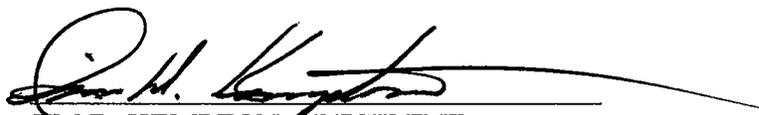
Therefore, for the foregoing reasons the Commission finds that it is unnecessary to intervene as a party representing the State of Idaho in STB Docket No. AB-33 (Sub-No. 294X).

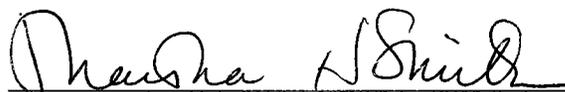
ORDER

IT IS HEREBY ORDERED that this case be closed. The Commission will not intervene as a party representing the State of Idaho or file comments with the Surface Transportation Board regarding the proposed abandonment, more fully described above.

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 14th
day of December 2010.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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