

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35842

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

Decided: July 29, 2015

By decision served December 23, 2014, the Board instituted a proceeding to establish new terms and conditions for the trackage rights of Pan Am Southern LLC (PAS) over a New England Central Railroad, Inc. (NECR) line of railroad, extending approximately 72.8 miles, from White River Junction, Vt., to East Northfield, Mass.

By decision served March 12, 2015, the Board granted the parties' request to commence mediation to resolve issues regarding the terms and conditions for PAS's use of NECR's line and issued a procedural schedule to govern the proceeding should mediation be unsuccessful. Mediation ultimately was unsuccessful, and, in accordance with the procedural schedule set forth by the Board, as amended,<sup>1</sup> NECR filed its opening statement and evidence on June 4, 2015.

On July 16, 2015, NECR filed a motion requesting that the Board make a preliminary determination as to the appropriate valuation method to be used to calculate one element of the trackage rights compensation to be paid by PAS to NECR. Specifically, NECR requests that the Board find that the "capitalized earnings" method is not an appropriate valuation method in this proceeding, and as a corollary to that finding, that NECR is entitled to an order under 49 C.F.R. § 1114.21(c)(2) to protect NECR from having to respond to discovery related to the capitalized earnings approach. NECR notes that a decision on its motion would likely require the current procedural schedule to be suspended.

By letter filed July 23, 2015, PAS states that it agrees with NECR that the Board should suspend the procedural schedule with respect to the due date for PAS's reply to NECR's opening and the due date for any NECR rebuttal. However, PAS asserts that discovery should also be held in abeyance due to PAS's concerns over NECR's lack of adequate discovery responses. PAS states that holding discovery in abeyance would allow time for a Board decision on NECR's motion, which would have a significant impact on the relevancy of, and scope of, PAS's discovery.

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<sup>1</sup> The procedural schedule was extended by subsequent decisions served on April 17, 2015, and May 19, 2015.

By letter filed on July 27, 2015, NECR states that it does not oppose suspending the procedural schedule for the submission of the PAS's reply and NECR's rebuttal pending disposition of its motion but that discovery should not be suspended except as subject to its motion.

Given these circumstances, the Board will hold the deadlines for PAS's reply and NECR's rebuttal in abeyance pending further order of the Board. The Board will address the issues raised in NECR's motion for preliminary determination of the appropriate valuation method and related discovery issues in a later decision.

It is ordered:

1. The deadlines for PAS's reply and NECR's rebuttal are placed in abeyance pending further order of the Board.
2. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.