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SERVICE DATE - JUNE 5, 1998
SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-549

CITY OF ROCHELLE, ILLINOIS
--ADVERSE DISCONTINUANCE--
ROCHELLE RAILROAD COMPANY

Decided: June 3, 1998

The petition of the City of Rochelle, Illinois (the City), for waiver of certain regulations for the filing of a third party or "adverse" discontinuance application will be granted to the extent discussed in this decision.

BACKGROUND

The City indicates that it intends to ask the Board to find that the public convenience and necessity permit the discontinuance of operations by the Rochelle Railroad Company (RRC) over 2.06 miles of track that the City owns in an industrial park within the City. RRC, the current operator, has been operating the line under lease. In a separate proceeding, the City is seeking to commence substitute operations over its line under its own authority.¹

By petition filed May 8, 1998, the City seeks waiver of all filing requirements so as to allow it to file an adverse discontinuance application that would contain only 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) total carloads broken out for each of the shippers currently using the line (asserted to be three);

¹ See the notice of exemption in City of Rochelle, Illinois -- Notice of Exemption -- Commencement of Rail Common Carrier Obligations, STB Finance Docket No. 33587 (STB served June 2, 1998) and published in the Federal Register on June 2, 1998. RRC has petitioned to revoke that exemption, which went into effect on May 5, 1998.

- (5) summary of the principal commodities handled, if available;
- (6) 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) 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 also requests waiver of all notice and publication requirements, except the following:

(1) The instant petition would be served on the "relevant parties" (the shippers on the line, the Rochelle Railroad Company, and connecting "trunk line" carriers). The City requests that its petition for waiver serve as the notice of intent to discontinue or to abandon service required under 49 CFR 1152.20.

(2) A copy of the application would be served on each of the aforementioned "relevant parties" and on the Illinois Commerce Commission.

Finally, the City requests waiver of our requirement of environmental analysis.

On May 15, 1998, RRC filed a motion to strike the City's request for a waiver. On May 29, 1998, Americold Inc., which states that it is a shipper on the 2.06 miles of track operated by RRC, objected to the City's petition for waiver. On June 1, 1998, the City filed a reply to RRC's motion.

DISCUSSION AND CONCLUSIONS

The City's waiver request will be granted. Any additional requirements would not be relevant to an adverse discontinuance action. Similar requests have previously been granted by the Board or its predecessor agency. Chelsea Property Owners -- Abandonment -- Portions of the Consolidated Rail Corporation's West 30th Street Track in New York, NY, No. AB-167 (Sub-No. 1094) (ICC served July 19, 1989); Grand Trunk Western Railroad Incorporated -- Adverse Discontinuance of Trackage Rights Application -- A Line of Norfolk and Western Railway

Company in Cincinnati, Hamilton County, OH, STB Docket No. AB-31 (Sub-No. 30) (STB served Feb. 12, 1998) (Grand Trunk).

The City will be required, however, (a) to serve a copy of this decision upon all current shippers on the line, upon all shippers with sidings on the line, and upon all carriers that connect with RRC.

Our waiver of environmental regulations is justified because the City is merely proposing to substitute operators.

RRC's motion to strike will be denied. RRC argues that the petition for waiver was not properly served. Our rules governing the method of service provide as follows at 49 CFR 12(a):

(a) Generally. Every document filed with the Board should include a certificate showing simultaneous service upon all parties to the proceeding. Service on the parties should be by the same method and class of service used in serving the Board, with charges, if any, prepaid. One copy should be served on each party. If service is made on the Board in person, and personal service on other parties is not feasible, service should be made by first-call or express mail. When a party is represented by a practitioner or attorney, service upon the practitioner is deemed to be service on the party.

RRC argues that the City's request for waiver must be rejected on the grounds that, under the above quoted regulation, it should have been hand delivered to RRC's counsel at his Washington, DC office, the method used to file the document with the Board, rather than served by first class mail.

RRC's argument is not persuasive. Our regulations do not specifically require petitions for waiver to be served on outside parties.² Moreover, the purpose of the above quoted regulation is to ensure that parties do not disadvantage each other by the use of inferior filing methods. This purpose was not contravened here. First class mail service is not an inferior means of service. RRC has not shown that it was prejudiced by petitioner's use of the mails. The City's timely service by first class mail does not constitute a reason to reject the notice.

RRC also argues that the Board should reject the petition for waiver because it does not name the specific regulations that the City seeks to waive but, rather, provides a list of information that it proposes to provide (not to be waived) in its application. The City has identified the regulations with sufficient specificity to enable the Board to waive the City's compliance with them.

² Under 49 CFR 1152.24(e)(5), petitions for waiver are required only to be filed with the Board, and there is no requirement of service upon potentially interested parties.

RRC also objects that the information that the City would not be submitting is required to enable opponents to contest the adverse discontinuance. However, other than the System Diagram Map, RRC has not pointed to specific data or information that it would need to contest the application. There is no need for a system diagram map.³ None of the excluded information is relevant to an adverse discontinuance application, which is designed to permit a change of operators. Nor are the standard notice and publication requirements for abandonments required. The shippers on the line, the only parties who are likely to be affected by the proposed change of operators, will receive notice. The Illinois Commerce Commission will also receive notice.

Americold offers no support for its objection to the City's waiver request, other than to state that the City has failed to inform Americold of its intentions. But Americold has pointed to no notice requirements that the City has violated. Americold's objections will be denied.

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

It is ordered:

1. RRC's motion to strike and Americold's objection are denied.
2. The City's petition is granted, to the extent discussed above.
3. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

³ Moreover, the filing of a system diagram map is not required under the statute in the context of an adverse abandonment. Grand Trunk, supra.