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May 8, 2008

VIA FEDERAL EXPRESS

Ann K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20024

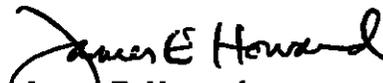
Re State of Maine--Acquisition of Certain Lines in Maine
Finance Docket No 35140

Dear Secretary Quinlan

By letter to you dated May 1, 2008, I transmitted the original and 10 copies of a "Joint Petition for Declaratory Order" in the above-captioned matter. I understand, contrary to my view as stated in the letter of May 1, 2008 that the filing fee should be waived, that you believe that a filing fee is due. Accordingly, enclosed is a check in the amount of \$1,400 representing the filing fee.

It would be greatly appreciated if you could docket the Joint Petition promptly. If you need any further information, please contact me. Thank you very much.

Very truly yours,


James E. Howard

Enclosure
cc Robert B. Culliford

FEE RECEIVED

MAY 9 - 2008

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

MAY 9 - 2008

**Part of
Public Record**

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May 1, 2008

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Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20024



Re State of Maine--Acquisition of Certain Lines in Maine
Finance Docket No 35140

Dear Secretary Quinlan

Enclosed for filing in the above-captioned matter are the original and 10 copies of a "Joint Petition for Declaratory Order" The Department of Transportation of the State of Maine is the primary petitioner, and, as a consequence, we believe that the filing fee is waived in accordance with 49 CFR 1002 2(e)(1) If you disagree, could you please notify me at your earliest convenience?

If you have any questions or need further information, please contact the undersigned Thank you for your attention to this request

Very truly yours,

James E Howard
James E Howard

Enclosures
cc Robert B Culliford

ENTERED
Office of Proceedings
MAY 9 - 2008
Part of
Public Record



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No 35140

STATE OF MAINE--ACQUISITION OF
CERTAIN LINES IN MAINE

FEE RECEIVED
MAY 9 - 2008
SURFACE
TRANSPORTATION BOARD

JOINT PETITION FOR DECLARATORY ORDER

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Attorney for Maine Central Railroad
Co. Portland Terminal Co and
Springfield Terminal Railway Co.

FILED
MAY 9 - 2008
SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings
ENTERED
Office of Proceedings
MAY 9 - 2008

Part of
Public Record
Public Rec.

Dated: May 1, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No 35140

STATE OF MAINE--ACQUISITION OF
CERTAIN LINES IN MAINE

JOINT PETITION FOR DECLARATORY ORDER

The State of Maine, acting by and through its Department of Transportation ("Maine DOT"), Maine Central Railroad Co. ("MEC"), Portland Terminal Co ("PTC") and Springfield Terminal Railway Co ("ST") by this Joint Petition for Declaratory Order request the Board to confirm that Maine DOT did not become a carrier subject to the jurisdiction of the Board by reason of the acquisition of a line of railroad--a portion of the Mountain Division--from MEC in 1996 and will not by reason of the acquisition of *another portion of the Mountain Division from MEC and PTC become a rail carrier*

Facts

The Mountain Division was part of the rail system operated pursuant to the trade name Guilford Rail System, which is now known as Pan Am Railways, and it originally extended from Portland, Maine, where it connects with what is now Pan Am Railways' main line, in a northwesterly direction through Maine and into New Hampshire¹. PTC owned the Mountain Division between milepost 0 0 in Portland and milepost 7 3 at the

¹ Guilford Rail System, and now Pan Am Railways, are comprised of the Maine Central Railroad Company, the Portland Terminal Company, the Boston and Maine Corporation and the Springfield Terminal Railway Company

Westbrook-Windham town line, and MEC owned the Mountain Division between milepost 7.3 and milepost 51.11 at the border between Maine and New Hampshire. By 1994, there had been no rail traffic on the Mountain Division between milepost 5.76 and milepost 51.11 for more than two years. In 1994, MEC and PTC filed a notice of exemption pursuant to 49 C.F.R. 1152, Subpart F to abandon and discontinue operations, respectively, over the Mountain Division between milepost 5.76 and milepost 51.11. In a decision served on December 15, 1994, the abandonment and discontinuance became effective. Maine Central Railroad Co --Abandonment Exemption--Cumberland and Oxford Counties, Maine, Docket No. AB-83 (Sub-No. 14X); Portland Terminal Company--Discontinuance of Service Exemption--Cumberland and Oxford Counties, Maine, Docket No. AB-268 (Sub-No. 2X)

Subsequent to December 15, 1994, neither MEC nor PTC, nor any affiliate of either of them, such as ST, operated trains over the abandoned/discontinued portion of the Mountain Division between milepost 5.76 and milepost 51.11. MEC, PTC and ST took other actions to implement, and evidence their intent to act on, the abandonment and discontinuance authority by promptly abolishing stations and tariffs and removing rail and ties from certain portions of the line. In 1996, Maine DOT and MEC negotiated for the purchase and sale of the Mountain Division between milepost 11.16 and milepost 51.11. By deed dated December 30, 1996, MEC conveyed such portion of the Mountain Division to Maine DOT. Believing that the line had been fully abandoned and that service had been discontinued by the authorized operator, Maine DOT did not seek any regulatory authority for the acquisition.

Recently, Maine DOT has discussed with MEC and PTC the purchase of a second portion of the Mountain Division between milepost 11.16 and milepost 6.0. In anticipation of such a transaction, PTC filed with the Board a notice of exemption to abandon and ST filed a notice of exemption to discontinue service on the Mountain Division between milepost 7.3 and milepost 6.0. By decision served on December 14, 2007, the abandonment and discontinuance became effective Portland Terminal Co -- Abandonment Exemption--In Cumberland County, Maine, Docket No. AB-268 (Sub-No 16X), Springfield Terminal Railway Co --Discontinuance of Service Exemption--In Cumberland County, Maine, Docket No. AB-355 (Sub-No 34X)

In the course of performing due diligence in connection with the proposed purchase of the Mountain Division between milepost 11.16 and milepost 6.0, Maine DOT learned from Pan Am Railways' representatives that ST had been the lessee of the entire Mountain Division at the time of the 1994 abandonment/discontinuance proceeding and that ST has not sought or obtained authority to discontinue operations on any portion of the Mountain Division other than between milepost 6.0 and milepost 7.3, as described above. In light of this information, Maine DOT, MEC, PTC and ST have decided to seek clarification that Maine DOT should not be considered to be a common carrier by virtue of its 1996 acquisition of the portion of the Mountain Division and that it is not necessary for ST to now pursue discontinuance authority given the original intent of the MEC and PTC filing and the lack of activity on the line, even though ST ostensibly continues to have operating rights that have not been formally discontinued. Maine DOT, MEC, PTC and ST also deem it appropriate to seek clarification that Maine DOT will not be

considered to be a common carrier when it purchases the portion of the Mountain Division between milepost 11 16 and milepost 6 0

Argument

Pursuant to 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board has discretionary authority to issue a declaratory order in order to eliminate or terminate controversies or to remove uncertainty. As described above, uncertainty exists concerning the status of Maine DOT as the owner of a portion, and as the potential owner of a second segment, of the Mountain Division. For the reasons outlined below, this is an appropriate case for the Board to issue a declaratory order to the effect that Maine DOT did not become and will not be a rail common carrier as a result of the acquisition of any portion of the Mountain Division between milepost 5.76 and milepost 51 11.

At the time of its purchase of the line between milepost 11 16 and milepost 51 11 in 1996, Maine DOT believed that the line had been fully abandoned and that all regulatory rights to operate on the line had been properly discontinued. As the owners of the line, MEC and PT had taken actions evidencing their intent to exercise the abandonment authority that had been granted, including the ultimate indicator of abandonment--sale of the line. As the Board has recently stated, a determination whether abandonment authority has been consummated depends "on a case-by-case evaluation of all the facts and circumstances to determine the line owner's intent." Beaufort Railroad Co., Inc. --Modified Rail Certificate, Finance Docket No. 34943, decision served March 19, 2008. Generally, the Board "looks for a physical act which shows a clear intention on the part of the rail line owner to remove the line from the national rail system and relinquish the property interest." *Id.*

Maine DOT would not have proceeded with the 1996 transaction if it had believed that there were any possibility that the acquisition would be accompanied by a common carrier obligation. Indeed, Maine DOT is prohibited by state law from conducting rail operations on the lines that it acquires. 23 M.R.S.A. §§ 7151.2 and 7155.2.

As a consequence of this statutory prohibition, Maine DOT has always been meticulous to ensure that its acquisitions of rail lines do not result in Maine DOT becoming a rail carrier subject to the jurisdiction of the ICC or the Board. For example, in the transaction that was the subject of State of Maine, Department of Transportation--Acquisition and Operation Exemption--Maine Central Railroad Co., 8 I.C.C.2d 835 (1991), Maine DOT sought and obtained a decision from the ICC to the effect that its acquisition of certain lines from MEC would not result in Maine DOT becoming a common carrier. Similarly, Maine DOT obtained Board confirmation that its recent purchase of a line from St. Lawrence & Atlantic Railroad Co. would not result in Maine DOT being considered to be a common carrier. State of Maine--Acquisition Exemption--Certain Assets of St. Lawrence & Atlantic Railroad Co., Finance Docket No. 35018, decision served September 13, 2007. Maine DOT has also acquired inactive rail lines without regulatory authorization after such lines have been abandoned. As these examples demonstrate, Maine DOT has adopted and adhered without deviation to the policy that it would not acquire any line of railroad--whether active or abandoned--if as a result it would become a common carrier.

Maine DOT acquired rail lines, including the Mountain Division in 1996, only for purposes of preserving the rights of way for potential future rail operations by others.

In 1980, the ICC promulgated rules intended to "promote continuation of rail service and to remove obstacles which might inhibit States from acquiring lines [that would otherwise be abandoned and dismantled] so that service can be continued " Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions, 366 I C C 132 at 137 (1980) The ICC concluded that its "mandate to promote transportation is best served by following the policy that mere ownership of a rail line by a State does not create common carrier status" if a state does not hold itself out to the public as the operator of a line. Id As described above, Maine DOT does not hold itself out as the operator of any line of railroad

At the present time, active rail operations on the Mountain Division between milepost 5.76 and milepost 51 11 could not be resumed without a substantial investment to repair portions of the line that have deteriorated as a result of a lack of use and regular maintenance and to replace rail and ties that were removed by MEC and PTC between milepost 5 76 and milepost 11 16 Significantly and consistently with the State law described above, Maine DOT has no right, intention or ability to conduct rail operations on its own Rather, it will lease or license others to use the lines that it owns so that freight or passenger operators may provide rail service.

For their part, MEC, PTC and ST wish to clarify and confirm that it was their intent in 1994 not only to abandon but also to discontinue all operating authority on the Mountain Division between milepost 5 76 and milepost 51 11 Although it is not clear at this time why ST did not request authority to discontinue in 1994, it would appear that the failure was inadvertent As the lessee of various lines of MEC and PTC, as well as Boston and Maine Corporation, another affiliate, ST has consistently sought

discontinuance authority when the owner-lessor of the line has applied for abandonment
See, for example, Boston and Maine Corporation--Abandonment Exemption--In Hartford
County, CT, Docket No AB-32 (Sub-No 101X), Springfield Terminal Railway Co --
Discontinuance of Service Excmption--In Hartford County, CT, Docket No AB-355
(Sub- No 35X) and Portland Terminal Company--Abandonment Exemption--In
Cumberland County, ME, Docket No AB-268 (Sub-No. 16X), Springfield Terminal
Railway Co --Discontinuance of Service Exemption--In Cumberland County, ME,
Finance Docket No AB-355 (Sub-No. 34X)

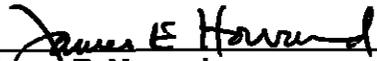
Relief Requested

Maine DOT, MEC, PTC and ST believe that a declaratory order by the Board is necessary and appropriate in order to remove the uncertainty concerning the status of Maine DOT as a result of the 1996 purchase and the additional acquisition of the portion of the Mountain Division between milepost 6 0 and milepost 11 16 More specifically, the Board is requested to determine (1) that MEC and PTC implemented their abandonment and discontinuance authority between milepost 5 76 and milepost 51 11 through their actions following the 1994 ICC decision such that the line was fully abandoned and operations discontinued by the time of the 1996 sale by MEC to Maine DOT, (2) that ST's de facto discontinuance of its operations on the Mountain Division between milepost 5 76 and milepost 51 11 is tantamount to, and should now be recognized as, a formal discontinuance, with the result that ST has no residual regulatory right or obligation to provide service on that line, (3) that Maine DOT did not become a rail carrier as a result of the 1996 purchase and (4) that Maine DOT will not become a rail

carrier as a result of purchasing the portion of the Mountain Division between milepost
6 0 and milepost 11 16

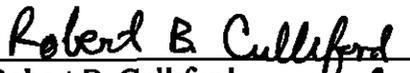
Respectfully submitted,

**State of Maine Department
of Transportation**


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Dated May 1, 2008