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SERVICE DATE – JUNE 26, 2003

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: June 25, 2003

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.¹ 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. SKO and TPL reached a trail use agreement as to the portion of the right-of-way between milepost 153.0 and milepost 157.10 and by decisions served on June 1, 2001, and December 31, 2001, the negotiation period was extended to May 24, 2002, at TPL's request for the portion of the right-of-way between milepost 157.10 and milepost 188.0.² TPL and SKO reached a trail use agreement as to the portion of the right-of-way between milepost 157.10 and milepost 163.21 and Tulsa County was subsequently authorized to replace TPL as the interim trail user for that portion of the right-of-way by decision served on April 24, 2002. By decisions served on June 11, 2002, and November 12, 2002, the negotiation period under the NITU was extended at

¹ Notice of the exemption was served and published in the Federal Register on October 6, 2000 (65 FR 59891-92).

² The City of Tulsa was subsequently authorized to replace TPL as the trail user between milepost 153.05 and milepost 157.10.

TPL's request to May 19, 2003, for the portion of the right-of-way between milepost 163.21 and milepost 188.0.

On May 19, 2003, TPL filed a request to extend the negotiating period for an additional 180 days. TPL stated that details pertaining to this transaction had delayed the process by several weeks, but that it anticipated that conveyance of the property could occur by the end of May 2003.

On May 19, 2003, Alfred E. Mullen, Marilyn S. Mullen, Tonya Annette Mahan, Jack O. Jones, Donna Sue Jones, William L. Craine and Leonard Easkey (collectively referred as petitioners) filed a petition for leave to intervene in this proceeding to oppose an extension of the trail use negotiating period. Petitioners (owners of property adjacent to the line) asserted that, during the negotiating period, they have suffered trespass and destruction of personal property. They also stated that sections of the corridor adjacent to their property have been unmowed and been kept in a state of disrepair that they maintain is hazardous to the health, safety, and welfare of local inhabitants.

SKO filed a reply to TPL's and petitioners' requests. SKO states that it is agreeable to the extension sought by TPL and reports that the parties have reached an agreement, but were unable to close before the negotiation period was due to expire on May 19, 2003. SKO opposes petitioners' request for intervention and petitioners' request that the NITU negotiation period not be extended.³

Under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and the Board's implementing rules, if a prospective trail user requests a trail condition and the carrier indicates its willingness to negotiate a trail agreement, the Board's role under the Trails Act is largely ministerial. Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990) (Goos). To invoke the Trails Act, a prospective trail sponsor need only file a request accompanied by the necessary statement of willingness to assume liability and acknowledgment that interim trail use is subject to possible reinstatement of rail service. See National Ass'n of Reversionary Property Owners v. STB, 158 F.3d 135, 138 (D.C. Cir 1998); 49 CFR 1152.29(a) and (d). If the railroad indicates its willingness to negotiate, the Board must then issue a NITU. Goos, 911 F.2d at 1295.

Because trails must be maintained according to state and local land use plans, zoning ordinances, and public health and safety legislation, adjacent property owners allegedly harmed by improperly maintained trails can present their complaints to the appropriate state, regional, or local

³ Petitioners' filing did not include a certificate of service, and thus there was no indication that it was served on SKO. Under 49 CFR 1104.12, every document filed with the Board should include a certificate of service showing simultaneous service upon all parties to the proceeding. SKO states that it was made aware of petitioners' filing when it appeared on the Board's website. Under the circumstances, petitioners' intervention will be permitted.

entities. See Burlington Northern Railroad Company–Abandonment Exemption–In Skagit County, WA, Docket No. AB-6 (Sub-No. 299X) (ICC served Oct. 19, 1993).

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.⁴ 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, 59 (8th Cir. 1966), cert. denied, 519 U.S. 1149 (1977). Accordingly, the NITU negotiating period will be extended to November 25, 2003, for the portion of the right-of-way between milepost 163.21 and milepost 188.0.

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

It is ordered:

1. The petition for leave to intervene is granted and accepted into the record in this proceeding.
2. The negotiation period under the NITU for the portion of the right-of-way between milepost 163.21 and milepost 188.0 is extended to November 25, 2003.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

⁴ See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).