

PENTIUK, COUVREUR & KOBILJAK

PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELLORS AT LAW

EDELSON BUILDING, SUITE 200

2915 BIDDLE AVENUE

WYANDOTTE, MICHIGAN 48192

TELEPHONE (734) 281-7100

FACSIMILE (734) 281-7102

WEBSITE: WWW.PCK-LAW.COM

November 26, 2014

237204

ENTERED

Office of Proceedings

December 10, 2014

Part of

Public Record



Honorable Vernon A. Williams
Surface Transportation Board Secretary
395 E. Street, S.W.
Washington, D.C. 20423-0001

**Re: STB No. AB-1230, Riverview Trenton Railroad Company –
Petition For Waiver/Request For Waiver of Filing Fee**

Dear Secretary Williams:

The City of Riverview, Michigan intends to file an Application For Adverse Abandonment of the track of the Riverview Trenton Railroad Company that lies within the City's limits. To precede this Application, on November 6, 2014, we filed a Petition For Waiver from certain statutory and STB filing requirements that are normally required to accompany an Application For Adverse Abandonment. See, e.g. Norfolk Southern Ry. Co.—Adverse Abandonment—St. Joseph County, IN., Docket No. AB-290 (Sub-No.286)(served Oct. 26, 2006). The Board prefers, but does not require, that such a petition be filed before the actual application is filed.

To accompany our Petition For Waiver, we filed a letter seeking a waiver of the actual \$1,900.00 filing fee for our Petition, as well as a waiver of the larger filing fee for our forthcoming Application For Adverse Abandonment. This request was respectfully made pursuant to 49 C.F.R. §1002.2(e)(1), which provides that the Board can waive filing fees for local governmental entities—which the City of Riverview is, and one that is in a position of very limited finances.

Based on my discussions with an Attorney-Advisor from the STB Office of Public Assistance, Governmental Affairs & Compliance, I now understand that the Board much prefers to process a request for waiver of fees when said request is accompanied both by the filing with which the fee is associated, and by the actual \$1,900.00 fee that the City seeks to be waived. I was also advised that if this fee is waived, then the accompanying payment is refunded by the Board.

The City of Riverview humbly reiterates its request, pursuant to 49 C.F.R. §1002.2(e)(1), that this Honorable Board waive the filing fee for its petition for waiver. Enclosed, please find our check in the amount of \$1,900, which represents the fee for a Petition For Waiver.

Very truly yours,

Michael A. Karman
Assistant City Attorney
City of Riverview

Enclosure.

FILED
December 10, 2014
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
December 10, 2014
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

AB 1230
STB Docket No. ~~FD-34040~~

RIVERVIEW TRENTON RAILROAD COMPANY
ADVERSE DISCONTINUANCE IN WAYNE COUNTY, MI

PETITION FOR WAIVER
(EXPEDITED CONSIDERATION REQUESTED)



Respectfully Submitted,

The City of Riverview, MI

By its City Attorney,

Randall A. Pentiuik
Pentiuik, Couvreur & Kobiljak, P.C.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
Tel. (734) 281-7100
Fax (734) 281-7102

Dated: November 6, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

AB 1230
STB Docket No. ~~FD-34040~~

RIVERVIEW TRENTON RAILROAD COMPANY
ADVERSE DISCONTINUANCE IN WAYNE COUNTY, MI

PETITION FOR WAIVER
(EXPEDITED CONSIDERATION REQUESTED)

A. Background Facts

Pursuant to 49 C.F.R. §1152.24(e)(5), the City of Riverview, Michigan (herein after “Petitioner” or “Riverview”) seeks waiver of certain requirements of the Surface Transportation Board (“STB” or “Board”) abandonment regulations for an adverse discontinuance application that Petitioner intends to file in this proceeding. Petitioner also seeks certain minor related exemptions as described below. These requirements are inapplicable or unnecessary in an adverse discontinuance context, and the STB has consistently granted waivers and exemptions from such provisions in previous adverse discontinuance cases.

Petitioner intends to file its adverse discontinuance application on or about December 5, 2014, pursuant to 49 U.S.C. 10903 and 49 C.F.R. Part 1152, 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 (“RTRR”). This rail line is located in Riverview, as well as its neighbor to the South, the City of Trenton, Michigan (“Trenton”).

Petitioners will ask the STB to find that the public convenience and necessity permit the adverse discontinuance of operations by RTRR on its line, which commences near the intersection of King Road and Jefferson Avenue in Trenton proximate to the FN Tower and GTW River Subdivision (milepost 10.96), and extends to the North to a point proximate to the intersection of Jefferson Avenue and Ford Avenue in Riverview (milepost 9.39). The line intersects with GTW and Conrail lines at the south end and with GTW at the north end. There are no stations on the affected line. To the best of Riverview’s knowledge, information, and belief, the line does not include any federally granted rights-of-way. There are neither any existing nor potential railroad customers located anywhere along the line.

In 2001, CenTra, Inc., through its subsidiary, RTRR, sought an exemption under Federal law from the prior approval requirements of 49 U.S.C. 10901 to acquire and operate a line of railroad in Wayne County, Michigan, and totally contained within the neighboring Cities of Riverview and Trenton. In a decision served on May 15, 2003, the Board found that what RTRR proposed was a legitimate rail transportation service that would meet a public need and authorized RTRR to acquire and operate as a railroad common carrier.

The exemption allowed RTRR to begin rail service over the 1.5 miles of track on its own property, which is a 76-acre parcel that it purchased from its non-carrier parent company, Crown Enterprises, Inc., a real estate development subsidiary of CenTra, Inc.

The line also has connecting track granted by an easement with an adjacent 195.45-acre industrial site that is owned by the Detroit Steel Center, Ltd. (“DSC”).

RTRR’s track connects with a track that is owned by a major railroad at the south end of the property, where there is a grade-separated connecting track passing of Jefferson Avenue, which was formerly used to serve the adjacent industrial site.

Wayne County, Riverview and Trenton have all vociferously opposed RTRR’s petition for exemption on the grounds that there were alternative development plans for the property in question and that CenTra, Inc. was seeking to obtain exempt railroad status solely for the purposes of circumventing all local regulations. STB Finance Docket No. 33979, CenTra, Inc., et al. - Continuance in Control Exemption - Crown Enterprises, Inc.

In 2007, Riverview filed a petition to revoke RTRR’s exemption wherein it argued that RTRR’s efforts to begin rail service had not been adequate. It also pointed out that the use of the property for the storage of containers, trucks, and other equipment in combination with the rancid environmental conditions thereon—which have, and continue to, constitute multiple violations of the reporting and monitoring conditions imposed by the STB in 2003 when it granted the exemption—on the parcel create a nuisance to nearby property owners.

While the Board did not grant the relief requested in the petition, it did leave the door open therein for the continuing issues and threats presented by RTRR’s line to be revisited in the future: “Should circumstances warrant in the future, opponents could file another petition to revoke this exemption or a request for adverse abandonment authority.” (See Riverview Trenton Railroad Company—Petition for Exemption from 49

U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI, STB Finance Docket No. 34040 (STB served November 30, 2007) (November 2007 Decision), Petition to Revoke Exemption denied, at page 4.) The continuing state of the inactivity on the line, in conjunction with the disarray of the parcel as a whole have, and continue to, warrant circumstances appropriate to petition this Honorable Board for an Adverse Application for Discontinuance and Abandonment of this rail line.

Petitioner anticipates that the only objection to the adverse discontinuance will come from RTRR.

B. Waiver Requests

As the STB and its predecessor have consistently found, much of the information that the STB's regulations otherwise require in an abandonment or discontinuance application is largely inapplicable or irrelevant to the issues in an adverse discontinuance proceeding such as the one at bar. These waivers are justified on the grounds that the Subject Line of this Petition is contained entirely in Michigan, consists of **only 1.5 miles**, and will serve **zero customers or potential customers**. Furthermore, the line contains no existing or potential stations, and no existing or potential transload sites.

In addition, little of the information in the regulations sought to be waived is relevant to the merits of an adverse discontinuance application. Waiver of these inapplicable and unneeded portions of the STB's abandonment regulations is routine in adverse discontinuance cases. Chelsea Property Owners - Abandonment Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY. Docket No. Ab-167 (Sub. No. 1094) (ICC served July 19, 1989); Grand Trunk Western Railroad Incorporated -Adverse Discontinuance of Trackage Rights Application – A Line

of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH. Docket No. AB-31 (Sub No. 30) (SIB served Feb. 13, 1998); City of Rochelle, Illinois - Adverse Discontinuance - Rochelle Railroad Company, Docket No. AB-549 (STB served June 5, 1998).

Petitioner requests waiver of the following informational requirements of 49

C.F.R. §1152 Subpart C:

1. 49 C.F.R. §1152.22(a)(5), 1152.10-1152.14- System Diagram Map

Petitioners seek waiver of the system diagram map requirements of § 1152

Subpart B. There is no need for filing a system map in an application, which is designed to permit a change of operations, not discontinuance of service entirely. City of Rochelle at 3; see also Grand Trunk Western Railroad Incorporated at 2 (finding that the filing of a system diagram map is not appropriate in the context of adverse abandonment).

Furthermore, the system map requirements are not relevant to adverse discontinuance proceedings. Maine Central Railroad Company, State of New Hampshire -Adverse Discontinuance – Line Between Whitefield, NH and St. Johnsbury, VT., Docket no. AB-848-0 (STB served July 1, 2003) at 4.

2. 49 C.F.R. § 1152.20 - Notice and Publication Requirements.

Petitioner requests a waiver from the requirement to serve its Notice of Intent on the entities listed in 49 C.F.R. §1152.20 (a)(2)(1),(4),(5), and (7).

The City seeks waiver of the requirements in 49 U.S.C. §10903(a)(3)(D) and 49 C.F.R. §1152.20 (a)(2)(1) to serve the Notice on significant users of the track, because

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this line has never conducted any operations, and there are no shippers or users of rail service on it.

The City seeks waiver of the requirement in 49 C.F.R. §1152.20 (a)(2)(1),(7) to serve notice on labor organizations, because there are no known employees who have ever worked on this track—as there have never been any rail operations conducted thereon. Since there have been no employees who have ever worked on this track, there is consequently no point in serving a copy of the Notice on the Railroad Retirement Board.

This Petition for Waiver will be served on the RTRR and the City of Trenton. This Petition for Waiver shall serve as the notice of intent to adversely discontinue rail service required under 49 C.F.R. §1152.20. There are no known existing or potential railroad employees or customers which would be adversely affected by the application. The 1.5-mile-long rail line contains no existing or potential stations, and no existing or potential transload sites. Furthermore, the continuing state of the inactivity on the line, in conjunction with the numerous environmental hazards on the parcel warrant circumstances appropriate to waive these notice requirements so that Riverview may have this line declared as abandoned, and begin the lengthy clean-up process as soon as possible to protect the health and welfare of its residents.

A copy of the application will be served upon the aforementioned parties and on the Michigan Department of Transportation, and the Michigan Public Service Commission. See City of Peoria and Village of Peoria Heights, IL Adverse Discontinuance - Pioneer Industrial Railway Company, Docket No. AB-878-0. (STB served Sept. 10, 2004).

3. 49 C.F.R. §1152.24(f) and 49 C.F.R. §1152.29(e)(2) – Waiver of Abandonment Consummation Notice and One Year Authorization

The City seeks waiver from the requirements of 49 C.F.R. §1152.24(f) and 49 C.F.R.

§1152.29(e)(2), because the City may not be able to control when the abandonment by the RETT

is consummated. The City may need to resort to state or federal law to require that the RTRR

vacate the premises within Riverview. See Napa Valley Wine Train, Docket No. AB-582, 2001

STB LEXIS 327, *8.

4. 49 C.F.R. §1152.29 – Interim Trail Use

Riverview asks for waiver from the interim trail use provisions of 49 C.F.R.

§1152.29. The Board has apparently not fully addressed this issue. See Norfolk Southern Ry. Co.—Adverse Abandonment—St. Joseph County, IN., Docket No. AB-290, 2006

STB LEXIS 630, *14. The City submits that its Petition present an appropriate case for waiver, as the land in question is within its limits, and owned by the City.

5. 49 C.F.R. § 1002.2(e) - Waiver of Filing Fee.

Petitioners respectfully request that the Board waive or reduce the \$23,300.00 filing fee for the adverse discontinuance of service application and the \$1,900.00 filing fee for the instant waiver request. The City of Riverview, as a local governmental entity, is eligible for a waiver of filing fees pursuant to the provisions of 49C.F.R. §1002.2(e).

Riverview is a small Michigan municipal corporation with a population of approximately 13,272. It has seen its operating budget dwindle in recent years due to the severe downturn in the United States' economy—its resources are increasingly precious and few. Thus, Petitioner cannot afford the substantial filing fees associated with the adverse discontinuance application, which will impose an undue hardship on its citizens

who seek to have this inoperable rail line deemed abandoned, and the environmentally hazardous parcel upon which it sits cleaned up.

The complete lack of any activity on the line coupled with the many environmental hazards on the parcel merits that this Honorable Board waive these application fee requirements so that Riverview may have RTRR's line declared as abandoned, and begin the lengthy clean-up process as soon as possible to protect the health and welfare of its residents. Accordingly, waiver, or at least a significant reduction of the Board's filing fee, is in the best interest of the public, because it will expedite and facilitate the adverse discontinuance of this faux line.

Petitioner requests exemption from the following requirements:

1. 49 U.S.C. § 10903(c)(2) - System Diagram Map.

Petitioner requests an exemption from the system diagram map requirements of 49 U.S.C. §10903(c)(2), pursuant to 49 U.S.C. §10502, to the extent deemed necessary for the adverse discontinuance application. It also seeks a waiver of the related regulation in 49 C.F.R. §1152.22(a)(5) relating to identification of the track that is the subject of the application on the carrier's system diagram map. Since the City if not a carrier, it does not have such a map.

2. 49 U.S.C. § 10903(a)(3)(B) - Posting Requirements.

Because Petitioner is not legally in possession of the line, it cannot comply with the notice and publication requirements (and related regulations, 49 C.F.R. 1152.20(a)(3)) of this Section. Moreover, this provision is "designed for carriers, [unlike

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Petitioner], [who] are proposing to voluntarily discontinue their own service over a line.”

See Canadian National Railway Company - Adverse Discontinuance - Lines of Bangor

and

Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County,

ME, Docket No. AB-279-3 (STB served September 25, 2002) at 7.

3. 49 U.S.C. § 10904 - Financial Assistance Requirements.

Petitioner requests an exemption from the financial assistance requirements of 49 U.S.C. §10904 (and waiver of related regulations, 49 C.F.R. § 1152.27) See Modem Handcraft, Inc. - Abandonment, 363 I.C.C. 969 (1981).

Given that Petitioner will seek to have the RTRR line declared as abandoned for public convenience and necessity by putting it and the subject property to viable, alternative non-rail use, the application of the above provisions is not necessary to carry out the national rail transportation policy of 49 U.S.C. §10101. Rather, it will promote that policy by eliminating unnecessary procedures, and thus will expedite regulatory decisions [49 U.S.C. § 10101(2)], fostering sound economic conditions in transportation [49 U.S.C. § 10101 (5)], and other aspects of the rail transportation policy will not be adversely affected.

4. Revenue and Cost Data

The City seeks a waiver from the requirements of 49 C.F.R. § 1152.22(d). This kind of information would be in the possession of the RTRR—if it even exists. As explained, there are no shippers on the line or in Riverview whatsoever. Furthermore, Riverview’s application is not predicated on a cost/revenue analysis. Rather, it contends

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that the interests of the public convenience and necessity would be furthered by putting the property to alternative non-rail use.

Petitioner understands that, as applicants in the adverse discontinuance proceeding, it bears the burden of proof to submit sufficient relevant information to allow the STB to reach a decision on the merits and grant the requested relief.

REQUEST FOR EXPEDITED CONSIDERATION

Petitioner seeks to file its adverse discontinuance of service application on or after December 5, 2014. All concerned—especially the concerned citizens of the City of Riverview—will benefit from prompt consideration of the discontinuance of service application. Grand Trunk Western Railroad Incorporated - Adverse Discontinuance of Trackage Rights Application - A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH, Docket No. AB-31 (Sub No. 30) (STB served Feb. 13, 1998).

Therefore, Petitioner respectfully requests expedited consideration of this Waiver Petition from this Honorable Board, and a decision issued and effective on or before December 5, 2014.

WHEREFORE, Petitioners respectfully requests that the STB grant the requested waivers and exemptions set forth herein as soon as possible.

Respectfully Submitted,
The City of Riverview, MI
By its City Attorney,

Randall A. Pentiuik, Esq.
Pentiuik, Couvreur & Kobiljak, P.C.
2915 Biddle Avenue, Suite 200

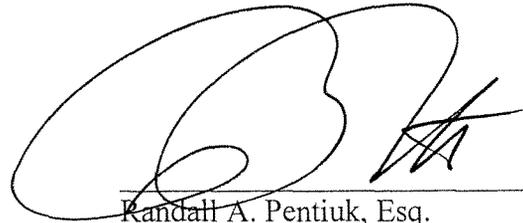
Wyandotte, MI 48192
Tel. (734) 281-7100
Fax (734) 281-7102

Dated: November 6, 2014

VERIFICATION

I, Randall A. Pentiuik, City Attorney for the City of Riverview, Michigan, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on: November 6, 2014.



Randall A. Pentiuik, Esq.
Pentiuik, Couvreur & Kobiljak, P.C.
2915 Biddle Avenue, Suite 200
Wyandotte, MI 48192
Tel. (734) 281-7100
Fax (734) 281-7102