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SERVICE DATE - OCTOBER 5, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 183)

SALT LAKE CITY CORPORATION—ADVERSE ABANDONMENT—IN SALT
LAKE CITY, UT

Decided: October 4, 2001

By petition filed on September 14, 2001, Salt Lake City Corporation (the City) seeks a waiver of certain regulations requiring the filing of specific information for an “adverse” abandonment application that it intends to file.¹ UP filed a reply to the City’s waiver petition.

The City states that the line has been dormant for over 2 years and is currently inactive.² Thus, it alleges that certain of the required information is unnecessary. It also alleges that it cannot comply with certain informational requirements due to the adverse nature of the application.

The City seeks waiver of certain procedural and notice requirements of the Board’s abandonment regulations. Specifically, it seeks a waiver from 49 CFR 1152.10-14 and 1152.24(e)(1) pertaining to system diagram maps (SDMs). With the exception of 49 CFR 1152.20(a)(1) and (b)(1) and (3),³ it seeks waiver of the remaining required information and/or

¹ On the same date, the City filed a Notice of Intent to seek adverse abandonment of a 1.32-mile line of railroad owned and operated by the Union Pacific Railroad Company (UP). The line, known as the 900 South Line, is a portion of the former Passenger Line Industrial Lead, extending from milepost 781.0, east of Redwood Road, to milepost 782.32, in Salt Lake City, UT. The City states that it intends to file its application on or about October 15, 2001. The City also filed a motion to consolidate this abandonment proceeding with a petition for declaratory order that was filed by UP on August 23, 2001, in STB Finance Docket No. 34090, Union Pacific Railroad Company—Petition for Declaratory Order. UP replied to the motion to consolidate on September 27, 2001. The motion to consolidate will be addressed in a separate decision.

² In its reply, UP objects to this characterization of the line and submits that the correct statement is that freight service has not been provided over the line since 1999.

³ The City states that the Notice of Intent contains the information and/or complies with these pre-filing notice requirements.

procedures in 49 CFR 1152.20, pertaining to its Notice of Intent.⁴ The City also seeks a waiver of certain filing and service of application requirements in 49 CFR 1152.24(c), (d), and (f).⁵

As far as the contents of the abandonment application are concerned, the City seeks a waiver of 49 CFR 1152.22 and 49 CFR part 1152, subpart D. The City states that, other than the information requested in 49 CFR 1152.22(a)(1) through (4), and (6) through (8), which it can provide,⁶ the information requested in this section is either unavailable to the City or irrelevant with respect to the City's adverse abandonment application.

In addition, the City seeks a waiver of the environmental and historic preservation reporting requirements in 49 CFR 1105, 49 CFR 1152.20(c), and 49 CFR 1152.22(f). The City claims that, because the line is currently not in use for freight service and has not been for 2 years, there are no environmental and historic preservation issues relating to the abandonment of the line.

In its reply, UP states that certain of the waivers requested by the City appear to be appropriate for an adverse abandonment, while others are not. UP argues that the City's petition should be denied with regard to its request for waiver of the requirements in 49 CFR 1152.20(a)(4),⁷ 49 CFR 1152.24(c), only to the extent that it requires applicant to send its application to certain people, 49 CFR 1152.24(d), and 49 CFR 1105, 49 CFR 1152.20(c), and 49 CFR 1152.22(f). UP asserts that the City can comply with these requirements and should be required to do so.

⁴ The City also seeks a waiver of 49 CFR 1152.21, which is the "Form of notice." The City, however, filed a Notice of Intent that substantially comports with this regulation. Therefore, a waiver of this regulation is unnecessary and will not be granted.

⁵ In addition, the City seeks a waiver of 49 CFR 1152.29(e)(2), which is cross referenced in 49 CFR 1152.24(f). Both sections relate to the Board's notice of consummation requirement.

⁶ The City states that, if waivers are granted, it plans to include this information in its application as well as the limited service information and revenue data which UP has provided to it, the name of each station on the line (if any), and a draft Federal Register notice.

⁷ UP states that, if the City intends the requested waiver to cover the service requirements of 49 CFR 1152.20(b), such relief should be denied because there is no justification for it.

DISCUSSION AND CONCLUSIONS

Under 49 CFR 1150.10, prospective applicants, prior to filing an application, may seek an advance waiver, either on a permanent or temporary basis, of required information which is unavailable or not necessary or useful in analysis of the proposal.

In appropriate instances, such as situations involving adverse applications, the Board and its predecessor agency, the Interstate Commerce Commission, have waived inapplicable and unneeded portions of the abandonment regulations.⁸ The City correctly argues that many of the cited requirements seek information that it does not possess or that is not relevant to its adverse abandonment application. While waiver of certain information required by the Board's regulations is appropriate here, UP has nonetheless raised valid objections to some of the waiver requests.

Waiver of the information required for an abandonment application by 49 CFR 1152.22 (other than what the City has agreed to provide and subsection (f) discussed *infra*) is clearly warranted. Much of this information is unavailable or irrelevant in an adverse abandonment application. Moreover, because there is no current service on the line, other information, such as rural and community impacts, is unnecessary.

A waiver from 49 CFR 1152.10-14 and 1152.24(e)(1), pertaining to SDMs and from 49 CFR 1152.20(a)(3), which pertains to posting notice requirements, will be granted. Compliance with these requirements is not feasible by a third-party applicant. However, we agree with UP that the regulations at 49 CFR 1152.20(a)(2), which pertain to service requirements, and at 49 CFR 1152.20(a)(4), which pertain to publishing requirements, should be met here so that UP and other potential parties with legitimate interests in the proposal can be apprised of the status of the line. Therefore, waiver from these requirements will not be granted. A waiver of the requirement in 49 CFR 1152.24(c) to make the abandonment application available at agency stations will be granted.⁹ However, a waiver of the requirements to provide a copy of the application to "certain people" as provided in 49 CFR 1152.24(c) and to "whomever requests it" under 49 CFR 1152.24(d) are not justified and will not be granted. The certain people involved are the governor and state transportation agencies which have an obvious interest in receiving copies.¹⁰

⁸ See Napa Valley Wine Train, Inc.—Adverse Abandonment—in Napa Valley, CA, STB Docket No. AB-582 (STB served Mar. 30, 2001) and cases cited therein.

⁹ There are no stations on the line. Therefore, this requirement appears unnecessary.

¹⁰ The City must serve copies of its Notice of Intent on all persons designated in 49 CFR 1152.20(a)(2), which it has not done.

The abandonment consummation notification requirements in 49 CFR 1152.24(f), as well as the 1-year authorization limit in 1152.29(e)(2) are not appropriate because they presuppose control over consummation once the Board's decision is issued. That is not the case in an adverse abandonment because the applicant must usually invoke state law to obtain control of the property. Accordingly, these waivers will be granted.

Waiver of the environmental requirements of 49 CFR 1105, 49 CFR 1152.20(c), and 49 CFR 1152.22(f) will not be granted. The City's argument that the environmental and historical reporting requirements would not be applicable because the line is currently not in use for freight service is inappropriate. The City in effect argues that its proposal has no environmental impact and therefore qualifies for treatment under 49 CFR 1105.6(c). The City should make that argument in its filing, rather than seeking a waiver. See CSX Corporation and CSX Transportation, Inc.–Adverse Abandonment Application–Canadian National Railway Company and Grand Trunk Western Railroad, Inc., STB Docket No. AB-31 (Sub-No. 38) (STB served Mar. 2, 2001).

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

It is ordered:

1. The City's petition for waiver is granted in part and denied in part as described above.
2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary