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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF UNION PACIFIC RAILROAD COMPANY TO TRANSFER LOCAL AGENCY SERVICES IN THE STATE OF IDAHO TO THE NATIONAL CUSTOMER SERVICE CENTER AT ST. LOUIS, MISSOURI. | )  )  )  )  )  )  ) | CASE NO. UP-RR-95-4  STAFF ANSWER TO UP’S MOTION TO STRIKE |
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COMES NOW the Staff of the Idaho Public Utilities Commission by and through its attorney of record and submits this Answer to Union Pacific Railroad Company’s Motion to Strike portions of Staff witness Ron Law’s direct prefiled testimony.  This Answer is submitted in pursuant to the Commission’s procedural Rule 57.03, IDAPA 31.01.01.057.03.  For the reasons outlined below, the Commission should deny UP’s Motion to Strike in its entirety.

BACKGROUND

In its Motion, UP moves to strike seven portions of Staff witness Ron Law’s prefiled testimony in this matter.  The Railroad states that the “principal problem with such testimony is that it is ‘largely’ based on conclusory off-the-record statements made by unknown individuals.”  Motion to Strike Memorandum at 1.  The testimony UP seeks to strike can be divided into three general areas.  The first area is Mr. Law’s testimony concerning the familiarity and importance of a local agent in providing service to Idaho shippers.  Id. at 1-3, ¶¶ (a), (d), (e) and (g).  The second area is his testimony concerning the role agents play in ensuring the timely delivery of cars and shipments.  Id. at 2, ¶¶ (b) and (c).  The third area deals with Mr. Law’s statement that NCSC customer service may “decline during the course of the Union Pacific and Southern Pacific merger.”  Id. at 3, ¶ (f).  As pointed out below, the primary source of Mr. Law’s information has been the testimony already entered into the record at the seven field hearings.

EXPERT TESTIMONY

As a preliminary matter, UP challenges the credentials of Mr. Law to provide expert testimony.  Id. at 5-6.  The Staff takes strong exception to this assertion.  As the Commission is well aware, Mr. Law was appointed to the duties as the Administrator of the Regulated Carrier Division in July 1995.  As Administrator, he is responsible for the management of the Commission’s regulatory oversight of the railroad and motor carrier industries.  He manages the Commission’s rail program including hazardous-material rail inspections, formulation of Commission rail policy, coordinates with various federal agencies (FRA, STB, Department of Transportation) and serves as the Commission’s representative on the Governor’s Rail Advisory Committee.  During his tenure at the Commission as well as his eighteen years in public service (Montpelier City Council, the mayor of Montpelier, and Bear Lake County Commissioner), Mr. Law has developed analytical skills and expertise that permit him to examine and evaluate a wide range of management issues.

In preparation for this case, Mr. Law has attended each of the seven public hearings that the Commission has conducted in this matter.  In addition to hearing all the public testimony offered in this case, Mr. Law has inspected the National Customer Service Center (NCSC) located at St. Louis, Missouri.  While there, he received briefings from UP representatives, including James Carter, a witness in this proceeding.  Mr. Law monitored actual conversations between customers and a NCSC customer service representative.  This gives him first-hand knowledge into the interactions between shippers and customer service representatives at the NCSC.  He also received briefings on the Railroad’s problem resolution procedures including the assigning of priorities to the various types of problems, communicating with operational management, and working with customers to handle critical shipments.

Mr. Law received briefings and toured the Railroad’s headquarters and operations center (Harriman Dispatch Center) in Omaha, Nebraska.  His interviews, observations and briefings, have also apprised him about UP’s coordination between the NCSC and the local operational units to ensure that customer needs are met.  He has observed the daily management review of operations conducted by UP Superintendent Heavin, the Harriman Dispatch Center, and his managers of train operations (MTOs).  Mr. Law has also interviewed shippers, UP employees and public officials, and reviewed correspondence forwarded to the Commission concerning this case.  Simply put, Mr. Law is qualified to be an expert in this matter.

UP’S OBJECTIONS

1.  Local Familiarity.  The first area of testimony objected to by UP concern statements by Mr. Law regarding a local agent’s familiarity with area shippers.  More specifically, the Railroad moves to strike the following testimony:

(a)  The familiarity of the local agents with their specific areas and shippers provides a valuable tool in providing Union Pacific customers with excellent customer service tailored to customer needs.

Pp.  2-3, lines 23-1.

(d) Ashgrove also, as did many other customers that I had an opportunity to visit with, indicated that you just cannot replace the knowledge and expertise of the local agent with the service center located in another part of the country.

Pp.  8-9, lines 24-3.

(e) The vast majority of Union Pacific customers, that I had the opportunity to visit with, interview and listen to at the hearings, feel that local agencies are very important to [shippers] and their operation and need to be maintained.  Even those customers who  feel that NCSC does a fairly good job, want assurance that local contacts will still be available to handle customer-specific needs and problems.

Pp.  20, lines 5-12.

(g) The Staff has found in its investigation that the shippers that are served by those agencies [Sandpoint/ Bonners Ferry, Weiser/Payette, Parma and Montpelier] rely heavily upon the services of the local agent in meeting their needs and solving their problems as do the local communities.  It is the Staff’s position that if those local agencies are shut down, there is no doubt that the quality of service will be diminished no matter what measures are undertaken at the National Customer service center in St. Louis and that the customers that are served by those agencies will see a definitive decline in customer service provided to them by UPRR.

Pp.  21-22, lines 22-8.  The general thrust of UP’s argument is that Mr. Law obtained information used for his observations from undisclosed individuals and, therefore, this information is inadmissible as hearsay.  Contrary to UP’s fears, the primary source for Mr. Law’s testimony is the testimony received at the prior seven hearings.

The record contains many references to the importance of local familiarity. Nu-West Industries is the largest shipper in Montpelier shipping approximately 40-50 carloads per day in and out of its plant served by the Montpelier agency. The material manager for Nu-West testified that the local agent in Montpelier is very familiar with his operations. Experience with Nu-West operations as well as train operations is extremely helpful.  Tr. at 280. He characterized the presence of the local agent as “our vital communication link with what the train crews are doing on a real-time basis, how they’re performing and we’re going to get serviced everyday.” Id. at 266.

A new shipper at Montpelier, Louisiana-Pacific, also testified to the importance of the local agent.  He stated that there “is no real substitute for having a good person on the ground that knows the local situation, particularly here where there is a lot of things going on, as the gentlemen from Nu-West had stated.”  Tr. at 294; 310.  At the same hearing, Monsanto’s traffic manager indicated that she contacts the local agent every day.  She explained that it is not unusual for the cars she has ordered not to be in the appropriate place.  She testified that the agent “will call me and tell me that it’s not there, so I can switch that order to a different car.”  Tr. at 363.  She orders her cars directly from the local agent.  Id.  The traffic manager of the FMC Corporation said that it is important to have local people on the ground to help with his shipping needs such as determining the location of cars, anticipating time of delivery, taking special handling instructions or weighting cars.  Tr. at 330-31.  Even though he uses the NCSC, he still makes “contact locally to find out what’s actually going on here in Pocatello.”  Id.; 232; 235.

Parma shipper Kristine Bruins testified that local agents serves as the “eyes and ears” for the local managers of train operations (MTOs).  Tr. at 438.  She related one example of where local representatives perform an essential function as an adjunct to the NCSC.  In one particular instance in tracing a car, the NCSC indicated that her grain car was sitting in Missouri.  She advised the NCSC that it was “sitting in front of my elevator.  Well, this went on for two weeks and I’m sitting here between the Railroad and my customer, trying to tell the Railroad to pull that car.  It finally took an agent to go out there and stand in front of the car, read the number into the computer to get the car moving ....” Id.  Louisiana-Pacific’s shipping superintendent and the lumber shipper for the Idaho Forest Industries also contact the local agent daily. Tr. at 7; 10; 61, 65.

It is ironic that UP objects to Mr. Law’s observations when this Commission has made similar observations in the past.  The following passages taken from prior Commission Orders support Mr. Law’s testimony and observations.  In particular, the Commission noted in Order No. 23773 at 2:

Shippers rely on local agencies to assist in a variety of customer service functions including: Ordering cars, spotting/pulling of cars; car tracing; making last minute adjustments to car ordering/spotting/pulling instructions; assisting with customer recordkeeping (demurrages, claims, shortages); car cleanliness; and making car substitutions depending upon local car availability.

In other Orders, the Commission has recited a number of advantages of local agents over the NCSC.  Local agents have been characterized “as being the closest and most essential link of [UP’s] contact with shippers.”  Order No. 21876 at 11.  In Case No. UP-RR-91-3, Fred Anderson of Duffin Potatoes and Pleasant Valley Potatoes stated that the local agent “knows the local geography, knows Simplot’s business and has an interest in Simplot’s business that is not evident by the NCSC.” Staff Exhibit No. 107, Order No. 24816 at 9. He expressed concern that “elimination of the local agent inhibits the railroad’s ability to respond and to understand local needs . . . [T]he local agent provides the ‘human element’ that is not available from the NCSC in St. Louis.”  Id. The Staff requests that the Commission take official notice of its own Orders pursuant to Rule 263, IDAPA 31.01.01.263.  Other shippers have described a “good” local agent as an individual “who knew the shipper, knew the operation of the shipper, knew the climate and marketing circumstances important to product shipment, and knew the shipper’s rail layout.”  Order No. 21876 at 11.

2.  Availability and Timeliness.  The next area for examination concerns the availability of a local agent and the importance of receiving raw materials on time.  Law Testimony on p. 3, lines 8-22; p. 5, lines 3-5.

(b)  In listening to the testimony of the various hearings and interviewing a number of Union Pacific customers, I found that the areas the agent was deemed the most important to the customer was in resolving problems and accommodating special, individualized needs.  For instance, many customers rely heavily upon the agent to ensure that the right cars are available where and when they are needed.  This service is critical to many of the customers that I visited with, including some of the largest ones.  I was often told by various Union Pacific customers how important they felt it was to have a local agent available on a daily basis who knows the customers on a first name basis, who knows their operation and needs, and who can be depended on, as opposed to someone located thousands of miles away.

Pp. 3, lines 8-22.

(c)  Other customers that I visited with also expressed how important it was to get raw materials in on time.

Pp. 5, lines 3-5.

In making these statements, Staff witness Law indicated that he formed these opinions in listening to testimony at the various hearings and interviewing UP customers.  Again, the primary source for this information was the prior testimony in this case.

A review of the transcript in this case reveals that a number of witnesses discussed the importance of contacting their local agent on a daily basis.  Louisiana Pacific’s shipping superintendent testified that he contacts the local agent to confirm “my request each day of what I have requested from the Customer Service Center will actually take place.”  Tr. at 7, lines 13-15.  He further testified that if there are any last-minute problems that come up for his shipping needs, he always contacts the agent first.  Tr. at 16, line 22.  The shipping manager for Idaho Forest Industries also indicated that he utilizes the services of the local agent in Sandpoint.  Tr. at 59.

At the Commission’s Montpelier hearing, Nu-West’s material manager testified that he depends on the local agent to handle unscheduled or unplanned changes.  Tr. at 279, lines 19-25.  Monsanto’s traffic coordinator also indicated that she contacts the local agent every morning.  Tr. at 363.  She discussed at length the importance of receiving shipments on a timely basis.  “If we don’t have raw materials, there are times where our stockpiles are very low.  If we don’t get those  raw materials in, we’re going to have to shut a furnace down, which costs us production time. . . .  We could lose shipments there too if we don’t have preloaded cars.”  Tr. at 364-65, lines 23-2.

At the Aberdeen hearing, the warehouse coordinator for J.R. Simplot’s food division testified about the importance of timely delivery.  If the processing plant does not receive timely shipments of cooking oil, they cannot produce french fries and the plant will have to be shut down.  Tr. at 166.  This is not the first instance that Simplot has explained the critical need for timely delivery.  In Case No. UP-RR-91-3, Simplot witness Clarence Peck testified about the importance of receiving timely commodities.  The Commission’s Order No. 24816 sets out in detail his efforts to get delivery of a vegetable oil car via the NCSC.  See Staff Exhibit No. 107 at 6 (Order No. 24816 issued April 1, 1993).  Pursuant to Rule 263, the Commission may take official notice of its own Order.

One individual interviewed by Mr. Law in preparation for this case was the previous local agent at Idaho Falls, Sabas Flores.  As indicted in Staff Exhibit No. 104 the NCSC contacted the local agent on a daily basis.  After contacting the local agent, the NCSC would “apply cars according to [the local agent’s] instructions.”  As indicated in the agent’s weekly worksheets, he provided a variety of customer services to shippers in his area, including car ordering and switching instructions.  See Staff Exhibit No. 105.  It is clear that there is sufficient information in the record to support Mr. Law’s statement concerning the importance of timely delivery of raw materials.

3.  UP-SP Merger.  Finally, UP objects to Mr. Law’s testimony that there is a “high probability that customer service will continue to decline during the course of the Union Pacific and Southern Pacific merger.” Direct at p. 21, lines 8-16.

(f)  . . .having heard numerous complaints about the operation of the NCSC from the majority of the customers staff interviewed, and coupled with the high probability that customer service will continue to decline during the course of the Union Pacific and Southern Pacific merger, staff feels that it is not appropriate nor in the best interest of anyone at this time to remove the local agent who is an important tool in providing good customer service to UPRR’s customers.

Pp. 21, lines 8-16.

The underlying basis for his concern about the UP-SP merger is the difficulties UP experienced when it merged with the Chicago & Northwestern Railroad (C&NW). He based this opinion on several points including: The testimony of UP witness Carter; public testimony of Christine Bruins at the Parma hearing; data contained in Staff Exhibit 103;  comments made by employees during his tour of the NCSC.  It is undisputed that the Company experienced “unprecedented problems with service” when UP merged with the C&NW.  This is borne out both by the testimony of UP witness Carter at pp. 14-15 as well as UP top management in Exhibit No. 8, pp. 1-2.  Carter testified that UP experienced customer service problems in the “September-December” time frame in spite of the fact that UP sought permission six months earlier to merge the railroads.  See Staff Exhibit 106 at p. 2.

Ms. Bruins noted that when UP merged with C&NW, the Railroad was not ready for the merger.  Tr. at 442, line 25.  Knowing that the UP and SP merger “is on the table right now,” she stated that “I shudder to think of what customer service is going to be like then. . . . [W]e’ve certainly had a lot of gliches with [C&NW merger], and when you see a merger like the Southern Pacific come in, I think you’re going to see some huge problems.”  Tr. at 443.

The underlying issue in this case, is whether UP can meet its customer service obligation on a prospective basis.  Given the fact the Company experienced “unprecedented  problems” with the recently completed C&NW merger, Mr. Law opined, that there was a “high probability” that the Railroad may experience more problems with the SP merger.  Mr. Law is entitled to offer an opinion on this issue, just as UP is entitled to offer evidence to rebut this opinion.

Finally, Union Pacific’s reliance on the Idaho Rules of Evidence are misplaced.  As the Commission is well aware, Idaho Code § 61-601 provides that the Commission shall not “be bound by the technical rules of evidence.”  As has been set out above, Mr. Law’s testimony was based on a number of sources, the least of which was interviews with individuals.  UP’s argument goes not to the admissibility of Mr. Law’s testimony but to the weight that the Commission places upon it.  At such time as the Commission makes its findings of fact in this case, such findings must be based upon substantial and competent evidence.  Application of Hayden Pines Water Company, 111 Idaho 331, 723 P.2d 875 (1986).

Admission of  this testimony will not deprive UP of its right to due process.  Mr. Law will be available for cross-examination at which time UP may explore the basis for his statements.  In addition, given the nature of prefiled testimony, UP has been apprise of Mr. Law’s testimony and has submitted rebuttal testimony on these points.

CONCLUSION

As outlined above, there is ample evidence already included in the record to serve as the basis for Mr. Law’s statements.  Contrary to the fears of UP, the primary source for Mr. Law’s prefiled testimony was the testimony previously offered at the seven hearings.  The Staff requests that the Commission deny UP’s Motion to Strike and take official notice of Staff Exhibit Nos. 106 and 107.

RESPECTFULLY submitted this 25th day of March 1996.

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