



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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

200

**LAW DEPARTMENT
(978) 663-1029**



July 18, 2003

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20006

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Re: **NO. 42083**
~~Finance Docket No. 34381~~

**Granite State Concrete Company, Inc and Milford Bennington Railroad Company,
Inc. vs. Boston and Maine Corporation and Springfield Terminal Railway Company**

Dear Secretary Williams:

Enclosed for filing are the original and ten (10) copies of **Motion to Dismiss and Reply of the Boston and Maine Corporation and the Springfield Terminal Railway Company to Petition for Relief filed by Granite State Concrete Company, Inc. and Milford Bennington Railroad Company, Inc. , in the above-captioned proceeding.**

Thank you for your attention to 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

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BEFORE THE
SURFACE TRANSPORTATION BOARD

42083
~~Finance Docket No. 34381~~

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

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

MOTION TO DISMISS AND REPLY OF THE BOSTON AND MAINE
CORPORATION and THE SPRINGFIELD TERMINAL RAILWAY COMPANY
TO PETITION FOR RELIEF FILED BY GRANITE STATE CONCRETE
COMPANY, INC. and MILFORD BENNINGTON RAILROAD COMPANY, INC.
PURSUANT TO 49 U.S.C. § 11123 and 49 C.F.R. § 1146.1

I. INTRODUCTION

On July 14, 2003, the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") received a copy of a formal complaint (the "Complaint") filed in this docket number by Granite State Concrete Company, Inc. ("Granite State") and Milford Bennington Railroad Company, Inc. ("MBR"). While styled a formal complaint, Granite State and MBR also include as Count I a request for entry of an order for alternative rail service pursuant to 49 U.S.C. § 11123 and 49 C.F.R. § 1146.1, resulting in some confusion on the part of Guilford as to how to respond to this pleading. After discussions with the Board and counsel for Granite State and MBR—who asserts that Count I is intended to be a petition for alternative service—Guilford is submitting this Motion to Dismiss and Reply to the allegations contained in Count I of the Complaint to avoid the possibility of being found



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in default of the pleading requirements of 49 C.F.R. § 1146.1. Nevertheless, Guilford reserves the right to further respond to the allegations contained in the Complaint—including those in Count I—pursuant to the Board’s rules at 49 C.F.R. Part 1111, and respectfully requests that the Board allow a further response by Guilford, particularly in light of the confusion regarding the exact nature of the Complaint.

**II. MOTION TO DISMISS COUNT I
OF THE COMPLAINT TO THE EXTENT COUNT I
IS A PETITION FOR ALTERNATIVE SERVICE**

While reserving the right pursuant to 49 C.F.R. §§ 1111.4 and 1111.5 to file a further response to the allegations in the Complaint, Guilford hereby moves for an order dismissing Count I of the Complaint insofar as it is a petition for alternative service pursuant to 49 C.F.R. § 1146.1. The basis for Guilford’s motion is that Granite State and MBR have failed to comply with the service requirements established by section 1146 by failing to serve its pleading upon the Federal Railroad Administration. More particularly, the Board’s rules require that in any petition for alternative rail service, “All pleadings under this part shall be served by hand or overnight delivery on the Board, the other parties, *and the Federal Railroad Administration (“FRA”).*” 49 C.F.R. § 1146.1 (e) (emphasis added). Additionally, a petitioner is required to certify that service was made on FRA by hand or overnight delivery. 49 C.F.R. 1146.1(b)(1)(iv). In this instance, Granite State and MBR have filed the Complaint with the Board and served Guilford by overnight delivery, but apparently failed to serve a copy upon the FRA by the same means, if at all. Because the purpose of this requirement is to ensure that FRA is aware of the potential change in service and has the opportunity to comment upon any safety issues that might arise as a result, failure to properly serve FRA is grounds for dismissal.

Expedited Relief for Service Inadequacies, STB Ex Parte No. 628, Service Date: December 21, 1998, unnumbered page 8 (“*Expedited Relief*”).

III. FACTUAL BACKGROUND

Granite State is a New Hampshire corporation engaged in the production of concrete and stone products and is a shipper by rail. Complaint, ¶ 2. MBR is a Class III rail carrier that is subject to the jurisdiction of the Board. *Id.*, ¶ 3. The Boston and Maine Corporation and the Springfield Terminal Railway Company are rail carriers subject to the jurisdiction of the Board. *Id.*, ¶¶ 4-5. Granite State has an excavation site located at Milepost 19 on the line leased and operated by MBR, and a processing plant at Milepost 13 on the line owned and operated by Guilford. *Id.*, ¶ 6. In 1992, MBR acquired trackage rights over Guilford between Milepost 16.36 in Wilton, New Hampshire and Milepost 11 near Milford, New Hampshire. *Id.*, ¶ 10. The portion of Guilford’s line over which MBR operates is classified as excepted track, and the Federal Railroad Administration has not issued any citations to Guilford regarding the condition of this track. Verified Statement of Roger D. Bergeron (“Bergeron V.S.”), ¶ 2. Prior to June 20, 2003, MBR operated up to three trains per day between the excavation site and the processing plant owned by Granite State. Verified Statement of Erwin R. Towle (“Towle V.S.”), ¶ 2. MBR owns or controls nine hopper cars used for transporting stone from the excavation site to the processing plant, which has existing capacity for up to 15 cars if certain minor improvements are made. *Id.*, ¶ 3.

In or about late 2002, Guilford was approached by Mr. Stuart Draper regarding the possibility of operating a scenic railway over the tracks leased and operated by MBR, and requesting permission to utilize portions of Guilford’s property to support this

service. Verified Statement of Thomas F. Steiniger (“Steiniger V.S.”), ¶ 2. In response, Guilford presented Mr. Draper with its concerns about the operation of passenger service on property that had previously been devoted solely to freight operations, and requested that Mr. Draper provide additional information prior to making a final determination. *Id.*, ¶ 3. Neither Mr. Draper nor MBR provided any additional information. *Id.*

Instead, Guilford was contacted by Colin Pease—a representative of Mr. Draper—who confirmed that no passenger service would be conducted on Guilford property. *Id.*, ¶ 4. Moreover, Mr. Pease and MBR also agreed to Guilford’s request that a derail device be installed on MBR property to prevent passenger and/or freight cars from inadvertently intruding onto Guilford’s property with little or no warning. *Id.* The principal reason for Guilford’s concern with cars entering onto Guilford’s property is that the grade of track on the MBR leading to Guilford’s line is between .75 and 1.5% over two miles. *Towle V.S.*, ¶ 4. Guilford was also concerned by the lack of a continuous dispatching or operating presence on the MBR, and the location of the freight and passenger cars being stored on the MBR. Verified Statement of Sydney B. Culliford (“Culliford V.S.”), ¶ 6. Once this agreement was reached, Guilford delivered a derail device to MBR—which committed to install it immediately—and published a bulletin on December 12, 2002 advising Guilford and MBR crews that the derail was in place. Verified Statement of Andrew J. Zompa (“Zompa V.S.”), ¶ 3. This device was subsequently installed by MBR. *Id.*

In response to a request from Mr. Pease that Guilford participate in the development of a plan governing the operations of MBR, Guilford and the scenic railroad on the MBR lines, on June 19, 2003 several Guilford representatives went to Wilton,

New Hampshire to inspect the area in and around the connection between the Guilford and the MBR tracks. Culliford V.S., ¶ 2. Upon arriving at the intersection of the MBR and Guilford lines, Mr. Culliford noted that the derail device was not applied and—when approached by the President of the MBR—requested an explanation as to why the derail was not being used as agreed. Id., ¶ 3. In response, Mr. Peter R. Leishman, president of MBR, stated that the State of New Hampshire—the owner of the MBR line—had objected to the use of the device and that the MBR was in a difficult position trying to maintain the derail in light of this opposition. Id., ¶ 4. At no time did Mr. Leishman make any statements to the effect that the derail device served no purpose, caused unnecessary delays or created a safety issue. Zompa V.S., ¶ 6. Nor—despite the understanding of all parties involved and the existence of the bulletin—had anyone from the MBR notified Guilford that the derail was not being utilized in the agreed upon manner. Zompa V.S., ¶ 12.

Recognizing that the MBR did not intend to utilize the derail in the manner agreed upon, on the afternoon of June 19th Guilford undertook to install a derail on its own property, and issued a bulletin alerting both Guilford and MBR crews to its existence. Id., ¶ 13. Additionally, in light of the MBR's apparent willingness to disregard its agreements and to alter its operating practices with no notification, Guilford elected to separate the operations of MBR and Guilford in order to minimize the potential for an incident on Guilford's line. Id., ¶¶ 12-13. As part of these efforts, separate operating windows were established on Guilford's lines for the MBR and Guilford, with the MBR being allowed to operate over Guilford's line from 12:00 a.m. to 8 a.m. and Guilford serving its customers in the remaining hours. Subsequently, Guilford also discovered

that the MBR had been performing track maintenance on Guilford's lines without any authority, in violation of NORAC operating rules, Roadway Worker Protection rules and Guilford's collective bargaining agreements. *Bergeron V.S.*, ¶¶ 4-7.

Once these operating windows were put in place, Guilford was contacted by Granite State on several occasions to discuss the possibility of Guilford providing service directly to the processing facility. *Steiniger V.S.*, ¶ 5. In response to each contact, Guilford informed Granite State that it had implemented the new operating windows as a safety measure—not to obtain the right to provide service to the processing facility—and that Guilford could not accept Granite State's offers. *Id.*, ¶ 6. Once Guilford became aware of the permitting restrictions on Granite State's excavating operation, however, Guilford did offer to provide service to Granite State until its safety concerns with MBR were fully addressed, an offer that was declined. *Id.* Additionally, to further facilitate service to Granite State, on July 11, 2003 Guilford informed counsel for the MBR that a new operating window—from 4 a.m. to 1 p.m.—would be implemented. *Towle V.S.*, ¶ 5. This new operating window was implemented on July 15, 2003. *Id.*

IV. ARGUMENT

A. Granite State and MBR have failed to meet the minimum requirements of 49 C.F.R. § 1146.1.

As a preliminary matter, neither Granite State nor MBR have offered any proof that they have met the standard for relief required by the Board to support a petition for alternative service. 49 C.F.R. § 1146.1. Instead of providing a full explanation of the need for alternative service, Granite State and MBR have simply elected to assert general allegations in the form of a complaint, without making any effort to support those claims by means of verified statements, documentation or other evidence. 49 C.F.R. § 1146.1(b)(1)(i). Accordingly, because Count I of the Complaint fails to meet the *minimum* requirements of section 1146.1(b)(1)(i), to the extent that Count I is intended to be a petition for alternative service, it should be denied.

As if that were not enough, Count I also fails to contain a summary of the discussions between Granite State, MBR and Guilford, including reasons why Guilford is unlikely to restore adequate rail service within a reasonable period of time. Rather, MBR simply submits that discussions have taken place, but have not to date been successful in resolving the issues present in this proceeding. Complaint, ¶ 17. There is no attempt to summarize the nature of those discussions, or to explain the reasons underlying Guilford's actions. Similarly, Count I also fails to reference the nature of the discussions between Granite State and Guilford regarding Granite State's request for Guilford to provide service to the processing facility. Finally, the complaint makes no mention of Guilford's offer to provide temporary service to Granite State or Guilford's decision to

facilitate service to Granite State by altering the operating window made available to MBR.

Count I also fails to describe how service by MBR in the manner requested can be implemented safely, which is vital in this instance due to the repeated safety violations committed by MBR and detailed herein. As discussed further below, Guilford elected to separate the operations of MBR and Guilford because of the MBR's callous disregard of its obligation to operate safely and in compliance with applicable rules and regulations. As a result, it is not possible for any petition filed by MBR to describe the safe implementation of an operating plan that will allow the MBR to operate on Guilford's lines at the same time as Guilford trains, or to operate its passenger and freight interests without the placement of a derail device to maintain separation between the two railroads.

Because Count I is completely devoid of any substantive information to allow the Board to make an informed decision, to the extent Count I is intended to be a petition for alternative service, it should be denied.

B. No transportation emergency exists, nor have Guilford's actions caused a substantial deterioration in service to Granite State.

49 U.S.C. § 11123 authorizes the Board to issue temporary alternative service orders when it determines that an emergency situation of such magnitude exists as to have substantial adverse effects on shippers. *49 U.S.C. § 11123(a); Petition for Emergency Service Order*, STB Service Order No. 1523, Service Date: November 24, 1999. To exercise this authority, the Board has promulgated 49 C.F.R. § 1146.1 to delineate those instances where a, "substantial, measurable deterioration or other demonstrated inadequacy in rail service provided by the incumbent carrier" warrants an

order prescribing alternative rail service. 49 C.F.R. § 1146.1. However, the temporary relief authorized by sections 11123 and 1146 are, “meant only to address *serious* service problems and only to the extent necessary to meet a *demonstrated* need for rail service. It [alternative service] is to be used for restorative or alleviative purposes only, *and not as a punitive or preventive measure.*” *Expedited Relief*, unnumbered page 4. More particularly, the Board emergency service rules are intended to be directed only at “substantial service problems that cannot readily be resolved by the incumbent carrier”, not “minor service disruptions.” *Id.*, unnumbered page 2. Moreover, alternative service is not appropriate in situations where service is adequate, but not at the level expected by the shipper, because individual service desires are not likely to be the proper measure of the adequacy of rail service. *Id.*, unnumbered page 4.

Leaving aside the fact that Granite State is the MBR’s customer—making the MBR the *incumbent carrier* via its trackage rights over Guilford—the record established to date plainly shows that Granite State and MBR have failed to meet their burden. The facts underlying the Complaint clearly show that Guilford is acting solely to promote and improve the safety of its operations, and that its actions are not only reasonable, but necessary in response to the irresponsible behavior of MBR. Instead of initiating positive change in its operations, MBR seems content to portray itself as a helpless Class III carrier at the mercy of Guilford, ignoring a clear record of safety violations arising from an irresponsible approach to railroading. Granite State, for its part, has chosen to forget its attempts to abandon MBR in favor of Guilford, while also refusing to demand that MBR—as Granite State’s incumbent carrier—provide it with adequate service. *Steiniger V.S.*, ¶ 5. In short, rather than indicate the slightest commitment to safety or to

improving the efficiency of their respective operations, Granite State and MBR simply demand a return to the status quo, refusing to even consider Guilford's proposals for a private resolution to this matter.

While Guilford continues to believe that the original midnight to eight a.m. operating window made available to MBR provided more than enough time to provide service to Granite State, on July 11th Guilford informed counsel for MBR that a new operating window would be adopted—from four a.m. to one p.m. daily. Rather than take advantage of this new schedule, however, both Granite State and MBR continue to complain of the difficulties that they are experiencing, despite the fact that those difficulties are attributable to the actions of Granite State and MBR—not to Guilford. As a result, the claims of Granite State and MBR that a service emergency exists ring hollow.

As a 24 hour per day/seven day per week railroad, Guilford is well aware of the importance of developing sound operating plans to ensure that its customers' needs are met and its operation runs efficiently. As a result of this experience, Guilford believes that with slight modifications to their operations, any service disruptions that Granite State and MBR claim to be experiencing would be easily resolved. For example, presently the MBR operation consists of loading one train at the Granite State quarry in Wilton—beginning at 6:30 a.m.—delivering that train to the processing plant in Milford, and returning to Wilton to perform the process again. *Zompa V.S.*, ¶ 8. To justify this inefficient use of the revised operating window, Granite State and MBR rely upon the permitting restrictions on operations at the quarry, as well as the lack of artificial lighting at that facility. However, because the permitting restrictions do not apply to the

processing plant and cannot apply to railroad operations, there is nothing to prevent the MBR from loading one train each evening at the quarry—as opposed to loading the first train of the day at 6:30 a.m.—and moving that train to the processing plant each morning at four a.m. for immediate unloading. *Id.*, ¶ 9. Through this relatively minor change in operations, the MBR could gain significant operating time in which to make additional runs to serve its customer, but has inexplicably elected not to take advantage of this option. *Id.*

In addition, while Granite State and the MBR make much of the provision of the MBR/Guilford trackage rights agreement limiting MBR trains to 10 cars only, this argument is a red herring. In truth, the MBR owns or controls nine hopper cars which are dedicated to serving Granite State, and has not shown any inclination to acquire more cars to run longer trains. *Towle V.S.*, ¶ 3.

While the car supply issues facing the MBR are in reality more restrictive than the language of the trackage rights agreement, it is also important to note that the Granite State facility has the capacity to handle trains in 12-15 car blocks with relatively minor changes to an existing crossing and the length of the unloading siding. *Id.* Accordingly, Granite State could effectively decrease the number of trains per day that it claims to require, further improving the efficiency of the use of the revised operating window. Therefore, despite their pronouncements of dire consequences flowing from Guilford's decision to separate the operations of Guilford and the MBR, a commitment by the MBR to increase its car supply and by Granite State to increase its capacity—with little cost or effort—would easily address any concerns that either entity may have without compromising safety.

Notwithstanding these issues, there are also two practical considerations that show the fallacy of the arguments put forth by Granite State and MBR. First, since Guilford first elected to separate its operations from MBR, the MBR has continued to maintain its five day per week operation, without making any effort to serve its customer on weekends. *Zompa V.S.*, ¶ 10. Second, on July 17, 2003, Guilford was informed that MBR trains would be on a restricted schedule that day because the MBR engineer had called in sick—despite the fact that the president of the MBR is a licensed engineer who could have crewed the train in regular service. *Id.*, ¶ 7. To Guilford, it would seem that if regular service were as critical to the success of Granite State as claimed, the MBR would have instituted additional weekend service to make up any lost time during the week, and would have immediately arranged for a substitute crew to ensure that its customer's needs were met. Since neither Granite State nor the MBR seems overly concerned with these service shortcomings, it must be asked whether the present service situation is as dire as described.

C. Granite State and the MBR have failed to consult in good faith with Guilford.

As discussed in Section III.A, above, Count I fails to meet the requirements of section 1146.1 because it does not accurately or completely summarize the nature of the discussions between the parties in an effort to resolve this matter privately. *49 C.F.R. § 1146.1(b)(1)(ii)*. While this flaw is sufficient in and of itself to deny alternative service, it is more important to note that neither Granite State nor MBR have made a good faith attempt to resolve this issue through discussions with Guilford, despite Guilford's repeated attempts to address their concerns.

In the context of petitions for alternative service, discussions with the carrier prior to the filing of a formal petition are essential. *Expedited Relief*, unnumbered page 6. As part of these discussions, it is imperative that the parties act in good faith, for advance discussions may help to solve or ameliorate any service problems. *Id.* Indeed, “The regulation requiring pre-filing discussions is designed, among other things, to ensure that the shipper and the carrier have done all that they can to work out their service issues before coming to the Board for relief.” *American Plant Food Corp.—Alternative Rail Service—Line of Texas Northeastern RR*, STB Finance Docket No. 33795, Service Date: December 7, 1999, unnumbered page 2. Allegations that either party is acting unreasonably are to be considered in determining whether alternative service is appropriate. *Expedited Relief*, unnumbered page 6. Despite the a clear preference for private resolution of these matters through good faith negotiation, however, neither Granite State nor the MBR has to date shown any willingness to enter into good faith discussions with Guilford to resolve the issues between them.

Specifically, other than the requests by Granite State that Guilford provide service to the processing facility in place of the MBR, each attempt by Guilford to address the concerns raised by Granite State and the MBR has been rejected out of hand, with no counterproposal other than a demand to return to the status quo. For example, while Guilford was unwilling to accept Granite State’s offer to replace the MBR as its incumbent carrier, Guilford did offer to provide short-term service to the processing facility while a long-term resolution was negotiated, an offer that was flatly rejected. In another effort to resolve this matter privately, Guilford also proposed to adopt the present operating window, subject to certain conditions to ensure that safety was properly

monitored, only to be rejected once again with another demand that the MBR be allowed to return to its previous operating schedule. Nevertheless, faced with these repeated refusals to compromise, Guilford still elected to implement the revised operating window to further facilitate service to the Granite State facility.

Because Granite State and the MBR have failed to engage in good faith discussions to resolve this issue prior to applying to the Board for relief—despite Guilford’s efforts to further such a dialogue—the petition for alternative service must be denied.

D. Guilford’s actions have been reasonable and are justified by the MBR’s repeated failures to adhere to applicable safety rules and regulations.

In support of the allegations in Count I, Granite State and the MBR assert that the MBR has been operating on Guilford’s line pursuant to a trackage rights agreement for eleven years without incident. However, under close scrutiny it becomes apparent that this assertion is without merit, for the MBR has repeatedly shown a callous disregard for operating and safety rules and regulations that are vital to the safe operation of a railroad. Prior to discussing Guilford’s specific concerns with the actions of the MBR, however, it is important to place this dispute in the proper context.

While Granite State and the MBR have attempted to characterize this dispute as being the result of some unexplained animus of Guilford towards them, the record plainly discredits these assertions. More particularly, it is important to note that Guilford had for a number of years been operating under the impression that the operations of the MBR were conducted safely and responsibly. *Steiniger V.S.*, ¶ 8. It was not until the MBR and Mr. Draper approached Guilford with a proposal to operate passenger service that

Guilford began to look closely at the operations of the MBR; for the simple reason that Guilford had substantial concerns with instituting scenic tours on what were previously freight-only lines. *Id.*, ¶ 3. As a result of this proposal, Guilford began to look more closely at the operation of the MBR and recognized that the steep grade leading to the intersection of the Guilford and MBR lines presented a potential safety problem if freight or passenger cars were to inadvertently travel onto Guilford property. *Id.* In response, Guilford requested that a derail be placed on the property of the MBR to minimize the risk of an accident, and the MBR agreed. *Zompa V.S.*, ¶ 2. Accordingly, despite the efforts of Granite State and the MBR to portray Guilford as the instigator of this dispute, it is clear that it was Mr. Draper's proposal that first brought the potential risks of the MBR operation to light. *Steiniger V.S.*, ¶ 9.

In addition, it is also important to clarify that the events of June 19th, including the decision by Guilford to inspect the location of the derail originally installed in December, were again triggered by the MBR through Colin Pease, a representative of Mr. Draper. *Id.*, ¶ 4. Specifically, Mr. Pease contacted Guilford with a request to develop a plan that would encompass the operations of Guilford, the MBR and the passenger service on the MBR's lines; a proposal that seemed reasonable to Guilford at the time. *Id.*, ¶ 10. Clearly then, Guilford's recognition of the safety risks created by the operations of the MBR did not arise out of any nefarious plot by Guilford, but instead arose from the requests by the MBR and its various representatives that Guilford become more involved with the operations of the MBR. *Id.*

When Guilford did focus upon the operating and safety practices of the MBR, it quickly became apparent that the MBR had adopted a cavalier approach to safety, and

had willingly disregarded established safety and operating rules on a regular basis.

Culliford V.S., ¶ 7. Indeed, despite the prior agreement of the MBR to install a derail on its property and the MBR's knowledge of Guilford bulletin regarding its use, it quickly became apparent that the MBR had no intention to utilize the derail device properly. *Id.* Of course, not only was the MBR willing to unilaterally abandon its prior agreement and ignore the Guilford bulletin, the most disturbing aspect of this incident was that the MBR failed to inform anyone from Guilford that the derail was not in service, a practice that is contrary to all customary operating and safety rules and practices. *Id.*, ¶ 8.

Furthermore, the issues surrounding the original placement of the derail are not the only circumstances under which the MBR has disregarded safety, further supporting Guilford's belief that the Guilford and MBR operations must be kept separate. Specifically, when this issue first arose, the MBR asserted that it was required to perform maintenance on Guilford's line in order to continue to operate, apparently because the MBR believed that Guilford was not properly maintaining the line. Exhibit A hereto. Notwithstanding the fact that the line is properly maintained, the MBR's assertions also point out how little that railroad regards customary safety and operating rules in practices. In short, if the MBR's claims are correct, then the MBR was regularly violating standard NORAC operating rules as well as the regulations promulgated by FRA to protect railroad workers. *Bergeron V.S.*, ¶¶ 4-7.

Additionally, the MBR's continuing treatment of the derail device originally located on MBR property further evidences the troubling approach to safety on the MBR. In an effort to resolve this matter privately, on June 19th Guilford elected to install a derail device on Guilford property—to be monitored and maintained by Guilford

personnel. *Zompa V.S.*, ¶ 11. While Guilford would not object if the MBR also elected to utilize the original derail on MBR property, the MBR is likely not doing so. *Towle V.S.*, ¶ 6. Nevertheless, Guilford's concern is not with the MBR's present use of the derail device as the the derail on Guilford's property will provide additional safeguards. Rather, Guilford's concern is that once again the MBR has essentially ignored customary safety practices by neglecting to inform Guilford whether it intends to use the derail device or not. In other words, absent confirmation from the MBR regarding the use of the derail on MBR property, the Guilford bulletin of December 12, 2002 remains in effect, yet despite the knowledge that this bulletin is in effect the MBR has so far neglected to confirm whether the derail is no longer in use. *Id.* To Guilford, this omission is yet another occasion in a disturbing series of incidents—refusing to properly use the derail without informing Guilford, performing maintenance on Guilford's track without adequate training and safeguards—where the MBR has shown that safety is not a priority in MBR operations.

It is also instructive to compare the response of the MBR to these events with the response of Guilford to an incident in which a Guilford crew inadvertently operated in MBR territory in violation of applicable operating rules. For example, once Guilford determined that its crew had violated the applicable operating rules, Guilford immediately took the crew out of service, tested the for drug and alcohol use, and initiated disciplinary proceedings. *Towle V.S.*, ¶ 7. To Guilford, these actions are necessary to ensure safety in all of its operations, and are steps that any railroad would take as a matter of course. *Id.*, ¶ 8. In contrast, to date Guilford is not aware of any effort by the MBR to address the safety issues that have been brought to light over the past

month in relation to the operations of the MBR, as discussed above. Instead, the MBR has chosen to blame Guilford for the MBR's shortcomings, while also altering its presentation of the facts underlying this dispute each time that Guilford points out the inconsistencies in those statements. Exhibits A & B hereto, Complaint, ¶ 11 (contradictory statements regarding failure to utilize the derail, discontinuance of assertions that the MBR was maintaining Guilford property).

As a final note, Guilford also believes that its actions are justified by the trackage rights agreement under which the MBR operates over Guilford's lines. Exhibit C hereto. More particularly, Section 1(i) of that agreement obligates the MBR, "to comply in all respects with the operating rules and regulations of [Guilford], and the movement of MBR's trains, locomotives, cars, and equipment of [Guilford's line] shall at all times be subject to the orders of the transportation officers of [Guilford]." Because Guilford's decision to separate the operations of the MBR and Guilford is expressly authorized by the trackage rights agreement, it is not appropriate nor necessary for the MBR to seek Board assistance to evade the MBR's obligations pursuant to an agreement that it entered into voluntarily. *Review of Rail Access and Competition Issues*, STB Ex Parte No. 575, Service Date: March 2, 1999, unnumbered page 3.

Because the decision of Guilford to separate the operations of the MBR and Guilford is entirely reasonable when viewed in light of the facts stated herein, the petition for alternative service should be denied.

V. CONCLUSION

For the reasons stated herein, Guilford respectfully requests that—to the extent Count I of the complaint is a petition for alternative service—that petition be denied.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. B. Culliford', written over a horizontal line.

Robert B. Culliford
Law Department
Iron Horse Park
North Billerica, MA 01862
(978) 663-1029

Attorney for:
Boston and Maine Corporation
Springfield Terminal Railway Company

July 18, 2003

A

Verified Statement of Peter Leishman

My name is Peter Leishman and I am President of the Milford-Bennington Railroad. The Milford-Bennington is a small class 3 carrier that operates in Wilton and Milford New Hampshire. We employ two full time employees and two part time employees in addition to myself. The Milford-Bennington operates over track that is owned by the State of New Hampshire and leased by Milford-Bennington. The State owned portion was formerly owned by Boston & Maine Railroad until it was abandoned in the 1980's and sold to the state. While our operating rights extend considerably farther over the state owned line we actually operate our freight service from a stone quarry located at milepost 19 to milepost 16.36 in Wilton, New Hampshire where our line connects with a branch line owned by the Springfield Terminal Railroad, a subsidiary of Guilford Transportation Industries. From milepost 16.36 to milepost 11 Milford-Bennington has the right to operate over Guilford owned track under a trackage rights agreement ordered by the Interstate Commerce Commission and ultimately agreed to by Springfield Terminal on June 22, 1992. While our rights extend to milepost 11 we only operate to a stone processing plant owned by Granite State Concrete located at milepost 13.5 or approximately 3 miles of Guilford owned track.

The Milford-Bennington serves one customer, Granite State Concrete. Our railroad shuttles stone loaded at Granite State's quarry located in Wilton, New Hampshire to their processing plant located in Milford. We operate three trains per day and move 27 cars of stone per day. In contrast Guilford operates over its track between milepost 13 and milepost 16.36 approximately 1 to 2 times per week. Granite State operates, in part, under permits issued by the town of Wilton under which Granite State agreed to move product by rail and not by truck and agreed to restrict quarry operations to daytime hours only between 6:30 am and 6:30pm, Monday through Friday. Granite State's restrictions are well known in the area as its rights have been well publicized over the years in local papers and they are a matter of public record. I believe that it is reasonable to assume that these restrictions are well known to the management of the Springfield Terminal Railroad and to Guilford's President, David Fink who lives in a neighboring town.

Guilford also operates over Milford-Bennington leased track between milepost 16.36 and approximately milepost 20. Guilford serves another quarry owned by a company called Pike industries. Milford-Bennington entered into a trackage rights agreement with Guilford on September 6, 1999 so that they could access the quarry to secure company ballast. Though the Guilford trackage rights agreement authorizing Milford Bennington to run over Guilford tracks restricts Milford-Bennington to running no larger than 10 car trains, Milford-Bennington did not set limits on Guilford operations over Milford-Bennington. The trackage rights agreement with Guilford expired in 2001 but Milford-Bennington has taken no action since 2001 to in any way restrict their operations and they have continued to use their rights.

The Milford-Bennington maintains its track to a very high standard. Since commencing operations in 1992 it has installed 105 lb rail between the Granite State Quarry and milepost 16.36 and 17.8 and renewed 100 percent of the defective ties in the rail line. We

operate conservatively and restrict my operating speeds to 25 mph though our track is capable of supporting speeds that are higher.

The Guilford owned track between milepost 16.36 and the Granite State processing facility at milepost 13.5 is in deplorable condition. The three miles utilized by Milford-Bennington are designated as excepted track and two of the three miles are restricted to 5 miles per hour. During the past ten years we have installed literally hundreds of ties, rails and gauge rods on the Guilford owned track in order to keep it safe enough to avoid derailing Milford-Bennington trains even at 5 mph. We cannot rely on Guilford to perform necessary work or even emergency work in a timely manner to protect my ability to meet my obligations to my customer.

Approximately 8 weeks ago employees of the Springfield Terminal Railway, I believe under the direction of Guilford President Mr. David Fink, insisted that a permanent derail device be installed on track operated by Milford-Bennington and leased from its owner the State of New Hampshire. The derail was installed without the approval of the property owner and was located at approximately milepost 16.38. At the time I did not want to "fight" Guilford, as I knew that this action would attract some form of retribution. I told the Guilford crew that it served absolutely no purpose other than one of harassment and that we would not use it.

A derail device is traditionally used in the rail industry to intentionally derail a car in the event it should roll out of a siding onto a main line track in order to protect operations on the main line track. Milford-Bennington has two sidings used to store cars for serving customers, one at Granite State's Quarry served by Milford-Bennington and one at Pike Industries served by Guilford. Both sidings are protected by derails and both derails are maintained and used to protect the main line.

On June 20, 2003 a team of Guilford managers again visited the location where the derail had been installed in Wilton. I was working in the area and went over to talk to them. Mr. Stuart Draper, who is a local business man and town of Wilton selectman, was also present. to join us as a witness. Guilford Vice President of Operations Culliford in the ensuing conversation ordered me to keep the derail closed at all times except when operating in the area. I refused on the grounds that the derail served no purpose, would seriously delay Milford-Bennington operations and that the derail could, in fact, create a safety problem. The original derail was installed at a location that could derail a train directly into a building adjacent to the tracks. After some further conversation in which I pointed out that derails already existed approximately 500 yards further down the Guilford owned track the Guilford managers left. Later that day I was informed that Guilford was now going to install another derail approximately 100 feet from the one on Milford-Bennington property but on Guilford property and that Milford-Bennington would not be permitted to run unless we agreed to maintain all derails in the closed position. A more detailed description of the above meeting is attached in the form of a verified statement witnessed by Mr. Draper.

27 03 05:20p

James E Howard

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After the encounter I telephoned Mr. Mark McKeon, Federal Railroad Administration Regional Administrator for Safety and reported what had happened. Mr. McKeon could not understand the purpose of the derail and agreed to look into the matter. I also telephoned the Office of Rail and Transit for the New Hampshire Department of Transportation who also agreed to get involved. They subsequently sent a letter to Guilford a copy of which is attached to this affidavit.

Later that day I was informed that Milford-Bennington would not be allowed to operate over Guilford track unless we agreed to use both derails that were now installed within about 100 feet of each other. I subsequently wrote a letter to Guilford's corporate counsel protesting but agreeing to use the derails. I was in a position where I had to agree or I would not be able to operate and serve my customer. By this time Guilford had refused to permit a Milford-Bennington train to operate over Guilford in accordance with our trackage rights agreement and my loaded train was sitting on Milford-Bennington track unable to move to the processing plant.

Finally, even though, I agreed under duress to Guilford's use the derails, Guilford changed the terms again and told me that they would only permit Milford-Bennington to operate between the hours of 1:00 am to 8:00 am. It is my firm belief that Guilford management including Mr. David Fink is fully aware of the operating restrictions placed on the Granite State quarry and knew that the terms they had set would shut down the quarry and would ultimately put the Milford-Bennington out of business.

Throughout the weekend of June 21-22 I again attempted to seek permission to operate over Guilford track during daylight hours and was refused permission by Guilford dispatchers. On Monday morning, June 23, 2003 we were able to operate one train to the Granite State processing plant arriving prior to 8:00 am but we were not able to return as the dispatchers refused me entry after 8:00 am.

The effect of these actions by Guilford will ultimately be to put my company out of business. Today our employees are idled. We are unable to serve Granite State which is experiencing serious difficulty and will be shut down very soon.

Milford-Bennington has operated in a sound and safe manner over our track and over Guilford track for approximately 11 years. We have done nothing to change our operations. I know of no other situation where Guilford has required the installation of a derail device on the main line on someone else's property on a main line track. Despite my attempts to resolve this issue amicably, despite efforts by the State of New Hampshire and despite the impact Guilford's actions are having on our customer, Guilford has refused to change its position. Guilford's actions are seriously harming the Milford-Bennington Railroad, its customer, Granite State Concrete and in a broader sense the public. I respectfully ask the STB to take whatever immediate action it can to enable the Milford-Bennington to fulfill its common carrier obligations and serve its customer.

If at any time any concerns are raised regarding the safety of our operations we would welcome a review by state or federal officials. We would welcome a detailed inspection

FROM : Guilford Law Dept

Winston & Strawn * Pg 5/6
FAX NO. : 9786631213

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27 03 05:21p

James E Howard

617 886 9324

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of our track and would also welcome a similar inspection of tracks owned by Guilford rail that are subject to the Milford - Bennington Trackage rights.

FROM : Guilford Law Dept

Winston & Strawn * Pg 6/6
FAX NO. : 9786631213

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James E Howard

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06/26/03 12:55 FAX 8038734899

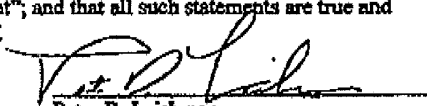
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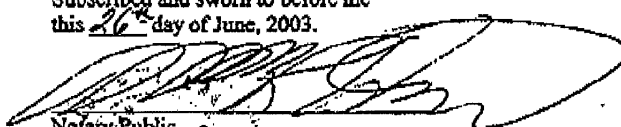
VERIFICATION

STATE OF NEW HAMPSHIRE)
) ss:
COUNTY OF HILLSBOROUGH)

I, Peter R. Leishman, being duly sworn, depose and state that I am President of Milford-Bennington Railroad Company, Inc., ("Milford-Bennington"); that I am authorized to sign the foregoing "Verified Statement" on behalf Milford-Bennington, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.


Peter R. Leishman

Subscribed and sworn to before me
this 26th day of June, 2003.


Notary Public

My Commission Expires:

MY COMMISSION EXPIRES
AUGUST 26, 2003

02 03 05:52p

James E Howard
Draper Energy

617 886 9324

603-654-4044

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Verified Statement of Peter Leishman

On Thursday, June 19, 2003 at approximately 11:00 AM I was in Wilton, New Hampshire when I met by chance with Mr. Syd Culliford, Vice President of Transportation and three others from Guilford Rail System. The four of them were inspecting a section of railroad that is owned by the State of New Hampshire but leased and operated by the Milford-Bennington. The area is near where Milford-Bennington tracks connect with tracks owned by Guilford Rail. The other Guilford representatives were Mr. Dick Miller, an employee who works for Mr. Culliford, Mr. Warren Bostwick, who I believe is a regional train master and Mr. Andy Zompa, Guilford's Director of Rules. Mr. Miller saw me near my truck and came over to tell me that Mr. Culliford wanted to see me. I was concerned over the fact that there were four people from Guilford there and immediately telephoned a friend, Mr. Stuart Draper and asked if he could join me. Mr. Draper is a local businessman in Wilton and the Chairman of the town's board of selectman. He came over immediately and the two of us approached the group from Guilford where they were standing near Milford-Bennington's tracks.

Mr. Culliford told me that they had come to Wilton to tell me that I was to insure that a derail device that had been ordered placed by Guilford in main line track owned by the State of New Hampshire and leased to me was to be kept locked in the closed position. The derail was located near where the Milford-Bennington connects to the Guilford Rail System. It became clear at the beginning of the conversation that the discussion was going to be confrontational as Mr. Culliford was not in any way asking me to do this, he was telling me.

A derail is a device used in the rail industry to intentionally derail a rail car. Derails are normally placed in track at the end of a siding so that a car is intentionally derailed before reaching a main track in the event its brakes release and it rolls unattended. It is highly unusual that a derail would be placed on a main line track. The Milford Bennington does have derails installed on the two sidings that are used to place empty cars, one of which is used by Guilford Rail.

I told Mr. Culliford that the derail he was referring to was ordered placed by Guilford on main line track owned by the State of New Hampshire and operated by the Milford Bennington. I told him that when the derail had been installed I told Guilford employees that I had no intention of using it, and that it would not make the area safer and that it made no sense putting it into the Milford-Bennington's main line. I pointed out that Milford-Bennington had operated in this area for 11 years without a derail being placed in its main line track and that the railroad had operated safely without incident. I also told Mr. Culliford that the derail had been placed on state owned property and that the State of New Hampshire had not authorized Guilford's actions and did not want the device in their track.

I asked Mr. Culliford if there were any other small or regional railroads that connected with the Guilford system where Guilford had required the installation of a derail on the main line. I also asked if there were any situations involving other carriers where

FROM : Guilford Law Dept

Winston & Strawn * Pg 3/4
FAX NO. : 9786631213

Jul. 18 2003 02:06PM P 3

James E. Howard

617 886 9324

P.7

Draper Energy

603-654-4044

P.2

Guilford had required the installation of a derail on main line track or whether they had installed two derails within 500 feet of each other. Mr. Culliford said it didn't matter what the situation was with other carriers he was going to make sure that the derail was installed in Wilton and he was going to force Milford-Bennington to use it. I told him that it made no sense and that the only reason for putting a second derail in the main line within 500 feet of a derail that was already in place was to make Milford-Bennington's operation more difficult. I told him it served no safety purpose.

I also told Mr. Culliford that it would be more prudent for Guilford to avoid spending the money on installing another derail and to spend it fixing their track between Nashua and Wilton as the track is in deplorable condition.

Mr. Culliford became angry and told me that I would be hearing from them. I found the meeting confrontational and very threatening. There was no attempt on the part of Mr. Culliford to seek ways of operating efficiently and it was clear to me that the only purpose of the four visitors was to take actions that would make the operation of the Milford-Bennington railroad more difficult. What they were trying to force me to do would not in any way enhance safe rail operations but would make rail operations more difficult and costly.

The four from Guilford then left. After their departure I immediately telephoned Mr. Mark McKeon, the Federal Railroad Administration Regional Administrator for Safety and told him of my conversation with Mr. Culliford. I also telephoned Mr. Kit Morgan, Administrator for Rail and Transit at the New Hampshire Department of Transportation and told him of the incident.

At no time during the conversation did any representative from Guilford provide me with an explanation of why they wanted the derail used or what safety purpose it would serve. They did not offer any explanation other than they were ordering me to do what they wanted me to do.

FROM : Guilford Law Dept

Winston & Strawn * Pg 4/4
FAX NO. : 9786631213

Jul. 18 2003 02:06PM P 4

02 03 05:53p

James E Howard
Draper Energy

617 886 9324
603-854-4044

P. 8

P. 3

VERIFICATION

STATE OF NEW HAMPSHIRE)

) ss:

COUNTY OF HILLSBOROUGH)

I, Peter R. Leishman, being duly sworn, depose and state that I am President of Milford-Bennington railroad Company, Inc. ("Milford-Bennington"); that I am authorized to sign the foregoing "Verified Statement" on behalf of Milford-Bennington, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me

This 2nd day of July, 2003

Margaret S. Arn

Notary Public

My Commission Expires June 8, 2006

My Commission Expires: _____

Peter R. Leishman

VERIFICATION

I, Stuart Draper, Being duly sworn, depose and state that I have examined all of the statements contained in the "Verified Statement" of Peter R. Leishman and that all such statements are true and correct to the best of my knowledge and belief.

Stuart Draper

Stuart Draper

Subscribed and sworn to before me

This 2nd day of July, 2003

Margaret S. Arn

Notary Public

My Commission Expires: _____

MARGARET S. ARN, Notary Public

My Commission Expires June 8, 2006

C

AGREEMENT

AGREEMENT, made as of this 22nd day of June, 1992 by and among Milford-Bennington Railroad Company, Inc. ("MBR") and Boston and Maine Corporation ("B&M") and the Springfield Terminal Railway Company ("ST") (collectively "B&M/ST").

WHEREAS, B&M is the owner/lessor and ST is the current lessee of certain railroad trackage between Wilton and Milford, New Hampshire, and,

WHEREAS, the parties hereto desire to enter into an agreement to provide for the overhead movement of traffic between Wilton, New Hampshire and Milford, New Hampshire, and whereas MBR required access to Milford over B&M/ST tracks;

NOW, THEREFORE, in consideration of the promises, covenants and undertaking contained herein, the parties agree as follows;

1. Trackage Rights between Wilton and Milford. B&M/ST hereby grant MBR the non-exclusive right to operate MBR trains, locomotives, cars and equipment with MBR's own crews (the "Trackage Rights") over the B&M/ST's trackage which extends from the point of the junction with MBR and the B&M/ST at approximately milepost N-16.36 in Wilton, New Hampshire, to approximately milepost N-11.0 in Milford, New Hampshire (the "Trackage"), subject to the following terms and conditions:

(a) The Trackage Rights are overhead rights only and are solely for the purpose of permitting the movement of stone and gravel cars, each not more than 2000 cubic feet in volume, in ten car trains between Wilton and Granite State Concrete Company,

Inc. in Milford. MBR shall not move any other shipments or perform any local freight service whatsoever over the Trackage. B&M/ST's right to use the Trackage shall not be diminished by this Agreement. B&M/ST hereby retain the right to grant to other persons or entities rights of any nature in the Trackage. The Trackage Rights shall not confer on or vest in MBR any title or estate in the Trackage beyond that contemplated herein.

(b) MBR shall be solely responsible for and shall report and pay directly to the owner of all cars in MBR's trains on the Trackage all mileage, car hire and other charges accruing on such cars while on the Trackage.

(c) Additional connections to the Trackage which may be required by B&M/ST shall be constructed, maintained, repaired and renewed as follows:

(i) B&M/ST shall furnish all labor and materials and shall construct, maintain, repair and renew at B&M/ST's sole cost and expense such portions of the tracks located on the B&M/ST right-of-way which connect with the Trackage.

(d) From time to time, B&M/ST may, at B&M/ST's sole cost and expense, make such changes in, additions and betterments to and retirements from the Trackage as shall, in B&M/ST's sole judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Trackage and such retirements (the "Retired Track")

shall, except as provided in sub-section (e) below, be excluded from the Trackage.

(e) If MBR determines that (i) changes in or additions and betterments to the Trackage, including changes in communications or signal facilities as they existed immediately prior to the date of this Agreement or (ii) continued use of any tracks which are proposed by B&M/ST to become Retired Track, are required to accommodate MBR's operations, beyond that required by B&M/ST to accommodate B&M/ST's operations over the Trackage, MBR shall pay for the construction of such additional or altered facilities, shall (subject to the notice and response requirements set forth below) be allowed the continued use of such otherwise Retired Track, and shall also pay for the annual expense of maintaining, repairing and renewing such additional or altered facilities and such Retired Track as MBR may, by written notice, elect to continue to use. B&M/ST shall provide MBR with ten (10) days notice of any planned retirements from the Trackage and MBR shall be required to notify B&M/ST, within said ten (10) day period, of any desire to continue the use of Retired Track. Notwithstanding the foregoing, B&M/ST shall have the right to approve or disapprove, in their exclusive discretion, any such addition or alteration prior to its construction, and such addition or alteration approved shall be constructed in such a manner as to minimize interference with B&M/ST's and MBR's operations over the Trackage.

(f) B&M/ST shall maintain, repair, and renew the Trackage at B&M/ST's own expense and with B&M/ST's own supervision and labor. B&M/ST shall perform routine and regular maintenance on the Trackage. It is the intent of B&M/ST to install welded rail between milepost N-11 and milepost N-16.36 within 5 years of the effective date of this agreement in order to eliminate existing webber type joint bars. The railroad will be maintained in compliance with Federal Railroad Administration Safety Standards.

However, B&M/ST do not guarantee the speed at which trains will be able to operate over the Trackage. MBR shall not by reason of failure or neglect on the part of B&M/ST to maintain, repair, or renew the Trackage, have or make any claim or demand against B&M/ST or B&M/ST's directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by MBR resulting from any such failure or neglect unless (i) MBR shall have notified B&M/ST, with confirmation in writing, of specific alleged defective conditions which MBR reasonably believes to constitute a breach of B&M/ST's maintenance obligation hereunder and (ii) B&M/ST shall have failed to remedy, dispute, or otherwise respond to said specific alleged defective conditions within seven (7) days after receipt of such notification. B&M/ST shall bear no responsibility for any loss or damage which may occur during the seven (7) day period.

(g) B&M/ST shall also perform, at the expense of MBR, such additional maintenance as MBR may request.

(h) B&M/ST shall have exclusive control of the management, dispatching and operation of the Trackage. MBR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of MBR's trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are operated over the Trackage. MBR shall indemnify, protect, defend, and save harmless B&M/ST and B&M/ST's directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon B&M/ST or B&M/ST's directors, officers, agents or employees under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable solely to the failure of MBR to comply with the provisions of this Section.

(i) MBR in its use of the Trackage will comply in all respects with the operating rules and regulations of B&M/ST, and the movement of MBR's trains, locomotives, cars and equipment over the Trackage shall at all times be subject to the orders of the transportation officers of B&M/ST. MBR's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Trackage as published in the Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by B&M/ST's operating rules and regulations without the prior written consent of B&M/ST,

which consent shall not be unreasonably withheld. MBR shall indemnify, protect, defend, and save harmless B&M/ST and B&M/ST's directors, officers, agents and employees from and against all liabilities when attributable to the failure of MBR to comply with the provisions of this Section.

(j) MBR shall make such arrangements with B&M/ST as may be required to have all of MBR's employees who shall operate MBR's trains, locomotives, cars and equipment over the Trackage qualified for operation thereover, and MBR shall reimburse B&M/ST for any cost incurred by B&M/ST in connection with the qualification of such employees of MBR, as well as the cost of pilots furnished by B&M/ST, until such time as such MBR employees are deemed by the appropriate examining officer of B&M/ST, in his exclusive discretion, to be properly qualified for operation over the Trackage as herein contemplated.

(k) In the event B&M/ST conduct an investigation or hearing concerning the violation of any operating rule or practice of B&M/ST by any employee or employees of MBR, MBR shall be notified in advance of any such investigation or hearing. Such investigation or hearing shall be conducted by B&M/ST, and may be attended by any official designated by MBR and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(l) B&M/ST shall have the right to exclude from the Trackage any employee of MBR determined by B&M/ST, as a result of such investigation or hearing described above, to have violated B&M/ST's rules, regulations, orders, practices or instructions.

MBR shall release, indemnify, defend, and save harmless B&M/ST and B&M/ST's directors, officers, agents, and employees from and against any and all claims and expenses resulting from such exclusion.

(m) The trains, locomotives, cars and equipment of B&M/ST and MBR shall be operated and dispatched over the Trackage or any portion thereof without prejudice or partiality to any party to this Agreement and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(n) If by reason of any mechanical failure or for any other cause not resulting from the accident or derailment, any train, locomotive, car or equipment of, or in the account of, MBR becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by B&M/ST on the Trackage, or if in an emergency crippled or otherwise defective cars are set out of a MBR train on the Trackage (collectively, the "Interference"), and MBR is unable to remedy said Interference within a reasonable time, the B&M/ST shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such train, locomotive, cars or equipment, or to properly move the disabled equipment off the Trackage, or otherwise clear the Interference, and MBR shall reimburse B&M/ST for the cost of rendering any such assistance.

(o) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Trackage, and MBR is unable to make such repairs, adjustments or transfers within a reasonable period of

time, then such work shall be done by B&M/ST and MBR shall reimburse B&M/ST for the cost thereof.

(p) MBR shall release, indemnify, defend, protect and save harmless B&M/ST and B&M/ST's directors, officers agents and employees from and against any and all claims expenses arising out of the movement of the traffic contemplated herein, the Trackage Rights or this Agreement as a result of the collective bargaining agreements between B&M/ST and their respective labor organizations, or incurred as a result of any labor protection obligations imposed by the Interstate Commerce Commission. Notwithstanding the foregoing, B&M/ST reserve their right to take such steps as are reasonably necessary to terminate this Agreement in the event that claims or labor protection obligations are created hereby which are beyond MBR's financial capacity to bear under its indemnification obligation.

2. Compensation.

(a) MBR agrees to pay B&M/ST for the trackage rights covered by this agreement \$5.00 per car, loaded or empty.

(b) MBR agrees that said Base Charge will be applicable to all cars, loaded and unloaded, moved by MBR over the Trackage Rights during the term of this Agreement.

(c) The "Base Charge" will be subject to revision as specified in paragraph (d) of this section.

(d) All payments to be made by MBR under this Agreement (including the Base Charge) shall be adjusted effective July 1 of each year beginning July 1, 1993, for price level changes as reflected in the Annual Indices of Charge Out Prices (1977 = 100)

series RCR, included in "Railroad Recovery Index" and supplements thereto, issued by the Association of American Railroads. The final "Material Prices, Wage Rates, and Supplements Combined (excl. fuel)" index for the Eastern District shall be used. The price level charges shall be based on the relationship of the most recent annual indices to the previous comparable annual indices. The first adjustment shall be based on the comparison of final figure for calendar 1992 to the final figure for calendar 1991.

3. Term and Termination. This Agreement shall take effect as of the date first set forth above and shall continue in full force and effect for a term of twelve (12) years; provided, however, that this Agreement may be terminated (i) at any time upon the mutual agreement of the parties or (ii) by B&M/ST upon 30 days prior written notice to MBR in the event of a breach by MBR of any of its covenants under this Agreement which breach shall not have been remedied within fifteen (15) days of notice of said breach by B&M/ST to MBR. Termination of this Agreement shall not relieve, release or excuse either party from any liability which either party may have incurred or any obligation which may have accrued under any provision of this Agreement prior to the effective date of termination.

4. Clearing of Derailments and Wrecks. In the event of any derailment or wreck of any train, locomotive, car or equipment of, or in the account of, MBR on the Trackage, B&M/ST shall, at MBR's expense, clear and repair the Trackage to allow for the passage of other trains within a reasonable time. B&M/ST

shall perform any re-railing, wrecking or wrecking train service as may be required in connection with such derailment or wreck.

5. Release and Indemnification.

(a) MBR hereby agrees to release, indemnify, defend, protect and hold B&M/ST, Guilford Transportation Industries, Inc. and their officers, agents, representatives and employees harmless from and against any and all liability, cost or expense (including expenses incurred by B&M/ST in clearing wrecks and derailments and repairing trackage as described in Section 4, above) which relate to or arise out of any loss of, damage to, or destruction of any property whatsoever, or any injury to or death of any person or persons whomsoever, when such liability, cost or expense arises out of or is in any way connected with the operation of trains, locomotives, cars or equipment of, or in the account of, MBR, either solely or in conjunction with trains, locomotives, cars or equipment of, or in the account of B&M/ST.

(b) B&M/ST hereby agree to release, indemnify, defend, protect and hold MBR and its officers, agents, representatives and employees harmless from and against any and all liability, costs or expense which relate to or arise out of any loss of, damage to, or destruction of any property whatsoever, or any injury to or death of any person or persons whomsoever, when such liability, cost or expense arise solely out of the operation of trains, locomotives, cars of, equipment of, or in the account of, B&M/ST, or any other party to whom B&M/ST might grant Trackage Rights, haulage rights or other rights.

(c) In every case of death or injury suffered by an employee of either MBR or B&M/ST, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay such compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying such future installments by reason of the expiration or other termination of the Agreement prior to any of the respective dates upon which any such future installments are to be paid.

6. Payment of Bills by MBR. All payments called for under this Agreement shall be made by MBR to B&M/ST within thirty (30) days of the receipt of the bills therefor by check made payable to the order of "Boston and Maine Corporation". No payments shall be withheld because of any dispute as to the correctness of items on the bills rendered. Any discrepancies reconciled between the parties shall be adjusted in the accounts of the subsequent month. The records of each party relating to the subject of this Agreement shall be open at all reasonable times to inspection by the other party. Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals in effect at the time any work is performed by B&M/ST.

7. Land Sale.

(a) Prior to B&M's offering of part or all of the Trackage and associated right-of-way, which would result in a break in the continuity of the right-of-way, for sale to a third party, B&M shall offer the entire right-of-way to MBR. The offer shall be upon the terms and conditions set forth in the purchase and sale agreement attached hereto and incorporated herein as Exhibit "A".

The purchase price shall be determined by the B&M at the time of the offer in accordance with its appraisal of the right-of-way. MBR shall have 30 days from receipt of B&M's offer to accept the offer, after which time the offer will be deemed to have been rejected. MBR shall signify acceptance by signing the purchase and sale agreement, in the form attached hereto, which shall accompany B&M's offer. Milford shall return the purchase and sale agreement and a deposit in the amount of 10% of the purchase price as stated in the offer to B&M within said 30 day period. In the event Milford accepts B&M's offer, the closing shall take place 90 days after the date on which Milford received B&M's offer. If said date falls on a day when the Hillsborough County Registry of Deeds is closed, the closing shall take place on the next day during which it is open.

8. General Provisions.

(a) No Waiver. Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

(b) Notice. Any notice required or permitted under this Agreement shall be given in writing to the parties at their respective addresses specified at the end hereof, or at such other address for a party as that party may specify by notice as provided herein, by (i) (A) delivery in hand or by postage prepaid, United States first class mail or (B) registered or certified mail, return receipt required, or Federal Express or other form of expedited mail that provided for delivery to the sender of a signed receipt, or (iii) telegram or telefacsimile transmission. Notice so sent shall be effective upon receipt.

(c) Integration. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understandings, courses of dealing, agreements, contracts and the like between the parties in such respect.

(d) Miscellaneous. The Agreement: (i) may be executed in any number of counterparts, each of which when executed by all parties to this Agreement shall be deemed to be an original, and all of which counterparts together shall constitute one and the same instrument; (ii) may be amended, modified, or terminated, and any right under this Agreement may be waived in whole or in part, only by a writing signed by all parties; (iii) contains headings only for convenience, which headings do not form part of and shall not be used in construction of this Agreement; and (iv) except as to indemnification, is not intended to inure to the benefit of any party not a party to this Agreement.

(e) Force Majeure. No party to this Agreement shall be responsible to the others for delays or errors in its performance or other breach under this Agreement occurring by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers, or failure of transportation, communication or power supply.

(f) Trains, Locomotives, Cars or Equipment. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such trains, locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of, or under the control of the other party to this Agreement, such trains, locomotives, cars and equipment shall be considered those of the other party.

(g) Assignment. This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns. MBR hereby acknowledges and agrees that B&M and ST shall have the right to assign any and all of B&M and ST's rights and obligations under this Agreement to any affiliate of B&M or ST, or to any other person or entity without MBR's consent. MBR may, with the prior written consent

of B&M/ST, which consent shall not be unreasonably withheld, assign its rights and obligations under this Agreement to an affiliate of MBR, provided that said affiliate shall be a suitably capitalized and financially acceptable substitute for MBR. MBR may not otherwise assign its rights and obligations under this Agreement without the prior written consent of B&M/ST which consent may be withheld for any reason or for no reason.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a sealed instrument as of the date first set forth above by their duly authorized representatives.

BOSTON AND MAINE CORPORATION

By: Sydney B. Culliford
Sydney B. Culliford
Vice President-Transportation
Iron Horse Park
North Billerica, MA 01862

SPRINGFIELD TERMINAL RAILWAY
COMPANY

By: Sydney B. Culliford
Sydney B. Culliford
Vice President-Transportation
Iron Horse Park
North Billerica, MA 01862

MILFORD-BENNINGTON RAILROAD
COMPANY, INC.

By: Peter R. Leischman
Peter R. Leischman
President
62 Elm Street
Milford, NH 03055

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT made as of this day of
 , 1992 by and between the **BOSTON AND MAINE**
CORPORATION, a Delaware corporation with a place of business at
Iron Horse Park, North Billerica, Massachusetts (the "Seller") and
the party hereinafter identified in paragraph 1(b) (the "Buyer").

WITNESSETH:

1. The following terms shall have the meanings specified whenever used in this Agreement:

(a) SELLER:

Boston and Maine Corporation
c/o Guilford Transportation Industries, Inc.
7 Executive Park Drive
Merrimack, NH 03054
Attention: Leonard A. Lucas, V.P.-Real Estate

Send a copy of any notice to:

Boston and Maine Corporation
c/o Guilford Transportation Industries, Inc.
7 Executive Park Drive
Merrimack, NH 03054
Attention: Philip R. Tremblay-Jean

(b) BUYER:

Milford-Bennington Railroad Company, Inc.

Send a copy of any notice to:

(c) **PREMISES:** Approximately 5.58 miles of railroad right-of-way of the Seller's "Hillsborough Branch" so-called situated between mile post 10.78 (centerline engineering station 518+65.7+/-), Milford, New Hampshire and milepost 16.36 (centerline engineering station 814+54.2+/-), Wilton, New Hampshire, all within the County of Hillsborough, New Hampshire and shown on valuation section V17, maps 10-16.

(d) **PURCHASE PRICE:** Intentionally omitted.

(e) **DEPOSIT:** Intentionally omitted.

(f) **CLOSING DATE:** Intentionally omitted.

- (g) **EXHIBITS:** The following exhibits are hereby incorporated by this reference into this Agreement;
- (i) Exhibit "A": Deed.

2. **PURCHASE AND SALE.** In consideration of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration received by each party, the Seller hereby agrees to sell and the Buyer agrees to purchase the Premises, upon the terms and conditions hereinafter set forth.

3. **TITLE.** The Premises shall be conveyed by a release deed running tot he Buyer in a form substantially identical to that annexed hereto and marked Exhibit "A" (the "Deed"). The Deed shall contain no warranties or covenants of title whatsoever and shall convey all of the Seller's right, title and interest in the Premises, subject to the following:

- (a) Provisions of existing building, land use, subdivision control and zoning laws;
- (b) Such real property taxes for the then current tax year as are not yet due and payable on the Closing Date;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Such agreements, leases, licenses, easements, restrictions and encumbrances, if any, as may appear of record, or otherwise; and
- (e) The provisions, conditions and covenants set forth in the Deed and hereby expressly incorporated by reference. The Buyer agrees to signify acceptance of such provisions, conditions and covenants contained in the Deed by executing the Deed at closing.

4. **ADJUSTMENTS TO PURCHASE PRICE.** Water rates, rents, real estate and other property taxes and sewer charges (collectively, the "Taxes") shall be apportioned as of the Closing Date and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by the Buyer. If the amount of Taxes is not known at the closing Date, they shall be apportioned on the basis of the Taxes for the applicable preceding period and reapportioned as soon as verified current information can be obtained. The latter provision shall survive the delivery of the Deed.

5. **FEES, COSTS, AND TRANSFER TAXES.** The Buyer agrees to pay all recording fees and real estate transfer taxes of any description imposed on either the Buyer or Seller on account of this transaction by any government or governmental authority.

6. **CLOSING.** The Deed shall be delivered and the Purchase Price less the Deposit shall be paid by certified or bank cashier's check (and not otherwise) at Seven Executive Park Drive, Merrimack, New Hampshire at 10 o'clock a.m. on the Closing Date, unless the parties otherwise agree beforehand in writing. It is agreed that time is of the essence in all respects to this transaction.

7. **POSSESSION.** The Seller shall deliver possession of the Premises to the Buyer on the Closing Date, subject only to the provisions of paragraph 3 hereof, the Premises then being in the same condition as they now are, reasonable wear and tear expected.

8. **SELLER'S DEFAULT.** In the event that the Seller is unable to give title or make conveyance of the Premises to the Buyer in accordance with the terms of this Agreement for any reason, then any payments made by the Buyer shall be refunded, the obligations of the parties shall cease, this Agreement shall be void and neither party shall have further recourse against the other.

9. **REMOVAL OF ENCUMBRANCES.** The Seller may use the Purchase Price paid by the Buyer at the time of the delivery of the Deed, or any portion thereof, to clear the title of any mortgage or other title encumbrance not in accordance with the terms hereof, provided that any instrument so procured is recorded as soon as reasonably practical after the delivery of the Deed.

10. **ACCEPTANCE OF DEED.** The Buyer's acceptance of the Deed shall be deemed to be a full performance and discharge of every agreement or obligation of the Seller herein contained, except for such as are, by the terms hereof, to be performed after the delivery of the Deed.

11. **BROKER.** The parties represent and warrant to each other that neither has dealt with any broker in respect to this transaction or the Premises. The Buyer and Seller each agree to indemnify and hold harmless the other party from and against all other claims for brokerage or commission on account of this transaction.

12. **DEPOSIT.** The Deposit shall be held by the Seller subject to the terms of this Agreement and shall be duly accounted for at time of delivery of the Deed. The parties agree that the Deposit shall not bear interest.

13. **WARRANTIES.** The Buyer acknowledges that the Buyer has not been induced to enter into this Agreement, and the transaction contemplated herein, in reliance upon any warranties or representations of any party not set forth herein. The Buyer hereby expressly waives any claims against the Seller for any matters of public record or matters which a physical inspection of the Premises would reveal. This paragraph shall survive the delivery of the Deed.

14. **BUYER'S DEFAULT.** In the event the Buyer fails to fulfill any one or more of the Buyer's performances under this Agreement, the Seller shall retain the Deposit as liquidated damages. The parties expressly acknowledge that the Seller's damages owing to the Buyer's default hereunder are difficult to ascertain and agree that the Deposit represents a reasonable estimate of the Seller's damages.

15. **APPROVALS, RELEASES.** The Seller's obligations under this Agreement are conditioned upon the Seller obtaining any necessary releases, approvals or permits relating to the sale of the Premises by the Seller from any state or federal government or governmental authority having jurisdiction over the Premises. The Seller agrees to proceed with reasonable diligence to obtain any such approvals. In no event, however, shall the Seller be required to obtain subdivision approval from any governmental authority. If subdivision approval is required by applicable law, the Buyer shall obtain it or shall indemnify the Seller from all loss, costs, damage, and expense arising in any way out of the conveyance of the Premises without first having obtained the same.

16. **HAZARDOUS WASTE.** The Buyer hereby acknowledges that the Buyer is purchasing the Premises "as is", "with all faults" and subject to the possible existence of hazardous materials, petroleum products and/or pollutants regulated by law. Notwithstanding the foregoing, the Buyer, for itself, its successors, assigns and grantees hereby irrevocably waives, gives up and renounces any and all claims or causes of action against the Seller in respect of any claims, suits, and/or enforcement actions, including any administrative or judicial proceedings and any remedial, removal, or response actions ever asserted, threatened, instituted, or requested by any person (including any government agency) on account of: (a) any release of oil or hazardous materials (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et seq.) or any applicable state law) on, upon, or into the Premises; and (b) any and all damage to real or personal property, natural resources, and/or harm to persons alleged to have resulted from such release of such oil hazardous materials upon the Premises. This provision shall survive the delivery of the deed.

17. **NOTICES.** Any notice or other communication in connection with this Agreement shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or other similar overnight mail carrier furnishing evidence of receipt to the sender, at the address set forth in paragraph 1 of this Agreement. Either party may change the address at which notices are to be received by notice given as set forth above.

18. **CONFIDENTIALITY.** The Buyer agrees and acknowledges that Information (hereinafter defined) concerning the Premises obtained by the Buyer in connection with the transaction contemplated in this Agreement (the "Transaction") is unique and confidential to the Seller. If the Transaction does not take place, for any reason whatsoever (including, but not limited to, breach of this Agreement by either party), the Buyer agrees, in addition to the provisions of paragraph 14 hereof, to turn over to the Seller all (i) plans, (ii) surveys, (iii) reports, (iv) site assessment and environmental reports of any description, (v) soil, vegetation, water, air and other samplings collected at the premises and the fruits of any research, testing, experimentation or study conducted with the same, and (vi) all plans or other information or documents furnished by the Seller to the Buyer (collectively, the "Information"). Furthermore, in the event the Transaction does not take place, the Buyer warrants to the Seller that all Information has been paid for and is free of any and all liens, and that the Buyer, its officers, agents, employees, directors, shareholders and affiliates shall not disclose the Information to any person, entity or government. The Buyer acknowledges and agrees that the Seller may, in addition to all other remedies available to it, obtain injunctive relief against the Buyer for any breach of threatened breach of the provisions of this paragraph.

19. **RECORDING.** The parties agree that neither this Agreement nor any memorandum thereof shall be recorded at the registry of deeds and that any such recording by the Buyer shall constitute a default by Buyer.

20. **AUTHORITY OF SIGNATORY.** If the Buyer executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Seller that he is authorized to execute, acknowledge and deliver this Agreement on behalf of the Buyer and to thereby bind the Buyer to the same. This warranty shall survive the delivery of the Deed.

21. **ASSIGNMENT.** The Buyer may not assign this Agreement, or any interest herein, without the prior written consent of the Seller, which consent shall not be unreasonably withheld.

22. **SEVERABILITY.** If any term of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent be deemed invalid or unenforceable, the remainder of this Agreement and the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected.

23. **NO WAIVER.** No delay or omission on the part of the Seller in exercising its rights under this Agreement shall constitute a waiver of such right or any other right under this Agreement. Also, no waiver of any such right on one occasion shall be construed as a waiver of it on any other occasion.

24. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state wherein the Premises lie.

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, supersedes all prior oral or written offers, negotiations, agreements, understandings and courses of dealing between the parties relating to the subject matter hereof and is subject to no understandings, conditions, or representations other than those expressly stated herein. This Agreement may only be modified or amended by a writing which states that it modifies or amends this Agreement and which is signed by all parties.

26. **SECTION HEADINGS.** The section headings contained in the Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

27. **MISCELLANEOUS.** This Agreement shall take effect as a sealed instrument and be binding upon and inure to the benefit of the parties and their respective successors, heirs, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in two counterparts, effective as of the day and year first above written.

SELLER
BOSTON AND MAINE CORPORATION

Witness

By: _____
David A. Fink, President

Approved for execution
by the Boston and Maine Corporation

BUYER
MILFORD-BENNINGTON RAILROAD
COMPANY, INC.

Witness

By: _____
Name: _____
Title: _____

Witness

EXHIBIT A

RELEASE DEED

BOSTON AND MAINE CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware, with offices at Iron Horse Park, North Billerica, Middlesex County, Massachusetts (the "Grantor") in consideration of -----

-----(\$-----)
Dollars paid to it by Milford-Bennington Railroad Co., Inc. a New Hampshire corporation with a place of business at -----

(the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon and appurtenances thereto, if any, situated in Milford and Wilton, Hillsborough County, New Hampshire -----
----- (the "Premises") described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A
PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.
2. The Grantor hereby reserves a permanent, exclusive right of way an easement in, on, over, under, across and through the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system for transmission of intelligence or information by any means, whether now existing or hereafter devised, including such poles, pipes, wires, fibers, fiberoptic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"). The Grantor further reserves the right to freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. The Grantee hereby covenants with the Grantor to recognize the Telecommunications Easement and, without the payment of any further consideration, to execute, acknowledge and deliver such instruments suitable for recording with the registry of deeds as the Grantor may reasonably require to acknowledge title to the Telecommunications Easement in the Grantor. The Grantor covenants to reasonably repair and restore the surface of the easement area after any work.

3. The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.
4. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
5. By the acceptance of this deed and as part consideration therefor, the Grantee agrees to irrevocably waive, give up and renounce any and all claims or causes of action against the Grantor in respect of claims, suits and/or enforcement actions (including any administrative or judicial proceedings and any remedial, removal or response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials or substances of any description on, upon or into the Premises in contravention of any ordinance, law or statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq., as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.
6. By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to build and forever maintain fences (together with any necessary gates), suitable to the Principal Engineering Officer of the Grantor, along the boundaries of the Premises which are common to remaining land or location of the Grantor ("Fences"), if Fences are ever required in the sole and reasonable opinion of said Principal Engineering Officer. If the Grantee fails to install, maintain, repair or replace the Fences within sixty (60) days after having been requested or ordered to do so by the said Principal Engineering Officer of the Grantor, then the Grantor shall have the right to so install, maintain, repair or replace the Fences. The Grantee further covenants and agrees that, upon the rendering of a bill for the expense of such installation, maintenance, repair or replacement of the Fences, the Grantee shall pay said bill in full within thirty (30) days from the date of

receiving it. The Grantee further covenants and agrees that if said bill is not paid within thirty (30) days, it shall become subject to a finance charge computed at a periodic rate of 1.5% per month applied to the previous balance after deducting any current payment. If said finance charge is not lawful, then the finance charge shall then be the highest lawful amount which does not exceed said 1.5% per month charge. If the Grantee, for any reason whatsoever, fails to pay said bill and finance charges, if applicable) the Grantee shall pay all Grantor's costs of collection, including reasonable attorneys' fees and expenses.

7. This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise.
8. By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, adversely affects, increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor. The Grantee agrees to indemnify and save the Grantor harmless from and against any and all loss, costs, damage or expense including, but not limited to, the cost of defending all claims and/or suits for property damage, personal injury or death arising out of or in any way attributable to any breach of the foregoing covenants.
9. The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.
10. Whenever used in this deed, the term "Grantor" shall not only refer to the **BOSTON AND MAINE CORPORATION**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case may be.

11. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.

IN WITNESS WHEREOF, the said BOSTON AND MAINE CORPORATION has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, its President, thereunto duly authorized this day of , 1992.

GRANTOR:
BOSTON AND MAINE CORPORATION

By: _____
David A. Fink, President

Witness

GRANTEE:
MILFORD-BENNINGTON RAILROAD
COMPANY, INC.

By: _____

Witness

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

_____, 1992

Then personally appeared the above-named David A. Fink, the President of the BOSTON AND MAINE CORPORATION and acknowledged the foregoing release deed to be his free act and deed and the free act and deed of said BOSTON AND MAINE CORPORATION, before me.

Notary Public
My Commission Expires:

STATE OF NEW HAMPSHIRE

Hillsborough, ss.

_____, 1992

Then personally appeared _____, the _____ of MILFORD-BENNINGTON RAILROAD COMPANY, INC. and acknowledged the foregoing release deed to be his/her free act and deed and the free act and deed of said Corporation, before me.

Notary Public
My Commission Expires:

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34381

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF ANDREW D. ZOMPA
IN SUPPORT OF MOTION TO DISMISS AND REPLY TO PETITION FOR
RELIEF**

Andrew Zompa states as follows:

1. I am the Rules Examiner for the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford"). As part of my duties, I was assigned to meet with Mr. Peter Leishman of the Milford-Bennington Railroad Company, Inc. ("MBR") to discuss the placement of a derail on MBR property.
2. During our conversation, Mr. Leishman was supportive of the placement of the derail, and was willing to have it installed by MBR personnel. At no time did Guilford pressure Mr. Leishman into agreeing to place this device.
3. This conversation took place shortly before the derail was placed in service, which was on or about December 12, 2002.
4. I was also present on June 20, 2003 when Mr. Culliford first noticed that the derail was not being used and Mr. Culliford questioned Mr. Leishman as to why the agreed upon procedures were not being followed.

5. In response to this question, Mr. Leishman stated to Mr. Culliford that the MBR was not going to use the derail because that the State of New Hampshire was in opposition to the use of this device on its property, and that Mr. Leishman felt that he was in a difficult position due to this opposition.

6. At no time during this conversation did Mr. Leishman make any statements to the effect that the derail served no purpose, caused unnecessary delays or created a safety issue.

7. On July 16, 2003, the MBR restricted its operations due to the illness of one of its crew members. To the best of my knowledge, only one unloaded train was operated due to this illness, as there was a delay in finding a replacement for the crew member who was ill.

8. Presently the MBR operation consists of loading one train at the Granite State quarry in Wilton—beginning at 6:30 a.m.—delivering that train to the processing plant in Milford, and returning to Wilton to perform the process again.

9. The permitting restrictions do not apply to the processing plant and cannot apply to railroad operations, there is nothing to prevent the MBR from loading one train each evening at the quarry—as opposed to loading the first train of the day at 6:30 a.m.—and moving that train to the processing plant each morning at four a.m. for immediate unloading. Through this relatively minor change in operations, the MBR could gain significant operating time in which to make additional runs to serve its customer, but has inexplicably elected not to take advantage of this option.

10. Since Guilford first elected to separate its operations from MBR, the MBR has continued to maintain its five day per week operation, without making any effort to serve its customer on weekends.

11. In an effort to resolve this matter privately, on June 19th Guilford elected to install a derail device on Guilford property—to be monitored and maintained by Guilford personnel.

12. Despite the understanding of all parties involved and the existence of the bulletin—had anyone from the MBR notified Guilford that the derail was not being utilized in the agreed upon manner.

13. Recognizing that the MBR did not intend to utilize the derail in the manner agreed upon, on the afternoon of June 19th Guilford undertook to install a derail on its own property, and issued a bulletin alerting both Guilford and MBR crews to its existence.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF MIDDLESEX)

I, Andrew D. Zompa, being duly sworn, depose and state that I am Director of Operating Rules of Boston and Maine Corporation ("B&M") and Springfield Terminal Railway Company ("ST"); that I am authorized to sign the foregoing "Verified Statement" on behalf of B&M and ST, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.



Andrew D. Zompa

Subscribed and sworn to before me
this 17th day of July, 2003.



Notary Public

My Commission Expires: March 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34381

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF SYDNEY B. CULLIFORD IN SUPPORT OF
MOTION TO DISMISS AND REPLY OF THE BOSTON AND MAINE
CORPORATION and THE SPRINGFIELD TERMINAL RAILWAY COMPANY**

Sydney B. Culliford states as follows:

1. I am the Vice President of Transportation for the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford"). I make this statement in support of Guilford's Motion to Dismiss and Reply to the Petition for Alternative Service filed by Granite State Concrete Company, Inc. ("Granite State") and Milford-Bennington Railroad Company, Inc. ("MBR").
2. On June 19, 2003, several Guilford employees—including myself—traveled to Wilton, New Hampshire to inspect the areas in and around the connection between the MBR and Guilford tracks.
3. Upon arriving at this location, I noted that the derail device provided to MBR was not applied and—when approached by the President of the MBR—I requested an explanation as to why the derail was not being used in the manner agreed to by Guilford and the MBR.

4. In response, Mr. Peter R. Leishman, President of the MBR, stated that the State of New Hampshire—the owner of the MBR line—had objected to the use of the derail device and that the MBR was in a difficult position trying to maintain the derail in light of this opposition.

5. At no time did Mr. Leishman make any statements to the effect that the derail served no purpose, caused unnecessary delays or created a safety issue.

6. As the result of this inspection of the intersection between the tracks of MBR and Guilford, Guilford became concerned with the lack of a continuous dispatching presence on the MBR and the location of freight and passenger cars being stored on the MBR because of the steep grade leading into this area.

7. When Guilford did focus on the operating and safety practices of the MBR, it became apparent that the MBR had willingly disregarded established safety and operating rules on a regular basis.

8. Not only was MBR willing to abandon its prior agreement with Guilford regarding use of the derail device and ignore the Guilford bulletin, the MBR also failed to inform anyone from Guilford that the derail was not in service, contrary to all customary operating and safety rules and practices.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)

) **SS:**

COUNTY OF MIDDLESEX

I, Sydney B. Culliford, being duly sworn, depose and state that I am Vice President of Transportation for Boston and Maine Corporation ("B&M") and Springfield Terminal Railway Company ("ST"); that I am authorized to sign the foregoing "Verified Statement" on behalf of B&M and ST, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.


Sydney B. Culliford

Subscribed and sworn to before me
this 17th day of July, 2003.

James J. Dimeau
Notary Public

My Commission Expires: March 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34381

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF THOMAS F. STEINIGER
IN SUPPORT OF MOTION TO DISMISS AND REPLY TO PETITION FOR RELIEF**

Thomas F. Steiniger states as follows:

1. I am the President of the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford"). I make this verified statement in support of Guilford Motion to Dismiss and Reply to Petition for Relief filed by Granite State Concrete Company, Inc. ("Granite State") and Milford-Bennington Railroad Company, Inc. ("MBR").
2. In or about late 2002, Guilford was approached by Mr. Stuart Draper regarding the possibility of operating a scenic railway over the tracks leased and operated by MBR, and requesting permission to utilize portions of Guilford's property to support this service.
3. In response, Guilford presented Mr. Draper with its concerns about the operation of passenger service on property that had previously been devoted solely to freight operations, and requested that Mr. Draper provide additional information prior to making a final determination. Neither Mr. Draper nor MBR provided any additional information.

4. Instead, Guilford was contacted by Colin Pease—a representative of Mr. Draper—who confirmed that no passenger service would be conducted on Guilford property. Moreover, Mr. Pease and MBR also agreed to Guilford's request that a derail device be installed on MBR property to prevent passenger and/or freight cars from inadvertently intruding onto Guilford's property with little or no warning.

5. Guilford was contacted by Granite State on several occasions to discuss the possibility of Guilford providing service directly to its processing facility. In response to each contact, Guilford informed Granite State that it had implemented the new operating windows as a safety measure—not to obtain the right to provide service to the processing facility—and that Guilford must therefore decline Granite State's offers.

6. Once Guilford became aware of the permitting restrictions on Granite State's excavating operation, Guilford did offer to provide service to Granite State until its safety concerns with MBR were fully addressed, an offer that was declined.

7. To further facilitate service to Granite State, on July 11, 2003 Guilford informed counsel for MBR that a new operating window—from 4 a.m. to 1 p.m.—would be implemented. This new operating window was implemented on July 15, 2003.

8. For a number of years Guilford had been operating under the impression that the operations of the MBR were being conducted safely and responsibly.

9. It was not until the MBR and Mr. Draper approached Guilford with a proposal to operate passenger service that Guilford began to look closely at the operations of the MBR, for the simple reason that Guilford had substantial concerns with instituting scenic tours on what were previously freight-only lines.

10. Mr. Pease also contacted Guilford with a request to participate in the development of an operating plan that would encompass the operations of Guilford, the MBR and the passenger service on the MBR's lines, a proposal that seemed reasonable to Guilford at the time.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF MIDDLESEX) ss:

I, Thomas F. Steiniger, being duly sworn, depose and state that I am President of Boston and Maine Corporation ("B&M") and Springfield Terminal Railway Company ("ST"); that I am authorized to sign the foregoing "Verified Statement" on behalf of B&M and ST, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.


Thomas F. Steiniger

Subscribed and sworn to before me
this 17th day of July, 2003.


Notary Public

My Commission Expires: march 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34381

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF ROGER D. BERGERON IN SUPPORT OF
MOTION TO DISMISS AND REPLY OF THE BOSTON AND MAINE
CORPORATION and THE SPRINGFIELD TERMINAL RAILWAY COMPANY**

Roger D. Bergeron states as follows:

1. I am the Assistant Vice President of Engineering for the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford"). I make this statement in support of Guilford's Motion to Dismiss and Reply to the Petition for Alternative Service filed by Granite State Concrete Company, Inc. ("Granite State") and Milford-Bennington Railroad Company, Inc. ("MBR").
2. This line is classified as excepted track, and is in compliance with the track safety standards of the Federal Railroad Administration ("FRA"). The FRA has never indicated that the use of this classification is improper for the type of traffic that is moved over this line, nor has FRA issued any violations for track conditions over the segment upon which the MBR operates.
3. Guilford inspects this line weekly, as required by the applicable FRA regulations, and is not aware of any maintenance work done on the line by the MBR.

4. If the MBR were performing maintenance on this line, the MBR would be required to contact the Guilford dispatcher to obtain permission to occupy the track. Guilford has no record of any such permission being requested or granted.

5. In addition, any person performing maintenance on Guilford's property would be required to be trained and qualified by Guilford pursuant to the FRA's Roadway Worker Rules. No employees of MBR have ever received any training or qualification from Guilford pursuant to these rules.

6. Pursuant to Guilford's collective bargaining agreements with its applicable unions, Guilford's employees have the right to perform maintenance on Guilford property, except in certain instances. As a result, performance of maintenance by MBR employees on Guilford property would be a violation of these agreements.

7. As owner of this line, Guilford is charged with responsibility for its maintenance, and any unauthorized track work would not only undermine this authority, but would also subject Guilford to liability under the FRA's track safety standards because the MBR employees who allegedly performed this work were not properly qualified.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF MIDDLESEX) ss:

I, Roger D. Bergeron, being duly sworn, depose and state that I am Assistant Vice President of Engineering for Boston and Maine Corporation ("B&M") and Springfield Terminal Railway Company ("ST"); that I am authorized to sign the foregoing "Verified Statement" on behalf of B&M and ST, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.


Roger D. Bergeron

Subscribed and sworn to before me
this 17th day of July, 2003.


Notary Public

My Commission Expires: March 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34381

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF ERWIN R. TOWLE IN SUPPORT OF MOTION
TO DISMISS AND REPLY OF THE BOSTON AND MAINE CORPORATION
and THE SPRINGFIELD TERMINAL RAILWAY COMPANY**

Erwin R. Towle states as follows:

1. I am the General Manager of Transportation for the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford"). I make this statement in support of Guilford's Motion to Dismiss and Reply to the Petition for Alternative Service filed by Granite State Concrete Company, Inc. ("Granite State") and Milford-Bennington Railroad Company, Inc. ("MBR").
2. Prior to June 20, 2003, MBR operated up to three trains per day between the excavation site and the processing plant owned by Granite State.
3. MBR owns or controls nine hopper cars used for transporting stone from the excavation site to the processing plant, which has existing capacity for up to 15 cars in certain minor improvements are made.
4. The principal reason for Guilford's concern with cars entering onto Guilford's

property is that the grade of track leading to Guilford's line is between .75 and 1.5% over two miles.

5. To further facilitate service to Granite State, on July 11, 2003 Guilford informed counsel for MBR that a new operating window—from four a.m. to one p.m.—would be implemented. This new operating window was implemented on July 15, 2003.

6. While Guilford would not object if the MBR continued to utilize a derail on its property, it is not likely that the MBR is doing so. However, the MBR has not confirmed one way or the other whether the derail is still being utilized on its property, despite the continued existence of the original Guilford bulletin.

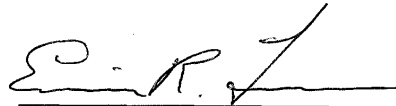
7. When a Guilford crew inadvertently violated applicable operating rules by entering onto MBR property, Guilford immediately took the crew out of service, tested for drug and alcohol use, and initiated disciplinary proceedings.

8. To Guilford, these actions are necessary to ensure safety in all of its operations, and are steps that any railroad would take as a matter of course.

VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF MIDDLESEX)

I, Erwin R. Towle, being duly sworn, depose and state that I am General Manager of Transportation of Boston and Maine Corporation ("B&M") and Springfield Terminal Railway Company ("ST"); that I am authorized to sign the foregoing "Verified Statement" on behalf of B&M and ST, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.



Erwin R. Towle

Subscribed and sworn to before me
this 17th day of July, 2003.


Notary Public

My Commission Expires: March 12, 2010

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing documents was served on July 18, 2003, by sending a copy by Federal Express and e mail on counsel for the plaintiffs, as follows:

James E. Howard, Esquire
James E. Howard, L.L.C.
One Thompson Square, Suite 201
Charlestown, MA 02129

and by Federal Express to:

Mark H. McKeon
Regional Administrator
Federal Railroad Administration
55 Broadway - Room 1077
Cambridge, MA 02142


Bonnie J. Boling

July 18, 2003