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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35842

**NEW ENGLAND CENTRAL RAILROAD, INC.
- TRACKAGE RIGHTS ORDER -
PAN AM SOUTHERN LLC**

NEW ENGLAND CENTRAL RAILROAD, INC.

OPENING STATEMENT AND EVIDENCE

(Color copies included)

VOLUME 1 of 3

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Dated: June 4, 2015

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This proceeding commenced in June, 2014, when New England Central Railroad, Inc. (“NECR”) filed a Request to Set Trackage Rights Terms and Conditions in order to modify a trackage rights order (“TO”) entered by the Board’s predecessor the Interstate Commerce Commission in 1990.¹ The TO governs the use of tracks owned by NECR (as successor to Central Vermont Railway, Inc. (“CV”)) by Pan Am Southern LLC (“PAS”) (as successor to Boston & Maine Corporation (“B&M”). In a decision served December 23, 2014, the Board confirmed that the TO allows the Board to modify the terms and conditions of the TO and instituted a proceeding.

In a decision served March 12, 2015, the Board granted the parties’ joint request for mediation to resolve issues regarding the terms and conditions for a new trackage rights agreement to replace the TO. The March decision also set a procedural schedule for the submission of argument and evidence in the event the parties were not able to reach a mediated resolution. Unfortunately, the parties have not been able to reach a resolution, and in accordance

¹ For reference a copy of the TO is attached hereto as Exhibit A.

with the schedule established by the Board, as amended,² NECR hereby submits its Opening Statement and Evidence.

In support of its Opening Statement, and as part of its Evidence, NECR also submits (as separate “volumes”) the following Appendices:

Vol. 2 Verified Statement of Dave Ebbrecht (“Ebbrecht VS”)

Vol. 3 Verified Statement of Charles Banks and John Ireland of R.L. Banks and Associates, Inc. (“RLBA VS”)

As will be more fully discussed below, the trackage rights line is comprised of three segments, two of which were originally owned by CV, and one of which was originally owned by B&M. Because it has not yet been determined by the parties or the Board whether the existing TO will be replaced by a single new agreement, or by three new agreements (one for each segment), NECR has submitted its evidence on both a segment basis and on a combined basis. As acknowledged by the Board in its decision served March 12, 2015, the parties have agreed that any new compensation would be retroactive to June 17, 2014.

To protect the confidential nature of the information provided, NECR is filing both a Highly Confidential and a Public Version of the Volumes 2 and 3.³

Background

There is no dispute about the background of the TO or the PAS trackage rights over the NECR lines between White River Junction, Vermont, and East Northfield, Massachusetts.

In *Amtrak – Conveyance of B&M in Conn River Line in VT & NH*, ICC Finance Docket No. 31250, 4 ICC 2d 761 (1988) (“*Amtrak I*”), the ICC required Boston & Maine Corporation

² The schedule was extended by agreement of the parties, and approved by the Office of Proceedings on April 17, 2015, and on May 19, 2015.

³ On June 3, 2015, the Board (through the Office of Proceedings) granted NECR’s motion for a protective order.

("B&M") to convey its 48.8 mile "Connecticut River Line" (also referred to as the "Former B&M Line") between Windsor, Vermont, and Brattleboro, Vermont, to the National Railroad Passenger Corporation ("Amtrak"), subject to the requirement that Amtrak grant specified trackage rights back to B&M. The ICC in *Amtrak I* also authorized Central Vermont Railway, Inc. ("CV") to acquire the Former B&M Line from Amtrak and to operate it, subject to B&M's trackage rights. CV and B&M were directed to negotiate a trackage rights arrangement. During their negotiations, the carriers operated under a temporary trackage rights agreement.

When the parties were unable to agree on certain terms for a permanent agreement, the ICC issued a decision in *Amtrak – Conveyance of B&M in Conn River Line in VT & NH*, ICC Finance Docket No. 31250, 6 ICC 2d 539 (1990) ("*Amtrak II*") resolving the disagreements between the parties, and adopting the trackage rights terms and conditions attached as an appendix to that decision, referred to as the "the trackage rights order" ("TO"). For reference, a copy of the TO is attached hereto as Exhibit A.

By agreement of the parties at the time, the TO covered not only the Former B&M Line, but also the adjoining 13.4 mile line between White River Junction, Vermont, and Windsor, Vermont, and the approximately 10.6 mile line between Brattleboro, Vermont and East Northfield, Massachusetts (together the "CV Lines") over which B&M previously had trackage rights so that there would be a single trackage rights arrangement to cover the lines then-owned by CV. See *Amtrak II*, 1990 ICC LEXIS at *6-*7; TO, ¶¶ 0.7, 0.11 and 1.1. A map showing the Former B&M Line and the CV Lines is attached hereto as Exhibit B. As a result of combining the lines covered by the TO, certain terms that had applied to the trackage rights over the CV Lines (including, without limitation, increases in rates to account for capital improvements, and termination provisions) were not reflected in the TO.

In subsequent transactions, NECR acquired CV's assets, including its rights and responsibilities under the TO, and B&M assigned its trackage rights over the line to its subsidiary, Springfield Terminal Railway Company ("ST"). See *Boston & Maine Corporation and Springfield Terminal Railway Company v. New England Central Railroad, Inc.*, STB Finance Docket No. 34612 (served January 10, 2006), at 2. More recently, the trackage rights and the rights and responsibilities under the TO were assigned by B&M and ST to PAS, although ST continues to operate the lines on behalf of PAS. See *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements – Pan Am Southern LLC*, STB Finance Docket No. 35147 (and related filings) (served March 10, 2009) (the "*PAS Control Proceeding*").

The TO specifically provided that its provisions were binding for only twenty years, and left open the establishment of revised terms and conditions after twenty years. Paragraph 2.2 of the TO provides in part:

After 20 years from the Conveyance Date, either party to this agreement may seek modifications from the other, and if satisfactory modifications are not agreed to after a reasonable period for negotiation, may apply to the ICC for modifications. Nothing in this section shall authorize the ICC to impose arbitration requirements upon either party to this Agreement.

See also *Amtrak II*, 1990 ICC LEXIS at *14-*15. Given that more than 20 years has passed since the Conveyance Date of September 9, 1988 (TO, ¶ 0.5), and in that significant improvements have been made to the trackage rights line such that the line is currently in FRA Class 3 condition without significant slow orders, allowing for more uniform efficient speeds and operations. Additionally, over the years the trackage rights line has been improved so that the entire trackage rights line, including all bridges on the trackage rights line, can now handle 286,000 lb loaded rail cars. NECR now seeks to have the terms and conditions of the trackage

rights re-set to reflect current standards for such agreements, the increased value of the line and the higher costs of maintenance.

Trackage Rights Compensation

The Board does not often get involved in the establishment of trackage rights terms and conditions. However, when it does, it (as the ICC did before it) will generally apply the “SSW Compensation methodology.” This methodology was developed in a series of cases involving St. Louis Southwestern Railway Company (“SSW”) beginning with *St. Louis Southwestern Ry. Co. – Trackage Rights Compensation*, 1 ICC 2d 776 (1984), and *St. Louis Southwestern Ry. Co. Compensation – Trackage Rights*, 4 ICC 2d 668 (1987) (*SSW Compensation-II*). While the SSW case involved the establishment of compensation for trackage rights to redress effects of a merger, the methodology has been extended to other situations, including in situations where the parties wanted the trackage rights to continue but could not agree on compensation. *See, for example, Arkansas and Missouri Railroad Company v. Missouri Pacific Railroad Company*, 6 ICC 2d 619 (1990) (“*A&M-P*”), and 7 ICC 2d 164 (1990) (“*A&M-IP*”). The three essential elements of the SSW Compensation methodology were summarized by the Board in *North Carolina Railroad Company – Petition to Set Trackage Compensation and Other Terms and Conditions – Norfolk Southern Railway Company, et al*, STB Finance Docket No. 33134 (served May 29, 1997), 1997 STB LEXIS 123, *10, fn. 13, and include:

- (1) the variable cost that is incurred by the owning carrier but attributable to the tenant carrier’s operations;
- (2) the tenant carrier’s usage-proportionate share of track maintenance and operating expenses; and
- (3) an interest or rental component to compensate the owning carrier for tenant carrier’s use of capital dedicated to the track by the owning carrier; determined by multiplying the value of the assets by a rate of return equal to the railroad’s current pre-tax nominal cost of capital.

See also *A&M-I*, 1990 ICC LEXIS at *7 (noting the propriety of applying the SSW Compensation methodology, modified as necessary); *A&M-II*, 1990 ICC LEXIS at *2, fn 2. In general, elements (1) and (2) are allocated to the tenant carrier based on its percentage of car-miles, and then converted to a per car fee. Element (3), the rental component reflects a return on capital, and is also allocated based on the tenant's percentage of car-miles, but it, at times, is paid in a lump sum, or monthly, in the same way that rent might be paid.

The various elements of the SSW Compensation formula, and the components necessary to make the calculations are as follows:

(a) PAS's percentage usage of the trackage rights line

In determining the percentage of usage of the trackage rights line, NECR examined the number of car miles attributed to each of the three rail users of the line, NECR, Amtrak and PAS. The total usage was determined by NECR using both locomotives and freight or passenger cars operated over the line (and each segment of the line). See *Ebbrecht VS* at 5.

PAS 2014 Percentage of Car Miles:

	South	Middle	North	Total
No. of PAS car miles	79,841	226,578	1,143	307,561
PAS % of car miles	18.7%	12.1%	0.2%	11.0%

(b) Variable costs attributable to PAS operations

This category represents the incremental cost that the tenant carrier imposes on the owning carrier as a result of its operation over the line in question. *A&M-I*, 199 ICC LEXIS at *8. The Board and ICC have consistently held that the tenant carrier should bear the incremental costs attributable to their operations. *Id.*

NECR contracts for dispatching of the trackage rights line from an affiliated entity, and is charged a fee based on usage. The fee includes the usage of all three rail carriers (NECR, PAS and Amtrak) that have to be dispatched on the line. Based on the fee, NECR has determined the portion of the fee that is attributable to PAS's use of the dispatching services.⁴ Because the fee is determined by calls to the dispatcher that are not directly attributable to the segments, for the purposes of the segment allocation, NECR has allocated the dispatching fees based on the relative PAS car miles shown in Section (a) above. Ebbrecht VS at 5-6. Under the SSW Compensation methodology, variable costs attributable to the tenant carrier are allocated based on usage.

Variable Cost of PAS Dispatching

	South	Middle	North	Total
PAS annual dispatching costs by segment	\$1,450.35	\$4,127.05	\$22.40	\$5,599.80
PAS dispatching costs per car mile	\$0.02	\$0.02	\$0.02	\$0.02

NECR is not in this proceeding seeking as part of the trackage rights compensation for any other variable costs that it may be incurring as a result of PAS's operations over the line, because it believes that, at this time, such costs are minimal. However, depending on the volumes of hazardous materials handled by PAS over the line, and the size of the PAS trains, additional inspection, handling and reporting requirements could be triggered.⁵

⁴ While dispatching is often considered part of the operating expenses, because dispatching is a fee based on usage, in this instance the dispatching costs attributable to PAS' use of the dispatching service is a variable cost.

⁵ The proposed trackage rights terms and conditions attached hereto as Exhibit C includes provisions for the reimbursement by PAS if additional variable costs are incurred by NECR in the future as a result of PAS' operations over the line.

(c) Proportionate Share of Operating and Maintenance Expenses

Operating and maintenance expenses include the expenses necessary to maintain the track, as well as other operating expenses such as property taxes, which are not directly caused by the tenant carrier's use of the trackage rights line. *A&M-I*, 199 ICC LEXIS at *8-9. Under the SSW Compensation methodology, these expenses are allocated by usage. *Id.*

The trackage rights line runs through the states of Massachusetts, New Hampshire and Vermont, and NECR pays property taxes in all three states. With respect to Vermont which has a unified property tax for railroads, NECR allocated the tax by mileage to determine the portion allocable to the trackage rights line and each segment. Additionally, NECR has been advised that its Vermont taxes will almost double for 2015 and 2016 from the current level. Accordingly, NECR has calculated the property taxes for both 2014, and for 2015 and 2016 as a base amount for going forward. *Ebbrect VS* at 6-7.

Maintenance of rail lines is comprised of two components – regular maintenance and program maintenance. *RLBA VS* at 10-11. The amount spent on maintenance can vary from year to year; however, for the purposes of calculating a base amount on which to calculate a long term trackage rights fee, NECR engaged an experienced railroad expert, R.L. Banks and Associates, Inc. (“RLBA”) to calculate an estimated level amount to maintain the trackage rights line (and each of the segments) in its current Federal Railroad Administration (“FRA”) Class 3 condition.⁶ RLBA's methodology and calculations are set forth in full in Volume 3. *RLBA VS* at 10-11 (and the Maintenance Appendix thereto).

Set forth below are the calculated maintenance and operating expenses broken down for each segment, and presented for the entire trackage rights line as well. Because of the substantial

⁶ For comparison purposes only, RLBA was also engaged to calculate the cost to maintain the line in FRA Class 2 condition.

increase in Vermont property taxes that NECR will incur beginning in 2015, NECR has presented the calculations for 2014 separately from the calculations for 2014 and 2015. Also shown is PAS's share of such expenses based on its percentage share of car miles shown above, and the per car mile charge that would result based on PAS' 2014 car miles also shown above.⁷

Maintenance and Operating Costs - 2014

	South	Middle	North	Total
Maintenance	\$699,574	\$1,870,751	\$519,448	\$3,089,773
Property Taxes	\$16,477	\$46,583	\$9,268	\$72,328
Total	\$716,051	\$1,917,334	\$528,716	\$3,162,101

Maintenance and Operating Costs Component - 2014

	South	Middle	North	Total
PAS share	\$133,902	\$231,997	\$1,057	\$347,831
Per car mile	\$1.67	\$1.02	\$0.92	\$1.13

Maintenance and Operating Costs – 2015 and 2016

	South	Middle	North	Total
Maintenance	\$699,574	\$1,870,751	\$519,448	\$3,089,773
Property Taxes	\$32,096	\$53,371	\$17,610	\$103,077
Total	\$731,670	\$1,924,122	\$537,058	\$3,192,850

Maintenance and Operating Costs Component – 2015 and 2016

	South	Middle	North	Total
PAS share	\$136,822	\$232,819	1,074	351,214
Per car mile	\$1.71	\$1.03	\$0.94	\$1.14

⁷ NECR suggests that the Board use the 2014 calculations for the agreed-upon retroactive compensation, and that it use the 2015 and 2016 calculations as the base amount for the trackage rights compensation going forward.

(d) Interest or Rental Component

The interest or rental component is determined by applying the owning railroad's pre-tax cost of capital to the value of the line. *A&M-I*, 1990 ICC LEXIS at *7 fn 8. The return that is calculated is then allocated to the tenant railroad based on its percentage usage of the line. *Id.*

The valuation of the line is the driving determinant of the quantum of the interest or rental component. Different valuation methods have been used historically based on the data and information available. In this proceeding, NECR has obtained an appraisal of the underlying real property, and a valuation of the infrastructure in place. *RLBA VS* at 6-12. As this represents the current market value of the property, the Board should base its calculation of the interest rental component on this value.

In the original SSW Compensation cases, the ICC used a capitalized earnings approach to valuation. *See A&M-I*, 1990 ICC LEXIS at *10-11. This method made sense in that proceeding as the underlying merger provided the elements necessary to make such a calculation. However, in this proceeding, as in the *A&M* cases, such an approach is not available. For example, trackage rights line specific earnings are not readily available. Not only does the trackage rights line represent only a portion of the total rail lines operated by NECR, but the tenant carrier PAS is permitted to provide local service on the middle segment and PAS' earnings are not available to NECR. *Id.*, 1990 ICC LEXIS at *11-12. Additionally, there is no readily available current stand-alone market valuation of the NECR. *Id.*, 1990 ICC LEXIS at *12-13. When the capitalized earnings approach is not available, the ICC and Board have looked to other methods.⁸ *See also Atchison, Topeka & Santa Fe Railway Company – Operating Agreement – Southern*

⁸ In *SSW Compensation-I*, the ICC recognized that the capitalized earnings approach might not be appropriate in other contexts. *SSW Compensation-I*, 1 ICC 2d at 786.

Pacific Transportation Co., ICC Finance Docket No. 22218, 8 ICC 2d 297 (1992), 1992 ICC LEXIS 43, at *13-18.

The ICC has made it clear that “net liquidation value” is not a method that should be used because calculation of the value of the use by the tenant railroad would be inconsistent with use of an operating line of a going concern railroad. *Id.*, 1990 ICC LEXIS at *14.

The ICC noted that it has allowed the use of the “replacement cost new less depreciation” (“RCNLD”) method in estimating the value of the underlying rail line. *Id.*, 1990 ICC LEXIS at *16-17. In doing so, the ICC allowed such use “in the absence of a more reliable market valuation based on the sale price of the specific property or reasonably similar property (sold as a unit, without liquidation) in an actual arm’s length market transaction.” *Id.* The goal is to estimate what it would cost to duplicate assets in their present condition. *Id.*

This is exactly what NECR has done – provide a reliable market valuation. The underlying land has been appraised to determine what it would be valued at in an arm’s length transaction. RLBA VS at 9 (and Anglemyer Appraisal Appendix thereto). The appraisal recognizes that NECR owns only an easement and not fee title; however, because the easement is permanent and exclusive for operating a railroad, NECR’s ownership is equivalent to fee title when considering the best and highest use for the property.⁹ *Id.* Further, the infrastructure has been valued in place using current market values, and taking into account a reduction for their use. RLBA VS at 6-8 (and Value in Place Appendix thereto). The full real estate appraisal and infrastructure valuation are included in the RLBA VS.

PAS is likely to raise the issue that public grant monies have been used over the years for a portion of the rehabilitation of, and capital improvements to, the trackage rights line. However,

⁹ Additionally, NECR has a contractual right to purchase the trackage rights line for nominal consideration of \$1.00.

the ICC made it clear that the owning railroad is entitled to earn a return on property donated by government that is used or useful in the railroad business provided by the owning railroad. *A&M-II*, 1990 ICC LEXIS at *17-18.¹⁰ The values set forth below include investments in the trackage rights line as it exists today, including improvements made with public grant monies and with funds expended by NECR.

Value of the Trackage Rights Lines

	South	Middle	North	Total
Land	\$1,120,000	\$4,680,000	\$4,660,000	\$10,460,000
Track/Infrastructure	\$6,699,000	\$67,405,000	\$12,677,000	\$86,781,000
Total	\$8,119,000	\$72,085,000	\$17,337,000	\$97,241,000

The ICC consistently has held that the reasonable return on valuation must be based on current, pre-tax cost of capital. *A&M-I*, 1990 ICC LEXIS at *20-21 (citing *SSW Compensation-II* and *SSW Compensation-III*). The current post-tax cost of capital as determined by the Board for 2013 is 11.32%. *Railroad Cost of Capital – 2013*, STB Docket No. EP 558 (Sub-No. 17) (served July 31, 2014). NECR does not file separate tax returns, but rather it is part of the consolidated tax returns filed by its ultimate parent holding company Genesee & Wyoming Inc. (“GWI”). GWI’s consolidated effective tax rate for 2014 was 29.1%. *Ebbrecht VS* at 4. Applying the effective tax rate to the post-tax cost of capital yields a pre-tax cost of capital of 15.97% as shown below.¹¹

¹⁰ The ICC noted that this is particularly true where the owning railroad has the obligation to maintain the government-financed infrastructure (as is the case here), and therefore is entitled to a return on future necessary capital expenditures for such purposes. *Id.*, at *18, fn 16.

¹¹ The ICC determined that the rental should change when the cost of capital changes, unless the parties agree otherwise. *A&M-I*, 1990 ICC LEXIS at *21. This adjustment has been included in the proposed form of trackage rights agreement. *See Exhibit C, §3.8.*

Pre-tax Cost of Capital:

Railroad After-Tax Cost of Capital - 2013:	11.32%
NECR (GWI) consolidated effective tax rate (2014):	29.1%
Pre-Tax Cost of Capital:	<u>15.97%</u>

Applying the pre-tax cost of capital the value yields the interest rental component of the SSW Compensation methodology. That interest rental component is then allocated to the tenant carrier based on the tenant carrier's percentage of usage.

In some cases the ICC has provided that the interest rental component should be paid on an annual or a monthly basis as rent would be. In others, the ICC determined that the interest rental component should be paid as a per car mile charge. *A&M-I*, 1990 ICC LEXIS at *22-23.

Interest Rental Component

	South	Middle	North	Total
Interest rental value	\$1,296,604	\$11,511,975	\$2,768,719	\$15,529,388
PAS share of interest rental value (annual)	\$242,465	\$1,392,949	\$5,537	\$1,708,233
PAS share of interest rental value monthly)	\$20,205	\$116,078	\$461	\$142,353
Interest rental per PAS car mile	\$3.04	\$6.15	\$4.84	\$5.55

Because of the nature of the interest rental component, NECR believes that the better practice is to have the interest rental component paid on an annual or monthly basis as it more closely mirrors the rental aspect of the component. NECR recognizes that making a single annual payment of the interest rental component might be burdensome for PAS, and therefore suggests that the Board establish this portion of the trackage rights compensation on a monthly basis.

As determined in *SSW Compensation-IV*, 1991 ICC LEXIS 206, at *40-41, it is most appropriate to apply the current cost of capital, as opposed to the previous cost of capital. On

that basis, the interest rental component shown above would be considered the interim payment amount, with adjustments being made as and when the cost of capital for subsequent years is announced.

Summary

Based on the evidence provided, NECR requests that the Board find that if a new single trackage rights agreement is established, the trackage rights fee going forward should be \$1.16 per car mile (\$1.15 per car mile for 2014), plus a monthly interest rental payment of \$142,353. If the Board were to establish a separate trackage rights agreement for each segment, then NECR requests that the Board find that the trackage rights fee and monthly rental for each of the segments going forward should be as follows: South - \$1.73 per car mile and \$20,205 per month; Middle - \$1.05 per car mile and \$116,078 per month; and North - \$0.96 per car mile and \$461 per month.

As noted by the Board in its decision served March 12, 2015, the parties have agreed that any new compensation would be retroactive to June 17, 2014.

Other Trackage Rights Terms

The terms of the TO were largely agreed upon by the parties, and were based on the interim agreement that the parties agreed would apply effective with the transfer of the middle segment by B&M to Amtrak (and then to CV). NECR believes that there are certain terms that need to be clarified, and others that should be brought up to current standards for trackage rights agreements. Included with this filing as Exhibit C, is a suggested form of revised trackage rights terms and conditions (marked to show changes from the TO) that NECR proposes that the Board adopt in connection with this proceeding. The following discussion addresses some of the more important suggested clarifications and changes.

1. No limitations on PAS's liability for capital improvements.

As part of the 1990 ICC order establishing the trackage rights terms, the ICC limited B&M's liability for capital improvements for the Former B&M Line, and capped the compensation to be paid based on then-current traffic levels. These limitations were in part to compensate B&M for the forced sale of the Former B&M Line at the constitutional minimum value of net liquidation value, and these limitations clearly were meant to be applied only to the Former B&M Line. However, when B&M and CV voluntarily agreed to have the trackage rights order apply to the CV Lines as well, the effect of the limitations spread to the trackage rights over the CV Lines.

Now, twenty five years later, there is no longer any justification for these limitations, and the benefit of this accommodation to B&M (and its successors) has more than offset any reduced payment B&M received as part of the forced sale. Accordingly, NECR proposes to eliminate the limitations which appeared in Sections 3.1, 3.3 and 3.6 of the TO, and has added provisions that would require PAS to pay its equitable share of major capital projects. The reopener provisions of Section 2.2 do not limit the modifications that the Board can make to the trackage rights conditions, except that arbitration cannot be imposed.

If the Board agrees that the limitations applicable to capital improvements should be eliminated, the NECR agrees that it would be appropriate to have a single trackage rights order for the entire trackage rights line. However, if the Board does not agree to eliminate the limitations, then NECR requests that the Board issue separate orders for the Northern and Southern Segment (the CV Lines), and for the Middle Segment (Former B&M Line) in recognition of the fact that any remaining limitations should only apply to the Middle Segment.

2. No haulage.

The parties have previously presented arguments to the Board regarding their positions on whether haulage is permitted under the TO. NECR's position is set forth in its Reply to PAS Claims filed October 9, 2104. As the Board noted in its December 23, 2014 decision, "PAS does not rebut NECR's argument." NECR acknowledges it has permitted haulage in the limited instance where PAS is hauling cars for Norfolk Southern Railway that are interchanged with NECR, but only in that limited circumstance. Although NECR believes that the TO already prohibits haulage, it has added language in Sections 1.9(a) and 10.7 to eliminate any prospective ambiguity.

3. Insurance.

It is now standard for trackage rights agreements to include insurance provisions to back up the liability and indemnity provisions, and for the owning railroad to be named as an additional insured. NECR is proposing customary provisions. The level of insurance is directly linked to the operations of Amtrak over the trackage rights line, and correlates with the Amtrak liability statute.

4. Hazardous Materials.

NECR has suggested additional provisions to clarify the responsibilities of the parties with respect to hazardous materials handled by PAS over the trackage rights line. Such provisions have become customary, especially given the new regulations issued by FRA with respect to the handling of such materials.

5. Reopening.

NECR is suggesting that the time period for reopening be reduced from 20 years to 10 years.

Conclusion

For the foregoing reasons, NECR requests that the Board establish new terms and conditions for the PAS trackage rights as requested and justified by NECR herein.

Respectfully submitted,



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Dated: June 4, 2015

Attorneys for
New England Central Railroad, Inc.

VERIFICATION

I, Dave Ebbrecht, President of New England Central Railroad, Inc., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on June 4, 2015.

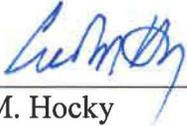
A handwritten signature in cursive script that reads "Dave E. Ebbrecht". The signature is written in black ink and is positioned above a horizontal line.

Dave Ebbrecht

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document, and the public versions of volumes 2 and 3, were served by email on counsel for Pan Am Southern, LLC:

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Eric M. Hocky

Dated: June 4, 2015

EXHIBIT A

APPENDIX: APPENDIX**TERMS AND CONDITIONS OF TRACKAGE RIGHTS IMPOSED BY THE INTERSTATE COMMERCE COMMISSION GOVERNING THE USE BY BOSTON AND MAINE CORPORATION OF CERTAIN LINES OF CENTRAL VERMONT RAILWAY, INC.****0. DEFINITIONS**

As used herein, the following capitalized terms have the following meanings (any other capitalized terms being defined in context hereafter):

0.1 "Agreement" means the terms and conditions of trackage rights as a whole set forth herein, as though the instant terms and conditions had been agreed to contractually by B&M and CV.

0.2 "Amtrak" means the National Railroad Passenger Corporation.

0.3 "B&M" means Boston and Maine Corporation, a corporation with its principal [*46] office at Iron Horse Park, North Billerica, Massachusetts 01862.

0.4 "CCR" means Claremont and Concord Railway (including its successors and assigns).

0.5 "Conveyance Date" means September 9, 1988, the date on which B&M conveyed the Former B&M Line to Amtrak, and on which Amtrak conveyed the same to CV, pursuant to the Order.

0.6 "CV" means Central Vermont Railway, Inc., a corporation with its principal office at 2 Federal Street, St. Albans, Vermont 05478.

0.7 "CV Lines" means the approximately 13.4-mile rail line between White River Junction, Vermont, and Windsor, Vermont, and the approximately 10.6-mile rail line between Brattleboro, Vermont, and East Northfield, Massachusetts, both of which have belonged to CV since before the Conveyance Date.

0.8 "Former B&M Line" means the approximately 48.8-mile rail line between Windsor, Vermont, and Brattleboro, Vermont, conveyed by B&M to Amtrak, and by Amtrak to CV, on the Conveyance Date pursuant to the Order.

0.9 "GMRC" means the Green Mountain Railroad Corporation (including its successors and assigns).

0.10 "ICC" means the U.S. Interstate Commerce Commission.

0.11 "Line" means the CV Lines and the Former B&M Line together. [*47]

0.12 "Order" means the decision of the ICC in National Railroad Passenger Corporation -- Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire, dated August 4, 1988, served August 9, 1988, and published at pages 761 through 817 of volume 4 of the ICC Reports, Second Series.

0.13 "ST" means the Springfield Terminal Railway Company (including its successors and assigns).

1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions of this Agreement, B&M shall have the non-exclusive right to operate B&M's trains, locomotives, cars and equipment with B&M's own crews over the Line, as more particularly defined as follows:

All main line track and passing sidings between a point at the interlocking at East Northfield, Massachusetts (approximately B&M MP 49.67 and CV MP 110.51) to the Bank switch at the termination of B&M ownership at White River Junction, Vermont (approximately CV MP 13.40).

1.2 B&M shall have only overhead running rights over the CV Lines.

1.3 B&M shall have the exclusive right to serve all existing shippers and shippers' facilities that were located on the Former B&M Line as of the Conveyance Date, including [*48] any and all new shippers that locate at such existing facilities after the Conveyance Date, provided that B&M makes available a minimum three day per week service along the Line. B&M must consult with the shippers and ensure their needs are met up to three day per week service.

1.3.1 For purposes of this Section 1.3, "existing shippers and shippers' facilities" shall mean industries and facilities at rail sidings which received or tendered rail shipments during the twelve months immediately prior to the Conveyance Date.

1.3.2 For purposes of this Section 1.3, "three day per week service" shall mean the provision of local set-off and pick-up service to shippers on the Former B&M Line at least three times per week (Monday through the following Sunday) in each direction.

1.3.3 CV shall be permitted to commence service to existing shippers and shippers' facilities upon B&M's failure to make available three day per week service during two weeks out of any four week period, unless such failure is excused by Section 9.6.

1.4 Except as provided in Section 1.3, CV and B&M shall each have the right to compete for and serve the following shippers and shippers' facilities on the Former B&M [*49] Line:

(a) shippers and shippers' facilities located on the Former B&M Line which have not received or tendered rail shipments during the twelve months immediately prior to the Conveyance Date;

(b) any other new shippers;

(c) any existing shippers and shippers' facilities to which B&M does not provide a minimum three day per week service, as specified in Section 1.3.

1.4.1 CV shall, upon request by B&M, provide reciprocal switching to permit B&M to serve such shippers and shippers' facilities as B&M may serve hereunder. CV shall not be required to switch cars on B&M's behalf at shippers' facilities which CV serves by virtue of B&M's failure to make available a minimum three day per week service along the Line as specified by Section 1.3, but B&M shall retain the right to provide service directly to such shippers and shippers' facilities. B&M shall pay to CV a per switch charge not greater than 180% of the CV variable cost of providing such switching service computed using CV's costs computed in accordance with formulas generally used or accepted in ICC proceedings.

1.5 CV and B&M shall each have the right to compete for and to interchange traffic at Bellows Falls, Vermont, with [*50] GMRC and at Claremont Junction, New Hampshire, with the CCR. B&M shall have the exclusive right to interchange traffic at Charlestown, New Hampshire, with the ST.

1.6 B&M shall have the right of entry over the Line for any and all B&M employees, agents or representatives, machinery, vehicles or equipment which B&M may deem necessary or convenient for the purposes of inspecting the Line, clearing any derailments or wrecks of B&M trains on the Line or otherwise conducting its operations over the Line.

1.7 B&M shall without charge to CV dispatch the interlocking CPR 50 located at East Northfield, Massachusetts, until seven (7) days after CV notifies B&M that CV is prepared to assume such responsibility and all applicable regulatory requirements have been satisfied.

1.8 Except as provided herein, this Agreement does not diminish in any way CV's right to use the Line, or CV's right to lease or otherwise allow another carrier to use the Line.

2. TERM AND TERMINATION

2.1 The term of this Agreement shall commence as of 7:00 a.m. Eastern Time, on the Conveyance Date.

2.2 Except as provided in Section 2.3, and subject to the provisions of this section, the term of this Agreement shall [*51] be perpetual. After 20 years from the Conveyance Date, either party to this agreement may seek modifications from the other and, if satisfactory modifications are not agreed to after a reasonable period for negotiation, may apply to the ICC for modifications. Nothing in this section shall authorize the ICC to impose arbitration requirements upon either party to this Agreement.

2.3 B&M may terminate this Agreement immediately upon notice to CV.

2.4 Notwithstanding the foregoing, the parties hereby acknowledge and agree that B&M has appealed the Order, and that in the event the Former B&M Line is reconveyed to B&M in connection with or resulting from such appeal, this Agreement shall terminate upon such reconveyance, and that thereafter the terms and conditions of the April 1, 1985 and January 1, 1930 Trackage Rights Agreements shall govern their operations over and use of the Line, and such agreements shall be deemed re-executed in their current forms.

3. COMPENSATION

3.1 B&M shall have no obligation to pay for or contribute in any way towards the cost of upgrading of the Former B&M Line, except as provided in Section 3.7.

3.2 Except as provided in Section 1.7, CV shall [*52] be solely responsible for dispatching all operations over the Line and for the maintenance and repair of the Line, including the signals and the signal and dispatching system which controls operations on it. CV shall keep the Line, at all times throughout the term of this Agreement or any extensions thereof, in not less than FRA Class II condition.

3.3 In full satisfaction of any and all obligations of B&M to pay for the trackage rights provided herein or contribute towards the costs of dispatching, maintenance and repair of the Line (including the maintenance, repair and operation of the signals and the signal and dispatching system which controls operations on it), B&M shall pay to CV 20.1¢ per car mile (whether loaded or empty including locomotives, cabooses and work equipment) of traffic actually operated by B&M (or its assignee) over the Line. Notwithstanding the foregoing, the sum of such payments in respect of the Former B&M Line shall not exceed one hundred forty-two thousand dollars (\$ 142,000) per year during the first three years this Agreement is in force and shall not exceed seventy-five thousand dollars (\$ 75,000) in any year thereafter, provided, however, that the [*53] foregoing limitation shall not apply if the annual gross traffic volume on the Former B&M Line attributable to B&M's overhead or local service, including traffic for interchange to GMRC, CCR, or ST, exceeds 32,500 carloads. Locomotives, cabooses and work equipment shall not be included in determining whether traffic attributable to B&M has exceeded 32,500 carloads in a given year. In any year that the amount of traffic attributable to B&M on the Former B&M Line exceeds 32,500 carloads, B&M shall pay CV as additional compensation 20.1¢ per car mile for all the cars in excess of 32,500 cars, whether loaded or empty, including locomotives, cabooses and work equipment.

3.4 All payments to be made by B&M and CV under this Agreement (including the caps set forth in Section 3.3) shall be adjusted effective March 31, 1989, and semi-annually thereafter, for price level changes from July 1, 1988, (using

(Illegible Word) 1988) based on the relationship of the most recent quarter's Association of American Railroads (AAR) Eastern District, Quarterly Indices of Chargeout Prices and Wage Rates (Table C) - "Material prices, wage rates and supplements combined (excluding fuel)" to comparable indices [*54] of the quarter six months previous. The first adjustment to be made shall be based on the comparison of the Fourth Quarter 1988 index value to the Second Quarter 1988.

3.5 B&M shall have responsibility for and shall report and pay directly to the owner of the cars, all mileage, car hire and other charges accruing on cars in B&M's trains on the Line.

3.6 CV shall issue its bill to B&M for the payments specified by Sections 1.4 and 3.3 by the fifteenth (15) day of each month for the traffic transported during the preceding calendar month. B&M shall pay to CV the amount shown on such bill by the last day of the month in which such bill is issued: B&M shall not be required to pay mileage charges attributable to its operations over the Former B&M Line once payments made in the preceding months of that year with respect to those operations equal the payment cap as adjusted in accordance with Section 3.4 for that year, until traffic attributable to B&M's operations over the Former B&M Line exceeds 32,500 carloads for that year. Payments not received by CV by such last day of the month in which the bill is issued will accrue interest at the rate of one and one-half (1.5%) percent per [*55] month for each month or portion of a month by which the payment is late.

3.7 In the event that CV is required to undertake any major capital projects which may become necessary due to changes in applicable local, state or federal statutes, ordinances or regulations, or by catastrophic occurrences on the Line, including but not limited to floods or destruction of bridges, B&M or its assignee shall pay its proportionate share of the expenditures actually made by CV for such capital projects based upon the percentage of total car miles on the Line attributable to B&M's (or its assignee's) average traffic volume during the preceding five (5) year period.

4. ADDITIONS AND ALTERATIONS

4.1 CV shall pay for and be responsible for the construction, maintenance, repair and renewal of any additional connections to the Line which it may require.

4.2 If B&M determines that changes in or additions and betterments to the Line, including changes in communication, dispatching or signal facilities as they existed immediately prior to the Conveyance Date, are required to accommodate B&M's operations beyond that required by CV to accommodate CV's and Amtrak's operations over the Line, B&M shall [*56] pay for the construction of such additional or altered facilities, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities. Notwithstanding the foregoing, CV shall have the right to approve of any such addition or alteration prior to its construction, which approval shall not be unreasonably

withheld, and such addition or alteration shall be constructed in such a manner as to minimize interference with CV's or Amtrak's operations over the Line.

5. SCHEDULING OF TRAINS AND MAINTENANCE; OPERATING RULES

5.1 The trains, locomotives, cars and equipment of B&M, CV, Amtrak, and any other present or future user of the Line or any portion thereof, shall be operated without prejudice or partiality to any party to this Agreement or any such other user and in such a manner as will result in the most economical and efficient manner of movement of all traffic; provided, however, that CV shall give priority to intercity rail passenger trains of Amtrak to the extent required by Section 402 of the Rail Passenger Service Act. Notwithstanding the foregoing, B&M shall have the right, in consultation with CV, to establish the schedules of B&M's trains [*57] over the line. Trains performing local work, whether B&M, CV or otherwise, are not entitled to priority over trains that are not performing such work. CV shall establish CV's train schedules with due regard to the trains to be operated by B&M. Each party shall use reasonable efforts to provide five (5) days' notice of changes in its traffic and operating patterns and procedures which may affect the Line. B&M acknowledges that the upgrading work will require a twelve (12) hour work block scheduled for between 7:00 a.m. and 7:00 p.m. CV shall coordinate with B&M and use its best efforts in scheduling the work required for the upgrading of the Former B&M Line and any future maintenance or repair of the Line to minimize any interference with or disruption of B&M's operations over the Line.

5.2 Any and all training that may be required to qualify B&M operating personnel as to CV's operating rules (after the initial training of such personnel, which will be provided by CV) shall be performed by B&M, and the determination as to whether such operating personnel are qualified under CV's operating rules shall be made in the discretion of B&M (giving consideration to any comments or recommendations [*58] of CV). CV shall train, and periodically recertify in accordance with CV's operating rules, B&M operating personnel who act as instructors for B&M personnel regarding CV's operating rules.

5.3 CV operating rules shall govern all operations over the Line, and CV shall report to B&M any incidents of violation of such rules by a B&M employee. CV may at its option, for good cause shown, exclude such employee from the Line.

5.4 In the event that any dispute arises as to the interpretation of any operating rules, the interpretations of the Uniform Code of Operating Rules, as amended, shall govern.

6. CLEARING OF DERAILMENTS AND WRECKS

6.1 In the event of any derailment or wreck of a B&M train, B&M shall clear the Line to allow for the passage of other trains within a reasonable time. B&M shall perform any rerailing wrecking or wrecking train service as may be required in connection with such derailment or wreck, in accordance with its customary practices. Except as provided in Section 7, the cost liability, and expense of the foregoing, including, without limitation, loss of, damage to, or destruction of any property whatsoever and injury to or death of any person or persons whomsoever [*59] resulting therefrom, shall be the responsibility of B&M. In the event that B&M does not begin rerailing operations for passage of trains over the Line within twelve (12) hours of an occurrence or does not complete the process of clearing the Line within a reasonable time, CV may clear the Line for passage of trains, and B&M shall reimburse CV for all reasonable costs CV incurs in performing such service.

7. RELEASE AND INDEMNIFICATION

7.1 Save as herein otherwise provided, each party hereto shall be responsible for and shall assume all loss, damage or injury (including injury resulting in death) to persons or property, including the cost of removing any trackage, repairing trackage and correcting environmental damage, which may be caused by its engines, cars, trains or other on-track equipment (including damage by fire originating therefrom) whether or not the condition or arrangement of the trackage contributes in any manner or to any extent to such loss, damage or injury, and whether or not a third party may have caused or contributed to such loss, damage or injury, and for all loss or damage to its engines, cars, trains or other on-track equipment while on said trackage from [*60] any cause whatsoever, except in the case of collision, in which event the provisions of Section 7.2 shall apply.

7.2 In the event of a collision between CV's and B&M's engines, cars, trains or other on-track equipment while on the Line, the apportionment of liability between the parties hereto for all loss, damage or injury (including injury resulting in death) to any person (including CV's or B&M's employees, agents or representatives) or property shall be governed by the following provision:

7.2.1 If the employees of one party are solely at fault, that party shall be responsible for all such loss, damage or injury including the cost of removing wreckage, repairing trackage, and correcting environmental damage.

7.2.2 If the employees of both parties hereto are at fault, or if the cause of the accident is so concealed that it cannot be determined whose employees are at fault, each party shall bear and pay for all such loss, damage or injury which its own engines, cars, trains or other on-track equipment and their contents or property in its custody, or its employees or others claiming for them, may have suffered by reason or in consequence of the accident. Responsibility for [*61] all other such loss, damage or injury shall be apportioned equally between the parties hereto.

7.2.3 The words "all other such loss, damage or injury" referred to in this Section 7.2 shall be deemed to include but not be limited to the cost of removing wreckage, repairing trackage, correcting environmental damage, and third party claims.

7.2.4 As between the parties hereto, the foregoing provisions of this Section 7.2 shall be applicable whether or not a third party may have caused or contributed to the accident.

7.2.5 The words "trackage" referred to in this Section 7 shall be deemed to include but not be limited to the tracks, structures or facilities pertaining to operation of the Line.

7.3 Without in any way restricting the terms of this Section 7, in the case of a collision or accident between the train of either party to this Agreement and the property of a third person or other entity, including any action done in the process of trying to avoid an accident or a collision, such party shall save harmless and indemnify the other party forthwith for all damages suffered by the other party including damages to equipment and structures or injuries (including death) to the employees [*62] or agents of the other party including also the results of those actions done in the process of avoiding a collision or accident, and irrespective of negligence of either party or such third person or other entity, and with a right of subrogation in favor of such party against any such third person or other entity.

7.4 Each party hereto shall forever indemnify and save harmless the other party, from and against all claims, liability or judgments by reason or on account of any injury to or death of any person or of any loss or damage to property, the liability for which is herein assumed by such first mentioned party, and such first mentioned party shall pay and discharge any judgment that may be obtained by reason thereof, and all costs, charges and expenses payable thereunder, including legal counsel fees.

7.5 The parties shall settle, as between themselves, any claim for loss or damage according to the terms of this Agreement, notwithstanding any judgment or decree of any court or other tribunal in a proceeding brought by other parties. In case a suit or proceeding shall be commenced by any person or corporation against either party hereto for or on account of any loss, damage [*63] or injury for which the other party hereto is liable under the provisions of this Agreement, the party so sued or proceeded against shall give to the other party reasonable notice, in writing, of the pendency of such suit or proceeding and thereupon the other party shall assume the defense of such suit or proceeding or shall save and hold the party so sued harmless from all loss and costs by reason thereof. Neither party hereto shall be bound by any judgment against the other party unless it shall have reasonable notice that it is so required to defend and has reasonable opportunity to make such defense. When such notice and opportunity has been given, the party notified shall be bound by the judgment as to all matters that could have been litigated in such suit or proceeding.

7.6 In every case of death or injury suffered by an employee of either B&M or CV, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay such compensation, if such compensation is required to be paid in [*64] installments over a period of time, such party shall not be released from paying such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

8. DEFAULT; PAYMENT DELINQUENCY

8.1 In the event of a material breach by B&M of the terms and conditions of this Agreement which continues for a period of forty-five (45) days after notice thereof from CV, CV shall have the right to terminate this Agreement upon ninety (90) days' notice.

8.2 If B&M becomes delinquent in payment of any amount by more than fourteen (14) days under the terms of Section 3.6, CV shall be entitled to receive advance payment from B&M for each B&M train seeking access to the Line until B&M satisfies the delinquency in full. If B&M fails to tender the advance payment, CV shall be further entitled to

exclude and eject B&M from the Line until B&M tenders the advance payment. CV shall be entitled to these remedies for delinquencies even if B&M has disputed the billed amount by invoking arbitration or otherwise. During the pendency of any such exclusion or ejection, CV shall nevertheless accept [*65] B&M cars for interchange at any point on the Line.

9. GENERAL PROVISIONS

9.1 No Waiver. Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

9.2 Notice. Any notice required or permitted under this Agreement shall be given in writing to the parties at their respective addresses specified above, or at such other address for a party as that party may specify by notice as provided herein, by (i)(A) delivery in hand or by postage prepaid, United States first class mail and (B) registered or certified mail, return receipt requested, or (ii)(A) telefax and (B) registered or certified mail, return receipt requested, or (iii)(A) Federal Express or other form of expedited mail that provides for delivery to the sender of a signed receipt, or (iv) telegram. Notice so sent shall be effective upon receipt.

9.3 Integration. Except for the Order and the documents executed in pursuance thereof, this Agreement constitutes [*66] the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understandings, courses of dealing, agreements, contracts and the like between the parties in such respect. Except for any and all obligations incurred or causes of action accrued thereunder prior to or as of the Conveyance Date, and except as provided in Section 2.4 and 9.3.1 hereof, the Trackage Rights Agreements by and between B&M and CV dated as of April 1, 1985, and January 1, 1930, are hereby terminated. Any provisions of any other agreement(s) between CV and B&M which are not inconsistent with the provisions of this Agreement shall remain in effect until cancelled according to the terms of such other agreement(s).

9.3.1 The provisions of Section 8, Freight Haulage, of the January 1, 1930 Trackage Rights Agreement between CV and B&M, as amended from time to time, shall remain in effect until cancelled by either party upon ninety (90) days' prior written notice to the other.

9.4 Miscellaneous. This Agreement: (i) may be amended, modified, or terminated, and any right under this Agreement may be waived in whole [*67] or in part, only by a writing signed by both parties; (ii) contains headings only for convenience, which headings do not form part of and shall not be used in construction of this Agreement; and (iii) is not intended to inure to the benefit of any party not a party to this Agreement.

9.5 Availability of Equitable Relief. The obligations imposed by this Agreement are unique. Breach of any of such obligations would injure the parties to this Agreement; such injury is likely to be difficult to measure; and monetary damages, even if ascertainable, are likely to be inadequate compensation for such injury. Protection of the respective interests provided herein would require equitable relief, including specific performance and injunctive relief, in addition to any other remedy or remedies that the parties may have at law or under this Agreement.

9.6 Force Majeure. No party to this Agreement shall be responsible for delays or errors in its performance or other breach under this Agreement occurring by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts [*68] of God, insurrection, war, riots, delays in suppliers, derailments or failure of transportation, communication or power supply.

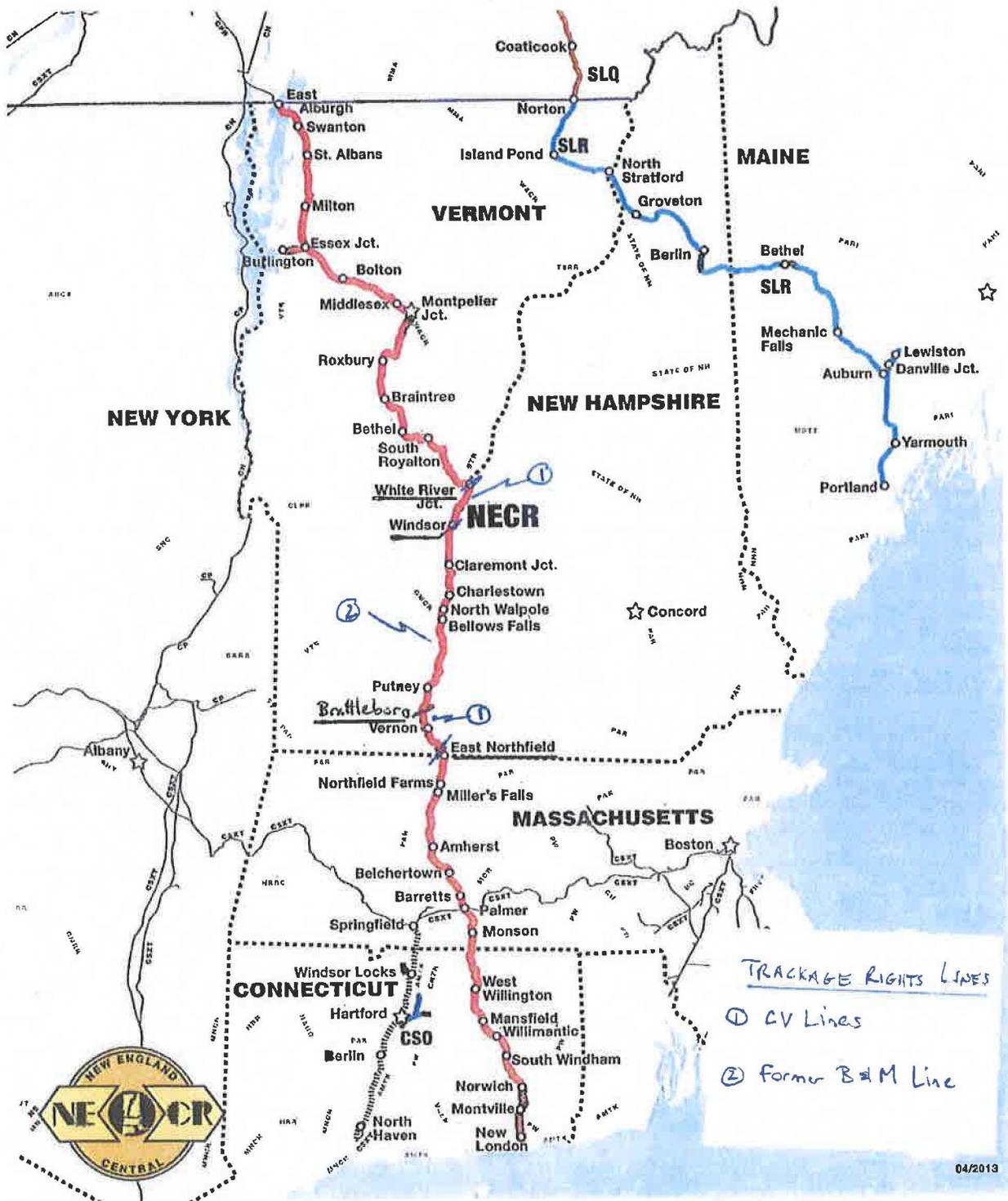
9.7 Trains, Locomotives, Cars or Equipment. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such trains, locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of, or under the control of the other party to this Agreement, such trains, locomotives, cars and equipment shall be considered those of the other party, except where the cars or equipment are being transported under the Haulage Agreement referred to in Section 9.3.1 of this Agreement.

9.8 Assignment. This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns. B&M shall have the right to assign any or all of [*69] B&M's rights and obligations under this Agreement to any affiliate of B&M, following consultation with CV. B&M shall have the right to assign any or all of B&M's rights and obligations under this Agreement to any other person with CV's prior consent, which shall

not be withheld unreasonably. In the event of an Agreement, the number of carloads attributable to the assignee's operations over the Former B&M Line shall be included in the number of cars attributable to B&M's operations for the purposes of Section 3.3 of this Agreement.

9.9 Governing Law. This Agreement is imposed and entered into in, and shall be governed by the laws of, the District of Columbia.

EXHIBIT B



New England Central Railroad, Inc.
 2 Federal St. Suite 201
 St. Albans, Vermont 05478
 802-527-3500

- Genesee & Wyoming (G&W) Railroads**
- CSO Connecticut Southern Railroad, Inc.
 - NECR New England Central Railroad, Inc.
 - SLR St. Lawrence & Atlantic Railroad Company
 - SLQ St. Lawrence & Atlantic Railroad (Québec) Inc.

EXHIBIT C

~~PROPOSED TRACKAGE RIGHTS TERMS AND CONDITIONS OF TRACKAGE RIGHTS IMPOSED BY THE
INTERSTATE COMMERCE COMMISSION GOVERNING THE USE BY BOSTON AND MAINE
CORPORATION OF CERTAIN LINES OF CENTRAL VERMONT RAILWAY, INC.~~

0. DEFINITIONS

As used herein, the following capitalized terms have the following meanings (any other capitalized terms being defined in context hereafter):

0.1 "Agreement" means the terms and conditions of trackage rights as a whole set forth herein, as ~~[though the instant terms and conditions had been]~~ agreed to contractually by ~~B & MPAS~~ and ~~CV~~NECR.

0.2 "Amtrak" means the National Railroad Passenger Corporation.

0.3 "B & M" mean Boston and Maine Corporation, a corporation with its principal office at Iron Horse Park, North Billerica, MA 01862.

0.4 "CCR" means Claremont and Concord Railway (including its successors and assigns).

0.5 "Conveyance Date" means September 9, 1988, the date on which B & M conveyed the Former B & M Line to Amtrak, and on which Amtrak conveyed the same to CV, pursuant to the Order.

0.6 "CV" means Central Vermont Railway, Inc., a corporation with its principal office at 2 Federal Street, St. Albans, VT 05478.

0.7 "CV Lines" means the approximately 13.4-mile rail line between White River Junction, Vermont, and Windsor, Vermont, and the approximately 10.6-mile rail line between Brattleboro, Vermont, and East Northfield, Massachusetts, both of which ~~have~~ belonged to CV ~~since~~ before the Conveyance Date, and which are currently owned by NECR.

0.8 "Effective Date" means with respect to the compensation terms in Section 3 hereof, June 17, 2014, the date on which the parties agreed revised compensation would be effective, and with respect to other terms and conditions hereunder, the effective date established by order of the STB.

0.9 "Former B & M Line" means the approximately 48.8-mile rail line between Windsor, Vermont, and Brattleboro, Vermont, conveyed by B & M to Amtrak, and by Amtrak to CV, on the Conveyance Date pursuant to the Order, and currently owned by NECR.

~~0.10~~0.9 "GMRC" means the Green Mountain Railroad Corporation (including its successors and assigns).

0.11 "Hazardous Substance" means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances; (ii) substances that endanger the health and safety of persons; and (iii) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.

~~0.10~~0.12 "ICC" means the U.S. Interstate Commerce Commission.

~~0.11~~0.13 "Line" means the CV Lines and the Former B & M Line together, currently owned by NECR.

0.14 "NECR" means New England Central Railroad, Inc., a corporation with its principal office at [INSERT ADDRESS].

~~0.12~~0.15 "Order" means the decision of the ICC in National Railroad Passenger Corporation—Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire, dated August 4, 1988, served August 9, 1988, and published at pages 761 through 817 of volume 4 of the ICC Reports, Second

Series.

0.16 "PAS" means Pan Am Southern LLC, a limited liability company with its principal office at [INSERT ADDRESS].

~~0.13~~0.17 "ST" means the Springfield Terminal Railway Company (including its successors and assigns).

0.18 "STB" means the U.S. Surface Transportation Board (including any successor agencies).

1. GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions of this Agreement, B & MPAS shall have the nonexclusive right to operate B & MPAS's trains, locomotives, cars and equipment with B & MPAS's own crews over the Line, as more particularly defined as follows:

All main line track and passing sidings between a point at the interlocking at East Northfield, Massachusetts (approximately B & M MP 49.67 and CVNECR MP 110.51) to the Bank switch at ~~the termination of B & M ownership at~~ White River Junction, Vermont (approximately CVNECR MP 13.40).

1.2 B & MPAS shall have only overhead running rights over the CV Lines.

1.3 B & MPAS shall have the exclusive right to serve all existing shippers and shippers' facilities that were located on the Former B & M Line as of the Conveyance Date, including any and all new shippers that locate at such existing facilities after the Conveyance Date, provided that B & MPAS makes available a minimum three day per week service along the Line. B & MPAS must consult with the shippers and ensure their needs are met up to three day per week service.

1.3.1 For purposes of this Section 1.3, "existing shippers and shippers' facilities" shall mean industries and facilities at rail sidings which received or tendered rail shipments during the twelve months immediately prior to the Conveyance Date.

1.3.2 For purposes of this Section 1.3, "three day per week service" shall mean the provision of local set-off and pick-up service to shippers on the Former B & M Line at least three times per week (Monday through the following Sunday) in each direction.

1.3.3 CVNECR shall be permitted to commence service to existing shippers and shippers' facilities upon B & MPAS's failure to make available three day per week service during two weeks out of any four week period, unless such failure is excused by Section ~~9.6-10.6~~.

1.4 Except as provided in Section 1.3, CVNECR and B & MPAS shall each have the right to compete for and serve the following shippers and shippers' facilities on the Former B & M Line:

- (a) shippers and shippers' facilities located on the Former B & M Line which ~~have~~did not ~~received~~receive or ~~tendered~~tender rail shipments during the twelve months immediately prior to the Conveyance Date;
- (b) any other new shippers;
- (c) any existing shippers and shippers' facilities to which B & MPAS does not provide a minimum three day per week service, as specified in Section 1.3.

1.4.1 CVNECR shall, upon request by B & MPAS, provide reciprocal switching to permit B & MPAS to serve such shippers and shippers' facilities as B & MPAS may serve hereunder. CVNECR shall not be required to switch cars on B & MPAS's behalf at shippers' facilities which CVNECR serves by virtue of B & MPAS's failure to make available a minimum three day per week service along the Line as specified by Section 1.3, but B & MPAS shall retain the right to provide service directly to such shippers and shippers' facilities. B & MPAS shall pay to CVNECR a per switch charge as established by NECR, provided that such per switch charge is not greater than 180% of the

~~CV~~NECR variable cost of providing such switching service computed using ~~CV~~NECR's costs computed in accordance with formulas generally used or accepted in ~~ICCSTB~~ proceedings.

1.5 ~~CV~~NECR and ~~B & M~~PAS shall each have the right to compete for and to interchange traffic at Bellows Falls, Vermont, with GMRC and at Claremont Junction, New Hampshire, with the CCR. ~~B & M~~PAS shall have the exclusive right to interchange traffic at Charlestown, New Hampshire, with the ST.

1.6 ~~B & M~~PAS shall have the right of entry over the Line for any and all ~~B & M~~PAS employees, agents or representatives, machinery, vehicles or equipment which ~~B & M~~PAS may deem necessary or convenient for the purposes of inspecting the Line, clearing any derailments or wrecks of ~~B & M~~PAS trains on the Line or otherwise conducting its operations over the Line; provided in each case that such entry shall not unreasonably interfere with operations on the Line by other carriers.

~~1.7 B & M shall without charge to CV dispatch the interlocking CPR 50 located at East Northfield, Massachusetts, until seven (7) days after CV notifies B & M that CV is prepared to assume such responsibility and all applicable regulatory requirements have been satisfied. [Intentionally Omitted – No Longer Applicable].~~

1.8 Except as provided herein, this Agreement does not diminish in any way ~~CV~~NECR's right to use the Line, or ~~CV~~NECR's right to lease or otherwise allow another carrier to use the Line.

1.9 Notwithstanding anything to the contrary contained in this Agreement or otherwise agreed by the parties hereto prior to the Effective Date, PAS (or any agents or affiliates acting on their behalf) shall not:

- (a) permit or admit, without permission in writing from NECR, any third party to the use of all or any part of the Line, nor contract, or make any agreement to provide haulage over the Line of trains or cars of any third party which in the normal course of business would not be considered as the trains or cars of PAS or ST, as applicable;
- (b) obstruct or leave any train or locomotive unattended on the Line, or stop its trains or locomotives on the Line except in the case of mechanical failure or emergency;
- (c) construct or alter tracks connecting to the Line, including the construction, installation or alteration of any switches from the Line without the express written consent of NECR;
- (d) construct, erect or place, or cause to be constructed, erected or placed on or near the Line, any structure, signage, fixture or any other work without the prior written consent of NECR;
- (e) fuel locomotives on the Line, or load, unload or store any Hazardous Substance on the Line, except as permitted under this Agreement and in accordance with the terms and conditions herein; or
- (f) by reason of failure or neglect on the part of NECR to maintain, repair or renew the Line, have or make any claim or demand against NECR or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees, for any injury to or death of any person or persons whatsoever, or for any damage to or loss or destruction of any property whatsoever, or for loss of any nature suffered by PAS resulting from such failure or neglect including without limitation any interruption or delay as PAS' usage of the Line shall be at its own risk and on an "as is" basis.

2. TERM AND TERMINATION

2.1 The term of this Agreement shall commence as of 7:00 a.m. Eastern Time, on the ~~Conveyance~~Effective Date.

2.2 Except as provided in Section ~~2.3, 2.3~~ and Section ~~8.1~~, and subject to the provisions of this section, the term of this Agreement shall be perpetual. After ~~20~~10 years from the ~~Conveyance~~Effective Date, either party to this Agreement may seek modifications from the other and, if satisfactory modifications are not agreed to after a

reasonable period for negotiation, may apply to the ICCSTB for modifications. Nothing in this section shall authorize the ICCSTB to impose arbitration requirements upon either party to this Agreement.

2.3 B & MPAS may terminate this Agreement immediately upon written notice to CVNECR.

~~2.4 Notwithstanding the foregoing, the parties hereby acknowledge and agree that B & M has appealed the Order, and that in the event the Former B & M Line is reconveyed to B & M in connection with or resulting from such appeal, this Agreement shall terminate upon such reconveyance, and that thereafter the terms and conditions of the April 1, 1985 and January 1, 1930 Trackage Rights Agreements shall govern their operations over and use of the Line, and such agreements shall be deemed re-executed in their current forms.~~

3. COMPENSATION

3.1 B & MPAS shall ~~have no obligation~~be obligated to pay for ~~or~~and contribute ~~in any way~~ towards (i) the cost of upgrading of the Former B & M Line, ~~except as provided in Section 3.7,~~continued maintenance and operating costs, and variable costs attributable to PAS' usage of the Line through payments set forth in Section 3.3 below; (ii) emergency repairs, capital upgrades and material alterations and additions not included in routine and program maintenance set forth in Section 3.7 below; and (iii) interest rental due to NECR set forth in Section 3.8 below.

3.2 ~~Except as provided in Section 1.7,~~CVNECR shall be solely responsible for dispatching all operations over the Line and for the maintenance and repair of the Line, including the signals and the signal and dispatching system which controls operations on it. ~~CV shall keep the Line, at all times throughout the term of this Agreement or any extensions thereof, in not less than FRA Class II condition.~~

3.3 In full satisfaction of any and all obligations of B & MPAS to pay for the trackage rights provided herein or contribute towards the costs of dispatching, maintenance and repair of the Line (including the maintenance, repair and operation of the signals and the signal and dispatching system which controls operations on it), B & MPAS shall pay to CV ~~20.1¢~~NECR [] per car mile (whether loaded or empty including locomotives, cabooses and work equipment) of traffic actually operated by B & MPAS (or its assignee) over the Line. ~~Notwithstanding the foregoing, the sum of such payments in respect of the Former B & M Line shall not exceed one hundred forty two thousand dollars (\$142,000) per year during the first three years this Agreement is in force and shall not exceed seventy five thousand dollars (\$75,000) in any year thereafter; provided, however, that the foregoing limitation shall not apply if the annual gross traffic volume on the Former B & M Line attributable to B & M's overhead or local service, including traffic for interchange to GMRC, CCR, or ST, exceeds 32,500 carloads. Locomotives, cabooses and work equipment shall not be included in determining whether traffic attributable to B & M has exceeded 32,500 carloads in a given year. In any year that the amount of traffic attributable to B & M on the Former B & M Line exceeds 32,500 carloads, B & M shall pay CV as additional compensation 20.1¢ per car mile for all the cars in excess of 32,500 cars, whether loaded or empty, including locomotive, cabooses and work equipment. Additionally, if NECR identifies additional variable costs attributable to PAS' use of the Line, the per car mile fee shall be adjusted by the annual amount of such variable costs divided by PAS' car miles during the previous 12 months.~~

3.4 ~~All~~Except as otherwise provided herein, all payments to be made by B & M and CV PAS under this Agreement (including the caps set forth in Section 3.3) shall be adjusted effective March 31, 1989, and semi-annually thereafter on March 31st of each year during the term of the Agreement, for price level changes from July 1, ~~1988, 2015,~~ (using ~~Second Quarter 1988~~Second Quarter 2015) based on the relationship of the most recent quarter's Association of American Railroads (AAR) Eastern District, Quarterly Indices of Chargeout Prices and Wage Rates (Table C)—“Material prices, wage rates and supplements combined (excluding fuel)” to comparable indices of the quarter ~~six~~twelve months previous, provided however that in no event shall the annual rate adjustment be less than 0%. The first adjustment to be made shall be based on the comparison of the ~~Fourth~~Second Quarter ~~1988~~2015 index value to the Second Quarter ~~1988~~2016.

3.5 B & MPAS shall have responsibility for and shall report and pay directly to the owner of the cars, all mileage, car hire and other charges accruing on cars in B & MPAS's trains on the Line.

3.6 CVNECR shall issue its bill to B & MPAS for the payments specified by Sections 1.4 and ~~3.3~~Section 3.3 and Section 3.8 hereof by the fifteenth (15) day of each month for the traffic transported during the preceding calendar month. B & MPAS shall pay to CVNECR the amount shown on such bill by the last day of the month in which such

bill is issued. ~~B & M shall not be required to pay mileage charges attributable to its operations over the Former B & M Line once payments made in the preceding months of that year with respect to those operations equal the payment cap as adjusted in accordance with Section 3.4 for that year, until traffic attributable to B & M's operations over the Former B & M Line exceeds 32,500 carloads for that year.~~ Payments not received by CVPAS by such last day of the month in which the bill is issued will accrue interest at the rate of one and one-half (1.5%) percent per month for each month or portion of a month by which the payment is late.

3.7 In the event that CVNECR is required to undertake any major capital projects (not generally included in routine or program maintenance) which may become necessary or desirable in NECR's discretion in the ordinary course or due to changes in applicable local, state or federal statutes, ordinances or regulations, or by catastrophic occurrences on the Line, including but not limited to, floods, washouts or destruction of bridges, ~~B & M~~ or implementation of Positive Train Control. PAS or its assignee shall pay its proportionate share of the expenditures actually made by CVNECR for such capital projects based upon the percentage of total car miles on the Line attributable to ~~B & MPAS's~~ (or its assignee's) average traffic volume during the ~~preceding five (5)~~ two (2) year period ~~preceding the capital project.~~ NECR shall issue its bill to PAS for the payments specified by this Section 3.7 as soon as practicable following the acceptance of a bid or commencement of the capital project. Payments not received by PAS by such last day of the month in which the bill is issued will accrue interest at the rate of one and one-half (1.5%) percent per month for each month or portion of a month by which the payment is late.

3.8 In full satisfaction of any and all obligations of PAS to pay for the interest rental component for the use of the Line, PAS shall pay to NECR \$[] monthly during the term of this Agreement. The interest rental component shall be adjusted each year based on changes in NECR's pre-tax cost of capital, as determined by considering the post-tax cost of capital as determined by the STB, and the effective tax rate of NECR, or its parent company if NECR is consolidated with its parent for tax purposes.

3.9 NECR reserves the right to audit the records and activities of PAS solely for the purpose of verifying PAS's compliance with the provisions of this Agreement. Without limiting the generality of the foregoing, PAS shall keep and maintain true and correct books, records and accounts with respect to its volume of cars along with any annual statements and summaries, for a period of three (3) years after the term of this Agreement. PAS shall, upon request of NECR, make available on reasonable advance notice and during normal business hours and permit NECR during such period to inspect, make copies of, and audit all such records. If there is any revision to charges as a result of an audit, payment shall be made within thirty (30) days of the audit. The provisions of this Section 3.9 shall survive the termination of this Agreement.

4. ADDITIONS AND ALTERATIONS

4.1 CVNECR shall pay for and be responsible for the construction, maintenance, repair and renewal of any additional connections to the Line which it may require.

4.2 If ~~B & MPAS~~ determines that changes in or additions and betterments to the Line, including changes in communication, dispatching or signal facilities as they existed immediately prior to the ~~Conveyance~~ Effective Date, are required to accommodate ~~B & MPAS's~~ operations beyond that required by CVNECR to accommodate CVNECR's and Amtrak's operations over the Line, ~~B & MPAS~~ shall pay for the construction of such additional or altered facilities, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities. Notwithstanding the foregoing, CVNECR shall have the right to approve of any such addition or alteration prior to its construction, which approval shall not be unreasonably withheld, and such addition or alteration shall be constructed in such a manner as to minimize interference with CVNECR's or Amtrak's operations over the Line.

5. SCHEDULING OF TRAINS AND MAINTENANCE; OPERATING RULES

5.1 The trains, locomotives, cars and equipment of ~~B & MPAS~~, CVNECR, Amtrak, and any other present or future user of the Line or any portion thereof, shall be operated without prejudice or partiality to any party to this Agreement or any such other user and in such a manner as will result in the most economical and efficient manner of movement of all traffic; provided, however, that CVNECR shall give priority to intercity rail passenger trains of Amtrak to the extent required by Section 402 of the Rail Passenger Service Act. Notwithstanding the foregoing, ~~B & MPAS~~ shall have the right, in consultation with CVNECR, to establish the schedules of ~~B & MPAS's~~ trains over the

Line. Trains performing local work, whether ~~B & MPAS~~, ~~CVNECR~~ or otherwise, are not entitled to priority over trains that are not performing such work. ~~CVNECR~~ shall establish ~~CVNECR's~~ train schedules with due regard to the trains to be operated by ~~B & MPAS~~. Each party shall use reasonable efforts to provide five (5) days' notice of changes in its traffic and operating patterns and procedures which may affect the Line. ~~B & M acknowledges that the upgrading work will require a twelve (12) hour work block scheduled for between 7:00 a.m. and 7:00 p.m. CVNECR shall coordinate with B & MPAS and use its best reasonable efforts in scheduling the work required for the upgrading any upgrades of the Former B & M Line and any future maintenance or repair of the Line to minimize any interference with or disruption of B & MPAS's operations over the Line.~~

5.2 Any and all training that may be required to qualify ~~B & MPAS~~ operating personnel as to ~~CVNECR's~~ operating rules (after the initial training of such personnel, which will be provided by ~~CVNECR~~) shall be performed by ~~B & MPAS~~, and the determination as to whether such operating personnel are qualified under ~~CVNECR's~~ operating rules shall be made in the discretion of ~~B & MPAS~~ (giving consideration to any comments or recommendations of ~~CVNECR~~). ~~CVNECR~~ shall train, and periodically recertify in accordance with ~~CVNECR's~~ operating rules, ~~B & MPAS~~ operating personnel who act as instructors for ~~B & MPAS~~ personnel regarding ~~CVNECR's~~ operating rules.

5.3 ~~CVNECR~~ operating rules shall govern all operations over the Line, and ~~CVNECR~~ shall report to ~~B & MPAS~~ any incidents of violation of such rules by a ~~B & MPAS~~ employee. ~~CVNECR~~ may at its option, for good cause shown, exclude such employee from the Line.

5.4 In the event that any dispute arises as to the interpretation of any operating rules, the interpretations of the Uniform Code of Operating Rules, as amended, shall govern.

5.5 For the avoidance of doubt, NECR's 'operating rules' means NECR's operating and safety rules, timetables, special instructions, bulletins, general orders, authoritative directions and amendments, and special rules governing the transportation of Hazardous Materials, and any supplements and replacements thereto as communicated from time to time by NECR's designated operating officer to PAS's designated operating office.

6. CLEARING OF DERAILMENTS AND WRECKS

6.1 In the event of any derailment or wreck of a B & MPAS train, B & MPAS shall clear the Line to allow for the passage of other trains within a reasonable time. B & MPAS shall perform any rerailing wrecking or wrecking train service as may be required in connection with such derailment or wreck, in accordance with its customary practices. Except as provided in Section 7, the cost liability, and expense of the foregoing, including, without limitation, loss of, damage to, or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be the responsibility of B & MPAS. In the event that B & MPAS does not begin retailing operations for passage of trains over the Line within twelve (12) hours of an occurrence or does not complete the process of clearing the Line within a reasonable time, CVNECR may clear the Line for passage of trains, and B & MPAS shall reimburse CVNECR for all reasonable costs CVNECR incurs in performing such service.

7. RELEASE AND INDEMNIFICATION

7.1 Save as herein otherwise provided, each party hereto shall be responsible for and shall assume all loss, damage or injury (including injury resulting in death) to persons or property, including the cost of removing any trackage, repairing trackage and correcting environmental damage, which may be caused by its engines, cars, trains or other on-track equipment (including damage by fire originating therefrom) whether or not the condition or arrangement of the trackage contributes in any manner or to any extent to such loss, damage or injury, and whether or not a third party may have caused or contributed to such loss, damage or injury, and for all loss or damage to its engines, cars, trains or other on-track equipment while on said trackage from any cause whatsoever, except in the case of collision, in which event the provisions of Section 7.2 shall apply.

7.2 In the event of a collision between CVNECR's and B & MPAS's engines, cars, trains or other on-track equipment while on the Line, the apportionment of liability between the parties hereto for all loss, damage or injury (including injury resulting in death) to any person (including CVNECR's or B & MPAS's employees, agents or representatives) or property shall be governed by the following provision:

7.2.1 If the employees of one party are solely at fault, that party shall be responsible for all such loss, damage or injury including the cost of removing wreckage, repairing trackage, and correcting environmental damage.

7.2.2 If the employees of both parties hereto are at fault, or if the cause of the accident is so concealed that it cannot be determined whose employees are at fault, each party shall bear and pay for all such loss, damage or injury which its own engines, cars, trains or other on-track equipment and their contents or property in its custody, or its employees or others claiming for them, may have suffered by reason or in consequence of the accident. Responsibility for all other such loss, damage or injury shall be apportioned equally between the parties hereto.

7.2.3 The words "all other such loss, damage or injury" referred to in this Section 7.2 shall be deemed to include but not be limited to the cost of removing wreckage, repairing trackage, correcting environmental damage, and third party claims.

7.2.4 As between the parties hereto, the foregoing provisions of this Section 7.2 shall be applicable whether or not a third party may have caused or contributed to the accident.

7.2.5 The words "trackage" referred to in this Section 7 shall be deemed to include but not be limited to the tracks, structures or facilities pertaining to operation of the Line.

7.3 Without in any way restricting the terms of this Section 7, in the case of a collision or accident between the train of either party to this Agreement and the property of a third person or other entity, including Amtrak, including any action done in the process of trying to avoid an accident or a collision, such party shall save harmless and indemnify and defend the other party forthwith for all damages suffered by (or claimed against) the other party including damages to equipment and structures and third party injuries (including death) or injuries (including death) to the employees or agents of the other party (including also the results of those actions done in the process of avoiding a collision or accident), and irrespective of the ordinary negligence or fault of either party or such third person or other

entity, and with a right of subrogation in favor of such party against any such third person or other entity.

7.4 Each party hereto shall forever indemnify and save harmless the other party, from and against all claims, liability or judgments by reason or on account of any injury to or death of any person or of any loss or damage to property, the liability for which is herein assumed by such first mentioned party, and such first mentioned party shall pay and discharge any judgment that may be obtained by reason thereof, and all costs, charges and expenses payable thereunder, including legal counsel fees.

7.5 The parties shall settle, as between themselves, any claim for loss or damage according to the terms of this Agreement, notwithstanding any judgment or decree of any court or other tribunal in a proceeding brought by other parties. In case a suit or proceeding shall be commenced by any person or corporation against either party hereto for or on account of any loss, damage or injury for which the other party hereto is liable under the provisions of this Agreement, the party so sued or proceeded against shall give to the other party reasonable notice, in writing, of the pendency of such suit or proceeding and thereupon the other party shall assume the defense of such suit or proceeding or shall save and hold the party so sued harmless from all loss and costs by reason thereof. Neither party hereto shall be bound by any judgment against the other party unless it shall have reasonable notice that it is so required to defend and has reasonable opportunity to make such defense. When such notice and opportunity has been given, the party notified shall be bound by the judgment as to all matters that could have been litigated in such suit or proceeding.

7.6 In every case of death or injury suffered by an employee of either **B & MPAS** or **CVNECR**, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay such compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

8. DEFAULT; PAYMENT DELINQUENCY

8.1 In the event of a material breach by **B & MPAS** of the terms and conditions of this Agreement which continues for a period of forty-five (45) days after notice thereof from **CVNECR**, **CVNECR** shall have the right to terminate this Agreement upon ninety (90) days' notice.

8.2 If **B & MPAS** becomes delinquent in payment of any amount by more than fourteen (14) days under the terms of Section 3.6, **CV3**, **NECR** shall be entitled to receive advance payment from **B & MPAS** for each **B & MPAS** train seeking access to the Line until **B & MPAS** satisfies the delinquency in full. If **B & MPAS** fails to tender the advance payment, **CVNECR** shall be further entitled to exclude and eject **B & MPAS** from the Line until **B & MPAS** tenders the advance payment. **CVNECR** shall be entitled to these remedies for delinquencies even if **B & MPAS** has disputed the billed amount by invoking arbitration or otherwise. During the pendency of any such exclusion or ejection, **CVNECR** shall nevertheless accept **B & MPAS** cars for interchange at any point on the Line.

9. ~~GENERAL PROVISIONS~~ INSURANCE AND HAZARDOUS SUBSTANCES

9.2 Insurance. PAS shall maintain the insurance coverage required by Schedule "A" attached hereto.

9.2 Transport of Hazardous Substances. In the event that PAS transports Hazardous Substances over the Line, PAS shall:

(a) comply with all applicable federal, state and municipal laws, rules and regulations including, but not limited to, applicable rules and regulations as set forth by the Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Surface Transportation Board, and the Association of American Railroads (AAR) respecting the handling and transporting of Hazardous Substances; and

(b) ensure its personnel comply with such applicable laws, rules and regulations and meet all the requirements and qualifications for training and certification set forth by such laws.

- (c) prepare and have at all times, an Emergency Response Plan with respect to its response to incidents or derailments involving Hazardous Substances over the Line and upon request provide a copy to NECR. The Emergency Response Plan must include at a minimum: (i) reporting and response procedures in the event of a derailment, accident or spill on the Line; (ii) emergency response service providers and contacts and their phone numbers; and (iii) incident reporting phone numbers including phone numbers for NECR incident reporting and local NECR personnel.
- (d) In the event any accident or derailment involving PAS rail cars, including rail cars carrying Hazardous Substances shall occur on any segment of the Line, PAS agrees to:
- (i) immediately notify local emergency response service providers (including the local fire stations) in accordance with its Emergency Response Plan, and ensure that such local emergency response service providers have appropriate information.
 - (ii) immediately report any release, leak, deposit or spill of a Hazardous Substance (e.g. fuel spill from an accident) to NECR dispatch, whether or not such releases are required to be reported to any federal, state or local authority, and to any regulatory authorities as required by law.
 - (iii) promptly respond to an accident, or a leak, spill or deposit of any substance (including without limitation any Hazardous Substance, waste or pollutant), except to the extent such leak, spill or deposit is *de minimis* in nature and results from the day to day operation of trains by PAS over the Line. PAS shall take all reasonable actions to contain the spill and respond in accordance with its Emergency Response Plan; provided, however that NECR may elect to reasonably remediate, repair and restore the roadbed, track and related structures impacted by any Hazardous Substance, at the expense of the PAS.
 - (iv) provide a written follow-up report to NECR within five (5) working days of any release, leak, deposit or spill on the Line, or any event on or affecting NECR property which constitutes an offence or is reportable under any laws, by-laws, or regulations relating to the protection of the environment, or is in breach thereof. Such follow-up report will describe the incident, substance and volume released, and measures undertaken or planned to clean up and remove the released substance and any contaminated soil, water and materials and waste.
 - (v) provide NECR with copies of any and all reports made to any governmental agency that relate to such incidents and/or releases. In addition, PAS shall provide NECR with a copy of any alleged violation of applicable environmental laws relating to such incident on the Line, as well as a copy of any written responses made by PAS to governmental authorities regarding said violations.
 - (vi) commence and complete, at NECR's request, the cleanup, disposal, and remediation of any spill or environmentally unsound condition occurring on the Line as a result of PAS's operations over the Line. PAS shall completely clean up any such spill or condition; shall dispose of any contaminated soil or waste in a properly licensed disposal facility; and shall replace contaminated soils with clean fill as appropriate under the circumstances. PAS shall demonstrate to NECR's reasonable satisfaction that any impacted lands and any impacted adjacent lands have been restored to a condition existing immediately prior to the contamination.
 - (vii) if PAS and NECR are in disagreement as to whether any such release has been completely cleaned up, the contaminated soil or waste properly disposed of and replaced with appropriate clean fill, to retain a reputable environmental consulting firm to review PAS's activities and report whether PAS has fulfilled its obligations. If PAS's obligations have not been fulfilled, PAS shall take further action as is necessary to rectify any deficiencies and obtain a report from the environmental consultant verifying the same.
 - (viii) be solely responsible for all costs related to the clean-up and remediation of any releases or incidents resulting from PAS's operations on the Line.

(e) NECR may from time to time perform inspections and environmental, safety, risk and security assessments of the Line. NECR may at any time implement any environmental, safety or security measures, procedures or requirements that it considers necessary or desirable, in its reasonable opinion. NECR agrees to notify PAS regarding any such measures, procedures or requirements and PAS agrees to cooperate, as necessary, in implementing such measures.

10. GENERAL PROVISIONS

~~9.4~~10.1 No Waiver. Waiver of any provision of this Agreement, in whole or in part, in any one instance shall not constitute a waiver of any other provision in the same instance, nor any waiver of the same provision in another instance, but each provision shall continue in full force and effect with respect to any other then existing or subsequent breach.

~~9.2~~10.2 Notice. Any notice required or permitted under this Agreement shall be given in writing to the parties at their respective addresses specified above, or at such other address for a party as that party may specify by notice as provided herein, by (i)(A) delivery in hand or by postage prepaid, United States first class mail and (B) registered or certified mail, return receipt requested, or (ii)(A) telefax and (B) registered or certified mail, return receipt requested, or (iii)(A) Federal Express or other form of expedited mail that provides for delivery to the sender of a signed receipt, or (iv) telegram. Notice so sent shall be effective upon receipt.

~~9.3~~10.3 Integration. ~~Except for the Order and the documents executed in pursuance thereof, this~~ This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written communications, proposals, negotiations, representations, understandings, courses of dealing, agreements, contracts and the like between the parties in such respect. Except for any and all obligations incurred or causes of action accrued thereunder prior to or as of the ~~Conveyance Date, and except as provided in Section 2.4 and 9.3.1 hereof~~ Effective Date, all prior trackage rights agreement between the parties or their predecessors with respect to the Line or any segments of the Line, including the Trackage Rights Agreements by and between B & M and CV dated as of April 1, 1985, and January 1, 1930, Order imposed by the ICC by decision dated February 6, 1990 in ICC Finance Docket No. 31250, are hereby terminated. Any provisions of any other agreement(s) between ~~CV~~NECR and ~~B & M~~PAS which are not inconsistent with the provisions of this Agreement shall remain ~~in effect until cancelled according to the terms of such other agreement(s)~~are hereby terminated.

~~9.3.1 The provisions of Section 8, Freight Haulage, of the January 1, 1930, Trackage Rights Agreement between CV and B & M, as amended from time to time, shall remain in effect until cancelled by either party upon ninety (90) days' prior written notice to the other.~~

~~10.3.1 [Intentionally Omitted- No Longer Applicable]~~

~~9.4~~10.4 Miscellaneous. This Agreement: (i) may be amended, modified, or terminated, and any right under this Agreement may be waived in whole or in part, only by a writing signed by both parties; (ii) contains headings only for convenience, which headings do not form part of and shall not be used in construction of this Agreement; and (iii) is not intended to inure to the benefit of any party not a party to this Agreement.

~~9.5~~10.5 Availability of Equitable Relief. The obligations imposed by this Agreement are unique. Breach of any of such obligations would injure the parties to this Agreement; such injury is likely to be difficult to measure; and monetary damages, even if ascertainable, are likely to be inadequate compensation for such injury. Protection of the respective interests provided herein would require equitable relief, including specific performance and injunctive relief, in addition to any other remedy or remedies that the parties may have at law or under this Agreement.

~~9.6~~10.6 Force Majeure. No party to this Agreement shall be responsible for delays or errors in its performance or other breach under this Agreement occurring by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, fire, major mechanical breakdown, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays in suppliers, derailments or failure of transportation, communication or power supply.

~~9.7~~10.7 Trains, Locomotives, Cars or Equipment. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the

trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. By way of clarification, the foregoing does not imply that PAS may handle trains, cars or equipment in haulage service for another rail carrier, except where the cars or equipment are being transported under a haulage arrangement for Norfolk Southern Railway for interchange with NECR. Whenever such trains, locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of, or under the control of the other party to this Agreement, such trains, locomotives, cars and equipment shall be considered those of the other party, ~~except where the cars or equipment are being transported under the Haulage Agreement referred to in Section 9.3.1 of this Agreement.~~

~~9.8~~10.8 Assignment. This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns. ~~B & M~~PAS shall have the right to assign any or all of ~~B & M~~PAS's rights and obligations under this Agreement to any affiliate of ~~B & M~~, ~~following consultation with CV. B & M shall have the right to assign any or all of B & M's rights and obligations under this Agreement to any other person with CV's prior consent, which shall not be withheld unreasonably. In the event of an Agreement, the number of carloads attributable to the assignee's operations over the Former B & M Line shall be included in the number of cars attributable to B & M's operations for the purposes of Section 3.3 of this Agreement.~~PAS, following written consent of NECR, which shall not be unreasonably withheld and receipt of regulatory or other necessary approvals, including from the STB.

~~9.9~~10.9 Governing Law. This Agreement is imposed and entered into in, and shall be governed by the laws of, the District of Columbia.

SCHEDULE "A"
Insurance Coverage

1.1 General

PAS, at its sole cost and expense, shall take out and keep in full force and effect and pay all premiums for, throughout the term and during such other time as this Agreement remains in force, the following insurances:

- (a) Railroad Liability insurance with a limit of not less than Two Hundred Million Dollars (\$200,000,000) for any one loss or occurrence for personal injury, bodily injury, or damage to third party, including but not limited to NECR property including loss of use thereof, and a self insured retention of not more than One Million Dollars (\$1,000,000). This policy shall by its wording or by endorsement include but not be limited to the following:
 - (i) NECR and its associated or affiliated companies (and the directors, officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of PAS under this Agreement and incidental thereto;
 - (ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (iii) blanket contractual liability, to include the insurable liabilities assumed by PAS under this Agreement;
 - (iv) shall not exclude operations on or in the vicinity of the railway right of way, if applicable;
 - (v) products and completed operations;
 - (vi) insure against all Federal Employer's Liability Act claims for liability arising out of PAS's operations under this Agreement; and
 - (vii) sudden and accidental pollution, or named perils pollution including the release or dispersal of pollutants as a result of a collision, overturning or derailment of any vehicle or railway rolling stock.
- (b) Automobile Liability insurance covering bodily injury and property damage in an amount not less than One Million (\$1,000,000) Dollars per accident, covering the ownership, use and operation (including the loading and unloading) of any motor vehicles and trailers which are owned, non-owned, leased or controlled by PAS and used in regards to this Agreement.
- (c) "All Risks" property insurance covering PAS's owned property and the property of NECR in the care, custody, or control of PAS, or for which PAS has assumed liability, on a replacement cost basis. With respect to the property of NECR, such policy shall contain a loss payable clause in favor of NECR, and include NECR as an additional insured.

Not more frequently than once every three years, NECR may request reasonable changes to the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

PAS agrees that the insurance it maintains is primary and not excess of any other insurance that may be available.

PAS shall provide NECR with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims concerning this Agreement as soon as practicable.

after the damage, loss, incident or claim has been discovered, PAS is responsible for any deductible and excluded loss under the insurance.

If PAS fails to maintain the insurance required under this Agreement, NECR may at its option terminate this Agreement.

1.2 Replacement Insurance

If the insurance procured by PAS pursuant to this Schedule A takes the form of a claims made policy and is cancelled or allowed to expire without renewal, PAS shall provide evidence of replacement insurance that provides coverage as required by Section 1.1. Such coverage must be retroactive to the original inception date of the cancelled or non-renewed policy. PAS further agrees to promptly give notice to NECR's Risk Manager of any claim or notice of incident, or notice of potential claim related to this Agreement, that is required to be reported to PAS's liability insurance company.

1.3 Notice to NECR

Each policy of insurance obtained by PAS pursuant to Section 1.1 shall contain provisions requiring that the insurance carrier to endeavor to give NECR, through its Risk Manager, at least 30 days' notice in writing of any proposed cancellation of any policy PAS is required to maintain pursuant to this Schedule A. Such notice shall be by registered mail to the specific attention of: [INSERT ADDRESS].

1.4 Certificate of Insurance

All policies of insurance stipulated in this Schedule A will be with insurers with a minimum A.M. Best Rating of "A- VII" and in a form satisfactory to NECR, and PAS will see that a copy of all certificates of insurance are delivered to NECR prior to the date that PAS commences operations and prior to any insurance renewal thereof. NECR shall have no obligation to examine such certificate(s) or to advise PAS in the event its insurances are not in compliance herewith. Acceptance of such certificate(s) which are not compliant with the stipulated coverages shall in no way whatsoever imply that NECR has waived its insurance requirements.

1.5 No Limitation

Neither compliance with the requirements of this Schedule A nor NECR's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of PAS to provide specific insurance coverage as required by Section 1.1 of this Schedule A. The insurance coverage acquired by PAS pursuant to this Schedule A shall not in any manner restrict or limit the liabilities assumed by PAS under this Agreement.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35842

NEW ENGLAND CENTRAL RAILROAD, INC.
- TRACKAGE RIGHTS ORDER -
PAN AM SOUTHERN LLC

NEW ENGLAND CENTRAL RAILROAD, INC.
OPENING STATEMENT AND EVIDENCE

VOLUME 2 of 3

VERIFIED STATEMENT OF DAVE EBBRECHT

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Dated: June 4, 2015

Attorneys for
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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OPENING STATEMENT AND EVIDENCE**

**VERIFIED STATEMENT OF
DAVE EBBRECHT**

VERIFIED STATEMENT OF
DAVE EBBRECHT

My name is Dave Ebbrecht. I am currently the President of New England Central Railroad, Inc. (“NECR”), having been appointed to that position in October, 2014. As such I am responsible for supervising all of the operations and maintenance of, and the capital planning for, the railroad.

Personal Background. Prior to becoming President of NECR, I was with Kansas City Southern Railway Co. (“KCS”), most recently as Executive Vice President and Chief Operating Officer. I began my railroad career in 1996 with CSX Transportation after serving as an Attack Helicopter Commander/Operations Officer in the U.S. Army. After joining KCS in 2001, I served in a variety of senior management positions, including Vice President of Transportation and Executive Vice President of Operations.

I graduated from the U.S. Military Academy at West Point with a bachelor’s degree in engineering and psychology. I also graduated U.S. Army Flight school, and earned an MBA from the University of Missouri.

NECR and the Issues in this Proceeding.

Overall, NECR is a Class III railroad that operates approximately 394 miles of rail lines between New London, Connecticut and Alburgh, Vermont. As is relevant to this proceeding, Pan Am Southern Railway (“PAS”) operates over the 73-mile main line portion of NECR’s line between East Northfield, Massachusetts and White River Junction (Banks), Vermont (the “Subject Line”), pursuant to a trackage rights order (the “TO”) imposed by the Interstate Commerce Commission in 1990. The TO identifies three segments (the “Subject Line Segments”), which we are calling for reference the Southern Segment (10.6 miles between East

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Northfield, Massachusetts and Brattleboro, Vermont), the Middle Segment (48.8 miles between Brattleboro, Vermont and Windsor, Vermont), and the Northern Segment (13.4 miles between Windsor, Vermont and White River Junction (“Banks”), Vermont). Because there may be some differences in the terms of the new trackage rights arrangements between the different Subject Line Segments, NECR has allocated the various costs and information by Subject Line Segment, as well as for the Subject Line as a whole.

Under the existing TO, PAS currently pays NECR only \$0.45 per car mile and PAS has not had to contribute any capital towards the significant improvements that have been made over the 25 years since the TO took effect (particularly in the past 5 years). Because NECR believes that the amount that PAS is paying represents substantially less than PAS’s share of the costs to maintain and operate the Subject Line, and that it does not provide any return to NECR on the capital value of the Subject Line, in this proceeding NECR is seeking (as allowed and contemplated by the TO) new terms and conditions for the trackage rights that will fairly and adequately compensate NECR for PAS’s use of the Subject Line.

The trackage rights that PAS holds over the Middle Segment are somewhat unusual for the railroad industry. PAS’s predecessor Boston & Maine Corporation (“B&M”) was given the exclusive right to serve the local customers (and locations) that were being served by B&M in 1988 when the Middle Segment was acquired by Amtrak (and then sold to CV) and to compete for all new business on Middle Segment, under an order of the ICC. While this may originally have been intended to create or maintain competitive options for shippers on the Middle Segment, because PAS has been operating over an improved rail line without having to pay for the improvements, and because PAS is paying less than its equitable share of the operating and maintenance costs, PAS now has a significant advantage over NECR in competing for traffic off

of the Middle Segment. Since NECR has paid for all of the improvements, and for most of the operating and maintenance costs, PAS is enjoying these benefits almost free of charge. And, the competitive environment that was intended to be created has been eliminated, as NECR, who bears an inequitable share of the financial burdens with respect to the Subject Line, cannot compete against PAS's rates, given these inequities.

We are asking the Board in this proceeding to establish new trackage rights arrangements that will require PAS to compensate NECR for PAS' fair share of the operating and maintenance costs, and to pay an appropriate interest rate rental to NECR based on the improved value of the Subject Line (or Segments), in order to level the playing field for new shipper business.

Opening Statement and Evidence. I have consulted with my staff regarding various elements of the trackage rights compensation that NECR is seeking from PAS in this proceeding. In this Verified Statement, I will summarize the results and some of the considerations that were made with regard to each. More detail on each element can be found in the Exhibits attached hereto.

(1) NECR's Effective Tax Rate.

NECR is an indirect, wholly-owned subsidiary of Genesee & Wyoming Inc. ("GWI"), and as such, does not file separate tax returns. GWI is a publicly-traded company that is traded on the New York Stock Exchange (NYSE: GWRR). GWI's most recent Form 10-K filed with the U.S. Securities and Exchange Commission on February 27, 2015 can be found at www.sec.gov. As shown in the Form 10-K, GWI's effective tax rate for 2014 was 29.1%. Since NECR is reported on a consolidated basis with GWI, I believe it is appropriate to consider NECR's effective tax rate to be 29.1% as well.

(2) PAS’s Use of the Subject Line Segments

Three rail carriers operate over the Subject Line Segments – NECR, PAS and Amtrak. To calculate PAS’s share of usage of the Subject Line Segments, NECR first determined the number of car miles attributable to PAS, including locomotives. The count was confirmed by comparing the totals calculated to the amounts billed under the TO to PAS by NECR. For Amtrak car miles, we took the standard Amtrak consist of 5 cars plus one locomotive, and assumed that Amtrak (in accordance with its schedule) ran 2 trains per day, all 365 days of the year, over the entire section. With respect to the NECR portion of usage, we could only track cars that produced revenue. We assumed that each loaded car returned empty (i.e, we doubled the car miles of the loaded cars), and added in additional car miles for the estimated number of locomotives based on our operating plan. From the PAS car miles and the total car miles of all three carriers, we were able to determine PAS’s percentage of usage of each of the Subject Line Segments, and its percentage usage of the entire Subject Line. See Exhibit A attached hereto. The results are summarized below.

PAS 2014 Percentage of Car Miles:

	South	Middle	North	Total
No. of PAS car miles	79,841	226,578	1,143	307,561
PAS % of all car miles	18.7%	12.1%	0.2%	11.0%

(3) Dispatching Costs Attributable to PAS

NECR obtains its dispatching services from American Rail Dispatching Center (“ARDC”), a wholly-owned subsidiary of GWI located in St. Albans, Vermont. ARDC provides dispatching services not only for NECR, but also to third-party rail carriers, including several other GWI subsidiaries.

ARDC bills NECR for all dispatching of NECR's lines, regardless of whether the calls are made by NECR, Amtrak or PAS. For this reason, there is no discrete tracking of PAS dispatching costs. Using March 2015 as a representative month, NECR calculated the dispatching cost attributable to each radio and phone call made to ARDC for dispatching, and then applied the cost per call to the average estimated number of calls per month made by PAS over the last twelve months. (The estimated number of calls per month are based on PAS' historical train movements and represent the minimum number of calls the PAS crews would have had to make in order to perform the train movements; we were unable to determine if they made additional calls.) See Exhibit B attached hereto. The amount of dispatching costs, and the cost per car mile, are summarized below.

Variable Cost of PAS Dispatching

	South	Middle	North	Total
PAS annual dispatching costs by segment	\$1,450.35	\$4,127.05	\$22.40	\$5,599.80
PAS dispatching costs per car mile	\$0.018	\$0.018	\$0.018	\$0.018

(4) State and Local Property Taxes

NECR pays state and local property taxes in Massachusetts, Vermont and New Hampshire with respect to the Subject Line Segments. The detail of the amounts paid in 2014 are shown on Exhibit C attached hereto. The property taxes paid with respect to each segment and the total amount paid with respect to the Subject Line, are shown on the following chart. NECR has been advised that its Vermont centrally assessed property taxes for 2015 and 2016 will be almost double the amount of the 2014 taxes. This will result in estimated increases in the taxes as shown in the chart below. NECR believes that PAS' proportionate share of the increased taxes should be reflected in the trackage rights rates for 2015 and 2016.

	South	Middle	North	Total
2014 Property Taxes	\$16,477	\$46,583	\$9,268	\$72,328
2015-2016 Property Taxes (est.)	\$32,096	\$53,371	\$17,610	\$103,077

EXHIBIT A
CAR MILE USAGE

[REDACTED MATERIAL]

EXHIBIT B
DISPATCHING COSTS

[REDACTED MATERIAL]

EXHIBIT C
PROPERTY TAXES

[REDACTED MATERIAL]

BEFORE THE
SURFACE TRANSPORTATION BOARD

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PAN AM SOUTHERN LLC

NEW ENGLAND CENTRAL RAILROAD, INC.
OPENING STATEMENT AND EVIDENCE

(Color copies included)

VOLUME 3 of 3

VERIFIED STATEMENT OF
CHARLES BANKS AND JOHN IRELAND OF
R.L. BANKS AND ASSOCIATES, INC.

ERIC M. HOCKY
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ehocky@clarkhill.com

Dated: June 4, 2015

Attorneys for
New England Central Railroad, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 35842

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-TRACKAGE RIGHTS ORDER-
PAN AM SOUTHERN LLC**

NEW ENGLAND CENTRAL RAILROAD, INC.

OPENING STATEMENT AND EVIDENCE

**JOINT VERIFIED STATEMENT OF CHARLES BANKS AND JOHN IRELAND
OF R.L. BANKS & ASSOCIATES, INC.**

**Joint Verified Statement of Charles Banks and John Ireland of
R.L. Banks & Associates, Inc.**

Qualifications

We are Charles H. Banks and John D. Ireland, employees of R.L. Banks & Associates, Inc. (RLBA), a consulting firm based in Arlington, VA providing professional services exclusively in railroad economics, engineering and service planning.

Mr. Banks is currently RLBA's President and has been a railroad transportation professional his entire professional career. Since joining RLBA in 1985, Mr. Banks has provided strategic railroad line evaluation and acquisition counsel to more than two dozen agency public and private sector rail clients in: 1) evaluating alternative rail line access arrangements; 2) devising rail line acquisition and negotiation strategies; 3) coordinating, managing or conducting rail line real property, rail asset and/or going-concern valuations and title research and 4) drafting/negotiating letters of intent, interim use/construction, operating rights, purchase/sale and sidetrack agreements.

Prior to joining RLBA, Mr. Banks was Director of Strategic and Financial Planning at the United States Railway Association (USRA), a public entity which restructured several Northeast railroads into Conrail. There, he identified Conrail's competitive advantages and rebutted valuation claims exceeding \$1.3 billion, including through extensive testimony as an Expert Witness. Previously, he worked in Strategic Planning and the Costing and Economic Analysis section of Conrail's Finance Department. He also worked in the Traffic, Operating and Market Research Departments of railroads subsequently acquired by Norfolk Southern, CSX Transportation and Union Pacific. Mr. Banks earned an MBA from the Wharton School and a BA in Economics at Haverford College.

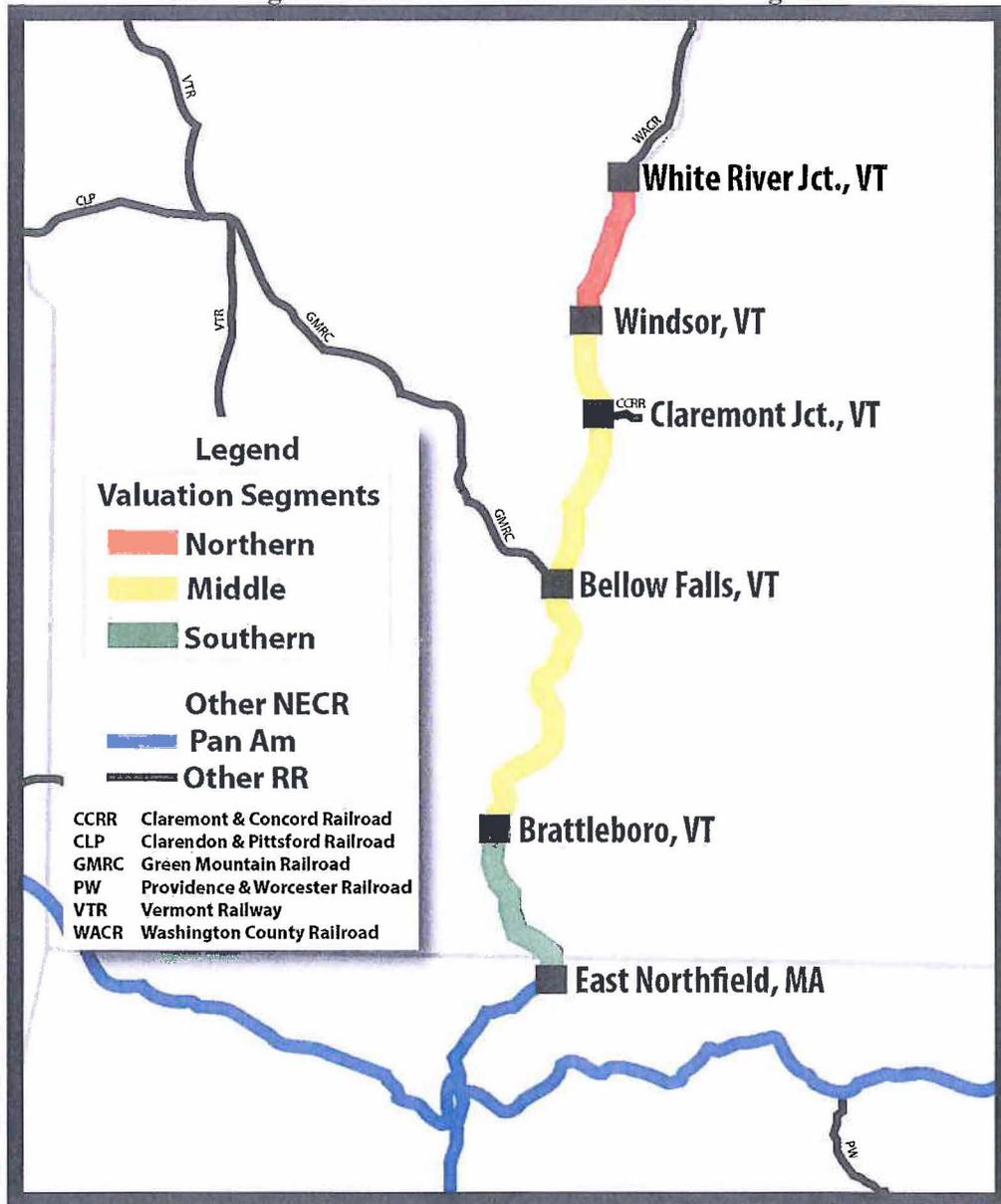
Mr. Ireland is currently a rail transportation Project Manager with RLBA. Since joining RLBA in 2014, he has specialized in railroad operations, valuation and litigation support, including the conduct of several investigations supporting client's filings before the Surface Transportation Board. Prior to joining RLBA, he served in various operational supervisory roles as an officer in the United States Navy. He is a graduate of Carnegie Mellon University.

Introduction

New England Central Railroad (NECR) is a short line railroad operating 394 miles of track between New London, CT and Alburgh, Vermont. NECR was formed in 1995 to purchase the assets of the Central Vermont Railway (CV) from Canadian National Railway Company. NECR was acquired by Genesee & Wyoming Inc. (G&W) in 2012 in connection with G&W's acquisition of RailAmerica. In 2014, RLBA was retained by the NECR to conduct three studies regarding the 73 main line route miles (approximately 86 miles of main and side track) of the NECR between East Northfield, MA and White River Junction, VT. Specifically, the three studies included; 1) a rail asset valuation employing the Value In Place (VIP) methodology; 2) a real estate valuation employing Across the Fence (ATF) value and Corridor Factor valuation methodologies; and 3) an annual, steady state, infrastructure maintenance cost estimation. It is our understanding that the requested studies will be used to help establish trackage rights compensation to be paid to the NECR by the Pan Am Southern Railway (PAS), which currently enjoys trackage rights over the subject 73-mile section under a trackage rights order entered by the Interstate Commerce Commission (ICC) in 1990. At the request of NECR, RLBA's analysis of the 73 route miles of railroad was divided into three segments - the middle segment that was once owned by PAS's predecessor Boston & Maine Corporation, and the northern and southern

segments which were historically owned by CV. In each of the studies, the appraised values and estimations are organized and presented by those segments, and also presented on for the total line segment as well. As illustrated in the Map below, the segments are defined as:

Map 1
New England Central Railroad and Valuation Segments



- Southern Segment: constituting 10.6 route miles of NECR, connecting Brattleboro, Vermont and East Northfield, Massachusetts;
- Middle Segment: constituting 48.8 route miles of NECR, connecting the north end of the Connecticut River Bridge in Windsor, Vermont and a point at Bridge Street in Brattleboro, Vermont; and
- Northern Segment: constituting 13.4 route miles of NECR, connecting Windsor and White River Junction (“Banks”), Vermont.

The RLBA Studies

Together we served as Project Managers of RLBA’s effort, overseeing, organizing and coordinating the efforts of several professionals whom completed the specific studies. The rail asset valuation and maintenance cost estimation studies were completed by RLBA Director of Transportation Engineering, Lee Meadows, Jr. P.E. Mr. Meadows joined RLBA after more than three decades of experience with Norfolk Southern Corporation and its predecessor the Norfolk & Western Railway, during which he held positions with increasing responsibility within the Engineering Department spanning management and engineering of railroad track structure, bridge and building inspection, condition assessment, maintenance, rehabilitation, design and construction as well as railroad operations. In support of the rail asset valuation and maintenance cost estimation studies, Mr. Meadows and Mr. Banks conducted an on-site inspection of the 73 route miles (86 miles total) of the NECR on July 2, 2014. In addition to a thorough asset inspection, Messrs. Meadows and Banks interviewed a variety of NECR Engineering Department personnel during that inspection to better understand both the physical condition of the railroad and the maintenance practices employed by the NECR.

The real estate valuation study was completed by Gary R. Anglemyer, M.A.I. For more than twenty-four years, Mr. Anglemyer has provided real estate valuation service experience in a wide range of conventional and complex special purpose product types and assignments especially including railroad rights of way and commercial real estate in the US and abroad. Through his company, Gary R. Anglemyer & Associates, LLC., Mr. Anglemyer has completed dozens of railroad-specific real estate valuations and appraisals for RLBA and other clients over the last two decades. In support of the real estate appraisal, Mr. Anglemyer conducted an on-site inspection of the 73 route miles of the NECR on August 27, 2014.

The following is an executive summary of the findings reached in the previously mentioned studies. All three studies are included as appendixes to this statement. The methodologies, values and key assumptions used to reach the findings in this summary are all extensively expanded upon in detail in those appendices.

Track and Infrastructure Value of Three New England Central Railroad Line Segments

At the request of NECR, RLBA determined the appraised value of the track and infrastructure using the Value In Place (VIP) methodology. VIP in the context of this analysis was defined as the retail market value of all rail assets as if they were available for sale assuming market prices on September 2, 2014, combined with the estimated value of in-place fixed infrastructure, again as of September 2, 2014. Rail assets valued included rail, ties, ballast, switches and other track material (OTM) including joint bars, anchors, tie plates and spikes. Fixed infrastructure valued included bridges, tunnels, at-grade crossings and signaling systems.

In performing this rail asset and fixed infrastructure-related VIP, RLBA assumed that NECR owns all the rail assets and fixed infrastructure, including all yard, siding and industry spur

tracks, as well as all bridges, tunnels and at-grade crossings. To assess the physical condition of the track assets, the valuations were based on conditions observed during field inspections.

The VIP of the subject NECR corridor’s track and related infrastructure assets (excluding land and rolling stock), \$86,781,000, is based on September 2, 2014 salvage, relay and scrap market prices of rail assets and the estimated in-place value of fixed infrastructure as summarized below and detailed in Tables 1 through 4. That figure was determined via desktop application of market prices as of September 2, 2014 to the physical inventory inspected, based on the condition assessed.

**Table 1
Value In Place Summary**

Southern Segment	\$6,699,000
Middle Segment	\$67,405,000
Northern Segment	\$12,677,000
Total	\$86,781,000

**Table 2
Value In Place - Southern Segment**

	Subtotal	Grand Total
Rail Assets		
Rail & OTM Asset Value in Place	\$4,377,800	
Turnout Value in Place	\$290,000	
Ballast Value in Place	\$488,780	
Fixed Infrastructure		
Bridge & Tunnel Value in Place	\$1,199,000	
Signal Value in Place	\$0	
Highway Crossing Value in Place	\$343,100	
Grand Total Value in Place	\$6,699,000	
Notes: Dollar amounts are rounded to the nearest hundred; units to the nearest tenth. Values may not appear to add due to rounding.		

Table 3
Value In Place - Middle Segment

	Subtotal	Grand Total
Rail Assets		
Rail & OTM Asset Value in Place	\$17,137,900	
Turnout Value in Place	\$343,000	
Ballast Value in Place	\$1,919,570	
Fixed Infrastructure		
Bridge & Tunnel Value in Place	\$44,540,500	
Signal Value in Place	\$1,960,000	
Highway Crossing Value in Place	\$1,504,200	
Grand Total Value in Place		\$67,405,000
Notes: Dollar amounts are rounded to the nearest hundred; units to the nearest tenth. Values may not appear to add due to rounding.		

Table 4
Value In Place - Northern Segment

	Subtotal	Grand Total
Rail Assets		
Rail & OTM Asset Value in Place	\$4,639,800	
Turnout Value in Place	\$35,000	
Ballast Value in Place	\$509,364	
Fixed Infrastructure		
Bridge & Tunnel Value in Place	\$6,950,000	
Signal Value in Place	\$0	
Highway Crossing Value in Place	\$542,600	
Grand Total Value in Place		\$12,677,000
Notes: Dollar amounts are rounded to the nearest hundred; units to the nearest tenth. Values may not appear to add due to rounding.		

Real Estate Value of Three New England Central Railroad Line Segments

After determining that the highest and best use of the 73 route miles of NECR is continued use as a freight and passenger corridor, RLBA directed that the Corridor Valuation methodology be used to determine the appraised value of real estate constituting the rail line. The real estate appraisal and conclusions were developed in conformance with the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute and all applicable local and state requirements.

It is a key assumption of the subject appraisal that the property is held in fee simple title. Regardless of whether this is true, because NECR owns a permanent, unencumbered easement and has rights to use the property for its highest and best use (a rail corridor), NECR's property interest is tantamount to fee simple title¹. Therefore, this assumption has little, if any, impact on the market value of the property.

Based on the analysis of the property and supporting market data, the estimated market valuations of the segments constituting the subject property, as of August 27, 2014, is \$10,460,000. Table 5 below shows the real estate value for the each segment, as well as the combine total, between East Northfield Station and White River Junction.

Table 5
Real Estate Summary

Southern Segment - Between East Northfield Station, MA and Bridge Street in Brattleboro, VT	\$1,120,000
Middle Segment - Between Bridge Street in Brattleboro, VT and Windsor Bridge in Windsor, VT	\$4,680,000
Northern Segment - Between Windsor Bridge in Windsor, VT and White River Junction, VT	\$4,660,000
Total - Between East Northfield Station, MA and White River Junction, VT	\$10,460,000

¹ Further, we understand that pursuant to existing, contractual arrangements, NECR has the right to acquire the property in fee simple for a nominal consideration of \$1.

Maintenance Cost Estimation of Three New England Central Railroad Line Segments

RLBA was directed by NECR to provide an estimated annual maintenance cost to maintain the above-described segments in a steady state condition meeting the requirements of the Federal Railroad Administration (FRA) Class 3 quality track, and for comparison purposes, of FRA Class 2 quality track. FRA track classes are federally regulated, and designated track standards are associated with maximum, permitted safe operating speeds of both freight and passenger trains, as displayed below in Table 6. RLBA organized its approach and findings into two maintenance activities - program and routine maintenance².

Table 6
Federal Railroad Administration Track (Quality) Classes

Track Class	Maximum Speed (Freight)	Maximum Speed (Passenger)
Excepted	10	N/A
Class 1	10	15
Class 2	25	30
Class 3	40	60
Class 4	60	80
Class 5	80	90
Class 6		110

Source: Federal Railroad Administration

Program maintenance encompasses regular, periodic replacement of track and bridge components such as switch timbers, ties, rail, ballast and bridge decking, to renew the track structure. Tamping and surfacing of large, contiguous sections of track generally are performed

² RLBA traditionally includes a third maintenance activity to capture any rehabilitation work required to return the line to the desired baseline steady state condition. However, Mr. Meadows observed during the physical inspection that the subject line is currently maintained to NECR's baseline Class 3 track standards. As such, RLBA does not believe any rehabilitation is currently necessary on the subject line to bring it to FRA Class 3 quality track standards, and no such work was reflected in any of its results in this report

under program maintenance. Routine maintenance generally covers the largely labor-intensive day-to-day tasks performed by section forces necessary to ensure that the track structure is available to host a carrier's train operations safely. Routine maintenance activities generally include inspections, switch stand and rod adjustments, lubricating, welding, re-spiking, replacing broken rail, spot tie replacement and surfacing, spot tamping, signal department tests, signal inspection and small emergency repairs.

RLBA estimated the annual maintenance of way expenses to maintain the 73 route miles (86 miles total) of NECR to Class 3 quality track at \$3,089,773 for the three designated segments. RLBA estimated the annual maintenance of way expenses to maintain the 73 route miles (86 miles total) of NECR to Class 2 quality track to be \$2,757,873 for the three designated segments. Grand total costs are expressed in Table 7. Those estimations result in an average annual expense per track mile of \$35,910.89 for Class 3 track and \$32,053. for Class 2 track.

**Table 7
Maintenance Cost Estimation Summary**

	Class 2	Class 3
Southern Segment		
Program Maintenance	\$295,150	\$365,450
Routine Maintenance	\$334,124	\$334,124
Total	\$629,274	\$699,574
Middle Segment		
Program Maintenance	\$927,100	\$1,142,500
Routine Maintenance	\$728,251	\$728,251
Total	\$1,655,351	\$1,870,751
Northern Segment		
Program Maintenance	\$226,450	\$272,650
Routine Maintenance	\$246,798	\$246,798
Totals	\$473,248	\$519,448
Total Annual Program Maintenance of Way Expenses	\$1,448,700	\$1,780,600
Total Annual Routine Maintenance of Way Expenses	\$1,309,173	\$1,309,173
Total Annual Maintenance of Way Expenses	\$2,757,873	\$3,089,773
Annual Expense Per Track Mile	\$32,053	\$35,911

I, Charles H. Banks, verify under penalty of perjury that I have prepared and read this Verified Statement to be filed on behalf of New England Central Railroad, Inc. in the aforementioned proceeding before the Surface Transportation Board, that I know the contents thereof, and that the same is true and correct. Further, I certify that I am qualified and authorized to file this statement.

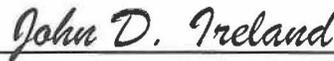


Executed on June 3, 2015

Charles H. Banks

Verification

I, John D. Ireland, verify under penalty of perjury that I have prepared and read this Verified Statement to be filed on behalf of New England Central Railroad, Inc. in the aforementioned proceeding before the Surface Transportation Board, that I know the contents thereof, and that the same is true and correct. Further, I certify that I am qualified and authorized to file this statement.



Executed on June 3, 2015

John D. Ireland

**Track and Infrastructure Valuations
of the
New England Central Railroad**

**Prepared
by
R. L. Banks & Associates, Inc.**

October 21, 2014



**Track and Infrastructure Valuations
of the
NEW ENGLAND CENTRAL RAILROAD
Between East Northfield, MA and White River Junction, VT**

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Appendices*

- 1 Summary of Rail Evaluated (Total)
- 2 Value In Place Summary (Total)
- 3 Gross Liquidation Value of Assets (Total)
- 4 Yard Tracks and Sidings Summary (Total)
- 5 Summary of Turnouts (Total)
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- 7 Summary of Rail Mileages (Total)
- 8 Summary of Bridges and Tunnels (Total)
- 9 Summary of Grade Crossings (Total)
- 10 Track Material Unit Prices (Total)

*Note: One set of 1 thru 9 for the Southern, Middle and Northern Segments

**Track and Infrastructure Valuations
of the
New England Central Railroad
Between East Northfield, MA and White River Junction, VT**

Introduction

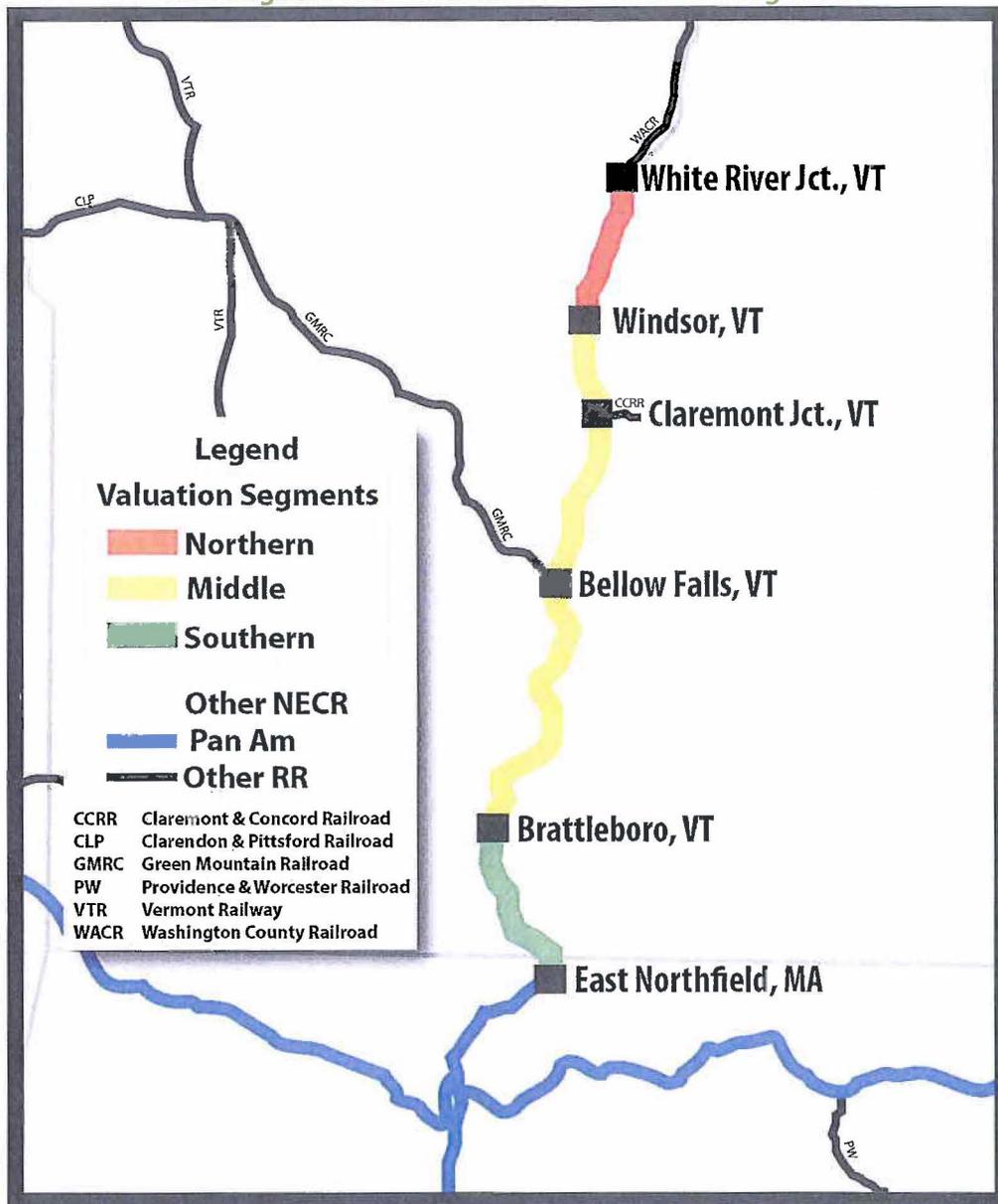
The New England Central Railroad (NECR) is a short line railroad operating 394 miles of track between New London, CT and Alburgh, VT. Formed in 1995 following the spinoff of the Central Vermont Railway from Canadian National, the railroad is currently a subsidiary of Genesee & Wyoming Inc. (G&W). RLBA was retained by NECR to perform, among other things, a Valuation In-Place (VIP) of track and real estate (the latter addressed in a separate report) assets of 73 miles of the NECR between East Northfield, MA and White River Junction, VT. The results of this valuation will be used to determine fair market value trackage right rates to be charged to the Pan Am Railway, which operates over the 73 miles of NECR previously mentioned. For purposes of this report, the track was separated into three segments as follows:

- **Southern Segment** - constituting 10.6 miles of NECR., connecting Brattleboro, Vermont and East Northfield, Massachusetts, which segment of railroad is subject to a trackage rights agreement with Pan Am Railways, now subject to renegotiation;
- **Middle Segment** - constituting 48.8 miles of NECR, connecting the north end of the Connecticut River Bridge in Windsor, Vermont and a point at Bridge Street in Brattleboro, Vermont, which segment is subject to a separate trackage rights agreement with Pan Am Railways, now subject to renegotiation and
- **Northern Segment** - constituting 13.4 miles of NECR, connecting Windsor and White River Junction (“Banks”), Vermont, which segment of railroad is subject to the same Trackage Rights Agreement with Pan Am Railways as in effect on the Southern Segment, now subject to renegotiation.

The above-described segments are illustrated in Map 1 on the following page.

This effort determines the Value In Place (VIP) of track and infrastructure assets in the subject property as of September 2, 2014 based on findings recorded during a physical inspection of the assets which occurred on July 2, 2014, conducted by R.L. Meadows, Jr., P.E., RLBA’s Director, Transportation Engineering. This report presents findings of the research and discusses the factors which influence the value of railroad rail, other track material (OTM), ties, ballast, bridges, tunnels, at-grade crossings and signaling systems.

Map 1
New England Central Railroad and Valuation Segments



Description of the Railroad

The 73 miles of the New England Central Railroad valued by RLBA runs between East Northfield, MA and White River Junction, VT. There are several junctions with other railroads along the line; Pan Am at East Northfield, MA, the Green Mountain Railroad (a subsidiary of the Vermont Railway) at Bellow Falls, VT, the Claremont & Concord Railroad at Claremont Junction, VT and the Washington Country Railroad (a subsidiary of the Vermont Railway) at White River Junction, VT.

For purposes of this report, RLBA was directed to provide an inspection and an assessment of the track and related infrastructure value of all three segments described above. A summary of the track and infrastructure evaluated appears in Appendix Four through Nine in respect to each respective segment, which identifies key asset characteristics by Mile Post location. The rail evaluation covers rail, ties, ballast, switches and other track material (OTM) including joint bars, anchors, tie plates and spikes. The infrastructure evaluation covers bridges, tunnels, at-grade crossings and signaling systems.

Value In Place

The estimated VIP of NECR's corridor track and related infrastructure assets (excluding land and rolling stock), \$86,781,000 is based on September 2, 2014 salvage, relay, scrap prices of rail assets and the estimated in-place value of fixed infrastructure as summarized below and detailed in Tables 1a through 1d. This figure was determined via desktop application of current market prices to the physical inventory inspected.

Table 1a
Value In Place Summary

Southern Segment	\$6,699,000
Middle Segment	\$67,405,000
Northern Segment	\$12,677,000
Total	\$86,781,000

Table 1b
Value In Place - Southern Segment

	Subtotal	Grand Total
Rail Assets		
Rail & OTM Asset Value in Place	4,377,800	
Turnout Value in Place	290,000	
Ballast Value in Place	488,780	
Fixed Infrastructure		
Bridge & Tunnel Value in Place	1,199,000	
Signal Value in Place	0	
Highway Crossing Value in Place	343,100	
Grand Total Value in Place		\$6,699,000

Notes: Dollar amounts are rounded to the nearest hundred; units to the nearest tenth.
Values may not appear to add due to rounding.

Table 1c
Value In Place - Middle Segment

	Subtotal	Grand Total
Rail Assets		
Rail & OTM Asset Value in Place	17,137,900	
Turnout Value in Place	343,000	
Ballast Value in Place	1,919,570	
Fixed Infrastructure		
Bridge & Tunnel Value in Place	44,540,500	
Signal Value in Place	1,960,000	
Highway Crossing Value in Place	1,504,200	
Grand Total Value in Place		\$67,405,000

Notes: Dollar amounts are rounded to the nearest hundred; units to the nearest tenth.
Values may not appear to add due to rounding.

Table 1d
Value In Place - Northern Segment

	Subtotal	Grand Total
Rail Assets		
Rail & OTM Asset Value in Place	4,639,800	
Turnout Value in Place	35,000	
Ballast Value in Place	509,364	
Fixed Infrastructure		
Bridge & Tunnel Value in Place	6,950,000	
Signal Value in Place	0	
Highway Crossing Value in Place	542,600	
Grand Total Value in Place		\$12,677,000

Notes: Dollar amounts are rounded to the nearest hundred; units to the nearest tenth.
Values may not appear to add due to rounding.

Methodology to Compute VIP

VIP was determined utilizing a multiple step process, the building blocks of which are summarized below:

- Asset Ownership;
- Rail Asset Inventory;
- Market Value Unit Prices of Rail Assets;
- Fixed Infrastructure Asset Inventory and
- Unit Price Estimations of Fixed Infrastructure Assets.

Appendices One, Three, Four, Five, Six, Seven, Eight and Nine, respectively, to this report provide detailed computational data, including inventory and unit costs by type of asset valued.

VIP in the context of this analysis was defined as the current retail market value of all rail assets as if they were available for immediate sale, combined with the estimated value of in-place fixed infrastructure. Rail assets valued included rail, ties, ballast, switches and other track material (OTM) including joint bars, anchors, tie plates and spikes. Fixed infrastructure valued included bridges, tunnels, at-grade crossings and signaling systems.

Asset Ownership

In performing this rail asset and fixed infrastructure-related VIP, RLBA assumed that NECR owns all the rail assets and fixed infrastructure in fee simple including all yard, siding and industry spur tracks, as well as all bridges, tunnels and at-grade crossings.

Rail Asset Inventory

To assess the physical condition of the track assets the three valuations were based on conditions observed during field inspection. Data concerning track condition and inventory obtained during that field inspection was used in developing this VIP report.

Steel. The most significant marketable materials reflected in the rail asset valuations were steel track components, assumed to be sold for railroad reuse or as steel mill scrap, depending upon condition. Generally, rail in the main track designated as "fit" or "relay" can be reused in other railroad applications, if it weighs at least 90 pounds per yard or greater. Rail may have a functional use and life with wear up to and exceeding ½ inch vertical or horizontal head wear but is not generally considered worth installing again into a relay, (cascading) position if it exhibits more than 1/4 inch wear. At the time of this valuation, it was found that certain NECR rail met two suitable, relay categories: Fit #1, which includes all rail with less than 1/8 of an inch head wear and Fit #2, all rail with less than 3/16 of an inch head wear. The retail price of Fit #1 is set at a premium relative to Fit #2. If not suitable for rail relay, the next highest value application is as reroll, where rail is rolled

into new, non-rail products. Rail not suitable for reroll because of excessive side head wear, excessive metal flow, holes mid-rail, short length or attached asphalt or concrete is suitable only as scrap. Reroll rail generally brings higher dealer prices than scrap subject to market demands by the US electric steel mills. Scrap is divided into two categories: rail and other track material (OTM) such as joint bars, tie plates, rail anchors, nuts, bolts, washers and spikes. OTM commands a higher price than rail because the melting of OTM avoids the extra effort required by mills to cut rail into sections suitable for melting.

Turnouts. Turnouts were determined or estimated as scrap or relay if their rail size was of 90 pounds per yard or heavier. All relay switches were predominately #10 turnouts with having solid manganese, self-guarded (SMSG) or rail-bound manganese (RBM) frogs in good condition. All double shoulder main track tie plates used on 132 pound rail were classified as relay, even if the rail they supported was classified as scrap because they would be matched with other relay rail featuring less desirable tie plates. All other single shoulder tie plates except high quality 9 ½” and 10 ½” were scrapped due to low market demand. If rail reuse as relay was warranted, joint bars and rail anchors were assumed reused whereas if rail were assumed scrapped or rerolled, the joint bars and rail anchors were assumed to be scrapped. All other track material (OTM) such as nuts, bolts, washers and spikes were valued as scrap.

Ties. For a VIP valuation, all ties were estimated as relay, with a 50 percent discount applied to the current market value of a new tie to reflect the normal wear resulting from the tie being in service.

Ballast. Ballast values were assumed by estimating the amount of ballast in tons, required per mile either in mainline or yard track and applying to it the unit price of ballast per ton provided by NECR based on historical prices paid by the railroad. The unit price only reflects the material, not the cost of installation.

Market Value Unit Prices for Rail Assets

The rail asset VIP estimates were based on the application of actual unit market prices as at September 2, 2014, as supplied by specifically identified market participants and displayed in Table 2 on the next page.

Table 2
Unit Market Prices – Rail Materials as of September 2, 2014

<u>Steel (Rail)</u>	<u>Unit Prices per</u>		
	<u>Component</u>	<u>Ton</u>	<u>Foot (Mi)</u>
Rail 136 pound per yard, CWR, Fit #1		\$890.00	
Rail 131 pound per yard, CWR, Fit #2		\$840.00	
Rail 115 pound per yard, CWR, Fit #1		\$990.00	
Rail 112 pound per yard, Jointed, Fit #1		\$830.00	
Rail 112 pound per yard, Jointed, Fit #2		\$790.00	
Rail 100 pound per yard, Jointed, Fit #1		\$700.00	
Rail 100 pound per yard, Jointed, Fit #2		\$650.00	
Rail Reroll		\$425.00	
Rail Scrap		\$363.00	
 <u>Steel (OTM)</u>			
Scrap OTM		\$363.00	
Tie Plates, D/S, 14" long, 6" base, Fit	\$9.70		
Tie Plates, D/S, 13" long, 6" base, Fit	\$9.60		
Tie Plates, D/S, 14" long, 5.5" base, Fit	\$9.30		
Tie Plates, S/S, 11" long, 5.125 - 5.375" base, Fit	\$3.50		
Tie Plates, D/S, 11" long, 5.5" base, Fit	\$8.40		
Tie Plates, D/S, 10 1/2" long, 5.5" base, Fit	\$7.80		
Joint Bars, 133/132/131 pound per yard, Fit	\$58.00		
Joint Bars, 119/112 pound per yard, Fit	\$40.00		
Joint Bars, 100 pound per yard, Fit	\$38.00		
Anchors, Fit	\$0.50		
 <u>Timber (Ties)</u>			
Relay (ea)	\$20.00		
 <u>Turnouts</u>			
Fit	\$20,000.00		
Fit (Long)	\$30,000.00		
 <u>Ballast</u>			
Yard (Mile)			\$25,995.20
Mainline (Mile)			\$35,464.00

Sources: American Metal Market, Unitrac and RLBA estimates.

Fixed Infrastructure Asset Inventory

Fixed infrastructure condition and inventory was calculated via the “desktop” method, using a combination of field inspection, data provided by NECR and, to a lesser extent, publicly available information from the Federal Railroad Administration. Unlike rail assets, which enjoy an active market with regularly updated information and established standards, market information regarding fixed infrastructure is extremely limited. It is rare that large, fixed infrastructure components such as bridges and tunnels or extensive in-place signaling systems are resold or removed. As such, RLBA considered various factors (including scrap metal prices, rail industry valuation standards and previous, applicable RLBA project experience) to create estimated values of fixed infrastructure components.

Bridges. Bridges were divided into three categories based on their material and design; steel girder bridges (including double plate and through plate girder designs), stone and concrete bridges (including arch, box and span bridges of both materials, as well as concrete slab bridges) and steel truss bridges. An estimated value of material per linear foot was assigned to each category of bridge. This estimated value was synthesized from several recent RLBA projects involving bridge construction and valuation. NECR-provided bridge inspection reports were consulted to determine the length and height of all bridges within the three segments. Bridge values were reached by applying an estimated value per linear foot of a given type to bridge dimension information collected from NECR bridge inspection reports and discounting the amount by 50 percent to reflect normal wear resulting from being in service.

Tunnels. The same methodology to value bridges described above was applied to the single tunnel found on one of the three segments.

At-Grade Crossings. Highway crossings were divided into three categories based on their use and type of protection; public crossings featuring active protection (protected by full or half barrier arms, flashing lights or both), public crossings featuring passive protection (protected by “stop” or “give-way” signs) or public private crossings (featuring passive crossing protection). An estimated value of material per linear foot was assigned to each category of crossing. The estimated value was synthesized from industry standards regarding grade crossing materials including highway panels and active protection components. Crossing category and dimension information was collected during the on-site inspection and was supplemented by NECR-provided track charts and the Federal Railroad Administration’s Crossing Inventory. The crossing value was reached by applying the estimated value per linear foot of a given type of crossing to crossing dimension information collected both on-site and from NECR and FRA materials.

Signaling Systems. During the on-site inspection, train movement was observed being controlled by Centralized Traffic Control (CTC) between milepost 130 and milepost 169.2, with the remainder of the line under Track Warrant Control (TWC) control or within Yard Limits. NECR provided time tables and documentation confirmed those on-site observation. An average value of the existing CTC system per mile was estimated by considering the extent of existing CTC related infrastructure installed (including powered rail signals, powered interlockings/control points, track circuits and sensors, communication equipment, relays and power sources) and discounting the value by 50 percent to reflect the wear observed during the on-site inspection, which has incurred since the original installation. No value was assigned to segments controlled by TWC or within Yard Limits, as a minimal amount of infrastructure is associated with those types of train traffic control.

Unit Price Estimations of Fixed Infrastructure Assets

The VIP of infrastructure assets was estimated based on the methodology describe above, as displayed in Table 3 below.

Table 3
Estimated Values – Fixed Infrastructure

Component	Unit Prices per	
	Ton	Foot (Mi)
<u>Bridges / Tunnels</u>		
Steel Girder		\$9,500
Steel Truss		\$19,000
Concrete / Stone		\$5,000
Tunnel		\$20,000
<u>Crossings</u>		
Private		\$50
Public Active		\$3,300
Public Passive		\$150
<u>Signals</u>		
CTC (Mile)		\$50,000

Sources: American Metal Market and RLBA estimates.

Railroad Rail Market

The predominant component of railroad track asset value is the rail itself. The rail market consists of four primary products: new rail and the three, previously described grades of used rail: relay, reroll and scrap. Since the NECR rail assets valued are currently all installed and in use, the discussion which follows is limited to the used rail markets. The VIP depends not only on the wear experienced on the subject rail but also on the situation in those markets.

Relay Rail

Rail replaced because of wear or defects on a busy or fast main track is eminently suitable to install on slower speed or lighter traffic lines. At the slow speeds operated in yards, few broken rails result in derailments. In turn, welded replacement rail installed on secondary lines is superior to older rail still in use in some yards. Relay rail tonnages installed consistently exceed new rail tonnages because rail removed from a main line and installed on a branch line frequently generates an additional rail cascade to yard tracks. At each step, however, a portion of the rail is scrapped, usually resulting in short lengths of rail (from cuts made at road crossings and switches) or rail with excessive curve wear.

Through the cascading process, relay rail is generated by installing new rail (or other relay rail). In addition, some liquidated rail lines generate relay rail, though abandonment rail is frequently light, worn sections which are scrapped. While most relay material generated by a railroad is used on its own lines, there is a very active commercial relay market; several brokers supply material to regional and short line railroads and shipper-owned spurs, which neither require nor can justify the cost of new rail.

At lower levels of remaining useful life, rail becomes unattractive to sell in the relay market because the expenses of marketing, transportation and installation on a regional or short line railroad would constitute an excessive share of total value.

Most rail relay programs include welding the rail before installation. Welding significantly reduces maintenance expenses incurred in the joint area associated with surfacing and bolt tightening. In addition, by removing the location of greatest rail wear, rail life is extended.

Reroll and Scrap Rail

Rail is a premium scrap grade because it is hard steel with known chemistry. While the scrap steel market includes many grades, used rail enters the scrap market as reroll or as charging material (heavy melting scrap) to be melted in furnaces and made into other steel products. Reroll is the designation attached to clean lengths of rail that can be rerolled into new products (construction rebar, fence posts, etc.). Scrap material is required in charging both integrated mills and in mini-mill electric furnaces. The mini-mill demand for scrap is expected to remain strong. While most

mills will accommodate rails up to five feet in length, some buyers prefer shorter lengths of two or three feet.

User Categories

The primary categories of rail users are Class I (large), regional, short line railroads and industrial plants. Class I railroads primarily purchase new rail and generate relay rail internally with light weight rail sold as scrap.

Use of relay rail by weight depends on specific railroad practice but, in general, on Class I (major) railroads, 112 pounds per yard and heavier will be reinstalled on secondary lines if within wear limits, otherwise it will be installed in yard tracks. Good relay rail is required in yard turnouts. Rail between 100 and 112 pounds per yard is suitable in yard and industry tracks, though if generated in abundance in any one year it may be sold into the second-hand market. Rail sections less than 100 pounds per yard are generally scrapped when taken up by Class I railroads.

Regional railroads are a market for second-hand rail and demand for repair rail has propelled second-hand prices on medium and heavy rail to a high value proportionate to prices of new rail with respect to remaining life as indicated by rail wear. This anomaly results because at typical regional railroad annual traffic levels of three to five million gross tons (MGT), half-worn rail may last another 50 - 80 years and so is a relative bargain at \$800 per ton compared with new rail at about \$1,200 per ton.

From the distinct economic perspective of regional railroads, by contrast with Class I railroads, paying one-half to three-quarters the price of new rail for half-worn rail can provide savings because replacement expenditures are years away. Rail weighing 115 pounds per yard or greater is preferred for replacement. Rail designated 132RE or greater (RE designation representing rail that adheres to AREA specifications) would be considered if the costs, including shipping and other track materials, were the same or less than an 115RE section. Similar economics drive the decision of Class I railroads to cascade worn rail, with little in-place economic life to another line on the system with lower traffic density rather than continuing to wear the rail down to scrap condition at its original location.

Short line railroads use any rail from new 136RE to second-hand 85 pounds per yard rail, depending on traffic volume and financial strength. Generally, 100 pounds per yard or heavier is preferred but some lines still install less than 100-pound rail (to replace even lighter weights). If predominant traffic is carried in 100 ton cars, 100 pounds per yard is a minimum standard although some western railroads in dryer climates, and hence better subgrade conditions, use 90 pounds per yard section. (The markets for relay quality 90 and 100 pounds per yard rail are still available but appear to be more regionalized, resulting in decreasing value due to the shift of the railroad industry toward

being able to handle even greater axle loads.) Only a few short lines, generally those owned by the primary company they serve, can finance new rail purchases.

Industrial users can use any weight rail but prefer 100 pounds per yard or heavier section. A nearly universal specification by civil engineering firms of 115RE rail (instead of 115RE or heavier) on new sidetrack construction has driven the relay price per ton of that section higher than most other sections. The high volume of 115RE rail installed in mainline tracks during the 1950's and 1960's followed by a shift to heavier 119, 132 and 136RE rail has led to a scarcity of available 115RE repair rail. During the last few years, the relative bargain of 119 and 132RE rail has been recognized and those prices also have risen to match that of 115RE at least on a lineal foot basis. Some of the rail valued in this appraisal is of the widely used section, 132, nearly all of which can be found on every major railroad in the country and is in great demand as relay rail on short line railroads.

Qualifications to Estimate

The findings of this cost estimate are subject to several qualifications and limiting conditions which are stated as follows:

It is assumed that all rail valued was manufactured according to AREA and ASCE recommended practices and that the rail assets are in full compliance with all FRA standards;

Further, RLBA assumes full compliance with all applicable Federal, state and local regulations and laws;

RLBA takes no responsibility for changes in market conditions which may occur after the date of valuation or for the inability of the rail owner to identify a qualified purchaser;

With regards to the valuation, RLBA has not conducted any title search or verification of legal ownership. RLBA has conducted this valuation under the assumption that the entire rail described herein is owned by NRL free and clear of any liens and encumbrances;

No employee or representative of RLBA will be required to give testimony or attend court or appear at any governmental hearing with reference to the subject rail material, unless prior arrangements have been made directly with RLBA;

RLBA takes no responsibility for changes in track structure under portions of the railroad that were covered by material obstructing physical inspection or areas not inspected;

RLBA has not conducted any environmental remediation investigation and as such has not factored in any environmental remediation costs that may result from actual liquidation of line.

Certification

I, R.L. Meadows, Jr., P.E, do hereby certify that to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, unbiased, professional analyses, opinions and conclusions.

I have no specified or unspecified present or prospective interest in the properties that are the subject of this report and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.

I made a personal inspection of the property that is the subject of this report on July 2, 2014.

Submitted,

R.L. Meadows, Jr., P.E.

[REDACTED MATERIAL]

Appraisal Report

72.8 Miles of
New England Central Railroad
Right of Way
Located Between
East Northfield, MA and
White River Junction, VT

As of August 27, 2014

Prepared for
New England Central Railroad

Prepared by
Gary R. Anglemeyer & Associates, LLC
In Association With:
R. L. Banks & Associates, Inc.

GRAA File No A-14-003

September 24, 2014

Mr. Ray Goss
Genesee & Wyoming, Inc.
400 Meridian Centre, Suite 330
Rochester, New York 14618

**Re: Appraisal Report: 72.8 Miles of New England Central Railroad Right of Way
Located Between East Northfield, MA and White River Junction, VT**

Dear Mr. Goss:

In accordance with your request, Gary R. Anglemyer & Associates, LLC, in association with R.L. Banks & Associates, Inc., prepared an appraisal of the above-referenced property and present our findings in the attached appraisal report. Specifically, based on the intended use and in consideration of the subject's physical and economic characteristics, Gary R. Anglemyer & Associates, LLC prepared an appropriate set of deliverables of work that will provide credible, practical and defensible valuation results.

The significant elements of the scope of work included: i) an inspection of the subject and its surroundings; ii) an analysis of the subject's corridor characteristics; iii) a collection of land and corridor sales data and iv) completion of the Sales Comparison Approach employing Across the Fence (ATF) value and Corridor Factor Valuation Methodologies.

The subject of this appraisal is an active 72.8-mile railroad right of way located between East Northfield, MA and White River Junction, VT. The highest and best use of the subject corridor is continued freight, passenger and other corridor-related uses suggesting a Corridor Valuation Methodology.

Data, information, and calculations leading to the valuation conclusions are incorporated in the report following this transmittal letter. The report, in its entirety, including all assumptions and limiting conditions is an integral part of and is inseparable from this letter.

Based on our analysis of the property and supporting market data, the estimated market valuations of the fee simple interests, of the segments constituting the subject property, as of August 27, 2014, subject to the assumptions and limiting conditions stated herein, are:

**South Segment - 10.6 Miles – Between East Northfield Station, MA and
Bridge Street in Brattleboro, VT**
ONE MILLION ONE HUNDRED TWENTY THOUSAND DOLLARS
(\$1,120,000)

**Middle Segment - 48.8 Miles – Between Bridge Street in Brattleboro, VT and
Windsor Bridge in Windsor VT**
FOUR MILLION SIX HUNDRED EIGHTY THOUSAND DOLLARS
(\$4,680,000)

**North Segment - 13.4 Miles – Between Windsor Bridge in Windsor VT and
White River Junction, VT**
FOUR MILLION SIX HUNDRED SIXTY THOUSAND DOLLARS
(\$4,660,000)

**South, Middle and North Segments – 72.8 Miles – Between East Northfield Station, MA
and White River Junction, VT**
TEN MILLION FOUR HUNDRED SIXTY THOUSAND DOLLARS
(\$10,460,000)

Note: It is an extraordinary assumption in this appraisal that the property is held in fee simple title. Regardless, the highest and best use of the subject property is as a corridor and the property owners/users enjoy perpetual, unencumbered, perpetual term operating rights that are tantamount to fee simple title. Thus the extraordinary assumption has little, if any, impact on the market value of the property.

The following appraisal sets forth the most pertinent data gathered, the techniques employed, and the reasoning leading to the opinions of value. The analyses, opinions and conclusions were developed based on, and this report has been prepared in conformance with, our interpretation of the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute and all applicable local and state requirements.

Representative photographs of the subject property are shown on the following pages. It has been a pleasure to assist you in this assignment. If you have any questions concerning the analysis, or if Gary R. Anglemyer & Associates, LLC can be of further service, please contact us.

Respectfully submitted,

GARY R. ANGLEMYER & ASSOCIATES, LLC



Gary R. Anglemyer, MAI

Representative Subject Photographs



Prime Agricultural Land



Typical Rural Residential



Typical Village or Town Center



Typical Higher Density Village Housing



Typical Industrial



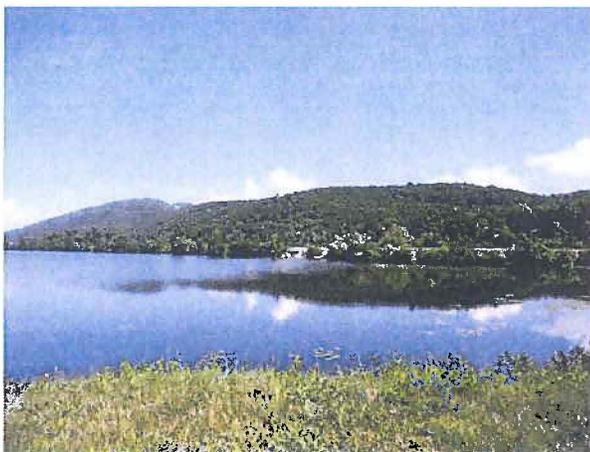
Typical Commercial



Typical Steep Woodlands



Subject located on Embankment between Road and Connecticut River



Wetlands Along Corridor

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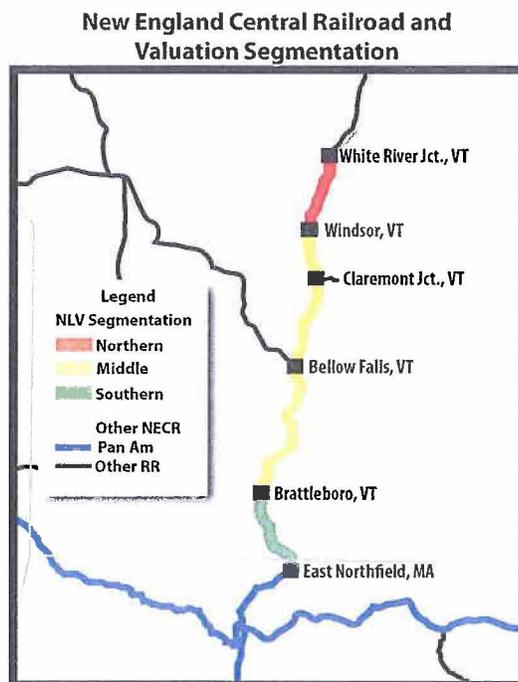
EXECUTIVE SUMMARY

Property Name:	New England Central Railroad
Property Type:	Railroad Corridor/Linear Right of Way
Intended User and Use:	New England Central Railroad; Trackage Rights Agreement Negotiations
Location:	Between East Northfield, MA and White River Junction, VT
Effective Date of Value:	August 27, 2014; Date of Last Inspection
Property Rights Appraised:	Fee Simple
Site Length/Area/Width:	Overall: 72.8 Miles with a gross land area of 582.40 acres and an average width of 98 feet South Segment: 10.6 Miles with a gross land area of 84.80 acres and an average width of 102 feet Middle Segment: 48.8 Miles with a gross land area of 390.40 acres and an average width of 148 feet North Segment: 13.4 Miles with a gross land area of 390.40 acres and an average width of 110 feet
Zoning/Use:	Mostly Rural with small amounts of Commercial, Industrial and Residential Land Use
Highest and Best Use As if Vacant and as Improved:	Continued Corridor Use; Freight and Passenger Rail Services are Currently Active; Most Likely Buyer is a Corridor Owner/User

	<u>South Segment</u>	<u>Middle Segment</u>	<u>North Segment</u>	<u>Total</u>
ATF Value:	\$1,120,000	\$4,680,000	\$4,660,000	\$10,460,000
ATF Factor:	1.00	1.00	1.00	1.00
Market or Corridor Value:	\$1,120,000	\$4,680,000	\$4,660,000	\$10,460,000

Property Description Identification and Area Overview

The subject of this appraisal is a 72.8-mile, active railroad right of way located between East Northfield, MA and White River Junction, VT. The appraisers were asked us to value the property in three segments: the South Segment; the Middle Segment and the North Segment. The map below was prepared by R. L. Banks & Associates, Inc. and shows the corridor segmentation.



For purpose of this analysis, the right of way extends between East Northfield Station in Massachusetts and White River Junction, Vermont. In general, the right of way parallels the Connecticut River, which divides the States of Vermont and New Hampshire. The right of way traverses Massachusetts (Franklin County/Town of Northfield) but only for a very short distance of about 700 feet or 0.13 miles then traverses the State of Vermont. The South Segment passes

through Windham County and the Towns of Vernon and Brattleboro. The Middle Segment traverses Windham County and passes through the Towns of Brattleboro, Dummerston, Putney, Westminster and Rockingham (Village of Bellows Falls). After the Village of Bellows Falls, the Middle Segment traverses the State of New Hampshire, County of Cheshire and passes through the Town of Walpole, where it then enters Sullivan County and passes through the towns of Charlestown, Claremont and Cornish. The Middle Segment, ends at the north end of the Windsor Bridge, which crosses back over to the State of Vermont in Windsor County. The North Segment extends between Windsor County, Vermont and Village of White River Junction, passing through the Towns of Windsor, Hartland and Hartford. A summary of the States, Counties and Towns traversed by the subject right of way is shown below:

South Segment:

Massachusetts:

Franklin County
Northfield

Vermont:

Windham County
Vernon
Brattleboro

Middle Segment:

Vermont:

Windham County
Brattleboro
Dummerston
Putney
Westminster
Rockingham

New Hampshire:

Cheshire County
Walpole
Sullivan County
Charlestown
Claremont
Cornish

Vermont:

Windsor County
Windsor

North Segment

Vermont

Windsor County

Windsor

Hartland

Hartford.

The Counties in both states have limited jurisdiction over the Towns insofar as the Towns control land use and municipal services. The Town Centers enjoy public water and sewer services but the outlying, rural areas rely on on-site septic systems and wells. The topography varies from level to fairly steep as both Vermont and New Hampshire feature mountainous terrain. However, an extensive amount of the corridor is located on banks between various roads and the Connecticut River. The vast majority of the corridor is rural. The area along the corridor/Connecticut River includes some of the most productive agricultural land in the eastern/western areas of the two states.

The Towns are generally old mill towns that have lost most of their industrial bases. Higher paying jobs have been replaced generally with lower paying wages. As a result, most of the towns are fairly depressed, economically. The exceptions are Brattleboro to the south and the northernmost section to the north in the town of Hartford.

Brattleboro retains a substantial industrial base and is located closer to southern New England. Hartford is located at the confluence of Interstates 91 and 89, which makes it a logical place at which to locate a distribution center serving central Vermont and New Hampshire. The northern terminus of the corridor is also anchored by Dartmouth College and its Medical Center in Lebanon and Hanover, located in New Hampshire.

The corridor is located in both states at various points and, therefore, sales are generally drawn from both states, given their close proximity. Values decrease substantially from Brattleboro to Bellows Falls and stay low until White River Junction, which features the highest prices. Prices decrease by roughly 50% from Brattleboro though Bellows Falls continuing to Claremont. North of Claremont, prices begin to rise approaching White River Junction.

Purpose of Appraisal

The purpose of the appraisal is to estimate the market value of the fee simple interest in the three segments constituting the subject property as of August 27, 2014, the date the property was last inspected.

Market Value

We have been retained to estimate the market value of the three segments constituting the subject property. Market value is defined by the Office of the Comptroller of the Currency under 12 CFR, Part 34, Sub-part C – Appraisals, 34.42 Definitions (g), as:

“The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

Buyer and seller are typically motivated;

Both parties are well informed or well advised, and acting in what they consider their own best interests;

A reasonable time is allowed for exposure in the open market;

Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,

The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”

Real Property Interest Being Appraised

The property rights appraised are the fee simple interest. Fee Simple Interest is most recently defined by the Appraisal Institute as:

Fee Simple Interest

“An absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the government powers of taxation, eminent domain, police power and escheat.”

Note: It is an extraordinary assumption in this appraisal that the property is held in fee simple title. Regardless, the highest and best use of the subject property is as a corridor and the property owners/users enjoy perpetual, unencumbered operating rights that are tantamount to fee simple title. Thus, the extraordinary assumption has little, if any, impact on the market value of the property.

Client, Intended User and Intended Use

The client and intended user of this assignment is New England Central Railroad. The intended use is to assist with trackage rights agreement negotiations.

Effective Date of Value, Inspection Date and Date of Report

The effective date of value is August 27, 2014, which is the date the property was inspected. The date of the report is September 24, 2014

Current Ownership and History

The appraiser was not provided with title information. It is our understanding that the property is owned by New England Central Railroad. To the best of our knowledge there have been no conveyances of the subject property within the three-year period immediately preceding the effective date of value rendered herein.

Extraordinary Assumptions and Hypothetical Conditions

Extraordinary Assumptions

Extraordinary assumptions are most recently defined in the Uniform Standards of Professional Appraisal Practice as:

“...an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser’s opinions or conclusions.”

Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. The use of extraordinary assumptions can have an effect on the concluded value(s) presented herein.

This appraisal employs the following extraordinary assumptions:

It is an extraordinary assumption in this appraisal that the property is held in fee simple title. Regardless, the highest and best use is as a corridor and the property owners/users enjoy, perpetual, unencumbered operating rights tantamount to fee simple title. Thus the extraordinary assumption has little, if any, impact on the market value of the property.

Hypothetical Conditions

Hypothetical conditions are defined in the Uniform Standards of Professional Appraisal Practice as:

“...a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of the analysis.”

Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in the analysis.

This appraisal employs the following hypothetical conditions: None

Scope of Work

The scope of this appraisal involves an inspection of the subject property and its surrounding environs and an investigation of market evidence as it relates to the valuation of the appraised

property. Valuation Maps provided to the appraiser formed the basis of the property description. Three appraisal firms provided the appraiser with land sales and or ad hoc consulting services: Powers Smith & Associates, Inc. in Keene, New Hampshire; Everett Real Estate Services, Inc. in Brattleboro, Vermont and Model Appraisal Services in West Lebanon, New Hampshire.

Transportation corridors represent a special purpose-type property due to the unique nature of their use. A transportation corridor is most recently defined by the Appraisal Institute, as:

“A strip of land used for transportation or transmission purposes (e.g., rail, highway, power, information, slurries, liquids). ”

A transportation corridor may be used for public or private transportation, utility lines and recreational uses. Nationwide, many of the transportation corridors originally acquired for railroad use have been converted to alternative uses as time, technology and needs have evolved. Common alternative corridor uses include gas, fuel, or oil pipelines, fiber optic networks, electric lines, coal slurry lines, cable television lines, water, sewer and storm water lines, telephone lines, cellular, microwave and satellite tower sites and recreational facilities, such as linear parks for biking and jogging trails. Many of these alternative uses may already coexist within the existing railroad right of way.

Corridor Valuation is most recently defined by the Appraisal Institute as:

“The process of estimating value associated with rights to corridor real estate. Valuation approaches may include methods such as the across the fence method, sales comparison, the alternate route (cost avoidance) approach and estimation of a net liquidation value.”

Across the Fence (ATF) Method and Value are most recently defined by the Appraisal Institute as:

“Across the Fence (ATF) Method; a land valuation method often used in the appraisal of corridors. The ATF Method is used to develop a value opinion based on comparison to abutting land.”

Across the Fence (ATF) Value; in corridor valuation, a value opinion based on comparison with adjacent lands including the consideration of adjustment factors such as rights conveyed, and location.”

The ATF valuation method is based on the premise that land constituting a corridor should be worth at least as much as the land through which it passes. Under this methodology, the corridor is typically divided into “appraisal parcels” or segments of similar utility, based on the adjacent land use. The value of a typical adjacent parcel is then applied to that portion of the corridor to arrive at market value. This method has been used to develop right of way valuations since the early 1900s. The ATF valuation method is the commonly acceptable and widely used method in reaching price agreement by public agencies, private transportation companies and utilities acquiring rights of way.

Once an ATF value has been established and based on the highest and best use of the corridor, the valuation process includes a corridor valuation or a net liquidation valuation (NLV).

A “corridor factor” is most recently defined by the Appraisal Institute, as:

“In corridor valuation, the ratio of the market value (or market price) of a corridor to the corridor’s across the fence value. Sometimes called an *enhancement factor* or *continuity factor*.”

A “net liquidation value” (NLV) is most recently defined by the Appraisal Institute, as:

“In the valuation of transportation/communications corridors, the current appraised market value of such properties for other than rail transportation (or other transportation/communication) purposes, less all costs of dismantling and disposition of improvements necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulation.”

If the highest and best use of the corridor is for non-rail use or if it is abandoned, then the corridor is often valued based on the Surface Transportation Board’s (STB’s) guidelines for determining net liquidation value. Included in the STB’s valuation guidelines is the determination of title. Value is only assigned to land that a railroad holds in the STB’s definition of marketable title. Specifically, value only is assigned to land that was granted to a railroad through warranty or grant deed, quitclaim without reversion, those with no record and limited title. The last two may have less value due to the loss resulting from a defect of title. The parcels granted through the various Acts of Congress and easements granted for railroad purposes only are excluded. Thus, portions of a corridor may not have marketable title in the STB’s abandonment proceedings and the market value likely will be less than ATF value. Once an ATF has been established in connection with the marketable parcels, a discount factor, if appropriate, is then applied to the ATF value to arrive at a Liquidation Value.

In this case, the highest and best use of the property is continued corridor use. Thus, the ATF and Corridor Valuation Methodologies are used in this appraisal.

Exposure and Marketing Time

Exposure Time is defined in the Uniform Standards of Professional Appraisal Practice as:

“...estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.”

"Exposure Time" is a retrospective opinion based on an analysis of past events assuming a competitive and open market. "Marketing Time" is forward looking.

Current appraisal guidelines require an estimate of a reasonable time period in which the subject property could be brought to market and sold. This reasonable timeframe can either be examined historically as noted above with the exposure time or prospectively. On a prospective basis, the term Marketing Time is most often used. The Exposure/Marketing Time is a function of price, time and use. It is not an isolated estimate of time alone. It is different for various types of real estate and under various market conditions.

We have concluded that an Exposure/Marketing Time of twelve months or less would be considered reasonable for the subject property. This Exposure/Marketing Time reflects current economic conditions, current real estate investment market conditions, the terms and availability of financing for real estate acquisitions as well as property and market-specific factors. It assumes that the subject property is (or has been or would be) actively and professionally marketed. The Exposure/Marketing Time would apply to all valuation premises included in this report.

Competency

Mr. Anglemyer brings 25 years railroad right of way corridor valuation experience to this assignment, as is common practice on such projects, and retained local consultants to provide local sale data and expertise regarding valuation in the region. No steps to competency were required in the performance of this assignment.

SALES COMPARISON APPROACH – ATF VALUATION

ATF Methodology

The first step in this analysis is to determine what the land located adjacent to the corridor is worth. Following the appraiser's inspection of the right of way, review of valuation or appraisal maps, zoning maps, aerial maps, market information and selection of the most appropriate valuation segments or appraisal parcels, the individual segments/appraisal parcels were valued using the traditional Sales Comparison Approach.

The Sales Comparison Approach is a method of comparing similar properties to the subject to yield an indication of value. Often called the Market Data Approach, this method represents an interpretation of the reactions of typical purchasers in the market. Basic to this approach is the principle of substitution, implying that a prudent person will pay no more to buy a property than it will cost to buy a comparable, substitute property.

This approach estimates the value of designated appraisal parcels or segments through direct comparison with other properties which have sold in the market area in the recent past and share similar utility. In this valuation analysis, the appraiser reviewed all rural, residential, commercial and industrial sales that occurred in the region since 2009 and further back in some rare cases but most of the sales data occurred between 2011 and 2014. We reviewed hundreds of land sale transactions. Ultimately, 97 verified land transactions were used to estimate the value of the appraisal segments. The sum of those values is what is referred to as the “across the fence” (ATF) value.

Sales Summary tables are located on the following pages. These are the most comparable sales used to facilitate direct comparison with the land located adjacent to the corridor. The unit of comparison is the price per acre in all cases. The sales in each table are presented from south to north in accordance to how the corridor real estate was inspected and appraised. Detailed sale information is retained in the appraiser's file.

[REDACTED MATERIAL]

ATF Value Conclusion

Based on an inspection of the property, the sales researched in this assignment, and discussions with many knowledgeable appraisers, brokers and market participants, the estimated ATF value of the subject property, via the ATF Valuation Methodology of the Sales Comparison Approach is as shown below:

	<u>South Segment</u>	<u>Middle Segment</u>	<u>North Segment</u>	<u>Total</u>
ATF Value:	\$1,120,000	\$4,680,000	\$4,660,000	\$10,460,000

CORRIDOR VALUATION

Introduction

While land represents the principal cost component of a transportation corridor, it is not the only component of value in a transportation corridor. Consideration also must be given to the supply and demand for a preassembled, connected and contiguous parcel permitting the user easy access between Points A and B. To create a new transportation corridor, one would need to pay for land, improvements, severance damages, relocation assistance, right of way clearance, legal and condemnation litigation fees and direct and indirect project and overhead costs, including environmental impact and mitigation. Advantages in buying an existing corridor include the amount of time and money the buyer would have had to incur to acquire and construct a replacement corridor. Illustratively, depending on the regulatory and environmental characteristics in a given region, assemblage costs could be two, three, or four or more times the ATF value. Based upon the principle of substitution, a buyer would not be willing to pay a premium that would exceed the cost of acquiring a similar, existing right of way through adjacent areas.

The subject corridor is a unique, special purpose asset. There is no substitute property in the local market for it. It is part of a larger right of way that connects Montreal, Canada and southern New England. The mountainous nature of the surrounding, privately-owned land constrains alternate corridor development. The corridor averages width of approximately 110 feet and any alternate use likely would need to conform to the existing corridor use. The special purpose nature of the subject is to host existing freight and passenger freight rail services and perhaps other linear right of way uses as borne by its present use.

An ATF Factor indicates whether a buyer paid the same, more or less than the ATF value of the corridor. Since the Highest and Best Use of the subject property is continued use as a corridor, market sales of existing transportation corridors were analyzed. By comparing the mathematical ratios between sales prices and ATF values calculated and employed in other transportation right of way corridor sales that have a similar Highest and Best Use as the subject property, the ATF Factor was established. The price per mile, acre or square foot is less relevant as it does not consider the dynamics of the local ATF values and varying economic and physical characteristics of the sales.

We have included six sales to facilitate comparison with the subject corridor. The sales are summarized in a table shown on the following page entitled Corridor Sales Summary. An analysis of the sales follows the Corridor Sales Summary table.

Corridor Sales Summary Table

Sale No.	Buyer Seller Location	Sale Date	Sale Price	Length (Miles)	\$/Mile	ATF Factor	Intended Use
1	State of Florida Trust for Public Land Gilchrist, Florida	Dec-10	\$2,787,200	9.33	\$298,735	1.25	Nature Coast Trail
2	Denver RTC Union Pacific Railroad Company Adams, Wild and Boulder Counties	Jun-09	\$117,637,821	32.70	\$3,597,487	1.02	Land Banking (most); Commuter Rail (some)
3	Sarasota County Trust for Public Land Sarasota, Florida	Dec-04	\$11,600,000	12.40	\$935,484	1.12	Corridor Preservation
4	Santa Clara Valley Transit Authority Union Pacific Santa Clara County/Metro/Suburban, CA	Dec-02	\$80,000,000	14.50	\$5,517,241	0.88	Mass Transit
5	Utah Transit Authority Union Pacific Railroad Salt Lake Metro/Suburban/Rural, UT	Sep-02	\$103,000,000	166.00	\$620,482	0.71	Mass Transit
6	Sacramento Regional Transit District Union Pacific Railroad Sacramento/Metro, CA	Dec-99	\$8,400,000	6.10	\$1,377,049	1.23	Rapid Transit/Freight
Range							
Low						0.71	
High						1.25	
Average						1.04	
Median						1.07	
Conclusion						1.00	

Corridor Sales Analysis

Our sales search focused on large and more rural metropolitan corridors that were acquired for existing or future freight and public transportation uses. Corridor sales occur infrequently. As a result, most are fairly dated. Nonetheless, the time and location (barring extreme rural or urban areas) are not as important as the ratio and the highest and best use in the sales depicted. All of the selected sales had corridor highest and best uses like the subject. The following discussion addresses the subject property, the sales summarized in the table above and elements of comparison regarding corridors.

Market Conditions

The sales data does not conclusively show an upward trend with regards to higher ATF Factors over time and direct comparison is difficult because of the paucity of data and vast differences between the sales. However, discussions with market participants revealed that many corridor buyers are willing to pay greater premiums for assembled corridors. Many of the corridors that sold at substantial discounts to ATF in the past have been absorbed in the market; there simply are not many intact corridors remaining in the area. Many of these corridors have been taken out of service or have become recreational trails. These sales have resulted in a relatively low supply of assembled corridors. Perhaps most importantly, as the railroad freight industry has consolidated and less profitable carriers have been acquired, fewer and more financially stable sellers exist and those that remain are holding out for higher prices or have simply not sold similar property. At the same time, railroad companies have become more profitable and will continue to be a cost effective means of distribution with increasing petroleum prices. The vast majority of the subject land is located in lower priced rural areas. Lower priced land can yield greater profitability and higher corridor factors. Conversely, higher priced land can render rail operations infeasible and substantially limit profitability due to the higher capital investment. In general, given the same shipping demand, railroads can pay higher corridor factors for right of ways with lower priced rural land like the subject. In essence, transportation corridor market conditions are favoring the seller, though no specific upward adjustments are warranted yet or made.

Elements of Comparison

For the reasons noted in the Corridor Valuation introduction subsection, the subject is considered to be unique and provides special benefits. While value is not necessarily based on cost, the appraised property avoids the substantial cost of creating a similar corridor with the same endpoints or concentric residential density. The existing density is moderately high in the Town Centers and Villages but the vast majority of the land is located in less densely populated, rural areas. Demand is evident through the existing freight and passenger rail uses but the majority of the area is experiencing sluggish economic growth. The subject connects with active freight and public transportation rail networks. The existing and future residential base provides demand for public interest corridor uses but at relatively low levels. For the above noted reasons, a neutral (not negative or positive factor to the ATF Value) corridor factor is warranted.

Connectivity has a big impact on the corridor factor. The larger corridor connects Canada and New England and passes through multiple towns but most host small populations, which warrant a neutral corridor factor.

The market does not have a substitute property available, suggesting a positive factor. Nonetheless, other than in the northern area, most of the area is depressed economically, manifesting low levels of demand and growth. A neutral corridor factor is warranted based on these attributes also.

Based on our estimates, the corridor averages around 110 feet. Segments located on steep embankments along the Connecticut River require additional land for slope and drainage purposes and have

substantially wide widths. This is a fairly wide corridor permitting multiple corridor uses. Widths in excess of 100 feet, or less where demand and utility are very low, can be discounted fairly heavily. This warrants a negative factor.

The subject is fairly straight, permitting faster speeds and reduced maintenance costs. It is located in sensitive environmental lands close to the Connecticut River on embankments, which involved a substantial amount of earthwork and cost avoidance from a buyer's perspective. These characteristics warrant a positive factor.

The most important element of comparison is the ATF factor. The six sales provide ATF Factors of 0.71 to 1.25. For the reasons noted above, the subject should command the midpoint of the corridors or 1.00 as a point estimate.

Corridor Valuation Summary

Based upon the preceding discussion, anecdotal evidence, the six corridor sales and our analysis, the appraisers applied a corridor factor of 1.00 to the previously estimated aggregate ATF value of the respective segments, which results in Corridor Values, shown below:

	<u>South Segment</u>	<u>Middle Segment</u>	<u>North Segment</u>	<u>Total</u>
ATF Value:	\$1,120,000	\$4,680,000	\$4,660,000	\$10,460,000
Factor:	1.00	1.00	1.00	1.00
Value:	\$1,120,000	\$4,680,000	\$4,660,000	\$10,460,000

ASSUMPTIONS AND LIMITING CONDITIONS

1. Unless otherwise specifically noted in the body of the report, it is assumed that title to the property or properties appraised is clear and marketable and that there are no recorded or unrecorded matters or exceptions to title that would adversely affect marketability or value. Gary R. Anglemyer & Associates, LLC is not aware of any title defects nor has it been advised of any unless such is specifically noted in the report. However, Gary R. Anglemyer & Associates, LLC has not examined title and makes no representations relative to the condition thereof. Documents dealing with liens, encumbrances, easements, deed restrictions, clouds and other conditions that may affect the quality of title have not been reviewed. Insurance against financial loss resulting in claims that may arise out of defects in the subject's title should be sought from a qualified title company that issues or insures title to real property.
2. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraisers. Gary R. Anglemyer & Associates, LLC has no knowledge of the existence of such materials on or in the property. Gary R. Anglemyer & Associates, LLC, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation, contaminated groundwater or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The Client is urged to retain an expert in this field, if desired.

Gary R. Anglemyer & Associates, LLC has inspected, as thoroughly as possible by observation, the land; however, it was impossible to personally inspect conditions beneath the soil. Therefore, no representation is made as to these matters unless specifically considered in the appraisal.

3. It is assumed that all factual data furnished by the Client, property owner, owner's representative, or persons designated by the Client or owner to supply said data are accurate and correct unless otherwise specifically noted in the appraisal report. Unless otherwise specifically noted in the appraisal report, Gary R. Anglemyer & Associates, LLC has no reason to believe that any of the data furnished contain any material error. Information and data referred to in this paragraph include, without being limited to, numerical street addresses, lot and block numbers, Assessor's Parcel Numbers, land dimensions, square footage area of the land, dimensions of the improvements, gross building areas, net rentable areas, usable areas, unit count, room count, rent schedules, income data, historical operating expenses, budgets, and related data. Any material error in any of the above data could have a substantial impact on the conclusions reported. Thus, Gary R. Anglemyer & Associates, LLC reserves the right to amend conclusions reported if made aware of any such error. Accordingly, the Client should carefully review all assumptions, data, relevant calculations, and conclusions within 30 days after the date of delivery of this report and should immediately notify Gary R. Anglemyer & Associates, LLC of any questions or errors.
4. The date of value to which any of the conclusions and opinions expressed in this report apply, is set forth in the Letter of Transmittal. Further, that the dollar amount of any value opinion herein rendered is based upon the purchasing power of the American Dollar on that date. This appraisal is based on market conditions existing as of the date of this appraisal. Under the terms of the engagement, we will have no obligation to revise this report to reflect events or conditions that occur subsequent to the date of the appraisal. However, Gary R. Anglemyer & Associates, LLC will be available to discuss the necessity for revision resulting from changes in economic or market factors affecting the subject.
5. Gary R. Anglemyer & Associates, LLC assumes no private deed restrictions, limiting the use of the subject in any way.
6. Unless otherwise noted in the body of the report, it is assumed that there are no mineral deposits or subsurface rights of value involved in this appraisal, whether they be gas, liquid, or solid. Nor are the rights associated with extraction or exploration of such elements considered unless otherwise stated in this appraisal report. Unless otherwise stated it is also assumed that there are no air or development rights of value that may be transferred.

7. Gary R. Anglemyer & Associates, LLC is not aware of any contemplated public initiatives, governmental development controls, or rent controls that would significantly affect the value of the subject.
8. The estimate of Market Value, which may be defined within the body of this report, is subject to change with market fluctuations over time. Market value is highly related to exposure, time promotion effort, terms, motivation, and conclusions surrounding the offering. The value estimate(s) consider the productivity and relative attractiveness of the property, both physically and economically, on the open market.
9. Any cash flows included in the analysis are forecasts of estimated future operating characteristics are predicated on the information and assumptions contained within the report. Any projections of income, expenses and economic conditions utilized in this report are not predictions of the future. Rather, they are estimates of current market expectations of future income and expenses. The achievement of the financial projections will be affected by fluctuating economic conditions and is dependent upon other future occurrences that cannot be assured. Actual results may vary from the projections considered herein. Gary R. Anglemyer & Associates, LLC does not warrant these forecasts will occur. Projections may be affected by circumstances beyond the current realm of knowledge or control of Gary R. Anglemyer & Associates, LLC.
10. Unless specifically set forth in the body of the report, nothing contained herein shall be construed to represent any direct or indirect recommendation of Gary R. Anglemyer & Associates, LLC to buy, sell, or hold the properties at the value stated. Such decisions involve substantial investment strategy questions and must be specifically addressed in consultation form.
11. Unless otherwise noted in the body of this report, it is assumed that no changes in the present zoning ordinances or regulations governing use, density, or shape are being considered. The property is appraised assuming that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report is based, unless otherwise stated.
12. This study may not be duplicated in whole or in part without the specific written consent of Gary R. Anglemyer & Associates, LLC nor may this report or copies hereof be transmitted to third parties without said consent, which consent Gary R. Anglemyer & Associates, LLC reserves the right to deny. Exempt from this restriction is duplication for the internal use of the Client-addressee and/or transmission to attorneys, accountants, or advisors of the Client-addressee. Also exempt from this restriction is transmission of the report to any court, governmental authority, or regulatory agency having jurisdiction over the party/parties for whom this appraisal was prepared, provided that this report and/or its contents shall not be published, in whole or in part, in any public document without the express written consent of Gary R. Anglemyer & Associates, LLC which consent Gary R. Anglemyer & Associates, LLC reserves the right to deny. Finally, this report shall not be advertised to the public or otherwise used to induce a third party to purchase the property or to make a "sale" or "offer for sale" of any "security", as such terms are defined and used in the Securities Act of 1933, as amended. Any third party, not covered by the exemptions herein, who may possess this report, is advised that they should rely on their own independently secured advice for any decision in connection with this property. Gary R. Anglemyer & Associates, LLC shall have no accountability or responsibility to any such third party.
13. Any value estimate provided in the report applies to the entire property, and any pro ration or division of the title into fractional interests will invalidate the value estimate, unless such pro ration or division of interests has been set forth in the report.
14. The maps, plats, sketches, graphs, photographs and exhibits included in this report are for illustration purposes only and are to be utilized only to assist in visualizing matters discussed within this report. Except as specifically stated, data relative to size or area of the subject and comparable properties has been obtained from sources deemed accurate and reliable. None of the exhibits are to be removed, reproduced, or used apart from this report.
15. No opinion is intended to be expressed on matters which may require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers. Values and opinions expressed presume that environmental and other governmental restrictions/conditions by applicable agencies have been met, including but not limited to seismic hazards, flight patterns, decibel levels/noise envelopes, fire hazards, hillside ordinances, density, allowable uses, building codes, permits,

licenses, etc. No survey, engineering study or architectural analysis has been made known to Gary R. Anglemeyer & Associates, LLC unless otherwise stated within the body of this report. If the consultant has not been supplied with a termite inspection, survey or occupancy permit, no responsibility or representation is assumed or made for any costs associated with obtaining same or for any deficiencies discovered before or after they are obtained. No representation or warranty is made concerning obtaining these items. Gary R. Anglemeyer & Associates, LLC assumes no responsibility for any costs or consequences arising due to the need, or the lack of need, for flood hazard insurance. An agent for the Federal Flood Insurance Program should be contacted to determine the actual need for Flood Hazard insurance.

16. Acceptance and/or use of this report constitutes full acceptance of the Assumptions and Limiting Conditions and special assumptions set forth in this report. It is the responsibility of the Client, or Client's designees, to read in full, comprehend and thus become aware of the aforementioned contingencies and limiting conditions. Neither the Appraiser nor Gary R. Anglemeyer & Associates, LLC assumes responsibility for any situation arising out of the Client's failure to become familiar with and understand the same. The Client is advised to retain experts in areas that fall outside the scope of the real estate appraisal/consulting profession if so desired.
17. Gary R. Anglemeyer & Associates, LLC assumes that the subject analyzed herein will be under prudent and competent management and ownership; neither inefficient nor super-efficient.
18. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined and considered in the appraisal report.
19. All areas and dimensions furnished are presumed to be correct. It is further assumed that no encroachments to the realty exist.
20. The Americans with Disabilities Act (ADA) became effective January 26, 1992. Notwithstanding any discussion of possible readily achievable barrier removal construction items in this report, Gary R. Anglemeyer & Associates, LLC has not made a specific compliance survey and analysis of this property to determine whether it is in conformance with the various detailed requirements of the ADA. It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the property is not in compliance with one or more of the requirements of the ADA. If so, this fact could have a negative effect on the value estimated herein. Since Gary R. Anglemeyer & Associates, LLC has no specific information relating to this issue, nor is Gary R. Anglemeyer & Associates, LLC qualified to make such an assessment, the effect of any possible non-compliance with the requirements of the ADA was not considered in estimating the value of the subject.
21. Client shall not indemnify Appraiser or hold Appraiser harmless unless and only to the extent that the Client misrepresents, distorts, or provides incomplete or inaccurate appraisal results to others, which acts of the Client proximately result in damage to Appraiser. The Client shall indemnify and hold Appraiser harmless from any claims, expenses, judgments or other items or costs arising as a result of the Client's failure or the failure of any of the Client's agents to provide a complete copy of the appraisal report to any third party. In the event of any litigation between the parties, the prevailing party to such litigation shall be entitled to recover from the other reasonable attorney fees and costs.
22. The report is for the sole use of the Client; however, Client may provide only complete, final copies of the appraisal report in its entirety (but not component parts) to third parties who shall review such reports in connection with loan underwriting or securitization efforts. Appraiser is not required to explain or testify as to appraisal results other than to respond to the Client for routine and customary questions. Please note that our consent to allow an appraisal report prepared by Gary R. Anglemeyer & Associates, LLC or portions of such report, to become part of or be referenced in any public offering, the granting of such consent will be at our sole discretion and, if given, will be on condition that we will be provided with an indemnification Agreement and/or Non-Reliance letter, in a form and content satisfactory to us, by a party satisfactory to us. We do consent to your submission of the reports to rating agencies, loan participants or your auditors in its entirety (but not component parts) without the need to provide us with an indemnification Agreement and/or Non-Reliance letter.
23. The Valuation Maps provided by the client were used as the primary basis for the description of the subject property. The area calculations presented herein are for purposes of reasonable analysis and

should not be relied upon as a legal description. The appraiser is not a certified land surveyor or engineer.

24. It is an extraordinary assumption in this appraisal that the property is held in fee simple title. Regardless, the highest and best use is as a corridor and the property owners/users enjoy perpetual, unencumbered operating rights tantamount to fee simple title. Thus, the extraordinary assumption has little, if any, impact on the market value of the property.

CERTIFICATION OF THE APPRAISER

I certify to the best of our knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report and have no personal interest with respect to the parties involved.

I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the Client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal institute.

Gary R. Anglemeyer, MAI has made a personal inspection of the property that is the subject of this report.

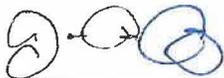
Three appraisal firms provided the appraiser signing this certification with land sales and consulting services: Powers Smith & Associates, Inc. in Keene, Everett Real Estate Services, Inc. in Brattleboro and Model Appraisal Services in West Lebanon.

The appraiser has performed no other services, as an appraiser or in any other capacity regarding the subject property within the three year period immediately preceding the date of acceptance of this assignment.

This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.

The use of this report is subject to the requirements of the Appraisal institute relating to review by its duly authorized representatives.

As of the date of this report, Gary R. Anglemeyer, MAI has completed the continuing education program for Designated Members of the Appraisal institute.



Gary R. Anglemeyer, MAI

Qualifications of Gary R. Anglemyer, MAI

Mr. Anglemyer has extensive real estate, business valuation and intermediary service experience in a wide range of complex special purpose and conventional property types.

Professional Experience

Gary R. Anglemyer & Associates, LLC

2012 to Present

President – Baltimore, Maryland

Commercial Real Estate Advisors

Notable projects include:

Railroad right of way corridor projects include: Caton Loudon Railroad in Baltimore City and County for Bargain Sale/Charitable Contribution/Rails to Trails (transaction closed in 2012); Charlotte Area Transportation System's Blue line Extension (transaction closed in 2012 with FTA approval); Union Pacific's Hollister Branch in San Benito County, CA (transaction closed in 2013); The Napa Valley Wine Train (the State of CA is acquiring a partial acquisition for road widening, condemnation format used to appraise the partial acquisition, transaction in negotiations); other corridors in North and South Carolina, San Bernardino, CA and Cincinnati, OH.

Appraised the Norfolk Southern Intermodal Facility in Downtown Charlotte, NC
Aberdeen Thruway Project; appraised 30 properties using condemnation valuation guidelines for State Highway Administration (SHA), transactions currently under negotiations and most have settled.

Grubb & Ellis Landauer Valuation Advisory Services, LLC

2011 to 2012

Senior Appraiser – Baltimore, Maryland

Grub & Ellis Gary R. Anglemyer & Associates, LLC, now Newmark Grubb Knight Frank, was a national valuation advisory business with approximately 150 appraisers nationwide.

Cassidy Turley – Commercial Real Estate Services

2006 to 2010

Senior Appraiser - Baltimore, Maryland

Cassidy Turley is the fourth largest full service commercial real estate firm in the U.S. Notable projects include:

U.S. Department of State - Mr. Anglemyer was the Project Director overseeing the assignment, completion and review of real estate appraisal and consulting assignments for the Department of State – projects include anything anywhere in the world.

IRS - Washington DC Façade Easement – Mr. Anglemyer was the Project Manager for the IRS involving a comprehensive study of residential façade easements and their impact on residential property values in Washington DC's Historic Districts.

Government Properties Trust - a \$630 Million dollar REIT comprised of 21 Federally leased special purpose properties located throughout the United States for merger and acquisition purposes

Dallas Area Rapid Transit - Appraised 50 miles of railroad right of way for an inter-agency transaction

Westholm & Associates - Appraisers and Consultants

2002 to 2006

Senior Appraiser - Annapolis, Maryland

Responsible for the appraisal of general commercial real estate in the Mid-Atlantic Region; notable projects include:

Park Place - a \$270 million mixed-use project in Downtown Annapolis for bond financing.
Valuation and consulting services for the disposition of Constellation Energy's Westport and

Gould Street waterfront power plants in Baltimore City.

Crossroads; a 1,000-acre industrial subdivision in Baltimore County.

Arthur Gimmy international - Appraisers and Consultants

1988 to 2002

Director - San Francisco, California

Responsible for the appraisal of general commercial real estate in California and the western States Region - notable projects include:

The ultimate settlement of an ongoing condemnation case regarding land acquisitions for military bases dating back to World War II for the Department of Justice in Guam.

Successfully represented several San Francisco Bay Area agencies and Joint Powers Boards with the acquisition and funding of several railroad right of ways for public transportation.

Successfully settled several complex litigation cases involving contaminated and stigmatized sites.

Appraised approximately fifty multi-sport recreational facilities in California, which led to niche dual agency brokerage of several clubs and consulting work regarding the formation of a real estate investment trust.

Provided a buyer with a plan to reasonably acquire and profitably restructure a \$40 million misguided golf course community in California.

Federal Reserve Bank, Science Management Corporation and Proudfoot Consulting

1985 to 1988

Management Consultant/Business Analyst - New York City and Pittsburgh, PA

Conducted business analysis and management consulting services for a wide range of industries and institutional clients throughout the U.S. and Canada

Education

Johnson & Wales University
Providence, Rhode Island

Baccalaureate of Science - Business Management **1984**
Completed all educational requirements for the MAI (Member of the Appraisal institute) Designation, California and Maryland State Certified General Real Estate Appraiser license and the California State Real Estate Broker license

Professional Associations

Designated Member of the Appraisal institute
Maryland Certified General Real Estate Appraiser No. 20646
Board of Directors; Maryland Chapter of the Appraisal institute 2011-2013
Approved Advisor to Candidates for MAI Designation

Representative Railroad Right of Way Appraisals

UPRR Hollister Branch – San Benito County; Appraised the Corridor Value for the buyer to assist with private financing; transaction closed.

Port Jersey Railroad – Port Jersey Marine Terminal, NJ; Appraised the ATF and Corridor value of a short line that connected the Port Jersey Marine Terminal with the main railroad line. The Port Authority of NY and New Jersey acquired the property based on our appraised value.

City of Charlotte – Charlotte Area Rapid Transit System – Appraised the ATF and Corridor value of a portion of an existing railroad right of way that was going to be used in part for the Blue Line Extension between the City of Charlotte and the University of North Carolina; the transaction closed in 2012. The appraisal met Federal Transportation Agency (FTA) standards.

Rocky Mount and Western Railroad Co. Inc. properties in Nash County, North Carolina to facilitate an Offer of Financial Assistance (OFA) by the State of North Carolina using Surface Transportation Board (STB) valuation regulations (Net Liquidation Value) in 2005.

Southern Railroad Company of New Jersey, Atlantic City, Camden County; Appraised the Net Liquidation Value of an existing corridor in Southern New Jersey for the STB.

Dallas Area Rapid Transit Estimated the Corridor Value of five separate corridors in the Dallas Fort Worth area for interagency transfer in 2006 and 2009. Negotiations are in progress.

Santa Cruz County Regional Transportation Commission Appraised a 31-mile Southern Pacific, now Union Pacific-owned right of way in Santa Cruz County in 1995, 2002, 2008, and 2009. Mr. Anglemyer also recently studied the existing rents and identified prospective lease income of the corridor property. This transaction closed in 2009.

City of Whittier – Los Angeles County Estimated the value of a portion of an abandoned Union Pacific railroad right of way called the La Habra Branch in 2007. Said right of way is encumbered with a gas pipeline and was being studied for the purpose of implementing a pedestrian trail.

Grafton and Upton Railroad Company Estimated the across-the-fence and net liquidation value of the land assets of a 15.4-mile rail line between North Grafton and Upton, Massachusetts as part of a larger effort to assist in the disposition of the assets.

City of Burlington, Vermont; Estimated the value of a leased short line operating corridor for purposes of continued freight service and future public transportation, land banking and recreational trail purposes.

Santa Clara Valley Transportation Authority Appraised more than 100 miles of several Union Pacific corridors in the Silicon Valley area of California. Responsible for valuation under various scenarios and for the valuation of the improvements and going-concern, which were prepared by subcontractors under his supervision

Peninsula Joint Powers Board Appraised the following Southern Pacific, now Union Pacific, right of ways: San Francisco-San Jose, San Jose-Gilroy, Dumbarton Line and various other freight lines. Transactions went to closing.

Utah Transit Authority/Union Pacific Appraised the fee, easement and other property rights acquisition/dispositions involving multiple segments collectively comprised of more than 166 miles of Union Pacific right of way in the Salt Lake Metropolitan Area. This \$185 Million transaction closed in 2002.

Golden Gate Bridge Highway and Transit District; Marin, Mendocino, Napa and Sonoma Counties Completed an appraisal of Southern Pacific right of way in the following corridors: Larkspur-Novato, Novato-Napa, Novato-Healdsburg and Willits-Healdsburg – the transactions closed.

Bay Area Rapid Transit (BART) District - Completed appraisal of right of way for BART between San Bruno and San Francisco International Airport for placement of an easement by Pacific Gas & Electric (PG&E)

U.S. Internal Revenue Service - Reviewed an appraisal of 162 miles of Southern Pacific right of way between Llano, Texas and Giddings, via Austin and several other corridor appraisals in the Northwestern U.S., which sold as “Bargain Exchanges” to government agencies or non-profit organizations.

Regional Transportation Commission of Southern Nevada - Reviewed an appraisal of Union Pacific's Las Vegas, Nevada Henderson Branch.

Los Angeles Department of Water and Power - Appraised 100 miles of railroad right of way in northeast Nevada

Alameda County Transportation Commission – Appraised a 21-mile portion of Union Pacific's Oakland Subdivision in CA that would have been part of an east/west line connecting the San Francisco Peninsula and the East Bay. Assignment involved project budget considerations for the Board of Directors.

**Estimated Annual Costs to
Maintain the Infrastructure
of the
New England Central Railroad**

**Prepared
by
R. L. Banks & Associates, Inc.**

October 27, 2014



**Estimated Annual Costs to Maintain the Infrastructure
of the
NEW ENGLAND CENTRAL RAILROAD
Between East Northfield, MA and White River Junction, VT**

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7	Northern Segment Estimated Annual Routine Maintenance of Way Expense Summary	

*Note: One set each for FRA Class 3 quality track and FRA Class 2 quality track

**Estimated Annual Costs to Maintain the Infrastructure
of the
New England Central Railroad
Between East Northfield, MA and White River Junction, VT**

Introduction

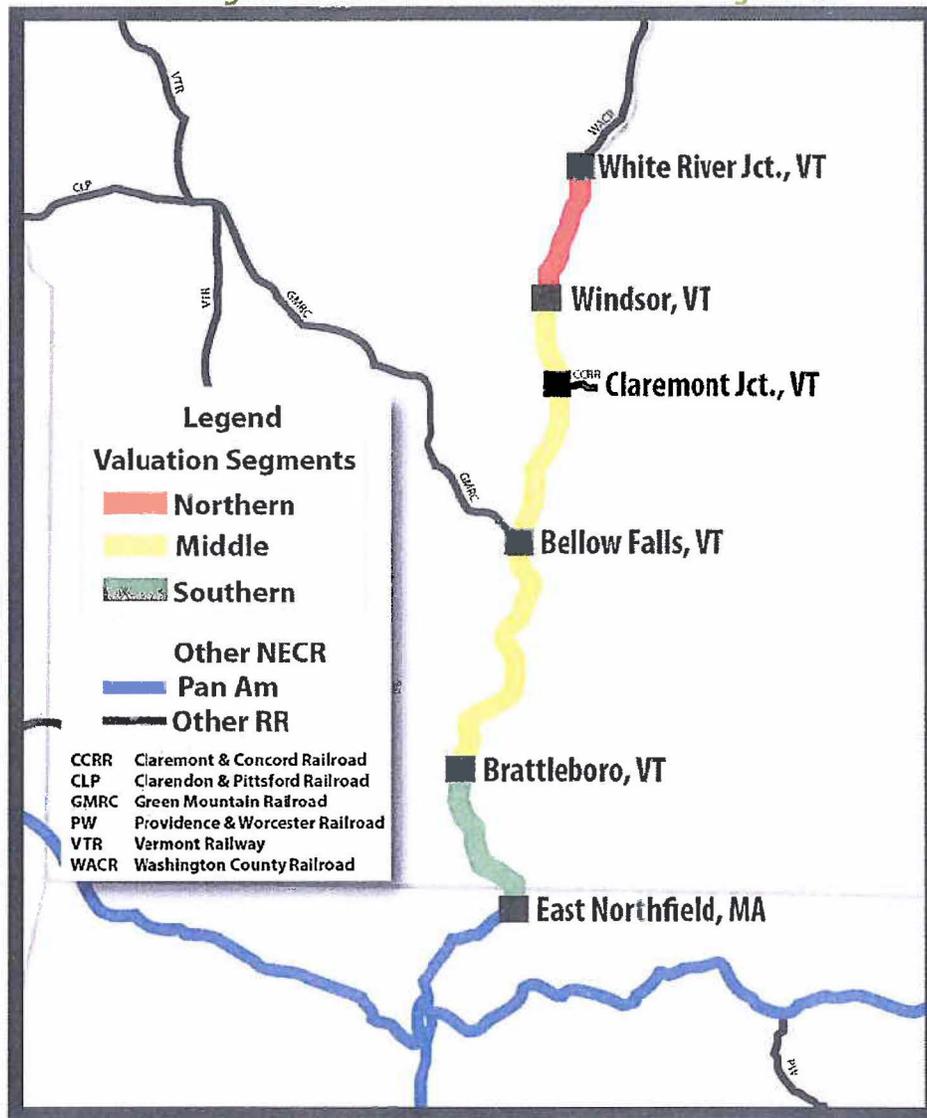
The New England Central Railroad (NECR) is a short line railroad operating 394 miles of track between New London, CT and Alburgh, VT. Formed in 1995 following the spinoff of the Central Vermont Railway from Canadian National, the railroad is currently a subsidiary of Genesee & Wyoming Inc. (G&W). RLBA was retained by NECR, among other things, to estimate the sustaining capital and routine infrastructure maintenance of way (MOW) expenses necessary to keep the line at FRA designated Class 3 and Class 2 quality track conditions on the 73 miles of the NECR between East Northfield, MA and White River Junction, VT. The results of this study will be used to determine fair market value trackage right rates to be charged to the Pan Am Railway, which operates over those 73 miles. As part of a previous task to appraise the railroad, RLBA separated the 73 miles into three separate segments based on their previous ownership. To remain consistent with RLBA's previous reports, this report uses the same segmentation, as defined below:

- **Southern Segment** - constituting 10.6 miles of NECR., connecting Brattleboro, Vermont and East Northfield, Massachusetts, which segment of railroad is subject to a trackage rights agreement with Pan Am Railways, now subject to renegotiation;
- **Middle Segment** - constituting 48.8 miles of NECR, connecting the north end of the Connecticut River Bridge in Windsor, Vermont and a point at Bridge Street in Brattleboro, Vermont, which segment is subject to a separate trackage rights agreement with Pan Am Railways, now subject to renegotiation and
- **Northern Segment** - constituting 13.4 miles of NECR, connecting Windsor and White River Junction ("Banks"), Vermont, which segment of railroad is subject to the same Trackage Rights Agreement with Pan Am Railways as in effect on the Southern Segment, now subject to renegotiation.

The above-described segments are illustrated in Map 1 on the following page.

The estimated annual MOW cost figures produced in this report are based on findings recorded during a physical inspection of the railroad which occurred on July 2, 2014, conducted by R.L. Meadows, Jr., P.E., RLBA's Director, Transportation Engineering. This report presents findings of the research and discusses the factors which influence the estimations.

Map 1
New England Central Railroad and Valuation Segments



Description of the Railroad

The 73 miles of the NECR inspected by RLBA runs between East Northfield, MA and White River Junction, VT. There are several junctions with other railroads along the line; Pan Am at East Northfield, MA, the Green Mountain Railroad (a subsidiary of the Vermont Railway) at Bellow Falls, VT, the Claremont & Concord Railroad at Claremont Junction, VT and the Washington Country Railroad (a subsidiary of the Vermont Railway) at White River Junction, VT.

Estimated Annual Maintenance Costs

RLBA was directed to provide estimated annual maintenance cost to maintain the above-described segments to Federal Railroad Administration Class 3 and Class 2 quality track. FRA track classes are federally regulated and designated track standards with associated maximum, permitted safe operating speeds of both freight and passenger trains, displayed below in Table 1. As one might expect, maintenance cost are generally higher at faster track classes.

Table 1
Federal Railroad Administration Track Quality Classes

Track Class	Maximum Speed (Freight)	Maximum Speed (Passenger)
Excepted	10	N/A
Class 1	10	15
Class 2	25	30
Class 3	40	60
Class 4	60	80
Class 5	80	90
Class 6	110	110

Source: Federal Railroad Administration

RLBA estimated the annual maintenance of way expenses to maintain Class 3 track to be \$3,089,773 on the three designated segments. RLBA estimated the annual maintenance of way expenses to maintain Class 2 track to be \$2,757,873 on the three designated segments. The costs per segment are summarized in Tables 2 and 3 below, as well as a summary of the fixed plant observed on the line in Table 4. Those estimations results in an average annual expense per track mile of \$35,911 if Class 3 track and \$32,053 if Class 2 track. A summary of the estimated costs and expenditures appear in Appendix One through Seven, with respect to each of the three segments.

Table 2
Summary Annual Estimated Maintenance of Way Costs, Class 3 Track

Segment	Maintenance Type	Amount
South	Program	\$365,450
South	Routine	\$334,124
Middle	Program	\$1,142,500
Middle	Routine	\$728,251
Northern	Program	\$272,650
Northern	Routine	\$246,798
	Total Program	\$1,780,600
	Total Routine	\$1,309,173
	Grand Total	\$3,089,773

Table 3
Summary Annual Estimated Maintenance of Way Costs, Class 2 Track

Segment	Maintenance Type	Amount
South	Program	\$295,150
South	Routine	\$334,124
Middle	Program	\$927,100
Middle	Routine	\$728,251
Northern	Program	\$226,450
Northern	Routine	\$246,798
	Total Program	\$1,448,700
	Total Routine	\$1,309,173
	Grand Total	\$2,757,873

Table 4
Summary of Fixed Plant Along the NECR

Track (miles):		
Main Track		71.93
Side Track		14.11
Total Track		86.04
Turnouts (number):		
Main Track Turnouts		22
Side Track Turnouts		16
Total Turnouts		38
Crossings (number):		
Main Track Public Crossings - Active		22
Main Track Public and Private Crossings - Passive		5
Main Track Farm Crossing - Passive		61
Total Grade Crossings		88
Bridges & Tunnels (lineal feet):		
Steel Girder		2,351
Steel Truss		905
Stone / Concrete		594
Tunnel		500
Total		4,350

Elements Comprising Estimated Annual Maintenance Costs

When producing estimated maintenance cost, RLBA generally organizes its approach and findings into three infrastructure maintenance activities:

- Rehabilitation;
- Program and
- Routine maintenance.

Rehabilitation

Rehabilitation includes repair and replacement of track and bridge components such as switch timbers, ties, rail, ballast, culverts, bridge decking and grade crossings which are required to return a rail line to service. Rehabilitation is commonly required in cases where the track has been out of service for a long time or has not been maintained (experienced “deferred maintenance”) or where significant track damage has resulted from severe weather. Rehabilitation captures those activities and costs necessary to restore track to service and “catch-up” on deferred maintenance. In the absence of such rehabilitation taking place, program and routine maintenance costs would be higher because those costs are based on the assumption that maintenance has not been deferred.

RLBA observed during the physical inspection that the subject line is currently maintained to Class 3 track standards. As such, RLBA does not believe any rehabilitation is necessary on the subject line and none was reflected in any of its results in this report.

Program Maintenance

Program maintenance encompasses regular, periodic replacement of track and bridge components such as switch timbers, ties, rail, ballast and bridge decking, to renew the track structure. Tamping and surfacing of large contiguous sections of track are performed under program maintenance.

Routine Maintenance

Routine maintenance covers the largely labor-intensive day-to-day tasks performed by section forces necessary to ensure that the track structure is available to host a carrier’s train operations safely. Routine maintenance activities generally include inspections, switch stand and rod adjustments, lubricating, welding, re-spiking, replacing broken rail, spot tie replacement and surfacing, spot tamping, signal department tests, inspection and small emergency repairs.

It should be understood that significant portions of the work performed in the context of “program maintenance” are very similar to the work performed in the context of “routine maintenance” except that program work tends to be done by larger gangs that are not assigned generally to any particular territory, are generally better equipped, can focus on one or two

specific functions and are not expected to work on routine issues that arise in the course of a typical day. Therefore, they achieve greater productivity than routine gangs using conventional metrics. The relative proportions of material to labor inputs are generally higher on program or production gangs than on routine maintenance gangs and so it is not unusual for significant portions of program or production work to be capitalized whereas routine work is generally expensed.

Key Assumptions

The above produced estimated costs were based on the application of the following key assumptions;

- The program maintenance estimates associated with cross ties are sufficient to keep tie conditions in a constant, steady state of good repair based on the current posted track speeds;
- The program estimates associated with rail are sufficient to keep the current rail in use over the near future but includes contingencies sufficient to provide emergency laying of rail to replace rail lost to derailments and cascading rail to replace lighter sections of 80 pound rail sections identified as deficient as a result of rail flaw detection inspections as mandated by the Federal Railroad Administration;
- The program estimates associated with rail surfacing captures the cost of surfacing that cannot be accomplished by the current routine surfacing gangs;
- The capital estimates associated with bridges is deemed sufficient to develop an adequate contingency to protect against the impacts of unpredictable (“non-protected”) events on loss of bridge(s) from washouts, fire, or derailments and
- The routine maintenance estimates are deemed sufficient to carry out all of the daily tasks necessary to maintain railroad infrastructure to a condition adequate to host the daily running of trains given listed track quality, necessary FRA inspections and requirements.

Additionally, it is important to note that the difference between Class 3 and Class 2 quality track routine maintenance requirements are relatively minimal. Given the short, 73 miles combined length of all the segments and the relatively small and efficient maintenance work force employed by NECR, differences in routine maintenance labor and equipment cost between Class 3 and Class 2 quality track are negligible.

Inspection

RLBA Senior Track Engineer, Lee Meadows, P.E., reviewed information provided by NECR and conducted an on-site inspection of the entire rail line comprising the Southern, Middle and Northern segments. He got out of his hi-rail vehicle on multiple occasions to inspect infrastructure that caught his attention and performed tie counts approximately every ten miles. In addition, Mr. Meadows conducted an in-depth document review supported by cursory on-site inspections of the various switches and bridges along the line. Based upon NECR - provided documents and his on-site inspection, he prepared the seven tables per track class which constitute the findings of this report, explained in Appendices One through Seven.

Qualifications to Estimate

The findings of this cost estimate are subject to several qualifications and limiting conditions which are stated as follows:

It is assumed that all assets are in full compliance with all FRA standards;

Further, RLBA assumes full compliance with all applicable Federal, state and local regulations and laws;

No employee or representative of RLBA will be required to give testimony or attend court or appear at any governmental hearing with reference to the subject rail material, unless prior arrangements have been made directly with RLBA;

RLBA takes no responsibility for changes in track structure under portions of the railroad that were covered by material obstructing physical inspection or areas not inspected;

RLBA has not conducted any environmental remediation investigation and as such has not factored in any environmental remediation costs that may result from actual liquidation of line.

Certification

I, R.L. Meadows, Jr., P.E, do hereby certify that to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and is my personal, unbiased, professional analyses, opinions and conclusions.

I have no specified or unspecified present or prospective interest in the properties that are the subject of this report and I have no personal interest or bias with respect to the parties

involved.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.

I made a personal inspection of the property that is the subject of this report on July 2, 2014.

Submitted,

A handwritten signature in cursive script that reads "R.L. Meadows, Jr." The signature is written in black ink and is positioned above the typed name.

R.L. Meadows, Jr., P.E.

[REDACTED MATERIAL]