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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB Finance Docket No 35147
(and related sub-dockets)**

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

**COMMENTS OF
MORRISTOWN & ERIE RAILWAY, INC.,
D/B/A MAINE EASTERN RAILROAD**

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**Attorneys for Morristown & Erie
Railway, Inc , d/b/a Maine Eastern Railroad**

Dated August 11, 2008

SURFACE TRANSPORTATION BOARD

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RAILWAYS, INC., ET AL.
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MORRISTOWN & ERIE RAILWAY, INC.,
D/B/A MAINE EASTERN RAILROAD**

Morristown & Erie Railway, Inc., d/b/a Maine Eastern Railroad ("MERR") hereby files these Comments in accordance with the decision of the Board served June 26, 2008 (the "June 26 Decision"). While overall MERR supports the proposed transaction, it does have several concerns about how the transaction would affect rail service to and from Maine generally, and the rail service provided by MERR in particular. Accordingly, MERR files these comments for the Board's consideration.

BACKGROUND OF MERR

On November 1, 2003, the Morristown & Erie Railway, Inc. established rail operations in the State of Maine under the "Maine Eastern Railroad" banner. MERR operates over two lines which it leases from the State of Maine – (1) the former Maine Central Railroad Rockland Branch which runs between Brunswick and Rockland, and (2) the former Maine Central Railroad Lower Road which runs between Brunswick and Augusta.¹ A map showing the lines is attached as Exhibit "A". Pan Am Railways, Inc. through Maine Central Railroad Company and

¹ The lease and operation of the lines was authorized in *Morristown & Erie Railway, Inc. – Lease and Operation – State of Maine*, STB Finance Docket No. 34403 (served October 23, 2003).

Springfield Terminal Railway Company ("ST") (collectively referred to herein as "PARI") have certain freight operating rights over the lines

MERR currently handles approximately 5300 carloads of freight annually. The major customer on the line is Dragon Cement, New England's only cement manufacturer. Dragon Cement ships its products to Canada by rail. Additionally, a portside terminal located in Rockland provides a route for marine shipment of cement and aggregates to locations in southern New England and the East Coast. MERR has aggressively been seeking additional freight business along the lines, including traffic that currently moves via PARI to and from Norfolk Southern Railway ("NSR") in Mechanicsburg, New York, and to and from CSX Transportation, Inc. ("CSXT") at Barbers, Massachusetts.

At the current time, MERR interchanges only with PARI, and only at Brunswick, Maine. MERR must rely on PARI to move MERR's traffic between Brunswick and PARI's interchange with St. Lawrence & Atlantic Railroad in Danville Jct., between Brunswick and PARI's interchange with Montreal, Maine and Atlantic Railway in Northern Maine Jct., or between Brunswick and PARI's Rigby Yard in South Portland. PARI moves the freight through Rigby Yard to and from points throughout New England, including to and from NSR and CSXT. At present, PARI's interchange service at Brunswick varies seasonally between once a week and twice a week, and is irregular at best. Relying on this service makes traffic development difficult.

STANDARDS FOR MINOR TRANSACTION

The Board has preliminarily determined that the proposed transaction qualifies as a "minor transaction" under 49 CFR §1180.2(c) based on its review of the Application. The Board's initial findings were that (1) the transaction would clearly not have any anticompetitive

effects, or (2) any anticompetitive effects would clearly be outweighed by the transaction's contribution to the public interest in meeting significant transportation needs June 26 Decision at 8-9 Based on the representations set forth in the Application, this may very well be the case MERR's concern is that Applicants may not live up to all of those representations

EFFECTS OF TRANSACTION

MERR generally supports the proposed transaction. It promises improved infrastructure in parts of New England, and stronger routings between PARI and NSR. MERR is hopeful that improved interchange and service opportunities with NSR will develop as a result. However, PARI is also MERR's only outlet to CSXT and its competitive route to and from New England. While the Applicants promise not to close any gateways with CSXT, and indicate that there will be no "interchange commitments" imposed to restrict traffic moving over PARI, it is clear that NSR and PARI will be working closely together to improve their joint routings. (One of the primary benefits touted by the Applicants is the stronger route into and out of Boston to compete with CSXT's single line route.) Any favoring of joint service with NSR over joint service with CSXT could affect competitive options for MERR and the shippers it serves. Thus, MERR believes that the Board, if it approves the transaction, should ensure that PARI does not downgrade or de-market its joint service with CSXT at the expense of its improved connections with NSR.

Additionally, MERR is concerned about the diversion of resources and attention away from Maine which is already underserved. Clearly with more than \$42 million of roadbed, tracks and related structure rehabilitation projects to be performed in and around the Patriot Corridor (almost \$90 million, including the yard construction projects), PARI's maintenance of way employees and energy will be focused on the Patriot Corridor, and not on its lines that serve

Maine (Capital projects and management of outside bids are largely reserved under the Capital Projects and Facility Management Agreement to ST.) MERR is concerned that the Patriot Corridor will absorb all of PARI's attention and focus, to the detriment of other parts of the PARI system – in particular in southern Maine. Any deterioration of infrastructure in Maine would cause PARI's service to and from Maine to deteriorate as well, directly affecting service to MERR and its customers.

To address these concerns MERR is engaged in ongoing discussions with PARI regarding additional services and opening other interchanges to MERR. Through additional access, MERR would have more control over its service offerings and would be able to provide more seamless, timely service to its customers. Hopefully, MERR and PARI will be able to reach agreement so that MERR and Maine will be able to share in the projected benefits of the transaction.

CONCLUSION

MERR can support the proposed transaction based on the promises made by the Applicants. MERR does, however, ask the Board to ensure that such promises are maintained if and when the transaction has been approved and consummated.

Respectfully submitted,



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Railway, Inc., d/b/a Maine Eastern Railroad

Dated. August 11, 2008

VERIFICATION

I hereby verify on behalf of Morristown & Erie Railway, Inc., d/b/a Maine Eastern Railroad, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on August 11, 2008.



Gordon R Fuller
Executive Vice President &
Chief Operating Officer

EXHIBIT A

MAP

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 2008, a copy of the foregoing Comments of Morristown & Erie Railway, Inc., d/b/a Maine Eastern Railroad, was served by U S mail, postage pre-paid, upon the following

Richard A. Allen
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888 Seventeenth Street, NW
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and on all Parties of Record named in the Board's decision served July 24, 2008.



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