

BEFORE THE SURFACE TRANSPORTATION BOARD

236430
ENTERED

Soo Line Railroad Company -)
) F.D. 35850
Petition for Declaratory Order)

Office of Proceedings
August 11, 2014
Part of
Public Record

Response by City of Saint Paul, Minnesota

This pleading is the response by the City of Saint Paul, Minnesota ("City") to the Soo Line Railroad Company's Petition for Declaratory Order and Request for Expedited Decision. Soo Line, d/b/a/ CP Rail ("CP Rail") seeks a declaration from the Surface Transportation Board ("Board") that the environmental review and zoning permitting requirements which are otherwise required under the laws of the State of Minnesota and the City for construction projects of the magnitude proposed in CP Rail's St. Paul Yard track extension project are categorically preempted by 49 U.S.C. 10501. For the reasons stated below, CP Rail's Petition is moot and the relief sought should be denied.

CP Rail, in what it described as "the spirit of cooperation," (see CP Rail Pet. for Dec. Order at 7) initially participated in an environmental assessment review ("EAW") required under Minn. Stat. 116D.04, Subd. 2a(a), to identify whether CP Rail's proposal to enlarge its St. Paul Yard operation had the potential for significant environmental effects. CP Rail also initially cooperated by submitting

various wetlands applications required under State and local law otherwise implicated by the Yard expansion. See CP Rail Pet. For Dec. Order at p. 7 n. 10.

The EAW identified a variety of potential adverse environmental effects from CP Rail's yard expansion proposal which, under Minn. Stat. § 116D.04, Subd.2a required the preparation of an environmental impact statement (we will refer to this as a "state EIS" to distinguish it from federal environmental impact statements). Under Minnesota law, a "state EIS" is required to analyze and to "explore[] methods by which adverse environmental impacts of an action can be mitigated." Id. As noted by CP Rail (CP Rail Pet for Dec. Order at 9), Minnesota law [Minn. Stat. § 116D.04, Subd.2b(3)] bars permit approvals until the state EIS "has been determined adequate," and it takes time and costs money to prepare a state EIS.

After learning that its St. Paul Yard expansion project poses the potential for significant adverse environmental effects, and thus requires a state EIS, CP Rail has evidently now decided that it no longer intends to cooperate in, or otherwise comply with, Minnesota's environmental and wetland review processes or the City's zoning permit review processes. Those processes are generally applicable to, and enforceable upon, all projects of this magnitude, except those enjoying federal preemption from state and local permit processes. CP

Rail manifests this change of heart by its Petition to the Board to find that the State of Minnesota and the City's environmental, wetland and zoning review processes are preempted.

Since the Board construes state and local preclearance procedures to be preempted per-se, CP Rail is relieved by federal law from involuntary compliance with those procedures. The City acknowledges that pursuant to the current interpretations of the ICC Termination Act, the City cannot require CP Rail to comply with Minnesota's environmental and wetland review processes or compel it to obtain zoning permits prior to CP Rail's commencement of its St. Paul Yard expansion project. There is, therefore, no need for the STB to undertake a declaratory proceeding let alone an expedited proceeding.

The City is cognizant that the Board in general takes the position that general state and local police powers are not categorically preempted and that compliance with ordinary health and safety requirements is not generally viewed as burdening interstate commerce.

Accordingly, if it is determined during or after the construction of the expanded Yard that CP Rail is in violation of generally applicable public health and safety requirements or other similar police power requirements, the City will so inform CP Rail and reserves the right to take further appropriate

action. It is City's hope that CP Rail and the City will be able to resolve any such disputes consistent with the public health and safety, without undue adverse impact on the environment, and without the need to raise any disputes to the Board. But if a dispute is raised, it will be in the nature of whether one or more specific substantive requirements or measures pursuant to the general police powers of the City and the State of Minnesota may be enforced, or instead is preempted by this Board's jurisdiction. It will not be in the nature of a dispute over a preclearance requirement or pre-construction environmental review.

For the reasons stated above, CP Rail's Petition for Declaratory Order is moot and should be denied.

Respectfully submitted,

/s/

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Certificate of Service

I hereby certify service of the foregoing by U.S. Mail, first class or equivalent, postage pre-paid, on 11 August 2014 upon the following counsel of record for Soo Line d/b/a CP Rail:

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