

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36575

TOWNLIN RAIL TERMINAL, LLC—
CONSTRUCTION AND OPERATION EXEMPTION—IN SUFFOLK COUNTY, N.Y.

Digest:¹ This decision authorizes Townline Rail Terminal, LLC, to construct and operate a new rail line in Smithtown, Suffolk County, N.Y., subject to environmental mitigation conditions.

Decided: August 14, 2024

By petition filed November 17, 2022, Townline Rail Terminal, LLC (Townline), an affiliate of CarlsonCorp, Inc. (CarlsonCorp), seeks 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, N.Y. (the Line). (Townline Pet. 2, Nov. 17, 2022.) The Supervisor of the Town of Smithtown, N.Y. (Smithtown), filed a letter in support of Townline’s petition. The Board also received numerous filings from community members and associations of community members opposing the petition.

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, examining the potential environmental and historic impacts of Townline’s project and requesting public comments, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370m(11), and related environmental laws, including Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108. After considering the comments received in response to the Draft EA, OEA issued a Final Environmental Assessment (Final EA) on June 7, 2024. Based on its analysis, OEA recommended environmental conditions to avoid, minimize, or mitigate the potential environmental impacts of the proposed construction and operation. OEA concluded that, with the mitigation recommended in the Final EA, the project would have no or negligible adverse environmental impacts.

After considering the entire record, including the transportation merits and environmental issues, the Board will grant Townline’s petition for exemption, subject to the recommended environmental mitigation measures in the Final EA.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

According to Townline, the Line would extend approximately 5,000 feet on a portion of CarlsonCorp’s industrial property² and would run parallel to the Long Island Railroad (LIRR) Port Jefferson Line. (Townline Pet. 2, Nov. 17, 2022.) Townline states that the New York & Atlantic Railway (NYAR) operates on the Port Jefferson Line and has entered into an agreement with CarlsonCorp on behalf of LIRR to install a new switch that would connect the Line to the Port Jefferson Line. (*Id.* at 2-3.) Townline also states that it would interchange with NYAR and anticipates that it would operate one round-trip train per day, five days per week. (*Id.* at 5.)

According to Townline, the purpose of the project is to provide common carrier rail service to a planned truck-rail transloading facility, which Townline states would be subject to state and local regulation.³ (*Id.* at 3.) CarlsonCorp would independently construct the transloading facility to handle the transportation of construction and demolition debris and incinerator ash from Long Island. (*Id.* at 3-4.) Townline explains that rail service to the planned facility is needed because the Brookhaven Landfill, the last remaining public landfill on Long Island to accept construction and demolition debris, is scheduled to close, and construction of new landfills to accept ash and construction and demolition debris is nearly prohibited under New York law. (*Id.* at 3.) Townline adds that the Line also could serve other local shippers, including Covanta Energy, Kings Park Ready Mix Corp, Kings Park Materials, and Pelkowski Precast. (*Id.* at 4.)

On November 8, 2022, Smithtown filed a letter stating that it supports Townline’s petition in light of the need to find alternative means for waste disposal given the impending closure of the Brookhaven Landfill. The Board also received numerous filings from community members and associations of community members in opposition to the Line and the planned facility.⁴ (*See, e.g.*, Townline Ass’n Comment, Feb. 1, 2023; Commack Cmty. Ass’n Comment,

² CarlsonCorp currently operates a state-permitted waste transfer facility on its property. (Townline Pet. 3, Nov. 17, 2022.)

³ By decision served February 23, 2024, the Board denied a petition for declaratory order filed by Smithtown regarding the transloading facility because the case law addressing the extent of the Board’s jurisdiction over transloading activities is well-established. Town of Smithtown—Pet. for Declaratory Order, FD 36575 (Sub-No. 1), slip op. at 3 (STB served Feb. 23, 2024). The Board also declined Smithtown’s request that the Board define in the abstract what may constitute a reasonable request for transportation of hazardous materials by Townline under 49 U.S.C. 11101(a). *Id.*

⁴ These community comments express concerns about potential environmental impacts and explain that the Line and the planned transload facility would be located in a residential area and near schools. (*E.g.*, Townline Ass’n Comment, June 21, 2023.) Residents also express concerns about impacts on property values, (*see, e.g.*, Townline Ass’n Comment 12, Apr. 10, 2023), traffic congestion, (*e.g.*, Townline Ass’n Comment 5, Apr. 17, 2023), and other issues, such as possible effects of the project on air, light, sound, and water, and what some commenters describe as the existing environmental burden on the area, (*e.g.*, Townline Ass’n Comment 14, Mar. 6, 2023; Townline Ass’n Comment 5-7, Mar. 13, 2023). As discussed below, (*see infra*

Feb. 21, 2023; Fort Salonga Ass'n Comment, Feb. 21, 2023; Russo Opp'n Statement, Feb. 27, 2023; Townline Ass'n Comment, Sept. 11, 2023.)

On April 4, 2023, Townline Association, Inc., an association 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. By decision served November 15, 2023, the Board denied that motion.

On July 18, 2024, Townline Association filed a petition with the Board seeking a Supplemental Environmental Assessment (Supplemental EA) or an Environmental Impact Statement (EIS), requesting that OEA “take a second hard look” at potential impacts of the project on groundwater. (Townline Ass'n Pet. 1, 5, July 18, 2024.) Townline filed a reply on July 26, 2024, arguing, among other things, that the petition should be rejected because it fails to present any “significant new information.” (Townline Reply 15, July 26, 2024).

DISCUSSION

Rail Transportation Analysis. The construction of new rail lines requires prior Board authorization through issuance of a certificate under 49 U.S.C. 10901 or, as requested here, through an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901. Section 10901(c) directs the Board to authorize rail line construction proposals unless it finds the proposal “inconsistent with the public convenience and necessity.” See Alaska R.R.—Constr. & Operation Exemption—a Rail Line Extension to Port MacKenzie, Alaska, FD 35095, slip op. at 5 (STB served Nov. 21, 2011), aff'd sub nom. Alaska Survival v. STB, 705 F.3d 1073 (9th Cir. 2013). Under 49 U.S.C. 10502(a), the Board shall, to the maximum extent consistent with U.S. Code Title 49, subtitle IV, part A, exempt a transaction from the detailed application procedures of 49 U.S.C. 10901 when it finds that: (1) those procedures are not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power.

Based on the record in this proceeding, the Board concludes that the proposed construction and operation qualifies for an exemption from the 49 U.S.C. 10901 prior approval requirements. The requested exemption would connect CarlsonCorp's planned transloading facility to the LIRR's Port Jefferson Line, thus creating a rail option for transporting incinerator ash and construction and demolition debris from the planned facility off of Long Island and filling a need raised by the impending closure of the Brookhaven landfill. Providing such an option would advance “the development and continuation of a sound rail transportation system with effective competition . . . with other modes, to meet the needs of the public,” 49 U.S.C. 10101(4), and help “ensure effective competition and coordination between rail carriers and other modes,” 49 U.S.C. 10101(5). Townline likewise states that it sees potential to provide rail service for Covanta Energy, a neighboring waste-to-energy facility that currently

pp. 4-6), OEA has evaluated the potential environmental and historic impacts of the project, addressing concerns such as those raised by the community and recommending environmental mitigation measures, as appropriate.

ships approximately 12,000 truckloads of incinerator ash per year to the Brookhaven Landfill. (Townline Pet. 3-4, Nov. 17, 2022.) Townline explains that it could provide a rail option for Covanta Energy to find new disposal options off of Long Island when the Brookhaven Landfill closes, and a rail option for certain other shippers in the vicinity of the Line, which currently use trucks to receive and ship commodities such as cement powder, sand, gravel, concrete, and aggregates. (*Id.* at 4.) By supporting these truck-to-rail diversions, the Line would not only advance the policies at 49 U.S.C. 10101(4) and (5), but also increase overall energy efficiency, thereby encouraging and promoting energy conservation in furtherance of 49 U.S.C. 10101(14).

Moreover, by minimizing the time and administrative expense associated with obtaining Board approval under the Board’s formal construction application procedures, the requested exemption would provide for expeditious regulatory decisions, 49 U.S.C. 10101(2); reduce regulatory barriers to enter the industry, 49 U.S.C. 10101(7); and provide for the expeditious handling and resolution of proceedings, 49 U.S.C. 10101(15). Other aspects of the RTP would not be adversely affected. Further, no issues about the Line’s current or future financial viability have been raised.

Regulation of the proposed construction and operation is not necessary to protect shippers from an abuse of market power. The construction and operation of the Line would enhance competition by providing a new rail option for CarlsonCorp, Covanta Energy, and other local shippers, including Kings Park Ready Mix Corp, Kings Park Materials, and Pelkowski Precast.⁵

For these reasons, the Board concludes that the evidence on the transportation-related aspects of this case demonstrates that the proposed construction and operation of the Line qualifies for an exemption from the prior approval requirements of 49 U.S.C. 10901.

Environmental Analysis. NEPA requires federal agencies to examine the environmental effects of proposed federal actions and to inform the public concerning those effects. Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize a railroad construction project as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). Lone Star R.R.—Track Constr. & Operation Exemption—in Howard Cnty., Tex., FD 35874, slip op at 4 (STB served Mar. 3, 2016). While NEPA prescribes the process that must be followed, it does not mandate a particular result. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989). Once the adverse environmental effects have been adequately identified and evaluated, an agency may conclude that “other values outweigh the environmental costs.” *Id.*

The Environmental and Historic Review Process. On January 5, 2024, OEA issued for public review and comment a Draft EA addressing in detail the potential environmental impacts

⁵ Because regulation of the proposed construction and operation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. 49 U.S.C. 10502(a)(2).

of the proposed construction and operation of the Line.⁶ The Draft EA analyzed a number of environmental issues, including transportation, land use and zoning, energy, air quality and climate change, noise and vibration, biological resources, water resources, cultural resources, hazardous materials release sites, environmental justice, and cumulative and other impacts. OEA recommended preliminary mitigation based on the results of its environmental analysis and agency consultation. (Draft EA 20, 60.) OEA explained that because the 5,000-foot Line would be built in an existing industrial area, there would be fewer environmental and historic impacts than would be the case with construction of an entirely new right-of-way.⁷ (*Id.* at i, iii.) It acknowledged that Long Island is a sole-source aquifer region, with groundwater supplying almost all drinking water, but found that the proposed project would have no impacts on groundwater. (*Id.* at 48-49.) OEA concluded that the proposed construction and operation would have negligible impacts to all resource areas evaluated except biological resources, and that impacts to biological resources could be appropriately minimized with the mitigation recommended in the Draft EA.⁸ (*Id.* at iii.) The mitigation recommended by OEA in the Draft EA included 11 voluntary mitigation conditions proposed by Townline and two additional mitigation measures developed by OEA to address potential environmental impacts of the proposed project related to biological resources and hazardous materials release sites. (*Id.* at 60, 63-64.)

OEA received a total of 105 comments on the Draft EA from individuals, citizen associations, and agencies. (Final EA 12; *id.*, App. G at G-31 to G-35 (Table 2).) Of those comments, OEA determined that 41 were substantive enough to warrant a response in the Final EA. (Final EA 12.) In the Final EA, served June 7, 2024, OEA responded to the substantive

⁶ Based on information provided by Townline and comments from various agencies and tribes, OEA determined that a full EIS was not necessary. (See Draft EA 8-9.) Moreover, after considering the project's purpose and need, the information provided by Townline, agency comments, and OEA's independent analysis, OEA concluded that the proposed construction and operation was the only reasonable and feasible build alternative. Accordingly, the Draft EA addressed only the proposed action and a no-action alternative. (See Draft EA ii, 19.)

⁷ OEA found that the proposed construction and operation would have no effect on historic properties because there are no historic properties present in the project area. (See *id.* at 52.)

⁸ Specifically, OEA determined that construction and operation of the Line may affect the northern long-eared bat (NLEB), a federally listed endangered species, through the clearing of or disturbance to forested habitat, temporary construction noise and lighting, and operational lighting and noise. (Draft EA iii.) OEA's recommended mitigation included restrictions on construction-related tree removal and the use of lighting both during construction and train operation, and measures to minimize and mitigate soil compaction. (*Id.* at 62-63; see also Final EA 64 (recommending additional lighting restrictions).) OEA concluded that with these mitigation measures, and due to existing habitat conditions, the proposed construction and operation may affect but is unlikely to adversely affect the NLEB. (Draft EA iii; see also *id.* at 43 (explaining that all vegetated habitats within the study area exhibit substantial evidence of historical and ongoing disturbance, as well as high levels of human presence due to adjacent industrial site operations).)

comments, individually or in groups, explaining its analyses on the issues raised in the comments. (Final EA, App. G at G-1.) Where appropriate, OEA clarified and corrected information in the Draft EA. (*Id.*) In addition, for biological resources, after considering the public comments on the Draft EA, OEA added one new mitigation measure regarding lighting. (Final EA 62, 64; *see also supra* note 8.) OEA concluded that, with the mitigation recommended in the Final EA, the proposed construction and operation would have no or negligible adverse impacts on all resources evaluated. (Final EA iii.)

The Board’s Analysis of the Environmental Issues. The Board is satisfied that OEA has taken the requisite hard look at the potential environmental impacts associated with the proposed construction and operation of the Line. The Draft EA and Final EA adequately identify and assess the environmental impacts discovered during the course of the environmental review and include appropriate environmental mitigation to avoid or minimize potential environmental impacts. Moreover, Townline Association’s July 2024 petition does not show that a Supplemental EA is required,⁹ as it merely reiterates concerns Townline Association previously raised during the environmental review regarding potential groundwater impacts and prior sand mining on CarlsonCorp’s property. These issues were specifically addressed in the Final EA. (Final EA, App. G at G-23 to G-24, G-30.) Accordingly, the Board will deny Townline Association’s July 2024 petition. The Board further finds that OEA properly determined that, with the recommended environmental mitigation measures, the proposed project will not have potentially significant environmental impacts, and that preparation of an EIS is unnecessary.¹⁰ Accordingly, the Board adopts the analysis and conclusions made in the Draft EA (as modified by the Final EA) and Final EA, including the final recommended mitigation measures, which are set forth in the Appendix to this decision.

CONCLUSION

Construction and operation of the Line will connect CarlsonCorp’s planned transloading facility to the interstate rail network, thereby supporting the shipment by rail of waste material from that facility off of Long Island. It will also provide a rail option to other shippers in the vicinity of the Line. With OEA’s final recommended mitigation measures,

⁹ Agencies should supplement EAs if “[t]here are substantial new circumstances or information about the significance of the adverse effects that bear on the analysis.” 40 CFR 1501.5(h)(1)(ii); *cf. City of Olmsted Falls v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002) (“[N]ew information [must] ‘provide[] a *seriously* different picture of the environmental landscape.’” (quoting *Wisconsin v. Weinberger*, 745 F.2d 412, 418 (7th Cir. 1984))).

¹⁰ In both the Draft EA and Final EA, OEA details the reasons it granted Townline’s request for a waiver of the preparation of an EIS. (*See* Draft EA 8-9; Final EA, App. G at G-2 to G-3.) The Board finds that OEA’s decision is both substantiated and in compliance with the applicable regulations. *See* 49 CFR 1105.6(d). The comments filed by the Fort Salonga and Townline Association provide no basis for revisiting OEA’s decision to prepare an EA here. (*See* Fort Salonga Ass’n Comment 2, Feb. 21, 2023; Townline Ass’n Comment, Feb. 14, 2023 (Filing ID 306144); Townline Ass’n Comment, Feb. 5, 2024; Townline Ass’n Pet., July 18, 2024.)

there will be no potential for significant environmental impacts; indeed, the Line—which will be less than a mile long and located within an existing industrial area—will facilitate the diversion of traffic from truck to rail, thereby increasing overall energy efficiency and reducing emissions from trucks. After carefully considering the various rail transportation and environmental issues and the record as a whole, the Board finds that the petition for exemption to allow construction and operation of the Line should be granted, subject to compliance with the environmental mitigation measures set forth in the Appendix to this decision.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Townline’s petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate the Line is granted as discussed above.
2. The Board adopts the environmental mitigation measures set forth in the Appendix to this decision and imposes them as conditions to the exemption granted here.
3. Townline Association’s petition seeking a supplemental environmental review is denied.
4. Notice will be published in the Federal Register.
5. Petitions for reconsideration must be filed by September 4, 2024.
6. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

APPENDIX

Land Use and Zoning

VM-Land Use and Zoning-01. Townline and its contractor(s) will consult, as necessary, with directly abutting landowners for coordination of construction schedules and temporary access during project-related construction.

Air Quality and Climate Change

VM-Air Quality-01. Townline's contractor(s) will comply with the dust control permitting requirements of Suffolk County, Smithtown, and New York State Department of Environmental Conservation to the maximum extent practicable to reduce fugitive dust emissions created during project-related construction. Townline will also require its construction contractor(s) to regularly operate water trucks on haul roads to reduce dust generation.

VM-Air Quality-02. Townline will work with its contractor(s) to ensure project-related construction equipment is properly maintained, and that mufflers and other required pollution-control devices are in working condition in order to limit construction-related air pollutant emissions.

Noise and Vibration

VM-Noise-01. Townline will comply with Federal Railroad Administration regulations (49 CFR Part 210) establishing decibel limits for train operation.

VM-Noise-02. Townline will work with its contractor(s) to make sure that project-related construction and maintenance vehicles are maintained in good working order with properly functioning mufflers to control noise.

Biological Resources

VM-Biological-01. Townline will not conduct construction-related tree removal for the Proposed Action during the Northern Long-eared Bat (NLEB) active season (March 1 to November 30) consistent with New York State Department of Environmental Conservation's NLEB active season for Suffolk County.

VM-Biological-02. During project-related construction, Townline will take steps to reduce the unnecessary removal of bat habitat by limiting tree removal to only the areas necessary to safely construct and operate the rail line, marking the limits of tree clearing through the use of flagging or fencing, and ensuring that construction contractors understand clearing limits and how they are marked in the field.

VM-Biological-03. During project-related construction, Townline will direct any temporary lighting away from suitable NLEB habitat during the active season for this species (March 1 to November 30). Townline will use downward-facing, full cut-off lens lights for any temporary lighting used during construction of the rail line.

VM-Biological-04. During project-related rail operations, Townline will use downward-facing, full cut-off lens lights (with the same intensity or less for replacement lighting) for the proposed permanent lights.

VM-Biological-05. Townline will require its contractor(s) to comply with the requirements of the Migratory Bird Treaty Act as applicable. The following measures will be taken by Townline and/or its contractor(s):

Where practical, any ground-disturbing, ground-clearing activities or vegetation treatments will be performed before migratory birds begin nesting or after all young have fledged.

If such activities must be scheduled to start during the migratory bird breeding season, Townline will not take steps to prevent migratory birds from establishing nests in the potential impact area. Townline or its agents will not haze or exclude nest access for migratory birds and other sensitive avian species.

If such activities must be scheduled during the migratory bird breeding season, a qualified biologist will perform a site-specific survey for nesting birds starting no more than seven days prior to ground-disturbing activities or vegetation treatments. Birds with eggs or young will not be hazed, and nests with eggs or young will not be moved until the young are no longer dependent on the nest.

If nesting birds are found during the survey, Townline will establish appropriate seasonal or spatial buffers around nests. Vegetation treatments or ground-disturbing activities within the buffer areas will be postponed, where feasible, until the birds have left the nest. A qualified biologist will confirm that all young have fledged.

MM-Biological-01. During project-related construction, Townline will minimize, to the extent practicable, soil compaction in temporarily disturbed areas, provide surface treatments (e.g., break up compacted soil) for any compacted soils, and take actions to promote vegetation regrowth.

MM-Biological-02. Townline's permanent lighting will consist of 2.0 footcandles at a height not to exceed 25 feet.

Hazardous Materials Release Sites

VM-Hazardous Materials Sites-01. Townline will require its construction contractor(s) to implement measures to protect workers' health and safety and the environment in the event that undocumented hazardous materials, if any, are encountered during project-related construction. Townline will document all activities associated with hazardous material spill sites and hazardous waste sites, if any, and will notify the appropriate state and local agencies according to applicable regulations. The goal of these measures is to ensure the proper handling and disposal of contaminated materials, including contaminated soil, groundwater, and stormwater, if such materials are encountered. Townline will use disposal methods that comply with applicable solid and hazardous water regulations.

MM-Hazardous Materials Sites-01. Townline shall follow American Society of Testing and Materials E1527-05, Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process in areas where potential contamination could be encountered. If Townline encounters contamination (or signs of potential contamination) during these activities, Townline shall promptly perform a Phase 2 environmental investigation. Should findings of a Phase 2 environmental investigation identify contamination in soil and/or groundwater, Townline shall coordinate with relevant New York state agencies on regulatory obligations and comply with those agencies' reasonable requirements for avoiding impacts related to soil and/or groundwater contamination.