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June 26, 2002



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington, DC 20423

RE: Finance Docket No. 34191, *Petition for Declaratory Order of Charles M. Sotelo*

Dear Secretary Williams:

Enclosed are the original and 10 copies of the Motion to Reject or Strike of SWKR Operating Co. and San Pedro Trails, Inc. to the reply to reply filed in above-entitled proceeding. Also enclosed are three floppy discs with the pleading Motion.doc. Please time and date stamp the extra copy of this letter and pleading and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Louis E. Gitomer".

Louis E. Gitomer
Attorney for SWKR Operating Co. and
San Pedro Trails, Inc.

ENTERED
Office of Proceedings

JUN 27 2002

Part of
Public Record

Enclosures

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34191



PETITION FOR DECLARATORY ORDER OF CHARLES M. SOTELO

MOTION TO REJECT OR STRIKE OF SWKR OPERATING CO.
AND SAN PEDRO TRAILS, INC.

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Attorneys for: SWKR Operating Co. and San Pedro
Trails, Inc.

Dated: June 26, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

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PETITION FOR DECLARATORY ORDER OF CHARLES M. SOTELO

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AND SAN PEDRO TRAILS, INC.

SWKR Operating Co. ("SWKR") and San Pedro Trails, Inc. ("SP Trails") (collectively "Respondents"), in the alternative, request the Surface Transportation Board (the "Board") either to (1) pursuant to 49 CFR 1104.10(a) reject the Reply of Charles M. Sotelo ("Petitioner") dated May 29, 2002 and filed June 6, 2002 (the "Reply") for failure to serve the Reply on Respondents as required by 49 CFR 1104.12(a) or (2) pursuant to 49 CFR 1104.13(c) strike the Reply as an impermissible reply-to-reply.

Respondents presented the background to this proceeding in the Response filed on May 13, 2002, and will not repeat it in this procedural motion.

1. The Board should reject the Reply for Petitioner's failure to serve it on Respondents.

Respondents urge the Board to reject the Reply. The Board requires service of pleadings "upon all parties to the proceeding." 49 CFR 1104.12(a). As of the date of the filing of this motion, the Reply has not been served on Respondents.

Respondents obtained a copy of the Reply from the Board's website. However, Petitioner did not give Respondents any notice that the Reply was filed. There is no certificate of service attached to the Reply. There is not even a "cc" on the cover letter.

Respondents respectfully request the Board to exercise its discretion to reject the Reply for this violation of one of the most basic requirements of due process as the Board's rules provide at 49 CFR 1104.10(a).

2. The Board should reject the Reply as an impermissible and unjustified reply to a reply.

In the alternative, Respondents respectfully urge the Board to strike the Reply because (1) it is an impermissible reply to a reply under CFR 1104.13(c); (2) Petitioner did not accompany submission of the Reply with a petition for waiver; and (3) the Reply contains information and arguments that could have been submitted earlier. *PSI Energy, Inc. v. CSX Transportation, Inc. and Soo Line Railroad Company*, STB Docket No. 42034 (STB served September 11, 1998). Moreover, Petitioner has not shown good cause to justify the Reply. *South Orient Railroad Company, Ltd.—Abandonment and Discontinuance of Trackage Rights—Between San Angelo and Presidio, TX*, STB Docket No. AB-545 (STB served October 6, 1998).

There is no question that the Reply is a reply to a reply. The Reply does not ask the Board to waive its rules or accept it. The Reply does not provide any good cause to accept it.

Respondents contend that the only possible open question is whether the Reply contains information and arguments that could have not been submitted earlier with the Petition for Declaratory Order filed on April 23, 2002 (the "Petition"). The background on pages 3 and 4 recount the history of railroad service to Naco, AZ and certain email communications with personnel at RailAmerica, Inc. (the parent of Respondents since January 4, 2002) on January 7 and April 1, 2002, both before the Petition was filed.

The argument on pages 4 and 5 addresses Respondents' May 13, 2002 reply to the Petition and alludes to the issues of invasion of territory, Respondents' potential uses of the trail banked railroad line in Naco, AZ, and whether an unaffiliated third party can make use of the

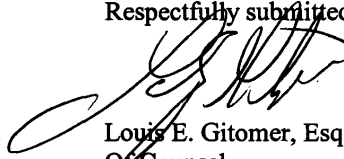
relocation exception to construct a railroad line without advance Board approval. These are all legal issues that are central to whether the Board should grant the declaration requested by Petitioner, and could have, and should have, been addressed in the Petition.

Finally, in the conclusion on pages 5 and 6, Petitioner provides data related to the Naco region that were available when the Petition was filed.

CONCLUSION

Respondents respectfully request the Board to reject Petitioner's Reply either for failure to serve the Reply on Respondents or to strike the Reply is an impermissible and unjustified reply to a reply.

Respectfully submitted,



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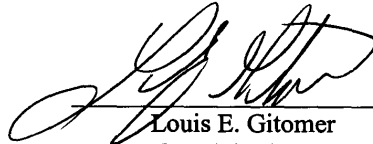
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Dated: June 26, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Motion to Reject or Strike of SWKR Operating Co. and San Pedro Trails, Inc. to be served upon Charles M. Sotelo by first-class mail, postage pre-paid.



Louis E. Gitomer
June 26, 2002