

June 21, 2017

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By E-Filing

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

ENTERED
Office of Proceedings
June 21, 2017
Part of
Public Record

RE: STB Docket No. AB-1258, Alloy Property Company, LLC – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL

Dear Ms. Brown:

I am E-filing on behalf of Chicago Terminal Railroad Company its Reply to the Petition for Partial Waiver of Abandonment Regulations and for Exemption in the above-captioned proceeding.

Sincerely yours,



John D. Heffner

Enclosure

cc: counsel for Alloy Property Company, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-1258

**ALLOY PROPERTY COMPANY, LLC –
ADVERSE ABANDONMENT-
CHICAGO TERMINAL RAILROAD IN CHICAGO, IL**

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

REPLY OF CHICAGO TERMINAL RAILROAD

Submitted by

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Due: June 21, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-1258

**ALLOY PROPERTY COMPANY, LLC –
ADVERSE ABANDONMENT-
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REPLY OF CHICAGO TERMINAL RAILROAD

**I.
INTRODUCTION**

On June 1, 2017, Alloy Property Company, LLC (“Alloy”), a private real estate developer, filed a “Petition for Partial Waiver of Abandonment Regulations and Exemption” (“the Petition”) as a prelude to filing an “adverse” application to abandon 2.875 miles of railroad (“The Line”) that Chicago Terminal Railroad (“CTM”) owns and operates. The Line extends from Union Pacific Railroad’s North Avenue Yard east and south to a terminus at the intersection of Chicago Avenue and Halsted Street on Goose Island, Chicago, IL. CTM is working aggressively to restore The Line to active service and is actively soliciting traffic from several potential customers. Accordingly, it will oppose Alloy’s application pursuant to a schedule set by the Board. However, it submits the following

comments with respect to the specific regulations or provisions from which Alloy seeks a waiver or exemption.

II. STATEMENT OF FACTS

CTM is a Class III short line railroad subsidiary of Iowa Pacific Holdings, LLC (“IPH”), a railroad holding company based in Chicago. IPH acquired the subject line of railroad known as the C&E Line in 2005 from the Soo Line Railroad d/b/a Canadian Pacific Railway as part of a larger acquisition totaling about 4.5 miles.¹ Subsequently, CTM acquired two other disconnected rail lines that are not the subject of this proceeding. In 2010 CTM agreed to sell a 1.625 mile portion of this Line to the City in a transaction for which the City received abandonment authority.²

Alloy is a subsidiary of Sterling Bay, a developer of urban real estate in Chicago. It seeks abandonment authority here in conjunction with a mixed use real estate development project whereby it seeks to convert industrial property to commercial, residential, and retail space.³

¹ Approved by the Board in *Chicago Terminal Railroad—Acquisition and Operation Exemption—Soo Line Railroad Company d/b/a Canadian Pacific Railway*, FD 34968 (STB served Dec. 22, 2006).

² *The City of Chicago, Illinois – Adverse Abandonment – Chicago Terminal Railroad in Chicago, IL*, AB-1036.

³ See “*Sterling Bay buys up another riverside property on North Side*” Crain's Chicago Business, March 16, 2017.

The area known as Goose Island is a Planned Manufacturing District (“PMD”), which means that it is intended to:

1. foster the city's industrial base;
2. maintain the city's diversified economy for the general welfare of its citizens;
3. strengthen existing manufacturing areas that are suitable in size, location and character and which the City Council deems may benefit from designation as a PMD;
4. encourage industrial investment, modernization, and expansion by providing for stable and predictable industrial environments; and
5. help plan and direct programs and initiatives to promote growth and development of the city's industrial employment base.⁴

Goose Island has had an active railroad running through it since the late 1800s. When CTM acquired the Line in 2005, it did so with the expectation that it would be able to provide rail freight service for the foreseeable future. The Line has always been an essential part of CTM’s ongoing and future rail business. Contrary to what Alloy claims in its Petition, the industries on and close to Goose Island depend on and benefit from rail service. CTM has been providing freight rail service to a several customers until a series of incidents of vandalism to the bridge connecting the Line to the national rail system interrupted that service. CTM has just completed those repairs and is ready to resume service.

⁴ See § 17-6-0400 of the Chicago Zoning Ordinance.

III. ARGUMENT

As a general matter, a long line of Board and court precedent holds that the agency generally does not authorize the adverse abandonment of an actively used rail line. *See, e.g., N.Y. Cross Harbor R.R. v. STB*, 374 F.3d 1177, 1180 (D.C. Cir. 2004) (where the court noted that “neither the Board, nor the [ICC] before it, has ever granted an adverse abandonment when the carrier was operating over the line.”) ; *Norfolk S. Ry.—Adverse Aban.—St. Joseph Cnty., Ind.*, AB 290 (Sub-No. 286) (STB served Apr. 17, 2012); *Yakima Interurban Lines Ass’n—Adverse Aban.—in Yakima Cnty., Wash.*, AB 600 (STB served Nov. 19, 2004); *Seminole Gulf Ry.—Adverse Aban.—in Lee Cnty., Fla.* (“Seminole Gulf”), AB 400 (Sub-No. 4) (STB served Nov. 18, 2004); *Waterloo Ry.—Adverse Aban.—Lines of Bangor & Aroostook R.R. & Van Buren Bridge Co. in Aroostook Cnty., Me.*, AB 124 (Sub-No. 2) (STB served May 3, 2004); and *Salt Lake City Corp.—Adverse Aban.—in Salt Lake City, Utah* (“Salt Lake”), AB 33 (Sub-No. 183) (STB served Mar. 8, 2002). This precedent not only includes lines serving active rail customers, but also lines that railroads need for operational reasons such as turning, storing, or servicing railroad equipment as well as out of service lines that are being marketed to potential customers for rail service. *Seminole Gulf*, slip op. at 5 (“Even though Seminole Gulf’s efforts to attract new shippers to the line have not yet proven successful, they demonstrate some prospects for continued rail service. Given

Seminole Gulf's efforts, we cannot say that there is no potential for continued rail service over this line"). This proceeding involves just such a case as the Line is an essential part of CTM's operational needs and is also being marketed to customers for rail service. As more fully discussed below, CTM has only just recently had its rail business interrupted as a result of an out-of-service bridge that was vandalized.

Alloy's filing presents the Board with a land use conundrum and a policy matter that it will face repeatedly as urban areas undergo revitalization. Specifically, the issue is whether a City can retain a downtown manufacturing base and the associated employment at the same time that urban revitalization occurs. As the Board knows, the availability of rail service is crucial to attracting industry, even "clean" industry such as distribution centers for manufactured products. CTM submits, at least in this instance, that these two equally beneficial goals are compatible and believes there may be some opportunities for compromise. So it urges the Board to look beyond the narrow issue of whether to grant Alloy's adverse abandonment. Simply stated, the STB should not authorize an abandonment because a property developer wants its land to be unencumbered by a railroad. The Petition filed by Alloy is nothing more than an effort to insure the

success of its gamble in buying and developing multimillion dollar purchase subject to a \$86,750,000 mortgage.⁵

Aside from several existing and potential customers, the Line permits CTM to store rail cars for future customer loading and to stage for cars ongoing and future rail operations to serve CTM's customers and potential customers along the Line and along other lines in the surrounding area. Preserving the Line, and rail service in the Goose Island and area generally, is in the public interest and the STB should not be persuaded by Alloy's unsubstantiated claim that the area is being "increasingly characterized by high tech/research and development, office, and retail/residential land use"⁶.

CTM will thoroughly oppose any abandonment application brought by Alloy against The Line. The three arguments made by Alloy in its Petition in support of abandonment are misrepresentative of the facts and lack merit. CTM will present more detailed arguments in opposition to Alloy's proposed adverse abandonment application when a response is due at the STB sometime this Fall. However, CTM's arguments in opposition can be summarized as follows:

- The Line Has Always Been Used For Rail Transportation And There Is An Ongoing And Future Need To Preserve Rail Service

⁵ See, "*Sterling Bay buys up another riverside property on North Side*," Crain's Chicago Business, March 16, 2017.

⁶ See *Petition*, pp. 6-7

Alloy's claim that "The Line Is No Longer Being Used for Rail Transportation, and There Is No Future Need For Rail Service" is incorrect. Since acquiring STB authority in 2007, The Line has been essential to CTM's operations. CTM has perpetually marketed The Line and is currently in discussions with existing and potential customers to provide rail service.

- Alloy's Argument Regarding the Vegetation Growth around the Swing Bridge lacks merit.

Alloy incorrectly claims that the swing bridge that allows for CTM to cross the Chicago River could not turn as a result of tree and vegetation growth⁷.

Whatever vegetation grew beneath the bridge was irrelevant to the functionality of the bridge and has been cleared, nonetheless. The true reason why the bridge did not function for a period of time is because it was vandalized on two occasions, as correctly noted by Alloy. Specifically, vandals ripped out and stole hundreds of feet of copper wiring and pilfered key components related to the bridge's functionality. CTM has well-documented evidence of its repair efforts taken in response to the vandalism. In addition, following the second act of vandalism, individuals who apparently did not work for Commonwealth Edison, the authorized electric utility-provider in the area removed the electrical wiring and parts that powered the bridge. That removal further complicated CTM's efforts to repair the bridge.

⁷ See *Petition*, pp. 4-5.

Finally, CTM rail operations were unjustly interfered with by Burgoyne, LLC (“Burgoyne”) a landowner that built two fences across The Line in August 2016, incorrectly claiming that CTM’s rail easement expired. Those fences not only cut off CTM’s rail access to approximately 4500 feet of track that dead-ends on Goose Island, but Burgoyne caused irreparable harm to CTM by misrepresenting to the public that CTM’s railroad was shut down. Although CTM’s litigation with Burgoyne remains ongoing, Burgoyne cannot force the abandonment of CTM’s line absent Board authorization under 49 U.S.C. § 10903.⁸

- CTM's Actions Are Consistent With Restoring Service on The Line

CTM’s actions have always been consistent with developing freight opportunities on The Line. CTM actively markets and is engaged with various shippers along and near the Line who benefit from rail service. In addition, CTM is actively engaged in discussions with various shippers for transloading opportunities that depend on CTM’s continued rail access along all portions of The Line. There are numerous prospects for regular and continuous freight traffic being restored. While some of these prospects must remain confidential, CTM will identify them subject to an appropriate protective order. The need for rail service in the Goose Island and surrounding area has not ended.

⁸ The state court recently denied Burgoyne’s Temporary Restraining Order application and granted CTM’s own Temporary Restraining Order, thereby recognizing and preserving CTM’s operating and property rights.

- The 2013 Trackage Removal Agreement is Irrelevant to this Proceeding

The 2013 trackage removal that CTM agreed to with “Lakewest,” which is referenced in Alloy’s Petition, was for the removal of very limited section of spur track, not mainline track, which is exempt by law from the abandonment provisions of 49 U.S.C. §§10903-10904. The track for which Alloy will seek abandonment authority is mainline track. CTM’s actions have never been consistent with abandoning its rail line.

- The Unused Line Is Not Interfering With Other Land Uses Or City Land Use Policy. There Is A Future Need For Rail Service.

The only interference CTM’s railroad causes to Alloy’s land use is as to Alloy’s private ambitions to maximize its profits by building office spaces, apartments, and condominiums. Alloy and its parent company took a risk in buying property knowing that it has had a mainline railroad track running through it for well over one hundred years. Notwithstanding that, Alloy can build plenty of office and living space even with CTM’s railroad rights persisting. The property Alloy bought is close to 40 acres and the railroad space that CTM needs to continue to be able to serve shippers in the area is only about 20 feet wide from the centerline of the mainline track.

As to the City of Chicago’s plans, nothing has been consummated to establish that the City of Chicago needs The Line abandoned to achieve whatever

goals it has for the area. If the City of Chicago needs to convert private land into public use, the City of Chicago has eminent domain authority that it can exercise over Alloy's expansive property, or elsewhere. Alloy's suggestion that the abandonment of CTM's Line must occur to serve the public interest is incorrect. The public service that the Line offers to this industrial area outweighs any public benefit that would be realized by an abandonment of The Line.

Additionally, the City of Chicago has indicated a need for passenger commuter service, which CTM would be uniquely poised to provide. CTM's parent company, IPH, owns several shortline railroads, some of which have been providing passenger service for years. IPH and/or CTM is immediately prepared with equipment and expertise to offer the type of short-distance passenger commuter service that could be needed in the event that the area becomes more commuter-oriented.

IV.

CTM'S RESPONSE TO SPECIFIC WAIVER REQUESTS

System Diagram Map requirements (49 CFR §§ 1152.10 to 1152.14 and §1152.24(e) and 49 U.S.C. §10903(c)(2)). CTM has no objection to this request.

Notice of Intent (49 CFR §1152.20). CTM has no objection to this request.

Significant User notifications (49 CFR §1152.20(a)(2)(i)) and 49 U.S.C. §10903(a)(3)(D). CTM objects vigorously to this request as there are present and potential users of rail service.

Labor Organizations (49 CFR §1152.20(a)(2)(xii)). CTM has no objection to this request.

Stations and Terminals (49 CFR §§ 1152.20(a)(3) and 49 U.S.C. §10903(a)(3)(B)). CTM has no objection to this request.

Form of Notice of Intent (49 CFR §§ 1152.21). CTM disagrees with that content of Alloy's notice insofar as it incorrectly suggests that there is an absence of current use for the Line and a lack of any reasonable future use for rail service. Rather Alloy should be required to explain the reasons for the proposed abandonment, namely the conversion of a railroad line into commercial, residential, and retail property. Other than that, CTM does not object to the form of the Notice.

Content of Application (49 CFR §§ 1152.22). CTM has no objection to this request.

System Diagram Map Information (49 CFR §§ 1152.22). CTM has no objection to this request.

Condition of Property (49 CFR §§ 1152.22(b)). CTM has no objection to this request.

System service provided (49 CFR §§ 1152.22(c)). CTM has no objection to this request.

Revenue and cost data (49 CFR §§ 1152.22(d)). CTM has no objection to this request.

Federal Register Notice (49 CFR §§ 1152.22(i)). Similarly, CTM objects to Alloy's proposed Federal Register Notice insofar as it describes the Line as "unused." Furthermore, CTM opposes the wording of this notice because it omits the language required in the regulations in §1152.22 pertaining to offers of financial assistance for subsidized operations or purchase. Otherwise CTM has no objection to Alloy's propose wording.

Notice of consummation (49 CFR §§ 1152.29(e)(2)). CTM has no objection to this request.

Offers of Financial Assistance (49 U.S.C. §10904) and 49 CFR §1152.27). CTM strongly objects to this exemption request as it wants to do everything to protect the rights of rail customers to receive service.

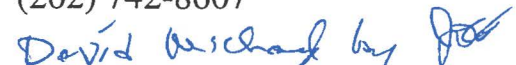
V. CONCLUSION

The STB should deny the waiver and exemption requests sought in the Petition insofar as they involve 49 CFR §1152.20(a)(2)(i), 49 CFR §§ 1152.22(i), and 49 U.S.C. §10904) and 49 CFR §1152.27 and should deny the abandonment application Alloy intends to bring. Should it grant Alloy's application, it should not foreclose a rail customer from filing an offer of financial assistance to preserve its rail service.

Respectfully submitted,


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Due: June 21, 2017

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of the foregoing Reply of Chicago Terminal Railroad to the Alloy Property, Company, LLC Petition for Partial Waiver of Abandonment Regulations was sent by electronic mail to all parties of record in this proceeding.

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