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October 3, 2003



VIA FEDEX

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Re: Finance Docket No. 34364
Vermont Railway, Inc. - Town of Wallingford, Vermont's
Response to the Petition for Declaratory Order

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Town of Wallingford, Vermont's Reply to the Supplemental Petition for Declaratory Order of Vermont Railway, Inc filed in this matter.

Thank you.

Very truly yours,

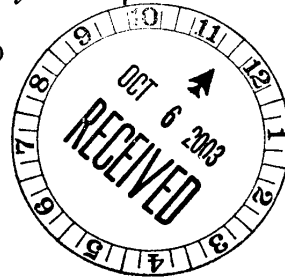
Alan B. George, Esq.

ABG/kcp
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34364

VERMONT RAILWAY, INC. -
PETITION FOR DECLARATORY ORDER



TOWN OF WALLINGFORD, VERMONT'S RESPONSE TO
THE PETITION FOR DECLARATORY ORDER
BY VERMONT RAILWAY, INC.

ENTERED
Office of Proceedings

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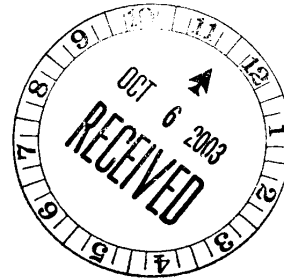
TOWN OF WALLINGFORD, VERMONT

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Dated: October 3, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34364
VERMONT RAILWAY, INC. -
PETITION FOR DECLARATORY ORDER



**TOWN OF WALLINGFORD, VERMONT'S REPLY TO THE
SUPPLEMENTAL PETITION FOR DECLARATORY ORDER
OF VERMONT RAILWAY, INC.**

I. INTRODUCTION

Vermont Railway, Inc. [VTR or the Company or Petitioner] has filed a Supplemental Petition dated September 15, 2003, in this matter. At least insofar as the Supplemental Petition pertains to the Town of Wallingford, it is a factitious pleading. VTR describes a "letter" to the "Town of Wallingford Planning Agencies, and townspeople of Wallingford," among others, as if it were *delivered* to the Town or its citizens; it was not. It distorts the motives and intentions of the Town and misrepresents the Town's positions in this matter as set forth in the Town's August 8, 2003 Response to the original Petition for Declaratory Order dated August 8, 2003 [the Wallingford Response]. Rather than apply the principle of charity and address the Town of Wallingford's Response fully and honestly, VTR resorts to omission and misinterpretation to skew the Town's statements and positions and make them seem simplistic and fallacious: mere "straw men." VTR pretends that the Town of Wallingford is engaged in a struggle with this Board, seeking to usurp the

authority of the STB to make preemption decisions, and to divest this Board of its jurisdiction. It conjures arguments over the time, expense and delay that compliance with the Town's zoning ordinances would entail, completely disregarding the fact that the Town has conceded that it cannot apply its zoning law to control the location of the facilities or to unduly restrict railroad operations or burden interstate commerce. It ignores this Board's suggestion that a railroad should share its plans with a town and seek to resolve issues through cooperation, a process that is calculated to reduce the need for STB intervention, and insists that this Board use its authority and power aggressively to remove even Wallingford's ability to protect the health, safety and welfare of its citizens by means which are not preempted. The Town of Wallingford respects this Board and, heretofore, has given VTR the benefit of any doubt regarding its intentions. In juxtaposition, VTR shows contempt for the Town of Wallingford and, by its efforts to use the STB, for this Board as well. VTR's representations, promises, and assurances are not believable.

II. THE WULFSON LETTER

VTR describes a "letter" written by its President as follow:

On August 27, 2003, David W. Wulfson, President of VTR, wrote to the Rutland Region Transportation Council, Rutland Regional Planning Agencies, Town of Wallingford Planning Agencies, and townspeople of Wallingford to explain VTR's Wallingford plans. His letter, attached as Exhibit 6, was read at an August 28 meeting of the Rutland Region Transportation Council. Supplemental Petition at 19.

Ordinarily, of course, one thinks of a "letter" as something deposited in the mail or hand delivered to named addresses. The Wulfson "letter" may have been written by VTR's President and read at a meeting of the Rutland Region Transportation Council [RRTC] but VTR did not deliver

the Wulfson "letter" to the Town of Wallingford. Although the Town of Wallingford has a representative on the RRTC, that individual was absent at the meeting on August 28, 2003.

Plainly, the purpose of the reference to the Wulfson "letter" in the Supplemental Petition is to give this Board the impression that VTR has made an effort to communicate directly with the Town of Wallingford. Obviously, this is not true. If Mr. Wulfson had intended to communicate directly with the Town of Wallingford, he could have sent his letter to the Town by mail or could have arranged a hand delivery. The letter might have been addressed to the Town of Wallingford Selectboard and to the Town of Wallingford Planning *Commission*.¹ Mr. Wulfson could have obtained the correct identification of the Town of Wallingford addressees and their mailing addresses from the Certificate of Service which accompanied the Petition and the Supplemental Petition in this matter. That is what one would have expected Mr. Wulfson to do if it truly was VTR's intention to communicate directly with the Town of Wallingford. Of course, that was not VTR's true intention: its intention was to simply give this Board the impression that it had done so. To date, VTR has not communicated with the Town of Wallingford. The representations in the Supplemental Petition implying that it has, are deceitful. The Wulfson "letter" is a true indicator of VTR's disdain for the Town of Wallingford and for this Board's policy preference that a railroad should proceed pragmatically, share its plans with a town, and only resort to the STB if a resolution cannot be achieved through cooperation.

¹The named addressees at the top of the Wulfson letter include the "Town of Wallingford Planning *Agencies*"; similarly, the "letter" names as a recipient the "Rutland Regional Planning *Agencies*, not the Rutland Regional Planning *Commission*."

III. VTR DISTORTIONS

The Supplemental Petition is replete with statements distorting Wallingford's motives, intentions, and positions in this matter. Wallingford in this Part addresses excerpts from the Supplemental Petition to illustrate VTR's unfairness and inaccuracy.

VTR claims that Wallingford wants to delay this proceeding. VTR says:

Wallingford...clearly hope[s] to avoid or delay a determination by the Board regarding the preemptive relationship between 49 U.S.C. §10501 and...Wallingford's zoning ordinances.... Supplemental Petition at 4.

VTR implies that the Town seeks to obtain some tactical advantage through delay or avoidance. Delay would provide absolutely no benefit to the Town. Avoidance of this proceeding is desirable, but not for some strategic reason: the Town of Wallingford can ill afford the costs of participating in a matter that was not foreseeable and budgeted, and which, in its view, is totally unnecessary. Suffice it here to say that the Town welcomed word from its counsel that this Board has encouraged railroads to "share their plans with the community, when they are undertaking an activity for which another entity would require a permit," [*Joint Petition for Declaratory Order - Boston and Maine Corporation and Town of Ayer, Ma.*, STB Finance Docket No. 33971 (April 30, 2001) at 12-13], and that this proceeding may be avoidable, at least insofar as the Town's participation in it, if this Board were to conclude that it is premature because VTR had not communicated its plans to the Town.

VTR absurdly claims that Wallingford seeks to usurp this Board's jurisdiction:

The gravamen of the positions taken by both Vermont and Wallingford is that interpretation of their respective statutes vis-a'-vis any possible conflict with the ICCTA should be made by agencies of the State or by Wallingford. The underlying theory advanced by both parties is that any "fact-bound" determinations associated with resolving conflicts between Section 10501(b) preemption and either State or

local land use regulations of necessity require a railroad such as VTR to invoke the respective State or town permitting process and carry them through to their final conclusion, even if to do so requires years of litigation in state courts. Supplemental Petition at 11 (*emphasis added*).

Although both Vermont and Wallingford *cleverly seek to imply* that recourse to the Board might thereafter be available to resolve any preemption disputes, the fact of the matter is that *the course of action advocated by Wallingford and Vermont would end up depriving this Board totally of any meaningful voice on preemption issues*. While Vermont and Wallingford both contend that it is “premature” for VTR to seek declaratory relief before the Board, if given their way, Vermont and Wallingford would not allow a preemption dispute to mature into an appropriate Board proceeding. Supplemental Petition at 11-12 (*emphasis added*).

Wallingford *attempts to suggest* (Wallingford Opposition, p. 5) that it does not oppose the project and is not unreceptive toward it, but that it cannot take a position, and thereby create a possible controversy, *unless and until an application is filed under its zoning ordinances*. Were the Board to accept that argument, *the Board would be divested totally of any ability to interpret the reach of its own preemptive jurisdiction*. VTR would have to institute and compete the entire Wallingford zoning process before becoming eligible to even request any court to consider preemption issues. Supplemental Petition at 18 (*emphasis added*).

In asserting that VTR must first submit an application under Wallingford zoning ordinances, where the appellate chain leads directly to the Vermont Supreme Court, *Wallingford in a sense seeks to exclude the Board altogether from rendering an opinion on preemption issues in this matter*. Supplemental Petition, footnote 9 at 18 (*emphasis added*).

It is apparent that what Wallingford wants is the right to determine whether, or to what extent, VTR’s entire proposal may go forward. VTR submits that this goal is in conflict with Section 10501(b). Supplemental Petition at 21.

Certainly these preposterous assertions are not derived from Wallingford’s Response to the VTR Petition. Wallingford has acknowledged that the preemption decisions of this Board and the courts are meaningful and already understood, including a decision of the Vermont Supreme Court which holds that a town has no control over the location of railroad facilities or the right to apply a regulation which would unduly restrict railroad operations or burden interstate commerce.

Wallingford Response at 5-6. And Wallingford *has not said* that VTR must go through the Town's zoning permit process. Wallingford perhaps is wrong, but it understands this Board's decisions in the *Town of Ayer* and *Fletcher Granite* [STB Finance Docket No. 34020 (June 25, 2001)] cases to say that a railroad should avoid unnecessary resort to the Board for a preemption determination. If a railroad shares its plans with a town and the parties are able to reach solutions to local concerns that do not unreasonably interfere with interstate commerce, there will be no need for Board intervention. With this understanding, the Town hoped that VTR would share its plans, indicate what approvals it does acknowledge to be applicable, identify its own needs, and address the needs and concerns of the Town and its inhabitants, cooperatively and in a spirit of accommodation. The Town invited VTR to "engage with the Town reasonably in the 'fact-bound' evaluation of any proposed restrictions or conditions that are intended to protect public health and safety." Wallingford Response at 8. This approach would not result in a divestiture of this Board's jurisdiction; rather it would free the Board from the expenditure of time (and the Town from the expense) of a proceeding addressing artificial and contrived issues which may never be in controversy. Of course, if the parties were unable to resolve a difference, and disagreed as to whether or not preemption applied, resort to this Board would then be appropriate. Under these circumstances this Board would know that the dispute before it was unavoidable, legitimate, and presumably, narrowly-framed, well-defined and "fact-bound."

This, it seems, is just the opposite of what VTR seeks: VTR wants a *carte blanche* decision that indiscriminately holds that all local regulations, save possibly building and electrical codes, are preempted. VTR would have this Board label local ordinances in crudely defined categories [*e.g.*, "pre-construction permitting regime"] and deem them to be preempted by virtue of their

classification. This would avoid all “fact-bound” evaluation of the circumstantial appropriateness of any particular regulation by any community or even concern as to whether a regulation were actually to interfere with a railroad’s operations: if it falls within a category, or is a part of an ordinance categorically preempted, VTR will be free to ignore it. VTR says:

Significantly, Vermont does not deny that Act 250 contains a pre-permitting construction regime. Nor does Wallingford deny that its ordinances merit a similar characterization. Supplemental Petition at 18.

And:

Vermont and Wallingford seem unwilling to recognize that a blanket pre-permitting regime conflicts with Section 10501(b). Supplemental Petition at 24.

Assuming that “pre-permitting construction regime” and “pre-permitting regime” mean pre-construction permitting regime, Wallingford does not deny that its zoning ordinances, viewed in totality, warrant that characterization. So what? What is important here is that Wallingford has conceded that it cannot apply its ordinances to control the location of the facilities or to unduly restrict railroad operations or burden interstate commerce. Again, Wallingford *has not* said that VTR must file an application for a zoning permit. So why does VTR concern itself with the Town’s zoning ordinances in their totality? Why treat them as a *blanket* and as a *regime*? Obviously, as suggested above, because VTR wants a *carte blanche* decision that indiscriminately holds that every local regulation that is a part of the “zoning ordinances” is preempted. Stated differently, if VTR were to recognize the severability of the provisions of Wallingford’s zoning ordinances, it would be exposed to “fact-bound” determinations in an eclectic process to assess whether a particular condition or requirement actually would interfere with railroad operations. Consequently, VTR insists that it must go through the zoning permit process as a “*blanket regime*”:

VTR's evidence leaves no room to doubt that its proposed project is subject to Vermont's 250 and Wallingford's zoning ordinances. VTR's detailed testimony addressing that point (VTR Exhibit No. 3) has not been challenged or rebutted by either Vermont or Wallingford and is certainly definite enough to support the institution of a declaratory order proceeding where the parties' positions can be resolved. Supplemental Petition at 22.

Obviously, in order to protect its demand for *carte blanche* treatment on the preemption question, VTR must ignore Wallingford's concessions, "that it cannot assert regulatory control over the location of the rail spur or the transload facility," and "that it cannot apply a local land use restriction, or regulation that would 'unduly restrict the railroad from conducting its operations, or unreasonably burden interstate commerce.'" See Wallingford Response at 5-6. Therefore, VTR persists in its position that the Town's zoning ordinances stand in its way:

It is noteworthy that Wallingford does not quarrel with VTR's testimony demonstrating that no less than several months would be consumed by the town's zoning process. Supplemental Petition at 18.... Nor does Wallingford contest VTR's evidence demonstrating that any such appellate process may well consume two or three years. Supplemental Petition at 19.

Although, as indicated, Wallingford claims that it has taken no position on the application of its zoning ordinances to the VTR salt transload project, Wallingford does not dispute VTR's testimony that "State law mandates that the Town [of Wallingford] zoning administrator take appropriate action to 'prevent, restrain, correct or abate' the construction or use of a building or improvement by a person who has not first obtained the required local zoning authorizations," and that, "if the zoning administrator fails to take appropriate action, other interested parties may obtain a writ of mandamus compelling enforcement action." Supplemental Petition at 23.

Under State law, it would appear to make no difference whether Wallingford now informally looks favorably or not on the proposed transload project; if it is commenced without a preemption determination or the required local zoning authorizations, enforcement action is a certainty. Supplemental Petition at 23.

Wallingford is not quarrelsome but it did challenge VTR's estimates as to the length of the Town's zoning permit process. Wallingford Response at 8. Of course, as suggested above,

Wallingford has not insisted that VTR submit to the Town's zoning process, at all. In its Response to the original Petition, Wallingford did not see the need to address the "mandate" contentions in view of the fact that it has conceded it has no authority under its zoning ordinances to regulate facilities or activities preempted by the ICCTA. Certainly there is no "mandate" which would compel the zoning administrator to take action in defiance of the Vermont Supreme Court's decision in the case of *In re Vermont Railway*, 171 Vt. 496, 769 A.2d 648 (2000). Similarly, a third-party's effort to obtain a writ of mandamus would be futile because of that decision. But whatever annoyance or delay may be occasioned by a third-party's effort to obtain mandamus, VTR is exposed to it no matter what: a person claiming entitlement to mandamus will presumably find this Board's declaratory order on the subject of preemption no more of a restraint than the action or inaction of the Town of Wallingford based on the decision of the Vermont Supreme Court! Obviously, an enforcement action is anything but a certainty. The preemption decision by the Vermont Supreme Court is already binding on the Town and any third-party seeking "enforcement" in a Vermont court.

VTR confirms its resistance to share detailed plans with the Town of Wallingford:

Vermont and Wallingford also contend that VTR's description of the transload facility and operations at the facility are too vague (Vermont Opposition p. 12; Wallingford Opposition, p. 6). Both Vermont and Wallingford appear to have overlooked the detailed evidentiary statements and map submitted by VTR with its June 17 Petition. Supplemental Petition at 17.

To what extent other salient information regarding the facility is necessary to apprise either Vermont or Wallingford of what VTR intends to do has not been disclosed by either party. Although Wallingford does indicate that it would like to know when the project would be completed, VTR believes that Wallingford recognizes that VTR is in no position to determine when construction would be commenced because of the very uncertainties that have prompted this proceeding – questions involving the extent to which Wallingford and Vermont can apply their laws and regulations against VTR. Moreover, no construction timetable can be established without

knowledge of when during the year work can be commenced. Supplemental Petition at 17-18.

Wallingford did not overlook the evidentiary statements and map submitted by VTR with its Petition. It is simply impossible to assess the impact that the development and operation of VTR's planned facilities will have in the Town of Wallingford on the basis of the information furnished. VTR turns the "disclosure" process on its head: rather than inform the Town about its plans and activities in detail to enable an assessment of impacts, VTR proposes that Wallingford identify what it does not know about the project and disclose everything that it would like to know, if and to whatever extent that what it does not know is, in fact, "salient information regarding the facility." Wallingford did request, in addition to the project details, the timetable for the commencement of construction and for operation of the facility. Initial Response at 5. Virtually every developer that comes into Wallingford to build a project can provide information about the plans for construction, including when they would like to start and when they would expect to be finished. VTR's excuses, that it does not know the outcome of this proceeding, or when during the year the work can be started, do not justify its unwillingness to disclose whether this project is expected to be constructed and online in 2003, or 2004, or at some later time. As indicated in the Wallingford Response at 4, one cannot even discern whether VTR's protests over "delay" are warranted without some idea of when it planned to begin its operations in Wallingford. True to form, the VTR theory of disclosure makes sense only if the objective is to avoid "fact-bound" review of the project and assessment of its impacts. For VTR, any controversy of any kind should warrant a declaratory order effecting a *carte blanche* elimination of any need to communicate with the Town of Wallingford:

Wallingford's own pleading in fact asserts the existence of great uncertainty regarding VTR's proposal (Wallingford Opposition, p. 7). Supplemental Petition, footnote 9 at 18.

Wallingford's uncertainties regarding VTR's proposals are attributable, exclusively, to the absence of information from VTR. As noted in the Wallingford Response, the uncertainty of the VTR plans can be removed only by VTR itself; it does not require a proceeding before this Board to provide information to the Town of Wallingford. Wallingford Response at 5.

VTR questions Wallingford's sincerity by noting that the Town has not sought project details from the railroad (by means other than the Wallingford Response) since it was served with the original Petition:

Wallingford apparently believes that the process of communication between it and VTR must originate only with VTR; in the nearly three months that Wallingford has been in possession of the Petition, it has made no efforts to determine from VTR any of the project details that Wallingford claims (without disclosing their nature), it needs in order to better understand the project. Supplemental Petition at 19.

This may be VTR's quintessential conceptual head-stand. According to VTR Exhibit No. 5, the Affidavit of Lisa W. Cota, at ¶3, VTR acquired an option on the Wallingford property 2½ years ago,² but has never found the occasion to share its plans with the Town! This notwithstanding the decision of this Board in the *Town of Ayer* matter, STB Finance Docket No. 33971, one month after VTR acquired its option, which encouraged railroads to "share their plans with the community when they are undertaking an activity for which another entity would require a permit." *See* Wallingford Response at 6. If VTR were oblivious to the policy recommended by this Board in the

² VTR now claims that it "purchased" the Wallingford site before it filed its original petition, and that it obtained an option on that property more than two years earlier, facts that were not disclosed to this Board or Wallingford until now. Yet, it has the audacity to question why neither Vermont nor Wallingford has explained "why a party holding an option on land cannot seek declaratory relief from the Board regarding the proposed railroad use of that land as if the option had previously been disclosed!" *See* Supplemental Petition at 16.

Town of Ayer decision, it certainly became aware of it when Wallingford served its response to the original petition dated August 8, 2003, and invited VTR to submit its detailed plans and explain its project activities and operational needs. *Id.* at 10. Since then, the only effort VTR has made to communicate with the Town is the so-called “letter” about preemption which was apparently written by David Wulfson, but not delivered by VTR to the Town of Wallingford which advises that a detailed review of VTR plans will be made *only after resolution of the legal issues before this Board*. See VTR Exhibit No. 6 at 2. VTR’s unwillingness to enter into meaningful discussions with Wallingford until after this Board declares all Wallingford ordinances preempted is asserted again, in the Supplemental Petition:

As yet, Wallingford has identified no specific facts missing from VTR’s project description that Wallingford would need in order to more fully understand the project, other than the construction timetable discussed above. VTR *remains fully willing to enter into discussions with Wallingford* aimed at considering Wallingford’s concerns, *but VTR needs to know from the Board the extent to which Wallingford may and may not apply its pre-construction permitting requirements*. It is unreasonable to expect VTR to make an irrevocable project financial development commitment before knowing whether VTR will be subject to what may be disproportionate costs to comply with State or local requirements. Supplemental Petition at 19-20 (*emphasis added*).

Contrary to the implication that VTR would have furnished project details if only Wallingford had requested them, VTR has chosen to ignore the request for details and for a more clear understanding of the VTR Petition as set forth in the Wallingford Response. VTR knows its detailed plans and is completely familiar with Wallingford’s ordinances. Surely the Company can anticipate the nature and extent of any concerns that may arise from its plans. The Town, on the other hand, has only the sketch of VTR plans described in the original Petition and Exhibits. The Wallingford Response not only explained the Town’s inability to estimate and appreciate the impacts

of VTR's proposed development, but also advised that it does not understand the scope of the preemption ruling sought by VTR in this case. *Id.* at 6-8.

Wallingford declines the invitation to engage in a guessing game regarding the details of the VTR project. VTR clearly states its intention to engage in discussion with Wallingford only after this Board issues a declaratory order making it unnecessary to do anything more than simply "consider" Wallingford's concerns. VTR also reaffirms that it is not even financially committed to the project at this time. Perversely, VTR's appeal to the Board implies that it sees the STB as an *advocate* for its project, and therefore pleads that it is "unreasonable...[for the Board] to expect VTR to make an irrevocable financial development commitment before knowing whether...[will have to comply with, and incur the costs of local requirements]." As for the prospect of "disproportionate costs," Wallingford believes that the costs of dealing with the Town directly would have been substantially less than the costs of these proceedings before the STB.

Finally, VTR impugns the integrity of the Town of Wallingford, implying that the Town's representations and statements of position are not believable:

Moreover, *it does not truly appear* as if Wallingford is willing to substitute a process of informal discussion for its zoning application procedures. *Nor does it appear* that Wallingford is willing to concede that it may not use its pre-construction zoning ordinances to either veto or delay the proposed project as described by VTR....*It appears to be* Wallingford's position that VTR must nevertheless apply for zoning approval to construct the transload facility that Wallingford concedes it may not regulate directly, thereby giving Wallingford an opportunity to accomplish indirectly, through the possible imposition of restrictions that limit the volume of goods that can be moved by truck from the facility and therefore that can be moved by rail into and through the facility. Supplemental Petition at 20 (Emphasis added).

VTR does not disclose how it knows that Wallingford's stated motives and intentions are insincere; it seems that this information may just "appear," "not appear" or "not truly appear" to

VTR. Obstinate maintaining that it is Wallingford's position that VTR must apply for zoning approval, VTR somehow sees the Town accomplishing "indirectly" what it cannot accomplish "directly." However this may "appear" to VTR, Wallingford believes that anything accomplished by application of its ordinance would be the result of "direct," not "indirect" regulation.

VTR suspects that the Town may want to impose "restrictions that limit the volume of goods that can be moved by truck from the facility," which leaves Wallingford to wonder anew, what are VTR's plans? As Wallingford noted in its initial Response, VTR sometimes seems to want this Board to declare that absolutely no regulation of truck traffic to and from the facility is permitted, and yet VTR expressly concedes that local laws pertaining to the operation of trucks on state highways and town roads are not preempted, including those that regulate truck size and weight. *See* Wallingford Response at 7. Does VTR foresee the use of huge volume, container type tractor trailer trucks being used to haul salt from the facility bearing weights that which vastly exceed the capacities of affected roads? Only VTR knows.

IV. SOVEREIGN IMMUNITY

VTR is correct in noting that the Town of Wallingford has not asserted the claim of sovereign immunity. Supplemental Petition, footnote 1 at 3. As VTR noted, Wallingford is not an agency of the State of Vermont. *Ibid.* In spite of the fact VTR itself realizes that the Town is not an agency of the State, it proposes that this Board conclude that preemption applies to Robert Ingles, Zoning Administrator of Wallingford. Mr. Ingles is not an agent of the State of Vermont and has no capacity to take State action. Moreover, there is a fundamental flaw in VTR's conception of preemption, for how can a law such as the ICCTA displace an individual human being? VTR's answer seems to be that *Ex parte Young*, 209 U.S. 123 (1908) bridges the gap between a law, such as the ICCTA and a

person who might try to enforce a displaced rule or regulation. The problem with this analysis is that *Ex parte Young* and its progeny are cases involving the exercise of equity jurisdiction by courts with the power to grant injunctive relief. VTR has not identified the source of this Board's authority to enjoin Mr. Ingles or any other person. The Supplemental relief sought by VTR against Mr. Ingles is not available.

V. CONCLUSION

For all of the reasons stated in the Town of Wallingford's initial Response, this Board should deny the VTR Petition to institute a declaratory order proceeding.

Respectfully submitted,

Town of Wallingford, Vermont

by:



Alan B. George, Esq.
Keyser Crowley, P.C.
29 South Main Street
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Town of Wallingford, Vermont's Reply to the Supplemental Petition for Declaratory Order of Vermont Railway, Inc. has, this 3rd day of October, 2003, been served by first-class mail, postage prepaid, to the following:

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