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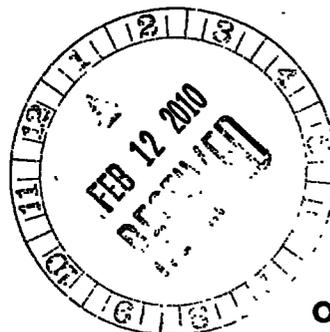
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February 12, 2010

BY HAND DELIVERY

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001



ENTERED  
Office of Proceedings  
FEB 12 2010  
Part of  
Public Record

Re: STB Finance Docket No. 35299, Borough of Riverdale -- Petition for Declaratory Order and Stay

Dear Ms. Brown:

On September 21, 2009, the Borough of Riverdale (“Borough”) filed a petition for declaratory order and stay in the above-captioned matter. On October 7, 2009, The New York, Susquehanna and Western Railway Corporation (“NYS&W”) filed a reply opposing both the Borough’s request that the Board initiate a declaratory order proceeding and the Borough’s request for a stay. NYS&W noted that the issues presented by the Borough’s petition were under the active jurisdiction and consideration of the Superior Court of New Jersey in *Borough of Riverdale v. New York Susquehanna and Western Railway Corporation*, Docket No. MRS-L-2297-96, and that the Court had not requested any assistance from the Board in resolving those issues. Indeed, the Court had ruled against the Borough both on the substantive preemption issues presented under the ICC Termination Act and on the Borough’s request for a stay pending the Borough’s effort to initiate a declaratory order proceeding at the Board.

The purpose of this letter is to advise the Board that by Order dated February 8, 2010, the Court has determined that NYS&W may immediately begin brick transload operations at NYS&W’s facility in Riverdale. A copy of that Order is attached. Thus, aside from the Board’s longstanding policy of avoiding interference with judicial proceedings, there is no longer any case or controversy for the Board to decide. The Borough’s petition should be dismissed.

Sincerely yours,

Robert M. Jenkins III

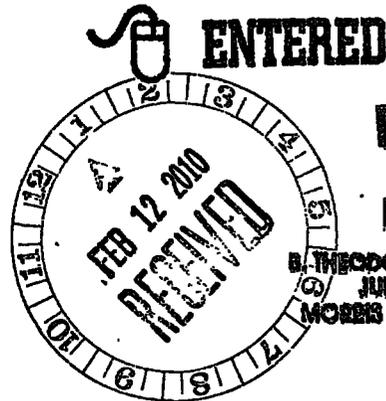
**Mayer Brown LLP**

**Cynthia T. Brown**  
**February 12, 2010**  
**Page 2**

**cc: John M Barbarula**  
**Nathan R. Fenno**  
**John K. Fiorilla**  
**Robert H. Oostdyke, Jr.**

**RMJ/bs**

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 The New York, Susquehanna & Western Railway Corporation



**FILED**

FEB 08 2010

B. THEODORE BOZONELIS, A.J.C.  
 JUDGE'S CHAMBERS  
 MORRIS COUNTY COURTHOUSE

Borough of Riverdale	:	
	:	SUPERIOR COURT OF NEW
Plaintiff,	:	JERSEY
	:	LAW DIVISION
vs.	:	MORRIS COUNTY
	:	
The New York, Susquehanna and	:	
Western Railway Corporation, a New	:	DOCKET NO. MRS-L-2297-96
Jersey Corporation	:	
	:	<b>ORDER</b>
Defendant.	:	
	:	

This matter having been opened to the court by John K. Fiorilla, Esq., of Capehart & Scatchard, P.A., attorneys for defendant, The New York, Susquehanna and Western Railway Corporation ("NYSW"), and John M. Barbarula, Esq. appearing for the Borough of Riverdale Planning Board and Robert H. Oostdyk of the firm of Johnson, Murphy, Hubner, McKeon, Wubbenhorst, Bucco and Appelt,

PC appearing for the Borough of Riverdale and argument having been heard on January 20, 2010, the Court finds as follows:

1. The Resolution of the Planning Board of the Borough Riverdale not approving the utilization of the railroad's site for a brick transload facility is hereby REVERSED and, subject to the conditions contained in paragraph 2 of this order, the defendant Railroad may begin utilization of its Riverdale facility upon entry of the within order.

2. The defendant Railroad may utilize the facility with the following conditions all of which are found at page 95-100 of the transcript of the November 5, 2009 hearing before the Riverdale Planning Board:

a. Defendant Railroad will transload brick Monday thru Friday between the hours of 7:00 AM to 4:00 PM. The Defendant will also occasionally operate the facility on Saturday as business requires. The Defendant agrees it will not load trucks at the facility on Sundays. The parties understand that trains will continue to operate to and thru this facility 7 days a week, 24 hours a day.

b. Defendant Railroad will from time to time load trucks the evening before they leave the facility. These trucks will not idle after they are loaded and parked at the site. Two trucks may remain on the site overnight.

c. Defendant Railroad expects to have a minimum of two full time employees during the hours of operation at the site when it is operating. One would be a supervisor but both could operate fork lift trucks. Additional staffing will be determined by the Defendant Railroad.

d. Defendant Railroad will provide a dispatch telephone number which can be used 24/7 for emergencies. The municipality will also be given information regarding the Supervisor's contact information.

e. Defendant Railroad will coordinate with the Riverdale Fire Department regarding access to the facility in case of an emergency.

f. Defendant Railroad agrees to stack brick no higher than nine (9) feet throughout the entire site. In addition, the Railroad will post signs in the facility stating that stacking of brick shall be no more than nine (9) feet high.

g. Defendant Railroad agrees to repair the portions of the macadam driveway and pavement which are currently in need of repair in the facility as per the Borough Engineer's recommendations and in accordance with the site plan.

h. Defendant Railroad will, upon the written request of the Board, extend the wooden fencing along the facility to Post Lane and repair and replace the existing fence that the Borough Engineer determined is unsafe, or in need of repairs, to maintain the continuity of the fence.

i. Defendant Railroad will replace dead landscaping and restore the landscaping as noted on the original site plan for the facility.

j. Defendant Railroad will clearly mark "Loading Zones" on the ground in the facility.

k. Defendant Railroad will mark brick storage areas on the ground in the facility.

l. Defendant Railroad agrees to have its engineer confer with the Borough's engineer regarding the safety of stacking brick on a sloping area in the approximate vicinity of Munn Avenue. Until the engineers can agree on how high brick should be stacked in that area, the Railroad would stack brick only one pallet high.

m. Defendant Railroad would use low sulfur fuel in the fork lifts if the fork lifts can accommodate such fuel.

n. All storage of fuel on the premises will be in compliance with current fire regulations for the storage of fuel and the Borough will be notified of where the fuel would be stored.

3. The Defendant Railroad will appear before the Riverdale Planning Board in the ordinary course of hearings after it has submitted within ninety (90)

days of the signing of this order further information to the Board and the Board's professionals regarding the following issues:

- a. A contingency plan for an emergency caused by the breaching of the water line under the facility.
- b. Specific information regarding the type and storage of fuel for the forklifts and its location on the site.
- c. Specific information regarding the fork lifts to be used i.e. specifications.
- d. Specific references to state laws and or regulations regarding the idling of vehicles on the premises which the Defendant Railroad assets apply to the facility.
- e. Railroad will also provide to the Board, the numbers of trucks and railcars that potentially will use the facility, the length of time of storage of the brick and related issues caused by the storage, such as dust control and stack management.

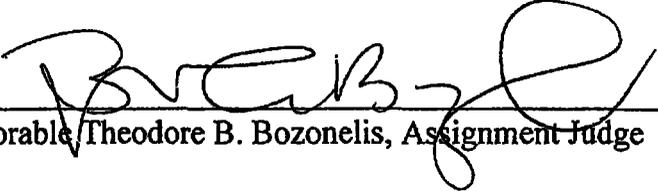
4. The Borough Planning Board shall not have the authority to stop or deny the railroad from operating the facility as a result of any of the information or lack of information provided at the hearing mentioned in paragraph 3 above, nor shall the scheduling of the hearing in anyway prevent the railroad from beginning its operation at the site after the signing of this order. In the event of a dispute

between the parties, the Court, having retained jurisdiction, shall determine what further actions, if any, will be required.

IT IS ON THIS 8<sup>th</sup> DAY OF February January, 2010,

**ORDERED** that

1. The Defendant Railroad may begin operations of this brick transload facility in the Borough of Riverdale subject to the conditions in paragraph 2 above forthwith.
2. That the Defendant Railroad will provide within ninety (90) days of the signing of this order, the information detailed in paragraph 3 above to the Riverdale Planning Board . The Board shall after receiving the required information, conduct a public hearing to review the Railroad's submissions.
3. All consent orders between the parties in this action shall remain in full force and effect.
4. The Court retains jurisdiction of this matter.

  
\_\_\_\_\_  
Honorable Theodore B. Bozonelis, Assignment Judge