

Surface Transportation Board Strikes Down "Jefferson Terminal Railroad" Attempt to Acquire, Operate Property Through Use of Board's Class Exemption Process

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that, at the request of the City of Detroit (the City), the Board has issued a decision striking down an attempt by the Jefferson Terminal Railroad Company (Jefferson) to use the agency's expedited class exemption process to acquire and operate certain property as a railroad in Detroit, Michigan. Jefferson claims that the property is a rail line subject to Board jurisdiction, while the City is seeking to condemn the property for use as a sewage treatment plant. Jefferson has attempted to use the Board's class exemption process in acquiring the property to block the condemnation, asserting that the City's condemnation action is preempted by the Board's jurisdiction over the property.

The City responded to Jefferson's invocation of Board jurisdiction by asking the agency to declare Jefferson's action to be void. The City said that Jefferson has failed in its duty to inform the Board of the condemnation action, and claimed that the Board lacks jurisdiction over the property because it is not rail property and has not been used for rail service for the past 13 years.

In its decision, the Board explained that its class exemption process invoked by Jefferson was adopted to facilitate continued rail service on lines that a selling railroad could no longer operate profitably. The Board emphasized that this process was not intended to apply to cases in which a non-rail carrier seeks to convert what could be non-rail property into a rail line to avoid local legal processes. The Board held that the class exemption invoked by Jefferson should not be applied here, given the particular circumstances of this case, where substantial factual and legal issues needed to be resolved. The Board also noted that it was troubled by Jefferson's failure to disclose that the property was about to be condemned. The Board stated,

"[t]his failure lends credence to the City's allegation that the proposal that Jefferson submitted to this Board was merely a device to acquire or retain property for non-rail purposes using federal preemption as a shield. . . [w]e will not permit our processes to be misused in that manner."

The Board indicated that Jefferson may pursue its proposal by filing a petition for an exemption from Board regulation, or a formal application for a specific Board ruling on the property. The Board noted that these procedures are designed to elicit a more complete public record.

The Board issued its decision in the case entitled *Jefferson Terminal Railroad Company--Acquisition and Operation exemption--Crown Enterprises, Inc.*, STB Finance Docket No. 33950. A printed copy of today's decision is available for a fee by contacting **D~To-D~ Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530**. The decision is also available for viewing and downloading via the Board's Website at <http://www.stb.dot.gov>

###