



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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

207964

LAW DEPARTMENT
(978) 663-1029

VIA FEDERAL EXPRESS

June 3, 2003

ENTERED
Office of Proceedings

JUN - 4 2003

Part of
Public Record



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

Re: **STB Finance Docket No. 33989, Pejepscot Industrial Park, Inc.
d/b/a/ Grimmel Industries— Declaratory Order**

Dear Secretary Williams:

Enclosed for filing are an original and ten copies of the *Petition of the Maine Central Railroad Co., Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc. for Reconsideration* in the above-referenced proceeding.

Thank you for your attention in this matter. Please feel free to contact me if you should have any questions or comments.

Sincerely,

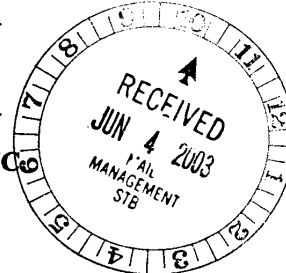
Robert B. Culliford
Corporate Counsel

Enc.
cc: Service List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33989

**PEJEPSCOT INDUSTRIAL PARK, INC.
d/b/a GRIMMEL INDUSTRIES—
DECLARATORY ORDER**



**ENTERED
Office of Proceedings**

JUN - 4 2003

**Part of
Public Record**

**PETITION OF THE
MAINE CENTRAL RAILROAD CO.,
SPRINGFIELD TERMINAL RAILWAY CO., AND
GUILFORD TRANSPORTATION INDUSTRIES, INC.
FOR RECONSIDERATION**

Pursuant to 49 C.F.R. part 1115, the Maine Central Railroad Company, the Springfield Terminal Railway Company and Guilford Transportation Industries, Inc. (collectively "Guilford") hereby petition for reconsideration of the decision in this proceeding served May 15, 2003 (the "May 15th Decision"). More particularly, Guilford submits new evidence in the form of the amended testimony of Kenneth R. Berg to show that the Board incorrectly determined that Guilford was required to provide a rate for the transport of auto shredder residue ("ASR") by rail in response to a request by respondent Pejepsco Industrial Park, Inc. ("Grimmel") on June 18, 1996 (the "June 18th Request").

As discussed in more detail below, the June 18th Request was limited to a rate for the movement of scrap metal—ferrous recyclables that had been exempt from regulation since 1995. *See Rail General Exemption Authority—Exemption of Ferrous Recyclables*, 10 I.C.C.2d 635 (1995); May 15th Decision, at 5. Guilford also submits amended testimony from Mr. Berg showing that Grimmel's subsequent request for rates for the transport of ASR on May 22, 1997

was not accepted by Grimmel, and that the reason for that non-acceptance at most had only partial relation to the condition of the Lewiston Lower Line.

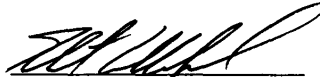
In finding that Guilford had improperly refused to provide rates for the movement of ASR, the Board relied upon Mr. Berg's testimony to determine that the June 18th Request included a request for rates to transport ASR from Topsham, Maine to Steelton, Pennsylvania. May 15th Decision, at 9. However, upon further review of his notes—including the Rate Request Form completed while speaking by telephone with Grimmel's representative Mr. Garrity—Mr. Berg has realized that no request for a rate to transport ASR was made on that date. Verified Statement of Kenneth R. Berg in Support of Petition for Reconsideration ("Berg Reconsideration V.S.") ¶ 3. Rather, Mr. Garrity's rate request was limited to scrap metal. In his initial review of the Rate Request Form, Mr. Berg mistook its reference to "shredded" as relating to ASR. *Id.* ¶ 4 & Exh. A. In fact the term "shredder" referred to a type of scrap metal known as "*shredded*, bundled number one scrap," not to ASR. *Id.*

Mr. Berg's recollection is further supported by the destination sought by Grimmel for the shipment—Steelton, Pennsylvania. *Id.* ¶ 5. Steelton is the location of a well-known scrap metal processing facility that receives shipments of scrap from dealers such as Grimmel. *Id.* The Steelton facility does not process ASR, which is a waste produced in shredding scrap that must be disposed of at properly certified landfills that are willing to accept such waste. *Id.* Because of the expense involved in disposing ASR, it is highly unlikely that the Steelton facility would have been willing to accept a shipment of that product from Grimmel. *Id.* Moreover, even if Steelton were capable of accepting ASR, Mr. Garrity made no indication that the facility was willing to accept this product from Grimmel or that Grimmel had access to the appropriate cars for this movement. *Id.*

After the June 18th Request, Mr. Berg did not receive any request for rates for the shipment of ASR from Grimmel or any broker acting on its behalf until May 22, 1997. *Id.* ¶ 6. The May 22, 1997 request for rates for the transport of ASR from Topsham to various points was made by Mr. Black of Grimmel. *Id.* ¶ 7 & Exh. B. Mr. Berg did quote rates in response—which were never accepted by Grimmel and hence not published by Guilford. *Id.* These rates, to various destinations including Framingham, Massachusetts at \$2100 per car and Port Clinton, Pennsylvania at \$2850 per car, were also conditioned upon Guilford's being able to access the Lewiston Lower Line, although Mr. Berg did not consider in his original testimony that it was unlikely Grimmel could have accepted these rates even had such access been available. *See id.* ¶ 7. For example, Grimmel would also have had to arrange for the availability of a particular type of car for the movement of ASR, a car that is not readily available due to its dimensions. *Id.* ¶ 8. As can be seen from the Rate Request Form, the particular dimensions of these cars was discussed, although no conclusion was reached as to their availability. *Id.* ¶ 8 & Exh. B. Moreover, prior to any movement of ASR to a properly certified landfill, Grimmel would have been required to obtain pre-approval from the landfill for dumping at that location, something that Grimmel did not indicate had been—or could be—done. *Id.* ¶ 9. As a result, although Guilford's rate quote from Topsham to these destinations was conditioned upon Grimmel's access to the Lewiston Lower Line, the non-acceptance of these rates by Grimmel reflected several unresolved issues in addition to such access—issues separate and distinct from the condition of the Lewiston Lower Line and outside Guilford's control. *Id.* ¶ 7. So far as Guilford is aware, the only rate request for ASR originating at Grimmel's Topsham facility ever received from Grimmel, or from any broker acting for Grimmel, was Mr. Black's request of May 22, 1997. *Id.* ¶ 10.

Accordingly, Guilford respectfully requests that the Board reconsider its May 15th Decision in consideration of the new evidence presented herein and rule that Guilford did not violate its obligations under 49 U.S.C. § 11101.

Respectfully submitted,



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Springfield Terminal Railway Company
Guilford Transportation Industries, Inc.

June 3, 2003

310345.2

ATTACHMENT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33989

**PEJEPSCOT INDUSTRIAL PARK, INC.
d/b/a GRIMMEL INDUSTRIES—
DECLARATORY ORDER**

**VERIFIED STATEMENT OF KENNETH BERG
IN SUPPORT OF PETITION FOR RECONSIDERATION**

Kenneth Berg states as follows:

1. I previously have submitted a Verified Statement in reply to the petition for declaratory order filed in this proceeding by petitioner ("Reply V.S."), Pejepscot Industrial Park, Inc. ("Grimmel"). I make this statement in support of the petition for reconsideration filed by respondents Maine Central railroad Company, Springfield Terminal Railway Company and Guilford Transportation Industries, Inc. (collectively, "Guilford").

2. Upon reviewing the decision of the Board served May 15, 2003, I realized that my Reply V.S. inaccurately stated the substance of my conversations with Grimmel regarding requests for rates of shipment of scrap metal and auto shredder residue ("ASR") from Topsham, Maine to various points.

3. More particularly, paragraph 6 of my Reply V.S. inadvertently stated that I had received a request on June 18, 1996, for a rate from Tim Garrity of Grimmel for the carriage of scrap metal *and ASR* from Topsham to Steelton, Pennsylvania. After reviewing my notes—including the Rate Request Form that I completed while speaking with Mr. Garrity on that

date—I realized that Mr. Garrity had not made a request for rates for the movement of ASR, nor had Mr. Delgrego made such a request in later discussions. A copy of the Rate Request Form is annexed hereto as Exhibit A.

4. Rather, Mr. Garrity's request was limited to scrap metal only. The reference to "shredded" on the request form, which I misread as relating to ASR when preparing my Reply V.S., was in fact a request for rates to ship a type of scrap metal known as "*shredded*, bundled number one scrap," not ASR.

5. My recollection is further supported by the destination sought by Grimmel for the shipment of this type of scrap metal—Steelton, Pennsylvania. Steelton is the location of a well-known scrap metal processing facility that receives shipments of scrap from dealers such as Grimmel. But the Steelton facility does not process ASR, which is waste produced in shredding scrap that must be disposed of at landfills that are properly certified and are willing to accept such waste. Because of the expense involved in disposing ASR, it is highly unlikely that the facility at Steelton would have been willing to accept a shipment of that product from Grimmel. Moreover, there are landfills certified for, and willing to accept, ASR that are far closer to Topsham than Steelton.

6. After that initial request (June 18, 1996), I did not receive any requests for rates for the shipment of ASR from Grimmel or any broker acting on its behalf until May 22, 1997.

7. I received a request for rates to transport ASR from Topsham to various points in Pennsylvania and Massachusetts from Mr. John Black of Grimmel on May 22, 1997. In response, I did quote rates to Mr. Black, namely \$2100 per car to Framingham, Massachusetts and \$2850 per car to Port Clinton, Pennsylvania. These rates were never accepted by Grimmel, however, and therefore never were published by Guilford. These rates were also conditioned

upon Guilford being able to access the Lewiston Lower Line, but I now recollect that it was unlikely that Grimmel could have accepted the rates until other conditions were met—conditions separate and distinct from the condition of the Lewiston Lower Line and beyond Guilford's control. A copy of the Rate Request Form that I completed while speaking with Mr. Black on that date—which clearly identifies the commodity discussed as waste and ASR—is annexed hereto as Exhibit B.

8. In order to accept the rates quoted on May 22, 1997, Grimmel would have had to arrange for the availability of a particular type of car for the movement of ASR, a car that is not readily available due to its dimensions. As the Rate Request Form indicates, I discussed the particular dimensions of this type of car with Mr. Black, although no conclusion was reached as to their availability.

9. In addition, prior to any movement of ASR to a properly certified landfill, Grimmel would have had to obtain pre-approval from the landfill for dumping at that location, something that Grimmel did not indicate had been—or could be—done. As a result, while Guilford did quote rates from Topsham to these destinations, the non-acceptance of these rates by Grimmel was indicative of the several issues *in addition to access to the Lewiston Lower Line* that needed to be resolved prior to shipment of ASR to these locations.

10. So far as I am aware and so far as Guilford's records reflect, the only rate request Guilford ever received from Grimmel or any broker acting for Grimmel for ASR originating at Grimmel's Topsham facility was Mr. Black's request of May 22, 1997.


KENNETH BERG

VERIFICATION

Commonwealth of Massachusetts)
) ss.:
County of Middlesex)

Kenneth Berg, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed Kenneth Berg

Subscribed and sworn to before me this third day of June 2003.

Joseph J. Dineen
Notary Public

My commission expires March 12, 2010

310346.2

EXHIBIT A

RATE REQUEST FORM - BOSTON AND MAINE CORP / MAINE CENTRAL RAILROAD

DATE OF REQUEST 6-18-96 DATE DUE _____ FILE NO _____

REQUEST MADE BY Tim Gannity TEL NO: 207-729-1691

COMPANY & ADDRESS Grimme/IND

COMMODITY Scrap Metal - Shredded Frag SIDE

SHIPPER/ORIGIN Topsham, Me →

RECEIVER/DESTINATION Stee/Ton Portsmouth

VOLUME OF TRAFFIC 4-5 PER WEEK SPOT MOVE _____

MINIMUM WEIGHT PER CAR _____ MIN _____ MIN _____ MIN

EQUIPMENT _____ PRIVATE _____ RAILROAD _____ MILEAGE ALLOWANCE _____

ROUTE(S) Lewiston - Lower

PRESSENT RAIL RATE(S): TARIFF _____ CONTRACT _____

ITEM(S) _____ RATE BASE _____ CRC _____ RATE LEVEL _____

RATE _____ PER _____ MIN _____ RATE _____ PER _____ MIN _____

CURRENT DIVISIONS:

ROUTE 1

ROUTE 2

ROUTE 3

CR 1270

ST 850

#2120

PROPOSED RATE(S):

RATE _____ PER _____ MIN _____ RATE _____ PER _____ MIN _____

RATE _____ PER _____ MIN _____ TARIFF _____ CONTRACT _____

ROUTING _____

NOTES _____

ACTION TAKEN 6-26-96

EXHIBIT B

TE REQUEST FORM--SPRINGFIELD TERMINAL RAILWAY (BM/MEC)

TE OF REQUEST 5-22-97 DATE DUE ASR 2010 F/uff FILE # STCC
 QUEST MADE BY John Black TEL # 207-729-1691
 COMPANY AND ADDRESS Waste - Scrap Metals
 MODITY Waste - Scrap Metals
 UPPER/ORIGIN Wadsworth, Me
 CEIVER/DESTINATION Pont Clinton, Cleveland
 VOLUME OF TRAFFIC SCAMASS - Mago
 N. WGT PER CAR PER MIN.
 EQUIPMENT PRIVATE RAILROAD

NOTE(S)

617-380-3556 Bernie Regan
 508-291-7432

Box car with roof off
 need big car
 5000 cubic feet
 need car to be dumped

BC

middle borough - BC

Framingham Pont Clinton

CR 450 1500
 Baycol 300 1350
 ST 1350
 2100 2850

Prokerizer
 tried - was successful
 Rochester, Me 300
 Shippers mileage

NOTE(S)

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2003, a copy of the foregoing *STB Finance Docket No. 33989, Petition of the Maine Central Railroad Co., Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc. for Reconsideration* was served by overnight mail to James J. Kilbreth, Esq. and Rita H. Logan, Esq., Verrill & Dana LLP, One Portland Square, Portland, ME 04112 and first class mail, postage prepaid to the following:

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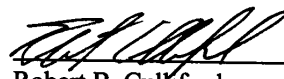
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