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SERVICE DATE – OCTOBER 19, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35147

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

Decided: October 8, 2009

By decision served on March 10, 2009, the Board approved the joint control and ownership of Pan Am Southern LLC, a new rail carrier, by Norfolk Southern Railway Company, Pan Am Railways, Inc., and two of its rail carrier subsidiaries, Boston and Maine Corporation and Springfield Terminal Railway Company, and the related operation agreements, subject to certain conditions. In this decision, the Board is removing the historic preservation condition imposed as Environmental Condition No. 17 in the March 10, 2009 decision.<sup>1</sup>

In its Environmental Assessment (EA) served on November 14, 2008, the Board's Section of Environmental Analysis (SEA) recommended that the decision be made subject to a number of environmental conditions. Of those, SEA recommended the imposition of an historic preservation condition that would require applicants not to initiate construction in areas potentially affected by historic properties within the proposed Mechanicville Facility footprint, or take any steps to alter the historic integrity of historic properties, including sites, buildings, structures, and objects within the project Area of Potential Effect (APE) that are eligible for listing or are listed in the National Register of Historic Places (National Register) until the Board's responsibilities under the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470F (NHPA), have been satisfied. SEA recommended the imposition of, and the Board subsequently imposed, this historic preservation condition because the New York State Historic Preservation Officer (NY SHPO) had not yet completed its review of the proposed project.

In a Post EA dated September 4, 2009, SEA has now advised that, in correspondence dated August 27, 2009, applicants have forwarded information from the NY SHPO indicating that, based upon information submitted by applicants, the proposed project would have no adverse effect on historic resources listed or eligible for listing on the National Register for the APE examined by the investigations undertaken for the Mechanicville Facility project.

SEA also states that, as discussed in the EA and a Post EA served January 30, 2009, consultation with the Massachusetts Historical Commission (MA SHPO) resulted in a finding

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<sup>1</sup> The other environmental conditions remain in effect.

that no historic architectural or archaeological resources would be affected by the proposed San Vel Automotive Facility or by repair and improvement work to be conducted at two bridges in Massachusetts. Accordingly, no historic preservation mitigation was recommended for Massachusetts. Confirming SEA's analysis, applicants have attached three documents from the MA SHPO stating that the project is unlikely to affect significant historic or archaeological resources.

Pursuant to the section 106 regulations of the NHPA at 36 CFR 800.5(b) and consultation with the NY SHPO, MA SHPO and the public, SEA has determined that the proposed project would not affect historic properties listed in or eligible for inclusion in the National Register. Therefore, SEA recommends that the section 106 historic preservation condition (Environmental Condition No. 17) imposed in the March 10, 2009 decision be removed.

Accordingly, based on SEA's recommendation, we will reopen the proceeding and remove Environmental Condition No. 17.

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

It is ordered:

1. The proceeding is reopened.
2. Upon reconsideration, Environmental Condition No. 17 imposed in the March 10, 2009 decision is removed.
3. This decision is effective on its service date.

By the Board, Vice Chairman Nottingham, and Commissioner Mulvey, Chairman Elliott not participating.

Anne K. Quinlan  
Acting Secretary