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Ms. Cynthia T.. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
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ENTERED
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May 29, 2018
Part of
Public Record

Docket Number AB 1256

Pan Am Railways v Milford-Bennington Railroad
action for adverse discontinuance

To the Members of the Board:

This letter opposes the proposed adverse discontinuance of Milford-Bennington Railroad Company's operating authority over a section of Boston & Maine Corporation/Springfield Terminal (collectively Pan Am Railways) Hillsboro Branch between mileposts 11.00 and 16.36 in the towns of Milford and Wilton, New Hampshire.

My opposition is based on Pan Am's history of litigation – including innumerable filings with your agency, a history which shows little that has the best interests of the customer or the rail network at heart.

Who I am: 23 years covering New England railroading

For the past 23 years (1994-2017) I published the *Atlantic Northeast Rails & Ports* weekly trade newsletter covering the operating freight railroads and ports in the region, as well as their government environment. From the very beginning, railroad workers and Pan Am customers complained to me about the railroad's service, and worst of all - its attitude.

While I have never actually worked for a railroad, I have practiced law, giving me a familiarity with litigation in the American court system as well as regulatory agencies. My newsletter closely followed the many instances when Pan Am was either a plaintiff or defendant in New England courts, both federal and state, as well as a party in federal and state regulatory actions.

Here are three instances – among many available – which underscore that Pan Am is not acting to further 'the public convenience and necessity.'

Instance One: New England Southern Railroad & promises of service

In 2008-2009, Peter Dearness, owner and operator of the New England Southern Railroad, was running a successful short-line operation using Pan Am tracks between Manchester, New Hampshire, and Concord, New Hampshire, serving many customers.

For an unknown reason, Pan Am instituted an action to remove the Dearness operation from its lines, and assume the operating itself. Pan Am won that action at the STB.

In its filing, Pan Am made this statement: 'Once Pan Am service is restored to the Subject Line, Pan Am will assign a crew to be headquartered in Concord, New Hampshire to work a five day per week schedule . . . !'

In granting the application, the Surface Transportation Board repeated Plaintiffs' promise: "Pan Am states that: (1) it will operate one crew on a 5-day-a-week basis; (2) the crew will be headquartered in Concord...." {Docket No. AB-32-100}

Pan Am did neither. In violation of its written filing to the Board, Pan Am never provided service five days a week to Concord, nor stationed a crew in Concord.

This shows that despite Pan Am's promises to serve the Milford-Bennington customer, Granite State, its promises cannot be relied upon. Particularly, Pan Am in this instance is stating it will station a locomotive at the runaround in Wilton. The board should not rely on Pan Am's this or any other promise.

Instance Two: vindictive libel lawsuit against me

In September 2011, Pan Am filed a libel lawsuit against me and *Atlantic Northeast Rails & Ports* in federal court in Maine, citing six instances in which I had libelled them. After five years of litigation and appeals, where they lost at every turn, we settled the case with my admission that I had never worked in the railroad industry (no money changed hands). *Pan Am v Hardenbergh*, Civil Docket No. 2:11-cv-00339-NT.

I raise this case not to refight this battle. Instead, I use it to show that Pan Am would much rather litigate than spend money improving its operations. Instance Three underscores that.

Instance Three: vindictive actions against Milford-Bennington and Peter Leishman

As Milford-Bennington has recited in its filings, Pan Am has acted vindictively against the shortline since its founding.

If Pan Am were faced with a threat to its existence, its almost continual state of battle with Milford-Bennington would make sense. However, Pan Am has expended much, much corporate time and legal fees on under three miles of track on which it has one customer. Its effort lacks rational purpose.

Moreover, its effort is certainly based neither on the best interests of its existing or potential customers, nor on 'public convenience and necessity', the standard for evaluating any adverse discontinuance.

Summary

1. The Board must realize that Pan Am's action for adverse discontinuance is aimed at vindictively crushing a small railroad on three miles of track. Pan Am wants vengeance, not an improvement to the public convenience and necessity.

2. Even if Pan Am's proposed service plan made sense (no sane railroad person would say that it does), Pan Am's record shows that it cannot be trusted to actually institute the plan it describes.

For these reasons, I ask the Board to reject Pan Am's motion to remove Milford-Bennington's trackage rights in Wilton.

/s/ Chalmers "Chop" Hardenbergh

I certify that I have this day served by e-mail a copy of this letter to the Parties of Record with an asterisk below, and a copy by mail to those without an asterisk.

/s/Chalmers "Chop" Hardenbergh

25 May 2018

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