

ATLANTIC NORTHEAST RAILS & PORTS

Helping to move rail and port traffic through New England, the Maritimes, & eastern Québec.
A weekly trade newsletter.

operating railroads + ports, intermodal facilities, and government environment

www.atlanticnortheast.com

Issue 08#09A 16 September 2008

*Article unchanged from e-bulletin.

** Blue type shows changes from e-bulletin.

NS-ST DEAL

NS-ST: Responses.*

PW: Applicants did not address its condition.*

EOT et al: Request for oral argument.

OTHER REGIONAL ISSUES

Greenbrier v ST: Details on request for receiver. 17 car hire cases listed.*

Greenbrier: ST says will pay, no receiver needed.* Box on car hire settlement system.*

CONNECTICUT

CSO: [see *Vermont*].

ConnDOT: On the NS-ST deal, rail in the state.*

MAINE

Road salt: ISCO wins most.* New bidder Mid-America Salt.* GPCOG on bid process.*

MERR: Agreement with ST may re-open Augusta interchange.*

ST: Quarry transloading in North Anson.*

MASSACHUSETTS

CSXT: Berkshire Biodiesel still seeking construction funding.*

NEW HAMPSHIRE

CCRR et al: Special move of nacelles.*

NEGS v ST: Adverse discontinuance proceeding halted?*

Portsmouth: Container facility still hoping for ship or barge call.**

RHODE ISLAND

[No report.]

VERMONT

NECR-CSO: Agreement with NS-ST.*

NECR v ST: Case re-opened, writ of execution issued for \$557,000.*

MARITIMES/QUÉBEC

Canso: Melford International hires Uberoi.* Environmental permitting underway.*

RAIL SHIPPERS/RECEIVERS

A cross-reference to companies mentioned here.

PEOPLE, POSITIONS, EVENTS

[No report.]

FROM THE PUBLISHER

One new story

Readers of the e-bulletin have already seen all but one story in this formal issue. I've published the news about the NS-ST deal at the STB, and the Greenbrier lawsuit against ST, as soon as I could get out e-bulletins.

The new one? EOT et al's request for oral argument on the NS-ST deal. I agree with them: the deal has so many ramifications. That's in part because most New England railroading, unlike the rest of the country, is done by short lines.

See you at NEARS tomorrow!

- Chop Hardenbergh Next issue: 30 September.

Common abbreviations: **BCLR** - Bay Colony RR, **BML** - Belfast & Moosehead Lake RR, **CBNS** - Cape Breton and Central Nova Scotia Ry, **CCCR** - Cape Cod Central RR, **CCRR** - Claremont Concord RR, **CFQ** - *chemins de fer Québec* System, **CMAQ** - congestion-mitigation or air quality (money from the US federal government for these purposes), **CN** - Canadian National Ry, **CNZR** - Central New England RR, **ConnDOT** - Connecticut Department of Transportation, **CPR** - Canadian Pacific Ry, **CSO** - Connecticut Southern RR, **CSRX** - Conway Scenic RR, **EOT** - Mass. Exec. Office of Transportation, **GW** - Genesee & Wyoming Inc, **FHWA** - Federal Highway Admin., **FRA** - Federal Rail Admin., **FRTC** - Fore River Transportation Co., **FTA** - Federal Transit Admin., **Guilford (GRS)** - Guilford Rail System, formerly name for Pan Am Railway, see ST, **GU** - Grafton & Upton RR, **HRR** - Housatonic RR, **MBCR** - Mass. Bay Commuter RR, **MBRX** - Milford-Bennington RR, **MBTA** - Mass. Bay Transportation Authority, **MC** - Mass. Coastal RR, **MCER** - Mass. Central RR, **MDOT** - Maine Department of Transportation, **MERR** - Maine Eastern RR, **MMA** - Montréal, Maine and Atlantic Ry, **MPO** - Metropolitan Planning Organization, **MTQ** - Québec Ministry of Transport, **NAUG** - Naugatuck RR, **NBDOT** - New Brunswick Department of Transportation, **NBSR** - New Brunswick Southern Ry, **NECR** - New England Central RR, **NEGS** - New England Southern RR, **NHCR** - New Hampshire Central RR, **NHDOT** - NH Department of Transportation, **NHN** - New Hampshire Northcoast RR, **NEPRA** - Northern New England Passenger Rail Authority, **NSDOT** - Nova Scotia Department of Transportation, **Pan Am** - new name for GRS, **PVRR** - Pioneer Valley RR, **PW** - Providence & Worcester RR, **QCR** - Quebec Central Ry, **RIDOT** - Rhode Island Department of Transportation, **Seaview** - Seaview Transportation Company, **SLQ** - St. Lawrence & Atlantic Ry (Québec), **SLR** - St. Lawrence & Atlantic RR, **ST** - Springfield Terminal Ry (leases three parts of Pan Am Systems (Maine Central RR, Portland Terminal RR, Boston & Maine), **TIRR** - Turner's Island LLC, **TEU** - twenty-foot equivalent unit (measure of container traffic, equal to a 20x8x8 foot box), **VAOT** - Vermont Agency of Transportation, **VRS** - Vermont Rail System (Green Mt. RR Company **GMRC** + Vermont Ry **VTR** + Clarendon & Pittsford RR **CLP** + Washington County RR **WACR**), **WHRC** - Windsor and Hantsport Ry.

NS-ST DEAL

The Norfolk Southern Railway (NS) and the Pan Am Railways (ST) propose to create the Pan Am Southern Railway to operate all of ST's lines west of Ayer. This section covers that deal, now before the STB.

NS-ST: RESPONSE*

5 September, DC. ***THE RESPONSE FILED BY THE APPLICANTS ACCEDED TO A FEW OF THE REQUESTED CONDITIONS***, and asked the STB to deny most of them.

[The response underscores the wide support for the deal. More in a future issue. This article deals with the conditions.]

STATE AGENCIES

New York State DOT

BKRR interchange. [See below, railroads.]

Notification of trackage rights. Applicants agreed to the NYSDOT condition that NS would notify the STB if and when it intended to exercise the trackage rights over PAS granted under the transaction, if PAS service failed.

Major service failure definition. 'Applicants agree with NYSDOT's recommendation that would utilize in both sections "the ninety percent (90%) on-time requirement taking into account the thirty (30) minute tolerance factor.'

Massachusetts

Assignment of trackage rights. ST's Robert Culliford and Sydney Culliford each filed a verified statement that, contrary to EOT's assertion, on 6 August they offered to negotiate with EOT the assignment of ST's trackage rights over the MBTA to PAS. [EOT said on 11 August it had not received any written response 'nor any substantive verbal response.' See 08#08A.]

NS-ST note that EOT does not want the STB to impose the assignment because EOT's right to accede to the assignment gives EOT leverage to force ST to pay trackage rights fees. But, Applicants state: 'Whatever enforcement rights they may have now or will have in the future, by judicial processes or otherwise, will not be worsened or affected in any way by the Transaction. If anything, the infusion of substantial capital into PAS by Norfolk Southern, and the capital that PARI will receive from the transaction should enhance, not diminish, the prospects that monies due MBTA and EOT will be paid.'

[Greenbrier argues the opposite. If PARI gives over a substantial part of its property to PAS, the debts owed by PAR will have that much less property against which to collect. *Editor*]

Payment of arrearages. Applicants argue that the money owed by ST to MBTA and EOT for trackage rights use predates the Transaction. The Response cited the 1995 merger case of BN and Santa Fe. There, STB predecessor Interstate Commerce Commission wrote: 'To be granted, a condition must first address an effect of the transaction. We will not impose conditions to ameliorate longstanding problems which were not created by the merger, nor will we impose conditions that are in no way related, either directly or indirectly, to the involved merger.' (Citations omitted) {Response page 5}

ConnDOT

Waterbury branch. 'Applicants fully concur with ConnDOT's desire for more traffic on the Waterbury Branch, and will work to develop traffic there as on the rest of PAS system.' {page 27}

Interchange agreements. Noting ConnDOT's request for interchange agreements with NAUG, HRRC, PW, and

CNZR, Applicants said they were ‘willing to negotiate acceptable agreements. To date, there has been no need for formal interchange agreements in Connecticut with the railroads mentioned, although traffic occasionally interchanges physically per informal agreements.’ [NAUG did have a customer, D-A Lubricants, and did interchange with ST, and recently accepted (perhaps informally) a heavy transformer—see 07#11B.]

Re-opening the Armory branch to Springfield. NS-ST ‘concur in principle...provided public funding is available.’ [More in *Connecticut*.]

VAOT

Applicants did not address two VAOT conditions, though they did say they were ‘prepared’ to work on upgrading the ConnRiver between Springfield and East Northfield for passenger service, and cooperate with Amtrak’s running Albany-Bennington via Hoosick.

Unaddressed conditions. VAOT requested that competitive options for freight be protected. Also, VAOT requested that PAS surrender its right to serve certain shippers between Brattleboro and Windsor if PAS fails to meet the service requirements in the 1990 ICC decision. [See *Vermont*.]

Applicants addressed neither condition.

MDOT

MDOT wrote that ST represented to it that the Transaction would enable certain improvements in Maine. NS-ST characterized these as ‘discussions...concerning improvements...[A]ny improvements will be done with PAR, not PAS funds, and these improvements are not transaction related.

‘Contrary to comments of others, PARI has every incentive to improve infrastructure in Maine, as paper and forest product traffic moving over PARI lines in Maine is likely [to] remain a principal component of traffic over PAS lines for the foreseeable future. Because these are not Transaction-related, however, no condition is appropriate.’

[NS-ST follow that phrase with another under MERR later: ‘Furthermore, where railroads devote—and should devote—their resources and attention depends mainly on the needs and demands of rail customers, and that is something railroads and the Board have limited ability to influence or predict.’ {Response, page 38} But by developing its system, a railroad can influence whether and how much any customer actually uses the railroad. *Editor*]

MUNICIPALITIES AND LOCAL AGENCIES

Springfield: no additional traffic

Applicants said the city’s proposed conditions addressed the existing situation, not Transaction effects. [Though the city did fear additional pollution from more traffic, see 08#07A.]

Applicants denied this. Their ‘Operating Plan projects *no* increases in the number of trains or tonnage moving through Springfield in the five years following consummation of the Transaction.’

Town of Ayer

Applicants noted that the issues raised by the Town were already addressed by the Board and federal district court, ‘which included a limited set of agreed-upon environmental conditions, which Applicants would expect to agree to.’ [Would *expect* to agree to? Expect to agree to a federal court’s consent decree? *Editor*]

Town of Deerfield: details on rail yards

Deerfield raised pre-existing issues at ST’s East Deerfield Yard. But, said the Applicants, except for the Mechanicville Facility, Ayer Intermodal, and San Vel Automotive, no increases in activity are projected. The yards in East Deerfield, Fitchburg, Gardner, Waterbury, and Plainville will see ‘no increases in activity’ as a result of the Transaction, ‘only modest growth independent of the approval of the Transaction.’ [Why then are many customers

supporting the transaction as significantly improving the rail system and giving them the chance to grow? See future issue. *Editor*]

RAILROADS

NEGS

This railroad was concerned that, after winning its pending federal district court case, it could not collect against the \$47.5 million PAR will receive. NS-ST responded: ‘[T]he Transaction will not affect or diminish the ability of [any] party to collect monies due it from any Applicant...’ [See EOT, above.]

MERR

Deal reached. See *Maine*.

PVRR

Deal reached to re-open Holyoke interchange. More in future issue.

NECR

Deal reached. See *Vermont*.

VRS

Applicants noted the VRS concern that it would lose its haulage rights over B&M, which provide leverage for VRS in its negotiations with NECR for haulage over the same stretch. NS-ST disputed VRS’ claim that it was providing as little as one round trip per week.

‘[B]etween January 1 2007 and May 31 2008, Springfield Terminal operated an average of 20 trains per month (or two and a half round trip trains per week) over the line between East Northfield and Bellows Falls, where Springfield Terminal interchanges traffic with GMRC, and an average of nine trains per month over the less-used segment between Bellows Falls and White River Junction.’ {Response, page 43} [Is not nine trains per month roughly equal to one round trip per week? *Editor*]

Applicants argued that VRS itself had diverted traffic away from NECR’s ConnRiver line, by re-opening the Hoosick Junction for Omya traffic. Sydney Culliford’s verified statement put the traffic at weekly 58-60-car unit trains.

VRS’ request that the ST trackage rights over NECR ‘should be transferred to them is not supported by customers or other connecting carriers and should be denied.’

Batten Kill Railroad

Applicants did not object to BKRR’s request to establish an interchange with PAS: ‘the two railroads will have an obligation to establish reasonable facilities for the interchange of traffic.’ But they saw no need for the STB to impose conditions, particularly those, as BKRR requested, requiring the interchange to be competitive with the interchange with VRS at Hoosick Junction, or requiring the interchange to include NS haulage traffic, as VRS’ will have.

Applicants argued that ‘the Transaction will not reduce any competitive options or worsen the commercial relationships between Norfolk Southern and those railroads, [so] there would be no warrant for the Board to require that Norfolk Southern be given direct access to BKRR via haulage.’

MMA

Applicants noted MMA’s concern that NS could emphasize its new PAS routing over MMA’s traditional routes to NS via CP and CN. They respond that the Board and predecessor Interstate Commerce Commission have found that such claims ‘contrary to logic and experience’ and quoted the ICC: ‘Simply put, there is no reason for a carrier to foreclose an efficient connecting carrier just to achieve a long haul. If a connecting carrier can provide service at a lower cost than can BN/Santa Fe, it is in the interest of all of the carriers to reach an agreement for joint service.’

Thus MMA's request that the Board estop Applicants from actions adversely affecting the CN and CP routing' would be tantamount to freezing existing routings, gateways, and rate relationships....' In the Conrail split-up in 1998, the Board stated: 'The ICC once pursued a policy of freezing routings, gateways, and rate relationships, but this policy was not in the public interest, and we will not reinstitute it here.' {Response, page 49-50}

MBRX

Applicants apparently granted the railroad trackage rights to Nashua! 'MBR operates a line of railroad in New Hampshire between Nashua NH and Bennington NH, known as the Hillsborough Branch. It also has trackage rights over 16 miles of line owned by B&M and operated by Springfield Terminal, and operates over two miles of that line to move stone...'

Applicants deride the MBRX assertion that the creation of PAS will degrade service to the remaining PAR customers, claiming it is contrary to the opinion expressed by other railroads in the region. [Depending on how one interprets the general opinion that the NS-ST creation of PAS will improve service in the region. I would say that the other railroads, in applauding the creation of PAS, meant that service to other railroads would improve. However, the fear remains, as noted by the Committee for Improvement of Rail Service in Maine and US Clay Producers, that ST will favor service on PAS over service on PAR. *Editor*]

'Nothing in the Transaction would cause PARI to divert its resources and efforts away from its remaining lines to PAS...', write the Applicants. 'PARI will certainly have no interest in hindering MBR's ability to serve its customers, including Granite State, since PARI and MBR are connecting carriers that do not compete with each other for customers.' [This flies in the face of the facts stated by MBRX about PARI hindering MBRX operation, facts not controverted by the Applicants. *Editor*]

Applicants conclude that the conditions requested by MBRX concern pre-existing conditions, which the Board should not address in this Transaction.

PW

Applicants did not address PW's request for a condition that the PW-PAR interchange in Worcester at Barber's remain open. PW addressed this point in a late filing.

PW noted that Applicants reiterated PW's support of the deal. In its filing, though, PW support was conditioned on the NS-ST commitment to keep the interchange at Barbers [see 08#07A]. 'P&W accordingly respectfully requests that the Board recall its commitment to maintain the Barbers interchange when issuing its decision in this matter and specifically condition approval of the transaction' on it.

To cover the late filing, PW asked the Board to treat it as a 'petition for relief not otherwise covered' under 49 CFR 11171. {text of PW filing}

UNIONS

The unions, Applicants note, are concerned that if ST employees in the future are adversely affected by ST's role as contract operator for PAS, they will have no labor protection. 'This will not occur. The unions' fear is groundless.'

OTHER PARTIES

US Clay Producers

Applicants sum up Clay Producers request as requiring payment of past claims, and then repeat that 'facilitation of debt collection is not a proper function of conditions the Board should impose on transactions subject to its approval.'

Applicants did not address the statement by Clay Producers' expert, Gerald Fauth, that the Board 'should consider imposing conditions that will insure adequate service over the non-PAS lines.' [However, Clay Producers did not include, in its request for conditions to which Fauth's statement was attached, Fauth's suggestion for a condition.]

Committee to Improve Rail Service in Maine

CTIRSIM, Applicants note, ‘offers no basis to support its alleged concern that the Transaction could lead to further reductions in rail service in Maine and, as discussed [see above] any such claim is highly implausible. Far more significant in this regard that CTIRSIM’s speculations are the comments filed by the State of Maine, which states that “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.”’ {Applicants response in STB FD No. 35147}

EOT, OTHERS REQUEST HEARING

11 September, DC. ***EOT AND OTHERS REQUESTED THAT THE BOARD HOLD ORAL ARGUMENT*** on the deal. Joining with EOT were the US Clay Producers Association and NEGS. EOT said it was authorized to state that MMA, MBRX, the Town of Ayer, and the Town of Deerfield supported the effort.

EOT and the others (the ‘Joint Parties’) requested the argument occur before 30 September, in DC, so that the Board could hold to its ‘shortened procedural schedule’ which calls for the Board to decide by 20 October.

The Joint Parties supported their request by noting that some of the commenters are ‘exploring possible settlement with the Applicants that might in some cases obviate the need for certain ameliorative conditions from the Board. Such ongoing efforts would not be adequately reflected or accounted for in a record that is based upon a single round of comments filed some 70 days’ prior to 20 October.’

Indeed, the 20th deadline is in question ‘because the Board has not commented definitively on the level of environmental review, if any.’

‘Moreover, given the significant number of parties that have come forward to express concern over what the Board had (largely on the basis of the Application alone) much earlier estimated to be a minor Transaction, oral argument is especially important to ensure a full and complete evaluation of the issues at play here.’

The Joint Parties also requested that the Board adjust its final decision date so that it would have no less than 45 days after the conclusion of oral argument to make its final decision. {EOT filing in STB case FD 35147}

Note: the Committee to Improve Rail Service in Maine, in its response (not yet summarized in this newsletter), also requested a hearing, in Maine.

Note: The Brotherhood of Maintenance of Way Employees and the Brotherhood of Railway Signalmen supported EOT’s request by a filing on 15 September. These two unions argued that the Board should understand the impact of the request to appoint a receiver for ST in a separate court proceeding [see *Other Regional*] filed by Greenbrier. [The Maine Committee had put the memorandum of law supporting the motion for a receiver into the STB record as an appendix to its 5 September filing.] {filing in STB FD 35147}

NS-ST oppose oral argument

On 15 September, Applicants opposed the oral argument, saying in part that a receiver would have no effect on PAS [see *Other Regional*].

OTHER REGIONAL

GREENBRIER v ST: DETAILS*

28 August, Boston. ***GREENBRIER ASKED THE US DISTRICT COURT TO APPOINT A RECEIVER FOR ST***, following its continued failure to collect car hire from ST [see 08#07A].

Authority to appoint a receiver

Rule 66 of the Federal Rules of Civil Procedure permit a judge to appoint a receiver. Greenbrier noted that ‘the decision to appoint a receiver lies within the discretion of the court’ and ‘is appropriate if equity dictates such a need.’ The appointment ‘is an ancillary remedy to further final relief for Plaintiff.’ {memorandum of law, page 5}

Legal grounds for appointing a receiver

Interestingly, a railroad case, *Conrail v. Fore River Railroad* (1988), provided the US Court of Appeals for the First Circuit located in Boston the chance to limn the rules for appointing a receiver. ‘Courts have recognized many factors that are relevant for a court to consider when determining the appropriateness of the appointment of a receiver. These include fraudulent conduct on the part of the defendant; imminent danger that property will be lost or squandered; the inadequacy of available legal remedies; the probability that harm to the plaintiff by denial of the appointment would be greater than the injury to the parties opposing appointment; the plaintiff’s probable success in the action; and the possibility of irreparable injury to his interests in the property; and whether the interests of the plaintiff and others sought to be protected will in fact be well served by the receivership.’ {861 F.2d 322, paragraph 17, citations omitted}

Facts of *Conrail*: In February 1987, Conrail filed in US District Court in Boston to recover unpaid freight charges allegedly collected by Fore River on Conrail’s behalf. The parties settled, and the court ordered Fore River to pay the \$220,000 owing by 10 December. Fore River did not pay, nor did it pay after the court granted an extension to 1 January 1988. The district court judge specifically instructed Fore River that if it failed to comply with the second order, then the court would vacate its prior judgment and would entertain Conrail’s motion for the appointment of a receiver. By January 15, 1988, the date that the receiver was appointed, Fore River still had not complied.

Moreover, Fore River failed to account for the collected freight charges and there was evidence that such funds had been intermingled with other funds of either the company or of its officers. After an evaluation of all of these factors, as well as a determination that Conrail would likely prevail on the merits, the court ordered the appointment of the receiver.

The appeals court concluded: ‘We are satisfied that the court’s discretion [to appoint a receiver] was wisely exercised.’ {paragraph 19}

Greenbrier’s arguments on legal grounds

The car leasing company used four grounds listed by the Court of Appeals for appointment of a receiver:

Fraudulent conduct on the part of the defendant.

Greenbrier stated that ST’s ‘unfair, deceptive, and fraudulent business practices have and continue to have significant negative impact on Greenbrier’s ability to conduct business’ as well as ‘no less than eight other companies that are forced to contend with [ST’s] conduct in regards to car hire....[See box.]

‘The most galling aspect of [ST’s] fraudulent and unfair business practices is the fact that the companies are not in financial distress....[they] own significant property worth millions of dollars.’ Noting the proposed NS-ST deal, ‘[ST] intends to complete this expansion on the backs of Greenbrier and its other competitors. The behavior of [ST] strongly supports the appointment of a receiver.’

The inadequacy of available legal remedies. Greenbrier said that because federal law pre-empts state action, ST is ‘shielded from traditional avenues of relief.’ Greenbrier cannot, much as it wants to, proceed against ST under the Massachusetts Consumer Protection Act,

CAR HIRE CASES AGAINST ST

Greenbrier listed 13 car hire cases filed against ST from 2001 to 2008 in addition to its own (all in Boston unless otherwise noted):

Union Pacific v ST 01-10934 RCL filed 2001.

First Union Rail Corporation v ST 03-12374 DPW filed 2003.

San Luis Central v. ST 04-12220 PBS removed to federal court)

GATX v ST, 04-32147 RWZ filed 12 October 2004

Railcar Management v. ST, 05-12282 GAO filed 15 October 2005

San Luis Central v ST 06-10554 WGY (filed 15 May 2006) [See 06#08B, 06#09A.]

American Railcar Leasing v ST 06-cv-10375 WGY filed 25 May 2006

GATX v ST 06-11042 RWZ filed 14 June 2006

Schuylkill Rail Car v. ST 07-10052 NMG filed 10 January 2007

GATX v ST, 07-10174 WGY filed 30 January 2007

Union Pacific Railroad v ST 07-12322 JLT filed 12 December 2007

CSXT v ST, 08-10220 NMG filed 10 February 2008

GATX v ST, 08-10845 JLT filed 20 May 2008.

Additional cases

First Union v ST 06-0015 (Western District of North Carolina) filed 21 September 2006 [see 06#09A].

Trinity Rail v ST 06-10187 RCL filed 2006 [see 08#07A]

Union Tank v ST 05-12364 filed 2005 [see 06#09A]

Indiana Harbor Belt Railroad v ST, 2:08-cv-155(Northern District of Indiana) filed 2008.

which would bar ST's 'knowingly and fraudulently entering into contracts with creditors in a dilatory effort to resist payment of a valid debt.' See *San Luis Central RR v ST* 369 F.Supp.2d at 177.

Greenbrier also noted that the federal-based rules governing car hire do not permit Greenbrier to refuse to allow ST usage of its cars. 'The practical effect is that Plaintiffs are trapped, unable to halt Springfield Terminal from using their rail cars and yet equally frustrated in their attempts to collect rents for the railcar's usage.' As are other car leasing companies; Greenbrier listed 13 other cases against ST for car hire [see box].

The plaintiff's probable success in the action. 'There is no denying that car hire is owed' and Greenbrier will succeed on the merits.

Will the receiver serve Greenbrier and others.

(a) Because ST does not pay car hire, Greenbrier must borrow money. Failures to pay by ST and others makes attracting investment capital 'extremely difficult'. Greenbrier has already lost 10 jobs in 2008, in part due to the substantial impact of ST's debt.

(b) Greenbrier also manages other car fleets. When it cannot collect on behalf of its customers, its own income is in jeopardy.

(c) 'Greenbrier is in the process of withdrawing 100 boxcars from the Springfield Terminal region by refusing to renew a lease for these 100 boxcars with Eastern Maine Railroad. This action is directly related to Springfield Terminal's refusal to pay car hire charges and will affect paper companies that ship products into the Northeast United States via the Springfield Terminal region. These cars will be pulled out of service in this region and put into a different service territory resulting in an interruption of service for users transporting goods using these boxcars.

'Regrettably, Greenbrier will continue to divert assets to other, more profitable regions of the country [resulting in] higher transport costs to third parties....' {page 15}

(d) ST's behaviour endangers the car hire rules. They 'operate on the honesty and integrity of the companies that utilize the railroad.' Pan Am's behavior may lead others to also refuse to pay car hire. 'The appointment of a receiver would send a clear message that such behavior would not be tolerated.' {page 20, *Greenbrier v ST*, US District Court Boston 08-cv-10362}

Next steps

The court has already scheduled a pre-trial conference for 25 September. On 3 September, Brodeur-McGan said she would be "surprised if they [ST] don't attempt to resolve the case before the 25th."

If not, she hoped to get a hearing on her motion to appoint a receiver on that day. If she succeeds, the court will select a receiver.

What rules will govern the receiver's actions? Per Brodeur-McGan, the judge must fashion the rules. None exist.

Options for other creditors

What can other creditors, particularly those who have already reached judgements against ST, do to collect?

Ask the receiver to take on their debt. Brodeur-McGan said the judge will surely require the receiver to deal with the claims of other creditors.

In the *Conrail* case, the judge not only permitted the receiver to collect the debt due to Conrail, but also 'to pursue remedies on behalf of general, unsecured creditors, even after Conrail's claim had been satisfied, in order to prevent the improper preference of Conrail over other Fore River creditors.'

Despite Fore River's argument that the receiver's duties should be limited to enforcing Conrail's claim and thus his duties must terminate upon satisfaction of the judgment, the appeals court agreed with the District Court that the receiver could continue. 'In this way the court can ensure that the receiver will not deplete all of the debtor's assets on behalf of one creditor, leaving other creditors without remedy.' {paragraph 22}

Get two other creditors, go into bankruptcy. Federal law permits three unsecured creditors to ask a federal bankruptcy judge to declare ST bankrupt, under ‘Chapter 11’ of the bankruptcy statutes. Creditors did just that when they put the Bangor and Aroostook System into bankruptcy in 2001 [see 01#12A].

Intervene in the Greenbrier case. Creditors could join Greenbrier’s lawsuit under Federal Rule of Civil Procedure Rule 24. ‘On timely motion, the court must permit anyone to intervene who...(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.’

Brodeur-McGan acknowledged the language, but believed other creditors ‘will have a hard time intervening in this case’ because it will make the case that much more complex.

Join all the cases together. Federal procedure permits one judge to gather all the car hire cases together. Brodeur-McGan called that “not a bad idea in concept. Is there enough money to pay everyone? The number owed is becoming larger.” {ANR&P discussions and e-mails with Brodeur-McGan 3.Sept.08}

Effect on NS-ST deal

Neither CSXT nor NS would ‘comment on active litigation,’ as NS spokesperson Rudy Husband put it. Yet the appointment of a receiver would apparently put a wrench into the procedure moving forward at the STB. Per the Board schedule, it will decide by 20 October [see *NS-ST deal*].

But NS and ST don’t think the granting of a receiver would affect the STB application, in their filing opposing oral argument. [See below.]

A creditor such as Greenbrier may not want the formation of Pan Am Southern, because much of ST’s fixed assets will disappear into PAS, and in return PAR only gets paid over a period of years. {editor}

ST: RECEIVER NOT NEEDED*

10 September, Boston. **ST ARGUED THAT A RECEIVER TO ENSURE GREENBRIER WAS PAID WAS NOT NEEDED**, in a memorandum in opposition to Greenbrier’s motion. ST CFO Eric Lawler’s ‘Declaration’, which accompanied the memorandum, made these points:

New system means ST will continue to pay

On 23 September, the Car Hire Railroad Clearing House [see box] will begin to operate. Greenbrier will get paid, going forward, automatically. This ‘will be very similar to the Interline Settlement System (ISS) by which railroads settle their interline freight payables....ST has been a participant in the ISS system since its inception (Jan. 1998) and has never missed a settlement [see comment in *Trinity Rail* car hire case, 08#07]. Effectively, this will ensure ST pays its car hire obligations on a current basis from this month forward.’

ST has taken steps to get finances in order

‘Long before plaintiffs’ motion was filed the defendants had already taken substantial steps to decrease expenses and to increase capital by focusing on its core business, freight railroading, steps that are now showing tangible benefit.

‘ST has discontinued unprofitable investments, embarked on aggressive cost control measures, and have been actively marketing superfluous assets for sale in order to improve cash flow.’

The NS-ST deal will help

‘First, the NS investment in infrastructure will provide up to \$87 million in infrastructure improvements, reducing ST’s expenses significantly and improving operations dramatically. [Indeed, anonymous ST sources say track crews have already begun a significant tie program on the future Patriot Corridor. {e-mails to ANR&P}]

‘Also, the cash contribution [\$50 million, per Lawler] that NS will make for defendants’ contributed assets will

accelerate defendants' existing efforts to improve cash flow by providing a lump sum payment that can be used to address this and other matters.'

North Point will help

'ST is also actively marketing their interest in an approximately 39-acre parcel of land in Cambridge, Massachusetts that is fully permitted and ready for development. This property, which has generated substantial interest from developers, is currently being prepared for competitive bidding, a process that should take approximately three months until a closing occurs. At present, it is expected that the sale of this asset will produce approximately \$70 million in proceeds for ST.'

ST has offered to pay down the debt to Greenbrier

'ST has committed to pay \$250,000 of the amount claimed by plaintiffs on September 11, 2008, with another \$300,000 payment in October, together with direct access to defendants' bank account to withdraw \$35,000 per month to address the balance. Plaintiffs have not responded to this offer.' {text of Lawler statement as filed in US District Court 08-cv-10362 (Boston)}

Legal arguments

In the memorandum opposing the receivership, ST asserted it was not attempting to obtain an interest-free loan fraudulently, as Greenbrier argued, and therefore fraud could not be used as a ground for the receivership.

Instead, defendants have offered a means to pay almost half the amount claimed; though plaintiffs have not responded, they are making the payments anyway.

'Defendants have in good faith attempted to resolve this and the 2006 Action by settlement agreements, and indeed have substantially performed their obligations under the settlement of the 2006 Action, in spite of an unexpected and severe rise in the cost of fuel.'

Legal remedies are available

ST noted that the law did provide some relief (and therefore the equitable relief of a receiver was unnecessary), because Greenbrier was able to attach \$513,000 from ST's bank account. 'Additionally, plaintiffs acknowledge that the defendants own millions of dollars of real estate and assets that would satisfy plaintiffs' claims if successful in their suit.'

Harm to defendants: threat to NS-ST deal

The harm to ST would far outweigh the benefit to Greenbrier if a receiver were appointed. '[I]f said receivership is granted, it would threaten the joint venture endeavored by defendants with NS. If said termination occurred, it would surely be harmful to defendants' existing business and plans for improving operations.'

[But both NS and ST say receiver would have no effect

In a filing by the two railroads at the STB opposing oral argument—see *NS-ST deal*—they claim that 'there would be no effect on the implementation of the transaction should a receiver be appointed for Springfield Terminal after receipt of approval from the STB.... There is no reason to believe that appointment of a receiver for Springfield Terminal would affect Springfield Terminal's ability to operate its system or to act as a contract operator for PAS.'

More in a future issue.

Effort to settle car hire debt

'Defendants are presently in fruitful good-faith negotiations and efforts to settle their Hire Debt with the plaintiffs and others. In fact, several creditors have recently been paid in full and/or are being paid down through innovative payment plans involving automatic bank account withdrawals on a monthly basis. The unfortunate postponement of the North Point transaction has delayed the defendants' ability to pay the plaintiffs in full as quickly as defendants had intended to do, thereby causing plaintiffs to react with this extreme request to appoint a receivership (sic).' {text of memorandum filed 10.Sept.08 in US District Court case 08-cv-10362 (Boston)}

CAR HIRE SETTLEMENT SYSTEM

Railinc has now advised that the earlier-postponed activation of Car Hire RCH has now been set for August 27. Past activation, the first such car hire settlement will be September 23 for July, 2008 car hire reports. {*Views and News*, ASLRRRA newsletter, 19.Aug.08}

Car Hire RCH provides for an electronic settlement of car hire funds on a net/net basis through the Railroad Clearinghouse. The system will potentially allow for the number of car hire settlements a carrier must make on a monthly basis to be reduced to one: a single transfer through RCH....Participation in Car Hire RCH is voluntary. {Railinc website}

CONNECTICUT

CSO: BENEFIT FROM PAS?*

RailAmerica's cover letter about the NECR agreement with NS-ST said CSO would have a beneficial commercial arrangement with PAS. See Vermont.

NS-ST: MORE ON CONNDOT FILING*

22 August, New Haven. *CONNDOT SEES A GOOD FUTURE FOR RAIL FREIGHT*, said Peter Labouliere, who worked closely with Eugene Colonese on the comments of ConnDOT [see 08#08A]. “We get a lot of questions from potential shippers. “How do I do I get on rail? What’s a good location, what’s a bad location? Why?”

In response to these questions, the department looks at state-owned property, and talks to railroads about what they have available, or which may be coming available. “We bend over backwards to try to make this work. I can't name too many [companies] we've had to turn away, in fact I can't think of any.”

ST and the Waterbury branch

Recently “we had a company asking about locating on the Shore Line.” ConnDOT told them that unless they had a lot of money, and wanted to fight with communities, they were better off looking at the Waterbury branch.

When your editor pointed out that ST seemed to be losing, not gaining, customers on the branch [see 08#06B], Labouliere maintained, “It’s not going to stay the same. It’s reached its low point. There’s a lot of interest in property along the Waterbury Branch, the Route 8 corridor between Torrington and Waterbury.” The area, the Naugatuck River valley, has many brownfield sites, former industrial sites which can be cleaned up.

MASSACHUSETTS PROBLEMS FOR ARMORY

Dana Roscoe, principal planner for the Pioneer Valley Planning Commission, said in late August that the Armory Branch in Massachusetts is compromised. “In East Longmeadow, there are a couple of dozen owners including a town-owned two-mile proposed bicycle path about to go out to bid.”

In Springfield, fences and parking lots block the line. Asked about the buildings existing west of Waltham Avenue and south of Wilbraham Road, which per the Google aerial either block the right of way or narrow it to less than 50 feet, Roscoe said “it’s illegal to put a structure on the right of way.”

His conclusion: “It’s not realistic that the line could be reactivated.” {*ANR&P* discussion 25.Aug.08}

A.J.Belliveau, who owns CNZR, said when ConnDOT bought the existing line to the Massachusetts border in 1995, “Massachusetts never bought their end of it.” Connecticut was upset at the time. He’s “trying to open up the line back to Enfield.” {*ANR&P* discussion 22.Aug.08}

He acknowledged that ST did not provide frequent service on the branch. “We’re working with Pan Am to be part of the solution, on the need for more frequent service. It’s a chicken and egg problem. Companies don’t want to locate where it takes an agonizingly long time to get product delivered and get the railcars back again.”

Recent successes

Companies spend years looking for new sites, Labouliere said. If all parties discuss clearly what they can provide (including the quality of rail service) “we can make the opportunity work. We can retain and attract new jobs.”

Working as a state, Connecticut landed the Home Depot distribution center [our *Directory* #596] in Bloomfield on CNZR; Clark Western Steel in Bristol on ST [see 07#11A]; a distributor of Canadian fabricated wood trusses [see 08#02B] on CNZR in Bloomfield; Beacon Pellet and Coal in Beacon Falls on ST which received its first carload in August; and Blakeslee Pellet on CNZR’s Armory branch which received its first cars in August.

The revival of the Armory branch

Labouliere acknowledged that the Armory branch is already significantly compromised in Springfield [see box]. However, ConnDOT used the NS-ST deal as a chance, because it involves Pan Am the former owner of the line in Massachusetts, to point out that the route presents a good opportunity to turn it into an alternate freight line. “That is a Massachusetts issue, though, we have no jurisdiction.

“It may never happen,” but he maintained that “buildings are removable,” Connecticut a few years ago did remove buildings in New Haven “to repair a deep cut.”

Right now, according to Labouliere, the ConnRiver line between Hartford and Springfield is the “heaviest-travelled freight rail line in the state. Most in Connecticut have only one round-trip a day, but that line sees seven freights in 24 hours.” He counted two CSO locals, and two CSO through freights (West Springfield to Hartford, and West Springfield to New Haven) both ways. “CSO had 27,000 cars last year.” ST runs Plainville to East Deerfield and back two to four days a week, which makes the seventh train. {*ANR&P* discussion 22.Aug.08}

MAINE

MDOT: ROAD SALT*

August. ***ISCO WON BIDS TO SUPPLY THE MAJORITY OF ROAD SALT TO MAINE***, at least to MDOT, the Maine Turnpike, and GPCOG.

Maine Turnpike

ISCO won the southern five salt sheds, Morton won the northern two. Total 2007-2008 usage 29,489 tons.

Sample bid - York: ISCO \$75.99, Granite State \$76.45, Morton \$76.47. Bids to supply the other sheds were also close. {*e-mail* to *ANR&P* from Susan Danforth at Turnpike}

New player in road salt: Mid-Atlantic Salt

Mid-Atlantic Salt started in the 1990s supplying to small users, and has since grown. Ron Sweet, one of the co-founders, said that he had salt piles in Wilmington, Baltimore, Philadelphia, and Camden, and wanted to move into New England because “you have a lot more weather there.” The company brought in 57,000 tons of salt to Searsport, and has landed contracts with municipalities via councils of government, and with other uses. “Unfortunately, we did not win any state contracts.”

He sources supply from a mine in the Mediterranean. {*ANR&P* discussion 11.Sep.08}

Some comments on the salt bid process

Carol MacKenzie, who handles the procurement for the Greater Portland Council of Governments (GPCOG), said only two companies had bid: ISCO and Harcos, who bid \$140/ton. The significant price increases stemmed from the oil price runup, which has increased transportation costs: “Less the local delivery, than the ocean freight.”

In an effort to keep the increase down, she had relaxed the requirements. For moisture, she had raised amount to 3% permitted; standard is 0.5%. She had also removed the requirement for covered storage. These failed to get additional bidders, MacKenzie noted. Companies can meet the bid requirements even with outside storage,

MacKenzie said, “if they are careful with the tarp” and use a pad.

MAINE ROAD SALT CONTRACTS AUGUST 2008*

Region	Location	Provider	Estimated tonnage 08-09	Price 2008	Price 2006*	Price 2005	Price 2004
Five/Northern	Aroostook	Cargill	13,570	75.41	57.73	53.44	42.52
Four/Eastern	Washington + Bangor	Cargill	19,095	69.73	53.39	49.90	42.48
Three/Western	Mountains	ISCO	19,485	78.82	54.70	52.39	48.98
Two/Mid-Coast	Augusta-Winterport	ISCO	20,360	69.86	52.12	49.92	46.86
One/Southern	Lewiston-Kittery	Morton	15,920	66.73	50.12	45.77	42.31
Total (tonnage)			88,430				111,570
Maine Turnpike	See note.	ISCO, Morton	29,489	See note	48.34	44.13	39.04
GPCOG**	Portland et al	ISCO	95,000	67.82	44.80	44.80	43.35

Other MDOT bidders in Region

- 1: ISCO bid \$69.74.
- 2: Mid-Atlantic Salt bid \$70.24, Morton bid \$90.94, Harcros bid \$94.90.
- 3: Morton \$94.72.
- 4: ISCO \$71.91, Mid-Atlantic Salt \$74.62.
- 5: Harcros \$99.98, ISCO \$108.09. {Terry Demerchant of MDOT supplied info 11.Sep.08}

Her tonnage increased about 20,000 tonnes this year because more towns participated in the bid process. Despite the fact that GPCOG obtains a considerably lower price than individual towns, the smaller towns remain reluctant to participate with GPCOG because of the participation fee: 1.5%/ton for non-members, and 0.75% for members. MacKenzie has capped the price on which to figure the percent “at what we got two years ago, \$44.80 per ton.” But some small towns balk at the fee, even though they will save many times the fee in the actual salt price.

ISCO storage

ISCO has a salt pile in Portsmouth, outside [see *New Hampshire*]. Deliveries to Maine from this pile often had higher moisture content. In South Portland, ISCO has had inside storage, leasing a building from Sprague Energy, but the building began collapsing last winter. Sprague would have rebuilt, but the costs would probably have passed to ISCO, which would have put the higher costs into the bid.

Advantages of incumbency

Fewer and fewer companies are offering competitive bids, she noted. Three years ago, she would get bids from Granite State, Eastern Salt, Cargill, and others. For 2008 GPCOG essentially had one bidder. “Once a bidder is entrenched, they are harder to beat. They can often offer a lower price, because they already have the stockpile area and the trucking companies from the prior year.” {ANR&P discussion 10.Sep.08}

MERR: DEAL WITH ST*

9 September, Morristown NJ. **MERR COULD OPEN AN ADDITIONAL INTERCHANGE IN AUGUSTA**, following discussions with ST officials. Gordon Fuller, executive vice president and chief operating officer, said he met with “the people who make things happen” at ST: Syd Culliford, Ed Motte, someone from “our largest customer” [Dragon Cement], and an ST marketing official. In a “frank and honest” discussion, “we said that our biggest problem is that we have an interchange only once a week.”

MERR could re-open its interchange with ST in Augusta. [Predecessor Maine Coast Railroad did have the interchange open in 2000—see 00#01 and 02#07A]. At this point, ST comes down to Augusta from Waterville three times a week. [See 08#07B *Other Regional*. ST serves Blue Seal (our *Directory* #868) and Cives Steel (#867); Suburban Propane (#869) and Industrial Metal Recycling (#870) stopped using rail some time ago. {ANR&P on-site interviews over past two years}]

MERR submission to STB

MERR withdrew its request that the STB ‘require the Applicants to adhere to their commitments as set forth in the Application’ [see 08#08A]. In its comment filed with the STB at the 5 September deadline, it reported the discussions, under which ‘PARI has agreed to provide MERR with additional services that will allow MERR to protect its connections and provide improved service to its customers.’

Asked if he believed that ST would provide better service, given MERR’s statement in its initial ‘concern that Applicants may not live up to all of their representations,’ Fuller concluded that he had a better chance interchanging in Augusta with its thrice-weekly service.

Traffic over Augusta

Would MERR move all its interchange to Augusta? “Whatever works best,” said Fuller. Dragon currently trucks its petcoke from Searsport [see 99#09]; that traffic could move by rail, Fuller said.

In addition, he listed former rail customer Pine State Distributors, which did move alcoholic beverages by rail, and a candle-maker as Augusta customers MERR could serve. {ANR&P discussion}

Agreement from Committee

Tom Hall, chair of the Committee for Improvement of Rail Service in Maine, formerly worked for an MERR predecessor. He wrote: ‘I think [service via Augusta] could be a plus. I remember the guys saying that when ST showed up, the interchange in Augusta worked well, and some weeks they had twenty plus cars of freight going to Augusta. It’s a matter of whether ST will live up to their end of the deal. Why should we expect them to start now?’ {e-mail to ANR&P 10.Sep.08}

ST: QUARRY OPEN*

10 September, North Anson. *COUSINEAU’S IS TRANSLOADING CRUSHED ROCK AGGREGATE* at its facility here, into open-top hoppers. ST has reopened its quarry in Embden and is draying the rock south; it rails the product to other points on the ST system, as planned initially [see 05#10B]. Randy Cousineau, the owner, said the rock “will move through the summer and fall” at the rate of 10 cars a week. Trucks dump it onto the ground, then his workers use a bucket loader to fill the cars.

Pulp move

Railing pulp from Madison Paper to Cousineau’s began in 2007 after rehab of the track from Madison to North Anson funded by MDOT’s Industrial Rail Access Program [see 07#06A]. The pulp move ended [see 08#02B]. Now, said Cousineau, the pulp is moving to his warehouse, but by truck. “I guess it’s cheaper” to do it that way. {ANR&P discussion 10.Sep.08}

Extension of track to quarry

The quarry lies 10 miles north of the Cousineau site, in Embden. Stakeholders decided not to extend the rail to the quarry in the first phase. Route 16 at the north end of the Carrabassett River rail bridge is lowered through the grade with the permission of ST; track ends shortly beyond that point. {Jack Sutton in *MRG/Downeast Rail* newsletter 9-10.08}

MASSACHUSETTS

CSXT: BIODIESEL SLOW*

4 September, Pittsfield. “*WE ARE IN A HOLDING PATTERN,*” said Lee Harrison, executive vice-president of Berkshire Biodiesel, which plans a facility and a new rail spur [see 08#05A]. “We still need to nail down financing.

Call me in a couple of months.” {ANR&P discussion}

NEW HAMPSHIRE

CCRR ET AL: SPECIAL MOVE*

8 September, Claremont. **RECEIVING THE NACELLES WAS “RAILROADING AT ITS FINEST,”** said Steve Fontaine, head of marketing and sales for CCRR. He was watching the arrival of 10 nacelles for wind turbines here, on five railcars, each eight-axle car weighing loaded 330,000 pounds. The Professional Logistics Group handled the move for the company building the turbines in nearby Lempster, New Hampshire.

Because of the size of the cars, they were interchanged in “headlight meets,” said Fontaine, meaning they did not wait at least in the last part of the journey. “NECR had a headlight meet with VRS in Bellows Falls, and we had a headlight meet with NECR in Claremont,” said Fontaine.

The loads were too large to pass through the Bellows Falls tunnel, so moved CSXT-CP-VRS-NECR-CCRR. {ANR&P discussion}

NEGS v ST: NO DISCONTINUANCE?*

1 September, Manchester. **ST PULLED THE LEGAL ADVERTISEMENT OF THE ADVERSE DISCONTINUANCE FILING,** according to the Manchester *Union-Leader* legal advertising department, after the ad appeared twice. Similarly, the ad in the *Concord Monitor* did not appear a third time. {ANR&P discussion}

The statute under which a railroad applies for a discontinuance, 49 USC 10903, requires a filer to ‘(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located.’ {editor}

Peter Dearness said on 3 September he had not reached any agreement with ST which would have caused it to pull the advertisement. He had no insight into the ST action. {ANR&P discussion}

PORTSMOUTH: SERVICE WANTED**

3 September. **“WE ARE WORKING HARD TO ATTRACT ANOTHER [CONTAINER] SERVICE,”** wrote Dale Wood of the Northeast Marine Development LLC. In 2007, he succeeded in getting a couple of calls by a container ship in a Halifax-Portland-Portsmouth-Boston rotation. “It’s not the easiest business in the world, but as a fund, we believe short sea shipping is the future so we will continue to invest.” He remains a tenant in Portsmouth, “and we intend to stay indefinitely.” {e-mail to ANR&P}

Eimskip started its New England Canada Express Short Sea Service (NECA) in July 2007 [see 07#07A]. In September and October it called Portsmouth, but in November Eimskip announced it was dropping Portsmouth and adding Saint John [see 07#10B and 07#11A]. In December Eimskip stopped the entire service [see 07#12B].

Marconi also optimistic

Geno Marconi, director of the state-owned Market Street Terminal, said: “We are working with Wood, and optimistic that he is moving in the right direction.” Wood still has “considerable equipment on site” but no activity; Marconi pointed out that Wood’s lease does not permit mere storage: “He has to put containers on or off a boat,” he can’t use the site as a container yard.

“This is a marine transportation facility.” He frequently gets inquiries from people who want to rent the warehouse, but for a marine-related activity, so Marconi turns them down. “We’re still financially solvent. We want to develop the marine aspects, and we have a few oars in the water.”

Salt and scrap

The International Salt Company’s first ship arrived 7 August, to offload salt. [The company did not win any New Hampshire state salt contracts, but did win some in Maine—see *Maine*, and some in Massachusetts—see future issue.]

ISCO must pay a minimum of \$225,000 in fees, which cover the laydown area, wharfage, and dockage.

Scrap, the other commodity handled here, is doing well, Marconi said. A scrap ship calls every three or four weeks to load out scrap. {ANR&P discussion 10.Sep.08}

VERMONT

NECR: DEAL WITH NS AND ST*

5 September, DC. **NECR REACHED AN AGREEMENT WITH THE APPLICANTS** on the use of NECR's track and the proposed new interchange at Miller's Falls.

Millers Falls. NS and ST said that as part of the creation of PAS, they would re-open the ST-NECR interchange at Miller's Falls, Massachusetts [see 08#06A]. Under the agreement, NECR and PAS will 'concentrate their interchange' here.

ST trackage rights. NECR will agree to the transfer of ST's trackage rights to PAS.

Haulage agreement. 'NECR and PAS will enter into a haulage agreement whereby NECR will provide haulage services for PAS, to be used at PAS' option, on the Connecticut River Line between Millers Falls, MA, and White River Junction, VT. Haulage service will include service to PAS customers on the Line, as well as to PAS interchange points at White River Junction, Bellows Falls, Brattleboro, West River, and Windsor VT, and Claremont Junction, NH.'

Benefit for CSO too

In his cover letter to the Board, Paul Lundberg, senior vice-president strategic relations of RailAmerica (owner of CSO and NECR and other railroads), wrote:

- 'The haulage condition will retain competitive service on the Connecticut River Line. PAS and NECR will be able to take advantage of greater traffic densities and reduced costs, while continuing to provide competitive service to shippers.' [This certainly sounds as though ST will hand over traffic to NECR, rather than run the trains it now does. See above, response to VRS. The consolidation makes sense. *Editor*]

- 'Another subsidiary, CSO, will serve as a commercial partner to PAS, and together they can help develop new rail freight in central Connecticut.' [ConnDOT did ask for a reopening of the interchange between CSO and ST in Hartford. See 08#08A.] {cover letter and agreement letter filed at STB in FC No.35147}

Neither RailAmerica, NECR, nor CSO filed an initial comment on the transaction.

NECR v ST: ATTACHMENT?*

31 January, Boston. **NECR WAS AWARDED JUDGEMENT AGAINST ST FOR THE COSTS** of cleaning up a derailment of an ST train in 2004 [see 06#09A]. The sides could not reach agreement, so NECR had to file suit in 2006. On 22 November 2006, the two sides settled the case for \$920,000 in four installments.

But ST made only two payments. Under the settlement agreement, if ST failed to pay, 'B&M, STRC and/or PAR shall be immediately responsible to pay NECR and/or RA as liquidated damages the sum of \$1,000,000 less the total payments received up and until that date from the B&M, STRC, and/or PAR' plus 12% interest.

When ST did not respond to NECR's request to pay, NECR went back to court. The judge reopened the case and issued judgement for \$557,563.59. The judge also permitted NECR a writ of execution. The court docket did not show the writ returned as of 4 September. {USDC case 3:04-cv-30235-MAP}

New address for Pan Am Systems

On 15 July, Pan Am counsel Rob Culliford told the court his address had changed to ‘Pan Am Systems, 400 Amherst Street Suite 405, Nashua NH’. {USDC case 3:04-cv-30235-MAP}

QUEBEC/MARITIMES

CANSO: MELFORD TERMINAL*

4 September, Halifax. **MELFORD INTERNATIONAL TERMINAL ANNOUNCED THE HIRING OF A CHIEF FINANCIAL/OPERATING OFFICER.** Mike Uberoi worked for Halterm, the company which operates the South End container terminal, as chief financial officer to 2004, and then moved to K&D Pratt, a supply and service house in Atlantic Canada. {web notes}

Project status

The project is currently awaiting environmental approval, expected later this year. Once regulatory approval is granted, construction will begin shortly afterward. {Melford press release}

Provincial statement

‘On July 25, 2008, Melford International Terminal Inc. registered the proposed Melford International Terminal for environmental assessment, in accordance with Part IV of the Nova Scotia Environment Act. The proposed project also requires an environmental assessment in accordance with the Canadian Environmental Assessment Act. Both environmental assessment processes are currently underway and copies of all comments submitted to the province will also be forwarded to the Canadian Environmental Assessment Agency, Atlantic Region....

‘It is anticipated that construction will commence, pending regulatory approvals, in the fall of 2008. Construction will last for approximately two and a half years. Start up and operation of the facility is scheduled for the spring 2011....

‘Public comments were accepted between July 25, 2008 and August 24, 2008.’ {Nova Scotia DEP website} Minister Mark Parent must decide by 23 October, and under an agreement with Ottawa, the federal assessment will end at the same time. {ANR&P discussion with Vanessa Margueratt of NS Environment}

RAIL SHIPPERS

Described in this issue.

Our *Directory of Rail Freight Facilities in New England* has more information on the companies denoted with their directory number.

Berkshire Biodiesel (CSXT, Massachusetts) No start yet.

Cousineau (ST, Maine) New aggregate move.

Industrial Metal Recycling (ST, Maine #870) Stopped rail.

Suburban Propane (ST, Augusta Maine #869) Stopped rail.

ATLANTIC NORTHEAST RAILS & PORTS

162 Main Street Yarmouth, Maine 04096

Vox (207) 846-3549 Fax (contact me for #)

Chalmers (Chop) Hardenbergh, publisher and editor

C_Hardenbergh@juno.com www.atlanticnortheast.com

E-ISSUE

Coverage

The newsletter covers the operating freight railroads and ports in New England, the Maritimes, and eastern Québec, as well as the government environment they function within. Coverage includes passenger rail and ships when relevant to freight operations.

Frequency and the e-bulletin

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.

Pricing

Subscriptions cost \$395 for professionals, \$125 per year for students, young and old. (Subtract \$40/year for e-mail). Introductory prices available. The *e-bulletin*, sent by e-mail at least weekly between issues, is free of charge to all subscribers.