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SERVICE DATE – NOVEMBER 27, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34267

MORRISTOWN & ERIE RAILWAY, INC.–OPERATION EXEMPTION–SOMERSET  
TERMINAL RAILROAD CORPORATION

PETITION FOR STAY

Decided: November 26, 2002

On November 20, 2002, Morristown & Erie Railway, Inc. (M&E), a Class III rail carrier, filed an amended verified notice of exemption<sup>1</sup> to operate over approximately 1.25 miles of rail line located in the Township of Bridgewater and the Borough of Manville, Somerset County, NJ, that is part of a rail line known as the Reading Company New York Branch (also known as the Raritan Valley Connecting Track), and identified as Line Code 0326, between milepost 57.25 at Manville Yard and milepost 58.50 at a junction with New Jersey Transit's commuter line. The notice indicates that M&E proposes to obtain rights from Somerset Terminal Railroad Corporation (STRC), a Class III rail carrier, to operate over this line of railroad that is owned by Joseph C. Horner. By letters filed on October 17, 2002, November 20, 2002, and November 26, 2002, Standard Terminal Railroad of New Jersey, Incorporated (Standard) alleges that STRC does not actually possess the rights it seeks to assign to M&E and requests that the exemption be stayed.<sup>2</sup> According to Standard, the question of whether or not STRC currently possesses the rights it wishes to assign will be decided by the United States Bankruptcy Court.<sup>3</sup>

DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a

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<sup>1</sup> M&E originally tendered a notice of exemption for filing on October 7, 2002, but additional and corrected information was subsequently submitted on November 20, 2002.

<sup>2</sup> Under 49 CFR 1150.42(b), the exemption becomes effective on November 27, 2002 (7 days after the amended notice was filed).

<sup>3</sup> In the Matter of Bridgewater Resources, Inc., No. 00-60057 (WHG) (D.N.J.).

stay would be in the public interest. Washington Metropolitan Area Transit Comm.v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977), and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). The party seeking stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

The request for stay will be denied. Standard has not shown that it would be irreparably harmed in the absence of a stay. M&E states in its notice that consummation of the transaction is contingent upon a court finding that STRC possesses the rights it wishes to assign to M&E. The effectiveness of the exemption invoked by M&E in this proceeding does not constitute any finding by the Board concerning the ownership of the property involved. The exemption permits M&E and STRC to consummate the described transaction if and when they, in fact, have the legal capacity to do so. The exemption, therefore, will have no immediate or demonstrated adverse effect on Standard. Moreover, it is not clear on the record submitted to the Board that Standard will prevail on the merits concerning the ownership of the property involved in the transaction. The issues concerning ownership will be decided by the bankruptcy court or other courts on the basis of a more complete record than the Board has before it now.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary