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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. FD 35842**

ENTERED  
Office of Proceedings  
November 4, 2016  
Part of  
Public Record

**NEW ENGLAND CENTRAL RAILROAD, INC.  
– TRACKAGE RIGHTS TERMS AND CONDITIONS –  
PAN AM SOUTHERN LLC**

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**NEW ENGLAND CENTRAL RAILROAD, INC.'S  
MOTION TO COMPEL PAN AM SOUTHERN LLC  
TO PRODUCE ADDITIONAL DISCOVERY RESPONSES**

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Dated: November 4, 2016

Attorneys for  
New England Central Railroad, Inc.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**INTRODUCTION**

This action involves New England Central Railroad, Inc. (“NECR”) seeking to set trackage rights terms and conditions and modify an existing trackage rights order (“TO”) entered by the Board’s predecessor the Interstate Commerce Commission in 1980. 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”)).<sup>1</sup>

By way of background, this proceeding commenced in June, 2014, when NECR filed a Request to Set Trackage Rights Terms and Conditions in order to modify the existing TO. On 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. After mediation efforts failed, NECR filed its Opening Statement and Evidence on June 4, 2015. On July 16, 2015, discovery was served by PAS on NECR, and NECR made numerous objections and filed a Motion for Preliminary Determination of Appropriate Methodology and for Protective Order. In connection with the

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<sup>1</sup> An affiliate of B&M, Springfield Terminal Railway (“ST”) operates over the trackage rights line on behalf of PAS.

denial of a protective order, PAS was permitted discovery on a broad range of discovery requests it served on NECR.

On July 19, 2016, PAS filed its Reply to NECR's Opening Statement and Evidence. On August 16, 2016, NECR served its First Set of Discovery Requests to PAS. A true and correct copy of NECR's First Set of Discovery Requests to PAS is attached as Exhibit A. PAS made a preliminary production of workpapers that had been filed with the Board with its Reply on August 8, 2016. On September 13, 2016, PAS served written responses and objections to NECR's First Set of Discovery Requests. A true and correct copy of PAS's written responses and objections to NECR's discovery is attached hereto as Exhibit B. On September 14, 2016, PAS produced a certain amount of documents it deemed responsive to NECR's document requests. Upon review of the PAS responses and objections, and the documents produced, NECR found that there were a number of deficiencies in the responses and production. A true and correct copy of NECR's deficiency letter dated October 14, 2016, is attached hereto as Exhibit C. The parties agreed to an extension of the schedule so that they would have time to "meet and confer" regarding the discovery disputes. On October 31, 2016, PAS provided a response to the deficiency letter, and produced certain supplemental documents on November 1, 2016. A true and correct copy of PAS's letter dated October 31, 2016, is attached hereto as Exhibit D. Although the parties made a good faith effort to resolve the outstanding discovery disputes before the deadline established by the Board for filing a motion to compel, there are several disputes that remain unresolved, and accordingly, NECR is filing this Motion to Compel. PAS counsel has indicated that it will respond further (as noted in part herein) by early next week, and the parties will continue to confer to see if any or all of the remaining open issues can be resolved.

## ARGUMENT

### **I. The Discovery Rules are Liberally Construed to Encourage Full Disclosure of All Relevant Information That May Affect the Outcome of the Proceeding.**

NECR is entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. §1142.21(a)(1). Relevance means that the “information might be able to affect the outcome of a proceeding.” *Appl. Of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(a) - Can. Nat’l Rv. (“Amtrak”)*, Docket No. FD 35743, 2014 STB LEXIS 238, \*17 (STB served Sept. 23, 2014) quoting *Waterloo Ry. – Adverse Abandonment - Lines of Bangor and Aroostook R.R. and Van Buren Bridge Co. in Aroostook County., ME. (“Waterloo”)*, Docket No. AB 124 (Sub-No. 2), et al. (STB served Nov. 14, 2003). PAS may not object on the grounds that “the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 49 C.F.R. §1114.21(a)(2). *See also Ballard Term. R.R. – Acquisition & Operation Exemption – Woodinville Subdivision*, Docket No. FD 35731, 2013 STB 269 (STB served Aug. 22, 2013) and *Seminole Electric Coop., Inc. v. CSX Transport, Inc.*, Docket No. 42110, 2009 STB LEXIS 25, \*2-3 (STB served Feb. 17, 2009).

Under the guidance of the Federal Rules, PAS should be required to produce any relevant documents that are in its possession, custody and control even if they were generated by an affiliate or parent company. For example, ST is the operator for PAS, and PAS is successor to B&M and ST with regard to the trackage rights at issue here. Accordingly, PAS should have access to relevant ST and B&M documents, including specifically documents that relate to the operations over the railroad line covered by the TO (the “TO Line”), as well as historic B&M and ST documents. Accordingly, PAS should be required to produce responsive, relevant information that is within its possession, custody and control, or within its ability to obtain, even

if it were generated by ST or B&M. *See S2 Automation LLC v. Micron Tech., Inc.*, 2012 U.S. Dist. LEXIS 120097, \*49, \*104 (D. N.M. 2012) (in discovery, documents are within a party's "control" when it has the legal right, authority or practical ability to obtain the documents; S2 Automation ordered to produce relevant documents from its parent company or file an affidavit from a corporate official that it does not have the legal or practical right to obtain such documents) (citations omitted); *see also* 7 Moore's Fed. Practice at § 34.14[2][b] (Matthew Bender 3d Ed.) ("control" is broadly construed to include the legal or practical right to request relevant document upon demand even if not presently in the party's possession). In response to certain discovery requests, PAS has produced some documents of or related to B&M and ST, but it is unclear whether PAS has produced all such relevant documents within its control.

## **II. PAS's Discovery Responses to NECR'S First Set of Discovery are Deficient.**

There are a number of deficiencies in PAS's responses to interrogatories and the document production that NECR asked PAS to rectify in order to avoid a motion to compel. Some, but not all, of the deficiencies were cured. In addition, there are several general objections lodged by PAS to the discovery that NECR contends are without merit and should not be used to shield production of relevant information pursuant to the Protective Order in this proceeding. NECR's remaining issues with PAS's discovery responses are set forth below.

### **A. General Objections**

With respect to General Objections 4 and 5, to the extent that PAS withheld documents or redacted portions of documents, they should be identified on a work privilege log (this does not include documents generated or contained in its attorney work/litigation files), similar to that produced by NECR when it produced documents to PAS. Otherwise, there is no way to adequately assess the validity of any documents that may have been withheld as privileged.

Although PAS did not provide a privilege log, PAS indicated that it has withheld some documents based on “attorney-client” privilege. However, based on its description of the document as a series of emails between PAS in-house counsel and person(s) who are not his client, it does not appear that these emails would be protected by the attorney-client privilege. Accordingly, NECR seeks production of the documents and/or a more detailed explanation (by way of privilege log or otherwise) that provides a proper basis for the alleged privilege.

General Objection 12 is also without merit to the extent that requested relevant documents of B&M and ST are within PAS’s possession, custody and control or within its practical ability to obtain. *See* the discussion in Section I above.

**B. Interrogatories**

PAS did not provide a complete answer to Interrogatory No. 4. Although PAS has partially supplemented its response, it did so by citing to a document in footnote 3 that is a valuation of PAS that PAS produced, and not the document on which Mr. Baranowski relied on in his analysis of the value of NECR’s railroad property. NECR requests that PAS be required to provide the bates-number to the document(s) on which Mr. Baranowski relied. Additionally, PAS failed to identify the market value of NECR’s total railroad property as determined by Mr. Baranowski, and PAS should be required to supplement its answer to the Interrogatory to provide that that information as well.

**C. Document Requests**

With regard to Document Request No. 9, NECR notes that certain trackage rights agreements or operating agreements were produced by PAS in its first production. Then two more agreements were produced in PAS’s supplemental production. However, PAS failed to confirm whether these are all of the trackage rights agreements that PAS, ST or B&M are

currently operating under and, if not, NECR seeks production of all other such trackage rights or operating agreements. In particular, PAS has produced only two trackage rights agreements between PAS, ST or B&M and other freight carriers. NECR believes there are additional PAS/ST trackage rights agreements with other freight carriers that should be produced as they are relevant to the proceeding. In particular, they are relevant to the arguments in PAS's Reply regarding whether certain provisions, including compensation, requested by NECR for the new trackage rights order are standard or extraordinary.

The response to Document Request 14, which requests detailed information regarding each car handled by PAS to, from or over the TO Line during the relevant period. The responsive documents produced were spreadsheets identified as HC-341 (Part A), HC-342 (Part B) and HC-343 (Part C). Each spreadsheet contains different types and amounts of information. PAS has partially explained what information is intended to be covered in each spreadsheet, but NECR has not been able to determine whether the response is complete. By way of specific example, it appears that not all of the requested information has been provided for all cars. PAS-HC-341 contains 2954 entries, PAS-HC-342 contains 2871 entries, and PAS-HC-343 contains 1941 entries. NECR requests that PAS be required to make full and complete production of the available information requested -- including all of the raw data files(s) that were used to generate the spreadsheets -- so that the adequacy of the response to this request can be properly assessed. PAS has indicated that it will produce the raw data files, and will continue to work with NECR to determine if there is any missing data from the production.

The response to Document Request No. 15 is incomplete. Although PAS did recently supplement its first response by providing a calculation of PAS's fuel costs, the description that was produced appears to have either an error in data or in the calculations. NECR requests that

PAS be required to confirm whether the average fuel burn listed as “3.5 Gallons per hour” should be “3.5 Gallons per mile.” If the burn rate is accurately described, then PAS should be required to recalculate and produce the fuel cost based on the number of hours each locomotive is used for service on and over the TO Line. PAS has indicated that it intends to clarify or correct its response.

With regard to Document Request No. 22, NECR has indicated to PAS that PAS’s responses included pricing documents with respect to only two commodities. In its deficiency letter, NECR requested that PAS confirm that the two commodities noted were the only products being handled by PAS in the relevant period. PAS responded by indicating that it was still looking for additional information and/or responsive documents. NECR believes that there should at least be some tariffs that would apply and that have not been produced, as well as other potential pricing document. PAS should be required to produce the additional information or documents, or to confirm that there are no additional documents.

**CONCLUSION**

For the reasons set forth above, NECR's motion to compel should be granted, and PAS should be required to produce the information sought herein within a reasonable period of time. While the motion is pending, however, the parties will continue to work in good faith to narrow or eliminate the remaining discovery issues subject to dispute.

Respectfully submitted,



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Dated: November 4, 2016

Attorneys for  
New England Central Railroad, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter to the Board on behalf of New England

Central Railroad, Inc. was served on this date by the method indicated below:

By email on:

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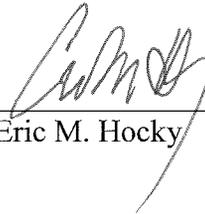
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Eric M. Hocky

Dated: November 4, 2016

**EXHIBIT "A"**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. FD 35842**

**NEW ENGLAND CENTRAL RAILROAD, INC.  
– TRACKAGE RIGHTS TERMS AND CONDITIONS –  
PAN AM SOUTHERN LLC**

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**NEW ENGLAND CENTRAL RAILROAD, INC.'S  
FIRST SET OF DISCOVERY REQUESTS TO  
PAN AM SOUTHERN LLC**

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Dated: August 16, 2016

Attorneys for  
New England Central Railroad, Inc.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**DOCKET NO. FD 35842**

**NEW ENGLAND CENTRAL RAILROAD, INC.  
– TRACKAGE RIGHTS TERMS AND CONDITIONS –  
PAN AM SOUTHERN LLC**

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**NEW ENGLAND CENTRAL RAILROAD, INC.'S  
FIRST SET OF DISCOVERY REQUESTS TO  
PAN AM SOUTHERN LLC**

Pursuant to 49 C.F.R. §1114.21 through 1114.31, New England Central Railroad, Inc. ("NECR") hereby directs the following discovery requests to Pan Am Southern LLC ("PAS"). Responses should be served as soon as possible, and in no event later than September 13, 2016, in accordance with the procedural schedule approved by the Board. PAS is requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view towards resolving any disputes or issues of interpretation informally and expeditiously, to avoid unnecessary delay to the proceeding.

**THE RAILROAD ENTITIES**

1. "NECR" means New England Central Railroad, Inc.
2. "PAS" means Pan Am Southern LLC, including its owners and its predecessors-in-interest, present and former managers, directors, officers, employees, representatives and agents, including without limitation all Persons acting or purporting to act on their behalf including any Person conducting rail operations and establishing rates on their behalf, including without limitation, B&M and ST.

3. "B&M" means Boston & Maine Corporation, including its owners and its predecessors-in-interest, subsidiaries and divisions, present and former directors, officers, employees, representatives and agents, including without limitation all Persons acting or purporting to act on their behalf including any Person conducting rail operations and establishing rates on their behalf, including without limitation ST.

4. "ST" means Springfield Terminal Railway Company, including its owners and its predecessors-in-interest, subsidiaries and divisions, present and former directors, officers, employees, representatives and agents, including without limitation all Persons acting or purporting to act on their behalf including any Person conducting rail operations and establishing rates on their behalf.

5. "NS" means Norfolk Southern Railway Company.

6. "CV" means Central Vermont Railway, Inc.

#### **DEFINITIONS**

1. "Amtrak" means National Railroad Passenger Corporation.

2. "Amtrak I" means the 1988 ICC decision that authorized the conveyance to CV of a 48.8-mile portion of the subject line from Windsor, Vt., to Brattleboro, Vt., which also authorized CV's conveyance of trackage rights over that portion of the line to the Boston and Maine Corporation ("B&M"). *See National Railroad Passenger Corp.—Conveyance of Boston & Maine Corp. Interests in Connecticut River Line in Vermont & New Hampshire*, 4 I.C.C. 2d 761 (1988).

3. "Amtrak II" means the 1990 ICC decision that imposed terms and conditions for the trackage rights over the subject line — the 48.8-mile portion at issue in Amtrak I and two adjoining CV-owned segments over which B&M previously had trackage rights. *See National*

*Railroad Passenger Corp.—Conveyance of Boston & Maine Corp. Interests in Connecticut River Line in Vermont & New Hampshire*, 6 I.C.C. 2d 539 (1990).

4. "Amtrak Proceedings" means the proceedings before the ICC in *National Railroad Passenger Corp.—Conveyance of Boston & Maine Corp. Interests in Connecticut River Line in Vermont & New Hampshire*, ICC Finance Docket No. 31250.

5. "Board" or "STB" means the Surface Transportation Board and its predecessor agency, the Interstate Commerce Commission ("ICC"), if applicable.

6. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

7. "Document" means any writing or other compilation of information, whether oral, printed, typed, handwritten, recorded, or produced or reproduced by any other process. It also means any communication in any form, including electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from the original version.

8. "Exclusive Customer" means each existing shipper and shipper's facility that was located on the Middle Segment as of September 9, 1988, including any new shipper that located at such an existing facility after September 9, 1988. "Non-exclusive Customer" means any other shipper or shipper's facility located on the Middle Segment.

9. "Including" means including without limitation.

10. "Middle Segment" sometimes referred to as the "Former B&M Line" means the 48.8 mile line segment formerly owned by B&M between Windsor, Vermont, and Brattleboro, Vermont.

11. "NECR Request to Establish New Terms and Conditions" means NECR's June 17, 2014 request for the Board to set new terms and conditions for trackage rights over the 72.8 mile line from White River Junction, VT to East Northfield, Mass.

12. "Northern Segment" means the 13.4 mile line segment formerly owned by CV between White River Junction, Vermont, and Windsor, Vermont.

13. "PAS Reply" means the "Reply to New England Central Railroad Inc.'s Opening Statement and Evidence" filed by PAS in This Proceeding on July 19, 2016.

14. "Person" means an individual, company, partnership, or other entity of any kind.

15. "Produce" means to make available to the undersigned attorneys for copying and viewing.

16. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.
17. "Relating," "referring" and "concerning" include, but are not limited to, referring relating, concerning, evidencing, reflecting, embodying, constituting, showing, describing, memorializing, discussing, pertaining to, containing reference to, purporting, establishing, comprising, connected with, commenting on, responding to, analyzing or presenting. "
18. "Request" means an interrogatory, request for admission or request for production of Documents or things.
19. "Southern Segment" means the 10.6 mile line segment formerly owned by CV between Brattleboro, Vermont, and East Northfield, Massachusetts.
20. "Studies, analyses and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.
21. "This Proceeding" means STB Finance Docket No. 35842, *New England Central Railroad Inc. - Trackage Rights Terms and Conditions - Pan Am Southern LLC* and any related proceedings or sub-dockets.
22. "TO" means the Trackage Rights Order entered by the ICC in Amtrak II.
23. "TO Line" means the railroad line covered by the TO comprised of the Southern, Middle and Northern Segments.
24. "You" and "Your" means PAS and B&M and ST, as applicable.

## INSTRUCTIONS

1. These discovery requests ("Requests") call for all non-privileged information which is in the possession, custody, or control of PAS, and B&M and ST, as applicable.
2. Where a Request has a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion. Any objection to a Request should clearly indicate the subdivision, part, or portion of the Request to which it is directed.
3. Each Request shall operate and be construed independently, and, unless otherwise indicated, no Request limits the scope of any other Request.
4. Words used in the singular shall include the plural and words used in the plural shall include the singular, whenever the context permits. Terms such as "and," "or," or "including" shall be construed in the broadest and most inclusive manner, in the disjunctive or conjunctive as necessary, in order to call for all responsive information without limitation.
5. References to railroads, shippers, and other companies include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
6. References to the present tense shall be construed to include the past tense, and references to the past tense shall be construed to include the present tense, as necessary to bring within the scope of each Request all responsive information that might otherwise be construed to be outside the scope of the Request.
7. If You believe that any request or definition or instruction applicable thereto is ambiguous, set forth the language that You believe is ambiguous and the interpretation that You are using in responding to the Request.

8. If any document covered by a Request is withheld for whatever reason, including any privilege asserted, PAS shall furnish a written document identifying all withheld documents in the following manner:

- a. the specific Request to which the document is responsive;
- b. the date of the document;
- c. the name of each author or preparer;
- d. the name of each Person who received the document and the name of such Person's employer at the time the Person received the document;
- e. a brief description of the subject matter of the document and any withheld attachments or appendices;
- f. the specific factual and legal basis for withholding; and
- g. the number of pages withheld.

9. Each document produced shall be an authentic original document or a true duplicate of an authentic original document. Each document produced should be in electronic and native, and computer-readable, format where available.

10. All requests are continuing and, pursuant to 49 C.F.R. § 1114.29, You are under a duty seasonably to supplement Your responses with respect to any question.

11. Unless otherwise indicated in specific discovery Requests, these Requests cover the period beginning January 1, 2013 through May 31, 2015.

12. If You object to any Request or any part thereof, please state the reasons for such objection, and all information forming the basis for such objection.

13. If You know or later learn that a response to any Request is incorrect, You are under a duty seasonably to correct that response.

14. If PAS has information that would permit a partial answer to any interrogatory or document request, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that request, and if the burden of conducting such special study would be greater for PAS than for NECR:

- a. state that fact;
- b. provide the partial answer that may be made with information available to PAS;
- c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and
- d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer.

15. Any delay in production of requested documents or answers to interrogatories is certain to prejudice the ability of NECR to present evidence to the Board in this proceeding.

16. Responsive documents should be produced to the undersigned counsel at Clark Hill, PLC, 2005 Market St., One Commerce Square, Suite 1000, Philadelphia, PA 19103, not later than September 13, 2016, in accordance with the procedural schedule approved by the Board. Serial production of relevant documents and narrative responses during that period is encouraged and requested.

17. You should contact Eric Hocky at (215) 640-8523 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

## INTERROGATORIES

1. Without regard to any date limitations, identify each and every instance since the TO became effective in which PAS, ST or B&M used the TO trackage rights to handle traffic in the account of another railroad (haulage traffic), other than PAS haulage of NS traffic for interchange with NECR, including:

- a. The dates of the moves;
- b. The number of cars moved;
- c. The commodities handled in each of the cars;
- d. The railroad for whom haulage was provided;
- e. The amount charged for the haulage.

**RESPONSE:**

2. State in detail the basis for PAS's argument on page 10 of the PAS Reply that calculations of compensation under the TO were calculated into perpetuity and can never be changed.

**RESPONSE:**

3. State whether your contention that the calculations of compensation under the TO were calculated into perpetuity is limited to the Middle Segment, or also applies to the Northern and Southern Segment, and if you contend that the contention applies to the Northern and Southern Segments, explain in detail the basis for Your response.

**RESPONSE:**

4. State whether for the purposes of applying the CE methodology You identified the market value of NECR's total railroad property based on a contemporaneous arms-length transaction, and if so, identify the the date of the transaction, and the market value.

**RESPONSE:**

5. For each of the years 1989, 2013, 2014 and 2015 through May 31, state what B&M, PAS or ST's per car revenue, gross revenue and earnings were with respect to (a) service to and from Exclusive Customers, and (b) service to and from Non-exclusive Customers.

**RESPONSE:**

6. Describe in detail how and in what manner You contend that PAS's service to the propane customer in Claremont, New Hampshire, as described on page 2 of the Verified Statement of Michael P. Bostwick, is more efficient than the service offered by NECR.

**RESPONSE:**

7. Describe in detail the capital policies of PAS, B&M and ST.

**RESPONSE:**

## DOCUMENT REQUESTS

1. To the extent not already produced, any and all of the work papers and supporting documentation, in electronic and native format where available, that support or relate to the PAS Reply including without limitation the Verified Statement of Michael B. Baranowski and or the work done by FTI Consulting, and including without limitation, work papers and supporting documentation related to the "PAS Earnings" and "Extrapolated PAS Earnings" attributable to the segments of the TO Line shown in Baranowski's Trackage Rights Calculation, GVC Approach tab.

**RESPONSE:**

2. Without regard to any date limitations, any and all agreements entered into between PAS, ST or B&M and another railroad (other than NECR, CV or NS) for the handling cars in the account of such other railroad (haulage) over the TO Line, between the effective date of the TO and the present.

**RESPONSE:**

3. Any and all documents that relate to the discussions between PAS and Vermont Rail System for the potential provision of haulage services between Bellows Falls and White River Junction, as described on page 3 of the Verified Statement of Michael P. Bostwick.

**RESPONSE:**

4. Without regard to any date limitations, any and all documents that relate to or support the calculation of the takings value determined in the Amtrak Proceedings shown on page 10 of the PAS Reply, including but not limited to all assumptions regarding B&M's future cash flows, future maintenance payments, and future obligations to pay for capital upgrades.

**RESPONSE:**

5. Without regard to any date limitations, any and all documents that refer or relate to PAS's contention that the fundamental assumptions in the takings value calculation in the Amtrak Proceedings were extended into perpetuity.

**RESPONSE:**

6. Without regard to any date limitations, any and all documents that relate to or support PAS's contention on page 11 of the PAS Reply that the TO can only be reopened for "minor modifications."

**RESPONSE:**

7. Without regard to any date limitations, any and all documents that relate to the selection or interpretation of the 20 year period for reopening in the TO.

**RESPONSE:**

8. Any and all agreements between PAS, ST or B&M, on the one hand, and Amtrak, on the other hand, covering operations of one over lines of the other.

**RESPONSE:**

9. Any and all agreements between PAS, ST or B&M, on the one hand, and another freight carrier, on the other hand, covering the operations of one carrier over the lines of the other carrier (trackage rights), including without limitation all agreements with respect to lines that are also operated over by Amtrak or any commuter railroad, other than the lines at issue in This Proceeding.

**RESPONSE:**

10. Any and all insurance policies covering PAS or ST's (a) operations over, and use of, the TO Line, and (b) operations over, and use of, the lines of any other railroad .

**RESPONSE:**

11. Without regard to any date limitations, any and all documents reflecting or relating to the title to or valuation of the real property underlying the Middle Segment as asserted by B&M in the Amtrak Proceedings.

**RESPONSE:**

12. Without regard to any date limitations, any and all documents reflecting or relating to the calculation of going concern value as asserted by B&M in the Amtrak Proceedings.

**RESPONSE:**

13. Any and all documents, including without limitation timetables, reflecting or relating to the schedule of PAS or ST's operations (a) to or from the Middle Segment, and (b) overhead over the TO Line.

**RESPONSE:**

14. Any and all databases, data warehouses and computer programs (with all documentation related to these databases and computer programs), in a computer-readable format, that include the information listed below for each movement handled by PAS or ST (A) to or from Exclusive Customers, (B) to or from Non-exclusive Customers, and (C) over the TO Line. If not available by such categories, produce any and all documents reflecting or providing a such information for PAS and ST related operations on the TO Line as a whole:

- a. Commodity (seven-digit Standard Transportation Commodity Code ("STCC"));
- b. Origin station and state;
- c. Destination station and state;
- d. For shipments that originated on PAS or ST's system, the date and time the shipment was originated;

- e. For shipments PAS or ST received in interchange, the on-junction station, state and SPLC;
- f. For shipments PAS or ST received in interchange, the road received from;
- g. For shipments PAS or ST received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, off-junction station, state and SPLC;
- i. For shipments given in interchange, the road to which they were given;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on the Middle Segment system, the date and time the shipment was terminated;
- l. Origin Freight Station Accounting Code ("FSAC");
- m. Destination FSAC;
- n. Origin SPLC;
- o. Destination SPLC;
- p. Number of railcars;
- q. Number of intermodal containers/trailers
- r. Tons (Net);
- s. Railcar tare weight;
- t. Intermodal container/trailer tare weight;
- u. Total freight revenues from origin to destination, including any adjustments thereto, along with a description of the adjustment (i.e., add to or subtract from gross revenue);

- v. PAS or ST's share or division of the total freight revenues, including any adjustments thereto;
- w. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and PAS or ST's division thereof provided in response to Subparts (v) and (w) above;
- x. The contract, agreement, tariff, pricing authority, etc. that the shipment is billed under, including the amendment and item numbers;
- y. Waybill number and date;
- z. TOFC/COFC plan;
- aa. Car/trailer/container initial for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer initials);
- bb. Car/trailer/container number for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer number);
- cc. Total loaded movement miles;
- dd. Total empty movement miles;
- ee. Miles used to derive applicable fuel surcharges;
- ff. Applicable fuel surcharge rate;
- gg. Total loaded miles handled by PAS or ST;
- hh. Total empty miles handled by PAS or ST;
- ii. AAR car-type code;

jj. Provider of car and trailer/container (PAS, B&M or ST-owned, PAS, B&M or ST-leased, shipper, or foreign road); and

kk. Provide the intermodal service plan code and the intermodal line of business code for each intermodal shipment.

**RESPONSE:**

15. Any and all documents reflecting or providing a breakdown of all PAS or ST operating costs by category, including without limitation, train crew wages, locomotive ownership or lease costs, locomotive operations and maintenance (including fuel), freight car ownership and maintenance, depreciation, ad valorem taxes, loss and damage, general and administration, (a) for the handling of traffic moving to and from Exclusive Customers, (b) for the handling of traffic moving to and from Non-exclusive Customers, and (c) for the handling of traffic over the TO Line. If not available by such categories, produce any and all documents reflecting or providing a breakdown of such operating costs by category for PAS and ST related operations on the TO Line as a whole. If not available for the TO Line as a whole, produce any and all documents reflecting or providing a breakdown of such operating costs by category for the PAS and ST systems as a whole.

**RESPONSE:**

16. Any and all financial statements, audited, or unaudited if audited are not available, and other documents for PAS, ST and B&M to the extent that they include or reflect results for operations to, from or over the TO Line.

**RESPONSE:**

17. For each of the Northern, Middle and Southern Segments, any and all documents, which contain operating statistics and density data for PAS or ST operations over such segments by commodity (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles gross ton-miles (both including and excluding locomotives), number of trains, etc.).

**RESPONSE:**

18. Any and all valuations and analyses conducted since 2007 by or for NS, PAS, B&M or ST in connection with the formation of PAS and/or the properties now owned by PAS.

**RESPONSE:**

19. Any and all studies and analyses conducted since 2007 by or for NS, PAS, B&M or ST which relate to or reflect the profitability of traffic handled by PAS or ST to or from points on the Middle Segment. Documents responsive to this request include, but are not limited to, studies and analyses conducted and prepared in connection with or related to the formation of PAS and the transactions that were the subject of the STB proceeding at Finance Docket No.

35147, *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements - Pan Am Southern LLC*, and the sub-dockets thereto.

**RESPONSE:**

20. Any and all studies and analyses conducted since 2007 by or for NS, PAS, B&M or ST which relate to or reflect the profitability of overhead traffic handled by PAS or ST over the TO Line. Documents responsive to this request include, but are not limited to, studies and analyses conducted and prepared in connection with or related to the formation of PAS and the transactions that were the subject of the STB proceeding at Finance Docket No. 35147, *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements - Pan Am Southern LLC*, and the sub-dockets thereto.

**RESPONSE:**

21. Any and all forecasts and other documents related to forecasts or projections prepared since 2007 by or for NS, PAS, B&M or ST, of or related to future traffic volumes and/or revenues for freight traffic by traffic group (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving (a) to or from customers located on the Middle Segment, and (b) overhead over the TO Line.

**RESPONSE:**

22. Any and all contracts or other pricing documents that reflect the price and/or terms of service between PAS or ST and customers located on the Middle Segment, including without limitation the propane customer in Claremont, New Hampshire, referred to on page 2 of the Verified Statement of Michael P. Bostwick.

**RESPONSE:**

23. Any and all documents that refer to or reflect the basis on which the propane customer in Claremont, New Hampshire, referred to on page 2 of the Verified Statement of Michael P. Bostwick, elected in 2013 to use the service of PAS instead of the service of NECR.

**RESPONSE:**

24. All correspondence between PAS or ST and the propane customer in Claremont, New Hampshire relating to or referring to the quality of service being provided by PAS or ST to the customer, and the customer's satisfaction with the service.

**RESPONSE:**

25. Any and all documents that refer to, relate to or support you contention on page 2 of the PAS Reply that the TO has benefitted shippers and connecting shortlines on the TO Line through lower rates.

**RESPONSE:**

26. Any and all documents that refer to, relate to or support your contention on page 2 of the PAS Reply that the TO has benefited shippers and connecting shortlines through increased service offerings.

**RESPONSE:**

27. Any and all documents that refer to, relate to or support your contention on page 2 of the PAS Reply that the TO has benefitted shippers and connecting shortlines on the Line through greater efficiencies and innovations as a result of strong competition between NECR and PAS.

**RESPONSE:**

Respectfully submitted,



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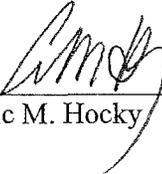
Dated: August 16, 2016

Attorneys for  
New England Central Railroad, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing document was served by email  
on counsel for Pan Am Southern, LLC:

William A. Mullins  
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\_\_\_\_\_  
Eric M. Hocky

Dated: August 16, 2016

**EXHIBIT "B"**

# BAKER & MILLER PLLC

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September 13, 2016

## VIA E-MAIL & OVERNIGHT EXPRESS

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

Re: FD 35842, New England Central Railroad Inc. – Trackage Rights  
Terms and Conditions – Pan Am Southern LLC

Dear Eric:

Enclosed please find Pan Am Southern LLC's ("PAS") written responses and objections to New England Central Railroad, Inc.'s ("NECR") First Set of Discovery Requests to PAS. Enclosed are two computer disks containing responsive documents. These responses and the documents being produced are subject to the Protective Order ("Order") issued on June 3, 2015 in this proceeding and should be treated as such. Please note, however, that rather than actually using the words "Public", "Confidential", and "Highly Confidential" on each page of the produced documents as set forth in Paragraph 4 of the Order, PAS has used a Bates numbering system that includes a "P", "C", or an "HC." The "P" means the page and the document is Public. The "C" means the page and the document should be treated as "Confidential" and the "HC" means the page and document should be treated as "Highly Confidential."

When a document is designated as HC, it means the entire contents of the document, including any identifying names, parties and information, cannot be disclosed to any person not authorized to review an HC document. If you desire to disclose any contents of an HC document, please let us know what information you would like to disclose and we will cooperate with you as necessary to allow disclosure of appropriate non-HC material.

Finally, to the extent PAS has produced Excel spreadsheet files, the file name of each Excel file specifies the Bates number for that entire spreadsheet. The entire Excel file should be treated in accordance with that Bates number and the designated level of confidentiality.

**BAKER & MILLER PLLC**

September 13, 2016  
Page 2

If there are any questions about this production or any of the documents, please do not hesitate to contact me directly or Crystal Zorbaugh, who can be reached at (202) 663-7831 or by e-mail at [czorbaugh@bakerandmiller.com](mailto:czorbaugh@bakerandmiller.com).

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Mullins", written in a cursive style.

William A. Mullins

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35842**

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**NEW ENGLAND CENTRAL RAILROAD, INC.  
– TRACKAGE RIGHTS TERMS AND CONDITIONS –  
PAN AM SOUTHERN LLC**

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**PAN AM SOUTHERN LLC'S REPLY TO NEW ENGLAND  
CENTRAL RAILROAD, INC.'S FIRST SET OF DISCOVERY REQUESTS TO PAS**

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**William A. Mullins  
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Fax: (202) 663-7849**

**Dated: September 13, 2016**

**Attorneys for Pan Am Southern LLC**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FD 35842**

---

**NEW ENGLAND CENTRAL RAILROAD, INC.  
– TRACKAGE RIGHTS TERMS AND CONDITIONS –  
PAN AM SOUTHERN LLC**

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**PAN AM SOUTHERN LLC'S REPLY TO NEW ENGLAND  
CENTRAL RAILROAD, INC.'S FIRST SET OF DISCOVERY REQUESTS TO PAS**

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Pursuant to 49 CFR Part 1114 and other applicable rules and authority, Pan Am Southern LLC ("PAS") hereby responds as follows to "New England Central Railroad, Inc.'s First Set of Discovery Requests" (the "NECR Discovery Requests"):

**GENERAL OBJECTIONS**

PAS's General Objections, set forth herein, apply to each and every one of the specific NECR Discovery Requests tendered by NECR in this proceeding. PAS's General Objections shall not waive, limit, or prejudice any objections it may later assert.

1. PAS objects to any and all definitions and/or instructions to the extent that they either expand upon or conflict with 49 CFR Part 1114, Subpart B, other Surface Transportation Board ("STB" or "Board") rules or Board precedents. PAS further objects to the NECR Discovery Requests to the extent that they seek to impose obligations on PAS greater than, or inconsistent with, those imposed under 49 CFR Part 1114, Subpart B.
2. The responses and objections contained herein are based on information currently known to be in the possession of PAS as of the date of this response. PAS reserves the right to amend or supplement its responses and objections as this proceeding continues.

3. PAS reserves the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information requested in the NECR Discovery Requests and in any responses PAS may provide thereto, in any subsequent proceeding, or in further proceedings in the above-referenced docket. To the extent that PAS produces responsive information or documents, PAS does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of PAS's objections to any of the NECR Discovery Requests.
4. PAS objects to the NECR Discovery Requests to the extent that they seek information relating to documents prepared, generated, or received in anticipation of or after the commencement of litigation.
5. PAS objects to the NECR Discovery Requests to the extent that they seek information protected from disclosure by the attorney-client privilege, attorney work product doctrine, any applicable common interest or joint defense privilege, or any other applicable privilege, doctrine, statute, regulation, agreement, or protective order. In the event that any such privileged, protected, or exempt information is unintentionally produced or provided, PAS reserves all rights under applicable law to demand and/or require return of all copies thereof and require the non-use by NECR or any other person or entity in this or any other proceeding. To the extent PAS has produced certain responsive document(s) that are protected under the attorney-client and/or work product privilege as to which it is willing to waive the privileges covering that document only, PAS has produced such document(s) only on the condition that NECR agrees that disclosure of such document(s) waives the privilege as to the intentionally disclosed document only and that such disclosure will not be claimed

to be nor construed as a general waiver of any applicable privilege, protection, or exemption for any other document or documents.

6. PAS objects to the NECR Discovery Requests, including all Definitions and Instructions, to the extent they call for information or documents that are confidential, proprietary, or commercially or competitively sensitive. Notwithstanding this general objection, PAS is producing any relevant and responsive information and documents pursuant to the STB's Protective Order issued on June 3, 2015 and all responses and documents should be treated in accordance with that order.
7. PAS objects to NECR Discovery Requests to the extent they seek information and/or documents that are neither relevant to the subject matter of this proceeding nor are reasonably calculated to lead to the discovery of admissible evidence.
8. No response contained herein waives nor shall be deemed to waive any claim of privilege as to any information or document not produced.
9. PAS objects to the NECR Discovery Requests to the extent that they seek information which would require PAS to undertake any special study. PAS will produce responsive information that it possesses which is not otherwise subject to objection in the form in which it possesses such information, but will not conduct any studies to respond to the NECR Discovery Requests.
10. PAS objects to NECR Discovery Requests to the extent those requests seek information and/or documents in PAS's possession that are publicly available and/or are already in NECR's possession, or would require PAS to search for and produce information or documents that are not currently within PAS's possession, custody, or control.

11. PAS objects to each and every one of the NECR Discovery Requests to the extent that it is  
(a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; or (d) would impose an undue burden or expense on PAS that outweighs any relevance or probative value the information sought may have in this proceeding.
12. PAS objects to the definitions of PAS, B&M, and ST to the extent that there are defined to encompass “its owners and its predecessors-in-interest, former managers, directors, representatives and agents, including without limitation all Persons acting or purporting to act on PAS’s behalf including any Person conducting rail operations and establishing rates on their behalf,” as it is overly broad, burdensome and irrelevant to the instant proceeding. Further, NECR does not have possession or control over the documents of its parent or affiliated companies or of any representatives or agents purporting to act on PAS’s behalf.
13. PAS objects to the definition of “Exclusive Customer” as it is overly broad, burdensome, irrelevant to the instant proceeding, and outside of the time period involved in this proceeding. Notwithstanding this objection, PAS will produce any relevant and responsive documents to the extent it maintains possession or control over such existing documents without conducting a special study and only to the extent such “Exclusive Customers” are existing customers over the trackage rights line.
14. PAS objects to these requests to the extent they request documents that relate to more than the trackage rights line at issue, or to the three segments comprising the trackage rights line. Where segmented information is not available, PAS will produce non-privileged, responsive information related to the entire railroad.

15. PAS objects to the definitions of “You” and “Your,” to the extent that it includes persons and entities which are not parties to this proceeding, as well as parties over which PAS lacks control or about which PAS does not have complete knowledge.
16. PAS objects to the definition of “Document” to the extent that it seeks to impose obligations broader than those imposed by 49 CFR Part 1114. PAS also objects to the definition of “Document” to the extent that it seeks information or data that is protected by the attorney-client privilege, work product doctrine, or otherwise protected or privileged, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine. In its document production and in line with Instruction No. 1, unless specifically waived for a particular document that is produced herein, PAS will interpret the term “Document” as excluding any data or other information that is protected from discovery or disclosure by such privilege, protection, doctrine, or rule.
17. PAS objects to all interrogatories and instructions calling for PAS to identify documents relating to any specified topic as calling for a legal conclusion. Each document speaks for itself and PAS is not required to identify for NECR what documents relate to what subjects.
18. PAS objects to the date range in these requests to the extent that NECR seeks documents or shipper information (including haulage) dating back to 1990 or earlier. There is no basis for seeking documents going back to 1990, as such requests would not produce relevant evidence for this proceeding, particularly since NECR is not seeking to calculate trackage rights based on those periods, nor is it seeking compensation for those periods. Given that NECR only used information from 2014 in its Opening Statement and Evidence<sup>1</sup>, it would be unduly burdensome, overbroad, and subject PAS to extraordinary time and expense to search

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<sup>1</sup> See New England Central Railroad, Inc.’s Objections and Responses to Pan Am Southern LLC’s First Set of Discovery Requests served on July 15, 2015 (“July 15<sup>th</sup> NECR Response”).

over twenty years of records to produce irrelevant documents. PAS does not object to producing documents for the period from January 1, 2013 through May 31, 2015, which is the same period over which NECR agreed to produce documents in response to PAS's First Set of Discovery Requests. Notwithstanding the foregoing, PAS does not object to producing available documents currently in its possession from the transactions that were the subject of Amtrak I and Amtrak II.<sup>2</sup>

19. PAS's General Objections and document responses are based upon information presently known to it. PAS reserves the right to rely upon facts, documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time.

#### **INTERROGATORIES**

1. Without regard to any date limitations, identify each and every instance since the TO became effective in which PAS, ST or B&M used the TO trackage rights to handle traffic in the account of another railroad (haulage traffic), other than PAS haulage of NS traffic for interchange with NECR, including:

- a. The dates of the moves;
- b. The number of cars moved;
- c. The commodities handled in each of the cars;
- d. The railroad for whom haulage was provided;
- e. The amount charged for the haulage.

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<sup>2</sup> National Railroad Passenger Corp.—Conveyance of Boston and Maine Corp. Interests in Connecticut River Line in Vermont & New Hampshire, 4 ICC 2d 761, 1988 ICC LEXIS 233, at \*68 (1988) (“Amtrak I”) and The National Railroad Passenger Corp.—Conveyance of Boston & Maine Corp. Interests in Connecticut River Line in Vermont & New Hampshire, 1990 ICC LEXIS 52 at \*26-\*30 (1990) (“Amtrak II”).

**RESPONSE:**

PAS objects to Interrogatory No. 1 on the grounds that the request is unduly burdensome, overbroad, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that the request seeks information prior to 2013. PAS further objects to the extent that the request seeks traffic information in a specialized format. Subject to and without waiving the General Objections set forth above, PAS states that it has not used the TO trackage rights to handle traffic in the account of another railroad (haulage traffic), other than PAS haulage of NS traffic for interchange with NECR. PAS is also producing responsive information which is not otherwise subject to objection in the form in which it possesses such information for the period from January 1, 2013 through May 31, 2015.

2. State in detail the basis for PAS's argument on page 10 of the PAS Reply that calculations of compensation under the TO were calculated into perpetuity and can never be changed.

**RESPONSE:**

PAS objects to Interrogatory No. 2 to the extent that the question calls for PAS to make a legal conclusion, as improper. Subject to and without waiving the General Objections set forth above, PAS refers NECR to Exhibit B - Verified Statement of Michael B. Baranowski ("VS Baranowski") to the PAS Reply, which discusses the basis for statement, as well as the Interstate Commerce Commission's ("ICC") decisions in Amtrak I and Amtrak II. Additionally, PAS refers NECR to Table 1 of Amtrak I.

3. State whether your contention that the calculations of compensation under the TO were calculated into perpetuity is limited to the Middle Segment, or also applies to the Northern

and Southern Segment, and if you contend that the contention applies to the Northern and Southern Segments, explain in detail the basis for Your response.

**RESPONSE:**

PAS objects to Interrogatory No. 3 for the reasons identified in Interrogatory No. 2 above. Additionally, PAS refers NECR to the documents identified in Interrogatory No. 2. The documents speak for themselves. PAS also refers NECR to the decisions issued in Amtrak I and Amtrak II and the verified statement of Michael Baranowski.

4. State whether for the purposes of applying the CE methodology You identified the market value of NECR's total railroad property based on a contemporaneous arms-length transaction, and if so, identify the date of the transaction, and the market value.

**RESPONSE:**

PAS objects to Interrogatory No. 4 as unduly burdensome based on PAS's General Objection No. 10. Subject to and without waiving the General Objections set forth above, PAS refers NECR to the VS Baranowski and the related workpapers produced on August 8, 2016 both of which explain PAS's calculation of the Capitalized Earnings Approach ("CE") in connection with calculation of trackage rights compensation.

5. For each of the years 1989, 2013, 2014 and 2015 through May 31, state what B&M, PAS or ST's per car revenue, gross revenue and earnings were with respect to (a) service to and from Exclusive Customers, and (b) service to and from Non-exclusive Customers.

**RESPONSE:**

PAS objects to Interrogatory No. 5 on the grounds that the question is overbroad and unduly burdensome. PAS further objects to producing the requested information on the basis that the information sought is not kept in the ordinary course of business in a manner that would

permit PAS to provide a response. PAS specifically objects on the grounds that separating revenues, gross revenues, and earnings for service to and from Exclusive Customers versus Non-exclusive Customers would require PAS to undertake a special study. PAS further objects to Interrogatory No. 5 to the extent that it seeks information prior to January 1, 2013 on the basis of General Objection No. 18. Subject to and without waiving the General Objections set forth above, PAS is producing traffic data in the format and manner kept in the ordinary course of business.

6. Describe in detail how and in what manner You contend that PAS's service to the propane customer in Claremont, New Hampshire, as described on page 2 of the Verified Statement of Michael P. Bostwick, is more efficient than the service offered by NECR.

**RESPONSE:**

PAS objects to Interrogatory No. 6 on the ground that the request seeks information that is neither relevant to the issues that the Board must resolve in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections set forth above, based on the customer's evaluation of its rail shipping options and decision to switch rail service providers, PAS contends the customer itself deemed that PAS was the more cost-effective and efficient option. PAS notes that it has a staging yard in East Deerfield, Massachusetts where it can offer the propane customer car staging to handle fluctuations in demand for propane. NECR has no such similarly situated yard. PAS also offers the customer five day per week service.

7. Describe in detail the capital policies of PAS, B&M and ST.

**RESPONSE:**

PAS objects to Interrogatory No. 7 on the grounds that the request is vague, ambiguous, overbroad, unduly burdensome, and fails to describe with reasonable particularity the information sought insofar as it seeks "capital policies," which is an undefined term.

Notwithstanding its objection, PAS states that in general, PAS makes strategic investments to:

(a) when economically advisable, improve capacity for more efficient operations; (b) maintain compliance with applicable safety regulations, such as 49 CFR Part 213, the FRA Track Safety Standards; and (c) address, if necessary or advisable, any conditions discovered during Part 213 mandated inspections and geometry and ultrasonic testing performed several times per year.

**DOCUMENT REQUESTS**

PAS has conducted a reasonable search for documents, which are responsive to the NECR Discovery Requests and that are not subject to the foregoing General Objections (which PAS hereby incorporates by reference into the following responses to each of the individual NECR Discovery Requests without repeating same with each response). PAS continues to search for documents to the extent the documents are not subject to objection, and will provide such additional documents, if any, as they may be located. Accordingly, and without waiver of any of the foregoing, PAS responds to the NECR Discovery Requests as follows:

1. To the extent not already produced, any and all of the work papers and supporting documentation, in electronic and native format where available, that support or relate to the PAS Reply including without limitation the Verified Statement of Michael B. Baranowski and or the work done by FTI Consulting, and including without limitation, work papers and supporting documentation related to the "PAS Earnings" and

“Extrapolated PAS Earnings” attributable to the segments of the TO Line shown in Baranowski’s Trackage Rights Calculation, GVC Approach tab.

**RESPONSE:**

Subject to PAS’s General Objections set forth above, specifically, General Objection 10, PAS responds that on August 8, 2016, counsel for NECR confirmed receipt of a CD entitled Workpapers Supporting Verified Statement of Pan Am Southern Witness Michael Baranowski, which contains the requested data.

2. Without regard to any date limitations, any and all agreements entered into between PAS, ST or B&M and another railroad (other than NECR, CV or NS) for the handling of cars in the account of such other railroad (haulage) over the TO Line, between the effective date of the TO and the present.

**RESPONSE:**

PAS objects to Document Request No. 2 on the grounds that the request is unduly burdensome and overbroad. PAS further objects to the request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that the request seeks information prior to 2013. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents which contain information relevant to this inquiry for the time period from January 1, 2013 through May 31, 2015.

3. Any and all documents that relate to the discussions between PAS and Vermont Rail System for the potential provision of haulage services between Bellows Falls and White River Junction, as described on page 3 of the Verified Statement of Michael P. Bostwick.

**RESPONSE:**

PAS objects to Document Request No. 3 on the grounds that the request is unduly burdensome and overbroad. PAS further objects to the request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that the request seeks information concerning PAS's potential provision of future haulage services. Subject to and while preserving PAS's General Objections set forth above, PAS is producing responsive documents that contain information relevant to this inquiry.

4. Without regard to any date limitations, any and all documents that relate to or support the calculation of the takings value determined in the Amtrak Proceedings shown on page 10 of the PAS Reply, including but not limited to all assumptions regarding B&M's future cash flows, future maintenance payments, and future obligations to pay for capital upgrades.

**RESPONSE:**

Subject to PAS's General Objections set forth above, specifically, General Objection 10, PAS refers NECR to the ICC's decision in Amtrak I, VS Baranowski, and the work papers produced on August 8, 2016 entitled, "Amtrak Decision Compensation.xlsx."

5. Without regard to any date limitations, any and all documents that refer or relate to PAS's contention that the fundamental assumptions in the takings value calculation in the Amtrak proceedings were extended into perpetuity.

**RESPONSE:**

Subject to PAS's General Objections set forth above, specifically, General Objection 10, PAS refers NECR to the ICC's decision in Amtrak I, VS Baranowski, and the work papers produced on August 8, 2016 entitled, "Amtrak Decision Compensation.xlsx."

6. Without regard to any date limitations, any and all documents that relate to or support PAS's contention on page 11 of the PAS Reply that the TO can only be reopened for "minor modifications."

**RESPONSE:**

Subject to PAS's General Objections set forth above, specifically, General Objection 10, PAS refers NECR to the ICC's decisions in Amtrak I and Amtrak II.

7. Without regard to any date limitations, any and all documents that relate to the selection or interpretation of the 20 year period for reopening in the TO.

**RESPONSE:**

Subject to PAS's General Objections set forth above, specifically, General Objection 10, PAS refers NECR to the ICC's decision in Amtrak II at \*14-\*15.

8. Any and all agreements between PAS, ST or B&M, on the one hand, and Amtrak, on the other hand, covering operations of one over lines of the other.

**RESPONSE:**

Subject to PAS's General Objections set forth above and subject to the further objection that Discovery Request No. 8 is vague, ambiguous, overbroad and unduly burdensome, PAS is producing copies of responsive documents.

9. Any and all agreements between PAS, ST or B&M, on the one hand, and another freight carrier, on the other hand, covering the operations of one carrier over the lines of the other carrier (trackage rights), including without limitation all agreements with respect to lines that are also operated over by Amtrak or any commuter railroad, other than the lines at issue in this proceeding.

**RESPONSE:**

PAS objects to Document Request No. 9 on the grounds that the request is overbroad and unduly burdensome. PAS further objects for the reasons stated in PAS's General Objections and because the request seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence relevant to any of the Board's existing methodologies for calculating trackage rights compensation. Notwithstanding this objection and subject to PAS's General Objections set forth above, PAS is producing copies of responsive documents.

10. Any and all insurance policies covering PAS or ST's (a) operations over, and use of, the TO Line, and (b) operations over, and use of, the lines of any other railroad.

**RESPONSE:**

PAS objects to Document Request No. 10 on the grounds that subpart (b) is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to PAS's General Objections set forth above, PAS is producing copies of responsive documents for the TO Line.

11. Without regard to any date limitations, any and all documents reflecting or relating to the title to or valuation of the real property underlying the Middle Segment as asserted by B&M in the Amtrak proceedings.

**RESPONSE:**

Subject to PAS's General Objections set forth above and subject to the further objection that Discovery Request No. 11 is vague, ambiguous, overbroad and unduly burdensome, PAS refers NECR to the decisions and documents submitted in the public record in connection with the Amtrak proceedings. Nonetheless, and subject to its General Objections, PAS is producing copies of responsive documents.

12. Without regard to any date limitations, any and all documents reflecting or relating to the calculation of going concern value as asserted by B&M in the Amtrak proceedings.

**RESPONSE:**

Subject to PAS's General Objections set forth above, specifically, General Objection 10, PAS responds that all information related to and/or reflecting the calculation of the going concern value is part of the public record in the Amtrak proceedings.

13. Any and all documents, including without limitation timetables, reflecting or relating to the schedule of PAS or ST's operations (a) to or from the Middle Segment, and (b) overhead over the TO Line.

**RESPONSE:**

Subject to PAS's General Objections set forth above, specifically General Objection 10, PAS states that it operates in accordance with and consistent with NECR's own timetable (and the TRO), which are already in NECR's possession. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents.

14. Any and all databases, data warehouses and computer programs (with all documentation related to these databases and computer programs), in a computer-readable format, that include the information listed below for each movement handled by PAS or ST (A) to or from Exclusive Customers, (B) to or from Non-exclusive Customers, and (C) over the TO Line. If not available by such categories, produce any and all documents reflecting or providing a such information for PAS and ST related operations on the TO Line as a whole:

- a. Commodity (seven-digit Standard Transportation Commodity Code ("STCC"));

- b. Origin station and state;
- c. Destination station and state;
- d. For shipments that originated on PAS or ST's system, the date and time the shipment was originated;
- e. For shipments PAS or ST received in interchange, the on-junction station, state and SPLC;
- f. For shipments PAS or ST received in interchange, the road received from;
- g. For shipments PAS or ST received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, off-junction station, state and SPLC;
- i. For shipments given in interchange, the road to which they were given;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on the Middle Segment system, the date and time the shipment was terminated;
- l. Origin Freight Station Accounting Code ("FSAC");
- m. Destination FSAC;
- n. Origin SPLC;
- o. Destination SPLC;
- p. Number of railcars;
- q. Number of intermodal containers/trailers
- r. Tons (Net);
- s. Railcar tare weight;

- t. Intermodal container/trailer tare weight;
- u. Total freight revenues from origin to destination, including any adjustments thereto, along with a description of the adjustment (i.e., add to or subtract from gross revenue);
- v. PAS or ST's share or division of the total freight revenues, including any adjustments thereto;
- w. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and PAS or ST's division thereof provided in response to Subparts (v) and (w) above;
- x. The contract, agreement, tariff, pricing authority, etc. that the shipment is billed under, including the amendment and item numbers;
- y. Waybill number and date;
- z. TOFC/COFC plan;
  - aa. Car/trailer/container initial for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer initials);
  - bb. Car/trailer/container number for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer number);
  - cc. Total loaded movement miles;
  - dd. Total empty movement miles;
  - ee. Miles used to derive applicable fuel surcharges;

- ff. Applicable fuel surcharge rate;
- gg. Total loaded miles handled by PAS or ST;
- hh. Total empty miles handled by PAS or ST;
- ii. AAR car-type code;
- jj. Provider of car and trailer/container (PAS, B&M or ST-owned, PAS, B&M or ST-leased, shipper, or foreign road); and

Provide the intermodal service plan code and the intermodal line of business code for each intermodal shipment.

**RESPONSE:**

PAS's objects to Document Request No. 14 on the grounds that the request is overbroad and unduly burdensome. PAS further objects to producing the requested information (as compartmentalized in the request) on the basis that the information sought is not kept in the ordinary course of business in a manner that would permit PAS to provide the requested response. Furthermore, on the basis of General Objection No. 9, PAS specifically objects to producing the requested information in the format specified because producing such detailed traffic information would require PAS to undertake a special study. Subject to and without waiving the General Objections set forth above, PAS is producing its traffic data as kept in the ordinary course of business.

15. Any and all documents reflecting or providing a breakdown of all PAS or ST operating costs by category, including without limitation, train crew wages, locomotive ownership or lease costs, locomotive operations and maintenance (including fuel), freight car ownership and maintenance, depreciation, ad valorem taxes, loss and damage, general and administration, (a) for the handling of traffic moving to and from Exclusive

Customers, (b) for the handling of traffic moving to and from Non-exclusive Customers, and (c) for the handling of traffic over the TO Line. If not available by such categories, produce any and all documents reflecting or providing a breakdown of such operating costs by category for PAS and ST related operations on the TO Line as a whole. If not available for the TO Line as a whole, produce any and all documents reflecting or providing a breakdown of such operating costs by category for the PAS and ST systems as a whole.

**RESPONSE:**

PAS objects to Document Request No. 15 on the grounds that the question is overbroad and unduly burdensome. PAS further objects to producing the requested information on the basis that the information sought is not kept in the ordinary course of business in a manner that would permit PAS to provide a response. On the basis of General Objection No. 9, PAS specifically objects on the grounds that providing the requested information would require PAS to undertake a special study. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents that contain information relevant to this inquiry.

16. Any and all financial statements, audited, or unaudited if audited are not available, and other documents for PAS, ST and B&M to the extent that they include or reflect results for operations to, from or over the TO Line.

**RESPONSE:**

Subject to PAS's General Objections set forth above, PAS is producing copies of responsive documents.

17. For each of the Northern, Middle and Southern Segments, any and all documents, which contain operating statistics and density data for PAS or ST operations over such segments by commodity (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles gross ton-miles (both including and excluding locomotives), number of trains, etc.).

**RESPONSE:**

PAS objects to Document Request No. 17 on the grounds that the request is overbroad and unduly burdensome. PAS further objects to producing the requested information on the basis that the information sought is not kept in the ordinary course of business in a manner that would permit PAS to provide a response. On the basis of General Objection No. 9, PAS specifically objects to producing the requested information in the format specified because producing such detailed traffic and operating information would require PAS to undertake a special study. Subject to and without waiving the General Objections set forth above, PAS is producing its traffic data as maintained in the ordinary course of business.

18. Any and all valuations and analyses conducted since 2007 by or for NS, PAS, B&M or ST in connection with the formation of PAS and/or the properties now owned by PAS.

**RESPONSE:**

PAS objects to Document Request No. 18 on the grounds that the request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Additionally, PAS objects to the request to the extent it seeks responses prior to the period from January 1, 2013 through May 31, 2015. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents which contain information relevant to this inquiry.

19. Any and all studies and analyses conducted since 2007 by or for NS, PAS, B&M or ST which relate to or reflect the profitability of traffic handled by PAS or ST to or from points on the Middle Segment. Documents responsive to this request include, but are not limited to, studies and analyses conducted and prepared in connection with or related to the formation of PAS and the transactions that were the subject of the STB proceeding at Finance Docket No. 35147, *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements - Pan Am Southern LLC*, and the sub-dockets thereto.

**RESPONSE:**

PAS objects to Document Request No. 19 on the grounds that the request is unduly burdensome and overbroad. PAS further objects to the request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Additionally, PAS objects to the request to the extent it seeks responses prior to the period from January 1, 2013 through May 31, 2015. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents which contain information relevant to this inquiry. .

20. Any and all studies and analyses conducted since 2007 by or for NS, PAS, B&M or ST which relate to or reflect the profitability of overhead traffic handled by PAS or ST over the TO Line. Documents responsive to this request include, but are not limited to, studies and analyses conducted and prepared in connection with or related to the formation of PAS and the transactions that were the subject of the STB proceeding at Finance Docket No. 35147, *Norfolk Southern Railway Company, Pan Am Railways, Inc., et al. – Joint Control and Operating/Pooling Agreements - Pan Am Southern LLC*, and the sub-dockets thereto.

**RESPONSE:**

PAS objects to Document Request No. 20 on the grounds that the request is unduly burdensome and overbroad. PAS further objects to the request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Additionally, PAS objects to the request to the extent it seeks responses prior to the period from January 1, 2013 through May 31, 2015. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents which contain information relevant to this inquiry. .

21. Any and all forecasts and other documents related to forecasts or projections prepared since 2007 by or for NS, PAS, B&M or ST, of or related to future traffic volumes and/or revenues for freight traffic by traffic group (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving (a) to or from customers located on the Middle Segment, and (b) overhead over the TO Line.

**RESPONSE:**

PAS objects to Document Request No. 21 on the grounds that the request is unduly burdensome and overbroad. PAS further objects to the request as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Additionally, PAS objects to the request to the extent it seeks responses prior to the period from January 1, 2013 through May 31, 2015. .

22. Any and all contracts or other pricing documents that reflect the price and/or terms of service between PAS or ST and customers located on the Middle Segment, including without limitation the propane customer in Claremont, New Hampshire, referred to on page 2 of the Verified Statement of Michael P. Bostwick.

**RESPONSE:**

PAS objects to Document Request No. 22 on the grounds that the request seeks responses prior to the period from January 1, 2013 through May 31, 2015. PAS further objects to the request on the grounds that the request seeks information that is neither relevant to the issues that the Board must resolve in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents which contain information relevant to this inquiry.

23. Any and all documents that refer to or reflect the basis on which the propane customer in Claremont, New Hampshire, referred to on page 2 of the Verified Statement of Michael P. Bostwick, elected in 2013 to use the service of PAS instead of the service of NECR.

**RESPONSE:**

PAS objects to Document Request No. 23 on the grounds that the request seeks information that is neither relevant to the issues that the Board must resolve in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents which contain information relevant to this inquiry.

24. All correspondence between PAS or ST and the propane customer in Claremont, New Hampshire relating to or referring to the quality of service being provided by PAS or ST to the customer, and the customer's satisfaction with the service.

**RESPONSE:**

PAS objects to Document Request No. 24 on the grounds that the request is unduly burdensome. PAS further objects to the request on the ground that the request seeks information that is neither relevant to the issues that the Board must resolve in this proceeding nor reasonably

calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections set forth above, PAS is producing responsive documents which contain information relevant to this inquiry.

25. Any and all documents that refer to, relate to or support you contention on page 2 of the PAS Reply that the TO has benefitted shippers and connecting shortlines on the TO Line through lower rates.

**RESPONSE:**

PAS objects to Document Request No. 25 on the grounds that the request is unduly burdensome, vague, and overbroad. PAS further objects to the request based on General Objection 10. Notwithstanding its objections, PAS refers NECR to letters submitted in the docket by Susan Minter, Secretary of Transportation, State of Vermont, FD 35842 (filed Aug. 28, 2015) (“Minter Letter”) and Victoria F. Sheehan, Commissioner, Department of Transportation, State of New Hampshire, FD 35842 (filed Apr. 19, 2016) (“Sheehan Letter”). PAS also refers NECR to the Board’s decision in Rymes Heating Oils, Inc. – Petition For Declaratory Order, FD 34098 (STB served July 19, 2002)(“Rymes”). Finally, subject to and without waiving the General Objections set forth above, PAS is also producing responsive documents which contain information relevant to this inquiry.

26. Any and all documents that refer to, relate to or support your contention on page 2 of the PAS Reply that the TO has benefited shippers and connecting shortlines through increased service offerings.

**RESPONSE:**

PAS objects to Document Request No. 26 on the grounds that the request is unduly burdensome, vague, and overbroad. PAS further objects to the request based on General

Objection 10. Notwithstanding its objections, PAS refers NECR to its response to Document Request No. 25. Subject to and without waiving the General Objections set forth above, PAS is also producing responsive documents which contain information relevant to this inquiry.

27. Any and all documents that refer to, relate to or support your contention on page 2 of the PAS Reply that the TO has benefitted shippers and connecting shortlines on the Line through greater efficiencies and innovations as a result of strong competition between NECR and PAS.

PAS objects to Document Request No. 27 on the grounds that the request is unduly burdensome, vague, and overbroad. PAS further objects to the request based on General Objection 10. Notwithstanding its objections, PAS refers NECR to its response to Document Request No. 25. Subject to and without waiving the General Objections set forth above, PAS is also producing responsive documents which contain information relevant to this inquiry.

Respectfully submitted,

Robert B. Culliford  
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Attorneys for Pan Am Southern LLC

September 13, 2016

**CERTIFICATE OF SERVICE**

I, William A. Mullins, hereby certify that on this 13th day of September, 2016, Pan Am Southern LLC's written responses and objections to New England Central Railroad, Inc.'s First Set of Discovery Requests to PAS was served via email and overnight express upon counsel for New England Central Railroad, Inc.



William A. Mullins  
Attorney for Pan Am Southern LLC

**EXHIBIT "C"**

# CLARK HILL

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October 14, 2016

VIA EMAIL [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com)

William A. Mullins, Esq.  
Baker and Miller PLLC  
2401 Pennsylvania Avenue, NW  
Suite 300  
Washington, DC 20037

**Re: New England Central Railroad, Inc. -  
Trackage Rights Order - Pan Am Southern LLC  
STB Docket No. FD 35842 – Discovery Deficiencies**

Dear Mr. Mullins:

We are in receipt of Pan Am Southern LLC's ("PAS") written responses and objections to New England Central Railroad, Inc.'s ("NECR") First Set of Discovery Requests to PAS, as well as the documents produced on August 8, 2016, and on September 14, 2016. There are a number of deficiencies in the responses to interrogatories and the document production that we ask that you rectify in order to avoid a motion to compel. In addition, there are several objections lodged by PAS to the discovery that NECR contends are without merit and should not be used to shield production of relevant information pursuant to the Protective Order in this proceeding. Capitalized terms used herein have the definitions set forth in the First Set of Discovery Requests unless otherwise defined herein. NECR's issues with PAS's discovery responses are as follows:

**General Objections**

- With respect to General Objections 4 and 5, to the extent you withheld documents or redacted portions of documents, they should be identified on a work privilege log (this does not include documents generated or contained in your attorney work/litigation files), similar to that produced by NECR. Please produce that as soon as possible so that any withholding of documents may be assessed.

- With respect to General Objection 6, please clarify that all responsive information and documents were produced pursuant to the Protective Order and that no responsive information was withheld from production based upon claims of confidential, proprietary, commercially or competitively sensitive information. The only relevant information that may be withheld are documents subject to privilege and those must be identified on a privilege log.
- General Objection 12 is without merit to the extent that ST is the operator for PAS and PAS is successor to B&M and ST with regard to the trackage rights at issue here. Accordingly, PAS should have access to relevant ST and B&M documents as they relate to the operations over the TO Line, as well as access to historical B&M documents. PAS is requested to produce responsive, relevant information that is within its possession, custody and control even if it is was generated by ST or B&M. *See S2 Automation LLC v. Micron Tech., Inc.*, 2012 U.S. Dist. LEXIS 120097, \*49, \*104 (D. N.M. 2012)(in discovery documents are within a party's "control" when it has the legal right, authority or practical ability to obtain the documents – ST Automation ordered to produce relevant documents from its parent company as requested or file an affidavit from a corporate official that it does not have the legal or practical right to obtain such documents) (citations omitted); *see also* 7 Moore's Fed. Practice at § 34.14[2][b] (Matthew Bender 3d Ed.) ("control" is broadly construed to include the legal or practical right to request relevant document upon demand even if not presently in the party's possession).
- General Objection 14 is without merit as there are limited document requests that seek information regarding other lines that may be relevant in this proceeding as a measure of comparison to the proposed terms of the proposed new trackage rights order.
- With regard to General Objection 18, NECR does not agree that the timeframe must be limited to January 1, 2013-May 31, 2015 as there are certain areas that require relevant documents prior to January 1, 2013, as set forth in regard to individual interrogatories and requests below.

#### Interrogatories

- Your response to Interrogatory No. 1 is incomplete. PAS states that it has not used the TO trackage rights to handle traffic in the account of another railroad (haulage traffic), other than PAS haulage of NS traffic for interchange with NECR. Please clarify as to whether that answer is true for B&M/ST as well, i.e., that B&M/ST did not use the TO trackage rights to handle haulage traffic for another railroad. Given that PAS has argued that the TO language does not prohibit haulage, NECR is entitled to know whether PAS or its predecessors ever used the trackage rights for haulage, and if so, when and for whom. Moreover, this is important information going back to the original Amtrak I proceeding and should not be limited by a January 1, 2013-May 31, 2015 timeframe.
- Interrogatory No. 2 does not request a legal conclusion; it requests the basis for PAS's argument that calculations of compensation under the TO were calculated into perpetuity and can never be changed. General referrals to court decisions or a Table without

William A. Mullins, Esq.

October 14, 2016

Page 3

reference to the language you rely on is insufficient. Please supplement your answer with more specific information.

- Your response to Interrogatory No. 3 is deficient because your referral to the documents listed does not adequately answer the straightforward question. It appears from the calculations provided that you are only applying the “perpetuity argument” to the calculation of compensation for the Middle Segment, but the Reply is not as clear. Please directly confirm or deny in response to the Interrogatory question.
- Your response to Interrogatory No. 4 is deficient because your referral to the Baranowski statement and the workpapers is not a complete answer. While the workpapers do not reflect the identification of any contemporaneous arms-length transaction, that does not mean that there were not any such transactions identified by PAS’s expert. Please answer the interrogatory yes or no, and if the answer is yes, please provide the information requested.
- Your response to Interrogatory No. 5 is incomplete. You have produced document HC-344 which provides responsive information with respect to 12 customers and locations identified; however, you fail to identify which customers are Exclusive and which are Non-Exclusive. Given the limited number of customers, this is not a burdensome or unreasonable request.
- Your response to Interrogatory No. 7 is deficient as you failed to provide information regarding B&M and ST in your answer, in particular B&M’s policy at the time it was forced to transfer the trackage rights line.

#### **Document Requests**

- The response to Document Request No. 1 is deficient. We have reviewed the workpapers that were produced by PAS, and do not find within the workpapers any calculations that support the PAS Earnings set forth in the “GVC Approach” tab. Please produce those calculations, or point us to the correct documents that contain such calculations.
- With regard to Document Request No. 2, you have not produced any haulage agreements. To the extent any haulage was performed by PAS or its predecessors over the TO Line (see the discussion of Interrogatory No. 1 above), please produce any and all responsive agreements, or confirm that there are none.
- The responses to Document Requests 4-6 are deficient to the extent you rely exclusively on the Amtrak decisions, the Baranowski statement and workpapers although the document request seeks historical documents relating to PAS or its predecessor’s submissions during the Amtrak proceedings that would be relevant and responsive. In your General Objection 18, you indicated that PAS would produce such relevant, responsive documents are within PAS’s possession.
- The response to Document Request No. 8 is deficient. Document HC-288 references a 2012 operating agreement between PAS and Amtrak which does not appear to have been produced. Please produce the agreement as it appears that it would be relevant and responsive to this request.

William A. Mullins, Esq.

October 14, 2016

Page 4

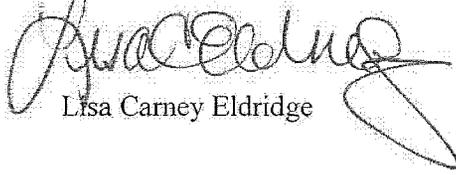
- With regard to Document Request No. 9, we note that certain trackage rights agreements or operating agreements were produced. Please confirm whether these are all of the trackage rights agreements that PAS, ST or B&M are currently operating under and, if not, produce all other trackage rights agreements. These agreements related to PAS's argument in its Reply regarding whether certain provisions requested by NECR for the new trackage rights order are standard.
- The response to Document Request No. 10 appears incomplete. You have produced a commercial property policy (HC-053), and a railroad liability excess policy (HC-101). However, you did not produce any railroad liability policy, or the other excess policies that seem to be in place (see HC-144 listing various excess policies). Please supplement your responses so that all relevant and responsive policies have been produced.
- The response to Document Request No. 12 is not sufficient as you have pointed NECR to the "public record in the Amtrak proceedings." It is only appropriate to respond with reference to documents that are publicly available if it were as burdensome to PAS as to NECR to obtain those documents. However, PAS is likely already in the possession of historical filings and submissions made by B&M in the Amtrak proceedings and thus NECR is in an unequal position as compared to PAS. As noted above, in your General Objection 18, you indicated that PAS would produce such relevant, responsive documents are within PAS's possession. To the extent PAS has copies of relevant filings and workpapers presented by or on behalf of B&M in the Amtrak proceedings they should be produced.
- It appears that the response to Document Request 14 is incomplete. The primary responsive documents appear to be the spreadsheets produced as HC-341 (Part A), HC-342 (Part B) and HC-343 Part C). Each spreadsheet contains different amounts of information, and Part C does not include any revenue information. Please explain what is covered by each spreadsheet so that we can determine whether the response is complete.
- The response to Document Request No. 15 is incomplete. PAS produced an email (HC-337) that provides operating ratios, crew costs and locomotive rental rates. It indicates that the author was planning to develop fuel cost based on average burn. Please produce the fuel costs which should be available by now.
- The responses to Document Requests Nos. 19, 20 and 21 are deficient. Studies, analyses and forecasts related to the profitability of traffic handles by PAS or ST to or from points on the Middle Segment, and overhead over the TO Line, are relevant to PAS's arguments that increased trackage rights rates would make the traffic not profitable and non-competitive.
- With regard to Document Request No. 22, please confirm that these are the only products being handled by PAS in the relevant period.

William A. Mullins, Esq.  
October 14, 2016  
Page 5

Please contact me and Eric to "meet and confer" as soon as possible after you have a chance to review the issues raised above, to see what, if any, can be resolved before moving forward with a motion to compel.

Very truly yours,

CLARK HILL PLC



Lisa Carney Eldridge

LCE/dml

cc: Eric M. Hocky, Esq.

**EXHIBIT "D"**

# BAKER & MILLER PLLC

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October 31, 2016

**VIA E-MAIL**

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

Re: FD 35842, New England Central Railroad Inc. – Trackage  
Rights Terms and Conditions – Pan Am Southern LLC

Dear Eric:

On October 14, 2016, New England Central Railroad Inc. (“NECR”) provided Pan Am Southern LLC (“PAS”) with a list of purported deficiencies in the discovery responses provided by PAS on September 13, 2016 (“Deficiencies Letter”). On October 20, 2016, you wrote me to request PAS’s consent to extend the procedural deadline for filing a motion to compel to November 4, 2016. PAS agreed to extend the deadline for NECR, and the Board adopted the revised procedural schedule in its Director Order of October 24, 2016. Please accept this letter as PAS’s formal response to the Deficiencies Letter.

**GENERAL OBJECTIONS**

**General Objections 4 and 5**

For General Objections 4 and 5, the Deficiencies Letter states that to the extent PAS withheld documents or redacted portions of documents, those documents (except for documents generated or contained in our attorney work/litigation files) should be identified on a work privilege log.

PAS has reviewed General Objections 4 and 5. Subject to and without waiving or limiting General Objections 4 and 5, PAS responds that at this juncture PAS has not withheld or

## **BAKER & MILLER PLLC**

October 31, 2016

Page 2

redacted any documents on the basis of General Objection 4 that are not otherwise generated or contained in our attorney work product/litigation files.

With respect to General Objection 5, PAS has withheld one document on the basis of attorney-client privilege. It is a short series of email exchanges from PAS's in-house counsel to counsel for a potential third party. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future. As this proceeding continues, should PAS identify and withhold or redact any documents on the basis of General Objections 4 and 5, PAS will produce a privilege log for such documents.

### **General Objections 6**

For General Objection 6, the Deficiencies Letter requests that PAS clarify that all responsive information and documents were produced pursuant to the Protective Order and that no responsive information was withheld from production based upon claims that requested information was confidential, proprietary, commercially or competitively sensitive.

Subject to and without waiving or limiting General Objection 6, PAS responds that at this juncture PAS has not withheld or redacted any documents on the basis of General Objection 6. Per General Objection 19, this response is based on the information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

### **General Objection 12**

For General Objection 12, the Deficiencies Letter claims PAS's response is without merit to the extent that ST is the operator for PAS and PAS is the successor to Boston and Maine Railroad ("B&M") and Springfield Terminal Railway Company ("ST") with regard to the trackage rights at issue. NECR further claims that PAS should have access to relevant ST and B&M documents as they relate to the operations over the TO Line, as well as access to historical B&M documents.

Subject to and without waiving or limiting General Objection 12, PAS responds that it has already produced copies of agreements related to operations on behalf of B&M, ST, and PAS (the "Parties").<sup>1</sup> In conjunction with this response, PAS is also producing additional responsive documents on behalf of the Parties. As far as historical B&M documents in PAS's possession, PAS has already produced copies of its then known documents in B&M/ PAS's custody. In preparing this response, PAS discovered some additional historical B&M documents, which are being produced as part of this response. Per General Objection 19, this

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<sup>1</sup> See PAS-P-00032 to PAS-P-00077; PAS-P-00228 to PAS-P-00271; PAS-HC-00252 to PAS-HC-00261; PAS-P-00110 to PAS-P-00144; PAS-P-00183 to PAS-P-00227; PAS-HC-00280 to PAS-HC-00303; PAS-P-00356 to PAS-P-00388.

October 31, 2016

Page 3

response is based on information presently known to PAS and PAS reserves the right to supplement this response in the future.

#### **General Objection 14**

For General Objection 14, the Deficiencies Letter claims PAS's response is without merit to the extent that NECR seeks information concerning other lines that may be relevant in this proceeding as a measure of comparison to the proposed terms of the proposed new trackage rights order.

Subject to and without waiving or limiting General Objection 14, PAS responds that it has already produced readily available trackage rights agreements/documents for other lines to be used as a measure of comparison.<sup>2</sup> In preparing this response, PAS discovered other potentially relevant documents. PAS is producing these additional responsive documents. However, PAS does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of PAS's objections to the NECR Discovery Requests. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

#### **General Objection 18**

For General Objection 18, the Deficiencies Letter indicates that NECR does not agree that the timeframe must be limited to January 1, 2013 to May 31, 2015, as there are certain areas that require relevant documents prior to January 1, 2013, as set forth in the individual interrogatories and requests. Subject to and without waiving or limiting General Objection 18, PAS responds that our responses generally cover the period from January 1, 2013 to May 31, 2015, which is the response period that was chosen by NECR. Producing documents for that time period allows the parties to compare apples to apples. Nonetheless, as part of this response, PAS is producing documents outside that period, as available on a case-by-case basis, as explained herein. In so producing these documents, PAS does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of PAS's objections to the NECR Discovery Requests. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

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<sup>2</sup> PAS-P-00228 to PAS-P-00271; PAS-HC-00252 to PAS-HC-00261; PAS-P-00110 to PAS-P-00144; PAS-P-00183 to PAS-P-00227; PAS-HC-00280 to PAS-HC-00303; and PAS-P-00356 to PAS-P-00388.

**INTERROGATORIES**

**Interrogatory No. 1**

For Interrogatory No. 1, NECR claims that PAS's response is incomplete because PAS states that it has not used the TO trackage rights to handle traffic in the account of another railroad (haulage traffic), other than PAS haulage of Norfolk Southern Railway Company ("NS") traffic for interchange with NECR, but fails to state whether the same is true for B&M/ST. NECR further claims that given that PAS has argued that the TO language does not prohibit haulage, NECR is entitled to know whether PAS or its predecessors ever used the trackage rights for haulage, and if so, when and for whom. NECR asserts that PAS's response should date back to the original Amtrak I proceeding and should not be limited to the January 1, 2013-May 31, 2015 timeframe.

Subject to and without waiving its General Objections, the Parties clarify that while the TO trackage rights does permit haulage, from the time of the original Amtrak I proceeding to date, none of the Parties have used the TO trackage rights to handle traffic in the account of another railroad (haulage traffic), other than PAS haulage of NS traffic for interchange with NECR.

**Interrogatory No. 2**

For Interrogatory No. 2, NECR disagrees with PAS's position that NECR's question calls for a legal conclusion. NECR states that it requests the basis for PAS's argument that calculations of compensation under the TO were calculated into perpetuity and can never be changed. NECR further claims that general referrals to court decisions or a table without reference to the language you rely on is insufficient. NECR requests that PAS supplement its answer with more specific information.

It remains PAS's position that Interrogatory No. 2 calls for PAS to make a legal conclusion and as such PAS objects to Interrogatory No. 2 as improper. Subject to and without waiving its General Objections, PAS refers NECR to PAS's Reply to NECR's Opening Statement And Evidence, Filed July 19, 2016 ("PAS Reply") and PAS's Written Responses and Objections to NECR's First Set of Discovery Requests to PAS, served on September 13, 2016, both of which identify the basis for our answer and the facts that the Board should find persuasive to arrive at its legal conclusion. NECR is free to reach a different conclusion than that reached by PAS. Ultimately, it is the Board's responsibility to interpret its prior decisions based on the law and facts presented during this proceeding.

**Interrogatory No. 3**

For Interrogatory No. 3, NECR claims that PAS's response is deficient because PAS's referral to the documents listed does not adequately answer the question. NECR requests that PAS confirm or deny whether the calculations of compensation under the TO that were

**BAKER & MILLER PLLC**

October 31, 2016

Page 5

calculated into perpetuity are limited to the Middle Segment, or whether the calculations also apply to the Northern and Southern Segment, and if PAS contends that the calculations apply to the Northern and Southern Segments, NECR requests that PAS explain in detail the basis for its contention.

PAS continues to object to Interrogatory No. 3 for the reasons identified in Interrogatory No. 2 above. Subject to and without waiving its General Objections, PAS responds that it has already identified the basis for our answer and the facts that the Board should find persuasive to arrive at its legal conclusion. NECR is free to reach a different conclusion than that reached by PAS. Ultimately, it is the Board's responsibility to interpret its prior decisions based on the law and facts presented during this proceeding.

**Interrogatory No. 4**

For Interrogatory No. 4, NECR asserts that PAS's answer is deficient because PAS's referral to the Michael Baranowski statement ("VS Baranowski") and the workpapers is not a complete answer. NECR asserts that the workpapers do not reflect the identification of any contemporaneous arms-length transaction; however, that does not mean that there were not any such transactions identified by PAS's expert. NECR requests that PAS answer the interrogatory yes or no, and if the answer is yes, please provide the information requested.

Subject to and without waiving its General Objections, PAS responds, yes, its expert was able to develop a purchase price from a report prepared in connection with Genesee & Wyoming's acquisition of NECR's parent company and using that report was able to approximate what the purchase price of NECR would be in a contemporaneous arms-length transaction.<sup>3</sup>

**Interrogatory No. 5**

For Interrogatory No. 5, NECR claims that PAS's response is incomplete because while PAS-HC-00344 provides responsive information concerning 12 customers and locations, PAS failed to identify which customers are Exclusive and which are Non-Exclusive. NECR asserts that given the limited number of customers, Interrogatory No. 5 is not burdensome or unreasonable.

PAS has reviewed Interrogatory No. 5 and its internal records. Subject to and without waiving or limiting Interrogatory No. 5, PAS has modified NECR-HC-00344 to identify exclusive and joint customers dating back to 1989.<sup>4</sup> The revised document is being produced. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

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<sup>3</sup> PAS-HC-00552 to PAS-HC-00726.

<sup>4</sup> See revised version – PAS-HC-00745.

**BAKER & MILLER PLLC**

October 31, 2016

Page 6

**Interrogatory No. 7**

For Interrogatory No. 7, NECR claims that PAS's response is deficient because PAS failed to provide information regarding B&M and ST in its answer, particularly with respect to B&M's policy at the time it was forced to transfer the trackage rights line.

PAS continues to object to Interrogatory No. 7 on the grounds that the request is vague, ambiguous, overbroad, unduly burdensome, and fails to describe with reasonable particularity the information sought insofar as it seeks "capital policies," which is an undefined term. Notwithstanding its objection, PAS states that in general, PAS, B&M, and ST have since the time of Amtrak I had the policy to make strategic investments to: (a) when economically advisable, improve capacity for more efficient operations; (b) maintain compliance with applicable safety regulations; and (c) address, if necessary or advisable, any conditions discovered during mandated inspections and geometry and ultrasonic testing performed several times per year.

**DOCUMENT REQUESTS**

**Document Request No. 1**

For Document Request No. 1, NECR claims PAS's response is deficient because it has reviewed the workpapers produced by PAS, and it does not find within the workpapers any calculations that support the PAS Earnings set forth in the "GVC Approach" tab. NECR requests that PAS produce those calculations or point NECR to the correct documents that contain such calculations.

Subject to PAS's General Objections, specifically, General Objection 10, PAS responds that on August 8, 2016, counsel for NECR confirmed receipt of a CD entitled Workpapers Supporting Verified Statement of Pan Am Southern Witness Michael Baranowski, which contains the requested data. It remains PAS's position that the narrative included in the VS Baranowski, which was part of PAS's Reply describes the calculations of PAS Earnings; and, the supporting calculations for the PAS Earnings are included in the "GCV Approach" tab. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

**Document Request No. 2**

For Document Request No. 2, NECR claims that PAS has not produced any haulage agreements. NECR requests that to the extent any haulage was performed by PAS or its predecessors over the TO Line (see the discussion of Interrogatory No. 1 above), PAS should produce any and all responsive agreements, or confirm that there are none.

Subject to and without waiving its General Objections, PAS responds that NECR's statement is incorrect. PAS refers NECR to the documents produced as PAS-HC-00041 to PAS-

**BAKER & MILLER PLLC**

October 31, 2016

Page 7

HC-00043, PAS-HC-00304 to PAS-HC-00336, and PAS-HC-00727 to PAS-HC-00744. PAS is also producing additional responsive documents that contain information relevant to this inquiry. However, as stated in Interrogatory No. 2, PAS, B&M, and ST have not used the TO trackage rights to handle traffic in the account of another railroad (haulage traffic), other than PAS haulage of NS traffic for interchange with NECR.

**Document Requests No. 4-6**

For Document Requests Nos. 4-6, NECR claims that PAS's responses are deficient to the extent PAS relies exclusively on the Amtrak decisions, the Baranowski statement, and the workpapers. NECR reiterates that its request seeks historical documents relating to PAS or its predecessor's submissions during the Amtrak proceedings that would be relevant and responsive.

Subject to and without waiving or limiting its General Objections, PAS responds that it has already produced copies of any known historical documents in B&M/ PAS's custody at the time of its initial response. In preparing this response, however, PAS has discovered other potentially relevant documents. PAS is producing these additional responsive documents. PAS does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of PAS's objections to the NECR Discovery Requests. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

**Document Request No. 8**

For Document Requests No. 8, NECR claims that PAS's response is deficient because Document PAS-HC-00288 references a 2012 operating agreement between PAS and Amtrak, which does not appear to have been produced. NECR requests that PAS produce the agreement as it appears that it would be relevant and responsive to this request.

Subject to and without waiving or limiting its General Objections, PAS responds that PAS-HC-00288 is actually a timetable to a 2015 Agreement with Amtrak concerning Allocation of Liability and Risk of Damage. Despite not being sure which Agreement NECR seeks, PAS has located and is producing a 2012 Operating Agreement between PAS/ST and Amtrak.<sup>5</sup>

**Document Request No. 9**

For Document Request No. 9, NECR recognizes that PAS has produced certain trackage rights agreements and/or operating agreements. NECR requests that PAS confirm whether these are all of the trackage rights agreements that PAS, ST, or B&M are currently operating under and, if not, produce all other trackage rights agreements. NECR purports the agreements are

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<sup>5</sup> See PAS-HC-00746 to PAS-HC-00791.

**BAKER & MILLER PLLC**

October 31, 2016

Page 8

related to PAS's argument in its Reply concerning whether certain provisions requested by NECR for the new trackage rights order are standard.

Subject to and without waiving or limiting its General Objections, PAS responds that it has already produced readily available trackage rights agreements/documents for other lines to be used as a measure of comparison.<sup>6</sup> In preparing this response, however, PAS discovered other potentially relevant documents. PAS is producing these additional responsive documents. However, PAS does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of PAS's objections to the NECR Discovery Requests. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

**Document Request No. 10**

For Document Request No. 10, NECR claims PAS's response appears incomplete because PAS produced a commercial property policy (PAS-HC-00053) and a railroad liability excess policy (PAS-HC-00101), but PAS did not produce any railroad liability policy, or the other excess policies that are listed on PAS-HC-00144. NECR requests that PAS supplement its response.

In preparing this response, PAS has discovered other potentially relevant documents. PAS is producing these additional responsive documents. However, PAS does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of PAS's objections to the NECR Discovery Requests. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

**Document Request No. 12**

For Document Request No. 12, NECR claims PAS's response is deficient because PAS points NECR to the "public record in the Amtrak proceedings." NECR claims PAS likely possesses historical filings and submissions made by B&M in the Amtrak proceedings that would not be in NECR's possession or the public record. Thus, NECR is in an unequal position as compared to PAS to obtain and possess relevant documents. NECR requests that to the extent PAS has copies of relevant filings and workpapers presented by or on behalf of B&M in the Amtrak proceedings, PAS produce the documents.

Subject to and without waiving or limiting General Objection 12, PAS responds that at the time of its initial production, it produced all known copies of documents in B&M/PAS's

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<sup>6</sup> PAS-P-00228 to PAS-P-00271; PAS-HC-00252 to PAS-HC-00261; PAS-P-00110 to PAS-P-00144; PAS-P-00183 to PAS-P-00227; PAS-HC-00280 to PAS-HC-00303; and PAS-P-00356 to PAS-P-00388.

October 31, 2016

Page 9

custody. In preparing this response, however, PAS discovered other potentially relevant documents. PAS is producing these additional responsive documents. However, PAS does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of PAS's objections to the NECR Discovery Requests. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement this response in the future.

**Document Request No. 14**

For Document Request No. 14, NECR recognizes that PAS produced three spreadsheets (PAS-P-00341 to PAS-P-00343) containing different amounts of information; however, NECR asserts it is unclear about what is covered in each spreadsheet. NECR has asked PAS to clarify what information is covered in the spreadsheets.

Subject to and without waiving or limiting its General Objections, PAS provides the following index to help NECR interpret the data provided in PAS-P-00341 to PAS-P-00343.

Document Request No. 14

A	341
B	341
C	341
D	343
E	343
F	343
G	343
H	343
I	343
J	341
K	342
L	342
m	342
n	NOT AVAILABLE
o	NOT AVAILABLE
p	341
q	341
r	342
s	341
t	341
u	342
v	342
w	342
x	342

y	342
z	341
aa	341
bb	341
cc	341
dd	341
ee	342
ff	342
gg	342
hh	342
ii	341
jj/kk	NOT AVAILABLE

**Document Request No. 15**

For Document Request No. 15, NECR claims PAS's response is incomplete because PAS produced an email (PAS-P-00341) containing operating ratios, crew costs, and locomotive rental rates, but failed to produce additional data that the email indicates PAS was to prepare regarding fuel costs based on average burn.

In preparing this response, PAS did not discover any additional responsive documents. Nonetheless, subject to and without waiving or limiting its General Objections, PAS requested its Mechanical Department to address the question and responds as follows:

Per John Morris of PAS's Mechanical Department, PAS's locomotives burn on the average 3.5 Gallons per hour. PAS generally uses two units per day over the NECR trackage rights, so the math would work as follows:  $3.5 \times 2 \times 145.6 \text{ miles} = 1,019.2$  Gallons.  $1,019.2 \times \$2.50 = \$2,548$  per day.  $\$2,548 \times 5 \times 52 = \$662,480$  annual fuel expense.

The total trackage rights are 72.8 miles. A round trip is 145.6 miles. PAS's fuel price at E. Deerfield today is \$1.80 per gallon, but historically has been much higher. Thus, Mr. Morris used \$2.50 per gallon because PAS's fuel surcharge tariff is designed to recover any amount over \$2.50 per gallon.

The numbers are generic based on operation over the whole TO line. It is not calculated based on service to specific customers or to specific connections. Nevertheless, the gallons per hour number are applicable regardless of distance traveled.

**BAKER & MILLER PLLC**

October 31, 2016

Page 11

Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement/modify this response in the future.

**Document Requests Nos. 19, 20, and 21**

NECR claims PAS's responses to Document Requests Nos. 19, 20 and 21 are deficient because studies, analyses, and forecasts related to the profitability of traffic handled by PAS or ST to or from points on the Middle Segment, and overhead over the TO Line, are relevant to PAS' s arguments that increased trackage rights rates would make the traffic not profitable and non-competitive.

Subject to and without waiving or limiting its General Objections, PAS responds that it has already produced all known responsive information in its possession in the form in which it possesses such information. Therefore, PAS renews its objection on the basis of General Objection 9, and PAS will not undertake special studies to produce additional responsive information.

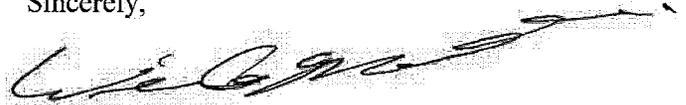
**Document Requests No. 22**

For Document Request No. 22, NECR seeks confirmation that these are the only products being handled by PAS in the relevant period.

Subject to and without waiving or limiting its General Objections, PAS responds that it is looking for additional information and/or responsive documents. Per General Objection 19, this response is based on information presently known to PAS. Thus, PAS reserves the right to supplement/modify this response in the future.

If there are any questions about this response or any of the documents, please do not hesitate to contact me directly or Crystal Zorbaugh, who can be reached at (202) 663-7831 or by e-mail at [czorbaugh@bakerandmiller.com](mailto:czorbaugh@bakerandmiller.com).

Sincerely,



William A. Mullins

cc: Rob Culliford  
John Edwards  
Aarthy Thamodaran