

SERVICE DATE – MARCH 5, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36575

TOWNLIN RAIL TERMINAL, LLC—
CONSTRUCTION AND OPERATION EXEMPTION—IN SUFFOLK COUNTY, N.Y.

Digest:¹ This decision denies John Kenavan’s request to reconsider the Board’s August 15, 2024 decision granting Townline Rail Terminal, LLC, authority to construct and operate a new rail line in New York.

Decided: March 5, 2025

By decision served August 15, 2024, the Board granted, subject to environmental mitigation conditions, the petition for exemption filed by Townline Rail Terminal, LLC (Townline), to construct and operate a new rail line in Smithtown, Suffolk County, N.Y. (the Line). Townline Rail Terminal, LLC—Constr. & Operation Exemption—in Suffolk Cnty., N.Y. (Approval Decision), FD 36575, slip op. at 1 (STB served Aug. 15, 2024). On November 18, 2024, John Kenavan (Petitioner) filed a petition for reconsideration of the Board’s decision. For the reasons discussed below, the Board will deny the petition.

BACKGROUND²

By petition filed November 17, 2022, Townline, an affiliate of CarlsonCorp, Inc. (CarlsonCorp), sought an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the Line. (Townline Pet. 2, Nov. 17, 2022.) The Line would extend approximately 5,000 feet on a portion of CarlsonCorp’s industrial property³ and would connect to the Port Jefferson Line, which is owned by the Long Island Railroad and operated by the New York & Atlantic Railway. (*Id.* at 2-3.) According to Townline, the purpose of the project is to provide common carrier rail service to CarlsonCorp’s

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² A more detailed history of this proceeding is available in the Approval Decision, FD 36575, slip op. at 1-3.

³ CarlsonCorp currently operates a state-permitted waste transfer facility on its property. (Townline Pet. 3, Nov. 17, 2022.)

planned truck-rail transloading facility, through which it would also provide a rail option to other local customers.⁴ (*Id.* at 3-5.)

On April 4, 2023, Townline Association, Inc. (the Association), an association of local residents and property owners, moved to dismiss the petition for exemption, arguing, among other things, that Townline would not be a rail carrier because it would provide only switching and transloading services rather than common carrier service. (Townline Ass’n Mot. 5-9.) The Board denied that motion by decision served November 15, 2023. See Townline Rail Terminal, LLC—Constr. & Operation Exemption—in Suffolk Cnty., N.Y. (Mot. to Dismiss Decision), FD 36575 (STB served Nov. 15, 2024).

The Board authorized Townline to construct and operate the Line on August 15, 2024. Approval Decision, FD 36575, slip op. at 1.⁵ On September 4, 2024, the Association filed a petition to reconsider the Approval Decision, which the Board denied by decision served December 3, 2024. See Townline Rail Terminal, LLC—Constr. & Operation Exemption—in Suffolk Cnty., N.Y., FD 36575 (STB served Dec. 3, 2024).

On November 18, 2024, Petitioner filed a petition to reconsider the Approval Decision. Petitioner argues that certain statements made in a newspaper by Townline’s counsel following the Approval Decision contradict Townline’s prior representations to the Board acknowledging and accepting the obligations it would be undertaking as a common carrier. (Kenavan Pet. 2-3.) More specifically, the petition cites to a letter to the editor, published in The Smithtown News on October 17, 2024, in which Townline’s counsel attempts to “ease [the Association’s] concerns” about the potential movement of hazardous materials on the Line. (*Id.* at 5.) In the letter, Townline’s counsel states that the Line is “landlocked” between the Port Jefferson Line and CarlsonCorp’s property, and thus the only way for transloading to occur will be through the proposed non-carrier transloading facility, (*id.*), which Townline separately has acknowledged is prohibited from storing or handling hazardous materials under state and local regulations, (Townline Pet. 3, Nov. 17, 2022; Townline Reply 4, May 16, 2023). The letter further states that no land exists along the Line for a neighboring company to construct industrial track connecting to it. (Kenavan Pet. 5.) In sum, Petitioner argues that these statements demonstrate that Townline cannot hold itself out as a common carrier, contrary to its representations on the record that it will do so.

Townline replied on November 21, 2024. Townline argues as an initial matter that the petition should be rejected as untimely. (Townline Reply 2, Nov. 21, 2024.) On the merits, Townline argues that the petition should be denied because the Board was fully informed of the

⁴ In addition to transporting construction and demolition debris from the transloading facility, Townline also sees potential to provide rail service for Covanta Energy to ship incinerator ash and has identified three additional local shippers it could serve via the CarlsonCorp transload facility. See Approval Decision, FD 36575, slip op. at 2-4; (Townline Pet. 4, Nov. 17, 2022).

⁵ The Approval Decision, FD 36575, slip op. at 6, also denied a petition by the Association seeking a Supplemental Environmental Assessment or an Environmental Impact Statement.

layout and proposed operation of the Line when the Board decided the Motion to Dismiss Decision and the Approval Decision. (Townline Reply 2, Nov. 21, 2024.) According to Townline, the record before the Board showed how the Line would be built and operated as a common carrier line. (Id. at 1-2.) Townline further argues that “recognizing [a] constraint on available freight that may be transloaded . . . does not demonstrate that [Townline] is unable to be a common carrier.” (Id. at 2.)

DISCUSSION AND CONCLUSIONS

Under 49 C.F.R. § 1115.3(e), petitions for reconsideration must be filed with the Board within 20 days after service of the action. Petitioner filed his petition for reconsideration on November 18, 2024, 95 days after the Board served the Approval Decision. However, under 49 C.F.R. § 1115.4, petitions to reopen an administratively final action may be filed at any time. The Board, therefore, will consider Petitioner’s late-filed petition for reconsideration as a petition to reopen. See CSX Transp., Inc.—Pet. for Declaratory Ord., FD 34662, slip op. at 2 (STB served May 3, 2005).

Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, the Board may reopen a proceeding because of “material error, new evidence, or substantially changed circumstances.” The alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected in order for reopening to be granted. See Montezuma Grain Co. v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); Canadian Nat’l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 4 (STB served Dec. 21, 2018).

The petition fails to establish that the Board’s decision would be materially affected by new evidence or changed circumstances or that it involved material error. The information provided by Petitioner, specifically statements by Townline’s counsel concerning the layout of the Line, do not amount to new evidence or substantially changed circumstances.⁶ Numerous filings submitted by Townline before the Board issued the Approval Decision clearly explain how the Line would be built and what Townline’s target market would be. (See Townline Pet. 2-3, 5, Nov. 17, 2022; id., Ex. A; see also Townline Reply to Mot. to Dismiss 4, 13, Apr. 24, 2023 (noting that customers will have access to the Line through the transload facility).) The Board considered the entirety of the record before authorizing the exemption in the Approval Decision. See Approval Decision, FD 36575, slip op. at 3. Notably, the Board has already considered Townline’s representations and plans to hold itself out as a common carrier and has determined that Townline would indeed be a common carrier on the Line. Mot. to Dismiss Decision, FD 36575, slip op. at 4; see also Town of Smithtown, N.Y.—Pet. for Declaratory Ord., FD 36575 (Sub-No. 1), slip op. at 5 (STB served Feb. 23, 2024).

⁶ In a petition alleging material error, a party must do more than simply make a general allegation; it must substantiate its claim of material error. See Canadian Nat’l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 4 (STB served Apr. 26, 2017) (articulating the three grounds for reopening and the need for grounds to materially alter the Board’s prior decision). Here, the petition presents no grounds that support a claim of material error.

Even if the matters raised by Petitioner could be considered new evidence or substantially changed circumstances, the petition fails to establish that the information would materially affect the Board's decision. A common carrier is required to provide "service on reasonable request." 49 U.S.C. § 11101(a). In other words, a carrier must accept reasonable requests to move the freight tendered to it. Here, Petitioner does not allege that Townline has received and refused a request to move hazardous materials, or that Townline has expressed an intent to refuse any future reasonable requests to move hazardous materials or other commodities. To the contrary, Townline has repeatedly stated that it would offer common carrier rail service to the public⁷ and has acknowledged that, as a common carrier, it would be obligated to transport hazardous materials on reasonable request.⁸ The published statements of Townline's counsel merely appear to explain why the siting of its Line makes it unlikely that Townline would, in practice, ever receive requests to move hazardous materials by rail. According to Townline, this is because the CarlsonCorp facility itself is subject to state and local regulation prohibiting handling and storage of hazardous materials, and there is not enough land along the Line for the siting of any other transloading facility or industrial track to connect to neighboring companies.

These practical limitations, however, do not diminish or negate Townline's obligations as a common carrier with respect to the rail traffic tendered to it.⁹ The Board has already acknowledged that Townline would have an obligation to carry hazardous materials "on reasonable request" even if "Townline's common carrier obligation would impart no obligation on CarlsonCorp to transload such materials." See Town of Smithtown, FD 36575 (Sub-No. 1), slip op. at 5. Nor do counsel's statements contradict the representations Townline made on the record that it would accept a reasonable request for rail service that includes hazardous materials if it received one or establish that Townline cannot carry out the obligations of a common carrier. Those statements simply acknowledge that, as a practical matter, there may be limits on the types of traffic Townline is asked to move.

⁷ (See, e.g., Townline Pet. 7, Nov. 17, 2022 ("Townline is willing to accept a common carrier obligation and to 'hold out' to provide rail service to the public at large."); id., V.S. Carlson 2-3 (stating that Townline will offer rail service to a variety of customers); Townline Reply to Mot. to Dismiss 13, Apr. 24, 2023 (stating that Townline will hold itself out as a common carrier).)

⁸ (See Townline Resp. 4-6, May 16, 2023 ("If a customer should locate on the Proposed Line and that customer makes a reasonable request for rail service that includes hazardous materials, Townline Rail accepts that it has a common carrier obligation to transport that material.").)

⁹ Petitioner argues that, in light of the Approval Decision, other carriers may intentionally "landlock" their lines to avoid moving hazardous materials. This argument lacks merit. As noted above, a common carrier's obligation is to accept reasonable requests for service, and Petitioner cites nothing in the statute or precedent requiring a carrier to situate its lines in a certain manner. Furthermore, it is not unusual for a common carrier rail line to be built or acquired for the purpose of serving a target market of certain commodities or industries. See, e.g., Midwest Generation, LLC—Exemption from 49 U.S.C. 10901—for Constr. in Will Cnty., Ill., FD 34060 et al., slip op. at 5-7 (STB served Mar. 21, 2002); Pemiscot Cnty. Port Auth.—Constr. Exemption—Pemiscot Cnty., Mo., FD 34117, slip op. at 1 (STB served July 2, 2002).

Therefore, for the foregoing reasons, the petition will be denied.

It is ordered:

1. The petition is denied.
2. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.