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November 9, 2007

E-Filing

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

**RE: STB Docket No. AB-882, Minnesota Commercial Railway
Company-Adverse Discontinuance and Abandonment-In
Ramsey County, MN**

**Petition for Waiver And Exemption Of Certain
Abandonment Application Requirements**

Dear Mr. Williams:

On behalf of the City of New Brighton, MN, I am E-Filing in the above-captioned matter its Petition for Waiver and Exemption of Certain Abandonment Application Requirements. New Brighton is a political subdivision in the State of Minnesota for whom the Board has previously granted a fee waiver request. A copy of the Board's letter granting that waiver is attached hereto.

New Brighton respectfully requests that the Board expedite its handling of this request so that it may file the related adverse discontinuance and abandonment application on or about December 1, 2007.

Sincerely yours,


John D. Heffner
Its Counsel

cc: All parties
Mr. Grant Fernelius

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-882

MINNESOTA COMMERCIAL RAILWAY
COMPANY—ADVERSE DISCONTINUANCE AND
ABANDONMENT—IN RAMSEY COUNTY, MN

PETITION FOR WAIVER AND EXEMPTION OF CERTAIN
ABANDONMENT APPLICATION REQUIREMENTS

Respectfully submitted,

The City of New Brighton, Minnesota

By its attorney,

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
(202) 296-3334

Dated: November 9, 2007

EXPEDITED HANDLING REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-882

MINNESOTA COMMERCIAL RAILWAY
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ABANDONMENT APPLICATION REQUIREMENTS

INTRODUCTION

Pursuant to 49 CFR 1152.1 *et al*, Petitioner City of New Brighton, MN (hereafter “the City” or “New Brighton”), petitions the Board to waive certain regulations and grant exemptions from certain statutory provisions in connection with the adverse abandonment of a rail line known as the “Butcher’s Spur” (or “the Line”) owned by MT Properties, Inc. (“MTP”) and operated under lease by Minnesota Commercial Railway Company (“MCRC”).¹ The City has reached an agreement with MCRC to abandon the Line by providing a “functional replacement” to accommodate the only remaining rail customer, Boulder Images, Inc. (“Boulder Images”). There are no other shippers on the Line and the City has acquired all real estate adjacent to the Line for redevelopment purposes. The regulations for which the City seeks a waiver include 49 CFR 1152.10-1152.14, 49 CFR 1152.20(a)(2)(xii), 49 CFR 1152.20(a)(3), 49 CFR 1152.21, 49 CFR 1152.22(a)(5), 49 CFR 1152.22(b), (c), and (d), 49 CFR 1152.36, 49 CFR 1152.22(e)(2),

¹ MTP was formerly known as the Minnesota Transfer Railway and operated as a class III switching railroad in the Minneapolis-St. Paul Area. MCRC is also a class III short line rail carrier. At some earlier time unknown to the City, MTP leased its lines to MCRC and ceased to be an operating carrier. Nevertheless, the City believes that MTP has an residual common carrier obligation on this line and the other rail properties it owns and leases to MCRC.

49 CFR 1152.24(c), 49 CFR 1152.24(e)(1), 49 CFR 1152.24(f), and 49 CFR 1152.22(e)(2), 49 CFR 1152.27, and 49 CFR 1152.29(e)(2). In addition, the City seeks exemptions from certain requirements of 49 U.S.C. 10903 as well as the provisions of 49 U.S.C. 10904 and 10905. The City had previously sought and been granted a waiver of most of these requirements as well as exemptions from the statutory provisions.² However, in view of the fact that the City's previous Petition is roughly three years old,³ it is resubmitting this Petition for Waiver and Exemption out of an abundance of caution.

Because the City seeks to begin construction by the Summer of 2008, the Board has previously approved the City's almost identical waiver and exemption petition filed some three years ago, and the City believes that this request and the abandonment application will be unopposed, the City respectfully requests that the Board grant this Petition on or before December 1, 2007, so that it may file its adverse abandonment application shortly thereafter.

BACKGROUND

New Brighton is a city which is a political subdivision of the State of Minnesota and a suburb of Minneapolis and St. Paul. As noted above, New Brighton had previously filed a Petition for Waiver and Exemptions of certain regulatory requirements and from certain statutory provisions pertaining to the subject adverse abandonment and discontinuance application. However, difficulty obtaining the agreement of necessary parties has precluded the filing of an adverse abandonment and discontinuance application until now. Recently, the City has reached an agreement with all affected

² STB Finance Docket No. 882, City of New Brighton, MN -- Adverse Abandonment -- and Discontinuance -- Minnesota Commercial Railway in Ramsey County, MN (served Jan. 21, 2005).

³ Filed on November 3, 2004.

parties and anticipates filing its adverse abandonment application within the next few weeks.

Currently, MTP owns and MCRC operates a line of railroad in Ramsey County, Minnesota, called the Butcher's Spur. The Butcher's Spur is located in the City of New Brighton. It commences in New Brighton from a turnout on MCRC's mainline and runs southeast approximately 2,600 feet to the western right-of-way line of Interstate Highway 35W. The affected railroad line is situated in U.S. Postal Service Zip Code 55112; it traverses no other U.S. Postal Service Zip Codes. As far as the City knows, there are no stations on the affected line.

The City wishes to acquire this portion of the right-of-way for a public purpose. That purpose is to redevelop this "Brownfield" property into a mixed-use development, including residential, office and commercial activities. The City hopes to obtain Board approval for this abandonment as soon as possible in order to facilitate the prompt commencement of the project that is currently scheduled to begin in the Summer of 2008. The City reached an agreement whereby MTP and MCRC will voluntarily discontinue all operations on and abandon the track in question pursuant to the terms and conditions of a Letter of Understanding by and between MTP and MCRC and the City of New Brighton, Minnesota dated and executed on October 9, 2007.⁴ Pursuant to that understanding, the City will acquire the underlying right-of-way, the sole remaining customer, Boulder Images will relocate its operations, and the City will provide MCRC at City expense with a "functional replacement" for the existing MCRC team track located along the Butcher's Spur.

⁴ A copy will be attached to the abandonment application.

To the best of the City's knowledge, MCRC's use of the Butcher's Spur over the past several years has been as a team track to accommodate the needs of four customers, Midwest Asphalt Corporation, Boulder Images, Five Star, and Commercial Transload of Minnesota (an MCRC subsidiary). The City believes that Boulder Images is the only customer continuing to use the subject line. In any event, all of these customers can be accommodated on the new team track that the City is building for MCRC.

WAIVERS

As is customary in adverse discontinuance and abandonment proceedings before the Board, the City requests that the Board waive the requirement that the City comply with certain provisions of the Board's discontinuance and abandonment regulations.

System Diagram Map: The City requests that the Board waive all provisions from 49 C.F.R. 1152.10 to and including 49 C.F.R. 1152.14 pertaining to the requirement that an abandonment applicant provide a system diagram maps. The City does not have access to such a map or the information necessary to create such a map.⁵ The Board had previously granted the City's request.

Notice requirements: The City asks that the Board waive the requirements of 49 C.F.R. 1152.20(a) (2) (xii), requiring an applicant to file its Notice of Intent upon the headquarters of all duly certified labor organizations that represent employees on the affected rail line. The City does not have access to that information. The Board previously granted this request.

The City asks that the Board waive the requirements of 49 C.F.R. 1152.20(a) (3) requiring that the City post a copy of its Notice of Intent at each agency station or

⁵ In connection therewith, the City seeks an exemption from 49 U.S.C. 10903(c).

terminal on the Line. The City does not have access to the facilities of the railroad. Furthermore, the City believes that no stations exist on the Line, and no stations exist through which business for the involved line is received or forwarded.⁶ The Board previously approved that request.

The City is prepared to file and publish a Notice of Intent in this case, however, it seeks a waiver of 49 C.F.R. 1152.21 to the extent that this section requires that the City include in the notice information that is unavailable to the City, that is irrelevant under the circumstances, or for which a waiver is requested herein. In particular, the City asks that the Board waive the requirement that the notice contain the statements “[a]ny documentation in the railroad’s possession will be made available to those requesting it” and “[t]his line of railroad has appeared on the system diagram map or included in the narrative in category 1.” The City cannot speak for the railroad on whether the railroad will provide any requested documentation, and the City lacks a system diagram map for the affected line. The Board previously approved that request.

Application requirements: The City requests that the Board waive the requirements of 49 C.F.R. 1152.22(a) (5) that the City include in the application a reference to having included the affected rail line in the system diagram map. As already stated, the City does not have access to such a map, and it has requested above that the Board waive the requirement for a system diagram map. The Board previously approved that request.

The City requests that the Board waive the requirements of 49 C.F.R. 1152.22(b) pertaining to a description of the condition of the properties. The City lacks the detailed information necessary to comply with this provision.

⁶ In connection therewith, the City seeks an exemption from 49 U.S.C. 10903(a) (3) (B) and (E).

The City requests that the Board waive the requirements of 49 C.F.R. 1152.22(c) requiring a description of the service provided. The City believes that MCRC is not currently providing service on the Line and is not familiar with the service previously provided over the Line.

The City requests that the Board waive the requirements of 49 C.F.R. 1152.22(d) requiring the City to provide revenue and cost data. The City lacks information necessary to comply with this provision. The Board previously approved each of these three requests.

The City asks the Board to waive the requirements of 49 C.F.R. 1152.22(e) (2) requiring identification of and detailed information on the significant users on the Line. As stated above, the City believes that there are no entities that currently use, or have recently used, the Line for rail transportation. The Board previously approved that request.

The City asks the Board to waive the requirements of 49 CFR 1152.36 pertaining to the submission of revenue and cost data as this Line has not handled any traffic in some time and the City lacks access to the information necessary to comply with this provision. The Board previously approved that request.

Service requirements: The City asks that the Board waive the requirement of 49 C.F.R. 1152.24(c) that a copy of the application be made available for public inspection at each agency station or terminal on the affected line. As stated, the City does not have access to the facilities of the railroad, and the City believes that no stations exist on the Line. The Board previously approved that request.

The City requests that the Board waive 49 C.F.R. 1152.24(e) (1) to the extent that it states that an application for abandonment or discontinuance shall be rejected if it does not conform to the requirement that the applicant publish the line in its system diagram map. As indicated above, the City does not have access to a system diagram map or to information necessary to create such a map. The Board previously approved that request.

The City asks that the Board waive the requirement of 49 C.F.R. 1152.29(e)(2) that, if the City receives abandonment authority, it file with the Board a notice that abandonment has been consummated within one year of the date that authority is granted. The Board previously approved that request and should do so again.

Finally, the City asks that the Board waive 49 C.F.R. 1152.27 pertaining to financial assistance procedures. There are no shippers or carriers currently using the Line, and the Board's grant of an offer of financial assistance would defeat the central purpose of the discontinuance and abandonment sought in this case, because it would prohibit the applicant's use of the right-of-way for the planned commercial development project.

The foregoing waiver requests are consistent with the approvals previously granted by the Board in adverse discontinuance and abandonment proceedings. See, Yakima Interurban Lines Association—Adverse Abandonment—In Yakima County, WA, STB Docket No. AB-600 (STB served Feb. 6, 2004); New York City Economic Development Corporation—Adverse Abandonment—New York Cross Harbor Railroad, Inc., STB Docket No. AB-596 (STB served Dec. 3, 2001); City of Rochelle, Illinois—Adverse Discontinuance—Rochelle Railroad Company, STB Docket No. AB-549 (STB served June 5, 1998).

EXEMPTIONS

As already indicated, in connection with its filing of its adverse discontinuance and abandonment application, the City asks that it be exempted from the provisions of 49 U.S.C. 10903(a)(2)(C), 49 U.S.C. 10903(a)(3)(B) and (E), 49 U.S.C. 10903(c), and 49 U.S.C. 10904 as well as 49 U.S.C. 10905 pertaining to Public Use Conditions. Requiring compliance with these sections is not necessary to carry out the railroad transportation policy of 49 U.S.C. 10101. To the contrary, granting the relief sought here would reduce regulatory barriers to exit from the railroad industry and provide for the expedition handling and resolution of these proceedings, minimizing the need for Federal regulatory control under 49 U.S.C. 10101a(2) and (7). The Line is of little or no actual use to any shipper or carrier. Furthermore, the discontinuance and abandonment authorization that is sought is of limited scope, involving only about 0.5 miles of track. Finally, application of the above statutory provisions is not needed to protect shippers from the abuse of market power. As already noted, the one remaining shipper has agreed to relocate its operations and MCRC will be provided with a replacement team track to serve the needs of customers who depend upon a team track for service.

Under similar circumstances, the Board has previously granted such exemptions at the request of adverse discontinuance and abandonment applicants. See, Union Pacific Railroad Company—Abandonment Exemption—In Monroe County, IA, STB Docket No. AB-33 (Sub-No. 153X) (STB served Sept. 1, 2000); Doniphan, Kensett and Searcy Railway—Abandonment Exemption—In Searcy, White County, AR, STB Docket No. AB-558X (STB served May 6, 1999); Jacksonville Port Authority—Adverse

1996). Moreover, the Board previously granted the City's exemption requests in its decision dated January 21, 2005. The only difference here is that the City also wants to make clear its request that this line is exempted from the public use provisions of 49 U.S.C. 10905 insofar as it is the public entity that will be benefiting from this transaction and does not want any complications to arise from the possibility of a public use request coming from an unknown third party.

The City accordingly asks that the Board grant its exemption requests.

EXPEDITED HANDLING REQUESTED

Because the City seeks to begin construction by the Summer of 2008, the Board has previously approved the City's almost identical waiver and exemption petition filed some three years ago, and the City believes that this request and the abandonment application will be unopposed, the City respectfully requests that the Board grant this Petition on or before December 1, 2007, so that it may file its adverse abandonment application shortly thereafter.

CONCLUSION

WHEREFORE, Petitioner, the City of New Brighton, MN, asks that the Board waive certain of the Board's discontinuance and abandonment regulations and grant exemptions from certain of the Board's statutory provisions in connection with its anticipated filing of its adverse discontinuance and abandonment application.

Respectfully submitted,

The City of New Brighton, Minnesota

By its attorney,

A handwritten signature in dark ink, appearing to read "John D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner

John D. Heffner, PLLC

1750 K Street, NW

Suite 350

Washington, D.C. 20006

(202) 296-3334

Dated: November 9, 2007



Office of the Secretary

Surface Transportation Board
Washington, D.C. 20423-0001

October 21, 2004

Mr. John D. Heffner, PLLC
Suite 800
1920 N Street, N.W.
Washington, DC 20036-1601

RE: STB Docket No. AB-882, City of New Brighton - Adverse Abandonment - Line of Railroad
Of MT Properties, Inc., City of New Brighton - Adverse Discon-
tinuance - Minnesota Commercial Railway Company

Dear Mr. Heffner:

I have reviewed your October 14, 2004, request for a waiver of the filing fees in connection with the adverse abandonment application to be filed by the City of new Brighton, MN (New Brighton). You indicate that New Brighton will file its adverse abandonment application to facilitate a commercial land development project, which you argue is in the best interest of the public. Further, you argue that New Brighton is a local governmental entity and has no intention of becoming a railroad. You contend that the circumstances warrant the waiver of the filing fees in question.

As a filing fee does not appear necessary under the circumstances as you present them, your request for a waiver will be granted, and the agency will promptly move the matter forward.

Sincerely,

Vernon A. Williams
Secretary

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the Petition for Waiver and Exemption of Certain Abandonment Application Requirements was served on November 9, 2007 to the following:

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street
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Chicago, IL 60606

Lee I. Larson
MT Properties, Inc.
2300 Myrtle Avenue
Suite 158
St. Paul, Minnesota 55114


John D. Heffner