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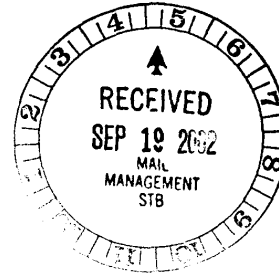
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September 19, 2002



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001

**Re: Finance Docket No. 34040 – Riverview Trenton Railroad Company –
Petition for an Exemption from 49 U.S.C. 10901 to Acquire and Operate a
Rail Line in Wayne County, MI**

Dear Secretary Williams:

Enclosed for filing please find an original and ten copies of the Report of Riverview Trenton Railroad Company Concerning Efforts to Settle this Proceeding. The original of this filing has been submitted reflecting consecutive page numeration in conformity with the Board's rules.

Respectfully,

David H. Coburn
Attorney for Riverview Trenton Railroad
Company

cc: All parties of record

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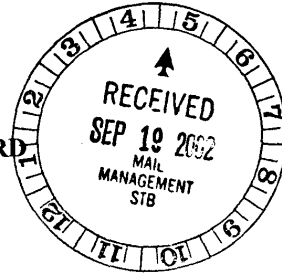
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34040



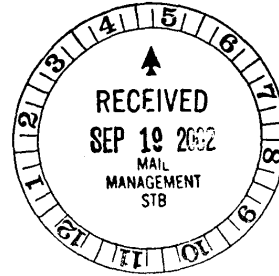
**RIVERVIEW TRENTON RAILROAD COMPANY – PETITION FOR AN EXEMPTION
FROM 49 U.S.C. 10901 TO ACQUIRE AND OPERATE A RAIL LINE IN WAYNE
COUNTY, MI**

**REPORT OF RIVERVIEW TRENTON RAILROAD COMPANY
CONCERNING EFFORTS TO SETTLE PROCEEDING**

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September 19, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Finance Docket No. 34040

**RIVERVIEW TRENTON RAILROAD COMPANY – PETITION FOR AN EXEMPTION
FROM 49 U.S.C. 10901 TO ACQUIRE AND OPERATE A RAIL LINE IN WAYNE
COUNTY, MI**

**REPORT OF RIVERVIEW TRENTON RAILROAD COMPANY
CONCERNING EFFORTS TO SETTLE PROCEEDING**

This proceeding concerns a May 1, 2001 Petition for Exemption (“Petition”) that Riverview Trenton Railroad Company (“RTRR”) has filed pursuant to 49 U.S.C. § 10502 to acquire and operate a rail line in the communities of Riverview and Trenton, MI. As RTRR has described in its Petition and in subsequent filings with the Board, RTRR seeks to operate a 1.5 mile shortline over track that is located on the portion of the former McLouth steel factory owned by RTRR and on the adjacent Detroit Steel Company (“DSC”) property, as to which RTRR has an easement allowing rail operations. The line that RTRR seeks to operate connects with Class I railroads (Conrail and GTW) and, at the south end of the property, is grade-separated from the main roadway in the area. A portion of the line is currently used by Conrail to provide common carrier service to the DSC steel manufacturing facility.

RTRR’s Petition has been opposed by, *inter alia*, the County of Wayne, MI and the Cities of Trenton and Riverview (collectively, “Local Governments”). Their opposition is rooted in the fact that these Local Governments would prefer a different use for the historically industrial

property at issue, envisioning a proposal to attract mixed residential/commercial/industrial developers and perhaps recreational access to the Detroit River which forms one boundary of the property.¹ They have also acknowledged in their prior filings that they have no fixed or immediate plans to take the property through the power of eminent domain.

Citing the willingness of the parties to negotiate a resolution to this matter and the belief that a negotiated resolution would be the optimal result in this hotly contested proceeding, the Board issued a decision on June 21, 2002 holding this proceeding in abeyance, directing the parties to commence negotiations and requiring a report on the status of those negotiations within 90 days from the service of its decision. RTRR hereby submits this report in conformity with the Board's request.

The parties have engaged in settlement discussions, which have now come to an end. As discussed further below, it now appears as a result of those discussions that the Local Governments have acknowledged their willingness to live with RTRR's operations in their communities, just as they have long lived with substantial Class I operations in the area adjacent to the RTRR property. The Local Governments thus have proposed to relocate RTRR to another site, including a site in very close proximity to the RTRR property. No agreement could be reached on their relocation proposal.

RTRR nonetheless views the negotiations with the Local Governments as having succeeded to the important extent of identifying the fact that most of the concerns raised by them with respect to matters of health, safety and related issues either have already been addressed by the conditions recommended in the Environmental Assessment issued in this proceeding or, with

¹ As RTRR has demonstrated to the Board, the property at issue is surrounded by heavy industry, including chemical and steel factories. See March 21, 2002 Reply of RTRR to Supplemental Evidence and Argument at 16-17 and Exhibits 1 and 2 to that filing.

respect to certain other matters, can readily be addressed in the manner set forth below. The Local Governments' claims on the record in this proceeding that they could not endure the environmental degradation arising from the operations proposed by RTRR, and the related truck traffic, were thus overstated and misleading since discussions with the Local Governments have made clear that they are prepared to accept RTRR's presence and that virtually all of the environmental and related issues on which they are focused are readily resolved.

A. The Parties Have Undertaken Extensive Negotiations, but Have Made No Meaningful Progress Toward Resolution; RTRR Does Not Believe that Further Negotiations and Delay Would be Fruitful

Promptly after service of the Board's decision, RTRR undertook aggressive steps to schedule meetings with the Local Governments. Thus, on June 24, 2002, the following business day after service of the Board's order, RTRR wrote letters to each of the key local officials inviting the parties to identify meeting dates and to set forth in writing their specific concerns about RTRR's proposed operations. RTRR officials then arranged and conducted "one-on-one" meetings with the top officials of Trenton (July 8) and Riverview (July 16) at which the interests of these localities were explored. RTRR had similar discussions by telephone with County officials, who indicated that they could not attend even a "one on one" meeting until August 13, more than seven weeks after the Board's June 21 decision requiring the parties to negotiate.² A joint meeting was accordingly scheduled for that date. These early discussions focused on broadly framed proposals offered by the Local Governments for relocating RTRR to a site outside of Wayne County, or a proposed relocation site nearly adjacent to the current RTRR property.

² A County representative denied reports that the County did not wish to meet prior to a primary election scheduled for August 6.

That August 13 meeting was attended by officials and counsel from all three local jurisdictions (the County and both Cities), as well as RTRR officials. RTRR came to that meeting prepared to identify and discuss the steps it would take to eliminate the opposition of the Local Governments. Representatives of the Local Governments proposed the possible relocation of RTRR's planned rail operations to the other (non-River) side of the Class I mainlines on privately-owned property that is very close to the RTRR facility. RTRR expressed initial skepticism that this proposal was viable, citing such fundamental problems as (1) the Local Governments' lack of authority or the means to convey this privately-owned property, (2) the inadequate size of the property for RTRR's rail operational needs and (3) the apparent lack of any rail infrastructure or connections to the Class I railroads. Nonetheless, at the August 13 meeting, the Local Governments requested, and RTRR agreed, to a two week period to allow the Local Governments to further explore and refine the relocation option. The County also expressed interest at that initial meeting (after delaying the initial joint meeting until August 13) in discussing an extension of the settlement discussions beyond the 90 day period specified in the Board's decision. RTRR indicated that it believed that the 90 day period was sufficient, as it has proven to be.

Another meeting between RTRR and the Local Governments was accordingly scheduled for, and held on, August 27. The parties made little substantive progress at that meeting, but agreed to exchange documents that outlined, in RTRR's case, its concerns with the proposed relocation site³ and, in the case of the Local Governments, their desires with respect to various

³ In addition to the fundamental concerns with the alternative property noted above, RTRR also noted that removal of its rail operations to that property would require additional regulatory approvals and an environmental report, all of which could result in significant delay. Since that property adjoins a residential community on one side, more environmental issues than were raised with respect to the current RTRR might need to be addressed. Moreover, RTRR

limitations on RTRR's proposed activities.⁴ Those documents were exchanged by the parties on Labor Day in advance of a meeting on September 3, attended by representatives of RTRR, the County and the Cities. The parties engaged in extensive discussions on September 3 and 4, followed by a further meeting on September 6. Those discussions explored, among other issues, the views of the parties with respect to future property acquisitions and the possibility that RTRR might relocate its operations to the nearby site following some period of operation at its current site. The parties were unable to significantly narrow their differences regarding an alternative site. Importantly, the Local Governments were unable to demonstrate that the alternative site option that they identified was viable, that they could attain control of the property or that they could credibly address RTRR's fundamental concerns with that option. However, on the separate issue of RTRR operations on its current site, RTRR was able to respond to all of the questions raised by the Local Governments regarding their concerns about its proposed rail operations.

It became clear at the September 6 meeting that the parties were unable to move forward toward resolution. The Local Governments have failed to clearly articulate a settlement position or to provide any specific or written settlement proposals for RTRR to consider. There have

could not directly serve the DSC facility from the property or efficiently develop the ability to serve water-borne traffic, as it could from its present location.

⁴ As discussed further below, many of the concerns raised by the Local Governments are in fact already addressed in the extensive Environmental Assessment prepared by the Board's Section of Environmental Analysis ("SEA") in this proceeding, and RTRR is prepared to adhere to additional actions outlined here. Other concessions demanded by the Local Governments -- that RTRR (unlike other railroads in the Cities) submit to zoning and land use controls and forego its right to acquire additional property. RTRR does not believe that it should be subject to such local controls to the extent that they are preempted by federal law, or that it should be the subject to rules not applicable to any other business in the Cities or County.

been some telephone conversations, but no negotiations, since September 6. There is no basis for further negotiations, or any reasonable prospect for agreement.

The parties in fact remain far apart on certain fundamental issues. While RTRR does not intend to burden the Board with a "blow by blow" account of the extensive back and forth between the parties, a recent public statement by a key official who has been negotiating for one of the Cities illustrates the lack of progress in reaching any settlement in this matter. A Riverview official, quoted in the attached September 11, 2002 newspaper article, questions why RTRR needs to be a railroad at all -- a question RTRR has answered extensively in the record of this proceeding and during the negotiations.⁵ With the parties obviously still separated on the core issue of whether RTRR should be authorized to conduct rail operations, there is no reason to expect that further negotiations prior to a Board decision will bear any fruit. Rather, RTRR is concerned that the Local Governments are content to further delay final resolution of this proceeding. Further, it is not at all clear to RTRR that the Local Governments have reached a consensus among themselves with respect to settlement. The absence to date of a single, clearly articulated settlement proposal from these Governments suggests that additional discussions will not yield results.

The negotiations were not, however, entirely for naught. RTRR has now gained a better understanding of steps that would meet most of the Local Governments' concerns with RTRR's proposed operations. In that regard, it became quite clear to RTRR during the course of the negotiations that the conditions recommended by SEA in its Post-EA in this proceeding in fact

⁵ See, e.g., RTRR's March 7, 2002 Response to February 15 Request to Supplement Record, Verified Statements of Arnold M. Mistura (RTRR President); Richard J. Schiefelbein (former FRA official and rail consultant) and David Wilson (former GTW official and rail consultant), each describing the importance to RTRR's business plan of its planned rail operations.

already address core issues and concerns raised by the Local Governments, including restrictions on the hours of operation of the RTRR facility; the required installation of berms and landscaping to mitigate noise concerns; mandatory adherence to the Due Care Plan for environmental restoration of the property; a requirement for two hours advance notice to emergency response officials of any RTRR use of the at-grade connection at the north end of its line; and compliance with federal, state and local permitting requirements with respect to any earth-moving activities on the RTRR property. RTRR remains prepared to comply with these conditions.

Another "operating" restriction of apparent interest to the two Cities -- truck routing -- is one as to which the Cities are in the best position to act by identifying and signing preferred routes. RTRR nonetheless has committed to offer its cooperation in the form of advising truckers of the preferred routes identified for their use by the Cities. Further, RTRR has assured the Local Governments that it will, as required by federal law, adhere to all relevant requirements concerning the transportation of hazardous materials, including requirements with respect to shipping papers describing such materials for the benefit of emergency response officials. Of course, RTRR also understands that it remains subject to the non-discriminatory application of local health and safety codes that may extend to facilities such as those it will construct.

Further, RTRR appreciates that a major interest of the City of Riverview in this proceeding -- achieving public access to the riverfront portion of RTRR's property -- could be met (consistent with rail operations on the property) by the provision of public funding to relocate local streets and address any other infrastructure requirements. However, due to the unpredictability of access to such funding, and the likely long-term nature of efforts to achieve

recreational access to the riverfront, RTRR *cannot* agree to stay its proposed rail operations (or this proceeding) pending the achievement of such access or a multi-year street relocation project. At the same time, RTRR can and will commit, were its Petition granted and rail operations allowed to commence without further Local Government opposition, to cooperate with Riverview and other interested governments on the public access issue and options for public funding.

In short, RTRR is prepared to adhere to the above-described commitments which it believes address each of the legitimate concerns of the Local Governments. It also understands that the Board has authority to maintain oversight with respect to the implementation of these commitments. RTRR therefore submits that the Board is now in a position to satisfy the reasonable interests of both RTRR and the Local Governments, thereby facilitating interstate commerce and simultaneously addressing the concerns of the communities. The Board should now move promptly to grant RTRR's Petition.

**B. Issuance of a Final Decision in this Proceeding
Will Advance the Public Interest**

Granting RTRR's Petition will serve the public interest, and any further delay will impair its business plans. As RTRR has explained in extensive evidence that it has submitted in this proceeding, including the supplemental evidence submitted on March 7, 2002, the statutory conditions for the issuance of the exemption under 49 U.S.C. § 10502 have been met here. RTRR's transportation operations will enhance competitive opportunities, expand shipper choices, and promote efficiency, all goals consistent with the Rail Transportation Policy, and no party has demonstrated or could demonstrate that granting RTRR's Petition would enable it to abuse market power.

RTRR is seeking Board authorization to operate as a railroad because an essential element of its business plan is to meld the respective advantages of rail and truck operations, offering automotive and other area shippers an improved transportation product in terms of velocity, flexibility, and efficiency. As a shortline rail carrier, RTRR intends to offer shippers the ability to contract with a single entity that can offer customized services, control and manage the process of building trains, manage short-haul pick-up and delivery services, and negotiate favorable arrangements with Class I railroads. The goal is to combine the benefits of logistics and rail capabilities and help to make "just-in-time rail" more of a reality. A short line railroad such as RTRR can serve as a coordinator and facilitator by controlling the entire movement for its customers. The shortline can receive large containers of parts from the manufacturer, unload the containers and their contents, and store the parts for later delivery in metered loads to the receivers. It can also receive smaller loads, either by rail or truck, combine them into container loads and make up trains for interchange to the Class I's. And most importantly, through arrangements with the Class I carriers, it can do this in a manner that simplifies the whole process for its customers.

The former McLouth Steel Company site, with its existing track and connections to three Class I railroads provides an ideal location for RTRR to implement its plan, allowing RTRR to provide rail services in conjunction with Class I railroads and helping to realize the vision of expanded intermodal usage for the auto industry, and for other shippers focused on Detroit area freight. Existing intermodal options – either where a Class I railroad operates its own intermodal facility or where an independent non-carrier without a short line carrier operates the facility – have not been able to fully meet the needs of shippers in industries, such as the automotive industry, where just in time inventory demands require faster, smaller and more efficient

deliveries, and the shortage of available intermodal capacity in the Detroit area has been documented.⁶ RTRR is confident that its business model will attract business not only for itself, but will also attract new business for the Class I railroads.

However, further delay in the regulatory process could well impair RTRR's business plans. Uncertainty with respect to its Petition means that RTRR is unable at this time to market its services or enter contractual arrangements. As a consequence, RTRR believes that it will lose business opportunities were its May 1, 2001 Petition to remain in limbo, now that efforts to achieve a settlement agreement in this proceeding have failed.

CONCLUSION

RTRR applauds the Board for giving the parties a 90 day opportunity to determine whether this matter may be resolved through settlement. The discussions unfortunately have not borne fruit, and there does not appear to be any benefit to continuing negotiations due to the fact that the relocation proposals of the three Local Governments have proven to be amorphous and unrealistic. However, RTRR now more fully understands the concerns of the Local Governments with respect to its proposed operations and believes that those concerns can be met through adherence to the environmental conditions already identified by SEA and the additional concessions RTRR has outlined above with respect to truck routings and riverfront access. RTRR is further prepared to accept continuing Board oversight over these matters.

⁶ As the Board may be aware, the City Council of Detroit unanimously adopted a resolution on July 31, 2002 in opposition to the current plans to construct the so-called Detroit Intermodal Freight Terminal ("DIFT"), a controversial facility that is being studied by various public agencies and others, and that RTRR's Opponents have claimed obviates the need for RTRR's facility. Funding and construction of the DIFT remain very much in doubt. In any event, RTRR's facility would complement the DIFT were the latter built.

For all of these reasons, the Board should proceed to renew its consideration of RTRR's
Petition, and promptly grant that Petition.

Respectfully submitted,



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September 19, 2002

RTRR talks nearing deadline

BY SCOTT HELD
HERITAGE NEWSPAPERS

With a deadline 10 days away, negotiations between the Riverview Trenton Railroad Co. and the three governmental entities it occupies still are going on.

And as the clock ticks toward the Sept. 21 date set by a federal mediating board, it appears the two sides are still far apart.

Riverview City Manager James Feudner said there have been four meetings in recent weeks, but neither side can really proclaim any kind of gain.

"There hasn't been any substantive success we can announce," he said.

The sticking point, according to Feudner, seems to be the RTRR's insistence that it be recognized as a railroad. The cities seem willing to accept the company's existence, but want it to be subject to guidelines in their master plans and local ordinances.

"At the moment, we still have a trucking operation in the community that needs some normal community

development and code enforcement attention for normal compliance," he said. "They would like us to stipulate that they're a railroad."

"That's why there have been numerous meetings."

Railroad companies are subject to the jurisdiction of the U.S. Department of Transportation, not state or local ordinances.

Mickey Blashfield, the RTRR's director of governmental affairs, said in an earlier interview that he would not comment on the negotiations, which he characterized as a positive step.

Cameron Priebe, the county's director of public services and its point man in the negotiations, deferred comment to the cities.

The DOT's Surface Transportation Board issued a directive June 21 asking the company and its opposition to try to sort out their differences.

The three entities challenged the RTRR before the federal board to appeal the procedure by which it sought status as a railroad.

As the negotiations continue, Robert Ranka, the Grosse Ile resident who has organized several meetings of people opposed to the development, remains upset that he and others from his group have been kept out of the negotiations.

In an earlier conversation, Ranka said he feared the communities would not consider the quality-of-life issues his group has raised. In previous meetings of his

group, attendees have proposed reaching out to elected representatives and making their views known to the STB.

When the STB ruled in February that the company could not secure railroad status through a notice of exemption, Ranka and other community leaders pointed to the communications sent to Washington, D.C., as a factor in the board's decision.

The company wants to operate an intermodal transport facility on a parcel of land that once was part of the McLouth Steel complex. Blashfield said in previous interviews that cargo would be taken in by truck, then offloaded into rail containers.

A spur on the property would connect the terminal to nearby rail lines.

Opponents of the development have warned of increased noise, pollution and road wear in the area, and some also have expressed fears that the company eventually would use a deep-water port on another part of the McLouth property, which today is owned by the Detroit Steel Corp.

Feudner said future meetings are planned, but only between attorneys representing the parties.

"Is there a solution today? No," he said. "But that doesn't mean we're not working on it."

Contact Staff Writer Scott Held at 1-734-246-0835 or scott@heritage.com.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2002, a copy of this Report of Riverview Trenton Railroad Company Concerning Efforts to Settle Proceeding was served by first class mail, postage prepaid, upon counsel for all parties of record.


David H. Coburn