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**AMERICAN SHORT LINE AND
REGIONAL RAILROAD ASSOCIATION**

The Voice of America's Independent Railroads

January 22, 2004



Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

**RE: FD NO. 34054, Morristown & Erie Railway, Inc., Modified Certificate
Petition of Five New Jersey Municipalities**

Dear Mr. Williams:

I am writing on behalf of the American Short Line and Regional Railroad Association ("ASLRRRA") in connection with the above-captioned proceeding.

For the record, the ASLRRRA is a national trade association representing the interests of America's over 500 short line and regional railroads. Short line and regional railroads today operate many of the secondary routes and branch lines spun off by larger railroads. Collectively, the ASLRRRA's members operate almost 29% of the nation's railroad mileage and represent approximately 9% of the railroad industry's revenues. Many rural portions of this country depend exclusively on short line and regional railroads for their rail service needs. But ASLRRRA members also fill a vital transportation function providing local rail service for small shippers and by operating alternative routings for bridge traffic. The ASLRRRA aggressively represents the interests of its members, both in legislative matters before the Congress and in legal proceedings before federal agencies and in the courts.

The rail line which is the subject of this Modified Certificate proceeding was formerly owned and operated by the Staten Island Railway and the Rahway Valley Railroad, two class III short line railroads, and was abandoned by them in the early 1990's for lack of traffic. Subsequently, both lines were acquired by the State of New Jersey for the purpose of restoring service. The State arranged with Union County, NJ, to take responsibility for rehabilitating these lines and selecting a short line railroad to provide service over them. The County in turn selected Morristown & Erie Railway ("M&E") as its operator.

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The ASLRRA understands that the M&E filed a request with the Board back in June 2002 for a Modified Certificate of Public Convenience and Necessity and began to rehabilitate the lines for restoration of common carrier service. Some 18 months later after an unsuccessful effort to thwart service resumption in the New Jersey courts, five on-line communities filed this Petition, ostensibly asking the Board to impose environmental conditions and mitigation measures on service restoration.

The ASLRRA opposes the Five Municipalities' Petition because it would be contrary to STB and Congressional intent to preserve service over the sort of ultra light density rail trackage the modified certificate program was designed to protect. The Interstate Commerce Commission decision establishing the Modified Certificate Program stated:

"[T]he purpose of this proceeding is to facilitate the acquisition and operation of rail lines for which service by the current carrier will in all likelihood not be continued. This purpose fulfills our most fundamental congressional mandate: to ensure the development, coordination, and preservation of a transportation system." See, Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 136 (1980).

While the ASLRRA supports the STB's pro-environmental goals as reflected in its environmental permitting regulations, it notes that the level of service proposed here by the M&E (thrice weekly for the first two years, then five times per week) does not trigger the STB's jurisdiction. Granting the requested relief would be contrary to Congressional policy to preserve railroad branch lines as important transportation resource.

Wherefore, the ASLRRA requests that the Petition to Reopen filed by the Five Municipalities be denied.

Respectively yours.



Keith T. Borman
General Counsel

Cc: All parties

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