

Is the Redmond-Issaquah right of way a spur line?

Thoughts and Ideas

John Rasmussen April 8, 2001

If it is found by this court that Hilchkanum granted an easement, the court should consider the issue of whether the railroad segment between Redmond and Issaquah is a *spur line*, thus exempt from STB control and fully abandoned. Recently I became aware of the fact that the STB does not have authority over the abandonment of spur lines. This rule is found at 49 USC §10906. During study, I discovered a decision in which a rail line found to be a spur was almost identical in length, use and other criteria to the former rail line between Redmond and Issaquah.¹ I found two decisions that explained to me the criteria for determining a spur line: *Nicholson v. I.C.C.*, 711 F.2d 364, (1983) and *Pennsylvania Railroad Co. v. Reading Company*, 132 F.Supp. 616, (1955).

Federal regulation over railroads does not include every aspect of railroad activity. If so, at some point, the Federal Government would violate the rights of the States to govern themselves and control railroad use that is local, intrastate, and not significantly associated with the national system. The rules to determine control of a spur line were obviously developed with that thought in mind. In *Nicholson*, I learned that a segment of track is determined to be a spur based on its *use*, not on its label, or cost. Segments that carry through trains between points of shipment, or extend into new territory require ICC approval, while *track segments that are not required for railroad service between points of service are exempt from approval.*

¹ *Hughes v. Consol-Pennsylvania Coal Co.*, 945 F.2d 594, rehearing denied, certiorari denied 112 S.Ct. 2300, 504 U.S. 955, 119 L.Ed.2d 224 (3rd Cir. 1991)

Main or branch lines that fall under STB authority are “lines designed and used for continuous transportation service by through, full trains between different points of shipment or travel” This would “exclude from the operation of the statute all that mass of tracks (as distinguished from “lines”) naturally and necessarily designed and *used for loading, unloading, switching, and other purposes connected with, and incidental to, but not actually and directly used for, such transportation services*” *Nicholson v. I.I.C.* 711 F.2d 364, 367 (1983).

Applying this criteria to the discontinued track along East Lake Sammamish strongly indicates that track to be a spur line. More that twenty years ago, the track extension from Issaquah to Snoqualmie was closed. Since that time, the *use* of the Redmond-Issaquah segment would justify its designation as a "spur line".

In *Pennsylvania v. Reading* at 616-617, a number of considerations were listed.

1. Will proposed track serve only one customer?
2. Will construction provide passenger, telephone, telegraph, loading platform, station or station agent’s service?
3. Is length so great so as to be considered in nature of branch lines?
4. Will connecting trackage be used only for switching service incidental to line haul movement?
5. Does proposed trackage invade territory of another railroad?
6. Will it involve special financing or condemnation proceedings?
7. Is cost reasonable for industrial spur in light of traffic involved?
8. Has railroad been requested by customer to give it service?
9. Will proposed connection provide service to single customer similar to that provided other industries in same area and similarly situated?

In *Pennsylvania v. Reading* at (621):

1. Is it wholly in one state?
2. Will the spur serve only a single carrier?
3. Lengths, in miles, considered to be spurs: 9, 1, 3.15, 5.75 (14.5 was found in *Hughes*.)

After looking through these considerations and applying them to the *use* given to the track between Redmond and Issaquah, I find that track meets the definition of a spur. BNSF served only one customer with less than daily service at the time of abandonment. There was no passenger, telephone, telegraph, or station at the terminus. The length abandoned was consistent with the length of spur lines. (The spur line in *Hughes* was 14.5 miles long. The Redmond-Issaquah spur was 12.45 miles in length.) The Redmond-Issaquah spur was not part of a main line, and was located completely within Washington State.

In TLC's petition for exemption to the STB in an undated document in early 1997, TLC requested to abandon and railbank the Redmond-Issaquah right of way. TLC used language that indicates the line is a spur. The line was described as 12.45 miles long and connecting two parks at each end of Lake Sammamish. The petition stated "...since at least 1994, the only significant user has been Darigold." *** "The *shortness of the line*, the *limited geographic area involved*, and the *lack of need* demonstrate the limited scope of TLC's proposed abandonment."²

In its finding dated July 1, 1997, the STB admits the line held by TLC is measured "a distance of 12.45 miles, in King County, WA." Further the

² TLC Petition for Exemption, undated, See Exhibit 11.

STB describes the line in these terms: "In this proceeding, TLC is proposing to abandon a line that constitutes its entire rail system."³

The STB and TLC describe the Redmond-Issaquah line in terms that identify it as a spur. *The length, use by a single customer, and location entirely within a single state are essential elements in defining a spur.* Because of its *use*, the Redmond-Issaquah spur should be designated a spur, exempt from STB authority, and *completely abandoned*. The full use of the easement land should be returned to its rightful owners.

³ STB Decision Summary July 1, 1997, See Exhibit 12.

Also see Exhibit 14, STB Decision, "*In the Matter of an OFA*" August 5, 1998. This document gives general information on the use, Location, and dimensions of the spur line.