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FEDERAL EXPRESS

Vernon A. Williams, Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: In the Matter of Morristown & Erie Railway Company
Reply to Supplement to Petition of Five New Jersey Municipalities to Reopen
Finance Docket No. 34054

Dear Mr. Williams:

This firm represents the Respondent Morristown & Erie Railway Company of Morristown, New Jersey (M&E"). Enclosed please find for filing an original and ten copies of Reply to Supplement to Petition of Five New Jersey Municipalities to Reopen, which is filed in reply to petitioners' request to reopen its decision of July 5, 2002 granting a Modified Certificate of Public Convenience and Necessity to M & E., in the above captioned matter.

A disc with a copy of the Morristown & Erie's Reply to Supplement Petition is enclosed in Word Perfect format.

Also enclosed is one additional copy to be stamped filed and returned to me in the self-addressed stamped envelope enclosed. Your prompt attention to this matter is kindly appreciated.

Sincerely,

John K. Fiorilla

JKF/ii

Encl.

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BEFORE THE SURFACE TRANSPORTATION BOARD

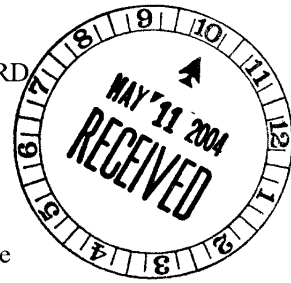
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Part of
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Finance Docket No. 34054

Morristown & Erie Railway, Inc. – Modified Certificate



MORRISTOWN & ERIE RAILWAY, INC.'S REPLY TO SUPPLEMENT TO
PETITION OF FIVE NEW JERSEY MUNICIPALITIES TO REOPEN

Respondent, Morristown & Erie Railway, Inc. ("M&E") hereby respectfully requests that the Board deny Petitioner's request to reopen its decision of July 5, 2002 granting a Modified Certificate of Public Convenience and Necessity to M&E. Respondent M&E contends that there are no changed circumstances that warrant reconsideration of the Board's decision in that M&E has satisfied all statutory and regulatory conditions for operation of the formerly abandoned Rahway Valley Railroad and Staten Island Railway and that the Supplement to the Petition recently filed by the petitioners contained NOT ONE NEW FACT or CONDITION which increases or in anyway changes M&E's powers under the Modified Certificate of Public Convenience. The Modified Certificate limits M&E to performing the specific services detailed in its Operating Agreement with the County of Union.

I. PETITIONERS HAVE FAILED TO ESTABLISH CHANGED
CIRCUMSTANCES

Petitioners allege, in essence, that the factual basis upon which the Board relied in their July 5, 2003 decision to grant a Modified Certificate to M&E pursuant to 49 CFR § 1150.21 et seq. has changed to warrant additional

consideration by the Board. Respondent M&E contend that Petitioner's contention is erroneous and misleading.

Petitioners' arguments rely on assumptions, which are not only premature but also speculative. None of their assumptions are based on the rights which M&E has been given by the Board and none of which are addressed or permitted in M&E's agreement with the County of Union upon which M&E's Modified Certificate to Operate is based.

First Petitioners allege that the authority granted by the Board to the Port Authority of New York and New Jersey (the Port Authority) in Finance Docket No. 34428 in a decision served on January 21, 2004 regarding the former Staten Island Railroad east of the New Jersey Turnpike, though it has nothing at all to do with the rights granted to M&E in its Modified Certificate which specifically begin west of the New Jersey Turnpike, might someday result in a connection with the former Staten Island Railroad across the New Jersey Turnpike. As the Port Authority's petition clearly indicates and as Petitioners admit in their Supplement, there is specifically no filing before the Board for such a connection. In addition M&E contends that even if some day the parties would want to make such a connection, M&E would have to return to the Board to have its current rights amended to include such additional trackage and interchange. At that time, if petitioners continue to oppose the connection, they would be fully heard prior to the granting of the amended certificate to M&E. Therefore, not only are

petitioners' comments on this possibility premature, they are speculative and should not be addressed by the Board at this time.

Second, petitioners note that the New York City Economic Development Corporation's (NYCEDC) petition for a Declaratory Order in Finance Docket No. 34426 to build a new track into a New York City municipal waste transfer facility at the Fresh Kills Landfill site in Staten Island, N.Y. could possibly someday be connected with the M&E's Modified Certificate over a bridge, which is constructed but not operational over the New Jersey Turnpike. Once again petitioners' demand for an environmental assessment of this connection is not only premature but also speculative. M&E currently has no Certificate permitting it to make the connection discussed by petitioners. Only a further decision of the Board upon petition by the owners and operators of such a service could effectuate such an operation.

II PETITIONERS SUPPLEMENT TO THEIR PETITION IS NOT PROVIDED FOR IN THE RULES OF PRACTICE AND ITS FILING, MORE THAN THREE MONTHS AFTER THE BOARD DECIDED THE ISSUES IN FINANCE DOCKET 34428 IS SO LATE AS TO CONSTITUTE LACHES

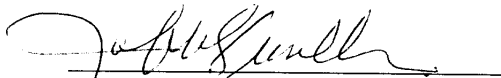
Finally, M&E notes that the Rules of Practice make no provision for the Supplemental filing of the petitioners in this matter. The Board should also note that just as its previous filing was long after M&E began construction of the line

of railroad pursuant to its Operating Agreement with Union County, in this filing, the petitioners waited over three months after the Board's decision in Finance Docket No. 34428 (which incidentally they clearly knew about but elected not to participate in) before attempting to cloud the issue further in this matter by making this filing to which laches should apply.

III CONCLUSION

For all the foregoing reasons, and the reasons presented in M&E's original Reply to the Petitioners' request to reopen, the Modified Certificate of M&E should be denied and its petition dismissed.

Respectfully Submitted,



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May 10, 2004

CERTIFICATE OF SERVICE
FINANCE DOCKET NO. 34054

I hereby certify that I have this date served a true copy of the foregoing document upon the persons indicated below by overnight mail:

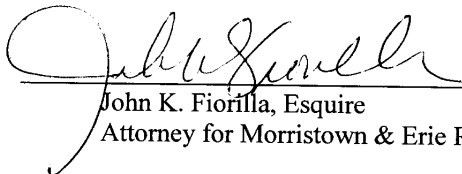
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