DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

RON LAW

GARY RICHARDSON

WORKING FILE (Pat)

FROM:SUSAN HAMLIN

DATE:FEBRUARY 28, 1996

RE:CASE NO. UP-RR-95-2; SUMMARY OF HEARING OFFICER’S RECOMMENDATION

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 Procedures seeking comments concerning potential effects of the abandonment on shippers, customers and nearby communities.  The Commission received timely comments from the Commission Staff, Union Pacific and United Transportation Union Idaho Legislative Board (Union Board).  The Union Board  requested a public hearing in this matter.

On January 30, 1996, the Surface Transportation Board  published notice in the Federal Register that the proposed abandonment should be exempt from the normal abandonment process because no traffic has moved over this abandonment in the last two years.  Consequently, this abandonment will take effect on February 29, 1996, if no protests are filed.  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.

EMMETT HEARING

The hearing was conducted February 20, 1996, in Emmett, Idaho, by hearing examiner Donald Howell.  The Union Board and Commission Staff presented testimony, and members of the public gave statements.  Given the expedited nature of this proceeding, the hearing examiner gave his recommended findings on the record at the hearing pursuant to Rule 258 of the  Commission’s Rules of Procedure.  Normally, the hearing officer will prepare and file recommended findings of fact within 14 days after receipt of the hearing record unless the recommended findings are stated on the record.  The Application before the Surface Transportation Board is being conducted on an expedited basis, thus the hearing examiner thought it was necessary to present his ruling at the conclusion of the hearing.

HEARING EXAMINER’S

FINDINGS OF FACT

The hearing examiner’s recommendation and findings are summarized as follows:

a).  Statutory Standard.  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 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 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 the behalf of the people of the state of Idaho.

b)  Judicial Notice.  The hearing officer took judicial notice of the Notice of Application and Modified Procedure and Notice of Comments and Protests dated December 26, 1995; the Notice of Hearing and Order No. 26326 dated February 7, 1996; the Comments filed by Commission Staff prepared by Ron Law and signed by Deputy Attorney General Susan Hamlin dated January 17, 1996; the Protests of the Abandonment filed by the United Transportation Union Idaho Legislative Board dated January 8, 1996; and the Application filed before the Surface Transportation Commission by Union Pacific Railroad Company Docket No. AB-33 (Sub—No. 95X) and Docket No. AB-433 (Sub No. 3X) for Idaho Northern & Pacific Railroad Company.  The hearing officer also accepted the letter from Dale Wheeler of the Idaho Legislative Board, marked as Exhibit 1, and the letter from Dwight Bower of the Idaho Transportation Department dated February 16, 1996, marked as Exhibit 101.

c) Findings.  In the beginning of his discussion, the hearing examiner noted the Application filed by Union Pacific was carefully crafted to be a limited abandonment to avoid impairing shippers.  He also noted that the Fisher branch would not be affected by this abandonment.  It is only the Maddens branch from Milepost 7 near Maddens to Milepost 24.5 near Emmett that will be affected.

i) affect on area being served

Upon reviewing the criteria established in Idaho Code § 62-424, the hearing examiner concluded that the abandonment would not adversely affect the area.  After hearing the testimony by Union Board, Commission Staff, and public testimony, he found that service will continue to these communities served by the Payette Valley branch, including the communities of Emmett and Horseshoe Bend.  He found that the shippers received notice of the 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.

ii) access to vital goods and services

The second criteria about whether the abandonment would impair access, 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.  Commission Staff indicated that only one businessman, Joe Martinez of J&L Independent Supplies in Middleton indicated that he may want to use 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.

iii) potential for profitability

When discussing the final criteria 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 moved over this branch was not local traffic.  Local traffic was defined as rail traffic that originated from the branch proposed for abandonment.  Union Pacific Railroad affirmed in their application that no local traffic moved over this line in the past two years.  The hearing examiner held that no local traffic has moved over this line in the past two years.  The hearing examiner noted that any party opposing these findings may independently file an objection with the Surface Transportation Board.  Under existing federal regulations, applications containing false information shall void the application.

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 was 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 are 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 line to avoid the danger of igniting fires from the locomotives.  Therefore, the hearing officer concluded that this branch line had little potential for profitability.

HEARING EXAMINER FINAL RECOMMENDATION

The hearing officer having found that the criteria of Idaho Code 62-424 have not been met, therefore recommends that the Commission not oppose this abandonment of the Maddens branch with the Surface Transportation Board.

COMMISSION DECISION

Does the Commission wish to adopt the hearing examiner’s recommendation and issue a final Order for this case?

Susan Hamlin

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