

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN SUPPORT OF
RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT,
AND IN OPPOSITION TO
THE PETITION

Index No.: 2012-0810

STATE OF FLORIDA)
COUNTY OF DUVAL) ss.:

WILLIAM MYLES, being duly sworn and deposes and says:

1. I am the Vice President of Operations for Respondent, the Wellsboro & Corning Railroad, LLC ("the Railroad") and I have held this position since January of 2008. I have worked in railroad operations for the last 12 years, including supervising operations for rail yards located in Pennsylvania and in other locations. I submit this affidavit in support of the motion filed on behalf of the Respondents for summary judgment dismissing the Petition. The statements made in this affidavit are based upon my personal knowledge, including my experience in railroad operations and my review of applicable documents including those submitted as part of the Administrative Record in this matter.

2. Based on my responsibilities in my capacity as Vice President of Operations, I am fully familiar with the lease the Railroad entered into with Painted Post Development LLC to operate the Transloading Facility located in the Village of Painted Post (the "Village") at 450 West Water Street (the "Lease") whereby surplus water will be loaded onto rail cars for transport to Pennsylvania. The Petition makes several allegations concerning the Transloading Facility operation and the Lease which are simply not true. For example, the Petition claims in sum and substance that operation of the Transloading Facility will result in significant increases to already existing train traffic in the Village, but that is simply not so. In fact, the only rail traffic associated with operation of the Transloading Facility is a single train that will operate once a day and will travel along the rail line located on Chemung Street to a pre-existing designated interchange point located adjacent the Transloading Facility. In sum, each day a single train comprised of 42 empty cars will travel to the Transloading Facility where each car will be moved to an individual loading station located on the siding where it will be automatically filled and the 42 cars that have been filled the previous day will be removed and then travel to a site located in the Wellsboro, Pennsylvania.

3. Further, there will be no significant periods of idling by the locomotives used for this single daily rail operation, and in fact, we anticipate that the two locomotives will spend no more than two hours per day within the Village. Specifically, the two locomotives to be used for the Transloading Facility operation will travel from Wellsboro, Pennsylvania, deliver the 42 empty cars and retrieve the full cars that will be transported to Pennsylvania. As such, any emissions from the locomotives that would potentially impact the Village will be negligible.

4. Further, based upon my experience in rail operations, and the fact that I know from my position with the Railroad that the rail line in the Village has been in use for decades, the addition of one of a single train per day under these circumstances to the existing rail traffic will

contribute negligible increases in emissions even when other rail operations are considered. The Petition also claims that motor vehicle traffic will be adversely affected by the Transloading Facility's operations, but the Railroad will avoid to the extent possible, undertaking this single operation and movement to those portions of the day where vehicular traffic is not anticipated to be at its highest levels.

5. Further, based upon my experience and knowledge of railroad operations including operations by the Railroad, significant noise is not expected from the operations associated with the Transloading Facility. In short, as set forth in detail in the documents associated with this matter including in the record, the activities associated with the Transloading Facility will be limited to filling rail cars with surplus water and the once per day changing out of the empty cars with the full ones. The filling of such cars will have no significant noise impact associated with it, as the existing Village of Painted Post pumps associated with the water will be off-site and, noise associated with them will not be at the Transloading Facility. Further, movement of the rail cars to be used whether empty or full will not have any more noise associated with such operations than the noise associated with other rail operations which are already taking place in the Village, including those associated with rail operations for Dresser Rand. Moreover, there is simply no basis for any allegation that the rail operations associated with the Transloading Facility will interfere with pre-existing rail operations in the Village.

6. There are also incorrect statements made in the Petition about the building of new rail lines for facilities. Rather than building any new rail lines, the Railroad will use the existing rail line in the Village at the former Ingersoll Rand Site. The only equipment or facilities that were constructed as part of the Transloading Facility are a simple siding and some essentially above ground piping to allow the water from existing pipes to be conveyed onto the rail cars as well as

automated metering equipment and facilities to facilitate the pumping of surplus water into rail cars. No additional rail lines have been laid or will be laid for the Transloading Facility.

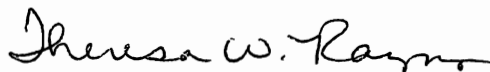
7. Further, this will also confirm my understanding that the Railroad is not required to obtain any permits for the Transloading Facility or associated operations from the Federal Railroad Administration, from the Surface Transportation Board, or from any other federal agency. Because the Railroad will be using an existing rail served facility on an existing rail line, there is and was no need for the Railroad to apply for or any authorization or permit to operate and serve the Transloading Facility.

8. There are also allegations made in the Petition regarding the location in Pennsylvania to which the surplus water from the Village will be taken. The location to which the Village's surplus water will be transported is in Wellsboro Pennsylvania, and while that location does not have anything to do with this matter, I nevertheless wanted to respond because of inaccuracies contained in such allegations. In fact, the site to which the water from the Village will be taken in Pennsylvania contains several large holding tanks where water is stored and is available for use; there is no basis to the allegation that the facility in Pennsylvania to which the surplus water will be taken will result in any problems or significant adverse effects. Indeed, the facility located in Wellsboro Pennsylvania was constructed and is operated in accordance with applicable law.



William Myles

Sworn to before me this
2nd day of August, 2012



Notary Public

