

City of Riverview Attorney Randall Pentiuik's September 14, 2006 letter to the U.S. Surface Transportation Board

217581

PENTIUK, COUVREUR & KOBILJAK

PROFESSIONAL CORPORATION
Attorneys and Counselors at Law
www.pck-law.com

RANDALL A. PENTIUK*
JOSEPH G. COUVREUR
KURT M. KOBILJAK
KERRY L. MORGAN**
MICHAEL P. HURLEY
JAYSON J. HALL
CRIGHTON D. GALLUP
APRIL E. KNOX

* ALSO ADMITTED TO PRACTICE
IN THE DISTRICT OF COLUMBIA
** ALSO ADMITTED TO PRACTICE IN VIRGINIA
- OF COUNSEL TO THE FIRM

EDLSON BUILDING, SUITE 100
245 BIDDLE AVENUE
WYANDOTTE, MICHIGAN 48192

TELEPHONE: (313) 281-7000
FACSIMILE: (313) 281-7100
EMAIL: firm@pck-law.com

September 14, 2006

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001




Re: Finance Docket No. 34040, Riverview Trenton Railroad Company -
Petition for Exemption

Dear Secretary Williams:

Enclosed please find the original and ten copies of the City of Riverview's First Supplemental Reply to Sixth Status Report of Riverview Trenton Railroad Company in connection with the above-referenced matter.

Thank you for your courtesies in this matter. Should you have questions regarding the foregoing, please contact the undersigned.

Very truly yours,

Randall A. Pentiuik
City Attorney
City of Riverview

RAP:klz
Enclosures
cc: David H. Coburn, Esq. (w/encl.)
Z:\4-8-2006\RYRW\JT\DS\Property\Links\STB.wpd

ENTERED
City of Proceedings
SEP 20 2006
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34040

CITY OF RIVERVIEW'S
FIRST SUPPLEMENTAL REPLY TO SIXTH STATUS REPORT
OF RIVERVIEW TRENTON RAILROAD COMPANY

ENTERED
Office of Proceedings
SEP 13 2005
Part of
Public Record

NOW COMES the City of Riverview ("Riverview"), and upon review of the "Sixth Status Report of Riverview Trenton Railroad Company", provides the following first supplemental reply:

RTRR SETS FORTH A TIME LINE FOR THE REPAIR
AND RE-OPENING OF THE RAIL AT THE NORTH END
CROSSING AT JEFFERSON AVENUE BUT CONTINUES TO FAIL
TO SET FORTH A TIME LINE FOR THE START OF RAIL
OPERATIONS FOR THE ENTIRE LINE, INCLUDING THE SOUTH END

As set forth in the City of Riverview's last filing, RTRR can no longer rely upon its bedrock excuse that petitions for judicial review of the Board's May 15, 2003, decision were delaying the start of rail operations. Now, over nineteen (19) months after the Sixth Circuit Court of Appeals affirmed the Board's ruling, RTRR has still not begun rail operations.

RTRR reports that it has *finally* gotten steps underway toward initiating progress toward the rehabilitation of the track at the north end crossing of Jefferson Avenue and that MDOT has granted its request to reestablish the crossing. MDOT has established a 24 month deadline from the date of the Order for all items listed in the "Ordered Items" section of the Diagnostic Study Team Review Crossing Evaluation Report (attached to RTRR's Sixth Status Report) to be completed.

However, RTRR continues to blame DSC's demolition of McLouth Steel for its failure to begin work on the rehabilitation of the south end of the track. In addition, RTRR contends that it does not intend to commence track rehabilitation work along the entire line, beginning at the

northern end of its line and moving south from there for the length of the line until the north end connection is reopened. The north end connection is not scheduled to be reopened for at least two years. What is the reason for waiting so long? RTRR gives no reason.

Furthermore, RTRR still hasn't done anything regarding issues such as landscaping, emergency services on site and general construction and environmental matters but continues to state that it will maintain an ongoing dialogue with nearby communities. The City of Riverview is not aware of any such dialogue.

As far as business developments are concerned, RTRR continues to *anticipate* working with shortline operators in the Detroit region. RTRR continues to be remiss in providing specifics.

More than nineteen (19) months have passed, and the only area RTRR has managed to make any progress in is the north-end crossing at Jefferson Avenue which is at least two years away. Further, it doesn't plan on getting any other rehabilitation work underway and will have no timetable for opening the facility and operating the rail line until *after* the reopening of the north-end crossing. This has the potential to go on indefinitely.

RTRR CONTINUES ITS NON-COMPLIANCE WITH BOARD MANDATED ENVIRONMENTAL CONDITIONS

As stated in the City of Riverview's supplemental response to RTRR's second status report, rail operations are the only aspect of RTRR's intermodal facility which has experienced any delay in the initiation of operations. RTRR continues to use the RTRR site to house and stack shipping containers and there is heavy truck volume at the site. RTRR has stated that it "believes that its practices in this regard are safe and consistent with industry practices." (RTRR's Fifth Status Report, pg. 6). Again, RTRR offers no specifics and does not refute the City of Riverview's

contention that RTRR invoked STB jurisdiction for the primary purpose of usurping local governmental regulation and, given the indefinite time period in which RTRR intends to take to repair the track from the north-end to the south-end, RTRR may have no intention to conduct rail operations on the site.

Further, RTRR continues to maintain that the majority of the environmental conditions prescribed by the Board are yet to be triggered. This position ignores the fact that many of the conditions were designed to reduce the adverse effects on the community stemming from all operations at the site, not just rail operations. There is a good deal of heavy truck traffic at the facility, yet RTRR has still refused to use landscaping such as berms and vegetation, as appropriate, to minimize noise as required. Perhaps this would also serve to minimize the unsightly appearance of the facility.

On August 14, 2006, and August 22, 2006, the City of Riverview obtained pictures of the site on which RTRR is located. A map of the Riverview/Trenton Railroad Property, August, 2006, as well as copies of 46 photographs of the site are attached hereto under tab 1. The photographs are numbered 1 through 46 to correspond with the map. As shown by all 46 pictures, the property upon which RTRR is located is unsightly. The vegetation is overgrown throughout the site and is even growing through the fence. (Pictures 1-46). There are holes in portions of the fence and the fence is rusted to the point where the fence is falling. (Pictures 14-17, 27, 29, 30, 32 and 40-44). There is all manner of debris on the site. (Pictures 5, 24-31, 36, 41-44, and 46). There is a swamp on site which is overgrown with tall weeds and debris. (Pictures 7 and 43-46). There are broken down trailers being stored at the site, some of which are left open and are an open invitation to people such as vagrants and children, as well as wild vermin, to come on to the site. (Pictures 2-4, 6, 11, 16-17,

* * *