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SERVICE DATE - SEPTEMBER 29, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-441 (Sub-No. 2X)

SWKR OPERATING CO.--ABANDONMENT EXEMPTION--
IN COCHISE COUNTY, AZ

Decided: September 22, 1998

This decision denies: (1) a petition to reopen the Board's December 2, 1997 decision in this matter, and (2) a petition to withdraw an extension request related to that decision.

BACKGROUND

By decision served February 14, 1997 (62 FR 7086), the Board permitted SWKR Operating Co. (SWKR) to abandon a 41.5-mile line of railroad running between Charleston and Paul Spur, AZ. Chemical Lime Company (CLC), a shipper on the line, filed an offer of financial assistance and a request that the Board set terms and conditions for subsidy and purchase of the line under 49 U.S.C. 10905. CLC rejected the terms set by the Board and, in a decision served December 2, 1997 (the December 2 decision), the abandonment was made effective on that date.

On March 30, 1998, Representative Gail Griffin of the Arizona House of Representatives filed a letter-petition requesting a 90-day "extension" of the December 2 decision to allow the Arizona Department of Transportation time to hire a consultant to conduct a feasibility study on the practicable uses, economic benefits, and potential purchase of the line. SWKR replied on April 13, 1998. Also on April 13, 1998, San Pedro Trails, Inc. (SPT) filed a request for issuance of a notice of interim trail use (NITU) for 180 days under the National Trails System Act, 16 U.S.C. 1247(d). By decision and NITU served on July 7, 1998, the Board denied the extension request and modified the February 14, 1997 decision to allow SPT to negotiate an interim trail use/rail banking agreement with SWKR for the right-of-way, for 180 days, until January 3, 1999.

On July 23, 1998, Representative Griffin filed a petition to reopen the December 2 decision. Also, on that same date, the Representative filed a petition to withdraw her March 30, 1998 extension request related to that decision. On July 27, 1998, SWKR filed a reply. By letter filed August 17, 1998, SWKR notified the Board that it and SPT have negotiated an agreement to rail bank the right-of-way and that, pursuant to the agreement's terms, SPT has assumed responsibility for management of the right-of-way and the tax and tort liability associated therewith.

In her petition to reopen, Representative Griffin contends that the December 2 decision involves material error because the Board lacked jurisdiction in approving the abandonment. According to petitioner, because the subject line of railroad is situated wholly within Arizona, this case is a local concern. Petitioner further contends that changed circumstances warrant reopening

the proceeding because there has been entrepreneurial interest, in both the United States and Mexico, in keeping the track in place, upgrading the line, and reconnecting the line to the Mexican rail system. Petitioner wants the Board to vacate its prior decision and allow local entities to conduct a feasibility study related to the possible purchase of the line.

DISCUSSION AND CONCLUSIONS

The Board may reopen an administratively final decision when a petitioner submits new evidence, shows that the Board has committed material error, or demonstrates that substantially changed circumstances have arisen that warrant a different result. 49 CFR 1115.4. Although the Representative's petition alleges both material error and changed circumstances here, it establishes neither.

It is well settled that a railroad line can be located in a single state and yet be engaged in interstate commerce, conferring jurisdiction upon this Board. See, e.g., United States v. Union Stock Yard, 226 U.S. 286, 306 (1912), where the Supreme Court held that service performed wholly in one state is still subject to the Interstate Commerce Act if it is a part of Interstate Commerce, as here.¹ Moreover, the Representative's assertion concerning the possible connection of the Charleston-to-Paul Spur line with the Mexican railroad system is not a changed circumstance warranting reopening. That matter was raised in a prior filing by CLC and was discussed in the Board's February 14 decision. Finally, it appears from the evidence submitted that there has been ample opportunity for interested parties to complete a feasibility study on the practicable uses, economic benefits, and potential purchase of this line. Thus, we have no grounds before us for reopening our prior decision.

The request to withdraw the extension request will also be denied. As stated earlier, the extension request was discussed and disposed of in our July 7, 1998 decision.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ SWKR notes in its reply that "SWKR regularly transported coal to the consignee, Chemical Lime Company, from without the State."

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It is ordered:

1. The petition to reopen and the petition to withdraw are denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary