

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 112X)

UNION PACIFIC COMPANY—ABANDONMENT EXEMPTION—
IN LANCASTER COUNTY, NE

Decided: September 23, 1997

By petition filed June 6, 1997, the Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.88-mile segment of its Lincoln Branch between milepost 494.76 near 10th Street and milepost 492.88 near 33rd Street in Lincoln, NE. The line traverses U.S. Postal Service Zip Code 68503 in Lancaster County, NE.

On June 12, 1997, Lincoln Lumber Company (LLC) filed an opposition statement, objecting to UP's abandonment of the portion of the segment between 19th Street and the west edge of 24th Street, where LLC's facilities are located. The shipper does not object to abandonment of the portion between the western edge of 24th Street and 33rd Street, and the portion between 10th Street and 19th Street, if conditioned on requiring UP to reroute its traffic over the line of a connecting carrier, the Omaha, Lincoln and Beatrice Railway Company (OLB), or making another arrangement for continued rail service.¹ On June 30, 1997, UP replied to LLC's statement. On September 9, 1997, the Nebraska Public Service Commission (NPSC) filed a statement supporting a partial denial of the abandonment to permit continued service to LLC. UP responded to NPSC on September 9, 1997.

The United Transportation Union (UTU) requests the imposition of labor protective conditions. The City of Lincoln, NE (City) requests issuance of a notice of interim trail use (NITU) and a public use condition.

Pursuant to 49 U.S.C. 10502(b), the Board served and published notice in the Federal Register (62 FR 34497) on June 26, 1997, instituting an exemption proceeding. Thereafter, on July 18, 1997, LLC filed opposing statements, and UP replied on August 7, 1997. After considering the evidence, we will grant the exemption.

BACKGROUND

UP asserts that it seeks to abandon the segment because revenues are insufficient to justify the costs of operation and maintenance. These costs include the cost for maintenance of 14 grade crossings. The railroad says that there is no reasonable prospect that traffic and revenues will increase sufficiently in the foreseeable future to justify continuing operations. UP states that the segment serves two shippers: LLC, which is located near 23rd Street, and Hyland Brothers Lumber (Hyland), which is located near 33rd Street. The segment is served by a local train, which is powered by one locomotive and operated by a 3-man crew. The train serves the Lincoln, NE area over a distance of 41 miles between Pickrell and Garrett, NE. Service is provided six days a week, as needed. A portion of the segment is also used for overhead movements of grain in unit trains and for the carriage of cement.

UP states that the segment does not connect with any other UP rail line. Rather, it connects with a line of The Burlington Northern and Santa Fe Railway Company (BNSF) at the western end

¹ Letters supporting LLC's position were also received from the Senator J. Robert Kerrey, Congressman Doug Bereuter, Georgia Pacific Corporation, the National Lumber and Building Material Dealers Association, A.B.C. Electric Company, Inc., Mid-America Lumbermens Association, the Home Builders Association of Lincoln, The Lincoln Builders Bureau, Norwest Bank, Nebraska, N.A., and Frank Korshoj.

of the segment near 10th Street, and with the OLB at milepost 494.17, near 19th Street. UP says that it will continue to operate an adjoining segment of the Lincoln Branch, extending west from milepost 494.76 to milepost 495.05, where that segment connects to UP's yard in Lincoln and ultimately to UP's main line.

Apparently, the abandonment evolved from a rail coordination project developed by the Lincoln-Lancaster County Railroad Transportation Safety District (RTSD) to relocate UP's operations between 10th Street and 19th Streets.² According to the project report, UP's operations were deemed to be hazardous to motor vehicles and pedestrians on the University of Nebraska (University) campus, which is located adjacent to the right-of-way. In addition, UP's unit train operations allegedly disrupted operations of several industries located near the right-of-way. The RTSD plan proposed that UP seek abandonment authority to remove track between 10th Street and 19th Street and that the railroad eliminate several grade crossings. The report also discussed alternative transportation service for overhead traffic and for the traffic of Hyland and LLC.

To implement the project, UP agreed to develop a trackage rights agreement with OLB to enable UP to continue operating the portion east of 19th Street to serve LLC and Hyland. UP also agreed to seek abandonment authority for the portion between 10 Street and 19th Street. However, UP reserved the right to seek abandonment of the portion east of 19th Street if continued service became uneconomical. The parties also agreed that overhead traffic would be rerouted over BNSF's line. UP also agreed that, after abandonment, it would sell the portion of the right-of-way between 10th Street and 19th Street to the University.

UP witness Bryce B. Bump acknowledges that UP has a contractual right to operate trackage rights over OLB to serve lumber customers east of 19th Street. He indicates that UP has not sought authority for such rights from the Board or its predecessor, the Interstate Commerce Commission (ICC), however, because trackage rights would pose substantial operating problems and would be extremely expensive. He indicates that UP's current route is a direct movement to serve LLC. He asserts that using OLB's route would be circuitous, and would require operating through cross-overs, switches and a congested OLB yard that is used to store cars. UP would not be guaranteed a priority to serve LLC, and crews would require substantial additional time and expense to serve LLC. Mr. Bump indicates further that under the trackage rights agreement, UP would be obligated to pay OLB a flat annual fee of \$10,000 and an additional amount of \$50 per car for the first 100 cars and \$75 per car thereafter. Mr. Bump states that the rate exceeds industry standards but is the best that could be negotiated.

UP states that the segment is located in an area with sufficient highways. In addition, UP witness Clarence A. Adamson testifies that he discussed alternative transportation service with LLC. He notes that he advised LLC that UP has three tracks available in the Lincoln area that would be suitable for LLC to use to receive rail shipments. He notes further that BNSF, which already moved more than one-half of LLC's shipments, may have unloading sites in Lincoln. Witness Bump indicates that OLB has informed UP that it would agree to provide service to LLC, but does not intend to acquire the portion between 19th and 24th street. He states that truck transportation service is available.

LLC claims that abandonment of the segment would cause it extensive economic harm. It requests a minimum of 36 months to review the information submitted by UP. It claims that it has been doing business with UP for more than 30 years and had not been previously informed of the proposed abandonment.

LLC further asserts that using trucks to bring in materials now received by rail would increase its direct costs approximately \$63,750.00 in the next year. In addition, LLC claims that the lumber and sheeting material brought in by rail accounts for approximately 35-40% of its sales. Using trucks instead of rail, LLC says, would increase its costs substantially.

² LLC witness Richard L. Schmeling submitted a copy of the RTSD project report and Memorandum of Intent among the RTSD, BNSF, UP, OLB, the University of Nebraska and the City to implement the project.

LLC states that it is in an extremely competitive market, and its competitors have access to rail. LLC states that it primarily serves home builders, who purchase lumber and other products, where price is the deciding factor. It claims that it would lose a substantial part of its revenues if its transportation costs increase, causing it either to increase costs to customers, or absorb increased transportation costs. It claims that its losses are more than UP's projected maintenance costs for the portion it wants continued in service. LLC states further that UP would be required to maintain only four crossings if it continued to operate on the portion of the segment to serve its facility on 23rd Street.

LLC witness Schmeling notes that UP had requested that OLB provide service to LLC as part of the RTSD project. He indicates that OLB declined to agree because it did not want to operate over dangerous street crossings between 27th Street and 33rd Street. He suggests that OLB may be willing to provide service to LLC over its line because that portion where dangerous street crossings were located would be abandoned and the crossings would be removed.

TRAFFIC

In 1995, UP reportedly handled 118 carloads of local traffic on the segment, of which 71 carloads were reciprocally switched from BNSF. In 1996, UP handled 128 carloads, of which 71 carloads were reciprocally switched from BNSF. Between January and March 1997, UP handled 27 carloads, of which 12 carloads were reciprocally switched from BNSF. The principal commodity handled was lumber.

For the forecast year, June 1, 1997-May 31, 1998, UP witness Adamson projects traffic levels at 85 carloads for LLC. UP states that there have been no shipments for Hyland since 1996, except for two cars received from BNSF early in January 1997. UP does not forecast any traffic for Hyland in the forecast year, noting that Hyland has another facility nearby on the BNSF where it can receive rail shipments.

LLC claims that UP underestimated the lumber traffic it is projected to receive for the forecast year. LLC's president, Don Hamill, indicates that UP's projection was based on LLC's actual lumber traffic for the year ending March 31, 1997. Mr. Hamill asserts that LLC received 48 carloads of lumber in the first half of 1997. He notes that, in the years 1995 and 1996, LLC received more carloads in the second half of the year. Based on actual traffic volumes, he contends that LLC would receive 96 carloads of lumber in 1997.

We will accept UP's traffic estimate of 85 carloads as better supported than LLC's estimate to project forecast year revenues. The fact that LLC actually received 48 carloads of lumber in the first half of 1997 would not justify the shipper's forecast year level of 96 carloads for the forecast year considering prior year traffic levels. While realizing that forecasted amounts are not exact, we believe that UP's traffic projections have been substantiated and provide us with a more realistic estimate of future traffic than that of the LLC. Therefore our restatement of forecast year operations will be based on UP's traffic level of 85 carloads.

Mr. Hamill states further that LLC will begin to receive shingles by rail in the forecast year. He notes that LLC currently receives shingles by truck from Phillipsburg, KS, but will begin receiving 50% of that traffic by rail. He estimates that LLC will receive 44 carloads of shingles per year in the near future.

UP witness Adamson responds that movements of shingles from Phillipsburg would be faster and less expensive by truck than rail. He notes that LLC has been using motor carriers exclusively for shingles since 1975. He states that a carload of shingles originating at Phillipsburg required 14 days to travel to LLC's facility. According to documents submitted by Mr. Adamson, the rail shipment originated on July 11, 1997, and was delivered to LLC on July 24, 1997. He states that the same shipment by truck would take about 4 hours. According to Mr. Adamson, the rail rate for rail service would be \$1,431, and the equivalent truck rate would cost LLC \$1,275.

We consider LLC's estimate of 44 carloads of shingles to be speculative. Apparently, LLC has not negotiated with UP to guarantee this new shingle traffic. Furthermore, LLC submits no prior

business plan indicating that it would use rail for the movement of shingles. Also, as UP witness Adamson notes, shipping shingles by truck would be significantly faster and less expensive than shipping them by rail.

The segment also carries overhead movements of 50-car unit grain trains shipped by AGP Grain Cooperative and Farmers Cooperative. The grain traffic originates in the OLB's yard and is moved by UP over OLB trackage, through the connection at 19th street, and then to 10th Street to UP's yard. UP indicates that the 50-car trains are consolidated into 100-car trains at its yard. The segment also carries overhead carloads of cement that are moved from a plant in Lincoln. In 1996, 3,926 carloads moved overhead over the line between OLB's connection at 19th Street and 10th Street. UP witness Bump indicates that, after abandonment, UP will continue to move the unit grain trains and cement carloads from OLB's yard over BNSF trackage via trackage rights to UP's yard.³

REVENUES AND COSTS

The heart of the railroad's argument that it should be permitted to abandon the line is that the line is a burden on interstate commerce, i.e., that UP must spend more to operate the line than it can earn from the revenues attributable to the line. Because, as we have noted, the overhead traffic can be rerouted, the focus of our review of traffic, costs, and revenues will be on local service. Because a connecting railroad, the OLB, has agreed to give access to the segment over OLB property, we will examine not only the costs of providing service over the existing segment, but also the cost of providing service over the alternative offered by OLB.

LLC has argued that UP's costs of providing service over the existing segment is irrelevant. But we will examine the costs of operating over both routes to see if either one permits UP to earn a profit on the service to LLC. We note that in its Memorandum of Intent to abide by the RTSD report, UP specifically reserved the right to seek abandonment of the portion located east of the connection with OLB at 19th Street.

We will first examine the costs and revenues attributable to service over the existing route, the segment between 10th Street and 33rd Street. The costs and revenues are summarized in Appendix I. Then we will examine the costs attributable to service over the OLB segment, described below as service over the portion between 19th Street and 24th Street. The costs and revenues are summarized in Appendix II. As these analyses show, the revenue attributable to the line fails to meet the cost of providing service on the segment over either routing.

Segment between 10th Street and 33rd Street

UP witness Hans Matthiessen submitted revenue and cost data reflecting operations over the segment between 10th Street and 33rd Street for the forecast year June 1, 1997-May 31, 1998. The data submitted by Mr. Matthiessen are summarized in Appendix I. He determined that, in the forecast year, UP would realize \$101,607 in revenues and incur avoidable costs totaling \$144,856, resulting in an avoidable operating loss of \$43,249.

Revenues. LLC claims that UP underestimates the revenue it is projected to realize in the forecast year. LLC estimates that UP would receive \$602,000 in revenues from the 85 carloads. LLC bases its estimate on information obtained from shippers on freight rates for lumber shipments from Canada and the western United States.

UP Witness Adamson responds that LLC has substantially overstated its revenue estimate. He states that UP receives only a reciprocal switch charge on much of LLC's traffic. He notes that, in 1996, 40 of the 82 cars received by LLC originated at locations served by BNSF were moved to Lincoln by BNSF. UP was not involved in the line haul movement and only received reciprocal

³ In Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33403 (STB served June 4, 1997), UP was authorized to operate overhead trackage rights over 2.14 miles of BNSF's line between milepost 59.06 near 10th Street and milepost 56.92 in Lincoln, NE.

switch charges of \$130 per car. For the remaining 42 cars received by LLC, UP did receive line haul revenue. In the forecast year, UP states that projected revenues reflect that 39 of the 85 carloads would be moved by BNSF, and UP would receive only a reciprocal switch charge. UP has successfully supported its revenue estimate, and we will accept it.

Overhead revenues. LLC claims that UP excluded revenue from overhead traffic in calculating forecast year revenues. UP responds that the overhead grain and cement traffic will be retained after abandonment and it is not required to include revenue from such traffic as part of its revenue and cost data.

We agree with UP that it is not required to include revenue from overhead grain and cement traffic. Under 49 CFR 1152.31(a)(3), a carrier is required to attribute revenues from bridge or overhead traffic only if that traffic will not be retained. Because UP will retain the overhead grain and cement traffic after abandonment over alternate routes, UP is not required to attribute the revenue generated from this traffic to the segment proposed for abandonment here.

Maintenance. UP Witness Sylvester Bobo indicates that the segment is constructed with 0.1-mile of 133 pound jointed rail, 0.1-mile of 115 pound jointed rail, and 1.68 track miles of 85 pound jointed rail. There is an additional 0.43-mile of sidings. The segment has an operating speed of 10 mph. He states that the segment does not need rehabilitation.

Mr. Bobo projects annual maintenance costs of \$56,955, or \$30,295 per mile. He projects tie replacement costs based on replacing crossties on an eight-year cycle of approximately 160 crossties per mile or an average of 20 crossties per mile per year. Switch ties would be replaced at a 20 percent rate every eight years, which is an annual replacement rate of 2.5 percent. Mr. Bobo computes the cumulative cost for tie replacement in the forecast year is \$1,763 per track mile.

According to Mr. Bobo, surfacing and lining would most likely be done in conjunction with programmed tie replacement. It would consist of a ½ to 2 inch raise of the track structure and would require about five carloads of ballast per mile every eight years. The cumulative expenditure for surfacing and lining track on an annualized basis is \$1,147 per main track mile.

He states further that expenditures for public road crossings are the largest single maintenance expense. There are 14 road crossings including eight signalized crossings, resulting in a cost of \$17,688 per main track mile. Costs include periodic replacement of the crossing surfaces, warning devices, and other appliances.

Other costs claimed to keep the line in service between programmed maintenance cycles, include costs for a 3-person section gang, a track inspector to inspect the line once a week, labor for signal maintenance, signal material, rail replacement for damage or failed rail, vegetation control, bridge inspection, bridge maintenance and material, material store expense and sales tax. Total costs are calculated at \$9,697 per main track mile.

We accept UP's costs estimates for normalized maintenance. The railroad's cost for tie replacement, surfacing and lining, and other track maintenance costs fall within a reasonable range and are not opposed by LLC. We agree with UP that maintenance costs for this segment would be comparatively higher than for other lines proposed for abandonment, because it contains many signaled grade crossings.

Overhead costs. LLC claims that UP costs are overstated, because they include maintenance and operating costs associated with the portion of the segment between 10th Street and 19th Street. LLC asserts that, because the overhead traffic that moves on this portion will be rerouted, the costs of maintenance and operation of the portion are not avoidable. Moreover, LLC claims that because UP's proposed abandonment of the portion between 10th Street and 19th Street results from the RTSD project, the carrier cannot claim these costs as being avoidable. UP disagrees, asserting that operating and maintenance costs on the portion between 10th and 19th streets are avoidable in the same manner as the expenses for operating the remaining portion of the line between 19th and 33rd streets.

We disagree with LLC. After abandonment, UP will no longer be required to maintain and operate any of the segment and thus it will no longer incur expenses for operation and maintenance of the entire segment, including the 10th to 19th street portion. The costs of this portion are properly considered in determining the total avoidable costs of providing freight service on this branch as defined in section 1152.32, Calculation of avoidable costs.

Transportation expenses. LLC questions the crew cost component of UP's transportation expenses, which are based on overtime wages for a 3-man crew. LLC president Hamill asserts that his employees observed that UP used a 2-man crew. In response, UP witness Matthiessen submitted copies of UP timekeeping system reports and car cycle reports that he allegedly used to compute forecast year crew expenses. These records show that UP used 3-man crews and, in several instances, a 4-man crew. UP documentary evidence supports its use of a 3-man crew at overtime wages in its forecast year projected expenses. However, Mr. Matthiessen reduced the crew cost component to reflect that avoidable train crew overtime occurs 90% of the time. As reduced, transportation expenses are reported at \$11,482. We accept Mr. Matthiessen's reduced amount.

Value of property. UP claims that for the forecast year the value of railroad property associated with the abandonment of the segment is \$1,192,953, consisting of working capital of \$2,767, income tax consequences of \$629,814, and net liquidation value (NLV) of \$1,820,000. However, we will adjust the income tax consequences and NLV calculations. UP's data and our adjustments are reflected in Appendix I.

Net liquidation value. UP's NLV is based on a real estate appraisal by Dennis J. Knudson conducted in 1995. The appraisal values the real estate in the segment's right-of-way at \$1,520,000, but increases the market value by a factor of 1.2 to \$1,820,000 because of the line's assemblage value.⁴ The land was appraised with the highest and best use of the assembled parcels. Mr. Knudson analyzed the sales of 15 vacant tracts from June 1988 to June 1994 and considered various valuation factors including the date of sale, location, physical characteristics, zoning, access, viability, topography, and other factors.

UP Witness Michael P. Horn adjusted Mr. Knudson's real estate appraised value. LLC had contended that only 17.4483 acres should be valued in the NLV, rather than UP's original 18.87 acres. Mr. Horn responded that the acreage used by Mr. Knudson was based on UP's land records and that the lower acreage was based on UP's property Accounting Group records. LLC claims that UP should use the lower acreage. Mr. Horn agreed with LLC and used the lower acreage figure. LLC further claimed that 5.243 acres of the right-of-way are subject to reversionary interests and should not be valued. Mr. Horn disagreed with LLC and noted that land records showed that only 3.05 acres in the right-of-way were subject to reversionary interests. He further reduced the land value by \$212,572 to exclude the 3.05 acres. As a result of these adjustments, Mr. Horn reduced the land value to \$1,508,342.

We accept Mr. Horn's adjusted real estate value, but will further adjust the land value to remove the assemblage factor. An assemblage factor is not allowed for NLV purposes unless the applicant can show that the parcels have specific use as a corridor (e.g., a utility corridor). See Chicago and North Western Transp. Co.—Abandonment, 363 I.C.C. 956, 959 (1981) aff'd sub nom. Chicago & North Western Transp. Co. v. ICC 678 F.2d 665 (7th Cir. 1982). UP has submitted no evidence in the record that the right-of-way has specific use as a corridor. We have adjusted the land value to \$1,260,285 to reflect the removal of the assemblage factor.

Mr. Bobo values track material based on prices as of December 1996 at \$88,912. The Branch contains reroll rail valued at \$155.00 per net ton, and scrap rail valued at \$126.26 per net ton. Scrap material other than rail is valued at \$120.00 per net ton. He states that these valuations are based on recent sales from its Brownsville Subdivision. The line contains 6,798 crossties and switch ties, of which 1,700 are reusable. Reusable ties are valued at \$6.25 per tie and landscape ties

⁴ Mr. Knudson describes the assemblage factor as "the combining of two or more parcels, usually but not necessarily contiguous, into one ownership or use."

at \$4.25. Mr. Bobo calculates removal costs at \$124,647, for a negative net salvage value of \$35,735. Rather than claiming a negative salvage value, UP uses a zero net salvage value.

We disagree with UP that a “zero” net salvage value is appropriate. In abandonments, the net salvage value of track material usually exceeds the carriers’s removal cost of removal. Here, however, UP calculates that its removal costs exceed the value of salvaged track material because more than half of UP’s projected removal costs are for removing 14 grade crossings. UP has not indicated that it intends to leave the track in place after abandonment. Rather, UP would be required to remove the grade crossings and the track materials from the right-of-way. In this circumstance, UP is required to include these assets in its NLV determination. See 49 CFR 1152.34(c)(1)(iii)(A). Moreover, to “zero out” negative track net salvage value in the circumstances here simply because it is negative would overstate by \$ 35,735 UP’s expected cash proceeds from abandonment and the opportunity cost associated with continued operation of the segment. Accordingly, we have restated the track material net salvage value to a negative \$35,735. In summary, the total NLV of the line would be \$1,224,550 (\$1,260,285 minus \$35,735).

UP indicates that it intends to donate a portion of the line to the University. UP witness Horn testified that the land to be donated has been appraised at \$780,000. We have removed the assemblage factor from the land value and reduce the value of the donated land to \$650,000. LLC objects to including the value of the donated property in the NLV. We agree with LLC. Because UP will not be selling this portion and will not have the proceeds to invest, it cannot reflect the value of this portion of the right-of-way in its land value. Accordingly, we will further adjust the NLV and remove the \$650,000 for the portion that will be donated to the University. The total adjusted NLV of the branch line is \$574,550 (\$1,224,550 minus \$650,000).

Income tax consequences. UP witness Matthiessen originally calculated UP’s tax consequences at \$629,814. This calculation was based on Mr. Knudson’s appraised value of land (\$1,820,000), less book value of corresponding land (\$82,066), plus scrap and secondhand material sold as determined by Mr. Bobo (\$88,912), minus removal costs (\$124,647), times an income tax rate of 37%.

UP witness Pamela J. Fischer testifies that UP will claim a tax deduction of 38% of the value of the donated land. Using Mr. Horn’s valuation of the donated property, Ms. Fischer determined that UP’s tax deduction for the donated real estate would be \$296,400. As noted above, we have adjusted the value of the donated land to \$650,000. Applying the 38% tax deduction rate determined by Ms. Fischer would result in a tax deduction of \$247,000.

We have further modified UP’s income tax consequences to reflect the revised land value and the deduction for donated land. We calculate the income tax consequences using Mr. Matthiessen’s methodology as follows: the revised land value (\$1,260,285), minus book value (\$82,066), plus the value of scrap and secondhand material (\$88,912), less removal costs (\$124,647), times the Federal and state tax rate of 37%, equals \$422,719. Applying the tax deduction of \$247,000 for the donated land, we have further adjusted the income tax consequences to \$175,719.

Thus, we have restated the total valuation of road property at \$401,598 consisting of working capital of \$2,767, income tax consequences of \$175,719 and NLV of \$574,550 (see Appendix I).

Rate of return. UP calculates the forecast year total return on value of road property using a 17.5% rate of return. UP provides no information about the source or derivation of that figure. The Board’s abandonment regulations allow the parties to use the Board’s most recent cost of capital finding for the railroad industry (which is stated on an after-tax basis) to derive the appropriate nominal rate of return (which is required to be stated on a pre-tax basis). 49 CFR 1152.34 (d). The Board determined that railroad industry after-tax cost of capital rate for 1996 on a pre-tax basis

(using a 37% tax rate) results in a nominal rate of return of 17.7%.⁵ Accordingly, we find the acceptable rate of return to be 17.7%.

Return on value. The opportunity cost or return on value for the segment is computed by multiplying the pre-tax cost of capital rate discussed above of 17.7% times the total valuation of road property of \$401,598, resulting in a nominal return on value of \$71,082.85.

Summary. As restated, we find that UP will incur an avoidable loss from operations of \$43,249 in the forecast year and a total economic loss of \$114,331.85.

Portion between 19th Street and 24th Street

As indicated in Appendix II, UP witness Matthiessen also calculated the forecast year results if UP continued to serve LLC by operating over OLB trackage and then over the portion between 19th Street and 24th Street. According to Mr. Matthiessen, rail service via OLB would likewise be unprofitable to UP. He calculates that, for the forecast year, UP would realize revenues of \$96,325 and incur avoidable costs of \$113,694, resulting in an avoidable loss of \$17,369 to continue operating the portion between 19th Street and 24th Street.

Mr. Bobo testified that for the portion between 19th Street and 24th Street, UP would incur only \$8,282 in maintenance expenses because it would only be responsible for four grade crossings. But UP would also realize less rental income. UP would also be required to pay trackage rights fees to OLB. Mr. Matthiessen determined that UP would incur \$14,300 in trackage rights payments to OLB.

We accept UP's revenue and cost data, with several modifications. Based on trackage rights rates discussed in Mr. Bump's testimony, the payments for 85 cars projected to move over the portion would be \$14,250, rather than \$14,300 as computed by Mr. Matthiessen. We will adjust the trackage rights payments accordingly. As set forth in Appendix II, we have determined that UP's operation of the portion between 19th and 24th Street would result in an avoidable loss of \$17,319 in the forecast year.

UP estimates the NLV at \$314,779, consisting of \$306,000 for land and \$8,779 for net salvage value of track and materials for the portion between 19th and 24th Street. UP's land estimate, which was determined by Mr. Horn, includes an assemblage factor, which, as we noted, is not supported by evidence that the portion will be used as a utility corridor. Removing the \$51,000 assemblage factor reduces the real estate value for the segment to \$255,000. We will accept Mr. Bobo's calculation of the net salvage value of track and material of the portion at \$8,779. The adjusted NLV for this portion is restated to \$263,779, consisting of real estate valued at \$255,000 and UP track net salvage value of \$8,779.

Mr. Matthiessen computes UP's income tax consequence at \$111,363, consisting of market value of land (\$306,000), minus book value of corresponding land (\$13,798), plus value of scrap and secondhand material sold (\$22,662), minus removal cost (\$13,883), times the combined Federal and state tax rate of 37%. As noted, the land value of this portion has been reduced to \$255,000 after removing the assemblage factor. As a result, we have adjusted the income tax consequences to \$92,493, consisting of the adjusted market value for land (\$255,000), minus book value of corresponding land (\$13,798), plus value of scrap and secondhand material sold, minus the removal cost (\$13,883), times the combined Federal and state tax rate of 37% .

As adjusted, UP's opportunity costs for operating the portion between 19th Street and 24th Street would be \$30,132.20.

As indicated in Appendix II, UP's economic loss from operating the portion would be \$47,451.20.

⁵ See Railroad Cost of Capital—1966, STB Ex Parte No. 558 (STB served July 2, 1997).

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of this abandonment under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of abandonment, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also promote a safe and efficient rail transportation system, foster sound economic conditions, and encourage efficient management because UP will be able to reallocate elsewhere on its rail system the funds and materials needed to maintain and operate the line [49 U.S.C. 10101(3), (5), and (9).] Other aspects of the rail transportation policy will not be affected adversely.

LLC asserts that the deficiencies in UP's data preclude a finding that abandonment is economically justified. It claims further that it has shown that it would ship additional traffic in the forecast year, requiring more review to determine the revenue and cost effect of that traffic. Without that finding, LLC claims that we cannot find that the abandonment should be exempted from the requirements of 49 U.S.C. 10903. It asserts instead that the abandonment should be subject to the requirements of section 10903 to carry out the policy of 49 U.S.C. 10101(4) to ensure the continuation of a sound rail system to meet the needs of the public.

We disagree with LLC's assertion that the regulation of this abandonment is required. Even with the adjustments that we have made in UP's revenue and cost data, it is clear that operations in the forecast year under either scenario would not be economical. LLC has not presented additional justification under the rail transportation policy for regulating this abandonment. Moreover, even if LLC were able to generate additional traffic, it appears from the testimony of Mr. Matthiessen that any additional revenues UP would derive would not make operations economical. And as for a partial abandonment sought by LLC, UP would still be obligated to pay trackage rights fees and incur substantial operating expenses to continue service to LLC over OLB trackage.

The record before us leads to the conclusion that UP's operations would be uneconomic. The evidence demonstrates that continued operations on the segment would be a burden on the carrier and interstate commerce. As shown in Appendix I, UP would incur an operating loss of \$43,249 and an economic loss of \$114,331.85 to continue operating the segment. As shown in Appendix II, UP would incur an operating loss of \$17,319 and an economic loss of \$47,451.20 if it continued to operate the portion between 19th Street and 24th Street. Moreover, UP has shown that continued service over OLB trackage would be circuitous and expensive.

Regulation of the transaction is not necessary to protect shippers from an abuse of market power. LLC is the only shipper that would be affected by the abandonment, and it seeks to retain service on the portion of the line between 19th Street and 24th Street. It does not oppose abandonment of the other portions of the segment. As the proponent of an alternate service proposal, LLC has the burden to prove the viability of its proposal. State of Me. Dept. Of Transp. v. ICC, 587 F.2d 541, 543 (1st. Cir. 1978). LLC has not submitted any evidence to show that UP's continued service on the portion between 19th Street and 24th Street would be economically justified.

We recognized that LLC would incur additional transportation costs if it had to use trucks. However, on balance, that factor does not outweigh the detriment to the public interest of continued uneconomic operations. Chicago & N.W. Transp. Co.—Aband., 354 I.C.C. 1, 7 (1977). This is particularly true because LLC has alternate transportation service available. LLC is apparently receiving shipments of shingles by truck. LLC indicates that OLB may consider providing transportation service. Also LLC has the option to consider acquiring or subsidizing continued operation on the portion between 19th Street and 24th Street under the offer of financial assistance (OFA) procedures contained in 49 U.S.C. 10904.

LLC requests a minimum of 36 months to review the information submitted by UP, but UP served copies of its petition on LLC and Hyland, and both shippers have had an opportunity to respond to the arguments. LLC has not shown why it needs additional time to respond, and why delaying UP's abandonment further is warranted. Under these circumstances, we will not grant this request.

Moreover, the abandonment would benefit the community interests because it would facilitate the RTSD plan to relocate UP lines from the corridor. UP would then remove grade crossings which are hazardous to traffic and pedestrians. In sum, we find that UP has met the exemption criteria for the proposed abandonment.

LABOR PROTECTION

UTU requests the imposition of labor protective conditions. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interest of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

ENVIRONMENTAL ISSUES

UP has submitted an environmental report with its petition 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 August 8, 1997, which noted that the Nebraska State Historical Society (NSHS) has not completed its evaluation of the potential impact of this project on historic resources. Therefore, SEA recommended that a condition be imposed that UP shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Comments on the EA were due September 10, 1997. In a letter filed September 2, 1997, the NSHS has concluded that the proposal would have no effect on historic property. On September 10, 1997, SEA notes that this action by NSHS completes the section 106 process, and recommends that the condition it previously recommended not be imposed. No other comments were received. Based on SEA's recommendation, as supplemented, which we adopt, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or conservation of energy resources.

TRAIL USE

The City requests issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), to enable it to acquire the right-of-way and extend a trail it has already developed to the University campus. The City submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service in compliance with 49 CFR 1152.29. In a letter dated July 11, 1997, UP indicated that it was willing to negotiate with the City for a portion of the line between milepost 492.88 near 33rd Street and milepost 494.166 at 18th Street, but it cannot agree to a trail condition for the portion of the right-of-way between 18th Street and milepost 494.76 near 10th Street because this portion of the right-of-way will be donated to the University if abandonment is granted.

The criteria for imposing trail use and rail banking are met. Accordingly, we will accept the trail use request and UP's response and issue a NITU for the segment of the right-of-way between milepost 492.88 and milepost 494.166. The parties may negotiate an agreement during the 180-day period described below. If the parties reach a mutually acceptable final agreement, further Board approval is not necessary. If no agreement is reached within 180 days, UP may fully abandon the

line, provided the conditions imposed in this proceeding are met. 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986) (Trails), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 U.S.C. 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

PUBLIC USE

SEA indicates in its EA that the right-of-way may be suitable for other public use after abandonment. The City also requests imposition of a 180-day public use condition requiring UP to leave intact all of the right-of-way (but not tracks, ties, and signal equipment) that are suitable for trail use. The City submits that 180 days is required to negotiate with UP.

Persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. When the need for both is established, it is our policy to impose them concurrently, subject to execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609. The City has met the criteria for imposing a public use condition by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the time period. 49 CFR 1152.28(a)(2). Accordingly, a 180-day public use condition will also be imposed. If a trail use agreement is reached on a portion of the right-of-way, UP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also we note that a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the City, but may engage in negotiations with other interested persons. We note that UP has already indicated that it would donate a portion of the right-of-way to the University. This would be consistent with the public use condition we are imposing here.

It is ordered:

1. Under 49 U.S.C., 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903, the abandonment by UP of the above-described 1.88-mile segment of the Lincoln Branch, subject to: (a) the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979); and (b) the condition that UP leave intact all the right-of-way (but not tracks, ties, and signal equipment), for a period of 180 days from the effective date of this decision, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; and (c) the requirement that UP comply with terms and condition for implementing trail use/rail banking for the portion of the line between milepost 492.88 and milepost 494.166, as set forth below.

2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad from any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

4. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed in this proceeding are met.

6. An OFA to allow rail service to continue must be received by UP and the Board by October 3, 1997, subject to time extensions authorized under 49 CFR 1152.27(c)(i)(C). Each OFA must be accompanied by the filing fee, which currently is set at \$900. See 49 CFR 1002.2(f)(25). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1).

7. 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.”**

8. Provided no OFA has been received, this exemption will be effective on October 24, 1997.

9. Petitions to stay must be filed by October 6, 1997. Petitions to reopen must be filed by October 14, 1997.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP must 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 a notice of consummation by September 24, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to consummation exists at the end of the one-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX I
Forecast Year

Segment of Lincoln Branch Between 10th Street and 33rd Street

	Railroad's Forecast Year	Restated Forecast Year
1. Freight Orig. and/or Term. on Branch	\$91,432.00	\$91,432.00
2. Bridge Traffic	0.00	0.00
3. All Other Revenue and Income	10,175.00	10,175.00
4. Total Attributable Revenue (Ls. 1 thru 3)	\$101,607.00	\$101,607.00
5. On-branch Costs:		
a. Maintenance-of-Way and Structures	\$52,882.00	\$52,882.00
b. Maintenance-of-Equipment	512.00	512.00
c. Transportation	12,344.00	12,344.00
d. General & Administrative	0.00	0.00
e. Deadheading, Taxi and Hotel	0.00	0.00
f. Overhead Movement	0.00	0.00
g. Freight Car Costs (Other Than Return)	2,017.00	2,017.00
h. Return on Value - Locomotives	1,253.00	1,253.00
i. Return on Value - Freight Cars	1,045.00	1,045.00
j. Revenue Taxes	0.00	0.00
k. Property Taxes	0.00	0.00
l. Total (Ls. 5a thru 5k)	\$70,053.00	\$70,053.00
m. Holding Gains - Locomotives	\$0.00	\$0.00
n. Holding Gains - Freight Cars	0.00	0.00
o. Net On-br Costs (Ls. 5l - 5m & 5n)	\$70,053.00	\$70,053.00
6. Off-branch Costs:		
a. Off-Branch Costs (Other Than Return)	\$64,440.00	\$64,440.00
b. Return on Value - Freight Cars	10,363.00	10,363.00
c. Holding Gains - Freight Cars	0.00	0.00
d. Net Off-br Costs (Ls. 6a+6b - 6c)	\$74,803.00	\$74,803.00
7. Total Avoidable Costs (L. 5o + L. 6d)	\$144,856.00	\$144,856.00
8. Rehabilitation	\$0.00	\$0.00
9. Administrative Costs (Subsidy Year Only)	1,016.00	1,016.00
10. Casualty Reserve Account	0.00	0.00
11. Total Subsidization Cost (Ls. 8 thru 10)	\$1,016.00	\$1,016.00
12. Valuation of Road Properties		
a. Working Capital	\$2,767.00	\$2,767.00
b. Income Tax Consequences	(629,814.00)	(175,719.00)
c. Net Liquidation Value	1,820,000.00	574,550.00
d. Total (Ls. 12a thru 12c)	\$1,192,953.00	\$401,598.00
13. Nominal Rate of Return	17.5%	17.7%
14. Nominal Return on Value (L. 12d x L. 13)	\$208,766.78	\$71,082.85
15. Holding Gain (Loss)	0.00	0.00
16. Total Return on Value (L. 14 - L. 15)	\$208,766.78	\$71,082.85
17. Avoidable (Loss) or Profit from Operations (L. 4 - l. 7)	(\$43,249.00)	(\$43,249.00)
18. Avoidable (Loss) or Profit Including Return on Value	(L.4 - (\$252,015.78)	(\$114,331.85)
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	(\$253,031.78)	(\$115,347.85)

APPENDIX II
Forecast Year

Portion of Lincoln Branch Between 19th Street and 24th Street

	Railroad's Forecast Year	Restated Forecast Year
1. Freight Orig. and/or Term. on Branch	\$91,432.00	\$91,432.00
2. Bridge Traffic		0.00
3. All Other Revenue and Income	4,893.00	4,893.00
4. Total Attributable Revenue (Ls. 1 thru 3)	\$96,325.00	\$96,325.00
5. On-branch Cost		
a. Maintenance-of-Way and Structures	\$8,282.00	\$8,282.00
b. Maintenance-of-Equipment	512.00	512.00
c. Transportation	11,482.00	11,482.00
d. General & Administrative	0.00	0.00
e. Deadheading, Taxi and Hotel	0.00	0.00
f. Overhead Movement	0.00	0.00
g. Freight Car Costs (Other Than Return)	2,017.00	2,017.00
h. Return on Value - Locomotives	1,253.00	1,253.00
i. Return on Value - Freight Cars	1,045.00	1,045.00
j. Trackage rights payments to OLB	14,300.00	14,250.00
k. Property Taxes	0.00	0.00
l. Total (Ls. 5a thru 5k)	\$38,891.00	\$38,841.00
m. Holding Gains - Locomotives	\$0.00	\$0.00
n. Holding Gains - Freight Cars	0.00	0.00
o. Net On-br Costs (Ls. 5l - 5m & 5n)	\$38,891.00	\$38,841.00
6. Off-branch Costs:		
a. Off-Branch Costs (Other Than Return)	\$64,440.00	\$64,440.00
b. Return on Value - Freight Cars	10,363.00	10,363.00
c. Holding Gains - Freight Cars	0.00	0.00
d. Net Off-br Costs (Ls. 6a+6b - 6c)	\$74,803.00	\$74,803.00
7. Total Avoidable Costs (L. 5o + L. 6d)	\$113,694.00	\$113,644.00
8. Rehabilitation	\$0.00	\$0.00
9. Administrative Costs (Subsidy Year Only)	963.00	963.00
10. Casualty Reserve Account	0.00	0.00
11. Total Subsidization Cost (Ls. 8 thru 10)	\$963.00	\$963.00
12. Valuation of Road Properties		
a. Working Capital	\$898.00	\$898.00
b. Income Tax Consequences	(111,363.00)	(92493))
c. Net Liquidation Value	314,779.00	263,779.00
d. Total (Ls. 12a thru 12c)	\$204,314.00	\$172,184.00
13. Nominal Rate of Return	17.5%	17.7%
14. Nominal Return on Value (L. 12d x L. 13)	\$35,754.95	\$30,476.57
15. Holding Gain (Loss)	0.00	0.00
16. Total Return on Value (L. 14 - L. 15)	\$35,754.95	\$30,476.57
17. Avoidable (Loss) or Profit from Operations (L. 4 - l. 7)	(\$17,369.00)	(\$17,319.00)
18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	(\$53,123.95)	(\$47,795.57)
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	(\$54,086.95)	(\$48,758.57)