

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-406 (Sub-No. 14X)

CENTRAL KANSAS RAILWAY, L.L.C.—ABANDONMENT EXEMPTION—
IN SEDGWICK COUNTY, KS

Decided: April 9, 2001

By a petition filed on December 21, 2000, Central Kansas Railway, L.L.C. (CKR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad extending between milepost 19.5 near Garden Plain, KS, and milepost 3.5 southeast of the grade crossing at McCormick Avenue in Wichita, KS, a distance of 16 miles in Sedgwick County, KS. Embraced in the petition are requests for exemption from the financial assistance provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. Notice of the petition was served and published in the Federal Register (66 FR 2048) on January 10, 2001.

Timely protests were filed by E.F. Lamb, of Kingman, KS, by the Kansas Rail Users Association (the Rail Users) (embracing a motion to strike the environmental report),¹ and by Seth Hostetler, of Wichita. On February 20, 2001, the City of Kingman, by its Mayor, Jack Ford, tendered a letter protest for filing.² Also on February 20, CKR filed a “Reply to Opposition and Motion to Strike.” On March 9, 2001, the Rail Users filed a “Motion for Leave to File a Reply to Reply and Motion to Reject.”³

We will grant the exemptions from 49 U.S.C. 10903-05, subject to conditions relating to the rerouting of overhead traffic, as well as to environmental, historic preservation, and standard employee protective conditions.

¹ The Rail Users’ pleading also included additional statements by Messrs. Lamb and Hostetler.

² As stated in the Board’s notice of the petition, protests were due January 30, 2001. However, as the letter essentially repeats matter contained in the other protests, it will be accepted.

³ On March 9, 2001, the Rail Users filed a motion asking the Board to take judicial notice of CKR’s asserted deliberate downgrading and inconsistent pleadings on overhead traffic. Both issues will be discussed in this decision.

PRELIMINARY MATTER

As noted, CKR replied to protestants' replies and to the motion to strike on February 20, 2001. A reply to the motion to strike is permissible. A reply to protestants' reply to CKR's petition is not. See 49 CFR 1104.13. Petitioner is aware of this fact and requests leave to file the reply. CKR asserts that acceptance of the reply will not delay the proceeding and will provide for a more complete record.

CKR's request will be denied, and, except for the matter on pages 14 and 15 replying to the motion to strike, the reply statement will be rejected.⁴ CKR filed its petition knowing that our procedures provide only for the filing of a petition and a reply thereto. The tendered pleading contains extensive argument and two new verified statements. CKR should have made as thorough and accurate a presentation as possible in its petition. While we have allowed the filing of additional evidence and argument in certain limited instances, CKR has not shown that allowing it to reply other than to the motion to strike is warranted here. Had CKR wished to assure itself the right to rebut a filing in opposition to its abandonment request, it could and should have filed a formal application.

BACKGROUND

CKR purchased the Wichita-Garden Plain segment in 1993 from The Atchison, Topeka and Santa Fe Railway Company as part of a larger line purchase transaction. The railroad has used the segment as part of its connection between Wichita to the east and Kingman, located 24.6 miles west of Garden Plain, to the west. There are two shippers located on the line: Techmer PM and Spartech Plastics. Both maintain facilities in Wichita where they have received sporadic shipments of plastic pellets in recent years. These shippers received eight carloads in 1998, three in 1999, and none in 2000. Petitioner asserts that the shippers have available motor carrier service via U.S. Highway 54 (U.S. 54), which runs near the shippers' locations and parallels the line. CKR also notes that it will continue to operate nearby rail lines from which plastic pellet traffic may be transloaded.

There are three shippers located on CKR's Garden Plain-Kingman line, but they have not shipped traffic over the subject line in recent years. Petitioner proposes to offer these three shippers, as well as its shippers at points farther west, continued service to Wichita over an alternate route.

Petitioner is the successor-in-interest to its former affiliate Kansas Southwestern Railway, L.L.C. (KSW), as the owner of a line between Wichita and Kingman via Conway Springs, a

⁴ Because we are largely granting the Rail Users' motion to reject, protestants' motion for leave to file a reply to CKR's reply material will be denied as moot.

point south of and approximately equidistant from Kingman and Wichita.⁵ CKR proposes to operate over that line in lieu of the line running through Garden Plain. CKR acknowledges that mileages will be longer via the new routing, but assertedly only 10 miles longer for traffic moving between Wichita and points in and west of Kingman. The railroad says that use of the new route will afford faster, safer service for CKR's shippers owing to increased speed limits, less congestion, and fewer crossings.

The line segment between Conway Springs and Kingman, over which CKR proposes to continue to provide service if its abandonment petition is granted in the present proceeding, is among those that the Board authorized KSW to abandon in Kansas Southwestern Railway, L.L.C.—Abandonment—In Sumner, Harper, Barber, Reno and Kingman Counties, KS, STB Docket No. AB-437 (Sub-No. 1) (STB served June 10, 1999) (KSR I). In a decision served November 30, 2000, in that proceeding (KSR II), the Board granted a request for an extension of the abandonment consummation deadline to June 8, 2001. The Board noted that, as justification for the extension, the railroad had explained that, "it was working with the State of Kansas to relocate a portion of its rail line near Kingman and that it was uncertain which portion of the line approved for abandonment would not be needed for future operations after the relocation is completed." KSR II at 1. CKR acknowledges that a rehabilitation project is under way, and it asserts that it would not consummate abandonment here until the rehabilitation of the alternate route is completed.

CKR shows that it earned on-branch revenue of \$24,015 (\$2,750 freight revenue and \$21,265 other income) in 1998; \$21,365 (\$600 freight revenue and \$20,765 other income) in 1999; and \$5,265 (\$0 freight revenue and \$5,265 other income) in 2000. CKR also shows that it incurred on-branch avoidable costs of \$27,224 in 1999, and thus experienced a \$5,859 loss from operations in that year.

Included in petitioner's costs is \$26,595 for actual maintenance-of-way (MOW) expenditures. CKR asserts, however, that only essential maintenance has been performed on the line in the last 3 years because the railroad has sought to minimize its operating costs. CKR estimates that it would need to spend \$88,000 annually, or \$5,500 per mile, to maintain the line on a normalized basis. Assuming the same local freight revenues (\$600) and transportation costs (\$629) as in 1999, projected other income of \$5,265 for 2001, and \$88,000 in MOW costs, CKR calculates that it would incur an operating loss of \$82,764 in the forecast year of December 1, 2000, through November 30, 2001. Petitioner avers that, were opportunity costs also factored in, its economic loss during the forecast year would be significantly higher.

⁵ KSW was merged into CKR on or shortly after April 26, 2000, pursuant to a notice of exemption in OmniTRAX, Inc., Central Kansas Railway, L.L.C., and Kansas Southwestern Railway, L.L.C.—Corporate Family Transaction Exemption, STB Finance Docket No. 33868 (STB served and published May 8, 2000 (65 FR 26658)).

CKR does not present revenue and cost data relative to its overhead traffic. Petitioner notes that revenues from overhead traffic are attributable to a rail line only to the extent that such traffic cannot be rerouted efficiently and economically, and CKR asserts that its overhead traffic can be rerouted.⁶ Petitioner contends that the alternate routing of its overhead traffic will mean not only faster, safer service for its shippers, but also increased efficiencies and cost savings for the railroad. CKR asserts that fewer crews will be needed to serve the shippers, thus reducing labor/transportation costs, that MOW costs will be less as the route will be newly rehabilitated, and that car hire costs will be reduced as the time to return cars to Wichita also will be sharply reduced.

The petition is supported by the City of Wichita (the City), Sedgwick County (the County), and the Kansas Department of Transportation (KDOT). The City supports the petition for three reasons. The first concerns flood control. The City asserts that removal of a bridge across Cowskin Creek will permit Wichita to widen the channel and lower the flood elevation upstream of the bridge, thus forestalling a recurrence of severe flooding such as that which occurred in 1998. Second, the City asserts, the presence of tracks along the side of U.S. 54, and the signalization required because of the tracks, limits the capacity of highway interchanges. According to the City, KDOT currently is redesigning the U.S. 54/Interstate Highway 235 (I-235) interchange in Wichita, and the removal of petitioner's tracks, which pass through the interchange, would permit a much more economical design. Finally, the City states that a portion of the right-of-way (between mileposts 4.53 and 9.62) runs through an area that is zoned either residential or mixed use. The City indicates that it wants to enhance the area by developing greenways and paths where that portion of the right-of-way now exists. The City adds that the requested abandonment would enable it to remove 10 crossings over extremely busy streets.

The County indicates that it supports Wichita's plan to extend its greenway/trail system. It notes also that abandonment will facilitate the elimination of up to 14 highway crossings between milepost 8.62 and Garden Plain, including 5 crossings that handle high volumes of school traffic. KDOT echoes the City's statements regarding the design of the U.S. 54/I-235 interchange.

The City, the County, and KDOT support an exemption from the OFA and public use condition procedures so that the state and local governments can quickly move ahead with their projects. The City adds that the imposition of a public use condition is unnecessary because the right-of-way is to be acquired and used for important public purposes. Imposition of a public use condition, the City asserts, would delay its engineering and construction planning.

⁶ In support, CKR cites Central Michigan Ry. Co.—Abandonment, 7 I.C.C.2d 498, 513 (1990) (Central Michigan).

Protestants criticize CKR's financial data, largely because it failed to include overhead traffic. Protestants argue that such data should be included because there is no alternate route available. Operation over the line between Conway Springs and Kingman, they assert, must await the rehabilitation of 25 miles of track and the construction of 3 miles of new rail line, and there is only speculation as to when such projects will be completed.

Protestants present calculations showing that, between 1998 and 2000, petitioner handled 2,617 carloads of grain in overhead movements for five named shippers, from which it earned revenue of \$235,286. Protestants also show 462 carloads of plastic pellets moving to Polymer Group, Inc., at Kingman, over the last 3 years.⁷

Protestants contest CKR's revenue figures and question the unexplained origin of petitioner's "other income." As to costs, protestants believe that only one locomotive, not two, has been used to provide local service over the subject line. Protestants argue that not only is the asserted normalized \$5,500 per mile MOW cost unduly high, but that the claimed actual \$1,662 per mile MOW is excessive as well. They criticize the lack of data or witnesses supporting the MOW figures. Protestants also recalculate on-branch avoidable costs using the Uniform Rail Costing System "Region 7, 1998 Cost Data" and state that the total should be \$10,643, which includes \$10,540 for MOW. This compares with petitioner's 1999 total of \$27,224, which includes \$26,595 in actual MOW costs.

Protestants also dispute CKR's allegations regarding track conditions on the subject line. Mr. Hostetler, a locomotive engineer formerly employed by CKR, contends that long stretches of the subject line are in condition to permit speeds greatly exceeding the 5 m.p.h. limit claimed by petitioners, and that the remainder needs only slight resurfacing work and a tie replacement program to support speeds up to 25 m.p.h. or better. Mr. Hostetler further disputes the premise that the proposed alternate route is faster and safer than the current route. For instance, he notes, the alternative routing for shippers at Garden Plain, such as Fisher Lumber Company, would involve traversing 100 crossings instead of the current 31. Protestants also argue that the alternate route is longer than petitioner states.

Protestants contend that CKR has deliberately downgraded the subject line, specifically, by providing fewer cars than shippers ordered. Charles Swayze, General Manager of the Farmers Cooperative Equity Company, asserts that, between 1998 and 2000, his company ordered 1,950 cars from petitioner but received only 1,221. He asserts that his company could ship 800 to 900 railcars a year if CKR could provide it one train a week. Also, Danny McLarty, General Manager of the Protection Cooperative Supply Company, asserts that, while his company has the potential to ship 400 to 600 railcars of wheat a year, it stopped using CKR because of poor service.

⁷ Polymer Group notes that it expects its demand for rail cars to increase by 20%.

Regarding the support of the state and local governments, protestants complain that the entities did not properly inform the public of their planned projects. Protestants assertedly were unaware of the plans until articles appeared in the Wichita Eagle newspaper. Protestants believe that the involved government entities maintained secrecy in order to avoid criticism of their plans. Protestants also dispute the wisdom of the planned projects. In particular, Mr. Hostetler argues that the bridge over Cowskin Creek is not the cause of flooding.

Protestants maintain that CKR has been disregarding the interests of its customers. They consider petitioner's proposed operation to be inefficient and uneconomical. They assert that the proposed abandonment exemption is not limited in scope because petitioner annually handles hundreds of carloads over the subject line in overhead movements. And they argue that petitioner has the market power to determine who will be favored with its hopper cars to ship grain to flour mills in Wichita.

Finally, protestants move to strike CKR's environmental report. In support of the motion, they cite several sections in the report where petitioner has stated that no overhead traffic has moved over the line in the past 3 years. They note that such statements are inconsistent with statements in the petition for exemption and are clearly erroneous. Protestants also dispute statements that the abandonment will not have any detrimental effect on prime agricultural land. In this regard, Mr. Hostetler asserts that the planned rehabilitation and construction on the line between Conway Springs and Kingman will have a direct and profound impact on prime agricultural land.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

As in any abandonment case, whether initiated by application or petition, the railroad must demonstrate that operating the line in question is a burden on interstate commerce. Typically, as here, in an attempt to make that showing, the carrier submits evidence to show that the costs it incurs for the line exceed the revenues attributable to it. Protestants contest CKR's financial showing.

We agree that petitioner could have been more definitive in specifying its revenue and costs figures for local traffic. Nevertheless, even viewing the evidence in a light most favorable to protestants, we conclude that local costs exceed local revenues. Scant, if any, local traffic moves over the line. Using only petitioner's 1999 "essential" MOW figure of \$26,595, or \$1,662 per mile, which we deem reasonable, and CKR's highest annual revenues for the past three years (\$24,015), the line would still lose more than \$2,500 a year. This is without considering

normalized MOW or any other costs. Protestants have asserted that, with only slight resurfacing work and a tie replacement program, the subject line could support speeds up to 25 m.p.h. or better. However, petitioner has not included rehabilitation costs in its calculations, and protestants do not suggest a figure for such costs. Further, protestants do not quantify how increased expenditures for rehabilitation would reduce operating costs or increase revenues.

Protestants contend that CKR should have included data relating to overhead traffic because there is no alternate route available for that traffic. They argue also that the asserted alternate route is longer, less safe, and more circuitous than the current route. While protestants' calculations are questionable, and we are not told which shippers' traffic moves in what volumes between which relevant points, it is nonetheless apparent that substantial overhead traffic moves over the subject line.⁸ It also is clear that the alternate route is not yet available, but it is not clear when it will be ready to handle traffic. Accordingly, in the circumstances, any approval here would be made subject to the alternate route's being made operational.

We disagree with contentions that the alternate route is too long and unduly circuitous. There is nothing in the record to establish that adding either 10 or 20 miles to the route between Kingman and Wichita would materially affect any shippers, particularly as most of the shippers that protestants name are situated at points west and southwest of Kingman, some at substantial distances. It is true that service between Garden Plain and Wichita would be circuitous, as CKR would serve Garden Plain via Kingman, to its west, while Wichita lies east of Garden Plain. But there is no evidence that any shipper at Garden Plain has made shipments to Wichita in recent years. Mr. Hostetler cites Fisher Lumber Company and an unnamed grain co-op as shippers situated at Garden Plain, but neither appears here, and the record does not reflect what volumes, if any, these shippers have tendered or would tender petitioner.

Assertions that CKR has deliberately downgraded the subject line are unsupported. Messrs. Swayze and McLarty simply present evidence that they received fewer cars than they ordered. Petitioner's failures in this regard do not equate to deliberate downgrading. Moreover, neither of the affiants relates its traffic to the subject line. In any event, if relevant to this proceeding, the traffic would be overhead in nature.

Protestants' contentions regarding safety of operations are unconvincing. State and local officials support the petition, in part because they want to eliminate crossings and improve a highway interchange. Protestants' contentions boil down to an argument that increased volumes of traffic will traverse various crossings on the alternate routes. While this appears true, we remind protestants that petitioner has always been free to reroute its traffic as a matter of

⁸ The fact is confirmed in petitioner's corrected environmental report, referenced below.

managerial discretion without the involvement of the Board. See, e.g., Futurex Industries, Inc. v. ICC, 897 F.2d 866 (7th Cir. 1990); and Central Michigan.⁹

Regarding protestants' complaints of lack of notice from state and local governments, we do not see how that matter is relevant here. There is no argument that the railroad failed to give proper notice as required by our rules or that any party's participation here has been hindered.

We will deny the motion to strike CKR's environmental report. The misstatements therein do not fatally affect the Board's ability to make an assessment of the environmental impact. On February 16, 2001, the Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) and recommended four conditions, discussed below. The misstatements regarding overhead traffic did not affect those recommendations. SEA subsequently requested petitioner to file an amended environmental report correcting the information regarding overhead traffic. Petitioner complied on March 6, 2001. SEA has reviewed the corrected report and has concluded that no additional environmental conditions, beyond the four contained in the EA, are necessary.

We conclude that detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving CKR of the cost of owning, maintaining, and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. Little or no local traffic has moved over the line in recent years, alternative motor carrier service is available to local shippers, and alternative rail service is available to both local and overhead shippers. Also no local shipper has objected to the proposed abandonment. Nevertheless, to ensure that the two local shippers who have used the line in recent years are informed of our action, we will require petitioner to serve a copy of this decision on them within 5 days of the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

As noted, the alternate route that petitioner proposes to use for overhead traffic has been approved for abandonment and is the subject of rehabilitation and relocation projects. Petitioner states that it will not consummate abandonment of the line involved in the present proceeding until the alternate route is operational. We will make our grant of an exemption here subject to the condition that petitioner not consummate the abandonment until after it has requested

⁹ We also remind petitioner that, in any event, all crossings should be maintained so as to be safe. This matter is not, however, within the Board's province.

dismissal of the related abandonment proceeding, in pertinent part, and has certified that its relocation project near Kingman has been completed and that any necessary rehabilitation and maintenance has been performed such that it can operate between Wichita and Kingman via Conway Springs.

As noted, petitioner has submitted an environmental report and a supplemental environmental report with its petition. As required, it has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. SEA has examined the initial environmental report, verified the data it contains, analyzed the probable effects of the proposed action on the quality of the human environment, and served an EA on February 16, 2001, requesting comments by March 19, 2001. As indicated, SEA has also reviewed petitioner's supplemental report. In the EA, SEA recommended that four conditions be imposed on any decision granting abandonment authority.

First, SEA stated that the U.S. Department of Commerce, National Geodetic Survey (NGS), has not completed its review of the proposed abandonment. Therefore, SEA's first recommended condition is that CKR notify the NGS not less than 90 days prior to commencement of any operations that are expected to destroy or disturb any geodetic station markers.

Second, SEA indicated that KDOT requests that petitioner prepare a track salvage work plan. SEA therefore recommended that the railroad consult with KDOT prior to initiation of any salvage activities regarding the preparation of a track salvage work plan.

Third, SEA noted that the Kansas Department of Health and Environment—Bureau of Water states that actions impacting water quality are subject to their review. Therefore, SEA recommended that CKR consult with that bureau and prepare a Non-point Source Pollution Control Plan prior to abandonment and secure all necessary permits prior to initiation of salvage or disposal activities.

Finally, SEA noted that the Kansas State Historical Society (SHPO) has not completed its review of the proposed abandonment. Therefore, SEA recommended that petitioner consult with the SHPO prior to salvage of the rail line to determine if the proposed abandonment is consistent with the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

A comment to the EA was filed by the Rail Users. SEA has reviewed the comment and the initial and corrected environmental reports and determined that no conditions beyond those initially recommended are required. SEA determined that CKR's proposed rerouting of overhead traffic would result in an increase of approximately 6.5 trains a month, or less than 1 additional train a day, over the alternate line between Wichita and Kingman. SEA concluded that such an increase would be de minimis and would not result in significant environmental or

safety impacts.¹⁰ Accordingly, we will impose the conditions recommended by SEA. Based on SEA's recommendations, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

To expedite the post-abandonment transfer of the right-of-way, CKR has requested that the abandonment be exempted from the OFA requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. The state and local governments support the requests. Specifically, the City of Wichita, County of Sedgwick, and State of Kansas have developed various plans for flood control, redesign of a highway interchange, development of a green way, and a removal of crossings to enhance safety, all of which they assert are dependent on abandonment of this line.

Exemptions from 49 U.S.C. 10904-05 have been granted from time to time, when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.¹¹ Here, CKR has agreed to transfer the subject right-of-way for a valid public purpose, obviating the need for a public use condition. Moreover, allowing for an OFA process could delay transfer of the line and hinder the timely completion of the planned construction projects. Significantly, there do not appear to be any active rail shippers on the line.

The evidence of record establishes that the proposed exemptions from 49 U.S.C. 10904-05 meet the criteria of 49 U.S.C. 10502. Applying OFA or public use requirements, in this instance, is not necessary to carry out the rail transportation policy. Allowing the abandonment exemption to become effective expeditiously, without first being subject to these requirements, would minimize the need for Federal regulatory control over the rail transportation system, expedite the regulatory decision, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. Application of these provisions (sections 10904-05) is not necessary to protect shippers from an abuse of market power.¹²

¹⁰ SEA noted that commenter contends that proposed construction projects in the area of Kingman should be subject to environmental review. That issue is outside the scope of this abandonment proceeding.

¹¹ See, e.g., Wisconsin Central Ltd.—Abandonment Exemption—In Marquette County, MI, STB Docket No. AB-303 (Sub-No. 5X) (STB served Oct. 14, 1999); Doniphan, Kensett and Searcy Railway—Abandonment Exemption—In Searcy, White County, AR, STB Docket No. AB-558X (STB served May 6, 1999), and cases cited therein.

¹² We also will not entertain trail use requests. No such requests were filed by the January 31, 2001 due date. Also trail use negotiations can proceed only if the abandoning railroad voluntarily consents to them. Here it is obvious that CKR would not do so in light of the proposed public use of the right-of-way.

Finally, under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting the abandonment exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

It is ordered:

1. The Rail Users' motion to strike petitioner's initial environmental report is denied.
2. The late-tendered letter protest of the City of Kingman is accepted.
3. The Rail Users' motion to reject is granted, and CKR's February 20, 2001 statement is rejected, except with respect to the matter on pages 14 and 15 replying to the Rail Users' motion to strike.
4. The Rail Users' motion for leave to file a reply to CKR's reply is denied as moot.
5. Under 49 U.S.C. 10502, we exempt from the requirements of 49 U.S.C. 10903-05 the abandonment of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that CKR: (1) shall not consummate abandonment until after it has requested dismissal of the abandonment proceeding¹³ with respect to the line segment between milepost 559.028 at Conway Springs and milepost 591.8 at Kingman, and certified that its relocation project near Kingman has been completed and that any necessary rehabilitation and maintenance has been performed such that CKR can operate between Wichita and Kingman via Conway Springs; (2) shall notify the National Geodetic Survey not less than 90 days prior to commencement of any operations that are expected to destroy or disturb any geodetic station markers; (3) shall, prior to initiation of any salvage activities, consult with the Kansas Department of Transportation regarding the preparation of a track salvage work plan; (4) shall consult with the Kansas Department of Health and Environment--Bureau of Water and prepare a Non-point Source Pollution Control Plan prior to abandonment and secure all necessary permits prior to initiation of salvage or disposal activities; and (5) shall, prior to the salvage of rail lines, consult with the Kansas State Historical Society to determine if the proposed abandonment is consistent with the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.
6. CKR is directed to serve a copy of this decision on shippers Techmer PM and Spartech Plastics within 5 days after the service date of this decision and to certify to the Board that it has done so.

¹³ Kansas Southwestern Railway, L.L.C.--Abandonment--In Sumner, Harper, Barber, Reno and Kingman Counties, KS, STB Docket No. AB-437 (Sub-No. 1) (STB served June 10, 1999, June 13, 2000, and Nov. 30, 2000).

7. This exemption will be effective May 10, 2001. Petitions to stay must be filed by April 25, 2001, and petitions to reopen must be filed by May 5, 2001.

8. Pursuant to the provisions of 49 CFR 1152.29(e)(2), CKR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CKR's filing of a notice of consummation by April 10, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If any legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary