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FD-34192

Hon. Faith S. Hochberg, U.S.D.J.
U.S. Post Office Courthouse Bldg.
Federal Square
P.O. Box 999
Newark, New Jersey 07101-0999

Re: Hi Tech Trans, LLC v. Hudson County Improvement Authority
Civil Action No. 02-3781 (FSH)

Dear Judge Hochberg:

This office represents defendants Hudson County Improvement Authority ("HCIA") and Essex County Utilities Authority ("ECUA") in the above-referenced matter. We are in receipt of Your Honor's Order of August 7, establishing a briefing schedule on plaintiff's application for a preliminary injunction, under which HCIA's and ECUA's opposing papers are due September 9, 2002. I write to request a modification and extension of that schedule. The basis for our request is that a motion is now pending before the Surface Transportation Board ("STB") that bears on a number of issues raised by plaintiff in its motion.

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August 15, 2002

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While plaintiff makes brief mention of the STB proceedings in its suit papers, see Complaint, ¶89 and Brief at 20, it fails to provide the Court with a description of the scope and status of those proceedings. Hi Tech instituted the STB proceedings on April 24, 2002, by filing a petition asserting an entitlement under the Interstate Commerce Commission Termination Act ("ICCTA"), 49 U.S.C. § 10101 et seq., to operate a solid waste transfer station without complying with state laws and regulations. Hi Tech initially listed the Canadian Pacific Railway (Hi Tech's asserted "licensor") as a co-petitioner but, at Canadian Pacific's insistence, amended the petition in early May to remove the railroad as a party.

On June 5, 2002, HCIA and ECUA filed a joint reply to Hi Tech's petition with the STB, in which they asserted that Hi Tech was not a rail carrier, was not entitled to the relief it was seeking, and urged the STB to dismiss the petition for lack of jurisdiction or alternatively decline, in its discretion, to open an administrative proceeding. The State of New Jersey filed a reply asserting similar positions, and also raising Eleventh Amendment defenses to Hi Tech's petition. On June 19, 2002, Hi Tech moved to strike the State's reply, and re-asserted that it was indeed a rail carrier within the meaning of the ICCTA – a disputed assertion that Hi Tech repeats in its Complaint in this action. See Complaint, ¶96. That motion has been fully briefed since late June.

At a minimum, the decision to be rendered by the STB on the motion now pending before it will clarify the positions of all the parties. Having chosen, in April, to initiate administrative proceedings before the STB, and having waited three and a half months before instituting this parallel, overlapping lawsuit, plaintiff cannot credibly maintain that it is in such dire straits that defendants and the Court should be forced to address its motion in advance of the impending

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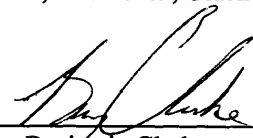
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decision by the STB as to whether it will or will not hear Hi Tech's petition. Accordingly, defendants would request that the existing briefing schedule be modified to take cognizance of the STB's impending decision, and to make defendants' opposition papers due three weeks from receipt of the STB's decision.

We have sought the consent of plaintiffs' attorney, John McHugh, Esq., to this proposal. Mr. McHugh advises that Hi Tech objects to any extension of the existing briefing schedule. Nonetheless, for the reasons set forth above, I respectfully request that the schedule set forth in the Court's Order of August 7 be modified to run from the date of issuance of the STB's forthcoming decision on the motion now pending before that agency. Thank you for your consideration of this request.

Very truly yours,

DeCotiis, FitzPatrick, Gluck & Cole, LLP

By: 

Benjamin Clarke

c: Attached Service List

SERVICE LIST
PETITION FOR A DECLARATORY ORDER
BY HI-TECH TRANS, LLC
FINANCE DOCKET NO. FD 34192

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