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SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 113)

UNION PACIFIC RAILROAD COMPANY--DISCONTINUANCE OF TRACKAGE RIGHTS AND ABANDONMENT--IN NATRONA AND CONVERSE COUNTIES, WY

Decided: November 10, 1997

By an application filed on July 25, 1997, Union Pacific Railroad Company (UP) seeks authority under 49 U.S.C. 10903 to: (1) abandon a line of railroad known as the Casper Branch, extending from milepost 590.0 to the end of the line at milepost 607.8 near Casper (Air Base), a distance of 17.8 miles in Natrona County, WY; and (2) discontinue trackage rights over a line of The Burlington Northern and Santa Fe Railway Company (BNSF) (hereafter the Orin-Casper Line), extending from UP milepost 532.5 near Orin to UP milepost 600.0 near Casper, a distance of 67.5 miles in Natrona and Converse Counties, WY. On August 14, 1997, the Board served and published in the Federal Register (62 FR 43578) notice of the filing of the application.

The United Transportation Union filed a letter requesting the imposition of labor protective conditions on any grant of authority. The City of Casper (City), the Wyoming Department of Transportation (WYDOT), and State Senator Charles K. Scott filed protests.[1] The City included in its protest requests for imposition of a public use condition and for issuance of a certificate of interim trail use. UP filed a reply.

Upon review of the record, we conclude that the application should be granted, subject to standard employee protective, environmental, historic preservation, public use, and trail use conditions. Our analysis follows.

## TRAFFIC, OPERATIONS, AND REVENUES

The 17.8-mile Casper Branch begins at a point east of Casper, passes through the downtown area of the city, and terminates on the west at the Natrona County International Airport, which is also the site of an industrial park. There are an additional 5.26 track miles of miscellaneous sidings along the Casper Branch. UP has no direct connection with the line and can access it only from the Orin-Casper Line, over which it has trackage rights. However, UP does not use its "overhead"

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[1] Since WYDOT essentially adopts the protest of the City, and a copy of Senator Scott's protest is submitted as part of the protest of the City, we will simply refer to the City (or protestant) when discussing opposition positions.

trackage rights over the Orin-Casper Line because, it asserts, the Casper Branch traffic level does not justify operation of trains using the rights. Instead, UP gives BNSF a division of revenue for handling traffic moving from and to Casper. UP notes that the trackage rights do not permit it to provide "local" service to any shipper located on the BNSF trackage. UP serves the Casper Branch using one local train that is "bulletined" for 6 days a week, but usually operates over the line only 2 days a week.

Applicant indicates that, for the base year of April 1996 through March 1997, it handled 1,070 carloads of traffic for the Casper Branch customers identified in the chart below. The shippers are listed generally in order of their location, from east to west. The first four are situated east of milepost 600, where the two subject lines connect. The remainder are situated between milepost 602 and the end of the line at milepost 607.8.[2] As shown, UP has handled a wide variety of commodities for its customers. UP states that traffic volumes on the line have varied little since 1995 but that, beginning this year, Black Hills Bentonite (Black Hills), its major shipper, has begun receiving rail service directly from BNSF through use of a new connection to BNSF track that the shipper has constructed near milepost 602. For the forecast year of July 1, 1997, through June 30, 1998, UP anticipates handling only 689 carloads of traffic on the line, of which 36 will be switch traffic from BNSF. During the base year, UP earned revenues of $567,522 from handling traffic on the Casper Branch. It projects, however, that traffic on the line will generate only $344,082 in the forecast year. According to applicant, the decrease in traffic and revenues will be largely due to the loss of the Black Hills traffic. UP's figures are not challenged.

BASE YEAR TRAFFIC:

| | SHIPPER | COMMODITIES | CARLOADS |
|---|---|---|---|
| 1. | CY Transportation | pipe, billets | 58 |
| 2. | Haliburton Energy (Haliburton) | cement | 2 |
| 3. | Homax Oil Sales (Homax) | lube oil | 9 |
| 4. | Stoval Beverage (Stoval) | malt liquor | 23 |

[2] UP indicates that, during 1996, more than 90% of its Casper Branch traffic originated or terminated on the westernmost 6 miles of the line.

| | | | |
|---|---|---|---|
| 5. | Amoco Petroleum Products (Amoco) | scrap iron or steel | 4[3] |
| 6. | Black Hills Bentonite (Black Hills) | bentonite clay | 381[4] |
| 7. | Pacific Steel and Recycling (Pacific) | scrap iron or steel | 175 |
| 8. | Wyoming Recycling | scrap iron or steel | 73 |
| 9. | Baroid MI Drilling Fluids (Baroid) | chemicals, clays | 28 |
| 10. | Wyoming Machinery | road equipment | 30 |
| 11. | Wire Rope of America (Wire Rope) | wire rope | 13 |
| 12. | Cooper Coating (Cooper) | industrial sand | 162 |
| 13. | Utah Recycling | scrap iron or steel | 80[5] |
| 14. | Weskem-Hall | chemicals | 32 |

Applicant asserts that the line is in poor condition and that freight revenues from the Casper Branch operation are insufficient to justify the costs of operation, maintenance, and rehabilitation. UP sees no reasonable prospect that traffic and revenues will increase sufficiently in the foreseeable future to justify continued operation over the Casper Branch and the Orin-Casper Line.

AVOIDABLE COSTS

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[3] Amoco is completing demolition of its facility and only a few loads remain to be shipped. Also, in its application, UP shows base year traffic of 12 cars of soil waste handled for Pacific Power. We have not, however, included this shipper here as the City does not mention it. UP does not include the traffic of either Amoco or Pacific Power in forecast year calculations as it anticipates that both will cease tendering it traffic.

[4] As noted, Black Hills has shifted its traffic to BNSF.

[5] In their statements, both UP and the City identify Utah Recycling as a shipper of scrap paper.

Avoidable costs are costs that UP will cease to incur if it abandons the Casper Branch. UP has submitted extensive data showing avoidable on-branch costs for the base and forecast years. These include: (1) maintenance of way and structures; (2) maintenance of equipment (including depreciation); (3) transportation expense; (4) freight car costs (other than return); (5) return on value for locomotives and freight cars; and (6) holding gains for locomotives. UP's total avoidable on-branch costs for the forecast year are shown as $485,768. UP also shows avoidable off-branch costs, including return on value for freight cars, totaling $75,303 for the forecast year. Protestant does not provide any avoidable cost data.

On examining the evidence, we conclude that on-branch and off-branch avoidable costs for the forecast year are $486,485 and $75,303, respectively. Each cost element is discussed below.

On-Branch Avoidable Costs

Maintenance of Way. UP estimates that a normalized expenditure of $10,091 per main track mile ($179,616 annually, rounded) would be needed to maintain the track at FRA Class 1 Safety Standards. The relatively high normalized maintenance cost is due to the presence on the line of 23 road crossings, 16 of which are signalized. The cost estimate is based on a physical inspection of the line and also on UP's historical experience in maintaining the line. We note that UP's per-mile maintenance cost, excluding the maintenance of signalized crossings, equals $5,440 per mile, which is reasonable in the Board's experience. For this reason, and because we received no evidence from protestant concerning maintenance expenses, we will accept UP's annual maintenance costs of $179,616 for the line.

Maintenance of Equipment. UP has calculated the cost of locomotive maintenance ($16,285 in the forecast year) for one locomotive dedicated 100% of the time to the branch line. Repair and maintenance costs ($1,946) were allocated on the basis of actual mileage by the locomotive, and depreciation ($14,339) was calculated based on the full amount of annual depreciation for a low power locomotive. UP's calculations are reasonable and will be accepted.

Transportation Costs. UP's transportation cost figure ($213,122 for the forecast year) consists mainly of crew wages ($179,835) and lesser amounts for train inspection and lubrication ($5,204), train fuel ($23,663), locomotive servicing ($620), and "locomotive exchange -- trackage rights costs" ($3,800).[6] As is true of other data, these figures are not contested by protestant. The calculations appear to be reasonable, and the figures will be accepted.

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[6] UP did not describe the activities for which it incurs these costs. The term suggests that they are payments that UP makes to BNSF for moving UP locomotives over BN lines between the Casper Branch and the UP system. Because the figure is not challenged, we will not strike it.

Freight Car Costs (Other than Return).[7] UP submits evidence that freight car costs (other than return) equal $15,863 in the forecast year. These costs have not been challenged. We have examined this evidence and find it reasonable.

Return on Value and Holding Gains - Freight Cars. UP submits evidence showing return on value (ROI) for freight cars to be $26,569 in the forecast year. This includes an adjustment for a variety of holding gains and losses[8], depending on the type of freight car employed. An examination of UP's work papers indicates that this figure was calculated correctly with one minor exception. UP uses the 1995 pre-tax cost of capital rate for the railroad industry (17.5%). As discussed in more detail below, we are using the most recent (1996) cost of capital rate (17.7%). Our restatement uses this rate and makes a separate adjustment for holding gains and losses. The slightly higher cost of capital rate results in a similarly higher overall ROI for freight cars. Our calculations produce an ROI for freight cars (before holding gain adjustment) of $24,768. We also calculate a holding loss of $2,082.

Return on Value and Holding Gains - Locomotives. UP's calculations of ROI for locomotives ($34,313) for the forecast year include a downward adjustment (from $38,197) to account for a holding gain ($3,884) representing the increase in value of the locomotive between the beginning and end of the forecast year. Our restatement separates these two elements. Our restatement also revises the locomotives ROI figure by including the 1996 pre-tax cost of capital figure, which slightly increases ROI for locomotives. Our revised ROI (before subtraction of the holding gain) for locomotives is $38,633. The holding gain is the figure supplied by the railroad, is unchallenged and appears to be reasonable.

Off-Branch Avoidable Costs

Off-Branch Costs (Other than Return). UP calculates total off-branch costs (other than return on freight cars) to be $65,538. This consists of four elements: (1) freight car costs of $43,508; (2) loss and damage claims costs of $1,675; (3) switch car costs of $2,848; and (4) station clerical costs for cars delivered to or from BNSF of $17,507. We have reviewed these figures and have determined that they are correctly calculated in accordance with the Board's regulations. They are not challenged. Accordingly, we will accept them.

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[7] In addition to recovering the investment they make -- the costs they incur -- in providing freight cars, railroads are entitled to earn a return on that investment. That return is excluded from this cost category and is considered in the next cost category.

[8] A holding gain (or loss) is the amount an asset such as a freight car would increase (or decrease) in value during a 1-year period. In order to compute a return on value for a 1-year period, the expected change in value over the year should be computed.

Return on Value and Holding Gains - Freight Cars. UP does not separate holding gains from other ROI for off-branch freight cars. It shows ROI of $9,765 and holding gains of $0. As the total is unchallenged and appears reasonable, we will accept it.

SUBSIDIZATION COSTS

Rehabilitation Costs. Rehabilitation costs are allowed only if track fails to meet Federal Railroad Administration (FRA) Class 1 Safety Standards. Here, UP has demonstrated that its track is in very poor condition, requiring substantial tie and ballast replacement. UP estimates total rehabilitation costs for ties and ballast to be $216,855 ($156,907 for ties and $59,948 for ballast). We have analyzed UP's figures, and we find them reasonable. The City neither disputes the need for track rehabilitation nor provides any evidence with respect to rehabilitation costs. Accordingly, we will accept UP's cost figures.

Administrative Costs. Under Board regulations (49 CFR 1152.32(k)), 1% of the total annual revenues attributed to the line are allowable to cover all costs of administering the subsidy program. UP has used this 1% figure in its calculations, resulting in costs of $3,441. We will accept the railroad's cost figure.

OPPORTUNITY COSTS

Opportunity costs (or total return on value) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under Abandonment Regulations - Costing, 3 I.C.C.2d 340 (1987), the opportunity cost of road property is computed on an investment base that is the sum of: (1) allowable working capital; (2) the net liquidation value (NLV) of the line; and (3) current income tax benefits (if any) resulting from abandonment. The investment base, also called the "valuation of the road properties," is then multiplied by the nominal rate of return, which is 17.5%.[9] The resulting figure, the nominal return on value, is then adjusted by applying a holding gain (or loss), which is the increase or decrease in value that a carrier will expect to realize by holding assets for 1 additional year.

UP has submitted data for the forecast year showing the value of the road property to be $1,176,784, consisting of an NLV of $1,758,423, income tax consequences of $588,542, and working capital of $6,903. The railroad calculates the nominal return on value to be $205,937, holding loss as $18,385, and total return on value as $224,322.

Because the consideration of the railroad's opportunity cost is not necessary for us to reach our decision here, and, as discussed below, because UP has failed to support adequately its estimate for the value of the right-of-way land, which constitutes the major portion of the investment base, we

[9] The 17.5% pre-tax nominal cost of capital rate is determined from the after-tax cost of capital (11.7%) developed in Railroad Cost of Capital-1995, 1.S.T.B. 46 (1996).

have not calculated an opportunity cost for use in deciding the abandonment application. We have set forth our analysis for use only by any party subsequently interested in making an offer of financial assistance (OFA) for the line.

Working Capital. Our abandonment regulations call for working capital to be equal to 15 days of avoidable on-branch costs (less depreciation and return). UP computes working capital for the forecast year to be $6,903. Our review of UP's work papers indicates that this figure was incorrectly calculated. We have determined that the forecast year working capital allowance is $16,798, computed as follows:

| | | |
|---|---|---|
| Avoidable on-branch costs before ROI and depreciation | | $486,485 |
| Less locomotive depreciation expense | 14,339 | |
| Less ROI for locomotives and freight cars | | 63,401 |
| = Basis to compute working capital | | $408,745 |
| | | |
| Times 15/365 (Working Capital Allowance) | | $ 16,798 |

Net Liquidation Value (NLV). NLV is the sum of the net salvage value for track and bridges and the value of the merchantable land in the right-of-way. Each of these values is discussed separately below.

a. Net Salvage Value. UP estimates a gross salvage value of $899,324 for 23.06 miles of track material (17.8 miles of main track plus 5.26 miles of sidings). Subtracting $260,102 removal costs for rail and ties gives a net salvage value for track material of $639,222. UP calculates a negative net salvage value of $150,692 for bridges, in that cost of removal of $205,300 exceeds the gross salvage of $54,608. Combining the positive and negative net salvage values yields a net salvage value of $488,530 for the line.

We have reviewed UP's net salvage value calculations and unit costs. They are supported by recent sales and are within ranges accepted in recent abandonment proceedings. The figures are not challenged. We conclude that the track net salvage value of $488,530 is acceptable. UP estimates that property valued at $167,718 will be retained for reuse by the railroad. This amount is judged reasonable in that it is calculated by subtracting removal costs ($28,022) from the value of reusable rail and ties ($103,274 and $92,466, respectively).

b. Net Land Value. Evidence regarding land value is presented by UP's Manager—Real Estate Jan R. Bornholdt and James Wren, a Senior Real Property Appraiser. Mr. Bornholdt indicates that the right-of-way totals 257 acres, of which 49.6 are non-reversionary and marketable for non-railroad purposes after abandonment. In January 1997, Messrs. Bornholdt and Wren inspected the right-of-way and, based on information he received from Mr. Wren, Mr. Bornholdt subsequently estimated a market value of $1,269,893 ($25,603 per acre) for the non-reversionary portions of the right-of-way.

Mr. Bornholdt acknowledges that the value is relatively high. He justifies it, however, by stating that a portion of the Casper Branch is located in downtown Casper and has a relatively high value due to its possible use as commercial or industrial property. Mr. Bornholdt bases his unit values on information provided by Mr. Wren, who concludes that the highest and best use of the land in downtown Casper is for commercial parking or expansion of industrial and retail businesses. Outside of downtown Casper, Mr. Wren states, the highest and best use for the right-of-way would be for heavy industrial use and agricultural purposes. However, in conflict with these highest and best use assumptions, Mr. Bornholdt applies a 10% assemblage factor, which assumes that the line would be used as an assembled corridor.[10]

Mr. Bornholdt includes a value of $25,000 for a freight building that includes a yard office. To justify this figure, UP must first show that the building is required for the operation of the line. (49 CFR 1152.34(c)(1)(iii)). The railroad has failed to do so. Second, UP must indicate how this value was determined in conformance with the railroad's stated highest and best uses of the land for commercial parking and expansion of industrial and retail businesses. According to our abandonment regulations, removal costs must be deducted from land values for improvements that a railroad is required to remove or chooses to remove to make the property available for its highest and best use. Removal costs for the building are not included in the record.

We have several significant problems with UP's land valuation. First, because Mr. Bornholdt fails to provide evidence of title to any of the land parcels, we are unable to verify that UP is entitled to value the 49.6 acres it claims are merchantable. Mr. Bornholdt refers to specific parcels of land and attaches unit values to them (e.g., $300 per acre and $2.25 per square foot), but he fails to provide either maps showing the location of the parcels or comparable sales figures supporting his unit values. Mr. Bornholdt does not tell us if he used "across-the-fence" (ATF)[11] values and, if so, whether he adjusted the values to reflect differences (e.g., in topography, location, or size) between the parcels being valued and the parcels valued by Mr. Wren. Moreover, several unit values proposed by Mr. Bornholdt are very high (e.g., $98,010 per acre), and these inflate the average unit value ($25,603 per acre) for the entire 49.6 acres. These high values must be supported and they are not. Mr. Bornholdt also fails explicitly to apply disposition costs reflecting costs associated with selling land, and he fails to discuss costs to restore grade crossings. Further, as pointed out by the City, UP's evidence does not indicate whether Mr. Wren examined Mr. Bornholdt's valuation schedule.

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[10] Also in this regard, UP should be aware that our abandonment regulations specify that land is to be valued for the highest and best use for non-rail purposes, i.e., it cannot be valued for use as a rail corridor. UP does not appear to assume use as a recreational corridor, and, in any event, the assumption would be inappropriate in view of evidence that UP is negotiating to sell portions of the right-of-way for continued rail use.

[11] An "across-the-fence" methodology estimates land values by determining the value, usually by recent sale, of comparable adjacent parcels of land.

The City does not provide any alternative land values for our consideration. However, the City criticizes UP's valuation as resembling a real estate offer to sell, and it faults Messrs. Bornholdt and Wren for not addressing contamination concerns and possible hazardous waste cleanup liability. The City indicates that litigation to determine such liability is now pending.

In view of the significant deficiencies in UP's evidence, we are unable either to accept UP's land value figures or to restate a land value figure for use here. In the circumstances, we are also unable to calculate a valuation of road properties or any other figures that rely on that valuation. The valuation figures will become significant if and when a party makes an OFA to acquire UP's property or subsidize continued operations. UP should be prepared to support its valuations explicitly and thoroughly both in its dealings with parties planning to make an OFA and in its participation in any future proceedings before us involving the subject properties.

Income Tax Consequences. UP computes income tax consequences for the forecast year as $588,542. In view of our discussion above, we are unable to accept or recalculate an appropriate figure here.

Nominal Return on Value. The opportunity cost (before holding gain) developed by UP is $205,937. Again, as we have been unable to determine NLV, we can neither accept this figure nor recalculate one.

Holding Gain. UP computes a holding loss of $18,385 based on the difference between NLV for the base and forecast years. UP has not indicated how it developed this figure. In any event, as we have rejected UP's forecast year NLV and have been unable to restate an appropriate figure, we are unable to calculate holding gain or loss.

## SUMMARY OF COST AND REVENUE EVIDENCE

The evidence shows that, for the forecast year, total revenue attributable to the Casper Branch will be $344,082. Net on-branch avoidable costs of $486,485 and net off-branch avoidable costs of $75,303 (totaling $561,788) result in a forecast year operating loss of $217,706. The record also shows that rehabilitation costs of $216,855 are required to bring the line into conformity with FRA Class 1 standards.[12]

## SHIPPER AND COMMUNITY INTEREST

[12] A complete summary of revenue and cost data is set forth in the appendix.

The City is concerned that abandonment of the Casper Branch will prevent it from attracting new business and force existing businesses to spend more for transportation, relocate, or shut down.[13] It also submits various statements and letters, largely from elected officials and civic group leaders, either opposing abandonment or supporting Casper's efforts to acquire the Casper Branch.

State Senator Scott presents the findings he made in a survey of Casper Branch customers. He has determined that rail service is essential to the continuation of business by Stoval, Pacific, Cooper, Utah Recycling, and Weskem-Hall. He also has found that the loss of rail service would result in significant cost increases for CY Transportation, Homax, Wyoming Recycling, Wyoming Machinery, and Wire Rope. Senator Scott believes that jobs will be lost as a result of the abandonment. In this connection, he points out that two of the businesses he believes will close, Cooper and Weskem-Hall, and two of the businesses he believes will be adversely affected, Wyoming Machinery and CY Transportation, provide support to the oil and gas industry, which is a major employer in the rural areas of his district. Senator Scott asserts that the businesses using UP's service in the community are small businesses, and that relocation is not an economically feasible alternative for them due to the shortage of sites available on BNSF's lines and the high cost of constructing rail spurs. He states that most of the potential sites for new businesses that need rail service in the community are along the Casper Branch. Finally, Senator Scott avers that the community would like to acquire the UP trackage rights on the Orin-Casper Line. He claims, however, that UP repeatedly has rebuffed efforts in this regard, stating that it is unwilling to retain the rights and is unwilling or unable to sell them.

The City has submitted letters from two shippers. Wyoming Machinery states that the abandonment of local rail service would require it to ship in all of its machinery by truck. The added cost of the required disassembly and reassembly of machinery, along with higher motor carrier freight rates, would result in higher costs for both the company and its customers. Stoval avers that it depends on UP's service and also would be forced to ship via truck in the event of abandonment. This shipper asserts that motor carrier service is much more expensive than rail service and that it is unable to absorb the extra cost.

State Representative Robert E. Tanner asserts that the loss of rail service would cause undue hardship for 13 shippers, and he asks the Board to look at the total picture of UP's position in Wyoming. State Representative Rick Tempest avers that the preservation of businesses in Casper is of utmost importance. He decries the railroad's intent to look at its "bottom line" rather than to consider the welfare of small businesses in Casper. State Senator Bill Hawks states that he supports the City's position.

Dale E. Bohren, the Executive Director of the Casper Chamber of Commerce, declares that Casper is, in effect, an isolated community. He views rail service on the Casper Branch as essential

[13] Attached to its protest is a verified statement from Casper City Manager Thomas O. Forslund.

to maintaining existing businesses, creating new businesses within the community, and attracting new businesses to Casper. Without the continuation of rail service on the Casper Branch, Mr. Bohren asserts, development of the industrial park would be seriously impeded at best. Bill B. Brauer, Chairman of the Natrona County Board of County Commissioners, also indicates that the industrial park would be in jeopardy without rail service.

The Casper Downtown Development Authority states that it supports City-led efforts to acquire the involved rail corridor for recreational purposes and to maintain rail service for businesses located on the western portion of the line. The Platte River Parkway Trust also wants to acquire the line for continued rail service on the west and for a pedestrian/bicycle path from Ash Street east. 71 Construction supports continued negotiations between Casper and UP for acquisition of the Casper Branch. This entity asserts that the west end of the line could support itself with the remaining shippers if the purchase price were reasonable. Finally, the Town of Mills opines that the railroad has an obligation to leave local communities in a position of being able to take over a rail line without having to invest local monies.

In reply, applicant notes that it is negotiating with Black Hills, Pacific, Wyoming Recycling, and Baroid for the transfer of the portion of the Casper Branch between mileposts 601.5 and 603.0, which those shippers could use as an industrial track to receive service from BNSF. Applicant asserts that, in return for its cooperation in this matter, these four customers have chosen not to protest the application. Also, UP recognizes the City's concern over the preservation of rail service to the industrial park at the end of the line. Applicant asserts that it would be willing to transfer to the community the intact rail line, or the right-of-way alone, of that portion of the Casper Branch between the Wyoming Machinery facilities and the industrial park, between approximately mileposts 603.5 and 607.8.

Applicant acknowledges that customers Cooper, Utah Recycling, and Weskem-Hall may have to relocate. UP contends, however, that Cooper, which deals in industrial sand, and Utah Recycling, which deals in scrap paper, essentially conduct transload activities with little fixed capital investment. The railroad submits that it might be more advantageous for these shippers to pay relocation costs and continue to enjoy rail rates rather than to forgo relocation and have to pay higher motor carrier rates.

In reply to the assertion that it is unwilling to convey its trackage rights, UP avers that it has reviewed the trackage rights contract and has determined that the agreement cannot be assigned without BNSF's consent. In any event, UP sees no reason to continue the trackage rights for, as previously noted, applicant has not found it cost-effective to use the overhead rights and local service is not permitted on the BNSF trackage.

## ALTERNATIVE TRANSPORTATION

UP asserts that motor carrier service is readily available in the Casper metropolitan area. It indicates that Casper is served by Interstate Highway 25, which runs north and south, U.S. Highway

20/26, which runs east and west, and State Highways 251 and 220, which run north and south. Those shippers that might not have direct access to BNSF track, applicant asserts, could use trucks to transport their commodities from and to a loading site on BNSF trackage or could use motor carrier service alone. As previously noted, BNSF trackage connects with the Casper Branch at two points -- the traditional interchange point at milepost 600 and the new connection at the Black Hills facility near milepost 602. UP contends that it is likely that BNSF could provide service to many of the shippers.

UP discusses options for its customers. It asserts that CY Transportation already uses BNSF service, moving materials by motor carrier from that railroad's line to warehouses, and can continue to do so. UP avers that Haliburton appears to have shifted to truck transportation for most of its shipments. Applicant expresses its belief that Homax should be able to return to the combination BNSF/motor carrier service it had used before shifting to UP's service. Applicant asserts that, BNSF interchange track runs within two blocks of Stoval's facility. UP asserts that if Stoval and BNSF were to agree to terms whereby the rail carrier would connect with UP track at a practical point, UP would sell Stoval the necessary right-of-way and track at net liquidation value to permit BNSF to reach Stoval's building. UP adds that Stoval has the option of relocating to a point adjacent to other existing BNSF trackage.

Applicant notes that, while Black Hills has shifted to BNSF service, the customer still requires access to a portion of the Casper Branch in the area of milepost 602 as a "run around" for its loading track. UP notes, further, that Pacific and Wyoming Recycling share a lead track located across from the Black Hills location and that Baroid is a tenant on property owned by Wyoming Recycling near milepost 603.[14] Applicant asserts that it has quoted these four shippers a fair price at which they can purchase the portion of the Casper Branch between mileposts 601.5 and 603.0 as industrial track that they could maintain to receive service from BNSF. UP avers, also, that Wyoming Machinery's siding is located just several tenths of a mile beyond milepost 603. In applicant's view, if this shipper joined with the four just-named customers to purchase and maintain the short stretch of track needed to access BNSF trackage, it could continue to receive the benefits of direct rail service. In any case, UP argues, motor carrier service is a feasible alternative for this shipper.

Applicant asserts that Wire Rope can use motor carrier service for its needs, perhaps in a rail-to-motor transload via BNSF. UP avers that it appears that Cooper's best option is relocation to a site adjacent to BNSF trackage; Cooper assertedly is exploring that possibility. Applicant also claims that Utah Recycling's activities appear conducive to relocation. Finally, UP states that Weskem-Hall may have to relocate its storage structures.

[14] UP asserts that Baroid also has the option of switching to competitive all-motor service.

DISCUSSION AND CONCLUSIONS

The statutory standard governing an abandonment or discontinuance of trackage rights 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).

The Board must determine whether the burden on the railroad from continued operation is outweighed by the burden on the shippers and public parties from the loss of rail service. 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 inconvenience and added expense is insufficient by itself to outweigh the detriment to the public interest of continued operation of uneconomic and excess facilities. Protestants must show that the harm to shippers and communities 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. No one factor is conclusive. See Cartersville Elevator, Inc. v. ICC, 724 F.2d 668, aff'd on reh'g, en banc, 735 F.2d 1059 (8th Cir. 1984).

Here, the factors weigh in favor of a grant of the application. The record shows that continued operation of the Casper Branch will impose a substantial economic burden on UP, involving a forecast year operating loss of $217,706. In addition, the record shows that the branch requires rehabilitation expenditures of $216,855. The record does not reveal any concrete prospects for increased traffic levels in the future. Accordingly, even without considering opportunity costs, we must conclude that the line will continue to produce heavy losses if the application is denied.

In considering the potential harm to shippers, we note that we have heard from only two actual users of the line. These two shippers, Wyoming Machinery and Stoval, account for only some 50 carloads a year of traffic. As noted above, both shippers are situated a short distance from BNSF trackage, and UP is offering to sell them the right-of-way and track necessary to permit them to connect with BNSF's line. Should negotiations not prove fruitful, both shippers have the alternative of motor carrier service.

All but a few of the remaining shippers appear to have alternative transportation available as well. UP appears to be working with several shippers to facilitate their connecting with BNSF for direct service. The three shippers that UP admits might have to relocate have not participated, and UP's assertions regarding their status are unchallenged. In sum, to the extent potential harm to shippers has been demonstrated, it is in the form of unquantified increased transportation costs.

Such increases are insufficient to offset the detrimental effect continued operation of uneconomical and excess facilities would impose on UP as demonstrated on this record. See Chicago and North Western, supra.

Local political leaders and civic groups have expressed general concerns that abandonment and discontinuance might have an adverse economic impact on the area served by the Casper Branch. They fear not only that jobs will be lost, but also that industrial expansion will be curtailed. We must consider, though, that no shippers have come forward to promise significant increases in shipping levels, and the prospect of future increases as a result of industrial expansion is highly speculative. Moreover, the potential for adverse effects on the area must be weighed against the certainty that UP is incurring losses on the Casper Branch, which adversely affect the railroad's ability to provide adequate rail service throughout its system, and that applicant would continue to suffer losses if forced to continue to operate the line. Suggestions that UP should cross-subsidize the subject operation are not well founded; it would be inherently unfair if UP were to raise rates for shippers elsewhere in Wyoming in order to cover the losses it incurs in operating the Casper Branch.

On balance, we conclude that any harm to shippers and the community from the abandonment of service over the Casper Branch is outweighed by the demonstrated harm to UP and the burden on interstate commerce through continued operation of the line. Moreover, we also conclude that discontinuance of UP's trackage rights over the Orin-Casper Line should be authorized. In light of our granting UP authority to abandon the Casper Branch, those trackage rights, which the carrier has not even been using, will have no separate utility to UP or shippers as UP cannot provide local service to shippers located on the Orin-Casper Line. For these reasons, we will grant the application.

We note that 49 U.S.C. 10904 provides a mechanism for those who want to continue rail service that the Board has authorized to be discontinued or abandoned. Under section 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an OFA to acquire a line or subsidize the losses of the existing operator. Applicant and interested parties appear to be engaged in ongoing negotiations regarding the Casper Branch. These parties may want to take advantage of our procedures to submit a bona fide OFA.

In this connection, we address the matter of the City's interest in acquiring UP's trackage rights over the Orin -- Casper Line. As noted, the City has asserted that UP has rebuffed its requests for relevant information, and UP has replied that it is unable to assign its trackage rights without BNSF's consent. The matter suggests novel issues of law and statutory interpretation. However, we need not decide at this point whether or not the trackage rights can be transferred under section 10904. The issues will ripen if and when an interested party files an OFA to acquire the trackage rights. For now, we will order UP promptly to provide interested parties the information they require in order to prepare an OFA. UP should provide potential offerors with a copy of the trackage rights agreement so that they can examine the assignability provisions. Any party that subsequently files an OFA should then submit the agreement for our examination as well. Finally, we will also order UP to serve a copy of this decision on BNSF in case that carrier wants to comment on this matter at an appropriate time.

## LABOR PROTECTION

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

## ENVIRONMENTAL ISSUES

The Board is also required to consider the environmental and energy impacts of the proposed abandonment and discontinuance of trackage rights. UP has submitted an environmental report with its application and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on September 8, 1997, and requested comments. No comments have been filed.

In the EA, SEA noted that the National Geodetic Survey (NGS) has identified 48 geodetic station markers along the Casper Branch and requires notice to plan relocation of any markers that might be destroyed. SEA recommends that the following condition be imposed on any grant of abandonment authority: UP shall notify the National Geodetic Survey (NGS) at least 90 days prior to engaging in salvage activities to enable NGS to plan for the relocation of geodetic markers.

Further SEA indicated that the U.S. Army Corps of Engineers has stated that it is unable to determine whether the proposed abandonment would require Department of the Army authorization. The railroad would need authorization if any bridges must be removed from over waterways (including intermittent). SEA recommends that the following condition be imposed on any grant of abandonment authority: UP must consult with the U.S. Army Corps of Engineers if the railroad plans to remove any bridges over waterways.

SEA also indicated that the Field Supervisor of the Wyoming State Office of the Fish and Wildlife Service has stated that bald eagles, other raptors, or migratory birds might be affected by the proposed abandonment. SEA recommends that the following condition be imposed on any grant of abandonment authority: UP must coordinate with the Wyoming State Office of the Fish and Wildlife Service prior to doing any work in the project area.

Finally, SEA noted that the Wyoming State Historic Preservation Division has not completed its assessment of the potential impact of this proposal on historic resources. SEA recommends that the following condition be imposed on any grant of abandonment authority: 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.

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

## TRAIL USE

The City requests issuance of a certificate of interim trail use (CITU) under the National Trails System Act, 16 U.S.C. 1247(d), to enable it to acquire the Casper Branch right-of-way for recreational trail use. The City has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has 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 its reply, UP indicates that is willing to negotiate with the City for the portions of the Casper Branch between mileposts 590.0 and 599.6 and between mileposts 603.5 and 607.8.[15]

The criteria for imposing trail use and rail banking conditions have been met. Accordingly, we will accept the trail use request and UP's response and issue a CITU for the segments of the Casper Branch right-of-way specified above. 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(c)(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), OFAs 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 certificate will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(1). 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 abandonment application 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 indicated in its EA that the Casper Branch right-of-way may be suitable for other public use after abandonment. The City is interested in a commuter and recreational trail and

[15] The remaining portion of the line might be conveyed to shippers for continued rail use.

requests imposition of a 180-day public use condition requiring UP to leave intact all of the right-of-way (other than track, ties, and ballast), including structures such as bridges, trestles, culverts, and tunnels. The City asserts that 180 days is needed because it has not had an opportunity to assemble or review property title information, complete a trail plan, or complete negotiations 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 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 find:

1. The present or future public convenience and necessity permit the discontinuance of trackage rights over the above-described Orin-Casper Line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. The present or future public convenience and necessity permit the abandonment of the above-described Casper Branch, subject to: (1) the above-specified employee protective condition; (2) the conditions that UP: (a) notify the National Geodetic Survey (NGS) at least 90 days prior to engaging in salvage activities to enable NGS to plan for the relocation of geodetic markers; (b) consult with the U.S. Army Corps of Engineers if the railroad plans to remove any bridges over waterways; (c) coordinate with the Wyoming State Office of the Fish and Wildlife Service prior to doing any work in the project area; and (d) 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; (3) the condition that UP leave intact all of the right-of-way (other than track, ties, and ballast), including structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date of this decision to enable any state or local government agency or other interested person to negotiate the acquisition of the right-of-way for public use; and (4) the requirement that UP comply with the terms and conditions for implementing trail use/rail banking for the portions of the rail line between mileposts 590.0 and 599.6 and between mileposts 603.5 and 607.8, as set forth below.

3. Abandonment and discontinuance of trackage rights will not have a serious, adverse impact on rural and community development.

4. The Casper Branch property may be suitable for other public purposes.

5. 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. The application for discontinuance of trackage rights over the above-described Orin-Casper Line and for abandonment of the above-described Casper Branch is granted subject to the conditions specified above.

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 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 certificate 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 certificate, 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. UP must promptly provide the City and any other interested persons the information they require in order to formulate an OFA to acquire or subsidize UP's trackage rights over the Orin-Casper Line. The information should include a copy of the UP/BNSF trackage rights agreement.

7. UP must serve a copy of this decision on BNSF within 5 days of the service date and certify to us that it has done so.

8. An offer of financial assistance (OFA) to allow rail service to continue must be received by UP and the Board by November 21, 1997, subject to time extensions authorized under 49 CFR 1152.27(c)(i)(C). Each OFA must be accompanied by the $900 filing fee. See 49 CFR 1002.2(f)(25). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1).

9. 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."**

10. Provided no OFA has been received, this decision will be effective December 12, 1997.

11. Petitions to reopen and for stay are due November 28, 1997.

12. 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 November 12, 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 1-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
## PROFORMA REVENUE AND COST DATA

| | Railroad's Base Year Actual Maint. | Railroad's Base Year Normalized Maint. | Railroad's Forecast Year Normalized Maint. | STB's Restated Forecast Year Normalized Maint. |
|---|---|---|---|---|
| 1. Freight Orig. and/or Term. on Branch | $564,182 | $564,182 | $340,742 | $340,742 |
| 2. Bridge Traffic | 0 | 0 | 0 | 0 |
| 3. All Other Revenue and Income | 3,340 | 3,340 | 3,340 | 3,340 |
| **4. Total Attributable Revenue (Ls. 1 thru 3)** | **$567,522** | **$567,522** | **$344,082** | **$344,082** |
| **5. On-branch Costs:** | | | | |
| a. Maintenance-of-Way and Structures | $50,453 | $174,974 | $179,616 | $179,616 |
| b. Maintenance-of-Equipment (Including Depreciation) | 16,067 | 16,067 | 16,285 | 16,285 |
| c. Transportation | 205,596 | 205,596 | 213,122 | 213,122 |
| d. General & Administrative | 0 | 0 | 0 | 0 |
| e. Deadheading, Taxi and Hotel | 0 | 0 | 0 | 0 |
| f. Overhead Movement | 0 | 0 | 0 | 0 |
| g. Freight Car Costs (Other Than Return) | 28,983 | 28,983 | 15,863 | 15,863 |
| h. Return on Value - Freight Cars | 46,057 | 46,057 | 26,569 | 24,768 |
| i. Return on Value - Locomotives | 37,746 | 37,746 | 34,313 | 38,633 |
| j. Revenue Taxes | 0 | 0 | 0 | 0 |
| k. Property Taxes | 0 | 0 | 0 | 0 |
| **l. Total (Ls. 5a thru 5k)** | **$384,902** | **$509,423** | **$485,768** | **$488,287** |
| m. Holding Gains - Locomotives | 0 | 0 | 0 | 3,884 |
| n. Holding Gains (Loss) - Freight Cars | 0 | 0 | 0 | (2,082) |
| **o. Net On-br Costs (Ls. 5l - 5m & 5n)** | **$384,902** | **$509,423** | **$485,768** | **$486,485** |
| **6. Off-branch Costs:** | | | | |
| a. Off-Branch Costs (Other Than Return) | $100,502 | $100,502 | $65,538 | $65,538 |
| b. Return on Value - Freight Cars | 18,327 | 18,327 | 9,765 | 9,765 |
| c. Holding Gains - Freight Cars | 0 | 0 | 0 | 0 |
| **d. Net Off-br Costs (Ls. 6a+6b - 6c)** | **$118,829** | **$118,829** | **$75,303** | **$75,303** |
| **7. Total Avoidable Costs (L. 5o + L. 6d)** | **$503,731** | **$628,252** | **$561,071** | **$561,788** |
| 8. Rehabilitation | $216,855 | $216,855 | $216,855 | $216,855 |
| 9. Administrative Costs (Subsidy Year Only) | 5,675 | 5,675 | 3,441 | 3,441 |
| 10. Casualty Reserve Account | 0 | 0 | 0 | 0 |
| **11. Total Subsidization Cost (Ls. 8 thru 10)** | **$222,530** | **$222,530** | **$220,296** | **$220,296** |
| 12. Valuation of Road Properties | | | | |
| a. Working Capital | $1,599 | $1,599 | $6,903 | $16,798 |
| b. Income Tax Consequences | (595,446) | (595,446) | (588,542) | - |
| c. Net Liquidation Value | 1,776,808 | 1,776,808 | 1,758,423 | - |
| **d. Total (Ls. 12a thru 12c)** | **$1,182,961** | **$1,182,961** | **$1,176,784** | - |
| 13. Nominal Rate of Return | 17.5% | 17.5% | 17.5% | 17.7% |
| 14. Nominal Return on Value (L. 12d x L. 13) | $207,018 | $207,018 | $205,937 | - |
| 15. Holding Gain (Loss) | $0 | $0 | ($18,385) | - |
| **16. Total Return on Value (L. 14 - L. 15)** | **$207,018** | **$207,018** | **$224,322** | - |
| **17. Avoidable (Loss) or Profit from Operations (L. 4 - l. 7)** | **$63,791** | **($60,730)** | **($216,989)** | **($217,706)** |
| **18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)** | **($143,227)** | **($267,748)** | **($441,311)** | - |
| **19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)** | **($365,757)** | **($490,278)** | **($661,607)** | - |