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SERVICE DATE - FEBRUARY 8, 2002

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: February 7, 2002

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 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. The negotiation period under the NITU for the portion of the right-of-way between milepost 359.0 and milepost 365.0 expired on May 29, 2001.¹

On January 24, 2002, the City of Pittsburg filed a request to extend the negotiation period for the 6-mile portion of the right-of-way between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee until June 30, 2002. The City of Pittsburg states that it and SKO are continuing to negotiate an interim trail use/rail banking agreement. By facsimile submission received on

¹ The negotiation period under the NITU has been extended to May 24, 2002, for the portion of the right-of-way between milepost 157.10 and milepost 188.0 by decisions served on June 1, 2001, and December 31, 2001. The June 1, 2001 decision also stated that, on March 15, 2001, TPL and SKO consummated a trail use/rail banking agreement for the portion of the right-of-way between milepost 153.0 and milepost 157.10. By decision served October 10, 2001, the proceeding was reopened and the NITU served November 29, 2000, was vacated as to the segment between milepost 153.0 and milepost 157.10, and the City of Tulsa was authorized to replace TPL as the new trail user over that portion of the right-of-way.

February 4, 2002, SKO states that it has not consummated the abandonment between milepost 359.0 and milepost 365.0, 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.² 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 June 30, 2002, for the City of Pittsburg to negotiate with SKO regarding the line segment between milepost 359.0 and milepost 365.0.

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 359.0 at Pittsburg and milepost 365.0 at Cherokee is extended to June 30, 2002.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² 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).