32345 SERVICE DATE – JANUARY 16, 2002
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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 170)

UNION PACIFIC RAILROAD COMPANY – ABANDONMENT – IN POLK COUNTY, IA

Decided: January 15, 2002

On September 28, 2001, the Union Pacific Railroad Company (UP) filed an application under 49 U.S.C. 10903 seeking authority to abandon and discontinue service over a 3.72-mile line of railroad known as the Bell Avenue Industrial Lead extending from milepost 221.10 near SE 18th Street to milepost 217.38 near SW 30th Street in Des Moines, Polk County, IA (the line).[1] On November 5, 2001, Zephyr Capital Corporation (Zephyr) filed a notice of intent to file an offer of financial assistance (OFA).[2] On November 13, 2001, Mid-America Development Company (Mid-America) and Smurfit-Stone Container Corporation (Smurfit-Stone) (collectively, protestants) jointly filed a protest.[3] On November 27, 2001, UP filed a reply to the protest.

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[1] Notice of the filing was served and published in the Federal Register on October 18, 2001 (66 FR 52970-71).

[2] Zephyr requested that UP provide it with the information set forth in 49 CFR 1152.27(a), as well as certain other information. In its notice of intent, Zephyr requests an extension of time to file its OFA, based on the supposition that UP would not timely comply with the request for information. In a reply filed on November 13, 2001, UP states that the abandonment application, which it provided to Zephyr on November 12, 2001, contains all of the requested information. Accordingly, Zephyr's request for an extension to file its OFA is moot.

In its application, UP had requested an exemption of the OFA and public use provisions. On November 19, 2001, however, UP filed a letter withdrawing its request for an exemption from these provisions, in light of the interest expressed by Zephyr and others in acquiring the line post abandonment.

[3] Mid-America is the lessor and Smurfit-Stone is the lessee of property adjacent to the line.

BACKGROUND

The line was constructed in the 1880s and includes a railroad bridge that was built between 1893 and 1901. The bridge, located at milepost 219.79, spans the Des Moines River and is known as the Des Moines River Bridge. The Des Moines River Bridge had been in service for approximately 100 years before it was taken out of service on May 1, 2001, due to inoperable conditions.[4] The line has been embargoed since that time.

TRAFFIC, OPERATIONS, AND REVENUES

UP provides traffic, operations, and revenue data for a base year (May 1, 2000-April 30, 2001)[5] and a forecast year (September 1, 2001-August 31, 2002). UP states that, prior to the embargo, the line had served three shippers: Smurfit-Stone; Des Moines Water Works (Water Works); and Ringling Brothers and Barnum and Bailey Circus (Circus). Of these, only Smurfit-Stone is a major shipper on the line. According to UP, Water Works shifted all of its lime deliveries from rail to truck in 1999,[6] and the Circus train was included in the base year but not the forecast year data because the movement will not recur in the forecast year.[7]

Smurfit-Stone maintained a paper bag manufacturing plant and a flexible packaging plant on the line. During the base year, Smurfit-Stone permanently closed its paper bag plant, leaving only its flexible packaging plant open for the forecast year. The paper bag plant received 255 carloads in 1999, 49 carloads in 2000, and no carloads in 2001. The flexible packaging plant

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[4] According to UP, the masonry substructure of the Des Moines River Bridge has suffered severe damage due to variations in temperature, and the superstructure has sustained corrosion and collision damage.

[5] The base year period was chosen to reflect the line's operations for the full 12-month period just prior to the embargo.

[6] Even though Water Works used only truck service in 2000, it solicited both truck and rail oriented supplier bids for 2001, according to Raymond E. Allamong, Jr., Manager of Rail Line Planning for UP's Marketing and Sales Department. Mr. Allamong states that UP supplied the rate information, but informed Water Works of the poor condition of the Des Moines River Bridge, the likelihood that UP could file for authority to abandon the line, and that it could not guarantee direct rail service for any particular length of time. See UP's Application, Appendix F.

[7] The Circus train uses a UP yard adjacent to the line when the Circus performs in Des Moines, which is once every other year. The next scheduled performance is in September 2002. Mr. Allamong reports that the Circus will work with UP in developing a new procedure for handling the Circus train. See UP's Application, Appendix F.

received 80 carloads in 1999, 55 carloads in 2000, and an expected 65 carloads in 2001.[8] There is no overhead traffic on the line.

Protestants contend that UP's traffic projections are understated because they rely on an unrepresentative level of traffic in the base year. According to protestants, Smurfit-Stone incurred a 7-month employee strike during this period that caused production and shipping to stop. Protestants suggest that 110 carloads would more appropriately reflect traffic for the forecast year. Additionally, protestants believe that UP should have included revenue from the Circus train, specifically 27 or 28 carloads per year based on an average of 55 rail cars every other year.

In reply, UP disagrees with the inclusion of additional traffic, arguing that the strike only affected Smurfit-Stone's paper bag plant, which is no longer on the line. Finally, UP explains that the Circus train only needs another yard to park the Circus train and not an alternative means of transportation.[9]

UP projects that forecast year revenues would be $136,438. Protestants do not include any revenues or operating costs associated with their traffic forecast. Because protestants have not supported their traffic forecast, and because UP's estimates appear reasonable, we will accept UP's forecast year 65-carload projection and $136,438 revenue projection.

AVOIDABLE COSTS

Avoidable costs are costs that applicant will cease to incur if it abandons and discontinues service over the line. UP has submitted data showing avoidable on-branch costs for the base and forecast years. These include: maintenance-of-way and structures, maintenance of equipment, transportation, and freight car costs. UP projects, for the forecast year, total avoidable on-branch costs of $44,396 and off-branch costs of $73,546, for total avoidable costs of $117,942. These figures are not challenged and appear reasonable.

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[8] Smurfit-Stone has been using a transload facility at Des Moines since the embargo was placed on the line. In an effort to establish the best basis for a forecast year, Mr. Allamong states that UP counted transload activity for Smurfit-Stone for the period September 2000 through August 2001, which is the most recent 12-month period for which UP has records. See UP's Application, Appendix F.

[9] Mr. Allamong states that UP has other yard facilities to accommodate the Circus train. See UP's Reply, Exhibit A.

LINE CONDITION AND REHABILITATION

The line is constructed primarily of 115-pound rail, with small amounts of 90-pound rail. It has a maximum speed of 10 m.p.h., except at milepost 219.79 where the line was taken out of service. UP states that the line, exclusive of the Des Moines River Bridge, does not require rehabilitation to meet Federal Railroad Administration (FRA) safety standards. UP estimates that the Des Moines River Bridge would cost approximately $1,500,000 to bring back into service.

OPPORTUNITY COSTS

Opportunity costs (or total return on value of road property) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under Abandonment Regulations – Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of: (1) allowable working capital; (2) the net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base (or valuation of the road properties) is multiplied by the current nominal rate of return, to yield the nominal return on value.[10] The nominal return is then adjusted by applying a holding gain (or loss) to reflect the increase (or decrease) in value a carrier will expect to realize by holding assets for 1 additional year.

NLV consists of the value of track components less their removal cost and the value of real estate. We have restated UP's forecast year value of track components of $242,302 to exclude bridge materials valued by UP at $29,192.[11] The result is $213,110. UP's removal cost of $59,408 is uncontested and otherwise appears reasonable. We also accept, as the only evidence of record, UP's real estate value of $1,500,000 (rounded). The restated NLV, therefore, is $1,653,702. Finally, we accept UP's forecast year working capital of $1,772 and UP's income tax consequences for abandonment of negative $615,736. Adjusting the restated NLV for working capital and income tax consequences results in a restated total road property valuation of $1,039,738.

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[10] Under 49 CFR 1152.34(d), the rate of return used to calculate return on value represents the individual railroad's current pre-tax nominal cost of capital. Our most recent after-tax cost of capital finding for the railroad industry is used as a basis for developing the appropriate nominal rate of return.

[11] We have assumed that the Des Moines River Bridge would not be salvaged post-abandonment because UP has not accounted for removal costs and the record shows no requirement to remove the bridge. Moreover, Abdollah Ghazai, Track Planning Engineer in UP's Engineering Services Department, observes that the City of Des Moines may be interested in acquiring the line for use as a recreational trail. See UP's Application, Appendix C. This would probably require that the bridge remain in place.

Applying the 15.4% pre-tax nominal cost of capital for the railroad industry for the year 2000 to the restated road property valuation results in a restated nominal return on value of $160,120, from which we deduct UP's holding gain of $58,901 to yield a restated forecast year total return on value (or opportunity cost) of $101,219.

SUMMARY OF COST AND REVENUE EVIDENCE

The line would realize a profit from operations of $18,496 in the forecast year. When the return on value is considered, the line shows an avoidable loss of $82,723 in the forecast year. However, when rehabilitation costs are included, the line would require a subsidy of $1,584,087 in the forecast year. See Appendix.

ALTERNATIVE TRANSPORTATION

UP states that there are several alternative service options available in the area, including a Burlington Northern and Santa Fe Railway Company (BNSF) line operated by the Iowa Interstate Railroad, Ltd., and a Norfolk Southern Railway Company line that serves the City of Des Moines. Additionally, the line to be abandoned runs parallel to Interstate Highway 235, which intersects with north/south U.S. Route 65/69. According to UP, the line's farthest point is no more than 2 miles from either highway.

Protestants argue that alternative shipping will become cost prohibitive if the line is abandoned.[12] They contend that motor transload costs now amount to $240,000 annually and could increase to $600,000. UP notes in reply that the $240,000 figure appears to be based on Smurfit-Stone's traffic projection, and would be substantially lower at the forecast year levels projected by UP. Additionally, UP notes that the projected increase in transload costs is unsupported. Indeed, UP submits that these costs could even drop if the shipper entered into a long-term transload commitment.

Protestants additionally suggest that UP could continue to serve the line if it were to purchase the Raccoon River Bridge, a bridge owned (but not used) by BNSF, which crosses the Des Moines River close to the line. UP acknowledges that it did negotiate for acquisition of the Raccoon River Bridge but, after Smurfit-Stone's paper bag plant closed, the potential of the line dropped to a level that could not economically justify the purchase. UP calculated that

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[12] UP currently subsidizes Smurfit-Stone's use of substituted transload service in the amount of $0.011 per pound, consistent with its continuing common carrier obligation over the embargoed line. See Overbrook Farmers Union – Petition for Declar. Order, 5 I.C.C.2d 316 (1989).

rehabilitating the Raccoon River Bridge and connecting it to the line would cost at least $400,000, assuming a nominal purchase price.[13]

SHIPPER AND COMMUNITY INTERESTS

Protestants argue that the abandonment should be denied based on shipper and community interests. Protestants submit that Smurfit-Stone is dependent on low cost rail service and that increased transportation costs will have a devastating effect on Smurfit-Stone's overall profitability. Additionally, protestants argue that the abandonment of the line will cause financial harm to Mid-America, as a property owner and landlord in an area zoned as light industrial.

Protestants maintain that community development would be injured by this abandonment and that the application discourages existing and new traffic. Smurfit-Stone claims that it would like to expand but will only do so if it can use rail service. According to protestants, there are commercial entities interested in relocating to the Bell Avenue area, but only if rail service is available. In its reply, UP notes that protestants did not provide the names of the interested commercial entities or contracts with those entities to support their speculation about potential traffic on the line.

DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment or discontinuance of service is whether the present or future public convenience and necessity permit the proposed abandonment or discontinuance. 49 U.S.C. 10903(d). In implementing this standard, we must balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. Colorado v. United States, 271 U.S. 153 (1926). Essentially, the Board must determine whether the burden on the railroad and on interstate commerce from continued operations is outweighed by the burden on the shippers and the community from the loss of rail service.

UP has established that continued operation of the line would be burdensome. Its projection of 65 carloads annually is consistent with recent traffic and has not been refuted by protestants' evidence. As stated above, the line would realize a forecast year profit from operations of $18,496 and an economic loss of $82,723, but rehabilitation costs for the bridge result in a subsidy requirement of $1,584,087.

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[13] Also, UP would incur an additional $750,000 expense if it were required to remove the Des Moines River Bridge. Protestants disagree with this figure and believe the cost of removing the Des Moines River Bridge should not be included in the cost of acquiring the Raccoon River Bridge. As discussed below, we need not resolve this dispute.

To the extent that we may consider the alternative scenario of purchasing and moving traffic over the Raccoon River Bridge, the proponent of the alternative to abandonment bears the burden of proving the viability of that alternative. See State of Me. Dept. of Transp. v. ICC, 587 F.2d 541, 543 (1st Cir. 1978); and Village of Candor v. United States, 151 F. Supp. 889, 892 (N.D.N.Y. 1957). The evidence shows that UP's purchase of the Raccoon River Bridge would result in a forecast year subsidy requirement of at least $400,000. Protestants have offered nothing in evidence that would ameliorate the financial burden of this alternative, if, in fact, BNSF were willing to sell the Raccoon River Bridge, the likelihood of which is also not of record. Under the circumstances, we find that this alternative has not been shown to be viable, and we need not rule on the related question of whether UP would have to incur the additional expense of removing the Des Moines River Bridge under that scenario.

In contrast to the demonstrated burden that continued operation of the line will impose on UP and on interstate commerce, the burden that abandonment will impose on shippers and the community appears to be speculative at best. Moreover, although protestants allege that lack of rail service will deter new business investment in the area, no specifics are provided. We conclude that any harm to the shippers and the community from the proposed abandonment is outweighed by the demonstrated harm to UP and the burden on interstate commerce through continued operation of the line. We will therefore grant the abandonment application.

LABOR PROTECTION

In approving this abandonment application, we must ensure that affected rail employees will be adequately protected. 49 U.S.C. 10903(b)(2). We have found that the conditions imposed in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979) (Oregon), satisfy the statutory requirements, and we will impose those conditions here.

ENVIRONMENTAL ISSUES

The Board is also required to consider the environmental and energy impacts of the proposed abandonment. UP has submitted an environmental report with its application and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 31, 2001, and requested comments by November 30, 2001.

In the EA, SEA recommends a pre-salvage consultation with Mr. Terry Stieger of the Emergency Management Division of the U.S. Army Corps of Engineers concerning the possible impacts to local Flood Protection Projects. The U.S. Army Corps of Engineers states that, if the Des Moines River Bridge is removed, UP will be required to implement appropriate measures to insure protection of the waterway.[14] Therefore, SEA also recommends that UP contact the U.S. Army Corps of Engineers, Rock Island District, prior to any extraction of the bridge.

In the EA, SEA states that the National Geodetic Survey (NGS) had identified two geodetic markers that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that would disturb or destroy these markers in order to plan for their relocation. Therefore, SEA recommends that a condition be imposed requiring UP to consult with NGS and provide NGS with 90 days' notice prior to conducting salvage activities, in order to plan for the relocation of the geodetic markers.

The State Historic Society of Iowa has determined that the Des Moines River Bridge is of considerable historical and architectural interest and may be eligible for listing on the National Register of Historic Places. Therefore, SEA recommends that a condition be imposed requiring UP to retain its interest in and take no steps to alter the historic integrity of the Des Moines River Bridge until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

No comments to the EA were filed. Accordingly, the conditions recommended by SEA in the EA will be imposed. We conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. We note that no one has sought a public use condition, and none will be imposed.[15]

We find:

1. The present or future public convenience and necessity permit the abandonment of the above-described line, subject to: (1) the employee protective conditions in Oregon; (2) the condition that UP, prior to engaging in any salvage activities, consult with Mr. Terry Stieger of the Emergency Management Division of the U.S. Army Corps of Engineers (flood control) and with the Corps of Engineers, Rock Island District (protection of the waterway); (3) the condition

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[14] UP would be required to remove all fill material to an upland, non-wetland site, and to remove all pilings to at least one foot below streambed elevations. In addition, UP would be required to seed all disturbed areas with native grasses and to implement appropriate measures to insure that sediments are not introduced into waters of the United States.

[15] Public use requests were due no later than 20 days after publication of the notice of the application in the Federal Register or by November 7, 2001.

that UP consult with NGS and provide NGS with 90 days' notice prior to conducting salvage activities, in order to plan the relocation of the affected geodetic markers; and (4) the condition that UP retain its interest in and take no steps to alter the historic integrity of the Des Moines River Bridge until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

2. Abandonment of the line will not have a serious, adverse impact on rural and community development.

3. The line may be suitable for other public purposes.

4. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is granted subject to the conditions specified above.

2. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by January 25, 2002, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Office of Proceedings, AB-OFA.**"

4. Provided no OFA has been received, this exemption will be effective on February 15, 2002. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

5. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by January 16, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier

to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

APPENDIX

	STB Restated Forecast Year
1. Freight Orig. and/or Term. on Branch	$136,388
2. Bridge Traffic	0
3. All Other Revenue and Income	50
4. Total Attributable Revenue (Ls. 1 thru 3)	**$136,438**
5. On-branch Costs:	
a. Maintenance-of-Way and Structures	$35,866
b. Maintenance-of-Equipment (Including Depreciation)	704
c. Transportation	6,970
d. General & Administrative	0
e. Deadheading, Taxi and Hotel	0
f. Overhead Movement	0
g. Freight Car Costs (Other Than Return)	0
h. Return on Value - Locomotives	856
i. Return on Value - Freight Cars	0
j. Revenue Taxes	0
k. Property Taxes	0
l. Total On-Branch Costs (Ls. 5a thru 5k)	**$44,396**
6. Off-branch Costs:	
a. Off-Branch Costs (Other Than Return)	$60,266
b. Return on Value - Freight Cars (Less Holding Gain)	7,311
c. Off-Branch Multiple Car Adjustment	0
d. Off-Branch Make-Whole Adjustment	5,969
e. Net Off-Branch Costs (Ls. 6a thru 6d)	**$73,546**
7. Total Avoidable Costs (Ls 5l + 6e)	**$117,942**
Subsidization Costs for:	
8. Rehabilitation	$1,500,000
9. Administrative Costs (Subsidy Year Only)	1,364
10. Casualty Reserve Account	0
11. Total Subsidization Cost (Ls. 8 thru 10)	**$1,501,364**
12. Valuation of Road Properties	
a. Working Capital	$1,772
b. Income Tax Consequences	(615,736)
c. Net Liquidation Value	1,653,702
d. Total (Ls. 12a thru 12c)	**$1,039,738**
13. Nominal Rate of Return	15.40%
l4. Nominal Return on Value (L. 12d x L. 13)	$160,120
15. Holding Gain (Loss)	$58,901
l6. Total Return on Value (L. 14 - L. 15)	**$101,219**
l7. Avoidable (Loss) or Profit from Operations (L. 4 - L. 7)	**$18,496**
l8. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	**($82,723)**
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	**($1,584,087)**