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November 15, 2004



VIA HAND DELIVERY

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

212548

**Re: Finance Docket No. 34040, Riverview Trenton Railroad Company –
Petition for Exemption**

Dear Secretary Williams:

Enclosed please find the original and ten copies of the Third Status Report of Riverview Trenton Railroad Company filed pursuant to Condition No. 7 of the Board's May 15, 2003 decision in the above-referenced proceeding.

Sincerely,

David H. Coburn

cc: All parties of record

WASHINGTON

PHOENIX

LOS ANGELES

LONDON

BRUSSELS

212548

**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, MI**

**THIRD STATUS REPORT OF
RIVERVIEW TRENTON RAILROAD COMPANY**

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Attorneys for Riverview Trenton
Railroad Company, Inc.

November 15, 2004

**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, MI**

**THIRD STATUS REPORT OF
RIVERVIEW TRENTON RAILROAD COMPANY**

Pursuant to Condition No. 7 of the Board's May 15, 2003 decision granting an exemption in this proceeding for Riverview Trenton Railroad Company ("RTRR") to acquire and operate a rail line in Wayne County, MI, RTRR submits this third six-month report on the status of its activities. That Condition requires RTRR to report to the Board "on its progress, satisfaction of environmental conditions, and, when operations commence, traffic levels." In this Report, RTRR will describe the steps it has taken in the previous several months toward the inauguration of rail service and the satisfaction of the relevant environmental conditions.

A. Progress Toward Inaugurating Rail Service

Petitions for judicial review of the Board's May 15, 2003 decision filed by the Local Government opponents of the rail line (County of Wayne and Cities of Trenton and Riverview) remain pending before the United States Court of Appeals for the Sixth Circuit.¹ In these

¹ No. 03-4174, *City of Riverview v. Surface Transportation Board, et al.*; No. 03-4198, *City of Trenton v. Surface Transportation Board, et al.*; No. 03-4206, *County of Wayne v. Surface Transportation Board, et al.*

judicial review proceedings, the Local Governments argue that the Board acted unlawfully, including in violation of the National Environmental Policy Act, in granting an exemption to RTRR allowing it to initiate rail service. RTRR has intervened in these proceedings and argued in support of the Board's actions. Briefing in these proceedings has been completed, and oral argument has been scheduled for December 9, 2004. Wayne County's attorney has requested a postponement in this oral argument date for personal reasons. RTRR has opposed that request on the grounds that any such postponement could possibly delay the argument date for months. The Court has not yet ruled on this matter.

RTRR currently anticipates that the Court will not issue a final ruling on the petitions for judicial review for at least several more months. While RTRR believes that the Court will affirm the Board's decision, uncertainty with respect to the status of the Board's decision will remain as long as the Local Governments continue to pursue judicial review. In view of that uncertainty, RTRR is constrained from investing significant capital toward the initiation of rail operations until the Sixth Circuit has ruled. Nonetheless, RTRR has continued to take measured steps in furtherance of its rail plans.

In recent months, RTRR has entered a contract with a party for clearing debris off of the RTRR rail track. This clearing operation is a necessary pre-condition to the rehabilitation of the track. RTRR has discussed plans for rehabilitation of the track at some length with officials of a firm likely to be retained to undertake such rehabilitation once the pending judicial appeals are at an end. Further, RTRR has also engaged in discussions with a shortline railroad operating in the Detroit area concerning a plan under which that shortline railroad might provide operational support and motive equipment to RTRR for the conduct of RTRR's rail operations.

RTRR has also met with Conrail officials in the Detroit area regarding a re-opening of the physical connection at the south end of the RTRR line between its line and the line operated by the Conrail Detroit Shared Assets Operator. At that meeting, the parties discussed the current state of the switch and track in the area. They also apportioned various responsibilities between themselves with respect to certain required inspections, and agreed to further discuss an interchange agreement.

RTRR, and its affiliated logistics management firm have had continued discussions with prospective users of the line, both in the Detroit area and outside the area. While these discussions have been fruitful, RTRR is not in a position to move toward formal arrangements with prospective shippers or other parties until judicial review of the Board's order is completed.

B. Progress in Implementing Environmental Conditions

As RTRR has previously reported, most of the environmental conditions imposed by the Board's May 15 Decision are operative only either during the stage that construction is underway or after rail operations have commenced. See environmental Condition No. 1 (notification of emergency responders in advance of using the north end grade crossing); No. 3 (consultation with various agencies and implementation of best practices prior to initiation of construction); No. 4 (compliance with certain local laws concerning environmental matters to the extent that they do not interfere with RTRR's ability to go forward); No. 5 (use of berms and landscaping to minimize noise from operations) and No. 6 (restrictions on hours of operation). Since RTRR has not yet begun the rehabilitation of its line or construction of its yard area, these conditions are not yet triggered.

RTRR continues to comply with the Due Care Plan that is referenced in Condition No. 2 of the Board's decision by managing the property consistent with the requirements of that Plan.

That Plan, found at Appendix C of the Environmental Assessment, is designed to protect public health and natural resources.

Finally, in furtherance of Condition No. 8, RTRR has recently appointed Wendy L. Smith as its new community liaison, replacing Mickey Blashfield, who has held this position until now. Ms. Smith's phone number is 586 939-7000, ext 2769. A notice of this appointment is being provided to local officials as required by that Condition.

Respectfully submitted,



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Attorneys for Riverview Trenton
Railroad Company, Inc.

November 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2004, a copy of this Third Status Report of Riverview Trenton Railroad Company was served upon all parties of record by first class mail, postage prepaid.


David H. Coburn