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December 13, 2017

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

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ENTERED
Office of Proceedings
December 13, 2017
Part of
Public Record

**Re: *New England Central Railroad, Inc. – Trackage Rights Order – Pan Am Southern LLC* (Docket No. FD 35842)
Reply to Motion to Hold the Procedural Schedule in Abeyance**

Dear Ms. Brown:

In the above-referenced matter, on December 11, 2017, Pan Am Southern LLC (“PAS”) concurrently filed a Motion to Hold the Procedural Schedule in Abeyance (“Abeyance Motion”) and a Motion to Strike portions of the December 6, 2017, Petition for Reconsideration (“Motion to Strike”) filed by New England Central Railroad, Inc. (“NECR”). PAS requested an expedited ruling on the Abeyance Motion.

NECR will respond to PAS’s Motion to Strike within 20 days after the Motion was filed, pursuant to 49 CFR §1104.13(a). In doing so, NECR will show that PAS misrepresents NECR’s filing. The testimony included in NECR’s filing by a leading expert in the relevant professional field that supports NECR’s legal claim that the Board committed material error, and the associated testimony, are not impermissible additions to the record, but merely illuminate the existing record. Such testimony is permissible and admissible in support of a petition for reconsideration based on material error where there are highly technical matters involved.

Regarding PAS’s Abeyance Motion, NECR agrees the Board’s decision on that Motion should be expedited. NECR does not agree, however, that abeyance is necessary or warranted under the circumstances here. PAS’s Motion to Strike is merely an effort to get two chances to respond to NECR’s Petition for Reconsideration. The Board should not rule on PAS’s Motion to Strike separately and independently from considering and ruling on NECR’s Petition for Reconsideration and any response on the merits to that Petition that PAS may make. The Board should rule on all filings together in an integrated decision, as it did in the two cases cited by PAS, *Keokuk Junction Railway Company – Feeder Line Acquisition – Line of Toledo, Peoria, and Western Railway Corporation Between La Harpe and Hollis, IL*, FD 34335 (STB served Feb. 7, 2005) and *Middletown & New Jersey Railroad, LLC – Lease and Operation Exemption – Norfolk Southern Railway Company*, FD 35412 (STB served May 2, 2012).

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That being said, NECR consents to PAS's request for a one week extension of time to file a reply to NECR's Petition for Reconsideration, originally due by agreement December 22, until Friday, December 29, in light of the upcoming holidays.

PAS's assertion in the Abeyance Motion that NECR's Petition for Reconsideration exceeds the page limit imposed under 49 C.F.R. §1115.3 is without merit. NECR's 14-page Petition is 6 pages shy of the 20-page limit. Pursuant to Section 1115.3(d), NECR's argument may be up to 20 pages. While the two verified statements and accompanying papers bring the page count over 20 pages, NECR confirmed with Board staff prior to filing the Petition that the page count excludes exhibits.

Respectfully,

/s/Paul A. Cunningham
Counsel for New England Central Railroad, Inc.

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that I have this 13th day of December, 2017, caused true copies of the foregoing letter to be served upon the parties listed below by email.

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