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August 8, 2008

VIA FEDERAL EXPRESS

Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: Norfolk Southern Railway Co , Pan Am Railways, Inc., et al.--Joint
Control and Operating/Pooling Agreements--Pan Am Southern LLC
Finance Docket No. 35147

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned matter on behalf of Milford-Bennington Railroad Co., Inc. are the original and 10 copies of the "Statement of Position and Request for Conditions of Milford-Bennington Railroad Co., Inc." and the attached "Verified Statement of Peter R. Leishman". Thank you very much for your assistance.

Very truly yours,


James E. Howard

Enclosures

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Public Record

223705

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



STATEMENT OF POSITION AND REQUEST FOR CONDITIONS
OF MILFORD-BENNINGTON RAILROAD COMPANY, INC.

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Attorney for Milford-Bennington
Railroad Company, Inc.

Dated: August 8, 2008

**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**

**STATEMENT OF POSITION AND REQUEST FOR CONDITIONS
OF MILFORD-BENNINGTON RAILROAD COMPANY, INC.**

Milford-Bennington Railroad Company, Inc. ("MBR") submits this statement of position and request for conditions in the event that the Board approves the transaction described in the application filed by Norfolk Southern Railway Co. ("Norfolk Southern"), Pan Am Railways, Inc. ("Pan Am") and certain affiliates of Pan Am. As demonstrated below, the transaction is likely to have the effect of preventing MBR from continuing to provide essential rail services to its only customer, Granite State Concrete. Consequently, the Board should condition any approval of the transaction by requiring the applicants to take certain actions, described below, all of which have been promised in the past but never delivered, to ameliorate the likely harm to essential services.

Background

MBR operates in New Hampshire on the Hillsborough branch, which connects to a north-south Pan Am line at Nashua, New Hampshire and extends from there north and west to Bennington, New Hampshire. Verified Statement of Peter R. Leishman ("Leishman V.S."), attached hereto, at 1. The portion of the Hillsborough branch

between Nashua and milepost 16.36 is owned by a subsidiary of Pan Am and is subject to trackage rights in favor of MBR, and the portion between milepost 16.36 and Bennington is owned by the State of New Hampshire and leased to MBR. Id.

MBR serves Granite State by moving stone from a Granite State excavation site located on the New Hampshire-owned portion of the Hillsborough branch to a Granite State processing facility located approximately 5 miles away on the Pan Am segment. Leishman V.S. at 1. MBR has trackage rights over the Pan Am line enabling it to reach the processing facility. The volume of rail traffic between the excavation site and the processing facility is substantial--approximately 400,000 tons of stone are moved annually. Id. at 2. Significantly, from the perspective of Granite State, the rail service provided by MBR is absolutely essential to the continued operation of Granite State. Id. at 12. As the Board has recognized in a prior decision, the permit by which Granite State operates its excavation site deprives it of the competitive service option of using trucks. Granite State Concrete Co., Inc. and Milford-Bennington Railroad Co., Inc. v. Boston and Maine Corp. and Springfield Terminal Railway Co., STB Docket No. 42083 ("Granite State"), decision served September 24, 2004 at 5.

In the Granite State litigation, MBR provided detailed information concerning the long-standing, multiple efforts of Pan Am to interfere with MBR's operations or put MBR and Granite State out of business. In its decision, the Board found that, while the Pan Am subsidiaries could have acted more quickly and reasonably, their actions were not "so egregious" as to constitute a statutory violation and not "necessarily unreasonable". Granite State at 3, 5. The Board concluded that, although Pan Am's conduct had "not risen to the level of violating our statute", going forward MBR and

Granite State should be afforded "immediate access to the Board's processes to protect the shipper from the risk of market power abuse" and should have the ability "to seek prompt relief if [Pan Am] were to impose unworkable restrictions." Granite State at 5.

Subsequent to the decision in Granite State, essentially nothing has changed. Although promising to upgrade its portion of the Hillsborough branch, Pan Am has allowed the track to remain in excepted condition, which permits operations to be conducted at maximum speeds of 5-10 mph. Leishman V.S. at 2. These track conditions make it very difficult for MBR to provide adequate service to Granite State. In addition, Pan Am continues to insist that MBR open and close a derail located at milepost 16.36, after receiving permission from the Pan Am dispatcher, even though the tourist operator, which was the original reason Pan Am gave for requiring use of the derail, has long since ceased operations. Leishman V.S. at 4 and letter attached as Exhibit B to Leishman V.S. Furthermore, the original trackage rights agreement between Pan Am and MBR expired by its own terms in 2004. MBR has been trying ever since, without success, to negotiate a new agreement. Leishman V.S. at 2. The lack of an agreement governing the use of Pan Am's line casts further uncertainty on MBR's ability to continue to provide service.

Adverse Impact of the Transaction

Neither the Hillsborough branch nor the Pan Am main line in New Hampshire will be part of Pan Am Southern, the new joint venture planned by Norfolk Southern and Pan Am. Consequently, the application provides no information concerning the intentions of Pan Am with respect to the rehabilitation or operation of those lines or the impact of the transaction on the part of the Pan Am system that does not become Pan Am Southern. For example, will Pan Am use any of the funds to be provided by Norfolk

Southern to upgrade the Hillsborough branch or to rehabilitate the New Hampshire line to Bow, New Hampshire in order to handle coal deliveries that the applicants claim will be enhanced by the transaction? *Leishman V.S.* at 7-8. Will Pan Am have sufficient resources and incentive to improve the Hillsborough branch, or will it continue to lack adequate resources and ignore its prior representations? Will Pan Am allocate sufficient locomotives to provide adequate service to the non-Pan Am Southern lines? *Id.* at 8. In short, the Board should recognize that the impact of the proposed transaction will be far broader and more far-reaching than the limited geographic scope of the lines and operations of Pan Am Southern. *Id.* at 5-10.

The combination of the silence of the application with respect to the Pan Am lines that will not become part of Pan Am Southern and the emphasis of the application on the operations of Pan Am Southern by Springfield Terminal, which will also continue to operate the non-Pan Am Southern lines, compel the conclusion that the non-Pan Am Southern lines will be ignored or, at best, afforded only superficial attention. Norfolk Southern and Pan Am will undoubtedly focus heavily on Pan Am Southern and its operations and profitability. Contrary to the applicants' representation that the transaction will "greatly improve rail service in the New England region" (Application at 11), the transaction is likely to improve service to customers that will be served by Pan Am Southern and result in a degradation of service to everyone else.

With respect to MBR specifically, it is reasonable to anticipate that Pan Am will continue to avoid its responsibilities and promises and perhaps, even worse, to continue the conduct that has made it difficult for MBR to survive at all. The end result will be an

exacerbation of the current situation to the detriment of MBR and the essential rail services that it provides to Granite State.

Conditions to Ameliorate Harm

The authority of the Board to impose conditions in order to alleviate competitive harm is beyond question. CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, 3 S.T.B. 196 (1998) ("Conrail") at 277. Furthermore, the Board has recognized that a type of competitive harm that warrants the imposition of conditions is the "loss by another rail carrier of the ability to provide essential services. Essential services are those for which there is no adequate transportation alternative." Conrail at 277-278.

As described above, the Board has already concluded in Granite State that MBR provides essential services to Granite State. Given the restrictions on Granite State's ability to use trucks, rail is the only alternative. Consequently, the Board should protect such essential services from the potential adverse effects of the transaction.

The applicants may argue that conditions are not appropriate, because the "problem" adversely affecting MBR and Granite State preexisted the transaction and is therefore not merger related. The Board has, however, recognized that conditions are appropriate where pre-existing harms are likely to be exacerbated by a transaction. Canadian National Railway Co. and Grand Trunk Corporation--Control-- Duluth, Missabe and Iron Range Railway Co., Bessemer and Lake Erie Railroad Co., and The Pittsburgh & Conneaut Dock Company, STB Finance Docket No 34424, decision and served April 9, 2004 at 14; Kansas City Southern--Control--The Kansas City Southern

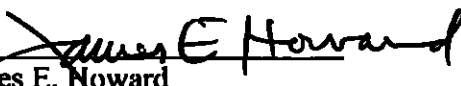
Railway Co., Gateway Eastern Railway Company, and The Texas Mexican Railway Co.,

STB Finance Docket No 34342, decision served November 29, 2004 at 16. For the reasons outlined above and in the Verified Statement of Peter R. Leishman, it is likely that the transaction will exacerbate the problems caused by Pan Am and make it more likely that essential services will be further adversely affected. In such a situation, conditions are warranted.

The conditions proposed by MBR are reasonable and appropriate. Leishman V.S. at 11. The Board should (1) require Pan Am to meet its pre-existing promises to the State of New Hampshire and MBR to improve branch lines, including specifically the Hillsborough branch, (2) require Pan Am to meet its obligations to the State of New Hampshire to improve the main line between Nashua and Manchester to FRA Class 2 standards, (3) be required to maintain a locomotive fleet sufficient to meet the service requirements in New Hampshire, (4) be directed to enter into a trackage rights agreement with MBR consistent with standard industry terms and conditions and (5) retain jurisdiction to enforce these conditions to the extent necessary.

Respectfully submitted,

MILFORD-BENNINGTON RAILROAD
COMPANY, INC.

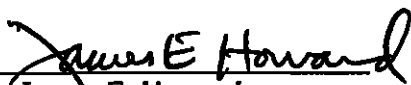

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Dated: August 8, 2008

Attorney for Milford-Bennington
Railroad Company, Inc.

Certificate of Service

I hereby certify that the foregoing "Statement of Position and Request for Conditions of Milford-Bennington Railroad Co., Inc." and the "Verified Statement of Peter R. Leishman" attached thereto are being served by mailing copies by first-class mail to all parties of record in this proceeding.



James E. Howard

**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**

VERIFIED STATEMENT OF PETER R. LEISHMAN

My name is Peter R. Leishman, and I am the founder, owner and president of Milford-Bennington Railroad (MBR). MBR was incorporated in 1987 and commenced active rail operations in 1992. MBR operates over a line of railroad known as the Hillsborough Branch that runs from Nashua, New Hampshire, through the towns of Milford and Wilton to Bennington, New Hampshire. The portion of the line that runs from Nashua (MP 0.0) to Wilton (MP 16.36) is owned by a subsidiary of Pan Am Railways (PAR) and the portion from Wilton (MP 16.36) to Bennington is owned by the State of New Hampshire and leased to MBR. MBR has trackage rights over the PAR segment. Milford-Bennington serves one customer, Granite State Concrete, and moves stone from a Granite State excavation site in Wilton, New Hampshire to a Granite State processing facility located approximately five miles away in the adjacent town of Milford. The excavation site is located on the section of the branch line that is leased by MBR from the State of New Hampshire and maintained and operated by MBR. The processing facility is located on the section of the branch line in Milford, New Hampshire that is owned by PAR. The portion of the branch that is leased and operated by MBR is

maintained so that it meets or exceeds a safety standard that is no less than FRA Class 2. The portion of track that MBR operates over that is owned by PAR is classed as excepted track and barely safe to operate over at 5-10 mph.

Over the past two decades MBR has interacted with PAR and its predecessor companies on multiple levels. Founded in 1987, the MBR has become a successful shortline railroad that has moved in excess of 400,000 tons of stone annually which eliminates in excess of 24,000 one way truck trips in the communities of Milford and Wilton. From the very beginning, MBR has had difficulty working with PAR. Many of the instances in which PAR made it difficult for MBR to operate successfully, or in some cases to operate at all, were described in the record in Granite State Concrete Co., Inc. and Milford-Bennington Railroad Co., Inc. v. Boston and Maine Corporation and Springfield Terminal Railway Co., STB Docket No. 42083, decision served September 24, 2004. On a number of occasions PAR has promised performance and delivered none. They have set goals of replacing worn out rail and have failed to do so. They have pledged to maintain track at a minimum standard of FRA class 1 conditions and they have never met those standards. They have pledged to enter into a reasonable trackage rights agreement based on traditional industry standards and they have refused to do just that. In short, they have frequently promised performance but they have failed to deliver and at times have taken actions that from my perspective were designed to put MBR out of business.

On a broader platform, I have served in various public capacities in the State of New Hampshire including being elected to the state legislature several times. In those public

positions I have actively supported measures and actions to enhance and improve the rail system in the State of New Hampshire. I am very aware of commitments made by Pan Am to the State of New Hampshire and others. For example in 1987 Pan Am's subsidiary, Boston and Maine Corporation, sought support from the State of New Hampshire when they were leasing portions of the Boston and Maine to another subsidiary, Springfield Terminal Railway. The petitioner stated that the lease to the Springfield Terminal would put the railroad in a position to upgrade track in New Hampshire and to maintain track at a standard that assured branch lines such as the Hillsborough would be maintained to a minimum FRA class 1 condition and the main line from the Massachusetts border to Manchester would be maintained at FRA class 2 conditions. New Hampshire issued an order, a copy of which is attached as Exhibit A, supporting the leases subject to their understanding that Springfield Terminal would honor its commitment. Springfield Terminal has not, and today the main line is riddled with slow orders and operates generally at 10 mph. The Hillsborough branch is classified as excepted track meaning it is not maintained to even a minimum FRA class 1 standard. The Hillsborough branch is in deplorable condition with thirteen miles restricted to 5 mph.

In June, 1992 PAR's subsidiary Springfield Terminal Railway entered into a trackage agreement with MBR that expired in 2004 enabling MBR to operate over a portion of the Hillsborough between MP 13 and MP 16.36. In that agreement Pan Am proposed and included the following language: "It is the intent of B&M/ST to install welded rail between milepost N-11 and milepost N-16.36 within 5 years of the effective date of this

agreement in order to eliminate existing webber type joint bars. The railroad will be maintained in compliance with Federal Railroad Administration Safety Standards". PAR has failed to meet that goal or commitment. During the term of the agreement, instead of improving the line, the referenced track was designated as excepted track, essentially meaning there are nearly no Federal safety standards that can be used to measure track safety. In a letter dated October 29, 2007, a copy of which is attached as Exhibit B, I wrote the President of PAR offering to purchase the short section utilized by MBR. In that letter I again voiced my opposition to the use of a derail device that had been placed in main line track by PAR and also pointed out that the device that PAR was using was not the type that would provide a safe work environment for PAR and MBR employees. In response to my letter PAR's Executive Vice President stated, "We also appreciate your concerns regarding the type of derail device presently in use on the Linc, and will immediately take steps to replace the current derail device with a so-called "split switch" device that will be more effective in provide (sic) a safe work environment for both PAR and MBR employees, as well as the public." PAR's letter was written on November 13, 2007 and as of August 4, 2008 no action has been taken.

I have reviewed the application filed by Norfolk Southern and PAR in which they seek authority to control a new rail carrier--Pan Am Southern--and to have Springfield Terminal Railway, a subsidiary of PAR, operate Pan Am Southern. As discussed in more detail below, Norfolk Southern and PAR argue that the service provided on the new Pan Am Southern will be superior to the current service provided by Springfield Terminal. The Pan Am Southern line will extend generally between Ayer, Massachusetts and

Mechanicville, New York, and, while it will include certain branch lines, Pan Am Southern will not own the north-south line that extends into New Hampshire or the Hillsborough Branch. Rather, PAR will continue to be the owner and Springfield Terminal will continue to be the operator of such lines.

There is a significant difference between what PAR and its affiliated companies say and what they actually do. In a number of situations in New Hampshire that I am personally aware of they have either not been able to meet the commitments that they have made or they have chosen not to meet commitments they have made to MBR or to the State of New Hampshire. It is for the above reasons and others that I am asking the STB to impose conditions that will assure that the benefits from the transaction will not be at the expense of the remainder of the PAR system that does not become part of Pan Am Southern.

The proposed transaction between Norfolk Southern (NS) and PAR suggests that the proposal has a relatively narrow focus. However, the proposal does in fact bring about a change to a significant portion of the PAR system and can and should have broad implications for the entire PAR system. If implemented successfully, the proposed transaction should provide initial short term benefits to PAR by injecting substantial cash into what appears to be cash strapped system. As discussed below, however, it is not clear whether or to what extent the cash infusion will be used to improve the infrastructure or service of the PAR lines that are not part of Pan Am Southern. One must assume that the proposed transaction will also provide substantial benefits to

Norfolk Southern or they would not be entering into the proposed agreement or investing \$140 million dollars in a section of railroad that does not physically connect to their own railroad. While the NS/PAR filing endeavors to minimize the positive impact the proposed transaction will have on each system, the filing clearly suggests that the parties expect to attract substantial volumes of new auto business into the proposed auto facilities in Ayer, MA and Mechanicville, to attract substantial growth in intermodal business both in Mechanicville and Ayer and perhaps Waterville and to support a substantial coal business. It is hard to conceive of Norfolk Southern investing such large sums in a railroad that does not directly connect to the Norfolk Southern system unless they did expect to attract sufficient growth both to the proposed new entity, PAS, and to the Norfolk Southern System in order to amortize an investment of this magnitude. Further, it is reasonable to assume that NS and PAR expect to grow other business on the new PAS. The filing indicates that the parties intend to improve the railroad between Ayer and Mechanicville such that it can carry rail cars weighing 286,000 pounds vs. the present 263,000. Since the PAR rail lines to the east of Ayer remain capable of maximum weights of 263,000 and the filing makes no mention of improving capacity east of Ayer it is reasonable to assume that the parties expect to grow only that traffic that originates and/or terminates within the Ayer-Mechanicville corridor as a result of track improvements and related gross capacity increases.

While the proponents argue that the proposed transaction should be viewed as one that is minimally designed to simply improve infrastructure so that existing traffic can move faster, safer and more reliably, the proposed transaction is in fact one that will impact all

of New England. In fact, the proponents themselves state on page 11 of their filing “In sum, the Transaction will greatly improve rail service in the New England region, enhance competition, reduce long-distance truck traffic and serve the public interest” The filing does not say that the Transaction will only serve the public interest in a small part of New England between Mechanicville and Ayer or only improve rail service between Mechanicville and Ayer or only take trucks off the road along Route 2 between Mechanicville and Ayer. The STB should view the transaction in the same broad sense as the quote above from page 11 of the proponents filing and take actions to insure that “All ships do in fact rise with the rising tide”.

The proponents seem to take great pains to avoid discussing any impacts or requirements the proposed transaction will have on the remaining PAR system that does not become part of Pan Am Southern. However when viewed carefully it is clear that the transaction will impact all of the PAR system and that the impact can be positive or it could be significantly negative, depending on how PAR ultimately focuses its investments and newly received cash. For example in defining the transaction on page 18 of their filing the proponents state in reference to their plan to increase load capacities between Mechanicville and Ayer to 286,000 pounds, “This enhanced capacity will be particularly important with respect to movements of coal to an electric generating plant of the Public Service Company of New Hampshire at Bow, NH adding significantly to the competitive options available to this Springfield Terminal customer. The ability to use larger cars to carry potential increase in rail volumes for this customer would mean that the daily tonnage of coal traffic over the line could increase in rail volumes for this customer

would mean that the daily tonnage of coal traffic over the line could increase without a proportionate increase in the number of rail cars.” The proposal, as submitted to the STB, does not provide any information on how 286,000 pound coal cars will move east of Ayer and north to the Bow power plant over track that will not be part of Pan Am Southern and that is presently rated to carry rail cars that can weigh no more than 263,000 pounds and includes no commitment to make the necessary investment to insure the cited benefit is in fact achieved. If one of the benefits of the proposed plan is as stated by the parties, the parties have an obligation to provide specific enforceable plans on how those benefits are to be achieved including specific plans to improve rail lines in New Hampshire to accommodate the heavier tonnage cars. Likewise if the proponents envisage moving other commodities over the upgraded PAS main line, take advantage of the heavier 286,000 loading capacity and move those cars to other parts of the PAR system, they should demonstrate that such a move will in fact be possible and can occur.

The filing by NS-PAR includes descriptions of agreements that the parties wish to enter. Included in these agreements are provisions that enable NS to increase control over specific services and to gain majority control over PAS in the event PAR defaults on its service obligations. Under the proposal the parties intend for PAR affiliate Springfield Terminal Railway to provide PAS service. It is reasonable to assume that such provisions are incorporated into the agreements in order to protect NS and their investment in the event that Springfield Terminal does not perform as expected under the terms of their agreements. It is also reasonable to assume that Springfield Terminal will go to some length to assure that service standards for PAS are met and any default

triggers are avoided. For example Springfield Terminal must specifically meet clearly stated on time service standards for Intermodal Services. The filing clearly suggests that certain types of cars will be heavier, increasing tonnage on the line. It suggests that some traffic will increase such as intermodal traffic benefiting from faster and more reliable transit times and auto traffic benefiting from the construction of new auto unloading facilities at Mechanicville and Ayer. In order to pull additional tons and move additional cars Springfield Terminal will require a sufficient fleet of reliable locomotives. Further, if Springfield Terminal fails to meet service standards and risks a default under their proposed agreement it is reasonable to assume that the company will do what is necessary to correct its failures including the shifting of locomotive power or perhaps crews from the eastern part (PAR core system) of the system, lowering service standards to core system customers, in order to maintain service standards on PAS and avoid default. The STB should review the failure rate of the existing PAR locomotive fleet to determine the extent that the existing fleet is reliable and insure that a plan is in place to provide sufficient power to meet the needs of PAS and also meet the need of the remaining core system.

The NS-PAR filing provides substantial detail about planned improvements to the proposed PAS subsidiary and clearly shows that NS has a highly focused desire to compete for additional intermodal, auto and coal business. Norfolk Southern is one of the best managed large railroads in North America and there is every reason to believe that NS will be successful in building their targeted lines of business and adding value to their company. Their management focus as a 50% partner in PAS should insure that the

new entity will improve operations and service between Ayer and Mechanicville. PAR should benefit also in several ways. First, PAR will receive a cash infusion of approximately \$50 million. Second, PAR will receive a disproportionate share of the PAS profits in the early stages of PAS operations and third, PAR will be relieved from the cost of maintaining their railroad west of Ayer as that obligation will become a shared obligation under PAS operations. In order for the PAS plan to successfully lift service on the remaining core system that does not become part of PAS and generate traffic for both PAS and PAR it will be necessary for PAR to invest in both branch lines and main lines and invest in reliable locomotives to improve transit times and to insure that the system has a sufficient fleet of reliable locomotives to meet its service needs.

NS and PAR fail to provide any insight at all into how the proposed PAS operation will impact the remaining PAR system. For example, the application provides no information on the financial impact of the transaction on Springfield Terminal, which will have the right to establish rates and divisions for both PAS and itself. Will Springfield Terminal have sufficient revenues and income to improve the infrastructure that does not go to PAS and to improve service on such lines, or will Springfield Terminal continue to be unable or unwilling to make such investments? It is likely PAR does not want the STB or any other parties expanding their review beyond what they view as the narrow scope of the transaction. However, the STB has an obligation, and perhaps in this particular case, a heightened obligation, to insure that the proposed transaction will, in fact, benefit all of New England and in particular not bring additional disruption to other portions of PAR. PAR is in the fortunate position to be gaining a strong reliable rail partner and a

substantial infusion of cash. In return PAR should be required to provide the STB and the public with a specific plan showing how these gained assets will be applied to improve their railroad and service

Specifically in approving the proposed transaction the STB should impose the following conditions:

1. PAR should be required to meet its pre-existing promises to the State of New Hampshire and MBR to improve branch lines such as the Hillsborough Branch to a minimum of FRA Class 1 standards.
2. PAR should be required to meet its obligations to the State of New Hampshire to improve its main line between Nashua and Manchester to minimum of FRA Class 2 standards.
3. PAR should be required to maintain a locomotive fleet in good order sufficient to meet its service requirements in New Hampshire and throughout its core service area.
4. PAR should be directed to enter into a trackage rights agreement with MBR that is consistent with standard industry practices and that contains a trackage fee that is no higher than those charged on a per car mile basis for freight railroads who operate freight rail services over the Northeast Corridor between Boston and Washington, D.C.
5. The STB should retain jurisdiction to review and enforce, if necessary, PAR's performance in complying with such conditions.

If the Board does not impose the conditions listed above, implementation of the transaction is likely to exacerbate the problems caused by PAR's failure to comply with earlier promises and to invest in its lines in New Hampshire and, in particular, the Hillsborough branch. If these lines and Springfield Terminal's service continue to deteriorate, MBR could be forced to curtail its service to Granite State or to cease operations completely. The ability to continue to provide rail service to Granite State is critical, because Granite State's permit to operate its quarry does not permit the use of trucks.

DOTR 87-02

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
BUREAU OF RAIL SAFETY

-00-

ORDER NO. 014

Upon consideration of the foregoing report, which is made a part hereof; it is

ORDERED, that the lease between the Boston and Maine Corporation and the Springfield Terminal Railway Company involving the operation and maintenance of (1) the Main line between mile post 34.50 at the New Hampshire-Massachusetts State Line and mile post 56.00 at Manchester; (2) the Hillsboro Branch from its junction with the Main Line at Nashua and mile post 16.3 in the Town of Wilton; (3) the north segment of the Manchester-Lawrence Branch from its junction with the Main Line at mile post 55.68 at Manchester to mile post 4.3 in the Town of Londonderry; and (4) the westerly segment of the Manchester-Portsmouth Branch from its junction with the Manchester-Lawrence Branch at mile post 0.25 in Manchester to mile post 2.01 in Manchester; also the switching and yard tracks in Manchester and Nashua and those connecting with the above described lines in accordance with the lease on file with the Bureau marked DOTR 87-02 be and hereby is approved; and it is

Exhibit A

FURTHER ORDERED, that a track maintenance program shall be adopted to upgrade the lines identified as (2), (3), and (4) above to comply with Class 1 Standards as prescribed by the Federal Railroad Administration; and it is

FURTHER ORDERED, that the line identified as (1) above shall be maintained as Class 2 or above as may be required for the safe operation of the coal trains; and it is

FURTHER ORDERED, that reports of progress of upgrading as required herein shall be submitted to this office on July 1 and November 1 of each year.

By Order of the Bureau of Rail Safety of the New Hampshire Department of Transportation this thirteenth day of March, 1987.


Walter W. King, Administrator
Bureau of Rail Safety
For Director of Administration
N. H. Department of Transportation

Milford-Bennington Railroad Company
62 Elm Street
Milford, New Hampshire 03055
(603) 673-7181
October 29, 2007

Mr. David A. Fink, President
Pan Am Railways
1700 Iron Horse Park
No. Billerica, MA 01862

Dear Mr. Fink:

For over two years representatives from our two companies have held numerous discussions seeking to develop a trackage rights agreement between the Milford-Bennington Railroad and Springfield Terminal (ST) for our operations over three miles of ST track between Wilton and Milford, New Hampshire. Though we have not made progress, your staff has stated on numerous occasions that the Springfield Terminal does want to reach a long-term agreement that would govern the relationship between our two companies. I share that goal.

As you know, for the past two years and in fact for many years the Milford-Bennington has operated many more trains per week than ST over the trackage rights section. Milford-Bennington has a goal of operating four trains per day between Milford and Wilton and generally ST operates one train per week in the same area serving its one customer. While our goal is to operate four trains per day, we absolutely can not do this within the prescribed operating hours of our customer for the following reasons:

1. **Track Conditions:** The Milford-Wilton section owned by ST continues to be classified as "excepted track." All operations are restricted to 10 miles per hour and some sections, in our opinion, are only safe to operate at speeds of less than 10 miles per hour. ST has made it clear that it has no intention of improving the track condition to a minimum FRA class 1 status. Keeping the track in such a condition results in delays from excessively slow speeds. On the other hand, we also understand that ST has higher priorities for its maintenance dollars and probably can not justify anything more than very minimal expenditures in an area that generates so very little traffic for the ST system.
2. **Derail:** Several years ago a scenic railroad commenced operations on Milford-Bennington trackage. ST demanded that a derail be installed at the point where our two railroads meet in Wilton at the beginning of the trackage rights section to protect ST from the scenic railroad operations. The installation of the derail and actions taken by ST to stop Milford-Bennington from serving its customer was the subject of a dispute before the STB that was ultimately resolved but which remains open in the event additional STB involvement is required. The scenic railroad ceased to operate nearly two years ago after the death of its owner and all

Exhibit B

of its passenger equipment has been sold and removed from the railroad. ST continues to require the use of the derail. The process of opening and closing the derail on main line track is cumbersome and delays trains. The manufacturer of the derail clearly states that this type of derail will not stop a locomotive or cars on the main line and is designed for very slow siding operations. There is no reason for the derail and it should be removed and in fact should have been removed many months ago.

3. **Dispatching Delays:** ST dispatchers that dispatch Milford-Bennington trains must also dispatch Amtrak passenger trains moving between Portland and Boston, MBTA commuter trains and ST freight trains. Milford-Bennington always receives last priority and always will. Dispatching delays are aggravated by the use of the derail as dispatching approval is required each time the derail is opened and closed. Milford-Bennington trains very often experience delays waiting for dispatcher approval to proceed through the derail. Milford-Bennington fully understands that dispatchers are not intentionally delaying Milford-Bennington trains and that they must handle passenger operations such as Amtrak and MBTA on a priority basis. The impact though is that Milford-Bennington trains must stop and wait while dispatchers handle higher priority traffic, and we continue to experience delays that are excessive and prohibit us from meeting the shipping needs of our customer.
4. **Uncertain Business Conditions.** Our customer moves stone from its quarry on the Milford-Bennington to its processing plant located in the trackage rights area in Milford. The customer utilizes the stone for making concrete and supplying products to the construction industry. It is important for the railroad to be able to respond to changes in our customer's business conditions by adjusting volume up and down. Likewise the business climate makes it very difficult to predict daily and weekly volumes.

While the above issues are major concerns to us, we also understand that ST is seeking guarantees that eliminate any element of risk in any future agreements. Our understanding of your position is as follows:

1. **Guaranteed Volume:** ST has asked Milford-Bennington to provide a daily volume guarantee. As stated above, Milford-Bennington can not provide such a guarantee as our volumes will always be dictated by our customer's business conditions.
2. **Track Conditions:** ST would consider maintaining the track at FRA class 1 conditions if it receives absolute volume guarantees and additional payment increases.
3. **Dispatching Delays:** ST has made efforts to improve dispatching delays but has not been able to solve the problem. Priorities mentioned above can not solve the problem unless we mutually agree to alter the way we are presently operating and controlling operations.

After a number of discussions, it appears to me that continuing along the path we have both followed will not lead us to a long-term solution. I believe there is a better

approach which can meet both of our goals and which gives you the economic protection you are seeking. I propose the following:

1. ST sells the three mile section between Milford and Wilton to the Milford-Bennington that is subject to our expired trackage rights agreement. The sale will be at Net Liquidation Value and the process subject to STB oversight.
2. Milford-Bennington will provide ST free and efficient access to ST's customer who is located within the trackage rights area
3. Milford-Bennington will upgrade the section purchased from ST to FRA Class 2 or better condition consistent with the standard that Milford-Bennington utilizes on its own rail operations. The line will then be subject to FRA and State of New Hampshire oversight such that inspectors can inspect the line against a known and defined standard. As you know, FRA inspectors have very minimal authority to cite railroads for defects on track classified as excepted track.

The above approach will provide ST with the economic protection you seek by providing you with a fair value for your property. It will remove any requirement that you pay for any future maintenance and also assure you that you won't have to maintain a track at a level you feel you are not being compensated for. In addition, you have complete freedom to continue to serve your customer, and you will not be required to pay a trackage fee to use the Milford-Bennington track to access your customer's siding. We are also prepared to assure you that your train serving your customer will not be subject to excessive delays.

Finally, I am sending a copy of this letter to STB Chairman Charles Nottingham and to Director of Compliance and Enforcement Melvin Clemens. By doing so, I am asking them to continue to assist both our organizations in seeking a solution that will assure that both our companies can operate safely and efficiently and that we can both continue to serve our customers in a manner that meets their shipping needs.

I thank you for your efforts over the past two years and the efforts of your staff. I hope the above proposal will provide a path to a long-term agreement between our companies and look forward to working with you in the near future.

Sincerely,

Peter R. Leishman

Cc Melvin F. Clemens
Charles D. Nottingham

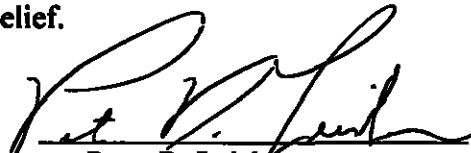
Verification

State of New Hampshire

)ss:

County of Hillsborough

I, Peter R. Leishman, being duly sworn, depose and state that I am President of Milford-Bennington Railroad Co., Inc. ("MBR"), that I am authorized to sign the foregoing Verified Statement on behalf of MBR, that I have examined all of the statements contained in the Verified Statement and that all such statements are true and correct to the best of my knowledge and belief.


Peter R. Leishman

Subscribed and sworn to
before me this 6th day of
August, 2008


Notary Public

My Commission Expires 9/17/08