

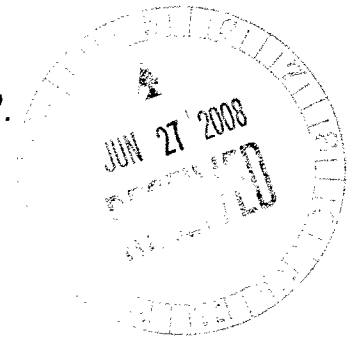
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June 27, 2008

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BY HAND DELIVERY

Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E St., S.W.
Washington, D.C. 20024

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JUN 27 2008
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**Re: STB Finance Docket No. 35147, Norfolk Southern Railway Company,
Pan Am Railways, Inc. *et al.* – Joint Control and Operating/Pooling
Agreements–Pan Am Southern LLC**

Dear Secretary Quinlan:

I enclose for filing in the above-referenced docket an original and 10 copies of Applicants' Reply to Petition of Clarendon & Pittsford Railroad, Green Mountain Railroad, Vermont Railway, and Washington County Railroad For A Finding That the Proposed Transaction is a "Significant" Transaction and for Revision of the Proposed Procedural Schedule.

Sincerely,

Richard A. Allen

Enclosure

cc: (w/encl.)
Andrew P. Goldstein, Esq.
Robert B. Culliford, Esq.
John V. Edwards, Esq.

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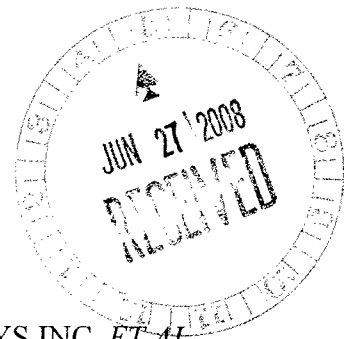
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Before The
Surface Transportation Board

Finance Docket No. 35147



NORFOLK SOUTHERN RAILWAY COMPANY, PAN AM RAILWAYS INC, *ET AL.*
—JOINT CONTROL AND OPERATING/ POOLING AGREEMENTS—
PAN AM SOUTHERN LLC

**APPLICANTS' REPLY TO PETITION OF CLARENDON & PITTSFORD
RAILROAD, GREEN MOUNTAIN RAILROAD, VERMONT RAILWAY, AND
WASHINGTON COUNTY RAILROAD FOR A FINDING THAT THE
PROPOSED TRANSACTION IS A "SIGNIFICANT" TRANSACTION AND FOR
REVISION OF THE PROPOSED PROCEDURAL SCHEDULE**

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Dated: June 27, 2008

(FILING CONTAINS COLOR MAPS)

Introduction

Norfolk Southern Railway Company (“Norfolk Southern”), Pan Am Railways, Inc. (“Pan Am”), Boston and Maine Corporation (“B&M”) and Springfield Terminal Railway Company (“Springfield Terminal”) (collectively “Applicants”) file this reply in opposition to the petition (“VRS Petition”) filed June 24, 2008 by a group of commonly-controlled short line railroads calling themselves the Vermont Railway System (“VRS”), which asks the Board to find the Transaction for which Applicants seek approval to be a “significant” rather than a “minor” transaction and to extend the procedural schedule proposed by Applicants. The Petition’s essential claim is that the Transaction will harm VRS and will therefore be anticompetitive.

By decision served June 26, 2008, the Board accepted the Application and found that it is a “minor transaction” under 49 C.F.R. § 1180.2(c). The Board stated, at page 9:

On its face of the application, there does not appear to be a likelihood of any anticompetitive effects resulting from the Transaction. The Norfolk Southern and Pan Am systems are entirely-end-to-end, and it appears that no shipper would have fewer competitive rail alternatives as a result of the Transaction.

The Transaction also would not appear to have an adverse competitive effect on connecting short line and regional carriers. The Transaction would not impose any interchange restrictions on PAS, and PAS would honor all of the existing interchange contracts with connecting carriers.

The decision also established a procedural schedule, which provides interested parties two weeks more time to file comments, protests and requests for conditions than the schedule the Applicants had proposed.

Although the Board’s decision resolved the issues raised by the VRS Petition, Applicants will treat it as a request to the Board for reconsideration of

the decision and will submit this reply in opposition to any such request. To date and to Applicants' knowledge, VRS is the only person or entity that has filed or stated any objection to the Transaction.¹

The Board's findings that the Transaction will have no anticompetitive effects generally and on short line and regional railroads in particular were correct and warrant no reconsideration. The claims in the VRS Petition to the contrary are completely without merit. First, as even a cursory review of the map will show (*see* Exhibit 1 to this reply), there is no basis whatever for VRS' claim that the Transaction will harm VRS. On the contrary, the Transaction will benefit VRS by giving VRS a new direct connection with NS in addition to the connection it now has with CSX Transportation, Inc. ("CSXT") and Canadian Pacific Railroad. Second, as the Board has stated many times, the Board's proper concern is with harm to *competition*, not harm to *competitors*.² Transactions that enhance competition – for example, by introducing a new competitor to a market or by improving an existing competitor's efficiency or shortening its routes – often harm other competitors by drawing away business from them or requiring them reduce prices. In this case, VRS' principal complaint is that the Transaction will provide another short line railroad, New England Central Railroad ("NECR"), a shorter and better

¹ The Director of Operations of the Vermont Agency of Transportation filed a letter dated June 24, 2008 which generally urges the Board "to adopt procedures that will permit a thorough examination of the impact of the proposed transaction on rail service in Vermont," but does not state any objection to the Transaction or the procedural schedule proposed by Applicants.

² *See, e.g.* F.D. 34342, *Kansas City Southern—Control—Texas Mexican Railway Company et al.* (served November 29, 2004); F.D. NO. 31979, *CSX Corporation and American Commercial Lines, Inc. -Control and Merger-American Valley Line, Inc.*, (served February 10, 1992); *Rio Grand Industries, et al.—Purchase and Related Trackage Rights—Soo Line Railroad Company Line Between Kansas City, MO and Chicago, IL*, 6 I.C.C. 2d 854, 875 (1990).

route via the new Pan Am Southern LLC (“PAS”) than NECR now has over VRS, which VRS speculates will cause NECR to discontinue a haulage service it now provides to VRS. Even if there were any basis for that improbable speculation, the result would not reflect any harm to competition, only a possible harm to a competitor; competition and service to customers in fact would be enhanced.

Accordingly, the Board correctly found in its June 26, 2008 decision that the Transaction is a “minor” transaction under 49 C.F.R. § 1180.2(c).

I. THE TRANSACTION WILL BENEFIT, NOT HARM, VRS.

As detailed in the Application, the Transaction will not reduce but will *increase* the connections that shortline and regional railroads lines in the affected region will have with other railroads. The Application explains, at page 3:

Shortline and regional railroads in the region – the Providence and Worcester Railroad Company (“P&W”), the New England Central Railroad Company (“NECR”) and the Vermont Railroad, Inc. (“VTR”) – will not only interchange traffic with the new railroad, but will obtain new direct routing opportunities for interchange with Norfolk Southern through haulage service provided to Norfolk Southern by PAS. These railroads and their customers will benefit further from a strengthened infrastructure connecting them with the remaining Springfield Terminal system.

At present, the only haulage services Springfield Terminal provides to Norfolk Southern are for intermodal traffic between Mohawk Yard in Schenectady, NY and Ayer, MA. Under the Transaction, pursuant to the Norfolk Southern Joint Use Agreement, PAS will provide to Norfolk Southern additional haulage services to include, among other things, traffic to be interchanged with three regional carriers: with VTR (one of the VRS carriers) at Hoosick Junction, NY, with P&W at Gardner, MA, and with NECR at Brattleboro, VT. This will

give these carriers and their customers, for the first time, direct commercial access to Norfolk Southern. As Applicants' witness John Williams states, the new connection with VTR at Hoosick Junction will "introduce[e] Norfolk Southern's single system service" to VTR at that point, which "will not be adversely affected by the proposed transaction and will likely benefit from the new Norfolk Southern competition." Application, Appendix B, p. 14. As VRS itself acknowledges, the Transaction "will in effect extent NS marketing and operations into Southern New England." VRS Petition at 2.

None of the VRS railroads will lose any existing connections to other railroads under the Transaction. Currently, VTR is the only VRS railroad whose lines connect with lines that will be acquired and operated by PAS; VTR and Springfield Terminal interchange traffic at Hoosick Junction. After the Transaction, VTR will interchange traffic with PAS (as well as Norfolk Southern) at Hoosick Junction. The other VRS railroads interchange traffic with Springfield Terminal at White River Junction, VT, Claremont Junction, VT and Bellows Falls, VT (points that Springfield Terminal access via trackage rights over NECR, which will be assigned to PAS), and will interchange with PAS at the same points after the Transaction. *See* Application, Appendix B at 11-14.

VRS does not dispute any of these facts, but nevertheless contends that the Transaction will jeopardize its existing connection to CSXT at Palmer, MA, which it has by reason of an asserted haulage agreement with NECR under which NECR hauls traffic of the VRS railroads between White River Junction, VT and Palmer, MA over NECR's line between those points. VRS Petition at 4; Wulfson

V.S. at 4-5.³ No aspect of the Transaction, however, will affect or impair in any way NECR's line or its ability to continue hauling VRS traffic between White River Junction and Palmer.

Mr. Wulfson nevertheless speculates that the Transaction will induce NECR to stop providing haulage for VSR traffic because the Transaction will make it unnecessary for NECR to continue using a VRS haulage service over a northern route from Bellows Falls, VT through Rutland, VT to Whitehall, NY in order for NECR to connect with Canadian Pacific Railway ("CP") and Norfolk Southern in Whitehall, NY. Mr. Wulfson states: "That [main] PAS line will also have direct connections with NECR so that NECR cars no longer will need to utilize haulage over VRS to Whitehall." Wulfson V.S. at 4. From this, Mr. Wulfson concludes: "I believe firmly that, if NECR no longer requires haulage via VRS to connect with NS via Whitehall and CP, NECR will have no reason to continue to maintain a commercial balance with VRS and will terminate the haulage that is essential to VRS between Palmer, Bellows Falls and White River Junction." *Id.*

Mr. Wulfson's belief that NECR will stop providing haulage services to VRS between White River Junction, VT and Palmer, MA is the only harm identified by VRS that will allegedly result from the transaction.⁴ Mr. Wulfson's belief, however "firmly" held, is completely speculative and, moreover, is highly improbable. Even if NECR decided, post-Transaction, not to use VRS' haulage

³ The basis for this claim is not explained in the VRS Petition but only in the attached verified statement of David W. Wulfson, president of the VRS railroads ("Wulfson V.S.")

⁴ While VRS and Mr. Wulfson allege other negative effects, such as the resulting need for VRS to move traffic over PAS' lines, all of these are depicted as the likely consequences of NECR's cessation of haulage services for VRS.

services between Bellows Falls and Whitehall because the Transaction provide a shorter and better way for NECR to move traffic to Norfolk Southern and CP, there is no reason to suppose that NECR would stop hauling VRS traffic between White River Junction and other Vermont points and Palmer, MA. Mr. Wulfson, in any event, offers no plausible reason for believing that NECR would decline to provide a revenue-generating transportation service over its line. Moreover, even if NECR did decline to continue moving VRS traffic on a haulage basis, it would continue to have a legal obligation to interchange traffic with the VRS carriers and to move that traffic over NECR's line to Palmer on an interline basis. 49 U.S.C. §§ 10703, 10742.⁵

Furthermore, the reason Mr. Wulfson gives for his belief that NECR will stop using VRS' haulage service and therefore will stop providing haulage to VRS makes no sense. He says: "The PAS line will also have direct connections to NECR so that NECR cars no longer will need to utilize haulage over VRS to Whitehall." Wulfson V.S. at 4. But this overlooks the fact that NECR already has a connection today with Springfield Terminal at East Northfield, MA, Brattleboro, VT and White River Junction, VT. *See* Application at 9, n.5. NECR could use that connection today to have Springfield Terminal move its traffic to

⁵ VRS will also be able, post-Transaction to utilize PAS (and its operator, Springfield Terminal) to move its north-south traffic between White River Junction and other Vermont point and CSXT at Springfield, MA via PAS' line between Springfield, MA and East Northfield, MA and via the trackage rights that will be assigned to PAS over NECR's line between East Northfield and White River Junction. Although VRS disparages the quality of Springfield Terminal's rail service over that line to date (Wulfson V.S. at 2-3), and the fact that the initial capitalization for PAS will be devoted to the Patriot Corridor, Applicants believe the large infrastructure investments they propose eventually will result in improved service over the entire PAS system. Further, ST, and PAS following the Transaction, only has trackage rights over the NECR line. In any event no basis for concluding that the Transaction will worsen that service or reduce in any way VRS' existing competitive options for moving traffic to CSXT.

NS and CP over the line that will become the main PAS line, just as it will be able to after the Transaction.⁶

In sum, there is no basis for VRS' claim that the Transaction will harm VRS.

II. EVEN UNDER VRS' IMPROBABLE SPECULATIONS, THE TRANSACTION WILL ENHANCE, NOT HARM, COMPETITION.

Furthermore, even if one assumes, improbably, that NECR will elect to stop providing haulage services to VRS for the reason, as Mr. Wulfson alleges, that the Transaction will give NECR a better route for moving its traffic to Norfolk Southern and CP than the route it now uses, with VRS' haulage services, from Bellows Falls to Whitehall, NY (see Exhibit 1), that result would clearly not represent a Transaction-related harm to *competition*, even if it resulted in less revenue to individual competitors, the VRS railroad. On the contrary, it would be an example of how the Transaction will *enhance* competition, by establishing more efficient and desirable routes and connections for railroads in the region. The fact that such an effect may adversely impact some individual railroads does not indicate that the Transaction is anticompetitive or that it is not a "minor" transaction under the Board's regulations. As the Board's predecessor said in *Rio Grand Industries, supra*,

[A] showing of expected substantial harm to a particular *competitor* as a result of a transaction is not equivalent to a showing of harm to *competition*. For example, a rail or truck competitor might lose traffic precisely because a transaction promises the significant public *benefit* of

⁶ Mr. Wulfson also discusses a supposed haulage agreement that Green Mountain Railroad ("GMRC") assertedly entered into in 2000 with Guilford Rail System, which controlled Springfield Terminal, but the relevance of this discussion to the VSR Petition is not clear. Wulfson V.S. at 3. Furthermore, his statement that "GMRC has not yet exercised the haulage rights to White River Junction in part because of an inability to reach an appropriate agreement with ST," (*id.*) seems inconsistent with the earlier assertion that a haulage agreement had been reached.

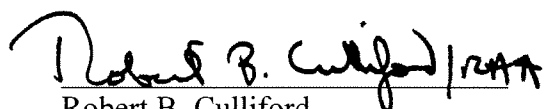
a new, improved transportation alternative. Harm to the competitor would not be grounds for rejection of a proposal or imposition of conditions unless a carrier's ability to provide essential services is threatened.

6 I.C.C.2d at 875.

These observations are particularly apt here. VRS improbable claims of harm, even if accepted, would show only harm to a competitor, not harm to competition, and VSR has not alleged, nor could it plausibly allege, that the Transaction will prevent its ability to provide essential services. Furthermore, the alleged harm to itself is the only basis VRS asserts for its claim that the Transaction should be found to be significant, rather than minor. VRS has not otherwise refuted the Board's conclusion that the proposed Transaction should be deemed to be a "minor" transaction.

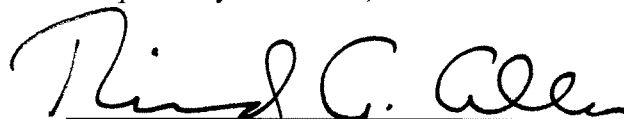
CONCLUSION

The Board correctly found in its decision served June 26, 2008 that the proposed Transaction is a "minor" transaction and should establish the procedural schedule proposed by Applicants.



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Respectfully submitted,



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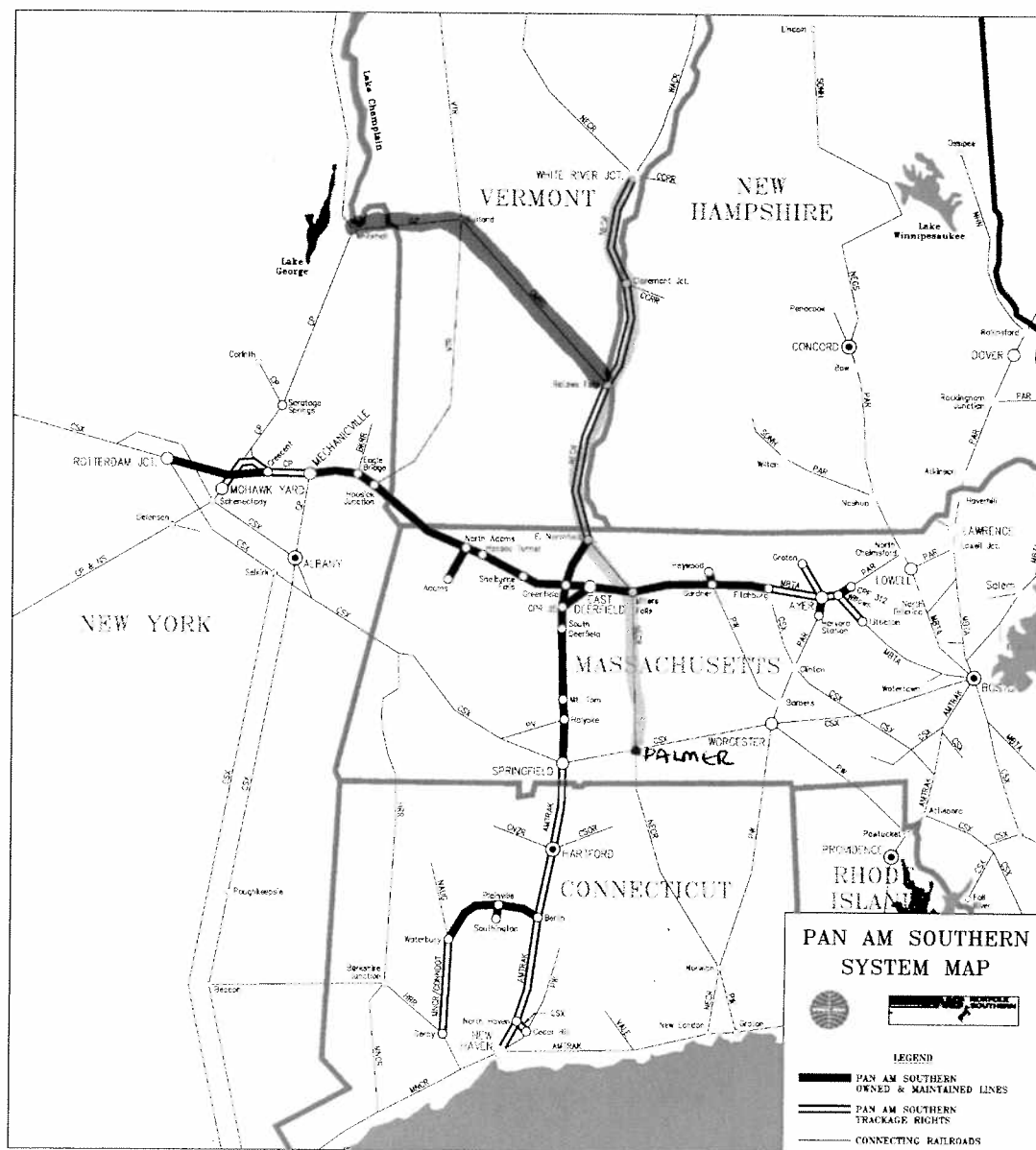
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June 27, 2008

EXHIBIT 1

PAN AM SOUTHERN LLC SYSTEM MAP AND PRE-EXISTING HAULAGE RIGHTS OF "VERMONT RAILWAY SYSTEM" ("VRS") AND NEW ENGLAND CENTRAL RAILROAD AS CLAIMED BY VRS



Asserted VRS haulage rights over NECR

[Redacted]

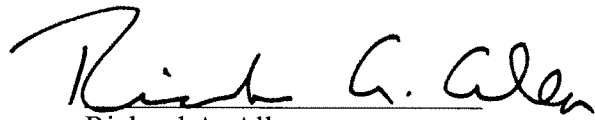
Asserted NECR haulage rights over VRS

[Redacted]

CERTIFICATE OF SERVICE

I certify that I have this 27th day of June, 2008 served a copy of the foregoing
“APPLICANTS’ REPLY TO PETITION OF CLARENDON & PITTSFORD
RAILROAD, GREEN MOUNTAIN RAILROAD, VERMONT RAILWAY, AND
WASHINGTON COUNTY RAILROAD FOR A FINDING THAT THE PROPOSED
TRANSACTION IS A “SIGNIFICANT” TRANSACTION AND FOR REVISION OF
THE PROPOSED PROCEDURAL SCHEDULE” in STB Finance Docket No. 35147, by
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