

STB FINANCE DOCKET No. 33989

PEJEPSCOT INDUSTRIAL PARK, INC., d/b/a GRIMMEL INDUSTRIES –  
PETITION FOR DECLARATORY ORDER

May 9, 2003

Statement of Robert Wimbish, Staff Attorney, Office of Proceedings

This case involves a dispute between a scrap metal producer, Pejepsco Industrial Park, Inc., and the rail carrier authorized to serve Pejepsco's facility, Guilford Transportation Industries, Inc., and its subsidiaries, Maine Central Railroad Company and Springfield Terminal Railway Company. I will refer to the 3 rail entities collectively as Guilford. The matter was referred to the Board by the U.S. District Court for Maine, which has asked our opinion on whether Guilford has violated its common carrier obligation to provide rail service to Pejepsco's facility at Topsham, Maine.

Pejepsco argues that Guilford failed to comply with its obligations because, in spite of numerous requests, Guilford has refused to provide rail service to its facility. Guilford responds that it has tried to accommodate Pejepsco, but admits that it has not provided any service to the plant. Guilford argues that it is not obligated to do so, because, in its view, Pejepsco's traffic would not justify the expense to rehabilitate and operate the line to Topsham, which has been out of service for many years.

The draft decision before you concludes that Guilford violated its common carrier obligations by failing to provide a rate for rail service directly to Pejepsco's facility at Topsham, even though Guilford concedes that Pejepsco specifically requested such a rate. Rather than providing a rate for service directly to the Topsham plant, Guilford quoted rates for service to

points it served on other rail lines in the general area. The draft decision finds that this is not an acceptable response, and that Guilford violated its common carrier obligations set forth in 49 U.S.C. section 11101 to furnish a rate (and provide service pursuant to that rate) in response to a specific request. The draft decision points out that although Guilford is not required to set the rate at a level at which it would lose money, it must establish a rate upon request.

There is an overlay to this matter, which is noted in the draft decision before you. Transportation of the commodities in question – scrap metal and automobile shredder residue (also known as ASR) – are subject to exemptions. The exemptions began on June 18, 1995 for scrap metal, and on May 21, 1998 for ASR. Pejepscot's requests for rates were made after the effective date of the exemption for scrap metal, but before the effective date of the exemption for ASR. Thus, there can be no violation of the statute with regard to scrap metal, but Guilford could be – and was – in violation of the statute with respect to its failure to provide a rate for the transportation of ASR.

We would be happy to address any questions you might have.