(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE ABANDONMENT  OF RAIL LINE IN WHITMAN COUNTY, WASHINGTON, AND LATAH COUNTY,  IDAHO,  BY BLUE MOUNTAIN RAILROAD, INC. | )  )  )  )  )  ) | CASE NO.  BMR-R-96-1  ORDER NO.  26746 |

On November 12, 1996, Blue Mountain Railroad, Inc. (BMR) filed with the Surface Transportation Board (STB) a Petition for Exemption seeking authority to abandon three segments of rail line between (1) milepost 19.0 (at Kamiaken Street) and milepost 19.30 at Pullman, Washington, (2) milepost 19.75 at Pullman, Washington and milepost 25.50 near Moscow, Idaho and (3) milepost 26.10 near Moscow and milepost 27.50 at Line Street in Moscow.

On November 21, 1996, the Commission issued a Notice of Modified Procedure soliciting comments in response to the Company’s Application.  Comments were submitted by the Commission Staff.

Commission Staff

Presently, there are two railroad lines running between Moscow, Idaho and Pullman, Washington.  The proposed abandonment would eliminate one of those lines while the other will remain intact to continue servicing the two communities.

Staff has identified three shippers who could potentially utilize the line in question including Wilbur Ellis, Inc., Busch Distributing and McGregor, Inc.  Employees of Wilbur Ellis stated that they do not utilize the track in question but that they do receive supplies from McGregor, who does use the track.  A representative of Busch Distributing said that his company also did not use the track.  Staff contacted a representative of McGregor who stated that his company was in favor of the abandonment and has made arrangements with BMR to facilitate continued rail service which would be accomplished by BMR constructing a spur from a section of adjoining track that has been purchased from Burlington Northern.

Staff also contacted the State of Idaho, Division of Environmental Quality (DEQ) which indicated that it was not opposed to the abandonment but did have some concerns that should be addressed.  According to DEQ, the rail line in question was used to supply Moscow with agricultural chemicals and petroleum products dating back to the 1920s.  DEQ believes that there may have been some unidentified hazardous material releases along the track in question and thinks that it would be reasonable to develop a proposed mitigation contingency plan to address actions needed to protect human health and environment.

Finally, Staff notes that the Petition for Exemption filed with the STB contained letters from the Mayor of the City of Moscow and the Latah County Board of Commissioners all supporting the proposed abandonment.  Based upon its investigations, Staff has not found anything to indicate that the proposed abandonment would adversely affect the area being served, or impair the access of Idaho communities to vital goods and services, nor has it found anything to indicate that the line has a real potential for profitability.

Legal Analysis

Idaho Code § 62-424 provides:

62-424.  Hearing on Abandonment. — Whenever any railroad proposes to abandon any branch line or main line now in operation within the state of Idaho, the railroad shall file notice of the intended abandonment with the public utilities commission.  Note less than ninety (90) days after such notice, the public utilities commission shall schedule a public hearing on the proposed abandonment.  If the hearing results in a finding by the commission that the abandonment of the branch line or main line would adversely affect the area then being serve and that 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 that the line has potential for profitability, then the public utilities commission shall transmit a report of its findings to the interstate commerce commission [now the STB] on behalf of the people of the state of Idaho.

F I N D I N G S

Based upon the comments filed by the Commission Staff in this case, we find that none of the statutory criteria set forth in Idaho Code § 62-424, compelling this Commission to take a position before the Surface Transportation Board, have been satisfied.  Because the only shipper who appears to be using the track in question has apparently made alternative arrangements with BMR, there is no reason to believe that the abandonment would “impair the access of Idaho communities to vital goods and services and market access to those communities.”  In addition, BMR presumably does not consider the line to have the potential for profitability or would not seek abandonment.  In light of the foregoing, we find that the abandonment of the line in question would not adversely affect the communities currently served by that line.  Consequently, we will not transmit a report of our findings to the Surface Transportation Board nor take a position before that entity.

We assume that DEQ will take whatever measures are necessary to ensure that whatever threat the abandonment may pose to the environment will be adequately mitigated.

O R D E R

IT IS HEREBY ORDERED that the abandonment by Blue Mountain Railroad, Inc. of the rail line described in this Order will not adversely affect any of the Idaho areas or communities currently being served by that line.  This Commission, consequently, will not transmit a report of its findings or take a position before the Surface Transportation Board with respect to 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. BMR-R-96-1   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.  BMR-R-96-1.  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 December 1996.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:BMRR961.bp

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

January 2, 1997