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ENTERED
Office of Proceedings

MAR 17 2006

Dept of
Public Records

March 15, 2006

216014



Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: *San Pedro Railroad Operating Company, LLC – Abandonment
Exemption – In Cochise County, AZ; STB Docket No. AB-1081X*

Dear Sir:

I am enclosing an original and ten (10) copies of the Request of Sonora-Arizona International LLC to Set Terms and Conditions in the above referenced proceeding. I am also enclosing a check for the required filing fee of \$18,400. An extra copy is enclosed for date stamp and return to our messenger. Please note that a 3.5 inch diskette is enclosed with this document.

Thank you for your assistance.

Sincerely,

Charles A. Spitulnik

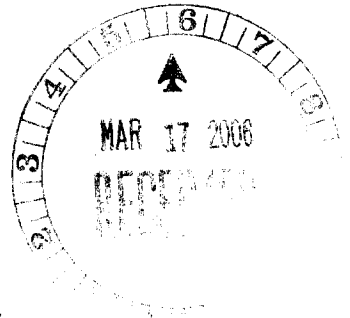
Enclosure

FILED
MAR 17 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Docket No. AB-1081X
SAN PEDRO RAILROAD OPERATING COMPANY, LLC-
ABANDONMENT EXEMPTION-IN COCHISE COUNTY, AZ**

**REQUEST OF
SONORA-ARIZONA INTERNATIONAL LLC
TO SET TERMS AND CONDITIONS**



Communications with respect to this document should be addressed to:

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Counsel for SONORA-ARIZONA
INTERNATIONAL LLC

ENTERED
Office of Project Director
MAR 17 2006
CMT
Public Hearing

Filed: March 17, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Docket No. AB-1081X
SAN PEDRO RAILROAD OPERATING COMPANY, LLC-
ABANDONMENT EXEMPTION-IN COCHISE COUNTY, AZ**

**REQUEST OF
SONORA-ARIZONA INTERNATIONAL LLC
TO SET TERMS AND CONDITIONS**

Sonora-Arizona International LLC ("SAI"), pursuant to 49 C.F.R. § 1152.27, hereby request this Board to set the terms and conditions for SAI to purchase the property and assets that are subject to the Petition for Exemption for Abandonment submitted by San Pedro Railroad Operating Company ("SPROC") in this proceeding.

SAI and SPROC have been able to agree on some basic points with respect to the property that SPROC included in the Petition for Exemption in this proceeding. That is, they agree that SPROC filed a Petition for Exemption on October 17, 2005, and that the Petition for Exemption covered 76.2 miles of track and right-of-way in Cochise County, AZ.

SAI submitted a proposed term sheet for this transaction to SPROC on March 8, 2006. A copy of that term sheet is attached at Tab A. SAI offered to acquire the entire track and right-of-way that was described in the Petition for Exemption as follows:

- (1) A segment of railroad designated as the Bisbee Branch, which extends between milepost 1085.0 at Bisbee Junction, AZ, and milepost 1090.6 at Bisbee, AZ, a distance of 5.6 miles;
- (2) A segment of railroad extending between milepost 1097.3 near Paul Spur, AZ, and milepost 1106.5 near Douglas, AZ, a distance of 9.2 miles;
- (3) A segment of railroad extending between milepost 1055.8 near Charleston, AZ, and milepost 1097.3 near Paul Spur, AZ, a distance of 41.5 miles; and
- (4) A segment of railroad extending between milepost 1040.15 near Curtiss, AZ, and milepost 1055.8 near Charleston, AZ, a distance of 19.9 miles.

Petition for Exemption at 2-3.

In submitting its Offer of Financial Assistance ("OFA") on February 13, 2006, SAI did not and SAI does not now contest the net liquidation value submitted by SPROC as part of its Petition for Exemption, even though SAI's principals believe that SPROC would not be able to recover the full value stated in that estimate if it were to try to sell the line and the materials on it for salvage. As a result, SAI stands by its offer to purchase the 76.2 miles of track and right-of-way for a purchase price of Five Million Four Hundred Thousand Dollars (\$5,400,000.00), the value set forth in the Net Liquidation Value Estimate submitted by SPROC in this proceeding as Exhibit F to its Petition for Exemption. SAI is introducing no additional evidence here to support that offer - - SAI relies on the evidence submitted by SPROC in Exhibit F and elsewhere in its Petition for Exemption.

In its response to SAI's term sheet (*see* Tab A), SPROC attempted to remove two of the line segments from the transaction. With respect to segments (a) and (b), above, SAI stated "No track on this segment; no railroad locally assessed property." Then, after reducing the amount of track and right-of-way by 15.3 miles, SPROC attempted to increase the price from the NLV it had presented to this Board in its Petition for Exemption, to \$5.65 Million. SPROC also attempted to limit its exposure for pre-existing environmental conditions to one year following the closing and a maximum of \$50,000.¹

SPROC's changes are not reasonable, and should not be approved by this Board. The Board's procedures for abandonment and subsequent OFA permit an Offeror to offer to purchase or subsidize all or a portion of the line that is subject to the proceeding where an OFA is

¹ SPROC also modified the proposed trackage rights arrangement with respect to the 7 mile segment from Curtiss to Benson that is described in items 3 and 4 of SAI's proposed term sheet, changing it to a haulage arrangement. SPROC accepted SAI's proposal to have right of first refusal in the event that SPROC elected to terminate or transfer its rights with respect to that segment. However, SAI is not requesting assistance from the Board with respect to this segment because it is not a part of the abandonment proceeding currently pending before this Board.

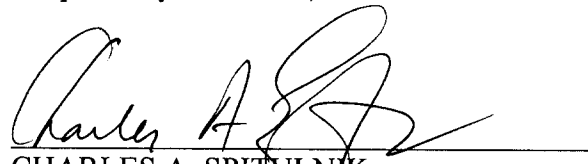
presented. Now, without reasonable justification, SPROC has attempted to reduce the amount of right-of-way that it wishes to sell but increased the price from the value that SAI offered. While the disagreement between the parties is fundamental to the ability to close the transaction, the scope of the inquiry to this Board at this time is in fact limited. SAI is asking the Board to require SPROC to sell the track and right-of-way that is subject to this proceeding to SPROC at the price that SPROC presented to this Board as the NLV in its Petition for Exemption, and to require SPROC to accept as reasonable the remaining items (with the exception of items 3 and 4, as noted in footnote 1, *supra*) of the terms and conditions proposed by SAI.

CONCLUSION

WHEREFORE, SAI respectfully requests the Board to issue an order confirming that the terms and conditions offered by SAI are reasonable and that they should constitute the terms and conditions for the sale of the 76.2 miles of track and right-of-way that are included in the Petition for Exemption in this proceeding to SAI.

Dated: March 17, 2006

Respectfully submitted,



CHARLES A. SPITULNIK
ALEX MENENDEZ
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, DC 20001
(202) 842-2345

Counsel for SONORA-ARIZONA
INTERNATIONAL LLC

CERTIFICATE OF SERVICE

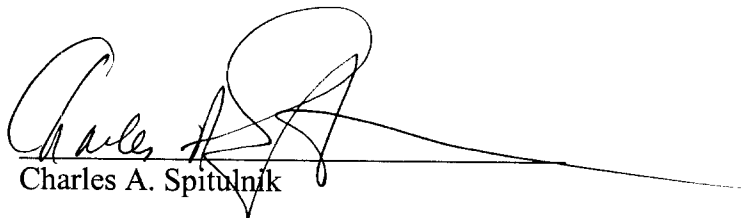
I hereby certify that I have this 17th day of March caused to be served a copy of the REQUEST OF SONORA-ARIZONA INTERNATIONAL LLC TO TO SET TERMS AND CONDITIONS to be served by first class mail (or by hand delivery for those counsel in Washington, D.C.) upon the following:

John D. Heffner
1920 N Street, N.W.
Suite 800
Washington, DC 20036
Attorney for San Pedro Railroad Operating Company, LLC

Rusty A. Brewer
Baker Botts LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

Mark P. Juszli
Chemical Lime Company
P. O. Box 985004
Fort Worth, TX 76185

Tily Shue
The Trust for Public Land
116 New Montgomery Street, 3rd Floor
San Francisco, CA 94105



Charles A. Spitulnik

Term Sheet

Agreement between
Sonora – Arizona International, LLC (“SAI”) and
San Pedro Railroad Operating Company (“SPROC”)

1. Property Description -- Map, drawings and track charts to be attached (SPROC to provide all available detailed description of property, including any metes and bounds descriptions that may be available to SPROC, within 5 days of execution of Purchase and Sale Agreement).

Property as described in the SPROC Abandonment application is: approximately 76.2 miles of track and railroad right-of-way in Cochise County, Arizona, consisting of four segments:

- (a) A segment of railroad designated as the Bisbee Branch, which extends between milepost 1085.0 at Bisbee Junction, AZ, and milepost 1090.6 at Bisbee, AZ, a distance of 5.6 miles;
- (b) A segment of railroad extending between milepost 1097.3 near Paul Spur, AZ, and milepost 1106.5 near Douglas, AZ, a distance of 9.2 miles;
- (c) A segment of railroad extending between milepost 1055.8 near Charleston, AZ, and milepost 1097.3 near Paul Spur, AZ, a distance of 41.5 miles; and
- (d) A segment of railroad extending between milepost 1040.15 near Curtiss, AZ, and milepost 1055.8 near Charleston, AZ, a distance of 19.9 miles.

2. Purchase Price: \$5.4 Million

3. Trackage Rights over the segment of line extending from milepost 1033.008 in Benson, AZ, to milepost 1040.15 in Curtiss, the remaining 7 miles of line owned and/or operated by SPROC. Maps, drawings and track charts to be attached.

- a. Traffic to or from SAI to be delivered at Curtiss at mutually agreed upon interchange point
- b. SPROC to handle all SAI traffic expeditiously and in non-discriminatory manner
- c. Trackage rights not assignable by SPROC without consent of SAI

4. Trackage Rights Fee: **\$TBD** per car mile

- a. All trackage rights fees to be credited towards purchase price of line segment if SPROC elects to sell line segment to SAI

5. Closing: To occur 45 days after execution of Purchase and Sale Agreement

_____ for SPROC
Date: _____
_____ for SAI
Date: _____

6. Condition of property: As is

7. Conditions precedent to closing:

- a. Completion of HiRail trip
- b. SPROC to provide Phase I environmental report for review by SAI at least 30 days prior to closing
- c. Both SAI and SPROC to provide evidence of authority to enter into transaction
- d. SPROC to provide list and copy of all agreements relating to the line that transfer with the line (easements, leases, etc.) and confirm prior to closing that it has complied with all requirements of those agreements with respect to transfer of ownership of line
- e. SPROC to provide, within 10 days of closing, detailed drawings (including architectural blueprints if any) of any improvements located on or adjacent to the line that are included in the property being transferred
- f. SPROC to confirm that execution of Purchase and Sale Agreement, and sale of the line, does not violate any agreement, court order or law to which SPROC is a party or by which it is bound
- g. SPROC to warrant that no tenant, easement holder or other interested party has a superior right to purchase the property and that all outstanding liens on the property have been extinguished or will be extinguished at the closing
- h. Both SPROC and SAI to warrant that there is no litigation (including administrative agency proceeding) or investigation pending that would prevent SPROC from selling the line, or SAI from purchasing it
- i. SPROC to warrant that there are no encroachments on the property from adjoining landholders and that the current use of the property does not encroach on any other adjacent owner's property
- j. SPROC to warrant that information contained in the historic and environmental reports submitted to the STB are true and remain accurate as of the date of the Closing

8. Right of first refusal: If SPROC elects to sell the 7 mile Curtiss – Benson segment, SAI to have right of first refusal at price to be established, if parties can not agree, by appraisal conducted by mutually agreed upon appraiser

9. Liability and Indemnification:

- a. SPROC to hold SAI harmless for all claims for personal or property damage, including but not limited to any claims relating to environmental issues, arising on the property or arising out of its use for events or incidents (including

_____ for SPROC
Date: _____

_____ for SAI
Date: _____

environmental degradation of or caused by use of the property) on or before the closing date

- b. SAI to hold SPROC harmless for all claims for personal or property damage, including but not limited to any claims relating to environmental issues, arising on the property or arising out of its use for events or incidents (including environmental degradation of or caused by use of the property) after the closing date.

10. Insurance: SPROC to maintain current insurance that covers the line in effect until closing

11. Closing:

- a. SPROC to provide grant deed to SAI.
- b. SAI to wire transfer funds to account designated by SPROC
- c. Parties to execute Trackage Rights Agreement at closing
- d. SPROC to deliver executed assignments of all leases, agreements, easements relating to the line, such assignment to include where necessary the consent of the other party to the agreement.
- e. SPROC to deliver assignment of any warranties related to the line or to materials attached to it or structures on the line.
- f. Each party to provide resolutions of Board of Directors or of shareholders if an LLC, certified by the corporate secretary, that confirm corporate authorization to enter into the transactions
- g. Each party to provide opinion of counsel that corporation is duly authorized to enter into the transactions, that all regulatory approvals have been received, and that the transactions are otherwise within the authority of the corporation and in compliance with all applicable laws

12. Risk of Loss: Prior to closing remains with SPROC

Date: _____ for SPROC

Date: _____ for SAI