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SEC

SERVICE DATE - OCTOBER 18, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34052

GREEN MOUNTAIN RAILROAD CORPORATION—PETITION FOR  
DECLARATORY ORDER

Decided: October 17, 2001

On June 5, 2001, Green Mountain Railroad Corporation (GMRC) filed a request for a declaratory order. GMRC asked the Board to determine whether a statute of the State of Vermont requiring GMRC to obtain a permit to develop its facilities in Rockingham, VT, is preempted by the Board's exclusive jurisdiction over railroad operations. On June 6, 2001, GMRC filed in the United States District Court for the District of Vermont (the Court) a complaint requesting declaratory and injunctive relief to prevent Vermont from enforcing its permitting requirement.<sup>1</sup> Vermont moved to dismiss the Court action.<sup>2</sup>

On September 26, 2001, the Court issued a decision: (1) denying GMRC's motion to stay the Court action and refer the matter to the Board; (2) partially granting Vermont's motion to dismiss GMRC's claim; and (3) denying Vermont's motion that the Court abstain from making any determination regarding the State's attempts to enforce the permit. On October 4, 2001, Vermont urged the Board to deny GMRC's petition in light of the Court's decision. On October 5, 2001, also in light of the Court's decision, GMRC filed a motion proposing: (1) that the proceeding before the Board be held in abeyance until final disposition by the Court of the complaint and request for relief pending before it; and (2) that GMRC and Vermont be directed to advise the Board, within 60 days of the issuance of a final decision by the Court, whether they deem further proceedings before the Board in this case to be warranted. Under the circumstances, GMRC's request is reasonable and will be granted.

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<sup>1</sup> Green Mountain Railroad Corporation v. State of Vermont, Vermont Agency of Natural Resources, and William H. Sorrell as Attorney General of the State of Vermont, No. 1:01-cv-181.

<sup>2</sup> The parties subsequently entered into a stipulation whereby Vermont agreed not to initiate an enforcement action for GMRC's alleged violations until after the District Court had ruled on its motion to dismiss, and GMRC agreed to withdraw its motion for a preliminary injunction.

It is ordered:

1. This proceeding is held in abeyance until final disposition by the Court of the complaint and request for relief pending before it in this case.
2. GMRC and Vermont are directed to advise the Board, within 60 days of the issuance of a final decision in this case by the Court, whether they deem further proceedings before the Board in this case to be warranted.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary