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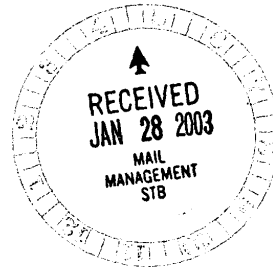
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A PROFESSIONAL ASSOCIATION OF INDIVIDUAL
ATTORNEYS AND NOT A PARTNERSHIP

R. NORMAN PETERS
MICHAEL W. SOWYRDA
STEVEN E. BRADY



January 28, 2003

via Telefax 202-565-9019

Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, DC 20423

RE: Millbury Sublease--Aubin Property
(Finance Docket No. 34281)

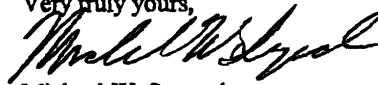
ENTERED
Office of Proceedings
JAN 29 2003
Part of
Public Record

Dear Mr. Williams:

Enclosed please find for filing the service certification regarding the above matter. I am submitting this after discussing the need for this document with Mr. Maynard Dixon of your staff.

If you have any questions, please feel free to call me.

Very truly yours,


Michael W. Sowyrda

Enc.

cc: Elizabeth Aubin
Maynard Dixon

CERTIFICATION

On this 27th day of January, 2003, I served a copy of this Motion of Elizabeth Aubin to
Lift Stay on:

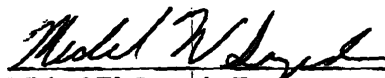
Stephen M. Richmond, Esq.
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Michael Creasey
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Worcester, MA 01608

John J. Goldrosen, Esq.
Kopelman & Paige, P.C.
31 St. James Avenue
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Michael W. Sowyrda, Esq.

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A PROFESSIONAL ASSOCIATION OF INDIVIDUAL
ATTORNEYS AND NOT A PARTNERSHIP

R. NORMAN PETERS
MICHAEL W. SOWYRDA
STEVEN E. BRADY
via Federal Express

January 23, 2003

Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, DC 29423

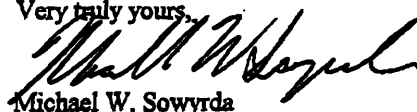
RE: Millbury Sublease--Aubin Property
(Finance Docket No. 34281)

Dear Mr. Williams:

On behalf of my client, Elizabeth Aubin, enclosed for filing and consideration by your Board regarding the above please find the Motion of Elizabeth Aubin to Lift Stay. Please note that this is a verified motion.

If you have any questions, please feel free to call me.

Very truly yours,



Michael W. Sowyrda

Enc.

cc: Elizabeth Aubin
Stephen M. Richmond, Esq.
Michael Creasey
Mary Jude Figsley
John J. Goldrosen, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34281

LB RAILCO, INC.
- LEASE AND OPERATION EXEMPTION -
PROVIDENCE AND WORCESTER RAILWAY COMPANY

NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.42

MOTION OF ELIZABETH AUBIN TO LIFT STAY

Elizabeth Aubin moves the Surface Transportation Board for an order lifting the stay of the operating authority of LB Railco in this proceeding. As a basis for such action, Movant states as follows:

1. The site has been operated as a transload facility for over thirty (30) years.
2. The Route 146 interchange was designed to preserve the transload facility.
3. The Board's failure to lift the stay places both the economic viability of the site as a transload facility in doubt and an infeasible burden on the use of the Premises in interstate commerce.
4. The Premises have no significant historical value.

A. BACKGROUND

Movant has been a resident of Millbury, Massachusetts for fifty (50) years and is in the process of moving to the adjoining town of Sutton, Massachusetts in the last month. Movant is the owner of the parcel of land lying between the Providence and Worcester Railroad ("P&W") and the Blackstone River which has been leased to LB Railco, which Movant understands to be a duly authorized rail carrier having its principal place of business in San Francisco, California. The leased parcel is located in the middle of the oval created by the southbound exit ramp from Mass Highway Route 146 ("146") and McCracken Road (the "Premises"). It was Movant's understanding in entering into the lease with LB Railco that the Premises would be used by LB Railco, in conjunction with a relocated P&W railroad siding, for the operation of a facility for the transloading of construction debris and other non-hazardous materials from trucks to railcars.

B. ARGUMENT**1. The site has been operated as a transload facility for over thirty (30) years.**

The transload operation is not new to the Premises, as a transload facility has been operated at the site since 1970. Construction materials, railroad ties and other materials have been unloaded and, in some cases, loaded at the site. As an example, lumber was delivered by rail to the location and transloaded to trucks for on-carriage to customers and lumber dealers throughout Eastern Massachusetts for over thirty (30) years. The most recent use of the site for transload purposes occurred, according to the P&W, approximately 16 months ago. Thus, LB Railco's proposed use of the Premises is a continuation of the use of the siding which has occurred for over thirty (30) years.

2. The Route 146 interchange was designed to preserve the transload facility.

There have been complaints made that the proposed transload facility will degrade both the bikeway adjacent to the northerly boundary of the site and the Blackstone River Corridor. However, when the new highway interchange for Route 146 which surrounds the site was designed by the Commonwealth of Massachusetts, specific and expensive design features were made to allow for the continued operation of the transload facility and the railroad siding side-by-side with the river and the bikeway. Included among the design features was the construction of a bridge on McCracken Road just north of the 146 ramp intersection whose only purpose is to allow access from Movant's land on the westerly side of McCracken Road to the Premises on the other side of such road and intersection. If the transload use of the Premises were inconsistent with the bikeway or Blackstone Corridor, it would seem that the Commonwealth would have taken the Premises by eminent domain. It should be noted by the Board that assurances were given to the Movant that the bikeway project would not in any manner hinder the operation of the Premises as a railroad loading facility. Such a significant expenditure of state funds to preserve the transload operation seem a clear indication that the Commonwealth recognized the use of the site as a transload facility and its potential value, given the new and upgraded highway system, as a meaningful gateway to the interstate commerce network of the nation's railways.

3. The Board's failure to lift the stay places both the economic viability of the site as transload facility in doubt and an infeasible burden on the use of the Premises in interstate commerce.

The objections to LB Railco's proposed use of the site appear driven primarily by the materials being transloaded at the site, which are required, pursuant to the Lease

terms, to be non-hazardous in nature. The continuation of the stay to further consider the LB Railco proposal will chill any future of the site serving as a gateway to the nation's rails since it would clearly imply that the ability to use the siding is directly dependent on what is being shipped. Such a standard places a grave and fatal burden on the use of the Premises for interstate commerce, as no one, including without limitation any shipper, any railroad or the undersigned, will know whether any particular item can be shipped to the Premises for transloading. Seeking the Board's approval of each shipment is simply infeasible. The application of such a standard undeniably immerses the Board into the type of day-to-day oversight which is the antithesis of the concept of free-flowing and efficient interstate commerce.

4. The Premises has no significant historical value.

An argument has been asserted to the Board that the Premises have some historical value. This position is without any factual support, as the Premises have been used as a reload facility for thirty (30) years. To my knowledge, there are no historical events associated with this parcel, no historic houses were built here, no forts, no battles fought here, nothing in particular happened here. Otherwise, the Commonwealth's construction of a major highway interchange at the site would never have taken place and it would not have been surrounded, as it is now, by brand new highway structures. I concur completely with LB Railco's assertion that this site has no historical significance.

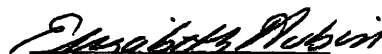
In fact, it should be noted that the historical significance of the Blackstone Valley which lead to the creation of the National Heritage Corridor is based upon the Valley's role in the Industrial Revolution, making effective use of the water provided by the Blackstone River for transportation and power generation. The location of the P&W availed itself of the Blackstone in its layout by traversing the Blackstone River Valley from north to south to provide an effective and important transportation link between Worcester, the commercial center of Central Massachusetts and the seaport of Providence, Rhode Island. Such a railroad location along the flat plain adjacent to a river is replicated throughout New England. If such riverside locations are now placed under intense case-by-case and cargo-by-cargo review, the effects will be wide-ranging and will undoubtedly have unintended consequences throughout New England.

C. CONCLUSION

Therefore, I respectfully request that the Notice of Exemption filed by LB Railco in this matter be deemed effective forthwith and that any environmental conditions that the Board should impose be limited to directing LB Railco to incorporate the environmental protective steps it has already proposed both within its original submission

to the State and in its November 20, 2002 letter to the Town and that its Notice be deemed proper.

Respectfully submitted


Elizabeth Aubin

Verification

Elizabeth Aubin verifies under penalty of perjury that the representations made above are true to best of my personal knowledge and belief.

Dated: _____

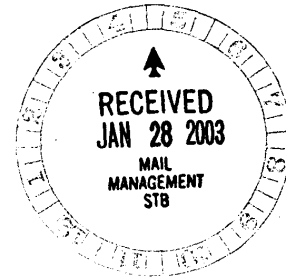
1/23/03


Elizabeth Aubin

PETERS & SOWYRDA

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Telefax (508) 754-9541



A Professional Association of Individual Attorneys and Not a Partnership

Date: 1/28/03

Number of Pages
Including cover sheet: 8

To: Maynard Dixon

Telephone: _____

Fax: 202-565-9002

From: Nike Sowyrda X 3008

RE: Hillbury Address - Rubin Property

***** CONFIDENTIALITY NOTICE *****

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