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November 15, 2005

VIA HAND DELIVERY

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

ENTERED
Office of Proceedings

NOV 15, 2005

Part of
Public Record



**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 Fifth 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
Attorney for Riverview Trenton
Railroad Company

cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

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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**

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

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November 15, 2005

**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**

**FIFTH 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 fifth report on the status of its activities over the past six months. That Condition requires RTRR to report to the Board every six months "on its progress, satisfaction of environmental conditions, and, when operations commence, traffic levels." In this Report, RTRR will describe the steps it has taken over the last six months, and additional steps that it will be taking, toward the inauguration of rail service and the satisfaction of the relevant environmental conditions.

A. Progress Toward Inaugurating Rail Service

As RTRR reported in its May 16, 2005 Status Report, 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) were denied by the United States Court of Appeals for the Sixth Circuit by decision issued February 10, 2005.¹

RTRR has continued to work diligently toward the end of initiating track rehabilitation efforts so that rail service can commence. As discussed further below, RTRR is pursuing efforts on various fronts toward this end, but has encountered some matters that have impeded its progress.

With respect to the connection at the south end of its line, on July 29, 2005, RTRR entered into a switch maintenance agreement with Canadian National Railway Company, and has made a payment to CN to provide for the continued maintenance of that switch. RTRR and CN have also discussed the need for the preparation of an appropriate agreement for the handling of traffic through that switch at such time as RTRR commences rail service.

With the assistance of knowledgeable rail consultants, RTRR also undertook, on June 29, 2005, a thorough inspection of the track that constitutes its line, including the portion of its line on the property of the adjacent landowner, Detroit Steel Company (DSC).² (RTRR has an easement over a portion of the DSC property allowing RTRR to operate its line on that property.) The inspection included a video recording of the entire line, including GPS location marking. During this inspection, RTRR identified various track deficiencies on portions of its line, including portions on the DSC property, that will need to be remedied during the rehabilitation

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.* As reported previously, all litigation over the Board's decision has now come to an end.

² RTRR's inspection was delayed somewhat as a result of DSC's resistance to allowing RTRR representatives on to the DSC property to conduct this inspection. This impediment was eventually overcome.

process. The deficiencies include broken and bent rails, as well as ties and ballast that need replacement at certain points.

In regard to the status of the track, it bears note that DSC has initiated demolition of the old McLouth steel mill on the DSC property and that this demolition work involves continual heavy truck and tracked vehicle activity across the track over which RTRR has an easement to operate. Due to on-going damage to the track being experienced as a result of this demolition-related traffic, rendering the track unserviceable, rehabilitation work on the DSC section of track being crossed by that traffic cannot commence until DSC's demolition work is completed. Completion of the demolition in the area adjacent to the easement is expected in the next several months.

Initiation of the rehabilitation of RTRR's track is dependent on the restoration to operative condition of the connection with the Grand Trunk Western, and the at-grade crossing of Jefferson Avenue, at the north end of the RTRR property. That connection is needed in order to bring in the materials and machinery needed for that rehabilitation to commence. The north end connection provides direct access to the RTRR property, where equipment needed for track rehabilitation can be staged and supplies stored (in contrast to the south end connection, which connects to the portion of RTRR's line on the DSC property). Further, by opening the north end connection, RTRR may be able to initiate limited operations sooner as the track and roadbed on the north end of the RTRR line is now in a better state of repair than the portion of the line on the DSC property.

In connection with investigating the condition of the RTRR track to determine steps needed to restore it to operational condition, RTRR has also identified certain portions of the land on its property at the north end connection as being sufficiently caustic to have caused

unusually extensive deterioration of ties. This area also has a persistent presence of water. Neither the source of the water nor the cause of the high pH has been identified at this time. The combination of these factors has led to some question as to whether the area on is sufficiently stable at this time to support train operations. An inspection of the ties on RTRR's property in this area has also indicated that they will need to be replaced with new tie materials that RTRR's consultants have advised can withstand the caustic conditions in the area. It is not known whether the conditions in the area are naturally occurring, are the result of historical fill or, at least in part, are the result of some new water source or other factor.

RTRR has thus requested that its environmental consulting firm (TMH Environmental, LLC) prepare a plan of action to address these issues.³ RTRR received a report from this firm on September 16, 2005 regarding its plans to ascertain the source of the water in the area, which could be a leaking water main or sewer line. RTRR is currently in the process of retaining an environmental remediation firm to undertake digging on the RTRR property in the area and to otherwise investigate possible sources of persistent water in order to identify the source of the water and then take such actions as may be necessary to resolve the wet and caustic conditions so that the land near this connection can be stabilized to allow rail operations to be sustained.

Before such digging can occur, the existing RTRR track in the area of the connection will need to be removed. RTRR accordingly hired the Alfonsi Railroad Construction Co. ("Alfonsi") on November 10, 2005 to provide for the removal of the track proximate to the north end connection on the RTRR property so that this remediation work can proceed and track then re-laid. While the track removal can be completed relatively quickly, it is unknown at this time exactly how long the subsequent remediation work to resolve the water problem at the north end

³ RTRR has initiated communications with DSC concerning financial responsibility for the clean-up costs at the north end connection. RTRR is awaiting a response.

of the RTRR line will last as that will depend on the level of effort needed to resolve the water problem and perform any cleanup that may be required. However, RTRR does not believe that this will be a prolonged process.

Once the north end connection is reopened, RTRR intends to commence (as weather permits) track rehabilitation work along the entire line, beginning at the northern end of its line and moving south from there for the length of the line. As described in its prior report, RTRR will acquire and install new rails (as required) and any additional track materials needed, such as turnouts to facilitate switching within the property. RTRR will also acquire and spread appropriate ballast material, level and tamp the track, and profile the ballast for best drainage.

At an October 25, 2005 meeting, scheduled at RTRR's initiative, between RTRR officials and the City Manager and outside counsel for the City of Riverview, RTRR advised the City officials of its plans to investigate the persistent water and caustic conditions problem at the north end connection and then reopen the at-grade crossing of Jefferson Avenue. That crossing is entirely within the city limits of Riverview. Once the opening of the crossing to rail traffic is closer to fruition, RTRR will work with local emergency services providers to develop notification procedures as required by the STB's conditions. It was also agreed at that meeting that RTRR would maintain an ongoing dialogue with Riverview regarding issues such as landscaping, emergency services on site and general construction and environmental matters.

Turning to business developments, RTRR's management consultant has now completed an updated study of business opportunities for the RTRR line and RTRR's planned terminal facility. That business plan study, which remains under review by RTRR management, suggests several opportunities available to RTRR. In developing and refining the business plan, the

consultant has had discussions with all of the Class I railroads in the area in order to develop plans that would be compatible with the operations of those railroads.

As reported previously, RTRR anticipates working with established shortline operators in the Detroit region, which would provide operational support and motive equipment to RTRR for the conduct of RTRR's rail operations.

B. Progress in Implementing Environmental Conditions

Despite the contentions made repeatedly by the City of Riverview (including in its September 27, 2005 filing), most of the environmental conditions imposed by the Board's May 15 Decision are by their terms not yet operative. 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 during development of the site with certain local laws concerning environmental matters to the extent that they do not interfere with RTRR's ability to go forward with its rail project); No. 5 (use of berms and landscaping to minimize noise from rail/intermodal operations) and No. 6 (restrictions on hours of operation of the railroad and intermodal yard). RTRR will comply with these conditions at such point as its obligations are triggered.

In its September 27, 2005 filing, the City of Riverview reiterates its previously expressed concerns about the stacking of containers on the RTRR property. RTRR believes that its practices in this regard are safe and consistent with industry practices.

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.⁴

Respectfully submitted,



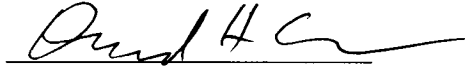
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⁴ DSC has various responsibilities under the Due Care Plan. RTRR's efforts to ensure that DSC applies its assets to meet its obligations under the Plan are continuing. Specifically, RTRR is pursuing an appeal from a decision of a Bankruptcy Court dismissing the petition that RTRR had previously filed to force DSC into involuntary bankruptcy.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2005, a copy of this Fifth Status Report of Riverview Trenton Railroad Company was served upon all parties of record by first class mail, postage prepaid.

A handwritten signature in black ink, appearing to read "David H. Coburn", written over a horizontal line.

David H. Coburn