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SERVICE DATE – JUNE 26, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35147<sup>1</sup>

NORFOLK SOUTHERN RAILWAY COMPANY, PAN AM RAILWAYS, INC., ET AL.  
– JOINT CONTROL AND OPERATING/POOLING AGREEMENTS –  
PAN AM SOUTHERN LLC

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2 in STB Finance Docket No. 35147; Notice of Acceptance of Primary Application and Related Filings; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the primary application and related filings, filed on May 30, 2008, by Norfolk Southern Railway Company (Norfolk Southern), Pan Am Railways, Inc. (PARI) (a noncarrier railroad holding company), and two of PARI's rail carrier subsidiaries, Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (Springfield Terminal) (collectively, Applicants). The primary application seeks Board approval under 49 U.S.C. 11322 and 11323 of (1) the acquisition by Norfolk Southern and B&M of joint control and ownership of Pan Am Southern LLC (PAS), a new rail carrier to be formed; and (2) the agreements by which Springfield Terminal would operate the lines of PAS and establish rates for PAS. The agreements for which approval and authorization are being sought by the application and the related filings will be referred to collectively as the Transaction.

If the Transaction is approved, PAS would own or operate over (through trackage rights) approximately 437 miles of track (PAS Lines). The PAS Lines consist of 238.3 miles of rail lines to be owned by PAS, as well as 198.4 miles of track over which PAS would have trackage rights. The west to east main line section of the PAS Line, called the Patriot Corridor, would be comprised of 139.7 miles of track to be owned by PAS extending from Mechanicville, NY to CPF-312, near Ayer, MA, as well as 15.8 miles of trackage rights over Massachusetts Bay Transportation Authority (MBTA) track between Fitchburg, MA and Willows, MA. The north-

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<sup>1</sup> This decision also embraces Pan Am Southern LLC – Acquisition and Operation Exemption – Lines of Boston and Maine Corporation, STB Finance Docket No. 35147 (Sub-No. 1); Norfolk Southern Railway Company – Trackage Rights Exemption – Pan Am Southern LLC – Between Mechanicville, NY and Ayer, MA, STB Finance Docket No. 35147 (Sub-No. 2); and Springfield Terminal Railway Company – Trackage Rights Exemption – Pan Am Southern LLC – Between CPF 312 Near Willows, MA, and Harvard Station, MA, STB Finance Docket No. 35147 (Sub-No. 3) (collectively, the related filings).

south section of the PAS Lines extending from White River Junction, VT to New Haven, CT would be comprised of: (1) 72.8 miles of trackage rights over New England Central Railroad (NECR) between White River Junction, VT and East Northfield, MA; (2) 49.7 miles of track to be owned by PAS on the Connecticut River Mainline between East Northfield, MA and Springfield, MA; and (3) 62.0 miles of trackage rights over the National Railroad Passenger Corporation (Amtrak) between Springfield, MA and New Haven, CT. The PAS Lines would also include several branch lines.<sup>2</sup>

In addition, the parties have filed with the application three related notices of exemption. Pursuant to 49 CFR 1150.35(a), the first is a notice of intention to file, on or after June 16, 2008, a notice of exemption in Pan Am Southern LLC – Acquisition and Operation Exemption – Lines of Boston and Maine Corporation, STB Finance Docket No. 35147 (Sub-No. 1), for PAS to acquire from B&M the 437 miles of rail lines and trackage rights involved in the Transaction and to operate over the lines as a common carrier. The second is a notice of exemption in Norfolk Southern Railway Company – Trackage Rights Exemption – Pan Am Southern LLC – Between Mechanicville, NY and Ayer, MA, STB Finance Docket No. 35147 (Sub-No. 2), for Norfolk Southern to acquire trackage rights over 151.33 miles of PAS track between Mechanicville, NY and Ayer, MA. Finally, Applicants have included a notice of exemption in Springfield Terminal Railway Company – Trackage Rights Exemption – Pan Am Southern, LLC – Between CPF 312 Near Willows, MA, and Harvard Station, MA, STB Finance Docket No. 35141 (Sub-No. 3), for Springfield Terminal to acquire trackage rights over 6.4 miles of PAS track, to allow Springfield Terminal to continue to connect its remaining lines and to preserve connections to CSXT and Providence and Worcester Railroad Company (P&W).

In this decision, the Board finds that the Transaction is a “minor transaction” under 49 CFR 1180.2(c). The Board also adopts a procedural schedule for consideration of the application under which the Board’s final decision would be issued on October 20, 2008, and become effective on November 4, 2008, assuming that there is no need for further environmental analysis. See the discussion on environmental matters, below.

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<sup>2</sup> The branch lines consist of: (1) the Rotterdam Branch, which is approximately 30.5 miles between Rotterdam Junction, NY and Mechanicville, NY (including 18.3 miles of trackage over Canadian Pacific Railway Company (CP) between Mohawk Yard in Schenectady, NY and Mechanicville, NY); (2) the Adams Industrial branch, which is approximately 4.6 miles between N. Adams, MA and Adams, MA; (3) the Heywood Industrial branch, which is approximately 1.2 miles between Gardner, MA and Heywood, MA; (4) approximately 2.3 miles between Ayer, MA and Harvard Station, MA; (5) the Groton Industrial, which consists of trackage rights over MBTA extending approximately 5 miles between Ayer, MA and Groton, MA; (6) approximately 2.3 miles of trackage rights over MBTA between Willows, just east of Ayer, MA, and Littleton, MA; (7) approximately 42.9 miles between Berlin, CT and Derby, CT (including 18.6 miles of trackage rights over Metro North Commuter Railroad (MNCR) between Waterbury, CT and Derby, CT); (8) the Southington Industrial branch, which is approximately 4.5 miles between Plainville, CT and Southington, CT; and (9) approximately 3.7 miles of trackage rights over CSX Transportation, Inc. (CSXT) between North Haven, CT and Cedar Hill, CT.

**DATES:** The effective date of this decision is **June 27, 2008**. Comments on applicants' Environmental Appendix, which sets out why they believe no formal environmental review is warranted in this case, are due to the Board's Section of Environmental Analysis (SEA) by **July 7, 2008**. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than **July 11, 2008**, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by **August 11, 2008**. Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the primary application or related filings must be filed by **September 5, 2008**. If a public hearing or oral argument is held, it will be held on a date to be determined by the Board. The Board will issue its final decision on **October 20, 2008**, unless an extension is needed to permit the completion of formal environmental review.

**ADDRESSES:** Any filing submitted in this proceeding must be submitted **either** via the Board's e-filing format **or** in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at "www.stb.dot.gov" at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Richard A. Allen (representing Applicants), Zuckert, Scouff & Rasenberger, LLP, 888 Seventeenth Street, N.W., Suite 700, Washington, DC 20006; and (4) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after July 11, 2008, as practicable).

**FOR FURTHER INFORMATION CONTACT:** Julia M. Farr, (202) 245-0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Norfolk Southern is a Class I railroad headquartered in Norfolk, VA. With more than 30,000 employees, it operates approximately 21,000 route miles in 22 states and the District of Columbia. Norfolk Southern is a wholly owned subsidiary of Norfolk Southern Corporation, a publicly held noncarrier holding company. Norfolk Southern provides intermodal rail service to upstate New York, New England and Canada through haulage agreements with CP (including CP subsidiaries) (collectively, CP) and Springfield Terminal.<sup>3</sup>

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<sup>3</sup> CP provides haulage of intermodal traffic to Norfolk Southern over a CP line from Sunbury, PA to Mechanicville, NY, and Springfield Terminal provides haulage of intermodal traffic to Norfolk Southern over its line from Mechanicville to the intermodal terminals in Ayer, MA and Waterville, ME.

Springfield Terminal is a Class II rail carrier. Its principal office, and that of its affiliate, B&M, is in Massachusetts. With approximately 700 employees, Springfield Terminal operates some 2,056 route miles in Maine, New Hampshire, Vermont, Massachusetts, New York, and Connecticut.

PARI is a noncarrier holding company formerly known as Guilford Transportation Industries, Inc. (GTI). PARI has four wholly owned subsidiaries, including B&M and Springfield Terminal. PARI (then GTI) acquired Maine Central Railroad, Inc. (MCR) in 1981, and in 1983, it purchased B&M and Springfield Terminal. Springfield Terminal's lines extend from Rotterdam Junction, NY in the west, to Mattawamkeag, ME in the east and, with trackage rights, to New Haven, CT in the south.<sup>4</sup> Springfield Terminal interchanges traffic with 15 other railroads. In addition to interchanges with 11 short lines, Springfield Terminal interchanges with CSXT at Rotterdam Junction, NY, Hartford CT,<sup>5</sup> Holyoke, MA, Barbers, MA, Clinton, MA, and Boston, MA (I and F Junction); with CP at CP's Mohawk Yard in Schenectady, NY, St. Johnsbury, VT, and Wells River, VT; with Norfolk Southern at Mohawk Yard;<sup>6</sup> and with Canadian National Railway Company (CN) at Danville Junction, ME, and St. John, New Brunswick (via CN haulage rights). The largest source of Springfield Terminal's traffic is the paper industry, for which Springfield Terminal transports inbound chemicals, clay, and pulp, and outbound paper.

Norfolk Southern, PARI, B&M and Springfield Terminal entered into a Transaction Agreement dated May 15, 2008, which would require the parties upon closing to establish PAS and to effect various other agreements (Ancillary Agreements), the complete versions of which are attached to the confidential version of the application filed with the Board. The Transaction Agreement is subject to, and would be consummated following, receipt of Board approval and effectiveness of applicable exemptions. The Transaction Agreement requires Norfolk Southern to contribute \$137.5 million in cash and demand notes, and to assign a Purchase Option<sup>7</sup> to PAS

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<sup>4</sup> In 1984, GTI also acquired the Delaware & Hudson Railway Company (D&H). D&H filed for bankruptcy protection in 1988 and is now owned by CP.

<sup>5</sup> The Hartford interchange point with CSXT is currently inactive.

<sup>6</sup> Norfolk Southern has the right to interchange traffic with Springfield Terminal at Mechanicville, NY, but the interchange now takes place by agreement at CP's Mohawk Yard. Following the Transaction and the construction of the proposed intermodal and automotive facility, to be located on the site of two former rail yards at Mechanicville, NY (Mechanicville Facility), it is anticipated that the interchange between Norfolk Southern and PAS will occur at that proposed facility. CP has consented to the relocation of its mainline and modification of the interchange location, in each case to accommodate the proposed Mechanicville Facility.

<sup>7</sup> Norfolk Southern has purchased an option (the Purchase Option) from B&M to purchase a 26.316% undivided interest in the PAS Lines and related assets for \$52 million, and PARI has agreed to expend \$2.5 million to perform specified track work. The \$5 million option  
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for which Norfolk Southern would receive a 50% membership interest in PAS. The Transaction Agreement requires the Pan Am parties to contribute a 73.684% undivided interest in the PAS Lines, certain trackage rights, and other related assets to PAS for which B&M would receive a 50% membership interest in PAS, and for PAS to use \$47.5 million of its capital to exercise the Purchase Option contributed by Norfolk Southern and purchase the other 26.316% undivided interest in the PAS Lines, certain trackage rights, and other related assets from the Pan Am parties.

The application states that Norfolk Southern would infuse substantial capital into PAS, \$87.5 million dollars of which would go into improving infrastructure. PAS would use part of that capital to remove long term slow orders along the Patriot Corridor and add capacity and clearances along that line for better traffic flow. Springfield Terminal would provide the labor associated with these capital projects, to the same extent it would do so under its operation of these lines today under its collective bargaining agreements.

According to the application, PAS would use a portion of the capital contributed by Norfolk Southern to create the Mechanicville Facility. The proposed Mechanicville Facility is expected to significantly improve overhead rail operations for intermodal and automotive traffic destined to Ayer, MA. The existing intermodal facility at Ayer also would be improved, and a new automotive facility would be constructed at San Vel near Ayer (San Vel Automotive). According to Applicants, for traffic moving into the Boston area from the west, the Transaction would strengthen the existing Norfolk Southern/Springfield Terminal competitive option to CSXT's single line service because it makes PAS a more efficient competitor.

Applicants state that short line and regional railroads in the area – P&W, NECR, and Vermont Railroad, Inc. (VTR) – would not only interchange traffic with PAS, but would also obtain new direct routing opportunities for interchange with Norfolk Southern. According to Applicants, these railroads and their customers would benefit further from the proposed infrastructure improvements.

Passenger Service Impacts. According to Applicants, there are no passenger trains currently operating or expected to operate over the line segments proposed to be owned by PAS.

Discontinuances/Abandonments. Applicants state that the Transaction would not entail any abandonments or elimination of any facilities.

Financial Arrangements. According to Applicants, no new securities would be issued in connection with the Transaction, and Norfolk Southern's contribution to PAS would be funded from available cash and credit facilities. Norfolk Southern does not expect any increase in fixed charges as a result of the Transaction.

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price paid by Norfolk Southern is non-refundable but will be credited against the purchase price when PAS exercises the Purchase Option at closing of the Transaction Agreement.

Time Schedule for Consummation. Applicants expect to consummate the Transaction promptly after the effective date of any Board approval of the Transaction.

Public Interest Considerations. Applicants contend that the Transaction would have no adverse competitive effects and that it would in fact enhance their ability to compete with trucks and with other railroads, most notably, CSXT, which is the only Class I railroad now providing rail service over its own lines to locations in this New England region. In a verified statement attached to the application, the Applicants' outside consultant maintains that: (1) the Transaction is an end-to-end transaction that would eliminate no competing routes, stations, or services; (2) no rail customer would be left with reduced competitive rail options as a result of the proposed transaction; and (3) the Transaction would not have any material adverse effects on connecting short lines, but would in fact benefit these carriers.

Applicants maintain that the improvement in their ability to compete would be most significant with respect to intermodal and automotive traffic between Massachusetts, eastern New York, and points west. Today, according to Applicants, CSXT has large intermodal and automotive terminals in eastern New York and Massachusetts and carries a large share of the intermodal and automotive traffic in those areas.<sup>8</sup> Applicants maintain that, with the improvements to the PAS Lines and the new or improved terminals at Ayer, San Vel and Mechanicville, Applicants' ability to expand their intermodal and automotive services into markets now largely dominated by CSXT would be significantly enhanced.

Applicants state that, in addition to furthering competition, the Transaction would further the public interest in meeting significant transportation needs. According to Applicants, the principal purpose of the Transaction is to enhance the existing infrastructure of the lines to be acquired by PAS, substantially improving service to rail customers. Infrastructure would be enhanced by: (1) upgrading the lines to permit heavier (286,000 pound) rail cars, which are more efficient and economical for the coal-burning electric utilities served by the lines; (2) the proposed intermodal facility at Mechanicville, which would enable Norfolk Southern to better utilize its existing authority to move more efficient double-stack cars to eastern New York from points west and to move single-stack intermodal trains faster and more efficiently to eastern Massachusetts; and (3) the proposed automotive facilities at Mechanicville and San Vel, which are intended to improve service to shippers of automobiles to eastern New York and New England.

According to Applicants, the investment that Norfolk Southern would make in PAS would benefit not only coal, automotive, and intermodal customers but all Springfield Terminal and Norfolk Southern industrial customers. Applicants state that elimination of the interchange of intermodal traffic at the less efficient Mohawk Yard should improve the movement of all traffic through this area. Applicants also assert that customers that can utilize 286,000 pound rail

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<sup>8</sup> According to Applicants, CSXT also leases a large terminal facility from Pan Am in Ayer, MA that is capable of handling automotive traffic, but CSXT has elected not to use it and not to relinquish the lease. B&M would contribute that facility to PAS, but it would not be available for PAS's use until 2017 due to the CSXT lease.

cars would benefit from the rail and track improvements. Finally, according to Applicants, the capacity that would be added and the increase in the speed of the main line between Albany and Ayer would improve the fluidity, speed, and consistency of shipments for all customers using the services of PAS. The Transaction does not contemplate the elimination of any existing facilities.

According to Applicants, the short line and regional railroads that would connect with PAS and their customers, including particularly, VTR, P&W, and NECR, would likewise benefit from the improved service over the PAS Lines resulting from those investments, as well as from the new direct connections with Norfolk Southern.

Environmental Impacts. Applicants state that their representatives met with representatives of the Board's Section of Environmental Analysis (SEA) on April 22, 2008, to explain why, in Applicants' view, the Transaction would not have significant environmental impacts and require formal environmental review. At SEA's request and to assist the Board in determining whether a formal environmental review should be conducted, Applicants, on June 6, 2008, filed an Environmental Appendix in support of their position and asked for public comments on it. In their Environmental Appendix, Applicants maintain that the Transaction would not have significant environmental impacts because it would not cause significant changes in railroad operations and that further environmental review is not warranted.

Labor Impacts. Applicants expect that the Transaction would result in no adverse effect on any of the Applicants' employees. Employees of Springfield Terminal are currently providing all of the rail services over the PAS Lines. The Transaction Agreement and the Railroad Operating Agreement (attached to the application) state that, after consummation of the Transaction, Springfield Terminal would become the contract operator of the PAS Lines, and Springfield Terminal would be required to "act in accordance with its then-current collective bargaining agreements as if the Assets were an integral part of the Springfield Terminal railroad network."<sup>9</sup> Applicants state that the Capital Facilities and Management Agreement (attached to the application) provides that Springfield Terminal would perform work on any capital contract that its labor agreements would require Springfield Terminal employees to perform under pre-Transaction circumstances unless Springfield Terminal obtains a waiver of any such requirement. Thus, according to Applicants, the same employees would be performing the same work under the same agreements for the foreseeable future.

In any event, Applicants expect that, as required by 49 U.S.C. 11326(a), the Board would impose the labor protective conditions set forth in New York Dock Ry. – Control – Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979), on the elements of the Transaction that are subject to 49 U.S.C. 11323.

Related Filings. In connection with the Transaction, three notices of exemption were filed:

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<sup>9</sup> Exhibit E, Section 9(f)(ii)(A).

*(Sub-No. 1).* Pursuant to 49 CFR 1150.35(a), PAS filed a notice of intent to file, on or after June 16, 2008, a notice of exemption docketed as (Sub-No. 1), whereby PAS would acquire and operate certain lines of B&M and acquire incidental trackage rights from Springfield Terminal to operate over the lines of third parties. Pursuant to the primary application to which this notice in (Sub-No. 1) is related, PAS would be formed and Norfolk Southern would contribute cash, demand notes and the Purchase Option agreement to PAS, which together are valued at \$140 million. Under the Transaction that is the subject of the notice in (Sub-No. 1), B&M would contribute certain railroad lines in Massachusetts, New York, Vermont, New Hampshire and Connecticut, totaling approximately 238 route miles. Springfield Terminal would assign to PAS trackage rights Springfield Terminal currently holds over certain lines of MBTA, NECR, CP, Amtrak, CSXT, and MNCR, totaling approximately 198 route miles.

*(Sub-No. 2).* Pursuant to 49 CFR 1180.2(d)(7) and 1180.4(g), Norfolk Southern filed a notice of exemption to permit it to acquire overhead trackage rights over approximately 151.33 miles of track that would be owned or operated by PAS between Mechanicville, NY and Ayer, MA. According to Norfolk Southern, the trackage rights that are the subject of this notice would enable Norfolk Southern to provide direct rail transportation of intermodal traffic to and from the existing intermodal terminal at Ayer, MA, and the new automotive terminal that the Applicants propose to construct at nearby San Vel, MA, in the event that PAS fails to provide haulage services at a service level required under the Transaction Agreement. Norfolk Southern would not exercise any of the trackage rights until the later of (1) the effective date of the notice of exemption (including compliance with any conditions imposed on the exemption by the Board) or (2) the closing of the agreements for which the Board's approval is being sought in the primary application. As a condition to this exemption, Applicants state that any employees affected by the acquisition of these trackage rights would be protected under the conditions imposed in Norfolk and Western Ry. Co. – Trackage Rights – BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. – Lease and Operate, 360 I.C.C. 653 (1980) (N&W).

*(Sub No. 3).* Pursuant to 49 CFR 1180.2(d)(7) and 1180.4(g), Springfield Terminal filed a notice of exemption to permit it to acquire overhead trackage rights over approximately 6.4 miles of track that would be owned by PAS between Willows, MA, and Harvard Station, MA. The trackage rights that are the subject of this notice would enable Springfield Terminal to provide direct transportation of traffic for its own account between its current lines east of CPF 312 and its current line south of Harvard Station, MA. These trackage rights also would enable Springfield Terminal to continue to interchange traffic in its own account directly with CSXT and the P&W at points south of Harvard Station. Springfield Terminal would not exercise any of the trackage rights until the later of (1) the effective date of the notice of exemption (including compliance with any conditions imposed on the exemption by the Board) or (2) the closing of the agreements for which the Board's approval is being sought in the primary application. As a condition to this exemption, Applicants state than any employees affected by the acquisition of these trackage rights would be protected under the conditions imposed in N&W.

**PRIMARY APPLICATION AND RELATED FILINGS ACCEPTED.** Based on the information provided in the application, the Board finds the proposed Transaction to be a “minor transaction” under 49 CFR 1180.2(c). A transaction that does not involve two or more Class I railroads is minor if (1) it would clearly not have anticompetitive effects, or (2) any

anticompetitive effects would clearly be outweighed by the transaction's contribution to the public interest in meeting significant transportation needs. On the face of the application, there does not appear to be a likelihood of any anticompetitive effects resulting from the Transaction. The Norfolk Southern and Pan Am systems are entirely end-to-end, and it appears that no shipper would have fewer competitive rail alternatives as a result of the Transaction.

The Transaction also would not appear to have an adverse competitive effect on connecting short line and regional carriers. The Transaction would not impose any interchange restrictions on PAS, and PAS would honor all of the existing interchange contracts with connecting carriers. Eight short lines connect with the Pan Am lines that would become part of the PAS Lines, and none would lose a connecting alternative as a result of the Transaction. Many short lines would simply be served by PAS instead of Pan Am, and some would gain more direct access to Norfolk Southern via PAS.

The Board's finding regarding competitive impact is preliminary. The Board will give careful consideration to any claims that the Transaction would have anticompetitive effects that are not apparent from the application itself.

The Board accepts the primary application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. 11321-26; 49 CFR part 1180. The Board is also accepting for consideration the three related filings, which are also in compliance with the applicable regulations. The Board reserves the right to require the filing of supplemental information as necessary to complete the record.

**PUBLIC INSPECTION.** The primary application and related filings are available for inspection in the library (Room 131) at the offices of the Surface Transportation Board, 395 E Street, S.W., Washington, DC. In addition, the primary application and related filings may be obtained from Mr. Allen (representing Applicants) at the address indicated above.

**PROCEDURAL SCHEDULE.** The Board has considered Applicants' request for an expedited procedural schedule filed on May 30, 2008, under which the Board would issue its final decision before the statutory deadline of 180 days after the filing of the primary application. The Board is adopting a procedural schedule that is similar to Applicants' proposed schedule, but providing more time for interested parties to file comments.

Under the procedural schedule adopted by the Board, comments on the Environmental Appendix are due to be filed by **July 7, 2008**. Any person who wishes to participate in this proceeding as a POR must file a notice of intent to participate no later than **July 11, 2008**; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or related filings, including filings by DOJ and DOT, must be filed by **August 11, 2008**; and responses to comments, protests, requests for conditions, and other opposition and rebuttal in support of the primary application or related filings must be filed by **September 5, 2008**. As in past proceedings, DOJ and DOT will be allowed to file, on the response due date (here, **September 5, 2008**), their comments in response to the comments of other parties, and Applicants will be allowed to file (as quickly as possible thereafter) a response to any such comments filed by DOJ and/or DOT. Under this schedule, a public hearing or oral

argument may be held on a date to be determined by the Board. The Board will issue its final decision by **October 20, 2008**, with an effective date of 15 days after its issuance, assuming that formal environmental review under NEPA is not required. For further information respecting dates, see the attached Appendix.

**NOTICE OF INTENT TO PARTICIPATE.** Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than **July 11, 2008**, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Mr. Allen (representing Applicants).

If a request is made in the notice of intent to participate to have more than one name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a “Non-Party.” The list will reflect the Board’s policy of allowing only one official representative per party to be placed on the service list, as specified in Press Release No. 97-68 dated August 18, 1997, announcing the implementation of the Board’s “One Party-One Representative” policy for service lists. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4, and any other requirements set forth in this decision.

**SERVICE LIST NOTICE.** The Board will serve, as soon after **July 11, 2008** as practicable, a notice containing the official service list (the service-list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service-list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service-list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service-list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a POR.

**COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT, INCLUDING FILINGS BY DOJ AND DOT.** All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or related filings, including filings by DOJ and DOT, must be filed by **August 11, 2008**.

Because the Transaction proposed in the application is a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the application or the imposition of conditions upon any approval thereof, on the theory that approval (or approval

without conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. See Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295 (D.C. Cir. 1983).

**RESPONSES TO COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION; REBUTTAL IN SUPPORT OF THE PRIMARY APPLICATION OR RELATED FILINGS.** Responses to comments, protests, requests for conditions, and other opposition submissions, and rebuttal in support of the primary application or related filings must be filed by **September 5, 2008**.

**PUBLIC HEARING/ORAL ARGUMENT.** The Board may hold a public hearing or an oral argument in this proceeding on a date to be determined by the Board.

**DISCOVERY.** Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

**ENVIRONMENTAL MATTERS.** Applicants assert in their application that the proposed Transaction would have insignificant environmental effects and therefore does not require a formal environmental review under the National Environmental Policy Act of 1969 (NEPA). Applicants state that the proposed Transaction would result in no significant changes in railroad operations that would exceed the thresholds triggering environmental review established in the Board's environmental rules at 49 CFR 1105.7(e)(4) or (5). No related rail construction or abandonment projects requiring Board approval have been proposed. Applicants further state that the Transaction is exempt under 49 CFR 1105.6(c)(2)(i) from environmental reporting requirements and exempt under 49 CFR 1105.8(b)(1) and (3) from historic preservation reporting requirements. Applicants also state that the proposed Transaction does not require preparation of a Safety Integration Plan pursuant to 49 CFR 1105.6.

To assist SEA in determining whether the Transaction would not have significant environmental impacts and would not require formal environmental review, SEA directed Applicants to prepare an Environmental Appendix providing additional details and explanation, including maps, supporting Applicants' conclusion that the Transaction does not warrant the preparation of formal environmental documentation. Applicants have prepared an Environmental Appendix and issued it for public review and comment to a wide range of appropriate Federal, state, and local agencies, government entities and other interested parties in the project area. The Environmental Appendix is available on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov), under "E-LIBRARY/Filings" (see Filings for June 6, 2008). Applicants also placed notices in major newspapers in potentially affected communities to announce the availability of the Environmental Appendix and the opportunity to file public comments.

Comments from all interested parties on the Environmental Appendix are to be postmarked by **July 7, 2008**. Based on its consideration of all timely comments on the Environmental Appendix and its own independent review of all available environmental information, SEA will recommend to the Board whether there is a need for formal environmental review in this case. The Board will then determine whether to issue a finding of no significant environmental impact, or, alternatively, whether an Environmental Assessment (EA) or

Environmental Impact Statement (EIS) should be prepared. If an EA or EIS is required to meet the Board's NEPA obligations, the procedural schedule set forth here will be adjusted accordingly.

**COMMENTS ON ENVIRONMENTAL APPENDIX.** All comments on the Environmental Appendix must be filed by **July 7, 2008**. Persons wishing to submit written comments on the Environmental Appendix should send: (1) one signed original to SEA by mail postmarked by **July 7, 2008**, to Office of the Secretary, Case Control Unit, STB Finance Docket No. 35147, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423;<sup>10</sup> and (2) one copy to Applicants' attorney, Richard A. Allen. Comments can also be submitted electronically by following the instructions for "e-filing" at the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov). Any questions or requests for additional information about the Board's environmental review process can be directed to Ken Blodgett of SEA, at 202-245-0305.

**FILING/SERVICE REQUIREMENTS.** Persons participating in this proceeding may file with the Board and serve on other parties: a notice of intent to participate (due by **July 11, 2008**); a certificate of service indicating service of prior pleadings on persons designated as PORs on the service-list notice (due by the 10th day after the service date of the service-list notice); any comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or related filings (due by **August 11, 2008**); and any responses to comments, etc., and any rebuttal in support of the primary application or related filings (due by **September 5, 2008**).

Filing Requirements. Any document filed in this proceeding must be filed **either** via the Board's e-filing format **or** in the traditional paper format as provided for in the Board's rules. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at "www.stb.dot.gov" at the "E-FILING" link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any copy may be sent by e-mail only if service by e-mail is acceptable to the recipient): (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Richard A. Allen (representing Applicants), Zuckert, Scoutt & Rasenberger, LLP, 888 Seventeenth Street, N.W., Suite 700, Washington, DC 20006; and (4) any other person designated as a POR on the service-list notice.

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<sup>10</sup> In their letter of transmittal, Applicants used the wrong zip code (20024, the zip code for the STB's building location), rather than 20423 (the Board's assigned zip code that follows the agency wherever it is located).

**SERVICE OF DECISIONS, ORDERS, AND NOTICES.** The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Decisions & Notices."

**ACCESS TO FILINGS.** An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The primary application and other filings in this proceeding will also be available on the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Filings."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The primary application in STB Finance Docket No. 35147 and the related filings in STB Finance Docket No. 35147 (Sub-Nos. 1 through 3) are accepted for consideration.
2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.
4. This decision is effective on June 27, 2008.

Decided: June 23, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey. Vice Chairman Mulvey commented with a separate expression.

Anne K. Quinlan  
Acting Secretary

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VICE CHAIRMAN MULVEY, commenting:

While I vote today to accept for consideration this transaction as “minor” in accordance with the statutory definition of that type of transaction, I believe the time may have come to redefine what is “minor” and what is “significant.” This transaction involves several hundred miles of rail line in the New England region and affects a number of carriers. It is by no means “minor” as that term is commonly used.

## APPENDIX

PROCEDURAL SCHEDULE<sup>11</sup>

May 30, 2008	Application, related notices of exemption, and motion to establish procedural schedule filed
June 27, 2008	Notice of acceptance of application and notices of exemption to be published in <u>Federal Register</u>
July 7, 2008	Comments on the Environmental Appendix due
July 11, 2008	Notices of intent to participate in the proceeding due
August 11, 2008	Comments, protests, requests for conditions, and supporting evidence, including filings for government agencies, due
September 5, 2008	Responses to comments, protests, and requests for conditions, and rebuttal in support of Application due
TBD	Public hearing or oral argument may be held
October 20, 2008	Service of final decision
November 4, 2008	Final decision effective

This schedule would meet the procedural deadlines in 49 U.S.C. 11325(a) and (d).

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<sup>11</sup> This schedule will be amended, if necessary, to accommodate formal environmental review, if needed.