

30161
EB

SERVICE DATE - MAY 27, 1999

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-549

CITY OF ROCHELLE, ILLINOIS—ADVERSE DISCONTINUANCE
ROCHELLE RAILROAD COMPANY

Decided: May 21, 1999

On February 16, 1999, the City of Rochelle, IL (City), filed an application under 49 U.S.C. 10903, requesting that we authorize the discontinuance by the Rochelle Railroad Company (RRC) of service over 2.06 miles of track that the City owns in an industrial park within the City.¹ Through this application, the City is seeking to terminate RRC's common carrier obligation to provide rail service on the line. RRC initially opposed the City's efforts to terminate RRC's operations on the line, but the City and RRC have resolved their differences. RRC has ceased operations on the line and does not oppose the City's adverse discontinuance application.

BACKGROUND

RRC had been authorized to lease the line from the City under an agreement dated February 12, 1996.² The application indicates that the City terminated the agreement in January 1998, and asked RRC to cease operations. RRC continued to operate the line, however, until November 13, 1998, when RRC ceased its operations on the line pursuant to a Mediation Agreement entered into by the City and RRC on November 12, 1998. The City itself has been authorized to operate the line under a Notice of Exemption in City of Rochelle, Illinois—Notice of Exemption—Commencement of Rail Common Carrier Operations, STB Finance Docket No. 33587 (STB served June 2, 1998) (63 FR 30036), and the City is currently providing common carrier service over the line through a contractor.

WAIVERS

In a decision served on June 5, 1998, the City was granted a waiver of certain regulations and filing requirements for its adverse discontinuance application. The decision called for the application to include certain identifying information about the City and the rail line. The City was also required to provide operating information about the service provided on the line including: the total carloads handled, a summary of the principal commodities, a summary operating plan for the

¹ The line was not further described in the application, but a map included with the filing indicates that the line begins at a switch near the intersection of Caron Road and Creston Road and deadends directly east of Gredco Drive.

² Rochelle Railroad Co.—Lease and Operation Exemption—City of Rochelle, IL., STB Finance Docket No. 32889 (STB served Apr. 10, 1996) (61 FR 16029).

substitute carrier, the benefits to be received from the application, and documentation from the City authorizing the service. In addition, the application was to include statements of supporting shippers. The City was also granted a waiver of all notice and publication requirements but was required to serve a copy of its application on the shippers on the line, RRC, connecting “trunk carriers” and the Illinois Commerce Commission.

Notice of the filing of the application was served and published in the Federal Register on March 8, 1999 (64 FR 11084). The notice indicated that the City had requested an additional waiver of the operating information and shipper statements that had been required by the June 5, 1998 decision. The City contended that the information and statements were unnecessary and irrelevant because its application would likely be unopposed. The notice stated that the Board deferred ruling on the waiver request because the required information and statements might be needed to address issues raised by parties that might oppose the application.

Because no opposition to the application has been received, and the operating information and shipper statements are therefore not necessary to decide the merits of the application, we will now grant the additional waiver request.

DISCUSSION AND CONCLUSIONS

The statutory standard governing discontinuance of operations is whether the present and future public convenience and necessity require or permit the proposed discontinuance. In making the finding, the Board shall consider whether the discontinuance will have a serious, adverse impact on rural and community development. 49 U.S.C. 10903(d)(2). The burden of proof is on the moving party. See Cheatham County Rail Authority “Application and Petition” for Adverse Abandonment, Docket No. AB-379X (ICC served Nov. 4, 1992).

Circumstances here warrant approving the adverse discontinuance application. The parties have settled their differences, and RRC has terminated operations over the line. Granting the City’s application will formally end RRC’s common carrier obligation. The City is now operating the line and will continue to provide service to shippers. No opposition has been received from shippers who are served by the line. Finally, RRC’s discontinuance of service will not impact rural and community development.

In approving this application, we must ensure that affected railroad employees will be adequately protected. 49 U.S.C. 10903(b)(2). We have found that the conditions imposed in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979), satisfy the statutory requirements, and we will impose those conditions here.

Because this is a discontinuance proceeding, and not an abandonment, trail use/rail banking, and public use requests are not appropriate. Also, offers of financial assistance will not be entertained in this proceeding, because the City is continuing to provide rail service over the line.

The June 5, 1998 decision waived compliance with environmental regulations because the City is a substitute operator of the line. Accordingly, no environmental assessment was prepared in this proceeding. See 49 CFR 1105.6(c)(6) and 1105.8(b)(3).

We find:

1. The present and future public convenience and necessity require and permit the discontinuance of operations by RRC over the above-described line of railroad, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).
2. Discontinuance of trackage rights will not result in an adverse impact on rural and community development.
3. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The additional waiver request, as described in this decision, is granted.
2. The City's application for the adverse discontinuance of operations as described above is granted.
3. This decision is effective June 26, 1999.
4. Petitions to stay must be filed by June 7, 1999.
5. Petitions to reopen must be filed by June 16, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams
Secretary