



City of Chillicothe

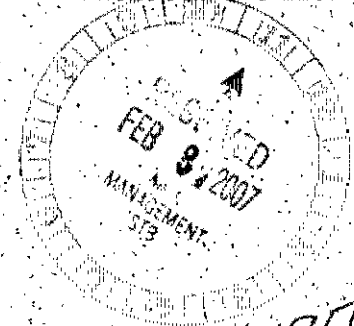
Office of Mayor
Phone 660-646-2267

6 February 2007

ENTERED
Office of Proceedings

FEB 8 - 2007

Part of
Public Record



Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20036

Motive Rail d/b/a Missouri North Central
Railroad -- Discontinuance Exemption --) AB 993X
-- Livingston, Linn and Chariton)
Counties, Missouri)

Chillicothe-Brunswick Rail Maintenance)
Authority -- Discontinuance Exemption --) AB 1001X
-- Livingston, Linn and Chariton)
Counties, Missouri)

Comments and Filing of "Statement of Willingness"
Filing fee exemption requested

Dear Mr. Secretary:

I. City Support for Discontinuance Proceedings

This letter is on behalf of the City of Chillicothe ("City") and is for filing in the two dockets above. As explained in footnote 1 of the notices of exemption filed by the railroads in those two dockets, City of Chillicothe owns the right of way, as well as all fixtures (e.g., track and ties), on the entire railroad corridor involved in these two proceedings from MP 226 (Chillicothe) to MP 188.56 (Kelly). City is not a common carrier, but instead contracted at various times with the railroads involved in these proceedings to operate on the property.

Chillicothe Brunswick Rail Maintenance Authority (CBRA) now seeks discontinuance authority from MP 226 to MP 188.56 in docket AB 1001X. CBRA's lease for the line in question expired in April of 2004. City supports CBRA's request.

Motive Rail seeks discontinuance authority from MP 218.25 to MP 188.7 in docket AB 993X. City and Motive Rail have already modified the applicable operating agreement to reflect this change, and City supports the discontinuance authority now sought by Motive Rail.

II. Railbanking Use

The City's council has unanimously adopted a resolution to seek to preserve the entire railroad corridor for possible future rail reactivation, and for interim use as a trail, pursuant to 16 U.S.C. § 1247(d). City is furnishing with this letter a "statement of willingness" for the portion of the corridor between MP 226 (Chillicothe) and MP 188.7 (near Kelly) (this encompasses the entire corridor except for MP 188.7 to MP 188.56, which passes through property otherwise owned by a grain elevator). Since City is a local governmental entity, this filing qualifies for a fee exemption under 49 C.F.R. § 1002.2(f), and the City moves for such exemption.

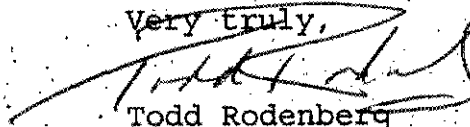
Although the City itself is not a regulated entity, the City stands in the same position as a governmental entity under 49 C.F.R. § 1150.21-.24 (modified certificates of public convenience and necessity). Under this Board's precedent, when a modified certificate (operational authority for a line) is terminated by the rail carrier operating over the exempt government's line, this Board has jurisdiction to issue a Notice of Interim Trail Use (NITU) upon proper request even though the underlying government owner is not itself a common carrier. E.g., D&I Railroad Co. -- NITU and Termination of Modified Certificate, F.D. 29910 (sub-no. 1), served Oct. 6, 2004 (citing precedent). Similarly here, the Board has sufficient jurisdiction to issue a NITU even though City as owner is itself exempt and not a common carrier.

Motive Rail will continue to provide rail services over the portion of the line between MP 226 and MP 218.25. Because CBRA is discontinuing its operational authority over this portion, City believes this portion of the line is nonetheless eligible for railbanking, and that continued rail operations in the circumstances are not inconsistent with railbanking this portion of the line. We note that City of Seattle acquired the Ballard Branch in Seattle pursuant to a NITU, while Ballard Terminal Railroad subsequently obtained operating rights over the Branch pursuant to 49 C.F.R. § 1150.21-.24. Compare Sea Lion Railroad -- Abandonment Exemption -- in King County, WA, AB 544X, served Sept. 18, 1998 (NITU issued) with Ballard Terminal Railroad Co. -- Modified Rail Certificate, F.D. 33594, served Feb. 26, 1999. City's situation parallels that of Seattle. Issuance of a NITU now would minimize future regulatory burdens and ensure continuity of the rail corridor. In the event the Board does not concur that the entire line is eligible for railbanking at this time, then we request that a NITU at least be issued for MP 218.25 to MP 188.7 at this time.

III. Conclusion

In sum, City supports prompt authorization of the requested discontinuances. City as owner and proposed "railbanker" also requests and supports issuance of a NITU for the property from MP 226 (Chillicothe) to MP 188.7 (near Kelly), and at least from MP 218.25 to MP 188.7. City is authorized to state that both CBRA and Motive Rail consent to negotiate an agreement under 16 U.S.C. § 1247(d) and that both support issuance of the requested NITU.

Very truly,



Todd Rodenberg
Mayor, City of Chillicothe
on behalf of the
City of Chillicothe

Encl.

cc. Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
counsel for CBRA and Motive Rail (w/encl.)

BEFORE THE SURFACE TRANSPORTATION BOARD

Motive Rail d/b/a Missouri North Central)
Railroad -- Discontinuance Exemption --) AB 993X
-- Livingston, Linn and Chariton)
Counties, Missouri)

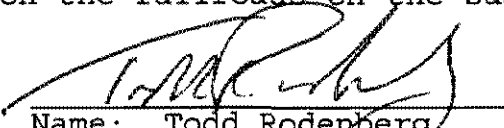
Chillicothe-Brunswick Rail Maintenance)
Authority -- Discontinuance Exemption --) AB 1001X
-- Livingston, Linn and Chariton)
Counties, Missouri)

Statement of Willingness to Assume
Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, City of Chillicothe ("City" or "Interim Trail User"), is willing to assume full responsibility for management of, for any legal liability arising out of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way which City already owns, and which has been operated by Motive Rail and/or Chillicothe Brunswick Railroad Maintenance Authority (CBRA). The property extends from MP 226 (City of Chillicothe) to MP 188.7 (near Kelly, in turn near Brunswick), in Livingston, Linn and Chariton Counties, MO, a distance of approximately 35.3 miles. The right of way is part of, or encompasses, a line proposed for discontinuance in Docket AB 993X (Motive Rail, MP 218.25 to MP 188.7) and in Docket AB 1001X (CBRA, MP 226 to MP 188.56).

A map depicting the property is attached.

County acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroads on the same date it is being served on the Board.


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cc. Charles H. Montange
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counsel for CBRA and Motive Rail

