

Voting Conference, January 19, 2005

Statement of Terry Guy
Paralegal Specialist, STB Office of Proceedings

Lamoille Valley Railroad Company—Abandonment and Discontinuance of Trackage Rights
Exemption—in Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT

STB Docket No. AB-444 (Sub-No. 1X)

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey

The draft decision before you denies a petition filed by Timothy D. Phelps to reopen a notice of exemption for abandonment and discontinuance of trackage rights that was served and published in the Federal Register on January 16, 2004. Through the notice, Lamoille Valley Railroad Company invoked the Board's 2-year out-of-service class exemption to abandon approximately 95.26 miles of rail line traversing Vermont. The line is owned by the State of Vermont by and through the State of Vermont Agency of Transportation or VTrans, and Lamoille Valley holds a leasehold interest in the line. There has been no service requested or provided on the line since 1989.

A petition to reopen an abandonment proceeding must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances that would materially affect the Board's prior decision. Petitioner seeks to reopen this proceeding on the grounds of new evidence, to show that abandonment authority is not justified. Petitioner claims that, for several years preceding the filing of the notice of exemption, VTrans was aware of a desire for rail service by a number of shippers but that no attempt was made by VTrans or Lamoille Valley to provide service. Petitioner bases his claims on various

expressions of support for continued rail service. Petitioner also claims that there was an illegal embargo of the line.

The draft affirms that Lamoille Valley has met all of the requirements set forth in 49 CFR 1152.50(b) to qualify for the 2-year out-of-service class exemption. The record supports a conclusion that the lack of traffic on the line was not caused by VTrans' and Lamoille Valley's unlawfully withholding service, but rather by mill closings, declines in agriculture, and other changes in shipper needs for service that occurred over 15 years ago. The recent expressions of support for continued rail service were not formal requests for or commitments to use rail service, nor have there been any formal shipper complaints regarding a lack of service on the line. In addition, the draft concludes that there is no basis for finding that the abandonment was precipitated by an illegal embargo.

In sum, the draft finds that Petitioner has not shown that Lamoille Valley failed to meet its obligations or that reopening of the proceeding is warranted.

This concludes my statement. If you have questions, we would be happy to answer them.