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INTERSTATE COMMERCE COMMISSION

Finance Docket No. 13611

# LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL. ABANDONMENT

Submitted July 3, 1942. Decided July 24, 1942.

Effective Sept 24, 1942

Certificate issued permitting abandonment by the Los Angeles & Salt Lake Railroad Company of a line of railroad in Beaver County, Utah, and abandonment of operation thereof by the Union Pacific Railroad Company, lessee. Condition prescribed.

George H. Smith and Dana T. Smith for applicants.
Charles A. Root for Public Service Commission of Utah.
H. W. Prickett for protestants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed by both parties, but no reply was filed by either party.

The Los Angeles & Salt Lake Railroad Company and the Union Pacific Railroad Company, lessee, on January 26, 1942, applied for permission for the former to abandon, and the latter to abandon operation of, the so-called Frisco branch extending from Milford to the end of the line at Frisco, approximately 16.42 miles, all in Beaver County, Utah. Protests were filed and a hearing was held. The application is opposed by the Public Service Commission of the State of Utah and a representative of that body made a motion that the application be dismissed, on the ground that the line involved is not subject to the jurisdiction of this Commission, and a further motion was made by counsel for the Publicity and Industrial Development Department of the State of Utah, protestant, that disposition of the case be held in abeyance for a period of six months. These motions will be given consideration later in this report.

The line in question is part of a branch which formerly extended from Milford, through Frisco, to Newhouse, approximately 22.37 miles. The portion from Frisco to Newhouse was abandoned in 1937, pursuant to permission granted in Los Angeles & S. L. R. Co. Abandonment, 221 I.C.C. 309, in which case we denied the applicant's request for permission to abandon the line between Milford and Frisco and stated that, because of the serious consequences that might result to those served, a further test of operation should be made for a period of two years. The history of the branch is stated in the previous report and will not be repeated herein.

The applicants state that, while there was an increase in traffic handled over the line from 1938 through 1940, it substantially decreased in 1941, and in their opinion there is little, if any, likelihood of sufficient traffic moving over the line in the future to warrant continued operation unless it be from shipments of scheelite, or tungsten ore, which commodity has recently been discovered in considerable quantities near Frisco. However, in their opinion the latter traffic could be economically trucked because trucking conditions from Frisco to Milford are favorable.

The territory served by the branch is rough desert country devoted mainly to mining and the production of livestock and wool. The only permanent residents are a few livestock and sheep raisers. The mine workers generally reside in Milford. There are four nonagency stations on the branch, Moscow, Hickory, Solus, and Frisco, none of which has any local population. The distances of the stations named from Milford range from 6 to 16 miles. There is no other railroad located in or near the territory. The branch is substantially paralleled by an improved gravel road which has a descending grade toward Milford. It is classed as an all-weather highway but becomes slippery and unsuitable for heavy trucking when wet. However, there is not a great deal of precipitation in the territory.

Train service is operated on the branch only when there is traffic to be moved. No express, passengers, or mail are handled. There were 23 trips made in 1941, which included one or more trips in each month of the year except January. A small consolidated steam locomotive weighing 150 tons is used in this service. A 5-man crew makes each trip and is paid on the basis of a minimum work day, which totals $43.50. Because of the infrequency of service on the line and as a safety factor, a section gang consisting of a foreman and five men is sent on a motor car in advance of the train to determine the condition of the track and bridges. The cost for this service is approximately $29 a trip but is charged to maintenance and included in the maintenance expenditures shown herein. The speed of the train is limited to 12 miles an hour, which restriction has been in effect for many years.

In the six years 1936-41 freight traffic handled by years, in order, amounted to 41, 57, 119, 252, 219, and 47 cars, total 735. Less-than-carload traffic totaled three tons, which was handled in 1937. Cattle shipments amounted to one car in 1937, six cars in 1938, and nine cars in 1940. There were 46 cars of sheep moved during the period, annual shipments thereof ranging from 6 to 13 cars, the latter number being handled in 1940. Wool shipments totaled 59 cars, of which 39 moved in the first three years of the period, and there were four cars in 1939 and eight in each of the remaining years. Most of the traffic handled for the period shown consisted of ores and concentrates. These shipments for the six years, in order, were 16, 28, 88, 235, 188, and 32 cars, total 587. The remaining traffic consisted of occasional movements of miscellaneous commodities.

36 = 41
37 = 57
38 = 119
39 = 252
40 = 219
41 = 47

The results of operating the branch as shown by the applicants for the six years 1936-41, in order, were as follows: Gross system revenues $5,045, $8,780, $13,108, $26,898, $23,522, and $9,877; operating expenses including taxes and equipment rents $6,796, $6,513, $6,802, $13,404, $12,089, and $11,372; cost of handling traffic on system lines beyond the limits of the branch, based on freight operating ratios of the applicants for the respective years ranging from 58.20 to 62.92 percent, $2,787, $5,056, $7,171, $14,792, $13,215, and $5,977; and net loss $4,538, $2,789, $865, $1,298, $1,782, and $7,472. If 50 percent of the revenues assigned other system lines had been taken as the cost of handling the branch traffic thereon, the net results to the Union Pacific system for the six years, in order, would have been $4,126 loss, $1,931 loss, $145 gain, $969 gain, $482 gain, and $6,245 loss.

In the calculation of railway operating expenses, the maintenance-of-way expenses, with minor exceptions, were actual. They averaged $2,454 annually and ranged from $564 in 1938 to $5,135 in 1941. Maintenance-of-equipment expenses averaged $280 annually and were allocated to the branch on reasonable mileage bases. Transportation expenses averaged $1,970 annually. They increased from $1,285 in 1936 to $3,085 in 1940 but decreased to $1,264 in 1941. These expenses, generally speaking, were actual except as to minor items which were prorated on reasonable mileage bases. Taxes averaged $4,148 annually, ranging from $3,518 in 1937 to $4,704 in 1940. Equipment rents increased from $109 in 1936 to $1,425 in 1939 and decreased to $119 in 1941.

The applicants state that the line is in need of a progressive program of tie renewals, bridge repairs, general repair of the roadbed, and cleaning the cuts. The line is laid with 60-pound rail which is in good condition. Ties are mostly treated. From 1937 through 1941 there were 5,026 new ties placed on the line, of which 2,816 were placed in the year last named, but the applicants estimate that within the next four years it will be necessary to place 17,300 ties. Maintenance expenditures estimated by the applicants for the four years 1942-45, in order, are as follows: $9,074, $9,255, $10,460, and $11,650, total $40,439. These expenditures will be divided as follows: Bridge and culvert repairs $6,612, tie renewals $31,227, cutting weeds on tracks $600, repair of switches and frogs $1,400, and cleaning cuts, removing earth from rails and restoration of embankments $600. The explanation offered by the applicants of the large increase is that maintenance has been deferred and permitted to accumulate until the line has now reached the point where it is essential that the expenditures indicated above must be made. In this connection it may be noted that the previous report, Los Angeles & S. L. R. Co. Abandonment, supra, shows that the applicants then estimated the cost of maintaining the line between Milford and Frisco for the three years next following at $9,500 annually. Testimony was that this expenditure would be absolutely necessary to put the line in condition to safeguard the operation of an occasional train over it. As previously shown herein, the actual expenditures for the next six years thereafter averaged $2,454 annually, the maximum expenditure being $5,135 in 1941. However, the increased expenditures in 1941 may be indicative that the line is now reaching a point where larger maintenance expenditures must be anticipated. The net salvage value of the line is estimated by the applicants to be $28,966. Approximately 90 percent of the rail on the line can be used or sold for re-laying purposes.

The principal grounds urged by the protestants for denial of the application relate to the possibilities in the near future of large shipments of ore, particularly tungsten ore. Tungsten is used as a hardening agent for steels and its largest source is in scheelite, which is the mineral in the tungsten-bearing ores. It recently has been found in substantial quantities at the Cupric mine located about 2.5 miles from the end of the Frisco branch. This deposit covers an area of approximately 100,000 square feet, of which about 10,000 square feet are considered rich ore having about 1 percent of tungsten. Certain out-croppings from the vein would add an additional 2,000 square feet of surface. This surface area is estimated to represent 1,000 tons of 1-percent ore for each foot of depth, and the vein has been proven thus far to have a depth of at least 180 feet. Upon that basis it should produce 180,000 tons of high-grade ore, each ton of which would have a value of approximately $20 at the mine. Testimony also is that it probably would be possible to mine as much as 4,000 tons for each foot of depth of 0.5-percent ore and 7,000 tons per foot of depth of 0.3-percent ore. The mining of the low-grade ore is largely dependent upon transportation costs.

The Cupric mine property has been leased to the United States Vanadium Corporation. This concern is promoting the tungsten development in the territory and expects to build a large refinery therefor at Salt Lake City. The plans for concentrating the ore from the Cupric mine have not been definitely settled, but it is anticipated that a gravity-concentrate mill will be constructed at Milford. From this point 50 to 100 pounds of concentrates and middlings for each ton of ore would move to the Salt Lake City refinery. Around Milford there is an abundance of artesian water, making it an advantageous location for the concentrate mill. To build a plant with a capacity of 500 tons of ore daily would require an expenditure of approximately $350,000, and to place the Cupric mine in operation would cost from $125,000 to $150,000 and consume six months' time. Testimony is that the demands for tungsten in the war effort are greater than for any other commodity not excluding rubber and tin. According to present plans of the War Production Board, the production in 1942 will be double that in 1941, and the production in the year last named is to be tripled in 1943. A telegram received in evidence from the United States Vanadium Corporation stated that the tungsten deposits in the territory are being developed as rapidly as consistent with the situation and that while it is still too early to make a definite tonnage guaranty to the railroad, the removal of that facility would add too much extra cost to shipments from the Cupric mine. Of course, at the present time it is not known what the transportation costs would be either by rail or by truck because no rates for the movement have been fixed. A witness for the protestants stated that 0.5-percent ore, which would have a value of $10 a ton at the mine, could move at a rate not exceeding from 60 cents to $1 a ton. It is estimated that trucking rates from the mine to Milford would range from 60 to 70 cents a ton. The probable capacity of the concentration mill to be constructed at Milford will amount to from 300 to 500 tons a day, Obviously, to move this amount of tonnage would require very extensive trucking facilities. Because of the wear occasioned by hauling heavy loads over a graveled road, one witness estimated that a set of tires would give only 5,000 miles of service.

Other traffic which may move over the line in the near future consists of from 25,000 to 30,000 tons of mine tailings from dumps near the Horn silver mine located near Frisco, which a preliminary assay indicates are of sufficient value to be used by the smelter at Garfield, Utah, as a low-grade fluxing ore. Four carloads had been shipped at the time of the hearing as a test, and if the smelter returns run as high as the original assay, it is anticipated that two cars a day, or 3,000 tons a month, will move until the dump is exhausted. The total movement is expected to range from 500 to 600 cars and revenues would be produced for the railroad ranging from $35,000 to $42,000.

At the Horn silver mine there also are from 5,000 to 10,000 tons of dump ore which is marketable at the present time. Negotiations with respect thereto are being conducted but arrangements for sale and shipment have not been concluded.

There are several other mines in the vicinity of Frisco which in the past have produced large volumes of ores containing copper, lead, zinc, gold, and silver. Because of the increase in price of the three commodities first named, consideration is being given to resuming operation at several of these mines. Substantial quantities of ore are already blocked out and ready for mining, but operations are not possible at present because of insufficient financial resources. Efforts are being made to secure adequate financing of the projects, and the operators are hopeful that such negotiations will prove successful. There is a possibility that these mines may produce a large volume of tonnage for the branch for a temporary period, but for the present this possibility must be considered speculative.

In support of a motion to dismiss, the representative of the Utah commission argues that the branch involved is a spur track within the meaning of section 1(22) of the Interstate Commerce Act, particularly in view of the interpretation placed thereon by the Supreme Court of the United States in <u>United States</u> v. <u>Idaho</u>, 298 U. S. 105. However, the facts and circumstances relating to the operation of this branch are so widely different from those involved in the above case that it is not believed controlling here. We are of the opinion that we have jurisdiction.

The motion that action on the case be deferred for a period of at least six months was made for the purpose of permitting a proper determination, before abandonment is permitted, of the probable traffic to be moved as a result of increased mining activities, particularly the tungsten ore.

The examiner recommended that we defer action on the application until November 1, 1942, to await steps being taken looking to the development of the scheelite deposits, with the further proviso that if at that time it appeared either upon stipulation of the parties or upon further hearing that the anticipated development had not materialized a certificate permitting abandonment should be entered forthwith.

The protestants excepted to those findings because, in their opinion, it was not made clear that a further hearing would be held in the event the parties through negotiations were unable to enter into a stipulation of the facts, and because the findings tended to predetermine the probative value of additional evidence that might be submitted at such further hearing.

The applicants, in their exceptions, contend that a certificate should be issued forthwith and that no deferment should be granted. They say that the history of the line shows conclusively that it cannot be operated profitably. While they admit the possibility of a large movement of scheelite, they say it is too speculative to warrant our forcing continued operation of the line, particularly in view of the fact that even if the traffic moved it might not make operation profitable. They suggest that if the owner of the scheelite needs the railroad to move the commodity it should purchase the line for its salvage value and assume the risk, rather than undertake to force the applicant to continue unnecessary and wasteful operations.

When we denied the application to abandon the line in 1937 we were convinced that the prospects for additional traffic were such as to require the continued operation thereof. In this we were apparently misled because it now appears that almost no traffic has been developed. The present application brings forward predictions of vast mineral traffic from the same territory and largely from the same developments. Apparently no one has yet decided that the expenditures necessary for development of the scheelite deposits will be justified by the prospects. Under such circumstances we are not convinced that the applicants should be required to continue operation of the line for a substantially longer period. Our certificate will be made effective from and after 60 days from its date. That should provide time for some definite conclusion to be reached with respect to the development of the scheelite deposits. If affirmative action should be taken with respect thereto within the period indicated the matter may be brought to our attention for such further action on our part as may be required. In order that the line may be available to the owners of the scheelite deposit in the event no affirmative action has been taken prior to the effective date of our certificate, that document will provide that the applicant shall sell the line to any person, firm, or corporation, offering, within 60 days from the date thereof, to purchase the same for continued operation and willing to pay therefor a price not less than its fair net salvage value.

We find that the present and future public convenience and necessity permit abandonment by the Los Angeles & Salt Lake Railroad Company of the line of railroad in Beaver County, Utah, described herein, and abandonment of operation thereof by the Union Pacific Railroad Company, lessee. An appropriate certificate will be issued, effective from and after 60 days from its date, in which suitable provision will be made for the cancelation of tariffs.

MILLER, Commissioner, dissents.

# CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 24th day of July, A. D. 1942.

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Finance Docket No. 13611

LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL. ABANDONMENT

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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 abandonment by the Los Angeles & Salt Lake Railroad Company of the line of railroad in Beaver County, Utah, described in the report aforesaid, and abandonment of operation thereof by the Union Pacific Railroad Company, lessee: Provided, however, and this certificate is issued upon the express condition, that said line of railroad or any part thereof shall be sold to any responsible person, firm, or corporation offering, within 60 days from the date hereof, to purchase the same for continued operation, and willing to pay not less than the fair net salvage value thereof.

It is ordered, That this certificate shall take effect and be in force from and after 60 days from its date. Tariffs applicable to the line 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 to the line, shall in such schedules refer to this certificate 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.