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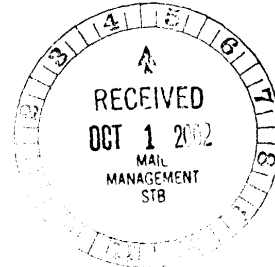
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October 1, 2002

**VIA HAND DELIVERY**

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

**ENTERED**  
Office of Proceedings

OCT 2 - 2002

Part of  
Public Record

**Re: Finance Docket No. 34040 – Riverview Trenton Railroad Company –  
Petition for 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 10 copies of the Reply of Riverview Trenton Railroad Company to Status Reports of Wayne County, City of Trenton and City of Riverview. The original of this filing has been submitted reflecting consecutive page numeration in conformity with the Board's rules.

Respectfully,

A handwritten signature in cursive script, appearing to read "David H. Coburn".

David H. Coburn  
Attorney for Riverview Trenton Railroad  
Company

Enclosure

cc: All parties of record

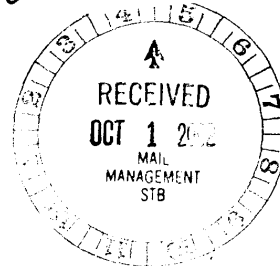
WASHINGTON

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LOS ANGELES

LONDON

206308



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**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**

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**ENTERED  
Office of Proceedings**

**OCT 2 - 2002**

**REPLY OF RIVERVIEW TRENTON RAILROAD COMPANY** Part of Public Record  
**TO STATUS REPORTS OF WAYNE COUNTY, CITY OF TRENTON AND CITY OF  
RIVERVIEW ON SETTLEMENT DISCUSSIONS**

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October 1, 2002

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**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**

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**REPLY OF RIVERVIEW TRENTON RAILROAD COMPANY  
TO STATUS REPORTS OF WAYNE COUNTY, CITY OF TRENTON AND CITY OF  
RIVERVIEW ON SETTLEMENT DISCUSSIONS**

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Riverview Trenton Railroad Company ("RTRR") hereby submits this reply to the three separate status reports filed with the Board on September 20, 2002 by Wayne County ("County"), the City of Trenton ("Trenton") and the City of Riverview ("Riverview") (collectively, the "Local Governments").<sup>1</sup> The filings by the Local Governments do not accurately reflect RTRR's views as to the matters addressed during the negotiations, the prospects for further negotiations, the need for further environmental reviews, and other matters. RTRR thus tenders this response so that its position will be clear to the Board.

RTRR remains of the view that key concerns raised by the Local Governments may be addressed through the Board's authority to condition its approval of RTRR's Petition consistent with the recommendations set forth in the Environmental Assessment and with RTRR's prior commitments. The Board can thereby satisfy the interests of RTRR in providing transportation

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<sup>1</sup> RTRR is replying separately to Riverview's September 20, 2002 "Brief" on the issues pertaining to the American Heritage Rivers matter.

services and concerns raised by the Local Governments.

## **I. INTRODUCTION**

If one thing is clear from the status report filings of the parties it is that there is no reason to believe that further discussions will yield a settlement in this proceeding. Not only do the Local Governments continue to question RTRR's very reason to exist as a railroad, but they also remain focused on an ill-defined notion that RTRR should be relocated to a site which they do not own and which they have failed to show is capable of accommodating RTRR's operations, the nearby Detroit Edison (DTE)-owned quarry. The pleas that the County and Trenton make for additional time for continued negotiations to explore this relocation option are not credible -- the parties cannot, within the 120 days that Trenton requests or within any such additional period, address fundamental relocation issues that could well take many months, if not years, to resolve, if they could be resolved at all. These include issues pertaining to the ability of the Local Governments to purchase and convey the DTE property (or otherwise arrange for RTRR and DTE to "swap" their properties), to undertake the needed environmental reviews and mitigation, and to provide for a rail infrastructure and physical connections to the Class I railroads that do not now exist.

Further, the requests of all three Local Governments for a Board order requiring the submission by RTRR of additional information on its plans, and for further environmental analysis of such information, are without foundation. RTRR's plans, as described to the Board in its May 1, 2001 Petition, remain unchanged, a point addressed further below. Thus, the relief that these parties request is not warranted, and would result in further delay.

Since settlement appears out of reach at this time, RTRR believes that what the Local Governments want is delay for the sake of delay. They are content with a *status quo* in which

RTRR cannot undertake rail operations. Indeed, their efforts to delay a decision in this proceeding have been a consistent theme, as evidenced by the nearly eight week delay that RTRR encountered in its efforts to simply set up a joint meeting of the parties following the Board's June 21 Decision.<sup>2</sup> The Board should now reject the latest efforts by the Local Governments to delay a decision.

**II. The Board Should Reject the Requests for Continued Discussions and Other Relief While this Proceeding is Held in Abeyance**

RTRR will demonstrate below that (a) the requests of the Local Governments for more time to explore the relocation plan are unrealistic and fail to recognize that long-term consideration of "relocation" is not foreclosed by favorable Board action on the Petition; (b) their demands for disclosure of a revised RTRR business plan are baseless as RTRR's plans have not been revised; and (c) the County's critique of the possible coexistence of the RTRR facility with recreational access to the riverfront is both premature and unsupported.

**A. No Concrete Relocation Plan was Ever Presented to RTRR; Any Relocation Can Only be Viewed as a Long Term Concept Which Should Have No Bearing on RTRR's Pending Petition for Exemption**

The County and Trenton each allege that RTRR summarily rejected the concept of relocation of the RTRR facility. That is not true. To begin, the notion of relocating rail operations away from the line to be used for those operations is an unusual, if not entirely unprecedented, one. The current RTRR site has unique advantages in terms of the existence of a rail infrastructure, connections with multiple Class I railroads that are already in place, a sufficient length of track (including the track over which RTRR holds an easement) on which to

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<sup>2</sup> For example, the Local Governments argued that RTRR should be required to file an application instead of petition for exemption; they sought an extension of time to file comments on the Draft EA and they belatedly requested that the EA be reopened and supplemented to address a set of bogus issues that they sought to inject into this proceeding.

build trains of the length contemplated by RTRR and access to water for possible future development of facilities to handle waterborne cargo.

Confronted with proposals to move out of the area entirely, to sites (including one in another county) as to which the Local Governments lacked the most basic information, RTRR advised the Local Governments that it was not interested in doing so. The Riverview/Trenton area is proximate not only to the Class I mainlines in the area, but also to several critical automotive businesses that RTRR has targeted as potential customers. Moving out of the area is simply not a viable option from a business perspective.

RTRR did not, however, reject the notion of a future relocation to a site proximate to its current site. At the same time, RTRR made clear that it was not prepared to forego pressing forward with its pending Petition and, assuming it is granted, initiating operations at its current site, while awaiting the likely years of effort that would be required to effectuate such a relocation to a new site. In other words, relocation would have to be viewed as a long-term event that would contemplate the shifting at some point of the operations that RTRR would initiate (assuming its Petition were granted) on its current site. RTRR also made clear that the financial burden of any such relocation would have to be borne by the Local Governments.

With that predicate, RTRR was prepared to discuss a relocation option. However, the Local Governments never got to first base in presenting a viable option worthy of continued discussion. While they raised in broad brush terms the notion that RTRR might move to the DTE property, they failed to address even the most basic question of how they would achieve ownership of that property such that it could be "swapped" for the RTRR property at some future point. In fact, they have never offered any evidence that DTE is interested in either leaving its property, currently used for quarrying operations, or assuming ownership of the RTRR property.

Similarly, they have failed to address whether the property (which is crossed by numerous utility lines) already has any intact rail infrastructure or connections at either end to all the Class I railroads, among other critical issues identified by RTRR.<sup>3</sup> The environmental status of the property was also a matter as to which the Local Governments were unable to offer *any* information. RTRR understands that the property is highly disturbed by active quarrying operations and is currently the site of blasting. Nor were the Local Governments able to explain how RTRR could satisfy its need to build trains that may exceed one mile in length on property that was physically constrained by its relatively short length.

Despite the County's contention at page 12 of its Status Report that some unspecified progress was being made on the acquisition of the DTE site, at no point during the discussions did RTRR ever receive a specific relocation proposal, identifying a plan for addressing the variety of issues RTRR raised. Indeed, the formal negotiations concluded on September 6, and did not resume thereafter, when it became clear that the Local Governments did not have anything new to lay on the table. RTRR left that meeting after inviting the Governments to make a formal proposal. None was ever offered, after numerous requests.<sup>4</sup>

Trenton claims (at ¶ 5 of its Report) that, with respect to the possibility of relocation of RTRR to the DTE property:

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<sup>3</sup> At the September 3 meeting, the County advised that it had spoken with GTW about a possible connection from the DTE property and that GTW, an opponent of RTRR's Petition to date, offered to open such a connection in return for the exclusive right to transport RTRR traffic. RTRR rejected this speculative proposal as inconsistent with its business plan. The Board may draw its own conclusions about GTW's intentions in this proceeding.

<sup>4</sup> A County official stated at the September 6 meeting that the entire RTRR matter was one for the Cities to resolve as the County had no interest independent of that of the Cities. The Cities, however, never showed any indication that they were prepared to coordinate with one another to make a meaningful proposal.

. . . the City [Trenton] was engaged in active negotiations to secure the alternative site [the Detroit Edison property]; the site has a longer stretch of straight line rail than does RTRR's 76-acre site and when combined with the adjoining track, has over a mile of straight line track; and has cross connections to the Class I Railroads. Water access would be available by rail spur.

Given Trenton's failure to offer any evidence on any of these points during the course of the 90 day settlement period, each of these statements quoted above came as a surprise to RTRR.

While RTRR was told that DTE had been contacted about its property, characterizing these inquiries as "active negotiations" with DTE appears to be an exaggeration. The fact remains that no information to suggest that DTE is interested in a deal, nor any evidence of feasibility, was offered during the settlement discussions. Further, there is in fact no evidence of an existing rail infrastructure on the DTE property.<sup>5</sup>

Trenton also claims that it contracted for "preparation of a comprehensive land use study to harmonize the City's development interests in its international waterfront with that of RTRR," referring to a SmithGroup "Redevelopment Proposal Discussion Draft" that was attached to the County's submission. Trenton Report at ¶ 4; County Report at p. 12 and Exhibit F. While the County and Trenton leave the impression that this Plan was devised in connection with settlement discussions, in fact the efforts to prepare this Discussion Draft have been underway for months as part of a so-called brownfield study. As its title indicates, the document is no more than a set of long-term ideas for future development intended to prompt discussion among a variety of interests in the Trenton area. One of the ideas set forth in the Discussion Draft is the

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<sup>5</sup> RTRR accordingly wrote the attached September 24 letter to Trenton's counsel to learn more. The self-serving "answers" it received did not provide any details as to the alleged negotiations for acquisition of the DTE property or demonstrate that there is a rail infrastructure on that property, much less any connection between the Class I lines and any track on the DTE property. See attached correspondence.

relocation of RTRR to the DTE site. Again, RTRR has not closed the door to that possibility, but neither does it view that possibility as anything more than speculation at this point.

RTRR thus submits that the Local Governments' relocation idea should have no bearing on the merits or disposition of RTRR's pending Petition. Relocation remains no more than a highly speculative, long-term idea, and certainly not a proposition that merits further delay in this proceeding. Further, allowing RTRR to operate in interstate commerce does not foreclose discussions on long-term relocation and RTRR is prepared, should the Local Governments develop a realistic plan, to engage in such discussions at an appropriate future point.

**B. The Local Governments' Contentions About Additional RTRR Acreage are Not Well Grounded**

The County and Riverview both argue that RTRR has modified its business plan by claiming its intent to acquire additional acreage.<sup>6</sup> They ask the Board to require RTRR to make a full disclosure of its business plan and to require a further environmental assessment which takes into account any additional property RTRR may acquire. Their arguments are baseless both factually and legally and should be rejected.

The issue of additional acreage arose during the settlement talks in the context of the proposal by the Local Governments that RTRR be restricted from acquiring any additional property from DSC, the owner of the remainder of the former McLouth steel plant. See Exhibit D to the County's September 20 Status Report, which lists the Local Government issues to be addressed during settlement discussions, including (in item 1 of County Exhibit D ) limitations on RTRR's use of the power of eminent domain. While the Local Governments initially focused on seeking to prevent RTRR from acquiring any additional property through the power of

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<sup>6</sup> The County claims at one point that RTRR proposed to acquire an additional 200 acres and, over the long term, 1,000 acres. RTRR never forwarded such a proposal.

eminent domain held by railroads in Michigan, the discussions quickly made clear that the Local Governments did not want RTRR acquiring property through any means, including purchase.<sup>7</sup>

It was in this context of this Local Government effort to foreclose any future growth or expansion that RTRR stated that it was unwilling to commit that it would never acquire any additional DSC property. During the negotiations in early September, RTRR countered the "no further acquisition" proposal with the position that it or one of its affiliated entities may wish to acquire some additional property, approximately 60 acres, for future use. However, additional land acquisition remains an entirely uncertain notion and, as shown next, irrelevant to this proceeding.

If there were any such land acquisitions in the future, they would have no impact on RTRR's acquisition and operation of its rail line, the only matter at issue in this rail proceeding. RTRR's plans for that line and for its operation of a related intermodal terminal were fully laid out in its May 1, 2001 Petition and were detailed in subsequent RTRR filings, notably in its March 7, 2002 Supplemental Evidence. *These plans remain unchanged, and would not be altered in any respect were RTRR or any affiliate, at some future time, to successfully negotiate for the purchase additional DSC or other property.*

In this regard, RTRR is at a loss to understand how Riverview could credibly claim in its Status Report that there may be additional trains and traffic -- beyond the levels analyzed in SEA's environmental assessment -- that may now need to be assessed. Riverview Report at ¶ 5. These feared additional trains and traffic are a fabrication by Riverview, as RTRR at no point has

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<sup>7</sup> The eminent domain issue is entirely bogus. RTRR has stated on the record in this proceeding that it has given no consideration to using any eminent domain authority it may have or attain under Michigan law to acquire DSC property, which is the property about which the Local Governments are concerned.

stated that it intends to expand the scope of its operations beyond the reasonable assumptions made in the EA.

Trenton engages in its own fabrication on this issue, positing that RTRR plans to acquire additional property "to permit the assembly of 1.5 miles of straight (not curved) rail line for the assembly of a 100-car train." Trenton Report at ¶ 6. This is not correct. RTRR can fulfill its rail plans on the 1.5 mile line described in its Petition (including the track over which it has an easement to operate on the DSC property) and needs no additional property to build trains of the length it intends to build.

In view of the above, the notion that a further environmental review is now needed to assess a larger RTRR facility can be seen for what it is: an effort by the Local Governments to have another bite at the environmental apple. No further environmental review is needed since it is entirely speculative whether additional land will be purchased, and if so by whom, when and where. In these circumstances, no obligation arises to engage in any supplemental environmental review under NEPA. See *NRDC v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975) (citing *NRDC v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972)) (NEPA does not require "crystal ball" inquiries). Thus, an agency need not consider projects or activity "so far removed in time or distance from its own that the interrelationship, if any, between them is unknown or speculative." *Id.* at 89; see also *Lange v. Brinegar*, 625 F.2d 812, 818 (9th Cir. 1980), *cert. denied*, 416 U.S. 961 (1974) ("The precise impact of potential... development... cannot be determined until decisions are made as to whether, when, and where such construction should occur. Until then, an attempt to measure the possible [] impact would be an exercise in speculation."); *Grandview v. Skinner*, 947 F.2d 651, 658 (2d Cir. 1991) ("speculative and contingent" projects need not be considered).

Further, NEPA obligations were triggered in this proceeding by RTRR's Petition asking that the Board exempt its plan to acquire and operate a rail line. Since any future property acquisition by RTRR or any of its affiliated companies would not bear on the acquisition or operation of the RTRR line, and thus on the nature and scope of the requested federal action, no further NEPA review would be required even if (and this emphatically is not the case) specific additional property acquisitions already had been identified and undertaken.<sup>8</sup>

**C. The County's Critique of "RTRR's Coexistence Proposal" is Misguided**

RTRR's stated in its September 19 Status Report that it remains prepared to discuss with Riverview and other interested government agencies their interest in attaining riverfront access at the site of the RTRR facility and to work with those agencies to achieve the public funding that may be needed for such access. While Riverview chose not to address this matter in its Status Report, the County chose in its Status Report to critique a "coexistence" plan that RTRR offered for discussion during a meeting with Riverview and Trenton officials in August 2001. County Report at 10-12, and Exhibit G.

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<sup>8</sup> The Council on Environmental Quality's regulations implementing NEPA require that an EIS be supplemented when: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts 40 C.F.R. § 1502.9 (emphasis added). Similarly, the Board's NEPA regulations provide:

[a]n Environmental Impact Statement may be supplemented where necessary and appropriate to address substantial changes in the proposed action or significant new and relevant circumstances or information . . .

49 C.F.R. § 1105.10(a)(5) (emphasis added). Here, any potential future land acquisition would not raise significant environmental impacts not previously addressed in the course of SEA's environmental review, and therefore a supplemental environmental report would not be required.

The County's critique may be designed to show that the expense of relocating streets and making other infrastructure improvements is considerable. Although RTRR believes that the County's cost estimates may be overstated, RTRR also recognizes that both public funds and considerable time will be needed were any such proposal to be implemented. Whether a coexistence option is feasible or not, however, is neither a matter for the Board to decide in this proceeding, much as the Local Governments tend to view this proceeding as a land use case, nor an issue that should delay a final ruling on RTRR's Petition.

### CONCLUSION

In its January 22, 2002 Post-EA, SEA observed that, "the Cities might have other plans for the property at issue, but it is not the role of the Board to balance one plan against the other." Post-EA at 21. The Local Governments have never accepted this point, and continue to act as though the Board is a federal land use control agency that should favor their vision of how the RTRR property might be used for non-rail purposes. Of course, the only issue here is whether RTRR has met the criteria for exemption to allow it to conduct rail operations, and RTRR has shown that it has.

Further, as RTRR demonstrated in its September 19 Status Report on settlement efforts, RTRR remains prepared to accommodate many of the operating restrictions on its proposed rail operations that were sought by the Local Governments. See the August 30, 2002 Memorandum attached at Exhibit D to the County's Status Report, identifying hours of operation, environmental clean-up, carriage of hazardous materials, truck routing issues and safety concerns, among the matters about which the Local Governments expressed concern.<sup>9</sup>

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<sup>9</sup> Riverview and Trenton now claim surprise about the recommended limits on RTRR's hours of operation set forth in the January 2002 Post-EA, *i.e.*, 6 am to 10 pm. RTRR had last year represented to the Cities that its planned hours of operation would be 7 am to 7 pm and, in

Granting RTRR's Petition subject to the environmental conditions recommended by SEA, and the additional undertakings offered by RTRR in its Status Report, will meet virtually all of the concerns that have been outlined by the Local Governments and advance the interests of interstate commerce.

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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David H. Coburn  
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1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
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October 1, 2002

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fact, those latter hours reflect RTRR's current plans. Over the longer term, however, RTRR believes that somewhat longer hours may be warranted and these longer hours were reflected in the EA. In any event, the hours of operation issue is a classic "much ado about nothing" since the EA makes clear that RTRR's operations will not exceed any noise mitigation thresholds. Indeed, if this is the most serious operational concern of the Cities, the Board can indeed feel comfortable that there remain no significant outstanding environmental issues open in this proceeding.

**STEPTOE & JOHNSON LLP**

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September 24, 2002

**VIA FACSIMILE (248 645-1568)/  
FEDERAL EXPRESS**

Wallace G. Long  
City Attorney  
City of Trenton  
39400 Woodward Avenue  
Suite 101  
Bloomfield Hills, Michigan 48304

**Re: City of Trenton Status Report dated September 19, 2002**

Dear Mr. Long:

We have reviewed your September 19, 2002 status report filed with the STB. We note that on page 4 of that report, you state that

In fact, the City was engaged in active negotiations to secure the alternative site [the Detroit Edison property]; the site has a longer stretch of straight line rail than does RTRR's 76-acre site and when combined with the adjoining track, has over a mile of straight line track; and has cross connections to the Class I Railroads. Water access would be available by rail spur.

We were somewhat surprised to read the above statements as we had understood that there had been no active negotiations to secure the Detroit Edison property. Further, we were not advised during the course of the recent settlement negotiations or other discussions that there was track on the DTE property or connections between such track and the nearby lines of the Class I Railroads.

WASHINGTON

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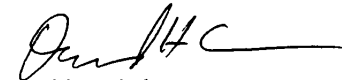
LONDON

Wallace G. Long  
September 24, 2002  
Page 2

Accordingly, in order that we may fully understand your report, I would appreciate it if you could please advise me as soon as possible, and no later than September 27, of (1) the details and status of: whatever prior or current negotiations between the City and DTE to which you were alluding with respect to securing the DTE site; (2) the particulars, including maps and/or track charts showing the precise location and length of the track that you claim is on the DTE site; (3) the identity of the "adjoining track" to which you make reference; (4) the specifics with respect to the "cross connections to the Class I Railroads" in terms of where these connections are located and whether they are currently in use; and (5) the identity and location of the "rail spur" that you state would provide water access were RTRR to relocate to the DTE property.

We look forward to your response. Thank you for cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "David H. Coburn", with a stylized flourish at the end.

David H. Coburn  
Attorney for Riverview Trenton  
Railroad Company

DHC/baw

# Howard & Howard

law for business

direct dial: 248.723.0321

Wallace G. Long

email: WLong@howardandhoward.com

September 27, 2002

David H. Coburn  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036-1795

**Re: City of Trenton Status Report, dated September 19, 2002**

Dear Mr. Coburn:

Thank you for your correspondence of September 24, 2002, requesting additional information on the DTE site no later than September 27, 2002. Although I am pleased to respond to your questions, please note that the City suspended its efforts to secure additional information about the DTE site when RTRR abruptly called for an end to negotiations. The City was pleased to hear of RTRR's renewed interest in the details concerning the DTE site. Your request underscores the reason additional time is required for the parties adequately to explore options that may best serve both RTR's interests and the public interest. Given your renewed interest, we hope that you will now join us in our request to the Board for an extension of the negotiating period so we can continue our discussions.

In response to your specific inquiry, please be advised of the following:

1. The City was equally surprised to learn that RTRR was surprised to learn of the negotiations by the City to secure the Detroit Edison property. The subject of discussions with DTE had been disclosed to representatives of RTRR on more than one occasion, including the September 6<sup>th</sup> meeting in the Wayne County Development Offices during which the attorneys representing the communities again asked RTRR for additional time to continue discussions with DTE, and by the Mayor to Mr. Maroun on September 9.
2. The site plan prepared by Kim Ley-Horn of Michigan, Inc. and submitted by RTRR shows a track-bed for a spur across the eastern edge of the DTE property. Inspection of the westerly-most rail crossing at King Road shows that same line running north onto the Edison property and south onto the Levy property.
3. The "adjoining track" referred to by the City is the extension of the Edison spur that enters the Levy property south of King Road. As a result of RTR's unilateral cut-off

David H. Coburn  
September 27, 2002  
Page 2 of 3

of negotiations, we did not complete a review of the condition of that rail and rail bed. We note, however, that much of the track or connections for RTR's present site is itself in need of replacement or major refurbishment.

4. Inspection of the site indicates the existence of a prior cross connection to service the Edison spur, which is not currently in use. Again, the City had not determined the condition of the connection at the time RTR ended our discussions.
5. The reference to water access by rail spur was a reference to the commitment made by Mayor Brown to representatives of RTRR to preserve for water access a portion of the existing spur across the DSC property to which RTRR already has rights.

The City has also had the opportunity to review the RTRR submission of September 19, 2002 and notes with interest the following representations:

1. On page 2, RTR states that "[I]t 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 as they have long lived with substantial Class 1 operations in the area adjacent to the RTRR property." Similarly, on page 3, RTRR asserts that the local governments' claims "were thus overstated and misleading in its discussions where 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 already resolved." Although in the spirit of negotiations the communities were willing to discuss potential restrictions on RTR operations, they were quite clear that their first - and potentially only acceptable option - was to move RTR's operations to a new location off the river. It misrepresents the community position to claim based on our negotiations that we are willing to live with RTR's existing proposal, with or without the conditions contained in the Environmental Assessment and the insubstantial additional representations about RTR's intentions contained in RTR's status report. Otherwise, it could equally be said based on our discussions that RTR acknowledged its willingness to move its operations to another location.

2 RTRR advised the communities in no uncertain terms during negotiations that its operations require 1 1/2 miles of straight track to assemble trains and for that reason the DTE site was unworkable. Please provide a description and maps of the 1.5 miles of continuous straight track located on (or that could practically be located on) the 75 acres already acquired by RTRR from DSC. If additional land is needed for the required straight track, please provide information as to the additional property RTR intends to acquire together with corresponding purchase or option agreements.

David H. Coburn  
September 27, 2002  
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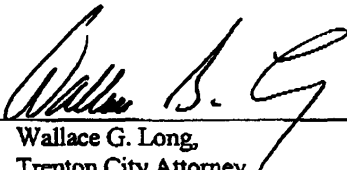
3. Please provide proof of RTRR's ownership of the entire 75 acres acquired from DSC and information as to how Crown acquired the 50-foot wide 1.54-acre parcel (Parcel No. 001-99-000-7-000) bifurcating the property, whose ownership is claimed by DTE.
4. RTRR provided to the communities a list of 80% of its requirements to relocate to the DTE parcel, indicating the other 20% would be forthcoming before the filing deadline. No such report was received. Please provide the remaining requirements of RTRR.

Again, it is unfortunate that RTRR declined the request of the communities to extend the negotiating period to permit the detailed exploration of these alternatives but, as you might expect, the City is fully prepared to resume its efforts to flesh out details of the DTE alternative should your client wish to resume those discussions. In that regard, we invite you again to join the City in its request for an extension of time before the STB to complete negotiations.

We would appreciate it if you could provide a reply as soon as possible, no later than October 2, 2002. I look forward to your response. Thank you for your cooperation.

Very truly yours,

HOWARD & HOWARD ATTORNEYS, P.C.

By: 

Wallace G. Long,  
Trenton City Attorney

WGL/glb

Enclosure(s) (map)

cc: Hon. Gerald R. Brown, Mayor

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October 1, 2002

Wallace G. Long, Esq.  
Howard & Howard  
39400 Woodward Avenue  
Bloomfield Hills, MI 48304-5151

**Re: City of Trenton Status Report**

Dear Mr. Long:

Your September 27 letter purports to respond to my written request for clarification of statements made in the City of Trenton status report submitted to the Board on September 20. My client and I cannot agree with many of the characterizations in your letter or with your contention that RTRR put an end to negotiations. To the contrary, RTRR asked your client and Riverview to make a concrete proposal and none has been forthcoming. I do wish, however, to correct some of the points you raised in response to my five specific questions about your client's status report.

First, in response to my request for information about the status of the "active negotiations" that you claimed that the City was having with DTE to secure the latter's property, you point to disclosures made to RTRR at the September 6 meeting and during a subsequent September 9 conversation between the Mayor and Mr. Moroun at a civic function. However, RTRR was merely apprised on these occasions that the City was making some inquiries about DTE's plans for its property, not that there were "active negotiations" to secure the property, as you claimed in the status report. We note the absence of any details in your September 27 letter about any such negotiations.

Second, in response to my question about rail infrastructure on the DTE property, you refer to an otherwise unidentified "Kim Ley-Horn of Michigan, Inc." site plan submitted by RTRR showing a track bed for a spur across the eastern edge of the DTE property. Kimley-Horn is a civil engineering contractor to RTRR. We have reviewed all of the materials prepared by Kimley-Horn and note that that firm has not specifically identified any rail or other structures on the DTE property. Further, you claim that inspection of a rail crossing at King Road shows a line running north onto the DTE property. Our own inspection shows the track to which you are apparently referring ends just on the north side of King Road.

Third, concerning our question about the adjoining track to which you refer, we now understand that you were referring to what is, at best, some possible evidence of a rail bed on

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property south of the DTE site, which you identify as the "Levy property." Further, RTRR has received no information from the Local Governments about the availability of the Levy property for RTRR operations. It appears to us that the notion of "relocation" that the City may have in mind builds speculation about the availability and utility of the DTE site on top of speculation about possible RTRR operations on yet another privately owned site adjoining the DTE site.

Fourth, concerning our inquiry into your statement about connections between any rail line on the DTE property and the Class I railroads, you refer to a "prior cross connection to service the Edison [DTE] spur," but you have not provided to us any specific information or details about such a "prior" connection. What is clear is that, unlike the situation at the former McLouth plant, there is no connection between the DTE or Levy properties in use today, let alone access to all of the nearby Class I rail carriers.

Fifth, as to our inquiry about your reference to a "rail spur" to serve waterborne freight in the future, you note a commitment made by Trenton Mayor Brown to preserve a portion of the rail on the DSC property "to which RTRR already has rights." Your assumption thus seems to be that any port operations RTRR might develop on the site of the former McLouth plant would maintain rail access distinct from that which would have to be developed on the DTE site, a proposition that would reduce the overall efficiency of the RTRR operations.

Concerning other points raised in your letter, RTRR stands by its statements that the Local Governments are prepared to live with a rail line and facility in Trenton -- the City's obvious willingness to accept RTRR operations on the DTE site demonstrates this point. Further, RTRR has explained on numerous occasions, including its May 1, 2001 Petition for Exemption, that a line extending from its property onto the DSC property (over which RTRR has rail easement rights) provides the requisite 1.5 miles of track it needs to build trains.<sup>1</sup>

Finally, RTRR has not closed the door to the idea of relocation. However, given that the idea appears to be highly speculative at this time, RTRR cannot agree to your proposal to delay action on its pending petition while the parties engage in what can only be viewed as long-term discussions on the possibility of relocation. RTRR is prepared to discuss any concerns with

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<sup>1</sup> You have also inquired about Crown's acquisition of the RTRR property and alleged ownership by DTE of a portion of the property. The question you raise is not germane to RTRR's ability to operate its rail line.

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relocation, additional to those it has already raised, at an appropriate time, after seeing evidence that the relocation notion is viable.

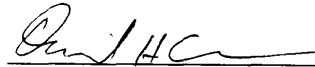
Sincerely,

A handwritten signature in black ink, appearing to read "David H. Coburn", with a long, sweeping horizontal line extending to the right.

David H. Coburn  
Attorney of Riverview Trenton  
Railroad Company

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of October, 2002, a copy of the Reply of Riverview Trenton Railroad Company to Status Reports was served by first class mail, postage prepaid, upon counsel for all parties of record.

  
David H. Coburn