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March 16, 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

Re: FD 35842
New England Central Railroad Inc. – Trackage Rights Order -- Pan
Am Southern LLC

Dear Ms. Brown:

On March 14, 2017, New England Central Railroad, Inc. ("NECR") filed a letter requesting the Board to schedule oral argument in the above-referenced proceeding. NECR's request is simply another attempt to delay the proceeding further, which it has consistently done through this proceeding. It is also clearly an attempt to get another bite at the apple contrary to the agreed upon procedural schedule. Neither of these reasons justify granting oral argument. As such, Pan Am Southern LLC ("PAS") respectfully requests the Board deny NECR's request.

As justification for holding oral argument, NECR claims that there are several "open issues" that warrant clarification and argument. The mere fact that there are open issues, complex issues, and disputed issues of fact and law is not justification for oral argument. Indeed, there have been several cases involving extensively briefed and complicated cases where the Board found no need to grant oral argument. BNSF Railway Company – Terminal Trackage Rights – The Kansas City Southern Railway Company And Union Pacific Railroad Company, FD 32760 (Sub-No. 46), slip op. at 6 (STB served July 5, 2016)(no need for oral argument given extensive record); Canadian Nat'l Ry.—Control—EJ&E West Co., FD 35087 (Sub-No. 8), slip op. at 3 (STB served Dec. May 15, 2015)(no need for oral argument where the record is extensive and complete); Rapid City, Pierre & E. R.R.—Acquis. & Operation Exemption Including Interchange Commitment—Dakota, Minn. & E. R.R., FD 35799; Genesee & Wyo.—

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Continuance in Control Exemption—Rapid City, Pierre & E. R.R., FD 35800, slip op. at 5 (STB served May 14, 2015); Honey Creek Railroad, Inc. – Petition For Declaratory; Honey Creek Railroad, Inc. – Abandonment Exemption – In Henry County, IN, FD 34869, AB-865X (STB served June 4, 2008)(denying oral argument request because the record was already extensive and contained the information needed to rule on the questions before the Board); and Kaw River Railroad, Inc. – Acquisition And Operation Exemption – The Kansas City Southern Railway Company, FD 34509 (STB served May 3, 2005)(denying request for oral argument because it would be unlikely to yield additional relevant information). The Board has been consistent in its denial of oral argument where the record is extensive and complete, as it is here, and it should do so again.

In essence, NECR simply wants another bite at the apple in an attempt to offer surrebuttal of its own. This is contrary to the procedural schedule to which it agreed and only adds further delay. The agreed upon procedural schedule provided PAS with an opportunity to provide rebuttal to NECR's attacks against PAS's evidence, just as NECR was provided the same opportunity to provide rebuttal against PAS attacks. NECR now wants to change the rules of the game and have yet another opportunity to provide even further argument. This simply adds further delay without any benefit to the Board or PAS.¹

If the Board determines that oral argument is necessary, of course PAS will be prepared to participate fully. However, NECR has not shown or even claimed that the record is insufficient. Holding oral argument would simply add further cost and delay, and raise potential further disputes about the record. Consistent with precedent, the Board should deny NECR's request.

Sincerely,



William A. Mullins

cc: Parties of Record

¹ The only potential beneficiary is NECR, who, if the Board grants retroactivity, which it should not do, would suffer no harm from further delay. It also provides NECR with an opportunity to shore up weaknesses in its arguments.