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SERVICE DATE - JULY 13, 1998

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-548]

Tacoma Eastern Railway Company—Adverse Discontinuance of Operations Application—A
Line of City of Tacoma, in Pierce, Thurston and Lewis Counties, WA

On June 23, 1998, the City of Tacoma, WA (City) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) find that the public convenience and necessity require and permit the discontinuance of the operations by Tacoma Eastern Railway Company (TE)¹ on 131.5 miles of City rail line in Pierce, Thurston, and Lewis Counties, WA: (1) between milepost 2192.0, at Tacoma, and milepost 17.7, at Chehalis; and (2) between milepost 2192.0, at Tacoma, and milepost 64.2, at Morton.² The line traverses United States Postal Service ZIP Codes 98235, 98304, 98328, 98330, 98338, 98344, 98355, 98356, 98371, 98373-98375, 98387, 98401-98405, 98408, 98421, 98424, 98443-98446, 98501, 98531, 98532 and 98576.

¹ TE was authorized to operate the line by lease in Tacoma Eastern Railway Co.-- Lease and Operation Exemption--City of Tacoma, Washington, Finance Docket No. 32591 (ICC served Nov. 3, 1994).

² A discontinuance of a railroad's service sought by a party other than the railroad is called an "adverse" discontinuance.

City states that it has terminated the contract pursuant to which TE has been operating on the line because TE has not satisfactorily performed its obligations under the contract.³

The line does not contain federally granted rights-of-way. Any documentation in City's possession will be made available promptly to those requesting it. City's entire case for discontinuance of service was filed with the application.

In addition, City has petitioned the Board to waive certain provisions of 49 CFR 1152.22 on the grounds that the information required by these provisions is not relevant to the merits of the application or is not available to the City because of the circumstances of the application. Requests for waivers are typically filed before the application drawn in reliance on those waivers is filed. By filing its application contemporaneously with the waivers, City has run the risk that the waivers will be denied in whole or part and City will have wasted time and effort in filing an application based on them. But, as City is no doubt aware, grants of waiver petitions in applications filed by third parties are customary. The waiver request as to information to be contained in the application will be granted in a separate decision to be served concurrently with this notice.

In an application by a third party for a determination that the public convenience and necessity permits a line to be discontinued or abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. By granting a third party application, the Board withdraws its primary jurisdiction over

³ Once City receives Board approval, it intends to replace TE with the Belt Line Division of the City of Tacoma Department of Public Utilities (Belt Line). Beltline will file a notice of exemption pursuant to 49 CFR 1150.31 to enable it to commence operations without any interruption in service to shippers on the line.

the line. Questions of the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are then left to state or local authorities; Kansas City Pub. Ser. Frgt. Operation- Exempt.- Aban., 7 I.C.C.2d 216 (1990).

The interest of railroad employees will be protected by the conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed adverse discontinuance or protests (including the protestant's entire opposition case), by August 7, 1998. Because this discontinuance of service is the functional equivalent of a discontinuance of trackage rights rather than an abandonment, trail use/rail banking and public use requests are not appropriate. Likewise, no environmental or historical documents are required here under 49 CFR 1105.6(c)(6) and 1105.8(b)(3).

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest by August 7, 1998. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments by August 7, 1998. Parties seeking information concerning the filing of protests should refer to section 1152.25. The due date for City's reply is August 24, 1998.

Written comments and protests must indicate the proceeding designation STB Docket No. AB-548 and must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. A copy of each written comment or protest must be served upon the City's representative Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, N.W., Suite 800, Washington, DC 20036

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[Telephone (202) 331-8800]. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the adverse discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning the abandonment/discontinuance procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

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

Decided: July 7, 1998.

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

Vernon A. Williams

Secretary