

Voting Conference, September 15, 2005

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San Pedro Operating Company, LLC—Abandonment Exemption—in Cochise County, AZ
STB Docket No. AB-441 (Sub-No. 4X)

Good morning, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

The draft decision submitted for your consideration denies a petition for exemption filed by San Pedro Railroad Operating Company, LLC to abandon approximately 76.2 miles of railroad in Cochise County, AZ. The abandonment is opposed by Chemical Lime Company and Sonora-Arizona International, LLC.

In its petition, San Pedro states that the level of traffic on the line has been inadequate to sustain the railroad and that it foresees no prospects for new traffic in the future. Chemical Lime, the only shipper on the line, argues that its transportation costs would rise significantly if San Pedro were to abandon the line. Chemical Lime also states that it invested significant funds in reliance on San Pedro's service to reopen its plant on the line and to improve the tracks leading to the plant. Chemical Lime argues that there is insufficient evidence upon which to allow the abandonment. Sonora states that it has pursued, developed, and is in the process of implementing significant business ventures directly dependent on continued rail service that could bring traffic to this line.

On rebuttal, San Pedro argues that the increased costs Chemical Lime might face are not a basis for denying the abandonment, and it maintains that the business opportunities Sonora describes are too speculative to be entitled to any weight. Petitioner also submits for the first time on rebuttal 2004 and 2005 pro forma and consolidated financial statements and a bridge repair estimate.

The draft decision before you denies San Pedro's petition for an abandonment exemption. Pursuant to a deadline established by Congress, the Board must issue a decision on the merits in this proceeding no more than 110 days from the date the petition was filed. The draft finds that San Pedro filed its petition knowing that the Board must meet the applicable time limits and that an applicant (or petitioner) must make its case-in-chief on opening. The draft states that, while San Pedro presented some financial information in its petition, it provided no workpapers or other underlying support for its figures.

In accepting Sonora's late-filed statement, the Board, in a prior decision, allowed San Pedro to respond to the statements filed by Chemical Lime and Sonora, but cautioned petitioner to respond directly to the statements and not to submit evidence and argument that could have been submitted with its petition. San Pedro provided more detailed financial information in its rebuttal, but, in doing so, disregarded the Board's limitation on submitting new evidence. The draft finds that it would be unfair and improper to consider that new evidence in this proceeding. If the Board were to consider that evidence, Chemical Lime and Sonora would be unfairly prejudiced because they have not had an opportunity to respond to it. The draft concludes that, without the additional evidence, San Pedro's petition fails. The draft states, however, that denial of this petition is without prejudice to San Pedro's filing an appropriate abandonment application or petition for exemption that contains all relevant evidence and financial data.

We would be happy to answer any questions you might have. Thank you.