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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 275)

UNION PACIFIC RAILROAD COMPANY — ABANDONMENT — IN RUSK COUNTY, TX

Decided: September 11, 2009

On May 26, 2009, Union Pacific Railroad Company (UP) filed an application under 49 U.S.C. 10903 to abandon its Henderson Industrial Lead, extending from milepost 0.59, near Overton, to milepost 16.28, near Henderson, a distance of 15.69 miles, in Rusk County, TX (the Henderson Industrial Lead or the line). Notice of the filing was served and published in the Federal Register (74 FR 28320-21) on June 15, 2009. On July 10, 2009, a joint protest was timely filed by West Fraser Timber Co., Ltd. (West Fraser), Henderson Economic Development Corporation, and Rusk County Rural Rail District (RCRRD) (collectively, Opponents). On July 27, 2009, UP filed a rebuttal to the protest. We will grant the request for abandonment authority, subject to environmental and standard employee protective conditions.

The Henderson Industrial Lead was constructed in 1887 by the Henderson & Overton Branch Railroad and currently operates as Federal Railroad Administration (FRA) excepted track. UP has argued that the line would require significant rehabilitation to operate at FRA Class 1 standards, does not generate enough freight revenue to justify undertaking such a rehabilitation, and lacks prospects for increased future traffic. We accept UP's position.

DISCUSSION AND CONCLUSIONS

Traffic, Operations, and Revenues

UP has been serving two shippers on the Henderson Industrial Lead: West Fraser and Boral Brick (Boral). Boral did not file a protest opposing the abandonment, and, according to UP, received only one railcar of bricks in 2007 and none in 2008. It does not ship any outbound traffic by rail. West Fraser operates a sawmilling facility in Henderson (at milepost 14.3 on the line), and processes logs into lumber. According to UP, West Fraser does not transport inbound traffic by rail and has been transporting the majority of its outbound lumber by truck.

UP transported 168 carloads of traffic in 2007, and 124 carloads in 2008 over the line. UP provides revenue and cost data for a base year (January 1, 2008–December 31, 2008) and a forecast year (May 1, 2009–April 30, 2010).[1] In the base year, UP shipped 124 carloads of

[1] See attached appendix for details.

traffic, which generated revenues of $531,080, and incurred a loss of $38,787 (revenues minus avoidable costs, as discussed below). In the forecast year, UP calculates it will ship 124 carloads, generating revenues of $531,080 and incurring a loss of $43,165.

Opponents agree with UP's volume figures for 2008 but claim that, because current market conditions in the forest products industry are severely depressed due to a downturn in the housing market, the forecast year is not representative, and UP would earn more revenues from the line once market conditions improve. Opponents therefore project that West Fraser's rail traffic would increase to 167 carloads per year in the near future, which would, it conservatively contends, generate $75,204 per year in operating profits.

In its rebuttal, UP states that Opponents' claim that market conditions will improve and that traffic levels and UP's revenue will increase is speculative. While it concurs that the housing market has been depressed, the railroad states that it cannot be assumed that this market will appreciably improve under current economic conditions. Also, UP points out that, according to West Fraser's own annual report, its production volume did not change from 2007 to 2008, despite the downturn in the housing market, but transportation by rail from the Henderson sawmill decreased by 25.6% over that period of time. UP notes that the 124 railcars of lumber that it shipped from West Fraser in 2008 represent only 9.7% of the total amount of lumber that West Fraser produced that year. The railroad suggests that the decline in rail transportation of lumber from West Fraser is caused not by poor market conditions but by West Fraser shifting much of its transportation from rail to truck.

We agree that Opponents' claims of increased traffic are speculative. UP's figures, with one exception noted below, appear reasonable and therefore will be accepted. These figures are more fully explained below.

Avoidable Costs

Avoidable costs are costs that the applicant will cease to incur if it abandons and discontinues service over the Henderson Industrial Lead. As already indicated, UP has submitted data showing avoidable on-branch and off-branch costs for the base and forecast years. The on-branch costs include: maintenance-of-way and structures (MOW&S); maintenance of equipment; transportation; general administrative; deadheading–taxi and hotel; overhead movement; freight car costs (other than return); return on value–locomotives; return on value–freight cars; revenue taxes; and property taxes. UP reports total avoidable on-branch costs of $235,909 for the base year and $236,730 for the forecast year. In addition, it reports total avoidable off-branch costs of $333,958 for the base year and $337,515[2] for the forecast year. Total avoidable costs, according to UP's calculations, are $569,867 for the base year and $574,245 for the forecast year.

Opponents assert that UP has overstated these costs. Specifically, Opponents claim that UP uses two locomotives to transport West Fraser's traffic, but only one locomotive is actually

[2] In the appendix to this decision the Board uses the figure $337,516 for off-branch costs in the forecast year. UP's total appears to contain a slight miscalculation.

required. Opponents allege that, without the second locomotive, UP would bring in a forecast year profit of $9,166.[3] They also claim that UP erred in calculating its on-branch costs because a round trip to and from the Henderson facility should take 3 hours instead of the 5 hours that UP used in calculating its on-branch costs.

In its rebuttal, UP counters that, while Opponents are correct that only one engine is required to serve West Fraser, the second engine is necessary to accommodate the higher tonnage of other customers served by the same train but not located on the Henderson Industrial Lead. UP states that removing the second locomotive to serve West Fraser and then replacing it to serve those other customers would incur additional costs in time and labor and would be economically impractical. Additionally, UP notes that, because the line has a dead end with no runaround trackage, in order to serve West Fraser, the train that operates on the Henderson Industrial Lead has to perform a time-consuming gravity drop at milepost 11.09, accounting for the 5-hour round trip time.[4]

UP concedes that only one locomotive is required to serve the line; the second locomotive is only needed to serve shippers located on an adjoining line. Accordingly, we agree with Opponents that UP's cost figures are overstated to the extent they include costs of operations involving the second engine. The cost modifications presented by Opponents to correspond to only one engine appear reasonable and will be accepted.[5] Nevertheless, the profit of $9,166 that UP would generate if it only used one locomotive is outweighed by both the cost of rehabilitating the line, and the opportunity cost of continuing to operate the line, both of which are further discussed below. Finally, because Opponents did not account for the gravity drop, the Board will accept UP's estimate of 5 hours to complete round trip service to West Fraser.

Line Condition and Rehabilitation

According to UP, the line is FRA excepted track and requires substantial rehabilitation in the amount of $1,005,245, which includes a major tie renewal, surfacing, and lining. In addition, UP claims that ordinary annual maintenance of the active portion of the line (13.71 miles) would

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[3] Opponents reached this figure by adjusting UP's estimates for maintenance of equipment costs, transportation costs, and return on investment expense—locomotives to account for using one locomotive instead of two. See Reply, Appendix 4, lines 5b, 5c, and 5i.

[4] A gravity drop is required when it is necessary to reposition cars from one end of the locomotive or train to the opposite end of the locomotive or train, and the only tracks available for shunting are dead end, or stub-ended, tracks. Cars must be staged on available tracks so that they are able to be moved by rolling under their own weight while the locomotives sit out of the path of the moving cars. Rolling cars are controlled by hand as opposed to by virtue of connection to a locomotive. Once rolled into position, the cars and locomotives are then reconnected, and the cars placed in their desired location.

[5] P contends that it would incur additional costs in switching to a siding, unhooking the additional locomotive, and then again switching to a siding to reconnect the locomotive. Reply at 7. Even if these costs were attributable to the service on the Henderson Lead, UP has failed to quantify them.

be $100,892.[6] UP argues that the traffic generated on the line does not justify the cost of rehabilitation.

Opponents state that the track meets FRA Class 1 standards. They cite UP's expert, Mr. Abdollah Ghazai, as stating that the track conditions comply with FRA Class 1 standards. They also claim that some of the ties that UP has designated as landscape quality would qualify as good or non-defective ties by FRA standards and thus would meet Class 1 compliance. Opponents, therefore, argue that UP would not incur any rehabilitation costs on the Henderson Industrial Lead.

In its rebuttal, UP states that its analysis of the line was made following inspections of the line, and it also has produced a page from its Palestine Subdivision timetable, which lists the Henderson Industrial Lead as excepted track between milepost 0.3 and milepost 16.3. See Rebuttal, Exhibit A, Appendix 1. RCRRD itself told a local newspaper that it estimated that it would need a little over $1,000,000 to maintain and rehabilitate the line, if it were to acquire the line. See Rebuttal, Exhibit A, Appendix 2, p. 2. Moreover, UP states that Opponents are wrong in their assertion that Mr. Ghazai found the track in compliance with FRA Class 1 standards. UP states that while Mr. Ghazai acknowledged that, "the entire line is designated as FRA Class 1 track," he went on to say that, "in my opinion, it is FRA excepted track." See Ghazai V.S., Application, Appendix C, p. 2. Mr. Ghazai's successor at UP, Mr. Darin Bair, stated that service on the Henderson Industrial Lead must be curtailed on or about September 1, 2009, and should not be resumed until the line is rehabilitated. Mr. Bair concurred with Mr. Ghazai's estimate that the line currently has 25% landscape quality ties, 68% scrap quality ties, and 6% good quality ties. Finally, there is no correlation between ties suitable for landscape use and ties meeting the FRA Class 1 track criteria set forth in 49 CFR 213.109.

Therefore, because Opponents have not presented sufficient evidence to refute UP's claims and figures and because UP's rehabilitation cost estimates appear reasonable, the Board will accept them.

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.[7] The investment base (or valuation of the road properties) is multiplied by

[6] Because the sole active shipper, West Fraser, is located at milepost 14.3, that portion of the line between milepost 14.3 and milepost 16.28 is not needed to serve the shipper and, accordingly, would not need to be maintained.

[7] UP estimates a forecast year working capital value of $9,233 and an income tax loss of $531,792. Opponents do not contest these figures, and we find them reasonable.

the current nominal rate of return, to yield the nominal return on value.[8] Under 49 CFR 1152.34(d), the rate of return used to calculate return on value represents the individual railroad's current pre-tax nominal cost of capital. Our most recent after-tax cost of capital finding for the railroad industry is used as a basis for developing the appropriate nominal rate of return. 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 an additional year.

UP estimates that, for the forecast year, the NLV for track assets will be $1,437,276. UP did not calculate the NLV for the underlying real estate. Opponents do not contest this figure. However, when it calculated the NLV, UP failed to include road crossing removal costs of $133,442. Taking road crossing removal costs into account, the Board calculates the NLV to be $1,303,834.

Based on the estimates for these items, the Board projects that the line will have a forecast year total opportunity cost of $134,379.

Summary of Cost and Revenue Evidence

Based on the evidence, the Board finds that the Henderson Industrial Lead would generate revenues of $531,080, incur avoidable costs of $521,914, and incur opportunity costs of $134,379, to realize an accounting profit in the forecast year of $9,166 (see Appendix, line 17), but an economic loss of approximately $125,000 (opportunity cost less accounting profit).

Alternative Transportation

As noted, both shippers on the line have been shipping the majority of their outbound traffic by truck, and Boral has also been shipping its inbound traffic by truck. According to UP, it will continue to serve Overton, TX, located at the west end of the Henderson Industrial Lead, via its Palestine Subdivision. Overton therefore would be an available location to transload shipments from truck to rail. UP also states that West Fraser can access a transload facility at Longview, TX, 30 miles from Henderson. Finally, UP avers that the Henderson area is served by a number of state and local highways, including US routes 79 and 259 and state routes 43 and 64. Hence, UP asserts, transload and motor carrier service are readily accessible in the Henderson area and can be and have been used to meet West Fraser's and Boral's transportation needs. Based on the proximity of the transload facility, highways to the area, and the shippers' current substantial reliance on truck transportation, we find that sufficient transportation alternatives are available.

Shipper and Community Interests

Opponents argue that the abandonment should be denied based on shipper and community interests. Opponents claim that the harm to UP that would result from rehabilitating the track, if necessary, and continuing rail operations does not outweigh the harm to West Fraser and the community if UP abandons the Henderson Industrial Lead.

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[8] The nominal rate of return is 0.172.

Opponents claim that transloading traffic at Longview would cost an extra $16.33 per ton of traffic: $11.36 per ton for trucking the traffic and $4.97 per ton for handling it at the transloading facility. Based on rail shipments of 124 carloads weighing 12,211 tons in the forecast year, Opponents assert that transloading would cost West Fraser an additional $199,406 in the forecast year, and that passing those costs on to consumers would result in an even further decrease in sales. According to Opponents, this added cost makes transloading economically infeasible.

Opponents also contend that, if the Henderson Industrial Lead were abandoned, the lack of direct rail service would impede the ability of the City of Henderson and Rusk County to attract industrial shippers to the area and thus broaden the local tax base. Therefore, Opponents claim, abandonment of the line would have a serious adverse impact on rural and community development in Henderson and Rusk County.

In its rebuttal, UP contends that Opponents have not shown that the rural and local community would be harmed if the Henderson Industrial Lead were abandoned. UP notes that West Fraser already moves 90 percent of its traffic by truck, and that there have been no new shippers on the line in at least 5 years. UP also states that not only is it unlikely that it would ever recover the cost of rehabilitating the Henderson Industrial Lead, but it might lose even more revenue if it continued to operate there, because neither West Fraser nor any other shipper has made a long-term commitment to continue shipping over the line.

Summary

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, the Board 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).

The Board must determine whether the burden on the railroad and on interstate commerce from continued operations is outweighed by the burden on the shippers and the community from the loss of rail service. This involves a question of whether and to what degree shippers will be harmed if rail service is no longer available. The fact that shippers are likely to incur some harm and added expense is not sufficient in and of itself to defeat an application for abandonment. See Union Pacific Railroad Company—Abandonment—In New Madrid, Scott, and Stoddard Counties, MO, STB Docket No. AB-33 (Sub-No. 261), slip op. at 6-7 (STB served Jun. 17, 2009). Opponents must show that harm to shippers and the community outweighs the demonstrated harm to the railroad and interstate commerce resulting from continued operation. See Chicago and North Western Transp. Co.—Abandonment, 354 I.C.C. 1, 7 (1977).

In determining whether to grant or deny an abandonment or discontinuance application, we consider a number of factors, including operating profit or loss, other costs the carrier may experience (including rehabilitation and economic costs), and the effects on shippers and communities. See Cartersville Elevator, Inc. v. ICC, 724 F.2d 668, aff'd on reh'g en banc, 755 F.2d 1059 (8th Cir. 1984).

UP has established that continued operation of the line would be burdensome. Its projection of 124 carloads annually is consistent with recent traffic and has not been refuted by Opponents' evidence. As stated above, the Henderson Industrial Lead would realize a forecast year profit from operations of $9,166, and rehabilitation costs for the line and return on value calculations result in a subsidy requirement of $1,087,333.[9]

Contrary to Opponents' claim, UP has not overestimated the burden of continuing to operate the Henderson Industrial Lead. Even accepting the claim that UP could generate a profit if it operated the line with one locomotive instead of two, the line does not generate sufficient revenue when rehabilitation and opportunity costs are taken into account. In addition, the claim that the line will generate more revenues when the housing market recovers from its current downturn is too speculative to be probative here. Nor have Opponents established that the track currently meets FRA Class 1 standards and would not have to be rehabilitated. Finally, although the cost of motor carrier service or transload service to West Fraser may be greater than the cost of rail service provided by UP, Opponents already relied heavily on alternative transportation prior to UP's filing of the application. Finally, Opponents have not demonstrated that abandonment of the Henderson Industrial Lead would impede the ability of the City of Henderson and Rusk County to attract industrial shippers to the area and therefore would have a serious adverse impact on rural and community development.

In contrast to the demonstrated burden that continued operation of the line would impose on UP and on interstate commerce, the burden that abandonment would impose on shippers and the community appears to be speculative. The Board concludes that any harm to the shippers and the community from the proposed abandonment is outweighed by the demonstrated harm to UP and the burden on interstate commerce through continued operation of the Henderson Industrial Lead. The abandonment application will therefore be granted.

LABOR PROTECTION

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

ENVIRONMENTAL ISSUES

The Board is also required to consider the environmental and energy impacts of the proposed abandonment. UP has submitted an environmental report with its application and has notified the appropriate Federal, state, and local agencies of the opportunity to submit

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[9] The subsidy requirement is calculated by subtracting the sum of the total avoidable costs ($521,914), the total subsidization costs ($1,010,556), and the total return on value ($85,943) from the total revenues attributable ($531,080). See Appendix.

information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. The Board's 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 June 26, 2009, and requested comments by July 24, 2009.

In the EA, SEA notes that the National Geodetic Survey (NGS) has identified nine geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that UP provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy any geodetic station markers so that plans can be made for their relocation.

SEA also notes that the Texas Parks and Wildlife Department (TPWD) has stated that railroad rights-of-way generally provide for higher quality wildlife habitat than surrounding landscapes. Accordingly, TPWD is concerned about the birds and other wildlife in the right-of-way. Therefore, SEA recommends that UP consult with TPWD, prior to initiating salvage operations, regarding the potential impact of the proposed abandonment on sensitive wildlife habitat and associated vegetated corridors within the right-of-way.

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

Although SEA has indicated in the EA that the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.[10]

The Board finds:

1. The present or future public convenience and necessity permit the abandonment of the above-described line, subject to the employee protective conditions in Oregon, and the conditions that UP shall: (1) provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy any geodetic station markers so that plans can be made for their relocation; and (2) consult with TPWD, prior to initiating salvage operations, regarding the potential impact of the proposed abandonment on sensitive wildlife habitat and associated vegetated corridors within the right-of-way.

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

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

[10] Public use requests were due no later than 20 days after publication of the notice in the Federal Register, or by July 10, 2009.

4. As conditioned, 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 is directed to serve a copy of this decision on West Fraser and Boral so that it is received by West Fraser and Boral within 3 days from the service date of the decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by September 21, 2009, 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 $1,500 filing fee. See 49 CFR 1002.2(f)(25).

4. 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.**"

5. Provided no OFA has been received, this decision will be effective on October 11, 2009. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by September 11, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

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

Anne K. Quinlan
Acting Secretary

APPENDIX

	Base Year operations (Jan 08-Dec 08)	Forecast year operations (May 09-Apr 10)	Projected Subsidy year operations (May 09-Apr 10)
Revenues attributable for:			
1. Freight originated and/or terminated on branch	$531,080	$531,080	$531,080
2. Bridge Traffic	0	0	0
3. All other revenue and income	0	0	0
4. Total revenues attributable (lines 1 through 3)	$531,080	$531,080	$531,080
Avoidable costs for:			
5. On-Branch costs (lines 5a through 5k)	$235,909	$184,398	$184,398
a. Maintenance of way and structures	$99,875	$100,892	$100,892
b. Maintenance of equipment	$2,547	$1,285	$1,285
c. Transportation	$112,602	$63,730	$63,730
d. General administrative	0	0	0
e. Deadheading, taxi, and hotel	0	0	0
f. Overhead Movement	0	0	0
g. Freight car costs (other than return on freight cars)	$9,727	$9,856	$9,856
h. Return on value-locomotives	$4,066	$1,544	$1,544
i. Return on value-freight cars	$7,091	$7,091	$7,091
j. Revenue taxes	0	0	0
k. Property taxes	0	0	0
6. Off-Branch costs	$333,958	$337,516	$337,516
a. Off-Branch costs (other than return on freight cars	$233,005	$236,239	$236,239
b. Return on value-freight cars	$45,783	$45,783	$45,783
c. Make whole adjustment Off -Branch	$55,170	$55,494	$55,494
7. Total avoidable costs(line 5 plus line 6)	$569,867	$521,914	$521,914
Subsidization costs for:			
8. Rehabilitation *		$1,005,245	$1,005,245
9. Administration costs (subsidy year only) **			$5,311
10. Casualty reserve account			0
11. Total subsidization costs (lines 8 through 10)	0	$1,005,245	$1,010,556
Return on value:			
12. Valuation of property (lines 12a through 12c)	0	$781,275	$781,275
a. Working capital		$9,233	$9,233
b. Income tax consequences		($531,792)	($531,792)
c. Net liquidation value		$1,303,834	$1,303,834
13. Nominal rate of return		0.172	0.172
14. Nominal return on value (line 12 time line 13) ***	0	$134,379	$134,379
15. Holding gain (loss)		$48,436	$48,436
16. Total return on value (line 14 minus line 15)	0	$85,943	$85,943
17. Avoidable gain or (loss) from operations (line 4 minus line 7)	($38,787)	$9,166	$9,166
18. Estimated forecast year gain or (loss)from operations (line 4		($76,777)	($76,777)
minus lines 7 and 16)			
19. Estimated subsidy (line 4 minus 7,11, and 16)			($1,087,333)

- 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.