

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34052

GREEN MOUNTAIN RAILROAD CORPORATION –
PETITION FOR DECLARATORY ORDER

ENTERED
Office of the Secretary

MAR 13 2002

Part of:
Public Record

PETITION FOR LEAVE TO FILE REPLY TO OPPOSITION
OF THE STATE OF VERMONT

Andrew P. Goldstein
John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, N.W., Suite 600
Washington, DC 20037
(202) 393-5710

Eric R. Benson
Box 65238
Champlain Station, VT 05406
(802) 863-4160

Robert B. Luce
Downs Rachlin & Martin
199 Main Street
P. O. Box 190
Burlington, VT 05402
(802) 863-2375

Attorneys for Petitioner

Dated: March 13, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34052

**GREEN MOUNTAIN RAILROAD CORPORATION –
PETITION FOR DECLARATORY ORDER**

**PETITION FOR LEAVE TO FILE REPLY TO OPPOSITION
OF THE STATE OF VERMONT**

Pursuant to 49 C.F.R. § 1117.1, Green Mountain Railroad Corporation ("GMRC" or "Petitioner") hereby seeks leave of the Board to file a reply (the "Reply") to the State of Vermont's Opposition ("Opposition") to Green Mountain Railroad Corporation's Supplemental Petition, dated March 1, 2002. The Reply that GMRC seeks leave to file is tendered contemporaneously herewith. The grounds for the relief sought in this Petition are as follows.

By decision issued October 18, 2001, the Board ordered this case held in abeyance until final disposition of Green Mountain Railroad Corporation v. State of Vermont, et al., pending in the United States District Court for the District of Vermont ("District Court Case"). On February 12, 2002, GMRC filed with the Board a

Supplemental Petition requesting the Board to resume consideration of this proceeding.

The State of Vermont ("State") is opposed to the Supplemental Petition.

The basis for the State's Opposition is in part a Motion for Clarification dated March 1, 2002 (the "March 1 Motion"), filed by the State in the District Court Case. The March 1 Motion seeks "clarification" of a decision issued by the District Court on September 26, 2001, in which, inter alia, the Court declined to delineate the scope of federal preemption of state environmental law. The State's Opposition argues against STB action on GMRC's Supplemental Petition prior to Court action on the March 1 Motion to avoid "the risk of confusion and inconsistent rulings." Opposition at 3. However, the determinations the State seeks from the Court -- that Vermont permitting requirements are or are not subject to federal preemption -- go far beyond clarification, and would necessitate extensive further proceedings in Court. Equally objectionable is the State's claim that there is no live controversy between the parties warranting Board action. As GMRC's Supplemental Petition shows, this controversy has already cost GMRC much-needed new business.

For reasons explained in more detail in GMRC's tendered Reply, GMRC believes that the State's March 1 Motion is little more than a contrivance designed to delay Board consideration of GMRC's Supplemental Petition. The March 1 Motion was not in existence at the time GMRC filed its Supplemental Petition, and GMRC obviously could not have anticipated either the contents of the Motion or its use by the State as a foundation for its Opposition.

Consequently, GMRC seeks this opportunity to explain to the Board in the tendered Reply why the State's March 1 Motion and related State arguments should not stand in the way of the relief sought by GMRC.

Respectfully submitted,



Andrew P. Goldstein
John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, N.W., Suite 600
Washington, DC 20037
(202) 393-5710

Eric R. Benson
Box 65238
Champlain Station, VT 05406
(802) 863-4160

Robert B. Luce
Downs Rachlin & Martin
199 Main Street
P. O. Box 190
Burlington, VT 05402
(802) 863-2375

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served by first-class mail, postage prepaid, this 13th day of March, 2002, on all persons, entities, and government agencies listed below.

William H. Sorrell, Esq.
Vermont Attorney General
Office of the Attorney General
Pavilion Building
109 State St., 2nd Floor
Montpelier, VT 05609-1001

Scott Johnston
Agency Secretary
Agency of Natural Resources
103 South Main Street
Waterbury, VT 05671-0301

Brian R. Searles
Agency Secretary
Agency of Transportation
1 National Life Dr., Drawer 33
Montpelier, VT 05633

Rockingham Selectboard
Larmont Barnett, Chair
P.O. Box 370
Bellows Falls, VT 05101

Rockingham Town Planning
Don Cuming, Chair
P.O. Box 370
Bellows Falls, VT 05101

Windham Regional Commission
139 Main St., Suite 505, FLR
Brattleboro, VT 05301

Jon Groveman, Land Use Attorney
ANR 103 So. Main St.
Ctr. Bldg. 3rd
Waterbury, VT 05671-0301

James McMenemy
District Fisheries Biologist
100 Mineral St., Suite 302
Springfield, VT 05156

Forrest Hammond
District Wildlife Biologist
100 Mineral St., Suite 302
Springfield, VT 05156

Horace & Betty Bezanson
P.O. Box 323
Bellows Falls, VT 05101

D. Halberg
3 Bezanson Falls
Bellows Falls, VT 05101

Ben & Jerry's Handmade, Inc.
P.O. Box 240
Waterbury, VT 05676

David Deen
Conn. River Watershed Council
P.O. Box 206
Saxtons River, VT 05154

MCD\GMRC Reply



Andrew P. Goldstein