

212398

JOHN D. HEFFNER, PLLC
1920 N St., N.W.
SUITE 800
WASHINGTON, D.C. 20036
(202) 263-4180
FAX (202) 296-3939
j.heffner@verizon.net

ORIGINAL



October 15, 2004

The Honorable Vernon W. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

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

ENTERED
Office of Proceedings

OCT 15 2004

Part of
Public Record

Dear Mr. Williams:

I am submitting in the above-captioned proceeding, an original and 10 copies of the City of New Brighton's Petition for Waiver and Exemption of Certain Abandonment Application Requirements.

Please date stamp and return one copy for our files. If you have any questions feel free to contact me at the above number.

Sincerely yours,

John D. Heffner

cc: Mr. John Gohmann
Mr. Lee Larson
Thomas McFarland, Esq.
Larry Starnes, Esq.
Mr. Mark Nagel

FILING FEE WAIVED

JOHN D. HEFFNER, PLLC

1920 N St., N.W.

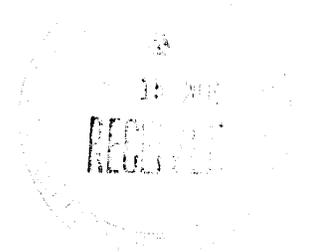
SUITE 800

WASHINGTON, D.C. 20036

(202) 263-4180

FAX (202) 296-3939

j.heffner@verizon.net



BY HAND

October 14, 2004

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

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

Filing Fee Waiver

Dear Mr. Williams:

I am writing at the request of on behalf of the
City of New Brighton (the City) to request a filing
fee waiver in connection with the above-captioned
"adverse" abandonment and discontinuance proceeding.

Under its regulations at 49 CFR 1002.2(e), the
Board is authorized to grant a request by a state or
local government entity for waiver of the applicable
filing fees when that waiver would be in the public
interest. The City of New Brighton is a duly
constituted public agency and political subdivision
established under the laws of the State of Minnesota.
New Brighton believes that it has satisfied the "best
interest of the public" standard of 49 CFR
1002.2(e)(2)(ii) because the City intends to use this
out of service railroad right of way for a commercial
land development project (an office park). This
project has substantial public support and will
generate jobs and tax revenues.

Additionally, the City is not a "rail carrier" within the meaning of the ICC Termination Act and the Board's regulations and has no plans to become a "rail carrier." With this letter, I am enclosing a letter from Mark Nagel, the Project Manager for the City, directing me to initiate proceedings for abandonment of and discontinuance of rail service over the subject rail line and requesting that I seek a filing fee waiver. Accordingly, the City believes that it is entitled to a fee waiver and requests that one be granted.

With this letter, the City submits a Petition for Waiver and Exemption of Certain Abandonment Application Requirements. Within the next few weeks, the City anticipates filing an "adverse application" for abandonment of and discontinuance of rail service over the track identified in the Petition under 49 U.S.C. 10903.

I appreciate your attention to this matter. Please date stamp and return one copy of this letter and Petition.

Sincerely yours,



John D. Herfner
Counsel for the
City of New Brighton

Cc: Mr. John Gohmann
Mr. Lee Larson
Thomas McFarland, Esq.
Larry Starnes, Esq.
Mr. Mark Nagel



Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RE: STB Docket No. AB-882, City of New Brighton-Adverse Abandonment-Line of Railroad of
MT Properties, Inc., City of New Brighton-Adverse Discontinuance-Minnesota Commercial
Railway Company **Filing Fee Waiver.**

Dear Mr. Williams:

I am writing at the request of our counsel John D. Heffner in connection with the above-captioned
abandonment and discontinuance proceedings.

Mr. Heffner has asked me to write you regarding the City's request for a filing fee waiver. By this
letter, I am advising the Board that John D. Heffner is authorized to initiate on behalf of the City of
New Brighton, a duly constituted political subdivision established under the laws of the State of
Minnesota, an "adverse application" for the abandonment of the subject rail line and
discontinuance of rail service over it along with such petitions as may be necessary for other relief
in connection with that application.

Under 49 CFR 1002.2(e), the Board is authorized to grant a request by a state or local
government entity for waiver of the applicable filing fees when that waiver would be in the public
interest. This letter authorizes Mr. Heffner to seek on behalf of the City of New Brighton a waiver
of the filing fees that would otherwise apply to the filing of a 1) petition for waiver, 2) a petition for
exemption under 49 U.S.C. 10502, and 3) an adverse application for abandonment and
discontinuance authority under 49 U.S.C. 10903.

I appreciate your attention to this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Mark Nagel". The signature is written in a cursive, flowing style.

Mark Nagel
Project Manager
City of New Brighton

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
1920 N Street, NW
Suite 800
Washington, D.C. 20036
(202) 263-4180

Dated: October 15, 2004

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

Pursuant to 49 CFR 1152.1 *et al*, Petitioner City of New Brighton, MN (hereafter “the City”), petitions the Board to waive certain of its regulations pertaining to the abandonment of rail lines and discontinuance of service over such lines and, pursuant to 49 U.S.C. 10502(a), the City also petitions the Board to exempt it from certain provisions of 49 U.S.C. 10903-4. In support thereof, the City states as follows:

Background

MT Properties, Inc. (hereafter “MT Properties”),¹ owns and Minnesota Commercial Railway Company (hereafter “MCRC”), a class III short line railroad, operates a line of railroad in Ramsey County, Minnesota, called the Butcher Spur or “the line.” The Butcher Spur is located in the cities of New Brighton and Arden Hills. It commences in New Brighton at the western edge of Old Highway 8, immediately crosses 14th Street N.W. in a southeast direction, continues east for approximately 1500 feet,

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

crosses a railroad bridge over I-35 West, heads east immediately crossing Round Lake Road, and extends approximately 1000 feet into Arden Hills, ending at the former ATS Steel facility. The total length of the track at issue is approximately 0.5 miles.² Only the western 1500 feet will be acquired by the City for redevelopment. The line appears to have originally extended a short distance beyond the ATS Steel facility, but this trackage is no longer in place.

The City has been informed by MT Properties that it is in the process of selling the underlying right of way to a developer and is in the process of seeking abandonment authority concomitant with the transfer of title.³

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.

To the best of the City's knowledge, this is not an active line and there is only one customer that has used this portion of the right of way. This customer is a landscape company, Landscape Junction, which is located approximately 25 miles south of the track in Lakeville, Minnesota. The City understands that Landscape Junction is currently using the right of way merely as a site to store large boulders that it hopes to use in potential landscaping contracts in New Brighton. The City will, at its own expense, relocate these boulders upon receipt of authorization to abandon and discontinue rail service.

² The City does not have access to the valuation maps of either MT Properties or MCRC and does not know if the line has any mileposts.

³ Arguably the line could be regarded as an intrastate spur track for which no abandonment and discontinuance authority would be needed under 49 U.S.C. 10906. This is borne out by its historical name: "The Butcher Spur." However, due to a lack of knowledge about the actual historical use of the track and out of an abundance of caution, the City seeks abandonment and discontinuance authority for the subject 0.5 miles of track and right of way.

The City lacks information as to when the Butcher Spur was last used for rail transportation; however, it believes that the line has been unused for at least two years.

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 non-industrial commercial use, which includes the proposed construction of an office campus for a major Minnesota medical device manufacturer. Because the City is competing with other communities vying for the Campus, it hopes to complete any approved abandonment as soon as possible in order to start construction in the spring of 2005. The City has attempted to reach an agreement whereby MCRC and MT Properties would voluntarily discontinue all operations on and abandon the track in question, and it has provided generous incentives for them to do so, however, the parties have not reached such an agreement as of the date of this filing.

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 map. The City does not have access to such a map or the information necessary to create such a map.⁴

⁴ In connection therewith, the City seeks an exemption from 49 U.S.C. 10903(c).

Notice requirements: The City asks that the Board waive the requirements of 49 C.F.R. 1152.20(a)(2)(i), (xi), and (xiii), requiring an applicant to file its Notice of Intent upon significant users of the line, the headquarters of the Railroad Labor Executives' Association, and the headquarters of all duly certified labor organizations that represent employees on the affected rail line. The City believes that there are no entities that use, or have recently used, the line for rail transportation.⁵ It believes that the Railroad Labor Executives' Association is no longer in existence. And it believes that there are no rail employees on the affected rail line.

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 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 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

⁵ Nevertheless, the City will serve a copy of the Notice on last known shippers and adjoining property owners.

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

will provide any requested documentation, and the City lacks a system diagram map for the affected line.

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 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.

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) and 49 C.F.R. 1152.36 pertaining to the provision of revenue and cost data. The line has not handled any traffic for some time, and the City lacks information necessary to comply with these provisions.

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.

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 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 City asks that the Board waive the requirement of 49 C.F.R. 1152.24(f) and 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. These provisions presuppose control by the applicant over the timing of consummation once the Board's decision is issued. Because this is a third party abandonment, after the City receives authorization from the Board to proceed with the abandonment, it must still invoke state law to obtain control of the property.

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.⁷

⁷ In connection therewith, the City seeks an exemption from 49 U.S.C. 10904.

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).

Exemption

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. 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. 10101(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 line is currently

out of use by any shipper or carrier, and there is only one shipper on the line whose property could potentially be transported by rail.

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 Discontinuance—In Duval County, FL STB Docket No. AB-469 (STB served April 18, 1996). The City accordingly asks that the Board grant its exemption requests.

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 an exemption 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,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, D.C. 20036
(202) 263-4180

Dated: October 15, 2004



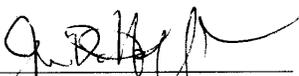
CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify this 15th day of October, 2004, that a copy of the foregoing Petition For Waiver and Exemption of Certain Abandonment Application Requirements was sent, postage prepaid, by first class mail to the following parties:

John W. Gohmann
Minnesota Commercial Railway
14047 Petronella Drive, Suite 201
Libertyville, IL 60048

Lee Larson
MT Properties, Inc.
475 Cleveland Ave. North
Suite 305
St. Paul, MN 55104

Thomas McFarland, Esq.
208 South LaSalle, #1890
Chicago, IL 60604



John D. Heffner