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August 12, 2019

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
August 12, 2019
Part of
Public Record

Re: **Docket No. AB-1289, CSX Transportation, Inc.—Adverse Abandonment—in
Pinellas County, FL**

Dear Ms. Brown,

Attached is CSX Transportation, Inc.'s Response to Petition for Waiver and Exemption
filed by the City of St. Petersburg, FL.

Sincerely yours,

Louis E. Gitomer

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1289

248307

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

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RESPONSE TO PETITION FOR WAIVER AND EXEMPTION
Public Record

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: August 12, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

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CSX TRANSPORTATION, INC.-ADVERSE ABANDONMENT
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RESPONSE TO PETITION FOR WAIVER AND EXEMPTION

CSX Transportation, Inc. (“CSXT”) responds to the Petition for Waiver and Exemption filed on July 23, 2019 (the “Petition”) by the City of St. Petersburg, FL (the “City”).

PREFACE

CSXT has begun the process of seeking abandonment authority for the 0.86-mile rail line on the Clearwater Subdivision, between milepost ARE 897.57 and milepost ARE 898.43, in St. Petersburg, Pinellas County, FL (the “Line”). On July 31, 2019, CSXT served consultation letters as required by 49 C.F.R. 1105.6(b)(2). CSXT served letters on August 9, 2019 providing the notice required by 49 C.F.R. 1152.50(d). Notice was published in Tampa Bay Times on August 10, 2019. CSXT intends to file a Notice of Exemption pursuant to 49 C.F.R. 1152.50 on or about August 20, 2019 in Docket No. AB-55 (Sub-No. 794X), *CSX Transportation, Inc.-Abandonment Exemption-in Pinellas County, FL*.

BACKGROUND

The City is proposing to file an adverse abandonment application to force CSXT to abandon a 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.” (Petition at 2). CSXT agrees with the City that the railroad line the City has described is the same as the Line CSXT will file a notice of exemption to abandon in AB-55 (Sub-No. 794X).¹

The City intends to file an application with the Board seeking approval of an adverse abandonment of the Line in order “to put the property into more productive use, and to facilitate the use of the [Line] by the public.” Petition at 2. The City does not indicate how it will acquire the property.

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SUMMARY OF WAIVERS AND EXEMPTIONS SOUGHT

The City seeks waiver of the following provisions:

- 49 C.F.R. §1002.2(f)(21), the filing fee for an abandonment application.²
- 49 C.F.R. §1152.20(a)(2)(i), service of Notice of Intent on significant users.
- 49 C.F.R. §1152.20(a)(2)(xii), service of Notice of Intent on labor representatives.
- 49 C.F.R. §1152.20(a)(3), posting of Notice of Intent at stations.
- 49 C.F.R. §1152.10-.14 and .24(e)(1), System Diagram Map (“SDM”) publication.
- 49 C.F.R. §1152.22(a)(4), detailed map.
- 49 C.F.R. §1152.22(a)(5), SDM reference.
- 49 C.F.R. §1152.24(e)(1), format of filing.
- 49 C.F.R. §1152.20(c), Environmental and Historic Reports.
- 49 C.F.R. §1152.22(f), environmental impact.

¹ A 0.43-mile portion of the Line, between milepost 897.57 and milepost 898.00, was part of a grant of discontinuance by the Board in *CSX Transportation, Inc.—Discontinuance of Service Exemption—in Pinellas County, Fla.* STB Docket No. AB-55 (Sub-No. 705X) (STB served Apr. 8, 2011). CSXT consummated the discontinuance by letter dated May 23, 2011.

² CSXT does not dispute that the City is a local government entity entitled to waiver of the filing fee (49 C.F.R. §1002.2(e)(1)).

49 C.F.R. §1105.7, Environmental Report.

49 C.F.R. §1105.8, Historic Report.

The City is not seeking, and has not justified, a waiver of 49 C.F.R. §1152.22(d), (g), and (h), even though the City specifically excludes those provisions from the contents of the application it proposes to file. Petition at 6. The City should be required to comply with those regulatory requirements, among others, since it has not sought waiver of those requirements.

The City does not seek an exemption from any specific provisions of the statutes governing abandonments (49 U.S.C. §§10903, 10904, and 10905). The Petition does not provide case-in-chief or supporting evidence for an exemption. 49 C.F.R. §1121.3(a). Indeed, the City has not addressed or attempted to meet the criteria for an exemption. Therefore, the City should be required to comply with those statutory requirements, and the derivative regulatory requirements.

ARGUMENT

CSXT contends that the City must provide the public notice required by the statute and regulations prior to filing the adverse abandonment application and must provide information in that abandonment application that is either in its possession or is readily attainable from public sources. Even though a railroad line has not been used for years, adjacent landowners, past and potential shippers, employees, and public interest groups have interests in the Line and should receive notice of a proposed abandonment.³ Indeed, the Board requires significant notification when railroads file notices of exemption for railroad lines that have not been used for two or more years. 49 C.F.R. §1152.50(d). The City has sought waiver of certain regulations that are mandated by statute, but has not sought an exemption from the statutory requirements: Service of Notice of Intent on significant users (49 U.S.C. §10903(a)(3)(D)), Posting of Notice of Intent at stations (49 U.S.C.

³ *Abandonment of R. Lines & Discontinuance of Serv.*, 354 I.C.C. 129, 131 and 136-142.

§10903(a)(3)(B)), and the SDM requirements (49 U.S.C. §10903(c)(2)). Since these requirements are statutory and the City has not sought exemption of these provisions, much less justified exemption, CSXT urges the Board to deny the waivers as being ineffectual since the City would still be required to comply with the statutory requirements. With respect to significant users, instead of baldly alleging that it does not believe there are any shippers, the City can diligently determine whether there are any shippers on the Line and provide that information in the Application. The regulations provide an alternative to posting notice at each station and the City should at a minimum comply with that provision. 49 C.F.R. §1152.20(a)(3). With respect to the SDM, the City does not specifically mention the SDM process or the reason for not complying, it only mentions 49 C.F.R. §1152.22(a)(5) in its waiver request. In an effort to comply with the SDM requirements, buried in the first page of Exhibit B, the City states that “The public records of the Board contains a system diagram map (SDM) for CSX Transportation, Inc. (“CSX”).” The City is wrong. CSXT has not filed, much less posted or published a SDM for the Line. In order to file an application, the City must comply with the SDM statutory and regulatory requirements.

CSXT objects to the waiver of the service of notice on the headquarters of all duly certified labor organizations that represent employees on the affected rail line as required by 49 C.F.R. §1152.20(a)(2)(xii). The City does not represent that CSXT employees will not be adversely affected by the proposed abandonment. Instead, the City erroneously asserts that employee protective conditions “are not generally applicable to complete abandonment.” Petition at 4. The City uses the term “complete abandonment” instead of the precise language in the decision that it relies on that states “After the entire line of railroad is abandoned, no operating carrier remains to enjoy the benefits of abandonment or pay the costs of employee protection.” *Northampton and Bath R. Co.-Abandonment*, 354 I.C.C. 784, 785 (1978). Even if the Board were to allow the City to file

an application and to grant the application, the abandonment of 0.86 miles would not be an abandonment of CSXT's entire 21,000-mile operation. CSXT will remain an operating railroad and employee protection will be imposed by the Board requiring CSXT to incur costs for any adversely affected employees, which CSXT would expect the City to pay since it is the moving party.⁴

Pursuant to 49 U.S.C. §10903(b)(2), the Board is required to impose on the abandoning railroad provisions to protect the interests of the railroad's employees. The conditions that must be imposed may create some rights in the employees. The employees should receive notice through their designated representatives in order to be apprised of their rights, if any. Moreover, service on the labor organization headquarters is not a burden. Therefore, CSXT respectfully requests the Board to deny the waiver of 49 C.F.R. §1152.20(a)(2)(xii).

The City seeks waiver of 49 C.F.R. §1152.22(a)(4) so that it does not have to file the detailed map required by the Board. Waiver is not warranted. The City should have its own maps locating roads and railroad lines. Even if the City does not have its own maps, it is no longer the 1990's when the decisions that the City relies upon were served. Maps with the detail required by the Board's regulations may be obtained from map services readily available on the internet. Within its filing the City describes in detail the location of the Line. It should be a minimal burden for the City to obtain a Google map of the location it has already described. The map is neither inapplicable nor unneeded. Further the map is not a burden for the City to obtain. If the minimum effort suggested above is too much for the City, then the City has available to it the map accompanying the CSXT Draft Combined Environmental and Historic Report that was served on July 31, 2019 on the Mayor of the City, the Pinellas County Administrator, and the Planning Offices of the City and

⁴ Were the City to withdraw from its misguided strategy of seeking an adverse abandonment and allow CSXT to proceed with its proposed notice of exemption unencumbered by the City's competing application, the burden of labor protection would rightly fall on CSXT as the moving party.

Pinellas County. CSXT respectfully requests the Board to deny the waiver of 49 C.F.R.

§1152.22(a)(4).

CSXT objects to the request for waiver of the Environmental and Historic Report and the requirements associated with the report and other environmental disclosures under 49 C.F.R.

§1152.20(c), 1105.7, 1105.8, and 1152.22(f). The City asserts that because the Line has not been in use that there would be no change in the environmental impact on the area and therefore, under 49 C.F.R. §1105.6(c), no environmental documentation or historic documentation is required. There is nothing in 49 C.F.R. §1105.6(c) that supports the City's assertion. The regulation states that it applies to "any action that does not result in significant changes in carrier operations...." An adverse abandonment is certainly a significant change in carrier operations. Moreover, the City's reliance on *Salt Lake City Railroad Company, Inc.—Adverse Abandonment—Line of Utah Transit Authority in Salt Lake City, UT*, STB Docket No. AB-520 (STB served Aug 28, 1999) ("*Salt Lake City*") is misplaced. In that proceeding, the owner of the line was seeking to remove one operator and replace it with another. In *Salt Lake City* there was no significant change in operations, whereas here, all regulated railroad operations over the Line would cease and the use of the property would change, as admitted by the City.

The City ignores 49 C.F.R. §1105.6(b)(2) and .7(b) mandating the submission of Environmental Reports for abandonment proceedings, even if the abandonment involves a line that has been out of service for two or more years.

In addition, an Historic Report is required "to provide the Board with sufficient information to conduct the consultation process required by the National Historic Preservation Act." §1105.8(a). The mere allegation by the City that "Furthermore, the City does not believe there to be any historic

structures on the [Line], making the historic impact negligible” (Petition at 3) does not demonstrate that its belief meets the required historic consultation process.

Therefore, CSXT respectfully requests the Board to deny the waiver of 49 C.F.R. §§1152.20(c), 1105.7, 1105.8, and 1152.22(f).

CONCLUSION

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The City has not demonstrated that exemption from the requirements of 49 U.S.C. §§10903, 10904, and 10905 meet the criteria of 49 U.S.C. §10502. Nor has the City demonstrated that the waivers it seeks or the information does not intend to provide should be waived. Therefore, CSXT respectfully requests that the Board deny the unjustified exemption requests and deny or modify the waiver requests of the City as discussed in this Response.

Moreover, in light of the pending abandonment filing that CSXT intends to make on August 20, 2019, in the interests of administrative efficiency and economy, CSXT alternatively requests the Board to hold the City’s requests in abeyance and then dismiss them once the notice of exemption becomes effective.

Respectfully submitted,

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: August 12, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Response to Petition for Waiver and Exemption to be served by first class mail, postage pre-paid on the following party of record to this proceeding.

Bradley S. Tennant
City of St. Petersburg
P.O. Box 2842
St. Petersburg, FL 33731

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Louis E. Gitomer August 12, 2019

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