

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

ENTERED
Office of Proceedings
July 23, 2019
Part of
Public Record

STB Docket No. AB-1289

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

PETITION FOR WAIVER AND EXEMPTION

The City of St. Petersburg, FL (the “City” or “Petitioner”), by and through the undersigned counsel, petition the Surface Transportation Board (“the Board”) for the waiver of certain of the Board’s abandonment regulations in 49 C.F.R. Parts 1152 and 1105, and for exemption from certain provisions of Subtitle IV of Title 49 of the U.S. Code. Because the City is a local government entity, it is entitled to a waiver of filing fees pursuant to the provisions of 49 CFR § 1002.2(e). In support thereof, Petitioner state as follows:

I. INTRODUCTION

In the late 1880’s the City of St. Petersburg, Florida, was founded contemporaneously with the installation of a rail line providing service to the core, downtown area of the City. But over the subsequent century-and-a-half, the City has grown exponentially to become the 5th most populous City in the state. Concurrently, the downtown has flourished into a residential and commercial hub in which certain sections of the rail line have become both functionally useless,

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and an impediment to growth. This was reflected in the Board's 2006 decision (STB Docket No. AB_55_646_X) to approve a trail use agreement for a large section of rail line through the City.

The instant action concerns a portion of former rail line running south from 5th Ave. N and curving east along 1st Ave. S and ending at 9th St. N, in downtown St. Petersburg, FL. ("Segment Property"). The Segment Property has been described by CSX Transportation Inc. ("CSX"), the owner listed by the Pinellas County Property Appraiser, as between mileposts ARE 897.57 and ARE 898.43 – a length of approximately 0.9 miles.

The Segment Property is not in active use, nor are there actual rails for much of its length. The street crossings have been paved over, and for much of the Segment Property running over privately held lands the rails and ties have either been removed or buried. To the City's knowledge, freight trains have not run on the property for several decades, and the last documented use found by the City was by the Ringling Bros. Circus in 2004. Since that time, CSX has entered into multiple agreements for other uses above and across the areas that previously contained railroad tracks.

The City, as the majority owner of abutting properties, intends to utilize any portion of the Segment Property made available by this action to create a public park and extension of the existing Pinellas Trail. Though the City has approached CSX with requests for trail use agreements for several years, an agreement has yet to be reached. Accordingly, the City is pursuing an adverse abandonment to be able to put the property into more productive use, and to facilitate the use of the Segment Property by the public.

II. WAIVERS

In an adverse abandonment action, current and prior Board precedent shows unambiguously that many of the requirements of the Board's governing regulations are largely inapplicable or irrelevant to the issues in an adverse abandonment case. *See CSX Corporation and CSX Transportation, Inc.—Adverse Abandonment—Canadian National Railway Company and Grand Trunk Western Railroad Inc.*, STB Docket No. AB-31 (Sub-No. 38) (served March 2, 2001); and *City of Rochelle, Illinois Adverse Discontinuance—Rochelle Railroad Company*, STB Docket No. AB-549 (served June 5, 1998).

Accordingly, the City respectfully requests a waiver of the following provisions:

Waiver of filing fees.

The City, as a local government entity, is entitled to a waiver of the filing fees for the application and for the waiver request pursuant to 49 CFR § 1002.2(e).

Notice of Intent.

The City, in reviewing Board precedent, believes many of the requirements of the notice prescribed by 49 CFR § 1152.21 are typically waived in adverse abandonment actions, as they tend to be inapplicable or inappropriate for such. *See Seminole Gulf Railway, L.P. Adverse Abandonment—In Lee County FL*, STB Docket No. AB-400 (Sub-No. 4) (served June 9, 2004). Board precedent and 49 C.F.R. 1152.24(e)(5) shows waivers should be requested and obtained before an adverse application is filed. As the City is preparing the notice for filing and publication, a draft of which is attached as Exhibit "A" it respectfully requests the following waivers of the applicable code:

49 CFR §1152.20(a)(2): The City requests a waiver of notifying significant users of the Segment Property because the City does not believe there to be any for at least the last ten years.

49 CFR § 1152.20(a)(2)(xii): The City requests a waiver of the requirement to notify “duly certified labor organizations that represent employees on the affected rail line” for the same reason as the previous waiver request – the City believes there is not active rail service on the Segment Property. Furthermore, Board precedent shows that protections for employees are not generally applicable to complete abandonments. *See Northhampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784, 785-787 (1978); *Wellsville, Addison & Galetton R. Corp.—Abandonment*, 354 I.C.C. 744, 745-746 (1978).

49 CFR § 1152.20(a)(3): The City requests a waiver of the requirement to post notices at each of the railroad’s stations, as the City does not believe there to be any such stations on the Segment Property, and that this provision is intended to apply to carriers only. *See, Napa Valley Wine Train, Inc.—Adverse Abandonment—In Napa Valley, CA*, STB Docket No. AB-582 (served March 30, 2001).

49 CFR § 1152.20(c), 1105.7, 1105.8, and 1152.22(f): The City requests a waiver of the requirement to serve copies of the Environmental and Historic Report and the requirements associated with the report and other environmental disclosures because, due to the lack of use of the Segment Property for railroad services, there would be no change in the environmental impact on the area. This makes 49 C.F.R. 1105.6(c) applicable, which waives environmental or historical documentation in actions that do not have a significant impact on carrier operations. *See, e.g., Salt Lake City Railroad Company, Inc.—Adverse Abandonment—Line of Utah Transit Authority in Salt Lake City, UT*, STB Docket No. AB-520 (served August 24, 1999).

Furthermore, the City does not believe there to be any historic structures on the Segment Property, making the historic impact negligible and making the waiver available in 1105.8(e) applicable. Furthermore, because the Segment Property has not been used for over a decade,

noise and air pollution would not be impacted. Finally, the proposed action would only have a positive impact on safety, allowing any remaining rails to be removed from the downtown core and would facilitate a more compatible use for pedestrians and vehicles by removing unnecessary physical obstacles,

49 CFR § 1152.22(a)(4) and (5), and 1152.24(e)(1): The City requests a waiver of the requirement to provide a detailed map of the line. Board precedent has consistently shown this requirement is not possible or practical for a third-party applicant. *See Napa Valley, The Western Stock Show Association—Abandonment Exemption—In Denver, CO*, STB Docket No. AB-452 (Sub-No. IX) (served October 19, 1995); *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH*, STB Docket No. AB-31 (Sub-No. 30) (served February 12, 1998).

49 CFR § 1152.22(i): The City requests a waiver of the requirement to utilize the format provided for, as, due to the number of applicable waivers, such form would be inappropriate in this instance. The City respectfully requests the form of the notice be as set forth in Exhibit “B”.

All such waivers are consistent with Board precedent. *See, e.g., Seminole Gulf Railway, L.P.—Adverse Abandonment—In Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4) (served June 9, 2004); *Napa Valley Wine Trains, Inc.—Adverse Abandonment—In Napa Valley, CA*, STB Docket No. AB-582 (served March 29, 2001); *CSX Corporation and CSX Transportation, Inc.—Adverse Abandonment—Canadian National Railway Company and Grand Trunk Western Railroad Inc.*, STB Docket No. AB-31 (Sub-No. 38) (served March 2, 2001); *Salt Lake City Railroad Company, Inc.—Adverse Abandonment—Line of Utah Transit Authority in Salt Lake City*,

UT, STB Docket No. AB-520 (served August 24, 1999). Accordingly, Petitioners respectfully request that their waiver requests be granted.

Contents of Abandonment Application.

Should the requested waivers be granted, the abandonment application will include as follows (references as to 49 CFR § 1152.22):

(a) General

(1) Exact name of applicants

(2) Whether applicants are common carriers by railroad Subject to 49 U.S.C. Subtitle IV, chapter 105;

(3) Relief sought;

(4) General map of the subject line;

(6) Statement of reasons for filing application

(7) Name, title, and address of applicants' representatives;

(8) List of all Postal Service ZIP Codes that the line traverses

(b) General statement of property condition

(e) Rural and community impact;

(h) Additional information; and

(i) Draft Federal Register notice.

III. CONCLUSION

For the reasons stated above, the City respectfully requests the Board grant the requested waivers and exemptions in anticipation of the City's filing of a petition for adverse abandonment.

Respectfully submitted this 22nd day of July, 2019.

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

By: /s/ Bradley S. Tennant

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 via CM/ECF to Kim Rice Bongiovanni, Esq. and Catherine Adkins, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202, and R. Eric Bilik, Esquire, R. Patrick Dover, Esquire, Sean P. Walsh, Esquire, McGuireWoods, LLP, 50 N. Laura Street, Suite 3300, Jacksonville, Florida 32202, kim_bongiovanni@csx.com, Catherine_Adkins@CSX.com, ebilik@mcguirewoods.com, jaiken@mcguirewoods.com, rdover@mcguirewoods.com, bchassereaucook@mcguirewoods.com, swalsh@mcguirewoods.com this 22nd day of July, 2019.

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FOR THE CITY OF ST. PETERSBURG

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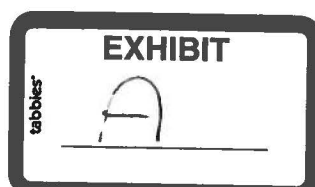
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CSX TRANSPORTATION INC. ADVERSE ABANDONMENT
IN PINELLAS COUNTY, FL

NOTICE OF ADVERSE ABANDONMENT OF THE CITY OF ST. PETERSBURG, FL

The City of St. Petersburg, Florida, a municipal corporation, (the “City” or “Applicant”) gives notice that on or about September 1, 2019, it intends to file with the Surface Transportation Board, Washington, DC 20423, an application seeking the adverse abandonment of approximately 0.9 miles of railroad between mileposts ARE 897.57 and ARE 898.43 in Pinellas County, Florida. The affected railroad lines are in U.S. Postal Service Zip Codes 33701, 33705, and 33713. The effected lines are not believed to contain any stations. The City is not a common carrier. The reasons for the proposed abandonment are (i) the line has been *de facto* abandoned, (ii) there is no present or foreseeable use of the lines, and (iii) the public would be served by abandonment through an increase in available use and public safety.

The application will include the City’s entire case for abandonment, based on the physical abandonment of use and the public policy concerns favoring such abandonment. The rail line in question is not in active use, nor are there actual rails for much of its length. The street crossings have been paved over, and for much of the Segment Property running over privately held lands the rails and ties have either been removed or buried. To the City’s knowledge, freight



trains have not run on the property for several decades, and the last documented use found by the City was by the Ringling Bros. Circus in 2004. Since that time, CSX has entered into multiple agreements for other uses above and across the areas that previously contained railroad tracks.

It is anticipated the residents of the City of St. Petersburg will benefit from the proposed abandonment by an improvement in safety to the area, by virtue of removing the remaining vestiges of the railroad to allow for easier traffic, and by the improved opportunity to develop the area. As the rail line is located in the flourishing downtown, the rail line has become both functionally useless, and an impediment to growth. This was reflected in the Board's 2006 decision (STB Docket No. AB_55_646_X) to approve a trail use agreement for a large section of rail line through the City. The City intends, as able, to convert any property acquired by virtue of the abandonment and post-abandonment actions into public park and trail use.

Any interested person, after the application is filed on September 1, 2019, may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment or discontinuance 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 interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or

discontinuance 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 (case in chief) including the following:

(1) Protestant's name, address and business.

(2) A statement describing protestant's interest in the proceeding including:

(i) A description of protestant's use of the line;

(ii) If protestant does not use the line, information concerning the group or public interest it represents; and

(iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

(3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].

(4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

(i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Recommended provisions for protection of the interests of employees;

(v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and

(vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

A protest may demonstrate that: (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application; (3) the feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and (4) the feeder line application is pending before the Board.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear. A supplemental EA of EIS may be issued where appropriate.

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 the 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 § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB ____ (Sub-No. ____) and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation

Board, Washington, DC 20423-0001, no later than 45 days after September 1, 2019.

Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant, Bradley Tennant, Assistant City Attorney for the City of St. Petersburg, Florida, One 4th St. N, St. Petersburg, FL 33701. Every comment or protest shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

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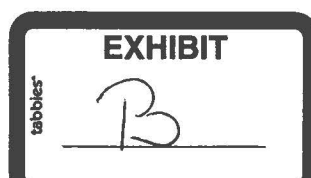
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The public records of the Board contains a system diagram map (SDM) for CSX Transportation Inc. (“CSX”).

Based on the information in possession of the Applicant, it is unclear if the line contains any federally granted right-of-ways. Any documentation related 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.gov, or a copy can be obtained from the Applicant’s representative, whose name and address appear below. The applicant’s case for abandonment was filed with the application.



Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment or discontinuance 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 interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance 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 (case in chief) including the following:

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Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear. A supplemental EA of EIS may be issued where appropriate.

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 the 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 § 1152.25.

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The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to

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