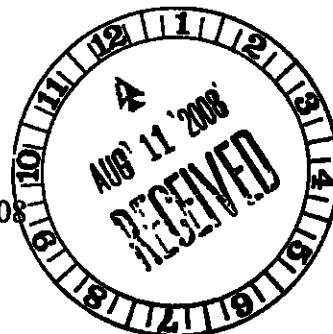


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August 8, 2008



VIA FEDERAL EXPRESS

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

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Office of Proceedings

AUG 11 2008

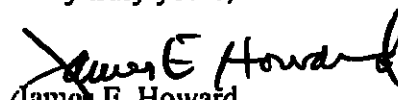
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Re. Norfolk Southern Railway Co , Pan Am Railways, Inc , et al.--Joint
Control and Operating/Pooling Agreements--Pan Am Southern LLC
Finance Docket No. 35147

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned matter on behalf of Montreal, Maine & Atlantic Railway, Limited are the original and 10 copies of the "Statement of Position and Request for Conditions of Montreal, Maine & Atlantic Railway, Limited" and the attached "Verified Statement of Joseph R. McGonigle". Thank you very much for your assistance.

Very truly yours,


James E. Howard

Enclosures

223207

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 LINE



STATEMENT OF POSITION AND REQUEST FOR CONDITIONS
OF MONTREAL, MAINE & ATLANTIC RAILWAY, LIMITED

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Public Record

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Attorney for Montreal, Maine &
Atlantic Railway, Limited

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 MONTREAL, MAINE & ATLANTIC RAILWAY, LIMITED**

Montreal, Maine & Atlantic Railway, Limited ("MMA") 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 described below, MMA provides certain essential rail services in Maine and handles a substantial amount of business that originates or terminates on Norfolk Southern.

The transaction is likely to have an adverse impact on competition. As demonstrated below, the applicants will have incentives to downgrade or eliminate competitive routings between MMA and Norfolk Southern in order to force traffic over the Pan Am route. As a consequence of the downgrading or elimination of the competitive routes, rail customers will be disadvantaged, and MMA will be harmed by a

loss of revenues, which, in turn, could result in MMA's inability to provide essential services to certain customers in Maine and could threaten the viability of such customers in their own markets.

In order to address these anti-competitive impacts of the transaction, the Board should condition any approval of the transaction by prohibiting the applicants from taking any actions that would adversely affect the competitive routes. Such a condition would be entirely consistent with the assurances of the applicants that the transaction will not adversely affect competition.

Background

MMA operates in Maine, Vermont, New Brunswick and Québec. Verified Statement of Joseph R. McGonigle ("McGonigle V.S."), which is attached hereto, at 2. The rail traffic handled by MMA is concentrated in the paper, lumber and other forest products industries. Id. MMA's customers include a number of paper and lumber mills that ship their products to various destinations in North America, including destinations located on Norfolk Southern. Id. MMA also handles inbound commodities used by paper mills, such as clay, some of which originates on Norfolk Southern. Id.

There are three principal routes for traffic moving between MMA and Norfolk Southern. McGonigle V.S. at 2 The most heavily used route is through Canadian Pacific via Montréal and the Albany, New York area or the Harrisburg, Pennsylvania area. Id. at 2-3. A second route involves Canadian National as the intermediate carrier between MMA and Norfolk Southern. Id. The third route involves the Pan Am system, which has an interchange with MMA at Northern Maine Junction, Maine and which

connects with Norfolk Southern near Albany. Id. The Pan Am route is the least desirable of the three, and is generally disfavored by customers due to poor service and uncompetitive pricing over the Pan Am lines, which are operated by Springfield Terminal Railway Co. ("Springfield Terminal"), a subsidiary of Pan Am. Id. at 2-3. It is often difficult to obtain cooperation from Springfield Terminal in order to create through rates that will be acceptable to customers or to address service issues. Id.

The MMA-Norfolk Southern business is very important to MMA. On an annual basis, approximately 7,300 carloads generating approximately \$12 million of revenue for MMA move between MMA and Norfolk Southern. McGonigle V.S. at 3. Almost all of this traffic moves via Canadian Pacific or Canadian National, not via the Pan Am system. Id. Any action that might adversely affect the service on the non-Pan Am routes, overall rail pricing on MMA-Norfolk Southern traffic, or the revenues of MMA would have significant adverse impacts on MMA's customers and MMA's ability to continue to provide the level of essential services that it provides today. Id. at 2.

Proposed Transaction

Norfolk Southern and Pan Am propose to create, and own on a 50-50 basis, a new rail carrier--Pan Am Southern--that will be the owner of the Pan Am main line between Mechanicville, New York and Ayer, Massachusetts, as well as several branch lines. Substantial portions of the current Pan Am system will remain outside Pan Am Southern. The lines that will not become part of Pan Am Southern include all of the lines east and north of Ayer, Massachusetts, including the line that connects with MMA at Northern Maine Junction, Maine. Springfield Terminal will operate the Pan Am Southern system

as well as the Pan Am system lines that do not become part of Pan Am Southern Springfield Terminal will also have the ability to set rates and divisions for traffic moving over or between Pan Am Southern and the non-Pan Am Southern lines.

The applicants argue that Pan Am Southern service will be an improvement over the service currently provided by Pan Am. Given the intention of Norfolk Southern to invest approximately \$50,000,000 to improve the Pan Am Southern main line and to add certain other facilities, as well as Norfolk Southern's 50% ownership interest and management rights in Pan Am Southern, it is reasonable to expect that service on the Pan Am Southern will in fact be better.

The application is conspicuously silent, however, on the question of the impact of the transaction on the Pan Am lines that do not become part of Pan Am Southern. There is no indication, for example, whether Pan Am intends to make investments to improve the infrastructure on such lines, or whether service will continue to be slow enough to discourage customers from using the route. The application contains no information, much less any pro forma financial statements, by which the effect of the transaction on the non-Pan Am Southern portion of the Pan Am system can be evaluated and, consequently, it is not possible to know whether the remaining Pan Am system will have sufficient revenues and earnings to support adequate service.

Harm to Competition

Although the application does not provide any insight with respect to the intentions of Pan Am and Norfolk Southern concerning the lines that are not slated to become a part of Pan Am Southern, it is likely that decisions will be made to favor Pan

Am Southern to the detriment of the remaining Pan Am system. With respect to the routing of traffic, it is reasonable to conclude that the applicants will have strong incentives to divert as much traffic as possible over Pan Am Southern and Pan Am routes. As this incentive affects MMA, it would mean that the applicants would attempt to divert traffic from the MMA-Canadian Pacific-Norfolk Southern or the MMA-Canadian National-Norfolk Southern routes to the Pan Am Southern-Pan Am route. Norfolk Southern would benefit as the 50% owner of Pan Am Southern, and the advantages to Pan Am are obvious. It takes little imagination to envision a situation in which Norfolk Southern might take actions, such as refusing to quote or continue commercially reasonable rates, to discourage traffic from moving over alternative routes in order to favor the Pan Am Southern route. *McGonigle V.S.* at 4.

If the Canadian Pacific or Canadian National routes between MMA and Norfolk Southern were downgraded, priced out of existence, or closed, it would be a significant harm to competition. It would mean that the worst route in terms of the economics for both customers and MMA--via Pan Am and Pan Am Southern--would be promoted at the expense of the best routes.

Diversions of traffic to the Pan Am route would likely mean increased cost to MMA customers and substantial losses of revenue by MMA. As noted above, MMA currently receives approximately \$12 million annually from traffic moving to or from Norfolk Southern. Substantially all such traffic moves on routes other than the Pan Am system. A loss of revenue could lead to reductions in service or abandonments, or both, by MMA, which, in turn, would mean a loss of MMA's ability to provide essential

services to paper and lumber mills in Maine. Increased costs for MMA shippers will result in traffic diversions from rail to trucks and other modes of transport as well as threaten the economic base of such rail customers. *McGonigle V.S.* at 4. Certain of MMA's paper mills and other shippers could not survive without rail service. *Id.* at 2.

The current economic conditions affecting paper and lumber shippers in the State of Maine are particularly difficult, with the long-term viability of many of MMA's customers being at risk. *McGonigle V.S.* at 2. These customers are highly dependent on rail transport, being located far from high-volume transport routes that might afford several competitive transportation alternatives. In turn, MMA's viability is closely correlated with the competitiveness of its customers in their own markets. *Id.* Any action by Norfolk Southern to close or limit competitive routings involving MMA in favor of more costly routings via Pan Am Southern would have serious adverse effect on MMA's customer base to the extent that their viability could be threatened. According to the Federal Reserve Bank's "Beige Book" of measurements of the U.S. economy, only two states have recently sustained negative growth--Louisiana and Maine. The reason for Louisiana should be obvious, but Maine's economic position is more endemic, with its geographic location and lack of economic diversification making its situation fragile at best. The proposed Pan Am Southern transaction poses additional risks that cannot be disregarded.

Conditions Required to Remedy Harm

The Board has broad authority to impose conditions on the approval of a transaction in order to ameliorate competitive harm. CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Co.--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, 3 S.T.B. 196 (1998) ("Conrail") at 277. "The principal harms for which conditions are appropriate are a significant loss of competition or 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. The anti-competitive impact of the transaction on MMA and its customers warrants the imposition of conditions.

The applicants have touted the transaction as being pro-competitive, asserting that "there will be no adverse impacts on any existing competitive options", that "no competitive options will be eliminated" and that "no shipper will lose any competitive rail service." Application at 2, 3 and 13. There is ample precedent for the proposition that the Board will hold applicants to the representations and promises made on the record. Canadian National Railway Co., Grand Trunk Corporation, and WC Merger, Inc.--Control--Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd., STB Finance Docket No. 34000 ("Wisconsin Central"), decision served September 7, 2001 at 12-14; Canadian National Railway Company and Grand Trunk Corp.--Control--Duluth, Missabe and Iron Range Railway Co., Bessemer and Lake Erie

Railroad Company, and The Pittsburgh & Conneaut Dock Co., STB Finance Docket No. 34424 ("Duluth"), decision served April 9, 2004 at 15.

The Board has on several occasions conditioned the approval of transactions on a requirement that the applicants adhere to their pledges to keep gateways and interchanges open. For example, in Wisconsin Central the applicants agreed not to engage in any vertical foreclosures and to keep open all existing active gateways on commercially reasonable terms. Wisconsin Central at 8. The Board imposed a condition holding the applicants to their representation, including a promise to work with connecting carriers to establish through contract rates. Wisconsin Central at 13-14. A similar representation was enforced by the Board in Duluth. Duluth at 15.

The Board should adopt a similar condition in this case. Specifically, the Board should take the applicants at their word and condition approval of the transaction on the obligation to make sure that no shipper will lose any competitive rail service. In this case, protecting against the loss of competitive rail service means taking effective steps that will preserve the advantages of the non-Pan Am Southern routes between MMA and Norfolk Southern.

Any such condition should have adequate means of enforcement or alternative relief in the event that there is any attempt to circumvent the condition. There are various established methods used by the Board to put teeth into its conditions. For example, the Board has granted haulage/trackage rights in situations in which a carrier, such as MMA, is likely to suffer financial harm that could adversely affect its ability to continue to provide essential services. Conrail at 305-306, 310. Indeed, the proposed transaction

uses a similar mechanism by granting Norfolk Southern haulage rights, convertible to trackage rights if performance standards are not met, over Pan Am Southern in order to create direct interchanges between Norfolk Southern and several short lines that connect with Pan Am Southern. Enabling MMA and Norfolk Southern to have a direct interchange would be consistent with the applicants' approach and an appropriate condition to provide an option in the event that the applicants attempt to circumvent a requirement to maintain all competitive routes .

The Board has also seen fit in other cases to retain oversight jurisdiction in order to monitor performance by the applicants and to ensure adherence to conditions. Conrail at 277; Wisconsin Central at 20. In addition, the Board has required applicants to negotiate with adversely affected parties to attempt to resolve disputes. Conrail at 303. Similar conditions would be appropriate in this case in order to assess the facts and potential need for further Board action in the period following implementation of the transaction.

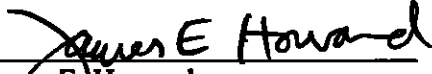
Conclusion

As demonstrated above, the proposed transaction is likely to result in the downgrading or elimination of competitive routes that are of critical importance to MMA and its customers and could result in MMA's inability to provide essential services for its customers in Maine and, moreover, a critical loss of competitiveness for MMA shippers. Consequently, the Board is respectfully requested (1) to condition any approval of the transaction by prohibiting the applicants from taking any actions that would adversely impact non-Pan Am Southern routes between MMA and Norfolk Southern, (2) to grant haulage and trackage rights to Norfolk Southern in order to enable it to have a direct

interchange with MMA and (3) to retain jurisdiction to monitor the applicants' performance in connection with the conditions and to grant further relief if warranted.

Respectfully submitted,

MONTREAL, MAINE & ATLANTIC
RAILWAY, LIMITED

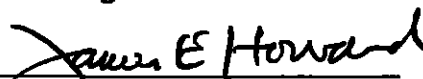

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Attorney for Montreal, Maine &
Atlantic Railway, Limited

Dated: August 8, 2008

Certificate of Service

I hereby certify that the foregoing "Statement of Position and Request for Conditions of Montreal, Maine & Atlantic Railway, Limited" and the "Verified Statement of Joseph R. McGonigle" 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 JOSEPH R. MCGONIGLE

My name is Joseph R. McGonigle, and I am the Vice President-Sales & Marketing of Montreal, Maine & Atlantic Railway, Ltd. ("MMA"). I have been employed in positions involving rail transportation and sales and marketing of rail services continuously since 1973. Immediately prior to my employment by MMA, I was the Director of Logistics Development/Rail for Stora Enso North America, a global paper producer, and prior to that I was the Vice President-Sales and Marketing of Nexus Distribution Corporation, a logistics and warehousing business. In both of those positions, my duties and responsibilities included substantial involvement in transportation services for the paper industry. From 1987 until 1997, I was Director-Marketing of Wisconsin Central Ltd, concentrating on marketing and business development for all commodities related to the paper industry. Prior to my relationship with Wisconsin Central Ltd, I was employed by Soo Line Railroad and The Milwaukee Road in sales and marketing positions.

I am familiar with the operations of MMA and, in particular, with the equipment, service and rates provided by MMA to its customers. I have reviewed the application filed with the Board by Norfolk Southern Railway Co. ("Norfolk Southern") and Pan Am Railways, Inc. ("Pan Am") for authority to jointly control and operate Pan Am Southern.

MMA operates 754 miles of line in Maine, Vermont, New Brunswick and Québec. The majority of the business of MMA relates to the paper and forest products industries. MMA handles paper and forest products originating in Maine and moving to destinations throughout North America, along with other commodities, some of which are related to the paper and forest products industry, such as clay and certain chemicals, and some of which are not, moving inbound to Maine.

MMA is the only rail carrier providing rail service to several mills in Maine, and certain cases the mills could not survive without such rail service. The economic condition of the paper and lumber shippers in Maine at this time is not particularly strong. In certain cases, the mills are highly dependent on rail service and likely could not survive if the most competitive rail routings were closed or made more expensive. The economic viability of MMA is closely linked to the well-being of these customers. Such customers could clearly not survive if MMA were forced to curtail or abandon its service.

Rail traffic between customers of MMA and Norfolk Southern moves over three principal routes. An important connection for MMA and its customers in terms of carloads and revenues is Canadian Pacific, with which MMA interchanges at Montréal. A second route used by MMA customers is via Canadian National. Springfield Terminal Railway Co. ("Springfield Terminal"), which has an interchange with MMA at Northern Maine Junction, Maine also interchanges with Norfolk Southern.

Routings with Canadian Pacific and Canadian National generally provide good service routes for both MMA and its customers. Conversely, routings with Springfield Terminal are generally disfavored by customers because of slow service over Springfield Terminal lines. In addition, joint service with Springfield Terminal has been and continues to be difficult as a result of Springfield Terminal's revenue requirements, which customers often find to be too high to permit traffic to move over a route including Springfield Terminal. Currently, most of the traffic interchanged between MMA and Springfield Terminal consists of business that terminates on Springfield Terminal, rather than traffic that moves beyond Springfield Terminal and for which Springfield Terminal would act as an overhead carrier.

MMA has a number of movements that originate or terminate on Norfolk Southern. Paper and lumber products are the principal commodities moving from MMA to destinations on Norfolk Southern, and kaolin clay is the primary commodity originating on Norfolk Southern and terminating on MMA or via the MMA. Nearly all of the MMA-Norfolk Southern traffic moves over Canadian Pacific or Canadian National. For the reasons outlined above, only a small percentage of the traffic is routed via Pan Am. At the present time, rail business between MMA and Norfolk Southern amounts to approximately 7,300 carloads and approximately \$12 million in revenue for MMA on an annual basis. As a consequence, this business is very important to MMA and its customers, and any action that could adversely affect service, pricing or MMA revenues on the non-Pan Am routes would have serious negative impacts on MMA's customers and on MMA's ability to provide essential services to such customers.

As I understand the transaction described in the application, Norfolk Southern and Pan Am will create a new rail carrier, Pan Am Southern, that will own the Pan Am main line between the Albany, New York area and Ayer, Massachusetts, as well as several branch lines. The Pan Am lines east and north of Ayer, including the line between Ayer and Northern Maine Junction, will continue to be owned by Pan Am and operated by Springfield Terminal. The application indicates that Springfield Terminal will operate both the Pan Am Southern lines and the Springfield Terminal lines that are not part of Pan Am Southern. Furthermore, Springfield Terminal will establish rates and divisions for both Pan Am Southern and Springfield Terminal.

MMA is concerned that the transaction, if approved and implemented, could lead to a de-emphasis or commercial closing of the Canadian Pacific and Canadian National routes between MMA and Norfolk Southern, both of which are more efficient than the Pan Am route, as a result of an effort by Norfolk Southern, Pan Am, Springfield Terminal and Pan Am Southern to force MMA-Norfolk Southern traffic to move over the Springfield Terminal-Pan Am Southern route. Springfield Terminal, as the agent for Pan Am Southern and acting on its own behalf, appears to have every incentive to increase traffic over the Springfield Terminal-Pan Am Southern route between Northern Maine Junction and Albany. Norfolk Southern, as the 50% owner of Pan Am Southern, has an incentive to facilitate the increase of traffic over the Springfield Terminal-Pan Am Southern route. Norfolk Southern could facilitate diversions to the Springfield Terminal-Pan Am Southern route by, for example, refusing to maintain or quote commercially reasonable rates via the non-Pan Am routes.

In my view, any actions that might tend to drive business off the Canadian Pacific or Canadian National route and onto the Springfield Terminal-Pan Am Southern route would be harmful to the current competitive balance, which in turn would be harmful to customers of MMA. In addition, diversions to the Springfield Terminal-Pan Am Southern route would harm MMA by decreasing its revenues. A loss of revenues by MMA could, in turn, cause MMA to consider service reductions or abandonments, or both, that would adversely impact its rail customers. A secondary effect would likely be diversions from rail to truck or other modes, which would increase the transportation expenses of these customers.

In the application, Norfolk Southern and Pan Am assert several times that no shipper will lose any competitive rail service. In order to ensure this result, the Board should impose a condition on the approval of the transaction that would explicitly enforce this representation by precluding Norfolk Southern, Pan Am, Springfield Terminal and Pan Am Southern from taking any action that would adversely affect the service or pricing on the Canadian National or Canadian Pacific route. In order to be effective, such a condition would necessarily have to apply to all traffic, including that which moves by contract.

Alternatively, or perhaps in conjunction with a condition prohibiting any action to adversely affect the Canadian Pacific and Canadian National routes, the Board should consider extending haulage/trackage rights so that Norfolk Southern would have the opportunity for a direct connection with MMA. Such a condition would be entirely consistent with the haulage extensions granted to Norfolk Southern pursuant to the

proposed application in order to enable Norfolk Southern to reach, by means of haulage and trackage rights, various short lines that connect with Pan Am Southern.

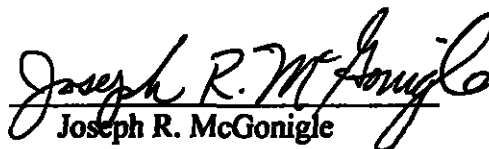
Verification

State of Maine

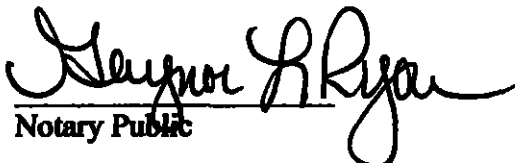
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County of Penobscot

I, Joseph R. McGonigle, being duly sworn, depose and state that I am Vice President-Marketing of Montréal, Maine & Atlantic Railway, Ltd. ("MMA"), that I am authorized to sign the foregoing Verified Statement on behalf of MMA, 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.


Joseph R. McGonigle

Subscribed and sworn to
before me this 5 day of
August, 2008


Notary Public

GAYNOR L. RYAN
Notary Public, Maine
My Commission Expires May 4, 2015