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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-549]

City of Rochelle, Illinois—Adverse Discontinuance—Rochelle Railroad Company

On February 16, 1999, the City of Rochelle, IL (City), filed an adverse application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) authorize the discontinuance by the Rochelle Railroad Company (RRC) of service over 2.06 miles of track that the City owns in an industrial park. The line was not further described in the application, but a map included with the filing indicates that the line begins at a switch near the intersection of Caron Road and Creston Road and ends in a stub east of Grecco Drive. The line has no stations and traverses United States Postal Service ZIP Code 61068.

In early 1998, the City terminated a contract with RRC to operate the line, but RRC continued to operate over the line. The City has also been operating the line under a Notice of Exemption in City of Rochelle, Illinois—Notice of Exemption—Commencement of Rail Common Carrier Operations, STB Finance Docket No. 33587 (STB served and published (63 FR 30036) June 2, 1998).

In a decision served in this proceeding on June 5, 1998, the City was granted a waiver of filing requirements in 49 CFR 1152 and was given permission to file an adverse discontinuance application containing the following information: (1) the name and address of the applicant; (2) the name and address of counsel; (3) a detailed map of the facilities involved; (4) the total carloads broken out for each of the shippers currently using the line

(asserted to be three); (5) a summary of the principal commodities handled, if available; (6) a summary operating plan for operations of the substitute carrier; (7) certification that the City's current, or proposed, operations comply, or will comply, with all federal and state safety requirements; (8) an opinion of counsel that the prior lease with RRC was terminated in accordance with its terms; (9) documentation from the City that authorizes the operations of the substituted service; (10) a statement from the City Manager of the reasons for the application and the benefits that will be obtained if the application is approved; and (11) supporting statements from shippers. The City was also granted a waiver of all notice and publication requirements but was required to serve a copy of its application on the shippers on the line, RRC, connecting "trunk carriers" and the Illinois Commerce Commission (Commission).

The City states that, under a Mediation Agreement dated November 12, 1998, RRC ceased serving the line on November 13, 1998, and agreed not to oppose the City's adverse discontinuance application. The City suggests that an adverse discontinuance proceeding is unnecessary because RRC has ceased operations and will not oppose the application and the City is currently providing service. As an alternative to consideration of the discontinuance application, the City requests that the adverse discontinuance proceeding be dismissed. The City asserts that, if the application is dismissed, RRC will be deemed to be relieved of its common carrier obligation.

In light of the settlement and the need for a formal end to RRC's common carrier obligation, the application for adverse discontinuance will not be dismissed. No other pleading is before the Board that would provide an opportunity for the Board to authorize

discontinuance of RRC's operations. Thus, while the situation here is unusual, the Board can proceed to resolve the remaining issues in the context of an adverse discontinuance proceeding.

The City further states that, if the Board accepts the discontinuance application, much of the information it was required to submit by the June 5, 1998 decision is now unnecessary because the adverse discontinuance application will likely be unopposed. Moreover, the City states that, because it is the only operator of the line, information about total carloads, a summary of the principal commodities, a summary operating plan, the benefits to be received from the application, the documentation from the City authorizing the service and supporting statements from shippers is no longer relevant. As a result, the City requests that the Board waive submission of that information. The City says that it has provided the remainder of the information called for in the June 5, 1998 decision and has served copies of its application on shippers, RRC, connecting carriers and the Commission.

A ruling on the City's waiver request will be deferred. While RRC has agreed not to oppose the adverse application, there are other interested parties who have participated in previous proceedings involving the City and RRC who may want to participate in this proceeding. The information sought to be waived might at some point be needed to address issues raised by other parties. The City will therefore be expected to supplement the record if necessary. On the other hand, if the application is unopposed, the decision on the merits of the application will be based on the existing record.

There is no indication that the line contains any federally granted right-of-way. Any documentation in the City's possession will be made available promptly to those requesting it. The applicant's entire case for discontinuance of service was filed with the application.

The interest of affected railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed discontinuance or protests (including the protestant's entire opposition case), by April 2, 1999. Because this is a discontinuance proceeding, and not an abandonment, trail use/rail banking, and public use requests are not appropriate. Also, offers of financial assistance will not be entertained in this proceeding. Any offer here would be limited to subsidization of RRC's services. Given the settlement agreement, RRC's cessation of operations, and the City's provision of continued rail service, the public interest does not require the consideration of offers of financial assistance.

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest by April 2, 1999. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments by April 2, 1999. Parties seeking information concerning the filing of protests should refer to section 1152.25. The due date for applicant's reply is April 17, 1999.

All filings in response to this notice must refer to STB Docket No. AB-549 and must be sent to (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001 and (2) John M. Robinson, 9616 Old

Spring Road, Kensington, MD 20895. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board or refer to the full abandonment regulations at 49 CFR part 1152.

The June 5 decision waived compliance with environmental regulations because the City is a substitute operator of the line. Accordingly, no environmental assessment will be prepared in this proceeding.

Decided: March 2, 1999.

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

Vernon A Williams

Secretary