

SERVICE DATE - JULY 29, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-441 (Sub-No. 2X)

SWKR OPERATING CO.--ABANDONMENT EXEMPTION--  
IN COCHISE COUNTY, AZ

EXEMPTION PURSUANT TO 49 U.S.C. 10502  
FROM THE PROVISIONS OF 49 U.S.C. 10904(e) and 49 CFR 1152.27(g)

Decided: July 25, 1997

By notice served and published in the *Federal Register* on February 14, 1997 (62 FR 7086), the Board exempted the abandonment by SWKR Operating Co. (SWKR) of its 41.5-mile line of railroad in Cochise County, AZ. Chemical Lime Company (CLC) timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to subsidize the line before SWKR's exemption became effective. By decision served April 4, 1997, CLC was found financially responsible and the effective date of the decision authorizing the abandonment was postponed to permit the OFA process to proceed. Also, as set out in that decision: (1) the parties were given until April 30, 1997, either to reach an agreement on the amount and other terms of the subsidy or purchase, or to file a request for the Board to establish the conditions and the amount of compensation; and (2) if no agreement was reached by the parties, and no request to set terms and conditions was made by the April 30 date, a decision would be issued vacating the April 4 decision and allowing the abandonment authorization to become effective.

On April 23, 1997, petitioners filed a joint petition requesting an exemption pursuant to 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10904(e) and 49 CFR 1152.27(g) to allow them 90 more days to attempt to arrive at a mutually satisfactory settlement. By decision served April 29, 1997, the Board, under 49 U.S.C. 10502, granted the exemption and extended the deadline to July 30, 1997, for the parties to reach an agreement or for a party to request the Board to establish the conditions and amount of compensation.

By joint petition filed July 18, 1997, SWKR and CLC again request an exemption pursuant to 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10904(e) and 49 CFR 1152.27(g). Petitioners' representatives indicate that they have been engaged in discussions, and that the parties in the interim have made progress but remain apart on the terms and conditions for the preservation of the rail line. The parties would like to be able to continue their negotiations, in the hope that they may be able to reach an agreement for the line's continued operation. SWKR and CLC request another extension of time, for 30 days, until August 29, 1997, to try to reach an agreement for the appropriate disposition of the line authorized for abandonment.

DISCUSSION

In order to further extend the statutory deadline here, the parties seek an exemption under 49 U.S.C. 10502. Under that section, we must exempt a transaction or service from a provision of law when we find that: (1) 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 needed to protect shippers from the abuse of market power.

Granting the sought exemption will enable the parties to continue to negotiate the terms of financial assistance here in an attempt to avoid abandonment of this line. As such, exemption here would further the rail transportation policy by minimizing the need for Federal regulatory control over the rail transportation system, promoting a safe and efficient rail transportation system, and fostering sound economic conditions in transportation. 49 U.S.C. 10101(2),(3), and (5). Other aspects of the rail transportation policy would not be adversely affected.

Regulation is clearly not needed to protect shippers from the abuse of market power in this instance. The request for the exemption has been jointly filed by the serving railroad and the only active shipper on the line. Indeed, permitting additional time for negotiations while operations continue would be beneficial for the shipper here and for shippers generally. Because we have found here that regulation is not needed to protect shippers from the abuse of market power, there is no need to make a limited scope finding.

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

*It is ordered:*

1. Under 49 U.S.C. 10502, we exempt this proceeding from the requirements of 49 U.S.C. 10904(e) and 49 CFR 1152.27(g) and extend the deadline to August 29, 1997, for the parties to reach an agreement or for a party to request the Board to establish the conditions and amount of compensation.

2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary