

SERVICE DATE - MARCH 20, 1997

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: March 12, 1997

On October 18, 1996, SWKR Operating Co. (SWKR) filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon 41.5 miles of railroad between milepost 1055.8 near Charleston and the end of the line at milepost 1097.3 near Paul Spur, in Cochise County, AZ. A decision and notice of interim trail use or abandonment granting the petition subject to conditions was served and published in the Federal Register on February 14, 1997 (62 FR 7086). The exemption was scheduled to become effective on March 16, 1997, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 CFR 1152.27(c)(2) was filed by February 24, 1997.

On February 19, 1997, a formal expression of intent to file an OFA was timely filed by Chemical Lime Company (CLC).¹ An OFA to allow rail service to continue is due March 16, 1997.

On March 7, 1997, CLC timely filed a petition requesting the tolling of the time period for 15 days, until March 31, 1997, for submitting an OFA.² Counsel for CLC indicates that he has submitted two written requests to SWKR's counsel for information not contained in SWKR's abandonment filings and supplements. CLC's counsel states that the letters have been followed up by oral communications in which counsel have discussed the apparent lack of any right-of-way real estate value estimates from SWKR and the question of track rehabilitation costs. CLC's counsel states that CLC also has not yet received information from SWKR concerning the costs associated with salvaging the rail and track material.

CLC's counsel further states that while SWKR and its counsel have endeavored to provide a complete response to CLC's written data requests, CLC will require a modest amount of additional time to confirm, with SWKR's assistance, the extent of the data contained in materials thus far received. CLC's counsel states that SWKR does not oppose the tolling request.³

¹ This filing automatically stayed the exemption's effective date for 10 days until March 26, 1997. See 49 CFR 1152.27(c)(2)(i) of the Board's former abandonment regulations that were in effect prior to January 23, 1997, and which continue to apply to OFAs in this proceeding, as stated in footnote 9 of the decision served on February 14, 1997.

² A request to toll the offer period must be filed within 25 days after publication in the Federal Register (here March 11, 1997).

³ SWKR did not file a reply.

Under section 1152.27(c)(2)(ii)(C) of the former regulations, the Board will entertain petitions to toll the 30-day period for filing OFAs when, as it appears here, an applicant has failed to provide a potential offeror with the information necessary to the development of its OFA. Accordingly, the period within which an OFA must be filed in this proceeding will be tolled for 15 days until March 31, 1997, and the effective date of the exemption will be postponed until April 10, 1997.

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

It is ordered:

1. The time period for Chemical Lime Company to file an offer of financial assistance is tolled until March 31, 1997.⁴
2. The effective date of the exemption is postponed until April 10, 1997.
3. This decision is effective on the date served.

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

Vernon A. Williams
Secretary

⁴ Due to the Board's scheduled relocation on March 17, 1997, any filings made on or after that date must be filed with the Surface Transportation Board, 1925 K St., N.W., Washington, DC 20423-0001.