

223079

Board of Selectmen

MEETING TUESDAYS AT 7 00 P M • UPPER TOWN HALL • 1 MAIN STREET • AYER, MASSACHUSETTS 01432

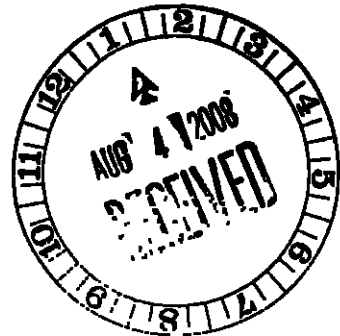
Tel (978) 772-8220
Fax (978) 772-3017

Monday, July 28, 2008



Town Administrator
(978) 772-8210

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street
Washington, DC 20024



Re: Notice of Intent to Participate
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:

Pursuant to the Board's decision served on June 26, 2008, the Town of Ayer, MA hereby notifies the Board of its intent to participate in this proceeding. Please add my name to the service list as representing a Party of Record. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Carolyn L. McCreary".

Carolyn L. McCreary, Chair
Town of Ayer Board of Selectmen
One Main Street
Ayer, MA 01432

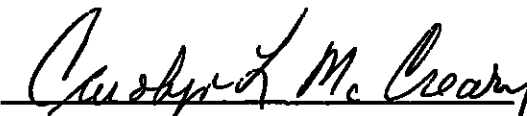
ENTERED
Office of Proceedings
AUG 4 2008
Part of
Public Record

cc: Ayer Board of Selectmen

CERTIFICATE OF SERVICE

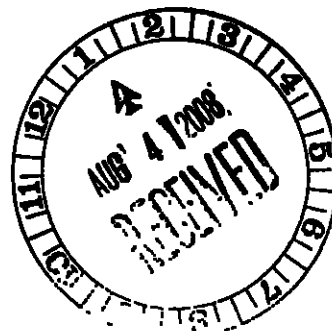
I, Carolyn L. McCreary, Chair of the Town of Ayer Board of Selectmen, hereby certify that I have this day served copies of the Town of Ayer's Notice of Intent to Participate and Certificate of Service, by first class mail, postage prepaid, on all parties of record in this proceeding.

July 28, 2008


Carolyn L. McCreary

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

THE TOWN OF AYER, MA
CERTIFICATE OF SERVICE PURSUANT TO 49 CFR Part 1104

THE TOWN OF AYER, MA ("Ayer") hereby certifies that it has this day served a copy of its Notice of Intent to Participate dated today (attached herein) upon all Parties of Record on the attached Service List, by first class mail, postage prepaid. Ayer's only other filing in this matter is the Intent to Participate.

Respectfully submitted,



CAROLYN L. MCCREARY, Chair
Town of Ayer Board of Selectmen
One Main Street
Ayer, MA 01432

ENTERED
Office of Proceedings

AUG 4 2008

Part of
Public Record

July 28, 2008

Chalmers Hardenbergh
Atlantic Northeast Rails & Ports
P O Box 941
Yarmouth, ME 04096

David A Hirsh
Harkins Cunniham
1700 K Street, NW Suite 400
Washington, DC 20006-3817

Eric M Hocky
Thorpe Reed & Armstrong, LLP
One Commerce Sq -200 Market St.
Suite 1910
Philadelphia, PA 19103

Toni L Kemmerle
Maine Department of Transportation
16 State House Station
Augusta, ME 04333-1116

Ronald A Lane
Fletcher & Sippel LLC
29 North Wacker Drive-Suite 920
Chicago, IL 60606-2875

DonnaLee Lozeau
City of Nashua
P O. Box 2019
Nashua, NH 03061-2019

Kevin C Maughan
Greenbrier Leasing Company LLC
One Centerpointe Drive-Suite 200
Lake Oswego, OR 97035

Keith G O'Brien
Backer & Miller PLLC
2401 Pennsylvania Ave NW
Washington, DC 20037

Harold A Ross
Gen. Counsel Brotherhood of Locomotive
Engineers
23195 Stoneybrook Drive
North Olmsted, OH 44070

Roger J Schiera
New York State Dept. of Transportation
50 Wolf Rd
Albany, NY 12232

Shaun Suhoski
1 Main Street
Ayer, MA 01432

James E Howard
James E. Howard, LLC
One Thompson Square-Suite 201
Charlestown, MA 02129

Stephen G Labonte
State of New Hampshire
33 Capital Street
Concord, NH 03301

Samuel B Lewis
State of Vermont
One National Life Drive
Montpelier, VT 05633-5001

Kevin C Maughan
Greenbrier Leasing Co LLC
One Centerpointe Dr Suite 200
Lake Oswego, OR 97035

Jeffrey B Mullan
Commonwealth of MA
Ten Park Plaza
Boston, MA 02116-3969

Edward J Rodriguez
Housatonic Railroad
P O Box 687
Old Lyme, Ct 06371

Denny Salisbury
Pike county Engineer's Office
502 South Pike St
Waverly, OH 45690

William Sippel
Fletcher & Sippel
29 North Wacker Dr Suite 920
Chicago, IL 60606-2875

Vincent P Szeligo
Wick Street Meyer O'Boyle & Szeligo PC
1450 Two Chatham Center
Pittsburgh, Pa 15219-3427

William L Taber
Batten Kill Railroad
Batten Kill Railroad Bldg -1 Elbow St
Greenwich, NY 12834

Anne K Quinlan, Esq
Acting Secretary
Surface Transportation Board
395 E Street
390 Washington, DC 2024

Edward D Greenberg
Canal Square
1054 Thirty-First St, N W
Washington, D C 20007

Marie Angelini, Esq
Providence & Worcester Railroad
75 Hammond St
Worcester, MA 01610

Richard A Allen
Zuckert Scoutt & Rasenberger LLP
888 Seventeenth St, N W Suite 700
Washington, D C 20006-3309

Harry P Carroll
City of Springfield, MA
36 Court St, Room 210
Springfield, MA 01103

Robert B Culliford
PamAm Railways, Inc
14 Aviation Avenue
Portsmouth, NH 03801

Richard S Edelman
O'donnell, Schwartz & Anderson, PC
1300 L Street, NW, Suite 1200
Washington D C 20005

Louis E Gitomer
The Adams Building, Suite 301
600 Baltimore Ave.
Towson, MD 21204

Thomas D Hall
Committee to Improve Rail Service in
Maine
176 Merrill Road
Pownal, ME 04069

Captain Dirck Hecking
Consultant Group of Hecking & Remington
6215 Coffman Rd
Indianapolis, IN 46268

Timothy W. Brennan
Pioneer Valley Comm
25 Central Street
W Springfield, MA 01089

Eugene J Colonese
Connecticut Dept of Transportation
P.O Box 317546
Newington, CT 06131-7546

John K Dunleavy
Assistant Attorney General
National Life Building Drawer 33
Montpelier VT 05633-5001

Daniel R. Elliott III
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

Andrew P Goldstein
McCarthy, Sweney & Harkaway, PC
2175 K Street, NW, Suite 600
Washington, DC 20037

Peter C Vail
Carolina-Eastern-Vail, Inc
P O Box 483
Salcm, NY 12865

Ford B. West
The Fertilizer Institute
820 First St, NE Suite 430
Washington, DC 20002

David B Ames
Town of Athol, MA
584 Main St.-Suite 14
Athol, MA 01331

Robert Borenstein
R&D Advance Warehousing Corp Inc.
201 Merrimack St -Suite 14
Lawrence, MA 01843-1693

Dave Buschner
Trailer Transport Systems, Inc/
900 Jefferson Rd Suite 1200
Rochester, NY 14623

Charles T. Connors
H&M International Transportation
75 County Rd
Jersey City, NJ 07307

Darl Curren
70-80 Grove St
Watertown, MA 02472

Dave Fellon
Progressive Rail Incorporated
21778 Highview Avenue
Lakeville, MN 55044

Myles L Tobin
Fletcher & Sippel LLC
29 North Wacker Dr Suite 920
Chicago, IL 60606-287

Christina M Wenzel
Zuckert Scoutt & Rassenberger LLP
888 17th St, N.W
Washington, DC 20006-3309

Michael S Wolly
Zwerdling Paul Leibig Kahn & Wolly
1025 Connecticut Ave NW-Suite 712
Washington, DC 20036

Joseph Basile
Cantania Spagna Corp
P O Box J
Ayer, MA 01432-0227

Peter R Bresnee
Mercedes-Benz
P O Box 350
Montvale, NJ 07645-0350

Ralph Carpenter
Northeast Paper Services Inc
10 Parkway Drive
Scarborough, ME 0Savings generated
\$54K4074

Scott P Conti
75 Hammond St
Worcester, MA 01610

John M Cutler
McCarthy Sweeney & Harkaway PC
2175 K Street NW -Suite 600
Washington, DC 20037

Christopher M Gardner
Washington County Commissioners
P O Box 297
Machuas, ME 04654

James B Hebenstreit
Bartlett & Co
4900 Main St.-Suite 1200
Kansas City, MO 64112-2807

Richard P Hyland
Celtic International
14535 John Humphrey Dr-Suite 200
Orland Park, IL 60462

Bernard R Kubiak
Town of Deerfield
8 Conway St
So Deerfield, MA 01373

Kathleen A Larson
E W Larson Reload Inc
38 Old Auburn Rd.
Derry, NH 03038

Mark A Marasco
Maple Leaf Distribution Serv Inc
Palmer Industrial Park
Bondsville, MA 01009

Robert W Murphy
Polyone Distribution
91 Fitchburg Rd
Ayer, MA 01432

Victor A Oberling Jr
7 Madison St
Troy, NY 12180-4929



Robert C Papworth
Matson Integrated Logistics
1855 Gateway Boulevard-Suite 250
Concord CA 94520

Steven M. Golich
Alliance Shippers Inc
15515 South 70th Court
Orland Park, IL 60462

Gary W Hogg
New Hampshire Northcoast
P O Box 429
Ossipee, NH 03864

Kendall P Kellaway
Roadlink
P O Box 750
Randolph, MA 02368

Peter R. Leishman
Milford-Bennington Railroad Co., Inc
62 Elm St.
Milford, NH 03055

Richard J Miller
All States Asphalt Inc .
P.O Box 91
Sunderland, MA 01375

Jane O'Hagan
Canadian Pacific
40 -9th Ave , SW -Suite 500
Calgary, AB T2P 4Z4

Anthony J. Pacella
Cushing Transportation Inc
3756 South Cicero Ave
Cicero, IL 60804-4536

Michael Partridge
Verso Paper Corp
6775 Lenox Center Ct.
Memphis, TN 38115

Patrick J Paul
Lane Construction Corp
216 Mt Herrmon Station Rd
Northfield, MA 01360

Randy Rotermund
Sappi Fine Paper North America
225 Franklin St
Boston, MA 02110

Steve Thibert
Madison Paper Ind
P O Box 129
Madison, ME 04950-0129

William E Whitney
Blue Seal Feeds Inc
P O Box 8000
Londonderry, NH 03053-8000

Thomas S Williams
J B Hunt
P O Box 130
Lowell, MA 02745-0130

David Wulfson
Vermont Railway Inc
One Railway Lane
Burlington, VT 05401

Robert W Rich III
Roar Logistics
2495 Main St -Suite 442
Buffalo, NY 14214

Larry Strug
Subaru of America, Inc
P O Box 6000
Cherry Hill, NJ 08034-6000

Jean Marie Voytyshyn
International Ramp Management
2721 South Avenue
Council Bluffs, IA 51503

Walt Whit
Clipper Group
9014 Heritage Pkdr -Suite 300
Woodbridge, IL 60517-4939

Mindy Wormuth
Town of Halfmoon
2 Halfmoon Town Plaza
Halfmoon, NY 12065

Brian Wynne
Port Elizabeth Terminal & Warehouse Corp
201A Export St
Port Newark, NJ 07114



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

MAINE DEPARTMENT OF TRANSPORTATION'S
CERTIFICATE OF SERVICE PURSUANT TO 49 CFR Part 1104

The MAINE DEPARTMENT OF TRANSPORTATION ("MaineDOT") hereby certifies
that it has this day served a copy of its Notice of Intent To Participate dated July 7, 2008 upon all
Parties of Record on the attached Service List, by first class mail, postage prepaid. MaineDOT's
only previous filing in this matter was its aforesaid Notice of Intent to Participate.

Respectfully submitted,

TONI L. KEMMERLE

Chief Counsel

Maine Department of Transportation

16 State House Station

Augusta, Maine 04333

July 22, 2008



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0016

COPY

DAVID A. COLE
COMMISSIONER

July 7, 2008

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



Re: Notice of Intent to Participate
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:

Pursuant to the Board's Decision served on June 26, 2008, the Maine
Department of Transportation hereby notifies the Board of its intent to participate in this
proceeding. Please add my name to the service list as representing a Party of Record.

Thank you for your assistance.

Sincerely yours,

Toni L. Kemmerle
Chief Counsel
Maine Department of Transportation
16 State House Station
Augusta, Maine 04333-0016



PRINTED ON RECYCLED PAPER

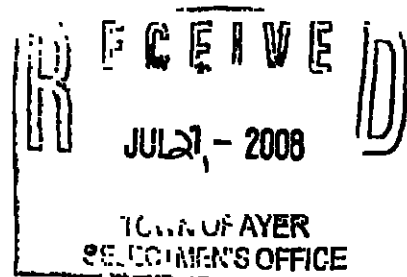
CERTIFICATE OF SERVICE

I, Toni L. Kemmerle, Chief Counsel for the Maine Department of Transportation, hereby certify that I have this day served copies of the Maine Department of Transportation's Notice of Intent to Participate and Certificate of Service, by first class mail, postage prepaid, on all parties of record in this proceeding.

July 22, 2008


Toni L. Kemmerle

**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**

**COMMENTS OF
PROVIDENCE AND WORCESTER RAILROAD COMPANY**

In accordance with the Board's decision served June 26, 2008 in this proceeding, Providence and Worcester Railroad Company ("P&W") hereby submits its Comments concerning the above-referenced transaction.

P&W is a Class II regional freight railroad operating in Massachusetts, Rhode Island, Connecticut and New York. P&W is the only interstate freight carrier serving the state of Rhode Island and possesses the exclusive right to conduct freight operations over the Northeast Corridor between New Haven, Connecticut and the Massachusetts-Rhode Island border. P&W provides service over approximately 516 miles of track and has connections with multiple Class I railroads, either directly or through connections with regional or shortline carriers. As particularly relevant here, P&W directly connects with PanAm Railways ("PanAm"), through its Springfield Terminal Company ("ST") and/or Boston & Maine Railroad Company ("B&M"), both at Gardner and Barbers, Massachusetts.

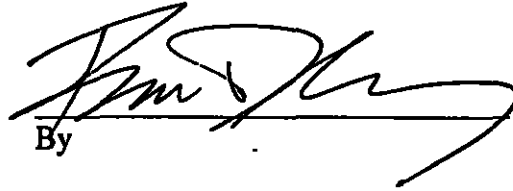
The proposed transaction between Norfolk Southern Railway Company ("NS") and PanAm promises to enhance the rail infrastructure on the so-called Patriot Corridor

between Mechanicville, New York and Ayer, Massachusetts, which is one of several primary rail arteries for traffic moving into and out of New England. As such, and since the Applicants have specifically represented that no competitive options will be eliminated (Application, Volume I, at 3), P&W believes that the proposed transaction will promote improved rail service in the region, increase competitive options for rail customers, and allow freight to be removed from New England area highways, thus benefiting the environment and reducing congestion.

It is important to note that P&W's support for the transaction is conditioned upon the Applicants' representation that no competitive options will be eliminated. Presently, P&W directly connects with ST at Barbers and Gardner, Massachusetts. The Application notes that P&W traffic would still be interchanged at those two locations (*see* Verified Statement of John H. Williams, Application, Volume I, Appendix B, at 13), with ST maintaining its current interchange with P&W at Barbers, Massachusetts but interchanging with PanAm Southern, rather than ST, at Gardner, Massachusetts. In view of the Applicants' representations that these two interchanges will be maintained, P&W agrees that the proposed arrangements would be procompetitive and beneficial and accordingly supports this transaction as proposed and hereby requests that any order issued by the Board on this matter require Pan Am, through ST and/or B&M, to maintain the connection with P&W at Barbers, Massachusetts.

In the event that conditions requested by third parties or ultimately added by the Applicants adversely affect the interests of P&W and/or its customers, P&W reserves the right to submit further Comments at an appropriate time.

Respectfully submitted,



By

Edward D. Greenberg
Galland, Kharasch, Greenberg,
Fellman & Swirsky, P C.
Canal Square
1054 Thirty-First Street, N.W.
Washington, D.C. 20007
Telephone: 202-342-5277
Facsimile: 202-342-2311

Marie Angelini, Esq.
Providence and Worcester
Railroad Company
75 Hammond Street
Worcester, MA 01610
Phone: 508-795-4000

Attorneys for
Providence and Worcester Railroad
Company

Dated: July 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Providence and Worcester
Railroad Company were served this date on the following parties of record

Allen, Richard A
Zuckert Scoutt & Rasenberger Llp
888 Seventeenth Street N W Suite 700
Washington, DC 20006-3309

Brennan, Timothy W
Pioneer Valley Comm
25 Central Street
West Springfield, MA 01089

Carroll, Harry P
The City Of Springfield, Massachusetts
36 Court Street, Room 210
Springfield, MA 01103

Colonese, Eugene J
Connecticut Department Of Transportation
P. O Box 317546
Newington, CT 06131-7546

Culliford, Robert B
Pan Am Railways, Inc.
14 Aviation Avenue
Portsmouth, NH 03801

Dunleavy, John K
Assistant Attorney General
National Life Building Drawer 33
Montpelier, VT 05633-5001

Edelman, Richard S
O'donnell, Schwartz And Anderson, P C
1300 L Street, N W, Suite 1200
Washington, DC 20005

Elliott III, Daniel R
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

Gitomer, Louis E.
The Adams Building, Suite 301
600 Baltimore Avenue
Towson, MD 21204

Goldstein, Andrew P.
Mccarthy, Swency & Harkaway, P C
2175 K Street, N. W, Suite 600
Washington, DC 20037

Hall, Thomas D
The Committee To Improve Rail Service In Maine
176 Merrill Road
Pownal, ME 04069

Hardenbergh, Chalmers
Atlantic Northeast Rails & Ports
P O BOX 941
Yarmouth, ME 04096

Hecking, Captain Dirck
Consultant Group Of Hecking & Remington, Llp
6215 Coffman Road
Indianapolis, IN 46268

Hirsh, David A
Harkins Cunningham
1700 K Street, Nw, Suite 400
Washington, DC 20006-3817

Hocky, Eric M.
Thorp Reed & Armstrong, Llp
One Commerce Square 2005 Market Street, Suite 1910
Philadelphia, PA 19103

Howard, James E
James E. Howard, L.L.C.
One Thompson Square-Suite 201
Charlestown, MA 02129

Kemmerle, Toni L
Maine Department Of Transportation
16 State House Station
Augusta, ME 04333-0016

Labonte, Stephen G
State Of New Hampshire
33 Capitol Street
Concord, NH 03301

Lane, Ronald A
Fletcher & Sippel Llc
29 North Wacker Drive Suite 920
Chicago, IL 60606-2875

Lewis, Samuel B
State Of Vermont
One National Life Drive
Montpelier, VT 05633-5001

Lozeau, DonnaLee
City Of Nashua
P. O. Box 2019
Nashua, NH 03061-2019

Maughan, Kevin C
Greenbrier Leasing Company Llc
One Centerpointe Drive Suite 200
Lake Oswego, OR 97035

Maughan, Kevin C
Greenbrier Leasing Company Llc
One Centerpointe Drive Suite 200
Lake Oswego, OR 97035

Mullan, Jeffrey B
The Commonwealth Of Massachusetts
Ten Park Plaza
Boston, MA 02116-3969

O'brien, Keith G
Baker & Miller Pllc
2401 Pennsylvania Avenue, Nw
Washington, DC 20037

Rodriguez, Edward J
Housatonic Railroad
P O BOX 687
Old Lyme, CT 06371

Ross, Harold A
Gen Counsel, Brotherhood Of Locomotive Engineers
23195 Stonybrook Drive
North Olmsted, OH 44070

Salisbury, Denny
Pike County Engineer's Office
502 South Pike Street
Waverly, OH 45690

Schiera, Roger J.
New York State Department Of Transportation
50 Wolf Road
Albany, NY 12232

Sippel, William
Fletcher & Sippel
29 North Wacker Drive Ste 920
Chicago, IL 60606-2875

Suhoski, Shaun A.
1 Main Street
Ayer, MA 01432

Szeligo, Vincent P
Wick Streiff Meyer O'boyle & Szeligo Pc
1450 Two Chatham Center
Pittsburgh, PA 15219-3427

Taber, William L
The Battern Kill Railroad
Batten Kill Railroad Building, 1 Elbow Street
Greenwich, NY 12834

Tobin, Myles L
Fletcher & Sippel Llc
29 North Wacker Drive, Suite 920
Chicago, IL 60606-2875

Vail, Jr , Peter C
Carolina Eastern-Vail, Inc
P. O Box 483
Salem, NY 12865

Wenzel, Christina M.
Zuckert Scoutt & Rasenberger, L L P
888 17Th Street, N W
Washington, DC 20006-3309

West, Ford B.
The Fertilizer Institute
820 First Street, Ne Suite 430
Washington, DC 20002

Wolly, Michael S
Zwerdling Paul Leibig Kahn & Wolly
1025 Connecticut Ave Nw Suite 712
Washington, DC 20036

Ames, David B
Town Of Athol, Massachusetts
584 Main Street - Suite 14
Athol, MA 01331

Basile, Joseph
Catania-Spagna Corporation
P.O Box J
Ayer, MA 01432-0227

Borenstein, Robert
R&D Advance Warehousing Corp., Inc.
201 Merrimack Street
Lawrence, MA 01843-1693

Bresnee, Peter R
Mercedes-Benz
P.O. Box 350
Montvale, NJ 07645-0350

Buschner, Dave
Trailer Transport Systems, Inc
900 Jefferson Rd Suite 1200
Rochester, NY 14623

Carpenter, Ralph
Northeast Paper Services, Inc.
10 Parkway Drive
Scarborough, ME 04074

Connors, Charles T
H&M International Transportation, Inc.
75 County Road
Jersey City, NJ 07307

Conti, P Scott
75 Hammond Street
Worcester, MA 01610

Curren, Darl
70-80 Grove Street8
Watertown, MA 02472

Cutler, John M
Mccarthy Sweeney & Harkaway P C
2175 K Street Nw Suite 600
Washington, DC 20037

Fellon, Dave
Progressive Rail Incorporated
21778 Highview Avenue
Lakeville, MN 55044

Gardner, Christopher M
Washington County Commissioners
P O. Box 297
Machias, ME 04654

Gardner, Christopher M
Eastport Authority
P.O. Box 278
Easport, ME 04631-0278

Golich, Steven M
Alliance Shippers Inc.
15515 South 70Th Court
Orland Park, IL 60462

Hebenstreit, James B.
Bartlett And Company
4900 Main Street, Suite 1200
Kansas City, MO 64112-2807

Hogg, Gary W
New Hampshire Northcoast
P.O. Box 429
Ossipee, NH 03864

Hyland, Richard P
Celtic International
14535 John Humphrey Dr Suite 200
Orland Park, IL 60462

Kellaway, Kendall P
Roadlink
P. O. Box 750
Randolph, MA 02368

Kubiak, Bernard R
Town Of Deerfield
8 Conway Street
South Deerfield, MA 01373

Lang, Jeff
Eagle Systems
P. O. Box 2177
Wenatchee, WA 98807-2177

Larson, Kathleen A
E.W. Larson Reload, Inc
38 Old Auburn Road
Derry, NH 03038

Leishman, Peter R
Milford-Bennington Railroad Co , Inc
62 Elm Street
Milford, NH 03055

Marasco, Mark A
Maple Leaf Distribution Services, Inc.
Palmer Industrial Park
Bondsville, MA 01009

Miller, Ricahrd J
All Staes Asphlat, Inc.
P O Box 91
Sunderland, MA 01375

Murphy, Robert W
Polyone Distribution
91 Fitchburg Road
Ayer, MA 01432

O'hagan, Jane
Canadian Pacific
40 - 9Th Avenue, Sw Suite 500
Calgary, AB T2P 4Z4

Oberting, Jr., Victor A.
7 Madison Street
Troy, NY 12180-4929

Pacella, Anthony J.
Cushing Transportation, Inc.
3756 South Cicero Avenue
Cicero, IL 60804-4536

Papworth, Robert C.
Matson Integrated Logistics
1855 Gateway, Boulevard, Suite 250
Concord, CA 94520

Partridge, Michael
Verso Paper Corp.
6775 Lenox Center Ct
Memphis, TN 38115

Paul, Patrick J.
The Lane Construction Corporation
216 Mt Herrmon Station Road
Northfield, MA 01360

Rich III, Robert E.
Roar Logistics
2495 Main Street, Suite 442
Buffalo, NY 14214

Rotermund, Randy
Sappi Fine Paper North America
225 Franklin Street
Boston, MA 02110

Strug, Larry
Subaru Of America, Inc
P O Box 6000
Cherry Hill, NJ 08034-6000

Thibert, Steve
Madison Paper Industries
P.O. Box 129
Madison, ME 04950-0129

Voytyshyn, Jean Marie
Intermodal Ramp Management
2721 South Avenue
Council Bluffs, IA 51503

Whitney, William E
Blue Seal Feeds, Inc
P. O Box 8000
Londonderry, NH 03053-8000

Whitt, Walt
Clipper Group
9014 Heritage Pkdy Suite 300
Woodbridge, IL 60517-4939

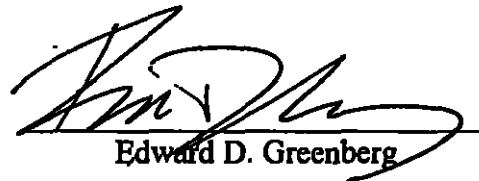
Williams, Thomas S
J B. Hunt
P O Box 130
Lowell, AR.72745-0130

Wormuth, Mindy
Town Of Halfmoon
2 Halfmoon Town Plaza
Halfmoon, NY 12065

Wulfson, David
Vermont Railway, Inc
One Railway Lane
Burlington, VT 05401

Wynne, Brian
Port Elizabeth Terminal & Warehouse Corp
201A Export Street
Port Newark, NJ 07114

Dated this 16th day of July, 2008.



Edward D. Greenberg

39173
EB

SERVICE DATE – JULY 21, 2008



SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35147¹

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

Decided: July 18, 2008

In this decision, we deny the petitions of the Clarendon & Pittsford Railroad, Green Mountain Railroad, Vermont Railway, and the Washington County Railroad – an affiliated group of Class III railroads known as the “Vermont Railway System” (collectively, VRS) – and of United Transportation Union and Brotherhood of Locomotive Engineers and Trainmen (UTU/BLET) to designate the transaction in this proceeding as a “significant” transaction under 49 CFR 1180.2(b) and for a revision of the procedural schedule.

BACKGROUND

By decision served in this proceeding on June 26, 2008, and published in the Federal Register on June 27, 2008, at 73 FR 36586, we accepted for consideration the primary application and related filings submitted by Norfolk Southern Railway Company (Norfolk Southern), Pan Am Railways, Inc. (PARI) (a noncarrier railroad holding company), and two of PARI’s rail carrier subsidiaries, Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (Springfield Terminal) (collectively, Applicants). The primary application seeks Board approval under 49 U.S.C. 11322 and 11323 of (1) the proposed acquisition by Norfolk Southern and B&M of joint control and ownership of Pan Am Southern LLC (PAS), a new rail carrier to be formed; and (2) the agreements by which Springfield Terminal would operate the lines of PAS and establish rates for PAS. The agreements for which approval and authorization are being sought by the application and the related filings will be referred to collectively as the Transaction.

¹ The decision in this proceeding also embraces Pan Am Southern LLC – Acquisition and Operation Exemption – Lines of Boston and Maine Corporation, STB Finance Docket No. 35147 (Sub-No. 1); Norfolk Southern Railway Company – Trackage Rights Exemption – Pan Am Southern LLC – Between Mechanicville, NY and Ayer, MA, STB Finance Docket No. 35147 (Sub-No. 2); and Springfield Terminal Railway Company – Trackage Rights Exemption – Pan Am Southern LLC – Between CPF 312 Near Willows, MA, and Harvard Station, MA, STB Finance Docket No. 35147 (Sub-No. 3) (collectively, the related filings).

Based on the information provided in the application, we found the proposed Transaction to be a "minor transaction" under 49 CFR 1180.2(c). Under this provision, a transaction that does not involve two or more Class I railroads is minor if it appears that (1) the transaction would clearly not have anticompetitive effects, or (2) any anticompetitive effects would clearly be outweighed by the transaction's contribution to the public interest in meeting significant transportation needs and thus that the transaction is not of regional or national transportation significance. We held that, on the face of the application, there does not appear to be a likelihood of any anticompetitive effects resulting from the Transaction, because the Norfolk Southern and Pan Am systems are entirely end-to-end and no shipper would appear to have fewer competitive rail alternatives as a result of the Transaction. We also observed that the Transaction would not appear to have an adverse competitive effect on connecting short line and regional carriers, reasoning that: (1) the Transaction would not impose any interchange restrictions on PAS, and PAS would honor all of the existing interchange contracts with connecting carriers; (2) none of the eight short lines that would connect with PAS would lose a connecting alternative as a result of the Transaction; and (3) many short lines would simply be served by PAS instead of Pan Am, and some would gain more direct access to Norfolk Southern via PAS. We stated that our findings regarding competitive impact were preliminary and that we will give careful consideration to any claims that the Transaction would have anticompetitive effects that are not apparent from the application itself.

By petition filed on June 24, 2008, VRS asked the Board to find that the Transaction is a "significant" transaction under 49 CFR 1180.2(b), rather than a minor transaction under 49 CFR 1180.2(c), as requested by Applicants.² According to VRS, the Transaction would be significant under these provisions because it would be of regional or national significance and it would have anticompetitive effects. VRS maintains that the Transaction would have regional or national significance because: it would make PAS the largest carrier operating in New England, with 438 route miles of rail lines and trackage rights; it would alter traffic patterns throughout Massachusetts, Connecticut, and Vermont and throughout the VRS system; and it would allegedly interfere with connections between VRS and CSX Transportation, Inc. (CSXT), making Norfolk Southern the dominant carrier in the territory served by VRS. VRS also maintains that the Transaction would decrease traffic moving over VRS carriers, by diverting traffic that is currently interchanged with CSXT and the Providence and Worcester Railroad (P&W) and by diverting traffic away from the Washington County Railroad north of White River Junction, thereby causing service to be downgraded in that area.

In support, VRS explains that it currently has balanced hauling arrangements with New England Central Railroad (NECR) that enable VRS to efficiently reach an interchange with CSXT at Palmer, MA, from its interchange point with NECR at White River Junction, VT, and to connect with its northernmost affiliate, Washington County Railroad. The arrangements also

² Because this petition was filed beyond the general 20-day period for filing replies and after we had made our decision on June 23, 2008 regarding accepting the application, it will be considered as a petition to reconsider the preliminary findings in the notice regarding the competitive impact of the Transaction, which served as the basis for finding the Transaction to be minor under 49 CFR 1180.2(c).

provide for NECR cars to move via haulage over VRS to Whitehall, NY, to participate in a route that connects with Norfolk Southern and Canadian Pacific Railway Company (CP). Because the Transaction would establish a new, direct interchange with NECR and P&W, VRS argues that neither NECR nor P&W would require the use of VRS's service involving Norfolk Southern movements or movements to other overhead connections. According to VRS, putting an end to that side of the arrangements between VRS and NECR would lead to the cancellation of the haulage arrangements under which VRS operates over NECR between White River Junction and Palmer, thus terminating VRS's only efficient connection with CSXT and the efficient and competitive connection between the main part of the VRS system and the northernmost part of the Washington County Railroad line. And, VRS contends, a new connection between Applicants and P&W would divert P&W traffic from present routes. Because the application fails to address these alleged competitive harms, VRS argues that we cannot properly find that the Transaction "clearly" would not have any anticompetitive effects so as to qualify as a minor transaction.

VRS also asks us to adopt a procedural schedule that conforms to the schedule required for a significant transaction, which would allow 180 days for the evidentiary phase.³ And, even if we conclude that the Transaction is minor, VRS argues that we should extend the procedural schedule to provide for the full 105 days allowed under 49 U.S.C. 11325(d) for concluding the evidentiary phase for a minor transaction.

On June 27, 2008, Applicants filed a reply opposing the petition. Applicants argue that VRS has not shown that the Transaction would harm VRS or any of its shippers. Applicants contend that VRS's concerns regarding the loss of NECR's haulage service are mere speculation and that, even if there were any basis for it, the result would not reflect any harm to competition, ~~only a possible harm to a competitor. Rather, according to Applicants, the Transaction would~~ enhance competition by establishing more efficient and desirable routes. Applicants argue that we correctly found the proposed Transaction to be minor and should establish the procedural schedule proposed by Applicants.

On July 3, 2008, UTU/BLET filed a petition to join in the petition of VRS. While not addressing any competitive concerns raised by VRS, they express concern over the absence of any mention of labor protection in a related notice of exemption filed on June 27, 2008, in STB Finance Docket No. 35147 (Sub-No. 1). Applicants filed a reply in opposition to the UTU/BLET petition on July 14, 2008.

DISCUSSION AND CONCLUSIONS

We deny the requests to reclassify the Transaction as "significant" under 49 CFR 1180.2. VRS has not shown any likelihood of harm to competition from the proposed Transaction.

VRS does not dispute that the Transaction would increase competition between Applicants and CSXT by upgrading the PAS route. However, VRS argues that the Transaction

³ See 49 U.S.C. 11325(c) and 49 CFR 1180.4(e)(2).

would result in "obvious damage to VRS and its customers" because it might divert traffic currently moving over VRS.⁴

VRS's argument is not persuasive. Because the Transaction is an end-to-end transaction and would neither close any existing routes nor reduce the competitive options available to shippers, traffic would remain free to move over the most efficient route. Thus, if traffic were diverted by NECR from VRS lines as a result of the Transaction, it would most likely be because the new routes involving Norfolk Southern and PAS would be more efficient than the existing routes. Even if this would adversely affect VRS, it is well settled that harm to individual competitors is not the same as harm to competition, and it is the latter that the statute requires us to assess.⁵

The only possible effect of the proposed Transaction that VRS raises which involves harm to competition, rather than merely harm to a competitor, is VRS's possible loss of access to Norfolk Southern's competitor, CSXT. But pre-Transaction VRS has no direct connection to CSXT. Moreover, it simply is not plausible, based on the record before us, that NECR would have an economic incentive to discontinue the haulage arrangement that provides VRS with its indirect connection to CSXT. While VRS indicates that this arrangement is balanced with the arrangement for VRS to provide haulage to NECR to connect with Norfolk Southern and CP, VRS does not provide an explanation of why the termination of one would result in the termination of the other. As Norfolk Southern points out, even if NECR decided, post-Transaction, not to use VRS's haulage services to Whitehall because the Transaction creates a more efficient 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 or otherwise would decline to provide revenue-generating transportation service over its line. ~~VRS will have the opportunity to provide further argument~~ during the course of this proceeding, but VRS's concerns about harm to competition to date are too speculative to support a finding at this stage of the proceeding that this transaction is significant.

Similarly, UTU/BLET have not provided sufficient grounds for us to reverse our prior finding that the application is minor. Their filing includes no discussion of competitive harm, which is our primary concern when classifying transactions.⁶ UTU/BLET will have the opportunity to provide further argument regarding labor protection within the procedural schedule we have adopted.

Procedural Schedule. VRS maintains that, even if the Board finds that the Transaction is a minor transaction, the procedural schedule proposed by Applicants is too accelerated to permit

⁴ Petition, at 6.

⁵ See, e.g., Rio Grande Ind., Inc. – Pur. & Track. – Soo Line R. Co., 6 I.C.C.2d 854, 875 (1990). See also, Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 337-38 (1990) (the purpose of the antitrust laws is to protect competition, not competitors).

⁶ See 49 CFR 1180 2(b) and (c).

development of an adequate record. According to VRS, an adequate schedule would "allow interested parties the full 105 days following notice to complete the evidentiary record, as provided by statute, including 15 days from date of notice to notify the Board of participation, 30 days thereafter to file comments, protests and requests for conditions, 45 days for Applicants' Responses, and 15 days for rebuttal by commenters."⁷ In a comment filed on June 24, 2008, the State of Vermont asks the Board "to adopt procedures that will permit a thorough examination of the impacts of the proposed Transaction on rail service in Vermont."⁸ And as noted, UTU/BLET have joined VRS's argument that we should provide the full 105 days allowed by statute.⁹

We are not persuaded that the schedule adopted in our notice served on June 26, 2008, should be modified. The previously adopted schedule gives interested parties 45 days from the date of publication to file comments (i.e., to August 11, 2008), which is the same period VRS requests here. This 45-day period should also give the State of Vermont adequate time to address any adverse effects on that state. Moreover, the Board's typical practice in consolidation proceedings is to allow applicants to close the record, without further rebuttal from commenters or parties seeking conditions.¹⁰ VRS has not shown why we should depart from that precedent in this proceeding. Similarly, UTU/BLET have failed to show why the procedural schedule does not provide adequate time to present their case.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petitions of VRS and UTU/BLET are denied.

⁷ Petition, at 9-10.

⁸ Comment, at 1.

⁹ UTU/BLET mistakenly claim that the current procedural schedule provides for the evidentiary record to close in 45 days. Our schedule provides for a 70-day evidentiary phase.

¹⁰ See Canadian National Railway Co. and Grand Trunk Corp. – Control – EJ&E West Co., STB Finance Docket No. 35087, et al. (STB served Nov 26, 2007); Fortress Investment Group, LLC, Et Al. – Control – Florida East Coast, Railway, LLC, STB Finance Docket No. 35031 (STB served June 21, 2007); and Burlington Northern, Inc. and Burlington Northern Railroad Company – Control and Merger – Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (ICC served June 23, 1995).

2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey. Vice Chairman Mulvey dissented with a separate expression.

Anne K. Quinlan
Acting Secretary

VICE CHAIRMAN MULVEY, dissenting:

In our decision served in this docket on June 26, 2008, I noted that this transaction involves several hundred miles of rail line in the New England region and affects a number of carriers. I commented that it is by no means "minor" as that term is commonly used. I dissent today because I do not believe it is clear that the proposed transaction satisfies the criteria for categorization as a "minor" transaction. Had we received Vermont Rail System's petition raising its competitive concerns prior to acceptance of the transaction as "minor," I would have voted to designate the transaction as "significant" and extend to parties the procedural safeguards provided under 49 U.S.C. 11325(c). The number of parties that have filed their notices of intent to participate, or that have already submitted comments, in these proceedings further indicates to me the wide-ranging impact of the proposed transaction and its potential regional significance.

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423-0001**

**OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300
RETURN AFTER FIVE DAYS**



Hasler

012H16211216

\$00.420

07/22/2008

Mailed From 20024
US POSTAGE

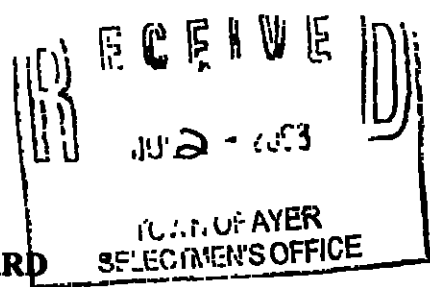
FD 35147 0 | 194853

Shaun A Suhoski
1 Main Street
Ayer, MA 01432 United States

0143231365 0006



**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 35147

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

**REPLY OF VERMONT RAILWAY, ET AL., IN OPPOSITION
TO APPLICANTS' REQUEST TO SHORTEN
PROCEDURAL SCHEDULE**

On June 27, 2008, Applicants filed a document styled a Reply to the Petition filed by Clarendon & Pittsford Railroad, Green Mountain Railroad, Vermont Railway and Washington County Railroad (hereafter "Vermont Railway System" or "VRS"), for a finding that the proposed transaction is "Significant."

Vermont Railway System is not replying to Applicants' Reply on the issue of whether this proceeding should be treated as "Significant" or "Minor." Those arguments have been mooted by the Board's Decision served June 26, 2008, in which the Board found the transaction "Minor."¹

However, VRS does want to go on record as opposing Applicants to the extent that Applicants urge the Board to shorten the procedural schedule in this proceeding.

¹ We do note subsequent filings expressing concerns, including the July 8 filing of the City of Springfield raising environmental issues (and describing the Transaction as having regional or national significance) In addition, UTU's July 3 Petition reiterates the position taken by VRS concerning this proceeding's significance

This request appears only on the last page in the Conclusion to Applicants' June 27 Reply, where they state:

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.

Reply at page 9, emphasis added.

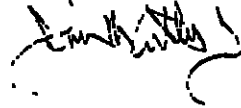
The Reply contains no support for or discussion of restoration of the procedural schedule originally proposed by Applicants. It may be that the underscored portion of the quoted language from Applicants' Reply is text from an earlier draft that was not modified with the rest of the Reply after the Board's June 26 Decision was issued.

However, the quoted words could be considered a request for reconsideration of the procedural schedule as extended by the Board. Out of an abundance of caution, VRS wants to go on record as opposing any shortening of the schedule. VRS welcomes the two week extension in the June 26 Decision, modest though that is. VRS also promptly commenced discovery of Applicants, and is reviewing the responses received to date. The current August 11, 2008 deadline for comments, protests and requests for conditions gives VRS and other parties minimal time to develop and analyze the relevant facts and implications, and prepare further filings protecting their interests.²

² As UTU points out in its July 3 Petition, the August 11 deadline, though preferable to the July 30 deadline Applicants sought and may still seek, is nevertheless far tighter than the 105 days provided for in the Act for evidentiary proceedings as to "Minor" transactions See 49 U.S.C. § 11325(d)(2).

Accordingly, if the Applicants' request for establishment of their proposed, and shorter, procedural schedule is treated as a petition for reconsideration of the Board's June 26 Decision, Applicants' request should be denied.

Respectfully submitted,



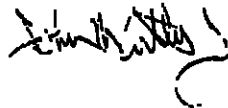
Andrew P. Goldstein
John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, N.W., Suite 600
Washington, DC 20037
(202) 775-5560

Attorneys for Vermont Railway System

Dated: July 17, 2008

Certificate of Service

I hereby certify that I have this 17th day of July, 2008, served copies of the foregoing document by first class mail on all parties of record, as well as the Secretary of Transportation, the Attorney General, and Mr. Allen.



John M. Cutler, Jr.



JOHN ELIAS BALDACCIO

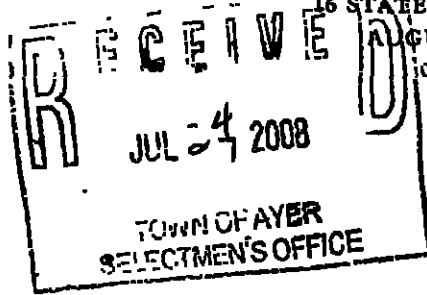
GOVERNOR

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0016

COPY

DAVID A. COLE

COMMISSIONER



LEGAL SERVICES Tel: (207) 624-3020 Fax: (207) 624-3021
MDOT TTY Tel: (207) 287-3392

July 22, 2008

Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 East Street, SW
Washington, DC 20423

Re: 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 Acting Secretary Quinlan:

Enclosed for filing on behalf of the Maine Department of Transportation in the above matter are the original and 10 copies of the Certificate of Service pursuant to 49 CFR Part 1104.

Very truly yours,

Toni L. Kemmerle, Esq.
Chief Counsel

TLK/jas

Enclosure



PRINTED ON RECYCLED PAPER

Board of Selectmen

MEETING TUESDAYS AT 7 00 P M • UPPER TOWN HALL • 1 MAIN STREET • AYER, MASSACHUSETTS 01432



Tel (978) 772-8220
Fax (978) 772-3017

Town Administrator
(978) 772-8210

July 7, 2008

Surface Transportation Board
395 E St., S.W.
Washington, D.C. 20423-0001

RE: Party of Record – STB Finance Docket No. 35147

Ladies and Gentlemen:

This correspondence shall evidence the intent of the town of Ayer to be listed as a Party of Record (POR) in the above proceeding.

All information concerning the transaction should be addressed to the Town, c/o
Board of Selectmen, 1 Main Street, Ayer, MA 01432.

Thank you.

Sincerely,

Shaun A. Suhoski
Town Administrator

cc: Ayer Board of Selectmen
Littleton Board of Selectmen
- U.S. Secretary of Transportation
U.S. Attorney General
Richard A. Allen, Esq.

Board of Selectmen

MEETING TUESDAYS AT 7 00 P M • UPPER TOWN HALL • 1 MAIN STREET • AYER, MASSACHUSETTS 01432



Tel (978) 772-8220
Fax. (978) 772-3017

Town Administrator
(978) 772-8210

July 7, 2008

Office of the Secretary
Case Control Unit
STB Finance Docket No. 35147
Surface Transportation Board
395 E St., S.W.
Washington, D.C. 20024

Attention: Environmental Filing

RE: STB Finance Docket No. 35147

Ladies and Gentlemen:

Based upon review of the Environmental Appendix filed in the above matter, and reserving any and all rights for further comment by Town officials, I offer the following reasons why further environmental review under the National Environmental Policy Act should be required due to potential impacts on drinking water, stormwater, traffic and endangered species:

~~Drinking Water: Spectacle Pond Well Fields = Mass. DEP Zone II Aquifer~~

The filing indicates planned construction of a "new automotive facility" at the so-called San Vel site in Ayer. The proposed new facility would accommodate 810 vehicles on a Massachusetts Dept. of Environmental Protection designated Zone II aquifer.

This aquifer directly recharges the Town's Spectacle Pond wellfield a primary source of the Town's public water system. The neighboring town of Littleton also has wellfields located within the zone of Spectacle Pond. A full environmental assessment should be required to ensure no negative impact to the drinking water supply for two municipalities.

Stormwater Stormwater Prevention Plan and NPDES Permit

The proponents should be required to comply with all applicable stormwater standards including preparation of an acceptable Stormwater Prevention Plan that employs low-impact development and best management procedures (LID/BMPs).

Whereas the new facility will greatly exceed disturbance of one acre of land, it would appear that the applicants are required to file for a general construction permit under the National Pollutant Discharge Elimination System (NPDES).

Office of the Secretary - Case Control Unit
STB Finance Docket No 35147
July 7, 2008
Page Two

Traffic: Threshold for Review Exceeded

Page 20 of the filing indicates a "projected additional 58 trucks per day" associated with the transaction at the Ayer Intermodal location. The same page states that 226 trucks per day is the pre-transaction total in 2007. The increase appears to exceed the 10 percent threshold for traffic

Endangered Species: Blanding's Turtles

The Town believes that there are documented reports of Blanding's Turtle habitat within the so-called San Vel site proposed for the new auto unloading facility. The applicants should be required to comply and verify such compliance with the National Endangered Species program.

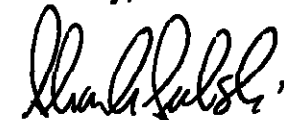
Option: Utilize Existing Transload Facility in Ayer / No New Build Scenario

The filing makes reference an existing, "unused" automotive transload facility in Ayer that is currently leased to CSX until 2017.

~~This longstanding auto unloading facility sits nearby – but outside of – the Zone II aquifer. The STB would be strongly encouraged to encourage a program that would allow use of this existing facility in lieu of the major construction proposed over the Town's aquifer.~~

In closing, the Town would respectfully reserve any rights to further comment on the proposal. Any questions concerning this correspondence may be directed to my attention or by telephone to 978-772-8210. Thank you.

Sincerely,



Shaun A. Suhoski
Town Administrator

cc. Ayer Board of Selectmen
Littleton Board of Selectmen
U.S. Secretary of Transportation
U.S. Attorney General
Richard A. Allen, Esq.