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SERVICE DATE – FEBRUARY 18, 2010

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-1036]

The City of Chicago, Illinois – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL

On February 1, 2010, the City of Chicago, IL (the City), filed an application under 49 U.S.C. 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment of two railroad lines in the City owned by the Chicago Terminal Railroad (CTR), totaling 1.625 miles: (1) a portion of the Kingsbury Branch from its southern terminus at the intersection of Kingsbury, Division, and Halstead Streets, to, but not including, the point at which the Goose Island Branch diverges from the Kingsbury Branch at or near Willow Street, a distance of approximately 6 city blocks (.75 mile) (the Kingsbury Segment); and (2) a portion of the Lakewood Avenue Line between the southwest right-of-way line of Clybourn Avenue and the Line's northern terminus at Diversey Parkway, a distance of approximately 7 city blocks (.875 mile) (the Lakewood Segment).<sup>1</sup> The lines traverse United States Postal Service Zip Codes 60614 and 60622 and include no stations. The application is available

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<sup>1</sup> This application is subject to a motion to strike and request for a cease and desist order filed by CTR on January 14, 2010, which allege that the City has unlawfully removed part of the track. The issues raised by this filing will be resolved in a subsequent decision.

on the Board's website at WWW.STB.DOT.GOV, or a copy can be secured from applicant's counsel, whose name and address appear below.

According to the City, these segments are not required for rail service, and their abandonment would benefit the City by improving safety and facilitating the reconstruction of the streets where the track is located.

In a decision served in this proceeding on July 10, 2009, the City was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 CFR 1152 that were not relevant to its adverse abandonment application or that sought information not available to it. Specifically, the City was granted waiver of certain requirements pertaining to the notice of intent prescribed at 49 CFR 1152.21; waivers of and exemptions from requirements in 49 CFR 1152.20(a)(2)(i) and (a)(3), and 49 U.S.C. 10903(a)(3)(D) and (B) that the notice be served on significant users and posted, except to the extent necessary to require the City to mail a copy of its notice to four shippers located on contiguous lines; waiver of the requirement in 49 CFR 1152.20(a)(2)(xii) that the notice be served on certain labor organizations; waiver of and exemption from the requirements pertaining to the System Diagram Map in 49 CFR 1152.10 to 1152.14, 1152.24(e)(1), 1152.22(a)(5), and 49 U.S.C. 10903(c)(2); waiver of the requirements of 49 CFR 1152.22(b)-(d), which require a description of the physical condition of the line, estimated deferred maintenance and rehabilitation costs, a description of service performed on the line during the prior year, and computation of the revenues and avoidable costs attributable to the line; certain requirements in 49 CFR 1152.22(i) pertaining to the draft Federal Register notice; waiver of the 1-year time limit on abandonment authority specified at 49 CFR 1152.29(e)(2); exemption from

49 U.S.C. 10904, which governs offers of financial assistance (OFAs), and waiver of the implementing regulations at 49 CFR 1152.27; and exemption from the provisions of 49 U.S.C. 10905, which provide for the offering of rail properties approved for abandonment for sale for public purposes, and waiver of the implementing regulations at 49 CFR 1152.28.

The City states that there is no documentation in its possession indicating that the lines contain Federally granted rights-of-way and that it will make any such documentation relating to this abandonment available promptly to those requesting it. The City's entire case for adverse abandonment was filed with the application.

The interests of railroad employees, if there are any employees on the lines, will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by March 18, 2010. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements in 49 CFR 1152.25. Because this is an adverse abandonment proceeding, OFAs and public use requests are not appropriate and will not be entertained. The City's reply is due by April 2, 2010.

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such

an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by March 18, 2010, and should address that issue. Each trail use request must be accompanied by a \$250 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-1036 and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; (2) counsel for applicant – Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112; and (3) counsel for CTR – John D. Heffner, 1750 K Street, N.W., Suite 200, Washington, DC 20006.

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR 1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Section of Environmental Analysis (SEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA by phone at the number listed below. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be

within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment/discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to SEA at (202) 245-0305. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.)

Board decisions and notices are available on our website at  
"WWW.STB.DOT.GOV."

Decided: February 17, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.