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September 4, 2003

208836

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

ENTERED By Hand Delivery
Office of Proceedings

SEP 5 2003

Part of
Public Record



Re: Finance Docket No. 34364
Vermont Railway, Inc. -- Petition for Declaratory Order

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Office of Proceedings

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Dear Secretary Williams:

The purpose of this letter is to advise the Board that Petitioner, Vermont Railway, Inc. ("VTR"), intends to file one or more pleadings on or before September 15, 2003, as a result of the filing made in this matter on August 8, 2003 by the State of Vermont ("Vermont"), styled "State of Vermont's Opposition to Vermont Railway's Petition for Declaratory Order," in which Vermont challenges the Board's jurisdiction and alternatively proposes a procedural schedule. VTR respectfully requests the Board not to act in response to Vermont's jurisdictional challenge or proposed procedural schedule until Petitioner has had the requested opportunity to prepare and file appropriate pleadings.

This request by Petitioner is occasioned in part by an unusual sequence of events that found the undersigned counsel for Petitioner served with the State's August 8 pleading on literally the penultimate day before the commencement of a long-scheduled vacation from which counsel just returned. Based upon an exchange of emails between Petitioner's undersigned counsel and counsel for Vermont, Petitioner had agreed to an extension of Vermont's filing date with the understanding that Vermont would not file a pleading to which a response by Petitioner would be "predictable, such as a motion or similar request." Petitioner's reason for conditioning its agreement to an extension on those grounds was to avoid the need to file a responsive document while counsel was on vacation. When we were led to understand by Vermont's counsel that its pleading would not contain a motion or similar request, we agreed to Vermont's requested extension of time, which resulted in its pleading being received by us just before the commencement of a vacation.

It is clear, however, that Vermont's August 8 pleading does contain certain jurisdictional challenges and affirmative requests for relief to which a response by Petitioner is both predictable and appropriate. Among other things, Vermont in effect seeks dismissal of the Petition under a claim of Eleventh Amendment sovereign immunity. Petitioner regards Vermont's assertion of sovereign immunity to be misplaced and in any event to warrant a response lest the Board construe Petitioner's silence as acquiescence in Vermont's claim. Vermont also has proposed a procedural schedule for adoption by the Board if the Board does not find that the Petition is barred by sovereign immunity. The proposed procedural schedule is unacceptable to Petitioner and likewise warrants a response.

The undersigned counsel for Petitioner is working diligently to prepare an appropriate response to the State's pleading. We expect to be able to file that response by September 15, and respectfully request the forbearance of the Board in this proceeding until our filing is made.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew P. Goldstein", with a horizontal line extending to the right.

Andrew P. Goldstein
Attorney for Vermont Railway, Inc.

cc: All Parties (by overnight delivery on
persons who have filed pleadings)