

211428

WILLIAM T. FIDURSKI  
32 HILLCREST DRIVE  
CLARK, NEW JERSEY 07066-2922  
TEL: 732-388-6293

June 21, 2004

JUN 25 2004  
RECEIVED

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

JUN 25 2004

Part of  
Public Record

Re: Finance Docket No. 34054  
Morristown & Erie Railway, Inc. – Modified Rail Certificate  
Comment on Reply of Union County, New Jersey filed May 11, 2004

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 comment on the Reply of Union County, New Jersey dated and filed May 11, 2004 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 is essential because of the domination of the docket record by governmental agencies and the consequential indirect effects of the proposed expansion of freight rail service throughout the northeastern North American Continent.

Page 7 of the above referenced Reply, refers to the April 29, 2004 filing of the New Jersey Municipalities of Springfield, Summit, Kenilworth, Roselle and Roselle Park as “premature and speculative” with regard to potential massive increases in freight and containerized solid waste movements on the lines affected under FD 34054. Contrary to Union County’s assertion in this matter, Union County’s original filing in this matter on June 5, 2002, at page 5, clearly states:

M&E shall interline freight with Consolidated Rail Corporation, Norfolk Southern Railway and CSX Transportation at Cranford, Bayway (Linden) and Bound Brook, New Jersey. M&E will be able to operate through service from the portions of the Staten Island Railway and Rahway Valley Railroad by utilizing its rights to operate over N.J. Transit at Cranford Junction, N.J.

Subsequent to the Board's initial decision in this matter, the Port Authority of New York and New Jersey, under FD 34428 filed on October 23, 2003, petitioned the Board for a Declaratory Order for the construction of connectors between the Staten Island Railway and the Chemical Coast Line; and the New York City Department of Economic Development, under FD 34429 filed on October 29, 2003, petitioned the Board for a Declaratory Order for the construction of additional facilities on the Staten Island Railway in Staten Island, New York. Even without the repair of the Staten Island Railway bridge over the New Jersey Turnpike at Linden, New Jersey, the combined effects of FD 34428 and FD 34429 would immediately place all rail shipments out of the Howland Hook/Port Ivory marine cargo terminals and all containerized garbage rail shipments out of the Fresh Kills Landfill facility, all on Staten Island, New York, onto Conrail Shared Assets with immediate access to Oak Island Yard, the Lehigh Valley Railroad, Cranford Junction, the Raritan Valley Rail Line, the Rahway Valley Railroad, and the westerly portion of the Staten Island Railway. New Jersey Transit plans to reactivate the Lackawanna Cutoff on the Erie-Lackawanna in New Jersey would allow the Rahway Valley Railroad to function as a connector between Staten Island and freight facilities at Scranton, Pennsylvania and subsequently to Class 1 rail carriers at Binghampton, New York.

In short, the short-term potential for massive expansion of service under the FD 34054 Modified Rail Certificate makes such certificate inappropriate under the potential conditions of service relative to legislative intent of 49 USC 10505 regarding the inapplicability of the modified certificate of public convenience and necessity under 49 CFR 1150.21 to the case at hand. Notably, *Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions*, 36 I.C.C. 132, 136 (1980), states:

In acquiring these lines the States may be contracting with new operators for service over lines which have proven uneconomical to operate. Service over these lines may be in danger of immediate termination. Requiring an application under 10901 to start up operations may result in temporary cessation of service to shippers. The new carriers may also be concerned with the necessity of continuing operations for months should another abandonment application be required. To require applications for the start up and termination of service over these lines serves no public purpose, is an unreasonable burden, and is not necessary to carry out the transportation policy....

The purpose of this proceeding is to facilitate the acquisition and operation of lines for which service by the current carrier will in all likelihood not be continued.

The above referenced I.C.C. ruling clearly reflects that the modified certificate was intended to protect shippers in situations in which "lines may be in danger of immediate termination" in order to avoid "temporary cessation of service to shippers."

As the I.C.C. ordered abandonment of service on the Rahway Valley Railroad and the Staten Island Railway over ten years ago and there is no danger of temporary cessation of service to shippers, the Board would be fully within its jurisdictional authority to require appropriate licensing and environmental review to assure that service could only be restored or created in a competitive, safe and efficient manner. I would therefore respectfully suggest to the Board that an EIS may well indicate that the ongoing and proposed expansions of rail services in New York and New Jersey will only interact with the rest of the surface transportation system in a competitive, safe and efficient manner, if the Board requires significant separation of road and rail traffic along the Rahway Valley Railroad and Staten Island Railway covered under FD 35054

Clearly, the legislative intent of NEPA requires a balancing the exigencies of public policy and business development and the essential need to protect environmental, historic and cultural resources. Notably, the interest in and/or ownership of rail and port facilities by the State of New Jersey and the State of New York and their various subdivisions and agencies creates the potential for conflicts of interest, which in the matter at hand would tend to create a prejudice in favor of economic development and the proliferation of rail facilities. Indeed, service expansion at any existing or future facilities would place additional freight loads on an aging, century-old rail system in New Jersey. Any additional loads will compete with commuter trains on shared portions of track at the Erie-Lackawanna and Raritan Valley Line and with motor vehicles at literally dozens and dozens of road crossings at street level throughout New Jersey. Specifically, the rail lines covered under FD 34054 cross at least 19 roadways at grade including a major interstate highway, U.S. Route 22 at Union, New Jersey, which is already notorious for its motor vehicle congestion. Under existing circumstances or under anticipated future scenarios of increasing traffic movements, automobiles and trucks will still have to carry the bulk of commuters and freight in New Jersey. The plans to allow the passage of additional freight trains will reduce the carrying capacity of roadways and create traffic delays on both road and commuter rail and consequential losses of productivity and increases in air pollution emissions from both trains and lines of waiting motor vehicles. Putting increased numbers of trains on the rail freight system in New Jersey has potential to shut down road movements across large areas of the state. On April 15, 2004 U. S. Environmental Protection Agency (USEPA) announcement that every county in New Jersey had failed to meet federal standards for ground level ozone, and that the State of New Jersey was in jeopardy of losing federal highway funding as a result. Under these circumstances, summarily adding additional freight trains onto the New Jersey rail system, without a full federal EIS, extensive traffic and pollution modeling and a workable air quality management plan, is reckless at best. Clearly, the conduct of an Environmental Impact Statement (EIS) under the requirements of NEPA would serve a valid public purpose in the adjudication of FD 34054.

I would therefore support a reopening of FD 34054 and the conduct of a full Environmental Impact Statement prior to the final issuance of any sort of operational license in this matter.

W.T.Fidurski/Surface Transportation Board, June 21, 2004, page 4 of 4.

I herein certify that I have this day, June 21, 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:

John D. Heffner, Esq.  
John D. Heffner, PLLC  
1920 N Street, N.W.  
Suite 800  
Washington, DC 20036

Scott N. Stone, Esq.  
Patton Boggs, LLP  
2550 M Street, N.W.  
Washington, DC 20037

John K. Fiorella, Esq.  
Watson, Stevens, Fiorella & Rutter, LLP  
390 George Street  
P.O. Box 1185  
New Brunswick, NJ 08903

Thank you for your kind attention to this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William T. Fidurski".