

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 35022

JOINT PETITION OF TWIN STATE RAILROAD CORPORATION
AND TRANS RAIL HOLDING COMPANY
FOR STAY OF TRANSACTION

Leonard M. Singer
101 Arch Street
Boston, MA 02110
(617) 737-7670
LMSinger@tiac.net

Attorney for
Twin State Railroad Corporation

Andrew P. Goldstein
Nicole S. Allen
McCarthy, Sweeney & Harkaway, PC
2175 K Street, N.W., Suite 600
Washington, DC 20037
(202) 775-5560
apg@mshpc.com
nallen@mshpc.com

Attorneys for
Trans Rail Holding Company

Dated: May 25, 2007

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Twin State Railroad Corporation ("Twin State" or "TRS") and Trans Rail Holding Company ("Trans Rail" or "TRHC") hereby petition the Board to stay the effectiveness of the Notice of Exemption filed by New Hampshire Central Railroad, Inc. ("New Hampshire Central" or "NHCR") on May 2, 2007. As demonstrated herein, the stay should be granted because (1) Twin State and Trans Rail have a strong likelihood of prevailing on the merits; (2) they will suffer irreparable harm in the absence of a stay; (3) other interested parties will suffer no substantial harm from the stay; and (4) the public interest supports the stay. *Virginia Petroleum Jobbers Assoc. v. FPC*, 259 F.2d 921 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). See, e.g., *Buffalo & Pittsburg Railroad, Inc. – Acquisition and Operation Exemption – CSX Transportation, Inc.*, Finance Docket No. 34410 (December 18, 2003), 2003 WL 22970229.

In support of their petition, Petitioners submit herewith the verified statements of Clyde S. Forbes, Jr., and David W. Wulfson as Exhibits 1 and 2 hereto, respectively.

BACKGROUND AND PRIOR PROCEEDINGS

Twin State is a Class III carrier and is the lessee of trackage between Lunenburg, VT and Whitefield, NH and holds operating rights to conduct common carrier service over that route.¹

TRHC is a non-carrier owned by the same individuals authorized to control the various Class III railroads comprising the Vermont Rail System.²

The railroad line which is the subject of these proceedings is the eastern end of a line that extends approximately 28.15 miles between St. Johnsbury, Vermont and Whitefield, New Hampshire. In connection with Guilford Transportation Industries, Inc.'s acquisition of control over the Boston & Maine and the Maine Central Railroad Company ("Maine Central") Maine Central leased and transferred the right to operate its line of railroad between St. Johnsbury and Whitefield to Twin State. See the Lease and Operating Agreement dated as of March 1, 1984 (the "Lease"), a copy of which is attached to the May 8, 2007 Petition of Twin State to Revoke the Notice of Exemption in this proceeding.

¹ *Maine Central R R Co - Lease*, Finance Docket No. 29720 (November 29, 1988), noting that the lease "transaction" was authorized in Finance Docket No. 29720 (Sub-No. 1), *Guilford Transp Indust - Control - B&M Corp*, and Finance Docket No. 29772, *Guilford Transp Inds Inc - Control - D&H Ry Corp* (May 22, 1984). The history of the Twin State franchise is set forth in the Petition of Twin State Railroad Corporation for Revocation of Notice of Exemption, dated May 8, 2007 in this proceeding, and in the Comments and Request for Revocation of the State of Vermont Agency of Transportation, filed in this proceeding on May 9, 2007.

² Vermont Railway Inc. ("VTR"), Clarendon & Pittsford Railroad Company ("CLP"), Green Mountain Railroad Corporation ("GMRP"), Washington County Railroad Company ("WACR"), and New York and Ogdensburg Railway Company, Inc. ("NYOG") THRC has not actually taken control of any carriers and will make an appropriate filing with the Board prior to doing so.

In 2002, pursuant to the right it reserved in the Lease, Maine Central conveyed its fee interest in the line between Whitefield, New Hampshire and Lunenburg, Vermont to the State of New Hampshire. (That rail segment between Whitefield and Lunenburg which is the subject of these proceedings is referred to hereinafter as the "Line ") The State of New Hampshire's Verified Notice of Exemption in connection with that transaction (Finance Docket No. 34307, *State of New Hampshire Dept. of Transportation -- Acquisition and Operation Exemption*)) acknowledged in a number of places that "Lamoille Valley Railroad Company and the Twin State Railroad Corporation currently lease the Line." The Verified Notice of Exemption also recited that the State of New Hampshire would "acquire the Line subject to the operating rights of [Twin State]." The Board's decision providing notice of the exemption reiterated that the acquisition was subject to the incumbent carriers "retaining their operating rights." *Id* , decision of January 22, 2003.

Although New Hampshire indicated that it might "seek to obtain a new operator to perform common carrier service on the Line,"³ New Hampshire did not say it would seek an "additional" operator while the operating rights of TSR were still in effect. Vermont Rail System and TRHC accordingly have viewed the State of New Hampshire's Verified Notice of Exemption in Finance Docket No. 34307 as meaning that New Hampshire recognized the need for the termination of TSR's operating rights before a "new operator" can be imposed on the Line.

Indeed, consistent with that interpretation of its Notice, New Hampshire took steps to apply for adverse discontinuance of TSR's operating rights In a Joint Petition

³ Finance Docket No. 34307, *State of New Hampshire Department of Transportation -- Acquisition and Operation Exemption -- Certain Assets of Maine Central Railroad Company*, Decision of January 15, 2003

for Waiver of the Board's service discontinuance rules, New Hampshire acknowledged the need for discontinuance authority. It said that Twin State was "operating on the Line pursuant to the Lease" and that the State acquired the Line "subject to the operating rights held by [Twin State]." The State further acknowledged that "adverse discontinuance is necessary to remove [Twin State's] interest in the Line from STB jurisdiction so that [it] can proceed to remove the interests of Twin State under State law." The Board expressly found that the State of New Hampshire had acknowledged that "the interests" of Twin State could not be "removed" absent Board approval of a discontinuance application. *Maine Central Railroad Company and State of New Hampshire – Adverse Discontinuance – Line Between Whitefield, NH and St. Johnsbury, VT*, No. AB-848 (decision served July 1, 2003).

Within the past year, TRHC commenced negotiations to acquire Twin State. TRHC did so because the only shipper on the line, Dirigo Paper Company ("Dirigo") at Lunenburg, had indicated a desire to resume the use of rail service. Dirigo's predecessor at Lunenburg had used rail service to both Whitefield and St. Johnsbury via Twin State. However, in the late 1990s, the predecessor closed its mill at Lunenburg and no longer needed rail service. In 2005, Twin State received permission from the Board to discontinue service between Lunenburg and St. Johnsbury.⁴ Dirigo has since requested that Twin State resume rail service between Lunenburg and Whitefield and also between Lunenburg and St. Johnsbury, as explained in the Verified Statements of Mr. Forbes and Mr. Wulfson.

⁴ *Twin State R.R. Co. – Abandonment and Discontinuance of Service – in Caledonia and Essex Counties, VT*, Docket No. AB-862X (November 17, 2005)

In reliance on the representation of the State of New Hampshire that its acquisition of the Line would be subject to the operating rights of Twin State, as well as the State's acknowledgement that discontinuance authority would be required before Twin State could be removed as the lessee of that line, TRHC entered into an Option Agreement with the owners of Twin State on April 11, 2007 giving it the right to acquire Twin State and its operating rights. TRHC paid \$10,000 down for the option before having knowledge of New Hampshire Central's Notice of Exemption to impose itself as an additional operator of the Lunenburg-Whitefield line.

The Option Agreement, which is attached to Mr. Wulfson's Verified Statement, reflects Vermont Rail System's plan to revive rail service between Whitefield and Lunenburg as well as between Lunenburg and St. Johnsbury, as requested by Dirigo. Vermont Rail System serves St. Johnsbury and provides connection to two Class I railroads. Acquisition of Twin State by Vermont Rail System (subject to Board approval) and revival of rail service between Whitefield and St. Johnsbury would restore the rail service that formerly was provided over those lines.

On May 2, 2007, New Hampshire Central filed a Verified Notice of Exemption to lease and operate the Line purportedly on the basis that the State of New Hampshire had authorized New Hampshire Central to provide rail freight service on the Line "effective immediately." The Notice contains no mention of the fact that New Hampshire had acquired the line "subject to the operating rights" of Twin State. On May 9 Twin State and the state of Vermont brought proceedings to revoke the Notice of Exemption filed by New Hampshire Central and for other relief. By Order served May 15, the Board required that any petitions for stay be filed by May 25.

Within the past few days, New Hampshire Central and the State of New Hampshire each have responded to the requests for revocation of New Hampshire Central's Verified Notice of Exemption in this case. Neither of those parties denies that New Hampshire represented to the Board that its acquisition of the Line would be subject to the operating rights of TSR. Indeed, New Hampshire Central simply argues that it is not bound by the State's representations because it (New Hampshire Central) was not a party to the State's Verified Notice of Exemption. The State, in its turn, argues only that it has a contractual right to replace TSR as the operator of the Line.

The Board obviously is not the forum in which disputes over state contractual law are decided but the presence of state law issues should not detract the Board from the fact that New Hampshire and New Hampshire Central are attempting to evade the limitations that New Hampshire placed on its acquisition of the Line and that were reasonably relied upon by Petitioners. The clear implication of New Hampshire's Verified Notice of Exemption was that it would honor TSR's operating rights unless and until those rights were terminated as provided by law – namely, through a discontinuance proceeding. As noted, New Hampshire previously recognized that its obligation was to seek removal of TSR through an adverse discontinuance before New Hampshire could rely on alleged contract rights.

That is not to say that the Board should fail to recognize why New Hampshire and NHCR have tried to invoke state law to misuse Board process. The State of New Hampshire and New Hampshire Central are attempting to use the Board's exemption process precisely because they do not have a strong case under state law. And that is improper. See *Modern Handcraft, Inc. – Abandonment*, 303 I C C 669, 672 (1981) ("we will not allow our jurisdiction to be used as a shield from legitimate processes of state law.")

As disclosed clearly and forcefully in Mr. Forbes' Verified Statement, New Hampshire's assertion of a breach by TSR of its Lease contract rests upon the preposterous claim that TSR failed to provide service to a shipper (the predecessor of the current Lunenburg shipper) that had closed its doors. TSR had no obligation to provide train service when no traffic was tendered to it and TSR is confident that New Hampshire cannot prevail in a state law contract claim, not to mention a discontinuance proceeding before the Board.

However, the Board is not called upon to resolve that issue. The primary question before the Board is the one that New Hampshire Central and the State of New Hampshire want to duck – which is whether it is inconsistent with New Hampshire's Notice of Exemption in Finance Docket No., 34307 for New Hampshire to now add an additional carrier to the Line thus impairing the operating rights of TSR, absent an appropriate discontinuance proceeding to terminate the TSR operating rights to which New Hampshire's interests are subject. New Hampshire does not even have a valid state law contract claim against TSR, as disclosed in Mr. Forbes' Statement. But in any event, New Hampshire cannot use a state law claim to replace the Board's jurisdiction over discontinuance of service. See, *Thompson v Texas Mexican Ry. Co.*, 328 U.S. 134 (1946).

ARGUMENT

I. PETITIONERS ARE LIKELY TO PREVAIL ON THE MERITS

Petitioners are likely to prevail on the merits for three separate reasons: (1) the transaction contemplated by the state of New Hampshire and New Hampshire Central has not been exempted from regulation by the Board; (2) the Notice of Exemption filed by New Hampshire Central as well as prior filings by the State of New Hampshire con-

tain material misstatements and misleading statements; and (3) even if the Board could resolve the state law contract claims raised by New Hampshire, the Lease does not permit the State of New Hampshire to designate another operator for the Line.

A. The Board Has Not Exempted the Proposed Transaction

Twin State is the carrier that operates and has the exclusive right to operate the Line. Maine Central, the State of New Hampshire's predecessor in interest, gave Twin State this right in the Lease that was approved by the Board's predecessor.

Since that approval, there has been no proceeding whatsoever, including any proceeding before the Board, such as an abandonment or discontinuance proceeding, adverse or otherwise, pursuant to which Twin State might be removed as the only carrier authorized to serve the Line. Under the circumstances, the transaction for which New Hampshire Central claims exemption is not simply a transaction pursuant to which a carrier is designated to conduct operations. To the contrary it is a transaction the necessary predicate for which is the discontinuance of Twin State's operating rights between Whitefield and Lunenburg (absent an appropriate consensual operating and cost agreement with Twin State). It is a transaction aimed at accomplishing a replacement of TSR as the Line's operator, as in fact asserted by New Hampshire in its May 22 Comments Regarding the Pending Requests for Revocation and as confirmed to TRHC by NHCR. Thus, the NHCR notice amounts to an adverse discontinuance.

An application to impair or discontinue Twin State's right to operate, and to superimpose an additional operator on an existing operator, filed unilaterally by any party other than Twin State, is an adverse application. Adverse applications are not exempted from regulatory review. Because the transaction contemplated by New Hampshire Cen-

tral's Verified Notice of Exemption necessarily entails the discontinuance or impairment of Twin State's rights, or use of its rights without its consent, the exemption procedure should be unavailable.

The exemption procedure should not be available to New Hampshire Central for a further reason. It is an effort by New Hampshire Central and the State of New Hampshire to avoid not merely the use of the Board's discontinuance procedures (within which TSR is fully prepared to defend its actions), but in effect to compel the Board to adjudicate Lease issues arising under state law. Even if the Board could do so, the Lease does not allow the State of New Hampshire to designate more than one operator for the Line (see argument, *infra.*). Because the transaction for which exemption is sought is not consensual, the exemption procedure is not applicable because it would result in requiring Twin State involuntarily to make its franchise and operating rights available to another carrier as uncompensated trackage rights.

B. The Verified Notice of Exemption Is Void Ab Initio

New Hampshire Central's Verified Notice of Exemption is void ab initio and should be revoked because it contains false and misleading information. Nowhere in New Hampshire Central's Verified Notice of Exemption is there any reference whatsoever to the fact that another carrier has operating rights over the Line. Nowhere in New Hampshire Central's Verified Notice of Exemption is there any reference whatsoever to Twin State. Nowhere in New Hampshire Central's Verified Notice of Exemption is there any reference to the fact that the State of New Hampshire understood that it acquired the Line subject to the rights of Twin State. Nowhere in the Verified Notice is there any mention that New Hampshire's own Verified Notice of Exemption in Finance Docket

No. 34307 never gave notice that the State intended to try to designate an additional operator, as opposed to a “new” operator, the word “new” implying a replacement and thus requiring a prior discontinuance proceeding (in which TSR would vigorously resist discontinuance). Furthermore, New Hampshire Central’s Verified Notice of Exemption mistakenly creates the impression that the State of New Hampshire has the right to designate a carrier to service the Line.

These omissions render New Hampshire Central’s Verified Notice of Exemption false and misleading. It creates the false impression that there is no incumbent operator on the Line, that the rights of any incumbent operator have been or will be voluntarily terminated, and it is flatly inconsistent with the State’s representation in Finance Docket 34307 that it would not seek a new operator except “subject to the operating rights” of Twin State, rather than trying to impose an additional operator to undermine TSR’s operating rights. In addition, it creates the false impression that the state of New Hampshire, without more, can designate a new operator. New Hampshire Central’s Verified Notice of Exemption creates the false impression that it seeks approval for an uncontested and consensual transaction.

New Hampshire Central’s misleading failure to mention that the State of New Hampshire, the entity which it claims authorized it to provide service, acquired the Lunenburg-Whitefield line subject to the operating rights of Twin State was raised pointedly by both Twin State and the State of Vermont earlier in this proceeding when each sought revocation of the Verified Notice. New Hampshire Central’s response is nothing less than astounding

In its Comments on the Petition of the Twin State Railroad Corporation for Revocation of Notice of Exemption, dated May 18, 2007, New Hampshire Central makes no effort to deny that the State of New Hampshire acquired the Line subject to the operating rights of Twin State. It makes no effort to refute Twin State's claims, and those of the State of Vermont, that the necessary result of New Hampshire's acquisition of the Line "subject to the operating rights" of Twin State requires that Twin State be lawfully dispossessed of its leasehold interest and operating rights before New Hampshire Central can be imposed as a new operator. Instead, New Hampshire Central argues that, because it was "not a party to any of these filings and proceedings [before the Board] ... [the State of New Hampshire] is the appropriate party that would respond to this allegation." Comments at 3. New Hampshire Central adds that because it "was never a party to any of the prior filings and proceedings to which [Twin State] refers throughout its Petition [for revocation]," New Hampshire Central "had no input that would affect their outcome."

In other words, New Hampshire Central's only response is that, because it was not a party to the State of New Hampshire's acquisition and prior exemption filings with the Board, New Hampshire Central is not bound by the representations made in those filings. To give any weight to that response would be to make a mockery of New Hampshire's Verified Notice of Exemption and to the notice of exemption process generally. New Hampshire Central plainly cannot acquire a greater interest than is held by its grantor. New Hampshire's acquired interest, if any, is subject to the operating rights of Twin State. Those operating rights do not disappear by the mere (and unfounded) assertion of a conflicting contractual right by the State. The need for New Hampshire to precede any claimed exercise of state law contract rights by prosecution of a discontinuance proceed-

ing was expressly acknowledged by the State of Hampshire and reasonably relied on by Twin State and TRHC to mean that Twin State held the exclusive franchise over the Line unless and until that franchise was discontinued lawfully. The Board accordingly should find that the Verified Notice of Exemption in this proceeding is false and misleading by failing to recognize that the Line is not open for operation by New Hampshire Central unless Twin State's operating rights are terminated (or an appropriate, use trackage rights agreement is reached with TSR).

In the alternative, the Board should void the Notice of Exemption filed by the State of New Hampshire in Finance Docket 34307 in connection with its acquisition of Maine Central's interest in the Line. That Notice of Exemption explicitly recognized that the State was acquiring Maine Central's interest subject to Twin State's rights. A fair reading of that Notice of Exemption would convey that the State of New Hampshire understood that any action that it took with respect to the line would be subject to Twin State's rights. Such a reading of the Notice of Exemption is confirmed by the State of New Hampshire's statements in its Joint Request for Waiver in Docket No. AB-848, discussed above.

Now, however, the NHCR and the State of New Hampshire seek to renege on New Hampshire's prior commitment in Finance Docket No. 34307 and avoid an adverse discontinuance proceeding prior to effectively substituting a new operator for TSR. As explained in Mr. Wulfson's Verified Statement, NHCR's goal is to install itself as the only carrier serving Dirigo despite Twin State's unrevoked operating rights to serve that facility, and New Hampshire similarly asserts in its May 18 pleading that it has a state law right to replace TSR. When the State of New Hampshire initially represented that it

would acquire the Line subject to the operating rights of TSR it nevertheless said that it might seek to appoint a “new” operator, but in that context New Hampshire plainly meant that it would seek to *replace* TSR. The involuntary replacement of TSR can only come about in a discontinuance proceeding where TSR has an opportunity to defend its position and assert its rights; in other words, through exactly the type of adverse discontinuance case that New Hampshire commenced and has since abandoned. Now, New Hampshire and its designee, NHCR, are effectively seeking to remove TSR from the picture without following the discontinuance process that would permit TSR to defend the validity of its operating rights.

Under the circumstances, NHCR’s Notice of Exemption is false and misleading because it did not reveal that the State of New Hampshire and New Hampshire Central are attempting to abrogate Twin State’s rights under the Lease by simply having its additional designee file a Notice of Exemption.

C. The Lease Does Not Permit New Hampshire to Designate Another Operator

Petitioners are not asking the Board to adjudicate state law disputes, but nevertheless want the Board to be aware of our firm belief that Twin State has the exclusive right to possession of and to operate over the Line as a necessary result of the Lease between it and Maine Central Railroad Company (“Maine Central”), the State of New Hampshire’s predecessor in interest. That Twin State’s right is exclusive is established by the nature of the transaction between it and Maine Central and by provisions of the Lease itself.

As an initial matter, the transaction between Twin State and Maine Central is a lease transaction. The title of the document is “Lease and Operating Agreement” and the very first words of the document are “This Lease and Operating Agreement ” Further-

more, the first operative provision of the Lease recites that Maine Central “hereby leases and grants” to Twin State the right to operate over the Line.

A lease “gives the right of possession of the land, and the *exclusive occupation* of it for all purposes not prohibited by its terms.” *Jones v. Donnelly*, 221 Mass. 213, 217 (1915)(emphasis supplied). Thus the fact that the transaction between Twin State and Maine Central is a lease means that Twin State was given exclusive possession of the Line. Because the state of New Hampshire’s predecessor in interest gave Twin State exclusive possession of the Line, the state of New Hampshire cannot grant New Hampshire Central any right to possess or operate the Line.

Furthermore, a lease of real property contains an implied covenant that the landlord will not disturb the tenant’s right to quiet enjoyment during the tenancy. *Knapp v. Town of Marlboro*, 29 Vt. 282, 286 (1857). The covenant of quiet enjoyment protects the tenant against acts or omissions that impair the character and value of the leased premises. *Northern Terminals, Inc. v. Smith Grocery & Variety, Inc.*, 138 Vt. 389 (1980) (covenant breached where landlord allowed other businesses to share parking facilities). Clearly, the designation of another operator to share in the traffic generated by the Line would impair the value of the leased premises to Twin State. Under the circumstances, the state of New Hampshire cannot permit another party to operate over the Line without breaching the covenant of quiet enjoyment contained in the Lease.

The fundamental nature of the relationship between Twin State and the state of New Hampshire is not the only reason for concluding that Twin State’s rights to the Line are exclusive. A number of provisions in the Lease would be rendered meaningless or

are irreconcilably inconsistent with any notion that Twin State was not intended to be the exclusive operator of the Line.

First, §2.01 provides that the rent for the entire term of the Lease, including extensions, is to be paid as a lump sum. It is absurd to suggest that Twin State paid Maine Central \$200,000 but that Maine Central retained the right to appoint additional operators for the Line. Manifestly, Twin State made the lump-sum payment based upon the anticipated traffic levels on the Line. It would have made no sense whatsoever for Twin State to have made such a substantial lump-sum payment and, at the same time, given Maine Central the right to appoint an additional operator who could diminish the traffic available to Twin State. This is not a situation where the rental is on a per car basis or is a percentage of revenue.

Second, §2.06 obligates Twin State to maintain the Line at its sole expense. There is no reason why Twin State would undertake this obligation if it could be forced to share the benefits of the Line with another operator.

Finally, the default provisions in the Lease make it clear that the state of New Hampshire does not have the right to designate another operator. First, §5.03 provides that if Twin State fails to provide the level of service called for by the Lease, Maine Central may "provide service on the Line itself or by a carrier designated by [itself]." If, as the state of New Hampshire now claims, it has the right to designate another operator in the absence of a failure to provide service, there would not have been any need to place a provision in the Lease giving it this right in the event that Twin State failed to provide the required service.

Similarly, §6.01 gives the state of Vermont the right to appoint an operator in place of Twin State in the event that Twin State defaults. Presumably, this provision was meant to confer a valuable right upon the state of Vermont. If, as the state of New Hampshire now claims, it can designate a carrier to serve the Line (and use its power to deal directly with shippers and receivers to divert all traffic to that carrier), the right accorded to the state of Vermont is ephemeral.

The State of New Hampshire's predecessor in interest entered into a lease transaction with Twin State. By the very nature of that transaction Twin State's rights to the Line are exclusive. Furthermore the specific terms of the Lease demonstrate that the parties understood and intended that Twin State's rights to the Line would be exclusive. Under the circumstances Twin State has established that it has a substantial probability of prevailing on its claim that New Hampshire Central has no right to operate the Line.

D. There Has Been No Default Under The Lease By Twin State

The Board likewise should understand that Twin State is not in default under the Lease, contrary to New Hampshire's claims. Pursuant to the Lease, in order to place Twin State in default the State of New Hampshire would have to give written notice of default and provide Twin State with 30 days to cure. The only written notices of default given to Twin State were substantially identical notices from Maine Central and New Hampshire in early 2003. Those notices claimed that Twin State had failed to provide the service required by Section 2.02 of the Lease and the maintenance required by Section 2.06 of the Lease.

The text of the Lease relating to the required level of service reads as follows:

[Twin State] shall operate the Line and shall provide train service which will be equal in all respects, including fre-

quency, reliability and speed, to the service presently provided on the Line by [Maine Central] *or such other manner of service as may be warranted by traffic levels* and operating conditions as they may exist from time to time. [Twin State] acknowledges that presently [Maine Central] provides service *upon the demand of customers* six days per week.

(Emphasis supplied). In 2003 when the notices of default were given, there were no shippers or receivers on the Twin State. The mill at Gilman had been closed since 1999. Under the circumstances, it is impossible that Twin State failed to provide the “service as may be warranted by traffic levels” or that there could have been any “demand of customers.”

To sustain its claim that Twin State failed to provide the required service, New Hampshire is forced to resort to a materially misleading description of the required level of service. New Hampshire’s Comments assert that the Lease “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 [Lease] was initiated.” New Hampshire’s Comments at p. 2. New Hampshire’s Comments go on to say that the Lease contains “an acknowledgement of Twin State that Maine Central provided ‘service upon the demand of customers six days per week’.” *Id.*

The foregoing quotes are materially incomplete and misleading. As the italicized language – omitted from New Hampshire’s Comments – reveals, the required level of service is not simply the level provided by Maine Central. It is the level of service provided by Maine Central “or” such service as may be warranted by traffic levels. New Hampshire seeks to create the false and misleading impression that Twin State was obligated to continue the level of service provided by Maine Central. Comparing the service provided by Twin State with what the Lease actually requires, as opposed to New Hamp-

shire's mischaracterization of those requirements, conclusively demonstrates that Twin State was not in default of its service obligations.

Other provisions of the Lease confirm that Twin State did not default on its service obligations. As New Hampshire acknowledges, the Lease grants it the exclusive right to deal directly with shippers and receivers. Twin State is obligated to handle cars for New Hampshire's account. Thus, to the extent any party is responsible for the failure of the mill at Gilman to generate traffic, that responsibility lies with New Hampshire rather than Twin State.

For similar reasons Twin State did not default on its maintenance obligations. Pursuant to Section 2.06 of the Lease, Twin State is obligated to "maintain the Line in good condition and repair so that freight train operations can be conducted on the Line *as warranted by traffic levels.*" (Emphasis supplied.) In 2003 there were no freight train operations because the mill at Gilman was closed and there was no traffic. The level of maintenance such that freight train operations could be conducted as warranted by traffic was no maintenance at all.

It is particularly disingenuous for New Hampshire to claim that Twin State was in default of its maintenance obligations. The two bridges that New Hampshire Central needs in order to access other railroads near Whitefield are owned by the State of New Hampshire, are presently being repaired, and will not be put back in service until August. New Hampshire is arguing that Twin State defaulted on its responsibility to maintain the track between Lunenburg and Whitefield notwithstanding the fact that there was no traffic to move on this line segment. New Hampshire presumably delayed in performing

maintenance on that line because there was no immediate prospect of any traffic at Whitefield.

II. PETITIONERS WILL SUFFER IRREPARABLE HARM

In this case, irreparable harm emerges in several forms. First, acting in good faith reliance on the 2002 representation of the State of New Hampshire in Finance Docket No. 34307, when it purchased the Lunenburg-Whitefield segment, that its acquisition of that line would be subject to the operating rights of Twin State and the consequential conclusion that a discontinuance proceeding would be necessary to remove TSR, TRHC entered into an Option Agreement in April 2007 to purchase Twin State. The interest of TRHC (and Vermont Rail System) in Twin State was prompted at first by discussions with Dirigo, the shipper at Lunenburg. Dirigo recently has made a specific written request of Twin State for the reinstitution of service, as disclosed in Mr. Forbes' statement. If service is revived to St. Johnsbury, connections with two Class I railroads via Vermont Rail System lines, trackage rights, or haulage arrangements, and rail operations would be restored to where they were before Dirigo's predecessor cancelled its use of rail service.

The purchase price of Twin State under the Option Agreement is \$450,000. TRHC paid \$10,000 down on April 11, 2007, when the Option Agreement was signed, and an additional \$40,000 on May 15, 2007, a payment necessary to preserve the Option Agreement while the Board ruled on challenges to NHCR's exemption notice by Twin State and the State of Vermont. Both of the Option Agreement payments to Twin State's ownership are nonrefundable and will be lost to TRHC unless the purchase of Twin State is consummated, in which case the option payments are applied to the purchase price.

TRHC agreed to pay \$450,000 for Twin State in the expectation that it would be the only carrier operating over the Line and the only carrier serving the Dirigo facility at Lunenburg, unless and until TSR's operating rights were terminated through a discontinuance proceeding in which TSR could resist impairment of its franchise. This expectation was based on the representation of the State of New Hampshire when it acquired the Lunenburg-Whitefield line that its acquisition would be subject to the operating rights of TSR, as reflected in the Board's Notice in Finance Docket No. 34307. The appropriate way to terminate those operating rights is through an adverse abandonment proceeding, as New Hampshire has already recognized through its actions in seeking waivers from the Board to commence such a proceeding.⁵ Alternatively, NHCR might seek an operating agreement from Twin State to permit NHCR to share appropriately in Twin State's costs of rehabilitating and maintaining the line NHCR has followed through with neither course of action.

TRHC purchased its option to acquire Twin State because TRHC and the Vermont Rail System to which it is related had been apprised of the desire of Dirigo to resume rail service between its Lunenburg facility and Whitefield, and between Lunenburg and St. Johnsbury where connections are available via other Vermont Rail System carriers to several Class I railroads. If NHCR now is permitted to institute service between Lunenburg and Whitefield and to participate in the traffic that TSR otherwise would handle upon its resumption of the service that it is planning to reinstitute, TSR plainly will be worth less than the \$450,000 that TSR and TRHC agreed upon in arms-length negotiations as the value of the company on April 11, 2007, before NHCR filed its Notice of Exemption. The full extent of that loss in value cannot be determined at this time because

⁵ See Docket No. AB-848, *Maine Central R R Co. Lease*

the magnitude of traffic diversion cannot be determined, and because such damages are by nature highly difficult to pinpoint. It has long been recognized that irreparable harm "includes the impossibility of ascertaining with any accuracy the extent of the loss." *Foundery Services, Inc. v. Beneflux Corp.*, 206 F. 2d 214, 216 (2d Cir. 1953) (Hand, J., concurring opinion). The potential losses to Twin State and TRHC thus constitute irreparable injury in keeping with the notion that "impossibility of proof has long been recognized as bearing upon the adequacy of the legal remedy." *State of Texas v. Seatrain Int'l*, 518 F. 2d 175, 179 (5th Cir. 1975).

Conversely, if TRHC determines not to go forward with the purchase of TSR because the Board permits NHCR to institute service, both TRHC and TSR will suffer irreparable harm. TRHC will be out its \$50,000 and TSR will be out the remaining \$400,000 of the Option Agreement purchase price. Neither party will be able to recover those sums from the other because neither party has breached a duty to the other. Neither party has a contract with NHCR upon which a suit against NHCR can be based. Petitioners cannot proceed independently of the Board in civil court to enjoin the commencement of operations by NHCR if its Notice of Exemption takes effect because of the preemptive effect of the Board's jurisdiction. If the Board does not stay the NHCR Notice of Exemption and the commencement of operations by NHCR, then TSR and TRHC will have no remedy to protect their good faith positions under the Option Agreement. The Petitioners' total lack of recourse is precisely why their injury is irreparable, for "[t]he very thing which makes an injury 'irreparable' is the fact that no remedy exists to repair it." *Bannercroft Clothing Co. v. Renegotiation Board*, 466 F.2d 345, 356 n.9 (D.C.Cir 1972), *rev'd on other grounds*, 415 U.S. 1, 94 S.Ct. 1028, 39 L.Ed 2d 123 (1974), *vacated*, 495

F.2d 1074 (D.C.Cir.1974). Furthermore, where, as here, a party suffers a substantial injury that is "not accurately measurable or adequately compensable by money damages, irreparable harm is a natural sequel." *Ross-Simons v. Warwick, Inc., et al. v. Baccarat, Inc.*, 102 F. 3d 12, 19 (1st Cir., 1996).

Irreparable harm flowing from the proposed transaction is present in other forms, as well. Under its Lease and Operating Agreement approved by the ICC in 1984, TSR is responsible to maintain the Lunenburg-Whitefield line in serviceable condition. Under the option agreement, TRHC is required to reimburse TSR for any costs TSR incurs in responding to a service request while the option agreement remains alive. It is estimated that approximately \$50,000 in rehabilitation costs will be required to restore the Lunenburg-Whitefield line to safe operating condition. Thereafter, the line will require normalized maintenance.

NHCR has entered into no agreement with TSR to compensate TSR for NHCR's use of the Line while it is maintained by TSR. If NHCR is permitted to use the Lunenburg-Whitefield line after it has been rehabilitated by Petitioners then, absent an appropriate consensual payment agreement between NHCR and TSR, NHCR will receive a windfall and TSR will be faced with a lawsuit to attempt to recover the value of its upgraded leasehold track interest. Where, as here, the service of a second railroad on a line already served by an incumbent carrier will be at the expense of the incumbent, dual operations cannot go forward simply on the basis of an operating protocol governing the dispatch of trains over the Line (which, in this case, is a single track line). Absent a consensual agreement, Petitioners do not believe that the Board can or should require an in-

cumbent railroad to make the benefit of its investments in track conditions available to a competitor at no cost to the competitor.

Even if TRHC exercises its option, acquires TSR, and TSR commences service between Lunenburg and Whitefield, the entry of NHCR will produce irreparable injury. It appears incontrovertible that the entry of NHCR into this market, which it has not heretofore served (distinguishing NHCR from TSR, which has served this market in the past), will result in the diversion of traffic from TSR once TSR goes forward with plans to resume service as requested by Dirigo. Any such traffic diversion will result in a reduction of TSR's revenues and profits, although it will be extremely difficult, if not altogether impossible, for TSR to establish the magnitude of those losses. TSR does not maintain accounts of variable costs or direct costs, and its profit margins would have to be determined by reference to the costs of Class I railroads operating in the region. See Ex Parte No. 589, *Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads* (March 28, 2003). The system-wide average variable costs of Class I railroads are bound to be significantly higher than those of Class III railroads such as TSR, and the use of Class I system average costs accordingly would result in a severe overstatement of those costs when applied to TSR's operations and, accordingly, in an understatement of its lost per car profits. Damages that cannot be ascertained accurately do not have a sufficient certainty of recovery to disqualify the losses as within the category of recognized irreparable harm. *Ross-Simons, supra*.

III. NO INTERESTED PARTY WILL SUFFER SUBSTANTIAL HARM FROM A STAY

The parties that have participated in this proceeding to date are New Hampshire Central and those who object to its Notice of Exemption, namely, Twin State, TRHC, and

the State of Vermont. In addition, Dirigo may be seen as a party in interest as the principal shipper on the Line. No such party will be harmed by a stay.

Plainly, those who object to New Hampshire Central's Notice will not be harmed by a stay. Neither will New Hampshire Central itself. It's President, Mr. Edward Jeffries, recently advised Mr. David Wulfson, President of TRHC, that New Hampshire Central does not expect to be able to commence operations earlier than August 1, 2007, if by then, due to the need for repairs to two rail bridges east of Whitefield that are necessary to connect the Line to railroads other than New Hampshire Central. Without such a connection, New Hampshire Central cannot move freight into the national rail system. See Wulfson V.S. If New Hampshire Central is not positioned to begin service, then Dirigo cannot be harmed by a stay because it will not be deprived of rail service.

IV. THE PUBLIC INTEREST SUPPORTS THE ISSUANCE OF A STAY

The public interest favors a stay in this proceeding for two reasons. First, it would be against the public interest for the Board to condone New Hampshire Central's abuse of the exemption notice procedure through its claim that it is not bound by the representations of its grantor, the State of New Hampshire, when the latter acquired the Line. To accept any such construction of the exemption process would be to invite widespread misuse of the Board's procedures and to make the exemption process inherently unreliable when used by lessees. If a lessee such as New Hampshire Central, with apparent and imputed full knowledge of the representations made by its grantor when utilizing the Board's verified notice of exemption procedures, can claim it is not bound by those representations because it was not a party to the grantor's exemption process, then representations made by parties acquiring lines will be meaningless because they can simply be

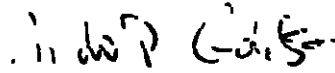
voided by lessees who refuse to be bound by them. The public interest requires that a much higher degree of integrity attach to the exemption process.

A second reason why the public interest favors a stay in this instance is because consummation of the subject transaction may well end up limiting the quantity and quality of rail service available to Dirigo, the Line's major if not sole shipper. As explained by Mr. Wulfson in his Verified Statement, one possible consequence if New Hampshire Central is permitted to impose its service on the Line will be for TRHC to forfeit its Option Agreement deposits and propose to cancel the purchase option unless Twin State agrees to accept a reduced price in light of the new New Hampshire Central Service that was not contemplated at the time the purchase option was negotiated. If that sequence of events occurs, and Twin State declines to accept a reduced purchase price, the Option Agreement will terminate and so will the State of Vermont's designation of Twin State to reinstitute service between Lunenburg and St. Johnsbury. See Appendix B to Mr. Forbes' Verified Statement, a letter from the Secretary of Transportation of the State of Vermont redesignating Twin State as the operator pursuant to the Option Agreement. In that event, the line between Lunenburg and St. Johnsbury is likely to remain without rail service to the detriment of the Lunenburg shipper, Dirigo. The public interest would be better served by permitting the orderly process to proceed under which Vermont Rail System can acquire Twin State, as contemplated before New Hampshire Central's Notice of Exemption was filed in contravention of the State of New Hampshire's representations to the Board, so that through rail service can be reinstituted between Whitefield and St. Johnsbury.

CONCLUSION

WHEREFORE, Petitioners urge the Board to take the following actions: (1) declare New Hampshire Central's Notice of Exemption void ab initio and revoke it forthwith, (2) alternatively, stay the effectiveness of New Hampshire Central's Notice of Exemption until there has been a discontinuance as required by law of Twin State's operating rights between Lunenburg and Whitefield and there has been a determination by an appropriate court that the State of New Hampshire has the right to designate an operator for that line segment, and (3) such other steps as may be appropriate, including declaring void ab initio the Verified Notice of Exemption filed by the State of New Hampshire in Finance Docket No. 34307.

Respectfully submitted,



**Leonard M. Singer
101 Arch Street
Boston, MA 02110
(617) 737-7670
LMSinger@tiac.net**

**Attorney for
Twin State Railroad Corporation**

**Andrew P. Goldstein
Nicole S. Allen
McCarthy, Sweeney & Harkaway, PC
2175 K Street, N.W., Suite 600
Washington, DC 20037
(202) 775-5560
apg@mshpc.com
nallen@mshpc.com**

**Attorneys for
Trans Rail Holding Company**

CERTIFICATE OF SERVICE

I hereby certify that I have, this 25th day of May 2007, served a copy of the foregoing on John K. Dunleavy, Assistant Attorney General, State of Vermont, and Stephen G. LaBonte, Assistant Attorney General, State of New Hampshire by overnight delivery, and on Jack E. Dodd, Director of Marketing and Sales, New Hampshire Central Railroad, Inc., by first class mail, postage prepaid.



Andrew P. Goldstein

Exhibit - 1

Exhibit 1

**VERIFIED STATEMENT OF CLYDE S. FORBES JR. SUBMITTED IN
SUPPORT OF THE MOTION FOR STAY OF THE TWIN STATE RAILROAD COR-
PORATION AND TRANS RAIL HOLDING COMPANY**

My name is Clyde S. Forbes Jr. and I am president of and in control of Twin State Railroad Corporation ("Twin State"). This verified statement is based on my own personal knowledge and a review of records kept in the ordinary course of Twin State's business.

Until the early 1980s what is now the Twin State was part of a through route from Portland to Canada. Following the acquisition by Guilford Transportation Industries, Inc. of the Maine Central Railroad Corporation ("Maine Central"), all of the through traffic on this route was diverted to other routings. Twin State was created to operate the portion of the former through route from Whitefield, New Hampshire to St. Johnsbury, Vermont and the Lamoille Valley Railroad Company ("LVRC") was created to operate the portion of the former through route between St. Johnsbury and Swanton, Vermont. See Finance Docket No. 29772, Guilford Transportation Industries, Inc. -- Control -- Boston and Maine Corporation (Decision served May 22, 1984) The Twin State connected with the interstate railroad system at its Western terminus in St. Johnsbury and at its Eastern terminus in Whitefield, New Hampshire.

As of March 1, 1984 Twin State entered into a Lease and Operating Agreement with Maine Central, a copy of which is attached to Twin State's May 8, 2007 Petition for Revocation in this proceeding. The Lease provides for an initial term that ran from March 1, 1984 through December 31, 1988, and provides Twin State with the right to re-

new the term for up to four additional ten-year periods. Twin State has exercised all available renewal rights.

In 2002, Maine Central sold its interest in the eastern portion of the Twin State, between the mill at Lunenburg (sometimes known as Gilman), Vermont and Whitefield, New Hampshire. See, Finance Docket No. 34307, *State of New Hampshire, Department of Transportation -- Acquisition and Operation Exemption -- Certain Assets of the Maine Central Railroad Company*. In 2005 Twin State received authority from the Surface Transportation Board to discontinue its operations from a point just west of the mill at Gilman to St. Johnsbury.

In late 2006 and early 2007 Twin State negotiated an Option Agreement with Trans Rail Holding Company ("Trans Rail") pursuant to which Trans Rail received an option to purchase the Twin State and other assets. (The Option Agreement is attached to the Verified Statement of David W. Wulfson). In connection with that Option Agreement, Trans Rail made nonrefundable down payments of \$50,000 on the agreed-upon purchase price of \$450,000. The predicate for the Option Agreement was the potential for rail traffic to and from the mill at Lunenburg.

Since at least 1989 Twin State has had only one actual or prospective customer: the paper mill at Lunenburg. The mill is located approximately 6 miles west of Whitefield, New Hampshire and 20 miles east of St. Johnsbury. In 1989, the mill was owned by Georgia Pacific who sold it to Simpson Paper Company in the early 1990s. Traffic levels on the line during this period were in the vicinity of 800 carloads per year. Simpson Paper closed the mill in October 1999 and later sold it to American Tissue Company

(aka, The Paper Mill at Gilman, Inc.) who sold it to the present owners, Dirigo Paper Company ("Dirigo"). Dirigo reopened the mill in 2005.

Until the mill closed in 1999 Twin State provided the level of service and the level of maintenance called for by the Lease. During that time Twin State receive no notice of default under the Lease for failure to provide required service or maintenance or otherwise and I am not aware of any material dissatisfaction with the service and maintenance provided by Twin State during this period.

After the state of New Hampshire purchased Maine Central's interest in Twin State's line between Lunenburg and Whitefield, Twin State received virtually identical notices of default from both New Hampshire and Maine Central. A copy of the notice of default from New Hampshire is attached as Appendix C to *New Hampshire Department of Transportation Comments concerning the Pending Request for Revocation* filed with the Board and dated May 22, 2007. (These comments are hereinafter referred to as "New Hampshire's Comments.") The substantially identical notice of default from Maine Central is attached to this verified statement as Appendix A. Twin State's counsel's response to these notices of default is attached to this verified statement as Appendix B.

Both notices of default claimed that Twin State had failed to provide the service required by section 2.02 of the Lease and that it had failed to provide the maintenance required by section 2.06 of the Lease. Contrary to these assertions in the notices of default, however, Twin State has not failed to provide either required service or required maintenance

With respect to the required level of service, New Hampshire's Comments are materially misleading in their description of the required level of service. New Hamp-

shire's Comments assert that the Lease "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 [Lease] was initiated." New Hampshire's Comments at p. 2. New Hampshire's Comments go on to say that the Lease contains "an acknowledgment of Twin State that Maine Central provided 'service upon the demand of customers six days per week.'" *Id.*

The foregoing quotes are materially incomplete and misleading. The text of the Lease relating to the required level of service reads as follows:

[Twin State] 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 [Maine Central] *or such other manner of service as may be warranted by traffic levels* and operating conditions as they may exist from time to time. [Twin State] acknowledges that presently [Maine Central] provides service *upon the demand of customers* six days per week.

(Emphasis supplied) As the italicized language - omitted from New Hampshire's Comments - reveals, the required level of service is not the level provided by Maine Central. It is the level of service provided by Maine Central "or" such service as may be warranted by traffic levels. New Hampshire's Comments create the false and misleading impression that Twin State was obligated to continue the level of service provided by Maine Central.

Furthermore the recitation that Maine Central provides service six days per week upon demand of customers does not mean that service was provided six days each week. It means that service was provided on as many as six days per week if such service was demanded by the customer.

Comparing the service provided by Twin State with what the Lease actually requires, as opposed to New Hampshire's mischaracterization of those requirements, demonstrates that Twin State was not in default of its obligations. In 2003, when the notices of default were given, the mill at Gilman was closed. Thus, the level of service "warranted by traffic levels" was no service. Furthermore, the "demand of customers" was nonexistent.

Twin State also did not default on its maintenance obligations. Pursuant to section 2.06 of the Lease, Twin State is obligated to "maintain the Line in good condition and repair so that freight train operations can be conducted on the Line *as warranted by traffic levels.*" (Emphasis supplied). In 2003 there were no freight train operations because the mill at Gilman was closed and there was no traffic. The level of maintenance so that freight train operations could be conducted as warranted by traffic was no maintenance at all.

Because Twin State was not in breach of its obligations with respect to repair or maintenance, it was not obligated to and it did not take any steps to "cure" its alleged defaults. New Hampshire's default letter (Appendix A to New Hampshire's Comments) states that if the defaults are not cured on or before March 21, 2003 New Hampshire "will take steps to terminate the rights and obligations of [Twin State] under the [Lease]." I understood this to mean that New Hampshire would file an adverse abandonment petition with the Board. Indeed, at that very time, New Hampshire sought a waiver from the Board of some of the requirements for such an application.

When the mill re-opened in 2005 there was, again, some potential for rail service. Sources at the mill indicate that the mill presently requires approximately 3500-4000 tons

of inbound pulp per month. The mill has received pulp from Jay, Woodland, Old Town and Lincoln, Maine; Quebec; St. Anne's, New Brunswick; Georgia and Alabama. In addition to pulp, the mill receives one truck per day of ground calcium carbonate from an origin in Vermont and two truckloads per day of precipitated calcium carbonate from Jay, Maine and 4-5 truckloads per week of starch from a corn products plant just over the border in Canada. Some or all of this traffic represents potential new rail business.

Dirigo initially marketed the paper products produced at the mill to customers located close enough to the mill to be served by truck transportation. As production has increased, Dirigo says that it desires to reach out to more distant customers who can be economically served only by rail.

Since the mill reopened in 2005 Twin State has had discussions concerning the resumption of rail service. As a result of the Option Agreement I am informed that Trans Rail has also had some recent discussions with the mill concerning the resumption of rail service. Recently, Twin State received the letter which is attached as Appendix C hereto from Dirigo, memorializing its request for the resumption of rail service. Twin State has also recently received the letter from the state of Vermont Agency of Transportation which is attached as Appendix D encouraging it to resume service between St. Johnsbury and Lunenburg.

Particularly in light of these efforts Twin State is not in default of its obligation to provide service. The Lease grants the state of New Hampshire as Maine Central's successor in interest the *exclusive* right to deal directly with shippers and receivers. Twin State's obligation is to handle cars for the account of New Hampshire. New Hampshire's Comments acknowledge that it has the right to deal with shippers and receivers to the ex-

clusion of Twin State and further acknowledges that *it* has received requests for service from the mill at Gilman.

I am not aware that Maine Central has made any effort whatsoever to develop traffic to or from the mill at Gilman. Whatever reasons there may be that the mill's requests for service have not developed into actual traffic, those reasons do not include any failure or inability of Twin State to provide required service. Neither Maine Central nor the state of New Hampshire have made any request whatsoever to Twin State to handle a single car for either of their accounts since the mill reopened. Neither Maine Central nor the state of New Hampshire have tendered any traffic whatsoever to Twin State since the mill reopened.

New Hampshire's Comments imply that Twin State has been unresponsive and uncooperative with respect to developing traffic from the mill at Gilman. New Hampshire complains that it made a number of unsuccessful attempts to contact Twin State (New Hampshire's comments at page 1) and that bringing the mill's request for service to Twin State's attention brought forth no action from Twin State (New Hampshire's Comments at page 3). This is simply not so. In any event, it is New Hampshire's obligation to deal with potential shippers whereas Twin State's obligation is to handle cars for the account of New Hampshire. Unless and until the state of New Hampshire actually develops some traffic for Twin State to handle, Twin State is not obligated to provide any service and cannot be in default.

Nor is Twin State in default on any of its maintenance obligations under the Lease. I am familiar with the physical condition of Twin State, having extensively surveyed it late last summer. I am not aware of any required maintenance that would mate-

rially delay the restoration of the line between Lunenburg and Whitefield should traffic movements become imminent. I am informed that two bridges that New Hampshire Central needs to use to access Whitefield which are owned by the state of New Hampshire are presently being repaired and will not be put back in service until August. Twin State can easily be in physical condition to handle traffic by then.

In summary, Twin State has, at all times, provided any required service or maintenance and is presently ready, willing and able to provide any such service or maintenance. Consistent with the Option Agreement Twin State desires to be acquired by Trans Rail and Trans Rail has undertaken and agreed to assist Twin State in providing any required maintenance and service during the term of the option.

I am now informed that the state of New Hampshire has purported to grant to New Hampshire Central Railroad, a "right" to operate on Twin State's railroad between the mill at Lunenburg and Whitefield, New Hampshire. I am not aware of any basis for any claim by the state of New Hampshire that it has the right to designate a conflicting operator for this railroad. Furthermore, if the state were to be successful in imposing another operator on Twin State, Twin State would be substantially and irreparably harmed.

My understanding of the Lease is that, unless and until it defaults, Twin State has the exclusive right to operate on the railroad between St. Johnsbury and Whitefield. I am not aware that Twin State has failed to meet any requests for rail service by refusing to provide required maintenance and service such as would give rise to a default under the Lease.

Other than pursuant to the Option Agreement, at no point has Twin State agreed to relinquish or share its right to operate its railroad between Lunenburg and Whitefield.

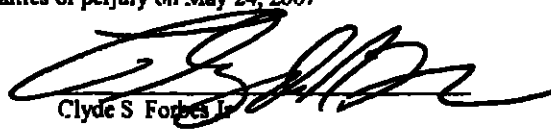
Under the circumstances, it is my understanding that any application to the Surface Transportation Board to terminate its right to operate the railroad must be by way of adverse discontinuance or adverse abandonment. This is my understanding of the Board's ruling in connection with Twin State's attempt to abandon Maine Central's interest in the railroad between Gilman and St. Johnsbury. *Twin State Railroad Company - Abandonment Exemption - in Caledonia and Essex Counties, Vermont*, Docket Number AB862X, Decision Released November 18, 2005.

Furthermore, it is my understanding that enforcement of Twin State's rights under its Lease can only occur if and when the Board approves.

VERIFICATION

Clyde S Forbes, Jr, being duly sworn, deposes and says that the foregoing is true
and correct, to the best of his knowledge, information and belief

Signed under the pains and penalties of perjury on May 24, 2007



Clyde S Forbes Jr

Appendix - A



BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY
IRON HORSE PARK
NO. BELLEFICA, MASS. 01882

APPENDIX A
Page 1 of 2

FILE COPY

**LAW DEPARTMENT
(978) 663-1215
Fax (978) 663-1213**

February 3, 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 – Railroad Line from Gilman, VT to
St. Johnsbury, VT**

Dear Mr. Forbes,

Pursuant to Section 5.02 of the above-referenced lease and operating agreement between the Maine Central Railroad Company ("MEC"), the Twin State Railroad Corporation ("TSR") and the Lamoille Valley Railroad Company ("LVRC") (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 a portion of the so-called "Twin State Railroad" from approximately Gilman, Vermont to St. Johnsbury, Vermont (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. Finally, TSR and LVRC, based upon our current records, have failed to obtain approval from MEC of their insurer(s) in violation of Section 2.08 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 4, 2003, MEC will take steps to terminate the rights and obligations of TSR and LVRC under the Agreement.

Sincerely,

Katherine E. Potter
Staff Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of February 2003, a copy of the foregoing document was served by first class mail, postage prepaid, upon:

Twin State Railroad Corporation
Stafford Avenue
Morrisville, Vermont 05661

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

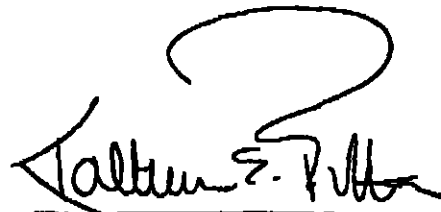
Lamoille Valley Railroad Company
Stafford Avenue
Morrisville, Vermont 05661

Twin State Railroad Corporation
Attn: C. S. Forbes
P.O. Box 1267
Trenton, Florida 32693

Lamoille Valley Railroad Company
Attn: C.S. Forbes
P.O. Box 1360
Trenton, Florida 32693

Twin State Railroad Corporation
Lamoille Valley Railroad Company
C/o Leonard M. Singer, Esq.
Craighead, Glick, LLP
277 Dartmouth Street
Boston, MA 02116

Craig S. Donais, Esquire
Assistant Attorney General
Transportation & Construction Bureau
New Hampshire Department of Justice
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397



Katherine E. Potter

Appendix - B

CRAIGHEAD GLICK LLP
COUNSELLORS AT LAW

277 DARTMOUTH STREET BOSTON MASSACHUSETTS 02116 PHONE 617 859 8200 FAX 617 859 7272

Leonard M. Singer

February 26, 2003

BY FACSIMILE AND FIRST-CLASS MAIL

978-663-1213

Katherine E. Potter
Maine Central Railroad Company
Iron Horse Park
North Billerica, MA 01862

Re. Lease and Operating Agreement - Twin State Railroad Corporation

Dear Katherine:

This will respond to your letter of February 3 which recites that it is written notice of defaults under the Lease and Operating Agreement dated as of March 1, 1984 by and among Maine Central Railroad Company, Twin State Railroad Corporation ("Twin State") and the Lamouille Railroad Company (the "Agreement"). As explained in this letter, there has been no default under the Agreement and, even if there had been, your letter is insufficient notice thereof.

Your letter first alleges a violation of Sections 2.02 and 2.04 of the Agreement. Section 2.02 obligates Twin State to

provide train service which shall 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

This Section provides two alternative standards for Twin State's service, both of which are being satisfied. The first standard is "the service presently provided" by MEC. As the Agreement acknowledges, MEC was providing service "upon the demand of customers." Twin State is presently providing service upon the demand of customers. Because there has been no demand, no service is required. The second standard is service as "warranted by traffic levels." Here, again, Twin State is meeting that standard. Present traffic levels do not warrant any service so none is being provided.

Section 2.04 requires Twin State to bear all costs related to operation. Twin State is not aware of any cost of operation that has been borne by any third party. To the extent that there has been any such cost, Twin State is ready willing and able to reimburse that third party. Because your letter of February 3 does not identify any item of cost or any third party, the letter does not constitute sufficient notice of default, if indeed, there be one.

Katherine E. Potter
February 26, 2003
Page 2

Your letter next alleges a violation of Section 2.06 of the Agreement. That Section requires maintenance so that freight train operations can be conducted "as warranted by traffic levels." No operations are warranted by present traffic levels, therefore the property is sufficiently maintained to support that level of operation. Furthermore, as explained in David Anderson's letter to Craig Donais of January 29 (a copy of which was provided to Robert Culliford), there has been deferred maintenance due to the lack of marketing efforts and traffic. Conditions have been worsened by the particularly severe winter temperatures and snowfall being experienced this year. Once the snow has melted sufficiently, maintenance work, if any, that is required can be performed.

Finally, your letter suggests that Twin State has failed to obtain approval of its insurers in violation of Section 2.08. Twin State's insurer is Steadfast Insurance Company which is a wholly-owned subsidiary of Zurich Insurance Group. I am informed that in 2002 Steadfast was rated A+ 15 superior by Best's.

I feel obliged to comment upon Maine Central's efforts and the tacit approval of the state of New Hampshire which are directed towards unfairly depriving Twin State of the value of its leasehold. It might make more sense for the parties to try to unwind their relationships given the total absence of any present traffic on this line and the meager, if not nonexistent, prospects for future traffic. If the parties are unwilling to do that, you may be assured that Twin state will vigorously defend and assert its rights under the lease and otherwise.

Very truly yours,


Leonard M. Singer

cc Craig S. Donais

Appendix - C



May 22, 2007

Twin State Railroad Company
Attention: Clyde Forbes
1022 East Wade Street
Trenton, FL 32693

Gentlemen:

As you know, Dirigo Paper Company has a paper mill located in Gilman, Vermont on what we understand to be your railroad line between Whitefield, New Hampshire and St. Johnsbury, Vermont. Dirigo restored the paper mill to production in 2004, more than two years after the mill was closed by its previous owner. We understand that sometime prior to the mill's closing in 2002, rail service to the mill was discontinued. Dirigo desires rail service, both to and from points and rail connections reached via Whitefield and to and from points and connections reached via St. Johnsbury.

Our inbound traffic would consist mostly of pulp, starch and calcium carbonate slurry and our outbound traffic would consist of paper rolls moving in boxcars. We look forward to working with you to resume rail service to our plant as soon as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter D. Hanson", written over a horizontal line.

Peter D. Hanson
President

Dirigo Paper Company
P.O. Box 118, 35 Riverside Avenue
Gilman, VT 05904
802 892 6100
802 892 6106 (fax)

Appendix - D

**State of Vermont
Office of the Secretary
One National Life Drive
Montpelier, VT 05633-5001
www.aot.state.vt.us**

[phone] 802-828-2657
[fax] 802-828-3522
[ttd] 802-253-0191

Agency of Transportation

May 22, 2007

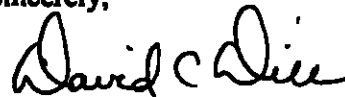
**Mr. Clyde S. Forbes, Jr.
President
Twin State Railroad Company
1022 East Wade Street
Trenton, FL 32693-3328**

Dear Mr. Forbes:

Pursuant to a certain March 1, 1984 Lease and Operating Agreement (the "1984 Lease"), by and among Maine Central Railroad Company ("MEC"), Lamoille Valley Railroad Company ("LVRC"), and Twin State Railroad Corporation ("TSRR" as operating designee of LVRC) and the Settlement Agreement Between State of Vermont Agency of Transportation and LVRC made as of February 19, 1998, the State of Vermont is authorized to designate TSRR as operator of the line of railroad between St. Johnsbury, VT and Whitefield, NH via Lunenburg, VT (Gilman). In 2003, TSRR obtained authority from the Surface Transportation Board to discontinue operations between Lunenburg and St. Johnsbury.

We are informed that TSRR may soon resume operations between Lunenburg and St. Johnsbury and we encourage it to do so. To the extent necessary to facilitate such resumption of service, the State of Vermont hereby re-designates TSRR as the operator of the St. Johnsbury-Lunenburg line pursuant to the 1984 Lease for a term equal to the term, or any extensions thereof, of the April 11, 2007, Option Agreement between Trans Rail Holding Company, Clyde Forbes, Jr. and Twin State Railroad Company.

Sincerely,



for

**Neale F. Lunderville
Secretary of Transportation**

Exhibit - 2

Exhibit 2

VERIFIED STATEMENT

OF

DAVID W. WULFSON

My name is David W. Wulfson. I am President of Trans Rail Holding Company ("TRHC"), which has been formed to acquire as a non-carrier the Class III railroad franchises presently comprising the Vermont Rail System, namely, Vermont Railway, Inc. ("VTR"), Clarendon & Pittsford Railroad Company ("CLP"), Green Mountain Railroad Corporation ("GMRC"), Washington County Railroad Company ("WACR"), and New York and Ogdensburg Railway Company, Inc ("NYOG") and additional railroads as the need arises, subject to Board approval as appropriate. Common control of all present members of the Vermont Railway System by me and four other members of my family has been approved by the Board, and I am President of all railroads within the Vermont Rail System except for GMRC, of which I am an officer and director.¹ A map of the Vermont Railway System is attached as Appendix A hereto.

The Vermont Railway System has been endeavoring for the past several months to participate in the reinstitution of rail service over a line of railroad extending between St. Johnsbury, on the west, and Whitefield, NH, on the east, via Lunenburg, VT, where Dirigo Paper Company ("Dirigo"), a receiver of paper product components such as pulp and starch and a shipper of finished paper products, has a large facility on the line that Twin State Railroad Corporation ("TSR"), a Class III railroad, is authorized to serve. WACR serves St. Johnsbury and can provide interline connections from St. Johnsbury to

¹ See Finance Docket No. 34186, *David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch – Control of New York and Ogdensburg Railway Company, Inc., Verified Notice of Exemption* dated March 14, 2002.

two Class I railroads. The history of the operations of TSR has been set forth in detail in the Petition for Revocation filed in this proceeding by that company on May 8, 2007 and in the Comments of the State of Vermont, and is being addressed in the Verified Statement of Clyde S. Forbes, Jr., attached to the Joint Petition.

In brief, TSR leases the line of railroad extending between St. Johnsbury, on the west, and Whitefield, NH, on the east, via Lunenburg, VT and holds operating rights between Lunenburg and Whitefield. It formerly held operating rights between Lunenburg (sometimes referred to as Gilman) and St. Johnsbury, but discontinued its operating rights over that segment with the approval of the Board after the company that operated the paper plant prior to Dirigo discontinued rail shipments in approximately 1999.

By virtue of the Lease and Operating Agreement under which TSR acquired the right to operate as lessee between St. Johnsbury, Lunenburg, and Whitefield, the State of Vermont was given the right, in certain circumstances, by the owners of those lines to name TSR as a new operator. New Hampshire Central Railroad, Inc. ("NHCR"), in its Comments in this proceeding dated May 15, 2007, acknowledges that Vermont retains this right.

Several months ago, the present ownership of Dirigo informally indicated to officials of Vermont Rail System a desire by Dirigo to resume rail service for shipments moving between the Lunenburg plant and both the St. Johnsbury gateway, on the west, and Whitefield, on the east. I and other representatives of Vermont Rail System thus undertook negotiations with the ownership of TSR to acquire its capital stock and other assets, recognizing that TSR presently holds operating rights between Lunenburg and Whitefield and that the State of Vermont is entitled, pursuant to the Lease and Operating

Agreement of 1984 that was previously approved by the Board, to designate TSR as the operator of the St. Johnsbury-Lunenburg line subject to Board approval.

As the negotiations progressed, I was aware that TSR had discontinued its operating rights between St. Johnsbury and Lunenburg, but also recognized that TSR could seek to resume those operations subject to Board approval if nominated to do so by the State of Vermont, whose representatives had assured me that they intended to take that step by filing an appropriate notice with the Board to recommence operations between St. Johnsbury and Lunenburg, including service to the Dirigo plant (because TSR's Lunenburg-Whitefield operating rights extend to Dirigo).

At the same time, it was and remains my understanding that TSR holds operating rights sanctioned by the Board between Lunenburg and Whitefield. I was aware that the State of New Hampshire had purchased the underlying line from Maine Central Railroad, but I was relying on the representations of New Hampshire, repeated by the Board, that New Hampshire's acquisition of the line was subject to TSR's operating rights between Lunenburg and Whitefield.² Although New Hampshire indicated at the time of the acquisition that it might seek to obtain a new operator to perform service over that line, I took its representation that its acquisition would be subject to TSR's operating rights as meaning that New Hampshire would either have to insist that a new operator obtain TSR's permission to institute operations over the line or that an adverse discontinuance proceeding would have to be successfully pursued against TSR before a new operator

² See STB Decision of January 15, 2003 in Finance Docket No. 34307, *State of New Hampshire Department of Transportation – Acquisition and Operation Exemption – Certain Assets of Maine Central Railroad Company* (“The State will acquire the Line subject to TSR retaining [its] operating rights on it.. ”)

could step in. If New Hampshire intended to seek a new operator while TSR was still the franchise holder, New Hampshire certainly failed to make that clear.

Indeed, New Hampshire itself seemingly agreed with that same interpretation, inasmuch as it and Maine Central in 2003 jointly sought waivers of the Board's abandonment and discontinuance regulations to permit an adverse discontinuance application for the Lunenburg-Whitefield line to be pursued without the consent of TSR. Even though the Board granted the waivers, to my knowledge no further steps have been taken by New Hampshire or any other party to seek an adverse discontinuance of that segment.³ But the discontinuance waivers confirmed to me that New Hampshire recognized that it could not supersede TSR's operating rights unilaterally.

In short, during the last several months, when Vermont Rail System was negotiating with TSR to acquire its interests, we had no reason to believe that any impairment of TSR's operating rights between Lunenburg and Whitefield existed, and we relied on New Hampshire's representation that its acquisition of the line, and any possible steps it might seek to take to find a new operator of that line, would not impair or supersede the operating rights of TSR so long as those operating rights remain in place, as they do.

Against that background, on April 11, 2007, TRHC entered into an Option Agreement with TSR, its owners, and its corporate affiliates to acquire the capital stock of TSR and other assets with the goal of restoring service between St. Johnsbury and Whitefield. A copy of the Option Agreement is attached as Appendix B hereto. If the option is fully exercised, it is the intent of Vermont Rail System and TRHC to retain TSR as the operator of the line as a subsidiary of TRHC, subject to Board approval.

³ See Docket No AB-488, *Maine Central R R Co – Lease*, July 1, 2003

Under Section 3 of the Option Agreement, TRHC paid \$10,000 for the option and then paid an additional \$40,000 on May 15 to keep the option alive while the Board decides the revocation requests. Both payments were irrevocable when made. When TRHC made the initial \$10,000 option payment, it had no reason to believe that any steps were being taken to override the TSR operating rights between Lunenburg and Whitefield. Although TRHC was aware by May 15 that NHCR was seeking to institute operations between Lunenburg and Whitefield, TRHC had to choose between giving up its option altogether as well as its initial \$10,000 down payment, or making the \$40,000 additional down payment due on May 15 to preserve both its initial investment and its goal of restoring through service between Whitefield and St. Johnsbury. TRHC chose the latter course of action because the Board had been requested to revoke NHCR's notice and TRHC believed that NIICR's Notice to the Board was false and misleading by failing to acknowledge TSR's operating rights, as pointed out to the Board by both TSR and the State of Vermont earlier in this proceeding. TSR is making plans to rehabilitate and commence active service over the Lunenburg-Whitefield line. Service will be instituted as soon as the line is repaired and rates agreed upon with Dirigo.

As things now stand, if NHCR is allowed to commence operations as it proposes and TRHC proceeds with the purchase of TSR pursuant to the Option Agreement, TRHC will suffer harm by acquiring a franchise that is subject to competition between Lunenburg and Whitefield, even though no such competition was present when the option agreement was entered into or reasonably foreseeable due to New Hampshire's representation that it was acquiring the line subject to TSR's operating rights. Even though New Hampshire indicated that it would seek out a "new operator," it did not say it would seek

an “additional operator” and Vermont Rail System accordingly construed New Hampshire’s Notice of Exemption as indicating that no new operator would be named unless and until TSR’s operating rights were terminated according to Board procedures. If an additional operator is added, TSR will be worth less than it was when the option bargain was struck. On the other hand, if as a result of NHCR operations, TRHC determines not to go through with the purchase pursuant to the Option Agreement, it will irrevocably lose its \$50,000 in down payments. Either way, TRHC will suffer injury unless NHCR is stayed from commencing operations.

Further, under its existing lease of the Lunenburg-Whitefield line, TSR is obligated to maintain that line in a condition necessary to provide service. Dirigo has now made a specific request for such service, as disclosed in Mr. Forbes’ Verified Statement. Under the Option Agreement, Section 6, TRHC is obligated to pay for any required maintenance on the line in the event TSR is obligated to expend funds for those purposes. It is the understanding of Vermont Rail System that a minimum of \$50,000 in track rehabilitation costs will be required to restore the Lunenburg-Whitefield line to safe operating condition, and those are funds that TRHC will be required to provide TRS.

Those arrangements were acceptable when they were negotiated because it was contemplated that TSR would become a part of the Vermont Rail System family, which would enjoy all revenues generated between Lunenburg and Whitefield. Now, however, TSR may well be required to invest those funds in order to meet the service request of Dirigo, and TRHC would then have to reimburse TSR, without any commitment or legal obligation by NHCR to pay for the use of the upgraded line or to pay it for its continued maintenance. Unless such an agreement is in place, I am unaware of how TRHC or TSR

may expect to recover these outlays from NHCR, which seeks to operate upon the line without the agreement of TSR. NHCR has made no proposal to TRHC, or to TSR as far as I am aware, for rehabilitation funds to be invested in the line by NHCR or New Hampshire, or for any sharing of costs. Any such proposal, even if made, would have to be satisfactory to TSR.

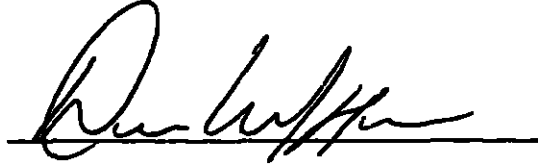
Additionally, it would be extremely difficult, if not altogether impossible, for TRHC or TSR to establish a specific monetary value representing lost profits for each car of freight diverted from TSR to NHCR after TSR resumes operations to Whitefield. To the best of my knowledge, TSR has developed and maintains no schedule of direct or variable per car costs. The only such costs publicly available are the regional costs for Class I railroads, which are much higher on a unit basis than those to be expected for a Class III carrier. Thus, available public cost data for Class I railroads would greatly overstate the actual costs of TSR, a Class III carrier, and the use of such costs would significantly understate TSR's profits. Absent prohibitively expensive special cost studies, TSR could not establish its actual costs, profits, or losses per car.

Finally, I should apprise the Board of a conversation that I had earlier this week with Mr. Edward Jeffries, President of NHCR. The conversation was initiated by me to explore any possibility of a private resolution of differences between our two companies. In that respect my effort was unfruitful and Mr. Jeffries indicated that his company's goal is to become the sole carrier serving Dirigo Paper Company at Lunenburg. However, during the course of the conversation, Mr. Jeffries mentioned to me that NHCR could not expect to commence operations before August 1, 2007 due to the fact that it has to rehabilitate two bridges east of Whitefield in order to reach connecting railroads. Without the

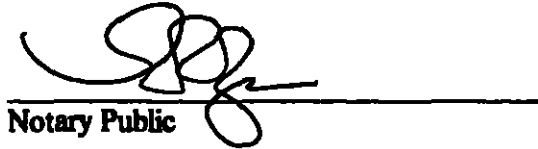
use of those bridges, the line between Lunenburg and Whitefield is essentially cut off from the rail transportation network.

VERIFICATION

David W. Wulfson, being duly sworn, deposes and says that the foregoing is true and correct, to the best of his knowledge, information and belief.

A handwritten signature in black ink, appearing to read "David Wulfson", is written over a horizontal line.

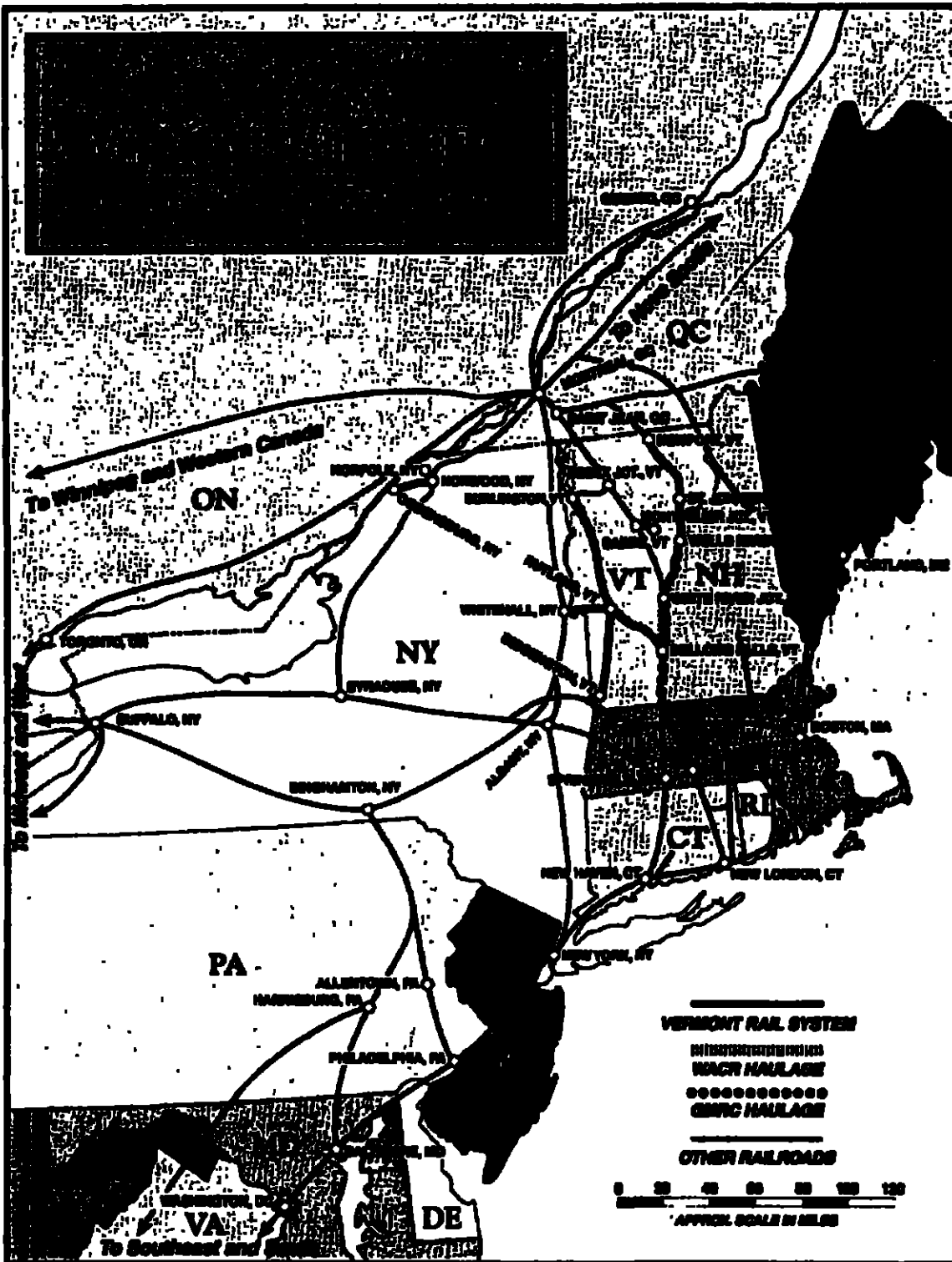
Subscribed and sworn to before me this 24th day of May, 2007.

A handwritten signature in black ink is written over a horizontal line. Below the line, the words "Notary Public" are printed.

My commission expires February 10, 2011.

Appendix - A

VRS REGIONAL MAP



Appendix - B

OPTION AGREEMENT

This Option Agreement, made as of the 11th day of April, 2007 by and between TRANS RAIL HOLDING COMPANY, a Vermont corporation with a mailing address of One Railway Lane, Burlington, Vermont 05401 ("TRHC"), and CLYDE S. FORBES, JR. an individual residing at 1022 East Wade Street, Trenton, Florida 32693 ("FORBES"), together with TWIN STATE RAILROAD COMPANY, a Vermont corporation with a mailing address of 1022 East Wade Street, Trenton, Florida 32693 ("TWIN STATE"), together with LAMOILLE VALLEY RAILROAD COMPANY, a Vermont corporation with a mailing address of 1022 East Wade Street, Trenton, Florida 32693 ("LMVR") together with THE NORTHERN VERMONT CORPORATION, a Vermont corporation with a mailing address of 1022 East Wade Street, Trenton, Florida 32693 ("TNVC") (FORBES, TWIN STATE, LMVR and TNVC are referred to herein collectively as "Sellers")

WHEREAS, on or about March 1, 1984, TWIN STATE, Maine Central Railroad Company, and the LMVR entered into a Lease and Operating Agreement (the "Operating Agreement") pursuant to which TWIN STATE was granted certain property and operating rights which are more particularly described in said Operating Agreement which is attached hereto as Exhibit A and made a part hereof;

WHEREAS, Sellers are desirous of conveying, selling, and assigning any and all rights, title and interests each may have in and to the Operating Agreement including, but not limited to, any and all claims of right to any and all: real property; track and track elements; ties; bridges; switches; leases; side track agreements; and any and all real or personal property ("Assets"), to TRHC, its successors and assigns;

WHEREAS, Sellers are desirous of granting to TRHC, its successors and assigns, an option to purchase the Assets;

WHEREAS, Sellers are desirous of conveying, selling, and assigning any and all stock, rights, title and interests each may have in and to the Vermont corporation TWIN STATE (the "Stock") to TRHC, its successors and assigns;

WHEREAS, FORBES, TWIN STATE, LMVR and TNVC are desirous of granting to TRHC, its successors and assigns, an option to purchase the Stock;

WHEREAS, Sellers are desirous of conveying, selling, and assigning any and all rights, title and interests each may have in and to the I.C.C. and/or S.T.B. federally approved operating rights of the TWIN STATE (the "Operating Rights") to TRHC, its successors and assigns;

WHEREAS, Sellers are desirous of granting to TRHC, its successors and assigns, an option to purchase the Operating Rights;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Term.** This Agreement shall continue in effect until July 31, 2007 (the "Initial Term"). In addition to the Initial Term, TRHC shall have at its option two (2) renewal terms of one (1) month each on the same terms and conditions as this Agreement (each a "Renewal Term"),

which Renewal Terms shall take effect automatically if TRHC gives Sellers written notice of renewal at least fifteen (15) days prior to the expiration of the then-current term. The Initial Term and the Renewal Terms are sometimes referred to collectively as the "Term." Notwithstanding the foregoing Sellers shall be under no obligation to grant said Renewal Term unless TRHC provides documentation with respect to delay in funding showing due cause for the delay not the fault of TRHC, which funding all parties hereto acknowledge is subject to Vermont legislative approval, and funding in the fiscal year 2008.

2. Option to Purchase and Right to Sell Terminal Assets.

(a) Sellers hereby grants TRHC an option to purchase the Assets, Stock and Operating Rights (the "Option") at any time during the Term. TRHC shall exercise the Option by providing Sellers, on or prior to the last day of the Term, with written notice that it is exercising the Option. Time is of the essence.

(b) Upon the exercise by TRHC of the Option, this Option Agreement and the notice of the Option shall constitute an agreement of sale and purchase between TRHC and Sellers, whereby Sellers shall sell and TRHC shall purchase the Assets, Stock and Operating Rights, upon the terms and conditions set forth herein

3. Purchase Price.

(a) Upon exercise of the Option, the purchase price shall be Four Hundred Fifty Thousand Dollars (\$450,000.00) (the "Option Price"). Said sum shall be a net sum payable to TNVC with no deductions taken therefrom, without exception.

(b) In consideration of this Option the sum of Fifty Thousand Dollars (\$50,000.00) shall be paid by TRHC as the Option Fee (the "Option Fee") as follows; Ten Thousand Dollars (\$10,000.00) upon the execution of this Option Agreement and the remaining Forty Thousand Dollars (\$40,000.00) due and payable on or before May 15, 2007. Unless the parties agree otherwise in writing, in the event that TRHC fails to pay said Forty Thousand Dollars (\$40,000.00) due and payable on or before May 15, 2007, TRHC shall forfeit all of said Ten Thousand Dollars (\$10,000.00) to TNVC, having then no claim of right thereto and this Option Agreement shall be null and void and of no further force and effect. Said Option Fee once completely paid, shall be applied in full to the Option Price, however, in the event that TRHC fails to exercise this Option, TRHC shall forfeit all of said Fifty Thousand Dollars (\$50,000.00) to TNVC, having then no claim of right thereto.

4. Closing. In the event of the exercise of the Option, the closing of the purchase and sale of the Assets, Stock and Operating Rights (the "Closing") shall occur within fifteen (15) days of receipt of written notice of such TRHC's exercise the Option. The closing shall take place at TRHC's offices at One Railway Lane, Burlington, Vermont, or such other location as the parties shall agree. If the date of Closing specified in the notice of Option will occur after the expiration of the Term, then the Term shall continue until Closing. Time is of the essence.

5. Payment of Purchase Price. The balance of the Option Price (Four Hundred Thousand Dollars - \$400,000.00) shall be paid at Closing in full by certified check or wire transfer of funds to TNVC's account. It is the intent of the parties that TNVC receive \$450,000 in consideration of the conveyance contemplated by this Agreement. Without limiting the generality of the

foregoing, TRHC agrees to pay any filing, registration and recording fees (including those of the Surface Transportation Board), deed stamps, conveyance taxes or fees and property taxes or fees (including any accrued before the date of conveyance). Notwithstanding the foregoing, Sellers shall bear their own attorneys fees.

6. **Title.** TNVC shall convey the Stock to TRHC or its nominee in the event the Option is exercised, free and clear of all liens and encumbrances pursuant to a bill of sale duly executed by it substantially in the form attached hereto as Exhibit B. The Sellers, other than TNVC, will execute a bill of sale for the Stock but they make no warranty in connection with the conveyance of the Stock whatsoever, including any warranty that they have any interest to convey.

Twin State shall assign its interest in the Assets, Operating Agreement and Operating Rights and the Sellers, other than Twin State will execute an instrument of conveyance for the Assets, Operating Agreement and Operating Rights but they make no warranty in connection with the conveyance of the Assets, Operating Rights and Operating Agreement whatsoever, including any warranty that they have any interest to convey.

TRHC acknowledges the full and ample opportunity to conduct any inspections and investigations desired by TRHC, including without limitation, for mechanical, structural and hazardous substance conditions, of the Assets and with respect to title to and the enforceability of the Operating Agreement or the Operating Rights. TRHC is fully satisfied with the results of the same and agrees to accept the Assets, the Operating Agreement and the Operating Rights in such condition as they may be at the time of Closing. TRHC affirmatively warrants that it is not relying upon any warranties or representations, express or implied, of Sellers or their agents as to the Assets, the Operating Agreement or the Operating Rights. TRHC acknowledges that Sellers have no responsibility for any failure by TRHC to fully exercise its inspection rights. TRHC further understands and acknowledges that the Assets, the Operating Agreement and the Operating Rights will be transferred "AS IS", with no warranties or representations as of now, as at the time of closing or at any time in the future. TRHC's agreements in this paragraph shall survive the conveyance of the Assets, the Operating Agreement and the Operating Rights.

TRHC acknowledges that Sellers have received one or more notices of default under the Operating Agreement from Maine Central Railroad Company ("Maine Central") and the State of Vermont and that Maine Central and the State of Vermont may believe that they have terminated or have the right to terminate any rights pursuant to the Operating Agreement. TRHC further acknowledges that the transaction contemplated by this Agreement may require the consent of Maine Central and that the Surface Transportation Board has permitted TWIN STATE to discontinue service over a portion of the Assets. TRHC agrees that the Assets, Operating Rights and the Operating Agreement conveyed pursuant to this Agreement will be subject to the rights of Maine Central and the State of Vermont, if any, and notwithstanding any discontinuance of service and that Sellers shall have no obligation to cure any default under the Operating Agreement, to obtain any consent from Maine Central or to take any action with respect to the Assets, Operating Rights or the Operating Agreement.

During the term of this Option and any extension thereof upon the demand of any of the Sellers and the payment by them to TRHC of \$10, TRHC agrees to perform, at its own expense, any obligation of Sellers pursuant to the Operating Agreement, including, without limitation, any maintenance or required service. In the event that TRHC fails to perform its obligations pursuant to this paragraph, any of the Sellers shall have the right to terminate TRHC's rights

hereunder, to retain any amounts theretofore paid by TRHC and to recover any damages caused by TRHC's failure to perform its obligations pursuant to this paragraph.

Notwithstanding the foregoing, the Sellers warrant that they are not presently aware of any claims against them by parties other than Maine Central and the State of Vermont that would expose TRHC to any liability whatsoever, whether in tort, contract, bankruptcy, or any other proceeding whatsoever, once it takes title to the Assets, Operating Rights or the Operating Agreement, except those claims that may be listed upon a separate schedule and attached hereto and signed by the Sellers and TRHC. Unless otherwise agreed by the parties or so listed, Sellers agree to indemnify, defend and hold TRHC harmless for any breach of this warranty.

7. **Closing Documentation.** At the Closing, TWIN STATE and TNVC shall deliver to TRHC any certificate or document required by law to be delivered by a seller to a buyer of realty, fixtures or personal property such as the Assets, Stock and Operating Rights, and in the event that further documentation is necessary, Sellers shall cooperate fully and shall execute whatever further documentation that may be necessary to complete the transfer of the Assets, Stock and Operating Rights to TRHC, its successors or assigns.

8. **Succession.** This Agreement and the provisions herein shall be binding on the respective heirs, personal representatives, successors and assigns of all parties hereto. It is understood and agreed by the parties hereto that the State of Vermont, Agency of Transportation, has sought the introduction of legislation to seek state funding of the purchase of a portion or all of the Assets, Stock and Operating Rights, which are the objects of this Option. Therefore the parties agree that the Assets, Stock and Operating Rights, may, at the discretion of TRHC be conveyed, in whole or in any part thereof, to the State of Vermont.

9. **Notice.** All notices required to be given pursuant to this Agreement, to be effective, shall be in writing and shall be delivered by hand, by fax, by overnight courier service or by certified mail, postage prepaid, return receipt requested, to the following addresses:

To **TRHC:** **TRANS RAIL HOLDING COMPANY**
 Attn: David W. Wulfson, President
 One Railway Lane
 Burlington, Vermont 05401
 Fax: (802) 658-2553

With a copy to: Eric R. Benson, Esq.
 One Railway Lane
 Burlington, Vermont 05401
 Fax: (802) 658-7450

To **Sellers** : **CLYDE FORBES, JR.**
 1022 East Wade Street
 Trenton, Florida 32693
 Fax: (352) 629-2276

With a copy to:

Leonard M. Singer, Esq.
101 Arch Street, Ninth Floor
Boston, MA 02110
Fax: (617) 395-2625

Notices shall be deemed to have been received upon (i) actual delivery in the case of delivery in-hand to a supervisory employee of either party; (ii) the date of transmission in the case of facsimile transmission on a Business Day (as defined below); (iii) the following Business Day in the case of delivery by overnight delivery service or in the case of transmission by facsimile on a non-Business Day; and (iv) five (5) Business Days after transmission if sent by certified mail. All notices of a party's address change shall be effective five (5) Business Days after the other party receives notice of the same. The term "Business Day" as used in this Agreement shall mean 9 a.m. to 5 p.m. Eastern Time on a day that federally chartered banks in Burlington, Vermont, are open for business.

10. Governing Law. This Agreement shall be governed by the laws in effect in the State of Vermont as those laws may be amended from time to time.

11. Entire Agreement. All negotiations, considerations, representations, and understandings between Sellers and TRHC are incorporated herein and may be modified or altered only by an agreement in writing between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

WITNESS:



STATE OF VERMONT)
CHITTENDEN COUNTY, ss.)

TRANS RAIL HOLDING COMPANY

By: 
Title: President and Duty Authorized Agent
Print name: David W. Wulfson

At Burlington, this 11th day of April, 2007, personally appeared David W. Wulfson and acknowledged the foregoing instrument, by him/her as President and duly authorized agent of TRANS RAIL HOLDING COMPANY subscribed, to be his/her free act and deed and the free act and deed of TRANS RAIL HOLDING COMPANY.

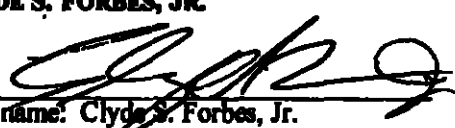
Before me,


Notary Public
(My commission expires Feb. 10, 2007)

WITNESS:



CLYDE S. FORBES, JR.

By: 
Print name: Clyde S. Forbes, Jr.

WITNESS:



TWIN STATE RAILROAD COMPANY

By: 
Title: President and Duty Authorized Agent
Print name: Clyde S. Forbes, Jr.

WITNESS:

[Signature]

LAMOILLE VALLEY RAILROAD COMPANY

By: [Signature]
Title: President and Duly Authorized Agent
Print name: Clyde S. Forbes, Jr.

WITNESS:

[Signature]

THE NORTHERN VERMONT CORPORATION

By: [Signature]
Title: President and Duly Authorized Agent
Print name: Clyde S. Forbes, Jr.

STATE OF FLORIDA)
MALONE COUNTY, FL.)

At 3:00 PM, this 18th day of April, 2007, personally appeared Clyde S. Forbes, Jr. and acknowledged the foregoing instrument, by him as President and duly authorized agent of COMPANY, and THE NORTHERN VERMONT CORPORATION subscribed, to be his free act and deed on his own behalf and the free act and deed of SAID COMPANIES.

Before me,

[Signature]
Notary Public
(My commission expires 4/5/10)

