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:JUNE 28, 1996

RE:UP NOTICE OF INTENT TO ABANDON ONE-HALF MILE OF NEW MEADOWS BRANCH NEAR WEISER, UP-RR-96-1

On June 24, 1996, Union Pacific Railroad Company notified the Commission that it intends to abandon a half mile segment of the New Meadows Branch near Weiser in Washington County, Idaho.  At one time, this branch line ran all the way to Tamarack.  In 1993 this branch was sold to the Idaho Northern & Pacific Railroad Company.

In Case No. IN-RR-95-1, the Commission considered whether the abandonment of 83.1 miles of this branch line (identified as the Council branch) would adversely affect Idaho’s public interest. In Order No. 26016 issued May 1995, the Commission did not oppose Idaho Northern’s abandonment of this branch before the Interstate Commerce Commission (ICC)(footnote: 1). The branch at issue in this case is an additional half mile “stub” of the Council Branch owned by Union Pacific. Union Pacific intends to abandon the additional half mile “stub” on this branch.

Union Pacific asserts that there have been no freight shipments originating or terminating over this line for at least the last two years.  The Railroad further asserts that there are no shippers on this segment of the track to be abandoned and there is no foreseeable possibility of future rail traffic moving over this portion of the branch.  Consequently, retention of this segment of branch is not cost justified.

Given the assertion that no rail traffic has moved over this branch in the last two years, the Railroad’s STB Application qualifies as an “exemption” application.  In an exemption proceeding, abandonment will normally be granted by the STB thirty days after publication in the Federal Register.

Staff has conducted a preliminary investigation into this matter and has determined that there currently are no shippers using this line.  Staff is aware of no parties who oppose the abandonment. The Historical Society determined that the branch is not eligible for the National Register of Historic Places, but is recommending that a professional archaeologist inspect the cite for potential effects of abandonment on archaeological properties.  Idaho Northern indicated that they do not use this ½ mile stretch and therefore do not oppose the abandonment.

Idaho Code § 62-424 states that “whenever any railroad proposes to abandon any branch line or main line now in operation within the state of Idaho,” the public utilities commission “shall schedule a public hearing on the proposed abandonment” to determine whether [1] it would adversely affect the area then being served, [2] 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 [3] that the line has potential for profitability.

Staff’s recommendation

In Case No. IN-RR-95-1, the Commission held a public hearing in Weiser on March 23, 1995, for the 83.1 miles of the Council branch which connects to the one-half mile branch at issue in this case. Given the fact that this abandonmentis an exemption proceeding before the STB, this case needs to be processed in an expeditious manner. Idaho Code § 62-424 does not define what is necessary to constitute a public hearing, however, it would appear that the Commission has the option of conducting a hearing through the solicitation of written comments under Modified Procedure, considering the Commission conducted a public hearing in the prior case involving the 83.1 miles of the connecting branch and  that there are currently no shippers on this line.  Staff recommends that this proceed through Modified Procedure.  However, if the Commission determines that a public hearing is necessary, Staff recommends that this be done on an expedited basis and be conducted by a hearing examiner.

Commission Decision

Does the Commission wish to handle this matter under Modified Procedure?  If not, would the Commission like to schedule a formal hearing?

Susan Hamlin          bls/M-uprr961.dh

**FOOTNOTES**

1:

The rail abandonment duties formally exercised by Interstate Commerce Commission (ICC) were reassigned to the Surface Transportation Board (STB) in the ICC Termination Act of 1995, Public Law 104-88.  This Law abolished the ICC and established the STB within the U.S. Department of Transportation.  Regulations previously issued by the ICC were continued pursuant to 61 Fed.Reg. 1842 (January 24, 1996).