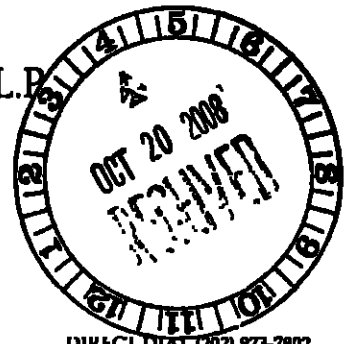


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RICHARD A ALLEN

October 20, 2008

Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E St., S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

OCT 20 2008

Part of
Public Record

22316

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

Dear Secretary Quinlan

On September 25, 2008, the Board issued a decision in the above-captioned proceeding (“September 25 Decision”) in which it vacated the previously-published procedural schedule to provide time for further environmental analysis in connection with the subject railroad Transaction. In that decision, the Board also instructed the parties to “take advantage of the additional time to continue negotiations on any unresolved issues, including the proposed assignment of trackage/operating rights to PAS by Springfield Terminal and B&M over rail lines owned by the Massachusetts Bay Transportation Authority (MBTA) and a rail yard owned by the Commonwealth of Massachusetts through EOTPW.”¹ September 25 Decision at 3. The Board also instructed EOTPW and the Applicants to report on the status of any such negotiations on or before October 20, 2008. Id. In accordance with the Board’s instructions, I have been authorized by Applicants and EOTPW (which also represents here the interests of MBTA) to submit this progress report on negotiations they have undertaken, and will continue to undertake, in order to reach an accord on issues contested in earlier phases of this proceeding.

Following issuance of the Board’s September 25 Decision, representatives of EOTPW, MBTA, and the Applicants (hereafter, the “Parties”) resumed negotiations, which included in-person meetings in Boston on October 9 and October 14, 2008, to address the assignment issues referred to in the September 25 Decision and other issues raised by EOTPW in its Comments filed in this proceeding on August 11, 2008. As a result, the Parties are able to report that they have reached agreement as to resolution of the issues deemed essential to each party, as further

¹ The subject status report will employ herein the acronyms used by the Applicants in their Application (see Application, NS/PA-2, Vol. 1, “Table of Abbreviations” at vi-vii) and by the Board in its September 25 Decision.

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discussed below. The Parties have committed to further meetings as may be necessary to implement their agreement. Agreement has been reached as to each of the following issues:

I Assignment/Transfer of PARI's Freight Easement and Operating Rights over MBTA Owned Lines to PAS and Related Joint Rail Operations

MBTA has agreed that, to the extent consent is required, B&M and Springfield Terminal are permitted to assign its freight easement rights over 23.1 miles of MBTA-owned rail lines² to PAS, subject to PAS' agreement to assume the rights and obligations of Springfield Terminal, and to be bound by and comply fully with the terms of the 1976 Deed, as amended, as to the MBTA Lines, that PAS may contract with Springfield Terminal to fulfill PAS' common carrier obligations on the MBTA Lines, and that PAS may grant operating rights (in the form of overhead trackage rights) over the MBTA Lines to NS and Springfield Terminal,³ but only to these two rail carriers, subject to the Applicants' commitments set forth below.

In return, the Applicants have agreed that, following consummation of the Transaction, (1) PAS will, as assignee of B&M and Springfield Terminal's freight easement interests in the MBTA Lines, assume all of B&M and Springfield Terminal's rights and obligations accruing on or after the closing of the Transaction, as set forth in the 1976 Deed as the same pertain to the MBTA Lines, (2) PAS will comply with the terms and conditions of the 1976 Deed, and, as to operations following assignment, will be responsible for all payments due to MBTA for the collective operations of PAS, NS, and Springfield Terminal over the MBTA Lines, and (3) PAS, NS, and Springfield Terminal will, upon acquisition of the operating rights described above, abide by, accept and be bound by the terms of the 1976 Deed, and operate on and over the MBTA Lines, subject to and in accordance with the terms of the 1976 Deed.

In keeping with the constructive nature of the discussions, the Parties agree that as a result of the proposed transaction PAS anticipates that an additional 1.5 trains per day will be operating over the MBTA Lines. Similarly, the operations of the MBTA over the MBTA Lines are also expected to increase in the near future to possibly as many as seven additional round trips per day as a result of a planned \$150 million infrastructure investment by the MBTA in these Lines. In order to accommodate the expected increase in both freight and passenger service, the Parties agree that such increases are reasonably foreseeable, yet also agree to conduct a joint capacity study incorporating mutually agreed upon factors to determine the effect of an

² Springfield Terminal possesses certain freight easement rights over MBTA-owned lines over which PAS would not propose to operate. Springfield Terminal would retain its easement rights over such lines not involved in the proposed Transaction. The 23.1 miles of MBTA-owned lines over which Springfield Terminal would convey its freight easement rights to PAS are described more fully in the Application, and will be referred to herein as the "MBTA Lines."

³ Such proposed PAS-NS and PAS-Springfield Terminal trackage rights transactions would be governed by the draft Joint Use Agreements included as Exhibits 2E and 2G to the Application.

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increase of two freight roundtrip trains per day and up to seven commuter rail round trip trains per day on the MBTA Lines and, if necessary, the additional capacity that may be needed to accommodate increases in operations by each party. To the extent that either or both of the passenger or freight service over the Lines is/are proposed to be expanded beyond the levels identified in the preceding sentence, the Parties agree to first consult with each other to determine whether the expansion can be reasonably accommodated within the current operating plan, or with adjustments to the current operating plan. For expansions that cannot be so accommodated, the Parties agree to jointly fund a quantitative capacity study as further described in the Settlement Agreement they have reached on this October 20, 2008.

II Assignment/Transfer of Easement Rights in East Deerfield Yard to PAS

EOTPW will agree to the assignment of B&M's rights in and to the EOTPW-owned portion of East Deerfield Yard to PAS, provided that (1) the Applicants agree that PAS will be bound by the terms and conditions set forth in the 1985 and 1987 conveyance documents and related agreements (the "EOTPW-B&M Agreements") that accrue on or after closing of the Transaction, (2) upon consummation of the Transaction, PAS will assume responsibility for payments prescribed under the terms of the EOTPW-B&M Agreements that accrue on or after closing of the Transaction, and shall make such payments to EOTPW and the Town of Deerfield promptly and in full when due, (3) Pan Am will continue ongoing environmental remediation efforts at East Deerfield Yard, including cleanup of hazardous materials and monitoring of conditions, in compliance with all applicable laws and regulations, and (4) PAS will conduct safe and secure operations, in compliance with all applicable laws and regulations, at East Deerfield Yard and will cooperate with Town and Commonwealth officials with regard to same.

III Payment of Arrearages to MBTA

The Applicants and MBTA have reached a Settlement Agreement as of October 20, 2008, under which the unpaid arrearages owed to MBTA for use of MBTA's lines are resolved.

IV Future Expansion of Passenger Rail Operations to PARI and/or PAS Lines

Finally, the Applicants and EOTPW/MBTA have committed to continuing good faith negotiations concerning the Commonwealth of Massachusetts' plans to expand passenger operations (by way of line acquisitions and/or acquisitions of passenger operating rights) over lines currently owned by rail carrier subsidiaries of PARI, including rail lines that PARI would convey to PAS and other lines that PARI rail carrier subsidiaries would retain post-Transaction.

The Parties will continue to meet regarding implementation of this agreement. As to matters involving EOTPW and MBTA, the Parties hereby inform the Board that they have resolved their differences. EOTPW and MBTA withdraw their objections to the Transaction provided the Board imposes the Settlement Agreement of October 20, 2008 described herein as a condition of its approval of the Transaction. The Applicants concur in the request of EOTPW

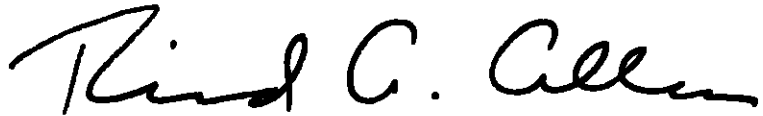
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and MBTA to impose the Settlement Agreement as a condition to the STB's approval of the Transaction⁴

I certify that I have this day served a copy of this letter by first class mail, postage prepaid, on all parties of record in this proceeding

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent than the last name "Allen".

Richard A Allen

Attorney for Norfolk Southern
Railway Company

cc All Parties of Record

⁴ The Parties agree that the Settlement Agreement, and the Board's imposition of the Settlement Agreement as a condition of its approval of the Transaction, moots the Applicants' request for an override of the EOTPW/MBTA agreements to the extent necessary to implement the Transaction