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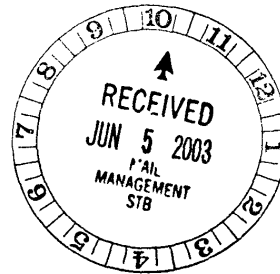
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Wallace G. Long

email: WLong@howardandhoward.com

June 4, 2003

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20006-1101



Re: Finance Docket No. 34040 - Riverview Trenton Railroad Company - Petition for Reconsideration for City of Trenton

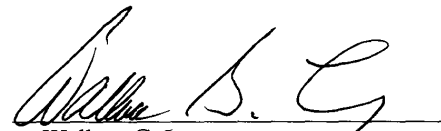
Dear Secretary Williams:

Enclosed please find the original and 10 copies of the Petition for Reconsideration for City of Trenton in reference to the aforementioned matter.

Please contact the undersigned should you have any questions or concerns.

Very truly yours,

HOWARD & HOWARD ATTORNEYS, P.C.

By: 
Wallace G. Long,
Attorneys for the City of Trenton

WGL/adb

cc: David H. Coburn, Steptoe & Johnson, LLP, w/enclosures
Mark J. Zausmer, Fink, Zausmer & Kaufman, w/enclosures

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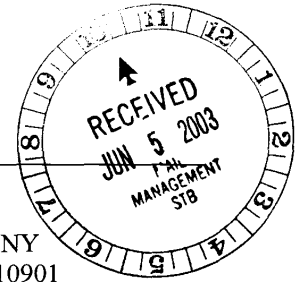
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207971

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34040

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



CITY OF TRENTON'S
PETITION FOR RECONSIDERATION

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Dated: June 4, 2003

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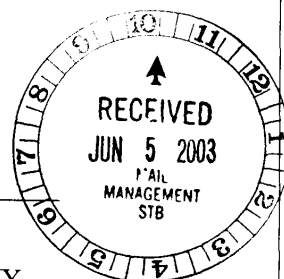
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34040

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



CITY OF TRENTON'S
PETITION FOR RECONSIDERATION

The City of Trenton, (the City), through counsel, pursuant to 49 CFR 1115.1 et seq., hereby submits its Petition for Reconsideration of the Surface Transportation Board's Decision granting the Riverview Trenton Railroad Company's (RTRR) Petition for Exemption from 49 U.S.C. 1091.

STATEMENT OF FACTS

RTRR originally filed its individual exemption pursuant to 49 CFR Part 1121, seeking to acquire and operate railroad track located in the cities of Riverview and Trenton, in Wayne County, Michigan, and establish an intermodal terminal comprised of rail, motor as well as future barge traffic. Responses to RTRR's Petition in opposition to the proposed rail terminal have been submitted by Grosse Isle Bridge Company, Wayne County, the City of Trenton, and the City of Riverview.

The City of Trenton requested that the exemption sought by RTRR not be granted as the operation of such rail and freight operations proposed by RTRR because it would be to the detriment of the public health and safety and would adversely affect the lives and jeopardize the property of the people working and living in the City. The adverse environmental impact of

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the project includes: blockages of roads at key fire and police routes, increasing emergency response time at the expense of public safety; storm water management, soil erosion, and sediment control; hazardous materials contamination; excessive dust and exhaust fumes; and the creation of excessive noise, all of which would disrupt and interfere with the quality of life. Despite this, the Board found the impact was not compelling and granted the exemption.

ARGUMENT

The Board's Decision granting RTRR's exemption should be reconsidered for several reasons: The Board neglected the disparity between the acreage acquired by RTRR and that slated for acquisition in its long term plan for the area (as revealed in RTRR's later statements) which more than doubles the actual acres that will be affected; the Board minimized the environmental impact of the project failing to consider the relevant federal statutes affecting this matter, and specifically the provisions of the American Heritage Rivers executive order; and finally, the Board's determinations set forth its initial Decision are arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law.

The Petition originally submitted by RTRR in May, 2001 set forth the request for an exemption for the operation of a rail line and construction of a loading and distribution facility on 76 acres of property straddling the Cities of Riverview and Trenton, which was acquired by RTRR in February of 2000. The Environmental Assessment prepared and submitted to the STB on the environmental impact of RTRR's proposed rail facilities was based solely on an analysis of the 76 acres set forth in RTRR's Petition for Exemption. Subsequently, during the course of discovery, it was revealed that the intention of RTRR was to acquire an additional 60 acres adjacent to the original 76 acres, an expansion that nearly doubled the area. The City submits that RTRR had specifically submitted this limited, "Phase I" of its plan for

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redevelopment in the area in an effort to minimize the apparent impact of the project, disguising the overall plan. This intention to incorporate more area into the project is far from mere conjecture as has been suggested by RTRR. It is evidenced by following: 1) RTRR's original purchase proposal and 2) RTRR's access to additional acreage by easements.

RTRR's interest in the DSC property was for an area considerably greater than the 76 acres ultimately acquired. Centra, Inc. owner of Crown and RTRR, already operate a truck terminal in the Metro Detroit area and purchased this site for the very reason that its existing site was of insufficient size to accommodate both current operations and growth. Accordingly, there would be little or no purpose in relocating its operations to the RTRR site, unless there was the potential for expansion. The total acreage owned by the seller, DSC approximated 270 acres, most of which is contaminated by a half century of steel mill operations and is subject to a clean-up Order under the jurisdiction of the EPA and the Michigan Department of Environmental Quality. At present, DSC is actively utilizing no more than 50 acres, leaving a substantial portion, adjacent to RTRR's 76 acres, available for sale or transfer at a future date. In the City of Trenton's earlier attempts to acquire the surplus property, the City learned of RTRR's ambitions to acquire the surplus property and that the only obstacle was price. The City was advised by RTRR that if the City was not otherwise competing for the right to purchase the surplus property, the asking price would be considerably diminished and permit RTRR to acquire the additional property, affordably.

Although RTRR has been unable to acquire the additional property as of this date, the relocation of its operation to this site of less than optimal dimensions was made possible and workable by RTRR's acquisition of extensive rail easements located in the remaining 175 acres of property. In effect, RTRR has acquired not title, but use of more than 76 acres of property

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by and through the easement rights to utilize tracks on an additional 100 acres of adjacent property. The purchase discussions and long range plans which are not part of the original record, are evidenced the Purchase Agreement with Crown Enterprises, included in the Environmental Assessment. Contrary to RTRR's assertions, the future plans for use of the property are not mere conjecture, but real, tangible, and should not have been dismissed by the Board as being too speculative. Submitting to the Board only its plan and application with respect to the 76 acres, RTRR obviously hoped that the Board's review would be limited to this "Phase I" and if approved, open the door to set in motion the transition through the additional phases subject to limited scrutiny. Obviously, the plan worked as evidenced by the Board's refusal to consider the scope of the full project in approving the limited Application. Neither the Environmental Assessment nor the Board in its Decision, would consider this expanded scope. As such, the Environmental Assessment was made prematurely, and based on the initial 76 acres, despite being made aware of RTRR's intentions through a Status Report filed by the City of Trenton in September, 2002. The Board's failure to take this information into consideration, or to address it in its initial Decision is therefore, capricious.

Next, under the National Environmental Policy Act and the Board's environmental rules in the Code of Regulations, 49 CFR 1105, the Board was required to conduct and complete an environmental review of RTRR's proposed actions. The Board's Section of Environmental Analysis (SEA) issued an environmental assessment of RTRR's proposal on October 15, 2001, which failed to include an analysis of Executive Order 13601, the American Heritage Rivers, Section 4 of this Executive Order provides:

(a) The American Heritage Rivers initiative has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation. (b) Executive agencies ("agencies"), to the extent permitted by law and consistent with their missions and resources, shall

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coordinate Federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage. (c) Agencies shall develop plans to bring increase deficiencies to existing and authorized programs with goals that are supportive of protection and restoration of communities along rivers. (d) Agencies are encouraged, to the extent permitted by all, to develop partnerships with State, local and tribal governments and community and non-governmental organizations. Agencies will be responsive to the diverse needs of different kinds of communities form the core of our cities to remote rural areas and shall seek to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by State, local and tribal governments. To the extent possible, Federal resources will be strategically directed to complement resources being spent by these governments.

The Detroit River, along which this parcel is located, has been designated as an American Heritage River by the United States. The City of Trenton is concerned that the operation of the RTRR as outlined in its Petition will interfere with public access to, and across the Detroit River. The Board must take this concern into account and examine the Petition accordingly to determine whether or not and to what extent the Petition must be modified or amended to permit and maximize public access to the river to the extent consistent with the agency's mission pursuant to section 4(b). Under section 4(c), the agency must emphasize river protection, restoration and community revitalization. This is a non-discretionary obligation, the failure of which to prefer is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the law.

Section 4(d) of the Order sets forth the Agencies are encouraged to develop partnerships with local and community governments to be responsive to the diverse needs of communities, to ensure that the role played by the Federal Government is complementary to the plans and work being carried out by such governments. The plans and operations set forth in RTRR's petition are contrary to the City's plans for the preservation and/or development of its river front property. One of the initiatives undertaken by the American Heritage River committee

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that is impacted by the project is the establishment of a greenway from Lake Saint Clair to Lake Erie. Neither the Environmental Assessment nor the Board's Decision address these concerns. The Board must therefore reverse the granting of RTRR's exemption which is contrary to the provisions in the American Heritage Rivers Executive Order.

Although the omission in the Environmental Assessment was brought to the Board's attention, the Board's declined to mention or address it, an arbitrary act, contrary to law. The Board must at least consider the pleadings in its Decision and failure to do so requires reversal upon rehearing. In failing to consider the relevant Heritage Rivers Executive Order, the Board's initial decision cannot be found to be supported by such relevant evidence as is adequate to support the conclusion reached. Railroad Ventures, Inc v Surface Transportation Board, 299 F3d 523 (C.A. 62002)

Finally, the Board's Decision grants RTRR's Petition for an Exemption and notes that RTRR plans to establish an intermodal terminal involving rail, motor, and possibly barge traffic but neither conducted nor obtained an environmental assessment of such barge traffic, calling it speculative while ignoring the acquisition of rail easements that service the dock area of neighbor to the south

CONCLUSION

The initial Decision set forth by the Surface Transportation Board in this matter should be reconsidered and reversed. Neither RTRR's intentions to expand it's proposed rail terminal an additional 60 acres, the environmental assessment, nor the Board's initial Decision take this greatly expanded area into consideration. Additionally, neither the environmental assessment nor the Board's initial Decision addresses Executive Order 13061, regarding American Heritage Rivers. Each of these additional findings set forth in the Board's initial Decision are arbitrary,

capricious, an abuse of discretion and otherwise not in accordance with the law, warranting a reversal upon rehearing.

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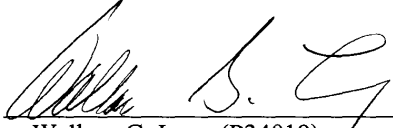
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Dated: June 4, 2003

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

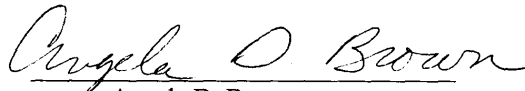
CERTIFICATE OF SERVICE

Angela D. Brown, being first duly sworn, deposes and says that on the 4th day of June 2003, she mailed a copy of **Petition for Reconsideration** and this **CERTIFICATE OF SERVICE** in the above-captioned matter to:

David H. Coburn
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mark J. Zausmer
Fink, Zausmer & Kaufman
31700 Middlebelt Road, Suite 150
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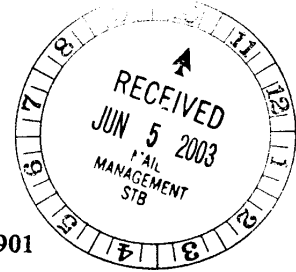
by depositing said documents into a United States Post Office receptacle with the above address and correct postage affixed thereto.


Angela D. Brown

**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, MICHIGAN**



**VERIFIED PETITION FOR EXEMPTION
AND
REQUEST FOR ISSUANCE OF
PROPOSED PROCEDURAL SCHEDULE**

**ENTERED
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JUN - 5 2003

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J. William Koegel, Jr.
David H. Coburn
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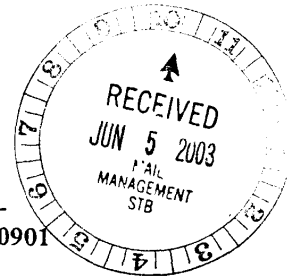
Attorneys for Riverview Trenton
Railroad Company

May 1, 2001

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, MICHIGAN



VERIFIED PETITION FOR EXEMPTION
AND
REQUEST FOR ISSUANCE OF
PROPOSED PROCEDURAL SCHEDULE

Pursuant to 49 U.S.C. § 10502 and the Board's rules at 49 C.F.R. Part 1121, Riverview Trenton Railroad Company ("RTRR") hereby petitions the Board for an exemption from the prior approval requirements of 49 U.S.C. § 10901 for the proposed acquisition and operation of approximately 1.5 miles of rail line in Wayne County, Michigan. The facts set forth in this Petition have been verified by B. Michael Blashfield, who serves as Director of Governmental Relations for RTRR and its ultimate parent, CenTra, Inc.

The exemption that RTRR seeks by this Petition addresses the same rail line acquisition and operation transaction that is the subject of a December 11, 2000 Notice of Exemption that RTRR filed under the Board's class exemption rules at 49 CFR Part 1150.31 in Finance Docket No. 33980, *Riverview Trenton Railroad Company – Acquisition and Operation Exemption – Crown Enterprises*. For reasons more fully explained in the Supplemental Reply that RTRR is simultaneously filing in that docket, RTRR is filing this Petition to put to rest any outstanding concerns the might exist about RTRR's invocation of the class exemption procedure.

RTRR believes (for reasons stated in its prior submissions in Docket No. 33980) that those concerns are not well-founded. However, it asks that the Board consider this Petition if the Board is of the view that there are unresolved issues concerning RTRR's use of the class exemption. In that event, RTRR urges the Board to initiate a proceeding to further consider the issue of revocation pursuant to 49 U.S.C. § 10502(d), and to consolidate consideration of this Petition with that further proceeding. On the other hand, should the Board deny the petitions to revoke that are pending in Docket 33980, and thus uphold the class exemption that RTRR has already invoked in that proceeding, RTRR will voluntarily withdraw this Petition.

While RTRR is prepared to move forward expeditiously to make the investments needed to allow it to initiate rail operations, including track rehabilitation, and has in fact already made some initial investments, RTRR has been constrained as a business matter from doing everything necessary to initiate operations until the Board has made a final determination that RTRR is entitled to a regulatory exemption. Accordingly, RTRR has set forth a proposed procedural schedule for the solicitation of comments on this Petition that would allow for a prompt Board decision on this Petition should that be necessary.

BACKGROUND

A. RTRR's Proposal To Operate As a Shortline Railroad

RTRR, a Michigan corporation with headquarters at 12225 Stephens Road, Warren, MI, is a wholly owned subsidiary of Crown Enterprises, Inc. ("Crown"), which in turn is owned by CenTra, Inc. ("CenTra"). CenTra is a large, privately-owned, Michigan-based holding company that owns substantial transportation assets, including trucking companies and firms that engage in forwarding and logistics operations. Crown is CenTra's real estate management and development firm that acts on behalf of CenTra's transportation subsidiaries.

By this Petition, RTRR seeks an exemption to (1) acquire from Crown the approximately 1.5 miles of existing rail line located in the Cities of Riverview and Trenton, which are within the borders of Wayne County, Michigan and (2) operate as a rail common carrier over the line and to operate pursuant to an operating agreement over the line on the adjacent Detroit Steel Center, Ltd. ("DSC") property, connecting with Class I carriers at both the north and south ends of the line. A map of the RTRR line, which shows the line on the RTRR property, the rail line over which RTRR would operate on the adjacent DSC property, and the Class I lines is attached as Exhibit 1. The line over which RTRR would operate begins near the intersection of King Road and Jefferson Ave. in Trenton, MI proximate to the FN Tower and GTW River Subdivision milepost 10.96 and extends generally northward to a point proximate to GTW milepost 9.39 near the intersection of Jefferson Ave. and Ford Ave. in Riverview, MI. The line intersects with GTW and Conrail lines at the south end and with GTW at the north end.¹ RTRR anticipates that it will have annual revenues of less than \$5 million and thus that it will be classified as a Class III rail carrier.

RTRR is a Michigan corporation organized under that state's railroad statute on November 1, 2000. Ownership of the 76-acre property on which the RTRR line is located was thereafter transferred to RTRR from Crown. Crown had purchased the property in February 2000 from DSC and DSC's parent, the Monguagon Land Company. Crown acquired the property in furtherance of CenTra's decision to develop, through a railroad subsidiary, an intermodal transportation facility for the benefit of shippers and carriers in Southeast Michigan.

¹ The line on the RTRR property for which it seeks acquisition authority is approximately 1.5 miles long. The length of the line over which RTRR seeks authority to operate is somewhat longer.

CenTra, which also controls another start-up shortline railroad,² had determined prior to the purchase of the property and rail infrastructure now owned by RTRR that it could best meet growing demands for intermodal services in the Detroit metropolitan area, and fulfil its own business plan to enhance the efficiency of intermodal service, by developing a shortline rail operation and related intermodal facility. RTRR believes that it can fill a niche within the intermodal transportation industry by focusing on the transportation of containerized freight for the automobile manufacturing industry. RTRR will operate in a manner that complements services provided by motor carrier and other transportation affiliates of CenTra that already serve the automobile industry and believes that it will be able to attract a significant volume of inbound and outbound freight to its operation. The decision to develop the RTRR property and rail line as described here was also informed in part by a study of intermodal capacity in the Detroit area undertaken for the Michigan Department of Transportation which concluded that:

- Detroit is among the top 10 intermodal centers in the United States in terms of inbound and outbound trailer/container loads moving by rail.
- The biggest three automobile manufacturers in the area continue to show willingness to utilize intermodal technologies to support their operations.
- Overseas international trade tends to favor intermodal transportation and movements from/to the Pacific Rim and Europe are increasing.
- Tunnels to Canada are being improved, which will increase intermodal access.
- Intermodal movements with Canada and Mexico continue to increase spurred by NAFTA.

See Greater Detroit Area Intermodal Study, Final Report, prepared by Mercer Management Consulting, Inc. for Michigan Department of Transportation, December 1993.

² CenTra also controls the Jefferson Terminal Railroad Company, which is located in Detroit. The Board revoked the class exemption held by Jefferson Terminal. The carrier is now in the process of preparing a petition for exemption. *See Jefferson Terminal Railroad Company - Acquisition and Operation Exemption -- Crown Enterprises, Inc.* (served March 19, 2001).

What is now the RTRR property was determined by Crown to be an ideal site for the development of an intermodal rail facility and operation of a shortline due several factors. These include its location in an industrial area near I-75, a major interstate highway; the existence of a rail infrastructure on the property; the proximity to Class I carrier lines that run adjacent to the property; the presence of physical connections between those lines and the tracks on the RTRR property; and access to a waterfront and thus waterborne freight. The track and the right of way in fact formed a significant portion of Crown's overall purchase price, as is clear from the February 2000 Purchase Agreement between Crown and DSC, attached hereto as Exhibit 2. Further, as a part of the transaction, DSC -- whose adjacent facility is rail-served today -- retained rights to operate over the track located on the RTRR property and, on June 2, 2000, Crown and DSC also executed a Railway Easement Agreement to permit each party (and their successors, *i.e.*, RTRR) to hold easement rights across the rail lines on the other's (adjacent) property. Thus, RTRR can operate over the track on the DSC property to connect with Class I railroads at the south end of the line over which RTRR seeks authority to operate. A copy of that Rail Easement Agreement is set forth as Exhibit 3.

Consistent with CenTra's goal to utilize the property to facilitate intermodal transportation, RTRR plans to conduct rail services on the line in conjunction with a new rail loading and distribution facility. The facility will be constructed on the 76-acre parcel on which the RTRR rail line is located. As noted, 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. The facility will receive intermodal containers and trailers from motor and water carriers that will be loaded onto railroad cars and transported by RTRR over its line for interchange with nearby Class I railroads, CSX Transportation, Inc. ("CSX"), Norfolk

Southern Railway Company ("NS"), which jointly operate in the area through the Conrail Shared Assets Operator, and Grand Trunk Western Railroad Inc. ("GTW"). In the inbound direction, containers transported by the Class I railroads will be interchanged with RTRR, transported on the RTRR line and then off-loaded from rail cars and interchanged with motor and water carriers at the RTRR facility. RTRR's business plan is based on the fact that there is increasing demand for intermodal services in the region and that it can work cooperatively with Class I railroads and other carriers to enhance the efficient transfer of intermodal freight. To that end, RTRR intends to negotiate arrangements to open switches between its line and those of the Class I railroads and to use existing rail crossings to access the RTRR property at the north and south ends of the property. Initial discussions concerning the opening of switches have been held with GTW, CSX, NS, and the Conrail Shared Assets Operator. RTRR anticipates that these discussions will lead to an agreement to open switches to the RTRR line. GTW and Conrail currently access rail lines on the adjacent DSC property, using the same physical connections that RTRR would use.³ RTRR will in fact use existing tracks that are currently used for the rail transportation of DSC's freight from its adjacent property for interchange with the nearby Conrail and GTW lines.

RTRR believes that there is a substantial body of shippers and motor carriers that will find use of its intermodal yard and shortline operation convenient and efficient for inbound and outbound cargoes. RTRR intends to hold out its services to all potential users. It will not operate its line as a private line or limit its transportation services to affiliated firms.

³ GTW has previously expressed concerns in a March 8 filing with the Board supporting Wayne County's petition to revoke that RTRR's operations might result in delay on GTW's nearby lines. RTRR is hopeful that it can work cooperatively with GTW to resolve its concerns in that regard, which RTRR submits are not well founded. However, RTRR is prepared to pursue regulatory options in the event that no agreement is reached.

The RTRR line has historically been used for the transportation of freight. The McLouth Steel Products Company, DSC's predecessor as owner of the RTRR property and rail infrastructure on the property, used the rail line for many years to transport freight to and from a still mill located on DSC's adjacent property. RTRR is advised that GTW, and possibly other rail carriers, operated over the track for the purpose of serving the McLouth plant. Rail transport on what is now the RTRR line terminated approximately five years ago with the termination of McLouth's operations, although rail service continues to be provided to DSC's adjacent facility over tracks that were also formerly used to serve McLouth.

RTRR intends to invest substantial resources to rehabilitate the line and construct the intermodal facility. To that end, RTRR has been moving deliberately to initiate operations. It has engaged a rail engineering firm, CTE Engineers, to develop plans for rehabilitation of the line and construction of additional tracks that would be used for the intermodal operation. A rendering of the planned facility is set forth at Exhibit 4. RTRR is also in the process of exploring the lease or purchase of motive power to operate trains on the line, and to that end has had discussions with WATCO Companies, Inc., a national rail service and maintenance provider. Further, RTRR affiliates currently possess intermodal lifts which will be moved to the property to facilitate the transfer of containers between modes.

Further progress toward its initiation of operations has been slowed somewhat over the last few months as a result of the opposition of local governments. Wayne County and the Cities of Riverview and Trenton, each of which have known of rail plans for the property since at least mid-2000, have now stated opposition to RTRR's use of the property for rail transportation purposes. As described further below, the Cities in particular do not want RTRR to initiate rail operations because they do not want more rail activity within their borders. As a

result, the County and Cities have sought to revoke RTRR's class exemption, and related litigation has been spawned by the County's initial eminent domain efforts, which have now been enjoined. These proceedings are described next.

B. Prior Proceedings Before the Board and Related Litigation

On December 11, 2000, RTRR filed a Notice of Exemption with the Board pursuant to 49 C.F.R. §§ 1150.31, *et seq.*, stating its intent to acquire the line and commence rail operations, and describing the rail line on the RTRR property. *See* Docket No. 33980, *Riverview Trenton Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc.* The Notice contained all of the information required by 49 C.F.R. § 1150.33 and the Board published notice of the filing in the Federal Register on January 8, 2001. 66 Fed. Reg. 1371.⁴

After its December 11 Notice was filed, on December 29, 2000, Crown received a letter from attorneys for Wayne County requesting information, pursuant to Michigan's Uniform Procedures Condemnation Act, about the 76 acre parcel owned by RTRR.⁵ Issuance of such a letter is the initial step in the statutory eminent domain process for taking property. The eminent domain process was apparently triggered by the County, at the urging of the Cities of Riverview

⁴ RTRR incorporates the contents of the Notice by reference in this Petition.

⁵ The County had sent such an informational letter on November 28, 2000, but it did not specifically identify the RTRR property as opposed to several other Crown-owned property in the area. Moreover, the RTRR property is itself divided into several parcels and the November 28 letter, which referred generally only to property located at "Bridge Ave. a/k/a Riverview Ave. and Jefferson Ave.," did not make clear which, if any, of the RTRR parcels the County was referencing. Accordingly, on December 11, 2000, RTRR requested a legal description of the property from the County. The County's December 29 letter made it clear that the County was interested in the entire RTRR property, other than a strip of 5 acres in Riverview.

and Trenton, because those jurisdictions do not want rail operations on the RTRR property.⁶ The goal of the eminent domain activities was therefore apparently to stop RTRR from progressing its rail plans.

In response to the initiation of procedures under Michigan's eminent domain statute designed to stifle its rail plans, on January 5, 2001 RTRR filed a lawsuit in the U.S. District Court for the Eastern District of Michigan seeking a preliminary injunction to prevent the County from initiating an eminent domain lawsuit or otherwise proceeding with the pre-litigation eminent domain activities it had initiated. *See Riverview Trenton Railroad Company v. County of Wayne*, Case No. 01-70078 (E.D. Mich, filed Jan. 5, 2001). RTRR argued to the District Court that any such action by the County was preempted by the provision of the Interstate Commerce Act, 49 U.S.C. § 10501(b), that preempts the operation of state laws that would interfere with rail operations subject to the Board's exclusive jurisdiction. By letters dated January 4 and 17, 2001, RTRR also notified the Board of the threatened eminent domain action and subsequently advised the Board of its lawsuit.

Following a hearing, discovery and extensive evidentiary submissions, on April 10, 2001 U.S. District Judge Cook issued the preliminary injunction that RTRR had requested barring the County from proceeding with an eminent domain proceeding. Judge Cook was fully aware of the proceedings before the Board and copies of the filings made with the Board, including the County's petition for revocation (on which the County heavily relied in its

⁶ Initial reports had suggested that the Cities want to develop a park on this heavily industrialized property, but more recently the City of Trenton has indicated that plans for the property are still under review. What is clear is that the local jurisdictions do not want rail activity on the property.

arguments to the Court), were submitted to the Court before it issued its order. A copy of the Court's decision, and the April 18 letter of RTRR's counsel forwarding that decision to the Board, is attached as Exhibit 5. The injunction was issued on the basis of the Court's view of the preemptive scope of 49 U.S.C. § 10501(b). RTRR believes that the injunction issued by the Court not only enjoins the County, but also serves to prevent the Cities of Riverview and Trenton from proceeding with any eminent domain plans that they may have with respect to the RTRR property.⁷ As a result, the immediate threat of condemnation of RTRR's property and rail line has been lifted.

While opposing RTRR's actions in Court, Wayne County also filed a February 16, 2001 Petition to Revoke with the Board in Docket No. 33980, seeking revocation of RTRR's exemption. The Cities of Riverview and Trenton later filed their own petitions to revoke on March 12 and 13, respectively. By filings with the Board dated March 8 (in reply to the County) and April 2 (in reply to the Cities), RTRR has responded at length to each of these petitions to revoke.⁸ RTRR has also responded to discovery served on it in the revocation proceeding by the City of Riverview. While the revocation proceeding remains pending for Board decision, RTRR has filed this Petition, which it requests that the Board consider only in the event that either

⁷ Rule 65 of the Federal Rules of Civil Procedure provides that injunctions are binding upon not only parties to the case, but "those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." There is no question that the Cities have worked in "active concert" with the County. To date, neither City has taken any steps on its own to pursue an eminent domain action directed at the RTRR property.

⁸ In its April 2 Reply, RTRR addressed the Board's March 19 decision in the *Jefferson Terminal* case. RTRR also addressed in that Reply the March 8 submission by GTW in support of Wayne County. As noted above, GTW has argued that RTRR traffic may result in delays on GTW's nearby line. Again, RTRR is hopeful that it can resolve those concerns, which it does not believe are well founded, through further discussions with GTW.

RTRR's current exemption is revoked or in the event that the Board initiates a further proceeding pursuant to 49 U.S.C. § 10502(d) to consider the revocation issue.

RTRR's intent in filing its December 11 Notice of Exemption, and this Petition, is to advance a shortline rail plan that CenTra developed some years ago in recognition of the need for additional intermodal yard capacity and the growth of intermodal traffic in the greater Detroit area. While issues relating to the preemption of local government efforts to stifle RTRR's rail activities have, unfortunately, arisen, these issues have been addressed to date by the U.S. District Court for the Eastern District of Michigan, and RTRR does not seek to inject those issues into this proceeding before the Board. What RTRR seeks here is simply what the Board has provided in the past to other shortline start-up railroads, namely, an exemption to allow RTRR to acquire and operate as a common carrier over a rail line in interstate commerce. Should Wayne County choose to continue any efforts to take RTRR's property, its right to do so will need to be adjudicated further in the U.S. District Court.

C. The Board Has Jurisdiction Over This Petition

The Board has jurisdiction over RTRR's acquisition and operation of a rail line. RTRR will hold out its services as a rail common carrier serving all shippers and transporting freight that will move in interstate commerce. Such transportation is subject to the Board's jurisdiction under 49 U.S.C. § 10501.

Further, since the line to which this petition relates constitutes RTRR's entire line, it is a "rail line" under 49 U.S.C. § 10901 subject to the Board's regulatory control, and not an exempt spur under 49 U.S.C. § 10906. *See* Docket No. 41986, *Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, IL* (served September 12, 1997,

aff'd by Board decision served Sept. 18, 1998); *aff'd on appeal, United Transp. Union v. Surface Transportation Board*, 183 F.3d 606 (7th Cir. 1999); *Operation of Lines by Coal River & Eastern Ry. Co.*, 94 I.C.C. 389, 398-90 (1925) ("*Coal River*") (both holding that a track is not an exempt spur where a line is the entire line owned by a railroad, regardless of its length and any other tests that may indicate otherwise).⁹ For these reasons, RTRR submits that Board authority under section 10901, or an exemption from regulatory requirements pursuant to section 10502, is needed before it may operate its line.

Recognizing that the Board's jurisdiction attaches to its proposed operations, RTRR initially filed its December 11 Notice of Exemption with the Board. While RTRR was of the view, and remains of the view, that the class exemption provided by 49 C.F.R. § 1150.31 is available to it, it nonetheless now files this Petition for the reasons previously stated.

**RTRR's ACQUISITION AND OPERATION OF A RAIL LINE
SATISFIES THE LEGAL STANDARDS FOR EXEMPTION**

Pursuant to 49 U.S.C. § 10502(a), the Board must exempt a rail carrier's request for acquisition and operation of a rail line from full procedural review under Section 10901(a) if two conditions are satisfied. The first is that the application of section 10901's requirements is not necessary to carry out the Rail Transportation Policy set forth at 49 U.S.C. § 10101. *See* 49 U.S.C. § 10502(a)(1). The second is that the transaction "is of limited scope," or that application of section 10901 application procedures is not "needed to protection shippers from the abuse of market power." *See* 49 U.S.C. § 10502(a)(2). It is established that Congress "wanted the

⁹ The Board, of course, has exclusive jurisdiction under 49 U.S.C. § 10501(b) over RTRR's line regardless of whether it is a line of railroad (which it is) or an exempt spur. That statute provides the Board with jurisdiction over the construction, acquisition and operation of spur and industrial tracks, even if those tracks are located in one state. For

exemption power to be wielded boldly.” *Simmons v. ICC*, 760 F.2d 126, 132 (7th Cir. 1985) (Posner, J.) (citing *Illinois Commerce Comm’n v. ICC*, 749 F.2d 875, 883-85 (D.C. Cir. 1984)). Here, RTRR’s proposal to operate over its short rail line satisfies the applicable legal standard, and therefore the Board should grant this petition, as it has done in similar cases. *See, e.g., Effingham Railroad Company – Notice of Exemption – Operation of Rail Trackage to be Acquired by TQW*, STB Finance Docket No. 33528, (Notice published December 30, 1997 at 62 Fed. Reg. 67937; Notice affirmed by decision served September 18, 1998); *Livonia, Avon & Lakeville Railroad Corporation--Acquisition and Operation Exemption--Line of Consolidated Rail Corporation*, STB Finance Docket No. 32754 (STB served Mar. 11, 1996).

A. An Exemption Will Promote the Rail Transportation Policy

A proceeding under § 10901 is not necessary to carry out federal rail transportation policy expressed in Section 10101. Rather, granting an exemption application from full regulatory review in this case would promote the nation’s Rail Transportation Policy for several reasons.

First, the granting of an exemption for the operation of the proposed rail line is consistent with the mandate of Sections 10101(1), 10101(4), and 10101(5) that the Board ensure that the development and continuation of a sound rail transportation system with effective competition and coordination between rail, motor, and water carriers that will allow competition and the demand for service to establish reasonable rates for intermodal service. Specifically, the proposed line will increase the rail and intermodal service to the shipping public. It will also enhance the domestic market opportunities for the shipper’s products originating in the Southeast Michigan/Detroit area and will result in the diversion of additional freight traffic from the highways to rail, with consequential environmental and traffic benefits. Conversely, the failure

to grant the exemption could restrict the current service arrangements critical to shippers and perpetuate inefficiencies.

Second, consistent with Sections 10101(2), 10101(3), and 10101(7) of the Rail Transportation Policy, an exemption will reduce regulatory barriers to entry, promoting an efficient rail transportation system, and minimize the need for federal regulatory control over the rail transportation system. Specifically, an exemption here will promote these policies by minimizing the time and administrative expense associated with the full review process, and by increasing options for rail service. The line is RTRR's sole link to the general rail system and is thus vitally important to RTRR's ability to service the needs of shippers. In similar circumstances involving a short line's extension of operations to reach a more efficient interchange with a connecting Class I carrier, the Board and ICC have consistently exempted such transactions as consistent with the Rail Transportation Policy. *See, e.g., Portland & Western Railroad, Inc., -- Lease Operation Exemption -- Burlington Northern Railroad Co., Fin. Dkt. No. 32766 (Jan. 5, 1996); New Hampshire Northcoast Corp.—Acquisition Exemption -- Boston and Maine Corp., et al., Finance Dkt. 32330 (ICC served September 3, 1993).*

In sum, Board approval pursuant to Section 10901 is not necessary to carry out the goals of the Rail Transportation Policy. Indeed, requiring such approval, with its attendant expense and risk of delay, as opposed to issuing an exemption, would be inconsistent with the policies expressed in Section 10101.

B. The Transaction To Be Exempted Is Limited In Scope and Regulation Is Not Needed to Protect Shippers From the Abuse of Market Power

The second test for exemption is stated in the disjunctive -- either the transaction must be of limited scope or the Board must find that regulation of the transaction is not needed to

protect shippers from the abuse of market power. Although RTRR is required to satisfy just one of these alternatives, its proposal satisfies both.

First, the proposed operation is limited in scope. The entire line to be operated by RTRR is quite short. Under Board precedent, the construction and operation of a rail line of RTRR's length is limited in scope. See *Burlington Northern R.R. Co. – Construction and Operation Exemption – Macon and Randolph Counties, MO*, 9 I.C.C.2d 1161 (1993), *aff'd sub nom, Missouri Mining, Inc. v. ICC*, 33 F.3d 980 (8th Cir. 1994) (17 miles); *Elk River R.R. – Construction and Operation Exemption – Clay and Karawha Counties, WV*, Fin. Dkt. 31989 (May 28, 1992) (30 miles); *PSI R.R., Inc. – Construction Exemption – Gibson County, IN*, Fin. Dkt. No. 32010 (Feb. 24, 1992) (13 miles); *Southern Electric Generating Co. – Petition for Exemption—Construction of a Rail Line in Shelby County, AL*, Fin. Dkt. 31498 (Sept. 19, 1989) (7.5 miles); *Louisville & Jefferson County Riverport Auth. and CSX Transp., Inc. – Construction and Operation Exemption – In Jefferson City, KY*, Fin. Dkt. No. 31136 (Dec. 22, 1987) (6.7 miles). Here, the proposal before the Board is even more limited, as no new rail line construction is involved. Further, virtually all of the rail activity at issue here will occur within a confined area, and largely on property owned by RTRR or on adjacent property on which RTRR has an easement allowing its operations. And RTRR does not at present anticipate that it will, at least initially, operate more than 2 trains per day. Thus, the limited scope of its planned activities is obvious.

Second, the proposed operation will not result in an abuse of market power, and therefore regulation of the operation is not needed. No captive shippers are located on the RTRR line; DSC is the only shipper currently located on the line and it has direct access to other railroads. Further, the proposed line will assist competition by providing the local manufacturers

with increased rail and intermodal transportation options and, thus, will not open the door to any potential market power abuses. *See Entergy Arkansas and Entergy Rail – Construction and Operation Exemption—White Bluff to Pine Bluff, AR*, Fin. Dkt. Nos. 32158 and 32158 (Sub-No. 1) (May 11, 1993) (“the proposed transaction will provide . . . an additional rail transportation option and thus will enable [the shipper] to realize the benefits of increased railroad competition”); *Southern Electric R.R. Co. – Construction and Operation Exemption—West Jefferson, AL*, Fin. Dkt. No. 33387 (July 16, 1997); *Southern Gulf Ry. Co. – Construction and Operation Exemption – In Calcasieu Parish, LA*, Fin. Dkt. No. 32321, at 4 (Sept. 9, 1993) (construction of a new rail line to serve a utility coal shipper held not to subject shippers to carrier market power abuses).

ENVIRONMENTAL COMPLIANCE

The Board need not undertake an environmental review of RTRR’s proposed activity because RTRR is merely restoring service to existing track. No new rail line construction is implicated here and the area in which RTRR will operate already experiences a significant volume of Class I rail traffic. Further, RTRR will not exceed any environmental thresholds established in the Board’s regulations at 49 C.F.R. § 1105.7 since it contemplates that, at least initially, no more than two trains per day will traverse the line.¹⁰ In these circumstances, the Board’s rules contemplate that environmental documentation, either an Environmental Assessment or an Environmental Impact Statement, will not normally be required. *See* 49 C.F.R. § 1105.6(c)(2)(i).

¹⁰ The RTRR line is located in an attainment area and thus the Board’s threshold for environmental analysis is 8 trains/day. *See* 49 C.F.R. § 1105.7(e)(5)(A).

Nonetheless, in order to address any outstanding concerns, and specifically recognizing that the Cities of Riverview and Trenton have expressed concerns about the impacts of renewed rail activity, RTRR has engaged an environmental consulting firm, URS Corporation (a successor to Radian), to prepare an environmental report on its planned activities in compliance with 49 C.F.R. section 1105. A copy of that report is submitted with this filing. While RTRR submits that the Board is not required to prepare any environmental documentation in these circumstances, the attached report will provide the basis for any such documentation should the Board decide to undertake a further environmental analysis. As the environmental report demonstrates, the RTRR acquisition of the property will result in the clean-up of that property pursuant to a detailed remediation plan, and will not result in any significant adverse environmental impacts.

Finally, since RTRR will be restoring service to a rail line and will not affect any structures that are more than 50 years old, no historical report is required here. See 49 C.F.R. § 1105.8(b).

**PROPOSED PROCEDURAL SCHEDULE FOR
SOLICITING COMMENTS FROM INTERESTED PARTIES**

While RTRR's efforts before the Board to date have been contentious, RTRR is hopeful that there will not be any serious objections to the instant Petition should the circumstances arise that action on this Petition may be necessary. Nevertheless, to ensure that Wayne County, the Cities of Riverview and Trenton and any other interested parties have ample opportunity to air views on the proposed action, RTRR proposes the following procedural schedule for the submission of comments on this Petition:

(1) interested parties may file comments within 30 days of the Board's issuance of a Federal Register notice of the filing of this Petition; and

(2) RTRR's reply, if any, is to be filed within 20 days following the submission of any such comments.

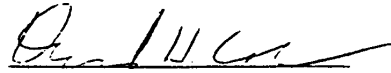
This proposed schedule will allow ample time for the submission of views on this Petition, and also allow time for the Board to issue a decision in this proceeding (or in any proceeding in which this Petition is consolidated with the revocation proceeding in Docket No. 33980) so that RTRR may move forward to finalize arrangements for the opening of the rail switch and for the track rehabilitation and other work related to the intermodal facility to be undertaken in a timely manner. In that regard, RTRR is hopeful that the Board can take final action in sufficient time to allow RTRR to move forward with its plans expeditiously after receiving regulatory authorization well before the end of the relatively short construction season in the Detroit area.

CONCLUSION

RTRR urges the Board to allow its current exemption in Docket No. 33980 to remain in place. However, in the event that the Board has any remaining doubts on the pending revocation issues, RTRR urges the Board to consolidate consideration of this Petition with any further revocation proceedings, issue a procedural schedule as specified above and, after the

receipt of any further submissions, promptly affirm or grant an exemption authorizing Riverview
Trenton Railroad Company to acquire and operate the rail line at issue.

Respectfully submitted,



J. William Koegel, Jr.

David H. Coburn

Alice Loughran

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1330 Connecticut Ave.

Washington, D.C. 20036

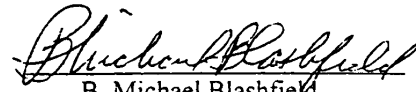
(202) 429-8063

Attorneys for Riverview Trenton
Railroad Company

May 1, 2001

VERIFICATION

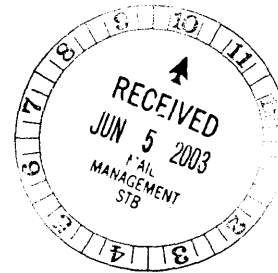
I, B. Michael Blashfield, hereby verify under penalty of perjury that all of the facts set forth in the attached Petition for Exemption are true and correct to the best of my knowledge. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. § 1001 by imprisonment up to five years and fines up to \$10,000 for each offense.


B. Michael Blashfield

May 1, 2001

31864
EB

SERVICE DATE - MAY 15, 2003
SURFACE TRANSPORTATION BOARD
DECISION



STB 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

Decided: May 9, 2003

ENTERED
Office of Proceedings

We are granting the petition of Riverview Trenton Railroad Company (RTR) for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to acquire and operate a line of railroad in Wayne County, MI, subject to environmental and monitoring conditions and the requirement that RTR designate a community liaison.

JUN - 5 2003
Part of
Public Record

BACKGROUND

In this proceeding, RTR has filed a petition for an individual exemption, under the procedures set forth at 49 CFR Part 1121, to acquire and operate a line of railroad in Wayne County, MI. This proceeding involves the same proposal as the one presented to us in STB Finance Docket No. 33980, Riverview Trenton Railroad Company-Acquisition and Operation Exemption-Crown Enterprises, Inc., under the class exemption at 49 CFR 1150.31 et seq., and incorporates the record in that earlier proceeding, as well as the additional evidence and arguments filed in this proceeding. The background, issues, and record in these proceedings are explained in greater detail in our decision in STB Finance Docket No. 33980, et al., served on February 15, 2002.

The Initial Pleadings. RTR seeks to acquire and to operate over track located in the towns of Riverview and Trenton, in Wayne County, MI. Specifically, RTR plans to operate over: (1) 1.5 miles of rail line on its own property, a 76-acre parcel that RTR purchased from its noncarrier parent, Crown Enterprises, Inc. (Crown);¹ and (2) via easement, track within an

¹ Crown is a real estate development subsidiary of CenTra, Inc. (CenTra). CenTra is a holding company that also owns several transportation companies, including a trucking company, Mason Dixon Lines, Inc. In STB Finance Docket No. 33979, CenTra, Inc., et al.-Continuance in Control Exemption-Crown Enterprises, Inc., CenTra filed a notice of exemption under 49 CFR 1180, to permit it to control RTR, when RTR becomes a rail carrier, along with the Jefferson Terminal Railroad Company (Jefferson), another subsidiary of Crown that had filed a notice of exemption in Jefferson Terminal Railroad Company-Acquisition and Operation Exemption-Crown Enterprises, Inc., STB Finance Docket No. 33950 (STB served Mar. 19,

(continued...)

adjacent 195.45-acre industrial site owned by a non-affiliate, Detroit Steel Center, Ltd. (DSC).² DSC currently moves its own traffic over RTR's track,³ and was moving it over this portion prior to the creation of RTR.⁴ RTR plans to establish an intermodal terminal involving rail, motor, and possibly barge traffic and also plans to transport DSC's traffic.

RTR indicates that it has initiated discussions with other railroads for the interchange of traffic. The track in RTR's 76-acre parcel physically connects at two points with track owned by a CN subsidiary, the Grand Trunk Western Railroad (GTW).⁵ RTR claims that, after appropriate interchange arrangements are made, it will have access to track of the Consolidated Rail Corporation (Conrail) Detroit Shared Assets Area.⁶

RTR's invocation of the class exemption in STB Finance Docket No. 33980 attracted local opposition and generated a substantial record. As explained in more detail in our February 2002 decision, RTR's opponents alleged that RTR's real purpose was to block condemnation of the property for public purposes, rather than to develop it for rail use. GTW also argued that our class exemption procedure was not intended to encompass operations where a start-up carrier like

¹(...continued)

2001) (Jefferson Terminal). We revoked the Jefferson Terminal exemption at the request of the City of Detroit.

² RTR's 76-acre parcel and the adjacent parcel owned by DSC were formerly owned by the McLouth Steel Company (McLouth), which used the track therein to service its plant. On its property, DSC operates a steel mill.

³ DCS and RTR have easements to use the track on each other's property.

⁴ In a letter dated April 16, 2001, DSC asserted that it was transporting 15-20 carloads/month but that it expected to be transporting 50 carloads/week within 6 months. Mistura Exh. 2, attached to RTR's supplemental statement filed on March 7, 2002. According to DSC, the Canadian National Railway Company (CN) operates over its track.

⁵ The grade-separated connection at the south end of the property is active, passing over Jefferson Avenue. The street level (crossing Jefferson Avenue) connection at the north end has been paved over and may require reconstruction to become operable. See the affidavit of James M. Kvedaras, attached to Wayne County's Petition to Revoke filed on February 16, 2001, Tab K, and the photographs in the Environmental Assessment served on October 15, 2001.

⁶ Pursuant to our decision allowing division of the operations and properties of Conrail between Norfolk Southern Railway Company (NSR) and CSX Transportation, Inc. (CSXT), Conrail continues to operate this track in the Detroit area for the benefit of both NSR and CSXT. See CSX Corp. et al.-Control-Conrail Inc. et al., 3 S.T.B. 196 (1998).

RTR would be developing an entirely new service over track that has lain dormant. the class exemption because the property is not subject to our jurisdiction. In any event, they argued, the class exemption should be revoked under the statutory criteria for revocation set forth in 49 U.S.C. 10502(d), or at least be subjected to a proper investigation of environmental issues.

On May 1, 2001, RTR, attempting to put to rest any concerns about its use of our class exemption procedure, filed the instant petition for an individual exemption for the same proposal. Attached to RTR's petition in STB Finance Docket No. 34040 was an environmental report containing environmental information about the proposal.

Because RTR did not withdraw its notice in STB Finance Docket No. 33980, invoking the class exemption, the parties continued to file pleadings arguing whether that exemption should be revoked. By decision served on February 15, 2002, we revoked the use of the class exemption in STB Finance Docket No. 33980. We found that the proposal warrants more detailed scrutiny than was afforded by the existing record in that proceeding. Our decision stated that we would consider all of the arguments submitted in STB Finance Docket No. 33980, to the extent such material was not addressed in the February 2002 decision, when we considered RTR's petition for individual exemption. We also allowed the parties to file supplemental statements and replies in STB Finance Docket No. 34040.⁷

The Environmental Review Process. On October 15, 2001, our Section of Environmental Analysis (SEA) issued for public review and comment a detailed Environmental Assessment (EA)⁸ of RTR's proposed acquisition and subsequent intermodal operations in Wayne County.⁹ SEA received comments on the EA from GTW, the City of Trenton (Trenton), the City of Riverview (Riverview), Wayne County Department of Public Services, and the Southeastern Michigan Council of Governments. SEA addressed those comments in a Post Environmental Assessment (Post EA), which was placed in the public docket on January 22, 2002. The Post EA

⁷ Because members of the affected public have already had substantial opportunity to address the issues raised in this docket, we did not publish a notice requesting public comments under 49 CFR 1121.4.

⁸ SEA prepared an EA in this case because RTR's proposed actions would add a maximum of 300 trucks per day to local roads, exceeding the Board's 50 or more trucks-per-day threshold for the preparation of environmental documentation at 49 CFR 1105.7(e)(4), (5).

⁹ Issues considered included safety, land use, social and economic effects, physiography and soils, water and biological resources, transportation systems (including local roadways, highway/rail at grade crossings, traffic delay, and emergency response delay), energy, navigation, air quality, noise, cultural resources, recreational and visual resources, "environmental justice" demographics, and cumulative effects.

found that, with the imposition of the conditions to mitigate the environmental impact of the proposed actions recommended in the Post EA, RTR's proposal would not significantly affect the environment. Shortly after issuance of the Post EA, a public meeting attended by approximately 500 persons was held in Southgate, MI, where many expressed concern about adverse effects to their communities and their hopes to convert the proposed project area to non-industrial use. After the meeting, the Board received approximately 1700 letters raising concerns of private citizens and government officials. In response SEA prepared a Supplemental Post EA (which was placed in the public docket on August 28, 2002) that reaffirmed SEA's original conclusion that the proposed action would not significantly affect the environment if the conditions SEA had recommended in the Post EA were imposed.

Riverview filed a motion on April 21, 2003, which RTR opposed, asking that we prepare a supplemental EA that considers the environmental impacts associated with a barge facility that the City believes RTR will locate on the Detroit River adjacent to its intermodal facility.¹⁰ As RTR stated, SEA did not evaluate in its EA potential environmental impacts resulting from increased barge traffic due to its speculative nature. SEA explained that RTR has no specific plans to introduce barge service, and, therefore, there would have been no way for SEA to effectively analyze it.¹¹

We have carefully reviewed the EA, Post EA, and Supplemental Post EA (collectively, the EA) and Riverview's April 21, 2003 motion. We find that SEA properly declined to consider barge traffic in the EA, and that there is no need to prepare a Supplemental EA here. We are adopting the analysis and conclusions in the EA as our own and are imposing the conditions recommended by SEA.¹² The scope of the analysis in the EA was adequate, and the EA provided

¹⁰ On May 6, 2003, the Grosse Ile Bridge Company filed a letter in support of Riverview's request for a Supplemental EA evaluating the potential impacts from barges on Grosse Ile residents.

¹¹ Riverview also alleges that RTR's proposal has substantially changed, based on affidavits describing conversations that allegedly took place during settlement negotiations. But affidavits related to unsuccessful negotiation proposals plainly do not demonstrate that this proposal has changed. Accordingly, the EA is fully adequate, and we see no need to conduct further environmental review.

¹² We have made minor changes to SEA's recommended environmental conditions to clarify them. The most significant change is to amplify and clarify the fourth condition in the Post EA. The new condition (No. 4) makes it clear that, in response to concerns raised by the Wayne County Department of Public Services, regarding storm water management, soil erosion, and sediment control, RTR shall ensure that its development of the site complies with the

(continued...)

the appropriate environmental documentation required by the National Environmental Policy Act for this project.

Positions of the Parties. On March 7, 2002, the County of Wayne (Wayne County), Trenton, and GTW (the Joint Opposition) jointly filed a statement, which Riverview has supported, urging us to deny the individual exemption petition. Attached to Riverview's supporting statement was a copy of Riverview's "Master Plan of Future Land Use." The Joint Opposition continues to argue that: (1) RTR is improperly seeking to invoke our jurisdiction to avoid local land use regulation rather than for legitimate transportation purposes; (2) the project would have adverse environmental effects on local traffic and safety; (3) the rail transportation policy of 49 U.S.C. 10101 requires that we consider local desires to put the property to recreational or other "quality-of-life" uses that serve local residents more than interstate transportation, i.e., uses such as the proposed "Riverfront Greenway" development along the Detroit River; and (4) we lack jurisdiction over the proposed operation and thus have no jurisdiction to authorize RTR's project through an exemption.

RTR also filed an opening supplemental statement on March 7, 2002. RTR explained that it has been planning its rail facility, which is in a primarily industrial area, since at least early 2000, and that local officials were well aware of its plans prior to the county's taking exploratory eminent domain action in late 2000. RTR argued that it had met the statutory standards for exemption authority. It stated that its proposed operations fall within the Board's jurisdiction because RTR will hold itself out to the shipping public to provide transportation and interchange services. RTR stated that, consistent with its intent to provide common carrier service, it has invested substantial resources in preparation to rehabilitate the line and construct additional track for the intermodal facility. RTR submitted supporting statements from auto manufacturers and other shippers, motor carriers, and logistics and ocean carrier interests. RTR also submitted witness statements arguing that the planned intermodal terminal is feasible, will have important transportation benefits, and will benefit the environment by diverting traffic from trucks to railroads.

On March 8, 2002, the Grosse Ile Bridge Company (the Bridge Company) filed a statement in opposition to the exemption. The Bridge Company operates a toll bridge that connects Riverview and Trenton to the nearby Detroit River island residential community of Grosse Ile. The Bridge Company maintains that RTR's terminal would create traffic congestion that would interfere with use of the bridge.

¹²(...continued)

Michigan Natural Resource & Environmental Protection Act, and the Wayne County Storm Water Management Ordinance, to the extent that this does not unreasonably interfere with RTR's ability to go forward with this rail transportation project.

On March 21, 2002, RTR filed its reply statement. Addressing opponents' argument that we should allow local jurisdictions to put the property to non-rail use, RTR argues that: (1) the Interstate Commerce Act restricts our evaluation to the transportation considerations mentioned in the rail transportation policy, these considerations have been satisfied, and they do not allow us to act as a local zoning agency or to weigh non-transportation uses of RTR's property; (2) the non-transportation uses and alternate terminal location mentioned by opponents are wish lists rather than feasible, concrete, and funded plans;¹³ and (3) the plans of the local communities could not be realized even if we were to deny RTR's petition because (a) those plans would require that DSC and the numerous surrounding industrial properties also be condemned and (b) DSC is still operating rail track that may not be condemned. RTR also reasserted that we have jurisdiction over the transaction and that the project is a genuine attempt to commence rail service.

In a reply statement filed on March 21, 2002, the Joint Opposition continues to question our jurisdiction over the transaction. Their jurisdictional argument is premised on their assumption that RTR would not be providing common carrier services but, rather would be operating an intermodal terminal only for its own purposes. The Joint Opposition also argues that RTR's evidence improperly points to the general benefits of an additional intermodal terminal in the area, rather than the benefits of conferring common carrier status on RTR. They argue that the shipping needs of the Detroit area would be better met by construction of a "world class freight transportation hub" at a different location. The Joint Opposition criticizes the supporting statements submitted by RTR, arguing that: (a) they are merely form letters; (b) some of them incorrectly purport to represent the views of the entire company rather than the lower-level officers signing them; and (c) they express weak commitment to use of the terminal.

On March 22, 2002, CSXT tendered a late-filed comment and a request on the cover letter that we accept it.¹⁴ That carrier states that it "neither opposes nor supports the proposed transaction," but it expresses concern about the possibility that volumes might turn out to be too low to justify the expense of interchange. CSXT asserts that it has not yet meaningfully discussed interchange terms with RTR and for that reason urges us to retain jurisdiction over any "regulated transportation-related matters" that may arise out of a grant of operating authority to RTR, such as interchange and switching relationships.

¹³ The opponents to this project acknowledge that there is as of yet no timetable for any taking of this property that the County might decide to pursue.

¹⁴ We will accept CSXT's late-filed comment because it prejudices no party and will not delay the proceeding.

On the same date, GTW filed an unauthorized one-page reply-to-a-reply, disputing RTR's argument that opponents have failed to address legal precedents allegedly supporting RTR's position.

By decision served on June 21, 2002, given the willingness to negotiate indicated by each side at that time, we held the proceeding in abeyance, in the hope that the parties could resolve their differences through good faith negotiations to reach a mutually acceptable solution, and directed them to file reports on the status of the negotiations within 90 days. The negotiations did not produce a settlement or any meaningful signs of progress towards one. Each side filed the requested 90-day status reports and, following that, numerous other status reports. In these reports, each party attempted to support its own positions and to blame the other side for lack of progress. On December 6, 2002, RTR filed a document stating that an impasse had been reached and requesting that we act.

On February 28, 2003, Riverview filed a letter stating that further negotiations might be fruitful and asking us to determine "whether further negotiations are intended." By letter filed on March 4, 2003, RTR replied in opposition to any further delay. Given the lack of progress on the parties' negotiations, it is appropriate to issue our decision in this matter at this time.

DISCUSSION AND CONCLUSIONS

We find that we have jurisdiction over the transaction, and we will grant the requested exemption, subject to mitigation conditions developed during the environmental review process. We understand the desire by some opponents to enhance the recreational and aesthetic nature of RTR's parcel, but our statutory responsibility is to assess the transportation merits. Nonetheless, in response to the concerns of the opponents, we will impose on RTR a monitoring and reporting condition designed to ensure that we are kept advised of RTR's progress in implementing its project and to allow us to reopen and revisit the matter and take appropriate action if RTR does not follow through on the representations it has made in this proceeding regarding the development of rail service on this property. To facilitate future interaction between RTR and local communities, we will also impose a condition requiring RTR to designate a community liaison.

Jurisdiction

Under the licensing provisions of 49 U.S.C. 10901, a noncarrier (such as RTR) may acquire a rail line and operate as a common carrier only if we find that the proposal is not inconsistent with the "public convenience and necessity," or if we exempt the transaction from the requirements of section 10901 pursuant to 49 U.S.C. 10502. Throughout this proceeding, RTR's opponents have argued that we lack jurisdiction over the proposed acquisition and operation because RTR's track is excepted "spur, industrial, team, switching, or side tracks"

under 49 U.S.C. 10906.¹⁵ GTW adds that jurisdiction may be lacking because the track may be private track. Wayne County and GTW also maintain that the RTR transaction is not subject to our general jurisdiction under 49 U.S.C. 10501 because RTR's proposed intermodal facility would not be a railroad common carrier operation. Because the jurisdictional issues were not resolved in STB Finance Docket No. 33980, we will resolve them here.

Based on our consideration of all of the parties' evidence and arguments, we find that the transaction proposed by RTR is subject to our jurisdiction under 49 U.S.C. 10901. RTR will not be hauling its own goods. Rather, it will be providing transportation for hire analogous to the regulated services provided in Assoc. of P&C Longshoremen v. The Pitts & Conneault, 8 I.C.C.2d 280 (1992) (P&C Dock) (terminal type rail operations comprise "all movements of railway cars and locomotives in yards") and Effingham¹⁶ (any line that becomes the entire line of a new rail common carrier requires Board authority).

In attempting to show that the track is excepted track under section 10906, Wayne County and GTW focus on the past (pre-notice) use of the track. They explain that previously the track was owned by a non-railroad, McLouth, and used by GTW to switch cars between McLouth's plant and connections with line haul common carriers.¹⁷ They also point out that RTR does not claim that any common carrier had ever leased or had trackage rights over the track.

In determining whether track is excepted track under section 10906, however, we must focus on its intended or future use under the transaction at issue, which may differ from its past use. Nicholson v. I.C.C., 711 F.2d 364, 367-68 (D.C. Cir. 1983) (Nicholson). If track – even track that is used for purposes such as switching – (1) will constitute the entire operation of the new carrier; (2) permits the using carrier to extend operations into, or invade, new territory, and thereby alter the competitive balance between railroads; and/or (3) is essential to the through

¹⁵ The general licensing requirements of section 10901 do not apply to track that is excepted under section 10906, although we retain exclusive jurisdiction over such track pursuant to 49 U.S.C. 10501(b)(2).

¹⁶ Effingham RR Co.-Pet. For Declaratory Order, 2 S.T.B. 606 (1997), reconsideration denied, STB Docket No. 41986 (STB served Sept. 18, 1998), aff'd, United Transp. Union v. Surface Transp. Bd., 183 F.3d 606 (7th Cir. 1999) (Effingham).

¹⁷ The record does not indicate that McLouth was ever certificated to operate as a common carrier. In his statement attached to RTR's reply filed on April 2, 2001, RTR witness B. Michael Blashfield asserts that an official of McLouth told him that GTW served McLouth's plant by operating over its tracks.

movement of traffic from shipper to consignee, then it is deemed to be a railroad line subject to Board licensing requirements, rather than excepted spur or auxiliary track.¹⁸

RTR's intended use of the track meets each of these three criteria. The track will comprise RTR's entire operation. RTR plans to start up an intermodal terminal that will create new competition with intermodal facilities owned by other railroads in the Detroit area. RTR will connect and interchange containers and DSC traffic with the national rail system, first at its south end connection and perhaps later (after track reconstruction) at its north end.

Moreover, RTR will be providing railroad transportation as a common carrier. The record indicates that RTR intends to hold itself out to provide service to the general public, rather than to operate as a private carrier or a switching agent for line haul carriers.¹⁹ Using its rail connections with other established railroad common carriers and motor carriers providing local drayage service,²⁰ RTR's terminal will play a part in the interstate transportation of goods before they reach their place of rest. To do this, RTR will use equipment and facilities that are part of rail service.²¹

¹⁸ See Texas & Pacific Ry. v. Gulf Colorado & S.F. Ry., 270 U.S.C. 266, 278 (1926); Effingham; United Transp. Union v. STB, 169 F.3d 474, 477-78 (7th Cir. 1999); Great Salt Lake and Southern Railroad, L.L.C.—Construction and Operation—In Tooele County, UT, STB Finance Docket No. 33824 (STB served Dec. 15, 2000) (track construction subject to regulation because it would allow service to a new market and constitute the carrier's entire line); New Orleans Terminal Co. v. Spencer, 366 F.2d 160, 165-66, (5th Cir. 1966), cert. denied, 386 U.S. 942 (1967) ("If there are traffic movements which are part of the actual transportation haul from shipper to consignee, then the trackage over which the movement takes place is a 'line of railroad' or extension thereof."); Nicholson, 711 F.2d at 368.

¹⁹ RTR asserts that it will offer a common carrier service to "all shippers" (not just DSC), and that in this respect it will be "no different from any other terminal railroad." Statement of B. Michael Blashfield, at 9, attached to RTR's reply filed on March 8, 2001. RTR also has supported its petition with evidence from shippers stating that they wish to have the service available. Statements by opponents indicate that plans exist for another intermodal terminal in the Detroit area, which supports RTR's claim that there is a market for its service.

²⁰ Statement of B. Michael Blashfield, at 3, attached to RTR's reply filed on March 8, 2001: "The new facility will receive containers and trailers on flat cars (for example) to be loaded and unloaded for interchange between motor carrier mode and rail carrier mode."

²¹ RTR will own and lease track. RTR will purchase or lease "motive power" for the cars that will move on its track. Statement of B. Michael Blashfield, at 9. Under 49 U.S.C.

(continued...)

RTR can be a common carrier even if it neither picks up containers before, nor delivers containers after, rail shipment. There is no statutory requirement that a common carrier railroad must itself pick up from shippers, or deliver to consignees, traffic transported in intermediate stages of movements in interstate commerce. In short, RTR's operation will be similar to those of other small terminal railroad companies that are subject to our jurisdiction.²²

Exemption Criteria

Because RTR's transaction is subject to our jurisdiction, we proceed to consider the exemption request. Section 10502(a) provides that, to the "maximum extent" consistent with the rail provisions of our governing statute, we "shall exempt" a transaction from the requirements of the statute, including section 10901, if we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101; and (2) either (A) the transaction is of limited scope or (B) regulation is not needed to protect shippers from abuse of market power. For the reasons discussed below, we find that the requirements of section 10502 have been met.

Rail Transportation Policy. Wayne County argues that we should deny the petition for exemption because regulation under 49 U.S.C. 10901 is necessary to carry out the rail transportation policy of 49 U.S.C. 10101.²³ Basically, the County does not want to have the property used for rail or industrial purposes, preferring other uses that would enhance "the recreational and aesthetic nature of the parcel,"²⁴ and better comport with surrounding communities' quality of life, public health, safety, and welfare. We recognize that the County and the local communities have a different vision for this property than RTR, and the parties have debated whether opponents' plans are achievable. But, while we understand the

²¹(...continued)

10102(6)(a) and (c), RTR's intermodal equipment, yard, and ground will be "railroad" facilities.

²² See P&C Dock, where the ICC held that terminal rail movements "need not satisfy a distance threshold, nor are they limited to train formation or other related classification activity." 8 I.C.C.2d at 292. The cases cited by Wayne County are inapposite because they involved transportation that, unlike the transportation planned by RTR, was private carriage, contract carriage, or carriage exclusively for a corporate parent.

²³ The County also makes a separately captioned argument that regulation is necessary "due to the overriding public interest at stake." We evaluate public interest concerns as appropriate under 49 U.S.C. 10101.

²⁴ Affidavit of DeWitt Henry, attached as Tab A to the County's Petition to Revoke; Post EA at 20-21; Supplemental Post EA at 3-5.

communities' concerns, our statutory responsibility is to look at the transportation merits of RTR's proposal.

Here, RTR has developed specific plans for constructing an intermodal facility for which there is evidence of a current demand, thereby furthering the development of a rail transportation system that meets the needs of the public [§ 10101(4)]. RTR has taken reasonable steps to prepare for the commencement of rail operations, such as purchasing the necessary property and commissioning a rail engineering firm.²⁵ There is evidence that the Detroit area needs increased intermodal development and that RTR's project will help to meet this need.²⁶ The proposed Detroit Intermodal Freight Terminal (DIFT), relied on by opponents, is currently little more than a concept, and there are reasons to believe that the DIFT and RTR's project would both serve a transportation need. See RTR's reply filed on March 7, 2002, at 7-9.²⁷

RTR also has submitted statements from shippers supporting its project.²⁸ RTR's opponents criticize these statements, arguing that: (a) they are merely form letters; (b) some of them incorrectly purport to represent the views of the entire company rather than the lower-level officers signing them; and (c) they express weak commitment to use of the terminal. RTR responds, however, that its efforts to elicit support have been hindered by the intense controversy connected with its transportation project. On balance, we believe that the statements show that the project is sound enough to attract some significant support under difficult circumstances.

Accordingly, we find that, based on careful consideration of the entire record, this is a legitimate rail transportation project, which should be allowed to go forward. By creating an additional rail intermodal terminal facility, the transaction will promote competition and reasonable rates [§§ 10101(1), (4), (5), (6), and (12)]. The competitive benefits of independent terminals like the one planned by RTR are documented in RTR's reply filed on March 7, 2002, v.s. of Richard J. Schiefelbein. The exemption will also minimize the need for federal regulatory control [§ 10101(2)] and reduce regulatory barriers to entry [§ 10101(7)]. The promotion of

²⁵ See: RTR's reply filed in STB Finance Docket No. 33980 on April 2, 2001, at 17; v.s. of Richard A. J. Duffield, attached to RTR's response filed on March 7, 2002. In light of the uncertainty created by opposition to the project, we cannot fault RTR for so far failing to invest substantial sums to implement the plans described in its notice of exemption.

²⁶ Response of RTR filed on March 7, 2002: v.s. of Arnold M. Mistura; v.s. of Richard P. Urban.

²⁷ The DIFT depends on the outcome of a lengthy environmental review process and would require public money that has yet to be dedicated.

²⁸ Exhibit No. 1 to v.s. of Arnold M. Mistura, filed separately on March 18, 2002.

energy conservation, by the development of an intermodal rail service like RTR's that can substitute for truck movements, is another rail transportation policy that supports granting the exemption [§10101(14)].

Section 10101(8) of the rail transportation policy favors the operation of transportation facilities "without detriment to the public health and safety." Riverview and Trenton assert that the intermodal facility will substantially affect the quality of life in the community and that the planned operation will block traffic, to the detriment of public health and safety. But the EA prepared by SEA here shows that (a) there are already significant rail operations in the largely industrial area in the immediate vicinity of the project, (b) for the reasonably foreseeable future, RTR does not anticipate running more than two trains per day, (c) the projected maximum of 300 additional trucks per day on local roadways represents an increase of less than 3 percent of average daily traffic, which is not significant, and (d) the prospect of street blockage will be limited. As the EA explains (at pp. 5-9 to 5-12), the primary rail access to the property is from the south over a grade-separated crossing of the primary traffic artery in the area, and we agree with SEA's conclusion that, with the environmental conditions it has recommended – including one that addresses concerns related to potential delay to emergency response providers when RTR uses its northern rail connection to access Class I railroads – the exemption will not significantly affect the quality of the human environment.²⁹

Finally, the rail transportation policy provides no grounds for denial of the exemption to meet GTW's concern that RTR's operation might operationally interfere with GTW's operations in the area. In any event, GTW has submitted no evidence to support this concern.³⁰

²⁹ Some commenters to the EA alleged that the EA does not adequately consider existing hazardous materials contamination and remediation at the proposed intermodal facility. To the contrary, the EA explained that RTR, working under the guidelines of the Michigan Department of Environmental Quality, has prepared a Due Care Plan to protect public health and natural resources during development of the site as an intermodal facility. The EA attached a copy of the Due Care Plan in Appendix C. One of our environmental conditions requires RTR to comply with the Due Care Plan. RTR also has agreed to voluntary mitigation to minimize noise.

³⁰ In a letter to us dated April 15, 2003, Michigan State Senator Raymond E. Basham requested that we defer any decision until investigative agencies responsible for border, customs, and related interstate and international commerce tied to homeland security provide written documentation that they have completed a review of the concerns related to the railroad. But RTR, like any other railroad, must comply with all applicable regulations covering homeland safety and security. Railroads are legally bound to comply with the comprehensive across-the-board safety measures adopted by the Federal agencies with jurisdiction to adopt appropriate measures to enhance the security of the rail industry as a whole, including the Transportation
(continued...)

Abuse of Market Power. Regulation of RTR's entry into the railroad business is not necessary to protect shippers from abuse of market power. No party maintains to the contrary. Indeed, the kind of traffic that will be handled by RTR, TOFC/COFC traffic, has been exempted as a class from our regulation based on a finding that the regulation of such traffic is not necessary to protect shippers. There is no basis for us to find that regulation of RTR's entry into the TOFC/COFC business is necessary to protect shippers when the service that RTR intends does not need to be regulated. Because we have found that the proposal will not be an abuse of market power, we need not address whether the proposed exemption is limited in scope.

Monitoring and Reporting and Community Liaison Conditions

As discussed above, we are granting the petition for exemption because the statutory criteria have been met. Nevertheless, we are sensitive to the concerns expressed by the communities affected by this proposal. Consequently, we are reserving oversight jurisdiction over the exemption proceeding for 3 years. We will impose a monitoring and reporting condition to ensure that we are kept advised of RTR's progress in implementing its project. Should it become clear at any time during this period that RTR is not following through on the representations it has made in this proceeding regarding the development of rail service on this property, we will entertain requests to reopen and revisit this matter.³¹ In addition, given the level of local concern regarding this project, we will also impose a condition requiring RTR to designate a community liaison to be a point of contact with local communities. The environmental and other conditions being imposed here follow.

Our Conditions

1. To mitigate potential delay to emergency response providers when RTR uses its northern rail connection to access Class I railroads, crossing Jefferson Avenue at grade, RTR shall notify the appropriate emergency response providers at least 2 hours prior to using the at-grade crossing at the north end of its property.

³⁰(...continued)

Security Administration and the Federal Railroad Administration. The statutory requirements of these agencies apply to RTR just as they do to all other railroads. Senator Basham has raised no security issue relating to RTR's proposed intermodal terminal that is separate and distinct from homeland security issues facing the railroad industry generally. Therefore, there is no reason for us to defer action on this proposal.

³¹ Should circumstances warrant it, opponents could file a petition to revoke this exemption or, if necessary, a request for adverse abandonment authority.

2. RTR shall comply with the terms of the comprehensive Due Care Plan (attached in Appendix C of the Environmental Assessment), which is designed to protect public health and natural resources during development of the site as an intermodal terminal facility.

3. RTR shall consult with the U.S. Department of Agriculture, Natural Resource Conservation Service, to identify and implement Best Management Practices to restrict erosion and avoid runoff to the Trenton Channel from areas where the project may disturb the soil prior to initiation of any construction or earth disturbing activities.

4. In response to concerns raised by the Wayne County Department of Public Services, RTR shall ensure that its development of the site complies with Part 91 of Act 451, Michigan Natural Resource & Environmental Protection Act, and the Wayne County Storm Water Management Ordinance of October 19, 2000, to the extent that this does not unreasonably interfere with RTR's ability to go forward with this rail transportation project.

5. As agreed to by RTR, RTR shall use landscaping such as berms and vegetation, as appropriate, to minimize noise generated by the intermodal facility.

6. As agreed to by RTR, to minimize project-related noise, RTR shall, except in unusual circumstances, conduct rail operations and intermodal facility operations between the hours of 6:00 a.m. and 10:00 p.m. Central Standard Time.

7. To ensure that we are kept aware of RTR's progress in implementing its project, RTR shall report to the Board every 6 months, beginning 6 months after the service date of this decision, on its progress, satisfaction of environmental conditions, and, when operations commence, traffic levels. These reports will be required for 3 years. This reporting will allow the Board to take appropriate action in the event that RTR does not follow through on the representations it has made regarding the development of rail service on this property.

8. RTR shall designate a community liaison from within its organization, to be a point of contact with the local community and local officials, and be available for public meetings. RTR shall provide the name and phone number of the community liaison to mayors and other appropriate local officials.

As conditioned, we find that our action here will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The exemption is granted, subject to the environmental mitigation and monitoring and other conditions set forth in this decision.

2. This decision is effective on June 14, 2003.

By the Board, Chairman Nober and Commissioner Morgan. Commissioner Morgan commented with a separate expression.

Vernon A. Williams
Secretary

Commissioner Morgan, commenting:

I trust that Riverview Trenton Railroad Company intends to use the authority it has been given here for rail transportation purposes, rather than merely as a place holder to prevent the City from using the property for other purposes. Given the concerns that have been raised about this matter, I wholeheartedly support the oversight condition that has been imposed as part of our approval here today.