



PAN AM RAILWAYS

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March 17, 2017
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March 15, 2017

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

**Re: STB Docket No. AB-32 (Sub No. 108X) – Boston and Maine
Corporation & Springfield Terminal Railway Company – Petition for
Waiver**

Dear Ms. Brown:

Enclosed for filing with the Board in the subject docket is an original and ten (10) copies of Boston and Maine Corporation's and Springfield Terminal Railway Company's Petition for Waiver dated March 15, 2017. Also enclosed is a check totaling \$2,000 representing the appropriate filing fee.

Should you have any questions in regard to this filing, please do not hesitate to contact the undersigned at (978) 663-1215. Thank you in advance for your assistance in this matter.

Very truly yours,

Robert B. Burns, Esq.
Boston and Maine Corporation
Springfield Terminal Railway Company

Encls.

FEE RECEIVED
March 17, 2017
SURFACE
TRANSPORTATION BOARD

FILED
March 17, 2017
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD



Docket No. 32 (Sub. No. 108X)

**BOSTON AND MAINE CORPORATION & SPRINGFIELD TERMINAL RAILWAY
COMPANY - ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY-
MILFORD BENNINGTON RAILROAD CO., INC. - FOR HILLSBOROUGH BRANCH
M.P. N-11.00 TO M.P. 16.36 - NEW HAMPSHIRE**

PETITION FOR WAIVER

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Dated: March 15, 2017



BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET No. AB-32 (Sub. No. 108X)

**BOSTON AND MAINE CORPORATION & SPRINGFIELD TERMINAL RAILWAY
COMPANY - ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY-
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PETITION FOR WAIVER

A. Background Facts.

Pursuant to 49 C.F.R. § 1152.24(e)(5), the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Pan Am") seek waiver of certain requirements of the Surface Transportation Board ("STB") abandonment regulations for an adverse discontinuance application that Pan Am intends to file in this proceeding. Pan Am also seeks minor related waivers and exemptions as described below. These requirements are inapplicable or irrelevant in an adverse discontinuance context, and the STB has consistently granted waivers and exemptions from such provisions in previous adverse abandonment and discontinuance cases. Pan Am intends to seek an adverse discontinuance of operations by Milford Bennington Railroad Co., Inc. ("MBR") and intends to file its application on or about April 20, 2017.

Accordingly, Pan Am intends to ask the STB to find that the public convenience and necessity permit the adverse discontinuance of operations by MBR over approximately five (5) miles of track in Southern New Hampshire (the "Subject Line") on the Hillsborough Branch from MP 11.00 to MP 16.36.

MBR has been operating over the Subject Line pursuant to a Trackage Rights Agreement dated June 22, 1992 (the "TRA"). The TRA contained an initial twelve-year duration and expired on its own terms in 2004. The MBR continued to operate and pay for such operation over the subject line up until late 2012, when MBR reduced payment amounts and eventually stopped making any payments whatsoever. Over the past couple decades Pan Am and MBR have had an unnecessarily contentious relationship due to acts and/or omissions by MBR. MBR has not filed for discontinuance to date but continues to use the track on a seasonal basis.

Pending the approval of its application and consummation of the discontinuance of service, Pan Am will control all rail operations along the Subject Line. This adverse discontinuance is necessary to remove MBR's interest in the Subject Line from STB jurisdiction so that Pan Am can exclusively operate over the subject line. The only objections to this discontinuance will likely come from MBR and perhaps its only customer, Granite State Concrete.

Pan Am is seeking to terminate MBR's trackage rights where they have expired, and MBR has selectively decided which provisions of the TRA it chooses to comply with and MBR has consistently been a safety concern on the line. MBR has refused to voluntarily discontinue its operations along the Subject Line.

B. Waiver Requests.

As the STB and its predecessor have consistently found, much of the information that the STB's regulations otherwise require in an abandonment or discontinuance application is largely inapplicable or irrelevant to the issues in an adverse discontinuance proceeding.

Pan Am seeks waiver on the ground that the Subject Line at issue is contained entirely in N.H, consists of only five (5) miles and one (1) customer, and service along the Subject

Line would be conducted by the current property owner, Pan Am. Whereas Pan Am currently operates over the Subject Line it is familiar with its demands, and Pan Am has significant experience in rail line operations throughout New Hampshire.

In addition, little of the information in the regulations sought to be waived is relevant to the merits of an adverse discontinuance application. Furthermore, as Pan Am has never served Granite State Concrete, MBR's sole customer, Pan Am is not in possession of much of the information required in the regulations sought to be waived. Waiver of these inapplicable and unneeded portions of the STB's abandonment regulations is routine in adverse abandonment or discontinuance cases. *Chelsea Property Owners -Abandonment Portion of Consolidated Rail Corporation 's West 3dh Street Secondary Track in New York , NY, Docket No. AB-167 (Sub. No. 1094) (ICC served July 19, 1989); Grand Trunk Western Railroad Incorporated-Adverse Discontinuance of Trackage Rights Application- A line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH, Docket No. AB-31 (Sub.No. 30) (STB served Feb. 12, 1998); City of Rochelle, Illinois, - Adverse Discontinuance-Rochelle Railroad Company, Docket No.AB-549 (STB served June 5, 1998).*

Pan Am requests waiver of the following informational requirements of 49 CFR § 1152, Subpart C:

1. 49 C.F.R. § 1152.22(a)(5).1152.10-1152.14-System Diagram Map.

Pan Am seeks waiver of the system diagram map requirements of §1152 Subpart B. There is no need for filing of a system map in an application, which is designed to permit a change of operations, not discontinue service entirely. *City of Rochelle at 3; see also Grand Trunk Western Railroad Incorporated at 2 (finding that the filing of a system diagram map is not appropriate in the context of adverse abandonment).* The system map requirements are

not relevant to adverse discontinuance proceedings. *Maine Central Railroad Company, State of New Hampshire -Adverse Discontinuance -Line Between Whitefield, NH and St. Johnsbury , VT.*, Docket No. AB-848-0 (STB served July 1, 2003) at 4.

2. 49 C.F.R. § 1152.22 (c), (d), and (e). -Service Provided, Revenue and Cost Data, and Rural and Community Impact.

Because the adverse discontinuance arises in the context of continued service, "there is no point in requiring the submission of traffic data, data on revenues and costs, and information about transportation alternatives". *Fore River Railroad Corporation - Discontinuance of Service Exemption - Norfolk County, Ma*, Docket No. AB-539 (ICC served Feb. 13, 1992) at 2, citing *Chelsea*. Moreover, revenue and cost data is "intended to apply to carriers seeking to discontinue their own operations on the grounds that those operations are a burden on interstate commerce". *Canadian National Railway Company-Adverse Discontinuance -Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Me*, Docket No. AB-279-3 (STB served September 25, 2002) at 7.

3. 49 C.F.R. § 1105-Environmental and Historical Requirements.

Because this adverse discontinuance arises in the context of the continued rail operations and does not result in significant changes that exceed the thresholds established in Section 1105.7, this proceeding is exempt from the environmental and historic reporting requirements of § 1105 pursuant to 49 C.F.R. §§ 1105.6(c)(2) and 1105.5(b)(1). See *City of Rochelle* at 2; See also *The Kansas City Southern Railway Company-Adverse Discontinuance Application -A Line of Arkansas & Missouri Railroad Company*, Docket No. AB-103 (Sub. No. 14) (STB served Nov. 24, 1998) at 2,

n.3. Pan Am also requests any further exemption or waiver that the STB may find necessary to confirm the inapplicability of environmental and historical reporting requirements to this proceeding.

4. 49 C.F.R. § 1152.20- Notice and Publication Requirements.

Pan Am requests waiver of all notice and publication requirements under Section 1152.20(a)(1),(2), (3) and (4) and 49 C.F.R. 1152.20(b)(1) except for the following:

- (a) This Petition for Waiver would be served upon the sole shipper on the line and all connecting rail carriers, if any. This Petition for Waiver is request to serve as the notice of intent to discontinue service required under 49 C.F.R. 1152.20.
- (b) A copy of the application would be served upon the aforementioned relevant parties and on the New Hampshire Department of Transportation. *See City of Peoria and Village of Peoria Heights, IL- Adverse Discontinuance -Pioneer Industrial Railway Company* Docket No. AB-878-0, (STB served Sept. 10, 2004).

Pan Am requests exemption from the following requirements:

1. 49 U.S.C. § 10903(c)(2).- System Diagram Map.

Pan Am requests an exemption from the system diagram map requirements of 49 U.S.C. § 10903(c)(2), pursuant to 49 U.S.C. § 10502, to the extent deemed necessary for the adverse discontinuance application.

2. 49 U.S.C. 10903(a)(3)(B) & (C). Posting Requirements.

Because Pan Am is not itself discontinuing service it should not have to comply with the notice and publication requirements (and related regulations, 49 C.F.R.

1152.20(a)(3)) of this Section. Moreover, this provision is "designed for carriers, unlike [Pan Am], [who] are proposing to voluntarily discontinue their own service over a line". See *Canadian National*.

3. 49 U.S.C. § 10904 – Financial Assistance Requirements.

Pan Am requests an exemption from the financial assistance requirements of 49 U.S.C. § 10904 (and waiver of related regulations, 49 C.F.R § 1152.27) See *Modern Handcraft Inc.,-Abandonment*, 363 I.C.C.969 (1981).

Application of the above provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. Rather, exemption will promote that policy by eliminating unnecessary procedures, and thus will expedite regulatory decisions [49 U.S.C. § 10101(2)], foster sound economic conditions in transportation [49 U.S.C. § 10101(5)], and encourage efficient management of the railroad [49 U.S.C. § 10101(9)]. Furthermore, other aspects of the rail transportation policy will not be adversely affected.

Pan Am understands that, as an applicant in an adverse discontinuance proceeding, it bears the burden of proof to submit sufficient relevant information to allow the STB to reach a decision on the merits and grant the requested relief.

WHEREFORE, Pan Am requests that this STB grant the requested waivers and exemptions set forth herein.

Respectfully submitted,

By: 

Robert B. Burns, Esq.

Boston and Maine Corporation

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*Legal Counsel for Boston and Maine
Corporation and Springfield Terminal Railway
Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15TH day of March 2017, a copy of the Petition for Waiver filed in the above-mentioned proceeding was served by first class mail, postage prepaid, upon:

Michael A. Delaney, Esq.
900 Elm Street, P.O. Box 326
Manchester, NH 3105-0326

New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
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Robert B. Burns