

BEFORE THE
SURFACE TRANSPORTATION BOARD

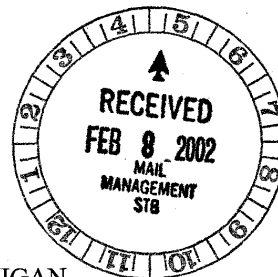
STB Finance Docket No. 33980

204729

RIVERVIEW TRENTON RAILROAD COMPANY
- ACQUISITION AND OPERATION EXEMPTION -
CROWN ENTERPRISES, INC.

STB Finance Docket No. 34040

204730



RIVERVIEW TRENTON RAILROAD COMPANY -
ACQUISITION AND OPERATION IN WAYNE COUNTY, MICHIGAN

**REPLY COMMENTS OF COUNTY OF WAYNE AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED
TO NEW ISSUES RAISED BY RIVERVIEW TRENTON
RAILROAD COMPANY**

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In its January 30, 2002 filing (“January 30 Filing”), Riverview Trenton Railroad Company (“RTRR”) advances several entirely new arguments and claims to which the County of Wayne (“County”) and Grand Trunk Western Railroad (“GTW”) (together, “WC/GTW”) have had no opportunity to reply. It also intermixes these arguments with selected claims it made previously in a reply to which WC/GTW likewise had no opportunity to respond. Since one of RTRR’s new arguments is that the Board should conclude both proceedings on February 15, 2002, without permitting any comments on the merits of RTRR’s petition, and since RTRR continues egregiously to misrepresent the facts, law, and positions of the parties, WC/GTW

respectfully requests that the Board permit them to respond briefly so that the Board may have a more reliable record for consideration.¹

First, in a sharp departure from its prior position in these proceedings, RTRR in its January 30 Filing suggests for the first time that the Board should afford no one the right to file comments on the merits of its petition for exemption.² Instead, it urges the Board to treat the petition as a sufficient record in itself, and it urges the Board to decide the merits of its petition by February 15, 2002. Second, RTRR makes new and misleading arguments in an effort to deny the fact that RTRR had notice of the County's desire to acquire the site of RTRR's proposed intermodal terminal before filing its notice of exemption, and that RTRR acted upon that knowledge in seeking to invoke Board jurisdiction. Finally, out of apparent concern that its motives and abuses have been laid bare, RTRR for the first time tries to defend the use of the Board's processes for the purposes of defeating local land use and zoning authority. The Board's precedents and policy considerations refute RTRR's argument.³

¹ Contrary to RTRR's suggestions, neither this type of abbreviated filing, nor environmental comments filed by parties, are a substitute for discovery and formal comment as part of an orderly Board proceeding. These filings have been directed at narrow issues, constrained by the Board's rules, and made without the benefit of any discovery, except in the case of the County, which was permitted limited discovery in the related district court proceeding (*see* Motion of Wayne County to Consolidate and Reply of Wayne County to Verified Petition for Exemption and Request for Issuance of a Procedural Schedule at 3 n.6 (May 21, 2001)).

² As shown below, RTRR's *post hoc* claim that it only supported a procedural schedule "in the event that the Board believed that further submissions would be informative here" (January 30 Filing at 4), is not supported by the text of its request.

³ RTRR's argument that parties should be permitted to invoke the Board's jurisdiction for improper purposes with impunity raises serious policy issues. In his February 1, 2002 letter to the Board, Representative John Dingell raised this issue (at page 1, paragraph 3) by asking what the Board can and will do in cases where its procedures are abused.

On February 15, 2002, the Board need only take action on the petitions to revoke RTRR's notice of exemption.⁴ Based on the facts of record, the Board may reasonably determine to dismiss RTRR's petition summarily. But the County and GTW respectfully submit that without permitting the development and filing of opposition evidence and comments on the merits of RTRR's petition, the Board lacks an adequate record to support granting RTRR's petition.

1. The Board Should Not Deny Parties The Right To Comment On RTRR's

Contentious Petition. When RTRR filed its petition for exemption, it hoped that there would "not be any serious objections to the instant Petition should the circumstances arise [*i.e.* revocation of the notice of exemption] that action on this Petition may be necessary." Verified Petition for Exemption and Request for Issuance of Proposed Procedural Schedule at 17 (May 1, 2001) ("Petition"). Nevertheless, recognizing the need "to ensure that Wayne County, the Cities of Riverview and Trenton and any other interested parties have ample opportunity to air views on the proposed action," RTRR requested adoption of a procedural schedule providing for such comments. *Id.*

Now, in the face of tremendous opposition to its petition, RTRR in its January 30 Filing suddenly reverses field and argues against permitting ANY comments on its petition. In addition to opposition by Senator Levin, Congressman Dingell, Governor Engler, Wayne County, the Cities of Riverview and Trenton, and other cities, almost 1,000 opposition letters and petitions have been filed to date, with more arriving daily. Such widespread opposition to RTRR's petition argues *for* proceedings on the merits (or outright denial of the petition), *not*

⁴ February 15, 2002 is not a statutory deadline for the petition (as opposed to the notice). RTRR has no right to demand or expect a decision on its petition on that date and it has not shown that it would suffer any harm without one.

against proceedings. Indeed, as the County and GTW have pointed out, the Board has recognized generally that its exemption procedures are not adequate for proposals that arouse “substantial public opposition” raising serious questions whether the agency can conclude that regulation is not need to carry out the rail transportation policy. *Ozark Mountain R.R. – Construction Exemption*, Finance Docket No. 32204, slip op. at 6 (ICC served Dec. 15, 1994).

RTRR observes that “the Board does not normally fix a procedural schedule in proceedings on petitions for exemption” (January 30 Filing at 2). This, however, is not a run of the mill petition. RTRR recognized as much when it called for a procedural schedule. The Board will likely only consider RTRR’s petition if it revokes RTRR’s notice of exemption on the ground, in part, that notice procedures fail to provide opponents with adequate due process. It follows then that the Board should likewise either dismiss RTRR’s petition so that parties may have the procedural protections of an application proceeding or, at a minimum, provide procedural protections similar to an application for opponents in the context of the petition proceeding. Thus, if the Board does not summarily dismiss RTRR’s petition, this is surely one of those instances that calls for the institution of proceedings as provided in the Board’s regulations. *See* 49 C.F.R. § 1121.4(c)(1).

RTRR seems to suggest that its opponents somehow waived any right to file comments on the merits of the petition by not having already done so. But both Wayne County and GTW sought authority to file comments.⁵

RTRR also suggests that further proceedings could not possibly bring additional light to bear on its petition. January 30 Filing at 6. It claims that parties “do not appear to contend that

⁵ The replies of Wayne County and GTW to the petition for exemption did not include comments on the merits of that petition, which those parties deliberately deferred until the appropriate time in the procedural schedule which, at that time, all parties agreed should be forthcoming. Further, as discussed at footnote 1, there is no substitute for institution of a procedural schedule providing parties with a right to discovery and comment.

RTRR's Petition for Exemption is beyond the Board's jurisdiction" (*id.* at 8). That claim is hard to fathom. The jurisdictional issue logically is equally applicable to RTRR in both the petition and the notice contexts. Further, Wayne County and GTW have specifically stated in their procedural filings that the petition and notice present many of the same issues, including the jurisdictional issue.⁶

RTRR's suggestion that opponents have not "even come close to demonstrating" that RTRR's proposal is inconsistent with the rail transportation policy of 49 U.S.C. § 10101 ("RTP") is also hard to fathom. January 30 Filing at 6. There is already substantial evidence that RTRR filed its petition not because RTRR needed Board action to pursue any legitimate transportation need or design, but because it wanted to avoid local jurisdiction.⁷ Thus, as noted in WC/GTW's January 25, 2002 Notice, there appear to be no public interests that could even arguably outweigh the public detriments that would follow from authorizing RTRR's operation as a rail common carrier. If RTRR believes there are, then, if the Board finds it has jurisdiction, RTRR should be required to explain those benefits and they should be subjected to scrutiny.⁸

⁶ Motion of Wayne County to Consolidate and Reply of Wayne County to Verified Petition for Exemption and Request for Issuance of a Procedural Schedule at 2 (May 21, 2001) ("County Motion to Consolidate"); Reply Of Grand Trunk Western Railroad Incorporated To Petition For Exemption And Motion of Grand Trunk Western Railroad Incorporated To Consolidate at 2-3 & n.3 (May 21, 2001) ("GTW Motion to Consolidate"); Notice by WC/GTW of Withdrawal of Motion to Consolidate and Supplemental Comments at 20 (Jan. 25, 2002) ("January 25, 2002 Notice").

⁷ This underscores the fact that RTRR is wrong in accusing the County and GTW of being anti-business or opposed to competition. What they oppose is RTRR's efforts to abuse the Board's processes in an effort to avoid local regulation of its business proposal.

⁸ RTRR's general statements concerning the supposed public benefits of its proposal have been vague and wholly inadequate. For example, it claims that, if it is recognized as a rail common carrier, shippers will benefit from through billing. Deposition of B. Michael Blashfield at 30, *Riverview Trenton R.R. v. County of Wayne*, No. 01-70078 (E.D. Mich. Mar. 6, 2001 ("Blashfield Tr.") (excerpts attached as Exhibit A hereto). In fact, just the opposite may be true. Shippers would likely receive two bills instead of one from RTRR – one for its terminal services and one for its supposed rail common carrier services.

2. Contrary To RTRR's Misleading And Contradictory Arguments, The Record

Shows That RTRR Sought Board Jurisdiction For An Improper Purpose. RTRR tries to

show that its corporate parents, CenTra and Crown Enterprises, Inc. ("Crown"), had long planned to use rail facilities, and that their plans were known. January 30 Filing at 9-12.

Nothing in the vague statements or documents cited by RTRR, however, indicates an intention to operate as a **Board-regulated** rail common carrier. Nor were the actions of RTRR's parents consistent with a belief that RTRR would be formed as a jurisdictional rail carrier; both continued discussions with the County and cities concerning land use issues with no hint of preemption. *See* January 30 Filing at 10 & nn. 11-12 and citations therein. Indeed, we are unaware of any other intermodal facility (other than Jefferson Terminal Railroad Company, for which the notice of exemption was revoked) whose structure required it to seek authority under 49 U.S.C. § 10901 to operate as a separate Board-regulated rail common carrier. RTRR has identified none, and its parents' vague references to possible rail activities (all of which are consistent with RTRR remaining a non-jurisdictional entity) and to the possibility of incorporating a railroad subsidiary under Michigan law (which does not require the company to be a jurisdictional rail carrier) do not show that there was an authentic need or intent to form a jurisdictional rail carrier.⁹

⁹ RTRR claims that the County and GTW were "flatly wrong" in stating that RTRR's operations "will be comparable" to those of RTRR's other intermodal operations for which RTRR has not claimed that it is or must be a rail common carrier. *See* January 25, 2002 Notice at 17; January 30 Filing at 7. They were not. The statement is supported by the affidavit of RTRR's Mr. Blashfield. Affidavit of B. Michael Blashfield ¶ 2 (Exhibit J to Motion of Wayne County to Consolidate and Reply of Wayne County to Verified Petition for Exemption and Request for Issuance of Procedural Schedule). Likewise, he makes clear in other testimony that RTRR operates other facilities "that provide intermodal services attendant to the rail," Blashfield Tr. 19. In none of those instances – other than Jefferson Terminal Railroad Company (as to which the Board rejected its claim) – has RTRR's affiliates sought to establish themselves as jurisdictional carriers. RTRR's assertion that none of these facilities are "comparable" to RTRR's planned intermodal terminal rests not on fact, but on RTRR's own self-serving and contradictory claims about its future plans to conduct new and different operations at the RTRR facility. For the reasons discussed in the January 25, 2002 Notice and herein, those claims should not be credited and do not constitute an adequate basis to find Board jurisdiction in this case.

By contrast, WC/GTW presented hard evidence demonstrating that RTRR was created as part of an abuse of the Board's processes for the improper purpose of preempting local land use regulation. See January 25, 2002 Notice at 11-15. For example, we showed that on two occasions – both well after the CenTra and Crown statements relied upon by RTRR, and both just prior to RTRR's filing of its notice of intent with the Board – Crown gave specific assurances to city officials that there would be *no* use of rail at the site.¹⁰ RTRR doesn't even attempt to rebut this evidence.

With regard to the other evidence adduced by WC/GTW, RTRR resorts once again to distortions and flat misstatements. In response to the deposition statements by Mr. Blashfield quoted in our January 25, 2002 Notice, which confirmed that RTRR's creation and the filing of RTRR's notice of exemption were responses to the possibility of eminent domain proceedings, RTRR notes that Mr. Blashfield made other inconsistent statements in the same deposition. January 30 Filing at 13-14. But whatever that says about the veracity of Mr. Blashfield's testimony, his self-serving statements cannot conceal the fact that Mr. Blashfield admitted having actual knowledge of the possible eminent domain proceedings and acting upon that knowledge.

RTRR's arguments are even more flimsy with regard to the letters that notified it of a possible eminent domain action prior to the filing of its notice of exemption on December 11, 2000. January 30 Filing at 12-13. RTRR does not deny that it was on notice through its attorney of possible eminent domain proceedings well before the filing of the notice, or that its attorney discussed the eminent domain threat with RTRR and its affiliates. Nor does RTRR deny that Crown received a letter dated November 28, 2000 directly from the County discussing possible

¹⁰ See January 25, 2002 Notice at 4-5, and Exhibits A and B thereto.

eminent domain proceedings. RTRR argues instead that Crown could not discern which property was the subject of those letters, because “Crown owns several properties in the area” of “Bridge Road a/k/a Riverview Avenue and Jefferson Avenue.” January 30 Filing at 13. But that unsupported claim is refuted by the sworn testimony of RTRR’s president, Arnold Mistura, who said that Crown did not own any property, other than the former McLouth Steel facility, within a five mile radius of the area described as “Property located at Bridge Road a/k/a Riverview Avenue and Jefferson Avenue.” Mistura Tr. 53-54, *Riverview Trenton R.R. v. County of Wayne*, No. 01-70078 (E.D. Mich. Mar. 7, 2001) (Exhibit B, hereto).

Finally, contrary to RTRR’s claim (January 30 Filing at 11), WC/GTW were correct in pointing out that RTRR misleadingly suggested that it had been created as a corporate entity before its parent received written notification of possible eminent domain proceedings. *See* January 25 Notice at 15. As discussed in the attached Appendix A, under Michigan law, RTRR was not formed as a “body corporate” until well after Crown had received that notification.

3. Neither Precedent Nor Policy Supports Condoning RTRR’s Abuse Of The Board’s Procedures And Jurisdiction By Upholding RTRR’s Notice Of Exemption Or Granting Its Petition For Exemption. RTRR cites a number of cases in an apparent effort to lend credibility to its position that the Board should overlook its improper motives and abuse of process in seeking to invoke the Board’s jurisdiction. January 30 Filing at 7-8.

Not surprisingly, not one of the cases supports its position. The cases it cites are readily distinguishable as there is no indication that any of them involved the kind of alleged abuses of the Board’s processes that exist in these proceedings. The cases are also distinguishable on other grounds.

RTRR claims that “a series of proceedings” show that “the [class] exemption process was designed for” use in situations “in which carriers have invoked class exemption procedures to assume control of track not previously subject to Board jurisdiction for use in connection with jurisdictional operations.” *Id.* at 7 (emphasis added, footnote omitted). In this case, however, RTRR was not a carrier at the time it acquired the property at issue or when it filed its notice of exemption.¹¹ Moreover, none of the cases cited by RTRR even involves a Board discussion of the specific question of whether the class exemption procedures are appropriate for conversion of non-jurisdictional into jurisdictional track.¹²

As WC/GTW have pointed out, the Board has spoken directly to that issue. In *Jefferson Terminal Railroad – Acquisition & Operation Exemption – Crown Enterprises, Inc.*, STB Finance Docket No. 33950 (STB served Mar. 19, 2001), which involved abuses by RTRR’s corporate family, the Board held “[t]he [class exemption] procedures were *not* intended to apply to cases in which a noncarrier seeks to convert what could be non-rail property into a rail line” (slip op. at 4 (emphasis added)) – or precisely the opposite of what RTRR argues. As we explained in our January 25, 2002 Notice (at page 12, note 26, and pages 13-14), contrary to arguments made by RTRR, the ruling in *Jefferson Terminal* is directly applicable to these proceedings.

¹¹ The distinction is important because an acquisition and conversion of non-jurisdictional property to jurisdictional property carries a far greater risk of potential abuse when the acquirer is a non-carrier subject to local regulation, as opposed to a carrier that is not subject to such regulation. In addition, non-carrier may not be known to the Board and will not have established their rail transportation *bona fides*.

¹² In all but one case, there was no holding by the Board at all, but merely the ministerial act of the Board’s Secretary in publishing a notice of the use of the class exemption. Moreover, in the single case where the Board itself took action (*Effingham R.R. – Petition for Declaratory Order – Construction at Effingham, IL*, STB Finance Docket No. 41986 (STB served Sept. 18, 1998) (denying petition to reject or revoke exemption in STB Finance Docket No. 33528)), the carrier at issue sought to avoid Board jurisdiction, not invoke it.

Similarly, even if RTRR had not abused the Board's processes, its reliance on *Association of P&C Dock Longshoremen v. Pittsburgh & Conneaut Dock Co.*, 8 I.C.C.2d 280 (1992) ("*P&C Dock*") would be misplaced. *P&C Dock* does not demonstrate that "RTRR will be a common carrier just like GTW" (January 30 Filing at 7 & n.6). The Interstate Commerce Commission ("ICC") determined in that case that an entity under contract or common control with a line-haul rail common carrier, and which performed rail-to-water transfer operations as "an integral element of [the affiliate's] railroad service" (*P&C Dock* at 283), was itself a rail carrier subject to ICC regulation. RTRR, by contrast, is not under common control with or under contract to perform its services for any line-haul railroad (much less one with which it connects or one that would offer RTRR's services as an integral part of its own services). RTRR is an independent company that can only offer independent intermodal loading and unloading services. Even if those services are performed in conjunction with related and unrelated trucking companies, as RTRR claims (January 30 Filing at 7), that would not transform RTRR into a railroad common carrier. The fact remains that RTRR's minimal trackage serves nothing but its own facility. Whatever use it might make of those tracks would be solely for its own intermodal terminal services; it would not be railroad common carrier services. It does not matter that RTRR's business would involve the provision of intermodal terminal services, rather than the production of goods; the essential fact remains that if RTRR conducts rail operations at

its own facility, it will be in the service of its own business, and not rail common carrier services.

See Ciaccio v. New Orleans Pub. Belt R.R., 285 F. Supp. 373, 375-76 (E.D. La. 1968)

(steamship company's movement of freight by rail incidental to its steamship business did not make the company a rail common carrier).

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February 8, 2002

APPENDIX A

RTRR cites the Michigan Railroad Code, which states, "One or more persons may form a corporation for the purpose of constructing, operating and maintaining a railroad, railroad bridge, or railroad tunnel by subscribing articles of association." Mich. Comp. Laws. § 462.202(1) (cited in January 30 Filing at 11). But this provision does not indicate when a railroad company's corporate existence begins. The point at which that occurs is instead indicated in the succeeding paragraph of the Michigan statute, in a provision that RTRR does not mention:

Whenever 1/2 the estimated cost of the railroad, bridge, or tunnel is subscribed upon the articles of association, and 5% of the amount subscribed is paid in to the directors named in the articles, in good faith, in cash, and an affidavit is made and attached thereto by any 2 of the directors, that this amount has been subscribed, the articles of association shall be filed in the office of the department of commerce, and *thereupon* the persons who have subscribed the articles, and all other persons who thereafter subscribe to or become the holders of the capital stock of the corporation, in the manner to be provided in its by-laws, shall be a body corporate.

Mich. Comp. Laws. § 462.201(2) (emphasis added).

This provision disproves RTRR's claim that "RTRR was thus formed on November 1, [2000,] when its incorporators subscribed the articles" (January 30 Filing at 11 (footnote omitted)) and confirms that Wayne County and GTW were correct when they stated that it was wrong for RTRR to suggest that "RTRR had been established before even the November 17, 2000, letter informing Crown of the County's condemnation plans" (January 25, 2002 Notice at 15 (footnote omitted)).

CERTIFICATE OF SERVICE

I certify that I have this 8th day of February, 2002, served copies of the foregoing Reply Comments of County of Wayne and Grand Trunk Western Railroad on all parties to these proceedings, by causing a copy to be delivered to each of the following by first-class mail or by a more expeditious manner of delivery:

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONFIDENTIAL

RIVERVIEW TRENTON RAILROAD Case No.
COMPANY, 01-70078

Plaintiff,

vs.

COUNTY OF WAYNE, a Michigan
municipal corporation,

Defendant.

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The Deposition of B. MICHAEL BLASHFIELD, a
Witness in the above-entitled cause, taken before
Shari J. Pavlovich, CSR-5926, Certified Shorthand
Reporter, Registered Professional Reporter, and
Notary Public for the within and for the County of
Wayne, State of Michigan, at 1900 Buhl Building,
Detroit, Michigan, on Tuesday, March 6, 2001,
commencing about 2:40 p.m., pursuant to the Michigan
General Court Rules.

Page 18 1 subsidiaries. 2 MR. KOEGEL: Mr. Blashfield indicated in 3 his answer that may not be an acceptable way of 4 providing answers. 5 MR. ZAUSMER: I am defining the rules. 6 I am not trying to make it more difficult. I don't 7 want to go through each and every affiliate or 8 subsidiary of CenTra. 9 BY MR. ZAUSMER: 10 Q So what I am saying to you is: In order to make it 11 simpler, when I refer to CenTra, I am referring to 12 CenTra or its affiliates or subsidiaries. Is that a 13 fair understanding between us? 14 A As long as I am not held to any specifics of those, 15 there may be exceptions or whatnot under that. Not 16 knowing the nature of your questions, I -- it may be 17 a little bit cumbersome. I think I know what you 18 mean and if I don't, I will certainly clarify it. 19 Q Fair enough. Okay. 20 My question to you is: Does CenTra at -- 21 and again, I'll clarify it this time but in the 22 future I won't do this. But I am referring to 23 CenTra or its affiliation or subsidiaries -- operate 24 any other intramodal facilities around the country? 25 A Intramodal?	Page 20 1 talking about was that a CenTra-related entity would 2 own the site and would operate its intermodal rail 3 facility on the site; correct? 4 A Yes, that's correct. 5 Q And what I am asking you is, if there is any 6 comparable facility around the country that CenTra 7 or an affiliate owns or operates. 8 A Not a hundred percent, no. 9 Q When you say not a hundred percent, what do you mean 10 by that? 11 A I mean, I do things everything up until the point of 12 operating a railroad. I do container repairs. I do 13 drayage from rail heads to rail equipment storage 14 yards. I -- like I said, we do everything virtually 15 except transportation since we do everything up to 16 the point of actually operating a railroad. 17 Q In other words, if I am understanding you, in the 18 various CenTra-related entities, that is, CenTra 19 affiliates or subsidiaries, CenTra will bring the 20 goods into an area. It will get them -- I don't 21 know if this is the right phrase -- offloaded onto 22 a rail car. And then that rail car will ship them 23 to another destination; is that correct? 24 A We do that at the request of the customer. That's 25 generally it but I don't know that it's complete or
Page 19 1 Q Intermodal, I am sorry, I-N-T-E-R. 2 A Yes. 3 Q Where? 4 A Not full-blown. I guess we do interaction with 5 rail, I believe, in Kansas City. Our trucking 6 companies interact with the railroads and will put 7 our customer's product on rail at various rail heads 8 when that mode of transportation is most cost 9 effective. 10 Q I am going to interrupt you because I want to make 11 sure we're talking about the same thing. Let me 12 tell you what I am driving at. And hopefully, we 13 can make this simpler. 14 What I am talking about, is there a site 15 at which CenTra or one of its affiliates actually 16 owns the site and operates on that site as an 17 intermodal facility? 18 A The way I defined it before, the answer would be 19 no. We provide intermodal services attendant to the 20 rail, everything up to the point of operating the 21 rail. 22 Q I think I understand you. But I want to make sure 23 that I am clarifying this. At least I understand 24 your testimony to be that the purpose of purchasing 25 this particular seventy-six acre parcel we're	Page 21 1 a hundred percent of the time that's the way it 2 happens but, yes. 3 Q Is there any CenTra subsidiary or affiliate or 4 CenTra, itself, that actually owns any rail 5 equipment? 6 A Yes. 7 Q Where? 8 A Our marine container division, I believe, owns 9 container equipment that would be this intermodal 10 container that's interchangeable that can be put on 11 rail, either owned or lease. We own railroad track 12 in Trenton and Riverview. 13 Q Is that on this acreage that we're talking about, 14 the seventy-six acres? 15 A Yes. I don't know as far as ownership. I know that 16 there are access agreements with our Central Avenue 17 facility here in Detroit, which is adjacent to the 18 Livernois yard or junction yard as it's sometimes 19 referred to. 20 I don't know if a lease has been 21 consummated but I know that we have -- we have 22 looked at several scenarios, either buying, leasing 23 or contracting for local mode of power. 24 Q I want to go back to the marine container division 25 for a second because I want to understand better

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1 what it is that CenTra, including affiliates or 2 subsidiaries owns. 3 You had said they own containers; is that 4 right? I assume these are the containers that get 5 materials off of ships and then put them onto either 6 trucks or rail; correct? 7 A I need to clarify. I know that there are some that 8 are leased. I don't know that we actually own the 9 containers. But -- 10 Q Let me tell you what I am trying to understand 11 because perhaps I am not making myself clear. 12 What I am trying to understand is whether 13 CenTra, its affiliates or subsidiaries, actually own 14 the rail cars that leave a facility and then move -- 15 goes down the track to another location. 16 A There's difference between a rail car and the 17 container. 18 Q Right. I agree. I am talking about the mode of 19 transportation being a rail car; right? That's what 20 goes along the track. 21 Do you understand that to be a rail car? 22 A Could be, yes. 23 Q What else moves along the track? 24 A Switch engine, locomotive engine. 25 Q Switch engine, locomotive engine, rail car?	1 railroads are receiving -- are receiving those 2 containers. 3 And those are left with our intermodal 4 lift trucks, large fork lift. They are actually 5 lifted and put on there with that kind of 6 equipment. And they are taken to the rail head, 7 interchanged with the rail head at the loading 8 point. And all that's accomplished with the 9 customers needed in that process. 10 Q Then once it's interchanged at the rail head how 11 does it get from location A to location B? 12 A Whether it's on our behalf or on a customer's 13 behalf, the freight is taken by the -- it's -- I 14 don't know why I am struggling for a word. It's 15 taken by the rail, by the class one railroads to its 16 destination point. 17 Q And it goes on by the class one railroad via 18 locomotive or rail car; correct? 19 A Yes. 20 Q Now, at least if I am understanding what you're 21 saying is there are a series of events that will 22 occur either on Crown property or on anybody's 23 property at which CenTra or one of its affiliates or 24 subsidiaries facilitates the movement of goods from 25 that site onto the class one rail for movement via
Page 23	Page 25
1 A Also along the tracks, move not directly in contact 2 with the track but the containers, the property 3 within the containers. 4 Q But the containers need something to move them along 5 the track; right? 6 A Sure. 7 Q This isn't meant to be a trick question. I am 8 talking about getting a container or any kind of 9 goods from location A, whether it be Detroit or 10 Kansas City, to location B, whether it be Colorado 11 or Nebraska. Okay? 12 A Can I give you an example? 13 Q Sure. 14 A My -- what I would refer to as an intermodal service 15 yard here in Detroit, our marine container operated 16 by our Mason Dixon marine container division, the 17 intermodal facility here in Detroit obtains either 18 empties or full containers from customers or the 19 rail heads. 20 We would on our own property store those 21 rail containers, provide services to them such as 22 repairs so that they can continue in either on the 23 road or in interstate commerce. We would provide 24 the chassis that would take that from the intermodal 25 facility to an actual rail head where the class one	1 locomotive or rail car to another destination; 2 right? 3 A That's a fair summary. 4 Q CenTra, its affiliates or subsidiaries, take -- do a 5 lot of the work necessary to get it from a 6 particular location onto the locomotive or rail; 7 correct? 8 A Up until -- yeah, up until recently, yes. 9 Q And is it CenTra's equipment; that is, you actually 10 own the equipment that gets these materials onto the 11 rail car? 12 A At the rail head? 13 Q At the rail head, yes. 14 A Generally, it's whoever owns that kind of intermodal 15 center, whoever operates that intermodal center. 16 Q Sometimes you'll use somebody else's intermodal 17 center? 18 A Yes. 19 Q Now, we're back to the question that I was really 20 getting at. And that is: The locomotives or the 21 rail cars that go along the rail tracks; that is, 22 once it's loaded, it starts moving from location A 23 to the new -- to its destination. 24 My question to you is: Does CenTra, its 25 affiliates or subsidiaries, own any of those

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1 locomotives or rail cars that are physically moving
2 the materials from one location to another?
3 A The line haul rail carriers?
4 Q The line haul cars or locomotives.
5 A I am only couching my answer because like I said, I
6 don't know the current status of -- we've
7 consummated a lease but we have looked at, you know,
8 at having a locomotive or contracting for that
9 service.
10 (Mr. Long has entered the deposition.)
11 BY MR. ZAUSMER:
12 Q My question to you is, as of today, are you aware
13 of?
14 MR. KOEGEL: Excuse me, Mr. Long has
15 entered the room. He is not counsel of record as
16 far as I am aware.
17 MR. ZAUSMER: There's a joint
18 representation agreement. He's going to sit in on
19 the deposition. It's the City of Trenton has an
20 interest in this. And he's going to sit in on the
21 deposition. If you want to try and throw him out,
22 we can call it a day.
23 MR. KOEGEL: He can sit in as long as
24 he's bound by the protective order.
25 MR. ZAUSMER: That's no problem.

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1 MR. KOEGEL: Mr. Long, are you familiar
2 with the protective order?
3 MR. LONG: No.
4 MR. KOEGEL: Let's get a copy. I'd like
5 him to read it before he agrees that he's going to
6 be bound by it.
7 (Short recess.)
8 ---
9 MR. LONG: For the record, I've reviewed
10 the confidentiality agreement, understand its terms
11 and conditions and agree to be bound by it.
12 BY MR. ZAUSMER:
13 Q Mr. Blashfield, at least for, say, the nine years or
14 so that you were -- you have been employed with
15 CenTra are you aware of CenTra or any of its
16 affiliates or subsidiaries owning the rail cars or
17 locomotives that move goods from one location to
18 another?
19 A In the nine years that I've been with CenTra?
20 Q Yes.
21 A I am not aware, no.
22 Q Now, you had mentioned that -- something about until
23 recently, which suggests that this may be changing;
24 is that correct?
25 A That's correct.

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1 Q And by the way, I don't know. Let me back up for
2 one second if I could.
3 Are you aware in the roughly nine years
4 that you have worked at CenTra whether CenTra or its
5 affiliates have leased any of the rail cars or
6 locomotives that move goods from location A to
7 location B?
8 A Yes. I believe we have through several divisions.
9 Q And who have you leased those from?
10 A I don't know the companies for sure. I don't
11 usually get into the equipment specifics that much.
12 But I am generally aware that LINC, or our marine
13 container division or our equipment procurement
14 company, GLS Lease, could regularly -- would consign
15 that kind of transportation necessary to fulfill the
16 customer's demands.
17 Q I am sorry, would you actually -- that is, when I
18 say you, I mean CenTra, would actually -- let me
19 back up.
20 When you're talking about lease,
21 you're saying you will pay a fee for somebody else's
22 rail car or locomotive to move the goods from
23 location A to location B?
24 A Yes.
25 Q But the ownership of the locomotive or rail car

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1 would remain with the entity that originally owned
2 it?
3 A Depending on the terms of the lease but I believe
4 so. I mean, that's a general way that most
5 transportation companies try to contain costs and,
6 you know, fix costs by leasing.
7 Q As opposed to purchasing?
8 A As opposed to purchasing or generally it's those two
9 options, yeah.
10 Q Now, tell me about the until recently language.
11 What is it that is being contemplated that you're
12 aware of that might change CenTra's position of not
13 owning these rail cars or locomotives?
14 A I am sorry?
15 Q What is it that is about to change -- I'll back up
16 and clarify this. As I understood your answer when
17 you used the phrase until recently, I thought you
18 were implying that somehow something might change in
19 the foreseeable future; that is, that CenTra may get
20 to the point where it will purchase some of this
21 rail equipment to move goods from location A to
22 location B, as opposed to leasing it.
23 A Well, the -- yes, something has changed. As part of
24 a, I guess, a longer range involvement with
25 intermodal developments here in the City of Detroit.

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1 Q What's changed?

2 A The fact that we have -- we have a couple of pieces

3 of property that have the ability to interface the

4 rail with the truck and to be able to do that on a

5 through line of service on the bill of lading for

6 the customer.

7 In other words, I can effectively set the

8 rate for through line service and make it a very

9 seamless experience for my customer, which is what

10 my logistics company has done on various other

11 aspects of the transportation for the automotive

12 industry.

13 Q Let's see if we can talk specifically about this

14 seventy-six acres for a minute.

15 A Okay.

16 Q Is that where you're referring to, the fact that

17 this might occur?

18 A That's one. There are several others.

19 Q And at least up until now the way CenTra has done

20 business is the goods would come in via water or via

21 truck. CenTra would take all of the necessary steps

22 to offload these goods onto a train, for example.

23 And the train would then carry those goods to

24 another location; correct?

25 MR. KOEGEL: Objection, form of the

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1 question.

2 You may answer.

3 THE WITNESS: I don't understand the

4 question. I mean, it's a fairly simple -- you've

5 simplified it a lot but it covers a lot of ground.

6 BY MR. ZAUSMER:

7 Q I am not trying to make this more complicated. All

8 I am trying to understand is the way things are

9 going to change based on what you've testified to.

10 And at least in the simplest form, what's

11 happened up until now, the goods have come in via

12 truck or water. The goods are loaded at the rail

13 head onto a train that is owned by somebody other

14 than CenTra or its affiliate or subsidiary.

15 Then the goods move from location A to

16 location B off the site. In the simplest form

17 that's the way CenTra has done business up until

18 now.

19 A Yeah.

20 MR. KOEGEL: Is that a question?

21 MR. ZAUSMER: Yes, it is.

22 BY MR. ZAUSMER:

23 Q Is that a fair characterization in a simple form of

24 the way CenTra has done business up until now?

25 A Sure. I'll buy that premise.

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1 Q At least as I understand what you're telling me, is

2 that CenTra is considering a change in which

3 everything would remain the same up to the point of

4 the goods moving from location A to location B

5 because instead of offloading those goods onto a

6 rail car that is owned by somebody else, that it

7 would be offloaded onto a rail car owned by CenTra,

8 moving from one location to another; is that what

9 you're telling me?

10 A No. Maybe I was oversimplifying, too. There are

11 plenty of advantages within the intermodal facility,

12 plenty of additional services attendant to that.

13 Plenty of revenue available in the operation of that

14 kind of an intermodal facility where I have more

15 flexibility and control over the incoming and

16 outgoing rail from that facility.

17 Q How would you have more flexibility and control?

18 A Well, I would have a greater economy of scale of

19 being able to talk with the class one railroads as

20 far as coming to stop by for a pickup because I'd

21 have more items consolidated, ready for them to come

22 in with a road crew and a unit train to take it away

23 after I've been able to very efficiently handle the

24 switch operation, obtain revenue for that; handle

25 the lifts to and from the train; gain revenue from

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1 that.

2 Q I think I understand you.

3 MR. KOEGEL: Let him finish his answer.

4 MR. ZAUSMER: I am sorry. I thought you

5 were done.

6 THE WITNESS: I wouldn't say that's a --

7 necessarily a complete list but that's an idea of

8 some of the other attractive things of that kind of

9 a -- of that kind of an operation, of that kind of a

10 facility.

11 BY MR. ZAUSMER:

12 Q This was a map that was used this morning. And --

13 MR. KOEGEL: If you're going to ask him

14 questions about it, I would ask you to mark it as an

15 exhibit.

16 MR. ZAUSMER: Okay. Why don't we do

17 that? We'll mark this as -- this is 1 and this will

18 be 2.

19 (Deposition Exhibits 1 and 2

20 were marked for identification.)

21 BY MR. ZAUSMER:

22 Q Exhibit 2, let me see if I understand what you're

23 telling me about the way CenTra would utilize this

24 property as an intermodal facility.

25 You're talking about that there are

EXHIBIT B

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RIVERVIEW TRENTON
RAILROAD COMPANY,

Plaintiff,

-vs-

No. 01-70078

COUNTY OF WAYNE, a Michigan
municipal corporation,

Defendant,

The deposition of ARNOLD M.

MISTURA, a witness of lawful age, taken in the
above-entitled cause, wherein RIVERVIEW TRENTON
RAILROAD is the Plaintiff and WAYNE COUNTY is the
Defendant, pending in the District Court of the United
States for the Eastern District of Michigan, Southern
Division, pursuant to the Federal Rules of Civil
Procedure, before Jennifer A. Makelke, CSR-3666,
Registered Professional Reporter, and Notary Public in
and for Oakland County, Michigan, at 1900 Buhl
Building, Detroit, Michigan, on Wednesday, March 7,
2001, commencing at 11:20 o'clock a.m.

* * * *

MEADOWBROOK COURT REPORTING
10 West Square Lake Road, Suite 221
Bloomfield Hills, Michigan 48302
(248) 334-6300

1 very broad and after just recently having conversation
2 with the private individual regarding the bridge and
3 the widening of the road.

4 MR. FLASKA: Did we mark that site plan?

5 MR. ZAUSMER: Yes, it's 6.

6 Q. (BY MR. ZAUSMER): In any event, sir, you had recently
7 made one purchase of property in this vicinity;
8 correct?

9 A. Correct.

10 Q. The 76 acres was a single transaction, a single
11 purchase of a single parcel; right?

12 A. No, multiple parcels.

13 Q. It was a single transaction?

14 A. Single transaction, yes.

15 Q. Single purchase agreement?

16 A. Yes.

17 Q. You didn't own, either you or Crown or RTR or any
18 affiliate, didn't own any other property in the area
19 except what it acquired through this particular
20 purchase agreement with DSC?

21 A. How do you define what's in the area?

22 Q. Within a five-mile radius.

23 A. I think so.

24 Q. You think so, meaning what, that that's true or that's
25 not true?

- 1 A. I think that would be the only transaction we had
2 within a four or five-mile radius.
- 3 Q. Did you, and when I saw you I mean Crown or RTR, own
4 any property within five miles of this particular
5 parcel other than what was acquired in the transaction
6 with DSC?
- 7 A. I don't believe so.
- 8 Q. The November 28th letter, is that 5?
9 MR. FLASKA: 3 I believe.
- 10 Q. (BY MR. ZAUSMER): I'm sorry, 3, requests all deeds
11 and title work related to the subject property. There
12 was only one deed in the transaction between Crown and
13 DSC; correct?
- 14 A. I believe so.
- 15 Q. And then it requests the entire closing package
16 including but not limited to closing statement and
17 purchase agreement related to purchase of the subject
18 property. There was only one purchase agreement
19 relative to this entire transaction; correct?
- 20 A. Purchase agreement, I believe so. I believe it was
21 just one.
- 22 Q. Was there more than one closing package?
- 23 A. There were other documents that were related to the
24 property, easements, such as --
- 25 Q. Was there more than one closing package?