SERVICE DATE – LATE RELEASE JANUARY 2, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 209)

UNION PACIFIC RAILROAD COMPANY—DISCONTINUANCE—IN UTAH COUNTY, UTAH

Decided: January 2, 2008

On September 14, 2007, Union Pacific Railroad Company (UP) filed an application under 49 U.S.C. 10903 seeking authority to discontinue service over a 27.57-mile line of railroad known as the Elberta Line in Utah County, Utah. Notice of the filing was served and published in the Federal Register (72 FR 56828) on October 4, 2007. On October 29, 2007, Chief Consolidated Mining Company (CCMC) filed a protest. On November 14, 2007, UP filed a rebuttal. For the reasons discussed below, we will grant UP's application, subject to standard labor protection.

BACKGROUND

The Elberta Line is comprised of four end-to-end line segments. They include the Tintic Industrial Lead from milepost 5.52 to milepost 26.00, the West Tintic Industrial Lead from milepost 26.00 to milepost 27.23, the Goshen Valley Branch from milepost 0.0 to milepost 3.80 (equation milepost 2.89 = milepost 2.98), and the Iron King Branch from milepost 0.0 to milepost 2.15. According to UP, the entire line has been out of service since the beginning of 2003 because of deteriorated track conditions, and the West Tintic Industrial Lead, the Goshen Valley Branch, and the Iron King Branch otherwise qualify for the 2 year out-of-service class exemption at 49 CFR 1152.50.

The only active shipper on the line, Deseret Mill & Elevators (Deseret Grain), is located on the Tintic Industrial Lead. Deseret Grain has utilized motor carrier service for its transportation needs since the end of 2002. These truck movements involve corn carried to the facility and wheat hauled out. These truck movements have qualified as substitute service, and UP has compensated Deseret Grain for transportation fees that have exceeded those the shipper would have incurred had UP provided rail service directly to the facility.

UP claims that allowing it to discontinue operations on the entire line is both reasonable and warranted. UP explains that the Tintic Industrial Lead's current traffic volume does not generate sufficient freight revenues to justify the costs of operation and maintenance of either that segment or the entire line. The carrier adds that there is no reasonable prospect that traffic and revenues will increase in the foreseeable future to justify continued operation of the line or any segment of it. UP also claims that the Tintic Industrial Lead and the rest of the line are in need of significant rehabilitation and that these added costs further justify approving its application.

UP adds that it is seeking discontinuance of service rather than an abandonment of the Elberta Line because the Utah Transit Authority (UTA) has purchased the real property and track structure for a major portion of the line (from milepost 5.52 to milepost 13.06 of the Tintic Industrial Lead, a total of 7.54 miles) and might utilize all or portions of the Elberta Line for light rail commuter operations in the future.[1]

In addition to seeking authority to discontinue service over the Elberta Line, UP also asks that the Board grant it permission to remove or pave over any of the line's at-grade crossings that threaten public safety. UP notes that the removal or paving over of the crossings would be done pursuant to state and local laws.

Cost and Revenue Evidence. UP has submitted cost data and revenue data for the Tintic Industrial Lead for the base year (ending May 31, 2007) and the forecast year (ending August 31, 2008). In the forecast year, UP estimates that it would realize $1,392,891 in revenue and avoidable costs of $1,300,925, resulting in a forecast year operating profit of $91,966. But UP also estimates that $4,333,632 in rehabilitation costs would be required before it could resume operations on the Tintic Industrial Lead.

Traffic, Operations, and Revenues. UP provides carload and revenue data for both the base year and the forecast year. UP estimates that, during the base year, it earned $553,259 in revenue for handling 172 carloads of corn and wheat. UP estimates that it would earn revenues of $1,392,891 for handling 348 carloads of various grain, farm, and food commodities during the forecast year.

UP explains that the forecast year figures are based on Deseret Grain's projections for 2008. According to UP, the increase in traffic stems from Deseret Grain's plan to expand its business into dairy. UP notes that, while it based its traffic and revenue projections on Deseret Grain's expansion, there is no guarantee that this traffic will materialize. We note that Deseret Grain has neither filed a protest nor commented on UP's traffic revenue and cost projections regarding that shipper's traffic.

CCMC claims that more traffic will be available to UP than that forecast by the railroad. CCMC contends that it will begin shipping lead/zinc concentrate in the second half of 2008 from its Burgin mine complex located at the end of the Goshen Valley Branch. CCMC believes that these shipments will increase in 2009 and will plateau in 2010.

CCMC claims that it will tender additional traffic based on water that has accumulated in its Burgin mine. CCMC states that it has completed a water treatment plant (WTP) feasibility

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[1] UP notes that it retained an easement allowing it to provide freight operations over the section of the line sold to UTA. See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company, STB Finance Docket No. 34170 (STB served Feb. 22, 2002, and May 22, 2002).

study considering the Burgin as a source of 30,000 acre-feet of potable water annually. The feasibility study contemplates a conventional WTP utilizing chemical pretreatment conditioning followed by reverse osmosis to desalinate the Burgin water. The study anticipates rail delivery of 325 carloads of chemicals to treat the water starting in 2010.

In its rebuttal, UP questions CCMC's projections. UP argues that CCMC's traffic projections are speculative and notes that CCMC did not provide any contracts to give concrete proof of the shipments. UP further argues that CCMC's traffic would originate on the Goshen Valley Branch and that CCMC has not shown that its traffic will generate sufficient revenue to make the segment profitable while still paying for costs and rehabilitation. UP notes, however, that if concrete traffic materializes, it would consider hauling it if it could do so profitably.

We will not include CCMC's traffic projections in our analysis. CCMC has failed to provide evidence supporting its claim that ore traffic would start running on the line in 2008. CCMC has not taken the basic step of contacting UP about rates, terms of service, or when the embargoed and overgrown line could be returned to service the mine, which has not generated any traffic in some 30 years. Indeed, CCMC has not made its presence known to the carrier prior to its filing here. Nor has CCMC provided evidence of contracts or otherwise demonstrated that its traffic will need to get to a receiver in 2008 or beyond. And, in the meantime, there are many factors that might affect CCMC's potential decision to reopen the mine and tender rail shipments. CCMC's traffic projections simply are too speculative to be given any weight in our analysis.

Moreover, even if we wanted to include CCMC's traffic data, we do not know, as UP notes, what revenue this traffic would generate or what it would cost to operate and rehabilitate the Goshen Valley Branch to access the mine complex. Accordingly, we cannot and will not consider the traffic projections submitted by CCMC. Thus, we accept only the carloads and revenues submitted by UP based on Deseret Grain's traffic projections and will use only them in our analysis.

Avoidable Costs. Avoidable costs are costs that the applicant will cease to incur if it discontinues service over the line. UP has submitted avoidable on-branch and off-branch costs for the base and forecast years. UP reports total avoidable on-branch costs of $199,941 for the base year, and projects $403,427 for the forecast year. In addition, it reports total avoidable off-branch costs of $378,055 for the base year and projects $897,498 for the forecast year. Total avoidable costs estimated by UP for the base year are $577,996 and $1,300,925 for the forecast year.

For the base year, UP has calculated its costs using a three-person crew out of Provo, UT, making 10 round trips to deliver and pick up 172 carloads of corn and wheat using two 3,000 horsepower locomotives. The grain has moved in multiple carload movements consisting of 6-19 carloads at a time, with only one single car movement. For the forecast year, UP projects on-branch costs using a three-person crew providing service twice a week (104 round trips) to transport 348 carloads of various commodities using two 3,000 horsepower locomotives. While CCMC questions the number of round trips needed for the increased traffic projected for the forecast year, UP's projection includes a substantial increase in single car movements for the new dairy traffic, necessitating the increase in the number of trips to service the traffic. UP's estimate appears reasonable and CCMC has failed to submit any specific evidence showing otherwise. Thus, we will accept UP's estimate for the number of trips for the forecast year.

UP has submitted some 131 pages of workpapers supporting its revenue and cost projections. The workpapers are well documented and detailed, and they fully support the on-branch and off-branch costs attributable to the line. UP also has used a computer program to estimate annual maintenance costs for the line. While UP has not provided similar details regarding inputs and other aspects of this program, no one has challenged its use and the overall maintenance estimates appear to be within a reasonable range.

We have found what appears to be a typographical error in UP's calculation of base year labor costs for lining and surfacing work as part of its maintenance estimate. The labor cost should be $427, not $417 as shown. With this adjustment, UP's total on-branch costs for the base year would be $199,951.

In sum, UP has provided support for its cost estimates and no one has challenged those estimates with specific evidence. As adjusted, UP's estimates appear reasonable, and we will accept them.

<u>Rehabilitation</u>. UP provides a detailed list of work to be done to the Tintic Industrial Lead to rehabilitate it to Federal Railroad Administration Class 1 safety standards, so that rail service could resume to Deseret Grain. The railroad calculates that this work would cost $4,333,632, and that UP would need to do the rehabilitation work prior to restoring service to the shipper. No one has challenged UP's methodology or offered other evidence of the cost to rehabilitate this line, and UP has submitted a number of photographs showing that the line would require extensive rehabilitation, along with other supporting data.

We have reviewed the data provided by UP. The quantities shown in the rehabilitation estimate essentially agree with the quantities in the detailed list of rehabilitation work needed. UP has used the same computer program to estimate certain rehabilitation costs that it used in estimating on-branch maintenance costs, and as noted, has not provided details regarding inputs and other aspects of the program. Additionally, UP has not provided verifiable support for all elements of its rehabilitation estimate. Again, however, no one has challenged the use of the program or the specific cost estimates it has generated. Given the state of the line, substantial rehabilitation is warranted, and UP's unchallenged estimate, in total, does not appear unreasonable and is accepted as the best evidence of record.

Although CCMC expresses certain general concerns related to rehabilitation, these concerns are without merit. First, CCMC notes that the application does not contain a maintenance history of the line. However, our regulations do not require that an applicant provide a maintenance history.

CCMC also questions whether UP deferred maintenance on the line, thus creating a need to rebuild it, and whether such inaction on UP's part should be taken into consideration in determining whether to grant the application. The line's existing shipper has not complained on this record about deferred maintenance. Nor has CCMC submitted any evidence to show that UP's maintenance in the past was improper or how any economic effects of that investment, or lack thereof, should be factored into our decision. UP notes that much of the line consists of rails that are not strong enough to accommodate modern rail cars loaded with freight. UP estimates that approximately 18 miles of the line are comprised of 75-pound and 85-pound track, which need replacing.

Finally, CCMC questions whether there is a more cost effective construction program available to restore service to the line as opposed to a complete rebuild. UP has provided a comprehensive proposal for rehabilitating that portion of the line that would enable it to resume service to Deseret Grain. CCMC, however, has failed to challenge any of the specifics of that proposal and has not identified, or submitted evidence in support of, any reasonable alternative to a complete rebuild. In sum, UP's rehabilitation proposal appears reasonable.

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. 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.

UP's determination of the total return on value relies only on $14,849 in working capital in the forecast year. Because UP is proposing to discontinue service, there would neither be an NLV nor income tax consequences here.[2] UP multiplies $14,849 by 18.4% to produce a nominal return on value of $2,732. UP has not adjusted this figure to reflect a holding gain or loss because it is proposing to discontinue service. Accordingly, the carrier calculates an opportunity cost of $2,732 for the forecast year. Because these calculations are reasonable, we will accept them.

Summary of Cost and Revenue. After modifying the labor cost noted above, we find that the Tintic Industrial Lead would realize a profit from operations of $91,966 in the forecast year. When return on value is factored in, the line would show an economic profit of $89,234. However, when rehabilitation costs are included, the line would incur a loss in the forecast year, requiring a subsidy payment of $4,258,327. A summary of our restatement of UP's cost and revenue estimates is contained in the appendix to this decision.

Alternative Transportation. UP states that Deseret Grain has transported its goods by motor carrier since the line was embargoed in 2003. UP also notes that the town of Elberta lies on U.S. Route 6, an east-west highway, which connects to Interstate 15.

[2] See Application, Appendix D at 4.

UP adds that rail service would continue to be available to Deseret Grain approximately 14 miles east of Elberta on the Sharp Subdivision at Payson, UT. UP also states that rail service would continue to be available at Spanish Fork, a point at the end of the line over which it proposes to discontinue service.

Shipper and Community Interests. Although Deseret Grain has not filed a protest to explain its stake in this proceeding, the record implies that the shipper would lose the subsidy payments made by UP for substitute service and therefore would have to pay more for its motor carrier service. As noted above, CCMC has filed a protest. It claims that it will use the Goshen Valley Branch, the West Tintic Industrial Lead, and the Tintic Industrial Lead to ship ore starting in 2008 and receive water treatment chemicals starting in 2010.

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 from continued operations is outweighed by the burden on shippers and the community from the loss of rail service.

We will grant UP's application seeking discontinuance authority. The entire line needs to be rehabilitated. We accept UP's estimate that rehabilitation of the Tintic Industrial Lead alone would cost $4,333,632 and that rehabilitation costs of the other segments would only increase this amount. The only segment of the line that has an active shipper, the Tintic Industrial Lead, would only generate $91,966 in operating profits during the forecast year, giving full effect to Deseret Grain's projections, and this amount would drop to $57,019 after taxes. This projected operating profit does not take into account the vast sums necessary to rehabilitate the segment so that service could resume. UP estimates, and we agree, that, at the projected profit level, it would take over 20 years to pay off the rehabilitation costs. The other segments are not forecast to carry any traffic or earn any profit. Thus, continued operation of the line clearly would be burdensome for UP.

Although CCMC claims that it will begin shipping ore on the Tintic Industrial Lead, West Tintic Industrial Lead, and Goshen Valley Lead in 2008, we find these projections too speculative to be credible. As noted earlier, CCMC has not submitted any evidence supporting its claim that CCMC will provide ore for shipment in 2008 from a mine that has not generated traffic for some 30 years, due in part to water disposal problems that continue to persist, and it has not even contacted UP to discuss rates, terms of service, or the status of the overgrown and embargoed rail regarding its proposal to ship future traffic. CCMC's chemical traffic is even more speculative. This traffic, assuming it develops, would not commence until 2010. CCMC has not even started to build the plant that would receive the chemicals, and future economic conditions might make the protestant want to abandon the venture altogether. And there is no evidence of what revenue such traffic would generate or what costs UP would incur in reinstituting service over the additional portion of the line needed to serve the mine complex, or what costs UP would incur in transporting the traffic.

Moreover, if the traffic does develop, we emphasize that UP has stated that it will consider providing service if the traffic levels would make the line profitable and that we are granting discontinuance, not abandonment, authority. Therefore, granting the application will not preclude traffic from moving on the line at a future date if economically feasible.

Beyond the rail line itself, there are transportation alternatives for shippers. Indeed, Deseret Grain, the only active shipper on the line, has trucked its goods since the end of 2002 and has not filed a protest to the proposed discontinuance of service.

For these reasons, we find that UP has demonstrated that continued operation of the line is a burden on it and interstate commerce and that the shipping community does not need the line in service at this time.

Additionally, we understand that UP intends, subject to state and local laws, to pave over or remove at-grade crossings that it believes to be a safety hazard. These actions will make roads safer. Moreover, we have granted discontinuance authority that would result in the removal of crossings in the past. See Union Pacific Railroad Company—Abandonment and Discontinuance Exemption—In Cook County, IL, STB Docket No. AB-33 (Sub-No. 167X) (STB served Aug. 23, 2002).

Because CCMC is a party of record in this proceeding, it will receive a copy of this decision and thus be aware of our action. To ensure Deseret Grain is also aware of our action, we will require UP to serve a copy of this decision on Deseret Grain within 5 days of the service date and certify to the Board that it has done so.

Labor Protections. In approving this discontinuance 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 IC.C. 91 (1979) (Oregon), satisfy the statutory requirements, and we will impose those conditions here.

Environmental Issues. 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 discontinuance. See 49 CFR 1105.11.

Our Section of Environmental Analysis (SEA) has determined that this action is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8. Consequently, SEA concludes that this action does not require the preparation of an environmental assessment.

CCMC claims that granting the application will have an effect on traffic, energy consumption, and emissions. CCMC claims that these effects commenced with the embargo of the line, and that granting the application will allow them to continue. CCMC adds that these effects will be aggravated by CCMC's commencing mining operations in the future and moving its traffic by motor carrier rather than rail. It has not been shown, however, that granting the discontinuance application is likely to result in any environmental review thresholds being exceeded. Thus, we agree with SEA that this action does not require further environmental review.

Because this is a discontinuance proceeding, and not an abandonment, interim trail use/rail banking and public use requests are not appropriate.[3]

We find:

1. The present or future public convenience and necessity permit the discontinuance of service over the above-described line, subject to the employee protective conditions in Oregon.

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

3. 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. UP must serve a copy of this decision on Deseret Grain within 5 days of its service date and certify to the Board that it has done so.

3. UP must promptly provide any interested persons the information they require to formulate an OFA to subsidize rail service over the line.

4. An OFA under 49 CFR 1152.27(b)(1) to subsidize continued rail service must be received by the railroad and the Board by January 11, 2008, 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 $1,300 filing fee. See 49 CFR 1002.2(f)(25).

5. 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**."

[3] The offer of financial assistance (OFA) provisions for a subsidy to provide continued rail service do apply to discontinuances. 49 U.S.C. 10904(b).

6. Provided no OFA to subsidize continued rail service has been received, this decision will be effective on February 1, 2008. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary

APPENDIX

	Base Year operations 6/1/06 - 5/31/07	Forecast year operations 9/1/07 - 8/31/08
Revenues attributable for:		
1. Freight originated and/or terminated on branch	553,259	1392891
2. Bridge Traffic	0	0
3. All other revenue and income	0	0
4. Total revenues attributable (lines 1 through 3)	553259	1392891
Avoidable costs for:		
5. On-branch costs (lines 5a through 5k)	199951	403427
a. Maintenance of way and structures	130478	131768
b. Maintenance of equipment	1280	6749
c. Transportation	38436	201533
d. General administrative	0	0
e. Deadheading, taxi, and hotel	0	0
f. Overhead Movement	0	0
g. Freight car costs (other than return on freight cars)	11823	24361
h. Return on value-locomotives	1435	5635
i. Return on value-freight cars	16499	33381
j. Revenue taxes	0	0
k. Property taxes	0	0
6. Off-branch costs	378055	897498
a. Off-branch costs (other than return on freight cars	295058	652894
b. Return on value-freight cars	85062	181627
c. Off-branch URCS Multiple car adjustment	-5826	-7800
d. Make whole adjustment Off branch	3761	70777
7. Total avoidable costs(line 5 plus line 6)	578006	1300925
Subsidization costs for:		
8. Rehabilitation *	0	4333632
9. Administration costs (subsidy year only) **	5533	13929
10. Casualty reserve account	0	0
11. Total subsidization costs (lines 8 through 10)	5533	4347561
Return on value:		
12. Valuation of property (lines 12a through 12c)	7455	14849
a. Working capital	7455	14849
b. Income tax consequences	0	0
c. Net liquidation value	0	0
13. Nominal rate of return	0.184	0.184
14. Nominal return on value (line 12 time line 13) ***	1371.72	2732
15. Holding gain (loss)		
16. Total return on value (line 14 minus line 15)	1371.72	2732
17. Avoidable loss from operations (line 4 minus line 7)	-24747	91966
18. Estimated forecast year loss from operations (line 4 minus lines 7 and 16)	-26118.72	89234
19. Estimated subsidy (line 4 minus 7,11, and 16)	-31651.72	-4258327

* This projection shall be computed in accordance with § 1152.32(m).

** Omit in applications pursuant to § 1152.22

*** If a negative for the "forecast year operations" insert "0" in this line.