



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

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September 5, 2003

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

By Federal Express



**Re: Docket No. NOR 42083, Granite State Concrete Company, Inc. and
Milford Bennington Railroad Company v. Boston and Maine Corporation
and Springfield Terminal Railway Company.**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten
copies of the *Reply of the Boston and Maine Corporation and the Springfield Terminal
Railway Company to Request of Granite State Concrete Company, Inc. and Milford
Bennington Railroad Company to Revoke Exemption.*

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

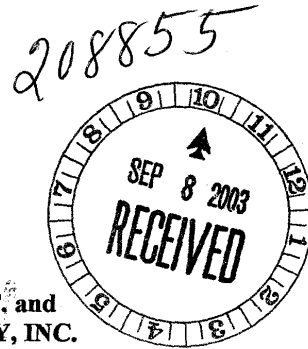
BEFORE THE
SURFACE TRANSPORTATION BOARD

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



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REPLY OF THE BOSTON AND MAINE CORPORATION and THE SPRINGFIELD
TERMINAL RAILWAY COMPANY TO REQUEST OF GRANITE STATE CONCRETE
COMPANY, INC. and MILFORD BENNINGTON RAILROAD COMPANY, INC. TO
REVOKE EXEMPTION

Once again, the Granite State Concrete Company, Inc. ("Granite State") and the Milford Bennington Railroad Company, Inc. ("MBR") have filed a pleading to which the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") are at a loss to respond. More particularly, on August 19, 2003 Granite State and MBR served a reply to Guilford's motion to dismiss the complaint (the "Reply") which contained a request the exemption of stone and related commodities be revoked as it applies to Guilford.¹ Reply at 6. While the Reply itself was expected and does not rebut the substance of Guilford's motion to dismiss, there is no procedural or substantive basis for the informal request to revoke the exemption contained therein and this request should therefore be denied.

¹ Ignoring the plain language of 49 C.F.R. §1039.11(a) and the Board's recent decision in *Pejebscot Industrial Park, Inc.*, the first portion of the reply predictably asserts that the subject exemption does not apply in this circumstance, despite the lack of any reservation of relevant regulatory oversight in the exemption. *Pejebscot Industrial Park, Inc. D/B/A Grimm Industries—Petition for Declaratory Order*, STB Finance Docket No 33989, Served May 15, 2003, Footnote 13.

Granite State and MBR argue that the allegations made in the formal complaint should be sufficient for revocation, purportedly because “the issue has been joined” and “there is no need for a formal petition” and the delays that could result. Reply at 9. However, this position finds no support in Board precedent, which clearly establishes that, “...the only recourse available to a person aggrieved with respect to a matter that has been exempted under section 10505 is to petition for revocation of the exemption under 49 U.S.C. 10505(d).” *Consolidated Rail Corporation—Petition for Declaratory Order—Suspension of Service*, Ex Parte No. 346 (Sub-No. 14B), Decided June 13, 1989, unnumbered page 2. This requirement is necessary since the Board must first revoke the exemption as it applies to a carrier before it can determine the propriety of that carrier’s actions under the Interstate Commerce Act (the “Act”). *Id.* Accordingly, because the formal complaint alleges that Guilford has violated the Act in relation to a commodity that has been exempted from the provisions of 49 U.S.C. Subtitle IV (with exceptions not relevant here), Granite State and MBR must first seek a determination that the Act is applicable in this instance, which can only be accomplished through a formal petition. *Id.*

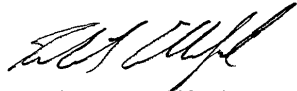
In addition, the request for revocation falls woefully short of a formal petition for revocation, because “[a] petition to revoke must assert, on the basis of factual evidence, that regulation is necessary to prevent conduct that would, in the absence of the exemption, be unlawful under the Interstate Commerce Act...” *Rail General Exemption Authority—Miscellaneous Agricultural Commodities—Petition of G&T Terminal Packaging Co., Inc. et. al. to Revoke Conrail Exemption*, Ex Parte No. 346 (Sub-No. 14A), Decided December 27, 1988, unnumbered page 2. In this instance, Granite State and the MBR provide no factual or legal basis for their general allegations that revocation is necessary to prevent unlawful conduct,

instead relying upon unsupported and speculative assertions that reregulation will further the National Rail Transportation Policy ("NRTP"). More particularly, the request contains no factual or legal support to indicate that: (a) Guilford's actions are unlawful under the Act; (b) any unlawful actions are within the Commission's regulatory reach; (c) those actions are serious enough to warrant reregulation; and (d) reregulation of this commodity will be effective in carrying out the NRTP, and therefore fails to meet the minimum requirements for revocation.

Rail General Exemption Authority—Miscellaneous Agricultural Commodities—Petition of G&T Terminal Packaging Co., Inc. et. al. to Revoke Conrail Exemption, 8 I.C.C.2d 674, 676-7 (1992).

Consequently, Guilford respectfully requests that the informal request to revoke the exemption contained in the Reply filed by Granite State and the MBR be denied.

Respectfully submitted,



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Attorney for:

Boston and Maine Corporation
Springfield Terminal Railway Company

September 5, 2003

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing documents was served on September 5, 2003, by sending a copy by Federal Express and by facsimile on counsel for the plaintiffs, as follows:

James E. Howard, Esquire
James E. Howard, L.L.C.
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Charlestown, MA 02129


Robert B. Culliford

September 5, 2003