

ORIGINAL

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ENTERED
Office of Proceedings 2175 K STREET, N.W.
WASHINGTON, D. C. 20037
JAN - 5 2004 (202) 775-5560

Part of
Public Record

January 5, 2004

FACSIMILE
(202) 775-5574

E-MAIL
MSH@MSHPC.COM

WEBSITE
HTTP://WWW.MSHPC.COM

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

By Hand Delivery

209771



Re: Finance Docket No. 34455
Vermont Railway, Inc. - Modified Certificate

Dear Secretary Williams:

Enclosed for filing are an original and 10 copies of a Notice for a Modified Certificate of Public Convenience and Necessity on behalf of Vermont Railway, Inc., pursuant to 49 C.F.R. § 1150.21, et seq. Also enclosed is our check in the amount of \$1,300.00 as the prescribed filing fee.

Please file stamp the extra copy of this letter that is being provided, as well as an extra copy of the Notice that is being provided, and return them to our messenger.

Respectfully submitted,

Andrew P. Goldstein

Andrew P. Goldstein
Attorney for Vermont Railway, Inc.

FILED

JAN - 5 2004

SURFACE
TRANSPORTATION BOARD

FEE RECEIVED

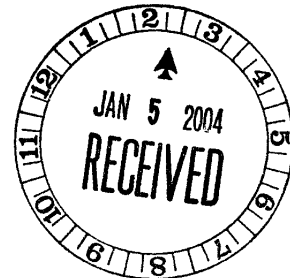
JAN - 5 2004

SURFACE
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____ 209771



FINANCE DOCKET NO. 34455

VERMONT RAILWAY, INC. - MODIFIED RAIL CERTIFICATE

ENTERED
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JAN - 5 2004

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NOTICE PURSUANT TO 49 C.F.R. § 1150.21, ET SEQ.

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JAN - 5 2004

SURFACE
TRANSPORTATION BOARD

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JAN - 5 2004

SURFACE
TRANSPORTATION BOARD

Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
Suite 600
2175 K Street, N.W.
Washington, DC 20037
(202) 775-5560

Attorney for
Vermont Railway, Inc.

Dated: January 5, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34455

VERMONT RAILWAY, INC. – MODIFIED RAIL CERTIFICATE

NOTICE PURSUANT TO 49 C.F.R. § 1150.21, ET SEQ.

Vermont Railway, Inc. ("VTR"), a Class III rail carrier, files this Notice for a Modified Certificate of Public Convenience and Necessity ("Modified Certificate") pursuant to 49 C.F.R. § 1150.21, et seq., to permit VTR to continue as the operator of a 131-mile rail line owned by the State of Vermont ("Vermont") and previously authorized for abandonment.

In support of this Notice, VTR submits the following information as required by 49 C.F.R. § 1150.23(b):

- (1) Name and address of operator

Vermont Railway, Inc.
One Railway Lane
Burlington, VT 05401

(i-iii) Articles of Incorporation, names and addresses of officers and directors, and information regarding financial responsibility.

Not applicable because VTR is an existing rail carrier.

- (2) Information about the prior abandonment, including docket number, status and date of the first decision approving the abandonment.

The line of railroad involved in this proceeding was authorized to be abandoned in Rutland Ry. Corp., Abandonment of Entire Line, 317 I.C.C. 393 (1962). Subsequently, VTR and Vermont sought and were granted authority under the former Section 1(18) of the Interstate Commerce Act for Vermont to acquire, and for VTR to operate, the subject line. See Finance Docket No. 22830, State of Vt. And Vermont Ry., Inc., Acquisition and Op., 320 I.C.C. 330 (1963), modified in State of Vt. And Vermont Ry., Inc., Acquisition and Op., 320 I.C.C. 609 (1964), further modified by Supplemental Order (not printed) served October 3, 1974, Second Supplemental Decision (not printed), served March 3, 1983, and Decision (not printed) served December 28, 1993. A copy of the latter Decision is attached hereto as Appendix A for the convenience of the Board.

- (3) The exact dates of the period of operation which have been agreed upon by the operator and the State which owns the line (if there is any agreement it should be provided):

As noted in the attached Finance Docket No. 22830 Decision, served December 28, 1993, the original operating lease of the line from Vermont to VTR was revised in July 1990, filed with the Interstate Commerce Commission ("ICC") in Finance Docket No. 22830, and reviewed by the ICC. It is thus not being refiled at this time, although VTR will supply a copy if so desired by the Board. The December 28, 1993 Decision notes certain respects in which the 1990 lease differs from the earlier lease approved by the ICC in Finance Docket No. 22830, including the fact that the 1990 lease contains six 10-year renewal options for VTR. The ICC found in that Decision that the 1990 lease changes were consistent with the public interest and approved the changes retroactively. The Decision also noted that VTR could elect to proceed in the future under 49 C.F.R. § 1150, subpart C (i.e., 49 C.F.R. § 1150.21), rather than continuing to seek periodic operating approval under the successor provisions to the former Section 1(18).

The 1990 lease filed with the ICC in Finance Docket No. 22830 provides that, so long as VTR "performs

the agreements [in the lease] on its part, then it shall have the right ... to renew this lease for additional ten year terms, up to a maximum of six times.” The first such renewal term was exercised on January 6, 1994 and extended through January 5, 2004. That option was approved by the ICC in the Finance Docket No. 22830 Decision attached as Appendix A.

VTR has notified Vermont that VTR intends to exercise the second ten-year option provided for in the lease, commencing January 6, 2004 and extending through January 5, 2014, and Vermont has acknowledged receipt of such notice. See Appendix B hereto. Additional ten-year renewal terms are available to VTR through January 5, 2054.

- (4) A description of the service to be performed including the line over which services is to be performed, all interline connections and the names of connecting railroads, the nature and extent of all liability insurance coverage, and any preconditions which shippers must meet to receive service.

VTR’s line consists of approximately 131 miles extending between Burlington, on the north, and Bennington, on the south, via Rutland. At Rutland, VTR connects with its affiliate, Clarendon & Pittsford Railroad Company,

whose line extends to Whitehall, NY and connections with Canadian Pacific Railroad. At Rutland, VTR also connects with another affiliate, Green Mountain Railroad Corporation, whose line extends to Bellows Falls, VT, where it has interchanges with New England Central Railroad and Springfield Terminal Railway Company. At Burlington, VTR connects with New England and Central Railroad.

VTR maintains third party and property damage liability insurance coverage in the amount of \$20,000,000, subject to a \$100,000 self insurance deductible. Its coverage is through Lexington Insurance Company, Policy No. 6007437.

VTR has set no preconditions which shippers must meet to receive service.

- (5), (6) The name and address of any subsidizers and information to establish the financial responsibility of any subsidizers.

There are no operating subsidies applicable to VTR's service over this line of railroad. However, pursuant to the lease between VTR and Vermont entered into in 1990, Vermont is required to pay for the maintenance of certain structures along the line operated by VTR. Pursuant to 5 V.S.A. §§ 3401-3409, the Vermont Agency of Trans-

portation is authorized to enter into agreements to ensure
continued rail service over rail lines owned by Vermont.

This notice does not require an historic report under 49 C.F.R. § 1105.8 and no
environmental documentation is required under 49 C.F.R. § 1105.6.

Respectfully submitted,



Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
Suite 600
2175 K Street, N.W.
Washington, DC 20037
(202) 775-5560

Attorney for
Vermont Railway, Inc.

Dated: January 5, 2004

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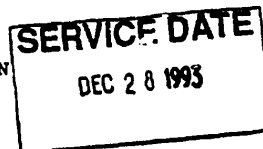
EC

INTERSTATE COMMERCE COMMISSION
DECISION

Finance Docket No. 22830

STATE OF VERMONT AND VERMONT RAILWAY, INC.--
ACQUISITION AND OPERATION IN VERMONT

Decided: December 20, 1993



By letter-petition filed February 9, 1993, Vermont Railway, Inc. (Railway) seeks modification of the Commission authorization to lease and operate a line of railroad owned by the State of Vermont (Vermont) approved in State of Vt. And Vermont Ry., Inc., Acquisition and Op., 320 I.C.C. 330 (1963), as modified in State of Vt. And Vermont Ry., Inc., Acquisition and Op., 320 I.C.C. 609 (1964), as further modified by Supplemental Order (not printed) served October 3, 1974, and Second Supplemental Decision (not printed), served March 3, 1983.

Pursuant to these prior authorizations, Railway has been conducting operations over approximately 131.6 miles of railroad leased from Vermont, in Bennington, Rutland, Addison, and Chittenden Counties, VT. The lines extend: (1) between chaining station 0+00 at White Creek, NY and station 6583+50 in Burlington, VT; (2) between chaining station 3024+91 and station 3265+88, on the Bennington Branch; and (3) between chaining station 2641+23 and station 2756+66 on the Bellows Falls subdivision. The original lease and a subsequent amended lease provide for renewal of the lease every 10 years. With Commission approval, the lease term has been extended twice and the current lease term expires on January 5, 1994.

On January 15, 1993, Railway and Vermont agreed to renew the lease again. Railway now seeks Commission authorization to continue operation under the lease for the 10-year period extending from January 6, 1994 to January 5, 2004.¹

¹ Railway also refers to a revised lease which the parties signed in July 1990 and the Vermont Legislative Joint Fiscal Committee approved on September 19, 1990. The 1963 decision approved the original lease only for the initial 10-year term and stated that no renewal or change could be made without prior Commission authority. In October 1990, Railway sent the Commission a copy of the 1990 lease. The cover letter stated that the copy was enclosed in accordance with Finance Docket 22830, without noting that Commission approval was necessary and being sought. The Commission took no action on the revised lease.

The principal changes in the 1990 lease are: (1) an adjustment of the lease payments; (2) a new provision for revenue distribution from fibre optics rentals; (3) clarification of the purchase option; (4) clarification of maintenance and obligations on bridges over water; and (5) six additional 10-year renewal periods.

The 1990 changes are consistent with the public interest. We will approve them here retroactively. We note, however, that since the 1963 decision was issued requiring prior approval for further changes or extensions, the Commission has adopted simpler procedures. Where a rail line is authorized for abandonment and later purchased by a State and leased to an operator under a Modified Certificate of Public Convenience and Necessity, the start up and termination of operations are exempt from Commission regulation. See 49 CFR Part 1150, Subpart C. If the parties were to use that procedure, we would not need to approve future
(continued...)

Finance Docket No. 22830

We find that the continued operation of the line by Railway under the terms of the lease as previously modified and as amended September 19, 1990, for an additional 10-year period, is consistent with the public interest and we will grant Railway's petition for modification.

This decision will not have a significant effect on the quality of the human environment or the conservation of energy resources.

It is ordered:

(1) The authority to lease and operate the line of railroad granted to Vermont Railway, Inc., in State of Vt. And Vermont Ry., Inc., Acquisition and Op., 320 I.C.C. 330 (1963), as modified in State of Vt. And Vermont Ry., Inc., Acquisition and Op., 320 I.C.C. 609 (1964), and as further modified by Supplemental Order (not printed) served October 3, 1974, and Second Supplemental Decision (not printed), served March 3, 1983, is further modified: (1) retroactively to include the terms of the September 19, 1990 lease; and (2) to extend the term of the grant of authority for an additional 10-year period terminating January 5, 2004.

(2) This decision is effective on December 28, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.
Secretary

(SEAL)

¹(...continued)
changes or extensions. We recommend that they consider that method. If assistance is needed, they may consult with the Commission's Office of Public Assistance, Washington, DC 20423; (202) 927-7597.

APPENDIX B

OFFICES AT:
NATIONAL LIFE BUILDING
ONE NATIONAL LIFE DRIVE
MONTPELIER, VERMONT 05604

TELEPHONE:
(802) 828-2831

FAX:
(802) 828-2817



STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION
NATIONAL LIFE BUILDING
DRAWER 33
MONTPELIER, VERMONT 05633-5001

March 11, 2003

Eric R. Benson, Esq.
Vermont Railway, Inc.
One Railway Lane
Burlington, VT 05401-5290

Re: Vermont Railway, Inc. — Exercise of Option to Renew for
Ten-Year Period (January 6, 2004 - January 5, 2014)

Dear Eric:

This is to acknowledge that the Agency of Transportation has received David Wulfson's November 11, 2002 letter in which Vermont Railway, Inc. gave notice that it is exercising its option to renew its September 19, 1990 lease for a second 10-year renewal term, extending from January 6, 2004 through January 5, 2014.

Sincerely,


John K. Dunleavy
Assistant Attorney General

jkd/bem

cc: David C. Dill, Director of Operations