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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

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION'S
COMMENTS REGARDING THE PENDING REQUESTS FOR REVOCATION**

ENTERED
Office of Proceedings

MAY 23 2002

Part of
Public Record

The State of New Hampshire
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May 22, 2007

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Department of Transportation

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– Lease and Operation Exemption –
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**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION'S COMMENTS
REGARDING THE PENDING REQUESTS FOR REVOCATION**

The New Hampshire Department of Transportation Bureau of Rail and Transit (hereinafter "NHDOT"), by and through its attorneys, the Office of the Attorney General, submits the following comments to the Surface Transportation Board (hereinafter "STB") in response to the requests for revocation filed by the Twin State Railroad Corporation (hereinafter "Twin State") and the Vermont Agency of Transportation (hereinafter "VAOT").

On April 18, 2007, the NHDOT, owner of the line subject to this proceeding, authorized the New Hampshire Central Railroad (hereinafter "NH Central") to provide rail freight service over the same. The NHDOT authorized NH Central to do so after receiving a number of requests for service from a potential shipper and receiver on the line. Twin State has not provided service over the subject line since October of 1999. After receiving the request for service, the NHDOT made a number of unsuccessful attempts to contact Twin State by fax, regular mail and certified mail (a certified letter was returned unopened).

NHDOT purchased the subject rail corridor from the Maine Central Railroad Company (hereinafter "Maine Central"), a subsidiary of Guilford Transportation Industries, Inc. (hereinafter "Guilford"), in December 2002. The sale was made

subject to a 1984 Lease and Operating Agreement in which Maine Central, Twin State and the Lamoille Valley Railroad Company were parties. (The Assignment of the Lease and Operating Agreement is hereinafter referred to as “the Assignment” and is attached hereto as *Appendix A*. The Lease and Operating Agreement shall be hereinafter referred to as “the Agreement” and is attached hereto as *Appendix B*.)

The initial term of the Agreement was effective through December 31, 1988.

However, Twin State had the option to renew the Agreement for a maximum of four 10-year periods subsequent to that date. In January of 2003, Maine Central assigned all its rights, title and interests in the Agreement to the NHDOT. The Assignment being in place, NHDOT now stands in the shoes of Maine Central. Pursuant to the Assignment clause identified as XI on page 17 of the Agreement, Twin State cannot assign its rights under the Agreement without written consent of NHDOT.

The NHDOT may authorize another carrier such as NH Central (pending the appropriate filing with the STB) to operate over the line as the Agreement does not grant Twin State an exclusive right to the line. Even if the Agreement could be interpreted that Twin State has an implied exclusive right to operate over the subject line, NHDOT would still be within its rights to provide service through another carrier which it is doing here with NH Central.

Section 2.02 of the Agreement requires Twin State to provide rail service “equal in all respects, including frequency, reliability and speed,” to the service provided by Maine Central at the time the Agreement was initiated. Within this section, there is an acknowledgment of Twin State that Maine Central provided “service upon the demand of customers six days per week.” As previously

mentioned, Twin State has not provided service over the line since October 1999 despite the request for service made to both Maine Central and NHDOT by a potential shipper and receiver.

The Agreement further grants NHDOT the exclusive right to deal directly with shippers and receivers on the line and obligates Twin State to handle cars on behalf of the NHDOT. NHDOT may further solicit such traffic in its own best interest.

In a letter dated February 21, 2003 (attached hereto as *Appendix C*), NHDOT served written notice pursuant to Section 5.02 of the Agreement that Twin State had breached Sections 2.02, 2.04 and 2.06 of the Agreement and had 30 days to cure the defaults. As Twin State has yet to even attempt to cure such defaults, the NHDOT may provide service on the line through another carrier pursuant to Section 5.03 of the Agreement.

NHDOT's authorization to NH Central to operate over the subject line pending its filing of a Notice of Exemption with the STB is an exercise of NHDOT's express rights under the 1984 Agreement. Twin State stopped service over the line in October of 1999. Since that time, both Maine Central and NHDOT have received requests for service. Maine Central and NHDOT have brought these requests for service to Twin State's attention with no subsequent action from Twin State. NHDOT has provided Twin State with the required notice and demand to cure, which has been ignored by Twin State. As such, NHDOT is exercising its rights under the Assignment and the Agreement to provide service on the subject line by authorizing NH Central to do the same.

NHDOT, therefore, requests the STB deny the pending requests for revocation.

Respectfully submitted,

The State of New Hampshire
Department of Transportation
Bureau of Rail & Transit

By its attorneys,
Kelly A. Ayotte
Attorney General

Date: May 22, 2007



Stephen G. LaBonte
Assistant Attorney General
Transportation and Construction Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
(603) 271-3675

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has on May 22, 2007 been forwarded first class mail, postage prepaid, to

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

Twin State Railroad Corporation
Leonard M. Singer, Esquire
101 Arch Street
Boston, MA 02110

John K. Dunleavy, Esquire
Assistant Attorney General
Vermont Agency of Transportation
Office of the Attorney General
Transportation Section
National Life Bldg., Drawer 33
Montpelier, VT 05633-5001



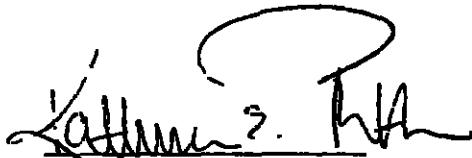
Stephen G. LaBonte

APPENDIX A

ASSIGNMENT OF LEASE AND OPERATING AGREEMENT

For consideration paid by the **STATE OF NEW HAMPSHIRE, THROUGH ITS DEPARTMENT OF TRANSPORTATION**, John Morton Building, 1 Hazen Drive, Concord, Merrimack County, New Hampshire ("Assignee") the **MAINE CENTRAL RAILROAD COMPANY**, a Maine Corporation with its principal place of business at Iron Horse Park, North Billerica, Massachusetts ("Assignor") hereby assigns unto the Assignee all of the Assignor's right, title and interest, if any, in the Lease and Operating Agreement between the Maine Central Railroad, the Lamoille Valley Railroad Corporation and the Twin State Railroad Corporation (the "Agreement") entered into on March 1, 1984 affecting a portion of the so-called Twin State Railroad as described in "Exhibit A". A copy of the Agreement is attached hereto as "Exhibit B".

IN WITNESS WHEREOF, the **MAINE CENTRAL RAILROAD COMPANY** has caused this Assignment to be executed in its behalf by Roland Theriault, Vice President, Real Estate of the **MAINE CENTRAL RAILROAD COMPANY**, on this 7th day of January, 2003.


Witness

By: 
Roland Theriault
Vice President, Real Estate

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

January 7, 2003

Then personally appeared the above-named Roland Theriault, its Vice President for Real Estate of the **MAINE CENTRAL RAILROAD COMPANY** and acknowledged the forgoing instrument to be his free act and deed of said **MAINE CENTRAL RAILROAD COMPANY**, before me.


Notary Public
My Commission Expires: March 8, 2006

EXHIBIT "A"

LEGAL DESCRIPTION

Certain parcels or strips of land (railroad right-of-way) located in the Towns of Whitefield and Dalton, County of Coos, State of New Hampshire, as shown on Valuation Section 17NH Map 53 beginning in Whitefield at engineering station 5060+25 and continuing through Dalton, New Hampshire, to the New Hampshire/Vermont state line as shown on Valuation Section 17NH Map 59 thence continuing on Valuation Section 18VT Map 1 in Lunenburg, Vermont and ending in Lunenburg and shown on Valuation Section 18 VT Map 3, at engineering station 5503 at River Road (Town Road).

The said right-of-way includes the entire width of said portion of said rail line including all appurtenances thereto and all fixtures attached or affixed thereon. Said right-of-way runs in a generally north-easterly direction and is more particularly defined as shown, outlined with heavy dashed line (..) as shown on Federal Valuation plans on file with the Chief Engineer of the Maine Central Railroad Company, Iron Horse Park, North Billerica, Massachusetts 01862 and the State of New Hampshire, Department of Transportation, Bureau of Railroads and Public Transportation, 1 Hazen Drive, Concord, New Hampshire 03302.

Said parcel contains a total area of approximately 97 86 acres of land, and is approximately 8.5 miles in length

This conveyance is subject to a Lease and Operating Agreement between the Maine Central Railroad Company and Twin State Railroad Corporation and Lamoille Valley Railroad Company dated March 1, 1984 from mile post P103 in Whitefield to mile post 131 5 in St. Johnsbury, Vermont

APPENDIX B

LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT ("Agreement") dated as of the 1st day of March, 1984, by and among MAINE CENTRAL RAILROAD COMPANY, a Maine corporation ("MEC"), TWIN STATE RAILROAD CORPORATION, a Vermont corporation ("TSR"), and LAMOILLE VALLEY RAILROAD COMPANY, a Vermont corporation ("LVRC").

WITNESSETH:

WHEREAS, MEC, LVRC, the State of Vermont ("Vermont") and Guilford Transportation Industries, Inc. ("Guilford"), the owner of all of the outstanding common stock of MEC, have executed and delivered a Settlement Agreement dated as of November 1, 1983 (the "Settlement Agreement"), pursuant to which they have agreed to resolve, as of the Effective Date (as defined below), certain disputes arising in connection with the acquisition by Guilford of control of Boston and Maine Corporation ("B&M"); and

WHEREAS, the Settlement Agreement provides that MEC and LVRC will enter into an agreement for the operation of the line of railroad of MEC from Whitefield, New Hampshire to St. Johnsbury, Vermont by LVRC; and

WHEREAS, TSR has been organized as a wholly-owned subsidiary of Northern Vermont Corporation, which is also the owner of all of the outstanding stock of LVRC, to operate the Line (as defined below) as the designee of LVRC;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises and covenants set forth herein and intending to be legally bound, hereby agree as follows:

I. GRANT OF AUTHORITY

1.01 In consideration of the payment, as of the Effective Date, of the sum of \$200,000 by TSR to MEC, MEC hereby leases and grants to TSR the right to use and operate, during the term of this Agreement and subject to the provisions of this Agreement and to the limitations set forth in Sections V and VI below, the line of railroad of MEC between the east MEC yard limit sign at approximately Mile Post P 103, Whitefield, New Hampshire and the west end of the MEC main track at approximately Mile Post 131.15, St. Johnsbury, Vermont, except a parcel of real property consisting of approximately 9.2 acres at South Lunenburg, Vermont, situated northerly of a line approximately 900 feet long lying 50 feet northerly of and parallel to the monumented baseline of MEC between the Connecticut River and Lunenburg State Aid Highway

No. 1. TSR shall have the right to use and operate the line of railroad and all appurtenant facilities, including tracks, bridges, culverts, signals, fences and buildings, which are used in connection with the operation of the line, all of which shall be referred to in this Agreement as the "Line".

1.02 MEC hereby assigns to TSR all leases, sidetrack agreements, licenses, private crossing agreements and other such agreements in connection with or relating to the Line listed in Appendix A attached hereto. TSR shall have the right on its own behalf to enter into such additional leases, sidetrack agreements, licenses, private crossing agreements or other such agreements in connection with or relating to the Line, subject, however, to the prior written consent of the Chief Engineer of MEC, which consent shall not be unreasonably withheld, and to collect and receive for its own account any rents or payments with respect to all such agreements. TSR shall have the right and responsibility to enter into agreements with states, municipalities or administrative agencies relating to highway grade crossings, highway bridges or grade crossing protection on the Line, subject, however, to the prior written consent of the Chief Engineer of MEC, which consent shall not be unreasonably withheld. MEC shall have and retain the exclusive right, and TSR shall be precluded from

claiming or exercising any right, to enter into agreements, so long as any such agreements do not adversely affect the operation of the Line, to convey the fee interest in any real property constituting part of the Line, to grant an easement affecting the Line or to resolve any taking by eminent domain affecting the Line. Upon termination of this Agreement, TSR shall assign or reassign to MEC all leases, sidetrack agreements, licenses, private crossing agreements and other such agreements in connection with or relating to the Line.

1.03 TSR may request MEC to retire any property on, or portion of, the Line which may no longer be required for the performance of the duties of TSR under this Agreement, and MEC shall not unreasonably withhold approval of such requests. TSR may retain for its own account any property recovered or proceeds received incidental to any such retirement, but retirement accounting shall be performed by MEC.

II. COVENANTS OF LVRC

TSR hereby covenants and agrees as follows:

2.01 As of the Effective Date, TSR shall pay to MEC the sum of \$200,000.

2.02 During the term of this Agreement, TSR shall operate the Line and shall provide train service which will be equal in all respects, including frequency, reliability and speed, to the service presently provided on the Line by MEC or such other manner of service as may be warranted by traffic levels and operating conditions as they may exist from time to time. TSR acknowledges that presently MEC provides service upon the demand of customers six days per week. TSR shall provide all locomotives, personnel and any other equipment (except that cars for loading shall be provided as stated in Section IV below) necessary in order to provide such service.

2.03 TSR shall offer to employ one MEC employee presently assigned to maintenance-of-way duties on the Line.

2.04 TSR shall assume and bear all costs related to its operation of the Line.

2.05 TSR shall file any returns or reports required by Vermont or New Hampshire in respect of franchise, corporate or income taxes and shall pay any taxes assessed on the basis of the earnings or income of, or operation of the Line by, TSR. TSR shall pay (1) 37.5% of the Vermont property and franchise tax, 32 Vermont Statutes Annotated, Chapter 211, §§ 8211-8286, as it or a similar tax law based on the value of

property used for railroad operations may be in effect from time to time, assessed in respect of that portion of the Line which is located in Vermont and (ii) 37.5% of the New Hampshire railroad and public utility tax, 1-A New Hampshire Statutes Annotated, Chapter 82, §§ 1-38, as it or a similar tax law based on the value of property used for railroad operations may be in effect from time to time, assessed in respect of that portion of the Line which is located in New Hampshire, whether any such taxes are assessed against TSR or MEC or both. Except for property taxes to be paid by MEC pursuant to Section 3.02 below and except as provided in the preceding sentence, TSR shall pay any other property taxes assessed on the Line.

2.06 TSR shall, at its own expense, maintain the Line in good condition and repair so that freight train operations can be conducted on the Line as warranted by traffic levels in a safe, efficient and economical manner and in compliance with all federal and state laws and regulations. Any property or materials used by TSR to replace or repair any property or materials in the Line shall be of equal or better quality compared to the property or materials so replaced or repaired.

2.07 TSR shall indemnify and save MEC, its parent and its officers, agents and employees harmless from and

against all liabilities, claims, charges, costs and expenses of whatever nature arising from or in connection with the use, operation or maintenance of the Line by TSR.

2.08 TSR shall, at all times during the term of this Agreement, maintain, from insurers approved by MEC, which approval shall not be unreasonably withheld, the following types and amounts of insurance coverage:

(a) insurance against loss or damage to property, including without limitation property of MEC, cargo and rolling stock, and against injury or death to persons, including without limitation employees of MEC, arising or incurred in connection with the operation, use or maintenance of the Line, in minimum amounts of (i) \$1,000,000 for injury or death of any person and \$2,000,000 for injury or death arising out of any occurrence and (ii) \$1,000,000 for any loss of or damage to property and \$2,000,000 for loss or damage arising out of any occurrence, in each case subject to a deductible not in excess of \$25,000; and

(b) insurance against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by the terms "extended coverage" and "vandalism and malicious mischief" to any bridges located on the Line in an amount of \$1,000,000 for any occurrence, subject to a deductible not in excess of \$25,000.

TSR shall maintain the insurance described in subsection 2.08(a) above at its sole expense and shall pay 37.5% of the cost of the insurance described in subsection 2.08(b) above.

III. COVENANTS OF MEC

MEC hereby covenants and agrees as follows:

3.01 MEC shall pay TSR \$300 for each loaded car (but not including any MEC company material cars or MEC non-revenue equipment) handled by TSR on the Line. On January 1, 1985, and on January 1 of each succeeding year this Agreement is in force and effect, the amount paid by MEC to TSR for each loaded car so handled by TSR shall be increased or decreased, as the case may be, by multiplying \$300 by a fraction, the numerator of which shall be the "Labor, Fuel and Materials and Supplies Combined" portion of the Railroad Cost Recovery Index of the Association of American Railroads and the denominator of which

shall be such Index as of January 1, 1984. If the Association of American Railroads ceases publication of such Index, the parties hereto shall utilize such other index, for the purpose of adjusting the payment for each loaded car, that fairly reflects the increased or decreased costs of labor, fuel and materials and supplies incurred in operating railroads in the United States. No payment shall be due from MEC to TSR for the handling by TSR of empty cars which are loaded or made empty on the Line. TSR shall bill MEC after the conclusion of each month. Such bills shall show the car number and the date or dates of handling for each loaded car for which payment is requested. Within 15 business days after the receipt of any such bill, MEC shall make the payment due TSR.

3.02 MEC shall file any returns or reports required by Vermont or New Hampshire in respect of franchise, corporate or income taxes and shall pay any taxes assessed on the basis of the income or earnings of MEC in respect of the Line. MEC shall pay (i) 62.5% of the Vermont property and franchise tax, 32 Vermont Statutes Annotated, Chapter 211, §§211-8286, as it or a similar tax law based on the value of property used for railroad operations may be in effect from time to time, assessed in respect of that portion of the Line which is located in Vermont and (ii) 62.5% of the New Hampshire railroad

and public utility tax, 1-A New Hampshire States Annotated, Chapter 82, §§1-38, as it or a similar tax law based on the value of property used for railroad operations may be in effect from time to time, assessed in respect of that portion of the Line which is located in New Hampshire, whether any such taxes are assessed against MEC or TSR or both. MEC shall pay property taxes assessed on the parcel of real property described in Section 1.01 above as not being subject to this Agreement.

3.03 MEC shall pay 62.5% of the cost of the insurance described in subsection 2.08(b) above.

IV. OPERATION AND TRAFFIC

4.01 TSR shall handle cars on the Line for the account of MEC. MEC shall have and retain the exclusive right to deal directly with shippers and receivers regarding traffic moving to or from the Line and to solicit such traffic in the best interests of MEC and the railroad system owned by Guilford (hereinafter referred to as the "Guilford system"). MEC shall provide all station agency functions related to the operation of the Line and shall furnish TSR such information as may be necessary for TSR to provide service to customers on the Line. MEC shall provide TSR with instructions concerning delivery

locations for traffic moving to or from the Line, and TSR shall comply with such instructions. TSR shall furnish MEC weekly with copies of each daily "Conductor's Train Report" completed with information relating to cars handled on the Line during each week. MEC shall have the right, at reasonable times, to review and obtain copies of any records of TSR or LVRC relating to traffic handled by TSR on the Line.

4.02 TSR shall first use Guilford system cars supplied to TSR for loading for any shippers located on the Line. To the extent that Guilford system cars are not so available, TSR may provide TSR or LVRC cars for loading. In the event that neither Guilford system cars nor TSR or LVRC cars are available, TSR shall use cars supplied to it by any Guilford system railroad.

4.03 TSR shall operate the Line under its own rules, except that TSR shall incorporate into its operating instructions MEC Time Table Special Instructions as they may be pertinent to operations of the Line, including MEC Time Table No. 2, dated April 11, 1982, pages 2 through 7 under Sections (Rules) 33a, 33b, 93, 98, 110 and 695.

V. DEFAULTS BY LVRC AND REMEDIES OF MEC

5.01 The following events or occurrences shall constitute defaults by TSR under this Agreement:

(a) the failure or inability of TSR to provide service on the Line, except when such failure or inability is caused by an event or occurrence such as an act of God, vandalism, strike, or order of a court or other governmental authority which (i) is not attributable, directly or indirectly, to any act or failure to act by TSR and (ii) cannot be cured by TSR without unreasonable delay or expense;

(b) the failure to maintain the Line in accordance with the standard established in Section 2.06 above;

(c) the failure to pay any of the costs and expenses to be paid by LVRC pursuant to Section 2.04 or Section 2.05 above; or

(d) the failure to comply with or to perform any other covenant or agreement undertaken by TSR pursuant to this Agreement.

5.02 In the event that MEC gives TSR and LVRC written notice of the occurrence of any default under this Agreement and TSR or LVRC, pursuant to Section XII below, does not cure any such default within 30 days after such notice, then MEC may, by further written notice to TSR and LVRC, with a copy to Vermont, terminate the rights and obligations of TSR and LVRC under this Agreement.

5.03 Notwithstanding any other provision of this Agreement, in the event that TSR fails to provide service in the manner required by Section 2.02 above, MEC may, at its option, provide service on the Line itself or through a carrier designated by MEC.

VI. SUBSTITUTION OF OPERATOR

6.01 The rights and obligations of TSR and LVRC under this Agreement shall terminate, but the Agreement shall remain in full force and effect, upon the occurrence of either of the following two events:

(a) provision of notice by MEC to TSR and LVRC of a default, as provided in Section 5.02 above, which TSR or LVRC has failed to cure within 30 days after notice of such default; or

(b) provision of notice by Vermont to MEC and LVRC to the effect that LVRC is in default under its lease with Vermont concerning the operation of the line of railroad between Swanton, Vermont and St. Johnsbury, Vermont or to the effect that LVRC has failed to renew such lease.

In either event, Vermont may, by notice to MEC and to TSR and LVRC, designate a new operator of the Line in place of TSR.

6.02 Subject to the approval of Guilford and the approval of or exemption by any regulatory agency which may have jurisdiction over such matters, any new operator so designated by Vermont shall assume all of the rights and obligations of TSR, except the rights set forth in Section VII below, under this Agreement.

VII. TERMINATION BY TSR

TSR may, at its option, terminate this Agreement (i) for any reason within two years after the Effective Date or (ii) if it handles less than 1,100 carloads on the Line in any calendar year during the period beginning on the second anniversary of the Effective Date and ending on December 31, 1988. If TSR so terminates this Agreement, or if the Agreement

terminates pursuant to the last sentence of Section VIII below, MEC shall pay TSR the sum of \$200,000; provided, however, that MEC shall have no obligation to pay any amount to TSR if the rights and obligations of TSR are terminated pursuant to Section VI above.

VIII. TERM

The initial term of this Agreement shall be from the Effective Date through December 31, 1988. At its option, TSR may renew this Agreement for a maximum of ~~four~~ 10-year periods subsequent to December 31, 1988. Notwithstanding any other provision of this Agreement, it shall terminate and be of no further force and effect as of June 30, 1994, unless such date is extended by MEC, in the event that Vermont has not provided assurances satisfactory to MEC by such date to the effect that Vermont has obtained the authority necessary to fulfill the obligations assumed by Vermont with respect to certain public structures and grade crossings in Vermont pursuant to paragraph 5 of the Settlement Agreement.

IX. NOTICES

All notices, requests and demands to or upon the parties hereto shall be deemed to have been given or made when deposited in the United States mails, postage prepaid, addressed as follows:

To:

**Twin State Railroad Corporation
Stafford Avenue
Morrisville, Vermont 05661**

with a copy to:

**Robert A. Gensburg, Esq.
Gensburg & Axelrod
101 Eastern Avenue
P.O. Box 189
St. Johnsbury, Vermont 05819**

To:

**Lamoille Valley Railroad Company
Stafford Avenue
Morrisville, Vermont 05661**

with a copy to:

**Robert A. Gensburg, Esq.
Gensburg & Axelrod
101 Eastern Avenue
P. O. Box 189
St. Johnsbury, Vermont 05819**

To:

**Maine Central Railroad Company
242 St. John Street
Portland, Maine 04102**

with copies to:

**James E. Howard, Esq.
Kirkpatrick, Lockhart, Johnson & Hutchison
1500 Oliver Building
Pittsburgh, Pennsylvania 15222**

and

**Guilford Transportation Industries, Inc.
171 Orange Street
New Haven, Connecticut 06510**

X. NO WAIVER; CUMULATIVE REMEDIES

No failure to exercise, and no delay in exercising on the part of any party of, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power, or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the parties hereunder are cumulative and not exclusive of any rights or remedies provided by law, and all such rights and remedies may be exercised singly or concurrently.

XI. ASSIGNMENT

This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. TSR shall not assign this Agreement or any portion hereof except upon the prior, written consent of MEC.

XII. GUARANTY BY LVRC

LVRC hereby (i) guarantees the performance by TSR of its duties, covenants and obligations under this Agreement and (ii) if TSR fails to perform such duties or obligations or to fulfill such covenants or if there is a default by TSR

hereunder, consents to the enforcement by MEC against LVRC of any such duties, covenants and obligations and to the exercise of any rights, powers, remedies or privileges available hereunder or at law.

XIII. EFFECTIVE DATE

This Agreement shall become effective (the "Effective Date") only upon the occurrence of both of the following conditions precedent:

- (a) the litigation by LVRC, Vermont and Eastern Magnesia Talc Company relating to the acquisition of B&M, including the matter relating to LVRC remanded to the Interstate Commerce Commission ("ICC") pursuant to Lamoille Valley Railroad Co. v. ICC, 711 F.2d 295 (D.C. Cir. 1983), shall have been terminated and dismissed with prejudice by the ICC and any courts having jurisdiction over such matters; and
- (b) this Agreement, the Settlement Agreement and any transactions contemplated hereby or thereby shall have received such approvals, if any, as may be required by the ICC, Vermont or New Hampshire or

AGREEMENTS - WHITEFIELD, N.H. TO ST. JOHNSBURY, VT.

<u>Name</u>	<u>Description</u>	<u>Agreement Date</u>	<u>Annual Rent</u>
<u>Whitefield, N.H.</u>			
Hennessey, Herbert	Land Lease	5/17/65	10.00
Hutchins, Roger W.	" "	12/10/79	45.00
McIntyre, Douglas	" "	5/ 1/60	10.00
Stiles, Robert	" "	5/ 1/70	108.00
Way, Ralph A.	" "	8/ 5/76	25.00
New England Tel & Tel Co.	Wires	12/ 1/46	15.00
New England Tel & Tel Co.	U.G. Cable	12/20/61	38.00
New England Tel & Tel Co.	Aerial Cable	12/10/71	-
Public Service Co. of N.H.	115 KV Line	5/27/68	65.00
Bray, E. C.	Water Pipe	10/20/28	-
Town of Whitefield	Sewer	8/16/95	-
Town of Whitefield	Sewer	7/25/06	-
Town of Whitefield	Sewer	6/16/23	-
Town of Whitefield	Sewer	9/ 5/30	-
Town of Whitefield	Sewer	5/ 6/32	-
Whitefield Mfg. Co.	Water Pipe	6/25/12	-
<u>Dalton/Scotts, N.H.</u>			
White, C. N.	Post Brook	4/28/10	-
New England Tel & Tel Co.	Wires	12/ 1/46	15.00
New England Tel & Tel Co.	Cables	4/18/73	-
New England Tel & Tel Co.	Wires	5/22/74	25.00
New England Tel & Tel Co.	Cables	9/ 1/75	-
New England Tel & Tel Co.	Wires	9/15/75	25.00
Public Service Co. of N.H.	110,000 Volt Line	3/ 8/48	65.00
Public Service Co. of N.H.	33 KV Line	6/25/53	40.00
Public Service Co. of N.H.	115 KV Line	9/25/58	65.00
Public Service Co. of N.H.	7200 Volt Line	12/ 1/75	50.00
Twinstete Gas & Elect. Co.	Wires	10/ 6/23	Decree
Morin, George	Water Pipe	10/23/29	-
Cloutier, Leon	Pipe	9/13/26	-
Brooks, George	Temp. Crossing	9/20/73	-
Dorsey, B. S.	Temp. Crossing	4/ 9/81	95.00
White, R. R.	Temp. Crossing	6/ 9/81	95.00
<u>Lunenburg, VT.</u>			
New England Tel & Tel Co.	Wires	8/11/47	45.00
New England Power Co.	Trans. Line	1/21/55	5.00
Central Vt. Public Service	Wires	7/ 1/63	5.00
Smith, O. R.	Sewer	8/28/23	-

APPENDIX A
PAGE 2

<u>Name</u>	<u>Description</u>	<u>Agreement Date</u>	<u>Annual Rent</u>
<u>Gilman, VT.</u>			
Georgia Pacific Corp.	Yard Tracks	1/16/78	Ind. Owned
Georgia Pacific Corp.	8" Water Pipe	8/ 8/22	-
Georgia Pacific Corp.	8" Sewer	7/ 8/24	-
Georgia Pacific Corp.	Steam & Wtr. Pipes	5/22/36	-
Georgia Pacific Corp.	Wtr. & Sewer Pipes	11/25/47	-
Georgia Pacific Corp.	Hopper & Conveyors	11/25/47	-
Georgia Pacific Corp.	Private Crossings	4/20/78	-
Bernard, P.	Water	10/27/23	-
<u>East Concord, VT.</u>			
Ranney, S. C.	1/2" Water Pipe	7/12/16	-
<u>Miles Pond, VT.</u>			
Caldbeck-Cosgrove Corp.	Water Pipe	9/22/22	-
State of Vermont	" "	10/15/68	10.00
Renfrew, E. R.	Foot Crossing	6/10/71	-
<u>No. Concord, VT.</u>			
Copp, Carroll D.	Land Lease	11/ 1/56	-
Copp, Carroll D.	Water Pipe	11/ 1/56	-
Copp, Carroll D.	2" Water Pipe	10/15/69	10.00
Johnson Lumber Co.	3/4" Water Pipe	12/ 7/37	-
State of Vermont	Conduit	3/10/38	-
Central Vt. Public Service	Guy Wire	5/ 8/47	-
<u>Concord, VT.</u>			
Central Vt. Public Service	Wires	7/ 8/49	5.00
New England Tel & Tel Co.	"	4/ 1/48	15.00
New England Tel & Tel Co.	"	12/10/57	15.00
New England Tel & Tel Co.	Guy Wires	12/10/57	15.00
New England Tel & Tel Co.	Aerial Cable	6/15/57	25.00
Hood, H. P. & Sons	Water Pipe	12/ 9/19	-
Lewis, E. C.	Water Pipe	4/23/17	-
Village of Concord	Sewer	9/28/15	-
<u>East St. Johnsbury, VT.</u>			
Congregational Church	Sewer	10/26/21	-
Croteau, Paul	Water Pipe	9/ 1/53	5.00
Lee, H. J.	Sewer	7/18/14	-

APPENDIX A
PAGE 3

<u>Name</u>	<u>Description</u>	<u>Agreement Date</u>	<u>Annual Rent</u>
<u>St. Johnsbury, VT.</u>			
Dolgin, Steven	Land Lease	7/16/79	25.00
Gravelin, Elmer	" "	7/ 1/61	14.00
Judd, Alfonso R.	" "	8/ 1/61	25.00
Lewisburg Chair Co.	" "	4/ 1/61	5.00
Maple Grove, Inc.	" "	3/31/69	135.00
Murphy, Bernard J.	" "	7/29/66	90.00
Peck Co., The	" "	5/ 1/61	75.00
Sangravco, Lawrence, Inc.	" "	9/20/78	25.00
Vermont Salvage Corp.	" "	7/10/61	15.00
Colt Industries, Inc.	Tracks 16 & 18	9/22/66	Ind. Owned
Maple Grove/Peck Co.	Track 5	12/ 5/69	" "
Rossi, Alan D.	Track 10	2/23/81	" "
True Temper Corp.	613 Ft. Track 8	7/11/49	" "
True Temper Corp.	45 Ft. Track 8	9/ 1/49	" "
Vermont Salvage Corp.	250 Ft. Track 14	7/ 1/55	" "
Vermont Salvage Corp.	450 Ft. Track 14	4/ 5/52	" "
Central Vt. Public Service	Wires	7/ 3/47	5.00
Central Vt. Public Service	"	1/20/49	5.00
Central Vt. Public Service	"	11/14/50	5.00
Central Vt. Public Service	"	10/20/59	5.00
Central Vt. Public Service	7200 Volt Line	9/ 8/66	25.00
Central Vt. Public Service	34.5 KV Line	1/12/67	40.00
New England Tel & Tel Co.	Wires	1/ 3/49	15.00
New England Tel & Tel Co.	Aerial Cable	6/17/81	25.00
New England Tel & Tel Co.	Cables	4/15/82	-
New England Tel & Tel Co.	Guy Wires	6/17/82	25.00
Sangravco, Lawrence, Inc.	120 Volt Line	6/15/76	25.00
St. Johnsbury Comm. Tele.	Wires	3/20/67	25.00
Vermont Elect. Power Co.	115 KV Line	4/10/72	150.00
Carpenter, C. W.	14" Water Pipe	7/ 6/60	-
Colt Industries, Inc.	4" Water Pipe	1/12/66	10.00
Dean, H. C.	Sewer	1/ 2/17	-
Goodrich, R. B.	12" Water Pipe	12/ 5/69	-
Hudson, E. A.	Sewer	5/25/40	-
Maple Grove, Inc.	Pipes	3/31/69	10.00
Murphy, B. J.	6" Sewer	9/16/67	10.00
Passumpsic Tel. Co.	Conduit	9/15/12	-
Passumpsic Tel. Co.	"	7/30/12	-
Potvin, C. F.	Pipes	8/10/82	25.00
Riverside Lumber Co.	Water	12/ 9/15	-
Town of St. Johnsbury	10" C.I. Pipe	5/20/31	-
Town of St. Johnsbury	14" Water Pipe	8/30/34	-
Town of St. Johnsbury	8" Tile Pipe	9/11/34	-
Town of St. Johnsbury	8" Water Pipe	10/15/58	17.00
Town of St. Johnsbury	10" Sewer	5/20/63	10.00
Town of St. Johnsbury	20" Sewer	5/20/63	20.00
Town of St. Johnsbury	3/4" Water Pipe	10/15/66	10.00

APPENDIX A
PAGE 4

<u>Name</u>	<u>Description</u>	<u>Agreement Date</u>	<u>Annual Rent</u>
<u>St. Johnsbury, VT.</u>			
Weidmann Ind.	4" Oil Pipes	2/25/81	25.00
Maple Grove, Inc.	Coal Pit	6/20/69	-
Colt Industries, Inc.	Pedestrian Cross.	6/11/82	55.00
Gilfel of Vt., Inc.	Temp. Crossing	5/11/72	-
Maple Grove, Inc.	" "	11/22/82	80.00
True Temper Corp.	" "	7/ 1/62	100.00

2025 45 Y.

APPENDIX C



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



CAROL A. MURRAY, P E
COMMISSIONER

GILBERT S. ROGERS, P E.
ASSISTANT COMMISSIONER

February 21, 2003

Twin State Railroad Corporation
P O. Box 1267
Trenton, FL 32693

Lamoille Valley Railroad Company
P O Box 1360
Trenton, FL 32693

Re: Lease and Operating Agreement

Dear Mr. Forbes,

On December 30, 2002, the State of New Hampshire, Department of Transportation acquired the right, title and interest of the Maine Central Railroad Company (MEC) in a portion of the Twin State Railroad from Whitefield, New Hampshire to Gilman, Vermont. The State acquired this Line subject to the Lease and Operating Agreement between MEC, the Twin State Railroad (TSR) and the Lamoille Valley Railroad Company (LVRC) (the "Agreement"). The acquisition included the assignment of the rights and obligations of MEC, under the Agreement, to the State.

Pursuant to Section 5.02 of the Agreement, this letter serves as written notice of the occurrence of a default or defaults under Section 5.01 of the Agreement. Specifically, TSR and LVRC have failed to or are unable to provide service and have failed to bear the costs of operating on the Line in violation of Section 2.02 and 2.04 of the Agreement. Additionally, TSR and LVRC have failed to maintain the Line in violation of Section 2.06 of the Agreement.

Upon receipt of this notice, Section 5.02 of the Agreement provides for 30 days to cure said defaults. If the above-described defaults are not cured on or before March 21, 2003, the State will take steps to terminate the rights and obligations of TSR and LVRC under the Agreement.

Sincerely,

Christopher Morgan
Administrator

