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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 101)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT-- PLAINVILLE BRANCH (PLAINVILLE-COLBY LINE) IN ROOKS, GRAHAM, SHERIDAN AND THOMAS COUNTIES, KS

Decided: March 21, 1997

By application filed December 6, 1996, Union Pacific Railroad Company (UP) seeks authority to abandon its line of railroad known as the Plainville-Colby Line between milepost 102.0 near Plainville and milepost 201.0 near Colby, a distance of 99.0 miles, in Rooks, Graham, Sheridan and Thomas Counties, KS. Public notice was properly given.

Protests were filed by Sheridan County, KS, Hoxie Implement Company, Inc., the Kansas State Corporation Commission, Graham County Commissioners, and the City of Hoxie, KS. Comments in opposition were filed by Rex Carswell, Vista Roth, Alfred and Barbara Rietcheck, and Lawrence Wark on behalf of CO-AG Co-operative. The United Transportation Union (UTU) filed comments seeking labor protection.

On review of the protests, the Board, by order of the Director of the Office of Proceedings, served January 17, 1997, instituted an investigation into the proposed abandonment under the modified procedure. UP was asked to submit additional evidence or supporting documentation on various issues.

UP filed its opening statement on February 3, 1997. Although protestants' initial and reply statements were due on February 13, 1997, no statements in opposition were filed on or after that date. Upon review of the record, the abandonment application will be granted.

TRAFFIC, OPERATIONS, AND REVENUES

UP's 99-mile Plainville-Colby Line is used principally for the carriage of grain and farm machinery. Service on the line is provided by a three-man crew out of Oakley, KS, on an as-needed basis, averaging about one train a week. UP identifies six significant users on the line: Continental Rail, Collingwood Grain, J I Case Hoxie Implement, Midland Marketing Coop, Midwest Coop, and Co Ag. These users shipped 338 carloads during 1995.

According to UP, the line is a financial drain and there is no prospect that traffic will increase in the future. UP says that it believes that traffic on the line has declined because shippers are using alternative truck and rail service to meet their transportation requirements. Applicant indicates that, except for two short segments operated at Federal Railroad Administration (FRA) class 1, the line is classified as FRA class 2 with a maximum speed of 25 m.p.h.

In the Board's investigation decision served January 17, 1997, UP was asked to explain why it projected a decrease in freight revenues for the forecast year ($648,228) from the base year ($1,002,796), but projected that carload traffic would remain static at 323 carloads. UP explained in its February 3 statement that the base year traffic was for only a 10-month period. UP's actual 12-month base year traffic, detailed in the carrier's work papers, was 484 carloads, generating revenues of $1,002,796. UP now projects its forecast year traffic to be 343 carloads, generating revenue of $686,428. Total revenues for the forecast year are set at $745,329. Applicant's details presented for the forecast year appear reasonable compared to the actual base year data, and no one challenges UP's revised traffic and revenue figures. Thus, we will accept UP's revised forecast year figures for these items.

AVOIDABLE COSTS

UP projects its on-branch costs for the forecast year to be $613,900. These consist largely of maintenance-of-way and structure costs, estimated at $495,338. Applicant estimates normalized track maintenance costs to be $477,957, or $4,828 per mile, for the base year, and $495,338, or $5,003 per track mile, for the forecast year, in order to maintain the track at FRA class 1 standards. Review of applicant's maintenance-of-way calculations indicates that the quantities and unit costs used to develop the estimates are reasonable. Because virtually all the line is classified at FRA class 2, no rehabilitation is required which would add to the cost of continuing operations over the line.

UP estimates that its total off-branch avoidable costs are $487,411. Applicant's off-branch cost data comport with the applicable abandonment rules and they are therefore acceptable. We therefore accept both UP's on-branch and off-branch costs for the forecast year.

OPPORTUNITY COSTS

Opportunity costs (or total return on value) 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 that is 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, also called the "valuation of road properties," is then multiplied by the nominal rate of return, which is 17.5%.

UP estimates its opportunity costs to be $705,994, computed by multiplying the 1995 pre-tax cost of capital rate of 17.5% times the valuation of road property ($3,773,888) dedicated to train operations over the line. The greater part of the line's property value is the net salvage value of track structure. UP estimates salvage value to be $4,627,192, based on current market value, and $4,581,628 for the base year. UP submitted detailed supporting information for salvaged track materials and removal costs, and the unit costs used to develop the net salvage value are reasonable.

Land is valued at $69,276 for non-reversionary parcels. Its marketability is based on UP records indicating the method of acquisition of the right-of-way, and its valuation is developed from information on the sale of comparable parcels obtained from a local appraiser, which is acceptable. Thus, on this record, we find the net liquidation value for the line to be $4,696,468 for the base year and $4,650,904 for the forecast year.[1]

SUMMARY OF COST AND REVENUE EVIDENCE

As shown in the following table, UP estimates for the forecast year that, the subject line will generate avoidable losses of $355,983 that can be curtailed by abandonment. The costs are based on a projected volume of 343 carloads. Total revenues for the forecast year are $745,329. Total avoidable costs are estimated at $1,101,312 (including off-branch costs of $487,411). Total return on value is estimated at $705,994. The parties have not contested UP’s revenue and cost estimates, including return on value, and we accept them on this record. They are as follows:

Total Revenue	$745,329
Total On-Branch Costs	$613,900
Total Off-Branch Costs	$487,411
Total Avoidable Costs	$1,101,312
Avoidable Loss From Operations, Excluding Return On Value	$355,983
Return on Value	$705,994
Avoidable Loss, Including Return on Value	$1,061,977

The subsidy required to cover all costs and make the railroad whole during the forecast year is estimated to be $1,069,430, computed by subtracting from total revenue of $745,329, total costs of $1,814,759 (consisting of avoidable costs of $1,101,312, subsidization costs of $7,453, and return on value of $705,994).

SHIPPER AND COMMUNITY INTERESTS

As noted above, protests to the abandonment were initially filed by Sheridan County, KS, Hoxie Implement Company, Inc., the Kansas State Corporation Commission, Graham County Commissioners, the City of Hoxie, KS, and five individuals on behalf of CO-AG Co-operative.

Sheridan County and the City of Hoxie contend that UP’s abandonment of the Plainville-Colby Line will deprive them of

[1] UP inadvertently transposed the base year and forecast year net liquidation values in its Exhibits 1 & 1A--Revised.

needed tax revenues and will result in increased traffic congestion and maintenance costs on area roads and bridges. Sheridan County also seeks a condition requiring UP to repair or rebuild public road bridges adjacent to UP's right-of-way and to grant the county permission to perform future maintenance on these bridges. Hoxie Implement maintains that the abandonment will increase its shipping costs and force it to reduce its payroll and employment. The individuals appearing on behalf of CO-AG Co-operative state that they fear that their grain income will decline if the abandonment is permitted.

Protestants did not respond to the Board's investigation order nor did they reply to UP's evidence filed pursuant to that order.[2]

ALTERNATIVE TRANSPORTATION

UP contends that there is substantial alternative rail and motor carrier transportation available to shippers. The railroad states that grain shippers in the area can easily truck their products to three large grain elevators located on UP's KP Line that parallels the Plainville-Colby Line proposed for abandonment. UP also states that there are numerous for-hire motor carriers available to transport grain shipments directly to final destination.

DISCUSSION AND CONCLUSIONS

The statutory standard governing abandonments is whether the present or future public convenience and necessity require or permit the proposed abandonment. 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 would 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 from continued operation is outweighed by the burden on the shippers and public parties from the loss of rail service.

The record shows that continued operation of the line will impose a substantial economic burden on UP, involving a forecast year operating loss of $355,983. When opportunity costs of $705,994 are factored in, UP's annual loss increases to $1,061,977. The record does not reveal any realistic prospect for increased traffic levels in the future. Accordingly, we must conclude that the line will continue to suffer heavy losses if abandonment is denied.

Local communities and individual protestants have expressed general concerns that abandonment would have an adverse economic

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[2] In a letter filed March 4, 1997, the Sheridan County Board of Commissioners requests an opportunity to respond to any Board action concerning UP's "rebuttal" evidence. Our records show that officials of both Sheridan County and Hoxie, KS, the county seat, were served with copies of UP's evidentiary statement in response to our January 17, 1997 investigation decision. Our decision gave protestants until February 13, 1997, to file their replies. No replies have been filed.

impact on the area served by the line. They also express concerns that tax revenues will decline and traffic congestion and maintenance costs on area roads and bridges will increase. The potential for these adverse effects must, however, be weighed against the certainty that UP is incurring losses on the line. Continuing to incur those losses would adversely affect the railroad's ability to provide adequate service throughout its system.

Sheridan County seeks a condition requiring UP to repair or rebuild public road bridges adjacent to UP's right-of-way and grant the county permission to perform future maintenance on these bridges. Because these are apparently public bridges owned by the county, we have no basis for requiring UP to maintain them or grant easements over its right-of-way as conditions to the abandonment.

On balance, we conclude that any harm to shippers and the community from the abandonment of the subject line 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 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), satisfy the statutory requirements, and we will impose those conditions here.

ENVIRONMENTAL ISSUES

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment on January 8, 1997, and requested comments. In its EA, SEA examined the environmental impacts of the proposal. Areas of consideration included, but were not limited to, energy consumption, air and water quality, noise levels, endangered species, and public safety. SEA concluded that, subject to certain salvage conditions it recommends below, abandonment will not significantly affect the quality of the human environment.

SEA noted that the Kansas Department of Health and Environment (KSDHE) is concerned about the potential water quality impacts of the abandonment and that UP may be required to obtain a water quality certification from KSDHE and prepare a Nonpoint Source Pollution Control Plan. KSDHE is also concerned about properly removing storage batteries, and the potential release of environmentally damaging materials during salvage and their proper clean up.

SEA also noted that the National Geodetic Survey (NGS) has identified 42 geodetic station markers along the rail line and requests 90 days' notice in order to plan relocation of any markers which may be disturbed or destroyed.

We agree with SEA's recommendations and will adopt them.

We find:

1. The present and future public convenience and necessity permit the abandonment of the above-described line of railroad, subject to: (1) the employee protective conditions outlined in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979); (2) the requirement that UP shall consult with the Kansas Department of Health and Environment (KSDHE), and, if necessary, comply with KSDHE requirements regarding a water quality certification and a Nonpoint Source Pollution Control Plan, and the removal of storage batteries and potential release of environmentally damaging materials during salvage; and (3) the requirement that UP shall consult with the National Geodetic Survey and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers.

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

3. As conditioned, this action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Notice of these findings will be published in the Federal Register on March 28, 1997. Offers of Financial Assistance (OFAs) must be filed with the Board and the railroad by April 7, 1997. An OFA must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c).[3] Each OFA must be accompanied by a filing fee of $900. See 49 CFR 1002.2(f)(25).

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

2. Unless otherwise ordered by the Board, this decision will be effective and abandonment may be carried out on April 28, 1997, unless, prior to that date, the Board finds that one or more financially responsible persons have offered financial assistance (through subsidy or purchase) regarding the line.

By the Board, Chairman Morgan and Vice Chairman Owen.

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[3] We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in Abandonment and Discontinuance of Rail Line and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996), effective January 23, 1997. Because we have processed UP's abandonment application under the former regulations, we will continue to use the former regulations in this proceeding to process an OFA, if one is filed.

Vernon A. Williams
Secretary