DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

GARY RICHARDSON

WORKING FILE (Pat)

FROM:SUSAN HAMLIN

RON LAW

DATE:JANUARY 29, 1996

RE:CASE NO. UP-RR-95-2; UNION PACIFIC’S PROPOSED ABANDONMENT OF THE TRACKAGE BETWEEN MP 7 AT MADDENS AND MP  24 AT EMMETT; PROTEST OF MODIFIED PROCEDURE AND ABANDONMENT FILED BY UNITED TRANSPORTA­TION UNION; COMMENTS FILED BY STAFF AND UNION PACIFIC.

On December 26, 1995, the Commission issued a Notice of Application, Notice of Modified Procedure and Notice of Comments/Protests for the proposed abandonment of the trackage at milepost 7 at Maddens and milepost 24 at Emmett by the Union Pacific Railroad Company (Union Pacific).  On January 8, 1996, United Transportation Union Idaho Legislative Board (Board) filed a protest of Union Pacific’s Application.  The Board protests the abandonment of the trackage and would like to have a “rail banking system” established.  The Board also requests a public hearing for consideration of the abandonment.   Staff filed comments not opposing the proposed abandonment.

COMMENTS/ PROTESTS TO ABANDONMENT

A)  United Transportation Union Idaho Legislative Board (Board)

The Board claims that the proposed abandonment could drastically affect shippers, because it would leave only one other rail line, which they claim is currently in poor condition, and if it goes out of service it would leave many shippers land locked.

The Board states that in 1993, the Idaho Northern and Pacific Railroad Company (Idaho Northern Railroad) purchased the Idaho Northern Branch from Emmett to Cascade, the Payette Valley Branch from Emmett to Payette, and the New Meadows Branch from Weiser to Rubicon.  (See exhibit A.)  At the same time, Idaho Northern leased from Union Pacific the portion of trackage that is being considered for abandonment in this case. (See exhibit B)   In 1995, the Idaho Northern Railroad did not renew its lease with Union Pacific, thus the only way to get rail cars from Cascade, Horseshoe Bend or Emmett was 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 mainline movement.  The protest 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.  The Board claims that on the Idaho Northern Branch, between 1994-1995, Boise-Cascade Company shipped 992 rail cars at Cascade; at Horseshoe Bend, Boise-Cascade shipped 535 rail cars; at Emmett, Boise-Cascade, Emmett Valley Fruit Growers, Gem Supply Coop, Merrill Egg Farm and UNIMIN together shipped 2544 rail cars.  The Board claims that this is  a total of 4071 rail cars passing on the Idaho Northern Branch from Cascade to Emmett.  The Board alleges that when these cars originate or arrive at Emmett they are land locked.  The Board also claims that Idaho Northern Railroad is currently only shipping green logs from Horseshoe Bend to Emmett leaving the many other shippers only trucks for their transportation needs.

The Board also points out that the track from Emmett to Payette (Payette Valley  Branch) is constructed of very light rail and the ties are in poor condition and in most cases would not pass a Federal Railroad Administration (FRA) investigation.

Finally, the Board claims that Idaho Northern Railroad did not renew their lease with Union Pacific for the portion of the Idaho Northern Branch between Emmett and Nampa (the proposed abandoned area) and that Union Pacific is using its portion of trackage for rail car storage. (See exhibit B.)  The Board claims that this leaves many shippers land locked or held to paying higher shipping rates due to the 51 miles extra an East bound rail car must travel from Payette to Nampa and eastward, as compared to shipping through Emmett to Nampa and eastward.

The Board argues that the trackage at issue in this case must be retained either by denial of the Application to abandon or by a state rail banking system.  The Board claims that more than 4000 rail car shipments per year will be forced to Idaho state highways that are already overcrowded and in many areas unsafe for large trucks.  The Board claims that the railroad is the most economical way to transport a large commodity and 40 times safer for the environment.  The Board is concerned that abandonment of the trackage throughout Idaho will no longer create jobs in Idaho, will keep Idaho shippers from having access to rail service, and will no longer help pay Idaho taxes.   The Board urges the Commission to hold a public hearing to review this proposed abandonment.

B)  CommissionStaff

Staff filed comments with the Commission summarizing its investigation.   According to Idaho Code § 62-424, when a railroad proposes to abandon trackage, the IPUC is required to determine whether (1) it would adversely affect the area being served, (2) there is reason to believe that the closure would impair the access to Idaho communities to vital goods and services and market access to those communities, and (3) the line has potential profitability.  It is Staff’s position that the abandonment of this trackage would not have an adverse impact on the affected area.

Staff investigated the proposed abandonment and how it would affect Idaho’s public interest.  Upon interviewing various shippers doing business in the area of the proposed abandonment, Staff found that none of the shippers were opposed to the abandonment.  Staff also talked with community leaders in both Middleton and Emmett, Idaho, who also indicated that they did not oppose the abandonment of this trackage.  Leaders in both communities indicated that they are interested in a Rails to Trails project if the abandonment is approved.  The Gem County Board of  Commissioners did not oppose the abandonment, but has reservations about a Rails to Trails project.

Staff was informed during the investigation that the rail switch at Payette, giving the Payette Valley branch access to the Union Pacific main line, was spiked. (See exhibit A.)  Staff contacted officials from Idaho Northern Railroad who explained that there had been a problem with the Union Pacific switch at Payette on December 29, 1995, the Friday before New Years, and since there was going to be no traffic during the holiday weekend, the switch was spiked for repairs and returned to service the next week.  Idaho Northern Railroad assured the Staff that they have full access to Union Pacific’s main line.

Staff believes that the abandonment of the line will have no adverse effect to 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.  There appears to be very little if any potential for profitability if the line is kept open and members of the community did not oppose the abandonment.   Staff feels even if the line were to remain open, it would receive little if any use as long as the Payette Valley Line remains operational.

Finally, in their comments, Staff reiterated that rail service is critical to the Emmett Valley area.  If the proposed abandonment takes place, it will leave one line to provide service to the community.  Staff feels this is adequate as long as the Payette Valley branch remains open and viable.  Based upon its investigation, Staff does not oppose the abandonment of the trackage between milepost 7 at Maddens and milepost 24 at Emmett, as long as the Payette Valley branch remains serviceable and open.

C)  Union Pacific

Union Pacific served the Commission copies of their combined environmental and historical report that was filed before the Interstate Commerce Commission.  In that report, Union Pacific indicates that Idaho Northern Railroad will continue to serve shippers near Emmett from the Payette/Cascade line.  It also 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.  It claims that there are no shippers on the proposed segment of trackage to be abandoned.

RULES FOR MODIFIED PROCEDURE

Commission Rules 201-210 state that the Commission may preliminarily find that  public interest may not require a hearing to consider the issues presented in a proceeding.  When the Commission determines this, the matter may proceed under Modified Procedure, i.e., by written submission rather than by hearing.  When a party files an objection to the Modified Procedure it must include an explicit request for a hearing and state whether or not they will appear at a hearing if one is scheduled.  (See also Motor Carrier Rule on Modified Procedure No. 45.)  It is in the Commission’s discretion whether public interest dictates the need for a public hearing.

COMMISSION DECISION

1.  Does the Commission wish to grant the Board’s request for hearing and set a date for hearing?

2.  Does the Commission wish to deny the request for hearing and issue an Order based on the written comments?

3.  Does the Commission have another alternative?

Susan Hamlin, Deputy Attorney General

Ron Law, Director, Regulated Carrier

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