

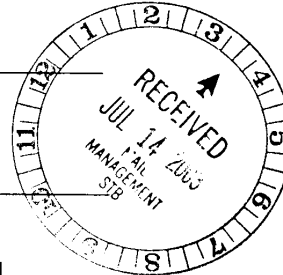
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D.O. #0108215001

EXPEDITED CONSIDERATION
REQUESTED FOR COUNT I

BEFORE THE
SURFACE TRANSPORTATION BOARD

NO. 42083
Finance Docket No. 34381



FEE RECEIVED

JUN 14 2003

SURFACE TRANSPORTATION BOARD GRANITE STATE CONCRETE CO., INC. and
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

v.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY CO.

FILED

JUN 14 2003

ENTERED
Office of Proceedings

JUL 1 2003

Part of
Public Record

**SURFACE
TRANSPORTATION BOARD**

FORMAL COMPLAINT

Granite State Concrete Co., Inc. ("Granite State") and Milford-Bennington Railroad Company, Inc. ("Milford-Bennington") hereby file this Complaint and request the Board to (1) issue an order, on the expedited schedule contemplated by 49 C.F.R. 1146, authorizing and directing the operation by Milford-Bennington over a line of railroad owned by Boston and Maine Corporation ("Boston and Maine") and operated by Springfield Terminal Railway Company ("Springfield Terminal") (Boston and Maine and Springfield Terminal are referred to below as "Guilford") between milepost 16.36 in Wilton, New Hampshire and milepost 13.0 near Milford, New Hampshire, (2) determine that the actions of Guilford described below constitute an unreasonable rule or practice and an illegal commercial closing of a route, (3) direct Guilford immediately to

discontinue such practice and permit Milford-Bennington to operate without time restrictions, and (4) award damages to Granite State and Milford-Bennington.

1. This complaint is filed pursuant to 49 U.S.C. 11701(b) and 11704(b) and 49 C.F.R. 1111 is based upon the following provisions, among others: 49 U.S.C. 11123, 10702 and 10704.

2. Granite State is a New Hampshire corporation with a principal place of business at Elm Street, Milford, New Hampshire. Granite State is engaged in the production of concrete and stone products and is a shipper by rail.

3. Milford-Bennington is a New Hampshire corporation with its principal place of business at 62 Elm Street, Milford, NH 03055. Milford-Bennington is a Class III rail carrier that is subject to the jurisdiction of the Board.

4. Boston and Maine is a Delaware corporation with its principal place of business at Iron Horse Park, N. Billerica, MA 01862. Boston and Maine is a rail carrier that is subject to the jurisdiction of the Board.

5. Springfield Terminal is a Vermont corporation with a principal place of business at Iron Horse Park, N. Billerica, MA 01862. Springfield Terminal is a rail carrier that is subject to the jurisdiction of the Board.

6. Granite State has an excavation site located at milepost 19 on the line leased and operated by Milford- Bennington. Granite State also has a processing plant located near milepost 13, approximately 6 miles from the excavation site, on a line which is owned by Boston and Maine and operated by Springfield Terminal and over which Milford-Bennington has trackage rights.

7. Until June 20, 2003, Milford-Bennington operated three or four trains per day, 5 days per week for Granite State between the excavation site and the processing plant. Granite State's permit prohibits it from using motor carriers between the excavation site and the processing plant.

8. Granite State has a permit for its excavation operations that restricts its hours of operation, including the loading of rail cars, from 6:30 AM to 6:30 PM. Even if Granite State were permitted to operate its excavation site after 6:30 PM, there is no artificial lighting at the site that would allow night time operations. The three or four trains per day rail service provided to Granite State by Milford-Bennington was conducted between the hours of 6:30 AM and 6:30 PM.

9. Milford-Bennington leases and operates the line between milepost 34.9 in Bennington, New Hampshire and milepost 16.36 in Wilton, New Hampshire, a distance of approximately 18.6 miles. The owner of the line is the state of New Hampshire. The lease became effective in 1986, and Milford-Bennington initiated its operations in 1992 after rehabilitating the line between milepost 16.36 and milepost 19 in order to serve Granite State, which is Milford-Bennington's sole customer.

10. In June, 1992, Milford-Bennington acquired trackage rights over the Boston and Maine line between milepost 16.36 in Wilton and milepost 11.0 near Milford, a distance of approximately 5.36 miles. These trackage rights, which are still in effect, have until recently enabled Milford-Bennington to provide the service described above between the excavation site and processing plant of Granite State. The trackage rights agreement provides that Milford-Bennington's trains may not exceed 10 cars. Consequently, in order to meet Granite State's needs, Milford-Bennington has operated 3

or 4 round trips per day since 1992. The trackage rights agreement does not limit the hours during which Milford-Bennington is permitted to operate.

11. Milford-Bennington has been operating pursuant to the trackage rights over the Guilford line without safety problems since 1992. In recent years, Guilford, has failed to maintain the line. At the present time, operation over the entire 3 miles of Guilford line used by Milford-Bennington to reach the Granite State processing plant is limited by order of Guilford to operations at 5 mph. All 3 miles are classified as excepted track. Despite numerous requests by Milford-Bennington, Guilford has failed to maintain the line in a condition that would accommodate efficient operations.

12. On or about June 19, 2003, Guilford installed a derail device at approximately milepost 16, which is on the line which is owned by Boston and Maine and over which Milford-Bennington has trackage rights. Guilford advised Milford-Bennington that the derail device must be in the closed position whenever a train is not passing the device. There is no valid safety related reason for any derail device at this location on the Guilford line. Furthermore, compliance with the Guilford directive requires Milford-Bennington to stop its trains in order to open and close the derail device, thereby slowing service, increasing costs and blocking a public grade crossing.

13. As of June 20, 2003, Springfield Terminal advised Milford-Bennington that Springfield Terminal would not permit Milford-Bennington to exercise its trackage rights, even though Milford-Bennington advised Guilford that Milford-Bennington would comply with Guilford's demand with respect to the derail device, except between 1 AM and 8 AM. On information and belief, Guilford understands that Granite State cannot operate except during the hours of 6:30 AM to 6:30 PM. As a result of Guilford's action,

Milford-Bennington has been able to operate only 1 train a day for Granite State since June 20, 2003.

14. There is no valid basis for Guilford to restrict the operations of Milford-Bennington to the hours of 1 AM to 8 AM or to frustrate such operations by failing to maintain the track or insisting upon use of the derail device. Guilford has asserted that its action to restrict Milford-Bennington's hours of operation is based upon safety concerns, but, on information and belief, such assertions are pretextual. On information and belief, Guilford's actions are motivated by considerations other than safety or efficient rail operations or service.

15. The actions of Springfield Terminal described above have created a transportation emergency. If Milford-Bennington is not permitted to operate during daylight hours as it has for the last 11 years in order to serve Granite State, both Milford-Bennington and Granite State will effectively be shut down. Both have experienced and will continue to experience substantial losses of revenue. Moreover, the movement of freight in interstate commerce has been and will continue to be frustrated.

Count 1

16. Granite State and Milford-Bennington hereby incorporate by reference paragraphs 1 through 15 above.

17. As described above, the actions by Guilford have created a substantial measurable deterioration or other demonstrated inadequacy of rail service to Granite State. Such actions have resulted in a severe curtailment of rail service by Milford-Bennington to Granite State, causing substantial adverse effects on Granite State. Discussions with Guilford have been unsuccessful in persuading it to permit Milford-

Bennington to provide rail service during normal daylight hours without harassment.

Notwithstanding efforts by the Board's Office of Compliance and Enforcement, Guilford has refused to restore the hours of operation that existed for 11 years. Milford-Bennington remains committed and able to provide such service to Granite State.

18. The criteria for the entry of an order pursuant to 49 U.S.C. 11123 and 49 C.F.R. 1146 have been met. The Board should follow the procedural schedule set forth in 49 C.F.R. 1146 and enter an order as soon as possible directing Guilford to permit Milford-Bennington to serve Granite State between 6:30 AM and 6:30 PM.

Count 2

19. Granite State and Milford-Bennington hereby incorporate by reference paragraphs 1 through 18 above.

20. Pursuant to 49 U.S.C. 10702, a rail carrier providing transportation or service subject to the jurisdiction of the Board must establish reasonable rules and practices on matters related to such transportation or service.

21. Guilford has established a rule or practice that restricts the use by Milford-Bennington of trackage rights in a manner that prevents Milford-Bennington from providing the service required by Granite State. After 11 years of exercising such trackage rights without any limitation on the hours during which Milford-Bennington could operate, Guilford has arbitrarily limited those hours to 1 AM to 8 AM. Guilford knows that this restriction has prevented and will continue to prevent Granite State from receiving the service it needs and prevents Milford-Bennington from fulfilling its common carrier obligations and obligations to Granite State. There is no valid reason supporting the rule or practice implemented by Guilford.

22. Guilford has contended that its restriction on the hours of operation by Milford-Bennington and the compelled use of the derail device are justified by safety concerns. In fact, however, the operation by Milford-Bennington over its line and over the trackage rights line have been conducted safely and in accordance with applicable rules and regulations. To the extent that safety or safe operating practices are a legitimate issue, rather than an alleged justification by Guilford for its restriction on Milford-Bennington's operation, the Board is requested to ask the Federal Rail and Administration to investigate the situation and provide a report or advice. Milford-Bennington agrees to abide by any such report or advice.

23. The action by Guilford to curtail and render inefficient the service provided by Milford-Bennington to Granite State amounts to the commercial closing of a route that has been open and used for 11 years.

24. The actions by Guilford constitute an unreasonable rule or practice and an illegal commercial closing of a route. Pursuant to 49 U.S.C. 10704, the Board should order Guilford to cease and desist such unreasonable rule or practice and require Guilford to permit Milford-Bennington to serve Granite State without time restrictions.

Count 3

25. Granite State and Milford-Bennington hereby incorporate by reference paragraphs 1 through 24 above.

26. As a result of Guilford's actions, Milford-Bennington and Granite State have been able to move only a fraction of the gravel that they normally handle, thereby reducing their respective revenues and profits substantially. The Guilford actions are particularly harmful at this time of the year, which is the peak season for Granite State.

27. In accordance with 49 U.S.C. 11704(b), a rail carrier providing transportation subject to the jurisdiction of the Board is liable for damages sustained by a person as a result of an act or omission of the carrier in violation of 49 U.S.C., Part A (§§ 10101-11908).

28. The acts of Guilford described above violate the provisions of Part A, including 49 U.S.C. 10702.

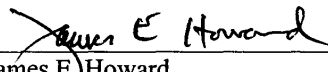
29. The Board should determine, based upon evidence to be presented, the amount of damages sustained by Granite State and Milford-Bennington and enter judgment against Guilford in such amounts plus interest, costs and attorneys' fees.

WHEREFORE, Granite State and Milford-Bennington hereby request that an order or orders granting the relief requested above be entered.

Respectfully submitted,

GRANITE STATE CONCRETE CO., INC.
and
MILFORD-BENNINGTON
RAILROAD COMPANY, INC.

By their attorney



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Dated: July 11, 2003

208378

**SURFACE TRANSPORTATION BOARD
MEMORANDUM**

Date 7/15/03

TO: Microfilm Unit Staff
FROM: Management Information and Legal Support Services,
Office of Proceedings
SUBJECT: REDOCKETED FILING(S) IN FD-34381

The filing(s) in the above-referenced proceeding should be redocketed as follows:

No. 42083

Check the appropriate box:

- ☐ A copy of the filing to be redocketed is attached.
☐ A list of filings received to date to be redocketed is attached.

Please correct any copies of the subject filing(s) that you may have in your possession.

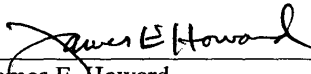
Attachment

cc: Commissioners
Records Officer
Working Office (Office with lead responsibility for working the case)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Formal Complaint was served this 11th day of July, 2003 by sending a copy by Federal Express to counsel for the defendants, as follows:

Robert B. Culliford
Corporate Counsel
Guilford Rail System
Iron Horse Park
N. Billerica, MA 01862



James E. Howard