

38152  
EB

SERVICE DATE – NOVEMBER 30, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34040

RIVERVIEW TRENTON RAILROAD COMPANY – PETITION FOR EXEMPTION FROM 49 U.S.C. 10901 TO ACQUIRE AND OPERATE A RAIL LINE IN WAYNE COUNTY, MI

Decided: November 28, 2007

We are denying the petition of the City of Riverview (the City) to revoke the exemption authorizing the Riverview Trenton Railroad Company (RTR) to acquire and to operate the line of railroad at issue in this proceeding.

BACKGROUND

In a decision served May 15, 2003, the Board authorized RTR to acquire, and to operate as a railroad common carrier over, about 1.5 miles of track on the site of a former steel mill located in the towns of Riverview and Trenton in Wayne County, MI.<sup>1</sup> Specifically, the exemption allowed RTR to begin rail service over: (1) 1.5 miles of track on its own property, a 76-acre parcel that RTR purchased from its noncarrier parent;<sup>2</sup> and (2) connecting track under easement within an adjacent 195.45-acre industrial site owned by the Detroit Steel Center, Ltd. (DSC).<sup>3</sup> RTR's track connects at two points with track owned by major railroads: (1) at the south end of the property, there is a grade-separated connecting track passing over Jefferson Avenue, which was formerly used to serve the industrial site; and (2) at the north end of the property, there is a paved-over street level connecting track crossing Jefferson Avenue, which would require reconstruction to become operable. In opposition to RTR's petition, the City and

---

<sup>1</sup> See Riverview Trenton Railroad Company – Petition for Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI, STB Finance Docket No. 34040 (STB served May 15, 2003) (May 2003 Decision), reconsideration denied (STB served Aug. 27, 2003), aff'd, City of Riverview v. Surface Transp. Bd., 398 F.3d 434 (6th Cir. 2005).

<sup>2</sup> RTR's parent, Crown Enterprises, Inc., is a real estate development subsidiary of CenTra, Inc., a holding company that owns several transportation companies, including a trucking company.

<sup>3</sup> RTR had originally hoped to serve DSC's adjacent plant as well as to provide intermodal service. However, DSC's plant is no longer operational, and DSC is attempting to sell its remaining steel operations in the Detroit area.

other local interests argued that RTR was not committed to beginning rail service and was seeking Board authority only to circumvent local efforts to eliminate industrial use of the property.

In the May 2003 Decision, the Board found that what RTR proposed was a legitimate rail transportation service that would meet a public need. Accordingly, the Board authorized RTR's proposed acquisition and rail operations, subject to environmental conditions. To allay the concerns expressed by the local communities, the Board also imposed a 3-year reporting and monitoring condition. Pursuant to this reporting and monitoring condition, RTR submitted 6 reports. Each report by RTR was followed by a reply from the City questioning RTR's progress and commitment toward resuming rail service. The reporting condition has expired by its own terms.

By petition filed on March 22, 2007, the City asks us to revoke RTR's exemption. The City alleges that RTR's efforts to begin rail service have been inadequate. The City also maintains that RTR's failure to commence rail service and its use of the property for storage of containers has created a nuisance to nearby property owners and violations of the environmental conditions imposed by the Board. Attached to the City's petition are photographs that allegedly illustrate nuisance conditions on the property.

On May 9, 2007, RTR filed a reply in opposition to the City's petition to revoke. RTR details the steps that it has taken to restore rail service. According to RTR, it has done all it can reasonably be expected to do to restore rail service but has been impeded by, among other circumstances beyond its control, a recent decline in economic activity in the Detroit area and the entire state of Michigan that has eroded for the moment the demand for rail service of the sort RTR will provide. RTR asserts that, when the local economy revives, it will be "positioned to make rapid progress in completing the facility when economic opportunities arise."<sup>4</sup> RTR also maintains that the site is not experiencing significant environmental problems, that the property is in no worse condition than other nearby industrial properties, that the site is still zoned for industrial uses, that the site is not being used for container storage, and that the City still lacks concrete plans to condemn the property for alternate uses in the event that its petition to revoke were granted.

By decision served June 20, 2007, we instituted a proceeding to consider the issues raised.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502(d), the Board may revoke an exemption, in whole or in part, if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. The Board can also revoke an exemption, if necessary, to protect the integrity of its processes. Minnesota Comm. Ry., Inc.—Trackage Exemp.—BN RR. Co., 8 I.C.C.2d 31 (1991). The party seeking revocation has the burden of proof and must provide reasonable, specific concerns to

---

<sup>4</sup> RTR's reply filed on May 9, 2007, at 13.

demonstrate that revocation is warranted. I&M Rail Link LLC—Acquisition and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998). The City has not shown on this record that revocation is necessary at this time to carry out the rail transportation policy of 49 U.S.C. 10101 or to protect the integrity of our processes.

In its decision authorizing the exemption, the Board found that the exemption would further the development of a rail transportation system that meets the needs of the public [§ 10101(4)], promote competition and reasonable rates [§§ 10101(1), (4), (5), (6), and (12)], minimize the need for federal regulatory control [§ 10101(2)], reduce regulatory barriers to entry [§ 10101(7)], and promote energy conservation [§ 10101(14)] without significantly affecting the quality of the human environment. In determining whether to revoke the exemption, we must decide whether circumstances have changed sufficiently to warrant our finding that regulation of the transaction is necessary to further these provisions of the rail transportation policy, or that the transaction should be revisited because RTR is not following through on the representations that it made regarding the development of rail service on the property. See May 2003 Decision, at 13.

RTR's Progress. The crux of the City's petition to revoke is that RTR has not yet completed track rehabilitation or begun operating its rail line and that therefore RTR has no intention to provide rail service and its authorization to do so should thus be revoked. However, the City has made no attempt to show that the Detroit area no longer needs the kind of service that RTR plans to provide, or that RTR could not provide that service. Nor has the City shown that RTR is no longer committed to providing rail service. RTR's progress has been slower than anticipated. But the record here indicates that circumstances beyond RTR's control – primarily weakness in the area's economy due to problems in the local auto industry – have impeded RTR's progress in implementing this project.<sup>5</sup> Furthermore, the steps taken to date by RTR to restore rail service support its claim that it remains committed to instituting the proposed rail service.<sup>6</sup> RTR's actions to date are not inconsistent with its proposed use of the property for rail

---

<sup>5</sup> Delay has also resulted because: (1) judicial review was not completed until February 2005 (see supra note 1); (2) the State did not grant permission to reopen the northern Jefferson Avenue crossing until early 2006; (3) work on the easement track could not proceed until DSC completed demolition work on its property sometime after RTR filed its sixth status report in May 2006; and (4) the Wayne County Department of Public Services has asked RTR to refrain from track installation work, possibly until September 2008, to keep it from interfering with nearby road and bridge work.

<sup>6</sup> In addition to incurring the costs of property acquisition and legal proceedings, RTR has taken the following steps to restore rail service: (1) in early 2004, it engaged Transdevelopment Corp. to study track condition and rehabilitation costs; (2) in late 2004, it began cleaning slag, coal, and ballast from tracks to allow assessment of their condition; (3) it hired TMH Environmental, LLC to address a problem with water leakage and caustic contamination; (4) it obtained permission from the State to reopen the northern Jefferson Avenue street-level crossing and removed nearby track in preparation for this reopening; (5) it prevailed  
(continued . . .)

service. Therefore, there is no basis at this time for us to reverse our prior finding that the service proposed by RTR is a legitimate transportation service that would help to meet the rail transportation needs of the Detroit area.

Environmental Issues. During the exemption proceeding, the Board's Section of Environmental Analysis conducted an extensive environmental review and recommended various environmental conditions to mitigate the environmental effects of RTR's rail operations and intermodal facility, all of which the Board imposed. We find no merit in the City's allegation that the exemption should be revoked because RTR has failed to comply with the Board's environmental conditions. Most of the environmental conditions imposed by the Board do not even become operative until RTR begins its rail operations.<sup>7</sup> And the City has failed to give us reason to question RTR's compliance with the remaining ones.<sup>8</sup> While the City argues that the property is not as well maintained as the City would like and has produced photographs to show the current state of portions of RTR's property, the City has failed to show that the condition of the property is not comparable to that of other nearby industrial properties. Moreover, the City does not dispute RTR's assertion that it has been maintaining the property in a manner consistent with all applicable health and safety requirements, including the City's own property maintenance regulations.

In sum, the City has not met its burden of showing that RTR's exemption should be revoked at this time. Should circumstances warrant in the future, opponents could file another petition to revoke this exemption or a request for adverse abandonment authority.

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

---

( . . . continued)

upon DSC to rehabilitate the easement track that DSC damaged by its demolition of buildings on the easement property; (6) it entered into an agreement with the Canadian National Railway Company for maintenance of the southern Jefferson Avenue overpass crossing; and (7) held initial discussions with officials of other railroads. See RTR Reply filed May 9, 2007, at 10-11, and V.S. Thomas Christ; Sixth Status Report of RTR filed May 15, 2006.

<sup>7</sup> See: conditions 1 (notification of emergency responders before using the northern end grade crossing); 3 (consultation and implementation of best practices before initiation of construction); 4 (compliance during site development with certain local environmental laws to the extent that this does not interfere with RTR's ability to proceed with its project); 5 (use of berms and vegetation to minimize noise generated by the intermodal facility); and 6 (restriction on hours of operation). May 2003 Decision, at 13-14.

<sup>8</sup> RTR has complied with conditions 7 (filing of status reports) and 8 (appointment of a community liaison) (see RTR Reply filed May 9, 2007, V.S. Thomas Christ, at 10), and the City does not allege that RTR has failed to comply with condition 2 (compliance with the comprehensive Due Care Plan, appearing in Appendix C of the Environmental Assessment, to protect health and natural resources during development of the site).

It is ordered:

1. The City's petition to revoke the exemption is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary