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SURFACE TRANSPORTATION BOARD

CORRECTED DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT[*]

STB Docket No. AB-33 (Sub-No. 140)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT—
IN LANCASTER AND GAGE COUNTIES, NE, AND MARSHALL COUNTY, KS

Decided: December 16, 1999

On August 31, 1999, Union Pacific Railroad Company (UP) filed an application under 49 U.S.C. 10903 seeking authority to abandon a 57.72-mile rail line known as the Beatrice Branch extending from milepost 66 near Jamaica, NE, to milepost 125 near Marietta, KS,[1] in Lancaster and Gage Counties, NE, and Marshall County, KS.[2] A protest to the application was filed by Southeast Nebraska Cooperative Co. (SNC). Requests for a public use condition and for issuance of a certificate of interim trail use (CITU) were filed by the City of Beatrice (City), the Nebraska Trails Foundation, Inc. (Foundation), and the Lower Big Blue Natural Resources District (District). In addition, the United Transportation Union (UTU) requests that labor protection be imposed. UP replied to SNC's protest. Upon review of the record, we will grant the application, subject to environmental, public use, and standard employee protective conditions, and issue a CITU.

PRELIMINARY MATTER

On November 9, 1999, SNC filed a petition for leave to file a reply verified statement, and on November 19, 1999, UP filed a reply to SNC's petition, as well as a petition for leave to file second reply verified statements. We will deny both petitions.

A reply to a reply is prohibited under 49 CFR 1104.13(c). In appropriate circumstances, however, we construe our rules liberally to allow such replies where they will contribute to a complete record without prejudicing any party or delaying the proceeding. SNC's reply purports to correct allegedly false or misleading factual allegations in UP's reply statement with regard to: (1)

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[*] This decision corrects an inadvertent error in ordering paragraph 10 on page 15 of the decision served December 17, 1999.

[1] The track mileage is 1.28 miles less than the milepost differential because a track relocation on the line between Beatrice and Holmesville, NE, created a milepost discontinuity. (Milepost 101.72 now coincides with milepost 103.)

[2] Notice of the filing of the application was served and published at 64 FR 50863-50864 on September 20, 1999.

1997 traffic levels; (2) UP's share of SNC's traffic prior to April 1998, when UP switched from 75-car train service to 26-car service;[3] (3) UP's explanation for the switch to 26-car service; (4) a UP contract offer; and (5) SNC's failure to tender newly available traffic.

SNC has not shown good cause why the information contained in the reply verified statement should be accepted at this time. Some of these matters are already (albeit implicitly) contained in the record; the rest are not crucial to our analysis and would not have altered the outcome of this proceeding. Indeed, SNC's reply, and UP's reply as well, simply appear to be an effort to have the last word.

We recognize that the parties have proceeded diligently. SNC's petition was filed 8 days after UP's reply, and UP responded 10 days thereafter. Abandonment applications, however, are processed under the strictest of time constraints; unlike other kinds of proceedings, the deadline for issuing an abandonment decision is based on the filing date, not on the close of the evidentiary record. Only in exceptional circumstances will we interrupt the deliberative process to consider what are generally prohibited replies to replies.

TRAFFIC, OPERATIONS, AND REVENUES

Service over the Beatrice Branch has been performed as two separate movements: (1) a local train originating in Lincoln, NE, provides service, as needed, over the 29-mile northern segment between milepost 66 near Jamaica and milepost 95 north of Beatrice; and (2) a local train originating in Marietta provides service, as needed, over the 28.72-mile southern segment between milepost 95 and milepost 125 near Marietta. Accordingly, UP has submitted bifurcated data for the separate segments.[4]

UP states that a total of 425 carloads were handled during the base year (June 1, 1998, to May 31, 1999)[5] in the following commodity groups.

[3] The record is ambiguous as to whether the new service is 26-car or 25-car.

[4] In a decision served on July 29, 1999, UP was granted a waiver of the requirements of 49 CFR 1152.22(c)-(d) to the extent those provisions require submission of revenue, cost, and service data relating to overhead or bridge traffic on the line.

[5] The base year is the latest 12-month period, ending no earlier than 6 months prior to the filing of the abandonment application, for which data have been collected at the branch level. 49 CFR 1152.2(c).

Commodity Group	Total Carloads	Northern Segment	Southern Segment
Farm Products	391	10	381
Clay, Concrete, Glass or Stone Products	25	0	25
Waste or Scrap Material	2	0	2
Chemicals or Allied Products	3	0	3
Primary Metal Products	1	0	1
Hazardous Materials	3	0	3
TOTAL	425	10	415

Northern Segment. UP projects that no traffic will originate or terminate on the northern segment during the forecast year.[6] UP's only revenue for this segment will amount to $7,150 from projected annual rental income.[7] A total of 10 carloads of grain were handled over the northern segment during the base year for two shippers, Pickrell Co-op Elevator and Firth Co-op. UP states that both shippers currently transport their grain by truck to a UP rail site at Lincoln, and that neither plans to use rail service on the line in the future. No protest has been received regarding a need for service over this segment of the line. Therefore, we will accept UP's projection that no traffic will move over the northern segment during the forecast year.

Southern Segment. UP projects that traffic originating or terminating on the southern segment will drop from 415 carloads during the base year to 190 carloads during the forecast year. This projection assumes that base year levels for commodities other than grain (34 carloads) will

[6] The forecast year is the 12-month period, beginning with the first day of the month in which the application is filed, for which future revenues and costs are estimated. 49 CFR 1152.2(h). UP's forecast year is August 1, 1999, to July 31, 2000.

[7] UP states that there are 286 acres of non-reversionary property in the northern segment and that annual rental income from that property amounted to $6,850 for the past 2 years.

remain the same.[8] No protest was filed involving non-grain commodities. Accordingly, we will accept UP's projection of 34 carloads.

In addition to the 3 carloads of non-grain traffic, SNC, the major shipper on the line, shipped a total of 381 carloads of grain (sorghum and soybeans) from Beatrice during the base year. Nevertheless, UP projects that SNC's traffic for the forecast year will decline to 156 carloads. UP bases this projection on the fact that The Burlington Northern and Santa Fe Railway Company (BNSF) provides direct service to SNC's elevator at Beatrice, whereas UP's service entails a switching operation over BNSF trackage.[9] UP submits that BNSF's competitive advantage allows it to handle larger unit trains and offer lower rates, and, as a result, SNC makes primary use of BNSF to meet its transportation needs.

SNC, on the other hand, argues that not only does it expect to ship as much grain via UP in the forecast year as it did during the base year, but it also anticipates that its traffic will increase substantially because it recently acquired HCBA, a company with three nearby grain elevators. As a result, SNC projects that it will ship an additional 300 carloads of grain during the remainder of the forecast year.[10] Thus, SNC argues that UP's cost evidence should be analyzed based on forecast year traffic of 715 carloads. At that level, SNC submits that UP would earn revenues of $1,289,145. SNC's revenue estimate is extrapolated from UP's $342,484 revenue projection at the 190-carload level (average of $1,803 per carload).

In its reply, UP projects that the southern segment would earn revenues of $1,243,504 at the 715-carload level. Because UP's projection appears to be based on actual rather than average carload revenues, we will use its figures in our analysis at the 715-carload level. Therefore, we accept UP's projection that the southern segment would generate freight revenues of $342,484 at the 190-carload level, and $1,243,504 at the 715-carload level.

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[8] UP's witness, Clarence A. Adamson, only discusses the following 31 carloads that moved during the base year: 25 carloads of cement and 1 carload of steel reinforcing bars for Beatrice Concrete; 2 carloads of scrap iron and steel for Beatrice Scrap Processing; and 3 carloads of fertilizer for SNC. The traffic table (Appendix H to the application) shows an additional 3 carloads of fertilizer handled as interchange traffic for Herkimer Cooperative Business Association (HCBA) that were not discussed by Mr. Adamson.

[9] UP must use BNSF's rail siding to provide service to SNC.

[10] SNC's estimate of 300 additional carloads is based on an assumed 800 to 1,000 (average of 900) carloads from HCBA's elevators. Historically, SNC has shipped approximately 40% of its traffic via UP. Thus, SNC estimates that 360 carloads of this new traffic will move over UP's line and that the remainder will be handed by BNSF. Because these additional carloads were projected to begin moving in October of this year, SNC anticipates that it will ship an additional 300 carloads via UP during the remainder of the forecast year.

LINE CONDITION AND REHABILITATION

UP states that the line is constructed of a mix of jointed and continuous welded rail. There are 56.82 miles of 133-pound rail and 0.9 miles of 131-pound rail. Based on track inspections conducted on June 21 and July 20, 1999, UP's witness, Jeffrey A. Hedges, avers that the line currently meets Federal Railroad Administration (FRA) Class 2 safety standards with a maximum speed of 25 m.p.h., except between mileposts 96.5 and 97.3 and at a crossing with BNSF, where the speed is 20 m.p.h. Although UP states that no rehabilitation is required for the line, it included an administrative cost ($72 for the northern segment and $3,599 for the southern segment) in the cost evidence for this item. Given that the line requires no rehabilitation and UP has provided no justification for this administrative expense, we have excluded it from our forecast year calculations.

AVOIDABLE COSTS

We have analyzed the parties' revenue and cost evidence as follows: (1) at the 190-carload level for the entire line, the northern segment, and the southern segment; and (2) at the 715-carload level for the southern segment.[11] With the exception of UP's maintenance-of-way (MOW) expenses for the southern segment, SNC has not challenged UP's avoidable cost evidence. For the reasons discussed below, we find UP's MOW estimate reasonable,[12] and have recalculated its avoidable on- and off-branch costs as $652,369 for the entire line at the 190-carload level ($187,009 for the northern segment and $465,360 for the southern segment), and $1,131,926 for the southern segment at the 715-carload level.

For the forecast year, UP uses normalized MOW costs based on FRA Class 1 safety standards. It estimates MOW costs of $6,449 per route-mile, or a total of $187,009 per year for the northern segment, and $6,877 per route-mile, or a total of $197,498 per year for the southern segment.[13] Because the line currently meets FRA Class 2 safety standards, SNC argues that UP's use of normalized MOW costs results in an overstatement of expenses for the southern segment. Moreover, SNC contends that the low volume of traffic on the line makes it unnecessary for UP to perform normalized FRA Class 1 maintenance in the forecast year and for some time into the future. SNC argues that Board precedent makes it clear that normalized MOW costs are unneeded and inappropriate where the current condition of the line significantly exceeds FRA Class 1 safety

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[11] Our restatement of UP's forecast year revenue and cost data is shown in Tables 1, 2, and 3 in the Appendix.

[12] We have, however, adjusted UP's MOW expense calculations for the entire line from $384,476 to $384,507 because of a slight error.

[13] UP's historical MOW cost for the entire line is $81,214 per year, approximately $1,407 per route-mile.

standards.[14] Consequently, SNC argues that historical MOW costs, prorated on a mileage basis, are the only appropriate evidence for determining MOW cost for the southern segment.[15]

We disagree. In Union Pacific, a 51.1-mile segment of the 71.5-mile Wallace Branch met FRA Class 3 safety standards, and the evidence in that proceeding indicated that it would take approximately 12 years for the track to deteriorate to FRA Class 1 safety status.[16] Here, however, there is no evidence that this FRA Class 2 line significantly exceeds FRA Class 1 safety standards, or how long it will take for it to deteriorate to that level. UP's evidence regarding the condition of track material suggests that the line meets mid-level FRA Class 2 safety standards, at best,[17] and we find that its material replacement quantities are reasonable.[18] Furthermore, we find no evidence to support a conclusion that historical maintenance cost would be adequate to maintain the line either at its current condition or at FRA Class 1 safety standards.

UP's unit cost of $6,877 per route-mile is within the range of maintenance costs we expect to see for FRA Class 1 track based on other recent abandonments.[19] Therefore, we accept UP's estimate of $197,498 per year as the best estimate of MOW costs for the southern segment.

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 that is the sum of: (1) allowable working capital; (2) current

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[14] See Union Pacific RR. Co.—Aban—Wallace Branch, ID, 9 I.C.C.2d 325 (1992) (Union Pacific).

[15] In Union Pacific, 9 I.C.C.2d at 345, roadway depreciation costs along with a substantial amount of spot maintenance were substituted for normalized maintenance. Here, neither party presents any evidence regarding roadway depreciation expense or spot maintenance.

[16] Id. at 370.

[17] We rely on tie condition as a surrogate for track condition. FRA Class 2 safety standards require a minimum of 36% non-defective ties. UP indicates that 20% of the ties are relay quality, 50% are landscape quality, and 30% are scrap. (Landscape grade ties can be classified nondefective as long as they are left in place, even though they would be rendered inappropriate for relay purposes due to damage during removal.)

[18] UP's maintenance cycle is 8 years; its annual tie replacement rate is 20 per mile.

[19] We also note that in Union Pacific, 9 I.C.C.2d at 345, the annual maintenance cost accepted for the FRA Class 3 segment of the line was $5,157 per route-mile in 1992 dollars.

income tax benefits (if any) resulting from abandonment; and (3) the net liquidation value (NLV) of the line. The investment base is multiplied by an opportunity cost rate of return,[20] to yield the nominal return on value. The resulting figure is then adjusted by applying a holding gain (or loss),[21] which is the increase (or decrease) in value that a carrier will expect to realize by holding the assets for 1 additional year.

UP's road property valuation data are set out in the following chart.

	Entire Line 190 Carloads	Northern Segment 0 Carloads	Southern Segment 190 Carloads	Southern Segment 715 Carloads
Working Capital	$16,111	$7,685	$8,426	$16,133
Income Tax Consequence	$39,605	$124,592	($84,987)	($84,987)
NLV	$2,869,501	$1,133,090	$1,736,409	$1,736,409
Total Value of Road Property	$2,925,216	$1,265,367	$1,659,848	$1,667,555
Opportunity Costs (before holding gains)	$456,334	$197,397	$258,936	$260,139
Holding Gain	$43,043	$16,996	$26,046	$26,046

SNC provided no alternative values.

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[20] 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 most recent finding (10.7%) was made in Railroad Cost of Capital—1998, STB Ex Parte No. 558 (Sub-No. 2) (STB served May 17, 1999). Therefore, using our 1998 after-tax cost of capital finding and applying a combined Federal and state tax rate of 37%, the current nominal return on value rate is 15.6%. UP correctly used a rate of 15.6% in its calculations.

[21] Under 49 CFR 1152.34(e), the most recent Gross Domestic Product (GDP) Implicit Price Deflator calculated by the U.S. Department of Commerce is used to calculate the holding gain (or loss) for road properties. UP calculated a holding gain rate of 1.5%, the pre-tax equivalent of the 1% change in GDP between 1997 and 1998. We accept this figure as reasonable and correctly calculated.

a. Working Capital. Under 49 CFR 1152.34(c)(1)(i), working capital is computed at 15 days of avoidable on-branch costs (less depreciation). We have examined UP's workpapers and accept the northern segment figure. However, we are unable to duplicate UP's calculation of working capital for the southern segment. As indicated in the following chart, we have restated UP's working capital for the 190- and 715-carload levels as $9,742 and $12,708, respectively.

	190 Carloads	715 Carloads
MOW expense	$197,498	$197,498
Transportation expense	$ 29,846	$ 80,958
Maintenance of equipment (excluding depreciation)	$ 2,195	$ 3,452
Freight car costs (other than return)	$ 7,505	$ 27,314
Total	$237,044	$309,222
Divided by 365 times 15	$ 9,742	$ 12,708

b. Income Tax Consequences. UP computes income tax consequences by determining the net loss (northern segment) or gain (southern segment) after taking into account the cost of removal of road property and the gain on the sale of that property. UP uses the 37% tax rate which we traditionally use (35% Federal and 2% state taxes). We have examined UP's workpapers and conclude that it has correctly calculated income tax consequences.

c. NLV. UP calculates net salvage value of $647,090 for the northern segment, and $1,466,409 for the southern segment.[22] Assertedly, all of the land under the right-of-way is non-reversionary property. UP values the 286 acres in the northern segment at $486,000, and the 208 acres in the southern segment at $270,000. Overall, UP's valuation of the line and land appears reasonable and we accept the calculations and resulting NLV figures.

[22] Most of the rail on the line is No. 2 relay rail in excellent condition, valued at $245 per net ton. Scrap other track material is valued at $120 per net ton based on recent sales of similar material. Relay ties are valued at $6.00 each, and landscape quality ties are valued at $4.00 each. UP submits that these values are considerably below comparable market prices for similar quality ties. Removal cost is estimated at $8,155 per track-mile. UP also includes a substantial amount for bridge removal.

d. Return on Value. UP's calculation of opportunity costs of $180,401 for the northern segment is acceptable. Our restatement of working capital for the southern segment reduces the total value of road property and, consequently, opportunity costs, which equal $413,496 for the entire line and $233,096 for the southern segment at the 190-carload level, and $233,558 for the southern segment at the 715-carload level.

SUMMARY OF COST AND REVENUE EVIDENCE

Based on the above analysis, our restatement of the cost and revenue evidence shows that: (1) at the 190-carload level, the entire line would generate an avoidable operating loss of $285,360 ($179,859 for the northern segment and $105,501 for the southern segment), and a total avoidable loss of $698,856 ($360,260 for the northern segment and $338,597 for the southern segment) when economic costs are added; and (2) at the 715-carload level, the southern segment would generate an operating profit of $128,953 but incur a total avoidable loss of $104,605 when economic costs are added.

Because there are no rehabilitation costs, the estimated subsidy payments would be the same as the avoidable losses, including return on value.

ALTERNATIVE TRANSPORTATION

The grain facility of SNC is located adjacent to BNSF's line at Beatrice and SNC currently uses BNSF for most of its service needs. UP submits that, if the abandonment application is granted, the line's other shippers will continue to have access to rail service from BNSF. Assertedly there also is effective motor carrier service in the area because U.S. Highway 77, from Lincoln to Beatrice, closely parallels the UP line from Jamaica to Marietta, and intersects Highway 136 at Beatrice. According to UP, several shippers that used the line in the past several years now use motor carriers.

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, this involves a question of whether, and to what degree, the 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 operations 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 by continued operation of the line. See Chicago and North Western Transp. Co.—Abandonment, 354 I.C.C. 1, 7 (1977).

In determining whether to grant or deny an abandonment application, we consider a number of factors, including operating profit or loss, other costs the carrier may experience (including opportunity/economic costs), and the effect 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).

Northern Segment. UP projects that no traffic will move over the northern segment during the forecast year and no protest has been filed concerning this line segment. As noted above, UP's continued operation of the northern segment will result in a total forecast year operating loss of $179,859 and an opportunity cost of $180,401 for a total forecast year avoidable loss of $360,260. Thus, we conclude that the northern segment will continue to suffer heavy losses and we will authorize abandonment of this line segment.

Southern Segment. SNC's protest is directed toward continuation of rail service over the southern segment. Where a protestant claims that an abandonment applicant should be required to continue service over a portion of a line, that protestant bears the burden of proving the viability of the segment to be retained. See State of Me. Dept. of Transp. v. ICC, 587 F.2d 541, 543 (1st Cir. 1978); and Village of Candor v. United States, 151 F. Supp. 889, 892 (N.D.N.Y. 1957).

We have analyzed the southern segment at both UP's 190-carload scenario and SNC's 715-carload scenario. As noted above, our adjusted forecast year operating results show that at the 190-carload level, the southern segment would suffer an avoidable operating loss of $105,501 and incur an opportunity cost of $233,096 for a total forecast year avoidable loss of $338,597. While the segment would generate a profit from operations of $128,953 at the more generous 715-carload level, UP would incur an overall avoidable loss of $104,605 when opportunity costs of $233,558 are factored in.

Forecast year traffic projections must be fully supported by evidence. SNC argues that UP has not supported its projected decline in SNC's traffic from 381 carloads in the base year to 156 carloads in the forecast year. Instead of a decline in the number of carloads, it projects that it will ship an additional 300 carloads as a result of its recent acquisition of HCBA. SNC submits that UP is intentionally forgoing greater forecast year traffic and revenues by refusing to provide 75-car service.[23]

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[23] Assertedly, SNC shipped an average of 1,281 carloads annually via UP between 1992 and 1996, when UP provided 75-car service. UP re-designated SNC's facility from a 75-car to a 26-car facility in April of 1998 for two cited reasons: (1) the 75-car operation created a safety hazard because road crossings in Beatrice were blocked for extended periods of time; and (2) it required two crews to switch the larger 75-car trains. SNC argues that UP's safety concerns can easily be eliminated because BNSF is willing to extend its yard limits to allow trains to be made up further north. Moreover, SNC submits that it has offered to pay for the cost of a second UP train (continued...)

In response, UP argues that its projection of 156 carloads of grain during the forecast year may even be too high because, between January 1 and October 18, 1999, SNC only shipped a total of 77 carloads via UP, all in the month of January. SNC acknowledges that the newly acquired grain elevators of HCBA are not located on this rail line, and grain would have to be trucked to SNC's facility at Beatrice for reshipment. UP asserts that, as of October 18, 1999, SNC had not shipped any of the 300 additional carloads of HCBA traffic that it projected would be moved via UP during the remainder of the forecast year.[24] UP also argues that, although it is willing to restore 75-car service, provided that BNSF makes necessary track modifications,[25] SNC is not willing to make a contractual commitment to ship a specific volume of traffic on UP.[26]

We conclude that SNC's 715-carload scenario is not supported. In any event, our adjusted forecast year operating results show that at the 715-carload level, UP would incur an overall avoidable loss of $104,605 when opportunity costs of $233,558 are factored in. It is well settled that economic loss alone does not warrant abandonment where rural and community development would be seriously harmed by abandonment.[27] Here, however, SNC does not allege that abandonment would cause closure of its facility or result in increased costs. Indeed, if the abandonment is granted, SNC will continue to have direct rail service from BNSF, its primary carrier. The record also indicates that BNSF is able to offer 54-car service at lower rates. SNC does

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[23](...continued)
crew outright or to adjust the transportation rate to provide compensation for that cost.

[24] As noted above, however, the HCBA traffic was not projected to begin before October 1999.

[25] UP submits that, even if BNSF extends its yard limits northward, there would be no cost savings because two crews and two sets of power would still be needed to pull the loaded train and to move it into a position for departure on the UP main line.

[26] In a letter dated August 24, 1999, submitted with the reply, UP recounts that, during a January 15, 1999 meeting, it offered to postpone the abandonment if SNC would commit to shipping 1,700 carloads per year (essentially increasing its share from 40% to virtually all of SNC's traffic). Although SNC failed to respond by the March 1, 1999 commitment date, the letter indicates that UP was willing to extend the offer until November 15, 1999. Assertedly, as of October 22, 1999, SNC had not responded to the offer.

[27] See, e.g., CSX Transportation, Inc.—Abandonment—in Ben Hill and Irwin Counties, GA, Docket No. AB-55 (Sub-No. 352) (corrected ICC decision served Feb. 25, 1991); Southern Pacific Transportation Company—Abandonment—in El Dorado and Sacramento Counties, CA, Docket No. AB-12 (Sub-No. 13) (ICC served Aug. 10, 1987), aff'd sub nom. Southern Pacific Transp. Co. v. ICC, 871 F.2d 838, 843 (9th Cir. 1989); and Burlington Northern Railroad Company—Abandonment—in Benson, Pierce, and Rolette Counties, ND, Docket No. AB-6 (Sub-No. 104F) (ICC served Feb. 9, 1982).

not allege that BNSF has been unable to meet its shipping needs. Although SNC argues that UP would receive a larger percentage of SNC's traffic if UP restored 75-car service, SNC appears unwilling to enter into a contractual commitment with UP.

SNC also argues that it would be seriously harmed by the loss of UP's rail service because often the most advantageous market for its grain is a location most economically and efficiently reached by UP. This argument is not convincing, however, given that SNC has not shipped any traffic via UP since January of this year. In addition to continuing rail service from BNSF, motor carrier service is available in the area. No other shipper or community interest has objected to the abandonment. Under the circumstances, we find that the evidence does not support a conclusion that any substantial adverse impact to shipper or community interests would result from the proposed abandonment.

On the other hand, the record shows that continued operation of the southern segment at both the 190- and 715-carload levels would impose a substantial economic burden on UP. We conclude that any harm to the shippers and the community from the proposed abandonment of this line segment is outweighed by the demonstrated harm to UP and the burden on interstate commerce through continued operation. Therefore, we will grant the abandonment application in its entirety.

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 abandoned. Under section 10904, any financially responsible person (and all government agencies are deemed to be financially responsible) may file an offer of financial assistance (OFA) to acquire a line or subsidize the losses of the existing operator. Should area shippers or any other interested party determine that continued rail service over the line is in their best interest, they may avail themselves of the section 10904 procedures.

LABOR PROTECTION

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

ENVIRONMENTAL ISSUES

The Board 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 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 October 1, 1999, and requested comments by November 1, 1999. No comments were filed.

In the EA, SEA noted that the National Geodetic Survey (NGS) has identified 32 geodetic station markers along the rail line that may be affected by the proposed abandonment and has requested that it be notified 90 days in advance of any activities that may disturb or destroy these markers. Therefore, SEA recommends that any abandonment authority be conditioned to require UP to consult with NGS and provide it with 90 days' notice prior to engaging in any activities that would disturb or destroy any geodetic markers identified on the line. We agree with SEA's recommendation and will adopt it.

Based on SEA's recommendation, we conclude that the abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

TRAIL USE

City, Foundation, and District request issuance of a CITU pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), in order to negotiate with UP for acquisition of the right-of-way for use as a trail. Foundation's request covers the entire line. City subsequently amended its request to cover the line segment between milepost 91.75 and milepost 102.00, and District amended its request to cover the line segment between milepost 79.5 near Cortland, NE, and milepost 118 near Barneston, NE. Both City and Foundation have submitted statements of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. District does not make the required statement of willingness to assume financial responsibility for the right-of-way, but simply states that it would be willing to cooperate with other government entities or trail organizations regarding that portion of the right-of-way within its jurisdiction. UP states that it is willing to negotiate a trail use agreement. Because the requests of the City and Foundation comply with the requirements of 49 CFR 1152.29 and UP is willing to enter into negotiations, we will issue a CITU covering the entire line. The parties may negotiate an agreement during the 180-day period prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 608 (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 has indicated in its EA that the right-of-way may be suitable for other public use after abandonment. City, Foundation, and District also request imposition of a public use condition on the respective line segments discussed above. They submit that 180 days are needed to hire consultants, meet with other local interest groups, and commence negotiations with UP. They request that UP be prohibited from disposing of the corridor other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that UP be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. The parties submit that development of a trail would provide wildlife habitat, greenspace, and other recreational facilities, and provide a connection between the small towns and cities along the right-of-way.

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 both conditions concurrently, subject to the execution of a trail use agreement. See Trails, 2 I.C.C.2d at 609. City, Foundation, and District have met the criteria for imposing a public use condition as set forth at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, the requested 180-day public use condition also will be imposed. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, UP is not required to deal exclusively with City, Foundation, and District, but may engage in public use negotiations with other interested persons.

We find:

1. The present or future public convenience and necessity permit the abandonment of the above-described line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979); (2) the condition that UP consult with NGS and provide it with 90 days' notice prior to engaging in any activities that would disturb or destroy any geodetic markers identified on the line; (3) the condition that UP leave intact the right-of-way, including bridges, trestles, culverts and tunnels (but not track and track materials), for a 180-day period from the effective date of this decision and certificate, to enable any state or local government agency or any other interested person to negotiate an acquisition for public use; and (4) the condition that UP comply with the interim trail use/rail banking procedures, as set forth below.

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

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

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. SNC's petition for leave to file a reply verified statement and UP's reply and petition to file second reply verified statements are denied.

2. This application is granted subject to the conditions specified above.

3. 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, for 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 against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

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

5. 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.

6. 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 above are met.

7. UP must promptly provide any interested person the information they require to formulate an OFA to acquire or subsidize the line.

8. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by December 27, 1999, 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 the filing fee, which currently is set at $1,000. See 49 CFR 1002.2(f)(25).

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 and certificate will be effective January 16, 2000. Any petition to stay or petition to reopen must be filed as provided at 49 CFR 1152.25(e).

11. Pursuant to 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 December 17, 2000, 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 specified time 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 Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams
Secretary

Table 1

Computation of Revenue Attributable to the Line, Avoidable Costs, and
Reasonable Return on the Value of the Line to Be Abandoned
Entire Line - MP 66.0 to MP 125.0

	Railroad's Forecast Year 190 Carloads
1. Freight Orig. and/or Term. on Branch	$342,484
2. Bridge Traffic	0
3. All Other Revenue and Income	24,525
4. Total Attributable Revenue (Ls. 1 thru 3)	**$367,009**
5. On-Branch Costs:	
a. Maintenance-of-Way and Structures	$384,507
b. Maintenance-of-Equipment	3,727
c. Transportation	29,846
d. General & Administrative	0
e. Deadheading, Taxi and Hotel	0
f. Overhead Movement	0
g. Freight Car Costs (Other Than Return)	7,505
h. Return on Value - Freight Cars	6,856
i. Return on Value - Locomotives	3,527
j. Revenue Taxes	0
k. Property Taxes	0
l. Total On-Branch Costs (Ls. 5a thru 5k)	**$435,968**
6. Off-Branch Costs:	
a. Off-Branch Costs (Other Than Return)	$179,374
b. Return on Value - Freight Cars	41,699
c. Off-branch Costs URCS Multicar Adj.	(4,672)
d. Net Off-br Costs (Ls. 6a+6b - 6c)	**$216,401**
7. Total Avoidable Costs (L. 5o + L. 6d)	**$652,369**
8. Rehabilitation	$0
9. Administrative Costs (Subsidy Year Only)	0
10. Casualty Reserve Account	0
11. Total Subsidization Cost (Ls. 8 thru 10)	**$0**
12. Valuation of Road Properties	
a. Working Capital	$17,427
b. Income Tax Consequences	39,605
c. Net Liquidation Value	2,869,501
d. Total (Ls. 12a thru 12c)	**$2,926,533**
13. Nominal Rate of Return	15.6%
l4. Nominal Return on Value (L. 12d x L. 13)	$456,539
15. Holding Gain (Loss)	$43,043
l6. Total Return on Value (L. 14 - L. 15)	**$413,496**
l7. Avoidable (Loss) or Profit from Operations (L. 4 - l. 7)	**($285,360)**
l8. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	**($698,856)**
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	**($698,856)**

Table 2

Computation of Revenue Attributable to the Line, Avoidable Costs, and Reasonable Return on the Value of the Line to Be Abandoned
Northern Segment MP 66 to MP 95

	Railroad's Forecast Year 190 Carloads
1. Freight Orig. and/or Term. on Branch	$0
2. Bridge Traffic	0
3. All Other Revenue and Income	7,150
4. Total Attributable Revenue (Ls. 1 thru 3)	**$7,150**
5. On-branch Costs:	
a. Maintenance-of-Way and Structures	$187,009
b. Maintenance-of-Equipment (Including Depreciation)	0
c. Transportation	0
d. General & Administrative	0
e. Deadheading, Taxi and Hotel	0
f. Overhead Movement	0
g. Freight Car Costs (Other Than Return)	0
h. Return on Value - Freight Cars	0
i. Return on Value - Locomotives	0
j. Revenue Taxes	0
k. Property Taxes	0
l. Total On-Branch Costs (Ls. 5a thru 5k)	**$187,009**
6. Off-branch Costs:	
a. Off-Branch Costs (Other Than Return)	$0
b. Return on Value - Freight Cars	0
d. Net Off-br Costs (Ls. 6a+6b - 6c)	**$0**
7. Total Avoidable Costs (L. 5o + L. 6d)	**$187,009**
8. Rehabilitation	$0
9. Administrative Costs (Subsidy Year Only)	0
10. Casualty Reserve Account	0
11. Total Subsidization Cost (Ls. 8 thru 10)	**$0**
12. Valuation of Road Properties	
a. Working Capital	$7,685
b. Income Tax Consequences	124,592
c. Net Liquidation Value	1,133,090
d. Total (Ls. 12a thru 12c)	**$1,265,367**
13. Nominal Rate of Return	15.6%
14. Nominal Return on Value (L. 12d x L. 13)	$197,397
15. Holding Gain (Loss)	$16,996
16. Total Return on Value (L. 14 - L. 15)	**$180,401**
17. Avoidable (Loss) or Profit from Operations (L. 4 - l. 7)	**($179,859)**
18. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	**($360,260)**
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	**($360,260)**

Table 3

Computation of Revenue Attributable to the Line, Avoidable Costs, and
Reasonable Return on the Value of the Line to Be Abandoned
Southern Segment - MP 95 to MP 125

	Railroad's Forecast Year. 190 Carloads	Railroad's Forecast Year 715 Carloads
1. Freight Orig. and/or Term. on Branch	$342,484	$1,243,504
2. Bridge Traffic	0	0
3. All Other Revenue and Income	17,375	17,375
4. Total Attributable Revenue (Ls. 1 thru 3)	**$359,859**	**$1,260,879**
5. On-branch Costs:		
a. Maintenance-of-Way and Structures	$197,498	$197,498
b. Maintenance-of-Equipment (Including Depreciation)	3,727	5,862
c. Transportation	29,846	80,958
d. General & Administrative	0	0
e. Deadheading, Taxi and Hotel	0	0
f. Overhead Movement	0	0
g. Freight Car Costs (Other Than Return)	7,505	27,314
h. Return on Value - Freight Cars	6,856	26,521
i. Return on Value - Locomotives	3,527	5,924
j. Revenue Taxes	0	0
k. Property Taxes	0	0
l. Total On-Branch Costs (Ls. 5a thru 5k)	**$248,959**	**$344,077**
6. Off-branch Costs:		
a. Off-Branch Costs (Other Than Return)	$179,374	$652,344
b. Return on Value - Freight Cars	41,699	155,628
c. Off-Branch URCS Multi-Car Adj.	(4,672)	(20,123)
d. Net Off-br Costs (Ls. 6a+6b - 6c)	**$216,401**	**$787,849**
7. Total Avoidable Costs	**$465,360**	**$1,131,926**
8. Rehabilitation	$0	$0
9. Administrative Costs (Subsidy Year Only)	0	0
10. Casualty Reserve Account	0	0
11. Total Subsidization Cost (Ls. 8 thru 10)	**$0**	**$0**
12. Valuation of Road Properties		
a. Working Capital	$9,742	$12,708
b. Income Tax Consequences	(84,987)	(84,987)0
c. Net Liquidation Value	1,736,409	1,736,409
d. Total (Ls. 12a thru 12c)	**$1,661,164**	**$1,664,130**
13. Nominal Rate of Return	15.6%	15.6%
l4. Nominal Return on Value (L. 12d x L. 13)	$259,142	$259,604
15. Holding Gain (Loss)	$26,046	$26,046
l6. Total Return on Value (L. 14 - L. 15)	**$233,096**	**$233,558**
l7. Avoidable (Loss) or Profit from Operations (L. 4 - l. 7)	**($105,501)**	**$128,953**
l8. Avoidable (Loss) or Profit Including Return on Value (L.4 - Ls. 7&16)	**($338,597)**	**($104,605)**
19. Estimated Subsidy Payment (L.4 - Ls. 7, 11, & 16)	**($338,597)**	**($104,605)**