

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

ENTERED
Office of Proceedings
January 17, 2020
Part of
Public Record

STB Docket No. AB-55 (Sub-No. 794X)

CSX TRANSPORTATION INC. — ABANDONMENT EXEMPTION
IN PINELLAS COUNTY, FL

NOTICE OF APPEAL AND REQUEST FOR WAIVER AND EXTENSION

The City of St. Petersburg, FL (“City”), by and through the undersigned counsel, responds to the Decision entered by the Director of the Office of Proceedings (“Director”) regarding interim trail use of the subject line, dated January 10, 2020 (“Decision”). In response to the Decision, the City states as follows:

I. NOTICE OF APPEAL

Pursuant to 49 CFR §1011.2, §1011.7, and §1115.2, the City hereby appeals the Decision of the Director to the Surface Transportation Board (“Board”). Pursuant to §1011.7(iv) and (v), the Director has been delegated authority to determine applicability of the National Trails System Act and issue appropriate decisions. Pursuant to §1011.2(a)(7), the Board has reserved authority to hear appeals of initial decisions issued by the Director. Pursuant to §1115.2(a), appeals of initial decisions are permitted¹.

FILING FEE WAIVED

¹ To note, though 49 CFR §1115.1 specifically excludes abandonment and discontinuance proceedings from the Board’s standard appellate procedure, the City is not appealing the decision by the Director’s decision to grant and exemption to abandonment pursuant to 49 CFR 1152 subpart F, but only the initial Decision granting the Notice of Interim Trail Use (“NITU”) to GHF pursuant to 1152.29.

Pursuant to 49 CFR §1115.2(b), “[a]ppeals must be based on one or more of the following grounds: (1) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record; (2) That a necessary legal conclusion, or finding is contrary to law, Board precedent, or policy; (3) That an important question of law, policy, or discretion is involved which is without governing precedent; or (4) That prejudicial procedural error has occurred.”

The City believes an appeal is warranted because ground 1-3 are all implicated. As for the first ground for appeal, 49 CFR §1152.29(a) requires a private organization to be qualified. The City believe this requires at least a minimal finding of fact regarding an entity’s qualification. The Decision makes no such finding. As for the second ground for appeal, the City believes this issue involves a necessary legal conclusion regarding the application of federal law to the unique facts of this matter. As for the third ground for appeal, the City believes this is an important decision without direct precedent, that will result in a substantial use of taxpayer funds, due to claims under the Tucker Act.

For these reasons, the City respectfully requests an appeal of the Decision to the Board, in the manner set forth below.

II. REQUEST FOR WAIVER AND EXTENSION TO FILE BRIEF

Pursuant to 49 CFR §1002.2(e), filing fees are generally waived for local government entities. The City respectfully requests the filing fee for this appeal to be waived.

Pursuant to 49 CFR §1011.2(a)(7), appeals of decisions by the Director must be appealed within 10 days. Pursuant to 49 CFR §1115.2(e), appeals of initial decisions must be filed within 20 days. Pursuant to 49 CFR §1115.2(e), the Board may authorize extension for filing (not to exceed 20 days). Due to the inherent confusion of the applicable time period in this instance, the City respectfully requests an extension of 10 days from the day this request is granted (if granted)

to file a brief with the Board outlining the arguments set forth above in more detail, with appropriate citations to law and precedent, and in compliance with the restrictions set forth in §1115.2.

Respectfully submitted this 17th day of January, 2020.

OFFICE OF THE CITY ATTORNEY
FOR THE CITY OF ST. PETERSBURG

By:/s/ Bradley S. Tennant_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail service or U.S. Postal Service, first class, to all parties in the instant action.