

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1230

RIVERVIEW TRENTON RAILROAD COMPANY—ADVERSE ABANDONMENT—IN  
WAYNE COUNTY, MICH.

Digest:<sup>1</sup> This decision waives certain requirements, such as revenue and cost data, that normally pertain to abandonment applications, but would be unnecessary, difficult, or impossible to comply with should the City of Riverview, Mich., a non-operator of a rail line, file an application for adverse abandonment.

Decided: April 8, 2015

In a petition filed on December 10, 2014, the City of Riverview, Mich. (Riverview or Petitioner) seeks waiver of certain Board regulations and exemption from certain statutory provisions in connection with the filing of a third-party or “adverse” application for abandonment or discontinuance authority regarding a rail line of Riverview Trenton Railroad Company (RTR). Riverview states that it intends to seek adverse abandonment of, and adverse discontinuance of service on, an approximately 1.5 mile line of railroad track (the Line) in Riverview and Trenton, Mich., so that the property can be put to alternative use.<sup>2</sup>

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Riverview’s petition is unclear as to the exact nature of the relief it might seek, sometimes indicating that Riverview will seek adverse abandonment authority, sometimes adverse discontinuance of service, and sometimes both. For instance, Riverview states that it “intends to file its adverse discontinuance application ... for a certificate of public convenience and necessity permitting adverse discontinuance of service on, and adverse abandonment of, a line of railroad spanning approximately 1.5 miles in southern Wayne County that is owned by CenTra, Inc. and operated by Riverview Trenton Rail Road.” In 2007, the Board stated that persons seeking to remove RTR from the Line could do so by filing for adverse abandonment authority. Riverview Trenton R.R.—Pet. for Exemption from 49 U.S.C. § 10901 to Acquire & Operate a Rail Line in Wayne Cnty., Mich. (2007 Decision), FD 34040, slip op. at 4 (STB served Nov. 30, 2007). Thus, the Board stated, if Riverview decides to seek relief from the Board, it should file an adverse abandonment application. This decision will discuss Riverview’s requests for waivers and exemptions as if for an adverse abandonment application.

On January 15, 2015, RTR, the owner and entity authorized to operate over the Line, filed a reply in partial opposition to Petitioner’s waiver requests.<sup>3</sup> Petitioner’s request for waivers and exemptions will be granted, to the extent discussed below.

## BACKGROUND

In a decision served May 15, 2003, the Board authorized RTR to acquire and operate the Line, which is on the site of a former steel mill located in Riverview and Trenton, Mich.<sup>4</sup> Specifically, the exemption allowed RTR to begin rail service over: (1) 1.5 miles of track on its own property, a 76-acre parcel that RTR purchased from its non-carrier parent;<sup>5</sup> and (2) connecting track under easement within an adjacent 195.45-acre industrial site owned by the Detroit Steel Center, Ltd. (DSC).<sup>6</sup> In opposition to RTR’s petition, Riverview and other local interests argued that RTR was not committed to beginning rail service and was seeking Board authority only to circumvent local efforts to eliminate industrial use of the property. The Board, however, found in the 2003 Decision that what RTR proposed was a legitimate rail transportation service that would meet a public need.

In 2007, Riverview asked the Board to revoke RTR’s exemption. It alleged that RTR’s efforts to begin rail service had been inadequate. Riverview also maintained that RTR’s failure to commence rail service and its use of the property for storage had created a nuisance to nearby property owners and violations of the environmental conditions imposed by the Board. The Board found that Riverview had not demonstrated that RTR’s exemption should be revoked, but stated that “[s]hould circumstances warrant in the future, opponents could file another petition to revoke [the] exemption or a request for adverse abandonment authority.”<sup>7</sup>

Through its December 10, 2014 petition, Riverview has sought waivers and exemptions in anticipation of filing for adverse abandonment or discontinuance. It claims that “the continuing state of inactivity” on the Line, “in conjunction with the disarray of the parcel as a whole,” warrant relief. Riverview asserts that the waivers and exemptions it seeks in its petition

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<sup>3</sup> In a decision served on December 24, 2014, the Board extended the due date for RTR’s reply to January 15, 2015.

<sup>4</sup> See Riverview Trenton R.R.—Pet. for Exemption from 49 U.S.C. § 10901 to Acquire & Operate a Rail Line in Wayne Cnty., Mich. (2003 Decision), FD 34040 (STB served May 15, 2003), reconsideration denied (STB served Aug. 27, 2003), aff’d, City of Riverview v. STB, 398 F.3d 434 (6th Cir. 2005).

<sup>5</sup> RTR’s parent, Crown Enterprises, Inc., is a real estate development subsidiary of CenTra, Inc., a holding company that owns several transportation companies, including a trucking company.

<sup>6</sup> As part of that proceeding, RTR noted that it planned to establish an intermodal terminal involving rail, motor, and possible barge traffic and also planned to transport DSC’s traffic.

<sup>7</sup> 2007 Decision, slip op. at 4.

are routinely granted by the Board. RTR filed a reply noting that it will vigorously oppose any effort to preclude it from moving forward with plans to provide common carrier rail service on the Line. In the meantime, it opposes Riverview's request for waiver of 49 C.F.R. § 1152.29, the interim trail use provisions, and 49 C.F.R. § 1152.20(a)(4), requiring newspaper publication of an applicant's notice of intent.<sup>8</sup> On February 23, 2015, Riverview replied to RTR, detailing alleged environmental offenses and safety hazards present on the Line.

## DISCUSSION AND CONCLUSION

The Board's regulations require that abandonment and discontinuance applications conform to the requirements of 49 C.F.R. pt. 1152 subpart C. In appropriate circumstances, however, such as the filing of a third-party or adverse abandonment application, the Board will waive inapplicable and unneeded regulations and grant exemptions as appropriate from statutory provisions.<sup>9</sup>

System Diagram Map. Riverview requests waiver of the requirements of 49 C.F.R. §§ 1152.10-14, which relate to filing and amending of, and providing notice to the public through, a carrier's system diagram map (SDM), and establish a 2-month waiting period between amendments of the SDM and the filing of a corresponding abandonment application. Riverview also requests waiver of 49 C.F.R. § 1152.22(a)(5), which requires reference to inclusion of the rail line subject to the abandonment request on the carrier's SDM or narrative, the date on which the line was first listed there for abandonment, and a copy of the line description that accompanies the carrier's map. Riverview further seeks an exemption from the corresponding statutory SDM requirements of 49 U.S.C. § 10903(c)(2). In support, Riverview contends that there is no need to comply with the SDM requirements here because they are designed to permit a change in operators and not relevant to this proceeding.

We will waive the above requirements. RTR does not oppose these requests, and waiver of the SDM requirements is customary in adverse proceedings.<sup>10</sup> Applicants in these types of cases generally do not have access to the SDM, as is the case here.

Revenue and Cost Data. Riverview requests waiver of 49 C.F.R. § 1152.22(d), requiring revenue and cost data. Riverview claims that RTR would possess this information and suggests

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<sup>8</sup> In its Reply, RTR states that Riverview's petition is "not entirely clear on the point," but "to the extent that Riverview seeks waiver of the requirements of 49 CFR section 1152.50(a)(4), requiring newspaper publication, it has failed to justify waiver of this straightforward requirement." The Board will interpret this request as relating to 49 C.F.R. § 1152.20(a)(4).

<sup>9</sup> See Lackawaxen-Honesdale Shippers Ass'n—Adverse Discontinuance of Operating Auth.—in Wayne & Pike Cntys., Pa. (Lackawaxen), AB 1110 (STB served Jan. 23, 2014); Paulsboro Ref. Co.—Adverse Aban.—in Gloucester Cnty., N.J. (Paulsboro), AB 1095 (Sub-No. 1) (STB served July 26, 2012).

<sup>10</sup> See, e.g., Lackawaxen, slip op. at 2-3; Paulsboro, slip op. at 2-3.

the data might not even exist. Petitioner also asserts that its application is not predicated on a cost/revenue analysis. RTR does not oppose this request. Riverview is correct that this information is unnecessary here and, accordingly, we will grant this waiver request.<sup>11</sup>

Filing, Notice, Posting and Newspaper Publication. Riverview seeks partial waiver of the notice requirements of 49 C.F.R. § 1152.20. Specifically, Riverview asks that its petition be permitted to serve as the notice of intent to abandon service required under 49 C.F.R. § 1152.20. Petitioner’s request for waiver of this requirement is unopposed and will be granted.<sup>12</sup>

Petitioner also seeks partial waiver of the requirements in 49 C.F.R. § 1152.20(a)(2), regarding service of the notice of intent. Petitioner proposes that its notice of intent (i.e., its petition) be served only on RTR and Trenton. We find this to be insufficient notice under 49 C.F.R. § 1152.20(a)(2) and, therefore, will require Riverview also to serve notice of intent on the Michigan Department of Transportation (MDOT) and Michigan Public Service Commission (MPSC).<sup>13</sup>

Riverview seeks relief from 49 U.S.C. § 10903(a)(3)(D) and 49 C.F.R. § 1152.20(a)(2)(i), which require that the notice of intent be served on significant users of the Line. According to Riverview, no rail operations have been conducted on the Line and the Line has no shippers. RTR does not object to this request. As it is undisputed that there have been no active shippers on the Line, waiver of 49 C.F.R. § 1152.20(a)(2)(i) is reasonable.<sup>14</sup>

Concerning labor protection, Riverview requests waiver of 49 C.F.R. § 1152.20(a)(2)(ix) and (xii), which require service of the notice of intent on the U.S. Railroad Retirement Board and headquarters of all duly certified labor organizations that represent employees on the affected line, respectively.<sup>15</sup> Riverview states that there are no known railroad employees who have ever worked on the Line. RTR does not object to these waivers. We will grant Riverview’s waiver requests, as compliance with these requirements is unnecessary here.<sup>16</sup>

In addition to requesting waiver of the notice of intent service requirements, Petitioner asks for exemption from 49 U.S.C. § 10903(a)(3)(B) and waiver of 49 C.F.R. § 1152.20(a)(3),

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<sup>11</sup> See Paulsboro, slip op. at 5.

<sup>12</sup> See Lackawaxen, slip op. at 3-4.

<sup>13</sup> See Lackawaxen, slip op. at 4.

<sup>14</sup> See Norfolk S. Ry.—Adverse Aban.—St. Joseph Cnty., Ind. (St. Joseph), AB 290 (Sub-No. 286), slip op. at 3 (STB served Oct. 26, 2006).

<sup>15</sup> The Board will interpret Riverview’s request for “waiver of the requirement in 49 C.F.R. § 1152.20(a)(2)(1),(7) to serve notice on labor organizations” and related statement that “there is...no point in serving a copy of the Notice on the Railroad Retirement Board” as requests to waive 49 C.F.R. § 1152.20(a)(2)(ix) and (xii). Pet. 7.

<sup>16</sup> See Palmer Ranch Holdings, Inc.—Adverse Aban.—Seminole Gulf Ry. in Sarasota Cnty., Fla. (Palmer Ranch), AB 400 (Sub-No. 5), slip op. at 4 (STB served Sept. 21, 2011).

which require that a copy of the notice of intent be posted at each agency station and terminal on the line sought to be abandoned, or, if there are no agency stations on the line, at any agency station through which business for the line is received or forwarded. Riverview states that it cannot comply with these requirements because it “is not legally in possession of the [L]ine.”<sup>17</sup> Because there have been no operations, or shippers or users of rail service, on this Line, we find requiring notice to be posted at designated stations to be unnecessary. The request for waiver is unopposed and will be granted.<sup>18</sup>

Finally, Riverview requests that it be permitted to serve a copy of its adverse abandonment application only on RTR, Trenton, MDOT, and the MPSC. See 49 C.F.R. § 1152.24(c). We find that this request is reasonable and therefore it will be granted.<sup>19</sup>

As RTR notes, it is not clear whether, or the extent to which, Riverview seeks waiver of 49 C.F.R. § 1152.20(a)(4) (which requires newspaper publication of a notice of intent at least once a week for three consecutive weeks) or other filing and notice requirements. If Riverview has requested waiver of 49 C.F.R. § 1152.20(a)(4) or other filing or notice requirements, it has not provided justification for those requests. We therefore will require Riverview to comply with 49 C.F.R. § 1152.20, except to the extent waived above.<sup>20</sup>

Consummation Notice and One-Year Time Limit on Abandonment Authority. Riverview requests waiver of the requirements in 49 C.F.R. § 1152.24(f), requiring the filing of a consummation notice with the Board, and 49 C.F.R. § 1152.29(e)(2), requiring that abandonment authority be consummated within one-year of an abandonment application being granted. Riverview states that the requested waivers are needed because it might need to invoke other legal processes to obtain control of the subject property and, therefore, might not have control over the timing of the abandonment. RTR does not oppose these requests.

Riverview’s request for waiver of the consummation notice requirement will be denied. Should Riverview file for and obtain adverse abandonment authority, it is important that the Board know if and when the Line is no longer within our jurisdiction. Riverview’s request for waiver of the one-year time limit for consummation of abandonment authority will be granted. This regulation presupposes control by the applicant over the timing of consummation, once the Board issues a final decision authorizing abandonment. But such is not the case in a third-party abandonment because, as Riverview notes, there is the potential need to invoke other legal processes, typically a proceeding under state law, to obtain control of the property.<sup>21</sup>

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<sup>17</sup> Pet. 9.

<sup>18</sup> See St. Joseph, slip op. at 3.

<sup>19</sup> See Lackawaxen, slip op. at 4 (citing City of Peoria & Vill. of Peoria Heights, Ill.—Adverse Discontinuance—Pioneer Indus. Ry., AB 878 (STB served Sept. 10, 2004).

<sup>20</sup> Should Riverview need assistance with the Board’s processes, it should contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC).

<sup>21</sup> See Palmer Ranch, slip op. at 7; Stewartstown R.R.—Adverse Aban.—in York Cnty., Pa. (Stewartstown), AB 1071, slip op. at 5 (STB served Mar. 10, 2011).

Trail Use and Offers of Financial Assistance Conditions. Although Riverview requests waiver of the trail use provisions found at 49 C.F.R. § 1152.29, the Board will not rule on that request at this time. These provisions would be applicable only if the Board grants an adverse abandonment application for the Line. Therefore, this issue can be addressed, if need be, in a later decision.<sup>22</sup>

Riverview also asks for exemption from 49 U.S.C. § 10904 and waiver of the corresponding regulations at 49 C.F.R. § 1152.27, which govern offers of financial assistance (OFA) to continue rail service. Riverview contends that these procedures are not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101 because the city wishes through potential adverse abandonment of the Line to put the property to “viable, alternative non-rail use.” RTR does not oppose this waiver request.

A grant of the request for waiver of the Board’s OFA regulations would not affect the merits of an adverse abandonment application, and, if the application fails, the waiver would be mooted. But if adverse abandonment authority were to be granted in this case, the Board would be finding that public convenience and necessity no longer require or permit the Line’s operation as part of the interstate rail network. It would be fundamentally inconsistent with such a finding to allow parties to seek to restart rail service by pursuing an OFA under 49 U.S.C. § 10904.<sup>23</sup> For these reasons, the Board will waive the OFA regulations at § 1152.27.<sup>24</sup> This waiver, however, does not foreclose persons interested in potential rail service or preservation of the Line from participating in a Board proceeding concerning an adverse abandonment application by Riverview.

Exemption Criteria. As indicated, Riverview seeks, and the Board will grant, exemption from the following statutory provisions corresponding to the Board regulations previously discussed: 49 U.S.C. § 10903(c)(2) (SDMs); 49 U.S.C. § 10903(a)(3)(B) (Posting); 49 U.S.C. § 10903(a)(3)(D) (Notice for Shippers); 49 U.S.C. § 10904 (OFAs). We will grant these exemptions because full compliance with the Interstate Commerce Act is not necessary here to carry out the RTP of 49 U.S.C. § 10101. Rather, these exemptions will provide Petitioner with a reasonable opportunity to make its case that there is no overriding present or future public need for RTR’s service on the Line. The exemptions will promote the RTP by eliminating unnecessary procedures, and thus will expedite regulatory decisions (§ 10101(2)), and foster

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<sup>22</sup> See Stewartstown, slip op. at 5 (citing Denver & Rio Grande Ry. Historical Found.—Adverse Aban.—in Mineral Cnty., Colo., AB 1014, slip op. at 5 (STB served Oct. 18, 2007)).

<sup>23</sup> See St. Joseph, slip op. at 6; City of Chi., Ill.—Adverse Aban.—Chi. Terminal R.R. in Chi., Ill., AB 1036 (STB served June 16, 2010); CSX Transp., Inc.—Adverse Aban.—In Shelby Cnty, Tenn., AB 1010 (STB served Oct. 10, 2007).

<sup>24</sup> Petitioner also requests a waiver of the filing fees for this petition and its forthcoming application. The Board’s Chief, Section of Administration, Office of Proceedings, the agency official delegated authority to rule on filing fee waiver requests under 49 C.F.R. § 1002.2(e), granted waiver of the filing fees for this petition on February 25, 2015.

sound economic conditions in transportation (§ 10101(5)). Other aspects of the RTP will not be adversely affected. Further, application of the statutory provisions from which we are granting exemptions is not necessary to protect shippers from an abuse of market power, because RTR currently is not serving any active shippers on the Line.

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

It is ordered:

1. The petition for waivers and exemptions is granted to the extent discussed above.
2. The decision is effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.