

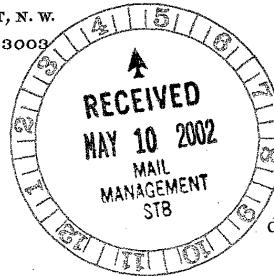
SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036-3009

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
KAREN HASSELL HERREN



TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:
dga@sloverandloftus.com

May 10, 2002

BY HAND

Office of the Secretary
Case Control Unit
STB Finance Docket No. 34002
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

205 371

Re: Finance Docket No. 34002, Alamo North Texas Railroad Corporation-Construction and Operation Exemption-in Wise County, TX (Comments on Environmental Assessment)

Dear Mr. Secretary:

Enclosed for filing in the captioned proceeding please find an original and ten copies of the "Comments of TXI Operations, LP on Environmental Assessment," together with a diskette containing a copy of this filing in Wordperfect format.

An extra copy of these comments is also enclosed. We ask that you stamp the extra copy to indicate your receipt, and return the stamped copy to our messenger.

Sincerely,

Donald G. Avery
Donald G. Avery
An attorney for TXI
Operations, LP

Cc: Parties of Record

ENTERED
Office of the Secretary

MAY 13 2002

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



In the Matter of)
)
)

ALAMO NORTH TEXAS RAILROAD)
CORPORATION-CONSTRUCTION)
AND OPERATION EXEMPTION-)
IN WISE COUNTY, TX)

Finance Docket No. 34002

COMMENTS OF TXI OPERATIONS, LP
ON ENVIRONMENTAL ASSESSMENT

TXI Operations, LP
1341 West Mockingbird Lane,
Ste # 700W
Dallas, TX 75247

Of Counsel:

Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036

C. Michael Loftus
Donald G. Avery
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036
(202) 347-7170

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In the Matter of)

ALAMO NORTH TEXAS RAILROAD)
CORPORATION-CONSTRUCTION)
AND OPERATION EXEMPTION-)
IN WISE COUNTY, TX)

Finance Docket No. 34002

**COMMENTS OF TXI OPERATIONS, LP
ON ENVIRONMENTAL ASSESSMENT**

TXI Operations, LP respectfully submits these comments on the "Environmental Assessment" ("EA") issued by the Surface Transportation Board in this matter on April 12, 2002.

Summary

TXI Operations, LP ("TXI") is the "other large stone-producing company" referred to on page 5-2 of the EA as owning the Dozier tract of land that would be cut in two by the proposed rail line. As such, TXI will be directly and adversely impacted by the proposed line if it is built. TXI is also, by virtue of its extensive aggregates operations both in Wise County and elsewhere throughout Texas, in a unique position to evaluate both the claimed need for this rail line and the EA's sanguine assessment of the proposal's impact on the human environment of Wise County.

Unfortunately, despite the fact that the third-party consultant who prepared the EA was aware of TXI's ownership of the Dozier tract, according to TXI's Bridgeport plant manager, Vice President of Aggregates and TXI's Vice President of Real Estate, TXI was never consulted

during the preparation of the report, nor was TXI contacted by the third party consultant (or the line's proponents) for permission to access its Dozier tract. Had such contacts and consultations taken place, TXI could have alerted the consultant and Board staff early in the process to several significant errors and omissions in the consultant's analysis. As it is, TXI is forced to provide its input on the proposed route now, at this late stage in the review process.

At the outset TXI would note that despite the common carrier status to be assumed by the Alamo North Texas Railroad Corporation ("Alamo"), the proposed track is actually designed solely to serve the interests of a single shipper, Alamo's corporate parent, Martin Marietta Materials Southwest, Ltd. ("Martin Marietta"). To be sure, lip service is paid to the possibility of serving other reserves, but the fact of the matter is that the only other producers of aggregates near the line are TXI and Hanson, each of which already has either (a) direct access to UP through its own private rail facilities, or (b) a rail easement for its own benefit that will satisfy such need. In function if not in law, therefore, the proposed track is a private rail spur to serve Martin Marietta. While TXI does not suggest that this fact precludes common carrier status, TXI does submit that the Board should consider the narrow scope of benefits and beneficiaries of the line when evaluating the significance of the adverse impacts of the proposal on the environment and on TXI, as explained below. When these factors are duly recognized and appropriately weighed, TXI believes that the STB should reject Alamo's line construction proposal on both competitive and environmental grounds.

Alamo's statement that the proposed route is wholly within an existing rail easement is both inaccurate and misleading. It is inaccurate because the information available to TXI indicates that Alamo's proposed track alignment would be outside the boundaries of the

existing easement over TXI's Dozier tract that was granted to another producer, Hanson, by a previous owner of TXI's tract. The statement is also misleading because Martin Marietta does not have the right to utilize the Hanson easement. Moreover, while that easement if exercised by Hanson would have similar adverse impacts on TXI as the Alamo line proposal would, there is no present indication that Hanson will exercise the easement in the immediate future, and even if it does, the rentals it would be obligated to pay for such use would help offset the resulting economic harm to TXI.¹

In the balance of these comments, we shall discuss what TXI believes to be the most significant errors in the EA –, the correction of which can (and in TXI's judgment should) influence the Board's decisionmaking process. We also attach a memorandum in which other factual errors are identified.

Discussion

Broadly speaking, TXI believes that the EA seriously underestimates the adverse impact that construction of the proposed rail line would have on the economic environment of Wise County and its citizens, while overstating the necessity for the proposed rail line.

¹ Martin Marietta further contradicts itself in section 4.2 of the EA stating "All of the proposed rail line is on property leased by MMM Southwest, Ltd." This statement is false.

TXI FUTURE QUARRY: The understatement of impact results from the EA's failure to appreciate that the proposed route will split asunder, not just a single parcel of TXI's quarry land (though that alone would result in the loss of substantial reserves, a net loss to society as well as to TXI), but a large complex of connected parcels that collectively comprise TXI's entire future operations in the Chico area. The Dozier tract serves as an isthmus or bridge between two large aggregations of quarry land for TXI – the land to the south of the Dozier tract which is currently in active stone production, and the land to the north which represents the future of TXI's operations in this area. While TXI certainly plans to mine the significant reserves under the Dozier tract itself, which would be substantially impaired if the line is built, it also plans to develop more than 275 acres of reserves under its control that are located north of the Dozier tract, and when it does, it will need to move raw pit production through the Dozier tract to its processing facilities immediately to the south. Severing these land parcels with a rail line would (1) dramatically increase TXI's cost of production due to the need to move raw materials from the quarry to the plant by means other than haul units; and (2) decrease the amount of quarryable materials, thus decreasing TXI's production revenues and net income.

Ironically, if the proposed line is built, and assuming that TXI could obtain an easement across the proposed rail line, TXI's only recourse would be to construct a conveyor system to move its production between the two disconnected sections of its holdings – the very transport mechanism that the EA rejected summarily as prohibitively expensive for Martin Marietta.

By bisecting TXI's Dozier tract, the proposed line may, subject to the final design approvals of UP, also prevent TXI from going forward with planned improvements to its rail

facilities, which entail construction of additional sidings adjacent to UP's line, south of the Dozier tract, to serve TXI's current and planned quarry operations at the site. In effect, therefore, the proposed line would take TXI's property away from TXI, displacing the planned rail siding project by TXI on its own land with construction on TXI's property benefitting only Martin Marietta.

Additionally, as noted earlier the Dozier tract is already encumbered by a 40' wide rail easement for the benefit of a third stone producer in the area, Hanson, which was granted by a previous owner of TXI's property. Martin Marietta's proposal would, based on the information available to TXI, more than double the width of that easement, thereby further exacerbating the negative economic impact of the proposal on the viability of TXI's future quarry.²

TRANSPORTATION ALTERNATIVES: The EA also significantly overstates the need for the proposed line, in comparison to truck service (the predominant means of moving aggregates to nearby markets, in Texas as elsewhere.

TRUCKING: it is significant that Martin Marietta claims that the rail line will eliminate approximately 83,000 truck trips per year from Texas roads, to the contrary, no truck trips will be eliminated. Martin Marietta admits that it will continue to rely on trucks for (according to its figures) two-thirds of its expanded quarry output, or 4 million tons per year – precisely the same amount as it is moving by truck from those quarries today.

² Because it is not clear that the Hanson will ever exercise its easement, or if it does, that it will do so before TXI has been able to extract its reserves from the tract, the adverse impact of that potential severance is far less than that of the Alamo proposal – and the terms of the Hanson easement call for it to pay a rental to TXI based on its use of the easement if it builds a spur, further reducing the economic detriment of the existing easement to TXI. If Hanson waits for a substantial period before exercising its easement, the impact on TXI might well be smaller still, as the eventual depletion of TXI's reserves south of the Dozier tract might well permit consolidation of its operations entirely on the northern parcels.

Lest there be any misunderstanding Martin Marietta cannot seriously claim that there is a shortage of truck drivers and rigs available to handle whatever additional output it might produce from its Chico quarries. According to input from TXI's transportation group, TXI currently has a waiting list of qualified truck drivers (+75) who want to haul aggregates from TXI's Bridgeport quarry.

RAIL: TXI fully agrees with Martin Marietta's position that rail access has a cost advantage for accessing more distant markets; that is why TXI plans to build improved rail facilities on its own land, to serve its own operation . But this is an incremental benefit to the quarry's operator, not a critical determinant of a quarry's viability. In this case, therefore, the question is not whether Martin Marietta will be able to develop its reserves fully without the spur; the question is whether there is a good reason to usurp the incremental transportation benefit that TXI currently enjoys by virtue of its situs immediately adjacent to UP's rail line, and transfer that economic advantage to TXI's competitor, Martin Marietta.

In effect, therefore, the proposed line would take TXI's property away from TXI, displacing the planned rail siding project by TXI on its own land with construction on TXI's property benefitting only Martin Marietta.³

Conclusion

The Alamo North rail spur is a track that should not be built. As proposed it can practicably serve only the private interests of its corporate owner, and thus it would effectively

³ Furthermore, Martin Marietta has stated in several places in the EA that the quarry expansion and the rail project are unrelated considerations (see page ES-5 "Statement of Proposed Action" of the EA). Elsewhere in the EA they seem to contradict themselves, stating that without the proposed rail project the quarry expansion, if dependent on truck distribution, is economically infeasible (see Section 3.5 of the EA).

function as a private spur, despite its common carrier status. More fundamentally, however, the adverse impacts of the proposed line on other parties including TXI, and on the economic environment, will be of major proportions, while the professed "need" for the line is a veiled attempt by the line's sponsor to obtain an incremental improvement in its profitability at the expense of TXI and its property rights. Because the EA issued on April 12 fails to recognize these factors, it presents an inadequate basis for Board action in this matter.

If the economic viability of the new quarry is dependent on this rail project, and cannot be an economic success using only trucks (which is contradicted in the EA by the sponsor), why has Martin Marietta proceeded with establishing the new quarry and constructing a plant on the Dvorken property without having rail access?

TXI stands ready to meet with the Board's environmental staff to answer any questions they may have regarding the comments and concerns expressed herein. The end result of such a consultative process, hopefully, would be a document, be it an amended EA or an Environmental Impact Statement, that accurately and fully explains the true impacts that the proposed spur would have on the quality of the human environment in Wise County, TX, at which point the Board would have the necessary information upon which to make a reasoned decision on Alamo/Martin Marietta's application.

Of Counsel:

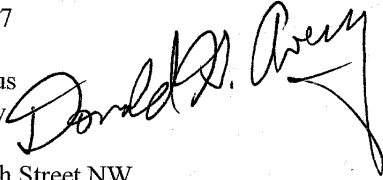
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036

Dated: May 10, 2002

Respectfully submitted,

TXI Operations, LP
1341 West Mockingbird Lane
Ste # 700W
Dallas, TX 75247

By: C. Michael Loftus
Donald G. Avery
Slover & Loftus
1224 Seventeenth Street NW
Washington, DC 20036
(202) 347-7170

A handwritten signature in black ink, appearing to read "Donald G. Avery", is written over the typed name and address of Donald G. Avery.

Additional TXI Comments on

**Environmental Assessment
Finance Docket No. 34002**

ALAMO NORTH TEXAS RAILROAD CORPORATION

Comment Due Date: May 10, 2002

<u>Page</u>	<u>Comments / Issues / Response</u>
ES-2	ALAMO NORTH TEXAS RAILROAD CORPORATION (“ALAMO NORTH”) “is interested in selling <u>its</u> products beyond its present markets” Is the Railroad producing the aggregates? They use Alamo North and MMM Southwest interchangeably throughout the document. Alamo North and MMM Southwest are for all practical purposes “one and the same”. Alamo North’s proposal is for the exclusive benefit of MMM Southwest and their desire to grow their business. This proposal benefits no one other than the parent company, MMM Southwest.
ES-5	MARTIN MARIETTA MATERIALS SOUTHWEST, Ltd (“MMM Southwest”), ALAMO NORTH’s parent company and the operator of the Chico Quarry Parent plans to develop a new quarry (Dvorken Tract) unrelated to construction of the new rail line. Contradiction on page 3-6 – paraphrasing: ‘ truck transportation alone would economically prohibit the quarry expansion’ Cost of transport: \$0.12 - 0.10/ton miles vs. \$0.03 - 0.04/ton miles This is very misleading because it does not take into account the additional costs associated with unloading the rail cars and then delivering the materials to the customer by truck. Alamo North estimates that almost 83,300 truckloads of crushed limestone aggregate materials would be removed from roadways per year.

There is no reduction of truck traffic. If current production is 4.0 million tpy, all truck, and plan is to increase to 6.0 million tpy, and 33% (2.0 million tpy) is forecast to be shipped by rail, there is no decrease in truck traffic. There is no public benefit to MMM Southwest's expansion of their quarry.

ES-8

Proposed route would minimize interference w/quarrying operations

This proposed route will create a major interference with TXI's future mining operations.

Support the greatest access to Dvorken reserves

It may maximize MMM's reserves, but it compromises TXI's.

1-2

Purpose & Need – truck transportation is inefficient & uneconomical for distances above 50 miles 90% of customers' are within 70 miles

TXI presently operates a large fleet (160 trucks) of leased owner-operators to distribute limestone aggregate from Bridgeport throughout the North Texas area. The average distance for materials delivered by truck is 75 miles and is proven to be a very efficient means to deliver product to the market.

ALAMO NORTH formed for the purpose of constructing and operating rail line to transport aggregates from the Chico Quarry

Obviously not a common carrier perspective. Admits that it is single purpose – Private rail line.

Alamo North asserts that it was formed for the purpose of constructing and operating a rail line to serve the Chico quarry. With no other beneficiaries, how can Alamo North support common carrier status?

3-5

Alternative 1 / 2 / 3

Very little difference in distance

How were assessments made on TXI property without TXI permission?

Verification

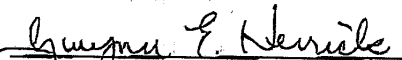
STATE OF TEXAS)
) SS:
COUNTY OF DALLAS)

DANIEL J. McAULIFFE, Vice President - Real Estate,
Marketing of TXI Operating Trust, the general partner of
TXI Operations, LP, being duly sworn, deposes and says that
he has read the foregoing "Comments of TXI Operations, LP
on Environmental Assessment," knows the contents thereof,
that to the best of his actual knowledge, and not the
constructive or imputed knowledge and without the
obligation of any further investigation or inquiry, the
facts set forth therein are true as stated.

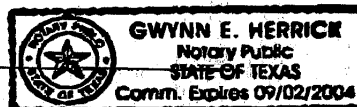


Daniel J. McAuliffe
Vice President - Real
Estate, Marketing of TXI
Operating Trust, the
general partner of TXI
Operations, LP

Subscribed and sworn to
Before me this 10th day of May, 2002.

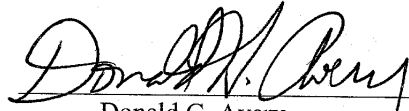

Notary Public in and for
Dallas County, Texas

My Commission expires



Certificate of Service

I hereby certify that I have this tenth day of May, 2002, served copies of the foregoing Comments of TXI Operations, LP on all parties of record, by first class mail, postage prepaid.


Donald G. Avery