

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

November 21, 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-In Ramsey County, MN**

**STB Docket No. AB-884, MT Properties, Inc.
-Adverse Abandonment-In Ramsey County, MN**

**Supplement to 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 a Supplement to a Petition for Waiver and Exemption of Certain Abandonment Application Requirements that was previously filed on November 9, 2007. 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 was submitted with the petition filed on November 9, 2007.

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 in early December 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—IN RAMSEY COUNTY, MN

STB Docket No. AB-884

MT PROPERTIES, INC.-ADVERSE
ABANDONMENT IN RAMSEY COUNTY, MN

SUPPLEMENT TO
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 21, 2007

EXPEDITED HANDLING REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-882

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

STB Docket No. AB-884

MT PROPERTIES, INC.-ADVERSE
ABANDONMENT IN RAMSEY COUNTY, MN

SUPPLEMENT TO
PETITION FOR WAIVER AND EXEMPTION OF CERTAIN
ABANDONMENT APPLICATION REQUIREMENTS

INTRODUCTION

On November 9, 2007,, Petitioner City of New Brighton, MN (hereafter “the City” or “New Brighton”), petitioned the Board pursuant to 49 CFR 1152.1 *et al*, 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 In the course of preparing the requisite application, counsel for the City inadvertently neglected to seek a waiver from the following requirements in connection with the

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. New Brighton also recognizes that MTP should be included in the caption of this Supplement and requests that the Board amend the Petition for Waiver and Exemption filed on November 9, 2007, to include MTP’s name and docket number in the caption as well.

form of the Notice of Intent and Notice to be placed in the Federal Register and the requirement for execution and verification of the application by an official of the carrier.

Notice of Intent. Petitioner is required to file and publish a Notice of Intent in connection with the proposed adverse abandonment. See, 49 CFR 1152.20. In view of Petitioner's other waiver requests, Petitioner believes that the wording of the notice, as prescribed in 49 CFR 1152.21, is inappropriate for use in this proceeding. Specifically, Petitioner seeks to use a Notice that omits any language relating to public use and trail use and related conditions, offers of financial assistance, and feeder applications. Accordingly, it seeks a waiver of the provisions of 49 CFR 1152.21, proposing instead to be allowed to use the form of notice as set forth in Attachment A. Such relief is consistent with Board practice in granting similar requests in other adverse abandonment cases. Docket No. AB-290 (Sub-No. 286), Norfolk Southern Railway Company – Adverse Abandonment - St. Joseph County, IN (October 26, 2006, slip op. at 3).

Federal Register Notice. Petitioner is required to include a draft Federal Register Notice with its application. 49 CFR 1152.22(i). In view of Petitioner's other waiver requests, Petitioner believes that the wording of the notice, as prescribed in 49 CFR 1152.22, is inappropriate for use in this proceeding. Specifically, Petitioner seeks to use a Federal Register Notice that omits any language relating to public use and trail use and related conditions, offers of financial assistance, and feeder applications. Accordingly, it seeks a waiver of the provisions of 49 CFR 1152.22, proposing instead to be allowed to use the form of notice as set forth in Attachment B. Such relief is consistent with Board practice in granting similar requests in other adverse abandonment cases. Id. At 5.

Verification. Petitioner notes that the Board's regulations require that the original application be executed and verified by an officer of the carrier having knowledge of the facts

and matters relied upon. 49 CFR 1152.22(j). Petitioner is not in a position to obtain a verification from either MCRC or MTP. However, it will arrange for the execution and verification of the application by the City Manager or other responsible official of the City. Accordingly, Petitioner requests that the Board waive the requirement of 49 CFR 1152.22(j) for execution and verification by the carrier.

CONCLUSION

WHEREFORE, Petitioner, the City of New Brighton, MN, asks that the Board to allow it to supplement its previously filed Petition for Waiver and Exemption filed November 9, 2007, and to grant it the waivers requested herein.

Respectfully submitted,

The City of New Brighton, Minnesota

By its attorney,


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

Dated: November 21, 2007

EXHIBIT A

SURFACE TRANSPORTATION BOARD

STB No. AB-882

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

STB Docket No. AB-884

MT PROPERTIES, INC.-ADVERSE
ABANDONMENT IN RAMSEY COUNTY, MN

NOTICE OF INTENT TO ABANDON AND DISCONTINUE SERVICE

The City of New Brighton, MN (“the City”) gives notice that on or about December __, 2007, it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for permission to discontinue service on, and abandon, a line of railroad known as the Butcher’s Spur that is owned by MT Properties, Inc. and operated by the Minnesota Commercial Railway Company (“MCRC”). 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 line has no mileposts. It traverses through ZIP Code 55112, and extends a distance of approximately 0.5 miles. There are no stations on the affected line.

The reason for the proposed discontinuance and abandonment is that 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. Based on information in our possession, the line does not contain federally granted rights-of-way.

This line of railroad has not appeared on any system diagram map or narrative and the City has a pending request with the Board for waiver of certain regulatory filing requirements including that relating to the system diagram map.

The City believes that there are no rail employees on the affected rail line.

The application will include the application’s entire case for discontinuance and abandonment (case in chief). Any interested person, after the application is filed on December __, 2007, may file with the Surface Transportation Board written comments concerning the proposed discontinuance and abandonment or protests to it. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance or abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following:

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the line;
 - (ii) If protestant does not use the line, information concerning the group or public interest it represents; and
 - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.
- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service. (This information must be supported by affidavits of persons with personal knowledge of the facts.)
- (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

- (i) Environmental impact; and
- (ii) Impact on rural and community development;

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed discontinuance and abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests should indicate the proceeding designation STB Nos. AB-882 and 884 and must be filed with the Secretary, Surface Transportation Board, Washington, D.C. 20423, no later than January __, 2008. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance and abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant, John D. Heffner, 1750 K Street, N.W., Suite 350, Washington, D.C. 20006, (202) 296-3334. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

A copy of the application will be available for public inspection at the City Manager's office, 803 Old Highway 8 NW, New Brighton, MN55112, on or after December __, 2007. In addition, the City shall make a copy available to each person upon request.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

EXHIBIT B

FEDERAL REGISTER NOTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB No. AB-882

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

STB Docket No. AB-884

MT PROPERTIES, INC.-ADVERSE
ABANDONMENT IN RAMSEY COUNTY, MN

NOTICE OF INTENT TO ABANDON AND DISCONTINUE SERVICE

The City of New Brighton, MN (“the City”) gives notice that on December __, 2007, it filed with the Surface Transportation Board, Washington, D.C. 20423, an application seeking the adverse abandonment of a line of railroad known as the Butcher’s Spur that is owned by MT Properties, Inc. and operated by the Minnesota Commercial Railway Company (“MCRC”). 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 line has no mileposts. It traverses through ZIP Code 55112, and extends a distance of approximately 0.5 miles. There are no stations on the affected line.

The public record of the Board does not contain any system diagram map (SDM) for the Butcher's Spur identifying it as being potentially subject to abandonment.

Based on information in the possession of the Applicants, the line does not contain federally granted rights-of-way. Any documentation relating to this abandonment in the Applicants' possession will be made available promptly to those requesting it. The application can be reviewed on the Board's webpage, www.stb.dot.gov, or a copy can be secured from Applicants' counsel, whose name and address appear below. The Applicants' entire case for abandonment was filed with the application.

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings' docket numbers. These filings are due 45 days after the application is filed. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, SW, Suite 1260, Washington, DC 20423-0001, together with a certificate of service attesting that copies of the

comments or protests have been served on Applicants' counsel, John D. Heffner. Written comments and protests must indicate the proceeding designation STB Nos. AB-882 and 884. Except as otherwise set forth in 49 C.F.R. 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be appeared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 245-0335 or refer to the text of the abandonment regulations at 49 C.F.R. 1152.1, *et seq.*, which can be viewed at www.gpo.gov/nara.cfr.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will

be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

CERTIFICATE OF SERVICE

I, John H. Heffner, do hereby certify that a true copy of the foregoing Supplement to Petition for Waiver and Exemption was served on November 21, 2007 on the following by first class United States mail and email transmission:

Mr. John Gohmann
Minnesota Commercial Railway
4047 Petronella Drive, Suite 201
Libertyville, IL 60048

Thomas F. McFarland, Esq.
Thomas F. McFarland, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60606

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



John D. Heffner