

City of Cincinnati



Office of the City Manager

Room 152, City Hall
801 Plum Street
Cincinnati, Ohio 45202-5706
Phone (513) 352-3241
Fax (513) 352-6284

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Milton Dohoney, Jr., ICMA-CM
City Manager

The Honorable Anne K. Quinlan, Secretary
Surface Transportation Board
395 East Street S.W.
Washington, DC 20423

Re: Request for Public Use Condition for STB Docket No. AB-290 (Sub. No 289x)

Dear Secretary Quinlan:

These comments are on behalf of the City of Cincinnati, Ohio (City). The Surface Transportation Board published a 49 C.F.R. 1152.50 Notice of Exemption authorizing abandonment of MP CT 2.50 (Cincinnati) to MP CT 3.60 (Norwood) on its website on August 5, 2008. According to the Notice, requests to reopen or for public use conditions are due by August 25, 2008. Environmental comments and requests for stay on environmental grounds will be due 20 days after issuance of the "environmental assessment" (EA). City of Cincinnati is commenting to Surface Transportation Board's (STB) Section of Environmental Analysis (SEA) in connection with Norfolk Southern's (NS) environmental report. City reserves the right to file further comments and to request other appropriate relief upon review of the EA and further reflection on the record and in accordance with applicable rules and regulations.

Interest of City Consonant with our comments to STB's SEA on the NS environmental report, City has long been interested in retaining intact, by acquisition if necessary, the rail corridor involved in this proceeding for a future passenger rail system. Certainly the spike in gasoline prices has emphasized the need to preserve options for rail transportation for future passenger purposes. To this end, City at this time is asking for a form of relief intended to assist in assuring that its efforts to keep the entire property intact for rail use will ultimately be successful. The City of Cincinnati has been involved in regional transportation planning for many years. The City was a player in the development of the area's Regional Rail Plan (see Attachment I). Attachment II shows how the Norfolk Southern abandonment fits in the Regional Rail Plan.

Request for Public Use Condition The City is hopeful that it can arrange acquisition and preservation of the line through voluntary negotiation. Nonetheless, in order to ensure that this important asset is kept intact, it is prudent to request the issuance of a public use condition (PUC)

pursuant to 49 C.F.R. 1152.28 and 49 U.S.C. 10905. To this end, City requests that the Board find that the rail properties involved here are appropriate for use for other public purposes and in particular, that the properties are suitable for rail passenger use.

Condition Sought: An order barring disposal of the property other than to the City of Cincinnati or its nominee for continued rail use, including future passenger rail use, for 180 days from the actual effective date of the abandonment

Public Importance of the Condition: Applicable regional plans have long identified this entire rail property for a future passenger rail system. In the words of the First Circuit in Reed v. Meserve, 487 F.2d 646, 649-50 (1973), "A scarcity of fuel and the adverse consequences of too many motor vehicles suggest that society may someday have need either for railroads or for the rights-of-way over which they have been built. A federal agency charged with designing part of our transportation policy does not overstep its authority when it prudently undertakes to minimize the destruction of available transportation corridors painstakingly created over several generations." If the railroad corridor at issue here is fragmented, assembly of an alternative to serve the needs of the City and the region will be much more costly, if possible at all.

Period of Time: 180 days (the statutory maximum as stated by STB in its regulation).
A 180 day delay is needed to permit voluntary negotiations and to permit the City to prepare other relief (such as eminent domain proceedings) if necessary.

Conclusion For the reasons stated, City of Cincinnati notifies the Board and NS of its intent to file a PUC. City reserves the right to make further comment.

By my signature below, I certify service by deposit on August 20, 2008, for express (next business day) delivery upon James Paschall, Esq., Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

Sincerely,



Milton Dohoney, Jr.
City Manager

Attachments

[illegible]

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

Attachment II

