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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**

PETITION BY BATTEN KILL RAILROAD FOR CONDITIONS IMPOSED

William L. Taber
General Manager
Batten Kill Railroad
1 Elbow Street
Greenwich, NY 12834

August 4, 2008

With regard to the proposed Pan Am Southern, LLC railroad transaction, Batten Kill Railroad petitions the Board for conditions granting Batten Kill Railroad equitable competitive access to the new railroad, including interchange to Norfolk Southern via Pan Am Southern haulage, the same as is promoted by the applicants as a gained advantage to the other Patriot Corridor directly connecting shortline and regional carriers. The other connecting carriers, named by the applicants,¹ being Vermont Railway, New England Central, and the Providence and Worcester.

¹ From page 3 of the Application, 2nd paragraph: "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 (sic), 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." There are many additional mentions of these specific haulage commitments throughout the Application

BACKGROUND

By sale agreement to the State of New York and lease/acquisition sub-agreement, Batten Kill Railroad (BKRR) on July 8, 1982, commenced operation of 34 route miles of certain railroad branch lines, principally in Washington County, New York, that were embargoed for approximately one year, from the Delaware & Hudson Railway. These are the lines formerly operated by the D&H subsidiary Greenwich and Johnsonville (Thomson Branch and Salem Branch) and the southern third of the former D&H Washington Branch. Our principal commodities handled are inbound grain and fertilizer. We also ship logs outbound.

The Batten Kill Railroad (BKRR) has only one geographic point of connection to the North American railroad network. This is at Eagle Bridge, in Rennselaer County, New York, a location on the proposed Patriot Corridor mainline of the proposed Pan Am Southern Railway (PAS). (See map, attached as Exhibit A) It is at this location where we interchange our traffic with Canadian Pacific Railway, successor to the Delaware and Hudson Railway. Our interchange with Canadian Pacific (via CPR trackage rights on Springfield Terminal between Mechanicville, NY and Eagle Bridge, NY) is not based on an exclusivity arrangement by contract. It is instead the product of the practical reality that, throughout our history, we've lacked realistic (operationally efficient and competitive) opportunity for alternate interchange routing of our traffic. We see two possible profound impacts of the proposed Pan Am Southern transaction on our railroad's (and customers') competitive situation, one possibility being particularly positive, the other possibility being particularly detrimental. The potentially positive outcome hinges on the fact that two alternative competitive routing options are emerging as practical, just, and attainable for us. These are:

1. Interchange with Pan Am Southern directly. We see this primarily as a potentially workable competitive access route to CSXT at Rotterdam Junction, NY for traffic from/

to points beyond (and, likely to a lesser extent, to New England points should we be able to attract some such traffic). Prior to the recent reintroduction by Pan Am Railway's Springfield Terminal (ST) of a regular local train operating in our neighborhood, that is, by Eagle Bridge, NY,² this was not a genuine option. Absent such consistency of service, we've had no reason to pursue this routing. We are astute to the fact that unless a local train is otherwise available to encompass the work, the operational challenges related to interchanging occasional or modest traffic between BKRR and ST would likely be perceived as outweighing the revenue benefit to ST. Any traffic could be expected to be prioritized accordingly. Experience has demonstrated this.³

2 On April 23, 2008 Springfield Terminal Railway commenced operation of a regular train service running between CSX T at Rotterdam Junction, NY and the Vermont Railway by way of the reopened track connection at Hoosick Junction, NY. This Hoosick Junction connection to Vermont Railway had been closed as an interchange connection route since 1986. This established new service will be sustained by the proposed Pan Am Southern and its existence introduces a practical opportunity for introducing a level of interchange traffic between PAS and BKRR. Note that the BKRR Eagle Bridge track connection to PAS is just 3 miles west of Hoosick Junction, by which this newly introduced service is running.

3 Prior to May 1999, Springfield Terminal (and previously Boston & Maine) handled our traffic in haulage from/to Canadian Pacific proper (and previously Delaware & Hudson) ostensibly at Mechanicville, NY. Local traffic on ST had diminished to such a degree, that our traffic was essentially all that was left of the work for their local assignment. Service suffered and ultimately ST served notice to CPR that they were terminating the haulage agreement (concurrent with eliminating the regular local assignment to or by Eagle Bridge). This led to CPR's exercise of trackage rights (from inherited agreement dating back to 1926) to introduce running a periodic train directly to Eagle Bridge to connect with us. Despite contract terms requiring three days per week service, CPR unilaterally acted in February 2006 to reduce service to us to typically only once per week. This action, by itself not particularly harmful (sometimes even beneficial, considered case by case), in conjunction with recent area service changes by CPR has introduced long and often unpredictable delays on much of our traffic. We make it work the best we can by maintaining frequent interaction with very helpful CPR operating officers to adjust (when possible) service to best protect the traffic to coincide with customers' needs. Nonetheless, the service is substantially inferior to what it had been and often doesn't meet reasonable customer expectation. It is not uncommon for railcars to take more than a week after initial arrival at Saratoga, NY (CPR's nearby yard from which they service us) to reach our interchange at Eagle Bridge. This deterioration of service deters stronger business volume and underscores our need for gaining competitive access to other long haul carriers.

- 2 Interchange with Norfolk Southern via haulage by Pan Am Southern. The applicants promote that they will provide this competitive advantage to Vermont Railway, New England Central, and Providence and Worcester. These are the other railroads that directly connect with the proposed Pan Am Southern core Patriot Corridor that, like us, don't otherwise have this access. We trust that omission (of mention) of this same competitive benefit to Batten Kill Railroad stems only from erroneous assumption, misunderstanding, and/or misinformation obtained relative to our status as an interchange partner with Canadian Pacific Railway. To clarify, we are an independent line haul carrier. We are not a switching carrier in a captive relationship with CP Rail. We see no reason that Norfolk Southern and Pan Am Southern would not welcome the opportunity for business with us, especially with regard to the potential for recovering lost business,⁴ or developing additional or altogether new business.⁵ Our goal is not to divert existing traffic from CP Rail except in the anticipated limited cases where there is not likely to remain a service or cost advantage to the CPR routing. Being able to compare advantages is the essence of competition, and enhancing competition is the applicants' declared primary objective in advancing the proposed transaction. It is our goal too.

The potentially negative outcome for our competitive situation, and for competition in general, would be for Batten Kill Railroad not to be assured of reliable direct interchange access to the new Pan Am Southern and to Norfolk Southern via PAS haulage. Just by virtue of the fact that there is a parallel neighboring shortline railroad, Vermont Railway, gaining this advantage puts us, absent the same, at a distinct relative disadvantage. There should be no doubt that this disadvantage would be of significant influence to any potential customers if the customers have a

4 See Exhibit B, statement by former customer Hollingsworth & Vose

5 See Exhibit C, statement by customer Cargill Animal Nutrition

choice of locations in giving consideration to use of rail in our region. This would likely lead to our loss of any such potential customers. Also, this disadvantage threatens to a degree some loss of business with our existing customers. For example, our grain customer, Cargill Animal Nutrition, has a similar facility in Swanton, VT on New England Central. Cargill could conceivably favor this facility for certain production if they gain a unique rate or service advantage to this facility from NS origins to NECR. Of even greater appreciable significance is the fact that Cargill has an aggressive toe-to-toe competitor, Whitman's Feed, with a facility very close by on the VTR at North Bennington, VT. It is predictable that if rail rate and service advantages are gained by this competitor, and if not similarly gained by Cargill, it would negatively impact Cargill's market share. This competitive disparity is preventable and needs to be prevented. It is contrary to the primary intent of the Pan Am Southern application - that intent widely understood as being to enhance overall competitive options for the greatest base of customers in the service region.

OTHER CONSIDERATIONS

As previously mentioned, Batten Kill Railroad has historically been devoid of alternatives for interchange of our traffic to the mainline rail network. Because we acquired the operation of branch lines that were former Delaware & Hudson properties, Delaware & Hudson sought to be our interchange partner. Because of the absence of a customer base to justify it, not all of the embargoed Washington Branch was acquired. This severed the direct access longer connection to the D&H by way of Castleton, Vermont to the D&H Rutland Branch (now Clarendon and Pittsford). D&H maintained access to us by utilization of existing trackage rights (dating from an agreement in 1926) permitting D&H trains access over the Boston and Maine Railroad for the 19 miles between Mechanicville, NY and Eagle Bridge, NY. In actual practice, D&H (later CP

Rail) contracted with B&M (later Springfield Terminal) to handle BKRR interchange traffic by private agreement haulage in a B&M local. Since, at the time, Guilford Transportation had already acquired the B&M and was in the process of acquiring the D&H, our only option for interchange access was with Guilford and none other. Even after CP Rail's acquisition of the D&H, realistic opportunities for us to interchange with Springfield Terminal never arose. This is principally because all of our traffic moves from or to points to the west or to the south, an impractical short haul for ST (to CSXT) considering that ST was reducing and virtually eliminating (until now) regular local service in our region.

We know all too well the handicap we've had as a railroad with such a limited interchange situation. For several weeks in 1986 and again in 1987 the Guilford railroads were on strike and we had no reliable access for our traffic. We were in a captive shut-down state and struggling with exacerbating financial crises. As a result of the strikes and the generally deficient quality of connecting rail service, the two Hollingsworth & Vose paper mills on our railroad completely abandoned our service from 1987 through 1989. Prior to the strikes, H&V was providing us with generous business of about 125 carloads of inbound woodpulp annually. When they finally resumed business in 1989, it was in response to sharp rate reduction inducement (by us alone); and, running between 20 to 40 carloads annually, remained incidental by comparison to what was lost. The customer wanted to protect the bulk of the business with better overall service by CSXT from nearby transload destinations. Ultimately, in February 2006, H&V withdrew even the remaining traffic from us, citing better service for their needs by rail-warehouse-truck transload. About half of this woodpulp traffic originated at NS stations, and about half originated at CSXT stations. It is easy to speculate that we wouldn't have lost this valuable business if we had better connections to NS and CSXT.

CONCLUSION

The Batten Kill Railroad appeals to the Board to act in the public interest by approving the greatest measure of broadened competitive opportunities prudently achievable in the context of the proposed transaction. It is in this regard that the Batten Kill Railroad petitions for these two specific protective conditions to be imposed:

1. Require Pan Am Southern, LLC to establish agreement with Batten Kill Railroad to publish availability of and provide a competent service of direct interchange of rail traffic between Pan Am Southern and Batten Kill Railroad at Eagle Bridge, NY at the same available service frequency and otherwise competitive to that committed to Vermont Railway at neighboring Patriot Corridor station Hoosick Junction.
2. Require Norfolk Southern Railway and Pan Am Southern, LLC to establish agreement with Batten Kill Railroad to publish availability of and provide a competent service for interchange of rail traffic between Norfolk Southern, via PAS haulage, and Batten Kill Railroad at Eagle Bridge, NY at the same available service frequency and otherwise competitive to that committed to Vermont Railway at neighboring Patriot Corridor station Hoosick Junction.

With these essential and reasonable protective conditions imposed, and only if imposed, the Batten Kill Railroad is supportive of the proposed transaction.

To the extent that our interests may appear, Batten Kill Railroad reserves the right to submit additional comment at the appropriate time.

Respectfully,



William L. Taber
General Manager
Batten Kill Railroad
1 Elbow Street
Greenwich, NY 12834

August 4, 2008

EXHIBIT A

Map

Batten Kill Railroad in relation to Patriot Corridor

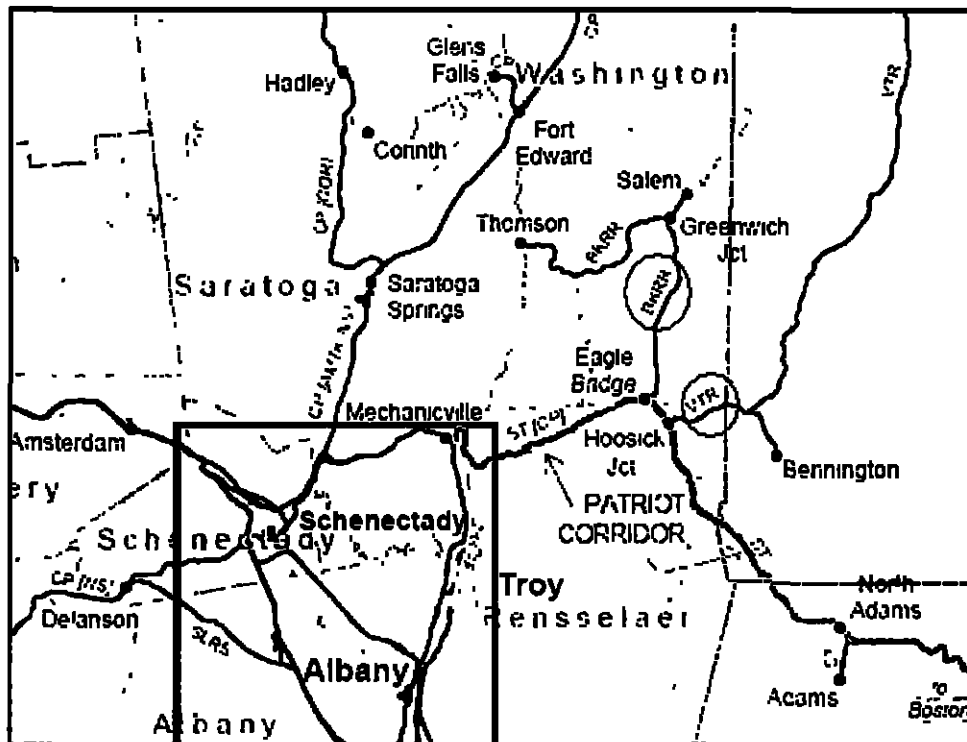


EXHIBIT B

Statement from Hollingsworth & Vose Company, received via e-mail:

Page 1 of 1

William Taber

From: "Hall, Joe" <Joe.Hall@hovo.com>
To: "William Taber" <wtaber@earthlink.net>
Sent: Friday, August 01, 2008 10:04 AM
Subject: Batten Kill RR new railroad connection

Dear Bill,

This note is not to be construed as a commitment to revert to rail deliveries of wood pulp

Having been a long standing customer of the Batten Kill Railroad, H&V is supportive of increasing competitive routing options for the Batten Kill Railroad in the context of the Pan Am Southern transaction.

Pricing and quality of service issues, particularly service issues related to the long and highly inconsistent transit times for the CP Rail route to the Batten Kill Railroad from predominantly NS and CSXT origins had limited our rail business in the past.

Without committing to anything, should the Pan Am Southern transaction be approved with introduced competitive routing options for the Batten Kill Railroad, H&V would be open to exploring new or renewed shipping opportunities with the Batten Kill Railroad.

Regards,

Joe Hall, C.P.M., A.P.P.
Procurement Category Manager, US Mills
Phone- 518-695-8133
Fax- 518-695-4786
e-mail - jhall@hovo.com

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EXHIBIT C

Statement from Cargill Animal Nutrition



August, 1, 2008

William Teber
General Manager
Batten Kill Railroad
1 Elbow Street
Greenwich, NY 12834

RE: STB Application for Pan Am Southern Railroad

Dear, Bill,

In regards to the Batten Kill Railroad's petition for access to the newly proposed Pan Am Southern Railroad:

Cargill's East Greenwich, NY plant, which supplies dairy feed to the agricultural market north of Albany NY, would gain the ability to source commodities from Norfolk Southern origins if the Batten Kill Railroad obtains access to the proposed Pan Am Southern Railroad at Eagle Bridge, NY. Currently this facility is captive to Canadian Pacific origins or interchanges.

Cargill needs Eagle Bridge as an interchange station for the proposed railroad. Cargill supports the Batten Kill Railroad position that this condition be imposed in the matter of the Pan Am Southern application before the Surface Transportation Board. Gaining this competitive access will enhance rail business opportunities for Cargill at East Greenwich, NY

Sincerely

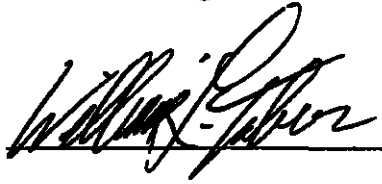
A handwritten signature in black ink, appearing to read "Peter DelGobbo".

Peter DelGobbo
Logistics Manager
Cargill Animal Nutrition
7700 Maltage Drive
Liverpool, NY 13090
Peter_DelGobbo@cargill.com

 **CARGILL** Animal Nutrition

I, William L. Taber, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Executed on August 4, 2008.

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

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**CERTIFICATE OF SERVICE OF
BATTEN KILL RAILROAD**

I hereby certify that on this 4th day of August, 2008, I have served a copy of all filings by Batten Kill Railroad to date in this proceeding by U.S. first class mail, postage prepaid, upon all Parties of Record named in the Board's decision served July 24, 2008. This includes our August 4, 2008 Petition by Batten Kill Railroad for Conditions Imposed and our July 9, 2008 Notice of Intent to Participate.



William L. Taber
General Manager
Batten Kill Railroad
1 Elbow Street
Greenwich, NY 12834

August 4, 2008