

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 Connecticut Avenue, NW
Washington, DC 20036-1795Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoelaw.comENTERED
Office of the Secretary
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Public RecordDAVID H. COBURN
(202) 429-8063
dcoburn@steptoelaw.com

February 14, 2002

VIA HAND DELIVERYHonorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

204767

Re: **Finance Docket No. 33980, Riverview Trenton Railroad Company --
Acquisition and Operations Exemption -- Crown Enterprises**

**Finance Docket No. 34040, Riverview Trenton Railroad Company --
Petition for Exemption**

204768

Dear Secretary Williams:

Riverview Trenton Railroad Company is in receipt of the February 13, 2002 "Comments of the Brotherhood of Locomotive Engineers in Response to Recent Filings of Wayne County and Grand Trunk Western R.R. and Riverview Trenton Railroad Company." The filing, made on the eve of the issuance of the Board's forthcoming decision, is largely a diatribe against the Board's exemption procedures, and for the most part merely reiterates unfounded claims directed at RTRR.

BLE's motivations for opposing RTRR's specific exemption are hard to comprehend. If it perceives some possible job losses from the RTRR operation or other detriment to its members, it certainly does not so state. Any such perception of harm to labor would be unfounded. By its very nature, RTRR will facilitate the diversion of containerized freight traffic from all-truck routings to truck/rail handling. The Class I railroads that employ BLE's members will benefit from this increased rail traffic. BLE's last-minute filing thus appears to be contrary to the interests of rail labor.

BLE's motivation seems to be based, instead, on its notion that the Board, as a general proposition, should not allow railroads to file notices of exemption. It discusses certain alleged

WASHINGTON

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Honorable Vernon A. Williams
February 14, 2002
Page 2

situations in which other railroads have allegedly abused the exemption process to the alleged detriment of rail labor. BLE notably fails to provide citations to any of the cases it discusses, impairing the ability to test its claims against the facts of those cases. In any event, what other railroads have done in other class exemption proceedings is not at issue here. Nor does BLE's criticism of the Board's class exemption process speak at all to the merits of RTRR's Petition for Exemption.

As to the merits of this case, BLE merely accepts at face value the untrue allegations that have been made by the County, GTW and their allies in the effort to stop RTRR from operating its railroad. Coupled with its resounding silence up until this late point, BLE's failure to speak in any meaningful way to the issues in this case underscores that BLE's gripe is more generally with the Board and its class exemption processes, not with RTRR. For these reasons, the Board should not credit BLE's last-minute submission.¹

BLE does offer one allegation that is grossly wrong and requires specific rebuttal. It claims that it is "especially troubling that RTRR has used the perfunctory notice of exemption process to obtain a court order barring Wayne County from going forward in eminent domain proceedings" and that RTRR is now seeking permanent relief from the court "without regard for the ultimate actions of the Board in these cases." (emphasis in original) As to the first part of this allegation, RTRR did no more than assert its rights in a federal district court action, under 49 U.S.C. § 10501(b), to be free from a preempted eminent domain effort initiated by the County for the sole purpose of stifling a railroad. Other railroads, large and small, have acted likewise to prevent local governments from interfering with rail operations or planned facilities, including in situations in which the railroad's activity is not even subject to Board exemption or approval authority. See *Norfolk Southern Ry. Co. v. City of Austell*, 1997 WL 1113647 (N.D. GA 1997) (local zoning and land use regulation of planned intermodal terminal preempted). After hearing extensive arguments, the Court relied on settled precedents and issued a decision on April 10, 2001 in favor of RTRR, preliminarily enjoining the County. See *Riverview Trenton Railroad Company v. County of Wayne*, Case No. 01-70078 (E.D. MI).

¹ The justification that BLE offers for not submitting any filing until this late date is that RTRR did not serve it with certain RTRR filings made in recent weeks. While RTRR's service list inadvertently omitted BLE's counsel, BLE had copies of all of the prior filings in this proceeding, including the filings with respect to the petitions to revoke the class exemption and the RTRR May 1, 2001 Petition for Exemption. It also had access to SEA's environmental documents issued over the last several months and to the January 2002 filings by the County and GTW. Further, the Board's May 15, 2001 decision instituting an investigation in Docket 33980 put it on notice that a decision would be served in that proceeding by February 15, 2002. The bottom line is that if BLE really cared about the RTRR project, it had ample opportunity to make a submission to the Board well prior to February 13, 2002, and BLE cannot be heard to blame RTRR for its failure to do so.

Honorable Vernon A. Williams
February 14, 2002
Page 3

As to the second part of its argument, RTRR sought permanent injunctive relief in October 2001 because it believes it is entitled to such relief. However, RTRR submitted to the court a form of proposed order that provided for the Court to retain jurisdiction to modify or dissolve the permanent injunction if circumstances so warrant, a stipulation that would allow the Court to take any Board action into account.² The record in the federal district court speaks for itself, should BLE care to review it.

Respectfully,



David H. Coburn
Attorney for Riverview Trenton
Railroad Company

cc: All parties of record

². Counsel for Wayne County agreed that a permanent injunction and dismissal was appropriate but did not agree to the terms of the proposed order submitted by RTRR.