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SEC

SERVICE DATE – JUNE 20, 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: June 19, 2007

In a prior decision in this docket, the Board granted the petition of the Riverview Trenton Railroad Company (RTR) for an exemption to acquire, and to operate as a new railroad common carrier, private industrial track located in the towns of Riverview and Trenton in Wayne County, MI.¹ 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; and (2) connecting track under easement within an adjacent 195.45-acre industrial site owned by the Detroit Steel Center Ltd. In opposition to RTR's petition, the City of Riverview (the City) and other local interests argued that RTR was not committed to beginning rail service and was invoking the Board's preemptive federal jurisdiction only to circumvent local efforts to eliminate industrial use of the property.

In its May 15, 2003 decision granting the exemption, the Board imposed environmental conditions and the following reporting and monitoring condition:

7. To ensure that we are kept aware of RTR's progress in implementing its project, RTR shall report to the Board every 6 months, beginning 6 months after the service date of this decision, on its progress, satisfaction of environmental conditions, and, when operations commence, traffic levels. These reports will be required for 3 years. This reporting will allow the Board to take appropriate action in the event that RTR does not follow through on the representations it has made regarding the development of rail service on this property.

¹ 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, and, on reconsideration, Aug. 27, 2003), aff'd, City of Riverview v. Surface Transp. Bd., 398 F.3d 434 (6th Cir. 2005).

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.

By petition filed on March 22, 2007, under 49 U.S.C. 10502(d), the City asks the Board 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 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 the City's petition to revoke its exemption. 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 unable to do so due to reasons beyond its control, the most important of which has been a recent decline in Detroit's auto industry. RTR 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, and that the City still lacks concrete plans to condemn the property for alternate uses in the event that its petition is granted.

The City's petition for revocation and RTR's reply raise issues that require consideration by the Board. Pursuant to 49 U.S.C. 10502(d), the Board must determine whether to begin a proceeding within 90 days of the filing of a petition for exemption. A decision must then be issued within 9 months of the date when the proceeding is formally instituted. The 90th day in this proceeding is June 20, 2007. In compliance with the statute, this order will be issued, and a proceeding will be formally instituted.

The Board will not provide for the submission of additional evidence unless a need for it becomes clear as the proceeding progresses.

It is ordered:

1. Under 49 U.S.C. 10502(d), a proceeding is instituted to consider the issues raised in this proceeding.
2. The proceeding will be completed by March 20, 2008.

3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary