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March 22, 2004



Via Facsimile (202-565-9004) and US Mail

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

ENTERED
Office of Proceedings

MAR 22 2004

Part of
Public Record

Re: Finance Docket No. 34429
Petition of the New York City Economic Development Corporation,
Acting on Behalf of the City of New York, New York for Declaratory Order

Dear Secretary Williams,

Please accept this submission as a petition under 49 CFR 1117.1 for relief from procedural requirements under 49 CFR 1104 and as reply and comment on the letter of the New York City Economic Development Corporation (NYCEDC) dated February 19, 2004, which provided the Verified Reply of the New York City Economic Development Corporation in the above referenced matter.

Relief under 49 CFR 1117.1 is requested because the procedural requirements under 49 CFR 1104 would tend to limit participation by the general public without the expertise or resources to participate in the submission process. The participation of the general public in the above referenced docket remains essential because of the domination of the docket record by interrelated state and local governmental agencies and the consequential indirect effects of the proposed expansion of freight rail service throughout the northeastern North American Continent.

Notably, although page 2 of Exhibit B of the October 29, 2003 filing of the petition under Finance Docket No. 34429 indicates that there was "interim" ability to export containerized waste in "transfer trailers," the petition made no representations regarding the long term ability of the new transfer facility to continue export of containerized waste. In contrast, the petitioner's Verified Reply of February 19, 2004 states "The City has planned for and built a facility that can be served directly by rail or by truck." It would seem, therefore, that an indefinite ability of the facility to continue to transfer containerized waste by truck would have material bearing upon the urgency of the Board to render a decision in this matter regarding the petitioner's request for "EXPEDITED HANDLING."

In particular, the petitioner's reply appears to continue the proffer of a circuitous argument that no other governmental unit has authority over any rail operations, because all authority over rail operations resides within the Surface Transportation Board, while concurrently

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arguing that in the matters at hand, the Surface Transportation Board also has no authority over the proposed expansion of rail services. Quite frankly, the Board's concurrence with the petitioner's position would leave the efficiency of rail operations and public safety entirely in the hands of rail operators.

Clearly, the National Environmental Policy Act of 1969 (NEPA) was intended to protect environmental quality and historic and cultural resources in matters falling within the jurisdiction of federal governmental units. Given the pre-eminent authority of the Board over rail operations, any ruling by the Board that relieves a petitioner of Board scrutiny under NEPA, including the requirement for the preparation of an Environmental Impact Statement under 49 CFR 1105 would create the potential for significant environmental impact by obviating the need for any evaluation or mitigation of any detrimental effects of the cumulative effects of regional rail projects despite the fact that the United States Environmental Protection Agency (USEPA) has designated the affected areas of New York and New Jersey as nonattainment areas for ozone quality.

Although the petitioner's Verified Reply of February 19, 2004, contends that my concerns can be addressed within the ongoing scoping of the referenced Comprehensive Port Improvement Plan Environmental Impact Statement (CPIPEIS), there is no guarantee that the operations of the New York City Department of Sanitation at Fresh Kills Landfill, the operations of Visy Paper and the operations of Vanbro Corporation will be determined to be port operations and included within the scope of that Environmental Impact Statement. The Board, therefore, is the only agency with clear jurisdiction over the environmental impacts of cumulative increases in rail operations in the region.

In this regard, although the petitioner's original filing before the Board makes no estimation of the contribution of Visy Paper and Vanbro Corporation to train movements, page 14 of the petitioner's Verified Reply of February 19, 2004 states that "Visy Paper and Vanbro Corporation will also become important users of the railroad once reactivation occurs." Furthermore, despite the fact that page 10 of the petitioner's October 29, 2003 filing states that "The intended use of the New Track is for switching and for pick-up and delivery to and from the DSNY Transfer Station," the petitioner has made no representations about the ability of the Transfer Station to assemble railcars of trash containers that have been containerized in the other four boroughs of New York City and brought to the Fresh Kills facility for rail shipment or the number of trains that might emerge from the facility as a result of such transfers. In addition, although that same reference page notes "the significant expenditure of funds and effort that PANYNJ is undertaking to revitalize the Howland Hook facility" and "to construct the new Port Ivory facility adjacent to Howland Hook," no data was provided to document the effect of those plans on rail movements.

Notably, "Building a 21st Century Port," an undated publication of the Port Authority of New York and New Jersey, clearly states that Howland Hook was "Reopened in 1996 after a decade of inactivity" and that the "Port Authority, in cooperation with the City of New New York, is therefore proposing a phased development of up to 177 new acres of container-handling capacity at Howland Hook, along with new rail facilities and expanded warehousing." That document noted that anticipated new and expanded port facilities coming on line between 2000 and 2008 would total 687 acres, and that new and expanded terminal options for 2009 and

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beyond would exceed an additional 789 acres.

In addition, although page 17 of the petitioner's Verified Reply of February 19, 2004 states that "traffic moving from Staten Island to CSXT, NS or Conrail will not be moving across the former lines of the SIRR to the west of the New Jersey Turnpike unless or until either the Morristown & Erie or someone else reconstructs that connection," the *Union Leader* (Union, N.J.) published the results of an interview with Mr. Gordon Fuller, chief operating officer of the Morristown & Erie Railway Inc., on its front page of August 14, 2003 in an article entitled "State to determine improvements". That article, a copy of which is enclosed, clearly notes the ongoing plan to establish a rail link from Howland Hook Marine Terminal, across the Arthur Kill Lift Bridge, into Elizabeth, New Jersey, and through Linden, Roselle and Cranford to connect to the cross country line (the Lehigh Valley Railroad) or cross into Roselle Park to connect to the Rahway Valley Railway. The Rahway Valley would proceed through Kenilworth and Union, cross the major U.S. Route 22 highway at grade, proceed through Springfield to Summit and connect to the Erie Lackawanna at Summit. The link is characterized as "the beginning of the link from east coast sea ports to rail lines heading northwest." Concurrently, New Jersey Transit has made public announcements of plans to reactivate the Lackawanna Cutoff on the Erie Lackawanna in northwestern New Jersey. Notably, that reactivation would complete a rail freight linkage from Howland Hook to rail freight facilities at Scranton, Pennsylvania.

In addition the New Jersey Department of Transportation (NJDOT) has made public announcements of its plans to increase trackage on the Chemical Coast Line, at Oak Island Yard and on the Lehigh Valley Railroad from Edison to Bound Brook, New Jersey at a cost of \$50 million. In that regard, on June 26, 2003, a meeting attended by myself and approximately 250 people was held in the Municipal Council Chambers at Edison, New Jersey and was moderated by NJDOT officials including: Assistant Commissioner W. Dennis Keck, Director of Transportation Services Ted Matthews, Manager of the Bureau of Freight Services James Badgley and Manager of Community Services John Mytoff. Representatives from Norfolk Southern and CSX were also in attendance. According to the railroad representatives an average of 36 trains a day had been moving on the Lehigh Valley. The NJDOT representatives said that the \$50 million proposed for new track would improve "fluidity." The NJDOT representatives could or would not, however, make any estimations of the amount of increased traffic that would result from the expenditure of the \$50 million and the achievement of increased "fluidity," and would only say that any increases in train movements would be driven by the economy of New Jersey and the movement of trucks.

There simply cannot be any assurance that the cumulative effects of all the noted rail projects across the State of New Jersey can be adequately regulated within the scope of the ongoing CPIPEIS. I cannot find where any documentation of the anticipated cumulative increases in train movements has been placed before the Board, despite the fact that the affected areas of New York and New Jersey are clearly designated by the USEPA as nonattainment areas for federal ozone standards. Requiring documentation of these anticipated increases in train movements is clearly within the jurisdiction of the Board. The Board therefore needs to consider the ultimate consequence of accepting the petitioner's argument that the Board need exert no jurisdiction over the need for an Environmental Impact Statement that considers both the reactivation and extension of the Travis Branch of the Staten Island Railway and planned

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expansion of rail facilities, both in New York State and across the State of New Jersey, with regard to the safe and efficient operation of the regional rail system.

In the State of New Jersey, there are literally dozens and dozens of roadway crossings at grade that will be affected by increases in rail freight operations on the Staten Island Railway; the Rahway Valley Railway; the Erie Lackawanna, the New York, Susquehanna & Western; the Chemical Coast Line; the Reading System; the Lehigh Valley Railroad; and the West Trenton Line. The rail system was laid out over a century ago, when most of the grade crossings were through farm country, and of limited significance to motor vehicle movements. The authority of the Board is clear with regard to the ability of the Board to determine current conditions and the need for grade separation within the scope of the Board's Environmental Impact Statements pertaining to the expansion of rail facilities. The Board's order regarding Finance Docket No. 33407, the application of the Dakota, Minnesota & Eastern Railroad Corporation filed on February 20, 1998 is an example. The presumption that no expansion of rail service will ever have sufficient effect at grade crossings to require Board intervention is an invitation to disaster. In the matters at hand, the resumption of train crossings at grade on U.S. Route 22 in Union, New Jersey on the Rahway Valley Railway may be the ultimate embodiment of that disaster. I therefore beg that the Board consider the importance of its jurisdiction over a major expansion of rail operations on the northeastern North American Continent.

I herein certify that I have this day, March 22, 2004, transmitted this letter by first class mail and by facsimile at 202-565-9004 to the Surface Transportation Board as noted above and by first class mail to:

Charles A. Spitulnik, Esquire
McLEOD, WATKINSON & MILLER
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001

In addition, please correct the date incorrectly entered as "January 27, 2003" on my letter of January 27, 2004 to reflect the correct dating of "January 27, 2004."

Thank you for your kind attention to this matter.

Respectfully submitted,



Encl

State to determine improvements

By Steven Reilly
Staff Writer

Freight trains will be crossing Route 22 as early as next year, state officials said, once the Railway Valley and Staten Island Railroad lines are reactivated.

According to Mike Horan, a spokesman for the state Department of Transportation, diagnostic teams from the agency's Office of Railroad Engineering and Safety will assist Morrisstown & Erie Railway Inc. to determine what needs to be done to get the trains rolling across the busy state highway. M&E has been contracted by Union County to operate the short-line railroad.

The state team of engineers will be meeting with railroad officials to discuss all improvements to grade crossings along the two rail lines. The Route 22 crossing will be the only

improvements funded by the state, all other grade crossings will be the responsibility of the rail company and Union County, Horan said.

County officials have arranged a meeting on Aug. 25 at David Drearily High School on Monroe Avenue in Kenilworth to discuss the reactivation project. The meeting begins at 7 p.m. in the school's auditorium.

Union County Freeholder Chairman Deborah Scanlon of Union County did not return phone calls seeking comment.

Gordon Fuller, chief operating officer for M&E Railway said that reactivation work will be completed on the first phases of the project in six months and the second half of the project will begin after that.

The Route 22 crossing will be part of the second half of the reactivation project and will include improve-

ments to traffic flow, signals and sign placements around the grade crossing. Trains will enter the Township of Union at the border of Union and Kenilworth and cross Route 22 several hundred feet from the entrance to the Costco Wholesale Outlet and West Chestnut Street.

State officials said the Route 22 crossing will require substantial improvements that include warning devices, traffic signals and road work. "The diagnostic teams plan to look at everything to determine what improvements need to be done," Horan said.

State officials and engineers from M&E will meet next week to discuss improvements for the grade crossings in Linden and Roselle to get the first trains rolling by February.

According to the state, the rail lines will be reactivated with service beginning in the eastern section of the railroad first and work will continue west into Summit.

The Township of Union will be part of the rail line that will link M&E's Playhouse Terminal Facility in the Bayway petroleum and chemical refinery and storage facility to the Morris & Essex line in Summit.

M&E began operations in the Bayway refinery in 1995 when the railroad became the switch operator for the facility. M&E handles the terminal's 8,000 tanker cars dispatched per year, railroad officials said.

The state has also eliminated plans to demolish the rail trestle located at the intersection of Morris and Commerce avenues after officials from M&E proposed plans to reactivate a spur of the Railway Valley line which runs from the main line into Union along Commerce Avenue.

This spur passes by Hannah Caldwell Elementary School and terminates in the existing industrial park near Vauxhall Road. Several trucking companies including Federal Express and intermodal services have facilities in the park and nearby warehouses.

Mayor Brenda Restivo was unavailable for comment but committee members have said in the past that the township has a resolution on the books which was passed in 1995 that opposes the reactivation project.

However, Union, Cranford and Linden are the only municipalities that have not joined a lawsuit brought against the county by the five other municipalities affected by the rail line.



Photo By Kevin Kase Shayan

Motorists exit Route 22 west to access West Chestnut Street, just a few hundred feet before the railroad crossing for the currently inactive Railway Valley rail line.

ment with the rail company was finalized in May and work began shortly afterward to get the first trains into Cranford, the first link along the new railway.

When completed, the rail link will begin in the Howland Hook Marine Terminal located in Staten Island. The container terminal recently spent \$15 million to repair the bridge across the Arthur Kill which links Staten Island to Port Newark-Elizabeth. The new rail link will cross into Elizabeth at this bridge crossing.

The railroad will then travel through Linden and into Roselle. State and M&E engineers will begin work on these grade crossings in the next few weeks, officials said.

The rail line will then cross into Cranford and link to the Raritan Valley Line at the proposed Cranford Junction. Trains will then either travel to points west on the cross country rail line or cross into Roselle Park.

This crossing from Cranford into Roselle Park is planned to be under way by the end of this year, Fuller said, and represents the beginning of the link from east coast sea ports to the rail lines heading northwest.

County officials have said that the Railway Valley and Staten Island lines cannot be used to transport goods through the county. The short line rail can only be used if the final

destination is along the line within Union County, as per the agreement reached in May.

Once trains cross into Roselle Park they will travel into Kenilworth and then cross Route 22 into the Township of Union. Trains will roll past industrial parks near along Route 22 before splitting at the spur near Railway Avenue.

Trains will then either take the Commerce Avenue spur of the Railway Valley Line and head toward Vauxhall Road or continue on the main line.

The main line through Union crosses Liberty Avenue and rolls past the Autumn Ridge Condominiums currently under construction and through residential neighborhoods in the Battle Hill section of Union.

Trains will continue through several parks and residential areas before crossing into Springfield. Trains will cross Meisel and Mountain avenues before hitting Orchard Street in Summit.

Trains will then roll through several residential neighborhoods and parks before linking up to the cross country Erie Lackawanna Line just across from Broad Street, east of the New Jersey Transit Summit commuter rail station.

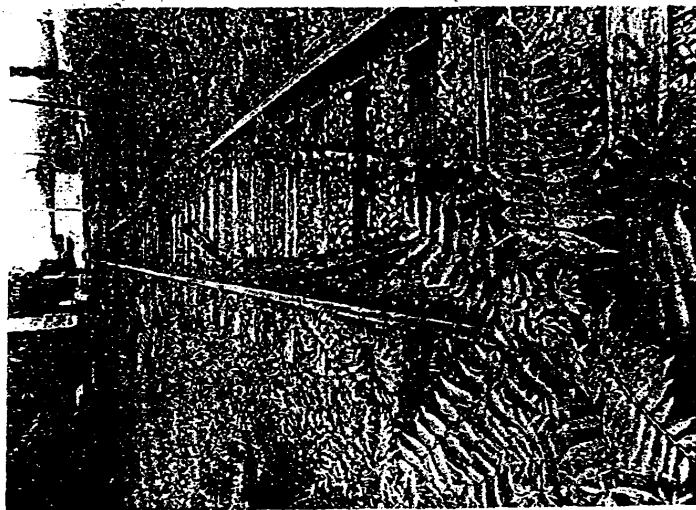


Photo By Kevin Kase Shayan

The tracks of the former Railway Valley rail line will be rehabilitated using state funds.