

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE PROVIDENCE AND :
WORCESTER RAILROAD COMPANY :
 : **Docket No.** _____
(PETITION OF MOBIL PIPE LINE :
COMPANY) :

PETITION FOR ISSUANCE OF EMERGENCY ORDER

1. Mobil Pipe Line Company (“MPLCO”), a Delaware Corporation, in accordance with Rhode Island General Laws 1956, Section 39-1-32, seeks the issuance of an emergency order from the Rhode Island Public Utilities Commission (the “PUC” or “Commission”) to prevent irreparable injury to the public interest.

2. MPLCO owns and operates a six inch diameter interstate common carrier pipeline (the “Pipeline”) in Rhode Island and Massachusetts pursuant to the terms of the Interstate Commerce Act, 49 U.S.C. §1 et seq. (1959), which is regulated by the Federal Energy Regulatory Commission (“FERC”).

3. Providence and Worcester Railroad Company (“P&W”) is a Rhode Island chartered railroad company and has a franchise from the Rhode Island General Assembly to “conduct a general railroad business in the State of Rhode Island and in all states of the United States.” Rhode Island Acts & Resolves, January Session 1972, p. 208.

4. The Pipeline, which was constructed in 1931, originates at a ship terminal in East Providence, Rhode Island. Heating oil, diesel fuel and gasoline are delivered by ship into storage facilities at the terminal. A portion of the heating oil, diesel fuel and gasoline is pumped into tanker trucks for delivery to fuel stations and other businesses in Rhode Island. Another portion

of the heating oil, diesel fuel and gasoline is delivered to the Pipeline and transported to Springfield, Massachusetts.

5. The Pipeline serves as a key transportation infrastructure for the delivery of gasoline and other refined products to the Springfield and surrounding areas. The pipeline transports in excess of 20,000 barrels (840,000 gallons) per day of products to the only gasoline terminal in Springfield, where it is then distributed via truck to service stations serving the surrounding consumer markets. This pipeline system is critical to providing reformulated gasoline to the Springfield and western Massachusetts markets. No other pipeline provides gasoline to the Springfield area and the only other available transportation is via truck from the Boston and East Providence areas and at a higher transportation cost which would ultimately be passed on to the consumer.

6. The Pipeline runs in a northerly direction from East Providence. Just south of Manville (Lincoln), Rhode Island, the Pipeline turns westerly, and crosses the Blackstone River. Immediately west of the Blackstone River, the Pipeline crosses a parcel of land owned by P&W (the “subject parcel.”) P&W operates railroad tracks on this parcel, as part of its railroad line between Worcester, Massachusetts and Providence, Rhode Island.

7. Upon information and belief, although the subject parcel has been owned by P&W for many years, it was leased to the New York, New Haven and Hartford Railroad (“NYNH&H”) and its successor, the Penn Central Railroad (“Penn Central”) until about 1975.

8. Upon information and belief, prior to 1975, the NYNH&H and Penn Central leased the use of the subject parcel to MPLCO for the Pipeline for a nominal annual rent of less than one hundred dollars (\$100).

9. Upon information and belief, in about 1975 or earlier the agreement between P&W and Penn Central ended and P&W resumed control of the subject parcel. In 1975, P&W leased the subject parcel to MPLCO. The lease provided for an initial term of five years, and for five successive options to renew the lease for additional five year terms. The lease expired on February 2, 2005, and has been extended by several agreements until April 30, 2005.

10. The annual payment required under the lease in 1975 was \$9,000. As a result of an escalation clause, the annual payment for the most recent year was \$14,231.99.

11. On the subject parcel, the Pipeline is 418 feet long, and is buried beneath both the P&W railroad tracks and the Rhode Island Department of Transportation's ("RIDOT") recently constructed Blackstone River Bikeway.

12. Several years ago MPLCO added thirty feet of casing to the Pipeline to accommodate the development of the bikeway by RIDOT. Except for the railroad tracks and bikeway, the subject parcel is undeveloped at the Pipeline's location. Photographs of the Pipeline's route across the subject parcel are attached hereto.

13. In October, 2004, a representative of MPLCO contacted P&W to seek the renewal or continuation of the lease for the subject parcel.

14. By letters dated December 6, 2004, January 11, 2005 and February 23, 2005, P&W has threatened to require MPLCO to "evacuate" P&W's property, which would require MPLCO to cease operation of the Pipeline and interrupt its interstate common carrier service, unless MPLCO agrees to pay P&W either (1) \$500,000 for an easement containing onerous and unreasonable terms, or (2) \$100,000 per year for a new lease.

15. By letter dated March 24, 2005, P&W advised MPLCO that the purchase price for a permanent easement across the subject parcel would increase to \$600,000 on April 1, 2005.

16. By letter dated April 13, 2005, P&W advised MPLCO that the purchase price for a permanent easement across the subject parcel would increase to \$700,000 on May 1, 2005.

17. The threatened increases in the easement price as of April 1 and May 1, 2005 demonstrate the arbitrary nature of P&W's demands.

18. The amount demanded by P&W so greatly exceeds the market value of the easement needed by MPLCO to operate the Pipeline, that it is unconscionable.

19. As a FERC regulated common carrier, operating in accordance with the terms of the Interstate Commerce Act, MPLCO's operation of the Pipeline serves a public purpose. MPLCO maintains tariffs on file with FERC that obligate MPLCO to make the Pipeline available to any entity who wants to ship applicable product in the Pipeline on a pro rata basis, and at a fixed rate. Ocean State Power, a non-regulated power producer located in Burrillville, Rhode Island, has paid MPLCO's FERC tariff to transport products from the East Providence terminal to its plant in Burrillville.

20. Rhode Island recognizes that common carriers serve a public interest. Rhode Island General Laws 1956, Section 39-1-1 provides that the business of offering public transportation of property is affected with a public interest. The definition of common carriers under Rhode Island law includes both railroads and common carrier pipelines. Rhode Island General Laws § 39-1-2(7).

21. The Pipeline's transportation of heating oil, diesel fuel and gasoline in Rhode Island in accordance with FERC tariffs establishes that the Pipeline is a carrier for hire over a fixed route, serving a public use.

22. P&W has advised MPLCO that (i) it will not negotiate the consideration for an easement or lease of the subject parcel and (ii) if MPLCO does not agree to P&W's demand, it will be required to relocate the Pipeline off the subject parcel.

23. Upon information and belief, it would difficult and expensive, if not impossible, to relocate the Pipeline, which runs in a generally northwesterly direction from East Providence to Springfield so as to avoid a crossing of the P&W right of way which runs generally north from Providence to Worcester.

24. Even if it were possible, it is not practical to relocate the Pipeline which has been in use and has co-existed with the railroad right of way for over 70 years.

25. If P&W forces MPLCO to remove the Pipeline from the subject parcel, and accordingly interrupts the common carrier service provided, then the heating oil, diesel fuel and gasoline currently being efficiently transported by pipeline will need to be shipped in trucks. It would require over ninety (90) truck trips per day to transport 20,000 barrels of product from East Providence to Springfield. The effort and cost to transport these products will certainly increase. Significantly, this change will accordingly increase the cost of heating oil, diesel fuel and gasoline to consumers and businesses in both Massachusetts and Rhode Island. It is not in the public interest of Rhode Island or New England generally for the public to pay more for heating oil, diesel fuel and gasoline, caused by a railroad's attempt to line its pockets with a gross overcharge.

26. P&W is a railroad and common carrier under the jurisdiction under the Commission (see Rhode Island General Laws § 39-1-2(22) and (7); 39-9-3; § 39-8-1 et seq. and 39-9-1 et seq.)

27. As the holder of a public franchise from the Rhode Island General Assembly, P&W has an obligation to provide reasonable facilities and accommodations to its customers (§39-9-1) and an obligation to cooperate with other railroads (§39-9-5.)

28. Similarly, P&W is prohibited from providing unreasonable preferences or prejudices (§39-2-3) and is subject to civil liability for violation of this section (§39-2-7.)

29. The legislative charter granted by the Rhode Island General Assembly authorizes P&W to construct, own and operate facilities for the transportation of passengers and freight by rail. It did not grant the P&W a license to construct an Iron Curtain which it could use to extract unconscionable sums from persons who must cross the P&W right of way.

30. The use of its franchise in such a way is a clear abuse of the authority granted to it by the Rhode Island General Assembly.

31. In light of P&W's outrageous demand for excessive consideration to allow the continued operation of the Pipeline in its current location, MPLCO respectfully requests that the Commission (i) enter an order pursuant to § 39-1-32 ordering the P&W not to interfere with the continued use of the Pipeline by MPLCO so long as MPLCO continues to pay rent monthly at a rate of \$14,231.99 per year as provided in the lease; (ii) direct P&W to enter into good faith negotiations with MPLCO to determine fair and reasonable consideration for the continuing use of the Pipeline across the subject parcel; and (iii) to grant such other relief to which MPLCO may be entitled.

Respectfully submitted,

Mobil Pipe Line Company

By its Attorneys,

NIXON PEABODY LLP

/s/ Peter V. Lacouture

Peter V. Lacouture (#1188)
One Citizens Plaza, Suite 500
Providence, Rhode Island 02903
(401) 454-1011
(866) 947-1235 (FAX)

April 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2005, I faxed or sent by regular mail a true copy of the within Petition to the following:

Amy Silverstein, Esq.
Assistant General Counsel
Providence and Worcester Railroad Company
75 Hammond Street
PO Box 16551
Worcester, MA 01610

Paul J. Roberti, Esq.
Assistant Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903

John Spirito Jr., Esq.
Chief of Legal Services
RI Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

/s/ Krysten A. Callina