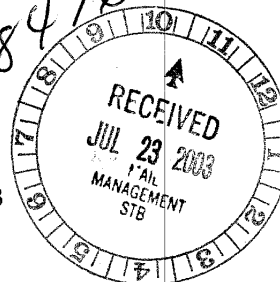


JAMES E. HOWARD LLC
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ENTERED July 22, 2003
Office of Proceedings



VIA FEDERAL EXPRESS

JUL 23 2003

Part of
Public Record

No. 42083

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

Re: Granite State Concrete Company, Inc. and Milford-Bennington
Railroad Company, Inc. v. Boston and Maine Corporation and
Springfield Terminal Railway Company

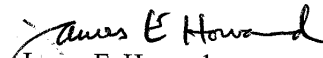
Docket No. NOR 42083

Dear Secretary Williams:

Enclosed for filing in the above captioned matter are the original and 10 copies of the "Rebuttal of Granite State Concrete Company, Inc. and Milford-Bennington Railroad Company, Inc. to ' 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 USC 11123 and 49 CFR 1146.1", including the originals and 10 copies each of the Verified Statements of Peter R. Leishman, F. Colin Pease, John G. MacLellan, III and Stuart Draper.

Could you please acknowledge receipt of the Rebuttal and the Verified Statements by date stamping the extra enclosed copy of the Rebuttal and returning it to me in the self-addressed stamped envelope? Thank you very much for your assistance.

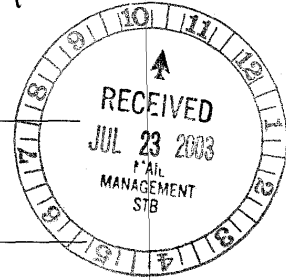
Very truly yours,


James E. Howard

208476

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42083



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

v.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY CO.

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REBUTTAL OF GRANITE STATE CONCRETE CO., INC.
and MILFORD-BENNINGTON RAILROAD CO., INC. TO
"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"

In accordance with 49 C.F.R. 1146.1(b) (3), Granite State Concrete Co., Inc.
("Granite State") and Milford-Bennington Railroad Co., Inc. ("Milford-Bennington")
hereby submit this Rebuttal to the "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" (the "Guilford

Reply"). Boston and Maine Corporation and Springfield Terminal Railway Co. are referred to collectively as "Guilford."¹

The issue before the Board is whether Guilford has failed to provide service for Granite State such that a service order pursuant to 49 U.S.C. 11123 and 49 C.F.R. 1146 is required. As demonstrated below, Guilford has failed to provide service, and Granite State and Milford-Bennington have met the criteria necessary to be entitled to relief in the form of a service order directing Guilford to permit Milford-Bennington to serve Granite State.

FACTS

In order to serve Granite State, Milford-Bennington has operated for 11 years between the Granite State excavation site in Wilton and the processing plant in Milford over Milford-Bennington's own line and pursuant to trackage rights over approximately three miles of line owned by Guilford. Verified Statement of Peter R. Leishman ("Leishman V.S.") at 1-2. Such operations were conducted without any limitation on the hours during which Milford-Bennington was permitted to provide service. Leishman V.S. at 1-2. The trackage rights agreement between Guilford and Milford-Bennington contains no restriction whatsoever on the hours for Milford-Bennington's operations. Attachment C to Guilford Reply.

The permit governing Granite State's operations at its excavation site in Wilton, on the line of Milford-Bennington, restricts Granite State's operations to the hours of 6:30 AM until 6:30 PM from Monday through Friday. Leishman V.S. at 1-2. These operating

¹ Both the complaint setting forth the request of Granite State and Milford-Bennington for relief pursuant to 49 C.F.R. 1146 and 49 U.S.C. 11123 and the Guilford Reply were filed under Finance Docket No. 34381. The Board has advised Granite State and Milford-Bennington that the case has been renumbered as Docket No. NOR 42083.

restrictions are well known to Guilford and generally to others in the area. Verified Statement of F. Colin Pease ("Pease V.S.") at 1-2; Leishman V.S. at 2.

Guilford insisted that Milford-Bennington trains serving Granite State be limited to a maximum of ten cars per train, and this provision was incorporated in the trackage rights agreement. Leishman V.S. at 4. As a result, Granite State invested in modifications to its excavation site and to its processing plant to accommodate trains that were a maximum of ten cars long. In addition, Granite State acquired ten cars which are used by Milford-Bennington. The same 10 car train is shuttles back and forth between the excavation site loaded and the processing plant empty during the course of any given week day.

For approximately the first five years of Milford-Bennington's service to Granite State, Milford-Bennington operated 4 trains per day from Monday through Friday. Leishman V.S. at 2. As the Guilford line over which Milford-Bennington has trackage rights deteriorated, operations were limited to a maximum of three trains per day. Although the trackage rights agreement provides that it was Guilford's intent to install welded rail between the junction with the Milford-Bennington line and the Granite State processing plant, Guilford has never done so. To the contrary, Guilford has permitted the line to deteriorate to the point that the three miles used by Milford-Bennington is classified as excepted track and is limited to a maximum speed of five miles per hour. Leishman V.S. at 2.

Granite State is able to operate at its excavation site for approximately nine months a year, closing down during the coldest winter months. In order to meet demands from customers, Granite State must maximize its production of stone during the

months of operation and, in particular, during the summer months. To the extent that Granite State is unable to receive stone from the excavation site for processing, Granite State is required to purchase stone from other sources and to move it to the processing plant by truck. Verified Statement of John G. MacLellan III ("MacLellan V.S.") at 3.

In December, 2002, Guilford, Milford-Bennington and Wilton Scenic Railway discussed the plans of Wilton Scenic to operate a passenger service on the Milford-Bennington line beginning in the summer of 2003. Pease V.S. at 2-3; Verified Statement of Stuart Draper ("Draper V.S.") at 1-2. All parties agreed that it would be appropriate to place a derail device on the Milford-Bennington line just before the point where Guilford's ownership begins in order to separate passenger service from any possibility of encroaching on Guilford's line. A temporary device was delivered by Guilford to Milford-Bennington in December, 2002, and it was used during the winter when freight operations were not conducted due to the closing of the Granite State excavation site and passenger cars were stored on the Milford-Bennington main line. In the spring of 2003, when Granite State and Milford-Bennington resumed operations, the passenger cars were moved to a Milford-Bennington siding approximately 3 miles from the Guilford line, and the siding was protected with two derails. Draper V.S. at 3; Pease V.S. at 4-5.

Both Guilford and Milford-Bennington operated without any derail from the start of operations in the spring of 2003 until late May, 2003, when a permanent derail was installed at the same location--milepost 16.36. Leishman V.S. at 5-6. From late May until June 19, 2003, both Guilford and Milford-Bennington ran freight trains without using the newly installed permanent derail. Leishman V.S. at 5-6. The derail was used only when Wilton Senic operated in accordance with an understanding between Wilton

Scenic and the Federal Railroad Administration ("FRA"). Pease V.S. at 5-6; Draper V.S. at 4. Guilford was informed of Wilton Scenic's actions, and Guilford expressed no concern or disagreement. Pease V.S. at 6-7.

There was never any derail device on the main line of Milford-Bennington or Guilford until the initiation of Wilton Scenic passenger service. More importantly, Guilford never requested or suggested, until June 20, 2003, that Milford-Bennington should use the derail device for its freight operations. Leishman V.S. at 5-6. Furthermore, Guilford operated trains over the Milford-Bennington line pursuant to a trackage rights agreement until June 20, 2003, and Guilford never used the derail device on the main line; it remained in the "open" position before and after Guilford's trains passed. Leishman V.S. at 6.

On June 19, 2003, Guilford demanded that Milford-Bennington use the derail device for all freight operations. Although Milford-Bennington disagreed that the device was necessary for any valid safety reason, Milford-Bennington clearly and unequivocally advised Guilford that Milford-Bennington would in fact use the derail device in order to avoid further issues with Guilford. See letter dated June 20, 2003 from Peter R. Leishman to Robert B. Culliford, attached hereto as Exhibit A. Notwithstanding this consent by Milford-Bennington to use the derail device, Guilford unilaterally imposed restrictions, as discussed below, on the time of Milford-Bennington's operations, ostensibly to rectify an alleged "safety" problem.

Guilford has contended that it found it necessary to separate the operations of Guilford from Milford-Bennington by restricting Milford-Bennington's hours of operation initially to the hours between 1 AM and 8 AM and, subsequently, to the hours

between 4 AM and 1 PM. Even assuming, contrary to the facts, that Milford-Bennington had refused to use the derail device, the "operating windows" established by Guilford bear no rational relationship to any alleged safety problem.

Guilford operates approximately one train per week over the line that is subject to the trackage rights in favor of Milford-Bennington. Leishman V.S. at 6. As noted above, Milford-Bennington operated three trains a day, 5 days a week over the same line. More significantly, however, Milford-Bennington can never be on the trackage rights line without clearance from the Guilford dispatcher. Leishman V.S. at 6. There is, therefore, no possibility, due to Guilford's control of the line, that a Guilford train or crew will be in the trackage rights area at the same time that Milford-Bennington is attempting to exercise its trackage rights.

The lack of rail service caused by the actions of Guilford are having a devastating impact on Granite State. Thus far, Granite State has suffered a loss of revenue of approximately \$ 325,000, and those losses will continue at the rate of approximately \$10,000 a day until service is restored to three trains a day. McLellan V.S. at 3. In addition, Granite State will be forced to purchase stone from other sources, as a result of Guilford's actions to date, at a cost of approximately \$450,000. MacLellan V.S. at 3. Granite State has been required to temporarily lay off employees and to limit the work of subcontractors at its facilities. MacLellan V.S. at 3-4. Thus, the actions of Guilford are having not only a direct adverse impact on Granite State but also a harmful effect on the economy of the region. Needless to say, the economic health of Milford-Bennington is tied directly to that of Granite State, Milford-Bennington's only current customer.

Guilford has blithely--and incorrectly--suggested that Granite State and Milford-Bennington can alter their operations in order to alleviate the adverse effects of Guilford's actions. As noted above, Granite State's permit restricts its operations to the hours of 6:30 AM to 6:30 PM Monday through Friday. Furthermore, it is not allowed to use trucks to move stone from the excavation site. Moreover, it would be impractical and highly expensive to attempt to change the layout of either facility in order to accommodate longer trains, assuming that Guilford would agree to modify the trackage rights agreement to permit trains longer than ten cars. Leishman V.S. at 4-5. Finally, due to the condition of the Guilford line and the time needed to operate between the 2 sites, Milford-Bennington is unable to run more than 2 trains, and often is able to complete only 1 trip, while its operations are limited by Guilford's actions. Leishman V.S. at 3-4.

ARGUMENT

I. The Applicable Standards for Relief Afford the Board Flexibility to Rectify Service Failures.

Section 11123 provides, in effect, that the Board may take action in the nature of a temporary service order when there is an emergency situation of such magnitude as to have "substantial adverse effects on shippers, or on rail service in a region" or when it finds that a rail carrier "cannot transport the traffic offered to it in a manner that properly serves the public." The Board is expressly authorized to act in order "to promote commerce and service the public." 49. U.S.C. 11123(a).

The regulations which were promulgated by the Board in 1998 and which are now published at 49 C.F.R. 1146 provide specific guidance for the application of Section 11123. More specifically, a service order is appropriate if the following criteria are met:

1. An applicant must demonstrate that, “over an identified period of time, there has been a substantial, measurable deterioration or other demonstrated inadequacy in service provided by the incumbent carrier.” 49 C.F.R. 1146.1(a).

2. An applicant must provide a summary of discussions with the incumbent carrier and state the reasons why it is unlikely that adequate service will be restored consistent with current transportation needs. 49 C.F.R. 1146.1(b)(1)(ii).

3. There must be a commitment from another carrier to provide service that would meet the current transportation needs safely and without unreasonably interfering with the incumbent's ability to provide service. 49 C.F.R. 1146.1(b)(1)(iii).

The Board has provided further guidance in its decisions leading to the adoption of 49 C.F.R. 1146. In May, 1998, in the notice of proposed rulemaking, the Board acknowledged that while Section 11123 was more typically used to address regional service emergencies, the provision could also be used to afford "more localized relief to shippers." Expedited Relief for Service Inadequacies, Ex Parte No. 628, served May 12, 1998 at 4. The Board stated that it intended to apply a flexible standard of relief, rather than to adopt a list of factors to be considered or a formulaic weighing of factors. As the Board stated, “[e]ach shipper has its own particular needs and experiences” that must be reviewed in order to determine whether a service order is appropriate. Id.

In its decision in December, 1998 adopting final rules, the Board reiterated that its intent was to be able to provide temporary relief from serious localized service problems more quickly and effectively. Expedited Relief for Service Inadequacies, Ex Parte No. 628, served December 21, 1998 at 3. Furthermore, the Board noted that Section 11123 gave it “very broad authority” and required the Board to focus on and alleviate the impact

on shippers rather than to attempt to identify the cause of any particular problem. Id.

Particularly relevant to this case, the Board observed that the regulations were intended to provide flexibility in fashioning relief, because the needs and services of particular shippers could vary substantially; the Board did not attempt to define adequate rail service for every conceivable situation. Id. at 6.

II. Granite State and Milford-Bennington are Entitled to Relief Pursuant to 49 U.S.C. 11123 and 49 C.F.R. 1146.

Beginning June 20, 2003, with the arbitrary restrictions of the hours during which Milford-Bennington could operate on the Guilford line, there has been a substantial deterioration and inadequacy of service. Granite State continues to demand at least three trains a day Monday through Friday, and Milford-Bennington is able to deliver one or sometimes two trains a day as result of the restricted access to the Guilford line and the poor condition of the line. Leishman V.S. at 3-4.

Guilford has suggested that Milford-Bennington is the “incumbent” carrier within the meaning of Section 1146 and that, if this argument is accepted, Section 1146 does not apply. Although this is not a case in which a rail carrier is unable to provide train service to a customer, such as was the situation with respect to the service “meltdowns” in the West in the late 1990s, Guilford in fact provides a “service” within the meaning of Section 1146 which is inadequate and which has deteriorated substantially. Specifically, the service provided by Guilford is access to its line by Milford-Bennington and dispatching in order to permit Milford-Bennington to serve Granite State without restrictions. Guilford initially withdrew such services completely from Granite State and Milford-Bennington and then partially restored such services, but the service provided by Guilford continues to be far below the level required by Granite State.

The situation described above is a “localized service failure” within the meaning of Section 1146. The Board entered a service order in a similar case involving Denver Rock Island Railroad. Denver Rock Island Railroad--Alternative Rail Service--Lines of Kansas Southwestern Railway, LLC, Finance Docket No. 33762, decision dated June 15, 1999. The Board permitted Denver Rock Island to serve a customer on a line approximately ten miles long that was the subject of an abandonment proceeding in a situation in which the owner did not wish to incur the expense of resuming service. The Board noted that “Section 1146 is intended to ‘handl[e] requests for localized immediate service relief.’”

There has been extensive discussion, in the form of an exchange of correspondence and conversations beginning June 20, 2003, in an attempt by Granite State and Milford-Bennington to resolve Guilford's service inadequacies directly with Guilford. On June 27, 2003, Granite State and Milford-Bennington requested the Board's Office of Compliance and Enforcement to initiate its informal mediation process in an attempt to resolve the matter. In addition, there were direct conversations between counsel for Guilford and the undersigned counsel for Granite State and Milford-Bennington. Although Milford-Bennington agreed on June 20, 2003 to use the derail device and, in response to conditions proposed by Guilford, Milford-Bennington and Granite State agreed to waive any damage claims, Guilford refused to restore the status quo with respect to the hours of operation.

Notwithstanding the extensive discussions among the parties, as described above, Guilford contends that Granite State and Milford-Bennington have not “shown any willingness to enter into good faith discussions with Guilford to resolve the issues

between them.” Guilford Reply at 13. This argument is patently ludicrous, as demonstrated above. The parties have discussed the problem extensively over a 4 week period without a resolution. As further evidence of the attempts to resolve this matter amicably, attached as exhibits are the following items of correspondence since June 20, 2003:

1. Letter dated June 20, 2003 from Peter R. Leishman to Robert B. Culliford, attached as Exhibit A.
2. Letter dated June 27, 2003, from James E. Howard to Melvin F. Clemens, with verified statements of Peter R. Leishman and John G. MacLellan, III, attached as Exhibit B.
3. Letter dated June 30, 2003 from Robert B. Culliford to Melvin F. Clemens, with verified statements and attachments, attached as Exhibit C.
4. Letter dated July 2, 2003 from James E. Howard to Melvin F. Clemens, with verified statement of Stuart Draper, attached as Exhibit D.
5. Letter dated July 2, 2003 from Carol A. Muray, Commissioner of Transportation of State of New Hampshire, to the Board, attached as Exhibit E.
6. Letter dated July 3, 2003 from Robert B. Culliford to Melvin F. Clemens, attached as Exhibit F.
7. Letter dated July 8, 2003 from James E. Howard to Robert B. Culliford, attached as Exhibit G.
8. Letter dated July 8, 2003 from Robert B. Culliford to Melvin F. Clemens, attached as Exhibit H.

At the risk of stating the obvious, Milford-Bennington is committed to provide the service required by Granite State. Such service can be accomplished in accordance with the trackage rights agreement, as it has been for the last 11 years, without any adverse impact on Guilford or its operations. More importantly, Milford-Bennington can provide the service safely, as it has for 11 years, by continuing to operate in accordance with the trackage rights agreement and applicable regulations. The arguments raised by Guilford with respect to safety--the asserted need for a derail device on the main line and the purported desirability of "separate" operations--should be recognized and disregarded as pretextual excuses for Guilford's refusal to provide the service needed by Granite State. In any event, as noted in the complaint, Granite State and Milford-Bennington would welcome the involvement of the FRA to study or supervise the safety of operations and to suggest any improvements.

III. There is No Basis to Dismiss Count 1.

Guilford has correctly noted that the complaint filed on July 14 was not served at that time on the FRA and has argued that this omission should be grounds to dismiss the request for a service order. The failure to serve the FRA at the time the complaint was filed was inadvertent but, more importantly, did not prejudice Guilford or the FRA.

This Rebuttal and the complaint are being served on the FRA today. Guilford has provided its response to the FRA. Moreover, the FRA is already familiar with many of the facts relating to this case as a result of discussions and correspondence between Wilton Scenic and the FRA and Milford-Bennington and the FRA. Pease V.S. at 5-7; Exhibit B, statement of Peter R. Leishman.

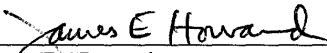
CONCLUSION

As demonstrated above, this is a case in which action by the Board pursuant to Section 11123 and 49 C.F.R. 1146 is thoroughly justified and warranted. Without immediate, temporary relief, Granite State will continue to suffer from completely inadequate rail service in the form of Guilford's refusal to permit unrestricted operations.

Respectfully submitted,

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

By their attorney,


James E. Howard
One Thompson Square, Suite 201
Charlestown, Massachusetts 02129
Telephone: 617-886-9322
Facsimile: 617-886-9324
e-mail: jehoward@worldnet.att.net

Dated: July 22, 2003

CERTIFICATE OF SERVICE

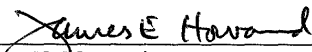
I hereby certify that the foregoing "Rebuttal of Granite State Concrete Co., Inc. and Milford-Bennington Railroad Co., Inc. to 'Motion to Dismiss and Reply of The Boston and Maine Corporation and The Springfield Terminal Railway Company to Petition for Relief Filed by Granite State Concrete Company, Inc. and Milford-Bennington Railroad Company, Inc. Pursuant to 49 U.S.C. § 11123 and 49 C.F.R. § 1146.1'" was served this 22nd day of July, 2003 by sending a copy by Federal Express to counsel for the defendants and to the Federal Railroad Administration, as follows:

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

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

I hereby certify that the Formal Complaint in this case was served this 22nd day of July, 2003 by sending a copy by Federal Express to the Federal Railroad Administration as follows:

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


James E. Howard

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

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

VS

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

**VERIFIED STATEMENT OF JOHN G MACLELLAN III,
PRESIDENT, GRANITE STATE CONCRETE, INC.,
IN RESPONSE TO THE MOTION TO DISMISS FILED BY
BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

John G MacLellan III states as follows:

Granite State Concrete, Inc operates a stone and concrete business and owns a rock excavation facility in Wilton, New Hampshire and a stone processing plant in Milford, New Hampshire. Over 11 years ago our company entered into an arrangement with the Milford-Bennington Railroad under which the railroad has provided service between our two facilities. Milford-Bennington operates in part on line maintained and operated by them and leased from the State of New Hampshire and on line owned and operated by Guilford Rail system's Boston and Maine Corporation and the Springfield Terminal Railway. Milford-Bennington's trackage agreement to operate over Guilford restricts Milford-Bennington to operating ten car trains and when we constructed the rail facilities we constructed them to accommodate ten car trains.

The rail service is critical to our business as our excavation facility is permitted to operate between the hours of 6:30 am and 6:30 pm, Monday through Friday and our permit requires that we move product between our two facilities by rail. During the first few years of service by Milford-Bennington the railroad was able to serve our facilities with four trains per day delivering the amount of stone that we had anticipated when we began our operation. For approximately 6 years that number has been reduced to three trains per day because the Milford-Bennington must operate at about 5 miles per hour when operating over Guilford track. Milford-Bennington track is well maintained and they are able to run at 25 mph.

Throughout our 11-year affiliation with Milford-Bennington we have been extremely satisfied with their performance and commitment to serving our two facilities. At all times they have demonstrated a strong commitment to service and an equally strong commitment to operating safely.

On June 19, 2003 I received a call from Mr. Peter Leishman, President of Milford Bennington. He informed me that Guilford had restricted him to operating between the hours of 1:00 am and 8:00 am. Since our facilities can only run between the hours of 6:30 am and 6:30 pm, Guilford's actions have nearly shut us down. Recently Guilford has expanded the hours of service from 4:00 am to 1:00 pm enabling Milford Bennington to operate two trains per day but only if everything works perfectly. We cannot operate our excavation site on weekends.

Immediately after hearing about the restriction of service my brother, Peter MacLellan telephoned David Fink, Guilford's executive vice president. He asked Mr. Fink what was going on and told Mr. Fink that the Guilford's actions would shut us down. Mr. Fink's reply was something like "that's all I've got for you".

A few days later I telephoned the railroad's President, Mr. Tom Steiniger in the hopes that I could convince him to change his mind. I did not reach him but left a message. Mr. Steiniger ultimately returned my call but I was not in my office and ultimately I spoke with the railroad's corporate counsel, Mr. Rob Culliford. Mr. Culliford told me that there was nothing he could do for me.

Guilford's actions have now had serious impacts on our company, our employees and our subcontractors. Had Guilford not shut off our rail service for the period between June 19, 2003 and July 19, 2003 production at our Milford plant would have been 65,205 tons. Instead it was 17,595. In other words our lost production equaled 47,610 tons of material and our revenue losses associated with the lost production equal \$323,748. In addition it will now be necessary to purchase materials from other locations and it is expected those additional replacement materials will cost \$442,774.

Guilford's actions have negatively impacted our employees. At our Milford and Wilton plants our production employees total 6 and during the normal high season production hours are 10 to 12 hours per day or 40 hours per employee plus 10 to 20 overtime hours.

We have tried to keep all of our employees employed at least part of the time. However one employee has experienced layoffs of 2-3 days per week and five others have had their hours reduced to 40 hours and are assigned to perform non essential work during non-production periods. It is not clear how much future alternate work will be available.

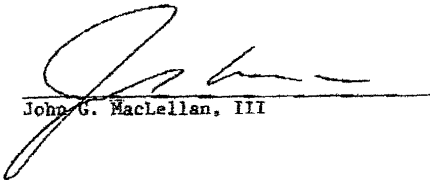
In addition we employ a subcontractor to perform rock drilling at our Wilton site. He has been laid off. Our blasting contractor for the Wilton site during normal operations provides services approximately every two weeks. The blasting contractor last serviced the site on June 17, 2003 and at the current rate of operation blasting services will not be needed until early or mid August.

The arbitrary actions taken by Guilford have already cost our company a large amount of money and they are seriously impacting our employees and our contractors. None of these costs are costs that can be made up as we live with finite operating hours and weather conditions force us to shut down during the winter. Our employees count on working during our production season and they count on the overtime. It is critical that Milford-Bennington operations be restored and restored quickly.

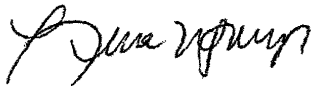
VERIFICATION

Commonwealth of Massachusetts)
) ss:
County of Middlesex)

I, John G. MacLellan, III, being duly sworn, depose and state that I am President of Granite State Concrete Co., Inc., that I am authorized to sign the foregoing "Verified Statement" on behalf Granite State Concrete Co., Inc., 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.


John G. MacLellan, III

Subscribed, and sworn to before me
this 22nd day of July, 2003.





**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

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

VS.

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

**VERIFIED STATEMENT OF STUART DRAPER
IN RESPONSE TO THE MOTION TO DISMISS FILED BY
BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

Stuart Draper states as follows:

In the fall of 2002 I commenced plans to start a new scenic railroad to operate between Wilton and Bennington, New Hampshire. In the early stages of my planning efforts I wrote Mr. David Fink of Guilford Rail at his home in the neighboring town of Amherst to tell him of my plans, to invite him to visit our operation and to seek his assistance. I was asking him to enter into an arrangement under which the Wilton Scenic Railroad could utilize an unused sidetrack in Guilford's Wilton Yard to park two rail passenger RDC cars I had purchased. The sidetrack would have enabled me to store the cars for the winter in an area where they could be watched and also worked on during the winter months. During the summer months use of the sidetrack would have permitted us to

secure our two cars when not in use so that the main line would be used by both Guilford and the Milford-Bennington Railroad. I also asked if it would be possible to develop an agreement under which Wilton Scenic could use approximately several hundred feet of Guilford track to access a building that I owned that is adjacent to one of two tracks in Guilford's Wilton Yard. I had hoped to use the building as a station facility.

In late November I received a reply to my letter to Mr. Fink from Guilford's Corporate Counsel, Mr. Robert Culliford. Mr. Culliford stated that Guilford would require Wilton Scenic to provide "general liability insurance of not less than \$75 million and pollution liability insurance of not less than \$5 million per occurrence with all railroad exclusions removed". The cost of such insurance for a small scenic railroad was prohibitive and I chose not to proceed any further. A consultant working for me, Mr. Colin Pease verbally told Guilford representatives that the insurance requirement made any use agreement impossible to achieve.

As I was not able to store the cars on Guilford's unused yard track I made arrangements with the Milford-Bennington Railroad to store the cars on track owned by the State of New Hampshire and operated by the Milford -Bennington. The location was on main line track that connects directly to Guilford Yard track. Milford-Bennington does not run during the winter months as its one customer, Granite State Concrete does not operate during the winter. The storage location is just beyond where Guilford ownership ends and New Hampshire ownership begins at milepost 16.36.

The two RDC cars were located in British Columbia where BC Rail had been using them in a daily intercity passenger service at speeds as high as 60 mph. When the cars were delivered to Wilton by Guilford, Guilford asked that they be immediately removed from Guilford property and the cars were moved to their winter storage location just beyond milepost 16.36. Immediately after they were “parked” the Wilton Scenic and Milford-Bennington secured the cars using a skate device that chocked the wheels on the RDC cars in such a way that they could not possibly roll away in addition to setting the brakes on the cars.

On December 12, 2002 a Guilford employee arrived in Wilton and left a derail device at milepost 16.36 and asked that it be installed to “protect” Guilford from the potential of the passenger cars rolling away onto Guilford property. Even though the cars were already well protected by actions of the Wilton Scenic and Milford-Bennington, the portable device was installed.

In the Spring of 2003 the two RDC cars were moved from their winter storage location to a point approximately 3 miles north on the state owned line. They were placed on a siding and protected by two derails. At all times the cars have been stored using proper procedures to insure that they could not roll out onto the Milford-Bennington main line and ultimately Guilford’s track through the use of derails applied by Milford-Bennington and Wilton Scenic.

In the spring of 2003 Mr. Pease, on behalf of Wilton Scenic contacted Guilford to initiate discussions with Guilford and Milford-Bennington to assure all railroads could develop safe and efficient operating plans for all three carriers. Guilford was initially agreeable to such discussions but subsequently notified Wilton Scenic that such discussions would not be necessary, as Guilford would not be operating over any track that will be used by the Wilton Scenic.

Throughout the Spring as Wilton Scenic completed an extensive program to rehabilitate the track it will operate over and as it made plans to commence its operations the Wilton Scenic has kept the State of New Hampshire and the Federal Railroad Administration Regional Office of Safety in Cambridge informed of its plans. Mr. Pease has met with the FRA and has provided them written plans explaining how the Wilton Scenic will adhere to Federal Safety Regulations. Wilton Scenic has also entered into an agreement with the Milford-Bennington under which the Milford-Bennington performs numerous services to assure Wilton Scenic's operations are safe and efficient. Wilton Scenic, after fulfilling New Hampshire regulations for public hearings has entered into an extensive lease agreement with the New Hampshire Department of Transportation which agreement provides for rigid maintenance requirements.

At all times Wilton Scenic has taken steps that are normal and prudent in the rail industry to assure its two cars are properly secured and has assured that when stored the cars at all times have been protected through the application of one or more derail devices. These actions have been taken because they are prudent and because both Wilton Scenic and the

Milford-Bennington both have strong policies that advocate safety first in all phases of our operations.

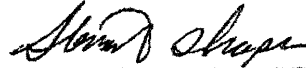
VERIFICATION

STATE OF NEW HAMPSHIRE)

) ss:

COUNTY OF HILLSBOROUGH)

I, Stuart Draper, being duly sworn, depose and state that I am President and Owner of the Wilton Scenic Railroad Company; that I am authorized to sign the foregoing "Verified Statement" on behalf of the Wilton Scenic Railroad Company, 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.



Stuart Draper

Subscribed and sworn to before me
This 22nd day of July, 2003


Notary Public

My Commission expires: _____

MARGARET S. ARN, Notary Public
My Commission Expires June 8, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

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

VS.

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

**VERIFIED STATEMENT OF PETER R. LEISHMAN
IN RESPONSE TO THE MOTION TO DISMISS FILED BY
BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

Peter R. Leishman States as follows:

The Milford-Bennington has operated a train between the Granite State excavation site in Wilton, New Hampshire and its processing plant in Milford for some 11 years. Milford-Bennington was formed for the purpose of providing this service because when the excavation site was permitted Granite State's permit required that stone move by rail, not by truck as the trucks would have had to travel directly down the main street of the small town of Wilton. I have read the permit document issued by the town of Wilton and the document also restricts the excavation site to operations only between the hours of 6:30 am and 6:30 pm Monday through Friday. This is a public document and these

restrictions are well known to many in town and I believe have been well known by Guilford for many years.

For approximately the first five years when the Milford-Bennington operated under its trackage rights agreement over Guilford lines between milepost 16.36 and the Granite State stone processing facility at approximately milepost 13.5 it was possible to deliver four stone trains per day. At the time the Guilford track was maintained to a condition that permitted speeds of 10 MPH and in its agreement with MBR Guilford stated that it's goal was to install welded rail on the line. However, by the mid 1990's the Guilford line began to deteriorate to a point where Guilford track crews found it necessary to lower speeds to 5MPH, a speed that is even below those envisaged under excepted track conditions. Guilford did not invest the sums necessary to restore the line so that it met FRA class 1 track safety standards for safe operations at 10 mph or even excepted track standards that permit operations at 10 MPH. Excepted track is track that doesn't even meet the minimum FRA class 1 standards. As the speeds decreased it became impossible to deliver four trains and MBR was only able to deliver 3 trains per day within time limits during which the Granite State excavation site can be operated. When our operations started Granite State had planned on a consistent delivery of four trains per day. Also early in MBR operations MBR rehabilitated its line and today the line is operated at 25 MPH and is maintained for speeds that are substantially higher.

Recently Guilford has restricted my hours of operations first to the hours of 1:00 AM to 8:00 AM and now to the hours of 4:00 AM to 1:PM. In statements they have said that

they don't see why I can't deliver three trains per day. Guilford Rules Examiner, Andy Zompa has recently ridden a MBR train though when invited to ride for the entire distance on both Guilford and on MBR he refused to ride over MBR track and was thus not able to gain a full understanding of what it takes to load, unload and operate a round trip service. Had he taken the time to truly understand the operation he could not have submitted the verified statement he did.

Milford-Bennington crews report for work at 6:00 am, 30 minutes before the Granite State excavation site can start operations under their permit and they use this time to inspect their train and assure that it meets all safety requirements for the day's operations. At 6:30 AM they load their train and that takes approximately 30 minutes and at approximately 7:00 they leave for Milford. If the Guilford dispatcher gives them a quick clearance, something that has not always happened, they will arrive in Milford at approximately 8:00 AM. It takes about 45 minutes to unlock the derail at MP 16.36, relock it and travel the 3 miles over Guilford track at no more than 5 mph. Upon arrival at Granite State the crew switches the cars into the plant and unloads their train, an operation that takes about an hour and 15 minutes. By 9:15 AM they are ready to return to Wilton. The return trip takes about 50 minutes and at 10 AM the crew is ready to load again. The loading process is completed at 10:35 AM and if the dispatcher grants a quick approval the train departs and arrives in Milford at approximately 11:10. Again the crew switches the cars into the processing plant and unloads the stone, a process that takes about an hour and 15 minutes. If the train does not depart by 12:15, and again it takes about 45 minutes to traverse the 3 miles of Guilford track, it is impossible to arrive at

Wilton by 1:00 PM after which Guilford has prohibited operations over Guilford track. On many days the operation has not operated this smoothly. Guilford manager's have stopped and boarded the MBR train to inspect the crew's credentials, even though the crew just recently went through Guilford's "derail" school and is listed as approved to operate with Guilford's dispatchers. On one day MBR experimented with loading the train in Wilton in the afternoon so the crew could depart exactly at 6:30am. This saved the crew 30 minutes but not nearly enough time to make a third round trip that takes about 3.5 hours under ideal conditions.

Guilford has suggested that the MBR run on weekends. The suggestion is at best disingenuous as Guilford is fully aware that the Granite State excavation facility cannot operate and thus load a train on weekends. As stated above and in Granite State's permit the excavation facility can only operate Monday through Friday from 6:30 AM to 6:30 PM.

Guilford has suggested that Granite State could enlarge their rail facilities at the excavation facility and at the processing plant and that such actions could be done relatively easily. They are wrong and they could not have made these statements honestly if they had performed a physical inspection of the sites. Guilford knows that it was Guilford who originally insisted on a 10-car restriction for MBR trains and the trackage rights agreements so provides. Knowing the 10-car restriction the Granite State facilities were designed and built to accommodate the restrictions. To lengthen the rail siding at the excavation site Granite State would have to relocate an existing haul road

and remove a substantial amount of ledge. Prior to commencing any work in Wilton Granite State would first have to seek Wilton planning board review and approval a difficult and lengthy process. In Milford at the processing plant it would be necessary to extend the siding across an existing wash pond. There is no room to add a siding off the existing siding as the existing siding runs between the wash pond and the washed sand pile. To enlarge the siding the wash pond would need to be filled and the sand conveyor and wash towers at the plant would need relocating. Even if this were done more than ten cars on the siding would block the road crossing to the Granite State facility and to two other businesses. Finally it would be necessary to purchase an additional 5 stone cars.

Guilford and MBR both operate over MBR's rail line. MBR serves Granite State and Guilford under a trackage rights agreement with MBR procures stone at another facility owned by Pike Industries. When Guilford insisted on the placing of a derail on December 12, 2002 they did so because they were concerned over two passenger cars that had recently been received by the Wilton Scenic Railroad. At the time neither Guilford nor MBR were operating freight services as the quarries had been closed for the winter. When freight service started in the spring the passenger cars were relocated to a safe location on a siding at approximately MP 19 on Milford-Bennington's rail line. The siding was protected by two derails installed by Milford-Bennington. From early spring until June 19 both Guilford and MBR operated without using a derail device at milepost 16.36. From early spring until May 17 it wasn't there as the temporary device was removed when the passenger cars were relocated. Guilford crews were fully aware the derail was not there as they were operating on MBR track and they could clearly see it

was not there. Soon after May 17 when passenger service had begun, Guilford insisted on the installation of a permanent derail at MP 16.36. I agreed to install it and had a clear discussion with Andy Zompa and others about its use. There was no misunderstanding by them or by me that the derail was placed because passenger service had begun and there was no misunderstanding that the derail device would be used only during passenger train operations. This understanding was further confirmed as after the installation of the derail Guilford trains operated over the open derail. Guilford inspectors inspected their track weekly up to MP 16.36, where the new derail was located. They all saw that the derail was kept in the open position for freight, which is safe, proper, and in conformance with NORAC rules, the operating rules used by both Guilford and MBR. At no time did a Guilford train crew pass over the derail, stop and close it. They knew the rules and they knew it was there only for the passenger service and they left it open for freight service.

Guilford alleges that Guilford and MBR must operate separately. The fact is they do and they have for 11 years. MBR receives clearance from Guilford dispatchers before operating over three miles of Guilford rail line. Approval is granted by dispatchers only when it is safe to operate and when there is no risk that MBR and Guilford trains could be involved in an accident. Guilford serves its line infrequently. It has one primary customer who receives a few cars per week. It has another who receives only a few cars in the winter. The fact is they do not use their line with any frequency and most days dispatchers are able to grant MBR broad latitude to operate as Guilford trains are not operating at all. There is no reason whether because of safety or any other valid

consideration that would prohibit continuation of operations by MBR so it can serve its customer as agreed to in its trackage rights agreement and as demanded by the customer.

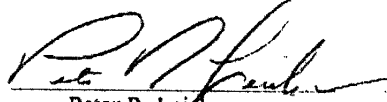
VERIFICATION

STATE OF NEW HAMPSHIRE)

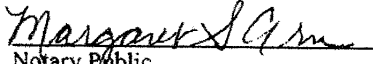
)ss:

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.


Peter R. Leishman

Subscribed and sworn to before me
This 22nd day of July, 2003


Notary Public

My Commission Expires: _____

MARGARET S. ARN, Notary Public
My Commission Expires June 3, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

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

VS.

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

**VERIFIED STATEMENT OF F. COLIN PEASE
IN RESPONSE TO THE MOTION TO DISMISS FILED BY
BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

F. Colin Pease states as follows:

Prior to starting my consulting business in 1998 I worked for the Guilford Rail system beginning in June 1983 until I resigned from the company in July 1998. When I left Guilford in 1998 I served as the railroad's executive vice president. I worked closely with the railroad's president, David Fink and all of its officers. I was intimately familiar with Mr. Fink's views towards the Milford-Bennington Railroad and its president Mr. Peter Leishman. On a number of occasions while Executive Vice President of Guilford Rail I participated in discussions with Mr. Fink and on occasion the railroad's Vice President – Mechanical Mr. Jim Coffin a resident of Wilton regarding the fact that Granite State Industries operated a quarry in Wilton with severe operating limitations

including a restriction to daylight operations and a restriction on trucking product between Wilton and their processing plant in Milford.

In September, 2002 I was retained by Mr. Stuart Draper to assist him creating the Wilton Scenic Railroad ("WSR"). It was intended that the scenic railroad would operate over a section of railroad that is owned by the State of New Hampshire between the towns of Wilton and Bennington. In order to start a scenic railroad in New Hampshire, operate over state owned line and initiate service it is necessary to go through a public hearing process in order to form a railroad in the State of New Hampshire and explain the railroads plans. Wilton Scenic followed this procedure and a representative from Guilford rail attended the public hearing. It is also necessary to enter into a lease agreement with the State in order to use the state owned rail line, to develop an extensive program to rehabilitate the rail line to be used by the scenic railroad, hire contractors to perform the work and to enter into an operating arrangement with the Milford-Bennington Railroad. The Milford-Bennington conducts freight operations over a portion of the same line that is used by the Wilton Scenic.

In October of 2002 the Wilton Scenic purchased two RDC cars from BC Rail in British Columbia. The cars were shipped by rail from Vancouver to Wilton New Hampshire over Canada's Via rail, Canadian National Railways, New England Central Railroad and the Springfield Terminal Railroad. The rail cars arrived in Wilton New Hampshire in late November.

During the process of moving the cars to Wilton, Wilton Scenic's President, Stuart Draper wrote to Mr. David Fink at Guilford rail to determine if Mr. Fink would be willing to lease an unused yard track in their Wilton yard to be used to store the two RDC cars. Mr. Draper also expressed an interest, at some point, in operating over several hundred feet of Guilford track so that the Wilton Scenic Railroad could use a rail freight house owned by the Wilton Scenic for a passenger station facility. Guilford's Corporate Counsel replied to Mr. Draper responded to Mr. Drapers letter stating that Guilford would not consider any operations over their track unless the Wilton Scenic provided \$75 million in liability insurance, a financial impossibility. Mr. Culliford also indicated verbally that Guilford would not consider leasing the unused yard track. Failing to reach an agreement on the storage option I told Mr. Rob Culliford, Guilford's Corporate Counsel that the cars would be stored on the State owned line just beyond milepost 16.36 for the winter. As Milford-Bennington does not operate during the winter months and Guilford indicated that they would not be operating between milepost 16.36 and Pike Industries, a quarry located on the Milford-Bennington line, storage of the cars on the main line did not create any problems for either carrier.

On December 12, 2002 I was in Wilton New Hampshire working on various projects to support start up of Wilton Scenic operations. Late in the afternoon I was inspecting the two Wilton Scenic RDC cars that had been parked and secured for the winter just beyond milepost 16.36 when Andy Zompa from Guilford Rail arrived in his vehicle and left a portable derail device and asked that it be installed on State owned track just beyond milepost 16.36. It was clear from our conversation that he was delivering the derail

because Mr. Fink had insisted that it be delivered immediately and it was also clear that the derail was sent by Guilford because they were for some reason concerned about the two passenger cars even though Guilford to my knowledge never inquired how the cars were secured. The Mr. Zompa said that he had to remove the derail from some other location on their railroad as one was not available in inventory and he asked Mr. Leishman to install it. Mr. Leishman said he would as it would not cause any operating problems over the winter and he had no interest in creating a fight with Guilford. Our discussions were friendly and at no time did anyone mention that the derail was to be used to in any way control freight operations. As I said at that time no Milford-Bennington freight operations were running as the railroad was shut down for the winter since its only customer, Granite State Concrete shuts its quarry down for the winter. We were all aware that Mr. Fink lived in a neighboring town and that the employees from Guilford wanted to be sure the portable derail was installed that evening in case Mr. Fink were to drive by to check. The employee was clearly concerned that he would get in trouble if the derail was not in place that night and clearly believed that Mr. Fink would personally check.

I had no discussion and I am not aware that there was any discussion regarding the derail device throughout the winter. In the spring prior to the resumption of rail freight service by Milford-Bennington the two RDC cars were moved from their location in Wilton to a remote section of the railroad approximately three miles from Wilton and milepost 16.36. They were stored on a siding that had also been used by Guilford rail when they placed rail cars to be loaded at a quarry owned by Pike Industries. The siding was protected by

two derail devices so that no cars could inadvertently roll from the siding onto the main line. When the passenger cars were secured on the remote siding the portable derail device placed near milepost 16.36 was removed. It was used again during the weekend of May 17-18 when WSR operated its first passenger service in accordance with WSR's understandings with the Federal Railroad Administration. After May 18 a permanent derail device was installed very near MP 16.36

Throughout the spring of 2003 the Wilton Scenic initiated a comprehensive program to rehabilitate the track that would be used by the railroad and also planed several weekend excursions over the portion of the line that was maintained to a condition that would permit safe operation of passenger services. Wilton Scenic scheduled its first day of operations for Saturday, May 17 to coincide with an arts and film festival being held in the town of Wilton. Prior to the initiation of service I met with Mr. Terry Robbins, Chief Inspector, in the Federal Railroad Administration's regional safety office in Cambridge. During that meeting I discussed our plans and explained to Mr. Robbins how the Wilton Scenic would operate. During that meeting I also agreed with him that during the initial start up of operations the Wilton Scenic would close and lock the derail device placed at approximately milepost 16.36, essentially separating the Wilton Scenic operations from the nations railroad system. Also prior to the initiation of service on May 17, 2003 I notified Mr. Rob Culliford at Guilford Rail that the scenic railroad would be operating and that it would operate with the derail closed, separating WSR operations from the nations rail system. I notified Mr. Culliford because Guilford has the right to operate trains between milepost 16.36 and the Pike Industries Quarry at approximately milepost

19 and I wanted to be sure that they were not planning any weekend operations, as the line would be closed.

On June 5, representing the Wilton Scenic Railroad, I participated in a track inspection of the State owned line from milepost 16.36 to approximately milepost 27. Mr. Leishman also participated. The inspection was conducted by a track safety inspector from the Federal Railroad Administration and a federally qualified track inspector from the New Hampshire Department of Transportation. Both inspectors and I walked the first three miles of track. During the inspection both inspectors inspected the derail device placed near milepost 16.36. The derail device was in the open and locked position and neither took any exception to the fact that the device was open.

On about June 10 I again contacted Mr. Rob Culliford at Guilford Rail to ask for a meeting between Guilford, the Wilton Scenic Railroad and the Milford-Bennington Railroad. I told Mr. Culliford that at some point in the near future it was the intent of the Wilton Scenic to initiate service during the week as well as on weekends. I told them that it would no longer be feasible to use the derail as its use would severely impact the efficiency of both freight carriers and that I wanted to make sure that a sound plan was agreed to by all carriers to safely control train operations in the corridor. I also told Mr. Culliford that I had been working with the FRA Office of Safety to make sure that the FRA was in agreement with Wilton Scenic plans for initiating operations. Mr. Culliford suggested that a meeting might not be necessary and that we could possibly accomplish our objectives by phone.

On June 18, 2003, in anticipation of a meeting with Guilford I wrote another letter to Mr. Robbins at the FRA explaining how the Wilton Scenic would abide by the various FRA safety regulations. I wrote the letter because it was the intention of the Wilton Scenic to commence weekday operations and the use of the derail to separate Wilton Scenic from the nations railroad system would no longer apply. There had been no discussion between me and any representative from Guilford that would have led me to believe that Guilford intended the derail device to be used for controlling the operation of freight services in the corridor.

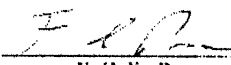
On June 19 I spoke with both Mr. Draper and Mr. Leishman and they informed me that that Mr. Leishman had encountered Mr. Syd Culliford, VP Operations for Guilford Rail and three other Guilford employees standing near MP 16.36. Mr. Draper told me that Mr. Leishman had asked him to join him before engaging in a conversation because Mr. Leishman believed it would be important to have a witness to any conversation that took place. Mr. Draper is the Chairman of Wilton's Board of Selectmen, in addition to being President of the Wilton Scenic Railroad. Mr. Draper agreed to verify a statement made by Mr. Leishman about the encounter. Shortly after the encounter between Mr. Culliford and Mr. Leishman on June 19 and on either June 19 or June 20 I again spoke with the Mr. Rob Culliford hoping to calm emotions after what was apparently a heated discussion. My efforts apparently didn't have the desired effect but during my conversation with Rob Culliford he told me that Guilford had no issues with the Wilton Scenic, as Guilford would no longer be operating beyond milepost 16.36. He said that, since Guilford would

not be using their trackage rights it would not be necessary for the three railroads to meet and develop an operating plan and no further action has been taken to include Guilford in the planning process for Wilton Scenic operations.

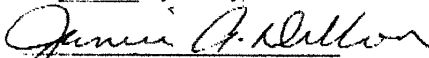
VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)
)ss:
COUNTY OF MIDDLESEX)

I, F. Colin Pease, being duly sworn, depose and state 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.


F. Colin Pease

Subscribed and sworn to before me ()
This 20th day of July, 2003


Notary Public

JANICE A. DILLON
Notary Public

My Commission Expires: 2/22/07
My Commission Expires

A

A

Milford-Bennington Railroad Company, Inc.
62 Elm Street
Milford, New Hampshire 03055
(603) 673-7181
June 20, 2003

Robert B. Culliford
Corporate Counsel
Guilford Rail System
Iron Horse Park
No. Billerica, MA 01862

Sent via fax: 978-663-1213

Dear Mr. Culliford

Approximately 8 weeks ago employees of the Springfield Terminal Railway, apparently under the direction of Mr. David Fink, insisted that a permanent derail device be installed on track that is operated by the Milford-Bennington Railroad and owned by the State of New Hampshire. The derail was installed without the approval of the property owner. At the time I did not want to "fight" Guilford, as I knew that opposing this action would attract some form of retribution. I told your employees that the derail was opposed by the State of New Hampshire. I explained that the derail, located on the main line of my railroad served absolutely no purpose other than one of harassment.

Yesterday a team of your managers came to Wilton and ordered me to keep the derail that you insisted be placed on state owned property 'or else'. There was no explanation of why the derail was necessary or what purpose it serves. I refused. Later in the day a Milford-Bennington train approached the end of our line and sought permission from Guilford dispatchers to enter Guilford property in Wilton in order to operate over trackage rights secured from you and approved by the Interstate Commerce Commission some 11 years ago. Our train crew was operating in exactly the same manner they have operated, without incident, for approximately 11 years. Your dispatchers, I believe on orders from Mr. Fink, refused to allow our train to proceed, seriously impacting the Milford-Bennington Railroad from serving its customer and seriously impacting our customer's ability to run his business efficiently. I was told by you and by others in your management team that I would not be allowed to run unless I agreed to keep and use the derail that you demanded be installed on a railroad you don't own.

The Milford-Bennington serves two customers. We operate over our own line from milepost 16.36 to a quarry owned by Granite State Concrete at milepost 18.50. At the quarry cars are placed on a siding that is protected by a derail device. Should cars roll from the siding they will be stopped from entering the main line by the derail that is kept

closed. The only other customer on our rail line is a quarry located at milepost 19.00 that is owned by Pike Industries. This customer is served by your railroad. Two derail devices protect the siding that serves Pike Industries. The device is kept in the closed position so that in the unlikely event cars were to roll down the siding towards the main line they would be derailed before they can access the main line. In Wilton just past milepost 16.36 where my railroad meets your main line your company owns a small two-track yard. At the end of this yard both tracks are secured by a derail. Both derrails will protect your main line, as cars will be prohibited from leaving the yard by the derrails.

Last night a sizable contingent of Springfield Terminal employees installed another derail device approximately 100 feet along the main line from the derail that you insisted I install on the main line of the Milford-Bennington Railroad two months ago. This derail, like the one installed on state owned property is near a building such that if they were to derail a train it is highly possible they could derail the train into an adjacent building. I have now been told that the Milford-Bennington will not be permitted to operate unless both the derrails, the one on state owned property and the one installed last night are kept in the closed and locked position.

Following yesterday's incident, I telephoned the Federal Railroad Administration office of safety for advice and guidance. The office had sent an inspector to our property about two weeks ago and performed a joint inspection of the whole line with me, and representatives from the State of New Hampshire. None of the inspectors could understand what purpose the first derail serves and certainly couldn't understand the purpose of the second.

The actions your company has taken has disrupted my rail operation and has impacted my ability to serve my customer. You have required me to take actions, which are inconsistent with the way you treat every other shortline and regional railroad that connects with your railroad, and I am writing to tell you that I object strongly to your actions. It is my intent to explore whatever legal options are available to me to remedy this situation.

However, I cannot simply refuse to do what you have demanded and shut down my railroad and its service to Granite State. Therefore, I am writing to inform you that I will maintain the derail that you insisted be placed on state property in the locked position except when our trains are moving across the derail unless and until we obtain relief from this requirement by an authority with appropriate jurisdiction, and we expressly reserve our right to pursue any available legal remedy. I will also unlock and relock the new derail that you installed on your railroad approximately 100 feet from the first derail and I will do so with the understanding that such actions should in no way be considered an acceptance of your actions and that they in no way constitutes a waiver of any legal remedy available to us.

It is the intention of the Milford-Bennington Railroad to operate trains today and based on the verbal representations of several of your managers, it is my understanding that you will issue instructions to your dispatchers to permit the movement of trains over the

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P. 03

Springfield Terminal Railway in accordance with our trackage rights agreement and the authority of the Surface Transportation Board.

Sincerely



Peter R. Leishman

Cc: Stuart Draper
John G. MacLellan
Christopher Morgan

B

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**JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129**

**TEL (617) 886-9322
FAX (617) 886-9324**

June 27, 2003

BY FACSIMILE

Melvin F. Clemens
Office of Compliance and Enforcement
Surface Transportation Board
Suite 780
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Mr. Clemens:

I am writing on behalf of Granite State Concrete Co., Inc. ("Granite State") and Milford Bennington Railroad Co., Inc. ("Milford Bennington"). The purpose of this letter is to bring to your attention an emergency situation that has resulted in the virtual shutdown of rail operations by Milford Bennington and business activities of its customer, Granite State, and to request your assistance in resolving this emergency. The facts relating to the situation are summarized below but are also fully set forth in the enclosed statements of John MacLellan of Granite State and Peter Leishman of Milford Bennington. Both would testify under oath to the facts set forth in their respective statements.

Granite State operates a rock and gravel business, including an excavation site and a processing plant that are served by Milford Bennington in New Hampshire. The excavation site is located at milepost 18.6 on a line that is leased by Milford Bennington from the State of New Hampshire, and the processing plant is located approximately five miles from the excavation site at milepost 13.5 on a line which is owned by Boston and Maine Corporation and operated by Springfield Terminal Railway Co. ("Springfield Terminal"). Milford Bennington has trackage rights over the Boston and Maine line that enabled Milford Bennington in the past to move stone from the Granite State excavation site to the Granite State processing plant.

The permit by which Granite State operates its excavation site restricts such operations to the hours of 6:30 AM to 6:30 PM and precludes the movement of crushed stone by motor carrier. For many years, until recently, Milford Bennington has operated 3 or 4 trains per day, 5 days per week between the excavation site and the processing

plant during the hours between 6:30 AM and 6:30 PM. Springfield Terminal personnel are well aware of the time restrictions relating to the operations of Granite State.

Beginning as of June 23, 2003, Springfield Terminal refused to permit Milford Bennington trains to operate over the trackage rights in order to serve the Granite State processing plant except between the hours of 1 AM and 8 AM. No reason, much less any valid reason, was given by Springfield Terminal for the refusal to permit Milford Bennington to operate during the daytime as it has for many years. As a result of the actions of Springfield Terminal, the operations of Granite State and Milford Bennington have, in effect, been shutdown, thereby resulting in substantial financial losses to both.

The absolute denial by Springfield Terminal of access to the trackage rights line is the culmination of a series of actions constituting a pattern of harassment that has made it difficult for Milford Bennington to serve Granite State. As described in the enclosed statements, and as summarized below, the pattern of conduct has included a failure by Springfield Terminal to maintain the line and the insistence by Springfield Terminal of the use of the derail devices on the line.

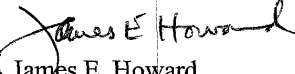
The Boston and Maine line over which Milford Bennington has trackage rights is in deplorable condition. The entire extent of the line is classified as excepted track, and operations have been restricted to five miles per hour. From time to time, Milford Bennington has been forced to perform emergency maintenance itself in order to operate its trains safely. Notwithstanding numerous requests over the years by Milford Bennington, Springfield Terminal has refused to maintain the line in a condition that would accommodate efficient operations.

Springfield Terminal has installed a derail device on the portion of the Boston and Maine line over which Milford Bennington must operate to reach the Granite State processing plant. In addition, Springfield Terminal recently compelled the installation of a derail device on the Milford Bennington line within approximately 100 feet from the derail device on the Boston and Maine line at a location where there is a public grade crossing. As of June 20, 2003, Springfield Terminal advised Milford Bennington that it could not operate unless both of the derail devices were in the closed position at any time that Milford Bennington trains were not passing such devices. There is no valid safety reason for the use of derail devices on this line. Indeed, a potential safety hazard is created by locating two derail devices near a public grade crossing. The only plausible explanation for the position of Springfield Terminal with respect to the derail devices is to harass Milford Bennington and to make its operations slower and more costly by reason of the need to stop its trains each time it passes the derail devices.

Granite State and Milford Bennington respectfully request your office to investigate the matters referred to above in an effort to permit interstate commerce to flow once again and to restore Granite State's and Milford Bennington's ability to operate. We believe that the Department of Transportation of the State of New Hampshire is fully supportive of the position of Granite State and Milford Bennington. If you need further

information or have any questions, please contact the undersigned. Thank you very much in anticipation of your efforts to resolve this matter.

Very truly yours,


James E. Howard

cc: Robert Culliford
Corporate Counsel--Springfield Terminal

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 derailling 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.

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.

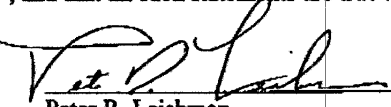
If at any time any concerns are raised regarding the safety of our operations we would welcome a review by state or federal officials. We would welcome a detailed inspection

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.

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

My name is John G. MacLellan, III, I am President of Granite State Concrete Co., Inc. a New Hampshire corporation based in Milford N.H.. Granite State Concrete Co., Inc. produces crushed and washed stone, washed sand, gravel products and ready mixed concrete. These products are distributed to manufacturers, state and local highway departments, contractors, homeowners etc. A major part of our business operations involve the excavation, processing and transportation of stone. Our primary source of raw material is our excavation area located in Wilton N.H.. This site has been in operation for over forty years as an excavation site.

Prior to 1992 raw materials were excavated from the Wilton excavation site and moved to another company site in Milford N.H. by truck where it was processed and stockpiled for sale to the construction industry and the public. In 1992 the company completed a major operational change shifting the method of transportation between the excavation site and the processing/sales yard from truck to rail. This operational change required the securing of local and state permits to allow for the primary processing of the stone at the excavation site (to reduce it to a size that could be moved in rail hopper cars). It was also necessary to install railroad sidings and loading and unloading facilities at each location. In addition a locomotive, rail cars and caboose were acquired. These major investments were all directly related to rail transport portion of our operations.

The Milford and Bennington Railroad provides rail service between our site in Wilton and our processing/sales yard in Milford. Beginning in 1992 the train (9-10 loaded cars) typically made four round trips between Wilton and Milford (our processing equipment is designed to handle 40 carloads of material in a ten hour day). In recent years the train has averaged approximately three round trips per day. I am informed by the Milford and Bennington Railroad that this reduction in service is due to the reduced speeds which have been implemented on the track owned by B & M Railroad and controlled by Springfield Terminal Railway (Note: Approximately one half of the rail trip between our sites in Wilton and Milford involve the use of track owned by Springfield Terminal). As a result, for the past several years we have been forced to operate both locations at approximately 75% of capacity due solely to the reduction in rail service.

On June 19, 2003 the regular rail service between our two locations was interrupted. We were informed by Milford and Bennington Railroad that the interruption was due to a dispute between Milford and Bennington and Springfield Terminal concerning the installation and use of derail devices on the rail line. On June 20 we were informed that derail devices had been installed and service could resume, but only between the hours of 1:00 a.m and 8:00 a.m. Milford and Bennington indicated that Springfield Terminal would only allow access to their track (which services our Milford site) between those hours. For the past 11 years the train servicing our sites has operated on a continuous basis during daylight hours without incident or problem.

The unilateral unexplained change in the service hours has effectively brought our operations to a halt. Under the terms of our permits with the Town of Wilton the crushing and on site loading operations are limited to the hours of 6:30 a.m. and 6:30 p.m. Monday through Friday. The limits imposed by Springfield Terminal thus allows only 1 ½ hours of morning operations and eliminates the vital 12 hour window our permits provide. Currently we have no other transportation option because the terms of our local permits makes the transport of crushed stone by rail the primary means of hauling.

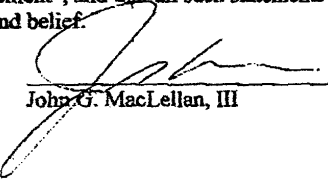
A minimum of four nine car trains are necessary to operate our plant in Milford during its daily shift. Between June 19 and June 27 we have received a total of only three trains. Thus the Milford plant has been shut down since June 21. . We are losing tens of thousands of dollars a day due to this situation. Our production season is only during the warm weather months. We have no way to make up these lost days, lost production and lost inventory. The production plant in the excavation site has also been shut down all this week. This is affecting the livelihood of our employees, because we have found it necessary to layoff employees without work. The reduced production also means we will soon be unable to fulfill our commitment to our customers. If we are limited to one day of production per week the interstate shipments will cease or be curtailed, contracts may be breached and damages will accrue.

As stated above, for eleven years we have been serviced by rail during normal daylight hours. These operations have occurred successfully without any apparent safety concerns or problems. I have been given no explanation for the change in operating hours to nighttime. I know of no legitimate reason for the switch to nighttime operation. I do know that the implementation of the 1:00 a.m. to 8:00 a.m. hours has effectively denied us access to any form of reasonable rail service. This denial has resulted in great personal and financial cost to our company, our employees, our subcontractors and customers. It is imperative that The Surface Transportation Board intercede as quickly as possible and issue an order that restores rail service to our company. We respectfully request that such an order be entered immediately.

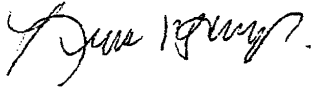
VERIFICATION

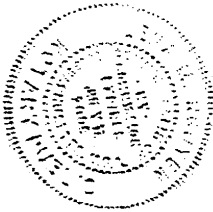
Commonwealth of Massachusetts)
)ss:
County of Middlesex)

I, John G. MacLellan, III, being duly sworn, depose and state that I am President of Granite State Concrete Co., Inc., that I am authorized to sign the foregoing "Verified Statement" on behalf Granite State Concrete Co., Inc., 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.


John G. MacLellan, III

Subscribed and sworn to before me
this 27 day of June, 2003.





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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

LAW DEPARTMENT
(978) 663-1029

June 30, 2003

Melvin F. Clemens
Office of Compliance and Enforcement
Surface Transportation Board
Suite 780
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Milford-Bennington Railroad Company, Inc.

Dear Mr. Clemens:

The Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") are in receipt of the Milford-Bennington Railroad Company, Inc.'s ("MBR") letter to you of June 27, 2003. Relying almost exclusively upon the Verified Statement of its President, Peter Leishman, the MBR attempts to create the impression that Guilford is pursuing an agenda that designed solely to harass MBR and frustrate its ability to serve its customer. However, had the MBR accurately disclosed all of the events leading up to Guilford's decision to implement a new operating plan, it would become apparent that Guilford's actions are necessary from a safety perspective and entirely justified pursuant to the terms and conditions of the trackage rights agreement voluntarily entered into by MBR.

In its submission, the MBR makes much of Guilford's request that a derail be installed on MBR property—but strangely makes no reference to the fact that Guilford's original request was prompted by the decision of the MBR to host excursion trains on its property. More particularly, in October of 2002, Mr. Stuart Draper wrote to Mr. David Fink regarding his planned operation of excursion trains over the lines of MBR, and requesting the use of Guilford property for loading and unloading passengers. Exhibit A hereto. Since Mr. Steiniger—and not Mr. Fink—is the president of the rail division with primary responsibility for such matters, Mr. Draper's request was forwarded to him for handling, and a response was ultimately drafted by the undersigned. Exhibit B hereto. In that response, Guilford raised several concerns with the proposed operation of excursion trains in what had previously been freight only territory, and all of the parties—Mr. Leishman, Mr. Draper and Guilford—agreed that no passenger operations would take place on Guilford property. Moreover, to prevent these passenger cars from inadvertently entering on Guilford property, those same parties also agreed that it would make sense

for MBR to install a derail device on its property.¹ Additionally, as Guilford looked more closely at the operations of the MBR, it became apparent that a derail device made a great deal of sense from a freight and passenger safety perspective because the steep grade (approximately 1.5% over at least two miles) of the MBR line leading to its connection with Guilford created the potential for cars and locomotives to break free if not properly secured and travel unattended onto Guilford's lines with little time to react—a situation that recently occurred outside of Los Angeles.² Verified Statement of Sydney B. Culliford ("Culliford V.S."), ¶ 3, Appendix A hereto. The risk of such an incident is also increased due to the particular operating characteristics of the MBR, which has only three full time employees and no continuous dispatching presence, leaving scant resources to monitor conditions on its property.³

Because the derail was originally agreed to by MBR, and installed with MBR forces, Guilford takes great exception to Mr. Leishman's efforts to now claim that the derail was not only installed against his wishes—but was also installed by Guilford forces. As described by Andrew Zompa, Guilford's Rules Examiner, Mr. Leishman was originally supportive of the use of the derail, and agreed to have it installed by MBR personnel, without any pressure from Guilford. Verified Statement of Andrew Zompa, ("Zompa V.S.") ¶ 2, Appendix C hereto. In addition, Mr. Leishman's Verified Statement is also incorrect in its assertions that the derail was installed approximately eight weeks ago, and that his objection to its use was based upon operational and safety concerns. To the contrary, as can be seen from the operating bulletin issued by Guilford, the derail was originally installed in December of 2002, some six months prior to Mr. Leishman's Verified Statement. Zompa V.S., ¶ 3, Exhibit A. Furthermore, when Guilford personnel first realized that the derail was not being utilized in the agreed upon manner, Mr. Leishman's initial response was that the State of New Hampshire—as the property owner—was opposed to this device, and that he was in a difficult position in trying to maintain the derail in light of this opposition.⁴ Culliford V.S., ¶ 4; Zompa V.S., ¶ 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. Culliford V.S. ¶ 5; Zompa V.S. ¶ 6. Consequently, Guilford is at a loss to understand Mr. Leishman's testimony in

¹ The undersigned was directly involved with these discussions and agreements. Accordingly, no verified statement is submitted as to these facts.

² Guilford also utilizes derails on its main line at several other locations to maintain the safety and integrity of its operations. These locations include Guilford's yard in Rumford, Maine to protect against the steep grade leading from the yard to the main line, and at Sappi Fine Paper in Skowhegan, Maine to protect both Guilford crews and Sappi crews who operate on the main line. Verified Statement of Roger D. Bergeron ("Bergeron V.S."), ¶ 8, Appendix B hereto.

³ Indeed, during the training classes conducted by Guilford for MBR employees, two employees expressed their concern with the manner in which train location and separation was monitored pursuant to this system.

⁴ While a staff member of the New Hampshire Department of Transportation "NHDOT" initially objected to the use of the derail, Guilford subsequently met with the Commissioner of DOT who indicated her support for operating in a safe manner. Verified Statement of David A. Fink, ¶ 2, Appendix D hereto.

his Verified Statement, which directly contradicts the recollections of several Guilford employees who were present on June 20, 2003.⁵

Of course, Mr. Leishman's willingness to alter his testimony to fit the purposes of MBR is but one instance in a series of troubling events that caused Guilford to reevaluate its operations in relation to the MBR. More particularly, it would be one thing if Mr. Leishman had contacted Guilford to discuss the removal of the derail, but no contact was ever made or even attempted despite the regular communication between the operating groups of each railroad. *Culliford V.S.*, ¶ 7. Rather, the MBR simply elected to discontinue use of the derail, without alerting anyone at Guilford and contrary to Guilford's bulletin identifying the location of the derail for both Guilford and MBR crews operating in this area. *Id.* To Guilford, such unilateral action reflects a callous disregard for railroad safety, particularly where Guilford was acting under the mistaken assumption that the derail was providing important protection to its crews operating in the area.⁶ *Id.*

Moreover, Mr. Leishman also submits testimony regarding the condition of Guilford's track and the efforts of the MBR to maintain this line to allow it to serve its customers; which is either incorrect or further reflects the unsafe manner in which the MBR conducts its operations. In the first instance, Mr. Leishman correctly identifies the Guilford line as being excepted track, but fails to explain why this classification creates a safety hazard. Notwithstanding Mr. Leishman's efforts to create a safety issue where none exists, this line is in compliance with FRA's track safety standards, and FRA has never indicated that the use of this classification is improper for the traffic that is moved over the line. *Bergeron V.S.*, ¶ 2. Secondly, Guilford is not aware of any effort by MBR to perform track maintenance on this line, despite Mr. Leishman's assertions. *Bergeron V.S.*, ¶ 3. Additionally, if the MBR were in fact performing maintenance on Guilford's property, it would be without the knowledge or consent of Guilford and would be in violation of not only the NORAC operating rules, but also the Roadway Worker Protection Rules and Guilford's collective bargaining agreements.

More particularly, in order to perform the type of maintenance described by Mr. Leishman, the MBR would be required to contact the Guilford dispatcher to obtain permission to occupy the track, and Guilford has no record of any such permission being requested or granted. *Id.*, ¶ 4. Also, any person performing maintenance on Guilford's lines is required to be trained and qualified pursuant to FRA's Roadway Worker Rules, and no employees of MBR have ever received any training or qualification from Guilford. *Id.*, ¶ 5. Further, maintenance of Guilford's property is reserved to Guilford's agreement employees except in certain instances, and performance of these tasks by the

⁵ Mr. Leishman's testimony also references a Verified Statement of Mr. Draper which allegedly supports Mr. Leishman's recollection of the events of June 20th. However, no such Verified Statement was submitted.

⁶ Ironically, Guilford decided to inspect the derail in response to a request from a representative of Mr. Draper's to develop the operating plan originally suggested by Guilford in November of 2002. Because Guilford has not operated on the MBR line recently, Guilford would not have known that the derail was no longer being used in the agreed upon manner if this inspection had not been prompted by this request. *Culliford V.S.*, ¶¶ 2, 4.

MBR would be in violation of Guilford's collective bargaining agreements. *Id.*, ¶ 6. Finally, as the owner of the track, Guilford is charged with responsibility for its maintenance, and any unauthorized track work would not only undermine this authority, but would subject Guilford to liability under the FRA's track safety standards if the MBR employees performing the work were not qualified pursuant to those standards. *Id.*, ¶ 7. Consequently, Mr. Leishman's testimony is particularly troubling because it is either not true or, if maintenance was in fact performed, it was likely done in violation of industry-wide safety requirements, further supporting Guilford's concerns with the manner in which the MBR operates its railroad.

With this background in mind, Guilford determined that it would not be prudent to rely upon the MBR to take the appropriate measures to ensure the safe operations of both Guilford and the MBR. As a result, Guilford immediately elected to implement additional safety measures designed to ensure consistently safe operations. *Culliford V.S.*, ¶ 8. The first of these measures was to install a derail on Guilford's property on the same day that Guilford first realized that the MBR was unwilling to properly utilize the derail on its property. *Id.*, ¶ 9. Second, Guilford also required MBR crews to attend a rules training and qualifications class the next day, and now requires MBR crews to contact the Guilford dispatcher each time that the derail on Guilford property is removed and replaced. *Id.*, ¶ 10. Third, Guilford has also adopted a new operating plan that allows the MBR to operate on Guilford's line pursuant to its trackage rights from 12 am to 8 am each day, an operating window that is substantially greater than any that existed when both the MBR and Guilford were operating on the line during the same periods. *Id.*, ¶ 11. Most importantly, however, Guilford is compelled to take this step because of its experience with the MBR—an experience that has shown that the MBR has little regard for operational safety, as discussed above.⁷

Additionally, the implementation of this new operating plan is also entirely consistent with the trackage rights agreement voluntarily entered into by MBR in 1992 as a settlement of its feeder line application to the ICC. *See, Milford-Bennington Railroad Company, Inc.—Feeder Line Acquisition—Boston and Maine Corporation Hillsborough Branch*, Finance Docket No. 31701, Service Date: July 6, 1992. Specifically, Section 1(i) of that agreement obligates 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 over the Trackage shall at all times be subject to the orders of the transportation officers of [Guilford]". Consequently, Guilford's actions are in compliance with this agreement, and MBR's objections to Guilford's implementation of valid operating rules are merely an attempt to hold Guilford responsible for MBR's inability to develop an alternative plan to serve its customer. In light of the Board's longstanding practice of respecting private agreements willingly entered into, it is inappropriate for the MBR to seek the assistance of the Board to evade its contractual obligations. *See, Review of Rail Access and Competition Issues*, STB Ex Parte No. 575, Service Date: March 2, 1999, at 3.

⁷ This experience includes an incident in 1996 when a train carrying Mr. Leishman struck a vehicle at a crossing and pushed it approximately 60 feet before the train's caboose came to rest on top of the vehicle. Exhibit C hereto.

Accordingly, even if the trackage rights agreement did not allow Guilford the discretion to adopt this new operating practice, the MBR has yet to show how this operating window prevents or seriously hinders service to its customer. Instead, the MBR relies upon the operating restrictions placed upon its customer by local permitting and regulatory requirements, despite the fact that neither requirement has any relation to rail service. In fact, there is no reason why the MBR cannot serve its customer during this new operating window other than the fact that its customer does not have the capacity to unload more than nine cars at a time, and the MBR has in fact been providing this service since the new rules were put into effect. *Culliford V.S.*, ¶ 12. Since service is being provided, and the only reason that the MBR is seeking Board assistance is because it cannot transport more than the nine cars at a time that it currently moves, Guilford is extremely frustrated to be placed in this position. Quite simply, rather than work with its customer and Guilford to develop a means to meet their mutual objectives, however, the MBR has apparently elected to simply blame Guilford. While this strategy is consistent with the MBR's actions in the past, Guilford does not agree with the MBR's assessment of this situation, and does not believe that Board involvement is necessary or appropriate absent a conclusive showing by MBR that no other alternatives exist.

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

cc: James E. Howard, Esq.

FROM : Guilford Law Dept

FAX NO. : 9786631213

Jul. 01 2003 03:10PM P 7



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

Encl. A

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

November 1, 2002

Mr. Stuart S. Draper
Draper Energy Co., Inc.
148 Main Street
P. O. Box 419
Wilton, New Hampshire 03086-0419

Dear Mr. Draper:

Mr. Fink has forwarded to me your letter of October 28th in view of my capacity as President of Guilford Rail System.

Upon review of the rail issues you proffered in your letter, I will respond accordingly in the near future.

Sincerely,

Thomas F. Steiniger
President



Draper Energy Co., Inc.

148 MAIN STREET, P.O. BOX 412, WILTON, NEW HAMPSHIRE 03095-0412 • TELEPHONE 603 654-8400

October 28, 2002

Mr. David Fink
61 Christian Hill Rd
Amherst N H 03031

Dear Mr. Fink:

As you may have read in the local newspapers, I am undertaking a new adventure to try to bring outside people to downtown Wilton. The Wilton Main Street Association and the Town Wilton recently applied for and received a T-21 Grant in the amount of \$500,000 to repair sidewalks and make other improvements to the Wilton Main Street Area. This will no doubt help the Wilton merchants but there must be some attraction to lure people to town. I have said for years that the rail line from Wilton to Bennington has some fantastic scenery. I have tried to get the Wilton Main Street Association to get a group together to run a Scenic Train over this route as I feel this would be the attraction that the Town needs. As you no doubt know everyone is too busy to get involved. This summer I took the so-called bull by the horns and decided to do it on my own.

I have purchased two RDC's from BC rail to start this adventure. In fact I am told but it has not been confirmed that one of these combination cars was an old B&M Budd Car.

The reason for this letter is two fold. First I would like to sit down and talk with you about the project, give you an idea of my plans and get your thoughts about the project. You have a long experience in the railroad industry and a good appreciation for dealing with passenger issues. Most important you understand the value of this type of operation for the surrounding community though the benefits you have brought to the seacoast region by putting Pease Trade Port on the map are much larger than a two-car train in Wilton. I'd like to talk to you about using a siding in Wilton which is no longer in use to store these cars on while not in use. And finally I'd like to talk about the possibility of being able to use the siding next to the Wilton Freight House as a location to load and unload passengers. I have owned the freight house for a number of years and feel that this would be an excellent location for passengers to embark and disembark the cars. All of the above is with the understanding that we must properly indemnify and not interfere with your freight services.

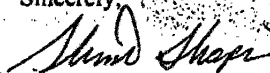
The second reason is to invite you and your family to join us on a trip up the line this fall once we get the cars here in Wilton. The date is yet to be determined but hopefully sometime in November. I'd like to show you the equipment and once again get your thoughts on our ideas.



DISTRIBUTORS OF COAL, GASOLINE & DIESEL FUEL

I'll give you a call in the next few days to schedule a time to get together or if it is more convenient for you please don't hesitate to give me a call at 634-3601.

Sincerely

A handwritten signature in cursive script, appearing to read "Stuart S. Draper".

STUART S DRAPER



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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

Encl. B

LAW DEPARTMENT
(978) 663-1029

November 21, 2002

Mr. Stuart S. Draper
Draper Energy Company, Inc.
148 Main Street
PO Box 419
Wilton, NH 03086

By Fax: (603) 654-6655
18 Pages
and First Class Mail

**Re: Milford-Bennington
Excursion Train Proposal**

Dear Mr. Draper:

At the request of Mr. Steiniger, I have reviewed your correspondence of October 28, 2002 describing the proposed excursion train service from Milford to Bennington, New Hampshire, as well as those issues that would be involved with implementing your proposal. While your enthusiasm for this project is obvious, the Guilford Rail System ("GRS") has found that there are myriad issues involved with the operation of both passenger and freight service on the same tracks, and that it is in the best interest of the parties for these issues to be adequately addressed prior to undertaking such a project. Therefore, the purpose of this letter is to highlight some of the major issues that GRS has identified in its experience with similar proposals, and to request that you provide additional information in response to these items so that we can assess your proposal properly.

1. **Liability:** Based upon the reference in your letter to the risk management issues arising from the operation of passenger service on lines primarily devoted to freight service, it appears that you have already developed initial thoughts on how to address those risks, an important element in the success of your proposed venture. More particularly, our experience has shown that it is essential to implement a comprehensive risk management scheme prior to initiating passenger service to protect the continuing viability of both the freight service provider and the passenger service operator.

As your letter mentioned, a common approach to addressing those risks would be for the passenger service provider to contractually assume all risks associated with the service, although the success of this approach is dependent upon the party providing these assurances having sufficient resources to support this commitment. Consequently, in light of the risks associated with operating passenger service, GRS would need

assurances that the operator of this service has the financial resources to assume potentially significant liability, and I would appreciate a detailed proposal of how you intend to support this commitment if passenger service is implemented on GRS lines. To assist you in developing this proposal, I am attaching hereto a decision by the United States Surface Transportation Board identifying those risks that Amtrak is required to assume in order to operate on GRS lines.

In the alternative, we would suggest that you investigate the availability and cost of comprehensive general liability insurance that would provide coverage for similar operations. In addition, since you have proposed storing rail cars on GRS property, it would be prudent to obtain the same type of information for pollution liability insurance that would adequately respond in the event of a release or threat of release of hazardous materials arising from passenger operations on GRS property. To assist you in these discussions with your insurer(s), please note that GRS would require general liability insurance of not less than \$75 million and pollution liability insurance of not less than \$5 million per occurrence with all railroad exclusions removed.¹

2. Operations: As you point out in your letter, there are several operational issues that would need to be addressed as part of any agreement to initiate passenger service on our lines, and it is encouraging that you recognize that freight operations would require priority over the passenger service. As you may be aware, GRS presently operates several trains over this line to transport stone and gravel and to perform local switching operations to its customers north of Nashua, both of which also require regular use of the run around track adjacent to the Freight House identified for loading and unloading passengers. Moreover, this track is classified as an interchange track subject to an agreement between GRS and the Milford-Bennington Railroad ("MBR"), resulting in the potential that the run around track will be subject to use by three railroads at any one time.

Additionally, since the proposed service would be instituted on tracks over which GRS and MBR trains already operate regularly, we would need to institute formal dispatching to ensure that both the freight and passenger operations are conducted safely and without undue interference. Since this service would likely be conducted by the MBR on its lines, we would appreciate confirmation that the MBR is willing to upgrade its dispatching capability in this manner and how this dispatching will be performed.

While these logistical issues are not insurmountable, they do reflect the importance of developing a comprehensive operating plan for this line in the event that passenger service commences. To assist GRS in identifying the required elements of such a plan, as well as any other issues that may arise, please provide any additional information that you may have regarding the proposed scope of the service.

¹ This \$75 million figure is derived from the amount of insurance held by the MBTA for its commuter rail operations, although the MBTA would most likely procure much higher insurance levels if not for the statutory liability limits for commuter rail operations in Massachusetts. For example, Amtrak presently maintains insurance coverage up to \$200 million, which is the federal statutory limit for Amtrak's potential liability. Despite the efforts of GRS to have similar legislation passed in New Hampshire, no statutory limits exist today.

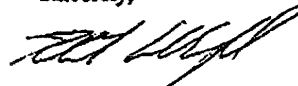
As a final note, you should be aware that the main line over which the passenger service would access the freight house is currently classified as "Excepted Track" pursuant to the FRA Track Safety Standards, which does not allow for the operation of passenger service over this track. Similarly, the sidetrack that you propose to utilize for storage has not been in service for a number of years and consequently is not in a condition to support any type of operation. Accordingly, the initiation of passenger service would require extensive rehabilitation to both the main line and the sidetrack, a cost that GRS would not incur if used solely for freight service. Therefore, we would appreciate your thoughts regarding the funding of this rehabilitation, as well as the funding of the additional maintenance costs that would be incurred to support continued passenger service on the line.

3. Operating Rights: Presently, use of the GRS main line is limited to freight service only, and no entity has applied for or received authority from the Surface Transportation or GRS to conduct passenger operations. Consequently, please advise as to the entity that will be performing passenger service on the line and how that entity proposes to obtain operating rights. In the event that the operating entity is not a railroad, please also advise how it intends to assume common carrier obligations in the event that such operating rights are obtained.

These items reflect some of the major issues that GRS has encountered with similar proposals, and are intended to provide you with some idea of the requirements for initiating the passenger service described in your letter. Once you have had the opportunity to review these items and gather the requested information, please feel free to contact me to discuss the best manner in which to proceed.

In the interim, please feel free to contact me if you should have any questions or comments.

Sincerely,



Robert B. Culliford
Corporate Counsel

cc: T.F. Steiniger

Jul-01-2003 11:36am

From-MARILYN SECRETARIAL SERVICES COPY CTR

603 672 6332

T-646 P.002/003 F-141

Exh. C

D
C
T

2

Leishman, trucker taken to hospitals

By Walter Smith
and Kathy Cleveland
Staff reporters

MILFORD—A crash at Granite State Concrete that flipped a 14-wheel gravel truck and left a railroad caboose perched atop it injured two men Tuesday, including Milford selectman Peter Leishman.

Leishman, owner of the Milford-Bennington Railroad, was riding in the train's caboose when it struck a Granite State Concrete gravel truck driven by Wayne Gagnon.

Gagnon was airlifted by a Milford helicopter to the University of Massachusetts Medical Center in Worcester, Mass. He was listed in fair condition Tuesday afternoon on a regular floor.

It was exactly a week ago that Leishman was injured in a truck-train crash involving the railroad he runs between Milford and Wilton.

Leishman was taken by ambulance to Southern New Hampshire Medical Center in Nashua. At press time Tuesday his condition was still being evaluated and said to be good, although the decision had not yet been made whether to admit him.

According to witnesses, the engineer was backing up the train at the Granite State Concrete yard on the street. At the same time, a 14-wheel Granite State Concrete

CHARGE

Please turn to Page 2

TWO HURT—The caboose of a Milford-Bennington Railroad train, which was struck by a 14-wheel Granite State Concrete gravel truck, was perched atop it Tuesday. Leishman, who owns the railroad, was hurt in the crash.

Jul-01-2003 11:37am

From-MARILYN SECRETARIAL SERVICES COPY CTR

603 672 8332

T-648 P.003/003 F-141

truck crash in Milford Tuesday

Leishman

Continued from Page 1

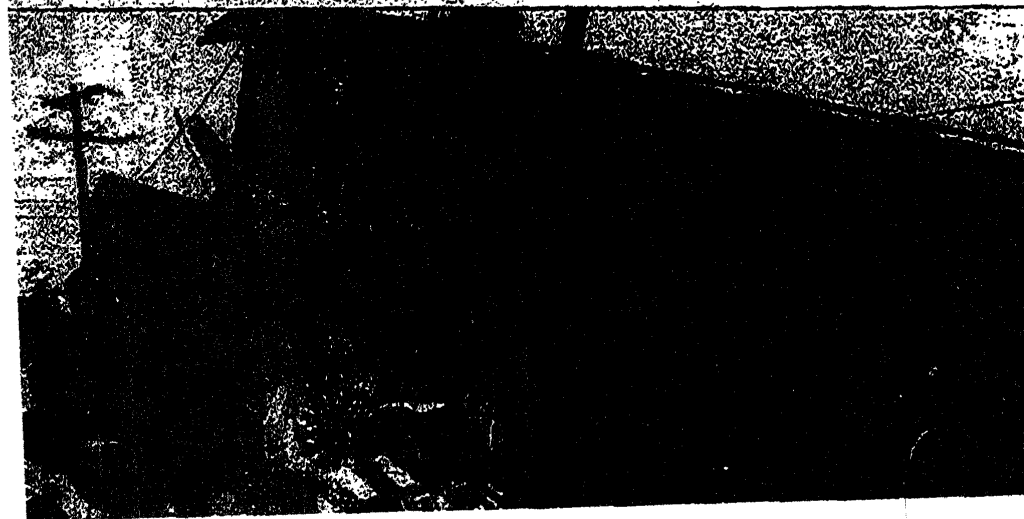
A tractor-trailer truck was crossing the tracks heading north when it struck the back of the train. According to the owner of Ambrose, who was in the train, the train was backing up to load stone when the tractor-trailer truck crossed the tracks and struck the back of the train. The tractor-trailer truck was carrying a load of stone and was heading north on the tracks. The train was heading south on the tracks. The tractor-trailer truck was struck by the train and was thrown off the tracks. The tractor-trailer truck was struck by the train and was thrown off the tracks. The tractor-trailer truck was struck by the train and was thrown off the tracks.

Meanwhile, Leishman was trapped in the caboose, which was rearing on the top of the truck and touching a power line.

According to Milford Ambulance Director Ron Poffit, Leishman and Gagnon were "both busted up pretty good."

On Tuesday, Sept. 24, Leishman was riding in the caboose of his train when a tractor-trailer truck from Hitchiner Manufacturing, which had just pulled out of a loading dock, crossed the tracks and was hit by Leishman's train. The train clipped the back wheels of the trailer and the caboose, containing Leishman, jumped the track.

State Police are investigating both accidents.



APPENDIX A

**BEFORE THE
SURFACE TRANSPORTATION BOARD
VERIFIED STATEMENT OF
SYDNEY B. CULLIFORD**

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"), and have been involved with the Milford-Bennington Railroad Company, Inc. ("MBR") for a number of years, including the recent events relating to the MBR's operating practices.
2. In response to a request from a representative of Mr. Stuart Draper that Guilford and the MBR develop an operating plan to ensure the safe operation of passenger and freight service on the lines of the MBR, on June 20, 2003 I traveled to Wilton, New Hampshire to inspect the area where the lines of the MBR meet those of Guilford. During this inspection, I noted that the derail device that the MBR had previously agreed to maintain on its property was not in place, and I questioned Mr. Peter Leishman as to why the derail was not being maintained in the agreed upon manner.
3. This derail was originally placed in service due to the initiation of passenger service on the MBR. However, as Guilford looked more closely at the operations of the MBR, it became apparent that a derail device made a great deal of sense from a freight and passenger safety perspective because the steep grade (approximately 1.5% over two miles) of the MBR line leading to its connection with Guilford created the potential for cars and locomotives to break free and travel unattended onto Guilford's lines with little time to react.
4. In response to this question, Mr. Leishman became agitated and insisted that the MBR was not going to utilize the derail—despite its prior agreement to do so—because the State of New Hampshire was opposed to placement of this device on its property, which is leased to the MBR. Mr. Leishman further claimed that he felt that he was in a difficult position of trying to satisfy the State while also living up to his agreement with Guilford.
5. At no time did Mr. Leishman make any statements to the effect that the derail was not being maintained because it served no purpose, caused unnecessary delays or created a safety issue.
6. Because Guilford had not recently operated its trains on the property of the MBR pursuant to its trackage rights, had this inspection not occurred Guilford would

not have known that the derail was not being maintained in the manner agreed to by the MBR.

7. Despite the fact that the operating groups of Guilford and the MBR are in regular contact, particularly when the MBR is operating on Guilford's lines, there was no contact from the MBR to inform Guilford that it would no longer be using the derail device in the manner agreed upon. Instead, the MBR simply elected to discontinue use of the derail, without alerting anyone at Guilford an contrary to Guilford's bulletin identifying the location of the derail for use by both Guilford and MBR crews operating in this area. As a result of this unilateral action by MBR, Guilford crews were operating in this area under the mistaken assumption that they were protected by the derail.
8. In response, Guilford determined that the MBR could not be relied upon to take appropriate measures to ensure the safe operation of both MBR and Guilford. As a result, Guilford immediately elected to implement additional safety measures designed to ensure consistently safe operations.
9. The first of these measures was to install a derail on Guilford's property on the same day that Guilford first realized that the MBR was unwilling to properly utilize the derail on its property.
10. Second, Guilford also required MBR crews to attend a rules training and qualifications class the next day, and now requires MBR crews to contact the Guilford dispatcher each time that the derail on Guilford property is removed and replaced.
11. Third, Guilford has also adopted a new operating plan that allows the MBR to operate on Guilford's line pursuant to its trackage rights from 12 am to 8 am each day, an operating window that is substantially greater than any that existed when both the MBR and Guilford were operating on the line during the same periods.
12. Since this new operating window has been effective, the MBR has continued to serve its customer with customary nine car trains, although not as frequently. If the MBR's customer had more capacity and the MBR locomotives were capable, however, it is possible that trains greater in length than nine cars could be delivered.

VERIFICATION

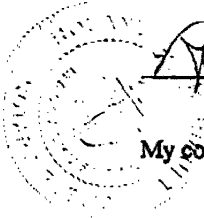
Commonwealth of Massachusetts)
) ss.:
County of Middlesex)

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

Signed



Subscribed and sworn to before me this 1st
day of July 2003.



Notary Public

Roland L. Theriault

Notary Public

My commission expires

My Commission Expires

August 7, 2009

APPENDIX B

**BEFORE THE
SURFACE TRANSPORTATION BOARD
VERIFIED STATEMENT OF
ROGER D. BERGERON**

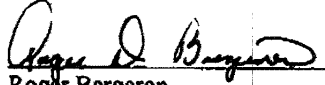
Roger D. Bergeron states as follows:

1. I am the Assistant Vice President-Engineering for the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford"). In my position, I have responsibility for the maintenance of all of Guilford's tracks, including the line connecting to the 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.
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.
8. Guilford utilizes derails on its main line at several other locations to maintain the safety and integrity of its operations. These locations include Guilford's yard in Rumford, Maine to protect against the steep grade leading from the yard to the main line, and at Sappi Fine Paper in Skowhegan, Maine to protect both Guilford crews and Sappi crews who operate on the main line.

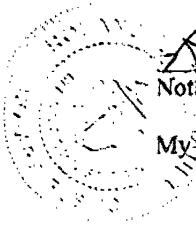
VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF MIDDLESEX)

I, Roger 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 Bergeron

Subscribed and sworn to before me
this 1st day of July, 2003.




Notary Public

My Commission Expires: August 7, 2009
Roland L. Theriault
Notary Public
My Commission Expires
August 7, 2009

APPENDIX C

**BEFORE THE
SURFACE TRANSPORTATION BOARD
VERIFIED STATEMENT OF
ANDREW ZOMPA**

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. A copy of the Guilford bulletin regarding the placement of the derail is attached hereto as Exhibit A.
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.

FAX NO. :9786631213

Jul. 01 2003 03:16PM P 21

001/002

JUL 01 2003 01:37PM P 3

VERIFICATION

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

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

Signed

Subscribed and sworn to before me this 1st
day of July 2003.

Alfred L. Jannett
Notary Public

Notary Public

Roland L. Theriault
Notary Public

My commission expires

My Commission Expires
August 7, 2009

FROM: TRUADZ DSP65
7/12/02 11:30:29

DOCUMENT: T00100308

PAGE: 1 OF 1

SPRINGFIELD TERMINAL RAILWAY
SUPPLEMENTAL BULLETIN ORDER
NO 3-0128

*E.L. A to
App. C*

IN EFFECT 1500 THURSDAY, DECEMBER 12, 2002

HILLSBORO BRANCH
WILTON, NH

A. A NEW DERAIL IS PLACED INTO SERVICE AT THE END OF MAIN TRACK JUST
NORTH OF HOWARD ST. ON THE MILFORD AND BENNINGTON RAILROAD.

E.R. TOWLE
GENERAL MANAGER

E.J. REARDON
ASSISTANT GENERAL MANAGER

APPENDIX D

**BEFORE THE
SURFACE TRANSPORTATION BOARD
VERIFIED STATEMENT OF
DAVID A. FINK**

David A. Fink states as follows:

1. I am the Executive Vice President of the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford"). In my position, I became involved with the Milford-Bennington Railroad Company, Inc. ("MBR") when the State of New Hampshire, Department of Transportation ("NHDOT") expressed its objections to the placement of a derail on property owned by NHDOT and leased to the MBR.
2. Initially, a staff member of NHDOT wrote to Guilford to object to the placement of a derail on NHDOT property. In response, Guilford wrote to the Commissioner of NHDOT and requested a meeting on June 23, 2003 to discuss the issues arising from the operations of the MBR. A copy of that letter is attached hereto as Exhibit A.
3. As a result of that meeting, the Commissioner of NHDOT indicated her support for safe operations on both the MBR and Guilford.

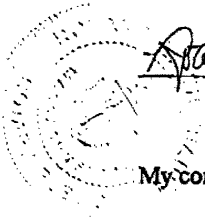
VERIFICATION

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

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

Signed David A. Fink

Subscribed and sworn to before me this 1st
day of July 2003.



Roland L. Theriault
Notary Public
Roland L. Theriault
Notary Public
My Commission Expires
August 7, 2009
My commission expires _____

D

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**JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129**

**TEL (617) 886-9322
FAX (617) 886-9324**

July 2, 2003

BY FACSIMILE

Melvin F. Clemens
Office of Compliance and Enforcement
Surface Transportation Board
Suite 780
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Mr. Clemens:

This letter responds to a letter dated June 30, 2003, from Robert B. Culliford, corporate counsel for Boston and Maine Corporation and Springfield Terminal Railway Co. (referred to by Mr. Culliford as "Guilford"), which was directed to my letter to you dated June 27, 2003 on behalf of Milford-Bennington Railroad Co., Inc. ("Milford-Bennington") and Granite State Concrete Co., Inc. ("Granite State"). Mr. Culliford's letter was served on me by facsimile at approximately 3 PM on July 1, 2003.

As demonstrated in my letter of June 27, 2003 and below, Guilford has utterly failed to explain why it has arbitrarily restricted Milford-Bennington's use of trackage rights over Guilford, thereby severely harming both Milford-Bennington and its customer, Granite State. Guilford has attempted to obfuscate the real issue--denial of access to its line by Milford-Bennington--by means of detailed discussion of derail devices and maintenance practices in an effort to create the aura of a "safety" issue in order to justify its restrictions of Milford-Bennington's rail operations. Notwithstanding these attempts, the actions of Guilford cannot be justified. They represent a callous disregard of the interests of Granite State, which is not even mentioned by name in Mr. Culliford's letter, in order to punish Milford-Bennington.

A brief response to several of the extraneous points raised by Guilford will serve to underscore the arbitrary nature of the restriction of use of the trackage rights to the hours of 12 AM to 8 AM:

Deraill Devices

Guilford story: According to Guilford, the derail device on Milford-Bennington's line was prompted by the anticipation of the operation of excursion passenger trains on

the line. After the device was "installed", allegedly in December, 2002, Guilford purportedly required both the passenger operator and Milford-Bennington to use the device. Guilford assertedly did not know that Milford-Bennington was not using the device until June 20, 2003, when a delegation of Guilford personnel visited the location of the device.

Facts: As a result of discussions concerning passenger operations that would commence in the spring of 2003, a temporary derail device was left by Guilford personnel in December, 2002 next to the Milford-Bennington line near the connection to the Guilford line. The passenger operations began on Memorial Day, 2003, at about the time that a permanent derail device was installed on the Milford-Bennington line. All parties agreed that use of the device made sense in order to ensure that the passenger operations did not intrude on Guilford's line. The derail devices were never used for freight operations--whether by Milford-Bennington or Guilford--and Guilford never advised Milford-Bennington that Guilford believed that Milford-Bennington should use the device until June 20, 2003.

On June 20, 2003, Milford-Bennington wrote to Mr. Culliford to indicate that it would use the derail device on its property as well as the derail device approximately 100 feet away on Guilford's line "under protest" in order to continue to operate. A copy of the letter is attached. Whatever disagreement there may be as to the facts or issues regarding the derail devices, therefore, there was no issue concerning their use as of June 20, 2003.

Milford-Bennington uses derail devices in accordance with the applicable NORAC rules. For example, Milford-Bennington has derail devices at the end of sidetracks at both the Granite State excavation site and the quarry served by Guilford. The devices prevent cars from inadvertently rolling onto the main line. Guilford itself uses derail devices in the same manner at Rumford and Skowhegan, Maine. The devices are located at the point where yards and main line tracks intersect. The rules do not contemplate the use of derail devices on main lines except in situations where they are necessary on a temporary basis due to track work or disabled equipment.

Maintenance

Guilford story: Guilford denies that Milford-Bennington has ever performed any maintenance on the Guilford line over which Milford-Bennington has trackage rights. Guilford also argues that any such maintenance work would be inappropriate.

Facts: Milford-Bennington has from time to time installed ties and gauge rods and fixed broken rails on the Guilford line in order to operate safely. In each case, the work has been done in accordance with all applicable regulations by properly trained and qualified personnel. Furthermore, any such work has been done only after communication with the Guilford dispatcher.

Safety

Guilford story: Guilford has referred to in a 1996 grade crossing collision apparently in an effort to imply that Milford-Bennington does not operate safely.

Facts: The grade crossing incident occurred at the Granite State concrete plant when a truck driver failed to stop and ran into the train. The accident was investigated by the state police and the FRA, and the driver was determined to be at fault. Milford-Bennington was not cited for any improper operation. More importantly, Milford-Bennington has operated safely on the trackage rights line for eleven years.

New Operating Plan

Guilford story: Guilford's new "operating plan" for Milford-Bennington restricts operations to the hours between 12 AM and 8 AM, allegedly due to its "experience with [Milford-Bennington]--an experience that has shown that [Milford-Bennington] has little regard for operational safety" Guilford letter of June 30, 2003 at p. 4. According to Guilford, Milford-Bennington and Granite State have not shown how this "operating window" hinders their operations. Guilford alleges that the only reason that Milford-Bennington cannot serve Granite State under the new operating plan is that Granite State does not have the capacity to unload more than nine cars at a time.

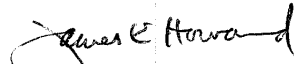
Facts: Guilford knows--indeed, it does not deny--that Granite State's hours of operation are restricted to 6:30 AM to 6:30 PM. Guilford knows that it is impossible to operate three trains of nine cars each between 6:30 AM and 8 AM. More significantly, Guilford clearly understands that the 1992 trackage rights agreement provides that Milford-Bennington may serve only Granite State and may operate trains with a maximum of 10 cars. As a consequence, the rail facilities at the Granite State excavation site and processing plant were designed to accommodate ten car trains. Modifications of those facilities at this time to permit 30 car trains would be prohibitively expensive.

It is disingenuous for Guilford to suggest that the operating impossibility that it has created for Granite State and Milford-Bennington can be solved by Granite State and Milford-Bennington. Daylight operations have been conducted for eleven years without objection from Guilford and without interference with Guilford's operations, which are limited to 1 or 2 trains a week on the line in question. While the trackage rights agreement provides that operations by Milford-Bennington are subject to the orders of Guilford, any such orders must be reasonable and must enable Milford-Bennington to realize the express purpose of the agreement--to provide service to Granite State.

Attached you will find a verified statement of Stuart Draper and a letter dated June 20, 2003 from the Department of Transportation of the state of New Hampshire to Guilford, both of which were referred to in Mr. Leishman's verified statement but which were inadvertently omitted from the material I supplied to you on June 27, 2003. Mr. Draper's statement is actually a verification of the accuracy of Mr. Leishman's statement.

Thank you for your anticipated efforts to resolve this matter. If you need additional information or have questions, please let me know.

Very truly yours,


James E. Howard

cc: Robert M. Culliford

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

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.

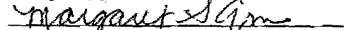
VERIFICATIONSTATE OF NEW HAMPSHIRE)

) 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.

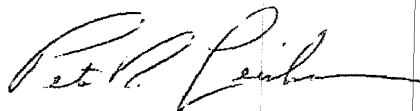
Subscribed and sworn to before me

This 2nd day of July, 2003

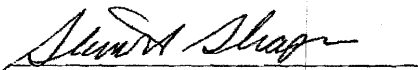
MARGARET S. ARN, Notary Public

My Commission Expires June 8, 2006

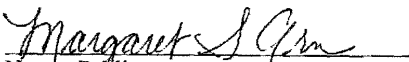
My Commission Expires: _____

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

Subscribed and sworn to before me

This 2nd day of July, 2003

Notary Public

My Commission Expires: _____

MARGARET S. ARN, Notary Public

My Commission Expires June 8, 2006

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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

CAROL A. MURRAY, P.E.
COMMISSIONER



July 2, 2003

United States Surface Transportation Board
Office of Compliance & Enforcement
Suite 780
1925 K St. NW
Washington, DC 20423-0001

Re: Milford-Bennington Railroad, Hillsboro Branch

Dear Sir or Madam:

The state of New Hampshire has maintained a long-standing commitment to the continued existence of the Hillsboro Branch railroad line as an active freight line. The state has been joined in this effort by the private sector in the form of shippers on the line. The line serves two stone quarries and has diverted thousands of truck trips from local roadways.

Following the abandonment of a portion of the line in 1988 by the Boston and Maine Corporation, the state acquired 16 miles of this line, along with three other corridors, for \$2.1 million. In 1989, the state purchased the rail and other track materials from the B&M for \$350,000. An industry located on the line contributed \$25,000 toward that purchase, to protect its interests in future freight service.

In 1995, the state contributed \$500,000 to a major rehabilitation of 2 miles of the line, to upgrade the rail and replace ties and ballast, so that it could withstand the heavy loads from stone and gravel trains. A portion of the overall project cost was borne by the quarry in the form of 4000 tons of stone, and by a cash payment from another shipper.

At times the state has faced criticism for investing in this railroad line. The Department of Transportation continues to believe, however, that these funds contribute to relieving the burden on local roads of thousands of heavy trucks. It would be difficult for local streets to accommodate these trucks, even if substantially upgraded at a cost higher than what has been spent on the railroad corridor.

The state does not customarily become involved in railroad operating issues, other than to oversee short line operations on state-owned railroads. In the case of the Hillsboro Branch, however, there is a real threat to the continued viability of the

shipper and the short line railroad, which has led to the petition for directed service on the segment from the state-owned corridor at Wilton to the stone processing plant at Milford. I urge the Board to take the necessary steps to ensure that this corridor is operated smoothly and without conflict, and is adequately maintained.

Sincerely,

A handwritten signature in black ink, reading "Carol A. Murray". The signature is fluid and cursive, with the first name "Carol" and last name "Murray" clearly distinguishable. It is positioned to the right of the typed name and title.

Carol A. Murray, P.E.
Commissioner

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

**IRON HORSE PARK
NO. BILLERICA, MASS. 01862**

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

July 3, 2003

Melvin F. Clemens
Office of Compliance and Enforcement
Surface Transportation Board
Suite 780
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Milford-Bennington Railroad Company, Inc.

Dear Mr. Clemens:

The Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") are in receipt of the Milford-Bennington Railroad Company, Inc.'s ("MBR") reply to Guilford's July 1, 2003 submission, dated June 30th. Relying upon a substantially revised verified statement of Mr. Leishman, the MBR is inching closer to acknowledging its missteps, although it is still committed to blaming Guilford for taking prudent, reasonable measures to maintain the safety of its operations.

Specifically, while Mr. Leishman's revised statement reflects a more accurate recollection of the discussions relating to the derail, he is mistaken in his assertions that the derail was only meant for use when the passenger train operates. By taking this tack, the MBR essentially ignores the existence of the Guilford bulletin alerting both Guilford and MBR crews to the presence of the derails, originally published on December 12, 2002 and in effect at present. If, as the MBR asserts, use of the derail was limited to those times when the passenger service was being operated, then the bulletin would have stated as much. However, because the bulletin was posted to reflect the actual intention of the parties—that the derail would be in place at all times—no passenger/freight distinction is made. Plainly, Mr. Leishman is either claiming that he was not aware of the bulletin—which was distributed to MBR operating personnel—or that he ignored its terms, which clearly state that the derail was "placed into service" as of December 12th. Either way, his failure to inform Guilford that the derail was not being used—despite the clear terms of the bulletin—reflects the very disregard for safety that is of the greatest concern to Guilford.

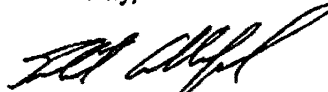
As for the track maintenance issue, Guilford's Michael Moretto, the longtime dispatcher for the area that includes the Milford-Bennington line, does not recall the

MBR ever contacting him for permission to occupy Guilford's track for maintenance work. Rather, Mr. Moretto distinctly recalls that the MBR would contact him if work were being performed on MBR property so that Guilford trains did not access the MBR line during those periods. Additionally, Mr. Moretto also recalls being contacted by MBR if the MBR noticed a condition on the Guilford portion of the line that was not in compliance, and that MBR would then request Guilford to correct the condition, a course of events that is entirely consistent with section 1(f) of the trackage rights agreement.¹ Nevertheless, if the MBR would like to provide specific dates on which such maintenance was performed, Guilford would be pleased to review its train records for those days to confirm whether any request for permission was made or granted.

The MBR continues to assert that the operating plan put in place by Guilford is unworkable and is causing great harm to the MBR and its customer. However, while the MBR acknowledges that an increase in capacity will allow it to serve its customer during this new operating window, it continues to refuse to propose alternatives for Guilford to consider. Nevertheless, to address the immediate concern of service to Granite State, Guilford is willing to provide service to this customer while a final resolution is being discussed, upon reasonable terms and conditions prescribed by the Board.

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

cc: James E. Howard, Esquire

¹ Due to the lateness of the day and the pending holiday, Guilford was not able to obtain a Verified Statement from Mr. Moretto. Guilford will, however, be pleased to provide a statement on request.

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**JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129**

**TEL (617) 886-9322
FAX (617) 886-9324**

July 8, 2003

VIA FACSIMILE

Robert B. Culliford
Corporate Counsel
Guilford Rail System
Iron Horse Park
North Billerica, Massachusetts 01862

Dear Mr. Culliford:

In your letter dated July 3, 2003 to the Surface Transportation Board concerning Granite State Concrete and Milford-Bennington, you asserted that Milford-Bennington has refused to propose alternatives to the Guilford operating plan that restricts Milford-Bennington's operations to the hours of 12 AM to 8 AM. In addition, you offered to provide service to Granite State, pending the discussion of a resolution, upon terms and conditions to be prescribed by the STB.

The provision of service by Guilford is unacceptable. Milford-Bennington continues to be willing and able to provide service during the normal daytime hours of operation that have been used for the past eleven years.

We suggest the following:

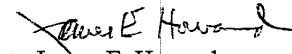
1. Guilford will remove the restriction on the hours during which Milford-Bennington is permitted to operate.
2. Prior to departure from the Granite State quarry, Milford-Bennington will obtain clearance from Guilford dispatchers. In this way, there will be no question that the trackage rights section between Wilton and Granite State in Milford is clear and there will be no risk of a Milford-Bennington train entering Guilford territory without your prior knowledge and approval. If operating conditions permit, the Guilford dispatcher will provide sufficient approvals for Milford-Bennington to return from Milford to Wilton.
3. If normal operating hours are restored, Milford-Bennington is willing to use the derail device at the north end of the Guilford yard, as it agreed to do on

June 20, 2003, pending a review by the Federal Railroad Administration concerning the alleged safety issues relating to the derail device.

4. Guilford and Milford-Bennington will jointly seek FRA review of the use of the above referenced derail to determine if the derail contributes to the safe operation of the line by Milford-Bennington and Guilford. Such review will consider the relocation of the derail to the south end of the yard so that it protects Guilford's main line from cars placed in Wilton yard consistent with procedures followed at Sappi and Rumford. Both parties will agree to abide by whatever decision or recommendation the FRA might render concerning the placement or use of derail devices.
5. Guilford and Milford-Bennington will ask the FRA to monitor operations under the above proposed arrangement and seek its advice for any improvements that can be implemented to assure safe operation by all parties.

We look forward to your reply and the immediate restoration of Milford-Bennington operations to avoid any further hardship to the railroad and, most importantly, its customer, Granite State Concrete.

Very truly yours,


James E. Howard

cc: Melvin F. Clemens

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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

LAW DEPARTMENT
(978) 663-1029

July 8, 2003

Melvin F. Clemens
Office of Compliance and Enforcement
Surface Transportation Board
Suite 780
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Milford-Bennington Railroad Company, Inc.

Dear Mr. Clemens:

Pursuant to our recent discussions, the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") appreciate your efforts to resolve our ongoing issues with the Milford-Bennington Railroad Company, Inc. ("MBR"), and have prepared a proposal for your review, as discussed below in more detail. While we agree that service to the MacLellan facility should be of paramount importance to both Guilford and the MBR, we are somewhat disappointed that the MBR's irresponsible approach to safety has been disregarded during this process, and will insist that the MBR commit to the safe operation of its railroad as part of any resolution. Moreover, we continue to believe that alternatives exist for service to the MacLellan facility by the MBR within the existing operating window, and resent any attempt to characterize Guilford's actions—based solely on safety considerations—as an effort to obtain the right to serve this customer. To the contrary, since this issue first arose, Guilford has steadfastly refused to entertain several offers by MacLellan to discuss alternative service measures, and has to date only offered to provide service on a temporary basis to allow for a more comprehensive solution to be developed.

In addition, the MBR's willingness to distort the facts underlying this episode and to alter its argument to suit its needs has done little to improve Guilford's confidence in the MBR's commitment to safety. Consequently, the proposal described below is designed to establish specific, verifiable means to ensure that the MBR is in compliance with all applicable operating and safety rules. In contrast with the proposal made by the MBR—which simply returns operations to their previous status—Guilford believes that its plan will provide necessary precautions where few existed previously.

With this understanding in mind, Guilford would propose the following to resolve the issues presently outstanding with the MBR:

1. To provide for a realistic, identifiable separation of the MBR/Guilford operations that will maximize safety, the MBR's operating window would be revised to provide that railroad the ability to serve the MacLellan facility between the hours of four a.m. and one p.m. daily, with Guilford operating on the line after one p.m. to serve its customers. This proposal takes into account the concerns raised by the MBR in relation to local permitting restrictions on its loading operations, and will allow the MBR to deliver three loaded trains of nine cars each during the operating window if the MBR modestly improves its customary service times;
2. Guilford will continue to maintain a derail on its property at all times, allowing the device to be removed only when MBR or Guilford trains are operating through the area, and requiring that it be immediately replaced when each train has cleared the derail. Contrary to the claims of the MBR, the derail device is necessary at all times—not just when the passenger train is operating—to prevent either passenger or freight cars from breaking free and traveling down the steep grade on the MBR onto Guilford property with little or no warning;
3. At the sole cost and expense of the MBR, a Guilford supervisor will be assigned to observe MBR operations on Guilford's property until such time that the MBR can show to Guilford's satisfaction that the MBR is committed to safe operations. This measure is necessary to ensure that the derail is properly utilized and that the MBR crews are following all applicable safety and operating rules while on Guilford property;
4. In the event that it was doing so previously, the MBR will no longer perform maintenance on Guilford's line, and will instead follow the procedures of the trackage rights agreement in the event that the MBR has concerns with the condition of the line. Additionally, all other terms and conditions of the trackage rights agreement will continue in full force and effect;
5. Guilford will continue to provide training in Guilford's and other applicable operating and safety rules to MBR operating employees;
6. The MBR will release Guilford from any claims or causes of action arising from or related to the implementation of the 12 a.m. to eight a.m. operating window and will secure a similar release from its customer waiving any claims or causes of action that the customer may believe exist.

While we continue to have grave concerns with the manner in which the MBR operates its railroad, we believe that this proposal will allow for service to the MacLellan facility during daylight hours without the need for continued Board involvement. Most importantly, however, this proposal will also implement important safeguards to minimize the risk of an unfortunate incident—safeguards that either did not exist previously or were not being adhered to by the MBR.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'R. B. Culliford', written in a cursive style.

Robert B. Culliford
Corporate Counsel

cc: James E. Howard, Esquire