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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF UNION PACIFIC RAILROAD COMPANY’S PROPOSED ABANDONMENT OF THE TRACKAGE BETWEEN MILEPOST 7 AT MADDENS AND MILEPOST 24 AT EMMETT. | )))))) | CASE NO. UP-RR-95-2ORDER NO.  26366 |

On December 6, 1995, the Union Pacific Railroad Company (Union Pacific) notified this Commission that it intended to submit formal application to the Surface Transportation Board to abandon 17.5 miles of the Maddens branch located in Canyon and Gem Counties.  On December 26, 1995, the Commission issued a Notice of Application and Notice of Modified Procedure seeking comments concerning potential effects of the abandonment on shippers, customers and nearby communities.  The Commission also conducted a public hearing in Emmett, Idaho to determine what effect the abandonment would have on the communities served by  the Maddens branch.  Based on the evidence submitted at the hearing and throughout the course of this case, the Commission has determined not to protest the proposed abandonment before the Surface Transportation Board.

COMMENTS AND TESTIMONY

Pursuant to the notice of Modified Procedure, the Commission received comments from the Commission Staff, Union Pacific and the United Transportation Union Idaho Legislative Board (Union Board).  The Union Board  requested a public hearing in this matter.  On February 7, 1996, the Commission issued a Notice of Hearing and appointed a hearing examiner to conduct the proceedings pursuant to Idaho Code § 61-211.  The hearing was conducted February 20, 1996, in Emmett, Idaho, by hearing examiner Donald L. Howell, II.  The Union Board represented by James T. Mular and the Commission Staff, represented by Deputy Attorney General Susan E. Hamlin, presented testimony, and members of the public gave statements on the record.

a. Union Pacific

Union Pacific provided the Commission with copies of its combined environmental and historical report filed with the Surface Transportation Board. A representative was present at the Emmett hearing, but chose not to present testimony.  Union Pacific states the trackage proposed for abandonment is from milepost 7 near Maddens to milepost 24.7 near Emmett, known as the Maddens Branch.  In the report, Union Pacific indicates that Idaho Northern & Pacific Railroad (Idaho Northern) will continue to serve shippers near Emmett from the Payette/Cascade line.  The report further states that Union Pacific will serve shippers near Maddens from the Nampa line.  Union Pacific also claims that there have been no freight shippers or local traffic originated or terminated over this line segment for at least the past two years and that there are no shippers on the segment of trackage proposed to be abandoned.

b. Union Board

The Union Board filed comments with the Commission and presented the testimony of Dale Wheeler, the Director of the Union Board.  The Union Board claims that the proposed abandonment could drastically affect shippers, because it would leave only one other rail line which, if it goes out of service, would leave many shippers land locked.  The Union Board stated that the only way to get rail cars from Cascade, Horseshoe Bend or Emmett is over the Payette Valley Branch.  The Board claims that where Idaho Northern Railroad meets with Union Pacific at Payette, the switch connecting to Union Pacific’s main line was spiked or disabled from main line movement.  The Board claims that with the switch spiked at Payette and Union Pacific’s storage of rail cars on the Idaho Northern Branch, shippers and Idaho Northern Railroad would be land locked.  Mr. Wheeler testified that he has personally observed rail cars passed over the Maddens Branch in the past two years.  He did not know whether the rail cars originated as local traffic or whether the rail cars were passing through the branch as overhead traffic.

c. Commission Staff

Staff filed comments with the Commission and presented the testimony of Ron Law and Ronald Kerr at the Emmett hearing.  Mr. Law, the Director of the Commission’s Regulated Carrier Division, testified that the abandonment of the line will have no adverse affect on the communities originally served by the line, nor would it impair the access of the communities to vital goods and services so long as the Payette Valley branch remains operational and open.  Staff could not find an active rail shipper located on the portion of the line slated for abandonment.  Staff testified that there appears to be very little if any potential for profitability if the line is kept open.  Furthermore, Staff noted that members of the community did not oppose the abandonment.  Staff confirmed that the rail switch at Payette, giving the Payette Valley branch access to the Union Pacific main line, was briefly spiked for repairs but has been returned to full service.  Staff feels that even if the Maddens branch line were to remain open, it would receive little if any use as long as the Payette Valley Line remains operational.

Mr. Kerr works for the Idaho Transportation Department as the state rail planner.  His duties include examining rail systems through the state of Idaho.  He testified at the hearing that the abandonment would not have an adverse impact on the area being served because rail service would still be provided by Idaho Northern at Emmett and Union Pacific at Maddens.  He also stated that there is little potential for profitability because no current rail shippers are using the branch.

d. Public Testimony

Approximately three members of the public gave comments on the proposed abandonment.  Several stated that they had witnessed rail cars passing through on the Maddens branch in the past two years.  They did not believe, however, that the cars had originated on the line in question.  The public confirmed that there had been a fire caused by Idaho Northern on Freeze-Out Hill in 1994.   None of the members of the public who testified were active shippers on the Maddens branch.

FINDINGS

The authority to grant or deny the abandonment rests solely with the Surface Transportation Board.  However, pursuant to Idaho Code § 62-424, this Commission conducts an independent review to determine whether abandonment would adversely affect Idaho’s public interests.  More specifically, the Commission is required pursuant to Idaho Code § 62-424, to determine whether the abandonment:

1.would adversely affect the area being served;

2.whether there is reason to believe that the closure would impair the access of Idaho  communities to vital goods and services and market access to those communities, and;

3.whether the line has potential for profitability.

If the Commission finds that the foregoing criteria have been met, then it may transmit a report of its findings to the Surface Transportation Board on behalf of the people of the state of Idaho.

a. Affect on area being served

Upon reviewing the testimony provided by the Union Board, Commission Staff, and the public, the hearing examiner found that service will continue to be provided to the communities served by the Payette Valley branch, including the communities of Emmett and Horseshoe Bend.  He further found that the shippers in the area received notice of Union Pacific’s Application and notice of the hearing.  He noted that no shippers appeared at this hearing to protest the abandonment indicating that they did not oppose this abandonment.  Thus, he found that the abandonment would not adversely affect the area being served.  Based on our review of the record we concur with this finding.

b. Access to vital goods and services

With regard to whether the abandonment would impair access to vital goods and service, the hearing examiner gave the same rationale as above again noting the lack of shippers’ protest and their conspicuous absence from the hearing.  He also found that the Mayors of Middleton and Emmett, as well as the Gem County Commissioners, did not oppose the abandonment nor did they file a protest.  The Commission Staff indicated that only one businessman, Joe Martinez of J&L Independent Supplies in Middleton, indicated that he may want to use the rail lines in the future.  However, the hearing examiner noted that J&L Independent Supplies did not file a protest to this abandonment and found that J&L Independent Supplies was not currently a shipper using these rail lines.  Therefore, the hearing examiner found that the abandonment would not impair access to vital goods and services.  Based on our review of the record we find the facts to be as stated and we find it reasonable to adopt the hearing examiner’s findings.

c. Potential for profitability

When discussing the final criterion on the potential for profitability, the hearing examiner found that “overhead” rail traffic has moved over this line in the past two years.  However, the rail traffic that has moved over this branch was not local traffic.  Local traffic was defined as rail traffic that originates from the branch proposed for abandonment.  The hearing examiner held that no local traffic has moved over this line in the past two years.

The hearing examiner also found, that when Idaho Northern leased this trackage from Union Pacific, it originally used one locomotive to take cargo over this branch.  However, because the Freeze-Out Hill near Emmett is so steep, Idaho Northern added additional locomotives as the number of rail cars increased.  The additional locomotives, coupled with the larger trains, caused a fire on the Freeze-Out Hill area in 1994.  Idaho Northern received a bill from the Bureau of Land Management for $68,000 as the result of this fire.  Therefore, he concluded, that using additional locomotives is more expensive, causes more wear and tear on the tracks and requires more maintenance.  Idaho Northern indicated that it would use the alternative route of the Payette Valley  branch to avoid the danger of igniting fires from the locomotives.  Therefore, the hearing officer concluded that this branch line had little potential for profitability.  Based on our review of the record we find it reasonable to adopt the hearing examiner’s findings.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

We find that the criteria of Idaho Code § 62-424 have not been met.  Therefore, the Commission will not file an opposition of the proposed abandonment of the Maddens branch with the Surface Transportation Board.

O R D E R

IT IS HEREBY ORDERED that, for the reasons set forth herein, the Commission will not oppose the abandonment of the Maddens branch.

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. UP-RR-95-2 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 No. UP-RR-95-2.  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                  day of March 1996.

                                                                                                                                       RALPH NELSON, PRESIDENT

                                                                                            MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

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**TEXT BOXES**

Office of the Secretary

Service Date

March 15, 1996