

STATEMENT OF AMY ZIEHM
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STB Finance Docket No. 34054
MORRISTOWN & ERIE RAILWAY, INC – MODIFIED RAIL CERTIFICATE

Good Morning Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

The decision submitted for your consideration involves a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, pursuant to which Morristown & Erie Railway, Inc. (Morristown & Erie) obtained the right to operate certain rail lines in New Jersey formerly owned and operated by the Staten Island Railway and the Rahway Valley Railroad. The modified certificate became effective upon its filing on June 5, 2002. Notice was served and published in the Federal Register on July 5, 2002.

The lines at issue here were abandoned in 1991 and 1992. The New Jersey Department of Transportation acquired the lines in 1994, and conferred upon Union County responsibility for rehabilitating the lines and reestablishing rail service. The County selected Morristown & Erie as its Class III short line railroad operator and signed an operating agreement with Morristown & Erie on May 9, 2002.

On January 2, 2004, five New Jersey municipalities filed a petition to reopen the Board's July 2002 decision, alleging changed circumstances. Petitioners claim that the County breached a commitment to them that Morristown & Erie would not implement its operating agreement without the written concurrence of the County, which would not be given without the express consent of the municipalities. Petitioners state that, because they relied on this promise, they did not previously raise their environmental and safety concerns regarding reactivation of these rail lines before the Board. Petitioners ask the Board to reopen to permit a thorough environmental review and the imposition of appropriate mitigation measures.

The County and Morristown & Erie oppose the petition to reopen. They argue that the Board has no role to play in the parties' dispute, which is simply a breach of promise claim. They also argue that environmental review would be inappropriate in this proceeding.

The draft decision before you denies the petition to reopen on grounds that none of the criteria for reopening has been met here. Whether the County had any legal obligation to the municipalities is a private contractual dispute, which is properly resolved in state court. In fact, the record shows that petitioners have already pursued their breach of promise claim against the County and Morristown & Erie in New Jersey Superior Court and were denied relief. Additionally, the draft finds that environmental review would not be appropriate in this proceeding because the proposed level of service, three round-trip trains per week, falls well below the threshold warranting environmental review under 49 CFR 1105.7(e). The draft does, however, inform petitioners that, should they desire to have their concerns addressed, they may avail themselves of a community outreach procedure contained in respondents' operating agreement.

We would be happy to address any questions you might have.

Thank you.