

212643

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532

NOV 29 2004
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lgitomer@dc.bjllp.com

November 29, 2004

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington, DC 20423

ENTERED
Office of Proceedings

NOV 30 2004

Part of
Public Record

RE: Finance Docket No. 34612, *Boston and Maine Corporation and Springfield Terminal Railway Company v. New England Central Railroad, Inc.*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Answer in this proceeding and three diskettes. Please time and date stamp the extra copy of this letter and the Answer and return them with our messenger. Thank you for your assistance.

If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for New England Central Railroad,
Inc.

Enclosures

212 643
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34612

NOV 29 2004
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BOSTON AND MAINE CORPORATION AND
SPRINGFIELD TERMINAL RAILWAY COMPANY

v.

NEW ENGLAND CENTRAL RAILROAD, INC.

ANSWER OF NEW ENGLAND CENTRAL RAILROAD, INC.
TO COMPLAINT OF BOSTON AND MAINE CORPORATION AND
SPRINGFIELD TERMINAL RAILWAY COMPANY

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Gary A. Laakso, Esq.
Vice President Regulatory Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for: NEW ENGLAND
CENTRAL RAILROAD, INC.

Dated: November 29, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34612

BOSTON AND MAINE CORPORATION AND
SPRINGFIELD TERMINAL RAILWAY COMPANY

v.

NEW ENGLAND CENTRAL RAILROAD, INC.

ANSWER OF NEW ENGLAND CENTRAL RAILROAD, INC.
TO COMPLAINT OF BOSTON AND MAINE CORPORATION AND
SPRINGFIELD TERMINAL RAILWAY COMPANY

Pursuant to 49 C.F.R. § 1111.4 New England Central Railroad, Inc. ("NECR") answers the formal complaint filed by Boston and Maine Corporation ("B&M") and Springfield Terminal Railway Company ("ST") (jointly referred to as "Complainants") in this proceeding on November 9, 2004.

In *Amtrak—Conveyance of B&M in Conn River Line in VT & NH*, 6 I.C.C.2d 539 (1990) (the "*Agreement Decision*") a trackage rights agreement ("TRA") was imposed on B&M and ST and the Central Vermont Railway, Inc. ("CV"), predecessor to NECR. The derailment involved only the ST train. Pursuant to section 7.1 of the TRA, if a single party causes damage, that party is liable, "whether or not the condition or arrangement of the trackage contributes in any manner or to any extent to such loss, damage or injury". *Agreement Decision*, at 564.

Complainants have alleged no facts that would create an exception to the specific language of section 7.1. Therefore, NECR respectfully requests the Board to dismiss the complaint.

To the extent that NECR does not specifically admit an averment made in the complaint, that averment is denied.

1. NECR denies the averments in Paragraph 1 of the complaint.
2. NECR is without sufficient information to admit or deny the information provided by Complainants in Paragraph 2 of the complaint.
3. NECR is without sufficient information to admit or deny the information provided by Complainants in Paragraph 3 of the complaint.
4. NECR admits the averments in Paragraph 4 of the complaint.
5. NECR admits the averments in Paragraph 5 of the complaint.
6. NECR admits the averments in Paragraph 6 of the complaint.
7. NECR is without sufficient information to admit or deny the information provided by Complainants in Paragraph 7 of the complaint.
8. NECR is without sufficient information to admit or deny the information provided by Complainants in Paragraph 8 of the complaint.
9. NECR admits the averments in Paragraph 9 of the complaint.
10. NECR admits the averments in Paragraph 10 of the complaint.
11. NECR admits the averments in Paragraph 11 of the complaint.
12. NECR denies the averments in Paragraph 12 of the complaint.
13. NECR denies the averments in Paragraph 13 of the complaint.
14. NECR denies the averments in Paragraph 14 of the complaint.
15. NECR admits the averments in Paragraph 15 of the complaint.
16. NECR is without sufficient information to admit or deny the information provided by Complainants in Paragraph 16 of the complaint.

17. NECR denies the averments in Paragraph 17 of the complaint.

18. NECR adopts its prior responses to the averments in Paragraphs 1-17 of the complaint.

19. NECR denies the averments in Paragraph 19 of the complaint.

20. NECR denies the averments in Paragraph 20 of the complaint.

21. NECR denies the averments in Paragraph 21 of the complaint.

22. NECR denies the averments in Paragraph 22 of the complaint.

23. NECR denies the averments in Paragraph 23 of the complaint.

24. NECR denies the averments in Paragraph 24 of the complaint.

25. NECR adopts its prior responses to the averments in Paragraphs 1-24 of the complaint.

26. NECR denies the averments in Paragraph 26 of the complaint.

27. NECR denies the averments in Paragraph 27 of the complaint.

28. NECR denies the averments in Paragraph 28 of the complaint.

29. NECR denies the averments in Paragraph 29 of the complaint.

30. NECR adopts its prior responses to the averments in Paragraphs 1-29 of the complaint.

31. NECR admits the averments in Paragraph 31 of the complaint.

32. NECR denies the averments in Paragraph 32 of the complaint.

33. NECR denies the averments in Paragraph 33 of the complaint.

34. NECR denies the averments in Paragraph 34 of the complaint.

35. NECR denies the averments in Paragraph 35 of the complaint.

36. NECR denies the averments in Paragraph 36 of the complaint.

37. NECR adopts its prior responses to the averments in Paragraphs 1-36 of the complaint.

38. NECR denies the averments in Paragraph 1 of the complaint.

39. NECR denies the averments in Paragraph 1 of the complaint.

40. NECR admits the averments in Paragraph 40 of the complaint.

41. NECR admits the averments in Paragraph 41 of the complaint.

42. NECR admits the averments in Paragraph 42 of the complaint.

43. NECR denies the averments in Paragraph 43 of the complaint.

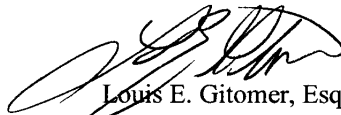
44. NECR denies the averments in Paragraph 44 of the complaint.

PRAYER

For the foregoing reasons, NECR requests the Board to (1) conclude that it does not have jurisdiction over this complaint; (2) determine that the trackage rights agreement imposes liability upon Complainants; (3) deny damages to complainants; (4) dismiss the complaint; (5) discontinue this proceeding; and (6) award NECR such other relief to which it is entitled.

Respectfully submitted,

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

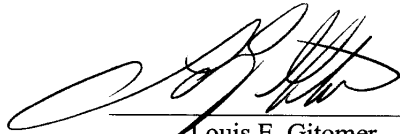

Louis E. Gitomer, Esq.
Of Counsel
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1455 F Street, N.W., Suite 225
Washington, D.C. 20005
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Attorneys for: NEW ENGLAND
CENTRAL RAILROAD, INC.

Dated: November 29, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon counsel for Boston and Maine Corporation and Springfield Terminal Railway Company, by pre-paid first class mail.

A handwritten signature in black ink, appearing to read "L. E. Gitomer", is written over a horizontal line.

Louis E. Gitomer
November 29, 2004