

INTERSTATE COMMERCE COMMISSION

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COMMISSION OF UTAH

LOS ANGELES & SALT LAKE RAILROAD COMPANY
ABANDONMENT

Submitted March 31, 1937.

Decided April 21, 1937.

1. Certificate issued permitting abandonment by the Los Angeles & Salt Lake Railroad Company of part of its Frisco branch between Frisco and Newhouse in Beaver County, Utah, and abandonment of operation thereof by the Union Pacific Railroad Company, lessee.

2. That portion of the application seeking permission to abandon part of said branch between Milford and Frisco, denied.

Dana T. Smith for applicant.

Charles A. Root and Aldon J. Anderson for protestants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, PORTER, AND MAHAFFIE

BY DIVISION 4:

No exceptions to the report proposed by the examiner were filed.

The Los Angeles & Salt Lake Railroad Company on September 24, 1934, applied for permission to abandon that part of its Frisco branch, hereinafter sometimes called the line, extending in a northwesterly direction from milepost No. 1 of said branch at Milford to the end thereof at Newhouse, 22.37 miles, all in Beaver County, Utah. Protests were filed. On February 15, 1936, the application was dismissed without prejudice for want of prosecution. On September 21, 1936, the case was reopened for further proceedings; the Union Pacific Railroad Company, lessee, which has been operating the property since January 1, 1936,¹ was made a party to the proceeding; and in October, 1936, a hearing was held. Unless otherwise noted all points mentioned herein are in the State of Utah.

The Public Service Commission of Utah recommended (a) that the application be dismissed for want of jurisdiction, as in its opinion the line has lost its character as a branch line and is now operated as a spur track; but if the Commission should be of the opinion that it has jurisdiction in the premises the Public Service Commission recommends (b) that the application be denied for a period of at least two years in order to give the mining interests in the district an opportunity to complete the development of their property and made shipments of the ores that are now or will be in the reasonably near future available for shipment.

¹ Union Pac. R. Co. Unification, 207 I.C.C. 543.

The line was constructed from Milford to Frisco in 1880, and from Frisco to Newhouse in 1904, to serve mining interests. The line from Milford to Frisco was operated as a part of a main line between Salt Lake City and Frisco from 1880 to 1903. Since 1903 the entire line has been operated as a branch line.

The tributary territory, estimated population about 300, is a semiarid desert country, rough and mountainous, with no farming, lumbering, or manufacturing activities. The only industries are mining and the grazing of sheep and a small number of cattle. Frisco during the mining boom had a considerable population, probably four or five thousand. There are only two families there now, two habitable houses, and the applicants' station building; the men who are employed at the mines live at Milford. The only building now remaining at Newhouse is the applicants' station building.

Silver and lead ore were discovered in the Frisco district in 1875, and in 1879 the first mining company was incorporated. The entire district has produced from \$90,000,000 to \$100,000,000 worth of ores, carrying lead, silver, zinc, copper, and gold; but there were no shipments of ore from the branch in 1932-34, and very little in 1935 and the first eight months of 1936.

The Horn Silver Mines Company, King David Mining Company, and the Plumbic Mines Company, which are subsidiaries of the Tintic Lead Company, the Quad Metals Mining Company, and possibly the Peacock Copper Consolidated Mining Company, and the Frisco Silver-Lead Mining Company are the only companies that are actually operating in the district at the present time.

Investment of Tintic and its subsidiaries in developing its territory in the Frisco district from 1928 to October 10, 1936, inclusive, amounted to a total of \$375,982. The Quad Metals mine had been shut down for several years until the present management assumed charge and commenced in April, 1936, to place the property upon a production basis. About \$35,000 has been invested and the work of reopening the shafts is proceeding. The Peacock and Frisco mines are said to contain substantial bodies of ore, but further financing will be necessary to place them upon a basis of regular production.

Most of the ore tonnage handled by the line since 1928 was classified by metals, divided, 70 percent lead ore, 25 percent zinc ore, and 5 percent copper ore. Prices of lead dropped from an average of 7.67 cents a pound in 1920-29 to 3.18 cents in 1932 and 4.06 in 1935; zinc from an average of 7.21 in 1920-29 to 2.8 in 1932 and 4.33 in 1935, and copper showed similar variations.

Any substantial development of the various mines will depend in large measure upon improvement in the metal market and prices and such improvement is anticipated by the mine operators. Ore from this territory generally is shipped to smelters at Bauer, Garfield, Tooele, and Midvale.

It is estimated that from 70,000 to 100,000 sheep range in the tributary territory, including a number of herds which winter there, this territory extending westward across the line into eastern Nevada. About 200 head of cattle graze on a ranch near Newhouse. From 7 to 12 cars of surplus ewes from herds in the country west of Newhouse are shipped every spring to Colorado, being loaded at Frisco or Milford; about 14 cars of ewes

and lambs, that could not be trailed across the desert country to Milford are shipped from Frisco about June 10 of each year; occasionally there are inbound movements of sheep; and a carload of rams is generally shipped to and from Frisco each year. The applicants' tonnage statements show that in 1931-35 and eight months of 1936 shipments of sheep handled by the line averaged about 210 tons a year outbound and about 70 tons inbound. Shipments of cattle averaged about 24 tons a year. Sheep are trailed back and forth between a ranch near Newhouse and their summer range near Manti, about 150 miles; and in the fall of the year sheep are trailed from a range near Gunnison to a ranch near Newhouse, approximately the same distance. It appears, however, as heretofore noted, that ewes with lambs cannot be trailed a long distance through a desert country.

A few carloads of wool, about 260 tons a year, are shipped from Frisco, and about 150 tons of feed, depending largely upon the severity of the winter, are unloaded at Frisco. In 1929 shipments of feed amounted to 288 tons, while in 1930 only 33 tons were handled.

The line between Frisco and Newhouse was washed out in several places in 1934 and 1935. This damage has not been repaired, and no trains have been operated over that portion of the line since 1933. No regular trains have been operated on the line since 1931. The present service depends upon whether there is any ore or other carload traffic to move. Twenty-five trains were operated between Milford and Frisco in 1934, 28 in 1935, and 17 in the first seven months of 1936. The applicants have had no agent at Frisco or Newhouse and no wire service to Milford from those points in the last seven years. No passenger traffic has been handled on the line since 1928.

An improved highway, in good condition, practically parallels the line from Milford to Frisco and connects with a highway extending westwardly to Ely, Nev., and points beyond. There was testimony for protestants that the trucking rates on wool would probably not be higher than the rail rates, and if once loaded on trucks the wool would probably be trucked to destination; that the present contract cost of trucking ore from the Quad Metals mine to Milford is \$1.50 a ton and would be \$1.75 from the Horn Silver. These charges for ore, if the line were abandoned, would be in addition to the railroad rates, which are the same from Frisco as from Milford.

Tonnage handled by the line in the period, 1929-35 plus eight months of 1936, dropped from 13,555, 28,143, and 10,314 tons, respectively, in 1929-31 to an average of 1,028 tons a year in 1932-34, 1,324 in 1935, and 874 (33 carloads) in the first eight months of 1936. Ore tonnage was about 60 percent of the total, livestock 11, wool 9, water 8, feed and salt 6, and other freight 6 percent.

Revenue assigned to the line on a mileage prorate in the same period, practically all freight, dropped from \$4,401, \$5,292, and \$2,264, respectively, in 1929-31 to \$597 a year in 1932-34, \$325 in 1935, and \$242 in the first eight months of 1936; average figures being \$3,986 in 1929-31 and \$505 a year thereafter. Similar changes from average figures in 1929-31 to average figures thereafter were maintenance of way and structures expense, from \$12,912 to \$684, total operating expenses from \$17,164 to \$2,541, taxes from \$3,401 to \$3,511, and railway operating deficit from \$16,579 to \$5,547.

A large amount of deferred maintenance has been accumulated, and the line is in poor condition. The cost of the necessary rehabilitation and maintenance in the next three years, should the entire line be continued in operation, is estimated at \$39,830, or about \$13,300 a year, practically the same as the average cost of maintenance in 1929-31; divided, \$9,500 to the line east of Frisco and \$3,800 to the portion west. For a reasonable period, thereafter, barring serious washouts, maintenance expenses for the entire line would probably average from \$2,500 to \$3,000 a year. The total cost of operating the entire line in the next three years, including maintenance, operation, and taxes, is estimated at approximately \$18,000 a year and probably would not exceed \$14,000 a year for the portion east of Frisco.

A witness for the applicants presented a statement showing that the revenue from traffic handled by the line allocated to Union Pacific system lines beyond the line, for 1931-35 and eight months of 1936, was \$22,188, \$9,819, \$8,752, \$5,433, \$5,586, and \$4,276, respectively. Based on operating ratios obtained by multiplying ^{the system} operating ratios by 0.75, which the witness believed to be equitable, about 53 percent should be deducted for the cost of handling the traffic beyond the line. The resulting net income to other system lines from such traffic, similarly stated, would be \$10,351, \$4,753, \$4,344, \$2,606, \$2,562, and \$1,854. Crediting these amounts to the line, the witness arrives at the following estimate of the net deficit to the system from the operation of the line, in order for 1931-35 and eight months of 1936: \$8,096, \$275, \$2,591, \$2,553, \$2,588, and \$1,760; net average annual deficit \$3,152.

In the same period taxes paid on the branch averaged about \$3,500 a year, which, if eliminated or reduced to a nominal basis, would have eliminated the estimated system deficit above noted. A member of the State Board of Tax Commissioners testified that the present attitude of the Board, all the commissioners having tentatively expressed themselves to that effect, was that under the circumstances the Board would be justified in reducing the valuation of the line for tax purposes to a scrap or salvage value "until business developed to justify otherwise"; that such revaluation, if made, would be effective for the 1937 assessment; and that the present commissioners would hold office until after that assessment.

A witness for the applicants testified that in his opinion the abandonment of the line would have little effect upon the gross revenues of the applicant, as the rates on the commodities handled are practically the same from Milford and Frisco; that the principal commodities can readily be handled by truck between Frisco and Milford, and there is practically no reason why the sheep which move to and from this territory could not be trailed between the same points.

Witnesses for the protestants believe that the immediate consequence of abandonment would be the stoppage of all development and mining in the district, that everything that has been invested in the past few years of depression would be lost, and the reopening of the Horn Silver would be postponed until prices were much higher than would be necessary with continued operation of the line. They further testified that it is very seldom that snow would interfere with the operation of trucks in the vicinity of Milford, but when it does happen it is not easy to truck feed

for livestock a distance of 17 miles, and that is the time when feed is most urgently needed; that the trucking of feed and wool between Milford and Frisco would add about \$700 a year to the operating expenses of the above-mentioned company whose herds range west of Newhouse; and that they are willing to accept the line as it is in order to avoid the expense of rebuilding the portion west of Frisco, but ask that the applicants allow this branch to remain in status quo for the next two years.

The line has been operated at a loss in the past six years and the prospects are that due to the necessity of making good the deferred maintenance these losses will be substantially increased in the next three years, unless as a result of increased prices and improved market conditions there should be a resumption of mining activities in the territory and a substantial increase in the tonnage offered to the line. But these matters are beyond the scope of accurate or certain prediction, and the development, ultimately, of a substantial volume of traffic is by no means assured. The burden of accumulating operating losses ought not to be laid indefinitely upon interstate commerce in order to test the mining possibilities under more favorable conditions. Oregon-W. R. & Nav. Co. Abandonment, 175 I.C.C. 492, 500.

It is clear from the record that continued operation of that portion of the line between Frisco and Newhouse would impose an undue burden upon interstate commerce. However, in view of the rather serious consequences of abandonment to those who are now served by the line, including mining and livestock interests, and their confidence that traffic will increase as recovery in business proceeds, we conclude that a further test of operation of the line between Frisco and Milford for a period of two years should be made; and the present denial of the application as to that portion of the line will not affect the applicants' right to renew the proposal with respect thereto after the expiration of the period indicated.

We find (1) that the present and future public convenience and necessity permit the abandonment by the Los Angeles & Salt Lake Railroad Company of that portion of its Frisco branch between Frisco and Newhouse, approximately 6 miles, in Beaver County, Utah, described in the application, and abandonment of operation thereof by the Union Pacific Railroad Company, lessee, and (2) that the application herein, so far as it relates to the abandonment of that portion of the branch between Frisco and milepost No. 1 at Milford, approximately 16 miles, in the same county and State, and abandonment of the operation, thereof should be denied. An appropriate certificate and order will be issued, effective 30 days from the date thereof. Suitable provision will be made for the cancelation of tariffs.

file

No. 10623 - CERTIFICATE AND ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4,
held at its office in Washington, D. C., on the 21st day
of April, A. D. 1937

Finance Docket No. 10623

LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.

ABANDONMENT

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity permit the abandonment by the Los Angeles & Salt Lake Railroad Company of that portion of its Frisco branch between Frisco and Newhouse, approximately 6 miles, in Beaver County, Utah, described in the application and report aforesaid, and abandonment of operation thereof by the Union Pacific Railroad Company, lessee.

It is ordered, That the application herein, so far as it relates to the abandonment of that portion of the branch between Frisco and milepost No. 1 at Milford, approximately 16 miles, in the county and State aforesaid, and abandonment of the operation thereof, be, and it is hereby, denied.

It is further ordered, That this certificate shall take effect and be in force from and after 30 days from its date. Tariffs applicable to the portion of the branch permitted to be abandoned may be canceled upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act.

It is further ordered, That the Union Pacific Railroad Company, when filing schedules canceling tariffs applicable on said portion of the branch permitted to be abandoned, shall in such schedules refer to this certificate and order by title, date, and docket number.

And it is further ordered, That the Union Pacific Railroad Company shall report to this Commission as required by valuation order No. 24, effective May 15, 1928.

By the Commission, division 4.

(SEAL.)

W. P. BARTEL,

Secretary.