

**Before the
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35147

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

**PETITION OF UNITED TRANSPORTATION UNION'S AND
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND
TRAINMEN'S FOR A FINDING THAT THE PROPOSED
TRANSACTION IS A "SIGNIFICANT" TRANSACTION AND
FOR REVISION OF THE PROCEDURAL SCHEDULE**

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Dated: July 3, 2008

Attorney for United Transportation Union

United Transportation Union (“UTU”) and Brotherhood of Locomotive Engineers and Trainmen (“BLET”) respectfully join in Petition of Vermont Railway (“VTR”), Clarendon & Pittsford Railroad (“CLP”), Green Mountain Railroad (“GMRC”), and Washington County Railroad (“WACR”), collectively known as the Vermont Railway System (“VRS”), concerning the Application of Norfolk Southern Railway Company (“NS”), Pan Am Railways, Inc. (“PARI”), Boston & Maine Corporation (“B&M”), and Springfield Terminal Railway Company (“ST”) (collectively “Applicants”) for approval of a complex transaction that will in effect extend NS marketing and operations into southern New England.

Under the original application herein, Applicants stated that labor protection (*New York Dock*) did apply to the transaction. Also, in various trackage rights exemption notices filed in conjunction with the transaction, applicants stated that labor protection (*Mendocino Coast*) would apply. Now, applicants have filed a notice of exemption from § 10901 which does not seem to have any labor protection attached to it at all. As a result, UTU and BLET obviously have some serious concerns about whether Applicants will attempt to use this transaction to avoid labor protection altogether. UTU and BLET believe this concern requires greater investigation unless Applicants are willing to state that *New York Dock* and *Mendocino Coast* are applicable to the entire transaction as discussed above without exception.

The public interest requires that a more thorough record be developed to enable a more comprehensive analysis of the transaction and its ramifications on rail labor. UTU and BLET accordingly request the Board to conclude that the proposed transaction is a “significant” transaction within the meaning of 49 U.S.C. § 11345(a)(2) and (c). In any event, the Board should extend the procedural schedule proposed by the Applicants.

II. PROCEDURAL SCHEDULE

The Board has set a procedural schedule under which a final decision would be served on October 20 and all comments, protests, requests for conditions and supporting evidence would be due on August 11, 2008. That procedural schedule is premised on the determination that the proposed transaction qualifies as a “minor” transaction, in which the Board is required to conclude evidentiary proceedings by the 105th day after the date of publication of notice of the Application. *See* 49 U.S.C. § 11325(d).

The Board filed notice of the Application on June 27, 2008, and held that the evidentiary proceeding shall be concluded by August 11, 2008, a span of 45 days, as opposed to the 105 days provided by statute for “minor” transactions. UTU and BLET seek this relief from the Board’s prior decision because of their serious concerns which do not seem to have been addressed by Applicants in a straightforward manner. Based on this information, under the statute, the Board should conclude that this is a “significant transaction” and should allow 180 days for the conclusion of evidentiary proceedings. 49 U.S.C. § 11325(c). The Board’s present procedural schedule plainly deprives rail labor of adequate time in which to pursue discovery and prepare and present their case.

Even if the Board maintains that this transaction is “minor,” the procedural schedule is far too short to permit development of an adequate record. At a minimum, the Board should extend the schedule to allow interested parties the full 105 days following notice to complete the evidentiary record.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petition has been served this 3rd day of July, 2008 via first-class, postage pre-paid mail upon the following:

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