

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36177

HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY—
ACQUISITION EXEMPTION—IN HENNEPIN COUNTY, MINN.

Decided: May 3, 2018

On April 5, 2018, the Hennepin County Regional Railroad Authority (HCRRA), a political subdivision of the State of Minnesota, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Soo Line Railroad Company d/b/a Canadian Pacific a permanent, irrevocable, exclusive rail freight operating easement over the Bass Lake Spur (the Line). The Line extends from milepost 435.06 in Hopkins, Hennepin County, Minn., to milepost 428.38 in St. Louis Park, Hennepin County, Minn., and includes a portion of the connecting track between the Bass Lake Spur and CP's Minneapolis, Northfield and Southern Spur in St. Louis Park, for a total distance of approximately 6.7 miles. Notice of the exemption was served and published in the Federal Register on April 20, 2018 (83 Fed. Reg. 17,585). The exemption is scheduled to become effective on May 5, 2018.

As described in the Board's notice, HCRRA states that its proposed acquisition is directly related to a petition for declaratory order filed on April 4, 2018, in Docket No. FD 36178, by the Metropolitan Council (Council), a non-railroad, political subdivision of the State of Minnesota. In the declaratory order petition, the Council seeks certain Board assurances regarding its potential acquisitions of rail property including the Line and a connecting segment owned by HCRRA. According to HCRRA, the proposed acquisition here, along with the transactions described in the declaratory order petition, would facilitate the planning and future construction of the Southwest Light Rail Transit Project (SWLRT)—managed by the Council—which, when complete, would provide transit light rail service from downtown Minneapolis through the communities of St. Louis Park, Hopkins, Minnetonka, and Eden Prairie.

On April 24, 2018, Twin Cities & Western Railroad Company (TCW) filed a petition to reject or stay the notice of exemption. TCW argues that HCRRA's notice is (1) false and misleading; (2) filed under the wrong regulatory provisions; (3) not routine and extremely controversial and therefore not properly the subject of a notice of exemption; and (4) the subject of a federal court proceeding that could moot the Board's need to act. (TCW Pet. 1-2.) TCW, as a rail carrier currently conducting freight rail operations on the Line via overhead trackage rights, also expresses concern regarding how the series of proposed transactions (including the acquisition at issue here and the other transactions addressed in Docket No. FD 36178) would impact freight service to TCW's customers. (See, e.g., *id.* at 2-5.) More than 30 shippers, municipalities, and other stakeholders have filed letters expressing concerns about HCRRA's

notice of exemption and also the importance of service provided by TCW.¹ Also, U.S. Representatives Collin C. Peterson and Jason Lewis, both of Minnesota, have submitted letters requesting careful consideration from the Board.

In a reply filed on May 2, 2018, HCRRA argues that TCW's claims are inaccurate and that the Board should deny TCW's petition.² HCRRA asserts, among other things, that (1) the Board has jurisdiction over HCRRA and therefore the notice was filed under the right section; (2) the transaction is not so complex or controversial that the expedited notice procedure would be inappropriate; (3) the notice is exempt from environmental and historic review, and the Board was a participating agency in the environmental review process for the SWLRT; and (4) it is unnecessary to postpone the effectiveness of the exemption because this case does not involve complex factual issues, novel questions of law, or immediate threats to continued freight service. (See HCRRA Reply 2-3, 17-24, 25-26, May 2, 2018.)

To provide sufficient time for the Board to fully consider the arguments presented, the effective date of the exemption will be postponed until further order of the Board.

It is ordered:

1. The effective date of the exemption is postponed until further order of the Board.
2. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

¹ On April 24, 2018, HCRRA submitted a letter asking the Board to disregard the requests in these letters, which HCRRA states are unsubstantiated and speculative.

² Also on May 2, 2018, the Council submitted a reply to TCW's initial comments in Docket No. FD 36178. In addition to addressing TCW's initial comments in that docket, the Council expresses opposition to TCW's petition to reject or stay HCRRA's notice of exemption. (Council Reply 5 n.5, 15, May 2, 2018, Metro. Council—Pet. for Declaratory Order, FD 36178.)