



BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

LAW DEPARTMENT

(978) 663-1215

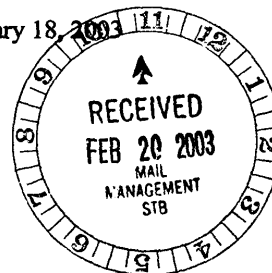
Fax (978) 663-1213

207254

VIA FEDERAL EXPRESS

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

February 18, 2003



**Re: Maine Central Railroad Company — Adverse Discontinuance of Service —
Twin State Railroad from Whitefield, NH to St. Johnsbury, VT
Docket No. AB 848**

Dear Secretary Williams:

This letter is to notify the Board that applicant, Maine Central Railroad Company hereby withdraws their **Petition for Waiver** filed with the Board on December 12, 2002.

Should you have any questions, please contact the undersigned. Thank you for your assistance with this matter.

ENTERED
Office of Proceedings

FEB 20 2003

Part of
Public Record

Respectfully submitted,

Katherine E. Potter
Attorney for Maine Central
Railroad Company

cc: Clyde Forbes
Leonard Singer, Esq.
Craig Donais, Esq.



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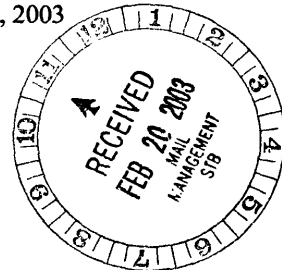
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The Honorable Vernon A. Williams
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**Re: Maine Central Railroad Company
State of New Hampshire, Department of Transportation
— Adverse Discontinuance of Service —
Twin State Railroad from Whitefield, NH to St. Johnsbury, VT
Docket No. AB 848**

Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding is an original and ten copies of the **Joint Petition for Waiver** dated February 18, 2003.

Should you have any question in regard to this filing, please feel free to contact me. Thank you for your assistance with this matter.

Respectfully submitted,

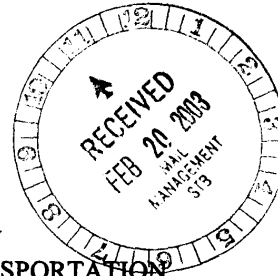
Katherine E. Potter
Attorney for Maine Central
Railroad Company

Enclosures

207254

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 848



MAINE CENTRAL RAILROAD COMPANY
STATE OF NEW HAMPSHIRE, DEPARTMENT OF TRANSPORTATION
-ADVERSE DISCONTINUANCE-
A LINE KNOWN AS THE "TWIN STATE RAILROAD"
FROM WHITEFIELD, NH TO ST. JOHNSBURY, VT.

Office ENTERED
of Proceedings

FEB 20 2003

Part of
Public Record

JOINT PETITION FOR WAIVER

A. BACKGROUND

Pursuant to 49 C.F.R. § 1152.24(e)(5), the Maine Central Railroad Company ("MEC") and the State of New Hampshire, Department of Transportation (the "State") (collectively the "Applicants") seek waiver of certain requirements of the Surface Transportation Board ("STB" or the "Board") regulations, including minor related exemptions, for an adverse discontinuance application that the Applicants intend to file in this proceeding. These requirements are inapplicable or irrelevant in an adverse discontinuance context, and the STB has consistently granted waivers and exemptions from such provisions in previous adverse abandonment and discontinuance cases. The Applicants intend to seek an adverse discontinuance of operations by the Twin State Railroad Corporation ("TSR") as designee of the Lamoille Valley Railroad Company ("LVRC"). The Applicants intend to file their adverse discontinuance application on or about March 28, 2003.

The Applicants intend to ask the STB to find that the public convenience and necessity permit the discontinuance of operations by LVRC and TSR over approximately 28.15 miles of track between Whitefield, New Hampshire and St. Johnsbury, Vermont (the "Line").

LVRC and TSR have been operating on the Line pursuant to the Lease and Operating Agreement dated March 1, 1984 (the "Agreement") approved in an Interstate Commerce Commission ("ICC") Decision decided May 16, 1984. Guilford Transportation Industries, Inc. – Control – Boston and Maine Corporation, Finance Docket No. 29720 (Sub-No. 1); Guilford Transportation Industries, Inc. – Control – Delaware and Hudson Railway Corporation, Finance Docket No. 29772 (ICC decided May 16, 1984). The Agreement is attached hereto as Exhibit "A".

On December 23, 2002, the State filed a notice of exemption pursuant to 49 C.F.R. § 1150.31 et seq., to acquire from MEC a certain portion of the Line. Specifically, the State sought to acquire the portion of the Line from Whitefield, New Hampshire to Gilman, Vermont (the "Segment"). The State acquired the Segment subject to the operating rights held by TSR and LVRC. The exemption took effect on December 30, 2002. The State of New Hampshire, Department of Transportation – Acquisition and Operation Exemption – Certain Assets of the Maine Central Railroad Company, Finance Docket No. 34307. MEC and the State consummated the transaction on December 30, 2002. MEC maintains ownership of the remainder of the Line from Gilman, Vermont to St. Johnsbury, Vermont. On January 7, 2003, MEC assigned its right, title and interest, if any, in the Agreement to the State with regard to the Segment.

On January 16, 2003, MEC and the State jointly filed a Request for Substitution of Parties indicating MEC's and the State's desire to substitute the State as a party to this proceeding in regard to the Segment.

Pending the approval of its application and consummation of the discontinuance of service, MEC and the State desire to have the LVRC and TSR interests in the property terminated. MEC and/or the State will likely institute a new operator or new operators, which

will recreate a viable freight rail service option in this area. The adverse discontinuance is necessary to remove LVRC's and TSR's interest in the Line from STB jurisdiction so that MEC and/or the State can proceed to remove the interests of LVRC and TSR under State law.

B. WAIVER REQUESTS

As the STB and its predecessor have consistently found, much of the information that the STB's regulations otherwise required in an abandonment or discontinuance application is largely inapplicable or irrelevant to the issues in an adverse discontinuance proceeding. The Applicants seek waiver on the grounds that the line at issue is out of service and little of the information in the regulations sought to be waived is relevant to the merits of an adverse discontinuance application. Additionally, as neither of the Applicants have been the operator on the Line, the Applicants are not in possession of much of the information required in the regulations sought to be waived. Waiver of these inapplicable and unneeded portions of the STB's abandonment regulations is routine in adverse abandonment or discontinuance cases. Chelsea Property Owners – Abandonment—Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY, Docket No AB-167 (Sub No. 1094) (ICC served July 19, 1989) ("Chelsea"); Grand Trunk Western Railroad Incorporated – Adverse Discontinuance of Trackage Rights Application – A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH, Docket No. AB-31 (Sub No. 30) (STB served Feb. 12, 1998) ("Grand Trunk Western Railroad Incorporated"); and City of Rochelle, Illinois – Adverse Discontinuance—Rochelle Railroad Company, STB Docket No. AB-549 (STB served June 5, 1998) ("City of Rochelle").

MEC and the State request waiver of the following informational requirements of 49 C.F.R. § 1152, Subpart C:

1. 49 C.F.R. § 152.20(a)(1), (2), (3) and (4) – Filing and Publication Requirements

a. 49 C.F.R. § 1152.20(a)(1) – Filing.

The Applicants seek a determination that this petition for waiver serve as the notice of intent to discontinue the operating rights of TSR and LVRC the filing of which satisfies the requirement of § 1152.20(a)(1). See City of Rochelle at 1.

b. 49 C.F.R. § 1152.20(a)(2) and (4) – Service and Newspaper publication.

The Applicants seek waiver of the service and newspaper publication requirements of § 1152.20(2) and (4) (and the corresponding requirements of § 1152.20(b)(1) and (2)). The adverse discontinuance will not result in a change in service or a discontinuation of service. Rather, MEC will provide service from Gilman, Vermont to St. Johnsbury, Vermont and the State intends to implement a new operator that will provide service from Whitefield, New Hampshire to Gilman, Vermont. See City of Rochelle at 3 (holding that strict adherence to the notice provisions in an adverse discontinuance proceeding would not serve the chief purpose for which they were promulgated, i.e. to alert those served by the line, when no rail service has been provided on the line for a significant period of time.)

c. 49 C.F.R. § 1152.20(a)(3) – Posting requirements

The Applicants seek waiver of the posting requirements of § 1152.20(a)(3) (and the corresponding requirements of § 1152.20(b)(2)). Canadian National Railway Company – Adverse Discontinuance – Lines of the Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, STB Docket No. AB-279 (Sub.

No. 3) (STB served September 25, 2002) ("Canadian National") at 4. See also City of Rochelle at 3.

2. 49 C.F.R. § 1152.22(a)(5), §§ 1152.10-1152.14 – System diagram map

The Applicants seek waiver of the system diagram map requirements of § 1152, Subpart

B. There is no need for the filing of a system diagram map in an application, which is designed to permit a change of operators, not discontinue service entirely. Again, as explained above, the adverse discontinuance will not result in a change or discontinuance of service on the Line. City of Rochelle at 3. See also Grand Trunk Western Railroad Incorporated at 1 (finding that the filing of a system diagram map is not appropriate in the context of an adverse abandonment).

3. 49 C.F.R. § 1152.22(c), (d) and (e) – Service provided, Revenue and cost data, and Rural and community impact.

Because the adverse discontinuance arises in the context of the restoration of continued service, "there is no point in requiring the submission of traffic data, data on revenues and costs, and information about transportation alternatives." Fore River Railroad Corporation – Discontinuance of Service Exemption – Norfolk County, MA, Docket No. AB-539 (ICC served Feb 13, 1992) (Fore River Railroad) at 2 citing Chelsea.

a. 49 C.F.R. § 1152.22(c) – Service provided

49 C.F.R. § 1152.22(c) requires an applicant to submit information regarding the service provided on the Line. As the exclusive operator on the Line, only TSR and LVRC could provide information regarding the service provided. For example, only TSR and LVRC can provide the average number of locomotive units operated, the level of maintenance required or the average crew size. 49 C.F.R. § 1152.22 (c) (3), (7), (6).

With regard to traffic levels, as per Section 4.01 of the Agreement, the Lessor maintains

an exclusive right to deal directly with the shippers and receivers regarding traffic and to solicit such traffic that is in the benefit of the Lessor. In the past, TSR/LVRC and MEC have shared information regarding actual traffic on the Line and the potential development of new accounts. However, during recent years, the sharing of information has been limited. There have been no requests by the State to share information, given their recent acquisition of the Segment. The Applicants have developed theories as to why the traffic levels have declined, but, again, as the exclusive operator on the Line, TSR and LVRC are in the best position to provide such information. Should TSR and LVRC wish to provide information as to why traffic levels have declined, the Applicants will evaluate such information and consider including such information in the adverse discontinuance application.

b. 49 C.F.R. § 1152.22(d) – Revenue and cost data.

49 C.F.R. § 1152.22 (d) requires an applicant to submit information regarding the revenues and costs generated on the Line. Again, as the exclusive operator on the Line, only TSR and LVRC could provide cost and revenue data relating to the operation of the Line.

A large part of the costs associated with the Line are a result of maintenance. Section 2.06 of the Agreement provides that “TSR [and LVRC] shall, at its own expense, maintain the Line in good condition and repair so that freight train operations can be conducted on the Line as warranted by traffic levels in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations.” Even when there is no traffic on the Line TSR and LVRC are required to maintain the Line, at the

very least, in compliance with all federal and state laws and regulations. Because TSR and LVRC are the sole operators, only they can provide the cost of this maintenance.

With regard to revenue, as per Section 4.01 of the Agreement, the Lessor maintains an exclusive right to deal directly with the shippers and receivers regarding traffic and to solicit such traffic that is in the benefit of the Lessor. The Applicants are currently unaware of any revenue generated by the Line. However, pursuant to Section 1.02 of the Agreement, "TSR [and LVRC] shall have the right on its own behalf to enter into [agreements] in connection with or relating to the Line, subject, however, to the prior written consent of the Chief Engineer of MEC, which consent shall not be unreasonably withheld, and to collect and receive for its account any rents or payments with respect to all such agreements." Although MEC retains the right to review any agreements entered into, the revenue ultimately generated is between TSR/LVRC and their customer. Again, the Applicants can estimate what the current and projected costs and revenues may be if TSR and LVRC continue to operate the Line, but as the exclusive operator on the Line, TSR and LVRC are in the best position to provide accurate information. Should TSR and LVRC wish to provide information as to their costs and revenues, the Applicants will evaluate such information and consider including such information in the adverse discontinuance application.

Additionally, it is important to note that the potential projected revenues and costs of another operator are irrelevant to this consideration. This proceeding is addressing the adverse discontinuance of TSR and LVRC as operators on the Line not the potential for the Line under the direction of another operator.

c. 40 C.F.R. § 1152.22(e) – Rural and community impact.

As explained above, because the adverse discontinuance arises in the context of the restoration of continued service, “there is no point in requiring the submission of ... information about transportation alternatives.” Fore River Railroad at 2 citing Chelsea.

4. 49 C.F.R. § 1105 – Environmental historical requirements

Because this adverse discontinuance arises in the context of the potential use of the Line for the purpose of continued rail operations and does not result in significant changes that exceed the thresholds established in section 1105.7(e)(4) or (5), this proceeding is exempt from the environmental and historic reporting requirements of § 1105 pursuant to 49 C.F.R. §§ 1105.6(c)(2) and 1105.8(b)(1). See City of Rochelle at 2. The Applicants request any further exemption or waiver that the STB may find necessary to confirm the inapplicability of environmental and historical reporting requirements to this proceeding.

The Applicants request exemption from the following requirements:

1. 49 U.S.C. § 10903 (a)(3)(B) – Posting requirements.

The Applicants request an exemption from the posting requirements of 49 U.S.C. § 10903 (a)(3)(B), pursuant to 49 U.S.C. § 10502, to the extent deemed necessary for the adverse discontinuance application. See Canadian National at 2.

2. 49 U.S.C. § 10903 (c)(2) – System diagram map

The Applicants request an exemption from the system diagram map requirements of 49 U.S.C. § 10903(c)(2), pursuant to 49 U.S.C. § 10502, to the extent deemed necessary for the adverse discontinuance application. See Canadian National at 3.

3. 49 U.S.C. § 10904 – Financial assistance requirements

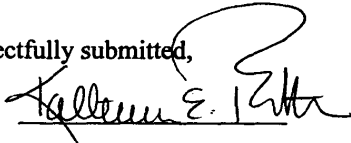
The Applicants request an exemption from the financial assistance requirements of 49 U.S.C. § 10904 (and waiver of the related regulations, 49 C.F.R. § 1152.27). See Canadian National at 3.

The Applicants understand that, as an applicant in an adverse discontinuance proceeding, it bears the burden of proof to submit sufficient relevant information to allow the STB to reach a decision on the merits and grant the requested relief.

WHEREFORE, the Applicants respectfully requests that the STB grant the requested waivers and exemptions set forth herein.

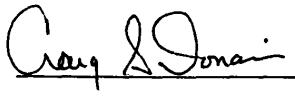
Respectfully submitted,

By:


Katherine E. Potter, Esquire
Staff Attorney
Maine Central Railroad Company
Iron Horse Park
North Billerica, MA 01862
978-663-1215

**ATTORNEY FOR MAINE
CENTRAL RAILROAD
COMPANY**

By:


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Assistant Attorney General
Transportation & Construction Bureau
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Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397
603-271-3675

**ATTORNEY FOR THE
STATE OF NEW HAMPSHIRE,
DEPARTMENT OF
TRANSPORTATION**

Dated: February 18, 2003

CERTIFICATE OF SERVICE

**Maine Central Railroad Company/State of New Hampshire, Department of Transportation
– Adverse Discontinuance of Service–
“Twin State Railroad” from Whitefield, New Hampshire to St. Johnsbury, Vermont
Docket No. AB 848**

The undersigned hereby certifies that on the 18th day of February 2003, a copy of the
Joint Petition for Waiver filed in the above-referenced proceeding was served by first class
mail, postage prepaid, upon:

Twin State Railroad Corporation
Attn: C. S. Forbes
P.O. Box 1267
Trenton, FL 32693

Twin State Railroad Corporation
Lamoille Valley Railroad Company
C/o Leonard M. Singer, Esq.
Craighead, Glick, LLP
277 Dartmouth Street
Boston, MA 02116

Lamoille Valley Railroad Company
Attn: C. S. Forbes
P.O. Box 1360
Trenton, FL 32693

Governor
State of New Hampshire
Office of the Governor
State House, Room 208-214
Concord, NH 03301-4990

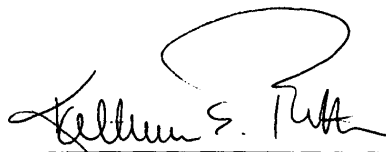
New Hampshire Public Utilities
Commission
8 Old Suncook Road
Concord, NH 03301

Bureau of Rail and Transit
State of New Hampshire
Department of Transportation
P.O. Box 483
Concord, NH 03302-0483

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109 State Street, Pavilion
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Vermont Agency of Transportation
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Montpelier, VT 05633-0001

Vermont Department of Public Service
112 State Street, Draw 22
Montpelier, VT 05620-2601


Katherine E. Potter