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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
DOCKET NO. 35842

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June 27, 2014  
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**NEW ENGLAND CENTRAL RAILROAD, INC. – TRackage RIGHTS ORDER – PAN  
AM SOUTHERN LLC**

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Dated: June 27, 2014

Attorneys for Pan Am Southern LLC

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

Pan Am Southern LLC (“PAS”) hereby submits this “Motion to Show Cause” in the above captioned proceeding. Specifically, PAS requests that the Board order the New England Central Railroad, Inc. (“NECR”) to show cause why its speed restriction on foreign railroads and its requirement that PAS produce revenue waybill information prior to movement on NECR lines (the “Operating Restrictions”) are reasonable and do not violate the Trackage Rights Order issued by the Interstate Commerce Commission in *Amtrak—Conveyance of Boston and Maine Corporation Interests in Connecticut River Line in Vermont and New Hampshire*, Finance Docket No. 31250, 6 I.C.C.2d 539 (1990) (“TRO”).

On June 17, 2014, NECR filed a petition to set trackage rights terms with the Board as contemplated in the TRO in *New England Central Railroad, Inc.—Trackage Rights Order—Pan Am Southern LLC*, STB Finance Docket No. 35842. PAS takes no issue with this action and will submit an appropriate response separately. The sole purpose of this Motion is to address the unilateral Operating Restrictions imposed by NECR since May 2014 in violation of the very TRO that NECR seeks to enforce. Because the Operating Restrictions have significantly impacted service to customers and other railroads and threaten to continue to do so, PAS requests that the Board expedite consideration of this motion in advance of any procedural schedule requested by NECR in its filing.

## I. FACTUAL BACKGROUND

As part of the compensation for the acquisition of a 48.8 mile rail line between Windsor, VT, and Brattleboro, VT, the Interstate Commerce Commission (“ICC”) granted trackage rights to the Boston and Maine Corporation (“B&M”) over certain rail lines located in Vermont and Massachusetts. In the TRO, the ICC granted B&M the right to operate over the line acquired by Amtrak (the “Former B&M Line”) and two adjacent line segments owned then by Central Vermont Railway, Inc. (“CV”)<sup>1</sup> between White River Junction, VT, and Windsor, VT, and between Brattleboro, VT, and East Northfield, MA, over which B&M already held existing trackage rights (collectively with the Former B&M Line, the “Rail Lines”).<sup>2</sup>

Because the TRO was part of the compensation to B&M for the acquisition by Amtrak, the ICC also imposed specific language relating to the right of the B&M and its successors and assigns to exclusively serve certain customers located on the Former B&M Line, as well as the right to compete to serve other customers located on the Former B&M Line. *TRO*, § 1.4. In addition, the TRO requires that, “The trains, locomotives, cars and equipment of B&M, CV, Amtrak and any other present or future user of the Line shall be operated without prejudice or partiality to any party to this Agreement or any other user and in such manner that will result in the most economical and efficient manner of movement of all traffic. *TRO*, § 5.1 (emphasis added). Further, the TRO requires that the term be perpetual, and that 20 years after the Conveyance Date, either party to the TRO may seek modifications, and if satisfactory

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<sup>1</sup> NECR acquired the assets of CV, including the Rail Lines, in 1994. *NECR – Acquisition and Operation Exemption – Lines between East Alburgh, VT and New London, CT*, I.C.C. Finance Docket No. 32432 (served December 9, 1994).

<sup>2</sup> The section of line between Brattleboro, VT, and East Northfield, MA, is the only connection between the lines of the former B&M and the line acquired by Amtrak.

agreements are not reached after a reasonable negotiating period, either party may apply to the ICC (now Surface Transportation Board) for modifications. *TRO*, § 2.2.

B&M subsequently assigned its rights to operate the Rail Lines to its affiliate Springfield Terminal Railway Company, and in 2009, those rights were assigned to PAS. *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 (served March 10, 2009) (the “PAS Control Proceeding”). During the PAS Control Proceeding, discussions were held with NECR regarding assignment of the TRO to PAS. At that time, NECR was a subsidiary of RailAmerica, Inc. (“RailAmerica”), and sought certain conditions from PAS in consideration of the assignment of the TRO to PAS. None of the conditions sought in 2008 by NECR related to material modifications to the TRO, nor did NECR at that time seek to impose speed restrictions on PAS trains or additional paperwork requirements on PAS operations.

PAS uses its trackage rights pursuant to the TRO to compete with NECR for the business of shippers on the Former B&M Line, which is exactly the type of competitive outcome that the ICC preserved in the TRO.<sup>3</sup> Since at least 2009 PAS solicited the business of a customer located in Claremont, NH, and successfully obtained that business in 2013 through competitive pricing and service proposals. Subsequently, NECR sought modifications to the TRO and met with PAS in late 2013 and early 2014 to discuss issues such as compensation, insurance requirements, and other items. These discussions ultimately did not result in an agreement, and

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<sup>3</sup> This is true for the period when RailAmerica owned the Rail Lines and the period after the Rail Lines were acquired by Genessee & Wyoming (“G&W”) in 2012 in *Genessee & Wyoming—Control—RailAmerica, Inc. et al.—Railroad Control Application*, STB Finance Docket No. 35654 (served December 20, 2012). In fact, G&W stated in its control application that its acquisition of RailAmerica would result in “no lessening of competition” for shippers, but G&W’s actions here are inconsistent with the spirit of that representation to the Board.

the parties acknowledged an impasse. Rather than appeal to the Board as provided for in the TRO, NECR instead elected to engage in self-help by imposing the Operating Restrictions on PAS. The Operating Restrictions amount to a unilateral modification to the TRO that directly impacts the ability of PAS to serve its customers and other rail carriers.

## II. ISSUES AND CONTROVERIES

### A. The Speed Restriction on Foreign Roads

Effective May 21, 2014 NECR imposed a speed restriction on “[a]ll foreign freight trains operating on the [NECR]...” that limited operating speeds to 25 miles per hour. Exhibit A hereto. In other words, NECR did not apply the speed restriction to its own trains – but it applied that restriction to trains operated by PAS. This restriction was imposed without any explanation as to why a rail line recently rehabilitated with public funds could not support speeds of up to 40 miles per hour by all freight railroads.<sup>4</sup> Prior to the announced bulletin, the speed limit on the Rail Lines was 40 m.p.h. PAS can think of no other reason for the imposition of this speed restriction other than to disadvantage service provided on the line by foreign railroads. And in fact, as a result, the unilateral imposition of this speed restriction has adversely affected the ability of PAS to serve its customers on the Former B&M Line and to provide competitive options to others, as it has added at least one hour to transport time over the length of the Rail Lines. This is wholly inconsistent with the idea embodied in the TRO that PAS and NECR trains be operated “without prejudice or partiality” and constitutes a violation of the Board’s order.

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<sup>4</sup> The Rail Lines were rehabilitated as part of a project that was completed in October of 2012 to support the Amtrak *Vermont* service, utilizing \$50 million in federal funding and \$20 million in funding provided by the State of Vermont. Work included installation of welded rail, new cross ties, signal and other improvements that would permit Amtrak operations of up to 79 miles per hour in some sections. Exhibit B hereto.

## B. The Waybill Requirement

Not satisfied with the adverse impact of the unilateral speed restriction, NECR next imposed a requirement that PAS provide revenue waybills on all cars moving over the Rail Lines, a requirement that did not previously exist and it not authorized by the TRO. Exhibit C hereto. This waybill demand was apparently based upon NECR's reading of a report of haulage service being provided by PAS to a connecting railroad, and remains in effect even though PAS has informed NECR: (a) that no such haulage service is presently being conducted for the railroad subject to the article; and (b) NECR has never previously objected to haulage services provided by PAS to other rail carriers over the Rail Lines.<sup>5</sup> As a result, NECR originally would not permit any PAS trains to operate on the Rail Lines without producing revenue waybills for review by NECR, though NECR has subsequently acknowledged that trains operating to Claremont, NH, need not produce such waybills.

Nevertheless, NECR continues to deny permission for PAS trains to operate to and from Bellows Falls, VT, and White River Junction, VT, without the production of waybills, which has adversely affected movement of cars between those two points while also causing PAS to expend resources attempting to provide rail service only to be denied entry to the Rail Lines by NECR dispatchers. Indeed, PAS crews have been denied access to the Rail Lines at both Bellows Falls, VT, and East Northfield, MA, on several occasions despite informing NECR that no haulage cars were present on these trains. Similarly, cars have remained in White River Junction for

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<sup>5</sup> PAS disputes the position of NECR regarding the right of PAS to provide haulage services pursuant to the TRO, and PAS will raise this issue in response to the NECR request for modifications of the TRO. However, since the waybill requirement is having an immediate adverse impact, PAS is raising the issue in this filing.

numerous days because PAS is not permitted to transport those cars to interchange at Bellows Falls<sup>6</sup>.

NECR's revenue waybill mandate violates the TRO's requirement that "[t]he trains, locomotives, cars and equipment of B&M, CV, Amtrak and any other present or future user of the Line shall be operated without prejudice or partiality to any party to this Agreement or any other user and in such manner that will result in the most economical and efficient manner of movement of all traffic. Indeed, the arbitrary waybill requirement is the antithesis of efficient movement.

### **III. REQUESTED RELIEF**

PAS hereby requests that the Board issue an order as soon as possible that NECR show cause as to why its speed limit restriction on foreign railroads and its revenue waybill requirement are reasonable and do not violate the 1990 TRO. Alternatively, PAS requests that the Board find NECR's operating restrictions invalid and unenforceable and grant such other and further relief as the Board may deem under the circumstances. Due to the immediate impact of NECR's arbitrary operating restrictions, PAS requests further that the Board hold NECR's request to set terms of the relevant trackage right order in abeyance until these issues are resolved.

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<sup>6</sup> PAS also notes that NECR is not in the routing of the traffic at issue, and therefore 49 U.S.C § 11904 prevents PAS from disclosing certain confidential waybill information to NECR, despite its arbitrary requirement.

Respectfully submitted,



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Attorney for Pan Am Southern LLC

## VERIFICATION

I, Michael Rooks, General Manager of Pan Am Southern LLC, 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: June 27, 2014

  
Michael Rooks

## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing was served on the following by U.S. first class mail, postage prepaid:

Eric M. Hocky  
Clark Hill PLC  
One Commerce Square  
2005 Market Street, Suite 1000  
Philadelphia, PA 19103

Dated: June 27, 2014

  
Robert B. Culliford

**EXHIBIT A**



**EXHIBIT B**



## Amtrak Fact Sheet, Fiscal Year 2012 State of Vermont

### Amtrak-Vermont partnership

- Grants from the State of Vermont help support the daily *Vermont* service from St. Albans to New York and Washington
- State grants also help support the daily *Ethan Allen* express service from Rutland to Albany and New York
- Over 8,500 Vermont residents are members of the Amtrak Guest Rewards frequent user program
- Vermont completed a federally funded track improvement project along the *Vermont* route in 2012

### Amtrak Service & Ridership

Amtrak operates two medium-distance trains in Vermont, the *Vermont* (Washington, D.C.-New York-St. Albans) and the *Ethan Allen Express* (New York-Albany-Rutland).

During FY12 Amtrak served the following Vermont locations:

<u>City</u>	<u>Boardings + Alightings</u>
<u>Bellows Falls</u>	4,620
<u>Brattleboro</u>	17,410
<u>Castleton</u>	3,649
<u>Essex Junction</u>	20,706
<u>Montpelier</u>	7,372
<u>Randolph</u>	2,004
<u>Rutland</u>	16,776
<u>St. Albans</u>	3,345
<u>Waterbury</u>	5,005
<u>White River Junction</u>	15,125
<u>Windsor-Mount Ascutney</u>	962
<b>Total Vermont Station Usage:</b>	<b>96,974</b>
	(up 5.5% from FY11*)

\**Vermont* service was greatly impacted by a major track work project during FY11 (see below).

## **Procurement/Contracts**

Amtrak spent \$364,855 on goods and services in Vermont in FY12.

## **Employment**

At the end of FY12, Amtrak employed 2 Vermont residents. Total wages of Amtrak employees living in Vermont were \$96,744 during FY12.

## **State-Assisted Services**

Both the *Vermont* and the *Ethan Allen Express* are supported by the state of Vermont. In Fiscal 2012, *Ethan Allen Express* ridership was over 54,000, up 10.0% from the year before. *Vermont* ridership was over 82,000 in Fiscal 2012, up 5.5% from the year before.

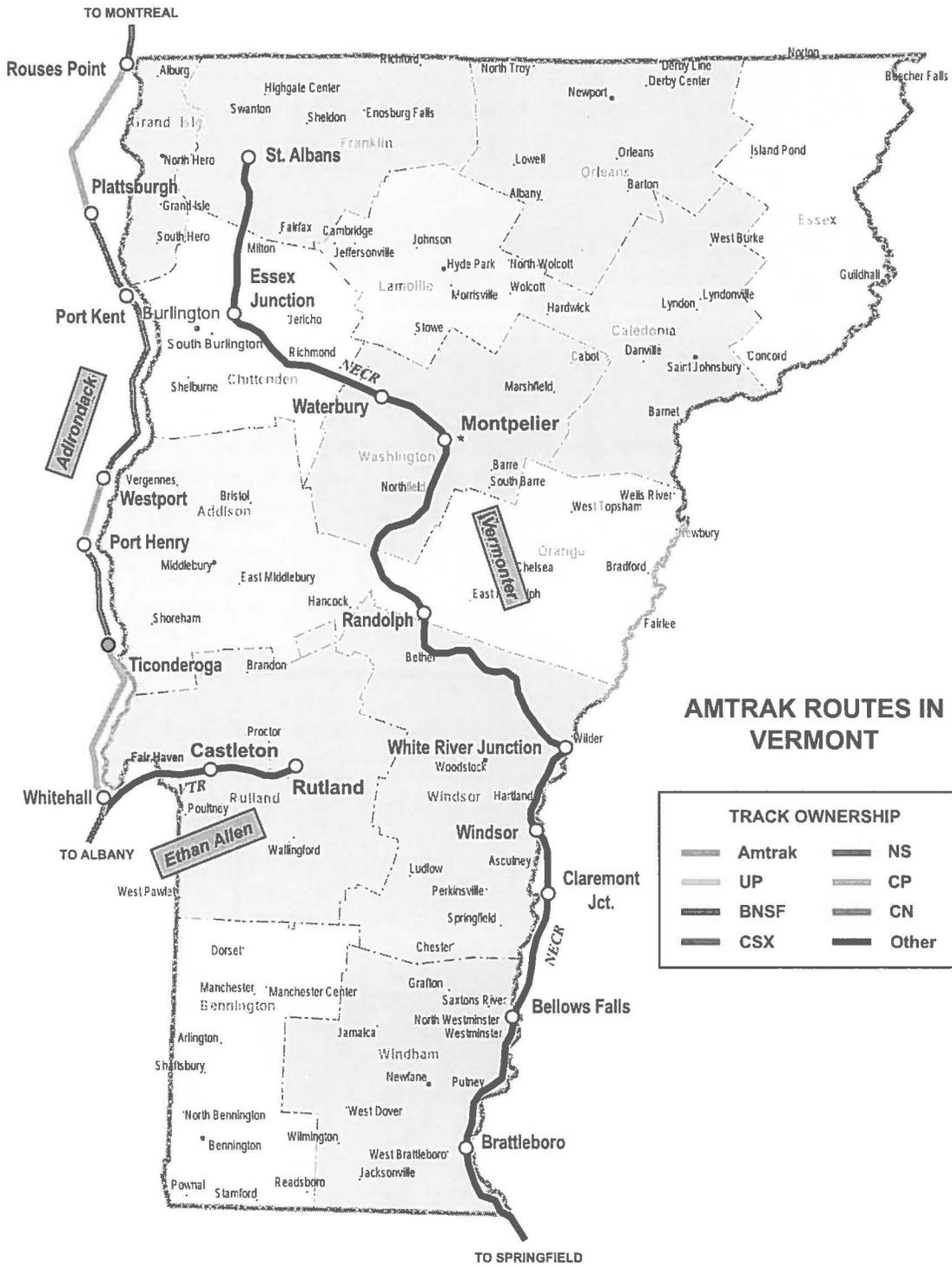
## **Stations**

The stop at Fair Haven on the *Ethan Allen Express* route was replaced during 2010 with a new stop at Castleton, four miles to the east. The recently restored historic depot houses a waiting area and a coffee shop that offers pastries and sandwiches.

## **Vermont Route Improvements**

In October 2012, the State of Vermont completed a \$70-million track rehabilitation project along the route of the *Vermont* on track owned by the New England Central Railroad. This project was funded through the ARRA Stimulus program which provided \$50 million in grant funds along with \$20 million in funding being provided by the State. The project consisted of replacing jointed rail with continuously welded rail, new cross ties, grade-crossing safety improvements, and other track improvements along a 190-mile section of track from St. Albans to Vernon (just north of the Massachusetts border). These upgrades will allow trains to travel up to 59 mph (79 mph in some sections). These improved speeds will result in reducing over 40 minutes of the scheduled running times.

The U.S. Department of Transportation has also awarded a \$70 million ARRA grant to the Commonwealth of Massachusetts for the reconstruction of the Connecticut River Line in Western Massachusetts currently owned by the Pan Am Southern Railroad. The *Vermont* will be able to operate over the Connecticut River Line once the project is completed which will result in a more direct route and will result in a reduction in travel time of approximately 25 minutes. This project is currently underway and future station stops in Greenfield, Northampton, and possibly Holyoke are being planned. This new route is being referred to as the Knowledge Corridor by the State of Massachusetts.



**EXHIBIT C**



a Genesee & Wyoming Company

May 16, 2014

via email: [dfink@panamrailways.com](mailto:dfink@panamrailways.com)

David Fink  
President, Pan Am Railways  
1700 Iron Horse Park  
N. Billerica, MA 01862  
United States of America

Re: Trackage Rights over NECR

Dear Mr. Fink:

We read recently in the Atlantic Northeast Rails and Ports e-bulletin that VRS and PAS have been discussing PAS haulage of VRS cars between Bellows Falls and Bank. Please be reminded that Section 1.1 of the Trackage Rights Order only provides PAS/ST with the right to operate "B&M's trains, locomotives, cars and equipment with B&M's own crews." As such haulage of cars for other carriers is not permitted.

We will require that PAS provide advance copies of the waybills for each car in its trains entering the Line at either Bellows Falls or Bank, and will not provide clearance to enter the Line unless all cars and equipment are moving in PAS/ST's account, and not in the account of VRS or any other carrier.

Complete waybills on the entire train must be sent either by fax to (802) 527-3486, or by email to [ARDCDispatchers@gwrr.com](mailto:ARDCDispatchers@gwrr.com) before authority will be granted to enter or occupy any New England Central Track.

Please let me know if you have any questions.

Sincerely,

Raymond A. Goss  
President

cc: David Wulfson, VRS ([dwulfson@vrs.bz](mailto:dwulfson@vrs.bz))