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ENTERED
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APR 9 2003

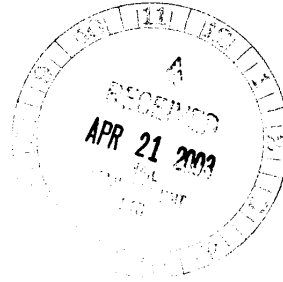
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207667
April 15, 2003

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



Re: Finance Docket 34040, Riverview-Trenton Railroad-Petition for Exemption.

Dear Secretary Williams:

Enclosed for filing in the above captioned matter is an original and 10 copies of the City of Riverview's *Motion for Order compelling Petitioner to Amend Petition for Exemption and for Order Directing Supplemental Environmental Assessment* together with the Certificate of Service.

Very truly yours,

PENTIUK, COUVREUR & KOBILJAK, P.C.

Randall A. Pentiuik

/pdj

Enclosure

c: All parties of record

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April, 2003, a copy of the City of Riverview's *Motion for Order compelling Petitioner to Amend Petition for Exemption and for Order Directing Supplemental Environmental Assessment* was served by First Class Mail, postage pre-paid upon the following:

Charles A. Spitulnik
Alex Menedez
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW, Suite 800
Washington, DC 20001

Hon. John Dingell
U.S. House of Representatives
Washington, D.C. 20515

Edward Ewell, Jr.
County Corporation Counsel
Wayne County
600 Randolph, Suite 253
Detroit, MI 48226

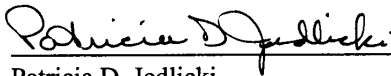
Hon. Carl M. Levin
United States Senate
Washington, D.C. 20510

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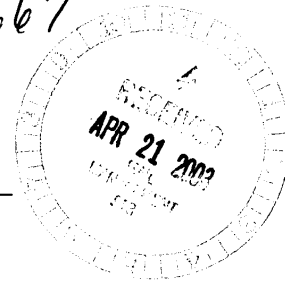
BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

APR 21 2003

Part of
Public Record

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 COUNT, MICHIGAN

CITY OF RIVERVIEW'S MOTION FOR ORDER COMPELLING
PETITIONER TO AMEND PETITION FOR EXEMPTION AND
FOR ORDER DIRECTING SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT

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April 15, 2003

**MOTION FOR ORDER COMPELLING PETITIONER TO
AMEND PETITION FOR EXEMPTION AND FOR ORDER
DIRECTING SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT**

FACTS

Representations made by representative's of Petitioner, Riverseiw-Trenton Railroad Company (RTRR), during settlement negotiations in this matter, regarding the scope of the proposed operation at the site in question, are inconsistent with the operation proposed in its Petition for Exemption.

RTRR filed its Verified Petition for Exemption on May 1, 2001. In its petition, RTRR represents that it intends to operate an intermodal terminal facility on a 76-acre parcel of land along the Detroit River located in the Cities of Riverview and Trenton. RTRR further represents that it intends, and seeks this Board's approval, to acquire 1.5 miles of track from its corporate parent and to provide rail service over that track, and over adjacent property owned by Detroit Steel Center (DSC) via an easement.

Pursuant to the Board's order of June 21, 2002, Wayne County, the City of Riverview, and the City of Trenton provided the Board with reports on the status of settlement negotiations. All said reports raised concerns regarding the true nature of RTRR's proposed operation. The City of Riverview's status report noted that "progress has been impeded by RTRR announcing changes to its position and denouncing previous commitments", and that RTRR was taking a "moving target" approach to negotiations as it was constantly increasing the scope of its proposed operation. In its reply to the status report of RTRR, Wayne County stated that "RTRR has misrepresented its plans to the Board during the environmental review process." The City of Trenton, in its reply to RTRR's status report, fears 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.”

Specifically, during settlement negotiations, RTRR representatives have stated that it intends to acquire as much as 1,000 acres in the area at issue in order to complete its broader business plan, more than ten times the size of the operation contemplated in RTRR’s Petition for Exemption and the Environmental Assessment in this matter. (See affidavits of Wayne County and City officials attached to Wayne County’s Reply to RTRR’s Status Report). Furthermore, RTRR has been noncommittal on issues such as the number of containers to be stored on the property, and the hours of operation, indicating an expected change in the scope of operations in the future. Moreover, RTRR’s refusal to consider any alternative site without water access indicates that RTRR’s intention to engage in water transportation activities at the site is not “to speculative to assess” as stated in the Environmental Assessment (this determination was made notwithstanding the fact that RTRR’s Petition for Exemption itself states that “the RTRR property has waterfront access, and thus the facility eventually *will be* used to interchange rail, motor and, *once a pier is developed, waterborne intermodal traffic.*”)

In a letter from Board Chairman, Roger Nober, to Congressman John D. Dingell dated January 23, 2003, it was stated that “if RTR were to substantially alter its original proposal pending before the Board, the Board would need to review its existing Environmental Assessment and determine whether it needs to be supplemented.” The letter goes on to assure Congressman Dingell that should the Board have evidence placed before it “that shows that RTR made a substantial change in its proposal that is relevant to environmental concerns, the Board will conduct a supplemental environmental analysis at that time, consistent with the National Environmental Policy Act and related environmental laws.”

ARGUMENT

RTRR has made a substantial change in its proposal that is relevant to environmental concerns, hence a supplemental Environmental Assessment is warranted.

As stated above, RTRR, during settlement negotiations, and verified by affidavits of participants (attached to Wayne County's Replay to RTRR's Status Report), has revealed that it intends to acquire as much as 1,000 acres surrounding its current 76 acre parcel in order to attain its business goals for the proposed operation.

It is axiomatic that with the increased size of the facility would come increased operations. Such a sizeable expansion of RTRR's proposed operation would amplify the concerns of the communities exponentially. A ten fold plus increase in the size of RTRR's facility could signal a proportional increase in train traffic, heavy truck traffic, noise, fumes, dust, and road damage. Surely RTRR's intention for such a vast increase in its operations constitutes a substantial change in its proposal that is relevant to environmental concerns, thereby, justifying a supplemental Environmental Assessment.

Additionally, a supplemental Environmental Assessment regarding RTRR's water transportation activities is warranted. The Environmental Assessment states that the intermodal terminal "could" be expanded in the future to include water transport, and concluded that the nature and scope of any water transportation activities are too speculative to assess. (Environmental Assessment, pg. 1-3). However, RTRR's Petition for Exemption makes it clear that water transportation activities at the site are a certainty by stating that the facility "will be" used to interchange rail, motor, and, once a pier is developed, waterborne intermodal traffic. Since it is certain that the communities will be impacted by the environmental effects of such waterborne traffic at the facility in the future, they are entitled to have said impacts assessed.

At a minimum, RTRR should be compelled to amend its Petition for Exemption so as to reveal the true desired scope of the proposed operation. This would allow the Board to assess RTRR's true intentions and determine if a supplemental Environmental Assessment is necessary. Additionally, it would assist in the possible settlement of this matter, by allowing the communities to tailor settlement proposals to RTRR's ultimate goals to the extent possible.

Should RTRR fail to amend its Petition for Exemption so as to disclose the intended scope of the proposed operation, said petition should be declared void ab initio.

Petitions to the Board which contain misleading information are void ab initio. 49 C.F.R. 1150.32(c). RTRR's Petition for Exemption is misleading at the very least. It is abundantly clear from discussions during settlement negotiations, verified by the affidavits of participants (attached to Wayne County's Reply to RTRR's Status Report), that RTRR's plans for its operations at the site at issue are much broader in scope than represented in its petition. RTRR's failure to disclose to the Board and the communities its long term business plan for the proposed operation and its desired ultimate scope constitute bad faith and tends to mislead the Board and the public as to the nature of the exemption it seeks.

CONCLUSION

Wherefore, for the reasons stated above, the City of Riverview respectfully requests that this Honorable Board grant it the following relief:

1. Issue an order compelling RTRR to amend its Petition for Exemption so as to disclose the desired scope of the proposed operation.

2. Order that a supplemental Environmental Assessment be conducted so as to consider the environmental impact of RTRR's anticipated expansion of its proposed operation including the environmental impacts of waterborne transport.

Respectfully submitted,

PENTIUK, COUVREUR & KOBILJAK, P.C.

A handwritten signature in black ink, appearing to be 'R. A. Pentiuk', written over a horizontal line.

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Dated: April 15, 2003

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