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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35147

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

ENVIRONMENTAL COMMENTS

The New York State Department of Transportation (NYSDOT) has reviewed the Environmental Appendix prepared in support of Finance Docket No. 35147 - Norfolk Southern Railway Company, Pan Am Railways Inc., et al - Joint Control and Operating/Pooling Agreements - Pan Am Southern LLC and offers the following comments.

The creation of Pan Am Southern LLC (PAS) provides an opportunity for increased competition in New York State which will benefit shippers and consumers throughout the northeast. In addition, the elimination of 35,000 truck trips annually from New York's roadways has significant public benefits.

NYSDOT concurs with the conclusion that the creation of PAS, joint control of PAS by Norfolk Southern Railway Co. (NS) and Pan Am Railways Inc., (PAR) the rehabilitation of existing rail lines and structures to remove slow orders and allow passage of 286,000 lb. rail cars, the elimination of clearance obstructions to allow passage of double stack rail cars, and the proposed changes to train operations do not warrant further environmental review under the National Environmental Policy Act ("NEPA") and the Board's environmental rules at 49 CFR 1105

PAS has stated that they will obtain federal and, to the extent applicable, state environmental permits for construction of the new Mechanicville facility (Environmental Appendix, p. 17). NYSDOT applauds this commitment by the applicants to work with state and local entities, but it is critically important that this proceeding assess all potential environmental effects of the transaction, as states and local agencies have been held under certain circumstances to be preempted from conducting environmental reviews under state law (Joint Petition for Declaratory order - Boston & Maine Corp and Town of Ayer, MA., FD 33971).

Page 33 of Application, footnote 25 states: "The Transaction Agreement contemplates that the Applicants may apply for public funding for certain infrastructure improvements, but the Transaction is not contingent upon the receipt thereof" NYSDOT administers

two funding programs for which the capital improvements proposed are potentially eligible. Similarly, based on a preliminary site plan for the Mechanicville facility presented to NYSDOT by the parties on June 26, 2008 it appears that construction of the facility will require a highway work permit to be issued by NYSDOT to permit work with the highway night-of-way for the access road to the facility.

Projects funded by NYSDOT or permits issued by NYSDOT require compliance with the New York State Environmental Quality Review Act ("SEQRA"). If the parties were to appear before NYSDOT with either a funding application or Highway Work Permit application, additional information would be required for NYSDOT to comply with its obligations under SEQRA. (Other State and Local permits may also be necessary which would constitute an independent basis for SEQRA compliance.) Therefore, NYSDOT recommends that NS and PAR consider amending the Environmental Appendix to address the following issues associated with the Mechanicville facility:

- Effect of the proposed facility on the regional highway network.
 - On June 26, NS and PAR met with NYSDOT and committed to provide additional information on truck distribution from the Mechanicville Intermodal Facility. In keeping with this commitment, the parties should include a Traffic Impact Study to assess the operational and physical impacts of the Mechanicville facility on state and local highways.
 - The application and Environmental Appendix allude to highway improvements undertaken by NYSDOT in the vicinity of the Mechanicville facility to make them suitable for truck traffic (Environmental Appendix, P.8) However, these highway improvements were developed with no advance knowledge of the Mechanicville facility on the part of NYSDOT. The information provided in the Environmental Appendix is not of sufficient detail to allow NYSDOT to determine if the improvements are adequate to handle the truck traffic generated by the Mechanicville facility over and above the traffic projections on which the improvements are based.
- Effect on properties listed or eligible for listing on the National Register of Historic Places
 - Prior NYSDOT projects in the vicinity of the proposed Mechanicville facility have identified railroad-related properties listed or eligible for listing on the National Register of Historic Places. NYSDOT recommends the Environmental Appendix include a determination by the State Historic Preservation Officer regarding the effect of the project on historic sites
- Effect on endangered species.
 - Prior NYSDOT projects in the vicinity of the proposed Mechanicville facility have identified potential habitat for endangered species. NYSDOT recommends the applicants coordinate with the US Fish & Wildlife service to identify any threatened or endangered species in the vicinity of the Mechanicville facility and determine whether the project will affect any habitat areas.

- **Effect on surface waters and wetlands**
 - The Mechanicville site is directly adjacent to the Anthony Kill and associated wetlands. NYSDOT recommends the applicants identify wetland impacts and document efforts to avoid, minimize, or mitigate those impacts.
 - NYSDOT recommends the applicants document their compliance with NPDES / SPDES requirements under the Clean Water Act.
- **Effect on Air Quality**
 - The Environmental Appendix states that "close to 35,000 trucks per year will be diverted by 2015." This substantial number of truck diversions could have a significant affect in the Capital District. NYSDOT recommends the applicants coordinate with the Capital District Transportation Committee (CDTC) to determine how to account for the decrease in truck traffic in their future Transportation Conformity Determinations
 - As this transaction affects diesel locomotive and truck engines, NYSDOT recommends that PM emissions and Mobile Source Air Toxics be included in the analysis.
 - NYSDOT recommends that a CO or PM microscale analysis be performed, or, at a minimum, the applicants consider screening for the project's microscale air quality impacts.
 - Throughout the document, it is stated that truck traffic will be decreased as a result of the transaction. NYSDOT recommends that the air quality analysis account for the air quality benefits associated with a decrease in truck traffic of "close to 35,000 trucks"
 - The document does not consider greenhouse gas emissions (GHG) as part of the analyses. NYSDOT recommends the applicants address GHG as part of the analyses, particularly as they relate to construction activity.
 - Exhibit B, Table 1: Footnote b is incorrect as it applies to the 4th column of the table ("2012 Projected Transaction related Traffic Change") as data contained within this column does not include traffic unrelated to the project.
 - Exhibit C, "Clean Air Attainment Status": The 2nd column of the table identifies the attainment status (i.e. "moderate".) This is incorrect. The attainment status should be in the 3rd column to identify the non attainment status (i.e.: "Non Att" should read "Moderate Non Att.) Also, "Ozone" should be identified as "8-hour Ozone"
- **Noise Impacts**
 - The Board considers noise impacts to be potentially significant only where noise levels would increase by at least 3 decibels (dBA) and the resulting noise level experienced would be 65 dBA or greater. While the Environmental Appendix establishes that the increase in noise would not exceed the 3 dBA threshold, NYSDOT recommends the applicants address the second part of the two-part test regarding the overall noise level in comparison to the 65 dBA threshold.

- NYSDOT recommends the Environmental Appendix identify measures to ensure the safety and security of the Mechanicville facility, including measures such as fencing, video surveillance, and coordination with state and local law enforcement.

Finally, NYSDOT encourages the applicants to identify and implement measures to make the Mechanicville facility a "green" facility, including use of low-emission locomotives and yard equipment.

Respectfully submitted,

The New York State Department of Transportation

by 

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