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SEC

SERVICE DATE – JANUARY 8, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34429

THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION–PETITION FOR
DECLARATORY ORDER

Decided: January 7, 2004

On December 10, 2003, the Board served and published in the Federal Register (68 FR 68968-69) a notice instituting a declaratory order proceeding and requesting comments on a petition by the New York City Economic Development Corporation (NYCEDC), acting on behalf of the City of New York, NY (City), for an order confirming that: (1) pursuant to 49 U.S.C. 10906, its proposal to add track to, and rehabilitate, the end of the Travis Branch of the Staten Island Railroad is construction of spur or switching track that does not require Board approval; and (2) under 49 U.S.C. 10501(b)(2) and 10901, federal law preempts the State of New York and the City from requiring permits or other prior approval with respect to that proposed construction. The Board requested interested persons to file written comments concerning NYCEDC's petition by January 9, 2004, with replies due on January 29, 2004.

On January 2, 2004, the New Jersey Department of Environmental Protection (NJDEP) filed a letter requesting a 3-week extension of the comment period until January 30, 2004. NJDEP states that, in view of the recently concluded holiday season, it has not been possible for NJDEP officials to meet with either representatives of NYCEDC or the New York State Department of Environmental Conservation (NYSDEC) in an attempt to better clarify or narrow the significant issues raised by the petition. NJDEP further states that it intends to discuss the issues arising out of NYCEDC's petition with those agencies in the immediate future and will then be able to determine what position, if any, it might take on this matter and whether its participation would be helpful to the Board. NJDEP claims that current time restraints will not permit it to hold the above discussions and to develop and present any comments that may be necessary.

On January 6, 2004, NYSDEC filed a letter supporting and joining in NJDEP's extension request. NYSDEC indicates that it shares NJDEP's serious concerns about the proposal and adds that the holiday season also affected its ability to prepare comments by the January 9, 2004 deadline. NYSDEC indicates that, while it will still make every attempt to submit by that time comments to the petition, the parties and the proceeding would be better served if additional time were provided.

Also on January 6, 2004, NYCEDC filed a reply to the extension request. NYCEDC states it believes that such an extension is unnecessary because, in its view, both NJDEP and NYSDEC have had ample time to respond to the issues raised in the petition – particularly NYSDEC because that agency was fully informed by NYCEDC of the issues raised in the petition even prior to its filing. However, NYCEDC further states that, notwithstanding its need for expedited consideration of this matter, and in an attempt to accommodate the concerns of NJDEP and NYSDEC, NYCEDC would not object to an extension of 10 days to the comment period.

On January 7, 2004, NJDEP filed a petition for leave to file a reply to NYCEDC's reply, accompanied by that reply. In the interests of compiling a complete record on the extension request, NJDEP's petition will be granted and the reply to NYCEDC's reply will be considered. Therein, NJDEP asserts that a 3-week extension of the comment period in this matter is both necessary and appropriate in view of the complex and significant issues raised in the declaratory order request.

The request for a 3-week extension of the due date for the filing of comments is reasonable and will be granted. Replies will be due 20 days thereafter.

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

It is ordered:

1. NJDEP's petition for leave to file a reply to a reply is granted and the reply to reply will be considered.
2. The extension request is granted.
3. The due date for comments to the petition is extended until January 30, 2004. Replies will be due on February 19, 2004.
4. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary