

BEFORE THE SURFACE TRANSPORTATION BOARD

308913

STB Docket No. FD 36575

ENTERED
Office of Proceedings
November 18, 2024
Part of
Public Record

**TOWNLIN RAIL TERMINAL, LLC
CONSTRUCTION AND OPERATION OF A LINE OF RAILROAD
IN SUFFOLK COUNTY, NY**

PETITION FOR RECONSIDERATION

My name is John Kenavan [Petitioner] and pursuant to 49 C.F.R. §§ 1115.1 et seq., I submit this Petition for Reconsideration of the Surface Transportation Board's Decision of August 14, 2024 which authorized Townline Rail Terminal to construct and operate a new rail line in the Town of Smithtown, Suffolk County, New York.

STATEMENT OF FACTS

I have been a homeowner and a resident of Kings Park for 26 years. I reside with my wife on Glen Lane. We have raised two children in Kings Park and have four grandchildren who are at our house multiple days a week. We are located 75 yards from the proposed Townline Rail yard. I am a retired Design Engineering Manager from L-3 Harris. I am an active volunteer fireman with 47 years of service. I have been closely following STB Docket No. FD 36575 since early 2023.

HISTORY

By petition filed November 17, 2022, Townline Rail Terminal, an affiliate of CarlsonCorp, sought an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate a new rail line in Smithtown, Suffolk County, New York. The line would extend approximately 5,000 feet on a portion of CarlsonCorp's industrial property and would run parallel to the Long Island Railroad Port Jefferson Line.

On January 12, 2023, the Board instituted a proceeding under 49 U.S.C. 10502. The Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (Draft EA) on January 5, 2024. After considering the comments received in response to the Draft EA, the OEA issued a Final Environmental Assessment on June 7, 2024.

On April 4, 2023, Townline Association, Inc., a community group of local residents and property owners, moved to dismiss the petition for exemption, arguing that the Board lacks jurisdiction over the project, or in the alternative, that the project is not appropriate for the exemption process. The Board's November 15, 2023 denied that motion.

On July 18, 2024, Townline Association filed a petition with the Board seeking a Supplemental Environmental Assessment or an Environmental Impact Statement, requesting that the OEA take a second hard look at potential impacts of the project on groundwater.

On August 14, 2024, the Board granted Townline Rail's petition for an exemption under 49 U.S.C. 10502 and denied Townline Association's petition seeking a supplemental environmental review.

F I L E D

FEE RECEIVED

STANDARD OF REVIEW

Pursuant to 49 C.F.R. § 1115.3(a), a discretionary appeal of a Board action is permitted and should be designated a “petition for reconsideration.” The petition will be granted only on a showing of one or more of the following points: (1) the prior action will be affected materially because of new evidence or changed circumstances; and (2) the prior action involves material error.

ARGUMENT

Townline Association argued in its Supplemental Evidentiary Filing to its April 4, 2023 Motion to Dismiss that Townline Rail will not be a rail carrier and therefore the Petition for Exemption should be dismissed.

The May 3, 2023 filing by Townline Association argued that public statements made by Townline Rail regarding the transportation of hazardous materials and service to local shippers indicates that it does not intend to fulfill its common carrier obligation and therefore would not be a rail carrier. (Pages 1-2)

On May 16, 2023, Townline Rail filed a response **VERIFYING Townline Rail understands that once it exercises the Board’s authority to construct and operate as a common carrier, it will have a common carrier obligation to provide rail service upon reasonable request.** (Page 6)

Townline Association’s Motion To Dismiss was ultimately denied by the Board on November 15, 2023. The Board held, with respect to this argument, the following:

- Townline Rail has sought authority to construct and operate the Line as a rail carrier and has repeatedly stated that **it would offer common carrier rail service to the public for compensation.** (Pet., V.S. Carlson 2-3 (stating that Townline will offer rail service to a variety of customers); Townline Reply 13 (stating that Townline will hold itself out as a common carrier.) (Page 4 - November 15, 2023 STB Decision)
- **Townline Rail states that it would offer common carrier rail service to the public, that those services would be separate from the transloading services offered by CarlsonCorp,** and that Townline would bill rail customers independently from any contracts that CarlsonCorp may have with its customers. (Page 4- November 15, 2023 STB Decision)
- **Townline also acknowledges that, as a common carrier, it would be obligated to transport hazardous materials on reasonable request.** (Townline Resp. 4- 6.) (Page 5- November 15, 2023 STB Decision)
- **Townline reiterates its understanding that, as a rail carrier, it would be obligated to provide service on reasonable request.** (Townline Resp. 6.) (Page 5- November 15, 2023 STB Decision)

Furthermore, in Townline Rail’s Petition, dated November 17, 2022, **Townline Rail VERIFIES, “It is willing to accept a common carrier obligation and to ‘hold out’ to provide rail service to the public at large.”** (Page 7) Note also in a slide show titled *Townline Rail Terminal, LLC* presented at Townline Rail/CarlsonCorp’s initial meeting with the OEA, the former wrote customers included lumber yards and car dealerships.

The above is not, however, what Townline Rail’s attorneys, the same ones that represent the LLC in the STB filings, are saying now.

In letter to the editor in the *Smithtown News*, Townline Rail's attorney, Justin Marks is saying that Townline Rail will never have to accept for transport hazardous material because the proposed track is landlocked. (Attached below)

"The Townline Rail common carrier line will not have its own land along the proposed track - it is landlocked. On one side of the common carrier line will be the Long Island Railroad Port Jefferson track and on the other will be Carlson Corp property regulated by state and local authorities. Because the common carrier rail line will be landlocked, the only way for transloading to occur will be through the proposed non-carrier transloading facility. Further, no land exists along the Townline Rail common carrier line for a neighboring company to construct an industrial track. And even if land did exist, that theoretical company would need local approvals to build its industrial track."

In a letter of response, Townline Association's attorney, Daniel Elliot points out that this means only the waste that enters Mr. Carlson's transloading facility can move by rail as there is no other access or egress points on this railroad line.

Mr. Marks has repeatedly in his filings stated the railroad will transport hazardous materials pursuant to its common carrier obligation. Now, he claims that scenario is impossible because it is landlocked. Therefore, all of the claims that it will hold itself out to provide rail service to the community are based on a fiction as it cannot do so based on Mr. Marks's latest description of the situation.

Townline Rail sought, and was granted, authority to construct and operate the Line as a rail carrier and that it would offer common carrier rail service to the public for compensation. Now it is saying this service cannot exist because the only way to move any commodities is through its proposed waste transload facility.

As Mr. Elliot explains, "The way Townline Rail will operate appears to depend on who it is talking to at the time. It will move hazardous materials and any other rail traffic if it is talking to the STB. It will be impossible for it to move hazardous materials or any other freight because it is landlocked."

This new revelation is material and flies in the face of what the Board relied on and stated in its decision to Townline Association's Motion to Dismiss. Townline Association argued for a dismissal based on the fact that Townline Rail will not be a rail carrier. The Board found that the latter repeatedly agreed to offer common carrier rail service to the public, and that those services would be separate from the transloading services offered by CarlsonCorp.

It appears that Townline Rail and CarlsonCorp are willfully trying to create a situation wherein Townline Rail cannot act as a common carrier. If it is allowed to deliberately landlock its line and avoid the obligations that comes with being a common carrier, then every railroad that does not want to accept and ship hazardous materials will do the same thing.

CONCLUSION

For the reasons stated in this Petition, and in light of Townline Rail's inability to hold itself out as a common carrier, the undersigned petitioner respectfully requests that the Board grant its Petition for Reconsideration pursuant to 49 C.F.R. §§ 1115.1 et seq.

Respectfully Submitted



John Kenavan
34 Glen Lane,
Kings Park, New York
11754

November 18, 2024

CERTIFICATE OF SERVICE

I certify that I have, on this 18th day of November 2024, served by the most efficient means copies of the foregoing document on all parties of record.

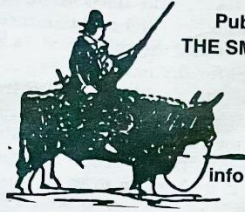


John Kenavan

ATTACHMENTS

The Smithtown News

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Railyard rebuttal...

Editor, The NEWS:

Mr. Elliott's October 3, 2024, letter to the editor on behalf of the Townline Association as its attorney reveals what may simply be a misunderstanding by Mr. Elliott and the Townline Association of the Townline Rail common carrier line. Mr. Elliott states, that the "railroad obviously has land next to its proposed rail track where [a] simple transfer [of hazardous materials] could take place." This statement is incorrect.

The Townline Rail common carrier line will not have its own land along the proposed track - it is landlocked. On one side of the common carrier line will be the Long Island Railroad Port Jefferson track and on the other will be Carlson Corp property regulated by state and local authorities. Because the common carrier rail line will be landlocked, the only way for transloading to occur will be through the proposed non-carrier transloading facility. Further, no land exists along the Townline Rail common carrier line for a neighboring company to construct an industrial track. And even if land did exist, that theoretical company would need local approvals to

build its industrial track.

Since Townline Association's concerns over hazardous materials appear to rest on a misunderstanding of the Townline Rail project, we hope that this explanation eases those concerns.

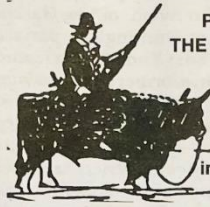
Justin Marks
Washington D.C.

(Editor's Note: Mr. Marks is the railroad counsel for Townline Rail Terminal, LLC, which is proposing to build a rail yard in Kings Park.)

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Railing...

Editor, The NEWS:

In Mr. Marks's October 17, 2024 "Railyard Rebuttal" on behalf of Mr. Carlson, he states that the Townline Association misunderstands the situation at hand. He asserts that "Townline Rail will not have its own land along the proposed track - it is landlocked... Because it is landlocked, the only way for transloading to occur will be through the proposed noncarrier transloading facility." In other words, only the waste that enters Mr. Carlson's trans-loading facility can be moved by rail as there are no other access or egress points on this railroad line.

As a result, Mr. Marks argues that the Townline Association's concerns about the movement of hazardous materials is based on a misunderstanding of the project. However, this supposed misunderstanding is based on the words of Mr. Marks in his filings that the railroad will transport hazardous materials pursuant to its common carrier obligation. Now, he claims that scenario is impossible because it is landlocked. Therefore, all of its claims that it will hold itself out to provide rail service to the community are based on a fiction as it cannot do so based on Mr. Marks's latest description of the situation.

The way Townline Rail will operate appears to depend on who it is talking to at the time. It will move hazardous materials and any other rail traffic if it is talking to the STB. It will be impossible for it to move hazardous materials or any other freight because it is landlocked if it is talking to the local community. So, what is it?

Daniel Elliot

Railroad Counsel for Townline Association

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