

NEW HAMPSHIRE CENTRAL RAILROAD, INC.

P.O. Box 165, North Stratford, NH 03590-0165
(603) 922-3400 Fax: (603) 922-9058

219312

May 15, 2007

ENTERED
Office of Proceedings

MAY 16 2007

Part of
Public Record



The Honorable Vernon Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Finance Docket No. 35022, New Hampshire Central Railroad, Inc. -
Lease and Operation Exemption - Certain Lines of the State of New Hampshire
Department of Transportation

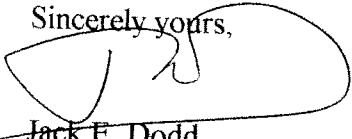
Dear Secretary Williams:

Attached for filing are the original and ten copies of New Hampshire Central Railroad's Comments on the Vermont Agency of Transportation's Request for Revocation of the above-captioned Docket. New Hampshire Central Railroad has also submitted Supplemental Information, in the body of the attachment, regarding the location of Subject Line. Also enclosed is a compact disc containing the Comments and Supplemental Information. Please time and date stamp the extra copy of the Notice of Exemption and return it to my office at the following address:

Jack E. Dodd
Director of Marketing and Sales
New Hampshire Central Railroad, Inc.
Post Office Box 28
Saint Albans, VT 05478-0028

If you have any questions, please contact me.

Sincerely yours,

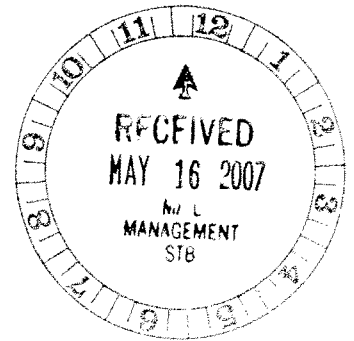

Jack E. Dodd
Director of Marketing and Sales

Enclosures

cc: Edward W. Jeffrey, President, New Hampshire Central Railroad, Inc.
Service List

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35022



**NEW HAMPSHIRE CENTRAL RAILROAD, INC.
-LEASE AND OPERATION EXEMPTION-
CERTAIN LINES OF THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**

**COMMENTS ON THE VERMONT AGENCY OF TRANSPORTATION'S
REQUEST FOR REVOCATION
AND SUPPLEMENTAL INFORMATION**

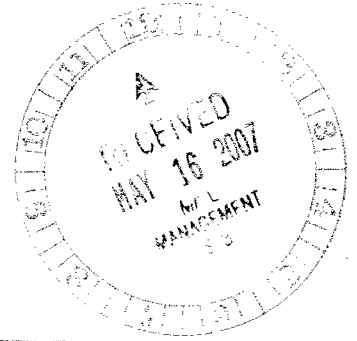
**Jack E. Dodd
Director of Marketing and Sales
New Hampshire Central Railroad, Inc.
Post Office Box 28
Saint Albans, VT 05478-0028
(802) 524-2035**

Dated: May 15, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35022

**NEW HAMPSHIRE CENTRAL RAILROAD, INC.
-LEASE AND OPERATION EXEMPTION-
CERTAIN LINES OF THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION**



**COMMENTS ON THE VERMONT AGENCY OF TRANSPORTATION'S
REQUEST FOR REVOCATION
AND SUPPLEMENTAL INFORMATION**

New Hampshire Central Railroad, Inc. ("NHCR") hereby submits comments regarding the Request for Revocation ("Request") filed with the Surface Transportation Board ("Board") by the State of Vermont Agency of Transportation ("Vermont") on May 9, 2007. In addition, NHCR will today submit supplemental relevant information to complement its Verified Notice of Exemption ("NOE") filed on May 2, 2007. NHCR respectfully requests that the Board consider the NOE, and the supplemental information contained herein, and not the unfounded allegations made by Vermont in its Request, when it prepares its decision in this matter.

COMMENTS REGARDING VERMONT'S REQUEST OF MAY 9, 2007

In its Request, Vermont alleges that NHCR did not comply with the information requirements of 49 C.F.R. Part 1150, Subpart E, when NHCR filed its NOE on May 2, 2007.¹ In

¹ See New Hampshire Central Railroad, Inc., Finance Docket 35022, Verified Notice of Exemption, filed May 2, 2007.

fact, Vermont questions whether 49 C.F.R. Part 1150, Subpart E, is the “proper provision”.² Vermont also contends that NHCR did not mention “the existence of [the rights of] Twin State Railroad Corporation (“TSRR”)” with respect to the line of railroad owned by the State of New Hampshire Department of Transportation (“NHDOT”) that is the subject of the NOE (“Subject Line”).³ Vermont further asserts that the NOE does not address how TSRR’s operating rights would be transferred to NHCR or, “in the alternative, articulate any legal authority to explain how TSRR’s operating rights might have been extinguished or superseded”.⁴ Vermont also refers to and relies on various documents throughout its Request, including the 1983 Settlement Agreement, the 1984 Lease and Operating Agreement and the 1998 Settlement Agreement.⁵ It appears, therefore, that the crux of Vermont’s Request is its reliance on agreements in which NHCR has never been involved and on dockets of various natures brought before the Board by other parties to which NHCR has never been a party.

Let us first address Vermont’s allegation of incompleteness of the NOE. One merely needs to read 49 C.F.R. Part 1150, Subpart E, as well as 49 U.S.C. 10902, to see clearly that these are the regulations with which a carrier has to comply in order to properly file a Verified Notice of Exemption.⁶ More particularly, Sec. 1150.43 spells out in detail the required information to be included in a Verified Notice of Exemption. NHCR complied fully with these requirements when it filed its NOE on May 2, 2007, in spite of Vermont’s allegations to the

² See Comments and Request for Revocation of the State of Vermont Agency of Transportation, Finance Docket 35022, filed May 9, 2007.

³ *Id* page 10

⁴ *Id* page 11

⁵ The 1983 Settlement Agreement is found at *Twin State Railroad Company - Abandonment Exemption - in Caledonia and Essex Counties, VT, STB Docket No. AB-862, Reply of Maine Central Railroad, Inc. (Sep. 21, 2005)* and is noted as Exhibit B thereto. The 1998 Settlement Agreement is found in the Request filed by Vermont, to which NHCR’s comments respond with this instant filing.

⁶ Authority is granted by 49 U.S.C. 721 (a), 10502, 10901 and 10902.

contrary. Thus, the Board must agree with NHCR that its NOE of May 2, 2007 is complete, insofar as the required information is concerned, without regard for matters Vermont has raised in its Request concerning TSRR or any other party involved in past proceedings before the Board or its predecessor. NHCR was given the authority by NHDOT, the owner of Subject Line, to operate Subject Line and submit required filings to the Board; the NOE fulfills the authority vested in NHCR by NHDOT. Moreover, it would not be appropriate for NHCR to address prior proceedings in which it was neither a party nor had an interest of any nature.

Vermont also noted that Exhibit B, the map of Subject Line, did not “identify any counties”. 49 C.F.R., Subpart E, Part 1150.43 (f) requires the applicant to “clearly indicate the area to be served, including...cities, counties...”. The three sole stations on Subject Line (Whitefield and Dalton, NH and Lunenburg (Gilman), VT) are shown clearly on the map. For the Board’s reference, Whitefield and Dalton are located in Coos County, NH, and Lunenburg (Gilman) is in Essex County, VT. Thus, NHCR believes that no modification of the map is required.

With regard to Vermont’s invocation of the two aforementioned Settlement Agreements, a reading of these Settlement Agreements, in the order in which they were created, gives the reader contradictory messages with regard to any rights Vermont may have had to name an operator of Subject Line. The 1983 Settlement Agreement, which lead to the 1984 Lease, gives Vermont the apparent right to name the operator⁷. This apparent right was made a part of the 1984 Lease as well, the apparent right being predicated upon a default under its lease of a rail line in Vermont. However, in the 1998 Settlement Agreement, Vermont decided to not consider the

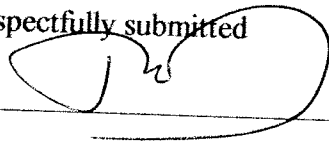
⁷ See 1983 Settlement Agreement, found at *Twin State Railroad Company - Abandonment Exemption - in Caledonia and Essex Counties, VT*, STB Docket No. AB-862, Reply of Maine Central Railroad, Inc. (Sep. 21, 2005), Exhibit B. The 1984 Lease is Exhibit A to this Docket.

surrender of a leasehold on a rail line in Vermont as a default, and waived "any and all future right...to designate a carrier other than TSRR to operate the Twin State Segment".⁸ Clearly, Vermont has relinquished any right it may have had to name an operator of Subject Line.

CONCLUSION

For all the reasons as provided herein, NHCR respectfully requests that the Board considers the NOE complete and that the NOE fulfills the requirements set forth in 49 C.F.R. Part 1150, Subpart E. Further, NHCR respectfully requests that, since Vermont has no standing with respect to Subject Line, its request to revoke the exemption is rejected by the Board.

Respectfully submitted



Jack E. Dodd, Director of Marketing and Sales
New Hampshire Central Railroad, Inc.
Post Office Box 28
Saint Albans, VT 05478-0028
(802) 524-2035

⁸ Request, Page 5.

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of May, 2007, served a copy of the foregoing on the following parties by first class mail, postage prepaid:

Christopher Morgan, Administrator
Bureau of Rail & Transit
New Hampshire Department of Transportation
John O. Morton Building
7 Hazen Drive, P. O. Box 483
Concord, NH 03302-0483

John K. Dunleavy, Esq.
Assistant Attorney General
Vermont Agency of Transportation
National Life Building
One National Life Drive
Montpelier, VT 05633-5001

Leonard M. Singer, Esq.
101 Arch Street, 9th Floor
Boston, MA 02110

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a final flourish.

Jack E. Dodd