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October 8, 2002

206350



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

**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, Michigan**

Dear Secretary Williams:

Enclosed for filing please find an original and 10 copies of the Reply of the City of Trenton to Riverview Trenton Railroad Company's Status Reports, along with a Certificate of Service confirming service to all parties of record.

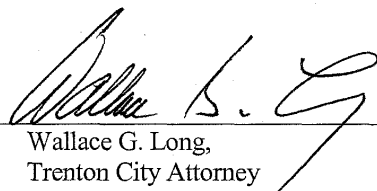
Thank you for your assistance in this matter.

Very truly yours,

HOWARD & HOWARD ATTORNEYS, P.C.

ENTERED
Office of Proceedings
OCT 9 2002
Part of
Public Record

By:


Wallace G. Long,
Trenton City Attorney

WGL/glb

Enclosure(s)

cc: David H. Coburn
Mark J. Zausmer
Randal A. Pentiuk
Sean Finn

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206350

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

OCT 9 2002

Part of
Public Record

Finance Docket No. ³⁴⁰⁴⁰33040



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

**REPLY OF CITY OF TRENTON TO RIVERVIEW TRENTON
RAILROAD COMPANY'S STATUS REPORTS**

CERTIFICATE OF SERVICE

Gina L. Barber, being first duly sworn, deposes and says that on the 8th day of October, 2002, she mailed a copy of **Reply of the City of Trenton to Riverview Trenton Railroad Company's Status Reports**, in the above-captioned matter to:

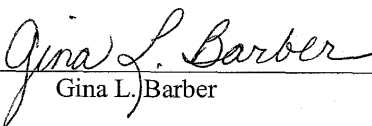
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by depositing said documents into a United States Post Office receptacle with the above address
and correct postage affixed thereto.


Gina L. Barber

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



34040
Finance Docket No. 33040

**RIVERVIEW TRENTON RAILROAD COMPANY
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Wallace G. Long,
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October 8, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. ³⁴⁰⁴⁰33040



RIVERVIEW TRENTON RAILROAD COMPANY
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REPLY OF CITY OF TRENTON TO RIVERVIEW TRENTON
RAILROAD COMPANY'S STATUS REPORTS

On June 22, 2002, the Surface Transportation Board (STB) ordered the Riverview Trenton Railroad (RTRR) and communities of Riverview, Trenton and Wayne County (Communities) to meet over the course of ninety days in an effort to reach a negotiated settlement of the dispute, acceptable to both parties. There were no parameters placed on those negotiations (such as that imposed by RTRR to the effect that it was at the negotiations to discuss one thing only: what will it take to get the Communities to withdraw their objection to railroad certification for RTRR on the existing 76-acre site). There was no delay in the commencement of discussions (RTRR held its first meeting with City of Trenton officials on July 8). Despite what RTRR may want the Board to think, representatives of the Communities met separately and jointly with RTRR throughout the ninety-day period in a good faith effort to explore possible resolutions. The parties were unsuccessful in their endeavor for a number of reasons. Contrary to RTRR's assertion, the one certain thing is that no negotiated settlement is possible without additional time being afforded. RTRR contends in its reply that the request for an extension is a delaying tactic by the Communities. It is most assuredly not. The negotiation

process revealed a number of concerns and questions, answers to which were simply not available in the confines of the time extended. RTRR claims that it could not get answers from the Communities when asked (*e.g.*, a concrete plan, evidence of ability to secure DTE property, information as to the existence of rail conditions on DTE property). These questions or concerns were raised by RTRR less than two weeks prior to the deadline (September 13th) for a resolution set by Manuel Maroun, owner of the RTRR holding company. We do not suggest that RTRR should have asked those questions sooner, but only that appropriate time be given to make the necessary contacts to secure answers, particularly in this instance where much of the information was as to the condition of property of third parties and not owned or under the control of the Communities.

RTRR makes several references to the fact that it requested the Communities to make a concrete proposal in the final week but received none, leading it to conclude that the City's proposal was speculative at best. What RTRR fails to disclose is that during the same period RTRR presented the City with a list of requirements for moving to the DTE property, which list, according to RTRR representatives, was incomplete. The Communities, not unexpectedly, correspondingly asked for the additional 20% of the items in order to make such a proposal. RTRR failed, after several requests, to provide that additional information necessary for the formation of a proposal. In that regard, RTRR set the stage for the inability of the Communities to make a proposal within the RTRR imposed deadline, about which they now complain to the Board.

Another example is RTRR's ridiculing of the Communities' compromise proposal to bring abandoned track from the Levy property (south of the DTE quarry) into the equation, as "speculation stacked upon speculation". The additional suggestion of adding the "levy track" was based solely upon a last minute demand of RTRR that any replacement site to which they

might be relocated, have not just a mile and a half of track to assemble trains, but "a mile and a half of straight track" to assemble trains (a claim now denied by RTRR in its response). Aside from the fact that the City questions the authenticity of RTRR's need for a mile and a half of straight track (because they don't even have that on their current site and are planning to use a number of spurs for partial assembly), such requirements, whether just thought up at the last moment or not even necessary, caused needless delay in the negotiation process as they sent the City scrambling about to determine how those needs could be met.

The City has further outlined the problems.

SUMMARY OF CONTRADICTIONS AND MISREPRESENTATIONS BY RTRR

Charge

1. RTRR states that moving out of the Riverview-Trenton area is not a viable option from a business perspective because of its proximity to Class 1 mainlines into several critical automotive businesses that RTRR has targeted as potential customers.

Answer

Other locations suggested by the Communities are also proximate to Class 1 mainlines and can service the same "critical automotive businesses that RTRR has targeted as potential customers."

Charge

2. RTRR states that the Communities have "failed to address even the most basic questions of how they would achieve ownership of the DTE property and have never offered any evidence that DTE is interested in leaving its property or, currently used for quarry operations, or assuming ownership of the RTRR property."

Answer

There is no obligation of the City at this early date to provide "evidence" that DTE is interested in leaving its property or assuming ownership of the RTRR property within the limited time frame afforded for negotiations. DTE has communicated its interest and support for the redevelopment of the waterfront property and would, like RTRR, like to have its concerns addressed by the Communities. This can only be accomplished through the assemblage of data and negotiations (RTRR would, for instance, have the Board believe that the entire 135 acres of DTE property is unavailable due to the presence of an active quarry). What RTRR neglects to advise the Board is that quarry operations on the site are but a part of the DTE site, and

conducted for the sole purpose of generating revenues to cover fly ash disposal which takes place in the quarry. In the event an alternate disposal site is found for the fly ash, DTE's quarry needs are diminished.

Charge

3. RTRR states that the Communities have failed to address whether the DTE property has any intact rail infrastructure or connections.

Answer

Aside from the fact that RTRR previously indicated that it intended to construct and upgrade existing rail on its own property anyway (which it could similarly do on the Edison site), the DTE site clearly has, or had, rail service on it as evidenced by an unused rail line running onto the south end of the Edison property near the King Road crossing, supporting the fact that the site is as accommodating to rail as is the existing RTRR site.

Charge

4. RTRR states "nor were the local governments able to explain how RTRR could satisfy its needs to build trains that may exceed one mile in length on property that was physically constrained by its relatively short length."

Answer

The DTE site of 135 acres is actually larger than the 76 acres that RTRR now possesses and thus, to the extent that a one-mile train could be assembled on the RTRR site, it would likewise be the case with DTE.

Charge

5. To stymie the Communities' efforts to meet RTRR's requirements in relocating to the DTE property, RTRR representatives then declared in negotiations that the mile and a half of track must be straight line.

Answer

With this new requirement, the Communities then began exploring acquisition of additional straight line track and/or track bed on the Levy property to the south of DTE only to later learn (after submissions to the STB) that RTRR didn't really need straight line track on its own property but would assemble trains using a number of short spurs.

Charge

6. RTRR states "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."

Answer

RTRR provided the Communities with a list of issues regarding relocation which it claimed to be only 80% of those needing to be addressed. The Communities repeatedly asked RTRR for the list of remaining concerns before submitting a proposal. The additional list of concerns to be addressed was never supplied to the Communities by RTRR and accordingly, no final plan could be submitted before the September 13th deadline imposed by RTRR.

Charge

7. RTRR claims that "there is in fact no evidence of an existing rail infrastructure on the DTE property."

Answer

The nature and condition of the rail line and/or rail bed on the DTE property can only be determined through further discussions with DTE which the Communities are prepared to resurrect in the event additional time is extended. Again, RTRR expects to reconstruct and rehabilitate much of the rail on its own property, and in that regard, a reconstruction of the rail on the DTE track bed may not be as onerous and speculative as RTRR would have this Board believe.

Charge

8. RTRR claims that "additional land acquisition remains an entirely uncertain notion and . . . is 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."

Answer

The Communities maintain that the acquisition of additional property and operations thereon, would have a significant impact on the Communities and that such growth of the site is far from being as speculative as RTRR would have this Board believe. From the outset, RTRR attempted to purchase more than the mere 76 acres from DSC that it currently owns. DSC had advised the Communities that the parent companies, Crown and/or Lakeshore Properties, had attempted to purchase as many as 125 acres from DSC, including that on which many of the rail spurs exist. The offer to purchase the larger site was denied and RTRR ended up acquiring rail easements on the additional property instead of the real estate itself. RTRR subsequently advised City officials that in fact the only thing that is holding up the purchase of additional acreage from DSC is the owner's, (Michael Wilkinson) price, which RTRR argues is inflated because of the Communities' competing interest in acquiring that real estate. The point is that it would appear RTRR is diminishing the significance of its interest in assembling a much larger freight terminal on the banks of this international waterway and is proceeding in a piecemeal fashion by getting its foot in the door with a small railroad which would later set the precedent for and facilitate the expansion of it.

Additional property acquisition is relevant if the objective is to submit to the Board a small parcel (76 acres) for consideration and then if approved, expand by further acquisition, the site, having first received approval as to the type of activity on the smaller parcel.

Additionally, during the course of the ninety-day negotiation period, RTRR sought from the Communities an agreement not to compete with them for the purchase of an additional 65 acres of DSC property "to square off" the parcel parameter. The commitment that was sought by RTRR was for a finite period of a year after which it would expire. Obviously, there would be no need to secure such a commitment from the Communities unless RTRR actually expected to acquire additional property within that time period.

Finally, RTRR has indicated both in the negotiations and its reply to the STB that the DTE site is of insufficient size to accommodate its needs. The DTE site measures some 135 acres, not including the quarry pit. It is inconsistent for RTRR to say on one hand that one of the reasons the DTE site is of insufficient size, yet on the other hand, claim that the 76-acre RTRR site with rail spurs is sufficient for its operations. It is apparent that the number of acres RTRR needs to have or will be acquiring, is highly dependent upon which question is asked of it.

CONCLUSION

While the Communities have clearly and unmistakably expressed their preference to have this vast waterfront area reclaimed from its prior industrial past and redeveloped to provide public access and recreational opportunities for the public, they are not without understanding of RTRR's interests. The Communities have proceeded methodically and in good faith to attempt to identify alternate sites and solutions to RTRR's issues. In many instances, that methodical process, particularly when it involves property owned by third parties, as well as the elusive requirements of RTRR in relocating, can be a time consuming process. But the Communities are prepared to proceed undeterred by these challenges in the event additional time is extended. In that regard, the Communities reject any suggestion by RTRR that they are or have at any time been engaged in foot-dragging.

Accordingly, the City reiterates its request for additional time by the Board for the parties to negotiate alternative arrangements.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

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Dated: October 8, 2002