

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 25, 2008

In a petition filed on November 9, 2007, the City of New Brighton, MN (the City), seeks exemptions from several statutory provisions as well as waiver of certain Board regulations pertaining to procedures for obtaining abandonment authority (November 2007 petition). 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, known as the Butcher’s spur, owned by MT Properties, Inc. (MTP) and operated by Minnesota Commercial Railway Company (MCRC).

In a decision served in these proceedings on January 21, 2005, the Board granted the City a waiver of certain regulations, as well as exemptions from statutory provisions, pertaining to procedures for obtaining abandonment authority (January 2005 decision). Those waivers and exemptions were not acted upon by the City. The City states that it is resubmitting its petition for waiver and exemption out of an abundance of caution due to the time lag and because the City has reached agreements with MCRC and MTP to abandon the line by providing “a functional replacement” to accommodate the only remaining rail customer.

In addition to the original exemptions sought, the City, in its November 2007 petition, asks the Board to reconsider its decision to deny an exemption from the Offer of Financial Assistance (OFA) provisions at 49 U.S.C. 10903(a)(2)(C) and 49 U.S.C. 10904. The City also seeks an exemption from the statutory provisions of 49 U.S.C. 10905 pertaining to public use conditions. On November 21, 2007, the City filed a supplemental request for waiver of the requirement of 49 CFR 1152.22(j) for execution and verification of the application by the carrier.

Because these proceedings began as “adverse” matters, we will not require the interested parties to restart the process or require MTP and MCRC to initiate the application for authority even though there is no longer opposition to the abandonment and discontinuance proposals. Our acquiescence to the proposed procedure is nonetheless limited to the facts presented here.

## DISCUSSION AND CONCLUSIONS

The January 2005 decision granting waivers of certain regulatory requirements was issued based on the expectation that there would be opposition to the adverse abandonment and discontinuance by MTP and MCRC. However, the November 2007 petition demonstrates that there is no longer opposition to the abandonment and discontinuance. The City, MTP and MCRC have executed a Letter of Understanding pursuant to which MTP and MCRC agree to cooperate with the City in making or supporting the City's application before the Board. Accordingly, in light of these changed circumstances, we will reexamine each of the exemption and waiver requests previously granted, as well as the new requests contained in the petition.

The City 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 done so. The City argues that compliance with these requirements is not feasible for a third-party applicant. If this were a typical adverse application, one in which there is actual opposition, the City would be correct. However, because MTP and MCRC have agreed to support the City's third-party application for abandonment and discontinuance, it should be feasible for the City to obtain the necessary cooperation or information from the railroads to effectuate the posting of a notice at each terminal and station on the line within the 30-day period prior to filing the application or to certify that no terminal or station exists. Therefore, we will deny the exemption request from 49 U.S.C. 10903(a)(3)(B) and (E), as well as the corresponding requests for waiver of the posting requirements of 49 CFR 1152.20(a)(3).

Additionally, the City seeks exemption from the provisions of 49 U.S.C. 10903(c) that require all rail carriers to maintain a system diagram map (SDM) and to identify on that map rail lines planned for abandonment or discontinuance of service. While a third-party applicant is not in control of the railroad's SDM, when the railroad agrees to the abandonment and discontinuance, a railroad could amend its SDM in cooperation with the third party applicant to provide the advance public notice that the SDM is designed to provide. In the present circumstances, however, the public has had several years' notice of the City's proposal and requiring compliance with the SDM provisions would merely cause delay. The exemption request will therefore be granted. Application of the statutory provision of 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, foster sound economic conditions in transportation, and encourage efficient management of railroads [49 U.S.C. 10101(2), (5), and (9)]. Other aspects of the rail transportation policy will not be adversely affected. Thus, an exemption from 49 U.S.C. 10903(c) will be granted, as well as the City's corresponding request 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).

The City continues to seek exemption from the 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 requiring compliance with these sections is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 because the line is of little or no actual use to any shipper or carrier and it is of limited scope. Additionally, the City argues that the statutory provisions are not needed to protect shippers from the abuse of market power because the one remaining shipper has agreed to relocate its operations and MCRC will be provided with a replacement track to serve the needs of customers who currently depend on the Butcher's spur for service. As was stated in the January 2005 decision, the Board need not resolve this matter at this time. This 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.

We will also defer action on the City's request for an exemption from the public use conditions of 49 U.S.C. 10905. The City has provided no justification for an exemption other than that the City and its plans meet the public use requirements and it does not want any complications to arise from the possibility of a public use request coming from an unknown third party. Again, this 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.

#### Other Waiver Requests.

The City's request for waiver of regulations governing the procedures for a Notice of Intent will be denied. The City seeks waiver of 49 CFR 1152.20(a)(2)(xii), requiring service on the headquarters of all duly certified labor organizations that represent employees of the affected line. The City asserts that it does not have access to this information. However, as noted previously, the City has an agreement with MCRC and it should be able to acquire this information from the railroad.

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. The City may omit those two statements in its notice of intent because the City, as third-party applicant, need not make representations about documents being made available by the railroad, and leaving out the statement regarding a SDM is consistent with our grant of an exemption from the SDM requirement.

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; and 49 CFR 1152.22(e)(2), requiring information on significant users on the line, will be denied. While the City does not have this information in its possession, it should be able to acquire it from MCRC or MPT.

The City's request for waiver of 49 CFR 1152.24(c), requiring that a copy of the application be made available for public inspection at each agency station or terminal on the affected line, will be denied. The City states that it does not have access to the facilities of the railroad, and that it believes that no stations exist on the line. The railroads have agreed to support the City's adverse application and it would not be unreasonable to assume that the City could effectuate the posting of the necessary information at agency stations or terminals, if they exist.

The City's request for waiver of 49 CFR 1152.22(j), requiring that the original application be executed and verified by an officer of the carrier having knowledge of the facts and matters relied upon, will be granted because the City, rather than any carrier, contemplates filing the application.

Finally, the City's request for waiver of the regulations at 49 CFR 1152.29(e)(2), the 1-year time limit on abandonment authority, will be denied. This provision generally presupposes control by the applicant over the timing of consummation once we issue a final decision on an application. While that is not usually the case in a third-party abandonment because the applicant must generally invoke state law to obtain control of the property, the parties have reached an agreement here that appears to remove the need for the City to invoke state law to acquire the property it needs. Thus, it should be within the City's power to comply with the 1-year time limit imposed by this regulation.

This decision 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 Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan  
Acting Secretary