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SERVICE DATE - JUNE 1, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-471 (Sub-No. 4X)

SOUTH KANSAS AND OKLAHOMA RAILROAD COMPANY--
ABANDONMENT EXEMPTION--IN CRAWFORD, WILSON, ELK AND GREENWOOD
COUNTIES, KS AND OSAGE AND TULSA COUNTIES, OK

Decided: May 29, 2001

South Kansas and Oklahoma Railroad Company (SKO) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk, and Greenwood Counties, KS. Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92). On October 10, 2000, the Board received a notice of intent to file an offer of financial assistance (OFA) to purchase the 6-mile portion of the right-of-way between milepost 359.0 and milepost 365.0 in Crawford County, KS. While no OFA was ultimately filed, the effectiveness of the exemption was delayed until November 30, 2000, to permit the potential offeror to obtain needed information. On November 29, 2000, a decision and notice of interim trail use or abandonment (NITU) was served authorizing a 180-day period for SKO to negotiate a trail use agreement with: (1) the City of Pittsburg for the 6-mile portion of the right-of-way between milepost 359.0 near Pittsburg and milepost 365.0 near Cherokee; and (2) the Trust for Public Land (TPL) for the 35-mile portion of the right-of-way between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall.¹ On December 29, 2000, a NITU was served authorizing a 180-day period for SKO to negotiate a trail use agreement with the American Trails Association for the 23.5-mile portion of the right-of-way between milepost 438.5 at Severy and milepost 415.0 at Fredonia. The negotiation period under the NITU is due to expire on May 29, 2001.

On May 22, 2001, TPL filed a request to extend the negotiation period for the portion of the line in Oklahoma between milepost 157.10 in Tulsa County and milepost 188.0 in Osage

¹ The November 29 decision also imposed a 180-day public use condition that expires on May 29, 2001.

County. TPL states that negotiations will not be completed prior to May 29, 2001.² In a response submitted by facsimile on May 25, 2001, SKO states that it has not consummated the abandonment between milepost 157.10 and milepost 188.0, and is agreeable to the extension request.

Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.³ Under the circumstances, further extension of the negotiation period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to November 25, 2001, for TPL to negotiate with SKO regarding the line segment between milepost 157.10 and milepost 188.0.

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

It is ordered:

1. The NITU negotiating period for that portion of the railroad line between milepost 157.10 and milepost 188.0 in Tulsa and Osage Counties, OK, is extended to November 25, 2001.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² TPL states that, on March 15, 2001, it and SKO consummated a trail use/rail banking agreement for the portion of the right-of-way between milepost 153.0 and 157.10. TPL also states that, on the same date, it and the City entered an agreement with respect to that part of the line and that they will be filing a joint notice of transfer and a request for substitution pursuant to 49 CFR 1152.29(f).

³ See Rail Abandonments--Supplemental Trails Act Procedures, 4 I.C.C.2d, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and SSW Ry. Co.--Aban.--In Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).