

ORIGINAL

VTRS-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

223194



FINANCE DOCKET NO 35147, et al

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

COMMENTS AND REQUESTS FOR CONDITIONS OF CLARENDON AND PITTS-
FORD RAILROAD, GREEN MOUNTAIN RAILROAD, VERMONT RAILWAY,
AND WASHINGTON COUNTY RAILWAY

ENTERED
Office of Proceedings

AUG 11 2008

Part of
Public Record

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Attorneys for Petitioners

Dated August 11, 2008

I. PRELIMINARY SUMMARY

Vermont Railway ("VTR"), Clarendon & Pittsford Railroad ("CLP"), Washington County Railroad ("WACR"), and Green Mountain Railroad ("GMRC") (sometimes hereinafter referred to as the "Vermont Carriers") are separate entities that are affiliated through common ownership. As explained in Exhibit No. 1, the verified statement of David W. Wulfson, who is President of all of the Vermont Carriers except GMRC, of which he is Vice President, operations of the Vermont Carriers can essentially be seen as falling into two segments. VTR and CLP operate on the west side of the state, while GMRC and WACR operate on the east side of the state along the Connecticut River Valley. GMRC's line extends between Bellows Falls and Rutland, VT and has haulage rights from Boston & Maine Railroad ("B&M") and New England Central Railroad ("NECR") between Bellows Falls and White River Junction, a town on the Connecticut River approximately 50 miles north of Bellows Falls. WACR's line then extends to Newport, VT, where it connects with the Montreal, Maine & Atlantic Railroad ("MM&A"). The Vermont Carriers are all Class III railroads, and a map of their operations is attached as Appendix A to Mr. Wulfson's verified statement.

The Vermont Carriers do not oppose the application provided it is properly conditioned to protect against anti-competitive service reductions and to maintain access by the Vermont Carriers to existing gateways on reasonable terms.

II. BACKGROUND

The Applicant carriers¹ seek authority under 49 U.S.C. 11322 and 11323 for a transaction that will extend the Applicants' ability to operate into southern New England, including the State of Vermont, as a unified system. Over the objections of certain parties, the Board found the proposed transaction to be a "minor transaction" under 49 C.F.R. 1180.2(c).² The Board held that, on the face of the application there does not appear to be a likelihood of any anticompetitive effects resulting from the transaction and 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." The Board continued. "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."

The Vermont Carriers believe that there are, indeed, anticompetitive effects of the application that are not apparent from the application itself. Although the application postures connections between the Applicants and other short lines as remaining undisturbed by the proposed transaction, the Applicants fail to disclose that the service they now provide to connecting short lines in some cases is virtually nonexistent, and that the

¹ Pan Am Southern LLC ("PAS"), Boston & Maine Corporation ("B&M"), Norfolk Southern Railway Company ("NS"), and Springfield Terminal Railway Company ("STRC")

² See Decision of July 21, 2008

Applicants have stated their intent to terminate service and end interchange with some existing short lines, including those parties to this pleading. The application, therefore, is likely to have a negative impact on competition offered by existing short line carriers.

II ARGUMENT

The crux of the interest of the Vermont Carriers in this proceeding revolves around B&M, one of the applicants. B&M operates a line of railroad under trackage rights acquired from NECR along the Connecticut River, serving the communities of Bellows Falls and White River Junction, among others. B&M's trackage rights and other operating rights were imposed by the Interstate Commerce Commission in Finance Docket No. 31250, *National Railroad Passenger Corp.*, 6 I.C.C. 2d 539, 559-67 (1990), in which the I.C.C. gave B&M certain trackage rights along the Connecticut River Line over NECR provided that B&M "makes available a minimum three-days-per week service along the Line." GMRC's haulage rights over B&M are dependent on B&M's exercise of the trackage rights it received from NECR in *National Railroad Passenger Corp.*

The trackage rights granted B&M play a significant role in the operations of GMRC and WACR. Each of these carriers is reliant on B&M for service to Bellows Falls and White River Junction, respectively, for certain traffic, including stations served on WACR after interchange has been accomplished at White River Junction and stations on GMRC after interchange at Bellows Falls. B&M's Connecticut River Line maintains connections with CSX Transportation and other B&M lines maintain connections with Norfolk Southern Railroad. As a result of those connections, and also because of the ability of the B&M system to generate its own traffic, B&M through its shippers controls traffic moving along the Connecticut River Line that is competitive with the NECR route.

and that is destined to stations on GMRC and WACR. For example, if a shipment originates on B&M, or one of its southerly connections, for delivery to a station on WACR, that shipment can be routed B&M to White River Junction, then WACR, or it can be routed B&M to Bellows Falls, then GMRC. NECR is a route also available to shippers.

It is unfortunately evident that the Applicants intend to downgrade service post-merger along the Connecticut River, thereby weakening the interchanges between B&M, GMRC, and WACR, and placing NECR in position to exercise monopoly power along the Connecticut River Line. If B&M does not provide adequate service, then GMRC and WACR will have only inadequate service to offer the public insofar as they must rely on B&M's service for traffic captive to B&M until it is interchanged. As explained in Mr. Wulfson's statement, where shippers lose traffic via B&M, there is nothing that GMRC or WACR can do to improve the service received by that traffic because routing is controlled by the customers.

As things stand, the interchanges at Bellows Falls and White River Junction between B&M, on the one hand, and GMRC or WACR, on the other, have been downgraded to what amounts to one roundtrip per week, probably in contemplation of the merger and the Applicants' need to use their funds elsewhere than along the Connecticut River. The Applicants have told Mr. Wulfson that they would prefer to withdraw from the Connecticut River Line, and the actions they have taken are consistent with that intent. Not only has B&M reduced its service over the Connecticut River Lines, but it also omits those lines entirely from any plans to upgrade or add to their facilities in that region. See Application, Volume I, p. 7-8, where the Applicants describe the improvements they intend to

make upon acquisition of the subject property, and fail to mention any contemplated improvements whatsoever along the Connecticut River Line

Bellows Falls and White River Junction are “gateways” between B&M and the respective Vermont Carriers, GMRC, and WACR. The proposed transaction plainly threatens the existence of those interchanges, and it is evident that the Applicants intend to downgrade, and ultimately eliminate, service along the Connecticut River Corridor, including service to the “gateways” of Bellows Falls and White River Junction for traffic destined to GMRC and WACR, respectively. Actions that downgrade gateways below a commercially reasonable level should be condemned in a proceeding of this nature. *Canadian National Railway Company, et al – Control-Duluth-Missabe and Iron Range Railway Company, et al*, Finance Docket No. 34424 (April 9, 2004), Slip Op. at 15, *Canadian National Railway Company, et al – Control-Wisconsin Central Transportation Corporation, et al*, Finance Docket No. 34000 (September 7, 2001), Slip Op. at 12; *Kansas City Southern – Control – The Kansas City Southern Railway Company, et al*, Finance Docket No. 34342 (November 29, 2004), Slip Op. at 12, 13.³

A review of the application readily discloses that the Applicants have aggressive plans to enhance their system at points operationally unrelated to the Connecticut River Line and that they plan to expend their merger-related funds to achieve improvements on their system elsewhere than the Connecticut River. The Vermont Carriers believe that the Applicants’ plans for the expenditure of post-merger revenues on projects having

³ The Kansas City Southern transaction was a minor transaction similar to the instant proceeding. In it, like the two cases cited immediately prior, the Board imposed gateway protective conditions to enforce pledges of the Applicants to avoid anti-competitive behavior. As recognized in the cited cases, closure of gateways is an anti-competitive foreclosure of traffic access, whether admitted by the Applicants or not. Here, the Applicants assert that “shortline and regional railroads in the region will interchange traffic with the new railroad.” Application, Vol. I, p. 3. The Board should enforce this pledge as it has enforced similar pledges in other proceedings.

nothing to do with the Connecticut River Line, even though service on that line plainly requires improvement, justifies the conclusion that the proposed transaction will be at least a part of the reason why interchange at Bellows Falls and White River Junction is slated for downgrading or elimination by the merged company.

Competition along the Connecticut River will be weakened not just by the stated intentions of the Applicants, but also by the reduction in revenues that GMRC and WACR will experience as the Applicants carry forward their post-merger plan to reduce or eliminate B&M service along the Connecticut River. As a result of those steps, GMRC and WACR stand to lose over 21 percent of their revenues that will, in turn, weaken their ability to maintain competitive service at Bellows Falls, White River Junction, and elsewhere along their Connecticut River lines.

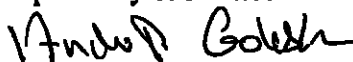
In some proceedings, such as those cited above, the Board has maintained a period of oversight with retained power to direct the Applicants to take those steps as may be necessary to terminate anticompetitive behavior that develops in the future. In this instance, the Applicants, or at least B&M, have already established that they intend to flaunt the Board's pro-competitive directive that adequate service be maintained by B&M along the Connecticut River Line, having ignored the ICC's 1990 service directive

B&M also has failed to live up to the haulage agreement with GMRC that B&M signed in 2000. The fact that B&M has partially downgraded its service prior to consummation of the proposed transaction does not preclude the Board from recognizing and correcting those downgrades herein. B&M has placed its service and performance before the Board, and if the facts show a trend toward service reduction and anticompetitive consequences that began prior to institution of the proposed transaction and that will con-

tinue after the transaction is implemented, the Board is not deprived of its ability to take corrective action regarding B&M service as a whole, both prior to and after consummation of the transaction

From the viewpoint of the Vermont carriers, it is questionable whether there is any value in a further, repetitive directive to the Applicants requiring the maintenance of adequate, competitive service at gateways or elsewhere, as the Board has imposed in other proceedings of this nature. Because B&M has demonstrated an unwillingness to provide a specific level of service even when directly ordered by the ICC to do so, and has not honored its year 2000 haulage agreement with GMRC, the Board should consider the preservation of competition along the Connecticut River through a condition requiring B&M to assign to GMRC the haulage or trackage rights as B&M now holds from NECR, since it is obvious that B&M has no intention of living up to the conditions imposed by the ICC to insure that the exercise of those rights would act to maintain competition along the Connecticut River. At a minimum, the Board should keep this proceeding open for a period of five years to observe and, if necessary correct, service levels maintained by B&M or its successors between Bellows Falls and White River Junction, or should grant such other relief as it may deem appropriate.

Respectfully submitted



Andrew P. Goldstein

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202-775-5560

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I have, this 11th day of August, 2008, served copies of the foregoing Comments and Requests for Conditions of Clarendon and Pittsford Railroad, Green Mountain Railroad, Vermont Railway, and Washington County Railway on all parties of record, postage prepaid



Andrew P. Goldstein

VERIFIED STATEMENT

OF

DAVID W WULFSON

My name is David W. Wulfson. My testimony is on behalf of Vermont Railway ("VTR"), which operates between Bennington and Burlington, VT; Clarendon & Pittsford Railroad ("CLP"), which operates between Rutland, VT and Whitehall, NY; Green Mountain Railroad ("GMRC"), which operates between Rutland and Bellows Falls, VT; and Washington County Railroad ("WACR"), which operates between White River Junction and Newport, VT, with a haulage agreement over New England Central Railroad ("NECR") between Bellows Falls and White River Junction¹ GMRC also has an agreement with Boston and Maine Railroad ("B&M") under which B&M is to interchange traffic originating on B&M or its connections to GMRC at Bellows Falls and White River Junction At Newport, WACR connects with the Montreal, Maine and Atlantic RR ("MM&A"), which serves northern Vermont, Maine and the Canadian Province of Quebec. WACR interchanges traffic at White River Junction with B&M on behalf of MM&A

All parties to this pleading are Class III railroads, individually and collectively. I am President of all of the carriers with the exception of GMRC, of which Jerome Hebda is President and I am Vice President. A map of the Vermont Carriers is attached as Appendix A to this statement.

¹ Another member of the Vermont Carrier family is the New York & Ogdensburg Railway ("NYOG"), which operates entirely in New York State and is not physically connected to other components of the Vermont Carrier system White River Junction is actually the rail station name for Hartford, VT

There are somewhat complicated arrangements under which our carriers conduct rail operations along the Connecticut River corridor. NECR's line of railroad extends from Connecticut, on the south, to East Alburg, VT. GMRC has haulage rights over NECR between Bellows Falls and White River Junction. However, there is considerable traffic that is forced over the parallel B&M route that B&M has told me it hopes to eliminate. Approximately 21 percent of total revenues earned by GMRC and WACR are derived from interchange with B&M (or other members of the B&M family), and will be jeopardized by any further deterioration in B&M service.

B&M's services primarily involve interchange at Bellows Falls and White River Junction as a result of trackage rights on the Connecticut River Line imposed by the Interstate Commerce Commission in Finance Docket No. 31250, *National Railroad Passenger Corp.*, 6 I C C 2d 539, 559-67 (1990), in which the ICC gave B&M certain trackage rights along the Connecticut River Line over NECR provided that B&M "makes available a minimum three days per week service along the Line." B&M was given the right to interchange traffic with GMRC at Bellows Falls and to otherwise serve shippers who interchange and require reciprocal switching along the Line.

As a result of the imposed conditions, B&M can handle freight destined to shippers on GMRC or WACR through interchange at Bellows Falls or White River Junction. Freight routed in this manner would frankly not be the first choice of GMRC because B&M service has become so sparse and unreliable, but GMRC is not in a position to select the routing. Although directed by the ICC to provide service not less than three times per week (six one-way trips), B&M in fact provides service over the described part of the Connecticut River Line as little as 10 single trips per month, or about one round

trip per week, according to its responses to our discovery requests and according to the knowledge of the Vermont Carriers. The fact remains that our carriers along the Connecticut River are dependent on B&M for certain freight receipts that are interchanged at Bellows Falls and White River Junction, that B&M is not living up to the service requirements imposed by the ICC; and that B&M has lost interest in sustaining that service, evidently resulting in part from the merger. When B&M fails to provide service, GMRC and WACR can do nothing to improve conditions for receivers waiting for traffic to be interchanged.

Attached are several letters from towns served by GMRC and WACR that illustrate the economic burdens brought about by inadequate B&M service. Appendix C is a letter from the town of Ludlow, VT, located on the GMRC line. Appendix D is a letter from the town of Rockingham/Bellows Falls, also served by GMRC. Appendix E is a letter from the town of St. Johnsbury, VT, which is on WACR approximately 70 miles north of White River Junction. Appendix F is a letter from the Town of Hartford, which embraces White River Junction. All four towns state that they are suffering economically due to poor service by B&M on traffic that shippers choose to route via that railroad.

Omya, Inc., is a rail shipper of limestone served by VTR. Its letter of support for the Vermont Carriers is attached as Appendix G. Omya recognizes the importance of maintaining sound competitive rail service for the entire Vermont Carrier system, including segments served by the Applicants, and supports the conditions proposed by the Vermont Carrier as necessary if the application is granted.

I have attempted on numerous occasions to discuss service improvement on the Connecticut River Line with B&M officials. At one point, in January 2000, GMRC actu-

ally reached an agreement with B&M for improved haulage service between Bellows Falls and White River Junction, increasing the number of B&M trips that would be available to GMRC to a six one way trips per week. See agreement of January 20, 2000 between GMRC and B&M, attached as Appendix B hereto.² Even though B&M has been utilizing access to GMRC's White River Junction yard as provided in the January 20, 2000 Agreement for the purpose of interchanging rail cars with NECR and to store cars and locomotives in the GMRC yard at no charge by GMRC to B&M (in other words, has been enjoying the fruits of the agreement), B&M still has not maintained three-day a week service for GMRC between Bellows Falls and White River Junction as provided in the year 2000 agreement. GMRC has been frustrated in seeking to use these haulage rights by disagreements with B&M. Even though the haulage rights have not been used, they play an important role by representing competitive rates that could impact the NECR haulage rates.³

Perhaps the most ominous event regarding service by B&M was the repeated assertion by Mr. David Fink, President of applicant Pan Am Railways, that the applicants intend to discontinue service along the Connecticut River Line. This statement was made in my presence by Mr. Fink on two occasions, August 21, 2007 and, most recently, April 30, 2008, when Mr. Fink said that his company wanted to be "off" the Connecticut River Line. I believe that B&M was aware at the time it first made this statement that a consolidation with Norfolk Southern was possible, leading to a realignment of B&M routes and gateways, and it certainly was aware of the proposed consolidation in April 2008.

² In discovery in this proceeding, B&M asserted that it could not locate any executed copy of this document.

³ As another example of B&M's unresponsive service, on July 7, 2008, I requested three-day-a-week rates from B&M between White River Junction and Bow, NH, but have received no response.

The emphasis of the proposed transition clearly is on intermodal and automotive traffic, as explained in Vol. I of the Application, pp 18-19, where the Applicants state that they intend to spend nearly \$40 million on such projects and project not a penny's worth of expenditure on the Connecticut River Line, where the Applicants can't even live up to the service standards mandated by the ICC

The carriers joining in this pleading work together toward many common service goals, but each is an independent carrier related by common ownership that has been approved by the Board Gateways that are available to VTR, for example, such as one at Hoosick Falls, NY, are not necessarily suitable for operations by other carriers whose lines follow the Connecticut River valley In order for our carriers to provide reliable service to customers along the Connecticut River, they must have adequate underlying service such as interchange from B&M at Bellows Falls and White River Junction.

We do not oppose the proposed transaction so long as it is conditioned by the Board on the performance by B&M of adequate underlying service to GMRC and WACR. Given the failure of B&M to live up to its mandated and voluntary agreements, and the anticompetitive effects of its behavior, the Board should require B&M to assign whatever operating rights it has from NECR to GMRC Without adequate service from B&M, GMRC and WACR cannot hope to compete effectively with NECR, which will end up with a virtual service monopoly along the Connecticut River Valley when B&M's service disintegrates totally, as seems to be the direction B&M is taking At a minimum, the Board should keep this proceeding open for a period of five years to observe and, if necessary correct, the service levels maintained by B&M between Bellows Falls and White River Junction and to grant such other relief as it deems appropriate

VERIFICATION

David W. Wulfson, being duly sworn, deposes and says that the foregoing is true and correct, to the best of his knowledge, information and belief

David W Wulfson

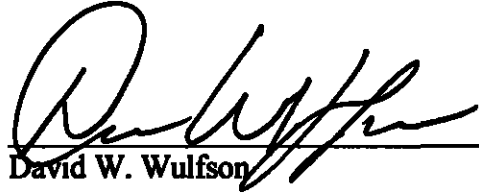
Subscribed and sworn to before me this ____ day of _____, 2008.

Notary Public

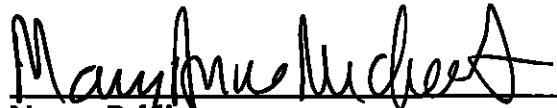
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VERIFICATION

David W. Wulfson, being duly sworn, deposes and says that the foregoing is true and correct, to the best of his knowledge, information and belief.


David W. Wulfson

Subscribed and sworn to before me this 8 day of AUGUST, 2008.


Notary Public

LETTERS[illegible]

One Railway Lane Burlington, Vermont 05401 • Phone 802-658-2550 • Fax 802-658-2553



**BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**IRON HORSE PARK
NO. BELLEFICA, MASS. 01863**

January 20, 2000

**Jerome M. Hebda
President
Green Mountain Railroad Corporation
One Railway Lane
Burlington, VT 05401**

Re: White River Junction

Dear Mr. Hebda.

The purpose of this letter is to formalize our agreement regarding the relationship between the Green Mountain Railroad Corporation ("GMRC") and the Springfield Terminal Railway Company/Boston and Maine Corporation ("GRS") as it relates to our mutual operations in and around White River Junction, Vermont. By this agreement, GMRC will be in the position to effectively market rail freight service to potential customers on the White River to Wells River line, and GRS will be able to continue to serve its customers and any new customers on its lines at the customary service levels. The terms of our agreement are as follows:

1. **Haulage:** At the request of GMRC, GRS will agree to haul GMRC freight cars and locomotives from Bellows Falls to White River Junction and return on a six-day per week schedule, (3 days northbound, 3 days southbound) plus reasonable supplemental service requested by GMRC. The haulage provided for under this agreement will be at no cost to GMRC, except that any supplemental service requested by GMRC shall be at the expense of GMRC.
2. **Car Hire/Car and Locomotive Responsibility:** All GMRC cars and locomotives being hauled by GRS shall remain the sole responsibility of and shall remain in the account of GMRC at all times under this agreement and GRS shall be deemed to be an independent contractor of GMRC. There shall be no interchange between GMRC and GRS of the cars and locomotives being hauled by GRS and GMRC pursuant to this agreement and, for the purposes of this agreement, cars in the account of GMRC and GMRC locomotives shall be the sole property of GMRC.
3. **Locomotive/Car Inspection:** GMRC agrees to perform the necessary inspections at Bellows Falls and White River Junction to insure that there are no car or locomotive conditions that will affect the haulage of the cars by GRS. In the event that GRS is required to perform any inspections, adjustment or repairs to GMRC freight cars or

locomotives, GMRC shall reimburse GRS for the reasonable costs of such inspection, adjustment or repairs.

4. Access to White River Yard: In consideration of the agreement by GRS to haul GMRC cars and locomotives, GMRC agrees to take the necessary steps to insure that GRS will have access to White River Yard for the purpose of interchanging rail freight traffic with the New England Central Railroad and GMRC, together with the ability to "wye" and to store cars and locomotives in the yard. Specific operational and storage issues related to this agreement shall be mutually decided by the chief transportation officers of the parties in a manner to allow for the most efficient level of operation by both GRS and GMRC. GMRC also agrees to maintain the yard at its expense to a level that allows for reasonable freight use and is in compliance with the Federal Rail Safety Act and other applicable laws.

5. Operations:

Upon no less than five (5) days notice from GMRC, GRS shall make available one track for the operation of "run through" service by GMRC in White River Yard. GRS will also allow GMRC the use of a GRS locomotive, subject to the terms and conditions of a locomotive use agreement to be negotiated between the parties. Other operational issues related to blocking, classification, overdimensional loads and other arrangements shall be decided by the mutual agreement of the parties.

6. Liability:

- A. GRS hereby agrees to indemnify, defend, release and hold harmless GMRC, its parent and affiliates, and their respective officers, directors, employees, agents and representatives from and against any and all claims, loss, cost, damage, or expense, including, without limitation, all claims or suits for loss or damage to property, the environment, personal injury or death, delay or other damage expense which arises out of or is referable to (i) the sole negligence of GRS, its parent, affiliates and their respective officers, directors, employees and agents in the performance of this agreement or (ii) any loss, cost, damage, or expense arising out of or referable to the interchange of freight traffic between GRS and the New England Central Railroad in White River Yard. Provided, however, that this provision shall not apply to any loss, cost, damage or expense arising from or in any way referable to the sole negligence of GMRC, its parent, affiliates and their respective officers, directors, employees and agents.
- B. GMRC hereby agrees to indemnify, defend, release and hold harmless GRS, its parent and affiliates, and their respective officers, directors, employees, agents and representatives from and against any and all claims, loss, cost, damage, or expense, including, without limitation, all claims or suits for loss or damage to property, the environment, personal injury or death, delay or other damage expense which arises out of or is referable to (i) the sole negligence of GMRC, its parent, affiliates and their respective officers, directors, employees and agents in the performance of this agreement or (ii) any loss, cost, damage, or expense

arising out of or referable to the interchange of freight traffic between GMRC and any other rail freight carrier. Provided, however, that this provision shall not apply to any loss, cost, damage or expense arising from or in any way referable to the sole negligence of GRS, its parent, affiliates and their respective officers, directors, employees and agents.

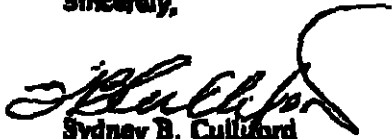
- C. In the event that both parties are responsible for any loss, cost, damage or expense incurred by either party, then each party shall assume its relative portion of the fault.

7. **Amendment:** The parties agree to review this agreement periodically for the purposes of amendment.

8. **Effective Date and Termination.** This agreement will be effective as of the date of this letter, and will continue in full force and effect unless terminated by either party upon thirty (30) days written notice. Notwithstanding the foregoing, in the event that the State of Vermont does not agree to allow GRS to have access to White River Yard pursuant to the terms and conditions contained herein, this agreement shall terminate immediately. In the event that this agreement is terminated for a reason other than denial of access to White River Yard or for cause, GRS and GMRC agree to negotiate the terms and conditions under which GRS would be willing to continue to haul GMRC cars from Bellows Falls to White River Junction.

If these terms are acceptable to the Green Mountain Railroad Corporation, please indicate such acceptance by your signature below

Sincerely,


Sydney B. Cullisford
Vice President-Transportation

Accepted:


Jerome M. Hebda
President

Municipal Manager
P O Box B
Ludlow, VT 05149-0250



Ludlow, Vermont

A Better Place To Live, Work & Play

APPENDIX C

Municipal Offices
Ph. 802-228-2841
Fax 802-228-2813
townhall@ludlow.vt.us
village@ludlow.vt.us

VERIFIED STATEMENT

**OF
FRANK HEALD**

My name is Frank Heald. I am the Municipal Manager of Ludlow, VT, a town with a population of 2,600 located approximately 28 miles west of Bellows Falls., VT.

Ludlow is what I call a typical rural community in that it is heavily reliant on goods manufactured elsewhere and imported to sustain local commercial needs that are beyond the ability of the Ludlow community to produce. Examples of such goods are road salt, lumber, pipe, cement, and other construction materials, farm implements and fertilizer, and fuel (there are no gas pipelines into the Ludlow area).

Most of the commodities consumed in the Ludlow area are manufactured too far away to be shipped by truck, so the community is heavily reliant on rail service. In addition Ludlow is home to a "Rio Tinto Group" talc mining operation that uses outbound rail service on a daily basis accessing end users across the country.

Ludlow is served by Green Mountain Railroad ("GMRC"), which heavily relies on B&M to interchange traffic at Bellows Falls, Vt. GMRC is a member of the Vermont Rail System ("VRS"), which includes Vermont Railway ("VTR"), Clarendon & Pittsford Railroad ("CLP"), Green Mountain Railroad Company ("GMRC"), and WACR. GMRC operates between Bellows Falls and Rutland, VT.

Any Season Is The Right Season to Visit Ludlow

B&M has trackage rights over NECR to White River Jct. and shippers selling goods to customers at White River Jct. and other points may, including Ludlow may elect to route their traffic B&M.

B&M, though, has displayed a gross indifference toward service to Bellows Falls, now operating no more than 10 trips per month. As a result, businesses at Bellows Falls and elsewhere along the GMRC, including Ludlow, that receive freight routed via B&M suffer costly service delays. These delays may cause them to lose business to competitors and, at a minimum, hampering their ability to compete effectively. Another effect of B&M's operating practices is a practical closure of the interchange at Bellow Falls between B&M (or between VRS when using haulage rights over B&M) and GMRC if one regards the sparse B&M service as amounting to a service failure.

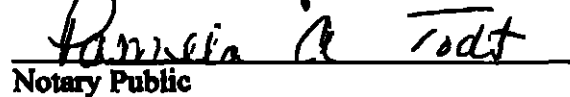
The Town of Ludlow supports the efforts of VRS to provide improved service to Bellows Falls by conditioning any approval of the proposed transaction on improved service by B&M (for the benefit of itself and VRS as a haulage carrier) or, in the absence of such improved service, by causing B&M to affirm its traffic rights over NECR to VRS subject to appropriate service requirements. Ludlow accordingly supports the application subject to the condition requested by VRS

VERIFICATION

Frank Heald, being duly sworn, deposes and says that the foregoing is true and correct, to the best of his knowledge, information and belief.


Municipal Manager

Subscribed and sworn to before me this 8th day of August, 2008.


Notary Public

My commission expires: 2/10/2011.

Town of Rockingham

and

Bellows Falls Village Corporation



Post Office Box 370

Bellows Falls, Vermont 05101

(802) 463-3964

Fax (802) 463-1228

**Verified Statement
Of
John P. O'Connor**

My name is John O'Connor. I am the Acting Municipal Manager for the Town of Rockingham and the Village of Bellows Falls, Vermont, a town with a population of approximately 5,300 located on the west bank of the Connecticut River, approximately 50 miles south of White River Junction, Vermont.

Rockingham is a typical rural community that is heavily reliant on goods manufactured elsewhere and imported to sustain local commercial needs that are beyond the ability of the local community to produce. This includes such goods as road salt, lumber, pipe, cement and other construction materials, farm implements and fertilizer and fuel (there are no gasoline or natural gas pipelines into the Rockingham area)

Many of the commodities consumed in the Rockingham area are shipped to the area by rail service. Rockingham/Bellows Falls is served by the Boston & Maine Railroad ("B&M"), New England Central Railroad ("NECR") and the Washington County Railroad ("WACR"), which has haulage rights between Bellows Falls and White River Junction on NECR. WACR is a member of the Vermont Railway ("VTR"), Clarendon & Pittsford Railroad ("CLP"), Green Mountain Railroad Company ("GMRC") and WACR.

B&M has trackage rights over NECR to Bellows Falls and shippers selling goods to customers in Bellows Falls and Rockingham may elect to route their traffic to B&M. B&M is currently operating no more than ten trips per month to Bellows Falls, resulting in service delays for businesses in Bellows Falls, Rockingham and other communities along the Connecticut River Line. These delays may have an impact on the ability of these businesses to compete effectively with businesses not reliant on B&M for delivery of goods and materials.

The Town of Rockingham and Village of Bellows Falls supports the efforts of VRS to provide improved service to the area by requesting that approval of the proposed merger between B&M and Norfolk Southern be conditioned on improved service by B&M (for the benefit of itself and VRS as a haulage carrier) or, in the absence of such an improved service requirement, by causing B&M to affirm its traffic rights over NECR to VRS, subject to appropriate service requirements. Rockingham/Bellows Falls accordingly supports the application subject to the condition requested by VRS.

VERIFICATION

I, John P O'Connor, being duly sworn, deposes and says that the foregoing is true and correct to the best of my knowledge, information and belief.


John O'Connor, Acting Municipal Manager

Subscribed and sworn before me this 8th day of August, 2008


Notary Public

My commission expires: 2/12/2011

**VERIFIED STATEMENT
OF
MICHAEL A. WELCH**

My name Michael A. Welch, I am the Town Manager of St. Johnsbury, Vermont. St. Johnsbury has a population of approximately 7,571, and is located westerly of the Connecticut River approximately 70 miles north of White River Junction, Vermont.

Like most Vermont communities, St. Johnsbury is heavily reliant on goods manufactured elsewhere and imported into the area to sustain local commercial needs. Some examples of these goods include road salt, lumber, pipe, cement, construction materials, farm implements, fertilizer, and fuel. There are no gas pipelines into the St. Johnsbury area.

The State of Vermont has invested heavily in supporting rail services. The use of rail services in this area has increased over the past several years, under the management of Washington County Railroad (WACR). The WACR relies heavily on B&M to interchange traffic at White River Junction. WACR is a member of the Vermont Rail System (VRS), which includes Vermont Railway (VTR), Clarendon and Pittsford Railroad (CLP), Green Mountain Railroad Company (GMRC), and WACR. WACR operates between White River Junction and Newport, Vermont.

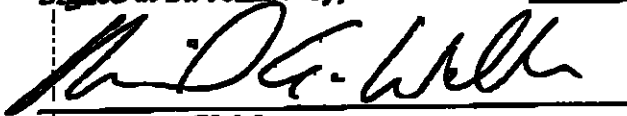
B&M has trackage rights over the NECR to White River Junction, and shippers selling goods to customers at White River Junction and other points, including St. Johnsbury, may elect to route their traffic via B & M.

I have been informed that B&M has displayed a gross indifference toward service to White River Junction, now operating more than ten (10) trips per month. As a result, businesses at White River Junction, and elsewhere along the Connecticut River line, including St. Johnsbury, that receive freight route via B & M will suffer costly service delays. Delays will impact the ability of local businesses using the rail to compete. A effect of B&M's operating practices results in practical closure of the interchange at White River Junction, between B & M (or between VRS when using haulage rights over B & M) and WACR.

The Town of St. Johnsbury supports the efforts of VRS to provide improved service to White River Junction by conditioning any approval of the proposed transaction on improved service by B&M (for the benefit of itself and VRS as a haulage carrier), or in the absence of such improved service, by causing B&M to affirm its traffic rights over NECR to VRS subject to appropriate service requirements.

VERIFICATION

Signed at St. Johnsbury, Vermont this 11th day of August, 2008.



Michael A. Welch
Town Manager
St. Johnsbury, Vermont

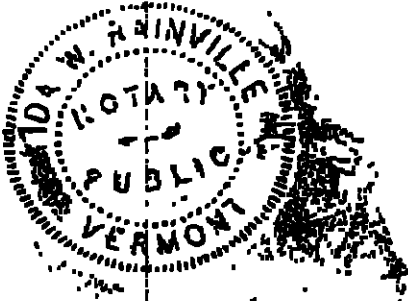
STATE OF VERMONT
CALEDONIA COUNTY, SS

At St. Johnsbury, Vermont, in said County, this 11 day of August, 2008, personally appeared, Michael A. Welch, and he made oath to the truth of the foregoing statement by him subscribed.

Before me,


NOTARY PUBLIC

My Commission Expires: 2-10-11





TOWN OF HARTFORD

MUNICIPAL OFFICES

171 Bridge Street

White River Junction, Vermont 05001

Telephone: 802/295-9353 • Fax: 802/295-6382

website: www.hartford-vt.org



Serving the Villages of Hartford • West Hartford • White River Junction • Wilder • Groches

VERIFIED STATEMENT OF HUNTER F. RIESEBERG TOWN MANAGER

August 11, 2008

The Town of Hartford and the Village of White River Junction has had a long history as a railroad community serving the immediate area and the overall New England Region. The area has been largely served by the Boston & Main Railroad (B&M), the New England Central Railroad (NECR) and the Washington County Railroad (WACR) which is a member of the Vermont Rail System.

We understand that the B&M railroad holds trackage rights over the NECR rails in and around the White River junction area. We also understand that these rights may currently be underutilized by the B&M which may result in delays and/or related access issues by shippers wishing to sell products and materials to area customers. These goods and products are essential to our local and regional economies.

In these difficult times, the Town of Hartford and the region need to do whatever we can to encourage effective and efficient means of promoting our area economies. We also believe that every effort should be made to make product transport and travel by rail cost efficient and available to all.

Accordingly, the Town of Hartford supports improved rail service to and from the White Rivers Junction region. In general we believe that every reasonable effort should be made to provide broad and timely access to these rails to all – or at least to those who are in the best position to make full and effective use of our rail systems. and in doing so provide valuable goods and services to our region.

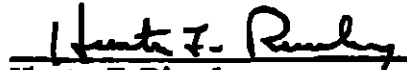
We therefore encourage the transfer of trackage rights to those best suited to provide these services and in doing so assure the cost effective and efficient delivery of goods and services to our region.

Sincerely yours,


Hunter F. Rieseberg
Town Manager

VERIFICATION

I, Hunter F. Rieseberg, being duly sworn, deposes and says that the foregoing is true and correct, to the best of his knowledge, information and belief.


Hunter F. Rieseberg
Town Manager

Subscribed and sworn to before me this 11th day of August, 2008


Notary Public

My Commission expires: 2/10/2011

VERIFIED STATEMENT

OF

ERIK G. BOHN

My name is Erik G. Bohn and I am Director of Logistics at Omya Inc. My company processes, sells and tenders for transport Calcium Carbonate, in slurry and dry forms, throughout North America. The majority of our shipped volume moves by rail, which we rely upon extensively. An efficient and cost competitive transportation infrastructure is essential to the success of our business, and to that of our customers. I am writing to offer my company's support for the proposed joint venture between Norfolk Southern and Pan Am Railways. While we urge the Board to approve it as promptly as is possible, we request that the Board carefully evaluate the potential of any negative impact(s), even if unintended, on a number of regional Class III railroads, upon which my company depends heavily.

Our largest North American processing facility is located in Florence, Vermont. The Vermont Railway (VTR) services this important facility and originates all outbound rail traffic from it. In Rutland, Vermont, VTR interchanges our traffic with Green Mountain Railroad (GMRC) for movement southeast to Bellows Falls, Vermont. Here our traffic is interchanged with New England Central Railroad (NECR) for movement south to Palmer, Massachusetts and furtherance via CSX Transportation (CSX), or with Springfield Terminal Railroad (ST), operating over NECR trackage, for furtherance to destinations located in Maine. Recently, an interchange between VTR and ST was

reopened at Hoosic, New York. From this point, traffic can now be handled by ST east to Maine destinations or west to Rotterdam Junction, New York and Mechanicville, NY for furtherance via CSX and Norfolk Southern (NS), respectively. In Rutland, VTR also interchanges our traffic with Clarendon & Pittsford Railroad (CLP) for movement west to Whitehall, New York and furtherance via CP Rail (CP).

We believe this transaction can be in the best interests of New England businesses for expanding rail service alternatives from, to and within New England. But it must also consider the impact of certain interchange relationships VTR has with other regional railroads, particularly Boston and Maine (B&M), ST and NECR.

The transaction should promote rail infrastructure improvements along one of the primary rail arteries in New England. We depend upon this east – west rail artery heavily, servicing our New England customers as well as other customers throughout North America. Other, Pan AM Southern (PAS) trackage, not contained within the proposed Patriot Corridor, must also be maintained, or given the ability to expand and improve. Increased competition for the movement of goods into and out of the New England region can help to control rates and improve service offerings. But there are potential consequences of this transaction that can result in decreased service offerings with VTR and GMRC. This is of great importance and concern to us in order to allow our largest North American plant to adequately compete on a North American, and Global, basis.

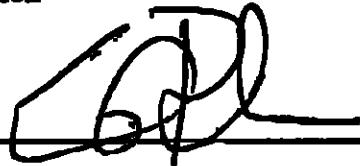
Improvements to rail service reliability and cost can encourage the continued removal of more freight from New England area highways, benefiting the environment and reducing congestion. With adequate protection to existing commercial and operational services, we feel this is an important step to improve service, enhance

efficiencies and promote growth of transportation options in, and for, the New England region.

In conclusion, we support the application of the Norfolk Southern – Pan Am transaction subject to certain concerns and conditions which could negatively impact non-Patriot Corridor service and competitiveness. We support VTR's concerns and conditions..

VERIFICATION

**Erik G. Bohn, being duly sworn, deposes and says that the foregoing is true and correct,
to the best of his knowledge, information and belief.**

A handwritten signature in black ink, appearing to be 'Erik G. Bohn', written over a horizontal line.

Erik G. Bohn

Subscribed and sworn to before me this 11th day of August, 2008

A handwritten signature in black ink, appearing to be 'Nancy E. Sterrett', written over a horizontal line.

Notary Public



**NANCY E. STERRETT
Notary Public, State of Ohio
My Commission Expires 07-20-2013**