

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35147

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

PETITION AND COMMENTS FOR CONDITIONS IMPOSED

The Committee to Improve Rail Service in Maine is a group comprised of business, political and civic leaders who have joined to intervene in the matter of Pan Am Southern LLC, in an effort to improve rail service in our State.

The Committee to Improve Rail Service in Maine hereby petitions the Surface Transportation Board (STB) to approve the formation of Pan Am Southern LLC with the following conditions:

1. That within three years of the STB's approval in the matter of Pan Am Southern, Pan Am Railways (PAR) agrees to upgrade and repair all of their track lying within the State of Maine; such that Pan Am Railways will be in full compliance with the "Box B" speeds listed in their own Timetable Number 5, which was effective on April 1, 2006.
2. That PAR commit to the establishment of a comprehensive locomotive rebuild program, such that within four years of the STB's approval in the above matter of Pan Am Southern LLC, all Pan Am Railways/Springfield Terminal/Pan Am Southern locomotives have been rebuilt to full industry standards, in compliance with all current environmental standards and with the installation of auxiliary power units (APU).

3 That PAR commit to the assignment and maintenance of no less than 50 locomotives to their rail operations within the State of Maine. We calculated this number of locomotives as the number needed to handle the 69,000 loads¹ that PAR moves within the State of Maine each year. The number also corresponds to the minimum number of locomotives needed to provide ample opportunity for normal maintenance and repair, as well as complete overhaul, while still providing adequate rail service for the following Maine points on the PAR system:

- a. Bangor to Mattawamkeag and return
- b. Bangor to Portland and return
- c. Bangor to Bucksport and return
- d. Waterville to Portland and return
- e. Rumford to Portland and return
- f. Madison to Waterville and return
- g. Bangor switchers
- h. Waterville switchers
- i. Rumford switchers
- j. Riley's switchers
- k. Rigby switchers
- l. Woodland switcher

4. That PAR commit to a formal program to ensure that all Maine rail shippers have adequate railcar resources to meet their shipping needs. Such program will be devised by the STB, the Maine Department of Transportation (MDOT), the Maine Attorney General and PAR.

5. That PAR agrees to a penalty program to be devised by the STB, MDOT, the Maine Attorney General and PAR for failure to meet the conditions listed above.

We also request that the STB hold a public hearing in the State of Maine to provide an opportunity for public input on these matters.

¹ Atlantic Northeast Rails and Ports; 08#02A, 29 February 2008, pg 5

In support of the above, we offer the following comments:

The State of Maine's relationship with PAR has been somewhat contentious for the last couple of years.² In 2005, a group of rail shippers formed the "Northeast Rail Consumers Association" to petition the Maine Legislature to do something to improve rail service in the State. In response, the Maine Legislature passed Title 35-A section 1711, which directed the Maine Public Advocate to survey rail shippers within the State, and to report back to the legislature with three annual reports for 2006, 2007 and 2008. On January 28, 2008, the Maine Public Advocate reported to the Utilities and Energy Committee of the Maine Legislature with the third and final report. In his summary, the Public Advocate wrote: 'Many of the comments provided by the shippers point to an apparent lack of desire on the part of some railroad management/ personnel to improve the rail system in Maine. Several shippers felt that until railroad management is changed in Maine, and until the intermodal rail service in the State of Maine improves further, they would not expand their business.'³ The Public Advocate went on to report that 86 percent of the complaints received were directed to PAR.⁴ After hearing the Public Advocate's report, the Utilities and Energy Committee voted unanimously (12-0) to: 'Request that MDOT, with the assistance of the Attorney General, investigate the possibility of filing a feeder line application at the Surface Transportation Board. The agencies would report to the Legislature at the start of the next legislative session.' As such, the House and Senate chairs of both the Transportation Committee and the Utilities and Energy Committee have sent a letter to the Maine Attorney General asking that his office investigate the Feeder Railroad Development Program as a means to improve railroad freight service.⁵ The Maine Attorney General has assigned a staff attorney to investigate this program, to report back to the next session of the Maine Legislature.

There is support for this effort within the State, as can be seen by an editorial that appeared in the March 16, 2008 edition of the Maine Sunday Telegram. In the article,

² Maine Sunday Telegram, editorial March 16, 2008

³ Atlantic Northeast Rails and Ports, 08#02A, 29 February 2008, pg. 4

⁴ Portland Press Herald; March 6, 2008, LEGISLATOR'S PLAN: FORCE SALE OF RAIL

⁵ See Attachment A

editors of the paper said that: 'The state should know what legal means it has at its disposal.'⁶

The Committee to Improve Rail Service in Maine is particularly concerned that the formation of Pan Am Southern could lead to further reductions in rail service in Maine. As we understand the agreement, Pan Am Southern will be a joint and equitable venture between Norfolk Southern Railroad and PAR. A committee comprised of an equal number of Norfolk Southern Railroad and PAR representatives will oversee Pan Am Southern operations. However, Pan Am Southern operating assets (locomotives, operating crews) will come entirely from Springfield Terminal Railways, which is a wholly-owned subsidiary of PAR.

While we do not know the finer details of the agreement between Norfolk Southern Railroad and PAR on this matter, we can only expect that the agreement would include performance incentives and penalties for the Springfield Terminal Railways for meeting the operating demands of the Pan Am Southern.

We fear that since there are no penalties in place for PAR reallocating their operating assets from Maine to the Pan Am Southern, Pan Am Southern will be assigned the priority, and Maine will suffer. PAR's allocation of assets to their holdings in the State of Maine already appears to be meager. While their timetable⁷ calls for a maximum operating speed of 40 miles per hour on nearly 125 of the 139 mainline route-miles between Bangor and Portland, a review of a recent PAR Temporary Speed Restriction Summary⁸ shows that this entire line is currently under speed restrictions of either 10 or 25 miles per hour. We could not find a single mile that could be traversed at the 40 mile per hour timetable speed.

There are resources available that would aid PAR in upgrading and maintaining their track to a higher standard. The Montreal, Maine and Atlantic (MMA) Railway, which is also headquartered in the State of Maine, moves less than half the number of loaded railcars within our State than the number moved by PAR. Yet MMA has committed to a loan of some 34 million dollars through the Railroad Rehabilitation & Improvement

⁶ Maine Sunday Telegram, editorial March 16, 2008

⁷ Timetable Number 5, effective April 1, 2006

⁸ Pan Am Railways Temporary Speed Restriction Summary #204, Effective 0300 Tuesday, July 22, 2008 to 0300 Wednesday, July 23, 2008

Financing (RRIF) Program of the Federal Railroad Administration⁹ to be spent on the maintenance of their right of way. This same program is available to PAR.

We are also very concerned with the size and operating condition of PAR's locomotive fleet. A review of their roster¹⁰ shows a fleet of 102 locomotives. As listed, when removing the locomotives that are out of service for repair or in storage, you have an effective number of 79 units. The newest locomotives in their fleet were built in the mid-1970s, and have not been rebuilt to comply with current Tier 2 emissions standards. Reliability is questionable, as witnessed by this past winter, when a rail customer in the State of Maine was told that the reason his facility received rail service on only 12 of 29 days during February 2008 was because of the unusually snowy winter and the lack of engine power to get through the drifts.¹¹

Again, though we do not know the details within the agreement to form the Pan Am Southern, we would expect that the owners of PAR would realize some financial gain from this transaction, which would allow them to repair and upgrade their rail holdings elsewhere. That apparently will not be the case, as evidenced by comments made by PAR President David Fink, who told employees at the railroad's facilities in Waterville, Maine that PAR does not plan to improve its service model in Maine.¹²

We believe that PAR could capture a much larger share of the transport market here in our State, just as railroads are doing throughout the United States, if PAR would only offer faster, more reliable service. The Technical Association of the Pulp and Paper Industry (TAPPI) lists Maine as the second only to Wisconsin in paper production,¹³ with 3.4 million tons being produced in Maine as compared to nearly 5.1 million tons produced annually in Wisconsin. A phone call to the Maine Pulp and Paper Association confirmed this statistic. And yet, according to the Association of American Railroads, Maine doesn't appear in the top 10 states in the category of pulp and paper loads that originated and/or terminated within that state by railroad.¹⁴ Wisconsin is listed prominently in the number two position. The statistics beg the question 'Why doesn't

⁹ <http://www.fra.dot.gov/us/content/177>

¹⁰ <http://www.thedieselshop.us/GRS.HTML>

¹¹ Atlantic Northeast Rails and Ports; e-bulletin, 5 March 2008

¹² Atlantic Northeast Rails and Ports; e-bulletin, 28 July 2008

¹³ http://www.tappi.org/s_tappi/doc.asp?CID=183&DID=549321

¹⁴ http://www.aar.org/PubCommon/Documents/AboutTheIndustry/RRState_Rankings.pdf

more of the State of Maine's number one manufactured product move by rail?' Prior to the acquisition of the Maine Central Railroad in 1981 by the principals of PAR, the single heaviest train that ran nearly seven days a week was the "wood job" This was a freight that could move over 2000 cords of pulpwood per day from northern and eastern Maine to the paper mills in the south. Comparatively little of this pulpwood now moves by rail The vast majority now moves by truck.¹⁵

And finally, we would ask the Surface Transportation Board to review all of these matters with a great deal of scrutiny. Earlier this year, the US Department of Transportation (USDOT) issued Order Number 2008-2-3, served February 1, 2008. In this document, the USDOT 'propose to revoke the certificate of public convenience and necessity issued to Boston-Maine Airways Corp. ("BMAC"), and dismiss its applications for foreign scheduled certificate and exemption authority for its failure to continue to remain fit, willing, and able to provide air transportation as a U.S. certificated air carrier. Our review of the record in this case indicates that BMAC does not possess (1) the financial wherewithal to continue or expand its operations without posing an undue risk to consumers and their funds, (2) the managerial competence necessary to oversee its current and proposed operations, and (3) a proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and to ensure that acceptable consumer relations practices will be followed.' Boston - Maine Airways was a wholly owned subsidiary of the Pan Am Group, the same group that manages PAR, which is evidenced in their response to the USDOT order: 'For far longer than their 10 economically-difficult years in the airline business, Messrs. Mellon and Fink have also been partners in safe, successful, reliable, and lawfully-compliant - and frequently-honored - railroad operations in the Northeastern United States for over 25 years'. While we might take issue with their definition of success, the assertion that the management of the railroad and the management of the now defunct airline are one in the same is irrefutable.

We believe that the formation of Pan Am Southern will be very good for the new railroad's service area. But at the same time, the point must be made that historically

¹⁵ Atlantic Northeast Rails and Ports; 08#02A, 29 February 2008, pg. 8

speaking, the industries within PAR's service area in the State of Maine have accounted for the largest share of PAR's traffic base. Certainly, there are more rail customers, and therefore more rail shipments originating and terminating in PAR's service area in the State of Maine than in the area to be serviced by Pan Am Southern. We ask only that the service levels of PAR in the State of Maine receive the same attention and investments being allocated to Pan Am Southern.

"I, Thomas D Hall, 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 11 August, 2008 "

A handwritten signature in black ink, appearing to read 'Thomas D. Hall', with a stylized, cursive script.

Thomas D Hall
Chairman
The Committee to Improve Rail Service in Maine
176 Merrill Road
Pownal, Maine 04069
(207) 688-4294

Dated: August 11, 2008



MAINE STATE LEGISLATURE
Augusta, Maine 04333

April 15, 2008

Honorable G. Steven Rowe, Attorney General
State House Station #6
Augusta, ME 04333-0006

Dear Attorney General Rowe

We are writing to request for your opinion and analysis regarding the options available under the Feeder Railroad Development Program of the federal Surface Transportation Board. Specifically, we request that you explore the ramifications of and possibilities for utilizing the Feeder Railroad Development Program as a means to improve railroad freight service in the State. The statutory provisions for the Feeder Railroad Development Program are found at 49 U.S. Code §10907 and the associated Surface Transportation Board regulations are found at 49 CFR Part 1151.

We would appreciate your advice at your earliest convenience and no later than January 15, 2009. If you have any questions regarding our request, please let us know. Thank you.

Sincerely,

Philip L. Bartlett II
Senate Chair
Utilities and Energy Committee

Dennis Damon
Senate Chair
Transportation Committee

Lawrence Bliss
House Chair
Utilities and Energy Committee

Boyd Marley
House Chair
Transportation Committee

cc: Members, Joint Standing Committee on Utilities and Energy
Members, Joint Standing Committee on Transportation

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Attachment A