

SERVICE DATE – OCTOBER 12, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1256

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

Digest:¹ In this decision, the Board denies an application filed by Boston and Maine Corporation and the Springfield Terminal Railway Company for third-party, or “adverse,” discontinuance of the operating authority of Milford-Bennington Railroad Company, Inc. over approximately 5.36 miles of rail line between Wilton and Milford, N.H.

Decided: October 11, 2018

On April 13, 2018, Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (Springfield Terminal)² (collectively, Pan Am), filed an application under 49 U.S.C. § 10903 asking the Board to find that the public convenience and necessity (PC&N) require or permit the third-party, or “adverse,” discontinuance of operating authority³ held by Milford-Bennington Railroad Company, Inc. (MBR) over approximately 5.36 miles of rail line owned by B&M between milepost 16.36 in Wilton and milepost 11.00 in Milford, N.H. (the Line). Notice of Pan Am’s application was served and published in the Federal Register on

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decision, EP 696 (STB served Sept. 2, 2010).

² B&M is a Class II railroad that owns rail lines in Maine, New Hampshire, and Massachusetts. (Pan Am Appl. 3.) B&M leases its rail lines to Springfield Terminal. (Id. citing Bos. & Me. Corp.—Lease & Trackage Rights Exemption—Springfield Terminal Ry., FD 30993 (ICC served Mar. 12, 1987).)

³ An adverse discontinuance application seeks a Board finding that the PC&N require or permit the discontinuance of service by a carrier over a rail line, when that application is filed by someone other than that carrier. Such filings are also known as third-party applications and are termed “adverse” because they are often, though not always, opposed by the carrier holding the authority to operate.

May 3, 2018 (83 Fed. Reg. 19,591).⁴ MBR filed a protest in opposition to the discontinuance on May 29, 2018. On June 12, 2018, Pan Am filed a reply to MBR's protest.⁵ Granite State Concrete Inc. (Granite State), the sole active shipper served by MBR on the Line, and Monadnock Paper Mills, Inc. (Monadnock), a potential rail shipper, as well as other business entities, members of the public, and affected communities, filed comments in opposition to Pan Am's proposed discontinuance.⁶ For the reasons set forth below, the Board will deny Pan Am's application.

BACKGROUND

B&M owns 16.36 miles of rail line, known as the Hillsborough Branch, from milepost 0.0 in Nashua, N.H., to milepost 16.36 in Wilton. (Pan Am Appl. 2 n.1.) MBR, a Class III rail carrier, has trackage rights to operate over the Line, an approximately 5.36-mile segment of the Hillsborough Branch, from Milford to Wilton. Pan Am seeks to terminate MBR's trackage rights through adverse discontinuance authority. (See Pan Am Appl. 2; MBR Protest 3.) MBR also leases 18.6 miles of rail line owned by the state of New Hampshire, between Wilton and Bennington, N.H. (the NH Line). (MBR Protest 3.) The Line connects to the NH Line in Wilton. (See Pan Am Appl. 2; MBR Protest 3.)

In 1990, MBR filed a feeder line application under former 49 U.S.C. § 10910 to acquire the Line. (MBR Protest 3.) Pan Am opposed the application. Milford-Bennington R.R.—Feeder Line Acquis.—Bos. & Me. Corp. Hillsborough Branch, FD 31701 (ICC served July 6, 1992). In 1992, MBR and Pan Am voluntarily entered into a Trackage Rights Agreement (1992 TRA) as part of a settlement of the feeder line proceeding, granting MBR the trackage rights over the Line. In view of the settlement, MBR and Pan Am jointly requested that the feeder line application be withdrawn, which it was. Id.; (see also MBR Protest 4; Pan Am Appl. 3).

⁴ In a decision served on June 23, 2017, the Board granted in part Pan Am's March 17, 2017 petition seeking waiver of certain Board regulations and exemptions.

⁵ On June 22, 2018, MBR filed a motion to partially strike the contents of Pan Am's reply. The Board will deny as moot the motion to strike because this decision does not rely on the information that MBR moves to strike.

⁶ Comments were submitted by the following individuals and entities: Richard B. Putnam; Ronald Brown; Sopurkh Khalsa; Deana Darby; Jacqueline Kahle; Gail and Andrew Hoar; Edward and Joanne Wood; Matthew Cosgro; Lara Crandall; Donna Crane; Malissa Knight; Kevin Federico; Chalmers Hardenbergh; Elizabeth G. Torre; American Steel & Precast Erectors; Wilton Heritage Commission; Wilton N.H. Economic Development Team; Towns of Greenfield, Wilton, and Milford; and Nashua Regional Planning Commission. Some of the public comments were filed after the May 29, 2018 comment deadline, but in the interest of compiling a complete record the Board will accept these late-filed public comments.

Pan Am states that the purpose of the 1992 TRA, which had an initial term of 12 years, was to facilitate MBR's movement of crushed or broken stone, sand, and/or gravel between a quarry owned by Granite State in Wilton, on the NH Line, and Granite State's processing plant on Pan Am's Hillsborough Branch in Milford. (Pan Am Appl. 3-4; see also id., Ex. 1, 1992 TRA.) The parties state that MBR continued to operate over the Line pursuant to the terms of the expired trackage rights agreement until 2012, (see Pan Am Appl. 4, 5 n.6; MBR Protest 5), at which time MBR continued to operate over the Line but stopped paying trackage rights fees, (MBR Protest 13). In 2015, Pan Am filed a complaint in New Hampshire state court regarding MBR's failure to pay trackage rights fees after 2011. (See Pan Am Appl. 4.)⁷ Following a 2017 verdict requiring MBR to pay approximately \$52,000 in damages to Pan Am for trackage usage between 2012 and 2016, the parties re-initiated negotiations to reach a new trackage rights agreement. (See Pan Am Appl. 19; MBR Protest 5, V.S. Leishman 9 (citing Ex. 7, MBR-Executed Trackage Rights Agreement [hereinafter 2017 Draft TRA]).) According to Peter R. Leishman, president of MBR, Pan Am sent the 2017 Draft TRA to MBR, he discussed the draft with Pan Am, and he returned an edited, executed copy to Pan Am. Mr. Leishman states that MBR has subsequently paid trackage rights fees pursuant to the terms of the 2017 Draft TRA. (MBR Protest, V.S. Leishman 9.) However, the 2017 Draft TRA was never executed by Pan Am. (See MBR Protest, Ex. 7 at 17.)

MBR currently serves one shipper on the Line, Granite State. (Pan Am Appl. 10; MBR Protest 13.) As it has since 1992, MBR transports stone and gravel approximately five miles between Granite State's quarry on the NH Line and its processing plant on the Line.⁸ (MBR Protest 2, 10-11, V.S. Leishman 1-2.) MBR generally operates eight to nine months each year in a frequent single-line shuttle-type train service. (MBR Protest 2, V.S. Leishman 2-3.) Each day that MBR operates, it carries up to 30 100-ton carloads in trains that can be up to 10 cars long, meaning that some days MBR operates three round trips. (MBR Protest, V.S. Leishman 2.) MBR states that service is often provided on fewer than 12 hours' notice in accordance with Granite State's needs. (Id. at 2-3.) Pan Am proposes that if the adverse discontinuance is granted, Granite State would "[b]e served as a joint movement by MBR and Pan Am. MBR [would] serve the origin and Pan Am the destination. The interchange [would] be at Wilton."

⁷ The relationship between Pan Am and MBR has long been contentious. The parties have disagreed, among other things, about the 1992 TRA, the condition of the Line, maintenance of the Line, safety on the Line, and trackage rights payments. See, e.g., Milford-Bennington R.R.—Trackage Rights Exemption—Bos. & Me. Corp., FD 32103 (ICC served Sept. 3, 1993); (see also Pan Am Appl. 4., Ex. 2, Jury Verdict Form, Bos. & Me. Corp. v. Milford-Bennington R.R., 226-2015-CV-348 (N.H. Super. Ct. Feb. 27, 2017) (suit regarding MBR paying Pan Am for use of the Line from 2012 to 2016); Pan Am Appl. 18-19 (discussing how MBR's lack of trackage rights payments negatively affects Pan Am's maintenance of the Line and their overall condition); MBR Protest 5; id., V.S. Leishman 7-9 (discussing MBR's payment disputes with Pan Am).)

⁸ Approximately half of the move is on the NH Line and half on the Line.

(Pan Am Appl. 10.) Pan Am states that it would provide service based on demand up to five days per week and two or more round trips per day. (Id. at Ex. 4 at 33.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903(d), the standard governing any application to abandon or discontinue service over a line of railroad, including an adverse abandonment or discontinuance, is whether the PC&N require or permit the proposed abandonment or discontinuance. Under this standard, the Board balances the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the railroad, the shippers on the line, the communities involved, and interstate commerce generally. Waterloo Ry.—Adverse Aban.—Lines of Bangor & Aroostook R.R. in Aroostook Cty., Me., AB 124 (Sub-No. 2) et al., slip op. at 4 (STB served May 3, 2004) (citing City of Cherokee v. ICC, 727 F.2d 748 (8th Cir. 1984)); see also N.Y. Cross Harbor R.R. v. STB, 374 F.3d 1177, 1183 (D.C. Cir. 2004).

“The function of the Board’s regulatory authority with respect to abandonments or discontinuance of rail service is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service.” Waterloo Ry., AB 124 (Sub-No. 2) et al., slip op. at 5. Additionally, “the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.” 49 U.S.C. § 10903(d). In an adverse discontinuance case, the burden of proof is on the applicant. State of S.D. ex rel. Dept. of Transp.—Adverse Discontinuance of Operating Auth.—Napa-Platte Reg’l R.R. Auth., AB 1253 (STB served June 27, 2018). After considering the evidence presented and balancing the interests of all concerned, the Board concludes that Pan Am has failed to demonstrate that the adverse discontinuance of MBR’s authority to operate over the Line via trackage rights meets the PC&N standard, as explained below.

Interests of Pan Am. Pan Am argues that discontinuance of MBR’s operating authority would meet the PC&N standard because it would not adversely impact any shipper, would improve safety and maintenance and thereby service on the Line, and would promote community and rural development. It also claims that the discontinuance would “basically” involve only a change in operator over the Line, which, on balance, would result in no harm to the shipper or communities. (Pan Am Appl. 9-10.)

Pan Am asserts that, under its proposed operating plan, the change in operator would not adversely impact Granite State, as Granite State allegedly would continue to receive rail service on the same or better terms as its current service with MBR. (Id. at 10-13.) Pan Am explains that if adverse discontinuance were granted, it and MBR would jointly serve Granite State. Specifically, MBR would load at Granite State’s quarry, transport the shipment over the NH Line, and interchange with Pan Am in Wilton. (Id. at 10-11.) Pan Am would then take the train to Granite State’s processing plant on the Line, unload, and return the empty cars in interchange back to MBR at Wilton. (Id. at 11.) Pan Am asserts that this service would be as timely and

efficient as MBR's existing service, and "Pan Am believes the service will actually be better." (Pan Am Appl. 11; Ex. 4, Duane V.S. 33.)

Pan Am proposes that the rate paid by Granite State would be divided between Pan Am and MBR based on pro-rata mileage or an alternative methodology. (Pan Am Appl. 13, 13 n.14.) Pan Am asserts that Granite State's rate for rail service would remain the same as it was while MBR was serving Granite State, as long as MBR does not raise rates for its portion of the move. (Pan Am Appl. 13.)

Pan Am claims that, in addition to serving Granite State, it is willing to provide service to any other shippers. (Pan Am Appl. 20.) Pan Am argues that "MBR and Granite State should not be allowed to adversely affect such service because they do not wish to change their existing service arrangement with each other." (*Id.* at 21.) Accordingly, Pan Am states that granting the adverse discontinuance would be in the public interest, as it would allow for additional shippers to benefit. (*See id.*)

Pan Am further contends that "allowing MBR to continue to operate over the Line allows [MBR] to use the Board's jurisdiction to shield it from its financial obligations and its obligation to operate it in a safe manner." (*Id.* at 3; *see also id.* at 9, 24.) Pan Am claims that because it cannot evict MBR from the Line without Board authorization, MBR can and has used this procedural hurdle to continue operating over the Line without making payments to Pan Am and has operated in an unsafe manner. (Pan Am Appl. 5.) Pan Am explains that MBR refused to vacate the Line following expiration of the 1992 TRA despite Pan Am's requests that MBR terminate operations. (*Id.*) Pan Am asserts that, given MBR's refusal, Pan Am attempted to renew a trackage rights agreement with MBR multiple times but that MBR refused to agree to reasonable terms and conditions. (*Id.*) Pan Am argues that MBR's refusal to make trackage rights payments at times has adversely impacted the condition of, and maintenance on, the Line. (*Id.* at 18.) Pan Am claims that under the 1992 TRA, it is responsible for track maintenance and that without adequate trackage rights payments from MBR, Pan Am cannot properly maintain the Line. (*Id.* at 5, 18-20.) According to Pan Am, this constitutes a basis for adverse discontinuance because "when an operator establishes a consistent pattern of failing to meet its obligations and investment in the rail line is significantly impaired, the operations become a burden on the public and impose a burden on interstate commerce." (Pan Am Appl. 19 (citing Fore River R.R.—Discontinuance of Serv. Exemption—Norfolk Cty., Mass., 8 I.C.C. 2d 307 (1992)).)

Pan Am further argues that granting the adverse discontinuance would improve safety on the Line and recounts several disputes with MBR about safety practices and policies affecting the Line. (*Id.* at 15-18). Specifically, Pan Am cites to events that occurred in 2003 and 2004 and an accident that occurred in 2009 involving an MBR train. Pan Am further alleges that MBR has violated certain Northeast Operating Rules Advisory Committee (NORAC) rules and that its pattern of unsafe operations has continued. (*Id.* at 15-16.)

Pan Am argues that the situation here is akin to past adverse discontinuances where the line owner “proposed to replace the operator after the latter’s contractual or property right to operate over the line had expired or had been lawfully terminated and the operator refused to voluntarily give up its operating authority.” (Pan Am. Appl. 9-10 n.10 (citing Jacksonville Port Auth.—Adverse Discontinuance—in Duval Cty. Fla., AB 469 (STB served July 17, 1996); Tacoma E. Ry.—Adverse Discontinuance of Operations Application—a Line of City of Tacoma in Pierce, Thurston & Lewis Ctys., Wash., AB 548 (STB served Oct. 16, 1998)).)

Interests of MBR. MBR contends that Pan Am’s application does not meet the PC&N standard. It argues that Pan Am’s proposed operating plan to eliminate MBR’s specialized service to Granite State would not be in the public interest because the operations Pan Am says it would provide would not meet Granite State’s needs or address the interest of other shippers and the affected communities in continued rail service. (See MBR Protest 2-3, 8.)

In particular, MBR asserts that Pan Am’s proposed operating plan would seriously degrade the rail transportation service available to Granite State, because Pan Am could not duplicate its specialized shuttle-type service. (Id. at 2, 8.) MBR explains that Pan Am’s proposed discontinuance would sever MBR’s short-distance, single line haul for Granite State by inserting an interchange at Wilton between MBR and Pan Am for every train operating at Granite State’s processing plant. (Id. at 9.) MBR asserts that under Pan Am’s proposed plan, there could be up to six interchanges each day between MBR and Pan Am (three times for loaded trains and three times for empty trains). (Id.) MBR explains that the switching maneuvers for each interchange at Wilton would include exchanging crews, locomotives, and shoving platforms that must be utilized on the ends of the trains. (Id., V.S. Leishman 4.) According to MBR, on days when it operates three trains to Granite State’s processing plant, MBR barely has time under current circumstances to complete service within the operative window at the facility, so adding an interchange to every one of those train movements would make completion of service virtually impossible. (MBR Protest 9-10.) In addition, MBR contends that the interchange at Wilton under Pan Am’s proposed operating plan raises safety concerns involving runaway cars, as the yard at Wilton is on a 1.5% grade and such events have occurred in the past. (See MBR Protest 10.) Accordingly, MBR contends that Pan Am has failed to support its argument that its proposed operating plan could be efficient and cost-effective for Granite State. (See MBR Protest 9-10.)

With respect to Pan Am’s concerns about MBR’s non-payment for its use of the Line and maintenance issues, MBR argues that it has not breached any trackage rights agreement obligations to Pan Am. (Id. at 15.) MBR asserts that it made trackage rights payments to Pan Am from 1992 to 2012, and that it resumed paying fees according to the terms of the 2017 Draft TRA. (MBR Protest 13, V.S. Leishman 9.) MBR acknowledges that a New Hampshire court found that it owed Pan Am approximately \$52,000 for use of the Line from 2012 to 2016, (MBR Protest 13; see also Pan Am Appl., Ex. 2), but explains that it believed resolution of this payment would be addressed in any new trackage rights negotiations. (MBR Protest 16, V.S. Leishman 9.)

Further, MBR states that, although Granite State is currently MBR's only traffic, it works aggressively on traffic opportunities and works with shippers and the state of New Hampshire to ensure adequate monies are available to maintain the NH Line. It states that the active segment of the NH Line is maintained to Federal Railroad Administration's (FRA) Class 3 standard. (MBR Protest, V.S. Leishman 3.) By contrast, MBR asserts that Pan Am's portion of the Hillsborough Branch (including the Line) is maintained only to FRA excepted track standard, which only allows trains to operate at a speed limit of five miles per hour. (MBR Protest 13.) MBR disputes the notion that the Line's poor condition is due to its lack of payment of trackage rights fees. (*Id.* at 13-14.) MBR notes that the state court found that it only owes Pan Am \$52,000 for the entire period between 2012 and 2016, after a \$20,000 set-off for maintenance expenses on the Line that MBR had itself incurred. (*Id.* at 13.) Pointing to Pan Am's estimate that it would require \$900,000 to restore the Line to FRA Class 1 standard, MBR argues that the 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." (*Id.*)

MBR also states that Pan Am has failed to support its claims related to the safety of MBR's operations on the Line, that Pan Am's allegations focus on issues that arose nearly a decade ago, (*see* MBR Protest 7), and that MBR complies with NORAC rules, (*id.* V.S. Leishman 10).

Finally, MBR distinguishes the cases relied upon by Pan Am, explaining why Tacoma, Jacksonville, and Fore River do not support adverse discontinuance in this case. MBR argues that those cases either involved situations where the existing operators had breached contracts or were committing safety violations, or the shippers supported the removal of the existing operators, none of which exists here. (MBR Protest 15-17.)

Interests of Shippers, Affected Communities, and the Public. The Board received comments from Granite State, Monadnock, business entities, members of the public, and affected communities in opposition to Pan Am's proposed discontinuance.

Granite State indicates that MBR's customized, on-demand service suits Granite State's operations and minimizes heavy trucking on the local roads. (Granite State Comment 1-2.) Granite State explains that, because its quarry in Wilton and its production site in Milford operate in conjunction with each other in an "assembly line" manner, a rail delay of only a few hours results in a shutdown of one or both plants until service resumes. (*Id.* at 2-3.) Granite State is concerned that the multiple interchanges each day between Pan Am and MBR that would be needed under Pan Am's operating plan would result in unnecessary daily delays and reduced service. (*Id.* at 3.) Granite State also notes that Pan Am did not reach out to Granite State to discuss Granite State's requirements before proposing the Pan Am's operating plan. (*Id.*)

Monadnock is located on the NH Line northwest of Wilton. (Monadnock Comment 1, May 24, 2018.) It states that it contributed considerable funds in 1982 to the repair costs on the

Hillsborough Branch and that it has subsequently contributed to improvements on the NH Line to try to maintain the possibility of rail service. (Id. at 1-2.) Monadnock claims that despite its “continued, demonstrated interest and investment in common carrier service, Pan Am . . . has declined to provide a reasonable quotation and has never even solicited our interest regarding rail service over the Hillsboro [sic] Branch.” (Id. at 2.) Monadnock concludes that the PC&N “of shippers [are] not served by Pan Am’s current service on its segment of the Hillsboro [sic] Branch, and will certainly not be improved by the addition of an interchange at Wilton.” (Id.)

Communities, members of the public, and other business entities also submitted comments in opposition. Some raise concerns about an increase in trucks on the roadways if Granite State is no longer able to use rail service to transport its gravel products. (See, e.g., Town of Wilton Comment 1; Town of Milford Comment 2; Wilton NH Economic Development Team 2; Torre Comment 1.) Other comments express concern about a decrease in business development and tourism in the area if rail service is discontinued. For example, the Town of Milford states that MBR’s service allows Granite State to employ local residents and that Granite State supports the town’s tax base, while the Nashua Regional Planning Commission (NRPC) contends that the discontinuation of MBR’s service would negatively impact rail freight service in the region. (See Town of Milford 1; NRPC Comment 1.)

PC&N Analysis. Both parties addressed the impact of Pan Am’s proposed rail service. As noted, Pan Am contends that its proposed operating plan would be equivalent to the service that Granite State currently receives from MBR. On the other hand, MBR, Granite State, Monadnock, and the other commenters are concerned about the harm the proposed discontinuance would cause to rail service in the area and the possibility that trucking could increase. As discussed below, Pan Am has not met its burden to show its proposed operating plan would not negatively impact rail service.

While Pan Am asserts that its proposed operating plan would result in essentially the same service to Granite State, the record before the Board does not support that assertion. Pan Am’s proposal to have MBR and Pan Am interchange multiple times a day to replace the on demand, single-line service MBR currently provides to Granite State would not be operationally similar to or as efficient as the existing service. Nor has Pan Am consulted with MBR on the details of joint-line service or reached out to Granite State to discuss the shipper’s requirements or whether the proposed change in operations would be feasible for the shipper. (Granite State Comment 3.) Indeed, MBR has raised valid questions about whether Pan Am’s proposed operations are even feasible. Further, Pan Am’s claim that it “is fully committed to providing service to all shippers,” (Pan Am Appl. 14), is not supported by the record. Monadnock, a potential shipper in the area, states that Pan Am has never solicited Monadnock’s interest in rail service, despite its continued investment and demonstrated interest in using rail. (Monadnock

Comment 2, May 24, 2018).⁹ Additionally, the fact that no other interested parties support Pan Am's application belies Pan Am's suggestion that MBR and Granite State are impeding service to other shippers. After balancing all the relevant interests in this matter, the Board cannot find that Pan Am has shown that the present or future public convenience and necessity justifies Pan Am's proposed adverse discontinuance, and will deny Pan Am's application.

Pan Am cites the decisions in Jacksonville and in Tacoma as examples of adverse discontinuance cases that were granted, based on facts it asserts are similar to the facts in this proceeding. However, those cases are inapposite. Both involved situations where the record showed that discontinuance would result in no change in operations, and neither discontinuance was opposed by shippers. See Tacoma, AB 548, slip op. at 7; Jacksonville, AB 469, slip op. at 4.

The Board also disagrees with Pan Am's arguments that MBR's operating authority should be discontinued because of Pan Am's safety concerns about MBR's operations. FRA has primary responsibility over rail safety matters and sets track standards based on the condition of the track. See Tyrrell v. Norfolk S. Ry., 248 F.3d 517, 523-24 (6th Cir. 2001); Granite State Concrete Co. v. Bos. & Me. Corp., FD 42083, slip. op at 3 (STB served Sept. 24, 2004). Here the track has been classified as FRA excepted track because of its condition, and there is nothing in the record showing that MBR is not complying with the FRA requirements that pertain to excepted track or that FRA has raised concerns about MBR's safety practices. Moreover, the majority of the safety allegations that Pan Am alleges occurred nearly a decade ago or earlier, and the more recent claims of NORAC rule violations are insufficiently clear for the Board to conclude there are ongoing safety issues.

Finally, the Board rejects Pan Am's argument that its application should be granted based on the fact that the 1992 TRA has expired and its assertion that MBR has failed to compensate Pan Am for the trackage rights. Pan Am cites to Fore River as support for the Board granting adverse discontinuance where an operator is not fulfilling its obligations and, as a result, has become a burden on the public and interstate commerce. (See Pan Am Appl. 19.) Fore River does not support Pan Am's petition, however. Fore River involved a carrier that had a consistent pattern of failing to meet its obligations to its shippers, employees, and the owner of the line. The record here shows that a New Hampshire court determined that MBR owes Pan Am for MBR's use of the Line from 2012 until 2016. However, the record also indicates MBR's willingness to pay for this past amount due and for its use of the Line going forward. (MBR Protest, V.S. Leishman 8-9.) Although the parties have made some attempts to negotiate terms for a new agreement, to date they have been unable to come to a resolution on their own. (Id. at 7-9.) Given these circumstances, as well as the prior findings that Pan Am's operating plan

⁹ Although the 1992 TRA does not appear to restrict Pan Am's ability to provide service to any shipper on the Line, the record does not show that Pan Am has made any significant effort to reach out to potential local shippers. Indeed, the map Pan Am attached to its application is labeled "Abandonment Plan Hillsborough Branch." (See Pan Am Appl., Ex. 3.)

would not meet Granite State's shipping needs and that MBR's relationship with Granite State is not impeding service to other shippers, the Board finds that Pan Am has not shown that the PC&N permits adverse discontinuance.¹⁰

The Board favors the resolution of disputes, including the terms for trackage rights, through alternative dispute resolution, such as mediation and arbitration procedures, in lieu of formal Board proceedings, whenever possible. The Board reminds interested parties that they may contact the Board's Rail Customer and Public Assistance (RCPA) office, for informal facilitation assistance. The RCPA office may be reached at (866) 254-1792; faxing to (202) 245-0461; or by email at rcpa@stb.gov.

It is ordered:

1. Pan Am's application for adverse discontinuance is denied.
2. MBR's motion to strike is denied as moot.
3. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.

¹⁰ Additionally, unlike here, in Fore River the two shippers on the line supported the discontinuance. Fore River R.R., 8 I.C.C.2d at 311.