

211715

ENTERED
Office of Proceedings

AUG 03 2004

Part of
Public Record
BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 355 (Sub No. 30X)

SPRINGFIELD TERMINAL RAILWAY COMPANY
-ABANDONMENT AND DISCONTINUANCE OF SERVICE-
WESTOVER INDUSTRIAL TRACK, HAMPDEN COUNTY, MASSACHUSETTSREPLY OF SPRINGFIELD TERMINAL RAILWAY COMPANY
THE COMMENT SUBMITTED BY
THE WESTOVER METROPOLITAN DEVELOPMENT CORPORATION

On July 21, 2004, the Westover Metropolitan Development Corporation ("WMDC") submitted a comment in response to the Environmental Assessment issued by the Surface Transportation Board ("STB" or the "Board") in the proceeding instituted by the Springfield Terminal Railway Company ("ST"), pursuant to 49 C.F.R. §1152.50, to abandon and discontinue service over the so-called Westover Industrial Track (the "Line"). This comment sought to inform the Board of WMDC's reversionary interest in the Line and requested that the Board impose certain conditions upon the abandonment and discontinuance of the Line, namely, the restoration of the entire Line to Federal Railroad Administration Class 1 standards and the restoration of all at-grade railroad crossings on the Line.

Initially, it is important to note, that it is not necessary for WMDC to provide the Board with notice of its reversionary interest. As WMDC pointed out in its comment (*See* WMDC Notice of Reversionary Interest and Request to Impose Certain Conditions on the Proposed Abandonment of the Track, dated July 21, 2004, at p.3), ST has already notified the Board of WMDC's interest in the Line. 49 C.F.R. § 1152.50(d)(2) requires that the railroad file a verified notice that includes the information described in 49 C.F.R. § 1152.22(e)(4). Section 1152.22(e)(4) required the disclosure of any restrictions to the title of the property that encompasses the line, including any reversionary interest, which would affect the transfer of title or the use of the property for other than rail purposes. ST stated in its Verified Notice of Exemption that any interest ST maintained in the Line would revert to WMDC in accordance with the terms of the agreements negotiated and executed by ST and WMDC.

The Line was originally an industrial spur, which extended approximately 4.8 miles from milepost 6.67 of the Connecticut River Main Line, which is owned by ST affiliate, the Boston & Maine Corporation (the "Main Line").¹ A 1.5 mile segment of the Line traverses through property owned by WMDC known as Airpark West. This portion of the Line is owned by WMDC. Airpark West was previously owned by the federal government and was a part of the

¹ See Finance Docket No. 30089, Springfield Terminal Railway Company – Acquire and Operate and Additional Railway Line – Exemption, dated December 8, 1982, at ¶3

United States Air Force airbase known as Westover Field. WMDC leased the remaining 2.58 miles (from Airpark West to the Main Line) from the federal government for approximately five years before it sought to purchase this portion of the Line.

In November of 1982, WMDC and ST entered into three separate agreements whereby ST would gain an interest in the Line so that ST could operate the Line, publish "Westover" as a station for the purpose of participating in the division of joint line revenue from rail traffic to and from the station and use the proceeds thereof to maintain the Line.² First, WMDC and ST agreed that ST would lease the 1.5 mile segment of the Line owned by WMDC (the "1.5 Mile Lease"). The 1.5 Mile Lease provided ST with an option to purchase the leased premises pursuant to certain terms and conditions. Furthermore, the 1.5 Mile Lease provided that in the event of a discontinuance of the railroad by the Board, WMDC would be required to pay to ST the undepreciated value of any improvements to the trackage made by ST.

Second, WMDC and ST agreed that ST would sublease the 2.58 mile segment of the Line owned by the federal government and leased by WMDC (the "2.58 Mile Sub-Lease") until WMDC obtained title to the 2.58 mile segment from the federal government. Once WMDC gained title to the 2.58 mile segment of the Line, it was agreed by WMDC and ST in Purchase and Sale Agreement (the "P&S"), the third agreement, which is believed to have been executed on the same date, that ST would purchase the 2.58 mile segment of the Line. In the P&S, ST and WMDC agreed that any deed delivered to ST would provide for an immediate reverter to WMDC should ST ever abandon the 2.58 mile segment. Additionally, the P&S provided WMDC with an option to purchase the 2.58 mile segment of the Line back from ST if ST failed to exercise its option to purchase the 1.5 mile segment of the Line in accordance with the 1.5 Mile Lease.

On December 8, 1982, ST filed with the Interstate Commerce Commission ("ICC") (now, the Board) an application for exemption³ to acquire and operate the Line. Subsequently, on December 13, 1982, WMDC gained title to the 2.58 mile segment of the Line.⁴ By decision dated January 14, 1983, the ICC exempted the acquisition and operation by ST of the Line. A little over a year later on April 17, 1984, WMDC conveyed the 2.58 mile segment of the Line to ST pursuant to deed recorded in the Hampden County Registry of Deeds, Book 5607, page 370 (the "Deed"). The Deed incorporated the language regarding the immediate reverter and the purchase option in accordance with the terms of the P&S.⁵

In their comment submitted to the Board, WMDC stated that ST, "with full knowledge of the reverter provision in the Deed, simply allowed the Track and railroad crossings to fall into disrepair" implying that ST deliberately devalued the Line while WMDC remained powerless to do anything about the situation. This is simply untrue, and had WMDC made the slightest

² *Id.* at ¶6-7.

³ Said application was filed pursuant to ICC Ex Parte No. 400 Modification of Procedure for Handling Exemptions Filed under 49 U.S.C. § 10505 served December 9, 1980 published at 45 FR 85, 180 (1980).

⁴ See Deed from United State of America to WMDC, attached as Exhibit A to WMDC's Notice of Reversionary Interest and Request to Impose Certain Conditions on the Proposed Abandonment of the Track, dated July 21, 2004.

⁵ See Deed from WMDC to ST, attached as Exhibit B to WMDC's Notice of Reversionary Interest and Request to Impose Certain Conditions on the Proposed Abandonment of the Track, dated July 21, 2004 at ¶¶ ff. and gg. of Schedule B.

attempt to portray an accurate picture of the history of this Line, it would be clear that ST has expended significant resources to develop business on the Line—often with little or no help from WMDC. Specifically, ST was committed to restoring business on the Line for a number of years, and would regularly meet with WMDC, customers and government officials in an effort to spur growth, despite the historically low revenue levels that it produced. See, August 24, 1998 Letter from Richard M. Willey to Allan W. Blair attached hereto as Exhibit A. In response, WMDC did little—as evidenced by Mr. Blair’s failure to respond to Mr. Willey’s repeated attempts to contact him. Moreover, when ST was left with little choice but to embargo the Line because revenues did not support the maintenance and rehabilitation necessary to continue operations, ST continued to try to develop business on the Line by working closely with the Massachusetts Executive Office of Transportation and Construction (“EOTC”)—as well as the WMDC—in another effort to improve revenue levels and develop rail transportation options, and was yet again unsuccessful. See, March 7, 2000 Memorandum from P.D. Kingman to T.F. Steiniger of ST; April 20, 2000 Letter from T.F. Steiniger to Astrid Glynn of EOTC; and July 20, 2000 Letter from T.F. Steiniger to Colonel Thomas A. Mauzaka, attached hereto as Exhibits B through D. In short, ST has invested substantial time and energy trying to develop rail business on this Line, but the simple truth is that revenue levels historically did not support the maintenance and rehabilitation expense necessary to support the service. To hear the WMDC explain the history of this line, however, ST apparently elected to permit the Line to degrade as an excuse to not provide service to the WMDC and its tenants. If that were truly ST’s aim, then ST would have filed for abandonment and discontinuance authority in 1999 rather than issue an embargo. Instead, ST continued to work with various agencies to: (a) develop business; and (b) identify funding to rehabilitate the Line so that operations could be re-commenced.⁶

Nor, as a purely legal matter, have ST’s actions in relation to the condition of the Line been in anyway abnormal. Indeed, as the Board has consistently noted, *future* maintenance expenditures are relevant to an abandonment determination, not *past* expenditures. *SWKR Operating Co.—Abandonment Exemption—In Cochise County, AZ*, STB Docket No. AB-441 (Sub No. 2X), Decided: February 7, 1997, at 2. In fact the Board has also consistently found that it is common for railroads to defer maintenance on lightly used branch lines because of the lack of revenue generated by those lines. *Id.* Accordingly, given the historically low revenue produced this Line, ST’s decision to defer maintenance was entirely justified. Nevertheless, in light of ST’s efforts to generate additional business and its efforts to procure funding for necessary upgrades, See Exhibits B through D hereto, it is difficult to understand the claims of WMDC that ST somehow achieved a windfall from its operation of the Line, particularly where WMDC never once complained about the condition of the Line previously. Furthermore, the request of WMDC for a condition requiring ST to rehabilitate the Line to FRA Class 1 standards is wholly without merit, for the simple reason that the Line would be rehabilitated to essentially lie fallow as the Line produces insufficient—in fact, no—revenue to support continued maintenance at this level and WMDC has shown little inclination to develop sufficient rail

⁶ By way of specific examples, ST worked diligently Sweeney Transportation, Inc. and Dunsirn Industries to provide competitive transportation rates for the movement of paper from Shawmut, Maine to the Sweeney warehouse in Chicopee, Massachusetts via the Line. Additionally, ST worked closely with the Stop & Shop Companies supermarket division to facilitate the movement of paper and beverage products to their warehouse facility in Chicopee where the products would then be distributed to their several stores throughout New England. ST also supported the movement of Friendly’s Ice Cream Corporation to a facility in Chicopee where inbound products were shipped by rail to this facility and then distributed to Friendly’s restaurants throughout New England.

business to support such maintenance costs under WMDC ownership, particularly where WMDC has offered no plan to have another rail operator assume responsibility for the Line once abandonment and discontinuance are consummated.⁷

WMDC also seems somewhat confused as to how to properly present and prosecute its allegations regarding potential state law remedies such as waste. Leaving aside the validity of these claims, WMDC is not without recourse if the Board were to decide not to require ST to rehabilitate the Line, as once ST consummates abandonment, Board jurisdiction will end. Accordingly, notwithstanding WMDC's extensive review of preemption and Board jurisdiction, this analysis is essentially irrelevant once ST consummates its abandonment and discontinuance authority.

As for WMDC's argument that ST should be required to rehabilitate each of the crossings along the Line, this too is misplaced. First, in another example where WMDC is willing to present only half the story to protect its interests, ST is not required by Massachusetts law to maintain crossings in their entirety. Rather, by its plain terms Massachusetts General Law ch. 160, § 103 provides that a railroad shall maintain only those portions of a crossing between the rails, not the entire crossing. What WMDC does not disclose, however, is that Massachusetts General Law ch. 84, § 1 requires that municipalities are required to maintain crossings in good repair for vehicular traffic, and that municipalities are eligible for reimbursement from the Commonwealth for such work. Consequently, WMDC not only failed to disclose the duty of the local municipalities to contribute to the maintenance and repair of crossings, it also fails to disclose that those municipalities will be reimbursed from a fund set up for that very purpose. Finally, WMDC also fails to mention is that the condition of only one crossing of approximately six on the Line seems to be in issue here, for reasons that are unexplained. As a result, it would be inequitable to require ST to repair all of the crossings on the Line, as the local municipalities would therefore be relieved of their duties under state law and resources would be expended to repair crossings not otherwise in need of rehabilitation.

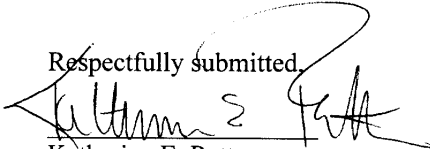
WMDC also once again ignores the history of ST's efforts to address the condition of all of the crossings along the Line, efforts that received no support from WMDC and were ignored by the Commonwealth. More particularly, ST has attempted to work the State Representative for this District to address the so-called Route 33 crossing, but received absolutely no response. See June 28, 2004 Letter from D.A. Fink to Representative Joseph F. Wagner, attached hereto as Exhibit E. Had the WMDC or the Commonwealth acted on ST's offers, this and other crossings would have been eligible for Federal Highway Administration funding to repair and rehabilitate crossings, substantially lessening the burden on all of the parties. Unfortunately, this funding is now not likely to be available as the Line is no longer considered active by FHWA, though this should not be an excuse to place the entire burden of rehabilitation upon ST.⁸

⁷ It is also uncertain whether the Board can order ST to rehabilitate the Line to meet the FRA Track Safety Standards, as this is an area subject to the jurisdiction of FRA—not the Board. See, *National Railroad Passenger Corporation—Petition for Declaratory Order—Weight of Rail*, STB Finance Docket No. 33697, Decided: January 31, 2003.

⁸ It is also disingenuous for WMDC to claim that the rails and other track materials on the Line are "Fixtures" intended to revert to WMDC upon abandonment, while at the same time WMDC is seeking to avoid all responsibility for the maintenance and repair of its own property. Quite simply, as the title documents make clear, WMDC always intended to take back ownership of the Line upon abandonment and discontinuance—most likely

For the reasons set forth herein, and in other filings with the Board, ST respectfully requests that WMDC's comment requesting that the Board impose conditions on the abandonment and discontinuance of the Line that include the restoration of the Line to Federal Railroad Class 1 standards and the restoration of the grade crossings to the specifications determined by the City of Chicopee, Department of Public Works be denied

Respectfully submitted,



Katherine E. Potter

Staff Attorney

Springfield Terminal Railway Company

Iron Hors Park

North Billerica, MA 01862

Dated: August 2, 2004

because WMDC saw the Line as a valuable asset,. That the condition of the Line as degraded over the years through ordinary wear and tear is to be expected—particularly where there was not enough traffic to support maintenance and rehabilitation, a condition directly attributable to WMDC's apparent indifference. Accordingly, since WMDC always intended to own the Line, WMDC—and not ST—would be receiving a windfall if the Board were to require ST to repair and rehabilitate the property of WMDC—property that WMDC made sure it would retain as part of the original transaction.

A



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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

15

August 24, 1998

Mr. Allan W. Blair
President
Westover Metropolitan Development Corp.
One Airpark Way
Chicopee, MA 01022

Dear Allan:

I have tried without success to recently contact you by phone. With vacations and busy schedules, it is understandable. My reason for trying to talk with you is to get an update on the positive path forward that was established at our last meeting.

At that meeting which you hosted on May 11, 1998 with many of the parks' customers in attendance, you outlined a path forward to secure state grant monies to upgrade the tracks.

My understanding from that meeting was that a draft letter would be sent to the customers seeking their support for the monies, three to four days for letters from customers to be returned, and you were to work with the Mayor of Chicopee to write application with final package available mid-June. If all went as planned, the work on track to be done this Fall 1998.

As our construction season is very strong at present, within a short time winter will be upon us and the prime construction time over.

Could you please advise where we are in this whole process.

Take care,

Rich Willey

Richard M. Willey
Senior Vice President
Marketing and Sales

CC: S. B. Culliford
P. D. Kingman

B

MARKETING & SALES DEPARTMENT

MEMO

TO: T. F. Steiniger
FROM: P. D. Kingman
DATE: March 7, 2000
SUBJECT: Westover

Tom, here is a recap of yesterday's meeting held at the Westover Metropolitan Development Corporation (WMDC) offices in Chicopee, MA.

The EOTC, led by Astrid Glynn, served as "moderator" of this meeting in an attempt to resolve the ongoing concerns at the park. A historical perspective of the railroad/park relationship was given by both Allan Blair, President, WMDC, and Syd Culliford. The issues were and are clear and neither the railroad nor the park is going to take responsibility for maintaining the WMDC owned track inside the park. The tracks are also in need of repair, but there is not enough business to support the investment.

The local customer rail interest was clearly illustrated by who attended the meeting and who did not. Of the eight or so customers invited, only Sweeney Transportation and Engineered Polymers (Osterman) attended. The rail business available today after the Sappi-Sweeney move is eliminated (now handled Sappi-Grif-Bak in Holyoke on GTI, trucked to Dunsirn); the only business left is Engineered Polymers (7 cars - 1998, 5 cars - 1999), and wine to both Burke Beverage and Country Club Wine and Spirits. Historically, wine is difficult to move to this area (vandalism and transit time) and both customers have some

T. F. Steiniger
March 7, 2000
page 2

negative notions towards rail. Friendly's was an active customer, but because McCain's changed their origin to Easton, ME from Othello, WA, they now receive their french fries by truck. (The largest annual volume was 57 cars in 1997.)

I believe that the EOTC was given a good representation of the problems, the history, and the frustration felt by all parties concerned. Astrid presented a path forward as follows:

- 1) Guilford to provide estimate for track repairs and annual maintenance cost of the line.
- 2) Allan Blair (WMDC) to provide business plan with customers for potential rail business. I am not sure if he will follow through with this request as he balked at the notion.
- 3) Air Force to determine, with our estimates, their desire to fix and maintain line for "war time planning".
- 4) Present all information to the EOTC by the first week of April.

I think, in summary, "all the elephants were put on the table" and there clearly is not enough business or interest to support the investment in the track. There is little opportunity in the park for industrial development, and other than Paul Dikan at Engineered Polymers who "located in the park because of rail" in 1998 with a multi-million dollar investment, there is not much customer interest either. The upside to all of this appears to be the Air Force's possible desire to keep the line open. If this were to occur, once again we could work with the customers to try and generate a rail program.

P. D. Kingman

C



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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

FILE COPY

EXECUTIVE DEPARTMENT
(978) 663-1175

April 20, 2000

Ms. Astrid Glynn
Deputy Secretary
The Commonwealth of Massachusetts
Executive Office of Transportation and Construction
Ten Park Plaza
Boston, MA 02116-3969

Re: Westover Air Base

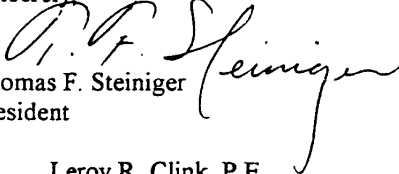
Dear Ms. Glynn:

Pursuant to our meeting of March 6, 2000, I have asked Roger Bergeron to prepare the attached estimate of rehabilitation that will be required at the Westover Industrial Park to reinstitute customary rail service and the costs to be borne by the funding party. As you will note, this estimate is limited to the rehabilitation needed for normal freight service on those segments of the line over which GRS has historically operated and does not account for the portion of the track controlled by the Air Force or the at-grade crossings on the line. If Mr. Clink or the Air Force have different requirements for the operation or maintenance of the entire track, it will be their responsibility to detail these issues and the method of financing the necessary work.

With regard to the Mr. Clink's involvement in this process, please note that I have yet to receive a response to my letter of March 9th requesting confirmation of his proposal that the Air Force provide support for the rehabilitation of the line. Furthermore, I have not received a copy of the business plan of potential rail service that Mr. Allan Blair of the WMDC promised to prepare in conjunction with the customers at Westover. Without an agreement as to how this rehabilitation will be funded and the active support of the Air Force, the WMDC and the customers on the line, I do not believe that reinstituted rail service to Westover will be viable. Accordingly, if EOTC remains interested in supporting rail service to Westover I would appreciate your assistance in resolving these issues.

Thank you for your continued assistance on this project. Please feel free to contact me if you should have any questions or comments.

Sincerely


Thomas F. Steiniger
President

cc: Leroy R. Clink, P.E.
Allan Blair

Engineering

Department

Guilford Rail System

Westover Industrial Park

I have divided this track estimate of the Westover Industrial Park into two line segments, the first segment being that track managed by Guilford Rail System with line segment two administered by Westover Metropolitan Development Corporation. This estimate was developed taking into account historical levels of service prescribed for the Park. There has been no consequential track evaluation taking into account issues raised by Mr. Clink, as presented in our March 2000 meeting. Therefore:

Line Segment 1.	Conn River Main Line to Mile Post 2.55
Line Segment 2.	Trackage encompassing "Westover Air Park - West"

Estimate

Line Segment 1:

Track Data:

- * 6,786 track feet - curved
- * 6,790 track feet - tangent
- * 9,427 track feet - on a grade exceeding AREA specifications
- * 7 rail / highway at-grade crossings

Cost Data:

- | | |
|--|---------------|
| * Install 3,800 cross ties. | \$ 319,200.00 |
| * Establish a rail anchor pattern, five ties boxed per rail. | \$ 22,650.00 |
| * Surface and line track, 13,576 track feet | \$ 20,499.00 |
| * Vegetation Management | \$ 12,761.00 |
| * Repair washouts - drainage - install culvert | \$ 80,000.00 |
| * Rail / Highway at-grade crossings (to be done by others) | \$ ----- |

Total	\$ 455,110.00
--------------	----------------------

Line Segment 2:

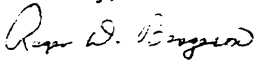
Track Data: * 1,600 track feet - curved
* 3,400 track feet - tangent
* 6 active industrial turnouts
* 3 rail / highway at-grade public crossings

Cost Data:

*	Install 1,300 cross ties	\$ 109,200.00
*	Replace 165 switch timber	\$ 24,750.00
*	Establish a rail anchor pattern, five ties boxed per rail.	\$ 5,500.00
*	Surface and line track 5,000 track feet + 6 turnout's	\$ 14,750.00
*	Retire non active turnouts and lag spike curves	\$ 21,000.00

Total **\$ 175,200.00**

Sincerely;



Roger D. Bergeron
AVP- Engineering

Leroy R. Clink, P.E.
Base Civil Engineer
Suite 250
Patriot Avenue
Westover ARB
Chicopee, MA 01020

D



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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

EXECUTIVE DEPARTMENT
(978) 663-1175

July 20, 2000

Colonel Thomas A. Mauzaka
439 AW/CV
100 Lloyd Street, East Wing, Suite 100
Chicopee, MA 01022-1825

Re: Great New England Air Show

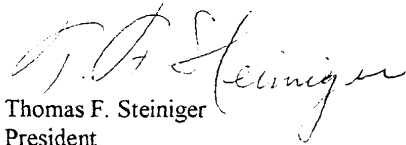
Dear Colonel Mauzaka:

Thank you for your letter regarding the use of the Guilford Rail System's track to transport equipment for use in the Air Show to and from the Westover Air Base. As you know, this line has been embargoed by GRS because of its concerns regarding the capacity of the track to support any rail traffic. Therefore, as long as this embargo is in effect GRS cannot operate, or allow other entities to operate, over this rail line. As a result, I cannot assent to your request to allow the use of the line for rail traffic in its current condition.

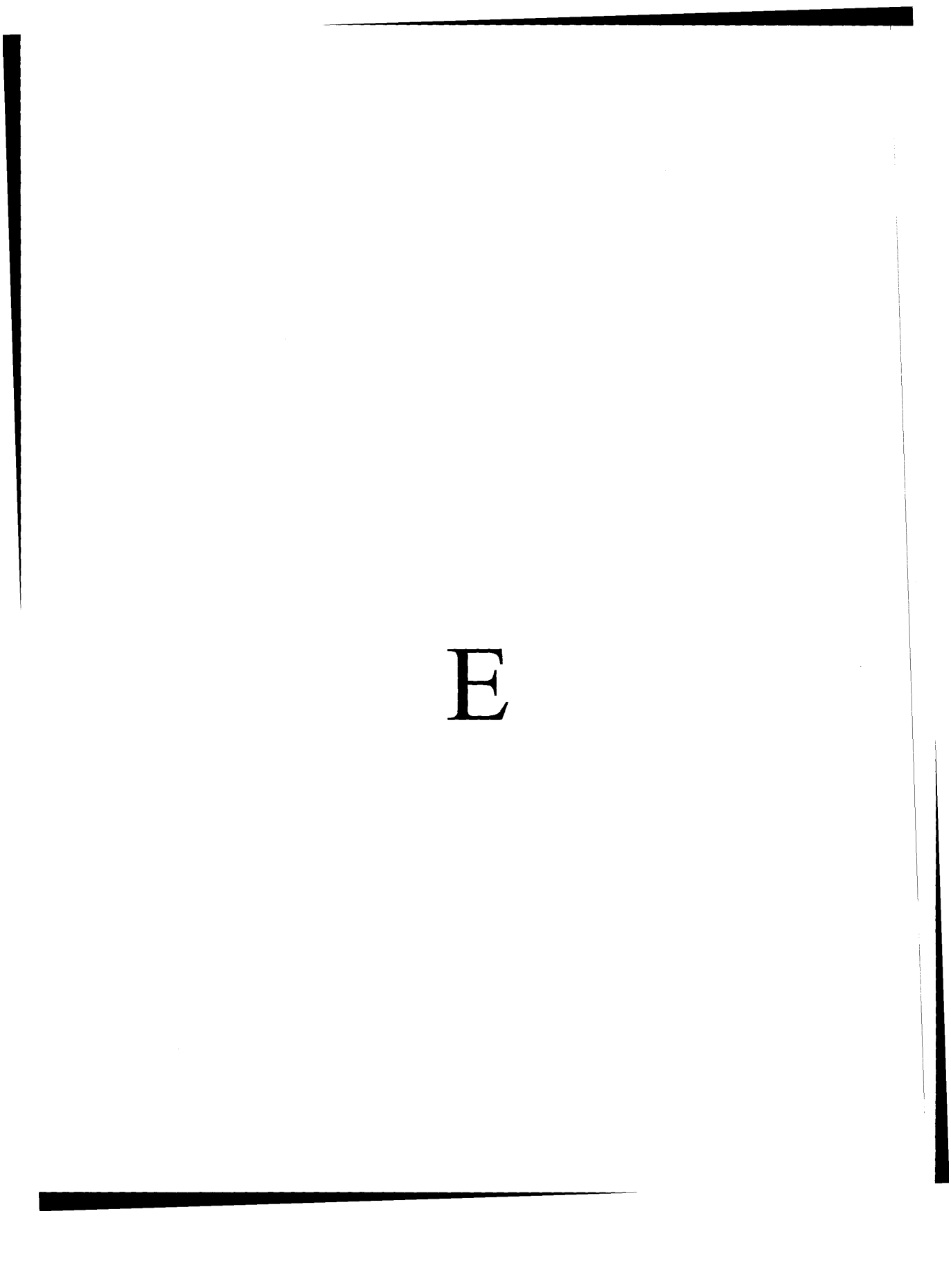
For your information, GRS has been attempting to follow up with Mr. Leroy Clink, the Base Civil Engineer at Westover, regarding his offer to provide assistance with the track repairs that are necessary on this line. However, despite repeated requests by GRS for a proposal from Mr. Clink for these repairs, to date I have not had any response from his office. Obviously, if this assistance had been forthcoming earlier, GRS would have been in a more favorable position to assist the Air Force with this project.

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

Sincerely,



Thomas F. Steiniger
President



E



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

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

EXECUTIVE DEPARTMENT
(978) 663-1186
Fax (978) 663-6907

June 28, 2004

Hon. Joseph F. Wagner
Chairman, Joint Committee on Transportation
Commonwealth of Massachusetts
House of Representatives
State House, Room 443
Boston, MA 02133-1054

Dear Chairman Wagner,

I am writing to inform you, as was indicated in my letter of May 7, 2004, that Guilford has filed Notice of Exemption to Abandon and Discontinue service on Westover Industrial Track (the "Line") in Chicopee, Massachusetts with the Surface Transportation Board. A copy of the filing is attached for your reference. The Notice of Exemption will be effective on or about August 11, 2004. Upon the filing of the Consummation Notice, ownership of the Line will revert to the Westover Development Corporation.

Guilford has been an active participant in discussions with your office, EOTC and local officials for quite some time with regard to a solution that will address the needs of all the parties involved. In November 2003, the parties attended a meeting and discussed several solutions to address the issues raised about the Route 33 grade crossing, one of which was full rehabilitation of the crossing. Guilford also provided an estimate projecting the costs of a full rehabilitation and stood ready and willing to provide assistance to the local governments to implement a temporary solution until a long-term plan could be evaluated and adopted.

Despite these efforts, there was little progress toward resolution. As a result, Guilford advocated for an additional meeting with all of the parties involved, including the Westover Development Corporation (the "Corporation") because it had been determined, upon further review of the relevant documents that an effective abandonment and discontinuance of the Line would result in the property reverting back to the ownership of the Corporation.