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December 19, 2002

FEE RECEIVED

DEC 19 2002

Tracie D. Spear
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VIA HAND DELIVERY

**SURFACE
TRANSPORTATION BOARD**

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

206893



**Re: Finance Docket No. 34294, State of Vermont – Acquisition
Exemption – Certain Assets of Newport and Richford Railroad
Company, Northern Vermont Railroad Company Incorporated and
Canadian American Railroad Company**

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of the State of Vermont** and the **Motion of the State of Vermont to Dismiss the Notice of Exemption**. A check in the amount of \$1,300.00, representing the appropriate fee for the Notice of Exemption, is enclosed.

Should any questions arise regarding these filings, please feel free to contact me.
Thank you for your assistance in this matter.

Respectfully submitted,

Tracie D. Spear
Attorney for State of Vermont
Agency of Transportation

FILED

DEC 19 2002

**SURFACE
TRANSPORTATION BOARD**

Enclosures

**ENTERED
Office of Proceedings**

DEC 20 2002

**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34294

STATE OF VERMONT
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF NEWPORT AND RICHFORD RAILROAD COMPANY,
NORTHERN VERMONT RAILROAD COMPANY INCORPORATED AND
CANADIAN AMERICAN RAILROAD COMPANY



VERIFIED NOTICE OF EXEMPTION
OF
STATE OF VERMONT
PURSUANT TO 49 C.F.R. § 1150.42

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TRANSPORTATION BOARD

Edward J. Fishman
Tracie D. Spear
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, NW
Washington, DC 20036
(202) 778-9000
(202) 778-9100 fax

ATTORNEYS FOR STATE OF
VERMONT AGENCY OF
TRANSPORTATION

Dated: December 19, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34294

STATE OF VERMONT
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF NEWPORT AND RICHFORD RAILROAD COMPANY,
NORTHERN VERMONT RAILROAD COMPANY INCORPORATED AND
CANADIAN AMERICAN RAILROAD COMPANY



**VERIFIED NOTICE OF EXEMPTION
OF
STATE OF VERMONT
PURSUANT TO 49 C.F.R. § 1150.42**

The State of Vermont ("Vermont"), acting through its Agency of Transportation, hereby files this Verified Notice of Exemption ("Notice") under 49 C.F.R. § 1150.41, et seq. to acquire the right-of-way, trackage and other physical assets of a railroad line between approximately milepost 63.58 in Newbury (Wells River), Vermont and approximately milepost 2.0 in Newport, Vermont (the "Subject Line"). The total distance of the Subject Line to be acquired by Vermont is approximately 61.58 route miles.

Pursuant to a Purchase and Sale Agreement entered into by and between Vermont and James E. Howard, in his separate capacities as Chapter 11 Trustee ("Trustee") for the Estates of Newport and Richford Railroad Company ("N&R"), Canadian American Railroad Company ("CDAC") and Northern Vermont Railroad Company Incorporated ("NVT") (collectively, "Seller"),¹ Vermont will acquire the Seller's right, title and ownership interest in the right-of-way, trackage and other physical assets

¹ On August 15, 2001, an involuntary Chapter 11 bankruptcy proceeding was filed against Bangor and Aroostook Railroad Company ("BAR"). On May 14, 2002, CDAC, NVT and N&R filed voluntary petitions for relief under Chapter 11.

of the Subject Line. Under the terms of that Purchase and Sale Agreement, Vermont's acquisition will be subject to the Seller's reservation of an exclusive freight railroad operations easement on the Subject Line (the "Freight Easement"). The Seller will convey the Freight Easement to Washington County Railroad Company ("WCRC") simultaneously with Vermont's acquisition of the Subject Line. Vermont will not acquire the right or obligation to conduct any freight rail operations on the Subject Line.²

Vermont is filing in this docket a motion to dismiss this Notice. Vermont is utilizing this procedure to obtain a jurisdictional determination regarding its prospective common carrier status on the Subject Line. See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991).

In accordance with the requirements of 49 C.F.R. § 1150.43, Vermont submits the following:

Advance Notice: 49 C.F.R. § 1150.42(e)

The projected annual freight revenues of Vermont will not exceed \$5 million. Accordingly, the requirements of 49 C.F.R. § 1150.42(e) do not apply to this transaction.

² On September 19, 2002, the Surface Transportation Board ("Board") served and published notice that Montreal, Maine & Atlantic Railway LLC ("MM&A"), a noncarrier, filed a notice of exemption under 49 C.F.R. 1150.31 to acquire and operate, among other things, certain rail lines and other assets of CDAC, NVT and N&R in Maine and Vermont not including the Subject Line. See Montreal, Maine & Atlantic Railway LLC – Acquisition and Operation Exemption – Bangor & Aroostook Railroad Company, Canadian American Railroad Company, the Northern Vermont Railroad Company Incorporated, Newport & Richford Railroad Company and Van Buren Bridge Company, Finance Docket No. 34110 (STB served September 19, 2002).

Name and Address of Applicant: 49 C.F.R. § 1150.43(b)

Vermont's representative to whom correspondence regarding this transaction should be addressed is as follows:

Edward J. Fishman
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, NW
Washington, DC 20036-1221
(202) 778-9000

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

Pursuant to the Purchase and Sale Agreement, the Seller will convey to Vermont the right-of-way, trackage and other physical assets associated with the Subject Line.

Pursuant to the Purchase and Sale Agreement, the Seller will retain the Freight Easement, which the Seller will convey to WCRC.

Operation of the Property: 49 C.F.R. § 1150.43(d)

Vermont will not operate any freight rail service on the Subject Line. Instead, the Seller will convey its reserved Freight Easement to WCRC in a separate transaction. Under the Freight Easement and an Operating Agreement to be entered into by and between WCRC and Vermont, WCRC will conduct freight rail operations on the Subject Line.³ (See Summary of the Transaction, below).

Summary of the Transaction: 49 C.F.R. § 1150.43(e)

Pursuant to the Purchase and Sale Agreement entered into by and between Vermont and the Seller, Vermont will acquire the Seller's right, title and ownership

³ WCRC contemporaneously is filing a notice of exemption for, among other things, its acquisition of the Freight Easement and its operations on the Subject Line. See Washington County Railroad Company – Acquisition and Operation Exemption – Certain Rights of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company, Finance Docket No. 34302.

interest in the right-of-way, trackage and other physical assets associated with the railroad line extending between approximately milepost 63.58 in Newbury (Wells River), Vermont and approximately milepost 2.0 in Newport, Vermont, a total distance of approximately 61.58 route miles in Orange, Caledonia and Orleans Counties. Vermont will not acquire the right or obligation to operate freight rail service on the Subject Line. The Seller will retain the Freight Easement on the Subject Line. In a separate transaction that is not the subject of this Notice, the Seller will convey the Freight Easement to WCRC. By means of the sale to Vermont and the conveyance of the Freight Easement to WCRC, the Seller will have transferred all of its rights and obligations to operate any rail service on the Subject Line.⁴

The names of the railroads transferring the Subject Line to Vermont are Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company. The address of each of these railroads is as follows:

15 Iron Road
Hermon, ME 04401

Vermont has filed this Notice, together with a motion to dismiss, in order to obtain a jurisdictional determination regarding Vermont's prospective status as a common carrier on the Subject Line. See State of Maine, Department of Transportation –

⁴ NVT currently conducts freight rail operations on the Subject Line. See The Northern Vermont Railroad Company Incorporated – Acquisition and Operation Exemption – Lines of Canadian Pacific Limited, Finance Docket No. 32981 (STB served July 25, 1996). CDAC currently has local and overhead trackage rights on the Subject Line. See Canadian American Railroad Company – Trackage Rights Exemption – The Northern Vermont Railroad Company Incorporated, Finance Docket No. 33137 (STB served Oct. 15, 1996). The common carrier rights and obligations of NVT, CDAC and N&R on the Subject Line will be conveyed to WCRC through the Freight Easement.

Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991).

Vermont will not consummate acquisition of the Subject Line until this Notice becomes effective and until MM&A consummates its acquisition of the assets that are the subject of Finance Docket No. 34110.

Map: 49 C.F.R. § 1150.43(f)

A map showing the Subject Line is attached as Exhibit A to this Notice.

Certificate of Class III Status: 49 C.F.R. § 1150.43(g)

The projected freight rail revenues of Vermont as a result of this transaction will not result in the creation of a Class I or Class II rail carrier. A certificate complying with the provisions of 49 C.F.R. § 1150.43(g) is attached as Exhibit B to this Notice.

Environmental/Historic Preservation Data: 49 C.F.R. Part 1105

Under the clear intent of 49 C.F.R. § 1105.6(c)(2), the proposed acquisition of the Subject Line by Vermont is exempt from environmental reporting requirements.

Vermont's acquisition will not result in significant changes in carrier operations (i.e., changes which exceed the thresholds established in 49 C.F.R. § 1105.7(c)(4) or (5)).

Under 49 C.F.R. § 1150.8(b)(1), the proposed acquisition of the Subject Line by Vermont also is exempt from historic preservation reporting requirements. Vermont's acquisition will not interrupt or disturb common carrier obligations on the Subject Line. Further Board approval is required to abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.44

A caption summary in the appropriate Form is attached as Exhibit C to this Notice.

Respectfully submitted,

By: 
Edward J. Fishman
Tracie D. Spear
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, NW
Washington, DC 20036-1221
(202) 778-9000

**ATTORNEYS FOR STATE OF
VERMONT AGENCY OF
TRANSPORTATION**

Dated: December 19, 2002

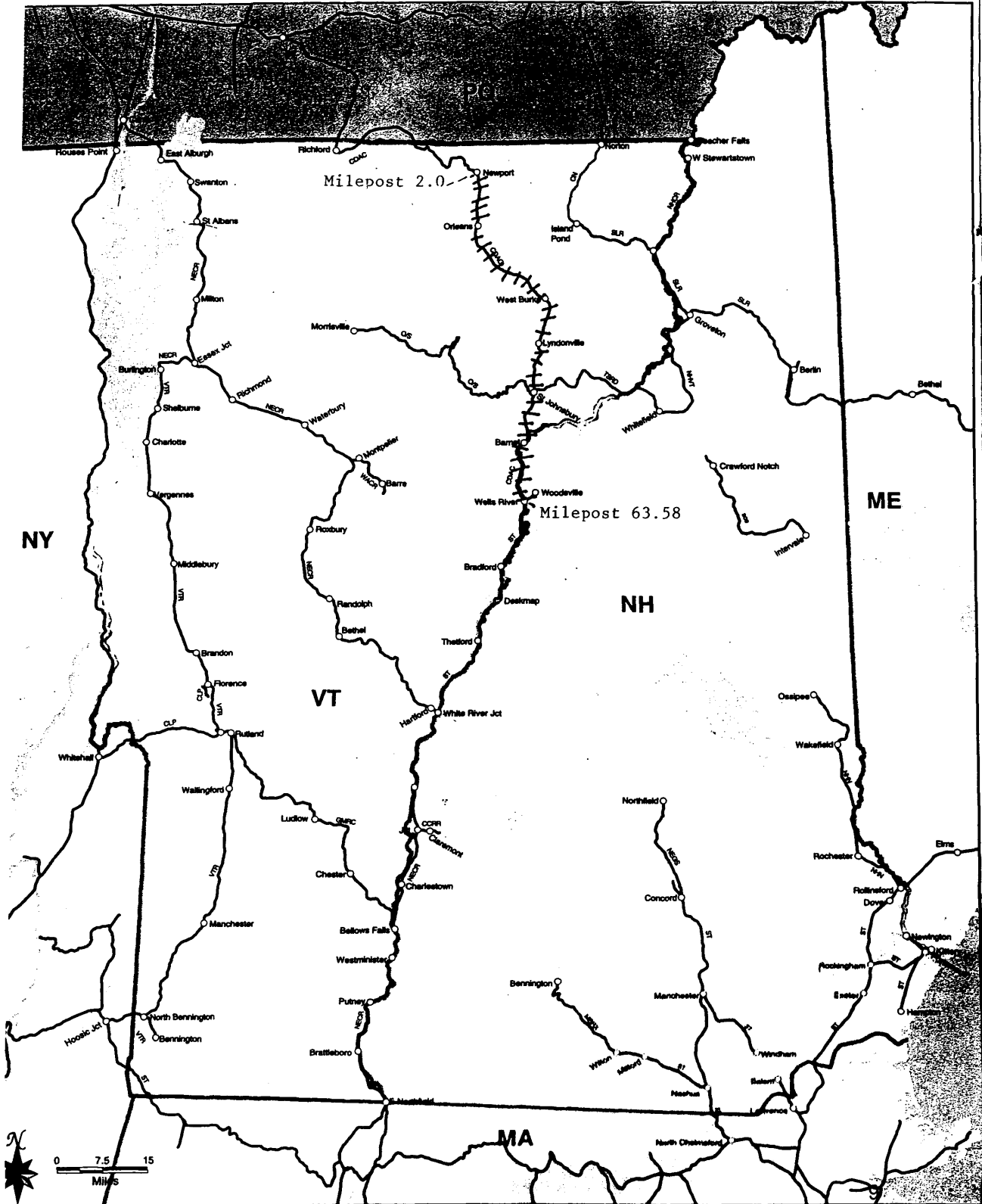
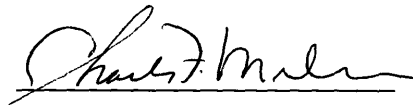


EXHIBIT B

CERTIFICATION

State of Vermont)
)
County of Washington) SS:

Charles F. Miller, being duly sworn, hereby certifies that the projected freight rail revenues of the State of Vermont Agency of Transportation upon consummation of the proposed transaction would not result in the creation of a Class I or Class II rail carrier under the provisions of 49 C.F.R. § 1201(1-1).



Charles F. Miller

SUBSCRIBED AND SWORN TO
Before me this 10th day
Of December, 2002.


Notary Public

My Commission expires: Feb. 10, 2003.

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34294

STATE OF VERMONT
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF NEWPORT AND RICHFORD RAILROAD COMPANY,
NORTHERN VERMONT RAILROAD COMPANY INCORPORATED AND
CANADIAN AMERICAN RAILROAD COMPANY

The State of Vermont ("Vermont"), acting through its Agency of Transportation, has filed a notice of exemption under 49 C.F.R. § 1150.41, et seq. to acquire from the Estates of the Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated, and Canadian American Railroad Company (collectively, the "Seller") the right-of-way, trackage and other physical assets of a railroad line between approximately milepost 63.58 in Newbury (Wells River), Vermont and approximately milepost 2.0 in Newport, Vermont, a total distance of approximately 61.58 route miles in Orange, Caledonia and Orleans Counties. The Seller will reserve an exclusive freight railroad operations easement ("Freight Easement") from the conveyance to Vermont, and will simultaneously convey the Freight Easement to Washington County Railroad Company in a separate transaction that is the subject of a notice of exemption in Finance Docket No. 34302.

Vermont has filed in this docket a motion to dismiss its notice of exemption. Vermont is utilizing this procedure to obtain a jurisdictional determination regarding its prospective common carrier status with respect to the line. See State of Maine,

Department of Transportation – Acquisition and Operation Exemption – Maine Central
Railroad Company, 8 I.C.C.2d 835 (1991).

Vermont will not under any circumstances consummate this acquisition until this notice becomes effective.

Comments must be filed with the Board and served on Edward J. Fishman,
Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, N.W., Second Floor,
Washington, DC 20036; (202) 778-9000.

This notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: December __, 2002

By the Board

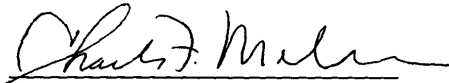
Vernon A. Williams

Secretary

VERIFICATION

State of Vermont)
)
County of Washington) SS:

Charles F. Miller, being duly sworn, deposes and says that he is the Director of Rail of the State of Vermont Agency of Transportation, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Charles F. Miller

SUBSCRIBED AND SWORN TO
Before me this 10th day
Of December, 2002


Notary Public

My Commission expires: Feb. 10, 2003.