

M&NJ SALE UPDATE 2/11/09

On February 11, 2009 at 5:14 PM, the [Times Herald-Record](#) posted an article to its web site (recordonline.com) headlined "Chartwell identifies buyer for Middletown & New Jersey Railway". According to the article Chartwell is selling the M&NJ for \$450,000 to Regional Rail LLC, a subsidiary of East Penn Railroad, an owner of short lines in eastern Pa. (I think the reporter has this backwards – see below.) The deal is expected to close this Monday. In addition, the 60 flat cars have been sold to Tealinc Ltd. for \$1,374,000 in cash in a deal that closed January 30th. (There have been several reports that the flat cars have been leaving the M&NJ on a daily basis this month.)

Chartwell filed its quarterly report for the period ending December 31, 2008 with the SEC also on February 11th. The M&NJ, Chartwell's only operation, had revenue of \$36,000 in the quarter as opposed to \$39,000 last year. Chartwell posted general and administrative expenses of \$671,000 to produce a loss from operations of \$635,000 in the quarter and after adding interest charges, the loss grew to \$745,000. Chartwell has lost a total of \$14,627,000 since beginning operations on March 3, 2005. Included in the latest quarterly loss was the third writeoff of certain railroad assets, this time in the amount of \$470,000 which brings the total writeoff of railroad assets from 12/31/07 through 12/31/08 to \$2,725,000. The \$500,000 note payable to the Rasmussens remains unpaid and with unpaid interest now totals \$535,000. It is the subject of a lawsuit filed on July 17, 2008. The filing further stated that on December 2nd, Chartwell entered into a purchase agreement with Tealinc Ltd. to sell the 60 railcars for \$1,374,000 in cash. The agreement closed on January 30th. On January 8th, Chartwell signed a letter of intent with Regional Rail LLC to sell the M&NJ for \$450,000 in cash. "The transaction is subject to execution of a purchase agreement and due diligence, and is expected to close on February 16, 2009."

According to the American Short Line and Regional Railroad Association (<http://www.aslrra.org/>) Regional Rail LLC acquired the East Penn Railroad LLC from John Nolan effective August 27, 2007. The acquisition included the East Penn Railway and the Penn Eastern Rail Line which serve the Philadelphia and Wilmington, De., regions. This was Regional Rail's first acquisition. Bob Parker, Regional Rail's President and CEO, said they had a "strong relationship with a well established institutional investor" and were looking for other acquisitions. Regional Rail LLC and East Penn Railroads LLC have their headquarters in Kennett Square, Pa.

The United States Railroad Retirement Board website (<http://www.rrb.gov/>) has a 2007 decision that gives an idea of the size of the East Penn Railroad operation. There were eleven line segments, mostly in southeastern Pa., aggregating 251.1 miles with an annual volume of about 8,100 carloads. There were seventeen employees including fifteen full-time and two part-time.

Tealinc, Ltd. (website, <http://www.tealinc.com/>) "buys and sells railcars and locomotives to the shipper, railroad and investor community. We also supply railcars through operating leases. We buy surplus assets and put them to work in structured leases through creative marketing, upgrading and refurbishment if necessary and by finding exact market niches in which they are in demand." They also offer transportation consulting and are located in Forsyth, Montana.

Thanks to Ed Horan for emailing us the newspaper article.

Today on the M&NJ

On November 19th, it was reported in the [Times Herald-Record](#) that two bids had been received for the M&NJ, "either of which would be committed to the growth and long-term operation of the railroad." A decision on a buyer was expected by late December followed by possibly three months to close the deal. However, it was subsequently learned that the highest bidder could not obtain financing and apparently Strategic Rail Finance solicited other bidders while trying to get the second bidder to raise the bid. On December 17th, the paper reported that Chartwell "is close to a deal to sell the former (SIC) Middletown & New Jersey Railway, officials confirmed Wednesday." Interestingly, the only comments came from Middletown's Mayor, Marlinda Duncanson, who said "They're very close" and a contract signing was expected shortly. She wouldn't name

the company but said "it is a company that has been in the business for a long time, and they are looking to bring in new businesses." The article went on to state "Duncanson said the city is staying in contact with Chartwell to make sure the transition is smooth, and the city is working with Wawayanda and local businesses to support the rail and attract new business." Independently, we learned on the 16th, a day before the newspaper article, that a short line operator with railroads in New Jersey and Pennsylvania had been given an auto tour of the M&NJ earlier in the week and appeared interested. However, at this point, "due diligence" still had to be done and perhaps financing had to be arranged. For whatever reason, we learned on January 17th, a month later, that another short line operator, this one with railroads in Pa., had appeared on the scene as several of his people had toured the M&NJ earlier in the week and the owner was expected to arrive on the property in the next week. Again, this is all very preliminary as, if there is indeed an interest in the M&NJ, this person will have to begin his own process to evaluate the railroad and perhaps seek financing as well. It now appears that the time table established for the sale of the M&NJ has slipped well beyond the late December decision on a buyer envisioned in the article of November 19th and the consummation of the sale could be off until the spring.

A number of sources have reported that the flat cars, long stored between Dolson Ave. and Route 78 as well as on the former Agway Fertilizer siding and elsewhere, have been leaving the M&NJ during January at the rate of three cars weekly. At this rate, the fleet of 60 cars will require 20 weeks, almost five months to depart the railroad.

Chartwell filed its quarterly report for the period ending 9/30/08 in mid-November. The M&NJ provided the only revenue, \$58,000. The loss from operations was \$228,000 and after adding in other expenses, Chartwell lost \$557,000 in the quarter which brought its cumulative loss since inception to \$13,881,000. Cash decreased from \$182,000 to \$91,000 and the working capital deficiency amounted to \$2,247,000. The report stated that Chartwell has "been exploring and continues to explore a variety of opportunities to increase our cash position through selling strategic assets." On September 26th, it entered into a "non-binding letter of intent" to sell a controlling interest to Universal Property Development & Acquisition Corporation but on October 27th, UPDA walked away from the deal because of the world-wide financial crisis. Chartwell stated this was their best "immediate opportunity to generate the necessary cash flow to meet our short term operational and debt obligations. We will consider all available and remaining options to best address our immediate needs, including less desirable options like the sale of certain assets at discounted values, bankruptcy proceedings or voluntary dissolution."

On December 23rd, Chartwell filed a Schedule 14 A, a proxy statement for their annual meeting, with the SEC. The meeting is scheduled for February 19th in Sacramento, Ca. A number of major proposals to be voted on by the shareholders at the meeting were contained in the proxy statement. Two proposals concerned the M&NJ and were specifically designed to jettison the M&NJ as soon as possible. One proposal would grant discretionary authority to Chartwell's board of directors "to approve a sale of our wholly-owned subsidiary, Middletown and New Jersey Railway Company ("MNJ"), for no less than \$300,000 payable in (i) cash or (ii) a combination of cash and promissory note secured by the assets of MNJ," The reasons given included the M&NJ's need for "substantial and sustained investment in its infrastructure to attract additional customers and generate revenue." Chartwell also stated an "experienced management and operations team is required to develop and execute a strategic and operational plan." Chartwell declared it doesn't have the money to satisfy these needs and furthermore the M&NJ is losing money and there is no guarantee it can be made profitable. Therefore Chartwell seeks to "recover a portion of our original investment while ceasing further losses from operations of MNJ". The second proposal would grant discretionary authority to the board of directors to approve a pro-rata spin-off of M&NJ to Chartwell's stockholders. Each stockholder in Chartwell would get a certain amount of M&NJ stock based on the number of Chartwell shares owned. Thus Chartwell would no longer own the M&NJ, Chartwell's stockholders would. Chartwell said the M&NJ is its only revenue-generating business and Chartwell's board is exploring an exit from the railroad industry. If they cannot sell the M&NJ then they want to spin it off as a separate company. "We must act quickly to spin off MNJ and reduce our cash-burn rate."

Chartwell's proposed proxy statement was quickly superseded by a revised version on January 6th "in response to telephonic comments from the Securities Exchange Commission on or about December 29, 2008."

Basically, the proposals relating to the M&NJ were removed and all that remained was a proposal on a reverse one for two stock split and a proposal to approve the accountants. Two days later, on the 8th, Chartwell filed its “definitive proxy statement” and it was basically the same as the version of the 6th, no mention of the M&NJ.

Under the title of “General Manager, M&NJ”, Thomas Winant sent a letter dated December 1, 2008 to the Surface Transportation Board with appropriate copies to New York State agencies. He noted the exemption granted on June 19, 2008 authorizing the M&NJ “to abandon a 7.5-mile line of railroad between milepost 6.5 in Slate Hill and milepost 14.0 in the Village of Unionville, located in Orange County, NY.” The purpose of the letter was for the M&NJ to provide notice to the various government agencies “that it has exercised the abandonment authority granted in this proceeding and consummated abandonment of the subject line as of the date of this letter. M&NJ has discontinued operations 37 years ago, thus there are no existing tariffs. M&NJ intends that the property be removed from the interstate rail network.”

The Village of Unionville’s website (www.unionvilleny.org) contained the following item in its recapitulation of the regular village board meeting of October 6th. Apparently Unionville has an interest in the abandoned right-of-way. The Board unanimously approved sending the letter to the County.

Mayor Ludwick reviewed a letter with the Board that he wrote to the Orange County Planning Department regarding the abandonment of the M&NJ ROW in the Village. Mayor Ludwick asked the County to help expedite the process by writing a letter to NYSDOT. The NYSDOT will need to provide a notice to M&NJ that they do not wish to acquire the ROW so that the railroad may sell the property. The County needs to ask that Unionville be released from a 12 month waiting requirement.

The gas-fired power plant project, along Route 6 near I 84, proposed by Competitive Power Ventures for Wallkill continued to move ahead as on December 8th, the Middletown Common Council approved hiring a consulting firm to evaluate CPV’s proposal to buy 150,000 gallons of “gray water” daily from Middletown’s wastewater treatment plant. CPV is paying the City’s cost to evaluate the proposal. Whether the M&NJ would have any role in bringing in components for the plant during the construction phase, possibly “high and wide” loads, is unknown. On January 10th, the Times Herald-Record reported that the Town of Wawayanda had retained a law firm from Albany to work on a “host community agreement” with CPV which would cover what CPV would give Wawayanda to offset local impacts of the power plant and to protect the town “against liability in case of plant decommissioning or an industrial accident.” In addition, the Orange County Industrial Development Agency has hired an appraisal firm from Niagara Falls “to evaluate the proposed plant for an agreement on payment in lieu of taxes.” CPV wants a 22-year agreement versus the IDA’s preference for a 15-year agreement to gradually raise the plant’s taxes from zero or close to that up to the full level. The land would be fully taxed from the start.

Fourteen years ago, in 1994, Masada proposed its waste-to-ethanol plant which had the potential for hundreds upon hundreds of carloads of traffic for the M&NJ. The project has become the subject of arbitration between the City of Middletown and Pencor-Masada OxyNol which backed off its proposal to build a full-size plant and instead offered to build a pilot plant. The contract deadline was Tuesday, December 9th and the Times Herald-Record commemorated the date with an article on the 11th which basically said the matter was still in the arbitrator’s hands with no deadline for a decision. In recent years, there has been no mention of rail service by the project’s backers.

The bids Metro-North received in August for repairs to Moodna Viaduct were too high and Metro-North re-advertised the project in scaled-down form in November. Metro-North has a \$21 million plan to rehabilitate the viaduct which is considered in “overall fair condition”. The new project specifications call for replacing five of the concrete piers instead of ten. Steel work will also be postponed until a later time. Sections of the trestle will be jacked up and temporary columns will carry the load so that rush-hour train service continues. Metro-North leases the main line from NS and is responsible for maintenance.

The Center for American Progress, a Washington, D. C., think tank, released a report in mid-November that called upon chemical plants that manufacture bleach to stop bringing in hazardous chlorine gas by rail and instead manufacture the gas on site. Jones Chemical, Warwick, is one of thirty facilities that produce bleach. The CEO of the plant’s owner disagreed with the report and labeled its authors as “misinformed”.

Thanks to Ed Horan for providing Times Herald-Record articles and those who have provided other information.