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Issue 08#08A 20 August 2008

NS-ST DEAL

Comments from:

Railroads and customers: PW, BKRR, CaroVail, MMA, MBRX, MERR, US Clay Producers, PVRR, VRS, Omya, Amtrak.

Unions: UTU/BLE, IAMAW/IBEW, and BMOW/BRS.

States: NYSDOT, State of Maine, VAOT, EOT, NHDOT, ConnDOT.

Others: PVPC, Committee to Improve Rail Service in Maine, City of Springfield, GATX.

FROM THE PUBLISHER

The 12 pages of this issue are entirely devoted to the NS-ST deal. The conditions requested, if granted by the STB, would shake up most of New England railroading.

I'll get out an e-bulletin with other, non-deal news soon.

- Chop Hardenbergh

NS-ST DEAL

NS-ST DEAL: COMMENTS SUMMARY

11 August, DC. ***THE INITIAL COMMENT PERIOD ENDED***. Some 29 of the 72 parties which had filed notices of intent to participate filed comments:

9 railroads: PW, BKRR, MMA, MBRX, MERR, NEGS, PW, VRS, and Amtrak.

6 states: (governor of Maine and five DOTs) New York, Connecticut, Vermont, Massachusetts, and Maine (with NHDOT submitting a letter early on).

6 unions: UTU/BLE, IAMAW/IBEW, and BMOWE/BRS

3 shippers: CaroVail, Clay Producers, and Omya.

4 regional or local entities: Pioneer Valley Planning Commission, the City of Springfield, Massachusetts, the Committee to Improve Rail Service in Maine, and Hecking & Remington LLC [in 08#07B].

1 supplier: GATX.

45 conditions

Nearly all commenters supported the transaction, but asked for conditions in return for their support. Most of the 45 conditions requested fell into certain categories:

Getting past debts paid, and future ones paid timely. GATX, Clay Producers, EOT, NEGS.

Labor protection. The unions wanted to be certain that their collective bargaining agreements with ST would be protected in the event PAS hired a different contract operator.

Improved service or new interchange or continued interchange. ConnDOT, PVRR, PW, MMA, MBRX, Committee to Improve Maine Rail Service, MERR.

Adding BKRR to the short lines getting NS haulage. NYSDOT, BKRR, and CaroVail.

Expenditure of funds on non-PAS assets. Many believed that not only would PAR not spend any of its funds on non-PAS assets, but that service in the non-PAS area would decline: Committee to Improve Maine Rail Service, Clay Producers, MBRX, MERR.

On the other hand, MDOT accepted the assurance of ST that it would expend funds on rail infrastructure in Maine, and service would improve in Maine.

BLE and UTU believed that PAR's financial condition was questionable in any case.

Continuing haulage and service on the ConnRiver in Vermont (or turning it over to someone else): VRS, Omya, VAOT.

Supporting passenger service from Springfield north. PVPC, VAOT, EOT, ConnDOT.

Quality of service

These railroads found ST service inadequate now or in the past: BKRR, MMA, MBRX, MERR, PVRR, VRS. {summary by editor from comments found on STB filings page, Docket No. FT 35147}

NS-ST DEAL: RAILROADS & THEIR SHIPPERS

Providence & Worcester Railroad

PW applauded the deal because it will improve rail service, increase competitive options for customers, and take trucks off the highway. But 'P&W's support for the transaction is conditioned upon the Applicants' representation that no competitive options will be eliminated. Presently, P&W directly connects with ST at Barbers and Gardner, Massachusetts. The Application notes that P&W traffic would still be interchanged at those two locations (see Verified Statement of John H. Williams, Application, Volume I, Appendix D, at 13), with ST maintaining its current interchange with P&W at Barbers, Massachusetts but interchanging with PanAm Southern, rather than ST, at Gardner...'

PW 'hereby requests that any order issued by the Board on this matter require Pan Am, through ST and/or B&M, to maintain the connection with P&W at Barbers...' {comment dated 15 July filed 4.Aug.08}

Batten Kill Railroad (BKRR)

In its comment, 'Batten Kill Railroad petitions the Board for conditions granting Batten Kill Railroad equitable competitive access to the new railroad, including interchange to Norfolk Southern via Pan Am Southern haulage, the same as is promoted by the applicants as a gained advantage to the other Patriot Corridor directly connecting short line and regional carriers' VRS, NECR, and PW.

Background. In 1982, BKRR commenced operations on lines New York bought from the D&H. 'Our principal commodities handled are inbound grain and fertilizer. We also ship logs outbound.'

BKRR has but one interchange, at Eagle Bridge, 'on the proposed Patriot Corridor,' with CPR. CPR reaches

Eagle Bridge via trackage rights on ST. This interchange ‘is not based on an exclusivity arrangement by contract. It is instead the product of the practical reality that, throughout our history, we’ve lacked realistic (operationally efficient and competitive) opportunity for alternate interchange routing of our traffic.’

Positive or negative outcome; current poor service. ‘A potential positive outcome of the NS-ST hinges on the fact that two alternative competitive routing options are emerging as practical, just, and attainable for us. These are:

1. Interchange with Pan Am Southern directly. We see this primarily as a potentially workable competitive access route to CSXT at Rotterdam Junction, NY for traffic from/points beyond (and, likely to a lesser extent, to New England points should we be able to attract some such traffic). Prior to the recent re- introduction by Pan Am Railway's Springfield Terminal (ST) of a regular local train operating in our neighborhood [the Hoosick Gateway service—see 08#04A], that is, by Eagle Bridge NY, this was not a genuine option.

‘Absent such consistency of service, we've had no reason to pursue this routing. We are astute to the fact that unless a local train is otherwise available to encompass the work, the operational challenges related to interchanging occasional or modest traffic between BKRR and ST would likely be perceived as outweighing the revenue benefit to ST. Any traffic could be expected to be prioritized accordingly. Experience has demonstrated this.’¹

2. Interchange with NS via PAS haulage. ‘We trust that [the] omission [of BKRR from the list of short lines obtaining NS haulage access] of this same competitive benefit to Batten Kill Railroad stems only from erroneous assumption, misunderstanding, and/or misinformation obtained relative to our status as an interchange partner with Canadian Pacific Railway. To clarify, we are an independent line haul carrier. We are not a switching carrier in a captive relationship with CP Rail.

‘We see no reason that Norfolk Southern and Pan Am Southern would not welcome the opportunity for business with us, especially with regard to the potential for recovering lost business/ or developing additional or altogether new business. Our goal is not to divert existing traffic from CP Rail except in the anticipated limited cases where there is not likely to remain a service or cost advantage to the CPR routing.

‘Just by virtue of the fact that there is a parallel neighboring shortline railroad, Vermont Railway, gaining this advantage puts us, absent the same, at a distinct relative disadvantage. There should be no doubt that this disadvantage would be of significant influence to any potential customers if the customers have a choice of locations in giving consideration to use of rail in our region This would likely lead to our loss of any such potential customers. Also, this disadvantage threatens to a degree some loss of business with our existing customers.’

¹Prior to May 1999, Springfield Terminal (and previously Boston & Maine) handled our traffic in haulage from/to Canadian Pacific proper (and previously Delaware & Hudson) ostensibly at Mechanicville, NY. Local traffic on ST had diminished to such a degree, that our traffic was essentially all that was left of the work for their local assignment. Service suffered and ultimately ST served notice to CPR that they were terminating the haulage agreement (concurrent with eliminating the regular local assignment to or by Eagle Bridge) This led to CPR's exercise of trackage rights (from inherited agreement dating back to 1926) to introduce running a periodic train directly to Eagle Bridge to connect with us. Despite contract terms requiring three days per week service, CPR unilaterally acted in February 2006 to reduce service to us to typically only once per week This action, by itself not particularly harmful (sometimes even beneficial, considered case by case), in conjunction with recent area service changes by CPR has introduced long and often unpredictable delays on much of our traffic. We make it work the best we can by maintaining frequent interaction with very helpful CPR operating officers to adjust (when possible) service to best protect the traffic to coincide with customers' needs. Nonetheless, the service is substantially inferior to what it had been and often doesn't meet reasonable customer expectation. It is not uncommon for railcars to take more than a week after initial arrival at Saratoga, NY (CPR's nearby yard from which they service us) to reach our interchange at Eagle Bridge. This deterioration of service deters stronger business volume and underscores our need for gaining competitive access to other long haul carriers.

Possible loss of Cargill. ‘For example, our grain customer, Cargill Animal Nutrition, has a similar facility in Swanton, VT on New England Central. Cargill could conceivably favor this facility for certain production if they gain a unique rate or service advantage to this facility from NS origins to NECR. Of even greater appreciable significance is the fact that Cargill has an aggressive toe-to-toe competitor, Whitman's Feed, with a facility very close by on the VTR at North Bennington VT. It is predictable that if rail rate and service advantages are gained by this competitor, and if not similarly gained by Cargill, it would negatively impact Cargill's market share. This competitive disparity is preventable and needs to be prevented. It is contrary to the primary intent of the Pan Am Southern application - that intent widely understood as being to enhance overall competitive options for the greatest base of customers in the service region.’

Loss of Hollingsworth & Vose. ‘For several weeks in 1986 and again in 1987 the Guilford railroads [which provided the BKRR haulage to CPR] were on strike and we had no reliable access for our traffic. We were in a captive shut-down slate and struggling with exacerbating financial crises. As a result of the strikes and the generally deficient quality of connecting rail service, the two Hollingsworth & Vose paper mills on our railroad completely abandoned our service from 1987 through 1989. Prior to the strikes, H&V was providing us with generous business of about 125 carloads of inbound woodpulp annually. When they finally resumed business in 1989, it was in response to sharp rate reduction inducement (by us alone); and, running between 20 to 40 carloads annually, remained incidental by comparison to what was lost.

‘The customer wanted to protect the bulk of the business with better overall service by CSXT from nearby transload destinations. Ultimately, in February 2006, H&V withdrew even the remaining traffic from us, citing better service for their needs by rail-warehouse-truck transload. About half of this woodpulp traffic originated at NS stations, and about half originated at CSXT stations. It is easy to speculate that we wouldn't have lost this valuable business if we had better connections to NS and CSXT.’

Requested conditions. ‘1. Require Pan Am Southern, LLC to establish agreement with Batten Kill Railroad to publish availability of and provide a competent service of direct interchange of rail traffic between Pan Am Southern and Batten Kill Railroad at Eagle Bridge, NY at the same available service frequency and otherwise competitive to that committed to Vermont Railway at neighboring Patriot Corridor station Hoosick Junction.

2. Require Norfolk Southern Railway and Pan Am Southern, LLC to establish agreement with Batten Kill Railroad to publish availability of and provide a competent service for interchange of rail traffic between Norfolk Southern, via PAS haulage, and Batten Kill Railroad at Eagle Bridge, NY at the same available service frequency and otherwise competitive to that committed to Vermont Railway at neighboring Patriot Corridor station Hoosick Junction.’ {filing by General Manager Bill Taber 4.Aug.08}

CaroVail, BKRR customer

In a separate comment, CaroVail, a division of Carolina Eastern, stated it provided 100,000 tons of fertilizer to upstate New York and western New England from seven locations, including one served by BKRR in Salem NY. Because BKRR interchanges only with CPR, CaroVail trucks its urea (originating on NS or CSXT) from a transload on CSXT in Albany about 3000 tons ‘at a lower cost but heightened inconvenience.’

CaroVail urged the STB ‘to impose the condition that Pan Am Southern introduce reliable access to the Batten Kill Railroad’ at Eagle Bridge. {comment by Peter Vail 4.Aug.08}

Montreal, Maine, and Atlantic Railway

The MMA stated its concern that significant amount of its traffic could be diverted by the Applicants. It noted: ‘The application is conspicuously silent...on the question of the impact of the transaction on the Pan Am lines that do not become part of PAS.

Joe McGonigle, its vice-president for sales and marketing, in his verified statement, said MMA ‘has a number of movements that originate or terminate’ on NS: paper and lumber to NS destinations, and kaolin clay from NS destinations.’

Nearly all this traffic moves over CP or CN, with a small percentage over ST. It totals 7300 carloads a year and

\$12 million in revenue [a significant fraction of the 48,000 total carloads a year—see 07#12A].

Why not over ST. Per McGonigle, ‘routings with Springfield Terminal are generally disfavored by customers because of slow service over Springfield Terminal lines. In addition, joint service with Springfield Terminal has been and continues to be difficult as a result of Springfield Terminal’s revenue requirements, which customers often find to be too high to permit traffic to move over a route including Springfield Terminal.

‘Currently, most of the traffic interchanged between MMA and Springfield Terminal consists of business that terminals on Springfield Terminal’ rather than overhead traffic.

What might happen. ‘Norfolk Southern could facilitate diversions to the Springfield Terminal-Pan Am Southern route by, for example, refusing to maintain or quote commercially reasonable rates via the non-Pan Am routes.’

The MMA comment stated that the current economic conditions affecting paper and lumber shippers in the State of Maine are particularly difficult, with the long-term viability of many of MMA’s customers being at risk. McGonigle notes: ‘In certain cases the mills are highly dependent on rail service and likely could not survive if the most competitive rail routings were closed or made more expensive.’

What MMA seeks. McGonigle noted that the Applicants assert ‘that no shipper will lose any competitive rail service. In order to assure this result, the Board should impose a condition on the approval of the transaction...precluding...any action that would adversely affect the service or pricing’ on the CN or CP route.

Also, ‘the Board should consider extending haulage/trackage rights so that Norfolk Southern would have the opportunity for a direct connection with MMA.’

Legal support. The MMA comment argues that the STB has already ruled that imposing conditions in rail cases is appropriate when facing ‘a significant loss of competition or the loss by another rail carrier of the ability to provide essential services....The Board has on several occasions conditioned the approval of transactions on a requirement that the applicants adhere to their pledges to keep gateways and interchanges open.’ {MMA comment by attorney Jim Howard 8.Aug.08}

Milford-Bennington Railroad

MBRX argued that: ‘Contrary to the applicants’ representation that the transaction will “greatly improve rail service in the New England region”, the transaction is likely to improve service to customers that will be served by [PAS] and result in a degradation of service to everyone else.’

Peter Leishman, MBRX owner, summed up his outlook: ‘There is a significant difference between what PAR and its affiliated companies say and what they actually do.’ He asserted several ST failures:

- ‘They have set goals of replacing worn-out track and have failed to do so.
- They have failed to maintain track at a minimum of FRA class 1 conditions and they have never met those standards.
- They have pledged to enter into a reasonable trackage rights agreement based on traditional industry standards and they have refused to do just that....
- [A]nd at times have taken actions that from my perspective were designed to put [MBRX] out of business.’

MBRX view. The STB ‘should view the transaction in the same broad sense’ of all of New England and ‘take actions to insure that “All ships do in fact rise with the rising tide.”

Leishman noted that to move the additional tons anticipated by the Applicants, ST will require ‘a sufficient fleet of reliable locomotives.’ If ST fails to meet the service standards required by its agreement with PAS [see 08#06A], ‘it is reasonable to assume that the company will do what is necessary to correct its failures including the shifting

of locomotive power or perhaps crews' from the eastern PAR system 'in order to maintain service standards and avoid default.'

'[[T]he STB has an obligation, and perhaps in this particular case a heightened obligation, to insure that the proposed transaction will, in fact, benefit all of New England and in particular not bring additional disruption to other portions of PAR.'

MBRX requests. The STB should require PAR to:

- Meet its promises to New Hampshire for track standards [see 08#06B].
- Maintain a locomotive fleet sufficient to meet service requirements 'throughout its core service area.'
- Enter a trackage rights agreement with MBRX with a fee 'no higher than those charged on a per-mile basis for freight railroads who operate freight rail services over the Northeast Corridor.'

And the STB should retain jurisdiction to review and enforce 'PAR's performance in complying with such conditions.' {Leishman statement attached to Jim Howard comment dated 8.Aug.08}

Maine Eastern Railroad

MERR commented that [w]hile overall MERR supports the transaction, it does have several concerns about how the transaction would affect rail service to and from Maine generally, and the rail service provided by MERR in particular....

'At present, PARI's interchange service at Brunswick [with MERR—the railroad moves about 5300 carloads a year, much of that locally between Thomaston and Rockland] varies seasonally between once a week and twice a week, and is irregular at best. Relying on this service makes traffic development difficult....

'The Board's initial findings were that the transaction would clearly not have any anti-competitive effect....Based on the representations set forth in the Application, this may very well be the case. MERR's concern is that Applicants may not live up to all of their representations.

Concern about CSXT connection. 'PARI is..MERR's only outlet to CSXT....MERR believes that the Board, if it approves the transaction, should ensure that PARI does not downgrade or de-market its joint service with CSXT at the expense of its improved connections with NSR.'

Diversion of resources. 'MERR is concerned that the Patriot Corridor will absorb all of PARI's attention and focus, to the detriment of other parts of the PARI system—in particular in southern Maine.

'To address these concerns, MERR is engaged in ongoing discussions with PARI regarding additional services and opening other interchanges to MERR. [This could mean giving MERR trackage rights to Yarmouth where it could interchange with SLR—*editor.*] Through additional access, MERR would have more control over its service offerings and would be able to provide more seamless, timely service....'

'MERR does...ask the Board to ensure that [PARI] promises are maintained... ' {comments submitted by attorney Eric Hocky of Philadelphia 11.Aug.08}

US Clay Producers Traffic Association

The Association submitted the Verified Statement of Thomas Flaherty, president of Clay Producers, and the verified statement of Gerald Fauth, an economic consultant with extensive experience working for the STB and appearing before the STB.

Flaherty said: "Almost without exception, all Clay Producers shipping into the Northeast over lines owned or operated by [ST] have had to threaten or actually resort to litigation to collect mileage allowances....Clay Producers fear that unless [ST] is compelled to account for its outstanding mileage obligations and arrange for payment, the prospects for collection will be jeopardized once [ST] undertakes its new obligations.'

Waybill sample. Fauth analyzed the 2006 Waybill Sample for traffic handled by ST. While his verified statement had the figures redacted, it contained his conclusion that ‘the majority of traffic handled by ST is terminating traffic’ and the largest amount of traffic, the paper industry, originates or terminates on Pan Am’s non-PAS lines in Maine or New Brunswick.

The Sample showed that ST terminated kaolin traffic at five points on the northern Pan Am lines. [Presumably Sappi Hinckley, NewPage in Rumford, Verso in Jay, Verso in Bucksport, and either Wausau in Jay or Sappi Westbrook. Each of these mills produces coated paper which requires clay. ST’s Mike Bostwick has said that the coated paper mills are doing well—see 08#03B]

ST, wrote Fauth, delivers the clay originating on NS points in Georgia, and imported clay landing in South Portland. [See 99#24. Para Pigmentos built a kaolin clay facility at Mack Point—see 05#08A].

History of labor, service, and financial problems. Fauth reviewed the history of Pan Am, its predecessor GTI, and its components including the 1986 strike ‘which required the intervention of President Ronald Reagan’ and a 1988 fine by the FRA of \$734,000 for a variety of safety issues.

‘As Flaherty indicates, ST has a long history concerning delays and persistent non-payment of mileage compensation, which frequently has required the threat of, or actual collection litigation. It appears the proposed transaction will only worsen these problems for the Clay Producers.’

Need for more trains and more equipment. Fauth noted that the Applicants anticipated an increase in the number of freight trains and the possibility that MBTA will operate additional commuter trains over PAS-used MBTA lines. But Applicants did not state that ST would hire additional employees. Its current 700 employees are overworked: NS employees work an average of 40.93 hours per week, while ST’s work 48.50 hours per week.

While the Application states that ‘the same employees will be performing the same work under the same agreements for the foreseeable future,’ Fauth concludes ‘it is clear these same employees will ‘be working even longer hours and moving more traffic.’

ST will favor PAS. Fauth argues: “With these new ST service obligations, NS’s freight traffic and MBTA’s and others’ passenger traffic over the PAS lines will obviously receive favorable service over other PAS shippers on the remaining ST system....Although Pan Am will receive \$47.5 million in additional funding, there is no indication that Pan Am will use any of this funding to make needed upgrades on the northern lines in order to improve service. In fact, non-PAS shippers can expect service to deteriorate as a result of ST’s service obligations to the PAS lines.....

ST will have too much paperwork. ‘The inclusion of a new and independent railroad in the routing, i.e. PAS, combined with a complex system of rights and obligations (haulage rights, trackage rights, service obligations, etc) which do not clearly set forth which party is responsible for the payment of mileage allowances on private cars, will certainly not improve things and will create the potential and even likelihood for confusion, delays, and difficulties in collecting mileage allowances.

‘The ST’s service obligations to PAS traffic apparently also includes car accounting and tracing and claims handling services. This clearly indicates that PAS shippers will receive priority in this area and Clay Producers can expect the past problems in this area to worsen.

Conditions on non-PAS lines. ‘[T]he STB,’ Fauth concluded, ‘should consider imposing conditions that will insure adequate service over the non-PAS lines and provide non-PAS shippers with the same options for alternative service the PAS shippers will have.’

Conditions on payments. Clay Producers asked the STB to order ST to pay mileage compensation, and then certify that all has been paid, prior to consummation of the transaction.

Also, to place the ultimate obligation to pay mileage compensation with PAS, and order ST ‘to make timely certified payment of all future allowed mileage compensation,’ and report any compensation more than 90 days past

due. {verified statements filed 11.Aug.08}

New England Southern Railroad

NEGS supported the transaction not only because it will ‘more likely than not, improve rail transportation service in New England,’ but also because the appearance of NS may help NEGS recover sums due, and let NEGS bow out of providing rail service in the Concord, New Hampshire area.

‘[F]or the past thirteen months, no payment has been forthcoming for the interline obligations and car hire reimbursements’ which PAR owes to NEGS. At this point, NEGS has a claim in excess of \$500,000 pending in federal court...’

Also, PAR has filed an adverse discontinuance against NEGS’ use of PAR lines in New Hampshire [see 08#05B]. NEGS, in its comment, wrote ‘it is willing to cooperate with PAR in a more streamlined Board procedure, such as a substitution of operators notice of exemption, that would permit NEGS voluntarily to terminate service’ no later than 31 October 2008. PAR has not yet responded to this offer.

Does PAR have the funds to pay NEGS? NEGS recited the three railcar lessor cases against ST as well as CSXT’s case [see 08#07A]. In addition NEGS ‘understands from personal investigation that [NECR] and other New England carriers may also be engaged in disputes’ over amounts due from PAR. And NEGS ‘understands that [B&M/ST] owe the Commonwealth of Massachusetts millions of dollars [see Massachusetts comment].’

NEGS ‘views the proposed Transaction...as an opportunity to collect against’ the funds due to ST from NS [\$47.5 million in cash over a few years—see 08#06A].

Could NEGS collect? ‘[G]iven PAR’s predilection to invoke federal pre-emption...PAR may argue here or in another forum that [NEGS] may not collect against’ the \$47.5 million because it was authorized by the STB and any effort to collect ‘arguable would affect a Board-approved transaction...’

‘NEGS respectfully requests that the Board make clear in its decision approving the Application that no act of the Board in this proceeding or provision of the ICCTA under which the Board approves the Application would...impede NEGS’ ability...to satisfy its judgement against’ the \$47.5 million. {comment by attorney Keith O’Brien of DC 11.Aug.08}

Pioneer Valley Railroad

PVRR told the STB: ‘Efforts to develop an operable interchange [with ST at the inactive, out-of-service interchange in Holyoke] and reasonable rate divisions with ST for the movement of traffic over Holyoke have not been successful.’

But, ‘PVRR has engaged in productive discussions with NS, pursuant to which PVRR and PAS would each pay for the rehabilitation and reactivation for their portions of the Holyoke interchange, and PVRR would be assured that PAS and its owners would reasonably cooperate in rate-making, division, and operational arrangements for the movement of traffic.

‘Contingent on successful completion of those discussions, PVRR would support the proposed transaction.’ {comment by attorney Thomas Litwiler of Chicago 11.Aug.08}

Vermont Rail System

The members of VRS repeated some of the concerns expressed in July [see 08#06B]. David Wulfson, president of all members except GMRC where he is vice-president, asserted in his Verified Statement:

Haulage rights on ConnRiver line. GMRC and WACR use the haulage rights on either NECR, (lessor of the line between Alburgh, Vermont, and New London, Connecticut), or B&M (which has trackage rights on NECR awarded under a 1990 ICC decision), to move traffic between Bellows Falls and White River Junction.

‘Approximately 21% of total revenues earned by GMRC and WACR are derived from interchange with B&M

(or other members of the B&M family), and will be jeopardized by any further deterioration in B&M service,' wrote Wulfson.

Under a 2000 agreement between B&M and GMRC, B&M was going to provide haulage of three round trips per week (as mandated by the ICC) and in return receive rights on GMRC trackage in White River Junction. 'GMRC has been frustrated in seeking to use these haulage rights by disagreements with B&M. Even though the haulage rights have not been used, they play an important role by representing competitive rates that could impact the NECR haulage rates.'

Poor service by ST. 'Although directed by the ICC [in its 1990 decision] to provide service not less than three times per week (six one-way trips), B&M in fact provides service over the described part of the Connecticut River Line as little as 10 single trips per month, or about one round trip per week, according to its responses to our discovery requests and according to the knowledge of the Vermont Carriers. The fact remains that our carriers along the Connecticut River are dependent on B&M for certain freight receipts that are interchanged at Bellows Falls and White River Junction, that B&M is not living up to the service requirements imposed by the ICC; and that B&M has lost interest in sustaining that service, evidently resulting in part from the merger.'

ST wants out? 'Perhaps the most ominous event regarding service by B&M was the repeated assertion by Mr David Fink, President of applicant Pan Am Railways, that the applicants intend to discontinue service along the Connecticut River Line This statement was made in my presence by Mr Fink on two occasions, August 21, 2007 and, most recently, April 30, 2008, when Mr. Fink said that his company wanted to be "off" the Connecticut River Line. I believe that B&M was aware at the time it first made this statement that a consolidation with Norfolk Southern was possible, leading to a realignment of B&M routes and gateways, and it certainly was aware of the proposed consolidation in April 2008.'

Traffic to Bow NH. Wulfson also wrote: 'As another example of B&M's unresponsive service, on July 7, 2008, I requested three-day a week rates from B&M between White River Junction and Bow, NH, but have received no response.' {footnote 3}

Proposed conditions. Wulfson concluded: 'Given the failure of B&M to live up to its mandated and voluntary agreements, and the anticompetitive effects of its behavior, the Board should require B&M to assign whatever operating rights it has from NECR to GMRC. Without adequate service from B&M, GMRC and WACR cannot hope to compete effectively with NECR, which will end up with a virtual service monopoly along the Connecticut River Valley when B&M's service disintegrates totally, as seems to be the direction B&M is taking.

'At a minimum, the Board should keep this proceeding open for a period of five years to observe and, if necessary correct, the service levels maintained by B&M between Bellows Falls and White River Junction and to grant such other relief as it deems appropriate.' {verified statement of Wulfson 8.Aug.08}

Legally, the comment argued, 'The fact that B&M has partially downgraded its service prior to consummation of the proposed transaction does not preclude the Board from recognizing and correcting those downgrades herein. B&M has placed its service and performance before the Board, and if the facts show a trend toward service reduction and anti-competitive consequences that began prior to institution of the proposed transaction and that will continue after the transaction is implemented, the Board is not deprived of its ability to take corrective action regarding B&M service as a whole, both prior to and after consummation of the transaction.

'From the viewpoint of the Vermont carriers, it is questionable whether there is any value in a further, repetitive directive to the Applicants requiring the maintenance of adequate, competitive service at gateways or elsewhere, as the Board has imposed in other proceedings of this nature.

'Because B&M has demonstrated an unwillingness to provide a specific level of service even when directly ordered by the ICC to do so, and has not honored its year 2000 haulage agreement with GMRC, the Board should consider the preservation of competition along the Connecticut River through a condition requiring B&M to assign

to GMRC the haulage or trackage rights as B&M now holds from NECR, since it is obvious that B&M has no intention of living up to the conditions imposed by the ICC to insure that the exercise of those rights would act to maintain competition along the Connecticut River.

‘At a minimum, the Board should keep this proceeding open for a period of five years to observe and, if necessary correct, service levels maintained by B&M or its successors between Bellows Falls and White River Junction, or should grant such other relief as it may deem appropriate.’ {comment by attorney Andrew Goldstein of DC}

Support from Vermont towns. VRS attached to its comment statements (first three worded nearly the same) supporting the conditions it requested, from the Town of Ludlow (home of the Luzenac talc mining operation—our *Directory* #1137), the Town of Rockingham/Village of Bellows Falls, the Town of St.Johnsbury, and the Town of Hartford. The last, which contains White River Junction, concluded ‘we encourage the transfer of trackage rights to those best suited to provide these services.’ {attachments dated 8 & 11.Aug.08}

Omya

Erik Bohn, director of transportation for Vermont shipper Omya, in his verified statement supported the transaction ‘subject to certain concerns and conditions which could negatively impact non-Patriot Corridor service and competitiveness. We support VTR's [presumably VRS’-*editor*] concerns and conditions.’ {comment filed 11.Aug.08}

Amtrak

[Amtrak did not file a notice to participate, and filed this comment late.] President Alexander Kummant praised both applicants:

‘In the nine years since NS acquired freight rights between New York and Washington from Conrail, it has been a strong partner in efforts to improve freight and passenger rail service and infrastructure along the NEC. NS has had considerable success in reversing the long contraction of NEC freight rail traffic and facilities, as evidenced by its recent rebuilding of a long abandoned freight yard along the NEC at Trainer, Pennsylvania.’

‘Pan Am's dispatching has been a key contributor to the Downeaster's on-time performance, which in most years has been among the highest of any Amtrak route. Agreements between Pan Am and the Northern New England Passenger Rail Authority (NNEPRA), Amtrak's state partner, led to reductions in running time and the addition of a fifth round trip last year. Pan Am and NNEPRA are also working together to extend the Downeaster service from Portland to Brunswick, Maine.’

The ConnRiver line. ‘The Pioneer Valley Transit Authority is currently working with the Massachusetts Executive Office of Transportation and the Vermont Agency of Transportation on a federally-funded study of the restoration of passenger rail service over this line. For a number of reasons, including a large student population market and linkage to the NEC, Amtrak believes that passenger rail service on the Connecticut River Line has great potential and could produce significant public benefits. We view the conveyance of that line to the joint venture, with its enhanced financial resources, as a positive development in efforts to restore passenger service.’ {comment by Kummant 14.Aug.08}

NS-ST DEAL: UNION COMMENTS

United Transportation Union

Brotherhood of Locomotive Engineers

The two train crew unions’ comment centers on a concern that PAS will not continue to contract with ST to operate

PAS lines. Applicants did state that the ST workers would ‘perform...the same work under the same agreements for the foreseeable future.’

But UTU and BLE fear, along with the other unions filing comments, that the Applicants may intend to get Board approval and then have PAS terminate the contract with ST and take over the operations itself, with self-imposed substandard wages and working conditions.

A lack of trust in ST. The unions listed actions ‘over the past several decades’ by PAR and predecessors, beginning with the transfer of operations over the PAR lines to ST in 1986 and 1987. Despite the ICC imposition of conditions on the ST action, two major arbitration decisions, and additional litigation, ‘it took over three years to obtain an arbitrated implementing agreement and many more to resolve the situation....The current situation causes the employees to envision the same circumstances happening here.’

On 17 July 2008, BLE representative Mike Twombly and UTU representative George Casey met with PAR General Counsel Robert Culliford to discuss union concerns. Culliford did not provide sufficient reassurance, noting that the ‘for the foreseeable future’ language referred to the provision permitting NS to operate trains on the Patriot Corridor if PAS failed to meet certain performance standards [see 08#06A].

The unions noted that when ST operated commuter rail for the MBTA as a contract provider, and did the unloading of autos at the Ayer facility, ST lost both contracts.

Concern about finances. Unions also commented on their ‘real concern as to whether Pan Am Railways Inc is in sufficiently sound financial condition and has adequate managerial competence to achieve the standards required of it.’

The unions pointed to the USDOT action revoking Boston-Maine Airways certificate. The record in that case, the unions noted, ‘necessarily cause any outside observer to question the ability and willingness’ of PAR to honor its commitments. The USDOT documents called PAR management either lacking in competence or lacking compliance disposition. [See 08#01B.]

USDOT also reviewed ST’s financial records, concluding that it did not have the funds ‘necessary to support BMAC’s operations and capital expenditures, let alone [ST’s] own.’

The unions also expressed concern about the outstanding lawsuits by car leasing companies and CSXT, and whether Pan Am and B&M might owe funds on the Northpoint development in Boston [see 08#05A].

Track conditions. In their verified statements, the union representatives each said: ‘It also needs to be noted that the tracks on Springfield Terminal's lines have not been maintained to 40 mile per hour standards for years and accordingly the trains operating on them are subject to speed restrictions.

‘For the most part on lines owned by Pan Am Railways, trains operate at either 10 miles or 25 miles per hour, and on lines owned by MBTA (commuter lines) or lines upgraded for Amtrak service (Atkinson, NH to Portland, ME), trains may be operated at speeds up to 40 miles per hour, but most are restricted to 30 miles per hour because Pan Am Railways does not have sufficient telemetry devices (an FRA requirement) to permit speeds in excess of 30 miles per hour on the 40 miles per hour lines.’

Isn’t this like Michigan Central? The STB recently declined to approve a recent transaction under which NS and Watco would form the Michigan Central to operate 299 miles of NS track. The STB, noted the unions, wrote in that case: ‘[T]he proposed transaction here involves NSR’s contribution of hundreds of miles of rail lines to a noncarrier entity coupled with NSR’s retention of extensive control over those lines, including significant ownership in the new entity.’

The NS-ST deal looks similar.

Request for conditions. ‘BLET/UTU has serious concerns about PAR’s abilities to live up to its promises to the employees involved in this transaction.’ If the Board does approve it, the unions ask for strict labor protection. It

also asked the Board ‘to require Applicants to give priority of hire to all ST employees and maintain the collective bargaining agreements if there is a change in operators on PAS.’ {comment by Harold Ross, attorney for BLE, and Daniel Elliott, attorney for UTU 11.Aug.08; copies of documentation on the CSXT and Greenbrier lawsuits, the Massachusetts environmental crimes indictment, and the USDOT airline action were attached}

International Association of Machinists and Aerospace Workers and International Brotherhood of Electrical Workers

The two unions, like the UTU and BLE, expressed concern that PAS could end its agreement with ST ‘at will’ and leave the workers without a union contract. In requesting strict labor protections, the IAMAW and the IBEW asked the Board to require;

‘That if a change in operators occurs, that the new operator assume all ST employees and maintain and continue to honor all collective bargaining agreements covering those employees...’ {attorneys Michael Wolly and Jeffrey Burritt of DC 11.Aug.08}

Brotherhood of Maintenance of Way Employees and Brotherhood of Railway Signalmen

BMWED and BRS received responses to their interrogatories and filed these comments. These unions feared that if PAS removed ST as the operator, existing labor agreements would no longer be enforceable.

‘BMWED and BRS note that it was not that long ago that an effort was made by the predecessors to PARI/Pan Am to engage in a series of operator replacement transactions in ICC Finance Dockets, where the transactions were designed solely for the purpose of replacing existing rates of pay, rules and working conditions with lower rates of pay, and rules and working conditions substantially less favorable to railroad employees, and the ICC allowed years to pass without responding to what was really happening. *Delaware and Hudson Ry Co —Springfield Terminal Ry*, 4 ICC 2d 322 (1988).

‘So the employee concerns raised here are not speculative or fanciful.’ The unions asked for effective labor protection, if and when PAS terminated the contract with ST.

NS has effective control. ‘Applicants have admitted [in the interrogatories] that there is no tiebreaker or deadlock resolution procedure. If Norfolk Southern says “no” to an action or decision, PAS may not take that action or make that decision. BRS and BMWED submit that by the Primary Transaction, Norfolk Southern will effectively be acquiring control of PAS, and through the vehicle of PAS, Norfolk Southern will then be acquiring the lines to be conveyed to PAS.’ {Comment by attorney Richard Edelman 11.Aug.08}

NS-ST DEAL: STATE COMMENTS

New York State Department of Transportation

NYSDOT filed these comments:

- It deferred on environmental matters to the NYS Department of Environmental Conservation.
- It asked the Applicants ‘either to extend the opportunity for interchange with both NS and PAS to the BKRR at Eagle Bridge, or [to] explicitly state that the establishment of such interchange is prohibited by a restriction on interchange...’
- It noted that the Transaction Agreement permitted NS to pay less if the Applicants get public funds to do infrastructure work. ‘Since the parties are committed to the transaction and the capital investments, this provision would seem to forestall any public benefit which would be derived from public investment.’ [See 08#06A: Note

2 to table of Contributions.]

- It supported the transaction because the new Mechanicville intermodal terminal ‘will replace NS’s capacity-constrained facility in downtown Albany. The new automotive terminal will be in healthy direct competition with CSX Transportation’s Selkirk terminal.’

Also, Mechanicville will see fewer grade crossings with the new terminal and better service will take more trucks off NY highways.

- NYSDOT also supports the transaction because the new intermodal facility ‘provides NS and PAS the opportunity [of] working with the local communities as a good corporate neighbor.’

Help to D&H. ‘The additional NS overhead traffic on [the D&H] Freight Main Line will enhance the long-term viability of [the D&H].’

Requested conditions. (1) Require NS to notify the STB if it decides to exercise its trackage rights in the Patriot Corridor; (2) ‘Require the applicants to clarify the status of their connection to the BKRR at Eagle Bridge’; and (3) ‘Require the applicants to supplement their application to clarify the standard that will be applied to trigger the exercise of traffic rights by’ NS.²

‘We recommend clarification to the standard by supporting a higher level of service for the railroad’s customers which would entail’ the 90% on-time figure with a 30-minute tolerance. {comment by NYSDOT Associate Counsel Roger Schiera 11.Aug.08}

State of Maine

Governor John Baldacci commented that ‘[w]hile most of the effects of this transaction will occur beyond the borders of the State of Maine, the State does have substantial interest in the favorable outcome of the joint venture....Improvements on [the Patriot Corridor] should enable Maine carriers to compete with other modes of transportation more effectively by offering more predictable and compressed delivery schedules to their customers.

‘Additionally, PAR has indicated...this transaction will enable PAR to accomplish the following:

- invest in much-needed track upgrades that will improve track conditions on its freight main line and branch lines within the State resulting in better track speeds and in added capacity that will allow the lines to accommodate 286,000-pound cars;

- provide additional locomotives and cars to be used in the State to provide more reliable service to Maine shippers, connecting railroads, and connecting State-owned rail lines;

- reduce shipping times for Maine customers, including intermodal shipments between Maine and Ayer, Massachusetts/ Mechanicville, New York; and

- re-open PAR’s Waterville, Maine intermodal facility if business demand is sufficient.

‘Based on these representations, the State of Maine supports this transaction and believes that, as proposed, it will result in improved rail service for the State of Maine and the region.’ {comment by Baldacci 7.Aug.08}

² NYSDOT noted the inconsistency between the Joint Use Agreement Section 2(a) stating that a failure occurs when ST does not operate trains on-time 85% of the time within a 60-minute window, while section 2(d) states that ST will ‘return haulage operations to the 90% on-time requirement taking into account the 30-minute tolerance factor described above...’

Vermont Agency of Transportation

‘VTrans’s support for the proposed transaction is based on Applicants’ representation that competitive options for rail freight will be protected....specifically:’

- ‘PAR’s existing commitment to Massachusetts and Vermont to cooperate with efforts to upgrade the Connecticut River Line between Springfield and East Northfield MA for passenger service as well as to allow operation of Albany-Bennington-Rutland-Burlington passenger service over the Patriot Corridor between Mechanicville and Hoosick Junction NY.’

- ‘No rail customer will be left with reduced or no competitive rail service options, including the assignment to PAS of the interchanges with GMRC at Bellows Falls, NECR at White River Junction and Windsor and the re-opened interchange at Millers Falls, VTR at Hoosick Junction, and WACR at White River Junction.’

Request for conditions. VTrans requested that the Board require PAS to maintain these connections, honor existing...commitments to restore passenger service, and ‘[s]urrender its exclusive right to serve certain shippers along the Brattleboro-Windsor segment of the ConnRiver Line should PAS fail to comply with the minimum service standards specified in the ICC’s 1990 trackage rights decision.’ {comment by John Dunleavy, Vermont assistant attorney general 11.Aug.08}

Executive Office of Transportation of Massachusetts

In its comment, EOT [Executive Office of Transportation and Public Works, or EOTPW but this newsletter uses ‘EOT’] said it ‘cannot support the Application or the Proposed Transaction in its current form.’

Assignment of trackage rights. The agreement between EOT or MBTA and PAR ‘governing the operation and maintenance of the’ lines owned by MBTA which ST uses in Massachusetts requires ‘the MBTA’s written consent to the type of assignment contemplated by the proposed Transaction. To date, neither Pan Am nor any subsidiary or affiliate has sought the MBTA’s formal agreement to assignment....The MBTA would be unlikely to object...in principal...subject to’ payment of current financial obligations and assurances of payment of obligations going forward.

East Deerfield Yard. EOT owns this yard and leases it to B&M. As with trackage rights, ST has not sought an assignment. ‘EOT has experienced difficulty in obtaining payments’ for use of the yard ‘over the past several years, and has, from time to time, resorted to “self-help” in order to recoup delinquent payments. Nevertheless, a balance of more than \$25,000 remains due to the Commonwealth as of August 2008...’ [The Town of Deerfield recently collected arrears—see 08#04A.]

Unpaid trackage rights fees and other fees. ‘As of July 2008, PAR...owed the MBTA an amount in excess of \$4.5 million.’ The MBTA has received commitments to make the MBTA whole and to pay future amounts in a timely fashion, but PAR has not given a date certain by which the payments will be made.

[‘The EOT payments are much lower [than the payments due to MBTA] at this point, because the Commonwealth has been able to employ self-help to divert Springfield Terminal funds from other sources to pay off otherwise unpaid invoices.’ {page 20, footnote 16}]

‘Applicants propose a new freight operating regime which will make use of substantial Commonwealth-owned assets, but they have done nothing to ensure that this regime will be any better able than Springfield Terminal and B&M to abide by its financial obligation to the Commonwealth.’

Lack of response from NS and ST. ‘The Commonwealth has reached out to both NS and Pan Am (individually and together) since the May 30 filing, in an effort to resolve outstanding issues and concerns in a cooperative fashion, but has yet to receive any written response to our proposals, nor have we received any substantive verbal response.’

Thus far, our efforts have not been fruitful. While we are committed to good faith negotiations going forward, we are fearful that the Applicants may be relying on the Board's willingness to issue a Declaratory Order in order to cement their rights, before they have even begun to seek or negotiate those rights in accordance with existing, fully-negotiated, contractual agreements.

The STB authority. Under 49 USC 11321(a), the Board may issue a declaratory order that, as requested in the Application, 'PAS and any contract operator of PAS Lines will have the authority to conduct operations over the trackage rights lines as fully and to the same extent as Springfield Terminal could, notwithstanding any clauses in any such trackage rights agreements' {Application, page 38}

EOT argues that the statute permits such override only if the Applicants can show it necessary, and it is not necessary when other remedies, such as negotiation, remain.

Plans for passenger service blocked? EOT reported that 'the Commonwealth has engaged in extensive conversations with PAR regarding certain rail lines...regarding the Commonwealth obtaining sufficient rights to conduct passenger train operations over them.' Footnote 17 lists these lines as the Worcester Main, the Connecticut River Main line, and various segments of other lines between Andover, Lowell, North Chelmsford, Ayer, Fitchburg, Wachussetts, and Gardner. But the Applicants said nothing of the Transaction's impact on future passenger rail service.

Environmental concerns. EOT noted that the specific issues raised by Deerfield [in its 7 July environmental letter, not on the STB filings page—*editor*] and Ayer [see 08#07A] 'warrant careful consideration'.

Requested conditions. (1) Deny the authority to override the assignment provisions in the MBTA and EOT contracts; (2) Require the Applicants to assure that arrearages will be paid by the closing of the Transaction; (3) Require the Applicants and PAS to assure a commitment to negotiate the conveyance of passenger rights over, and the sale of, certain rail lines owned by PAR; and (4) evaluate the environmental concerns raised in the Commonwealth letter of 7 July [not on the STB filings page—*editor*]. {comment by Jeffrey Mullan, EOT general counsel 11.Aug.08}

New Hampshire Department of Transportation

Commissioner George Campbell sent a letter to the STB (which did not make it to the filings page) on 24 June supporting the transaction. He added: 'We understand that market forces dictate the availability of connecting freight service, and hope that the capital improvements to be made will attract more business to Springfield Terminal and in turn to the short lines through improved connections.' {text from Campbell's office}

Connecticut Department of Transportation

ConnDOT supported the transaction 'provided no competitive options are eliminated in Connecticut,' but asked for more time to study some implications.

Traffic can grow on the Waterbury Branch. '[PAR]'s freight service on the Waterbury Branch, specifically from Highland Junction in Waterbury to Derby, has dwindled to service-as-requested, currently less than one day per month. The Department believes that there is significant rail freight potential on the Waterbury Branch, and that a more focused and aggressive effort must be put forth to promote and expand rail freight service.

'To improve the development of rail freight in Connecticut, the Department requests that Interchange Agreements be established within three years between' PAS, NAUG, HRRC, and PW.

Hartford interchange. 'Likewise, the Department requests, that the inactive interchange between Pan Am Railways, Inc. and the Connecticut Southern Railroad Company at Hartford be re-activated to promote the movement of freight

into Connecticut from northern New England and Atlantic Canada. The establishment of an Interchange Agreement between Pan Am Southern, LLC and the Central New England Railroad Company at Hartford is requested.’

CNZR to Springfield? ‘Finally, the Department would like to go on record in support of the future reestablishment of a rail connection between East Longmeadow and Springfield, Massachusetts, a distance of approximately eight miles. This Pan Am Railways, Inc -owned right-of-way connects directly with the Department's Armory Branch at Enfield, Connecticut.

‘The Department and its partner, the State of Massachusetts, are engaged in an active planning effort to build a commuter rail service between New Haven and Hartford, Connecticut to Springfield, Massachusetts. A functioning Armory Branch would provide a valuable alternate route between Hartford, Connecticut and Springfield, Massachusetts for freight train detours, work equipment moves, and potential passenger train detours or deadhead equipment moves.’

Conditions. ‘The Department supports the proposal to create Pan Am Southern, LLC, conditioned by development of a business strategy to achieve the above requests in a prompt and reasonable fashion.’ {comment from Eugene Colonese, rail administrator, Bureau of Public Transportation 11.Aug.08}

NS-ST DEAL: OTHER COMMENTS

Pioneer Valley Planning Commission

This regional planning agency stated: ‘The PVPC has also been meeting with officials from Pan Am Railways to discuss the possibility of reactivating the Connecticut River Line between Springfield and Northfield Massachusetts for a combination of rail passenger and freight services. The PVPC is in fact currently managing a \$750,000 federally-funded feasibility study to explore the possibility of moving the Amtrak *Vermont* service back onto the Connecticut River Line. The subject study will also evaluate the viability of providing commuter rail service north of Springfield on the Connecticut River Line. Pan Am officials have been involved in this process from the start and Pan Am has been a proactive and positive partner in this important planning process....

‘The PVPC is seeking assurance that the creation of Pan Am Southern will in no way jeopardize the potential for passenger rail service on the Connecticut River Line and we have repeatedly been advised that this will be the case if the subject joint venture railroad is created.

‘Reproducing rail passenger service to the Connecticut River Line will undoubtedly require a significant public investment in the existing rail corridor and its infrastructure in order to successfully achieve a desired 60 mph speed for rail passenger services. This public investment will also improve operations and efficiency for the freight that is currently transported on this line, and create new opportunities to expand the amount of freight that is transported on this line. Accordingly, we believe the benefits to be derived from this new joint venture railroad are significant and positive and thus merit broad public support.’ {comment from Executive Director Timothy Brennan 8.Aug.08}

Committee to Improve Rail Service in Maine

The Committee’s comment recounted the effort by the Northeast Rail Consumers Association to improve rail service, and the 2008 Public Advocate report that 86% of complaints it received about rail service stemmed from ST [see 08#02A].

It noted that the current ST track is far below the standard set by PAR itself. According to the 22 July Temporary Speed Restriction Summary, ‘the entire [Freight Main between Bangor and Portland] is currently under speed restrictions of either 10 or 25 miles per hour. We could not find a single mile that could be traversed at the 40 miles per hour timetable speed.’

The Committee believed ‘that PAR could capture a much larger share of the transport market here in our State just as railroads are doing throughout the United States, if PAR would only offer faster, more reliable service.’

Maine is second to Wisconsin in paper production, yet according to American Association of Railroad statistics, Wisconsin is second in pulp and paper loads originated or terminated by rail, while Maine is not even in the top 10.

The Committee noted the failure of Boston-Maine Airways, managed by Mellon and Fink [see UTU/BLE filing].

The Committee request. The STB should approve the Application with these conditions: PAR agrees to maintain its track to the condition listed in its Timetable No.5 of 2006; it bring its locomotive fleet in compliance with current environmental standards and with auxiliary power units; it assign at least 50 locomotives to Maine; it ensure that all Maine shippers have an adequate car supply; and it agrees to a penalty program for failure to meet these conditions.

Request for public hearing. The Committee requested a public hearing in Maine ‘to provide an opportunity for public input on these matters.’ {Comment by Chair Tom Hall 11.Aug.08}

City of Springfield

In its comment, the city reiterated the environmental concerns stated earlier [see 08#07A] and added other notes:

FRA accident/incident report.

| Pam Am Rwy/Guilford System [GRS] | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|----------------------------------|------|------|------|------|------|------|------|------|------|------|
| ***TOTAL ACCIDENTS/INCIDENTS*** | 12.0 | 15.0 | 8.0 | 3.0 | 15.0 | 6.0 | 8.0 | 10.0 | 12.0 | 5.0 |

Noise pollution. Idling engines in Andover, Massachusetts [see 07#05B].

Fire hazards. Westminster concerns about sparks from locomotives [see 07#05B].

Derailment. Deerfield attempts to collect for responding to a derailment [see 08#06B].

Oil spills. The indictment for environmental crimes [see 08#06A].

Request for conditions. The City asked that the Board ‘order an environmental assessment of the Transaction followed by a detailed environmental impact study...’ In addition, all locomotives should conform to Tier 3 emission standards; PAS should install noise barriers; and PAS should keep its right-of-way through the city clear of all brush, debris, and trash.’ {comment by Harry Carroll, senior legal counsel 11.Aug.08}

GATX

This railcar lessor began its comment thus: ‘Throughout the years [NS] has been a valuable customer of GATX, and GATX, in turn, has been a valuable customer of NS.

‘Such has not been the case with Springfield Terminal Railway Company....Over the past several years, GATX has had extreme difficulty in collecting normal course of business car hire, private car mileage charges, car repair, and other car-related charges from ST. On repeated occasions, we have had to sue ST for collection...and even when settlements were reached, we have been forced to sue ST to enforce the settlements.

‘Thus, we were somewhat concerned about this transaction, on the basis that ST is supposed to be the manager of the Joint Venture.’ But NS Vice-president John Friedman sent GATX Vice-president a letter on 11 August stating that the ‘debts and obligations associated with’ PAS operations will ‘not be the debts of’ ST. Friedman continued: ‘Should the proposed transaction be approved, and should there be any difficulty in obtaining payment of debts to GATX in the normal course, we unequivocally invite you to raise that issue with representatives of [the PAS] operating committee.’ [The committee has NS representatives on it. *Editor*]

On the basis of the Friedman assurance that the debts of PAS will be paid ‘in the normal course of business,

[GATX] are comfortable with the transaction and offer our comments in support of that transaction.’ {comment by attorney Myles Tobin of Chicago 11.Aug.08}

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ANR&P appears at least four times a month. We send a formal issue twice a month, via post or e-mail. Between the issues, we send out the *e-bulletin*, only by e-mail. All information in the *e-bulletin* is included, and often updated, in the issue.

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Purpose

Atlantic Northeast Rails & Ports, née *Maine RailWatch* (1994-1997) and later *Atlantic RailWatch* (1998-1999), is dedicated to the preservation and extension of the regional rail network. The editor believes that publishing news on railroads and ports spotlights needed action to preserve the rail network. The publication also imbues the region with a sense of an interdependent community, employing the network to move rail and port traffic. ‘No railroad is an island, entire onto itself.’

E-ISSUE