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SERVICE DATE - JANUARY 29, 1999

SURFACE TRANSPORTATION BOARD

DECISION

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

STB Docket No. AB-437 (Sub-No. 2X)

KANSAS SOUTHWESTERN RAILWAY, L.L.C.--ABANDONMENT
EXEMPTION--IN RENO, PRATT AND STAFFORD COUNTIES, KS

Decided: January 27, 1999

Kansas Southwestern Railway, L.L.C. (KSW) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon an approximately 64.27-mile line of railroad on the Iuka Branch between milepost 609.97, at Olcott and milepost 630.13 at Iuka, and the portion of its Stafford Branch between milepost 610.0 at Olcott and milepost 654.11 at Radium, in Reno, Pratt and Stafford Counties, KS. Notice of the exemption was served and published in the Federal Register on December 28, 1998 (63 FR 71537-38).

The exemption was scheduled to become effective on January 27, 1999, but a formal expression of intent to file an offer of financial assistance (OFA) has been filed by the Denver Rock Island Railroad (DRI) to purchase the entire line, which has the effect of staying the effective date of the exemption for 10 days until February 6, 1999.¹ DRI simultaneously requested that KSW provide it with the financial data and information prescribed in 49 CFR 1152.27(a). On January 22, 1999, DRI timely filed a petition requesting tolling of the time period for submitting an OFA for an additional two weeks until February 19, 1999.² DRI states that the additional time is required to evaluate the data KSW provides by February 5, 1999, so that it can provide meaningful analysis of the value of the line and submit an OFA.

On January 19, 1999, Iowa Trails Council (ITC) late-filed a request for issuance of a notice of interim trail use (NITU), under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with KSW for acquisition of the right-of-way for use as a trail.

¹ 49 CFR 1152.27(c)(2)(i).

² A request to toll the offer period must be filed within 25 days after publication in the Federal Register (here January 22, 1999).

ITC requests that KSW be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts, ballast or other items necessary to the purpose for which it seeks the corridor, for a 180-day period from the effective date of the abandonment exemption. ITC states that it does not object to the removal of rails and ties during the negotiation period. ITC has submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking in compliance with 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. By reply filed January 22, 1999, KSW has indicated its willingness to negotiate with ITC.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments--Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). ITC has satisfied these requirements for both a public use condition and a NITU and, therefore, imposition of both would be appropriate commencing with the effective date of the exemption. However, an OFA takes priority over any requests for a NITU or for a public use condition. Therefore, issuance and effectiveness of a NITU and a public use condition will be delayed until the OFA process has been completed. If agreement is reached on sale or subsidy of the line, public use and trail use conditions would be unnecessary and unavailable. If no agreement is reached on the OFA, the appropriate decision and notice of interim trail use will be issued.

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

It is ordered:

1. If the OFA process terminates, a decision effective on its service date will be issued to impose the notice of interim trail use and the public use condition.
2. The requests for issuance of a notice of interim trail use and for issuance of a public use condition are held in abeyance pending completion of the OFA process.
3. KSW is directed to provide DRI with the requested information to enable DRI to file an OFA. The deadline for DRI to file its OFA is extended to February 19, 1999.

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4. The effective date of the exemption is postponed until March 1, 1999.
5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary