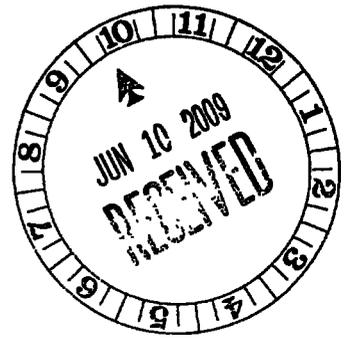


FILING FEE WAIVED

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com



THOMAS F. MCFARLAND

June 9, 2009

By UPS overnight mail
(original + 10 copies)

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

ENTERED
Office of Proceedings

JUN 10 2009

Part of
Public Record

225227

Re: Docket No. AB-1036, *The City of Chicago, Illinois -- Adverse Abandonment -- Chicago Terminal Railroad in Chicago, IL*

Dear Ms. Quinlan:

In behalf of the City of Chicago, Illinois, hereby transmitted for filing is a Petition for Partial Waiver of Abandonment Regulations and for Exemptions.

No filing fee is required because the City is a governmental entity.

Very truly yours,

Tom McFarland

Thomas F. McFarland
*Attorney for the City
of Chicago, Illinois*

TMCF kl enc wp8 0\1277\trstb1

cc. (by e-mail)

John Heffner, Esq., *j.heffner@verizon.net*

Mr. Ed Ellis, *ellise@towapacific.com*

Steve Holler, Esq., *sholler@cityofchicago.org*

Ms. Jill A. Gansen, *jill.gansen@cityofchicago.org*

Mr. Chris Wuellner, *chris.wuellner@cityofchicago.org*

Mr. Dan Burke, *dan.burke@cityofchicago.org*

BEFORE THE
SURFACE TRANSPORTATION BOARD



THE CITY OF CHICAGO, ILLINOIS --)
ADVERSE ABANDONMENT --) DOCKET NO.
CHICAGO TERMINAL RAILROAD IN) AB-1036
CHICAGO, IL)

**PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS
AND FOR EXEMPTIONS**

ENTERED
Office of Proceedings
JUN 10 2009
Part of
Public Record

THE CITY OF CHICAGO, ILLINOIS
CITY HALL
121 North LaSalle Street
Chicago, IL 60602

Applicant

MARA S. GEORGES, Corporation Counsel
STEVEN J. HOLLER, Deputy Corporation Counsel
City of Chicago, Law Department
121 North LaSalle Street, Room 600
Chicago, IL 60602

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 fax
mcfarland@aol.com

Attorneys for Applicant

DATE FILED: June 10, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

| | | |
|----------------------------------|---|------------|
| THE CITY OF CHICAGO, ILLINOIS -- |) | |
| ADVERSE ABANDONMENT -- |) | DOCKET NO. |
| CHICAGO TERMINAL RAILROAD IN |) | AB-1036 |
| CHICAGO, IL |) | |

**PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS
AND FOR EXEMPTIONS**

Pursuant to 49 C.F.R. § 1152.24(e)(5) and 49 U.S.C. § 10502(a), the CITY OF CHICAGO, ILLINOIS (the “City”) hereby seeks partial waiver of regulations governing railroad abandonments at 49 C.F.R. § 1152, Subpart C, and exemptions from the offer-of-financial-assistance (OFA) provisions of 49 U.S.C. § 10904 and from the public use provisions of 49 U.S.C. § 10905. That waiver and those exemptions are sought in conjunction with an application that the City intends to file for adverse abandonment of the authority of Chicago Terminal Railroad (CTR) to operate over two unused rail lines in Chicago, i.e.:

- (1) the Kingsbury Branch between its point of connection to the Goose Island Branch north of North Avenue and its terminus at the junction of Division and Halsted Streets (“Kingsbury Segment”); and
- (2) a portion of the Lakewood Avenue Line between the south right-of-way line of Clybourn Avenue and the terminus of that Line at Diversey Parkway (the “Lakewood Avenue Segment”).

The Kingsbury Branch is shaded in blue on a print that is attached to this Petition as Appendix 1. The Lakewood Avenue Segment is shaded in yellow on Appendix 1. Also shown on that print, but not being sought to be abandoned, is CTR's Goose Island Branch, sometimes also referred to as CTR's Cherry Street Line.

BACKGROUND

The Kingsbury Branch and the Lakewood Avenue Segment are parts of 4.5 miles of rail line not identified by milepost numbers that CTR acquired from Soo Line Railroad Company, d.b.a. Canadian Pacific Railway (CP-Soo) in December, 2006.^{1/} *See Chicago Terminal Ry. -- Acq. & Oper. Exempt. -- Soo Line R. Co., d.b.a. Canadian Pacific Ry., 2006 STB LEXIS 794 (Finance Docket No. 34968, Notice of Exemption served December 22, 2006).* Soo Line had acquired its interest in those rail lines in conjunction with the bankruptcy of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee Road). Milwaukee Road had operated those rail lines for many years.

The Kingsbury Branch and the Lakewood Avenue Segment are referred to by those names because they are located within the right of way of, or run parallel to, two City Streets -- Kingsbury Street and Lakewood Avenue, respectively. For much of their length, the railroad trackage of those rail lines is located within the traffic lanes of those streets. The use of the properties along those streets that are adjacent to that trackage has become largely residential and retail in recent years and those properties do not require rail freight service. The City and the local alderman have received complaints that the trackage in those streets has caused personal

^{1/} The rail lines were deeded from CP-Soo to CTR parent company Iowa Pacific Holdings, LLC, who then deeded them to CTR.

injury and property damage to motorists, bicyclists, and pedestrians. In addition, the presence of such trackage in the streets substantially increases the cost of reconstruction and/or realignment of those streets. The City's Department of Transportation ("CDOT") has slated Kingsbury Street for reconstruction in 2009. Abandonment of the unused Kingsbury Segment and of the Lakewood Avenue Segment would have significant public benefits in reduced personal injury and property damage and in substantial reduction of costs for reconstruction and/or realignment of the streets in which trackage of such rail lines is located.

CDOT and the City's Department of Planning and Development ("DPD") have established that there is no present or reasonably foreseeable future need for rail service on the Kingsbury Branch or on the Lakewood Avenue Segment. No present or prospective shipper would lose rail service as a result of the proposed adverse abandonment. The proposed abandonment would not include trackage that serves Finkl Foundry, which is located south of Clybourn Avenue. The only recent user of the Lakewood Avenue Segment -- Peerless Candy -- has gone out of business. The facilities that Peerless used have been demolished.

Where, as here, there is a legitimate nonrail need for property devoted to rail use and there is no overriding need for rail service over such property, adverse abandonment of the rail carrier's operating authority is granted. *See, e.g., Norfolk & W. Ry. Co. -- Aban. Exem. -- Cinn., Hamilton County, OH, 3 S.T.B. 110, 119 (1998).*

There has been no rail traffic on the Kingsbury Branch for many years. The City has been advised that in the recent past, CTR may have convinced a wood company located near Division and Halsted Streets to ship firewood by rail over the Kingsbury Branch in an effort to be in a better position to oppose an anticipated adverse abandonment application by a private developer.

CTR has also contacted local community groups and the local alderman's office concerning a plan to run a holiday "Polar Express" passenger train along a portion of the Kingsbury Branch. The City's application will show that a contrived freight shipment of firewood and a proposed "Polar Express" fantasy train with no freight purpose do not establish a legitimate need for rail transportation that would defeat an adverse abandonment application of a long-unused rail line.

WAIVERS REQUESTED

As the Board and its predecessor, the Interstate Commerce Commission ("ICC") have consistently found, much of the information that the Board's regulations require in an abandonment proceeding is largely inapplicable or irrelevant to an application for adverse discontinuance or abandonment. *Seminole Gulf Railway, L.P. -- Adverse Abandonment -- in Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4), served June 9, 2004 ("*Seminole Gulf*") (citing, *Napa Valley Wine Train, Inc. -- Adverse Abandonment -- in Napa Valley, CA*, STB Docket No. AB-582, served Mar. 30, 2001 ("*Napa Valley*")); *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), served July 19, 1989. Consistent with that precedent, the City requests waivers from the following provisions:

A. **Notice of Intent.** The City intends to file and publish a notice of the proposed adverse abandonment, as required by 49 C.F.R. § 1152.21. The City believes, however, that the form of the notice prescribed in § 1152.21 is inappropriate for use in this proceeding. Therefore, the City requests a waiver of the prescribed form for the notice, and proposes instead to use the form of notice set forth in Appendix 2. Such relief is consistent with the Board's decisions in *Seminole Gulf* and in *Norfolk Southern Railway Company -- Adverse Abandonment -- St. Joseph*

County, IN, STB Docket No. AB-290 (Sub-No. 286), served Oct. 26, 2006 (“*St. Joseph County*”).

The City requests a waiver of 49 C.F.R. § 1152.20(a)(2)(i), which requires service of the notice upon all significant users of the lines. Because there are no users of the lines, significant or otherwise, this provision is inapplicable or irrelevant. Petitioner proposes to serve the notice on CTR.

The City requests a waiver of 49 C.F.R. § 1152.20(a)(2)(xii), which requires service of the notice upon the headquarters of all duly certified labor organizations that represent employees on the affected rail lines. Because rail service is not provided on these lines, there are no railroad employees who would be affected by an adverse abandonment of the lines.

The City requests a waiver of 49 C.F.R. § 1152.20(a)(3), which requires the notice to be posted at each station and terminal along the lines. There are no stations or terminals along the affected rail lines.

B. System Diagram Map. The City seeks a waiver of all requirements in 49 C.F.R. §§ 1152.10 to 1152.14, and 49 C.F.R. § 1152.24(e)(1). These provisions require the carrier to maintain, file and publish a System Diagram Map (“SDM”), and requires a line to appear on the SDM for at least 60 days before an abandonment application can be filed for the specific line. Waiver of this requirement is appropriate because the City does not own the affected lines and cannot amend, file or publish the SDM. Furthermore, waiver of this requirement is consistent with the Board’s decision in *St. Joseph County*. See, also, *Salt Lake City Corp. -- Adverse Abandonment -- in Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) (served Oct. 5, 2001) (“*Salt Lake*”).

C. Contents of the Abandonment Application. The City requests a waiver of the requirements of 49 C.F.R. § 1152.22(a)(5), which requires inclusion of the rail lines on the carrier's SDM, the date upon which the lines were first listed on the SDM, and a copy of the line descriptions which accompanies the carrier's SDM. Waiver of these requirements is appropriate because the City, as a third party applicant, does not have access to CTR's current SDM, if any, and it does not possess, nor is it able to obtain this information. In recognition of these facts, the Board has granted waivers of these requirements in prior adverse abandonment proceedings. *See Yakima Interurban Lines Assos. -- Adverse Abandonment -- in Yakima County, WA*, STB Docket No. AB-600 (served Feb. 6, 2004). *Cf. St. Joseph County.*

The City requests a waiver of the requirements of 49 C.F.R. § 1152.22(b)-(d), which requires a description of the present physical condition of the line, estimated deferred maintenance and rehabilitation costs, a description of service performed on the lines during the prior year, and a computation of the revenues attributable and avoidable costs for the lines to be abandoned. No rail service is provided over the lines. As a third party applicant, the City is unable to provide any further description of the lines' condition, service performed on the lines, or revenue and cost data associated with the lines. Waiver of these requirements is consistent with prior Board decisions in adverse abandonment cases. *St. Joseph County*, at 5. *See, also, Seminole Gulf and East St. Louis Jct. R.R. Co. -- Adverse Abandonment -- in St. Clair County, IL*, STB Docket No. AB-838, served June 30, 2003 ("*St. Clair County*").

In view of the waiver requests contained herein, the City further requests that the form of the draft Federal Register notice, as required by 49 C.F.R. § 1152.22(i), be waived. The City proposes instead to utilize the form of draft Federal Register notice set forth in Appendix 3.

D. Notice of Consummation. The City requests a waiver of the abandonment consummation notice requirement in 49 C.F.R. § 1152.24(f) and the one-year authorization limit in § 1152.29(e)(2). As the Board has held in prior adverse abandonment proceedings, these waivers are not appropriate because the applicant does not have control over consummation, since it must invoke state law to obtain control of the property. *See Salt Lake and Napa Valley.*

E. Environmental and Historic Regulations. The City seeks waiver of the Board's regulations requiring environmental and historic reporting in this matter. The rail lines proposed for abandonment are not being used for rail transportation. The tracks in those lines are located generally in the middle of active city streets. Abandonment of the Federal interest in those tracks, leading to their removal, would have minimal environmental and historic effect, and any such effect would be decidedly positive. Environmental and historic reporting are unnecessary in that situation, so they should be waived.

EXEMPTIONS REQUESTED

Public Use, Trails, and OFA Conditions. The City seeks a waiver of the provisions for offers of financial assistance ("OFA"), public use procedures, and interim trail use and rail banking requirements of 49 C.F.R. §§ 1152.27 through 1152.29. In connection therewith, the City also seeks an exemption from the requirements of 49 U.S.C. §§ 10904 and 10905.

These procedures will serve no useful purpose and are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. If the Board were to grant the City's application for adverse abandonment, the Board would withdraw its exclusive jurisdiction over the right-of-way to permit the application of state, local, or other federal laws because there is no overriding federal interest in interstate commerce. In this situation, the Board has noted that, absent an

exemption, Sections 10904 and 10905 “could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate.” *St. Joseph County*, at 6 (citing, *Kansas City Puc. Ser. Frgt. Operations - Abandonment Exemption*, 7 I.C.C.2d 216, 225 (1990)). *See, also, St. Clair County*.

WHEREFORE, the City respectfully requests that the Board grant the waivers and exemptions sought herein.

Respectfully submitted,

THE CITY OF CHICAGO, ILLINOIS
CITY HALL
121 North LaSalle Street
Chicago, IL 60602

Applicant



THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 fax
mcfarland@aol.com

Attorneys for Applicant

MARA S. GEORGES, Corporation Counsel
STEVEN J. HOLLER, Deputy Corporation Counsel
City of Chicago, Law Department
121 North LaSalle Street, Room 600
Chicago, IL 60602

DATE FILED: June 10, 2009

Draft Notice of Intent

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

STB Docket No. AB-1036

**THE CITY OF CHICAGO, ILLINOIS
-- ADVERSE ABANDONMENT --
CHICAGO TERMINAL RAILROAD IN CHICAGO, IL**

THE CITY OF CHICAGO, ILLINOIS (the City) (hereinafter “Applicant”) gives notice that on or about July 15, 2009, it intends to file with the Surface Transportation Board (“the Board”), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of Chicago Terminal Railroad (CTR) to operate over two unused rail lines in Chicago, Cook County, Illinois, i.e.: (1) the Kingsbury Branch between its point of connection to the Goose Island Branch north of North Avenue and its terminus at the junction of Division and Halsted Streets; and (2) a portion of the Lakewood Avenue Line between the south right-of-way line of Clybourn Avenue and the terminus of that Line at Diversey Parkway. The affected railroad lines are situated in U.S. Postal Zip Codes 60614 and 60622. The lines do not have stations. The reasons for the proposed abandonment include (i) the absence of current use of the lines, (ii) the lack of any reasonably foreseeable future need for rail service on the lines; and (iii) the prospect for beneficial nonrail use of the property. In addition, there are significant safety concerns.

APPENDIX 2

There are no documents in the City's possession that indicate that the lines contain federally granted rights-of-way. Any such documentation that might come into the City's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's webpage, *www.stb.dot.gov*, or a copy can be secured from the City's counsel, whose name and address appear below. The application will include the City's entire case for abandonment. Any interested person, after the application is filed on or about July 15, 2009, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the application. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application. Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests

APPENDIX 2

have been served on Applicant's counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarland@aol.com. Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, *et seq.*

Draft Federal Register Notice

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

STB Docket No. AB-1036

**THE CITY OF CHICAGO, ILLINOIS
-- ADVERSE ABANDONMENT --
CHICAGO TERMINAL RAILROAD IN CHICAGO, IL**

THE CITY OF CHICAGO, ILLINOIS (the City) gives notice that on July 15, 2009, it filed with the Surface Transportation Board (“the Board”), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of Chicago Terminal Railroad (CTR) to operate over two rail lines in Chicago, Illinois, i.e.: (1) the Kingsbury Branch between its point of connection to the Goose Island Branch north of North Avenue and its terminus at the junction of Division and Halsted Streets; and (2) a portion of the Lakewood Avenue Line between the south right-of-way line of Clybourn Avenue and the terminus of that Line at Diversey Parkway. Those rail lines are situated in U.S. Postal Zip Codes 60614 and 60622. The lines include no stations.

There is no documentation in the City’s possession that indicates that the line contains federally granted rights-of-way. Any such documentation relating to this abandonment in the Applicant’s possession will be made available promptly to those requesting it. The application can be viewed on the Board’s webpage, www.stb.dot.gov, or a copy can be secured from

APPENDIX 3

Applicant's counsel, whose name and address appear below. The Applicant's entire case for abandonment was filed with the application.

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days after the application is filed. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitted verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, DC 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarland@aol.com. Written comments and protests must indicate the proceeding designation STB AB-1036.

APPENDIX 3

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interest may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, *et seq.*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2009, I served the foregoing document, Petition For Partial Waiver Of Abandonment Regulations And For Exemptions, by e-mail and first class, U.S. mail, postage prepaid, upon representatives of CTR.

Mr. Edwin Ellis
Chicago Terminal Railroad
118 South Clinton Street
Room 300
Chicago, IL 60618
ellise@iowapacific.com

John D. Heffner, Esq.
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, DC 20036
j.heffner@verizon.net

Thomas F. McFarland

Thomas F. McFarland