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ENTERED
Office of the Secretary

JAN 14 2002

Part of
Public Record

January 11, 2002

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



RE: Application of Rymes Heating Oils, Inc. for certain determinations and a prescription, all related to competitive access for Petitioner to two rail carriers (Finance Docket No. 34098)

Dear Secretary Williams:

Following up on our filing of yesterday in the above-captioned matter, I enclose the original verification that was filed yesterday in the form of a facsimile transmission. Please substitute the enclosed original for the facsimile version.

The originals of the verifications of Ms. Jodi Jones and Mr. James Rymes, facsimile versions of which were in yesterday's filing, are en route and will be delivered to your office next week.

Thank you for your attention to this request.

Respectfully submitted,

Ernest J. Ierardi, P.C. kw
Ernest J. Ierardi, P.C.
Counsel for Petitioner

EJI:ehr

Enclosure

R550102.2

Verified Statement of
Ernest J. Ierardi

In its Petition herein, Rymes Heating Oils, Inc. ("Rymes") contends that the Terms and Conditions of Trackage Rights ("T.R. T&C") which the Interstate Commerce Commission imposed in its decision in Finance Dockets Nos. 31250 and 31259¹ are referring to buildings and structures occupied by a shipper when they use the term "existing . . . shippers' facilities." That term is important to the Second Claim in the Petition which essentially maintains that, if the Board finds that Petitioner cannot be awarded the relief it seeks under its First Claim, the Board should find that Respondent Springfield Terminal Railway Company ("ST") is not entitled to an exclusive right to serve Rymes since Rymes neither is an existing shipper nor does it occupy existing facilities as those terms are used in the provision of the T.R. T&C affording ST exclusive service rights.

Buildings and structures occupied by a shipper comprise "existing . . . shippers' facilities" in the T.R.T&C because of the language of Section 1.3.1 of the T.R.T&C. That section provides:

For purposes of this Section 1.3, "existing shippers and shippers' facilities" shall mean industries and facilities at rail sidings which received or tendered rail shipments during the twelve months immediately prior to the Conveyance Date.

In this formulation, "existing shippers" plainly refers to "industries" and "existing . . . shippers' facilities" to "facilities" making shipments that predate the Conveyance Date, a term defined in T.R. T&C section 0.5 as September 9, 1988.² The facilities which Rymes occupies at Claremont are the Distribution Center described in Section 1 of the Petition. Rymes never made shipments from any building or structure before the Conveyance Date, nor did it make shipments other than in connection with its Distribution Center once it was built in the mid-1990s. Exhibit JTR-1.

Under Section 3.1 of the T.R. T&C, ST's exclusive right to serve on the Conn River Line extends only to (1) existing shippers and shippers' facilities located on that

¹ Finance Docket No. 31250: The National Railroad Passenger Corporation - Conveyance Of Boston And Maine Corporation Interests In Connecticut River Line In Vermont And New Hampshire. Finance Docket No. 31259: Central Vermont Railway, Inc. - Petition For Exemption - Acquisition And Operation Of Certain Interests In Rail Lines From The National Railroad Passenger Corporation, 6 I.C.C. 2d 539, 1990 ICC LEXIS 52 (February 6, 1990).

² That Rymes is not an "existing shipper" is established by section 30 of the Petition, supported by Exhibit JTR-1, especially paragraph 4. The Verification submitted herewith attests to the accuracy of Exhibit JTR-1.

line as of the Conveyance Date and (2) after that, new shippers located at such existing facilities, i.e., facilities dating from the Conveyance Date. Since Rymes does not qualify under either (1) or (2), the ST exclusive does not apply to it. Rather, Rymes is entitled to the competition described in Section 1.4(a) and (b) of the T.R. T&C.

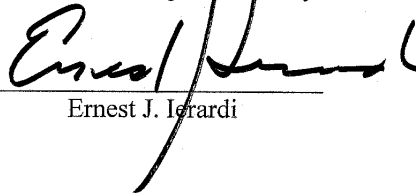
VERIFICATION

State of New York

County of Monroe

SS:

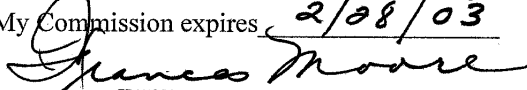
Ernest J. Ierardi, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts stated therein are true except as they relate to facts stated in this proceeding by another witness and, subject to the same exception, the same are true as stated. To the extent that the statement contains arguments, they are based only on those facts.


Ernest J. Ierardi

Subscribed and sworn
to before me this 10th day
of January 2002

Notary Public of STATE OF New York

My Commission expires 2/28/03



FRANCES MOORE
Notary Public, State of New York
No. 01MO4677991
Qualified in Ontario County
Certificate Filed in Ontario County
Commission Expires Feb. 28, _____