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SERVICE DATE – JANUARY 21, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-882

MINNESOTA COMMERCIAL RAILWAY COMPANY–  
ADVERSE DISCONTINUANCE–IN RAMSEY COUNTY, MN

STB Docket No. AB-884

MT PROPERTIES, INC.–ADVERSE  
ABANDONMENT–IN RAMSEY COUNTY, MN

Decided: January 19, 2005

In a petition filed on October 15, 2004, the City of New Brighton, MN (the City), seeks exemptions of several statutory provisions as well as waiver of certain Board regulations pertaining to procedures for obtaining abandonment authority. The City indicates that it intends to file a third-party or “adverse” application for abandonment and discontinuance of service over approximately 0.5 miles of rail line owned by MT Properties, Inc. (MT), and operated by Minnesota Commercial Railway Company (MCRC).

The line, known as the Butcher Spur, extends between the western edge of Old Highway 8 in New Brighton and the ATS Steel facility in Arden Hills, in Ramsey County, MN. According to the City, there are no stations on the line, and no employees would be affected by abandonment and discontinuance of service because the line has been out of service for several years. The City states that it wants to acquire the right-of-way to redevelop the property into non-industrial commercial use, including the proposed construction of an office campus for a major Minnesota medical device manufacturer, but it has been unable to reach an agreement with MT and MCRC.

In a reply filed on November 4, 2004, MCRC states that, contrary to the City’s assertions, the line is an active rail line and is needed to provide service to several current and prospective shippers in the area. In support of its argument, MCRC has attached copies of correspondence from these shippers outlining their specific needs for service. As far as the City’s planned commercial development project is concerned, MCRC submits that the site is one of several locations under consideration for the project and the potential user has made no commitment to locating in this area. However, although MCRC states that there is no basis for granting an adverse abandonment application under the circumstances here, it does not oppose the City’s requests for exemptions and waivers.

## DISCUSSION AND CONCLUSIONS

As noted, the City seeks an exemption from certain statutory provisions and waiver of certain related regulations to facilitate the filing of its third-party abandonment and discontinuance application. The proposed exemption and waiver requests are discussed below.

Exemption and Related Waiver Requests. The City seeks exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10903(a)(2)(C) and 49 U.S.C. 10904, as well as waiver of the related regulations at 49 CFR 1152.27. The City argues that these provisions are not applicable here because the right-of-way is needed for a planned commercial development project. Thus, the City argues that an OFA would defeat the central purpose of the application it plans to file. The Board need not resolve this matter at this time. The issue can be addressed, if relevant, in the final decision on the merits of any adverse application that the City may file in the future involving this line.

The City also seeks exemption from the provisions of 49 U.S.C. 10903(a)(3)(B) and (E) that require a rail carrier to post a notice at each terminal and station on the line proposed to be abandoned or over which all transportation is to be discontinued within the 30-day period prior to filing the application, and certify that it has been done; and the provisions of 49 U.S.C. 10903(c) that require all rail carriers to maintain a system diagram map and to identify on that map rail lines planned for abandonment or discontinuance of service. As the City argues, compliance with these requirements is not feasible for a third-party applicant. Thus, the sought exemptions from these provisions will be granted. The City's corresponding requests for waiver of notice and filing requirements pertaining to SDMs at 49 CFR 1152.10-14, 49 CFR 1152.22(a)(5), and 49 CFR 1152.24(e)(1), as well as the posting requirements at 49 CFR 1152.20(a)(3) are warranted and will also be granted.

Application of the statutory provisions at 49 U.S.C. 10903(a)(3)(B) and (E), and 49 U.S.C. 10903(c) to this transaction is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. Rather, an exemption will promote that policy by eliminating unnecessary procedures, and thus will expedite regulatory decisions [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Other Waiver Requests. 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. 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. The City correctly argues that many of the cited requirements seek information that it does not possess or that is not relevant to an adverse abandonment and discontinuance of service application. While waiver of certain information required by the Board's

regulations is therefore appropriate here, the requested waiver of other provisions will be denied, as discussed below.

The City's request for waiver of regulations governing the procedures for a Notice of Intent will be granted in part. The City seeks waiver of 49 CFR 1152.20(a)(2)(i), requiring an applicant to file the notice upon significant users of the line; 49 CFR 1152.20(a)(2)(xi), requiring service on the headquarters of the Railroad Labor Executives' Association (RLEA); and 49 CFR 1152.20(a)(2)(xiii), requiring service on the headquarters of all duly certified labor organizations that represent employees of the affected line. The City submits that it does not have access to information necessary to comply with these regulations. The City also argues compliance with these regulations is not necessary because RLEA is no longer in existence and, moreover, that no employees would be affected by the abandonment and discontinuance because the line has been out of service for several years. The City is correct that RLEA is no longer in existence. Indeed, effective January 3, 2004, the RLEA service requirement at 49 CFR 1152.20(a)(2)(xi) was eliminated from our regulations, and 49 CFR 1152.20(a)(2)(xiii) was redesignated as 49 CFR 1152.20(a)(2)(xii). See Public Participation in Railroad Abandonment Proceedings, STB Ex Parte No. 537 (Sub-No. 1) (STB served Dec. 4, 2003). Under the circumstances, a waiver from the requirement that the City serve a copy of the notice on RLEA is unnecessary. A request for waiver of the requirements that the notice be filed upon significant users of the line [49 CFR 1152.20(a)(2)(i)] would normally be granted because this information is usually not available to a third-party applicant. Here, however, in view of MCRC's assertion that this is an active rail line, the City should serve a copy of the notice on the current and prospective shippers that submitted the letters that are attached to the reply. The City's request for waiver of the requirement that it serve a copy of the notice on the headquarters of all duly certified labor organizations that represent employees of the affected line [current 49 CFR 1152.20(a)(2)(xii)] will be granted because the City does not have access to this information.

The City's request for waiver of the regulations governing the content of a Notice of Intent at 49 CFR 1152.21, requiring that the notice indicate that documentation in the railroad's possession will be made available upon request and that the line appears on a SDM, will be granted. Compliance with these requirements is not feasible by a third-party applicant.

The City's request for waiver of the regulations governing the content of an abandonment application at 49 CFR 1152.22(b), requiring a description of the condition of the properties; 49 CFR 1152.22(c), requiring a description of the service provided on the line; 49 CFR 1152.22(d) and 49 CFR 1152.36, requiring revenue and cost data; 49 CFR 1152.22(e)(2), requiring information on significant users on the line; and 49 CFR 1152.24(c), requiring an applicant to make information available at agency stations or terminals on the line, will also be granted. The City does not have information available to comply with these requirements. Accordingly, waiver of these regulations is warranted.

Finally, the City's request for waiver of the regulations at 49 CFR 1152.24(f) and 49 CFR 1152.29(e)(2) pertaining to a notice of consummation will be granted in part. The City states that waiver of these regulations is warranted because, if the application is granted, it cannot consummate abandonment of the line until it obtains control of the property in state court. Notwithstanding the City's concerns, a waiver from the regulation at 49 CFR 1152.24(f) requiring that the City file a consummation notice will be denied because we need to know if and when a rail line is removed from our jurisdiction. Accordingly, should the City obtain our approval for an adverse application involving this line, the City must immediately notify the Board when the transaction is consummated. However, a waiver from the 1-year time limit on abandonment authority specified at 49 CFR 1152.29(e)(2) will be granted. This provision presupposes control by the applicant over the timing of consummation once we issue a final decision on an adverse application. That is not the case in a third-party abandonment because, as the City correctly states, the applicant must generally invoke state law to obtain control of the property.

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 exemption and waiver is granted in part and denied in part as described above.
2. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary