

36082  
CO

SERVICE DATE – AUGUST 5, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34734

NORTHEAST INTERCHANGE RAILWAY, LLC  
– LEASE AND OPERATION EXEMPTION –  
LINE IN CROTON-ON-HUDSON, NY

STB Finance Docket No. 34735<sup>1</sup>

GORDON REGER  
– CONTINUANCE IN CONTROL EXEMPTION –  
NORTHEAST INTERCHANGE RAILWAY, LLC

Decided: August 5, 2005

By notice filed on August 1, 2005, Northeast Interchange Railway, LLC (NIR), a noncarrier, invoked the summary class exemption procedure at 49 CFR 1150.31 to lease and to operate, as a common carrier by railroad, approximately 1,600 feet of track that connects with CSX Transportation, Inc. (CSXT), at approximately milepost QC 35, in Croton-on-Hudson, NY. The track is owned by Greentree Realty, Inc. (Greentree), a noncarrier, and is under lease to Metro Enviro Transfer, LLC (Metro), a wholly owned subsidiary of Allied Waste North America, Inc. (Allied). NIR has reached an agreement to acquire Metro from Allied, including Metro's rights under its lease with Greentree. Under the class exemption procedures, the exemption would ordinarily go into effect on August 8, 2005.

NIR states that it will initially provide rail transportation service for the transloading of construction and demolition waste and other materials over the 1,600 feet of track. The firm plans to install, at an unspecified date, additional trackage on the property to serve other traffic, such as intermodal, lumber, brick, road salt, steel, and bulk liquid shipments. NIR expects to enter into an interchange agreement with CSXT for the interchange of traffic.

NIR asserts that the trackage was constructed "in approximately 1997" and has been used by Metro to switch cars to and from track owned by CSXT at milepost QC 35. According to NIR, Metro has been transloading construction and demolition debris at the site from trucks to rail cars for shipment by railroad to disposal sites and has operated under license from the New

---

<sup>1</sup> These proceedings are not consolidated but are being considered in the same decision for administrative convenience.

York State Department of Environmental Conservation (NYSDEC). The town of Croton-on-Hudson, however, has declined to renew a zoning permit for such use, and the town's position has been upheld by the New York Court of Appeals.<sup>2</sup> According to NIR, the town has ordered Metro to discontinue its transloading of construction and demolition waste. By supplement e-filed on August 3, 2005, NIR clarifies that it intends to transfer the Metro license issued by NYSDEC to NIR and that it "intends to operate the facility in full compliance with the license and other applicable regulations of NYSDEC notwithstanding the fact that the license requirements and regulations are arguably preempted by 49 U.S.C. 10501."

NIR is wholly owned by Regus Industries, LLC, which is in turn controlled by Gordon Reger (Reger). Reger owns a controlling interest in the New York Cross Harbor Railroad Corporation (NYCH), a Class III rail carrier. To allow his common control of NYCH and NIR if NIR becomes a licensed railroad common carrier, Reger has concurrently filed a notice of exemption in Gordon Reger – Continuance in Control Exemption – Northeast Interchange Railway, LLC, STB Finance Docket No. 34735. That exemption would also ordinarily go into effect, under the class exemption procedures, on August 8, 2005. In this notice, Reger asserts that businesses that he controls transport various commodities by rail, including construction, demolition, and other solid wastes.

On August 4, 2005, the Village of Croton-on-Hudson (Village) filed a petition to reject the notice in STB Finance Docket No. 34734, or, alternatively, to stay its effectiveness. The Village argues that: (1) the notice is void ab initio for containing false, misleading and inadequate information; (2) the Board has no authority over the track because it is exempt spur track; and (3) the activity in which NIR would be engaging is not subject to Board jurisdiction because it is not rail transportation by a rail carrier, but merely continuation of the same waste processing activities by a different entity.

The operations of the Metro waste transfer facility have been the subject of extensive litigation, including the decision by the State's highest court that Croton-on-Hudson could deny renewal of Metro's special use zoning permit. The operations involve the transloading of waste materials and have generated substantial local interest. The transaction proposed by NIR would attempt to convert what apparently were private carrier operations subject to state and local regulation into for-hire common carrier service, triggering the agency's primary jurisdiction and raising important issues regarding the potential preemption of the proposed service from many aspects of local control. The Village has raised issues that should be addressed by the Board before the exemption is allowed to become effective.

In light of the objections raised by the Village and the important issues raised by these filings, the Board will enter a housekeeping stay of both notices to provide sufficient time to resolve the issues presented here. NIR will be given 10 days to reply to the Village's petition.

---

<sup>2</sup> Metro Enviro Transfer, LLC v. Vill. of Croton-on-Hudson, \_\_\_ N.E.2d \_\_\_, available at 2005 WL 1556709 (N.Y. 2005).

The stay will remain in effect and the exemptions sought under the notices will not become effective until further order of the Board.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The notices in STB Finance Docket Nos. 34734 and 34735 are stayed and the exemptions sought under the notices will not become effective until further order of the Board.
2. NIR's reply to the Village's petition is due by August 15, 2005.
3. This decision is effective on its date of service.

By the Board, Roger Nober, Chairman.

Vernon A. Williams  
Secretary