

TOWN OF SMITHTOWN

SUPERVISOR
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TOWN COUNCIL
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OFFICE OF THE TOWN ATTORNEY
MATTHEW V. JAKUBOWSKI
TOWN ATTORNEY

306748

June 15, 2023

ENTERED
Office of Proceedings
June 16, 2023
Part of
Public Record

Via E-Filing

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, D.C.20024

FD 36575 (Sub-No.1)

Re: STB Docket No. ~~FD 36575~~, Townline Rail Terminal, LLC
Construction/Operation Exemption of a line of railroad in
Suffolk County, New York

**Town of Smithtown Request for Waiver of Filing Fee and
Filing Petition for Declaratory Order/Request to
Set Procedural Schedule**

Dear Chief Brown,

The Town of Smithtown is a local government in Suffolk County, New York. The purpose of this letter is to request a waiver of the \$1,400.00 filing fee pursuant to 49 C.F.R. §1002.2(e) in connection with Smithtown's filing of the enclosed petition for a declaratory order proceeding. Smithtown has no ownership, construction or operational role in the line of rail subject of the above referenced petition for exemption. The proposed rail sits entirely within Smithtown's boundaries.

On January 12, 2023, the STB issued a decision instituting an exemption proceeding under 49 U.S.C. §10105(b). We have been advised that a draft Environmental Assessment is near completion. On April 24, 2023, a motion to dismiss the petition for exemption was filed with the STB by an entity called Townline Association, Inc.

FEE RECEIVED
June 16, 2023
SURFACE TRANSPORTATION BOARD

FILED
June 16, 2023
SURFACE TRANSPORTATION BOARD

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STB Docket No. FD 36575
Townline Rail Terminal LLC
Construction & Operation Exemption
Town of Smithtown Request for Waiver of Fee
And Filing of Town's petition

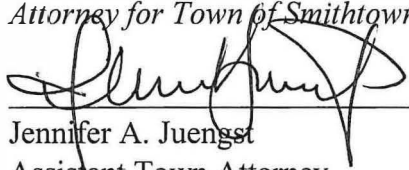
Smithtown is filing a petition with the STB to institute a declaratory order proceeding to resolve an issue raised by the parties' filings in the motion to dismiss. This issue involves a common carrier's obligation to transport hazardous materials.

Thank you for your consideration of the Town's request.

Sincerely,

Matthew V. Jakubowski
Town Attorney
Attorney for Town of Smithtown

By:



Jennifer A. Juengst
Assistant Town Attorney

cc: All parties on the Service List

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36575

TOWNLINE RAIL TERMINAL, LLC
CONSTRUCTION AND OPERATION OF A LINE OF RAILROAD
IN SUFFOLK COUNTY, NY

TOWN OF SMITHTOWN - PETITION FOR
DECLARATORY ORDER AND
REQUEST FOR PROCEDURAL SCHEDULE

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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36575

TOWNLIN RAIL TERMINAL, LLC
CONSTRUCTION AND OPERATION OF A LINE OF RAILROAD
IN SUFFOLK COUNTY, NY

TOWN OF SMITHTOWN PETITION FOR
DECLARATORY ORDER AND
REQUEST FOR PROCEDURAL SCHEDULE

Pursuant to 5 U.S.C. §554(e) and 49 U.S.C. §1321 and 49 C.F.R. §1117.1, the Town of Smithtown (hereinafter “Smithtown”) hereby petitions the Surface Transportation Board (hereinafter “STB” or “Board”) to exercise its discretionary authority to institute a declaratory order proceeding and to establish a procedural schedule to address the issue of Townline Rail Terminal LLC’s [hereinafter “TRT”] obligation as a common carrier to transport hazardous materials in the event TRT is granted a license by the STB in accordance with TRT’s petition for an exemption under 49 U.S.C. §10502 from the requirements of 49 U.S.C. §10901. Pursuant to 49 C.F.R. §1011.7(a)(2), the Office of Proceedings generally accepts this type of petition under its modified procedures at 49 C.F.R. Part 1112. For the reasons set forth below, Smithtown respectfully requests that the Board accept the instant Petition and establish a procedural schedule for the filing of statements.

Background

On January 12, 2023, the STB instituted a proceeding under 49 U.S.C. §10502(b) to address issues raised in TRT’s petition for exemption. [STB Decision Docket No. FD 36575, ID No. 51534]. As of June 12 2023, comments continue to be filed with the STB under Docket No. FD 36575. [ID No. 306718].

According to TRT's petition for exemption, the proposed rail line it seeks to construct and operate lies completely within the boundaries of the Town of Smithtown, Suffolk County, New York. TRT is affiliated with CarlsonCorp Inc. which currently owns the land where the line and tracks are proposed to be constructed. According to the petition for exemption, CarlsonCorp Inc. (a non-carrier) will transfer title to TRT for the land needed for the rail line and the switching and side tracks. [TRT petition for exemption Docket No. FD 36575, ID No. 305656, at p. 3]. According to TRT, CarlsonCorp Inc. will independently own, construct and operate a truck/rail trans-loading facility that will serve TRT's proposed rail line. Id.

In opposition to TRT's petition, an entity called Townline Association, Inc. [hereinafter "TA"] purportedly comprised of local citizens filed a motion to dismiss TRT's petition. [STB Docket No. 36575, ID No. 306408 filed April 4, 2023]. One of the grounds cited in support of TA's motion is that TRT's proposed line does not involve transportation by a rail carrier or an agent of a rail carrier and the operations will not be under the control of a rail carrier. [Id. at pp. 5-6]. TA's Verified Motion to Dismiss did not raise any issues involving the issue of a common carrier's obligation to transport hazardous materials.

Subsequently, TA filed a document with STB entitled, "Supplementary Evidentiary Filing" dated May 3, 2023. [STB Docket No. 365475, ID No. 306547]. In its supplementary filing, TA presented printouts of comments contained in social media website postings to support its contention that TRT will not be a common carrier rail line. According to TA, comments posted by CarlsonCorp Inc. and Toby Carlson amount to refusals by TRT to transport hazardous materials which may violate a common carrier's obligation to transport hazardous materials. [Id. at p. 1].

On May 16, 2023, TRT filed a response to the supplementary filing clarifying that the social media comments were not made by TRT and Mr. Carlson's comments relate solely to the CarlsonCorp Inc. trans-loading facility which will be controlled by local law and its NYSDEC permit and that CarlsonCorp Inc. will not seek approval from Smithtown or the DEC to handle hazardous materials at its trans-loading facility. [TRT Response dated May 16, 2023, STB Docket No. 36575, ID No. 306617, at p. 4]. TRT also clarified its understanding that as a common carrier it would be obligated to transport hazardous materials if a customer makes a reasonable request for the service on the proposed line. [*Id.* at p. 4, and f.n. 8 citing ICC Docket No. AB-55 (Sub-No.486), 2002 WL 31045472].

Smithtown has local authority to regulate the construction and use of the CarlsonCorp Inc. trans-loading facility where materials would be moved between trucks and rail cars. Smithtown's Town Code does not permit storage or handling of hazardous materials. It is Smithtown's understanding that CarlsonCorp Inc. will continue to operate its property in compliance with its current New York State Department of Environmental Conservation solid waste permit which does not allow for the handling of hazardous materials. However, it appears from the above referenced responsive filing that TRT will have to transport hazardous materials if it is presented with a "reasonable request."

What is a "reasonable request" in the context of the proposed structure and operation of the TRT rail line and tracks and the CarlsonCorp Inc. trans-loading facility and what impact would federal jurisdiction in this matter have on the regulatory authority of New York State and Smithtown? The parties and the public need an answer to this question and respectfully request a schedule for submission of statements for the Board's consideration.

Smithtown suggests the following procedural schedule for the submission of statements for the Board's consideration: Board order instituting declaratory order proceeding and establishing procedural schedule = Day 0; Smithtown's statement = Day 10; Party statements = Day 20; and Smithtown's rebuttal statement = Day 30.

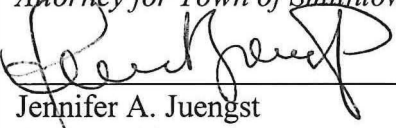
Conclusion

For the foregoing reasons, Smithtown requests that the Board institute a declaratory order proceeding and adopt a procedural schedule for the parties to submit statements for the Board's consideration.

Respectfully submitted,

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Attorney for Town of Smithtown

By:


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Dated: June 15, 2023

CERTIFICATE OF SERVICE

STB DOCKET NO. 36575

I hereby certify that on this 15th day of June 2023, I caused a copy of the foregoing Petition for Declaratory Order to be served on the persons listed below by US first class mail or by electronic filing where indicated:

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Service list continued STB DOCKET NO. 36575

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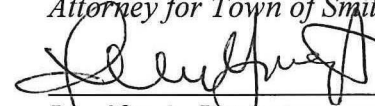
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