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BEFORE THE
SURFACE TRANSPORTATION BOARD

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FD 35749

**BOSTON AND MAINE CORPORATION, *et al.* v.
TOWN OF WINCHESTER, *et al.* –
PETITION FOR DECLARATORY ORDER**

MOTION FOR LEAVE TO FILE
AND SUPPLEMENT TO
AMICUS CURIAE BRIEF OF
THE CONCERNED PARTIES
BY THE MILFORD-BENNINGTON RAILROAD CO., INC.

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
202-742-8607

Dated: July 19, 2013

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INTRODUCTION

Pursuant to 49 CFR §1104.13 and §1117.1, Milford-Bennington Railroad Co., Inc. (“MBRX”), a Class III short line railroad common carrier, moves the Board for leave to join in and supplement the *amicus* brief submitted yesterday by six parties identified as “the Concerned Parties.” MBRX strongly supports the request filed on July 1, 2013, by Petitioners Boston and Maine Corporation and its subsidiary Springfield Terminal Railroad Company (collectively “Pan Am”) for a declaratory ruling to address the issue of whether federal law preempts a town zoning decision prohibiting Pan Am from providing freight rail service to its customer Tighe Logistics Group (“Tighe”).

MOTION FOR LEAVE

MBRX contacted the undersigned counsel late yesterday afternoon after learning of this proceeding and the *amicus* brief filed yesterday by the Concerned Parties. The undersigned counsel promptly contacted the Board this morning to advise that MBRX wishes to participate in this proceeding in support of Pan Am and that it would be submitting a short filing to that effect. Although MBRX realizes that the Board must act expeditiously on Pan Am's request in order to forestall likely adverse action by the Town of Winchester, this case presents important policy issues that require the Board's attention on a long term basis. MBRX does not believe that its brief submission here would unduly broaden the issues or delay the Board's consideration of Pan Am's request. Accordingly, it requests leave to participate in support of Pan Am.

STATEMENT OF POSITION

By now that Board is well familiar with the parties to and the facts of this proceeding so there is no point in repeating them. The Concerned Parties initially included four independently-owned short line railroads,¹ a short line railroad holding company [Iowa Pacific Holdings, LLC] along with its subsidiary the Massachusetts Coastal Railroad, LLC, and a railroad shipper [Clayton Sand Company] that owns a railroad line over which common carrier railroad service

¹ Adrian & Blissfield Rail Road Company, Bay Coast Railroad, Cleveland Commercial Railroad Company, and Coos Bay Rail Link.

will soon be provided. The Concerned Parties told the Board that many short line railroads specialize in providing the local pick up and delivery function at the beginning or end of a rail journey. Moreover, the Concerned Parties added that many short lines operate over railroad lines and rights of way owned by third parties that are not common carriers and provide common carrier service inside shipper facilities. Accordingly, the Concerned Parties believe that a ruling adverse to Pan Am would disproportionately affect short line railroads as the vast majority of their traffic involves the same type of local “retail” service that Pan Am is providing to Tighe.

MBRX is a Class III short line railroad common carrier established in 1992. As relevant here, it operates on lines owned by Pan Am (the Boston & Maine Railroad) and the State of New Hampshire as well as over several long sidings on private property (i.e. “private lines”). Currently, MBRX operates between Wilton and Milford, NH, a distance of about 5 miles serving a large stone quarry at Wilton. More specifically, MBRX handles a large volume of aggregate traffic for its only customer, Granite State Concrete, during the prime construction season from May to November. As with Pan Am’s customer at Winchester, Tighe, MBRX operates on the customer’s private property switching and classifying cars for loading and eventual movement. The Town of Wilton, NH, has placed hourly restrictions on the operation of the Granite State Concrete quarry from 6:00 a.m. to

6:00 p.m. MBRX has from time to time found it necessary to operate through town (on a corridor owned by the State of New Hampshire) and load at the quarry after 6:00 p.m. due to factors beyond the railroad's control. Should the Town of Winchester be successful here, MBRX believes the Town of Wilton would seek to impose the same restrictions or even greater restrictions on the railroad as Wilton has imposed on its customer. Any restrictions on MBRX's operating flexibility would be devastating to MBRX and would jeopardize its very existence.

Accordingly, MBRX joins the other Concerned Parties in its support for Pan Am in asking that the Board find that federal law preempts the Town of Winchester's enforcement of its zoning decision.

Respectfully submitted,



John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
202-742-8607

Dated: July 19, 2013

Certificate of service

I hereby certify that I mailed a copy of the above Motion for Leave to File and Supplement to *Amicus Curiae* brief in the above-captioned proceeding to all parties of record by either email transmission or first class US Mail on July 19, 2013.



John D. Heffner

Fritz R. Kahn
1919 M Street, NW, 7th Floor
Washington, DC 20036

Andrew C. Nichols
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006

Robert A. Wimbish
Counsel for Massachusetts Railroad Association
Baker & Miller PLLC
2401 Pennsylvania Avenue, N.W., Suite 300
Washington, DC 20037

Peter J. Shudtz
Paul R. Hitchcock
John P. Patelli
Mark Hoffmann
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Edward J. Rodriguez
General Counsel
Housatonic Railroad Company, Inc.
8 Davis Road West
P.O. Box 687
Old Lyme, CT 06371

John M. Scheib
Greg E. Summy
Maquiling Parkerson
Garrett D. Urban
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

Mark Bobrowski
Blatman, Bobrowski & Mead, LLC
Attorneys at Law
9 Damonmill Square, Suite 4A4
Concord, MA 01742

/s/ John D. Heffner
John D. Heffner

Dated: July 19, 2013