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

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| IN THE MATTER OF THE UNION PACIFIC RAILROAD’S PROPOSED ABANDONMENT  OF THE GAY BRANCH BETWEEN FORT HALL AND GAY IN BANNOCK AND BINGHAM COUNTIES, IDAHO. | )  )  )  )  )  ) | CASE NO. UP-RR-96-2  ORDER NO.  26642 |

On September 4, 1996, Union Pacific Railroad Company (Union Pacific) notified the Commission that it intends to submit formal application to the Surface Transportation Board (STB)(footnote: 1) to abandon and discontinue operations over the Gay Branch between Fort Hall and Gay, Idaho.  On September 11, 1996, the Commission issued a Notice of Application and Notice of Modified Procedure seeking comments concerning potential effect of the abandonment on shippers and the above communities. On October 10, 1996, the Commission conducted a public hearing at Fort Hall, Idaho to determine what effect the abandonment would have on the community served by the Gay 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.

BACKGROUND

On September 4, 1996, Union Pacific notified the Commission that it intended to submit formal Application to the STB to abandon and discontinue operations over the Gay Branch between Fort Hall and Gay, Idaho.  Union Pacific indicated that the trackage proposed for abandonment extends from milepost 0.03 near Fort Hall to the end of the line at milepost 21.52 near Gay, a distance of 21.49 miles.  This segment proposed for abandonment is known as the Gay Branch and is located in Bannock and Bingham Counties.  Union Pacific also notes that its main line at Fort Hall at milepost 140.0 is not affected by the proposed abandonment. See attached map.

The Gay Branch was constructed in 1948 by Union Pacific at the request of Simplot Company to transport phosphate ore from the Gay Mine to Union Pacific main line.  Later, FMC, Inc. continued operating the Gay Mine and used the Gay Branch for transporting ore.  FMC has since discontinued operating the Gay Mine and the mine is no longer in use.  Union Pacific indicated that since FMC has discontinued operations at the Gay Mine, there has been no rail traffic on the line since October 1993.

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 30 days after publication in the Federal Register.  Union Pacific filed with the STB on September 19, 1996. Notice was published in the Federal Register on October 9, 1995 and the abandonment will become effective on November 8, 1996.

COMMENTS AND TESTIMONY

On September 11, 1996, the Commission issued a Notice of Application and Notice of Modified Procedure seeking comments concerning potential affects of the abandonment on  shippers, customers and nearby communities.  The Commission received a request from the Idaho Joint Rail Labor Legislative Board (IJRLLB) and the Shoshone-Bannock Tribe for a public hearing in this matter.

On October 10, 1996, the Commission conducted a formal hearing in Fort Hall, Idaho.  Appearing and designated as parties to this case were Union Pacific Railroad represented by Joseph D. Anthofer; Commission Staff represented by Deputy Attorney General Susan Hamlin; IJRLLB represented by James Mular, and the Shoshone-Bannock Tribe represented by Albert Jones.  Members of the public also gave statements on the record during the hearing.

a.  Union Pacific

Union Pacific provided the Commission with copies of its combined environmental and historical report filed with the STB.  Union Pacific did not present testimony during the hearing, although it did participate as a party to the case.    Union Pacific asserts that there has been neither freight shipment nor local traffic using this line for more than two years, when FMC ceased operating the Gay Mine.  The Railroad further asserts that there are no shippers on this segment of track proposed for abandonment and no foreseeable possibility of future rail traffic moving over this portion of the branch.    Consequently, the Railroad claims that retention of this segment is not cost justified.

b.  Shoshone-Bannock Tribe

The Tribe presented testimony on the potential use of the Gay Branch during the hearing. Although the Tribe acknowledges that there has been no traffic on the Gay Branch since 1993, they argue that there is a potential for development using this branch line.  Tribal Chairman Delbert Farmer explained that the Tribe expects to receive $10 million from the 1990 Fort Hall Water Rights Agreement in the near future to be used for economic development. Mr. Farmer described various plans for economic development that may use the Gay Branch.  These ideas included transporting ore from the abandoned Gay Mine, using the mine shafts for solid waste storage, agricultural development and tourism.  The witness admits that these ideas for development are in early stages and is not sure when these projects may actually commence using the rail line. Tr. at 37-39, 48.

Marlin Jim, a witness from the Bureau of Indian Affairs (BIA), explained that a road runs parallel to the Gay Branch.  However, as the witness explained, because this road has not been adequately maintained, the Gay Branch is a better source for moving the freight.  The witness suggests that if the road were paved then heavier trucks may safely use the road, however, there are no current plans to upgrade the road.  Tr. at 165, 47. The witness further indicated that paving the road would be very costly and that the BIA has not allocated funds for paving the road at this time.  The Tribe also presented testimony by Simplot employee Steve Sandoval, who described chemical testing on mine tailings remaining at the Gay Mine.  The witness described the Company’s attempt to develop a chemical product from the tailings to be used in the future.  The witness, however, was unable to predict when and if the product would be developed.  The witness also admitted that the Simplot Company as a former shipper on the line did not file a protest to this abandonment.  Tr. at 104.

The Tribe also presented testimony on a plan to develop an agricultural business operation on the Reservation.  Witness Marvin Osborne described the agriculture project and how the project may want to use the Gay Branch for shipping grain.  Mr. Osborne admitted that the project is in the preliminary stages and that final approval of the project has not been received from the Tribal Business Council.  Tr. at 143-144.  The witness indicated that there were alternative sites in the proposal to locate development on Union Pacific’s main line rather than on the Gay Branch.  Tr. at 147.

c.  IJRLLB

Witnesses for the IJRLLB described the history of the Gay Branch during the hearing.  Witnesses described how the branch was constructed in 1948 by Union Pacific to transport phosphate ore from the Gay Mine to the Union Pacific main line.  The witnesses described the various improvements made to the Gay Branch and described the branch as in good condition. The IJRLLB admitted that the Gay Branch has not been used since 1993 when the branch line was spiked, however, witnesses explained that they believe there is a possibility of potential use and development of the rail line.

d.  Commission Staff

The Commission Staff submitted comments pursuant to the Modified Procedure describing its findings on the Gay Branch. Staff did not present testimony during the hearing.  In its comments, Staff noted that it was unable to find an active shipper being served by the Gay Branch. Staff concluded that the Gay Branch was in good condition and appeared to be well maintained. The Bannock County Commission informed the Staff that it opposed the abandonment of the Gay Branch and supported economic development by the Tribe. The Bingham County Commission also indicated that it supported economic development plans of the Tribe.  The Idaho Historical Society also informed Staff that the Oregon Trail is located near the rail line and recommended a historical assessment be done.

e.  Public Testimony

Several members of the public gave comments during the hearing.  All of the witnesses explained that as members of the Shoshone-Bannock Tribe they opposed the abandonment of the Gay Branch and felt that the Gay Branch could be used for economic development on the Reservation.  Some Tribal witnesses suggested that the Shoshone-Bannock Tribe should protest the abandonment before the federal STB on its own behalf as an independent sovereign nation.  Other witnesses suggested that the Gay Branch should be sold or given to the Tribe for economic development on the Reservation.

FINDINGS OF FACT

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 the abandonment would adversely affect Idaho’s public interest.  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 a 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 the area being served.

Upon reviewing the record in this matter, we find that rail service will continue to the Fort Hall Indian Reservation through Union Pacific’s main branch.  We further find that the Gay Branch has not been used since 1993 and there are no active shippers on this line.  The previous shippers that used the Gay Branch for transporting ore, FMC and Simplot Company, had notice of the potential abandonment of the Gay Branch, but did not file a protest to the abandonment.  The Tribe and the IJRLLB protested the abandonment, however, neither is nor has been a shipper on the Gay Branch. We recognize that the Tribe has discussed possibilities for use of the branch line in the future, however, no definite plans for any of those possibilities exist at this time. Therefore based on our review of the record, we find that the abandonment would not adversely affect the area being served.

b) Access to vital goods and services.

With regard to whether the abandonment would impair access to vital goods and service, we give the same rationale as above noting lack of active shippers using the line.  Several of the witnesses described a road that runs parallel to the Gay Branch, which may be used to transport goods or services if there is a need in the future. We also note the Union Pacific main line at Fort Hall at milepost 146.0 is not affected by the proposed abandonment. Based on our review of the record, we find that the abandonment will not impair access to vital goods and services.

c) Potential for Profitability

When considering the final criteria, potential for profitability, we find that the evidence is inconclusive.  The Tribe had several witnesses who described projects that may use the tracks in the future.  The projects range from tourism to transporting ore, solid waste or agricultural products.  However, none of the witnesses was able to identify a certain date when these projects would be completed and how much rail traffic would pass over the line.

Union Pacific argues that given the Gay Branch has not been used since September 1993 maintaining the line for speculative development is not cost justified.  Although we believe there is a possibility of future development on the Reservation, there is not enough evidence based on our review of the record and in light of our statutory duty to find an immediate potential for profitability of the Gay Branch.  We find that local rail traffic has not used the Gay Branch for more than two years and there is no foreseeable possibility of traffic on the Gay Branch in the immediate future.

We do believe, however, that the Tribe does have the authority on its own behalf to pursue this issue before the Surface Transportation Board.  We also note that on October 17, 1996, the Surface Transportation Board issued an Environmental Assessment for this case (STB Docket No. AB-33 (Sub No. 102X)) which imposes the following conditions on any decision by the STB on whether to grant the abandonment: (1) Union Pacific shall retain its interest and take no steps to alter the historic integrity of all sites or structures on the line until completion of Section 106 process of the National Historic Preservation Act, 16 USC 470f; and (2) that Union Pacific shall consult with the Shoshone-Bannock Tribe prior to salvaging the right-of-way.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the review of the record, we find that the criteria for Idaho Code § 62-424 have not been met.  Therefore, the Commission will not file an opposition to the proposed abandonment of this branch with the Surface Transportation Board.

O R D E R

IT IS HEREBY ORDERED that for reasons set forth above herein the Commission will not oppose the abandonment of the Gay Branch with the Surface Transportation Board.

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-96-2  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-96-2.  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 November 1996.

RALPH NELSON, PRESIDENT

                                                                                          MARSHA H. SMITH, COMMISSIONER

                                                                        DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

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1The 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).

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

November 1, 1996