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May 29, 2018

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

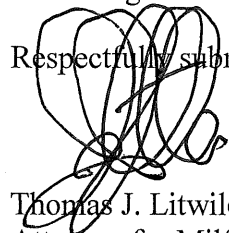
Re: **Docket No. AB-1256**
Boston and Maine Corporation & Springfield Terminal
Railway Company -- Adverse Discontinuance of Operating
Authority -- Milford-Bennington Railroad Company, Inc.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Protest of Milford-Bennington Railroad Company, Inc.**, dated May 29, 2018.

Should any questions arise regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Milford-Bennington
Railroad Company, Inc.

TJL:tl

Attachment

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
-- ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY--
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

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**ATTORNEYS FOR MILFORD-BENNINGTON
RAILROAD COMPANY, INC.**

Dated: May 29, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
-- ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY--
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

Milford-Bennington Railroad Company, Inc. ("MBR") hereby protests the application of Boston & Maine Corporation (where relevant, "B&M") and Springfield Terminal Railway Company (collectively with B&M, "Pan Am") seeking adverse discontinuance of MBR's long-standing trackage rights over Pan Am's rail line between Wilton and Milford, New Hampshire (the "Subject Line"). Pan Am stands alone in seeking to oust MBR: its application is not supported by any existing or potential future customers of MBR or on the Subject Line; by any other customers of Pan Am; by the local municipalities through which the Subject Line passes; by the State of New Hampshire; or by any other community interests.

Indeed, a remarkable cross-section of these diverse interests has been motivated to become formal parties of record and register their strong concerns and objections regarding Pan Am's course of action. The Board should note that, far from repeated submission of the same form letter, these filings are nearly all individualized and often remarkably detailed in their recitations of the inadequacies of Pan Am rail service and the threat which adverse discontinuance poses to effective rail transportation in the area.

The reasons for this are manifest: MBR utilizes its trackage rights on the Subject Line to provide specialized, frequent single-line shuttle-type train service for Granite State Concrete Co., Inc. (“Granite State”) between a quarry facility on MBR’s line north of Wilton and a Granite State processing plant on the Subject Line near Milford, a distance of approximately 5 miles. Granting Pan Am adverse discontinuance authority would require these short-haul, ten-car trains to be interchanged between MBR and Pan Am at Wilton – a cumbersome process that would sometimes have to occur *six* times a day. Knowledgeable local citizens and institutions rightly fear that such a process would significantly degrade rail service to Granite State, if not destroy it altogether. In the absence of effective rail service, Granite State would be faced with curtailing its local operations or diverting large volumes of short-haul aggregate traffic to local roads and highways.

Compounding all of this is Pan Am’s long history of inadequacy, indifference and at times outright hostility to the provision of effective transportation service on what is known as the “Hillsborough Branch.” It is telling that the STB commodity exemption that otherwise would apply to Granite State’s stone has been *revoked* for the last fifteen years, quite specifically because of the risk of abusive market actions by Pan Am. It is into the care of that railroad that the STB is now asked to deliver Granite State, against the express wishes of Granite State and all other parties who have expressed a position on the matter.

In considering adverse discontinuances, the Board’s responsibility is to ensure that the public convenience and necessity (“PC&N”) is satisfied for community, shipper and railroad interests, and to “protect[] against the unnecessary discontinuance, cessation, interruption, or obstruction of rail service.” *Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge*

Company in Aroostook County, Me., Docket No. AB-279 (Sub-No. 3) (STB served May 3, 2004) (“*Waterloo*”). Eliminating MBR’s long-established single-line service to Granite State serves no public interest, and is not justified by any legitimate reasoning proffered by Pan Am. Pan Am’s adverse discontinuance application must be denied.

BACKGROUND

MBR is a Class III rail carrier which leases a 18.6-mile rail line between Wilton and Bennington, New Hampshire that is owned by the State of New Hampshire (the “State-Owned Line”). *Milford-Bennington Railroad Company, Inc. -- Modified Rail Certificate*, Docket No. FD 31701 (Sub-No. 1) (ICC served August 8, 1990). The State-Owned Line was the western segment of B&M’s Hillsborough Branch, and had been abandoned by B&M in 1986. *Boston and Maine Corporation – Abandonment – In Hillsborough County, NH*, Docket No. AB-32 (Sub-No. 32) (ICC served March 18, 1986).

The Subject Line is the adjacent segment of the Hillsborough Branch to the east of the State-Owned Line, and extends from Milepost 16.36 at Wilton to Milepost 11.0 at Milford. The Subject Line had appeared in Category 1 on B&M’s System Diagram Map since 1983, and in 1990 MBR filed a feeder line application pursuant to what was then 49 U.S.C. §10910 to acquire the line. *See Milford-Bennington Railroad Company – Feeder Line Application – Boston and Maine Corporation Hillsborough Branch*, Docket No. FD 31701 (ICC served October 31, 1991). B&M then engaged in a series of actions intended to stymie MBR’s application, including belatedly removing the line from Category 1 on its SDM and having to have a corporate affiliate file a competing feeder line application – essentially seeking to forcibly acquire the line from itself. All of these actions were unsuccessful. *Id.; Acquisition of Boston and Me. Corp. Reversionary Inter.*, 8 I.C.C.2d 807 (1992).

Ultimately, as part of an agreement to settle MBR's feeder line application, MBR was granted trackage rights over the Subject Line pursuant to a June 22, 1992 Agreement between the parties (the "1992 TRA"). See *Milford-Bennington Railroad Company, Inc. -- Feeder Line Acquisition -- Boston and Maine Corporation Hillsborough Branch*, Docket No. FD 31701 (ICC served July 6, 1992); Adverse App. at 3 ("In 1992, Pan Am and MBR voluntarily entered into [the 1992 TRA] as a settlement of MBR's feeder line application"). MBR's trackage rights were authorized by the Interstate Commerce Commission ("ICC") in *Milford-Bennington Railroad Company, Inc. -- Trackage Rights Exemption -- Boston and Maine Corporation and Springfield Terminal Railway Company*, Docket No. FD 32103 (ICC served July 9, 1992). It is these authorized trackage rights, obtained in return for the withdrawal of a highly-contested feeder line application against Pan Am, that Pan Am now seeks to have the Board eliminate in this proceeding.

It is not the first time, however. Within a year of the 1992 TRA, Pan Am sought – unsuccessfully, once again – to terminate MBR's ability to operate over the Subject Line and service Granite State. *Milford-Bennington Railroad Company, Inc. -- Trackage Rights Exemption -- Boston and Maine Corporation and Springfield Terminal Railway Company*, Docket No. 32103 (ICC served September 3, 1993). A decade later, it tried to impose significant restrictions on MBR's service to Granite State, triggering the proceedings in *Granite State Concrete Co. v. Boston and Maine Corp.*, 7 S.T.B. 834 (2004) ("*Granite State v. B&M*"), *aff'd sub nom. Granite State Concrete Co, Inc. v. STB*, 417 F.3d 85 (1st Cir. 2005). In that case, the Board found that Pan Am had not violated its common carrier duties to Granite State or MBR, but only *after* Pan Am relaxed its previously-imposed operating restrictions and performed sufficient maintenance on the Subject Line to allow 10 mile per hour operations. Nonetheless,

the Board warned Pan Am that “[i]t should not have waited until there was litigation to take into account the interests of parties other than itself.” 7 S.T.B. at 836.¹ As discussed in the attached Verified Statement of Peter R. Leishman, MBR’s President (“Leishman V.S.”), the conclusion of the 2004 litigation also unfortunately meant the conclusion of Pan Am’s fleeting commitment to maintenance of the Subject Line, which is once again in FRA excepted track status and subject to a 5 mile per hour speed restriction. Leishman V.S. at 3.

The 1992 TRA expired in 2004, and the parties continued to operate under its terms until 2012. Leishman V.S. at 7. Negotiations between MBR and Pan Am regarding a new agreement were unsuccessful, and as matters deteriorated Pan Am filed suit in state court in 2015 alleged various contractual breaches by MBR. That suit was largely unsuccessful, resulting in a jury verdict for MBR on most counts and a small unjust enrichment finding for Pan Am of just over \$50,000 (after an offset for MBR’s maintenance expenditures on the Subject Line) for MBR’s use of the line for the 2012-2016 period. See Adverse App., Exhibit 2. After the court case, MBR slightly modified and executed a new trackage right agreement that was tendered by Pan Am, and resumed paying trackage rights fees to Pan Am in accordance with that agreement. Leishman V.S. at 9 and Exhibit 7.

The long and contentious history of the Hillsborough Branch – of which the Board is well aware – is admittedly not dispositive of the important present-day public interest questions that must be considered in this adverse discontinuance proceeding. But it is relevant because Pan Am’s warped view of that history provides the only real attempted justification for the dramatic relief it seeks here. Pan Am thus insists over and over that MBR must be ejected

¹ This is also the proceeding where, as referenced above, the Board revoked the commodity class exemption applicable to Granite State’s stone traffic because, in the Board’s words, “the record of this conduct [by Pan Am] shows that Granite State does merit immediate access to the Board’s processes to protect the shipper from the risk of market power abuse.” 7 S.T.B. at 838.

from the Subject Line because it has breached its contractual obligations to Pan Am. *See, e.g.*, Adverse App. at 14 (alleging “MBR’s failure to abide by contractual terms”); Adverse App. at 21 (alleging that MBR “has an established record of disregarding contractual and safety interests”); Adverse App. at 22 (alleging that MBR “continually ignores other terms and conditions of the TRA”); Adverse App. at 22 (alleging “MBR’s long history of ignoring its contractual obligations”); Adverse App. at 24 (alleging that MBR seeks “to avoid abiding by any of its contractual obligations”); Adverse App. at 24 (alleging that “MBR has a long history of ignoring its contractual obligations”). Yet here was the verdict in the lawsuit Pan Am brought against MBR alleging such contractual breaches: “Do you find that the plaintiffs [Pan Am] has proven by a preponderance of evidence that the defendants breached the trackage rights agreement dated June 22, 1992?” Answer: “No.” Adverse App., Exhibit 2 (Jury Verdict).

Of course, the Board is the wrong forum in which to contest the substance of these types of contractual issues. *E.g., General Railway Corporation – Exemption for Acquisition of Railroad Line – In Osceola and Dickinson Counties, IA*, Docket No. FD 34867 (STB served June 15, 2017) (“Any dispute regarding the validity of this agreement, or ownership of the Line, involves questions of state contract and property law. The Board is not the proper forum to resolve such disputes.”). But where courts have already acted, parties cannot simply ignore their findings. Pan Am would have the Board oust MBR from the Subject Line on the basis of a series of contractual breaches that never happened.

Similarly, Pan Am also insists that adverse discontinuance is appropriate because when Pan Am attempts to enforce its supposed contractual rights and safety interests against MBR, “litigation usually follows.” Adverse App. at 18. The Board itself has directly addressed Pan Am’s culpability for this situation: Pan Am “should not have waited until there was

litigation to take into account the interest of parties other than itself.” *Granite State v. B&M*, 7 S.T.B. at 836. The Board believed that the litigation in *Granite State v. B&M* did, in fact, compel Pan Am to account for the legitimate interests of others; the existence of such litigation cannot logically now become the bootstrap for eliminating those interests.

Finally, Pan Am asserts that MBR’s operations present safety issues that compel an adverse discontinuance. “[I]t is not the Board’s role to be the final arbiter of safety issues.” *Granite State v. B&M*, 7 S.T.B. at 836. Even then, Pan Am’s safety arguments boil down to a single incident eight years ago that Pan Am utilized to ban MBR’s Peter Leishman from Pan Am property. See *Leishman V.S.* at 9-10. While a federal district court upheld Pan Am’s contractual discretion to act as it did, the court’s cautionary language was telling:

I do not condone Pan Am’s conduct in this case. While there is reason to doubt Pan Am’s claim that it invoked its right to exclude Leishman from its tracks solely because of public safety concerns, the contract plainly gives it the right to as it did, regardless of its motives for doing so.

Milford-Bennington Railroad Co., Inc. v. Pan Am Railways, Inc., No. 10-cv-00264-PB, 2011 WL 6300923 (D.N.H., December 16, 2011), at *6, *aff’d*, 695 F.3d 175 (1st Cir. 2012). The Board should be similarly skeptical of the motive and legitimacy of Pan Am’s purported safety rationale for seeking adverse discontinuance.

Instead, what is clear is that removing MBR from the Subject Line, and requiring Granite State’s specialized short-haul traffic to be interchanged between MBR and Pan Am in the middle of a five-mile movement, does not serve the public convenience and necessity of any interested party. That is the guiding analysis here, and it requires denial of Pan Am’s application.

DISCUSSION

While the precise interest of Pan Am in effecting this disruptive discontinuance remains unclear – it is hard to believe that Pan Am has a sudden interest in traffic of a lesser quantity than it abandoned decades ago – what is apparent is that Pan Am’s proposed discontinuance does not promote the PC&N concerns of shippers and the widespread interest in continued rail service on the Subject Line. It’s been more than a year since Pan Am filed its petition for waiver to commence this proceeding. In that time, Pan Am has been unable to convince a single community body, member, or shipper (actual or potential) to support its application. That glaring absence simply confirms what the operational reality demonstrates: Pan Am has not carried its burden of demonstrating the PC&N is served by the proposed adverse discontinuance.

I. THE OPERATIONAL REALITIES OF POST-DISCONTINUANCE SERVICE DO NOT SUPPORT THE PC&N

Pan Am has indicated that after MBR is forced off of the Subject Line, Pan Am will “simply” expand its operation over the line to handle Granite State traffic between the Milford facility and a new interchange with MBR at Wilton some three miles away. Adverse App. at 6, 7. Closer examination of Pan Am’s statements and the real, physical facts of the operational realities subsequent to a discontinuance demonstrates the fallacy of Pan Am’s operational plan.

A. Pan Am’s imposition of joint-line movements via a Wilton interchange for Granite State’s traffic will seriously degrade the rail transportation service available to Granite State.

MBR utilizes its trackage rights on the Subject Line for a single, intended purpose: to move stone for Granite State that originates at a quarry on the State-Owned Line to the Granite State Milford facility on the Subject Line. Because of capacity limitations at the

Milford facility, these trains can be no longer than 10 cars long, and the 1992 TRA specifically incorporates that restriction. Leishman V.S. at 7. During the 8-9 months of the year that the Milford facility operates, MBR generally provides daily service moving anywhere from ten to thirty 100-ton cars on a cycle, with loaded cars being moved from Wilton to Milford and empties being returned over the five-mile route. Because train length is limited to ten cars, moving thirty cars in a day requires three round trips between Wilton and Milton, which MBR does routinely. To be as responsive as possible to operational schedules and needs at Granite State's facilities, MBR often provides this service on 12 hours or fewer notice. Leishman V.S. at 2.

Pan Am's proposed discontinuance would sever this short-distance, single line haul in two, and interject an interchange at Wilton between MBR and Pan Am for every train operating to the Milford facility. On many days, this would mean *six* interchanges of short trains between MBR and Pan Am – three loaded runs to the Milford facility and three empty returns to the Wilton quarry. Mr. Leishman explains in his verified statement the switching maneuvers that would be required at Wilton for every one of these interchanges. Leishman V.S. at 4. This includes not just exchanging crews and locomotives, but also the shoving platforms that must be utilized on the ends of the trains.

The idea that such an interchange operation could take place efficiently and cost-effectively up to six times a day without affecting the adequacy and level of service to Granite State on a five-mile movement is ludicrous. The switching operations at Wilton would likely dwarf the work currently undertaken to move the trains between Wilton and Milford. And unless Pan Am crews were on stand-by at Wilton for the entire day – something Pan Am has made no representation about – then there will likely be dwell times waiting for a Pan Am crew to arrive every time an interchange is to occur, up to six times a day. On days when MBR operates three

trains to the Milford facility, it barely has time under current circumstances to complete the service within the operative window at the facility. The addition of an MBR-Pan Am interchange to every one of those train movements would make completion of service a virtually impossibility.

Granite State has separately indicated its significant reservations about Pan Am's ability to provide adequate rail service to meet Granite State's needs. See Granite State letter filing dated May 25, 2018. Granite State had no opportunity to express those concerns to Pan Am because, somewhat amazingly, Pan Am did not bother to contact Granite State before filing its adverse discontinuance application. *Id.* That is further reason to doubt the viability of Pan Am's supposedly operating plan.

The proposed interchange at Wilton yard also raises significant safety implications that Pan Am has neglected to address. In 1983 and again in 1993, Pan Am experienced run-away cars that had been left standing at the Wilton yard. Leishman V.S. at 5 and Exhibits 2 and 3. A 1.5% grade at the yard location contributes significantly to the risk of such incidents. After the 1993 incident, the parties made track changes at the Quinn Quarry on the State-Owned Line that allowed Pan Am to no longer stage cars at the Wilton yard, Leishman V.S. at 5, and because MBR runs its Granite State trains directly through from the Wilton quarry to Milford, no traffic has utilized the Wilton yard for a number of years. As a result, there has been no risk of repeating past runaway incidents. Pan Am's proposed ejection of MBR from the Subject Line and interjection of an unnecessary interchange into Granite State's traffic movements would change that.

It is similarly unclear whether Pan Am is prepared to provide the specialized and tailored service to Granite State that MBR currently offers. Pan Am provides little comfort in

this regard through its accusations that the current arrangements between MBR and Granite State are a “sweetheart deal” whereby MBR favors its only customer. Adverse App. at 12, 22. Pan Am implies, without explaining or demonstrating, that MBR has acted to the detriment of other shippers and the State of New Hampshire, but such bald claims would obviously be more persuasive coming from those parties. None has seen fit to support Pan Am’s application. MBR has worked aggressively to maintain all of the State-Owned Line, not just the short segment currently in use to reach the Granite State quarry, and seeks to exploit all traffic opportunities from any source. Monadnock Paper Mills, one such potential shipper, is on record in this proceeding with its support of MBR and opposition to Pan Am’s proposed adverse discontinuance of MBR’s rights. See Monadnock May 24, 2018 letter filing. But MBR does not apologize for going the extra mile to serve Granite State, and believe it is revealing that Pan Am plainly would not.

In a previous case when a line owner attempt to oust a tenant railroad providing desired service to a single shipper, the Board found that the PC&N protected the service and compelled denial of the adverse discontinuance application. *City of Peoria and Village of Peoria Heights, IL – Adverse Discontinuance – Pioneer Industrial Railway Company*, Docket No. AB-878 (STB served November 19, 2007) (“*City of Peoria*”). In *City of Peoria*, the eponymous municipality had previously sought to discontinue service by Pioneer Industrial Railway (“Pioneer”) in favor of another carrier over a municipal-owned branch line that served a lumber shipper. The lumber shipper, dissatisfied with the replacement for Pioneer, had stopped using rail service. In addressing what the PC&N was on Pioneer’s request to resume service, the Board determined that “it is appropriate in this proceeding for us to base our decision on, among other things, concerns about the cost, frequency, and reliability of [the replacement operator’s] service

to Carver Lumber; the service available to the shipper via transloading; and [Pioneer's] willingness to reinstate its prior satisfactory service over the Kellar Branch." The Board then found that Pioneer's desire and ability to provide service tailored to the unmet needs of a single shipper over a rail line otherwise operated by another carrier required denying the adverse discontinuance as inconsistent with PC&N.

Drawing on the *Waterloo* standard, *supra*, that interruption is disfavored and Board precedent on similar facts in *City of Peoria*, the law is clear is clear that discontinuance interrupting the responsiveness, frequency, and reliability of service Granite State currently enjoys – not to mention unified with the interest of the community – is to be rejected. Absent any opposition to MBR continuing to serve Granite State, the shipper-service element of PC&N weighs wholly in favor of denying the adverse discontinuance.

II. DISCONTINUANCE AND INTERLOPING BY PAN AM DOES NOT SERVE THE ECONOMICS OF COMMUNITY DEVELOPMENT OR SHIPPER INTERESTS

Aware that an additional interchange presents a new stitch and seam in what is otherwise a whole-cloth, 5 mile move by MBR, Pan Am notes that contrary to intuition, this will "actually promote rural and community development within the region." However, Pan Am's insertion into an existing short-haul, high frequency service does not benefit the economic well being or development of community, shippers, or railroads. As is apparent from the correspondence offered by the interested towns of Wilton and Milford and a significant number of community members, the community cannot identify Pan Am's interest in serving traffic originating from the line that it had previously abandoned.

A. Pan Am has no interest in serving shippers on the line.

MBR provides service over the Subject Line in accordance with the needs of Granite State, its sole current customer. Pan Am, on the other hand, has had **no** contact with that customer, or apparently with any other potential customers on the line. That omission is consistent with more than thirty years of history that indicate that Pan Am's only intention for the Hillsborough Branch is neglect and abandonment. Those suspicions are hardly allayed when the map exhibit of the Subject Line included with Pan Am's adverse discontinuance application and required by 49 C.F.R. § 1152.22 (a)(4) is plainly labeled as an "Abandonment Plan." Adverse App., Exhibit 3.

Nor is any assurance provided by Pan Am's abject failure to maintain the Subject Line. Pan Am insists that it is impossible for it to do so because MBR has not been paying Pan Am trackage rights fees. Adverse App. at 18. The notion is absurd on its face. MBR paid trackage rights fees to Pan Am, without objection from Pan Am, from 1992 to 2012. It resumed paying fees according to a tentative trackage rights agreement in 2017. Leishman V.S. at 9. For the intervening period of 2012-2016, a New Hampshire state court found that Pan Am was due a total of \$52,000 for the *entire* period, after a \$20,000 set-off for maintenance expenses on the Subject Line that MBR had incurred itself. Leishman V.S. at 8; Adverse App., Exhibit 2 (Jury Verdict). Pan Am now estimates that it would require \$900,000 to restore the Subject Line to FRA Class 1 condition. Adverse App., Exhibit 4, Duane V.S., Attachment. The Subject Line plainly did not reach that state of repair because Pan Am did not receive \$12,000 annual payments for several years in the 2010s.

What is more, the FRA "excepted" track status and 5 miles per hour speed limit encompasses the Hillsborough Branch all the way to Nashua – some eleven miles east of the

Subject Line. Leishman V.S. at 3. Even Pan Am doesn't purport to blame MBR for the condition of that track segment. It is, instead, a harbinger of what lies ahead if the Subject Line is turned over to the sole care and control of Pan Am.

B. Pan Am discontinuance is incompatible with community economic development.

Whatever the purpose of Pan Am's current efforts, the community understands that adverse discontinuance of MBR's trackage rights could have the effect of requiring Granite State to use trucking through the hamlet of Wilton on a daily basis. The outpouring of public filings the Board has received is clearly illustrative of the public's understanding of its needs – discontinued rail service by MBR to Wilton does significant harm to the community development of Wilton and Milford and is incompatible with vital community interests. Discontinuance presents Wilton with a choice where neither option supports community development – should it sacrifice the economic benefit of Granite State's industry to keep trucks off the roads, or should it permit its downtown community development to be sacrificed for jobs? These questions, posed solely by Pan Am's request for discontinuance, are inconsistent with the PC&N in community development.

III. BOARD PRECEDENT CITED BY PAN AM PROVIDES NO SUPPORT FOR ADVERSE DISCONTINUANCE IN THIS CASE.

Pan Am has attempted to align this discontinuance with a line of cases where a carrier has failed in its duties. See *City of Peoria* at 6 & nn.16-18 (“Often, a line owner seeking an adverse discontinuance wishes to dispossess a tenant because the tenant has breached an obligation to the line owner, has failed to provide adequate service to the public, or both.”).² The

² Citing *Fore River R. Corp. – Discon. Exempt. – Norfolk County, MA*, 8 I.C.C.2d 307, 310-11 (1992) (“*Fore River*”); *Tacoma Eastern Ry. Co. – Adverse Discontinuance of Operations Application – A Line of City of Tacoma, in Pierce, Thurston and Lewis Counties, WA*, Docket No. AB-548 (STB served October 16, 1998) (“*Tacoma*”); *Jacksonville Port Authority –*

comparisons are inapt – MBR has (1) not breached any obligation to Pan Am under the trackage rights agreement and (2) continues to provide valued service to the public.

Pan Am cites heavily to *Fore River* for the proposition that MBR represents a burden to the PC&N as a bad-acting operator that has failed in its obligations to shippers, the public, and track owners. App. at 19. In *Fore River* the incumbent was bouncing checks (and failing to cash them), missing vendor payments, failing to make payroll, and not serving its shippers. The Board determined that the incumbent had become a burden on the public, on the owner, and on labor, and by extension, interstate commerce. *Fore River*, 8 I.C.C.2d at 311.

As noted above, a New Hampshire state court has rejected Pan Am's claims that MBR had breached its trackage rights agreement with Pan Am. At most, Pan Am can claim a small amount due as a result of a court verdict last year – and even on that amount Pan Am did not bother to make a formal demand for payment from MBR until *after* filing its adverse discontinuance application. Leishman V.S. at 9 and Exhibit 6. No other commonality with the *Fore River* precedent exists. Unlike *Fore River* and *Tacoma* (discussed *infra*), this is not a straight-swap of an operator that has overstayed its welcome on a single, contiguous line. MBR continues to pay its employees, is solvent, and meets its obligations to the State of New Hampshire and shipper interests. Most significantly, in *Fore River* “[t]he only two shippers on the line support discontinuance.” 8 I.C.C.2d at 311. Here, the situation is just the opposite: the sole affected shipper on the line opposes the adverse discontinuance, and supports continued service from the tenant. The facts of *Fore River* hardly lend themselves to comparison.

Adverse Discontinuance – In Duval County, FL, Docket No. AB-469 (STB served July 17, 1996) (“*Jacksonville*”) (“protestant . . . has been unable to make monthly payments since August 1995.”). Pan Am relies extensively upon *Fore River*, *Tacoma* and *Jacksonville*. App. at 19, 23.

Pan Am then turns to *Jacksonville* for the support *Fore River* failed to offer. The material facts of *Jacksonville* turned on a criminal investigation and ensuing failure of a carrier to abide by a court order to pay an amount due to the court registry. Pan Am contends that *Jacksonville* supports removal of MBR, lest MBR be encouraged to violate safety protocols, avoid payment of amounts due for trackage rights, and frustrate efforts by Pan Am to provide service to other customers.

Not only does *Jacksonville* not actually address issues of safety and ability of another carrier to provide service, none of these allegations by Pan Am regarding safety or frustration are supported by demonstrable fact. Like *Fore River*, at most *Jacksonville* involves continued, unjustified refusal to pay a lawfully-required amount. Here, the first formal demand for the relatively small amount that Pan Am contends is owed was received weeks after the adverse discontinuance application was filed – suggesting Pan Am is trying to create an issue *after* alleging its existence. MBR had believed the matter was subsumed in what were, until recently, apparently good faith negotiations regarding a new trackage rights arrangement. *Leishman V.S.* at 9. In neither severity nor duration does that matter approach the situation that was present in *Jacksonville*.

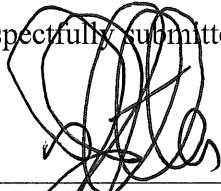
That leaves the final case that Pan Am contends supports its cause, *Tacoma*. In *Tacoma*, a publicly-selected contract operator was terminated for defaulting on its contractual obligations (a circumstance also similar to *Fore River*). The Board, finding that there was no shipper support for the operator and that an interchangeable, substitute carrier was available and preferred by the public entities, granted the adverse discontinuance. *Tacoma* at 7. In this instance, discontinuance, as Pan Am occasionally acknowledges, will not result in a simple, replacement of service because fundamentally this is about *segmenting* an existing short-haul rail

movement – not the substitution of a contract operator over an entire line. Adverse App. at 10. Moreover, there is overwhelmingly ample shipper support and public entity support for MBR – even amongst those shippers who do not currently use rail service.

CONCLUSION

Seldom has a more one-sided case been presented to the Board in an adverse discontinuance context. The public convenience and necessity warrants, and indeed demands, that MBR's existing rail service to Granite State be preserved and protected. Ousting MBR from the Subject Line would degrade the unique and tailored – and desired – service that MBR provides, interjecting an unnecessary and burdensome interchange process into a five-mile, high-frequency shuttle train operation. And it would leave rail service at the mercy of a historically disinterested rail carrier that the present shipper, potential future shippers and the community all do not want. Pan Am's adverse discontinuance application should be denied.

Respectfully submitted,

By: 

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**ATTORNEYS FOR MILFORD-BENNINGTON
RAILROAD COMPANY, INC.**

Dated: May 29, 2018

**VERIFIED STATEMENT
OF
PETER R. LEISHMAN**

My name is Peter R. Leishman. I have been the President and sole shareholder of the Milford-Bennington Railroad Company, Inc. (“MBR”) since its inception in 1987. I also serve as a representative in the New Hampshire state legislature, serving on the Finance Committee, the NH College Tuition Savings Plan Advisory Commission, the Committee to Study Education Funding and the Cost of an Opportunity for an Adequate Education, and the Commission to Study the Legalization, Regulation, and Taxation of Marijuana.

MBR is a Class III rail carrier which holds so-called “modified certificate” authority to operate a rail line owned by the State of New Hampshire and extending approximately 18.6 miles from Wilton to Bennington (the “State-Owned Line”). The State-Owned Line is the western end of the Hillsborough Branch of the Boston and Maine Corporation (“B&M”), and was acquired by the State after its abandonment by B&M in the 1980s. MBR has been the authorized operator of the State-Owned Line since 1989; MBR’s most recent agreement with the State, entered into in 2014, extends through 2024 with an additional ten-year renewal option.

MBR also holds trackage rights on a connecting segment of B&M’s Hillsborough Branch, extending from Milepost 16.36 in Wilton to Milepost 11.0 in Milford (the “Subject Line”). MBR obtained those trackage rights from B&M in 1992, pursuant to Interstate Commerce Commission (“ICC”) authorization, as part of an agreement that resulted in the withdrawal of MBR’s feeder line application to acquire the Subject Line. MBR uses the rights to provide rail service for Granite State Concrete Co., Inc. (“Granite State”) between a Granite State quarry on the State-Owned Line north of Wilton and Granite State’s processing plant on the Subject Line near Milford at Milepost 13.4 (“the Milford facility”). Indeed, MBR’s long-standing track-

age rights – now more than 25 years old – are limited to the handling of stone and gravel cars to Granite State at the Milford facility, and that is all for which MBR has ever used them (except a brief period in 1992, when MBR moved ballast stone for a Pan Am customer to the Milford Yard at Milepost 12 for Pan Am, at Pan Am’s request, to avoid a ballast-loading operation that was occupying the main line and preventing MBR from serving Granite State).

Now, B&M and its lessee, Springfield Terminal Railway Company (collectively, “Pan Am”) seek STB adverse discontinuance authority to oust MBR from the Subject Line. Such action would require MBR and Pan Am to interchange 10-car Granite State shuttle trains up to 6 times each day in the middle of repeated 5-mile runs from origin to destination and back again. That would significantly degrade, if not destroy, service to Granite State under the best of circumstances. Moreover, Pan Am’s demonstrated and unremitting history of service inadequacy on the Hillsborough Branch makes clear that this would be far from the best of circumstances. None of Pan Am’s reasons for upending the current service provided to Granite State is credible. MBR strongly protests Pan Am’s adverse discontinuance application, and with a host of other interested parties – including Granite State – asks that the Pan Am application be denied.

The Granite State service

MBR generally operates 8-9 months of the year, as winter weather does not permit stone processing at the Milford facility. Every operational day MBR carries up to 30, 100-ton carloads from the Granite State Wilton excavation site to the Milford facility as direct, shuttle service, returning after delivery to secure another load. This traffic is handled in trains that can be up to 10 cars long (due to capacity limitations at the Milford facility site), plus a locomotive and a shoving car, so that on some days MBR operates three round trips between Wilton and Milford. Service is provided on fewer than 12 hours notice in accordance with the daily and sea-

sonal needs of Granite State. Last year, MBR carried 1,180 carloads (a 10% increase on the prior year) and as the economy continues to improve, this number may rise. Additionally, MBR staff is specially-certified by the U.S. Mine Safety and Health Administration to assist with the delivery and unloading of the stone at the Milford facility, and MBR provides switching service at the unloading points free of charge. Granite State is currently MBR's only traffic, but MBR works aggressively on traffic opportunities and continues to work with shippers and the State to make sure that adequate monies are available to maintain the State-Owned Line from Wilton to Bennington in FRA Class 1 condition. The active segment of that line, from the Granite State Quarry (Milepost 18.6) to the connection with the State-Owned Line at Wilton yard (Milepost 16.36) is maintained to FRA Class 3 condition.

By contrast, the Pan Am portion of the Hillsborough Branch (including the Subject Line) is maintained only to FRA "Excepted" condition and has a restricted operating speed of 5 m.p.h. See FRA Inspection Reports of 2015-2016, attached hereto as Exhibit 1. This has deterred shippers from considering the line for timely deliveries, as Monadnock Paper Mill has referenced in its May 24, 2018 letter filing. MBR has, as required for safe operations, replaced broken rails and joints, and replaced ties to maintain gage on the Subject Line. Pan Am, on the other hand, has never satisfied its commitment to replace the nearly 100 year old rail on the Subject Line that was specified in Section 1(f) of the 1992 trackage rights agreement between the parties.

The operational results of interchanging the Granite State shuttle trains at Wilton yard, as Pan Am now proposes, would be an entirely uneconomical and untenable disruption halfway through the short 5-mile move of trains that at most are only 10 cars long. Under Pan

Am's plan, this disruption could occur *6 times* every day, once in each direction for up to three cycles of loaded and empty trains.

Pan Am currently provides weekly, single-car service to Hendrix Wire, the sole shipper served by Pan Am, and even those maneuvers at Wilton yard take nearly an hour to accomplish. Interchange at Wilton would require tripling these maneuvers and doubling resources. With regard to equipment, Pan Am would need to supply locomotive power and a shoving car or platform. As for the number of moves, (1) MBR would need to decouple its motive power from the east end and use the run-around track to remove its shoving car on the west end; (2) Pan Am would then utilize the same run around track to place its shoving car on the west end and (3) the Pan Am motive power would then return, using the run around, to provide head end power. This process would be repeated in the opposite order for each returning empty train, up to a total of 6 times each day.

Nor is the interchange handoff likely to be timely: it begs credulity to believe Pan Am would perpetually station a crew with motive power and a shoving platform at the Wilton yard to immediately receive only 10 cars of traffic on demand. (Pan Am has asserted that it will split the existing Granite State freight compensation at its current level – so any such crew costs cannot be made up as part of the rate, unless Pan Am intends to charge for accessorial services that MBR does not). Moreover, both carriers would be required to apply hand brakes, remove or attach its locomotive and shoving platform, release hand brakes, do a brake test and align switches before either carrier could leave the Wilton yard. Today, the MBR is barely able to move 30 cars over the Subject Line in the 12 hours each day the Granite State Milford facility is permitted to operate – no matter how promptly performed, having to interchange trains 6 times a day would make this virtually impossible.

Interchanging stone trains at Wilton yard would also present serious safety challenges, as demonstrated by prior experience. A quarry owned by Quinn Brothers Corp. is located on the State-Owned Line at Milepost 19.0, but Quinn Brothers had been in the practice of loading Pan Am ballast cars in the Wilton yard on the Subject Line. The Wilton yard has a downhill 1.59% grade eastward toward Milford. On August 12, 1993, Quinn Brothers was loading standing cars at the Wilton yard with ballast when two cars began to roll through the yard striking a derail. The derail failed. The cars continued eastward down the grade at speeds of more than 30 mph, before coming to rest 6 miles down the track in Amherst, New Hampshire. See Amherst Police Department Report, Case No. 930004432, Aug. 12, 1993, attached hereto as Exhibit 2. Soon after the run-away car incident, MBR was approached by Pan Am and Quinn Brothers about the possibility of constructing a loading facility at the Quinn Quarry on the State-Owned line. MBR cooperated in the construction of a rail siding at the Quinn Quarry and supported the Pan Am request at the STB for operating rights to reach the siding – foregoing MBR’s own right to originate the traffic and interchange with Pan Am. Pan Am provided rail service to the Quinn Quarry until 2003. After the construction of the Quinn siding, the Wilton yard was never used to interchange or store rail cars again.

This was the second time Pan Am had an incident in the Wilton yard; the first occurred in 1983. See October 2, 1983 Nashua Telegraph newspaper article, attached hereto as Exhibit 3. The two runaway car incidents clearly demonstrate the use of the Wilton yard is inappropriate to store or interchange stone-laden rail cars. Even if it that were not the case, the operational burdens of interchange would dramatically and unnecessarily degrade the frequent, shuttle-type train service that is essential to effectively handle Granite State’s traffic.

MBR's History with Pan Am

As described above, MBR's trackage rights on the Subject Line arose from MBR's 1990 "feeder line" application to the former ICC to acquire the short segment of the Hillsborough Branch east of Wilton, which even then B&M had identified as a candidate for abandonment. Pan Am and MBR entered into the 1992 TRA allowing MBR to operate on the Subject Line to service Granite State after a B&M affiliate was unsuccessful in its own feeder line application to essentially acquire the line from itself. MBR obtained appropriate trackage rights exemption authority from the ICC at that time. Nonetheless, fewer than 10 months later, B&M sought to revoke that regulatory authority. The ICC rejected that effort.

In 2003, due to various Pan Am actions including the installation of a derail device and Pan Am's unilateral restriction of MBR's operating hours on the Subject Line, Granite State and MBR brought an unreasonable practice case against Pan Am at the STB. The STB eventually found that Pan Am had not violated its common carrier obligations, but only after Pan Am had removed the operating hours restriction against MBR and had agreed to increase maintenance on the Subject Line to raise the operating speed to 10 miles per hour. In the period since then, Pan Am has allowed the line to again deteriorate, and it once again has a speed restriction, imposed by Pan Am, of 5 miles per hour. Pan Am asserts that it has not maintained the Subject Line to an acceptable standard because it is not being paid by MBR for MBR's trackage rights. But the deplorable condition of Pan Am's Hillsborough Branch extends all the way to the beginning of the branch in Nashua, more than thirteen miles east of the segment that MBR operates on. See Exhibit 1 hereto. Pan Am's maintenance delinquencies have nothing to do with whatever trackage rights fees Pan Am has expected to receive from MBR, and is emblematic of its disinterest in providing adequate and efficient rail service in this portion of New Hampshire.

As previously discussed, the 1992 TRA provided for Pan Am to replace the 100-year old rail on the Subject Line with welded rail no later than 1998. To date, the rail has not been replaced.

At approximately the same time as the STB unreasonable practice proceeding, MBR and Pan Am engaged in Board-sponsored mediation to develop a new agreement to replace the 1992 TRA, which expired by its terms in 2004. No agreement was reached, due in part to the dramatic increase in trackage rights fees sought by Pan Am, from the former \$5.00 per car fee (less than \$2.00 per car mile before inflation indexing) to a guaranteed weekly compensation in excess of \$2,000 per week. As explained above, MBR does not operate year-round, but in accordance with the seasonal shipping needs of Granite State, so a guaranteed weekly fee would charge MBR for a significant period of time in which no trains were running. Moreover, the last year of the agreed-to fee (2004) was an indexed per-car rate of \$2.30 per car mile. In any given week, this fee would be no more than \$1,000 and in most weeks, less, based on traffic movement of between 50 and 200 cars a week.

Pan Am has proposed a guaranteed payment regime of more than \$2,000 per week, every week, for a stipulated maximum of 210 cars per week (3 trains per day, multiplied by 10 cars maximum, multiplied by 7 days), equating to about \$3.17 per mile over the three miles that MBR operates on the Subject Line. See Proposed Pan Am Trackage Rights Agreement, Section 2(a), attached hereto as Exhibit 4. But this number assumes a hypothetical year-round operation moving nearly 11,000 cars a year. Last year, MBR actually moved 1,180 cars over only 6 months of operation. Using last year's figures, Pan Am is requesting a **1,208%** rate increase, to nearly \$29.00 per car mile (\$2,000 times 52 weeks per year is \$104,000. \$104,000 divided by 1,200 car loads is \$86.66, divided by 3 miles of track, is \$28.89 per car mile).

MBR continued to pay Pan Am ever increasing fees in accordance with the expired terms of the 1992 TRA, up to \$3.24 per car mile, until 2012. From 2012 onward, I undertook repeated correspondence with Rob Culliford, Vice President, and Robert Burns, Corporate Counsel, of Pan Am in an effort to negotiate a revised trackage rights agreement. See record of correspondence attached hereto as Exhibit 5. In 2012, the State of New Hampshire solicited proposals for the operation of the State-Owned Line, to which both MBR and Pan Am responded. Also in 2012, 8 years after the 2004 expiration of the 1992 TRA, Pan Am inquired as to whether MBR had been making adequate payments for its trackage rights on the Subject Line. Pan Am had previously declined to discuss any terms until the State of New Hampshire awarded the new operating agreement on the State-Owned Line. From 2004 until 2012, MBR paid in excess of \$250,000 in usage fees to Pan Am. Given the increasing difficulties with Pan Am, MBR took the position that the long-terminated TRA did not require further payment, particularly given the lack of maintenance associated with the subject line and its post-2004 degradation.

Pan Am did not inquire about the rate again until 2014, after the awarding of the operating agreement for the State-Owned Line to MBR. In 2015, Pan Am filed a state court lawsuit alleging that MBR had breached the 1992 TRA, among other things. The lawsuit was tried to a jury verdict in 2017. The jury found that there was no agreement implied or in fact, that MBR had breached. The jury awarded Pan Am equitable consideration for use of the line from 2012-2016 of approximately \$52,000, after an off-set of approximately \$20,000 for materials that MBR had invested in the line between 2012–2016.

On May 14, 2018, more than a month after Pan Am filed its adverse discontinuance application, I received a request for payment of that award from Pan Am's attorneys. See May 14, 2018 correspondence from Pan Am counsel, attached hereto as Exhibit 6. From the jury

verdict of February 27, 2017 until May 14, 2018, I had not received any requests, demands, or solicitations for payment from Pan Am. Last week, I spoke with Pan Am counsel that authored the letter who indicated that she was unaware of the current Board matter, and had only recently been asked to send a demand letter.

During the same period, I believed that Pan Am and MBR were negotiating in good faith to reach a new trackage rights agreement, and that resolution of this payment would be included in that agreement. Pan Am presented me with a new draft agreement the day after the verdict. Mr. Burns asked me to review the agreement, make changes and return it to Pan Am as soon as possible. I discussed my proposed changes with Mr. Burns via telephone, who then requested I return the draft agreement with the changes. I executed and returned to Pan Am two signed copies on April 3, 2017. See April 3, 2017 correspondence and MBR-executed Agreement, attached hereto as Exhibit 7. This agreement included a per car rate of \$6.00 loaded or empty, and MBR paid this rate for the 2017 season. Pan Am accepted and deposited my checks for \$6.00 per car (about \$2.00 per car mile), totaling about \$14,000. While 2018 traffic has been light with only one train moving to date, MBR intends to pay in accordance with the 2017 arrangement.

Finally, I note Pan Am's heavy reliance on a 2009 incident in which a train on which I was serving as the conductor was involved in a grade crossing accident. This accident was investigated by the Federal Railroad Administration, the Milford, NH Police (who cited the driver for disobeying the crossing lights), MBR's insurer, and the motor vehicle operator's insurer. MBR received a substantial settlement from the operator's insurer. As a result of the accident, Pan Am banned me for life from operating on the Subject Line. Due to certain procedural irregularities associated with the safety review hearing (including, on one occasion, being noti-

fied the afternoon before a session convened the very next morning), I unsuccessfully sought to have the ban overturned in a contract action alleging that Pan Am had breached its duty of good faith and fair dealing under the 1992 TRA. The court determined that Pan Am had no such duty under the 1992 TRA. In so finding, the court explained that: "I do not condone Pan Am's conduct in this case. While there is a reason to doubt Pan Am's claim that it invoked its right to exclude Leishman from its tracks solely because of public safety concerns, the contract plainly gives it the right to act as it did, regardless of its motive for doing so."

MBR has never received a fine or violation from the FRA or any other regulatory agency. Including the aforementioned crossing incident, every accident MBR has experienced has been due to a vehicle failing to obey crossing signals and signs, fouling the track, and failing to yield at the crossing. No MBR employee has ever failed a Pan Am rules test or failed to qualify. With regard to the alleged violation of NORAC rules, Pan Am fails to provide the proper context in alleging MBR fails to ask for the requisite permission to occupy the track when performing maintenance. Pan Am ignores that the track in question is within yard limits -- no Pan Am train can proceed without verbal dispatcher permission and no MBR train can proceed without verbal dispatcher permission pursuant to NORAC Rule 93. Our continued compliance with NORAC Rule 93 ensures the safe occupancy of the line.

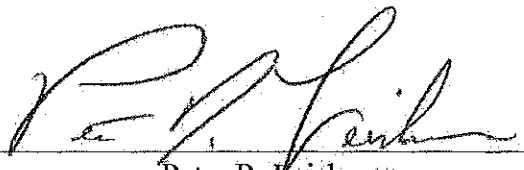
The relatively modest scale of our railroad, inability to absorb losses/pay increased insurance premiums, and the trust the community places in our operation makes it paramount that we operate as safe a railroad as we can. Safety remains our only absolute priority. Efficiency is secondary. The proposed discontinuance serves neither safety nor efficiency, and has the effect of disrupting service valued by community and shippers. MBR asks only that it be

permitted to continue service in the same way as it has for three decades, by using a small, 3 mile portion of railroad otherwise neglected, at an appropriate trackage rights fee.

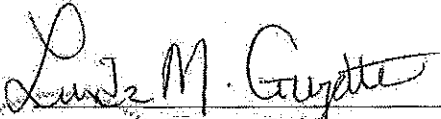
VERIFICATION

State of New Hampshire)
) ss:
County of Hillsborough)

Peter R. Leishman, being duly sworn, deposes and says that he is President of Milford-Bennington Railroad Company, Inc., that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

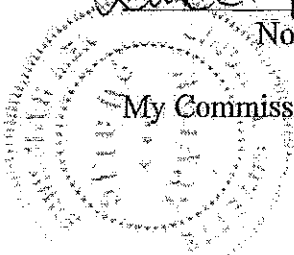

Peter R. Leishman

SUBSCRIBED AND SWORN TO
before me this 29 day
of May, 2018.


Notary Public

My Commission expires:

LINDA M. GUYETTE, Notary Public
My Commission Expires June 4, 2019



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
–ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY–
MILFORD-BENNINGTON RAILROAD COMPANY, INC

PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

VERIFIED STATEMENT OF PETER R. LEISHMAN
EXHIBIT 1

2015-2016 FRA TRACK INSPECTION REPORTS

2016 12:43PM FAX 6036440249

0016/0024

~~BM000123~~

All switches worked. API 6 to API 13 taken 0.0.5.

**ELIZABETH
FRED 1901**

10/08/2010 12:33PM FAX 6036440240

TYPE CODES: N-MAIN LINE, S-SIDING, K-YARD, I-INDUSTRIAL, F-FURNACE, X-CROSSOVER

LIST OF SWITCHES WALKED FOR INSPECTION, COMMENTS, ETC.

All switches worked and thrown.

~~BM000138~~

0007/0013

SPRINGFIELD TERMINAL RAILWAY TRACK INSPECTION REPORT

FD-302A
REV. 1-81

10/06/2016 12:32PM FAX 6036440249

PURCHASING NO.		LINE & YARD		FROM MP - TO MP		LOCATION FROM - LOCATION TO		MONTH - DAY - YEAR		INSPECTOR'S SIGNATURE	
		Hillsboro Branch		0.0 11.36		Nashua		3 124 2016		Christopher P. Ryan	

ITEM	MILEAGE	TRACK NUMBER	TYPE CODE	AS OF PART	RULE	SUB RULE	OPERATING SPEED	CLASS TRACK	DESCRIPTION OF DEFECT	REMEDIAL ACTION	DATE CORRECTED
1	2.1	S	I	213	11310	5	X		H-W Separation	213.4	
2	3.3	S	I	213	11310	5	X		H-W Separation	213.4	
3	Low		I	213	13315	5	X		Turnout fastener, insufficient	213.4	
4	4.0	S	I	213	13310	5	X		H-W Separation	213.4	
5	4.2	S	I	213	53315	5	X		Wide Gauge on turnout (58")	Gauge Rod Installed	3/25/2016
6	4.2	S	I	213	11310	5	X		H-W Separation	213.4	
7	4.8	S	I	213	11310	5	X		H-W Separation	213.4	
8	4.9	S	I	213	11310	5	X		H-W Separation	213.4	
9	5.3	S	I	213	63A3	5	X		4 1/2" deviation from zero cross level	213.4	
10	5.5	S	I	213	11310	5	X		H-W Separation	213.4	
11	6.2	S	I	213	11310	5	X		H-W Separation	213.4	
12	6.9	S	I	213	11310	5	X		H-W Separation	213.4	
13	7.6	S	I	213	11310	5	X		H-W Separation	213.4	
14	8.9	S	I	213	11310	5	X		H-W Separation	213.4	
15	9.8	S	I	213	11310	5	X		H-W Separation	213.4	
16	11.2	S	I	213	11310	5	X		H-W Separation	213.4	
				213							
				213							
				213							
				213							

TYPE CODES: M-MAIN LINE, S-SIDING, Y-YARD, I-INDUSTRIAL, F-TURNOUT, X-CROSSOVER

LIST OF SWITCHES WALKED FOR INSPECTION, COMMENTS, ETC.

All switches walked.

RM000136

0005/0013

RECEIVED
FEB 7 1987

10/08/2018 12:33PM FAX 0036440248

TYPE CODES: M-MAIN LINE, S-SIDING, Y-YARD, I-INDUSTRIAL, E-ENTRANCE, X-CROSSOVER

LIST OF SWITCHES WALKED FOR INSPECTION COMMENTS, ETC.

All switches worked.

BM000143

0012/0013

SPRINGFIELD TERMINAL RAILWAY TRACK INSPECTION REPORT

BRM 1691

10/08/2018 12:28PM FAX 6036440249

DATE/REPORT	LINE OR YARD	FROM MP - TO MP	LOCATION FROM - LOCATION TO	MONTH - DAY - YEAR	INSPECTOR'S SIGNATURE
	Hillside Branch (Cont'd)	0.0 - 16.36	Nashua - Wilton	11 / 04 / 2015	Christopher P. Ryan

ITEM	MILEAGE	TRACK NUMBER	TYPE CODE	43 CFR PART	RULE	SUB RULE	OPERATING SPEED	CLASS TRACK	DESCRIPTION OF DEFECT	REMEDIAL ACTION	DATE CORRECTED
21	3.5	S	I	213	121A3	5	X		Insufficient fasteners at joint	213.4	
22	3.5	S	I	213	133A4	5	X		Worn or missing cotter pins	213.4	
23	3.6	S	I	213	109B3	5	X		Joint tie defect	213.4	
24	3.6	S	I	213	121D2	5	X		Pull Apart	213.9	
25	3.6	S	I	213	109B3	5	X		Joint Tie Defect	213.4	
26	3.6	S	I	213	109B3	5	X		Joint Tie Defect	213.4	
27	3.6	S	I	213	124A3	5	X		Insufficient fasteners at joint	213.4	
28	3.8	S	I	213	124A3	5	X		"	213.4	
29	3.8	S	I	213	11310	5	X		H+V Separation	213.4	
30	4.1	S	I	213	37E3	5	X		Vegetation brushing rolling stock	213.4	
31	5.1	S	I	213	135B1	5	X		Open switch point	213.4	
32	5.2	S	I	213	63A3	5	X		Derivation from cross level	213.4	
33	5.2	S	I	213	63A3	5	X		"	213.4	
34	5.2	S	I	213	135E2	5	X		Connecting Rod insecure	213.4	
35	5.2	S	I	213	133A4	5	X		Missing Cotter Pins.	213.4	
36	5.3	S	I	213	109B2	5	X		Ties not effectively distributed	213.4	
37	5.4	S	I	213	11310	5	X		H+V separation	213.4	
38	6.2	S	I	213	121C1	5	X		Center cracked TB.	213.4	
39	6.3	S	I	213	11310	5	X		H+V Separation	213.4	
40	7.2	S	I	213	11310	5	X		H+V Separation	213.4	

TYPE CODES: M-MAIN LINE, S-STORY, Y-YARD, I-INDUSTRIAL, T-TURBOOUT, X-CROSSOVER

LIST OF SWITCHES WALKED FOR INSPECTION, COMMENTS, ETC.

BM000155

10/11/2018

SNZ96A
REV. 1/81

10/08/2016 12:28PM FAX 0036440248

*TYPE CODES: M-MAIN LINE, S-SIDING, Y-YARD, H-INDUSTRIAL, T-TURNOUT, X-CROSSOVER

LIST OF SKETCHES WALICED FOR INSPECTION, COMMENTS, ETC.

All Southern states

~~BM000162~~

图 8-1 示意图

0018/0018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
–ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY–
MILFORD-BENNINGTON RAILROAD COMPANY, INC

PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

**VERIFIED STATEMENT OF PETER R. LEISHMAN
EXHIBIT 2**

**AMHERST POLICE DEPARTMENT
CASE NO. 930004432
REPORT OF AUGUST 12, 1993**

A**Investigation Report**

Case#	Officer	ID
93004432	SCHOFIELD	108

Report Date	1ST Date	1ST Time	2ND Date	2ND Time	Reported Date	Reported Time	Cleared Date
08/12/1993	08/12/1993	1113					

Location	ROUTE 101A
Crime #1	IN INCIDENT
Crime #2	
Crime #3	
Crime #4	

Veh Yr	Veh Make	Veh Type	Veh Color	Veh Reg	State	Vehicle VIN#
NA						

Narrative:

Milford PD reported that they had a runaway train going through their town, heading eastbound towards Amherst at a speed of 25-30 MPH. The train consisted of two railroad cars filled with gravel. I was dispatched to the intersection of Routes 101-A and 122 to shut down traffic with the assistance of two state troopers. We were later advised that the train had come to a stop at the Milford/Amherst town line. There were no reported injuries or damage caused by the train.

Contacts:

Last Name	First Name	Middle Name	DOB	SS#	License#	Phone#
BOSTON &	MAINE	RAILROAD				5086639310
Street			State	ZIP	City	Contact Type
IRON HORSE PARK			MA	01862	N. BILLERI	VICTIM

Last Name	First Name	Middle Name	DOB	SS#	License#	Phone#
MILFORD	POLICE	DEPARTMEN				6737717
Street			State	ZIP	City	Contact Type
ELM STREET	169		NH	03055	MILFORD	REPORTER

A

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
—ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY—
MILFORD-BENNINGTON RAILROAD COMPANY, INC

PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

VERIFIED STATEMENT OF PETER R. LEISHMAN
EXHIBIT 3

OCTOBER 2, 1983 ARTICLE
NASHUA TELEGRAPH

IN THE REGION

Hudson's first trade fair termed success

By JOANN COSLIN
Telegraph Staff Writer

HUDSON — If the turnout at Saturday's "Discovery '92" trade fair is any indication, Hudson residents have discovered the Chamber of Commerce.

According to Stan Huxford-Jones, the chamber's office manager, all 72 booths at the Lion's Club Hall were occupied by local business owners and "well over 400 people attended" the day-long event.

"We at least broke even and probably made a little," she said of the fair, which was originally intended to make local residents aware of the businesses in the community, rather than as a profit-making event.

Although there were 72 booths occupied, in some cases, businesses took more than one booth, according to Ms. Huxford-Jones, who said approximately 50 businesses, mostly from Hudson, were actually represented.

"The majority of people had never been to a trade fair in their lives," she said. "Well over 50 percent want to do it again."

Although traditionally, such fairs are set up with painted booths, Ms. Huxford-Jones said most business owners "didn't go that particular route."

She said this setup resulted in an atmosphere that was "more friendly, more congenial (and) more spontaneous" and the only regret was that "they didn't get around to see the show."

Ferry Street resident Harold Moore was the day's biggest prize winner, copping the week's vacation for two in Orlando, Fla. His was one of many door prizes raffled during the day. Other prizes included a car care kit, a clock, pen set and quilted vest.

The festivities began at 11 a.m. with brief welcoming speeches delivered by Gov. John Sununu, State Rep. Leonard Smith and selectmen Chairman Leon Maglian.

The Southwesterns, a female drum and bugle



Louise O'Neill R.N., of Courville Home Health Care Inc., picks the finger of a grinning Raoul Fournier of Hudson at the Hudson Chamber of Commerce Trade Fair Saturday for blood-sugar test.

corps from Southern New Hampshire, and the Stowtappers, a group of acrobatic players of various ages were featured entertainers at the fair, which "went well into 8 p.m.," according to Ms. Huxford-Jones.

"I think, for the chamber, we let the people in the town see that we really are interested in their businesses and they're really doing well," she added. "We're for the big people and the little and we really want to try and get a community effort going."

Mr. Huxford-Jones explained the chamber is

not "a secret club's not a political machine. We want people to be politically aware but we don't take sides."

"We want to educate the public as to what's going on in the town," she said of the purpose of the chamber.

The fair was a really good team experience for a lot of people, the chamber said, and through a lot of chamber people closer together," she said. "We had a good time and made some money and it made the chamber of commerce much more visible than it's ever been."

Morning fire closes school

WILTON

WILTON — Approximately 250 students were evacuated from the Wilton Elementary School this morning when a fire that started in curtains in the school auditorium gymnasium broke out at about 8:15.

Fire Chief Gilbert Testa said the fire started near an electrical panel but he was not sure whether a electrical malfunction caused it.

Firefighters from Wilton and Milford arrived at the Livermore Street school to find the gymnasium full of smoke. The automatic sprinkler system had apparently doused the flames, officials said.

Firefighters installed heavy duty fans in the windows to blow the smoke out of the gym and limit the fire damage except for the curtains.

Principal Lloyd Solenberg said he first found out about the fire from school nurse Ingrid Howard, whose office is just down the hall from the gym. He immediately called the fire

department as a teacher pulled the alarm.

At the time the alarm was sounded, classes had just started and teachers were taking attendance and collecting lunch money, Solenberg said.

"The kids merely left the building the way they had been taught in the fire drills," said Solenberg, who immediately went out of the building and took a head count as 250 monitored all students were "present and accounted for."

Students evicted with their teachers in the school placed in an fire-fighter's upper up the extension with wet curtains and later moved to only three buses and a van home by 9:30 a.m.

Current plans call for school to reopen on schedule tomorrow morning, Solenberg said.

Runaway rail cars baffle the B&M

By DONALD DILLARY
Telegraph Staff Writer

MILFORD — Boston and Maine Railroad officials and investigators for the Public Utilities Commission are questioning their moving company why two cars of a B&M freight train broke loose and rolled some three miles before being halted.

The incident occurred at about 12:17 p.m. Friday when plans received a call reporting that two cars were headed east on the Hillsboro Branch rail line and a locomotive was in hot pursuit.

Sgt. Gary Franklin, Milford police dispatcher, said the cars broke loose in Wilton near South Main Street and

Milford Wilton train line, then Old Wilton Road, the crossing near Milford Manufacturing and Suburban Properties, the other end of Old Wilton Road near Savage Farm. A motorist on public crossing, and Westchester Drive, before they came to halt behind the Milford's Restaurant.

The cars traveled better than three miles and Franklin.

The rest of the train was left in Wilton, Franklin said, while the locomotive chased the runaway cars. He did not know how many cars made up the train.

Deputy Colby, the B&M's assistant to the vice president of government affairs, said today investigators still had not determined the cause of the runaway.

"When I know what happened, we are conducting an internal investigation," Colby said, adding it must be completed before any information on the cause of the incident is released.

Board will hold forum

MERRIMACK — The School Board tonight will hold the first of a series of public forums to enable parents to examine and make suggestions on current school programs.

Joseph's hour-long presentation, scheduled for 6 p.m. in the High School, will focus on the study skills now being taught students from elementary to high school.

School Board member Len Woods, chairing presentation by teachers and school administrators, said he hopes the public and fellow School Board members "all have suggestions" to further strengthen what he thinks is already a good program.

Several other forums are also planned for the next few months.

Planners give initial OK to annexing 47 acres

MASON — Planners gave conditional approval to a request by Stan Sun and Archangelos of Hurricane Hill Road to annex some 47 feet from neighboring property to their land.

Stan Archangelos said the adjacent land was being made so the couple could build a home addition to their quarters, with a little room to spare.

The property, belonging to neighbor Frances Lambert, extends from the road past the Archangelos home. The board gave the applicants a conditional approval, pending their obtaining a sign for the chairman and have it signed by the chairman.

In other matters, one of three sand-pit excavation operators notified by

planners to appear for an informational hearing regarding the enforcement of state laws appeared before the board. The Planning Board explained that there was no indication of closing down any of these three pits, nor could the board require permits from owners of existing pits as well as new ones with any future pit contracts.

However, the board repeated state laws requiring return of discontinued pits to "natural repose" slopes, with vegetation covering them.

"Gravel pits may become a danger in the neighborhood to the kids if the slopes are too steep," explained member Robert Deperone. citing the reason for his main concern and adding that there have been four fatalities

recently of children being buried while digging in gravel banks.

The case of owner present, Mr. and Mrs. Michael Bonaghi of Brookline Road, were complemented for the sloping of one of their pits and requested to do the same for the other pit. Bonaghi indicated it was not worth selling the gravel because of the considerable expense of returning the land to "natural repose" after the pits are removed, insisting he would not be reopening either of the

pits. The borough promised to see to the repair of the second pit within a year.

The board decided to send a letter to planners Bonaghi and his colleague of Valley Road regarding what appears to be a closed excavation pit in the absence of a response from the Bonaghis to the board's letter requesting their presence at the hearing. The board decided to call for communication regarding the future of the pit within 30 days.

Teen dies in crash

WILMINGTON, Mass. — An 18-year-old Bedford man has been charged with vehicular homicide and operating under the influence of alcohol in the death of a 27-year-old woman who was killed by a car in which he was traveling Friday night on Andover Street Friday night.

Richard E. Finner of 241 Rock River Road, who was also charged with driving to endanger, was released on bond pending arraignment in Wilton District Court, according to Wilmington police.

The passenger, Brian J. McKersie, 35, of 121 True Ave., was pronounced dead Friday at the Peapack Health Center in Wilmington after sustaining head injuries in the one-car accident.

New Ipswich reviews project

By HAZEL COZLIN

NEW IPSWICH — In recent hearings conducted by the New Ipswich Planning Board, members heard discussions on subdivisions that are still in the planning stages.

Robert Maki of Turnpike Road presented the board with a sketch showing 115 acres to be divided into five lots located on Turnpike Road, just before the junction of Routes 124/124. Maki was given a subdivision application and will get back to the Planning Board when he is ready for his hearing.

Walter and Patricia Mercer of Page Hill had their second public hearing on their 30-acre Page Hill to be divided into five lots. Stanley Mercer, brother of Walter and an abettor to his property, brought out some facts about the boundary lines, which he thinks needs to be re-examined.

All members were in favor of having the points established and will discuss the matter with the town attorney. Upon agreement with the attorney, the board will sign the map, if it was agreed by all parties concerned.

Selectmen back ash-disposal study

By SALLY BASILIAN

Telegraph Correspondent
LITCHFIELD — Selectmen have given the go-ahead for a 10-year ash disposal site study and awarded the work to Hydco Systems of Wakefield, Mass.

The company came in with the lowest estimate of \$110,150 for the plan which selectmen accepted "subject to the state solid waste department's concurrence with the scope of the work."

The 10-year engineering design study is necessary for Litchfield if they are to retain their exemption from participation in the regional solid waste management district. According to Chairman Stephen Robinson, the solid disposal plan for the town's incinerator is required by the state if the town wants to be exempt from the regional waste district.

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15'x30' - \$39 18'x33' - \$39

20'x44' - \$129

ABOVE GROUND - Oval Covers

2-Year Warranty 15'x30' - \$49 15'x48' - \$59 18'x30' - \$59 18'x48' - \$69

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
–ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY–
MILFORD-BENNINGTON RAILROAD COMPANY, INC

PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

**VERIFIED STATEMENT OF PETER R. LEISHMAN
EXHIBIT 4**

**PAN-AM PROPOSED TRACKAGE RIGHTS
AGREEMENT OF 2010**

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT made the ____ day of _____, 2010

BETWEEN:

SPRINGFIELD TERMINAL RAILWAY, a corporation incorporated under the laws of Vermont and **BOSTON AND MAINE CORP**, a corporation incorporated under the laws of Delaware (hereinafter "ST")

AND

MILFORD BENNINGTON RAILROAD, a corporation incorporated under the laws of New Hampshire (hereinafter MBRX).

RECITALS:

WHEREAS: ST owns and controls certain railroad trackage between Milford and Wilton, New Hampshire, and,

WHEREAS: The parties hereto desire to enter into an agreement to provide for the overhead movement of traffic between Wilton, New Hampshire and Milford, New Hampshire, and,

WHEREAS: MBRX requires access to its customer Granite State Concrete located in Milford on ST tracks,

WHEREAS: ST and MBRX were operating pursuant to a trackage rights agreement dated June 22, 1992, that has since expired 2004.

NOW, THEREFORE, in consideration of the promises, covenants and undertaking contained herein, the parties agree as follows:

1. Trackage rights between Wilton and Milford. ST hereby grants MBRX

operating rules and regulations of ST, and the movement of MBRX's trains, locomotives, cars and equipment over the Trackage, subject to the provisions of paragraph (n), shall at all times be subject to the orders of the transportation officers of ST. MBRX's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restriction or capacities of the Trackage as published in the Railway Line Clearances and no train shall contain locomotives, cars or equipment that require speed restrictions or other movement restrictions below the authorized freight speeds as provided by ST's operating rules and regulations without prior written consent of ST which consent shall not be unreasonably withheld.. MBRX shall indemnify, protect, defend, and save harmless ST and ST's directors, officers, agents and employees from and against all liabilities when attributable to the failure of MBRX to comply with the provisions of this Section.

(i) MBRX shall make such arrangements with ST as may be required to have all of MBRX's employees who shall operate MBRX's trains, locomotives, cars, and equipment over the Trackage qualified for operation thereover, and MBRX shall reimburse ST for any cost incurred by ST in connection with the qualification of such employees of MBRX, as well as the cost of pilots furnished by ST, until such time as MBRX employees are deemed by the appropriate examining officer of ST, in his exclusive discretion, to be properly qualified for operation over the Trackage as herein contemplated.

(j) In the event ST conducts an investigation or hearing concerning the

the non-exclusive right to operate MBRX trains, cars and equipment with MBRX's own crews (the "Trackage Rights") over ST's trackage which extends from the point of the junction with MBRX and the ST at approximately milepost N-16.36 in Wilton, New Hampshire, to milepost N-11.0 in Milford, New Hampshire (the "Trackage"), subject to the following terms and conditions:

(a) The Trackage Rights are overhead rights only and are solely for the purpose of permitting four (4) round trips per day involving the movement of stone and gravel cars, each not weighing more than 263,000 pounds, in ten (10) car trains, for the Granite State Concrete Company, Inc. over the Trackage. ST's right to use the Trackage shall not be diminished by the Agreement. ST hereby retains the right to grant to other persons or entities rights of any nature in the Trackage subject to the understanding that such grants shall not unreasonably restrict MBRX's ability to provide rail service to its customer Granite State Concrete, Inc. The Trackage Rights shall not confer on or vest in MBRX any title or estate in the Trackage beyond that contemplated herein.

(b) MBRX shall be solely responsible for and shall report and pay directly to the owner of all cars in MBRX's trains on the Trackage all mileage, car hire and other charges accruing on such cars while on the Trackage.

(c) Additional connections to the Trackage that may be required by ST shall be constructed, maintained, repaired and renewed as follows:

- a. ST shall furnish all labor and materials and shall construct, maintain, repair and renew at ST's sole cost and expense such portions of the tracks located on the ST right-of way that connect with the Trackage.

(d) From time to time, ST may, at ST's sole cost and expense, make such changes in, additions and betterments to and retirements from the Trackage as shall, in ST's sole judgment, be necessary or desirable for the economical and/or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Trackage and such retirements (The "Retired Track") shall, except as provided in sub-section (e) be excluded from the Trackage. The parties agree that ST shall not make changes that unreasonably interfere with the ability of MBRX to provide service to its customer, Granite State Concrete, Inc.

(e) If MBRX determines that (i) changes in or additions and betterments to the Trackage, including changes in communications or signal facilities as they existed immediately prior to the date of this Agreement or (ii) continued use of any tracks that are proposed by ST to become Retired Track, are required to accommodate MBRX's operations, beyond that required by ST to accommodate ST's operations over the Trackage, MBRX shall pay for construction of such additional or altered facilities to be performed by ST and not by MBRX, shall (subject to the notice and response requirements set forth below) be allowed the continued use of such otherwise Retired Track and shall also either pay for the annual expense of maintaining such Retired Track or if MBRX so elects maintain the Retired Track as MBRX may, by written notice, elect to continue to use. ST shall provide MBRX with ten (10) days notice of any planned retirements from the Trackage and MBRX shall be required to notify ST within 10 days of receipt of ST's notice of any desire to continue the use of Retired Track.

Notwithstanding the foregoing, ST shall have the right to approve or disapprove, in their exclusive discretion, any addition or alteration prior to its construction, and such addition or alteration approved shall be constructed in such a manner as to minimize interference with ST's and MBRX's operations over the line.

(e) ST shall maintain, repair, and renew the Trackage at ST's own expense and with ST's own supervision and labor and MBRX shall have no right to perform any such work. In the event that MBRX does perform any maintenance, repair or renewal of the Trackage, MBRX shall pay ST's costs to inspect such work and to repair any changes made by MBRX that are not reasonably acceptable to ST. ST shall perform routine and regular maintenance on the Trackage and agrees that the Trackage shall be maintained to Federal Railroad Administration (FRA) Class 1 standards. However, ST does not guarantee the speed at which trains will be able to operate over the Trackage. MBRX shall not by reason of failure or neglect on the part of ST to maintain, repair or renew the Trackage, have or make any claim or demand against ST or ST's directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by MBRX resulting from such failure or neglect unless: (i) MBRX shall have notified ST with confirmation in writing, of specific alleged defective conditions which MBRX reasonably believes to constitute a breach of ST's maintenance obligation hereunder, and (ii) ST shall have failed to remedy, dispute or otherwise respond to said specific alleged defective conditions within seven (7) days after receipt of such written

notification. ST shall bear no responsibility for any injury, death, loss or damage which may occur during the seven (7) day period.

(f) ST shall also perform, at the expense of MBRX to be paid in addition to the fees identified in Section 2, such additional maintenance as MBRX may request. Unless required by conditions that present an immediate safety hazard, ST shall be permitted to schedule such additional maintenance so as not to interfere with the maintenance of ST's other lines.

(g) Subject to the provisions of paragraph (n), ST shall have exclusive control of the management, dispatching and operation of the Trackage. MBRX shall comply with the provisions of all applicable local, state and federal laws, rules, ordinances, orders and codes as amended, respecting the operation, condition, inspection and safety of MBRX's train, locomotives, cars and equipment while such trains, locomotives, cars and equipment are operated over the Trackage. MBRX shall indemnify, protect, defend, and save harmless ST and ST's directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon ST or ST's directors, officers, agents or employees under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable to the failure of MBRX to comply with the provision of this Section.

(h) MBRX in its use of the Trackage will comply in all respects with the

violation of any operating rule or practice of ST by any employee or employees of MBRX, MBRX shall be notified in advance of any such investigation or hearing. Such investigation or hearing shall be conducted by ST, and may be attended by any official designated by MBRX and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(k) ST, in its sole and exclusive discretion, shall have the right to exclude from the Trackage any employee of MBRX determined by ST, as a result of such investigation or hearing described above, to have violated ST's or other applicable rules, regulations, orders, practices or instructions. MBRX shall release, indemnify, defend and save harmless ST and ST's directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

(l) The trains, locomotives, cars and equipment of ST and MBRX shall be operated and dispatched over the Trackage or any portion thereof without prejudice or partiality to any party to this Agreement and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(m) If by reason of any mechanical failure or for any other cause not resulting from the accident or derailment, any train, locomotive, car or equipment of, or in the account of, MBRX becomes stalled or unable to proceed under its own power or fails to maintain the speed required by ST on the Trackage, or if in an emergency crippled or otherwise defective cars are set out of a MBRX train on the Trackage (collectively the

"Interference"), and MBRX is unable to remedy said Interference within a reasonable time, the ST shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such train, locomotive, cars or equipment, or to properly move the disabled equipment off the Trackage, or otherwise clear the Interference, and MBRX shall reimburse ST for the cost of rendering any such assistance.

(n) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Trackage, and MBRX is unable to make such repairs, adjustments or transfers within a reasonable period of time, then such work shall be done by ST and MBRX shall reimburse ST for the cost thereof.

2. Compensation

(a) Regardless of whether MBRX moves less than three (3) trains per day, MBRX agrees to pay ST for the trackage rights covered by this agreement a minimum of \$ 2,042.68 per week (the "Base Charge"). In the event that MBRX operates more than three trains per day, MBRX shall pay to ST \$10.21 per car loaded or empty for any car over 210 moved over the Trackage in any given week (the "Incremental Charge").

(b) MBRX agrees that said Base Charge and Incremental Charge will be applicable to all cars, loaded and empty, moved by MBRX over the Trackage Rights during the term of this Agreement.

(c) The Base Charge and Incremental Charge will be subject to revision as

specified in paragraph (d) of this section.

(d) All payments to be made by MBRX under this Agreement (including the Base Charge and Incremental Charge) shall be adjusted effective July 1 of each year beginning July 1, 2010, for price level changes as reflected in the Annual Indices of Charge Out Prices (1977 = 100) series RCR, included in "Railroad Recovery Index" and supplements thereto, issued by the Association of American Railroads. The final "Material Prices, Wage Rates, and Supplements Combined (excluding fuel) index for the Eastern District shall be used. The price level charges shall be based on the relationship of the indices. The first adjustment shall be based on the comparison of final figure for calendar 2006 and for calendar 2007.

3. Term and Termination.

This Agreement shall take effect as of the date first set forth above and shall continue in full force and effect for a term of three (3) years; provided, however, that this Agreement may be terminated (i) at any time upon the mutual agreement of the parties or (ii) by ST upon 30 days prior written notice to MBRX in the event of a breach by MBRX of any of its covenants under this Agreement which breach shall not have been remedied within fifteen (15) days of written notice of said breach by ST to MBRX. Termination of this Agreement shall not relieve, release or excuse either party from any liability that either party may have incurred or any obligation which may have accrued under any provision of this Agreement prior to the effective date of termination.

4. Clearing of Derailments and Wrecks

In the event of any derailment or wreck of any train, locomotive, car or equipment of, or in the account of, MBRX on the Trackage, ST shall clear and repair the Trackage to allow for the passage of other trains within a reasonable time. ST shall perform any re-railing, wrecking or wrecking train service as may be required in connection with such derailment or wreck. Services performed on behalf of MBRX under this section shall be at MBRX's expense except that MBRX shall not be responsible for payment in the event that a derailment is caused by a track deficiency and the track does not meet the standards required by section 1(f).

5. Liability and Indemnity

a. Unless otherwise provided herein, each of MBRX and ST will bear responsibility for itself for all loss of damages and personal injury occurring to or on board its locomotives cars or trains when such loss, damages and personal injuries flow from the use of said equipment as provided in this Agreement.

b. Each of MBRX and ST will bear responsibility for itself for all loss, damages or personal injuries occurring to or by a person legally authorized by said party to be on the premises of the Trackage for professional activities related to the movement of traffic.

c. MBRX and ST agree that in case of collision between their respective locomotives, cars or trains on the Trackage or in case of a derailment thereon or in case of a collision between the locomotives, cars and trains of MBRX or ST and any third party (other than the parties hereto, their employees or their properties) that is caused by the exclusive fault of one party, that party shall be solely responsible for all damages relating to removal of equipment, track repairs and third party claims and will assume property damage, or personal injuries to its properties and employees and those of the other party and, accordingly agrees to fully indemnify the other party. Whenever the investigation of the occurrence discloses a fault of both parties (without regard to any percentage of such liability) for such collision or derailment or whenever the investigation fails to permit a determination of the cause of the collision or derailment, each party will bear 50% of all damages relating to removal of equipment, track repairs and third party claims and will assume property damage or personal injuries to its properties and employees.

d. The party seeking indemnification pursuant to this Agreement (the "Indemnified Party") shall give the party obligated to indemnify (the "Indemnifying Party") notice of any claim or assertion of liability by a third party with respect to which the Indemnified Party is seeking indemnification (a "Claim")

e. The Indemnifying Party shall have the right to undertake the defense

of such Claim (by counsel or other representatives of its own choosing and reasonably acceptable to the Indemnified Party) at the Indemnifying Party's sole risk and cost.

Notwithstanding the fact that the Indemnifying Party undertakes the defense of a Claim, if there is a reasonable probability that the Claim may materially and adversely affect the Indemnified Party, the Indemnified Party (by counsel or through other representatives of its own choosing) shall have the right, at its expense, to participate in the defense, compromise or settlement of the Claim.

f. If the Indemnifying Party undertakes the defense of a Claim, (i) the Indemnifying Party shall keep the Indemnified Party informed of the status of the defense and furnish the Indemnified Party with copies of all documents, instruments and information reasonably requested by the Indemnified Party in connection with the Claim; (ii) the Indemnified Party (by counsel or other representatives of its own choosing and at its own expense) shall have the right to consult with the Indemnifying Party (and its counsel and representatives) concerning the Claim, and the Indemnifying Party and the Indemnified Party (and their respective counsel and representatives) shall cooperate with respect to the Claim; and the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise a Claim or consent to the entry of a judgment without obtaining from the claimant or plaintiff an unconditional release of all liability of the Indemnified Party in respect of such Claim in a form satisfactory to the Indemnified Party and under circumstance which do not require the Indemnified Party to pay any money or consent to the taking or withholding of any action affecting it or any of its properties, assets or businesses.

g. If the Indemnifying Party does not elect to undertake the defense of a Claim or fails to defend the Claim within a reasonable time after notice of the Claim, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of a Claim (by counsel or other representatives of the Indemnified Party's own choosing) on behalf of, for the account of and at the risk and cost of the Indemnifying Party. In such event, the Indemnifying Party shall pay (in addition to any other sums required to be paid under the terms of this Agreement) the reasonable costs and expenses incurred by the Indemnified Party in connection with the defense, settlement or compromise of the Claim as and when those costs are incurred.

h. The provisions hereinabove concerning liability will prevail, as between the parties on any decision rendered by a Court upon a third party suit.

6. Payment

All payments called for under this Agreement shall be made by MBRX or by ST within (30 days) of receipt of the bills therefore by check made payable to the order of "Springfield Terminal Railroad". No payments shall be withheld because of any dispute as to the correctness of items on the bills rendered. Any discrepancies reconciled between the parties shall be adjusted in the accounts of the subsequent month. The records of each party relating to the subject of this Agreement shall be open at all reasonable times to inspection by the other party. Bills rendered pursuant to the

provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals in effect at the time any work is performed by ST or by MBRX.

8 General Provisions

(a) No Waiver. Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

(b) Notice. All notices to be given under this Agreement shall be in writing and may be served personally or sent by postage prepaid, United States first class mail or registered or certified mail, return receipt required or Federal Express or other form of expedited mail that provides for delivery to the sender of a signed receipt. All notices shall be addressed as follows:

If to MBRX: Mr. Peter Leishman, President
Milford Bennington Railroad
62 Elm Street
Milford, NH 03055

others for delays or errors in its performance or other breach under this Agreement occurring by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers, or failure of transportation, communication or power supply.

(f) Trains, Locomotives, Cars or Equipment. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expressions means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such trains, locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of, or under the control of the other party to this Agreement, such trains, locomotives, cars and equipment shall be considered those of the other party.

(g) Assignment. This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns. MBRX hereby acknowledges and agrees that ST shall have the right to assign any and all of ST's rights and obligations under this Agreement to any affiliate of ST or to any other person or entity without MBRX's consent. MBRX may, with the prior written consent of ST, which consent shall not be unreasonably withheld, assign its rights and obligations under this Agreement to an affiliate of MBRX.

If to ST: Mr. David A. Fink
President
Springfield Terminal Railway
Iron Horse Park
N. Billerica, MA 01862

(c) Integration. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understanding, courses of dealing, agreements, contracts and the like between the parties in such respect.

(d) Miscellaneous. The Agreement: (i) may be executed in any number of counterparts, each of which when executed by all parties to this Agreement shall be deemed to be an original, and all of which counterparts together shall constitute one and the same instrument; (ii) may be amended, modified, or terminated, and any right under this Agreement may be waived in whole or in part, only by a writing signed by all parties; (iii) contains headings for convenience, which headings do not form part of and shall not be used in construction of this Agreement; and (iv) except as to indemnification, is not intended to inure to the benefit of any party not a party to this Agreement.

(e) Force Majeure. No party to this Agreement shall be responsible to the

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above by their duly authorized representatives.

Mr. Peter Leishman, President
Milford Bennington Railroad
62 Elm Street
Milford, NE 03055

Springfield Terminal Railway
1700 Iron Horse Park
No. Billerica, MA 01862

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
–ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY–
MILFORD-BENNINGTON RAILROAD COMPANY, INC

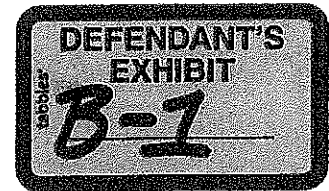
PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

**VERIFIED STATEMENT OF PETER R. LEISHMAN
EXHIBIT 5**

**TRACKAGE RIGHTS AGREEMENT NEGOTIATION
CORRESPONDENCE**



PAN AM RAILWAYS
IRON HORSE PARK
NO. BILLERICA, MA 01862



February 20, 2009

Mr. Peter R. Leishman
President
Milford-Bennington Railroad Co., Inc.
62 Elm Street
Milford, NH 03055

Dear Mr. Leishman:

Please accept this correspondence in reply to your letter dated February 7, 2009 to David A. Fink regarding the maintenance standards on Pan Am Railways' Hillsboro Branch and MBRR's desire to lease a portion of that line between Milford and Wilton, New Hampshire. Prior to addressing your proposal to lease this portion of the Hillsboro Branch, I would like to correct your mischaracterization of the "Petition" attached to your letter. Specifically, while you are correct that the B&M and ST petitioned NHDOT for approval of the lease of certain lines to ST, at no point in those proceedings did B&M or ST voluntarily agree to maintain these New Hampshire lines to a specific class. To the contrary, at the public hearing referenced in your letter, Jim Howard—B&M and ST's attorney at the time and now the attorney for MBRR—argued strenuously against such a condition, which was ultimately imposed by NHDOT.

Furthermore, the above issue is completely irrelevant to any discussion today because Pan Am does in fact maintain the Hillsboro Branch to FRA Class I conditions today. While it is true that the line between Milford and Wilton is currently classified as Excepted Track pursuant to the Track Safety Standards, this classification is for operational convenience only and has absolutely no effect on track speeds, which would be 10 miles per hour under either a Class I or Excepted standard.

In response to your proposal for MBRR to lease that portion of the Hillsboro Branch between Milford and Wilton, I must respectfully decline that offer for several reasons. First, MBRR already has trackage rights to operate over this portion of the Branch, although the original agreement has expired and the renewal of these rights needs to be finalized, as discussed further below. Second, Pan Am is currently negotiating with NHDOT regarding potential commuter rail service to the Wilton area, making it imperative that Pan Am retain control of the Branch to support these efforts. Finally, there is great concern with MBRR's history of ignoring customary safety regulations and practices as detailed in the pleadings relating to Granite State Concrete Co. et al. v. Boston and Maine Corp., et al., Dkt. No. NOR 42083, and Pan Am is therefore hesitant to

BURNS
Exhibit No. 5 for I.D.
Reporter: K.A. Smith
Date: 11/11/16

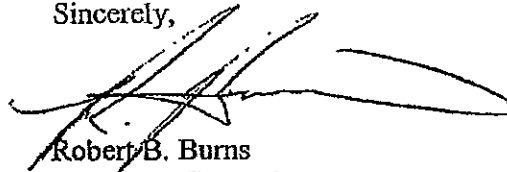
MBR 000002

place its crews in the position of operating regularly over track maintained and controlled by MBRR.

Furthermore, as mentioned above the existing trackage rights agreement providing MBRR with operating rights between Milford and Wilton has expired and negotiations regarding a renewal need to be completed. As I understand it, all material terms have been finalized—including the new rates—except for a commitment by MBRR to pay for a guaranteed minimum number of trips per day in season, regardless of whether those trips are made or not. As you know, Pan Am has made this request based upon sworn testimony made by you in a Surface Transportation Board proceeding that MBRR could perform four round trips per day if speeds on the line were maintained at 10 miles per hour, as is the case today. Given this testimony, and the increased cost of maintaining these speeds that Pan Am must incur, it is not clear why this is such a difficult point to resolve, particularly where Pan Am is not asking for a guaranteed four round trips per day testified to by you, but is instead only asking for a guarantee of payment for three round trips per day. Consequently, I would hope that you would agree that Pan Am's request is reasonable and consistent with your sworn testimony, and that we can finalize the trackage rights agreement renewal as soon as possible.

Thank you for your attention to this matter. Please feel free to contact me if you should have any questions or comments.

Sincerely,

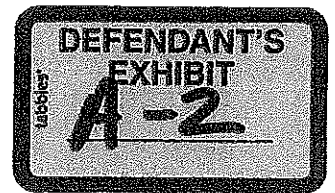


Robert B. Burns
Corporate Counsel
Pan Am Railways

cc: George Campbell, NHDOT Commissioner
David A. Fink, President
Robert B. Culliford, General Counsel



PAN AM RAILWAYS
IRON HORSE PARK
NO. BILLERICA, MA 01862



January 29, 2010

Mr. Peter Leishman
Milford-Bennington Railroad
62 Elm Street
Milford, NH 03055

Re: Trackage Rights Agreement

Dear Mr. Leishman:

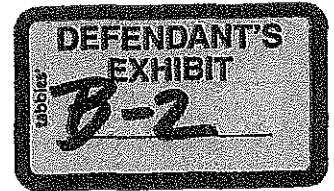
I have been asked once again to attempt to finalize the subject Trackage Rights Agreement that has gone unexecuted for far too long now. Enclosed you will find the latest updated version for your review and execution. I hope this version can be duly executed in the very near future.

Although Pan Am prefers your cooperation in seeing this Agreement come to fruition, in the event that you are unable or unwilling to execute said Agreement as is, Pan Am expects to seek the assistance of the STB to resolve our dispute – a course of action that both MBRR and Pan Am were exploring during our last round of correspondence nearly a year ago.

Accordingly, kindly either execute the enclosed Agreement and forward this office an original copy, or otherwise provide your position regarding the same at your earliest opportunity.

Very truly yours,

Robert B. Burns
Corporate Counsel
Pan Am Railways, Inc.
(978) 663-1215
rburns@panamrailways.com



Milford-Bennington Railroad Co., Inc.
62 Elm Street
Milford, New Hampshire 03055
MBRXNH1@aol.com
(603)673-7181

March 21, 2010

Mr. Robert B. Burns, Esq.
Corporate Counsel
Pan Am Railways
1700 Iron Horse Park
North Billerica, MA 08862

Dear Bob:

I would first like to thank you and Mike Clements for venturing to Milford last Friday, March 19, 2010 to discuss a new trackage rights agreement to replace the earlier agreement that expired in 2004.

I thought it might be helpful to put in writing the areas I had some reservations with, and although with some trepidation, my areas of compromise.

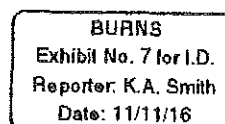
- 1) Page 1, Trackage rights between Wilton and Milford - Should be MPN 13 vs. MPN11 (a reduction of 2 miles). Granite State Concrete is at MPN 13.50.
- 2) Page 2, Section 1(a) - accept
- 3) Page 4, Section 1(e) - accept
- 4) Page 8, Section 2(a) - accept with modification. I will accept the new rate of \$10.21 per car and agree with some reluctance to a 2000 car annual minimum. As written, your draft would require us to move nearly 11,000 cars annually. In 2009 we moved 1,310 cars and in 2008 we handled 2,370 cars. Therefore, I believe a 2000 car minimum to be realistic and fair.
- 5) Page 9, Term and Termination - 3 years is very limiting.

Finally, I wish to again thank you for our meeting on Friday. It is the first time in more than 20 years that legal counsel from your legal department has acted in a professional and non-threatening manner.

Sincerely,

Peter R. Leishman

Cc: Michael B. Clements



MBR 000024

From: prleishman <prleishman@aol.com>

To: rculliford <rculliford@panamrailways.com>; brugmant <brugmant@stb.dot.gov>; dfink <dfink@panamrailways.com>

Subject: Milford-Bennington

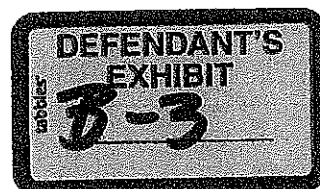
Date: Tue, May 11, 2010 12:18 pm

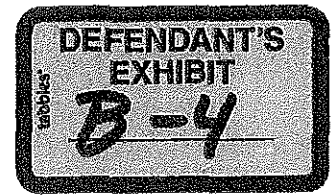
Rob:

As a further suggestion, I would propose that you and whomever you wish to take with you, and I venture to the STB in Washington to discuss our on-going dispute. I believe a face to face discussion with the STB and ourselves would be productive.

Please don't hesitate to contact me should you have any questions.

Peter





From: prleishman <prleishman@aol.com>
To: CMorgan <CMorgan@dot.state.nh.us>; JRobinson <JRobinson@dot.state.nh.us>
Subject: Fwd: Trackage Rights/Use of the Wilton-Lyndeborough (MBRX) Section
Date: Fri, Nov 18, 2011 8:44 am

FYI

Have a great weekend!

Peter

-----Original Message-----

From: prleishman <prleishman@aol.com>
To: rburns <rburns@panam.com>
Cc: craig.donais <craig.donais@donaislaw.com>; mconnolly <mconnolly@haslaw.com>; rculliford <rculliford@panam.com>; dfink <dfink@panamrailways.com>
Sent: Fri, Nov 18, 2011 3:43 am
Subject: Re: Trackage Rights/Use of the Wilton-Lyndeborough (MBRX) Section

Bob,

I assume you need nothing from me to discontinue your rights to use the Wilton to Lyndeborough section but if you do, I would provide whatever support you require.

Peter

-----Original Message-----

From: Burns, Robert <rburns@panam.com>
To: prleishman <prleishman@aol.com>
Cc: craig.donais <craig.donais@donaislaw.com>; mconnolly <mconnolly@haslaw.com>; waltstapleton1 <waltstapleton1@juno.com>; Culliford, Rob <rculliford@panam.com>
Sent: Mon, Nov 14, 2011 4:21 am
Subject: RE: Trackage Rights/Use of the Wilton-Lyndeborough (MBRX) Section

Peter:

I've been advised that we are no longer in need of the trackage rights referenced below, and will seek to discontinue the same. However, we do desire to renew the discussions regarding the trackage rights granted to MBRR, whereas MBRR has resumed its operations.

Bob

From: prleishman@aol.com [mailto:prleishman@aol.com]
Sent: Sunday, November 13, 2011 8:59 PM
To: Burns, Robert
Cc: craig.donais@donaislaw.com; mconnolly@haslaw.com; waltstapleton1@juno.com
Subject: Trackage Rights/Use of the Wilton-Lyndeborough (MBRX) Section

Bob,

At your convenience would you be so kind to call me to discuss the renewal of the expired trackage rights agreement (FD-33794-0 - Service Date - September 13, 1999) on the Wilton (MP16.36) - Lyndeborough (MP19.67) section. I can be reached at (603) 365-0621.

BURNS
Exhibit No. 8 for I.D.
Reporter: K.A. Smith
Date: 11/11/16

MBR 000100

Thank you,

Peter

From: Culliford, Rob <rculliford@panam.com>
To: prleishman <prleishman@aol.com>
Cc: Fink, David <dfink@panam.com>
Subject: RE: Hillsboro Branch
Date: Thu, Sep 27, 2012 2:31 pm

Peter:

I think that I should clarify that PAR does not believe it would be beneficial to discuss a future relationship at this time because the State of New Hampshire has terminated the MBRR operating rights on the Hillsborough Branch, a condition that would exist regardless of whether an RFP was issued. Because MBRR has been informed of this termination and no one at PAR has any knowledge of the termination being rescinded, I think that it is best not to discuss future business relationships until that issue is resolved, which again is unrelated to the RFP. As for materials, please note that PAR has plenty of materials to maintain its track to its class under the FRA TSS and does not need or desire to utilize any MBRR contributed materials.

Rob

From: prleishman@aol.com [<mailto:prleishman@aol.com>]
Sent: Thursday, September 27, 2012 8:28 AM
To: Culliford, Rob
Cc: Fink, David
Subject: Hillsboro Branch

Rob,

A quick follow-up to our conversation on Tuesday afternoon concerning my interest in discussing the relationship between PAR and the MBRX. Although I am very disappointed that PAR is not willing to discuss ways on improving our relationship, until such time the state of New Hampshire makes a decision concerning the RFP, I remain willing to discuss the expired trackage rights agreement between us. Additionally, the MBRX is willing to provide maintenance support for the Wilton to Milford section of the branch including but not limited to providing stone ballast to improve the surface and line at no cost to PAR.

As far as my knowledge of the status of the RFP, like you, I only know what is on the NHDOT webpage. I was, however, made aware last week after an inquiry by the NH House Speaker, that the NH Attorney General is conducting an active investigation on the RFP matter.

Please feel free to contact me should you have any questions.

Peter

From: Burns, Robert <rburns@panam.com>
To: prleishman <prleishman@aol.com>
Subject: Re: Trackage Rights Agreement
Date: Fri, Jan 25, 2013 3:05 pm

Peter:

I've been advised that we still maintain our position we conveyed to you upon your last request.

Bob

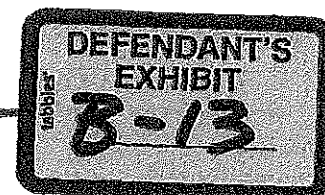
Sent from my Verizon Wireless 4G LTE
Razr Maxx.

prleishman@aol.com wrote:

Bob,

Any interest in discussing
a new trackage rights agreement, etc. yet?

All the best,
Peter



From: Fink, David <dfink@panam.com>
Sent: Saturday, March 23, 2013 12:06 PM
To: Scarano, Cyndi
Subject: Re: Milford-Wilton

Rob has blocked peter's email to me.

Sent from my iPhone

On Mar 23, 2013, at 9:44 AM, "Scarano, Cyndi" <cscarano@panam.com> wrote:

David I am sure you received. I will discuss with Rob regarding response.
Sent from my Verizon Wireless BlackBerry

From: <prleishman@aol.com>
Date: Sat, 23 Mar 2013 07:58:24 -0400
To: <cscarano@panam.com>
Subject: Fwd: Milford-Wilton

Cindy,

Knowing that David may be very busy, I am forwarding the below message to you.

All the best,
Peter

-----Original Message-----

From: prleishman <prleishman@aol.com>
To: dfink <dfink@panam.com>
Sent: Fri, Mar 22, 2013 7:32 am
Subject: Milford-Wilton

Good morning,

I have left a few messages concerning the Milford-Wilton section on your phone but since I have not heard from you, I wanted to reach out with an e-mail.

As you know, the terms of trackage rights agreement expired in 2006 and has yet to be renewed. Is there any interest in a new agreement or selling the 3 miles between Milford & Wilton with PAR retaining trackage rights and rights to underground utilities (fiber optics, gas, etc.)

Please do not hesitate to contact me.

Thank you,

Peter Leishman

CULLIFORD
Exhibit No. 26 for I.D.
Reporter: K.A. Smith
Date: 11/11/16

Bob,

Thanks for the reply. Might I suggest a meeting as we had some time ago (2009) to go over the terms? We can have it in Milford or I would be happy to travel to No. Billerica. Also, would you be so kind to forward what you have as your most recent version of the TRA.

Best,
Peter

-----Original Message-----

From: Burns, Robert <rburns@panam.com>
To: prleishman <prleishman@aol.com>
Cc: Culliford, Rob <rculliford@panam.com>
Sent: Mon, Mar 25, 2013 9:53 am
Subject: Trackage Rights Agreement

Dear Peter:

In reference to you latest email to David regarding the TRA. We have provided you our terms and they have not changed. Therefore, we have no interest in further discussions at this time.

Regards,

Bob

Robert B. Burns
Legal Counsel
Pan Am Railways
1700 Iron Horse Park
No. Billerica, MA 01862
978-663-1215
rburns@panam.com



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Last month I received a bill for the months of July, August, and September for the use of the Wilton to Milford corridor. Since there are no agreements in place that define what the trackage fee is for the use of this PAR section, there is no basis for MBRX to pay a fee. Further there is no agreement in place that justifies the charges in your above referenced bills that equate to \$3.40 per car mile, a number that is well above the national average and in fact about three times higher than the rate charged by Amtrak for use of the Northeast Corridor.

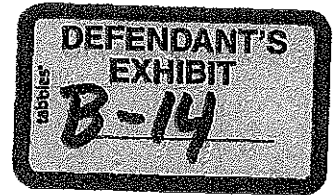
I would like to resolve all open trackage rights issues such as maintenance, fees, duration for both sections of the Hillsboro Branch. I am prepared to meet and discuss terms at your earliest convenience. At that time I would hope we can resolve all open issues. If we cannot, I propose that we identify those issues that remain open and submit them to the STB for their review and resolution.

All the best.

Peter

MBR 000033

BM000084



From: Burns, Robert <rburns@panam.com>
To: prleishman <prleishman@aol.com>
Cc: Culliford, Rob <rculliford@panam.com>
Subject: Trackage Rights Agreement
Date: Mon, Mar 25, 2013 9:53 am

Dear Peter:

In reference to your latest email to David regarding the TRA. We have provided you our terms and they have not changed. Therefore, we have no interest in further discussions at this time.

Regards,

Bob

Robert B. Burns
Legal Counsel
Pan Am Railways
1700 Iron Horse Park
No. Billerica, MA 01862
978-663-1215
rburns@panam.com

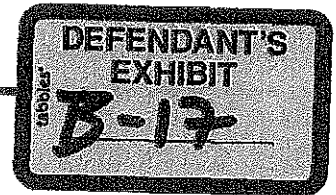


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MBR 000027

BM000077

Locker, Deborah



-----Original Message-----

From: prleishman <prleishman@aol.com>

To: dfink <dfink@panam.com>

Sent: Mon, Jan 6, 2014 1:16 pm

Subject: Hillsboro Branch Derailment

Dear David,

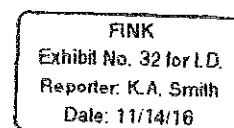
I am in no way being critical of PAR's attempt to service Hendrix last week. As a matter of fact, I contacted your dispatcher offering a large loader to help move the cars that were blocking Granite State Concrete's driveway. As you know, the derailment this past Thursday blocked Granite State Concrete's driveway, damaged one of your locomotives and damaged a loader. Knowing that, I am asking you if there is any interest in selling or leasing the Milford to Wilton section with PAR retaining trackage rights (at no charge) to Wilton. I can assure you that the derailment at Granite State would not have occurred as the MBRX would have made certain the crossing at Granite State and all crossings between Milford and Wilton would have been cleared and salted. As such, the three cars that were on their way to Hendrix would have made it on Thursday and not returned to Nashua on Saturday.

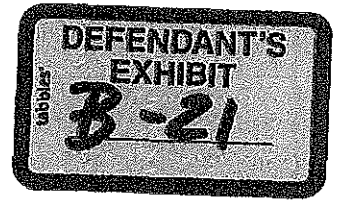
Perhaps, this year we can move from an adversarial relationship and work together where all concerned parties would be the beneficiaries?

Thank you and I look forward to hearing from you.

Happy New Year!

Peter





From: pnsisrman <pnsisrman@aol.com>
To: dfink <dfink@panam.com>
Subject: Thank you!
Date: Fri, Jun 6, 2014 3:55 pm

David,

Thanks for taking the time to speak with me this morning concerning the Milford-Wilton section of the Hillsboro Branch.
Like you, I welcome good relationship.

Looking forward to hearing from you or Rob and moving forward.

Enjoy the weekend!

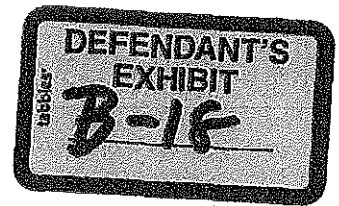
Thanks again,

Peter

MBR 000031

FINK
Exhibit No. 31 for I.D.
Reporter: K.A. Smith
Date: 11/14/16

BM000062



From: Burns, Robert <rurns@panam.com>
To: prleishman <prleishman@aol.com>
Subject: RE: Wilton to Milford (Hillsboro Branch)
Date: Fri, Mar 7, 2014 11:03 am

Hi Peter:

I did receive it and I have ran it up the flag pole. I suspect you should have a response in the near future.

Bob

From: prleishman@aol.com [mailto:prleishman@aol.com]
Sent: Friday, March 7, 2014 8:16 AM
To: Burns, Robert
Subject: Fwd: Wilton to Milford (Hillsboro Branch)

Good morning Bob,

As I sent the below message on Sunday, I wanted to make sure you received it since I have not yet heard from you.

Thanks,

Peter

-----Original Message-----

From: prleishman <prleishman@aol.com>
To: rurns <rurns@panam.com>
Sent: Sun, Mar 2, 2014 10:23 am
Subject: Wilton to Milford (Hillsboro Branch)

Hi Bob,

It was good speaking with you on Friday.

In the past, I believe it was PAR's position that until the NHDOT made a decision who the department supported for the continued operation of the Wilton to Bennington portion, PAR would not discuss a long-term solution for the long expired/canceled trackage rights agreement. Now that the NHDOT has selected the MBRX to proceed toward a new agreement, I would be very supportive of working with PAR to come up with a long-term agreement concerning the Milford to Wilton section.

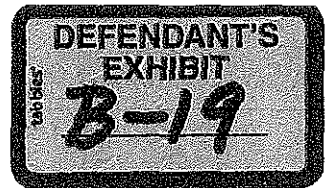
I look forward to hearing from you.

All the best,

Peter

MBR 000026

BM000078



Burns, Robert

From: prleishman@aol.com
Sent: Friday, March 28, 2014 9:24 AM
To: rculliford@panam.com
Subject: Re: Invoices

Good morning,

In 2012, I received an email from Linda Breen asking me why payments were short and she asked for an explanation. I responded that I was using the rate from 2004 (\$2.30 per mile) as the trackage rights agreement had long since expired by its own terms. I was never questioned further about it.

Additionally, since the Boston & Maine/Springfield Terminal terminated the June 22, 1992, trackage rights agreement many years ago the MBRX was under no obligation to abide by its terms. However, in good faith and for nearly twenty years, the MBRX continued to abide by its terms despite the termination by B&M/ST. As a result, the MBRX made payments to the B&M/ST far exceeding \$600,000.00 on a terminated contract.

In the past, PAR has made it clear it was unwilling to discuss any agreement on the Wilton to Milford section of the Hillsboro Branch with the MBRX until the NHDOT acted on the Hillsboro RFP. However, now that the NHDOT has asked the MBRX to enter into a new contract, I would very much like to move forward and discuss some form of agreement with PAR on the Milford to Wilton section.

Should you require additional information, please do not hesitate to contact me.

Peter

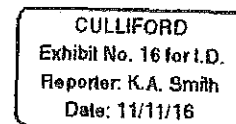
-----Original Message-----

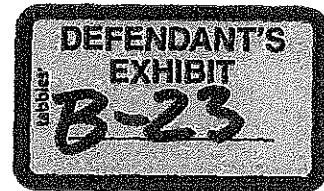
From: Culliford, Rob <rculliford@panam.com>
To: prleishman <prleishman@aol.com>
Sent: Thu, Mar 27, 2014 1:49 pm
Subject: Invoices

Dear Peter:

It has come to my attention that the Milford-Bennington Railroad Company has not paid approximately \$21,000 owed for trackage rights movements. Could you please either make prompt payment or let me know why you may believe that these payments have not been forthcoming?

Rob





-----Original Message-----

From: prleishman <prleishman@aol.com>
To: rburns <rburns@panam.com>
Sent: Tue, Jan 13, 2015 9:17 pm
Subject: Re: MBRX Wilton-Milford

Bob,

It was good speaking to you earlier today concerning my email below. I certainly understand that you have more pressing matters at present and will be happy to discuss terms, etc. at a future date. Until then, I will wait to hear from you. Be well and spend more time with your nine and a half year old son too!

Best,

Peter

-----Original Message-----

From: prleishman <prleishman@aol.com>
To: rburns <rburns@panam.com>
Sent: Mon, Jan 12, 2015 6:23 pm
Subject: Fwd: MBRX Wilton-Milford

Hi Bob,

Since I haven't heard from you, I wanted to make sure you received my email below.

Please feel free to contact me if you have any questions.

All the best,

Peter

-----Original Message-----

From: prleishman <prleishman@aol.com>
To: rburns <rburns@panam.com>
Sent: Tue, Dec 23, 2014 10:13 am
Subject: MBRX Wilton-Milford

Bob,

As you recall, while New Hampshire DOT was going through its very lengthy process in awarding an operating agreement on the Wilton to Bennington section of the Hillsboro Branch, PAR took the position that you would not negotiate with MBRX or enter into a trackage rights agreement with MBRX for the line between Milford and Wilton. As you know the old agreement terminated by its own term in 2004 and prior to that had been terminated by B&M/ST in 1993.

As you also know, a new operating agreement between the MBRX and the state of NH was approved by NH Governor and Executive Council on September 3, 2014 and that new agreement is fully executed.

Both carriers have recognized that the rights to use the Milford to Wilton section by the MBRX and the rights to use the Wilton to Lyndeboro section by PAR (PAR has previously stated it has no interest in abandoning its rights to use the Wilton to Lyndeboro section) are governed by earlier decision by the ICC/STB. However, there are no trackage agreements in place defining the administrative rights and obligations of PAR or MBRX on either section of the railroad. I am writing because it is important to both of us that we resolve any open issues and put in place trackage rights agreements for both of our companies.

MBR 000032

BURNS
Exhibit No. 14 for I.D.
Reporter: K.A. Smith
Date: 11/11/16

BM000083

Bob

Sent from my Samsung Galaxy S6 Edge Plus.

----- Original message -----

From: prleishman@aol.com

Date: 3/2/17 5:24 PM (GMT-05:00)

To: "Burns, Robert" <rburns@panam.com>

Subject: Trackage Rights Agreement

Bob,

Please see attached edited terms of the Milford-Bennington Trackage Rights agreement for your review.

Please do not hesitate to contact me with any questions.

Best,

Peter

From: prleishman <prleishman@aol.com>
To: rburns <rburns@panam.com>
Subject: Re: Trackage Rights Agreement
Date: Wed, Mar 29, 2017 8:08 pm

Hi Bob,

Since I haven't received a return phone call or email in response to my emails or phone call to you, I wanted to reach out one more time.

All the best,

Peter

-----Original Message-----

From: prleishman <prleishman@aol.com>
To: rburns <rburns@panam.com>
Sent: Wed, Mar 22, 2017 9:12 am
Subject: Re: Trackage Rights Agreement

Good morning Bob,

I'm available all day and would be happy to travel to No. Billerica to discuss trackage rights terms.

I look forward to hearing from you.

Peter

-----Original Message-----

From: prleishman <prleishman@aol.com>
To: rburns <rburns@panam.com>
Sent: Mon, Mar 20, 2017 3:33 pm
Subject: Re: Trackage Rights Agreement

Bob,

Although I don't like to assume, I'm assuming that our discussion concerning terms for the trackage rights between MP13.4 and 16.36 is over with your filing of the petition for waiver with the STB on Friday.

Peter

-----Original Message-----

From: Burns, Robert <rburns@panam.com>
To: prleishman <prleishman@aol.com>
Sent: Fri, Mar 3, 2017 10:14 am
Subject: RE: Trackage Rights Agreement

Got it Peter. I'll be out of pocket today and Monday but will get to it early next week. I haven't had a chance to discuss your offer to purchase yet. Will do that next week as well.

Thanks,

From: prleishman <prleishman@aol.com>
To: rburns <rburns@panam.com>
Subject: Re: Trackage Rights Agreement
Date: Mon, Mar 20, 2017 3:33 pm

Bob,

Although I don't like to assume, I'm assuming that our discussion concerning terms for the trackage rights between MP13.4 and 16.36 is over with your filing of the petition for waiver with the STB on Friday.

Peter

-----Original Message-----

From: Burns, Robert <rburns@panam.com>
To: prleishman <prleishman@aol.com>
Sent: Fri, Mar 3, 2017 10:14 am
Subject: RE: Trackage Rights Agreement

Got it Peter. I'll be out of pocket today and Monday but will get to it early next week. I haven't had a chance to discuss your offer to purchase yet. Will do that next week as well.

Thanks,

Bob

Sent from my Samsung Galaxy S6 Edge Plus.

----- Original message -----

From: prleishman@aol.com
Date: 3/2/17 5:24 PM (GMT-05:00)
To: "Burns, Robert" <rburns@panam.com>
Subject: Trackage Rights Agreement

Bob,

Please see attached edited terms of the Milford-Bennington Trackage Rights agreement for your review.

Please do not hesitate to contact me with any questions.

Best,

Peter

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
–ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY–
MILFORD-BENNINGTON RAILROAD COMPANY, INC

PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

**VERIFIED STATEMENT OF PETER R. LEISHMAN
EXHIBIT 6**

MAY 14, 2018 LETTER FROM PAN AM COUNSEL



1000 Elm Street
Manchester, NH 03101

Tel: 603-621-7100
Fax: 603-621-7111
www.clrm.com

Direct 603-621-7107
k.mahan@clrm.com

May 14, 2018

VIA ELECTRONIC AND FIRST CLASS MAIL

Peter Leishman
Milford-Bennington Railroad, Co., Inc.
62 Elm Street
Milford, NH 03055
MBRXNH1@aol.com

Re: Boston & Maine Corporation, et. al v. The Milford-Bennington Railroad Co., Inc.
Docket No. 226-2015-CV-00348

Dear Peter:

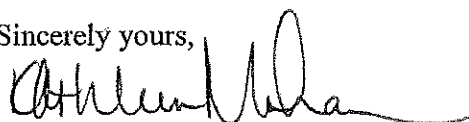
As you know, I represent Boston & Maine Corporation and affiliated entities. I am writing with respect to the judgment entered against Milford-Bennington Railroad Co., Inc., on June 28, 2017 in this matter in the total amount of \$52,163.79. I understand that Attorney Delaney no longer represents Milford-Bennington, and therefore I am writing to you directly.

As you likely know, the judgment entered by the Hillsborough County Superior Court became final on July 29, 2017. I understand from my client that the judgment has not been paid, nor has it received any communications from you regarding when it can expect such payment.

My client has provided ample time to pay the judgment. However, the time has come for the judgment be paid. I am reaching out to you now in the hopes that we can come to an agreement for payment and avoid the time and expense of unnecessary collection proceedings for both sides. If we are not able to reach some agreement, Boston & Maine will be forced to pursue its rights to the fullest extent, including initiating further collection proceedings. While Boston & Maine would prefer to reach an agreement, if we have not heard from you by May 21, 2018, we will be forced to initiate a collection action.

Please give me a call to discuss at your earliest convenience.

Sincerely yours,



Kathleen M. Mahan

KMM/amm
cc: Client

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1256

BOSTON AND MAINE CORPORATION &
SPRINGFIELD TERMINAL RAILWAY COMPANY
–ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY–
MILFORD-BENNINGTON RAILROAD COMPANY, INC

PROTEST OF
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

**VERIFIED STATEMENT OF PETER R. LEISHMAN
EXHIBIT 7**

**2017 MBR-EXECUTED TRACKAGE RIGHTS
AGREEMENT**

Milford-Bennington Railroad Co., Inc.
62 Elm Street
Milford, NH 03055
mbxnh1@aol.com
(603) 365-0621

April 3, 2017

David A Fink, President
Springfield Terminal Railroad
1700 Iron Horse Park
No. Billerica, MA 01862

Dear David,

Please find enclosed two original signed copies of the terms of the trackage rights agreement between the Springfield Terminal Railroad and the Milford-Bennington Railroad. If acceptable, please sign and return one copy to me in the enclosed postage paid envelope.

Should you have any questions, please do not hesitate to contact me.

All the best,

Peter R. Leishman

Enclosures

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: EL611967215US



Delivered

Scheduled Delivery Day: Tuesday, April 4, 2017, 12:00 pm ⓘ
Money Back Guarantee

Signed for By: C MILLS // NORTH BILLERICA, MA 01862 // 11:36 am

Product & Tracking Information

See Available Actions

Postal Product:
Priority Mail Express 1-Day™

Features:
Insured
PO to Addressee
Up to \$100 insurance included
Restrictions Apply ⓘ

DATE & TIME	STATUS OF ITEM	LOCATION
April 4, 2017, 11:36 am	Delivered, To Original Sender 	NORTH BILLERICA, MA 01862
Your item has been delivered to the original sender at 11:36 am on April 4, 2017 in NORTH BILLERICA, MA 01862. The item was signed for by C MILLS.		
April 4, 2017, 8:32 am	Available for Pickup	NORTH BILLERICA, MA 01862
April 4, 2017, 8:32 am	Arrived at Post Office	NORTH BILLERICA, MA 01862
April 4, 2017, 7:24 am	Forwarded	BILLERICA, MA

See More ▼

Available Actions

Text Updates



Email Updates



Confidential

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT made the 3rd day of April, 2017

BETWEEN:

SPRINGFIELD TERMINAL RAILWAY, a corporation incorporated under the laws of Vermont and **BOSTON AND MAINE CORP**, a corporation incorporated under the laws of Delaware (hereinafter "ST")

AND

MILFORD-BENNINGTON RAILROAD COMPANY, a corporation incorporated under the laws of New Hampshire (hereinafter MBRX).

RECITALS:

WHEREAS: ST owns and controls certain railroad trackage between Milford and Wilton, New Hampshire, and,

WHEREAS: The parties hereto desire to enter into an agreement to provide for the overhead movement of traffic between Wilton, New Hampshire and Milford, New Hampshire, and,

WHEREAS: MBRX requires access to its customer Granite State Concrete located in Milford on ST tracks,

WHEREAS: The Interstate Commerce Commission granted MBRX the right to operate over ST tracks in its decision dated July 9th 1992.

NOW, THEREFORE, in consideration of the promises, covenants and undertaking contained herein, the parties agree as follows:

1. Trackage rights between Wilton and Milford. ST hereby grants MBRX the non-exclusive right to operate MBRX trains, cars and equipment with MBRX's own crews (the "Trackage Rights") over ST's trackage which extends from the point of the junction with MBRX and the ST at approximately milepost N-16.36 in Wilton, New Hampshire, to milepost N-13.0 in Milford, New Hampshire (the "Trackage"), subject to the following terms and conditions:

(a) The Trackage Rights are overhead rights only and are solely for the purpose of permitting the movement of stone and gravel cars, each not weighing more than 263,000 pounds for the Granite State Concrete Company, Inc. between Wilton and Milford. ST's right to use the Trackage shall not be diminished by the Agreement. ST hereby retains the right to grant to other persons or entities rights of any nature in the Trackage subject to the understanding that such grants shall not unreasonably restrict MBRX's right to provide rail service to its customer Granite State Concrete, Inc. The Trackage Rights shall not confer on or vest in MBRX any title or estate in the Trackage beyond that contemplated herein.

(b) MBRX shall be solely responsible for and shall report and pay directly to the owner of all cars in MBRX's trains on the Trackage all mileage, car hire and other charges accruing on such cars while on the Trackage.

(c) Additional connections to the Trackage that may be required by ST shall be constructed, maintained, repaired and renewed as follows:

- a. ST shall furnish all labor and materials and shall construct, maintain, repair and renew at ST's sole cost and expense such portions of the tracks located on the ST right-of way that connect with the Trackage.

(d) From time to time, ST may, at ST's sole cost and expense, make such changes in, additions and betterments to and retirements from the Trackage as shall, in ST's sole judgment, be necessary or desirable for the economical and/or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Trackage and such retirements (The "Retired Track") shall, except as provided in sub-section (e) be excluded from the Trackage. The parties agree that ST shall not make changes that unreasonably interfere with the ability of MBRX to provide service to its customer, Granite State Concrete, Inc.

(e) If MBRX determines that (i) changes in or additions and betterments to the Trackage, including changes in communications or signal facilities as they existed immediately prior to the date of this Agreement or (ii) continued use of any tracks that are proposed by ST to become Retired Track, are required to accommodate MBRX's operations, beyond that required by ST to accommodate ST's operations over the Trackage, MBRX shall pay for construction of such additional or altered facilities, shall (subject to the notice and response requirements set forth below) be allowed the continued use of such otherwise Retired Track and shall also either pay for the annual

expense of maintaining such Retired Track or if MBRX so elects maintain the Retired Track as MBRX may, by written notice, elect to continue to use. ST shall provide MBRX with ten (10) days notice of any planned retirements from the Trackage and MBRX shall be required to notify ST within 10 days of receipt of ST's notice of any desire to continue the use of Retired Track. Notwithstanding the foregoing, ST shall have the right to approve or disapprove, in their exclusive discretion, any addition or alteration prior to its construction, and such addition or alteration approved shall be constructed in such a manner as to minimize interference with ST's and MBRX's operations over the line.

(f) ST shall maintain, repair, and renew the Trackage at ST's own expense and with ST's own supervision and labor. ST shall perform routine and regular maintenance on the Trackage and agrees that the Trackage shall be maintained to Federal Railroad Administration (FRA) Class 1 standards. In the event that MBRX does perform any maintenance, repairs or renewal of the Trackage, MBRX shall pay ST's costs to inspect such work and to repair any changes made by MBRX that are not reasonably acceptable to ST. MBRX shall not by reason of failure or neglect on the part of ST to maintain, repair or renew the Trackage, have or make any claim or demand against ST or ST's directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by MBRX resulting from such failure or neglect unless:

(i) MBRX shall have notified ST with confirmation in writing, of specific alleged defective conditions which MBRX reasonably believes to constitute a breach of ST's mainte-

nance obligation hereunder, and (ii) ST shall have failed to remedy, dispute or otherwise respond to said specific alleged defective conditions within seven (7) days after receipt of such written notification. ST shall bear no responsibility for any injury, death, loss or damage which may occur during the seven (7) day period.

(g) ST shall also perform, at the expense of MBRX to be paid in addition to the fees identified in Section 2, such additional maintenance as MBRX may request. Unless required by conditions that present an immediate safety hazard, ST shall be permitted to schedule such additional maintenance so as not to interfere with the maintenance of ST's other lines.

(h) Subject to the provisions of paragraph (n), ST shall have exclusive control of the management, dispatching and operation of the Trackage. MBRX shall comply with the provisions of all applicable local, state and federal laws, rules, ordinances, orders and codes as amended, respecting the operation, condition, inspection and safety of MBRX's train, locomotives, cars and equipment while such trains, locomotives, cars and equipment are operated over the Trackage. MBRX shall indemnify, protect, defend, and save harmless ST and ST's directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon ST or ST's directors, officers, agents or employees under such laws, rules, and regulations by any public authority or court having jurisdiction, when attributable to the failure of MBRX to comply with the provision of this Section.

(i) MBRX in its use of the Trackage will comply in all respects with the operating rules and regulations of ST, and the movement of MBRX's trains, locomotives, cars and equipment over the Trackage, subject to the provisions of paragraph (n), shall at all times be subject to the orders of the transportation officers of ST. MBRX's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restriction or capacities of the Trackage as published in the Railway Line Clearances and no train shall contain locomotives, cars or equipment that require speed restrictions or other movement restrictions below the authorized freight speeds as provided by ST's operating rules and regulations without prior written consent of ST which consent shall not be unreasonably withheld.. MBRX shall indemnify, protect, defend, and save harmless ST and ST's directors, officers, agents and employees from and against all liabilities when attributable to the failure of MBRX to comply with the provisions of this Section.

(j) MBRX shall make such arrangements with ST as may be required to have all of MBRX's employees who shall operate MBRX's trains, locomotives, cars, and equipment over the Trackage qualified for operation thereover, and MBRX shall reimburse ST for any cost incurred by ST in connection with the qualification of such employees of MBRX, as well as the cost of pilots furnished by ST, until such time as MBRX employees are deemed by the appropriate examining officer of ST, in his exclusive discretion, to be properly qualified for operation over the Trackage as herein contemplated.

(k) In the event ST conducts an investigation or hearing concerning the violation of any operating rule or practice of ST by any employee or employees of MBRX, MBRX shall be notified in advance of any such investigation or hearing. Such investigation or hearing shall be conducted by ST, and may be attended by any official designated by MBRX and shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to said employee or employees.

(l) ST shall have the right to exclude from the Trackage any employee of MBRX determined by ST, as a result of such investigation or hearing described above, to have violated ST's or other applicable rules, regulations, orders, practices or instructions. MBRX shall release, indemnify, defend and save harmless ST and ST's directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

(m) The trains, locomotives, cars and equipment of ST and MBRX shall be operated and dispatched over the Trackage or any portion thereof without prejudice or partiality to any party to this Agreement and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(n) If by reason of any mechanical failure or for any other cause not resulting

from the accident or derailment, any train, locomotive, car or equipment of, or in the account of, MBRX becomes stalled or unable to proceed under its own power or fails to maintain the speed required by ST on the Trackage, or if in an emergency crippled or otherwise defective cars are set out of a MBRX train on the Trackage (collectively the "Interference"), and MBRX is unable to remedy said Interference within a reasonable time, the ST shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such train, locomotive, cars or equipment, or to properly move the disabled equipment off the Trackage, or otherwise clear the Interference, and MBRX shall reimburse ST for the cost of rendering any such assistance.

(o) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Trackage, and MBRX is unable to make such repairs, adjustments or transfers within a reasonable period of time, then such work shall be done by ST and MBRX shall reimburse ST for the cost thereof.

2. Compensation

(a) MBRX agrees to pay ST for the trackage rights covered by this agreement a per car rate of \$6.00 per car loaded or empty over the Trackage during the terms of this Agreement.

(b) All payments to be made by MBRX under this Agreement shall be adjusted effective July 1 of each year beginning July 1, 2018, for price level changes as reflected in the Annual Indices of Charge Out Prices (1977 = 100) series RCR, included in "Railroad Recovery Index" and supplements thereto, issued by the Association of American Railroads. The final "Material Prices, Wage Rates, and Supplements Combined (excluding fuel) index for the Eastern District shall be used. The price level charges shall be based on the relationship of the indices. The first adjustment shall be based on the comparison of final figure for calendar 2017 and for calendar 2018.

3. Term and Termination.

This Agreement shall take effect as of the date first set forth above and shall continue in full force and effect for a term of ten (10) years; provided, however, that this Agreement may be terminated (i) at any time upon the mutual agreement of the parties or (ii) by ST upon 30 days prior written notice to MBRX in the event of a breach by MBRX of any of its covenants under this Agreement which breach shall not have been remedied within thirty (30) days of written notice of said breach by ST to MBRX. Termination of this Agreement shall not relieve, release or excuse either party from any liability that either party may have incurred or any obligation which may have accrued under any provision of this Agreement prior to the effective date of termination.

4. Clearing of Derailments and Wrecks

In the event of any derailment or wreck of any train, locomotive, car or equipment of, or in the account of, MBRX on the Trackage, ST shall clear and repair the Trackage to allow for the passage of other trains within a reasonable time. ST shall perform any re-railing, wrecking or wrecking train service as may be required in connection with such derailment or wreck. Services performed on behalf of MBRX under this section shall be at MBRX's expense except that MBRX shall not be responsible for payment in the event that a derailment is caused by a track deficiency and the track does not meet the standards required by section 1(f).

5. Liability and Indemnity

a. Unless otherwise provided herein, each of MBRX and ST will bear responsibility for itself for all loss of damages and personal injury occurring to or on board its locomotives cars or trains when such loss, damages and personal injuries flow from the use of said equipment as provided in this Agreement.

b. Each of MBRX and ST will bear responsibility for itself for all loss, damages or personal injuries occurring to or by a person legally authorized by said party to be on the premises of the Trackage for professional activities related to the movement of traffic.

c. MBRX and ST agree that in case of collision between their respective

locomotives, cars or trains on the Trackage or in case of a derailment thereon or in case of a collision between the locomotives, cars and trains of MBRX or ST and any third party (other than the parties hereto, their employees or their properties) that is caused by the exclusive fault of one party, that party shall be solely responsible for all damages relating to removal of equipment, track repairs and third party claims and will assume property damage, or personal injuries to its properties and employees and those of the other party and, accordingly agrees to fully indemnify the other party. Whenever the investigation of the occurrence discloses a fault of both parties (without regard to any percentage of such liability) for such collision or derailment or whenever the investigation fails to permit a determination of the cause of the collision or derailment, each party will bear 50% of all damages relating to removal of equipment, track repairs and third party claims and will assume property damage or personal injuries to its properties and employees.

d. The party seeking indemnification pursuant to this Agreement (the "Indemnified Party") shall give the party obligated to indemnify (the "Indemnifying Party") notice of any claim or assertion of liability by a third party with respect to which the Indemnified Party is seeking indemnification (a "Claim")

e. The Indemnifying Party shall have the right to undertake the defense of such Claim (by counsel or other representatives of its own choosing and reasonably acceptable to the Indemnified Party) at the Indemnifying Party's sole risk and cost. Notwithstanding the fact that the Indemnifying Party undertakes the defense of a Claim, if

there is a reasonable probability that the Claim may materially and adversely affect the Indemnified Party, the Indemnified Party (by counsel or through other representatives of its own choosing) shall have the right, at its expense, to participate in the defense, compromise or settlement of the Claim.

f. If the Indemnifying Party undertakes the defense of a Claim, (i) the Indemnifying Party shall keep the Indemnified Party informed of the status of the defense and furnish the Indemnified Party with copies of all documents, instruments and information reasonably requested by the Indemnified Party in connection with the Claim; (ii) the Indemnified Party (by counsel or other representatives of its own choosing and at its own expense) shall have the right to consult with the Indemnifying Party (and its counsel and representatives) concerning the Claim, and the Indemnifying Party and the Indemnified Party (and their respective counsel and representatives) shall cooperate with respect to the Claim; and the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise a Claim or consent to the entry of a judgment without obtaining from the claimant or plaintiff an unconditional release of all liability of the Indemnified Party in respect of such Claim in a form satisfactory to the Indemnified Party and under circumstance which do not require the Indemnified Party to pay any money or consent to the taking or withholding of any action affecting it or any of its properties, assets or businesses.

g. If the Indemnifying Party does not elect to undertake the defense of a

Claim or fails to defend the Claim within a reasonable time after notice of the Claim, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of a Claim (by counsel or other representatives of the Indemnified Party's own choosing) on behalf of, for the account of and at the risk and cost of the Indemnifying Party. In such event, the Indemnifying Party shall pay (in addition to any other sums required to be paid under the terms of this Agreement) the reasonable costs and expenses incurred by the Indemnified Party in connection with the defense, settlement or compromise of the Claim as and when those costs are incurred.

h. The provisions herein above concerning liability will prevail, as between the parties on any decision rendered by a Court upon a third party suit.

6. Payment

All payments called for under this Agreement shall be made by MBRX or by ST within (30 days) of receipt of the bills therefore by check made payable to the order of "Springfield Terminal Railroad". No payments shall be withheld because of any dispute as to the correctness of items on the bills rendered. Any discrepancies reconciled between the parties shall be adjusted in the accounts of the subsequent month. The records of each party relating to the subject of this Agreement shall be open at all reasonable times to inspection by the other party. Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges,

overhead percentages and equipment rentals in effect at the time any work is performed by ST or by MBRX.

8 General Provisions

(a) No Waiver. Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

(b) Notice. All notices to be given under this Agreement shall be in writing and may be served personally or sent by postage prepaid, United States first class mail or registered or certified mail, return receipt required or Federal Express or other form of expedited mail that provides for delivery to the sender of a signed receipt. All notices shall be addressed as follows:

If to MBRX: Mr. Peter R. Leishman, President
Milford-Bennington Railroad Co., Inc.
62 Elm Street
Milford, NH 03055

If to ST: Mr. David A. Fink
President
Springfield Terminal Railway
1700 Iron Horse Park
N. Billerica, MA 01862

(c) Integration. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understanding, courses of dealing, agreements, contracts and the like between the parties in such respect.

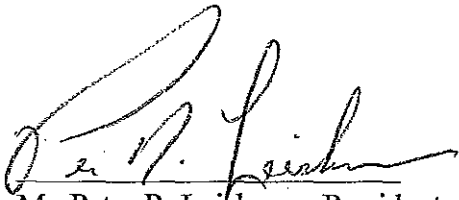
(d) Miscellaneous. The Agreement: (i) may be executed in any number of counterparts, each of which when executed by all parties to this Agreement shall be deemed to be an original, and all of which counterparts together shall constitute one and the same instrument; (ii) may be amended, modified, or terminated, and any right under this Agreement may be waived in whole or in part, only by a writing signed by all parties; (iii) contains headings for convenience, which headings do not form part of and shall not be used in construction of this Agreement; and (iv) except as to indemnification, is not intended to inure to the benefit of any party not a party to this Agreement.

(e) Force Majeure. No party to this Agreement shall be responsible to the others for delays or errors in its performance or other breach under this Agreement occurring by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers, or failure of transportation, communication or power supply.

(f) Trains, Locomotives, Cars or Equipment. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expressions means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such trains, locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of, or under the control of the other party to this Agreement, such trains, locomotives, cars and equipment shall be considered those of the other party.

(g) Assignment. This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns. MBRX hereby acknowledges and agrees that ST shall have the right to assign any and all of ST's rights and obligations under this Agreement to any affiliate of ST or to any other person or entity without MBRX's consent. MBRX may, with the prior written consent of ST, which consent shall not be unreasonably withheld, assign its rights and obligations under this Agreement to an affiliate of MBRX.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above by their duly authorized representatives.



Mr. Peter R. Leishman, President
Milford-Bennington Railroad Co., Inc.
62 Elm Street
Milford, NH 03055

Mr. David A. Fink, President
Springfield Terminal Railway
1700 Iron Horse Park
No. Billerica, MA 01862

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of May, 2018, he caused a true and correct copy of the foregoing **Protest of Milford-Bennington Railroad Co. to Application for Adverse Abandonment** to be electronically served on Robert B. Burns, Esq. and served upon all other Parties of Record via deposit on the 30th of May, 2018 in the United States Mail chute located at 29 North Wacker Drive, Chicago, Illinois 60606, with proper postage prepaid:

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Stanley Young
Wilton Heritage Commission
P.O. Box 82
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SIGNATURE PAGE FOLLOWING

By:


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Chicago, IL 60606

Attorney for Milford-Bennington Railroad
Company